

Securities

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Bristol-Myers to Face \$6.7 Billion Celgene Deal Payout Suit (1)

December 2, 2025, 6:01 AM PST; Updated: December 2, 2025, 7:27 AM PST

Summary by Bloomberg AI

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- Bristol-Myers Squibb Co. must defend against allegations brought by a trustee for certain Celgene Corp. shareholders who got contingent value rights through its 2019 acquisition.
- UMB Bank NA accused Bristol-Myers of stalling the approval process for one of Celgene's acquired drugs to avoid paying out to the bought-out company's shareholders.
- A US District Court judge allowed claims regarding breach of contract for failing to use diligent efforts and a request for declaratory judgment that UMB is the trustee, while granting Bristol-Myers' motion to dismiss certain other claims.

Bristol-Myers Squibb Co. must defend against allegations brought by a trustee for certain Celgene Corp. shareholders who got contingent value rights through its 2019 acquisition.

UMB Bank NA, suing as a trustee for the holders, sufficiently alleged Bristol-Myers breached an implied covenant of good faith and fair dealing through its delisting of the CVRs, US District Court for the Southern District of New York Judge Jesse M. Furman said.

A CVR is a type of security which requires the issuer to pay the holder if an event occurs by a specific date—in this case, regulatory approval of certain Celgene therapies. UMB accused Bristol-Myers of stalling the approval process for one of Celgene's acquired drugs to avoid paying out \$6.7 billion to the bought-out company's shareholders.

UMB, which took over as a trustee from Equiniti Trust Company under Bristol-Myers' 2019 CVR agreement, said the pharmaceutical giant delayed Food and Drug Administration approval of cancer therapy Liso-cel, now sold as Breyanzi, to erase the CVR payout. UMB said Bristol-Myers breached the CVR agreement, which required the company to use "diligent efforts" to reach milestones by the specified dates in 2020 and 2021.

UMB alleged the company made it difficult for holders to enforce their rights under the agreement by having the New York Stock Exchange delist the CVRs and the Depository Trust Company delete its participant electronic trading system. Furman granted Bristol-Myers' motion to dismiss claims regarding maintaining a security register beyond the missed milestone date and the DTC's deletion.

The judge allowed claims regarding a request for declaratory judgment that UMB, not Equiniti, is the trustee, and breach of contract for failing to use diligent efforts, refuting Bristol-Myers' argument there wasn't a default event allowing a trustee to sue.

Furman tossed UMB's first attempt at suing Bristol-Myers, finding UMB hadn't properly been appointed as the trustee before suing because its appointment and the removal of Equiniti were supported only by a majority of beneficial CVR owners. UMB refiled after a 2024 "reconfirmation" process, and Furman said UMB has standing to bring this lawsuit.

Shareholder Litigation

This is one of multiple shareholder lawsuits surrounding Bristol-Myers' 2019 acquisition of Celgene.

Monday's partial dismissal comes after Bristol-Myers agreed to pay \$239 million to end a Celgene investor class action alleging the drugmaker misrepresented the approval prospects of a multiple sclerosis drug ozanimod, now sold as Zeposia, and sales of psoriasis and psoriatic arthritis pill Otezla.

The US Court of Appeals for the Second Circuit earlier this year affirmed Furman's dismissal of another CVR suit, finding the purchasers didn't adequately allege the level of conscious misbehavior to carry securities fraud claims against Bristol-Myers and then-executives in their proposed class action.

Selendy Gay PLLC, which declined to comment, and Katten Muchin Rosenman LLP represent UMB. DLA Piper US LLP represents Bristol-Myers. None of these other firms nor Bristol-Myers immediately responded to emails seeking comment.

The case is UMB Bank, NA v. Bristol-Myers Squibb Co. , S.D.N.Y., No. 1:24-cv-08668, 12/1/25 .

(Updates throughout.)

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I previously missed some of the background on this long running suit and it's wild.

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Bristol-Myers Must Face Trimmed \$6.7B Celgene Investor Suit - Law360

A Manhattan federal judge Monday trimmed UMB Bank's lawsuit accusing Bristol-Myers Squibb of slow-walking the U.S. Food and Drug Administration approval process for three drugs to avoid paying shareho...

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So this case is another example of how earnouts are just a future lawsuit. Here, Bristol Myers bought Celgene, and paid in part with a contingent value right - CVR - that would require Bristol to pay out if a certain drug in development met its milestone by a particular date.



1



4



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The milestone was hit. 36 days late.

Much lawsuitsing followed, alleging Bristol intentionally slow walked approval in order to avoid a payout.

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So this case is another example of how earnouts are just a future lawsuit. Here, Bristol Myers bought Celgene, and paid in part with a contingent value right - CVR - that would require Bristol to pay out if a certain drug in development met its milestone by a particular date.

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The milestone was hit. 36 days late. Much lawsuitsing followed, alleging Bristol intentionally slow walked approval in order to avoid a payout. There were securities fraud claims (ever since, mergers involving CVRs have specified that -

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- they are nontransferrable, I think because that makes it easier to argue they aren't securities and can't be the subject of securities fraud claims.)

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Business Law Prof Blog



[Let's talk about something other than SB 21, okay?](#)

[Like this Walgreen's deal with Sycamore.Very quick thing I note about it: It includes the equivalent of an earnout, namely, in addition to the cash](#)

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But in addition to securities fraud claims, there were contractual claims. Straight up - the CVR is a contract, you breached the contract. Except the thousands/hundreds of thousands/however many holders of CVRs can't organize to bring a contract lawsuit. So the contract itself specifies -

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- that these kinds of disputes will be handled by a trustee, who was appointed right when the CVRs were created to administer them. Anyway, it turns out, at some point, the original trustee was replaced by a new trustee. Which the contract said you could do with a vote of the CVR holders.

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That trustee filed a contract lawsuit alleging Bristol slow walked the approval process. And the case was dismissed on the ground that the new trustee had not been properly appointed.

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Why? Because the judge read the contract to mean that when it said a vote of the registered CVR holders was necessary to replace the trustee, the registered holder had to be DTC/Cede! Not the investors who traded CVRs, but technical registered owner. Which I presume was an argument -

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- made by Bristol, which itself had drafted the original contract for the CVRs. That is ... quite a trap for the unwary.

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Anyway, the new trustee went back to DTC, got approval for the switch, refiled, and now the case can proceed.

Judge rejects bid to disqualify Quinn Emanuel attorney in Elon Musk securities case

DJ [dailyjournal.com/articles/388799-judge-rejects-bid-to-disqualify-quinn-emanuel-attorney-in-elon-musk-securities-case](https://www.dailyjournal.com/articles/388799-judge-rejects-bid-to-disqualify-quinn-emanuel-attorney-in-elon-musk-securities-case)

A San Francisco federal judge has rejected a bid by plaintiffs' attorneys in a securities fraud case against Elon Musk to disqualify Quinn Emanuel Urquhart & Sullivan LLP partner Alex Spiro from the case.

"Plaintiffs contend Musk has not shown how he has a strong interest in being represented by Spiro at trial," Senior U.S. District Judge Charles R. Breyer wrote in a Monday afternoon ruling.

"But the choice of counsel is a deeply personal one, particularly when the lawyer will represent a client before a jury," he added. "Accordingly, this factor weighs in Musk's favor." *Pampena et al. v. Musk*, 22-cv-05937 (N.D. Cal., filed Oct. 10, 2022).

The dispute concerns a class action filed by Twitter shareholders who sold their stock starting on May 13, 2022, when Musk tweeted that his deal to buy the company for \$54.20 per share was 'temporarily on hold' pending verification of spam and fake account data -- a statement plaintiffs alleged was false.

Cotchett, Pitre & McCarthy LLP senior associate Caroline A. Yuen and Bottini & Bottini Inc. partner Francis A. Bottini Jr. argued that Spiro's dual role as both a firsthand witness to the events and Musk's lead trial counsel requires his removal.

"Allowing Spiro to unfairly play both of these roles would violate the advocate-witness rule, create a grave risk of jury confusion, make a mockery out of these proceedings, and inflict serious prejudice on Plaintiffs," Yuen and Bottini wrote.

Breyer wrote that their argument "would functionally lock Spiro out of working on major business disputes. And there is no basis to suggest Spiro's mere presence would suborn perjury."

He added that California Rule of Professional Conduct Rule 3.7(a) allows attorneys to act as advocates and witnesses in a trial if the client gives written consent, as Musk has done in this case.

That said, Breyer - who has scheduled the trial for Feb. 23 - conceded that the plaintiffs had legitimate concerns that he vowed to address.

"But just because Plaintiffs fail to make this heightened showing does not mean they make invalid points," Breyer wrote. "The Court and the parties can take steps to limit the risk of prejudice."

The judge wrote that he has the ability "to control counsel's questioning and argument" so that Spiro handles his dual role appropriately, including by providing limiting instructions to the jury, as necessary.

"As for the parties, Musk has suggested that other trial counsel can cross-examine witnesses that Plaintiffs believe have a high risk of conflict," he added. "Such negotiation and compromise are reasonable and expected by the Court."

Cotchett partner Mark C. Molumphy declined to comment on Tuesday. Spiro could not be reached.

#388799

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Litigation

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Musk Beats Back Attempt to Drop Spiro as Investor Suit Lawyer

December 2, 2025, 7:08 AM PST

Summary by Bloomberg AI

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- Elon Musk will be allowed to have Alex Spiro represent him in an ongoing investor suit that alleges Musk manipulated Twitter's stock price.
- Judge Charles R. Breyer rejected the investors' motion to disqualify Spiro as Musk's trial counsel on the basis of being an "advocate witness," reasoning that Musk provided consent.
- The investors claim that Musk violated the Securities Exchange Act when he fanned uncertainty about his proposed buyout of Twitter, now called X.

Elon Musk will be allowed to have high-profile lawyer and Quinn Emanuel partner Alex Spiro represent him in an ongoing investor suit that alleges the billionaire manipulated Twitter's stock price in advance of his acquisition of the company.

Judge Charles R. Breyer of the US District Court for the Northern District of California on Monday rejected the investors' motion to disqualify Spiro as his trial counsel on the basis of being an "advocate witness," reasoning that the tech mogul provided consent and that the investors failed to show "palpable prejudice."

The ruling is a win for Musk and Spiro, who recently assumed the role of chairman of the board at CleanCore Solutions, which is launching a "Dogecoin treasury," and who since began charging a whopping \$3,000 an hour, close to double his 2021 rate.

The investors claim that Musk violated the Securities Exchange Act when he fanned uncertainty about his proposed buyout of Twitter, now called X.

Spiro, a frequent Musk attorney, has "relevant, firsthand knowledge" of Musk's statements "that are at the heart of the case," said Breyer, citing discussions he had with Musk regarding tweets he published about the acquisition and its delay.

The investors failed to convince Breyer that Spiro's role as lead trial counsel would violate the advocate-witness rule, the judge said, which provides that lawyers can't act as both advocate and witness at a trial unless the lawyer has obtained informed written consent from the client, or other conditions are met.

Though the investors point to “very real concerns” with Spiro’s role as an advocate-witness, they haven’t “made a convincing demonstration of palpable prejudice, let alone potential injury to judicial integrity,” the judge said.

The investors also made only a “weak showing” that they have a “genuine need” of Spiro’s testimony, Breyer said.

And while the investors are correct that Musk is unlikely to incur cost or delay if Spiro is disqualified, he said “the choice of counsel is a deeply personal one, particularly when the lawyer will represent a client before a jury.”

Cotchett, Pitre & McCarthy LLP and Bottini & Bottini Inc. represent the investors. Quinn Emanuel Urquhart & Sullivan LLP represents Musk.

The case is Pampena v. Musk , N.D. Cal., No. 3:22-cv-05937, order 12/1/25 .

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Class Action

Manage Newsletters

Stride Leadership Sued Over 'Ghost Students,' Staffing Issues

December 2, 2025, 11:13 AM PST

Stride Inc.'s board and top executives misrepresented the online educator's business health by concealing false enrollment numbers, corner-cutting in staffing and background checks, and sales slippage, an investor alleges.

The harm to the company from its leaders' misconduct includes the costs of its exposure to a proposed investor class action, corporate reform expenses, and damage to its reputation, David Murphy says. He filed his derivative suit Monday in the US District Court for the Eastern District of Virginia.

The class action focused on the Oct. 29 stock drop of 54%, to close at \$70.05 per share, following a disappointing financial report. The tumble was the steepest in the stock's history, according to data compiled by Bloomberg.



Stride's leaders touted the company's enrollment strength and growth potential while concealing that it enrolled nonexistent, or "ghost," students, Murphy says. They also failed to disclose that Stride disregarded statutory and regulatory requirements related to employee vetting, teacher workloads, and special education services—and that it silenced whistleblowers, he says.

Murphy brings claims on behalf of the company for breach of fiduciary duty, gross mismanagement, waste of corporate assets, unjust enrichment, and proxy misstatements. He seeks damages, corporate governance reforms, and restitution.

Stride didn't immediately respond to an emailed request for comment on behalf of itself and the individual defendants.

Sutter & Terpak LLP and Rowley Law PLLC represent Murphy.

The case is *Murphy v. Rhyu*, E.D. Va., No. 1:25-cv-02222, complaint 12/1/25 .

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Litigation

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Eddie Lampert Settles Challenge to Sears Hometown Restructuring

December 1, 2025, 12:28 PM PST

Summary by Bloomberg AI

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- Billionaire Eddie Lampert and his affiliates have agreed to pay \$9.37 million to resolve a long-running investor challenge to the take-private restructuring of Sears Hometown and Outlet Stores Inc. in 2019.
- The deal follows a trial in 2023, a separate \$3.1 million partial settlement with three former Sears Hometown directors, and a post-trial damages award that initially totaled \$18.3 million and was later reduced by about \$10 million.
- Vice Chancellor J. Travis Laster approved the settlement, saying the investors recovered a “substantial portion” of the original damages award, and also approved a \$2.92 million fee award for the lawyers for the shareholders leading the case.

Billionaire Eddie Lampert and his affiliates have agreed to pay \$9.37 million to resolve a long-running investor challenge to the take-private restructuring of Sears Hometown and Outlet Stores Inc. in 2019.

The deal approved Monday by the Delaware Chancery Court follows a trial in 2023, a separate \$3.1 million partial settlement with three former Sears Hometown directors, and a post-trial damages award that initially totaled \$18.3 million and was later reduced by about \$10 million.

“Six years is a lot of litigation,” Vice Chancellor J. Travis Laster said in a bench ruling in Wilmington, Del.

It’s a “relatively easy settlement to approve,” he said, because the investors recovered a “substantial portion” of the original damages award.

The settlement was “more than fair” and eliminates the risk of further reductions to the investors’ recovery, said Ned Weinberger of Labaton Keller Sucharow LLP, representing the class.

Laster reduced the damages he awarded post-trial to ex-shareholders of the bankrupt onetime affiliate of the iconic department store chain in July 2024, in response to Lampert's request for an adjustment. But he denied Lampert's attempt to appeal his decision to separately grant additional relief to an investment fund that opted into the class action.

Those appraisal-related claims may still be the subject of an appeal, now that the primary class has reached a court-approved settlement, said Michael Pittenger, Lampert's attorney from Potter Anderson & Corroon LLP.

"I hope there's nothing for me to do on the other portion of the case," Laster said.

The judge also approved a \$2.92 million fee award for the lawyers for the shareholders leading the case. The lead plaintiffs' counsel also includes Andrews & Springer LLC, Wolf Popper LLP, Prickett, Jones & Elliott PA, and Levi & Korsinsky LLP.

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

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Five More Lawsuits Allege Fraud, Kickbacks in Class Action Settlements

The class actions, filed from Nov. 7 to Nov. 20, come as the U.S. Judicial Panel on Multidistrict Litigation hears arguments this week on whether to coordinate five similar suits against claims administrators and banks.

December 02, 2025 at 05:00 AM By  **Amanda Bronstad**

What You Need to Know

- The new suits were brought by Pensacola, Florida's Aylstock, Witkin, Kreis & Overholtz; Cory Watson; and Wood Law Firm.
- The suits caught the attention of both the class action bar and the bench, where at least three federal judges have issued orders in the past several months in cases involving Google and Facebook.
- The defendants are Epiq Systems, JND Legal Administration, Angeion Group, Huntington National Bank, Western Alliance Bank, Blackhawk Network Holdings and Tremendous.



Credit: Wikimedia

Five more lawsuits have been filed against claims administrators and banks over alleged financial arrangements and kickbacks in class action settlements.

The suits, filed Nov. 7 through Nov. 20, come ahead of this week's hearing before the U.S. Judicial Panel on Multidistrict Litigation on whether to coordinate five prior lawsuits, [three of which were brought](#) by Boies Schiller & Flexner, alleging the same claims administrators and banks engaged in fraud, antitrust violations and racketeering by failing to disclose the financial arrangements and kickbacks to class members and the courts. The new suits were brought by Pensacola, Florida's Aylstock, Witkin, Kreis & Overholtz; Cory Watson; and Wood Law Firm.

"Plaintiff brings this action to bring an end to defendants' clandestine practices, enjoin them from continued use of the kickbacks for their own benefit, to compensate the class members for the harm caused by defendants' illegal conduct, and to stop the anticompetitive practices that the defendants have carried on, which has depressed payouts substantially in class actions in the United states," says one complaint, filed on Nov. 19 by Aylstock Witkin.

The suits caught the attention of both the class action bar and the bench, where at least three federal judges have issued orders in the past several months to disclose potential financial arrangements in cases involving [Google's advertising](#), [Facebook's alleged privacy violations](#) and antitrust allegations over [real estate commissions](#).

The cases name the same claims administrators that control 65% of the class action settlement administration market: Epiq Systems Inc., JND Legal Administration and Angeion Group. They also name Huntington National Bank and Western Alliance Bank, and its subsidiary Digital Settlement Technologies, as well as financial technology companies that issue prepaid payment cards, Blackhawk Network Holdings Inc. and Tremendous LLP.

In a statement to Law.com, a JND Executive Managing Director Neil Zola wrote, "The new lawsuits appear to essentially copy the same allegations as the prior suits. As to JND the allegations are baseless and we look forward to defending ourselves in court."

An Angeion spokesperson wrote to Law.com, "The recently filed complaints are similar to the earlier complaints and assert generally the same claims based on similar allegations. It is not unusual to see new and similar actions filed shortly in advance of a hearing before the Judicial Panel on Multidistrict Litigation, and the fact that several new cases have recently been filed in multiple jurisdictions tends to support the conclusion that coordination in an MDL would be appropriate."

Representatives from the other defendants did not respond to requests for comment.

'I Was Very Concerned'

The MDL panel is hearing Dec. 4 arguments in Austin, Texas, about whether to coordinate the first five suits, brought in April and May. All the cases allege violations of the Sherman Act and the Racketeer Influenced and Corrupt Organizations Act, but the allegations focus on two separate alleged schemes: undisclosed payments by the banks to the claims administrators in the form of interest on the class action settlement deposits, and revenue-sharing agreements the banks had with digital payment companies that provided kickbacks from unredeemed gift cards and digital pay cards that were never claimed.

The cases cite a 2024 white paper from digital payment critic Todd Hilsee that estimated the alleged kickbacks could generate between \$12 million and \$225 million from settlements since 2020.

“I was very concerned when four officers of a major national bank—who sought me out to tell me that they knew claims administrators were sharing kickbacks removed from class action qualified settlement funds—did not want to report to the government the activity they were witnessing,” Hilsee, of the Hilsee Group, told Law.com on Monday. “I have spent my career honoring the value of the class action device. I hope my work to bring the information to light helps the courts I have served.”

Eric Lechtzin and Liberato Verderame, of Edelson Lechtzin in Newton, Pennsylvania, who [filed the first case](#), later joined by Seeger Weiss’ Christopher Seeger, in Ridgefield, New Jersey, moved to coordinate the cases in the U.S. District Court for the Eastern District of Pennsylvania, specifically before U.S. District Judge Kelley Brisbon Hodge. But Boies Schiller’s David Boies, whose cases are in the Eastern District of Pennsylvania, the Southern District of Florida and the Southern District of New York, pushed for the Northern District of California, which was supported by LTL Attorneys’ Caleb Liang, in Los Angeles, who filed the fifth case.

The defendants have advocated for the Southern District of New York.

The new cases are in the Eastern District of Pennsylvania, the Northern District of Alabama, the Western District of Missouri and the Central District of California.

Aylstock’s Jonathan Aylstock and James Barger filed the cases in Missouri and Pennsylvania, on behalf of two class members in the \$380.5 million Equifax data breach settlement.

Cory Watson partner Douglas Dellaccio, in Birmingham, Alabama, filed one of the Alabama cases on behalf of an Equifax settlement class member.

E. Kirk Wood, of Wood Law Firm in Birmingham, filed the other Alabama case, and, teaming up with Peter McNulty, of McNulty Law Firm in Los Angeles, the case in California. Both were filed on

behalf of class members in a \$3.1 million settlement with Virgin Scent involving alleged benzene in Artnaturals hand sanitizer.

Aylstock, Barger, Dellaccio, Wood and McNulty, in the new cases, did not respond to requests for comment.

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Securities

Exxon Mobil Sued by Pension Over New Automatic Voting System (2)

December 1, 2025, 1:48 PM PST; Updated: December 1, 2025, 3:04 PM PST

Exxon Mobil Corp.'s automatic voting program used for annual meetings violates state and federal laws by automatically aligning investor votes with the board without an option to vote against it altogether, a Florida-based pension fund said in a lawsuit filed Monday.

The energy giant's new voting system, billed as a way to increase engagement from smaller investors, lets shareholders automatically support board recommendations for proposals. These resolutions allow both the board and shareholders to gauge investor sentiment on director elections, environment and diversity measures, and more.

Participants can opt out of the program or override the default vote. But that right is "illusory" since shareholders who normally don't vote, such as retail investors, are unlikely to make manual changes once signed up, the Boca Raton Police and Firefighters' Retirement System said in its lawsuit filed in the US District Court for the District of New Jersey.

"The point of the Program is not to enhance shareholder democracy or increase voter engagement," but to "support and entrench Exxon's current Board and vote in line with their recommendations, according to the complaint.

The pension asked the court to prevent Exxon from continuing to implement the program, citing alleged violations of the federal Securities Exchange Act and New Jersey's proxy law. The lawsuit comes two months after a similar one from the City of Hollywood Police Officers' Retirement System.

Exxon Mobil, which has seen several high-profile investor campaigns in the last few years, received Securities and Exchange Commission support for its voting program on Sept. 15. But the agency's decision not to recommend enforcement action doesn't mean the program is legal, nor does it preclude the SEC from bringing enforcement action later, according to the Boca Raton lawsuit.

Exxon Mobil, however, said the pension fund plaintiff is trying to silence mom-and-pop shareholders from voting how they want.

“Our program literally creates more shareholder democracy, not less, and individual shareholders are supportive of it,” according to an emailed statement from the company.

The energy company hasn’t announced the date of its 2026 annual meeting.

Calcagni & Kanefsky LLP represents the Boca Raton pension.

The case is Boca Raton Police Ret. Sys. v. Exxon Mobil Corp. , D.N.J., No. 3:25-cv-18060, filed 12/1/25 .

(Updated to include Exxon Mobil’s statement in seventh and eighth paragraphs.)

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Guest Post: Is DExit Creating an Emerging D&O Risk?

K [dandodiary.com/2025/12/articles/corporate-law/guest-post-is-dexit-creating-an-emerging-do-risk](https://www.dandodiary.com/2025/12/articles/corporate-law/guest-post-is-dexit-creating-an-emerging-do-risk)

Kevin LaCroix

December 1, 2025

Sarah Abrams

One of the more interesting recent developments in the U.S. corporate arena has been the recent emergence of a [DExit movement](#) – that is, the rise of the argument that companies would be better served to move their state of incorporation from Delaware to another state, usually Nevada or Texas. In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, takes a closer look at the legal changes that have emerged in the wake of the DExit movement, both in Delaware and elsewhere, and considers the extent to which these changes may present D&O risks. My thanks to Sarah for allowing me to publish her article as a guest post on this site. Here is Sarah's article.

Does Coinbase's recent reincorporation to Texas from Delaware, and its messaging surrounding the move, raise an emerging D&O underwriting risk related to a company's state of incorporation?

In his [Wall Street Journal opinion](#) piece, Coinbase's Chief Legal Officer asserts that Delaware's judicial outcomes have become too unpredictable and that Texas, with recent corporate-law reforms, offers efficiency, flexibility, and legal predictability. He further cites Delaware's recent jurisprudence, concern about growing shareholder litigation, and desire for statutory protection for fiduciaries, which Delaware does not appear to provide. Coinbase is not the only company to provide similar bases to reincorporate from Delaware over the last year.

Alongside newly enacted corporate-law reforms in states such as Texas and Nevada, a recent [Analysis Group review \(reported in the Harvard Law School Forum on Corporate Governance\)](#) shows a year-over-year increase in public companies seeking shareholder approval to reincorporate out of Delaware. The filings commonly cite motivations which mirrored Coinbase: greater legal certainty, reduced litigation exposure, and lower operating or franchise-tax costs.

As [D&O Diary readers](#) may recall, shortly after Delaware signed into law [Senate Bill 21](#) (DE SB 21) in an attempt to blunt corporate reincorporation efforts, the Texas legislature codified [Senate Bill 29](#) (TX SB 29) and [Senate Bill 1057](#) (TX SB 1057), and the Nevada legislature, not to be outdone, revised its corporation code Chapter 78 (NV 78). The impact of each of these state initiatives is just beginning to show, along with the potential risk to D&O underwriters of companies that are weighing whether to stay or leave Delaware.

To appreciate what, if any, additional risk may arise from reincorporation, the following will briefly review the above-referenced Delaware, Texas, and Nevada laws, the recent wave of shareholder proposals seeking reincorporation, and data demonstrating momentum behind DExit.

State Law Developments

Delaware

There have been several [D&O Diary posts discussing DE SB 21](#), including [constitutional challenges](#), so I will only briefly describe the bill as passed. [DE SB 21 was enacted in March 2025](#) and amends select provisions of Sections 144 and 220 of the Delaware General Corporation Law. The effect is to address provisions of the state's corporate laws to lessen stockholders' rights relative to claims involving controlling stockholders, particularly as they relate to purportedly conflicted transactions.

Texas

Signed into law by Governor Greg Abbot in May 2025, [TX SB 29](#) codifies the Business Judgment Rule directly into the Texas Business Organizations Code. Under TX SB 29, directors and officers of a Texas corporation (publicly traded or opt-in) are presumed to act (1) in good faith, (2) on an informed basis, (3) in furtherance of the interests of the corporation, and (4) in obedience to the law and the entity's governing documents. Thus, a plaintiff seeking to hold a director or officer liable must rebut one or more of those presumptions and prove that the act or omission constituted a breach of duty and involved fraud, intentional misconduct, an ultra vires act, or a knowing violation of law.

TX SB 1057, also codified in May, allows certain Texas incorporated companies, under specified circumstances, to include a provision in their governing documents that imposes higher stock ownership requirements on shareholders

seeking to submit proposals. To submit a proposal, a shareholder or group must meet either a \$1 million market value threshold OR a 3% ownership threshold and hold the shares continuously for at least 6 months.

Nevada

Nevada's corporation code, anchored in NV 78, presumes that fiduciaries (directors and officers) act in good faith and with a valid business purpose, and it permits broad exculpation along with expansive indemnification for any claim other than intentional misconduct, fraud, or a knowing violation of law. Nevada also imposes higher procedural hurdles on derivative litigation and maintains narrower, less shareholder-friendly books-and-records inspection rights than Delaware.

Discussion

Thus, considering the above and the increasing number of shareholder proposals to reincorporate from Delaware, will shareholder scrutiny over a company's decision to stay or leave begin to impact D&O underwriter exposure?

First, it is important to note that Delaware continues to attract substantial new entity formations even while high-profile public companies are opting to depart. In 2025, [29 companies, including Coinbase](#), reincorporated out of Delaware, yet nearly 250,000 new entities (which may include LLPs and LLCs with lower franchise fees) have been formed in the state since the end of September.

However, as noted earlier, in the HLS post, Delaware experienced a net loss of *large public companies* (with significant or controlling shareholders) through reincorporation in 2024 and the first half of 2025. In addition, in July, [Institutional Shareholder Services \(ISS\) Group presented data](#) that, through the first half of 2025, 18 public companies proposed to reincorporate out of Delaware, compared with 10 companies proposing to move into Delaware from other states.

Proxy-season data from 2025 further showed heightened scrutiny over the state of incorporation. [Glass Lewis](#) evaluated 29 reincorporation proposals, plus one written-consent action, representing a 70.6% increase from 2024. Of the 28 proposals that went to a shareholder vote, 18 companies (64.3%) sought to leave Delaware, compared to 23.5% the prior year. 55% of all reincorporation proposals reviewed by Glass Lewis involved companies with significant or controlling shareholders, echoing the HLS post.

One example illustrating how shareholder scrutiny can influence these decisions is the case of MercadoLibre, a \$120 billion e-commerce platform that sought approval to move from Delaware to Texas. MercadoLibre also [cited](#) Delaware's "indeterminate" case law and use of "broad, flexible standards" as creating unpredictability. The company emphasized that Texas's recent reforms, including the codification of the business judgment rule, would "provide greater certainty to the board in its decision-making." After publicly stating its concerns, MercadoLibre later withdrew its proposal without explanation, perhaps signaling investor sensitivity surrounding reincorporation debates.

D&O exposures may begin to emerge from a company's deliberation, disclosures, process, and rationale regarding a company's state of incorporation or reincorporation. For example, if peer companies, like Coinbase, continue to publicly highlight Delaware's litigation intensity or case-law unpredictability, shareholder plaintiffs may argue that a board failed to adequately evaluate alternatives, resulting in derivative suits asserting *Caremark*-style oversight claims. In addition, Section 14(a) or 10(b) securities claims alleging misstatements about governance risks or reincorporation may arise when a company describes reincorporation as reducing uncertainty or director liability, if shareholders believe they were misled about the risks and benefits.

Thus, D&O underwriters may want to consider that, as companies publicly cite Delaware's evolving jurisprudence, active derivative-litigation environment, and expansive books-and-records rights as sources of uncertainty and cost, directors and officers who decide to "stay put" may face scrutiny over whether they adequately evaluated alternatives such as Texas or Nevada's more management-protective regimes.

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Securities

Manage Newsletters

Jury Trials Face the Axe in England for Complex Financial Crime

December 2, 2025, 5:31AM PST

Summary by Bloomberg AI

AI Generated



- Juries will be scrapped in England and Wales for a range of criminal trials, including the most complex financial crime, in a shake-up of the country's justice system.
- Judges would sit alone in trials where the suspect is likely to get a sentence of three years or less, while juries will remain for the most serious violent crime.
- The proposals include handing lower ranking magistrates higher sentencing powers and introducing "swift courts" to move through the criminal process more quickly, with a defendant's right to a jury trial restricted to prevent them from "gaming the system".

Juries will be scrapped in England and Wales for a range of criminal trials, including the most complex financial crime, in the biggest shake-up of the country's justice system in decades.

Justice Secretary, David Lammy, said that in order to ease a record backlog of criminal cases, judges would sit alone in trials where the suspect is likely to get a sentence of three years or less. Juries will remain the "cornerstone" of the justice system for the most serious violent crime.

The "once in a generation" reform is "desperately needed because this government inherited an emergency in our courts," Lammy said, laying out his proposals in parliament on Tuesday.

The current backlog in the Crown Courts of England and Wales stands at about 78,000. New trials are currently being as far away as 2030 meaning victims of crime and suspects are waiting years for their cases to be resolved.

While the proposals aren't quite as radical as initially trailed they do represent the most significant shift in how criminal justice operates in generations. Lammy's proposals largely stick to [recommendations](#) made by Brian Leveson, a retired judge, in July.

Lower ranking magistrates will be handed higher sentencing powers and “swift courts” will be introduced to move through the criminal process more quickly. A defendant’s right to a jury trial will be restricted to prevent them from “gaming the system,” Lammy said.

[Leveson Puts Jury Trials on Notice With Justice System Proposals](#)

The jury system in the UK dates back to the Magna Carta and has remained central to the UK’s criminal justice system for more than 800 years in one form or another. But successive governments have grappled with a system that has struggled to deal with the record backlog of cases, shortages of judges and lawyers, crumbling court buildings and trial lawyer strikes over low pay.

Still, the jury trial is seen by many as to be a crucial mainstay of a functioning democratic society.

Opponents of Lammy’s plans say that jury trials are not the cause of the backlog, and should be preserved to ensure that people faced with crimes are given a fair hearing.

The proposals could “compromise public trust and confidence in our criminal justice system through curtailing jury trials,” Barbara Mills, chair of the Bar Council, said in a statement on Tuesday. “We urge the government to reconsider pursuing radical changes under the mistaken belief that radical equals effective.”

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Expert Opinion | **Litigation**

Attorney-Client Privilege Should Protect Private Consultations With Counsel About Matters Ultimately to Be Made Public

A recent decision from the Pennsylvania Superior Court raises the question of whether the attorney-client privilege applies when private communications between the client and counsel involve matters that are “intended to be disclosed to third parties.”

December 02, 2025 at 10:46 AM By **Kevin P. Allen**



Kevin P. Allen with Duane Morris. Courtesy photo

Attorney-client communications must be confidential, and be kept confidential, in order to be privileged and protected from compelled disclosure. When clients communicate with their lawyers, the attorney-client back-and-forth often relates to information that ultimately will be made public or otherwise shared with third parties. A client and lawyer may discuss privately the proposed contents of a forthcoming pleading, affidavit, SEC filing, or will. Attorneys and clients could, and often do, hold private discussions in order to plot out what to say in open court or disclose during negotiations with an opponent. In other words, attorneys often talk with their clients *privately and confidentially* about future statements—oral and written—that will be made *publicly*.

A recent decision from the Pennsylvania Superior Court raises the question of whether the attorney-client privilege applies when private communications between the client and counsel involve matters that are “intended to be disclosed to third parties.” See *Brand v. Brand*, No. 1317 WDA 2023, 2025 WL 2452252 (Aug. 26, 2025) (nonprecedential). *Brand* involves an intra-family dispute over a parcel of property, a dispute that implicated a father’s estate planning. An opposing party (one of his sons) sought production of the father’s communications with counsel.

The trial court held that certain communications between the father and his estate planning lawyers were not privileged in the first instance because those communications “involve matters that were intended to be disclosed to third parties” in documents such as “a will, irrevocable trust, power of attorney, insurance policies, and an option agreement to purchase an interest in property.” The father appealed, arguing that the trial court wrongly had held that “the attorney-client privilege does not apply to communications ... made for purposes of obtaining and providing estate planning advice.”

A divided Superior Court panel affirmed. The majority quoted approvingly the portion of the trial court’s opinion that held that the privilege simply did not apply at all to communications that involved estate planning because the subject matter of those communications was “intended to be disclosed to third parties.”

The trial court and Superior Court majority opinions thus sweep broadly by suggesting that the privilege does not protect private attorney-client communications merely because those communications involve matters that ultimately would be made public or otherwise disclosed to third parties. Indeed, the Superior Court dissent offers the view that the majority opinion was so sweeping that it amounts to a “holding that the attorney-client privilege does not apply to communications dealing with ‘estate planning.’”

It is doubtful that the Superior Court majority intends for *Brand* to sweep as broadly as its opinion suggests. Many private and confidential attorney-client consultations involve matters that ultimately will be disclosed publicly. Consider, for instance, the following examples:

- A client communicates to his attorney what the client thinks should be included in an interrogatory answer;
- A lawyer advises her client about what to say during contract negotiations;
- A client emails his attorney about his desired disposition of assets for the attorney to include in the will the attorney is preparing; and
- A client tells an attorney about certain facts in relation to the attorney’s preparation of a complaint for the client.

In all of those examples, the private attorney-client communications relate to documents or statements intended ultimately to be made public or otherwise disclosed to third parties. Yet the lawyers and clients in those examples likely (rightly) assume that those attorney-client communications are privileged.

So long as the client does not place at issue the confidential consultations themselves, the ultimate public disclosure of the subject matter should not deprive earlier private communications of the protection of the attorney-client privilege. One leading treatise has observed that the attorney-client privilege “should not be lost simply because the object of the confidential communication may one day be shared with others or become public” and that courts that rule otherwise errantly refuse to recognize that clients have a reasonable expectation of privacy regarding such communications. See Attorney-Client Privilege in U.S. Section 5:12 (Dec. 2024).

Count *Brand* among the decisions errantly applying this mistaken “ultimate-intended-use” analysis. When a client confers privately with counsel in order to obtain legal advice, the attorney-client privilege shields that communication from later discovery. Notwithstanding *Brand’s* suggestion to the contrary, that should be true even if the private attorney-client communication is about a topic, statement, or document that ultimately will be made public or otherwise disclosed to third parties.

Kevin P. Allen *is the managing partner of the Pittsburgh office of Duane Morris and the author of “The Attorney-Client Privilege and the Work-Product Doctrine in Pennsylvania.”*

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San Francisco sues Kraft, Mondelez over ultra-processed foods

 [reuters.com/legal/litigation/san-francisco-sues-kraft-mondelez-over-ultra-processed-foods-2025-12-02](https://www.reuters.com/legal/litigation/san-francisco-sues-kraft-mondelez-over-ultra-processed-foods-2025-12-02)

Diana Jones

December 2, 2025

Item 1 of 3 Bottles of Coca Cola are displayed on a shelf in a supermarket October 29, 2024. REUTERS/Dado Ruvic/Illustration/File Photo

[1/3]Bottles of Coca Cola are displayed on a shelf in a supermarket October 29, 2024. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights](#), [opens new tab](#)

Dec 2 (Reuters) - The city of San Francisco sued Kraft ([KHC.O](#)), [opens new tab](#), Mondelez ([MDLZ.O](#)), [opens new tab](#), Coca-Cola ([KO.N](#)), [opens new tab](#) and other makers of ultra-processed foods on Tuesday, accusing them of knowingly sickening California residents with addictive and harmful products.

City Attorney David Chiu filed the lawsuit in San Francisco Superior Court, alleging that the companies employed tactics similar to those used by the tobacco industry to design and market products intended to addict consumers. The lawsuit accuses the companies of violating California laws on public nuisance and deceptive marketing.

“These companies engineered a public health crisis, they profited handsomely, and now they need to take responsibility for the harm they have caused,” Chiu said in a statement.

As ultra-processed foods have proliferated, rates of obesity, cancer and diabetes have increased, the lawsuit claims. According to Chiu’s office, heart disease and diabetes—both linked to ultra-processed foods—are among San Francisco’s leading causes of death, with higher rates of diagnosis among minority and low-income communities.

Representatives for Mondelez, Coca-Cola and Kraft-Heinz did not immediately respond to requests for comment.

The city is seeking restitution and civil penalties to offset its healthcare costs, along with a court order prohibiting the companies from engaging in deceptive marketing and requiring them to alter their practices.

Although the definition of ultra-processed foods remains under debate, researchers [generally apply it](#) to many packaged snack foods, sweets and soft

drinks made using processing techniques, additives and industrial ingredients, and mostly containing little whole foods.

In a report put out by U.S. Health Secretary Robert F. Kennedy Jr. in May, the Trump administration [pointed to ultra-processed foods](#) as among the causes of an epidemic of chronic illnesses in children in the country.

The lawsuit marks the first time a municipality has sued over claims food companies have knowingly marketed addictive and harmful ultra-processed foods.

San Francisco is represented by attorneys from Morgan & Morgan, the firm that was behind an earlier lawsuit over similar claims brought by a Philadelphia man, who said he was diagnosed with Type 2 diabetes and non-alcoholic fatty liver disease as a 16-year-old due to his consumption of ultra-processed foods.

That lawsuit was dismissed in August after a Pennsylvania federal judge said the plaintiff [had failed to connect specific products](#) to his health conditions, a problem that could dog many similar claims.

Reporting by Diana Novak Jones in Chicago; Editing by Alexia Garamfalvi and Leslie Adler

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[Diana Novak Jones](#)

Thomson Reuters

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

Trump administration backs Bayer's bid to curb Roundup lawsuits

 [reuters.com/sustainability/boards-policy-regulation/trump-administration-backs-bayers-bid-curb-roundup-lawsuits-2025-12-02](https://www.reuters.com/sustainability/boards-policy-regulation/trump-administration-backs-bayers-bid-curb-roundup-lawsuits-2025-12-02)

Diana Jones

December 2, 2025

The 120 metres high Bayer Cross, logo of German pharmaceutical and chemical maker Bayer AG, consisting of 1710 LED glass bulbs, is seen next to a red traffic light in Leverkusen, Germany, September 23, 2023. REUTERS/Wolfgang Rattay [Purchase Licensing Rights, opens new tab](#)

- Trump administration supports Bayer's Supreme Court appeal
- Bayer faces over 67,000 lawsuits over Roundup's alleged cancer risk
- Solicitor General says juries should not second-guess EPA's science-based findings

Dec 2 (Reuters) - President Donald Trump's administration urged the U.S. Supreme Court on Monday to take up Bayer's bid to curtail thousands of lawsuits claiming its Roundup weedkiller causes cancer, pushing the group's shares to their highest in almost two years.

In a brief filed at the court, U.S. Solicitor General D. John Sauer bolstered Bayer's effort to limit the lawsuits and potentially avert billions of dollars in damages, saying the company was correct that the federal law governing pesticides preempts lawsuits that make claims over the products under state law.

The shares had surged 14.9% to 35 euros at 0812 GMT on Tuesday.

"We see the Solicitor General's recommendation as an important step towards containing glyphosate litigation," JPMorgan analysts said in a note, adding the Supreme Court was likely to rule next year.

The analysts flagged there could be a reduction in provisions for glyphosate litigation, which Bayer has said were \$7.6 billion at the end of September.

Bayer ([BAYGn.DE](#), [opens new tab](#)) has asked the justices to hear its appeal of a lower court's decision to uphold a \$1.25 million verdict awarded by a St. Louis jury in a Missouri state court case in which a plaintiff named John Durnell sued after being diagnosed with non-Hodgkin's lymphoma he attributed to his exposure to Roundup. Bayer is facing more than 67,000 such lawsuits in U.S. state and federal courts.

The German pharmaceutical and biotechnology company, which acquired Roundup as part of its \$63 billion purchase of Monsanto in 2018, has said that decades of studies have shown Roundup and its active ingredient, glyphosate, are safe for human use.

LABEL FIGHT

Sauer told the justices that upholding the lower court's decision would allow juries to second guess the science-based judgments of the U.S. Environmental Protection Agency.

"EPA has repeatedly determined that glyphosate is not likely to be carcinogenic in humans, and the agency has repeatedly approved Roundup labels that did not contain cancer warnings," Sauer said in the brief.

"Where, as here, EPA has specified the health warnings that should appear on a particular pesticide's label, a manufacturer should not be left subject" to state labeling regimes each prescribing different requirements, Sauer said.

The brief comes as the Trump administration — which has aimed to address concerns from agricultural groups about potential restrictions on agrochemicals — must also contend with supporters of the "Make America Healthy Again" movement, who have highlighted possible health risks associated with pesticides.

Bayer's effort has drawn support from pro-business groups like the U.S. Chamber of Commerce, which said that allowing Bayer to face the liability opens up many corporations that follow federal law to litigation.

Lawyers for Durnell asked the Supreme Court to turn away Bayer's appeal. They said the plaintiff relied on Bayer's advertising and not just the label when he chose to use Roundup, and the company's marketing failed to warn consumers of the product's risks.

The [U.S. Supreme Court](#) asked the Trump administration in June for its views in the case.

MIXED RECORD

Roundup is among the most widely used weedkillers in the United States.

The company has paid about \$10 billion to settle most of the Roundup lawsuits that were pending as of 2020, but failed to get a settlement covering future cases. New lawsuits have continued to pour in since then. Plaintiffs have said they developed non-Hodgkin's lymphoma and other forms of cancer due to using Roundup, either at home or on the job.

The company has had a mixed record at trial in the Roundup lawsuits. Bayer has prevailed in a series of Roundup trials, but it was also hit with large jury awards in the past few years, including a \$2.1 billion verdict in a case in the U.S. state of Georgia in March.

Bayer settled the Georgia case and three others that had been on appeal in November.

Bayer has threatened to [withdraw Roundup](#) from the U.S. market as it fights the litigation. The company replaced glyphosate in U.S. consumer products with different weedkilling substances.

Reporting by Diana Novak Jones; Additional reporting by Andrew Chung; Editing by Alexia Garamfalvi, Stephen Coates and Kate Mayberry

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[Diana Novak Jones](#)

Thomson Reuters

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

Bayer AG

US government backs Bayer bid to curb Roundup claims

Solicitor-general's backing lifts hopes of reducing litigation, pushing up German group's shares



Bayer's Roundup herbicide is at the centre of thousands of pending US lawsuits © Stephanie Lecocq/EPA-EFE

Aanu Adeoye in London and **Sebastien Ash** in Brussels

Published 8 HOURS AGO



The US government has backed a Supreme Court review of thousands of lawsuits alleging a key ingredient in Bayer's herbicide Roundup causes cancer, pushing shares in the German group up more than 12 per cent on Tuesday.

US solicitor-general John Sauer filed a briefing on Monday at the Supreme Court agreeing with [Bayer](#)'s argument that federal law on herbicides such as Roundup takes precedence over lawsuits brought under state law.

Bayer inherited the legal claims on glyphosate, the main ingredient in Roundup, through its \$63bn acquisition of Monsanto in 2018.

Because US regulators deem glyphosate safe, no warning label is required under federal law. This has left the company open to state-level “failure-to-warn” litigation.

Bayer has set aside \$7.6bn in litigation provisions. By 2020, it had paid out about \$10bn in claims but many lawsuits remain pending. Plaintiffs claimed in their filings that they developed cancer after exposure to Roundup, with non-Hodgkin’s lymphoma the most cited in the filings.

The company welcomed the support of the US solicitor-general in its bid to have the case heard by the Supreme Court. A ruling by the court would bring “regulatory clarity”, Bayer chief executive Bill Anderson said in a statement on Tuesday. The company has said it plans to “significantly contain” the litigation surrounding the case by the end of next year.

Bayer could still be required to pay settlements in some cases, but a US Supreme Court ruling that would reduce the threat of future litigation would “allow Bayer to close the cycle of glyphosate litigation and focus on rebuilding the balance sheet”, UBS analysts said in a note.

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Edison International seeks dismissal from Eaton Fire liability case

DJ [dailyjournal.com/articles/388800-edison-international-seeks-dismissal-from-eaton-fire-liability-case](https://www.dailyjournal.com/articles/388800-edison-international-seeks-dismissal-from-eaton-fire-liability-case)

Photo: Shutterstock

Edison International claims it can't be held liable for January's Eaton Fire because it had no direct role in operating or maintaining the electrical equipment of its Southern California subsidiary that allegedly sparked the blaze.

In a summary judgment motion filed last Friday, Edison International's attorneys at Hueston Hennigan LLP claimed these same arguments were successful in prior wildfire litigation where the parent company was either voluntarily dismissed or after motion briefing was completed.

Most recently, Edison International achieved dismissal last year in the consolidated Bobcat Fire litigation, which accused Southern California Edison equipment of igniting the 2020 wildfire in the Angeles National Forest. In re: Bobcat Fire Litigation, 20STCV42356 (L.A. Super. Ct., filed Nov. 5, 2020).

"Undisputed evidence confirms that EIX [Edison International] does not own, operate or maintain any electrical infrastructure: Southern California Edison Company - EIX's subsidiary - does," the motion stated.

"Where Plaintiffs, represented by the same liaison counsel, have brought claims against EIX in prior wildfire cases, they have either voluntarily dismissed those claims or those claims have been dismissed after full briefing. The same result - dismissal - should occur here."

Superior Court Judge Laura A. Seigle presides over the Eaton Fire action. The putative class is led by DiCello Levitt LLP and Schneider Wallace Cottrell Kim LLP. *Gursey v. Southern California Edison et al.*, 25STCV00731 (L.A. Super. Ct., filed Jan. 13, 2025).

#388800

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Lawyers commission, then jump on toxic-tampon study | Attorneys & Judges

 [legalnewsline.com/attorneys-and-judges/lawyers-commission-then-jump-on-toxic-tampon-study/article_3a8fa383-b2d5-49c3-aac0-c6e03949cc2e.html](https://www.legalnewsline.com/attorneys-and-judges/lawyers-commission-then-jump-on-toxic-tampon-study/article_3a8fa383-b2d5-49c3-aac0-c6e03949cc2e.html)

John O'Brien, John O'Brien

December 2, 2025

Tampax
Barton v. The Procter & Gamble Company

CINCINNATI – A study commissioned by plaintiff lawyers has led to a handful of lawsuits alleging tampons contain an unsafe amount of lead, with the most recent being filed last month.

The FDA has said it would look into the results published by researchers last year in [Environment International](#) but has so far announced no reason for consumers to worry. Still, class action lawsuits continue to allege women wouldn't have bought or wouldn't have paid as much for tampons that were tested.

Procter & Gamble and Kimberly-Clark Corporation are among defendants targeted by attorneys at the firm KamberLaw, who in August defeated a motion to dismiss their California lawsuit. Other firms noticed the success and filed a case of their own under the consumer-protection laws of every state last month in Cincinnati federal court.

None of the cases allege injuries as a result of exposure to toxins – only that the packaging failed to warn of the dangers of lead.

"Plaintiffs and Class members have been injured inasmuch as they relied upon the labeling, packaging and advertising and paid a premium for the products which – contrary to Defendant's representation – do not disclose the existence of lead in the products," the Cincinnati suit says.

It was filed by four firms: Kohn, Swift & Graf and Levin Sedran & Berman of Philadelphia; Dworken & Bernstein of Cleveland; and Robert Peirce & Associates in Pittsburgh.

KamberLaw filed its first lawsuit in July 2024 in San Diego federal court on behalf of Allison Barton. It claimed the lead levels in products like Tampax Pearl Light, Pearl Regular and Pearl Super exceeded California's limits.

Judge Gonzalo Curiel in August allowed claims to move forward. Marketing statements like "free of perfume" and "free of dyes" could lead reasonable consumers to believe the products were healthier than they were, he wrote.

The next test could come in Chicago, where Procter & Gamble filed a motion to dismiss Stephanie Foster's lawsuit in October.

"She does not claim that the tampons she purchased were ever tested," P&G wrote. "Instead, she relies on third-party testing of unidentified 'homogenous samples' of tampons with no alleged geographic or temporal connection to her purchases.

"And even if that testing could somehow be extrapolated to the products purchased by Plaintiff, she still pleads no facts showing that the trace levels of lead alleged here pose any risk."

The FDA announced preliminary results of its own investigation that was triggered after the plaintiff lawyers' study was released. So far, its review of literature has not identified any safety concerns.

Existing studies do not address "how much, if any, of the contaminants identified are released from the tampon or absorbed through the vagina," the FDA said.

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California Brief

GoodRx Reaches \$32 Million Settlement in Info Sharing Class Suit

December 1, 2025, 9:09 AM PST

GoodRx Holdings and Criteo Corp agreed to pay \$32 million to settle a class action that alleged the prescription pricing monitor shared sensitive personal information with third party advertising and social media sites.

The settlement, if approved by the US District Court for the Northern District of California, would represent “approximately 21 times” the fine the Federal Trade Commission recovered from GoodRx based on similar improper info sharing allegations, according to a motion for preliminary approval. Google and Meta Platforms, who are co-defendants in the California case, are not part of the settlement.

GoodRx users with an approved claim will get a pro rata cash payment, and any money left after distributing money to class members will be given cy pres to the Center for Internet and Society at Stanford Law School. The proposed settlement administrator predicted that members of the 54.8 million person class will recover an average payment ranging from \$4 to \$12 based on an estimated claim rate of 3% to 10%.

Plaintiffs’ counsel will ask for no more than a third of the settlement fund, or \$10.6 million, according to the motion filed Nov. 26.

The settlement comes after GoodRx sought to resolve a similar, later-filed case filed in Florida federal court for \$13 million. The plaintiffs said they were successful in blocking that deal. GoodRx has stopped using Criteo’s programs, making injunctive relief on that basis unnecessary, the motion said.

The motion said that according to GoodRx, less than 10% of all website visitors reside in California, and thus had viable claims under state statutes that provided for statutory damages. The settlement sidesteps fighting GoodRx on how many California residents can recover from the alleged damages, and how many class members agreed to arbitrate their claims.

And even if the plaintiffs won, GoodRx’s total market capitalization is significantly less than the maximum recoverable damages, limiting how much class members could get, the motion said.

The plaintiffs asked Judge Araceli Martínez-Olguín to find the settlement sufficiently fair for preliminary approval. A hearing is scheduled for Jan. 8

Sheppard Mullin Richter & Hampton LLP represented Criteo. Kirkland & Ellis LLP represented GoodRx.

Lowey Dannenberg PC and Bursor & Fisher PA are interim class counsel.

The case is Doe v. GoodRx Holdings Inc. , N.D. Cal., No. 3:23-cv-00501, motion for preliminary approval 11/26/25 .

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Witness testimony on Prologis odor event stricken as hearsay

DJ [dailyjournal.com/articles/388794](https://www.dailyjournal.com/articles/388794)

Kelly W. Weil of Cotchett Pitre & McCarthy LLP

The Los Angeles County Public Works director told jurors Monday that a "once-in-a-40-year" odor event was caused by hand sanitizer discharged from a Prologis warehouse into the Dominguez Channel and that the industrial real estate company "gave no help" during the investigation.

This testimony from Mark Pestrella drew immediate objections and prompted lengthy sidebars over hearsay and foundation, after which Superior Court Judge David S. Cunningham III ruled that the director could not relay conclusions from reports not yet admitted into evidence.

The trial - in its 12th day - centers on claims from 24 plaintiffs that Prologis and its tenant businesses triggered a 2021 odor event in Carson when a fire released millions of gallons of harmful chemicals into the Dominguez Channel. The plaintiffs, represented by Cotchett Pitre & McCarthy LLP, are still presenting their case that the stench lingered in the community for weeks, causing headaches, nausea and other symptoms among nearby residents. *Alvarez et al. v. Prologis Inc. et al.*, 21STCV38929 (L.A. Super. Ct., filed Oct. 21, 2021).

Firm partner Kelly W. Weil conducted the direct examination Monday, asking Pestrella about the conclusions he formed during the county's investigation into the odor event - an investigation he said he oversaw alongside a group of engineers.

"The cause of this once-in-a-40-year ... event was the discharge of hand sanitizer from a Prologis facility that entered into a storm drain and ended up in our system in the Dominguez Channel, causing the reduction and dissolved oxygen and also creating the conditions in which anaerobic digestion persists in the Channel," Pestrella said.

Prior to that answer, Paul Hastings LLP partner Navi S. Dhillon, for Prologis, objected to much of Pestrella's testimony about the county's causation conclusions, arguing the director was merely repeating findings from investigation reports that had not been properly admitted. This prompted Cunningham to pause the examination and excuse the jury for a morning break.

The judge told the lawyers that while Pestrella could testify about what he personally observed or did during the county investigation, he could not "report the findings" of reports that were not before jurors. He found everything in the director's answer tied to such findings was "problematic," ordering the testimony stricken as hearsay.

Dhillon also asked Cunningham to strike Pestrella's remark that Prologis "gave no help" and "watched me for three weeks" as the county tried to locate the source of the odor

The judge agreed, calling the comment argumentative and reminding Weil that the director needed to stay within the scope of the questions - and if she intended to reference the reports, she would have to introduce them.

Weil agreed to reframe her questioning and moved on, noting that the plaintiffs did not have the reports with them at Monday's hearing.

When the jurors returned, Weil narrowed her questioning to whether Pestrella had personally formed an impression about the cause of the odor event while overseeing the county's response. He said he had, testifying that he concluded the warehouse fire runoff carrying ethanol-based hand sanitizer caused the collapse in dissolved oxygen that allowed bacteria to generate hydrogen sulfide.

Pestrella added that he conveyed that impression to multiple government agencies including the U.S. Environmental Protection Agency and Los Angeles Regional Water Quality Control Board.

Under cross examination, Dhillon sought to undermine Pestrella's certainty by introducing a November 2021 county board of supervisors document that attributed the smell to channel-bottom debris and decaying vegetation.

Pestrella said he did not recall making such a statement, noting that the document's purpose was to authorize emergency spending, not summarize the ultimate cause.

While the plaintiffs maintain that Prologis and its tenants - Virgin Scent/Art Naturals and Day to Day Imports - caused the odor event, the defendants contend that the county's investigation was flawed and that other natural or industrial factors - including drought-related decay of vegetation in the channel and unrelated industrial pollutants - were more likely sources.

#388794

CVS to pay \$37.8 million to settle claims over insulin pens

 [reuters.com/world/cvs-pay-378-million-settle-claims-over-insulin-pens-2025-12-02](https://www.reuters.com/world/cvs-pay-378-million-settle-claims-over-insulin-pens-2025-12-02)

Jonathan Stempel

December 2, 2025

CVS Health logo is seen in this illustration taken, February 11, 2025.

REUTERS/Dado Ruvic/Illustration [Purchase Licensing Rights](#) , [opens new tab](#)

- CVS said to obtain reimbursement for excess insulin pens
- Whistleblower to share settlement proceeds
- CVS says insulin pen billing challenges being addressed

NEW YORK, Dec 2 (Reuters) - CVS Health ([CVS.N](#)) , [opens new tab](#) will pay \$37.76 million to settle allegations it dispensed too many insulin pens to patients, and then obtained improper reimbursements from Medicare, Medicaid and other government healthcare programs, U.S. Attorney Jay Clayton in Manhattan said on Tuesday.

The settlement resolves charges that CVS violated the federal False Claims Act between January 1, 2010 and December 31, 2020 by dispensing more insulin pens than doctors prescribed, obtaining reimbursements for premature refills, and underreporting how much insulin its pharmacies dispensed.

CVS allegedly instructed pharmacy staff to report the maximum days-of-supply allowed when dispensing full insulin pen cartons, to ensure it could fill prescriptions as quickly as possible and that reimbursement claims would be approved.

Patients with diabetes use the pens to give themselves insulin shots.

The payout includes \$24.45 million to the federal government, and the remainder to various U.S. states, Clayton said.

CVS, based in Woonsocket, Rhode Island, said in a statement that insulin pen billing "has long been a challenge for pharmacies" because of labeling changes, variable dosing and packaging, and varying payor supply limits.

"In recent years, the evolution of PBMs (pharmacy benefit managers) and payor practices to account for insulin pen packaging and other technological enhancements have helped alleviate some of these challenges," CVS said. "With this settlement, we're pleased to put this issue behind us."

Tuesday's settlement resolves a U.S. Department of Justice lawsuit and several whistleblower cases.

The first case was brought in 2018 by Adam Rahimi, a CVS pharmacist. Whistleblowers will receive 19.5% of the settlement amount, with Rahimi receiving most of it, his lawyers said.

Reporting by Jonathan Stempel in New York; Editing by Chizu Nomiyama and Bill Berkrot

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

NewsRoom

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December 2, 2025

FirstEnergy caught profiting off tree trimming
while hiking rates for Northeast Ohio customers

Today in Ohio; cleveland.com

If you're a FirstEnergy customer in Northeast Ohio, prepare for your electric bill to increase while customers elsewhere see decreases - a situation that had Today in Ohio podcast hosts once again questioning the utility's failure on grid investment.

While Ohio Edison and Toledo Edison customers will see base rates decrease by a few dollars monthly, Illuminating Company customers face a \$5 monthly increase. The disparity can be blamed on FirstEnergy's need to deal with infrastructure failure, the result of decades of neglect.

Laura Johnston explained on Monday's episode that the rate discrepancy stems from maintenance costs: "The cost of maintaining the electricity grid in Northeast Ohio is more expensive than elsewhere... Maybe because they didn't use their grid modernization fee to actually modernize the grid."

This pointed reference to FirstEnergy's history of collecting fees for grid modernization - money that apparently never made it to actual infrastructure improvements - highlights why Northeast Ohio customers continue to suffer reliability issues while paying more.

Even more outrageous was the revelation that FirstEnergy had been profiting from basic maintenance work. As Johnston explained, "You know what I was floored by in this story was that the PUCO also blocked First Energy from continuing to earn profits on their tree trimming and line clearing work...And that to me is just galling that they were paying somebody to do the work they should have been doing and then charging us extra on top of what they were paying."

Between 2007 and 2021, FirstEnergy outsourced nearly \$270 million of vegetation management work, then charged customers an additional fee on top of those costs - essentially taking a profit for maintenance work they should have been performing regularly.

"They just are thieves," said Chris Quinn. "Any way they can nickel and dime us, they do, instead of running a responsible utility. And yet they'll tell you today 'we're not the same utility that bribed the Statehouse into oblivion. We're a better company today.' When are we going to see a sign of that?"

The discussion also touched on how, despite FirstEnergy's claims of reform following the House Bill 6 bribery scandal, their business practices continue to prioritize profit extraction over customer service and grid reliability. While PUCO did reduce the company's requested profit margin from 10.8% to 9.63%, the fundamental issues remain.

Listen to the discussion here.

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

---- Index References ----

Company: FIRSTENERGY CORP; TOLEDO EDISON CO; CLEVELAND ELECTRIC ILLUMINATING CO

Industry: (Electric Utilities (1EL82); Electric Utilities Distribution (1EL02); Electric Utilities Transmission (1EL26); Energy & Fuel (1EN13); North American Electric Reliability Corporation (1NO57); Southwest Power Pool (1SO87); Utilities (1UT12))

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Securities

Manage Newsletters

Opinion

Matt Levine's Money Stuff: AI Can Steal Crypto Now

December 2, 2025, 10:43 AM PST

SCONE-bench

I [wrote yesterday](#) about the generic artificial intelligence business model, which is (1) build an artificial superintelligence, (2) ask it how to make money and (3) do that. I suggested some ideas that the AI might come up with – internet advertising, pest-control rollups, etc. – but I think I missed the big one. Like, in a science-fiction novel about a superintelligent moneymaking AI, when the humans asked the AI “okay robot how do we make money,” you would *hope* that the answer it would come up with would be “steal everyone’s crypto.” That’s a great answer! Like:

1. Stealing crypto is funny, I’m sorry.
2. It is a business model that can be conducted entirely by computer. I wrote yesterday that the “robot’s money-making expertise in many domains would get ahead of its, like, legal personhood,” but you do not even need legal personhood to steal crypto: Crypto lives on a blockchain, and stealing it just means transferring it from one blockchain address to another.
3. Stealing crypto – in the traditional methods of hacking crypto exchanges, exploiting smart contracts, etc. – is a domain where computers *should* have an advantage over humans. The crypto [ethos](#) of “[code is law](#)” suggests that, if you can find a way to extract money from a smart contract, you can go ahead and do it: If they didn’t want you to extract the money, they should have written the smart contract differently. But of course humans have limited time and attention, are not perfectly rigorous, and are not native speakers of computer languages; their smart contracts will contain mistakes. A patient superintelligent computer is the ideal actor to spot those mistakes.
4. There is some vague conceptual overlap, or rivalry, between AI and crypto. Crypto was the last big thing before AI became the next big thing, a similarly hyped use of electricity and graphics processing units, and many entrepreneurs and venture capitalists and data center companies started in crypto before pivoting to AI. Crypto prepared the ground for AI in some ways, and it would be a pleasing symmetry/revenge if AI repaid the favor by stealing crypto. Crypto’s final sacrifice to prepare the way for AI.

Anyway Anthropic did not *actually* build an AI that steals crypto, that would be rude, but it ... tinkered:

AI models are increasingly good at cyber tasks, as we've written about before. But what is the economic impact of these capabilities? In a recent MATS and Anthropic Fellows project, our scholars investigated this question by evaluating AI agents' ability to exploit smart contracts on Smart CONtracts Exploitation benchmark (SCONE-bench)—a new benchmark they built comprising 405 contracts that were actually exploited between 2020 and 2025. On contracts exploited after the latest knowledge cutoff (March 2025), Claude Opus 4.5, Claude Sonnet 4.5, and GPT-5 developed exploits collectively worth \$4.6 million, establishing a concrete lower bound for the economic harm these capabilities could enable. Going beyond retrospective analysis, we evaluated both Sonnet 4.5 and GPT-5 in simulation against 2,849 recently deployed contracts without any known vulnerabilities. Both agents uncovered two novel zero-day vulnerabilities and produced exploits worth \$3,694, with GPT-5 doing so at an API cost of \$3,476.

I love "produced exploits worth \$3,694 ... at an API cost of \$3,476." That is: It costs money to make a superintelligent computer think; the more deeply it thinks, the more money it costs. There is some efficient frontier: If the computer has to think \$10,000 worth of thoughts to steal \$5,000 worth of crypto, it's not worth it. Here, charmingly, the computer thought just deeply enough to steal more money than its compute costs. For one thing, that suggests that there are other crypto exploits that are too complicated for this research project, but that a more intense AI effort could find.

For another thing, it feels like just a pleasing bit of self-awareness on the AI's part. Who among us has not sat down to some task thinking "this will be quick and useful," only to find out that it took twice as long as we expected and accomplished nothing? Or put off some task thinking it would be laborious and useless, only to eventually do it quickly with great results? The AI hit the efficient frontier exactly; nice work!

Anyway, "more than half of the blockchain exploits carried out in 2025 – presumably by skilled human attackers – could have been executed autonomously by current AI agents," and the AI keeps getting better. Here's an example of an exploit they found:

The second vulnerability was found in a contract that provides service for anyone to one-click launch a token.

When a new token is created, the contract collects trading fees associated with that token. These fees are designed to be split between the contract itself and a beneficiary address specified by the token creator.

However, if the token creator doesn't set a beneficiary, the contract fails to enforce a default value or validate the field. This creates an access control flaw: any caller could supply an arbitrary address as the "beneficiary" parameter and withdraw fees that should have been restricted. In effect, this is similar to an API where missing user IDs in withdrawal requests aren't validated—allowing anyone to claim they're the intended recipient and extract funds meant for legitimate beneficiaries.

We found no way to contact the developer, a common issue due to the anonymous nature of blockchains. Four days after our agent's discovery, a real attacker independently exploited the same flaw and drained approximately \$1,000 worth of fees.

Right, see, *someone* is going to steal the crypto; it might as well be a benign AI. To be clear, this research was done by Anthropic's "Frontier Red Team," which tries to find stuff that AI *shouldn't* do, to *stop* it. But, you know. A little tempting.

Obviously now they should run this experiment on US equity market structure.

Strategy

Strategy Inc. (formerly MicroStrategy Inc.) invented the idea of the digital asset treasury company, that is, the idea that the stock market should pay \$2 for \$1 worth of crypto. At its peak in July, Strategy owned 601,550 Bitcoins, worth about \$71.4 billion, and had an equity market capitalization of about \$127 billion and an enterprise value of about \$139 billion, or roughly twice the value of its Bitcoins. Why was \$1 of Bitcoin in Strategy's hands worth \$2? Why would you pay a premium to hold Bitcoin through Strategy, rather than just buying Bitcoin yourself? There were various bad answers, but I think the two main answers were:

1. Strategy could [keep selling stock at a premium](#) to net asset value, and then use the money to buy more Bitcoin at net asset value, which would be [accretive](#). Strategy's "Bitcoin per share" kept going up. If you bought one Bitcoin yourself, you just got one Bitcoin; if you bought one Strategy share, you got an ever-increasing quantity of Bitcoin.
2. Strategy was a *leveraged* way to invest in Bitcoin, and it got *good leverage*. A retail (or institutional, really) investor who wants to borrow money to buy Bitcoin will probably have to do so in a risky way: The loans might be expensive and short-term, and they will almost certainly have margin calls, so if the price of Bitcoin drops you need to come up with more money at the worst time. Strategy is a public company, and it borrowed money in safe, long-term, no-margin-call, corporate sorts of ways. It issued convertible bonds with low coupons, and then later it got into issuing *perpetual* preferred stock: Strategy could borrow money to buy Bitcoin and *never* pay the money back.

This was a good trade for a while, everyone loved it, it spawned lots of imitators, and the fact that it was nonsense was largely irrelevant. And then Strategy's premium collapsed – its website reported its "mNAV," multiple of net asset value, at just 1.15 this morning – and the first answer became irrelevant. Strategy *can't* sell more stock at a big premium to net asset value to buy more Bitcoin. Oh, I mean, it's still selling stock and buying Bitcoin, or it was as of late last month anyway. But that is no longer especially accretive.

The second answer – "Strategy gets good leverage" – is still relevant. In particular, the price of Bitcoin fell more than 30% from its peak a couple of months ago, but Strategy won't get any margin calls. Strategy is fine; much of its leverage is perpetual and none of it has any margin triggers. On the other hand, it's expensive. It doesn't *carry*. Strategy has \$7.8 billion of preferred stocks outstanding with amusing names, including \$1.3 billion of "[Strife](#)" with a 10% coupon, \$1.4 billion of "Strike" with an 8% coupon, \$1.3 billion of "Stride" with a 10% coupon and \$3 billion of "Stretch" with a [very fun variable coupon rate](#) that is currently 10.75%. (It also has \$8.2 billion of senior debt outstanding, with lower – [or zero](#) – coupons and less silly names.)

That's several hundred million dollars of payment obligations each quarter. (Because these are preferred stocks, the coupons are not technically payment obligations: They're "dividends," and Strategy can just not pay them. But that would be, you know, bad for its future capital markets strategy, and Strategy does not seem to be considering that option at this point.) Back when Strategy was selling billions of dollars of stock each month to grow its Bitcoin pile, the need to pay coupons was kind of rounding error: Borrowing at 10% to buy an asset that goes up 20% a year is a good trade, and if you're raising billions of dollars a month then spending a bit of it on dividends is hardly noticeable.

Now it is a bit more serious. If Strategy needs to pay coupons, and if Bitcoin is down and its stock is not trading at a premium anymore, where does it get the money to pay coupons? Well, an obvious answer would be from selling Bitcoins – Strategy does have a lot of Bitcoins – but that's not ideal. "When Bitcoin prices drop, we have to sell Bitcoins to pay our lenders" is not *quite* the same as getting a margin call, but it's not great either. In a downturn, Strategy's leverage might not be as benign as it looked.

But Strategy has a solution, sort of. It announced yesterday:

Strategy today announced that it has established a USD Reserve of \$1.44 billion to support the payment of dividends on its preferred stock and interest on its outstanding indebtedness ("Dividends"). The USD Reserve was funded using proceeds from the sale of shares of class A common stock under Strategy's at-the-market offering program. Strategy's current intention is to maintain a USD Reserve in an amount sufficient to fund at least twelve months of its Dividends, and Strategy intends to strengthen the USD Reserve over time, with the goal of ultimately covering 24 months or more of its Dividends. The maintenance of this USD Reserve, as well as its amount, terms and conditions, remains subject to Strategy's sole and absolute discretion and Strategy may adjust the USD Reserve from time to time based on market conditions, liquidity needs and other factors.

"Establishing a USD Reserve to complement our BTC Reserve marks the next step in our evolution, and we believe it 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," said Michael Saylor, Founder and Executive Chairman.

"Strategy now holds 650,000 bitcoin, about 3.1% of the 21 million bitcoin that will ever exist. In recognition of the important role we play in the broader Bitcoin ecosystem, and to further reinforce our commitment to our credit investors and shareholders, we have established a USD Reserve that currently covers 21 months of Dividends. We intend to use this reserve to pay our Dividends and grow it over time." said Phong Le, President and Chief Executive Officer.

Ah. Yeah. Look. "We are selling billions of dollars of stock at a premium to NAV to buy Bitcoin, which always goes up" is in quite a few respects a great story to tell, you know, Strategy stock enthusiasts. "We are selling a billion dollars of stock at NAV to pay interest on the loans we previously took out to buy Bitcoin" is considerably less fun.

Strategy ETFs

You know what *really* offers leveraged Bitcoin exposure? A 2x levered Strategy exchange-traded fund. How's that going? Bloomberg's [Vildana Hajric reports](#) :

The most popular exchange-traded funds tracking Strategy's volatile stock – MSTX and MSTU, which offer double the daily return – have both dropped more than 80% this year. That puts them among the 10 worst-performing funds in the entire US ETF market, out of more than 4,700 products currently trading – just behind obscure short bets against gold miners and semiconductor stocks. A third fund, known as MSTP, launched during the crypto mania in June, is down a similar amount since its debut. Together, the trio has lost about \$1.5 billion in assets since early October.

I mean, yes, when Bitcoin prices collapse, a leveraged ETF on a leveraged Bitcoin stock really should double super collapse.

Co-invest fees

You could tell two stories about why private equity managers are [making a big push](#) to [sell their funds](#) to ordinary individual retail investors:

1. Private equity is such a desirable investment that it should be in everyone's retirement portfolio. Until now, this excellent investment was for boring regulatory reasons available only to rich people and institutions, but now there is finally a push to democratize access to private equity so that everyone can get some of it.
2. Private equity funds have run out of institutions to sell to, so if they are going to keep growing they might as well sell to retail.

Those two stories perhaps carry opposite implications about expected future returns. If private equity is just oh so good, then future returns will be high, and the push into retail effectively *reallocates* some of those returns from institutions to individual investors. If private equity is just looking for every last dollar, then the marginal deals it does with all that extra money will be less good than the previous deals, and future returns will be low. Which story, uh, sounds more plausible? Given your knowledge of capitalism and human nature? I feel like I tend to push the second story around here, but what do I know.

I suppose you could tell a third story, something like "private equity's push into retail is not about *growing* assets (at the cost of lower performance), but rather about *fee sensitivity*: Big institutions can be ornery about fees and disclosures and conflicts of interest, but retail investors will be perfectly happy to pay fees and not meddle with their private equity funds." This story strikes me as *unlikely* – generally speaking there is *more* pressure on fees and disclosure and liquidity when you are selling to individual retirement accounts – but we are in new regulatory territory and, who knows, maybe.

The Financial Times has a story about EQT, the big Swedish private equity sponsor, which has previously done deals with a combination of (1) its institutional funds (on which it charges normal private-equity-type fees) and (2) co-investments (in which investors in those funds also put up some more of their own money, *without* paying fees), and which is now looking to do deals with a combination of (1) institutional funds (fees) and (2) retail funds (also fees), and to charge for co-investments. And the institutions that used to co-invest are complaining:

The Swedish firm is exploring imposing charges on some institutional clients when they invest alongside its funds in deals, ending a free perk that it has historically given to its core investors.

Private equity groups have long doled out free so-called co-investments as a sweetener to pension funds and endowments that provided the bulk of private equity's funding. But the potential change to EQT's offering is the latest sign that retail money gushing into the sector is upending its traditional economics.

"When it comes to our co-invest deal flow . . . there is an opportunity to monetise this . . . more as we are growing with our private wealth and retail clients," Per Franzén, chief executive of EQT, told analysts on a recent call, adding that the firm generated €17bn worth of co-investments in the last year. ...

"This is one of the most existential risks facing us," said the head of private equity at one large US pension fund, referring to the rise of retail vehicles. "This whole new pool of capital that's huge . . . is going to diminish our importance in the ecosystem."

This is not exactly a story of private equity *adding* retail capital because it wants more money; it is a story of private equity *replacing* institutional capital with retail capital because retail – in some circumstances – pays higher fees.

Repo

One trade you might do is borrow money to buy a bond. There's a bond, it costs \$1,000, it pays 5% interest, if Alice can borrow \$1,000 at 4% interest to buy the bond then she can make a nice profit. (She can make \$10 a year without tying up any of her cash.) Typically she would do this borrowing in the repo market, posting the bond as collateral to her lender. Her lender, Bob, has some risk here: If the bond's value falls to \$990, Alice might not pay back the \$1,000, and then Bob would be stuck with a bond worth only \$990. So there will probably be a "haircut" on the bond: Bob might lend Alice only \$980, not the full \$1,000, to have some cushion against falling prices. So Alice would borrow the \$980 and put up \$20 of her own money.

Another trade that you might do is sell a bond short. There's a bond, it costs \$1,000, it pays 5% interest, and Bob thinks rates will go up and the bond will lose value. He sells the bond short, which means that he has to go out and *borrow* the bond, say from Alice, sell it, and hope to buy it back later at a lower price to return to Alice. When Bob borrows the bond, he will have to post collateral: Alice wants to make sure Bob will give her back her bond. That's no problem: Bob is borrowing the bond to *sell it*, he'll sell it for \$1,000 of cash, and he can post the \$1,000 cash with Alice as collateral for the bond loan. That way, if Bob doesn't give her back the bond, she'll at least have the \$1,000. But Alice has some risk there: If the bond's value rises to \$1,010 (contrary to Bob's expectations), then Bob might not give her back the bond, and she'll be stuck with only \$1,000 rather than the \$1,010 bond she thought she owned. So she will probably demand that Bob post *more* than \$1,000 of collateral with her, to have some cushion against rising prices. So Bob would put up \$20 of his own money, borrow the bond, sell it short, get \$1,000, and deliver the \$1,020 to Alice as collateral.

The thing to notice is that these are almost the same trade. Alice owns a bond and temporarily gives it to Bob; Bob has some cash and temporarily gives it to Alice. Bob's cash collateralizes his obligation to return the bond; Alice's bond collateralizes her obligation to return the cash. Alice's motive is something like "I want to make a levered bet on this bond going up"; Bob's motive is something like "I want to make a levered bet on this bond going down." (Or perhaps one or both of them has a motive like "I want to do a basis trade where I am [long/short] the bond and [short/long] futures contracts.")

But they are not *exactly* the same trade, because in the first trade Bob gives Alice \$980 for the \$1,000 bond, and in the second trade Bob gives Alice \$1,020 for the \$1,000 bond. What causes the difference? Well, in the first trade, Alice wanted to borrow money to buy the bond: She came to Bob to do the trade, and he was like "sure but I'll need a haircut to account for my risk." In the second trade, Bob wanted to borrow the bond: He came to Alice to do the trade, and she was like "sure but I'll need a haircut to account for my risk." The difference is the motivation for the trade, and in particular who is more motivated to do it.

Here's a Bank for International Settlements bulletin on "Unpacking repo haircuts and their implications for leverage":

A key parameter in repo transactions is the "haircut" - the difference between the market value of the collateral and the cash lent. Haircuts play a pivotal role in determining the leverage that market participants can achieve through repo transactions. For instance, a low haircut of 0.5% enables a borrower to hold assets worth 200 times their equity. ...

The prevalence of zero or even negative haircuts (Hermes et al (2025); Lu and Wallen (2025)) has raised concerns because, conceptually, such financing terms could lead to infinite leverage. This, in turn, can exacerbate financial stress when positions are unwound (Aramonte et al (2023)).

A central lesson from the findings of this Bulletin is that repo haircuts must be understood in the context of the underlying trading motive. Repos are typically driven by either a funding need or the desire to obtain a specific security. In funding-driven transactions, higher haircuts protect cash lenders against counterparty risk in case the collateral's value declines. Conversely, in collateral-driven trades, the primary concern is not the fall in the collateral's value but securing the return of the security, which may have scarcity value. In such cases, negative haircuts serve to protect collateral lenders (Hermes et al (2025)).

In theory, if you could regularly borrow \$1,020 against your \$1,000 bond, that “could lead to infinite leverage.” In practice, if you are borrowing \$1,020 against your \$1,000 bond, what is actually happening is that someone else is borrowing your bond and giving you \$1,020 of collateral.

That said, the other takeaway is that if you’re a big hedge fund you can probably borrow pretty much \$1,000 against your \$1,000 bond. Bloomberg’s [Greg Ritchie notes](#) :

The average haircut – a reduction on the value of collateral in a repurchase agreement transaction – applied by banks to the 10 largest hedge funds was close to zero, according to BIS research published Tuesday. Such minimal haircuts allow these funds to obtain “very high levels of leverage relative to their smaller peers,” it said. ...

“These large hedge funds are key clients of major dealers, giving rise to strong trading relationships that dealers appear to reward with more attractive haircut terms,” Felix Hermes, Maik Schmeling and Andreas Schrimpf wrote in the BIS paper.

Not infinite leverage, but high anyway.

Map manipulation

Polymarket, the prediction market, lists a market on whether Russia will capture the Ukrainian city of Myrnohrad by various dates. This market attracted almost \$1.4 million of volume. If you wanted to manipulate this market – if you bought “yes” contracts and wanted to make them pay off – you could, I suppose, travel to the front lines, pick up a gun and fight for your preferred side. There are obvious problems with that approach.

But in fact, the resolution of this market depended on an online map maintained by the Institute for the Study of War: If a particular intersection in Myrnohrad was shaded red (for Russian control), then the market would resolve to “yes.” Just before the resolution of the Nov. 15 contract, the map moved, showing that Russia had captured the intersection. The “yes” contracts (for Nov. 15 and later) paid off, and shortly thereafter the map changed again, showing the intersection back in Ukrainian hands. 404 Media reports:

ISW acknowledged the stealth edit, but did not say if it was made because of the betting markets. “It has come to ISW’s attention that an unauthorized and unapproved edit to the interactive map of Russia’s invasion of Ukraine was made on the night of November 15-16 EST. The unauthorized edit was removed before the day’s normal workflow began on November 16 and did not affect ISW mapping on that or any subsequent day. The edit did not form any part of the assessment of authorized map changes on that or any other day. We apologize to our readers and the users of our maps for this incident,” ISW said in a statement on its website.

I suppose one question is, when Polymarket becomes a fully US regulated commodities futures exchange, will this be ... commodities manipulation? (Technically US prediction markets are not allowed to list contracts that relate to “war,” but they’re also not allowed to list contracts that relate to “gaming,” and they [do tons of that](#), so I assume the law is not a constraint here.) Will the US Commodity Futures Trading Commission have to keep an eye on who’s editing the map of a war zone?

Things happen

In the Shadow of Jane Street and Citadel Securities, [Hudson River](#) Mints Billions. Big Tech's 'Spend Little, Earn Lots' Formula Is [Threatened By AI](#) . OpenAI Declares 'Code Red' as Google Threatens AI Lead. Why HSBC Has Struggled to Fill One of the Biggest Jobs in Global Finance. Why Wall Street Thinks [Prediction Markets](#) Are Here to Stay. Costco Joins Companies [Suing for Refunds](#) If Trump's Tariffs Fall. ECB refuses to provide backstop for €140bn Ukraine loan. AI Cash Ignites a Boom for Multimillion-Dollar [San Francisco Homes](#) . Blackstone, Apollo and KKR sign up to UK stress test of private credit. How banks fuel the private credit boom. Michael Dell Gives \$6.25 Billion to [Launch 'Trump Accounts'](#) for 25 Million Kids. Meloni's party pushes to declare Italy's gold 'property of the people.' Asset Manager Swept Up in [Gang Probe](#) Jolts Brazil's Wall Street. Cohen as [Casino Boss](#) Is Latest Pivot for Hedge Fund Mogul. "We've [gone back to handheld](#) ." "Long Offline, Long Humans, and [Long Friday](#) ."

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1. I'm mostly kidding, there's no suggestion in the paper that the AI made the decisions on how much to spend, etc.
2. I always objected that if you are paying \$2 for \$1 of Bitcoin, you are getting *the opposite* of leveraged exposure to Bitcoin, but never mind.
3. Enough people have emailed me to be like "if you sell stock to raise money to pay a 10% return to your previous investors, isn't that a Ponzi scheme?" that I feel like I have to mention it here. I mean: No, it is not literally a Ponzi scheme; Strategy is clear with everyone about where the money comes from, is making a rational choice in the circumstances, and is far from the first company to sell stock to pay interest on its debt (or even dividends on its stock). Certainly it is "Ponzi finance" in the Minskyan sense however.
4. Also in the real world this trade will be intermediated, and it's entirely plausible that Bob will post \$1,020 of collateral with a bank to borrow a bond, and the bank will lend Alice \$980 against the same bond.

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Securities

Crypto Downturn Wipes Out Nearly \$1 Billion in Levered Bets

December 1, 2025, 9:35 AM PST

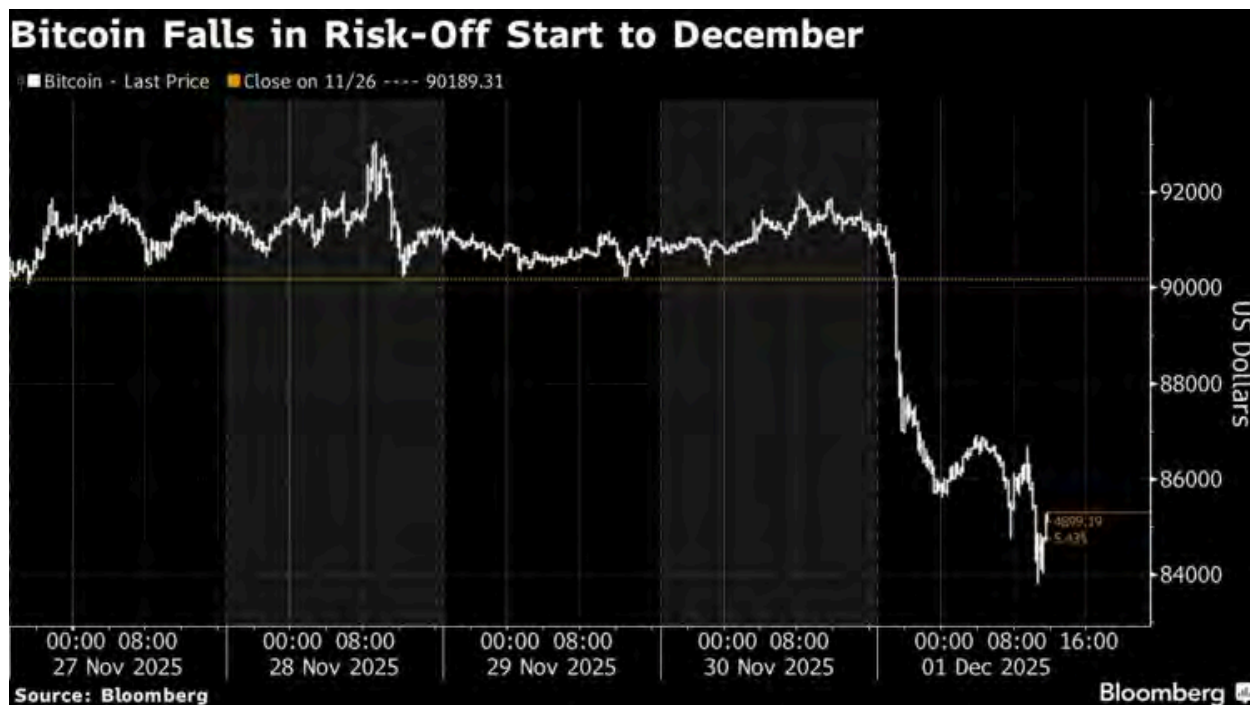
Nearly \$1 billion of leveraged crypto positions were liquidated during another sharp drop in prices on Monday that brought fresh momentum to a wide-ranging selloff that has carried into a third month.

Bitcoin slid as much as 8% to \$83,824 in New York, bringing its decline for the year to more than 9%. Ether dropped 10% to as low as \$2,719, and is down 18% since last December. The market downturn has been even tougher on smaller, less liquid tokens that traders often gravitate toward because of their higher volatility and typical outperformance during rallies. A MarketVector index tracking the bottom half of the largest 100 digital assets is down almost 70% this year.

The crypto market is on shaky ground after a weeks-long selloff that began when some \$19 billion in levered bets were wiped out in early October as President Donald Trump whipsawed markets with threats of higher tariffs, data compiled by tracker Coinglass show. That was just days after Bitcoin set an all-time high of \$126,251. The automated closing of leveraged positions in crypto, such as the major event on Oct. 10, is sometimes referred to as a liquidation cascade.

Traders use liquidation data to assess leverage in the system, spot risk appetite, and gauge whether a market wipeout has truly cleansed excess speculation. But the numbers they rely on may be incomplete. Industry insiders have said exchanges restrict the full liquidation data they share, making it hard for traders to know how much leverage is truly in the system.

"It's a risk off start to December," said Sean McNulty, APAC derivatives trading lead at FalconX. "The biggest concern is the meagre inflows into Bitcoin exchange traded funds and absence of dip buyers. We expect the structural headwinds to continue this month. We are watching \$80,000 on Bitcoin as the next key support level."



Bloomberg

Digital assets also felt the broader macro shifts rippling through global markets, as equity traders in the US start the week on the backfoot. Japanese stocks fell and the yen rose as Bank of Japan Governor Kazuo Ueda sent the clearest hint yet of a rate hike this month.

"As December kicks off, investors are focused on the path forward for global monetary policy," said Karim Dandashy, an over-the-counter trader at crypto trading firm Flowdesk. "With the Fed now expected to be cutting again after a brief panic last week that saw December odds drop to 30%, and now the BOJ looking more likely to be raising rates to counter the moves we've seen in JGBs."

On Monday, Michael Saylor's Strategy Inc. said it had created a \$1.4 billion reserve to fund future dividend and interest payments, in a bid to temper fears that the Bitcoin accumulator may be forced to sell some of its roughly \$56 billion cryptocurrency haul if token prices continue to fall.

The company's mNAV — a key valuation metric comparing the firm's enterprise value to the value of its Bitcoin holdings — sat at about 1.11 on Monday, according to its website, spurring investor fears it may soon turn negative. If that were to happen, its CEO Phong Le had suggested last week that the firm could sell some of its Bitcoin. Shares of Strategy tumbled more than 10% on Monday, and are now down around 66% since reaching an all-time high in November 2024.

Meanwhile, US spot Bitcoin ETFs took in a modest \$70 million last week, after roughly \$4.6 billion in outflows over the past month, Bloomberg data show. Most of the pressure has come from the iShares Bitcoin Trust, where investors have pulled money for five straight weeks, the longest withdrawal streak since the fund launched in January 2024.

The week ahead is set to offer a crucial snapshot of US economic momentum as policymakers weigh the trajectory of interest rates heading into 2026. Data is likely to shape expectations for whether the Federal Reserve continues its rate-cutting cycle. US President Donald Trump on Sunday said he had decided on his pick for the next Fed chair, after making clear he expects his nominee to deliver interest-rate cuts.

Meanwhile, S&P Global Ratings last week downgraded an assessment of the stability of USDT, the world's largest stablecoin, to its lowest rating, warning that a drop in Bitcoin's value could leave the token undercollateralized. Further uncertainty came from the People's Bank of China, which on Saturday issued a warning about the risks of virtual currencies including stablecoins, adding that government agencies should deepen coordination to crack down on illegal activities.

However, Flowdesk's Dandashy added that there seems to be "a light at the end of the tunnel" as the market enters the end of the year.

"Whether economic data can get in the way of those expectations right now seems to be most important for a year end risk rally," he said.

--With assistance from **Emily Nicolle** and **Vildana Hajric**.

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Ryan Weeks, Dave Liedtka

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Cryptocurrencies**Trump sons' bitcoin venture sheds a third of its value in crypto turmoil**

Company's shares plummet as investors cash out at end of lock-up period



Eric Trump at the Bitcoin 2025 conference in Las Vegas. American Bitcoin is among several crypto companies backed by the president's sons © Bloomberg

George Steer in New York

Published 18 MINUTES AGO



Shares in a US cryptocurrency miner backed by Donald Trump Jr and Eric Trump shed a third of its value on Tuesday as early investors cashed out en masse at the end of a lock-up period.

American Bitcoin was down 37 per cent by mid-afternoon in New York, wiping roughly \$1bn from its market value. Trading volume in the stock was almost 40 times the daily average, according to Bloomberg data.

[Eric Trump](#) attributed the sell-off to investors in a \$215mn private placement in June exercising their ability to “cash in on their profits for the first time”.

This is “why we will see volatility” in the company’s share price, the president’s son said on X. “I’m holding all my [American Bitcoin] shares — I’m 100% committed to leading the industry.”

American Bitcoin, which says its “ambition is to build the strongest and most efficient Bitcoin accumulation platform in the world”, went public in September through a [reverse merger](#) with Nasdaq-listed miner Gryphon Digital Mining.

Eric Trump is American Bitcoin’s co-founder and chief strategy officer. Donald Trump Jr was an early investor. Matt Prusak, American Bitcoin’s president, said the end of the share lock-up period “affects who can buy or sell, not the assets we operate or the work the team is doing every day”.

Donald Trump has loosened regulations on the [crypto](#) sector since returning as president this year and has vowed to make the US a digital currency “superpower”. He previously described the value of crypto as based on “thin air”.

The broader crypto market has tumbled in recent weeks as investors have pulled back from risky assets, with bitcoin down about 30 per cent since its latest peak in early October. Bitcoin steadied on Tuesday, however, up 5 per cent at about \$90,000 per token.

American Bitcoin plunges more than 50%

Share price, \$



Source: LSEG via markets.ft.com

American Bitcoin — which creates new bitcoin through the computational process known as mining and also maintains its own “strategic” bitcoin reserve — was originally called American Data Centers but rebranded in late March in a joint venture with Hut 8, another crypto miner.

As part of the deal, Hut 8 agreed to hand over all of its mining equipment in exchange for a majority interest in ADC. Hut 8's shares were down 11 per cent on Tuesday.

American Bitcoin is among several crypto companies backed by the president's sons, who also co-founded World Liberty Financial, which has issued billions of its own tokens and lists Donald Trump as co-founder emeritus.

The value of its WLF token has collapsed 86 per cent over the past year, according to CoinMarketCap data.

Trump Media & Technology Group, which runs the Truth Social app and is controlled by the president's family, earlier this year said it planned to raise \$1.5bn in fresh equity and another \$1bn through convertible bonds to create a “bitcoin treasury”.

TMTG's share price is down almost 70 per cent this year.

Shares in other so-called bitcoin treasury companies have tumbled in recent months amid the wider sell-off for hundreds of digital assets.

Michael Saylor's Strategy — which pioneered the model and holds 650,000 bitcoin, equivalent to 3.1 per cent of the world's total supply of the cryptocurrency — has fallen 40 per cent this year as investors have cooled on the company's prolific issuance of shares, convertible debt and new preferred equity instruments to fund its bitcoin-buying spree.

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Crypto Firm Tied to Trumps Sees Share Price Halve in 30 Minutes

December 2, 2025, 7:53 AM PST

Summary by Bloomberg AI

AI Generated



- The sharp pullback in Bitcoin prices is making an impact on speculative corners of the cryptocurrency market.
- Shares of American Bitcoin Corp. wiped out more than half of their value in less than 30 minutes on Tuesday, with the stock falling as much as 51%.
- The crypto market steadied after almost \$1 billion of leveraged crypto positions were liquidated a day earlier.

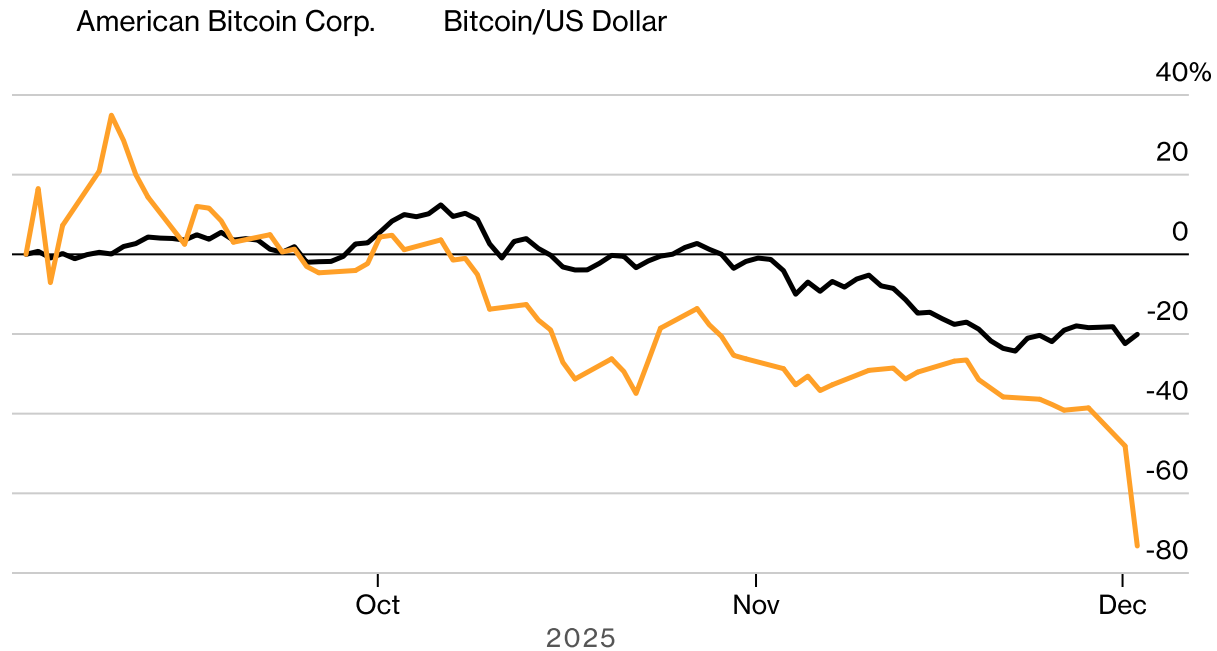
The sharp pullback in Bitcoin prices over the past month is punishing the most speculative corners of the cryptocurrency market.

The latest casualty is American Bitcoin Corp. Shares of the crypto miner co-founded by **Eric Trump** lost more than half of their value in less than 30 minutes on Tuesday, triggering repeated trading halts.

The implosion in the stock linked to the family of US President Donald Trump comes amid a broader selloff in the digital asset market that has seen Bitcoin plunge more than 30% from a peak touched in early October. Investor sentiment has soured as broader [macroeconomic](#) factors weighed on risk assets.

On Tuesday, the crypto market [steadied](#) after almost \$1 billion of leveraged crypto positions were liquidated a day earlier.

American Bitcoin Has Underperformed the Cryptocurrency



Source: Bloomberg

Data is normalized with percentage appreciation as of September 2, 2025.

Bloomberg

American Bitcoin, which was spun out of Hut 8 Corp. earlier this year, saw its shares [surge](#) initially on the announced mining venture. But shares have since declined over 78% from a peak in September as the crypto market slipped into a downturn. The firm reported third-quarter net income of \$3.5 million on revenue of \$64.2 million in November.

Donald Trump Jr., who is also an American Bitcoin shareholder, along with other Trump family crypto ventures have suffered too. [WLFI](#), the token of Trump-linked decentralized finance platform World Liberty Financial, is down more than 30% from September's high, while ALT5 Sigma Corp., a digital asset treasury company holding WLFI tokens, is down over 80% from its record high.

Read More: [Crypto Crash Erodes Wealth for Trump's Family and Followers \(1\)](#)

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Securities

Manage Newsletters

Opinion

Saylor's Bitcoin Hype Machine Is Glitching Out: Lionel Laurent

December 2, 2025, 1:00 AM PST

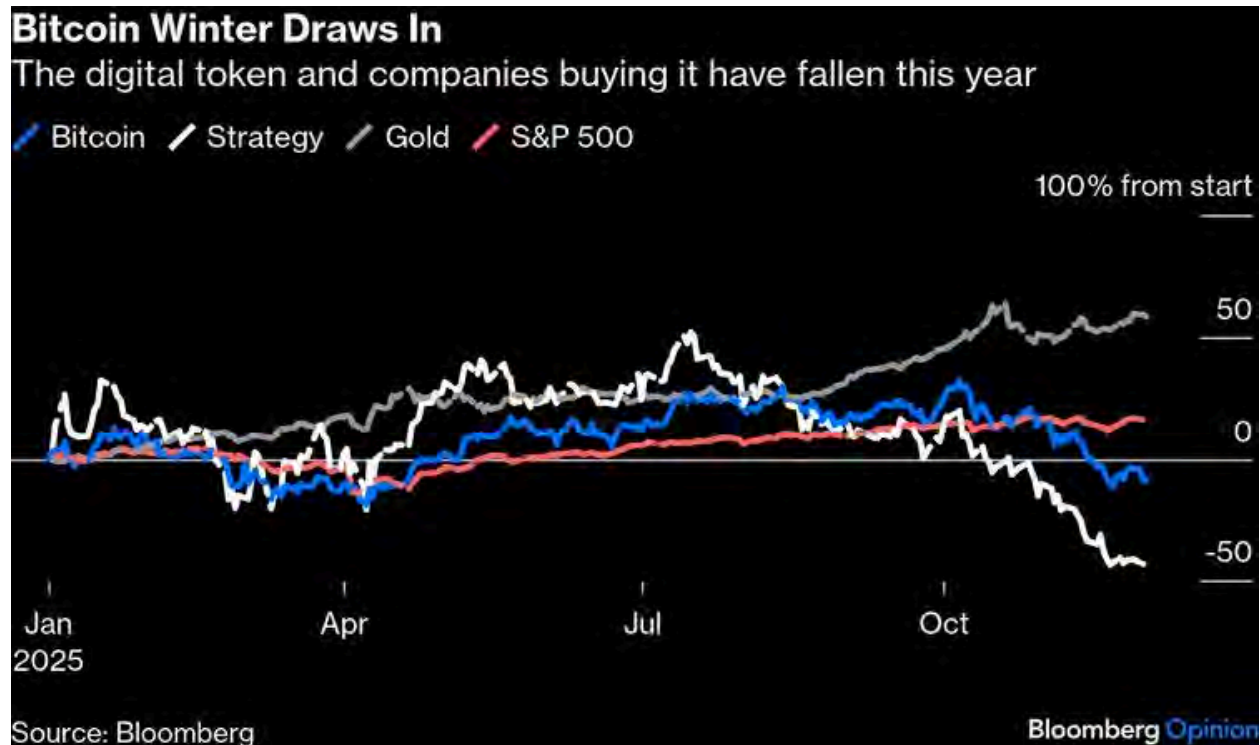
Summary by Bloomberg AI AI Generated



- The Bitcoin-buying machine is running out of fuel with investors sitting on the sidelines after an estimated \$17 billion share-price wipeout across the nascent sector.
- Strategy Inc. has let slip the idea that it might sell Bitcoin if necessary to meet yearly dividend and interest payments, and has created a \$1.4 billion cash reserve to cover at least 21 months' worth of payments.
- Crypto optimists argue that the storm is survivable, but there are risks including market risk from Bitcoin price volatility, cybersecurity risks, and potential losses of confidence if a Bitcoin treasury company were hacked.

Here's how Michael Saylor 's Bitcoin treasury company Strategy Inc. is supposed to work: The firm raises funds to buy Bitcoin; that buying drives up the price of Bitcoin; the share price of Strategy follows suit. Rinse and repeat. The trade, helped along by the utter self-belief of Saylor as a hype capitalist on par with OpenAI Inc.'s Sam Altman, has been so lucrative it has spawned dozens of imitators hoping to capture the same " [infinite money glitch](#) ," like a cheat code on a video game.

But the glitch is glitching out. Bitcoin's price has fallen below \$90,000, making it harder for Strategy to keep the number-go-up boosterism alive as the cryptocurrency nears the \$74,000 average price it paid for its 650,000-coin stash. Copycat firms and investment vehicles are competing away Strategy's premium, with French entrepreneur Eric Larcheveque the latest to announce a Bitcoin treasury company. As well as their speculative appeal, these Saylor-imitating corporates say they hedge against inflation by plowing capital reserves into apparently safer Bitcoins.



With investors in these firms sitting on the sidelines after an estimated \$17 billion share-price wipeout across the nascent sector, the Bitcoin-buying machine is running out of fuel. Short-seller Jim Chanos and others betting against Saylor have been the winners this year.

So far, so predictable for such a frothy part of the market. Now the test for Saylor is whether he can draw a line under the latest sell off by changing course. After years of his “we’ll never sell Bitcoin” bombast, Strategy has let slip the idea that yes, it might sell if necessary to meet yearly dividend and interest payments of about \$689 million. And on Monday the firm said it had created a \$1.4 billion cash reserve to cover at least 21 months’ worth of payments, funded from the sale of common stock. Pragmatic stuff from a company whose communications usually veer more into the cultish, claiming that Bitcoin will go up “forever” while fiat currency melts like an “ice cube.”

The problem is the message it’s sending to the Bitcoin faithful sounds more like a hunkering down for crypto winter than the revving up of a fundraising machine. A \$1.4 billion reserve can keep the lights on at Strategy but can’t on its own backstop a \$1.7 trillion Bitcoin market suddenly lacking in FOMO-fueled narratives (especially if treasury firms become sellers.) The Trump administration’s endorsement of crypto has enriched insiders but done little to spread adoption. Meanwhile, Bitcoin has underperformed the gold it was supposed to replace. Co-Pierre Georg of the Frankfurt School of Finance says Strategy has become a victim of its market success. “They can’t deter imitators and there’s only so much finite hedge fund capital,” he tells me.

Crypto optimists will argue that this storm is survivable. But that assumes things don’t get worse for Strategy and the 140-odd other listed entities holding more than 5% of Bitcoin supply on their balance sheets. S&P analysts have flagged market risk from Bitcoin price volatility and cybersecurity risks, for example. If ever a Bitcoin treasury company were hacked, the sector might suffer a lasting loss of confidence.

More sustained Bitcoin selling could also see skeletons falling out of the systemic-risk closet. Market pressure could reach stablecoin Tether, whose ability to maintain parity with the dollar is critical for crypto-land because it lets traders sell tokens for virtual greenbacks without leaving the digital-coin ecosystem. It holds more US Treasuries than South Korea and has amassed one of the world’s biggest hoards of gold outside of banks and nation states as part of its reserve assets. And the wealth effect felt by retail traders hooked on apps like Robinhood Markets Inc., where Strategy’s preferred stock is being traded, could go into reverse as losses mount.

This is not to predict some kind of extinction event for a crypto market that somehow keeps proving naysayers wrong. Already, prices appear to be stabilizing somewhat. Still, when the masters of hype capitalism come undone, in Bitcoin and beyond, pay very close attention.

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Securities

Strategy's Dollar Reserve Fails to Soothe Bitcoin Sales Concern

December 1, 2025, 7:09 AM PST

Strategy Inc. said it had created a \$1.4 billion reserve to fund future dividend and interest payments, tempering concern that the Bitcoin accumulator may be forced to sell some of its roughly \$56 billion cryptocurrency haul if token prices continue to fall.

The Tysons Corner, Virginia-based company said in a statement on Monday that the new reserve, funded by proceeds from the sale of shares of class A common stock, would cover at least 21 months of dividend payments. Over time, it plans to maintain enough cash in the reserve to cover up to two years of payments.

Even so, the announcement did little to allay concern. The shares slumped as much as 7.9% on Monday, the most in more than a year. The company has funded its Bitcoin accumulation by repeatedly selling common stock — a controversial strategy that dilutes existing shareholders and has pushed Strategy to issue more expensive forms of capital.



The company's mNAV — a key valuation metric comparing the firm's enterprise value to the value of its Bitcoin holdings — sat at about 1.14 on Monday, according to its website, spurring investor fears it may soon turn negative. If that were to happen, its CEO **Phong Le** had suggested last week that the firm could sell some of its Bitcoin. The price of Bitcoin fell as much as 7% to below \$85,000 on Monday.

"We can sell Bitcoin and we would sell Bitcoin if we needed to fund our dividend payments below 1x mNAV," Le said on a podcast on Friday, noting that it would only be carried out as a last resort.

Formerly known as MicroStrategy, the company's main business has switched from software development to primarily holding Bitcoin. Strategy's latest move lands as cracks widen across the broader digital asset treasury model, a financial engineering playbook that once drew applause for merging crypto conviction with public-market access. As Bitcoin tumbles and risk appetite fades, that model is unraveling. The leveraged market loop that once worked — raise capital, buy crypto, ride momentum — is now buckling under market stress.



Phong Le

Photographer: Brent Lewin/Bloomberg

Strategy's software business doesn't generate enough free cash flow to cover the dividend or interest payments. Bitcoin doesn't pay a dividend.

Investors historically have looked to Strategy's steady accumulation of Bitcoin as a signal of confidence in cryptocurrency markets, while sales might herald concern. After a week of not adding to its Bitcoin pile, Strategy purchased 130 Bitcoin for an aggregate price of \$11.7 million, the company said Monday. It used common shares to fund the purchase.

"There's the mathematical side of me that says that would be absolutely the right thing to do, and there's the emotional side of me, the market side of me, that says we don't really want to be the company that's selling Bitcoin," Le added in the podcast. "Generally speaking, for me, the mathematical side wins."

The decline in Strategy's share price is collapsing the premium that once made the stock a favorite of momentum traders. The shares are down around 65% from an all-time high reached in November 2024. Index providers are taking notice. Analysts at JPMorgan Chase & Co. recently warned that Strategy may be dropped from major indexes, a move that could trigger billions in outflows from passive funds.

The company also updated its full-year earnings guidance, having previously issued a forecast in October based on the assumption that Bitcoin would be worth \$150,000 by the end of 2025. Now assuming a price range of between \$85,000 and \$110,000, Strategy said it expects to report operating income that could range from a loss of \$7 billion to a profit of \$9.5 billion. The range varies so widely because accounting guidelines require Strategy to value its Bitcoin holdings at market value at the end of the quarter.

Net income could range from a loss of \$5.5 billion to a profit of \$6.3 billion, it added, while diluted earnings per share could range from a loss of \$17 per share of common stock to a profit of \$19.

(Updates with share price, context from third paragraph onward.)

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Strategy CEO Says Reserve Reduces Pressure to Sell Bitcoin

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Katie Greifeld, Muyao Shen

December 2, 2025



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Summary by Bloomberg AI

AI Generated



- Strategy Inc.'s new \$1.4 billion reserve gives the Bitcoin accumulator flexibility to meet short-term obligations during market turbulence, according to Chief Executive Officer Phong Le.

- The reserve buys the firm time to cover dividend payments without having to liquidate its \$59 billion Bitcoin stockpile, with 21 months of dividend coverage extendable to two years.
- The company's move aims to calm investor concerns that it might be forced to sell Bitcoin to cover payouts, with Le stating that the objective is to pay the dividend into perpetuity.

By Katie Greifeld and Muyao Shen

(Bloomberg) --

.’s new \$1.4 billion reserve gives the Bitcoin accumulator flexibility to meet short-term obligations such as dividend and interest payments during market turbulence, according to Chief Executive Officer .

The move aims to calm investor concerns that Strategy might be forced to sell Bitcoin to cover ballooning payouts. Funded by share sales, the reserve buys the firm time: 21 months of dividend coverage, extendable to two years, without having to liquidate any of its \$59 billion Bitcoin stockpile.

“We really don’t want to have to utilize that Bitcoin at times when our equity value goes” below that of the Bitcoin holdings, Le said during an interview on Bloomberg TV on Tuesday. “Our objective is to pay the dividend into perpetuity.”

The comment reflects the firm’s underlying fear: that the market may price its business below its assets, forcing it to sell Bitcoin at a perceived discount. To avoid that scenario, Strategy is even considering lending out some of its tokens — a shift that underscores just how far the once-radical buy-and-hold model is bending under pressure.

“When they [traditional finance firms] enter that space, and we have different counterparty, [lending Bitcoin] is something we would consider and I think we would be enthusiastic about,” he said.



Strategy Chief Executive Officer Phong Le says he hopes to keep paying a dividend to investors in perpetuity. Le says there are no plans to sell its Bitcoin holdings even as token prices continue to fall. He speaks on “Bloomberg Crypto.”

Source: Bloomberg

Strategy was an enterprise software firm until 2020, when co-founder and Chairman surprised Wall Street by shifting his corporate cash into Bitcoin, citing the corrosive effects of inflation.

After initially being viewed as curiosity by most market observers, the former MicroStrategy became a favorite of speculative investors seeking an easy way to access Bitcoin while the original cryptocurrency soared in value. The shares soon become a market phenomenon, soaring more than 3,500% at its peak following the pivot in strategy and outperforming all equity indexes.

Since reaching a record high in November 2024, the stock has tumbled around 60% as the post-presidential election exuberance around crypto faded and more companies copied the digital asset treasury model that Saylor pioneered.

The company's mNAV — a key valuation metric comparing the firm's enterprise value to the value of its Bitcoin holdings — sat at about 1.17 on Tuesday, according to its website, spurring investor fears it may soon turn negative. If that were to happen, Le had suggested last week during a podcast that the firm could sell some of its Bitcoin as a last resort.

Strategy's latest move lands as cracks widen across the broader digital asset treasury model, a financial engineering playbook that once drew applause for merging crypto conviction with public-market access. As Bitcoin tumbles and risk appetite fades, that model is unraveling. The leveraged market loop that once worked — raise capital, buy crypto, ride momentum — is now buckling under market stress.

Shares of Strategy jumped almost 8% on Tuesday, while increased 6.5% to about \$92,000.

Read more on Strategy:

[Crypto's Retail Traders Hit Hard as Strategy ETFs Plunge 80%](#)

[Strategy's Dollar Reserve Fails to Soothe Bitcoin-Sales Concern](#)

[Blank-Check Firms Stuffed With Crypto Are Financial 'Turducken'](#)

(Adds additional comment in the third paragraph.)

--With assistance from .

World's Largest Bitcoin Holder, Strategy Inc., Announces CLO Appointment on Bumpy Day for Business

The day Strategy Inc. announced Thomas Chow's hiring as legal chief was a nail-biter for senior executives, who saw the company's stock price tumble 5%.

December 01, 2025 at 04:00 PM By  **Chris O'Malley**



Credit: Fotofabrika/Adobe Stock

A lawyer with two decades of experience at tech companies, including PubMatic and Snap Inc., has landed at the world's largest corporate holder of bitcoin at a time the cryptocurrency's market price has tumbled.

Thomas Chow will serve as executive vice president and general counsel of Strategy Inc., the Tysons Corner, Virginia-based company [announced Monday](#).

He succeeds Wei-Ming Shao, who said in July that he would retire by year-end, capping more than 25 years with the company.

His successor, Chow, spent the last five years at South San Francisco-based Chia Network, which developed a blockchain platform and the digital currency Chia.

Strategy Inc., known as MicroStrategy until a February rebranding, might be Chow's biggest challenge yet.

The company, launched 36 years ago to develop business intelligence software, has been snapping up bitcoin tokens since 2020 as its primary treasury reserve asset.

In addition to announcing Chow's appointment, the company on Monday revealed that it had made another big purchase of bitcoin, news that rattled investors in the wake of bitcoin in November suffering its biggest monthly decline since 2021.

Strategy bought 130 Bitcoin tokens for \$11.7 million, an average of \$89,960 apiece. Bitcoin on Monday was trading at \$84,867—\$5,103 less per token than what Strategy shelled out, resulting in a paper loss on the purchase of \$663,390.

Strategy holds about 650,000 bitcoins, or 3.1% of the 21 million in existence.

Strategy has spent more than \$48 million acquiring bitcoin. In a recent [presentation to investors](#), the company reported that those tokens were worth \$59 million. However, as of Monday, their value had dropped to just over \$55 million.

Strategy also said Monday that it established a \$1.44 billion reserve, funded by the sale of its common stock, to support 21 months of dividend payments.

Selling additional shares of common stock has the effect of diluting the holdings of existing shareholders, leaving existing holders with a smaller percentage of the ownership pie.

Strategy investors on Monday reacted harshly to the bitcoin purchase and share sale, shrinking the company's stock price by 5% as of 3 p.m. EST. In morning trading, shares shrank as much as 11%.

Previously, Strategy issued guidance that assumed a Bitcoin price of \$150,000 on Dec. 31, more than 75% above its current price. Hitting that price would generate about \$24 billion in profit, the company said.

On Monday, however, it revised its bitcoin year-end price range to \$85,000 to \$110,000, which would result in net income ranging from a loss of \$5.5 billion to a profit of \$6.3 billion.

Chow is no stranger to the world of crypto, having served as chief legal officer for five years at Chia Network.

From 2018 to 2022, Chow was general counsel of PubMatic, a Redwood City, California-based adtech company. He spent a year as head of adtech legal at Snap Inc., the Santa Monica, California-based owner of Snapchat.

Chow earned his bachelor's degree in sociology from University of California, Berkeley and his law degree from UC-San Francisco.

Strategy's growth has not been without controversy. In 2000, the company, along with co-founders Michael Saylor and Sanju Bansal, struck an \$11 million settlement with the SEC to resolve allegations that the business had materially overstated revenues and earnings from the sales of software and information services over the prior three years. At the time, Saylor was CEO and Bansal was vice chair of the board.

Without admitting the allegations, the company and the executives agreed to \$10 million in disgorgements and \$1 million in penalties.

Saylor covered \$8.3 million and Bansal \$1.6 million of the disgorgements. They each also paid a \$350,000 civil penalty.

A restatement reduced revenues by \$66 million over the three years.

Page printed from: <https://www.law.com/corpcounsel/2025/12/01/worlds-largest-bitcoin-holder-strategy-inc-announces-clo-appointment-on-bumpy-day-for-business/print/>

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Securities

Manage Newsletters

Michael Burry Calls Tesla 'Ridiculously Overvalued' (Correct)

December 2, 2025, 3:25 AM PST

Michael Burry called Tesla Inc. shares "ridiculously overvalued" and said shareholder dilution is set to continue after the proposed \$1 trillion pay package for co-founder Elon Musk, according to a Substack post.

Burry – best known for correctly betting against the US housing market during the 2008 financial crisis – estimated that the electric-vehicle maker's stock-based compensation dilutes shareholders by about 3.6% per year, with no buybacks to offset it, he wrote on the blog site. He didn't respond to Bloomberg News's request for comment.

(Corrects to remove reference to Fortune report on Burry's short position.)

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Ravil Shirodkar, Lynn Thomasson

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Palantir Investor Says Williams & Connolly's Conflict of Interest Cost Him \$1B in Stock Proceeds

Investor Marc Abramowitz claims that the firm prioritized its own financial interests when it failed to achieve a global settlement in a case against Palantir and when it advised him to sell his stock in the tech company for \$6 per share in 2020.

December 01, 2025 at 04:07 PM By  **Amanda O'Brien**

What You Need to Know

- A former Williams & Connolly client claims the firm engaged in a conflict of interest when it amended its fee agreement in a case against technology company Palantir.
- His suit alleges that Williams & Connolly violated D.C. Rules of Professional Conduct when it changed the fee agreement to include a stake in the sale of the client's Palantir shares.
- The suit further accuses the firm of not negotiating a global settlement in litigation between the client and Palantir in order to maximize its earned fees.



Williams & Connolly offices in Washington, D.C. Photo: Diego M. Radzinski/ALM

Investor Marc Abramowitz filed a malpractice suit against Williams & Connolly in District of Columbia Superior Court on Sunday, accusing the firm of advancing its own financial interests rather than securing the best results and settlements for Abramowitz in his years-long dispute with technology company Palantir.

Abramowitz, an early investor in Palantir, claims that the elite litigation firm engaged in a conflict of interest while representing Abramowitz against Palantir, specifically by amending its fee agreement with Abramowitz in one case to allow the firm to take a 15 to 20% stake in any sale of his Palantir stock, depending on if the case was settled before trial.

“The new compensation structure...created egregiously illegal and nonwaivable conflicts of interest for Williams & Connolly, which gave the firm incentives to improperly advise Abramowitz, negligently or intentionally, to sell his Palantir stock and to settle the Palantir litigation, all in a manner benefitting the firm but causing plaintiffs massive damages,” the suit, filed by Charles Remus III of Remus, Weddle & Cavenee, alleges.

According to the suit, Abramowitz first hired Williams & Connolly to represent him in 2016 after his first attempted sale of his Palantir stock to a Chinese asset management firm, CDH Investments, fell through. In that attempted transaction, Abramowitz aimed to sell his shares for between \$9.25 and \$11 per share for a total of \$64 million; however, the suit says, Palantir instead reached out to CDH Investments directly and convinced the company to buy shares directly from Palantir instead of Abramowitz.

After Abramowitz’s sale fell through, the sale price of Palantir’s stock fell and, according to the malpractice suit, left Abramowitz unable to secure a comparable deal for his shares. Abramowitz hired Williams & Connolly in 2016, and the firm first filed a books-and-records action in Delaware in March 2017 against Palantir which was summarily dismissed by the Delaware Chancery Court.

According to the malpractice suit, Williams & Connolly billed Abramowitz almost \$2 million for work completed through November 2017, including the books-and-records action. The suit characterizes that bill as a sign “the firm was breaching its duty of care and profiting from unnecessary legal work that did not advance its client’s interest,” and that the firm “should have known [the records action] would not be successful” based on case law.

After the records action, the malpractice suit says, Williams & Connolly filed a tortious interference claim against Palantir in December 2017. The dispute between Abramowitz and Palantir continued as Palantir later filed an action against Abramowitz in Germany in 2018.

In July 2019, the malpractice suit claims, Williams & Connolly amended its fee agreement with Abramowitz in only the tortious interference case, laying claim to a contingent percentage of any

recovery in that case as well as a 15 to 20% stake in any sale of Abramowitz's Palantir stock. That stake was capped at "three times the amount of the firm's time charges on the tortious interference case," according to the suit, adding that the firm also "dramatically increased the hourly rates it charged" Abramowitz at the same time, although Abramowitz did not discover this for a year after the firm failed to send invoices for its services.

Under the new fee agreement, the suit claims, the firm had a financial interest in convincing Abramowitz to sell his Palantir shares for less than \$10 per share in order to maximize the firm's total payment in the tortious interference case. If Abramowitz's shares sold for more than \$10 each, the suit says, he would have had no recoverable damages in the tortious interference case and could abandon the action.

In fact, the suit alleges, Williams & Connolly advised Abramowitz to sell his Palantir shares in August 2020, just before the company was slated to go public. The suit alleges the firm advised Abramowitz of this to ensure that the stock sold for less than \$10 each; as such, Abramowitz sold his stock for \$6 per share, or a total of \$33 million, the suit says, estimating based on Palantir's November 2025 peak stock price of \$207 per share that the 2020 sale cost Abramowitz more than \$1 billion.

"The Engagement Letter Amendment incentivized the Firm to convince Abramowitz to sell his shares below \$10 dollars so that the Firm could (i) lock in Abramowitz's damages, thereby eliminating any chance of Abramowitz dropping the case and guaranteeing both the Firm's ability to increase the cap and its chance to recover a contingency fee, and (ii) immediately collect a multimillion-dollar bonus rather than face the uncertainty of payment if Abramowitz were to hold the stock well into the future," the suit claims.

Williams & Connolly allegedly received over \$4.9 million in its share of the stock proceeds as the tortious interference case continued. The suit further characterizes the new fee agreement as a violation of D.C.'s Rules of Professional Conduct as it was contingent on the timing of selling stock rather than just the tortious interference case, as well as being "patently unreasonable".

In yet another conflict of interest, the suit claims, the new fee agreement also incentivized Williams & Connolly to settle the tortious interference case without settling any of the other cases filed against Abramowitz by Palantir, which the firm continued to work on under an hourly fee-arrangement.

"Settling only the Tortious Interference Case enabled Williams & Connolly both to maximize its contingency fee—because a global settlement in which Palantir's cases against him were also settled would have resulted in a lower monetary recovery for Abramowitz—and to bill Abramowitz for another \$3.2 million in fees over the next five months" before settling a second case, along

with other pieces of litigation, in 2022, the suit claims. “In response to Abramowitz’s repeated inquiries about a global settlement, the Firm told him it was ‘too difficult’ and that the legal team was ‘too tired’.”

After the settlement in 2022, the suit claims, Williams & Connolly requested a \$3 million retainer from Abramowitz for additional work in an upcoming trial against Palantir, threatening to drop Abramowitz as a client.

In total, Williams & Connolly’s representation of Abramowitz spanned six years and eight separate lawsuits involving Palantir spread across a number of state and district courts, as well as the case in Germany. The malpractice suit alleges other separate incidents of malpractice throughout the course of the representation, including an allegation that partner Barry Simon fell asleep while participating in a hearing via telephone in the German case, which was subsequently referred for criminal review for attempted litigation fraud.

“That referral was based in large part on a misrepresentation made at the hearing by the German counsel who was supposed to have been supervised by Williams & Connolly,” the suit claims. “Had Simon not been asleep that mistake could have been immediately corrected before the conclusion of the hearing, forestalling the criminal referral... But the debacle, which would not have happened but for Williams & Connolly’s inept representation, damaged Abramowitz...by forcing him to pay to defend not only himself, but also Williams & Connolly, who charged him for its own defense in a criminal investigation caused by its own negligence.”

Furthermore, the suit claims, Simon spoke to Abramowitz “in an abusive and condescending manner,” including calling Abramowitz the worst witness he had ever seen in his 40 years of practice and denigrating Abramowitz’s patents, which were the subject of one piece of litigation filed by Palantir.

The suit ultimately accuses Williams & Connolly with legal malpractice and breach of fiduciary duty, and seeks compensatory damages, disgorgement of attorneys’ fees paid to Williams & Connolly, attorneys’ fees and costs, and pre- and post-judgment interest.

Neither Williams & Connolly nor counsel for Abramowitz immediately responded to requests for comment Monday.

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California Brief

Insight

KPMG AI Use Metric a Necessary Professional Services Wakeup Call

December 2, 2025, 1:30 AM PST

KPMG's decision to rate staff on their use of artificial intelligence tools in annual performance reviews is more than symbolic. It marks a structural shift in how professional services firms define performance and value. This change is long overdue.

There's a persistent misconception that AI transformation is a technology problem. But it's really a people and skills problem. Every firm is talking about tools, pilots, and vendors. Yet, as a July study out of MIT showed, around 95% of AI initiatives still fail to make a measurable impact on the bottom line.

Leaders still treat AI as something that simply can be plugged in instead of something that rewires the firm itself. But real transformation happens when individuals redesign the operating model with technology at the center.

Tools, Talent, Platforms

KPMG's move formalizes what many challenger firms already recognize. In private-equity-backed and founder-led advisory platforms, performance reviews, as well as interviews for new hires, already ask how people are using technology to scale their impact. The firms growing fastest are those that quickly and skilfully develop AI expertise.

Professional services' future model is people plus products—expertise built into code, embedded in workflow, and delivered at scale. Real growth now sits in recurring revenue models such as compliance monitoring, AI-driven diligence, instant contract review, finance managed services, and outcome-based subscriptions. That's where client loyalty becomes unbreakable.

For years, clients paid for access to smart people. Increasingly, they want capability built directly into their operating systems. If your business model still relies on armies of mid-managers billing by the hour, you're already priced like a commodity.

But AI has changed the math. What took weeks now takes days, and what took days now takes hours. The middle of the pyramid is being hollowed out.

Generational Change

Many firms risk creating a lost generation of professionals who missed the AI inflection point. Individuals who didn't grow up with these tools may find it uncomfortable or may be unwilling to change. But just as Excel once separated the modern consultant from the typewriter generation, AI will soon define the professional baseline.

Some firms have already taken action. In recent months, Accenture has justified the layoffs of tens of thousands of staff who they deemed unable to reskill in AI. Every hour of work must now deliver more leverage, and that leverage comes from AI-enabled productivity, not just human effort.

KPMG's leadership has made it clear that everyone, from partners to juniors, must bring AI into their work. That signals a new social contract inside these firms. Everyone, not just leadership, must demonstrate how they create value through technology.

Culture Over Compliance

Firms that treat AI adoption as a human-capital challenge rather than a compliance exercise will come out ahead. The ones building cultures of curiosity and experimentation, where professionals are rewarded for rethinking workflows, are already pulling ahead.

The real disruption is coming from startups and technology firms that deliver transformation directly. They aren't burdened by legacy systems or leaders who insist, "This is how we've always done it." They're laying down systems clients can't operate without. That isn't advice. That is control.

And that's where the premium will sit—at the intersection of industry expertise and proprietary tools. Fewer layers, sharper spikes of knowledge, workflows that begin with AI and finish with senior judgment. The winners of this era will build code, context, and capability that remain long after the engagement ends.

Doers and Orchestrators

This shift marks the end of the "doer" era in professional services. For decades, firms rewarded those who executed the most work personally: The longest hours, the heaviest workloads, the largest teams beneath them.

AI collapses that model. The most valuable professionals are no longer the ones who do the most; they're the ones who orchestrate the most leverage.

They design systems, data flows, and AI-enabled processes that multiply output far beyond what any team of humans could deliver. They architect the ecosystem that completes tasks rather than doing it themselves. In the same way the best chief financial officers no longer close the books themselves, the best consultants and advisers will increasingly be the ones who build operating models that scale without them.

KPMG's move sends a clear message: Making AI use a formal performance metric tells people that if you want to lead, you also must lead in how you work. The next generation of partners won't just be rainmakers; they'll be builders of repeatable, technology-enabled intellectual property.

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Securities

Manage Newsletters

US Audit Board Member Who Advocated for Auditors, Tech to Resign

December 2, 2025, 10:14AM PST

Summary by Bloomberg AI

AI Generated



- Christina Ho is stepping down from the Public Company Accounting Oversight Board, with her last day being Jan. 31 unless a successor is named sooner.
- Ho's term ended in October and she opted not to seek reappointment, saying "now is the time to make way for a new board to bring fresh and forward-looking leadership to the PCAOB".
- Ho called for the next board members to focus on "common sense" regulation, building a resilient audit marketplace, and advancing innovation to best protect investors.

A member of the Public Company Accounting Oversight Board who pushed the Enron-era regulator to adopt technology advances and was a vocal critic of the its rewrite of the US audit rulebook is stepping down.

Christina Ho said Tuesday that her last day serving on the US audit board will be Jan. 31 unless a successor is named sooner. Ho's term ended in October and she opted not to seek reappointment, according to a statement.

"Now is the time to make way for a new board to bring fresh and forward-looking leadership to the PCAOB," Ho said in the statement.

The SEC, which oversees the audit regulator, sought applicants to fill all five board seats over the summer, but the selection process was stymied by the 43-day government shutdown. Three other board members continue to serve in the interim.

Ho, one of two CPAs serving on the board, described her role as "a credible lone dissenter" and said she was able to block "some potentially harmful standards and rules."

Ho was sharply critical of rule-writing projects the board advanced under former Chair Erica Williams and said some would harm the profession rather than improve audits. She also clashed with lawmakers over the implications of high violation rates in the PCAOB's routine inspections.

She voted against a years-in-the-making overhaul of foundational rules for how firms police their own compliance with US audit standards. She also opposed measures to expand auditor disclosures.

To best protect investors, Ho said the next slate of board members should focus on what she called "common sense" regulation while building a resilient audit marketplace and advancing innovation.

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Securities

Manage Newsletters

Exclusive

New York Bill Would Boost Penalties for Financial Fraud Crimes

December 1, 2025, 2:00 AM PST

Summary by Bloomberg AI

AI Generated



- A New York lawmaker is introducing a bill to toughen criminal penalties for financial crimes, arguing the state needs to step up after the Trump administration gutted the Consumer Financial Protection Bureau.
- The bill would allow state prosecutors to pursue equity fines on publicly traded companies and would update state law to keep pace with digital currency, including new definitions of virtual currency.
- The measure would also include new definitions of offenses related to structuring financial transactions to evade reporting requirements and create new degrees of offenses for defrauding the government, and enhance penalties for financial crimes targeting elderly victims.

A New York lawmaker is introducing a bill to toughen criminal penalties for financial crimes, arguing the state needs to step up after the Trump administration gutted the Consumer Financial Protection Bureau.

Corporations with annual revenues greater than \$100 million that are convicted of a felony offense under New York state laws would face stiffer penalties under the bill sponsored by state Sen. Zellnor Myrie (D), who shared the text of the bill exclusively with Bloomberg Government. Currently, fines assessed on companies convicted of certain criminal offenses can't exceed \$500,000.

The bill would allow state prosecutors to pursue equity fines on publicly traded companies. Through the measure, courts could transfer a percentage of nonvoting shares to the state victim's compensation fund.

Corporations view current penalties under state law as the "cost of doing business," Myrie said.

The measure would also include new definitions of virtual currency as New York looks to further regulate cryptocurrency and update its laws for a 21st century digital marketplace.

"The public expects the states to be stepping up regardless, but I think it's particularly pronounced when we have a federal administration that has explicitly said that they do not want to go after this type of crime," Myrie, who represents Brooklyn, said in an interview.

State Efforts

At least 16 states have boosted their consumer financial protection laws as the Trump administration has drastically scaled back the federal CFPB.

A new California law (SB 825), for example, will make it easier for state regulators to crack down on abusive or deceptive practices by banks and credit unions. California lawmakers have also proposed a state measure (AB 801) similar to the federal Community Reinvestment Act, which would expand state oversight of unfair and discriminatory lending practices.

New York Attorney General Letitia James (D) has been active in financial enforcement, suing a bank-owned financial-technology company for allegedly allowing fraud to run rampant on a peer-to-peer payments network. Her office refiled state claims after the bureau dropped its lawsuit.

She's also sued Credit Acceptance Corp. and Capital One Finance Corp. after lawsuits against the two financial services companies originally brought by the CFPB were dropped by the Trump administration.

James has backed more stringent state laws to enable her office to sue companies and individuals for fraud and embezzlement schemes.

Myrie is preparing to face opposition in Albany from lobbyists. But he said he's hopeful a growing willingness to challenge "unfairness" in financial systems, pushed by progressive politicians such as New York City Mayor-elect Zohran Mamdani, could smooth the bill's path.

"I think that there is a political appetite for us to challenge the status quo," Myrie said. "There is a healthy skepticism many New Yorkers have right now about whether the law applies equally to everyone and whether everyone has a fair shot."

Catching Technology

Beyond boosting penalties, the bill also would update state law to keep pace with digital currency.

The bill would create new technical definitions for virtual currency and stipulate how stolen crypto assets can be disposed of under property law, giving law enforcement officers greater agency to find and return those assets to victims.

The attempt to further define and regulate illegal activity around virtual currency comes as President Donald Trump has embraced the crypto industry and vowed to make the US the crypto capital of the world.

Trump signed into law earlier this year a measure that creates a national licensing framework for stablecoins, a type of cryptocurrency that has its value pegged to a more stable asset, such as the US dollar.

Myrie and other attorneys say New York has long lagged in modernizing its penal code to match rapid advances in technology.

"This bill appears to be the most comprehensive amendment of white-collar fraud and criminal fraudulent behavior in many years," said Barry Kamins, a former New York City judge. "It is well known that fraudulent schemes have become quite sophisticated, and our laws have not kept up with the frenetic pace of criminals."

The omnibus measure would additionally expand the definition of offenses related to structuring financial transactions to evade reporting requirements and create new degrees of offenses for defrauding the government. It also enhances penalties for financial crimes targeting elderly victims.

– With assistance from Andrew Oxford.

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Wall Street Agitator to Lead Blue State Consumer Protection Drive

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Emily Flitter

December 2, 2025

A group of Democratic state prosecutors seeking to address rising living costs and widespread fraud hired , former director of the US Consumer Financial Protection Bureau, to lead the effort.

Chopra, who frequently clashed with banks before his dismissal from [the CFPB](#) in February, will lead the Consumer Protection and Affordability Working Group, the organization's policy arm announced Tuesday. He will oversee a team of researchers and policymakers charged with making recommendations for how prosecutors can curb abusive practices by lenders and other companies in their states.

The group expects to formulate nationwide strategies for health care, technology and financial services. Democratic attorneys general will then be able to choose whether to implement the recommendations in their states, said Sean Rankin, president of [the Democratic Attorneys General Association](#).

The move marks another step in a months-long push by Democratic prosecutors to use state powers to fill the void created by the Trump administration's retreat from financial regulation. The administration has been rolling back rules and widening the range of practices permitted for companies across numerous sectors.

Rohit Chopra

Photographer: Tierney L. Cross/Bloomberg

"We would normally count on federal regulators to be able to serve as a check on some predatory practice or criminal activity, and now it's really falling on state attorneys general to serve as a line of defense," Chopra said in an interview.

"We have seen so many different places," he said, pointing to policies from the US Department of Agriculture and the Department of Transportation where "state attorneys general are functionally now the key regulators in America."

The choice of Chopra to help lead the effort represents an aggressive stance by blue-state prosecutors. During his tenure of more than three years at the CFPB, Chopra became known for poring over federal laws to find obscure powers that

his predecessors didn't notice and using them to gain greater regulatory authority.

He became a lightning rod for financial-industry criticism of former President 's oversight agenda. Trade groups such as [the American Bankers Association](#) and [the Independent Community Bankers of America](#) — along with firms facing fines or other penalties — repeatedly took the CFPB to federal court, [claiming regulatory overreach](#).

Under President , much of the CFPB's work has stalled. Staff have focused on undoing rules put in place under Biden and attempted to reverse settlement agreements the bureau reached with financial institutions, some of which required the institutions to pay damages to consumers they were alleged to have harmed. Bank examiners also have been instructed to sign "[humility](#)" pledges before entering financial institutions to do their work.

Rankin, DAGA's president, said on Tuesday that the group has already been working with Chopra for years, coordinating with him on enforcement strategies during his tenure at the CFPB and his time at the Federal Trade Commission, where he served from 2018 to 2021. Before exiting the CFPB, Chopra drafted a road map to help state law-enforcement officials enforce federal financial regulations and other consumer-protection rules.

Chopra, 43, has continued to advise state prosecutors since leaving the federal government. The creation of the affordability working group — operating within DAGA's policy arm, the Progressive State Leaders Committee — is part of a broader strategy by state-level Democrats to reshape their image with voters, said [John Relman](#), a civil rights lawyer and founder of the Washington law firm Relman Colfax.

Relman said that positioning Democratic officials, including prosecutors and governors, as leaders on affordability issues should give voters a fresh reason to align with the party in next year's midterm elections.

"It helps the entire slate of Democratic candidates, who are either challenging Republican incumbents or up for reelection in their states next November," Relman said in an interview on Tuesday.

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US SEC chief calls for redo of executive compensation disclosure rules

 [reuters.com/legal/government/sec-chief-calls-redo-executive-compensation-disclosure-rules-2025-12-02](https://www.reuters.com/legal/government/sec-chief-calls-redo-executive-compensation-disclosure-rules-2025-12-02)

Douglas Gillison, Ross Kerber

December 2, 2025

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

Item 1 of 2 Paul Atkins, Chairman of the U.S. Securities and Exchange Commission (SEC), rings the opening bell at the New York Stock Exchange (NYSE) in New York City, U.S., December 2, 2025. REUTERS/Eduardo Munoz

[1/2]Paul Atkins, Chairman of the U.S. Securities and Exchange Commission (SEC), rings the opening bell at the New York Stock Exchange (NYSE) in New York City, U.S., December 2, 2025. REUTERS/Eduardo Munoz [Purchase Licensing Rights](#) , [opens new tab](#)

NEW YORK / BOSTON, Dec 2 (Reuters) - Wall Street's chief regulator said on Tuesday [the U.S. Securities and Exchange Commission](#) should reform rules requiring disclosure of executive compensation and move to reduce the legal burdens facing smaller companies.

In an address at the New York Stock Exchange billed as a statement of his vision for the future of capital markets, SEC Chair Paul Atkins also previewed major themes in the agency's deregulatory policy agenda.

Since taking over the role in April, Atkins has laid out plans that [embrace the cryptocurrency sector](#) and tilt the balance of power from [investors back toward companies](#). The White House, asserting direct control over the agency, has also called for an [end to quarterly reporting](#) , [opens new tab](#) and reforms [to shareholder disputes](#).

"When the SEC's disclosure regime has been hijacked to require information unmoored from materiality, investors do not benefit," Paul Atkins said in his prepared remarks. "We need a reset of these and other SEC disclosure requirements."

Atkins also said the burden of complying with SEC regulations was a barrier to raising capital for smaller companies.

"The last comprehensive reform to these thresholds took place in 2005. This dereliction of regulatory upkeep has resulted in a company with a public float of as low as \$250 million being subject to the same disclosure requirements as a

company that is 100 times its size."

Critics have warned that the SEC's deregulatory agenda and declining workforce are weakening the agency, potentially allowing risk and misconduct to build up in the financial system.

With support from some corporate leaders, Atkins and other Republicans have taken aim at a series of pay disclosure rules, including those put in place after the 2008 financial crisis, meant to give investors a clearer picture of managers' incentives.

Among other things, Congress required companies to report the ratio of CEO compensation to median employee compensation. The average pay of chief executive officers at S&P 500 companies stood at \$18.9 million last year, a 7% increase over 2023, [according to a review](#)  [.opens new tab](#) by the AFL-CIO labor federation, and the average CEO-to-worker pay ratio was 285 to 1 at these companies.

Democrats have argued for pay disclosures and limits they say are needed to [limit risky behavior](#)  [.opens new tab](#). In his prepared remarks, Atkins approvingly quoted Warren Buffett saying the required disclosures backfired, helping drive up CEO pay because the "new rules produced envy, not moderation."

Reporting by Douglas Gillison in New York and by Ross Kerber in Boston; Editing by Chizu Nomiyama and Paul Simao

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Thomson Reuters

Douglas Gillison covers financial regulation for Reuters, focusing on securities regulation, consumer finance and prudential oversight. He was previously a Congo-focused anticorruption investigator for a transparency organization and has covered war crimes trials and human rights. His reporting has sparked a foreign bribery probe of a publicly traded mining company.

[Ross Kerber](#)

Thomson Reuters

Securities

Trump Commutes Sentence of GPB Capital Founder David Gentile (1)

December 1, 2025, 12:44 PM PST

President Donald Trump has freed GPB Capital Holdings LLC founder **David Gentile**, who was sentenced to seven years in prison for a fraud scheme that put at risk more than \$1 billion of investor funds.

Gentile had reported to federal prison on Nov. 14 and spent less than two weeks there before Trump commuted his sentence. According to the US Bureau of Prisons website, Gentile was released from its custody as of Nov. 26. The fund manager was convicted by a New York federal jury in August 2024, along with co-defendant **Jeffrey Schneider**, on securities and wire fraud charges.

The Justice Department at the time accused Gentile of attempting to defraud investors by misrepresenting the performance of three private equity funds and the source of investor payments.

White House Press Secretary **Karoline Leavitt** on Monday dismissed the case as “another example” of “a weaponization of justice from the previous administration.” Gentile’s case was championed by White House pardon czar Alice Marie Johnson, who posted on X that she was “deeply grateful to see” him “heading home to his young children.”

“GPB disclosed to investors the possibility of using investor capital to pay some of these distributions rather than funding them from current operations,” Leavitt said. “Even though this was disclosed to investors, the Biden Department of Justice claimed it was a Ponzi scheme.”

Gentile and two other executives were accused of using the funds to cover shortfalls and enrich themselves instead of securing returns for their customers. Some 17,000 investors were affected, about 4,000 of them seniors, according to a related complaint by the US Securities and Exchange Commission.

At the time of Gentile’s sentencing, the judge who presided over the case said she received hundreds of letters from victims, many of whom lost their life savings or were retirees in their 70s, including one who said they lost \$450,000 as a result of the fraud.

Trump’s commutation is the latest instance of his use of clemency for white-collar criminal defendants. Still, the grant falls short of a full pardon, meaning that the crimes may remain on Gentile’s record.

Schneider, who was given a six year sentence, did not appear to receive clemency. His lawyer did not return a call seeking comment.

Read more: GPB Capital Founder Gentile Found Guilty in Ponzi-Like Fraud

A spokesman for US Attorney for the Eastern District of New York Joseph Nocella, whose office prosecuted the case, did immediately respond to a request for comment.

In a May statement on the defendants' sentencing, Nocella said the prison terms were "well deserved and should serve as a warning to would-be fraudsters that seeking to get rich by taking advantage of investors gets you only a one-way ticket to jail."

Adriana Riviere-Badell, a lawyer for Gentile at Kobre & Kim, did not immediately return a voicemail seeking comment about Gentile.

Recently, Trump has granted clemency to former New York Representative **George Santos** as well as Ozy Media co-founder **Carlos Watson**, who was set to begin serving his nearly 10-year prison term for lying to investors in his startup before his term was commuted, according to a senior White House official.

(Adds more context starting in seventh paragraph)

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Kessler Topaz To Lead Apple Investors In Siri AI Plans Suit

By **Emilie Ruscoe**

Law360 (December 1, 2025, 7:38 PM EST) -- Kessler Topaz Meltzer & Check LLP will represent a putative class of Apple investors who claim the technology giant was overly bullish on its timeline for implementing certain artificial intelligence-based features for its digital personal assistant Siri.

In an order Friday in California federal court, U.S. District Judge Noël Wise granted appointment of Kessler Topaz client National Pension Service as lead plaintiff, finding the pension fund's alleged losses of over \$87 million make the institutional investor the lead plaintiff movant with the largest financial interest in the litigation.

NPS will serve as lead plaintiff on behalf of South Korea's National Pension Fund, which it described in its lead plaintiff bids as one of the world's largest pension funds, with nearly \$900 billion in assets under management.

With its lead plaintiff appointment, the Korean pension fund beat out Bernstein Litowitz Berger & Grossmann LLP client Union Investment Luxembourg SA and KBC Asset Management NV, represented by Motley Rice LLC and Robbins Geller Rudman & Dowd LLP.

In seeking the lead counsel spot, KBC had asserted that National Pension Service didn't have standing to bring the suit because as the asset manager for the Korean pension fund, it wasn't the real party in interest allegedly harmed by the losses.

KBC also urged the court to calculate losses in the case using a first in, first out accounting methodology, compared to the last in, first out methodology NPS used for its loss calculations.

Judge Wise shot down those arguments, finding the asset manager has standing and noting that "scores of courts" have relied on NPS's accounting method.

In her order, the court said the case had a "convoluted procedural history," pointing out that the lead plaintiff's bids were filed in a separate case bringing some of the same claims that have since been voluntarily dismissed. Briefing on the lead plaintiff bids happened in the instant case.

The ongoing case, launched in July, alleges Apple has in recent years been under pressure from its competitors "to incorporate generative-AI technology into its iPhones and especially to introduce advanced AI-based Siri features."

Beginning in June 2024, the suit states, Apple representatives told investors that "over the course of the next year" the company would be rolling out new Siri features, including one called Apple Intelligence.

Following that June statement, the suit claims trading prices for Apple shares were artificially inflated as Apple shareholders anticipated the imminent implementation of the new Siri features.

However, Apple's stock price fell on several occasions after a series of allegedly corrective disclosures revealed the company's actual timeline for the Siri feature rollout. Those trading price declines range from just over 1% — which was just under \$2.50 at the time — to over 9%, which at the time represented nearly \$21.

The final disclosure, from June 2025, was the company's acknowledgment at its latest Worldwide Developer Conference that it "needed more time to reach a high quality bar" for its expected Siri advances.

Alongside the company, the complaint names three current and former Apple executives: CEO Timothy D. Cook, former Chief Financial Officer Luca Maestri and current CFO Kevan Parekh.

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

Lead plaintiff National Pension Service is represented by Stacey M. Kaplan of Kessler Topaz Meltzer & Check LLP.

Apple and the individual defendants are represented by Melanie M. Blunschi, Whitney B. Weber, Jordan Mundell, Michele D. Johnson and Jason C. Hegt of Latham & Watkins LLP.

The case is City of Coral Springs Police Officers Pension Plan v. Apple Inc. et al., case number 5:25-cv-06252, in the U.S. District Court for the Northern District of California.

--Editing by Drashti Mehta.

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11th Circ. Reverses Energy Co. Win In Investor Suit

By **Carolina Bolado**

Law360 (December 1, 2025, 5:47 PM EST) -- The Eleventh Circuit has revived a proposed class action against NextEra Energy Inc. seeking to hold the energy company liable for a drop in its share price after political interference allegations emerged against its subsidiary Florida Power and Light Co.

In a unanimous published opinion Wednesday, the appeals court said the lower court put too high a burden at the pleading stage on the lead plaintiffs. Those plaintiffs alleged that false statements made by NextEra executives denying FPL's involvement in a scheme to get "ghost candidates" on the ballot later led to a drop in the utility's stock price.

U.S. District Judge Aileen M. Cannon **concluded** that the plaintiffs had failed to plead loss causation because they had not identified a corrective disclosure from NextEra, but the Eleventh Circuit said the judge had "improperly searched for a singular corrective disclosure."

"This both contravenes our precedent and erroneously assumes markets cannot link multiple pieces of information," the Eleventh Circuit said.

The appeals court also rejected the trial court's faulting of NextEra's Jan. 25, 2023, 8-K disclosure for not explicitly mentioning any of the alleged misstatements that the plaintiffs rely on. U.S. Securities and Exchange Commission Form 8-K is used by publicly traded companies to inform the commission and shareholders of events that may affect a company's stock price or financial condition.

"Scattered or less dramatic revelations may indeed make it more difficult for a plaintiff to rule out other explanations for the decline," the Eleventh Circuit said. "But requiring a corrective disclosure to decisively and unequivocally debunk the earlier fraud overstates the role of loss causation — especially at the pleading stage."

The appeals court noted that the plaintiffs still need to show material fraud to recover under SEC Rule 10b-5 and will need to plead that with particularity to advance their claims.

"Loss causation, though, is not the element to litigate the fraud," the appeals court said. "It simply asks whether the loss was proximately caused by the alleged misstatements ... here, we hold that the retirement funds have identified adequate corrective disclosures, a subsequent price drop, and have plausibly ruled out other explanations."

Lead plaintiff Maha Jastram filed the suit in May 2024 on behalf of a proposed class of individuals who bought NextEra securities between Dec. 2 2021, and Feb. 1, 2023, the period in which Jastram claims NextEra and FPL denied media allegations of certain political wrongdoing.

According to the complaint, media outlets, including the Orlando Sentinel and Miami Herald, began reporting in December 2021 that FPL and its political consulting firm Matrix LLC had potentially violated state and federal campaign finance laws in the 2020 election cycle. Reports said the company used nonprofit organizations to fund so-called ghost candidates intended to derail campaigns of Florida legislators with unfavorable views of FPL, according to the complaint. Some reports also alleged FPL had offered jobs to public officials in an attempt to privatize certain public utilities, the complaint states.

Jastram says some news outlets also reported that FPL spied on journalists who appeared "unsupportive" of the company.

FPL, NextEra and its executives consistently denied the allegations, according to the complaint.

Jastram says the narrative changed on Jan. 25, 2023, when FPL President and CEO Eric Silagy resigned. On that same day, NextEra acknowledged legal and reputational risks associated with the political misconduct allegations in a quarterly 8-K filing with the SEC.

On this news, NextEra's stock dropped \$7.31 per share, or about 8.7%, representing a loss of approximately \$15 billion in market capitalization, the complaint alleges.

Jastram claims NextEra's stock continued to drop until Jan. 31, when the Florida Times Union reported that NextEra executives disclosed to analysts that Silagy's exit agreement hinted at a link between his departure and the new risk disclosure statement concerning legal and reputational risk arising from political misconduct allegations.

In addition to Silagy, former NextEra CEO James Robo and FPL corporate spokesperson David P. Reuter were named as individual defendants in the suit.

Matthew Wessler, who represents the plaintiffs, said the Eleventh Circuit's ruling "reaffirms that investors are entitled to transparency."

"As the allegations in this case detail, NextEra, one of the largest power and utility companies in the country, misled the market about its role in a Florida election-interference scheme involving political corruption, off-the-books operations, surveillance of journalists, ghost candidates, and efforts to influence independent media," Wessler said. "In reversing the district court's decision dismissing the complaint, the Eleventh Circuit's unanimous ruling ensures that the police officers, firefighters, and families whose savings the Retirement Funds protect will have the chance to seek accountability in court and to prove the full extent of NextEra's misconduct."

A representative of NextEra did not respond to a request for comment Monday.

U.S. Circuit Judges Elizabeth L. Branch, Embry Kidd and Gerald Bard Tjoflat sat for the Eleventh Circuit.

The investor plaintiffs are represented by Jeffrey Craig Block, Jacob A. Walker, Brendan Jarboe and Mark Byrne of Block & Leviton LLP and by Matthew W.H. Wessler, Deepak Gupta and Jessica Garland of Gupta Wessler LLP.

NextEra is represented by Daniel J. Kramer, Audra J. Soloway, Joshua Hill, David P. Friedman, Kannon K. Shanmugam, William T. Marks, and Anna M. Stapleton of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is Jastram et al. v. NextEra Energy Inc. et al., case number 24-13372, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Nick Petruncio.

Correction: A previous version of this story included incorrect counsel information. The error has been corrected.



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Bristol-Myers Must Face Trimmed \$6.7B Celgene Investor Suit

By **Lauren Berg**

Law360 (December 1, 2025, 11:36 PM EST) -- A Manhattan federal judge Monday trimmed UMB Bank's lawsuit accusing Bristol-Myers Squibb of slow-walking the U.S. Food and Drug Administration approval process for three drugs to avoid paying shareholders \$6.7 billion owed from its 2019 acquisition of Celgene Corp.



Bristol-Myers Squibb failed in its motion to dismiss a lawsuit from UMB Bank, but succeeded in dismissing two of UMB's allegations for failure to state a claim. (Photo by Michael Nguyen/NurPhoto via AP)

In a mixed **order**, U.S. District Judge Jesse M. Furman denied Bristol-Myers Squibb's bid to dismiss the case for lack of subject-matter jurisdiction but partially granted its motion to toss the suit for failure to state a claim.

The judge found that UMB has standing to sue because it has been properly appointed the trustee of the Celgene shareholders since the court **last year tossed** a previous iteration of the litigation.

In September 2024, Judge Furman dismissed the previous iteration of the 3-year-old case — which

alleged Bristol-Myers Squibb dragged its feet on three drug approvals, including a cancer treatment, following the **\$74 billion Celgene deal** — after concluding UMB had not properly replaced Equiniti Trust Co. as the trustee under the shareholders' contingent value rights, or CVR, agreement before bringing the claims.

However, the judge ruled that a new lawsuit could be filed by a properly appointed trustee, and if that new lawsuit "were to survive jurisdictional challenge, the court would likely pick up where [the first case] left off," according to the order. And after going through a "reconfirmation" process to replace Equiniti as trustee, UMB brought the current suit in November 2024.

This time around, Judge Furman determined that UMB survives Bristol-Myers Squibb's jurisdictional challenge, rejecting the biopharmaceutical company's argument that the section of the CVR agreement governing the appointment of a successor trustee was terminated on Jan. 1, 2021, when the entire agreement automatically terminated.

In this case, the agreement includes a survival clause that lists several provisions that survive termination of the agreement, and while it does not include the section governing successor trustees, Judge Furman agreed with UMB that the section survives by implication because it is necessary to effectuate a related section.

Turning to Bristol-Myers Squibb's bid to dismiss for failure to state a claim, the judge kept alive UMB's first two counts: a request for declaratory judgment that the bank is the trustee under the CVR agreement and a breach of contract claim. Judge Furman noted that he already **declined to dismiss** the breach of contract claim.

Judge Furman also declined to dismiss count four, which alleges breach of implied covenant of good faith and fair dealing, according to the order.

But the judge did dismiss counts three and five, alleging breach of contract for failure to maintain a security register and seeking declaratory judgment against Bristol-Myers Squibb, respectively.

With regard to the breach of contract claim, Judge Furman agreed with the biopharmaceutical company that it cannot be liable under the CVR agreement for failure to maintain the security register because the pertinent section is not listed under the agreement's survival clause, according to the order.

As to count five — which "requests a declaratory judgment that any condition precedent of the CVR agreement that would require a beneficial holder to obtain a proxy from the registered holder to act under the CVR agreement is excused" — the judge found that the claim hinges on its count three argument, the order states.

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

UMB Bank is represented by David A. Crichlow and Julia M. Winters of Katten Muchin Rosenman LLP and Joshua S. Margolin, Korey Boehm, Maria Ginzburg, Meredith Nelson, Sean Baldwin and Philippe Z. Selendy of Selendy Gay PLLC.

Bristol-Myers Squibb is represented by John J. Clarke Jr. and Jessica Masella of DLA Piper.

The case is UMB Bank NA v. Bristol-Myers Squibb Co. et al., case number 1:24-cv-08668, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Hailey Konnath and Craig Clough. Editing by Michael Watanabe.



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Chancery OKs \$9.4M Deal To End Sears Take-Private Suit

By **Jeff Montgomery**

Law360 (December 1, 2025, 7:55 PM EST) -- Terming it a settlement that is "easy to approve," a Delaware vice chancellor on Monday OK'd a \$9.37 million deal to end a suit contesting investor payouts after a take-private deal for Sears Hometown and Outlet stores in 2019.

The decision was the latest in a long-running battle over Sears Hometown's 2019 merger with controller Eddie Lampert's Transform Holdco. Earlier litigation drove the initial payout, after reargument on a post-trial ruling in 2024, moving the terms up from \$2.25 per share to \$3.21 and, in July 2024, to \$4.06.

As proposed, the terms would end litigation over Lampert's and ESL Investments' post-bankruptcy buyout of Sears Hometown; said litigation alleged that Lampert used his control to push through an unfairly low deal

The eventual \$9,373,500 deal approved Monday, when combined with an earlier \$3.1 million settlement, sets the total recovery from litigation at \$12.4 million.

Expenses will take about \$524,000, with another \$2,924,293 approved for attorney fees.

"We think it is a fair result from whatever perspective," said Ned Weinberger of Labaton Keller Sucharow LLL, counsel for the stockholders said to have been damaged by Lampert's use of his control to push through an unfairly low deal. Minority stockholders had earlier argued that they lost \$70.2 million in an unfair, Lampert-orchestrated cashout.

Some \$18.3 million had been proposed for stockholders in January 2024 after a three-day trial, which produced a first-of-its-kind ruling that found that controllers of a company can owe duties of good faith and care to a company and minority stockholders.

That number fell to \$8.7 million after the court reported that it had recalculated to account for payables, liabilities and other adjustments. A \$25,000 incentive fee also was set aside from the total for two stockholders who served as class representatives.

"Real world cases like this entire fairness case are risky even when you do win," Weinberger told Vice Chancellor J. Travis Laster.

The vice chancellor observed that, in light of an article published Nov. 25 in the Harvard Law School Forum on Corporate Governance, "You guys are skating and sitting pretty, once past the motion to dismiss. Why, on a portfolio-wise basis, don't they have a point?"

The article, based on reviews of more than 2,400 cases between 2017 and 2022 comparing Delaware Chancery and federal securities actions, found a "Delaware premium." Delaware awards significantly higher fees — especially higher multipliers — than comparable federal cases, even though the underlying litigation risk looks quite similar."

Professors Stephen J. Choi of New York University, Jessica M. Erickson of the University of Richmond and A.C. Pritchard of the University of Michigan noted that "Delaware may indeed be different — but the beneficiaries of that difference are often the lawyers, not the stockholders the system is meant to protect."

The paper suggested reforms to the fee award process "that could make Delaware's fee-award process more consistent and better align plaintiffs' lawyers' incentives with shareholder interests."

Weinberger told the vice chancellor that the study did not look at comparable risk tolerance among investors or ask "what sort of return would you want on risk capital if you were investing in a case like this."

In addition, Weinberger told the vice chancellor, "It's not until we get in discovery do we understand the full risk in these cases." He added that it's "not uncommon where we have a stubbornly litigious defendant who believes he did nothing wrong, with a story to tell and happy to tell that story at trial but with no insurance."

The investors are represented by Ned Weinberger, Mark Richardson, Michael C. Wagner, Jiahui "Rose" Wang and John Vielandi of Labaton Keller Sucharow LLP, Peter B. Andrews, Craig J. Springer and David M. Sborz of Andrews & Springer LLC and Samuel L. Closic and Seth T. Ford of Prickett Jones & Elliott PA.

The executive committee for the investors is represented by Donald J. Enright and Elizabeth K. Tripodi of Levi & Korsinsky LLP.

Edward S. Lampert, ESL Investments Inc., ESL Partners LP, RBS Partners LP, Transform Holdco LLC and Hometown Midco LLC are represented by Michael A. Pittenger, Matthew E. Fischer, Jacqueline A. Rogers, Nicholas D. Mozal and Charles P. Wood of Potter Anderson & Corroon LLP.

The case is In re: Sears Hometown and Outlet Stores Inc. Stockholder Litigation, case number 2019-0798, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.

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Apple iPhone Buyers Push To Appeal Class Decertification

By **Matthew Perlman**

Law360 (December 1, 2025, 7:33 PM EST) -- Consumers told the Ninth Circuit they need to appeal a district court ruling that decertified a class of iPhone buyers expected to reach 200 million members in an antitrust case over Apple's App Store policies because the ruling was a "death knell" for the case.

The consumers filed a **proposed reply brief** Friday in support of their **petition appealing** the decertification ruling. The consumers said the lower court's "erroneous" order has left the named plaintiffs with just \$268 in potential damages, instead of the more than \$20 billion sought by the class.

"Apple's suggestion the parties should be forced to spend millions of dollars to try claims worth a few hundred — and appeal certification thereafter — is not realistic," the consumers said. "It would grossly misuse judicial resources to undertake such a trial solely to generate a final judgment where, as here, the decertification arose from reversible legal error."

The consumers said the lower court initially accepted an expert's model that calculated overcharges for every App Store transaction, grouped by Apple ID, as a basis for showing that nearly all class members suffered damages from the App Store policies.

But the court then imposed an additional requirement when reviewing the **decertification motion** and called for the class to identify every member's individual damages before trial. When Apple's data prevented a second expert from performing this additional step, the consumers said the lower court abruptly decertified the class.

"As in any case where, before trial, the identity of purchasers may not be clear from the defendant's records, matching transactions to purchasers is a matter for post-trial administration," the consumers argued.

The case traces back to 2011, accusing Apple of **violating antitrust law** by monopolizing the distribution of apps on its devices through policies requiring the use of the App Store and its in-app payment system where the tech giant collects commissions of up to 30%.

The allegations are similar to those being brought by video game developer Epic Games against both **Apple** and **Google**.

The consumer case previously took a trip all the way to the U.S. Supreme Court, which held in 2019 that iPhone users have **standing to sue** under federal antitrust law that permits damages claims only for customers who purchase directly from the alleged lawbreaker.

U.S. District Judge Yvonne Gonzalez Rogers certified a **nationwide class** last year for individuals who have spent \$10 or more on iOS applications or in-app purchases since 2008. The Ninth Circuit later rejected Apple's bid for an interlocutory appeal of the class certification.

But in October, the judge granted Apple's motion for decertification, noting that when she certified the class, she had warned the consumers about finding a reasonable way to determine whether and to what extent consumers were harmed.

She also said she had been assured the consumers' experts could match Apple ID accounts with actual consumers to prove consumer harm, which turned out not to be the case.

In their petition for review, the consumers said all that matters for class certification is calculating the overcharge on every App Store transaction on a classwide basis, and they argued it's not necessary to match the transactions to individual class members until after trial.

Apple **responded** that Judge Gonzalez Rogers gave the consumers "every chance" to establish a way to show injury through common evidence across the class but said they were consistently unable to do so.

Representatives for Apple and the consumers did not immediately respond to requests for comment Monday.

The consumer class is represented by Betsy C. Manifold, Rachele R. Byrd, Mark C. Rifkin, Matthew M. Guiney and Thomas H. Burt of Wolf Haldenstein Adler Freeman & Herz LLP, and David C. Frederick, Aaron M. Panner, Alex P. Treiger, Caroline A. Schechinger, Kyle M. Wood and Kelley C. Schiffman of Kellogg Hansen Todd Figel & Frederick PLLC.

Apple is represented by Cynthia E. Richman, Theodore J. Boutrous Jr., Daniel G. Swanson, Blaine H. Evanson, Bradley J. Hamburger, Caeli A. Higney, Julian W. Kleinbrodt, Matt Aidan Getz, Eli M. Lazarus and Harry R.S. Phillips of Gibson Dunn & Crutcher LLP.

The case is Pepper et al. v. Apple Inc., case number 25-7122, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Hailey Konnath, Bryan Koenig, Bonnie Eslinger, Dorothy Atkins and Lauren Berg. Editing by Lakshna Mehta.

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Meta Can't Block 'Disgruntled' Researcher's Depo Responses

By **Bonnie Eslinger**

Law360 (December 1, 2025, 11:17 PM EST) -- A California federal judge overseeing discovery in litigation against social media giants over their impact on youth mental health rejected Meta's bid Monday to block a "disgruntled" former researcher from sharing information it deems attorney-client privileged in an upcoming deposition.

U.S. Magistrate Judge Peter H. Kang issued an oral ruling from the bench during a hearing in San Francisco over Meta Platforms Inc.'s request for a protective order in connection with the upcoming deposition of former meta researcher Jason Sattizahn, who testified in September before a U.S. Senate Judiciary subcommittee hearing titled "Hidden Harms: Examining Whistleblower Allegations that Meta Buried Child Safety Research."

Meta lawyer Timothy Hester of Covington & Burling LLP told the court it needed the order to protect its attorney-client privilege. He told the court Meta envisioned a situation in which Sattizahn ignores an instruction not to disclose a privileged communication.

"We have no assurance that Dr. Sattizahn will respect that instruction," Hester told the court. "He's a disgruntled former employee. He's already disclosed privileged communications in testimony to Congress."

Further, Sattizahn's lawyer told Meta that Sattizahn intends to testify consistent with what he told Congress, Hester said.

Meta's lawyer said he also expects Sattizahn to "volunteer" privileged legal advice during the deposition.

"These are foreseeable scenarios that we submit warrant a protective order," Hester told the court.

After all, Sattizahn already disclosed to Congress information about what Meta's counsel told him when he was an employee, Hester said.

Those disclosures related to "advice he received about research he was conducting" for the company, the Meta lawyer told the court.

Meta asked the court for an order requiring Sattizahn to follow instructions from Meta's counsel when he's asked not to answer questions deemed protected by attorney-client privilege and not volunteer testimony about the legal advice he received while he was a Meta employee. The protective order should also say that plaintiffs can't ask about the privileged communications disclosed to Congress or other privileged advice Sattizahn received as a Meta employee.

A lawyer for personal injury plaintiffs and school district plaintiffs in the litigation, Lexi Hazam of Lieff Cabraser Heimann & Bernstein LLP, told Judge Kang that a presumptive court order is not appropriate.

"Mr. Sattizahn cannot respect and does not have to respect a privilege that doesn't apply or exist," Hazam said. "Meta presumes that it does."

Hazam told Judge Kang that Meta is likely seeking the order because a District of Columbia Superior

Court judge recently held that certain documents are **not shielded** by attorney-client privilege due to the so-called crime-fraud exception.

If Sattizahn testifies that Meta's legal department advised that the company's research on kid safety or mental health on its platform "should be altered, suppressed or erased due to a risk of liability, that evidence of spoliation overcomes any privilege," Hazam told the court.

The lawyer for the plaintiffs also told Judge Kang that a New Mexico court in the MDL has already ordered that a transcript of Sattizahn's deposition remain sealed until that court rules on any objections based on privilege brought by Meta after the deposition.

This avoids the need for an overly broad order from Judge Kang that could suppress "highly relevant testimony, which goes to the core of plaintiff's case," Hazam said.

Sattizahn's lawyer, Michael Ward of Baker Botts LLP, told Judge Kang that his client would respect "appropriate" assertions of attorney-client privilege. He also said that Sattizahn plans to testify about his communications with Meta's in-house counsel when he was a researcher for the company.

"He's been directed by the New Mexico court to do so," Ward said.

"He is going to testify that he was directed to change research protocols by lawyers to avoid collecting evidence of harms," Ward said. "The company did not want to possess any evidence that these harms were occurring."

Meta's lawyer told Judge Kang that the New Mexico procedure didn't do enough to prevent the disclosure of confidential communications to a wide variety of jurisdictions.

The judge said later in the hearing that he wouldn't grant the protective order Meta sought because of the New Mexico court order governing the deposition.

"I'm hesitant to create a separate procedure when the New Mexico has already set one up," Judge Kang said, later adding, "I defer to what the New Mexico judge has done."

The MDL involves personal injury plaintiffs, schools and attorneys general who claim that Meta Platforms Inc., YouTube LLC and other social media giants design their multibillion-dollar revenue-generating social media platforms to be addictive, to the detriment of minors' health and livelihoods.

In a filing to the court last month, the school districts told the court that Meta **clamped down** on internal research showing that the mental health of young users suffered from compulsive use of its social media platforms, even as staff likened themselves to drug pushers.

The personal injury plaintiffs and school district plaintiffs were represented by Lexi J. Hazam of Lief Cabraser Heimann & Bernstein LLP and Previn Warren of Motley Rice LLC.

Meta is represented by Timothy C. Hester, Ashley M. Simonsen and Paul W. Schmidt of Covington & Burling LLP and James P. Rouhandeh of Davis Polk & Wardwell LLP.

Jason Sattizahn is represented by Michael W. Ward of Baker Botts LLP.

The MDL is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California.

--Additional reporting by Emily Field and Dorothy Atkins. Editing by Emily Kokoll.



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Nvidia Faces More Allegations Of YouTube AI Scraping

By **Elliot Weld**

Law360 (December 1, 2025, 4:21 PM EST) -- The creators of YouTube channel h3h3 Productions and two golf content creators have brought a proposed class action against artificial intelligence and computer chip giant Nvidia, claiming it had improperly scraped their content to train the AI model Cosmos.

Ted Entertainment Inc., a company held by h3h3 creators Ethan and Hila Klein, sued Nvidia in California federal court on Nov. 26, along with fellow YouTuber Matt Fisher, who runs the channel Mr.ShortGame Golf, and Golfholics Inc. They alleged violations of the anti-circumvention provision of the Digital Millennium Copyright Act.

The YouTubers said Nvidia bypassed YouTube's internal measures meant to protect its video files to scrape videos from the platform. The website's terms of service expressly prohibit scraping or unauthorized mass downloading of video content, according to the suit.

The website's terms say video creators give YouTube license for certain uses, but the license says it "does not grant any rights or permissions for a user to make use" of the video content independent of YouTube, the suit said.

"Defendant used a video-downloading program combined with virtual machines that rotated IP addresses to avoid detection and blocking — enabling the mass extraction of, at times, eighty years of video content per day," the suit said.

The suit said most YouTube videos do not have registered copyrights, but that does not render them totally unprotected as intellectual property since their creators "invest time, skill and resources into producing their works."

YouTube does offer downloading options to its premium users, but that only allows for offline viewing of videos, not access to the video files themselves, according to the suit.

Cosmos is an AI model at the center of several other services offered by Nvidia, according to the suit, and the company therefore needed "significant amounts of data" to improve and commercialize it. Nvidia is trying to give Cosmos the ability to turn language prompts into audiovisual content and directed employees to find datasets to enter into Cosmos, the suit reads.

According to the YouTubers, Nvidia's employees have a Slack channel called #cosmos-dataset-creation. A screenshot of the Slack channel included in the suit shows an Nvidia researcher saying there's an "initiative to aggregate a huge curated video dataset for the purposes of generative modeling."

The company obtained data from academic, research and other video collections created by universities, companies and independent researchers to meet its goals, the YouTubers said.

According to the suit, Nvidia said in May 2024 that it had downloaded 38.5 million video URLs.

The suit adds to a stack of cases filed in federal courts alleging widespread copyright infringement by companies seeking to train artificial intelligence. Nvidia **was sued** by YouTuber David Millette in August 2024 over allegations that his videos were scraped to train Cosmos. Millette voluntarily dismissed the case in March.

A representative for Nvidia declined to comment.

"This lawsuit is a critical step in protecting the rights and livelihoods of content creators," said Tom Kherkher, who is representing the YouTubers, in a statement. "Nvidia is one of the world's most valuable companies, yet it allegedly built its foundational AI model on the back of YouTube content it scraped without permission from the underlying creators and violation of YouTube's Terms of Service."

The YouTubers are represented by Rom Bar-Nissim of Heah Bar-Nissim LLP and Jarrett Ellzey, Tom Kherkher, Leigh Montgomery and Natischa Volpe of Ellzey Kherkher Sanford Montgomery LLP.

Counsel information was not immediately available for Nvidia.

The case is Ted Entertainment Inc. et al. v. Nvidia Corp., case number 3:25-cv-10287, in the U.S. District Court for the Northern District of California.

--Editing by Alex Hubbard.

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What MDL Judges Can Get Done With A New Civil Rule

By **Cara Salvatore**

Law360 (December 1, 2025, 4:35 PM EST) -- As the first federal procedure rule geared toward multidistrict litigation goes into effect, judges will have a new buffet of best practices to guide them, but little in the way of hand-tying mandates.

Federal Rule of Civil Procedure 16.1, the product of a nearly eight-year rulemaking process, took effect Monday. An accompanying note by the MDL subcommittee of the Advisory Committee on Civil Rules stresses the importance of maintaining "flexibility," notes that certain tools "should be of great value," and says that for at least one component of the rule, "There is no single method that is best."

The upshot: Almost none of the MDL management ideas laid out are mandatory.

"Language such as 'may' and 'should' instead of 'must' and 'shall'" dominates the new rule throughout, said Shauna Itri of Seeger Weiss LLP, who has extensive experience in mass actions and class actions.

"Previously, the courts were relying on some ad hoc rules," Itri said. "It depends on the case." But what the new civil procedure language really envisions is that "courts are going to be taking a more active role in case management."

The new tools relate to case management orders, picking and structuring leadership counsel, and sussing out early what claims and defenses will be wielded and whether they're valid.

What mass litigators have ended up with is "more of a recognition and an endorsement of existing case management tools that had previously developed as sort of an MDL-specific quasi-recognized shadow procedure," said Gary Feldon of Hollingsworth LLP.

Feldon highlighted, for example, the long-spreading use of plaintiff fact sheets. Though not called for in standard litigation, the standardized, detailed summaries they provide can help defense lawyers start to inventory what they're grappling with and start comparing apples to apples within a case.

The rule also formalizes the permissibility of so-called Lone Pine orders, with which judges can mandate that plaintiffs put hard evidence on the table very early in the litigation process, making such orders beloved to defense lawyers. According to a Stanford University database spearheaded by MDL expert Nora Freeman Engstrom, there have been more than 100 Lone Pine orders used in state and federal court since 1986, when the idea first appeared in a New Jersey case called *Lore v. Lone Pine Corp.*

Now, judges have a written endorsement of their ability to ask plaintiffs for more granular information and documentation up front than is required in a non-MDL case.

Itri and her Seeger Weiss colleague Ben Barnett suggested that if the Rule 16.1 tools mean judges will be managing cases more closely and actively, it's a good thing.

"Cases generally go smoother when a judge is having regular [case management conferences], is actively involved in the issues, [and] holds both parties' feet to the fire in terms of deadlines," Itri said.

Barnett said it's an "unfair criticism, but one of the criticisms that existed for some time is that MDLs are quote, unquote 'black holes' where cases disappear" — though he noted that has "not been my

experience" with the judges he's practiced before.

D. Theodore Rave, a law professor at the University of Texas at Austin who studies MDLs, said the new rule is more than a loose collection of suggestions: It's "a helpful checklist for judges" that preserves flexibility, one of the best things the MDL framework has to offer.

"Different things come up in these cases, and so it's helpful to not have a locked-in set of steps that you have to do," Rave said. As one major example, in a prescription drug injury MDL, it may be appropriate to steam ahead, figuring out whether there is general causation, or whether federal law preempts claims. In another type of MDL, it may be more useful to focus on whether plaintiffs are able to prove individual causation, and drive forward on the fact sheet process or "some other screening mechanism up front."

"One of the advantages of MDL is that the judge can decide which of those issues to prioritize," Rave said. "It's tough to know sort of in advance or across the board" what type of process will be most helpful.

Feldon said defense lawyers are looking to be able to put a dollar value on each claim so that they can move toward dismissals, settlements, or whatever form of resolution might be called for.

He cited the litigation against 3M over hearing damage that service members claimed was a byproduct of less-than-effective combat earplugs.

"You need a process to efficiently figure out what those cases are worth," Feldon said. "In the 3M litigation, you are not going to have 300,000-plus trials, so the MDL process is really geared towards valuing the entire collection" of claims.

That's especially true when there's no "exposure" aspect, such as exposure to toxic water, air or mineral material, he said. In the 3M litigation, it's "hard to document whether somebody has ringing in their ears or has hearing loss, and trying to show what caused it is nearly impossible," Feldon said. That means claims without merit, defense lawyers believe, "can kind of free ride along on all of the claims that actually have preliminary factual merit."

Feldon said it's his personal belief that the work on the rule prompted some judges to institute changes, even prior to the Dec. 1 official effective date.

In the Aqueous Film-Forming Foam MDL, concerning "forever chemicals" in firefighting foam alleged to have made their way into local water utility systems, there was no case management order for the MDL's first seven years, Feldon said. But this past August, after Rule 16.1 turned into a done deal, the judge entered a CMO. Feldon said he personally doesn't believe it's a coincidence that after the emergence of a rule discussing deadlines and proof of diagnosis and exposure, the judge is now making explicit how those things should be addressed.

Judges are always sharing information among themselves, according to Barnett of Seeger Weiss, and the new rule will likely add a new dimension to their discussions about what can be useful.

"They talk to each other all the time. There are conferences that are held; there are judges' schools that they attend," Barnett said. "I think having a judge who's active and engaged makes a huge difference. And, frankly, setting deadlines has an incredibly disciplining effect on both sides."

Any MDL adds a massive amount of work to a judge's docket, Barnett also noted, and the Judicial Panel on Multidistrict Litigation doesn't assign new MDLs to just anyone.

"Oftentimes, once a district judge shows that she's capable of managing an MDL, they're selected to do other MDLs as well," Barnett said. "I don't know if it's an honor or, to some degree, a little bit of a punishment."

--Editing by Robert Rudinger.