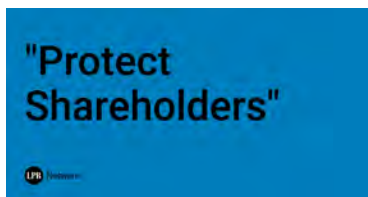


"Protect Shareholders" | Business Law Prof Blog

 [businesslawprofessors.com/2025/12/protect-shareholders](https://www.businesslawprofessors.com/2025/12/protect-shareholders)

Ann Lipton

December 3, 2025



In this week's [Shareholder Primacy podcast](#) ([here at Apple](#), [here at Spotify](#), [here at YouTube](#)), Mike Levin and I talk about the all-of-government war on proxy advisors.

Which was timely, because – as we didn't know when we recorded – ISS just created a new website, www.protectshareholders.com, apparently aimed at making the case for proxy advisors and fighting back against all of the political attacks.

My initial social media reaction was, "OMG," which apparently was inscrutable to many, so I'll elaborate here.

To me, ISS's website does not appear to be a targeted lobbying approach aimed at asset managers or politicians; it appears to be directed at largely a general audience, like public-facing PR. Certainly not geared toward low-information voters, but maybe toward reporters who will communicate to a general audience, or other general audiences who may have sway with politicians. And it is surprising – shocking – to me when a technical matter of corporate governance reaches that level of political salience. Which happened, for example, [in the context of SB 21, when I posted that this kind of controversy was unequivocally bad for Delaware](#).

Now, back in the day – the "day" meaning late 1800s, early 1900s – corporate law was *very much* a matter of general political concern, and that's largely because corporate law was the only mechanism to regulate corporate behavior. Beginning in, oh, the 1920s or so, states began to hive out substantive corporate regulation from corporate law – leading to the illusion (and I do mean illusion) that corporate law was something *not* regulatory, and therefore removed from ordinary political considerations.

So in some ways, the move back almost feels like the natural order; but it also represents a deep lack of faith in the efficacy of the regulatory state, which is why the turn to corporate governance as a substitute.

That said, my *suspicion* is that this particular effort by ISS is misguided, because – if they're targeting something like a general audience – most normal people are unlikely to be persuaded by a message that protecting institutional shareholders is a moral imperative. The *structural* role that ISS plays is by organizing a force that has the heft to push back against oligarchic control of America's economic resources. That *is* a message that the public can understand and, I think, support, but it's *not* a message that ISS, as a representative of institutions with fiduciary obligations to maximize equity value, can deliver.

Or maybe that's just a me thing.

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Securities

'Lets Go Brandon' Crypto Coin Class Suit Teed Up for Trial (2)

December 3, 2025, 10:14 AM PST; Updated: December 3, 2025, 1:25 PM PST

Whether "Lets Go Brandon Coin," a meme cryptocurrency referencing the slogan used to criticize former President Joe Biden, are a security like stocks will go before a Florida jury.

LGBCoin purchasers sufficiently proved two of three tests for the memecoin's security status, Judge Paul G. Byron said Tuesday, teeing up whether buyers had a reasonable expectation of profit for trial in the US District Court for the Middle District of Florida.

The US Supreme Court's *Howey* test determines whether something is an investment contract. The coin purchasers bought LGBCoins through various exchanges by converting dollars into crypto, sufficient to meet the test's "investment of money" standard, Byron said.

Their investments' success was entangled with Republican influencer and coin co-creator James Koutoulas', satisfying the test's requirement of a common enterprise. "For example, when NASCAR revoked its sponsorship agreement with LGBCoin, Plaintiffs and Defendant Koutoulas equally experienced a decrease in the value of their LGBCoins," Byron said.

But there's a dispute over whether the buyers could reasonably expect to make money, as there were significant non-investment reasons for purchasing the coin—namely advocating of conservative beliefs. "Plaintiffs were not promised—either directly from Defendant Koutoulas or indirectly through social media and internet posts—any profits, dividends, transaction fees, or appreciation on their investment in LGBCoin."

Koutoulas' arguments that the coins weren't securities fell flat. A Securities and Exchange Commission staff statement on memecoins doesn't have legal force, Byron said, and an SEC release attached to Koutoulas' motion in a US Court of Appeals for the Eleventh Circuit case indicated that it shouldn't be seen as an exoneration.

The buyers adequately showed losses tied to Koutoulas and his LGBCoin LTD's promoting the cryptocurrency for standing to sue.

Koutoulas said Byron's order "defies the SEC which after a two year inquiry concurred that it doesn't even support an allegation of being a security," referring to the aforementioned motion attachment.

"Plaintiffs have made three brightline violations of the PSLRA which carry mandatory sanctions," he said in an email, accusing the buyers of withholding promotional material touting "the coin as an investment, the very allegation they project onto me. We will fight this sham case until Scott and Scott and Aaron Zigler receive those mandatory sanctions and are held accountable for their abuse of process," he said in reference to the buyers' counsel. The court previously declined to impose sanctions tied to the PSLRA requirements.

The order comes while the SEC in the second Trump administration has pulled back on enforcement actions and its purview over certain digital assets.

NASCAR Deal

The LGBCoin buyers originally sued multiple individuals and groups who've been dismissed from the class action, including NASCAR and professional race car driver Brandon Brown. Byron earlier this year certified a class of people who bought LGBCoin between Nov. 2, 2021, and March 15, 2022.

The "Let's Go Brandon" phrase went viral among conservatives after a TV reporter interviewing Brown in 2021 mistook a crowd's vulgar chant about Biden as a cheer for the driver. The purchasers said trillions of LGBCoins were minted a few weeks after the interview, and Brown later promoted the coin.

The coin's value skyrocketed before crashing in January 2022 after NASCAR revoked sponsorship approval of LGBCoin for Brown.

In October a Miami jury sided with NASCAR against the LGBCoin foundation's \$76 million lawsuit over the backtrack.

Zigler Law Group which declined to comment for this story, and Scott + Scott Attorneys at Law LLP, which declined to comment on the order, represent the purchasers. Scott + Scott didn't immediately respond to an email seeking comment on Koutoulas' comment. Di Pietro Partners PLLC represents Koutoulas and LGBCoin.

The case is De Ford v. Koutoulas , M.D. Fla., No. 6:22-cv-00652, 12/2/25 .

(Updates paragraph 15 to include that attorney Aaron Zigler declined to comment and paragraphs eight and nine to include additional reporting.)

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Securities

Adidas Investor Loses Bid to Revive Suit Over Ye Partnership (1)

December 3, 2025, 1:37 PM PST; Updated: December 4, 2025, 5:10 AM PST

Adidas AG correctly defeated an investor's proposed class action tied to the footwear brand's imploded partnership with Ye, the rapper formerly known as Kanye West, an appeals court ruled Wednesday.

Business partnership risk disclosures targeted by the investor weren't misleading like was found in securities cases involving Alphabet Inc. and Meta Platforms Inc., the US Court of Appeals for the Ninth Circuit said in an unpublished memorandum.

The court said the footwear investor's case differed from those that concerned concealed data breaches given it involved "a celebrity partner who already had public notoriety for his improper behavior even prior to the Partnership."

"Therefore, we conclude that a reasonable investor would know that a partnership with a celebrity partner like Ye would come with inherent risks relating to improper behavior and that a reasonable investor would not be misled by the Business Partners Risk disclosures," said memorandum said.

The investor, a group of funds associated with the Hampton Roads Shipping Association-International Longshoremen's Association, failed to plead a material misrepresentation tied to Adidas' compliance with European Union disclosure standards because the company's statement wasn't capable of objective verification, the memorandum said. Regardless, the shareholder failed to allege the level of intent or deliberate recklessness for securities fraud claims.

The sneaker maker cut ties with Ye and his shoe brand Yeezy after an antisemitic outburst in 2022. Adidas' share prices dropped after Ye made racist and antisemitic statements and other information came to light about the partnership, the suit said.

The US District Court for the District of Oregon Judge Karin J. Immergut tossed the proposed class action last year, finding the HRSA-ILA Funds failed to adequately allege Adidas misled shareholders. Allegations Adidas failed to give required information under European Union rules fell short, as the provisions were "too broad and flexible for the reasonable investor to have relied on them."

Skeptical Panel

During oral arguments in October, Chief Judge Mary H. Murguia and Circuit Judge Patrick J. Bumatay questioned investor counsel's comparison that Adidas' business risk disclosures weren't up to snuff similar to findings in securities cases following the disclosure of a data breach impacting Alphabet and the Cambridge Analytica scandal ensnaring Meta, formerly Facebook. Circuit Judge John B. Owens didn't ask any questions.

The public didn't know Ye was a "raging anti-semitic" until 2022, but Adidas had internally witnessed that behavior when he drew a swastika on a shoe in 2013 and praised Adolf Hitler to Jewish employees, argued Daniel Tyre-Karp, a partner at The Rosen Law Firm PA who represents the investor.

But when asked by the lower court, the investor had no answer as to what Adidas' disclosures should've said instead, said Maeve Louise O'Connor, a partner at Debevoise & Plimpton LLP who represents the company and chief financial officer Harm Ohlmeyer.

Neither side's aforementioned law firms immediately responded to emails seeking comment. Adidas declined to comment.

The case is HRSA-ILA Funds v. Adidas AG , 9th Cir., No. 24-6655, unpublished 12/3/25 .

(Updates story originally published Dec. 3 with Adidas declining to comment in eleventh paragraph.)

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Securities

Avidity Hit With Suit Aiming to Block \$12 Billion Novartis Deal

December 3, 2025, 5:29 PM PST

An Avidity Biosciences Inc. stockholder has filed a lawsuit against the company and its board of directors seeking to stop its sale to Novartis AG over allegations Avidity withheld key details from investors and provided misleading information about the deal.

Novartis agreed to buy Avidity in October in a \$12 billion at \$72 a share. The transaction is one of the Swiss drugmaker's biggest acquisitions in over a decade.

Avidity's proxy statement omits material information about the sales process, financial projections, and conflicts of interest that shareholders need to make informed voting decisions, Steve Barnhart, an Avidity stockholder, alleged in his complaint in the US District Court for the Southern District of California. Barnhart alleged Avidity and its board members violated the Exchange Act and the sale should be enjoined or rescinded if the transaction is "consummated."

"The Proxy Statement is materially deficient, deprives plaintiff of the information necessary to make an intelligent, informed, and rational decision of whether to vote in favor of the proposed transaction and is thus in violation of the Exchange Act," Barnhart said.

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

Barnhart claims Avidity's board conducted a flawed sales process designed primarily to benefit company insiders through "golden parachute" payments and stock option payouts worth millions of dollars.

Brodsky Smith represents Barnhart.

The case is Barnhart v. Avidity Biosciences Inc. , S.D. Cal., No. 3:25-cv-03414, complaint 12/3/25 .

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Securities

Ares, Citi, Jefferies Win Again in \$497 Million Apollo Deal Suit

December 3, 2025, 11:01 AM PST

Affiliates of Ares Management Corp., Citigroup Inc., and Jefferies Financial Group prevailed at Delaware's highest court Wednesday over claims they breached their duties to investors in an under-priced \$497 million sale of Smart and Final Stores Inc. to Apollo Global Management Inc.

The Delaware Supreme Court upheld a lower court's ruling that found in February that ex-Smart and Final shareholder Glenn J. Krevlin failed to show the Ares funds controlling the food retailer withheld key information before investors voted in favor of selling to Apollo.

A two-page order signed by Justice Abigail M. LeGrow didn't elaborate on the high court's reasoning. Chief Justice Collins J. Seitz Jr. and Justice N. Christopher Griffiths also heard the appeal Oct. 22; a panel of three justices typically hears oral arguments, except in death penalty appeals or other cases where it determines en banc consideration is warranted.

Krevlin, principal and portfolio manager of Glenhill Capital Advisors, claimed in a 2022 proposed class action lawsuit that Ares funds controlling the food retailer pushed for a quick sale to satisfy their own liquidity needs.

In February 2025, the Delaware Chancery Court dismissed Krevlin's claims, finding he failed to show the Ares funds had a disabling conflict of interest or that disclosures to shareholders were deficient. Krevlin's appeal focused on whether the Chancery Court correctly determined that the "business judgment rule" applied to the transaction, shielding it from more rigorous judicial scrutiny.

Krevlin is represented by Gordon, Fournaris & Mammarella PA. Paul, Weiss, Rifkind, Wharton & Garrison LLP represents Citigroup Global Markets Inc. Ares is represented by Potter Anderson & Corroon LLP. Young Conaway Stargatt & Taylor LLP represents Jefferies LLC.

The case is Krevlin v. Ares Corp. Opportunities Fund III, L.P., Del., No. 94,2025, order 12/3/25.

—With assistance from Bloomberg Law Automation.

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News | **Law Firm Office Launches and Closures**

Securities Litigator Jeroen van Kwawegen Launches Firm, Plans Raid of Bernstein Litowitz Corporate Governance Team

Van Kwawegen expects JVK Law to include at least nine former Bernstein Litowitz lawyers, including three former partners.

December 04, 2025 at 12:52 AM By  **Dan Roe**

What You Need to Know

- An eight-lawyer corporate governance and securities litigation team announced plans to leave Bernstein Litowitz Berger & Grossmann and start a new law firm under the leadership of Jeroen van Kwawegen.
- JVK Law will service institutional investor clients out of offices in New York, Delaware and Los Angeles.
- Van Kwawegen's former firm said he was fired for misconduct, an allegation van Kwawegen disputed as "pretextual and disappointing."



Jeroen van Kwawegen of Bernstein Litowitz Berger and Grossmann. Photo: Ryland West/ALM

Jeroen van Kwawegen, a Chambers-ranked plaintiff-side securities litigator and former head of the department of governance at Bernstein Litowitz Berger & Grossmann, on Wednesday announced

the formation of a new law firm to be staffed initially by at least nine Bernstein Litowitz lawyers.

The firm, JVK Law, will have offices in New York, Los Angeles, and Wilmington, Delaware, serving a broad clientele of investors who face increasing risks amid deregulation and fewer constraints against insiders, van Kwawegen said in an interview.

"I think institutional investor clients are looking for and benefiting from advice that is clear and transparent but also informed by people who are willing to take cases to trial and stand up for the rule of law—and people who have broad thought leadership roles in the corporate community," van Kwawegen said. "I think we will be uniquely positioned to do that."

Van Kwawegen also said that "virtually everybody from the (Bernstein Litowitz) department of corporate governance is joining me," which so far includes commitments from fellow management committee members Christopher Orrico and Edward Timlin as well as partners Andrew Blumberg, Thomas James, Eric Riedel, Dan Meyer, Ben Potts, and Lauren Cruz. At press time, all attorneys besides van Kwawegen remained employed at Bernstein Litowitz, however.

In response to their departure, a firm spokesperson said, "We thank these attorneys for their contributions to the firm."

Van Kwawegen and his former firm dispute the reason for his departure. In a statement, Bernstein Litowitz said van Kwawegen was "terminated after a unanimous decision of all remaining members of the firm's Board, based on a determination of the firm's Executive Committee that, in its opinion, Mr. van Kwawegen engaged in misconduct that was inimical to the best interests of the firm."

A firm spokesperson said Bernstein Litowitz would not comment further on the details of the alleged misconduct; a statement from van Kwawegen said that "any claim of misconduct is pretextual and disappointing."

"We are disappointed that Mr. van Kwawegen has made misleading statements about his departure from the firm. We therefore feel compelled to clarify for the record that Mr. van Kwawegen was in fact terminated after a unanimous decision of all remaining members of the firm's Board, based on a determination of the firm's Executive Committee that, in its opinion, Mr. van Kwawegen engaged in misconduct that was inimical to the best interests of the firm," the firm said in an emailed statement.

While at Bernstein Litowitz, van Kwawegen was involved in numerous high-profile securities litigations and corporate governance disputes. Most notably, he co-led a team that [nullified](#) Elon Musk's \$56 billion Tesla compensation package after the Delaware Court of Chancery ruled in 2024 that Tesla's board breached its fiduciary duty.

He also helped the firm win a \$1 billion settlement for Wells Fargo shareholders after the U.S. District Court for the Southern District of New York ruled in 2023 that the bank issued false and misleading statements that prompted a sharp decline in its stock price.

While van Kwawegen said that he didn't have a target size for the firm, he also wouldn't be surprised if it doubled in size in the next six to 12 months. "We're growing in a cautious, responsible way that protects the culture we're trying to cultivate," he said. The firm is in the process of negotiating leases, van Kwawegen added.

Although van Kwawegen absconded with most of Bernstein Litowitz's department of governance, the firm retains a head count of roughly 80 attorneys, including Delaware office head Greg Varallo.

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Securities

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Bernstein Litowitz Spars With Ex-Partner Starting Rival Firm

December 3, 2025, 3:00 AM PST; Updated: December 3, 2025, 1:21 PM PST

Summary by Bloomberg AI

AI Generated



- A Manhattan lawyer, Jeroen van Kwawegen, has left Bernstein Litowitz Berger & Grossmann to launch a new firm, JVK Law, with at least four other partners.
- Van Kwawegen said he left due to differences with other partners about the firm's direction, while Bernstein Litowitz claims he was fired for misconduct.
- Van Kwawegen's new firm, JVK Law, will focus on advising institutional investors and plans to build out a securities litigation practice, with offices in New York, Delaware, and Los Angeles.

A Manhattan lawyer's exit from the prominent securities firm that challenged Elon Musk's \$55.8 billion dollar Tesla pay package has prompted a public war of words.

Jeroen van Kwawegen said Wednesday that he left Bernstein Litowitz Berger & Grossmann with at least four other partners to launch a new firm, JVK Law. Van Kwawegen, who led Bernstein Litowitz's corporate governance practice, said he bolted over differences with other partners about the firm's direction.

"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 whose interests you should be serving first," van Kwawegen said in an interview. "That includes, for example, being ready to take cases to trial."

Bernstein Litowitz says van Kwawegen was fired, a claim that he denied. "Mr. van Kwawegen was in fact terminated after a unanimous decision of all remaining members of the firm's Board, based on a determination of the firm's Executive Committee that, in its opinion, Mr. van Kwawegen engaged in misconduct that was inimical to the best interests of the firm," the firm said in a statement.

Such dueling narratives are uncommon at major law firms, where partners often come and go but rarely air internal disputes in public. Bernstein Litowitz is known for representing investors in massive suits against the likes of Musk, Rupert Murdoch, and Warner Bros. Discovery chief David Zaslav.

Van Kwawegen said his new firm will focus on advising institutional investors as regulatory changes weaken guardrails. "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," he said.

JVK Law plans offices in New York, Delaware, and Los Angeles, but is still negotiating leases in those locations.

Ex-Bernstein partner Andrew Blumberg will run JVK's Delaware outpost. Other Bernstein recruits, including CJ Orrico, Tom James, Eric Reidel, Edward Timlin, Dan Meyer, Ben Potts, and Lauren Cruz, are joining JVK as partners, with some being elevated to partner after serving as senior counsel at their former firm. Another dozen or so other attorneys and paralegals from Bernstein Litowitz are also joining JVK Law across its three locations.

"I am honored that so many of my former colleagues, including eight new partners, are joining me in our new venture and I wouldn't be surprised if others will follow," van Kwawegen said.

Bernstein Litowitz said it "felt compelled to clarify" the circumstances surrounding van Kwawegen's exit. Greg Varallo, the longtime partner who led the shareholder lawsuit against Tesla over Musk's pay package, will continue to lead the firm's Delaware practice, it said.

"It is important to emphasize that BLB&G is fully committed to protecting shareholder rights through both our governance and securities practices and that we are always focused on achieving the best result for our clients," the firm said.

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.

Van Kwawegen also was part of the trial team that secured a \$1 billion settlement from Wells Fargo to resolve a federal securities class action lawsuit.

He expects his new firm to build out a securities litigation practice and add more attorneys quickly.

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

(Updated with additional reporting throughout)

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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 are set to leave Bernstein Litowitz Berger & Grossmann to create 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 he launched the new firm on Wednesday and that most of the department was joining with him. The firm, JVK Law, will start out with offices in Los Angeles, New York and Wilmington, Delaware, van Kwawegen said.

Bernstein Litowitz said in a statement to Reuters later on Wednesday that van Kwawegen had been terminated for alleged misconduct that it called "inimical to the best interests of the firm." A spokesperson for the firm said van Kwawegen was terminated on November 16 but did not say why.

Van Kwawegen responded that "any claim of misconduct is pretextual and disappointing." He said he was "honored" that many of his colleagues would be joining him at their new firm and that more may follow.

In a Tuesday interview with Reuters, van Kwawegen 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. 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 the 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](#).

Florida Jury Deliberated for 11 Days in an Opioid Trial. Pharmacies Now Want a Mistrial.

Wednesday's mistrial motion, filed by Walmart, Walgreens and CVS, cites the extraordinary length of jury deliberations and some of the notes sent by the jury, including one that asked for the sworn oath of jurors.

December 03, 2025 at 03:23 PM By  **Amanda Bronstad**

What You Need to Know

- Wednesday's mistrial motion says that jurors could be deadlocked but unaware they can notify the court about their situation.
- 'No lawyer in this case has ever experienced deliberations remotely approaching this duration or structure,' says the motion.
- The three pharmacies are accused of flooding Florida counties with opioid prescriptions, costing more than a dozen hospitals, and plaintiffs' attorney Warren Burns, of Dallas-based Burns Charest, has asked for up to \$1.5 billion in damages.



Broward Circuit Judge Carol-Lisa Phillips. Courtesy photo

Pharmacies awaiting a verdict in a high-profile opioid trial have asked a Florida judge to declare a mistrial after jurors began their 11th day of deliberations on Wednesday.

The jury, after 51 days of trial in Broward County Circuit Court, has sent multiple notes since beginning its deliberations on Nov. 14. Some of those notes, according to Wednesday's mistrial motion, indicate that jurors could be deadlocked but unaware they can notify the court about their situation.

"No lawyer in this case has ever experienced deliberations remotely approaching this duration or structure," says the motion, filed by lawyers for Walmart, Walgreens and CVS. "Although plaintiffs have pointed to examples they found on the internet of juries that have deliberated longer, those are the Guinness Book of World Record type cases. None of the lawyers in this case – including counsel with many decades of collective trial experience – has ever witnessed anything approaching deliberations of this length and strain."

The three pharmacies are accused of flooding Florida counties with opioid prescriptions, straining the financial resources of more than a dozen hospitals, and plaintiffs' attorney Warren Burns, of Dallas-based Burns Charest, has [asked for up to \\$1.5 billion in damages](#). Unlike most opioid trials, which have focused on public nuisance claims against drug manufacturers and distributors, the trial alleges the pharmacies violated the Florida Racketeer and Influenced Corrupt Organizations Act by acting together in profiting off customers addicted to the painkillers.

The deliberations, the motion says, are "extraordinary by any measure."

"After more than 60 hours of deliberations spanning four weeks, multiple notes indicating discord and loss of focus, and clear signs of juror frustration, further deliberations risk coercion and a compromise verdict," the motion says. "The jury has crossed the point where continued deliberations remain a reliable indicator of reasoned judgment. They are instead becoming a vehicle for coercion."

Burns, the plaintiffs' attorney, told Law.com, "The motion reeks of desperation. It is based on nothing more than rank speculation and an ardent desire to upset the deliberative process. Over 11 days, this jury has shown absolutely no sign of deadlock; no sign of dispute; and every sign that they are taking their job seriously and going about the work the court has asked them to do. The motion is a fiction. We are confident it will be denied."

'Textbook Sign of Deadlock, Frustration, and Pressure'

The mistrial motion referenced one note from the jury on Nov. 24 asking for the sworn oath for jurors – a request that first triggered concern from defense lawyers that they might be deadlocked

but unaware that they can tell the court without disclosing the numerical split, according to Courtroom View Network's livestream. Burns countered that they should not "tinker" with the jury's deliberations.



Warren T. Burns, founder and co-managing partner of the law firm of Burns Charest LLP, has been elected to membership in the American Law Institute.

"Having presided over well past 300 jury trials, as a judge, I've never had a jury have a problem to communicate with me with regards to whether or not there's a deadlock at some point," Phillips told the lawyers at the time. "I'm not going to read too much into that."

Cornell Law School Professor Valerie Hans, an expert on juries, said she had never heard of a jury asking for a repeat of the juror's oath.

"It was a lengthy trial, so they could be very deliberate in how they are going through their review of the evidence," she said. "That's a hallmark of an 'evidence-driven' jury—extensive review of evidence first, then exchange of views about the verdict. Of course, it could also mean that they disagree about the interpretation of evidence in the case or about the verdict."

Another note, on Tuesday, sought explanation for a juror who was "arguing" a point the others disagreed with — a "textbook sign of deadlock, frustration, and pressure." The question, according to Courtroom View Network's livestream of the trial, focused on the alleged crime of violating the Controlled Substances Act, a federal law, in the distribution of opioids, asking, "Can you please clarify or is there someone, perhaps a paralegal, or someone else with law knowledge, to help the juror (jurors) understand the law?"

Phillips responded by referring the jury back to the instructions.

“They’re certainly not shy. Certainly, they’re continuing to work back there,” she told the lawyers about the jurors. “What I don’t want to do is get in there, essentially.”

The mistrial motion also referenced that one juror “became aggressive” with the court’s camera operator during a break, “demanding to know whether he was being recorded.”

“These are unmistakable signs of deliberations that have ceased to be productive,” the motion says. “These are not characteristics of a jury capable of rendering a fair, reasoned verdict. They are characteristics of a jury that has reached the functional limits of deliberations and is now simply trying to find an alternative means to end the case.”

In a statement to Law.com, Courtroom View Network Section Editor Arlin Crisco wrote, “CVN’s presence in the courtroom for the duration of this trial complies with both Florida and local court rules for recording proceedings. CVN never records jurors, and our videographer has followed all appropriate protocol, including never speaking with jurors.”

‘Jurors May Not Realize They Have This Option’

In Nov. 14 closing arguments, lawyers for the pharmacies told jurors that spikes in patients admitted to hospitals were primarily due to opioids from other pharmacies, including pill mills doling out large numbers of prescriptions. All three defense lawyers said the plaintiff hospitals hadn’t proven a criminal racketeering conspiracy among them.

They also questioned the request for damages of more than \$1 billion, which David Markus, of Markus/Moss in Miami, who represents Walmart, called a “money grab.”

And pharmacists aren’t the ones who write opioid prescriptions, said Brian Swanson, of Chicago’s Bartlit Beck, who represents Walgreens.

“It’s doctors who guide volume. Pharmacists do not guide volume,” he told jurors, according to Courtroom View Network. “Pharmacists fill prescriptions written by doctors. Without a prescription, there’s nothing for a pharmacist to do.”

Zuckerman Spaeder’s Eric Delinsky, in Washington D.C., represented CVS.

On Nov. 28, the pharmacies filed a mistrial motion, citing 17th Judicial Circuit Court Judge Carol-Lisa Phillips’ readback, in response to a jury question, of the “most prejudicial sliver” of testimony from one of the plaintiffs’ experts. Phillips rejected that motion.

Wednesday’s motion suggests that should Phillips not grant them a mistrial, she should give the jury a “neutral instruction” stating, “Ladies and gentleman of the jury, if you find that you are unable



Eric Delinsky of Zuckerman Spaeder. HANDOUT.

to reach a unanimous verdict, you may notify the court by handing a note to the courtroom deputy. You should feel no rush to complete your deliberations, however, and you should not feel any need to write a note that is not warranted by your deliberations.”

“Jurors may not realize that they have this option,” the motion says. “Florida law permits such neutral instructions where prolonged deliberations raise concerns about possible deadlock or coercion.”

The lengthy deliberations aren’t the only unusual aspect of the jury. Before taking five days off for the Thanksgiving break, the motion says, the jury offered home-made spiced nuts to the attorneys and the court, along with a card “containing images of the parties and items of evidence from trial.”

On Halloween, when the trial was on its 26th day, jurors dressed up as the characters Things One through Nine from the Dr. Seuss book, “The Cat in the Hat.” In his closing argument, Markus, of Miami-based Markus/Moss, in a nod to the jury’s costumes, wrote his own poem in the style of Dr. Seuss, titled “Walmart is not a Racketeer”:

“If you look and you listen and weigh every fact, you will see there’s no plot, no criminal act, no whisper, no wink, no nod or collusion, just hard-working folks and a grand wrong conclusion,” he said, according to Courtroom View Network. “The facts are the facts. They do not pretend. And here, those facts bring the story to an end.”

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Reasons for AI errors don't matter, panel sanctions for not checking work

DJ [dailyjournal.com/articles/388822-reasons-for-ai-errors-don-t-matter-panel-sanctions-for-not-checking-work](https://www.dailyjournal.com/articles/388822-reasons-for-ai-errors-don-t-matter-panel-sanctions-for-not-checking-work)

Justice Frances Rothschild

Tarzana attorney Fahim Farivar denies using artificial intelligence to write an opening brief that contained made-up quotes, but a California appellate court sanctioned him anyway, saying the reason for the errors doesn't matter.

The 2nd District Court of Appeal sanctioned Farivar in an opinion filed Monday, ordering him to pay \$7,500 to the court clerk for filing the error-ridden brief, which it says shows several hallmarks of AI. The justices ordered the court clerk to send a copy of the opinion to the State Bar.

"Regardless of whether inaccuracies in a brief are the result of using artificial intelligence (AI) tools or some other drafting process, as Farivar and appellant argue occurred here, the signatory attorney is responsible for the content of the brief and subject to sanctions for inaccuracies it contains," stated the opinion, signed by Presiding Justice Frances Rothschild and Justice Helen I. Bendix and Gregory J. Weingart of Division 1. *Shayan v. Shakib*, B337559 (Cal. App. 2nd. Dec. 1, 2025).

Farivar said the mistakes stemmed from the process he used to draft the brief, according to the opinion. He said he used placeholders instead of exact language in the draft and that his staff forgot to replace them with the actual quotes, according to the panel.

Either way, the panel concluded, Farivar had a responsibility to check his work.

Farivar also argued that, despite the errors, his brief didn't misrepresent any of the opinions he cited. But the panel concluded that the errors could make their way into future decisions, citing September's *Noland v. Land of the Free L.P., et al.*, B331918.

"We must consider broader concerns about the integrity of the courts and the legal profession," the opinion states. In addition to the *Noland* case, a handful of other attorneys have been sanctioned for inappropriate AI use.

Noland was the first instance of a California appellate court sanctioning a lawyer for using artificial intelligence. In that case, the lawyer, Amir Mostafavi, was given a \$10,000 sanction. However, unlike Farivar, Mostafavi admitted to using AI.

The justices said that Farivar's refusal to take responsibility for his actions contributed to the monetary penalty, which was calculated to reflect the time the court had to spend trying to verify his citations.

Farivar did not respond to emailed questions Wednesday.

According to Jason E. Fellner, a San Francisco attorney who specializes in legal malpractice, the exact amount of the fine isn't as significant as the sanction itself.

"In my view, the monetary sanction is just a slap on the wrist at this point," Fellner said in a phone interview.

Fellner said that the courts have made it clear through a recent slew of sanctions that lawyers are only allowed to use AI if they thoroughly check their work.

Fellner said that clients are insisting their attorneys use AI to improve efficiency, which is partially to blame for the recent uptick in sanctions.

Once lawyers become acclimated to the technology, client expectations and court policies, he expects that fewer lawyers will be sanctioned for using AI improperly.

"Right now is, I expect, as bad as it will be because we're learning and growing with this evolving tool," Fellner said.

#388822

Daniel Schrager

Daily Journal Staff Writer

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Expert Opinion | **Legal Ethics and Attorney Discipline**

You've Been Sanctioned! How Lawyers Can Protect Themselves and Clients When Misuses of AI Create a Firm Crisis

A string of high-profile judicial sanctions has delivered a sobering reminder: the lawyer remains fully accountable for every word and citation filed with a court, even when those words were drafted by a machine.

December 03, 2025 at 12:27 PM By **Elizabeth Lampert**



Elizabeth Lampert, ELPR. Courtesy photo

The last thing a lawyer with a long and stellar career wants is to be called out by a judge for a poorly written brief or argument on behalf of a client. What's even worse is having that judge sanction that lawyer for the use of fake citations in that brief. But it's been happening, and the media is covering it as breaking news. Name, photo, firm and all!

A string of high-profile judicial sanctions has delivered a sobering reminder: the lawyer remains fully accountable for every word and citation filed with a court, even when those words were drafted by a machine. In courtrooms across the country, judges have publicly rebuked and sanctioned attorneys for submitting briefs containing entirely fabricated case law generated by large-language models (LLMs). These "hallucinated" authorities, complete with plausible-sounding

case names, citations, and doctrinal summaries, have triggered headlines, bar complaints, referrals to state disciplinary bodies, and lasting reputational harm.

Recently, here in California, a lawyer with a 30-year career made the headlines for his use of AI. With all the recent examples, why is this still happening, and if it happens to you, is there any way to repair your reputation when the world is informed of your mistake?

The fallout is rarely confined to the courtroom. Because these incidents instantly become public record and attract aggressive coverage from legal and tech media, they can rapidly morph into full-blown communications crises. Without disciplined management, a single error can define a lawyer's or firm's reputation for years.

If Your Firm Is Sanctioned for AI-Generated Fictitious Citations

Public sanctions erode judicial trust, alarm current clients, deter prospective ones, and can raise malpractice premiums. Clients, though blameless, often suffer the most immediate harm through stricken briefs, delayed proceedings, forced re-briefing at additional expense, and unwelcome media scrutiny that questions their choice of counsel.

Prevention starts early, well before any sanctions, headlines, or client calls. Law firms that have not already adopted a formal, written AI-use policy that clearly defines what is permitted, what is prohibited, and what verification steps are mandatory, should get one in place, now.

Every AI-assisted filing should undergo dual human review to ensure accuracy, ethical compliance, and alignment with court rules. Firms should also integrate citation-verification tools and checklists into their standard workflow. This will help prevent erroneous or hallucinated citations from ever reaching a judge. Finally, naming a dedicated AI or ethics partner or a small oversight committee creates a clear escalation path when questions arise, helping resolve issues before they become public problems.

First 24 Hours: Rapid Internal Assessment

When a court sanctions a firm for submitting AI-generated citations that turn out to be fictitious, the first few hours, just like any crisis, is critical. Begin by immediately securing and reviewing the offending filing along with every related AI prompt, output, and chat logs. This documentation will form the backbone of your factual understanding and later disclosures.

Assemble a tightly controlled crisis team that includes the responsible partner, senior firm leadership, internal or external ethics counsel, a representative from the firm's malpractice carrier, and, if already engaged, outside PR counsel. This group should meet to reconstruct the precise

sequence of events to find who used which AI tool, what prompts were entered, how the output was reviewed, and what verification steps (if any) were taken before filing.

Simultaneously, notify key firm leaders and your malpractice carrier. Many policies require notice within 24 to 48 hours, and early transparency often proves critical to preserving coverage, managing risk, and shaping a credible response strategy going forward.

Client Protection

Another consequential step is direct client communication. Senior leadership, ideally the managing partner or practice head alongside the relationship partner, should personally call the affected client within hours. Do not wait for the client to hear about the sanction from the media, that would be a trust-destroying mistake.

During the call, offer a factual explanation of what occurred, free of defensiveness or excuses. Provide the client with a concrete remediation plan, including the team members assigned to correct the record, the filings to be amended, and how the firm will ensure accuracy going forward. To preserve the relationship, the firm should offer to absorb any additional costs created by the error, whether refiling fees, rebriefing time, or other corrective work.

Importantly, align with the client on external messaging. A public statement should not be released without client awareness and, ideally, sign-off.

Court Response

There is also a response to the court. The firm must file a corrective notice or motion that acknowledges the error, withdraws the fictitious authorities, and submits a verified, corrected brief. Transparency and ownership are the most credible approaches; equivocating or shifting blame will just compound the damage.

Attorneys should explicitly accept responsibility. The message to the court should be simple: the firm recognizes the gravity of the mistake, has taken corrective action, and has put safeguards in place to ensure it never happens again.

External Communication

When a law firm is sanctioned for submitting AI-generated citations, you want to stabilize the situation, protect the client, and prevent long-term reputational damage.

The first rule of effective crisis response is no external communication until the facts are fully verified. Once the internal investigation is complete and the corrective steps are confirmed, the firm should create a statement that becomes the anchor for all subsequent messaging. A strong core message might read:

"We recognize the gravity and take full responsibility for the error involving inaccurate citations generated by artificial intelligence in our brief. We have withdrawn the erroneous documents, filed a corrected brief, and implemented additional review protocols to prevent recurrence."

This statement should be posted on the firm's website and can be sent to any reporters who inquire. Beyond that, restraint is essential. With few exceptions, interview requests should be declined and a referral made to the prepared statement. Overengagement will invite speculation and prolong the news cycle, which increases reputational risk.

The firm should simultaneously monitor legal media, social channels, and X for misinformation or misreporting. Correct factual errors swiftly and surgically, without escalating tone, arguing the sanctions order in public, or appearing combative. Litigating the merits of the sanction outside the courtroom almost always backfires.

Taken together, these steps reinforce a posture of accountability, professionalism, and control, which are key ingredients in containing a crisis triggered by the misuse of AI-generated legal research.

Turn Crisis Into Leadership Opportunity

You'll need to start the work to repair your reputation. One example is to offer to present at a bar association or to write an article on "Ethical AI Use After the Sanctions Cases." Update the firm website with a dedicated AI policy page emphasizing competence and oversight. Use the incident, anonymized if needed, in future training.

Elizabeth Lampert *is a crisis communications strategist and tabletop facilitator at Elizabeth Lampert PR. Her agency does traditional media, content writing, training and crisis communications.*

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<https://www.wsj.com/tech/ai/ai-goodbye-to-billable-hours-cba198fe>

TECHNOLOGY | ARTIFICIAL INTELLIGENCE

Say Goodbye to the Billable Hour, Thanks to AI

With AI taking over their grunt work, lawyers and other professionals may have to charge for outcomes rather than time spent

By Rita Gunther McGrath

Dec. 4, 2025 11:00 am ET



ISTOCK PHOTO

Quick Summary

- The billable hour, prevalent since the 1960s, is becoming untenable for professional services due to accelerating AI capabilities.

View more

Rita Gunther McGrath ([@rgmcgrath](https://twitter.com/rgmcgrath)) is an academic director in executive education at Columbia Business School and author of “Seeing Around Corners: How to Spot Inflection Points in Business Before They Happen.”

Is the billable hour about to become a thing of the past?

It seems inevitable, at least for lawyers and other professional-services firms, because as artificial-intelligence capabilities accelerate, the fundamental logic of charging for time spent rather than value delivered is becoming increasingly untenable.

The billable hour as the fundamental unit of business for professional services is so widespread that it's difficult to remember that it is a fairly recent innovation, becoming prevalent in the 1960s and 1970s. Before that, many lawyers and other professionals billed for outcomes achieved or services rendered, not for time.

Many say the seed for the billable hour was planted in the early 1900s by a young lawyer named Reginald Heber Smith, who implemented a time-tracking system for lawyers during his tenure as counsel to the Boston Legal Aid Society, which provided legal services to the poor. He wanted lawyers to track how they were spending their time, not for billing purposes but to find ways to improve the efficiency of the team, which had a limited budget.

Smith continued to champion time measurement as a management tool after leaving the Society in 1919 and joining the law firm of Hale and Dorr. Eventually, the legal profession adopted time-based systems for billing clients, believing it offered a more fair and transparent way to charge for their services.

Ironically, what began as an effort to promote transparency and efficiency for legal work has since become a tyrannical arrangement with both senior people and junior associates motivated to rack up hours to maximize profits. It spread from law firms to accounting firms, consultants and most other professional services firms as the dominant mechanism for value exchange.

Upside down

All of this could be about to change.

When an AI system can review thousands of contracts in minutes rather than weeks, draft complex documents in seconds rather than hours or generate strategic analyses near-instantaneously, the time component becomes almost meaningless. More fundamentally, as AI handles routine cognitive work, the remaining human contribution shifts toward judgment, creativity and relationship management—the value of which bears little relationship to time expended.

The economic absurdity becomes clear when we consider that firms adopting AI most successfully would paradoxically see revenue collapse under hourly billing, even as

they deliver superior results more efficiently. This misalignment between value creation and revenue generation makes the billable hour's demise inevitable.

Clients have always chafed at the fact that they get stuck with the training costs for junior-level people when what they really want are the insights from that analysis from the more senior people. Now they can say to firms, "Sorry, we aren't shelling out hundreds of dollars a day for a junior person's time."

Alternative methods

The dilemma for professional services firms is that the familiar pyramid model is so deeply baked into everything they do that this will require a major rethink on their part.

Value-based pricing represents the most obvious alternative, where fees are tied directly to outcomes achieved or value delivered rather than time spent. A law firm might charge based on the successful completion of a transaction, a consulting firm on measurable business improvements or an accounting firm on the quality and strategic value of financial insights provided. This model rewards efficiency and innovation rather than penalizing them. The difficulty is that both sides must agree on what value is fair.

Subscription and retainer models offer another path forward, providing clients with ongoing access to expertise and capabilities for a fixed periodic fee. This approach works particularly well when AI enables firms to serve clients more continuously and proactively. A law firm might offer ongoing compliance monitoring and advisory services, and a consulting firm continuous strategic intelligence and analysis.

The end of the billable hour also could bring change to the organizational structure of professional-services firms. Instead of maintaining a pyramid structure in which authority flows down from a small group of leaders at the top to a large group of employees at the bottom, these firms might become flatter and more flexible, consisting of a small core of senior experts who assemble teams and technology on an as-needed basis, depending on the client or project.

In any case, the premium will be on human insight and connection, not the hours logged.

Email Rita Gunther McGrath at reports@wsj.com.

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Meta's Legal Shield Meets Pivotal Test in Teen Addiction Case

December 4, 2025, 2:00 AM PST

Summary by Bloomberg AI

AI Generated



- Meta Platforms' immunity claim in social media addiction cases is being considered by the Massachusetts Supreme Judicial Court, which will review the application of Section 230 of the Communications Decency Act to Instagram's design.
- A ruling that limits the reach of Section 230 could have significant implications for the social media industry, potentially raising concerns about liability and changing the internet as we know it, according to Eric Goldman.
- The case, brought by Massachusetts Attorney General Andrea Campbell, alleges that Meta purposefully designed Instagram to addict young users and deceived the public about the dangers posed by overusing the product, with features such as incessant notifications and infinite scroll targeted in the complaint.

Meta Platforms' immunity claim in social media addiction cases hits its first state supreme court this week, as Massachusetts justices consider whether the social media industry's bedrock defense applies to Instagram's design.

In oral argument Friday, the Massachusetts Supreme Judicial Court is set to sort out competing views on the reach of a litigation shield Congress created for internet companies in Section 230 of the Communications Decency Act, providing a crucial appellate review of the law's application to social media addiction claims that threaten tens of billions of dollars in damages to Meta alone.

A ruling shrinking the reach of Section 230—often referred to as the 26 words that created the internet—could ripple through the social media industry, raising concerns about liability and fundamentally changing the internet as we know it, said Eric Goldman, who co-directs Santa Clara University's High Tech Law Institute.

"If the plaintiffs make any progress, they're going to structurally change the internet and almost certainly shrink it," said Goldman, who backs a broad interpretation of Section 230 and calls the cottage industry of social media addiction litigation one of "several existential threats to the internet."

The case, brought by Massachusetts Attorney General Andrea Campbell (D), says Meta purposefully designed Instagram to addict young users and deceived the public about the dangers posed to young people by overusing the product. Addictive features targeted in the complaint include incessant notifications and alerts, infinite scroll and autoplay elements, ephemeral posts, and intermittent variable rewards.

The oral argument comes weeks before the US Court of Appeals for the Ninth Circuit is scheduled to hear from Meta and others in their challenge to an Oakland federal judge's ruling advancing portions of a massive multidistrict youth addiction case.

Judges haven't interpreted Section 230 as the type of case-killer that Meta sees it as for the youth addiction cases, and many appeals courts have refused Meta's requests to immediately appeal those decisions.

But while some courts have found the law to bar portions of cases, experts say the decisions are all over the map.

"Every case is a bit of a test case, and different courts and different circuits are deciding things differently," said Elettra Bietti of Northeastern University School of Law, who signed onto a brief supporting a limited view of Section 230.

Representatives for Meta and Campbell didn't respond to a request to comment.

Moderators' Dilemma

Section 230 effectively immunizes website operators from liability for third-party content posted on their websites and has been understood to extend to claims related to "traditional editorial functions."

Meta sees the definition as encompassing nearly all the platform's activity, telling the Massachusetts justices in a brief that all Instagram content is from users and that without it, "no one would use it, nor could possibly claim that they were addicted to the service." The Facebook parent also says the claims against its design of Instagram are barred by the First Amendment.

The trial court concluded the heart of the case had nothing to do with Meta having to edit, remove, or monitor content—typical actions protected under Section 230—and instead is being targeted for its own conduct. A Nevada Supreme Court ruling last month in a case involving ByteDance's TikTok held the company's platform safety statements and its feature design could be challenged.

A California federal court overseeing thousands of social media addictions cases in multi-district litigation adopted a "nuanced" approach that concluded certain allegations and features qualified for immunity, like publishing geolocation information for minors, while others, like offering appearance-altering filters, didn't.

"It should be straightforward but it's not," said the Electronic Frontier Foundation's Sophia Cope, who says Section 230 should reach all design features that are analogous to actions a newspaper publisher would take.

Bietti and other groups backing Campbell's position urged the court in an amicus brief to find Section 230 applies when its actions would force a company into a "moderators dilemma," where it would be forced to police all its content, police none of its content, or stop hosting third-party content.

Immunity Denied

Massachusetts' high court considered a similar Section 230 case in 2021 as car-sharing company Turo invoked the provision to attempt to defeat an injunction blocking it from offering users the ability to pick up and drop off cars at Boston Logan International Airport, operated by the Massachusetts Port Authority.

The justices denied the availability of Section 230 to Turo because the injunction was based in part on the company's own advertising of the airport as a desirable location. It also found Turo was a party to the rental transactions, not merely a disinterested host of its users' content.

Anderson Kreiger partner David Mackey, who argued the Turo case for MassPort, said it'll be interesting to see whether Meta's role in its creation and management of Instagram gets a similar treatment.

Goldman said he hopes the justices are able to fix problems in the lower court's ruling, like its brief rationale greenlighting the state's public nuisance claim against Meta. The idea of an online public nuisance is a "super interesting theoretical question" that has been discussed for decades, he said, but the court approved the state's theory without a thorough engagement with that deeper discussion.

"That one line changed how I teach internet law," he said.

The case is *Commonwealth v. Meta Platforms, Inc.*, Mass., SJC-13747 .

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OpenAI, Mixpanel Hit With Novel Data Breach Class Action Over November Cyberattack

ChatGPT maker OpenAI and third-party web analytics platform Mixpanel were both hit with a data breach class action on Monday over their alleged failure to protect users' personally identifiable information from a November cyberattack.

December 02, 2025 at 08:41 PM By  **Kat Black**

What You Need to Know

- OpenAI was hit with a data breach class action stemming from a November cyberattack.
- Its co-defendant is Mixpanel, a third-party web analytics provider that it used to improve its API product.
- The data breach did not affect the PII of ChatGPT users, OpenAI maintains.



Credit: ymgerman/Adobe Stock

ChatGPT maker OpenAI and third-party web analytics platform Mixpanel were both hit with a data breach class action on Monday over their alleged failure to protect users' personally identifiable information from a November cyberattack.

Strourian Law Firm in Beverly Hills, California, and Emery|Reddy in Seattle filed the [complaint](#), which alleges negligence, breach of implied contract and unjust enrichment, on Dec. 1 in the U.S. District Court for the Northern District of California. The case has been assigned to District Judge Vince Chhabria.

The complaint contended that both OpenAI and Mixpanel should have proactively deployed industry-standard cybersecurity measures—such as scrubbing PII they no longer retained the rights to from their databases and encrypting, tokenizing and/or restricting internet access to sensitive user data—well ahead of the November data breach incident. Moreover, it alleged, the companies failed to disclose the inadequacy of these protocols to users, who would have never entrusted them with their PII if they had been properly informed.

A news release on Mixpanel's [website](#) said that it first detected a "smishing" campaign—a type of cyberattack that induces victims to reveal PII through text messages—on Nov. 8.

OpenAI maintains that the breach was not caused by a "vulnerability" in its own systems. According to a Nov. 26 [blog post](#) published on the OpenAI website, OpenAI—which has since "terminated" its relationship with Mixpanel—formerly used the analytics provider to evaluate and improve the services of its API product, which allows app developers to access OpenAI's AI models and integrate them into their own products.

Mixpanel, it said, shared the "affected dataset" with OpenAI on Nov. 25. The breach, since it "occurred within Mixpanel's systems," impacted "limited analytics data related to some users of the API," but not the PII belonging to users of OpenAI's flagship AI chatbot product, ChatGPT, it said.

"This was not a breach of OpenAI's systems," the post asserted. "No chat, API requests, API usage data, passwords, credentials, API keys, payment details, or government IDs were compromised or exposed. ... This incident was limited to Mixpanel's systems and did not involve unauthorized access to OpenAI's infrastructure."

The data at issue, it added, may include PII associated with use of the website [platform.openai.com](#) such as names and email addresses provided on the API account; locations based on the API user browser; the operation systems and browsers used to access the API account; referring websites; and organizations or user IDs linked to the API account.

OpenAI advised users to monitor their email accounts for phishing scams and enable multifactor authentication on their accounts in the wake of the data breach and said it was "in the process" of notifying those affected by email.

"We're reviewing the complaint in detail, and we disagree with its claims," said a spokesperson for OpenAI in an emailed statement.

The plaintiff is seeking monetary damages and injunctive and declaratory relief. Plaintiffs' counsel and a spokesperson for Mixpanel could not immediately be reached by phone or email on Tuesday.

This action was surfaced by [Law.com Radar](#), which delivers real-time alerting on new litigation across more than 2,900 state and federal courts. Click here to get started and be first to act on opportunities in your region, practice area or client sector.

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California Brief

OpenAI Again Fails to Halt Disclosure of 20 Million ChatGPT Logs

December 3, 2025, 12:39 PM PST

OpenAI Inc. failed once again to persuade a federal judge against ordering the AI giant to share 20 million de-identified ChatGPT user logs in a major lawsuit brought by newspaper companies over its training process.

Magistrate Judge Ona T. Wang said OpenAI hadn't brought up any new facts that warranted a reconsideration of her Nov. 7 order compelling the company to hand over the output logs. She reiterated that OpenAI failed to show how its consumers' privacy was at risk despite the data's de-identification coupled with a protective order in the case, according to a Tuesday order filed in the US District Court for the Southern District of New York

In a footnote, Wang said the company's decision to pre-emptively de-identify the logs contradicts its privacy concerns. She wrote that if OpenAI didn't intend to produce those logs, it wouldn't have spent the time and money de-identifying the logs.

"Either OpenAI initially intended to produce the 20 million logs to News Plaintiffs and changed its mind, for one reason or another; or OpenAI never intended to produce the logs and de-identified the entire 20 million either as a discovery tactic, or for some other reason that has not been identified," she wrote. "Neither bode well for OpenAI."

The ruling marks the latest episode in a months-long saga over the plaintiffs' fight to access ChatGPT outputs to analyze how users query the AI model about news-related content, which OpenAI has argued is a violation of its users' privacy. OpenAI already requested an oral argument before Judge Sidney H. Stein over the Nov. 7 discovery order last week.

Wang said the discovery request by newspapers including New York Times Co. and Daily News LP was relevant even if the ChatGPT outputs didn't contain partial or whole copies of the plaintiffs' articles. Such outputs would be relevant to OpenAI's defense that ChatGPT has many non-infringing uses, she wrote.

The 20 million user logs are less than 0.05% of the total logs OpenAI has preserved over the course of its business, Wang wrote. She said the court recognized OpenAI's privacy considerations were "sincere" but that "such considerations are only one factor in the proportionality analysis, and cannot predominate where there is clear relevance and minimal burden."

After newspapers' lawsuits against OpenAI were consolidated for pre-trial proceedings in April, plaintiffs convinced Wang in May to force OpenAI to preserve its ChatGPT user outputs. Wang denied OpenAI's motion to reconsider that order, too.

By August, the parties had settled on a sample size of 20 million user conversations, until OpenAI proposed to further narrow that sample in October, Wang summarized in her order. That spurred the newspapers' motion to compel the production of the 20 million de-identified logs in whole.

Wang's Tuesday order directs OpenAI to turn over the user logs within 7 days of completing the de-identification process, which it has finished or will soon complete.

Susman Godfrey LLP, Rothwell, Figg, Ernst & Manbeck, Loevy & Loevy represent the news plaintiffs. Kecker, Van Nest & Peters LLP, Latham & Watkins LLP, and Morrison & Foerster LLP represent OpenAI.

The case is In Re: OpenAI Inc. Copyright Infringement Litigation , S.D.N.Y., No. 1:25-md-03143, order filed 12/2/25 .

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OpenAI loses fight to keep ChatGPT logs secret in copyright case

 [reuters.com/legal/government/openai-loses-fight-keep-chatgpt-logs-secret-copyright-case-2025-12-03](https://www.reuters.com/legal/government/openai-loses-fight-keep-chatgpt-logs-secret-copyright-case-2025-12-03)

Blake Brittain

December 3, 2025

OpenAI logo is seen in this illustration taken May 20, 2024. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights](#)  [, opens new tab](#)

Dec 3 (Reuters) - OpenAI must produce millions of anonymized chat logs from ChatGPT users in its high-stakes copyright dispute with the New York Times [\(NYT.N\)](#)  [, opens new tab](#) and other news outlets, a federal judge in Manhattan ruled.

U.S. Magistrate Judge Ona Wang in a decision made public on Wednesday [said](#)  [, opens new tab](#) that the 20 million logs were relevant to the outlets' claims and that handing them over would not risk violating users' privacy. The judge rejected OpenAI's privacy-related objections to an earlier order requiring the artificial intelligence startup to submit the records as evidence. "There are multiple layers of protection in this case precisely because of the highly sensitive and private nature of much of the discovery," Wang said.

An OpenAI spokesperson on Wednesday cited an earlier blog post from the company's Chief Information Security Officer Dane Stuckey, which said the Times' demand for the chat logs "disregards long-standing privacy protections" and "breaks with common-sense security practices."

OpenAI has separately appealed Wang's order to the case's presiding judge, U.S. District Judge Sidney Stein.

Spokespeople for the New York Times did not immediately respond to a request for comment.

A group of newspapers owned by Alden Global Capital's MediaNews Group is [also involved](#) in the lawsuit. MediaNews Group executive editor Frank Pine said in a statement on Wednesday that OpenAI's leadership was "hallucinating when they thought they could get away with withholding evidence about how their business model relies on stealing from hardworking journalists."

The case, originally [brought by the Times in 2023](#), is one of many brought by copyright owners against tech companies including OpenAI, Microsoft and Meta Platforms for using their material without permission to train their AI systems.

The news outlets argued in their case against OpenAI that the logs were necessary to determine whether ChatGPT reproduced their copyrighted content, and to rebut OpenAI's [assertion](#) that they "hacked" the chatbot's responses to manufacture evidence.

OpenAI countered that turning over the logs would disclose confidential user information and that "99.99%" of the transcripts have nothing to do with the infringement allegations.

Wang had said in her initial order to produce the chats that OpenAI users' privacy would be protected by the company's "exhaustive de-identification" and other safeguards. Wang reiterated on Wednesday that the company's measures would "reasonably mitigate associated privacy concerns."

Wang ordered OpenAI to produce the logs within seven days of removing users' identifying information.

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Blake Brittain reports on intellectual property law, including patents, trademarks, copyrights and trade secrets, for Reuters Legal. He has previously written for Bloomberg Law and Thomson Reuters Practical Law and practiced as an attorney.

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Class Action

Manage Newsletters

Oracle Facing Two New Class Actions Over Customer Data Breach

December 3, 2025, 9:15 AM PST

Summary by Bloomberg AI

AI Generated



- Oracle Corp. has been hit with two new proposed class actions for not protecting sensitive personal data of its customers' employees in a data breach.
- The company failed to properly address a data breach in a July cyberattack until October, resulting in more breaches in August and September, one of the lawsuits says.
- Plaintiffs in the cases, including former employees of Oracle's corporate customers, say they fear their sensitive information was raided in the cyberattacks and has been or will be published on the dark web.

Oracle Corp. has been hit with two new proposed class actions for not protecting sensitive personal data of its customers' employees in a data breach.

The company specializing in cloud based data storage failed to properly address a data breach in a July cyberattack until October, one of the lawsuits says. As a result of the failed fix, more breaches occurred in August and September, one of the suits says.

Now, Oracle along with some of its corporate customers "have chosen a strategy of silence," and refuse to comment on when breaches occurred, one of the suits says.

Oracle didn't respond to a request for comment Wednesday.

Filed Tuesday, the proposed class actions are the second and third brought in recent weeks against Oracle in the US District Court for the Western District of Texas.

In one of the new suits, Oracle is joined as a defendant by 10 of its corporate customers—Rheem Manufacturing Co., Trimble Inc., Integra LifeSciences Holding Corp., Milgard Manufacturing Inc., Envoy Air Inc., Emerson Electric Co., Michelin North America Inc., MKS Instruments Inc., Schneider Electric USA Inc., and Logitech Inc.

Plaintiffs in that case are former employees of those companies who say they fear their sensitive information such as social security numbers and credit card information was raided in the cyberattacks.

The second suit was brought by Andrew Torrente, a former employee of Schneider Electric, on behalf of more than 100 other current and former employees of the company. He's suing both Oracle and Schneider.

The employees' information has been published—or will be published soon—on the dark web, Torrente says.

"And yet, despite the data breach having unfolded nearly a month ago, defendants have made no effort whatsoever to notify the class," Torrente alleges.

Last month, Oracle was hit with a proposed class action from a consultant for GlobalLogic Inc., one of its customers impacted by the breach.

Torrente is represented by Strauss Borrelli PLLC and CohenMalad LLP.

Plaintiffs in the other suit are represented by Rigby Slack PLLC and Hausfeld LLP.

The cases are *Torrente v. Oracle Corp.*, W.D. Tex., No. 1:25-cv-1960, 12/2/25 and *Smith v. Oracle Corp.*, W.D. Tex., No. 1:25-cv-001964, 12/2/25 .

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 [legalnewsline.com/northern-california-record/sf-trial-lawyers-aim-at-big-food-seeking-huge-payday/article_b7ac18e2-aa85-4295-b875-75bdfce2241e.html](https://www.legalnewsline.com/northern-california-record/sf-trial-lawyers-aim-at-big-food-seeking-huge-payday/article_b7ac18e2-aa85-4295-b875-75bdfce2241e.html)

Jonathan Bilyk, Jonathan Bilyk

December 3, 2025

San Francisco City Attorney David Chiu
Votedavidchiu.com

SAN FRANCISCO - Looking to replicate the legal playbook that led tobacco companies to hand over hundreds of billions of dollars decades earlier, the city of San Francisco has partnered with some of America's most prominent trial lawyers now to take aim at food producers, saying they should be made to pay for allegedly "sickening" Americans with so-called "ultra processed foods."

On Dec. 2, San Francisco City Attorney David Chiu announced the city and county of San Francisco was filing the lawsuit in San Francisco County Superior Court.

[The lawsuit](#) was filed "on behalf of the people of the state of California."

Chiu's office is joined in the action by prominent plaintiffs' lawyers, including those from the firms of Morgan & Morgan, of Orlando, Florida; DiCello Levitt, of Chicago, Cleveland, Ohio, and Birmingham, Alabama; and Andrus Anderson, of San Francisco.

The lawsuit was filed against some of the biggest food makers and sellers in the U.S.

Defendants named in the legal action include the Kraft Heinz Company; Mondelez International; Post Holdings Inc.; Coca-Cola Company; Pepsico; General Mills; Nestle USA; Kellanova; WK Kellogg Co.; Mars Inc.; and Conagra Brands, among others.

The lawsuit accuses the "Big Food" companies of allegedly worsening health problems in the U.S. by allegedly using "deceitful tactics" to persuade people - and particularly children and people in black and Latino communities - to consume large quantities of "ultra processed" food items, which allegedly contain minimal nutrition value.

Those food choices then allegedly led to a worsening of health problems among Americans, allegedly including diabetes, obesity, and liver and kidney disease, among other maladies.

The lawsuit asserts the marketing techniques employed by the food companies to promote "ultra processed foods" (UPF) was akin to those used by tobacco companies for decades to promote the use of cigarettes.

"Big Food did all this with the singular goal of making UPF a staple of the American diet, regardless of the health and societal damage that they knew UPF would cause," San Francisco and the trial lawyers wrote in the complaint.

The complaint asserts food companies have known of the alleged harmful effects of their products since at least the 1990s.

The lawsuit claims the alleged "deceitful" marketing of "ultra processed foods" has led to "addictions" that has translated into an alleged public health crisis that has strained public resources. So, they say, "Big Food" must pay to compensate for the alleged damage.

San Francisco's complaint does not specify what the ultimate payment demands may be. It only asks the court to award sums that would "abate the public nuisance" allegedly caused by the food companies' alleged practices and awards for "statewide civil penalties" under California state law.

However, the city's lawsuit may be just the tip of the spear in the legal attack on the food companies.

In announcing the lawsuit, the trial lawyers made no secret of their intent to widen the litigation to potentially include state and local governments throughout the U.S., in a bid to use public health claims to extract potentially tens of billions of dollars or more from "Big Food" just as trial lawyers partnered with state and local governments to extract many billions of dollars from "Big Tobacco" in decades past.

Jennie Lee Anderson
Andrus Anderson

In a statement, trial lawyer Jennie Lee Anderson, of the Andrus Anderson firm, said the lawsuit is intended to help "establish a legal framework that other cities can use to safeguard their communities," likely through lawsuits of their own, in partnership with still more trial lawyers.

Should the lawsuits result in settlements or judgments in their favor, trial lawyers could then also be in line for a bonanza in fees worth billions of dollars, as well, as they could potentially claim up to a third of whatever is ultimately paid out, based

on past arrangements.

Trial lawyers, for instance, claimed more than \$13 billion under the master tobacco settlement in 1998. Adjusted for inflation, that payout would now be worth about double that amount, or \$25.9 billion.

Tobacco companies are estimated to have paid a total of more than \$368 billion in the past 25 years to settle those lawsuits.

In 1998, Americans spent about \$51 billion on tobacco products, or about \$100 billion adjusted for inflation.

According to federal estimates, Americans spend more than \$1 trillion each year on food purchased to be consumed at home, and an additional \$1 trillion on food away from home.

The lawsuit and its demands come as just the latest in a widening legal and regulatory attack on food companies.

Recently, the U.S. Food and Drug Administration, under the oversight of Health and Human Services Secretary Robert F. Kennedy took up the task of attempting to define the term "ultra processed food" for regulatory purposes. [That was met with a wave of comments and concerns from the food industry over how consumer choice and the nation's food supply could be harmed by stiffened regulations and rules.](#)

And earlier this year, a lawsuit brought by Morgan & Morgan - one of the firms now partnering with San Francisco - leveling many of the same allegations in San Francisco's lawsuit was tossed by a judge in Philadelphia.

That lawsuit was brought on behalf of a man who claimed his diet, rich in UPFs, had been "forced" on him by the food industry, leading him to develop diabetes and non-alcoholic fatty liver disease at the age of 16.

[The judge in the case said the pleading was "woefully deficient" in establishing a causal link between the food and illnesses.](#)

"By naming over 100 brands, Plaintiff has put thousands of products at issue without any additional information to identify what caused his harm," the Pennsylvania judge wrote in his late August ruling.

However, the loss appears to have not slowed Morgan & Morgan or many other plaintiffs' firms across the country, many of whom have begun soliciting clients to join them for more lawsuits seeking big payouts from "Big Food."

In announcing the city of San Francisco's lawsuit, City Attorney Chiu appeared to mimic the legally disputed claims that the food industry has allegedly all but forced consumers to eat UPFs.

"They took food and made it unrecognizable and harmful to the human body," Chiu said.

"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. These companies engineered a public health crisis, they profited handsomely, and now they need to take responsibility for the harm they have caused."

In response to the lawsuit, the food makers through their trade association, the Consumer Brands Association, released a statement:

"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," said Sarah Gallo, the Consumer Brands Association's Senior Vice President of Product Policy.

"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 FDA to deliver safe, affordable and convenient products that consumers depend on every day. Americans deserve facts based on sound science in order to make the best choices for their health."

In blog posts published in 2024, the Consumer Brands Association directly assailed the claims against "ultra processed foods," such as those laid out in the San Francisco and Pennsylvania lawsuits.

In the post, attributed to Megan Kastner, a Consumer Brands Association policy manager for public policy, the Consumer Brands Association said such claims are based on shaky science and are intended to "demonize certain foods, and, therefore, the food choices consumers either want to make or need to make for their personal lifestyle."

"The assertions — made in what largely feels like an effort to weigh in on the topic du jour — are so ridiculous, lacking not only in common sense but also in understanding and empathy for the variety of dietary needs many consumers face and budgets they're balancing," Kastner wrote.

She added such claims and attacks on the nation's food supply fall "short of considering what processing is or how it enables continued access to affordable, nutritional, shelf-stable items.

"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," Kastner wrote.

The food companies have not yet responded to the San Francisco lawsuit in court.

Blockbuster San Francisco Lawsuit Targets Food Industry Giants Over Ultraprocessed Foods, with Extensive Documentation of Health Damage and Success in Producing Addiction

 [nakedcapitalism.com/2025/12/blockbuster-san-francisco-lawsuit-targets-food-industry-giants-over-ultraprocessed-foods-with-extensive-documentation-of-health-damage-and-success-in-producing-addiction.html](https://www.nakedcapitalism.com/2025/12/blockbuster-san-francisco-lawsuit-targets-food-industry-giants-over-ultraprocessed-foods-with-extensive-documentation-of-health-damage-and-success-in-producing-addiction.html)

Yves Smith

December 4, 2025

The San Francisco's attorney's office, on behalf of the citizens of California, has filed a devastating suit, California v. Kraft Heinz, which targets 10 food company giants, such as Mars, Pepsi, and General Mills and contemplates adding others. I thought I was reasonably knowledgeable about health costs of ultraprocessed foods. But the history and litany of harms in this complaint go far beyond what I've encountered into the mainstream press and a handful of studies I've reviewed.

[If you read the filing](#), which I strongly urge you to do at the end of this post, ¹, you'll never want to eat a Cheetos again, although the document also explains why you may be unable to resist. One section of the claim discusses a 1988 Surgeon General list of criteria for addictive substances and how these products meet all three conditions, the substance's ability to cause compulsive use, induce psychoactive effects via their impact on the brain; and reinforce behavior. The result is that 14% to 20% of US adults being hooked, with results like 20% to 50% of gastric bypass surgery patients continuing to overeat ultraprocessed foods despite vomiting and diarrhea.²

We'll explain below why this is a formidable filing. The short version is that San Francisco is experienced in this sort of action and won sizeable settlements and judgements in tobacco and opioid litigation.

The filing chronicles how Big Tobacco, using the same techniques they had honed with cigarettes. RJ Reynolds targeted food in the 1960s, with the stated intent of building on its expertise in flavors. Hawaiian Punch was the first in a series of deals, with Nabisco in 1985 upping its ante. Phillip Morris bought General Foods in 1985 and Kraft in 1988. A 2006 article explained the strategy:

112. Philip Morris' Director of Applied Research distilled his company's acquisition philosophy thus: "control all of the pleasure drugs that are not regulated."

113. R.J. Reynolds and Philip Morris did not operate their food companies as wholly independent entities but instead rapidly integrated them into the pre-existing tobacco companies.

114. As a result, there was a systematic transfer of people, knowledge, information, and technologies from "Big Tobacco" to the food and beverage industry in the 1980s, 1990s, and 2000s. Big Food put the institutional knowledge of these employees to work...

120. The purpose of all this research was not to determine how to make food more flavorful. The purpose was to understand how to exploit the physiological structures of the human brain, to override the body's natural mechanisms for resisting its addictive qualities, and to evade the body's ability to control intake.

121. As Dr. [Phillip Morris scientist Frank] Gullotta explained in 1990, the senses of taste, smell, and touch don't "matter a didley if you don't have the effects in the brain. [Consuming UPF] are only pleasurable because of the consequences" in the brain.

The filing gives examples of ongoing, extensive research efforts at defendants like Nestle, Kellogg, ConAgra and Mars to understand and better trigger desired brain reactions, as in pleasure responses as well as the bypassing of normal mechanisms of recognizing satiety.

And it's not as if these and the other giant defendants can plead ignorance of the tobacco-level damage of their ultraprocessed products. The pleading opens in 1999 with Michael Mudd, Vice President to the predecessor of Kraft Heinz, pleading with industry executives to change course over their exploitation of ultraprocessed foods. It returns to that session later:

200. In December 1953, the CEOs of the major tobacco companies met secretly in New York City. Their purpose was to counter the damage from studies linking smoking to lung cancer. What followed “were decades of deceit and actions that cost millions of lives.”

201. As depicted in the Introduction to this Complaint, Big Food had its own version of that meeting in April 1999, when CEOs from Defendants met secretly in Minneapolis to discuss the “devastating public health consequences” of their actions, including 300,000 excess deaths every year and massive public health costs upwards of \$100 billion each year. Executives from Defendants Kraft Heinz, Mondelez, Post Holdings, General Mills, Coca-Cola, Mars, or their predecessors, all attended this meeting.

202. Unfortunately, just like Big Tobacco, Big Food did not change its ways, but, instead, spent the ensuing decades deceiving the public.

The filing documents the strong connections of the food engineering to health damage. Sections from that discussion:

10. This case is not about food that is merely “unhealthy.” This case is about food products with hidden health harms, that Defendants designed to be cheap, colorful, flavorful, and addictive. This case is about food products whose ingredients and manufacturing processes interrupt our bodies’ abilities to function. It is about the Defendants—gigantic food conglomerates, all—who designed, manufactured, marketed, and sold these foods knowing they were dangerous for human consumption...

49. UPF are fundamentally different than the foods that make up traditional diets. A UPF is the result of combining, using a series of mechanized processes, cheap ingredients with enhancers, and additives with little to no food uses outside of processing.

50. UPF are formulations of ingredients, mostly of exclusive industrial use, which are created by series of industrial techniques and processes.

51. Ingredients characteristic of UPF are either food substances of no or rare culinary use, or classes of additives whose function is to make the final product sellable and often hyper-palatable...

52. These components are assembled into a final food product using industrial processes which most American consumers have never heard of (such as extrusion, molding, hydrogenation, hydrolyzation, and pre-frying, each of which further transform the chemical makeup of UPF.

I have before recounted the mention in a lecture by an MD and Professor of Medicine at the University of Ohio that hydrogenated fat is so far removed from food that if you left a block on a counter, cockroaches would not touch it.
Continuing:

71. Ultra-processing disrupts the nutrient balance that humans are genetically adapted to consume, and a growing body of evidence suggests the human metabolism is not be able to properly process nutrient distributions that substantially deviate from the range and structure of nutrient distributions in foods found in nature, known as the "food matrix."³⁵ Put simply, UPF bypass the signals our bodies send us that we are full and we can stop eating.

72. High-quality scientific studies with large representative samples have also found that consuming UPF significantly increases risks of a host of serious health problems, including breast, colorectal, pancreatic, lung, and brain cancer; cardiovascular disease, irritable bowel disease, chronic kidney disease, Crohn's disease, chronic inflammation, Type 2 Diabetes, non-alcoholic fatty liver disease, disruption of the endocrine system, depression, and anxiety.

74. Some of these alarming results may be attributable to the fact that many of the ingredients in UPF have not been independently tested for safety. Defendants have introduced more than 10,000 such chemicals in our food supply in service of producing UPF.

75. Almost none of these chemicals have undergone long-term testing to determine whether they are safe to be chronically consumed. In fact, the available evidence suggests that many of these chemicals may be toxic even at exceedingly low levels.

The filing also extensively documents how the food behemoths targeting of children, particularly from minority groups, to create life-long addicts, and the resulting population-level harm, notably the significant rise in ailments previously only very rarely seen in pediatric populations, such as what was formerly called "adult onset" diabetes and fatty liver disease.

Reading this complaint, I would think the defendants would be crazy not to settle, assuming they do not succeed via preliminary motions in keeping it from getting to discovery.

Given the 1999 industry conference where the damage to health was presented by industry executives and chosen to be ignored because profit (this by the way in the same time frame when Big Tobacco was negotiating its massive Federal-state settlement), one has to think that internal records contain simply ginormous amount of damaging information. Recall that some would contend that despite

the WHO deeming glyphosate to be a probable carcinogen to humans, that the case against Monsanto were scientifically weak. What cinched it for jurors was that Monsanto had its own workers wear hazmat-level gear when treating fields with its glyphosate product. Roundup, while giving no such warn to do so to farmers and consumer users.

And let's not forget this recent, erm, unfortunate disclosure:

Campbell's is defending itself after a company executive was allegedly caught on tape calling the soup company's products "highly process[ed] food" for "poor people." <https://t.co/NJvI7YxZ2f> pic.twitter.com/dl3Ur2Jac6

— ABC News (@ABC) [November 25, 2025](#)

We'll turn the mike over [to the New York Times](#) as to why industry execs ought to be sweating bullets over this case, which has the potential to open a tsunami of related litigation:

It is unclear how successful the suit will be...

But the San Francisco city attorney's office has had success as a groundbreaking public agency on health matters. The office previously won \$539 million from tobacco companies and \$21 million from lead paint manufacturers.

In 2018, the office also sued multiple opioid manufacturers, distributors and dispensers, reaching settlements with all but one company worth a combined total of \$120 million. San Francisco then prevailed at trial over the holdout, Walgreens, scooping up another \$230 million.

And it's not as if a Trump Administration that has gone all in for MAHA will file an amicus brief on behalf of Big Food. Pass the popcorn. I am pretty sure it is healthier than Doritos.

¹ Thank reader Bugs for having super duper compression software that could reduce the file size enough for WordPress.

² A real doozy:

89. Tellingly, rodents will risk aversive experiences (e.g., electric shock) to consume UPF (in the form of industrially-produced sweets) when other calorie sources are easily available to them. Rats even show greater resistance to electric shock when attempting to access industrially-produced sweetener than when they are attempting to access methamphetamine. Non-UPF do not elicit these responses in humans or rodents.

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Zoom 100%

Report Shows How Recycling Is Largely a 'Toxic Lie' Pushed by Plastics Industry

 [nakedcapitalism.com/2025/12/report-shows-how-recycling-is-largely-a-toxic-lie-pushed-by-plastics-industry.html](https://www.nakedcapitalism.com/2025/12/report-shows-how-recycling-is-largely-a-toxic-lie-pushed-by-plastics-industry.html)

Yves Smith

December 4, 2025

Yves here. Although the Greenpeace report discussed below no doubt has more detail, yours truly has long been frustrated by vendors of supposedly healthy products, such as "organic" or "natural" cleaners, who use plastic packaging. My rough and ready understanding was that only clear or white containers could be recycled (and that of course assumes collection and trucking to recycling centers) when I see just about none like that. Why is it so hard to use a clear vessel with a colored label? Or as one company does, an outer cardboard sheath with a paper label and one hopes a clear inner liner?

This recap of the Greenpeace report does not discuss the energy cost of recycling, which is another offset to supposed benefit .

More generally, our former and much appreciated writer Jerri-Lynn Scofield covered the (not successful) war on plastics. She traveled regularly to India, and pointed out that the use of plastic packaging was vastly lower there than in the US. That demonstrated that vastly more could be done to reduce plastic waste by not using as much in the first place. But don't ask Americans to give up on their vaunted convenience.

By Brett Wilkins, staff writer at Common Dreams. Originally published at [Common Dreams](#)

A [report](#) published Wednesday by [Greenpeace](#) exposes the [plastics](#) industry as "merchants of myth" still peddling the false promise of recycling as a solution to the global [pollution](#) crisis, even as the vast bulk of commonly produced plastics remain unrecyclable.

"After decades of meager investments accompanied by misleading claims and a very well-funded industry public relations campaign aimed at persuading people that recycling can make plastic use sustainable, plastic recycling remains a failed enterprise that is economically and technically unviable and environmentally unjustifiable," the report begins.

"The latest US government data indicates that just 5% of US plastic waste is recycled annually, down from a high of 9.5% in 2014," the publication continues. "Meanwhile, the amount of single-use plastics produced every year continues to grow, driving the generation of ever greater amounts of plastic waste and pollution."

Among the report's findings:

- Only a fifth of the 8.8 million tons of the most commonly produced types of plastics—found in items like bottles, jugs, food containers, and caps—are actually recyclable;
- Major brands like Coca-Cola, Unilever, and Nestlé have been quietly retracting [sustainability](#) commitments while continuing to rely on single-use plastic packaging; and
- The US plastic industry is undermining meaningful plastic regulation by making false claims about the recyclability of their products to avoid bans and reduce public backlash.

"Recycling is a toxic lie pushed by the plastics industry that is now being propped up by a [pro-plastic narrative](#) emanating from the [White House](#)," Greenpeace USA [oceans](#) campaign director John Hocevar said in a [statement](#). "These corporations and their partners continue to sell the public a comforting lie to hide the hard truth: that we simply *have* to stop producing so much plastic."

"Instead of investing in real solutions, they've poured billions into public relations campaigns that keep us hooked on single-use plastic while our communities, oceans, and bodies pay the price," he added.

Greenpeace is among the many climate and environmental groups supporting a global plastics treaty, an accord that [remains elusive](#) after six rounds of talks due to opposition from the [United States](#), [Saudi Arabia](#), and other nations that produce the petroleum products from which almost all plastics are made.

Honed from decades of funding and promoting dubious research aimed at casting doubts about the [climate crisis](#) caused by its products, the petrochemical industry has sent a small army of lobbyists to influence global treaty negotiations.

In addition to environmental and climate harms, plastics—whose chemicals often leach into the food and [water](#) people eat and drink—are linked to a wide range of health risks, including infertility, developmental issues, metabolic disorders, and certain cancers.

Plastics also break down into tiny particles found almost everywhere on Earth—including in human bodies—called microplastics, which cause ailments such as inflammation, immune dysfunction, and possibly cardiovascular disease and gut biome imbalance.

A study [published](#) earlier this year in the British medical journal *The Lancet* estimated that plastics are responsible for more than \$1.5 trillion in health-related economic losses worldwide annually—impacts that disproportionately affect low-income and at-risk populations.

As Jo Banner, executive director of the Descendants Project—a Louisiana advocacy group dedicated to fighting environmental [racism](#) in frontline communities—[said](#) in response to the new Greenpeace report, “It’s the same story everywhere: poor, Black, Brown, and [Indigenous](#) communities turned into sacrifice zones so [oil](#) companies and big brands can keep making money.”

“They call it development—but it’s exploitation, plain and simple,” Banner added. “There’s nothing acceptable about poisoning our air, water, and food to sell more throwaway plastic. Our communities are not sacrifice zones, and we are not disposable people.”

Writing for *Time* this week, Judith Enck, a former regional administrator at the US [Environmental Protection Agency](#) and current president of the [environmental justice](#) group Beyond Plastics, [said](#) that “throwing your plastic bottles in the recycling bin may make you feel good about yourself, or ease your guilt about your climate impact. But recycling plastic will not address the [plastic pollution](#) crisis—and it is time we stop pretending as such.”

We have all been duped into play-acting our roles in the blue-bin fantasy that plastics recycling is real. It’s not. <https://t.co/KacqPvAiQJ>

— Sheldon Whitehouse (@SenWhitehouse) [December 2, 2025](#)

“So what can we do?” Enck continued. “First, companies need to stop producing so much plastic and shift to reusable and refillable systems. If reducing packaging or using reusable packaging is not possible, companies should at least shift to paper, cardboard, glass, or metal.”

“Companies are not going to do this on their own, which is why policymakers—the officials we elected to protect us—need to require them to do so,” she added.

Although lawmakers in the 119th [US Congress](#) have introduced a handful of bills aimed at tackling plastic pollution, such proposals are all but sure to fail given Republican control of both the House of Representatives and Senate and the Trump administration's pro-petroleum policies.

AT&T sues generic drugmakers over alleged price-fixing scheme

 [reuters.com/legal/government/att-sues-generic-drugmakers-over-alleged-price-fixing-scheme-2025-12-03](https://www.reuters.com/legal/government/att-sues-generic-drugmakers-over-alleged-price-fixing-scheme-2025-12-03)

Mike Scarcella

December 3, 2025

Illustration photo shows various medicine pills in their original packaging in Brussels, Belgium August 9, 2019. REUTERS/Yves Herman/Illustration [Purchase Licensing Rights, opens new tab](#)

WASHINGTON, Dec 3 (Reuters) - AT&T ([T.N](#)), [opens new tab](#) and its employee benefit trust have sued dozens of generic drug manufacturers in U.S. federal court, accusing them of orchestrating an industry-wide conspiracy to inflate prices on hundreds of medications.

The [lawsuit, opens new tab](#) filed on Tuesday in federal court in Philadelphia alleges that from at least 2009, companies including Teva Pharmaceuticals, Sun Pharma, Sandoz, Glenmark and Amneal schemed to divide up the market and fix prices, leading to "staggering" price increases for critical medications.

AT&T said it has paid billions of dollars in reimbursements for generic medications since the start of the alleged scheme, and would have spent much less "were it not for the massive overcharges resulting from defendants' illegal conduct." The lawsuit said the companies violated antitrust law by coordinating on pricing.

AT&T had no immediate comment. Teva Pharmaceuticals, Sun Pharma, Sandoz, Glenmark and Amneal did not immediately respond to requests for comment.

Dallas, Texas-based AT&T employs about 141,000 workers, and the company runs a self-funded health plan that uses corporate or trust assets to pay claims rather than third-party insurance.

The lawsuit adds to a wave of private and state enforcement actions targeting generic drug pricing, which accounts for nearly 90 percent of all U.S. prescriptions. Some other major U.S. employers, including General Motors, Target and American Airlines, have also brought cases.

State [attorneys general are pursuing](#) related antitrust allegations against generic drugmakers in federal court in Connecticut. Related class actions from drug wholesalers and others are pending in the Philadelphia federal court.

Government investigations have already led to deferred prosecution agreements and more than \$900 million in fines against several defendants.

Switzerland-based Sandoz in February agreed to pay [\\$275 million](#) to resolve claims by U.S. consumers and others who had accused the company of conspiring to fix prices.

AT&T seeks unspecified monetary damages, in addition to disgorgement of allegedly ill-gotten gains.

The case is AT&T Services Inc et al v. Actavis Holdings U.S. Inc et al, U.S. District Court for the Eastern District of Pennsylvania, No. 2:25-cv-06772.

Read more:

[Drug price-fixing plaintiffs allege campaign to prey on settlements](#)

[Teva agrees to pay \\$35 million to settle asthma inhaler antitrust lawsuit](#)

[Bausch, Teva accused of delaying generic version of diarrhea drug Xifaxan](#)

[Sandoz to pay \\$275 million to settle drug price-fixing case](#)

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Class Action

Manage Newsletters

Exclusive

Litigation Funder Certum Launches MSO Aimed at Mass Tort Firms

December 4, 2025, 3:00 AM PST

Summary by Bloomberg AI

AI Generated



- Certum Group, a litigation funder, acquired a managed service organization, now called Certum Legal Solutions, to provide pre-litigation support for mass tort and personal injury firms.
- The move is part of a trend of litigation funders exploring managed service organizations as a way to invest in law firms and provide operational expertise.
- Interest in MSO deals has increased, with some seeing it as a way for firms to raise capital and outside investors to take stakes in law firms without running afoul of restrictions on direct investments.

Another litigation funder is investing in the law firm space, by taking over a managed service organization to provide pre-litigation support for mass tort and personal injury firms.

Texas-based Certum Group, which specializes in litigation finance and related insurance offerings, acquired a managed service organization in October. Rechristened Certum Legal Solutions, the MSO has already partnered with several firms working on a fees for services basis, but will consider acquiring stakes in law firms down the road, said Certum Group's managing director David Diamond.

Litigation funder Burford Capital in August said it was exploring MSOs and other options for investing in firms, while Big Law's McDermott Will & Schulte said last month it is considering selling a stake in the firm to outside investors.

"I think it's an interesting strategy for litigation funders to kind of diversify what has traditionally been their bread and butter approach here involving debt instruments to look at equity opportunities," said Josh Porte, a partner at Holland & Knight who advises on MSO transactions.

The service organizations, increasingly seen in the healthcare and accounting industries, are getting a closer look in the US legal market as a way for firms to raise capital and steer clear of restrictions on direct investments in most states. Some MSOs are entities spun off from law firms so that outside investors can take direct stakes, while others are created to offer services directly to firms. Certum is part of the latter camp.

Interest in MSO deals was already on the rise, but Burford's announcement has added a boost, said Trisha Rich, a partner at Holland & Knight that works with Porte.

"This was already happening and we could tell it was going to get busy, but I don't really think we predicted it would be like this," she said. "It's exploded."

Certum Legal CEO Asim Badaruzzaman built the MSO last year inside New Jersey law firm Sbaiti & Company, where he serves as partner and chair of the mass tort practice group. The firm has handled cases in major mass torts, including litigation over injuries and illnesses allegedly caused by water contamination at Camp Lejeune, PFAS "forever chemicals," and weedkiller Roundup.

"There is a lot of hunger in the market for operational expertise," he said. "We can provide them all the infrastructure to be able to manage the complexity that comes with, especially on the mass tort side, managing thousands of cases."

The MSO will continue to service Sbaiti while also taking on other firms, although Badaruzzaman declined to name them. The company will handle case intake and discovery support tasks done by a mix of attorneys and non-lawyers. Certum Legal has proprietary tools to manage integration with medical records providers, an app that allows the MSO to communicate with clients directly, and uses automation to receive documents, Badaruzzaman said.

"Ultimately this is a much more economical solution for law firms, especially when you don't have an existing infrastructure," said Badaruzzaman.

Mass torts and personal injury law are "ground zero" for MSOs, according to Rich. She said her team has about 40 different projects right now, with about half in personal injury or mass torts.

Litigation funders have already been pouring money into these kinds of suits, with many providing loans to mass tort firms against their docket of cases.

Milan Markovic, a law professor at Texas A&M University, has studied deregulation efforts in places like Arizona, which allows non-lawyers to own law firms through entities called alternative business structures.

Private equity firms and litigation funders have flocked to the state.

MSOs are an easier way for outside capital to enter the legal space, according to Markovic.

"It's definitely a bit of a gray area, particularly as we get down to the brass tacks of individual agreements," he said. "People are using that as a way to get firms involved without going the full alternative business structure approach."

Porte at Holland & Knight said they're currently working with a funder on an MSO transaction. Regarding funders' longer-term strategies to diversify he said, "I'm excited to see how all that plays out over the next few years. It's gonna be fun."

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Ongoing 'Harm'?: Take a Sip of the Long-Running Keurig Coffee Litigation

Plaintiffs lawyers have begged Manhattan federal court judge Vernon Speede Broderick, who is overseeing the multi-district litigation, to appoint a special master, set a trial date, or remand their cases to original venues, alleging the slowpoke pace has allowed defendant Keurig to engage in continued anticompetitive behavior. Broderick has not responded to those letters.

December 03, 2025 at 03:23 PM By  **Emily Saul**



Keurig Coffee. Photo: Chaya Wanvaisart/iStockphoto.com.

Since coffee business Rogers Family Company filed suit against Keurig alleging anticompetitive behavior in 2014, two of the company's founders have died and many employees key to litigation have retired.

In that time-span, Keurig's Chief Technology Officer passed away, Keurig has twice changed ownership and the entire executive team at Keurig accused of plotting to obstruct competition has turned over.

But there is still no trial date in the case, and the parties have now waited nearly four years for a decision on cross motions for summary judgment from U.S. District Court Judge Vernon Speede Broderick of the Southern District of New York.

In multiple filings on the public docket across years of multi-district litigation, plaintiffs attorneys have begged the judge for procedural clarity and alleged the delay has eroded evidence while allowing the alleged anticompetitive behavior to continue.

“Keurig’s anticompetitive conduct in the market has continued to harm plaintiffs, while also resulting in the slow but inevitable decay of the evidentiary record due to the deaths, retirements, and career changes of key fact and expert witnesses,” Dan Johnson, one plaintiffs attorney, wrote in a letter to Broderick on July 23, 2024.

His clients, Johnson wrote in another letter from 2025, have “suffered with this situation for more than ten years.”

The latest publicly-available data from the Administrative Office for the U.S. Courts shows that Broderick has the second-highest total pending motions backlog in the SDNY and the nineteenth-highest out of the country’s more than 800 federal judges. Those numbers are from a March 31, 2025 report.

Judges are required under the 1990 Civil Justice Reform Act to disclose the number of civil cases pending in their courts for more than three years, and the number of civil motions pending for more than six months.

The website notes that caseload statistics are a “snapshot” of data and that readers should account for the unique demands faced by each court. Plaintiffs acknowledge in filings that the case is complex. The docket has more than 2,400 entries and the court has dispatched with numerous motions through the years of litigation.

"The court does not comment on matters pending before the court," SDNY District Executive Ed Friedland said in response to a request for comment directed toward the judge.

As of publication, Broderick has still not ruled on the summary judgment motions, which were fully briefed as of Dec. 15, 2021, according to court records.

Plaintiffs in the underlying action allege that Keurig has conspired with its major competitors, restrained trade through the supply chain, tied sales of its brewing machines to its beverage pods or packs and engaged in monopolization.

Keurig denies any wrongdoing and has argued plaintiffs case is without merit.

The litigation began in 2014, after Keurig debuted a new machine, “Keurig 2.0” that only worked with K-Cups made by Keurig. Twelve class actions were brought by individuals in New York, New Jersey, California, Florida, Massachusetts, and an insurance company in Maryland. Two companies that manufacture competing coffee makers, JBR (also known as the Rogers Family Co.) and Treehouse Foods, also filed suit. The 2.0 was a commercial flop and discontinued in 2014.

The actions were consolidated in 2014 and assigned to Broderick. In the years since, ownership of the company has changed repeatedly. In 2015, Keurig was acquired by a German investment firm JAB Holding Co. The company merged with Dr Pepper, becoming Keurig Dr Pepper, in 2018. Keurig Dr Pepper announced in August it would acquire JDE Peet’s, another coffee company, and now plans to unwind the Dr Pepper and Keurig companies once the acquisition concludes.

Winston & Strawn partner Aldo Badini, who represents plaintiff Treehouse Foods and others, has also filed letters with the court attempting to pick up the pace of litigation.

In April 2022, Badini asked the judge to set a trial date, noting the federal courthouse in Manhattan had recently lifted restrictions put in place during the COVID-19 pandemic.

“It is clear that Plaintiffs have been prejudiced by the long delay, as key witnesses have passed away, others have become too ill to testify, and memories have faded,” the attorney wrote in his submission. “Evidence has a tendency to disappear with the passage of time. Indeed, the truism that justice delayed is justice denied continues to have relevance to the case at hand.”

In a ruling on May 16, 2022, Broderick denied the request, observing that it would be “imprudent and inefficient” to set a trial date prior to the resolution of summary judgment motions.

Johnson, of Dan Johnson Law Group, has pressed the judge repeatedly over the years to move the action along. He filed for mandamus in 2022 and then filed a renewed petition for mandamus in 2023. Both were denied.

“While Petitioner may lack an adequate alternative means of obtaining relief, it has not made a showing that its right to the writ is clear and indisputable or that granting the writ is appropriate under the circumstances,” a panel with the Second Circuit Court of Appeals wrote in June 2023.

In a 2024 letter to Broderick, Johnson wrote that 10 of the 20 company employees and executives have left his client's company, including the majority of witnesses designated to testify on JBR’s behalf. Those witnesses include Vice President of Product Development, the CEO and two CFOs. The company’s founder, Jon Rogers, died in May 2022, and his wife and co-founder Barbara Rogers died in Jan. 2023.

Keurig's former CTO, who led the team that designed the Keurig 2.0 has also died, Johnson told the court.

"All of the relevant Keurig employees and executives involved in the anti-competitive decision making in the lead up to the launch of Keurig 2.0 in 2014 have since left the company," the JBR lawyer added.

Johnson has repeatedly attempted to return his client's case to the Eastern District of California, and earlier this year made his fourth request for remand or a summary judgment ruling.

"Since the conclusion of summary judgment briefing and one hearing in early 2022, the case has been dormant for well over three years," the lawyer wrote June 5, 2025 letter to the court.

As of press time, the court has not publicly responded to Johnson's June letter.

In addition to employee turnover and death, plaintiffs allege the passage of time has eroded the evidence needed to make their case. A magistrate judge overseeing aspects of the litigation granted a motion for sanctions against Keurig due to spoliation of evidence more than two years ago.

U.S. Magistrate Judge Sarah Cave of the Southern District of New York in March 2023 ruled that plaintiffs could present evidence at trial that Keurig failed to preserve hard copy documents and hard drives and could seek a jury instruction permitting jurors to consider the missing evidence. Cave denied the requested sanctions for adverse inferences.

"The continued failure to decide the numerous motions is having a materially adverse effect on the litigation," Johnson wrote in the July 2024 letter. The filing requested a status conference and asked Broderick to appoint motions impacting his client to a special master.

Three days later, Broderick replied he would decide pending motions "shortly."

"The Court is in the process of resolving the outstanding motions, an endeavor that has taken longer due to the voluminous record, number of parties, and complexity of issues," the judge wrote in response.

"The parties can expect a ruling on the Daubert motions by the fall," the judge wrote on July 26, 2024. "Remaining motions will be decided shortly thereafter."

Broderick issued rulings on the Daubert motions on January 3, 2025. In that ruling, he excluded JBR's requested experts damages model. JBR filed a motion for reconsideration, which was denied. Broderick then granted a request from JBR for leave to amend their report, which was granted.

The judge issued his latest ruling in the case last week, denying a motion to certify a class of director purchaser plaintiffs.

Johnson and Badini declined to comment on the litigation.

Keurig is represented by a team at Cleary Gottlieb Steen & Hamilton. Neither the attorneys nor a representative of the company immediately returned a request for comment.

Editor's note: This copy has been updated to reflect that Judge Broderick signed off on Magistrate Judge Cave's sanctions recommendation.

Page printed from: <https://www.law.com/newyorklawjournal/2025/12/03/-ongoing-harm-take-a-sip-of-the-long-running-keurig-coffee-litigation/print/>

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Securities

Opinion

Matt Levine's Money Stuff: Can the Lenders Stick Together?

December 3, 2025, 10:59 AM PST

Cooperation

Here is my schematic description of modern “liability management exercises”:

1. A company borrows \$1,000 in good times from a bunch of lenders.
2. It runs into bad times, can't pay back the \$1,000, and needs more money to stay afloat.
3. It goes to some of its lenders — ones who hold 51% of its debt — and says “Look, we don't have \$1,000. But here's a deal. If you lend us \$100 today, on top of the \$510 you already gave us, we will pay you back \$800 in three years, a nice \$190 bonus. But in exchange, you have to vote to amend the credit agreement so that we can pay the *other* guys back \$0.”
4. The 51% lenders are like “sure, fine, that's a good deal for us, too bad for those other guys.” And they vote to amend the credit agreement to zero the other guys.
5. Net, the company has borrowed \$1,100 and only has to pay back \$800 (a \$300 windfall). The 51% favored lenders have loaned \$610 and get back \$800 (a \$190 windfall). The 49% disfavored lenders have loaned \$490 and get back zero, a \$490 loss that pays for everyone else's gain.
6. The 49% disfavored lenders complain a lot and sue, with mixed success.

This is exaggerated and schematic; in particular, you cannot *actually* amend the credit agreement to say that some lenders get back zero. (What you do is amend the credit agreement to strip collateral and other protections from the disfavored lenders, or restructure the company to move assets out of the collateral package, or give the favored lenders new super-priority liens, etc.) But it captures the rough intuition of a lot of recent trades.

Given this dynamic, it is very important for lenders to be in the 51% (who get paid with a bonus) rather than in the 49% (who get hosed). There are various ways to do this. One way is to be a big important scary lender, so companies (and their private equity sponsors) won't want to hose you. Another way is to *come to the company first*: If, at the first sign of trouble, you go to the company and say "heeeeyy what if you paid us a little bonus in exchange for some new money and voting to zero the other guys," you're more likely to end up in the group of favored majority lenders. (Occasionally two groups try this and get into a bidding war to be the favored group.) Thus liability management exercises are sometimes described as "creditor-on-creditor violence," suggesting that the lenders are jockeying to help themselves at the expense of other lenders.

A third approach is for all the lenders to say "no, this is terrible, the whole point of being credit investors is that we all get paid back, we are not going to stand for these liability management exercises anymore." One way to implement that approach is in credit agreements (and bond indentures): Lenders can refuse to make loans whose documents have loopholes that allow for these sorts of shenanigans. This is a bit hard, though, because (1) the credit agreements are long and complicated and creative lawyers keep finding new loopholes and (2) generically, the credit agreements were written in *good times*, when lenders feared missing out on deals and didn't worry too much about distress, and are exploited in *bad times*, when it's too late to change them.

And so another way to implement the approach is for the lenders to say "no": If a company comes to them and says "hey we'll give 51% of our lenders a nice bonus for hosing the other 49%, do you want to be in the 51%," each lender can say "no thank you." Even if it is individually advantageous, in the moment, to be in the 51%, in the long run it is bad for lenders to have to deal with this stuff, and they'd prefer to cut it out. If everyone says no, then these deals won't happen, and lenders generally will be better off.

Obviously there is a prisoners' dilemma here: If *you* say "no thank you," and everyone *else* says "sure sign me up," then you will be in the 49%, which is very bad for you. Just individually refusing to participate doesn't work. You need everyone — or at least most lenders — to refuse to participate.

And so in some deals lenders sign up to "cooperation agreements," where the lenders (often majority holders) agree among themselves not to take a separate deal with the company. Sometimes the cooperation agreement is a way for some set of lenders to get to 51% and negotiate a collective deal with the company, but other times the cooperation agreement is a way for the lenders to prevent *any* sort of asymmetric deal and force the company to treat all of the lenders equally.

At some intuitive gut level, that sounds nice to me. There is something off-putting about this whole process, a broad norm of "distressed companies should have to treat all of their creditors the same" seems fine, and if all the creditors want to get together and agree on that then who am I to complain.

On the other hand, if a bunch of competing firms get together and agree not to cut separate deals with the company, is that ... an antitrust problem? Is that a conspiracy in restraint of trade? I dunno, maybe. Bloomberg's Reshmi Basu and Chris Dolmetsch reported last week:

Altice USA Inc. filed an antitrust lawsuit against some of its largest creditors Tuesday, an opening salvo ahead of potential discussions to restructure its \$26 billion debt pile.

Optimum Communications Inc. — Altice's name following a rebranding earlier this month — brought the case in federal court in New York against lenders including Apollo Capital Management LP, Ares Management LLC and BlackRock Financial Management Inc., alleging that they worked together to freeze the company out of the US credit market.

The suit argues that a so-called cooperation agreement between the defendants binds “nearly every creditor holding Optimum's debt” and bars them from dealing with the company unless two-thirds of the firms approve. ...

“The cooperative is a classic illegal cartel,” the company said in the complaint. “Competing debt investors have agreed to lock Optimum out of the credit market unless Optimum offers terms the entire cooperative deems acceptable.

“It is also classic price fixing: the cooperative is collectively dictating terms to Optimum by forcing it to transact only at loan and bond prices the whole group will accept,” the complaint reads. “These restraints decimate competition and obstruct the capital markets from working as intended.”

Here is the complaint, which gives a description of liability-management exercises that is maybe a touch more sympathetic than mine, but only a touch:

Defendants and their advisors have sought to justify their conspiracy by claiming they need it to curtail “creditor-on-creditor violence.” In this telling, leveraged debtors like Optimum often play creditors off each other by enticing some creditors to strike unilateral deals that help themselves while potentially undermining competitors. Because this process induces rival creditors to act against each other's interests, Defendants like to call it “violence.” But that is just a pejorative term for competition. The antitrust laws' founding principle – that competitors should compete – does not evaporate just because the competitors here collectively dislike it. In a free market, competing creditors should work against each other to unilaterally help their own position. That process, of course, may ultimately help some creditors at the expense of others. But that is hardly a reason to allow this conspiracy. When these creditors decry “creditor-on-creditor violence,” they are really just articulating the traditional logic of a cartel: the belief that collusion between rivals yields better outcomes for those in the cartel.

Right, I mean, from a distressed borrower's perspective, it's good for the lenders to compete to offer the company a good deal to avoid being left out entirely. The company has a lot more leverage, if each lender is afraid that all the other lenders will betray it. Is it required by antitrust law? Maybe?

I should add that not all cooperation agreements work like this. Here, allegedly, “the Cooperative has captured a staggering 99% of [Optimum’s] outstanding loans and bonds,” making it impossible for Optimum to cut a deal with some favored creditors. In other cases, though, a cooperative will control, you know, 51% of the debt, and will then cut its own deal with the company at the expense of the other 49%. Just a standard liability management exercise, but with the 51% holders coordinating beforehand. Is *that* an antitrust problem? In October, Bloomberg’s Giulia Morpurgo reported that “a group of lenders to Selecta is suing the vending machine company and some of its bondholders — Strategic Value Partners, Invesco, Man Group and Diameter — in the first legal challenge to the kind of creditor pacts gaining traction in distressed debt negotiations,” also alleging antitrust violations. “By using the Cooperation Agreement to enhance their own market position at the expense of other market participants, the Favored Holders violated Section 1 of the Sherman Act,” says the complaint in that case. If lenders get together to *stop* creditor-on-creditor violence, or to *commit* it, either way there is some antitrust risk.

Borrow costs

Here are some things about the stock market that are approximately true:

It’s hard to know which stocks will go up and by how much. People who can reliably beat the market — who can reliably buy stocks that will go up a lot and avoid stocks that will go down — are rare and in high demand, most people should own index funds, etc.

There are, however, some stocks that are obvious garbage, and it’s easy to tell that they will go down. If you spend five minutes looking at one of them, you will think “this stock is garbage, I should sell it short to profit when it goes down.”

But if you try to do that, you will run into a problem: To sell a stock short, you need to borrow it from someone who owns it, and you have to pay the owner a fee to borrow the stock. And this stock — the one that you immediately knew was garbage — has a very high borrow fee. Because, it turns out, *everyone* who looks at this stock immediately knew that it’s garbage and decided to short it, and all the demand for short selling bid up the borrow cost until it was very high — 10% or 20% or 100% or 1,000% of the price of the stock per year.

How big is this problem? You could imagine three possible answers:

1. It’s expensive to short the stock, but it is *such* garbage that it is nonetheless profitable: Even paying 100% per year to short the stock, you’ll still make a profit, because the stock will go to zero in like a month. The borrow cost is lower than the expected return of shorting. If this is true, you should short the stock.
2. It’s much too expensive to short the stock: The borrow cost is so high that, even if the stock goes to zero in the time you expect, you will lose money. The borrow cost is higher than the expected return of shorting. If this is true, you should *buy* the stock, lend it out in the stock borrow market, get paid the stock borrow fee, and make a profit even as the stock goes to zero.
3. The borrow cost and expected return of shorting are in precise equilibrium: In expectation, you will make about as much money on your short as you will spend on borrowing the stock. The *combination* of (1) the stock

market and (2) the stock borrow market is efficient: The stock is knowably garbage, but once you factor in the borrow cost you should not expect to beat the market either by shorting it or by going long.

Obviously the pleasing answer would be No. 3: The stock market is generally efficient, and in the pockets where it is not efficient — where it is easy to identify a stock that is overvalued — it is nonetheless meta-efficient, so you can't profitably *trade* on that insight.

And that's approximately right. Here's a fun paper on "Inefficiencies in the Securities Lending Market" by Kent Daniel, Alexander Klos and Simon Rottke. (Here is a blog post from John Cochrane about it.) On the one hand, the paper is a story of *inefficiency*: Stock borrow costs have gone up, leading to bigger stock mispricings. From the abstract:

In contrast with a general trend of declining trading frictions, over the last several decades the cost of borrowing securities for short-selling has increased dramatically. Using a portfolio approach, we show that as the borrow costs have increased so has the mispricing associated with portfolios of high-borrow-cost names. This decline in market efficiency has resulted from a lack of competition in the intermediation chain that links share lenders with borrowers, and a growing and rational unwillingness among institutional investors to hold and lend high-borrow-cost names. Since 2020, we estimate that the inefficiencies associated with these frictions have exceeded \$300 Million/day.

On the other hand, the stock-plus-borrow pricing seems eerily *accurate*, in some sense. They construct a portfolio of stocks with the highest borrow costs and find that those stocks are on average, garbage, and that their borrow costs almost perfectly reflect what garbage they are:

Our high-borrow-cost portfolio ... earns an annualized CAPM alpha of -81.4% ($t = -5.87$). Thus, an investor in this portfolio who did not lend out the securities would have earned a risk-adjusted return of -81.4%.

Given the large negative alpha earned by this portfolio, one might think a short position in this portfolio would have earned a high positive alpha of 81.4%. However, the ex-post cost of borrowing the shares over this period was approximately 84.8%, so net of the borrow cost the return to shorting this portfolio was an annualized -3.4% (t -statistic: -0.25), based on the daily indicative fees reported by Markit.

A net-of-borrow-cost alpha of zero is consistent with a market in which short-sellers are rational, informed, and competitive. The net return for our high-borrow-cost portfolio is statistically indistinguishable from zero.

But intermediation in the stock borrow market is expensive enough that, while the short sellers are making approximately \$0, the *long* side of this trade — the investors who own the stocks and lend them out — is losing money:

By comparing this borrow cost with the revenue received by the fund, we estimate that the intermediation costs are about 40% of the fees. Thus, the lender receives only 60% of every dollar that a short-seller pays to borrow its shares. The intermediaries' share does shrink with the borrow cost but is still roughly 67% for even higher borrow cost names. Thus, once one accounts for the spread between the cost paid by the share borrowers (as reported by Markit), and the fee received by the lenders, the alpha from a strategy of holding and lending out a portfolio of high-borrow-cost names are strongly negative and highly statistically significant.

Anyway the paper also has a sample list (Table 1, page 2) of 30 stocks with the highest borrow costs in June 2025 (more than 400% annualized), and, uh, let me put it this way, several of them will be familiar names to Money Stuff readers. Sometimes it's not that hard to tell.

Midnight Madness

Some people like solving puzzles and are good at it, and the world is their oyster. Many of them would like to pursue a career that (1) consists mainly of solving fun puzzles and (2) pays them lots of money. In 2025, the field where those career opportunities are densest and most lucrative is arguably finance, particularly the quantitative/prop-trading/market-structure bits of finance. It is not entirely obvious why that would be the case, and you could imagine a world where the puzzle-solvers flocked to, you know, cancer research or sending rockets to Mars or historical linguistics or theology. Also finance has always had a lot of competition from the tech industry, and in particular these days from generative artificial intelligence.

But there is something about finance as a meta-layer on economic activity that makes it a good general source of puzzles: If you are good at building rockets, you will build good rockets, but if you are good at capital allocation you can find the most lucrative possible puzzles, whether they are in rocket-building or biotechnology or internet advertising, and solve those. AI has a similar meta attraction: If you are good at building smart computers, you can find the most lucrative possible puzzles and have your computer solve those. We talked yesterday about having your computer solve puzzles to steal crypto, a particularly pleasing application.

Anyway the point is that now if a young person in the US is good at solving puzzles, someone will eventually come up to her at a chess tournament or a Math Olympiad or an MIT Puzzle Hunt or a historical linguistics convention or even, like, a SpaceX internship, and will quietly take her aside and hand her a bag of money and a Rubik's dodecahedron and whisper "you come with us now." And off she will go to join her fellows at quantitative hedge funds and proprietary trading firms, where she will spend her days solving market-structure puzzles and her evenings playing poker and the occasional weekend doing this:

Working together, they figured out how to punch a dummy at the right speed to play a series of TV news clips that correlated with the dates of famous boxing matches. Nine boxes held objects related to specific boxers along with a scale. Weighing the correct pairs of boxes provided the coordinates of words in the newspaper they'd been given at the beginning of the scavenger hunt, directing them to the final spot on their quest.

That is from Rainier Harris's story in Bloomberg Markets Magazine about Midnight Madness, the big financial-industry puzzle hunt in Manhattan. We have talked about Midnight Madness (and its predecessor, Compass) around here before; I have played a few times (not this year, sadly), and this year's puzzle creators were on the Money Stuff podcast a few months ago. The anecdote I quoted is about a team sponsored by Raymond Iwanowski of Secor Asset Management LP and including Daniel Aisen of Proof Trading Inc.; they came in third. Is a puzzle hunt like finance? Sure why not:

"Quantitative people like to solve puzzles," Iwanowski says.

It also turns out that the scavenger hunt, with all its intricacies, has a lot in common with investing. Just like the Ouija board puzzle that ensnared the Midnight Marauders, being successful in finance often comes down to figuring out which problems are worth solving. "Really good investors are really good at separating the signal and the noise," Iwanowski says.

Presumably really good ____s are really good at separating the signal and the noise, for lots of professions that could go in that blank, but investing is a particularly lucrative place to apply that skill.

Weeknd guessing

We talked the other day about URL guessing, a simple way to occasionally get material nonpublic information: A company or government agency regularly publishes some data on a web page, the URL of the web page has the same format each time, last quarter's URL was "company.com/data_q3.html" or whatever, so you go ahead and guess that next quarter will be "company.com/data_q4.html." And then you type that into your browser an hour before the data is supposed to be announced, and occasionally you get lucky, the data has been uploaded before the official announcement, and you get to see it first.

A slight variation on that is: Some company or agency has a website, it uploads media assets (pictures etc.) to that website to get ready to put out some press release, and those assets are publicly findable even before the release goes out. You set up a web scraper, it scrapes the site, it finds the pictures before they are announced, and those pictures give you early access to material nonpublic information.

We talked about this approach in October, because someone reportedly used it to (1) predict the winner of the Nobel Peace Prize hours before the announcement and (2) make tens of thousands of dollars trading on Polymarket. Apparently the same thing happened with the year-end Spotify rankings. Prediction market trader Phantom tweeted:

Just like Nobel site, The Spotify Newsroom blog is run on WordPress. If you know where to look, you can query when they upload new images to the media library. Anyone who studied previous years would know that Spotify uploads the Wrapped graphics there before the blog post going live.

So if you're watching that feed, you can see tomorrow's "big reveal" today, and trade on it before any public announcement.

All year, Spotify's streaming numbers are public, so most of the prediction markets on the event were already trading above 90%, but one ranking was a big surprise.

Drake was on track to finish as the #3 artist globally, ahead of the Weeknd by over 2 billion streams. On the leaked graphic, he suddenly shows up at #4. This is likely tied to Spotify's recent lawsuit over bottd streams. It looks like they filtered out a huge chunk of Drake's streams.

The market on Drake was trading >95% yesterday morning and then began to dump and this image hit the site and traders discovered it.

It is in its way a tiny triumph of market efficiency, a micro-scale case of the power of financial markets to attract puzzle-solvers and incorporate information into prices. Spotify's public data suggested that Drake was the #3 artist this year, but you could make, you know, tens of thousands of dollars by finding out that that data was wrong, and someone did. The world — I mean, the people watching Polymarket Spotify markets anyway — knew that the Weeknd beat out Drake hours before it was officially announced. Is this good? Is it socially useful? Man, I don't know, don't ask me, but I guess the market signals tell you that it is.

Things happen

Anthropic taps IPO lawyers as it races OpenAI to go public. Prediction Market Kalshi Hits \$11 Billion Valuation in New Funding Round. Native American Tribes Fight Sports Betting Rivals. Brussels floats 'emergency' powers to raise €210bn from Russian assets. Serial-Defaulter Argentina Preps Return to Foreign Bond Market. Harvard's Big Wager on Bitcoin Came Right Before the Bust. The 26-Minute, 51% Wipeout That Deepened Trumps' Crypto Woes. Dell's \$6.25 Billion Gift Marks New Path for Billionaire Charity. The New, In-Demand Job Skill: Being a TikTok Influencer for Your Company. Baby slop doo doo di doo di doo. Raccoon goes on drunken rampage in Virginia liquor store and passes out on bathroom floor.

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1. This is debatable — maybe non-pro-rata LMEs are broadly value-preserving — but my sense is that people are pretty skeptical of that. Many of them end in bankruptcy anyway. In any case the LMEs incur a lot of legal and professional fees.
2. Obviously I am oversimplifying and, like, more senior creditors should get more, etc. But modern LMEs are often about treating pari passu creditors differently, or even elevating junior creditors over more senior ones.
3. The way stock borrow normally works is that you borrow the stock from me, you post cash collateral with me, I pay you interest on your cash collateral, and you pay the stock borrow fee to me. The interest rate is roughly the risk-free rate, call it 4% per year, the stock borrow fee is normally much less than this — conventionally 0.25% per year for easy-to-borrow "general collateral" stocks — and we net out the payments, so for easy-to-borrow stocks I am paying you 3.75% interest on your cash (the risk-free rate minus the stock borrow fee). Some stocks are "special," though, meaning that they have higher rates than general collateral stocks, so I

might pay you only 1% if the stock borrow fee is 3%. And some stocks are so special that they have “negative rebate”: If the borrow cost of some stock is 10% per year, then I won’t pay you any interest at all and you will pay me 6% per year to borrow the stock. Also, this market is intermediated by banks and other custodians, and investors cannot capture all of the borrow fees paid by short sellers; for now I am simplifying by ignoring the costs of intermediation but we’ll get to that.

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SEC Chair Paul Atkins and Public Company Disclosure Reform

K [dandodiary.com/2025/12/articles/regulatory-reform/sec-chair-paul-atkins-and-public-company-disclosure-reform](https://www.dandodiary.com/2025/12/articles/regulatory-reform/sec-chair-paul-atkins-and-public-company-disclosure-reform)

Kevin LaCroix

December 3, 2025

It is already well understood that there has been a change in direction at the SEC under the current Trump Administration and SEC Chair Paul Atkins. In a speech earlier this week at the New York Stock Exchange entitled “Revitalizing America’s Markets at 250,” Atkins described the ways in which he thought the agency in recent times has lost its direction, particularly with respect to its public company disclosure requirements. With the stated aim of restoring its original mission, Atkins identified two main public company disclosure reform goals for the agency. He also set out “three pillars” to “make IPOs great again.” Atkins’s IPO-related remarks include brief but noteworthy comments about securities class action litigation reform that have largely been overlooked in the press coverage of his speech.

A copy of Atkins’s December 2, 2025, speech can be found [here](#). Atkins’s December 3, 2025, *Wall Street Journal* op-ed summarizing his NYSE speech remarks can be found [here](#).

Atkins’s speech title invoked both the upcoming 250th anniversary of the adoption of the Declaration of Independence and his goals at the SEC to “revitalize” the agency, primarily through regulatory reform. His opening comments summoned the principles of individualism and entrepreneurialism that in his view embody the country’s bedrock principles and also invoked the strength of America’s capital markets as a key component of the country’s historical success. He also stressed the principles behind the establishment of the SEC itself. But, he warned, “in recent years, our regulatory frameworks have veered from the founding ideals that helped the United States to once stand without peer as the world’s destination for public companies.”

In his retelling of the history of the SEC since its founding, Atkins expressed the view that the agency’s original mission has been compromised as “rules have multiplied faster than the problems they were intended to solve.” What has happened is “a cautionary tale of regulatory creep,” which has resulted in companies being overburdened with disclosure requirements that have “eroded American competitiveness.” Three decades of “accretive rulemaking have produced reams of paperwork that can do more to obscure than to illuminate.”

By way of illustration of this regulatory overkill, Atkins cites the SEC's current rules on executive compensation (while expressly referring to a [recent letter](#) from Warren Buffett to Berkshire Hathaway shareholders critical of the disclosure rules). Atkins noted that earlier this year the SEC had brought together representatives from a variety of constituencies to discuss the agency's executive compensation disclosure requirements. Atkins reported that "somewhat to my surprise" the participants universally agreed that "the length and complexity of executive compensation disclosure" have "limited its usefulness and insight to investors."

Accordingly, Atkins said in his speech, that one of his priorities as SEC Chair is to reform the SEC's disclosure rules, with two goals in mind: "First, the SEC must root its disclosure requirements in the concept of financial materiality. Second, these requirements must scale with a company's size and maturity."

With respect to keying the disclosure requirements to materiality concepts, Atkins noted that "to avoid information overload to investors, our disclosure regime is most effective when the SEC provides, as FDR advocated, the minimum effective dose of regulation needed to elicit the information that is material investors and we allow market forces to drive the disclosures of any additional aspects of their operations that may be beneficial to investors." When the SEC's disclosure regime "has been hijacked to require information that is unmoored from reality, investors do not benefit." The executive compensation roundtable to which Atkins referred in his speech represents "one of the first steps" toward the execution of his goal of "ensuring that materiality is the north star of the SEC's disclosure regime."

Atkins's other priority with respect to reforming SEC disclosure requirements is "to scale the requirements with the company's size and maturity as a public company." Atkins cited several past occasions in which the SEC and Congress had scaled disclosure requirements to company size, adding that it is "time to revisit these concepts that have proven effective and merit expansion." It should, Atkins said, no longer be the case that smaller companies labor under the same requirements as much larger and better resourced companies. "We need," Atkins said, "disclosure that is calibrated for a company's size and maturity; that is driven by market demands; and to the extent mandated by the SEC, this is rooted in materiality and not whimsical social or political agendas."

The proposed public company disclosure reform agenda is, Atkins added, "just one of three pillars of my plan to make IPOs great again." A second pillar involves "de-politicizing shareholder meetings and returning their focus to director elections and significant corporate matters." The third pillar is that "we must also

reform the litigation landscape for securities lawsuits to eliminate frivolous complaints, while maintaining an avenue for shareholders to continue to bring forth meritorious claims.” Atkins said that the SEC has “been hard at work on executing this plan, and we look forward to the progress that is taking shape.”

Discussion

Readers wondering what public company disclosure reform might look like may want to consider Atkins’s September 2025 proposal, discussed at length [here](#), to eliminate public company quarterly reporting requirements.

Readers may also recall that in prior public comments Atkins has previously referred to “making IPOs great again.” Atkins used those precise words in connection with the SEC’s September 2025 announcement that it was changing its policy with respect to prospective IPO companies’ inclusion of mandatory arbitration provisions in its corporate bylaws (as discussed at length [here](#)).

The SEC’s change in its policy with respect to mandatory arbitration provisions in prospective IPO companies’ bylaws arguably represents a notable first step by the agency toward Atkins’s third pillar of “reforming the litigation landscape for securities lawsuits.” Atkins’s remark that the agency is hard at work seeking to “execute” on the three pillars of his plan suggest that there could be further developments ahead in which the agency seeks to alter the securities litigation “landscape.”

With respect to Atkins’s proposal to differentiate disclosure requirements between smaller and larger companies, Atkins’s speech provides little detail about what that might look like or how the requirements might differ, nor does it provide a suggestion of what size differences would entail different requirements. I suspect we will hear more details about this disclosure proposition in the weeks and months ahead (my guess is it will be sooner rather than later).

It is of course not news that the SEC under the current Trump Administration will be taking a different approach to public company disclosure requirements than was taking by the agency under Atkins’s predecessor, Gary Gensler. Indeed, in March of this year, and even before Atkins took office, the agency under interim Chair Mark Uyeda [voted end its defense of the agency’s Climate Change Disclosure guidelines](#), which had been put in place under Gensler, during the Biden administration.

Atkins's stated mission to combat burdensome public company disclosure requirements also raises the question about other Gensler-era disclosure regimes. For example, what does Atkins's disclosure reform agenda mean for the Cybersecurity and Incident Disclosure requirements that were implemented by the agency under Gensler? Will the SEC target those disclosure requirements as well?

And Speaking of the SEC: A December 2, 2025, [item](#) in the *New York Times Dealbook* column notes that on January 3, 2026, the SEC will lose its sole remaining Democratic commissioner, as Democratic Commissioner Caroline Crenshaw's term comes to an end. Crenshaw's departure will leave the nominally non-partisan agency without a Democratic Commissioner, but instead with a 3-0 Republican majority. The *Dealbook* column suggests that President Trump is unlikely to appoint another Democratic commissioner. "Who will watch the watchdog?" a commentator in the *Dealbook* column asks.

I note that in his speech Atkins emphasized the need for the agency to return to its original mission and purposes. If that really is his concern, he will undoubtedly be alarmed to find that the agency that was from its inception conceived of as non-partisan will soon become unrelievedly partisan, contrary to the intent of Congress and, with only a few brief exceptions, to the agency's lengthy history.

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Securities

SEC Punts Controversial Short-Sale Disclosure Deadline Again

December 3, 2025, 4:08 PM PST

The US Securities and Exchange Commission delayed for the second time this year the deadline for hedge funds and other big investors to comply with much-watched disclosure rules for short selling and related stock lending.

Investment managers will now have until Jan. 2, 2028 to comply with the short-sale rules and until Sept. 28, 2028 on the related stock lending disclosures, the SEC said in an order Wednesday.

"The Commission finds these temporary exemptions to be necessary in the public interest and consistent with the protection of investors," the agency said in the order.

While short selling has long been a practice in US markets, it has faced heightened scrutiny following the 2008 financial crisis and after investors piled into so-called memestocks like GameStop Corp. in 2021.

The SEC issued the rules in October 2023, requiring certain investment managers to report short-sale data on a monthly basis. Pension funds, banks and institutional money managers that lend their stocks would have to report the transactions the next day.

Trade groups including the Managed Funds Association and the Alternative Investment Management Association challenged the rules in court, saying they were inconsistent and exceeded the agency's authority. In August, a three-judge panel of the 5th US Circuit Court of Appeals issued a ruling saying the SEC didn't fully consider the economic impact of the rules and called on the agency to reconsider.

SEC Commissioner **Caroline Crenshaw**, the commission's lone Democrat, issued a statement Wednesday expressing concern about the delay, characterizing it as "repeal by extension" that could indefinitely delay compliance with new rules. She also described the court's instructions as a narrow directive, not a message for the SEC to abandon the rules.

"Under the guise of compliance date extensions, we are attempting to camouflage a new willingness to repeatedly bend the rules until they break — eroding the rule of law," Crenshaw said.

Bitcoin's Predicted Sky-High Prices Have Not Panned Out

 static01.nyt.com/ads/tpc-check.html

David Yaffe-Bellany, Kailyn Rhone

December 3, 2025

Sign up for the On Tech newsletter. Get our best tech reporting from the week. A year ago, the price of Bitcoin hit a [landmark](#) of \$100,000, sparking wild celebrations in the cryptocurrency world. With a pro-crypto president set to take office, industry boosters predicted that Bitcoin would [surge as high](#) as \$250,000 by the end of 2025.

Those rosy projections have not panned out.

Over the last two months, Bitcoin has plunged to a low of \$82,000 in late November from \$126,000, a nearly 35 percent drop that erased virtually all its gains this year. (Bitcoin rebounded this week, reaching \$93,000 on Wednesday.) The prices of other leading cryptocurrencies have also plummeted, with Ether down nearly 40 percent since August.

The causes of the downturn show that crypto, once considered a distinct branch of the financial world, has close ties with the wider economy. The market turbulence has been fueled partly by broad economic trends, like the threat of tariffs and speculation about interest rates. But it was also exacerbated by high-risk practices in the crypto world, where many traders borrow money to increase their bets, leading to steep losses when the market falls.

Even the most established cryptocurrencies remain volatile investments, despite the growing popularity of digital assets in politics and traditional finance.

"The recent sell-off is a good reminder of the risks that come with this space," said Adam Phillips, managing director of investments at EP Wealth Advisors, a wealth management firm. "Crypto remains a volatile investment and certainly isn't for the faint of heart."

The downturn arrived just as the crypto industry was reaching a new level of mainstream acceptance. President Trump ended a regulatory crackdown on crypto and signed legislation that gave a seal of government approval to one of the industry's most profitable products. He also made crypto a staple of his family's business empire, starting a crypto firm called World Liberty Financial with his three sons.

The increasing adoption of digital currencies has widened the downturn's impact. This year, dozens of publicly traded companies began buying crypto, betting that the enthusiasm around digital currencies would help increase their share prices.

Now, as stock prices crater, many of those companies are struggling, announcing [share buybacks](#) and [management reshuffles](#).

By far the largest of these "digital asset treasury" companies is Strategy, a software firm that has [amassed](#) more than \$58 billion of Bitcoin. Its stock has fallen more than 30 percent over the last month, [raising concerns](#) that the company could be forced to sell some of its Bitcoin, which would cause crypto prices to drop even further. (Strategy did not respond to a request for comment.)

"People will be sort of nervously watching for any sign of that," said Hilary Allen, a law professor and crypto expert at American University.

None of this seemed likely last December, when Bitcoin reached the \$100,000 milestone. Since then, the industry has gotten much of what it wanted in Washington, the result of a fund-raising blitz that filled Congress with crypto sympathizers.

The Securities and Exchange Commission dropped lawsuits against many major crypto companies, lifting a legal cloud that had halted the industry's progress for years. And Mr. Trump announced that the United States would establish its own Bitcoin reserve, a government-run stockpile of digital coins.

On Oct. 6, Bitcoin reached a high of \$126,000. Then came the crash.

On Oct. 10, Mr. Trump [announced](#) that he would impose a new tariff on China, sending shock waves through the global economy. Bitcoin dropped about 10 percent, while other coins plunged even more.

The impact on traders was immediate. On many crypto trading platforms, investors can borrow money to make [bigger bets](#), posting collateral and receiving multiples of that amount in return. When the market does well, this type of leveraged trading helps maximize profits.

But in a downturn, it can intensify losses, forcing the platforms to seize the collateral that traders have posted — a process known as liquidation. The day of Mr. Trump's tariff announcement, more than 1.6 million crypto traders faced liquidations, at a cost of at least \$19 billion, according to [CoinGlass](#), a crypto data tracker.

These sorts of crashes are common in the crypto world. When prices cratered in 2022, a succession of crypto companies were forced into bankruptcy, exposing fraudulent practices that led to [criminal charges](#) and [lengthy prison sentences](#).

So far, the current market turbulence has not caused anywhere near that level of damage. Bitcoin's price remains several times as high as it was in late 2022, when the collapse of the FTX exchange forced it below \$20,000. That means many longtime crypto buyers may still be sitting on large profits.

And the falling prices have not entirely dampened the crypto world's enthusiasm.

On Monday, Michael Saylor, the executive chairman of Strategy, [announced](#) that his company had bought another \$12 million of Bitcoin.

The Crypto Industry

[The Crypto Industry's \\$28 Billion in 'Dirty Money'](#)

[Nov. 17, 2025](#)

[New Crypto Super PAC Garners \\$100 Million to Help Push Industry Agenda](#)

[Sept. 15, 2025](#)

[Crypto Industry Reaches Milestone With Passage of First Major Bill](#)

[July 17, 2025](#)

California Brief

Zuckerberg Plans to Cut Metaverse Group's Budget Up to 30% (2)

December 4, 2025, 6:33 AM PST

Meta Platforms Inc.'s Mark Zuckerberg is expected to meaningfully cut resources for building the so-called metaverse, an effort that he once framed as the future of the company and the reason for changing its name from Facebook Inc.

Executives are considering potential budget cuts as high as 30% for the metaverse group next year, which includes the virtual worlds product Meta Horizon Worlds and its Quest virtual reality unit, according to people familiar with the talks, who asked not to be named while discussing private company plans. Cuts that high would most likely include layoffs as early as January, according to the people, though a final decision has not yet been made.

The proposed metaverse cuts are part of the company's annual budget planning for 2026, which included a series of meetings at Zuckerberg's compound in Hawaii last month, the people said. Zuckerberg has asked Meta executives to look for 10% cuts across the board, which has been the standard request during similar budget cycles the past few years, they added.

The metaverse group was asked to cut deeper this year given that Meta has not seen the level of industry-wide competition over the technology that it once expected, they said. The majority of the proposed cuts are likely to hit Meta's virtual reality group, which makes up the bulk of metaverse-related spend, the people said. Cuts would also target Horizon Worlds.



Mark Zuckerberg

Photographer: David Paul Morris/Bloomberg

The entire metaverse effort has drawn scrutiny from investors, who have seen it as a drain on resources, as well as from watchdogs, who have alleged that children's privacy and safety have been compromised in the virtual worlds. Shares of Meta jumped as much as 5.7% after markets opened in New York, their biggest intraday gain since July 31.

A spokesperson for Meta declined to comment.

Read More: Meta Lays Off More Than 100 Staff Across Reality Labs Unit

Meta's vision for the metaverse has not taken off despite Zuckerberg's conviction, which he still has, that people will one day work and play in virtual worlds. In 2021, as Facebook was facing fallout for user safety and privacy issues, Zuckerberg rebranded the whole company around the idea of the metaverse and started spending heavily on the vision.

The metaverse group sits within Reality Labs, the Meta division focused on long-term bets like VR headsets and AR glasses. That group has lost more than \$70 billion since the start of 2021. Zuckerberg has largely stopped mentioning the metaverse in public and on company earnings calls, and is instead focused on developing the large AI models that underpin AI chatbots and other generative AI products, as well as the hardware products that are more linked to those experiences, like Meta's Ray-Ban smart display glasses.

Some analysts and investors have long advocated that Zuckerberg rid himself of Reality Labs products that continue to drain resources without providing much revenue in return. In April, Mike Proulx, a vice president at research and advisory firm Forrester, predicted that Meta would “shutter its metaverse projects, like Horizon Worlds” before the end of the year.

Meta’s “Reality Labs division continues to be a leaky bucket,” he said in an email at the time, pointing to the unit’s losses. Shuttering metaverse efforts, Proulx said, “would allow the company to give more focus to its AI projects including Llama, Meta AI, and AI glasses.”

Meta is still committed to building consumer hardware, and recently hired Apple Inc.’s top design executive to help.

(Updates with share move in the fifth paragraph.)

--With assistance from Riley Griffin.

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Meta Platforms

Meta set to slash spending on metaverse as Zuckerberg shifts focus to AI

Social media company considers cutting unit's budget by as much as 30%



Mark Zuckerberg in 2021 announced a push to build an avatar-filled 'metaverse' where users globally could socialise, game and shop in virtual spaces © Bloomberg

Hannah Murphy in San Francisco

Published 2 HOURS AGO



Meta has set out plans to meaningfully cut back its metaverse efforts next year, as chief executive Mark Zuckerberg narrows his focus on winning the artificial intelligence race.

Executives at the \$1.7tn social media company have discussed potential budget cuts as high as 30 per cent for its metaverse group, which will probably include job losses starting early next year.

The news was welcomed by investors, who have questioned Zuckerberg's spending on a long-term initiative that failed to gain traction with consumers and promised no immediate returns.

Meta's shares rose as much as 7 per cent at the start of trade in New York. They were 4 per cent higher in mid-afternoon, adding about \$60bn to its market value.

The cuts would include teams working on Horizon Worlds, its avatar-filled social virtual reality experience, and its Quest virtual reality headsets, according to a person familiar with the discussions.

[Meta](#) declined to comment. The plans were first reported by Bloomberg, and could yet change.

It comes a day after Zuckerberg announced that the company was [building a new design studio](#) within its virtual and augmented reality department Reality Labs, focused on wearable AI-powered devices, such as smart glasses. The company poached top Apple design executive Alan Dye to head the new studio.

Zuckerberg in 2021 announced a push to build an avatar-filled “metaverse” where users globally could socialise, game and shop in virtual spaces, going as far as to rebrand the company from Facebook to Meta.

However, that effort has been hampered by technical difficulties, safety concerns and a lack of consumer appetite, prompting some investors to pressure [Zuckerberg](#) to curb spending. The Reality Labs division has lost more than \$70bn since 2021.

Zuckerberg began to link the metaverse to his wider AI objectives. In April 2023, he told investors: “The two areas are . . . related . . . Metaverse technologies will also help to deliver AI as well. For example, embodying AI agents will take advantage of the deep investment we’ve made in avatars over the last several years.”

A bright spot at Reality Labs has been the emerging success of wearables such as Meta’s Ray-Ban smart glasses. Zuckerberg has recently doubled down on his commitment to developing [AI](#)-powered wearables, arguing that they will supplant smartphones and are vital to his bet on “superintelligence”.

The social media titan is now pouring billions of dollars into hiring top AI researcher talent and building costly infrastructure to support plans to develop “personal superintelligence”, which Zuckerberg hopes will be smarter than humans. This includes developing open-source AI models, chatbots within Meta’s suite of apps and the AI glasses that he believes will replace smartphones as the ubiquitous computing platform.

The shake-up in strategy has led to a series of executive reshuffles and rounds of lay-offs at the company over the past year.

Investors remain cautious about the AI push, however. In October, Meta's shares dropped more than 10 per cent — wiping more than \$208bn from its valuation, its second-biggest one-day loss in value — after Zuckerberg announced plans for even more aggressive spending on AI next year.

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Accountancy

Big Four maintain stranglehold on biggest UK audits

No mid-tier accounting firms won mandates from large listed firms, banks or insurers last year, FRC finds



The FRC and government have for several years tried unsuccessfully to increase the number of audit firms with the skill to audit public interest entities © Jose Sarmiento Matos/Bloomberg

Ellesheva Kissin in London

Published 3 HOURS AGO



The Big Four accounting firms maintained their iron grip on auditing the UK's largest companies last year despite attempts to open up the market, the industry watchdog has found.

Firms outside the Big Four of Deloitte, EY, KPMG and PwC barely increased their share of audits for so-called public interest entities (PIEs) — which encompass large listed companies, banks and insurers — according to Financial Reporting Council figures published on Thursday.

Their share of PIE audits increased by 1 percentage point in 2024 to 40 per cent, the FRC said. However, the Big Four retained a stranglehold on the audits of large listed companies, for which fees are far higher than other PIEs, taking 98 per cent of the fees paid by the FTSE 350.

The watchdog and government have for several years tried unsuccessfully to increase the [number of audit firms](#) with the skill to audit PIEs.

HSBC in 2021 struggled to attract pitches for its mandatory audit re-tender because of concerns over possible conflicts with lucrative consulting contracts held by the Big Four firms.

In September, the FRC launched a coaching programme for small firms, reducing the inspections and permissions they need to seek to take on new audits of PIEs. Successive governments have given their backing to an audit reform bill that includes measures to [increase the number of players at the top end](#) of the audit market.

However, the 29 PIE companies that switched auditors in 2024 all moved from one Big Four firm to another. That was the highest figure for five years and the first time in that period that no audits were transferred to a firm outside the Big Four.

The shake-up pushed EY to the bottom of the Big Four for PIE audit earnings, with a share 4 percentage points lower than KPMG, the FRC data showed.

PwC kept the top spot with a 28 per cent share of PIE audit fees, which totalled about £1.3bn in 2024. However, FTSE 350 audit fees only increased 3 per cent that year compared with a 14 per cent rise in 2023.

Some mid-tier firms have shunned PIE audit work. Grant Thornton cut its number of public interest clients by more than 70 per cent between 2016 and 2022, largely because audits of listed companies are subject to more rigorous supervision.

Richard Moriarty, FRC chief executive, said: “While we’ve seen encouraging progress, with non-Big Four firms now conducting 40 per cent of PIE audits, achieving a resilient audit market requires collective action from all stakeholders — audit firms, companies and regulators alike. The FRC is committed to working collaboratively to embed proportionality, reduce unnecessary burdens and build capacity across the whole market.”



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7 Pension Funds Picked To Lead Neogen Investor Class

By **Carolyn Muyskens**

Law360 (December 3, 2025, 4:24 PM EST) -- A Michigan federal judge Wednesday selected a group of pension funds to serve as a lead plaintiff for Neogen investors alleging the company hid postmerger financial difficulties following a combination with a division of manufacturing giant 3M.

U.S. District Judge Hala Y. Jarbou said in an **order** the seven pension funds appointed as lead plaintiff collectively have a larger financial stake in the litigation than the other lead plaintiff candidate, the IAM National Pension Fund.

She also named Saxena White PA and Grant & Eisenhofer PA lead counsel for the plaintiffs at the pension funds' request.

Together, the seven funds — Operating Engineers Construction Industry and Miscellaneous Pension Fund, City of Miami Fire Fighters' & Police Officers' Retirement Trust, Metropolitan Employee Benefit System, City of Orlando Firefighters' Pension Fund, City of Orlando Police Officers' Pension Fund, City of Orlando General Employees' Pension Fund and West Palm Beach Firefighters' Pension Fund — have asserted \$3.7 million in losses, surpassing IAM's \$1.7 million loss claim, according to the decision.

IAM, which had also sought to be appointed lead plaintiff, said it experienced the largest individual investor loss and argued the seven funds could not aggregate their losses to win lead plaintiff status.

The judge that found nothing in the Private Securities Litigation Reform Act prevents a group of plaintiffs from combining their losses for the purposes of calculating which party has the greatest financial interest.

Courts in the Sixth Circuit generally take a "case-by-case" approach to determine if the members of a proposed group of plaintiffs can effectively work together to lead the proposed class, she said.

In this case, the seven pension funds provided "a joint declaration stating that they 'are dedicated to maximizing the class's recovery by ensuring this litigation is prosecuted in an efficient and cost-conscious manner and believe that [they] have put in place mechanisms to ensure effective decision-making and coordination and oversight of [their] chosen counsel,'" according to the order.

Judge Jarbou said she was "satisfied" with the pension funds' declaration of "their intent and ability to work together and represent the interests of the class."

IAM, represented by Robbins Geller Rudman & Dowd LLP, had additionally contended that seven funds made up too large a group to serve as a lead plaintiff, citing a "general rule" that a lead plaintiff group should have no more than five members.

The pension fund group had countered that the three Orlando, Florida, funds could be considered one entity, as they have the same executive director, are part of a unified investment strategy for the city's public investments and purchased the Neogen stock in a jointly held account.

The court determined it ultimately did not matter if the Orlando pension funds were one entity or separate entities because the "no more than five" rule is only a guideline, and the judge was satisfied that the close ties between the Orlando funds meant the group would not be unwieldy.

"Thus, the pension funds may amalgamate their losses, and they collectively have the largest financial interest of any potential lead plaintiff," Judge Jarbou wrote.

The institutional investors **sued** Neogen and two of its executives in July, alleging the company hid financial difficulties it faced after merging with the food safety division of 3M Co. in 2022.

Neogen led investors to believe the integration was progressing more smoothly than it was and that any hurdles were being resolved, according to the suit.

Then, in January 2025, the company revealed, among other things, that its net income for the most recent financial quarter was negative because of a \$461 million write-down related to the business combination. It also revealed it had identified weaknesses affecting internal financial controls, and lowered the firm's revenue projections for the coming fiscal year.

From an August 2023 high of nearly \$24 per share, Neogen's stock price dropped to just shy of \$5 a share at the beginning of June 2025, a 79% drop that erased more than \$4 billion of the company's market capitalization over the class period, the investors said.

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

The lead plaintiffs are represented by Marco A. Dueñas, Maya Saxena and Lester R. Hooker of Saxena White PA, Karin E. Fisch and Vincent J. Pontrello of Grant & Eisenhofer PA, Robert D. Klausner of Klausner Kaufman Jensen & Levinson, and E. Powell Miller, Marc L. Newman and Dennis A. Lienhardt Jr. of The Miller Law Firm PC.

IAM is represented by Jason A. Forge, Danielle S. Myers, Michael Albert and Kenneth P. Dolitsky of Robbins Geller Rudman & Dowd LLP.

Neogen is represented by John A. Neuwirth, Stefania Di Trolio Venezia and Tanner S. Stanley of Weil Gotshal & Manges LLP and D. Andrew Portinga of Miller Johnson Snell & Cummiskey PLC.

The case is Operating Engineers Construction Industry and Miscellaneous Pension Fund v. Neogen Corp. et al., case number 1:25-cv-00802, in the U.S. District Court for the Western District of Michigan.

--Additional reporting by Emilie Ruscoe. Editing by Covey Son.



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9th Circ. Won't Revive Adidas Investors' Suit Over Ye Collab

By **Ben Adlin**

Law360 (December 3, 2025, 9:13 PM EST) -- The Ninth Circuit on Wednesday affirmed an Oregon federal court's decision to toss investors' proposed class action accusing Adidas of failing to disclose the risks of relying on the rapper Ye for a multibillion-dollar fashion partnership, concluding a lower court properly tossed the dispute.

In an unsigned, unpublished opinion, a three-judge panel agreed with the district court's ruling that plaintiffs, including HRSA-ILA funds — benefit funds for Virginia port workers — failed to allege that Adidas made meaningful misrepresentations about the deal with Ye, which soured in 2022 amid what the court called his "antisemitic and other improper behavior."

HRSA-ILA had argued that Adidas' statements to investors about the deal treated the risk of Ye's improper behavior as "hypothetical" even though it knew of the celebrity's past antisemitic conduct. But the Ninth Circuit panel disagreed, writing that Adidas' risk disclosure to investors "presents the hypothetical risk as the negative effect of improper behavior, not the improper behavior itself."

"A reasonable investor would know that a partnership with a celebrity partner like Ye would come with inherent risks relating to improper behavior" and wouldn't be misled by Adidas' disclosures, the panel ruled.

The investors' proposed securities class action also didn't show that Adidas or its agents acted with "deliberate recklessness," the judges said, nor were the statements in question capable of objective verification.

At **oral argument before the panel** in October, the investors' attorney, Daniel Tyre-Karp of Rosen Law Firm PA, said Adidas executives had internally expressed concerns about Ye's antisemitic behavior as early as 2013, when he met with Adidas in Germany and allegedly asked the company to design a shoe featuring a swastika, which would be illegal in that country.

U.S. Circuit Judge Mary H. Murguia said at the time that she was skeptical of Tyre-Karp's argument that the lower court wrongly distinguished the Adidas case from previous Ninth Circuit holdings in **In re: Alphabet Inc. Securities Litigation** in 2021 and **In re: Facebook Inc. Securities Litigation** in 2023.

Those cases involved data security breaches the companies concealed, the judge said, while Ye was a celebrity "who was exhibiting actions that the public was well aware of."

Adidas attorney Maeve Louise O'Connor of Debevoise & Plimpton LLP told the Ninth Circuit panel at oral argument that the lawsuit was "an improper attempt to turn what really is an adverse business development into a claim of securities fraud."

Investors **filed the proposed class action** in May 2023, claiming Adidas overlooked the dangers working with Ye could pose to the company's stock prices, ignoring the risk to investors in yearly reports starting in 2018 and failing to disclose that it had considered ending the partnership as a result of his behavior.

The suit noted that in February 2023, Adidas said it could suffer \$1.29 billion in lost revenue if it was unable to sell Ye's Yeezy-branded inventory. As a result of that warning, investors claimed, the

company's stock slipped by 4.62% on Feb. 21, 2023.

In a ruling affirmed by Wednesday's Ninth Circuit opinion, U.S. District Judge Karin J. Immergut **dismissed the case** in August 2024, finding that none of Adidas' allegedly misleading statements were actionable.

Counsel for the investors did not immediately respond to a request for comment Wednesday. Adidas' counsel and company representatives also didn't immediately reply.

U.S. Circuit Court Judges Mary H. Murguia, John B. Owens and Patrick J. Bumatay sat on the panel for the Ninth Circuit.

The investors are represented by Daniel Tyre-Karp of Rosen Law Firm PA.

Adidas and its executives are represented by Maeve Louise O'Connor of Debevoise & Plimpton LLP.

The case is HRSA-ILA Funds v. Adidas AG et al., case number 24-6655, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Dorothy Atkins and Katryna Perera. Editing by Marygrace Anderson.

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9th Circ. Asks Calif. High Court For Ruling In Buyout Dispute

By **Rae Ann Varona**

Law360 (December 3, 2025, 9:38 PM EST) -- The Ninth Circuit on Wednesday asked California's highest court to rule on whether California state law bars a shareholder from seeking buyout-related damages when the shareholder does not become aware of their basis for seeking damages until after a buyout's completion — a ruling that could upend a \$9 million verdict.

The Ninth Circuit's request to the California Supreme Court comes as it takes on cross-appeals following a jury's verdict that gave \$9 million to investors who accused AI-imaging software company ArcSoft Inc. and its billionaire CEO of duping them into selling their shares for less than they were worth by hiding information about the business's success and its move to and eventual IPO in China.

A three-judge panel at the Ninth Circuit said in an order certifying a question to California's highest court that there is a "tension" between the policy objectives of Section 1312(a) of the California Corporations Code as well as "background concerns of equity, which no controlling state precedent has addressed."

"This unanswered question of California law — whether there is a non-statutory exception to [Section] 1312(a) for a shareholder who does not become aware of a defendant's buyout-related misconduct until after the buyout is consummated — is dispositive in the instant case," the panel wrote. "We therefore exercise our discretion to certify this question to the California Supreme Court."

Lei Li, the wife of one of ArcSoft's early investors, Marc Chan, and two shell companies, that in addition to Li, Chan transferred his shares to, had sued ArcSoft and its CEO Michael Deng in California federal court, claiming that the company duped them into agreeing to a less-than-fair-value buyout offer by omitting certain material information such as quarterly financial reports, audited financials, revenue projections and a fairness opinion.

According to the Ninth Circuit's filing, ArcSoft shareholders had approved a \$150 million buyout in late 2017 based on incomplete information available to them. This amount was considerably lower than a \$680 million valuation from less than a year earlier. ArcSoft debuted on China's science-and-technology-focused "STAR Market" in 2019.

A California federal jury returned a **verdict** in February 2024, finding ArcSoft liable for negligent misrepresentation and concealment, and Deng liable for breach of his fiduciary duty.

It awarded Chan and his family \$2.815 million in damages, and the family's British Virgin Island-based investment entities, Pacific Smile Ltd. \$2.62 million, and Strong Wealth Ltd. \$4.271 million — for a total of \$9.07 million in compensatory damages — plus roughly \$5.03 million in prejudgment interest.

The jury also found that Li and the shell companies were unaware of ArcSoft's and Deng's tortious conduct until after the buyout.

The parties filed cross appeals to the Ninth Circuit. The investors sought a new trial, saying "the record and law entitle Chan to much more." ArcSoft, meanwhile, argued that there was "no basis" for a retrial of a "split verdict" that had awarded "only \$9 million of the over \$50 million in damages" that the investors had presented to the jury.

Section 1312(a) provides that no shareholder "shall have any right at law or in equity to attack the validity of the reorganization or short-form merger, ... except in an action to test whether the number of shares required to authorize or approve the reorganization have been legally voted in favor thereof."

The statute is subject to two limited exceptions, neither of which the Ninth Circuit said is implicated in the present case.

The Ninth Circuit said Wednesday that the question presented by the case is whether there is an "additional exception" not identified in the statute's text for situations "in which a shareholder does not become aware of the basis for an 'attack on the validity of the reorganization or short-form merger' until after the reorganization or short-form merger has been consummated."

The appeals court said that existing precedent does not answer the question and that "policy balancing implicit in crafting such an exception is complex."

The Ninth Circuit said that the California Supreme Court had most recently addressed the meaning of Section 1312(a) in a 1986 ruling and did not foreclose the possibility of a non-statutory exception for a shareholder who does not become aware of a manager's unlawful conduct until after the fact.

"But it also did not endorse such an exception," the Ninth Circuit said.

California Courts of Appeal have also noted that the non-statutory exception remains an "open" question, according to the Ninth Circuit.

It said that other states have meanwhile recognized non-statutory exceptions to similar statutes.

The Ninth Circuit also said that the "equitable remit to 'do justice'" is not the only issue. At issue is also the California legislature's purposes in adopting Section 1312(a), it said.

"In our view, the California Supreme Court, rather than a federal court, is better suited for reconciling the two," the Ninth Circuit said.

Howard E. King of King Holmes Paterno & Soriano LLP, an attorney for Li and the shell companies, said that the jury "found that our clients, minority shareholders in a technology company, were duped into a cut-price buyout by the majority shareholders, who fraudulently concealed the company's true financial condition and the interest of a major Chinese investment bank in sponsoring an IPO."

"The district court, in allowing our clients' fraud claims to go to trial, rejected the defendants' argument that the only remedy for shareholders in that position is to seek a statutory appraisal at the time of the buyout — an argument that would make it practically impossible for defrauded shareholders to vindicate their rights," King said. "The Ninth Circuit concluded that there is no binding California precedent on this issue. We are pleased that the California Supreme Court will have the opportunity to resolve this issue."

William K. Pao of Cooley LLP, an attorney for ArcSoft and Deng, told Law360 that they "welcome the Ninth Circuit's certification of the [Section] 1312 question to the California Supreme Court."

"We have consistently maintained that [Section] 1312 forecloses plaintiffs' claims and look forward to presenting our position to the Court," Pao said.

Chief Judge Mary H. Murguia, Circuit Judge Danielle J. Forrest and U.S. District Judge Raner C. Collins from the District of Arizona sat on the Ninth Circuit panel.

Li and the shell companies are represented by Howard E. King, Tor R. Braham and Jackson S. Trugman of King Holmes Paterno & Soriano LLP and Robin Meadow and Stefan C. Love of Greines Martin Stein & Richland LLP.

ArcSoft and Deng are represented by Kathleen R. Hartnett and William K. Pao of Cooley LLP.

The case is Lei Li et al. v. ArcSoft Inc. et al., case number 24-2531, in the U.S. Court of Appeals for

the Ninth Circuit. The district court proceeding is Lei Li et al. v. ArcSoft Inc. et al., case number 4:19-cv-05836, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins. Editing by Vaqas Asghar.

Update: This story has been updated to add a comment from ArcSoft's attorney.

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Ex-Bernstein Litowitz Atty Starts Firm After Contentious Exit

By **Adrian Cruz**

Law360 (December 3, 2025, 7:00 AM EST) -- A former Bernstein Litowitz Berger & Grossmann LLP partner known for handling high-profile stockholder cases has led the launch of a boutique focused on corporate disputes and securities litigation after the firm says he was fired for misconduct.

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 Wednesday 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."

Following JVK Law's initial announcement, a representative from Bernstein Litowitz told Law360 in an emailed statement that van Kwawegen made misleading statements about the circumstances of his departure, saying that the six other members of the firm board unanimously agreed to terminate him after the executive committee found that he engaged in "misconduct that was inimical to the best interests of the firm."

"A group of our governance attorneys have informed us they are starting a new firm together, led by our former partner Jeroen van Kwawegen and we thank these attorneys for their contributions to the firm," Bernstein Litowitz's statement said. "We are disappointed that Mr. van Kwawegen has made misleading statements about his departure from the firm. It is important to emphasize that [Bernstein Litowitz] is fully committed to protecting shareholder rights through both our governance and securities practices and that we are always focused on achieving the best result for our clients."

Bernstein Litowitz did not immediately provide more information about the alleged misconduct beyond a confirmation that his last day with the firm was Nov. 16.

Van Kwawegen told Law360 in an emailed statement that he finds Bernstein Litowitz's misconduct claims to be "pretextual and disappointing," and that going forward, he expects more of his ex-colleagues to make the move over to JVK Law.

"I am focused on moving forward and continuing to represent our clients in an evolving regulatory landscape," he said. "I am honored that so many of my former colleagues, including eight new partners, are joining me in our new venture and I wouldn't be surprised if others will follow."

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.

During his time with Bernstein Litowitz, van Kwawegen worked on a number of high-profile matters including a Tesla investor class action claiming the electric vehicle giant's directors breached their fiduciary duty to shareholders by approving Elon Musk's **\$56 billion compensation package**, a **Santander stockholders'** consolidated class action challenging a \$2.5 billion minority squeeze-out merger and a stockholder challenge to Discovery Inc.'s **\$43 billion merger** with AT&T.

"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.

Update: This story was updated to include additional information on van Kwawegen's departure from Bernstein Litowitz and his response to the firm's statement.



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Investors In Pot Co. Cronos Ask Court To OK \$10M Settlement

By **Jonathan Capriel**

Law360 (December 3, 2025, 7:42 PM EST) -- An investor is asking a New York federal court to approve a \$10 million deal to end a nearly 5-year-old class action accusing cannabis company Cronos Group Inc. and its executives of artificially inflating company revenue by improperly recording "round-trip" transactions as sales.

Lead plaintiff Keith D. Norman asked the court Tuesday for preliminary approval of the settlement, which would resolve claims that Cronos, its CEO Michael Gorenstein and its Chief Financial Officer Jerry F. Barbato committed "flagrant accounting fraud" by playing up transactions that had little commercial benefit to the company.

The settlement would be distributed to those who purchased Cronos shares between May 9, 2019, and March 30, 2020. Counsel for the proposed class would receive about 33% of the settlement, or about \$3.3 million, plus no more than \$200,000 in legal expenses, according to the terms of the deal.

The \$10 million represents somewhere between 4% to 7% of the damages that the proposed class suffered, which ranges between \$140 million to about \$200 million, according to the motion for preliminary approval of the settlement. This is a pretty fair outcome for the investors, the filing says.

"This recovery is a very favorable result for the settlement class in the face of the action's risks," the motion says. "Indeed, courts within the Second Circuit have regularly approved settlements that recover similar percentages of maximum damages. The \$10 million Settlement also is in-line with recoveries obtained in securities class actions during the first half of 2025."

The lawsuit has survived quite a bit. It was initially filed in March 2020 at the beginning of the COVID-19 pandemic, which caused some delay in discovery. The suit was dismissed with prejudice in November 2023, but was resurrected in December 2024 after U.S. District Judge Eric N. Vitaliano agreed to **reverse** his prior decision.

According to the second amended complaint, filed in January, three transactions Cronos made with MediPharm Labs and Heritage Cannabis were improperly labeled by Cronos executives as revenue-generating. In reality, the suit says, they were round-trip transactions, a bit of financial trickery where a business can create the illusion of revenue by sending cash, products or assets to a second entity only for it to come back to the original party. As an example, the suit claims that Cronos sent dried cannabis to be processed into resin for a fee. But, instead of recording this as a service expense, Cronos improperly called it a sale.

The suit claims that the accounting trickery "unraveled" in February 2020, when Cronos was forced to correct prior quarterly earnings statements. The company issued new lower revenue amounts for the first and second quarter of 2019, dropping them by about 40%. These corrections caused the price of the stock to drop for several days in March 2020, the suit claims.

If the suit were to go to trial, the motion says, one potential challenge for the proposed class in making its economic arguments would be the market turmoil that all investors suffered in March 2020, as the pandemic made ripples across the world.

Cronos and its executives are represented by Nikko B. Price of Sullivan & Cromwell LLP.

The proposed class is represented by Carol C. Villegas, Christine M. Fox and Jake Bissell-Linsk of Labaton Keller Sucharow LLP.

The case is In re: Cronos Group Inc. Securities Litigation, case number 2:20-cv-01310, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Mike Curley and Collin Krabbe. Editing by Michael Watanabe.

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Jury Must Weigh 'Let's Go Brandon' Meme Coin Investor Suit

By **Emilie Ruscoe**

Law360 (December 3, 2025, 6:29 PM EST) -- An entity and individual associated with the "Let's Go Brandon" meme token can't beat a lawsuit over a collapse in prices for the coin after a judge said a jury must decide whether people purchased the token because they expected profits or because the coin was pitched as "a meme coin for advocacy of conservative values."

In a Tuesday **order**, U.S. District Judge Paul G. Byron denied a summary judgment bid by James Koutoulas and LGBcoin Ltd. and partially granted a competing summary judgment request from the proposed class of meme coin purchasers, finding that "neither party is entitled to summary judgment as to whether LGBCoin is a security."

"A genuine dispute of material fact exists as to the third prong of the Howey test," Judge Byron said, referring to the 1946 holding in the case **Securities and Exchange Commission v. W.J. Howey Co.** that an offering is an investment contract if it involves, first, an investment of money; second, investment in a common enterprise, and third, an expectation of profits that would come solely through the efforts of others.

Judge Byron's finding in favor of the meme coin purchasers included a holding that their payment for LGBcoin represents an investment of money and that they'd invested in a "common enterprise." As such, they'd satisfied the first two prongs of the Howey test, the court said.

But "neither party is entitled to summary judgment as to the third prong," the court said, noting that the parties disagreed about "whether defendants' promotional materials for LGBCoin attracted plaintiffs with an expectation of profits or motivated plaintiffs by a desire to obtain LGBCoin as a meme coin for advocacy of conservative values."

The coin at issue in the case is inspired by the "Let's Go Brandon" meme, in which the phrase serves as a stand-in for a profane statement of distaste for former U.S. President Joe Biden.

The meme originated in October 2021 as a TV news reporter interviewed stock car racer Brandon Brown following a race at the Talladega Superspeedway in Alabama. As the interview took place, the news reporter mistakenly described chanting from the crowd in the background as "Let's go, Brandon," an expression of support for Brown.

In the latest version of their suit, LGBcoin buyers Sandra Bader, Eric De Ford and Shawn R. Key claimed that purchasers of the coin bought it in part because those associated with the coin teased "an upcoming announcement of a NASCAR partnership" with Brown.

LGBcoin did indeed announce in December 2021 that it would be Brown's full-season primary partner for the 2022 NASCAR Xfinity Series season. The announcement allegedly sent prices for LGB coin up by nearly 510% from its opening price two months earlier.

But days later, the investors claimed, NASCAR revoked the sponsorships in an effort to "steer away from political issues," which allegedly precipitated a complete wipeout of prices for LGBcoin.

Earlier versions of the suit included Brown, NASCAR and others as defendants, but Koutoulas and LGBcoin Ltd. are the final remaining defendants. In March, Judge Byron certified a class of buyers solely related to their claims of the sale of unregistered securities.

Judge Byron's Tuesday order also asserted that "In support of their argument that LGBCoin is a 'meme coin' rather than a security, defendants cite to several cases which the court believes are hallucinated from artificial intelligence."

"The court cautions defendants that citing to cases that do not exist is a misrepresentation to the court," Judge Byron said, warning that "if defendants continue to use such unethical practices in later briefings, the court may impose appropriate sanctions against defendants."

The case is currently scheduled for trial in early March.

In a Wednesday email, Koutoulas told Law360 that he would continue to "fight this sham case." He also asserted that plaintiffs' counsel should be sanctioned for what he alleged were "brightline violations" of the Private Securities Litigation Reform Act, without specifying what the alleged violations were.

Counsel for the LGBcoin purchasers declined to comment, and Koutoulas and his counsel did not immediately respond to a follow-up request for comment regarding Judge Byron's comments about the citations.

The buyers are represented by Aaron M. Zigler, Nidya S. Gutierrez, Lawrence V. Ashe and Kevin McCormack of Zigler Law Group LLC and John T. Jasnoch and Sean T. Masson of Scott + Scott Attorneys at Law LLP.

Koutoulas and LGBCoin Ltd. are represented by Nicole Martell of Di Pietro Partners PLLC.

The case is De Ford v. Koutoulas et al., case number 6:22-cv-00652, in the U.S. District Court for the Middle District of Florida.

--Editing by Rich Mills.

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Pharmacies Want Opioid Mistrial As Deliberations Stretch On

By **Cara Salvatore**

Law360 (December 3, 2025, 9:36 PM EST) -- The nation's three major pharmacy chains asked a Florida state judge Wednesday to declare a mistrial following 11 days of deliberations in a \$1.5 billion case by hospitals over opioid dispensing, claiming jurors seem unaware that they are allowed to report a deadlock.

CVS, Walgreens and Walmart told Judge Carol-Lisa Phillips they believe certain of the 11 jury notes that have been sent hint at dissension, about which the jury is not being explicit.

The jury is deliberating over claims that the companies' allegedly reckless opioid dispensing practices cost the hospitals some \$1.5 billion by helping drive a wave of addiction that ultimately broke on the hospitals' doorstep.

"The lawyers on both sides, no one has had anything like this, ever," defense lawyer David Markus of Markus Moss PLLC said Wednesday afternoon, referring to the length of deliberations without any note explicitly reporting trouble reaching an agreement.

The defense asked for either a mistrial or a "neutral instruction" clarifying that it's OK to report a deadlock.

Markus noted that the jury asked on Nov. 24 — about seven working days into deliberations — for a readback of its oath. Defense lawyers argued at that time that jurors might be misunderstanding a pattern instruction that mandates they not disclose to the judge a "split" in the votes.

In addition, Markus said that a note Tuesday indicates that there is one holdout juror. The note said at least one juror "is arguing" that because the Controlled Substances Act is a federal law, there might be no "criminal activity" under Florida law under the court's instructions. The judge responded by telling the jurors to reread the instruction and the definitions provided alongside it.

The hospitals told Judge Phillips on Wednesday that Tuesday's note was not an indication that one juror has dug in their heels.

"Within the last few days, the jury has come and asked for testimony to be read back," argued Warren Burns of Burns Charest LLP, representing the hospitals. "The latest question indicated that one juror had an idea about federal crimes versus state court crimes; it's proper for them to ask that question."

He added, "The fact that someone is quote-unquote arguing that position, doesn't mean that they're deadlocked; it means that they're doing what they're supposed to do."

The hospitals also noted that the foreperson is a National Transportation Safety Board investigator, saying that should be an indication that deliberations concerning a nine-week trial are being done "methodically." They also said jurors have sent a Christmas card in recent days with illustrations of a toolkit and a three-legged stool on the front, references to recurring metaphors from the trial.

Judge Phillips did not rule from the bench, saying she needs time to think and research.

The hospitals argued during the nine-week trial that the corporations profited from the epidemic and

that their pharmacists were gatekeepers who should have known that the medications they were dispensing weren't prescribed in good faith.

The pharmacies argued that no Racketeer Influenced and Corrupt Organizations Act conspiracy has been proven, nor has causation.

The hospitals are represented by Warren Burns, Darren Nicholson, Hannah Crowe and Laura Soundy Seggerman of Burns Charest LLP.

Walgreens is represented by Brian Swanson, Kaspar Stoffelmayr, Jean Tinkham, Michael Nance, Jordan Golds and Rachel Smith of Bartlit Beck LLP and Alec Schultz of Hilgers Graben PLLC.

Walmart is represented by David Markus and A. Margot Moss of Markus Moss PLLC and Tara Fumerton of Jones Day.

CVS is represented by Eric Delinsky, Marcos Hasbun, Ariella Muller, Alexandra Miller, Paul Hynes Jr., Adam Fotiades, Steven Herman and Christopher MacColl of Zuckerman Spaeder LLP.

The case is Florida Health Sciences Center, North Broward Hospital District et al. v. CVS et al., case number CACE19018882, in the Seventeenth Judicial Circuit of the State of Florida.

--Additional reporting by David Minsky. Editing by Drashti Mehta.

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