

Litigation

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Investor Sues Neogen Over Stock Drops After 3M Division Merger

December 5, 2025, 10:54 AM PST

Summary by Bloomberg AI

AI Generated



- Current and former Neogen Corp. executives and board members allegedly concealed systemic issues with the company's integration of 3M Co.'s food safety division following its merger in 2022.
- Statements from Neogen's executives about the company's integration progress were false or materially misleading because they failed to disclose adverse facts about Neogen's financial prospects and operations, according to a shareholder derivative complaint.
- The complaint asserts claims for breach of fiduciary duties, unjust enrichment, waste of corporate assets, and violations of federal securities law, and the shareholder is asking the court to award damages against the individual defendants.

Current and former Neogen Corp. executives and board members allegedly concealed systemic issues with the company's integration of 3M Co.'s food safety division following its \$5.3 billion merger in 2022.

Statements dating back to early 2023 touting the company's continued integration progress were false or materially misleading, because they failed to disclose adverse facts about Neogen's financial prospects and operations, according to a shareholder derivative complaint filed Thursday in the US District Court for the Western District of Michigan.

The suit names as defendants former CEO John Adent and former CFO David Naemura, among others.

Neogen, Adent, and Naemura didn't immediately respond to requests for comment.

Neogen's executives, and the company itself, consistently touted its "tremendous" progress in implementing 3M's food safety division into its own product lines since January 2023. Through press releases, calls with investors, and federal securities filings, the food safety company said it was "crossing multiple significant integration milestones" and promised a strong financial outlook, the complaint says.

But in January, Neogen revealed “disappointing financial results,” reporting a net loss of more than \$456 million for the third quarter of 2024, driven by a “non-cash goodwill impairment charge related primarily to the acquisition of the former 3M Food Safety Division.” The company decreased its financial outlook for the rest of the year, according to the complaint.

In April, Neogen again reported a loss of \$11 million and announced Adent was stepping down as CEO. Neogen’s stock declined by roughly 28% following the announcement, the suit says.

On June 4, Neogen revealed the company anticipated its EBITDA margin to be in the high-teens, representing a “considerable drop from the previous quarter’s profit margin of 22%.” The company blamed it on elevated inventory write-offs, which allegedly led to a 17% decrease in its stock price.

Neogen’s integration of 3M’s food safety division was “riddled with inefficiencies from day one,” which the company’s executives failed to disclose to investors, as well as its impacts on Neogen’s financial health and revenues. The executives also failed to disclose that Neogen was experiencing issues integrating 3M’s business with respect to manufacturing, shipping, production overlap, and internal controls due to the size of the merger, the complaint says.

The alleged conduct has also caused Neogen to incur “significant financial losses, including the cost of defending and paying class-wide damages” in a separate suit brought by investors, the shareholder says.

The complaint asserts claims for breach of fiduciary duties, unjust enrichment, waste of corporate assets, and violations of federal securities law. The shareholder is asking the court to award damages against the individual defendants for all losses suffered due to the alleged acts, in addition to an order directing Neogen to reform its corporate governance structure and internal procedures.

Grabar Law Office, Fink Bressack, and Rigrodsky Law PA represent the shareholder.

The case is *Topper v. Adent*, W.D. Mich., No. 1:25-cv-01649, complaint filed 12/4/25 .

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Securities

Manage Newsletters

Rosen Law Hit With Fee Sanction for 'Groundless' Investor Suit

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Summary by Bloomberg AI

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- The Rosen Law Firm PA was hit with a sanctions order for filing a "groundless" initial complaint against Harbor Diversified Inc.
- Judge William C. Griesbach said the original complaint was devoid of allegations regarding the executives' level of intent or recklessness for securities fraud claims.
- Harbor and the executives must submit a fee petition with billing records within 30 days of Griesbach's order as to the expenses incurred in defending against the original complaint.

The Rosen Law Firm PA, known for representing investors in securities litigation, got hit with a sanctions order for filing a "groundless" initial complaint against Harbor Diversified Inc., the parent of a Wisconsin regional airline.

The original complaint was devoid of allegations regarding the executives' level of intent or recklessness for securities fraud claims, Judge William C. Griesbach said. "It follows that, whether out of ignorance of the law or simple laziness, the original complaint reflects a failure to conduct a reasonable inquiry prior to filing."

In arguing against sanctions, The Rosen Law Firm invoked allegations from an amended complaint filed later, the US District Court for the Eastern District of Wisconsin judge said Dec. 3. "This, RLF cannot do."

The ruling is significant because "no one's addressed this for the last 30 years," as generally at the end of a case when a court must look at the Private Securities Litigation Reform Act's procedure inquiry, "no one wants to bother litigating a sanctions motion," said Jason de Bretteville, a Stradling Yocca Carlson & Rauth LLP partner who represents the company.

The PSLRA, passed three decades ago, requires that a court impose sanctions for any violation of Rule 11(b) of the Federal Rules of Civil Procedure.

The PSLRA's lead plaintiff process unintentionally weakened initial complaints such as the one filed here, de Bretteville said in a phone call Friday. "Why invest the money investigating an event and trying to plead a viable complaint when you don't know if you're going to be appointed lead plaintiff?"

This is "interesting" or "troubling even, because one of the purposes of the PSLRA was to discourage the filing of frivolous complaints," he said.

Harbor and the executives must submit a fee petition with billing records within 30 days of Griesbach's order as to the expenses incurred in defending against the original complaint.

The judge denied Harbor's request for sanctions against Pomerantz LLP, another well-known law firm in securities litigation that later was appointed lead counsel, because the first amended complaint it filed didn't "demonstrate a pre-suit investigation so faulty that sanctions are warranted."

Griesbach denied the investors' cross-requests for sanctions against the defendants' counsel, Stradling Yocca, noting some were procedurally barred and that certain misrepresentations weren't "so severe."

The case was tossed with the ability to replead in January for failing to allege a sufficient inference of executives' intent or deliberate recklessness to deceive investors over its revenue reporting practices in connection with Air Wisconsin Airlines LLC's agreement with United Airlines Inc.

Air Wisconsin shifted to an agreement with American Airlines Inc., which it said it was ceasing this year.

Harbor told the US Securities and Exchange Commission in August it signed a non-binding letter intending to sell all equity in Air Wisconsin's direct parent.

The Rosen Law Firm represents investor Viral Kothari, who filed the initiating complaint. Pomerantz represents investor Jon Arne Toft. Attorneys from these firms didn't immediately respond to an email seeking comment.

Stradling and Godfrey & Kahn SC represent Harbor and the executives.

The case is Toft v. Harbor Diversified Inc. , E.D. Wis., No. 1:24-cv-00556, 12/3/25 .

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Securities

Manage Newsletters

Elite Shareholder Suits Firm's Nasty Divorce Comes at Tough Time

December 5, 2025, 2:00 AM PST

Summary by Bloomberg AI

AI Generated



- The exit of a group of lawyers from Bernstein Litowitz comes as the firm faces new challenges to its business model, including an overhaul of Delaware's corporate laws and a federal policy change.
- The changes threaten shareholder firms' ability to win large class actions and bet-the-company investor suits, prompting anxiety across the shareholder plaintiffs' bar about how to retool.
- Jeroen van Kwawegen, who is leading the exodus, said he left Bernstein Litowitz over a "fundamentally different vision" and expects to poach more attorneys to join him at his new firm.

The messy exit of a group of lawyers from Manhattan's Bernstein Litowitz comes as the firm known for taking on corporate giants faces new challenges to its business model.

Jeroen van Kwawegen, who is leading the exodus, said Wednesday that he expects to poach more Bernstein Litowitz attorneys to join him at the new firm he launched this week with four former partners. Bernstein Litowitz responded by claiming that van Kwawegen, who led its corporate governance group, was fired for "misconduct."

The ugly split comes as the firm's bread and butter—massive shareholder suits involving companies such as Walmart Inc., Paramount Global, Tesla Inc., and Coinbase Global Inc—is under attack from two recent developments. An overhaul of Delaware's corporate laws, Senate Bill 21, and a federal policy change threaten shareholder firms' ability to win large class actions and bet-the-company investor suits.

"In the wake of SB21, there's a lot of concern this side of the business may have to shift," said University of Colorado law professor Ann Lipton.

New York-founded Bernstein Litowitz Berger & Grossmann is a top player in Delaware's Chancery Court, long the top venue for corporate legal fights. Its lawyers lead cases on behalf of a wide range of investors, from Walmart shareholders who extracted a \$123 million opioid-related settlement to billionaire activist Carl Icahn in a suit challenging Silver Lake's \$13 billion buyout of Endeavor Group Holdings Inc., parent company of WWE and UFC.

Those are the kinds of disputes that Delaware may see much less of, thanks to SB21. The law gives more power to controlling stockholders, restricts shareholder access to the texts and emails of board members, and strengthens their defenses. It was drafted, with help from defense lawyers, after the Chancery Court rejected Elon Musk's \$55.8 billion dollar Tesla pay package in lawsuit led by Bernstein Litowitz and heavy campaigning by private equity interests.

The second blow to shareholder lawyers came in September, when the US Securities and Exchange Commission gave companies the green light to force investors to sign arbitration agreements. The SEC's policy shift means companies can ban investors from pursuing securities fraud cases as class actions, requiring them to instead file individual demands for arbitration. That would eliminate a powerful tool for lawyers, but could also give them new leverage if they file thousands of arbitration demands.

"Plaintiffs' firms are absolutely planning for a world in which securities cases have to be brought in individualized arbitration," said Lipton, who practiced at Bernstein Litowitz earlier in her career. "That's partially because that may be the world we're in, but I think it's also partially because they want to use it as a club to show companies that adopting arbitration clauses will actually make your lives much more miserable."

The changes have prompted widespread anxiety across the shareholder plaintiffs' bar about how to retool. Bernstein Litowitz, as one of the most active shareholder firms in Chancery Court, may have the most to lose.

"Part of the reason the Delaware practice at BLBG got so beefed up was because securities cases had become so hard to litigate, and Delaware was more receptive," Lipton said.

Bernstein Litowitz is leading an ongoing billion-dollar insider trading case alleging Coinbase CEO Brian Armstrong, venture capital titan Marc Andreessen, and other executives dodged huge losses after its public listing by strategically dumping shares worth \$2.9 billion. It's also one of several firms vying to lead the shareholder class action challenging Paramount's sale to Skydance Media LLC.

"We have full confidence of the continued viability and importance of governance litigation in Delaware—as well as other venues nationally—for the integrity of our capital markets and the protection of shareholders and other investors," the firm said in a statement.

'Different Vision'

Van Kwawegen, who worked on the Musk pay case and was part of Bernstein Litowitz's executive committee, is already taking a chunk of the firm's corporate governance practice with him. He said Wednesday that he left over a "fundamentally different vision about what the law firm should look like" including its willingness to fight cases all the way through trial.

Van Kwawegen has been an outspoken critic of the new Delaware law.

"This fly-by-night proposal is a license to steal from institutional investors and pension funds, including pensions of teachers, police officers, and firefighters who've worked for the common good every single day," he said in a March LinkedIn post.

Greg Varallo, a veteran litigator and longtime Bernstein Litowitz partner, is leading a suit challenging SB21 that is currently before Delaware's Supreme Court. Varallo also quarterbacked the Musk case—leading a team that included van Kwawegen—which landed the firm a record \$345 million fee currently tied up in an appeal.

Varallo "remains in place as head of BLB&G's Delaware practice," the firm said.

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Securities

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Mobileye Investors Seem Unlikely to Have Inventory Suit Revived

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Summary by Bloomberg AI

AI Generated



- Mobileye Global Inc. investors met with a tough appellate panel in their bid to reopen a proposed class action alleging the company misled them over inventory practices.
- The US Court of Appeals for the Second Circuit pressed back on claims that Mobileye needed to disclose more information about its minimum market contracts, citing a lack of allegations that customers were forced into those commitments.
- The pension funds alleged that Mobileye hid a "channel stuffing" scheme, forcing customers to buy more inventory than needed and artificially boosting sales and profit levels, which the company's counsel argued was not improper and was a means to counteract pandemic supply chain shortages.

Mobileye Global Inc. investors met a tough appellate panel Thursday in their bid to reopen a proposed class action alleging the driver-assist chip maker misled them over their inventory practices.

The US Court of Appeals for the Second Circuit pressed back on attorney's claims that Mobileye needed to disclose more information about its minimum market contracts, citing a lack of allegations that their customers were forced into those commitments.

One circuit judge mentioned Mobileye's warning that its customers might work through their own inventory first, potentially impacting the company down the road. She asked if that wasn't a "direct notice of exactly the effect that came to bear?"

But Mobileye didn't disclose that it was continually forcing customers to take on more chips than they needed while blaming it on the pandemic, said John Rizio-Hamilton, a partner at Bernstein Litowitz Berger & Grossmann LLP representing the pension funds. Analysts, drawing from the company's communications, were discussing that issues from the coronavirus pandemic were no longer affecting Mobileye.

Hamilton said the Second Circuit's recent decision to revive a securities fraud suit against Hain Celestial Group Inc., which alleged misstatements and omissions about giving distributors concessions to buy more product up front, supports reversing the lower court's decision in the Mobileye suit.

District Judge Sidney H. Stein, who sat on the appellate panel, asked Mobileye's counsel if the company's disclosures were complete and accurate, how does it account for the analyst and market reaction?

That's a hindsight pleading, said Dana M. Seshens, a partner at Davis Polk & Wardwell LLP who represents Mobileye and certain executives. There aren't contemporaneous allegations to render disclosures misleading when made. What the company later learned and disclosed was customers' inventory build-up was a more significant issue than expected—and then Mobileye went straight to the market with that information.

There's no allegation of Mobileye's visibility into its customers' clients' demand, which impacts how much the company's customers take on, Seshens said. This wasn't "channel stuffing" as the pension funds appealing the dismissal alleged, rather a means to counteract pandemic supply chain shortages. Regardless, channel stuffing isn't inherently improper.

'Channel Stuffing'

The pension funds alleged the driver-assist technology business and its senior leaders hid their channel stuffing scheme—when a company sends more inventory to customers than they really need, artificially boosting its sale and profit levels—propping up share prices. Among those also named as defendants were CEO Amnon Shashua, Chief Financial Officer Moran Shemesh Rojansky, Chief Communications Officer Daniel Galves, and former CFO Anat Heller.

The Retirement Plan for Chicago Transit Authority Employees and Oklahoma Firefighters Pension and Retirement System said Mobileye forced certain customers to buy a minimum number of its "EyeQ" silicon chips, which equip vehicle cameras. Once customers were free of their contracts in 2023, they reduced orders while working through saturated inventory.

After Mobileye said in January 2024 an inventory pile-up would impact revenue, share prices plummeted nearly 25%—then the stock's biggest single-day fall since its October 2022 initial public offering, according to data compiled by Bloomberg. The stock price fell more than 22% in a day after Mobileye lowered its 2024 guidance that August on lower EyeQ sales.

Circuit Judges Beth Robinson and Sarah A. L. Merriam and Stein sat on the panel.

Lower Court Dismissal

Investors failed to allege "any material misstatement or any deceptive conduct" to carry securities fraud or scheme liability claims, said Judge Denise L. Cote when dismissing the proposed class action in April.

The company was enforcing contracts “that were both legal and publicly disclosed,” the US District Court for the Southern District of New York judge said then. And the complaint didn’t sufficiently allege offering documents for its 2023 secondary public offering contained an omission that would’ve mattered to reasonable investors for a liability claim under the securities law that governs newly-issued stock.

The proposed class would’ve covered investors from Jan. 26, 2023, through Aug. 1, 2024, and those who got stock in its June 2023 secondary public offering.

Neither of the above law firms nor Mobileye immediately responded to messages offering the chance to comment, sent before arguments began.

The case is In Re: Mobileye Glob. Sec. Litig. , 2d Cir., No. 25-1292, oral arguments 12/4/25 .

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Securities

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Barclays Defeats Short-Seller's Appeal Over Notes' Suspension

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Summary by Bloomberg AI

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- A short-seller who lost money on Barclays Bank PLC's volatility-linked VXX securities failed to allege securities fraud by the bank, the Second Circuit said.
- The suit by Michael Puchtler was part of the legal fallout of the Barclays PLC unit's loss of "well-known seasoned issuer" status in 2017 and its alleged failure to adapt to that change.
- The Second Circuit said Puchtler didn't show that top executives' statements after Barclays lost "well-known" issuer status were reckless.

A short-seller who lost money on Barclays Bank PLC's volatility-linked VXX securities failed to allege securities fraud by the bank, the Second Circuit said Friday in affirming the suit's dismissal.

Michael Puchtler didn't show that top executives' statements after Barclays lost "well-known" issuer status were reckless, the US Court of Appeals for the Second Circuit said in an unsigned, unpublished opinion.

The suit by Puchtler, who wasn't representing a class, was part of the legal fallout of the Barclays PLC unit's loss of "well-known seasoned issuer" status in 2017 and its alleged failure to adapt to that change by prepaying for securities registrations and monitoring their number.

Barclays settled US shareholders' class claims over its inadvertent sales of unregistered securities for \$19.5 million in a deal that received final approval in March.

Puchler alleged Barclays abruptly halted its sale of securities, including the VXX exchange-traded notes, in March 2022 when it discovered the over-issuances. Prices skyrocketed and he was caught in a short squeeze, he said.

But the complaint doesn't suggest the executives knew about the lack of internal controls when they allegedly misrepresented those controls, the Second Circuit said. "Instead, Puchtler alleges that the Individual Defendants knew about the consequences of Barclays losing its WKSI status," the appeals court said.

A “consistent non-culpable inference” from the complaint is that the executives knew about those consequences and delegated the task of tracking securities issuances to a working group, the court said. “In hindsight, the working group did not track the securities issued by Barclays,” but Puchler didn’t allege the executives knew that at the time, it said.

The appellate panel consisted of Chief Judge Debra Ann Livingston and Judges Reena Raggi and Michael H. Park.

Sperling Kenny Nachwalter LLC and Kaplan Fox & Kilsheimer LLP represented Puchler. Sullivan & Cromwell LLP represented Barclays and its executives.

The case is Puchler v. Barclays PLC , 2d Cir., No. 25-995, unpublished 12/5/25 .

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Securities

TaskUs, Investors Get Final Approval for \$18 Million Settlement

December 4, 2025, 2:00 PM PST

TaskUs Inc.'s nearly \$18 million class settlement with investors over the outsourcing firm's employee retention metrics received final approval from a federal court Thursday.

The deal is fair, reasonable, and adequate, Judge John P. Cronan said for the US District Court for the Southern District of New York. Cronan also approved nearly \$5.3 million in attorneys' fees, or 30% of the settlement fund.

The investors alleged TaskUS, which provides customer support and social media content moderation services, misrepresented its employee attrition rate and manipulated its Glassdoor worker satisfaction rating to boost its initial and secondary public offerings

Corporate insiders, including a Blackstone affiliate that was sued as a former majority shareholder, allegedly sold securities for \$951 million while the stock price was artificially inflated

Cronan adopted a magistrate judge's recommendation in favor of the settlement's final approval

Bleichmar Fonti & Auld LLP was lead counsel for the class. Simpson Thacher & Bartlett LLP represented the defendants.

The case is Lozada v. TaskUs, Inc. , S.D.N.Y., No. 1:22-cv-01479, 12/4/25 .

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Standard Chartered PLC**Standard Chartered settles £1.5bn lawsuit over Iran sanctions breaches**

Investors alleged the UK-headquartered bank had issued misleading statements about compliance



Over 200 claimants representing 1,400 investment funds sued Standard Chartered in London © Lam Yik/Bloomberg

Alistair Gray and **Simon Foy** in London

Published 4 HOURS AGO



Standard Chartered has settled a £1.5bn investor lawsuit that included claims its breaches of sanctions against Iran were more widespread than the UK-listed bank has acknowledged.

More than 200 claimants representing 1,400 investment funds sued Standard Chartered in London, accusing the bank of issuing misleading statements and omitting crucial information, particularly about its [compliance with US sanctions on Iran](#).

The claimants argued this meant they had taken the decision to invest in [StanChart](#) based on flawed information and suffered losses as a result.

The settlement came after the Court of Appeal ruled that the bank would need to disclose sensitive documents as part of the case, which was due to go to trial next October.

The bank had resisted the disclosure, contending that releasing the documents would expose the bank to regulatory sanction or even criminal proceedings overseas because of its duty of confidentiality to foreign regulators, according to a ruling published on Friday.

In the ruling, the Court of Appeal said: “After a draft of this judgment was circulated to the parties, they reached a settlement of the entire action.”

Financial terms of the settlement were not disclosed.

The bank said in a statement: “Notwithstanding that Standard Chartered has always denied any and all liability, a settlement has been reached to bring this matter to a close.

“The settlement is not material to the Group’s operating results or financial position.”

Law firm Signature Litigation, representing the claimants, did not immediately respond to a request for comment.

The case was part of a [wave of legal actions](#) brought in London by shareholders seeking compensation for declines in share prices, a long-standing trend in the US that has gained momentum in the UK.

The StanChart case is the latest to settle. Most shareholder lawsuits in England have done so before trial, meaning there is little legal precedent on several important issues in shareholder lawsuits.

In its latest half-year report, StanChart said the legal action alleged that the bank produced untrue and misleading statements — as well as omissions in information — regarding the group’s historic sanctions, money laundering and financial crime compliance issues.

The claimants also alleged similar failings regarding StanChart’s rights issue prospectuses in 2008, 2010 and 2015.

StanChart [agreed to pay \\$1.1bn in 2019](#) to settle charges from US and UK authorities that it violated Iran sanctions and ignored red flags about its customers.

The settlement included a guilty plea by a former bank employee. That came seven years after the bank first paid a \$667mn fine and signed a deferred prosecution agreement with US prosecutors to avoid criminal charges for breaching Iran sanctions.

However, the investors in the English civil case had claimed the misconduct was broader than StanChart has acknowledged. They had previously accused the bank in court documents of engaging in a “systemic course of conduct” in “developing its Iran business in breach of sanctions”.

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Securities

Pinnacle West Finalizes \$7 Million Pension Math Class Settlement

December 4, 2025, 8:52 AM PST

Pinnacle West Capital Corp. secured final approval for a \$7 million class settlement with retirees who accused the Arizona-based utility holding company of shortchanging pensions that include post-death payments for workers' surviving spouses.

The deal is expected to boost the monthly retirement checks of about 900 retirees who began receiving pensions that include post-death spousal payments after November 2016. Judge Susan M. Brnovich granted final approval to the settlement and awarded class counsel more than \$2.4 million in fees and costs in a pair of orders issued Wednesday in the US District Court for the District of Arizona.

The lawsuit said Pinnacle calculated certain optional pension formats using outdated life expectancy data that caused workers who chose these formats to see their benefits improperly reduced

Dozens of large employers have been sued over the actuarial assumptions used by their pension plans, and court rulings have been mixed

Brnovich greenlighted the case in 2023, saying pension plans must use reasonable actuarial assumptions and interest rates when calculating optional benefit formats

Covington & Burling LLP and Snell & Wilmer LLP represented Pinnacle. Iazard, Kindall & Raabe LLP, Motley Rice LLC, and Keller Rohrback LLP represented the retirees.

The case is Skrtich v. Pinnacle W. Cap. Corp. , D. Ariz., No. 2:22-cv-01753, 12/3/25 .

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Justices to review whether private parties may sue investment companies

[Sb scotusblog.com/2025/12/justices-to-review-whether-private-parties-may-sue-investment-companies](https://www.scotusblog.com/2025/12/justices-to-review-whether-private-parties-may-sue-investment-companies/)

Ronald Mann

December 5, 2025

CASE PREVIEW

(Daniel Slim/AFP via Getty Images)

The justices will be treading on familiar ground during next week's argument in [FS Credit Opportunities Corp. v Saba Capital Master Fund](#), to take place on Wednesday, Dec. 10. Like many cases the court has heard in the last decade, this one asks the justices to consider whether the federal courts should recognize a federal statute as implying a private right of action (that is, providing the ability for private parties to sue) when the words of the statute do not explicitly authorize it.

The particular statute here is the Investment Company Act, adopted with the Investment Advisers Act in 1940, following the Securities Act of 1933 and the Securities Exchange Act as among the last of the major securities statutes passed during the tenure of Franklin Roosevelt. The statute imposes various safeguards on investment companies, generally designed to protect third-party investors from self-dealing conduct at the hands of insiders of the investment companies. To that end, the statute vests broad regulatory authority in the Securities Exchange Commission, which has the ability to investigate, monitor, and take action against conduct it believes violates the statute.

The particular provision in question, [Section 47\(b\)](#), authorizes courts to rescind any contract that violates any of the specific provisions of the statute. The lower courts held that this authorized an independent suit by investors seeking to rescind a contract that they allege violates the statute, even though the SEC has not taken any action. When the lower courts allowed that suit to proceed, the justices agreed to review the case.

The fund (FS Credit Opportunities Corp.) [characterizes](#) the lower court decision as emblematic of the "*ancien regime*" that the justices have been criticizing for the last few decades, in which the court frequently implied private rights of action, especially in cases involving securities litigation. As so many of the court's opinions have emphasized in recent years, that regime is now a distant memory. Because the statute does not contain the kind of language that creates a private right of action – identifying particular plaintiffs and authorizing them to bring a suit for some specified reason – the fund argues that there is no basis in the court's modern jurisprudence for what the lower courts have done here. That result is particularly appropriate in this case, the fund says, because the statute does include two explicitly crafted private rights of action, neither of which would apply to this dispute.

The investors (including Saba Capital Master Fund) [rest](#) their case on the court's 1979 decision in [Transamerica Mortgage Advisors v. Lewis](#). A closely divided court in that case recognized a limited private right of action to rescind unlawful contracts, based on a provision of the Investment Advisers Act that closely resembles the provision at issue here. For the investors, there is no basis for treating this statute any differently than the provision at issue in *Transamerica*.

For its part, the fund forcefully rebuts the investors' reliance on *Transamerica*. They emphasize that the justices in *Transamerica* distinguished the Investment **Advisers** Act (at issue in *Transamerica*) from the Investment **Company** Act (at issue here) because the Company Act includes explicit private rights of action for specified situations. The lack of those statutory rights of action in the Advisers Act, the fund argues, made it much easier to imply a private right of action in *Transamerica* than it should be here.

When you read that the question presented is whether the justices should imply a private right of action, you have to know that there will be some skeptical questioning from the justices. I expect that Paul Clement (who represents the investors) will face some pretty tough questioning on that point next week, just as he did in [Cox this past Monday](#).

Posted in [Court News](#), [Merits Cases](#)

Cases: [FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.](#)

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Reincorporation Update - December 2025

 [businesslawprofessors.com/2025/12/reincorporation-update-december-2025](https://www.businesslawprofessors.com/2025/12/reincorporation-update-december-2025)

December 5, 2025



There has been some movement since the [last update](#). Here are the new proposed moves. It's one more for Nevada, and two puzzlers for Texas. One recent announcement and one newly discovered.

Nevada

Nevada picks up [Classover Holdings](#). It's another nano-cap stock with a current market cap of around \$9 million. Classover flags the franchise fees as an issue and should update its [bracket] placeholders with figures by the time of the final proxy to reveal how much it pays now. Given the market cap, I expect the franchise fee may be a material factor.

Classover also flags a concern about the Delaware litigation environment:

The increasing frequency of claims and litigation directed towards directors and officers has greatly expanded the risks facing directors and officers of public companies in exercising their duties. The amount of time and money required to respond to these claims and to defend these types of litigation matters can be substantial.

Classover also expresses a preference for Nevada's statutory approach.

Though Delaware corporate law has recently been amended to, among other things, increase protections for officers of a corporation, we believe Nevada is more advantageous than Delaware because Nevada has pursued a statute-focused approach that does not depend upon judicial interpretation, supplementation and revision, and is intended to be stable, predictable and more efficient, whereas much of Delaware corporate law still consists of judicial decisions that migrate and develop over time.

Two Texas Puzzles

Eightco Really Wants To Go

There are actually two newly identified Texas puzzles. The first is [Eightco Holdings](#). It declared for Texas on December 1. The puzzle here is where do I put Eightco? I had them on the Nevada list for 2025 because they declared for Texas in late 24 and had the unsuccessful vote in 25. Now, it appears I may have to put them on the Texas list. Maybe I just count "attempts" instead of companies attempting. The vote is set for December 16.

This is Eightco's stated rationale:

Delaware and Texas provide substantially equivalent bundles of economic, governance, and litigation rights for stockholders, balancing relevant considerations against one another and as relevant to the Company. However, there were two differentiating factors: (1) Texas statutory law on corporate constituencies would better align with the Company's mission-driven culture; and (2) Delaware has an established and respected business court and the largest body of corporate case law in the country, whereas relatively recently Texas has created a business court, but the Texas statutes are more favorable to the Company and its shareholders. The Board balanced these considerations and concluded that, in its business judgment, it is in the best interests of the Company and all its stockholders for the Company to reincorporate in Texas. The Board, in this evaluation, included an examination of the effect of redomestication on the economic, governance, and litigation rights of stockholders.

Don't get too attached to Eightco Texas; it was proposing to Nevada just last year and voting on it earlier this year. Plus, Nevada must still be on Eightco's mind because the proxy has this lovely Freudian slip on page 11 instructing shareholder-nominated directors to include "a written statement executed by the nominee acknowledging that as a director of the Company, **the nominee will**

owe fiduciary duties under Nevada law with respect to the Company and its stockholders." I'm not sure how that would happen unless Eightco is planning to run off to Vegas.

The drafting is interesting because when it originally [proposed to come to Nevada](#) at the end of 2024, the language read that "the nominee **will owe fiduciary duties under Delaware law (or Nevada law after the Redomestication)** with respect to the Company and its stockholders."

The Solidion Technology Mystery

[Lora Kolodny](#) brought [Solidion](#) to my attention. I haven't had enough time to dig into what happened yet, but here is what I know. This is a company with a market cap over \$60 million. It recently received a [grant](#) from the U.S. Department of Energy. The last proxy is a [preliminary one](#) filed on January 8, 2025. It contains a previously unreported proposal to shift to Texas. It gives usual reasons, franchise fees, the Texas Business Court, and settles on Texas because of its operational connection to the state.

I haven't found a final, definitive proxy and have not found an 8-K disclosing the results of any vote. I'm not an expert in proxies, but [Donnelly Financial](#) is and they seem to think companies have to file definitive proxies. Solidion has filed them in the [past](#). I did find [8-Ks stating](#) that people should not rely on prior financial statements. The most recent [quarterly report](#) identifies Solidion as a Delaware corporation. I haven't verified whether its in good standing in Delaware or not yet, but I would be interested to hear if anyone pays the Delaware Secretary of State's office for the goods. I ran a [search in Texas](#) and didn't find an entity with the name. It terminated Deloitte for CBIZ CPAs as its auditor. CBIZ only executes deficient audits [50% of the time](#). Nothing to see here.

And now for some wild speculation about what might have happened. I have no source on this, I'm just spitballing. With the unreliable accounting figures, I'm guessing that there is some drama behind the scenes. The curious absence of a final proxy or information about the vote makes me guess that some lawyers probably withdrew from representation. The new legal team or whoever was handling that period probably just dropped the ball on the filings. I'll poke around some more and see if I can figure this out.

The Search Method

Now that I've been going on EDGAR and running searches for some time, I thought it might be helpful to put out how I do it and flag a strange wrinkle in EDGAR.

To check for moves, I tend to run this [search](#). Essentially, I look at recent proxy materials for Delaware-incorporated companies and search for the word "Nevada." If you want to check for Texas or any other state, just change the search term. You get a lot of false positives, but it narrows it down and it's quick to click through. You can get a broader set and capture moves from other states by leaving the state of incorporation field blank.

This brings me to the strange wrinkle. EDGAR does not appear to update the state of incorporation when companies move from one state to another. For example, Cannae has been a Nevada corporation for some time, but all of its materials keep showing up because EDGAR incorrectly identifies it as a Delaware corporation. I should probably start filling out the feedback forms that the SEC pops up when you visit the website.

And with that, I have the updated lists below.

2025 Nevada Domicile Shifts

	Firm	Result	Notes
1	Fidelity National Financial	Pass	
2	MSG Sports	Pass	
3	MSG Entertainment	Pass	
4	Jade Biosciences	Pass	Jade merged with Aerovate.
5	BAIYU Holdings	Pass	Action by Written Consent
6	Roblox	Pass	
7	Sphere Entertainment	Pass	
8	AMC Networks	Pass	
9	Universal Logistics Holdings, Inc.	Pass	Action by Written Consent
10	Revelation Biosciences	Fail	97% of votes cast were for moving. There "were 1,089,301 broker non-votes regarding this proposal"
11	Eightco Holdings	Fail	Votes were 608,460 in favor and 39,040 against with 763,342 broker non-votes.
12	DropBox	Pass	Action by Written Consent
13	Forward Industries	Fail	This is New York to Nevada. Votes were 427,661 for and 96,862 against with 214,063 Broker Non-Votes. Did not receive an affirmative vote of the majority of the outstanding shares of common stock.

14	Nuburu	Fail	87% of the votes cast were in favor of the proposal. 11% against 1.6% Abstained. There were 12,250,658 Broker Non-Votes.
15	Xoma Royalty	Pass	
16	Tempus AI	Pass	
17	Affirm	Pass	
18	Liberty Live	Pending	This is a split off from a Delaware entity to Nevada
19	Netcapital	Fail	This was a proposed move from Utah to Nevada. It failed with 541,055 votes in favor and 1,456,325 votes against.
20	Algorhythm Holdings	Pending	Meeting set for Nov. 20
21	Capstone Holding Corp	Pending	Meeting set for Nov. 18
22	Oblong, Inc.	Pending	Meeting set for Dec. 17
23	HWH International Inc.	Pass	Action by written consent
24	Twin Vee PowerCats	Pending	Meeting set for Dec. 4
25	Digital Brands Group, Inc.	Pass	Action by written consent
26	Brilliant Earth Group	Pass	Action by written consent
27	NextNRG	Pending	Meeting set for Dec. 29
28	ClassOver Holdings	Pending	

2025 Texas Domicile Shifts

Firm	Result	Notes
1. Zion Oil and Gas	Pass	
2. Mercado Libre	Withdrawn	
3. Dillard's	Pass	12,791,756 votes for and 1,477,174 votes against
4. United States Antimony Corporation	Pass	Shift from Montana to Texas . 20,626,385 votes in favor. 11,816,235 against. 35,888,464 broker non-votes.
5. Exodus Movement, Inc.	Pass	Action by written consent.
6. Coinbase	Pass	Action by Written Consent
7. Solidion Technology	Unclear	A preliminary proxy dated Jan. 8, 2025, announced a proposal to shift to Texas. The most recent 10-Q identifies company as a Delaware entity. I was not able to locate an 8-k with results of the vote.
8. Eightco Holdings	Pending	They're proposing Texas, but saying shareholder nominated directors must promise to abide by Nevada law. Voting Dec. 16

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Class counsel request 20% fee in historic \$1.5B Anthropic deal

DJ [dailyjournal.com/articles/388841-class-counsel-request-20-fee-in-historic-1-5b-anthropic-deal](https://www.dailyjournal.com/articles/388841-class-counsel-request-20-fee-in-historic-1-5b-anthropic-deal)

Rachel Geman of Lieff Cabraser

Plaintiffs' lawyers who represent authors and publishers, led by Lieff Cabraser Heimann & Bernstein LLP and Susman Godfrey LLP, asked a federal judge for \$300 million in attorney fees along with additional expenses for reaching a \$1.5 billion settlement of their copyright infringement lawsuit against Anthropic PBC.

In a motion filed Thursday morning, attorneys for the class requested 20% of the recovery, which they said was "markedly below" the 25% benchmark for a reasonable fee award in the 9th U.S. Circuit Court of Appeals.

Senior U.S. District Judge William Alsup of San Francisco granted preliminary approval Sept. 25 of the settlement between the authors and publishers and Anthropic, which makes the Claude AI chatbot.

Notices to affected authors and publishers, as well as any objections, are due next, and a judge must give the agreement final approval. It might be a different judge, as Alsup indicated during the September hearing that he "hopes to step off the bench at the end of the year."

Lieff Cabraser partner Rachel Geman and Susman Godfrey partner Justin A. Nelson quoted Alsup's complimentary remarks about the tentative settlement in their motion for attorney fees.

"Each factor courts consider under the percentage-of-the-fund method supports awarding the requested 20% fee to Class Counsel," the lawyers wrote.

"The request is significantly below this Circuit's presumptively reasonable 25% benchmark -- and it is so despite Class Counsel securing the largest known copyright settlement in history, which is among the most significant class action settlements," they added.

Class counsel also asked for reimbursement of costs and expenses of nearly \$1.97 million that were incurred during the litigation, as well as \$50,000 in service awards to compensate the class representatives. *Bartz et al. v. Anthropic PBC*, 24-cv-05417 (N.D. Cal., filed Aug. 19, 2024).

Under terms of the proposal, the two leading firms that represented the plaintiffs, Lieff Cabraser and Susman Godfrey, would split 75% of the recovery. Oppenheim & Zebrak LLP and Edelson PC would get 12.5% and 7.5% of the settlement, respectively. Cowan, DeBaets, Abrahams & Sheppard LLP would receive 5%.

Geman and Nelson wrote that the case was "teeming with risk," and noted that before this lawsuit, no court had found an AI company liable for copyright infringement, held that piracy by an AI company constituted copyright infringement or certified a class in such a complaint.

They cited several other attorney fee awards in class cases, with percentages ranging from 20 to 33%, including in several California cases.

Deborah R. Hensler, a professor at Stanford Law School who is not involved in the lawsuit, wrote in an email that, "the fee request in the Anthropic class action seems reasonable to me."

"The best data from the early 2000s (up to about 2013), for all class actions for which researchers were able to collect fee data, show average percent of fund recoveries of about 25 percent, as cited in the brief, with the percentages declining as the size of the recovery increases," she continued.

Hensler wrote that judges have sometimes awarded much smaller amounts in attorney fees, such as in the Volkswagen "dieselgate" case, but that was because the company conceded liability. *In re: Volkswagen Clean Diesel Marketing, Sales Practices and Product Liability Litigation*, 15-MD-02672 (N.D. Cal., filed Dec. 8, 2015).

Anthropic, by contrast, had not conceded anything and was preparing to go to trial. The company was represented by high-powered law firms, including Morrison & Foerster LLP, Arnold & Porter Kaye Scholer LLP, Cooley LLP, Latham & Watkins LLP and Lex Lumina LLP.

The company and its attorneys could not be reached for comment. Plaintiff's counsel also could not be reached.

#388841

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Authors' lawyers in \$1.5 billion Anthropic settlement seek \$300 million

 [reuters.com/legal/litigation/authors-lawyers-15-billion-anthropic-settlement-seek-300-million-2025-12-04](https://www.reuters.com/legal/litigation/authors-lawyers-15-billion-anthropic-settlement-seek-300-million-2025-12-04)

Mike Scarcella

December 4, 2025

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

WASHINGTON, Dec 4 (Reuters) - Attorneys for authors and publishers in the \$1.5 billion landmark copyright settlement with artificial intelligence company Anthropic have asked a federal judge in California to award them \$300 million in legal fees.

The lawyers, from law firms Susman Godfrey and Lieff Cabraser, [filed their request, opens new tab](#) on Wednesday in the federal court in San Francisco. The fee bid, amounting to 20% of the settlement fund, requires a judge's approval. Anthropic agreed to the settlement in October to resolve claims that it trained AI models on hundreds of thousands of pirated books. The company also agreed to destroy pirated datasets and certify that those works were not used in its commercial AI models like Claude.

The lead attorneys have called the accord, which requires Anthropic to pay class members more than \$3,000 per copyrighted work, the largest reported copyright class action settlement in history.

Anthropic did not immediately respond to a request for comment. The authors' lead attorneys declined to comment.

Anthropic denied any wrongdoing in agreeing to the settlement, which [won preliminary approval, opens new tab](#) in September. The terms allow Anthropic to challenge the requested fee amount.

The lawyers called their bid "conservative" when compared to other so-called megafund settlements, and said the 20% request falls below a higher benchmark in cases in California and other western states. They said they invested more than 26,000 hours of work in the case, which they said was "teeming with risk."

Authors have until Jan. 15 to decide whether to opt out of the class action and potentially file their own lawsuits.

U.S. District Judge William Alsup will weigh the fairness of the settlement and the arguments of authors who have objected to the deal at a hearing in April.

The case is Andrea Bartz et al v. Anthropic PBC, U.S. District Court, Northern District of California, No. 3:24-cv-05417-WHA.

For plaintiffs: Justin Nelson of Susman Godfrey; and Rachel Geman of Lieff Cabraser Heimann & Bernstein

For defendant: Douglas Winthrop of Arnold & Porter Kaye Scholer; Kathleen Hartnett of Cooley; Daralyn Durie of Morrison & Foerster; and Mark Lemley of Lex Lumina

Read more:

[Google to pay \\$190 million in legal fees to Texas' law firms in privacy settlement](#)

[Big Law rates for small firms? US appeals court takes up fee fight](#)

[Lawyers behind \\$700 million Google settlement ask for \\$85 million fee award](#)

[Epic Games seeks \\$205 million in legal fees from Google after trial win](#)

[More lawyers join the \\$3,000-an-hour club, as other firms close in](#)

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California Brief

Authors' Lawyers in Anthropic AI Settlement Ask for \$300 Million

December 4, 2025, 9:15 AM PST

Lawyers representing a group of authors who sued Anthropic PBC over its AI training process are seeking 20% of the landmark \$1.5 billion class-action settlement fund as attorneys' fees.

In addition to the roughly \$300 million in fees, the class counsel also asked for \$1.97 million in unreimbursed litigation expenses and a \$17-million reserve fund for future expenses, according to a motion filed Wednesday in the US District Court for the Northern District of California. The motion also asks for a service award of \$50,000 for each of the three named plaintiffs in the case: Andrea Bartz, Charles Graeber, and Kirk Wallace Johnson.

In the Sept. 5 motion seeking preliminary approval of the settlement, the lawyers said they would seek a fee award that of as much as 25% of the settlement fund. Wednesday's motion also said the 20% ask is a lower than the 25% benchmark for fee awards in the Ninth Circuit.

Lawyers from Susman Godfrey LLP and other firms representing the plaintiffs spent more than 18,000 hours on the case, according to the motion, which argues the time spent was reasonable in a complex case taken on contingent-fee basis against a well-funded and sophisticated defendant. Class counsel from Susman Godfrey and Lief Cabraser Heimann & Bernstein LLP would split 75% of the fees award.

Judge William Alsup has previously been dubious about how the terms of the settlement—the largest publicly disclosed award in a US copyright action—are being worked out. Before granting preliminary approval in September, he expressed skepticism over roping in more lawyers to work out the terms of the settlement, saying there would “not be one penny paid to any lawyer except class counsel,” according to a hearing transcript.

In Wednesday's motion, the class' attorneys said coordination counsel for the publishers and author groups from Edelson PC, and Oppenheim & Zebrak LLP, and Cowan Debaets Abrahams & Sheppard LLP helped boost the size of the works list covered by the settlement and would receive the remaining 25% of the fees.

Anthropic is represented by Arnold & Porter Kaye Scholer LLP, Cooley LLP, Latham & Watkins LLP, Lex Lumina LLP, and Morrison & Foerster LLP.

The case is Bartz v. Anthropic PBC , N.D. Cal., No. 3:24-cv-5417, motion filed 12/3/25 .

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Expert faces sharp cross-examination in Johnson & Johnson talc trial

DJ [dailyjournal.com/articles/388842-expert-faces-sharp-cross-examination-in-johnson-johnson-talc-trial](https://www.dailyjournal.com/articles/388842-expert-faces-sharp-cross-examination-in-johnson-johnson-talc-trial)

Johnson & Johnson's first witness in its defense against claims its talc causes cancer faced hours of scrutiny Thursday over her assertion that talc particles cannot migrate to the ovaries and her lone conclusion, compared to other pathologists, that a plaintiff's cancer was low grade rather than high grade.

After the plaintiffs rested their nearly three-week case Wednesday afternoon in Los Angeles County Superior Court, Stanford University pathologist Brooke Howitt returned to the stand the next morning under extensive cross-examination from Alabama plaintiffs' attorney Andy Birchfield of Beasley Allen Law Firm.

The proceeding is the first bellwether trial in California's coordinated talc litigation addressing whether Johnson & Johnson's talcum powder products can cause ovarian cancer.

Howitt's expert testimony sought to rebut allegations that long-term genital use of the company's baby powder caused the plaintiffs' cancer diagnosis. The company, represented by Kirkland & Ellis LLP, argues extensive epidemiological research shows no causal link and that its talc products have always tested asbestos-free.

By contrast, the plaintiffs - also represented by Robinson Calcagnie Inc. - told jurors that internal company documents and scientific literature demonstrate both risk and corporate knowledge.

During cross-examination, Birchfield pressed Howitt on the basis for her conclusions, beginning with whether she had researched talc or asbestos migration before being retained. "I had not looked into the literature myself," she testified, later stating that she had not seen any research showing talc can reach the ovaries. Asked whether she was assuming migration is impossible, she replied, "I have not seen evidence to show that it can't."

Birchfield then confronted her with a textbook she helped write, which discusses concerns that talc "may potentially increase ovarian cancer risk," and references studies reporting a "small but consistent increased risk" in some populations. Howitt said she was neither the author nor editor of the chapters Birchfield was referencing.

"It doesn't mean that I agree with every sentence in this entire textbook," she said.

Jurors were shown a 2021 FDA Interagency Working Group white paper on particle migration through tissues and organs, which Howitt downplayed as irrelevant and based on exposure pathways she said did not apply to perineal talc use by women.

This led to a lengthy sidebar during a prolonged jury break where the plaintiffs' counsel, joined by Robinson Calcagnie partner Daniel S. Robinson, argued to Superior Court Judge Theresa M. Traber that the defense had improperly introduced a slide on tissue contamination, along with testimony from Howitt identifying supposed contamination in the plaintiffs' samples.

Kirkland & Ellis partners Allison M. Brown and Kuan Huang, for Johnson & Johnson, countered that the slide had been produced earlier in the week and that Howitt had already testified that "contamination can occur," arguing the challenged image was merely an example of opinions she had previously disclosed.

Traber disagreed, noting that pointing to a specific area on a slide went beyond Howitt's disclosed opinions, saying the testimony "was not provided during the deposition," and that identifying a particular example of contamination was "a very different thing" from merely stating contamination can occur.

The judge struck both the slides and testimony, telling jurors once they returned from break that the materials were excluded.

Cross-examination then shifted to Howitt's determination that one of the plaintiffs' cancer was low-grade rather than high-grade, as diagnosed by multiple pathologists who treated or reviewed her case between 2014 and 2018.

Walking jurors through the reports, Birchfield noted each doctor identified high-grade serous carcinoma. "You're the only one," he told Howitt. "Are you telling the jury that these doctors ... who rely on these pathologists to set out a course of treatment, would you describe that as malpractice?"

Howitt said it wasn't her place to determine what is and what isn't malpractice. "I can tell you that those pathologist diagnoses were incorrect," she added. She maintained that her review focused solely on the microscopic appearance of the tumor and that, in her view, the features she observed did not meet the criteria for a high-grade diagnosis, despite the other doctors' conclusions.

"I'm not an epidemiologist," Howitt told Birchfield after he pressed her on how her conclusions affect epidemiology studies, many of which assess ovarian cancer as a single category without distinguishing between low- and high- grade tumors, according to the plaintiffs.

Closing arguments are expected next week. *Johnson & Johnson Talcum Powder Cases*, JCCP4872 (L.A. Super. Ct., filed Aug. 2, 2016).

#388842

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News from Bloomberg Terminal

A Retracted Study on Roundup Reignites Debate Over Its Potential Cancer Risk

December 5, 2025, 11:11AM PST

The 2000 study in the scientific journal Regulatory Toxicology and Pharmacology had concluded that the active ingredient in Roundup, glyphosate, did not pose a cancer risk to humans.

By Amudalat Ajasa

(Washington Post) -- A scientific journal has retracted a bedrock study that found that glyphosate - the active ingredient in one of the most widely used herbicides on the planet - does not pose a human health risk, igniting a fresh debate over the chemical's possible link to cancer.

Scientists and regulators have worked for years to determine whether glyphosate - the active ingredient in Roundup, which was produced by Monsanto until the company was acquired by Bayer in 2018 - causes cancer. European and U.S. officials have not classified it as a carcinogen, while the World Health Organization deemed it "probably carcinogenic to humans" in 2015.

Last Friday the scientific journal Regulatory Toxicology and Pharmacology retracted a 2000 study that concluded "under present and expected conditions of new use, there is no potential for Roundup herbicide to pose a health risk to humans."

The retraction from the co-editor in chief said evidence suggests that Monsanto employees "may have contributed to the writing of the article without proper acknowledgment as co authors," the study's authors may have been paid by Monsanto without disclosing it and that the findings about its cancer risk "are solely based on unpublished studies from Monsanto."

Noting that the paper "had a significant impact on regulatory decision-making regarding glyphosate and Roundup for decades," the journal concluded that it has "lost confidence in the results and conclusions of this article, and believes that the retraction of this article is necessary to maintain the integrity of the journal."

The Environmental Protection Agency, which is slated to announce an updated human health risk assessment for glyphosate next year, cited the paper in its 2016 review of glyphosate. It later determined that the pesticide ingredient was "not likely to be carcinogenic to humans."

But EPA press secretary Brigit Hirsch said in a statement that retraction would not affect its stance because it does not directly rely on review articles to inform its pesticide risk assessments. She added that the study was used as a source to find other relevant studies and ensure that the agency had the most complete database for health risk assessment for glyphosate, but was not used on its own.

"The retraction of this publication has no impact on EPA's glyphosate assessment, which has historically reviewed more than 6,000 individual studies across all disciplines, including human and environmental health," Hirsch said.

Monsanto's influence over the study was discovered through internal emails during federal litigation against the company in 2017. Bayer has spent roughly \$10 billion to settle lawsuits arguing that the company did not warn customers about the negative health impacts of using Roundup.

In a statement, Bayer defended the chemical's safety and said Monsanto's involvement was appropriately cited in the acknowledgments.

"Glyphosate is the most extensively studied herbicide over the past 50 years. Thousands of studies have been conducted on the safety of glyphosate products," said Bayer spokesman Brian Leake. "The vast majority of published studies on glyphosate had no Monsanto involvement."

But advocates and scientists say that the study, one of the most-cited papers on glyphosate safety, underpinned federal regulations for the pesticide and that the retraction raises questions about the scientific literature that followed it.

Scientists who have studied the health effects of glyphosate on humans said the retracted study led people to prematurely believe in glyphosate's safety and dissuade policymakers from regulating it.

"It got us off on the wrong course," said Brenda Eskenazi, a professor at the University of California at Berkeley's School of Public Health.

Alexander Kaurov and Naomi Oreskes, who requested the retraction, published research in September that found the paper is in the top 0.1 percent of cited academic literature on glyphosate. Oreskes, a professor of the history of science at Harvard University, said the manipulation and distortion of the scientific literature means that the "very foundation for decision-making has been undermined."

"Even if EPA doesn't rely on this one, it relies on many other papers that rely on this review," said Kaurov, a PhD candidate at the School of Science in Society at Victoria University of Wellington. "It's impossible to come up with any decision without relying on studies that rely on this review."

The controversy over the study comes as the Trump administration has backed Bayer's efforts to obtain legal immunity from these lawsuits.

The Office of Solicitor General filed a brief in support of Bayer on Tuesday, arguing that failure-to-warn lawsuits in state courts are preempted by federal law. Bayer is challenging a Missouri failure-to-warn lawsuit, where a jury awarded \$1.25 million to a man who claimed he developed non-Hodgkin's lymphoma from exposure to Roundup.

"For decades, EPA has classified glyphosate as a chemical that is not likely to be carcinogenic in humans, and the agency has approved hundreds of labels for Roundup and other glyphosate-based products without requiring a cancer warning," the brief stated.

Bayer has also sought to obtain immunity from legal liability connected to glyphosate on the state level and in Congress.

At the same time, debates about glyphosate's potential health risks have revealed deep divisions between the Trump administration and its "Make America Healthy Again" allies.

Health and Human Services Secretary Robert F. Kennedy Jr., whose department does not directly oversee pesticide regulation, has criticized them for years. He tweeted last year that glyphosate was "one of the likely culprits in America's chronic disease epidemic" and, in a social media post five years ago, called Monsanto "the enemy of every admirable American."

As an environmental lawyer, Kennedy was part of a team that in 2018 won a \$289 million judgment against Monsanto over claims the weed killer caused cancer.

The administration's backing of Bayer's immunity push has drawn criticism from MAHA activists.

Vani Hari, an author, activist and Kennedy ally known as the "Food Babe," said that if Bayer receives a liability shield, MAHA activists will shift their support, impacting leaders and future elections.

"We want President Trump to uphold his promise to safeguard American families from toxic pesticides," Hari said.

[Click Here](#) to see the story as it appeared on the Washington Post website.

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California Brief

Google, Flo App Data Privacy Settlement Sees Likely Approval

December 4, 2025, 2:26 PM PST

Google LLC and Flo Health Inc.'s multi-million dollar data privacy settlements with users of the popular menstrual tracking app will likely get initial approval by a California federal court.

Judge James Donato at a hearing Thursday said he was fine with the overall settlement plans, which amount to a \$48 million payout from Google and an \$8 million payout from Flo to be distributed to around 12 million Flo users across the nation.

But the judge said he wouldn't give preliminary approval to the plans until the parties work on alerting more class members about their settlement payouts. The class claims administrator estimated that around 6% of eligible class members will file claims.

"You need to get that up to double digits, high double digits," Donato said at the hearing in the US District Court for the Northern District of California.

The details of the settlement plans come after a first-of-its-kind jury trial this summer over claims that Google and Meta Platforms Inc., another defendant in the case, illegally intercepted the private menstrual health data of millions of Flo users.

The class action, first filed in 2021, claimed that Meta and Google's software development kits embedded in the Flo app allowed them to record answers to questions about users' pregnancy goals and details about their most recent periods.

Google settled the case ahead of the trial, and Flo reached a settlement the day before the case was set to go to the jury. After three hours of deliberation, the jury found that Meta had violated the California Invasion of Privacy Act by eavesdropping on Flo users' answers. Meta faces potentially billions of dollars in damages under the law.

Class attorney Carol Villegas of Labaton Keller Sucharow LLP said at the Thursday hearing that the average recovery for claimants would be between \$25 and \$90. Those in the California sub-class, which would be between 1.4 million and 1.6 million users, would get double the amount, she said.

Villegas said the plaintiffs have obtained about 3 million emails of users from Flo, and they're working on additional methods to identify class members who didn't input their email into the app. Bryan Heller of the company ClaimScore, which is working on identifying class members, said they can likely bring the number of identified class members up to 5 million by connecting IP addresses and other data points.

Villegas said Flo will put banner ads about the settlement on its app, and it will advertise on Facebook, Instagram, YouTube, and Pinterest. Donato requested Flo also put advertisements on TikTok.

Lowey Dannenberg PC and Spector Roseman & Kodroff PC are also part of the plaintiffs' co-lead counsel. Cooley LLP represents Google. Dechert LLP represents Flo.

The case is *Frasco v. Flo Health Inc.*, N.D. Cal., No. 3:21-cv-00757, 12/4/25 .

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What the Legal Battle Between the New York Times and OpenAI Means for E-Discovery

Lawsuits involving artificial intelligence developers may require unique data strategies, but enterprises and lawyers of all types will need to learn how to handle gen AI data.

December 02, 2025 at 04:35 PM By  **Benjamin Joyner**

What You Need to Know

- A discovery dispute in The New York Times' copyright infringement suit against OpenAI has raised broader e-discovery issues.
- Gen AI models suffer from a black box problem, complicating relevance determinations in disputes related to how underlying models work.
- Proper handling of gen AI data is likely to grow in importance for a broad array of disputes as adoption grows.



Credit: mh.desing/Adobe Stock

The copyright infringement [suit brought](#) by The New York Times against OpenAI in December 2023 has raised a host of intellectual property issues. Recent developments in the case, however, have also implicated important e-discovery and privacy topics.

On Nov. 7, U.S. Magistrate Judge Ona Wang of the Southern District of New York ordered OpenAI to turn over a sample of 20 million anonymized ChatGPT chat logs in response to a request from the Times. OpenAI objected to the order in a Nov. 12 letter, arguing that a majority of the requested logs were irrelevant, and that turning them over would violate its users' privacy rights.

Not only does the discovery dispute raise concerns for OpenAI, but it could also carry broader implications for other potential litigants.

The New York Times declined to comment on the case, which is captioned [*The New York Times v. Microsoft*](#). OpenAI referred Legaltech News to a Nov. 12 [blog post](#) laying out the company's objections to producing the chat logs. In a subsequent court filing, the company reiterated its request for reconsideration and said that the process of anonymizing the requested chat logs would take until at least the end of November; the original order to turn over the logs required them to be produced within seven days of the completion of the anonymization process.

Developers Are Unique Litigants

Open AI argued in its letter that Wang's order "sets a dangerous precedent," suggesting that "anyone who files a lawsuit against an AI company can demand production of tens of millions of conversations without first narrowing for relevance." OpenAI's attorneys contrasted such a possible approach to the way users' emails might be treated in a suit against Google.

But the very nature of generative artificial intelligence systems may require unique discovery approaches in lawsuits involving their developers. Gen AI models suffer from a black box problem, in which even their creators can struggle to fully explain how they work and what data they are drawing on to provide outputs. Proving allegations such as the use of copyrighted material can require looking at the results gen AI systems provide users, making it challenging to determine relevance to the case.

"The New York Times is really just trying to find the answer to 'was the OpenAI large language model trained on copyrighted New York Times content?'" said Brett Burney, vice president of e-discovery consulting at Nextpoint Law Group, e-law evangelist at Nextpoint and principal of Burney Consultants. He added that looking at chat logs was one of several methods the plaintiff was using to attempt to find evidence of infringement, in addition to looking at OpenAI source code and seeking communications between engineers.

"You're trying to find out, 'OK, how are users, or general users, trying to prompt ChatGPT, so that they could regurgitate a New York Times article?'" he added.

Beyond requiring different types of evidence, lawsuits against developers will generally involve different causes of action than cases against deployers.

"OpenAI (and other frontier model developers) are being sued for the methods and data used to create their tools, whereas enterprise deployers will be sued for their use of it," Nelson Mullins Riley & Scarborough partner Jeff Kelly told Legaltech News in response to written questions.

"Some states are enacting laws that hold both developers and deployers liable for certain disparate impacts of biased models, but the more common discovery request will focus on a prompt sent to a corporate chatbot."

While these issues stand to significantly impact companies like OpenAI, they are likely to be of limited relevance beyond cases involving developers. In cases involving deployers of gen AI systems, discoverability of gen AI data will hinge much more on traditional factors.

"Whether it's a prompt or an output, input, no matter what, ... if it's [electronically stored information] that is relevant and not privileged, it should be produced," said Burney, who is on a brainstorming group on the question for the Sedona Conference.

Data Types May Matter More Than Volume

While some issues in the lawsuit are unique to gen AI developers, the case also raises the question of how equipped parties are to handle the preservation, production and use of gen AI data, an issue likely to grow in importance as increasing numbers of companies and individuals adopt gen AI-powered tools.

"While the raw volume of data might seem manageable compared to massive antitrust cases, the topology of the data is the real challenge," Kelly said. "Unlike emails, PDFs, or other common documents, gen AI interactions are dynamic, nonlinear streams often stored in complex ... or unstructured formats that do not render naturally for human review."

At the recent Georgetown Law Advanced eDiscovery Institute, members of a panel focused generally on the intersection of gen AI and e-discovery [noted](#) that preserving, producing and parsing gen AI data such as inputs, outputs and system data present novel challenges as the field grapples with how to manage new data types.

Robert Keeling, a partner at Redgrave, noted that, unlike emails, which tend to stay grouped in chains, prompts and outputs often show up as separate, disaggregated documents in discovery. This issue is compounded by the way gen AI models produce "artifacts," byproducts through

which they essentially show their work. Together, these factors mean that gen AI systems produce unprecedented amounts of data, much of which can be confusing and hard to place in context.

Pearl Robertson, a partner at plaintiffs firm Irpino Avin Hawkins, noted at the Georgetown Institute that the complexity of parsing gen AI data may induce a change of strategy for requesting parties. “For once, plaintiffs don’t want more,” she said.

While requesters typically want as much data as they can get their hands on, such as file paths and date stamps, the existence of artifacts can threaten to swamp requesting parties with unhelpful information, making the meet-and-confer process more important than ever.

Burney told Legaltech News that, for cases not involving developers, simply locating gen AI data could prove to be a challenge. Even when the data can be found, the effort required to locate it and extract it in a usable form may eclipse the value of that data to a case.

“If it's technically extremely difficult to even understand where it's being stored, how is it being stored, what formats can it be collected in and actually produced to the other side, that's where we can start to bubble up some of those proportionality arguments,” he said.

Beyond the location of data, producing it in a comprehensible and usable format remains a challenge. “Unlike a static email, chat logs often lack clear document boundaries, making it technically difficult to capture the full context of the conversation without over-collecting,” Kelly noted. “For gen AI specifically ... the challenge is even greater: a ‘chat log’ isn’t just text, it’s a system state. It includes the ‘temperature’ settings, the specific model versions (e.g., GPT-3.5 vs. GPT-4, etc.), and the system prompt active at that time.”

Burney said that the industry would likely need time to develop technologies and techniques devoted to capturing gen AI data, much as it had for previous technologies like cellphones and workplace messaging apps like Slack. At present, the field largely lacks commonly understood standards for producing gen AI inputs, outputs and metadata.

“We're not there with gen AI prompts,” he said. “We could collect all of the prompts, the outputs, the entire conversation, ... but how do I know that that is exactly I'm looking at, exactly what it spit out, that that was the exact prompt and I made the changes to it.”

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The Live Nation litigation minefield: lessons from a legal crossroads for the live entertainment industry and beyond

 [reuters.com/legal/legalindustry/live-nation-litigation-minefield-lessons-legal-crossroads-live-entertainment--pracin-2025-12-03](https://www.reuters.com/legal/legalindustry/live-nation-litigation-minefield-lessons-legal-crossroads-live-entertainment--pracin-2025-12-03)

Meredith Strauss, Mindy Lewis, Jon-Jamison Hill

December 3, 2025

Live Nation Entertainment logo is seen in this illustration taken May 23, 2024.

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

December 02, 2025 - Few lawsuits have the potential to reshape an entire industry. But Live Nation, long the dominant force in live entertainment, now faces a cascade of legal challenges that could do just that. For companies in the live entertainment and production sector, or those relying on mass arbitration clauses, exclusivity provisions, or vertically integrated platforms, the outcome could reconfigure the legal framework that has governed their operations for decades.

A perfect storm of litigation

Filed in January 2022, Skot Heckman v. Live Nation Entertainment, Inc. is a pending putative class action that challenges the very model on which Live Nation has built its empire. Plaintiffs in that case allege that Live Nation and Ticketmaster overcharge consumers and stifle competition in violation of the Sherman Act.

The dispute has yet to be fully litigated on the merits, as Defendants swiftly moved to compel arbitration in March 2022, invoking an arbitration clause in Ticketmaster's terms of purchase. The district court held that the mass arbitration clause was procedurally and substantively unconscionable under California law.

The 9th U.S. Circuit Court of Appeals affirmed, reiterating the district court's reasoning that the mass-arbitration protocol, including batching procedures, limited discovery, restricted appeal rights, and one-sided arbitrator-selection provisions, rendered the agreement unenforceable.

Defendants' petition to the United States Supreme Court for certiorari was denied in October 2025. The standing 9th Circuit ruling signals broader implications for corporate arbitration practices nationwide, including potential constraints on the use of these mass-arbitration mechanisms and the risk that, if litigated, a court

would find arbitration agreements containing them unenforceable. This development gives future challengers to arbitration clauses greater leverage in a legal landscape where public policy generally favors arbitration.

Two government actions followed Heckman's filing. In May 2024, the U.S. Department of Justice, joined by nearly 30 state attorneys general, filed an expansive antitrust lawsuit in the Southern District of New York. Their complaint accuses Live Nation of maintaining an unlawful monopoly through exclusive venue contracts, bundling, and retaliatory conduct. Then, in September 2025, the Federal Trade Commission filed a separate suit alleging unfair and deceptive practices designed to entrench Ticketmaster's dominance in ticketing and live events.

While Live Nation and Ticketmaster have publicly denied several of the FTC's allegations, they have also announced forthcoming policy changes aimed at reducing the likelihood of ticket brokers and bots over real fans, and, in turn, curbing high resale prices, as reported in Forbes, "Ticketmaster Promises Overhaul — Crackdown Targets Scalpers," Oct. 20, 2025.

While criticism of Ticketmaster's dominance has simmered for decades, this convergence of private and public action signals something new. At play are three potent forces: (1) federal agencies' commitment to dismantling consolidated market power, (2) consumer frustration over skyrocketing fees and "dynamic pricing," and (3) growing judicial skepticism toward mandatory arbitration clauses in online clickwrap agreements.

Together, these pressures have created an inflection point in the future of ticketing and the legal scaffolding of the live entertainment industry. Potential ripple effects could reach companies in other industries that are highly concentrated, incorporate ticketing practices, and/or utilize mass-arbitration clauses.

Exclusive deals and market power under scrutiny

Central to all three actions is a shared theory: Live Nation's integrated control over promotion, ticketing, and venues gives it unparalleled leverage across the industry. In their respective filings, the Heckman plaintiffs and the DOJ argue that Live Nation's exclusive contracts with major venues effectively lock out rivals and create structural barriers to entry.

This is not the DOJ's first antitrust scrutiny of Live Nation. The agency imposed a consent decree on Live Nation and Ticketmaster in 2010 following their merger and extended it in 2020. Despite that ongoing oversight, the DOJ returned to

court in 2024, alleging Live Nation continues to abuse its market power. The DOJ's latest action suggests the agency is increasingly skeptical of vertical integration — the combination of two or more stages of production under the umbrella of one parent company — when they believe consumer choice is being curtailed.

Live Nation and Ticketmaster have filed for summary judgment, as reported in *Billboard*, arguing that Ticketmaster has in fact lost over 30 points of market share since the merger, and the DOJ utilizes a narrowed market definition to argue monopoly. "Live Nation Moves to Crush DOJ Antitrust Case With Motion to Dismiss," *Billboard*, Nov. 19, 2025.

The FTC enters stage right

The FTC's recent complaint adds new urgency. It alleges that Live Nation and Ticketmaster have stifled competition through retaliation, restrictive bundling, and opaque business practices that mislead both fans and artists.

According to the complaint, Live Nation penalized venues for using rival ticketing platforms, bundled promotion and ticketing in ways that narrowed options, and deployed resale systems that lacked transparency and inflated costs. The lawsuit seeks to unwind parts of Live Nation's business structure, signaling a regulatory appetite for structural change.

If successful, it could partially dismantle the Live Nation/Ticketmaster merger and become one of the most significant antitrust interventions in the modern entertainment industry.

Implications for the entertainment industry

Heckman and the government actions create a legal stress test for business practices across the live events sector. If exclusivity clauses are invalidated, companies may need to rethink long-term venue contracts. If mass arbitration provisions continue to fall, the door opens to coordinated class litigation, which has long been avoided by relying on one-sided terms.

Reputational risk also looms large. In the age of social media, negative press can trigger consumer backlash faster than courts can rule. Once eroded, public trust is difficult to restore, even if companies ultimately prevail in court.

Beyond the 9th Circuit

Although the 9th Circuit has ruled on arbitration, the core antitrust and consumer protection claims remain active in federal district courts. The litigation is entering a new phase — one that may involve contentious discovery, high-stakes motion practice, and precedent-setting trials.

In parallel, the DOJ and FTC appear to be coordinating enforcement strategies, advancing a more interventionist posture toward dominant platforms. This could extend well beyond entertainment to any sector where one company controls access to both infrastructure and audiences.

Takeaways for in-house counsel and dealmakers

For legal and business teams, the lesson is clear: Review your contracts now. Arbitration clauses should be fair, visible, and provide meaningful opt-outs. Exclusivity and bundling provisions should be carefully drafted, supported by pro-competitive justifications, and regularly revisited as market conditions change.

Companies operating at the intersection of content, infrastructure, and consumer access should conduct internal audits of their pricing models, loyalty strategies, and dispute resolution frameworks. Transparent terms and flexible structures are more defensible than rigid, risk-heavy defaults.

The final act?

The convergence of Heckman, the DOJ's lawsuit, and the FTC's enforcement action marks a pivotal moment. Whether or not these efforts result in a formal breakup or blockbuster verdict, one truth is undeniable: Market dominance and boilerplate contracts are no longer shielded from meaningful legal challenge.

The next chapter of the live entertainment industry, and perhaps others, will be written not only on stage, but in courtrooms and boardrooms across the country.

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What Is Driving a Record Litigation Surge Across Los Angeles and Orange County Courts?

A new report by legal analytics platform Lex Machina has found that emerging tech, artificial intelligence and economic headwinds are fueling a record surge in litigation across state and federal courts throughout Los Angeles and Orange counties.

December 03, 2025 at 06:44 PM By  **Kat Black**



Credit: Maksim Kabakou/stock.adobe.com

A new report by legal analytics platform Lex Machina has found that emerging tech, artificial intelligence and economic headwinds are fueling a record surge in litigation across state and federal courts throughout Los Angeles and Orange counties—marking Southern California as "one of the most active litigation hubs" this year and, most likely, well into 2026.

According to the [report](#), released Nov. 24, more civil lawsuits were documented in Los Angeles and Orange County Superior courts in 2024 than in any year since at least 2016, and the caseload in the U.S. District Court for the Central District of California reached a potential "all-time high," with more civil suits recorded in 2024 than in any year since at least 2009.

This rapid growth wasn't consistent across the board, noted the report's authors, Chuan Qin and Adam Mills Masarek, but was driven primarily by three practice areas: lemon law suits filed under California's Song-Beverly Consumer Warranty Act; consumer collections; and employment and labor disputes.



Trial courts in and around Los Angeles have heavier civil caseloads than ever, driven in large part by consumer collections, "Lemon Law" claims, and labor disputes. Credit: Lex Machina

Masarek said in an interview that, more broadly, an uptick in these three types of claims is likely being shaped by two forces: the widespread use of AI-powered large language models and "general economic pressures," including inflation and shifting job markets.

In the case of lemon law claims, he said, plaintiffs are more willing to pursue litigation over inadequate vehicles as they contend with record levels of sticker shock: In September, the average price of a new car surpassed \$50,000 in the U.S. for the first time, according to a report by [Kelley Blue Book](#). Lex Machina found that plaintiffs filed more than 17,000 lemon law claims in Los Angeles and Orange counties in 2024—three times as many as those filed in 2021.

"So we're talking about property damage that is more significant to individuals in small business than perhaps it used to be," he said.

The plaintiff's bar is also turning more and more to AI to automate legal services—leading to an explosion in consumer collections claims, added Masarek.

"These technologies are actually reducing the transactional cost, if you will, for plaintiff's collection firms to pursue these types of cases," he said, noting that the report cited a study from the [National Center for State Courts](#) linking AI and other emerging tech tools to the increased number of collection lawsuits, which skyrocketed to over 112,000 new filings in the Los Angeles County Superior Court—a 40% increase from 2023. Comparable figures were seen in Orange County courts, the report said.

"It makes [it] easier to draft the pleadings and related motions and filings, whereas in the past, even ... a small dollar value would need an attorney or more than one attorney to be intimately involved in the process ... but much of those documents can be generated much more quickly, making it easier for a lot of these collection agencies to pursue these cases."

According to the report, in 2024, plaintiffs filed more than 8,600 employment-law actions in the Los Angeles County Superior Court alone—a year-over-year increase of over 17% and "the highest annual total since at least 2016." The Central District of California also logged more labor and employment lawsuits in 2024 than any year since at least 2009—and, "as of late 2025," caseloads in both courts "are on track to break these records again," the report said.

"And what's especially notable here is that it's not really attributable to any specific industry or sector," said Masarek. This trend, he said, could be traceable to general economic instability and the wrench AI-automated processes have thrown into the labor market.

"... This is a particularly tough market in a lot of sectors right now, and these workplace disputes tend not to arise unless things are not working out [smoothly] at the workplace. [There's] kind of an economic tie-in with that.

"But it's also technological as well. ... It's not like a few years ago where we were seeing an increasing proportion of litigation involving rideshare apps and the disputes regarding whether they counted as employees or contractors. Those cases are still around, but they're not taking up the big portion of these or anything like that. We're seeing employees and contractors upset throughout industries in California."

Qin said in an interview that this surge shows no signs of slowing down: As long as nothing changes on the legislative or regulatory front, litigation in Southern California will maintain upward momentum as firms leverage new technologies to reach more plaintiffs.

"I think the trend will continue," she said.

Tom Goldstein fights to sell home as tax trial looms

 [reuters.com/legal/government/tom-goldstein-fights-sell-home-tax-trial-looms-2025-12-04](https://www.reuters.com/legal/government/tom-goldstein-fights-sell-home-tax-trial-looms-2025-12-04)

David Thomas, Mike Scarcella

December 4, 2025

A man opens his briefcase during a meeting in Brussels, Belgium November 5, 2018. REUTERS/Francois Lenoir [Purchase Licensing Rights, opens new tab](#)

- SCOTUSblog founder faces January tax evasion trial
- Appeal hinges on \$2.65 million home financed by litigation funder
- Goldstein says he needs real estate proceeds to pay for defense

WASHINGTON, Dec 4 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com, [opens new tab](#).)

The prosecution of prominent Washington lawyer Tom Goldstein has veered into an unusual appellate showdown involving pricey D.C. real estate, the constitutional right to counsel and a high-powered litigation funding firm that is set to be a witness in the case.

Goldstein, formerly a leading member of the U.S. Supreme Court bar and a founder of SCOTUSblog, is facing trial next month in Greenbelt, Maryland on [22 counts of tax evasion and other financial criminal charges](#) allegedly connected to his side career as a big-money poker player.

Since August, he has been seeking court permission to sell his nearly 5,000 square-foot home in Washington's tony Wesley Heights neighborhood to help fund his defense. That request is now before the 4th U.S. Circuit Court of Appeals, after a judge in Maryland [agreed with the government, opens new tab](#) that the house is wrapped up in the allegations against Goldstein and cannot be sold. Goldstein, who has pleaded not guilty, has had a string of defense lawyers at the trial court but is representing himself in his appeal. He [told the 4th Circuit, opens new tab](#) he has incurred millions of dollars in legal fees and expenses, and that barring him from selling the home, which he purchased for \$2.65 million in 2021, violates his rights under the Constitution.

"As a criminal defendant, I have a Sixth Amendment right to use 'untainted' assets that are necessary to pay the costs of my defense. The home itself is not 'tainted,'" Goldstein said in his Nov. 26 appellate brief.

The government opposes Goldstein's bid to sell the house, now valued at more than \$3 million by real estate listing platforms Redfin and Zillow. In [a brief filed Wednesday, opens new tab](#), prosecutors said the property is indeed tainted

because Goldstein made false statements on a loan application related to its purchase.

In any case, the government told the 4th Circuit, the home is being held as collateral for an appearance bond for Goldstein, who was deemed a flight risk by U.S. District Judge Lydia Kay Griggsby.

Attorneys for Goldstein at Munger, Tolles & Olson did not immediately respond to a request for comment.

The government alleges that Goldstein falsely omitted information on two loan applications by not disclosing more than \$15 million in unpaid personal debts and federal taxes. Federal prosecutors [have said](#) Goldstein won and lost millions of dollars in individual poker matches and made improper payments through his law firm to cover debts.

After getting turned down for one loan application in March 2021, Goldstein allegedly borrowed more than \$5.6 million from a company that invests in litigation and used the funds to buy the Washington home. Goldstein never disclosed his personal debts to the funder, prosecutors said.

Goldstein revealed in his 4th Circuit brief last week that the funder is Parabellum Capital, a top litigation finance firm with offices in New York and Boston with more than \$1.5 billion in investments as of last year. Goldstein said Parabellum placed no restrictions on the funds, which he used to buy the D.C. property and pay taxes.

Parabellum said in a statement that it is a witness in Goldstein's criminal case and that the firm has not been accused of wrongdoing. "A minor part of the case involves small investments Parabellum made several years ago," the firm said.

Goldstein's bid to quickly sell the property faces an uphill battle given its connections to his bail conditions, white-collar experts said.

"The facts here are what's going to be a problem for him," said Michael Weinstein, who leads the white collar criminal defense practice at law firm Cole Schotz. Weinstein said he was a law school classmate of Goldstein's at American University, but has no personal relationship to him and is not involved in the case.

"In my experience, the federal government typically prevails in cases where property is reasonably alleged to be a tainted asset," said Arun Rao, a Mayer Brown partner and former deputy assistant U.S. attorney general.

Goldstein wants the 4th Circuit to reverse Griggsby's ruling and allow the sale, or to order an evidentiary hearing on whether the house is a tainted asset.

A spokesperson for the Maryland U.S. attorney's office did not immediately respond to a request for comment.

– Alphabet's Google [urged a federal judge, opens new tab](#) in California last week to slash a request for \$128.3 million in legal fees tied to a class settlement over its advertising practices, calling the demand "massively inflated."

The plaintiffs' lawyers in a [court filing argued, opens new tab](#) that the fee award is justified by what they called a "trailblazing" settlement. Law firm Pritzker Levine served as the lead for the consumer plaintiffs, and worked with firms Bleichmar Fonti, Simmons Hanly, DiCello Levitt, Cotchett Pitre and Bottini & Bottini. Under the settlement, Google will add a new control allowing users to limit data shared in online ad auctions and will notify account holders via email and a dedicated webpage. The plaintiffs value these changes at \$1.4 billion.

Google, which has denied any wrongdoing, counters that the lawsuit delivered minimal success. There was no settlement fund, and the company said it was implementing only modest changes largely duplicating existing privacy settings.

Google has proposed capping the fee award at about \$14.3 million. The court will weigh the competing proposals at a February hearing. Google did not immediately respond to a request for comment.

Elizabeth Pritzker, a lead attorney for the plaintiffs, said Google's filing "misstates the record and the law in an effort to diminish plaintiff's counsel's reasonable compensation for this significant result."

– A federal judge in Philadelphia on Thursday rejected a bid by plaintiffs' law firm Hagens Berman Sobol Shapiro to force his recusal from long-running litigation over the drug thalidomide.

The Seattle-based law firm argued that communications between U.S. District Judge Paul Diamond and court-appointed official William Hangley were improper, citing hundreds of hours of contacts between them.

In [his ruling, opens new tab](#) Diamond dismissed the claim as "absurd," noting that Hangley's appointment in 2014 allowed such communications and that they averaged less than an hour per week over 11 years. Diamond said several plaintiffs opposed his recusal and none supported the firm's arguments.

"The law does not require a judge's recusal because a party dislikes his rulings," Diamond wrote.

The recusal motion followed Hangle's 2023 report [accusing the firm](#) of dishonesty and finding that a former partner altered evidence and gave false testimony. The report said the firm's conduct bordered "on the criminal." Hagens Berman has disputed the report and denied any wrongdoing. The firm also has questioned Diamond's [decision this week to refer the firm](#) to the U.S. Justice Department to investigate its conduct in the case. Hagens Berman and the firm's outside counsel did not immediately respond to requests for comment. Read more:

[Conservatives split on litigation funding reform legislation](#)
[Lawsuit that ignited Tom Girardi scandal ends after five years](#)
[Law firm's AI experiment gives lawyers a break from billable hours](#)

Reporting by Mike Scarcella

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Your new co-counsel? Like it or not, it's AI

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Three years ago, on Nov. 30, 2022, OpenAI quietly released a free large language model (LLM) chatbot that could seemingly answer any question you had. Chatbots existed before, but they sounded, well, like a chatbot. The brilliance of ChatGPT is that it can process complex information to create new content. Older, rule-based chatbots mostly performed predefined tasks depending on the input. An engineer would have to pre-program the chatbot to identify user queries and provide corresponding pre-programmed responses. This presented a crucial limitation because no one could predict every possible query and response in advance. That is why when you try to use the rudimentary chatbot usually present on online shopping platforms, the chatbot often misunderstands your question and ultimately connects you to a live agent.

ChatGPT has no such limitation. It is built on an artificial neural network and trained on a vast amount of human-generated data to understand patterns from large amounts of information, including text, images, audio and video. When responding to a user request, the chatbot uses the patterns it has learned to predict and create new content. In other words, it's designed to talk like us. And ChatGPT seems to have no question it cannot answer, no problem it cannot solve, not because it has the expertise or is trained to answer those questions or solve those problems, but because it is designed to generate a response based on your prompt, which provides the context.

ChatGPT's success became proof of concept for generative AI: People were not only ready for it, they were enamored by it. And this AI boom has affected every industry, including the legal sector. It is hardly surprising that a profession that constantly demands faster and cheaper work product would turn to a technology promising exactly that. Indeed, traditional legal databases like Thomson Reuters (parent of Westlaw) and RELX (parent of LexisNexis) have worked tirelessly to bring these promised fruits to lawyers through products like Westlaw's CoCounsel and LexisNexis's Lexis+ AI. Brand new platforms like Harvey AI have also begun offering law-specific AI tools that threaten to disrupt the legal technology sector.

Despite these heavily advertised time-saving tools, some lawyers remain skeptical of generative AI, preferring to simply ignore its existence and rely on good old-fashioned boolean searches and human juniors to do grunt work. And headlines

support their caution. There has been no shortage of sanctions against lawyers and law firms who include hallucinated case citations, invented quotes, and outright false propositions in their briefs. But reading these widely publicized examples as a general indictment against generative AI absolves lawyers of their responsibilities. As the California Court of Appeals recently held: "Simply stated, no brief, pleading, motion, or any other paper filed in any court should contain *any* citations--whether provided by generative AI or any other source--that the attorney responsible for submitting the pleading has not personally read and verified." *Noland v. Land of the Free, L.P.*, 114 Cal.App.5th 426, 431 (2025). It is that simple because while technology has no doubt transformed the landscape of legal practice, our ethical duties remain the same.

It is a fundamental duty that a lawyer provides competent representation to clients. Model Rule 1.1 specifies that "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Model R. of Pro. Conduct R. 1.1 (2023). Lawyers who rely on AI-generated content without independently verifying the output will likely fall short of this duty. See ABA Formal Opinion 512 at 3-4 ("a lawyer's reliance on, or submission of, a GAI tool's output--without an appropriate degree of independent verification or review of its output--could violate the duty to provide competent representation as required by Model Rule 1.1."). Meanwhile, Model Rule 3.1 prohibits lawyers from knowingly making a false statement of fact or law to a tribunal or failing to correct a false statement of material fact or law previously made. And Model Rules 5.1 and 5.3 specifically require lawyers who have supervisory authority over other lawyers or managerial authority within a firm ("senior lawyers") to make reasonable efforts to ensure that the firm and its lawyers conform to the Rules of Professional Conduct. In certain circumstances, the rules require senior lawyers to be responsible for other lawyers' violations and to ensure that non-lawyers' conduct is compatible with the lawyer's professional obligations. The rules are clear: A lawyer is responsible whether a false citation arises from a junior attorney's human error or an AI tool's hallucination.

The problems do not stop at hallucinations. Recent advancements in hyper-realistic image generation, like Google's Nano Banana Pro, put the authenticity of evidence presented in legal proceedings at risk. What if a client uses these tools to fabricate evidence in their favor? We are operating in a minefield.

Since we cannot put generative AI back in its box, how do we navigate the vastness ahead? We call for a return to the basics. Every lawyer, aspiring lawyer, and law student should reread their applicable ethics rules and ensure they

understand what is required when using AI. Law firms should offer recurring training as technology develops not only to understand how the technology works but also how it intersects with the lawyer's professional responsibilities. Attorneys, young and old, should learn or relearn the foundational skills of legal research and writing without the assistance of AI, both so they learn to think for themselves and so they know what a good work product is to verify what AI has produced. Law firms should also establish and publicize best practices to safeguard against AI errors. For example, to ensure accuracy of case citations, junior lawyers could be required to send PDFs of each opinion cited, and senior lawyers could set aside time to verify the accuracy of the cited cases. Lawyers should keep up to date with the various AI tools and their strengths and weaknesses, and law firms should supply basic AI training to its lawyers.

Your new co-counsel may be AI, but the counsel responsible will still be you.

#388832

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Law firms seek AI edge with new executive hires

 [reuters.com/legal/legalindustry/law-firms-seek-ai-edge-with-new-executive-hires-2025-12-04](https://www.reuters.com/legal/legalindustry/law-firms-seek-ai-edge-with-new-executive-hires-2025-12-04)

Sara Merken

December 4, 2025

AI (Artificial Intelligence) letters and robot hand miniature in this illustration taken, June 23, 2023. REUTERS/Dado Ruvic/Illustration [Purchase Licensing Rights, opens new tab](#)

NEW YORK, Dec 4 (Reuters) - Big law firms trying to navigate the artificial intelligence boom and capitalize on the technology are tapping new executives to shape their AI strategy.

In the latest hire, Ropes & Gray said on Thursday that it has brought on Gretchen Greene, a lawyer-scientist from Meta Platforms, as the 1,500-lawyer law firm's first chief of AI strategy. Greene led AI adoption for Meta's policy and legal teams, the firm said.

Greene, an AI researcher and machine learning engineer, worked at Boston-founded Ropes & Gray as an associate earlier in her career. She joined Meta as an AI policy senior manager in 2022, according to her LinkedIn profile. Meta did not immediately respond to a request for comment on her departure.

Ropes & Gray said Greene will work with its chief information officer to steer its AI approach and "create measurable value for our clients." She was not immediately available for comment.

Law firms have been [hiring](#) for newly-created strategic and technical AI and data science leadership roles since late 2022, when the rollout of OpenAI's ChatGPT supercharged the AI industry. The technology can speed legal research and drafting in ways that experts predict could transform the legal industry's reliance on junior lawyers.

Herbert Smith Freehills Kramer last month brought on Ilona Logvinova from Cleary Gottlieb as its global chief AI officer. Earlier this year Husch Blackwell hired Michael Yang from Adobe, and Fisher Phillips tapped Pritesh Patel from Walmart.

Linklaters recently said that it has put together a team of 20 dedicated artificial intelligence lawyers to apply AI to client work across the firm.

Ropes & Gray [rolled out an initiative](#) this fall that allows its current first-year associates to devote up to 20% of their annual required billable hours for AI training and simulations. The firm told Reuters last month that the pilot program is

a "deliberate investment" that will allow new lawyers to build skills without sacrificing hourly expectations.

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Sara Merken reports on the business of law, including legal innovation and law firms in New York and nationally.

California Brief

Insight

Here's How Accountants Can Evolve as AI Redefines the Profession

December 5, 2025, 1:30 AM PST

Though artificial intelligence hasn't been around long, most firms recognize its potential. I've chatted with hundreds of accounting firms this year and have watched skepticism evolve, but trust remains the biggest barrier.

Some firms that rushed to implement AI are facing the consequences of hallucinations, including making headlines and losing professional credibility. Others have tried tools that overpromised and underdelivered.

As the market rushed to solve the accounting industry's struggles, AI companies didn't sit with accountants to explain the technology's nuances, which degraded trust.

Deterministic AI, for example, is great for repetitive, rule-based tasks such as matching forms or validating entries, including ensuring someone's birthday is entered correctly on a tax return. Generative AI, meanwhile, can analyze context and infer meaning, such as whether a client's individual retirement account is Roth or traditional.

You need both, in combination with professional oversight, to do tax and accounting work properly. Accounting firm leaders should seriously explore AI tools on the market but be wary of lofty claims. As firms face talent shortages and clients demand faster, more strategic guidance, accountants must evolve their skills and systems to stay competitive.

AI for Operations

When exploring AI, accounting firms should start small and pick one area to focus on. I recommend testing different AI platforms with tax returns that your team has already prepared. Run the returns through the tool and compare the results with what the team's prepared. This can help uncover any potential discrepancies and optimize before implementing anything for tax season.

Apply the same approach to other areas, including audits, bookkeeping, and consulting. Parallel testing helps identify tools that improve efficiency without compromising quality. Examine the differences between the platform's output and your team's output without ego.

Many accountants I've worked with have spotted their own errors when comparing their work with what AI has output, while others have seen AI make errors. In situations where teams have been made aware of their own errors, they understand that AI represents a form of risk mitigation.

And in situations where the opposite is true, firms tend to understand that AI represents a huge head start that otherwise may not be available with older tech.

Attracting Young Talent

On top of this technological shift, it's no secret that the tax industry's talent pipeline is broken. Seventy-five percent of CPAs are eyeing retirement, and the number of US students graduating with degrees in accounting continued to fall. I believe AI is going to change this trend.

How? It starts by leveraging the strengths of everyone in your organization, including today's digital natives—Gen Z. Invite your teams into the implementation process. Give them real ownership by listing out the boring and mundane parts of the job, such as manual data entry and reporting.

Once you have a plan, test it. You'll want to create a framework for how, when, and why to use AI and a safety net for reviewing. Start by establishing cohorts and comparing the speed and accuracy of the outputs of those using AI for their tasks and those not. Iterate, test again, and train your models to create outputs that are closer to what you need until you have a process that works for your firm.

The last piece is to not forget your more senior employees, who have established networks and specific industry knowledge that newer professionals may not have. When the younger generation uses AI to do their work faster, let them do higher-level work sooner and free up your experienced team members to mentor and make connections with these new professionals.

This serves not only those employees and their clients, but also the field at large, because it gives people the chance to do what makes the profession so great: navigate gray areas, make judgment calls, challenge themselves to think, and get to know clients.

Who Has Advantages

While the Big Four are heavily investing in proprietary AI systems, smaller firms have the AI advantage. I see small firms setting the tone for AI adoption for the overall profession, rather than the Big Four, because they can adopt off-the-shelf tools faster and experiment without the layers of bureaucracy and technical debt of a large firm.

This agility allows smaller firms to modernize operations incrementally with more participation from their teams, less friction, and no need to wait around for the legacy firms to set the standard.

Tax and accounting professionals at all levels are responsible for modernizing our approach to business. The way forward is in small, measured steps toward improvement that include people at every step.

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A.I. Deal Making Is Getting Faster

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Erin Griffith

December 4, 2025

Colin Roberts, left, and Vivek Nair, the founders of Multifactor, an A.I. start-up, fielded interest from more than 250 investors and raised more money than planned. Credit...Poppy Lynch for The New York Times

Listen to this article · 8:23 min [Learn more](#)

Ben Braverman was recently speeding across the Golden Gate Bridge while explaining, in rapid-fire patter, why venture capital investors like him needed to move fast. The artificial intelligence boom had changed everything, he said. Companies were getting started faster, finding customers faster, scaling up faster. The numbers were gobsmacking. Investors had to hustle to keep up.

That's why he was ferrying across the San Francisco Bay with Filip Aronshtein, the 25-year-old founder of Dirac, a start-up that uses A.I. to automate work for industrial companies. They were headed to Club Evexia, a luxury fitness center in Mill Valley, Calif. That's where Mr. Braverman planned to persuade the founder to take money from his firm, Saga Ventures, in between rounds of bench presses. A weight-lifting meeting was the only time Mr. Braverman could get with Mr. Aronshtein, and he was eager to take it.

"Speed is the name of the game," Mr. Braverman said.

Across Silicon Valley, investors have been doing anything they can to get into the hottest A.I. start-ups. One venture capital firm flew [the 22-year-old founders of Mercor](#), an A.I. company valued at \$10 billion, on a private jet to Las Vegas to race Ferraris. Another gave college students money to start companies rather than do internships. Others are acting as if they work for young start-up founders, making customer introductions and recruiting employees. All of them are moving at a breakneck pace.

Image



The founders of the A.I. company Mercor, from left, Adarsh Hiremath, Brendan Foody and Surya Midha. Credit...Carolyn Fong for The New York Times

That has led to some eye-popping funding rounds. Safe Superintelligence, a start-up that was [created](#) last year to try to build A.I. that is smarter than humans, raised \$2 billion at a valuation of \$32 billion this year. Sierra, which was founded in 2023 and lets companies build A.I. agents, gathered \$350 million and was valued at \$10 billion. Cursor, an A.I. coding start-up, raised money three times this year and saw its valuation leap more than tenfold to \$27 billion.

Funding for A.I. start-ups has overtaken all other categories, with [64 percent](#) of venture funding — or roughly \$161 billion — flowing into such deals in the first nine months of the year, according to PitchBook, which tracks start-ups. Large fund-raising rounds by Anthropic, OpenAI and [Elon Musk's xAI](#) are driving the shift.

Investors argue that the A.I. opportunity is so enormous and that potential winners will be so successful that deal prices, especially when the companies are just starting out, do not matter. What matters is getting into the best start-ups,

they said. If A.I. has boosted the valuations of Nvidia, Microsoft and Alphabet into the trillions, perhaps several more trillion-dollar companies are getting started today.

"Everyone feels like the next decade of winners are being decided in the next 18 to 24 months, and that's creating this real intensity," said Smit Patel, who advises A.I. founders and investors on fund-raising. "People are trading some discipline for speed because speed is the only strategy."

The mania has helped stoke worries about a bubble in A.I. investment, particularly [on data centers for A.I. computing](#). Tech has long been an industry of booms and busts, and sentiment can change quickly.

But investors justify their deal making by pointing to the rapid revenue growth of many A.I. companies. Cursor's monthly revenue hit an annualized rate of \$1 billion this year, a tenfold increase since the end of last year, a company spokesman said. (Fast-growing software companies often extrapolate their latest monthly revenue to a full year.)

OpenAI expects to hit annualized monthly revenue of \$20 billion this year, [according](#) to Sam Altman, its chief executive. And Anthropic, which makes the Claude chatbot, said its annualized revenue had grown to \$7 billion in October, from \$1 billion at the start of the year. On social media, investors post breathlessly about smaller start-ups that [need only 10 days](#), not even a month, to go from zero revenue to an annualized rate of \$2 million.

Mr. Braverman said he had observed that growth in start-ups he invested in. "It breaks all the rules for what you think can happen," he said.

(The New York Times has sued OpenAI and its partner, Microsoft, over copyright infringement. Both companies have denied wrongdoing.)

Vibecode, a start-up that uses A.I. to let people build apps, set out to raise \$3 million last spring. It had not released its app, but investors were so eager that the company garnered \$15 million in offers in a week. Vibecode wound up amassing \$9 million at double the valuation it initially sought. In August, two months after releasing its app, it rocketed to \$1 million in annualized monthly revenue.

Ansh Nanda, a Vibecode co-founder, said he had heard from several dozen investors since then. He marveled at the opportunities that Silicon Valley has enabled, where 24-year-olds like him could be given millions of dollars to chase their dreams.

"I want to build something that has a massive impact on the world," he said.

To land deals, venture capitalists have adapted their strategies. Katie Jacobs Stanton, an investor at Moxxie Ventures, said she had sought out entrepreneurs in countries including Canada, France and Israel. Some teams she backed in those places are now moving to San Francisco.

Ms. Jacobs Stanton said she was also trying to find founders before they went through accelerator programs and saw their valuations rise. And like everyone else, she is moving fast.

"Founders will remark, 'Hey, sorry, the round went really fast in three days,'" she said. "The market is rewarding speed."

Gaurav Jain at Afore Capital has adjusted his investment criteria. He previously sought out great founders with great ideas. Now, he said, he is willing to back great founders with not-so-great ideas — or no ideas at all. The strategy is risky, but Mr. Jain's firm helps entrepreneurs develop their ideas.

"We cannot wait for the companies to have an idea and take off, because then it's too late," he said.

Afore is also giving college students \$25,000 to \$50,000 to take a "gap semester" and start a company instead of doing an internship. The program has funded roughly 30 companies since it started this year; most of the founders have dropped out of college because their ventures took off, Mr. Jain said.

Image



Mr. Nair and Mr. Roberts showed off Multifactor's technology at a demo day this week. The apartment they share is also the company's temporary headquarters. Credit...Poppy Lynch for The New York Times

On Wednesday, the founders of Multifactor, a start-up building security systems that let humans and A.I. agents share accounts, took the stage at a "demo day" held by Y Combinator, a start-up accelerator program. But Multifactor was not trying to woo any investors in the room, because it had already secured funding.

Vivek Nair, 24, a former officer in the Central Intelligence Agency, said he and his Multifactor co-founder, Colin Roberts, a 31-year-old former scientist with the National Aeronautics and Space Administration, had spent the end of November fielding interest from more than 250 investors. Many of them wanted more than a 30-minute Zoom call with them and suggested rock climbing, hikes, gym sessions, sporting events and hot yoga. Some sent unsolicited offers. Others sent branded cookies.

Mr. Nair and Mr. Roberts wanted \$10 million to \$12 million, but got \$45 million in offers at valuations as high as \$120 million. On top of the money, the investors pitched their expertise and connections, Mr. Nair said.

After a week of nonstop meetings, Multifactor chose Abhishek Sharma at Nexus Ventures to lead the funding. Mr. Sharma said he had known within 15 minutes that he wanted to invest and had scheduled a second meeting within 24 hours. Multifactor raised \$15 million led by Nexus, valuing the company at \$100 million.

Even so, Mr. Nair continued to hear from investors, whom he has directed to other start-ups. He approached his demo day pitch as a moment to show off the most ambitious vision for Multifactor's technology.

"I have no need to impress anyone at demo day," Mr. Nair said. The investors "I care most about are already on the team."

Cade Metz contributed reporting.

SEC Chair Rejects Investor Panel's Push for Expanded AI Disclosures

While issuers have attempted to report on the use of artificial intelligence, disclosures are inconsistent and vary widely among industries, stated the U.S. Securities and Exchange Commission's Investor Advisory Committee.

December 04, 2025 at 06:15 PM By  **Dan Novak**



Paul Atkins, chair of the U.S. Securities and Exchange Commission. Photo: Diego M. Radzinski/ALM

U.S. Securities and Exchange Commission Chair Paul Atkins has dismissed a proposal to increase corporate artificial intelligence disclosures advanced Thursday by the SEC's Investor Advisory Committee.

"We should resist the temptation to adopt prescriptive disclosure requirements for every new thing that affects a business," Atkins said during a committee meeting. He added that investors can rely on existing SEC rules to inform them of how AI affects companies.

"With every emerging development, the question for the SEC to consider is not necessarily its novelty, but whether our existing disclosure framework sufficiently provides investors with material information about it," Atkins said.

The IAC made three key [recommendations](#) to the commission to ramp up companies' AI disclosures: require issuers to adopt a definition of "artificial intelligence," disclose how boards oversee the use of AI at the company, and report on how issuers are developing AI and whether, if material, it affects business operations or consumer-facing issues.

SEC rules already require companies to disclose material impacts of artificial intelligence, including how AI affects financial outcomes and how AI can be a risk factor in investment, Atkins said.

"Our principles-based rules were intentionally designed to allow companies to inform investors of material impacts of any new development," he said.

The SEC proposed three rules related to AI disclosure during the Biden administration, but all were withdrawn this year.

The IAC argued in its draft proposal that while issuers have attempted to report on the use of AI, disclosures are inconsistent and vary widely among industries. The SEC has not provided guidance or rules on how issuers should report information on AI to investors, resulting in uneven disclosures, the draft stated.

Republican SEC Commissioner Hester Peirce said any variation is not necessarily problematic and simply reflects how companies use AI in different ways and to different degrees.

"If company and industry adoption of AI is not entirely homogenous, why should our disclosure regime force conformity?" Peirce said.

The advisory committee is recommending the SEC create overly prescriptive rules that are "responding to the hottest issue du jour," she added.

IAC member Paul Royce said he did not see the recommendation as a prescriptive requirement but as "food for thought for issuers."

"You think about whether or not your use of artificial intelligence in the context of your business is material," added Royce, the former director of the SEC's division of investment management. "And if it is, define it, make appropriate disclosures and outline how your board is overseeing that process."

SEC Commissioner Caroline Crenshaw, a Democrat, said the recommendation gives the commission a good sense of what AI disclosures would be useful for investors.

The commission is statutorily required to review and respond to any recommendation approved by the IAC.

Crenshaw is departing the SEC when her 18-month post-term grace period ends Jan. 3, which will leave Republicans with 3-0 partisan control over the five-member commission. President Donald Trump has nominated neither Crenshaw's replacement nor someone to fill the SEC's existing vacancy.

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Securities

Manage Newsletters

Wall Street Races to Cut Its Risk From AI's Borrowing Binge

December 5, 2025, 3:30 AM PST

Summary by Bloomberg AI

AI Generated



- Wall Street is lending massive amounts of money to the biggest players in artificial intelligence and trying to protect itself from any potential bubble.
- The cost of protecting debt against default using derivatives has risen, with the cost of protecting Oracle Corp. debt reaching the highest since the Global Financial Crisis.
- Banks are using tools such as credit derivatives and sophisticated bonds to shift the risk of underwriting the AI boom to other investors, as they try to reduce their exposure to potential losses.

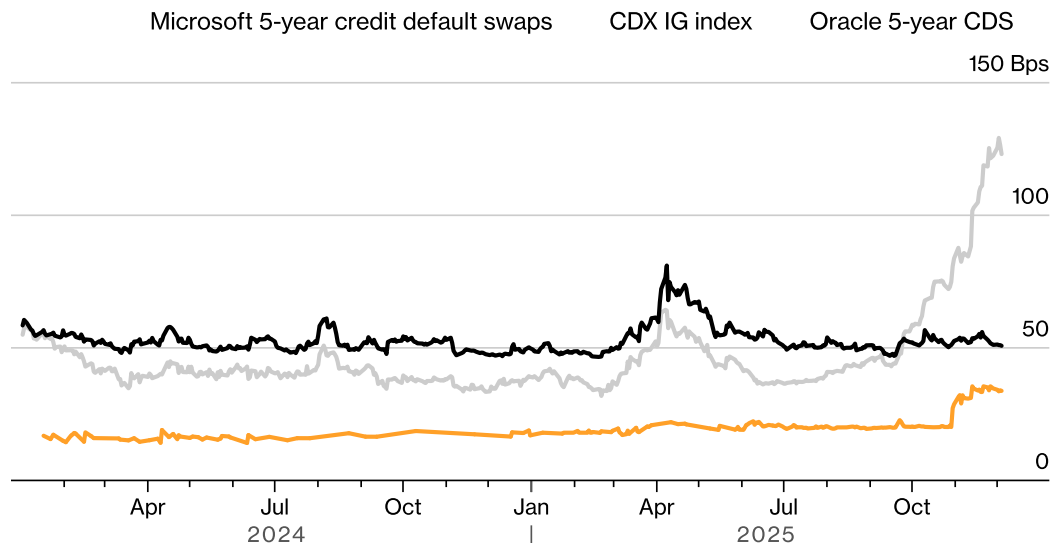
Wall Street is gearing up to lend [massive amounts of money](#) to the biggest players in artificial intelligence – and simultaneously trying to figure out how to protect itself from any bubble that its financing may be helping to inflate.

The urgency at banks to shed risk is visible all over credit markets. The cost of [protecting](#) Oracle Corp. debt against default using derivatives has risen to the highest since the Global Financial Crisis. Morgan Stanley has looked at using a [significant risk transfer](#) – a form of insurance against loan losses – to diffuse some of the risk tied to its tech company borrowers.

Mega offerings from tech behemoths including Oracle, Meta Platforms Inc. and Alphabet Inc. have helped push global bond issuance to more than \$6.46 trillion in 2025. These hyperscalers, along with electric utilities and other firms, are expected to spend at least [\\$5 trillion](#) as they race to build data centers and other infrastructure for a technology that's promising to revolutionize the world's economy.

Credit Fear Gauges Spike Amid AI Bubble Fears

Five-year credit default swaps on Oracle have surged to 16-year high



Source: Bloomberg, ICE Data Services

Bloomberg

The sums are so large that issuers will have to tap just about all major debt markets, according to JPMorgan Chase & Co. It could take years for these tech investments to pay off – if they pay off at all. The rush has left some lenders over-exposed, so they're using a series of tools – credit derivatives, sophisticated bonds and some newer financial products – to shift the risk of underwriting the AI boom to other investors.

Real Risks

"The technology is impressive. But that doesn't mean you're going to profit from it," said Steven Grey, chief investment officer at Grey Value Management.

Those risks became more real last week when a major outage halted trading at CME Group Inc. and reminded investors that data-center customers can leave if there are repeated breakdowns. In the aftermath, Goldman Sachs Group Inc. paused a planned \$1.3 billion mortgage bond sale for CyrusOne, the data-center operator.

Read More: [CyrusOne Halts Bond Sale After Data-Center Failure Cripples CME](#)

Banks are turning to the credit derivatives markets to reduce their exposure. Trading of Oracle's credit default swaps ballooned to about \$8 billion over the nine weeks ended Nov. 28, according to an analysis of trade repository data by Barclays Plc credit strategist **Jigar Patel**. That's up from around \$350 million in the same period last year.

Banks are providing the bulk of massive construction loans for data centers where Oracle is the intended tenant, which is likely driving much of the Oracle hedging, according to a recent Morgan Stanley research report. These include a \$38 billion loan package and an \$18 billion loan to build multiple new data center facilities in Texas, Wisconsin and New Mexico.

Swaps Cost

Prices for other swaps are climbing, too. A five-year CDS agreement to protect \$10 million of Microsoft Corp. debt from default would cost about \$34,000 annually, or 34 basis points on Thursday. In mid-October, it was closer to \$20,000 a year.

The spread on Microsoft default swaps is remarkably wide for a AAA rated company, according to Andrew Weinberg , a portfolio manager at Saba Capital Management , a hedge fund management firm that has been selling protection. By comparison, protection on Johnson & Johnson, the other US company rated AAA, cost about 19 basis points a year on Thursday.

"Selling protection on Microsoft at greater than 50% wider levels than fellow AAA rated J&J is a remarkable opportunity," Weinberg said. A representative for Microsoft, which hasn't issued debt this year, declined to comment.

There are similar opportunities with Oracle, Meta and Alphabet. Despite their large debt raises, their credit default swaps are trading at high spreads relative to their risk of default, selling protection makes sense, Weinberg said. Even if the companies get downgraded, the positions should perform well because they already incorporate so much potential bad news, he said.

A spokesperson for Oracle declined to comment. Spokespeople for Meta and Alphabet didn't respond to requests for comment.

Complicated Bonds

Morgan Stanley, a key player in financing the artificial-intelligence race, has [considered off-loading](#) some of its data-center exposure via a transaction known as a significant risk transfer, which can give a bank default protection for between 5% and 15% of a designated portfolio of loans. SRTs often entail selling bonds known as credit-linked notes, which can have credit derivatives tied to companies or a portfolio of loans embedded in them. If the borrowers default, the bank can get a payout to cover its loss.

In this case, Morgan Stanley held preliminary talks with potential investors about an SRT tied to a portfolio of loans to businesses involved in AI infrastructure, Bloomberg reported on Wednesday. A representative for Morgan Stanley declined to comment.

"Banks are fully aware of the market's recent concerns with possible overinvestment and overvaluation," said **Mark Clegg**, a senior fixed-income trader at Allspring Global Investments, which advised on about \$629 billion as of the end of September. "It should be a shock to no one that they may be exploring hedging or risk transfer mechanisms."



The technology funding frenzy could become a bust for credit markets if AI falls short of lofty expectations, according to Barclays. Private capital firms including Ares Management Corp. have been angling to take some of banks' exposure in SRTs tied to data centers, according to people with knowledge of the matter. The firm has been talking to banks about possible transactions, the people said. Ares declined to comment.

Banks are looking to create other products to allow them to offload credit risk tied to hyperscalers. At least two firms have tried to put together baskets of credit derivatives tied to technology companies, akin to an equity sector exchange-traded fund, according to people with knowledge of the matter. Citadel Securities started making markets for two baskets of corporate bonds from hyperscalers, allowing investors to quickly add or reduce exposure to the companies.

Read More: [Citadel Securities Launches AI Bond Trading Baskets for Hedging](#)

Adding to the urgency is the massive size of the latest debt offerings. Not too long ago, investors considered a \$10 billion deal in the US high-grade market a big one. Marketing it might have taken a few days, including investor conference calls and individual meetings with money managers.

But with multi-trillion-dollar market-cap companies and funding needs in the hundreds of billions of dollars, a \$10 billion sale is a "drop in the bucket," according to **Teddy Hodgson**, global co-head of investment grade debt capital markets at Morgan Stanley.

"We raised \$30 billion for Meta in a drive-by financing," said Hodgson, referring to bond sales that take place in a single day.

"That's not historically a commonplace event. The investor base is going to have to get used to bigger deals from the hyperscalers because of how much they've grown and how much this opportunity is going to cost for them to capture."

--With assistance from **Dan Wilchins**, **Michael Gambale**, **Jeannine Amodio** and **Esteban Duarte**.

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News from Bloomberg Terminal
Buy Low, Sell to Yourself
December 4, 2025, 11:10 AM PST

By Matt Levine

(Bloomberg Opinion) --

Continuation fund

If you run a private equity fund, and you buy a company for \$2 billion, and you do a good job sprucing it up and you sell it for \$3 billion, then you get paid. Customarily you collect 20% of the increase in value, or \$200 million, as a performance fee (or “carry”) for your work: The investors (or “limited partners”) in your fund made \$1 billion, and you get 20% of their gains.

On the other hand, if you buy a company for \$2 billion, and you end up selling it for \$1 billion, then you generally collect about \$0 in carry. You don’t starve or anything – you collect various other fees along the way, and presumably other companies in your portfolio did better and earn you carry – but this one gets you nothing.

If you buy a company for \$1 billion, and then sell it for \$1.5 billion, you collect \$100 million in carry.

If you:

- buy a company for \$2 billion,
- sell it for \$1 billion,
- buy it back for \$1 billion, and
- sell it again for \$1.5 billion,

How much carry do you collect? A possible schematic answer is “\$100 million”: You collect zero for buying at \$2 billion and selling for \$1 billion, and then \$100 million for buying at \$1 billion and selling for \$1.5 billion, and zero plus \$100 million is \$100 million. Notice that in this scenario your limited partners have collectively *lost* money – they bought at \$2 billion and sold for \$1.5 billion – and you have made money, oops.

This analysis is rarely *correct*, for various important reasons. One is that I am assuming that you never get “negative carry” – you don’t pay \$200 million when you buy at \$2 billion and sell at \$1 billion – and in the case of a diversified private equity *fund* that is not really the case. You don’t write investors a check for \$200 million when you sell the company at a loss, but you generally earn carry on your *fund*, not on individual investments, so if you lose money on one that offsets the profits you make on others.¹ (In particular, in my example, if you do all the buying and selling within a single fund, then it collapses into “you bought at \$2 billion and sold at \$1.5 billion,” earning no carry.)

Also you are not actually in the business of constantly trading in and out of the company at different prices. Much of the point of private equity is that you do *not* constantly mark your assets to market; you (try to) buy when assets are cheap and sell when they’re expensive, without worrying about fluctuations along the way. Selling at the lows to reset your carry is not really how private equity works.

Also, you have fiduciary duties to your limited partners to treat them fairly, and this seems pretty sketchy. In particular, in my schematic trade, if you replace “\$1 billion” with “\$500 million,” or “\$0” for that matter, you make even more money for yourself (by resetting your carry threshold to an even lower level). You have an incentive to price the company as low as possible for your near-simultaneous sale and buyback. But you can’t just *do* that; you will need to persuade your limited partners that the selling price is fair.

Still the schematic trade is something to keep in mind. It used to be that the business model of private equity was (1) buying companies low, (2) sprucing them up for a few years and (3) selling them high (back to the public markets in an initial public offering, or to a strategic buyer). Increasingly, though, companies have stayed in private-equity hands for longer periods, and private equity sponsors have raised “continuation funds” to buy companies from themselves. That is, the sponsor raises a fund, it buys a company, it holds the company for five or seven or 10 years, everyone gets kind of antsy, and the sponsor raises a new fund – at least partly from different investors – to buy the company from the old fund.

What is the price that the continuation fund pays the old fund to buy the company? Well, it depends. But the private equity sponsor has some obvious conflicts of interest. Every extra dollar that the old fund gets comes out of the continuation fund. Which way does that cut? Again, it depends. A high price might crystallize a big gain (and a big performance fee) for the old fund; it might reward favored investors in the old fund; it might allow the sponsor to report good results when it raises its next fund; the sponsor might have a lot of its own money in the old fund and want a high price. A low price might usefully reset the carry on a losing investment; it might reward favored investors in the continuation fund; the sponsor might put a lot of its own money in the continuation fund and want a low price. The point is that it would be weird in general for the sponsor to have *no* bias, to be completely indifferent about the price at which it sells a company to itself.

There are ways to mitigate this conflict – getting fairness opinions, getting outside bids for the company, giving limited partners a vote to approve continuation deals, letting limited partners in the old fund roll over into the new fund without resetting their carry hurdles, etc. – but, still, there is perhaps a trade here.

At the Financial Times, Antoine Gara reports:

One of the world's largest sovereign wealth funds is suing a US private equity firm, accusing it of attempting to short-change investors on the sale of a portfolio company to another one of its funds.

The Abu Dhabi Investment Council is seeking to block Energy & Minerals Group from selling its stake in Ascent Resources, one of America's largest private gas drillers, to one of the private equity firm's sister funds. The sovereign fund alleges the deal undervalues Ascent while generating a windfall for the new fund managed by EMG.

The wealth fund said in a court filing unsealed on Wednesday: "Defendants are trying to force a conflicted sale of EMG fund assets to a continuation vehicle to reap a massive benefit for themselves at the expense of ADIC and the other investors to whom defendants owe fiduciary duties." ...

An investor in Ascent Resources told the FT they believed the gas driller was worth more than \$7bn when including debt. But EMG's continuation fund plans to buy its over 30 per cent stake in Ascent at roughly a \$5.5bn valuation, leaving investors with lower proceeds than what they believe they could get from an initial public offering or a sale to a third party. EMG is also asking to pay its investors over a two-year time period, further lowering the present value of the proceeds, they said. ...

A continuation fund deal would increase EMG's ownership in Ascent and restart its ability to earn management fees and potentially lucrative performance fees if the driller's value rises in the coming years.

Here is the (redacted) complaint. The gist of it is that, in this case, EMG had incentives to make the price as low as possible. For one thing, "the proposed CV Transaction involves EMG rolling over ... its own capital into the CV and investing ... additional capital," so the lower the price the continuation vehicle pays, the better for the sponsor. ("CV" stands for "continuation vehicle.") For another thing:

If existing investors elect to rollover (and are not caught by the cap on rolling investors), the CV Transaction will require them to pay fees and carry to EMG, despite EMG currently being entitled to little or no fees or carry because investors have already lost substantial amounts on their EMG investments. This again departs from customary industry practice, where a continuation vehicle transaction would not typically impose substantial new carry requirements on existing investors who have lost significant value already.

One general problem in selling a company (or, here, a big stake in a company) is that you want to tell the buyers that the company is very valuable, while also telling the sellers that it isn't. A few months ago, we talked about that problem in public-company mergers: A shareholder of a public company sued its board of directors, alleging that they used one set of (optimistic) projections to entice the buyer and another set of (pessimistic) projections to get the shareholders to agree to sell. Something like that allegedly went on here too:

ADIC continued to seek additional information about the CV Transaction, including access to the virtual data room ("VDR") that EMG's advisor ... maintained in connection with EMG's solicitation of potential CV investors. ...

EMG did not make and has never made the materials in the VDR generally accessible to investors in the current Funds. Most, if not all, other Advisory Board members, including those who have purportedly approved the CV Transaction, never received access to the materials contained therein. ...

ADIC gained access to two Confidential Information Memoranda ("CIM") that EMG had prepared for potential CV investors in March 2025 and September 2025. Both CIMs contained important information about the valuation of Ascent and the possibility of strategic alternatives that were not disclosed to (and directly contradicted what was disclosed to) the Advisory Boards. Together, the March 2025 CIM and September 2025 CIM painted a drastically different picture of Ascent's prospects, as compared to the materials that EMG had disclosed to Advisory Board members in late October and continued to produce through mid-November, which offered bleak commentary on Ascent's prospects.

In particular, EMG allegedly told investors in its existing fund that an initial public offering of Ascent was "not the immediate path to monetization," and estimated a low price for any potential IPO, but it "was far more optimistic about a potential IPO when speaking with potential investors in the CV Transaction," describing an IPO as the "expected case" and with a higher valuation.

I assume we'll see more of this? We talked the other day about a portable toilet continuation vehicle, which is "poised to suffer a total loss" because in hindsight it paid too much for a toilet company. Pretty much every continuation vehicle will buy a company from an old fund at a price that is, in hindsight, (1) too high or (2) too low. There will always be conflicts of interest, and there will always be at least some difference in emphasis in how the asset is described to the old investors and how it is described to the new ones. And whoever loses will have some reason to sue.

Amazon drivers

We talked yesterday about an alleged antitrust conspiracy. The classic antitrust conspiracy is, like, a handful of fat-cat chief executive officers of widget manufacturers meet in a smoke-filled room and agree not to sell widgets for less than \$100 apiece, immiserating widget consumers to increase their own profits. But a lot of antitrust conspirators don't see themselves that way. What we discussed yesterday was:

- Companies with cash-flow problems often play their creditors against each other, cutting favorable deals with some creditors that hose other creditors.
- The creditors feel threatened by this and band together to avoid being picked off: They agree that none of them will accept a sweetheart deal with the company at the expense of other creditors.
- Is that a *price-fixing* conspiracy? Does that *reduce competition* in the credit market? Kind of? The creditors will say that it reduces destructive competition, that it prevents some creditors from getting *unfair* prices for their debt. But unfair is in the eye of the beholder.

Antitrust law is kind of a mystery to me, and I often find myself sympathizing with alleged antitrust conspirators while also thinking "well yes I guess this does keep prices high."

Anyway the Wall Street Journal reports:

Amazon.com is facing a new labor challenge, this time from small-business owners who run the company's package-delivery network.

A group calling itself DSPs for Equitable and Fair Treatment, or Deft, went public on Black Friday, saying its goal is to organize the company's roughly 2,400 delivery-service providers to fight for better terms and reverse policies they say wipe out their profits.

The founders, who haven't yet revealed their identities in public, are aiming for Amazon to increase pay for package deliveries and reimbursement for van usage, and loosen the criteria for bonus payouts.

If you are an employee of Amazon, and you think that Amazon is underpaying you, and you get together with a bunch of your fellow employees to talk about it, and they all agree, you can work together to demand higher pay. (This is called a "union.") But if you are a small business that has Amazon as a customer, and you think that Amazon is underpaying you, and you get together with a bunch of other small businesses to talk about it, and they all agree, can you work together to demand higher prices from Amazon? I don't know, man!

We have talked about this before. In particular, drivers for rideshare companies are often in an ambiguous legal situation: They are technically independent business operators, so if they band together to demand higher pay is that an antitrust problem? Maybe? DEFT "is a chapter of the American Association of Franchisees and Dealers," and there *is* some history of franchisees – independent businesses – collectively bargaining against their monolithic franchisor. There are risks, though. In a gig economy in which everyone is an independent business operator rather than an employee, it's trickier for the independent business operators to do collective bargaining. Even if they are bargaining against the giant corporation that is the customer for all of their services.

I don't know if that exactly explains DEFT's opsec, but there is a lot of opsec. The Journal notes:

In building Deft's membership, the founders are taking steps to shield members' identities and communications from Amazon. The group is in the initial stages of vetting applicants to ensure they won't relay information to the company, according to a post in the DSP Signal chat. After consulting with a military veteran, the founders decided to create a structure of five-person "cells" to keep members of the larger organization anonymous in the event one cell is compromised. It remains uncertain whether the organization will gain enough momentum to effectively negotiate with Amazon.

Maybe it's not an antitrust conspiracy if no one knows who anyone is.

Narrow bank!

Here's a press release from N3XT, a new crypto-flavored bank:

N3XT, a new bank built on blockchain technology to leverage break-through innovation in finance, officially launched today, enabling clients to make instant, programmable business-to-business payments in U.S. dollars any hour of the day. ...

"The financial system is being re-wired to be internet native, 24/7/365 and global," said Alana Palmedo, Managing Partner of Paradigm, an investor in N3XT. "N3XT's blockchain-powered bank embodies that shift and we're proud to back them as they establish a new standard for how dollars move globally."

Sure. One general thing I will say about the US banking system is that it is a *system*, and if you bank at a bank that is open 24/7 and talks a lot about the blockchain, that doesn't *necessarily* mean that you can send dollars to someone at 2 a.m. over the blockchain. What if the recipient uses a regular bank?

Still, there are potential network effects. We talked once about the Silvergate Exchange Network, a crypto-flavored 24/7 payments network run by Silvergate Capital Corp. If you were on the SEN, and your counterparties were on the SEN, you could merrily send each other dollar payments any time you wanted, without touching the rest of the US banking system. How likely was it that you and your counterparty were both on the SEN? Actually pretty likely, if you were a crypto hedge fund or exchange in 2022; Silvergate did a good job of signing up a lot of crypto firms to its crypto-flavored payments network. (It shut down in 2023, for reasons.) Maybe N3XT will do the same. "N3XT launches with inaugural clients across crypto, shipping and logistics, foreign exchange, and other sectors," says the press release.

But that's not the point. Here's the point:

N3XT is a full-reserve bank – every dollar of deposits is backed one-to-one by cash or short-term U.S. treasuries, making N3XT the first "narrow bank" in the United States. The bank does not lend, and it publishes its reserve holdings daily. It operates globally under a Wyoming Special Purpose Depository Institution charter and is regularly examined by state banking authorities.

The point is that the US dollar payment system is dominated by *banks*: A "payment" basically means "telling my bank to decrease my account and increase your account," so it is natural that banks – which are where the accounts are – process the payments. And for a long time the fundamental business of banks was to take deposits (that is: create accounts) and issue loans. There are some natural historical reasons for that combination, but it is not an *obvious* combination from first principles. "What if we took deposits, parked the money in Treasury bills or interest-earning accounts at the Federal Reserve, and *didn't* make loans" is a perfectly natural thought to have, as is "what if we *didn't* take deposits, raised money from investors looking for returns, and made loans with that money?" The first thought is called "narrow banking," the second is called "private credit," and we have talked a lot about the move in recent years toward narrow banking.

But "the move toward narrow banking," in the US, has often involved non-bank forms of narrow banking. A US government money market fund is sort of a narrow bank. A stablecoin is sort of a narrow bank. These are not *banks*, though; they do not have bank charters. Actual banks *have* gotten narrower – retreating from some risky lending businesses – but they have not become pure narrow banks, and they have faced resistance when they tried. We have talked a few times about the Federal Reserve's rejection of a bank called TNB USA Inc., which wanted to take deposits, park them at the Fed, earn interest on reserves, pass the interest on to customers, and do nothing else. For various macroeconomic and systemic-stability reasons, the Fed was skeptical.

But there are a lot of narrow-bank-type things out there; if Tether can take customer money and park it in Treasury bills, why shouldn't a bank? It was kind of inevitable that eventually a chartered bank would get into the business, and now one has.

Trump account gold rush

I kind of just want to push fast-forward on this and get straight to my 2027 column about putting private credit and crypto into Trump accounts:

All manner of financial institutions are vying for a role in the program, from banks such as JPMorgan Chase to brokerages such as Charles Schwab and Robinhood Markets to money managers including BlackRock.

The U.S. will seed each of the "Trump Accounts" with \$1,000, costing \$15 billion through 2034, and tech billionaire Michael Dell and his wife, Susan Dell, said Tuesday they would donate \$6.25 billion to expand the reach of the initiative.

Participating financial firms likely would earn lower management fees than their typical rates, but the program would be a potential gateway to acquire millions of new customers the companies hope will stay with them into adulthood and grow their accounts over time. ...

Many of the largest banks, brokers and asset managers plan to make pitches to the Treasury Department. The agency already is seeking proposals from firms including Schwab and Robinhood to oversee the Trump accounts' records and perform administrative tasks, people familiar with the matter said.

I don't know what will go in the Trump accounts to begin with. "The Treasury Department is considering choosing an exchange-traded fund or working with firms to potentially create a market-tracking fund with no fees," reports the Wall Street Journal, which makes sense. By the time they launch, will they actually be filled with, like, Trump Media & Technology Group stock? World Liberty tokens? Various other crypto-y Trump personal projects? Stakes that the US Treasury has taken in various national-security-sensitive companies? Shares of Fannie Mae? Who knows. The point is that lots of people in the US, even now, do not have brokerage accounts, and if more of them got brokerage accounts then surely the brokers could make some money.

Crypto gambling

I always feel so stupid when I write this, but when I started in financial journalism, I assumed that the point of financial markets was to allocate capital to real-world economic uses, and by now I know that the point of financial markets is to create fun opportunities for gambling. What changed my mind was crypto.

The *fundamental* lesson of crypto, it seems to me, is "if you create an electronic token whose price goes up and down, people will have fun betting on it, so its price will go up a lot, period, the end." The electronic token doesn't have to have "fundamentals," it doesn't need to be tied to anything else, just the act of online electronic gambling is enough to get people interested.

This lesson is extremely generalizable, though, and lots of people have found lots of ways to give people what they want, which is electronic gambling. There are meme stocks, and zero-day options on meme stocks, and sports gambling, and prediction markets. Most of those ways are ... more fun than crypto? Like, betting on the price of Dogecoin or whatever is purely self-referential. Betting on a football game involves football! You can watch the game! Seems more entertaining. Meme stocks have a business.

Crypto, for a long time, had a couple of big advantages over other forms of electronic gambling:

1. Crypto had a better ecosystem for gambling: It offered wild bets that you couldn't get elsewhere, because the US legal-sports-betting and prediction-market and zero-day-options ecosystems were not particularly advanced, while crypto offered tons of unregulated casinos and memecoins.
2. Crypto mostly went up, so everyone could *make money*. This is not true of sports betting, which is inevitably zero-sum.

But now crypto has gone down a lot, and the other gambling ecosystems have evolved a lot, and Bloomberg's Muyao Shen reports:

The retail tide that once lifted everything from Trump-branded coins to dog-theme tokens is no more. In past cycles, altcoins would surge alongside Bitcoin and then fall harder. This year, the cohort largely missed the rally – and when the downturn hit, they cratered afresh, sending once-popular tokens like Dogecoin 50% lower since the September high.

One reason: competition for retail dollars has become far more crowded. Zero-day options, speculative tech stocks, leveraged ETFs and prediction markets can offer faster upside, better thrills, and less chaos. And with thousands of small coins – from joke tokens to half-abandoned blockchain experiments – the question is how far the shakeout runs. ...

Part of it comes down to something simple: many of the new places to speculate feel safer or easier to understand. ... Apps that once funneled retail money into altcoins now offer other ways to bet.

Crypto led the way to our modern gambling markets, but it might be losing its lead.

Puzzles

I guess that, if you run a quantitative hedge fund, the ideal design aesthetic for your offices is "escape room." Like, your employees come to work, and they solve puzzles to get into the office, and they solve puzzles to log into their computers, and then they are nice and warmed up to solve the puzzles that are the business of quantitative finance. Maybe this is wrong. You don't want them to spend so much time solving the get-into-the-office puzzles that they have no time to, like, find signals that predict stock price returns. But a little time. You want to select for people who love puzzles, and who are good at them, and who will seek out new puzzles to solve, and then you want to train them on more puzzles. Bloomberg's Justina Lee reports on PDT Partners' new offices:

When quantitative hedge fund PDT Partners moved into its new headquarters in New York City after the pandemic, Chief Executive Officer Pete Muller wanted to entice employees back into the office. So he designed a puzzle. "I wanted to give them a reason to look around," he says.

About 80 artworks are displayed around the three-floor office in Columbus Circle, five of which contain cryptic clues to a phrase. ...

One diptych, for instance, hangs in the office's hidden "speakeasy," a room that features books and games and is open to all employees through a secret entrance.

If the employees are spending hours tunneling into the secret room to find the art clues to solve the puzzles, is that *good* for the firm's profitability? I mean, indirectly, probably yes.

Things happen

Meta's Zuckerberg Plans Deep Cuts for Metaverse Efforts. Sam Altman Has Explored Deal to Build Competitor to Elon Musk's SpaceX. Bond investors warned US Treasury over picking Kevin Hassett as Fed chair. Two Sigma Starts New Funds, Raises Cash Despite Internal Turmoil. When Finance Needed More Math, It Turned to the Card Players. How Brendan Nelson became HSBC's stop-gap chair. Hedge Funds Get Jittery on Prospect of UK's Non-Compete Ban. Citadel debuts new AI tool for equities investors, CTO Subramanian says. Manhattan Luxury Apartment Market Surges in Month After Mamdani's Win. The World Has More Billionaires Than Ever. Flying taxis. Adversarial poetry.

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. This will not always be the case: If you don't have a ton of profits on other deals, then your losses on a bad deal won't be refundable, and there are also timing issues. The fund at issue here were apparently raised in 2011 and 2013, so presumably they have cashed out a lot of companies, and paid some carry, already.

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Securities

Crypto Reels From a \$200 Billion Crash as Casino Crowd Moves On

December 4, 2025, 5:48 AM PST

Crypto's riskiest tokens are crashing on a scale that stands out even by the industry's own volatile standards, abandoned by retail speculators saddled with humiliating losses and a growing sense the game is rigged.

Cryptocurrencies beyond Bitcoin have been hit hardest in the market downturn that kicked off early October. A MarketVector index tracking 50 mid- and micro-cap tokens has fallen nearly 70% this year, hitting its weakest level since early 2020. Altcoins have now shed \$200 billion on paper since the market peaked.

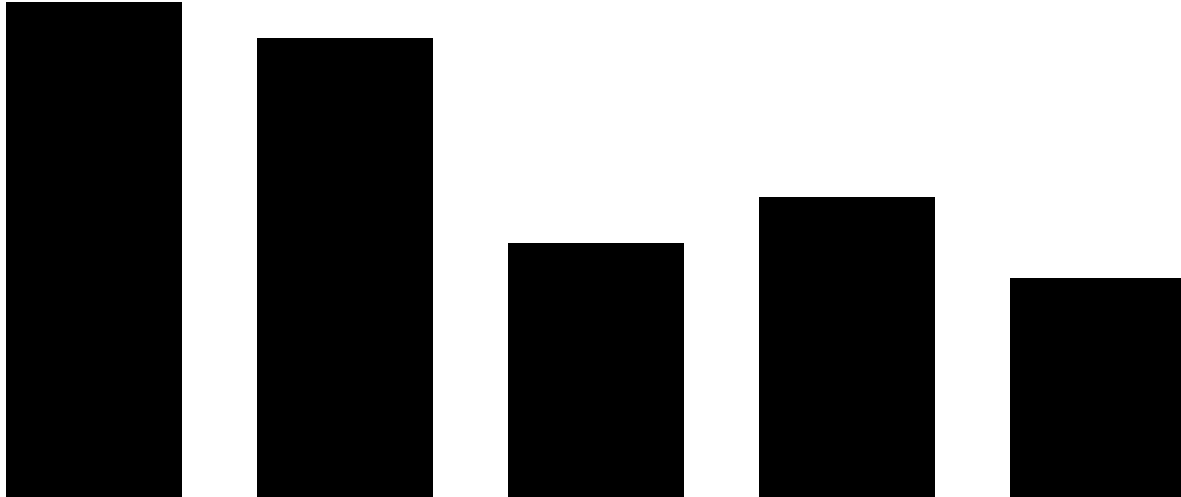
The retail tide that once lifted everything from Trump-branded coins to dog-theme tokens is no more. In past cycles, altcoins would surge alongside Bitcoin and then fall harder. This year, the cohort largely missed the rally — and when the downturn hit, they cratered afresh, sending once-popular tokens like Dogecoin 50% lower since the September high.

One reason: competition for retail dollars has become far more crowded. Zero-day options, speculative tech stocks, leveraged ETFs and prediction markets can offer faster upside and better thrills. And with thousands of small coins — from joke tokens to half-abandoned blockchain experiments — the question is how far the shakeout runs.

Memecoin Frenzy Ebbs as Volumes Slide

Monthly trading volume on memecoin platform Pump.fun fades

■ Volume



For many traders, the meme-era logic was the point: buy a token early, hope someone else arrives later, and repeat. It was speculation built on the greater-fool trade, and for years, it worked. But that engine has broken down. Prices are no longer rising simply because new buyers show up. Investors are starting to judge tokens the way they judge companies — by whether they have users, revenue, or a working product.

“For years, many tokens appreciated simply because of market cycles rather than real progress – and that era is ending,” said Shuyao Kong, who is building a new blockchain platform called Megaeth. “Today it’s influenced by cypherpunks, traders, Wall Street institutions, and even politics. No single narrative moves the market anymore, and the rise of traditional valuation frameworks is unsettling for some.”

Altcoins sit at the market’s outer edge, a mix of memecoins, decentralized-finance experiments and governance tokens designed to give holders a say in how projects run. Most trade in shallow markets with few natural buyers, driven by social-media buzz, day-trader leverage and hopes of catching the next tenfold jump. That model thrives when money rushes in and collapses just as quickly when it rushes out. And even many of the governance tokens tied to projects with clearer economic models have slumped, another sign of retail exhaustion.

Part of it comes down to something simple: many of the new places to speculate feel safer or easier to understand. Turbocharged stock funds and options have become everyday tools. And on the blockchain, a newer crop of products that track real companies — essentially crypto versions of stock futures — let traders bet on firms like Apple, Nvidia or Tesla with around-the-clock access. These products are still tiny but show where speculative habits are drifting.

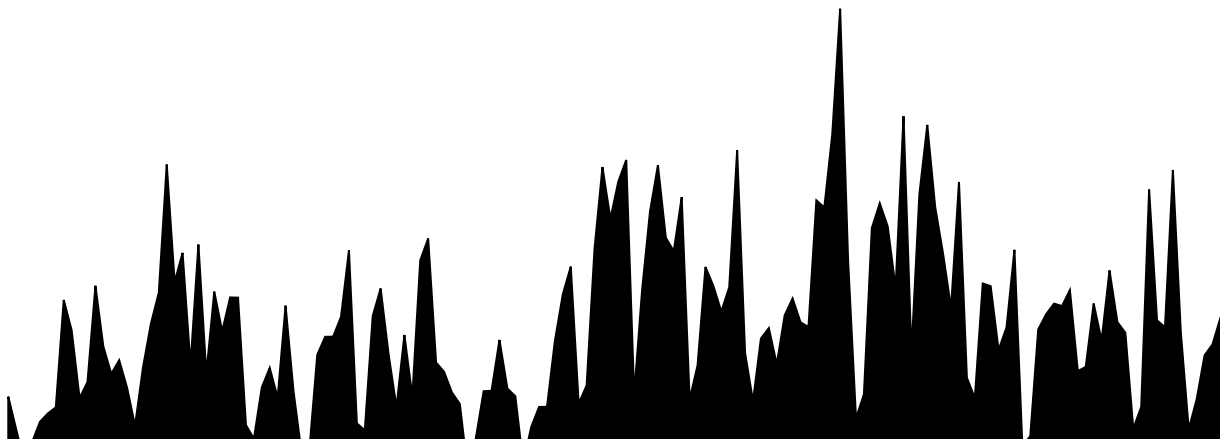
Daily volumes for small- and mid-cap crypto derivatives on Hyperliquid — an altcoin trading hub specializing in perpetual futures — have thinned sharply since October's crash. By contrast, prediction-market activity on Polymarket has hit records.

Crypto Trading Cools Since October Crash

Trading volume for crypto perpetual swaps on Hyperliquid Declines

■ Total Trading Volume for Crypto Perps

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Frid



The venues themselves have changed too. Apps that once funneled retail money into altcoins now offer other ways to bet. Robinhood Markets Inc. is leaning into sports bets. Gemini Space Station Inc., the crypto exchange founded by billionaires Tyler and Cameron Winklevoss, is preparing to offer prediction market contracts. Decentralized-finance platform Hyperliquid lets users spin up DIY contracts on everything from stock indexes to shares of private companies, while Coinbase Global Inc. has expanded its offerings.

Read: Stocks Go 24-7 in Crypto Betting Markets With 100x Leverage

At the same time, billions of dollars have been absorbed by Bitcoin ETFs — money that no longer sloshes into smaller, riskier tokens. Together, those shifts leave far less capital flowing into the altcoin universe than in past cycles.

Jack Melnick, who works in digital assets and trades his own money, said he has shifted much of his activity from altcoins to these new crypto-based stock bets.

"For the first time, as someone who likes to keep capital onchain, I now have the ability to trade the same businesses I covered in my TradFi days," he said. "These products give me easy leverage and exposure to companies that generate real revenue at more reasonable fundamental valuations than their crypto counterparts."

Melnick said this cycle has exposed how few altcoin projects ever build something people actually use — what the industry calls product-market fit. At the same time, he noted, many new tokens launch at increasingly high valuations after large private funding rounds. "By the time users get access to bidding altcoins," he said, "the majority of the upside has already bled away."

Another drag this cycle is basic supply pressure: many projects released large batches of new tokens this year, flooding the market and keeping prices pinned down. The launch of the Trump memecoin underscored the point — money rotated into it, draining demand from dozens of smaller meme tokens.

Altcoins won't vanish — the greater-fool impulse always finds new outlets — but the reliable bid that carried past cycles is missing.

There are notable exceptions. Tokens such as BNB and HYPE have held up because they use parts of their revenue to buy back coins and reduce supply — a mechanism closer to stock buybacks. A few others, including Zcash, have posted temporary eye-catching gains thanks to narrative buzz. But those winners are notable mainly because they're so rare.

Only about a dozen crypto projects generated more than \$1 million in revenue over the past month, according to Token Terminal — out of thousands still trading. The vast majority are drifting lower, with little to anchor their value.

"Mainstream retail traders are no longer seeing the convex returns in altcoins that they have in previous cycles and instead are finding that upside in equities tied to AI, quantum, nuclear energy and other emerging speculative sectors," said Joshua Lim, global co-head of markets at crypto prime broker FalconX.

--With assistance from **Dave Liedtka**.

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Securities

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The Man Who Got Eric Trump Into American Bitcoin Before 70% Rout

December 5, 2025, 7:04AM PST

Summary by Bloomberg AI AI Generated



- Eric Trump rang the Nasdaq bell in September to celebrate a more than \$500 million windfall from American Bitcoin Corp.'s trading debut, but three months later, the shares have cratered 70%.
- Michael Ho, the company's CEO, helped sell Trump on the venture and has seen the share price swoon, with the price tumbling 51% during the first half hour of trading on Tuesday.
- Ho and Eric Trump blamed the drop on temporary selling pressure and voiced confidence in the business, with Trump saying the company's fundamentals are "virtually unmatched" and Ho saying "none of this changes our focus or our conviction".

Eric Trump rang the Nasdaq bell in September to celebrate a more than [\\$500 million windfall](#) from American Bitcoin Corp.'s trading [debut](#) . Three months later, the shares have cratered 70%.

Standing beside him that day was a little-known Canadian now at the center of the meltdown: **Michael Ho**, who helped sell Trump on the venture over dinner at the US president's Florida golf club and now serves as the company's CEO.

His rise from a precocious Vancouver car dealer to the head of a Nasdaq-listed company underscores how access to Trumpworld became a fast route to riches during the 2025 crypto boom – and how quickly the music is stopping as the industry grapples with another downturn.



Eric Trump, co-founder and chief strategy officer of American Bitcoin Corp., center right, and Michael Ho, chief executive officer of American Bitcoin, second from right, before ringing the opening bell at the Nasdaq MarketSite in New York, US, on Tuesday, Sept. 16, 2025.

Source: Bloomberg

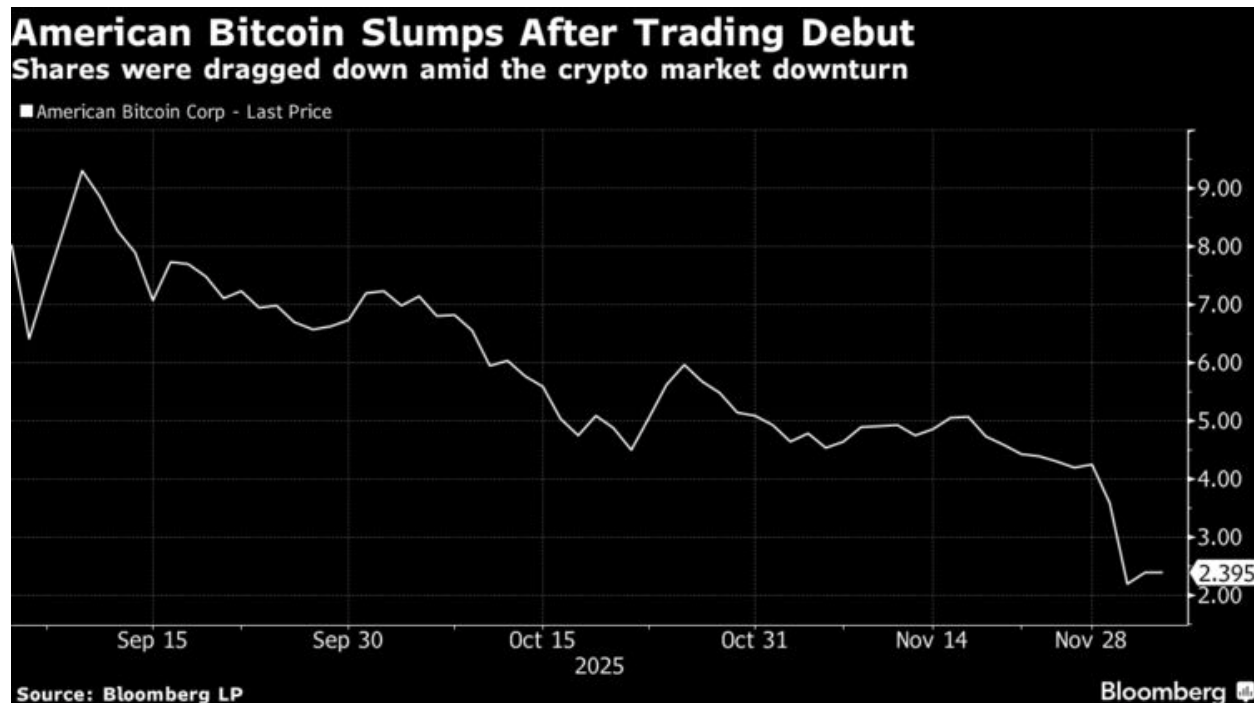
The slide in American Bitcoin's shares was stunning even in the highly volatile world of digital currencies and thrust the company among the Trump-affiliated ventures that have been [hammered](#) since the crypto markets started sinking two months ago. On Tuesday, when some early investors were freed up to sell their shares, the price tumbled 51% during the first half hour of trading and has since recouped only a fraction of the loss.

"Basically anything related to Trump has done quite poorly – and that's not surprising because their operations are all on the highly speculative end of crypto," said Todd Baker, a senior fellow at Columbia University's Richman Center. "This particular venture, which combines the Trump brand and Bitcoin mining itself, suffered when there was a flood of potential sellers."

As the share price swooned, Ho's longtime partner **Asher Genoot** – now chairman of American Bitcoin and CEO of Hut 8 Corp. – and Eric Trump, the firm's chief strategy officer, blamed the drop on temporary selling pressure and voiced confidence in the business.

"Our fundamentals are virtually unmatched," Trump said on X, while noting he was holding on to all of his shares. He told Bloomberg News that American Bitcoin is "growing one of the best companies in the crypto space."

Ho also attributed the slide to early investors taking profits on positions "that were significantly in the money." He said the opening price on Tuesday was dragged down by sales during pre-market hours, when liquidity was thinner, and that he hasn't sold any of his shares. "None of this changes our focus or our conviction," Ho said in a written response to questions.



As CEO, it's largely up to Ho to build out the less-than-one-year-old Bitcoin mining business, marking the most prominent stage of a career that until recently left him largely unknown.

Ho said his start during the primitive, do-it-yourself days of crypto mining has prepared him by making him "battle scarred," as he put it during an interview in Singapore in October.

Born in Shanghai and raised in Canada, Ho ran his own luxury-car business while still a student at Simon Fraser University, according to a 2014 profile in the Vancouver Sun. A 2023 investor presentation said the import-export company he founded when he was 17 generated over \$100 million in revenue.

He began mining Bitcoin in 2014 by using rigs made from milk cartons and gaming GPUs and went on to work as a middleman for companies like Riot Platforms Inc. and MARA Holdings Inc., helping them with energy infrastructure and mining equipment. Later, he sued MARA for \$138 million, claiming the company had failed to compensate him for work on the acquisition of an energy supplier. A court ruled in Ho's favor in July 2024. MARA is appealing the decision.

After the pandemic struck, Ho and Genoot were part of a push to sell stock in a hand-sanitizer business, SEC filings show. In 2020, the two started US Bitcoin Corp., a mining company, with financial backing from men who in 2018 [settled](#) SEC allegations of illegal promotion and manipulative trading of microcap stocks, according to a complaint by Massachusetts regulators. US Bitcoin agreed to pay \$1 million to settle the state's claims faulting it for failing to register the stock offering, without admitting any wrongdoing. US Bitcoin [merged](#) with Hut 8 in 2023.

Ho's breakout came in late 2024, when he and Genoot were introduced to the Trump family through Palm Beach, Florida, contacts. "We first started having conversations toward the end of last year just through a lot of mutual friends who were in similar circles in Florida," Ho said.

American Bitcoin [launched in March](#) through a deal with Hut 8, which gave the new company control of its mining fleet in exchange for a majority stake.

The new company's stock initially took off once it started publicly trading, closing as high as \$9.31 on Sept. 9. Even after it slid, Ho struck an upbeat tone during November's earnings call, when the company reported a quarterly profit of \$3.5 million on revenue of \$64.2 million.

"Nasdaq told us during our bell ringing we're probably one of the fastest public companies to have gone public from inception to bell ringing," Ho said on the earnings call. "We've become one of the largest miners in the world – essentially overnight."

But as the crypto selloff continued, the stock kept losing ground. Then, on Tuesday, as the lockup period expired, the price was swiftly cut in half before ending the day at \$2.19.

On X, Trump expressed faith in the company's competitive edge, saying it was able to mine Bitcoin at roughly half its spot trading price, has strong profit margins and is "climbing the BTC ranks daily."

"I'm 100% committed to leading the industry," he said.

--With assistance from **Emily Mason** and **Olga Kharif**.

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Securities

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Do Kwon Should Get 12 Years for 'Colossal' Crypto Fraud, US Says

December 5, 2025, 6:30 AM PST

Summary by Bloomberg AI

AI Generated



- US prosecutors said Do Kwon should be sentenced to 12 years in prison for the fraud that led to the TerraUSD stablecoin's \$40 billion collapse in 2022.
- Kwon pleaded guilty in August to conspiracy and wire fraud under an agreement in which prosecutors agreed to ask for no more than 12 years.
- Kwon will be sentenced by US District Judge Paul Engelmayer on Dec. 11, and as part of his plea deal, he agreed to forfeit \$19.3 million and some properties.

Terraform Labs Pte. co-founder **Do Kwon** should be sentenced to 12 years in prison for the fraud that led to the TerraUSD stablecoin's \$40 billion collapse in 2022, US prosecutors said.

Calling Kwon's fraud "colossal in scope," the government told a New York federal judge in a late Thursday court filing that the crime merited a tough sentence. Prosecutors pointed out that Kwon's lies to customers triggered a series of cascading crises in the crypto world, including the collapse of Sam Bankman-Fried's FTX .

Kwon will be sentenced by US District Judge Paul Engelmayer on Dec. 11.

The sentencing comes at a time when the Trump administration has mostly weakened enforcement actions targeting cryptocurrency. On Oct. 23, President Donald Trump pardoned Binance founder **Changpeng Zhao**, who was convicted of failing to maintain an effective anti-money laundering program at the world's largest cryptocurrency exchange.

In his own court filing last week, Kwon, 34, suggested he be given five years behind bars. He pleaded guilty in August to conspiracy and wire fraud under an agreement in which prosecutors agreed to ask for no more than 12 years.

As part of his plea deal, Kwon agreed to forfeit \$19.3 million and some properties. Prosecutors aren't seeking to force Kwon to pay restitution to the millions of investors who lost \$40 billion, saying the prospect of determining each of their losses would be too complex.

Kwon was charged in both the US and his native South Korea, and there was a lengthy tussle over where he would be extradited first after he was arrested in Montenegro in 2023 while traveling under a fake passport. He was sent to the US in January after spending almost two years in the Balkan nation, where we was [jailed](#) over the phony travel document.

US prosecutors said they will support Kwon serving the second half of his sentence in South Korea if he abides by the terms of his plea deal and qualifies under a transfer program.

The case is US v. Kwon, 23-cr-0151, US District Court, Southern District of New York (Manhattan).

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Securities

Ex-CEO Pardoned by Trump Refuses to Testify in Antitrust Suit

December 4, 2025, 4:40 PM PST

Longtime sports and entertainment executive **Tim Leiweke** declined to answer Justice Department questions on Thursday as part of a civil antitrust case, according to people familiar with the matter. Earlier this week he received a presidential pardon in a separate bid-rigging case.

Leiweke, the former chief executive officer of sports and entertainment company Oak View Group LLC, invoked his constitutional right against self-incrimination during a deposition related to the federal government's case accusing Live Nation Entertainment Inc. and its Ticketmaster business of monopolizing much of the live music industry, said the people. The people, who asked not to be identified discussing the proceeding, didn't provide details on why Leiweke chose to invoke his Fifth Amendment right.

Leiweke earlier unsuccessfully tried to avoid the deposition, citing liability from then pending criminal charges, according to court records.

An attorney and a spokesperson for Leiweke did not immediately respond to a request for comment.

Neither Oak View or Leiweke were named as a defendant in the DOJ's civil antitrust case against Live Nation, but in the complaint the government accuses Live Nation and Oak View of agreeing not to compete in the concert promotion market. A trial in the DOJ's antitrust case against Live Nation is set to start in early March in New York.

A Justice Department spokesperson declined to comment. A spokesperson for Live Nation didn't immediately respond to a request for comment.

The separate criminal case against Leiweke for which he received a pardon related to a July indictment that Oak View illegally coordinated with its rival Legends on the bidding to develop and operate the Moody Center, a \$338 million arena at the University of Texas in Austin. Oak View ultimately won the contract in 2018 and the venue opened in 2022.

Oak View Group and Legends both entered into non-prosecution agreements with the Justice Department that were announced in July and agreed to pay fines of \$15 million and \$1.5 million, respectively. Leiweke stepped down from his post as Oak View chief executive officer shortly after the charges were filed.

The Justice Department posted a notice of the pardon on its website on Wednesday. The notice was dated Dec. 2. The move stands out because the pardon comes just months after Leiweke was charged by the Justice Department under Trump's administration. A White House spokesperson didn't immediately respond to a request for comment.

Leiweke expressed "profound gratitude" to Trump for the pardon. "The president has given us a new lease on life with which we will be grateful and good stewards," he said in a statement.

An Oak View spokesperson didn't immediately respond to a request for comment about the deposition. On Wednesday the company said it was "happy for Tim" about the pardon.

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Tesla launches low-cost Model 3 variant in Europe

 [reuters.com/business/autos-transportation/tesla-launches-low-cost-model-3-variant-europe-2025-12-05](https://www.reuters.com/business/autos-transportation/tesla-launches-low-cost-model-3-variant-europe-2025-12-05)

Marie Mannes

December 5, 2025

Tesla's Model 3 is displayed during an event a day ahead of the official opening of the 2023 Munich Auto Show IAA Mobility, in Munich, Germany, September 4, 2023. REUTERS/Angelika Warmuth [Purchase Licensing Rights](#)  , [opens new tab](#)

- Tesla faces softening demand in Europe despite Model Y refreshes
- New Model 3 variant priced at 37,970 euros in Germany
- Defending European market share against cheaper Chinese rivals
- Deliveries expected in first quarter

STOCKHOLM, Dec 5 (Reuters) - Tesla ([TSLA.O](#))  , [opens new tab](#) launched the new, lower-priced version of its Model 3 car in Europe on Friday, two months after its U.S. debut, aiming to boost sales as competition intensifies and demand slows. Tesla is grappling with softening demand across Europe, where new registrations have [fallen sharply](#) this year despite a refreshed Model Y line-up, with many buyers opting for competitor vehicles such as the Volkswagen ([VOWG.DE](#))  , [opens new tab](#) ID.3 and Chinese manufacturer BYD's ([002594.SZ](#))  , [opens new tab](#) Atto 3.

The Model 3 - which Tesla describes in a post on X as having an "ultra-low cost of ownership" - drops some premium finishes and features but offers a driving range above 300 miles (480 km). Deliveries are expected to start in the first quarter of 2026.

CEO Elon Musk has long promised mass-market vehicles, though last year he [scrapped plans](#) for an all-new \$25,000 EV, opting instead to build lower-priced versions of existing models, a shift that has sparked concerns among analysts about cannibalising sales of higher-margin cars.

A low-cost Model Y crossover was [launched](#) in October as Tesla seeks to defend its market share against European and Chinese rivals offering increasingly [lower-priced](#) electric cars in Europe, with many selling EVs below \$30,000.

The new Model 3 Standard is listed at 37,970 euros (\$44,299.60) in Germany, 330,056 Norwegian crowns (\$32,698) in Norway and 449,990 Swedish crowns (\$47,820) in Sweden, according to Tesla's website. On its German website, the second cheapest Model 3, which is called "premium", comes in at 45,970 euros.

Tesla [introduced](#) the Standard variant of the Model 3 in the U.S. in October, where it currently sells for \$36,990.

Musk has been shifting the company towards artificial intelligence, focusing on robotaxis and humanoid robots, but the new cars are key to hopes of near-term revenue growth.

(\$1 = 0.8571 euros)

(\$1 = 10.0942 Norwegian crowns)

(\$1 = 9.4100 Swedish crowns)

Reporting by Marie Mannes; Editing by Terje Solsvik and Kate Mayberry

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

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



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Starbucks Wants 2nd Shot To Nix Investors' 'Triple Shot' Suit

By **Ben Adlin**

Law360 (December 4, 2025, 8:58 PM EST) -- Starbucks is asking a Seattle federal judge to reconsider a ruling last month that flushed all but four claims in a proposed securities class action against the coffee giant, aiming to dismiss entirely the shareholder suit accusing company executives of lying about a struggling "reinvention" campaign.

The remaining claims against former CEO Laxman Narasimhan over the company's "Triple Shot Reinvention With Two Pumps" plan should be thrown out on the same grounds U.S. District Judge John H. Chun used to justify dismissing the other claims, Starbucks Corp. argues in a Wednesday motion, arguing that the statements investors' say were misleading referred to a period of time before any alleged in-store problems began.

Narasimhan's statements that are the basis of the four claims referred to Starbucks' performance during the first quarter of fiscal 2024, which ended Dec. 1, 2023, according to the new filing. Those comments, including on a Jan. 30, 2024, earnings call, referred to historical results, the company says, not problems investors say the company encountered starting January 2024.

"Because all four remaining statements pertain to the completed 1Q24 results, no reasonable investor would have been misled about problems that allegedly arose after 1Q24 ended, in the few weeks before the January 30, 2024 earnings call," Starbucks claims.

U.S. District Judge John H. Chun's **November ruling** dismissed claims against former Starbucks Chief Financial Officer Rachel Ruggeri, finding that her statements weren't knowingly misleading and didn't violate securities laws. But the court preserved the four claims against Narasimhan, noting that the lawsuit's pleadings, including that Narasimhan was abruptly fired in 2024, raised a strong inference of his intent to mislead.

In its Wednesday motion, however, Starbucks argues Narasimhan's alleged comments don't meet the higher bar for scienter under an August Ninth Circuit ruling in [Sneed v. Talphera Inc.](#) That precedent requires statements to be "flagrantly false," Starbucks adds.

"Plaintiffs failed to allege particularized facts that Narsimhan [sic] was aware of any 'issues' that supposedly began in January, let alone that he had any motive to mislead investors about them," the company contends in its motion.

As the coffee chain seeks to toss the suit entirely, the plaintiffs are working to reinstate the dismissed claims against Ruggeri. In a competing Wednesday motion for reconsideration, the investors say the court misapplied a securities law standard regarding a person's control over a company.

Ruggeri "had the power to direct and influence the actions of Starbucks," which was the primary securities law offender, they argue, adding that the Ninth Circuit has "repeatedly stated" it's not necessary to show a defendant with that level of control was an active participant in a violation in order to make a claim against them.

"As CFO, Ruggeri possessed the power and authority to control the contents of Starbucks' public statements to investors," the lead plaintiffs in the case say. "She also received copies of Starbucks' reports and press releases alleged to be misleading prior to or shortly after their issuance, and had the ability and opportunity to prevent their issuance or cause them to be corrected."

Investors **filed the suit** in August 2024, claiming Starbucks and the two executives "touted the company's reinvention [plan] and confidence in the business's overall momentum" and minimized the risks the company would face in international markets, including China, before business soured. The company projected global comparable sales growth of between 5% and 7% during its 2024 fiscal year, according to the suit, but in April 2024 Starbucks announced that global sales declined globally by 4%, customer traffic fell by 7% and its revenues fell by 2%.

Starbucks **initially sought to dismiss the suit** in April, arguing that the statements in question were either reports about past results or "nonactionable opinions, expressions of corporate optimism, or forward-looking statements" that are protected by the Private Securities Litigation Reform Act's safe harbor.

Counsel for the parties did not immediately respond to requests for comment Thursday. Starbucks also did not immediately reply.

Lead plaintiffs the Pavers & Road Builders District Council Pension Fund, Teamsters Local 237 Additional Security Benefit Fund and Teamsters Local 237 Supplemental Fund for Housing Authority Employees are represented by Luke O. Brooks, Laurie L. Largent, Kevin A. Lavelle, Erika L. Oliver, Patton L. Johnson and Evelyn Sanchez Gonzalez of Robbins Geller Rudman & Dowd LLP, and Juli E. Farris of Keller Rohrback LLP.

Starbucks Corp., Narasimhan and Ruggeri are represented by Tyler K. Lichter of K&L Gates LLP and Andrew B. Clubok, Susan E. Engel, Michele D. Johnson and Whitney B. Weber of Latham & Watkins LLP.

The case is Charles Garbaccio et al. v. Starbucks Corp. et al., case number 2:24-cv-01362, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Emilie Ruscoe and Lauren Berg. Editing by Kristen Becker.

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Blue Owl Capital Faces Investor Suit Over Redemption Woes

By **Emilie Ruscoe**

Law360 (December 4, 2025, 7:46 PM EST) -- Alternative investment manager Blue Owl Capital Inc. faces a proposed investor class action alleging that it concealed financial stress related to shareholder redemptions, hurting investors when it disclosed a quarterly earnings miss and announced a merger that could have halted certain private fund redemptions.

In a complaint filed Wednesday in Manhattan federal court, plaintiff Alexander Goldman took aim at Blue Owl Capital and three of its executives, saying the private credit-focused company kept its share price artificially high by concealing redemption pressures that led to liquidity issues and might have eventually forced the company to limit, or temporarily halt, redemptions.

About 40% of Blue Owl's \$251 billion in assets under management is dedicated to its direct lending, or private credit, business, in which it makes private loans to businesses using funds raised from investors, who earn returns off the fees and interest payments paid to the loan portfolio, the complaint noted.

Goldman said that Blue Owl's direct lending business managed six business development companies. These include the publicly traded Blue Owl Capital Corp. and the privately-held Blue Owl Capital Corp. II, which has used quarterly tender offers to let investors sell shares back to the company at a price equivalent to its current net asset value.

The issues with the company began to emerge at the end of October, when Blue Owl reported quarterly financial results that missed analysts' expectations for fee-related earnings and a decline in performance revenue, Goldman said. On the heels of these results, Blue Owl's share price fell about 4% to under \$15.90, he said.

Blue Owl's share price fell another 5% a few days later, when the company announced it would merge Blue Owl Capital Corp. and Blue Owl Capital Corp. II, adding that Blue Owl Capital Corp. II didn't expect to hold any tender offers before the merger Goldman said.

Another share price decline occurred in the wake of a Nov. 16 Financial Times report that said Blue Owl Capital Corp. II shareholders would see the value of their investments fall by about 20% in the merger, Goldman said. This is because they would have to exchange their shares for Blue Owl Capital Corp.'s shares, which in turn were trading at a 20% discount to its stated asset value, the complaint said.

Days after this report, Blue Owl announced it had terminated its merger plans, the complaint said.

The proposed class would include those who purchased Blue Owl shares between Feb. 6, when the company stated in an annual report that it had "no meaningful pressure to our asset base from redemptions," and Nov. 16, when the Financial Times reported on the unfavorable details of the then-proposed merger.

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

Goldman is represented by Rebecca Dawson, Robert V. Prongay and Charles H. Linehan of Glancy Prongay & Murray LLP.

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

The case is Goldman v. Blue Owl Capital Inc et al., case number 1:25-cv-10047, in the U.S. District Court for the Southern District of New York.

--Editing by Jay Jackson Jr.

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Crypto Investors Fight To Revive Ripple Suit At 9th Circ.

By **Dorothy Atkins**

Law360 (December 4, 2025, 10:14 PM EST) -- A certified class of investors urged the Ninth Circuit on Thursday to revive allegations Ripple Labs violated securities laws through unregistered sales of digital-token XRP, arguing the lower court misapplied the Ninth Circuit's SEC v. Murphy precedent in granting Ripple summary judgment under a three-year statute of repose.

The arguments by investors' counsel, Jason Bell of Susman Godfrey LLP, came during a hearing before a three-judge panel on the class's appeal challenging a **June 2024** summary judgment ruling in favor of Ripple Labs Inc. on the class's claims.

Bell argued that the lower court erred by refusing to send the class's dispute to trial, because a reasonable jury could find that Ripple did not make a continuous offering of the same XRP securities from 2013 through 2017 or make a "bona fide offer" of those securities to the public before 2017.

Bell argued that in accepting Ripple's defense, the lower court misapplied the Ninth Circuit's 1980 **SEC v. Murphy** holding, which dictates when separate securities offerings trigger separate repose periods.

Prior to 2017, Ripple sold XRP only to sophisticated market makers, who aren't considered subject to bona fide public offerings under the law that would trigger a repose period, Bell said. Bell also said Ripple's public and internal documents show that in 2017, the cryptocurrency company began specifically targeting retail investors when it implemented software changes, which "had a profound economic effect on the XRP market itself."

Bell argued that the 2017 software change served as a "new supply-side restriction mechanism" that "fundamentally altered" the economic reality of XRP investment contracts by releasing XRP from escrowed tranches on a regular supply schedule, causing XRP trading volume to increase by 20,000% and XRP prices to jump 30,000% by the end of 2017.

"You can think about it as if Amazon invested in \$100 billion treasury shares and then one day Amazon says, 'We're going to take 90% of those shares off of the market, and instead only authorize \$1 billion shares to be made available for sale on a month-to-month basis,'" Bell said. "That changes how the economic reality of the security works for investors."

But U.S. Circuit Judge Gabriel P. Sanchez questioned why such a strategic shift would constitute an offering that would trigger a new three-year statute of repose. Bell replied that Murphy case law dictates what should be considered a new offering, and he acknowledged that mere minor marketing changes aren't enough to trigger an offering.

"But that's not what happened here," Bell added. "Ripple told investors that it was a 'sea change,' that it was a 'paradigm shift' ... A reasonable jury could credit Ripple's own representations to the public that this was something completely different, and could discredit Ripple's post-hoc litigation position that it was all part of one continuous offering."

Bell went on to argue that the purpose of the securities statute at issue — Section 13 of the Securities and Exchange Act, which restricts the statute of repose for each unregistered offering — is to ensure there is a viable unregistered-security claim for each unregistered offering.

"If you could trickle out a security for three or four years and then make a huge public offering, you would effectively be able to profit on making a fundamental economic change to your distribution without ever facing private enforcement actions, and that's not how Congress designed the statute," Bell said.

However, Ripple's counsel, Gregory G. Rapawy of Kellogg Hansen Todd Figel & Frederick PLLC, argued that the lower court got the Murphy precedent right in finding that the offerings were continuous after 2013, and therefore the claims are barred by the three-year statute of repose.

Rapawy told the panel that from 2013 to June 2015, Ripple allowed anyone who wished to buy XRP directly on the XRP Ledger's built-in exchange to buy the token, and Ripple sold XRP directly to institutional investors, including market makers and hedge funds.

"Therefore, the repose period ended no later than June 2018 and the classes' claims here are time-barred," he said.

Rapawy acknowledged that Ripple doesn't know who specifically purchased XRP between 2013 and 2015, but he noted that Ripple provided evidence showing that there were discussions on public message forums about purchasing XRP during that time period and XRP was publicly traded on third-party digital asset exchanges.

But U.S. Circuit Judge Eric D. Miller observed that, "that seems to be potentially different, because those aren't offers by you — they're transactions between third parties."

Rapawy responded by noting that the third-party transactions show that retail investors could easily purchase XRP prior to 2015, and so it wasn't a scenario in which an investor would have to "go to the door in the basement and knock three times between midnight and 2:00 a.m." in order to buy XRP, which the plaintiffs' arguments suggest.

But Judge Miller again doubted the argument, asking the attorney how the court should weigh certain evidence in the record, including statements from the company in 2016 specifically stating that Ripple doesn't sell XRP to consumers. Judge Miller also pointed to an email from Ripple's Head of Markets Miguel Vias in 2017 in which Vias wrote that there are a "lack of tools to buy or store" XRP, and "no clear signs of [XRP's] use by anyone."

"Doesn't that at least create a factual question as to whether this was genuinely being sold to the public?" Judge Miller asked Rapawy.

The attorney replied that reading witness testimony in its "full context" shows that a reasonable jury would infer that XRP was sold publicly, pointing to testimony indicating XRP was sold to market makers who were selling XRP to anyone who would buy.

"And [those witnesses] talk about the [XRP] giveaways and the giveaways were going to anyone, and then those people could resell it as well," Rapawy argued.

But Judge Sanchez pressed Rapawy on his argument, questioning whether those third-party XRP sales would legally be considered a bona fide public offering, if the market makers who initially purchased the XRP from Ripple are financially sophisticated.

"For me, the clearest example of what might be a bona fide offer is the sale on the XRP Ledger itself, because at least that seems to be something where there's something more offer-like, as opposed to just things showing up by other parties on digital exchanges," Judge Sanchez said.

Rapawy replied that whether those market makers are agents of Ripple selling XRP publicly is "maybe a separate question." But he added that on summary judgment, the court can conclude that the sales by the market makers were sales by Ripple for statutory purposes.

Judge Sanchez also asked both parties whether the Ninth Circuit needs to decide whether XRP is a security. Both attorneys replied that it is unnecessary for the appellate court to decide the issue on the current appeal.

At the end of the hearing, the panel took the arguments under consideration.

In the summary judgment ruling last year, U.S. District Judge Phyllis Hamilton allowed the lead plaintiff, Bradley Sostack, to proceed on his individual claim against Ripple and its CEO Brad Garlinghouse. Sostack claims he was deceived by statements Garlinghouse made during a televised 2017 interview in which the CEO expressed optimism about the coin's future and said he was holding on to his own XRP stake. Sostack said that statement was false because Garlinghouse was selling millions of XRP on various exchanges throughout 2017.

In keeping alive Sostack's individual claim, Judge Hamilton declined to accept on summary judgment Ripple's defense that XRP is not a security as defined by the U.S. Supreme Court's 1946 opinion in [SEC v. Howey](#) .

In another case last year, a New York federal judge **ordered** Ripple to pay a \$125 million civil penalty for failing to register institutional sales of its XRP token with the U.S. Securities and Exchange Commission. In **August**, both sides agreed to drop competing appeals of the lower court's ruling.

U.S. Circuit Judges Johnnie B. Rawlinson, Eric D. Miller and Gabriel P. Sanchez sat on the panel.

The investors were represented during the hearing by Jason Bell of Susman Godfrey LLP.

Ripple Labs was represented during the hearing by Gregory G. Rapawy of Kellogg Hansen Todd Figel & Frederick PLLC.

The case is Bradley Sostack et al. v. Ripple Labs Inc. et al., case numbers 24-7599 and 25-483, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Jessica Corso. Editing by Michael Watanabe.

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Snap Investors' \$65M Deal OK'd, But Attys Face 'Cheap' Judge

By **Craig Clough**

Law360 (December 4, 2025, 5:03 PM EST) -- A California federal judge said Thursday he will grant preliminary approval of a \$65 million deal to resolve a proposed securities class action against Snapchat, but warned the plaintiffs' side they will "have to see" about the request for 30% of the settlement in attorney fees because he is "notoriously cheap."

U.S. District Judge George H. Wu issued a written tentative ahead of a morning hearing that would grant the motion, and told the attorneys that he just wanted some adjustments made to the wording of the proposed order before he would sign it.

The judge's tentative order said the 30% sought by the lead counsel exceeds the 25% benchmark award for attorney fees, but noted that his court and others in the circuit have found in most common fund cases that fees are higher than that benchmark.

"And also, as far as attorneys fees, well, we'll have to see what happens," the judge said near the end of the hearing. "You know I'm notoriously cheap."

With the judge having indicated he plans to grant preliminary approval, the majority of the brief hearing was dedicated to working out a schedule for upcoming deadlines and hearings.

In October, a putative class of investors led by an Oklahoma firefighters' pension fund asked Judge Wu to preliminarily sign off on the **eight-figure deal**, under which class counsel plan to seek up to \$19.5 million in attorney fees and \$715,000 in costs plus interest.

If approved, the deal would resolve consolidated putative securities class action litigation **initially launched** against Snap Inc., its CEO Evan Spiegel and its former Chief Business Officer Jeremi Gorman in November 2021.

The investors allege Snapchat's parent company and its top brass downplayed the negative impact Apple's April 2021 privacy changes would have on its advertising business, causing the stock price to plunge once the effect was realized.

The investors claim that Snap Inc. and its executives reassured its shareholders that its focus on privacy, independent of Apple Inc.'s app tracking transparency-related changes, prepared the company to handle the impacts.

But in reality, the changes hurt the company's bottom line, causing its value to tumble, the suit alleges. When Snap finally announced the impact, in October 2021, the stock price fell \$19.97 per share, or 26%, to close at \$55.14 per share, according to the suit.

Apple announced the changes in June 2020 as a part of the tech giant's ongoing privacy push, including a new data privacy feature that allows users to opt out of app data tracking.

After multiple rounds of pleading, the lower court tossed the case in September 2023. But in December, the Ninth Circuit revived the litigation, and on remand, the case headed into full-blown discovery. In May, the investors filed a motion to certify the class, but before the court ruled, the parties asked the court to suspend court deadlines as they entered mediation.

The investors' motion to preliminarily approve the deal seeks to conditionally certify a class of individuals and entities that bought or sold publicly traded Snap securities or Snap call or put options between Feb. 5, 2021, and Oct. 21, 2021.

The investors are represented by Maya Saxena, Joseph E. White III, Lester R. Hooker, Dianne M. Pitre, Steven B. Singer, Sara DiLeo, David R. Kaplan and Emily R. Bishop of Saxena White PA, and John L. Littrell and Michael R. Williams of Bienert Katzman Littrell Williams LLP.

Snap Inc., Evan Spiegel and Jeremi Gorman are represented by Audra J. Soloway, Daniel J. Kramer and Kristina A. Bunting of Paul Weiss Rifkind Wharton & Garrison LLP and Darren L. Patrick and Ekwan E. Rhow of Bird Marella Rhow Lincenberg Dooks & Nessim LLP.

The case is Kellie Black v. Snap Inc. et al., case number 2:21-cv-08892, in the U.S. District Court for the Central District of California.

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

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TaskUs' \$17.5M Investor Settlement, Atty Fees Get Final OK

By **Sydney Price**

Law360 (December 4, 2025, 7:02 PM EST) -- Final approval has been granted to the \$17.5 million deal settling claims between outsourced digital customer service company TaskUs and its investors who allege that the company improperly influenced its ratings on the employer review website Glassdoor, according to an order on Thursday.

Lead counsel will receive \$5.3 million, or about 30% of the settlement fund, in fees, and approximately \$924,000 in expenses, the order signed by U.S. District Judge John P. Cronan states.

The settlement, which received preliminary approval in June, ends claims that filings for an initial public offering and a secondary public offering included misleading statements about TaskUs' online ratings from employees.

Specifically, the complaint alleges that TaskUs misled investors to believe its Glassdoor ratings "accurately reflected the company's positive workplace culture," when it was the company's policy to ask new employees to submit a review while still in training and "still excited about [TaskUs] based on management's promises that it was a 'fun place to work,' and had not yet experienced the disappointing reality of working at TaskUs."

In January 2024, Judge Cronan trimmed certain claims from the suit, including allegations that the company's public statements mischaracterized its attrition rates.

The investors are represented by Joseph A. Fonti, Nancy A. Kulesa, Evan A. Kubota and Thayne Stoddard of Bleichmar Fonti & Auld LLP and John A. Kehoe and Michael K. Yarnoff of Kehoe Law Firm PC.

TaskUs and the individual defendants are represented by Jonathan K. Youngwood and Meredith Karp of Simpson Thacher & Bartlett LLP.

The case is Lozada et al. v. TaskUs Inc. et al., case number 1:22-cv-01479, in the U.S. District Court for the Southern District of New York.

--Editing by Jay Jackson Jr.

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Banks Ask Justices To Review Class Cert. In \$12B VRDO Suit

By **Katryna Perera**

Law360 (December 4, 2025, 9:08 PM EST) -- A group of major banks has asked the U.S. Supreme Court to review a Second Circuit decision upholding class certification in a \$12 billion municipal-bond antitrust lawsuit, arguing the district court erred in not resolving an expert witness evidence dispute before granting certification.

Several banks, including Merrill Lynch, Barclays Capital Inc. and Goldman Sachs & Co., filed a **petition** for a writ of certiorari on Monday in a case involving a tax-exempt bond known as a variable rate demand obligation, or VRDO. The banks claim the Second Circuit erred in **upholding** the district court's decision not to resolve a dispute over whether the plaintiffs' expert evidence could distinguish between injured and uninjured class members, which affects whether the predominance requirement for certification can be met.

The banks claim the district court failed to weigh their competing expert evidence showing that the predominance requirement had failed, and instead, only determined whether the plaintiffs' expert reports were admissible. According to the banks, the Second Circuit misread the Supreme Court's ruling in *Tyson Foods Inc. v. Bouaphakeo* and concluded that expert disputes should be left to the jury "unless no reasonable juror could believe the plaintiff's evidence."

"Under the Second Circuit's understanding ... district courts are relieved of their obligation to weigh competing expert evidence and resolve whether the plaintiff's evidence actually proves predominance," the petition states.

"Even in the face of a defendant's 'forceful,' 'compelling,' and 'perhaps even meritorious' challenges to a plaintiff's expert evidence, the district court may certify a class without resolving the merits of those challenges — based on a finding that the plaintiff's evidence is believable," the petition further states. "As courts of appeals have remarked for over two decades, when a district court fails to engage with and resolve disputes about plaintiffs' expert evidence, the court effectively acts as a rubber stamp."

On Monday, the banks urged the high court to take up their petition due to a circuit split over whether district courts must resolve expert disputes bearing on the predominance requirement at class certification.

According to the petition, the Third and Seventh circuits have held that a district court must resolve expert disputes before certification. Meanwhile, the Ninth and D.C. circuits have held, similar to the Second Circuit, that the plaintiff's expert evidence need only be admissible, but, unlike the Second Circuit, have affirmed certification orders only after district courts resolved expert disputes.

The banks also argued that the Second Circuit's decision "flouts over a decade" of Supreme Court jurisprudence regarding class certification and the predominance requirement. The banks say that a class cannot be certified if the court only determines that a plaintiff's expert evidence could be "believed" by a juror.

"If that were the law, any plaintiff could obtain class certification just by 'hiring a competent expert,'" the petition states.

The banks further noted that the Supreme Court has held that to prove each element for class certification, such as numerosity, commonality and superiority, district courts must "rigorously analyze 'all probative evidence' offered by the parties, including by the defendant."

"A court may not sidestep this obligation simply because a plaintiff will need to prove the same things a second time at the merits stage," the petition states.

A New York federal judge **granted certification** in 2023 to a class of individuals and entities that directly paid interest expenses on variable rate demand obligations, or VRDOs, that had interest rates reset on a weekly or daily basis pursuant to remarketing agreements with the defendants at any point from Feb. 1, 2008, to Nov. 30, 2015.

In August, the Second Circuit concluded that the lower court had "properly proceeded" in granting certification. According to the appeals court panel, the district court determined that the plaintiffs' expert testimony was admissible, examined both parties' expert reports to make sure common issues of law and fact predominated, and explained why the banks' arguments against certification fell short.

The underlying suit accuses several financial institutions that acted as remarketing agents to state and local issuers of conspiring to rig rates on VRDOs, a kind of tax-exempt bond often used to finance big-ticket municipal projects.

As a result, while these banks raked in hundreds of millions of dollars in fees, state and local issuers were forced to pay billions of dollars in inflated interest rates for the bonds and left with less money to spend on public works projects and services, according to the suit.

The lead plaintiffs are the city of Philadelphia, the mayor and City Council of Baltimore and the San Diego Association of Governments, a California metropolitan planning agency also known as SANDAG.

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

The class is represented by Quinn Emanuel Urquhart & Sullivan LLP, Wollmuth Maher & Deutsch LLP and Susman Godfrey LLP.

The banks are represented by Covington & Burling LLP, Jones Day, WilmerHale, Skadden Arps Slate Meagher & Flom LLP, Paul Weiss Rifkind Wharton & Garrison LLP, O'Melveny & Myers LLP and Allen Overly Shearman Sterling.

The case is Banc of America Securities LLC et al. v. City of Philadelphia Pennsylvania et al., case number 25-639, in the Supreme Court of the United States.

--Editing by Michael Watanabe.



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Judge Nixes Hagens Berman's Recusal Bid After DOJ Referral

By **Emma Cueto**

Law360 (December 4, 2025, 4:12 PM EST) -- Two days after referring powerhouse plaintiffs firm Hagens Berman to the U.S. Department of Justice for alleged misconduct, a Pennsylvania federal judge on Thursday dismissed the firm's request that he recuse himself from the long-running product liability suit, calling the firm's arguments "absurd."

U.S. District Judge Paul S. Diamond said in his brief **order** that his regular communication with the special discovery master, William T. Hangle, was aboveboard and permitted by his appointment order in 2014. He noted that the firm had paid Hangle's invoices, which included time spent speaking with the judge and his staff, for years and only objected after Hangle called the firm's conduct into question and Judge Diamond suggested it "bordered on the criminal."

"The law does not require a judge's recusal because a party dislikes his rulings," he wrote in the order.

The dismissal comes **two days after** Judge Diamond said in a public filing that he had referred the Seattle-based firm, name partner Steve Berman and former partner Tyler Weaver to the DOJ for further investigation.

The dispute is part of a case that began in 2011, when Hagens Berman filed suit against GSK, formerly known as GlaxoSmithKline PLC, on behalf of plaintiffs who alleged their birth defects were the result of the morning-sickness drug thalidomide, which their mothers allegedly ingested roughly half a century prior.

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

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

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

The firm's counsel told Law360 on Tuesday that it considered the decision to refer Hagens Berman to the DOJ to be "truly confounding" and unwarranted. The firm did not respond to a request for comment Thursday regarding the denial of its motion for recusal.

Judge Diamond highlighted in his order the timing of the **motion to recuse** as coming after he denied a motion to remove Hangle and indicated that he considered the firm's conduct to border on criminality.

"Only then did the firm and Berman seek my recusal, essentially repeating their argument that Mr. Hangley's 'ex parte' communications with the court — and, more particularly, with me — were improper, and gave him opportunities to poison my thinking about the firm," he said. "Surely to state this argument is to refute it."

Judge Diamond went on to say that the firm had characterized the matter as one of "first impression" and wryly noted he agreed that it would be without precedent for a judge to be obligated to recuse for communications with a special master when such communications were allowed under the terms of the special master's appointment.

"In any event, Mr. Hangley's communications with chambers staff, my law clerks, and me (averaging considerably less than an hour a week), over the now eleven years Mr. Hangley has served, were both proper and necessary to administer this complex collection of cases," he wrote in the order.

Counsel for GSK did not respond to a request for comment.

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

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

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

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

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

MVP: Labaton Keller's Michael P. Canty

 [law360.com/classaction/articles/2404929](https://www.law360.com/classaction/articles/2404929)

Law360 (December 4, 2025, 4:03 PM EST) -- Michael P. Canty, co-leader of [Labaton Keller Sucharow LLP's](#) consumer protection and data privacy litigation team and leader of one of the securities litigation teams, successfully challenged Meta, [Google](#) and Flo Health over how the companies handled users' sensitive health data, earning him a spot as one of the [2025 Law360 Class Action MVPs](#).

Michael P. Canty

Labaton Keller

His biggest accomplishment:

Canty was behind a notable class action against Flo Health — a women's health app to track menstruation and pregnancy — Meta and Google that resulted in millions of dollars in settlements and a favorable jury verdict.

The class action alleged that Flo secretly shared users' data about their periods and fertility with third parties without their consent. The plaintiffs also said that Meta and Google used this data for profit.

"I've worked in the data privacy space since I joined Labaton in 2016, and what we've seen is a fairly dynamic change in how information is used from consumers," he said. "The challenge is always the idea that, where are we as a society? Have we kind of thrown our hands up and said, 'All this information is being collected and taken from us, and there's really nothing we can do?'"

Before trial, Google agreed to settle the claims for \$48 million.

What motivates him:

Canty is motivated by a simple goal: to right wrongs.

He served as a prosecutor in his early career, a role that was "about righting wrongs," and seeking justice for victims. That's a throughline with his current role as a plaintiff's attorney.

"Whether you're prosecuting a terrorist ... or violent criminals ... the theory of righting a wrong is just as strong when you have women that have their personal data taken," he said.

Canty is also motivated by the excellence of his peers.

"In order to try to be the best, you have to go up against the best, and in the securities field that I work in, as well as the consumer data privacy field, we are going up against the best attorneys in the world," he said. "As a civil litigant, I want the best defense attorneys up against me in the civil cases because I want to get better. I want to improve."

Why he's a consumer protection and securities attorney:

Canty's background as a prosecutor is a key reason why he represents class actions.

"I was really intrigued by the class action context because you're really representing those people that don't have the time, resources, or money, in certain instances, to go up against the largest corporations in the world," he said. "Knowing that I can represent them, it's humbling."

He said he likes fighting for the little guy, the individual.

"I'm an optimist at heart, and I always feel like, in order to be an optimist, you got to walk the walk," he said. "Saying that you're going to try to help somebody that's in that situation, or right a wrong, it's a little easier to be the optimist when you're out there trying to take on a fight for them."

His advice for junior attorneys:

Canty said junior attorneys need to ask themselves whether they want a job in the law or whether they want a career.

"If you want to have a career, you need to find an area of the law that motivates you and that will bring out the best in you," he said.

Once that's figured out, Canty said junior attorneys have to put in the work.

"That means becoming a subject-matter expert in the area of the law that you want to work in," he said.

Junior attorneys should also make use of all the resources available to them — including mentors, Canty said.

"As a member of the bar, I think we have an obligation to train young lawyers for the future," he said. "I always try to make sure that I tell my associates I have an open-door policy."

--As told to Daniela Porat. Editing by Dave Trumbore.

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2025 MVP winners after reviewing nearly 900 submissions.

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Authors' Attys Seek \$300M In Fees After \$1.5B Anthropic Deal

By **Elliot Weld**

Law360 (December 4, 2025, 6:37 PM EST) -- The attorneys who represented a group of authors that secured a \$1.5 billion settlement with artificial intelligence business Anthropic after claiming the company infringed copyrights by training its models with pirated books have asked the court for \$300 million in fees.

Lawyers from Susman Godfrey LLP and Lieff Cabraser Heimann & Bernstein LLP said in a Wednesday motion that their request for fees of 20% of the common settlement fund was "markedly" lower than the benchmark rate of 25% in the Ninth Circuit. The attorneys also requested reimbursement of about \$2 million in reasonably incurred litigation expenses.

U.S. District Judge William Alsup **ruled** that Anthropic's use of books that it purchased legally counted as fair use to train its chatbot Claude, but he later **certified** the class of authors and opined that it would not be hard for them to prove that Anthropic had engaged in widespread copyright infringement through use of pirated books.

The parties later settled for \$1.5 billion in a deal that Judge Alsup **said** would result in the "largest copyright recovery of all time."

According to Wednesday's motion, Judge Alsup said at a Nov. 30 hearing, "I don't see how you could get a better deal."

"The requested award reflects the 'impressive' monetary result obtained for the class despite the 'real risks in this action,' including the 'multiple issues of first impression' counsel litigated," the motion said. "It also reflects the 'skill and grit' required to litigate the case, exemplified by the more than 18,000 hours counsel have devoted and the millions of dollars they have expended — and will continue to expend — with no assurance of compensation or reimbursement."

The attorneys said they'd obtained a significant nonmonetary relief in the form of the destruction of the pirated book datasets Anthropic had obtained from online book collections LibGen and PiLiMi.

The attorneys said the case required "intensive fact discovery" that involved reviewing more than 80,000 documents produced by Anthropic and hundreds of gigabytes of data. They took 20 depositions, litigated 17 discovery motions and responded to 263 requests for production, according to the motion.

The attorneys further worked for months on preparing expert reports that would have been due on Aug. 29 if the settlement had not occurred, the motion said.

The attorneys touted various litigation accomplishments they'd secured in the case, including being the first group of lawyers to obtain a favorable class certification order in a copyright case against an AI firm.

The case represents a reasonable instance for awarding counsel a percentage of the settlement funds due to the "exceptional" and "historic" results the lawyers were able to obtain, the motion said.

A representative for Anthropic did not immediately respond to requests for comment.

The authors are represented by Justin A. Nelson, Alejandra C. Salinas, Rohit D. Nath, Michael Adamson, Jordan W. Connors, J. Craig Smyser and Samir Doshi of Susman Godfrey LLP, Rachel Geman, Jacob S. Miller, Danna Z. Elmasry, Daniel M. Hutchinson, Jallé H. Dafa, Amelia Haselkorn and Betsy A. Sugar of Lieff Cabraser Heimann & Bernstein LLP, Jay Edelson and J. Eli Wade-Scott of Edelson PC, Matthew J. Oppenheim and Jeffrey M. Gould of Oppenheim & Zebrak LLP and Scott J. Sholder of Cowan DeBaets Abrahams & Sheppard LLP.

Anthropic is represented by Kathleen R. Hartnett, Ephraim A. McDowell, Alexander J. Kasner, Elias S. Kim and Allison Wettstein O'Neill of Cooley LLP, Daralyn J. Durie, Ramsey Fisher, Jackson Lane, Whitney Rose O'Byrne, Mary Prendergast, Fitz Beckwith Collings and Aditya Vijay Kamdar of Morrison Foerster LLP, Douglas A. Winthrop, Joseph Farris, Pieter de Ganon, Jessica L. Gillotte, Estayvaine Bragg, Assad H. Rajani, Oscar Ramallo, Angel Tang Nakamura, Ryan M. Nishimoto and Allyson C. Myers of Arnold & Porter Kaye Scholer LLP and Mark Alan Lemley of Lex Lumina LLP.

The case is Andrea Bartz et al. v. Anthropic PBC, case number 3:24-cv-05417, in the U.S. District Court for the Northern District of California.

--Editing by Emily Kokoll.

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Calif. Judge Tosses Baby Food Experts In Heavy Metals Suits

By **Emily Field**

Law360 (December 4, 2025, 11:06 PM EST) -- A California state judge Wednesday tossed experts in a suit alleging that the presence of heavy metals in Hain Celestial baby foods caused a child's brain damage, finding that a toxicologist couldn't single out exposure from different companies.

Los Angeles Superior Court Judge Lawrence Riff granted summary judgment in favor of Hain Celestial Group Inc. and other baby food makers in the case brought by the parents of minor Landon R. The judge said toxicologist Jeremy Johnson is an expert in risk assessment, which includes exposure and dose assessment.

But Johnson's methodology didn't comply with the standard laid by the 2012 ruling by the California Supreme Court in *Sargon Enterprises Inc. v. University of Southern California*, which held that trial courts must evaluate whether experts' opinions have an adequate foundation, similar to the Daubert standard in federal court.

Johnson had taken data on the consumption of baby food from previous defendants in the case, such as Gerber, as well as the current defendants Hain Celestial, Nurture Life Inc. and Plum.

He calculated an average daily dose and then allocated from that daily total dose a proportion to each product, based on what flavors from each company that Landon's mother said that she fed him, according to the order.

The relevant legal question is whether a company's marketing of its baby food was a substantial factor in Landon's harm, the judge said.

"The court finds that Mr. Johnson's two step methodology is not Sargon compliant. ... Mr. Johnson's methodology does not permit that inquiry to be answered because the exposure and dose assessment attributable to a defendant necessarily includes the conduct (that is, the heavy metal product characteristics) of other companies," the judge said. "That is an essential, inescapable feature of the averaging technique Mr. Johnson employed."

Landon's parents claim his brain damage was caused by exposure to arsenic and lead in his baby food, and culminated in his diagnoses of autism spectrum disorder and ADHD, according to court filings. His case is one of a number before Judge Riff.

The suits were filed in the wake of a February 2021 report from the House of Representatives' Committee on Oversight and Reform that discovered high levels of heavy metals in baby foods produced by Nurture, Gerber Products Co., Plum Organics, Hain Celestial, and other companies. The report said arsenic, cadmium, lead and mercury were present at "significant levels."

In 2023, during a Sargon hearing in another baby food suit, the judge found that an expert's opinion was inadmissible since it was built on assumptions about the concentrations of heavy metals in the foods.

The key issue in that case was the amount of heavy metals that Melissa and Lorenzo Cantabrana's son was exposed to and whether the heavy metals in the baby food that he ate was a substantial factor in him developing autism and ADHD, the judge said during the hearing. But the heavy metals are widely found in the environment and while virtually all babies are exposed to the metals, not all

have those conditions, the judge said.

Thursday's ruling comes before a Rule 702 hearing in the federal multidistrict litigation over heavy metals in baby foods that is scheduled for next week.

The judge did decline Hain's Sargon motion regarding the plaintiffs' medical expert, Dr. Kevin Shapiro. Although he will not be allowed to testify since he cannot rely on Johnson's testimony on dose and exposure, the judge did address the challenges to Shapiro's methods.

The judge rejected Hain's argument that Shapiro opined that Landon was unusually susceptible to the toxic effects of arsenic and lead since Shapiro never said that — only that Landon was susceptible.

While Hain argued that Shapiro "ruled in" the wrong substance that allegedly caused Landon's harm and that he didn't consider studies about the neurological benefits of the nutrients in baby foods.

"The court disagrees; he did," Judge Riff said. "He concluded, however, that the studies do not show that the presence of such beneficial components 'neutralizes' or counteracts the toxic effects of lead and arsenic found in the products, at least in other than nutrient-deficient children of which Landon was not one."

"Judge Riff is a brilliant jurist, but his analysis regarding Mr. Johnson is not correct. We intend to appeal. Thankfully, the issue that caused the court to exclude Mr. Johnson was highly case-specific," R. Brent Wisner of Wisner Baum, who represents the plaintiffs, told Law360 on Thursday. "The broader rulings — which would apply to the general litigation — were all in our favor. That does not bode well for defendants moving forward. [It's] just a matter of time before they will be forced to face a jury and be held accountable for, quite literally, poisoning a generation of babies with lead and arsenic."

Representatives for the defendants didn't immediately respond to requests for comment Thursday.

Hain Celestial is represented by Michael Imbroscio, Nicole Antoine and Elizabeth Fouhey of Covington & Burling LLP.

Plum Organics is represented by Hope Freiwald, Will Sachse and Allie Ozurovich of Dechert LLP.

Nurture Inc. is represented by Loren Brown and Mary Gately of DLA Piper.

Landon R. is represented by R. Brent Wisner, Pedram Esfandiary and Monique Alarcon of Wisner Baum.

The case is Landon R. v. Hain Celestial Group Inc. et al., case number 23STCV24844 in the Superior Court of the State of California, County of Los Angeles.

--Editing by Kristen Becker.



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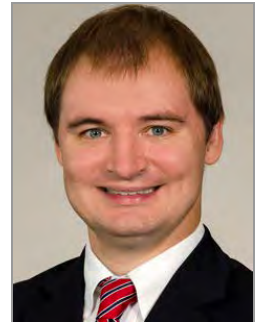
Class Actions At The Circuit Courts: December Lessons

By **Mitchell Engel** (December 4, 2025, 5:51 PM EST)

This article is part of a monthly column that highlights federal appellate decisions with takeaways for attorneys at various stages of class action litigation. In this installment, I discuss recent rulings and identify practice tips from cases involving securities, takings, automobile insurance, and wage and hour claims.

In October, federal appellate courts published decisions in class certification cases that touched on several topics, including:

- When a district court loses jurisdiction after a party files a Rule 23(f) interlocutory appeal.
- What evidence is needed to show a settlement should not be approved because class counsel is not adequate.
- Whether a class challenging a "typical negotiation adjustment" applied to totaled cars that reduced the value based on the theory that dealerships typically negotiate a lower price than the price at which the car was listed can be certified.
- Whether as part of a Rule 23(b)(3) opt-out settlement, the parties can agree to waive Fair Labor Standards Act opt-in claims.



Mitchell Engel

This monthly column provides a summary and overview of each decision, discusses the determining factors in each case, and identifies key takeaways for class action practitioners to keep in mind.

Nova Scotia Health Employees' Pension Plan v. McDermott International

Nova Scotia Health Employees' Pension Plan v. McDermott International involved a class of shareholders challenging the merger of McDermott, an upstream offshore development company, with Chicago Bridge & Iron Co., a downstream engineering and construction company.[1]

The class alleged that the defendants made pre- and post-merger material misrepresentations and omissions regarding four CB&I projects, the importance of McDermott's ability to integrate and operate CB&I's technology business, and the strength and viability of McDermott's post-merger capital structure, balance sheet, liquidity and financial health.

After merging, CB&I ceased to exist and became a part of the new McDermott entity, and CB&I stockholders received 0.82407 shares of McDermott stock in exchange for every one share of CB&I stock they held premerger.

In February 2024, U.S. Magistrate Judge Andrew M. Edison initially recommended that the court deny a motion to certify without prejudice because he identified a fundamental conflict between class members who purchased McDermott stock on the open market (purchasers) and class members, like the named plaintiffs, who only obtained McDermott stock because they held CB&I stock that was converted in the merger (exchangers). The court adopted Judge Edison's recommendation.

The plaintiffs filed a timely Rule 23(f) appeal. Before the U.S. Court of Appeals for the Fifth Circuit ruled on the Rule 23(f) appeal, the U.S. District Court for the Southern District of Texas withdrew the certification order in April 2024 because the magistrate judge informed the court it would like to revise his recommendation.

The revised order, which the district court adopted, maintained the fundamental conflict holding but concluded that the named plaintiff was adequate to represent the exchanger subclass. It then held that a purchaser lead plaintiff and purchaser lead counsel would have to be appointed.

The Fifth Circuit affirmed. The key takeaway is the Fifth Circuit held the filing of a Rule 23(f) petition does not divest the district court of jurisdiction to withdraw and reissue a class certification order. A Rule 23(f) petition is only a request for permission of appeal, and so a district court does not lose jurisdiction over a case when a party files a Rule 23(f) petition, but only if the appellate court grants the petition, which allows the appeal to proceed.

The Fifth Circuit then held that the district court did not err by resolving the fundamental conflict issue by creating two subclasses.

Wayside Church v. Van Buren County

In *Wayside Church v. Van Buren County*, the U.S. Court of Appeals for the Sixth Circuit **affirmed** the approval — over objection — of a class action settlement involving claims that Michigan counties violated the takings clause of the U.S. Constitution by seizing tax-delinquent homes, selling them and pocketing the windfall beyond the unpaid taxes.[1]

Most of the objectors' arguments were, in some form, a challenge to the adequacy of class counsel.

The Sixth Circuit affirmed. The key takeaway is the evidence the Sixth Circuit focused on to support the adequacy of class counsel and to find that the objectors presented "more speculation than concrete evidence of collusion." It noted that the class counsel were experienced, recognized class action litigators who have repeatedly been appointed by federal judges to leadership roles in complex cases and received numerous accolades from the Michigan legal community.

It noted that class counsel was among the first to bring federal takings challenges to Michigan's tax foreclosure scheme and helped spur a wave of parallel litigation.

Class counsel thus developed the legal theory underpinning the case and vigorously litigated the complex takings issue for more than a decade, conducting discovery, opposing dispositive motions, and participating in over 30 mediation sessions across 18 months.

The settlement guaranteed a sizable and immediate recovery for class members who received 80% of their surplus proceeds and 64 cents on the dollar in actual recovery. The equal pro rata recovery ensured all claims were treated similarly, aligning the interests of all class members.

The involvement of a neutral mediator is a strong indicator of procedural fairness, and there was no indication that the settlement talks were a cover for collusive activity.

Clippinger v. State Farm Automobile Insurance

In *Clippinger v. State Farm Automobile Insurance Co.*, U.S. District Judge Thomas L. Parker of the U.S. District Court for the Western District of Tennessee certified a class of State Farm insureds who alleged State Farm breached its insurance contracts by relying on valuation reports Audatex prepared to measure the actual cash value of totaled vehicles.[3]

The class alleged the valuation reports were improper because they applied a typical negotiation

adjustment that usually lowered the price of comparable vehicles.[4] The typical negotiation adjustment reduced values based on the theory that dealerships typically negotiate a lower price than the price at which the car was listed.

The Sixth Circuit **affirmed**. The key takeaway is it found that the central legal question was whether the application of a typical negotiation adjustment meant State Farm was not calculating the actual cash value as contractually required, but was, instead, calculating an artificially reduced amount.

It found the breach element of each class members' claim was subject to common proof about the statistical basis for the typical negotiation adjustment and the underlying Audatex valuation method.

U.S. District Judge Eric E. Murphy dissented. He held that certifying the class violated State Farm's substantive right to prove it paid each class member an amount equal to the fair market value of the class member's car. He would join in the reasoning of the Third, Fourth, Fifth, Seventh and Ninth Circuits that held similar cases were not appropriate for class certification.

Lundeen v. 10 West Ferry Street Operations

Lundeen v. 10 West Ferry Street Operations LLC involved allegations by bartenders and servers at the Logan Inn, a restaurant and bar owned and operated by 10 West.[5] The class alleged that 10 West made bartenders and servers contribute to a tip pool, but improperly allowed the bar manager, a salaried supervisory employee, to receive distributions.

The parties stipulated to, and the district court ordered, conditional certification of an FLSA collective action and sent notice to class members on how to opt in to the action. The parties then negotiated a settlement under Rule 23(b)(3), with part of that settlement requiring class members to release their FLSA claims.

The U.S. District Court for the Eastern District of Pennsylvania denied preliminary approval of the Rule 23(b)(3) class settlement because it held that class members who had not opted into the FLSA collective action could not be required by the class action settlement to waive their FLSA claims.

The U.S. Court of Appeals for the Third Circuit **reversed**. The key takeaway is the Third Circuit held that to be a plaintiff in an FLSA collective action requires the class member to opt-in but that the plain language of the FLSA statute did not bar the release of unasserted FLSA claims in a court-approved Rule 23 settlement.

The Third Circuit, however, also recognized that whether district courts can approve Rule 23(b)(3) opt-out settlements that release FLSA claims is a different inquiry from whether district courts should do so, and remanded for further consideration.

Mitchell Engel is a partner at Shook Hardy & Bacon LLP.

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

[1] **Nova Scotia Health Employees' Pension Plan v. McDermott International** , 2025 WL 2814735 (5th Cir. Oct. 3, 2025).

[2] **Wayside Church v. Van Buren County** , 2025 WL 2829601 (6th Cir. Oct. 6, 2025).

[3] **Clippinger v. State Farm Automobile Insurance Co.** , --- F.4th ---, 2025 WL 2861217 (6th Cir. Oct. 9, 2025).

[4] The court denied without prejudice the motion to certify a class against Audatex for tortious interference because the briefing and oral argument was centered on the claims against State Farm.

[5] [Lundeen v. 10 West Ferry Street Operations LLC](#) , --- F.4th ---, 2025 WL 2935340 (3d Cir. Oct. 16, 2025).

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Del. Justices Nix Challenge To \$1.1B Smart & Final Sale

By **Jeff Montgomery**

Law360 (December 4, 2025, 5:12 PM EST) -- A three-justice Delaware Supreme Court panel has rejected with little comment a bid to revive a stockholder suit alleging disclosure failures and conflicted moves ahead of the \$1.1 billion April 2019 sale of Smart & Final Stores Inc. to interests of Apollo Global Management.

The decision let stand Chancellor Kathaleen St. Jude McCormick's **dismissal in February** of a suit accusing Smart & Final controlling investors Ares Corporate Opportunities Fund III LP and Ares Corporate Opportunities Fund IV LP of pushing through an underpriced deal while in "harvest mode" for maturing investments.

In the decision, the chancellor wrote that the state's courts have been reluctant to consider conflicts to be disabling when they involve liquidity disputes in cases involving proportional deal consideration among large holders of stock. The 25-page decision cited several cases including [Firefighters' Pension System Of City of Kansas City](#) , [Missouri Trust v. Presidio Inc.](#) , in 2021 and [Corwin et al. v. KKR Financial Holdings LLC. et al.](#)  in 2015.

Smart & Final **sold in April 2019** for \$6.50 per share, including \$497 million in cash, to an affiliate of former owner Apollo Global Management in April 2019. By mid-2021, both Smart & Final segments were sold again for a combined nearly \$1.6 billion at what was described as a combined premium of \$470 million

The rejected, four-count **suit** initially named the two Ares funds — which held a purportedly controlling 57.8% of the company's outstanding stock — as well as company officers, directors and financial advisers for breaches of fiduciary duty or aiding those alleged breaches.

Also named were Citigroup Global Markets Inc. and Jefferies LLC, as well as former Smart & Final CEO David G. Hirz, Vice President Leland P. Smith and Chief Financial Officer Richard N. Phegley, with the complaint variously alleging breaches of fiduciary duty and aiding and abetting breaches.

During **dismissal arguments** before the chancellor in October 2024, Neil R. Lapinski of Gordon Fournaris & Mammarella PA argued that the company's board special review committee had a mandate to sell from the start.

"The reality was, it was immediately a sale, a cash-out merger," Lapinski argued, with the move occurring at a time when the Ares funds involved were winding down and seeking to capture gains from their multiyear investment.

Joining in the top court's ruling affirming the chancellor's view were Chief Justice Collins J. Seitz Jr., Justice Abigail M. LeGrow and Justice N. Christopher Griffiths.

Chancellor McCormick held in her February decision that stockholder Glenn J. Krevlin's suit failed to support any conflict claims involving Ares Management that would undermine dismissal based on the court's 2015 [Corwin v. KKR Financial Holdings](#)  decision.

Among the factors cited by the company as supporting its decision were, the chancellor wrote: uncertainty around retailer valuations, the potential for increased competition from companies with greater scale and financial resources, the company's recent performance and business plan, the

merger consideration's certainty of value, and the cost of remaining a publicly traded company.

"Nothing in this grab-bag of issues constitutes a disclosure deficiency," Chancellor McCormick wrote. "What Plaintiff presents as disclosure issues are no more than disagreements with the Board's decision. Substantive disagreements with a board's decision-making do not amount to disclosure violations."

Glenn J. Krevlin is represented by Neil R. Lapinski, Phillip A. Giordano and Madeline R. Silverman of Gordon Founaris & Mammarella PA.

Ares Corporate Opportunities Fund III LP and Ares Corporate Opportunities Fund IV LP are represented by T. Brad Davey, J. Matthew Belger and Matthew A. Golden of Potter Anderson & Corroon LLP.

Jefferies LLC is represented by Martin S. Lessner and Mary F. Dugan of Young Conaway Stargatt & Taylor LLP, and Scott S. Balber and Michael P. Jones of Herbert Smith Freehills New York LLP.

Citigroup Global Markets Inc. is represented by Daniel A. Mason and Susana M. Buerger of Paul Weiss Rifkind Wharton & Garrison LLP.

David G. Hirz is represented by Raymond J. DiCamillo, Matthew W. Murphy and Mari Boyle of Richards Layton & Finger PA, and Michele Johnson and Zachary L. Rowen of Latham & Watkins LLP.

The case is Krevlin v. Ares Corporate Opportunities Fund III LP et al., case number 94, 2025, in the Supreme Court of the State of Delaware. The case under appeal, under the same caption, is 2022-0336 in the Court of Chancery of the State of Delaware.

--Additional reporting by McCord Pagan and Lauren Berg. Editing by Amy French.