

Securities

Celsius Execs Should Escape Suit Over Pepsi Deal, Judge Says

December 5, 2025, 12:35 PM PST

The fraud claims against Celsius Holdings, Inc. executives based on statements they made allegedly overhyping a distribution deal with PepsiCo Inc. should be dismissed, a magistrate judge told a federal court.

The plaintiffs didn't sufficiently allege that the statements were false and material or that the executives had the requisite state of mind under federal securities law, Magistrate Judge Bruce E. Reinhart said in his report to Judge Melissa Damian of the US District Court for the Southern District of Florida.

Celsius signed agreements with Pepsi in 2022 that made the company Celsius' primary distributor in the US and its exclusive distributor in Canada.

Celsius' revenue grew from roughly \$653 million in 2022 to more than \$1.3 billion in 2023. The company, its CEO John Fieldly, and CFO Jarrod Langhans partially attributed revenue and profit growth to the expansion of distribution points and coverage tied to the Pepsi partnership.

But pension fund Shelby Township Police & Fire Retirement System said that Celsius, Fieldly, and Langhans "presented a misleading picture of Celsius' business and prospects." When Pepsi loaded up its inventory of Celsius products in 2023, "this was a one-time stock up that did not represent Pepsi's ongoing demand for Celsius product," it said.

The complaint also alleged that several Celsius executives and its highest investors sold roughly \$1.4 billion of their own shares in the company as Celsius stock was trading at artificially high prices "based on defendants' materially false and misleading statements."

The plaintiffs didn't allege that reasonable investors would have viewed the statements as changing the total mix of all the available information, Reinhart said. For example, there weren't any allegations that Celsius and Pepsi weren't trying to distribute the products, keep shelves stocked, or drive consumer demand, he said.

Many of the statements were also non-actionable "generalized, vague, nonquantifiable statements of corporate optimism," and others simply weren't misleading, Reinhart said.

The plaintiffs also didn't show that the executives intended to mislead them with false information, Reinhart said.

Rejecting the stock sales claim, Reinhart said that the plaintiffs didn't allege any information about the defendants' past trading history and whether their trades were inconsistent with that history. The complaint also didn't adequately allege that the timing of the trades was suspicious, he said.

A derivative suit against Celsius, stemming from similar allegations, is currently pending in the US District Court for the District of Nevada.

Robbins Geller Rudman & Dowd LLP; and Vanoverbeke, Michaud & Timmony, P.C.; Grant & Eisenhofer P.A., and Joshua Evan Dubin of Tamarac, Fla., represent the plaintiffs. Alston & Bird and Jones Foster represent the defendants.

The case is *Shelby Twp. Police & Fire Ret. Sys v. Celsius Holdings, Inc.* , 2025 BL 435698, S.D. Fla., No. 24-CV-81472-MD, 12/4/25 .

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Practical Tips on Safeguarding Privilege After 'FirstEnergy'

A company's ability to claim privilege over internal investigation materials is essential. Yet in May 2024, a Federal District Court in Ohio held that materials created during a company's internal investigations were not protected by any privilege and needed to be produced to civil litigants. While the Sixth Circuit reversed that decision and reaffirmed that both the attorney-client privilege and work-product doctrine can protect internal investigative materials from production in civil litigation, practitioners should understand why the privilege assertions were called into question here and how to ensure privilege is preserved.

December 08, 2025 at 06:43 AM By **Leila Siddiky**

Brittany Brudnicki

Caroline Swift



attorney-client privilege

A company's ability to claim privilege over internal investigation materials is essential. It allows the company to identify potential misconduct, respond to and limit legal exposure, and mitigate reputational risk. Yet in May 2024, a Federal District Court in Ohio held that materials created during a company's internal investigations—which were prompted by a criminal inquiry into alleged bribery—were not protected by any privilege and needed to be produced to civil litigants. *In re FirstEnergy Corp. Securities Litigation*, No. 2:20-cv-03785, 2024 WL 198480 (S.D. Ohio May 6, 2024) (*FirstEnergy I*). This decision caused great concern for companies and their counsel and prompted a writ of mandamus.

On Oct. 3, 2025, the Sixth Circuit unanimously reversed the Ohio District Court's decision, holding steadfast to the bedrock principles of attorney client privilege and the work-product doctrine that are critical to effective internal investigations. *See In re FirstEnergy Corp.*, 154 F.4th 431 (6th Cir. 2025) (*FirstEnergy II*). While the Sixth Circuit reaffirmed the privileged nature of internal investigations, practitioners should nevertheless be mindful of preserving privilege, including by informing participants as to the legal purpose of any investigations, clearly designating all privileged materials and maintaining accurate records of those materials, abiding by discovery rules, and being strategic in how privilege issues are navigated during discovery.

Background

In July 2020, the U.S. Department of Justice (DOJ) unsealed a criminal complaint against former Ohio House Speaker, Larry Householder (the Householder Complaint). Crim. Compl., *United States v. Householder*, No. 1:20-cr-00077 (S.D. Ohio July 21, 2020). The Householder Complaint detailed a bribery scheme in which an unnamed company allegedly paid roughly \$60 million in campaign contributions to Householder to ensure the passage of Ohio House Bill 6—a \$1.3 billion bill that included a bailout provision for two power plants closed by FirstEnergy Corporation in 2018. "The day after the complaint became public, FirstEnergy's stock price dropped by 45%." *FirstEnergy II* at 435.

In this context, FirstEnergy and its Board of Directors engaged two law firms (outside counsel) to internally investigate the alleged misconduct, evaluate legal exposure, and advise on next steps. The decision to engage outside counsel proved wise. Within a week, numerous state and federal regulators initiated investigations into FirstEnergy's conduct, and eight civil lawsuits were filed against FirstEnergy and various directors and officers. Within a year, FirstEnergy entered into a three-year deferred prosecution agreement ("DPA") with the DOJ and agreed to pay a \$230 million fine for conduct related to the allegations in the Householder Complaint. "FirstEnergy Reaches Agreement to Resolve Department of Justice Investigation," FirstEnergy, [July 21, 2021](#).

Class Action Discovery Dispute

Soon after the Householder Complaint was unsealed, a shareholder class action against FirstEnergy was filed. Compl., *Owens v. FirstEnergy Corp.*, No. 2:20-cv-03785 (S.D. Ohio July 28, 2020) (Shareholder Litigation), Dkt. No. 1. Unsurprisingly, plaintiffs sought production of materials relating to FirstEnergy's internal investigations. FirstEnergy objected and plaintiffs moved to compel. In their motion, plaintiffs sought an order compelling FirstEnergy to: (1) produce *all* materials from outside counsel's internal investigations relating to Householder; and (2) make both company employees and outside counsel available for testimony regarding those investigations. Mem. of Law at 27, Shareholder Litigation, Dkt. No. 4891.

In opposing the motion to compel, FirstEnergy asserted both attorney client privilege and work-product privilege over the withheld investigation materials and the requested witness testimony. Plaintiffs argued the privileges did not apply because the investigations were conducted primarily for business purposes rather than litigation purposes.

Specifically, plaintiffs claimed that the investigations were undertaken to finalize FirstEnergy's SEC Form 10-Q and to determine the continued employment of individuals implicated in the alleged bribery scheme. In the alternative, plaintiffs argued that FirstEnergy waived any protection when it provided information from the internal investigations to its external auditors for the 10-Q filing and to the DOJ for the DPA. The District Court referred the motion to compel to a Special Master.

Special Master Decision

In granting the plaintiffs' motion to compel, the Special Master determined that the record supported plaintiffs' view that FirstEnergy's investigations were conducted primarily for business purposes and FirstEnergy failed to prove otherwise. Order by Special Master at 17, Shareholder Litigation, Dkt. No. 571, at 14–16. The Special Master disregarded a declaration submitted by a FirstEnergy director that detailed the legal purposes underpinning the investigations because the declaration did not include the language that the declaration's contents were declared "as true," as required under 28 U.S.C. §1746.

District Court Decision

FirstEnergy objected to the Special Master's order. The District Court, however, overruled FirstEnergy's objections, explaining that FirstEnergy bore the burden of asserting privilege "with particularity for each document, or category of documents," and providing evidence that those materials are protected by that privilege. *FirstEnergy I* at *9. Without the declaration, the District Court agreed that the evidence supporting FirstEnergy's privilege claims was "scant." And while FirstEnergy's briefs explained that the internal investigations related to "ongoing government investigations" and potential lawsuits, the District Court concluded that FirstEnergy did not directly address its "intentions behind the internal investigations."

On the specific issue of attorney-client privilege, the District Court found that the predominate purpose of rendering or soliciting legal advice was not established and that the record showed the investigation materials were “prepared in the ordinary course of business pursuant to SEC publication requirements unrelated to litigation and for non-litigation human resources/public relations purposes.” The District Court further stated that merely “pointing to impending lawsuits” was insufficient to establish privilege because “within those materials, attorneys could be acting as business or human resources advisors and not as legal advisors.”

Regarding the work-product privilege, the District Court found that FirstEnergy failed to establish that the investigation materials were prepared because of FirstEnergy’s subjective anticipation of litigation. The District Court agreed that materials “can be used both in the ordinary course of business and in anticipation of litigation without losing work-product protection.”

However, FirstEnergy’s general references to pending lawsuits were insufficient to establish that the investigation materials were created because of litigation or that the materials would not have “been created in essentially similar form irrespective of the litigation.” Even assuming the declaration from FirstEnergy’s director complied with 28 U.S.C. §1746, the District Court explained that it would have been too conclusory because it “did not provide specific... evidence to establish that litigation was the driving force behind the preparation of the disputed materials.”

Because the District Court found that attorney-client privilege and work-product privilege were never established, the question of waiver was not addressed.

Sixth Circuit Decision

On Oct. 3, 2025, the Sixth Circuit vacated the discovery order. *See FirstEnergy II*. The unanimous panel explained that what was true in *Upjohn Co. v. United States*, 449 U.S. 383 (1981), the seminal decision on privilege, was also true for FirstEnergy: “[a]s with Upjohn, FirstEnergy and its board hired lawyers to secure legal advice through internal investigations into the company’s potential criminal and civil wrongdoing.” *FirstEnergy II* at 436.

In holding the investigation materials were protected by attorney client privilege, the Sixth Circuit focused on the circumstances surrounding the engagement of outside counsel and the actions undertaken by outside counsel during their investigations. The record demonstrated that outside counsel “met frequently” with the directors overseeing the investigation to discuss “investigative findings” and their “legal analyses[] and assessment of potential criminal and civil liability.”

Outside counsel likewise focused its investigation on FirstEnergy’s potential criminal liability and provided the company with legal advice. By engaging outside counsel to investigate the significant allegations in the Householder Complaint and advise on how to handle mounting legal exposure,

FirstEnergy “clearly sought legal advice” and the investigation materials were therefore protected by the attorney client privilege.

The panel also determined that the materials prepared during FirstEnergy’s internal investigations were protected work-product because FirstEnergy clearly “anticipated” that it “would face government investigations, civil litigation, and regulatory proceedings” after the Householder Complaint was unsealed. Indeed, “this anticipated legal risk became an actual legal risk” within weeks. Finding that the investigations were initiated for business advice only makes sense if you ignore “the context of the legal threats that FirstEnergy faced.”

The District Court—in the Sixth Circuit’s view—overlooked “the realities of litigation” and underestimated the “bedrock protections” of the attorney client privilege and the “intensely practical” work-product doctrine. Simply put, when facing mounting legal exposure, “it will be the rare company that will not also have business purposes for seeking essential legal advice.” The Sixth Circuit held that “none of [the] adjacent business purposes for seeking legal advice transform[ed] the communications and legal work into something other than legal advice.”

While the court determined that the declaration from FirstEnergy’s director should have been considered, the declaration was unnecessary. “It does not take a company leader’s insider knowledge to discern that criminal and civil investigations, state and federal regulatory action, and numerous shareholder lawsuits led FirstEnergy to expect litigation and seek legal advice.”

The court also held that FirstEnergy never waived privilege. While FirstEnergy disclosed some information obtained from the investigations for strategic reasons, most of the information shared was never privileged. It therefore could not be said that FirstEnergy waived privilege as to *all* materials related to its investigations. And even if the company had waived attorney client privilege as to certain documents, the investigation materials would still be protected by the work-product doctrine because disclosing investigative materials to non-adversaries does not waive that privilege.

Best Practices

1. Educate and Document: When engaging outside counsel to investigate allegations of wrongdoing and potential legal exposure, all board members, executives, interviewees, and other participants should be made aware of the legal nature of the investigation and how to ensure privilege is preserved. Privileged communications and documents should be appropriately designated as privileged with clear indication of their legal purpose, and participants should be educated on the importance of not sharing investigation materials and seeking legal approval before sharing any such materials. If sharing investigation

materials is necessary, practitioners should maintain consistent applications of privilege and only share non-privileged materials.

2. Privilege Logs Matter: Early in discovery the parties agreed that neither would log “any privileged communications, documents, or work product exchanged” with “its outside counsel” if the material concerned allegations in Householder Complaint and was dated after the Householder Complaint was unsealed. *FirstEnergy II* at 440.

The District Court was critical of this decision, stating “more extensive privilege logs... could have helped the Special Master determine the nature of communications created during the internal investigation” and “whether materials were made with a predominate purpose of soliciting or rendering legal advice.” *FirstEnergy I* at *12. The Sixth Circuit took a different approach to the parties’ stipulation by criticizing plaintiffs’ decision to forego a detailed privilege log and then moving to compel FirstEnergy to produce documents pursuant to a “broad and undifferentiated request.” *FirstEnergy II* at 440.

This signals that agreements regarding privilege logs can play a role in subsequent discovery disputes and may impact how a court resolves a privilege dispute. Practitioners should carefully consider how such agreements may help or hinder them in a future dispute as well as in pursuing claims or defenses. Further, they should consider the potential benefits of more detailed privilege logs while balancing the additional burden of preparing such logs.

- Use the Magic Words: Although the Sixth Circuit found the declaration submitted by FirstEnergy’s director irrelevant, the declaration and its failure to include the required language under 28 U.S.C. §1746 was noted by both the District Court and the Special Master. The Special Master may have reached a different conclusion if the declaration included §1746’s magic words. This serves as a reminder to be diligent with all court filings to ensure full compliance with relevant rules and avoid such technical shortcomings.

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Securities

This Week in Chancery Court: Prince, Tyson Foods Files, Novo

December 8, 2025, 2:00 AM PST

Lingering issues in the dispute over the management of the legacy of the late musician Prince are poised for resolution in the Delaware Chancery Court this week.

Here's what else is on the court's calendar:

Monday: McMillan v. Nelson, Del. Ch., No. 2024-0016, bench ruling 12/8/25.

At issue: Chancellor Kathaleen St. Jude McCormick will deliver a bench ruling on pending motions in a lawsuit over the management of a company overseeing Prince's assets. She previously ruled that control of Prince Legacy LLC must remain with two of the late musician's longtime friends, whom Prince's half-siblings sought to oust as managers. One pending motion seeks summary judgment on a breach of contract claim remaining from the friends' original lawsuit; they seek nominal damages and attorneys' fees and expenses.

Court action: Teleconference.

Prince Siblings Lose Bid to Seize Estate Management Company (1)

Monday: In re Emisphere Techs., Inc. S'holders Litig., Del. Ch., No. 2021-0025, bench ruling 12/8/25.

At issue: Vice Chancellor Nathan A. Cook will weigh final approval of a \$32 million settlement to end a lawsuit over Novo Nordisk AS's \$1.8 billion acquisition of technology used in the oral version of the diabetes drug Ozempic. The proposed deal would end claims that Lionsgate chairman Mark Rachesky exploited his control of Emisphere Technologies Inc. to force a sale that steered value to insiders. The Danish drug giant wasn't named as a defendant. The attorneys who represented the Emisphere shareholders leading the litigation seek a \$8.3 million fee award.

Court action: Teleconference.

Novo Agrees to \$32 Million Pact Ending Ozempic-Related Deal Case

Monday: Hillblom v. Wilmington Trust Co., Del. Ch., No. 2021-1034, oral arguments 12/8/25.

At issue: Claims leveled by a son of DHL Worldwide Express founder Larry Hillblom against the trustee managing his inheritance went to trial in July before Vice Chancellor Morgan T. Zurn, who now will hear post-trial arguments. Wells Lory Hillblom claimed Wilmington Trust Co. cost him \$1.1 million by mishandling his inheritance. Zurn allowed Hillblom's lawsuit to advance in 2022 after finding it was plausible for the trustee to be liable for failing to update Hillblom as it disputed fees with the law firm that established his parentage. The trust allegedly ended up paying the firm \$1.4 million after ignoring a \$300,000 settlement offer.

Court action: The post-trial hearing will be held in Wilmington, Del.

Son of DHL Founder Lost at Sea Advances Claims Against Trustee

Monday: Roth v. Sotera Health Co., Del. Ch., No. 2022-1192, oral arguments 12/8/25.

At issue: Vice Chancellor Lori W. Will previously determined a former Sotera Health Co. vice president, Kurt Roth, wasn't entitled to severance benefits or an equitable accounting of his past shares in the health care service provider. The parties went to trial in July over remaining claims that Sotera's CEO forced Roth to choose between forfeiting equity and accepting a demotion and pay cut, and now it's time for Will to hear post-trial arguments. When Roth resigned, he refused to sign a release that was a condition for receiving severance under his employment agreement.

Court action: The post-trial hearing will be held in Wilmington, Del.

Sotera Health Beats Some of Former Executive's Stock Claims

Tuesday: Castagna v. Tyson Foods, Inc., Del. Ch., No. 2025-0941, trial 12/9/25.

At issue: A Tyson Foods Inc. shareholder seeks to inspect internal company records related to potential animal welfare issues and worker safety concerns at its chicken farms and processing plants. The shareholder's claims involve alleged violations of Virginia animal welfare laws by the owner of a farm contracted with Tyson Farms Inc. to raise broiler chickens, according to a joint pre-trial brief. No charges against Tyson have been brought in connection with the Virginia farm owner's case.

Court action: A half-day trial will be held in Dover, Del.

DOJ Closed Meat Probe Just Before Trump's Investigation Demand

Thursday: Funicular Funds LP v. Concord Acquisition Corp., Del. Ch., No. 2022-1173, settlement hearing 12/11/25.

At issue: Vice Chancellor Paul A. Fioravanti Jr. will consider final approval of a settlement to end a proposed class action that accused Concord Acquisition Corp.'s backers of giving themselves a \$20 million "consolation prize" after the collapse of the SPAC's planned combination with Circle Internet Financial Ltd., a blockchain infrastructure company. The proposed deal was reached shortly before trial was scheduled to start in September. The total value of the settlement is about \$16.7 million, including \$3.7 million in cash and over 130,000 shares of Circle stock valued at approximately \$13 million.

Court action: A settlement hearing will be held in Wilmington, Del.

Hedge Fund Accuses Concord SPAC Backers of Pocketing Breakup Fee

—*With assistance from Bloomberg Law Automation.*

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Legal services

'A masterful coup': law firm behind Musk pay lawsuit faces internal revolt

New company from star partner at Bernstein Litowitz poaches nearly all of corporate governance practice



The legal community is watching to see which clients stay with Bernstein Litowitz Berger and Grossmann and which migrate to the new breakaway firm © Timon Schneider/Alamy

Sujeet Indap in New York

Published 9 HOURS AGO



In early 2024, two hard-nosed lawyers who had just helped defeat a \$55bn pay package for Tesla chief executive Elon Musk gave an exultant talk at Columbia Law School detailing their stunning triumph over the world's richest man.

Now those two star partners, Greg Varallo and Jeroen van Kwawegen, are at the centre of an ugly rupture at the powerhouse shareholder law firm Bernstein, Litowitz, Berger & Grossmann.

On Thursday, van Kwawegen announced he had departed BLB&G to form his own firm, JVK Law, and that about a dozen lawyers representing virtually the entire BLB&G corporate governance practice, as well as additional support staff, would soon join him.

The one exception to the exodus: Varallo, the group's marquee figure and architect of the Musk lawsuit, who is remaining at BLB&G.

Coincidentally or not, a decision from the Delaware Supreme Court on Musk's pay package is expected any day and will give final word on both the cancellation of the \$55bn arrangement and a \$345mn attorney's fee award which mostly accrues to BLB&G.

In an interview with Bloomberg Law on Thursday announcing his new firm, van Kwawegen said he "had a fundamentally different vision about what the law firm should look like, what the culture is that you should have and whose interests you should be serving first", an apparent criticism of his previous firm's management.

BLB&G later fired back in a statement, saying it was "disappointed that Mr van Kwawegen has made misleading statements about his departure from the firm".

BLB&G added that van Kwawegen had not left voluntarily but had been terminated after the firm's leadership determined that he "engaged in misconduct that was inimical to the best interests of the firm". The firm declined to specify the nature of the alleged misconduct.

It added that Varallo was remaining at BLB&G, that the firm had a "world-class trial team" and that it "anticipate[d] a strong pipeline of new cases and milestone outcomes ahead for 2026".

"I am very excited about the future. Institutional investors increasingly seek out counsel that is creating value, client-centred and trial-ready," van Kwawegen told the Financial Times, adding that more BLB&G lawyers could be joining his venture.

He also denied engaging in any wrongdoing at BLB&G: “Any claim of misconduct is pretextual and disappointing.”

Van Kwawegen’s quarrel is not with Varallo himself, but rather with the firm’s highest leadership, including top partners Max Berger, a co-founder, and Jerry Silk. BLB&G declined to comment beyond the statement. Any litigation between the firm and van Kwawegen would be addressed through arbitration.

“I love the man and it is unfortunate that, for reasons specific to him, Greg couldn’t be included with the rest of the Department of Governance when they decided to leave. It is a bit sad to think of him sitting in a virtually empty office in Delaware,” van Kwawegen said.

One BLB&G lawyer wondered how van Kwawegen would fund his cases as BLB&G had traditionally eschewed litigation finance, relying instead on the firm’s large partner capital base.

Another BLB&G lawyer expressed optimism about the new firm’s prospects. “The group that went is fabulous,” one lawyer within BLB&G conceded. “They will be a juggernaut.”

In any instance, the public fracas has rocked an important corner of corporate law just as regulators and politicians are seeking to [shift the legal balance](#) between companies and investors.

“Jeroen has pulled off a masterful coup. My hat is tipped,” said one rival shareholder lawyer.

BLB&G was founded in 1983 and has more than 100 lawyers across the US. It made its name in federal securities law litigation, typically bringing class action lawsuits on behalf of shareholders against listed companies, alleging that sharp drops in stock price were the result of disclosure failures.

On its website, it counts seven different cases where it won shareholder recoveries of more than \$1bn, against the likes of WorldCom, Bank of America and Merck.

To their critics, such plaintiff-side firms are gadflies or “ambulance chasers” who file nuisance suits to get quick settlements and take large cuts for themselves of minor amounts won.

However, the top firms insist they are skilled at handling complex, multiyear trials over allegations of serious executive misconduct, taking on the elite New York white-shoe practices that defend Fortune 500 companies. Moreover, shareholder firms can only make money on “contingency” if their shareholder clients win a judgment or a settlement. BLB&G told the Delaware court that it spent nearly 20,000 hours on the Musk pay case.

BLB&G launched what it called its corporate governance practice to pursue state law claims of fiduciary duty breaches in the mid-2000s, hiring a then young lawyer from Skadden, Mark Lebovitch who later retired from the firm in 2023 to teach in law schools.

Van Kwawegen joined BLB&G from Latham & Watkins in 2009 and Varallo came on board in 2019 from Richards, Layton & Finger, a leading Delaware corporate defence firm.

In 2014, the Delaware Supreme Court issued a ruling that largely ended the practice of nuisance lawsuits where most challenges to M&A transactions resulted in a quickly dismissed lawsuit that still netted shareholder firms a fee of a few hundred thousand dollars.

The court, at the same time, told plaintiff's law firms that if they could bring substantive cases showing that the corporate board had corruptly short-changed shareholders, it would approve big judgments and big awards for lawyers. In 2023, counsel to shareholders who won a \$1bn settlement over Dell's acquisition of EMC Corporation took home a fee of \$267mn.

Varallo and van Kwawegen, on behalf of BLB&G, had petitioned the court for a \$7bn fee in the form of Tesla shares for the victory in the pay package case, a figure that shocked even some plaintiff law firms who were otherwise sympathetic to BLB&G.

The trial court knocked down that number to \$345mn, still the largest single award in Delaware history, should the state's supreme court confirm it.

The firm, however, recently lost two high-profile cases at the Delaware Supreme Court, one against Columbia Pipeline, the other against Straight Path Communications. The losses demonstrated the tension between deciding to settle cases or rolling the dice on judicial rulings that might take years with no eventual pay-off.

Van Kwawegen had intimated in his recent public statements that he and BLB&G had disagreed on litigation tactics and strategy, though the firm has maintained that it has no hesitation in taking matters to trial.

At the same time, the future of Delaware corporation litigation remains uncertain as the state has recently enacted sweeping changes to protect boards of directors from shareholder lawsuits. The legislature is also considering a new law to potentially reduce fees paid to lawyers who win big settlements or judgments.

For now, the legal community is looking to see which clients stay with the reconstituted BLB&G governance group and which land at JVK Law, which will have to determine how to underwrite the considerable investment in contingency cases.

And then there is the future of Varallo himself at BLB&G. One person familiar with the terms of his employment contract said he had a “shitload of money” at stake that required he stay at the firm through the payment of the Musk lawsuit fee award.

Late on Sunday, BLB&G told the FT that Lebovitch had agreed to return to the firm as co-head of the group, alongside Varallo.

“In the face of the changes in Delaware law, you have got to have the best. Mark and Greg have done it before and they will do it again,” said Jerry Silk, a BLB&G senior partner and member of the firm’s management team, who added that at least one lawyer who was set to leave with van Kwawegen was now considering a return to BLB&G.

Varallo, now in his 60s, is currently representing a hedge fund in a Delaware court seeking to upend the banking merger between Comerica and Fifth Third, as well as leading a trial next year in Oklahoma challenging billionaire Harold Hamm’s 2022 take-private of his oil driller, Continental Resources.

The drama at the firm that took down Musk has not escaped the entrepreneur's fans on X.

“When 8+ partners walk out [of BLB&G] citing concerns about whose interests the firm serves, that's not just a personality conflict — that's a crisis of purpose,” read one X post on Thursday.

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Firm Leading Musk Pay Lawsuit Taps Retired Partner for Rebuild

December 8, 2025, 10:17 AM PST

Summary by Bloomberg AI

AI Generated



- Mark Lebovitch is rejoining Bernstein Litowitz after a little more than two years, following a wave of exits from the firm.
- Lebovitch founded the corporate governance group in 2006 and spent nearly two decades at the firm before leaving to teach part-time.
- His return comes after a group of lawyers, led by Jeroen van Kwawegen, left Bernstein Litowitz to launch a rival boutique, with van Kwawegen citing a "fundamentally different vision" for the firm.

The Manhattan law firm behind some of the country's largest shareholder suits is bringing back a retired partner after a wave of exits.

Mark Lebovitch, who helped Bernstein Litowitz become a premier player in shareholder disputes, is rejoining the firm a little more than two years after leaving to teach part-time. His return comes on the heels of a group of Bernstein Litowitz lawyers bolting from the corporate governance group Lebovitch founded in 2006.

"For the past two years, I traded the courtroom for the classroom, merger-related investing and volunteer work," Lebovitch said in a statement. "Last week, the mission of helping in the renewal and strengthening of the department I built for nearly two decades suddenly emerged."

Bernstein Litowitz Berger & Grossmann is known for leading massive shareholder cases involving companies such as Walmart Inc., Paramount Global, and Coinbase Global Inc. Its lawyers successfully challenged Elon Musk's \$55.8 billion dollar Tesla Inc. pay package, a ruling that fueled efforts to overhaul Delaware's corporate laws. The firm's \$345 million fee for its work on the case is currently tied up in an appeal.

Lebovitch spent nearly two decades at Bernstein Litowitz, building the corporate governance department from scratch after arriving from Wall Street's Skadden, Arps, Slate, Meagher & Flom. He taught as an adjunct law professor at Columbia University after leaving the firm.

Veteran litigator Jeroen van Kwawegen last week led a group of Bernstein Litowitz lawyers, including at four partners from the corporate governance group, who jumped ship to launch a rival boutique. Van Kwawegen said he left over a “fundamentally different vision about what the law firm should look like,” such as its willingness to fight cases all the way through trial. Bernstein Litowitz responded by saying that the firm had fired van Kwawegen for “misconduct.”

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Securities

Manage Newsletters

Bristol-Myers' \$239 Million Celgene Investor Deal Gets Court Nod

December 8, 2025, 7:36 AM PST

Bristol-Myers Squibb Co. earned a federal judge's preliminary blessing of its \$239 million settlement to resolve Celgene Corp. investor allegations the acquired company misrepresented approval prospects for a multiple sclerosis drug and a psoriasis treatment's sales.

Both sides were likely well attuned to their positions' strengths and weaknesses when hashing out the class deal, partly evident given that they made an agreement with a 2026 trial date looming, Judge Michael E. Farbiarz said while preliminarily approving it Dec. 5. The deal in the US District Court for the District of New Jersey would end nearly eight years of litigation with the pharmaceutical company that Bristol-Myers bought out in 2019.

Farbiarz partly denied defendants' request to shed class claims last year, saying a reasonable jury could find former Celgene executives acted with the level of intent for securities fraud claims for not telling investors of a risk the Food and Drug Administration would turn down ozanimod's application

Bristol-Myers in 2020 gained FDA approval of ozanimod, sold as Zeposia, to treat relapsing forms of MS

Kessler Topaz Meltzer & Check LLP, lead counsel for the class, didn't immediately respond to an email seeking comment. Latham & Watkins LLP, Jones Day, and Gibbons PC represent the company and two Celgene executives. Bristol-Myers, Latham, and Jones Day didn't immediately respond to emails seeking comment.

The case is *In re Celgene Corp. Sec. Litig.*, 2025 BL 437298, D.N.J., No. 2:18-cv-04772, 12/5/25 .

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Forescout investors secure \$45M settlement after lengthy litigation

DJ [dailyjournal.com/articles/388889-forescout-investors-secure-45m-settlement-after-lengthy-litigation](https://www.dailyjournal.com/articles/388889-forescout-investors-secure-45m-settlement-after-lengthy-litigation)

A federal judge granted final approval of a \$45 million securities class action settlement against cybersecurity company Forescout Technologies, which was accused of misleading shareholders over its profitability and a proposed acquisition by a private equity firm.

U.S. District Judge Susan Illston's approval came at a hearing Friday after more than five years of litigation that spanned multiple courts and included dozens of depositions and extensive international discovery.

"I think the settlement is fair and appropriate," said Illston. "We haven't had a significant objection to it."

Illston said she also intended to grant the attorney fee request of just under \$2.5 million "more or less unscathed."

In the settlement motion, attorney for the plaintiffs Jeffrey S. Abraham of Abraham, Fruchter & Twersky, LLP, called the agreement an "exceptional result" out of a "hotly contested litigation."

At Friday's hearing Abraham said they were expecting a "very high claim rate" for the settlement. The motion notes that 13,848 class members received postcard notices so far. *Sayce v. Forescout Technologies, Inc. et al.* 3:20-cv-00076 (N. D. Cal. Filed Jan. 2, 2020).

An attorney for Forescout, Amy Jane Longo of the Los Angeles-based Ropes & Gray LLP, said in a joint statement after stipulating to a settlement in July, "Defendants deny each and every allegation of wrongdoing in the second amended complaint, dispute that lead plaintiffs have asserted any cognizable claims, and contend that they have no liability in the Action.

"In particular, defendants deny, among other things, that they made any actionable misstatements or omissions, acted with scienter, or caused the alleged losses, or that lead plaintiffs and the members of the class have suffered any damages."

According to the plaintiffs' settlement motion, the \$45 million cash payment represents approximately 11% of estimated damages, far exceeding the median recovery of roughly 1.6% in comparable securities class actions.

The final approval order and judgment formally dismissed the case with prejudice and released all claims against Forescout and the individual defendants.

The judgment also underscores that the settlement does not constitute an admission of wrongdoing by Forescout and the agreement may not be used against the company as evidence of liability in future proceedings.

The settlement resolves claims that the San Jose-based cybersecurity company misled shareholders throughout 2019 and early 2020 about its sales pipeline, revenue shortfalls and the status of a proposed acquisition by private equity firm Advent International.

Plaintiffs argue those misstatements artificially inflated Forescout's stock price until a series of corrective disclosures, particularly the company's missed third-quarter revenue numbers in October 2019 and the collapse of the Advent deal in May 2020, triggered steep share price declines.

Plaintiffs say in their motion the deal was reached only after all fact and expert discovery had closed, following two failed mediation attempts and additional negotiations overseen by JAMS mediator Robert Meyer. The parties ultimately accepted a mediator's proposal in June 2025.

The litigation began in 2020 and weathered multiple rounds of dismissal. Illston twice threw out the complaint, but in 2023 the 9th U.S. Circuit Court of Appeals revived central claims reinstating allegations that Forescout misrepresented slipped deals, sales pipeline strength, global regional challenges, and the likelihood that the Advent acquisition would close.

The case saw more than 150,000 documents and 35 combined merits and expert depositions produced, including testimony obtained through letters rogatory in Australia and the United Kingdom.

When negotiations resumed in 2025, the defendants signaled they would seek to decertify the class, a risk plaintiffs point to in arguing the settlement's value in their motion.

The settlement agreement states that those who bought Forescout stock from May 12-15, 2020, will receive a 50% damages premium, reflecting the proximity to Forescout's allegedly misleading statement that it "look[ed] forward to completing" the Advent merger.

Abraham had argued that the lead plaintiffs should receive \$35,000 but Illston said that amount was not appropriate and reduced it to \$10,000.

"They get named as lead plaintiffs because they have the most egregious claims. I think they will be all right," Illston said at the hearing.

#388889

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Securities

K&L Gates Beats Fiduciary Duty Claim in Delaware Merger Dispute

December 5, 2025, 4:38 PM PST

A Delaware chancellor dismissed a breach of fiduciary duty claim against K&L Gates LLP Friday in a dispute stemming from a 2018 merger, saying a shareholder waited too long to bring its allegations.

“Florida imposes a two-year statute of limitations on fiduciary duty claims against law firms and attorneys, which” means the window to sue closed in July 2022, Vice Chancellor Morgan T. Zurn said for the Delaware Court of Chancery in a letter opinion, granting K&L’s motion to dismiss.

The case arose from Weird Science LLC’s merger with Renovaro Biosciences Inc., formerly known as Enochian Biosciences Inc., in which Weird Science received over 17.5 million Renovaro shares as consideration. Weird Science later alleged that K&L Gates, which represented Renovaro in the transaction, breached fiduciary duties by depriving Weird Science of its ability to sell these shares.

K&L sought dismissal on the grounds that the lawsuit, which was filed in December 2023, fell outside of the applicable statute of limitation and that Weird Science is presumed to know and understand the contents of the contracts it signed under Florida law.

Zurn held Weird Science was on inquiry notice of its claim no later than July 2020 under Florida law when Renovaro filed a registration statement for another party’s shares but not Weird Science’s. Zurn also declined to extend the limitations period, ruling Florida Supreme Court precedent expressly rejects the application of tolling doctrines not specifically provided in statute.

This ruling comes following Zurn’s February 2025 bench ruling that dismissed claims of fraudulent inducement and tortious interference against K&L Gates while allowing a breach of contract claim against Renovaro to proceed.

Phillips, McLaughlin & Hall PA represents Weird Science. Smith, Katzenstein & Jenkins LLP represents K&L.

The case is Weird Science LLC v. Renovaro Biosciences Inc. , Del. Ch., No. 2023-0599-MTZ, 12/5/25 .

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Juror Note in Florida Opioid Trial Accuses Another Juror of Threats, Bullying, Assault

On the 13th day of deliberations, a Florida judge dismissed a juror who had alleged misconduct by another juror, raising the prospect of a mistrial in the high-profile opioid trial.

December 05, 2025 at 04:14 PM By  **Amanda Bronstad**

What You Need to Know

- The note, titled 'Formal Statement of Juror Misconduct,' prompted upheaval in an already unusual jury deliberations, which has stretched 13 days.
- The judge concluded that some of the note's allegations were taken out of context or referring to analogies.
- On Thursday, jurors sent a note saying they were deadlocked, and the pharmacy defendants has asked for a mistrial.



Broward Circuit Judge Carol-Lisa Phillips. Courtesy photo

A Florida judge dismissed a juror on Friday afternoon in a high-profile opioid trial after she presented a note, apparently created with Google AI assistant Gemini, alleging a fellow juror spoke with defense lawyers, bullied other members of the jury and made offensive statements.

The dismissal, which came on the 13th day of jury deliberations and one day after jurors sent a note saying they were deadlocked, raises the prospect of a mistrial. In court on Friday, lawyers for the defendants — Walmart, Walgreens and CVS — argued that Broward County Circuit Court Judge Carol-Lisa Phillips should declare a mistrial, insisting there was no hope of a verdict at this point in the deliberations.

Earlier Friday, Phillips read the note, titled “Formal Statement of Juror Misconduct,” prompting upheaval in the already unusual jury deliberations, which involved multiple notes from the jury, one of which sought a read-back of the sworn juror’s oath.

In the note, according to the judge’s reading, which was live-streamed on Courtroom View Network, Juror No. 9 wrote that Juror No. 5 had gone into the men’s bathroom with defense attorneys, and “allegedly spoken with them about the case (during lunch this week and last week).” He also had “grabbed and hugged me without my consent” on the first day of deliberations, and made inappropriate and offensive statements, such as “banging a 14-year-old girl.”

“These remarks were highly inappropriate, disturbing and unrelated to evidence or deliberations,” Phillips read from the note.

The note also said Juror No. 5 threatened and bullied other jurors with “disrespectful, aggressively and openly bullying” behavior, repeatedly pressuring others to “adopt his predetermined position,” and has not considered evidence with an open mind, having decided prior to deliberations that the defendants were not liable. And he has openly stated that he is not following the legal instructions given to the jury.

“I am requesting to report ongoing juror misconduct and behavior that I believe threatens the fairness of deliberations, the integrity of the case, and the safety and comfort of multiple jurors, including myself,” Phillips read from the note, which requested that she “take any appropriate steps to protect the integrity of the trial and the safety of the jury.”

After Phillips finished reading, following a few seconds of silence, the lawyers stood up to take pictures of the note, which, according to the descriptions of the judge and lawyers, was written in a mix of typed words and blue and black ink.

“I certainly don’t take this lightly,” Phillips later said, according to Courtroom View Network’s livestream of Friday’s proceedings. “But I don’t have any idea what the jurors are going to say at this point, and it may certainly rise to the level of a mistrial. Certainly, it’s on the radar. I’m not

going to say it's not. But I think we should at least find out with regards to the significant allegations alleged in here. I mean, the inappropriate and offensive statements made within the jury room, and the assault, inappropriate physical conduct that was made, all those things may rise to some other level."

By Friday afternoon, Phillips had interviewed Juror No. 9, who wrote the note. After hearing contentious arguments from the lawyers, including the insistence from defense attorneys that the AI-generated note lacked credibility, concluded that Juror No. 9 needed to be dismissed, according to Courtroom View Network. She noted that the juror hadn't actually seen Juror No. 5 go into the bathroom with any of the attorneys.

"The inappropriate physical conduct was after he got up and was very adamant in his beliefs," Phillips said. "Maybe he went over and hugged her, touched her, whatever, that's different than, 'he grabbed and hugged me without my consent.'"

Many of the accusations, she said, were taken out of context or used as an analogy.

"All this other stuff does not rise to the level in which it jumped out of the page this morning," she said. "And it's concerning that the whole bathroom incident and inappropriate physical contact and the statements with regards to the child. At the very least, I need to remove Juror No. 9."

She said she would consider whether to interview Juror No. 5, who plaintiffs' lawyers urged her to dismiss, over the weekend.

'These Are Obviously Very Serious Allegations'

The note comes one day after jurors said they were deadlocked following a 51-day trial. On Friday, lawyers for pharmacy defendants Walgreens, Walmart and CVS, called for a mistrial, while plaintiffs' lawyers insisted that Phillips individually interview the jurors.

"These are obviously very serious allegations," plaintiffs' attorney Warren Burns, of Dallas-based Burns Charest, told the judge, according to Courtroom View Network.

The juror note comes two days after Walgreens, Walmart and CVS [moved for a mistrial](#) based on the fact that jurors might not know they can tell the court they're deadlocked, which multiple notes during deliberations have indicated, including one that asked for the sworn juror oath.

The three pharmacies are accused of flooding Florida counties with opioid prescriptions, straining the financial resources of more than a dozen hospitals, and Burns has [asked for up to \\$1.5 billion in damages](#). Unlike most opioid trials, which have focused on public nuisance claims against drug manufacturers and distributors, the trial alleges the pharmacies violated the Florida Racketeer and

Influenced Corrupt Organizations Act by acting together in profiting off customers addicted to the painkillers.

William Scherer, of Conrad & Scherer in Fort Lauderdale, Florida, another plaintiffs' attorney in the case, told the judge on Friday to "save this as much as we can" by having the jury, once questioned, continue to deliberate, according to Courtroom View Network. Walgreens attorney Jeannie Tinkham, of Chicago's Bartlit Beck, countered that the jury already sent a note yesterday saying they were deadlocked.

"The most important thing is that we preserve the integrity of the process, the fairness of the process and, at this point, that means declaring a mistrial because this jury is deadlocked," she said.

Friday's note, she added, indicates the jurors are at odds about the merits of the case.

"The note also shows from today that this deliberation process, your honor, it has broken down," she said, according to Courtroom View Network. "We are at the end of the road with this deliberations process, and the only just outcome at this point is a mistrial. It's not bringing in these jurors and interrogating them and try to ferret out who did what."

Tinkham also questioned the validity of the accusations in the note.

"We spoke to all the men, all the ones today and everybody in the last two weeks, who have since gone home, none of them have seen or spoken to Juror No. 5 in the men's bathroom," she said. "So that allegation is just false."

Phillips, before speaking with Juror No. 9, said she was inclined to remove both her and Juror No. 5, but she wanted to hear what they had to say first.

"At this time, I'm inclined to interview Juror No. 9 initially, and then probably or possibly interview Juror No. 5, and then essentially determine whether they should both go, or not go, or there should be a mistrial, at each and every level make a determination, and then if we're still moving forward to ask the additional jurors several questions."

Editor's Note: This story was updated Friday evening to reflect the judge's decision to dismiss the juror; add new details.

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Spain's 'Radical' Class Action Shift Could Rewrite the Rules of Litigation

A proposed opt-out system could revolutionize class actions, but political delays leave its fate—and timing—uncertain.

December 08, 2025 at 09:57 AM By **Katia Rossi**



5. Spain

Pictured: The Cibeles fountain in Madrid, Spain. (Shutterstock)

Spanish lawyers are preparing for a wave of class actions if a draft law with a controversial opt-out system finally clears parliament, rewriting the rules for consumer and corporate litigation and opening the door to increased competition cases.

So far, the draft has been the focus of much political debate, however, leaving partners at Spain's top law firms to zero in on two questions: Will the draft pass in its current form, and will it pass any time soon? Either way, they're readying themselves.

"If it eventually goes through, we'll see an increased number of class actions," said Cristian Gual, international arbitration and litigation partner at Uría Menéndez. "The shape of litigation will be

different because instead of thousands of individuals claims all over the country, we'll see massive, standalone cases.”

Spain’s patchwork legal system and absence of an official registry make it hard to track collective actions—suspected to number in the dozens—but rising filings, anecdotal evidence, and the potential impact of the stalled draft law all point to an upward trend.

“I expect it (the proposed draft law) will be used for a wide range of potential cases,” Gual said, “and maybe even for competition cases.”

‘Radical’ Proposals

The proposed law would simplify and unify Spain’s procedure for collective consumer redress with a “radical” shift from an opt-in to an opt-out provision, Gual said, describing the change as a “daring” legislative move.

“This is the number one controversial issue,” he said. “There is also a designed opt-out default system, although some tweaks have been made to make it slightly less radical.”

Cuatrecasas litigation partner María Pérez Carrillo considers opt-out regimes to be “very attractive” to plaintiff firms who can choose their jurisdiction, “With an opt-out system, that allows them to create a bigger claim.”

Spain’s draft law could potentially unleash an era of mass litigation, attracting both plaintiffs and major international funders. [Burford Capital](#), which manages a \$7.5 billion portfolio globally, has already moved in, launching in Madrid in October with plans to expand.

The draft law also aims to regulate litigation funding, but some lawyers question how settlements and undistributed funds will be handled. Since no clear rules exist yet, Pérez warns this could lead to frivolous lawsuits and multiple claims against the same company.

Spanish Litigation

Lawyers note that Spanish collective action cases are increasing, even without the EU Directive 2020/1828 being transposed into Spanish law, which sets the framework for representative actions.

“In recent years, Spain has become the go-to hub for litigation, along with the Netherlands, the U.K. and Portugal,” Pérez said.

Spain’s legal landscape makes it a plaintiff-friendly forum for mass lawsuits. Cases are resolved faster than in many other jurisdictions—often in 1.5 to two years, partly because of shortened

deadlines. The country is also a relatively inexpensive jurisdiction for litigation, both in terms of the cost to litigate and the risk of cost awards, Pérez said.

Courts appear to have recently leaned toward protecting consumers in mass litigation and antitrust infringement cases, burnishing Spain's appeal.

In a landmark win for consumer rights in June, for example, Spain's Supreme Court ruled that the Spanish Association of Bank, Savings and Insurance Users (ADICAE) can pursue collective lawsuits against over 100 banks over *cláusulas suelo* (mortgage floor clauses).

Spanish Politics: It's Complicated

Cuatrecasas partner Enrique Carrera, who specializes in competition and foreign investment, said it may be difficult for the class-action proposals to become law in the short term given the political climate.

Socialist Prime Minister Pedro Sánchez's government operates as part of a minority coalition and Junts, a Catalonia political party, voted this month to veto all laws proposed by the PM's party.

Another problem is that the draft law might still be revised, having been debated in parliament since 2022. If the conservative Partido Popular party gains power, the political party's strong opposition to the opt-out system could reset the legislation entirely.

There is a caveat, however. In Spain, laws can be passed by a royal decree without parliament's approval. This happened in 2014, with the [EU Damages Directive](#), but the exception is generally used for urgent matters. Nevertheless, Gual said, the option—however unlikely—does exist.

What's Next In 2026?

The next general election is set for 2027, although some speculate an early vote could be called in 2026.

As for the timing to pass the draft law, in Carrera's opinion, "This is a complete unknown."

Even if it passes, the judiciary may not immediately be able to cope with the legislation, Gual added, leaving lawyers to speculate about the opt-out provision and funding regulations.

If the draft is passed in its current form, Gual said, "You can assume that the likelihood of an increased litigation risk and an increased number of complaints" are guaranteed.



Ann M. Lipton

@annmlipton.bsky.social

Well this is creative. The sanction for filing a brief with AI hallucinated cases is to actually read the cases cited in the opinion imposing the sanctions.

www.law360.com/articles/241...

Utah Atty Avoids Monetary Sanction For 'Hallucinated' Cases - Law360

A Utah federal judge handling a trademark infringement matter has sanctioned an attorney for filing court documents with "hallucinated" cases, but instead of issuing a fine, the lawyer was ordered to ...

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2



5



22



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Louis Jim @proflouisjim.bsky.social · 7h

I hope he didn't use GenAI "summaries" of those cases. 🤔



1



3



Sarah Fackrell @design-law.bsky.social · 6h

This was literally my first thought.



2



DG @1dgrn.bsky.social · 7h

That, plus disbarment.



Investigation Reveals How Amazon Is Fleecing Public Schools With 'Algorithm-Driven Pricing'

 www.nakedcapitalism.com/2025/12/investigation-reveals-how-amazon-is-fleecing-public-schools-with-algorithm-driven-pricing.html

By Conor Gallagher

December 7, 2025

Conor here: A few recent pieces from Jeff Bezos' Washington Post ("Why you may not want lower prices as much as you think you do" and "Actually, today's food prices are a bargain") make for good partner pieces to the one below.

And here's a more detailed thread from Stacy Mitchell than the one featured in the following article that really highlights how this also decimates American businesses. It's all worth a read—as is the Institute for Local Self-Reliance report—but here are a few key points:

9. These independent suppliers often outperform Amazon: In a price comparison of 628 frequently purchased school items, an independent office supply dealer beat Amazon on 68% of them. And, unlike Amazon, these suppliers provide consistent next-day delivery & high level service. pic.twitter.com/wge8WTBuss

— Stacy Mitchell (@stacyfmitchell) December 4, 2025

12. The reality can be seen in the data: In Berkeley County, WV, the schools spent \$1.3 million with Amazon — and only \$142 went to in-state sellers. The vast majority of the district's spending went to Amazon itself or to overseas vendors. pic.twitter.com/teioIXb4bF

— Stacy Mitchell (@stacyfmitchell) December 4, 2025

By Jake Johnson, a senior editor and staff writer for Common Dreams. Originally published at Common Dreams.

A detailed investigation released Thursday reveals that the e-commerce behemoth Amazon is using its market dominance and political influence to gain a foothold in local governments' purchasing systems, locking school districts into contracts that let the corporation drive up prices for pens, sticky notes, and other basic supplies.

The new report by the Institute for Local Self-Reliance (ILSR), titled Turning Public Money Into Amazon's Profits: The Hidden Cost of Ceding Government Procurement to a Monopoly Gatekeeper, is based on purchasing records from nearly 130 cities representing more than 50 million Americans.

ILSR found that "cities, counties, and school districts spent \$2.2 billion with Amazon in 2023—a nearly fourfold increase since 2016."

"Through its Amazon Business platform, the company has maneuvered to become the default source for office products, classroom materials, cleaning supplies, and other routine goods," the report states. "Today, it is embedded in most local governments,

making inroads into state agencies, and dominating a new program designed to reshape how federal agencies buy commercial products.”

Unlike the fixed pricing that’s typical for government contracts, the agreements that Amazon has secured with local governments across the US entail “algorithm-driven pricing” to “covertly raise prices and inflate costs for governments.”

“The result is dramatic price variation: One city bought a 12-pack of Sharpie markers for \$8.99, while a nearby school district paid \$28.63 for the identical pack that same day,” ILSR said. “Our data contain thousands of similar examples, with some agencies paying double or even triple what others paid for the same items.”

1. Hard to believe, but Amazon has persuaded schools and cities across the country to abandon competitive bidding and fixed price contracts. Instead, they’re signing contracts with Amazon that specify dynamic pricing. The result: Paying \$37 for 12 pens or \$74 for 36 markers. pic.twitter.com/aflkPucZL

— Stacy Mitchell (@stacyfmitchell) December 5, 2025

Overall, ILSR found that school districts bound to Amazon contracts spend twice as much per student as school districts without an agreement with the \$2.5 trillion company.

“Public officials should be deeply concerned by what we found,” Stacy Mitchell, co-executive director of ILSR, said in a statement. “Amazon is reshaping public procurement in ways that expose taxpayer dollars to waste and risk. It has persuaded cities and schools to abandon safeguards meant to ensure fair prices and accountability—while driving out independent suppliers, eroding competition, and putting Amazon in a position to dictate terms.”

Having gained sweeping access to local government purchasing processes, Amazon is increasingly inserting itself into state and federal systems. ILSR noted that “Amazon dominates the General Services Administration’s Commercial Platforms Program, a new system for agencies to make purchases below \$15,000 that do not require competitive bids.”

“During the first two years of the program’s pilot phase,” the group found, “Amazon captured 96% of sales.”

ILSR emphasized that Amazon’s dominance is by no means inevitable and can, with concerted action, be rolled back.

“A handful of cities and counties have recognized the risks of relying on Amazon and taken steps to restore transparency and keep public dollars local,” the report observes.

“Tempe, Arizona rejected an Amazon group-purchasing contract after hearing concerns

from a local business owner. Between 2017 and 2023, the city cut its Amazon spending by 84% while increasing purchases from local suppliers. Phoenix likewise prioritizes local bids and has spent almost nothing with Amazon over the last decade.”

Kennedy Smith, co-author of the report, said that “when local officials put real safeguards in place and prioritize local suppliers, they save money, strengthen their economies, and restore public control over public dollars.”

To keep their procurement system free of the kinds of tactics Amazon uses to line its pockets with taxpayer money, ILSR urged state and local governments to prohibit so-called “dynamic pricing” in purchasing contracts and to prioritize buying from local businesses.

“By reclaiming control of public procurement, governments can safeguard dollars, strengthen local businesses, and ensure that the goods that sustain our schools and public services are supplied through systems that are transparent, competitive, and democratic,” the group said.

Lawyers follow AG Bonta's lead, sue over daily-fantasy sports | Northern California Record

 [legalnewsline.com/northern-california-record/lawyers-follow-ag-bonta-s-lead-sue-over-daily-fantasy-sports/article_b9500901-a0d8-4a8c-bb5e-833ac39e9e94.html](https://www.legalnewsline.com/northern-california-record/lawyers-follow-ag-bonta-s-lead-sue-over-daily-fantasy-sports/article_b9500901-a0d8-4a8c-bb5e-833ac39e9e94.html)

John O'Brien, John O'Brien

December 8, 2025

California Attorney General Rob Bonta
California Attorney General's Office

SAN FRANCISCO – Sports gamblers who lost money on FanDuel are claiming the online sportsbook is operating in California illegally and want a refund.

Gilbert Criswell is the lead plaintiff in a proposed class action filed last week by four law firms, including New York's Weitz & Luxenberg. The suit comes months after state Attorney General Rob Bonta released a legal opinion that said the type of online fantasy sports at issue here are illegal.

Sports-betting is prohibited in the state, which rejected two attempts to legalize it in 2022. FanDuel offers daily fantasy sports on which users place bets that depend on the performances of the players selected.

FanDuel says these are games of skill, not chance. Bonta [disagreed in July](#).

"Plaintiff... brings this lawsuit to stop the unlawful gambling that occurs on FanDuel's gambling websites in California and to recover the money that FanDuel has unlawfully taken from (users)," the complaint says.

Criswell alleges that if FanDuel had disclosed it was operating illegally in California, he never would have signed up. Over the years he has "lost money" on the site on bets he says were illegally taken.

California makes contracts invalid when the terms are contrary to law. Criswell said he didn't realize the daily-fantasy product was illegal until Bonta's opinion came out because FanDuel had misrepresented it as legal in news articles and legal blogs.

"Plaintiff and the class had no reason to believe that operation of the gambling websites was unlawful," the suit says. "In fact, just the opposite.

"They trusted and relied upon the purported expertise of FanDuel, 'America's #1 Sportsbook and the premier mobile sports betting operator in the U.S.,' in California gambling law and regulation."

Other firms pursuing the case are Almeida Law Group of Long Beach, Cutter Law of Sacramento and Tycko & Zavareei in D.C. Weitz & Luxenberg in October announced plans to sue other companies like Draft Kings and PrizePicks.

The same four firms sued Thrillzz in San Diego federal court in September and Underdog Fantasy in July. They'd also already sued FanDuel in July but withdrew the case in September,

California Brief

Meta's Litigation Shield Under Fire in Massachusetts Court (1)

December 5, 2025, 10:18 AM PST; Updated: December 5, 2025, 12:14 PM PST

Meta Platforms' claim to blanket immunity from youth addiction litigation landed with little traction before Massachusetts' top appeals court, with justices pressing the Instagram parent on how its features qualify as protectable publishing activity.

The oral arguments Friday before the Massachusetts Supreme Judicial Court marked the first state high court to hear Meta's claim to immunity under Section 230 of the Communications Decency Act for claims that it fueled youth addiction to Instagram through decisions that one justice described as feeding into teens' "fear of missing out."

The justices struggled to see how allegations were so easily preempted, as Meta claimed, by the federal statute that effectively blocks litigation against website operators for publishing third-party content.

"It's not a way to publish," said Associate Justice Scott L. Kafker. "It's how to attract the eyeballs. It's indifferent to content, right? It doesn't care if its Thomas Paine's Common Sense or nonsense. It's just, it's totally focused on getting you to look at it."

The high court's skepticism of Meta's first-line defense to the claims comes weeks before the US Court of Appeals for the Ninth Circuit is set to wrestle with the same litigation shield in a multi-district litigation case involving Meta's Facebook and Instagram, Alphabet's YouTube, ByteDance's TikTok, and Snap's Snapchat.

The Massachusetts litigation, brought by its attorney general Andrea Campbell (D), targets Instagram's incessant notifications and alerts, infinite scroll and autoplay elements, disappearing ephemeral posts, and intermittent variable reward programming as features designed to hook youth with dopamine hits. A trial court rejected Meta's arguments that the design features were publishing decisions protected by Section 230 and the First Amendment.

Algorithms 'Stimulate Looking'

Meta's argument that its notifications were simply the platform's protected republication of third-party likes and messages to users didn't appear to convince some justices.

"The third party isn't actually creating the content that you're pushing to the kids," Associate Justice Gabrielle Wolohojian told Meta's attorney, Mark Mosier of Covington & Burling LLP. The judge asked why Meta's retransmission of the fact of a like through a notification fits into the structure of Section 230 protection when it's Meta's decision.

Mosier compared the notification to a magazine's decision to summarize and describe all the articles within the publication. Wolohojian responded that the notifications seem more like advertising than an extension of Meta's third-party publishing.

Multiple times Mosier responded that even if features were found to be outside the boundaries of Section 230, they'd qualify as Meta's own speech protected under the First Amendment. But the justices insisted they were only considering the Section 230 defense, due to unique circumstances of the mid-litigation appeal.

In one exception, Kafker pressed whether algorithms that merely "stimulate looking," rather than expressively curating content for users, would qualify for the constitutional protection.

He cited Justice Amy Coney Barrett's 2024 concurrence in *Moody v. NetChoice*, which questioned whether the First Amendment is implicated if a "platform's owners hand over the reins to an AI tool" and concluded "the way platforms use this sort of technology might have constitutional significance."

Greatest Publisher on Earth

The state told the panel that Section 230's sweep isn't as broad as Meta would like.

Massachusetts state solicitor David Kravitz explained the law's reference to claims that bar treating online platforms as publishers of third-party content is a reference to common law publisher liability where a publisher is held liable for harm caused by the third-party content, not the common sense analogy of a social media platform to a print publisher.

"There's a critically and legally really important distinction between engaging in publication activity and being treated as a publisher," Kravitz said, noting the trial court referenced this distinction to limit Meta's claim to immunity.

The distinction appeared lost on the panel at least initially, with Kafker asking why Meta, "the greatest publisher on Earth," through its "super publishing" of all its users content doesn't fit the bill for being treated as a publisher.

Congress through Section 230 only cleared the online platforms' publishers liability, Kravitz responded. "The words 'treated as a publisher,' it's a term of art."

Meta spokesman Aaron Simpson said Friday in an emailed statement that the company is "confident the evidence will show our longstanding commitment to supporting young people."

Chief Justice Kimberly Budd, and associate justices Frank Gaziano, Dalila Arguez Wendlandt, and Serge Georges Jr. also sat on the panel.

Meta is also represented by Wilmer Cutler Pickering Hale & Dorr LLP.

The case is Commonwealth v. Meta Platforms Inc., Mass., SJC-13747, arguments held 12/5/25 .

(Adds comment from Meta in eighteenth paragraph.)

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New York Times sues Perplexity AI for 'illegal' copying of content

 [reuters.com/legal/litigation/new-york-times-sues-perplexity-ai-infringing-copyright-works-2025-12-05](https://www.reuters.com/legal/litigation/new-york-times-sues-perplexity-ai-infringing-copyright-works-2025-12-05)

Jaspreet Singh

December 5, 2025

Perplexity AI logo is seen in this illustration taken January 4, 2024. REUTERS/Dado Ruvic/Illustration [Purchase Licensing Rights, opens new tab](#)

- Perplexity faces multiple lawsuits from publishers
- NYT seeks damages and injunctive relief against the startup
- The Times has earlier sent cease and desist notice to Perplexity

Dec 5 (Reuters) - The New York Times ([NYT.N](#)), [opens new tab](#) filed a lawsuit against Perplexity AI on Friday, claiming that the artificial intelligence startup was copying, distributing and displaying millions of its articles without permission to power its generative AI products.

The startup has become a target of multiple legal disputes and faces similar accusations from a number of publishers as it tries to aggressively carve out a share of the hyper-competitive market for generative AI tools.

The Times also claimed that the startup's generative AI products created fabricated content, or "hallucinations," and falsely attributed them to the newspaper by displaying them alongside its registered trademarks.

It said that Perplexity's business model relied on scraping and copying content, including paywalled material.

"While we believe in the ethical and responsible use and development of AI, we firmly object to Perplexity's unlicensed use of our content to develop and promote their products," NYT spokesperson Graham James said [in a statement, opens new tab](#).

The NYT is seeking damages, injunctive relief and other equitable remedies to prevent Perplexity from continuing its alleged unauthorized use of content.

Perplexity was also [sued by the Chicago Tribune on Thursday, opens new tab](#).

The startup's head of communication, Jesse Dwyer, dismissed the lawsuits, saying it was an unsuccessful tactic used by publishers against emerging technologies.

Perplexity had previously said that it was not scraping data for building foundation models, but rather indexing web pages and providing factual citations.

The lawsuit, filed in the U.S. District Court for the Southern District of New York, comes more than a year after the NYT sent a [cease and desist notice](#) to Perplexity. It is also the latest salvo in a bitter [ongoing battle between publishers and tech companies](#) over the use of copyrighted content without authorization.

In October, social media company Reddit ([RDDT.N](#)), [opens new tab](#) sued Perplexity in New York federal court, [accusing it and three other companies](#) of unlawfully scraping its data.

The San Francisco-based startup, which is [valued at about \\$20 billion](#), is also facing lawsuits from [Encyclopedia Britannica](#) and media baron Rupert Murdoch's [Dow Jones and the New York Post](#).

The NYT, which has allowed Amazon.com ([AMZN.O](#)), [opens new tab](#) to use its editorial content for AI products [such as Alexa](#), is also [tussling with](#) ChatGPT-maker OpenAI.

Reuters reported last year that [multiple AI companies](#) were bypassing a web standard used by publishers to block the scraping of their data used in generative AI systems.

NYT shares were up 1.8%.

Reporting by Jaspreet Singh in Bengaluru, additional reporting by Arnav Mishra in Bengaluru; Editing by Arun Koyyur and Anil D'Silva

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

Nagel Rice Sues Lead Counsel Over Fees in Benicar MDL

Nagel Rice alleged that Robins Kaplan and Pendley Baudin & Coffin violated New Jersey's contingent fee rules in the multidistrict litigation over hypertension medication Benicar.

December 05, 2025 at 12:32 PM By  **Amanda Bronstad**

What You Need to Know

- The suits, filed in New Jersey's Camden County Superior Court, alleged both Robins Kaplan partner Tara Sutton and Pendley Baudin & Coffin partner Christopher Coffin charged a full 40% contingency fee while failing to disclose to their clients the compensation they received from the \$34 million common benefit fund.
- 'This is an issue that's been in the mass tort bar for a number of years, and finally it's being litigated,' Bruce Nagel told Law.com.
- Nagel Rice filed similar suits against Mazie Slater, whose partner, Adam Slater, also served on the plaintiffs' executive committee in the Benicar multidistrict litigation.



Tara D. Sutton, with Robins Kaplan. Courtesy photo

Nagel Rice has filed malpractice suits challenging attorney fees in the Benicar multidistrict litigation obtained by Robins Kaplan and Pendley Baudin & Coffin, whose partners were on the plaintiffs' executive committee.

The suits, filed in New Jersey's Camden County Superior Court, alleged both Robins Kaplan partner Tara Sutton and Pendley partner Christopher Coffin charged a full 40% contingency fee while failing to disclose to their clients the compensation they received from the \$34 million common benefit fund. That violates New Jersey's contingency fee rules, the suits say.

"Robins Kaplan never disclosed to their clients that their firm had or would receive substantial fees and costs for performing work on the liability aspect of the case, which work overlapped with work to be performed for each client and for which they received a full contingent fee under the individual retainer agreement," the complaint against Robins Kaplan says.

Bruce Nagel, of Nagel Rice, in Roseland, New Jersey, filed the case on Wednesday on behalf of a former Robins Kaplan client, Michelle Adams, a resident of Dunlap, Illinois, who is suing on behalf of a class of individuals in the Benicar multidistrict litigation "who have retained the defendants and been overcharged for legal fees and costs in violation of applicable Court Rules and Rules of Professional Conduct."

Sutton, who is in Minneapolis, did not respond to a request for comment.

On Nov. 26, Nagel Rice filed a similar class action against Coffin and his firm on behalf of two former Benicar clients, Wayne Bernard, a resident of Port Arthur, Texas, and Joanne Holmes, who lives in Utica, New York.

Coffin, in Plaquemine, Louisiana, did not respond to a request for comment.

"This is an issue that's been in the mass tort bar for a number of years, and finally it's being litigated," Nagel told Law.com. "And that is, that leadership counsel obtains a common benefit fee award for a great deal of the work that would be performed under the contingent fee agreement, and then, in addition to that, charges a full contingent fee. Many commentators have said that that amounts to double recovery and a breach of the contingent fee agreement."

'Unreasonable' Fees?

Nagel Rice filed [similar suits](#) against Mazie Slater Katz & Freeman, in Roseland, whose partner, Adam Slater, also served on the plaintiffs' executive committee in the multidistrict litigation, which alleged that Benicar, a hypertension medication, and its generic equivalent, Olmesartan, caused patients to suffer from severe diarrhea. Defendants Daiichi Sankyo and Forest Laboratories, now part of AbbVie, [settled 2,300 cases](#) in 2017 for \$358 million, with an 8% holdback for a common benefit fund to compensate lead counsel in the Benicar multidistrict litigation.



Adam Slater

Both Nagel Rice and Mazie Slater previously had a similar legal fight over fees in the [multidistrict litigation over transvaginal mesh devices](#) more than a decade after the acrimonious split in 2006 of Slater from the Nagel's firm, then called Nagel, Rice & Mazie.

In the Benicar fee dispute, U.S. District Judge Robert Kugler, in the District of New Jersey, granted Mazie Slater's motion to dismiss, finding that the rule didn't apply to the case, and that the common benefit award was within the acceptable range in the Third Circuit. In 2023, the Third Circuit upheld that dismissal.

But Nagel Rice filed another malpractice case against Mazie Slater, prompting both sides to bring sanctions motions against one another. Kugler ruled that he had federal

jurisdiction over the case, which was removed from New Jersey's Essex County Superior Court. The Third Circuit, in a July 11 holding, reversed that ruling, and Kugler's dismissal of the sanctions motions, which remain pending. Kugler retired last year, but the suit now is before U.S. District Judge Karen Williams, in the District of New Jersey.

"That case is the same theory as the one against the Coffin firm and Robins Kaplan," Nagel said. "Both assert in all the cases that by charging a full contingent fee, plus being reimbursed for substantial time and work product, with the common fund award, that it's unreasonable."

Nagel Rice's cases against Robins Kaplan and Pendley allege specific violations of New Jersey Court Rule 1:21-7 (c) and Rule 1:21-7 (f), both of which deal with the reasonableness of contingency fees.

"The other section of the rule says any case involving the same underlying facts, like the same drug we have here, that results in aggregate recovery of \$3 million or more, you need court approval for the fees," he said. "And the reasons is, that if you're litigating many cases with the same work product, theoretically, you're doing less work for each person. That's the basis of the rule."

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Litigation

Manage Newsletters

'Anti-Woke' Bank Startup Defends Suit Against Winston & Strawn

December 8, 2025, 11:14 AM PST

Summary by Bloomberg AI

AI Generated



- A liquidation trustee for a bankrupt "anti-woke" fintech startup is pushing back against Winston & Strawn LLP's bid to dismiss a \$1.7 billion lawsuit accusing the firm of breaching its fiduciary duties.
- The trustee argues that Winston & Strawn betrayed its fiduciary duties to GloriFi to "appease and protect" former CEO Toby Neugebauer, who engaged in destructive self-dealing and pressure campaigns against GloriFi's interests.
- Winston & Strawn says it had no obligation to undermine the wishes of GloriFi's governing principals and that doing so could itself have been a breach of duties, and argues that it isn't malpractice to do legal work at the client's instruction.

A liquidation trustee for a bankrupt "anti-woke" fintech startup is pushing back against Winston & Strawn LLP's bid to dismiss a \$1.7 billion lawsuit accusing the firm of breaching its fiduciary duties.

The law firm asked the court "to create a blanket immunity" that would allow corporate lawyers to intentionally ignore and breach their clients' fiduciary obligations without consequence, Chapter 7 trustee Scott M. Seidel argued in a Dec. 5 brief in the US Bankruptcy Court for the Northern District of Texas.

If the firm's position is accepted, a corporate lawyer could "evade liability simply by claiming, 'the company's CEO told me to do it,' even if the lawyer knows such actions constitute a breach of fiduciary duty, violate federal securities laws, or are otherwise unlawful," Seidel said.

The trustee sued the firm and one of its partners, Michael Blankenship, in September, alleging financial harm caused by Winston & Strawn's purported malpractice and intentional breaches of its fiduciary duties. He has also sued former CEO Toby Neugebauer.

The conservative fintech startup hired Winston & Strawn to provide legal expertise for a planned merger with a special-purpose acquisition company that would have taken GloriFi public at a valuation of about \$1.7 billion, according to the complaint.

The startup filed for Chapter 7 in February 2023. It aligned with conservative values and attracted high-profile conservative investors such as Peter Thiel and Ken Griffin.

The trustee argued that Winston & Strawn betrayed its fiduciary duties to GloriFi to “appease and protect” Neugebauer.

Neugebauer frequently engaged in destructive self-dealing and pressure campaigns against GloriFi’s interests, with the firm actively participating in “various schemes” to benefit his personal interests over the company’s, the trustee said.

Winston & Strawn and Blankenship moved to toss the suit in November, saying they had no obligation to undermine the wishes of GloriFi’s governing principals and that doing so could itself have been a breach of duties.

The firm also argued the trustee hasn’t pleaded that it breached a duty of care or that any malpractice caused GloriFi’s failure.

Winston & Strawn said in court papers that it isn’t malpractice to do legal work at the client’s instruction, “even if it furthers the client’s imprudent business decisions.”

The trustee is represented by lacuone McAllister Potter PLLC. The firm is represented by O’Melveny & Myers LLP and Gibbs & Bruns LLP. Neugebauer is represented by Texas Trial Group.

The case is Seidel v. Winston and Strawn LLP , Bankr. N.D. Tex., No. 25-03105, brief 12/5/25 .

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Securities

Deep Dive

Biblical Oil Firm First to Mandate Arbitration Since SEC Shift

December 8, 2025, 2:00 AM PST

The first company to take the SEC up on its pivot toward mandatory arbitration of securities claims is a Dallas-based firm that uses Bible verses to search for oil deposits in Israel.

Zion Oil & Gas Inc. adopted the mandatory arbitration clause last week, about 10 weeks after the Securities and Exchange Commission reversed a longtime policy that had effectively banned provisions like it. SEC Chair Paul Atkins announced the shift in September as part of a broader push to “make IPOs” great again” by reducing securities litigation and shareholder activism.

Zion, which amended its bylaws Dec. 1, is the only company so far to embrace the SEC’s new stance, according to a Bloomberg Law review of SEC records. A spokesperson said the agency couldn’t confirm that information independently of its filings database. Zion didn’t immediately respond to a request for comment.

The company described its mission in a scripture-heavy “vision statement” filed with the SEC in 2006 as fostering Israeli energy independence through a “Biblical treasure hunt.” Oilfields in neighboring countries “are the blessings and posterity which G-d had promised Abraham also for his son Ishmael,” whose descendants became Arabs, according to the filing.

The founder of Zion—which markets its securities to retail investors through televangelist broadcasts—was “ordained by G-d” to find fossil fuel reserves in Israel, according to that 2006 document. “We searched the Bible and found numerous occasions where, I believe, the Bible” makes “direct reference to the existence of OIL in Israel,” the SEC filing said.

Uncertainty

With major companies including Tesla Inc. bending over backwards to curtail investor lawsuits—including by going to war with Delaware over its shareholder protections—the low uptake is a bit surprising, according to University of Colorado professor Ann Lipton.

"I expected that Tesla would be the first mover" after its previous dramatic maneuvers to avoid shareholder claims, Lipton said.

The company relocated to Texas, adopted a bylaw requiring a 3% stake to bring most investor suits, and awarded Elon Musk a \$1 trillion pay package after a Delaware Chancery Court judge voided his \$56 billion compensation last year. That decision is currently on appeal.

Although Musk has urged a corporate exodus, the pace of "DExits" remains a trickle, as many business leaders and attorneys show caution toward competing states—such as Texas and Nevada—with less mature corporate ecosystems. The roughly 30 firms that have left Delaware include TripAdvisor Inc., Dropbox Inc., Andreessen Horowitz, Coinbase Global Inc., and Zion, which reincorporated in Texas.

The tepid interest in mandatory arbitration reflects similar anxieties about an "opaque" and unfamiliar process, according to Southern Methodist University law professor Carliss Chatman.

"Even with the SEC's policy shift, most public companies see mandatory arbitration of securities claims as destabilizing rather than protective," Chatman said by email. "The fact that only a small, idiosyncratic issuer has adopted such a clause tells us that companies serious about reducing litigation risk continue to prefer predictable judicial oversight."

Mass Arbitration Fears

Besides general aversion to legal unpredictability, there are several related reasons mainstream businesses have been hesitant to test the new regulatory waters, said Morrison & Foerster LLP partner Ryan Adams, a former SEC attorney.

For one thing, businesses tend to value the safety of crowds, according to Adams, who said being the first to test an unproven legal system involves risks that outweigh the "incremental benefits" of arbitration. He also pointed to market mechanisms that could punish firms for alienating shareholders overwhelmingly opposed to mandatory arbitration.

"Large companies, even the more aggressive ones, usually act slowly," Adams said. "They don't like to rile up their investors."

They're likely taking a wait-and-see approach as they cast a wary eye toward the consumer and employment litigation sectors, which have seen plaintiffs' firms respond to widespread arbitration requirements by initiating mass proceedings that can be even more irksome and costly than traditional class actions, according to Lipton.

"If plaintiffs' firms can organize mass consumer arbitrations, think what they'll do with mass institutional investors," she said.

Past Cases

Zion has faced five securities lawsuits, all filed in 2018, according to Bloomberg Law data. Four of the cases were consolidated and dismissed by a federal judge in Dallas. The fifth was voluntarily dropped.

The company's brief amended bylaw states that it "includes a mandatory arbitration provision for claims under the federal and state securities laws of shareholder claims." It vests jurisdiction over threshold disputes in Texas' new business court.

Zion "almost certainly wasn't getting appropriate legal counsel," Lipton said. "You can tell that from the way it's drafted."

— With assistance from Ben Miller.

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Securities

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Opinion

Matt Levine's Money Stuff: A Bidding War for Warner Bros.

December 8, 2025, 10:22 AM PST

Warner bidders

On Friday, after a fairly public auction process, the board of directors of Warner Bros. Discovery Inc. agreed to sell the company to Netflix Inc. In the deal, Warner shareholders would get three things:

\$23.25 per share in cash,

\$4.50 per share worth of Netflix stock, subject to a collar, and

stock in a new company called Discovery Global: Netflix would only buy Warner's studio and streaming business (including HBO and various movie franchises), and Warner's shareholders would keep an assortment of television networks, including CNN Discovery. How much is that worth? We don't know – the spinoff hasn't happened yet – but CNBC reported that "Paramount's executives and advisors valued the Discovery Global networks portfolio at close to \$2 a share, based on its predicted trading multiple and estimated leverage ratio," Bloomberg's Lucas Shaw reports that "the company believes those networks are worth \$3 to \$4 a share," and William Cohan notes that "Jessica Reif Ehrlich, a research analyst at Bank of America, has estimated that on a stand-alone basis, the Discovery Global business would trade at a minimum of \$5 per share."

So let's say the total value is between $\$23.25 + \$4.50 + \$2 = \$29.75$ and $\$23.25 + \$4.50 + \$5 = \$32.75$.

And Warner shareholders will get that \$29.75 or so in ... 2027? "The transaction is expected to close in 12-18 months," Warner and Netflix announced, and the long delay is obviously driven by concerns about antitrust review. Netflix and HBO are big streaming platforms, there are lots of competition worries about a big streamer acquiring the Warner movie properties, and it is all quite politically salient. "It is a big market share. It could be a problem," President Donald Trump said about the deal. There is a real possibility that the deal *won't* go through at all, and we'll find out in like a year. If that happens, Warner will be back to square one, though Netflix will have to pay Warner a **\$5.8 billion breakup fee**, a bit more than \$2 per share and "one of the biggest breakup fees of all time."

Given the timing and uncertainty, the market did not value this package quite at \$29.75: Warner's stock closed on Friday at \$26.08 per share.

As I said, this deal was the conclusion of an auction for Warner, an auction kicked off when Paramount Skydance Corp. approached Warner. In September, Paramount offered to buy all of Warner (including the Discovery Global television assets) for \$19 per share in a mix of cash and stock, but by last week it was up to \$30 per share, all in cash.

So Warner's board was deciding between (1) a cash offer worth \$30 and (2) a cash-and-stock-and-spinoff offer worth somewhere between \$29.75 and \$32.75, give or take. There were other considerations:

The Netflix deal has a lot of antitrust risk; the Paramount deal probably has less. "Paramount is highly confident in achieving expeditious regulatory clearance for its proposed offer, as it enhances competition and is pro-consumer," says Paramount, though it would say that. Also Paramount is run by David Ellison, the son of Larry Ellison, the world's second-richest person, and the Ellisons are close to Donald Trump. In the 2025 deal environment that matters a lot, though perhaps [less than the Ellisons thought](#).

The Paramount deal might have more *financing* risk. Netflix is giant, with a \$400 billion market capitalization and committed financing from big banks, and should have no problem paying \$80 billion or so for Warner. Paramount Skydance is a fraction of Netflix's size; in fact, it is smaller than Warner, with an equity market capitalization of about \$15 billion. On the plus side, Larry Ellison is the world's second-richest person. Bloomberg's [Michelle Davis reports](#) that "the Warner Bros. camp had doubts about how Paramount would pay for the company": "Paramount's offer included financing from Apollo Global Management Inc. and several Middle Eastern funds, and it had conveyed that its bid was fully backstopped by the Ellisons. Still, Warner Bros. executives were privately concerned about the certainty of the financing."

Paramount owns CBS, Warner (or its Discovery spinoff) owns CNN, and if you are a director concerned about the future of news, you might have various feelings about selling CNN to Paramount. I imagine this was not high on the board's list, though.

Warner's board took Netflix's deal – with higher upside valuation, lower current cash, more regulatory and timing risk, but less financing risk – over Paramount's. Paramount did not like this. Last week, even before the auction concluded, it [sent Warner a letter of protest](#):

Warner Bros. "appears to have abandoned the semblance and reality of a fair transaction process, thereby abdicating its duties to stockholders," the letter reads. The company has "embarked on a myopic process with a predetermined outcome that favors a single bidder."

Warner picked Netflix anyway, and today [Paramount escalated its fight](#):

Paramount Skydance Corp. launched a hostile takeover bid for Warner Bros. Discovery Inc. at \$30 a share in cash on Monday, just days after the company agreed to a deal with Netflix Inc.

The bid tops Netflix's offer of \$27.75 in cash and stock. Paramount's offer is for the entirety of Warner Bros., while Netflix is only interested in the Hollywood studios and streaming business.

"WBD shareholders deserve an opportunity to consider our superior all-cash offer for their shares in the entire company," Paramount Chief Executive Officer David Ellison said in a statement on Monday. "Our public offer, which is on the same terms we provided to the Warner Bros. Discovery Board of Directors in private, provides superior value, and a more certain and quicker path to completion."

Here is the tender offer. The financing is described on pages 31 to 34; it includes a \$54 billion debt commitment from Bank of America, Citigroup and Apollo and a \$40.4 billion equity commitment from Larry Ellison's trust. He's probably good for it:

The Ellison Trust has financial resources well in excess of what would be required to meet its financial obligations under the Equity Commitment Letter, including, among many other assets and financial resources available to it, record and beneficial ownership of approximately 1.16 billion shares of Oracle stock with a market value of approximately \$252 billion as of the date of this Offer to Purchase.

Warner's stock opened up about 6% this morning, at \$27.64, suggesting that shareholders were happy about this.

This is the same deal that Paramount already offered to Warner's board, which the board rejected. My general sense in situations like this is that shareholders like cash and certainty, while boards of directors are more willing to put weight on somewhat speculative ideas of long-term value. "Though Paramount offered Warner a higher price per share than Netflix did," the Wall Street Journal reported on Friday, "Warner saw Netflix's deal as the superior one given that Warner shareholders would continue to own shares in both companies following its planned split." Warner's existing management and directors naturally think *it's a good company*; they tend to think that the stub of Discovery Global is valuable, and that the continuing ownership of Netflix/Warner has some upside. Thirty dollars in cash is just \$30 in cash; why not reach for something more? Whereas for the shareholders \$30 in cash is worth more than, well, again, the stock closed at \$26.08 on Friday.

Anyway we are now in Round 2 of the auction, the messier and more public part. If Warner's shareholders want to take the Paramount deal, there's not *too much* that Warner's board can do to stop them: There are various defense mechanisms (poison pills, big reverse breakup fees) that Warner could put in place to protect the Netflix deal, but they would all lead to lawsuits.

The best defense of the Netflix deal is pretty much: more money. Netflix's stock fell when the deal was announced on Friday, suggesting that Netflix shareholders don't love it; it fell further this morning, suggesting that Netflix shareholders (1) still don't love it and (2) think that Netflix will be raising its bid. And David Ellison said on CNBC today that "he told [Warner Chief Executive Officer David] Zaslav via text message that \$30 per share wasn't the company's best and final offer," so presumably Paramount will be raising its bid too.

SEC shutdown

The US government was "shut down" from Oct. 1 to Nov. 12, 2025. A government "shutdown" is a term of art; it's not like the army went home or the prisons released everyone. But Congress had not appropriated money to keep paying for the government, and the result was that many government services were paused, many government employees were furloughed, etc.

If you take the term "shutdown" literally, though, you might get to thinking weird thoughts. "The US had no federal government for six weeks this fall," you might think, incorrectly but sort of plausibly. If you are a Money Stuff reader, you might go on to think: "And therefore, for six weeks, securities fraud was legal."

I mean, that's not legal advice, and I doubt that too many of you had that thought. But! On Nov. 7, the US Securities and Exchange Commission brought a securities fraud case against a guy named Srinivas Koneru. Koneru was the founder and owner of a private trade finance platform called Triterras Fintech Pte. Ltd., which he took public by a merger with a special purpose acquisition company in November 2020, at the height of the SPAC boom. As is standard in SPAC mergers, Triterras essentially went public at \$10 per share; it traded as high as \$14.42 in December 2020, but by early 2022 it was below \$2 and by mid-2023 it was considerably below \$0.01. Ultimately Koneru and some affiliates took it private again at \$0.10 per share, a 99% loss for the public investors, which I guess is not that weird for a 2020-vintage SPAC deal.

Also not weird for a 2020-vintage SPAC deal is that the SEC now says that the SPAC merger disclosures were misleading in various ways, "leaving investors with a false impression of the extent to which the demand for [Triterras's] Trade Finance module had been proven." The SEC does not argue that the *financial statements* were misleading, exactly, just that the company overstated how much real activity was happening on the platform. It's not the most slam-dunk fraud case you'll ever see, but "company went public at \$10 and private again at \$0.10" does suggest that investors might have been misled.

There is a problem, though:

1. The statute of limitations for SEC securities fraud lawsuits is generally five years: The SEC has to sue within five years of the fraud, which here let's say happened in November 2020, at the time of the SPAC deal.
2. The SEC tends to wait to the last minute to bring cases, which I [find annoying](#) but also understandable. (Everyone waits to the last minute to do everything.) Therefore, you'd expect the SEC to bring this case in, you know, October or November of 2025.
3. The government was shut down, then, though.

The SEC brought the case anyway, despite being shut down, and a few weeks later Koneru sued the SEC, arguing that it was illegal for the SEC to bring a case during the shutdown:

The Securities and Exchange Commission's investigation of Srinivas Koneru over several years didn't involve any emergency threat to human life or property that would justify continuing the probe during the shutdown under the Anti-Deficiency Act, the former executive of Triterras Inc. said in a complaint filed Sunday in the US District Court for the District of Columbia.

Koneru further alleged the SEC violated its own shutdown contingency plan by engaging in non-emergency activities such as reviewing his response to a Wells notice, holding internal meetings, and filing a civil complaint against him on Nov. 7 in the US District Court for the Southern District of New York.

Here is the complaint, which lists various bits of routine work that the SEC did to get this case filed during the shutdown, all of which are allegedly illegal:

[SEC enforcement lawyer Sam] Waldon and the Director of Enforcement – and based on information and belief, other staff members – engaged in internal discussions about the matter. ... Those actions violated the Anti-Deficiency Act. ...

The staff presented its investigation to the Commission. The Commission generally does not authorize the filing of a lawsuit against a respondent without a presentation and action memorandum from the staff, all of which would have been created in violation of the Anti-Deficiency Act. The staff filed its lawsuit on November 7, 2025, and so, therefore, the staff must have presented its investigation and action memorandum to the Commission at some point between October 24, 2025, and that date. Again, this presentation related to a routine, non-emergency investigation, violating the Anti-Deficiency Act.

The Anti-Deficiency Act actually does prohibit government employees from working for free during a shutdown, with some exceptions. I am not convinced that it creates a *private right of action* – I am not convinced that, if the SEC broke the rules and did some free work to sue you for securities fraud, the remedy is that you can't be sued for securities fraud – but, you know, (1) worth a shot and (2) kind of an amusing case to bring.

I should be clear, though, that the lesson here is not "you can go ahead and do securities fraud when the SEC is shut down." The lesson here is "you can go ahead and do securities fraud *five years before* the SEC is shut down." (Not legal advice!) It's not easy to get the timing right.

CFPB shutdown

You know who absolutely did not run into any Anti-Deficiency Act problems? The US Consumer Financial Protection Bureau, which still exists and employs hundreds of people, but which the Trump administration wants to shut down. So meanwhile those people twiddle their thumbs. The Wall Street Journal has kind of a sad profile of what they're up to:

John Thompson had been working at the Consumer Financial Protection Bureau for over a decade when he and his colleagues were abruptly ordered to halt work. It was February, and the Trump administration was back in charge. ...

"I'd log on, check my email, make sure I did my mandatory training, and then I would go work in the yard," said Thompson, an attorney who spent years at the bureau investigating predatory payday and auto title lenders.

He eventually left for the private sector.

DATs

I write occasionally, even now, about the circa-2021 craze for nonfungible tokens, and every time I do I worry that no one will believe me. "Wait people bought paintings, burned them to ashes, and then sold a digital pointer to a video of the ashes for more than the painting was worth? What? Why?" And I'll have to be like "I'm not saying it made any sense, it was nuts even at the time, I'm just saying it happened." I barely believe it myself.

By 2027 I will occasionally mention digital asset treasury companies, and there will be the same shock of disbelief. "Wait, people would put \$100 million of Bitcoin in a pot and sell shares of the pot for \$200 million? What? Why would anyone buy that?" And I'll have to be like "yeah no I hear you, it was nuts even at the time, I'm just saying it happened."

Anyway here's Bloomberg's Monique Mulima on the rise and fall of DATs :

An array of public companies thought they had found a sort of perpetual motion machine: Use your corporate cash to buy up Bitcoin or other digital tokens and presto, your share price shot up even more than the value of the tokens you bought. ...

One prominent entrant, SharpLink Gaming Inc., soared over 2,600% in a matter of days as the company said it would pivot from its old work in gaming, and sell shares to buy up lots and lots of Ethereum tokens, with one of Ethereum's co-founders as the chairman.

But it was always hard to explain why tokens should be worth more just because they were held by a public company, and the wheels began to come off the car, at first slowly and then much more quickly.

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Among the US and Canadian-listed companies that became DATs, the median stock price has fallen 43% this year, according to data compiled by Bloomberg. Bitcoin, by comparison, is down around just 6% since the beginning of the year.

I feel like one thing that crypto is good at is creating bubbles that are obvious at the time, yet hard to short. "This thing is trading above its fundamental value, so I should short it" is sometimes a useful heuristic, but pretty hair-raising in a world where "this thing is trading above its fundamental value so it will probably go up more" is also sometimes a useful heuristic. The DAT thing really was nuts at the time! Yet it worked, for a while.

Things happen

Donald Trump drives historic shift of power from investors to boardrooms. Inside India's Secretive Strategy to Stop the Rupee's Plunge . " Abu Dhabi has become a must-visit stop in every major fundraising cycle." The power crunch threatening America's AI ambitions. IBM Nears Roughly \$11 Billion Deal for Confluent. JPMorgan Taps Todd Combs to Lead Security Investments Group. France shielding €18bn Russian asset pot from EU 'reparations loan' push. Warren Demands Private Credit Stress Test After Big Bankruptcies. Wall Street Hedged Big Crypto Bet in \$500 Million Ripple Deal . Perpetual futures, explained (Patio11). Retail investors help drive gold and US stocks to bubble territory, BIS warns. One Man's Mission to Get Back \$4 Million of Stolen Skincare Products. 401(k)s Are Minting a Generation of 'Moderate Millionaires.' Why Does Everyone Think They Have Worms? Citi Is Worth the Sum of Its Parts for First Time in Seven Years.

If you'd like to get Money Stuff in handy email form, right in your inbox, please subscribe at this link. Or you can subscribe to Money Stuff and other great Bloomberg newsletters here. Thanks!

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1. The stock consideration is a variable amount of Netflix stock, floored at 0.0460 shares (if Netflix is trading below \$97.91 per share), capped at 0.0376 shares (if Netflix is trading above \$119.67), and otherwise \$4.50 worth if the stock is between \$97.91 and \$119.67. Netflix closed at \$103.22 the day before the deal was signed, and at \$100.24 the day after, so "\$4.50 worth" is a decent shorthand, but not a guarantee; it fell below \$97.91 this morning.

2. See page 35 of Paramount's tender offer today for the background of Paramount's various proposals.

3. Note that the litigation release is dated Dec. 3, while the complaint was filed Nov. 7. I assume that during the shutdown the SEC filed cases but didn't put out press releases.

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Securities

Manage Newsletters

SEC Chair Tells CPAs to Focus on Basics, Not 'Shiny' Baubles

December 8, 2025, 9:22AM PST

SEC Chair Paul Atkins chided the accounting industry Monday for its past support of disclosures he said would have undermined corporate reporting and urged firms to get back to "basics."

The industry should focus on delivering corporate accounting that meets the needs of investors and shouldn't "let the shiny bauble distract you," Atkins said at an American Institute of CPAs event in Washington.

"I was really shocked at the focus of some of the firms on things that I think would have completely subverted the importance of financial materiality and financial accounting," Atkins said. "That's some of the disclosure rules that were pushed forward at the SEC."

The Securities and Exchange Commission under the Biden administration adopted sustainability rules, now tied up in the courts, that would have required companies to have certain climate-related disclosures audited. US accounting firms were set to benefit by charging new fees for the audit mandate and through their consulting work in helping clients comply.

Atkins has criticized the regulator's climate disclosure rules as well as risk disclosures that pad corporate annual reports. He previously warned that efforts to write global sustainability reporting rules risked diverting resources and attention away from developing international accounting rules.

He also encouraged auditors to focus on maintaining professional objectivity. The spread of private equity ownership of firms and firms that have launched law practices could create challenges complying with conflict of interest rules, Atkins said.

To contact the reporter on this story: Amanda Iacone in Washington at aiacone@bloombergtax.com

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Securities

SEC Updates Accounting, Audit Guidance for Blank Check Mergers

December 5, 2025, 3:05 PM PST

Private businesses in line to merge with a blank check company in order to go public must provide audited financial statements that meet US audit standards in proxy statements and registration statements , according to SEC guidance released on Friday.

The Securities and Exchange Commission updated its staff guidance to address financial reporting and audit matters resulting from 2024 rules that aligned reporting for special purpose acquisition companies with those of traditional public offerings. SPACs are shell companies that aim to raise money to take an operating company public through a merger.

Updates to the commission's financial reporting manual also clarifies filing time lines and considerations for entities that qualify as small reporting companies or emerging growth companies.

To contact the reporter on this story: Amanda Iacone in Washington at aiacone@bloombergtax.com

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Biography and memoir

The Curious Case of Mike Lynch — the rise and fall of the cleverest man in the room

Katie Prescott's timely biography of the Autonomy entrepreneur offers lessons about today's tech bubbles



Mike Lynch arrives at the court in San Francisco in March 2024 © AP

Jonathan Guthrie

Published 9 HOURS AGO



Mike Lynch was born with a rare trait: smooth fingertips. He was literally a man who left no fingerprints.

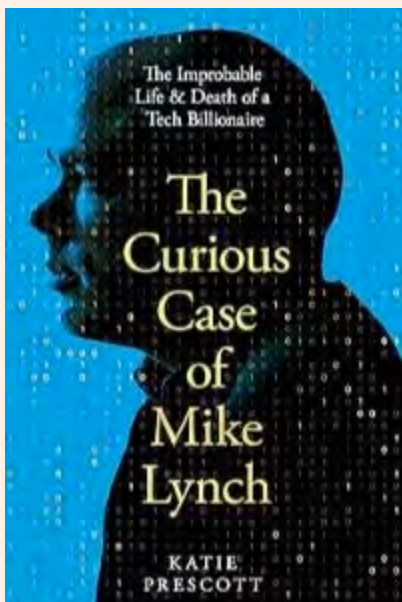
Enemies of the UK tech billionaire might argue this was predictive. How else could a US criminal court have found Lynch “not guilty” of fraud after he sold his business Autonomy to Hewlett-Packard for an inflated \$11.7bn? Much of the evidence appeared damning. The acquittal rate for such US criminal prosecutions is 0.4 per cent.

In August 2024, shortly after Lynch triumphed in a San Francisco courtroom, his life was ended by another outcome with long odds. A freak storm off the coast of Sicily [sank his superyacht](#). Lynch died with six others.

Paradox piles on paradox in Katie Prescott's timely biography *The Curious Case of Mike Lynch*. The author, a journalist with The Times, is responsible for a paradox of her own: she has created a highly readable book that pivots on accounting conventions.

For those fortunate enough to have avoided it, corporate revenue recognition will appear the dreariest of subjects. For cognoscenti, it is the commonest way in which dodgy accountants massage the numbers. As Prescott explains, revenue recognition is central to the stratospheric rise and precipitous fall of Autonomy.

Prescott drew on almost 100 interviews and court transcripts from three trials to chart that trajectory. The company was a product of the illustrious St John's Innovation Centre at Cambridge university, where Lynch had completed his PhD in signal processing. The métier of the business was creating software for finding related but unstructured data — for example, by trawling through company emails. The programs relied on Bayes' theorem. This is a method of updating probability predictions to reflect new evidence.



The young Lynch was not above “blagging”, as Prescott puts it — making misleading claims to gain advantage. Most of us view this as forgivable in a twentysomething entrepreneur. When it is practised by the bosses of large quoted businesses we generally see it as evidence of innate dishonesty.

This is where revenue recognition comes in. Autonomy floated in New York and London in 2000. The dotbomb crash in tech stocks pushed its shares down by more than 90 per cent. Executives wanted to show that Autonomy was growing strongly.

They used two main wheezes to bolster quarterly revenues at this self-proclaimed “pure software business”. First, they included sales of third-party hardware loaded with Autonomy software as well as software itself. Second, they recruited intermediaries to make big orders they expected real customers to place.

When struggling US office equipment giant Hewlett-Packard bought Autonomy in 2011, it ignored numerous red flags. The biggest and reddest was prolonged critical commentary from City analyst Daud Khan, a hero of this story.

“The sale was one in the eye for many in the Square Mile,” Prescott writes, “The punch Lynch had always wanted to deliver.”

HP saw only what it wanted to see: an innovative enterprise that could save it from obsolescence. Neither of HP’s chief executives during this period — [Léo Apotheker](#) or his “fiery” replacement [Meg Whitman](#) — emerges with much credit.

HP apparently overlooked the laxity of UK accounting rules. Prescott writes: “HP’s review of Autonomy was more akin to squeezing fruit at a market stall than a full-on dissection.” According to the judgment of UK civil court judge Robert Hildyard, Whitman then “fell in with HP’s corporate antipathy to any culture other than its own,” viewing Autonomy as if it was an “unwanted stepchild”.

The culpability of Lynch for HP’s subsequent massive write-offs depends on how aware he was that Autonomy’s numbers were misleading. US criminal courts acquitted him of fraud but found former finance director Sushovan Hussain guilty and jailed him. A UK civil court judge said both men were responsible.

Prescott depicts a man too brilliant to be deceived by his quiet sidekick. I knew Lynch and this seems accurate. So does the portrayal of Lynch as a man who was charming when he wanted something and bullying when he did not get it.

The author suggests an answer to the question “if he committed fraud, why did he do it?” Accounting wheezes inflated sales by only about a 10th. Autonomy would have been a success without them.

The best books of the Year 2025

From economics, politics and history to science, art, food and, of course, fiction — our annual round-up brings you top titles picked by FT writers and critics

[Read more](#)

Lynch, to paraphrase a description of Enron bosses, regarded himself as “the smartest guy in the room” — with no duty of honesty to his intellectual inferiors. More broadly, the valuation of a disruptive tech business depends on fast growth in sales not cash profits. Lynch was willing to push against accounting boundaries to juice up Autonomy’s key numbers.

The affair should remind investors how misleading revenue-based metrics can prove to be. We are in the middle of a tech bubble partly driven by them. History has already repeated in one respect. Many of today’s artificial intelligence businesses are enthusiastic users of Bayes’ theorem.

The Curious Case of Mike Lynch: The Improbable Life & Death of a Tech Billionaire by Katie Prescott *Macmillan Business* £22/\$29.99, 464 pages

Jonathan Guthrie is a former editor of Lex and author of ‘The Truth About Investing’

FT Asset Management Fund management

Pensions dump US equities over AI fears

Plus, bond investors sound alarm, US stocks on the rise and Münster at the Guggenheim



The UK's defined contribution pension sector is especially sensitive to potential stock market swings © Bloomberg

Emma Dunkley

Published YESTERDAY



Welcome to FT Asset Management, our weekly newsletter on the movers and shakers behind a multitrillion-dollar global industry. This article is an on-site version of the newsletter. Subscribers can sign up [here](#) to get it delivered every Monday. Explore all of our newsletters [here](#).

Does the format, content and tone work for you? Let me know:
emma.dunkley@ft.com

In today's newsletter:

- British pension funds sell US stocks on AI fears
- Bond investors sound alarm over next Fed chair
- US stocks set for double-digit gains

UK pension funds dump US equities

Is an AI bubble on the horizon? Some of the UK's biggest pension funds think so and are cutting back their exposure to US equities as a result.

Schemes managing more than £200bn in assets for millions of British savers [told the Financial Times](#) they had been shifting allocations to other geographical regions or adding protection against a potential fall in stock prices in recent months, write *Josephine Cumbo* and *Mary McDougall*.

The moves come as the tech-heavy Nasdaq Composite index has shot up more than 20 per cent this year — and more than doubled since early 2023 — driven by the so-called Magnificent Seven stocks such as **Nvidia**, **Alphabet** and **Meta**.

This has fuelled concerns about the market's growing concentration in a small number of stocks and the risk of a bubble that could leave retirement savers exposed to a sharp sell-off.

“We recognise the specific risks associated with US equities, such as tariff measures and the concentration in large tech stocks,” said **Callum Stewart**, head of investment proposition at **Standard Life**, part of the **Phoenix Group**. It oversees the £36bn Sustainable Multi Asset fund serving 2mn members, where roughly 60 per cent of its equity assets are in North America.

Stewart said the fund was in the process of reducing its allocation to US stocks and was instead boosting exposure to UK and Asian markets.

The UK's defined contribution pension sector, in which employees, typically with employer support, build individual retirement pots, is especially sensitive to potential stock market swings because younger savers are often heavily invested in US indices, which are dominated by the Magnificent Seven.

Savers 30 years from retirement typically have 70 to 80 per cent — or even 100 per cent — of their assets in global equities, with most equity allocations dominated by US Big Tech.

Bond investors sound the alarm

Bond investors have told the **US Treasury** they are concerned about **Kevin Hassett's** potential appointment as **Federal Reserve** chair, worrying he will cut interest rates aggressively to please President **Donald Trump**.

The Treasury department solicited feedback on Hassett and other candidates in one-on-one conversations with executives at major Wall Street banks, asset management giants and other big players in the US debt market, according to several people familiar with the conversations.

The discussions took place in November, before Treasury secretary **Scott Bessent** held his second round of interviews with candidates to replace **Jay Powell** as Fed chair when his term expires in May 2026, these people said.

The Treasury said it “regularly engages with a variety of market participants and investors on important developments and dynamics in the Treasury market and broader financial markets”.

It added: “During discussions with key stakeholders, the expected distribution of market outcomes across several asset classes for the five potential Federal Reserve chairs was extremely narrow.”

Hassett, the White House's top economic official, has emerged as a frontrunner for the position in recent weeks, as Trump and Bessent have whittled down the list of potential candidates from 11 initial contenders.

Trump on Tuesday said he planned to name his pick for Fed chair "early" next year, and signalled Hassett was a "potential" contender. The US dollar briefly slipped on the president's mention of Hassett.

The White House told the FT that "the president will continue to nominate the most qualified individuals to the federal government and, until an announcement is made by him, any discussion about potential nominations is pointless speculation".

Securities

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From 2,600% Gain to 86% Wipeout, Crypto's Hottest Trade Crumpled

December 6, 2025, 6:00 AM PST

Summary by Bloomberg AI AI Generated



- An array of public companies that bought digital tokens, known as digital asset treasuries, have seen their share prices plummet after initially soaring.
- The median stock price of US and Canadian-listed digital asset treasuries has fallen 43% this year, with some companies' stocks falling over 99% despite holding valuable crypto tokens.
- The decline is attributed to investors realizing that holding digital tokens does not generate yield, and the companies are now struggling to make interest and dividend payments on debt used to fund their crypto acquisitions.

What began the year as one of the best trades in the stock market has, in a matter of months, turned into one of the worst.

An array of public companies thought they had found a sort of perpetual motion machine: Use your corporate cash to buy up Bitcoin or other digital tokens and presto, your share price shot up even more than the value of the tokens you bought.

It was a playbook invented by **Michael Saylor**, who transformed his company, Strategy Inc., into a publicly traded Bitcoin holding vehicle. And through the first half of 2025 it worked for more than a hundred other companies that followed Saylor's lead.



Michael Saylor during the Bitcoin 2025 conference in Las Vegas on May 29.

Photographer: Ronda Churchill/Bloomberg

Digital asset treasuries, as these firms became known, turned into one of the hottest trends in the public markets, as share prices skyrocketed and everyone from **Peter Thiel** to the Trump family piled in.

One prominent entrant, SharpLink Gaming Inc., soared over 2,600% in a matter of days as the company said it would pivot from its old work in gaming, and sell shares to [buy up lots and lots of Ethereum](#) tokens, with one of Ethereum's co-founders as the chairman.

But it was always hard to explain why tokens should be worth more just because they were held by a public company, and the wheels began to come off the car, at first slowly and then much more quickly.

In the case of SharpLink, the stock has fallen 86% from its peak, leaving the whole company worth less than the digital tokens it owns. The company now trades at roughly 0.9 times its Ether holdings. It was, at least, spared the fate of Greenlane Holdings, which plunged more than 99% this year, despite its stash of around \$48 million BERA crypto tokens.

"Investors took a look and understood that there's not much yield from these holdings rather than just sitting on this pile of money, and that's why they contracted," B. Riley Securities Analyst **Fedor Shabalin** said in an interview.

Among the US and Canadian-listed companies that became DATs, the median stock price has fallen 43% this year, according to data compiled by Bloomberg. Bitcoin, by comparison, is down around just 6% since the beginning of the year.

Some lucky DATs are still worth more than their underlying holdings, but most have been losers for people who bought them when they were anywhere near their peaks and 70% are on track to end the year below where they began it, according to Bloomberg's calculations.

The worst performers have been public companies that eschewed Bitcoin and went for smaller, more volatile tokens.

Two of President Donald Trump's sons [lined up behind](#) Alt5 Sigma Corp., a public company that set out to buy over a billion dollars of WLFI, a token issued by a separate company that was co-founded by the Trump family. Those shares have fallen about 86% from their peak in June.



Donald Trump Jr. and Eric Trump during an opening bell ceremony for Alt5 Sigma at the Nasdaq MarketSite in New York on Aug. 13.

Photographer: Adam Gray/Bloomberg

Read More: [The 26-Minute, 51% Wipeout That Deepened Trumps' Crypto Woes](#)

The volatility of these stocks is explained, at least in part, by all the money that was borrowed to pay for the corporate crypto acquisitions.

Strategy came up with a remarkable array of convertible bonds and preferred shares that funded the company's Bitcoin purchases, with the tokens growing to be worth over \$70 billion at one point. DATs as a group raised over \$45 billion this year to purchase crypto tokens, according to Shabalin at B. Riley.

Now, though, Strategy and all the other companies are on the hook to make the interest and dividend payments on that debt. That is a problem because their crypto holdings, for the most part, don't generate any cash flow.

"If you own Strategy, you own the Bitcoin risk plus whatever kind of corporate stress, corporate risk they are taking on," RIA Advisors Portfolio Manager **Michael Lebowitz** said in an interview.

Strategy has recently tried to raise more capital to keep the flywheel spinning, turning to [Europe](#) in November to sell perpetual preferred stocks at a discount, after US preferred shares sales fell short of expectations. But those euro-denominated preferred stocks have already fallen below their offer price.

Meanwhile, for smaller DATs without name recognition, capital raising opportunities are even harder to come by as crypto prices decline and investor enthusiasm wanes.

For Strategy, the obvious next step is to sell some of its crypto holdings to pay the bills. And that is what Saylor's chief executive officer, **Phong Le**, said the company might do.



Phong Le during the Australian Crypto Convention in Sydney on Nov. 22.

Photographer: Brent Lewin/Bloomberg

"We can sell Bitcoin and we would sell Bitcoin if we needed to fund our dividend payments," Le said on a podcast.

Le said he will look at this option if the company's so-called mNAV falls below 1, a calculation that would suggest the company's market value has fallen below the value of its crypto holdings.

These comments shook the DAT industry because Saylor had said many times that he would not sell his Bitcoin, and would buy more when the price went down.

"Sell a kidney if you must, but keep the Bitcoin," he joked in a February post on X.

The big concern now is that DATs will be forced to sell their crypto, which will push down the prices of those tokens, setting off a downward spiral.

"If there's a headline that says Strategy sold, even if it's three Bitcoin, I think after everything Michael Saylor has said about he's never selling a dime, people are going to start to question the whole Bitcoin trade," Lebowitz said.

Strategy has created a [\\$1.4 billion reserve fund](#) to cover dividend payments in the near term. And shares are still up over 1,200% since it started buying Bitcoin in August 2020. But they are on track for a 38% decline this year.

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

The DAT wipeout risks bleeding into broader markets if traders are using borrowed money, which could force them to sell in order to cover margin calls. For now, the problems have largely cut off the flow of new companies adopting the strategy – and the burst of capital markets activity that it created.

But there are signs that there may be at least some new activity from somewhat more valuable DATs acquiring smaller DATs that are worth less than their holdings.

Strive Inc., co-founded by former Republican presidential candidate **Vivek Ramaswamy**, agreed to acquire Semler Scientific Inc. in an all-stock deal in September, merging the two Bitcoin treasury companies. Semler was one of the first DATs and has fallen 65% this year.

Ross Carmel, a partner at Sichenzia Ross Ference Carmel, expects that mergers and acquisitions will pick up for DATs in early 2026 with a focus on the potential for further pain.

The industry is likely to see more structured securities transactions "that can be used to give these investors more downside protection in these deals," Carmel said.

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2nd Circ. Upholds Toss Of Barclays Investor Case

By **Sydney Price**

Law360 (December 5, 2025, 8:37 PM EST) -- The Second Circuit on Friday affirmed the dismissal of a proposed securities class action accusing Barclays PLC of misleading investors about its internal controls before the bank accidentally oversold billions of dollars' worth of exchange-traded notes, finding the complaint did not allege that the bank's executives acted with fraudulent intent.

According to the summary order issued by a three-judge panel, a New York district court was correct for tossing Michael Puchtler's **suit in March**. Puchtler alleged in the suit that he lost \$197,563 in 2022 when Barclays discovered internal controls weren't in place to track the bank's issuance and sales of certain securities from its so-called shelf registration statements.

The case was one of several securities fraud suits related to Barclays' loss of its "well-known seasoned issuer" status, which had allowed the London-based investment bank to sell certain securities without the U.S. Securities and Exchange Commission's prior review.

The Second Circuit on Friday agreed with U.S. District Judge Lewis J. Liman's conclusion that the suit does not allege that Barclays' management knew about the lack of controls. According to the order, a working group had been impaneled to manage the bank's WKSJ status loss.

Barclays' CEO C.S. Venkatakrishnan, former chief executive James "Jes" E. Staley and ex-finance director Tushar Morzaria are individual defendants in the suit accused of not taking proper action to prevent the lapses.

"Puchtler does not make any allegations that the individual defendants were contemporaneously aware that the working group had not put in place adequate controls to track securities issuances," the Friday order states. "Without a link between the working group and the individual defendants, Puchtler's allegations do not raise a strong inference of scienter."

According to the suit, Barclays' failures allowed it to issue and sell billions of unregistered securities in multiple exchange-traded notes, including one that caused Puchtler's losses called "Barclays Bank PLC iPath Series B S&P 500 VIX Short-Term Future" — also known as VXX — which had allowed traders to bet on the short-term volatility of the S&P 500 index option contracts listed on the Chicago Board Options Exchange.

In March, Judge Liman found that Puchtler's claims additionally fail because he did not show that his losses were a result of the alleged misrepresentation, since the bank's issuance of the unregistered securities served as a "safety valve" to absorb excess demand that Barclays had no obligation to provide.

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

U.S. Circuit Judges Reena Raggi, Michael H. Park and Debra Ann Livingston sat on the panel for the Second Circuit.

Puchtler is represented by Timothy Sperling, Bruce S. Sperling, Jerry Santangelo and Nathan A. Shev of Sperling Kenny Nachwalter, and Frederic S. Fox, Robert N. Kaplan, Donald R. Hall and Melinda Campbell of Kaplan Fox & Kilsheimer LLP.

Barclays and the individual defendants are represented by Jeffrey T. Scott, Matthew J. Porpora, Julia A. Malkina and Jacob E. Cohen of Sullivan & Cromwell LLP.

The case is Puchtler v. Barclays PLC, case number 25-995, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Dorothy Atkins. Editing by Melissa Treolo.

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Ex-Derailment Deal Admin Faces Irked Judge In Contempt Bid

By **Matthew Santoni**

Law360, Youngstown, Ohio (December 5, 2025, 8:01 PM EST) -- The ex-administrator of Norfolk Southern's \$600 million settlement over the East Palestine, Ohio, derailment met skepticism as it admitted to a federal judge Friday that it had made some mistakes in distributing funds, but denied class counsel's key contention that \$120 million for personal injury claims had to be divided evenly among all the claimants.

During a hearing in Youngstown, the sometimes-irritated U.S. District Judge Benita Pearson at one point accused Kroll Settlement Administration's counsel of making a "disingenuous" argument in his bid to help his client fend off contempt claims from counsel representing individuals and businesses impacted by the Feb. 3, 2023, derailment and chemical spill in the Buckeye State hamlet near the Pennsylvania border.

Kroll told the judge the court-approved plan of distribution had always included starting each personal injury claim with a base payout of \$25,000, then adjusting up or down depending on the claimant's circumstances, rather than waiting for all the claims to be filed and dividing a limited piece of the settlement fund among them. So Kroll had not been in contempt of the court's orders when it was on pace to exceed the \$120 million set aside for personal injury claims, said Kroll attorney Scott M. Ahmad of Winston & Strawn LLP.

"The plan of distribution said the money can be reallocated as necessary," Ahmad told Judge Pearson during about three hours of argument Friday afternoon. "...The allocations in the plan of distribution are 'preliminary,' not 'final' or 'finite.'"

Kroll had been **ousted from its role** running the distribution of settlement funds in June, after complaints about delays and errors led the plaintiffs' class counsel to allege that Kroll had made major mistakes in interpreting the plan, overpaying some claimants and potentially leaving less money for others.

The class counsel had asked the court to hold Kroll in civil contempt and to make it repay what it had been awarded from the settlement to handle distribution, and had gotten the proceedings **broken up into two parts**: a finding of whether Kroll was in contempt, and after an audit, what if any other damages Kroll was liable for. Friday's hearing focused on the first step.

The key point of contention was the distribution of money for personal injury claims, also known as "voluntary exposure" claims. The class counsel claimed the plan was for each claimant to be assigned "points" based on factors like how close they had been to the fiery derailment and for how long, or whether they had developed health issues; those points would be added together and then used to divide up \$120 million set aside from the settlement fund in a "pro rata" fashion.

Kroll contended that the distribution plan said every personal injury claimant was "entitled" to start with an assumption of 100 points and \$25,000, which would then be adjusted upward or downward based on the factors laid out in the plan.

Ahmad pointed to language in the plan that cited the \$25,000 number, emails between Kroll personnel and members of the class counsel team that seemed to share the \$25,000 or \$250-per-point assumption, and the fact that class counsel had been the ones to tell the public that the base for a personal injury claim would be increased from \$10,000 to \$25,000 in order to entice more

people to file claims.

As payments started going out, he said class counsel knew Kroll hadn't finalized and added up all the claimants' points, as they would need to before finalizing payments under a pro rata system, but they did not object. Nor did they react when it first appeared that the claims were on track to exceed \$120 million, with one attorney suggesting that the fund would be bumped up to \$130 million.

Kroll believed increasing the pot of money for the payouts was possible — and was the plan all along — because of "pour-over" provisions in the plan that would take from later categories of claimants, who were more explicitly described as getting pro rata shares of whatever was left in the settlement fund, Ahmad said.

Judge Pearson seemed to lose patience with Ahmad at times or to cut off his arguments, such as when he tried to cast doubt on the alleged errors found by replacement administrator Epiq Class Action & Claims Services Inc. because it was a "competitor" to Kroll, or when he argued that Kroll didn't know the East Palestine class counsel would follow a purely points-based system the way Kroll and some of the same lawyers had **in a case involving Columbia Gas**.

"It's disingenuous for you to say your client knew nothing until August when you say he shared those examples from the Columbia Gas case," Judge Pearson said, later threatening, "When I put pen to paper, I don't think Kroll will be happy... We have folks in East Palestine who should have received something and haven't, because of what's happened here."

Seth Katz of Burg Simpson Eldredge Hersh & Jardine PC, representing the class counsel, argued that Kroll had known the court's plan involved a point-based, pro rata distribution, but made errors and overpayments that had threatened to overspend the settlement fund. He said both the personal injury payouts and the later "direct payments" to households were supposed to operate the same way.

"If one part of the program was pro rata and the other was not, they would not have had nearly identical language," Katz said, later adding, "This was a fixed fund. There's no going back to Norfolk Southern and asking for more."

He said other errors pointed to Kroll messing up rather than just misinterpreting the plan: some points were multiplied by factors that weren't in the plan, such as 0.25 or 0.75 where the plan only used increments of 0.5.

Kroll admitted it had made some mistakes, Ahmad said, including an error where residents of the greater East Palestine ZIP code got the higher multiplier for those who lived within the village itself. Kroll estimated that those overpayments were worth about \$4.8 million, which it said it was willing to repay to the settlement fund. But Katz said that offer was never made to class counsel before Kroll was ousted as administrator.

Some discussion also focused on whether Kroll had outsourced some work to India, which Judge Pearson said raised concerns about data security and privacy given the sensitive personal and health information claimants were submitting. Ahmad said that not all of the Kroll witnesses who had given depositions had been familiar with the outsourcing, but that the company had its own offices in India that could have been the ones handling the East Palestine claims, rather than the data being processed by a third party overseas.

Judge Pearson said she would take Friday's arguments under advisement, and said she may ask the parties for supplemental briefing.

The plaintiffs are represented by Jayne Conroy of Simmons Hanly Conroy LLP, Elizabeth Graham of Grant & Eisenhofer PA and Seth Katz of Burg Simpson Eldredge Hersh & Jardine PC.

Kroll Settlement Administration is represented by Christopher J. Joyce of Flannery Georgalis LLC and Scott M. Ahmad, Stephen V. D'Amore, Scott P. Glauberman and Rachael E. Thompson of Winston & Strawn LLP.

The case is In re: East Palestine Train Derailment, case number 4:23-cv-00242, in the U.S. District

Court for the Northern District of Ohio.

--Editing by Patrick Reagan.

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Rosen Law Firm Sanctioned Over 'Frivolous' Investor Suit

By **Lynn LaRowe**

Law360 (December 5, 2025, 4:29 PM EST) -- A Wisconsin federal judge has sanctioned The Rosen Law Firm PA for failing to conduct an adequate investigation before filing a "frivolous" securities complaint against an airline holding company.

U.S. District Judge William C. Griesbach said in an **order** Wednesday that the original complaint filed by Rosen Law attorney Phillip Kim on behalf of investor Viral Kothari did not comply with the heightened pleading standards required by the Private Securities Litigation Reform Act of 1995.

That original complaint failed to "plead with any specificity facts that would reasonably lead one to believe that defendants knew or were reckless in not knowing the financial statements issued were materially false or misleading," the judge found.

The judge said Rosen Law must pay reasonable attorney fees and expenses that defendant Harbor Diversified Inc. incurred in defending against the original complaint. A first amended complaint was ultimately dismissed.

The plaintiffs alleged that Harbor Diversified executives made fraudulent financial disclosures during the proposed class period, March 30, 2022, to March 29, 2024, that artificially increased the price of Harbor stock, thereby misleading investors, according to the case background in the order. Those investors then suffered economic loss when Harbor stock prices fell in response to Harbor's disclosure that revenues were improperly recognized and would need to be restated.

Judge Griesbach said the PSLRA is clear that plaintiffs in a securities case, such as the class action filed by Rosen Law, must plead facts evidencing "scienter," the requisite state of mind, of the defendants' intention to deceive, manipulate or defraud.

"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," Judge Griesbach wrote.

The judge said he was not persuaded by Rosen Law's argument that scienter was sufficiently pled in a first amended complaint because the PSLRA mandates that courts evaluate each complaint individually for compliance.

"The PSLRA does not grant a get-out-of-jail-free card — one nonfrivolous complaint does not immunize the earlier filing of frivolous complaints," Judge Griesbach wrote.

"Where an attorney fails to conduct a reasonable pre-suit investigation and subsequently files an untenable complaint, a company that may in fact be conforming with the law will be forced to incur substantial costs," the judge said, noting that attorneys are required to conduct more diligent prefiling investigations in cases involving securities fraud than in other "contexts."

The judge said Rosen Law's sanctions must be limited to the defendants' expenses in connection only with the original complaint, finding that an amended complaint filed by attorneys with Pomerantz LLP, which represents investor Jon Arne Toft, did comply with the PSLRA in pleading scienter.

"While Pomerantz' arguments came up short, they were not baseless nor of the kind that had no chance of success," Judge Griesbach wrote, noting that he dismissed the case with prejudice for

failure to state a claim.

Judge Griesbach denied a bid from the defense to sanction Pomerantz. He also rejected arguments from the plaintiffs that lawyers for the defendants should be sanctioned for acting in bad faith by filing a motion to dismiss before a lead plaintiff had been designated.

"There is nothing in the PSLRA that prevents a defendant from filing a motion to dismiss prior to the selection of a lead plaintiff," the judge said. "To the contrary, the PSLRA contemplates that a defendant will file a motion to dismiss when it believes the complaint fails to sufficiently allege that the defendant made misleading statements with the requisite state of mind."

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

Viral Kothari is represented by Phillip Kim of The Rosen Law Firm PA.

Jon Arne Toft is represented by Jeremy A. Lieberman, Joseph Alexander Hood II and Tamar A. Weinrib of Pomerantz LLP.

Harbor Diversified Inc., Christine R. Deister, Liam Mackay and Gregg Garvey are represented by David R. Konkel and John L. Kirtley of Godfrey & Khan SC.

The case is Toft et al. v. Harbor Diversified Inc. et al., case number 1:24-C-556, in the U.S. District Court for the Eastern District of Wisconsin.

--Editing by Amy French.

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NJ Judge Signs Off On \$13M BlockFi Settlement

By **Emily Lever**

Law360 (December 5, 2025, 5:58 PM EST) -- A New Jersey federal judge Friday gave final approval to a \$13.2 million settlement with investors seeking damages for their business with the failed cryptocurrency lender BlockFi Inc., awarding \$10,000 to each class member.

In an **order** filed Friday, U.S. District Judge Claire C. Cecchi approved the settlement, which provides for payouts to all who invested in BlockFi or placed their assets in BlockFi accounts between January 2019 and the company's bankruptcy filing in November 2022.

Judge Cecchi granted preliminary approval for the **settlement** in August and issued her final order following a hearing Thursday.

The investors initially brought proposed securities class actions in New Jersey and Massachusetts against BlockFi in early 2023. BlockFi in turn brought adversary proceedings against the lead plaintiffs of both suits, which it later settled.

BlockFi received the approval of New Jersey bankruptcy judge in October 2023 for its Chapter 11 reorganization plan, over the objection of one of the lead plaintiffs for the investors.

Judge Cecchi also granted co-lead counsel from Pomerantz LLP and Squitieri & Fearon LLP their request for a \$2.7 million cut of the settlement in legal fees.

The case is *Greene v. Prince et al.*, case number 2:23-cv-01165, in the U.S. District Court for the District of New Jersey

--Additional reporting by Katryna Perera

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Juror Who Alleged Misconduct Dismissed From Opioid Trial

By **Cara Salvatore**

Law360 (December 5, 2025, 10:21 PM EST) -- A juror in Florida hospitals' \$1.5 billion trial against the three major pharmacy chains over opioid dispensing was dismissed Friday after a judge found that her allegations of serious misconduct against another juror were largely unwarranted.

The allegations and subsequent dismissal came during the 13th day of deliberations over 26 hospitals' allegations that CVS, Walgreens and Walmart recklessly dispensed opioids, helping drive a wave of addiction that ultimately cost the hospitals more than a billion dollars.

Judge Carol-Lisa Phillips dismissed the juror, known as Juror 9, after that juror sent a page-long note Friday morning claiming that another juror, Juror 5, had touched her inappropriately, engaged in conversation with defense counsel, and openly refused to follow the court's legal instructions.

But after extensive argument over how best to respond, followed by questioning of Juror 9 in a closed court session, Judge Phillips found that only the allegations related to legal instructions had any merit.

"All of this other stuff really does not rise to the level in which it jumped out of the page this morning," the judge said.

"She signed off on this letter, and it's concerning ... At the very least, I need to remove Juror Number 9," the judge added.

During a discussion of the questioning in open court, observers heard that Juror 9 had had an AI app compose the note, which was typed but also bore handwritten edits in two different colors of ink.

After Juror 9 was dismissed, the other jurors were called in and told to remove that juror from a group text they've been using for logistics, and to return Monday to resume their deliberations.

The judge could still question Juror 5, potentially on Monday. Plaintiffs are pushing for Juror 5 to be removed alongside Juror 9 or at least questioned, while defense argued Friday for a mistrial.

In the note delivered Friday morning, Juror 9 wrote that Juror 5 had prejudged the case by writing "no RICO" in his notebook, referring to the Racketeer Influenced and Corrupt Organizations Act. He also allegedly spoke about the case to defense counsel in the men's bathroom during lunches, grabbed and hugged Juror 9 without her consent, used offensive language, was aggressive and bullying toward multiple jurors, and openly said he would not follow the judge's instructions, according to the note.

Following questioning of Juror 9, the judge seemed to acknowledge that some of the alleged conduct, like the hugging incident and a particular lewd comment, had happened in some form but that the original note had been missing significant context. For other allegations, like the supposed conversations with defense counsel, there seemed to be no supporting evidence whatsoever, the judge said.

The defense said Friday there was absolutely no communication between any of them and Juror 5.

Plaintiffs also agreed Friday they had no reason to think there was any misconduct by defense

counsel. Warren Burns of Burns Charest, counsel for the hospitals, told Judge Phillips everyone on the defense side "has assured me that they did not participate in those communications, and I am not making any allegations against defense counsel."

On Thursday, the jury indicated overtly for the first time that it was having difficulty reaching consensus, and the judge read a so-called Allen charge — an instruction given to a deadlocked jury.

The jury has now deliberated for roughly 70 hours following closing arguments on Nov. 13.

The hospitals argued during the nine-week trial that the corporations profited from the epidemic and that their pharmacists were gatekeepers who should have known that the medications they were dispensing weren't prescribed in good faith. The defense has argued there was no conspiracy and no causation.

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

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

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

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

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

--Additional reporting by David Minsky. Editing by Michael Watanabe.



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Utah Atty Avoids Monetary Sanction For 'Hallucinated' Cases

By **Matt Perez**

Law360 (December 5, 2025, 4:30 PM EST) -- A Utah federal judge handling a trademark infringement matter has sanctioned an attorney for filing court documents with "hallucinated" cases, but instead of issuing a fine, the lawyer was ordered to read all the cases and authorities cited in the opinion and file a summary statement within 30 days.

U.S. District Judge David Barlow of the District of Utah wrote in his 12-page opinion on Thursday that Matthew B. Crane of Ford & Crane PLLC filed an opposition to a motion to dismiss that included two hallucinated cases in violation of Rule 11(b) of the Federal Rules of Civil Procedure regarding "baseless filings in district court."

Crane argued that the issue was moot, given that the document in question related to an improperly filed second amended counterclaim that was struck from the docket by the judge, who then gave permission to file another second amended counterclaim. Judge Barlow ruled against the defense, as no claims were dismissed with prejudice, and said courts routinely impose Rule 11 sanctions post-dismissal.

"Hallucinated" is customarily used to describe mistakes made by artificial intelligence software. The ruling does not say the documents were written using AI, but in a footnote, the judge cites a District of Wyoming case, *Wadsworth v. Walmart Inc. et al.*, as "explaining that an AI hallucination 'occurs when an AI database generates fake sources of information' that appear to be accurate."

"Mr. Crane reports that remedial steps have been taken that should prevent this issue from ever occurring again," the judge said. "Accordingly, the court concludes that an appropriate sanction would be for Mr. Crane to read all of the cases and authority cited in this opinion and then file a summary statement with the court certifying that he has done so within 30 days of this order."

Crane included citations to two fake court cases, *Rawson v. Mathews* and *Equilon Enterprises v. Ford Motor Co.*, to support an equitable tolling claim.

"Mr. Crane indicates that the hallucinated cases came from 'a colleague's writings,'" the judge said Thursday.

"This defense has been rejected by courts across the country. Indeed, 'every attorney has an ongoing duty to review and ensure the accuracy of their court filings,' Judge Barlow said, citing *Garner v. Kadince Inc.*, a Utah Court of Appeals case heard in May. "This duty, according to the Supreme Court, is a 'nondelegable responsibility.' And Mr. Crane does not identify what reasonable inquiry he made to assure that the borrowed case law was real."

The plaintiffs, including Utah-based Black Oak Capital BOCA LLC, argued that three documents in total violated Rule 11. The court, however, determined that the two filings without fabricated cases were not made up of patently frivolous or improper arguments.

"The hallucinated cases are the only basis for a Rule 11 violation; plaintiffs' other arguments for Rule 11 sanctions consumed additional time and resources needlessly," Thursday's order said.

The case originated from a complaint alleging a breach of contract and trademark infringements between plaintiffs Black Oak Capital BOCA, Gregory D. Seare and others and defendants Paul Evans

LLC and Evan Fript.

Neither party immediately responded to a request for comment on Friday.

Black Oak Capital is represented by Tyson Raymond, Jonathan H. Love and Darren B. Neilson of Parsons Behle & Latimer.

Paul Evans LLC is represented by Matthew B. Crane of Ford & Crane PLLC.

The case is Black Oak Capital BOCA v. Paul Evans et al., case number 2:24-cv-00209, in the U.S. District Court for the District of Utah.

--Editing by Karin Roberts.

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Ga. Billing Firm Says Lack Of Harm Dooms Data Breach Row

By **Allison Grande**

Law360 (December 5, 2025, 10:09 PM EST) -- A Georgia-based medical billing practice asked a federal judge to dismiss a proposed class action accusing it of failing to properly secure its patients and employees' personal information that was exposed in a September data breach, arguing the plaintiffs failed to show their data was publicly disseminated or otherwise misused.

In a motion filed Thursday, MCBS LLC called on the Georgia federal court to dismiss a suit filed **in October** by plaintiff Sherry Neff accusing the medical billing practice of negligence, breach of contract, breach of fiduciary duty and unjust enrichment in connection with a cyberattack allegedly orchestrated by the ransomware group PEAR that compromised the Social Security numbers, health insurance details, medical treatment data and other personally identifiable information of the company's patients and current and former workers.

Neff and fellow plaintiffs Kelly McCollum and Carlos Rivera, who were added to the dispute in a November amended complaint, argue that the data breach put them and other proposed class members at "a heightened and imminent risk of fraud and identity theft" and that they would have to closely monitor their financial accounts "now and for years into the future." They additionally assert that, as a result of the breach, impacted individuals might have to spend their time and money purchasing credit monitoring services, credit freezes and credit reports.

But MCBS counters in its dismissal motion that the plaintiffs lack the Article III standing necessary to press their claims because they have not sufficiently asserted a concrete injury that's fairly traceable to the billing provider's allegedly unlawful conduct.

"Importantly, none of the named plaintiffs alleges that they (or any member of their proposed class) have incurred any actual out-of-pocket expenses, been the actual victim of fraud or identity theft traceable to the MCBS data breach, or lost any funds as a result of the data breach," MCBS argues.

The plaintiffs have also failed to "explain exactly what" protected health or other private information belonging to them was swept up by the incident, the company contends, instead relying on the "vague, generic" assertions that both patients and employees provide MCBS with a range of sensitive and personal information, and that this data is now in the hands of cyber criminals that have posted and made this information available for sale on the dark web.

"Rather than bringing specific factual allegations showing the actual misuse of their private information, plaintiffs provide a laundry list of feared future harms, mitigation measures they have allegedly taken to reduce the risk of future harm, alleged increases in spam email and phone communications, and feelings of fear or anxiety," MCBS says. "But conclusory allegations of a hypothetical risk of future harm 'are not enough to confer standing.'"

While Neff claims that a few days after the breach, she received a fraud alert from her bank about an attempted unauthorized check that prompted her to replace her debit cards and change her login credentials, the billing provider contends that she has failed to "explain exactly what data was leaked or how the data breach would have enabled the alleged 'attempted unauthorized check'" or to allege that any funds were actually stolen.

"Absent specific allegations showing actual misuse of plaintiffs' private information — and that the misuse of plaintiffs' data is fairly traceable to the MCBS data breach — plaintiffs have not alleged a

concrete harm sufficient to support Article III standing," MCBS argues.

Even assuming that the plaintiffs had sufficiently alleged an imminent risk of future harm to support a claim for injunctive relief, the company says, they wouldn't be able to sustain the suit on this front either because their request for an order requiring MCBS to use "appropriate methods and policies with respect to consumer data collection" and to "disclose with specificity" the information that was compromised "will not prevent the proposed future harms alleged in the complaint — i.e., the future misuse of their data by criminals."

MCBS also claims the plaintiffs' failure to plausibly allege legally cognizable injuries that were proximately caused by the billing provider undermined their negligence claims, which require the plaintiffs to assert duty, breach, causation and damages.

"Alleged diminished value of personal data, increased risk of future harm, lost time and opportunity costs, loss of privacy, and mitigation expenses following a data breach do not constitute legally cognizable damages," the company argues. And plaintiffs' conclusory allegations of a 'lost benefit of the bargain' do not satisfy the damages element of their negligence and negligence per se claims because plaintiffs allege no facts to support a plausible inference that they 'bargained' with MCBS with respect to data security."

MCBS also identifies several pleading deficiencies with the plaintiffs' other claims, including that they fail to allege the "meeting of the minds" necessary to sustain a breach of implied contract allegation and that they don't have a fiduciary relationship with the medical billing service.

"Plaintiffs chiefly allege that, as patients, they provided personal information to their healthcare providers in order to receive healthcare — not that plaintiffs contracted or bargained with MCBS to provide data security services," the company asserts, adding that the plaintiffs also hadn't alleged that MCBS' "mere receipt" of patients' data or the requirement for workers to furnish data as a condition of employment was enough to establish a valid fiduciary relationship.

Additionally, the plaintiffs' claim for breach of a third-party beneficiary contract fails because the plaintiffs haven't identified a specific contract under which they can claim third-party beneficiary status, and their unjust enrichment claim similarly falls short due to their inability to "plausibly allege that they directly conferred any direct benefit upon MCBS when they gave private information to their healthcare providers," according to the billing provider.

"Plaintiffs bring no factual allegations to plausibly support their bald contention that MCBS's contracts with healthcare providers for medical billing services were intended to benefit anyone other than MCBS and their healthcare provider clients," the company argues.

MCBS is represented by Kyle Waddell and John E. Price of Fulcher Hagler LLP.

The plaintiffs are represented by Joshua G. Schiffer of JD Law Group LLC, Andrew J. Shamis of Shamis & Gentile PA, Gary E. Mason and Danielle L. Perry of Mason LLP, and Casondra Turner of Milberg LLP.

The case is *Neff et al. v. MCBS LLC*, case number 1:25-cv-00235, in the U.S. District Court for the Southern District of Georgia.

--Additional reporting by Kelcey Caulder. Editing by Kristen Becker.



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Mass Tort Firms Targeted Over Benicar MDL Fees In NJ Suits

By **Jake Maher**

Law360 (December 5, 2025, 2:40 PM EST) -- Robins Kaplan LLP and Pendley Baudin & Coffin were hit with proposed class actions in New Jersey state court from former clients in multidistrict litigation over the blood pressure medication Benicar alleging that the firms overcharged on their fees.

Plaintiffs represented by Bruce Nagel of Nagel Rice LLP accused the firms of effectively double-dipping by charging contingent fees while also collecting common benefit awards for the same work in violation of New Jersey court rules. Robins Kaplan and Pendley Baudin were on the committee that allocated over \$34 million in common benefit fees, according to the two lawsuits.

Nagel said in an interview with Law360 Pulse on Friday that the cases are based on the fact that the mass tort firms unfairly received "double the fees" by getting both contingency fees and common benefit awards.

Michelle Adams sued Robins Kaplan and partner Tara Sutton on Wednesday in Camden County Superior Court. Wayne Bernard and Joanne Holmes sued Pendley Baudin and partner Christopher Coffin in Camden County last week.

The underlying Benicar case ended in a **\$300 million settlement** in 2017 resolving over 2,300 claims. Plaintiffs alleged that the drugmaker Daiichi Sankyo designed Benicar in a defective manner and failed to warn users that it could cause chronic diarrhea, nausea, malnutrition, dehydration and weight loss. Daiichi did not admit any liability through the settlement.

Adams, Bernard and Holmes claimed that Robins Kaplan and Pendley Baudin violated New Jersey rules by charging clients a 40% contingency fee, which is too high for New Jersey but allowed in Minnesota, where Robins Kaplan is based, and Louisiana, the home of Pendley Baudin.

Even if the court applies Minnesota or Louisiana rules rather than New Jersey rules, the plaintiffs argued, Robins Kaplan overcharged clients contingency fees for the same work it collected common benefit awards for without alerting clients or lowering the contingency fees.

Also, the firms failed to get court approval for charging over \$3 million in fees as required, the plaintiffs alleged.

The two suits follow another one that Nagel is mounting against Mazie Slater Katz & Freeman LLC. Plaintiffs in that suit also allege that attorneys at Mazie Slater did not get court approval for the contingency fees they charged and received contingency fees and common benefit awards for the same work.

That suit was dismissed in New Jersey federal court in 2024 but **brought back** by the U.S. Court of Appeals for the Third Circuit in July.

Representatives for Robins Kaplan and Pendley Baudin did not immediately respond to a request for comment on Friday.

Adams, Bernard and Holmes are represented by Bruce Nagel of Nagel Rice LLP.

Counsel information for Robins Kaplan and Pendley Baudin was not immediately available on Friday.

The cases are Adams v. Robins Kaplan LLP et al., case number CAM-L-004049-25, and Bernard et al. v. Pendley Baudin & Coffin et al., case number CAM-L-003994-25, in Camden County Superior Court.

–Editing by Karin Roberts.

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Mass. Justices Muse On Swift, 'FOMO' In Meta Addiction Case

By **Chris Villani**

Law360 (December 5, 2025, 4:19 PM EST) -- Massachusetts' highest court appeared divided Friday as it wrestled with whether Meta Platforms Inc. should have to face a suit by the state attorney general claiming that it is illegally getting kids hooked on Instagram.

Justices from the Massachusetts Supreme Judicial Court expressed skepticism about arguments by the social media giant that its platform is within the bounds of both Section 230 of the Communications Decency Act and the First Amendment.

But some justices also hinted that Meta may be nothing more than a content publisher, which would shield the company from liability associated with putting forth third-party content.

During oral arguments, Justice Gabrielle R. Wolohojian said what Meta is accused of doing to keep kids scrolling — such as autoplay, ephemeral postings and incessant notifications — is more akin to advertising than publishing.

"The magazine publisher decides to run an ad on television or send mail to people, good old-fashioned postcards, and they say, 'Subscribe to our magazine, this is the kind of thing that is in it,'" the justice said. "That would not historically be thought of as a publishing act, but advertising. These notifications seem to me to be much closer to that."

Arguing for Meta, Mark Mosier of Covington & Burling LLP said that what gets people to click is the content, not the notification, and the company can't be on the hook for what someone else posts to its platform under Section 230.

"If you get a notification that says your math teacher posted today's video of the lecture, you may not be inclined to click on it," Mosier said. "If you have a notification that says Taylor Swift liked your post, you're going to be more likely to click on it."

Justice Scott L. Kafker seemed to lean in the other direction. He noted that Meta's notifications and other means of getting people to click on posts are indifferent to content, saying it could be "Thomas Paine's 'Common Sense,' or nonsense."

"They are basically taking the content, they don't care what it is, and they are making everyone look at it. They are like the greatest publisher on earth," Justice Kafker said to David Kravitz of the state attorney general's office. "They found a way to connect someone who is interested in this and are getting them to look at it. Isn't turbocharging interest part of publishing?"

Kravitz argued that there are "critically important" distinctions between publishing content and advertising.

"Treating you as a publisher has a very specific meaning: Are you holding the defendant liable for the harm traceable to the third party?" Kravitz said.

Justice Kafker likened Meta boosting its users' content to a book publisher putting an enticing cover on the 1928 D.H. Lawrence novel "Lady Chatterley's Lover."

"When they put that fancy cover that makes people want to read it, isn't that publishing?" the justice

asked. "It seems to me to be what they are doing."

Mosier told the justices that both Section 230 and the First Amendment provide reasons for the top court to toss the suit.

Attorney General Andrea Joy Campbell's office filed the case in October 2023. Superior Court Justice Peter B. Krupp declined to dismiss the suit in an order last fall, and the Supreme Judicial Court agreed earlier this year to take the case.

Outside attorneys **called the suit "clever"** in that it seeks to get around Section 230 by focusing on Meta's own conduct and not the content its users put out. A federal judge is weighing summary judgment motions in a multidistrict suit with similar allegations after the case survived a motion to dismiss.

Meanwhile, last month, school districts claimed that Meta **clamped down on internal research** showing that the mental health of young users suffered from compulsive use of the company's social media platforms, even as staff members likened themselves to drug pushers.

In the Massachusetts complaint, Campbell's office said that Instagram's design features and notifications are meant to boost engagement and therefore advertising revenue from kids.

Justice Dalila A. Wendlandt on Friday expressed skepticism that the notifications, which are produced by Instagram and not its users, fall within the Communications Decency Act's protection.

"I am wondering how the notifications themselves are covered by 230 in terms of treating Meta as a publisher of third-party content," she said, "given that the third party isn't creating the content that you're pushing to the kids."

She noted that the attorney general has alleged that Instagram has created an "algorithm of incessant notification."

"It's designed so as to feed into the fear of missing out, FOMO, that teenagers generally have," Justice Wendlandt said. "That's the basis of the claim."

The justices took the issue under advisement.

Massachusetts is represented by David Kravitz of the state attorney general's office.

Meta is represented by Mark Mosier of Covington & Burling LLP.

The case is Commonwealth v. Meta Platforms Inc. et al., case number SJC-13747, in the Massachusetts Supreme Judicial Court.

--Additional reporting by Julie Manganis and Emily Field. Editing by Melissa Treolo.