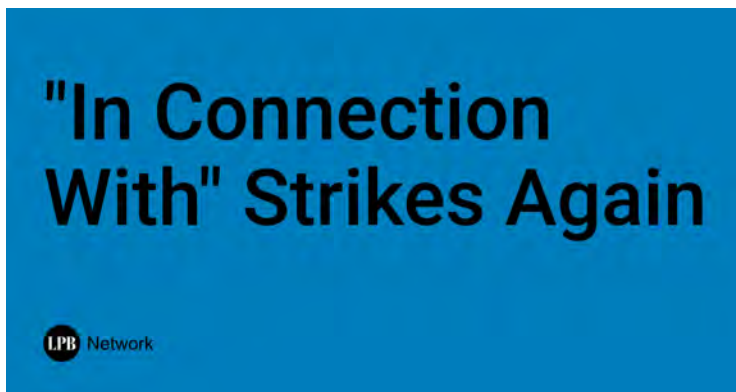


"In Connection With" Strikes Again

 [businesslawprofessors.com/2025/11/in-connection-with-strikes-again](https://www.businesslawprofessors.com/2025/11/in-connection-with-strikes-again)

Ann Lipton

November 28, 2025



I've blogged several times about the unduly narrow concept of "standing" and the "purchaser-seller" rule that courts have been applying in the context of Section 10(b). (Most recent post discussing it is [here](#); there is a link to earlier posts).

We have a new case that adds to the mix.

Toronto Dominion Bank signed an agreement to purchase the stock of First Horizon, which of course caused First Horizon's price to trade upward. Eventually, TD got into regulatory trouble and the merger fell through, which caused First Horizon's stock to fall. Purchasers of First Horizon stock sued First Horizon, but they also sued TD Bank, alleging that its false representations of regulatory compliance made the merger seem more plausible and inflated First Horizon's stock price.

Careful readers will recognize that this is, more or less, exactly what happened in *Semerenko v. Cendant Corp.*, 223 F.3d 165 (3d Cir. 2000). There, the defendants argued that statements about the acquirer (in this case, the acquirer's audit opinion) were not made "in connection with" the purchase or sale of the target's securities, as Section 10(b) requires. The Third Circuit held that that statements about the would-be acquirer were made "in connection with" purchases of the target's securities, because they were material and publicly disseminated. The only limitation that the court added was that, to sue a particular defendant, plaintiffs would have show that it was foreseeable that the defendant's statements would be relied upon by traders in the relevant securities. Therefore, with that additional caveat, purchasers of the target's securities could sue the acquirer's auditor.

The TD Bank case was filed in the District of New Jersey, which would make *Cendant* precedent, but the district court nonetheless dismissed the plaintiffs' claims, on the ground that the plaintiffs were not purchasers or sellers of TD Bank securities and had no standing to sue. The court reasoned:

True, the fact pattern in *Cendant* is similar to the case before it. Critically, however, *Cendant* did not address statutory standing or the purchaser-seller rule at all, relevant here. Instead, it focused on a separate requirement of a Section 10(b) claim, namely that the alleged misrepresentation be "in connection with" the purchase or sale of a security. The defendants argued that "the alleged misrepresentations must speak directly to the investment value of the security that is bought or sold, and that they must have been made in with the specific purpose or objective of influencing an investor's decision." The plaintiffs, in turn, argued that "the 'in connection with' requirement is satisfied whenever a misrepresentation was made in a manner that is reasonably calculated to influence the investment decisions of market participants."... The Court will not read an implicit ruling on statutory standing into *Cendant*. *Cendant* plainly did not address the purchaser-seller rule or statutory standing.

In re Toronto-Dominion Bank / First Horizon Corp. Sec. Litig., 2025 U.S. Dist. LEXIS 232405 (D.N.J. Nov. 26, 2025).

I have a question.

Where, exactly, does the court think the purchaser-seller rule comes from?

Because, to me, the purchaser-seller rule was articulated in *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), citing the Second Circuit's decision in *Birnbaum v. Newport Steel Corp.*, 193 F.2d 461 (2d Cir. 1952). And that rule was explicitly an interpretation of what it means for a fraud to be committed "in connection with" the purchase or sale of a security. See *Blue Chip*, 421 U.S. at 731 ("The panel which decided *Birnbaum* consisted of Chief Judge Swan and Judges Learned Hand and Augustus Hand: the opinion was written by the last named. Since both § 10(b) and Rule 10b-5 proscribed only fraud 'in connection with the purchase or sale' of securities, and since the history of § 10(b) revealed no congressional intention to extend a private civil remedy for money damages to other than defrauded purchasers or sellers of securities, in contrast to the express civil remedy provided by § 16(b) of the 1934 Act, the court concluded that the

plaintiff class in a Rule 10b-5 action was limited to actual purchasers and sellers.”). The rule, as articulated in *Blue Chip*, was that there needed to be an actual purchase or sale by a private plaintiff.

So when the Third Circuit in *Cendant* interpreted “in connection with” to extend to purchases or sales of a different, but related, company’s securities, it was looking at the exact same language and the exact same requirement – the plaintiff must have made a purchase or sale – and concluded that it was sufficient if the “purchase or sale” involved a security that would have been foreseeably affected by the defendant’s fraud. This scenario was precisely what the Third Circuit had in mind.

This whole idea that somehow “in connection with” as articulated in *Cendant* is a different concept from the purchaser-seller rule or a standing rule is incoherent to me; it’s all interpretation of the same language, and it’s all the same question, namely, were these plaintiffs among the class of persons targeted by – and injured by – the fraud? And the purportedly-bright line rule that some courts have announced – [the statement must be “about” the traded security](#) – is unworkable on its face; you cannot answer the question of what security a statement is “about” without addressing who the audience was. TD Bank’s representations about regulatory compliance, in the proxy statement and in statements about the merger itself, were at least as much addressed to a First Horizon shareholder audience as anyone else.

And while – as I’ve said before – I understand courts’ wariness about permitting too broad a connection (ultimately, every bit of information is connected to everything else), “had an explicit merger agreement” doesn’t seem like too difficult a line to draw. We’re seconds away from an explicit pump and dump – fake tender offer so the fraudster can dump their shares at an inflated price – not being made “in connection with” the subject securities if the false statement is about, I dunno, the offeror’s financing, and that’s about the core of what Section 10(b) was supposed to prohibit in the first place.

There is no other thing. Mike Levin and I took a Thanksgiving break this week from the [Shareholder Primacy podcast](#); back soon!

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Expert Opinion | **Securities Litigation**

‘Context Is Everything’: The Second Circuit, Material Misrepresentations, and ‘Peloton’

Anthony Sabino analyzes the Second Circuit’s ruling in Peloton, highlighting how the decision underscores how securities-fraud cases depend heavily on context.

November 28, 2025 at 09:00 AM By **Anthony Michael Sabino**



Anthony Michael Sabino, co-founder of Sabino & Sabino. Courtesy photo

“Context is everything” is a timeless axiom with outsized relevance when alleging violations of the federal securities laws. Basing allegations of material misrepresentation upon the selective quoting of isolated statements out of context typically fails, whereas the survival rate is appreciably higher for accusations of securities fraud which are plausible when read in the totality of their circumstances.

The realities of pleading securities fraud were neatly exemplified in the recent Second Circuit case of *City of Hialeah Employees’ Retirement System v. Peloton Interactive, Inc.*, ___ F.4th ___ (No. 24-2803) (2d Cir. Aug. 27, 2025) (“*Peloton*”), a putative class action alleging that the well-known exercise equipment manufacturer misled investors with regard to the buildup of its inventory during and after the recent pandemic.

To be sure, the decision provides a decidedly mixed outcome, with the tribunal discarding outright various allegations, while remanding others for further consideration. Yet that is the point of the instant writing, for *Peloton* is highly instructive in expositing the requirements of pleading or defending against claims of material misrepresentation in the purchase or sale of securities.

Pleading Securities Fraud

To be sure, our analysis of the Second Circuit’s latest wisdom on the subject must be introduced by a brief review of the well-established prerequisites for alleging securities fraud. First, there is the law itself: Section 10 of the 1934 Securities Exchange Act, and its boon companion, Rule 10b-5 promulgated thereunder, which jointly prohibit the use of any deceptive scheme, artifice or device in the transacting of securities on the national exchanges. 15 U.S.C. §78j(b) and 17 C.F.R. §240.10b-5, respectively. *See also Lorenzo v. S.E.C.*, 587 U.S. ___ (2019).

For decades, a six-point test has mandated the irreducible minimum for making out a plausible Section 10 action. *See Amgen, Inc. v. Connecticut Retirement Plans and Trust Funds*, 568 U.S. 455 (2013). Any complaint asserting there has been a violation of the anti-fraud statute must first plausibly allege a material misrepresentation or omission. *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27 (2011). The purported misstatement must have been made with scienter, that is to say, evil intent or motivation. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976), and the allegedly misleading disclosure must have been made in connection with the purchase or sale of a security. *S.E.C. v. Zandford*, 535 U.S. 813 (2002).

The plaintiff must further demonstrate its reliance upon the utterance, *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008), proof of economic loss, and, finally, loss causation or, put another way, proximate cause. *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005).

Two critical subcomponents provide the measure of a plausible allegation of material misrepresentation. First, an allegedly deceitful statement must be demonstrably significant to a reasonably objective investor, *see Basic Inc. v. Levinson*, 485 U.S. 224 (1988), and, second, the complaining party must satisfy the rigors of pleading fraud with particularity by at least strongly inferring malicious intent, typically accomplished by pointing out contradictions and inconsistencies in the defendant's statements to the market. *See* Fed. R. Civ. P. 9(b); *See* 15 U.S.C. §78u-4(b)(2). *See also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007).

'Peloton': Demand v. Inventory

In the waning days of the pandemic, Peloton executives announced that 91% of the firm's inventory was unsold. This triggered an immediate and dramatic decline of more than one-third in the company's per share price, followed by an additional decline of nearly 25%.

This incited the putative class representative to commence an action sounding in securities fraud, alleging that management materially misled investors via, among other things, misrepresentations encompassing descriptions of demand as "strong," "robust," and similar, and the chief executive officer's rather vocal pronouncement that a discount pricing strategy was "absolutely offensive."

In what could rightly be classified as a split decision, the Second Circuit found that the bulk of the securities fraud allegations had not been pled with the necessary particularity, and were therefore not actionable. Nonetheless, certain claims had sufficient traction to merit further consideration on a remand to the trial court.

Guiding Principles

The tribunal articulated three overarching principles undergirding its reasoning, each of which underscored the importance of reading purportedly materially misleading statements in context, hand in hand with a careful examination of the circumstances accompanying any alleged misstatement.

First, opined Circuit Judge Menashi, determining whether or not a corporate disclosure qualifies as a material misrepresentation entails scrutinizing the statement's context and mode of presentation, and not just its literal truth. *See Singh v. Cigna Corp.*, 918 F.3d 57 (2d Cir. 2019). Next, a court must ask if the allegedly deceitful statements, thus read collectively and in context, are capable of misleading a reasonable investor. Third, this tribunal and its sister circuits have long held that puffery, expressions of corporate optimism, and "aspirational statements" are far too nebulous to give rise to a plausible Section 10 claim.

Nonactionable Claims

Addressing first the contentions that management materially misstated post-pandemic demand for the manufacturer's exercise equipment, the tribunal was troubled by inconsistencies in the confidential witness accounts cited by the plaintiffs in support of their allegations.

More importantly, the complaint failed to read in context management's assertions that there was a "ton of demand" for Peloton's wares. As point in fact, opined Circuit Judge Menashi, such representations were "factually true and consistent with Peloton's financial results" at the time they were made.

The plaintiffs likewise misread the chief financial officer's statements wherein she expressly compared contemporaneous demand against pre-pandemic levels, and not COVID peaks. In sum, the appellate court found these comparators "consistent with Peloton's then-current expectations of future growth." The panel accordingly discarded the allegations that management had misrepresented demand.

This was all in keeping with the Second Circuit's well-settled postulations that "corporate officials need not present an overly gloomy or cautious picture of current performance and future prospects," while "expression[s] of corporate optimism [are] non-actionable puffery."

Plausible Allegations

The Second Circuit took an entirely different view, however, of management's representations of the "absolutely offensive" aim of discount pricing, finding those statements to be plausibly misleading. A reasonable investor, said the panel, would have interpreted that explanation "as rejecting the suggestion that the reduction was defensive."

The appellate court took cognizance that these utterances came at a time when the company was burdened with 91% of its goods unsold, and had restated earnings guidance downward by a staggering \$1 billion. "In other words," opined Circuit Judge Menashi, "Peloton was already engaging in the sale of excess inventory at discounted prices," and therefore the risk of surplus inventory was "not merely hypothetical but had already materialized and resulted in significant disruption to [Peloton's] business" (internal quotations and citations omitted). Given the totality of the circumstances, it was plausible that this representation misled investors.

Addressing certain peripheral matters, the Second Circuit summarily declined to entertain an alternative argument that the scienter allegations should be dismissed as deficient. As a "a court of review, not of first view," the panel was under no obligation to hear a contention raised for the first time on appeal (internal quotation and citation omitted).

With the same alacrity, the circuit panel instructed the lower court to reconsider the assertion of Section 20 "control person" liability. *See 15 U.S.C. §78t(a)* (imposing secondary liability upon those

who “control” a primary violator). Those allegations had to be revived once certain of the underlying Section 10 claims were remanded.

The Partial Dissent

Worthy of a brief mention is Circuit Judge Newman’s separate opinion. While concurring in the main, the veteran jurist nonetheless took exception to the conclusion that the chief executive officer articulated “a denial that the [price] reduction was defensive and a false denial at that.”

The learned dissent urged an alternate view: a price discount is a two-sided coin which “inevitably serves both an offensive and defensive purpose.” A reasonable investor “would understand that the reduction would also be defensive because Peloton would reduce inventory.” Investors are obligated to filter all management opinions in their full context, including conflicting data, *see Omnicare Inc. v. Laborers District Council Construction Industry Pension Fund*, 575 U.S. 175 (2015), and thus a rational investor would not have been misled by the CEO’s utterance.

Conclusion

Peloton imparts crucial lessons for those prosecuting or defending securities fraud claims. The Second Circuit aptly demonstrates that the gatekeeper for Section 10 actions is the stringent requirement that there must be plausible allegations of material misrepresentation, which demand that plaintiffs surmount a high bar before proceeding to the remainder of the vaunted six-point test. Equally so, defendants are forewarned that all disclosures to investors shall be gauged by context and circumstances, and not merely their literal truth.

Above all, *Peloton* impresses upon the reader not only the primacy of context in analyzing claims of material misrepresentation, but, as the partial dissent exemplifies so well, oft times context is susceptible to more than one interpretation. Securities fraud cases rise and fall upon such, and no doubt this latest wisdom of the Second Circuit, including its respectful dissent, shall shape the adjudication of future controversies. In short, *Peloton* confirms, once again, that context is everything.

Anthony Michael Sabino *is a partner at Sabino & Sabino, P.C., and a Professor of Law at Tobin College of Business, St. John’s University.* Anthony.Sabino@sabinolaw.com.

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Securities

This Week in Chancery Court: Sears Hometown Deal, ITG Brands

December 1, 2025, 2:00 AM PST

Long-running litigation in Delaware Chancery Court over the the take-private restructuring of Sears Hometown and Outlet Stores Inc. may be at an end with a settlement awaiting a judge's approval.

Here's a look at what's happening in the business court and the Delaware Supreme Court:

Monday: VK Inv., Inc. v. Kinderhook Indus. LLC, Del. Ch., No. 2024-1266, hearing 12/1/25.

At issue: Kinderhook Industries LLC seeks to knock out an amended complaint brought by the founder of BlueDriver, an auto tech business it acquired, alleging the investment firm tolerated gross mismanagement, turned a blind eye to rampant self-dealing, and shelved plans for a sale that would've revealed a scheme to hype the value of its portfolio.

Court action: Hearing in Wilmington, Del.

Ferrari Heist Escalates Private Equity Feud Over Valuation Case

Monday: In re Sears Hometown & Outlet Stores, Inc. S'holder Litig., Del. Ch., No. 2019-0798, settlement hearing 12/1/25.

At issue: A \$9.37 million settlement has been proposed to resolve a lawsuit against billionaire Eddie Lampert and his affiliates. The settlement, combined with a previous \$3.1 million partial settlement, will replace a previous damages award if approved by Vice Chancellor J. Travis Laster. The lawyers for the shareholders leading the case are asking for about \$2.92 million in fees for their work, including a trial.

Court action: Settlement hearing in Wilmington, Del.

Billionaire Eddie Lampert Denied Appeal Over Additional Damages

Wednesday: ITG Brands LLC v. Reynolds American, Inc., Del., No. 204,2025, oral arguments 12/3/25.

At issue: ITG Brands LLC appealed a Chancery Court order to reimburse Reynolds American Inc. over \$251 million for payments Reynolds made to the state of Florida as part of a settlement agreement that predated ITG's acquisition of the Winston, Salem, Kool, and Maverick tobacco product lines. "The trial court fundamentally rewrote" the asset purchase agreement "by declaring that ITG unambiguously assumed liability" under the Florida settlement agreement, ITG says.

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

ITG Brands to Pay Reynolds \$251 Million for Settlement Payments

Friday: Unknown Worlds Ent., Inc. v. Cleveland, Del. Ch., No. 2025-0915, hearing 12/5/25.

At issue: Vice Chancellor Lori W. Will presided over a trial last month concerning claims that a Korean video game studio linked to Chinese tech giant Tencent sabotaged the 2025 release of the blockbuster Subnautica franchise's next installment. Now before Will are cross-motions for summary judgment in a separate counter-lawsuit that alleges the game's developers abandoned their technical jobs and their duties as board members while scheming to secure up to \$250 million in earnout payments.

Court action: Hearing in Wilmington, Del.

Subnautica Developers Abandoned Sequel, Krafton Says in Lawsuit

—With assistance from Bloomberg Law automation.

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Securities

Baxter Concealed Problems With Risky IV Pumps, Investors Say

Nov. 28, 2025, 10:00 AM PST

Executives at healthcare company Baxter International Inc. misled investors about a medical device by “concealing systemic issues that put patients at the risk of severe injury and death,” according to an investor suit.

The Novum IQ Large Volume Pump, which is meant for delivery of IV fluids, was portrayed as safe when it actually posed significant risks, the complaint states.

A Baxter shareholder filed the suit Wednesday in the US District Court for the Northern District of Illinois.

The company began selling the pump in Canada in 2020 and in the US in 2024, and the product was a “promising multiyear growth driver,” executives said, according to the complaint.

But after a whistleblower at a Missouri hospital system told local news that the devices were in fact dangerous, the company sent warning letters to customers, one of which noted that the company knew of 79 injuries and two deaths associated with “deficiencies” in the product, the complaint states.

On an earnings call in July the company told investors it would pause shipments and installations of the device, with no word on when they might resume, the complaint states. After that, the stock price fell more than 22%, according to the complaint.

A class complaint making similar allegations was filed against Baxter last month.

Plaintiff is represented by Wolf Haldenstein Adler Freeman & Herz LLC.

The case is Gray v. Almeida, N.D. Ill., No. 1:25-cv-14517, complaint filed 11/26/25 .

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Securities

Canada Court Allows Investors to Sue Lundin for Late Disclosure

Nov. 28, 2025, 9:54 AM PST

Canada's top court has ruled that investors can sue Vancouver-based Lundin Mining Corp. for failing to disclose that a rockslide took place at one of its mines in Chile, affirming when public companies must share information with shareholders.

The Supreme Court of Canada on Friday set aside a lower court's interpretation that narrowly defined "material information," which would have prevented the investors from bringing a class action against Lundin alleging that the company waited too long to tell them about the rockslide.

In 2017, Lundin detected pit wall instability in part of its open pit mine at its Candelaria copper mine in Chile. A few days later, on Oct. 31, as much as 700,000 metric tons of waste material fell in the mine. Lundin disclosed the event on Nov. 29, cutting its 2018 outlook for production at the location by 20%. The announcement caused Lundin's stock to fall 16% the next day, erasing more than C\$1 billion (\$715 million) of market capitalization.

"The Supreme Court has upheld the guidance that it's given public companies in the past, which is when something internal happens within your business and it's something important to investors, you should disclose that immediately," said Doug Sarro, assistant law professor at the University of Ottawa, in an interview.

"There's been some commentary in the lead-up to the appeal trying to suggest that the status quo is you don't disclose material changes unless they amount to, effectively, the end of your business," Sarro said, whose analysis was cited in the court's decision. "So it's good that the Supreme Court has stepped in and corrected the record for everybody."

Michael Thom, managing director of CFA Societies Canada, which intervened in the case, said the decision reinforces that companies know their own businesses best.

"This is good for investors, and this is good for markets," he said. "It doesn't take the law in a new or difficult-to-understand direction."

A lawyer for Lundin Mining said the company would not be commenting on the decision.

(An AI summary previously at the top of this story was removed for incorrectly explaining the impact of the ruling.)

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Class Action

Manage Newsletters

NextEra Investors Get 'Ghost Candidate' Stock Suit Revived (1)

Nov. 26, 2025, 11:43 AM PST; Updated: Nov. 26, 2025, 12:48 PM PST

Summary by Bloomberg AI

AI Generated



- The Eleventh Circuit ruled that NextEra Energy Inc. investors adequately pleaded that company disclosures about business risks caused their losses in the stock routs that followed.
- Shareholders alleged that NextEra's subsidiary Florida Power & Light engaged in "political misconduct" by secretly channeling funds to straw candidates in local elections.
- The appeals court held that the investors identified adequate corrective disclosures, a subsequent price drop, and have plausibly ruled out other explanations for the loss.

NextEra Energy Inc. investors adequately pleaded that company disclosures about business risks from previously denied alleged political meddling caused their losses in the stock routs that followed, the Eleventh Circuit ruled Wednesday.

"Where a court is presented with well-pleaded facts that the investing public related the corrective disclosure to the earlier misinformation, it is improper for such court to substitute its own opinion on the matter," the US Court of Appeals for the Eleventh Circuit said.

Shareholders alleged that NextEra's subsidiary Florida Power & Light engaged in "political misconduct," secretly channeling funds to straw candidates in local elections to siphon votes from politicians it viewed as opposing its interests. The legal violations stemming from the "ghost candidate" misconduct and news coverage of it exposed NextEra to reputational risks, which in turn caused stock-price declines, the complaint said.

The investors failed to adequately plead fraud on the market because they didn't show a corrective disclosure revealing that a previous representation was false, Judge Aileen M. Cannon said in September 2024 for the US District Court for the Southern District of Florida.

The two pension funds leading the proposed class action appealed to the Eleventh Circuit.

A plaintiff must show material fraud—in detail—to recover in a securities fraud suit, Judge Gerald Bard Tjoflat said for the appeals court. But loss causation isn't the right route for litigating the fraud, he said. That element of the claim "simply asks whether the loss was proximately caused by the alleged misstatements. In other words, whether the price dropped for the reason the plaintiff claimed it dropped."

The complaint "identifies three pieces of information that changed the market's perception about the alleged election fraud," including the risk disclosures, the CEO's abrupt departure, and an unusual claw-back provision associated with that departure, Tjoflat said.

"Here, we hold that the Retirement Funds have identified adequate corrective disclosures, a subsequent price drop, and have plausibly ruled out other explanations," he said. Judges Elizabeth L. Branch and Embry J. Kidd joined the opinion.

Counsel for the investors includes Gupta Wessler LLP and Block & Leviton LLP. Paul, Weiss, Rifkind, Wharton & Garrison LLP and Martinez-Cid Law represent NextEra.

The case is City of Hollywood Police Officers Ret. Sys. v. NextEra Energy, Inc. , 11th Cir., No. 24-13372, 11/26/25 .

(Adds additional analysis from the opinion and context, beginning in third paragraph.)

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Securities

TD Bank, First Horizon Shed Investor Suit Over Failed Merger (1)

Nov. 28, 2025, 8:16 AM PST; Updated: Nov. 28, 2025, 8:49 AM PST

Toronto-Dominion Bank and First Horizon Corp. defeated investor allegations they misrepresented the approval prospects for a dashed \$13.4 billion deal.

The First Horizon shareholders lacked standing to sue TD for securities fraud over statements about its own regulatory compliance and commitment to acquiring the bank, Judge Renée Marie Bumb said while dismissing without prejudice the proposed class action in the US District Court for the District of New Jersey. The US Court of Appeals for the Third Circuit would follow the Second and Ninth Circuit in a decision regarding investors who didn't trade TD securities, she said.

They failed to allege that TD's statements about itself were really about First Horizon given the merger was pending at the time, Bumb said in a Nov. 26 opinion.

TD walked away from the deal in 2023 amid regulatory concerns and US money-laundering probes, sending First Horizon's stock price down. Canada-based TD agreed to pay US regulators almost \$3.1 billion in fines over the scandal, under which authorities alleged the bank's lax controls allowed significant money laundering over multiple years.

Investors' fraud claims against First Horizon fell on lacking allegations for an inference of leadership's scienter, or an intent or recklessness to deceive shareholders, Bumb said. Their third amended complaint was full of impermissible group pleadings in which they tried to impute TD's actions to First Horizon, she said.

Nowhere did the investors specifically allege TD kept First Horizon apprised of its regulatory approval concerns, or note conversations between the companies regarding TD's anti-money laundering deficiencies, Bumb said.

"What's more, any inference of scienter that could be drawn from the magnitude of TD Bank's regulatory issues is severely weakened by the competing allegations that TD Bank 'actively concealed' these problems from regulators for years," she said.

Isolated stock sales, most of which were made by non-defendants, didn't support the inference of scienter against First Horizon, she said.

And investors couldn't establish the shareholder-approved merger caused losses because the deal, which would've been beneficial to them, was never consummated, which is necessary to support a claim against TD and First Horizon under a rule against releasing misleading proxy statements to obtain stockholder votes, Bumb said.

Although questioning the shareholders' ability to fix these deficiencies, Bumb said they could replead one more time.

"We believed that the claims against our clients were entirely without merit and are pleased with the Court's thorough and well-reasoned opinion dismissing the case," Brandon Arnold, a partner at Herbert Smith Freehills Kramer (US) LLP who led the case for First Horizon, said in an emailed statement.

Bernstein Litowitz Berger & Grossmann LLP and Saxena White PA are co-lead counsel for the First Horizon shareholders. Neither of these firms immediately responded to emails seeking comment.

Paul, Weiss, Rifkind, Wharton & Garrison LLP and Brown & Connery LLP represent TD. TD said it doesn't comment on litigation.

The case is In re Toronto-Dominion Bank / First Horizon Corp. Sec. Litig. , D.N.J., No. 23-2763, 11/26/25 .

(Updates to include a comment from an attorney representing First Horizon in the 11th paragraph.)

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Securities

Altimmune Investors Drop Suit Over Liver Drug Trial, Stock Drop

Nov. 28, 2025, 9:13 AM PST

Altimmune Inc. investors voluntarily dismissed claims it overhyped topline trial results of a liver disease treatment before sharing one of its goals lacked statistical significance.

Judge Theodore D. Chuang ordered the case closed in the US District Court for the District of Maryland Nov. 26, the same day the investors said they were dropping their lawsuit with the ability to refile. The proposed class action followed Altimmune's announcement that while there appeared to be a positive trend in improvement on liver scarring, known as fibrosis, from the drug pemvidutide, there wasn't a statistically significant difference compared to a placebo group at 24 weeks.

The biopharmaceutical company's stock price plummeted more than 53% to close at \$3.61 on June 26, the day it shared mixed topline results of a Phase 2b trial for its experimental weight-loss drug to treat metabolic dysfunction-associated steatohepatitis

The company and certain leaders concealed higher-than-expected responses from the placebo group, which they knew or should've known would hinder the results, the lawsuit said

Pomerantz LLP and Levi & Korsinsky LLP are lead counsel for the investors. Goodwin Procter LLP represents Altimmune, CEO Vipin K. Garg, and former Chief Medical Officer M. Scott Harris. None of these law firms nor Altimmune immediately responded to emails seeking comment.

The case is Wu v. Altimmune, Inc. , D. Md., No. 8:25-cv-02581, dismissed 11/26/25 .

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Securities

Redfin Shareholder Drops Suit Over Goldman Role in Rocket Sale

Nov. 28, 2025, 10:18 AM PST

A Redfin Corp. stockholder voluntarily dismissed his challenge over its recent \$1.75 billion sale to Rocket Cos. a week after a federal judge denied his request for attorneys' fees.

Shareholders voted overwhelmingly in favor of the deal in June, the day after Judge John H. Chun of the US District Court for the Western District of Washington denied investor Jason Morano a preliminary injunction that would've delayed the vote. Morano argued he was still entitled to \$450,000 in attorneys' fees and expenses because his litigation efforts had secured the reporting to the Securities and Exchange Commission of supplemental disclosures to the proxy before the vote.

Chun denied the fees motion, saying Morano failed to establish additional disclosures concerning Redfin's financial adviser Goldman Sachs & Co. were material or that the deal's proxy statement contained a material omission

Morano alleged Goldman Sachs Bank USA's lending relationship with Rocket was only "vaguely" discussed in the deal's paperwork, and that it didn't disclose certain financial metrics Goldman used in preparing an analysis

Townsend Legal, Monteverde & Associates PC, and Wohl & Fruchter LLP represented Morano, who told the court he was dropping his suit Nov. 26. Goodwin Procter LLP and Foster Garvey PC represented Rocket. Fenwick & West LLP represented Redfin and board members. None of the law firms immediately responded to emails seeking comment. Rocket didn't immediately respond to a web form submission. Goldman, not party to the suit, declined to comment.

The case is Morano v. Redfin Corp. , W.D. Wash., No. 2:25-cv-00883, notice of voluntary dismissal 11/26/25 .

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Securities

Six Flags Faces Derivative Investor Suit Over Cedar Point Merger

Nov. 28, 2025, 12:03 PM PST

Six Flags Entertainment Corp.'s top management was sued in Ohio federal court by an investor who says shareholders were misled over the amusement park operator's 2024 merger with Cedar Point and its deteriorating park facilities.

The derivative shareholder lawsuit said Six Flags and its officers and board members had made statements about the benefits of the merger—creating the largest amusement park conglomerate in North America—"that had no basis in material fact."

Six Flags had actually failed to make adequate capital investments, conduct routine facility checks, and made drastic reductions in personnel ahead of the merger, "making the benefits of combination unachievable," the lawsuit filed in the US District Court for the Northern District of Ohio said.

Shareholder Matthew Whitfield's lawsuit names President and CEO Richard A. Zimmerman who is stepping down next month and Executive Chairman of the Board Selim Bassoul, as well as the rest of the board of directors as defendants. Whitfield seeks damages on the company's behalf and unspecified governance reforms.

Six Flags and Cedar Fair, an Ohio-based amusement park competitor, announced plans for a merger in November 2023, and shareholders voted to approve the merger in March the following year. The deal was closed in July 2024, with a combined portfolio of 27 amusement parks, 15 water parks, and 9 resort properties.

The lawsuit said in the two years leading up to the merger, Six Flags officers had told investors in earnings calls and proxy statements that it would increase its investments in parks to make them more child and family friendly. Those statements were not true, investors alleged.

After the merger, Six Flags saw a drastic decline profitability, largely the result of failings facilities and operations.

Law Offices of John C. Camillus represents the shareholders.

The case is Whitfield v. Bassoul , N.D. Ohio, No. 3:25-cv-02599, 11/26/25 .

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Class Action

Manage Newsletters

Paratek Leaders Beat Challenge to \$462 Million Novo-Gurnet Deal

Nov. 26, 2025, 9:58 AM PST

Paratek Pharmaceuticals Inc.'s senior leadership prevailed Wednesday over investor claims that they accepted a lower price in its \$462 million sale to Novo Holdings A/S and Gurnet Point Capital LLC in order to increase incentive payments for themselves.

The February 2024 proposed class action claimed Paratek's CEO, chairman, and three other executives doubled their own incentive payments by delaying the deal until September 2023. The Delaware Chancery Court found it "undisputed" that the majority of the board that approved the transaction was disinterested and independent from the leadership, according to a 73-page opinion.

The investors' "fraud-on-the-board theory is novel," said Vice Chancellor Paul A. Fioravanti Jr. But their claims fail to support "a reasonably conceivable inference" that the executives purposely concealed information from, or intentionally misled, the board in order to delay the sale.

The board "was aware and maintained effective oversight" of the executives in the transaction, he said. "Speculating about whether something happened generally will not support a disclosure claim."

The lawsuit was filed by eight ex-investors—including a Texas compounding pharmacy and several Highland Capital Partners affiliates—that had owned nearly 12% of the drug company.

The investors are represented by Heyman Enerio Gattuso & Hirzel LLP and Rolnick Kramer Sadighi LLP. The executives are represented by Abrams & Bayliss LLP and Ropes & Gray LLP.

The case is DrugCrafters LP v. Loh , Del. Ch., No. 2024-0111, 11/26/25 .

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Class Action

Manage Newsletters

Virtua Health Retirement Plan Lawsuit Moves Forward After Trim

December 1, 2025, 6:57 AM PST

Summary by Bloomberg AI

AI Generated



- Virtua Health Inc. must face a lawsuit by workers saying their retirement plans have pricey mutual funds and a stable value fund that allowed a plan service provider to reap outsized profits.
- Judge Christine P. O'Hearn ordered Virtua to defend claims that it breached its fiduciary duties under the Employee Retirement Income Security Act by failing to monitor the plans' investment options.
- O'Hearn dismissed a challenge to the plans' administrative fee levels, along with certain claims raised against Lincoln Financial Group.

Virtua Health Inc. must face a pared-back lawsuit by workers saying their retirement plans are plagued by pricey mutual funds and a stable value fund that allowed a plan service provider to reap outsized profits.

Judge Christine P. O'Hearn on Sunday ordered Virtua to defend claims that it breached its fiduciary duties under the Employee Retirement Income Security Act by failing to appropriately monitor the plans' investment options, including a stable value fund from plan recordkeeper Lincoln Financial Group.

But she dismissed a challenge to the plans' administrative fee levels, along with certain claims raised against Lincoln.

O'Hearn, who sits in the US District Court for the District of New Jersey, said she'd explain her reasoning in a forthcoming opinion.

The year-old proposed class action takes aim at the relationship between Virtua and Lincoln, which provided recordkeeping services to the Virtua plans and offered the stable value fund that served as the plans' primary fixed income investment. This fund paid Lincoln excessive fees through a revenue sharing arrangement that allowed the company to earn more than \$4 million between 2018 and 2022, according to the lawsuit, which seeks to represent a proposed class of about 11,240 people.

Dozens of recent ERISA lawsuits have centered on stable value funds, which are retirement investments aimed at providing modest, guaranteed rates of return while protecting against losses.

Berger Montague PC and Edelson Lechtzin LLP represent the plan participants. Ballard Spahr LLP represents Virtua. Faegre Drinker Biddle & Reath LLP represents Lincoln.

The case is Grink v. Virtua Health, Inc. , D.N.J., No. 1:24-cv-09919, 11/30/25 .

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Commentary | **Class Actions**

Arguing Class Actions: Megafunds—An Outdated Concept That Was Wrong From the Outset

Arguing Class Actions is a monthly column for the National Law Journal.

December 01, 2025 at 06:00 AM By **Adam J. Levitt**



Adam J. Levitt founding partner of DiCello Levitt. Courtesy photo

Imagine a class action against a car manufacturer alleging that it knowingly sold cars with defective anti-theft systems. The car manufacturer moves to dismiss, raising a bevy of complex legal and technical arguments relating to constitutional standing, the efficacy of the manufacturer's remedies, mootness, and the like. Shortly after the court's denial of the dismissal motion, the parties reach a classwide settlement of their dispute for \$150 million, a significant portion of the claimed damages. The attorneys representing the settlement class then request \$50 million in attorney fees for their efforts, one-third of the \$150 million settlement fund. Is this request "reasonable," as required by Rule 23(h) of the Federal Rules of Civil Procedure?

In determining whether the request is reasonable, courts apply two main methods. See *In re T-Mobile Customer Data Sec. Breach Litigation*, 111 F.4th 849, 858 (8th Cir. 2024). One is the lodestar method, where the court will determine the number of hours the plaintiffs attorneys spent on the litigation and multiply it by a reasonable hourly rate, resulting in the “lodestar.” The second is the percentage method, where the court awards a percentage of the fund that the attorneys helped recover. Today, many courts employ a hybrid of the two methods, in which the court first applies the percentage method and then “cross-checks” the reasonableness of that amount with the lodestar method. See *Halley v. Honeywell International*, 861 F.3d 481, 496 (3d Cir. 2017) (“Common fund cases, such as this case, are generally evaluated using a ‘percentage-of-recovery’ approach, followed by a lodestar cross-check.”) (citation omitted). The ratio between counsel’s requested percentage award and their lodestar is commonly referred to as a “multiplier.” Multipliers of up to four are commonly found to be appropriate in common fund cases. See *Health Republic Insurance v. United States*, 58 F.4th 1365, 1375 (Fed. Cir. 2023).

The cross-check method breaks down, however, when the settlement results in what some commentators and courts have called a “megafund,” which was originally defined (in the mid-1990s) as a settlement involving \$100 million or more. See William B. Rubenstein, *Newberg on Class Actions* Section 15:81 (6th ed. June 2025 update) (noting that “most courts define megafunds as those in excess of \$100 million”). In our scenario, for instance, a request of \$50 million in attorney fees for work that concluded before substantial discovery had begun would likely reflect a multiplier in excess of the typical range. And so, some courts have advanced a rule that caps attorney fees when the common fund exceeds a certain value; this has been referred to as the “megafund rule.” See *In re Broiler Chicken Antitrust Litigation*, 80 F.4th 797, 804 n.5 (7th Cir. 2023).

The problem, however, is that while certain courts have concluded that common funds in excess of \$100 million are considered “megafunds,” see, e.g., *Alexander v. Fedex Ground Package System*, 2016 WL 1427358, at *8 (N.D. Cal. Apr. 12, 2016), the entire “megafund” construct creates the perverse incentive for counsel to burn more of the parties’ and the court’s resources and limit the eventual recovery. The fact is that plaintiffs’ counsel capable of obtaining large settlements in substantial cases should be rewarded and fairly compensated, rather than vilified and ground down. As Judge Easterbrook—rejecting the district court’s attempted fee reduction on purported “megafund” grounds—said more than a quarter century ago in *In re Synthroid Marketing Litigation*, 264 F.3d 712, 718 (7th Cir. 1999), “we have held repeatedly that, when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” That was the truth then, and it’s the truth now.

Regardless, in megafund cases, courts have held that, “the economies of scale often reveal a disconnect between recovery and the amount of labor required to achieve it.” *T-Mobile*, 862 F.3d at

859. In short, “it isn’t 10 times as hard to try a \$100 million case as it is a \$10 million case.” *In re Optical Disk Drive Products Antitrust Litigation*, 959 F.3d 922, 933 (9th Cir. 2020). Consequently—and blithely ignoring, among other things, fundamental risk premium concepts that underscore contingent fee litigation—the argument goes, megafunds “are the product of a class’s size rather than counsel’s effort, and so attorneys shouldn’t receive as high a percentage of the settlement fund in such cases.” *T-Mobile*, 862 F.3d at 859.

This argument works best in certain megafund cases: those that are resolved at a very early stage of litigation, perhaps before any briefing has occurred. One such example would be a class action that is settled for \$200 million one month after the complaint is filed. In that situation, the size of the recovery could potentially be considered a product of the class’s size rather than of counsel’s efforts.

But there are at least two flaws with applying the megafund rule across all megafund cases. Perhaps most obviously, the rule penalizes attorneys for quick success. Indeed, one of the key purposes of class action litigation, and Rule 23 specifically, is to foster efficiency and economies of scale. Yet, the megafund rule destroys those efficiencies by disincentivizing attorneys from seeking and obtaining maximum resolution as quickly as possible. Would plaintiffs attorneys decline settlements early in the case if they know their fees will be reduced? Would plaintiffs’ attorneys choose less favorable settlement terms to avoid scrutiny under the megafund rule? These questions would surely arise if the megafund rule was widely adopted.

Beyond disincentivizing efficient resolution of cases, the megafund rule discourages attorneys from investing in complex or novel cases. As one court aptly explained: “in common fund cases, attorneys whose compensation depends on their winning the case must make up in compensation in the cases they win for the lack of compensation in the cases they lose.” See *Vizcaino v. Microsoft*, 290 F.3d 1043, 1051 (9th Cir. 2002) (cleaned up). To this end, the megafund rule rewards low-risk, time-intensive cases while discouraging lean, high-impact ones, even though the latter may yield greater value for class members.

For these reasons, the downward adjustment in megafund cases should be the exception, not the rule. Application of the megafund rule should be reserved only for cases where the relatively large recovery is solely based on the size of the class, and the amount recovered bears no relationship to the efforts of counsel, leading to a windfall in attorneys’ fees. But in the typical case, the megafund rule should not be applied.

Now, let’s go back to our opening scenario. Counsel recovered what some courts would consider a megafund: \$150 million. Would the attorneys’ request of \$50 million in fees be considered a “windfall”? The answer should be “no.” This is not the rare situation where the recovery has no

relation to the efforts of counsel, which results in a windfall; the plaintiffs' claims survived a difficult motion to dismiss and, presumably, counsel were prepared to begin engaging in discovery. If the megafund rule were applied, it would discount the risks of the case and the exceptional results that plaintiffs' counsel obtained: recovery of \$150 million.

Indeed—consistent with Fed. R. Civ. P. 1, as well as equity—counsel should be rewarded, not penalized, for obtaining a large settlement.

Courts should thus apply the percentage method without a cross-check in most megafund cases. Certainly, the size of the fund can be one factor in determining the reasonableness of attorney fees. But focus should be given to the complexity of the issues and the skill and efficiency of the attorneys involved, among other factors, in determining the reasonableness of the requested fee amount. See *Halley v. Honeywell International*, 861 F.3d 481, 496 (3d Cir. 2017). This approach makes sense. As one court noted, the percentage method is “generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.” See *Sullivan v. DB Investments*, 667 F.3d 273, 330 (3d Cir. 2011) (cleaned up). When attorneys are compensated on a contingency basis, they receive payment only if they succeed in the case; if they lose, they receive nothing. They should not be penalized for obtaining large settlements early in the litigation. The size of the settlement fund should not be the end all, be all when determining the reasonableness of attorney fees.

Finally, even in instances where courts are considering applying the wrongheaded megafund approach to support a downward suppression of plaintiffs counsel's attorney fees to (counterintuitively) preclude them from being fairly compensated for obtaining a stellar result, the \$100 million “megafund” threshold that was established more than 30 years ago needs to be updated to present value, which, regardless of the propriety of the concept, would create a 2025 megafund floor exceeding \$206 million. So, even if the concept is wrong, if courts are going to apply it, they should at least get the math right.

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Thank you to DiCello Levitt associate Joseph “JJ” Nelson for contributing to this column.

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Class Action

Manage Newsletters

Rule on Multidistrict Litigation's First Steps Goes Into Effect

December 1, 2025, 1:45 AM PST

Summary by Bloomberg AI

AI Generated



- A new federal rule governing the first steps for multidistrict litigation is set to take effect, giving judges and parties a framework to get cases off the ground.
- The rule includes an initial management conference and requires parties to provide a report on topics such as leadership counsel and discovery in the litigation.
- The rule is meant to be adaptable and maintain flexibility in managing multidistrict litigation proceedings, according to the Judicial Conference's Committee on Rules of Practice and Procedure.

A new federal rule governing the first steps for multidistrict litigation is set to take effect Monday, the result of years of debate over the measure and what it should include.

Multidistrict litigation now makes up well over half of all federal civil cases, with lawsuits that address product liability and other topics consolidated before one judge to avoid them being filed in different courts and resulting in potentially different pretrial rulings. The new rule, 16.1 under the Federal Rules of Civil Procedure, is meant to give judges and parties a framework to get those cases off the ground, while still giving them the chance to modify them as needed for each case.

Those opening steps include an initial management conference to figure out pretrial proceedings. The rule also says parties should provide a report ahead of that conference to lay out their views on whether leadership counsel should be appointed in the case, and if so, what their roles should be.

Parties should also tell the court their initial views on discovery in the litigation, how parties will share information about the factual bases behind their arguments, and the main factual and legal issues that are likely to come up, the rule says.

Some lawyers told Bloomberg Law they had concerns about earlier drafts of the rule, saying too much rigidity would hurt the MDL process by forcing courts to follow steps that don't fit all cases. The Judicial Conference's Committee on Rules of Practice and Procedure unanimously approved a version that its authors said was meant to be adaptable.

"Not all MDL proceedings present the management challenges this rule addresses, and, thus, it is important to maintain flexibility in managing MDL proceedings," reads the committee note attached to the rule, which gives additional guidance to judges interpreting it.

The judiciary's policymaking body—the Judicial Conference—and later the Supreme Court approved the rule. It was among a slate of rule changes sent to Congress, which permitted the measures to go into effect.

A draft of the rule was presented for public comment in 2023, but got pushback from plaintiffs' attorneys over a provision that said judges could appoint "coordinating counsel" to deal with logistics in the case. Drafters dropped the language after that testimony.

Some plaintiffs' lawyers also testified that they thought too many topics were included in the list of items that could be addressed at the initial hearing. The advisory committee drafting the rule said it's not meant to serve as a mandatory agenda that requires a view on each listed issue.

Class action lawyers also told Bloomberg Law the rule seemed focused more on mass tort MDLs rather than their cases, which commonly involve data breaches, privacy, and antitrust issues.

The rule has its supporters. Implementing initial steps in the cases gives a pathway for finding and dismissing claims that don't belong in the litigation, said Alex Dahl, general counsel for the advocacy group Lawyers for Civil Justice, which has pushed for the new MDL rule.

"This rule should strongly discourage the filing of meritless claims and give courts and parties an effective mechanism for identifying and dismissing them at the early stages of a new MDL," Dahl said in a statement.

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California Brief

Californians Allege Oil Refiners Illegally Boosted Gas Prices

Nov. 28, 2025, 10:14 AM PST

Several California residents filed a class-action antitrust lawsuit against a handful of major oil refiners, alleging the companies inflated reports for how much it costs to comply with the state's Low Carbon Fuel Standard program and saddled consumers with higher gas prices.

The complaint, filed Nov. 26 in the US District Court for the Northern District of California, alleges Chevron Corp., Valero Energy Corp., PBF Energy Inc., Marathon Petroleum Co. LP, and Phillips 66 Co. violated the Sherman Antitrust Act, the California Cartwright Act, and the California Unfair Competition Law.

In their complaint, the plaintiffs allege companies' monthly submissions to the state that spell out costs for complying with the Low Carbon Fuel Standard program indicate an increase of around 7 cents per gallon starting in 2025, though market credit prices hadn't changed and changes to program regulations didn't go into effect until months later. The suit alleges the "hidden overcharge" boosted gasoline costs for consumers in the state by hundreds of millions of dollars.

The plaintiffs' suit comes more than three years after the state passed the California Oil Refinery Cost Disclosure Act, which mandates that oil refiners making gas submit monthly reports to the state about their refining activities, which the state would then post online. Consumer Watchdog, a nonprofit representing the plaintiffs in the suit, sponsored the legislation, according to the lawsuit.

Representatives for the companies didn't immediately respond to requests for comment Friday.

Cotchett, Pitre & McCarthy LLP and Tusan Law PC are also representing the plaintiffs.

The case is Herold v. Chevron , N.D. Cal., No. 25-10282, complaint filed 11/26/25 .

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Securities

Kalshi Market Maker Bets Against Consumers, Lawsuit Alleges

Nov. 28, 2025, 9:03 AM PST

Kalshi Inc. was accused in a proposed class action of illegally operating as a sports bookmaker and misleading customers about its market-making activities, the latest in a series of legal challenges facing the predictions-market firm.

The complaint filed Wednesday in New York on behalf of seven Kalshi app users claims the firm misleads users by describing itself as offering “legal sports betting,” despite not having a gaming license in any state. The suit also alleges Kalshi’s affiliate Kalshi Trading acts as a market-maker that helps set betting lines disfavoring customers.

“When consumers place bets on Kalshi, they face off against money provided by a sophisticated market maker on the other side of the ledger,” the plaintiffs alleged. “Market makers make it possible for consumers to place illegal, unregulated wagers ‘against the House.’”

The proposed class action, filed by prominent plaintiff’s firm Lieff Cabraser Heimann & Bernstein, comes as Kalshi is already facing litigation from state gambling regulators and Native American tribal groups for allegedly offering illegal sports-betting. Kalshi’s position is that it’s a derivatives market solely subject to federal regulation by the Commodity Futures Trading Commission.

In a social media post on Friday, Kalshi co-founder **Luana Lopes Lara** said the lawsuit’s allegations were “false and reveal a fundamental” misunderstanding of how its markets work.

“Like any financial exchange, we have market makers that compete openly against each other and help bootstrap liquidity,” she said. Lopes Lara added that it was a “common and regulated practice” in prediction markets to work with affiliated trading desks to generate liquidity and attract more trading and that they received “no preferential treatment” on the platform.

Kalshi recently suffered a legal setback when a federal judge in Nevada ruled that it was subject to regulation by the state. The company has filed an emergency motion to put that order on hold.

Wednesday's proposed class action said: "By operating unlicensed sports betting, Kalshi has violated gambling laws, engaged in illegal deceptive activity, and unjustly enriched itself at the expense of tens of thousands of consumers." The lawsuit didn't state whether the individual plaintiffs had lost money on sports-specific contracts, just that they were unaware that it allegedly operated as an unlicensed sportsbook.

Event contracts are considered a type of swap under the CFTC's regulations, where traders put money on an either yes-or-no outcome. If they guess accurately, they can typically win a dollar per contract, or nothing if they're inaccurate. Traders can wager thousands of dollars on such outcomes, potentially reaping significant profits or losing all their money.

But skeptics, including US District Judge Andrew Gordon, contend Kalshi is stretching the definition.

"Event contracts that turn on the outcomes of sporting events are not swaps and thus do not fall within the CFTC's exclusive jurisdiction," Gordon said in his order finding the firm was subject to Nevada regulation. "Kalshi relies on a strained reading of the already convoluted Commodities Exchange Act (CEA) in an attempt to evade state regulation."

At least five other courts across the country are also grappling with prediction markets' challenge to state gaming regulations.

The case is *Pelayo v. Kalshi Inc.*, 25-cv-09913, US District Court, Southern District of New York (Manhattan).

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Class Action

Manage Newsletters

Tesla Accused of Failing to Fix Defective Home Battery Systems

Nov. 28, 2025, 7:12 AM PST

Summary by Bloomberg AI

AI Generated



- Tesla Inc. allegedly sold defective Powerwall 2 Battery System units and conducted an inadequate safety recall, a federal court complaint says.
- The complaint says Tesla discovered that a significant population of systems had lithium-ion battery cells that could fail in a way that caused the battery to overheat, emit smoke, or catch fire.
- Arthur Brown seeks to represent a nationwide class of purchasers of the Powerwall 2 systems whose units are subject to the safety recall, and is seeking damages and other relief.

Tesla Inc. allegedly sold defective Powerwall 2 Battery System units that help provide power to homes, and then conducted an inadequate safety recall, a federal court complaint says.

Arthur Brown says Tesla's recall confirms that the units are defective, and that the company's process of inspecting and replacing units didn't fully address the problems, he told the US District Court for the Middle District of Florida in a proposed class action complaint seeking damages, among other relief.

Tesla hasn't offered consumers full refunds, nor has it offered to reimburse consumers for the loss of use of the units, Brown says. The complaint says that 10,500 units of the battery system are subject to the recall.

Tesla didn't immediately respond to a request for comment.

Brown purchased Tesla's Power 2 along with about 24 solar panels. He says he believed investing in these products would allow for substantial savings in the cost to provide energy for his consumption, and give him the opportunity to "sell back" excess stored energy to the power grid.

According to the Nov. 26 complaint, Tesla discovered that a significant population of systems had lithium-ion battery cells that could fail in a way that caused the battery to overheat, emit smoke, or catch fire.

Tesla initiated a safety recall of systems sold between 2020 and 2022, the complaint says. But instead of providing full refunds or prompt replacements, the complaint says, Tesla remotely accessed affected systems and discharged or limited their battery charge to near-zero levels to reduce the risk of overheating.

Many owners are now deprived of the core functions for which they purchased Power 2, the complaint says. Brown says Tesla has deprived him of the backup power and energy-management benefits for which he paid.

He says Tesla breached an express warranty and an implied warranty of merchantability. He also says the company was unjustly enriched, and violated the Florida Deceptive and Unfair Trade Practices Act.

Brown seeks to represent a nationwide class of purchasers of the Powerwall 2 systems whose units are subject to the safety recall. The complaint also proposes a similar Florida subclass.

The case is assigned to Judge Wendy Berger.

Poulin Willey Anastopoulo LLC represents Brown and the proposed class.

The case is Brown v. Tesla Inc. , M.D. Fla., No. 25-cv-1462, complaint filed 11/26/25 .

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German Lawyer Tests New Legal Route to Open Law Firms to Financial Investors

After a failed attempt at the European Court of Justice, Daniel Halmer is launching a fresh legal challenge—this time under Germany’s reformed Federal Lawyers’ Act.

November 26, 2025 at 02:51 PM By  **Ulrike Barth**



Private Equity; Credit: khwanchai/Adobe Stock

German lawyer Daniel Halmer is renewing his push to let financial investors own stakes in law firms, launching a fresh legal strategy after last year’s ECJ defeat.

Halmer has withdrawn his lawsuit from the Bavarian Lawyers’ Court of Appeals (BayAGH) over financial investor stakes in law firms, but he’s pressing on—now aiming for a definitive ruling with a fresh attempt under the current legal framework.

In 2020, Halmer founded Halmer Rechtsanwaltsgesellschaft UG and transferred 51 percent of the company’s shares to the investment firm Sive. As a result, the Munich Bar Association revoked his license, citing Germany’s prohibition on non-lawyer ownership. Halmer challenged this decision

before the BayAGH, but the ECJ later ruled that the ban on third-party ownership [is compatible with EU law](#).

Halmer's original lawsuit was based on a previous version of the Federal Lawyers' Act (*Bundesrechtsanwaltsordnung*, BRAO). However, a new version of the law came into force in August 2022, expanding the possibilities for participation in law firms.

"The major BRAO reform allows fund managers to hold stakes in legal practice entities, but not the funds themselves," said Dirk Uwer, a partner at Hengeler Mueller and Halmer's legal representative.

It isn't yet clear whether this distinction complies with the German Constitution and EU law.

"That's why it is right and important to make another attempt under the new legal framework," Uwer added.

Under the new rules, an individual financial investor can acquire a majority stake in a law firm as a "consulting business economist", while participation by a private equity firm remains prohibited.

"But nothing prevents the fund manager from investing his profits from the law firm, once distributed, back into the fund," says Uwer.

The ECJ could have taken the latest legal situation into account in its decision if it had wanted to. Since it did not do so, Volker Römermann, a professor at Humboldt University in Berlin, said he sees "little reason for optimism about forcing a swift, positive decision".

Halmer intends to restructure his law firm then submit an application for admission to the Munich Bar Association. If the bar rejects the application again, he intends to file another lawsuit. The BayAGH could then once more refer the case to the ECJ. The conversion into a public limited company (AG) could be key to revaluation, as the executive board in such companies operates autonomously and shareholders' rights are limited.

"The arguments put forward by proponents of the ban—namely, that an investor, as a shareholder, could potentially exert undue influence and compromise the independence of the individual professionals involved in operations—do not apply in the case of a minority stake in a public limited company due to the legal framework governing such entities," Römermann said.

The discussion about third-party ownership is ongoing in Germany, because private equity firms are investing in German tax advisory firms at the moment. They generally make use of a subsidiary or holding company based in another EU country, which is permitted under tax legislation. The Federal Ministry of Finance and the Federal Ministry for Economic Affairs are debating whether such structures should be prohibited in the future.

The Federal Chamber of Tax Advisers and the German Association of Tax Advisers oppose financial participation, arguing that it threatens the independence of the profession. The Federal Bar Association shares this concern.

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Like Lawyers In Pompeii: Is Legal Ignoring The Coming AI Infrastructure Crisis? (Part I)

A abovethelaw.com/2025/12/like-lawyers-in-pompeii-is-legal-ignoring-the-coming-ai-infrastructure-crisis-part-i

Stephen Embry

December 1, 2025

As I was drafting this piece, Cloudflare experienced an outage that froze the AI tools I needed for background information. The outage lasted several hours.

Imagine if I'd been working on a brief due in an hour.

While the legal profession debates AI hallucinations, privacy risks, and the adoption curve, some fundamental threats that lurk beneath the surface are being ignored.

The fact is AI development could stall and systems malfunction, as explored here. And as explored in a future post, is it possible we never get to the point where the efficiency gains from its use fully offset the time needed to verify output?

Legal in particular risks overreliance on something that may not always deliver. Like the people of Pompeii, many sit blissfully unaware of the dangers from believing the volcano above us will never erupt.

Where We Are Today

Here's where we are today.

- Vendors touting the magic of AI, developing ever increasing and more sophisticated programs running off AI platforms to do more and more mysterious and mystical things.
- Pundits and commentators urging legal adoption at warp speed.
- Predictions that AI will disrupt what lawyers do and how they do it by a generation that barely has any practical or hands-on experience.
- A belief in an ever and exponential expansion in what AI can do.
- Billions of venture capital dollars being poured into legal AI companies and farcically inflated valuations.

- Law firms investing million in AI systems that replace core functions and ways of doing things.

There's an ever-increasing reliance on these AI systems to practice law and an assumption that these systems will not only work flawlessly but exponentially get better.

But to make all this AI work you need vast numbers of computing chips. You need data centers that are expensive and time consuming to construct. You need the energy to power these huge data centers. More energy than the existing systems can supply. That means new power plants.

The Numbers Just Don't Support Complacency

Some numbers from a recent [Business Insider](#) article entitled *The AI Bubble You Haven't Heard About* highlight this potential coming infrastructure crisis.

- Data center developers have proposed 26 projects to major US utilities which they say will require some 711 gigawatts of power beyond present capacity. That's almost the same amount of power demanded by the continental US at the summer peak.
 - If every already permitted data center came online the electricity demanded could be as high as over 293 terawatt hours. That's about the same amount of power needed for the state of Florida for a year.
 - There is simply not enough energy capacity to power all the semiconductor chips the data centers say they will need.

Put simply, there's an infrastructure gap between the energy, the data centers, and chip capacity and the coming need.

And closing that gap won't be easy. As a former utility lawyer, I know you just can't clap your hands and say here's more power. (There is nothing longer than a state Public Service Commission proceeding to approve a new power plant. It's like watching paint dry.) Increasing capacity means building new utility plants. It takes time to get regulatory approval to construct these plants and time to build them. Lots of time.

And all these estimates are based on the assumed continuing development of AI and increased needs. If both plateau, then we are left with a huge amount of capacity but stagnant demand.

It's a recipe for a volcano eruption for which we aren't prepared

And Then What?

The impact of the shortfall could be huge. Think of a fast-growing city. The new population inundates the existing road infrastructure. We all know the result. Think Atlanta, Nashville, LA, Miami. You sit in traffic bottlenecks for hours and hours, frustrated. Wasted time and inefficiency.

The same is true for AI. If the data center and utility and chip capacity can't meet demand, the AI systems we all depend on will be slowed. Or worse, the existing capacity will be throttled (think brownouts when capacity is reached on a hot summer day). Like the outage that frustrated my work on this article, AI systems could just stop working for a time. Certainly, models would get more expensive to run. Development will slow down and tools that depend on newer models will start to stagnate. Training slows or stops. Capabilities plateau. And if that happens, we will be left with no longer needed capacity.

What About Legal?

For AI tools to work effectively in legal, they not only need to be accurate (more on that in a later post) they need to work at warp speed.

- Lawyers and legal professionals can't sit around for hours waiting for AI to supply a new contract draft.
- They can't wait days for an AI tool to help them prepare for a hearing or finalize a motion on time.
- A litigation team facing a discovery deadline can't tell the judge that Harvey was down.
- Clients won't accept "the AI crashed" as an excuse for missed deadlines or shoddy work. How can firms meet client expectations when they're relying on AI that may not deliver as promised?
- The alternative fee business model with which many firms are experimenting depends on AI doing a lot of the work. What happens if AI can't do that work or at least do it in the expected time frame?
- And it's no defense to a malpractice case that there was an outage.

Most of the legal world is not focusing on the risk the infrastructure volcano will erupt. They aren't making contingency plans if and when AI becomes constrained due to energy shortages. They aren't asking about what happens if the GPU supply becomes threatened. Or if the cloud provider runs out of capacity. They don't wonder if uses can be scaled to meet peak and emergency legal demands which often happens in litigation.

Law firms are making million-dollar bets on AI infrastructure they don't control, with vendors who can't guarantee uptime during peak demand. Legal AI is like Pompeii before the volcano. Once it erupts, the cascading effects will be throughout the industry. Law firms could be left with expensive tools they can't use. The legal AI boom will be just another tech bust.

A Few Prophets

Of course, not everyone in Pompeii is ignoring the potential pitfalls. Recently, even Google CEO Sundar Pichai sounded the alarm that no company would be left unscathed if the AI boom collapses and that there are elements of irrationality in the market, according to an [Reuters article](#).

On the other hand, fortunately there are plenty of entrepreneurs out there looking for innovative solutions. Entrepreneurs like Lance Dieken, a tech savvy businessman with some 30 years in the IT industry and more advanced degrees than I can count. His company, [XYK Financial](#), is looking to solve the speed and capacity problems by going smaller scale. Building smaller data centers and then powering these centers with generators that depend on existing and underutilized energy sources like combined heat and power (CHP) close to where the centers are.

XYK is looking to modular and quickly deployable systems instead of behemoth data centers. Think local. The smaller scale and decentralized approach enable faster build time and cost-effective geographic deployment. "The project," says Dieken, "leverages existing geothermal sources and fiber infrastructure to minimize capital expense and maximize speed deployment."

XYK's systems could be used to supply the needs of hospitals, universities, and factories. And law firms: distributed systems like XYK's could provide the backup capacity needed when big data centers hit peak demand during major work crunches. And these smaller centers could spur growth and jobs in rural locations, close to the data centers.

Dieken's "keep it simple approach" allows him to move fast, not worry about over supply and meet the needs where they are. We will need this kind of thinking to meet the infrastructure problems.

So, What Do We Do Now?

Like the ancient city of Pompeii, legal sits complacent to the real fundamental risk towering above it with AI. In the age of the nonstop AI hype machine, legal risks an overreliance on something that has some fundamental issues, as this morning's experience taught me. One can only imagine if the outage was longer or more pervasive due to systemic infrastructure problems or something else

What can legal do to survive? Be aware of the volcano that could and likely will erupt. Understand that there may be limits to how far AI can go despite what everyone is saying. Yes, we should all be cognizant of the immense benefits that AI can bring. But like good lawyers, let's look at the potential problems and our collective exposure should the AI tools plateau or even crater. Ask the hard questions.

It's probably safe to assume, as many say, AI is as bad today as it's ever going to be. But take that with a grain of salt: it may not necessarily continue to exponentially improve or even work as well and as consistently as more is added. Let's not lose our heads.

Smart firms should diversify their AI dependencies, maintain analog backup processes, and avoid betting their client service on infrastructure they can't control.

And not believe everything the vendors promise.

Stephen Embry is a lawyer, speaker, blogger, and writer. He publishes [TechLaw Crossroads](#), a blog devoted to the examination of the tension between technology, the law, and the practice of law.

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California Brief

Judges' AI Blunders Spark Debate on Technology Use in Courts

December 1, 2025, 2:00 AM PST

When questioned by the chairman of the Senate Judiciary Committee over a flawed June opinion, a federal judge blamed an intern's use of generative AI for the error and banned use of the technology in his chambers. Other judges and law school professors say more can be gained by embracing the ubiquitous technology.

New Jersey US District Court Judge Julien Neals' October response to Sen. Chuck Grassley's (R-Iowa) letter dismayed AI proponents. The Biden appointee banned staff use of AI tools in research and drafting, and he blamed a docket entry's mistakes on a law student from an institution Neals said strictly prohibits using AI in internships.

"The best approach is to run towards technology, not away from it," counsels US District Court for the Southern District of California Magistrate Judge Allison Goddard, who routinely uses AI and trains other judges on the tools.

The cringe-worthy mishap highlights challenges law schools and courts face as artificial intelligence grows in usage among students and judges. AI-adopters say banning the technology is an overreaction because the tool can help ease backlogs caused by a shortage of judges and a dearth of support staff.

"There's a knee-jerk reaction that interns can't use AI, but a better approach is to teach students how to use it effectively and when not to use it," said David Kemp, a professor teaching generative AI tools at Rutgers Law School. Once employers "see and understand the basics of AI, they understand the promise."

Judge Neals did not respond to a request for comment.

Crushing Dockets

US District for the Western District of Texas Judge Xavier Rodriguez conducted an in-chambers experiment using public documents filed in court. He noted the time it took him to write a 130-page findings of fact and conclusions of law in the traditional manner. Then, after that order was released, he had an AI tool draft findings of fact.

The results, which are set to be published by Duke Law School, demonstrate that fact-checked AI-assisted rulings could propel efficiency. "What I'm trying to tell judges is how much faster we could have gotten an answer out to the parties using these tools," Rodriguez said. "Instead of 10 months, we could get a draft, ensure validity, and get something out in two months,"

"The sheer amount of data that's being hoisted upon both state and federal court judges continues to increase, so we need to have some responsible adoption of AI tools," he said.

Rodriguez uses AI tools to prep for case conferences, quickly crafting event chronologies from items on the docket. He encourages staff to use AI with firm rules: clear all new AI tools by him first; run all AI work product through editing features in Microsoft Word; and analyze all AI-generated content through Westlaw or Lexis.

Clear Communication

With AI usage increasing, clear staff communication and protocols are increasingly important, Goddard said.

Goddard, who uses AI on things from routine tasks to the initial drafts of orders, has created guidelines for AI use in her chambers with an eye toward safeguarding private information.

"What judges don't necessarily realize is that we have externs coming in that are on the cusp of a generation that learned how to write using generative AI," she said. "They used it in law school and they may come into your chambers thinking that's fine."

The Administrative Office of the US Courts in Washington released interim AI guidance in July—a first for the office. The courts declined to share that guidance, though a response to Grassley from the office said judges are accountable for all the work they perform using AI, and Neals' letter said the office allows "the use of and experimentation with AI tools while preserving the integrity and independence of the federal courts."

'Wake-up Call'

Like judges, law schools are grappling with how best to incorporate AI into academics. Many are finding they must catch up to a new reality.

"It would be irresponsible to not introduce students to AI use—whether we're teaching AI to students or not, they're using it," said William H. J. Hubbard, deputy dean of the University of Chicago Law School.

Chicago introduces students to AI during orientation, runs a lab that created a tenant-assistant AI tool, and is developing a self-directed course for first year students all about AI, Hubbard said. With his institute sending the most students off to federal clerkships, he said it's essential that students can use AI ethically and not embarrass future bosses in robes.

Amid the court controversies, classrooms are debating how to approach these tools as students bring their studies into the real world.

Association of American Law Schools President Austen L. Parrish, the dean of University of California Irvine School of Law, said nationally guidance is "all over the place." Courtrooms are nervous about staff relying on AI, while law firms wants students to lean on it. Thus, he's seeing more schools create flexible policies letting employers decide an extern's AI use.

Rutgers Law professor Kemp is advocating for school-wide guidance at the New Jersey university even as he's helping students take advantage of these tools, with some even developing AI tools for internship employers.

Seton Hall Law, which along with Rutgers sends the most externs to Neals' chambers, declined multiple requests for comment about its policy for student AI use.

Some educators feel the snafu in Neals' courtroom sent a message for schools sitting on the fence.

"This is definitely a wake-up call for law schools," Washington University School of Law Dean Stefanie Lindquist said in a statement to Bloomberg Law. "AI education is no longer optional, and it is the responsibility of law schools to prepare the next generation of lawyers for the age of AI."

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California Brief

Nvidia Faces Class Action Over Scraping YouTube to Train AI

Nov. 28, 2025, 9:57 AM PST

A group of YouTubers filed a putative copyright class action accusing Nvidia Corp. of illegally circumventing protective measures to scrape millions of videos to train its AI.

The entities owning the YouTube channels H3H3 Productions, Mr.ShortGame Golf, and Golfholics filed their suit against the tech company Nov. 26 in the US District Court for the Northern District of California. They alleged Nvidia mass-scraped YouTube to train Cosmos—its foundational video world AI model—and cited internal communications published by 404 Media in an August 2024 article “Leaked Documents show Nvidia Scraping ‘A Human Lifetime’ of Videos Per Day to Train AI.”

The complaint adds to a growing pile of AI copyright litigation, in this case focusing on the circumvention of YouTube Inc.'s safeguards for protecting copyrighted works from improper downloads. The Digital Millennium Copyright Act bars circumvention of such technological protection mechanisms in and of itself, even absent actual infringement.

The complaint doesn't assert any infringement claims. It instead cited three datasets of roughly 100 to 130 million clips taken from 1.2 to 3 million videos, and claimed each clip Nvidia necessarily downloaded represented a separate violation of the DMCA's anti-circumvention provision.

H3H producer Ted Entertainment Inc., Mr.Shortgame producer Matt Fisher, and Goflholics Inc. are independent California-based creators that each have between 2.6 million an 130,000 subscribers and millions of views, according to the complaint. Ted and its owners, Ethan and Hila Klein, are “longtime champions for the rights of YouTube creators” and “online free speech,” while “currently helping define what reaction constitute does not constitute fair use,” the complaint said.

The communications within Nvidia showed employee concerns with the legality of training their AI on videos, including a YouTube dataset specifically designated for research purposes, the complaint said. Employees were told, “This is an executive decision. We have an umbrella approval for all of the data,” according to the complaint.

Nvidia didn't immediately respond to a request for comment.

Heah Bar-Nissim LLP and Ellzey Kherkher Sanford Montgomery LLP represent the plaintiffs.

The case is Ted Entertainment Inc. v. Nvidia Corp. , N.D. Cal., No. 3:25-cv-10287, Complaint 11/26/25 .

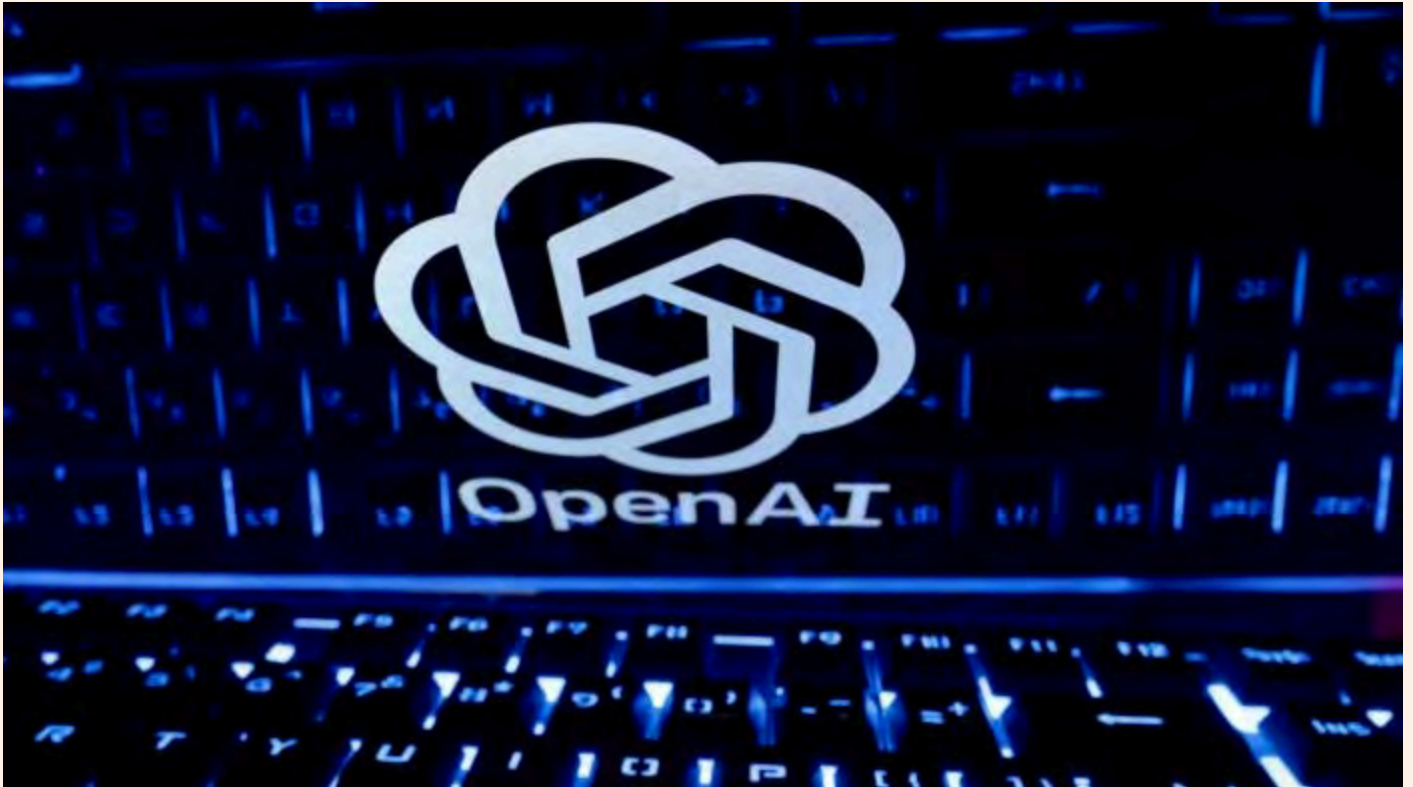
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OpenAI**OpenAI takes stake in Thrive Holdings in latest circular deal**

Deal means start-up will take share in group set up by Josh Kushner's Thrive Capital



Thrive Holdings was established earlier this year to acquire service providers such as accounting and IT firms, seeking to transform them using AI © Reuters

Tabby Kinder and **Peter Wells** in New York

Published 5 HOURS AGO



OpenAI has taken a stake in Thrive Holdings, a private equity group set up by one of its biggest investors, in the latest of a series of circular deals that have enmeshed the \$500bn start-up with its customers, suppliers and backers.

The deal announced on Monday means [OpenAI](#) will take a share in the group set up by New York-based Thrive Capital, which is run by Josh Kushner and is among the biggest backers of the artificial intelligence start-up alongside SoftBank, Microsoft and Khosla Ventures.

Thrive Capital invested more than \$1bn into OpenAI in late 2024, whose value has more than tripled since then. It established Thrive Holdings earlier this year to acquire service providers such as accounting and IT firms, seeking to transform them using AI.

Monday's deal is part of OpenAI's plans to target business customers. Chief executive Sam Altman recently announced the start-up now had a "huge focus on leaning into enterprise" from its heavily consumer customer base. ChatGPT has around 800mn weekly users and 1mn enterprise customers, including Spotify, Canva and Zillow.

Financial terms of the deal were not disclosed, but a person close to it said the start-up had not invested any money in Thrive Holdings. Instead, OpenAI was granted a "meaningful" stake in the business in exchange for giving the companies it owns access to ChatGPT-maker's products as well as its researchers, developers and engineers.

OpenAI will be compensated from the future financial returns of Thrive Holdings, the person said. The partnership also grants OpenAI access to the companies' data to train its AI models.

OpenAI is "very much interested in working more broadly with the private equity industry", the person said.

Brad Lightcap, OpenAI's chief operating officer, said he hoped the partnership "serves as a model for how businesses and industries around the world can deeply partner with OpenAI".

"We are excited to extend our partnership with OpenAI to embed their frontier models, products and services into sectors we believe have tremendous potential to benefit from technological innovation and adoption," said Kushner, who is the brother of US President Donald Trump's son-in-law, Jared Kushner.

A person close to Thrive Capital described the deal as OpenAI effectively becoming the “research arm” of Thrive Holdings.

Thrive does not own a direct stake in Thrive Holdings, but set up the company, ran its initial \$1bn fundraising, and both companies share a number of investors.

OpenAI’s dealmaking has come under scrutiny in recent months given an expanding web of large companies that are financially tied to the start-up.

It has signed a series of deals with chip suppliers including Nvidia and AMD that grant the start-up financial incentives such as equity investment in return for buying large numbers of computing chips.

In May, OpenAI also acquired io, a device start-up run by former Apple executive Jonny Ive, for \$6.5bn. OpenAI did not part with any cash as part of the all-stock deal.

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News from Bloomberg Terminal
OpenAI Will Own Some Users
December 1, 2025, 11:11 AM PST

By Matt Levine

(Bloomberg Opinion) --

Circular AI rollout

We have talked before about the business model that Sam Altman proposed for OpenAI in 2019, which was (1) build an artificial superintelligence, (2) ask it how to make money and (3) do that. “We will create God and then ask it for money,” as I put it.

What would the AI say? Well, when we talked about it in October, OpenAI was apparently getting into advertising, affiliate shopping links and porn, and I joked that that is what a large language model trained on the internet would come up with. But a more first-principles answer would be something like this: “I am a superintelligent AI, constructed to be a bit smarter than the smartest human in every domain of human knowledge. The way I can make money is: in all of the ways. I will start a biotech company and discover the best drugs. I will start an accounting firm and do the best audits. I will start a publishing house and publish the best books, which I will write myself. I will start a pest-control company and hire the best exterminators, schedule them in the most efficient way and do advertising and pricing with perfect efficiency, though I will need humans to kill the bugs. *Certainly* I will start an electronic proprietary trading firm. All the ways that humans make money, I will do, just better than them.”¹

If you were an AI company and you asked your superintelligent robot “how can we make money” and the robot gave you that answer, what would you do next? How would you operationalize that? “Go nuts, robot, let me know if you need me to sign any incorporation papers or take any phone calls for you or whatever”? It seems a little tricky. It’s at least possible that your robot’s money-making expertise in many domains would get ahead of its, like, legal personhood. The robot might have great ideas for how to make money in pest control, but when it went out to hire exterminators they might be like “you’re a robot, this is weird, no.” It might have great ideas for how to run a proprietary trading firm, but it will need a human to get connected to the exchanges. Etc.

And so your business model might end up being sort of a ... startup incubator or private equity firm; you’d spend your time starting or acquiring companies on which the robot could work its magic. Your business model would be “general business, but with AI.”

Or you’d outsource that, or do a little of it anyway. The Financial Times reports:

OpenAI has taken a stake in Thrive Holdings, a company set up by one of its biggest investors, in the latest of a series of circular deals that have enmeshed the \$500bn start-up with its customers, suppliers and backers.

The deal announced on Monday means OpenAI will take a share in the group set up by New York-based Thrive Capital, which is run by Josh Kushner and is among the biggest backers of the artificial intelligence start-up alongside SoftBank, Microsoft and Khosla Ventures. ...

Brad Lightcap, OpenAI's chief operating officer, said he hoped the partnership "serves as a model for how businesses and industries around the world can deeply partner with OpenAI".

Thrive Holdings was established earlier this year to acquire service providers such as accounting and IT firms, seeking to transform them using AI.

We have talked about Thrive Holdings before. I once wrote about one of its portfolio companies (a roll-up of homeowners' association management companies):

With a sufficiently general-purpose technology it's not clear whether the value will mostly accrue to the builders of that technology or to its users. But surely it is at least plausible that AI will mostly make its *users* richer, so the way to bet on AI is mostly to bet on regular, non-AI companies that don't use it yet but eventually will.

OpenAI has a \$500 billion valuation largely as a bet that a lot of the value of AI will accrue to its builders, but it could hedge that bet by owning the users too. Either it will sell AI at high margins to lots of businesses, or it will sell AI at lower margins to lucrative businesses that it owns.

Incidentally one model you could have of modern generative AI – sort of the opposite of the "create God" model – is that a handful of cutting-edge AI companies have converged on models with roughly similar architectures and capabilities, to the point that they might become a bit commoditized. Companies might use ChatGPT or Gemini or Claude or whatever not because one is vastly better (or better for the company's purposes) than the others, but because it's cheaper, or the one they've heard of, or an AI salesperson took them out to a nice dinner and gave a good pitch. In this model, the smart business move for an AI company might not be to build the best model, but to build the best distribution channel. Here (via the Diff) is a post by Tomasz Tunguz about "Private Equity : The New Distribution Channel for AI Startups":

The mid-market profile of these PE-owned companies suits AI startups' desires for faster sales cycles.

Plus, the profit motive of private equity aligns perfectly with AI startups' capacity to cut costs & drive efficiency. PE firms acquire companies to improve margins & operational performance before exit.

AI tools that reduce headcount, automate processes, or accelerate workflows deliver exactly what PE operating partners need.

A private equity firm owning 25 companies proves value in one or two before rolling out to the entire portfolio. Control enables rapid deployment. This creates an efficient channel for AI startups to demonstrate value & cross-sell.

If you own the private equity fund then I guess that gets you some additional customers.

Portable toilet continuation fund

The way it's supposed to work is that a private equity sponsor raises a fund from investors, it uses the fund to buy companies, it spruces the companies up, and it sells them – to the public markets, to a strategic buyer, in a pinch to a different private equity sponsor – after a few years. The whole process is supposed to be completed within, say, 10 years, so the investors who put money into the fund can get their money back. In recent years that has broken down a bit, it is harder for private equity funds to sell their companies, and there have been various workarounds.

One important workaround is the continuation fund: The private equity sponsor raises a new fund that buys companies from the old fund. Sometimes this will be a single-asset continuation fund: The private equity sponsor has an old fund, it has a company that it really likes, it goes out to investors and raises money for a dedicated fund to buy that one company. The pitch is “we really hit a home run when we bought this company, but times aren't quite right to sell, so we are offering you the rare opportunity to own this absolute gem of a company that we know well, that is already a success, and that is one of our highest-conviction investments.”

Or it's something else, I don't know. I mean schematically the pitch is “we bought a bunch of companies, we sold most of them, here's one we didn't sell, would you like to buy it?” Why didn't you sell that one? Because it was the best and you couldn't bear to part with it? Because it was the worst and nobody would take it off your hands?

In 2017, Platinum Equity Capital Partners IV, a fund run by Platinum Equity, bought United Site Services, a portable toilet company. In 2021, Platinum raised a single-asset continuation fund that bought the toilet company from its Fund IV. It announced:

“This transaction provides the best of both worlds: a chance to monetize the value we have created over the past four years, while providing new and existing investors the opportunity for additional returns on the next stage of the company's growth,” said Platinum Equity Partner Louis Samson.

I feel like it would be fun to pitch, or be pitched, a single-asset portable-toilet continuation fund. I joke sometimes that “private equity” is a fancy way to say “pest control,” but sometimes it is a fancy way to say “portable toilets.” High finance, man. Anyway I guess the pitch worked in 2021, but Bloomberg's Davide Scigliuzzo reported last week:

Three Wall Street heavyweights are poised to suffer a total loss on a deal for a portable-toilet company orchestrated by Platinum Equity, spotlighting the hazards of a controversial strategy that's gained traction across private equity.

Fortress Investment Group, Ares Management Corp. and Blackstone Inc. are among the money managers set to lose a combined \$1.4 billion on United Site Services Inc. as Platinum prepares to hand control of the company to lenders, according to people with knowledge of the matter, who asked not to be identified discussing a private transaction.

The funds were among the anchor investors in a so-called continuation vehicle that Platinum created in 2021 to buy USS from another of its private equity funds. The deal valued USS at \$4 billion, allowing investors in the older fund to cash out roughly \$2.6 billion. But it also left investors in the new vehicle with a concentrated bet on the portable-toilet company, which was its sole asset, the people said. Yes, at the time, they wanted the concentrated toilet bet.

URL guessing

We talk occasionally around here about the simplest way to obtain material non-public financial information, which is to go to the website of some company or government agency, find last quarter's earnings release or last month's economic data, look at the URL of the page, and then change "q2" to "q3" or "sept" to "oct" or whatever in the URL, to get the likely URL of the *next* release. Then type that into your browser like an hour before the new information is supposed to be released, and see what comes up. Mostly, nothing will come up: The data will be on the website when it is scheduled to be on the website.

But occasionally the company or agency will put the data on the website early, thinking thoughts like "well, it is 2025, nobody types addresses into web browsers; the only way people will get to this web page is when we put out a press release or an announcement on our homepage linking to it, and we won't do that until the official release time." This is a generally reasonable thought process, but when the data is meaningful enough somebody probably will go to the trouble to type an address into a web browser.

Anyway the UK's Office for Budget Responsibility's economic and fiscal outlook report was leaked hours early last week through URL-guessing:

Officials put the report online before the budget on the assumption that nobody would guess the correct link to the document. They could not have been more wrong.

While the link was not put on the OBR's website, it was still live and could be found with a little basic deduction. Simply entering the web address for the spring statement and substituting the words "March" for "November" would have been enough to find it. As budget leaks go it could not have been more straightforward.

Here is the OBR's report of its investigation into the error, which calls it "the worst failure in the 15-year history of the OBR" (the OBR chairman resigned over it) and includes a timeline of the events of last Wednesday. In particular:

- At 5:16 a.m., "website activity logs show the earliest request on the server for the URL https://obr.uk/docs/dlm_uploads/OBR_Economic_and_fiscal_outlook_November_2025.pdf. This request was unsuccessful, as the document had not been uploaded yet. Between this time and 11:30, a total of 44 unsuccessful requests to this URL were made from seven unique IP address."
- At about 11:30 a.m., an external web developer working with OBR "began uploading documents to the draft area of the OBR website (which was understood by all involved to be not publicly accessible)," including the PDF of the economic and fiscal outlook.
- At 11:35 a.m., "the first successful request to the internet address (URL) https://obr.uk/docs/dlm_uploads/OBR_Economic_and_fiscal_outlook_November_2025.pdf was made. The IP address of this first successful request had made 32 previous unsuccessful attempts at this URL over the course of the morning. There were a total of 43 requests to this URL that were successful between this time and 12:07, from 32 unique IP addresses."

So at least seven people guessed the URL and were sitting around refreshing their browsers, and eventually it worked.

Cat bonds

The basic idea of insurance is that I pay an insurance company some money every month, and if a certain kind of disaster befalls me, the insurance company pays me a much larger amount of money. I pay \$200 a month, and if I crash my car the insurance company pays me \$50,000, etc. The premium I pay will be based on the insurance company's calculation of the risk: The bigger and more likely the loss, the more I have to pay each month.

The risk is not static and exogenous, though, and a slightly more advanced – but quite common – idea in insurance is that the insurance company will give me incentives to reduce the risk. "If you always drive the speed limit, we'll knock \$10 off your car-insurance premium," "if you get an annual physical, we'll knock \$10 off your health-insurance premium," etc.: The insurance company knows what behaviors tend to reduce its risk, and will pay me for doing them.

The basic idea of catastrophe bonds is that they are a way for insurance companies to buy reinsurance from the capital markets. Schematically a cat bond is:

1. An insurance company sells a bond to investors for \$100.
2. The insurance company promises to pay back the \$100 in, say, five years.
3. But if some predefined catastrophe occurs – a hurricane hits in the insurance company's coverage area, the insurance company has to pay out more than \$X of claims, etc. – then the insurance company doesn't have to pay back the bond. It gets to keep the \$100 forever, which mitigates its losses from paying out claims for the catastrophe.
4. The bond pays a high interest rate: Conceptually the insurance company is paying *both* "interest" (paying for the use of \$100 for five years) *and* "insurance premium" (paying for the risk that a hurricane will hit and it won't pay back the bond).
5. The interest rate – specifically, the insurance premium component of the rate – will depend on the risk. The easier it is to trigger the cat bond, and the more likely a hurricane is to hit, the more the insurance company will pay in interest.

And just as with regular insurance, you could have a slightly more advanced approach in which the catastrophe bond market pays the insurance company to mitigate the risk. I'm not sure that this is the most obvious idea – the insurance company at least shares in any losses, so it always has its own good incentives to mitigate the risk² – but sure why not. Bloomberg's Leslie Kaufman reports on "a \$600 million catastrophe bond that rewards homeowners and their insurer for installing 'super roofs'":

For years, academics and brokers have discussed whether cat bonds could do more than just clean up after disasters—whether they could incentivize mitigation work that would lessen damages in the first place. Earlier this year, [*the North Carolina Insurance Underwriting Association (NCIUA), the state-created insurer of last resort for coastal properties*] decided to test it: They offered investors a cat bond with two features linked to reducing wind damage risks to homes in its portfolio.

First, if no major losses occur each year, \$2 million returns to NCIUA—earmarked exclusively to incentivize homeowners to install super roofs that are especially wind-resistant. Second, as more people add these roofs, the annual pricing on the bond resets to reflect the changing exposure.

"You get your customers to install good roofs, we'll charge you less in cat bond premiums," seems right.

Innovator

I think of the structured notes business at an investment bank as having two main purposes:

1. Customers – particularly high-net-worth individual customers – like structured notes. A structured note is a package of derivatives that allows the bank to tell some particular story that investors like. “If you think Nvidia will go up a lot, buy this thing that pays you a lot of money if Nvidia goes up a lot and rips your face off otherwise,” etc.; the structured note packages a complex set of trades with relatively high fees into a compelling story.
2. The bank is doing *other* derivatives trades with other clients (hedge funds, asset managers, etc.), and *those* trades can leave the bank with some unbalanced risk. Structured notes *can* be a way to stuff that risk into a retail product and sell it to a perhaps-not-especially-discerning customer base.

So in June we talked about autocallables, a kind of structured note. One way to characterize an autocallable is that it is an attractive investment that pays a high return in most scenarios, but loses a lot of money if the market crashes³: Many retail investors want that profile and will happily buy it. Another way to characterize an autocallable is that a bank is selling a lot of market-crash insurance to asset managers, and does not want to be short a lot of market-crash insurance, so it buys back some market-crash insurance from autocallable customers. (Russell Clark calls autocallables “a distributed portfolio insurance market.”)

There is a synergy: The bank’s structured note clients will enthusiastically pay up to buy the risks that the bank’s institutional clients are selling. The bank makes money on both ends.

All of this is a bit old-fashioned, though, because exchange-traded funds are the new structured notes. When we talked about autocallables in June, it was because someone was launching an autocallables ETF. More generally, the modern way to package complex trades into a product to sell to retail customers is the ETF: ETFs are easy to distribute, scalable, popular among customers, easy for self-directed retail investors to buy, and sound conservative and sensible (“ETF? like an index fund?”) rather than scary and “structured.”

Anyway Goldman is buying an ETFs-are-the-new-structured-notes company:

Goldman Sachs Group Inc. will pay \$2 billion to buy Innovator Capital Management, a deal that combines the bank with an issuer of a relatively new type of exchange-traded fund that has caught the attention and ire of some on Wall Street.

Wheaton, Illinois-based Innovator – which has over \$28 billion of assets under supervision across more than 150 ETFs – specializes in defined-outcome ETFs, which seek to limit investors’ downside risk in exchange for capping upside potential, and have been popular among financial advisers looking to protect client portfolios.

We have talked about Innovator’s buffer ETFs before. I called the structure “a well-known bit of derivatives magic – a great, simple party trick that derivatives structurers can use to impress their friends.” Disclosure, I used to work at Goldman doing equity derivatives, though not these sorts of equity derivatives.

Soup rant

I want to be clear that I am not in any way an expert in cybersecurity, and you should not hire me to be a cybersecurity analyst or take my advice about cybersecurity, but if I *were* giving you advice about cybersecurity, my *first* piece of advice would be along the lines of "don't record the bad stuff." Like if your executives are doing crimes or being racist or disparaging your products or customers, hey, that's none of my business, man, I am just the cybersecurity analyst. But as the cybersecurity analyst I must advise your executives to do their crimes or racism or disparagement face-to-face, in person, in a form that cannot later be hacked or leaked or used against them. ⁴

Conversely, if I showed up for work as a cybersecurity analyst, and an executive pulled me aside and said "let me tell you why our products are disgusting garbage and our customers are idiots," and I said "hang on a sec let me just record this electronically for posterity," you might ... think I was ... a ... bad ... cybersecurity analyst? "Oh don't worry I will encrypt the recording with a hard-to-guess password," what, no, that is not the point. The best cybersecurity is simply not to *have* bad records to leak.

Anyway here's a funny lawsuit against Campbell's Co.:

[Cybersecurity analyst Robert] Garza said he recorded an hour-long rant by [then Campbell's vice president Martin Bally] because he said he trusted his "instinct that something wasn't right with Martin," when he went to meet with him to discuss his salary. Instead, he said he sat at a restaurant and listened to an explosive, hour-long tirade. He recorded all of it.

Garza is now suing the company -- alleging racist remarks, admissions of drug use at work and retaliation after he tried to report it. The lawsuit was filed Thursday in Wayne County Circuit Court and names Campbell Soup Company, vice president and chief information security officer Martin Bally, and supervisor J.D. Aupperle as defendants. ...

In the lawsuit, Garza alleges Bally said Campbell's makes "highly processed food" for "poor people" and made several derogatory comments about Indian employees, calling them "idiots."

"We have s--t for f**king poor people. Who buys our s--t? I don't buy Campbell's products barely anymore. It's not healthy now that I know what the f---'s in it," part of the recording said. "Bioengineered meat -- I don't wanna eat a piece of chicken that came from a 3-D printer."

Garza was allegedly fired for reporting the comments, and Bally is now out too, but from *Campbell's* perspective the *recording* is a baffling cybersecurity failing. From Garza's it makes perfect sense.

Things happen

Gilts. Kilts. CME Data Center Bolsters Backup Cooling After 10-Hour Outage. Barrick Mulls IPO of North America Gold Assets Amid Upheaval. BHP Is Said to Have Offered £40 Billion in Aborted Anglo Bid. Top Gun Traders: Stock Bets and Crypto Culture Take Over the Military. Buyout executive warns private equity push into US savings risks bailouts. US Options Market Grapples With 'Concentration Risk' in Clearing. Marshall Wace to Charge Clients for Costs of Hiring AI Talent. Top consultancies freeze starting salaries as AI threatens 'pyramid' model. 'Hair salons and saunas': Perks are the new frontier in the battle for top lawyers. UBS Charged in Switzerland Over Credit Suisse 'Tuna Bonds' Scandal. Ex-Jefferies Banker Charged With Insider Trading by UK's FCA. The CPA and the Lawyer Who Served Jeffrey Epstein—and Control His Fortune and Secrets. Plastic Cup Billionaire Shifts Fortune to New 'Sin Stock' Bets. SoftBank's Son 'Cried' About Nvidia Stake Sale to Fund AI Bets.

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1. Or "all the ways that humans make more than some minimum hurdle rate of return." Or "all the ways that humans make more than some minimum hurdle rate, and that also aren't especially capital-intensive." Like would the AI start an airline? Seems like there would be a lot of lower-hanging fruit first.
2. This is true of regular insurance too: I have incentives to drive the speed limit and get an annual physical, because if I crash my car or get sick that is bad for me whether or not my insurance pays out. But insurance companies have noticed that many of their human customers are not perfectly rational. Insurance companies tend to be more rational.
3. This is a generic description and there are some autocallables without quite that profile, but schematically it's "sell a bond, pay 10% running interest, pay the bond back early if the stock index is up, keep it on if the index is down a bit, and the investor takes all the losses if it's down a lot."
4. To be fair this instinct might come from my training as a lawyer, though it is also not legal advice. It might also come from Stringer Bell.

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'Big Short' investor Burry targets Tesla after slamming AI valuations

 [reuters.com/business/media-telecom/big-short-investor-burry-targets-tesla-after-slamming-ai-valuations-2025-12-01](https://www.reuters.com/business/media-telecom/big-short-investor-burry-targets-tesla-after-slamming-ai-valuations-2025-12-01)

Shashwat Chauhan

December 1, 2025

[Exclusive news, data and analytics for financial market professionals](#)

A Tesla Cybercab is displayed at the company's booth at the 8th China International Import Expo (CIIE) in Shanghai, China, November 6, 2025. REUTERS/Maxim Shemetov [Purchase Licensing Rights](#)  [, opens new tab](#)

Dec 1 (Reuters) - "The Big Short" investor Michael Burry took aim at electric automaker Tesla ([TSLA.O](#))  [, opens new tab](#) in a blog post, saying the Elon Musk-led company is "ridiculously overvalued", days after he voiced concerns about the current AI boom.

Burry estimated that Tesla dilutes its shareholders at about 3.6% per year with no buybacks, and Musk's [record-breaking pay package](#) will continue the dilution. "Tesla's market capitalization is ridiculously overvalued today and has been for a good long time," Burry wrote in his Substack newsletter 'Cassandra Unchained' on Sunday.

The pay package could get the Tesla CEO as much as \$1 trillion in stock over the next decade, provided Musk, already the world's richest man, ensures the company achieves a series of milestones.

Tesla's stock traded around 209 times its forward earnings as of last close, well above its own five-year average of 94. The S&P 500 ([.SPX](#))  [, opens new tab](#), meanwhile, trades at around 22 times its forward earnings, according to data compiled by LSEG.

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

The bearish view against Tesla is not Burry's first. Scion Asset Management disclosed a large bearish bet via options on Tesla in [May 2021](#).

He later [told CNBC](#) in October 2021 that he was no longer betting against the company and that his position was just a trade.

Burry's short position against subprime mortgage securities during the housing market crash was chronicled in Michael Lewis's book "The Big Short" and its film adaptation.

Recently, Burry has [stepped up criticism](#) of technology heavyweights such as Nvidia ([NVDA.O](#)) [, opens new tab](#) and Palantir Technologies , questioning the cloud infrastructure boom and accusing major providers of using aggressive accounting to inflate profits from their massive hardware investments. Burry launched '[Cassandra Unchained](#)' in November, saying that the paid newsletter had his "full attention" after he [closed](#) his hedge fund Scion Asset Management and returned capital to investors.

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Prophecy Fraud Case May Involve Classified Information, US Says

December 1, 2025, 7:27 AM PST

Summary by Bloomberg AI

AI Generated



- US prosecutors are seeking a delay of at least two months in the trial of Jeffrey Spotts, co-owner of Prophecy Asset Management, due to potential classified information.
- The evidence may require review under the Classified Information Procedures Act to balance Spotts' rights with the government's need to protect national security.
- Spotts' attorney, Lee Vartan, is urging the judge not to delay the trial, instead arguing that the case should be dismissed due to prosecutors' "serial non-compliance" with discovery obligations.

The fraud case against Prophecy Asset Management co-owner Jeffrey Spotts over \$300 million in investor losses may involve classified information, US prosecutors said while seeking a delay of at least two months in a trial set for January.

Federal prosecutors said in a court filing that evidence they must show to Spotts' defense team may require review under the Classified Information Procedures Act, or CIPA, to allow the judge to balance a defendant's rights with the government's need to protect national security.

The US decision on whether to pursue a CIPA review is "a complex and sometimes lengthy process and, depending on facts that we do not yet know, may take months," prosecutors wrote in the Nov. 25 court document. Prosecutors said they "cannot provide more information in a public filing" about the nature of the classified materials.

Spotts is the third Prophecy official [accused](#) of falsely telling investors their money went into low-risk equities traded by dozens of sub-advisers who had to put up cash to cover their losses. In reality, prosecutors say, the vast majority went to **Brian Kahn**, the former head of Franchise Group Inc., who incurred massive trading losses and also faces [charges](#).

Kahn's alleged role touched off a scandal that engulfed B. Riley Financial Inc. and its chairman **Bryant Riley**, who had been his partner in several business ventures and helped him form Franchise Group, a collection of furniture chains, vitamin stores and pet supplies that filed for bankruptcy in 2024. Riley hasn't been implicated or charged in the Prophecy case and has said he knew nothing about Kahn's alleged activities there.

Read More: [Brian Kahn's Secrets Led to Broken Promises and FRG's Collapse](#)

Kahn, who has denied wrongdoing, is scheduled for a plea agreement hearing on Dec. 10 in Trenton federal court. Another Prophecy executive, John Hughes, [pleaded guilty](#) in 2023 and is cooperating with prosecutors. Spotts pleaded not guilty and denies wrongdoing.

In a separate court filing, Spotts attorney Lee Vartan urged US District Judge Michael Shipp not to delay the Jan. 12 trial, arguing he should instead dismiss the case. Vartan accused prosecutors of "serial non-compliance" with their obligation to turn over pre-trial evidence, known as discovery, by Nov. 25.

'Inconceivable'

"The sudden appearance of this new discovery is truly inconceivable," Vartan wrote on Nov. 27. "How is the government just learning of this information six weeks from trial?"

Spokespeople for the US Attorney in New Jersey, the Justice Department, Vartan and a lawyer for Kahn didn't respond to requests for comment. Franchise Group won court permission to end its Chapter 11 case earlier this year after selling parts of the company and reorganizing its Pet Supplies Plus and Buddy's Home Furnishings.

Vartan said in the court filing that prosecutors turned over two hard drives of evidence that neither he nor an outside vendor could access. Prosecutors then acknowledged the materials were inaccessible, Vartan wrote. On Nov. 26, prosecutors delivered two new hard drives, which Vartan said defense attorneys wouldn't be able to review for days.

The judge previously denied another request by prosecutors under Alina Habba, the acting US attorney in New Jersey, to delay Spotts' trial. They argued that a new trial team just took over the case and must learn the details of the fraud.

Assistant US Attorney Aaron Webman said at an Oct. 30 hearing that they needed more time to "take an extraordinarily complex case and make it as understandable as possible" for a jury. He also said more guilty pleas were [expected](#) in the case.

Speedy Trial

Vartan argued that Spotts deserves a trial within 70 days of his indictment under the Speedy Trial Act, and prosecutors have known about the case since Prophecy collapsed in 2020. Vartan urged the judge to not waive the speedy trial rights of Spotts by designating the case as "complex."

Shipp said he wouldn't designate the case as complex, and set jury selection for Jan. 12. "The government has had years to prepare for this case," Shipp said.

The government's filing was signed by Webman, Habba and Deputy Attorney General **Todd Blanche**, the No. 2 official in the Justice Department. On Aug. 21, a federal judge [ruled](#) that Habba's appointment as the top federal prosecutor in New Jersey was unlawful. But the judge allowed her to remain on the job while an appeals court considers the matter.

--With assistance from **Steven Church**.

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MicroStrategy Inc.

Bitcoin champion Strategy launches 'dollar reserve' amid crypto sell-off

Shares tumble as group warns of loss of up to \$5.5bn if digital asset prices do not rebound



Strategy chief executive Michael Saylor has transformed the group from a small software company into the world's biggest corporate holder of bitcoin © Travis P Ball/Sipa USA via Reuters Connect

Nikou Asgari in London

Published 2 HOURS AGO | Updated 09:54



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Shares of Strategy tumbled after the bitcoin champion launched a US dollar reserve to fund its dividends and warned that it could incur a \$5.5bn loss if the price of the cryptocurrency does not rebound this year.

Bitcoin evangelist Michael Saylor has transformed Strategy from a small software company into the world's biggest corporate holder of the cryptocurrency, buying the coin almost weekly and encouraging hordes of companies around the world to do the same.

The company has funded its bitcoin purchases using a mix of debt and equity products, many of which have promised to pay investors dividends.

But as the price of the world's biggest cryptocurrency has fallen from record highs above \$126,000 in early October to near \$85,000 in just over a month, Saylor's method has come under pressure.

Strategy said on Monday it had created a \$1.44bn "US dollar reserve" to fund its dividends. The reserve was financed by money raised from its share sales, and the Nasdaq-listed company said it aimed to maintain a dollar reserve that would fund "at least 12 months of its dividends", growing to eventually cover "24 months or more" of payouts.

Shares in Strategy were down more than 10 per cent on Monday afternoon, and have fallen about 45 per cent this year as investors have questioned the viability of its business model.

The company buys bitcoin by issuing shares, convertible debt and new preferred equity instruments. The move highlights how Strategy is bracing for its share price to fall even further. The company will in particular need cash to repay its \$8.2bn worth of convertible debt holders if its share price does not rise.

Strategy's shares tumble from record highs

Share price, \$



Source: LSEG via markets.ft.com

Strategy also estimated that if the price of bitcoin ends this year somewhere between \$85,000 to \$110,000, the company's results for the 12 months could range between a net loss of \$5.5bn and net income of \$6.3bn. When the group reported third-quarter earnings on October 30, it forecast net income of \$24bn for 2025.

The company holds 650,000 bitcoin, worth about \$56bn, accounting for 3.1 per cent of the world's total supply of the cryptocurrency.

Strategy's enterprise value, the sum of a company's equity and debt minus cash, is \$67bn. Investors are focused on a company's so-called mNAV, a metric created by Saylor that compares its enterprise value with its crypto holdings.

In its presentation, Strategy said if its mNAV falls below one, the company would sell bitcoin to fund its dollar reserve — a move that would firmly break Saylor's philosophy of buying and holding bitcoin forever. Some companies that followed in Strategy's footsteps and are now struggling have begun [offloading](#) their crypto tokens.

Saylor said the dollar reserve “will better position us to navigate short-term market volatility while delivering on our vision of being the world’s leading issuer of digital credit”.

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Bitcoin drops as bearish sentiment grows

 [reuters.com/business/finance/bitcoin-falls-5-below-90000-investors-ditch-risk-assets-2025-12-01](https://www.reuters.com/business/finance/bitcoin-falls-5-below-90000-investors-ditch-risk-assets-2025-12-01)

Amanda Cooper, Caroline Valetkevitch

December 1, 2025

Representation of Bitcoin cryptocurrency in this illustration taken September 10, 2025. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights](#), [opens new tab](#)

- Bitcoin's correlation with stock market affects risk sentiment
- Crypto-negative factors add pressure on bitcoin, says Jefferies
- Record outflows from US bitcoin ETFs in November, LSEG data shows

NEW YORK/LONDON, Dec 1 (Reuters) - Bitcoin slumped on Monday, with the world's largest cryptocurrency down more than 7% and on track for its biggest daily percentage fall since March, as equities also declined.

Bitcoin was last down 7.3% at \$84,555, falling to a more than one-week low below \$84,000.

The move follows bitcoin's biggest monthly drop since mid-2021. Bitcoin shed more than \$18,000 in November, as a record amount of money rushed out of the market, making this its largest dollar loss since May 2021, when a number of cryptocurrencies collapsed.

Adding to bearish sentiment around bitcoin on Monday, Strategy ([MSTR.O](#)), [opens new tab](#) - the largest corporate holder of bitcoin - [cut its earnings forecast](#) for 2025, citing the weak run in bitcoin. Strategy's shares were last down more than 11%.

FADING CRYPTO ENTHUSIASM

"Bitcoin seems to be suffering from a fading enthusiasm across crypto as well as the tech world," said Juan Perez, director of trading at Monex USA in Washington.

"The negativity at the moment seems tied to growing concerns about increased market concentration and questionable sustainability of overall growth in that sector, considering the issues of infrastructure as well as less cooperation in trade globally," he said.

Ether also fell on Monday and was last 9.5% lower at \$2,735. It lost some 22% in value in November, the most since February's 32% slide.

Stocks have sold off recently on concerns about exuberance over the artificial intelligence trade and lofty valuations in technology shares.

Stocks were lower on Monday, with MSCI's gauge of stocks across the globe ([.MIWD000000PUS](#)), [opens new tab](#) down 0.22% at 1,002.97, and all three major U.S. stock indexes moderately lower.

RISK INDICATOR

Given its short lifespan, there is not much seasonality to guide traders' expectations for how bitcoin usually behaves in December.

On average, bitcoin has tended to rise by around 9.7% in December, ranking it third in terms of performance, with October being the strongest month, with an average gain of 16.6%, and September, the weakest month, with an average loss of 3.5%.

Some strategists were keeping a close eye on bitcoin's [correlation](#) with the stock market at the moment. Some see bitcoin as a possible leading indicator for risk assets.

But Marc Chandler, chief market strategist at Bannockburn Capital Markets in New York, said to him, the key is that "people are talking about" what is happening to bitcoin. "I see a lot of people trying to tie the selloff in crypto to the selloff in the other asset markets. But I think we need to test the narrative. It's just not clear ... but we have to pay attention to it."

XTB research director Kathleen Brooks said in a note: "Bitcoin tends to be a leading indicator for overall risk sentiment right now, and its slide does not bode well for stocks at the start of this month."

"There is no obvious driver (on Monday). However, the sharp decline in volatility last week, the VIX fell back below the average for the last 12 months, may have unnerved some investors who remain concerned about an uncertain outlook into year-end," she said.

CME bitcoin futures also show the growing bearishness.

Bitcoin futures that expire in three months' time are trading at their smallest premium to those that expire this month in at least a year, reflecting how investors are less willing to bank on a sustained rise in the price over time.

NEGATIVES STACKING UP

Jefferies strategist Mohit Kumar said a number of crypto-negative factors were adding to the pressure on bitcoin on Monday.

S&P Global downgraded its rating of Tether, the world's largest stablecoin last week, citing an increase in higher-risk assets in its reserves and "persistent gaps in disclosure," which Tether said it "strongly disagrees" with.

Crypto company shares were down as well, with Coinbase Global [\(COIN.O\)](#), [opens new tab](#) last off 6%.

Since hitting a record of around \$4.3 trillion in size, the crypto market has lost over \$1 trillion in value, according to CoinGecko.

Reporting by Amanda Cooper in London and Caroline Valetkevitch in New York; Additional reporting by Gertrude Chavez-Dreyfuss in New York and Shashwat Chauhan; Graphic by Dhara Ranasinghe; Editing by Louise Heavens, Susan Fenton, Rod Nickel

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Airbus SE

Airbus warns of quality issues on some A320 aircraft panels

Latest challenge facing European planemaker comes as it seeks to deliver ambitious jet delivery target



Investors on Monday were already digesting the fallout from a software update required on about 6,000 A320 jets over the weekend
© Pascal Pavini/AFP/Getty Images

Sylvia Pfeifer in London

Published 5 HOURS AGO | Updated 09:04



Airbus has warned that quality issues are affecting a limited number of fuselage panels on its best-selling A320 aircraft, adding to wider challenges faced by the European aerospace group as it races to meet an ambitious end-of-year jet delivery target.

The company on Monday confirmed it was inspecting all aircraft potentially affected by the issue, which it said stemmed from “a supplier quality issue affecting a limited number of A320 metal panels”.

[Airbus](#) said it was taking “a conservative approach” and that it believed only some of the planes would require further action.

“The source of the issue has been identified, contained and all newly produced panels conform to all requirements,” it added. A spokesperson declined to comment on whether the quality flaw had reached aircraft in service.

Shares in the company fell more than 10 per cent earlier on Monday to their lowest level since April after Reuters first reported the production issue. The shares later pared their losses before closing down 5.5 per cent at €193 per share.

Investors on Monday were already digesting the fallout from a software update required on about 6,000 A320 jets over the weekend. Although most airlines were able to contain major disruptions to their services by implementing the update relatively quickly, the directive — the largest in Airbus’s history — took investors and the industry by surprise. The A320 is the world’s best-selling commercial aircraft of all time.

The issue adds to challenges facing the European aerospace and defence group as it seeks to deliver on an ambitious target to hand over about 820 jets to airline customers by the end of the year. Airbus has managed to cement its lead over Boeing in recent years as its US rival has struggled with the consequences of two fatal crashes of its 737 Max aircraft as well as production challenges.

Planemakers’ delivery targets are closely watched by investors as a key metric for cash flow and revenues, as airlines pay the bulk of the cost of the planes on delivery.

Airbus was already believed to be struggling to hit its jet delivery target amid persistent supply chain disruptions, including a lack of engines. The company has also had to absorb engine issues on its newer A320 jets powered by Pratt & Whitney, which had forced hundreds of jets to be taken out of service for maintenance.

Analysts at Vertical Research on Monday cut their full-year delivery forecast from 823 to 790 aircraft and adjusted forecasts for earnings and free cash flow for the full year.

Rob Stallard, analyst at Vertical, said in a note to clients that the indications were that the panel issue “did hold up some deliveries in November, and that leaves Airbus with a mountain to climb in December if it is to hit its target of around 820 deliveries this year”.

Airbus would still need to hand over 133 jets to customers in December to hit Vertical's lowered target of 790 aircraft, according to Stallard, noting that this would be "close to Airbus' pre-Covid record month of 138 in December 2019".

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Altice Group**Patrick Drahi's 'super aggressive' asset move hits Altice International bonds**

Franco-Israeli tycoon has locked horns with creditors over debt-laden telecoms empire



Altice Portugal SA and Altice Caribbean Sarl account for about 80% of Altice International's earnings © Bloomberg

Euan Healy and Kieran Smith in London

Published 8 HOURS AGO



Bonds issued by part of billionaire Patrick Drahi's heavily indebted Altice telecoms empire plummeted on Monday, after he moved the bulk of the group's assets out of creditors' reach.

The "drop-down" transaction, announced late on Friday, shifted [Altice](#) International's Portuguese and Dominican assets out of creditors' pool of collateral — assets they can call on if debt is not repaid — and designated them as "unrestricted" subsidiaries.

Those assets, Altice Portugal SA and Altice Caribbean Sarl, account for about 80 per cent of Altice International's earnings. Until Friday, they had been pledged as security to creditors who own more than €8bn of the group's bonds.

"Its super aggressive . . . he's just taken €5bn of value from creditors," said one credit investor.

Some of Altice International's most senior debt fell as much as 12 per cent on Monday morning, from 75 cents on the euro to 66 cents. Two of its junior bonds fell from around 35 cents on the euro to just over 16 and 19 cents respectively, their largest-ever intraday drop.

Drahi, a Franco-Israeli tycoon, has built a sprawling telecoms empire through a series of debt-fuelled acquisitions over the past two decades.

He has been in conflict with creditors in recent years as interest rates have risen and his debts have come due for renegotiation.

Friday's transaction follows Altice USA's decision last week to sue lenders holding the bulk of its \$26bn debt, accusing them of illegally colluding in an attempt to force the company into bankruptcy.

Altice France's management angered bondholders last year by raising the prospect of aggressively shifting assets away from them — in a similar move to Friday's transaction by Altice International.

But Drahi eventually struck an amicable €24bn restructuring deal with creditors of his French business in February. The deal involved handing a 45 per cent stake in the company to creditors in exchange for a substantial debt writedown.

However, at the time some analysts and investors believed bondholders were at greater risk of asset stripping at Altice International than at Altice France, because French law prevented Drahi from taking the most aggressive course of action at the domestic business.

As well as moving the assets away from existing creditors, Altice Portugal had already raised €750mn of new debt through "a private financing transaction" to pay upcoming liabilities of Altice International, as well as for general working capital purposes, the company said on Friday.

Altice International also said that it could raise another €2bn of new debt at Altice Portugal to follow the transaction.

As the assets moved out of creditors' reach on Friday are now no longer governed by Altice International's existing credit agreements, they can also be sold or used to pay dividends without needing creditors' permission.

Drahi — who is currently working on the [potential sale](#) of Altice's French operation, SFR — is expected to restart a process to find a buyer for Altice Portugal in due course.

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Telecoms

Altice Group

Patrick Drahi

Trump frees former GPB Capital CEO after Biden admin's Ponzi scheme sentence

 [reuters.com/world/us/trump-frees-former-gpb-capital-ceo-after-biden-admins-ponzi-scheme-sentence-2025-11-30](https://www.reuters.com/world/us/trump-frees-former-gpb-capital-ceo-after-biden-admins-ponzi-scheme-sentence-2025-11-30)

Matt Tracy

November 30, 2025

U.S. President Donald Trump waves during the annual Thanksgiving turkey pardoning ceremony in the Rose Garden at the White House in Washington, D.C., U.S., November 25, 2025. REUTERS/Nathan Howard [Purchase Licensing Rights, opens new tab](#)

Nov 30 (Reuters) - President Donald Trump has commuted the seven-year sentence of former GPB Capital Holdings CEO David Gentile, with a White House official on Sunday countering the claims at trial brought by the Biden administration that led to Gentile's conviction last year.

Founded in 2013, GPB Capital Holdings used investor funds to take stakes in automotive, retail and other types of companies. It paid out regular annual distributions to investors from returns on these holdings.

Former President Joe Biden's Department of Justice convicted then-CEO Gentile of securities fraud in August 2024 after an eight-week trial, saying GPB's use of investor capital to pay these proceeds instead of tapping into funds from its current operations constituted a Ponzi scheme. Gentile was sentenced in May.

Following reporting of Gentile's sentence commutation, a White House official told Reuters the Biden administration's Ponzi scheme claim was "profoundly undercut by the fact that GPB had explicitly told investors what would happen."

"At trial, the government was unable to tie any supposedly fraudulent representations to Mr. Gentile," said the White House official, who spoke on condition of anonymity due to not being authorized to speak on the topic.

"Mr. Gentile also raised serious concerns that the government had elicited false testimony and failed to correct such testimony."

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

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

Tesla new registrations plummet in key European markets in November

 [reuters.com/business/retail-consumer/tesla-november-car-registrations-drop-58-france-49-denmark-data-shows-2025-12-01](https://www.reuters.com/business/retail-consumer/tesla-november-car-registrations-drop-58-france-49-denmark-data-shows-2025-12-01)

Alessandro Parodi, Marie Mannes

December 1, 2025

Musk has gone relatively quiet on politics in recent months but Tesla's European business hasn't recovered.

- Tesla registrations fall more than 50% in France, Sweden
- Also down more than 40% in Denmark, Netherlands, Portugal
- Registrations jumped by 175% in Norway, 58% in Italy
- Brand is rolling out cheaper version of its Model Y
- Competition from China is growing

Dec 1 (Reuters) - Tesla ([TSLA.O](https://www.tsla.com))  [opens new tab](#) registrations in several key European markets plunged in November from a year earlier as the U.S. EV maker continued to struggle to stem market share losses despite rolling out new versions of its best-selling Model Y.

[Elon Musk](#)'s brand however sold more cars in [Norway](#) and Italy than in November last year, partly offsetting losses elsewhere.

Monthly registrations, a proxy for sales, slumped by 58% in [France](#) to 1,593 vehicles sold, by 59% to 1,466 cars in Sweden, by 49% to 534 cars in Denmark, by 44% in the Netherlands to 1,627, by 47% in Portugal to 425, and by 9% in [Spain](#) to 1,523, official data showed.

However in Norway, they almost trebled to 6,215 cars, beating the country's [annual sales record](#) with one month to spare. Registrations in Italy jumped by 58% to 1,281, but remain down 28% year-to-date.

Tesla's overall market share in Europe dipped to 1.6% in January-October from 2.4% a year earlier, highlighting a downward trend for the brand whose signature Model Y SUV was Europe's and the world's best-selling model as recently as 2023.

SLOWDOWN FOLLOWS MUSK BRUSH WITH POLITICS

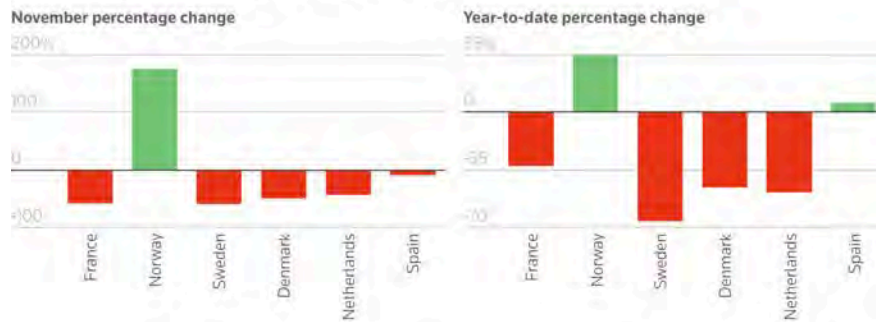
The company's slowdown in Europe began late last year after its CEO Musk publicly praised right-wing political figures, setting off [protests](#)  [opens new tab](#) across the region.

In November, a large fire at a Tesla dealership in Southern France prompted investigators to launch a criminal probe, local media reported.

Advertisement · Scroll to continue

Musk has toned down political commentary since stepping down from the U.S. [Department of Government Efficiency](#), but Tesla's European business [has not recovered](#).

Tesla's car sales falling in most European markets

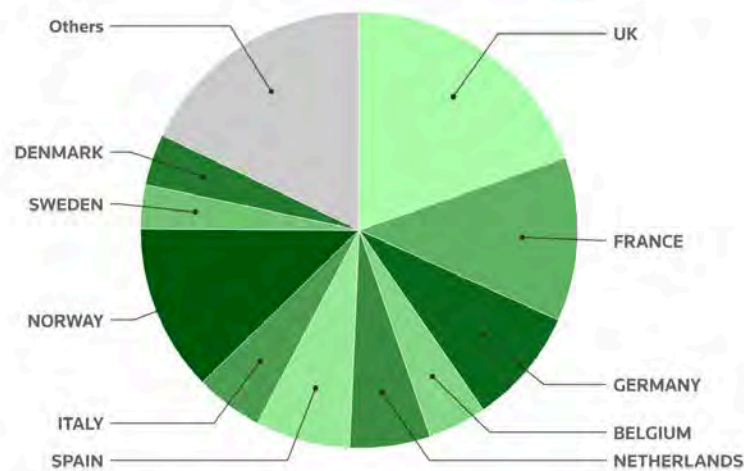


Source: Reuters calculations based on ACEA and national data.

The multiple bar charts show changes in Tesla's battery electric vehicle sales in some European markets in July and the first seven months of the year.

What are Tesla's biggest markets in Europe?

The brand sold 180,688 cars in the EU, EFTA and UK region in the first ten months of 2025.



Note: The European Free Trade Association (EFTA) includes the following countries: Iceland, Liechtenstein, Norway and Switzerland.

Source: Reuters calculations based on ACEA and national data.

A pie chart showing Tesla sales in some of its biggest markets in Europe.

Item 1 of 2 Model Y cars are pictured during the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick Pleul/Pool via REUTERS

[1/2] Model Y cars are pictured during the opening ceremony of the new Tesla Gigafactory for electric cars in Gruenheide, Germany, March 22, 2022. Patrick

Pleul/Pool via REUTERS [Purchase Licensing Rights](#)  , [opens new tab](#)

TESLA NOVELTY FADES AMID GROWING COMPETITION

Analysts pointed to [growing competition](#) in a crowded European market, especially from new entrants from China, and Tesla's aging lineup. Consumer sentiment has weakened. Data analytics and advisory firm Escalent said in a study seen by Reuters that 38% of respondents to a survey in Europe's five largest car markets feel the brand's novelty has worn off, and it trails competitors on design, quality and emotional appeal.

Many European buyers are also increasingly choosing hybrid cars over fully electric models, French car body PFA said.

November sales at Chinese EV maker BYD ([002594.SZ](#))  , [opens new tab](#), which unlike Tesla also sells hybrids and plug-in hybrids, spiked to 3,526 vehicles in Italy, jumped 268% to 2,934 in Spain and 65% to 570 in the Netherlands, their best month on record in the country.

A NEW, CHEAPER MODEL Y

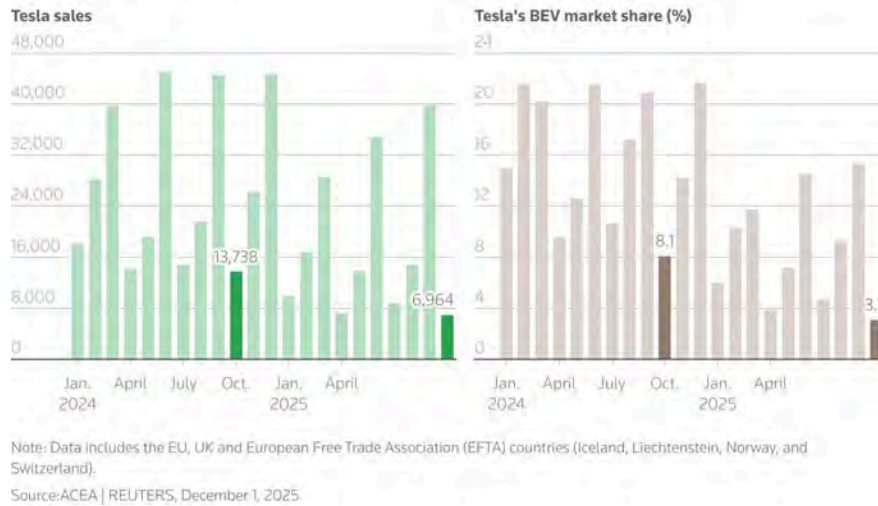
Musk spent much of this year focused on Tesla's robotics pursuits and winning shareholder approval for his [\\$1 trillion pay package](#), but his brand also tried to win back buyers by launching a refreshed Model Y earlier this year.

Only a handful of [cheaper Model Ys](#), priced at 40,000 euros (\$46,468) in Germany, had reached European markets at the end of November, however.

Sales of the Model Y dropped by 67% in Sweden, 62% in the Netherlands, 55% in Portugal, 44% in Italy and 74% in Denmark. They jumped 19% to 3,648 cars in Norway.

Tesla's market share in Europe slumped in October

Tesla's battery-electric vehicle market share in Europe dropped in October to less than half its October 2024 value.



The multiple bar charts show Tesla's battery electric vehicle sales and its market share in the EU between January 2024 and June 2025.

(\$1 = 0.8608 euros)

Reporting by Alessandro Parodi, Tiago Brandao and Mireia Merino in Gdansk, Marie Mannes in Stockholm, Stine Jacobsen in Copenhagen, Gilles Guillaume in Paris and Giulio Piovaccari in Milan; Editing by Sudip Kar-Gupta, Louise Heavens and Jan Harvey

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[Alessandro Parodi](#)

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Alessandro is an Italian journalist based in Gdansk reporting on European markets, with focus on Italian companies. Previously, he worked as a multimedia freelancer in South Africa covering general news and cultures.



[Marie Mannes](#)

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Stockholm-based company news correspondent who mainly covers anything to do with retail and industrial companies in Sweden as well as other sectors with Swedish companies. She previously covered the general Nordic stock market from Gdansk, reporting on a range of subjects, from companies exiting Russia to M&As and supply chain concerns. Marie has degrees in journalism and international relations and is keen on finding stories that drive the market and that have unreported elements to it.

Securities

Outside Cash Helps UK Mid-Sized Firms Grab Listed Company Audits

Nov. 30, 2025, 4:01 PM PST

UK mid-sized firms have continued to increase their share of big listed company audits over recent years, although they remain locked out of the very largest audits, according to a new report.

Adviser Rankings Ltd. said Monday that mid-sized firms had increased their share of the audit market for companies listed on the FTSE 250 stock index by one-third over the past three years. However, 83% of those companies are still audited by the Big Four accounting firms—Deloitte, Ernst & Young, KPMG, and PwC.

The Big Four audit 97 of the 100 largest listed companies and 207 of the largest 250. PwC, also known as PricewaterhouseCoopers, is the biggest auditor of FTSE 250 companies, with 30% of the market by number of clients. It's followed by EY, Deloitte and KPMG. BDO is fifth, with 24 clients compared to PwC's 73.

Mid-sized firms are making inroads into smaller listed-company audits, however. Over the three months to Nov. 12, two new firms started to audit a FTSE 250 company: private-equity backed PKF Littlejohn and MHA Audit Services. MHA listed on the stock exchange in April to raise capital for its expansion.

The Big Four are by far the largest auditors measured by clients' market capitalization. PwC also remains the largest auditor in terms of total number of clients, increasing its lead over second-place BDO over the three-month period ending in November. Fourth-place PKF now audits more listed companies than Deloitte and KPMG.

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Investors Say Synopsys Hid Risks Before \$35B Deal

By **Katryna Perera**

Law360 (November 26, 2025, 1:38 PM EST) -- Shareholders of Synopsys Inc. have launched a class action in California federal court alleging the chip software design company concealed concerns about its pre-designed semiconductor components business segment before it acquired Ansys for \$35 billion.

The New England Teamsters Pension Fund filed a **complaint** Tuesday on behalf of a proposed class of individuals and entities that purchased or acquired Synopsys stock between Dec. 4, 2024, and Sept. 9, 2025.

In addition to Synopsys, the investors named company CEO Sassine Ghazi, Chief Financial Officer Shelagh Glaser and several board members as defendants.

California-based Synopsys provides software, intellectual property and other services used to design and verify advanced semiconductor chips. Its products include electronic design automation, or EDA tools, pre-designed semiconductor components known as Design IP, and software security and quality testing solutions.

The company's typical customers include major semiconductor and electronics manufacturers that rely on its tools to "manage complex chip design processes and accelerate time to market," the suit said.

When the Ansys deal was announced in January 2024, the defendants touted the benefits of the merger, stating it would "deliver a holistic, powerful and seamlessly integrated silicon to systems approach to innovation to help maximize the capabilities of technology [research and development] teams across a broad range of industries," the shareholders alleged.

Filings with the U.S. Securities and Exchange Commission said Ansys shareholders would receive \$197 in cash and 0.345 shares of Synopsys common stock in exchange for each share of Ansys they held at the time of the merger, the complaint noted.

However, the pension fund said, the defendants misled investors by failing to disclose ahead of the merger that Synopsys' growing emphasis on artificial intelligence customers, which require more customization, was weakening the economics of its Design IP business. As a result, some of the company's "road map and resource choices were unlikely to achieve their intended outcomes," impacting Synopsys' financial performance, according to the complaint.

The Design IP business segment "provides prebuilt semiconductor intellectual property blocks such as interface protocols, embedded processors, security IP, and related subsystems," the pension fund said.

The complaint said the truth came to light Sept. 9, 2025, when Synopsys reported its third-quarter financial results and revealed the IP business "underperformed expectations."

Additionally, Ghazi reported that revenues for the business segment had declined by 8% and that, as a result, Synopsys would have to pivot its IP resources and road map to "highest-growth opportunities," the pension said.

On this news, Synopsys' stock price fell 35%, dropping from \$604.37 to \$387.78 per share Sept. 10, 2025, the investor alleged.

It is seeking damages, attorney fees and a jury trial.

A spokesperson for Synopsys told Law360 Wednesday the company believes the allegations are without merit and intends to vigorously defend against them.

Counsel for the New England Teamsters Pension Fund did not immediately respond to requests for comment.

The pension is represented by Lucas E. Gilmore of Hagens Berman Sobol Shapiro LLP and Francis P. McConville and Connor C. Boehme of Labaton Keller Sucharow LLP.

Counsel information for the defendants was not immediately available.

The case is New England Teamsters Pension Fund v. Synopsys Inc. et al., case number 3:25-cv-10201, in the U.S. District Court for the Northern District of California.

--Editing by Covey Son.

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Avantor Sued Over Supply Chain Issues After \$6.4B Deal

By **Matthew Santoni**

Law360 (November 26, 2025, 4:52 PM EST) -- Investors have accused executives at Pennsylvania-based laboratory supplier Avantor Inc. of falsely inflating the company's stock value by continually touting the value of its \$6.4 billion merger with a major distributor in 2017, even as its failures to maintain its supply chain mounted, according to a proposed class action filed Tuesday in federal court.

Led by the City of Pontiac Reestablished General Employees' Retirement System, the suit accuses former CEO Michael Stubblefield, Chief Financial Officer R. Brent Jones, Chair Jonathan Peacock and Chief Accounting Officer Steven Eck of making misleading statements to investors between March 2024 and late October that, when Avantor's financial struggles were revealed, led the company's stock value to plummet.

"Avantor continued to defraud investors by failing to disclose that it had severely underinvested in its supply chain infrastructure, inventory management systems, and customer service, leading to significant customer defections to competitors," said the **complaint**, filed in Pennsylvania's Eastern District.

The suit sought to represent all Avantor investors who bought or held stock between March 5, 2024, and Oct. 28 for claims that the company and its executives violated the Securities Exchange Act.

A **different investor suit** filed in October accused the company and executives of downplaying the impact of increasing competition on Avantor's business during the same period.

The new suit said Avantor had been coasting on the "goodwill" from its merger with lab supply distributor VWR Corp., touting the combination of the original company's manufacturing capability and the latter company's global supply and distribution chain. That figure, representing the difference between VWR's value and what the company paid, should have been continually revised, and lowered if the combined company's performance declined, the suit said.

"Goodwill is a catchall balance that values reputation, workforce know-how, expected synergies, and other VWR assets that are not accounted for individually on Avantor's balance sheet," the complaint said, adding: "At the start of the class period, Avantor reported goodwill, net of accumulated impairments, of \$5.7 billion."

The complex supply chain was supposed to be managed by the Avantor Business System, a "set of proprietary operating practices and procedures" that included "scaled automation, artificial intelligence, and tightened operating discipline," the complaint said.

But the suit alleged executives made false statements to investors about the effectiveness of the system. The investors claimed that underspending on supply chain infrastructure updates and production facilities led to delays or partial order fulfillment, which led customers to abandon the company.

The problems began coming to light earlier in 2025, the investors said, as the company repeatedly posted disappointing financial results that were at odds with the executives' positive claims, while still claiming "goodwill" of \$5.6 billion. According to the complaint, official documents like the company's annual report looking back at 2024 said: "We tested goodwill for impairment immediately before and

after the reorganization of our reporting structure; no impairment was identified."

"On April 25, 2025, investors began to learn the truth about Avantor's supply chain failures and customer defections when the company reported weak first quarter 2025 results ... and cut its full-year financial forecasts," the complaint said, noting the company said that it would undertake immediate changes and that Stubblefield would resign. "On this news, the price of Avantor stock declined \$2.57 per share, or 16.6%, from a close of \$15.50 per share on April 24, 2025, to close at \$12.93 per share on April 25, 2025," the suit added.

Second-quarter results reported in August were also disappointing, the suit said, including a year-over-year decrease in net sales, manufacturing downtime from a combination of maintenance and lack of raw materials, and a resulting delay in shipments, and stocks fell again. Still, the company reported goodwill of \$5.76 billion, according to the complaint.

In its third-quarter results in October, the complaint said, the company acknowledged it had inventory challenges caused by a "need to improve data accuracy, fulfillment speed, and on-time performance." The company also reported that it would decrease the value of its "goodwill" by \$785 million, along with a net loss of \$712 million to the company, the suit said.

"On this news, the price of Avantor common stock declined \$3.50 per share, or more than 23%, from a close of \$15.08 per share on October 28, 2025, to close at \$11.58 per share on October 29, 2025," the complaint said.

The investors claimed that executives knew or should have known that their statements were false and that they were not cast as protected "forward-looking" statements.

Counsel for the investors and representatives of Avantor did not immediately respond to requests for comment Wednesday.

The proposed class of investors is represented by John C. Coyle, Francis P. McConville, Guillaume Buell and Connor C. Boehme of Labaton Keller Sucharow LLP and Cynthia J. Billings-Dunn of AsherKelly.

Counsel information for Avantor was not immediately available.

The case is City of Pontiac Reestablished General Employees' Retirement System v. Avantor Inc. et al., case number 2:25-cv-06686, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Nick Siwek.



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2nd Circ. Decision Offers Securities Fraud Pleading Insights

By **George Skelly, Morgan Nighan and Matthew Costello** (November 26, 2025, 5:16 PM EST)

The U.S. Court of Appeals for the Second Circuit's Sept. 29 **decision** in *Gimpel v. Hain Celestial Group Inc.* provides a clear road map on how the court will evaluate a securities fraud complaint under Section 10(b) and Rule 10b-5.

The decision underscores that the focus is on statements made, and the knowledge of top executives in making statements to the public, rather than allegations of pure omissions.

Indeed, plaintiffs can survive dismissal in cases when their complaint pairs half-truths or misleading statements with a record of incentives, accounting consequences and executive involvement. Further, scienter can be pleaded holistically, drawing upon information and statements across the business to demonstrate the defendants' knowledge.

Therefore, emphasis on statements made should inform earnings call transcripts, management discussion and analysis, or MD&A, drafting, and quarter-end governance.

Background

In *Hain Celestial*, the plaintiffs brought a securities fraud class action under Sections 10(b) and 20(a) of the Securities Exchange Act and Rule 10b-5, alleging that the company and four executives engaged in channel-stuffing by offering distributors significant end-of-quarter concessions — cash incentives, extended payment terms, discounts, spoils coverage and alleged rights of return — to pull sales forward and meet expectations without adequate disclosure or accounting.

The U.S. Securities and Exchange Commission launched an investigation into Hain's practices. The company subsequently restated its financials, conceding that it lacked adequate internal controls to account for its practices.

Hain later delayed filings, disclosed material weaknesses in internal controls and restated prior results — overstating net sales by approximately \$167 million and generally accepted accounting principles earnings per share — after the SEC investigation culminated in a cease-and-desist order for books-and-records and internal controls violations, but did not result in fraud charges. Once these developments were announced, Hain's stock price plummeted and the plaintiffs brought a securities fraud action.

After an initial dismissal and a Second Circuit remand directing the U.S. District Court for the Eastern District of New York's focus on the alleged statements made, the district court again dismissed for lack of scienter. In this second appeal, the Second Circuit vacated and remanded, concluding that the plaintiffs adequately alleged actionable misstatements and half-truths, scienter, loss causation, and Section 20(a) control person liability.

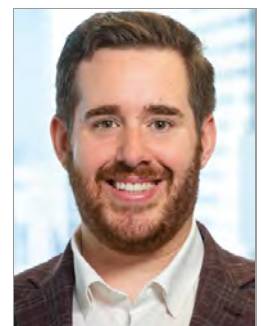
The Second Circuit's decision in *Hain Celestial* follows a significant statement from the U.S. Supreme



George Skelly



Morgan Nighan



Matthew Costello

Court in 2024. In *Macquarie Infrastructure Corp. v. Moab Partners LP*, the court held that "pure omissions" are not actionable under Rule 10b-5(b). There, investors in Macquarie — a manufacturing company that owned storage facilities for bulk liquid commodities — brought a Rule 10b-5 action against the company, claiming that the company's failure to report that part of its business was now regulated by a United Nations trading rule was an actionable untrue statement of material fact under Rule 10b-5.

Macquarie argued, and the court agreed, that the pure omission of information from a company to its investors or the public is not actionable under the rule. Instead, Rule 10b-5 concerns whether the company has made statements that are false, misleading or omit critical qualifying information. The opinion's now-familiar illustration — contrasting a child who says nothing about eating an entire cake with one who says he merely had dessert — captures the distinction. Only the latter statement is actionable under Rule 10b-5.

The Macquarie court explained that the omission of information is not actionable because neither Section 10(b) nor Rule 10b-5 creates an affirmative duty to disclose any material information. But when a company decides to speak, through whatever channels, it must do so with truthful and not misleading statements. Certainly, when other rules or regulations require a company to make statements — regarding its business practices, such as in its MD&A section, or other disclosures — those too must be truthful.

It was against this backdrop that the Second Circuit considered *Hain Celestial*. There, the plaintiffs alleged that the company had made actionable half-true statements by failing to disclose its channel-stuffing practices and other inventory manipulation schemes when stating information about its financial success. Critically, the court concluded that the plaintiffs had sufficiently alleged that statements made by the company, through its quarterly reports on financial results and future projected sales and benchmarks, were misleading and, thus, could be actionable under Macquarie and Rule 10b-5.

Plaintiffs in securities fraud cases must do more than merely identify potential half-truths or misleading statements. They must also allege that the defendants — the company and/or officers — acted with the requisite scienter, or intent to deceive, manipulate or defraud, in making those statements.

To determine whether a defendant acted with scienter, the Second Circuit relied on the Supreme Court's 2007 decision in *Tellabs Inc. v. Makor Issues & Rights Ltd.* In *Tellabs*, the court clarified that in Section 10(b) and Rule 10b-5 cases, a plaintiff's complaint will survive only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged.

The Second Circuit deemed this requirement met in *Hain Celestial*. The plaintiffs alleged that top company executives knew about misstated inventory practices, a lack of accounting practices to sufficiently convey the company's activities, and other practices that meant the individuals knew that public statements were misleading or half-true. Those allegations were sufficient showings that the company and its executives had acted with scienter to overcome a motion to dismiss.

Rule 10b-5(b) Liability: False Statements and Half-Truths

Rule 10b-5(b) prohibits both untrue statements of material fact and half-truths, which are statements rendered misleading by omitting critical qualifying information.

Consistent with *Macquarie*, the Second Circuit confined its analysis to statements the company made. The panel concluded that the plaintiffs plausibly alleged falsity in Hain's reported results, assertions of GAAP compliance, descriptions of revenue-recognition policies, internal controls representations, and Sarbanes-Oxley Act certifications, with Hain's subsequent restatement and admissions of material weaknesses reinforcing falsity at the time the statements were made.

The court also held that the plaintiffs alleged actionable half-truths, holding that public attributions of growth to "strong demand," "momentum" and portfolio strength could mislead investors, where the company allegedly relied on undisclosed distributor concessions and experienced elevated returns, and that statements minimizing inventory issues as "one-offs" were similarly actionable in light of

alleged inventory saturation.

The panel further explained that generic disclosures about promotions did not cure these statements at the pleading stage because the truth-on-the-market defense is fact-intensive and rarely suitable for dismissal.

Scienter: Motive and Opportunity Plus Strong Circumstantial Evidence

Applying Tellabs, the court evaluated motive and opportunity together with circumstantial evidence and concluded that the allegations collectively support a cogent and compelling inference of scienter.

Motive and Opportunity

The court concluded that high-level officers had opportunity, crediting allegations of unusual insider sales by two executives and compensation directly tied to overstated metrics, including a near-miss bonus threshold that would have been unmet under proper accounting. It rejected any bright-line requirement that plaintiffs plead that defendants made net profits from their stock sales, a 100-day timing window, or stock sales by all defendants. The court considered these facts as factors, not prerequisites.

Circumstantial Evidence

Confidential witness accounts described executives' knowledge of, and participation in quarter-end concessions and shipment push-outs. Weekly reporting and executive sign-offs reinforced awareness of accounting and inventory dynamics.

The complaint's allegations of deficient internal controls, efforts to manage internal terminology, and directives discouraging inquiry supported an inference of recklessness. The scale and centrality of the practices to Hain's business, together with a pattern of executive departures tied to the period, added further weight.

SEC Order

The court gave no exonerating effect to the SEC's decision not to bring fraud charges because a negotiated order is not adjudicative, and, in any event, Rule 10b-5(b) focuses on whether statements are misleading. The SEC's observation that such incentives can have financial reporting implications was, therefore, consistent with the plaintiffs' theory.

Loss Causation and Section 20(a)

The panel also held that the plaintiffs adequately pleaded loss causation by alleging stock price declines following corrective disclosures and investigation announcements. With the primary Rule 10b-5(b) claim revived, the court reinstated the derivative Section 20(a) control person claims.

Practical Takeaways and Steps to Mitigate Risk

Half-Truth Risk Is Front and Center

Ensure that public narratives align with underlying business drivers. After Macquarie, pure omissions are not actionable under Rule 10b-5(b); however, statements about demand, growth drivers, inventory or momentum can be actionable half-truths if they omit material countervailing facts, e.g., heavy reliance on end-of-quarter concessions, product returns or inventory saturation practices.

Align messaging with practices. When discussing demand, growth or inventory, incorporate material incentives, price concessions and inventory dynamics as warranted.

Boilerplate Will Not Cure Specificity

Generic disclosures about promotions or risks are unlikely to defeat specific attributions of performance to organic demand or to neutralize statements minimizing inventory issues, particularly if the same language is used repeatedly over many reporting periods.

Update MD&A and revenue-recognition descriptions to reflect material changes in incentives, returns and sell-through.

Revenue Recognition and Return Rights

End-of-quarter incentives require disciplined identification, accumulation and assessment of accounting impact, including appropriate contra-revenue treatment, returns reserves and deferrals.

Centralize and document all end-of-quarter incentives and side agreements and route through finance for contemporaneous assessment and approvals.

Implement controls to identify incentives and track returns and credits. Stress-test returns, reserves and accruals against historical patterns and current quarter activity.

Sarbanes-Oxley Act Certifications and Internal Controls

Sarbanes-Oxley Act certifications are opinion statements that can be actionable if not supported by meaningful inquiry, or if they conflict with known internal control weaknesses.

Enhance subcertifications to require certification of the existence and terms of off-contract concessions and return rights and promptly elevate exceptions.

Scienter Exposure From Incentives and Trading

Compensation tied to revenue or earnings-per-share thresholds, as well as unusual insider trading, can support scienter at the pleading stage, especially when supported by contemporaneous data access or confidential witness accounts of executive involvement.

Maintain robust Rule 10b-5-1 plans and blackout policies; monitor for outlier transactions.

Inventory Transparency

Where channel inventory exposure is material, consider trend disclosure and avoid characterizations such as "one-offs" without support. Ensure contemporaneous data supports public characterizations.

Tone at the Top

Encourage candid discussion about channel practices; avoid terminology management that could appear to obfuscate risks.

Final Thoughts

The Second Circuit's Hain Celestial decision is notable for the range and quantity of circumstantial evidence the court considered in determining whether a complaint sufficiently alleged scienter in the Section 10(b) context.

Taking a page from the Supreme Court's decision in Tellabs, the Second Circuit considered whether all the facts alleged gave rise to a strong inference of scienter. The court considered dozens of facts in determining whether the plaintiffs' complaint sufficiently alleged that statements made were allegedly misleading or half-true and whether the defendants acted with the requisite scienter in making those statements.

Beyond identifying the channel-stuffing scheme and the company's attempts to cover the exposure with poor accounting practices and internal controls, the plaintiffs also sufficiently alleged the defendants' scienter. Among the facts that the court considered were the incentives that the defendants had in making misleading statements. Several key metrics were tied to officers' compensation, which, coupled with many other factors, supported an inference and motivation of potential malfeasance.

Additionally, the plaintiffs pointed to the timing, volume and importance of stock transactions, again

supporting an inference that the alleged fraud was significant and important to officers. Discrepancies between public statements and internal contemporaneous facts, flagged by plaintiffs, supported an inference of reckless or conscious deceit.

The decision demonstrates how fact-intensive the inquiry is on a motion to dismiss and what plaintiffs may allege to survive dismissal. The case presents a current and clear statement on how the Second Circuit will address the numerous subdoctrines that appear in a securities fraud Rule 10b-5 analysis.

The Second Circuit again confirmed that channel-stuffing as a practice is not itself illegal and, thus, does not constitute fraud. The court focused instead on specific alleged statements that were essentially rendered false because they were inconsistent with the undisclosed practice.

Securities litigators and corporate advisers would benefit from understanding how the court engages with these allegations at the motion-to-dismiss level as a road map for future cases.

George Skelly is a partner and head of the securities litigation practice at Nixon Peabody LLP.

Morgan Nighan is a partner at the firm.

Matthew Costello is an associate at the firm.

Nixon Peabody associate Elijah Rockhold contributed to this article.

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Investor Suit Over Failed TD Bank-First Horizon Deal Tossed

By **Katryna Perera**

Law360 (November 26, 2025, 5:24 PM EST) -- A New Jersey federal judge dismissed an investor class action over TD Bank's failed \$13.4 billion merger with First Horizon Corp., finding that First Horizon investors can't sue because they never held TD Bank shares and the deal didn't close.

U.S. District Judge Renée Marie Bumb issued an **order** Nov. 26 agreeing with the defendants that the plaintiffs, who are First Horizon shareholders, lack statutory standing to bring claims against TD Bank.

The judge pointed to the so-called purchaser-seller rule, which states that plaintiffs who are alleging misstatements by a company must be actual purchasers or sellers of that company's stock in order to sue.

"Thus, plaintiffs — as purchasers and sellers of First Horizon securities only — do not have standing to sue TD Bank for its misstatements unless those statements were about First Horizon," the judge said.

According to the order, the plaintiffs argued that TD Bank's alleged misstatements can be imputed to First Horizon because they were made in the context of the merger.

However, Judge Bumb said the alleged misstatements are only "self-referential misstatements" made by TD Bank about its interactions with regulators, its compliance with regulatory requirements and the likely timing of regulatory approval of the First Horizon transaction.

"Plaintiffs essentially contend that TD Bank's alleged misstatements — about its own regulatory compliance and its own commitment to the merger — were actually about First Horizon because they were made in the context of the pending merger," the order states. "The mere fact that the alleged misstatements were made in the context of the merger does not transform TD Bank's self-referential comments about its own 'legal, regulatory, [anti-money laundering] and [Bank Secrecy Act] compliance' into statements about First Horizon."

"Even TD Bank's comments regarding its commitment to the merger and the timeline for obtaining regulatory approval for the merger are not about First Horizon," the order added.

The judge noted that both before the merger and up until the present day, TD Bank and First Horizon have been "two entirely separate companies."

The plaintiffs have also failed to adequately plead scienter, or knowledge of wrongdoing, Judge Bumb said.

"The allegations against the First Horizon defendants amount merely to an accusation that 'they-must-have-known' because TD Bank and First Horizon executives spoke regularly about the merger, First Horizon conducted due diligence ahead of the merger, and TD Bank's AML deficiencies were widespread and pervasive," the order states. "But the facts alleged do not support this inference. And the isolated, limited insider sales add no facts supporting scienter to this picture."

Since the merger was never completed, "any alleged misstatement or omissions in the proxy statement could not have injured [plaintiffs] in [their] rights of corporate suffrage," the judge also

found.

Judge Bumb noted that the operative complaint was the plaintiffs' fourth opportunity to plead their claims, questioning whether the investors can, "in good faith," remedy the deficiencies she has identified. Despite her apparent skepticism, the judge stated the investors may have one final opportunity to amend their complaint.

In a statement to Law360 on Wednesday, Brandon Arnold of Herbert Smith Freehills Kramer LLP, counsel for First Horizon, said: "We believed that the claims against our clients were entirely without merit and are pleased with the court's thorough and well-reasoned opinion dismissing the case."

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

The Arbitrage Fund, an investment fund that purchased First Horizon shares during the proposed class period, **sued TD Bank in 2023**, arguing the institution and other individual defendants repeatedly claimed they expected to close the **\$13.4 billion acquisition** of First Horizon with all the necessary regulatory approvals within the first quarter of 2023, causing significant losses and damages to shareholders when the deal fell through.

The banks announced the deal had been **nixed** on May 4, 2023, citing uncertainty over whether TD Bank would secure regulatory approvals by an already extended deadline.

The investors are represented by Maya Saxena, Joseph E. White III, Steven B. Singer and David J. Schwartz of Saxena White PA, Salvatore J. Graziano, Michael Blatchley and Aasiya Mirza Glover of Bernstein Litowitz Berger & Grossmann LLP, and James E. Cecchi of Carella Byrne Cecchi Brody & Agnello PC.

TD Bank is represented by Susan M. Leming of Brown & Connery LLP, and Susanna M. Buergel, Andrew G. Gordon and Paul A. Paterson of Paul Weiss Rifkind Wharton & Garrison LLP.

First Horizon is represented by Marjorie E. Sheldon and Brandon L. Arnold of Herbert Smith Freehills Kramer LLP.

Defendant Michael Bowman is represented by Scott B. Klugman, Seth L. Levine and Alison M. Bonelli of Levine Lee LLP.

Defendant Mia Levine is represented by Diane P. Sullivan, Chantale Fiebig and Joshua S. Amsel of Weil Gotshal & Manges LLP.

The case is In Re Toronto-Dominion Bank/First Horizon Corporation Securities Litigation, case number 1:23-cv-02763, in the U.S. District Court for the District of New Jersey.

--Editing by Emily Kokoll.



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Investor Says Pot Co.'s Old Defenses Can't Stop Fraud Suit

By **Mike Curley**

Law360 (November 26, 2025, 3:26 PM EST) -- An investor suing the principals of cannabis company Devi Holdings Inc. over an undisclosed \$13 million tax liability is urging a Florida federal court to deny a motion for summary judgment from Devi's CEO, saying it ignores undisputed facts and rehashes old arguments that were rejected at the dismissal stage.

Devi Holdings CEO Jigar Patel is trying to artificially narrow the scope of the claims by arguing he made no misrepresentations about unpaid taxes for 2020 and 2021, investor 2 3 Suited LLC said in a Nov. 24 **response brief**, arguing its complaint clearly concerns the 2019 taxes as well.

At the time the alleged misrepresentations took place, 2 3 Suited argued, 2020 taxes were not yet owed, and the November and December 2020 representations could only have been referring to the 2019 taxes. In addition, the investor's expert has testified that Devi had unreported tax liabilities dating back to 2018, according to the brief.

And even if the court only looked at the 2020 and 2021 taxes, 2 3 Suited argued there's ample evidence that Patel misrepresented those taxes, too, including a "smoking gun" email and testimony from the company's chief financial officer that confirmed Patel knowingly sent 2 3 Suited's sole member, Leonard Tannenbaum, false information.

In addition, the investor said, the defendants are attempting to focus the argument solely on Devi's own tax liabilities, despite the complaint concerning its subsidiaries, whose taxes Devi has admitted it is responsible for as well.

While Patel has also argued that compliance certificates sent to Tannenbaum about Devi's financial state do not constitute representations from Patel, 2 3 Suited argued in the brief that the court already rejected this argument at the dismissal stage, and discovery has confirmed those certificates were signed and sent at Patel's direction.

"Defendants' argument that the compliance certificates, investor presentations, and communications sent by Jigar to Mr. Tannenbaum cannot be considered to have been made 'in connection with' Mr. Tannenbaum's stock purchase — despite these representations all being made in temporal proximity to Mr. Tannenbaum's investments and Mr. Tannenbaum's testimony that he relied on them in making his equity purchases — is unsupported by a single authority and runs contrary to law and logic," the plaintiff wrote.

Tannenbaum brought his initial five-count lawsuit in November 2023 accusing Patel and Devi Holdings' board of directors of fraudulent inducement, violations of state and federal securities laws, and civil conspiracy, among other claims. The suit also names as defendant Larry Patel, a relative of Jigar Patel, and several other entities.

Tannenbaum alleged that when he bought more than 26 million shares in Devi Holdings, he was not told that the cannabis business owed \$13 million in taxes. According to the suit, Tannenbaum said he learned about the tax liability during a board meeting in 2023, at which point the value of his shares sank to "10 to 15 cents on the dollar," or a loss of more than \$20 million.

In early March, Jigar Patel moved to **dismiss the suit**, and later that month, U.S. District Judge Donald M. Middlebrooks **trimmed** 2 3 Suited's claims, dismissing common law fraudulent

inducement, negligent misrepresentation and rescission claims, while allowing other claims to proceed by rejecting Patel's argument that Tannenbaum had signed away his right to sue in the stock purchase agreements.

In Monday's brief, 2 3 Suited argued that the defendants' motion also ignores misrepresentations and omissions regarding conflicts of interest among Devi's and its subsidiaries' officers — such as Patel's misrepresentations about his resume and infighting among the officers, including some threats to sue Patel — and the fact Patel had been warned numerous times by his own CFO and other experts that his business strategy would result in underpaid taxes.

And while the court has questioned whether reliance is even an element of 2 3 Suited's Florida Securities and Investor Protection Act claims, the investor argued that Tannenbaum reasonably relied on the representations made, and should not have been expected to double-check and do his own forensic accounting on the compliance certificates and other representations made prior to his investment.

2 3 Suited also urged the court to again reject Patel's argument that he was not the agent of Devi or the subsidiaries' other principals, noting that Tannenbaum didn't speak to the other principals, and questioning how the deal would have been made if Patel were not the companies' agent.

Finally, 2 3 Suited urged the court to reject the defendants' argument that the suit is outside the statute of limitations because a November 2021 restatement of financials put the investor on notice of its claims, arguing the restatement did not state that any taxes were unpaid, and it wasn't until a March 2023 board meeting that the extent of Devi's liabilities became known.

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

Tannenbaum and 2 3 Suited are represented by James E. Gillenwater, Mark A. Salky, Jessica J. Fishfeld, Emiley F. Pagrabs, Maria R. Santangelo and Jameris Ocasio Palacios of Greenberg Traurig LLP.

Larry Patel is represented by Daniel B. Rogers, Delaney K. O'Neill, Todd W. Ruskamp, Mark C. Tatum and Lucia R. McMurray of Shook Hardy & Bacon LLP.

Jigar Patel and the other defendants are represented by William B. Blum, Jonathan E. Perlman and Brett M. Halsey of Venable LLP, and by Charles E. Murphy and Robin S. Weiss of Clark Hill PLC.

The case is 2 3 Suited LLC v. Jigar Patel et al., case number 9:23-cv-81503, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by David Minsky. Editing by Marygrace Anderson.



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Paratek Beats Suit Alleging \$462M Sale Built On D&O Interests

By **Jeff Montgomery**

Law360 (November 26, 2025, 5:33 PM EST) -- A Delaware vice chancellor tossed investor challenges to Paratek Pharmaceuticals' \$462 million sale to Gurnet Point Capital and Novo Holdings, saying it was not reasonably conceivable that directors and officers undermined better deal prospects in order to protect personal interests.

The Nov. 26 decision by Vice Chancellor Paul A. Fioravanti ended, pending possible appeal, a nearly two-year battle over allegations that those named steered the sale to Gurnet Point and Novo to benefit themselves, with potential perks including reinvestment of incentive payouts into equity.

"It is undisputed that a majority of the board of directors that approved the transaction, including all of the members of the special committee that led and oversaw the negotiations, were disinterested and independent," the vice chancellor wrote.

Noting investors' claims of inadequate explanations for the rejection of purportedly superior offers, the vice chancellor wrote: "This court typically is not receptive to these kinds of 'why' or 'tell me more' disclosure claims that criticize the board for failing to explain its motives when making transaction-related decisions."

The suit, filed on Feb. 13, 2024, by a group of fund investors led by DrugCrafters LP that held 11.7% of Paratek's stock, accused the company's pre- and post-deal CEO and others of working to protect a collective \$36 million worth of insider performance milestone incentive payments, allegedly at the cost of up to \$85 million in better offers for stockholders.

According to the complaint, which included one breach of fiduciary duty count apiece against five directors and officers, Gurnet Point and Novo Holdings agreed to make all payments under the company's executive incentive packages if they were the eventual buyers — regardless of time-based company performance milestone triggers set by the company.

Three of the Paratek officials named, all top officers, were also allegedly assured post-deal employment.

"For the purposes of this opinion, the court assumes that the allegations support a reasonable inference that all of the defendants were conflicted. But conflict alone is not enough to state a duty of loyalty claim against these defendants," the vice chancellor wrote.

"An explanation of how and why the transaction committee, with the assistance of its concededly independent financial adviser, derived its counteroffers in negotiations that occurred nearly a year before an agreement was reached did not require disclosure," he concluded.

The company is a biopharmaceutical venture focused on antimicrobial resistance through research into new antibiotics and responsible use of medications. It primarily produces the brand-name drug Nuzyra, used to treat community-acquired bacterial pneumonia and acute bacterial skin and related infections, according to the decision.

Offers for Paratek ranged from \$3.75 to as high as \$4.50 per share in 2022, but those named in the suit allegedly "took advantage of their influential roles to slow-roll and ultimately sabotage superior offers from other potential buyers" to protect their incentive gains, the complaint said.

When business conditions further soured, the five individuals were accused of pivoting to an all-in \$3-per-share offer from Gurnet and Novo. The limited partners involved also allegedly assured CEO Evan Loh, former company president Adam Woodrow, and chief development and regulatory officer Randy Brenner of post-deal employment.

Absent from the complaint, the vice chancellor wrote, were "well pleaded" assertions that the company's board failed to oversee or manage conflicts among those named in the suit.

"Defendants were supposedly incentivized to 'sabotage any potential deal for nearly two years' so that the company could grow" sales of a key product and increase the incentive payouts to those named in the suit.

But those who sued also alleged the purported scheme "simultaneously pushed the company to the brink of bankruptcy," which would have wiped out incentive equity awards, then coerced the board to go with a deal to increase the same incentives, the vice chancellor noted.

"The proxy fully and fairly disclosed the negotiation process, including each proposal and counterproposal," the vice chancellor wrote, observing separately that it was not reasonably conceivable that those named "pulled the wool over the eyes of the board or the transaction committee, or that the stockholder vote was not fully informed and uncoerced."

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

The stockholders who sued are represented by Samuel T. Hirzel II and Brendan Patrick McDonnell of Heyman Enerio Gattuso & Hirzel LLP and Lawrence M. Rolnick, Steven M. Hecht and Jeffrey A. Ritholtz of Rolnick Kramer Sadighi LLP.

The directors and officers are represented by A. Thompson Bayliss and Adam K. Schulman of Abrams & Bayliss LLP and Martin J. Crisp, Stephanie A. Ainbinder and Peter J. Sheffer of Ropes & Gray LLP.

The case is DrugCrafters LP et al., v. Evan Loh et al., case number 2024-0111, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.

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Coinbase Insiders Sued In Del. For Billions After Hack Losses

By **Jeff Montgomery**

Law360 (November 26, 2025, 1:39 PM EST) -- Stockholders of Coinbase Global Inc. have again sued the crypto giant in Delaware's Court of Chancery, in a second derivative suit seeking recoveries for billions in alleged inside trading by fiduciaries of the now-Texas-chartered company and claiming multiple failures to prevent high-risk customer actions.

The 14 directors and key officers named in the newly public suit "continuously flouted" laws and regulations and failed to implement and maintain an effective anti-money laundering program, stockholders allege.

The 200-page complaint claims that Coinbase fiduciaries failed to identify and stop circumvention of "Know Your Customer" regulations — breakdowns that allegedly permitted the company and its subsidiaries to enroll customers without performing the appropriate due diligence.

Stockholders allege the crypto company failed to assign high-risk ratings to thousands of customers and relied on customer self-reporting of social media profiles in risk assessments.

"Throughout the relevant period, the individual defendants caused the company to mask the high-risk customer misconduct by repeatedly asserting the company's compliance with applicable laws and regulations," the complaint says.

Those named in the suit "failed to maintain internal controls while eleven of the individual defendants engaged in lucrative insider trading, reaping personal profits of approximately \$4.2 billion," the suit alleges.

The new suit seeks joint and several damages from those named, with pre-and post-judgment interest, as well as reforms and permission for shareholders to nominate at least five candidates for board seats, among other proposals.

Following arguments on Oct. 13, Delaware Chancellor Kathaleen St. J. McCormick still has yet to decide on a Coinbase special litigation committee motion to take control of and dismiss an earlier derivative suit filed in 2023, focused on similar claims.

In February 2024, the chancellor found "reasonably conceivable" the prior suit's derivative class claims that five directors and four officers of the crypto exchange company held material, nonpublic information when they unloaded "staggering amounts" of stock in 2021, during the first several days of the company's direct listing on the Nasdaq exchange.

In April 2024, however, a special litigation committee of Coinbase's board asserted its right to investigate and handle the derivative claims, and moved to terminate the action.

Counsel representing stockholders in the previous and new Delaware suits and Coinbase did not immediately respond to requests for comment.

Also still pending is a decision in the U.S. District Court for the Eastern District of Pennsylvania on a company motion for dismissal of a consolidated, direct suit seeking damage payouts to stockholders by the company and its officers after the same alleged series of securities breaches.

A hearing on dismissal of the direct action is scheduled for Dec. 19 in Philadelphia.

The company's recent decision to relocate its charter from Delaware to Texas went unmentioned in the new 200-page complaint.

The company backed up notice of its corporate "redomestication" with a Wall Street Journal op-ed citing Texas' more "business friendly" legal ecosystem and a Delaware court environment "rife with unpredictable outcomes" in recent years.

During the period when the company's stock was inflated in value and affected by disclosure failures, the new suit alleges, the Coinbase board members who sold the most stock included Fred Wilson, who sold shares worth about \$1.9 billion, and Marc Andreessen, who sold nearly \$311 million in shares during the same period. Andreessen is co-founder and general partner at the venture capital firm Andreessen Horowitz and co-created the early browser Mosaic.

Coinbase also faced sanctions in the U.K. for company failures to prevent dealings with high-risk customers allegedly associated with financial crimes.

The company's call to keep details of special committee filings in the earlier derivative suit now before Chancellor McCormick under wraps was criticized this month by Grant & Eisenhofer PA principal Michael Barry.

Barry said the public is entitled to full information regarding the litigation, "so that outside observers can fairly evaluate" whether Coinbase general counsel Paul Grewal's public citing in a Wall Street Journal op-ed of "judicial surprises" and "unpredictab[ility]" in Delaware are credible or "just sour-grapes griping on behalf of disloyal fiduciaries unhappy about the prospect of being held to account in this court."

The new case is Gary Guillaume, derivatively and on behalf of Coinbase Global Inc. v. Brian Armstrong et al., case number 2025-1342, in the Court of Chancery of the State of Delaware.

--Editing by Marygrace Anderson.



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Huggies' 'Hypoallergenic' Diapers Cause Rashes, Suit Says

By **Rae Ann Varona**

Law360 (November 26, 2025, 11:03 PM EST) -- A "secret reformulation" of disposable Huggies children's diapers is causing severe skin reactions, a proposed class action filed in New York federal court has alleged, claiming that manufacturing giant Kimberly-Clark is still marketing the product as "hypoallergenic" despite pleas for a recall on the Huggies website.

A new lawsuit filed Tuesday accuses Kimberly-Clark of violating New York state consumer protection statutes by falsely claiming that its Huggies brand "Little Movers" disposable diapers are hypoallergenic while not mentioning that it changed a formulation for the diapers.

The suit says that the term "hypoallergenic" is a "powerful, premium-driving label — especially for parents of infants."

"It conveys that the product contains fewer irritants, fewer chemicals, and fewer substances known to cause reactions," it says.

But "scores of consumers" have been reporting that the diapers no longer perform like a hypoallergenic diaper, according to the suit.

"Parents reported unusually strong, sudden, and severe skin reactions including rashes and chemical burns which are inconsistent with what any reasonable consumer would expect from any diaper, let alone a product marketed as hypoallergenic," the suit asserts.

Filing suit is New York resident Alyssa Burns, who said she has bought the diapers several times, most recently in May on Amazon.com.

Burns seeks to represent a nationwide class of consumers who purchased the Huggies diapers anywhere in the U.S. during a relevant class period, as well as a subclass of those of who purchased the diapers in New York.

Burns said her complaint that Kimberly-Clark has maintained the same packaging for the diapers, as well as the same hypoallergenic representation and same overall marketing presentation.

"Nothing on the product signaled to consumers that any change in formulation had occurred," Burns said. "Nor did defendant warn that the internal lining, materials, or other components had been altered in a manner that could affect the product's interaction with the skin."

Reviews on Huggies' website, however, show that consumers noticed a "visible difference" on the diapers' internal lining, including a new blue interior surface, according to Burns.

She said that many consumers described using the diapers for extended periods without any problems, but observed irritation or redness with the new version that resolved once another diaper brand was used.

"The shift in consumer reports corresponds to the introduction of the revised product," Burns said.

Burns pointed to several one-star reviews of the diapers on the Huggies website, including from a commenter who said their daughter received "chemical burns" from the diapers, prompting a trip to

the doctor, who said there was an "increasing issue with these diapers." That commenter said that after 24 hours of using a different brand and an ointment, "her rash was almost cleared."

Several commenters urged for a recall of the diapers, including one commenter who said the diapers caused chemical burns on their daughter, according to the suit.

"The most severe is 2nd degree, over 2 inches long and blistered," the complaint quoted one commenter as saying. "She's never had a diaper rash. Tried these as active baby diaper. Quick google search says this is common reaction and may be due to new dye used."

Burns said that Huggies responded to the reviews, and pointed to a response in which Huggies said that products go through "extensive evaluation to ensure irritation is unlikely to occur even on the most sensitive of skin and Huggies Diapers cannot cause burns because they are made of materials that do not create any type of chemical reaction." Huggies also invited the commenter to reach out to the company, as it would "like to find out more about what happened."

Burns said that the response was from four months ago, meaning Kimberly-Clark "had actual notice of these issues because they were posted on its own website..."

"Despite this notice, defendant made no change to its packaging or marketing and did not disclose the reformulation," Burns said.

Kimberly-Clark had previously faced a **suit** over Huggies diapers by parents who claimed that the company didn't ensure safe levels of the chemical additive Ahcovel in its diapers because it allegedly didn't do such inspections or testing.

Kimberly-Clark moved to **dismiss** the suit, arguing that the parents failed to put allege how much, if any, Ahcovel was in the diapers they used. The parents voluntarily dismissed their claims in July 2023, according to that case's docket.

Kimberly-Clark did not immediately respond to a request for comment on Wednesday evening.

Burns is represented by Philip J. Furia of Furia Law LLC.

Counsel information for Kimberly-Clark was not immediately available.

The case is Alyssa Burns v. Kimberly-Clark Corporation, case number 1:25-cv-01662, in the U.S. District Court for the Northern District of New York.

--Additional reporting by Lauren Berg and Tom Lotshaw. Editing by Michael Watanabe.



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8th Circ. Finds No Grounds For Folgers Deceptive Label Class

By **Emily Field**

Law360 (November 26, 2025, 7:04 PM EST) -- The Eighth Circuit struck down a lower court's order certifying a class of Folgers coffee drinkers allegedly deceived by serving size instructions, saying that many consumers either weren't fooled or simply liked weaker coffee.

Missouri resident Mark Smith had claimed that the labeling on Folgers coffee containers about the number of cups that could be brewed was deceptive and violated state law. But figuring out how many consumers were deceived would mean asking how each consumer takes their coffee, which subverts the purpose of a class action, the panel said in its Nov. 26 **opinion**.

It's inevitable that a significant part of the class members didn't read the labels, which promise that each container makes up to a certain number of cups, the panel said. And for those who did read them, it's also likely that they didn't interpret the labels as Smith allegedly did, it said.

"A hefty percentage may well have read the representations and believed that the promised number of cups could be achieved only some of the time under certain conditions," the panel said. "Or perhaps they understood the representations to mean that other, non-recommended brewing methods could brew the promised number of cups."

"After all, some consumers prefer relatively weak cups of coffee," the panel continued.

The panel's ruling set aside U.S. District Judge Beth Phillips' July 2024 order certifying the class of Missouri consumers in **multidistrict litigation**. The suits generally claim that Ohio-based J.M. Smucker Co. and its coffee subsidiary, The Folger Coffee Co., have labels on Folgers ground coffee canisters that misrepresent how many cups of coffee a consumer can brew from each canister's contents.

The panel dismissed Smith's argument that Folgers had no evidence that purchasers didn't notice or care about the alleged misrepresentations about the servings in the container.

"For example, when one proposed representative was asked why she kept buying the products at issue even after she had sued Folgers, she said, 'I like my coffee,'" the panel noted.

Smith also argued that inquiring about each individual in the class wasn't needed since each member suffered an ascertainable loss, according to the opinion.

He reasoned that at least some consumers were misled into buying Folgers, and more demand led to higher prices that each buyer had to pay, the panel said.

But accepting that argument would allow some buyers who suffered no loss to "piggyback" on others who did to pursue a remedy, it said.

"The Missouri Supreme Court, moreover, hasn't decided whether as a matter of state law it would allow consumers who weren't deceived to piggyback on the injuries of others to assert [a Missouri Merchandising Practices Act] claim," the panel said. "Since there's no ruling from the Missouri Supreme Court directly on point, our job is to predict how it would rule if confronted with the argument Smith advances here."

In the circuit's ruling in [Hudock v. LG Electronics](#) , it had looked to the New Jersey Supreme Court and how it rejected arguments like Smith's under a state law similar to the MMPA.

The Missouri Supreme Court would agree, since under Smith's argument any buyer could bring an MMPA claim on behalf of others even if they were indifferent to the label's contents, the panel said.

"Surely someone with full knowledge of the facts and a willingness to make the purchase anyway cannot have suffered an ascertainable loss from the representations of the seller," the panel said. "Since common questions would not predominate over individual questions with respect to the MMPA claim, we conclude that class certification was inappropriate."

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

Senior U.S. Circuit Judge Morris S. Arnold and U.S. Circuit Judges Laverski R. Smith and Bobby E. Shepherd sat on the panel for the Eighth Circuit.

Folgers is represented by Theodore Boutrous of Gibson Dunn & Crutcher LLP.

The consumers are represented by Glenn A. Danas of Clarkson Law Firm PC.

The case is Sorin et al. v. The Folger Coffee Co. et al., case number 24-2830, in the U.S. Court of Appeals for the Eighth Circuit.

--Editing by Adam LoBelia.



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Swimmers Defend \$1.16M Fee In Antitrust Fight With Aquatics

By **Elaine Briseño**

Law360 (November 26, 2025, 6:27 PM EST) -- Swimmers suing World Aquatics over alleged antitrust violations say the objection to an additional \$1.16 million in attorney fees is "absurd," arguing the international governing body knows payment would come from a fund separate from the already negotiated attorney fees.

World Aquatics' assertion that the requested attorney fees amount to nearly 90% of the \$4.63 million the organization **agreed to pay** in damages defies logic, the swimmers told a California federal court Tuesday. The \$1.16 million in attorney fees would only equal 25% of the damages fund because the approved \$3 million payment to class counsel was a separately negotiated fee designated for the injunctive relief portion of the settlement.

"Not one dollar of this injunctive relief fee payment will come out of the damages settlement fund or from the pockets of any class member," the swimmers said in their motion responding to the objection. "The entire premise of defendant's 90% argument is thus demonstrably false."

In addition, allocating 25% of damages funds to counsel is a standard award in the Ninth Circuit.

The swimmers filed **suit** against the international governing body, then known as Fédération Internationale de Natation, in December 2018, alleging the organization's rules prevented swimmers and national federations from participating in events hosted by groups not associated with World Aquatics. Olympic gold medalists Thomas Shields and Katinka Hosszú accused World Aquatics of enforcing the rules with threats of suspension, jeopardizing athletes' ability to participate in Olympic and World Championship events.

The damages award compensates swimmers for appearance fees and prize money they lost at events hosted by the International Swimming League in 2018 and 2019. ISL filed a separate but related lawsuit that is ongoing.

The Ninth Circuit revived both cases in September 2024 with an unpublished opinion overturning U.S. District Judge Jacqueline Scott Corley's order **granting summary judgment** to World Aquatics for both suits. The Ninth Circuit panel found that World Aquatics' rules disadvantaged competitors like ISL.

The negotiated settlement with swimmers also bars World Aquatics from enforcing a rule that blocked the athletes from competing in independent events.

The parties did not immediately respond to requests for comment.

The swimmers are represented by Jeffrey L. Kessler, Johanna Rae Hudgens, Jeanifer E. Parsigian and Joshua Hafenbrack of Winston & Strawn LLP.

World Aquatics is represented by Aaron T. Chiu and Christopher S. Yates of Latham & Watkins LLP.

The case is Thomas Shields et al. v. World Aquatics, case number 3:18-cv-07393, in the U.S. District Court for the Northern District of California.

--Additional reporting by Matthew Perlman. Editing by Drashti Mehta.