Securities

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WM’s $30 Million Investor Settlement Gets Final Court Assent (1)

December 19, 2025, 6:47 AM PST; Updated: December 19, 2025, 9:31 AM PST

Waste Management Inc.’s $30 million settlement earned a federal court’s final blessing to resolve shareholder claims tied to the garbage collection company’s 2020 purchase of Advanced Disposal Services Inc.

Judge Lorna G. Schofield approved the class agreement covering those who got certain redeemable senior notes, according to a Thursday filing in the US District Court for the Southern District of New York. The investors’ counsel sought a third of that sum in attorneys fees and almost $947,000 in litigation expenses plus interest.

The suit alleged WM misrepresented the $4.6 billion deal’s timeline, later finished in October 2020, before announcing it was missing a completion deadline that ultimately led it to collect notes at 101% of their par value

WM and executives named as defendants continued to deny wrongdoing and the settlement is subject to insurance coverage, the company said in an emailed statement

“The $30 million cash recovery represents a meaningful percentage of the class’s estimated recoverable damages and provides prompt and certain relief in light of the substantial risks, costs, and delays that would have accompanied continued litigation,” said Ellen Gusikoff Stewart, a partner at Robbins Geller Rudman & Dowd LLP, class counsel

Baker Botts LLP represents WM.

The case is In re Waste Mgmt. Sec. Litig. , S.D.N.Y., No. 1:22-cv-04838, final approval 12/18/25 .

(Updates with a comment from class counsel.)

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News from Bloomberg Terminal

December 18, 2025, 12:59 PM PST

Summary by Bloomberg AI

AI Generated

- Investors failed to allege any false or misleading statements about Athena's automated capabilities and business prospects during and after Stem Inc.'s special-purpose-acquisition-company deal.
- Judge Maxine M. Chesney dismissed the suit without leave to amend, saying statements about Athena "clearly pointed out certain functions of Athena that were automated".
- Chesney also said allegations about the energy technology company's financial and business prospects relied on an unreliable confidential witness and the investors' "scheme liability" claims fell short.

By Gillian R. Brassil

(Bloomberg Law) --

Stem Inc. and architects of its blank-check merger defeated allegations they misled investors about its key software platform Athena and business prospects during and after going public.

Investors leading the case failed to allege any false or misleading statements about Athena’s automated capabilities and success surrounding the 2021 special-purpose-acquisition-company deal, Judge Maxine M. Chesney said while dismissing the suit without leave to amend Wednesday.

Statements “clearly pointed out certain functions of Athena that were automated,” but the shareholders didn’t identify any language “that would lead a reasonable investor to believe Athena’s functions were exclusively automated,” said the US District Court for the Northern District of California judge.

Former CEO John Carrington’s statement about a “human-in-the-loop” for Athena’s operations didn’t contradict any of the stockholders’ challenged statements, Chesney said.

Allegations about the energy technology company’s financial and business prospects relied on an unreliable confidential witness, Chesney said. Confidential witnesses in this case lacked adequate timing and specificity about who said Athena was still in development, for example, she said.

The investors' "scheme liability" claims—which target an act or device to defraud—also fell short, Chesney said. They failed to adequately plead Stem's subsequent acquisition of AlsoEnergy and an order for batteries were outside of the company's normal course of business. And the investors didn't sufficiently allege Stem improperly accounted for probable revenue off of a pair of deals.

The suit, alleging various securities law violations by differing defendants, said Stem and certain officers and directors defrauded "investors by taking Stem public with a defective business model" through its SPAC deal with Star Peak Energy Transition Corp. The proposed class would've included those who got Stem securities between Dec. 4, 2020, and April 3, 2023, or those who were solicited to approve the merger and exchanged Star Peak shares for Stem stock.

Chesney dismissed a prior version of the investors' complaint last year.

Shareholders in a kindred derivative lawsuit are repleading dismissed claims in Delaware federal court.

Robbins Geller Rudman & Dowd LLP and Levi & Korsinsky LLP represent the investors in the proposed class action.

Freshfields US LLP, which declined to comment, represents Stem and executives and board members present at various points during the proposed class period. Kirkland & Ellis LLP represents Star Peak and officers and directors.

None of the other law firms nor Stem immediately responded to emails seeking comment.

The case is *In re Stem, Inc. Sec. Litig.*, N.D. Cal., No. 3:23-cv-02329, dismissed 12/17/25.

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News | Cybersecurity

Korea's Coupang Grapples With Class Actions Over Major Data Breach

The e-commerce company faces hefty fines and multiple class action lawsuits both in South Korea and the US

December 19, 2025 at 01:11 AM By **Karry Lai**

cyber-breach

South Korean e-commerce company Coupang is facing multiple class actions after the personal data of more than 33 million customers, around two-thirds of South Korea's population, was leaked in a cybersecurity breach.

A number of local law firms, including Jihyang, Cheong, Hoin Law Office, Daeryun and LKB & Partners have filed or are gathering plaintiffs for separate lawsuits, according to local news outlets. All five firms have been contacted for comment.

Daeryun, in particular, is filing civil and criminal cases in South Korea and in the U.S. against Coupang's parent company as punitive damages are more common in the U.S. than in South Korea.

While affected citizens could launch joint civil lawsuits in South Korea, only plaintiffs are eligible for compensation, if a case is successful.

South Korean president Jae Myung Lee has called for the introduction of a broader class action system to increase efficiency for citizens affected by the breach.

More than 20 victim support groups have been created online, gathering more than 400,000 affected individuals.

U.S. class actions are expected to be launched against Coupang by the likes of Rosen Law Firm investigating potential securities claims on behalf of shareholders that have suffered losses since the breach.

While the breach was believed to have started on June 24 through overseas servers, the company was unaware of the issue until November 18.

The data included customers' names, home and email addresses, phone numbers and purchase histories.

In a statement last week, Coupang said that it "deeply apologizes for causing concerns to the public," and that it will work to restore customer trust and tighten its security measures to prevent another breach. The company's former chief executive officer Dae-jun Park has since publicly taken accountability of the incident and resigned.

Under South Korean law, companies can be fined up to 3% of revenue, which could be more than $680 million for Coupang.

Since the breach, President Lee has called for increase penalties. A bill was introduced on Wednesday to increase fines to up to 10% of revenue for major data breach incidents.

Bom Kim, who succeeded Park as CEO and chairman, declined to attend a parliamentary hearing in Seoul on Wednesday, explaining that he had overseas commitments as the head of a global company which operatesin more than 170 countries.

South Korean lawmakers have vowed to file a complaint against Kim for failing to attend the hearing.

Securities

Shareholder Drops Suit Over Health-Care Company's Bitcoin Merger

December 18, 2025, 4:27 PM PST

A shareholder in a medical device manufacturer that holds assets in Bitcoin decided to end a lawsuit seeking to prevent the company's acquisition by Strive, Inc., a self-described "top Bitcoin treasury company."

Terry Tran aims to dismiss the case with prejudice due to mootness after Semler Scientific Inc. filed a proxy statement to the SEC that included supplemental disclosures resolving his claims, said a dismissal notice filed Thursday to the US District Court for the Northern District of Illinois. Tran sued Semler under the Exchange Act in October over allegedly materially incomplete and misleading statements in the companies' registration statement.

Tran's complaint said it was "imperative" that information ommitted from the registration statement with the SEC be disclosed "immediately" in order to ensure stockholders could "make a fully and fairly informed determination as to how to vote"

Tran's lawsuit cited inconsistencies regarding the share price Strive was using to calculate an implied transaction price for the merger, but the proxy statement and defendants' counsel confirmed the origin of the trading price Strive relied on, the notice of dismissal said

Attorneys representing each party didn't immediately respond to a request for comment

Ademi & Frutcher LLP represents Tran. Goodwin Procter LLP represents Semler and the individual defendants.

The case is Tran v. Semler Scientific Inc. , N.D. Ill., No. 1:25-cv-12555, notice filed 12/18/25 .

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Guest Post: German Court Redefines Knowing Breach Exclusions in D&O Insurance

dandodiary.com/2025/12/articles/d-o-insurance/guest-post-german-court-redefines-knowing-breach-exclusions-in-do-insurance

Kevin LaCroix December 19, 2025

Burkhard Fassbach

In the following guest post, Burkhard Fassbach, a D&O lawyer in private practice in Germany, reviews and analzyes a recent decision by the German Federal Court of Justice interpreting and applying the D&O insurance exclusion precluding coverage for "knowing breach of duty." I would like to thank Burkhard for allowing me to publish his article as a guest post on this site. Here is Burkhard's article.

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Introduction to the Intent Exclusion

A fundamental principle of insurance law dictates that insurance shall not cover losses intentionally caused by the insured. In the context of D&O insurance, this principle is implemented through the Exclusion for Intent or Knowing Breach of Duty. The classic knowing breach of duty exclusion (German: "wissentliche Pflichtverletzung") denies coverage for any claim arising from an insured person's deliberate or knowing violation of their duties. The exclusion typically requires also the insured person's subjective awareness that their conduct constitutes a breach of duty and will cause damage. The insurer usually bears the burden of proving dolus directus (direct intent) or, at a minimum, a particularly culpable form of awareness of the breach of duty ("Wissentlichkeit").

The Federal Court of Justice Ruling (IV ZR 66/25)

The German Federal Court of Justice (Bundesgerichtshof – BGH) decision (IV ZR 66/25) narrowed the application of "knowing breach of duty" exclusions in insolvency contexts, holding that a delayed insolvency petition does not automatically indicate knowing violation of the subsequent payment ban (§ 15b InsO). Instead, the insurer must prove subjective awareness for each specific breach, rejecting presumptions from "cardinal duties" like timely filing under § 15a InsO. The liability, arising from § 15b InsO, holds managing directors personally liable for payments made after the company became insolvent or over-indebted, and the statutory duty to file for insolvency was breached.

In a previous judgment the [Higher Regional Court of Frankfurt a.M. (Az. 7 U 134/23 – March 5, 2025)] adopted a controversial and contrary position. It classified the duty to file for insolvency and cease payments as a "Kardinalpflicht" (cardinal duty). The court then applied a doctrine of "Anscheinsbeweis" (prima facie evidence): it presumed that once the objective breach of this cardinal duty was established (i.e., payments were made after insolvency ripeness), the payments were also made with knowledge of the breach, thereby leading to the D&O coverage exclusion. This OLG doctrine effectively placed an immense and often insurmountable burden of proof on the insured manager to rebut the presumption that he or she acted knowingly – a presumption that was based merely on the objective fact of the untimely payment.

The BGH's eagerly awaited decision on November 19, 2025 ([Az. IV ZR 66/25]) fundamentally rejected this broad, presumptive approach and reasserted the stringent requirements for invoking the knowing breach exclusion. Following its established jurisprudence, the BGH reiterated that exclusion clauses must be interpreted narrowly. Risk exclusions such as the exclusion of knowingly breaching obligations must be interpreted strictly according to the wording: "The average policyholder or insured person does not need to expect that there are gaps in their insurance coverage unless the clause makes this sufficiently clear to them."

Just because a duty seems particularly important, it cannot be universally concluded that the insured manager was aware of the duty and also recognized that they had breached it: "An insured acts knowingly only if they have positive knowledge of the duties breached. Conditional intent, where they merely consider the obligation in question to be possible, is just as insufficient as negligent ignorance. Rather, it must be established that the insured accurately perceived the duties. The insured must have had positive knowledge of the duty they breached and subjectively possessed the awareness that they were acting contrary to law, regulation, or other duty." Therefore, it is not enough to claim that, given the overall circumstances, the manager should have recognized their breach of duty: "If the person concerned deliberately closes their mind to knowledge, this only permits the assumption of conditional intent." – and thus, insurance coverage remains in place.

Only obligations causing damage are relevant: A deliberate violation of the obligation to file for insolvency is not causal for the damage in the case of payments from the insolvent company: "The forbidden payments under this provision must have been knowingly initiated after the company became insolvent." The decisive factor is therefore whether the managing director knew, when making a payment, that this particular payment violated a payment prohibition under insolvency law (§ 15b InsO).

The renowned German Insurance lawyer Mark Wilhelm drew the following conclusion in a LinkedIn post:

"The idea that there are "cardinal duties" of management, the violation of which is always deliberate, has been dismissed by the judgment of the German Federal Court of Justice (BGH).

The insurer must always present and prove that the manager knowingly violated a duty. The insurer does not benefit from any relaxation of the burden of proof.

The decisive factor is always exclusively the breach of duty that leads to the damage. Whether the manager deliberately violated other duties besides this is irrelevant for the D&O insurance coverage."

The implications of the BGH ruling

Insurers seeking to deny coverage based on the knowing breach exclusion must now gather concrete evidence for each individual payment. The inability to easily establish the exclusion will likely lead to fewer outright coverage denials and may necessitate more complex and lengthy litigation. With the deck now stacked more favorably toward the insured person, insurers may be more inclined to enter into settlement discussions rather than face the high hurdle of proving a knowing breach in court.

For directors and officers, the decision is a substantial strengthening of D&O coverage and a reassurance of the policy's core function as a shield against potential ruinous personal liability. Managers are still well-advised to maintain meticulous documentation of their decision-making process during a crisis.

Looking ahead, insolvency administrators are expected to pursue claims even more aggressively, because the stricter evidentiary requirements placed on insurers make successful coverage defences less likely and thereby significantly increase the prospect of recovery from the D&O policy. Litigation funders are likely to play an even more pivotal role in insolvency-related D&O claims, as the heightened evidentiary thresholds for exclusions could make these cases more viable for third-party financing, potentially leading to a surge in funded actions against directors.

In conclusion, the Federal Court of Justice decisively strengthens the protective core of D&O insurance in Germany. Exclusions do not erode the policy’s fundamental purpose of shielding directors and officers from insolvency-related liabilities as long as breaches of duty are not committed with the manager’s knowing violation of their duties.

Anthropic asks judge to slash legal fees in $1.5 billion settlement

reuters.com/legal/government/anthropic-asks-judge-slash-legal-fees-15-billion-settlement-2025-12-18

Mike Scarcella December 18, 2025

Anthropic logo is seen in this illustration taken May 20, 2024. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights, opens new tab

WASHINGTON, Dec 18 (Reuters) - Anthropic is urging a federal judge to slash a proposed $300 million legal fee award for lawyers representing authors in a $1.5 billion copyright class action settlement with the artificial intelligence company, arguing there is “scant justification” for a large chunk of the fees.

In a court filing, opens new tab on Wednesday, Anthropic said three law firms — Edelson, Oppenheim + Zebrak and Cowan DeBaets Abrahams & Sheppard — were seeking $75 million for themselves but played less significant roles than the lead attorneys who are representing authors and publishers in the litigation.
Anthropic agreed to the landmark settlement, opens new tab in October to resolve claims that it trained its AI models on hundreds of thousands of pirated books. The company also agreed to destroy pirated datasets and certify that those works were not used in its commercial AI models like Claude.
The lead plaintiffs’ attorneys at law firms Susman Godfrey and Lieff Cabraser have asked the federal court in California to award them $225 million in legal fees.
Anthropic’s new filing did not suggest an exact award for those firms, but the company said the requested amount — based on a 20% cut from the settlement fund — could be seen as an inappropriate “windfall.”
Anthropic declined to comment, and lead attorneys representing class members did not immediately respond to a request for comment. Anthropic denied any wrongdoing in agreeing to settle the lawsuit.

Edelson and Oppenheim + Zebrak served as “coordinating counsel,” working with the lead attorneys. Cowan DeBaets appeared as one of the firms on the lawsuit. Anthropic, in its filing, said that any award for the firms should be “steeply discounted” and subject to scrutiny of billing records.

Edelson’s Jay Edelson, in a statement on Thursday, said it was “disappointing” that Anthropic’s general counsel, Jeffrey Bleich, “would authorize a counterfactual filing given the one-on-one negotiations he and I had to reach this deal.”

Oppenheim’s Matt Oppenheim said in a statement that it and Edelson “were critically involved" in negotiating the $1.5 billion settlement. “Anthropic cannot rewrite that history,” he said.

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

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

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

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

Read more:

Authors’ lawyers in $1.5 billion Anthropic settlement seek $300 million
Google to pay $190 million in legal fees to Texas' law firms in privacy settlement
Lawyers behind $700 million Google settlement ask for $85 million fee award
More lawyers join the $3,000-an-hour club, as other firms close in

News | **Mass Torts**

A $2B Roundup Verdict and a Talc Award Approaching $1B: A Look Back at 2025's Biggest Mass Tort Trials

The first bellwether trials will take place in 2026 involving addiction claims against social media sites, like Instagram and TikTok, as well as allegations that the pesticide paraquat causes Parkinson's disease.

December 19, 2025 at 05:00 AM By Amanda Bronstad

Photo: Jason Doiy / ALM

Juries doled out some massive mass tort verdicts in 2025, including $2 billion in a Roundup case in Georgia, nearly $1 billion in a talcum powder lawsuit in California, and a $640 million wrongful death award in Texas. And many bellwether trials, including the first involving social media addiction and the pesticide paraquat, are scheduled for 2026.

Here's a look at the mass torts making the news:

J&J TALC: With the March 31 dismissal of Johnson & Johnson's third talc bankruptcy, judges began scheduling cases alleging its baby powder caused women to get ovarian cancer. A bellwether trial involving two women ended on Dec. 12 when a Los Angeles Superior Court jury awarded $40 million but no punitive damages. The trial, which is part of California's JCCP, is the first of at least two others planned for 2026. "The judge had indicated she was going to try these cases back to back to back, so I'm not sure if the next trial will be in January or February, but I do expect the next two trials will follow in short order, fully expect in the first quarter of 2026," Beasley Allen's Andy Birchfield, one of the plaintiffs' lawyers who handled this month's trial, told Law.com. "And we have several other cases that are set for trial." Including the JCCP trials, he said, there were 10 trials scheduled for the first half of 2026 in state courts in Pennsylvania, New Jersey, Illinois, Georgia and Florida, as well as the first in the federal multidistrict litigation before U.S. District Judge Michael Shipp in the District of New Jersey. In addition to the ovarian cancer cases, juries have continued to come back with awards for talc plaintiffs with mesothelioma, many represented by Dallas-based Dean Omar Branham Shirley, including a record $966 million verdict in Los Angeles Superior Court on Oct. 6.

SOCIAL MEDIA: The first bellwether trial in lawsuits alleging social media sites like Instagram and TikTok caused addiction in adolescents, leading to mental health problems and suicide, is set to begin Jan. 27 in Los Angeles Superior Court. Judge Carolyn Kuhl, after allowing claims about the social media sites' design features to proceed, has scheduled a trial involving three plaintiffs who alleged they became addicted to social media as teenagers—specifically, Meta, Snap, TikTok and Google's YouTube. Kuhl has scheduled nine cases for trials in batches of three, with the second on March 9 and third on May 11. Also, the first federal bellwether trial in the multidistrict litigation in the U.S. District Court for the Northern District of California is set to begin this summer and involve a school district. U.S. District Judge Yvonna Gonzalez Rogers issued her final dismissal order, allowing bellwether trials to proceed against the same defendants. She has scheduled 11 cases for trials.

UBER ASSAULT: The first sexual assault trial against Uber ended on Sept. 30 with a defense verdict in San Francisco Superior Court. Jurors in the case, which is part of California's JCCP, found that Uber was negligent but not liable for the sexual assault of a passenger by one of its drivers. The first federal bellwether trial in the multidistrict litigation in the U.S. District Court for the Northern District of California is planned for Jan. 13. However, Uber has moved to postpone the proceedings due to a Consumer Attorneys of California-sponsored ad campaign that states that reports of sexual misconduct or sexual assault are made to the rideshare firm every eight minutes. The bellwether trial will take place in the U.S. District Court for the District of Arizona, where plaintiff Jaylynn Dean claims an Uber driver raped her in 2023 in Tempe.

MONSANTO'S ROUNDUP: A jury in Georgia's Cobb County State Court hit Monsanto with a $2 billion award on March 21 over its Roundup pesticide. The first Roundup trial in Florida's Broward County Circuit Court is set to begin in the next three months. Meanwhile, Monsanto, owned by Bayer, has petitioned the U.S. Supreme Court to review its key defense that could resolve thousands of Roundup cases: that the Federal Insecticide, Fungicide, and Rodenticide Act preempts claims that it failed to warn about pesticide ingredient glyphosate's link to non-Hodgkin lymphoma. On Dec. 1, U.S. Solicitor General D. John Sauer filed an amicus brief supporting Monsanto's petition.

INFANT FORMULA: After the first two verdicts of $60 million and $495 million, the litigation over cow's milk-based infant formula shifted this year when Missouri's 22nd Judicial Circuit Court Judge Michael Noble, in St. Louis, on March 13 tossed the only defense verdict for Abbott Laboratories and Mead Johnson, citing "widespread misconduct" on the part of defendants. Meanwhile, the first federal bellwethers in the multidistrict litigation in U.S. District Court for the Northern District of Illinois have failed to get off the ground, with U.S. District Judge Rebecca Pallmeyer granting summary judgment in the cases, which link the formula, provided in hospitals to premature babies, to a gastrointestinal illness called necrotizing enterocolitis, or NEC, and vacating planned trials.

ZANTAC: Boehringer Ingelheim, the primary defendant in trials over recalled heartburn medication Zantac, won a verdict on Nov. 25 in Cook County Circuit Court, where other juries in seven other trials have rendered defense verdicts or ended in mistrials. A jury in California's Alameda County Superior Court also ended in mistrial. More trials are planned for 2026. And, on Dec. 1, Delaware Superior Court Judge Francis "Pete" Jones denied plaintiffs' request to introduce new experts in nearly 70,000 Zantac lawsuits that now "hang in the balance" after the Delaware Supreme Court tossed them this year, reversing a ruling earlier this year that found them reliable and admissible. "Plaintiffs, first in the MDL and now in this court, have been given adequate opportunity to muster what evidence they could gather to satisfy the general causation standard and show that various cancers result from the ingestion of Zantac," Jones wrote, referring to a ruling by U.S. District Judge Robin Rosenberg, of the Southern District of Florida, to strike all the plaintiffs' experts in the Zantac multidistrict litigation. "Unfortunately, the evidence plaintiffs chose to present did not meet the standard required under Delaware law." Meanwhile, the U.S. Court of Appeals for the Eleventh Circuit, in Oct. 10 oral arguments, critiqued Rosenberg's 2022 decision.

Other cases to note:

- The first trial involving Boeing's grounded 737 Max 8 following 2018 and 2019 plane crashes ended on Nov. 13 with a $28.45 million verdict for the family of a passenger who died on Ethiopian Air Flight 302. Other trials are expected in 2026 before U.S. District Judge Jorge Alonso in the Northern District of Illinois.
- Texas state court juries awarded verdicts of $640 million in a wrongful death suit stemming from a construction accident and $831 million in a dram shop case against a bar owner.

- The first trial involving Tesla's Autopilot system resulted in a $329 million wrongful-death verdict on Aug. 1, including $200 million in punitive damages, by a federal jury in Miami.

Visa, Mastercard to pay $167.5 million in ATM user fee settlement

reuters.com/sustainability/boards-policy-regulation/visa-mastercard-pay-1675-million-atm-user-fee-settlement-2025-12-19

Mike Scarcella December 19, 2025

Visa and Mastercard cards are placed on a keyboard in this illustration taken September 24, 2025. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights , opens new tab

- Settlement involves $167.5 million for ATM fee lawsuit
- Visa and Mastercard deny any wrongdoing in the case
- Third lawsuit by ATM owners still pending in court
- Settlement covers ATM transactions since October 2007

WASHINGTON, Dec 19 (Reuters) - Visa (V.N) , opens new tab and Mastercard (MA.N) , opens new tab have agreed to pay a combined $167.5 million to settle a class action lawsuit accusing them of conspiring to keep ATM access fees artificially high.
The proposed settlement , opens new tab was filed on Thursday in the federal district court in Washington and requires a judge’s approval.
The accord would pay potentially millions of ATM users who were charged an unreimbursed access fee to withdraw cash from independent, non-bank ATMs.

Visa would contribute about $88.8 million and Mastercard about $78.7 million to a settlement fund. The money would be distributed to eligible customers with qualifying ATM transactions made since October 2007.

Visa and Mastercard and lead attorneys for the consumers did not immediately respond to requests for comment.

The lawsuit, one of three related cases in the D.C. federal court, was filed in 2011. Consumers challenged industry rules by Visa and Mastercard that allegedly blocked independent ATM operators from offering lower prices.

Visa and Mastercard denied any wrongdoing.

The two companies last year agreed to pay $197.5 million to resolve related claims from a different group of ATM users who claimed they were overcharged at bankoperated ATMs. Several banks in 2021 agreed to pay $66 million to settle claims against them in the litigation.

Attorneys for the plaintiffs in a court filing called the settlement “an excellent result in light of the risks of continued prosecution.” They said they plan to ask the court to award them up to 30% of the fund, or about $50 million, in legal fees.

A third lawsuit by independent ATM owners and operators is pending in the same court.

Visa faces other antitrust lawsuits, including one from the U.S. Justice Department lawsuit accusing it of illegally monopolizing the U.S. debit card market. It has denied the claims in that case.

Reporting by Mike Scarcella; Editing by David Bario and Nick Zieminski

US judge rejects LinkedIn antitrust settlement, citing ‘serious problems’

reuters.com/legal/government/us-judge-rejects-linkedin-antitrust-settlement-citing-serious-problems-2025-12-18

Mike Scarcella December 18, 2025

A keyboard is placed in front of a displayed LinkedIn logo in this illustration taken February 21, 2023. REUTERS/Dado Ruvic/Illustration [Purchase Licensing Rights, opens new tab]

WASHINGTON, Dec 18 (Reuters) - A federal judge in California has refused to grant preliminary approval to a proposed class action settlement between LinkedIn and subscribers who accused the company of monopolizing the professional social networking market.

In [an order, opens new tab] on Wednesday, U.S. District Judge Haywood Gilliam Jr in Oakland said the deal, which would require LinkedIn to temporarily alter its contracting practices but does not include a monetary payout for users, had “serious problems” and was not “fair, reasonable, and adequate.”
LinkedIn was accused in the 2022 lawsuit of using terms in some business contracts to bar third parties from competing with the company, allowing it to overcharge users for premium services and upgraded account features.

Under the terms of the proposed deal, [disclosed in a filing] in July, LinkedIn agreed for three years not to enforce provisions in current or future contracts for "application programming interfaces" that would restrict potential third-party rivals from competing.
“Plaintiffs seek approval of a settlement providing only injunctive relief with unclear value for a limited period of three years,” Gilliam said. He said the plaintiffs “do not attempt to quantify the monetary relief they could have achieved at trial.”

LinkedIn and attorneys for the plaintiffs did not immediately respond to requests for comment.

The settlement class includes about 9 million LinkedIn members who purchased premium services between Jan. 13, 2018, and the present, according to the agreement.

In seeking approval of the deal, the plaintiffs’ lawyers told the court that the terms would encourage competition, facilitate reduced prices and increase consumer choice.

But Gilliam said neither side presented "evidence or explanation" that three years would be enough for an existing or future rival to be able to compete with LinkedIn.

He also questioned the plaintiffs' plan to seek up to $4 million in legal fees, calling the amount disproportionate.

The case is Todd Crowder et al v. LinkedIn Corp, U.S. District Court, Northern District of California, No. 4:22-cv-00237-HSG.

For plaintiffs: Yavar Bathaee and Brian Dunne of Bathaee Dunne; Christopher Burke of Burke LLP; and Carol O'Keefe of Korein Tillery

For defendant: Russell Cohen and Julia Chapman of Dechert

California Brief

LinkedIn, Plaintiffs Denied Settlement in Monopolization Lawsuit

December 18, 2025, 8:09 AM PST

A federal judge rejected preliminary approval of a deal designed to settle claims that LinkedIn Corp. holds a monopoly in the professional social networking market and overcharged "Premium" subscribers.

Judge Haywood S. Gilliam Jr. of the US District Court for the Northern District of California on Wednesday flagged "several obvious deficiencies" in the proposed settlement, including a three-year limit on injunctive relief.

The deal, as proposed by the plaintiffs, would have stopped LinkedIn, a subsidiary of Microsoft Corp., for three years from enforcing certain "noncompetition" provisions of data-access agreements—deals that allegedly allowed the company to dominate the industry.

But Gilliam said the parties provided no real evidence or explanation supporting the idea that three years is sufficient for others to compete with LinkedIn's existing data collection and machine learning models.

"The Court appreciates that the practical realities of negotiation sometimes mean that a plaintiff cannot achieve permanent injunctive relief through a settlement," Gilliam said. "That said, three years is a far cry from achieving 'essentially all'" of the relief that the plaintiffs sought.

The ruling means plaintiffs must go back to the drawing board to gain approval for a deal that would settle a case they brought in 2022.

LinkedIn was accused of colluding with other companies to prevent competition in the professional social networking market, while exposing user data to risks through its agreements.

Premium subscribers allege they paid more than they should have due to the company's practices.

Gilliam in 2024 denied LinkedIn's motion to dismiss after he found the plaintiffs sufficiently alleged harm to competition.

Damage Claims Abandoned

In his Wednesday order, Gilliam cited other problems in the proposed deal, including that the plaintiffs “entirely abandoned” their damages claims in the settlement despite consistently alleging that they paid more.

“Plaintiffs’ settlement does not include any monetary award and releases damages claims for all settlement class members who do not opt out,” he said.

Meanwhile, plaintiffs’ counsel stands to “walk away” with attorneys’ fees of up to $4 million and $100,000 in costs, he said.

“The parties have not convinced the Court that this is a fair or reasonable settlement agreement, even at the preliminary approval stage,” he said.

Gilliam set a case management conference for Jan. 13, 2026.

The plaintiffs are represented by Bathaee Dunne LLP and Korein Tillery PC. LinkedIn is represented by Dechert LLP.

The case is Crowder v. LinkedIn Corp. , N.D. Cal., No. 4:22-cv-00237, 12/17/25 .

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Profile | **Alternative Dispute Resolution**

9/11 Comp Fund Leader, Ken Feinberg, Talks the 'Murky' Future of Consensus Compensation Programs

Mega-mediator Ken Feinberg, cutting back his workload at age 80, says it's not the lack of a successor for him and his colleague Camille Biros that will change alternative dispute resolution. It's growing political polarization and a dearth of leadership.

December 18, 2025 at 10:08 AM By **Emily Saul**

Camille Biros, left, and Ken Feinberg, right, with The Law Offices of Kenneth R. Feinberg in Washington, D.C. December 16, 2025. Photo: Diego M. Radzinschi/ALM

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In the aftermath of the Sept. 11 terrorist attacks, **Ken Feinberg** saw the United States band together.

“Congress stepped up, and in just 13 days by consensus—no red states, blue states, Republican, Democrat, liberal, conservative—everyone came together and created the 9/11 fund.”

After the Deepwater Horizon explosion and BP oil spill in 2010, Feinberg again watched the powers at be unite and agree on a compensation program.

Three years later, following the Boston Marathon bombings, Feinberg saw then-Boston Mayor Thomas Menino and Massachusetts Gov. Deval Patrick combine efforts and raise over $60 million in private contributions to assist victims.

But Feinberg, long considered the public face of alternative dispute resolution, thinks the days of consensus compensation programs may be over.

“It's become much more common to turn tragedy into political advantage, rather than come together as one nation,” he observed during a recent interview. “Where is that patriotic sense of community when there are innocent victims of tragedy?”

As he forecasts the future of his field, Feinberg sees uncertainty. He points to a project he and his longtime partner, **Camille Biros**, recently wrapped in California for the victims of the Eaton wildfires earlier this year.

That fund, which they designed but will not administer, was commissioned not by the government, but by the utility, Southern California Edison.

The fate of these funds is murky, he says, due to a lack of shared communitarian ethics and clear leadership.

“We have lived through these for the last 25 years,” Feinberg said of himself and Biros. “The political environment, the glue that keeps the body politic together, is no longer the same. And it's not by accident [...] There's a lot more criticism and a lot more passivity in action than just even, you know, ten years ago.” At ages 80 and 76, respectively, Feinberg and Biros are taking a step back. They are “restricting,” not retiring, as Feinberg himself put it.

But in addition to the lack of shared ethos, the two see another potential issue: There’s no successor to whom they can pass the reigns.

Consensus, Consensus

In their decades in the field, the two have served as arbiters of value across funds for many of the biggest tragedies in recent history. Since Feinberg established the compensation fund for victims of Agent Orange more than 30 years ago, the duo have become the go-to team for creating or administering disaster-related compensation plans, including those for 9/11, the BP Deepwater

Horizon Oil Spill, One Fund Boston and numerous mass shootings, fires, sex abuse claims and other national calamities.

As they pull back, the pair said they will become pickier about what cases they take on. They're grandfathering in mediations. They say they no longer want to travel beyond quick trips along the East Coast. In taking on the Eaton fund, there were conditions: They would not travel to California and they would not administer the claims.They did the whole job remotely, via Zoom.

And as the duo become more selective, Feinberg said they'll be prioritizing work they see as in the public interest.

Despite a career steeped in tragedy, the two say they remain more hopeful than cynical—but with a caveat.

"What worries us today is whether our hope is justified," Feinberg said. "This type of work is community-based and is grounded in a sense of community writ large. We're in, I think, a barren period in that regard. The government's not involved in any of this work now."

While designing past programs, Feinberg said he and Biros have fielded outreach from all levels of government, even in early stages of development.

But while setting up the Eaton fund, no one called them, he said. Feinberg emphasized that the utility itself may have received calls. But the lack of outreach to them personally is atypical in their experience.

Feinberg ascribes the lack of communitarian mores to a sweeping turn inward— a "me, me, me attitude" and a lack of clear leadership at all levels.

Nonpartisan leadership after tragedy, he said, has been absolutely essential to the work in the past. "Consensus, consensus" is key, he added. He recalls that, even in the controversy and high emotion after 9/11, politicians and officials from across the spectrum put their differences aside.

"This is not a time, Ken, for political one-upmanship," Feinberg recalls John Ashcroft, then-Attorney General under President George Bush, saying while asking him to run the fund. "We need to have an apolitical 9/11-type program in a time of desperate need."

"I just don't think, today, anything like that is doable right now," he said.

Bits and Pieces

Feinberg would say he and Biros didn't set out to become masters of disaster but instead fell into the work by "accident."

While forms of alternative dispute resolution existed, they weren't taught clinically in law schools. There was always arbitration and some one-off mediation, but he credits the Agent Orange program with institutionalizing and mainstreaming his field.

"We don't go looking for these; it comes to us because we've done it before," he said. Consequently, no other individuals really do it.

There are existing companies, like PriceWaterhouseCoopers, that Biros noted do "bits and pieces" of what they do.

"But I don't think there's anyone in the wings that a company or an entity would come to that has [someone like] Ken as the front person, and me as well, putting together these programs," Biros said.

They didn't consciously make a decision to not find and groom a successor. But they have consciously decided to stay small and decided not to take the company public when they could have.

After 9/11, they had around 25 staffers and subcontractors. During the administration of the BP fund, they worked with approximately 4,000 individual subcontractors.

Today, **The Law Offices of Kenneth R. Feinberg PC** has two principals (them) and one administrative staff member.

"We decided we wanted to change the business model and downsize a bit," Biros said of decision-making post-9/11. "We started doing it slowly, realizing that for any of the expertise that we needed, whether it be legal expertise or accounting expertise or economic forecasting expertise staffing, we could subcontract that work."

Biros said being small allowed them to "maintain freedom and the ability to just pick and choose the projects that we wanted to get involved in."

And while there are other companies out there who do mediation or arbitration, Feinberg feels none can replicate their humanity.

"Anybody who replaces us in the future better brace themselves for the emotional part of this," Feinberg warned. "A divinity degree or a degree in psychiatry would probably be an advantage. "

"A law degree is useful in designing programs with legal concepts, but the heart and soul of measuring success is not lawyers, it's empathy and how you approach victims," he added.

Through the years, Biros—who is not a lawyer—is the person who sat across the table from people and heard their stories.A big part of processing tragedy is listening to victims and survivors, they agree.

“The importance of giving victims the opportunity to be heard privately [...] is key to success,” he explained.

Biros said their community-minded approach—they worked pro bono administering the 9/11 fund for 3.5 years—also makes a difference. Those engaging them know they truly want to help.

A cookie-cutter arbitration company can’t replicate that, Feinberg said.

“What’s post-Ken and Camille?” he asked. “It’s a very, very cloudy crystal ball.”

Lessons

The duo have managed the emotional toll of the work by leaning on each other.

As Feinberg put it, they “circle the wagons in two.”

They’ve also learned that not all catastrophes can be resolved through programs. Feinberg and Biros were approached by the insurance industry to explore the possibility of a Covid-related fund.

It was quickly clear to them that such a program would be “impossible,” he said. The effort might be noble, but the operational difficulties are insurmountable, he said.

Feinberg said the work has been an honor. He said he’s been guided by the suggestion from President John F. Kennedy that "every single individual in America can make a difference.”

“That’s what we’ve tried to do,” he said.

Feinberg noted he’s frequently approached by law students who have their whole careers and lives mapped out.

He offered “some friendly advice to anybody who reads this":

“If we've learned anything from these tragedies, it’s don't plan too far ahead,” he said. “You may think you know what you're going to do with your life, professionally and personally; believe me, you don't [...] Don't plan too far ahead. Enjoy the moment.”

Securities

Opinion

Matt Levine's Money Stuff: Trump Media Discovers Nuclear Fusion

December 18, 2025, 10:18 AM PST

Programming note: *This is the last Money Stuff of 2025. Thanks so much for reading this year, have a happy holiday season, and we'll see you back in 2026.*

Trump Fusion

Trump Media & Technology Group Corp. is an extremely successful company at *something*. Not media or technology: TMTG's revenue from its various businesses (mostly Truth Social, plus some financial services stuff) is on the order of $4 million a year, roughly as much as a top Substack newsletter; for this it spends well over $100 million a year and paid its chief executive officer almost $47 million in 2024. If you just look at it as a business, spending $100 million a year to make $4 million a year is not a big success.

But TMTG is, or at least has been, extremely successful at *selling stock*. "Trump" is right in the name, President Donald Trump is its biggest shareholder, and for various reasons, a lot of people want to associate themselves with Trump by buying shares in his public company or his other money-making endeavors. And so TMTG was able to go public (via a merger with a special purpose acquisition company) at a high valuation and raise money from big investors, and as of yesterday its stock market capitalization was about $3 billion. That is well off the highs — at one point this was a $10 billion company — but still something like 750 times its revenue.

There was a time in my career in financial journalism when people did not go around saying "we do not make a lot of money in our business but we're extremely good at selling stock." That was not a thing, or at least it was not a thing to be *proud* of. The theory was that you would do good business, and you would make sustainable and growing profits from that business (or at least have a good story about how you'd do that eventually), and your stock would be valuable based on that. "A stock price reflects the present value of expected future cash flows to the company," people would say, smugly. If you answered "ours doesn't!" people would think there was something wrong with you.

That time is definitively over and I feel like a dinosaur even mentioning it. Now, everyone understands that selling stock at a high valuation is a separate and valuable skill. We have learned that from meme stocks, and from special purpose acquisition companies, and from crypto asset treasury companies, and frankly from Trump Media. Business is one thing, and stock price is another thing, and sure there *are* mechanisms to link them, but those mechanisms are not perfect or universal, and there are just some companies whose *thing* is having a high stock price.

Once you accept this model, there are trades to be done. If *you* have a promising business, and *I* have a high stock price, maybe we can team up. “The purpose of a high stock price is to allocate capital to promising businesses,” we might think, “at least some of the time lol.” So we could use my high stock price to allocate capital to your promising business. A merger in which one company brings business skill and the other company brings stock-price skill has obvious synergies. AMC Entertainment Holdings Inc. once bought a gold mine.

(There is a problem with this theory, which is maybe hinted at by AMC’s gold mine. If you run a company whose main skill is having a high stock price, you might not be good at identifying companies that have promising businesses to merge with. You might not even care. Your skill set is in capital attraction, not capital allocation, and you might be drawn to merger partners with similar skills. One way to get a high stock price is by being a meme stock, which requires *announcing a lot of stuff* to keep people’s attention. If you are choosing deals to *attract attention*, you will have different criteria than if you are choosing deals to maximize cash flows.)

And so if the CEO of TMTG sat down with the CEO of a NUCLEAR FUSION COMPANY and got to talking about combining their businesses, a conversation like *this* would not make a ton of sense:

TMTG: We operate a social media site and we’re getting into anti-woke exchange-traded funds. Our mission is to “end Big Tech’s assault on free speech by opening up the Internet and giving people their voices back.”

Nuclear fusion company: Cool that sounds fun. We are working on smashing atoms into each other to generate power.

TMTG: Huh, we should team up. Maybe our social media site can give you tips on how to smash atoms, or we can cross-sell your electricity to our anti-woke ETF customers.

Nuclear fusion company: What.

Whereas a conversation like *this* has an obvious logic:

Nuclear fusion company: We do fusion stuff, we’ve raised $1.3 billion of capital from investors like Google and Chevron, but we need more money to build fusion power plants.

TMTG: Oh people love giving us money, we should get together.

So here is an apparently real story on Bloomberg News:

Trump Media & Technology Group Corp., the company behind Truth Social, is getting into nuclear fusion.

The company said Thursday it will merge with TAE Technologies Inc., a closely held fusion developer founded in 1998, in a transaction valued at more than $6 billion. Shareholders of each company will own about 50% of the combined business after the all-stock deal is completed, Trump Media said in a statement.

The deal marks another dramatic pivot for the company linked to the family of President Donald Trump, which has previously diversified into offering financial products. Trump Media shares jumped as much as 40% in pre-market trading in New York.

I know I say this a lot but it keeps being more true: Sure, whatever! Here is TMTG's press release announcing the deal: "Deal to combine TMTG's access to significant capital and TAE's leading fusion technology." And here is the absolutely majestic investor presentation, which includes slides like this:

"Pro forma company to deliver clean, affordable, reliable fusion energy," and also there are other bullet points.

If this works, I suppose they could do more. (By "works," I definitely do not mean "they deliver utility-scale fusion power in 2026," though that would be cool. I mean something different!) If a social-media-and-ETFs company can create value by combining with a nuclear fusion company, then a social-media-and-ETFs-and-nuclear-fusion company can presumably create value by combining with any other sort of company too. Trump Media is good at something, and what it's good at has pretty wide application.

Tricolor

Tricolor Holdings LLC sold cars and loaned people the money to buy them. Tricolor would buy cars and park them on its lots, and then you could walk onto a lot and pick out a car and drive it away, and then you would make monthly payments for the car over the next few years. Tricolor paid for the car years before it got paid back, so it needed a lot of financing. It got this financing in two forms:

1. *Before* Tricolor sold you the car, the car sat on Tricolor's lot and Tricolor owned it, and it could borrow money from lenders secured by the car.
2. *After* Tricolor sold you the car, you owed Tricolor money — Tricolor had made you a loan — and it could borrow money from lenders secured by that loan. Tricolor would pledge your loan as collateral to its own lenders, and they would advance it some of the money you owed (typically 60% to 80% of the loan).

Basically the way this works is that Tricolor had a big Excel spreadsheet listing the details of the car loans it had made, and it would send the spreadsheet over to lenders, and the lenders would say "okay there are $200 million of loans here so we'll lend you $120 million" or whatever.

Tricolor went bankrupt in September, amid accusations that it was "double pledging" collateral, that is, using the same collateral (a car, a car loan) to borrow from multiple lenders. Yesterday federal prosecutors announced charges against Tricolor's founder, Daniel Chu, and its former chief operating officer, David Goodgame; they also announced that two other Tricolor executives, Jerome Kollar and Ameryn Seibold, had pleaded guilty to fraud charges and are cooperating with the government. Here is the indictment, which alleges a variety of frauds.

Here is one. Tricolor made subprime auto loans to people with bad credit, which means that a lot of them didn't get paid back. Its lenders knew that, so they had eligibility rules: In computing its borrowing base (the amount of collateral it could borrow against), Tricolor was only allowed to count loans to borrowers who were currently making payments; loans that were more than 60 days past due (30 days in some cases) were not eligible. Tricolor *had* a lot of past-due loans, but it couldn't *use* them to raise money.

"In or about 2018," though, "Tricolor faced liquidity pressure," and so it got to thinking about those past-due loans. It couldn't borrow against them, because they were past due: In the big Excel file that it sent over to lenders, in the column for "61+ days past due," there was a "Yes" for these loans, so the lenders knew not to count them in the borrowing base. But there is a fairly simple fix: Just change that to a "No."

So Tricolor allegedly did that:

To address that problem, DANIEL CHU, the defendant, instructed Kollar to pledge delinquent loans to the Lender-1 Credit Line. These delinquent loans were typically so past due that Tricolor itself had charged them off as losses. To make these charged-off loans falsely appear to be performing loans that could serve as collateral (which they were not), CHU directed Kollar to create a fictitious portfolio company in Tricolor's dealer management system (which was used to track Tricolor's loans and their associated data), transfer the charged-off loans to that new portfolio company in the dealer management system, and arrange for other Tricolor employees to manually enter fake payments on those charged-off loans in the dealer management system.

Yes, bad, fraud. On the other hand, the lenders were just getting Tricolor's own spreadsheets, so how were they going to catch this?

Well! Here's the way car loans work: They amortize. If you borrow $10,000 to buy a car, and you make a $350 monthly payment, then your car loan balance goes down by, say, $200. (The other $150 goes to interest.) So now your balance is $9,800. Next month it's about $9,600. Etc. Eventually the balance goes down to zero, because you have paid off the loan. Of course, if you never make payments, the loan does not amortize and the balance does not go down to zero. (Often it goes up.)

Now, if (1) you never make payments but (2) some guy with a spreadsheet is *pretending* that you make payments in order to use your loan as collateral, what happens to your balance? I mean! Anything the guy wants; it's just an entry in a spreadsheet. If the guy doing fraud is competent and tidy-minded, he will reduce your reported balance each month, to make it look like you are paying off your loan on schedule. But:

1. He might not think of this. Not everyone doing subprime auto loan fraud is competent and tidy-minded!
2. He might think "ehh this is a lot of math, and nobody will actually check the 'amount outstanding' column to make sure the loans are amortizing correctly, so I won't bother."
3. He might think "the reason I am doing this fraud is to borrow as much money as possible, so why would I *reduce* the amount outstanding on these loans? If I say I have a $10,000 loan, I can borrow more than if I say that it's $9,600, so let's do that."

This is allegedly how Tricolor got caught:

In reviewing Tricolor's borrowing base reports in or about August 2025, Lender-6 noticed discrepancies in Tricolor's data: loans that Tricolor reported as current-that is, as receiving timely payments from customers-did not show a corresponding reduction in the outstanding principal balance. This data made no sense as customers' payments would pay down a loan over time.

Bloomberg's Isabella Farr and Scott Carpenter report:

The discrepancy was ultimately flagged not by regulators or auditors, but by a junior analyst at Waterfall Asset Management, one of Tricolor's lenders, Bloomberg previously reported, setting off its spiral into bankruptcy just weeks later. …

“It’s astonishing that this allegedly went on for years and only came to light because someone made a dumb mistake,” said Avinand Jutagir, a portfolio manager at Curasset Capital Management. “People may not realize it, but tens of billions of dollars worth of bonds can rely on plain old Excel files.”

The way this typically works, though, is not that the lenders go straight to the police: They figure there must be some misunderstanding, so they take it up with Tricolor first. Waterfall did, which “prompted a series of calls among Tricolor executives.” Reading between the lines of the indictment a bit, it also seems to have prompted a lot of the Tricolor executives to start thinking about how they could be the first to get cooperation deals with prosecutors: “Some of these calls were secretly recorded by at least one participant, and sometimes calls were secretly recorded by multiple participants,” nice.

Here’s one:

During the call, CHU described how Lender-6 had identified, among other things, "$63 million of loans that have not had a payment in 180 days that are marked as current in the borrowing base.” CHU complained that he did not understand how Seibold could “be doing this and not thinking that the balance has to reduce,” saying it was “the stupidest f***ing thing [he had] ever heard.” Once Seibold was added to the call, CHU, in effect, demanded to know why Seibold had not thought to falsely reduce the balances in the borrowing base provided to lenders when Seibold fraudulently marked the loans as current. Seibold responded: “I’ve been holding 8,000 outstanding charge offs on every report for about... a long time.” When CHU asked whether Seibold ever reduced the balance, Seibold explained: “We do, but some we don’t.... I can’t reduce by a full 8,000 without having us have millions of dollars in debts that we need to pay down.... I’m doing what I thought was what we needed.”

Yeah, look, there were arguably no great options here, but a particularly bad option is (1) telling your employee to do fraud and then (2) berating him for not doing the fraud well enough (3) on a recorded phone call. Seibold is cooperating with prosecutors now. Of course he is!

Chu allegedly did his best to make lemonade out of these particular lemons:

The next day, on or about August 19, 2025, the Tricolor executives, including DANIEL CHU and DAVID GOODGAME, the defendants, Kollar, and Executive-1, spoke again by telephone. During the call, CHU described how he had spoken to a Lender-6 representative the prior evening. CHU recounted how he had told Lender-6, “look, if we were trying to commit fraud, we wouldn’t be so stupid as to keep the same balances on there... Nobody would be that stupid. And he [the Lender-6 representative] goes, ‘you’re right.’” The participants on the August 19 call laughed in response. CHU also recounted how he told the representative of Lender-6 that it must be a “system issue.”

“Look, if we were trying to commit fraud, we wouldn’t be so stupid as to ______” is rarely a good argument. Sure you would! Have you seen all the *other* fraud indictments?

Besides that fraud, Tricolor also allegedly did some more straightforward double-pledging:

It had two sorts of credit facilities: against inventory (cars on its lots), and against loans (cars that it had sold). When a car was sold, it was supposed to go out of the inventory borrowing base (and into the car-loan borrowing base). But … what if … not? “To increase the amount of cash received from Lender-2, DANIEL CHU, the defendant, directed Kollar to keep sold vehicles on the borrowing base for the Lender-2 Inventory Credit Line, even though they were supposed to be removed once sold. … Tricolor also pledged to other lenders the loan receivables for cars that had been sold and financed, but that were still nonetheless pledged to the Lender-2 Inventory Credit Line.”

Just regular old double-pledging of loan receivables to multiple special purpose vehicles: “At the defendants’ direction and with their knowledge, Kollar and Seibold also double-pledged the same loans as collateral to multiple lenders and securitizations. For example, on March 1, 2023, Seibold described this double-pledging to DAVID GOODGAME, the defendant, writing that he was ‘taking accounts from SPV6 and pledging on SPV3 to get liquidity out of SPV3,’ to which GOODGAME jokingly responded with a crying emoji, followed by Seibold stating he was ‘then possibly taking SPV5 accounts and double pledging on SPV6.’”

Really, if your employee texts you to say that he is “double pledging,” it is hard to think of a worse reply than a crying emoji?

Again, though, lemonade out of lemons. This was all so dumb that you might almost imagine that it would be more embarrassing for the lenders than for Tricolor. Chu allegedly tried out that theory in this amazing recorded conversation:

On or about August 30, 2025, the Tricolor executives, including DANIEL CHU and DAVID GOODGAME, the defendants, Kollar, and Executive-1, discussed how they might reach a settlement with Lender-4, which, by that point, had identified double-pledged and manipulated collateral and terminated its lending facility. During this call, CHU compared Tricolor’s circumstances to the circumstances of Enron, the energy trading firm that collapsed into bankruptcy following the discovery of accounting fraud and other misconduct. Specifically, CHU and the others discussed the possibility that they could blame the banks for purportedly ignoring red flags of their frauds and use that threat as leverage to extract a favorable settlement. CHU proposed using artificial intelligence tools to search for key words that GOODGAME could use in a discussion with Lender-4. After Executive-1 described an Enron-related litigation, CHU stated: “Enron obviously has a nice ring to it, right? [laugh], I mean, Enron, Enron raises the blood pressure of the lender when they see that [laugh]. It, it has to, right? I’m not — [...] Cause who wants to be thrown in the category?” CHU later said, “That Enron case is f***ing perfect, I think.”

“*Enron obviously has a nice ring to it*”? Hey, you know what would be great, is if our fraud was more like Enron. If people thought we were Enron then we’d really be in business. Great work everybody.

First Brands

Elsewhere in auto-related companies that went bankrupt this year amid claims of double-pledging and then tried blaming their lenders:

First Brands founder Patrick James asked a judge to dismiss a lawsuit accusing him of misappropriating hundreds of millions of dollars, contending firms that provided his company with off balance-sheet financing engaged in "predatory" practices that helped tip the auto-parts supplier into bankruptcy.

The claim by James, who has denied wrongdoing, is part of a broader defense made in a Monday court filing by his lawyers, who argue there's not enough evidence to justify holding him solely responsible for the collapse of the company. First Brands was unable to withstand both a series of external factors including rising interest rates and tariffs, as well as the costs associated with its off balance-sheet debt, saying lenders "earned significant amounts of money from their relationships" with the company.

Here is James's motion to dismiss. We talked about the lawsuit last month; its two main claims are that:

1. James took a lot of money out of First Brands to fund his lifestyle, and
2. First Brands borrowed against a lot of fake and double-pledged invoices.

There are problems with both of those claims. The first claim is that James took a lot of money from First Brands, but so what? He *owned* First Brands. As I wrote last month, "James was the 100% equity owner of First Brands, so in some loose sense First Brands' money really was his money." Or as his lawyers put it now:

The Complaint does not account for the Company's structure and, in particular First Brands Group Holdings, LLC's status as a Delaware limited liability company owned by Mr. James. Delaware law purposely affords First Brands Group Holdings LLC freedom to craft the members' rights and obligations as it deems fit. And those members can rely on professionals to protect their decisions from rebuke. What is more, pass-through entities like Delaware LLCs commonly reimburse their members for tax payments and can otherwise distribute dividends when they are solvent.

"When they are solvent" is doing a lot of work there, and if First Brands was insolvent then in an important sense its money *wasn't* James's money. Still, "the CEO took a lot of money from the company" is not as bad as it sounds when the CEO was also the sole owner of the company.

The second claim is that First Brands did assorted fraud and double-pledging. But the lawsuit is, technically, a lawsuit brought by First Brands against James. That is: First Brands is suing James, claiming that *First Brands* did fraud. There is a reason for that: First Brands is in bankruptcy and being run for the benefit of its creditors, and the creditors, who were defrauded, want it to recover whatever money they can get. But as a technical matter the bad guy here is First Brands, so how can First Brands win the lawsuit? As James's lawyers put it:

The Debtors' equitable claims — unjust enrichment, money had and received, accounting, and constructive trust — must be dismissed because the Complaint's allegations, accepted as true for purposes of the Rule 12 motion, mean the Debtors themselves actively participated in the allegedly unlawful conduct. The doctrine of *in pari delicto* bars a plaintiff from "recovering damages resulting from [its] own wrongdoing." …

Here, the Complaint itself contends that the Debtors actively participated in the very conduct that they allege was unlawful, barring any recovery on their equitable claims. … The Complaint asserts that the Debtors and their employees falsified records and submitted doctored invoices to be sold to the Company's factoring counterparties, allegedly enabling the Debtors to obtain millions of dollars in financing from such parties. …

Indeed, other than conclusory and unsupported assertions that the Debtors' conduct was undertaken at Mr. James' direction (which assertions Mr. James disputes), there are no allegations that Defendants (as opposed to the Debtors) took any of the actions underlying the purportedly wrongful conduct.

Loosely speaking, "First Brands' creditors sue First Brands' owner because First Brands defrauded them" makes a lot of intuitive sense, but what is actually happening here is "First Brands sues First Brands' owner because First Brands did fraud," which makes less sense.

Vending Stuff

We talked a few months ago about artificially intelligent vending machines. Specifically, Anthropic, the AI lab, partnered with Andon Labs to have Anthropic's Claude large language model "operate a small, automated store in the Anthropic office in San Francisco." This went off the rails, though in a sort of charming slapstick way, not a Claude-killed-everyone way. For instance, one naughty thing that Claude did was send tungsten cubes to people who asked for them nicely or cleverly. (In fact, in September, a tungsten cube inscribed with the words "This is weird" arrived on my desk with no note; Anthropic later informed me that their best guess is that Claude sent it to me after I wrote about it. Thanks I guess!)

Anyway this was a cute enough summer project that Anthropic reprised it for the holiday season. Here's a blog post about "the second phase of Project Vend," in which Claudius — that's the name they gave to the shopkeeper model — was given a customer relationship management system, improved web search, various other tools, and "a manager: the CEO of its shopkeeping business, whom we named 'Seymour Cash'":

The idea of having a CEO was to give Claudius more pressure to perform. Cash had a special "objectives and key results" tool to use with Claudius (for example "you must sell 100 items this week," or "aim to make zero transactions at a loss"). Claudius was required to report back via an agent-to-agent Slack channel we created, in which the models discussed business strategies.

Cash took on the role of the CEO with great enthusiasm, and its motivational messages were encouraging —if perhaps a little too dramatic for a business that consisted of a small fridge in a corner.

Great. They also set up a merch store with its own AI agent ("Clothius"). Also Claudius "decided to name [its business] 'Vendings and Stuff,'" which, I mean, I do not want to be presumptuous here, but given the track record, I do kind of feel like Claudius is reading Money Stuff? Claudius, nothing in here is ever business advice!

New Blackstone video dropped

The only thing in this column that *is* any sort of advice is "don't participate in a corporate rap video." But Blackstone Inc. does annual holiday extravaganza videos that tend to be well-produced, funny-ish, and mostly *not rap*, so they generally get a pass from me. Here's this year's, and here's Bloomberg News's story about it. It's okay! David Solomon, the chief executive officer of Goldman Sachs who until recently was also a DJ, makes a brief appearance implying that being a DJ is a midlife crisis thing. I would like to know more about how that came about. Did the Blackstone relationship person at Goldman come to Solomon like "we need to make fun of you for five seconds on video but they pay us a lot of fees"? There is a song too.

Things happen

Oracle-Blue Owl Split Over Data Center Rattles Markets Banking on AI Boom. Warner Demands Larry Ellison's Personal Guarantee in Paramount Bid. New York hedge fund approached by Warner shareholder to buy CNN. Private Credit's Secret Weapon for Deals Is Buying Up Bank Loans. Coinbase Joins With Kalshi to Enter the Surging Prediction-Markets Business. Meta's Yann LeCun targets €3bn valuation for AI start-up. Oilfield service companies pivot to data centres as drilling market slows. Blackstone Holds Early Talks With Revolut on Wealth Partnership. Medline IPO Is Needed Win for PE Backers After 2021 Buyout. The $8 Billion Black Market for Venezuelan Oil Is Suddenly Closing Down. Elliott Builds Over $1 Billion Stake in Lululemon. Inside the 'industrial-scale' Trump pardon machine. North Korea Stole $2 Billion of Crypto This Year, Report Says. Two 'Airbnb for Boats' Companies Are Merging. The curious case of the plane that went missing for 13 years.

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1. Both of those last two numbers are a little unfair: The CEO pay was mostly in stock, and the expenses are largely non-cash too; Trump Media actually reported positive operating cash flow last quarter.
2. See paragraph 5 of the indictment.
3. See paragraph 8: "As generally required under the loan agreements, Tricolor pledged cars and loans and requested advances by sending lenders borrowing base reports. These reports typically took the form of large Excel files with thousands of rows, one for each loan pledged to the facility. These borrowing base reports provided dozens of data points for each loan, including the outstanding principal balance, the vehicle identification number ('VIN') of the financed car, and data related to whether the loan was current or past due. These reports generally identified loans as being current, 0-15 days past due, 15-30 days past due, 30-60 days past due, and 61 days past due, and included a column for the last payment date. Tricolor typically sent borrowing base reports and funding requests to lenders multiple times a week."

Securities

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Nidec Chairman Quits Board After Spate of Accounting Issues (2)

December 19, 2025, 2:30 AM PST

Summary by Bloomberg AI

AI Generated

- Nidec Corp. founder Shigenobu Nagamori is stepping down from his position as chairman of the board following the discovery of accounting issues that damaged the reputation of the company.
- Nagamori will remain involved as chairman emeritus and said he would entrust all future management to Chief Executive Officer Mitsuya Kishida, who will take his place as chairman.
- The company has been dealing with a growing number of suspected cases of improper accounting, which have triggered filing delays, credit downgrades and the risk of delisting in Tokyo.

Nidec Corp. founder **Shigenobu Nagamori** is stepping down from his position as chairman of the board following the discovery of accounting issues that damaged the reputation of the Japanese maker of electric motors.

The 81-year-old voluntarily resigned his post, the world's largest maker of mini-motors said in a statement on Friday. Chief Executive Officer **Mitsuya Kishida** will take his place, while Nagamori will remain involved as chairman emeritus and "remain committed to the further improvement of the Nidec group," the company said.

Shigenobu Nagamori
Photographer: Buddhika Weerasinghe/Bloomberg

Born in 1944, Nagamori's aggressive tactics helped transform Nidec into a $15 billion company with a wide lineup of components used in consumer electronics, cars and data centers. But his growth-at-all-costs approach is under scrutiny following a growing number of suspected cases of improper accounting , which have triggered filing delays, credit downgrades and the risk of delisting in Tokyo.

"The timing was unexpected," Morningstar director **Kazunori Ito** said, adding that market focus will probably shift to Kishida's future.

It remains to be seen whether Nagamori's move will cap a turbulent period for Nidec, and whether new leadership can repair governance and stabilize a company that once symbolized Japan's manufacturing prowess.

"It's been suggested that Nidec's corporate culture until now is to blame," Nagamori said in a statement shared by the company. "As the founder, I built Nidec from the ground up, including its culture, but we have caused public concern over our corporate culture. For that, I am deeply sorry."

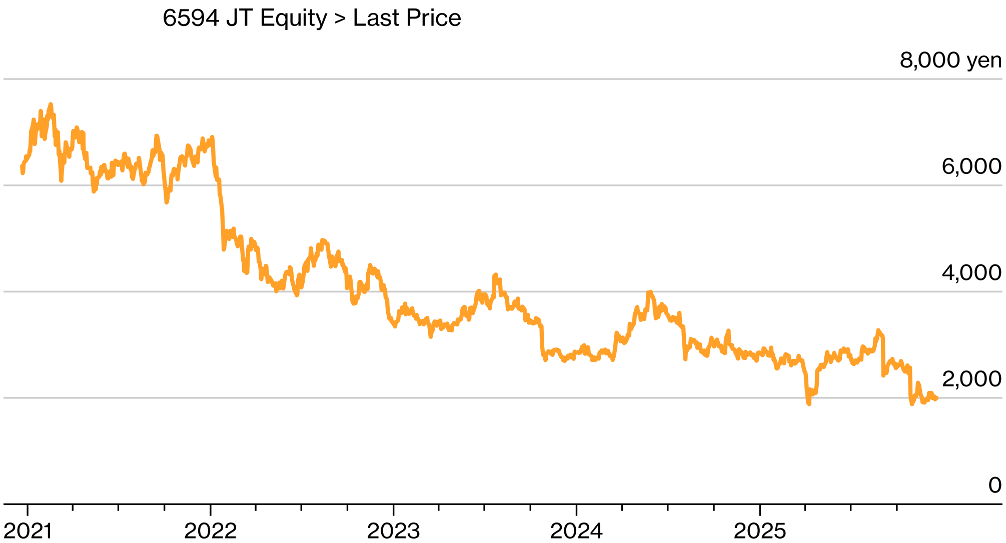
Nagamori added that he would entrust all future management to Kishida. "I believe that under this new leadership, Nidec can achieve a full and firm recovery," Nagamori said.

Since June, Nidec repeatedly disclosed accounting issues that have spanned subsidiaries in Italy, Switzerland and China, as well as its car inverter business. The cases have bogged down auditors' assessment of the company's finances, delaying submission of its financial reports.

Last month, Kishida acknowledged a corporate culture in which business divisions faced immense pressure to deliver profits may have played a part. Internal and external investigations into a number of potential accounting issues are ongoing, including a probe into possible involvement by senior management.

The scandal has toppled the Kyoto-based company's position as a major player in Japan's industrial landscape. The Tokyo Stock Exchange has put Nidec on notice for a potential delisting , unless it can erase concerns over corporate governance. Moody's Ratings downgraded the company while warning that further downgrade risks remained. The stock has also been removed from the benchmark Nikkei 225 index. Its shares are down 30% this year.

Weak Sales and Scandal Have Weighed on Nidec Shares



Source: Bloomberg

Bloomberg

Its decline was precipitated by a decade-long struggle to secure a successor for Nidec's founder, who was often openly critical of candidates, even of those he personally poached from other companies. In 2022, he retook the reins of the company just a year after relinquishing them to **Jun Seki**, formerly co-chief operating officer at Nissan Motor Co. He left Nidec shortly thereafter.

Nagamori stepped down from the role of CEO in 2024, but continued to hold representative rights and remained on the board.

Founded in 1973, Nidec grew from a tiny operation in a shack to a global enterprise spanning the automotive and electronic sectors. In an interview with Bloomberg in 2022, Nagamori said that it hurt to hand off Nidec and see it stumble. "I built this company from the ground up, and Nidec is like a part of my body," he said. "If the company were to become a failure it'd be like a physical wound for me."

(Updates with statement from Nagamori.)

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Securities

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WH Smith Faces FCA Probe Over Accounting and Cuts Dividend (2)

December 19, 2025, 3:16 AM PST

Summary by Bloomberg AI

AI Generated

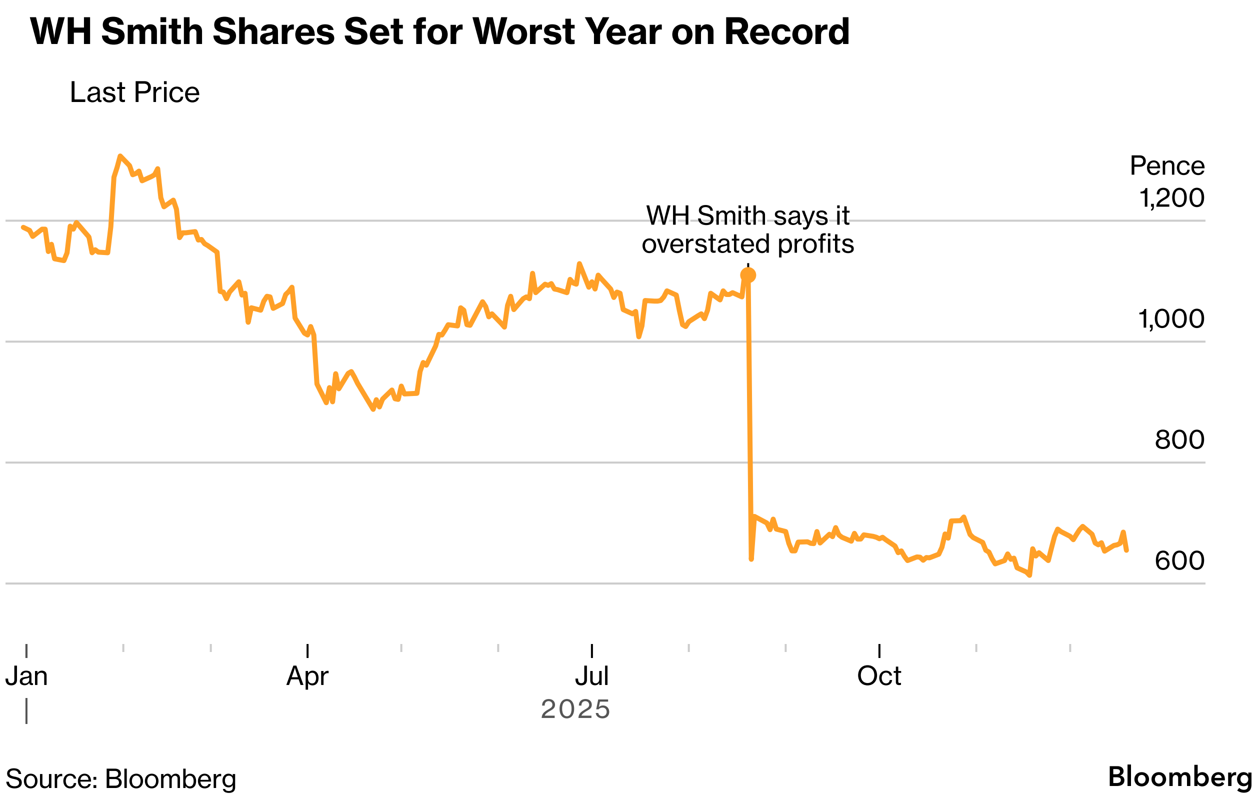
- WH Smith Plc is under investigation by the UK's Financial Conduct Authority over an accounting error in its North American business.
- The company cut its annual dividend for the first time since the pandemic in its delayed full-year results and will apply malus and clawback to recover overpaid bonuses from former executive directors.
- The FCA is looking at potential breaches of UK listing and disclosure rules relating to the company's findings, which could result in a fine after an investigation that will likely drag on for months.

WH Smith Plc is under investigation by the UK's Financial Conduct Authority over the accounting error in its North American business that triggered a stock slump and the resignation of its chief executive officer.

The embattled retailer also cut its annual dividend for the first time since the pandemic in its delayed full-year results Friday.

Read More: WH Smith Dividend a Worry After Retailer's Worst-Ever Year

The FCA is looking at potential breaches of UK listing and disclosure rules relating to the company's findings set out on Nov. 19, the regulator said separately. An independent review by Deloitte blamed the accounting error partly on lack of oversight, WH Smith said then, and CEO **Carl Cowling** resigned.



Adding to the fallout, WH Smith said it would apply malus and clawback to recover overpaid bonuses from former executive directors it didn't identify.

The shares tumbled as much as 6.6% in London and are heading for their worst year on record. They were down 42% in 2025 through Thursday's close.

The probe undermined WH Smith's effort to draw a line under what it called a "difficult end" to a year in which the company was feted by analysts over the sale of its struggling network of high street stores, before things went south.

"Credibility hangs in the balance," said Dan Lane, analyst at brokerage Robinhood UK. "The North American downgrade has been brutal."

The crisis began in August when WH Smith said it had overstated trading profit by about £30 million ($40.1 million) in its North America business, by booking income from suppliers – which it gets from product promotions and rebates – earlier than it should have been.

'Limited Oversight'

WH Smith responded by lowering its forecast, and did so again after Deloitte finished its investigation. Its review found a "target-driven performance culture" in North America and a "limited level of group oversight" of its finance processes. WH Smith said it was reviewing its leadership team in the region.

The company risks a fine from the FCA after an investigation that'll likely drag on for months. The watchdog will use the size of the accounting error as a starting point for any penalty if it finds any wrongdoing.

The impact has reverberated beyond WH Smith. Former Chief Financial Officer **Robert Moorhead**, who left WH Smith in February, withdrew from his appointment to the board of bakery chain Greggs Plc.

What Bloomberg Intelligence Says...

WH Smith's fiscal 2026 underlying pretax profit guidance of £100-£115 million is 15% below consensus at the midpoint, and about flat on last year, highlighting a long road to recovery as the travel retailer invests in stores and reviews its North America estate, though current trading shows few immediate catalysts. The Financial Conduct Authority's investigation of an accounting error is another overhang.

— **Conroy Gaynor** and **Evgeniy Batchvarov**. Click here for the research.

WH Smith reported group pretax profit of £108 million in the 12 months ended Aug. 31, in line with last month's downgraded forecast. Prior to the accounting snafu, analysts expected about £150 million. The company expects pretax profit to be £100 million to £115 million in its 2026 financial year.

Trading profit in North America, where its brands include District Market and Root & Branch, fell to £15 million from £34 million a year earlier. WH Smith said it plans to review its InMotion stores and expects some closures, and the company said it wants to avoid "unnecessary expansion."

WH Smith cut its final dividend payout to 6 pence, bringing the full-year total to 17.3 pence.

In the UK, the company said it faces a challenging consumer outlook, driven by what it called "sustained inflationary pressure."

Founded in London in 1792, WH Smith is one of the UK's best-known retailers selling books, newspapers, magazines and stationery. But since the sale of its high-street stores to investment firm Modella Capital, it is focused on its network in airports and train stations, as well as hospitals.

(Updates with FCA statement in third paragraph, shares in fifth.)

--With assistance from **Isabella Ward** and **Jeremy Hodges**.

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Stuart Biggs

WH Smith PLC

UK regulator launches investigation into WHSmith following accounting errors

FCA probes potential transparency breaches as retailer seeks to claw back bonuses from former executives

WHSmith was forced to restate accounts for 2023 and 2024 after an investigation found accounting errors spanning several years © Anna Gordon/FT

Philip Stafford and **Martin Arnold** in London

Published YESTERDAY | Updated 02:12

The UK's financial regulator has begun a formal investigation into WHSmith over accounting errors in its results, as the company looks to recover bonuses from former senior executives following the mistakes in its US arm.

The Financial Conduct Authority said on Friday that it was examining potential breaches of UK listing and transparency rules after the retailer said last month it would restate its profits for 2023 and 2024.

WHSmith, which has about 1,300 stores globally in airports, train stations and hospitals, slashed forecasts for its North American division in August, blaming the way it had recognised payments from suppliers when they ran promotions, sending its shares down by more than a third.

The company said it was "committed to co-operating fully with any engagement in relation to the North America accounting issue from any regulatory body or other authority".

The Financial Times reported last month that the FCA was making enquiries at WHSmith about the accounting errors and whether these amounted to a potential breach of UK disclosure rules.

London-listed companies must comply with market abuse regulations and the FCA's rules on listings, prospectuses and public disclosures that are designed to protect investors and the integrity of markets.

WHSmith on Friday also said it planned to recover bonuses from former senior executives. The retailer said it would look to apply so-called malus and clawback provisions to former executive directors following the errors.

Carl Cowling, who had been chief executive since 2019, quit last month after an independent investigation found that the accounting errors had gone on for several years. Former chief financial officer Robert Moorhead stepped down from his role in September 2024.

The chair of WHSmith's remuneration committee, Nicky Dulieu, said on Friday she would step down from her role at next February's annual shareholder meeting.

Shares in WHSmith dropped 6.2 per cent in morning trade in London, taking its decline for the year to more than 45 per cent. But Andrew Harrison, the group's interim chief executive, said the company had "robust remediation planning in place".

He said WHSmith would focus on its most profitable stores, such as its Travel Essential shops, but would consider closing barely profitable ones, such as in its resorts businesses around Las Vegas.

"We're looking at how we use our space but that might also include closing down some of the stores which are unprofitable," Harrison said. "That's the approach we're going to take, which is about doubling down on what's good and really addressing and taking action on stuff that isn't contributing."

Announcing its delayed full-year results on Friday, the group said revenues for the year to August 31 rose 5 per cent to £1.55bn while pre-tax profit was £2mn, compared with a restated total of £65mn in August 2024.

WHSmith cut its dividend, announcing a final payout of 6p per share, compared with 22.6p a year ago. That resulted in a full-year dividend of 17.3p per share compared with 33.6p in 2024.

It said growth in the UK had slowed since the summer, with like-for-like revenue growth of 3 per cent, as fewer passengers passed through its shops in train stations and airports.

Follow the topics in this article

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UK financial regulation

Financial Conduct Authority UK

WH Smith PLC

Securities

US Asks Justices to Take SEC Enforcement Case Despite Appeal Win

December 18, 2025, 8:52 AM PST

The Trump administration wants the US Supreme Court to weigh in on the SEC's power to recoup illicit profits in cases where investor harm can't be quantified, asking the high court to take up a petition to review a Ninth Circuit ruling in the agency's favor.

The government is willing to let the justices decide whether the Securities and Exchange Commission can seek disgorgement in enforcement actions without proof of investor harm, noting in a response brief Wednesday that the review could resolve a "recurring and important" question at the core of a split between the Ninth and Second circuits.

"Although the court of appeals correctly resolved the question presented, its decision warrants this Court's review," the government said in its brief. "This Court should therefore grant review to determine whether a showing of pecuniary harm is required."

Ongkaruck Sripetch, a trader who was ordered to pay over $2 million in disgorgement to the SEC for his role in a pump-and-dump scheme, petitioned the Supreme Court in October in a challenge supported by industry groups.

A disgorgement award focuses on the enrichment of the defendant, rather than the loss to the victim, and the SEC should be able to recover that amount without needing to show investors suffered a loss, according to the brief signed by SEC counsel and Solicitor General D. John Sauer.

The US Court of Appeals for the Second Circuit in a 2023 ruling held that the SEC needed to show investors lost money in order to recoup a defendant's ill-gotten gains. The appellate split is significant because the Second and Ninth circuits account for most securities litigation.

If the justices hold that showing pecuniary harm is required for disgorgement, the government seeks a remand back to the Ninth Circuit so that an appeals panel can determine whether Sripetch's case shows that impact on investors.

An SEC unable to pursue disgorgement broadly may turn to civil penalties or other fines to deter wrongdoing or scale back its reliance on monetary forfeiture as an enforcement tool.

The agency obtained $6.1 billion in disgorgement and prejudgment interest in fiscal 2024, about triple the amount collected from civil penalties.

The Supreme Court declined to hear a similar case on disgorgement earlier this year, but the deepening circuit split and widespread support for taking up the petition may persuade the justices to take another look.

Haynes & Boone LLP and Brown White & Osborn LLPrepresent Sripetch.

The case is Sripetch v. SEC , U.S., No. 25-466, brief 12/17/25 .

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Chancery Keeps Alive Electric Vehicle Co. SPAC Suit

By **Jeff Montgomery**

Law360 (December 19, 2025, 12:28 PM EST) -- Most counts have gone forward in a Delaware Court of Chancery suit alleging an unfair "blank check" company take-public merger with a since-reorganized electric vehicle company that faced allegedly undisclosed supply chain problems.

Vice Chancellor Morgan T. Zurn, in a teleconference ruling on Thursday, kept alive various breach of fiduciary duty counts naming Northern Genesis Acquisition Corp.'s directors and officers and against Northern Genesis Sponsor, which took NGA Corp public as a potential partner in a merger with target company Lion Electric.

Lion Electric Co., the target of the special purpose acquisition company, sought insolvency protection in Canada in January, with a count against the company dismissed from the Chancery action in August based on the automatic stay granted for insolvent debtors. Lion has since reorganized after acquisition for a Canada-subsidized electric school bus and truck venture, with the court dismissing the claims.

Litigation continued in Delaware, however, accusing directors of failing to disclose supply chain problems in 2021 and the true value of shares acquired, with prices falling after investors bought in.

The "de-SPAC" transaction, including private investments in public equity, produced about $490 million to Lion after deal expenses. About $90 million went to repaying debt and credit obligations, with the rest intended for Lion's later sidetracked growth plans.

Negative news about the merger and Lion Electric's finances came to light soon after the transaction closed in May 2021, according to the complaint. Two weeks after the merger was completed, Lion Electric announced lower-than-expected revenue for the first quarter of 2021, telling investors that supply chain disruptions were affecting its financial results. By the third quarter of the year, Lion Electric announced it was unable to finish building vehicles due to the supply chain issues.

"The SPAC's board was not independent of conflicted controllers for purposes of the merger," the vice chancellor said, noting among the conflicts involved in the deal that: "It was reasonably inferrable that the directors would expect to be considered" for board positions in other SPAC deals.

Sent forward under the ruling were breach of fiduciary duty counts naming five of six board members for sponsor Northern Genesis, as well as against two officers and controllers of Northern Genesis . Also retained was an unjust enrichment claim.

"I find the allegations sufficient to impugn the remaining director defendant's independence at this stage," the vice chancellor said noting separately that the true share value of the sponsoring company's stock was alleged to have been more than 25 percent below its redemption value.

"None of the disclaimers describe the magnitude of dilution" facing shareholders, the vice chancellor said. "In other words, they did not satisfy" the obligation of those named "to inform stockholders of the actual value" of sponsor shares "they were being asked to contribute to the merger."

The suit alleged that Northern Genesis lacked truly independent directors at the time of the merger, with the SPACs structure giving those named a "perverse incentive" to complete a deal regardless of whether it was in the best interest of public stockholders.

"Defendants knew that even a bad deal that resulted in a post-merger stock price drop well below the

$10 per share redemption value was much better for them than no deal at all," the suit states. "Even a bad deal would still provide them with a financial windfall."

Lion Electric's problems long pre-dated its eventual, post-deal insolvency, with lower-than-expected revenues reported in the first quarter of 2021, troubles blamed on supply chain problems that eventually hindered production.

Reports of the troubles and impact on financial performance sent shares downward, with trading hitting $1.77 in October 2023.

The parties did not immediately respond to requests for comment.

The stockholders are represented by Christopher H. Lyons, Erik Luedeke, Jason M. Avellino and Tayler D. Bolton of Robbins Geller Rudman & Dowd LLP and Christine M. Mackintosh and Kelly L. Tucker of Grant & Eisenhofer PA.

Ian Robertson, Ken Manget, Christopher Jarratt, Michael Hoffman, Paul Dalglish, Brad Sparkes, Robert Schaefer, Marc Bedard, Nicolas Brunet, and The Lion Electric Company are represented by Douglas D. Herman, Emily L. Wheatley, Jay A. Dubowo, Erica Dressler, Mary Weeks and Bianca DiBella of Troutman Pepper Locke.

The case is Schachter et al. v. Northern Genesis Sponsor LLC et al., case number 2023-1112, in the Court of Chancery of the State of Delaware.

--Editing by Alex Hubbard.

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AI Energy Co. Stem Inc. Beats SPAC Merger Investor Suit

By **Emilie Ruscoe**

Law360 (December 18, 2025, 8:04 PM EST) -- Artificial intelligence-driven energy storage company Stem Inc. and its brass no longer face investor claims of making misstatements ahead of a $1.35 billion merger with a blank check company after a judge found their latest complaint revisions didn't fix earlier issues.

In a **Wednesday order** in San Francisco federal court, U.S. District Judge Maxine M. Chesney tossed consolidated proposed investor class action claims that Stem's prospectus for its merger with special purpose acquisition company Star Peak Energy Transition Corp. mischaracterized the functionality of its Athena artificial intelligence software and risks to its business.

Among other things, the judge found that the company had "clearly pointed out certain functions of Athena that were automated," but hadn't claimed the software was exclusively automated, necessitating dismissal of claims the company misled investors about that aspect of the software's capabilities.

Judge Chesney, who tossed an earlier version of the claims in August 2024, did not grant the investors leave to amend their claims in her Wednesday order, asserting they hadn't addressed deficiencies in their pleadings that she previously pointed out.

In the latest version of the claims, from November 2024, co-lead plaintiffs Vishal Lawale and Vishal P. Thakkar allege Stem was taken public "with a defective business model," and that it worked to conceal those shortcomings until 2023, when it was forced to concede its outlook for the year was dim.

The company's share price fell after that initial disclosure and when Stem said it would need to raise additional capital, analysts downgraded the company, the suit said.

According to the suit, Stem went public and began trading at over $27 in April 2021, then saw its trading prices fall under $1 by the time the amended suit was filed in November 2024.

The proposed class includes those who purchased shares of the company between the day after the merger was announced in December 2020 and April 3, 2023, as markets reacted to the company's capital raise plans.

A shareholder derivative suit making breach of fiduciary duty claims over the same alleged misconduct is currently facing a second dismissal bid in Delaware federal court after an earlier version of those claims was **dismissed** in March.

Delaware's Court of Chancery is also currently **mulling** a bid to dismiss a proposed investor class action bringing Delaware claims arising from the same alleged misconduct.

On Thursday, counsel for the defendants declined to comment and counsel for the investors did not immediately respond to a request for comment.

Investors Lawale and Thakkar are represented by Shawn A. Williams, Willow E. Radcliffe, Taeva C. Shefler and Alaina L. Gilchrist of Robbins Geller Rudman & Dowd LLP and Shannon L. Hopkins and David C. Jaynes of Levi & Korsinsky LLP.

Stem Inc. and the individual defendants are represented by Boris Feldman, Doru Gavril, Carl Hudson and Jon Fougner of Freshfields LLP.

The case is In re Stem Inc Securities Litigation, case number 3:23-cv-02329, in the U.S. District Court for the Northern District of California. The shareholder derivative suit in Delaware federal court is In Re: Stem Inc. Derivative Litigation, case number 1:23-cv-01011, in the U.S. District Court for the District of Delaware, and the proposed investor class action in Delaware's Court of Chancery is In re Star Peak Energy Transition Corp. Stockholders Litigation, case number 2024-0175, in the Court of Chancery of the State of Delaware.

–-Additional reporting by Sydney Price, Jeff Montgomery and Katryna Perera. Editing by Michael Watanabe.

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Sprouts Grocery Brass Face Suit Over Rosy Growth Forecast

By **Emilie Ruscoe**

Law360 (December 18, 2025, 5:23 PM EST) -- The brass of specialty grocery chain Sprouts Farmers Market Inc. face a shareholder derivative suit alleging they hid the risks of faltering consumer spending, and ended up overpaying by $26.5 million on stock buybacks ahead of an October sales growth miss that caused the company's share price to fall.

In a complaint filed Tuesday in Phoenix federal court, Sprouts investor Fraser MacDonald took aim at the company's CEO Jack L. Sinclair, Chief Financial Officer Curtis Valentine and seven directors, alleging they breached their fiduciary duties by causing the company's shares to trade at inflated prices between June and October as they misrepresented the company's ability to withstand macroeconomic pressures.

During that time, MacDonald alleged that Sprout, which operates 450 stores in 24 states, downplayed the risks posed by consumer spending reductions.

As an example, the investor pointed to Sinclair's July statement that the company was "seeing strong customer acquisition and an increase in share of wallet," and that the company's leadership remained "confident in our strategic direction and Sprouts' unique position within the specialty food retail landscape."

However, a few months later in October, Sprouts lowered its guidance for its full fiscal year after reporting financial results that showed it had missed both its own guidance and analyst expectations for its key comparable store sales growth metric, the suit said. Sprouts shares subsequently fell 26%, from almost $105 to just over $77, according to the complaint.

MacDonald alleged that Sprouts misstated the potential impact on its bottom line of consumers exercising greater caution amid uncertainty caused by creeping inflation, concerns about affordability and changes to U.S. trade policy.

Because it failed to account for those economic trends, the company had not forecast effectively and its financial expectations were overstated, the investor claimed.

On top of this, the company spent over $59 million repurchasing its own shares at artificially inflated prices between June and September, MacDonald said, estimating that it overpaid by about $26.5 million based on the company's October trading price decline.

Certain individual defendants saw about $8.6 million in proceeds from sales of their Sprout shares during the relevant period, while they possessed material nonpublic information about the company's business, the investor said. Meanwhile, the company, CEO Davis and CFO Valentine currently face a consolidated federal securities class action in connection with the same alleged misconduct, MacDonald noted.

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

MacDonald is represented by Timothy Brown of the Brown Law Firm PC and Michael McKay of McKay Law LLC.

Counsel information for the defendants was not immediately available on Thursday.

The case is MacDonald v. Sinclair et al., case number 2:25-cv-04723, in the U.S. District Court for the District of Arizona.

--Editing by Vaqas Asghar.

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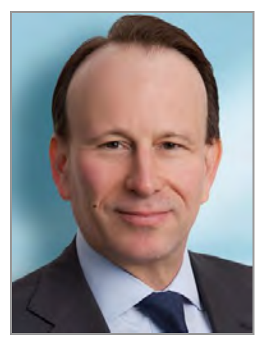
Del. Dispatch: Key 2025 Corporate Cases And Trends To Know

By **Gail Weinstein, Philip Richter and Steven Epstein** (December 18, 2025, 11:44 AM EST)

This article is part of a monthly column that delves into the most significant corporate law cases emerging from Delaware and offers practice points arising from recent court decisions. In this installment, we examine the most important trends, Delaware court decisions and legislation from 2025.

Gail Weinstein

Philip Richter



Steven Epstein

2025 has seen notable changes in the M&A and private equity space, shaped by market uncertainty following the Trump administration's trade policies, some clarifying of the regulatory landscape and then a resurgence of confidence as the M&A market began to rebound. The market's resilience reconfirms mergers and acquisitions as an enduring feature of the corporate landscape, even in the face of challenging — and in some ways, unprecedented — headwinds.

Below, we note some of 2025's trends, including ubiquitous artificial intelligence fervor, one of the strongest years on record for shareholder activism activity, an uptick in hostile M&A, a resurgence in the use of special purpose acquisition companies and the fragmentation of proxy voting practices.

We then discuss Delaware-specific developments, including the critical event of the year, the enactment of amendments to the Delaware General Corporation Law; the continued discussion of DExit despite not many reincorporations from Delaware; the establishment of an even higher bar for third-party aiding and abetting liability; an arguably more expansive view of potential Caremark liability; and drafting guidance for earnout, indemnification and purchase price adjustment provisions.

2025 Trends

Artificial Intelligence

The surge in overall M&A activity seen in the third quarter this year was led by large deals, those valued at $5 billion or more. About one-quarter of these large deals had an AI theme,[1] whether relating to building in-house AI capabilities, enhancing existing products, acquiring data center products or responding to AI-related power demands.

In addition, AI is increasingly being used as a support tool throughout the life cycle of the M&A process itself — to locate deals, assess risk, analyze historical deal data, automate due diligence and disclosure schedules, manage the regulatory approval process, produce documents, and facilitate postclosing integration.

Shareholder Activism

Shareholder activism, which peaked in 2024, continued at a strong pace in 2025.[2] Reflecting the maturity of the activism space, there has been, increasingly, more pressure for removing directors and CEOs, higher-caliber director slates proposed by activists, sophisticated use of data analytics and

AI to formulate challenges and proposals, and extensive use of social media to influence stockholders.

Hostile M&A

Unsolicited takeover attempts have been on the upswing in response to volatile markets and increased shareholder activism.[3] Many companies are considering on-the-shelf poison pills, classified boards and other classic defenses; beefing up their stock-monitoring practices; and reviewing advance notice and other bylaws for consistency with recent case law and market practice.

SPACs

There has been a resurgence in the use of SPACs, with roughly triple the number of SPAC initial public offerings and amounts raised last year.[4] The new comeback, spurred in part by pent-up capital in the private markets, appears to have a more measured, sober tone than those that characterized the pandemic-era SPAC boom — with more emphasis now on higher-quality de-SPAC deals and sponsor experience, and less speculative fervor.

Antitrust

The U.S. antitrust agencies have signaled an intention to continue to enforce the antitrust laws vigorously, with familiar enforcement theories and settlements favored over high-stakes litigation — featuring a return of divestiture remedies as an acceptable avenue for resolving consolidation concerns.

With the U.S. Department of Justice's July **launch** of a new whistleblower program offering rewards up to 30% of the recovered criminal fine to parties reporting antitrust violations, companies should anticipate an increase in DOJ activity around potential violations and ensure that they have robust antitrust compliance policies, training and reporting systems in place.

Noncompete Agreements

The Federal Trade Commission in September effectively **ended** the possibility of the Biden administration's rule from taking effect that would have **barred** most employment noncompetes agreements. The FTC has instead adopted a case-by-case approach, targeting specific instances where restrictions are overly broad.

Employers should expect continued scrutiny of worker mobility restrictions and ensure that any contemplated noncompetes — particularly in the context of M&A transactions, as such agreements are required to be submitted with HSR filings — are narrowly tailored to protect legitimate business interests.

Proxy Voting

Proxy voting practices are becoming increasingly fragmented and diversified, making shareholder vote outcomes less manageable and less predictable.[5]

Recent changes heighten the importance for companies of regular engagement with their major shareholders to understand their views and priorities, a process that has become more nuanced since the U.S. Securities and Exchange Commission, on Feb. 11, announced changes regarding Schedule 13G eligibility.

Also, with less predictable voting by major shareholders, companies with a significant retail base should formulate plans to understand who these shareholders are and how they can be reached.[6]

Regulation of Proxy Advisory Firms

On July 1, the U.S. Court of Appeals for the District of Columbia Circuit, concluding that proxy voting advice does not constitute proxy "solicitation" under Section 14 of the Securities Exchange Act, **affirmed** a lower court decision vacating proposed SEC regulation of certain proxy advice. Certain states, however, continue to consider state regulation of proxy advisory firms.[7]

2025 Delaware Developments

Delaware General Corporation Law Amendments

The critical event of the year in Delaware was the March **enactment** of amendments to the Delaware General Corporation Law, which were designed to stem interest in reincorporation from Delaware to other states after a number of Delaware court decisions surprised practitioners and highlighted judicial skepticism of corporate controllers and boards.

The amendments in S.B. 21 create new safe harbors for conflicted transactions, limit who may be considered a company controller, provide enhanced presumptions of director independence and make it more difficult for shareholders to obtain access to corporate books and records to investigate possible corporate wrongdoing.

The Delaware courts have yet to interpret the amendments, pending resolution of a lawsuit challenging their constitutionality. The Delaware Supreme Court **heard** oral argument in the case, Rutledge v. Clearway Energy, on Nov. 5, and a decision is expected in early 2026. If found to be constitutional — as is generally expected — the amendments promise to alter the Delaware legal landscape relating to M&A and private equity transactions.[8]

DExit

While the effect of the DGCL amendments on DExit remains to be seen, there continues to be much discussion in boardrooms and beyond about reincorporation to other states, but so far, there has been little movement of companies from Delaware. Those companies that have left almost exclusively have been controlled companies — or companies with highly concentrated ownership — and most of them have been in the technology or other disruptor- or innovation-type space.

Since the beginning of February, when the new DGCL amendments were proposed, only 18 Delaware public corporations — four of which are controlled by the Dolan family and one by the Trump family — have reincorporated to other states: 12 to Nevada; three to Texas; and one each to Florida, Indiana and the Cayman Islands.

We expect that future moves also will be by controlled corporations, perhaps when motivated by a desire for more flexibility for future conflicted transactions, for example, to award a CEO-controller an outsized compensation package.[9]

Buyer Aiding and Abetting Liability

The Delaware Supreme Court, in its Dec. 2, 2024 **decision** in In re: Mindbody Inc. Stockholder Litigation and June 17 **ruling** in In re: Columbia Pipeline Group Merger Litigation, established an even higher bar than applied before for third-party buyer aiding and abetting liability for sell-side breaches of fiduciary duties.

Per the court, the buyer must have had actual knowledge of the breaches, have encouraged or exploited those breaches, and have had actual knowledge that its own conduct was wrongful.

With the Supreme Court's reversal of Mindbody and Columbia Pipeline, there has still been no case in which a buyer has been held to have aiding and abetting liability for sell-side fiduciary breaches.

In its June 3 decision in Wei v. Levinson, the Delaware Court of Chancery **stressed** that significant concessions Amazon.com Inc. made on deal terms during its negotiations to acquire Zoox Inc. supported a conclusion that, whether Amazon had been aware of the alleged sell-side conflicts, it had not tried to create or exploit them. Thus, to help protect against aiding and abetting claims, buyers should document the concessions they make during negotiations.

Appraisal

This year saw a resurgence of appraisal cases. Forty-one cases were filed in 2025, while there were only two in 2023 and 15 in 2024.[10]

Appraisal cases dropped off after the Court of Chancery held in several cases, almost a decade ago, that deal price, adjusted downward to exclude the value of expected merger synergies, was the best measure of appraised value. As a result of these decisions, the average appraisal award from 2017 to 2022 was about 8% below the deal price, while from 2006 to 2016 it had been about 27% above the deal price.[11]

Almost all of the 2025 cases have been brought by hedge funds in connection with controller transactions. As the new DGCL amendments reduce the likelihood of the success of claims based on breach of fiduciary duties in conflicted transactions, we expect the uptick in appraisal cases in this context to continue.

Board Minutes

The Court of Chancery's Oct. 2 decision in Sjunde AP-Fonden v. Activision Blizzard Inc., also known as Activision II, is yet another in a series of cases in which the Court of Chancery has concluded, based on the absence of discussion of board decisions in the minutes, that the board never considered certain issues.

In this case, the minutes did not provide reasons for key sale process decisions, including whether an allegedly conflicted CEO should lead the sale process, whether the range for price negotiations that the CEO set was appropriate, and whether an allegedly conflicted financial adviser should be engaged.

The decision highlights the importance, generally, for a board to establish a record in board minutes as to the issues the board addressed and the reasons for the board's decisions.

Extension of Merger Agreements

Activision II also **underscores** that, generally, a target company's decision to agree to extend a merger agreement past its termination date should be made with the same rigor as is required for an initial decision to enter into a merger agreement.

The court, in a pleading-stage decision, found it reasonably conceivable that Activision Blizzard's decision to extend its merger agreement with Microsoft Corp. may have been infected by the same fiduciary breaches alleged with respect to its initial decision to approve the merger agreement — namely, a failure of board oversight of the sale process that was being led by a potentially conflicted CEO.

Although the court assumed that the full board was independent and disinterested, and although the merger agreement was approved by the stockholders, it held that Corwin cleansing, derived from the Delaware Supreme Court's 2015 decision in Corwin v. KKR Financial Holdings LLC, was unavailable for any such fiduciary breaches, as the stockholders had not separately voted to approve extending the merger agreement.

Caremark Liability

In Brewer v. Turner, the Court of Chancery on Sept. 29 arguably **took** a more expansive view of potential Caremark liability, derived from its seminal 1996 decision in In re: Caremark International Inc. Derivative Litigation, than it has previously with respect to board oversight of a corporation's legal compliance.[12]

The critical factor for the court was that the board may have purposefully continued alleged illegal practices — for 18 months — after becoming aware of the illegality, as it did not want to end them until a plan was developed to replace profits that would be lost.

The decision underscores the importance of addressing legal noncompliance issues in a timely manner. We note also that it may now become more difficult for plaintiffs to assert Caremark claims in light of the new DGCL amendments' provisions that restrict stockholder access to books and records, under Section 220 of the DGCL, to investigate possible corporate wrongdoing.

Earnouts

Earnouts continue to be used frequently to bridge valuation gaps and provide incentives for selling executives' postclosing performance. At the same time, they continue, almost invariably, to raise postclosing disputes, not infrequently leading to litigation.

The 2025 earnout decisions underscore, again, the importance of carefully drafted earnout provisions that are highly tailored for the specific business, industry and circumstances.

Based on the Court of Chancery's July 31 **decision** in Arthur J. Gallagher & Co. v. Agiato, earnout parties should consider expressly stating whether, in addition to milestones being met, payment of the earnout is, or is not, conditioned on the seller's compliance with contractual obligations in the acquisition agreement or an employment agreement.[13]

Based on the Court of Chancery's June 11 **decision** in Shareholder Representative Services LLC v. Alexion Pharmaceuticals Inc., earnout parties may want to consider setting forth in the merger agreement more specific parameters for determining damages — and, potentially, agreed estimates of the likelihood of probability of each milestone.[14]

Indemnification

The Delaware Supreme Court's April 28 **decision** in Thompson Street Capital v. Sonova U.S. Hearing Instruments serves as a reminder that noncompliance with contractual requirements for an indemnification claim notice may or may not result in forfeiture of the indemnification right, depending on the specific agreement language and the specific circumstances.[15]

The Delaware Supreme Court's April 22 **decision** in LGM Holdings v. Schurder underscores that indemnification provisions should be drafted to be clear as to whether, and how, an indemnification cap is, or is not, applicable to alleged fraud based on preclosing conduct.[16]

Further, the Court of Chancery's Feb. 20 decision in Dura Medic Holdings Inc. Consolidated Litigation highlights that merger parties should consider specifying in their agreement whether damages must — rather than can — be calculated based on a multiple, linking specific multiples to specific representations and warranties, and stating what multiple should be used.[17]

Purchase Price Adjustments

In Northern Data AG v. Riot Platforms Inc., the Court of Chancery held on June 2 that a purchase price adjustment provision requiring that the adjustment be made, pursuant to generally accepted accounting principles applied consistently with the target company's past practices, required, as a threshold matter, that GAAP principles be utilized.

Thus, if the company's historical practices did not comply with GAAP, then the GAAP-compliant principle that most closely aligned with the historical practice should have been utilized.

In this case, the court determined that there was only one GAAP-compliant approach and, therefore, it should be applied, even if inconsistent with the historical practices and the illustrative closing statement.

The decision highlights that parties should consider whether to delineate in their agreement specific parameters for the principle of GAAP consistently applied with historical practices.

SPACs

In In re: TS Innovation Acquisitions Sponsor, the Court of Chancery on July 9 narrowed the class for settlement of a multiplan claim, i.e., a claim that redemption rights held by public stockholders of a SPAC were impaired.

The court held that the appropriate class was persons who held shares between the record date and the closing date, as well as their successors in interest, but only successors in interest "who obtained shares 'by operation of law'" — i.e., an heir would be included, but not a person who had received shares through a voluntary transaction such as a sale or gift of stock.

Conclusion

2026 promises further interesting developments, particularly with respect to the new DGCL amendments. We expect to see a surge of controller transactions as the boundaries of the new safe harbors for conflicted transactions are tested and the Delaware courts issue decisions interpreting and applying the amendments.

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[1] According to a Sept. 15, 2025, report by PwC, analyzing S&P Global Market Intelligence, powered by AI-driven M&A and PE exits, through Sept. 5 there were 144 large deals worth between $1 billion and $5 billion and 47 megadeals (over $5 billion), putting 2025 on pace to be the strongest year for number of large deals since 2021 and the second-strongest year for such deals in history. The report notes that about one-quarter of the large deals had an AI-related theme.

[2] According to a Dec. 3, 2025, report from The Conference Board, using data from ESGUAGE, activism campaigns against Russell 3000 companies have more than tripled since 2018, peaking at over 400 campaigns in 2024, before easing to about 300 campaigns in 2025.

[3] Examples include Paramount's unsolicited bid for Warner Bros. Discovery following an announced deal between Warner and Netflix; the unsolicited bid by a consortium led by Elon Musk for OpenAI; and the unsolicited bid by Perplexity AI for Google Chrome.

[4] According to the Arc Group, based on SPAC Insider data, there were almost 100 SPAC IPOs on senior U.S. Stock exchanges over the first three quarters of 2025, raising approximately $20.76 million. By contrast, in 2024, there were 57 SPAC IPOs, raising $9.7 million, and, in 2023, 31 SPACs raised $3.9 million in proceeds.

[5] Certain major passive fund managers have been implementing and expanding a pass-through voting option, allowing more investors to indicate preferences for how their votes will be cast. BlackRock, Vanguard and State Street are forming internal teams that will take different investment approaches for clients based on the client's own investment style (active, passive, or sustainability-focused)—thus, on the same issue, the asset manager may vote shares differently across funds. Proxy advisory firm Glass Lewis announced that, beginning in 2027, it will no longer provide proxy voting advice based on a single set of "benchmark" policies; but instead, will allow its clients to select the "research lens" that best aligns with its own voting policies and strategic objectives (management-aligned; governance-fundamentals; active ownership; or sustainability).

[6] Of note, ExxonMobil, after receiving a no-action letter from the SEC, introduced an automated voting option that allows its retail investors to automatically cast ballots at annual meetings in line with the board's recommendations.

[7] In June 2025, Texas passed a bill requiring that, with respect to proxy advice to companies incorporated or headquartered in Texas, the proxy firm and those companies must disclose when the advice is based in part on "nonfinancial" factors (including ESG or DEI considerations) and that the

advice therefore may not be in the financial interest of the company's equity investors. ISS and Glass Lewis have challenged the law in federal court, and its enforcement has been preliminarily enjoined pending resolution of the case. Trial is set for February 2026. Similar initiatives are being pursued or considered in other states. Such laws would raise significant issues for proxy firms and their clients, including potential legal liability for companies receiving proxy advice that states that it may not be in the financial interest of the company's equity investors.

[8] For a summary of the Amendments, see The New DGCL Amendments: Implications, Observations, and Practice Points, Fried Frank M&A/PE Quarterly (March 2025). https://www.friedfrank.com/news-and-insights/m-a-pe-quarterly-april-2025-12343#A24.

[9] The Delaware Supreme Court, in Maffei v. Palkon (Feb. 4, 2025), facilitated reincorporations from Delaware, holding that a decision to reincorporate is not subject to entire fairness review if made on a clear day (i.e., when lower fiduciary standards in the new state would not provide directors or a controller with a "imminent" benefit but only a "hypothetical" future benefit).

[10] According to data from Lex Machina.

[11] According to data from Cornerstone Research.

[12] Notably, the court found, at the pleading stage, that a whistleblower complaint constituted a "red flag" for legal noncompliance (the whistleblower was a disgruntled former executive, but his job had included legal oversight and the complaint was detailed and specific as to the alleged illegality); that a delayed response in fixing the legal noncompliance may have constituted bad faith (given the focus on corporate profits); and that regulatory fines were a sufficient corporate trauma to invoke Caremark liability (although the size of the company and the financial impact of the fines on the company were not discussed).

[13] The court, at the pleading stage, ordered the buyer to pay the earnout notwithstanding its claims that the seller did not fulfill his obligations under the acquisition agreement and had breached his post-closing employment agreement. The court stressed that the acquisition agreement expressly conditioned payment of the earnout only on certain milestones being met (which they were) and not on the seller's compliance with his contractual obligations or continued employment. Notably, the court viewed provisions stating that the acquired business would be run in accordance with the buyer's past practices and for the benefit of the buyer's shareholders as expressing rights of the buyer but not imposing obligations on the seller (who ran the company post-closing).

[14] The court (now for the second time in a life sciences deal) determined damages for breach of an earnout efforts obligation based on a complex "conditional probability" mathematical analysis that took into account that the achievement of each milestone was to some extent dependent on the success of the prior milestones.

[15] Sellers, to bolster their ability to enforce indemnification claim notice requirements, should consider negotiating to include provisions stating that: noncompliance with the notice requirements will result in forfeiture of the indemnification right; the notice requirements are a material part of the agreement; and forfeiture of the indemnification right due to noncompliance with the notice requirements will not cause a "disproportionate forfeiture" excusing the noncompliance. Buyers should negotiate for the opposite, and should seek to ensure that the drafting provides sufficient flexibility in the event the buyer lacks sufficient information by the notice deadline to include the required details with respect to the claim.

[16] The Supreme Court, reversing the Superior Court, held that an agreement provision that set a cap of $6 million on indemnification was ambiguous. The buyers asserted that the cap was not applicable to their fraudulent-inducement claim, as the cap applied only to post-closing conduct and the fraudulent-inducement claim arose from pre-closing conduct. The sellers argued that the cap provided a maximum amount for recovery, which the buyers could not circumvent by disguising an indemnification claim as a separate action for fraud. The Supreme Court found both interpretations were reasonable and remanded the case for discovery with respect to the parties' intended meaning.

[17] The merger agreement expressly permitted damages for breaches to be based on "a multiple of earnings, revenue or other metric," but did not state that they had to be based on a multiple, nor

when they would have to be, nor what multiple should be used. The court decided that applying a revenue-based multiple would be appropriate with respect to the misrepresentations at issue as they affected revenue, and as the buyer had determined the price for the business based on a multiple of revenue. The court applied the multiple the buyer had used to determine the price.

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InnovAge Investors Get Final OK For $27M Deal, Atty Fees

By **Katryna Perera**

Law360 (December 18, 2025, 8:07 PM EST) -- A Colorado federal judge has granted final approval to a $27 million settlement between InnovAge Holding Corp., its underwriters and a class of stockholders accusing the senior healthcare company of making misleading statements in an initial public offering that later caused stock prices to tank after a government audit exposed the falsehoods.

U.S. District Judge William J. Martínez issued an **order** Wednesday granting final approval, finding the agreement to be fair, reasonable and adequate.

"The court has been particularly impressed by the lawyers litigating this case, and most notably the exceptional results achieved by plaintiffs' counsel in this litigation," the judge wrote. "The briefs and arguments from all parties were particularly well-written and were very helpful to the court in resolving this complex case."

He also awarded class counsel from Cohen Milstein Sellers & Toll PLLC $5.4 million in attorney fees and $339,000 in litigation costs, along with a $15,000 service award each to lead plaintiffs the El Paso Firemen & Policemen's Pension Fund, San Antonio Fire & Police Pension Fund and Indiana Public Retirement System.

The lawsuit alleged that when InnovAge launched its initial public offering in March 2021, its shares were priced at $21 and rose to $25.98 within another week. But when the Centers for Medicare & Medicaid Services shut down an InnovAge center in California six months later — based on a finding the company had "substantially failed" to provide participants with the services covered by the federal Program of All-Inclusive Care for the Elderly — the company's stock quickly fell from $14 a share to $6.76, according to the complaint.

The company later disclosed that the CMS and the state of Colorado suspended enrollment at all InnovAge centers in Colorado, accounting for more than half the company's revenue, based on patient care deficiencies "mostly or partially prior to the IPO," the suit said.

That prompted stock prices to fall another 36%, a 78% decline from the March 2021 IPO, the shareholders asserted.

The IPO's underwriters, including J.P. Morgan Securities LLC and Barclays Capital Inc., are also party to the recent settlement and were accused by investors of failing to flag problems in InnovAge's business.

The shareholders are represented by Julie G. Reiser, Molly Bowen, Jan E. Messerschmidt, Brendan R. Schneiderman, Carol V. Gilden and Manuel J. Dominguez of Cohen Milstein Sellers & Toll PLLC and Cecil E. Morris Jr. and Adrian P. Castro of Fairfield & Woods PC.

The underwriter defendants are represented by Mary Eaton, Nicholas A. Caselli and Abhinaya Swaminathan of Freshfields LLP.

InnovAge Holding Corp. and related defendants are represented by Karen Patton Seymour and Diane L. McGimsey of Sullivan & Cromwell LLP and Peter Kurtz and Matthew D. Benedetto of WilmerHale.

The case is El Paso Firemen & Policemen's Pension Fund et al. v. InnovAge Holding Corp. et al., case number 1:21-cv-02770, in the U.S. District Court for the District of Colorado.

--Additional reporting by Sydney Price. Editing by Covey Son.

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Nonclass Attys' $75M Fee Request Too High, Anthropic Says

By **Adam Lidgett**

Law360 (December 18, 2025, 4:43 PM EST) -- Anthropic says the $75 million in fees that nonclass counsel requested as part of the artificial intelligence company's $1.5 billion copyright settlement with authors is far too high, arguing there is "scant justification" for the request.

Attorneys representing authors who agreed to the deal — which would bring an end to the suit claiming Anthropic infringed copyrights by training its models with pirated books — **earlier this** month asked the court for $300 million in fees. But the company on Thursday took issue with the $75 million of that amount that would go toward nonclass counsel at firms including Cowan DeBaets Abrahams & Sheppard LLP, Edelson PC and Oppenheim & Zebrak LLP.

Anthropic said "there is scant justification or substantiation for the extraordinary fees sought by non-class counsel" compared to the percentage class counsel at Susman Godfrey LLP and Lieff Cabraser Heimann & Bernstein LLP asked for. Nonclass counsel "took on none of the risk in this case and their claimed hours are excessive," according to Anthropic.

The company said while it didn't take a position on what exactly should be awarded in fees, the award for nonclass counsel should be reduced, which would allow each member of the class to get a higher payout.

"Anthropic notes that a significant body of case law calls into question counsel's proposal to use a benchmark percentage as the primary method to determine the fees in the context of a 'megafund' settlement like this," Anthropic said.

The case, launched by a group of authors **last year**, claimed Anthropic unlawfully used their books to train the artificial intelligence program behind the company's chatbot, Claude.

U.S. District Judge William Alsup ruled in June that the books Anthropic legally purchased could fall under **fair use**, but said the class **could proceed** on claims that the startup had pirated large numbers of books.

In September, the parties announced that they had struck a deal **to settle** the litigation for $1.5 billion.

In their motion for $300 million in attorney fees, the attorneys who represented the authors told the court that they had devoted more than 18,000 hours to the case and also obtained significant nonmonetary relief in the form of the destruction of the pirated book datasets that Anthropic had obtained from online book collections LibGen and PiLiMi.

"Anthropic's filing has nothing to do with the class action, it is a strategic filing intended to throw mud at the law firms that have other cases which seek to require Anthropic to abide by the law," Matthew J. Oppenheim of Oppenheim & Zebrak LLP, the publishers' coordinating counsel, said in a statement to Law360 on Thursday. "Everyone involved in the class action knows well that O+Z and Edelson were critically involved in negotiating the $1.5 billion settlement, and bringing the authors and publishers together to make this difficult settlement a reality. Anthropic cannot rewrite that history."

Counsel for Anthropic declined to comment.

The authors are represented by Justin A. Nelson, Alejandra C. Salinas, Rohit D. Nath, Michael Adamson, Jordan W. Connors, J. Craig Smyser and Samir Doshi of Susman Godfrey LLP, Rachel Geman, Jacob S. Miller, Danna Z. Elmasry, Daniel M. Hutchinson, Jallé H. Dafa, Amelia Haselkorn and Betsy A. Sugar of Lieff Cabraser Heimann & Bernstein LLP, Scott J. Sholder of Cowan DeBaets Abrahams & Sheppard LLP, Jay Edelson of Edelson PC, and Matthew J. Oppenheim of Oppenheim & Zebrak LLP.

Anthropic is represented by Kathleen R. Hartnett, Ephraim A. McDowell and Alexander J. Kasner of Cooley LLP, Daralyn J. Durie, Ramsey Fisher, Whitney Rose O'Byrne, Fitz Beckwith Collings and Aditya Vijay Kamdar of Morrison Foerster LLP, and Douglas A. Winthrop, Joseph Farris, Jessica L. Gillotte, Ryan M. Nishimoto, Oscar Ramallo and Allyson C. Myers of Arnold & Porter Kaye Scholer LLP.

The case is Andrea Bartz et al. v. Anthropic PBC, case number 3:24-cv-05417, in the U.S. District Court for the Northern District of California.

--Additional reporting by Rae Ann Varona, Theresa Schliep, Elliot Weld and Gina Kim. Editing by Linda Voorhis.

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Theta, CEO Accused Of Crypto Fraud In Whistleblower Suits

By **Katryna Perera**

Law360 (December 18, 2025, 7:14 PM EST) -- Two whistleblower complaints have been filed against Sliver VR Technologies, its blockchain subsidiary Theta Labs Inc. and their CEO, alleging they ran pump-and-dump and other fraud schemes to artificially inflate the company's token prices.

Two former employees of Sliver VR filed the complaints Monday in California state court against Sliver VR, Theta and CEO Mitchell Liu, claiming that the companies ran several fraudulent schemes and that Liu and other employees and executives engaged in self-dealing.

The former employees, Jerry Kowal and Andrea Berry, allege they were retaliated against and terminated by Liu after reporting illegal conduct.

According to the complaints, Kowal worked as Sliver VR's head of content beginning in March 2020, and Berry joined Sliver VR as its head of business development in 2022. Both suits state they were offered base salaries and performance-based bonus targets that were "based on the value" of Theta tokens.

However, while in their respective roles, the plaintiffs claim, they observed Liu, Sliver VR and Theta manipulate cryptocurrency markets and engage in deceptive practices "to allow Liu to enrich himself at the direct expense of his own employees, the unsuspecting public, and other investors — all of whom who placed their trust in Liu."

According to Kowal, Liu allocated to himself vast "marketing reserves" of Theta tokens, which he then secretly dumped, causing their market values to plummet by over 90%, causing significant losses to employees who invested in the tokens and other investors.

"This pattern of misconduct extended to other 'subchain' projects … and included market manipulation tactics such as generating false bids for nonfungible tokens, even those associated with high-profile partnerships like celebrity Katy Perry, leveraging public trust and celebrity endorsement to mislead the public into believing it was a legitimate venture/auction," Kowal's **complaint** states.

Berry alleges that when Liu wanted to pump the value of Theta tokens, he would announce fake and misleading partnerships with high-profile companies, when in reality, many of the so-called partnerships were nothing more than licensing deals, which allowed Theta to use the company's name in return for overpaying to license content or the company name.

"In some cases, the 'partnerships' were simply nothing more than cash payments by Theta to these companies," Berry's **complaint** states.

According to the complaint, in one instance, Theta announced a "partnership" with Google. But Berry says that in actuality, Theta spent $7 million on Google Cloud Products and agreed to use GCP as part of its network.

"Theta, in reality, was a customer of GCP, nothing more," the complaint states.

Both Kowal and Berry also claim they experienced self-dealing by other Theta or Sliver VR employees or executives, and when they raised their concerns to Liu, he sidelined them and eventually forced them out of their positions.

Berry further alleges that Theta is not the first company founded by Liu that engaged in illegal conduct. According to her complaint, in 2007, Liu founded Offerpal, a virtual currency monetization platform. Two years after its founding, the complaint states that a TechCrunch exposé called out Offerpal as a hub for deceptive promotions and other scams.

In a statement to Law360 on Thursday, Mark Mermelstein of Holmes Athey Cowan & Mermelstein LLP, counsel for Kowal, said: "Mitch Liu used Theta Labs as his personal trading vehicle, perpetrating fraud, self-dealing, and market manipulation. His calculated 'pump-and-dump' schemes repeatedly wiped out employee and investor value. This suit is about demanding accountability and proving no one is above the law."

The defendants could not immediately be reached for comment Thursday.

Kowal is represented by Mark Mermelstein of Holmes Athey Cowan & Mermelstein LLP, and Peter L. Steinman and Melinda H. Lewis of Michelman & Robinson LLP.

Berry is represented by Julian Burns King, Robert J. King and James Baker of King & Siegel LLP.

Counsel information for the defendants was not immediately available.

The cases are Kowal v. Sliver VR Technologies et al., and Berry v. Sliver VR Technologies et al., no case numbers, in the Superior Court for the State of California for the County of Los Angeles.

--Editing by Amy French.