

Ethan Klingsberg to Discuss "Delaware Corporate Law: Is there a problem and, if so, how may it be addressed?"

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Ethan Klingsberg to Discuss "Delaware Corporate Law: Is there a problem and, if so, how may it be addressed?"

On Thursday, December 4, 2025, Freshfields Partner Ethan Klingsberg will speak at the NYU Institute for Corporate Governance and Finance during NYU Law School's *The Future of Delaware Corporate Lawmaking* Fall Roundtable.

Ethan will address issues related to Delaware corporate law alongside his co-panelists: Randy Baron (Robbins Geller), Dorothy Lund (Columbia Law School), Ted Mervis (Wachtell Lipton), Jeroen Van Kwawegen (Bernstein Litowitz) and Emiliano Catan (NYU Law School).

Freshfields speaker

[New York](#)

[Ethan Klingsberg](#) Partner, Co-Head of US Corporate and M&A

<https://bsky.app/profile/annmlipton.bsky.social/post/3m73ntt6xkk2c>



Ann M. Lipton @annmlipton.bsky.social · 4h

I mean, I'm certainly sympathetic to ISS's position here –
[@activistinvestor.bsky.social](#) just posted a pod this morning on this topic!

But, umm, to the extent ISS is appealing to public opinion – I don't think "protect shareholders" has the emotional punch it thinks it does.

The reality is–

 **Ann M. Lipton** @annmlipton.bsky.social · 5h

oh my god:

www.protectshareholders.com

(h/t Meredith Ervine)

Home | Protect the Voice of Shareholders

 www.protectshareholders.com



Ann M. Lipton

@annmlipton.bsky.social

ISS can't defend itself on the actual grounds worthy of defense, which is – "we are a counterweight to entrenched oligarchical power"

Dec 3, 2025, 6:23 AM

1 quote 5 likes





Dael Norwood @dael.bsky.social · 4h

Agreed this is going to be a losing argument for them. Being anti-oligarchy is the worthier cause, too - but the first forum the ISS is going to lose big and consequentially on all this, the DE legislature, isn't even rhetorically friendly to anti-oligarchy arguments.



1



1



Dael Norwood @dael.bsky.social · 4h

And locally the defense bar and their MAGA billionaire controller clients have already been v. active for months, adding academic legitimacy to their cause and papering the ground with Bloomberg columns, alongside the usual buying of ex-chancellors and legislators. They've learned & grown...



1



Dael Norwood @dael.bsky.social · 4h

I think this fight is going to be shorter and more conclusive than either HB313 or SB21, and then the SEC will make sure gas gets poured on the fraud inferno that'll result...



Investors Sue DeFi Technologies After Stock Plunge Tied to Disclosures

"The SEC is going to be increasingly focusing on market structure risks, which is going to step up these types of suits," said Sahal A. Assar, the blockchain and digital asset practice group leader at Buchanan Ingersoll & Rooney, who is not involved in the case.

December 02, 2025 at 05:56 PM By  **Michael A. Mora**



U.S. Courthouse, Eastern District of New York in Brooklyn, New York. Photo: Ajay Suresh/Wikicommons

DeFi Technologies is facing a shareholder lawsuit in Brooklyn federal court alleging the company and its top executives misled investors about the execution of its arbitrage strategy, the level of competition it faced and the risks involved, misstatements that plaintiffs say helped drive the stock down 40%.

The case, brought by Linkedto Partners LLC individually and on behalf of similarly situated investors, targets DeFi Technologies, a tech and digital asset treasury firm that develops Canadian exchange-traded products tracking single decentralized-finance protocols or baskets of DeFi assets. The company also provides asset management services.

Jason Spitalnick, a partner at [Snell & Wilmer](#) and ex-counsel in the enforcement division of the U.S. Securities and Exchange Commission, said it is inevitable that more of these digital asset treasury companies will operate.

“More of these companies are looking to public markets to raise capital, and once they do, they are going to be subject to all of these strictures to which public companies are subject,” said Spitalnick, who is not involved in the case. “And the plaintiff’s bar will be out there rigorously scrutinizing their statements, and—whenever there is a stock drop—making a concerted effort to connect these statements to investor harm.”

Jeremy A. Lieberman, the managing partner in New York at [Pomerantz](#) who represents Linkedto Partners, did not respond to a request for comment.

‘Market Structure Risks’

DeFi Technologies, formerly known as Valour Inc., was incorporated in 1986 and adopted its current name in July 2023. Its five business segments include DeFi Alpha, a specialized arbitrage trading desk that operates across decentralized and centralized markets. The company says DeFi Alpha is designed to “ensure minimal exposure to market and protocol risks, effectively mitigating revenue volatility.”

The class period is from May 12, 2025, to Nov. 14, 2025. At the outset, DeFi Technologies reported its financial results for the first quarter of 2025, highlighting the growth of DeFi Alpha and projected full-year revenue of \$201.07 million—a “meaningful increase” from its 2024 results and, the company said, “a clear signal of [its] accelerating growth trajectory.”

In August, DeFi Technologies reported its second-quarter results, once again touting DeFi Alpha and raising its 2025 revenue guidance to \$218.6 million, according to the complaint. The following month, it announced pricing for an oversubscribed \$100 million direct offering.

However, the plaintiff alleged that, throughout the class period, DeFi Technologies and its senior executives made materially false and misleading statements about the company’s business, operations and outlook. According to the complaint, the firm was facing delays in executing its arbitrage strategy and understated the competitive pressures from other digital asset treasury companies, factors that were undermining its trading performance.

The plaintiffs claimed that DeFi Technologies downplayed the severity of these issues and the extent to which they would weigh on its financial results, leading to public statements that investors argued were materially misleading.

The plaintiffs say these revelations culminated in a turbulent November. On Nov. 6, DeFi Technologies disclosed that digital asset treasuries had absorbed or delayed a significant share of arbitrage opportunities over the last year, prompting a 7.4% decline in the stock. On Nov. 14, the firm issued another update, reporting that its third-quarter revenue fell nearly 20% and slashing its 2025 revenue forecast from \$218.6 million to \$116.6 million. The company also announced the departure of its CEO. Shares fell an additional 27.6% over two days.

Now, the case is pending before U.S. District Judge Nina R. Morrison of the Eastern District of New York. The plaintiffs alleged violations of Sec. 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5.

Sahal A. Assar, the blockchain and digital asset practice group leader at [Buchanan Ingersoll & Rooney](#) in Washington, D.C., said that this case will signal that, in 2026, companies “must absolutely, clearly, explicitly warn investors about alpha-decay or competition-driven squeeze in trading margins, and they’re going to have to spell out risk disclosures.”

“Not just merely mentioning market volatility, because that is so open-ended and insufficient in the grand scheme of things,” said Assar, who is not involved in the matter. “And also how they should be prepared to respond to queries about or explain how increased competition will impact specific strategies, whatever the strategies may be. The SEC is going to be increasingly focusing on market structure risks, which is going to step up these types of suits.”

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Securities

Tesla, Elon Musk End Investor Autopilot Accusations on Appeal

December 2, 2025, 11:53 AM PST

Tesla Inc. and its billionaire CEO Elon Musk correctly escaped investor allegations over marketing of its autonomous driving features, an appellate court said Tuesday.

Musk didn't say Tesla's autonomous driving technology could drive safer than humans, and the electric-vehicle company represented it needed a "fully attentive driver," said US Court of Appeals for the Ninth Circuit judges in an unpublished memorandum. "Thus, fairly considered, Musk represented that a driver with the technology is safer than a driver without it."

Nor did the investors, Oakland County Voluntary Employees' Beneficiary Association and Oakland County Employees' Retirement System, adequately plead Musk's representations about the technology's "fully autonomous" abilities were false or misleading when made—or that the world's richest man "did not honestly believe reaching full autonomy was possible on his suggested timeline."

The lower court rightfully found the shareholders failed to allege the level of intent or recklessness for securities fraud, the panel said. Tesla repeatedly cautioned the autonomous driving technology might not advance as planned.

The investors didn't sufficiently connect Musk's hands-on management to awareness of information that would've rendered his statements misleading or false, the memorandum said, echoing Judge Araceli Martínez-Olguín's dismissal of the proposed class action in the US District Court for the Northern District of California last year.

Tesla's statements sent to California regulators didn't boost an adequate inference of intent or reckless disregard as they concerned a single feature of the technology in city streets, the memorandum said. "Tesla was also equivocal as to whether it could achieve full autonomy by the end of the year."

Other allegations of intent or recklessness fell short, including of Musk's financial motivation, partly because "the alternative explanation that he required liquidity to acquire Twitter reduces any inference" supporting investor claims.

Judges Sidney R. Thomas, Daniel Aaron Bress, and Salvador Mendoza Jr. were on the memorandum.

Tesla, Musk Shareholder Suits

The six-page opinion resolves one of many stockholder spats involving Musk, Tesla, or both.

Investors sued after Tesla's Robotaxi service launch in Austin, Texas. Following the long-awaited June debut, Bloomberg and other news outlets reported on alleged traffic violations from the launch catching the attention of the US National Highway Traffic Safety Administration. An investor originated that suit shortly after a jury said Tesla should cough up \$243 million over a 2019 Autopilot crash in Florida, finding the EV-maker 33% to blame for the deadly collision.

Tesla shareholders last month approved a trillion-dollar pay package for Musk, who's been caught in a lengthy court fight over a prior \$56 billion compensation deal.

And a federal judge Monday rejected a request by investors in X, formerly Twitter, to disqualify Musk's high-profile attorney as trial counsel in a suit over his takeover.

Labaton Keller Sucharow LLP is lead counsel for the investors in the Ninth Circuit. Quinn Emanuel Urquhart & Sullivan LLP represents Tesla and Musk. Neither of these law firms nor Tesla immediately responded to emails seeking comment.

The case is Oakland Cnty. Voluntary Emps' Beneficiary Ass'n v. Tesla Inc. , 9th Cir., No. 25-55, unpublished 12/2/25 .

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Quinn Emanuel's Alex Spiro Gets Green Light to Proceed as Lead Counsel to Elon Musk in Twitter Securities Litigation

U.S. District Judge Charles Breyer of the Northern District of California wrote that the court would not bar an attorney from a litigation role because they had previously worked with the client during the underlying transaction.

December 03, 2025 at 01:00 PM By  **Ellen Bardash**



Alex Spiro. Partner at Quinn Emanuel Urquhart & Sullivan. Photo: Ryland West/ALM

Quinn Emanuel Urquhart & Sullivan partner Alex Spiro may continue to represent Elon Musk in a Northern District of California securities class action, U.S. District Judge Charles R. Breyer [has ruled](#).

Shareholder plaintiffs moved in September to disqualify Spiro, who has worked frequently with Musk in recent years, claiming his being a key fact witness in the case would clash with his role as lead trial counsel.

Breyer on Monday wrote that barring an attorney who worked with a client during a transaction from later representing that client in litigation related to that transaction would go too far.

"If this becomes a categorical rule, parties with longstanding, trusted counsel would always be forced to switch lawyers just for litigation and in the anticipation of trial," he wrote.

The case, filed in October 2022, alleges Musk violated securities laws while acquiring stock in what was at the time Twitter Inc., artificially deflating the stock's value. In 2024, Breyer certified a class of plaintiffs that includes anyone who sold shares of Twitter stock between May 13, 2022, when Musk tweeted the first of what the plaintiffs claim were misrepresentations about Musk's deal with Twitter, and Oct. 4, 2022, the date Musk announced he planned to follow through with paying \$54.20 per share to wholly acquire the social media platform.

Breyer's order stated that while Spiro aided Musk throughout the Twitter acquisition and has knowledge related to the alleged misstatements that are the basis for the securities case, his representation of Musk isn't barred by the advocate-witness rule in the California Rules of Professional Conduct.

Breyer wrote that while the motion is denied for not meeting the heightened standard under the advocate-witness rule, that doesn't necessarily mean the plaintiff's points are invalid, and the court can take steps to limit the risk of prejudice.

"The court has the ability 'to control counsel's questioning and argument' to ensure Spiro conducts his dual role appropriately," Breyer wrote. "The court can also provide limiting instructions to the jury, as needed. As for the parties, Musk has suggested that other trial counsel can cross-examine witnesses that plaintiffs believe have a high risk of conflict. Such negotiation and compromise are reasonable and expected by the court."

Spiro has been Musk's lead counsel in the case since December 2022, and the plaintiffs deposed him this August. In D.C. federal court, the SEC is separately pursuing a claim against Musk, alleging he failed to properly disclose the purchase of Twitter shares within the required time period. Spiro is Musk's lead trial counsel in that case, as well.

Spiro also represented Musk in the Delaware breach of contract litigation Twitter filed in the Court of Chancery in an effort to hold Musk to his agreement to buy the company. That case was dismissed when the parties agreed to close the deal at the originally agreed upon price.

Cotchett, Pitre & McCarthy and Bottini & Bottini are lead class counsel and did not immediately respond for comment on the ruling.

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\$3,000-An-Hour Lawyer Skirts The 'You Can't Be Your Own Client's Witness' Rule

A abovethelaw.com/2025/12/3000-an-hour-lawyer-skirts-the-you-cant-be-your-own-clients-witness-rule

Chris Williams

December 2, 2025

Alex Spiro (Photo by Marlena Sloss/Bloomberg
via Getty Images)

Funny thing about being a lawyer and testifying on your client's behalf — the zealous advocacy baked into your job makes people a little suspicious of whatever you say on the witness stand. Despite that, we may see Alex Spiro stepping up as Elon Musk's witness against the accusations that Musk manipulated Twitter's stock prices before he was forced to buy the company. [Reuters](#) has coverage:

Elon Musk has persuaded a judge that his longtime lawyer Alex Spiro can represent him in a shareholder lawsuit over the billionaire's 2022 Twitter acquisition even though he may be a trial witness in the case.

San Francisco-based U.S. District Judge Charles Breyer in a ruling on Monday rejected the plaintiffs' objections...Musk's lawyers called the effort to disqualify Spiro a "Hail Mary" before a January 2026 trial, saying the investors waited too long to object to Spiro's role.

Can Elon have a normal trial for *once*? If it isn't him making it okay for his lawyers to testify on his behalf, he's [got a judge with sizeable investments in Tesla](#) or is [trying to turn Texas into the new Delaware](#) if it means he gets better legal outcomes. The quirk in norms will probably be a wash at the end of the day — chances are the guy getting paid \$3,000 an hour will find a way to get whatever narrative he needs to on the witness stand without setting foot on it, but it goes to show the wackiness that can arise when plaintiffs don't object to lawyer-witnesses early on.

[Musk Wins Fight To Keep Lawyer Alex Spiro In Twitter Trial](#) [Reuters]

Chris Williams became a social media manager and assistant editor for Above the Law in June 2021. Prior to joining the staff, he moonlighted as a minor Memelord™ in the Facebook group Law School Memes for Edgy T14s . He endured Missouri long enough to graduate from Washington University in St. Louis School of Law. He is a former boatbuilder who is learning to swim, is

interested in critical race theory, philosophy, and humor, and has a love for cycling that occasionally annoys his peers. You can reach him by email at cwilliams@abovethelaw.com and by tweet at [@WritesForRent](https://twitter.com/WritesForRent).

Securities

Bernstein Litowitz Corporate Governance Head Goes His Own Way

December 3, 2025, 3:00 AM PST

A Manhattan lawyer who helped challenge Elon Musk's \$55.8 billion dollar Tesla pay package is leaving securities firm Bernstein Litowitz to launch a rival, taking at least four other partners with him.

Jeroen van Kwawegen, who served as the head of Bernstein Litowitz Berger & Grossmann's corporate governance practice, is launching a new firm: JVK Law. The firm will focus on corporate governance matters and represent institutional US and EU investors in high-stakes corporate disputes.

The latest changes in the regulatory space are weakening the guard rails that protect institutional investors, according to van Kwawegen.

"Our clients more than ever need counsel that understands this on a deep, fundamental level and is also willing to do something about it by, for example, if necessary taking cases to trial and having the track record to do that," van Kwawegen said in an interview.

JVK Law plans offices in New York, Delaware, and Los Angeles. The fledgling firm says it is still negotiating leases in those locations.

Ex-Bernstein partner Andrew Blumberg will run JVK's Delaware outpost. Other Bernstein recruits, including Tom James, Eric Reidel, Edward Timlin, Dan Meyer, Ben Potts, and Lauren Cruz, are joining JVK as partners. Another dozen or so other attorneys and paralegals from Bernstein Litowitz are also joining JVK Law across its three locations.

The firm will use contingency-fee pricing and van Kwawegen says he is open to utilizing litigation financing.

He says he wishes his former firm all the best going forward.

"Ultimately what really happened is we just had a fundamentally different vision about what the law firm should look like, what the culture is that you should have and, and whose interests you should be serving first, that includes, for example, being ready to take cases to trial," van Kwawegen.

Van Kwawegen was part of the Bernstein team that challenged Musk's executive pay package at Tesla. Investors ultimately approved a \$1 trillion compensation package for Musk last month. He was also part of the trial team that secured a \$1 billion settlement from Wells Fargo to resolve a federal securities class action lawsuit.

Van Kwawegen sees the firm building out a securities litigation practice and adding more attorneys to the firm over time.

"I could envision us doubling in size or so in the next six months to a year," he said.

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Bernstein Litowitz lawyers leave to launch new shareholder firm

 [reuters.com/legal/government/bernstein-litowitz-lawyers-leave-launch-new-shareholder-firm-2025-12-03](https://www.reuters.com/legal/government/bernstein-litowitz-lawyers-leave-launch-new-shareholder-firm-2025-12-03)

David Thomas

December 3, 2025

A man walks through the street carrying a briefcase in Manhattan, New York City, U.S., August 19, 2020. REUTERS/Andrew Kelly [Purchase Licensing Rights](#)  , [opens new tab](#)

Dec 3 (Reuters) - A dozen lawyers will be leaving Bernstein Litowitz Berger & Grossmann to launch their own investor law firm, led by one of the attorneys who successfully challenged Elon Musk's \$56 billion Tesla [\(TSLA.O\)](#)  , [opens new tab](#) pay package last year.

Jeroen van Kwawegen, who led the corporate governance department at Bernstein Litowitz, said most of the department is joining his new firm, JVK Law. The firm will start out with offices in Los Angeles, New York and Wilmington, Delaware, van Kwawegen said.

He said his institutional investor clients, which include large asset managers, pension funds and hedge funds, need additional protection from the private bar with the Securities and Exchange Commission and other U.S. financial regulators in "retreat."

Reuters reported in March that hundreds of people in the SEC [agreed to take resignation offers](#) amid efforts by President Donald Trump's administration to remake the U.S. government.

New York-founded Bernstein Litowitz is one of the largest U.S. shareholder law firms, with about 100 lawyers and staff. The firm said in a statement that it wished the departing lawyers well and said it had enjoyed "a stellar year" of settlements and investor recoveries, with more in the pipeline.

Among his cases at the firm, van Kwawegen helped secure a [\\$1 billion settlement](#) from Wells Fargo & Co [\(WFC.N\)](#)  , [opens new tab](#) in 2023, resolving claims that it defrauded shareholders about its progress in recovering from a series of scandals over its treatment of customers.

A Delaware judge last year sided with van Kwawegen's client in the Tesla case and [voided](#) Musk's record-breaking \$56 billion package, calling it "an unfathomable sum" that was unfair to shareholders. Musk has [appealed that decision](#).

Tesla shareholders [approved a \\$1 trillion compensation plan](#) for Musk in November, marking largest corporate pay package in history.

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

David Thomas reports on the business of law, including law firm strategy, hiring, mergers and litigation. He is based out of Chicago. He can be reached at d.thomas@thomsonreuters.com and on Twitter @DaveThomas5150.

Judge refers law firm Hagens Berman to DOJ over conduct in drug cases

 [reuters.com/legal/litigation/judge-refers-law-firm-hagens-berman-doj-over-conduct-drug-cases-2025-12-02](https://www.reuters.com/legal/litigation/judge-refers-law-firm-hagens-berman-doj-over-conduct-drug-cases-2025-12-02)

Mike Scarcella, David Thomas

December 2, 2025

The Department of Justice (DOJ) building in Washington, D.C., U.S., November 28, 2025. REUTERS/Nathan Howard/File Photo [Purchase Licensing Rights, opens new tab](#)

WASHINGTON, Dec 2 (Reuters) - A federal judge on Tuesday referred prominent plaintiffs' law firm Hagens Berman and its managing partner to the U.S. Justice Department for investigation, citing findings of "misconduct bordering on the criminal" in cases it brought over alleged injuries from the drug thalidomide.

U.S. District Judge Paul Diamond in Philadelphia said in [his order, opens new tab](#) that a court-appointed official uncovered a decade of alleged wrongdoing in the thalidomide litigation by the firm, managing partner Steve Berman and former partner Tyler Weaver. Diamond's ruling also referred Weaver, now at another firm, to the Justice Department.

Diamond said the lawyers were found to have conducted "grossly inadequate" investigations into the strength of product liability claims against drugmakers Sanofi ([SASY.PA, opens new tab](#)), GSK ([GSK.L, opens new tab](#)) and Grunenthal, and that the attorneys made "false and baseless allegations" to counter arguments that many of their claims were time-barred.

When confronted, Diamond wrote, the firm allegedly sought to abandon its clients to avoid being sanctioned by the court.

Berman and his firm have denied any wrongdoing. In a statement to Reuters on Tuesday, outside counsel retained by the firm said "there is no basis for sanctions, much less a criminal referral (which was not suggested or recommended by the discovery master)."

An attorney for Weaver did not immediately respond to requests for comment, nor did spokespersons for Sanofi, GSK and Grunenthal.

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

The drug companies asked the court to dismiss the cases and sought sanctions against Hagens Berman, arguing that the firm should have known its claims were filed too late. In 2015, Diamond [appointed a special master](#), William Hangley, to interview the firm's clients.

Hangley's October 2023 report recommended sanctions against Hagens Berman over its prosecution of the cases, finding that it failed to vet its claims, obstructed discovery, and that Weaver had doctored a medical expert's report to pressure a client into dropping her claim.

Diamond upheld Hangley's report in August, but he has not yet issued a ruling on sanctions against the firm. The judge has also not yet ruled on a request by Hagens Berman that he recuse himself from weighing issues related to Hangley's report. The firm has alleged there was an "appearance of bias" stemming from extensive communications between the judge and the special master.

Hagens Berman's outside counsel said on Tuesday that it was "highly confounded" by Diamond's decision to refer it to the Justice Department "in light of the procedural posture of this longstanding civil case." The firm is represented by lawyers at Saxton & Stump; Pietragallo Gordon Alfano Bosick & Raspanti; and Coppersmith Brockelman.

Berman [told Reuters](#) in October that his firm has "thoroughly explained why we had a good faith basis" for the litigation. The fact that the case has not succeeded is not a ground for sanctions, he said, adding that personal injury cases "are lost in every court on a finding of a lack of causation or an exclusion of an expert." The case is Glenda Johnson et al v. SmithKline Beecham Corp et al, U.S. District Court for the Eastern District of Pennsylvania, No. 2:11-cv-05782-PD.

Read more:

[Law firm Hagens Berman battles sanctions in Apple, thalidomide cases](#)

Reporting by Mike Scarcella

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[David Thomas](#)

Thomson Reuters

David Thomas reports on the business of law, including law firm strategy, hiring, mergers and litigation. He is based out of Chicago. He can be reached at d.thomas@thomsonreuters.com and on Twitter [@DaveThomas5150](#).

Heavyweight plaintiffs firm faces possible DOJ criminal probe | Pennsylvania Record

 [legalnewsline.com/pennsylvania-record/heavyweight-plaintiffs-firm-faces-possible-doj-criminal-probe/article_fd94173a-54ae-4b2c-b8ea-bab220132036.html](https://www.legalnewsline.com/pennsylvania-record/heavyweight-plaintiffs-firm-faces-possible-doj-criminal-probe/article_fd94173a-54ae-4b2c-b8ea-bab220132036.html)

John O'Brien, John O'Brien

December 3, 2025

Berman

<https://www.hbsslaw.com/>

PHILADELPHIA – A prominent law firm that brought baseless birth-defect lawsuits is now in the crosshairs of the U.S. Department of Justice, as a Philadelphia federal judge has found his court's findings "more than warrant investigation."

"A judge has a duty to notify the proper authorities if he felt a crime was being committed in his courtroom," Judge Paul Diamond wrote, citing a [1985 case](#). His Tuesday order affects Hagens Berman, a class action firm based in Seattle, and firm co-founder Steve Berman.

Hagens Berman has long been at the forefront of plaintiff litigation and was part of the massive tobacco settlement of the 1990s that resulted in billions of dollars in fees for private attorneys representing states. In recent years, [it has targeted Amazon](#) over its business practices but in September lost an antitrust case against Amazon and Apple after the plaintiff sought to withdraw, leading to those companies asking Hagens Berman to pay [\\$2 million in legal fees](#).

The punishment stemming from the Philadelphia case could be more severe if the DOJ agrees with a special master who found in 2023 the firm's conduct was "bordering on the criminal."

Judge Diamond on Aug. 5 told Hagens Berman to show cause why it shouldn't be sanctioned for bringing frivolous lawsuits over the morning-sickness drug thalidomide.

A group of 52 plaintiffs sued companies like GlaxoSmithKline alleging the drug, used decades ago, caused birth defects. But those plaintiffs had either already sued or suffered genetic problems, and Berman and others are accused of not thoroughly reviewing their clients' cases before filing them.

Hagens Berman also scores government contracts to push litigation over issues like opioids and [PFAS](#), but its pursuit of a thalidomide mass tort was undone about a decade ago.

Confronted with this reality (and a \$145,000 sanction in 2015), Hagens Berman dismissed many of the suits in what a special master described as a "suspicious" arrangement under which Glaxo also dropped its request for sanctions.

Then in a further development, the law firm informed the court one of its lawyers had falsified a medical expert's report to convince a client to drop her claims. It has also settled a lawsuit by one disgruntled former client who accused the firm of selling her out to protect its own reputation.

Special master William Hangle was brought on board in 2014 after Hagens Berman obstructed the defendants' efforts to discover whether the cases were barred by the statute of limitations. It seemed the firm did not know when its clients knew thalidomide was possibly to blame for their injuries.

In one case, defendants introduced evidence Mary Sells' injuries were genetic in nature during a deposition. It was the first Hagens Berman had heard of it, Diamond wrote.

"That same Hagens Berman lawyer testified that even if she had seen the records before the deposition, she would not have 'understood the[ir] ramifications' given her lack of medical knowledge," Diamond wrote.

"The firm does not dispute these facts. Accordingly, the firm and Mr. Berman were plainly unaware of Ms. Sells' medical history when they accepted her case because they failed to conduct an adequate pre-suit investigation."

The firm filed cases despite no recent scientific research that could prove causation, Diamond wrote. William Hangle, the special master, also recommended sanctions for attempts to "bully the special master, demonize the Court in the eyes of the plaintiff-witnesses, and intimidate the court reporter."

Diamond did not rule on the request for sanctions, which could potentially have the firm paying the other side's legal bills for more than 10 years.

Judge Weighing Sanctions Against Hagens Berman Refers Thalidomide Cases to DOJ

U.S. District Judge Paul Diamond, of the Eastern District of Pennsylvania, issued the Tuesday order after finding that Hagens Berman managing partner Steve Berman, and a former lawyer at his Seattle-based firm, Tyler Weaver, engaged in 'misconduct bordering on the criminal' in thalidomide cases.

December 02, 2025 at 03:24 PM By  **Amanda Bronstad**

What You Need to Know

- From 2011 to 2014, Hagens Berman filed 11 lawsuits on behalf of 52 plaintiffs alleging that thalidomide, used in the 1960s to treat morning sickness in pregnant women, caused severe birth injuries.
- In 2023, a special master found in his report that Hagens Berman had failed to conduct an adequate pre-suit investigation of the claims and obstructed discovery into tolling limitations.
- Lawyers for Hagens Berman and Steve Berman told Law.com they were 'truly confounded by the court's highly unusual memorandum opinion.'



Steve Berman, managing partner of Hagens Berman Sobol Shapiro

A Pennsylvania federal judge who found Hagens Berman's handling in a series of thalidomide cases to be “misconduct bordering on the criminal” has referred the matter to the U.S. Department of Justice.

U.S. District Judge Paul Diamond, of the Eastern District of Pennsylvania, had given Hagens Berman managing partner Steve Berman, and a former lawyer at his Seattle-based firm, Tyler Weaver, [an opportunity to respond](#) before adopting special master William Hangle's recommendation to sanction them for filing “numerous false, misleading or baseless allegations” over the morning sickness drug and refusing to participate in discovery requests.

But, on Tuesday, Diamond found their responses didn't answer his questions.

“Although I am inclined to reject these arguments, I will not address the sanctions issue further at this time,” he wrote. “Mr. Hangle has described in painstaking detail the apparent efforts of Hagens Berman, Mr. Berman and Mr. Weaver over some ten years to prepare, file and prosecute fraudulent lawsuits. Because the civil discovery process limited him, Mr. Hangle's investigation and findings, damning as they are, appear to be only partial. Because his findings more than warrant further investigation, I have referred this matter to the Department of Justice.”

Berman and Hagens Berman are represented by Christopher Connor, of Saxton & Stump in Harrisburg, Pennsylvania; Gaetan Alfano, of Philadelphia's Pietragallo Gordon Alfano Bosick & Raspanti; and Keith Beauchamp of Coppersmith Brockelman in Phoenix, Arizona. On Oct. 24, they moved to recuse Diamond from the case, citing at least 146 times the judge had *ex parte* communications with Hangle, including during the drafting of the special master's 2023 report. They insisted that conduct showed an appearance of bias, and their motion raised an issue of first impression in the U.S. Court of Appeals for the Third Circuit.

As to Tuesday's order, they told Law.com, “Hagens Berman and its counsel are truly confounded by the court's highly unusual memorandum opinion in light of the procedural posture of this longstanding civil case in which neither the firm's motion for recusal nor the special discovery master's 2023 sanctions recommendation has been addressed by the court. The extensive response filed by the firm in December 2023 explains that there is no basis for sanctions, much less a criminal referral (which was not suggested or recommended by the discovery master). We will consider all available remedies and make no further comment pending case developments.”

Weaver, now a Seattle-based principal at Angeli & Calfo, and his attorney, Robert Welsh, of Philadelphia's Welsh & Recker, did not respond to a request for comment.

‘Hagens Berman Expended Significant Time and Substantial Resources’

From 2011 to 2014, Hagens Berman filed 11 lawsuits on behalf of 52 plaintiffs alleging that thalidomide, used in the 1960s to treat morning sickness in pregnant women, caused severe birth injuries. The suits were filed against four drug manufacturers including GlaxoSmithKline and Grünenthal, which moved to sanction Hagens Berman for bringing time-barred cases. In 2015, Diamond granted that motion, concluding that Hagens Berman acted in “bad faith and intentional misconduct” as to three cases.

In 2016, Hangley found during evidentiary hearings that Weaver had altered an expert’s report to persuade some of the plaintiffs to drop their cases.

Then, in 2023, Hangley, of Philadelphia’s Hangley, Aronchick, Segal, Pudlin & Schiller, found in his report that Hagens Berman had failed to conduct an adequate pre-suit investigation of the claims and obstructed discovery into tolling limitations. According to Hangley’s report, Berman took a leading role in drafting “numerous false, misleading or baseless allegations” and Weaver doctored expert reports. The report, which Diamond noted on Tuesday followed “a painstaking inquiry against Hagens Berman’s often fierce and unprincipled resistance,” also cited the unprofessional treatment of the special master by Hagens Berman lawyers.



Gaetan Alfano, with Pietragallo Gordon Alfano Bosick & Raspanti. Courtesy photo

“Mr. Hangley has found that in performing his duties as special discovery master, he discovered misconduct bordering on the criminal committed by Hagens Berman, its managing partner Steve Berman and its then-partner Tyler Weaver—all apparently intended to prevent the court from learning that the

firm had prepared, verified, filed and prosecuted baseless, dishonest claims,” Diamond ruled in an Aug. 5 order.

In a 156-page response, Berman said his firm spent nearly 20,000 hours on thalidomide cases, from 2011 to 2015, investing more than \$9.1 million in legal fees and \$850,000 on costs. He

insisted he and his firm's attorneys did not act in bad faith or vexatiously.

"Hagens Berman expended significant time and substantial resources on the thalidomide litigation and staffed the cases with a large number of attorneys and paralegals," his lawyers wrote in an Oct. 4 response. "The foregoing legal theories were researched extensively before the firm first filed suit and on behalf of plaintiffs and were the subject of careful consideration and discussion amongst the firm and its attorneys."

Weaver's response was filed under seal.

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Morgan & Morgan, DiCello Levin join San Francisco's landmark ultra-processed food lawsuit

DJ [dailyjournal.com/articles/388807-morgan-morgan-dicello-levin-join-san-francisco-s-landmark-ultra-processed-food-lawsuit](https://www.dailyjournal.com/articles/388807-morgan-morgan-dicello-levin-join-san-francisco-s-landmark-ultra-processed-food-lawsuit)

David Chiu, the city attorney of San Francisco, looks at the ingredients in products at a Safeway grocery store in San Francisco, Nov. 25. (New York Times News Service)

Attorneys from Morgan & Morgan and DiCello Levitt -- two firms known for high-stakes mass-tort and consumer litigation -- said Tuesday they expect a protracted legal battle as they join the San Francisco City Attorney's Office in launching what they described as a groundbreaking case against 10 of the nation's biggest food manufacturers.

The firms, brought into the litigation for their experience taking on corporate defendants with vast resources, said the lawsuit will test whether aggressive nationwide marketing of ultra-processed foods can be legally linked to widespread public-health harms. Jennie Lee Anderson, partner at Andrus Anderson LLP, has also been added to the legal team.

"The scientists have been trying to understand this for several decades. The ultra-processed food hypothesis was proven correct and the science is now at a point where just last month in The Lancet, the editor of the journal was saying it's time for global action," Rene Rocha, partner at Morgan & Morgan, said at a news conference.

The lawsuit on behalf of the people of California seeks to stop manufacturers such as Kraft Heinz Company, The Coca-Cola Company, PepsiCo, Nestle USA and Kellogg from deceptive marketing of foods allegedly containing unhealthy substances. Monetary damages in the form of penalties and costs for governments' increased health care bills are also sought.

"There's nothing about the lawsuit that would ban any products. But it is our perspective that this is an industry that is engaged in highly deceptive advertising, so we're certainly looking to address advertising, and we certainly want to ensure accountability on the part of industries that has created enormous costs on society," City Attorney David Chiu told the news conference.

Chiu called the lawsuit the first by a government entity against makers of allegedly "ultra-processed foods" -- though similar private lawsuits have been filed against many of the same companies.

Sarah Gallo, senior vice president of product policy at Consumer Brands Association -- which represents many of the named defendant companies -- said in a statement in response to the lawsuit: "There is currently no agreed upon scientific definition of ultra-processed foods and attempting to classify foods as unhealthy simply because they are processed, or demonizing food by ignoring its full nutrient content, misleads consumers and exacerbates health disparities."

Diandra Debrosse, partner at DiCello Levitt, said bringing the lawsuit required "courage." When asked why, she said, "It's a lot of exposure to stand up to companies and say, 'We're not going to do this.'"

"They've lied to a lot of people and so it takes a lot for people to start realizing, 'Wow, it's the ultra-processed foods.' So, we know it's going to be a legal battle, but we're on the right side of it."

Rocha added, "They've got deep pockets and they're not afraid to use it. Yes, they are in the business of bullying people, and they're going to try to bully their way out of this and through this, but it's not going to work this time."

Asked whether U.S. Secretary of Health and Human Services Robert F. Kennedy Jr.'s Make America Healthy Again movement and criticism of ultra-processed foods had impacted the decision to bring the lawsuit, Rocha said, "We've been looking at it for a long time, several years before Robert Kennedy started talking about it."

"We appreciate that he is on the right side on this issue and it's something that just about everyone agrees on except for the people who make them."

Earlier attempts to sue manufacturers of alleged ultra-processed foods have been defeated over failure to link foods to specific conditions suffered by consumers.

In August, Philadelphia U.S. District Judge Mia Perez dismissed a lawsuit filed against several of the same companies listed as defendants in the San Francisco lawsuit by a consumer who was diagnosed with Type 2 diabetes and nonalcoholic fatty liver disease at 16.

Perez ruled that the plaintiff "failed to identify what foods or products he consumed."

According to the San Francisco complaint, recent studies have linked overconsumption of ultra-processed foods to health problems such as Type 2 diabetes, fatty liver disease, cardiovascular disease, colorectal cancer and depression.

The lawsuit defines ultra-processed food as "formulations of often chemically manipulated cheap ingredients with little if any whole food added, made palatable and attractive by using combinations of flavors, colors, emulsifiers, thickeners, and other additives." *The People of the State of California v. The Kraft Heinz Co. et al.* no case number (S. F. Super. Ct., filed Dec. 2, 2025).

Gallo added in her statement on behalf of the companies, "Food and beverage manufacturers continue to introduce new product options that include increased protein and fiber, reduced sugars and sodium, and no synthetic color additives. Companies adhere to the rigorous evidence-based safety standards established by the FDA to deliver safe, affordable and convenient products that consumers depend on every day."

Rocha is co-chair of Morgan & Morgan's environmental and toxic tort litigation team and is one of the attorneys who helped secure the \$1.8 billion settlement with Southern California Gas Company and its parent company, Sempra Energy, in 2021 for a gas leak at a well in Los Angeles, the law firm's website said.

At the news conference, Chiu compared the corporations' alleged conduct to tobacco companies who "knew their products made people sick" and accused those companies of creating an ultra-processed food industry.

"The tobacco industry drove the rise of ultra-processed foods," Chiu said. Starting in the 1960s, big tobacco bought major food companies. These companies then transferred people, ideas, technology from big tobacco to the food industry. They used addiction science and marketing techniques that followed the big tobacco playbook of creating the illusion and erosion of consumer choice."

The San Francisco City Attorney's office helped win a \$539 million settlement from tobacco companies in 1998 over health care costs associated with smoking and \$21 million from lead paint manufacturers in 2019.

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#388807

Three Plaintiffs Firms Join San Francisco in Suit Over Ultra-Processed Foods

The lawsuit seeks unspecified damages for public health costs San Francisco alleges are linked to ultra-processed foods.

December 02, 2025 at 04:28 PM By  **Cheryl Miller**



Then-17th District Assemblymember David Chiu speaks out against Asian American violence at a press event held at Chinatown's Chinese Cultural Center in March 2021. Photo: Jason Doiy/ALM

San Francisco's city attorney, joined by three plaintiffs' firms, sued some of the nation's biggest food brands in state court Tuesday over claims their "ultra-processed" products have led to "devastating" public health consequences.

The [lawsuit](#), filed in San Francisco County Superior Court, alleges violations of California's Unfair Competition Law and public nuisance statutes. The city has asked a judge to enjoin the

companies' "deceptive marketing" of ultra-processed foods and to reimburse San Francisco for any related health care costs.

"Our reliance on ultra-processed foods is decades in the making, and while we are not going to be able to reverse that overnight, this lawsuit should be the beginning of how we ensure accountability," San Francisco City Attorney David Chiu said at a press conference.

Chiu filed the suit along with attorneys from DiCello Levitt, Morgan & Morgan and Andrus Anderson. Chiu's office did not immediately respond to questions about fee or cost arrangements with the three firms.

The suit names The Kraft Heinz Co., Mondelez International Inc., Post Holdings Inc., The Coca-Cola Co., PepsiCo Inc., General Mills Inc., Nestle USA Inc., Kellanova, WK Kellogg Co., Mars Inc. and Conagra Brands as defendants.

Though there is no singularly shared definition of what an ultra-processed food is, the John Hopkins Bloomberg School of Public Health last month [pointed](#) to the use of ingredients that would be found in the typical kitchen: chemical-based preservatives, hydrogenated oils, high fructose corn syrup and artificial colors as well as processing techniques such as molding and extrusion.

Although ultra-processed foods have been on the market for years, health officials in recent years have begun raising questions about their potential link to chronic health conditions such as diabetes and heart disease. Last month, The Lancet medical journal [published](#) a series of articles concluding that the proliferation of ultra-processed foods has reduced the quality of diets and increased the risk of diet-related diseases.

A California [law](#) set to take effect in January offers a broad description of such foods based on the ingredients' functions and directs regulators to develop rules that will ultimately lead to the elimination of ultra-processed products in schools.

Federal regulators this summer [announced](#) that they are working on a common definition of ultra-processed foods after U.S. Health and Human Services Secretary Robert F. Kennedy Jr. blamed them for "driving our chronic disease epidemic."

Chiu billed the suit as the first of its kind for a public entity, although a handful of firms around the country have already filed similar claims against food producers.

A federal judge in Pennsylvania this summer dismissed one of the first such suits, [Martinez v. Kraft Heinz](#), after concluding the plaintiff failed to prove a direct link between specific products

and his diabetes and fatty liver disease. San Francisco's suit names the same defendants sued by Martinez. Morgan & Morgan was one of the firms representing the plaintiff.

Representatives of some of the corporate defendants in the San Francisco case did not immediately return calls seeking comment Tuesday. A recent [blog post](#) by the Consumer Brand Association, while not addressing the lawsuit, called some criticism of ultra-processed foods "ridiculous" and lacking in common sense and empathy for food costs and individual dietary needs.

"Nor does it raise the credible concerns of what would happen if access to processed foods is limited, including decreased diet quality, increased risk of food-borne illness, greater food waste, stigmatization of critical foods such as fortified grains, plant-based proteins or infant formula and exacerbated health disparities," wrote Megan Kastner, the association's policy manager.

Chiu said the public has better, affordable options to ultra-processed foods.

"I would say that diabetes is unaffordable," he said. "Heart disease is unaffordable, obesity is unaffordable. These industries are peddling products that have caused Americans to be addicted and are leading to long term costs that are absolutely unaffordable for all of us and are unaffordable for city and state governments."

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California Brief

San Francisco Sues Coca-Cola, Pepsi Over Health Care Costs

December 2, 2025, 11:05 AM PST

San Francisco filed a first-of-its-kind lawsuit accusing ultra-processed food manufacturers of selling products that are addictive and harmful to the American public.

The complaint, filed Tuesday morning in San Francisco Superior Court, accuses eleven of the country's largest food manufacturers—including Kraft Heinz Co., The Coca-Cola Co., Conagra, PepsiCo, and Nestle USA—of violating California's unfair competition law and public nuisance statute through deceptive marketing. The city seeks a civil penalty to help offset health care costs.

"Our case is about companies that design food to be harmful and addictive, and marketed their products to maximize profits," San Francisco City Attorney David Chiu (D) said at a press conference announcing the suit.

The public health crisis stemming from unhealthy processed food has burdened the city with enormous health care costs, Chiu said. The companies have used the tobacco industry's strategy of targeting children and low-income consumers, the suit said.

The complaint also seeks a court order stopping the companies from engaging in deceptive marketing.

The case is California v. The Kraft Heinz Co. , Cal. Super. Ct., docket number unavailable, complaint filed 12/2/25 .

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Critical Mass With Law.com's Amanda Bronstad: The First MDL Rule Is Effective This Week, 5 More Lawsuits Allege Racketeering in Class Action Settlements

What impact could the first rule for multidistrict litigation, which became effective on Dec. 1, have on judges or lawyers? And find out who American Airlines turned to in lawsuits filed over this year's crash with a U.S. Army helicopter in Washington, D.C.

December 03, 2025 at 12:27 PM By  **Amanda Bronstad**



U.S. Judicial Panel on Multidistrict Litigation. Courtesy photo

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

This week: What impact could the first rule for multidistrict litigation, which became effective on Dec. 1, have on judges or lawyers? More law firms have filed racketeering and antitrust lawsuits against claims administrators and banks accused of failing to disclose financial arrangements in class action settlements. Find out who **American Airlines** turned to in lawsuits filed over this year's crash with a **U.S. Army** helicopter in Washington, D.C.

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



Alex DAhl, general counsel with Lawyers for Civil Justice.

New MDL Rule: 'The Environment for Settlement Is Better'

After years of debate and drafts, the first rule governing multidistrict litigation became effective Dec. 1.

Federal Rule of Civil Procedure 16.1, while dramatically scaled back from its original proposal, which targeted outside litigation financing and interlocutory appeals, mostly focuses on case management techniques at the start of multidistrict litigation, with the goal to address massive numbers of meritless claims that many in the defense bar insist swell docket sizes and increase potential settlement figures.

I checked in with **Lawyers for Civil Justice General Counsel Alex Dahl**, whose group pushed for the first MDL rule, to find out where it might come into place first. He said the rule could provide earlier attention to motions, and an exchange of information, in order to weed out insufficient claims from the start, while also providing guidance to judges who've never handled multidistrict litigation before.

He told me:

“The existence of unvetted and meritless claims in these mass tort cases have proved to be a significant impediment to efficient case management and the ability of the parties to reach resolution. I think judges and parties that focus on making sure that all the claims belong in an MDL are going to find that the litigation is more efficient and the environment for settlement is better.”

The rule’s entrance comes in a year with a record low number of petitions for multidistrict litigation. On May 29, the **U.S. Judicial Panel on Multidistrict Litigation** had [no cases set for argument](#), and only 11 motions to coordinate cases into multidistrict litigation had been filed. As of Tuesday, that number jumped to 30, narrowly beating out the lowest number in the past decade, in 2023, when 29 motions were filed before the panel.

And at its Dec. 4 hearing in Austin, Texas, the panel is set to hear eight cases, including those involving [blindness](#) and **Ozempic**, fraud claims against [claims administrators](#), the **Salesforce** [data breach](#), and [child sexual exploitation allegations](#) against **Roblox**.



U.S. District Judge Edward Chen, Northern District of California

Another Judge to Claims Administrators: 'The Court Remains Concerned'

Five more lawsuits have been filed against claims administrators and banks over alleged kickbacks and financial arrangements in class action settlements that weren't disclosed to class members or the courts.

[Here's my report](#) on the new suits, filed by **Aylstock, Witkin, Kreis, & Overholtz, Wood Law Firm** and **Cory Watson**, between Nov. 7 and Nov. 20. The cases add to five prior lawsuits, three of which were brought by **Boies Schiller Flexner**, which are set for the **U.S. Judicial Panel on Multidistrict Litigation's** Dec. 4 hearing in Austin, Texas.

What they're about: All the cases allege claims administrators including **Epiq, Angeion** and **JND Legal Administration** engaged in fraud, antitrust violations and racketeering by failing to disclose certain financial arrangements with **Huntington National Bank** and **Western Alliance Bank**, and financial technology companies **Blackhawk Network Holdings** and **Tremendous**, which provide prepaid payment cards. They allege two separate schemes: undisclosed payments by the banks to 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 cards that were never claimed.

The suits have prompted at least three federal judges to issue orders to disclose potential financial arrangements in cases involving **Google's** [advertising](#), **Facebook's** alleged [privacy violations](#) and antitrust allegations over [real estate commissions](#). In a \$27.5 million class action settlement with **Thomson Reuters, Angeion CEO Steve Weisbrot** submitted a declaration insisting no wrongdoing in its relationship with Blackhawk, and co-class counsel [Andre Mura](#) (**Gibbs Mura**) said in a post-distributing accounting statement that the revenue from the arrangement would not increase the cost of the settlement or reduce the funds available to class members.

On Nov. 17, **U.S. District Judge Edward Chen** of the **Northern District of California**, citing his colleague **U.S. District Judge Edward Davila's** Aug. 29 order in the Google case, allowed the settlement to move forward but insisted that Angeion and any other settlement administrator provide a full disclosure of all future financial arrangements with third parties related to the administration of the settlement, both when being selected and to the court. He also said the parties should ask settlement administrators about any such financial arrangements, concluding:

"The court remains concerned about compensation paid by vendors to class action administrators and the potential for conflicting interests."



Brian J. Alexander, with Kreindler & Kreindler. Courtesy photo

Who Got the Work?

[William Gould](#) (**Holland & Knight**) stepped in to represent **American Airlines** and **PSA Airlines** in [growing wrongful death lawsuits](#) filed over the Jan. 29 crash of American Eagle Flight 5342 and a **U.S. Army** Black Hawk helicopter around Washington, D.C. The crash killed 67 victims, including the families of five who have filed lawsuits against American Airlines and the U.S. government, represented by **U.S. Department of Justice senior aviation counsel Debra Fowler**. **U.S. District Judge Ana Reyes** of the **District of Columbia** is overseeing the cases, with a plaintiffs' steering committee composed of [Brian Alexander](#) (**Kreindler & Kreindler**), as lead counsel, and co-chairs [Robert Clifford](#) (**Clifford Law Offices**) and [Douglas Latto](#) (**Speiser Krause**).

Here's what else is happening:

DOJ Referral: A federal judge who found "misconduct bordering on the criminal" in a series of thalidomide cases brought by [Steve Berman](#) (**Hagens Berman**) and his Seattle-based firm, [has referred the matter](#) to the **U.S. Justice Department**. **U.S. District Judge Paul Diamond** of the **Eastern District of Pennsylvania** had given Berman and former Hagens Berman attorney [Tyler Weaver](#) (**Angeli & Calfo**) a chance to respond to special master [William Hangle](#) (**Hangle**

Aronchick Segal Pudlin & Schiller)’s recommendation to sanction them for filing “numerous false, misleading or baseless allegations” over the morning sickness drug, which was linked to severe birth defects. But, in a Tuesday order, he declined to address the sanctions, concluding that Hangley’s findings, “damning as they are, appear to be only partial.”

Roundup Brief: U.S. Solicitor General D. John Sauer [filed a brief on Monday](#) urging the **U.S. Supreme Court** to review **Monsanto**’s federal preemption arguments in **Roundup** lawsuits. The brief comes more than five months after the Supreme Court invited the solicitor general’s input in the petition, which Monsanto parent **Bayer** filed to overturn a \$1.25 million Roundup verdict in Missouri. **Former Solicitor General Elizabeth Prelogar**, under the Biden administration, filed a brief opposing federal preemption in a prior Roundup case before the Supreme Court, which declined to hear the petition, but Sauer, appointed by President Donald Trump earlier this year, agreed with Monsanto that a circuit split warranted review of its Roundup defense.

ABS Suit: Mass tort plaintiffs attorney [R. Brent Wisner](#) (**Wisner Baum**) has sued to block a California law that would stop fee-sharing with out-of-state alternative business structures. Tuesday’s suit, in the **U.S. District Court for the Central District of California**, argued that AB 931 violates the dormant commerce clause, the takings clause and numerous other federal constitutional provisions. He filed the suit alongside **Eleos Law**, an Arizona-licensed ABS firm in which Wisner has a 41% ownership share, and sought a preliminary injunction stopping the law, sponsored by the **Consumer Attorneys of California**, from taking effect on Jan. 1.

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

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Newspapers Seek \$10B in Latest OpenAI Copyright Suit, Its 18th

The suit alleges "willful" infringement, which carries penalties of up to \$150,000 per work.

December 02, 2025 at 02:24 PM By **Michael Gennaro**



OpenAI has grown explosively since it publicly released ChatGPT in November 2022. Credit: Tada Images/Adobe Stock

OpenAI and Microsoft are facing another major copyright lawsuit, this time from nine regional newspaper publishers that are demanding damages exceeding \$10 billion.

The publishers—led by lead plaintiff California Newspaper Partnership, owner of the Los Angeles Daily News and Orange County Register—allege that the tech companies "willfully" infringed their intellectual property to build profitable AI products.

[The 57-page complaint](#), filed in the U.S. District Court for the Southern District of New York, joins an avalanche of litigation that could determine whether OpenAI's business model survives in its current form; OpenAI now faces 18 copyright lawsuits around the world, the most of any company.

The publishers are being represented by Washington, D.C.-based Rothwell, Figg, Ernst & Manbeck.

The publishers say San Francisco-based OpenAI and Redmond, Washington-based Microsoft are guilty of a pattern of infringement in which they systematically copied hundreds of thousands of their articles without permission to train ChatGPT and other AI models, then used those works to generate competing content that diverts traffic and revenue from legitimate news sources.

The lawsuit alleges that Microsoft and OpenAI built systems to scrape and process massive amounts of web content, including articles from behind the publishers' paywalls. The complaint points to OpenAI's own technical documentation, which states that during GPT-3 training, content deemed higher-quality was sampled more frequently than other material. The publishers argue this demonstrates their journalism was specifically targeted and given priority in the training process.

Most troubling for OpenAI is that courts are letting these cases proceed. As the newspaper publishers note in their complaint, previous lawsuits against the company have "survived motions to dismiss largely intact," meaning judges have repeatedly found the claims credible enough to move forward toward potentially catastrophic jury verdicts.

According to the complaint, the defendants' conduct was not only knowing but brazen.

The publishers' complaint highlights statements from OpenAI's own leadership that may prove damaging in court. They cite founder Sam Altman's 2023 testimony before the British House of Lords, where he admitted that training advanced AI models without copyrighted materials would be "impossible."

Such admissions could support claims that OpenAI's infringement was knowing and willful, the legal standard that triggers maximum statutory damages

The suit also takes aim at Microsoft, and not just because it is OpenAI's largest investor.

According to the complaint, Microsoft built and operated the supercomputing infrastructure used to train OpenAI's models and actively collaborated on their development.

This deep partnership, the complaint argues, makes Microsoft jointly liable for the alleged infringement alongside OpenAI. The publishers say they are seeking maximum statutory damages, observing that even that "would be a pittance compared to the enormous revenues and other gains Defendants and their investors have already realized" through their alleged infringement. Altman has said OpenAI is on track to reach an annualized revenue run rate topping \$20 billion this year. Microsoft racked up revenue of \$282 billion in the 12 months ended June 30.

OpenAI and Microsoft did not respond to requests for comment on the lawsuit.

The financial stakes for OpenAI are staggering. Under copyright law, willful infringement carries penalties up to \$150,000 per work. The newspaper publishers alone claim ownership of tens of thousands of registered copyrights; among the plaintiffs are the Hartford Courant, which asserts more than 10,000, and the Virginian-Pilot, which claims more than 11,000 registered works.

Beyond monetary damages, the publishers seek something potentially more devastating to OpenAI: the destruction of all AI models trained on their works. If granted, this remedy would force OpenAI to rebuild ChatGPT and its other products from scratch, an outcome that could cost years of development time and billions of dollars in additional capital.

As the litigation landscape grows more crowded, the question facing OpenAI is no longer whether it will face copyright challenges over its training practices but whether its business model can survive them. With potential damages climbing into the hundreds of billions and courts showing a willingness to let these cases proceed, the company's legal strategy may prove as important to its future as its technological innovation.

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Trump administration tells SCOTUS to stop Roundup lawsuits | St. Louis Record



legalnewsline.com/stlouis-record/trump-administration-tells-scotus-to-stop-roundup-lawsuits/article_8248d746-bdd1-4acc-8769-a1eb97dc0dec.html

Daniel Fisher, Daniel Fisher

December 3, 2025

WASHINGTON - Reversing course from the Biden-era legal position, the Trump administration has urged the U.S. Supreme Court to reject lawsuits claiming Roundup herbicide should bear a cancer warning label.

At the request of the Supreme Court, the administration submitted a brief saying federal law prohibits Bayer's Monsanto unit from adding a warning to the Roundup label and thus preempts state courts from enforcing sometimes-massive verdicts based on failure to do so.

By taking the case, the high court also could resolve a split among federal circuits, [the administration said](#). It was a return to the government's position before the Biden administration shifted in favor of plaintiff lawyers.

Monsanto faces more than 100,000 lawsuits claiming glyphosate, the active ingredient in Roundup, causes cancers including non-Hodgkin's lymphoma, a common cancer associated with aging. Plaintiff lawyers began filing suits after a finding by the International Agency for Research on Cancer that glyphosate is a likely carcinogen, although the U.S. Environmental Protection Agency and other regulators around the world reject that conclusion.

The non-voting chairman of the IARC panel was Chris Portier, who quickly went to work as a plaintiff expert after stepping down from IARC.

Roundup is subject to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which regulates labeling and prohibits states from imposing "any requirements for labeling or packaging in addition to or different from those required under" FIFRA. The EPA prohibits cancer warnings on glyphosate, saying the benefits of the widely used herbicide outweigh the risks.

Despite this, courts in California, Pennsylvania and elsewhere have interpreted the law to uphold jury verdicts based on the claim Monsanto should have warned users it could cause cancer. Monsanto argues it can't comply with what is effectively a state regulation without violating FIFRA. It has asked the Supreme Court to overturn [a \\$1.25 million Missouri verdict](#) won by John Durnell, who claimed he contracted non-Hodgkin's lymphoma from using Roundup.

The Third Circuit Court of Appeals, based in Philadelphia, last year took the opposite tack, ruling FIFRA preempts state lawsuits. A state court in Philadelphia nevertheless [upheld a \\$177.3 million Roundup verdict](#) this year.

The Ninth and 11th Circuits have ruled the opposite way, creating a split that only the Supreme Court can resolve, the government said. Judges who say Monsanto can comply with state and federal law by changing the label are ignoring FIFRA's prohibition on requirements "in addition to" what the federal government demands, the administration said.

The EPA also weighed costs and benefits when deciding how to label herbicides, while a jury only considers the alleged costs.

Manufacturers can make "minor modifications" but can't change the label to add "the type of precautionary statements about health risks that are at issue here," the government said.

"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 '50 different labeling regimes prescribing' different requirements."

Monsanto took hope when the Supreme Court sought the government's opinion on its latest certiorari petition. The high court rejected its last attempt to appeal the Hardeman decision, in which the Ninth Circuit upheld a \$25 million Roundup verdict.

Trump Administration Supporting Bayer at Supreme Court Over Monsanto/Roundup Deal, Savaged by Investors for Wealth Destruction in the Name of Executive Preservation

 [nakedcapitalism.com/2025/12/trump-administration-supporting-bayer-at-supreme-court-over-monsanto-roundup-deal-savaged-by-investors-for-wealth-destruction-in-the-name-of-executive-preservation.html](https://www.nakedcapitalism.com/2025/12/trump-administration-supporting-bayer-at-supreme-court-over-monsanto-roundup-deal-savaged-by-investors-for-wealth-destruction-in-the-name-of-executive-preservation.html)

Yves Smith

December 3, 2025

Yves here. The article below describes how Bayer is trying to get out of the Roundup herbicide liability it took on when it acquired Monsanto. Why the Trump Administration is assisting a big German company that knowingly entered into what institutional investors derided as the worst deal ever is beyond me. The kicker here is that Bayer bought Monsanto for entirely executive serving reasons. Bayer was vulnerable to acquisition by pharma giants like Pfizer. It bought Monsanto solely to bulk up so as to be too big to swallow comfortably.

As we explained in our coverage of litigation against Bayer executives, board members, and the investment bankers on the deal, Bayer knew of the Roundup cancer liability risk yet chose to ignore it, because they had studies that pooh-poohed the idea. They persisted with the transaction even after the WHO found that glyphosate, the key ingredient in Roundup, was a probably carcinogenic to humans. The Bayer execs convinced themselves that that was not a firm enough finding to put them at legal risk, when US juries found otherwise.

[As we explained in a 2020 post:](#)

It isn't simply that Bayer-Monsanto has replaced AOL-Time Warner in most press reckonings as "the worst deal of all time". Yes, nearly every penny of the \$66 billion that Bayer paid for Monsanto has gone poof. Yes, Bayer is the first time in German corporate history that a public company got a majority vote of no confidence from its shareholders. Yes, Bayer is at risk of bleeding out over seemingly endless Monsanto-related liability claims (Roundup has so taken the center stage that what would ordinarily be a big-deal litigation drain, Dicamba, is treated as an afterthought). Unlike any other company ever facing similar litigation, Bayer has neither taken Roundup off the market, nor reformulated it, nor put a cancer warning on it. It looks like Bayer will eventually declare bankruptcy.

It is that unlike AOL-Time Warner, initially hailed as a brilliant tie-up but quickly went a cropper when the dot-com mania ended, virtually all major analysts and shareholders hated the idea of the deal from the date it was announced, and the business press was just as critical. Monsanto was already recognized as being dependent on Roundup when more and more consumers and experts were concerned about glyphosate risks.

And most important, the deal went ahead for the worst possible reason: Bayer management wanted to bulk up so as not to be acquired. The real motive was to keep current management in place to preserve their lofty pay and high status.

Monsanto was the only major candidate left standing, for the obvious reasons. Both the chemical and the pharma industries had seen decades of consolidation, and Bayer was a tempting target by having little debt and not having kept up with the agglomeration game. When Pfizer's bid for Allergan fell apart due to an adverse tax ruling, long-standing and highly regarded CEO Marijn Dekkers, who had long opposed the idea of Monsanto deal, suddenly retired. The "two Werners," Chairman Werner Wenning and the surprise new CEO, Werner Baumann, both of whom had long pushed to buy Monsanto, were in charge and moved forward rapidly with their plan.

Except they couldn't, save tying an anchor to Bayer in the form of a \$2 billion breakup fee. Bayer could do only limited due diligence on Monsanto due to the fact that they were competitors and the acquisition was subject to anti-trust review in the US and Germany. Those assessments usually take months; this one took 24.

In the meantime, Bayer out of obstinacy or ignorance chose to ignore signs that the evidence of glyphosate's cancer risks were becoming solid enough to kick off a tidal wave of suits.

So what sexual favors were exchanged to get the Trump Team to weigh in on behalf of Bayer? Not that that will cut much ice with the Supremes, but the optics are dodgy, and not just for the obvious "siding with big company peddling toxic weed killers, but for one that additionally thumbed its nose at and destroyed value of the capitalist classes.

By Carey Gillam. Originally published at [The New Lede](#)

Bayer, the beleaguered maker of Roundup herbicide, has garnered the support of the US Department of Justice in its court battle to turn back a tide of litigation brought by people claiming the company failed to warn them of cancer risks associated with the weed killers.

[In a Dec. 1 filing](#) with the US Supreme Court, Solicitor General D. John Sauer, appointed by the Trump administration in April, told the court that it should take up an appeal from Bayer that the company hopes could help it quash ongoing lawsuits inherited when it bought Monsanto in 2018.

Bayer, which maintains its glyphosate herbicides do not cause cancer, argues that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which governs the registration, distribution, sale, and use of pesticides in the United States, preempts "failure-to-warn" claims against the company. Because the Environmental Protection Agency (EPA) has approved labels with no cancer warning, failure-to-warn claims should be barred, the company maintains.

Multiple courts have rejected Bayer's argument, including two appellate courts, ruling that FIFRA does not preempt failure-to-warn claims, though one appellate court – the Third Circuit Court of Appeals- [has sided with Bayer](#).

A similar effort by Bayer to get the high court to weigh in on the preemption issue was rejected in 2022 after the Biden administration's Solicitor General [asked the high court](#) not to hear Bayer's appeal on the same issue, saying that "FIFRA does not preempt" such claims.

"Although some aspects of EPA-approved labeling may preempt particular state-law requirements, EPA's approval of labeling that does not warn about particular chronic risks does not by itself preempt a state-law requirement to provide such

warnings," then-Solicitor General Elizabeth Prelogar wrote in the 2022 brief to the Supreme Court. The agricultural industry [reacted with outrage](#) at the time, saying Prelogar's position posed "great risks" to the regulatory system and global food systems.

In contrast, Sauer's brief to the court this week was closely aligned with Bayer's arguments, saying the Third Circuit ruling favoring Bayer's position on preemption "correctly allows EPA to determine on a nationwide basis what warnings must appear on a particular pesticide's label to avoid an unreasonable risk to human health." He said given conflicting court rulings on the issue, review by the Supreme Court "is now warranted..."

Sauer also echoed Bayer's language on Roundup safety: "After careful scientific review and an assessment of hundreds of thousands of public comments, 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," the Solicitor General wrote in his brief.

Bayer has paid out more than \$11 billion in jury verdicts and settlements but continues to face tens of thousands of lawsuits from people alleging they developed non-Hodgkin lymphoma from use of Roundup and other glyphosate-based herbicides sold by the company. It has told investors for the last few years that getting the Supreme Court to rule in its favor on the preemption issue is a key goal.

Bayer celebrated the support from the administration, [issuing a statement](#) on Tuesday saying a positive ruling from the Supreme Court "could help bring the company closer to closure" in the Roundup litigation.

"The support of the US Government is an important step and good news for US farmers, who need regulatory clarity," Bayer CEO Bill Anderson said in a statement. "The stakes could not be higher as the misapplication of federal law jeopardizes the availability of innovative tools for farmers and investments in the broader US economy."

Bayer said a ruling from the Supreme Court on the preemption issue could impact other industries as well.

"It is time for the US legal system to establish that companies cannot be punished under state laws for complying with federal label requirements," Bayer said.

Kelly Ryerson, co-executive director of American Regeneration and a leading lobbyist in the Make America Healthy Again (MAHA) movement that the Trump administration says it supports, was furious at the Justice Department move.

"MAHA voters chose this administration because they were tired of watching captured regulators sign off on chemicals that are poisoning their families, not because they wanted Washington to hand pesticide giants a liability shield," Ryerson said.

"President Trump specifically promised to address the harms from pesticides. This move to support the Supreme Court in hearing Bayer's case for federal preemption of state laws that protect our safety could not stray further from that promise he made to American citizens," she added.

The Roundup litigation began in 2015 after the International Agency for Research on Cancer, an arm of the World Health Organization, reviewed years of independent research on glyphosate and Roundup, and found the weed killer to be a "probable human carcinogen."

Alongside its path through the courts, Bayer has also been [pushing for new state and federal legislation](#) that would effectively preempt lawsuits based on failure-to-warn claims.

Solicitor General Sides With Monsanto in Roundup Petition: 'United States Has Reexamined the Arguments'

U.S. Solicitor General D. John Sauer, on Monday, filed a brief supporting Monsanto's petition before the U.S. Supreme Court to decide whether federal law preempts claims that it failed to warn about Roundup's cancer risk.

December 02, 2025 at 06:11 PM By  **Amanda Bronstad**

What You Need to Know

- The brief comes more than five months after the Supreme Court invited the solicitor general's input in the petition, which Monsanto filed to overturn a \$1.25 million Roundup verdict in 2023 in Missouri's St. Louis City Circuit Court.
- Bayer, which owns Monsanto, petitioned the Supreme Court to rule on whether the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preempts claims that it failed to warn about Roundup's risk of non-Hodgkin lymphoma.
- The Supreme Court previously refused to take up a Roundup case after then-Solicitor General Elizabeth Prelogar, under the Biden administration, wrote an amicus brief stating that FIFRA did not preempt state law failure-to-warn claims.



U.S. Solicitor General D. John Sauer filed a brief on Monday urging the U.S. Supreme Court to review Monsanto's federal preemption arguments in the sprawling litigation over its Roundup pesticide.

The brief comes more than five months after the Supreme Court [invited the solicitor general's input](#) in the petition, which Monsanto filed to overturn a \$1.25 million Roundup verdict in 2023 in Missouri's St. Louis City Circuit Court. Bayer, which owns Monsanto, petitioned the Supreme Court to rule on whether the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preempts claims that it failed to warn about Roundup's risk of non-Hodgkin lymphoma.

"The decision below is incorrect and implicates a conflict of authorities on the question presented," Sauer wrote. "EPA has consistently approved Roundup labels without a cancer warning, based on the agency's conclusion that glyphosate is not likely to be carcinogenic in humans."

In 2022, the Supreme Court refused to take up Monsanto's petition to overturn an \$80 million Roundup verdict in the first federal bellwether trial, called *Hardeman v. Monsanto*, which took place in the Northern District of California in 2018. At that time, then-Solicitor General Elizabeth Prelogar, under the Biden administration, wrote an amicus brief stating that FIFRA did not preempt state law failure-to-warn claims. But the Trump administration had backed Monsanto's preemption defense in the same case when it was before the U.S. Court of Appeals for the Ninth Circuit.

Sauer, who [switched the Department of Justice's position](#) in a case involving campaign contributions, has been a prominent figure in cases against the Trump administration involving various issues including immigration policy and federal government workforce cuts. He was Trump's criminal defense lawyer before [being appointed earlier this year](#).

Monsanto, represented by Paul Clement, former U.S. solicitor general now at Washington, D.C.'s Clement & Murphy, had argued against inviting the solicitor general's brief, which could delay review of its Roundup petition. But a ruling in favor of Monsanto could help Bayer resolve thousands of Roundup cases, with juries returning defense verdicts, ending in mistrials or issuing jury awards, some more than \$2 billion. Bayer has noted that regulators, including the Environmental Protection Agency, have found that Roundup's key ingredient, glyphosate, is safe.

"The support of the U.S. government is an important step and good news for U.S. farmers, who need regulatory clarity," Bayer CEO Bill Anderson said in a statement. "The stakes could not be higher as the misapplication of federal law jeopardizes the availability of innovative tools for farmers and investments in the broader U.S. economy."

More than a dozen amicus groups, including many representing America's agricultural community, [raised concerns](#) that Monsanto could remove glyphosate should the Supreme Court rule against it.

"This case raises an important question about the scope of FIFRA's preemption provision," Sauer wrote in Monday's brief. But he mirrored [Bayer's April 4 petition](#) that urged review given that the U.S. Court of Appeals for the Ninth and Eleventh Circuits had ruled against Monsanto in 2021 and 2024 in finding no federal preemption in Roundup cases, while the Third Circuit, in [a 2024 opinion](#) called *Schaffner v. Monsanto*, disagreed.

"Since that time, a conflict has developed among the courts of appeals on the questions of whether FIFRA expressly preempts state-law tort claims premised on petitioner's failure to warn its customers about potential cancer risks created by use of Roundup," Sauer wrote. "In light of the Third Circuit's intervening decision in *Schaffner* and the change in administration, the United States has reexamined the arguments it pressed before this court in *Hardeman* and has returned to its previous position as to the scope of FIFRA preemption. Under that approach, EPA's approval of Roundup labels without a cancer warning, combined with an EPA regulation that prohibits petitioner from adding such a warning without agency approval, preempts respondent's failure-to-warn claim."

The case before the Supreme Court involved plaintiff John Durnell, whose \$1.25 million Roundup verdict was upheld by the Missouri Court of Appeals this year. On April 1, the Missouri Supreme Court opted not to hear the case.

David Frederick of Kellogg, Hansen, Todd, Figel & Frederick in Washington, D.C., who represents Durnell, did not respond to a request for comment.

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Australian Dispute Lawyers Keeping Busy with Rise in Class Actions, Regulatory Enforcement

AI and environmental laws will lead to even more disputes.

December 03, 2025 at 11:06 AM By  **Christopher Niesche**

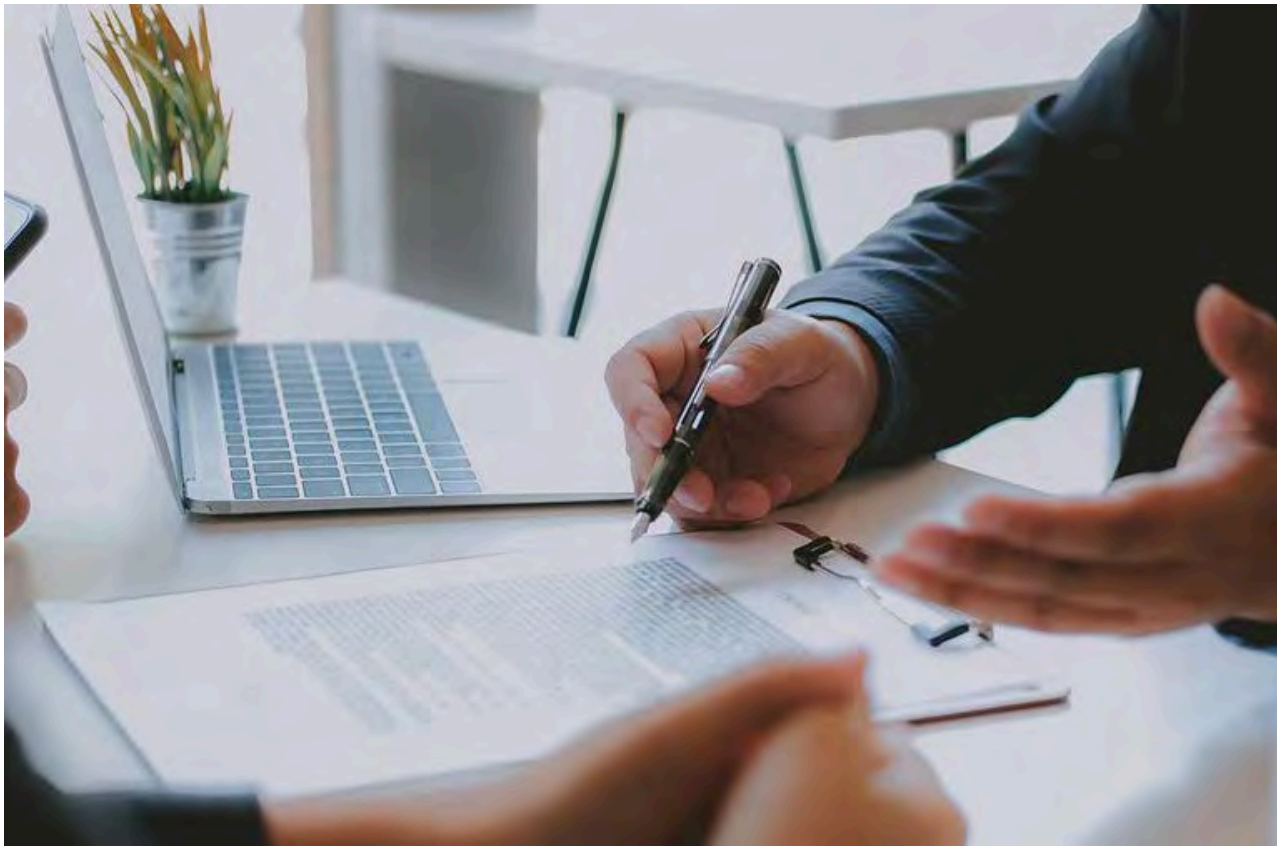


Photo: 88studio via Adobe Stock

The number of disputes in Australia is growing as regulators increase enforcement actions, class actions increase and corporates become more likely to take legal action.

Leaders of disputes practices—already busy—expect the increase to continue, driven by environmental and climate disputes and the emerging area of litigation over artificial intelligence.

Ante Golem, the head of disputes in Australia for Herbert Smith Freehills Kramer, said that for HSF Kramer, having a strong disputes practice ranks alongside having a strong transactions practice.

“If you're a leading corporate... you want a firm they can offer all of that, whether it's the M&A activity or the \$5 billion project on developing an asset or infrastructure project, or assisting on the

defence of a significant prosecution or class action or other piece of litigation,” he said.

HSF Kramer has 38 partners in its core disputes team in Australia. The firm prefers to promote associates to the partnership rather than make strong lateral hires, he said.

Golem said the amount of dispute activity has been building in Australia since the 2020 Covid-19 pandemic.

Rise in Disputes

A rise in class actions, increased regulatory activity—particularly from the Australian Consumer & Competition Commission and the Australian Securities & Investments Commission—and disputes over energy transition projects have all contributed to the rise, he said.

“The other area that's increasingly becoming area of focus is environmental matters, where people are seeing issues arise about environmental compliances and how that might give rise to issues for corporates at a state and federal level,” Golem said.

A record 79 new class actions were filed in the 12 months to June 30 this year, driven by a surge in employment-related class actions, particularly from junior doctors suing over long and unpaid work hours, according to the latest King & Wood Mallesons review of class actions in Australia.

In an announcement last month, the Australian Securities & Investments Commission said that in 2026 it would focus its enforcement activities on private credit practices; financial reporting misconduct; insurance complaints and claims handling; and misleading pricing

King & Spalding established an office in Australia in October, with disputes a key part of its offering.

Disputes practices are becoming more important to Australian firms, said Darren Gardner, managing partner of King & Spalding’s Sydney office.

“For the larger firms that are dealing with large public companies, there's a couple of reasons that you'd want to have a market leading disputes practice,” he said.

“The things that impact your brand—crisis situations, having strategic oversight on the broader market, risk management, compliance issues and investigations—and all of those touch on having a quality disputes practice.”

Global Disputes

Additionally, law firms are businesses and disputes practices can provide counter-cyclical billings revenue when transaction activity tails off.

King & Spalding has a global disputes practice, but it has started in a modest way in Australia, with international disputes partner Jennifer Chambers based in Sydney, and it plans to add more disputes partners.

There has been considerable turnover of disputes partners in Australia this year. Earlier this month, Australian firm Johnson Winter Slattery hired a partner each from White & Case and Australian corporate firm [MinterEllison](#). Last month, [DLA Piper](#) hired tax disputes partner Angela Wood from an Australian firm while Jones Day [hired four disputes partners](#) from HSF Kramer and an Australian firm.

Gardner said it is difficult to hire good disputes partners, particularly as some of the best disputes lawyers in Australia are barristers—self-employed advocates who are engaged by law firms to represent their clients in court hearings.

Law firms can bring a scale to a dispute, along with alternative perspectives, that barristers can't match, he said.

"These days, perspective and strategy are often as important as advocacy, so being able to bring that to the table for clients as they are making risk management decisions really matters," Gardner said.

Indeed, Ian Bolster, head of dispute resolution Australia at Ashurst, said clients are starting to call in disputes lawyers when they are hit with a crisis, even if it's not a dispute.

"It could be one of the first calls that are made. It's to help analyse the exposure, assess the risk, and help them make good decisions to manage the whole thing, not just the dispute that might come," he said.

Ashurst has 31 disputes partners in Australia and partners in other practices, such as employment, competition, and planning and environment, also work on disputes.

Bolster said the planned tie up with U.S. firm Perkins Coie will boost the global practice as "they've got a huge strength in litigation."

"Combining those just gives us opportunities around our clients to do more and bigger work for them, to service them across the globe," he said.

Tech Litigation

Bolster agrees that disputes work has been growing, in part because of litigation related to the

energy transition, where the de-commissioning of fossil fuel assets, such as coal-fired power stations, can lead to disagreements. Aging oil and gas assets also “throw off disputes”, he said.

Disputes arising from the deployment of technology are also rising, for instance over whether a data centre or processing facility delivered the desired outcome.

The bigger rise will come in future from disputes over artificial intelligence.

“AI itself has become huge, but the disputes that follow or could follow from it are still pretty modest,” Bolster said. “But as AI is used more and its applications become more focused and specific, we think there’ll be more.”

There will also be disputes over whether an AI application performs as promised and over who has responsibility for AI, such as when an AI agent is interacting with a person and misfires.

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As AI Becomes Ubiquitous, Legal Departments' Malpractice Risk Soars

"When I see cases like this of outside counsel ... phoning it in, it's very concerning to me. And it makes me wonder, what else is being phoned in for using AI?" said Nick Tiger, an associate general counsel at the AI platform Pearl.com.

December 03, 2025 at 12:39 PM By  **Trudy Knockless**



Credit: InfiniteFlow/Adobe Stock

Dozens of lawyers have been sanctioned for filing documents with fake, AI-generated citations—a tally that should serve as a warning flare for in-house legal teams relying on AI without clear oversight or protocols.

Nick Tiger, associate general counsel at Pearl.com, an AI platform that provides answers to professional service questions, has spent much of his career immersed in legal tech—expects those numbers will continue to swell

In one recent example that [garnered headlines internationally](#), an Alabama federal judge in July publicly reprimanded three lawyers with Butler Snow, the law firm hired to defend Alabama against lawsuits alleging its corrections officers used excessive force, after concluding they used OpenAI's

ChatGPT to produce a court filing with "completely made up" case citations. As part of Judge Anna Manasco's order, she threw the Butler Snow lawyers off the case.

In a separate incident in Alabama, federal Judge Terry Moorer in October [fined attorney James Johnson \\$5,000](#) for submitting fake AI-generated citations while representing a defendant in a high-profile drug case.

"It happens almost every business day across this country and internationally," Tiger said, citing a public database he monitors that tracks incidents involving lawyers misusing AI tools.

Tiger says misuse like this stems from lawyers plugging AI into the workflow too late in the process. "The earlier you use AI, the less risky it is. The later you use AI, the more risky it can be," Tiger said. "If I'm using AI to come up with case citations, and it's my last stop, and I'm not checking the citations, that's way too late in the process. And that really does tread into malpractice territory."

Interestingly, Butler Snow had taken at least some of the right steps to contain AI risks. It had implemented policies for responsible AI use and circulated warnings about generative AI use. It also required the approval of a practice group leader before an attorney could use AI. One of the Butler Snow lawyers sanctioned was himself a practice group leader.

Tiger noted that the incident raises questions about what legal departments are getting in return for their hefty payouts to outside law firms. The Associated Press reported that Alabama had paid Butler Snow more than \$40 million since 2020 to defend prison lawsuits.

Outside counsel "are so expensive," he said. "So when I see cases like this of outside counsel ... phoning it in, it's very concerning to me. And it makes me wonder, what else is being phoned in for using AI?" he said. "If you look at the bills, all these law firms are using AI, but the bills aren't going down."

Tiger's advice is straightforward: use AI early and with a human in the loop—not as a last-minute shortcut or replacement for legal review.

While some attorneys are calling for the creation of new, AI-specific regulations, Tiger said he doesn't believe that's needed. He said lawyers know where the lines are.

"All of this behavior ... it's not going to fly under the national rules anyway," he said. "You have to be competent. You have to ... oversee non-lawyers on the work that they do for you."

The lines between ethical and risky use are already well established in the ABA's model rules, Tiger noted. "If you don't have knowledge about the case, and you take on the case and you don't

educate yourself, that's a competency issue. If you're sharing client details with online, large language models, that's potentially a confidentiality issue as well.”

Tiger said his current employer, Pearl.com, built AI use directly into the workflow—rather than bolting it on. “We’re really intentional about integrating AI into the workflow itself, as opposed to being a separate add-on,” he said.

That means setting specific times to engage the tool, always followed by human validation. “That human doesn't necessarily need to be a lawyer, but if we're doing legal work, then that's when the professional rules come into play.”

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After Ohio's landmark decisions on HB 6 utility...

 [canarymedia.com/articles/utilities/ohio-puco-fine-firstenergy-hb6-scandal](https://www.canarymedia.com/articles/utilities/ohio-puco-fine-firstenergy-hb6-scandal)

December 3, 2025

After Ohio's landmark decisions on HB 6 utility scandal, what's next?

Regulators just fined FirstEnergy \$250M over its bribery scheme. While historically high, the amount falls short of what consumer advocates had pushed for.

By [Kathiann M. Kowalski](#)



Ohio's Kyger Creek Power Plant is one of two aging coal plants that the state's consumers propped up with subsidies mandated by House Bill 6. (FunksBrother, [CC BY-SA 4.0](#), via Wikimedia Commons)

In landmark rulings last month, the Public Utilities Commission of Ohio ordered FirstEnergy's three regulated companies to pay roughly [\\$250 million](#) for violations linked to the state's largest-ever utility corruption scandal. More than \$186 million of that will be refunded or credited to consumers.

It's one of the biggest such penalties in U.S. history. The rulings in three cases represent "an important milestone in fixing the harms FirstEnergy caused," said Ohio Consumers' Counsel Maureen Willis — even though the relief comes more than [five years](#) after her office first asked regulators for accountability and falls well short of what she and others pushed for.

The [utility corruption scandal](#) surrounding FirstEnergy and [House Bill 6](#) isn't just the largest in Ohio history — it also ranks up there [nationwide](#), where such occurrences have happened more often than regulators or consumers would want.

As part of the scheme, FirstEnergy paid roughly [\\$60 million](#) in bribes to pass the law bailing out unprofitable nuclear and coal plants, and then to [thwart](#) Ohioans' [constitutional right](#) to a [referendum](#) on it. FirstEnergy also admitted that it paid

[\\$4.3 million](#) to Sam Randazzo shortly before he became chair of Ohio's utilities commission in 2019, with the understanding that he would provide favorable treatment for the company.

A [lawsuit](#) and subsequent legislation [halted HB 6's nuclear subsidies](#) before they began. But [the law's coal subsidies](#) lasted five and a half years, up until this August, costing consumers approximately [half a billion dollars](#) in all.

On July 21, 2020, just about a year after Gov. Mike DeWine (R) signed HB 6 into law, federal agents arrested former Ohio House Speaker Larry Householder (R), former Ohio Republican Party Chair Matt Borges, and others in connection with the bribery scheme. Householder and Borges were [found guilty](#) of federal racketeering charges in 2023.

The Nov. 19 rulings by the utilities commission, also known as the PUCO, mark the first time FirstEnergy's utilities will pay anything to Ohio and its consumers for regulatory violations related to HB 6.

The company previously paid [\\$230 million](#) under an agreement with the Department of Justice to resolve a criminal charge, plus another [\\$100 million](#) to settle federal securities claims, and [\\$20 million](#) to avoid state criminal charges. The company also paid nearly [\\$50 million](#) to settle a [class action lawsuit](#).

Ripples in the rate cases

On the same day as its HB 6 rulings, the PUCO also approved a rate hike for some of FirstEnergy's customers, albeit one [much smaller than](#) what the company initially requested. Regulators granted an annual increase of nearly \$76 million for approximately 745,000 customers served by the Cleveland Electric Illuminating Co.

Meanwhile, rates will fall for customers of Toledo Edison and Ohio Edison by \$24.4 million and \$17.4 million per year, respectively. All told, regulators approved a net rate increase of about \$34 million — far less than the combined [\\$183 million](#) FirstEnergy asked for.

Consumer advocates had pushed for regulators to go further. The Office of the Ohio Consumers' Counsel — the state advocate for utility consumers — sought rate decreases totaling roughly [\\$132 million](#) for FirstEnergy customers, including a cut in the company's rate of return to account for the poor management that enabled the HB 6 corruption scheme.

"FirstEnergy's executive decisions contributed to increased financial risk, and it is unfair for its consumers to bear this burden through higher electric bills," Willis said, adding that shareholders should shoulder the cost. "Reducing the profits built into rates is also a way to ensure accountability."

Regulators ultimately rejected that approach.

Yet another battle over FirstEnergy's rates will probably play out next year, and the HB 6 scandal will likely loom over that process, too.

The day after the PUCO rulings came out, FirstEnergy announced that its three Ohio utilities will file their next rate case in [early 2026](#). So, different rates from the ones just approved will likely kick in as early as 2027.

"FirstEnergy's announcement does not come as a surprise," Willis said. That's because [legislation](#) passed earlier this year calls for an end to most bill riders and speeds up rate cases. [At least one company](#) has already filed a new rate case under the law.

FirstEnergy's utilities could use their new rate case to revisit some issues from the recently decided one.

All in all, "customers of Ohio Edison and Toledo Edison should be wary of the lower bills" they'll get after last month's rulings, said Dave Anderson, policy and communications manager for the Energy and Policy Institute, a watchdog group.

They're an improvement for now, he said, but may not last.

The book is not yet shut on HB 6

The PUCO's rulings in the HB 6 cases also stopped far short of the relief sought by consumer and industry groups, which would have topped [half a billion dollars](#).

And while regulators held that another [corporate-separation audit](#) should begin within the next three years, they refrained from providing a [full review](#) of FirstEnergy's management practices, which advocates have sought since 2020.

Nonetheless, the \$250.7 million in penalties and refunds imposed by regulators "are significant and welcome," said Tom Bullock, executive director of the Citizens Utility Board of Ohio, a nonprofit watchdog group.

For their part, PUCO Chair Jenifer French and Commissioner Lawrence Friedeman each [conveyed relief](#) that the three HB 6 cases had wrapped up. "As this journey began, the commission has expressed an unequivocal intent to follow the facts wherever they led, and today we reached the destination," Friedeman said at the Nov. 19 meeting.

But, as one of the commission's rulings notes, another case has yet to be addressed. Five years ago, in response to calls for investigations following the initial arrests of Householder, Borges, and others, the PUCO — then led by Randazzo — took the "[baby step](#)" of [ordering](#) FirstEnergy to show that it did not use money from Ohio customers for its HB 6 efforts.

FirstEnergy's utilities bear the burden of proof in the case. It may be difficult for them to prove the negative, because FirstEnergy had mixed funds from different sources in a [money pool](#). It's also unclear how much of a penalty regulators will impose if the companies can't demonstrate that they followed a state law banning use of customers' money for political or charitable purposes.

Written testimony in that case is due next month, and an administrative trial, called an evidentiary hearing, is [set to start](#) on Feb. 24.

Overall, Ohio's rulings on the HB 6 saga so far have been a mix of good news and bad news when it comes to holding utilities accountable, consumer advocates say.

"What we've learned from the whole HB 6 affair was that there was an extremely lax attitude towards regulation [at] FirstEnergy and the other majority utilities in Ohio ... that enabled the scheme to be played out," Anderson said.

He is encouraged by the commission's decisions last month, which reflected less deference to utilities and more serious financial consequences than past rulings.

"What the PUCO did do here that was quite strong was find FirstEnergy broke multiple Ohio laws," Anderson said. The assessed penalties also include several instances where the commission levied fines of [\\$10,000](#), [\\$16,000](#), or [\\$25,000](#) per day for different violations, which added up to tens of millions of dollars. If regulators in Ohio applied that approach all the time, not only in the wake of scandal, "it would provide utilities with a strong disincentive to take things as far as FirstEnergy did," he added.

Beyond that, criminal charges remain pending in state and federal court against two former FirstEnergy executives. Whether the outcome of those cases will reduce the incidence of future utility scandals remains to be seen.



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[Kathiann M. Kowalski](#) is a contributing reporter at Canary Media who covers Ohio.

Securities

House GOP, Lawyers Warn of ERISA Litigation Abuse by Plaintiffs

December 2, 2025, 12:28 PM PST

House Republicans and retirement plan industry players renewed warnings of a surge of copy-cat lawsuits from the plaintiffs' bar against fiduciaries, claiming during an oversight hearing they're exploiting the judicial system for a quick payout.

Witnesses and members of the House Committee on Education & the Workforce debated Tuesday about allegedly abusive litigation tactics and frivolous lawsuits brought under the Employee Retirement Income Security Act.

Republicans and ERISA legal experts argued that plaintiffs' firms are exploiting ERISA's fee-shifting provision, which allows courts to award fees if the claiming party achieves "some degree of success." These firms also use the threat of costly discovery to obtain quick settlements in class actions related to investment fees and plan underperformance, they said.

The Health, Employment, Labor, and Pensions Subcommittee hearing comes as Republicans consider legislation introduced last month to tighten the pleading standards for legal complaints under ERISA.

The ERISA Litigation Reform Act would specifically clarify the burden of proof in certain fiduciary-related claims and establish a targeted stay of discovery during early stages of litigation in alignment with federal court practices that deter frivolous lawsuits, according to the bill.

"No industry has a monopoly on jerks," Rep. Randy Fine (R-Fla.), the measure's key sponsor, said at the hearing. "There are bad actors that need to be sued. But there are also plenty of bad lawyers who take advantage of the system."

"And what my bill intends to do is to strike a balance—to give people the opportunity to" bring cases with merit but also protect them "from having their retirement savings sucked away from unscrupulous lawyers," he said.

Democrats Disagree

But Democratic members on the panel pushed back, accusing their Republican colleagues of being more concerned about prioritizing the interests of corporations over American workers and their retirement dollars.

Fine's bill directly targets the US Supreme Court's unanimous April decision in *Cunningham v. Cornell University*, which eased plaintiffs' ability to bring cases alleging that routine arrangements for retirement plan services violate ERISA's prohibited transaction rules, they said.

The high court justices did acknowledge *Cornell* could supercharge ERISA litigation by reducing the chances cases will be dismissed before the costly and time-consuming discovery phase.

"No one wants frivolous lawsuits. But if we follow the regulations and fund the investigators and enforcement arm, we wouldn't have to deal with lawsuits," said Mark DeSaulnier (D-Calif.), the panel's ranking member.

High Court Guardrails

Republicans and other critics insist that *Cornell* will lead to a flood of meritless ERISA cases.

Andrew Salek-Raham, principal at Groom Law Group, said class actions targeting employers and their health plan fiduciaries, along with benefits committees regarding costs and fees, have become a new focus for the plaintiffs' bar.

But Rep. Joe Courtney (D-Conn.) argued that the Supreme Court opinion and a concurrence by Justice Samuel Alito outlined several ways for defense lawyers and courts to challenge potentially meritless ERISA suits.

Alito wrote that judges can consider imposing sanctions, ordering plaintiffs to pay attorneys' fees, and carefully scrutinizing cases on standing grounds, among other things, the congressman said.

The justices "didn't throw the doors open to Lionel Hutz from the Simpsons to come rushing into court and try to get judgments that are undeserved," Courtney said, referring to the fictional attorney known for his greed.

William Alvarado Rivera, AARP Foundation senior VP of litigation, agreed with House Democrats that Fine's measure would undercut the high court's holding and ERISA's core protections.

But Lynn Dudley, senior VP of global retirement and compensation policy at the American Benefits Council, insisted Tuesday that the law incentivizes plaintiffs' attorneys by allowing them to "file several claims at once" in an effort "to compel settlements very quickly."

Plan sponsors want to avoid litigation altogether, so they're forced to reach a deal and to prevent contributors from pulling out, she said.

ESG Investing

At the hearing, HELP subcommittee Chair Rick Allen (R-Ga.) touted his proposal to codify a rule—initially announced by the first Trump administration—to restrict retirement fund managers from considering environmental, social, and governance factors in their investment choices.

The bill requires plan decision-makers to put financial factors above all else, and reinstates reporting requirements that President Joe Biden axed in 2023.

The House Committee on Education & the Workforce voted along party lines in June to advance the measure, and the Senate unveiled its version in October.

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Securities

Deep Dive

SEC's Earnings Fraud, Auditor Liability Cases Plunge Under Trump

December 3, 2025, 1:45 AM PST

The SEC under the second Trump administration is on track for its least active docket of earnings fraud and auditor liability cases since Ronald Reagan occupied the White House.

Fresh priorities under new leadership at the Securities and Exchange Commission—along with a staff exodus and a 43-day government shutdown—have stunted the regulator's efforts to hold companies and their outside auditors accountable.

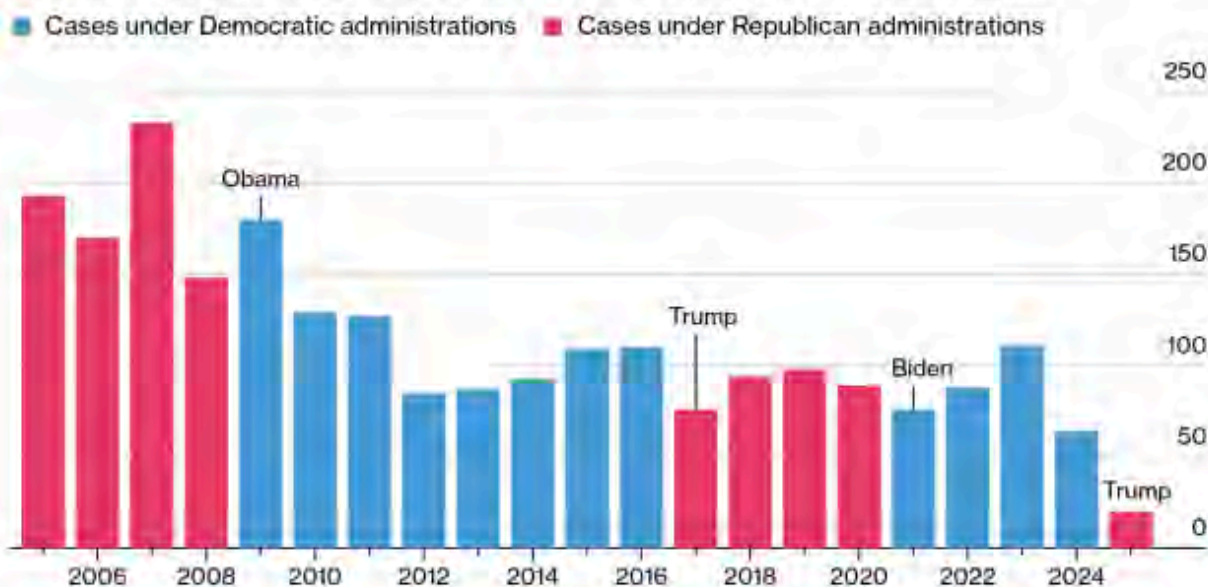
The SEC has issued just 20 enforcement actions so far this year involving violations that range from accounting errors to fraud, as well as audit failures.

That case count falls far short of the 79 financial reporting-related actions the Wall Street watchdog has issued on average annually since the start of President Donald Trump's first term in 2017, according to case data compiled by professors at the University of Southern California.

"It's truly a historic lack of enforcement this year," said William Floyd, an accounting analyst and adviser to Floyd Advisory.

Accounting and Auditing Enforcement Outlier

SEC enforcement plunge is steep even for a presidential transition year



Source: SEC accounting and auditing enforcement releases, USC professors Richard Sloan and Patricia Dechow

Bloomberg Tax

The steep drop in enforcement comes as the SEC considers reducing the frequency of corporate financial reporting to just twice a year. At the same time, a run-up in stock values for tech firms that dominate the market has sparked concerns about the underlying economics of those companies.

"We need this watchdog to be making sure everybody is doing the right thing," Floyd said.

The SEC declined to comment on its recent record policing financial accounting and auditors tasked with vetting corporate revenue and asset values.

Former SEC enforcement lawyers, forensic accountants, and other commission watchers warn that despite the steep slowdown, the regulator continues to pursue accounting and audit failures. Companies still risk facing future enforcement actions from any ongoing probes, even under the SEC's new enforcement paradigm.

Since the government re-opened Nov. 13, the SEC has suspended two CPAs and fined an investment management company for an auditor independence violation.

Enforcement Drought

Financial accounting and auditing cases typically decline during the first year of a new presidential administration, according to four decades of such enforcement actions tracked by USC accounting professors Patricia Dechow and Richard Sloan. Hiring new division directors and rolling out new agency priorities takes time.

The Wall Street watchdog finalized its most significant actions so far this year in the final days of the outgoing Biden administration. Among those early 2025 cases, American Electric Power Inc. reached a \$19 million settlement with the SEC over payments made to an entity at the center of a bribery scandal. E-commerce platform GrubMarket Inc. also reached an \$8 million settlement for overstating revenue.

Formal agency orders are on pace to drop by more than two-thirds this year, however—the biggest post-inauguration decline since the 1980s. Enforcement actions slipped by nearly one-third in the opening year of Trump's first term.

Electronic filing of corporate financial reports didn't start until the 1990s, making it harder for the SEC to identify earnings manipulations before then. The few enforcement actions brought weren't publicized as widely as they would be today, Dechow said.

"It should be easier nowadays to find companies doing unusual things because of the electronic filing," she said.

A confluence of factors contributed to the current drought in enforcement, including SEC Chair Paul Atkins' focus on frauds that directly hurt investors.

"Resources are limited in any organization, including the SEC, so hard decisions must at times be made," Atkins said in an October speech. "We must go after cases of genuine harm and bad acts, but we must view cases of benign or innocent actions differently."

Atkins' SEC is operating with fewer forensic accountants and lawyers to dig through corporate records and audit documents. The agency by June had shed 15% of its workforce through buyouts and early retirement incentives.

Meanwhile, the fall government shutdown halted much of the regulator's work for more than a month soon after key staff were in place to help deliver on Atkins' enforcement vision.

Procedural hurdles have also slowed the tempo of cases, including those that involve accountant professional violations. The agency has increasingly brought such cases in federal court as constitutional challenges have curbed the SEC's use of its in-house judges.

Priority Shift

Agency watchers expect the SEC to focus on clear-cut accounting and auditing violations that mislead shareholders. Plus, global companies listed in the US likely will face renewed SEC scrutiny of their financial statements and the work of the outside auditors they hire.

Unintentional errors in a controller's reasoning behind a complex accounting judgment or infractions of strict auditor conflict-of-interest rules are less likely to draw formal reprimands.

Revenue fraud, often with phony customers or sham transactions, along with big-ticket swings from asset impairments, will still trigger SEC scrutiny, said Tom Bednar, a partner with Cleary Gottlieb Steen & Hamilton LLP and a former enforcement trial lawyer for the commission.

"Regardless of the administration, the SEC knows that having integrity in financial statements is important and is going to continue to do enforcement in that space," Bednar said.

SEC enforcement staff continue to look into potential violations of US accounting and auditing standards, including an inquiry into MassMutual's investment income accounting.

"We are not seeing really a significant slowdown in activity at the investigation level" or the start of new inquiries, Ellen Burns, associate general counsel for Deloitte LLP, told an audit conference at Baruch College in November.

Any recently launched probes, however, could take years to surface, said Stephen Bucci, a forensic accountant and managing director with FTI. Bucci was previously an enforcement accountant at the SEC.

"This might be the best commission in a while to actually self-report to," Bucci said. "Do your investigation and come up with the resolution and then get in front of the issues."

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Ken Vogel

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NEW: The commutation Trump issued to David Gentile wipes away all further fines & restitution.

Gentile had been sentenced to 7 years for his role in a \$1.6B scheme that defrauded thousands of investors.

Prosecutors had been seeking \$15.5M in forfeiture.

www.justice.gov/pardon/media...

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

BE IT KNOWN, THAT THIS DAY, I, DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, PURSUANT TO MY POWERS UNDER ARTICLE II, SECTION 2, CLAUSE 1, OF THE CONSTITUTION, HAVE GRANTED UNTO THE INDIVIDUAL NAMED BELOW

AN IMMEDIATE COMMUTATION OF HIS ENTIRE SENTENCE TO TIME SERVED WITH NO FURTHER FINES, RESTITUTION, PROBATION, OR

OTHER CONDITIONS

For these offenses against the United States individually enumerated and set before me for my consideration:

United States v. Gentile, 21-CR-00054-001 (RPM)

DAVID GENTILE

I HEREBY DESIGNATE, direct, and empower the Pardon



District of Columbia this 26th day of November in the year of our Lord Two Thousand and Twenty-five and of the Independence of the United States the Two Hundred and fiftyeth.

Dec 3, 2025, 9:18 AM Everybody can reply

192 reposts 49 quotes 325 likes 23 saves

21

241

325





roch @rochmyre.bsky.social · 1h

He stole \$1.6 billion and was fined less than 1% of what he stole?

And then used the money to buy a Trump pardon and didn't even have to pay back that 1%?

Crime pays.



12

88



Gary Masson @garymasson.bsky.social · 1h

It's clear that Trump does not regard white collar crime, as an actual crime. He never has. He thinks people like himself can do whatever they want to make money, evade taxes, bribe and coerce with no accountability whatsoever! It should come as no surprise that he pardons people just like him!



2

5

41



Iwona B. Phuken @dubseasparks.bsky.social · 37m

Agreed, but I'd strike the word "collar" from your post



7



jag @i-am-j.ag · 1h

It gets worse.

[bsky.app/profile/jsweet...](https://bsky.app/profile/jsweetli.bsky.social)



Jacqueline Sweet @jsweetli.bsky.social · 3h

NEW: Trump commuted the sentence of billion dollar Ponzi schemer David Gentile days into his sentence.

Gentile's business history is long intermingled with former oligarch Michael Cherney, wanted by Interpol for alleged ties to Russian organized crime.

jacquelinesweet.substack.com/p/trump-comm...

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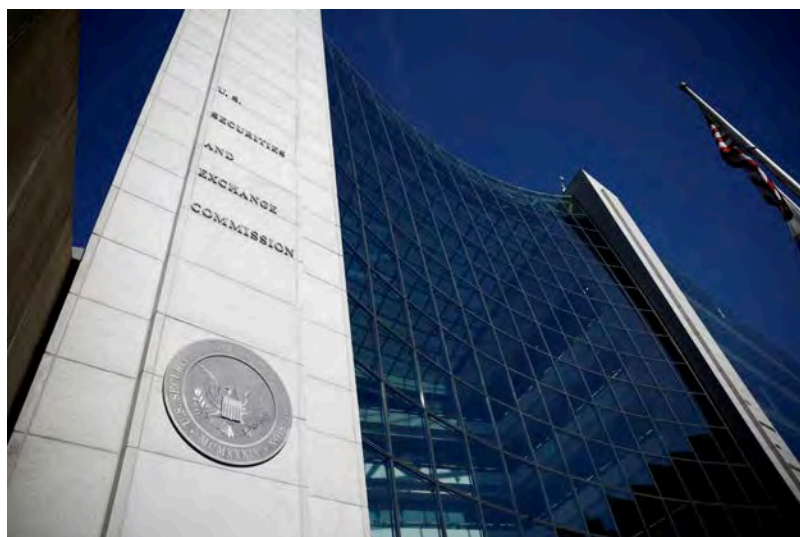
OPINION COMMENTARY [Follow](#)

The SEC Is Reviving American Capital Markets

Simpler disclosure rules will help companies and investors.

By Paul S. Atkins

Updated Dec. 2, 2025 5:15 pm ET



The Securities and Exchange Commission headquarters in Washington. BENOIT TESSIER/REUTERS

America marks its 250th anniversary next year. Our founders understood that markets can unleash a nation's dynamism as no monarch or government ministry possibly could. The securities markets soon emerged to unlock the most daring mobilization of capital in history. The steel that built our cities, the oil that powered our factories, and the electricity that illuminated our homes were carried forward by domestic and foreign investors willing to stake capital on an America still in formation.

As the 20th century unfolded and competing ideologies sought to engineer economic strength from the top down, our model steadily proved its value. The Soviet system collapsed under its own contradictions, while American life made giant leaps thanks to a system that rewards those who take risks.

But principles don't preserve themselves. In recent years, our regulatory direction has veered from the founding ideals that helped the U.S. stand without peer as the world's destination for public companies.

When promoting the initial federal law regulating sales of securities in 1933, President Franklin Roosevelt explained that its purpose was "to protect the public with the least possible interference with honest business." As the generations passed, the federal government's natural tendency asserted itself. Rulemakings now produce reams of paperwork that can obscure more than they illuminate. One of my priorities as Securities and Exchange Commission chairman is to reform the SEC's disclosure rules with two goals in mind: root them in financial materiality and scale them with a company's size and maturity.

Achieving the first goal necessitates restraint and care, both from the SEC when it promulgates a rule and from Congress when it directs the commission to mandate disclosure on a subject. Capital markets thrive not through the volume of disclosures but their clarity and importance to investors. To avoid information overload, our disclosure regime is most effective when the SEC provides the minimum effective dose of regulation.

The idea that disclosure requirements should scale with a public company's size and maturity is hardly novel. The SEC first tailored disclosure requirements for smaller public companies in 1992. Two decades later Congress, through the bipartisan JOBS Act, gave certain newly public companies an "IPO on-ramp" and permitted them to comply with some of the SEC's disclosure requirements on a delayed basis.

My goal is to examine all this anew through the lens of achieving disclosure that actually informs investors of the particular investment's real risks and returns.

These remedies are long overdue, but they are only the first steps in a broader effort to realign our markets with their most fundamental purpose—placing American might in the hands of citizens instead of the regulatory state.

The question isn't whether our entrepreneurs have the capacity to reinvigorate our capital markets, but whether regulators have the will. In this new day at the SEC, under President Trump's leadership, I am pleased to report we do.

Mr. Atkins is SEC chairman. This is adapted from a Dec. 2 speech to the New York Stock Exchange.

Appeared in the December 3, 2025, print edition as 'The SEC Is Reviving Capital Markets'.

Litigators of the (Past) Week: The SEC Walks Away From Its Case Against SolarWinds, Top Cybersecurity Officer

Late last month, the U.S. Securities and Exchange Commission agreed to dismiss claims that the software company concealed cyber vulnerabilities in the lead-up to the high-profile 2020 Sunburst attack. A team led by Sean Berkowitz and Serrin Turner of Latham & Watkins secured a ruling from a federal judge in Manhattan last year, gutting the SEC's case.

December 03, 2025 at 07:30 AM By  **Ross Todd**



Serrin Turner (L) and Sean M. Berkowitz (R) of Latham & Watkins. Courtesy photos

The enforcement action that the U.S. Securities and Exchange Commission brought in 2023 against SolarWinds captured the attention of the cybersecurity industry.

The SEC's suit, filed in the Southern District of New York, accused the Austin, Texas-based information technology software company and its chief information security officer, Tim Brown, of concealing red flags in the run-up to the Sunburst attack in 2020 and misleading investors about the scope of the attack, which caused major disruptions to customers.

But our litigators of the week, **Sean Berkowitz** and **Serrin Turner** of **Latham & Watkins**, led a team that secured [a ruling last year](#) knocking the teeth out of the SEC's claims. U.S. District Judge Paul Engelmayer found that the SEC failed to show "actionable deficiencies" in the company's reporting and that claims about the company's post-hack statements "impermissibly rel[ied] on hindsight and speculation."

Late last month, the SEC [agreed to dismiss](#) its case against the company and Brown with prejudice, although [the commission said](#) the decision "does not necessarily reflect the Commission's position on any other case."

Who is your client and what was at stake here in this SEC action?

Serrin Turner: Our clients were SolarWinds, a leading developer of network monitoring software, and Tim Brown, its Chief Information Security Officer, who has a long and distinguished career in the cybersecurity field. What was at stake for both of them, beyond the threat of financial penalties and injunctive relief, was the potential reputational impact from the SEC's baseless allegations that they had misled SolarWinds investors about the company's security and had failed to implement basic security practices. For Tim in particular, the stakes were intensely personal, as Tim prides himself on being an advocate for strong cybersecurity and sought to be a model of transparency after the cyberattack SolarWinds experienced in 2020. Tim literally had a heart attack the day he learned of the SEC's charges. The desire to right the reputational wrongs that had been done to our clients was an abiding source of motivation for the Latham team throughout the case.

How did this matter come to you and the firm?

Sean Berkowitz: Before this case, Latham had no prior connection to SolarWinds and, in fact, SolarWinds was represented by another firm during the investigative phase of the case. When it appeared the case might end up in litigation, in-house counsel at SolarWinds solicited feedback from trusted colleagues at other public companies about who they would hire if they were going to fight, and potentially try a case against, the SEC. A general counsel at a large public company recommended me based on success I had previously had defeating the SEC in a major case for that company. I assembled a team that included Serrin, an expert in cybersecurity matters and a fellow former federal prosecutor, and after several rounds of interviews, SolarWinds' general counsel, **Jason Bliss**, and head of litigation, **Becky Melton**, chose to hire us to represent the company. We then spoke with Tim Brown, who decided to engage us as well, along with **Alec Koch** from **King & Spalding** serving as his shadow counsel—with SolarWinds paying for all of Tim's legal costs.

Who all was on the team and how have you divided the work?

Berkowitz: Our team was led by myself and Serrin, with a strong team of New York and Chicago-based associates, including **Matthew Valenti**, **Nicolas Luongo**, **Maurice Baynard** and **Christian Beveridge**, as well as former Latham associate **Kirsten Lee**. The team had an ideal blend of securities and cybersecurity experience. Our success was truly a team effort and demonstrated the best of what we can bring to bear in a high-stakes case like this. Serrin led the briefing in the case, while I was primarily responsible for negotiating with the SEC. We split oral argument on the motion to dismiss as well as the factual development during discovery. We were aided in our efforts not only by Alec Koch, but also by **Andrew Ceresney** and **Anna Moody** at **Debevoise**, who had represented the company during the investigative phase of the case. Most importantly, our partnership with the SolarWinds in-house legal team—led by Jason Bliss, Becky Melton, **Anna Denton** and **Annie Gravelle**—was instrumental in achieving the outcome we did.

Why did this particular case capture the attention of the cybersecurity world like it did?

Turner: I think what worried the cybersecurity community about this case was the overreaching regulatory agenda behind it. The SEC is not a cybersecurity regulator—it's neither congressionally authorized nor institutionally qualified to play such a role. Yet the SEC was clearly seeking to expand its regulatory sphere of influence over cybersecurity through this enforcement action—pushing for cybersecurity disclosure obligations beyond anything the law previously required, and even claiming a general police power over public companies' cybersecurity controls, by falsely equating them with "accounting controls." Making matters worse, the SEC came up with the supposed evidence for its claims by sifting through the day-to-day communications of SolarWinds' IT staff and seizing on discussions of cybersecurity risks as if they were admissions of fraud. That understandably made cybersecurity professionals fearful that anything they said in their daily work—which constantly involves assessing risk—could be taken out of context by a regulator and used to target both their company and them personally. There was a real concern that this case would chill candid internal communication within cybersecurity programs as a result—harming the cause of cybersecurity rather than helping it.

You had multiple amicus groups back your position at the motion to dismiss phase. Who all joined that effort and how important do you think it was to this outcome?

Turner: Our amicus support was truly exceptional, and we are grateful to all who contributed, including software industry groups represented by **Jim Garland** at **Covington**, a collection of CISOs and CISO advocacy groups represented by **Andrew Goldstein** of **Cooley** and **Tim Howard** of **Freshfields**, the U.S. Chamber of Commerce and Business Roundtable represented by **Nicole Friedlander** at **Sullivan & Cromwell**, and a stellar roster of former government officials (even including a former SEC cyber enforcement chief!) represented by **John Carlin** at **Paul Weiss**. Their briefs powerfully explained how the SEC's aggressive legal theories threatened to disrupt and

distort companies' cybersecurity operations if they became law. I have no doubt the briefs helped persuade Judge Engelmayer to reject those legal theories, as he did in dismissing most of the SEC's claims at the pleading stage.

What can other companies take from how SolarWinds approached this case?

Berkowitz: I hope that other companies will learn that you can fight the SEC and prevail if you have the facts and law on your side. It is always a risk to litigate against your primary regulator, and many companies make the understandable decision to settle rather than engage in a public fight with the government. Here, I give tremendous credit to Jason Bliss, Tim Brown and the company for recognizing the importance of this case, not only to Tim and the company, but also to the broader constituency of public companies and their CISOs nationwide. The company and Tim took a principled stand and placed their faith in the system, trusting that after the facts came to light, it would be apparent that nobody did anything wrong here. I think the approach they took and the ultimate outcome they achieved are valuable lessons for other companies facing similar choices in the future.

The [SEC indicated](#) that its decision to seek dismissal of the case "does not necessarily reflect the Commission's position on any other case." What lessons do you hope the agency has taken from this litigation?

Berkowitz: It took a lot of courage for the agency to walk away from this case after the public statements it made when the case was charged and the resources it expended over almost two years of actively litigating (and two years of investigating before that). I would hope the agency continues to keep an open mind on cases it charges and focuses on getting the right result based on the facts and law as they ultimately develop, rather than continuing to pursue a case merely because they want to prevail. To paraphrase Justice Jackson, the government's role is to ensure justice is done, not merely to win a case.

Has handling this case made you rethink any of your own approaches to cybersecurity and digital hygiene?

Turner: No, it really hasn't—because the case wasn't genuinely about failures of cybersecurity hygiene. The SEC's complaint mischaracterized internal documents to *invent* cybersecurity hygiene failures that didn't actually exist. That is all laid out in our summary judgment briefing. However, what the case has caused cybersecurity lawyers to rethink is whether corporate legal departments should do more to supervise internal communications of cybersecurity personnel in order to minimize the potential for those communications to be misconstrued or misrepresented by regulators. I think some effort along those lines is advisable and have worked with companies on implementing processes for that. But I am wary of overlearning the lessons of this case and

over-lawyering cybersecurity programs—which risks chilling candid internal communications and distorting program priorities. To my mind, the real lesson of this case is not for companies but for cybersecurity *regulators*: They should approach cybersecurity with more humility, taking care to learn all the relevant facts before bringing a case and to avoid jumping to conclusions based on hindsight or confirmation bias.

What will you remember most about this matter?

Berkowitz: Other than being able to celebrate in person with our client the day the SEC formally dismissed its case, the most memorable moment I had was when I was cross-examining the SEC’s self-described whistleblower. The “whistleblower”—who was a marketing employee, not a cybersecurity employee—had very publicly claimed he warned SolarWinds about various supposed cybersecurity issues during his time at the company. After repeatedly showing the witness document after document about facts he was not aware of that contradicted his public statements, I asked him whether in fact he lacked sufficient information to support the allegations he had made. He answered: “This is becoming very apparent, yes.”

Turner: While it may sound a little mundane, one of the things I will most remember is the joint statement of material facts we filed in support of our motion for summary judgment, where the SEC admitted—at long last—that SolarWinds routinely implemented the very controls the SEC’s complaint had alleged the company pervasively neglected. Reaching that point required a great deal of work and effort during the discovery process, and it was satisfying to see the payoff in the form of a clear (albeit belated) admission of the truth from the SEC. I have to believe that the resulting cognitive dissonance—between what the SEC originally alleged and what they later conceded the facts showed—is what ultimately led the SEC to decide to dismiss the case altogether.

Page printed from: <https://www.law.com/litigationdaily/2025/12/03/litigators-of-the-past-week-the-sec-walks-away-from-its-case-against-solarwinds-top-cybersecurity-officer/print/>

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Securities

Manage Newsletters

The 26-Minute, 51% Wipeout That Deepened Trumps' Crypto Woes (1)

December 3, 2025, 2:39 AM PST

Summary by Bloomberg AI AI Generated



- American Bitcoin Corp. shares dropped more than 50% on Tuesday, with losses reaching 42% just five minutes after trading started and 33% at 9:31 a.m.
- Projects tied to the Trump family, such as World Liberty Financial and Alt5 Sigma, have seen significant declines, with World Liberty Financial's WLFI token tumbling 51% and Alt5 Sigma plunging around 75%.
- The Trump family's crypto ventures have lost over \$1 billion in wealth since October, with retail investors who bought in near the peaks suffering the most painful losses, including a 22-year-old student who saw his portfolio drop by as much as 40% by mid-November.

The crash Tuesday in the crypto miner American Bitcoin Corp. was instantaneous. At 9:31 a.m. on Wall Street, just one minute after trading started, its shares were down 33%. Five minutes later, losses had ballooned to 42% and then, by 9:56 a.m., to more than 50%.

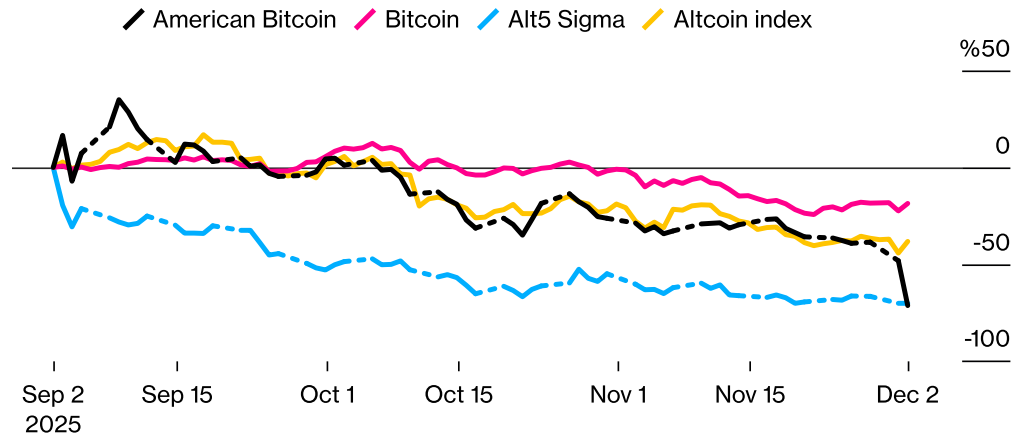
It was all so spectacular that American Bitcoin quickly became the symbol of not just the crypto market wipeout of late 2025 but also the collapse of the myriad ventures that the Trump family has been promoting in the digital-currency world over the past year. For as much as broader crypto markets have sunk these past two months – roughly 25% in the case of bellwether Bitcoin – projects that are tied to the Trump family are down far, far more.

World Liberty Financial, co-founded by President Donald Trump and his sons, has seen its WLFI token tumble 51% from its peak in early September, more than both Bitcoin and an index of smaller digital tokens. Alt5 Sigma, a company promoted by the Trump sons, has plunged around 75% as it deals with a growing number of legal problems.

Then there are the memecoins named after the president and his wife, Melania, which have fallen around 90% and 99% respectively from their record highs back in January. American Bitcoin, which was co-founded by **Eric Trump**, is now down 75% after the big drop on Tuesday. It rose 11% in US pre-market trading on Wednesday.

Trump-Crypto Premium Disappears

The Trump family's crypto plays have fallen sharper than actual token prices



Source: Bloomberg

Note: Data is normalized with percentage appreciation as of Sept. 2, 2025. The MarketVector Digital Assets 100 Small-Cap Index tracks the performance of smaller tokens known as altcoins.

Bloomberg

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

These moves have put a big dent in the huge piles of crypto wealth that the first family amassed earlier in the year. But they also carry a broader significance for both the digital asset industry and the president's public image. Trump's embrace helped boost a wide array of crypto tokens during the early months of his second term and turned the price of Bitcoin into a marker of his political success.

Now, though, what looked like a Trump premium has suddenly turned into a Trump drag, taking out one of the central pillars holding up cryptoassets and offering an indication of just how quickly confidence in these speculative markets – and even in the president himself – can dissolve.

"The Trump presidency has been a double edged sword for legitimacy," said Hilary Allen, a law professor at American University's Washington College of Law. "Trump started launching his own crypto projects, many of which lost value very quickly. If the goal was to achieve legitimacy through the Trump family, that's not helped."



Donald Trump spoke at the Bitcoin 2024 conference in Nashville, Tennessee,

Photographer: Brett Carlsen/Bloomberg

World Liberty Financial and the company behind Trump's memecoin, Fight Fight Fight, did not immediately respond to requests for comment.

While the president has recently toned down his public promotion of crypto, Eric Trump took to social media on Tuesday to blame American Bitcoin's bad performance on the end of a lockup period for its shares, rather than any broader weakness.

"Our fundamentals are virtually unmatched," he wrote in a post on X. "I'm 100% committed to leading the industry."

To be clear, the dramatic moves in the assets associated with the Trump family are hardly new for an industry that has been defined by its volatility. Digital tokens have experienced big drops in the past, before bouncing back. On Tuesday, as American Bitcoin struggled, the original cryptocurrency had one of its best days in the last few weeks, rising around 6%.

Read More: [Bitcoin Jumps Back Above \\$90,000 After Bruising Selloff](#)

Earlier this year, though, it seemed like Trump's embrace of the technology might be enough to take digital tokens out of their endless cycle of boom and bust and turn them into a more reliable part of the financial system. If nothing else, many crypto believers figured Trump would have enough power to ensure the success of the projects he cared about the most.

And for a while, the various cross-promotions seemed to be working. People looking to express their support for the president bought Trump tokens and pushed up their value. Gryphon Digital shares surged 173% when it announced that it was merging with Eric Trump's American Bitcoin in May. On the first day of trading after the merger, in September, shares of American Bitcoin rose another 16%.



Eric Trump and Donald Trump Jr. during the Bitcoin 2025 conference in Las Vegas, Nevada, in May 2025.

Photographer: Ronda Churchill/Bloomberg

These projects were all helped by policies and regulatory changes that Trump promoted, led by legislation that aimed to bring crypto stablecoins, tied to the value of the dollar, into the mainstream.

But the signs of trouble have been mounting over time. The memecoins that were launched right before the inauguration, with lots of promotional muscle from Trump himself, have steadily lost steam over time, with just occasional moments of relief, like the rally in April after the president offered to join some of the biggest holders of the coin for dinner.

Joel Li, the chief executive of an online marketplace for electric vehicles, bought the memecoin so he could attend the dinner, but sold out soon after. He noticed things getting particularly bad after Trump launched a new salvo of tariffs against China in October.

"People started to realize, this might not be what they thought," Li said.

Michael Terpin, a long-time crypto investor, said that the tariff moves have served as a cold reminder: "Trump giveth and Trump taketh away."

The problems, though, have gone beyond the vagaries of the broader markets. American Bitcoin has had to deal with a [report](#) that the mining machines it uses, from a Chinese manufacturer, have been investigated as a risk to US national security. Meanwhile, Alt5 Sigma, a public company that set out to buy one of the tokens issued by World Liberty Financial, has faced an [exodus of executives](#) after announcing that one of its subsidiaries had faced a criminal probe in Rwanda.

Alt5 Sigma did not respond to requests for comment on the recent developments.

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Harvard's Big Wager on Bitcoin Came Right Before the Bust

The school reported nearly a half-billion in crypto holdings in its last quarterly report

By [Heather Gillers](#) [Follow](#)

Dec. 2, 2025 6:05 pm ET



Harvard's endowment is the biggest of any U.S. school. MADDIE MEYER/GETTY IMAGES

Quick Summary

- Harvard University increased its investment in the iShares Bitcoin Trust ETF to nearly \$500 million last quarter.

[View more](#)

Things aren't looking good for Harvard's big bet on bitcoin.

The country's oldest and richest university supersized its wager on the cryptocurrency last quarter, ramping up its holdings in [iShares Bitcoin Trust ETF](#) to nearly half a billion dollars. Even after Tuesday's rebound, bitcoin [has dropped more](#)

[than 20%](#) this quarter—dragged down in a crypto rout hitting everyone from Wall Street to retail investors [to holders](#) of the U.S. president's meme coin.

Harvard could have gotten out unscathed—or even with a small gain—if the school had sold its holdings in early October, before prices dropped. The average price Harvard paid couldn't be learned but if the school still holds some or all of the 4.9 million shares it bought last quarter, the best-case scenario would be a 14% loss on those holdings.

That assumes the shares were purchased at the beginning of July when bitcoin prices were at their low for the quarter. In that case, Harvard would have paid \$294 million for shares that are now worth \$255 million.

Another 1.9 million shares Harvard [bought](#) in the second quarter before this year's big run up may have fared better.

Any crypto losses would be a drop in the bucket for Harvard's massive \$57 billion endowment, the biggest of any U.S. school. The bitcoin reported as of Sept. 30 represented less than 1% of the total holdings.

Still, Harvard's ill-timed bet is a reminder of how bitcoin has worked its way into the mainstream with institutional investors, and how many were placing healthy bets on the cryptocurrency even after a staggering run-up this year. Before its retreat, bitcoin had gained 34% in 2025 to a record above \$126,000.

Annualized returns on Harvard's investments have lagged behind some peers over the past decade, with an 8.2% return ranking ninth out of 10 Ivies and other top schools in [a comparison](#) by Markov Processes International. The endowment has fared better under current chief N.P. "Narv" Narvekar, with an annualized 9.6% return during his eight-year tenure.

For the year ending June 30, the school [reported a respectable 11.9% gain](#) but trailed Massachusetts Institute of Technology's 14.8% and Stanford University's 14.3%.

Other schools might have been stung by the drop in crypto prices as well, but to a far lesser extent. Universities reporting crypto holdings in the third quarter included Brown, with [\\$14 million](#) worth of the [BlackRock](#) bitcoin ETF, and Emory, with [\\$52 million](#) of Grayscale's Bitcoin Mini Trust ETF.

Paper losses aren't necessarily a problem for long-term investors such as endowments and pension funds as long as they eventually rebound—and as long as they have other holdings they can tap for quick cash. And some institutional investors have been weathering the ups and downs of crypto for years. Public pensions were [among those stung](#) when digital currencies crashed in 2022. Bitcoin prices have more than quintupled since then.

Still some investors deem crypto a poor match for long-term investors. "When you're gambling, you need to sell it, not hold it," said Jay Hatfield, chief executive of Infrastructure Capital Advisors.

Write to Heather Gillers at heather.gillers@wsj.com

The Latest on Crypto

Coverage of bitcoin and other cryptocurrencies, selected by the editors

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What Does Bitcoin's Drop Mean? Theories Include Risk-Off Investing, Trump Trade

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Christopher Beam

December 2, 2025



Bitcoin's selloff in recent weeks caught the market off guard.

Photographer: Milan Jaros/Bloomberg

Bitcoin's almost 30% drop in recent weeks has been hard to ignore. It's also difficult to explain. Today [Christopher Beam](#) writes about some of the theories. Plus: The [video game studio Yacht Club](#) is facing an existential struggle.

If this email was forwarded to you, [click here to sign up](#).

Last month, when McDonald's resurrected the McRib, the popular pork sandwich that periodically rotates on and off its menus, Bitcoin fans rejoiced. Yes, the sandwich is delicious. But the main reason for their excitement was the so-called McRib Effect: Someone once [observed](#) that the return of the McRib often precedes a Bitcoin rally. This time, even a McDonald's marketing exec [hyped up the supposed McRib-Bitcoin correlation](#).

The euphoria was temporary, as the price of Bitcoin, along with other cryptocurrencies, has plunged over the past few weeks. Since hitting an all-time high in early October, the token has dropped almost 30%, wiping out \$1 trillion in market cap across the crypto world—the biggest fall since 2022, when Sam Bankman-Fried's FTX exchange collapsed.

The McRib theory, while tongue in cheek, is rooted in a core truth: It can be hard to decipher the logic behind crypto's ups and downs. As the Bitcoin slump continued into Monday, observers scrambled to explain the downturn. (The token [rallied back above \\$90,000](#) this morning.)



The reasons behind Bitcoin's drop are open to interpretation.

Photographer: Camilo Freedman/Bloomberg

Most analysts seem to agree that Bitcoin's drop is an indicator of "[risk-off](#)" sentiment—that is, investors are less willing to take chances like buying Bitcoin. Their theory is that investors are waiting to see whether the Federal Reserve will cut interest rates next week. When the cryptocurrency hit its all-time high in October, many attributed the surge to expectations that the Fed would keep lowering rates. But after an [initial cut](#) in September, Chair Jerome Powell has been cagey about future moves. With lower rates uncertain, crypto plunged, exacerbated by leveraged buyers being [forced to liquidate](#), which drove the price down even further.

Other events have contributed to the perception that the market is risk-off, and therefore a bad environment for Bitcoin. In November, analysts pointed to fear of an AI bubble. This week, some blamed the Bank of Japan for signaling that it might hike interest rates. (For years, investors have borrowed Japanese yen at low rates and then traded them for US dollars in order to invest in US assets. When Japan raises rates, some of those investors have to unwind their bets—including on Bitcoin.) One analyst [speculated](#) that a decline in stock volatility last week might have spooked some Bitcoin investors, as it could signal a low appetite for risk.

Not [everyone sees](#) Bitcoin's plunge as driven by economics. On Substack, the economist Paul Krugman [called](#) it a "Trump trade," arguing that "Bitcoin's declining price is an indicator of Trump's declining dominance over the G.O.P." He attributed the coin's drop partly to the election of Democratic governors in Virginia and New Jersey on Nov. 4, plus the drip of revelations tying Trump to sex trafficker Jeffrey Epstein.

Bitcoin fans, meanwhile, can always find an explanation for why a downturn is good. One crypto influencer on X [suggested](#) the recent plummet mimics the coin's trajectory in 2020, which preceded a massive bull run. "This is your second chance," he wrote. "Most won't take it." Another X user [posted](#) a chart comparing Bitcoin's price to that of gold and the global money supply: All three roughly tracked each other early this year, but Bitcoin was now plunging while the others were skyrocketing—presumably a sign that Bitcoin would, too. Many Bitcoiners believe that the token's bull runs coincide with a quadrennial event known as the "halving," when the rewards paid out to miners are cut in half, thereby injecting scarcity into the market. The last halving was in 2024, which would mean a dramatic run-up is overdue.

Even in traditional markets, it's often hard to tell what exactly is driving price vicissitudes. (Indeed, there's a similar [theory](#) about the McRib's relationship with the S&P 500.) But cryptocurrencies are especially challenging because they're pure narrative. Bitcoin has no underlying business model, so its value derives entirely from the stories people tell about it. That's something to chew on along with your fries.

Related: [Crypto Firm Tied to Trumps Sees Share Price Halve in 30 Minutes](#)

In Brief

- Amazon.com Inc.'s cloud unit raced to get the [latest version of its artificial intelligence chip](#) to market, renewing efforts to sell hardware capable of rivaling products from Nvidia Corp. and Google.
- Americans are [increasingly over the "slop bowl."](#) Chipotle, Sweetgreen and Cava are struggling as diners tire of all those pick-your-own ingredients piled atop rice or greens.

Securities

Manage Newsletters

SEC Halts High-Leveraged ETF Plans in Warning Over Risks (2)

December 3, 2025, 5:33 AM PST

Summary by Bloomberg AI

AI Generated



- The US Securities and Exchange Commission has issued warning letters to firms including Direxion, ProShares and Tidal, effectively blocking the introduction of products designed to deliver three and even five times the daily returns of stocks, commodities and cryptocurrencies.
- The SEC's concern is that the funds' risk exposures may exceed SEC limits on how much risk a fund can take on relative to its assets, and the regulator has directed the fund managers to either revise their investment strategies or formally withdraw their applications.
- The SEC wrote to the applicants to express concern regarding the registration of exchange-traded funds that seek to provide more than 200% leveraged exposure to underlying indices or securities.

The US Securities and Exchange Commission has issued a flurry of warning letters to some of the country's most prolific providers of [high-octane](#) exchange-traded funds, effectively blocking the introduction of products designed to deliver three and even five times the daily returns of stocks, commodities and cryptocurrencies.

In a set of nine almost identical letters posted Tuesday, the SEC told firms including Direxion, ProShares and Tidal that it would not move forward with reviewing proposed launches until key issues are addressed. At the heart of the regulator's concern is that the funds' risk exposures may exceed SEC limits on how much risk a fund can take on relative to its assets. The letters direct the fund managers to either revise their investment strategies or formally withdraw their applications.

"We write to express concern regarding the registration of exchange-traded funds that seek to provide more than 200% (2x) leveraged exposure to underlying indices or securities," the SEC wrote to all nine applicants.

The move marks a rare pause in an otherwise permissive stretch for US fund approvals, which has seen a green light given to crypto-linked ETFs of all stripes, private-asset vehicles and increasingly complex trading strategies. The funds now under scrutiny are on the [extreme edge](#) of that trend – combining high leverage, daily trading resets and exposure to some of the most unstable corners of the market, including single-name stocks and digital tokens.

A central concern for the SEC is that the funds appear to be measuring their risk against a benchmark that may not fully reflect the volatility of the assets they aim to amplify.

“The issuers were aiming to go beyond the 2x limit allowed and the is SEC clearly not comfortable with that,” said **Todd Sohn**, a senior ETF strategist at Strategas. “Issuers were trying to get a workaround in some of the language, loopholes in a sense on what the ‘reference asset’ was on the funds.”

Some of the funds mentioned in the letters are by Volatility Shares which [filed to launch](#) ETFs with five times leverage. The funds were aimed at boosting the daily return of some of the most volatile assets including single stocks like Tesla Inc. and Nvidia Corp., as well as cryptocurrencies such as Bitcoin and Ether. No 5x – or even 3x – single-stock ETF currently exist in the US, with SEC rules having long kept a lid on such exposure effectively capping it at 2x leverage.

Leveraged products use options to amplify returns, and they’re popular with investors because they can offer big profits quickly. Trading volumes have [boomed](#) since the pandemic as traders look for a new edge in fast-moving markets while assets have climbed to \$162 billion. Leveraged ETFs have endured their share of criticism in recent years, with skeptics saying they tempt amateur investors with products that are both risky and opaque. In Europe, GraniteShares was forced to [shutter](#) its 3x Short AMD exchange-traded product in October after a big one-day surge in the shares of Advanced Micro Devices Inc. wiped out its value.

Staff in the SEC’s Division of Investment Management publicly posted the letters the same day they were written – an unusually speedy move that suggests the regulator wants to get its concerns out fast. The agency typically posts correspondence with firms 20 business days after wrapping up reviews.

An SEC spokesperson said the agency doesn’t comment on active registration matters.

Representatives of Direxion, ProShares and Tidal didn’t respond to requests for comment.

--With assistance from **Isabelle Lee**.

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DeFi Treasury Co. Faces Investors' Crypto Competition Suit

By **Aislinn Keely**

Law360 (December 2, 2025, 8:30 PM EST) -- An investment firm is bringing a proposed securities class action accusing DeFi Technologies Inc. of misleading them and others about the extent of competition the crypto treasury company faced and other factors that allegedly negatively impacted its stock price.

Linkedto Partners LLC said in a Monday complaint that DeFi Technologies, its former CEO Olivier Roussy Newton, and executives Paul Bozoki and Stefan Hanssen issued press releases and public statements that "downplayed the true scope and severity" of the negative impact the crowded field of crypto treasury companies would have on the firm's business and financial results.

DeFi Technologies is a so-called digital asset treasury company, which stockpiles crypto to provide indirect exposure to investors as part of its strategy. Previously known as Valour Inc. before rebranding in July 2023, the firm also develops exchange-traded products in Canada that synthetically track the value of certain decentralized finance protocols, or projects that use autonomous software to execute financial services.

Part of its business includes an offering called DeFi Alpha, the complaint said, which the firm's website described as "a specialized arbitrage trading desk" that capitalized on crypto arbitrage opportunities. According to the complaint, the firm consistently reassured investors through public statements that the trading desk drove company revenues, and that the firm expected that trend to continue.

However, the company acknowledged in a November 2025 report that the proliferation of other crypto treasury companies "absorbed or delayed" many of the arbitrage opportunities the company hoped to capitalize on, and its stock price subsequently fell more than 7%, according to the complaint. According to the investors, this was a sudden departure from the strong revenue projections and positive outlook DeFi Technologies had previously messaged to investors.

"Defendants failed to disclose, inter alia, the true scope and severity of the risks posed by DeFi Technologies' delays in executing its arbitrage strategy through DeFi Alpha, and by the competition that DeFi Technologies faced from other [digital asset treasury] companies," said the complaint.

The announcement of a leadership transition that would see Newton exit the CEO position to an advisory role also preceded a 27% drop in the firm's stock price.

"As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the company's securities, plaintiff and other class members have suffered significant losses and damages," said the complaint.

The individual executives had access to the firm's filings with the U.S. Securities and Exchange Commission and press releases and "had the ability and opportunity to prevent their issuance or to cause them to be corrected," the investors said.

Linkedto Partners is seeking to certify a class of all those who purchased DeFi Technologies securities between May and November of this year. Counsel for Linkedto Partners did not immediately respond to a request for comment Tuesday.

A representative for DeFi Technologies said in a statement to Law360 that the firm is aware of the suit.

"We believe that the allegations in the complaint are meritless and will vigorously defend the company and its executives against this plaintiff's claims," the firm said.

The suit comes amid the proliferation of digital asset treasury companies, or DATs. The publicly traded firms stockpile crypto assets as part of their value proposition. While some firms have padded their corporate coffers with bitcoin since around 2020, this year has **seen** a number of DATs adopt strategies around less popular crypto assets.

Linkedto Partners is represented by Pomerantz LLP, which served as **lead counsel** in an investor class action accusing Strategy, an earlier adopter of a bitcoin treasury strategy, of downplaying the risks of bitcoin volatility and the potential risks of changing the way it accounted for the tokens. The investors in the Strategy suit voluntarily dismissed the action in August.

Linkedto Partners is represented by Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP.

Defense counsel information was not immediately available.

The case is Linkedto Partners LLC v. DeFi Technologies Inc. et al., case number 1:25-cv-06637, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Sydney Price. Editing by Alyssa Miller.

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FAT Brands Sued In Del. For Docs On Spinoff, Other Moves

By **Jeff Montgomery**

Law360 (December 2, 2025, 4:59 PM EST) -- A stockholder of the FAT Brands Inc. global restaurant family sued for corporate books and records in Delaware's Court of Chancery Monday, pointing to allegedly suspicious transactions and purported debt pressures, and citing what was described as a history of purported "economic malfeasance" by FAT's management.

The demands by attorneys for stockholder Kevin Gordon alleged that they were made against the backdrop of "FAT's precarious financial condition, as well as a history of alleged economic malfeasance by FAT's management." An investigation said to have been conducted in connection with the demand, according to the **suit**, "has indicated that FAT's officers and directors might have breached their fiduciary duties or committed mismanagement."

In the complaint, FAT was described as a global franchising company headquartered in Beverly Hills, California, and incorporated in Delaware. The venture owns 18 restaurant brands and operates in 40 countries.

Gordon, the stockholder who sued, is listed as global head of structured credit for Alagna Advisors, alleged by counsel for FAT Brands to have threatened a lawsuit against FAT Brands in July in connection with undisclosed details involving a \$16 million bond trade.

"When Alagna notified FAT that it was exercising its put option in connection with the February 2025 transaction, FAT refused to fulfill its obligation to buy the bonds back," Alston & Bird LLP, counsel to FAT Brands stockholder Gordon, said in a letter docketed with the complaint. "As a holder of FAT common stock, this prompted Mr. Gordon to investigate FAT's financial health, including FAT's cash flow and liquidity, which revealed that FAT had over \$1.4 billion in debt obligations and was unlikely to be able to repay its various lenders."

Among other demands, documents accompanying the complaint said that Gordon sought details regarding "the full scope of high interest loans the company has taken in the form of merchant cash advances."

Also sought were details regarding FAT Brands' securitized bond transactions, "including whether the board failed to implement adequate controls, or exercise proper oversight of management." In addition, the demand cited the company's spinoff of Twin Peaks and Smokey Bones restaurant brands and "related party transactions" in the move, which included closing or rebranding of some Smokey Bones sites.

In addition, the demand requested information documenting FAT Brands board member "knowledge of, and involvement in, FAT's efforts to engage in a global company refinancing or restructuring effort, and when the board became aware of the global company refinancing or restructuring effort."

In a letter responding to the document demands dated Sept. 20, 2025, filed with the complaint, Stuart Kagen of Kagen Caspersen & Borgart PLLC, counsel to FAT, said the demands appeared to be designed to assist Alagna Advisors in suing the company.

"Alagna's threats of litigation against FAT, and your personal role in making those threats, demonstrate that this request is made in a manner that is adverse to FAT's interests," Kagen's response to Alston & Bird LLP said.

FAT's counsel added, "This clear, continuing and deep adversity to FAT precludes both you and Mr. Gordon from making any sort of" document demand under Section 220 of Delaware's General Corporation Law.

On Oct. 16, E. Scott Schirick of Alston & Bird wrote that Gordon had a proper purpose in demanding the records involved, including for investigations into whether FAT Brands' directors and officers engaged in mismanagement or breached their duties by "concealing, or negligently allowing management to conceal, among other things, aspects of the company's transactions" in securitized bonds.

Also a focus, the response said, was whether the company sought to inflate its apparent financial position and mislead stockholders and accountants regarding its cash and liquidity and artificially inflate the company's apparent financial position.

Kagen Caspersen said in its response that the company rejected claims that the demands had a proper purpose.

"We note further that your letter does not even make a mention of the deep-seated antagonism both you and your client have with regard to FAT," Kagen said in declaring the document demands "completely rejected."

Kevin Gordon is represented by E. Wade Houston and Chen Wang of Abrams & Bayliss LLP and E. Scott Schirick, Ryan M. Philp and Sam Bragg of Alston & Bird LLP.

FAT Brands Inc. is represented by Stuart Kagen of Kagen Caspersen & Bogart PLLC.

The case is Kevin Gordon v. Fat Brands Inc., case number 2025-1395, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.



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9th Circ. Robinhood Ruling May Alter Intraquarter Disclosures

By **Ryan Keats, Christin Hill and Julia Koch** (December 2, 2025, 4:54 PM EST)

Companies may need to include interim financial data in their U.S. Securities and Exchange Commission filings following a recent U.S. Court of Appeals for the Ninth Circuit ruling.

In *Sodha v. Golubowski*, the Ninth Circuit on Aug. 29 revived a putative securities class action against Robinhood Markets Inc. and several of its executives, alleging that the defendants misled investors in the company's initial public offering by failing to disclose an intraquarter decline in financial performance.[1] In doing so, the Ninth Circuit joined the U.S. Court of Appeals for the Second Circuit in expanding potential disclosure duties of interim financial information.

The court's decision — along with its Oct. 8 denial of a rehearing en banc — signals that issuers preparing registration statements should carefully consider whether there have been any material changes during the reporting period that merit updates. *Sodha* also adds color to the growing circuit split over the extent of interim disclosure obligations and whether they could meaningfully reshape disclosure practices in the Ninth Circuit and beyond.

Background

Robinhood **conducted** an IPO in July 2021, which followed months of frenzied retail trading activity in so-called meme stocks, such as GameStop Corp. and AMC Entertainment Holdings Inc., as well as the cryptocurrency dogecoin.

Robinhood's rapid growth during the first half of 2021 was driven by that surge in trading volume. When the trading volume subsided, however, so did many of Robinhood's key performance metrics.

In July 2021, Robinhood **filed** its registration statement in which it presented strong first-quarter financial results and acknowledged that trading activity on its platform had been particularly high during the first two months of the second quarter before returning to levels more consistent with prior periods. But, as alleged, the filing contained only limited quantitative information about the second quarter, which had closed just weeks before the IPO.

According to the offering documents, Robinhood forecasted revenue between \$546 million and \$574 million, compared to \$244 million from the second quarter of the prior year, and cautioned that third-quarter revenue would likely decline as trading activity normalized. The offering documents contained several disclaimers, including that Robinhood did "not know whether, over the long term, cohorts comprised of these new customers will have the same characteristics as our prior cohorts," and that Robinhood "may not continue to grow on pace with historical rates."

According to the plaintiffs, Robinhood's registration statement did not, however, disclose steep declines that had already occurred by the time of the IPO. For example, as the plaintiffs asserted, Robinhood's transaction-based revenue from equity and options trading had declined by 34.5%



Ryan Keats



Christin Hill



Julia Koch

between the first and second quarters, and cryptocurrency trading on Robinhood fell 76% between May 2021 and June 2021.

When Robinhood reported its full second-quarter results in October 2021, those declines became public, and the company's stock price fell by roughly 10%.

Investors Sue Robinhood

Following the stock price drop, Robinhood investors filed a putative securities class action under Sections 11, 12(a)(2) and 15 of the Securities Act, alleging that the IPO registration statement and prospectus were misleading for failing to disclose the intraquarter downturn in trading activity and related revenue.

Specifically, the investors claimed that Robinhood's offering documents painted an unduly positive picture of the company's financial health by highlighting record first-quarter results and general growth trends while failing to disclose that key metrics were already deteriorating during the second quarter.

According to the complaint, Robinhood's omission of sharp intraquarter declines in trading activity and revenue rendered its prior statements misleading and deprived investors of a clear understanding of Robinhood's actual performance at the time of the IPO. The investors further alleged that these omissions violated Section 11's "misleading" prong, as well as the affirmative disclosure obligations under Items 303 and 105 of Regulation S-K.

The U.S. District Court for the Northern District of California **dismissed** the case with prejudice in January 2024, holding that Robinhood was not obligated to disclose interim results unless they reflected an "extreme departure" from historical performance — a standard derived from U.S. Court of Appeals for the First Circuit precedent. The plaintiffs then appealed.

The Ninth Circuit Partially Reversed

On appeal, the Ninth Circuit reached three conclusions.

First, Section 11's "misleading" prong imposes a duty to disclose material interim information when nondisclosure renders prior statements about earlier periods misleading. That is, materiality governs the duty to disclose. When an issuer has made statements about a prior period, the court held, it must disclose later developments that are material with respect to those statements, not merely those representing an extreme departure. Here, the court concluded that Robinhood was required to disclose material interim information.

Second, Item 303 requires disclosure of more than long-term trends, as the regulation also applies to discrete events and uncertainties, and additionally mandates the quantification of known effects "to the extent reasonably practicable." Accordingly, Item 303 required Robinhood's disclosure and quantification of its interim financial results.

Third, Item 105 did not, by contrast, require Robinhood to quantify the "material factors that make an investment in the registrant or offering speculative or risky." The court affirmed the trial court's dismissal of claims under Item 105, finding Robinhood's risk-factor discussion adequate.

Circuit Split on Disclosure of Interim Data

The dispute in *Sodha* put the Ninth Circuit at the intersection of two contrasting approaches long taken by circuit courts concerning a company's duty to disclose interim results.

The First Circuit's 1996 decision in *Shaw v. Digital Equipment Corp.* established what became known as the extreme-departure test.^[2] In *Shaw*, the court held that issuers must disclose intraquarter performance only when results diverge so dramatically from expectations that nondisclosure would render prior statements misleading.

The Second Circuit, by contrast, has consistently applied the broader materiality standard set out in its 1976 decision in *TSC Industries Inc. v. Northway Inc.*, under which disclosure is required

whenever a reasonable investor would view the omitted interim data as significantly altering the total mix of information.[3]

The First Circuit's rule was intended to prevent an unworkable system of rolling disclosure obligations, while the Second Circuit's approach recognizes that even less divergent developments can be material and warrant disclosure.

In *Sodha*, the Ninth Circuit rejected the First Circuit's extreme-departure test articulated in *Shaw*, concluding that the *Shaw* test was "far less administrable" than the traditional materiality standard outlined in the Second Circuit precedent.

By "collapsing the duty to disclose into materiality," the Ninth Circuit held, securities law becomes "clearer and more predictable." This "holistic approach," the court ruled, was preferable to the *Shaw* test, which "leaves too many open questions," including those concerning the "degree of change necessary for an 'extreme departure.'" Thus, whether interim results must be disclosed depends on whether a reasonable investor would view the omission as significantly altering the total mix of information.

Clarifying What Must Be Disclosed Under Regulation S-K

The court's discussion of Item 303 is likely to reverberate beyond *Sodha*. Item 303 under Regulation S-K requires that a registrant provide a "discussion and analysis" capturing the registrant's "financial condition and results of operations," including "any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations."

In holding that Item 303 required the disclosure of Robinhood's interim financial results in the IPO materials, the court emphasized that the regulation requires disclosure of "known trends, events and uncertainties" that are reasonably likely to materially affect operations.[4] It rejected the view that a trend must persist for two months or more, calling that formulation too mechanical. Instead, the court noted, even a short-term decline may trigger disclosure if it reflects a significant development in the business environment.

By contrast, the court affirmed the dismissal of the plaintiffs' claims under Item 105, holding that the regulation does not require "a breakdown of Robinhood's revenue sources" for the second quarter of 2021. Item 105 requires registrants to "provide a discussion of the material factors that make an investment in the registrant or offering speculative or risky."

The court rejected the plaintiffs' argument that Robinhood had mischaracterized a past harm as a future risk, which the court observed could be actionable under Section 11 but could not, "standing alone, violate Item 105."

The court also rejected the plaintiffs' claim that the defendants had failed to disclose that Robinhood's revenues had become "far more volatile than they had been historically," and that the defendants should have quantified the disclosures made according to Item 105. Although Item 303 requires "registrants to quantify the items they are disclosing," there is no such requirement in Item 105.

Future Implications and Takeaways

Unless and until this variance is resolved by the U.S. Supreme Court, issuers in the Ninth Circuit should expect that material intraquarter information known at the time a registration statement is filed may need to be disclosed.

The immediate impact of *Sodha* is also likely to be felt by companies preparing IPO registration statements or shelf offerings during periods when midquarter results are still being finalized.

Sodha may also have implications for issuers and underwriters that may now need to evaluate whether known interim financial information could materially change investors' understanding of prior results.

Equally, the *Sodha* decision leaves open questions that may not be resolved immediately, such as:

How specific must interim financial information be before nondisclosure becomes misleading? At what point does knowledge within management constitute known information for Item 303 purposes? Can cautionary language in a registration statement suffice to protect against liability?

These and other questions are likely to be tested in the wake of *Sodha*, particularly as future plaintiffs attempt to define what constitutes material interim financial information.

Conclusion

Sodha is the latest decision to address interim disclosure obligations under the Securities Act. By aligning with the Second Circuit and rejecting the First Circuit's extreme-departure standard, the Ninth Circuit signaled a renewed emphasis on transparency when known trends that can be considered material arise between SEC quarterly reporting.

From this decision flows a suggestion that public companies, or those going public, may want to consider the *Sodha* decision and reassess their disclosure controls and procedures around interim financial information.

Ryan Keats is a partner and co-chair of the securities litigation group at Morrison Foerster LLP.

Christin Hill is a partner at the firm.

Julia Koch is an associate at the firm.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] 154 F.4th 1019 (2025). In October 2025, Robinhood's petition for rehearing en banc was denied.

[2] 82 F.3d 1194 (1st Cir. 1996).

[3] 426 U.S. 438 (1976); see *Stadnick v. Vivint Solar, Inc.*, 861 F.3d 31 (2d Cir. 2017).

[4] The Ninth Circuit, however, has held that Item 303 does not "create a duty to disclose" under Section 10(b) of the Securities Exchange Act and Rule 10b-5. *In re NVIDIA Corp. Sec. Litig.*, 2014 WL 4922264 (9th Cir. 2014).

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9th Circ. Tosses Tesla Investor Suit Over Self-Driving Tech

By **Katryna Perera**

Law360 (December 2, 2025, 9:53 PM EST) -- The Ninth Circuit on Tuesday affirmed the dismissal of a suit against Tesla Inc. and its CEO Elon Musk claiming they deceived investors about the capabilities and safety record of the company's self-driving technology, finding the investors failed to plead any actionable false statements, among other issues.

A three-judge panel issued an **opinion** stating that the investors failed to allege falsity in statements across three categories — safety of the technology, the technology's capability and the timeline to implement the technology.

The court said the investors did not sufficiently allege that the challenged safety statements were false or misleading, because Musk did not state that Tesla's autonomous driving technology could drive more safely than humans. Rather, Tesla represented to investors that the technology requires a "fully attentive driver," according to the opinion.

"Thus, fairly considered, Musk represented that a driver with the technology is safer than a driver without it," the judges added.

The capability statements also fall flat, the panel said, because Musk's statement that the autonomous driving technology, or ADT, was "'capable of zero intervention drives' did not suggest that the ADT had already reached full autonomy -- that is, autonomous driving without human intervention."

"On the contrary, Musk noted that he still has to intervene while the technology is engaged," the opinion stated.

Finally, the panel found that at least half of the timeline statements were opinions and that the investors failed to allege that Musk "did not honestly believe reaching full autonomy was possible on his suggested timeline."

The panel further found that the suit fails to properly plead scienter because Tesla "repeatedly" warned investors that the self-driving technology might not proceed as quickly as planned, since it involved "highly complex state-of-the art technology that was evolving and being developed on a daily basis."

The panel said these risk disclosures undermine any inference of scienter, and even though Musk stated that he was "deeply involved" with the technology's development, the investors failed to connect Musk's alleged "hands-on management with any information that he allegedly learned rendering his statements false or misleading."

Additionally, the panel said the suit's allegations over a confidential witness who purported to witness Musk receiving regular reports are too vague to support claims of scienter, as well as any purported financial motivations of Musk.

"While Musk sold a significant portion of his available shares, he sold them after corrective disclosures and the alternative explanation that he required liquidity to acquire Twitter reduces any inference in favor of finding scienter," the opinion stated.

The Ninth Circuit's ruling comes a year after a California federal judge **dismissed** the lawsuit, with leave to amend.

The suit accused the company of making a series of misstatements about the development timeline for its autonomous driving program while underplaying safety issues with driver assistance software, known as autopilot, that was present in the vehicles as early as 2019.

Investors said that Tesla's stock price dipped upon news of a 2021 National Highway Traffic Safety Administration **investigation** into the carmaker after a series of crashes potentially caused by the technology.

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

U.S. Circuit Judges Sidney R. Thomas, Daniel A. Bress and Salvador Mendoza Jr. sat on the panel for the Ninth Circuit.

The class is represented by Jake Bissell-Linsk, Carol C. Villegas and Guillaume Buell of Labaton Keller Sucharow LLP, Lucas E. Gilmore of Hagens Berman Sobol Shapiro LLP, and Aaron L. Castle of VanOverbeke Michaud & Timmony PC.

Musk and Tesla are represented by Alex Spiro, Jesse Bernstein and Ellyde R. Thompson of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Oakland County Voluntary Employees' Beneficiary Association et al. v. Tesla Inc. et al., case number 25-55, in the U.S. Court of Appeals for the Ninth Circuit.

–Additional reporting by Jessica Corso. Editing by Kristen Becker and Michael Watanabe.

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Twitter Investors Lose Bid To DQ Musk Counsel Spiro

By **Katryna Perera**

Law360 (December 2, 2025, 4:10 PM EST) -- A California federal judge has denied an attempt by Twitter investors to have Quinn Emanuel Urquhart & Sullivan LLP partner Alex Spiro disqualified from serving as both lead counsel for Elon Musk and a witness in a trial over claims that Musk tried to tank Twitter's stock.

U.S. District Judge Charles R. Breyer issued an **order** Monday denying the investors' motion, finding that Musk provided informed written consent of Spiro's continued representation as trial counsel, knowing he could be called as a witness, and that the investors have failed to show "palpable prejudice" under the California Rules of Professional Conduct's "advocate-witness rule."

The investors — who claimed Musk's oscillating approach to the \$44 billion purchase of Twitter in 2022 was **a ploy** designed to drive down Twitter's stock price during the acquisition process — urged Judge Breyer to **disqualify Spiro** as Musk's proposed lead trial counsel in a motion filed Sept. 26 and partially unsealed Oct. 6.

They argued that Spiro's involvement in key events surrounding the purchase of Twitter, which Musk renamed X in 2023, makes him a key witness, creating a conflict under the advocate-witness rule.

Musk countered that the investors didn't notify him that they intended to seek Spiro's disqualification until July, even though Spiro has been Musk's lead counsel in the case since December 2022.

On Monday, Judge Breyer said the investors had raised "very real concerns" about Spiro's dual role as attorney and witness but said the concerns are not unique.

"Plaintiffs argue the jury will see Spiro referencing and challenging the evidence, which would include his own testimony and testimony about him, throughout the trial. While plaintiffs correctly assess this risk, the court finds that it is a 'generic concern[]' that could 'apply to any case in which a lawyer acts as both advocate and witness,'" the order said.

The judge also labeled as "specious" the investors' argument that there could be substantial prejudice when Spiro cross-examines witnesses about their interactions with him.

"[Investors] contend that Spiro could then 'get[] the answers he wants from witnesses, or at least [be] effective in sowing confusion ... because trial witnesses will include major players in the business world, most of whom have every incentive to curry favor with, and avoid angering, both Musk and Spiro,'" the order said. "As Musk notes, plaintiffs' position 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."

Judge Breyer still acknowledged, though, that the investors make valid points and that the court and parties can take steps to limit any potential risk of prejudice.

"The court has the ability 'to control counsel's questioning and argument' to ensure Spiro conducts his dual role appropriately. The court can also provide limiting instructions to the jury, as needed," the order said. "As for the parties, Musk has suggested that other trial counsel can cross-examine witnesses that plaintiffs believe have a high risk of conflict. Such negotiation and compromise are reasonable and expected by the court."

Judge Breyer also found that the investors make a "weak showing" that Spiro's testimony is genuinely needed.

"For most of the topics, other witnesses can just as easily testify about the circumstances — as well as Spiro's statements and conduct," the order said. "And while Spiro may have unique knowledge ... it is unclear how much plaintiffs can extract without running headfirst into the attorney-client privilege."

Finally, Judge Breyer found that the investors did not seek to disqualify Spiro for purely tactical reasons and that the choice of counsel factor weighs in favor of Musk, since choice of counsel is a "deeply personal one, particularly when the lawyer will represent a client before a jury."

Counsel for the investors declined to comment Tuesday, and counsel for Musk did not immediately respond to requests for comment.

The investors are represented by Joseph W. Cotchett, Mark C. Molumphy, Tyson C. Redenbarger, Gia Jung, Elle D. Lewis and Caroline A. Yuen of Cotchett Pitre & McCarthy LLP and Francis A. Bottini Jr., Aaron P. Arnzen and Albert Y. Chang of Bottini & Bottini Inc.

Musk is represented by Stephen A. Broome, Alexander B. Spiro, Jesse A. Bernstein, Jonathan E. Feder, Joseph C. Sarles, Matthew A. Bergjans and Michael T. Lifrak of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Giuseppe Pampena v. Elon R. Musk, case number 3:22-cv-05937, in the U.S. District Court for the Northern District of California.

--Additional reporting by Jack Karp. Editing by Rich Mills.

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Vanguard Investors' Attys Seek \$8.3M Fee

By **Sydney Price**

Law360 (December 2, 2025, 8:29 PM EST) -- Attorneys representing investors that settled with Vanguard for \$25 million to end claims the company improperly triggered an asset sell-off that damaged investors asked a Pennsylvania federal court on Tuesday to award them \$8.3 million in fees in addition to other expenses.

Class counsel for the investors said an \$8.3 million payout, which is equal to about a third of the settlement amount, is reasonable considering the attorneys have spent over 6,100 hours litigating the action, and will continue devoting time to the case as the parties prepare for the final approval hearing scheduled for Jan. 6.

Additionally, the attorneys seek approximately \$941,000 in expense reimbursement and \$20,000 service awards for each of the suit's 12 named plaintiffs.

"Given Plaintiffs' extensive efforts on behalf of the Settlement Class and the size of the Settlement achieved, these awards are reasonable and in line with other awards granted by courts in the Third Circuit," Tuesday's motion states.

The settlement was **preliminarily approved** in September by U.S. District Judge John Murphy.

The parties agreed to a settlement amount lower than the previous \$40 million offer to account for a parallel U.S. Securities and Exchange Commission settlement with Vanguard, which would award \$133 million to the investors who agreed to settle in the class action before the federal court, according to a September court filing.

The dispute arose after investors filed a putative class action against Vanguard in 2022, arguing that the company breached its fiduciary duty and failed to protect its smaller investors in an attempt to lower fees. Investors in what are known as set-it-and-forget-it funds were forced to sell off as much as 15% of their assets, leaving those with taxable accounts holding the bag, they said.

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

The plaintiff investors are represented by Gregory Dovel, Julien Adams, Jonas B. Jacobson, Christin Cho and Simon Carlo Franzini of Dovel & Luner LLP, Joshua Baker, Phillip Kim, Jonathan Stern, Erica L. Stone and Jacob A. Goldberg of The Rosen Law Firm PA, Kenneth J. Grunfeld of Kopelowitz Ostrow Ferguson Weiselberg Gilbert, Mark C. Rifkin and Matthew M. Guiney of Wolf Haldenstein Adler Freeman & Herz LLP, Richard M. Golomb and Kevin W. Fay of Golomb Legal, W. Daniel Miles III and James B. Eubank of Beasley Allen Law Firm and Timothy Brown of The Brown Law Firm PC.

Vanguard and its officers are represented by Brandon Fetzer, Elliot Greenfield and Maeve O'Connor of Debevoise & Plimpton LLP and Samuel W. Silver of Welsh & Recker PC.

The independent trustees managing the funds are represented by Andrew J. Ehrlich and Daniel J. Kramer of Paul Weiss Rifkind Wharton & Garrison LLP and Francis P. Devine III and Michael E. Baughman of Troutman Pepper Locke LLP.

The case is In re: Vanguard Chester Funds Litigation, case number 2:22-cv-00955, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Kat Lucero. Editing by Emily Kokoll.



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Ex-Bernstein Litowitz Atty Launches Corporate Boutique

By **Adrian Cruz**

Law360 (December 3, 2025, 7:00 AM EST) -- A group of Bernstein Litowitz Berger & Grossmann LLP attorneys are planning to leave the firm to start a boutique practice focused on high-stakes corporate disputes and securities litigation, according to a Wednesday announcement.

Founded by former Bernstein Litowitz partner Jeroen van Kwawegen, JVK Law will launch with 15 attorneys and staff based out of offices in Los Angeles, New York and Wilmington, Delaware, the firm's announcement said.

Van Kwawegen told Law360 Pulse that the decision to launch JVK Law was due to an increased need by their corporate clients for deep governance and capital markets insight, with the firm's announcement adding that factors such as weakening regulatory oversight, disclosure failures becoming more common and lowering restraints on corporate insiders were some of the other drivers of clients' demand for services.



Jeroen van Kwawegen

"We are trial lawyers who understand our clients' needs within the broader capital markets and corporate governance context, and who build effective teams and partnerships to provide clear, transparent advice backed up by a track record of success," he said. "It's an incredibly exciting moment for our entire team, and we are proud to launch a firm that is fully aligned with our culture, mission, and client-first approach."

Prior to starting JVK Law, van Kwawegen spent more than 16 years at Bernstein Litowitz, where he served in a number of leadership roles, including leader of the corporate governance department and as a member of the executive leadership team, according to his LinkedIn page.

"I'm incredibly proud of what we accomplished at [Bernstein Litowitz]," van Kwawegen said. "I've long wanted to build a firm aligned with my own vision and values, alongside those who share a commitment to a positive culture where 'your success is my success and my success is your success,' and this is the moment to do it."

JVK Law focuses its work on shareholder litigation for clients such as institutional investors, sovereign wealth funds, hedge funds and event-driven trading desks, van Kwawegen said. Planning to join the firm as incoming partners are C.J. Orrico, Edward Timlin, Andrew Blumberg, Tom James, Eric Reidel, Dan Meyer and Ben Potts.

"Today's investors operate in a volatile world marked by corporate insiders pursuing their own interests, disclosure failures, and regulatory retreat — both at the federal and state level," he said. "We are seeing heightened governance failures, compensation abuses, and oversight breakdowns — all issues that require seasoned counsel and decisive strategic action. JVK was founded to deliver in these high-stakes and fast-moving situations."

--Editing by Jay Jackson Jr.

Hagens Berman Referred To DOJ For Alleged Misconduct

By **Emma Cueto**

Law360 (December 2, 2025, 4:41 PM EST) -- A Pennsylvania federal judge on Tuesday recommended to the U.S. Department of Justice that it investigate powerhouse plaintiffs firm Hagens Berman Sobol Shapiro LLP's conduct in connection with several since-dropped product liability cases that a special master found to be filed in bad faith.



A Pennsylvania federal judge on Tuesday recommended a DOJ investigation into Hagens Berman, its name partner Steve Berman and former partner Tyler Weaver. (iStock.com/BrianAJackson)

U.S. District Judge Paul S. Diamond said in a **three-page order** that instead of ruling on the **report and recommendations** in favor of sanctions from special discovery master William T. Hangley, Judge Diamond had decided to refer the matter to the DOJ for additional investigation, saying the agency should look into the firm, its name partner Steve Berman and former partner Tyler Weaver.

"Mr. Hangley has described in painstaking detail the apparent efforts of Hagens Berman, Mr. Berman, and Mr. Weaver over some ten years to prepare, file, and prosecute fraudulent lawsuits," Judge Diamond said. "Because the civil discovery process limited him, Mr. Hangley's investigation and findings, damning as they are, appear to be only partial. Because his findings more than warrant further investigation, I have referred this matter to the Department of Justice."

While the judge said he would not rule on the pending recommendation of sanctions, the order did not mention a motion that Judge Diamond **recuse himself** based on more than 100 alleged undisclosed private contacts between the court and the special discovery master, which Hagens Berman claimed was

an indication of bias.

Counsel for Hagens Berman and Steve Berman told Law360 in a statement that the firm is "truly confounded" by the "highly unusual" order.

"The extensive response filed by the firm in December 2023 explains that there is no basis for sanctions, much less a criminal referral (which was not suggested or recommended by the discovery master)," counsel said. "We will consider all available remedies and make no further comment pending case developments."

Counsel for Weaver did not respond immediately to a request for comment.

Judge Diamond's referral to the DOJ is the latest ruling in an acrimonious case that began in 2011, when Hagens Berman filed suit on behalf of several individuals against GSK, formerly known as GlaxoSmithKline PLC, on behalf of plaintiffs who alleged their birth defects were the result of the morning-sickness drug thalidomide.

The firm has contended that though it knew it would be difficult to overcome the statute of limitations in the case, it had a good faith basis for pursuing claims due to new scientific research suggesting thalidomide injuries could be much broader than once believed.

Judge Diamond appointed Hangley in 2014 to untangle discovery issues related to the statute of limitations. In his report and recommendation submitted in October 2023, Hangley found the law firm, Berman and Weaver had "conducted grossly inadequate presuit investigations; obstructed discovery; recklessly (or, perhaps, intentionally) made false and baseless allegations intended to toll the limitations clock; doctored evidence; and — when their misconduct came to light — sought to abandon plaintiffs and evade defendants' sanctions requests."

Hagens Berman has rejected these claims, saying **in a recent filing** it spent hundreds of hours and significant resources researching its legal theories, building off the work of an Australian attorney who had pursued similar cases, and that Hagens Berman's clients had not been duped into agreeing to dismiss their cases.

Weaver, who left Hagens Berman in 2018 and is now with Seattle and Portland litigation firm Angeli & Calfo LLC, was reprimanded by the Washington State Bar Association for doctoring two expert reports by omitting information he thought would be confusing to the clients while trying to convince them that the evidence was insufficient to continue with their claims.

According to the bar's findings, Weaver initially testified to Hangley years later in 2017 that he had not altered the reports and later came forward to say he had misremembered the events.

In addition to the outstanding motion for sanctions, Hagens Berman filed its own motion in October asking Judge Diamond to recuse himself from the case, saying that under Rule 53 of the Federal Rules of Special Procedure, the judge's undisclosed communications with Hangley "fatally compromised" the judge's ability to properly review the matter.

Berman and his firm are represented by Keith Beauchamp and Malvika A. Sinha of Coppersmith Brockelman PLC, Gaetan J. Alfano and Peter St. Tienne Wolff of Pietragallo Gordon Alfano Bosick & Raspanti LLP, and Christopher C. Conner and Timothy M. Stengel of Saxton & Stump LLC.

Weaver is represented by Robert E. Welsh Jr. of Welsh & Recker PC.

GSK is represented by Michael T. Scott of Mike Scott Law LLC.

The case is Glenda Johnson et al. v. SmithKline Beecham Corp. et al., case number 2:11-cv-05782, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Adrian Cruz, Lauren Berg, Emily Field and Matt Fair. Editing by Lakshna Mehta.

'Eating Ourselves To Death': SF Sues Processed Food Giants

By **Lauren Berg**

Law360 (December 2, 2025, 9:15 PM EST) -- The Kraft Heinz Co., General Mills, Nestle USA and other food industry giants aggressively market their ultra-processed products as staples of the American diet, despite knowing about the items' slew of dangerous health consequences, San Francisco's city attorney alleged Tuesday in a California state court lawsuit.



A commercial featuring the Minions illustrates how General Mills and other food industry giants aggressively and deceitfully markets its "cheap, colorful, flavorful and addictive" products largely to children, the San Francisco city attorney alleges in a Tuesday lawsuit. (Court Documents)

Ultra-processed foods make up more than 70% of grocery store offerings and over half of Americans' diets — a feat achieved by "Big Food" aggressively and deceitfully marketing its "cheap, colorful, flavorful and addictive" products largely to children, according to the **complaint** lodged in San Francisco County Superior Court.

Along with Kraft Heinz, General Mills and Nestle, the suit names as defendants Mondelez International, Post Holdings, The Coca-Cola Co., PepsiCo, Kellanova, WK Kellogg Co., Mars Inc. and ConAgra Brands.

According to the suit, the increase in availability of UPFs has coincided with a hike in the incidence of obesity, diabetes, heart disease, cancers and other life-threatening chronic diseases, but manufacturers of these products have only upped their efforts to hook more consumers.

"Addictiveness is a feature of UPF, not a bug," the city alleges. "UPF manufacturers are tricking us into eating ourselves to death."

In 1999, Michael Mudd, vice president of the predecessor to Kraft Heinz, urged his fellow food company executives to make changes to their products in light of the "devastating consequences of developing and marketing ultra-processed foods to Americans — and to children in particular," according to the complaint.

Mudd told his colleagues that the UPF industry was causing childhood obesity rates to double, that health conditions resulting from the products cost up to \$100 billion per year and that the foods were leading to the deaths of 300,000 Americans annually, the suit states.

But despite these statistics and the knowledge that their products were "wreaking havoc," UPF manufacturers took up the "deceitful tactics" first used by the tobacco industry to market their products to children, who the food giants saw as their future profit base, the complaint states.

"Defendants did everything in their power to deprive consumers of an informed choice," the city said. "They designed food to be addictive, they knew the addictive food they were engineering was making their customers sick, and they hid the truth from the public."

"They relentlessly promoted these dangerous products, made untold billions of dollars from doing so, and then they left taxpayers to foot the bill for the resulting public health crisis," the complaint added. "The nationwide epidemic of these preventable diseases, especially among children, has a clear origin — defendants' conduct."

The city alleges that the companies have created a public health crisis in San Francisco.

The suit asserts claims for violations of California's Unfair Competition Law and for public nuisance.

It seeks a statewide order barring the companies from engaging in deceptive marketing and requiring them to take action "to ameliorate the effects of their prior false marketing." In addition, the city is asking for costs to abate the public nuisance it claims the companies have created in San Francisco, as well as statewide civil penalties and litigation and attorney fees.

"These companies created a public health crisis with the engineering and marketing of ultra-processed foods," San Francisco City Attorney David Chiu said in a statement Tuesday. "They took food and made it unrecognizable and harmful to the human body."

"We must be clear that this is not about consumers making better choices. Recent surveys show Americans want to avoid ultra-processed foods, but we are inundated by them," Chiu said. "These companies engineered a public health crisis, they profited handsomely, and now they need to take responsibility for the harm they have caused."

Jennie Lee Anderson of Andrus Anderson LLP, an attorney representing the city, added, "This litigation is about more than accountability; it's about giving San Francisco the tools to protect its residents for generations to come."

"By challenging these corporate practices, we're helping to establish a legal framework that other cities can use to safeguard their communities," Anderson said.

Sarah Gallo, senior vice president of product policy for the Consumer Brands Association, whose members include the defendants, told Law360 in a statement Tuesday that "the makers of America's trusted household brands support Americans in making healthier choices and enhancing product transparency."

"That's why food and beverage manufacturers continue to introduce new product options that include increased protein and fiber, reduced sugars and sodium, and no synthetic color additives," Gallo said.

"There is currently no agreed-upon scientific definition of ultra-processed foods, and attempting to classify foods as unhealthy simply because they are processed, or demonizing food by ignoring its full nutrient content, misleads consumers and exacerbates health disparities."

"Companies adhere to the rigorous, evidence-based safety standards established by the [U.S. Food and Drug Administration] to deliver safe, affordable and convenient products that consumers depend on every day," she added. "Americans deserve facts based on sound science in order to make the best choices for their health."

The fight against UPFs has also been playing out against food manufacturers in courts by private plaintiffs, with one suit filed last year in Pennsylvania federal court accusing Kraft Heinz, Nestle, General Mills, Mondelez, PepsiCo, Kellogg, Conagra, Mars and Coca-Cola of making highly addictive UPFs and **marketing them to children**.

Similar to the current suit, that complaint alleged UPFs dominate grocery store shelves and the American diet despite containing little to no whole ingredients, and the products have led to an increase of obesity, diabetes and other chronic illnesses, particularly among youth and minorities.

In late August, however, U.S. District Judge Mia Roberts Perez **threw out the case**, saying the plaintiff didn't adequately allege that he was harmed by the companies' products, and also failed to show how often he consumed the foods or the amount that he ate. The plaintiff additionally didn't allege when he ate the UPFs, or how that relates to when he received his diabetes and fatty liver disease diagnoses, according to the judge.

California Gov. Gavin Newsom in October signed a **first-in-the-nation bipartisan law** that will slowly phase out and eventually ban UPFs from public school meals by 2032. The law builds upon prior legislation Newsom signed, known as the California Food Safety Act, which sought to eliminate harmful additives from foods sold in the state.

In 2023, California passed A.B. 418, which banned Red Dye No. 3, potassium bromate, brominated vegetable oil and propylparaben from being used in processed foods and drinks sold in the state.

Newsom also **signed into law** A.B. 2316, which barred the use of certain harmful synthetic food dyes and additives from products sold statewide and prohibited schools from serving and selling foods containing synthetic food dye additives associated with health harms.

San Francisco is represented by David Chiu, Yvonne R. Mere, Sara J. Eisenberg, Ronald Lee and Jesse E. Lanier of the San Francisco City Attorney's Office, Jennie Lee Anderson of Andrus Anderson LLP, Diandra S. Debrosse, Adam J. Levitt and Daniel R. Ferri of DiCello Levitt, and Rene F. Rocha and Frank M. Petosa of Morgan & Morgan PA.

Counsel information for the defendants was not immediately available.

The case is The People of the State of California v. The Kraft Heinz Co. et al., case number unavailable, in the Superior Court of the State of California, County of San Francisco.

--Additional reporting by Gina Kim, Hailey Konnath and Rae Ann Varona. Editing by Melissa Treolo.



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Vapor Evidence Tossed From Causation In Camp Lejeune Suit

By **Mike Curley**

Law360 (December 2, 2025, 5:49 PM EST) -- A panel of federal judges has excluded evidence of water vapor intrusion from the analysis of causation in the Camp Lejeune water contamination suit in North Carolina federal court, siding with the government in its argument that water vapor is not included in "the water" named in the Camp Lejeune Justice Act.

In an **order** filed Monday, the four-judge panel of the U.S. District Court for the Eastern District of North Carolina adopted the memorandum and recommendation of U.S. Magistrate Judge Robert B. Jones Jr., who in July recommended partially granting the government's motion to exclude evidence related to vapor intrusion, but only to the extent that it met the plaintiffs' causation burden.

In that memorandum, Judge Jones found that the text of the act under causation referring to "the water at Camp Lejeune" referred back to earlier text in the cause-of-action section that specified the water at the camp "that was supplied by, or on behalf of, the United States," and that water vapor that emanated from groundwater through soil into the area did not meet that definition.

In Monday's order, the panel rejected the plaintiffs' objection that the government had not raised this argument, saying the government had indeed raised the statutory reading of the act in its opening brief, and further developed it in its reply to the objection.

The plaintiffs had also objected to the statutory interpretation itself, saying that the two phrases — "the water at Camp Lejeune" and "water at Camp Lejeune, North Carolina, that was supplied by, or on behalf of, the United States" — are materially different, and that the former was not shorthand for the latter.

The panel on Monday disagreed, supporting Judge Jones' conclusion that "the water at Camp Lejeune" is shorthand for the "substantively identical" language in the cause-of-action portion.

"Plaintiffs fail to explain why Congress would define in Subsection 804(b) those who may bring a CLJA action as those exposed to 'water at Camp Lejeune that was supplied by, or on behalf of, the United States,' but then allow those same claimants to meet their burden of proof with evidence of water at Camp Lejeune not supplied by, or on behalf of, the United States," the judges wrote.

And while the plaintiffs also argued that Judge Jones overlooked other admissible uses of vapor intrusion evidence, the panel noted that he only excluded vapor intrusion evidence related to causation, while recommending against a blanket order excluding all testimony and evidence about vapor intrusion.

In a footnote, the panel noted that the U.S. government does not challenge the presentation of evidence about water vapors from activities like showering or cooking using the water supplied by the U.S. at the camp.

The consolidated litigation encompasses about 1,500 lawsuits filed by veterans and families alleging that water on the North Carolina military base contained excessive levels of chlorinated solvents and other contaminants, causing bladder cancer, kidney cancer, lymphoma and other diseases. People living on the base between 1953 and 1987 were potentially exposed to the pollutants.

The case is moving toward bellwether trials, and last month, the plaintiffs urged the court to **defer**

ruling on a "Moby Dick"-sized raft of pretrial briefing they say the government has filed to delay the proceedings.

Judges Richard E. Myers II, Terrence W. Boyle, Louise W. Flanagan and James C. Dever III sat on the panel for the Eastern District of North Carolina.

The plaintiffs' leadership group includes J. Edward Bell of Bell Legal Group LLC, Warren Postman of Keller Postman LLC, Robin L. Greenwald of Weitz & Luxenberg PC, Elizabeth Cabraser of Lieff Cabraser Heimann & Bernstein LLP, W. Michael Dowling of Dowling PLLC, James A. Roberts of Lewis & Roberts PLLC and Mona Lisa Wallace of Wallace & Graham PA.

The government is represented by Brett A. Shumate, Jonathan Guynn, Bridget Bailey Lipscomb, Adam Bain, Haroon Anwar, Sara J. Mirsky, Jennifer Adams, Nancy Tinch and Elizabeth K. Platt of the U.S. Department of Justice's Civil Division.

The case is In re: Camp Lejeune Water Litigation, case number 7:23-cv-00897, in the U.S. District Court for the Eastern District of North Carolina.

--Editing by Karin Roberts.

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Fiat Chrysler Seeks Pause Of EV Suit For Arbitration Decision

By **Jonathan Capriel**

Law360 (December 2, 2025, 11:23 PM EST) -- Fiat Chrysler wants to hit pause on a proposed class action alleging the batteries in its plug-in hybrid Jeep Wrangler 4xe and Grand Cherokees are at risk of spontaneously catching fire, saying the litigation should wait for the Michigan federal court to determine if most of the drivers suing should be pushed into arbitration.

There's a real chance that 25 of the 28 named plaintiffs explicitly signed contracts or tacitly agreed to terms which preclude them from bringing claims to court, FCA US LLC told the federal court. With this in mind, "it makes no sense to rush headlong into additional dispositive motion briefing on and delving into discovery," the automaker said in its Monday filing.

The automaker asked the court to impose a stay in the case until it decides its motion seeking to compel many of the drivers into arbitration.

Last month, the drivers opposed the request for a stay, saying granting such a motion could stall the litigation for "months or even years" allowing FCA "to avoid liability as these vehicles age and continue to catch fire," according to an opposition filing submitted in late November.

But FCA argued that it's only asking for a "brief stay," just long enough to get the arbitration issue squared away, according to its reply brief.

Drivers filed suit against FCA in March 2024 accusing it of selling plug-in hybrid electric vehicles with a dangerously defective battery system. The most recent 413-page long amended complaint, filed in November, claims that there have been instances where vehicles caught fire while they were plugged in while charging, and with the ignition on or off. The suit points to vehicle models Jeep Wrangler 4xe and Jeep Grand Cherokee 4xe in the years 2020 to 2024. The suit said Fiat Chrysler was aware of the fire risk but sold the vehicles anyway, marketing them as safe while failing to disclose the danger in the battery system.

In **June**, U.S. District Judge Brandy McMillion denied FCA's request to complete arbitration in the litigation, finding that the automaker failed to plausibly show that such a contract exists between it and the drivers.

In November, FCA filed a renewed motion to compel arbitration. It primarily argues that 20 of the lead plaintiffs signed sales or lease contracts that not only have arbitration clauses but also contain delegation clauses, which assigns to the arbitrator the authority to decide whether a dispute is subject to arbitration.

Some of the same drivers and others who didn't sign these contracts may still be subject to arbitration due to a written warranty booklet provided with the vehicles, FCA argued. A "bilateral contract" was established at the point of purchase and when the buyers used the warranty to obtain no cost repairs, FCA said. At least 16 drivers "availed themselves" to the benefits and thereby accepted all its terms, including the arbitration clause, FCA said.

FCA and counsel for the drivers did not immediately respond to requests for comment Tuesday.

The drivers are represented by E. Powell Miller, Dennis A. Lienhardt and Dana E. Fraser of The Miller Law Firm PC, Roger N. Heller, Phong-Chau G. Nguyen and Nicholas W. Lee of Lieff Cabraser Heimann

& Bernstein LLP, John R. Davis of Slack Davis Sanger LLP, Craig S. Davis of Lockridge Grindal Nauen PLLP, Todd M. Friedman, Adrian R. Bacon and Meghan E. George of Law Offices of Todd M. Friedman PC and Robert K. Shelquist of Cuneo Gilbert & LaDuca LLP.

FCA is represented by Stephen A. D'Aunoy, Scott H. Morgan, Fred Fresard and Ian Edwards of Klein Thomas Lee & Fresard.

The case is Gary Frisch et al. v. FCA US LLC, case number 2:24-cv-10546, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Hailey Konnath. Editing by Jay Jackson Jr.

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SDNY Head Backs Good Deals For Quick Cooperation By Cos.

By **Stewart Bishop**

Law360, New York (December 2, 2025, 9:50 PM EST) -- Manhattan U.S. Attorney Jay Clayton on Tuesday said he's prepared to offer "real benefits" to corporations facing criminal investigations if they quickly agree to cooperate and compensate victims, ideally in the form of comprehensive, government-wide resolutions.

Clayton said he'd like to see a corporate cooperation program in which a company that quickly self-discloses misconduct, turns over bad actors and tries to get evidence to prosecutors as soon as possible could get a deferred prosecution agreement at the outset, subject to continued cooperation, with better deal terms potentially to follow.

"You can tell your shareholders that 'look, we found a problem, we're solving it, we're solving it in conjunction with the DOJ, and we're ready to go,' Clayton said.

Speaking to a crowd in an informal Q&A session at the New York City Bar Association's International White Collar Crime Symposium, Clayton, formerly the chair of the U.S. Securities and Exchange Commission, said if a corporation says it's going to cooperate with prosecutors, but it still takes five years to get to the end of the matter, "that's not cooperation, that's just talk."

"I think real corporate cooperation, and cooperation where the corporation and its shareholders do not sustain a serious penalty, or perhaps no penalty at all, is when that speed is part of the cooperation," Clayton said.

The former Sullivan & Cromwell LLP partner repeatedly stressed the importance of prompt compensation to victims. Offering a hypothetical, Clayton said if someone is defrauded out of \$100, and the government can return \$70 to them tomorrow, that's a lot better than getting the victim \$90 five years down the line.

"If we can get the bad actors out, get a remedy and, most importantly, compensate the victims quickly, that's the kind of corporate cooperation program that I want to see," he said.

Clayton said he also favors government-wide corporate resolutions across different agencies, as opposed to "death by a thousand cuts."

"I'm advocating for a comprehensive approach across the federal government, to the maximum extent possible, to facilitate a comprehensive resolution on a timely basis," Clayton said.

He said companies that otherwise would be inclined to enter into a resolution with federal prosecutors at times hold back due to collateral consequences they may suffer, like an industry bar at the hands of another federal agency.

Or, for instance, a financial firm in hot water might be predisposed to quickly resolving criminal liability, Clayton said, but would need a waiver from the U.S. Department of Labor to continue to service retirees' investments.

"We ought to be able to facilitate that process in fairly short order," Clayton said.

Clayton, who served as SEC chair from 2017 to 2020, was named by President Donald Trump shortly

after the 2024 election as his pick for the U.S. attorney for the Southern District of New York, but his nomination was blocked in the Senate. Clayton served as interim SDNY U.S. attorney before the district's judges **appointed him** to the post in August.

Apart from his stints in government and BigLaw, Clayton also worked as the chairman of Apollo Global Management, and still teaches at the University of Pennsylvania's Carey Law School and Wharton Business School.

An emphasis on self-disclosure has for years been **a priority** for the Justice Department with respect to corporate criminal enforcement, both at Main Justice and **in U.S. attorney's offices**. However, under the Trump administration, the DOJ has signaled that it favors a more collaborative, business-friendly and less aggressive approach, with a clearer path to declinations and less of an emphasis on corporate monitorships.

Under the department's revised corporate criminal enforcement policy, **announced** by Criminal Division head Matthew Galeotti in May, companies will not have to enter into criminal resolutions if they voluntarily self-disclose, fully cooperate and take timely steps to remediate the issue, absent aggravating circumstances.

--Additional reporting by Phillip Bantz. Editing by Linda Voorhis.

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