

Klarna faces investor lawsuit

 [paymentsdive.com/news/klarna-faces-investor-lawsuit/808753](https://www.paymentsdive.com/news/klarna-faces-investor-lawsuit/808753)

Patrick Cooley

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The buy now, pay later company understated the risks of its consumer loans, the legal action alleges.

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A Klarna Group banner and CEO Sebastian Siemiatkowski outside the New York Stock Exchange. Courtesy of Klarna Group

Buy now, pay later company Klarna Group was sued in federal court by a shareholder last month in a complaint that seeks class action status.

The lawsuit lodged in U.S. District Court for the Eastern District of New York alleges that investors suffered losses when the Klarna's stock declined after a September initial public offering. The stock drop followed the company's failure to disclose "material adverse facts" in its prior filings regarding the stock sale.

A spokesperson for Klarna said: "We believe the allegations lack merit. We do not have any further comment at this stage."

Klarna was founded in Sweden in 2005. The company is led by CEO Sebastian Siemiatkowski, a founder who was also named as a defendant in the lawsuit.

The London-based company understated the risks associated with its business, failing to disclose that many of its customers are "experiencing financial hardship," according to the Dec. 22 complaint filed by the New York-based Rosen Law Firm.

"Since the IPO, and as a result of the disclosure of material adverse facts omitted from Klarna's Registration Statement, its share price has fallen substantially below its IPO price, damaging Plaintiff and Class members," the lawsuit said.

A Sept. 10 prospectus filed on the day of Klarna's initial public offering on the New York Stock Exchange "was materially false and misleading at the time it was made because it materially understated the credit risks involved in lending to Klarna's clients," the complaint says.

Other law firms are also lining up in search of investors who want to sue the company over the stock price drop since the initial public offering last September. They include Kaplan Fox & Kilsheimer; Robbins Geller Rudman & Dowd; and

Portnoy Law.

Klarna had disclosed that the company might incur losses if loans facilitated through its network did not perform as well as expected, according to the prospectus it filed.

Still, Klarna omitted from the document that many of its customers “are not financially sophisticated” and are willing to pay “substantial” interest rates to finance services such as fast food deliveries, according to the complaint.

Klarna said [in a news release in July](#) that the delinquency rate on its loans is below 1%.

Recommended Reading

- [Klarna, Shift4 embrace stablecoins](#)
- [Klarna touts perks to take on banks](#) By [Justin Bachman](#) • Oct. 28, 2025

Securities

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Deep Dive

Investor Arbitration, Class Status, AI Shake Up Securities Bar

Jan. 2, 2026, 2:00 AM PST

Summary by Bloomberg AI

AI Generated



- SEC policy shifts, including a pivot allowing companies to issue stock with mandatory arbitration conditions, may have a lasting effect in securities cases.
- Appeals court rulings on investor class status and actionable company statements are being closely watched, with a potential circuit split developing.
- The rise of artificial intelligence is being reflected in securities litigation, with attorneys expecting more cases involving public AI companies or companies using AI.

SEC policy shifts, rulings on investor class status and actionable company statements, and discussions about the future of artificial intelligence set the pace in 2025 and may have a lasting effect in securities cases in 2026.

A Securities and Exchange Commission pivot allowing companies to issue stock with the condition that disputes must be arbitrated remains one of the year's most talked-about developments in securities litigation. Mandatory arbitration brings the potential to upend that area of practice by handing corporations a new means of avoiding class actions, while raising the specter of mass filings to arbitrators.

Securities litigators are also paying attention to appeals court rulings on efforts to prevent investors from achieving class status. The issue has become more acute as companies seek a second line of defense to lawsuits that survive dismissal attempts, with a potential circuit split developing.

Judges are also applying a 2024 US Supreme Court opinion about disclosure "omissions" which analogized a child's statements about surreptitious cake consumption to suss out when companies speak in actionable "half-truths" and when they make no statements at all.

And the rise of AI has been reflected in securities litigation, attorneys say. It's either going to involve public AI companies or companies using it, said Simpson Thacher & Bartlett LLP's Jonathan Youngwood.

SEC Policy, Impact

The SEC said in September that it's removing a registration statement roadblock for companies with charter and bylaw provisions requiring the arbitration of securities claims. That new view raises more questions than answers, attorneys say.

"We are still waiting to see the full implications—including how many companies take advantage—but this could significantly disrupt securities litigation practice by shifting from federal class claims to individualized arbitral claims," said University of Colorado Law School professor Ann Lipton.

Doug Greene of Baker & Hostetler LLP similarly cautioned against "a knee jerk reaction" that this "would be great for companies" because arbitration is considered more efficient.

But "a lot of traps for the unwary" await with multiple arbitrations filed by plaintiffs and enforceability challenges, he said.

Alexander Drylewski of Skadden, Arps, Slate, Meagher & Flom LLP said he's seen his firm's clients and others "taking a really considered approach to this. They want to be thoughtful about it before they make a decision one way or the other."

Companies that adopt arbitration provisions will lose advantages they have in court, including legal rules, the discovery stay, and the high pleading standard, said plaintiffs' attorney Carol Gilden of Cohen Milstein Sellers & Toll PLLC. "Plus, lawsuits can still be brought in federal court against underwriters and accountants."

Unlike a class action, arbitration won't give companies "total peace," she said. "I would not expect mandatory arbitration to be embraced by companies on a widespread basis."

Lipton said arbitration, if adopted, "would mean less public development of the law, and more opportunities for wealthy investors to extract favorable settlements while smaller investors go uncompensated."

Meanwhile, the first uptake has occurred: a Dallas-based firm that uses Bible verses to search for oil deposits in Israel, Zion Oil & Gas Inc., amended its bylaws Dec. 1 to mandate arbitration.

Another Trump-SEC pivot away from cryptocurrency enforcement actions has created ripples in private litigation that will extend into the new year. What crypto assets courts deem a security will "be met with even more skepticism" than at the end of Biden's administration, Cleary Gottlieb Steen & Hamilton LLP's Matt Solomon said.

Supreme Court Interpretations

The Supreme Court's 2021 decision in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement Sys.* and a 2023 follow-up ruling by the US Court of Appeals for the Second Circuit, dismantling an investor class, are continuing to drive challenges to certification. Federal judges are interpreting the high court's ruling over a "mismatch" nationwide.

Defendants cite a *Goldman* mismatch between alleged misstatements and news spurring selloffs to undercut a presumption that a class of investors relied on a company's stock price. The Third and Ninth circuits have respectively upheld classes of Johnson & Johnson and Zillow Group Inc. shareholders while considering *Goldman*.

The Second and Third circuits "have now taken different approaches" on that theory and there's an "emerging circuit split," said Davis Polk & Wardwell LLP's Edmund Polubinski. He expects more appellate considerations next year and "would not be surprised if there were one or more" petitions to the top court.

Meanwhile, omissions questions reached appellate courts in 2025.

The Sixth Circuit undid a class of FirstEnergy Corp. investors in a suit over the company's bribery scandal, finding they couldn't rely on a Supreme Court presumption for omissions cases as this suit was primarily based on alleged misrepresentations. The class bid's being reconsidered by a lower court.

Courts are interpreting the Supreme Court's 2024 decision involving Macquarie Infrastructure Corp. and its cake analogy distinguishing inactionable "pure" omissions from half-truths, said Skadden's Tansy Woan. As a result, "we've seen a lot of courts really, really scrutinize" disclosures, with key decisions favoring investors.

Woan and others highlighted the Second Circuit's reopening a case against Hain Celestial Group Inc., where investors alleged a hidden "channel stuffing" scheme. She also cited Estée Lauder Co.'s failure to shake a class action over allegedly omitted gray-market risks in China when other "secret sauce" ingredients of its success were disclosed.

AI Everywhere

AI suits will continue growing as the technology's rapidly adopted and investors ask pointed questions about how companies are using it, attorneys say. This year saw a surge of investor lawsuits with AI-related claims.

Companies sued for monopolization or price fixing in the AI space might see securities suits over "misleading statements about their core business operation," said plaintiffs' attorney David Scott of Scott & Scott Attorneys at Law LLP. "You're going to see some of that because we're seeing an uptick in those cases from the competition space."

And the tech's sheer proliferation will mean more suits. "You're going to keep seeing AI because there's more AI," said Youngwood.

To contact the reporters on this story: Martina Barash in Washington at mbarash@bloomberglaw.com; Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editors responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com; Andrew Harris at aharris@bloomberglaw.com; Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

Securities

Insight

Event-Driven, AI Cases Dominate 2026 Securities Litigation Field

Jan. 5, 2026, 1:30 AM PST

Looking ahead to 2026, we expect the continued development of the law in the wake of recent US Supreme Court decisions and that event-driven litigation—i.e., litigation that is the result of a disruptive event that causes a company's share price to decline—will continue to be the predominant form of private securities litigation.

Within the broad category of event-driven litigation, the growth of artificial intelligence-related securities litigation and the reasons for that growth merit particular consideration.

AI-related litigation. With the massive growth of artificial intelligence has come massive growth in AI-related securities litigation. There were between six and eight AI-related securities cases each year between 2021 and 2023, followed by 15 such cases in 2024 and 12 more just in the first half of 2025. We expect this trend to continue in 2026.

One of the reasons for this rise is that quantifying AI capabilities and measuring AI performance present a fundamental challenge for public companies. Securities litigation typically follows when optimistic projections cross the line into potentially actionable misrepresentations or when companies fail to adequately disclose potential limitations and risks of AI capabilities.

In one recent case, the court held that statements that an AI model was a “fairly magical thing” were inactionable because they were “loosely optimistic statements that cannot be objectively verified,” but that claims arising from statements about the “significant advantage” of the AI model over “traditional FICO-based models” and its ability to “respond very dynamically” to macroeconomic changes were actionable material misstatements.

The court reasoned that these statements about the advantages of the AI model were actionable because they were sufficiently specific, material, and verifiable. Other courts might have found all those statements inactionable puffery or might have (incorrectly in our view) determined that even the “fairly magical thing” statement was potentially actionable. For the foreseeable future, there will be considerable uncertainty about which AI-related statements courts will determine are potentially actionable.

As AI-related securities litigation continues its upward trajectory, companies should be mindful that what may seem like standard marketing language about AI capabilities may be understood by courts to be verifiable statements of fact. The ability of companies to document the basis for any quantifiable statements about AI capabilities or performance could play a critical role in defeating this type of litigation.

Potential for mandatory arbitration provisions in organizational documents. On Sept. 17, 2025, the Securities and Exchange Commission published a policy statement clarifying that the inclusion of mandatory arbitration provisions in a company's organizational documents won't influence the SEC's decisions about whether to accelerate effectiveness of a company's registration statement.

However, whether this change will lead a significant number of companies to include such provisions in their organizational documents is uncertain. So far, at least one company has included such a provision. On Dec. 1, Zion Oil & Gas Inc. amended its bylaws to state that "Article XI includes a mandatory arbitration provision for claims under the federal and state securities laws of shareholder claims."

Now the ball is in the court of Zion's shareholders to decide whether to bring a lawsuit challenging the amended bylaw. One plaintiff-side securities litigator joked soon after the SEC published its policy statement that draft complaints already had been prepared and were merely awaiting the name of the defendant, so any such lawsuit may be filed in the near future. If such litigation does occur in 2026, it has the potential to reshape where and how securities cases are litigated for decades to come.

Dressing up securities claims as RICO claims. The Private Securities Litigation Reform Act provides that "no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities" to establish a Racketeer Influenced and Corrupt Organizations Act violation.

A recent petition for certiorari asks the US Supreme Court to resolve a circuit split over the applicability of this PSLRA bar to a civil Racketeer Influenced and Corrupt Organizations Act claim brought by a plaintiff who could not have successfully brought a securities fraud claim but arising from conduct that would have been actionable as securities fraud by a different potential plaintiff. In the case at issue, the RICO plaintiffs were bondholders who alleged that the purported misrepresentations and omissions induced them to hold (rather than to purchase) their securities.

The RICO plaintiffs in that case couldn't have successfully brought a securities claim because there is no judicially inferred private right of action for mere holders of securities (as opposed to purchasers). The US Court of Appeals for the Eleventh Circuit held that the PSLRA bar didn't apply. The cert petition argued that the Eleventh Circuit's ruling conflicts with the decisions of other circuit courts, including the US Court of Appeals for the First Circuit, which has held that "the better read of the [PSLRA bar] bars reliance on conduct actionable as securities fraud, regardless of who could have brought such an action."

This case could have significant ramifications. If the Supreme Court doesn't grant cert, creative lawyers may seek to identify plaintiffs who lack standing to bring a securities case and to try to assert RICO claims on their behalf in the Eleventh Circuit (or in other jurisdictions where courts haven't yet adjudicated this issue). RICO doesn't impose the same heightened pleading standard set out in the PSLRA, allows for aiding and abetting liability, and offers the possibility of potential treble damages, making RICO cases potentially attractive to creative plaintiffs' lawyers.

And of course, if the Supreme Court does agree to hear the case, any decision would significantly affect how securities claims are litigated in the future.

We expect that by the end of 2026, companies will have a better sense of what they can and can't say about AI capabilities and limitations, whether they should try to include mandatory arbitration provisions in their organizational documents, and whether they need to worry about potential RICO liability for alleged misrepresentations or omissions.

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Author Information

Samuel P. Groner is a partner at Fried Frank focused on securities litigation, shareholder and derivative litigation, and corporate disputes.

Katherine St. Romain is a partner at Fried Frank focused on securities litigation, complex commercial litigation, white collar criminal and regulatory matters, and corporate investigations.

Elizabeth Kalanchoe is an associate at Fried Frank and focuses on representing corporations, boards of directors, special committees, and individuals in a broad array of securities and shareholder disputes.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Jada Chin at jchin@bloombergindustry.com; Jessica Estepa at jestepa@bloombergindustry.com

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Federal Court Securities Suit Filings Declined Slightly in 2025

K [dandodiary.com/2026/01/articles/securities-litigation/federal-court-securities-suit-filings-declined-slightly-in-2025](https://www.dandodiary.com/2026/01/articles/securities-litigation/federal-court-securities-suit-filings-declined-slightly-in-2025)

Kevin LaCroix

January 4, 2026

After two consecutive years in which the annual number of federal court securities class action lawsuit filings increased, the number of federal court securities class action lawsuit filings decreased slightly in 2025 compared to 2024, to the lowest level since 2022. The number of federal court securities class action suit filings during past year reflected the impact of several ongoing securities lawsuit filings trends, such as the new lawsuit filings relating to artificial intelligence (AI) and cryptocurrencies. The slight decline in the annual number of filings reflects the diminishing impact of certain long-term trends that waned during the year, as discussed below.

The Importance of Securities Suit Filing Trends

D&O insurers closely track the annual number of securities class action lawsuit filings. The number of annual filings can provide some indication of insurers' ultimate loss costs during the year. The current year's filing patterns can also inform the insurers' efforts to try to determine the profit-making price for their D&O insurance products.

The Annual Number of Filings

According to my tally, there were 205 federal court securities class action lawsuit filings in 2025, compared to 222 in 2024, representing about a 7% decrease. The 205 federal court securities suit filings in 2025 represent the lowest annual number of securities suit filings since 2022, when there were 197 federal court securities class action lawsuit filings.

Please note that these annual figures reflect only federal court securities suit filings; the numbers do not include state court securities class action lawsuit filings. Please also see the endnote below with respect to my counting methodology.

The Impact of Long-Term Filing Trends

The 2025 federal court securities suit filings total reflects a number of continuing securities lawsuit filing trends. For example, of the 205 federal court securities suit filings during the year, 14 involved artificial intelligence-related allegations, representing about 7% of all securities suit filings during the year. Similarly, there were eight crypto-related securities lawsuit filings, representing about 4% of all 2025 federal court securities lawsuit filings.

On the other hand, a number of long-term securities lawsuit filings trends that contributed to the number of filings in recent years appeared to have tailed off during 2025, arguably contributing to the decline in the overall number of federal court securities lawsuit filings during the year compared to the year prior.

Thus, for example, while there were 16 COVID-related securities lawsuit filings during 2024, during 2025, there were only three COVID-related suit filings (and none at all after early July, suggesting that perhaps this long-term filing trend may finally have run its course). Similarly, during 2024 there were nine SPAC-related securities suit filings, while during 2025, there only five SPAC-related filings, and no SPAC-related filings at all after April 2025.

Merger Objection Lawsuits

According to my tally, there were only three federal court M&A-related securities class action lawsuit filings during 2025, meaning that there were 202 “core” or “traditional” filings during the year. The number of federal court securities class action lawsuits has declined significantly since the 2016-2020 time frame, resulting in a significant decrease in the overall number of federal court securities suit filings since that time. It is important to note that federal court merger objection securities suits continue to be filed; however, in more recent years, plaintiffs’ lawyers, for tactical reasons, have chosen to file these actions as individual lawsuits rather than as class actions, and as a result, these filings do not show up in the class action filing numbers.

Place of Filing

The 2025 federal court securities class action lawsuit filings were first-filed 36 different federal district courts. The federal court with the highest number of first-filed securities suit complaints in 2025 was the Southern District of New York, which had 49 class action lawsuit filings during the year, representing about 24% of all 2025 filings. The district courts with the next highest number of first-filed securities suit complaints were the Northern District of California (23) and the District of New Jersey (14).

Of the 205 federal court securities class action lawsuits filed in 2025, a total of 64 were filed in district courts in New York, representing more than 31% of all 2025 federal court securities suit filings, and 41 were filed in district courts in California, representing about 20% of all 2025 federal court securities lawsuit filings. A total of 105 federal court securities suits were first-filed in either California or New York federal district courts, representing over half (51.2%) of all 2025 federal court securities suit filings.

Industries Targeted

The 2025 federal court securities class action lawsuit filings were filed against a wide variety of different kinds of companies. The 205 federal court securities class action lawsuits were filed against companies in 85 different [Standard Industrial Classification](#) codes. The SIC Code with the highest number of 2025 filings was [SIC Code Category 2834](#) (Pharmaceutical Preparations), which had 29 federal court securities class action lawsuit filings in 2025, representing about 14% of all 2025 federal court securities suit filings.

The SIC Code Industry Group with the most 2025 federal securities suit filings was the [283 SIC Code Industry Group](#) (Drugs), which had 42 securities suit filings, representing about 21% of all 2025 securities suit filings. In addition to the filings in the 283 Industry Group, there were an additional eight securities suits filed in the [384 SIC Code Industry Group](#) (Surgical and Medical Instruments). Together, lawsuit against companies in these two industry groups totaled 50 federal court securities suit filings in 2025, meaning that about one-quarter of the total number of 2025 securities suits were filed against biotechnology and medical device companies.

Companies in the [SIC Industry Group 737](#) (Computer Programming and Data Processing) collectively had 30 securities suit filings in 2025, meaning that lawsuits filed against companies in the high technology industry represented about 15% of all 2025 federal court securities class action lawsuit filings.

A total of 80 securities suits were filed in 2025 against companies in the biotechnology and high-tech industry groups take collectively, meaning that during 2025, lawsuits against these two industry groups represented about 39% of all federal court securities class action lawsuit filings.

Securities Suits Against Non-U.S. Companies

Of the 205 federal court securities class action lawsuit filings in 2025, 33 were filed against companies either organized under the laws of a country outside the United States or that have their principal place of business outside the U.S., representing about 16% of 2025 securities suit filings. The companies named in these suits represented 12 different countries. The countries with the highest number of 2025 securities suit filings were Canada (8), the United Kingdom (7), China (3), Ireland (3), and Israel (3).

Securities Suits Against IPO Companies

Twelve of the 205 2025 federal court securities suit filings involved IPO companies, representing about 6% of all 2025 filings. Of these twelve lawsuits, one represented the IPO class of 2023; six represented the IPO class of 2024; and 5 involved the IPO class of 2025.

Methodology: I count each company that has been sued in a securities class action lawsuit for essentially the same allegations only once, regardless of the number of complaints filed. This counting methodology may differ from the methodology used by other public sources that track securities suit filings, which in turn may cause my tallies to differ from other published tallies.

I count all securities class action lawsuits that are filed, regardless of whether the entity defendant is listed on a U.S. exchange and regardless of whether or not the entity defendant has an SIC Code. This counting methodology may differ from the methodology used by other sources that track securities suit filings, which in turn may cause my tallies to differ from other tallies.

In tracking the securities suit filings, I rely on several different sources, including the Stanford Law School Securities Class Action Clearinghouse; Law360; Justia; and Stanford Securities Litigation Analytics. I audit my tally against other resources periodically throughout the year.

The Top Ten Stories of 2025 Webinar: Please note that on Thursday, January 15, 2025, at 11:00 am EST, my colleagues Marissa Streckfuss, Chris Bertola, and I will be conducting a free, hour-long webinar in which we will discuss The Top Ten D&O Stories of 2025. Registration for this webinar can be found [here](#). I hope you can join us for the webinar. In addition, keep your eyes open for my annual Top Ten blog post, which I will be publishing tomorrow.

Top Travel Pictures of 2025: You may not have seen it over the holidays, but in late December I published a post with review of my top travel pictures of 2025. The post can be found [here](#). I hope readers will take a moment to review the travel pictures post, and I also hope readers will take my up on my invitation to send me their own top 2025 travel pictures. I am hoping to publish a post in the next few days with readers' travel pictures.

Travel Hacks, Gripes and Likes: Readers may also have missed my post over the holidays in which I listed my top travel hacks, gripes, and likes. The post can be found [here](#). I am hoping readers will take a look at the post, and I am also hoping that readers will send me their own travel hacks, which I also hope to publish in a future post.

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Securities

This Week in Chancery Court: Snap and Popwallet, Subnautica Game

Jan. 5, 2026, 2:00 AM PST

Delaware's Court of Chancery will hear post-trial arguments in a \$250 million earnout suit tied to the postponed release of a popular underwater-survival game's next installment. And it will consider Snap Inc.'s motion to dismiss a lawsuit brought by a co-founder of Popwallet Inc., which the social media giant acquired, saying its stockholders were fraudulently induced into the 2021 deal.

Here's what else is on the calendar for Delaware's Court of Chancery and Supreme Court:

Monday: Orlando v. Digital World Acquisition Corp., Del. Ch., No. 2024-0264, oral arguments 1/5/26.

At issue: The ex-CEO of the blank-check company that combined with Donald Trump's social media platform to bring it public is presenting his second request for sanctions and to hold in contempt his old corporation in a legal fee spat. Patrick Orlando's been entangled in multiple court fights related to Trump Media & Technology Group Corp. and the special purpose acquisition company it combined with, Digital World Acquisition Corp. DWAC says it has paid Orlando \$18.1 million, the total undisputed amount of his legal fees, in compliance with a court advancement order. Orlando's asking for a \$50,000 daily fine in the motion to be considered in oral arguments, among other requests, and asserts that disputed fees primarily concern litigation brought by DWAC in Florida.

Court action: Magistrate Christian Wright hears oral arguments in Wilmington, Del.

Trump Media SPAC Brass Unable to Stop Hacking, Breach Suit (1)

Wednesday: Handler v. Centerview Partners Holdings LP, Del., No. 269,2025, oral arguments 1/7/26.

At issue: A former partner at Centerview Partners Holdings LLC appealed a Chancery Court decision dismissing his claims that the firm's founders defrauded him out of his equity stake after he started a rival company. David Handler alleged Centerview breached an oral partnership agreement by denying his stake as he left in 2022 to found Tidal Partners LLC. In a 2024 ruling, the Chancery Court found Handler's title at Centerview was an honorific and he wasn't entitled to the elite merger advisory firm's financial records.

Court action: The Delaware Supreme Court hears arguments in Dover, Del.

Centerview Founders Win Dismissal of Ex-Partner Handler's Claims

Thursday: Guerra vs. Snap Inc., Del. Ch., No. 2024-1009, oral arguments 1/8/26.

At issue: Wright will hear arguments to dismiss a lawsuit brought by Elias Guerra, a co-founder and securityholder representative of Popwallet, on behalf of former stockholders alleging Snap misrepresented how prepared it was for Apple Inc. privacy changes ahead of the acquisition. Snap bought the company for \$20 million in Snap Class A stock and \$5 million in cash. Snap says as a threshold matter, Guerra's barred from pursuing claims in this court by the Securities Litigation Uniform Standards Act, which "prevent litigants from seeking to circumvent the requirements of the federal securities laws." Also, his claims are "largely copied" from a proposed class action in California federal court where most alleged misrepresentations were deemed inactionable, it said. Snap's \$65 million settlement in that suit earned a federal judge's preliminary approval.

Court action: Wright hears oral arguments in Wilmington, Del.

Snap's \$65 Million Investor Settlement Gets Initial Court Nod

Friday: Fortis Adv., LLC. v. Krafon, Inc., Del. Ch., No. 2025-0805, post-trial arguments 1/9/26.

At issue: A South Korean video game studio linked to Chinese tech giant Tencent and three Unknown Worlds Entertainment founders who allege the gaming group sabotaged the release of a franchise's next installment will again argue before the court following a November trial. The former executives' suit says Krafon Inc. held off the release of Subnautica 2 to avoid paying its makers up to \$250 million in bonuses tied to certain revenue targets and pocket the cash itself. Krafon said the delay regarded having the sequel live up to gamer expectations.

Court action: Vice Chancellor Lori Will will hear post-trial arguments in Wilmington, Del.

Subnautica 2 Developers Sue Tencent-Linked Studio Over Delay (1)

To contact the reporters on this story: Jennifer Kay in Philadelphia at jkay@bloombergindustry.com; Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com

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Owlet Inc.'s \$3.5 million agreement to settle securities class claims over its baby monitoring product's readiness for market deserves final approval, investors told a federal court.

The deal followed a decision by Judge Fernando L. Aenlle-Rocha allowing some claims to proceed in the US District Court for the Central District of California. Aenlle-Rocha should sign off on the accord because it's fair, with the settlement amount representing about 38% of total estimated recoverable damages on the remaining claims, the investors said in their Jan. 2 filing.

The suit alleges Owlet misled investors by saying it didn't need the Food and Drug Administration to approve the Smart Sock monitor as a medical device, and that its stock price fell after it received an FDA warning letter

Owlet went public in 2021 by merging with a special purpose acquisition vehicle

There have been no objections to the settlement agreement to date, and the 38% recovery "far exceeds the median percentage recovery in comparable cases," the investors told the court

Kessler Topaz Meltzer & Check LLP is lead counsel for the investors. Latham & Watkins LLP represents Owlet.

The case is Butala v. Owlet, Inc. , C.D. Cal., No. 2:21-cv-09016, motion 1/2/26 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Andrew Harris at aharris@bloomberglaw.com

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BrainStorm Shareholder Seeks Access to Board's FDA Snub Records

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Summary by Bloomberg AI

AI Generated



- A BrainStorm Cell Therapeutics Inc. stockholder requested a Delaware court order the company to turn over board minutes and other documents tied to a stem-cell treatment that failed to get regulatory approval.
- The shareholder, Shari Roth, wants access to these books and records to investigate alleged wrongdoing, mismanagement, and the ability of directors and officers to impartially consider legal action in the company's interest.
- Roth is seeking a summary order requiring BrainStorm to produce documentation, including whatever the company produced for the proposed class action and related litigation, concerning board meetings dating back to Feb. 18, 2020.

A BrainStorm Cell Therapeutics Inc. stockholder requested a Delaware court order the biopharmaceutical company turn over board minutes and other documents tied to a stem-cell treatment that failed to get regulatory approval.

The shareholder wants access to these books and records to investigate alleged wrongdoing, mismanagement, and the ability of directors and officers to impartially consider legal action in the company's interest, said her complaint filed in Delaware Chancery Court Dec. 31.

Shari Roth's demand comes several months after a US District Court for the Southern District of New York judge partially allowed different BrainStorm investors' proposed class allegations to proceed. Those investors allege BrainStorm misrepresented the Food and Drug Administration's rebuke of its NurOwn treatment for amyotrophic lateral sclerosis.

Judge Dale E. Ho said in September the company must defend against allegations of rosily touting FDA feedback on its fatal neurodegenerative disease therapy before failing to get it approved. Executives' awareness of FDA feedback contradicting their public statements sufficiently boosted an inference of recklessness for securities fraud claims. Investors adequately alleged the company misrepresented the regulator's views imparted to it regarding the design of its clinical trials for the experimental ALS treatment, among other claims.

BrainStorm's stock price took hits following adverse news about NurOwn, including after an FDA advisory committee voted that there wasn't enough evidence of NurOwn's effectiveness in treating ALS patients in 2023. BrainStorm subsequently withdrew NurOwn's FDA biologics license application.

Roth now wants a summary order requiring BrainStorm to produce documentation—including whatever the company produced for the proposed class action and related litigation—concerning board meetings dating back to Feb. 18, 2020. She said she sent a letter to BrainStorm and Board Chairman Jacob Frenkel on Dec. 12, 2025, and that they haven't responded to her demand.

The FDA cleared BrainStorm for another ALS clinical trial last year, the company said. "We are making steady progress toward stabilizing our financial situation and initiating our Phase 3b study of NurOwn, designed to generate confirmatory data to support a potential BLA submission," CEO Chaim Lebovits said in a press release regarding financial results in November.

The Nasdaq delisted BrainStorm last year.

BrainStorm didn't immediately respond to an email seeking comment.

Rigrodsky Law PA and Grabar Law Office represent Roth, who said she's a beneficial owner of BrainStorm asserting her statutory right to inspect books and records under Delaware law. Depending on her review, she said her investigation may yield a shareholder derivative lawsuit on behalf of BrainStorm.

The case is Roth v. BrainStorm Cell Therapeutics Inc. , Del. Ch., No. 2025-1507, complaint filed 12/31/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editors responsible for this story: Alicia Cohn at acohn@bloombergindustry.com; Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

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Securities

Deep Dive

Future of 'DExit': Four Factors Driving State Reincorporations

Jan. 5, 2026, 2:00 AM PST

As Delaware, the country's long-established corporate capital, saw several high-profile companies leave the state last year, a debate is building whether 'DExit' will be a lasting trend.

Fidelity National Financial Inc., Dillard's Inc., and Dropbox are among the household names that announced they were moving from Delaware to reincorporate in either Nevada or Texas in 2025. The announcements followed Tesla Inc.'s 2024 move from Delaware to Texas.

More than three-dozen public companies proposed changing their state of incorporation last year, and Nevada was the most popular destination, according to Bloomberg Terminal data.

Yet Delaware's still home to about two-thirds of the Fortune 500 and unlikely to become a "ghost town" anytime soon, said Benjamin Edwards, a law professor at the University of Nevada, Las Vegas.

"Other states may pick up some of the market share," but many companies would need a significant reason to abandon the Delaware corporate law they understand well, he said.

Here are four things to watch next year to see how far reincorporation goes:

Industry

Reincorporation data hasn't shown a strong political trend, said Michal Barzuza, a corporate law professor at the University of Virginia. But politics aren't totally irrelevant either: Texas is aligned with the current White House, so industries favored by President Donald Trump tend to believe they'll do well there, too, said Jason Villalba, a partner at Frost Brown Todd LLP and a Republican former member of the Texas House of Representatives.

Cryptocurrency, which has the support of the Trump-nominated Securities and Exchange Chair Paul Atkins, is one example. Two public cryptocurrency companies, Coinbase Global Inc. and Exodus Movement Inc., announced Texas reincorporations in November.

Meanwhile, Nevada has grabbed companies across the technology and entertainment industries, including Madison Square Garden Entertainment Corp., AMC Networks Inc., and Forward Industries Inc.

Sectors that already have a large Texas presence, such as energy, might get more pressure from investors and stakeholders to reincorporate there, said Samantha Hale Crispin, partner at Baker Botts LLP. At least one energy company, Zion Oil & Gas Inc., moved to Texas in 2025.

Nevada Leads Public Company Reincorporation Proposals Nearly two-thirds of public companies eyeing reincorporation in 2025 chose Nevada



Source: Bloomberg Terminal
Note: Data spans Jan. 1 to Dec. 15 of 2025

Bloomberg Law

Litigation

Delaware wrapped up one buzzy case before the new year, with the state supreme court ruling in favor of Tesla Inc. CEO Elon Musk over a pay package dispute. But there are others to watch, including litigation over a new Delaware law intended to address complaints from high-profile founders.

But another big case to watch is taking place in Texas, where a federal court is set to decide whether the state's new requirements for proxy advisory firms violate the First Amendment. The outcome of that case will help determine how companies view Texas and who's excited to reincorporate there, Crispin said.

Companies have been struggling with "the burden and the hassle of dealing with" increasing numbers of social and governance proposals, she said. But a new Texas law letting companies raise ownership thresholds to submit such proposals, as well as parameters around proxy advisors, are "really attractive" to companies seeking to save time and money dealing with annual shareholder proposals, she said.

Proxy Season

If companies make proposals for moves to Nevada, Texas, or another state, many will likely pop up in proxy statements this spring and face a shareholder vote.

Shareholders will have to compare investor protections in the two states, Barzuza said. But if company insiders control significant parts of the stock, it ultimately won't matter what retail investors desire. In 2025, shareholders seemed wary of approving reincorporations in Nevada and a little less hesitant with Texas, she said. Fintech company Netcapital Inc.'s Nevada reincorporation proposal, for instance, failed by nearly one million votes. Texas reincorporation proposals haven't seen outright failures, but one company, MercadoLibre Inc., withdrew the measure before its annual meeting.

Last year was the biggest year on reincorporation proposals, according to Bloomberg data, and that trend isn't likely to reverse in 2026, said Abigail Gampher Takacs, a Bloomberg Law analyst.

"We will see a number of companies in their proxies looking to move, and I think there are even more that really like the idea — but they're not sure they want to be a first mover. Some of them want to see 'Is there a crowd that goes before me?'" Crispin said, adding that some also are awaiting the development of business courts outside Delaware.

Business Courts

The Delaware Chancery Court has for years been considered the premier venue to settle corporate disputes, with judges who are business law experts empowered to expedite cases and resolve them without juries. But more controller-led companies have cited dissatisfaction with that system—particularly rulings perceived as favoring minority shareholders—in opting to reincorporate in other states.

Texas opened its specialized business court in 2024 with the promise of a staunchly code-based interpretation system to offer companies more predictability. The Texas Business Court wrapped up its first bench trial in November, ruling in favor of Marathon Oil Co.

Mark Pendleton, a Dallas-based partner at Bradley Arant Boult Cummings LLP, said companies he counsels have been pleased with the courts so far. But the system isn't as busy as the state's other courts right now, so the test will be whether they can keep the same speed and ease as more cases come, he said.

Meanwhile, the Nevada Supreme Court tasked a commission of judges, attorneys, and business leaders to get its own specialty business court to start hearing cases later this year.

Creating a system that allows for efficient and consistent case adjudication "has that trickle effect of making our community more desirable for businesses to relocate to," Chief Justice Douglas W. Herndon said at a Nov. 18 commission meeting.

To contact the reporters on this story: Drew Hutchinson in Washington at dhutchinson@bloombergindustry.com; Jennifer Kay in Philadelphia at jkay@bloombergindustry.com

Litigation

Manage Newsletters

Centra Health Sued Over Stable Value Fund in Retirement Plan

Jan. 5, 2026, 9:37AM PST

Virginia health-care system Centra Health Inc. was hit with a proposed class action claiming its retirement plan is plagued by a subpar stable value fund that pays hefty fees to a plan service provider.

The lawsuit centers on a guaranteed investment fund from Transamerica Financial Life Insurance Co., which isn't a party to the litigation. This fund, which held more than \$60 million worth of the plan's assets, provided lower rates of return than similar investment options while allowing Transamerica to earn excessive compensation, plaintiff Ashley Fitch said in a complaint docketed Monday in the US District Court for the Western District of Virginia.

Fitch, who brings claims under the Employee Retirement Income Security Act on behalf of a proposed class of more than 10,000 people, says the Centra Health plan lost millions of dollars through its investment in the Transamerica fund

Dozens of recent ERISA lawsuits have centered on stable value funds, which are retirement investments aimed at providing modest, guaranteed rates of return while protecting against losses

Centra Health didn't immediately respond to an inquiry about the allegations

Capozzi Adler PC and Cook Legal Solutions represent Fitch and the proposed class.

The case is Fitch v. Centra Health, Inc. , W.D. Va., No. 6:26-cv-00001, complaint docketed 1/5/26 .

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloombergindustry.com

To contact the editors responsible for this story: Alicia Cohn at acohn@bloombergindustry.com; Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

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Expert Opinion | **Civil Appeals**

Tenth Circuit Adopts Ascertainability Test and Clarifies Class Action Requirements

In *Cline v. Sunoco, Inc. R&M*, the U.S. Court of Appeals for the Tenth Circuit largely affirmed the federal district court's rulings certifying a class and awarding damages, and in the process, adopted the majority test for determining whether the class members are ascertainable.

January 02, 2026 at 10:24 AM By **Stephen Masciocchi**

Adrianne Rosenbluth



Stephen Masciocchi, left, and Adrianne Rosenbluth, right, with Holland & Hart. Courtesy photos

In *Cline v. Sunoco, Inc. R&M*, 2025 U.S. App. LEXIS 29929, __ F.4th. __ (10th Cir. Nov. 17, 2025), the U.S. Court of Appeals for the Tenth Circuit largely affirmed the federal district court's rulings certifying a class and awarding damages, and in the process, adopted the majority test for determining whether the class members are ascertainable. The circuit court upheld the lower court's rulings on class certification, standing, and prejudgment interest but vacated its punitive damages award.

Factual and Procedural Background

The named plaintiff, Oklahoma farmer and landowner Perry Cline, owns royalty interests in three Oklahoma oil wells. Defendant Sunoco buys oil extracted from Oklahoma wells, including Cline's wells.

The Oklahoma Production Revenue Standards Act (PRSA), Okla. Stat. 52 Sections 570.1-570.15, governs the relationship between royalty owners and "first purchasers" like Sunoco. Of note, the PRSA comprehensively regulates the timing of royalty owner payments and the consequences for late payments. To curtail the industry practice of delaying payments to royalty owners following the sale of oil and gas, the PRSA mandates that any late payments include 12% interest. Under Oklahoma law, contractual arrangements between first purchasers and royalty owners automatically incorporate the 12% interest rate.

In 2017, Cline filed this lawsuit against Sunoco alleging that Sunoco had a uniform practice of not paying mandatory interest on late royalty payments unless the owner specifically requested. In 2019, the U.S. District Court for the Eastern District of Oklahoma certified a class of 53,000 royalty owners. The class asserted two claims: violation of the PRSA and common law fraud. On summary judgment, the district court ruled against Sunoco on the PRSA liability. Following a four-day bench trial, the court ruled for the class on the PRSA claim and for Sunoco on the fraud claim. It also awarded damages that included over \$103 million in actual damages, including additional prejudgment interest that accrued post-trial, and \$75 million in punitive damages.

The Tenth Circuit Holds Class Treatment Was Appropriate

On appeal, Sunoco challenged class certification on predominance and ascertainability grounds. The Tenth Circuit began its analysis by noting that it reviewed whether the district court applied the correct legal standard *de novo*, but that because the court "rigorously applied each of the Rule 23(a) and (b)(3) factors," its review of the decision to grant class certification was highly deferential.

Laying out the legal framework, the Tenth Circuit confirmed that for a damages class, the class must satisfy all the Rule 23(a) factors—numerosity, commonality, typicality and adequacy—as well as the Rule 23(b)(3) factors of predominance and superiority.

Common Questions Predominated

Sunoco maintained that individualized issues, including damages, frustrated predominance. In considering this challenge, the Tenth Circuit first explained that the predominance inquiry tests whether a class is sufficiently cohesive to merit class adjudication. It then instructed district

courts to begin their analysis by characterizing the case issues as either “common” or “individual” and then weigh whether the “common” issues predominate.

As to both the PRSA and fraud claims, the Tenth Circuit affirmed the district court’s findings that common questions predominated. In so holding, the circuit court repeatedly affirmed that Rule 23 requires only the predominance of common questions, even if individualized issues remain. Relevant here, the court relied heavily on three factors.

First, it noted that Sunoco’s liability hinged on a common scheme, i.e., the practice of not paying interest unless specifically requested, and a uniform scheme, policy, or practice has been the cornerstone of several recent Tenth Circuit predominance decisions. Moreover, it found that the classwide scheme here was unlike that in *Wal-Mart Stores v. Dukes*, 564 U.S. 338 (2011). In *Wal-Mart*, the circuit court observed, the relevant policy involved subjective employment decisions left to the discretion of low-level decision-makers. Thus, the class-wide policy was still highly individualized. Here, the common scheme stemmed from an objective, uniform policy of not paying interest unless requested. The Tenth Circuit also pointed out that the Supreme Court instructed that damages class should be treated differently than *Wal-Mart’s* proposed nationwide injunction.

Second, and relatedly, the Tenth Circuit emphasized the importance of common evidence. Typically, when there is a uniform scheme, policy, or practice, the common conduct lends itself to classwide adjudication because all class members will rely on the same evidence. In this case, the relevant evidence lay with Sunoco and would not vary from class member to class member.

Third, the Tenth Circuit found it compelling that this case had already been successfully tried as a class action. Most challenges to class certification arise prior to trial and involve hypothetical commonality considerations at a future trial. But here, the circuit court held that individual issues would not dominate at trial because, in fact, they did not.

Finally, the Tenth Circuit rejected Sunoco’s argument that individual damage determinations—such as timing of the interest payments and whether any given owner has marketable title—should have defeated class certification. While Sunoco relied heavily on *Wallace B. Roderick Revocable Living Trust v. XTO Energy*, 725 F.3d 1213 (10th Cir. 2013), the Tenth Circuit found the present case more analogous to *Harrel’s v. Chaparral Energy (Naylor Farms)*, 923 F.3d 779 (10th Cir. 2019). In *Roderick*, an earlier royalty underpayment case, the Tenth Circuit vacated the district court’s class certification order due to lease language variations, and particularly, the failure by the class to categorize the relevant leases and the court to review those categorizations. By contrast, in *Naylor Farms*, the Tenth Circuit upheld the certification of a class of royalty owners who alleged the defendant systemically underpaid royalty owners by charging excessive deductions. Critical to its

determination, the circuit court explained, was that in Naylor, the class plaintiffs prepared a generally accurate lease chart so that the district court could determine that individualized issues would not predominate. Moreover, in both this case and Naylor, the plaintiffs' expert provided evidence that he or she could calculate damages on a classwide basis. As to marketable title, the Tenth Circuit also found it significant that in this matter, marketable title acted as an affirmative defense, and Sunoco's expert had not provided evidence casting significant doubt on any class members' marketable title.

The Class Was Ascertainable Under the Majority Test

The Tenth Circuit also definitively ruled that to satisfy Rule 23, a party must show ascertainability. However, it clarified that ascertainability does not require a showing that identifying the class members is administratively feasible.

Sunoco argued that the class members were not identified by name, and thus, the class was not ascertainable or administratively feasible. In considering this challenge, the Tenth Circuit held to be ascertainable, the class must merely "be defined clearly and cannot be defined too vaguely, and be defined objectively and cannot be based on subjective criteria, such as a person's state of mind." It added that the class need only be identified by reasonable, not perfect, accuracy.

The circuit court then firmly rejected any administrative feasibility requirement. Sunoco had argued for its adoption, and two multi-district litigations in the District of Kansas had predicted that the Tenth Circuit would adopt this standard. But the circuit court explained its view that administrative feasibility risks rewarding defendants for their own obstruction. For example, the court remarked that defendants may affect feasibility by insufficiently maintaining their own business records or maintaining their records in burdensome ways. Here, the Tenth Circuit observed, Sunoco failed to gather and produce owner information until years into this litigation. Moreover, as a first purchaser, the PRSA obligated Sunoco to maintain proper payment records. As such, Sunoco should not reap the benefits of its poor document stewardship.

Stephen Masciocchi and Adrienne Rosenbluth *are attorneys at Holland & Hart, practicing in appellate and business litigation. Masciocchi is a partner who co-leads the appellate team and assists clients with high-stakes federal and state appeals. Rosenbluth is an associate who helps clients navigate complex commercial disputes at the trial and appellate level.*

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Commentary | **Class Actions**

Arguing Class Actions: A Recommitment to Civics and Productive Legal Discourse

Arguing Class Actions is a monthly column for the National Law Journal.

January 05, 2026 at 06:00 AM By **Adam J. Levitt**



Adam J. Levitt, founding partner of DiCello Levitt. Courtesy photo

The breakdown of civics in American life is no longer an abstraction debated in classrooms or lamented in policy journals. It is a lived reality, shaping how Americans speak, how they disagree, and how they relate to institutions that once commanded broad respect. Nowhere is this erosion more visible—or more consequential—than in the legal system. The legal profession, long understood as a steward of constitutional values, has not been immune to that erosion. Lawyers and judges now operate in an environment where shared assumptions about truth, legitimacy, and

institutional roles have weakened, producing effects that are corrosive, destabilizing, and increasingly difficult to reverse.

Civics, properly understood, is neither nostalgia nor the rote memorization of governmental structure. Rather, it is the collective agreement that certain norms, rules, and processes remain binding, even when they yield outcomes that we may dislike. Civics reflects an understanding that facts exist independent of ideology, that institutions derive authority from legitimacy rather than force, and that disagreement does not require delegitimization. It also assumes that losing a dispute does not entitle the loser to reject the system that produced the loss. In this sense, civics is less about patriotism than it is about restraint—restraint in speech, restraint in conduct, and restraint in how power is exercised and contested. A society that forgets its civic foundations inevitably forgets how to govern itself.

For generations, lawyers absorbed these lessons as part of professional culture. They learned them through mentorship, judicial example, and shared expectations about conduct, often as much as through formal instruction. Young lawyers were taught—sometimes gently, sometimes (very) sharply—that credibility is finite, reputation matters, and short-term gains achieved through exaggeration or bad faith come at a steep cost over the course of a career. Civics was the invisible architecture supporting the adversarial system without overwhelming it. It allowed fierce disputes to coexist with institutional stability, enabling lawyers to argue aggressively while accepting outcomes without questioning the legitimacy of the forum or their opponents.

That shared understanding has frayed. We now inhabit a civic environment in which institutional trust has collapsed, accountability is reframed as persecution, and civic restraint is mistaken for weakness or complicity. Assertions are increasingly untethered from reality, while error is recast as attack. The willingness to say “I was wrong” has been replaced by reflexive deflection, and correction is treated not as a virtue but as a threat. This shift is not merely rhetorical; it reflects a deeper rejection of the idea that shared standards exist at all. Coupling that reality with the equally disturbing theater of deeply personal opponent and claim vilification (as with the blogs that perpetually engage in the reductive analysis of “defense win good, plaintiffs’ win bad”), and we, as a bar, are left with a level of unacceptable—and highly destructive—institutional toxicity.

Such a breakdown is deeply destructive to legal culture, where truth, accuracy, and good faith should be non-negotiable. The effects on legal practice are unmistakable. Advocacy increasingly drifts from disciplined legal argument toward political theater. Briefs resemble press releases aimed at sympathetic audiences, rather than efforts to persuade neutral decision-makers. Hyperbolic accusations, insinuations of bias, and rhetorical excess appear with a frequency that would once have been professionally disqualifying. Lawyers increasingly frame losses as evidence of corruption rather than error, and adverse rulings as illegitimate, rather than incorrect. Even

routine professional courtesies—reasonable extensions, stipulations to uncontested facts, and genuine meet-and-confer efforts—are withheld as tactical weapons, as though cooperation itself were ideological surrender.

This is not zealous advocacy. It is the infection by a post-civic political culture into a system that depends on shared norms to function. The adversarial system presumes disagreement, but it also presumes a baseline commitment to process and good faith. Courts cannot operate when lawyers treat facts as malleable, rules as optional, opponents as enemies, and institutions as illegitimate whenever they disappoint. Nor can judges fairly adjudicate disputes when every ruling is framed as proof of political allegiance, rather than legal judgment. The rule of law presupposes a common commitment to procedure. When that commitment erodes, outcomes lose meaning regardless of their correctness, and judicial authority becomes fragile, even when lawfully exercised.

The judiciary, however, cannot claim exemption from responsibility for this dynamic. Judges sit at the intersection of law and legitimacy, and their conduct shapes how the public understands the justice system. While many judges continue to model restraint, rigor, and professionalism, others—sometimes inadvertently, sometimes less so—have also contributed to the erosion of civic norms. Opinions occasionally lapse into rhetorical excess, impatience hardens into dismissiveness, and judicial commentary edges toward ideological signaling. Even when motivated by understandable frustration with bad-faith advocacy, these choices matter. They teach lawyers what behavior will be tolerated and teach the public what kind of institution the courts have become.

Judges today are routinely asked to resolve disputes that are fundamentally political, cultural, or symbolic—disputes once mediated through legislatures, elections, or civic institutions rather than courts. That burden is unfair, but unavoidable. The response must be institutional discipline, rather than reaction. When courts appear partisan, performative, or contemptuous of litigants, they reinforce the very cynicism that undermines their authority. Judicial legitimacy is not asserted; it is accumulated slowly and lost quickly. The judiciary's power rests less on enforcement than on consent, and consent depends on civic trust.

The combined effect of these trends is a legal system under visible strain. Lawyers increasingly approach litigation as warfare, rather than problem-solving. Judges are forced to police conduct that once policed itself through professional norms. Litigants treat outcomes not as applications of law, but as validations or repudiations of identity. And the public, watching from a distance, absorbs the lesson that law is merely politics by other means. That perception is fatal to a system designed to channel disagreement into reasoned resolution, rather than raw power. Indeed, when courts lose their distinctiveness from politics, they lose the very quality that justifies their authority.

This erosion is not merely regrettable; it is strategically and professionally self-defeating. The legal profession's authority rests on the assumption that it operates according to standards higher than those governing ordinary political combat. Lawyers are officers of the court precisely because they're expected to privilege truth over narrative, process over passion, and institutional integrity over short-term advantage. When lawyers abandon those commitments, they don't gain leverage; rather, they squander their credibility. When courts respond in kind, they accelerate the loss of public confidence that makes their decisions meaningful beyond the immediate parties. A legal system perceived as merely another political arena can command compliance for a time, but never lasting obedience or respect—and compliance endures only as long as power does.

The solution is neither simple nor optional. It requires a deliberate recommitment to civics—not as a slogan, but as a professional obligation. Lawyers must relearn, and teach, that credibility matters, that facts are non-negotiable, and that persuasion requires discipline. Judges must insist on rigor and civility, while recognizing their own role in modeling those values. Law schools must teach not only doctrine, but the civic architecture that gives doctrine meaning—the norms that allow law to function as law, rather than as politics in robes. Bar associations must treat professional norms as enforceable standards, rather than aspirational ideals, and must be willing to defend those standards even when doing so is uncomfortable or unpopular.

Most importantly, the legal profession must recover a sense of institutional patriotism: loyalty not to parties or personalities, but to the structures that make self-government possible. Courts are not stages. Litigation is not performance art, disagreement is not betrayal, and accountability is not persecution. Civics teaches restraint in victory and humility in defeat—qualities essential to a system that depends on voluntary compliance rather than coercion.

Civics is not optional. It is the price of admission to a functioning legal system and a functioning Republic. Without it, law becomes noise, institutions become targets, and power replaces persuasion. With it, disagreement remains possible without collapse, and justice remains something more than a partisan claim. If the American legal profession cannot lead the restoration of civic norms—by example, by discipline, and by recommitment to shared truths—it should not be surprised when the American public concludes that no one else will.

Adam J. Levitt is a founding partner of DiCello Levitt, where he heads the firm's class action and public client practice groups. He can be reached at alevitt@dicellolevitt.com.

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Old laws, new tech: The massive litigation poised to define 2026

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Jenna Greene

January 5, 2026

AI (Artificial Intelligence) letters and robot hand are placed on computer motherboard in this illustration created on June 23, 2023. REUTERS/Dado Ruvic/Illustration [Purchase Licensing Rights, opens new tab](#)

Jan 5(Reuters) - Looking ahead to some of the biggest lawsuits of 2026, one theme stands out: the law is racing to catch up with technology.

High-stakes disputes involving artificial intelligence, antitrust, privacy, social media and more are poised to shape the litigation landscape in the year ahead, offering a legal stress test for the digital age.

The cases I'm following include litigation over software pricing algorithms. Class-actions have already been brought against landlords that use the AI-driven tools to help set apartment rents, hotel operators to decide room rates and healthcare insurers to determine out-of-network reimbursements.

Antitrust concerns may arise if the software "suggests prices based on the non-public information of competitors" that also use the platform, Skadden, Arps, Slate, Meagher & Flom antitrust partner Karen Lent, who has represented defendants facing such allegations, told me.

Could that be considered illegal per se, akin to industry titans meeting in a smoke-filled room to fix prices?

The question looms large in a potential test case in Seattle federal court, where apartment renters filed a proposed class-action against major property management companies and software maker Yardi Systems in 2023. The plaintiffs allege the landlords colluded to set rents on millions of apartments across the country through Yardi's automated pricing software.

In a pending [motion for summary judgment, opens new tab](#), Yardi denies the allegations. The company's outside counsel, Debevoise & Plimpton partner Maura Monaghan, told me Yardi software only utilizes "the client's own data and publicly available information."

Artificial intelligence-related litigation is heating up on other fronts as well, said Gregory Ewing, a data privacy and cybersecurity partner at Dickinson Wright. He flags dozens of still-unresolved suits against major tech companies over what constitutes fair use of copyrighted materials in training AI models.

Judges nationwide are considering when such use of materials creates new, transformative content that doesn't diminish the market for the original work.

My watch list includes a class action brought in San Francisco federal court by anonymous software coders against GitHub, Microsoft (which [bought GitHub](#) in 2018), and OpenAI. Seeking billions in penalties, the plaintiffs [allege, opens new tab](#) the companies copied their computer code to train the AI-powered assistant Copilot.

After a lower court judge dismissed the plaintiffs' Digital Millennium Copyright Act claims at the heart of the case, the 9th U.S. Circuit Court of Appeals granted an interlocutory appeal, with oral arguments set for Feb. 11.

A GitHub spokesperson said Copilot "adheres to applicable laws." Microsoft declined comment and an OpenAI spokesperson said the claims are without merit.

Massive penalties are also on the line in litigation brought under the California Invasion of Privacy Act, in which plaintiffs allege consumer tech companies' online tracking tools violate their privacy. The challenge, Mayer Brown litigation partner John Nadolenco noted, is how to apply the 1967 wiretapping law to modern website tools.

For example, Meta has been hit with lawsuits under the California privacy law and other consumer protection statutes involving its "Pixel" — a snippet of code that allows companies to track visitor activity online.

As I [previously wrote](#), a San Francisco federal jury in August found Meta liable for violating the privacy of users of the fertility tracking app Flo.

The crucial question now is damages. California's privacy law carries statutory penalties of \$5,000 per violation, but it remains unclear how a digital-age violation is defined — is it every time an app user entered data? A decision by U.S. District Judge James Donato is expected in the coming weeks or months.

A Meta spokesperson said, "We disagree with the verdict and believe the plaintiffs' claims are false." The company has also said it plans to appeal.

Meta is on the hot seat in other litigation as well along with other online platforms including Snapchat, Google and TikTok in [multidistrict personal injury products liability litigation](#).

The companies face more than 2,000 cases brought by state and local governments, school districts and individuals consolidated before a federal judge in Oakland, California, with about 1,000 other cases in parallel proceedings in Los Angeles County Superior Court.

The plaintiffs allege social media addiction has fueled a mental health crisis among minors that can result in eating disorders, depression, and, in some cases, suicide. The first state court jury trial is expected to begin in late January, while the federal bellwether trials are scheduled for June.

Meta said it strongly disagrees with the allegations. A spokesperson for Google, whose parent company Alphabet owns YouTube, said the lawsuits "fundamentally misunderstand how YouTube works and the allegations are simply not true." The other defendants did not immediately respond to a request for comment.

Similarly, video game makers also face dozens of suits nationwide by plaintiffs who allege the games are designed to cause psychological addiction.

The U.S. Panel on Multidistrict Litigation in mid-December [denied, opens new tab](#) a bid to consolidate 39 video game cases, citing fears that the litigation will "grow to encompass a large tangle of defendants and products" and become too unwieldy for an MDL.

Plaintiffs' lawyer Tor Hoerman, who represents clients in both social media and video game cases, said prior litigation against e-cigarette maker Juul Labs [set a precedent](#) that addiction is a valid legal injury. The potential impact of the new crop of addiction harm cases "is enormous, of course," he told me.

In 2026, courts won't just be deciding who wins or loses these cases and more — they'll be filling in the legal boundaries of the digital economy, and who pays the price when algorithms, platforms and products cross the line.

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Recent Developments in 'Regeneron', and Eleventh Circuit Argument Regarding the Constitutionality of the False Claims Act's Qui Tam Provision

This article updates on two key legal cases in healthcare enforcement. First, in *Regeneron*, after the First Circuit ruled that FCA liability requires “but-for causation” linking kickbacks to claims, the government is now trying to shift its theory to avoid this burden, arguing that false certifications—rather than causation—establish liability. Second, in *Zafirov*, a recent Eleventh Circuit hearing considered whether the FCA’s qui tam provision violates the Constitution’s Appointments Clause by allowing private relators to wield executive authority. Judge questions focused on the authority of relators and historical statutes, with some judges suggesting the issue might reach the Supreme Court.

January 04, 2026 at 02:04 PM By **Robert M. Radick**



(Credit: Olivier Le Moal/Adobe Stock)

The first edition of this column, published on May 1, 2025, included discussion of two critically important cases in the healthcare enforcement arena: (1) *United States v. Regeneron Pharmaceuticals*, in which the First Circuit held that but-for causation is necessary for an alleged violation of the Antikickback Statute (AKS) to give rise to liability under the False Claims Act (FCA); and (2) *United States ex rel. Zafirov v. Florida Medical Associates*, in which a district court ruled that the qui tam provision of the FCA violates the Appointments Clause of Article II, Section 2 of the U.S. Constitution.

This edition of the column now returns to both *Regeneron* and *Zafirov*, to discuss recent developments in these still ongoing and still important matters. In *Regeneron*, following the First Circuit's ruling and the remand of the case back to the district court, recent filings and decisions reflect the government's efforts to modify its FCA theory and escape the burdens of but-for causation, as well as the defendant's efforts to avoid summary judgment in the government's favor. In *Zafirov*, after extensive appellate briefing (including by various amici curiae), oral argument occurred before the Eleventh Circuit on Dec. 12, 2025, and *Zafirov* is now teed up for a decision that not only could create a circuit split but is likely in any event to bring the constitutional validity of the FCA's qui tam provision before the Supreme Court.

Regeneron and the Government's Efforts to Avoid But-For Causation

In the *Regeneron* case, the government sued Regeneron on the theory that the use of a charitable foundation to make copayment assistance payments on behalf of patients who received the anti-macular degeneration drug Eylea constituted a kickback scheme. The government further argued that the existence of the kickback itself gave rise to FCA liability because, under a 2010 amendment to the AKS, "a claim that includes items or services resulting from a violation of [the AKS] constitutes a false or fraudulent claim."

However, after extensive litigation over whether FCA liability required a causal link between the kickback and the claim, both the district court and, in an interlocutory appeal, the First Circuit rejected the government's argument, holding that an alleged kickback can create FCA liability under the 2010 amendment only if the plaintiff establishes that, but for the kickback, the claim would not have been submitted to the government for reimbursement.

Following the First Circuit's decision in *Regeneron*, proceedings returned to the United States District Court for the District of Massachusetts, 20-cv-11217 (FDS). There, starting in May 2025 the government sought to shift its theory of FCA liability from the so-called "2010 amendment" pathway to an alternative "false certification" pathway, which in turn would presumably permit it to avoid the potentially insurmountable burdens of the but-for causation standard. In particular, after the case's remand to the district court, the government sought leave to file what would be its second summary judgment motion in the case, with this second such motion adopting, for the first time, the theory that Regeneron's potential FCA liability arose not from the 2010 amendment, but rather because the copayment assistance program caused those who submitted claims for reimbursement for Eylea to "falsely certify" that there had been AKS compliance.

On Aug. 4, 2025, Judge F. Dennis Saylor IV issued a decision granting the government's motion for leave to file the summary judgment motion by which it intended to make the above-described shift

in its theory of the case. Although recognizing that “typically, a plaintiff must bear the risk that its choice of litigation strategy ultimately proves problematic,”

Judge Saylor held that his own reconsideration of and decision to reverse himself on the issue of whether the but-for causation standard applied, combined with the First Circuit’s subsequent adoption of the but-for requirement, “amounted to a critical shift in the applicable law,” such that “it would be unfair in these circumstances to chain the government to [the 2010 amendment pathway].”

Having secured the district court’s approval for the filing of a summary judgment motion in which it would modify its theory of liability, on Oct. 1, 2025 (and again on Oct. 16, 2025, due to the need to correct an admitted factual error), the government filed its second motion for summary judgment, this time asserting that it was entitled to judgment as a matter of law on three aspects of its FCA case—namely, that: (1) every claim for Eylea reimbursement that was within the time period covered by the case had contained an explicit or implicit certification of compliance with the AKS; (2) there could be no dispute that certifications of AKS compliance were material to government payment decisions; and (3) in a false certification case, the requisite causal link between the kickback and the claim for payment is not but-for causation, but rather that the defendant’s conduct “naturally and foreseeably caused providers to present false claims or to make or use false certifications.”

In its Nov. 5, 2025 brief in opposition to the government’s summary judgment motion, *Regeneron* challenged each of the government’s three arguments. First, as to whether claims for Eylea reimbursement contained explicit or implied certifications of compliance with the AKS, Regeneron contended that no such finding was possible on the record before the Court, primarily because the government had not provided the certifications for any Eylea claims submitted during the time period in question, let alone a certification that related to any of the eleven specific Eylea claims identified in the government’s complaint.

Second, in response to the government’s argument that certifications of AKS compliance are necessarily material to government payment decisions, Regeneron contended that there is no such per se materiality. Instead, relying on the Supreme Court’s decision in *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016), *Regeneron* argued that the materiality inquiry “turns on a fact-intensive assessment” that includes “the ‘particular type of claim’ at issue, the particular ‘noncompliance’ at issue, and whether the government routinely reimburses such claims despite similar ‘noncompliance’”—all of which, *Regeneron* argued, weigh against a finding of materiality given that CMS had “explicitly encouraged manufacturers to donate to co-pay charities” such as the one at issue in the case.

Third, regarding the government’s argument that it need only show that Regeneron caused providers to present false claims or make false certifications, Regeneron characterized the government’s argument as an assertion that “proof of actual causation is unnecessary.” In fact, although acknowledging that the order by which the district court allowed the government to file a second summary judgment motion included the statement that the “particular standard for causation under the 2010 amendment” (i.e., but-for causation) does not apply in false certification cases, Regeneron argued that the text of the FCA requires “some proof of actual causality,” and that the “presumptively correct” form of causation which the government must show is that, but for the alleged AKS violation, a claim would not have been submitted. Thus, Regeneron contended, but-for causation is an element of an AKS-predicated FCA violation even when the government does not proceed under the 2010 amendment pathway.

On Nov. 25, 2025, Saylor heard oral argument on the government’s motion for summary judgment as to the above-described aspects of its case, and the court took the matter under advisement. It thus remains to be seen how the court will address the parties’ arguments; how the complex issues in *Regeneron* will be resolved; and if and when this hard-fought matter will, more than five years after its initiation, finally proceed to trial.

Zafirov and the Constitutional Validity of the FCA’s Qui Tam Provision

On Dec. 12, 2025, a three-judge panel from the Eleventh Circuit heard oral argument in *Zafirov v. Florida Medical Associates*, No. 24-13581, an appeal from a September 2024 decision issued by Judge Kathryn Kimball Mizelle of the Middle District of Florida.

In *Zafirov*, Mizelle had held that the FCA’s qui tam provision violates the Appointments Clause of Article II of the Constitution, which governs the appointments of “Officers of the United States.” Judge Mizelle reasoned that the qui tam provision, and in particular the authority it gives to private citizens who become relators, “directly defies the Appointments Clause by permitting unaccountable, unsworn, private actors to exercise core executive power with substantial consequences to members of the public.” Mizelle’s opinion did not, however, address additional constitutional challenges that the defendants in the case had made against the qui tam provision under Article II’s Vesting and Take Care Clauses.

According to those arguments, the qui tam provision is unconstitutional for the additional reason that it takes from the office of the president authority that the Constitution vests solely in the executive branch, and leaves the president without the ability to “take care” that the laws are faithfully executed.

The *Zafirov* case is just one of a growing number of matters in which FCA defendants have challenged the constitutionality of the qui tam provision, and to this day *Zafirov* stands as the only

successful such challenge. In fact, since the issuance of Mizelle’s decision more than fifteen months ago, numerous parties have relied on *Zafirov* without success, with district courts writing off the decision as unpersuasive and “contrary” to the “overwhelming weight of the law.” *Kane v. Select Med. Corp.*, 2025 WL 1726253, at *1 n.1 (M.D. Fla. June 20, 2025) (declining to follow *Zafirov*); see also *Kenley Emergency Med. v. Schumacher Grp. of Louisiana Inc.*, 2025 WL 1359065, at *5 (N.D. Cal. May 9, 2025) (finding *Zafirov* “not persuasive”).

Further, four other courts of appeals—in the Fifth, Sixth, Ninth and Tenth Circuits—have previously rejected the same constitutional challenge to the qui tam provision that ultimately succeeded with Mizelle in *Zafirov*.

Notwithstanding *Zafirov*’s failure to find a foothold in the other courts that have reviewed the identical issues, the Eleventh Circuit panel that heard oral argument in *Zafirov* appears to seriously be considering the constitutional validity of the FCA’s qui tam provision.

The Eleventh Circuit panel in *Zafirov* was made up of Circuit Judges Elizabeth Branch and Robert Luck (both appointees of President Donald Trump), and Southern District of Florida Judge Federico Moreno (sitting by designation, and an appointee of President George H. W. Bush). After counsel for the government began the oral argument by noting that every court of appeals and every other district court have rejected Judge Mizelle’s holding, Branch interjected, clarifying that the circuit courts’ decisions on the matter are about 25 years old (the most recent was issued in 2002), and that since then, certain Supreme Court justices have suggested they might take up the constitutionality of the qui tam provision under Article II.

In particular, Judges Branch and Luck specifically questioned counsel for the government and the relator as to how the court should interpret Justice Thomas’s dissenting opinion in *United States ex rel. Polansky v. Executive Health Resources, Inc.*, 599 U.S. 419, 449 (2023), in which Thomas expressed doubt that Congress can “authorize a private relator to wield executive authority to represent the United States’ interests in civil litigation.”

Relatedly, Judges Luck and Branch peppered the government’s and relator’s counsel with questions concerning the extent of a relator’s authority, with the two judges seeming to view relators as possessing “significant authority under the laws of the United States”—one element of the two-prong Appointments Clause test Mizelle had applied below. Luck noted that in practice, a relator is a private person who effectively tells the United States how to use its investigative authority, since by statute the government must investigate claims a relator makes in a qui tam suit filed under seal. Moreno added that, practically speaking, in at least 80% of qui tam suits, the government declines to intervene and relators therefore end up conducting the litigation themselves.

The government and relator argued in response that the panel need not reach the analytical prong that addresses “significant authority,” because relators do not occupy a continuing office established by law, which is first element of the Appointments Clause test. Counsel for the government and the relator also argued that even if relators occupied a continuing position, their only unilateral power is to bring an action under seal. In this regard, counsel for the relator noted that relators cannot marshal government resources for their cases, and cannot direct the government how to proceed. Further, relator’s counsel argued that in declined cases, although relators occupy what Judge Luck referred to as the “driver’s seat,” the government remains in the passenger’s seat and is “able to grab the wheel at any time,” whereas the relator can only proceed like other private litigants, in that they lack government resources and are not suddenly handed a “windbreaker and a gun.”

When it was counsel for the FCA defendants’ turn to address (and defend) Mizelle’s decision, Luck reiterated a prior question he had posed—namely, whether the Supreme Court or any circuit court had ever applied the Appointments Clause to a private person with no employment or contractual relationship with the government—and asked whether the issue is more appropriately considered under another provision of Article II. Of note, the government did not object to a remand of the case so the district court could consider the Vesting Clause issue in the first instance, and defendants’ counsel somewhat similarly urged that all constitutional arguments be considered, but argued that such consideration could happen at the appellate level.

There was also much discussion during oral argument as to the history of qui tam statutes, including whether early versions of such statutes, and the long-standing judicial acceptance of qui tam suits, should be relevant to the circuit’s analysis. Counsel for the government and the relator argued that this history is necessary to determine (and is supportive of) the constitutionality of the qui tam provision. Counsel for defendants took a different tack, arguing that history is insufficient on this issue, and that reliance on judicial affirmance of early qui tam statutes “prove[s] far too much” because those statutes did not provide for government control and often permitted relators to engage in criminal prosecutions.

Counsel on behalf of amicus curia the U.S. Chamber of Commerce, who shared argument time with counsel for the defendants, likewise argued that judicial affirmance of historical qui tam statutes was of little relevance, because it was only after the 1986 amendments to the FCA that thousands of cases began to be filed each year in which relators possessed and exercised the power to seek “daunting monetary penalties on behalf of the United States, [which] is a quintessential executive power.”

Of course, attempting to decipher a case’s likely outcome from oral argument is an inherently speculative endeavor, and there is no way to predict how the Eleventh Circuit will rule in *Zafirov*.

Moreover, regardless of how the Eleventh Circuit resolves the case, Zafirov will likely end up as the subject of a certiorari petition before the Supreme Court, and two other circuits may also offer their views in the meantime—the Sixth Circuit, which, in *In re TriHealth, Inc.*, No. 25-0306, is considering whether to address the district court’s certification of Article II issues regarding the FCA’s qui tam provision; and the Third Circuit, which is considering the constitutionality of the qui tam provision in *United States v. Janssen Products*, No. 25-1818.

Robert M. Radick is a principal of Morvillo Abramowitz Grand Iason & Anello. He was formerly the Chief of Health Care Fraud Prosecutions and the Deputy Chief of the Public Integrity Section of the U.S. Attorney’s Office for the Eastern District of New York. **Emily Smit**, an associate at the firm, assisted in the preparation of this article.

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California Brief

IKEA Dodges Website Tracking Lawsuit With Voluntary Dismissal

Jan. 2, 2026, 8:54 AM PST

A California woman is dropping claims that IKEA North America Services LLC violated a California wiretap law by secretly tracking website visitors' online activities and collecting personal information without consent.

Plaintiff Erin Weiler notified the US District Court for the Central District of California of the voluntary dismissal without prejudice Dec. 31.

The litigation claimed that Ikea violated the California Invasion of Privacy Act by installing Meta and TikTok tracking software on its website

Weiler sued Ikea in October in a proposed class action seeking statutory damages, injunctive relief, attorneys' fees, and costs

Ikea filed a motion to dismiss Dec. 16

Weiler was represented by Smith Krivoshey PC. Perkins Coie LLP represented Ikea.

The case is Weiler v. IKEA N. Am. Servs., LLC , C.D. Cal., No. 2:25-cv-09659, 12/31/25 .

To contact the reporter on this story: Tonya Riley in Washington at triley@bloombergindustry.com

To contact the editor responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com

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Securities

Manage Newsletters

Column

Why AI Disruption Is the Best Thing That Could Happen to Lawyers

Jan. 5, 2026, 1:30 AM PST

Summary by Bloomberg AI

AI Generated



- Artificial intelligence will commoditize an entire segment of legal practice, stripping away analytical work such as document review and precedent research.
- What AI can't replace is strategic judgment, the capacity to advise under uncertainty, and human creativity that transforms analysis into direction.
- A "judgment practice" that cultivates strategic judgment and relationships with clients will be protected and more remunerative, creating value through the relationship itself and becoming essential for general counsel and CEOs.

It's true: Artificial intelligence will commoditize an entire segment of legal practice. And perhaps sooner than we think, it will strip away the analytical work that has long defined the profession—document review, precedent research, inconsistency detection, first-draft generation. The disruption will be profound.

And it may be the best thing that could happen to the future of the profession.

Because what AI can't replace is more valuable: strategic judgment, the capacity to advise under uncertainty, the human creativity that transforms analysis into direction. A moat will protect this work, but only if we're prepared for the kind of work it demands. And ironically, the biggest obstacle to reaching that potential may be our own legal training.

Training in Detection—And Its Limits

Legal education is training in detection: find the risk, spot the flaw, identify the problem, articulate the answer. This is rigorous, valuable, and essential. It gave us something important.

Detection trained us to make sense of ambiguity, see how disparate issues connect, and find coherence in complexity. But even sophisticated synthesis of information is still analytical. AI also does this well—and quickly.

Detection also orients us toward what's wrong rather than what's possible. But boards and CEOs aren't looking for more diagnosticians. They need navigators.

The kind of synthesis that matters now is interpretive: transforming what we detect into what we do.

The Gap Between Analysis and Strategy

Between analysis and strategy lies a conversion layer the profession avidly extols but inconsistently cultivates: judgment.

Judgment is where law stops being a technical discipline and becomes a leadership function. It is the capacity to transform analytical inputs into strategic direction—by reframing, weighing, and deciding amid uncertainty—and to carve a path forward.

AI doesn't do this well. Rather, it works within the premises and assumptions we give it. An AI tool can effectively assess the viability of a legal argument. But it won't affirmatively offer a reframing such as, "This legal argument is flawed, but the same facts could make a compelling policy case." It won't invert the premise. It won't find a path that the question itself obscured.

That is what judgment does. It optimizes the plasticity of human intelligence—the capacity to rethink, redirect, and reimagine. That skill isn't easily replicated. Analysis tells you the case law doesn't support your argument. Judgment recognizes that you may be making the wrong argument because you're asking the wrong question.

Strategy doesn't emerge from more analysis. It emerges when judgment transforms analysis into actionable insight.

This is the gap. Lawyers are trained extensively in analysis. We are expected to develop judgment somewhere along the way. And we are asked to deliver strategy as if the progression were automatic.

It isn't. And it is the shift our training doesn't systematically develop.

Judgment is not only automation-resistant, but also where the value is. Plus, it's why we became lawyers.

Disruption Resistance and the 'Judgment Practice'

A "judgment practice" can feel abstract, but when we're in it, we know it. I recently sat in a mediation involving a formidable counterparty—well-resourced, commercially important, high stakes. With our outside counsel, we used AI to supplement our preparation: We fed the tool our briefs, opposing materials, strategy memos, and even our late-night stream-of-consciousness assessment of likely positions and responses. The AI output was genuinely valuable—a "third voice" in the room that expanded our field of vision.

But when the 10:00 a.m. mediation stretched into night, it was just me and the senior partner at a conference table with cold coffee and expired plane tickets. The settlement wasn't a number to be split. It was a murky mix of contractual revisions, negotiated terms, and hard-won concessions—less than we hoped for, more than they wanted to give.

The outcome required weighing the industry-inflected meaning of nuanced language being drafted in real time, anticipated commercial consequences, respective risk profiles, the recovery foregone, and the concessions required—and then deciding how best to present it to my CEO.

No algorithm integrates that. It is found in the trust between lawyer and client—an ineffable amalgam of expertise, experience, and emotional intelligence. It's neither diagnosis nor synthesis. It is a distillation of inputs into an outcome that must be not only analyzed, but crafted—and then communicated to stakeholders and stood behind with both transparency and conviction.

This is why judgment legal practice is more than expertise. It rests on relationships. The lawyers who offer analysis for their clients risk displacement. The lawyers who navigate with their clients have a more secure *and* meaningful future.

The Forces Shaping the GC Role Today

General counsel today sit between two massive and accelerating forces: AI is automating the analytical support they once relied on, while boards and CEOs demand ever more strategic counsel on interdisciplinary risk. The space is isolating, and the need for genuine partnership has never been greater.

Judgment legal practice creates value through the relationship itself. The lawyers who become trusted partners in this space—helping in-house teams find a path through complexity rather than merely identifying its contours—forge a bond that is stable, renewable, and effectively immune from displacement. The counselor becomes essential not merely for what they produce, but for who they are in moments of uncertainty.

An entire segment of the profession—analytical, process-driven, undifferentiated—will be squeezed as commodity work becomes brutally price-sensitive. But judgment legal practice will be protected and more remunerative. Its output is not merely disruption-resistant—it compounds value for everyone it touches: the general counsel, the CEO, the board, and their stakeholders.

Using AI Disruption to Reframe Training and Apprenticeship

The question for the profession is whether we will cultivate judgment intentionally or continue to treat it as a skill born of self-discovery and osmosis.

Here is where disruption becomes opportunity—not just for preserving the heart of the profession, but for transforming how we develop its future practitioners.

The old model trained young lawyers on analytical work that is now becoming automated: document review, precedent research, inconsistency detection. Firms charged a significant markup and called it attorney development. But that work taught detection, not judgment.

And now it's being commoditized.

The new model is something else entirely. Young lawyers can use AI not to review documents for facts—AI will do that—but to test strategic hypotheses and surface potential approaches, alternative framings, patterns across contexts. AI becomes a tool for strategic exploration, not just analytical processing.

Those outputs require a human in the loop—not merely to catch hallucinations or generate prompts, but to apply the judgment that comes from experience, creativity, and relational understanding. The young lawyer generates; the seasoned lawyer metabolizes. And this work happens best in person, sitting across a table, in real dialogue.

This reframes the return-to-office debate entirely. The value proposition isn't sitting at a desk doing work you could do at home. It's participating in the synergistic process of transforming AI-synthesized data and AI-generated strategic inputs into judgment-driven direction—a process that develops and models the very capacity we need to cultivate.

The strategic output is valuable to the client. The apprenticeship process is invaluable to the profession. Instead of billing for analytical work that machines will soon do better, we develop judgment through a deliberative process that can't be automated—and that produces strategic counsel worth paying for.

This is why AI may be the best thing that happens to lawyers. Not only for the practice it preserves, but for the professional environment it creates—one in which we both practice and teach judgment simultaneously. By making the development of judgment intentional, visible, and central to what it means to practice law, we will find the deepest professional meaning.

That path isn't a threat to the profession. It is an invitation: to become the kind of lawyers we were always meant to be.

Columnist Eric Dodson Greenberg is executive vice president, general counsel, and corporate secretary of Cox Media Group. Eric writes about leadership, legal operations, and the intersection of law and AI for Bloomberg Law's Good Counsel column.

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To contact the editors responsible for this story: Daniel Xu at dxu@bloombergindustry.com; Jessie Kokrda Kamens at jkamens@bloomberglaw.com

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News from Bloomberg Terminal

Jan. 5, 2026, 11:29 AM PST

By Matt Levine

(Bloomberg Opinion) --

AI credit trading

Probably everyone in the financial industry, and possibly everyone in the world, has an opinion about the artificial intelligence boom. Many of them have views on whether we are raising too much money for data centers, on who is building the best AI models, and on the prospects of particular big AI-related technology companies like Nvidia or Meta or Alphabet or Microsoft or Oracle or OpenAI. And while a lot of those views are optimistic (AI companies are raising a lot of money), there is some diversity too (a lot of people complain about a bubble).

Some people in the financial industry, and probably outside of it, have thoughts about Olo Inc., “a leading open SaaS platform for restaurants” that Thoma Bravo bought for \$2 billion in September. But most people don’t. It is perfectly normal never to have thought about Olo. I myself have thought about AI and data centers and Nvidia and OpenAI a lot, but I had never thought or even heard about Olo until I searched Bloomberg for recent direct lending deals and Olo’s acquisition financing popped up.¹ Also there is probably not that much diversity of opinion on Olo, or at least, not that much *intensity* of opinion. If you work on the Thoma Bravo deal team, or at the private credit funds that loaned Thoma Bravo money to buy the company, you probably have some thought like “yeah, Olo, pretty good, good restaurant SaaS.” If you don’t, you are probably not going around thinking “I need to short this bubble in restaurant SaaS.” For the most part, either you’re in the deal or you’re indifferent.

Stereotypically, in recent years, the words “private credit” (and “direct lending”) have meant something like that Olo acquisition financing. Private equity sponsors buy companies, and for reasons of speed and certainty and flexibility and relationships, they decide to borrow the money to buy the companies from private credit firms. Private credit firms are experts in things like having good relationships with private equity sponsors and evaluating the cash flows and deal structures of private-equity buyouts. They have that expertise and opportunity, and most people don’t, so they go around making loans to those buyouts.

And, stereotypically, those are buy-and-hold loans: The private credit lenders give the companies the money, and the companies pay them back over time. The loans do not trade in a secondary market, in part for relationship reasons (the companies and sponsors want to be able to deal directly with their original lenders if they run into trouble) and in part perhaps for cynical return-smoothing reasons (the lenders would prefer not to mark down their loans just because they trade at a low price in the secondary market) but also in part because, you know, who would want them? These are stereotypically loans to small-to-medium-sized private companies, and if you are not already a lender, you probably don't know much about them. It might be hard to do due diligence and understand the companies, and it might not be worth it to do that just to buy a little bit of a smallish loan.

But increasingly the words "private credit" mean AI financing: When AI firms borrow infinity zillion dollars to build data centers, they will sometimes do so in the bond market, but for structuring-flexibility reasons, they will often do it from private lenders. And when they do that, everyone in the financial industry, and possibly everyone in the world, will think a thought like "ooh AI, I would like to get in on that deal" or else "ooh that's stupid, I would like to short that deal." Everyone knows about this stuff, and there is a diversity and intensity of opinions.

A diversity and intensity of opinions makes a market, and so Bloomberg's Caleb Mutua and Isabelle Lee report:

Artificial intelligence spending and the growth of the private credit market aren't just spurring companies to borrow more, they're also helping to generate fresh records for corporate-bond trading. ...

Some of the borrowing for those investments is happening in private markets, as when Meta Platforms Inc. and Blue Owl Capital Inc. raised about \$27 billion of high-grade debt for a data center in rural Louisiana last year. That in turn can spur more trading in private credit, where investors are increasingly looking for ways to sell out of positions, said Rehan Latif, global head of credit trading at Morgan Stanley.

"I view it very much as the biggest single opportunity coming into 2026," said Latif in an interview. "Every single time a new market is created, there is a little bit of a lag before the secondary market kicks off. The reality is this is the right time for it to happen."

Right yes if private credit is "junk-rated middle-market buyout loans," then it will probably end up with liquid secondary markets, because in the long run everything ends up with liquid secondary markets. But if private credit is "\$27 billion of investment-grade loans to Meta," then it will definitely end up with liquid secondary markets pretty soon, because everybody wants that, or wants to bet against it.

Elon got his money

It is a tradition around here that, when I go on vacation, Elon Musk does some stuff. Last month, I went on vacation, and Musk immediately went and got himself \$140 billion:

Elon Musk won reinstatement of his 2018 pay package as chief executive of Tesla Inc., after the Delaware Supreme Court reversed some findings of a judge who said the billionaire improperly influenced board members who formulated the record-breaking corporate compensation package.

The high court [on Dec. 19] concluded the world's richest person is entitled to a stock-based compensation plan now valued at about \$140 billion. When Tesla directors first authorized the payout, it was the biggest ever for a US executive. It's since been eclipsed by a separate plan that could be worth an additional \$1 trillion for the Tesla chief executive officer if he hits future performance targets.

Musk's 2018 compensation plan has been on hold after a single investor – who owned nine shares – successfully sued to block it in Delaware, where the electric carmaker was incorporated at the time. Tesla investors twice overwhelmingly voted to back the plan, which surged in value as the stock soared close to \$500 a share from around \$20 seven years ago.

In a unanimous ruling, the five justices on Delaware's highest court said canceling the CEO's entire payout improperly left "Musk uncompensated for his time and efforts over a period of six years." However, they upheld the finding of a lower court judge that Tesla's board was riven with conflicts of interest when it established the pay package for the company's billionaire co-founder.

Here is the Delaware Supreme Court's opinion, which is a bit unsatisfying theoretically but very practical. Basically:

1. Sure, yes, obviously Tesla's board was and is in Musk's pocket, and there were conflicts of interest when it gave him his giant slug of options in 2018. Because of those conflicts, Tesla had to demonstrate that the grant of options was "entirely fair" to minority shareholders, and it failed to do that.
2. But ehhhh what are you gonna do about it? Take back the options? Seven years later? That's hardly fair either.

This strikes me as basically a correct analysis. As I wrote two years ago, when the Delaware Chancery Court struck down the pay package, "there is something awkward about a judge second-guessing the CEO compensation decisions of the board of directors of a \$600 billion company," particularly when shareholders (twice!) approved those decisions.

It is also in its way a very *Elon Musk* analysis. *Of course* Tesla did not follow every technical nicety of corporate law or fiduciary duty; that's not how Elon Musk operates. Of course the transaction was conflicted and the board gave him an unprecedented and probably unnecessary pile of money. But (1) he's Elon Musk, (2) it's Tesla and (3) it all kind of worked out: Tesla really did create a trillion dollars of value for the shareholders, so they have no cause to complain and almost none of them did. (The plaintiff owned nine shares!) So, you know, no harm, whatever.

A few years ago, Musk decided to merge Tesla with SolarCity, a solar power company that he controlled. Shareholders sued, saying that the transaction was obviously conflicted and Musk was just bailing out his SolarCity investment with Tesla shareholders' money. A Delaware judge criticized Tesla's process, but nonetheless rejected the lawsuit. I wrote:

Those are the two sides of Elon Musk, aren't they? On the one hand he infuriatingly refuses to comply with the basic expectations of law and society; on the other hand Tesla's stock keeps going up. ... He did a deal that was rotten with conflicts of interest, and while he could have followed the proper procedures to do the deal right, he didn't, because he is too impetuous and doesn't really believe in rules or social norms. But also the deal worked out great and confirmed his reputation as a business genius. And so the Delaware judge spends some time criticizing him for doing the deal wrong, but his heart isn't in it. Musk is too much of a lovable business scamp for any judge to stay mad at him. He does all the wrong things but they keep working out right.

I feel like in the intervening five years he has become a less lovable business scamp, but nonetheless that analysis holds up.² Tesla did not *legally* give him those options, or not quite, but still he gets to keep them. That's how this works.

More Elon

Elsewhere in Elon Musk, I have to say that I grudgingly respect that his approach to life seems to be essentially *aesthetic*. His aesthetic is, it seems to me, very bad, but sincerely held. Here is a Wall Street Journal article about him that drove me somewhat insane:

For the longest time, Musk has talked about the possibility that we're living in a computer simulation. ...

"I do have this theory about predicting the future, which is that the most interesting outcome is the most likely," Musk said during a podcast appearance a few weeks ago.

It is an idea rooted in the thinking that if our reality really is a simulation, we would get shut down if we were boring.

"Another way to think of it is like we could be an alien Netflix series and that series is only going to get continued if our ratings are good," Musk said. "If you apply Darwin to simulation theory then only the most interesting simulations will continue. Therefore, the most interesting outcome is most likely because it's either that or annihilation.

"So," he added, "really, we have one goal: Keep it interesting."

This requires a real theory of mind about the hypothetical aliens who are running the hypothetical simulation. Are Musk's various social-media fights and other adventures interesting? I find them pretty exhausting and try to avoid them, even as he tweaks X's algorithms to show them to everyone. But I cannot deny that, you know, I keep writing about them. *He* obviously finds them riveting. What do the aliens think? I mean. The world continues to exist? That is consistent with (1) the world is a simulation, (2) it will only continue if ratings are good and (3) Elon Musk's personal contributions to the interestingness of the world are good for ratings. It is also consistent with other hypotheses.

Elsewhere:

The future of Tesla is an army of humanoid robots that Elon Musk says could eliminate poverty and the need for work. He has told investors the robots could generate “infinite” revenue for Tesla and have potential to be “the biggest product of all time.”

Musk has bet the company and his personal fortune on this vision of the world in which Optimus, as it is known, works in factories, handles domestic chores, performs surgeries and travels to Mars to help humans colonize the planet. Though today each robot is made by hand, Musk has proposed manufacturing millions of robots a year.

Okay. And:

Tesla took the unusual step of publishing a series of sales estimates indicating the outlook for its vehicle deliveries may be lower than many investors were expecting.

The carmaker posted estimates to its website showing analysts on average expect the company to deliver 422,850 cars in the fourth quarter, down 15% from a year earlier. That compares with a Bloomberg-compiled average of 440,907 vehicles, an 11% drop.

And:

Elon Musk’s Grok is facing mounting criticism and threats of government action around the world after the artificial intelligence chatbot created sexualized images, including of minors, on the social media platform X in response to user prompts.

See, if I were getting paid a trillion dollars to run a car company, I would try to (1) sell more cars and (2) not build a chatbot that creates sexualized images of minors, because I would think things like “I want a trillion dollars” and “I do not want to be fired from my lucrative job” and “I do not want to get arrested.” But Musk is optimizing for the fate of humanity, and selling more cars is boring. At least sell robots!

Venezuela predicting

The stock of Chevron Corp. closed at \$155.90 per share on Friday. As of noon today, it was trading at about \$164.36, up about 5%. There are call options on Chevron’s stock with a \$160 strike price and an expiry of Jan. 16. About 1,346 of those contracts traded on Friday, with a reported closing price of \$0.65 per share. (A contract is 100 shares, so that’s about \$87,500 of trading volume.) At around noon today, I saw those contracts at \$5.51, with more than 8,000 contracts in volume. If you had spent \$87,500 on Chevron call options on Friday – as buyers collectively did – you’d have about \$740,000 today.

Why might you have done that? Well. You *might* have had a joint hypothesis like: “Nicolás Maduro will be removed as leader of Venezuela, *and* his replacement will be more open to US energy companies extracting Venezuela’s oil reserves, *and* that will be good for Chevron, which ‘remained in Venezuela after the seizure of foreign oil assets at the turn of the century’ and ‘is best positioned among global oil giants to immediately benefit from greater US access to the world’s largest crude reserves,’ *and* therefore Chevron’s stock will go up, *and* this will all happen before the options expire on Jan. 16.” You could have made a highly levered joint bet on (1) Venezuelan regime change, (2) its economic implications and (3) its timing.

And if you had done that you would have been correct.³ Bloomberg's Mitchell Ferman reports:

US oil stocks jumped Monday after President Donald Trump pledged to revive the Venezuelan energy sector following the capture of Nicolás Maduro over the weekend.

Chevron Corp., the only American oil major currently operating in the South American nation under special US permission, surged as much as 6.3%, the most since April.

ConocoPhillips and Exxon Mobil Corp. also rose. The three largest oil-service companies – Halliburton Co., SLB Ltd and Baker Hughes Co. – all jumped more than 5%.

Trump said US oil companies will spend billions of dollars to rebuild Venezuela's crumbling energy infrastructure and restore the nation's oil sector to its former glory.

So not just Chevron. "American military adventurism will be good for Halliburton" is a thesis with a decades-old pedigree, and some more general view like "regime change in Venezuela will be good for oilfield services" seems pretty straightforward.

There are other theses. Venezuela has been in default on its sovereign bonds for a while, and it is plausible to think that regime change might lead to restructuring of those bonds and some recovery for the bondholders. And so "the country's dollar bonds rose by between 7 and 9 cents on the dollar across maturities in thin London trading on Monday."

Or, of course, you could have had some wrong joint hypothesis. "Regime change in Venezuela will bring more of its huge reserves into the global market and drive down the price of oil": Not a crazy thing to think, but in fact oil is up a bit today and there is a lot of uncertainty about the timing and impact of any changes in Venezuela.

And so if Donald Trump had come to you on Friday and said "hey, we're going to grab Maduro this weekend, don't tell anyone," you would have had material nonpublic information, but it would have been up to you to know how to use it. You could have correctly predicted the economic implications of that information, and made a lot of money, or you could have incorrectly predicted its implications, and lost a lot of money. (Also I am ignoring the legality of all of this!)

But that would require both (1) the inside information and (2) some ability to develop a model of its economic implications. What if you don't have that, or don't want to bother? Well, there were betting markets *just* on whether Maduro would be deposed. You could have made that simple bet. Somebody did. Axios reported:

Traders on Polymarket appeared to anticipate Maduro's capture late Friday night, before President Trump announced it early Saturday morning.

The market for whether or not Maduro would be out of power climbed shortly before 10pm ET on Friday, after hovering in the low single digits for weeks, per the Wall Street Journal.

What appears to be a newly created account appeared to invest \$30,000 Friday in Maduro's exit. After Maduro went into custody Saturday morning, that same investor netted \$436,759.61.

Was this based inside information? I have no idea. Byrne Hobart writes:

[I previously wrote] that such a market would barely function, because market-makers would assume that any trader in those markets had information the market-maker didn't. And yet, \$30k of liquidity is a lot more than I'd expect to get on such an asymmetric bet. What that piece didn't anticipate was just how big prediction markets and recreational gambling would get. There are enough punters on geopolitical markets that liquidity provision can still work, and even if there aren't professionals involved in every market, those same recreational traders are still providing liquidity.

On the one hand, the point here is that there are enough recreational gamblers on Polymarket that, if you have inside information about a CIA-backed coup in Venezuela, you can bet \$30,000 on it at 14-to-1 odds. On the other hand, the point here is that there are a lot of recreational gamblers on Polymarket, so it's always possible that the winning bettor here was one of them: Perhaps someone just felt like betting some money on Maduro's exit *without* inside information, because that is the sort of gambling that people do now.

My basic view is that there is some natural limit on the liquidity here. Markets with economic consequences – the market for oil, or for oilfield services stocks, or for Venezuelan sovereign bonds – are bigger and deeper than markets for recreational gambling. People have diverse reasons for buying or selling oil or stocks or bonds, and those reasons make a market, and if *your* reason for buying or selling those things is "I have inside information about a coup," then someone will take the other side of your trade, in large size, for unrelated reasons of their own. Whereas the market for pure bets on a coup is mostly limited to (1) recreational gamblers and (2) insiders.

Anyway Axios goes on:

Rep. Ritchie Torres (D-N.Y.) will reportedly introduce a new bill – the Public Integrity in Financial Prediction Markets Act of 2026 – to limit federal elected officials and some political figures from engaging in prediction markets.

It does seem bad for government officials to have incentives to do unexpected things to make themselves a quick profit, though maybe Elon Musk would disagree.

Hntrbrk

An important problem with being a dedicated short seller is that stocks mostly go up, so you are fighting against the current. If you are fabulously good at finding bad companies, perhaps your short portfolio will underperform the market by 10% per year. The S&P 500 index was up 16.4% last year. If you had bet \$100 against the bad companies you identified, you'd have \$94 now. There are other, more favorable ways to monetize this skill, but it is a hard business.

Buying stocks that go up is an easier business, because stocks mostly go up. If you are very good at finding bad companies, perhaps you can apply that skill to buying stocks that go up? "Buy all the stocks, except the bad ones" is one plausible (and common) approach. Also, though, maybe "investigate a bunch of stocks to see if they're frauds, and buy the ones that are the least fraudulent"? Or, for that matter: "Be an activist short seller, identify bad companies, short their stocks, publish withering short reports about them, develop a reputation as a vicious short seller, and then occasionally find good companies, buy their stocks, publish *glowing* reports about them, and have everyone think 'oh wow if this vicious short seller likes the stock it must really be good.'"

Anyway the Wall Street Journal reports:

Hedge fund Hunterbrook Capital launched less than two years ago with \$100 million and what it called a "news-driven strategy." An affiliated team of journalists would publish exposés on corporate wrongdoing, and the fund would short the stocks of their targets ahead of time.

In 2025, it learned that good news can be just as profitable as bad.

Hunterbrook Capital gained 23% after fees last year through September, according to an investor letter viewed by The Wall Street Journal. That was higher than indexes tracking hedge-fund performance, as well as the roughly 15% return of the S&P 500 over the same period. Many of its best-performing positions were bullish bets on stocks based on reporting from its sister newsroom, Hunterbrook Media.

Take flying-taxi maker Joby Aviation. The hedge fund had previously bet against similar companies it thought were overhyped and potentially fraudulent. Then, a Hunterbrook Media reporter discovered an abnormally long Joby flight appear, then disappear, from public flight logs.

He booked a room with a view of the hangar and photographed a new aircraft Joby was testing. Hunterbrook Capital bought Joby shares before the scoop was published, betting it would make Joby bears have to cover their shorts, and sold them a few weeks later after a rally.

"We naturally assumed that the flying taxi company was a fraud, but then we watched its taxi fly so we went long the stock," reasonable. Anyway Hunterbrook's whole schtick is that they are not *just* a hedge fund, and not just an activist short seller, but rather a real independent media company that publishes *stories* rather than *stock reports*. I suppose they could get into publishing glowing puff pieces to see if that moves any stocks.

Corporate rap

My general rule around here is that you should not be involved in any sort of corporate rap video. A case that I had never considered, though, is: What if you work for a cannabis company? On the one hand, no, corporate rap is bad. On the other hand, I feel like, historically, selling marijuana and rapping are often complementary skills. If you tell me "I sell mortgages and rap," I will assume you are a bad rapper. If you tell me "I sell marijuana and rap," I'm gonna give you a chance.

But then, I am old, and when I started listening to rap selling marijuana was illegal. Now you can sell cannabis and be very corporate indeed. So here's the chief executive officer of a European cannabis conference company rapping. Is he Snoop Dogg? He is not. But amid the corporate jargon you get the phrase "a medley of super heavy nugs." The video is also great. Everyone is wearing a lanyard.

Incidentally I have previously written a few times about a corporate rap video produced by an *opioid* company, which was a terrible idea, but I suppose technically the same loophole applies. "I rap and sell opioids," okay, maybe.

Things happen

Bridgewater, D.E. Shaw Among Top Hedge Fund Gainers of 2025. Citadel's Flagship Hedge Fund Climbed 10.2% Last Year. Japan's 'Dementia Money' Is a Warning to the World. Deutsche Bank shares exceed book value for first time since 2008. The upstart exchange drawing traders to the world's best-performing stock market. Small-Time Crypto Investors Are Facing Violent Attacks. "Households with at least one GLP-1 user counterintuitively spend more on eating out than they did before family members started the drug." US Auto Sales Poised to Slip as Middle-Class Buyers Retreat. "He rated a new roll with spicy tuna he recently tried a 'negative million.'" America Is Falling Out of Love With Pizza. A Booming Live Music Industry Looks for Its Next Generation of Roadies. "The secondary market for bankers is highly illiquid."

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To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:

Michael Newman at mnewman43@bloomberg.net

1. I just went to DLEN, Bloomberg's Direct Lending Deal Flow page, and chose the most recent US dollar deal. (It's an Olo deal listed for Dec. 22, though as far as I can tell that is just a minor amendment to a financing done in September.)
2. You could quibble with "the [SolarCity] deal worked out great," but Tesla's stock price worked out great (at the time of the decision) in any case.
3. "Correct" in sort of a narrow markets sense: Chevron's stock went up this morning. I don't mean to predict what will actually happen to Chevron's business returns in the long run.

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Securities

Bezos, Catz, Dell Cash Out Billions as 2025's Top Inside Sellers

Jan. 2, 2026, 2:00 AM PST

Mega-cap tech companies led a disproportionate share of the US stock market's gains in 2025. Their executives also accounted for an outsized share of insider selling as billionaire founders, CEOs and directors took more than \$16 billion off the table.

The largest sale came from Amazon.com Inc.'s Jeff Bezos, who started offloading stock at the same time as his star-studded wedding to Lauren Sanchez. His eventual sale of 25 million Amazon shares netted the world's third-richest person \$5.7 billion.

The tech rally, driven by euphoria around anything linked to artificial intelligence, also lifted the fortunes of lower-profile executives like Arista Networks Inc.'s Jayshree Ullal. A rare non-founder billionaire, the long-time chief executive officer of the networking-equipment company sold nearly \$1 billion as her net worth jumped to over \$6 billion last year.

Nearly all of the top insider sellers, including Ullal and Bezos, used 10b5-1 trading plans, which signal in advance their intention to sell.

Here are the top insider sellers for 2025, according to Washington Service, which tracks insider buying and selling. The data, which track sales disclosed in filings through Dec. 30, include board directors who report insider sales on behalf of their firms.

1. Jeff Bezos



Jeff Bezos

Photographer: Michael M. Santiago/Getty Images

Chair, Amazon

Total shares sold: 25,000,000

Total value sold: \$5,654,270,394

Bezos offloaded 25 million shares of Amazon in 2025 under a pre-arranged trading plan that kicked off the same weekend as his Venice nuptials. Over June and July, Bezos sold \$5.7 billion worth of stock, bringing his total sold since 2002 to more than \$50 billion, according to the Bloomberg Billionaires Index. The Amazon chairman has diversified his interests since founding the e-commerce giant and often uses his sale proceeds to fund his space venture, Blue Origin. Amazon didn't respond to a request for comment.

2. Safra Catz



Safra Catz

Photographer: Joe Raedle/Getty Images

Former CEO, Oracle Corp.

Total shares sold: 12,500,000

Total value sold: \$2,531,343,305

Oracle's former CEO is always quick to unload any shares she acquires and the pattern continued in 2025. Catz, who uses a 10b5-1 plan, exercised and sold millions of performance-based stock options she received in the first half of the year as Oracle hit new highs. Compared to founder Larry Ellison, whose net worth is primarily made up of Oracle stock, Catz maintains a small position of 1.1 million shares. She stepped down from the CEO role in September after 11 years leading the company, becoming vice chair of the board. Outside of Oracle, Catz recently joined the board of Paramount Skydance Corp., run by Ellison's son David, and owns a handful of restricted stock units, which aren't included in her \$3.5 billion fortune, according to Bloomberg's wealth index. Oracle declined to comment.

3. Michael Dell



Michael Dell

Photographer: Bridget Bennett/Bloomberg

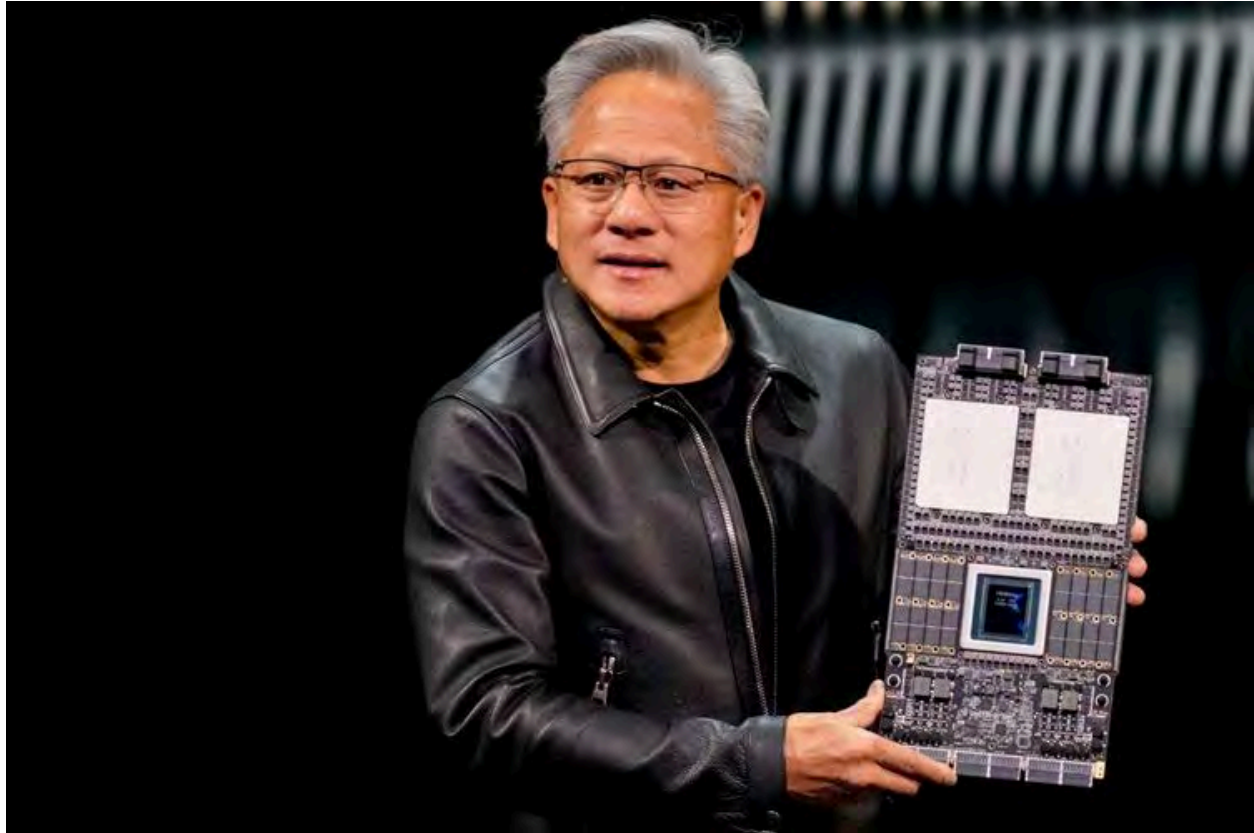
CEO, Dell Technologies Inc.

Total shares sold: 16,253,968

Total value sold: \$2,222,753,261

Dell made a splash in December when he and his wife Susan announced they would give \$6.25 billion to launch so-called "Trump Accounts" for 25 million American children. Some of that money could be coming from his stock sales throughout the year. The founder of the eponymous Round Rock, Texas-based computer company often sells large billion-dollar chunks without the use of a 10b5-1 plan. In 2025, he sold over \$2 billion in two different transactions in June and October, increasing his total sold to over \$13 billion, according to the Bloomberg Billionaires Index. Dell still owns around 40% of his company. Dell Technologies representatives didn't respond to a request for comment.

4. Jensen Huang



Jensen Huang

Photographer: Kent Nishimura/Bloomberg

CEO, Nvidia Corp.

Total shares sold: 6,000,000

Total value sold: \$1,048,586,165

When Huang first filed to unload 6 million shares of Nvidia, he was expected to net roughly \$865 million. The stock's relentless march higher, though, ended up tipping the value of his sales over \$1 billion. As Huang sold, Nvidia crossed the threshold of the world's first \$4 trillion company in July, then the first \$5 trillion company in October. Huang also gave over \$300 million to a donor-advised fund and his foundation, which has struggled to keep pace with Nvidia's stock growth and will have to double its giving, again, in 2026. Nvidia didn't respond to a request for comment.

5. Jayshree Ullal

CEO, Arista Networks

Total shares sold: 7,560,143

Total value sold: \$975,839,433

Ullal led Arista Networks to historic highs in 2025 as the networking equipment provider saw its stock soar nearly 50% to a record in October, before it erased some of those gains to end the year up 19%. Ullal's stock sales also set a record as she unloaded more than \$975 million in the fall. Despite the sales, most of her \$6.1 billion net worth is still tied up in her 2.4% stake in the company, according to the Bloomberg Billionaires Index. Ullal is one of four billionaires tied to Arista Networks, and a rare non-founder CEO who's among the world's richest women. A spokesperson for Arista didn't respond to a request for comment.

6. Mark Zuckerberg



Mark Zuckerberg

Photographer: Will Oliver/EPA/Bloomberg

CEO, Meta Platforms Inc.

Total shares sold: 1,387,605

Total value sold: \$944,785,836

Meta's stock finished the year up 13% as the social media company embraced AI. Along the way, Zuckerberg and his wife's Chan Zuckerberg Initiative, as well as its associated foundation, cashed out nearly \$945 million worth of shares. Zuckerberg had previously said he plans to give away 99% of his stock in his lifetime, and still owns a 13% stake in the company he co-founded. It was a tumultuous year for his philanthropy, which faced layoffs and shifting priorities, and also cut ties with a pro-immigration group he had co-founded. Meta didn't respond to a request for comment.

7. Max de Groen (on behalf of Bain Capital)

Director, Nutanix Inc.

Total shares sold: 10,980,467

Total value sold: \$830,759,670

The Nutanix board director represents Bain Capital, which sold two-thirds of its stake in the cloud-computing company in the past year. Last summer, the Boston-based investment firm converted a note and received 16.9 million shares, which de Groen said in June 2024 that the firm had no intention of selling. Bain sold nearly 11 million of the shares across two transactions in March and June, which are reported under de Groen's name. Despite reaching a high in May, Nutanix saw a double-digit decline in November after it cut its 2026 revenue forecast. Bain Capital declined to comment.

8. Frank Sloatman

Chair, Snowflake Inc.

Total shares sold: 3,437,162

Total value sold: \$757,721,569

Sloatman parlayed his tenure atop three tech companies into a 10-figure fortune, surpassing other non-founder chief executives like Apple Inc.'s Tim Cook and Microsoft Corp.'s Satya Nadella. Since retiring as CEO of the cloud computing company in 2024, Sloatman has been exercising stock options and selling shares under a 10b5-1 plan. He remains chairman of the Montana-based company, which didn't respond to a request for comment on his sales.

9. Nikesh Arora



Nikesh Arora

Photographer: Nathan Laine/Bloomberg

CEO, Palo Alto Networks Inc.

Total shares sold: 4,000,000

Total value sold: \$738,421,375

Arora, a former SoftBank Group Corp. executive, scored a huge pay package to come run cybersecurity firm Palo Alto Networks in 2018. Since then, the billionaire has been exercising and selling some of his stock options on a monthly cadence under a 10b5-1 plan, adding up to nearly \$740 million for the year. Earlier in 2025, Arora and a consortium of tech investors bought an English cricket team. Palo Alto Networks didn't respond to a request for comment.

10. Baiju Bhatt

Director, Robinhood Markets Inc.

Total shares sold: 7,697,404

Total value sold: \$724,926,811

Robinhood's co-founder briefly made the list of the world's 500 richest people in 2025 after the Menlo Park, California-based trading platform's stock quadrupled through early October. It's since given up some of those gains, but not before Bhatt cashed out nearly \$725 million. The former co-CEO sold 7.7 million shares throughout the year, including several million not included under his pre-existing trading plan. He's now worth \$6.7 billion, down from a high of \$8.9 billion in October. Bhatt didn't respond to a request for comment.

To contact the author of this story:

Biz Carson in San Francisco at bcarson28@bloomberg.net

To contact the editor responsible for this story:

Kristine Oworm at kowram@bloomberg.net

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<https://www.wsj.com/business/autos/tesla-sales-drop-for-second-year-in-a-row-958dec20>

BUSINESS | AUTOS

Tesla Falls Behind China's BYD as Vehicle Sales Drop for Second Year

End of U.S. subsidy for electric vehicles and flagging European demand dented global EV sales

By [Becky Peterson](#) [Follow](#) and [Joseph De Avila](#) [Follow](#)

Updated Jan. 2, 2026 4:54 pm ET



Car sales make up around three-fourths of Tesla's revenue. NOAH BERGER/ASSOCIATED PRESS

Quick Summary

- Tesla's annual vehicle deliveries decreased for the second consecutive year, with a 9% drop in 2025 sales.

[View more](#)

[Tesla](#) TSLA **-2.59%** ▼, once the top seller of electric vehicles, lost first place [to China's BYD](#) after reporting annual vehicle-delivery declines for the second year in a row.

Tesla sales were down 9% for all of 2025 and dropped 16% for the fourth quarter compared with a year prior.

The EV maker is adjusting to a shopping landscape disrupted by the end of federal subsidies. The company saw a surprise sales boost in the third quarter as U.S. buyers rushed to take advantage of the expiring \$7,500 tax rebate. For the fourth quarter there was no special incentive.

Tesla shares slumped 2.59% Friday, marking seven straight sessions of declines—the company's longest losing streak since April 2024. Tesla stock is down more than 10% over those seven sessions.

Chinese carmaker BYD, which doesn't sell vehicles in the U.S., said late Thursday that it sold 2.26 million battery electric vehicles last year, up 28% from the year before. Tesla meanwhile said it sold 1.64 million vehicles in 2025.

For BYD, the milestone is significant and its shares, traded in Hong Kong, closed up 3.6%. It was only a few years ago that the Chinese auto company's founder worried that BYD might [not survive](#).

The company still faces increasing competition from companies such as Geely and Leapmotor in China's budget-car market. Geely increased EV production by 39% last year. Leapmotor, once a smaller player in China's EV market, hit its 500,000-unit target for 2025 ahead of schedule and set an ambitious goal of one million cars for 2026.

For Tesla, 2025 was a year like no other. At the start of the year, CEO Elon Musk had a controversial role in the White House overseeing the Department of Government Efficiency. That caused backlash at some Tesla showrooms across the U.S. and pullback in sales.

Despite that, Musk has projected confidence focusing on the new products Tesla is bringing to market including robotaxis, the steering-wheel free Cybercab and the Optimus humanoid robots. But car sales are still Tesla's main source of sales, contributing about three-fourths of its revenue.

Tesla's final quarterly tally was 418,227 EVs delivered. Tesla missed analysts' estimates of 422,850 deliveries, according to an average of 20 projections published by the company.

Tesla also reported 49% growth in its energy business.

Tesla's fourth-quarter hangover from the expiration of the EV tax credits was expected, William Blair analyst Jed Dorsheimer said in a note. The weak fourth quarter "will have little influence on the stock, which is valued almost entirely on the transformation to real-world AI," he said.

Tesla missed analysts' expectations while dealing with the challenges of the expiring tax credits and headwinds in Europe, said Dan Ives, global head of tech research at Wedbush Securities, adding that sales were still better than where some "whisper numbers" put them.

"This will be viewed as better than feared deliveries and a step in the right direction for the Tesla story heading into 2026," Ives said.

In October, [Tesla released](#) cheaper, stripped-down versions of its popular Model 3 sedan and Model Y SUV in an effort to spur demand. Still, U.S. sales fell in the first two months of the quarter, according to industry data.

In November, [shareholders approved](#) a new pay package for Musk that could make him the world's first trillionaire, if he succeeds in increasing Tesla's market cap to \$8.5 trillion, while hitting a series of financial and operational goals, including selling more vehicles and launching its robotics business.

Tesla chair Robyn Denholm [said the record-setting package](#) is necessary to keep Musk focused and engaged through the next stage of the company's growth.

Tesla has described the objective of its next phase of growth as "sustainable abundance." In a master plan released over summer, the company laid out a vision in which artificial intelligence, robotics and energy storage systems eliminate scarcity.

"The tools we are going to develop will help us build the kind of world that we've always dreamed of—a world of sustainable abundance—by redefining the fundamental building blocks of labor, mobility and energy at scale and for all," the company wrote.

In December, Tesla started testing fully autonomous robotaxis in Austin, Texas, after launching a pilot program with safety drivers in the front passenger seat in June.

Tesla also offers rides in the Bay Area in vehicles with drivers behind the wheel, and it announced plans to expand its services to Arizona, Nevada and Florida.

Musk said he expects there to be hundreds of thousands of Teslas driving fully autonomously on roads in the U.S. by the end of the year, many of which would be personally owned vehicles. The company plans to start production on its dedicated autonomous vehicle, the Cybercab, this year.

Tesla struggled in Europe last year. The automaker registered 25,477 cars in 2025 in France, a 37% decline from a year earlier, according to the nation's automobile association. Tesla's registrations across Europe dropped 39% through the first 11 months of 2025, according to the European Automobile Manufacturers' Association.

Ives, of Wedbush Securities, said Tesla could reach a market cap of between \$2 trillion and \$3 trillion by the end of 2026 based on its plans for autonomous vehicles and robotics. Tesla will own about 70% of the global autonomous market over the next decade, he said.

"No other company in the world can match the scale and scope of Tesla coupled with its broadening AI footprint," Ives said.

Tesla will report its full fourth-quarter earnings on Jan. 28.

Write to Becky Peterson at becky.peterson@wsj.com and Joseph De Avila at joseph.deavila@wsj.com

Appeared in the January 3, 2026, print edition as 'Tesla Loses Crown as Top Seller of EVs'.

Securities

Manage Newsletters

Tesla Sales Outlook Darkens Despite Musk's Self-Driving Euphoria

Jan. 1, 2026, 3:00 AM PST

Summary by Bloomberg AI

AI Generated



- Tesla Inc. ended last year with investors buying into Elon Musk's views on autonomous vehicles, but the company likely sold fewer vehicles in the last six months than a year earlier.
- Tesla is expected to report that it delivered around 440,900 vehicles in the fourth quarter, down 11% from a year earlier, according to data compiled by Bloomberg.
- Wall Street has grown gloomy about the outlook for 2026, with the average estimate for deliveries this year plunging to roughly 1.8 million, down from over 3 million two years ago.

Tesla Inc. ended last year on a roll, with investors increasingly buying into Elon Musk's ebullience about autonomous vehicles. Winning over actual car buyers was another story.

Shares in the world's most valuable auto company soared in the second half, largely on the basis of its chief executive officer touting advances in [artificial intelligence](#) and [robotics](#). But the progress Musk trumpeted didn't translate to success in showrooms – the company likely sold fewer vehicles in the last six months than a year earlier, despite record deliveries in the third quarter.

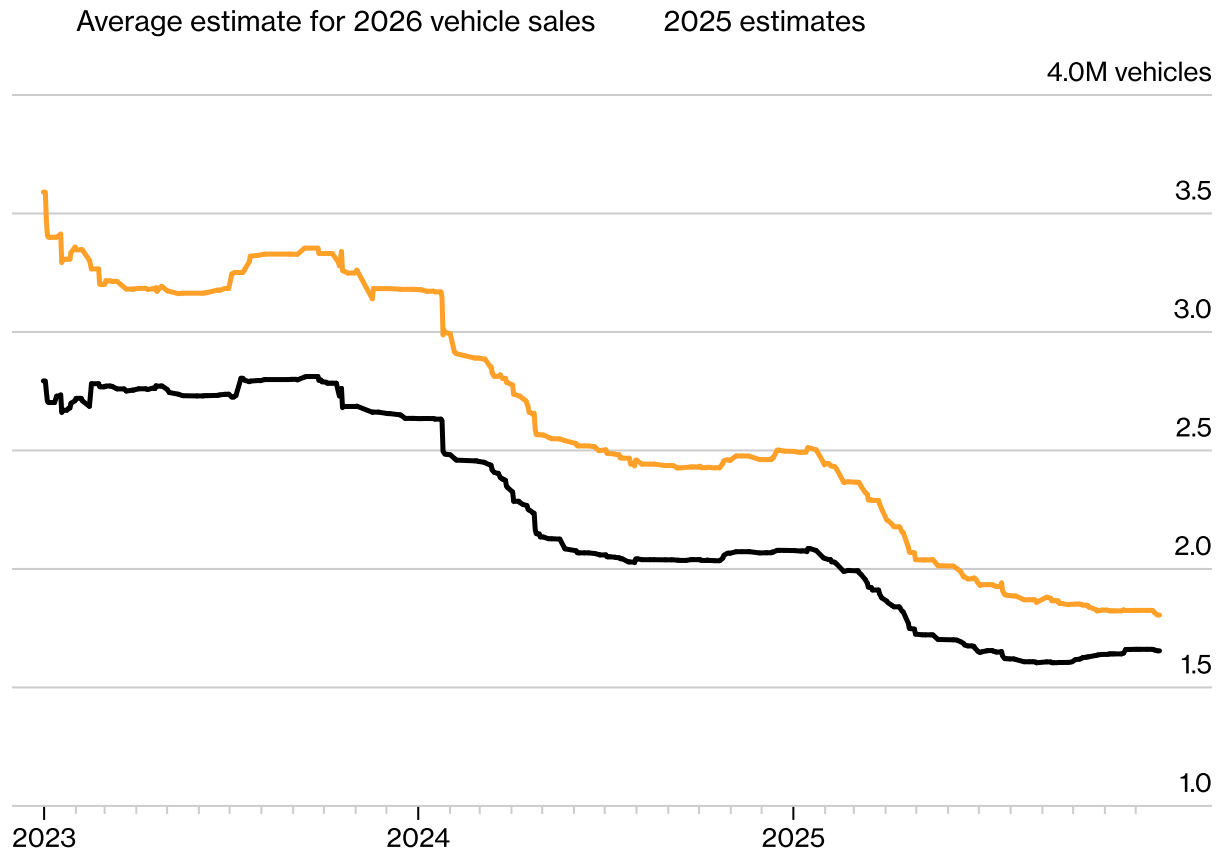
On Friday, Tesla is expected to report that it delivered around 440,900 vehicles in the fourth quarter, down 11% from a year earlier, according to data compiled by Bloomberg. Tesla took the unusual step this week of publishing its own average of analyst estimates that was even more pessimistic, calling for a [15% decline](#).

Wall Street has grown similarly gloomy about the outlook for 2026. This time two years ago, analysts were predicting Tesla would deliver more than 3 million vehicles. That average estimate for deliveries this year has plunged to roughly 1.8 million.

"Tesla investors are focused on how the company might look five, 10, 15 years down the road, and really discounting what they see in the near term," **Garrett Nelson**, an equity analyst at CFRA Research, said by phone. "The question is, can they maintain that, especially when we think headwinds are going to become more apparent in the financials?"

Tesla's Gloomier Sales Outlook

Deliveries estimates have dropped substantially



Source: Bloomberg

Bloomberg

Topsy-Turvy

Even by the standards of Musk and Tesla – two names synonymous with turbulence – 2025 was a tumultuous year.

The carmaker's vehicle sales got off to a [dismal start](#), partly due to the company retooling production lines at each of its auto plants for the redesigned Model Y, its most popular vehicle. Another major factor was the [intense backlash](#) against its CEO's work for US President Donald Trump.

By early April, when Musk was publicly feuding with members of the administration over [tariff policy](#), Tesla's stock had plummeted 45% for the year.

Musk spurred the recovery by [stepping back](#) from government and [returning to work](#) on a longtime goal: starting a ride-hailing business with cars he's said will eventually be autonomous.

In June, Tesla launched an invite-only Robotaxi service in Austin, with safety operators on board to supervise each of the Model Ys ferrying Musk fans around the Texas capital. While the vehicles [violated traffic laws](#) on day one – drawing the attention of a federal regulator that's opened [multiple investigations](#) into the company's driving systems – investors have shrugged off the safety concerns.

Read More: [Tesla's Dangerous Doors](#)

Tesla's board then proposed a new compensation package for Musk in September, offering a payout potentially worth \$1 trillion depending on milestones including [delivering millions](#) of robotaxis. Soon after, the comeback was complete – Tesla shares were trading higher for the year.

When the stock closed at a new all-time high on Dec. 16, the company had added more than \$915 billion in market capitalization in just over eight months.

Needing Convincing

But while Tesla's robotaxi prospects have captivated investors, car buyers have been relatively circumspect.

Musk himself has [acknowledged challenges](#) persuading consumers to purchase what Tesla markets as Full Self-Driving, or FSD, a suite of features that still require human supervision. Allegations that Tesla is misleading Californians by exaggerating the automated-driving capabilities of its vehicles could lead to the state suspending the company's sales license for 30 days early this year.

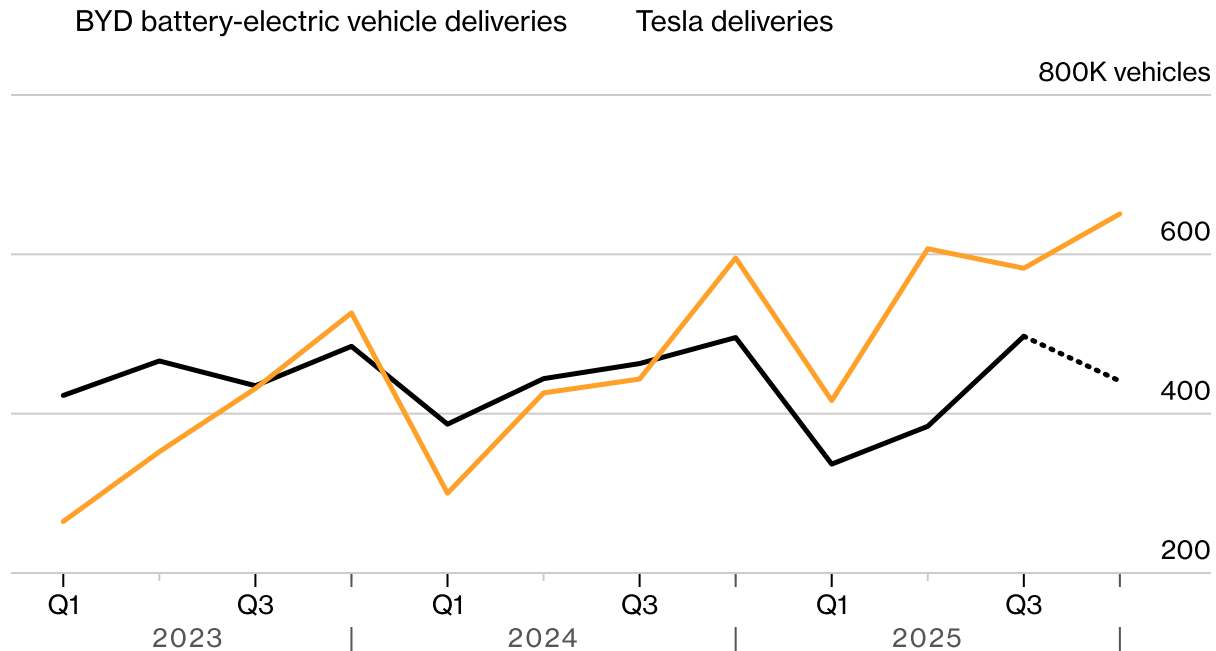
Read More: [Tesla Faces California Sales Halt Over Marketing of Autopilot](#)

Tesla's attempt to distinguish itself in China's crowded electric vehicle market with driver-assistance functions also isn't working out, with companies including BYD Co. and Xiaomi Corp. offering similar systems as [standard features](#).

Due largely to BYD's far higher sales in China and surge of [momentum in Europe](#) – where Tesla has been [unable to obtain](#) regulatory approval for FSD – analysts expect the Shenzhen-based carmaker to have sold more battery-electric vehicles worldwide for a fifth quarter in a row.

BYD Sells More EVs Than Tesla

The Chinese carmaker likely extended its streak in the fourth quarter



Source: Company statements, Bloomberg

Bloomberg

Moving Forward

After a widely anticipated annual sales decline – its second in a row – Tesla has more hurdles to contend with in 2026. The US has ceased offering federal tax credits for EV purchases and leases, which Musk has warned could lead to “a few [rough quarters](#).”

Some see a silver lining in the withdrawal of US policy support, which has led major manufacturers to pull back from EV investments. Ford Motor Co. said last month it expects to record about [\\$19.5 billion](#) in charges tied to abandoning EV and battery projects that were destined to lose money.

Musk ended the year by building anticipation for Cybercab, a two-seat compact car with butterfly doors. While the prototype he first unveiled in late 2024 lacked a steering wheel or pedals, Tesla’s board chair **Robyn Denholm** told Bloomberg News in October that the company will sell the car with those components [if required](#) by regulators.

“Investors have fully bought into his autonomous vision, which comes at a good time, as Tesla’s EV business will likely be flat to up 5 percent next year,” said **Gene Munster**, managing partner at Deepwater Asset Management. “At this point, Elon only needs the car business to stabilize over the next year to satisfy investors.”

To contact the reporter on this story:

Kara Carlson in Austin at kcarlson72@bloomberg.net

Securities

Strategy to Post Multibillion-Dollar Loss on Bitcoin Slide (1)

Jan. 2, 2026, 9:38 AM PST

Michael Saylor has long noted that Bitcoin's volatility "is a feature, not a bug" when pitching his cryptocurrency accumulator Strategy Inc.

Investors will soon see the downside of that, with the company likely to report a multibillion-dollar loss when it releases results for the just-ended fourth quarter. That would be a swing from a \$2.8 billion profit in the previous quarter, reflecting an unrealized loss tied to the falling value of the company's roughly \$60 billion Bitcoin stockpile.

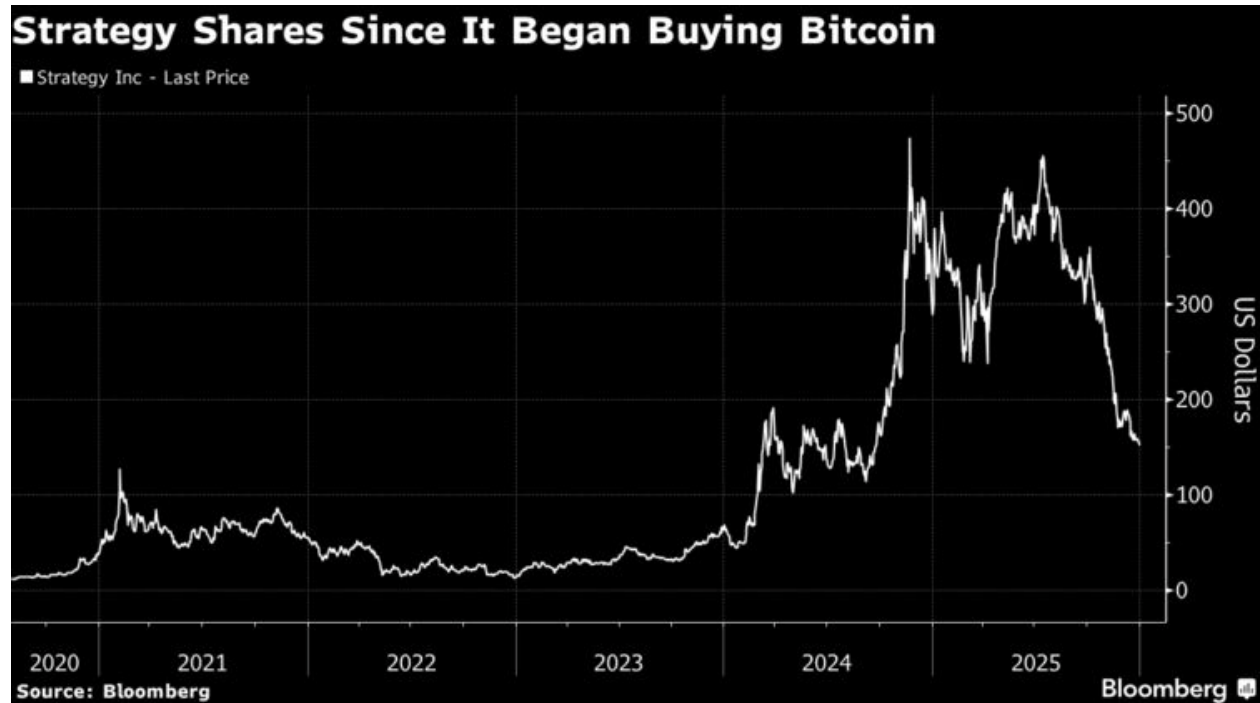
"There was this one-time pop, but that is a different story in this quarter," said Aaron Jacob, an associate professor at Brigham Young University and senior adviser at Taxbit. "It is going to be a sizable loss."

Strategy initially adopted an accounting change in the first quarter that requires valuing the firm's crypto holdings at market prices, which is why it is expected to book such a big hit: Bitcoin fell 24% during the fourth quarter. The multibillion loss still comes at a critical time for the dot-com-era software maker turned leveraged Bitcoin proxy. Investors have begun to sour on the treasury company model Strategy co-founder and chairman Saylor pioneered more than five years ago. After outperforming benchmark stock indexes since this shift, the common shares of the company formerly known as MicroStrategy tumbled 48% in 2025.

The declining share price raised concern that Strategy would have to sell Bitcoin to meet future costs such as mounting dividends and interest payments since the cryptocurrency doesn't produce any income and the software business generates little positive cash flow. To help alleviate those concerns, Strategy established a cash reserve on Dec. 1 by selling common shares.

The Tysons Corner, Virginia-based company also updated its full-year earnings guidance at the start of last month, assuming a price range of between \$85,000 and \$110,000 for Bitcoin by year-end. Based on that estimate, it projected that operating income would range from a loss of \$7 billion to a profit of \$9.5 billion. With Bitcoin ending last year down 6.5% to \$87,648, the operating loss is likely to be closer to the lower end of the projected range.

A spokesperson for Strategy didn't respond to a request for comment.



Saylor, who started purchasing Bitcoin as a hedge against inflation in 2020, isn't alone in facing large losses in the wake of the fourth-quarter collapse in crypto prices. Last year, a flurry of public companies adopted Strategy's playbook to accumulate digital assets and woo investors that wanted leveraged crypto exposure through the stock market. Shares of companies such as the Thomas Lee-backed BitMine Immersion Technologies Inc. soared before tumbling during the digital-asset downturn. They are also subject to the same fair value accounting standards.

"These unrealized gains and losses are being recognized contemporaneously with changes in market value," said Bruce Pounder, executive director at accounting advisory firm GAAP Lab. "This is completely different from the prior rule, in which neither unrealized losses nor unrealized holding gains were recognized."



Michael Saylor

Source: Bloomberg

Saylor's personal wealth also took a significant hit in 2025 amid the tumble in the price of Bitcoin and the shares of Strategy, dropping around 40% to about \$3.8 billion, according to the Bloomberg Billionaires Index.

In the meantime, Strategy faces another possible blow to investor confidence. The enterprise value of the company is on the verge of dropping below that of its Bitcoin stockpile for the first time in more than two years, underscoring the growing doubts about the sustainability of the corporate-treasury model. The company's enterprise value — which includes indebtedness and the aggregate notional value of its perpetual preferred stock — was about \$61 billion, data compiled by Strategy show.

The shares have slumped almost 70% from the record high touched in November 2024, dragging the company's mNAV — the ratio of its market capitalization and debt to its token holdings — to just above 1. The premium investors were willing to pay for the shares underpinned Saylor's argument for adopting the Bitcoin buying strategy. Now that appears to be almost gone too as shareholders face a multibillion loss for the quarter.

Strategy's shares kicked off the new year by rising 5.2% to around \$160, while the price of Bitcoin climbed 2.6% to \$90,549.

(Updates prices in the final paragraph.)

Securities

Bet Against Christ's Return Pays 5.5% Annual Gain on Polymarket

Jan. 2, 2026, 7:05 AM PST

Alas, Jesus Christ did not return to Earth in 2025. This might not come as particularly surprising or noteworthy to most people. But for a certain crowd of bettors, it was terrific news.

There are any number of random, oddball bets offered on the prediction market Polymarket, though few are quite as curious as the “Will Jesus Christ Return in 2025?” wager. Some \$3.3 million was placed on the bet over the course of the year. Most of that money, of course, came in on “No” and yet there were strong-enough believers among the Polymarket crowd, it turns out, to keep the probability of his return by year-end above 3% throughout most of the spring.

For those who bet “No” in April, when Second Coming speculation crescendoed on the site, the investment returned a tidy annualized profit of 5.5%, albeit before fees, according to one reckoning. That’s better, it’s worth noting, than US Treasury bills — the financial-market baseline for a sure thing.

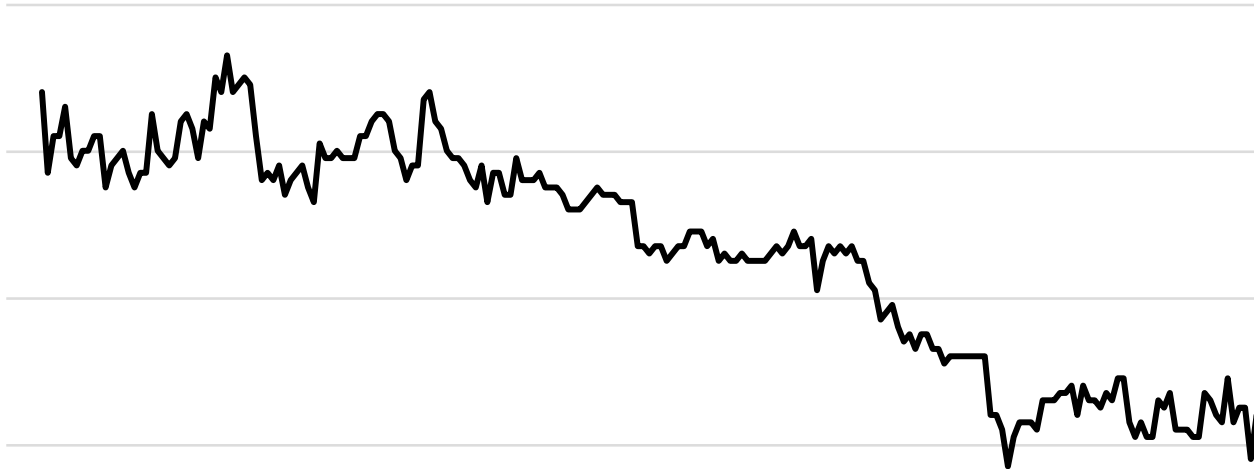
Polymarket and its rival, Kalshi, have generated plenty of buzz. They’re often held out as a cutting-edge way to give reliable odds to crucial real-world events — like an election’s result or the outbreak of war — by tethering the power of high-stakes betting to the wisdom of the crowd.

But for all the serious talk, there’s no shortage of contracts (on the box-office gross of the thriller *Greenland 2: Migration*, the frequency of Elon Musk’s tweets, or even **Jeffrey Epstein** turning up alive) that tap into social-media chatter and in many cases are little different than a pull on the arm of a slot machine.

'Will Jesus Christ Return in 2025?' Prediction Market Booms

Odds on Polymarket fell below 1% in December after an April spike

✓ Yes



The Jesus wager was the subject of some discussion. One user speculated over whether it was set up as a tax-loss scheme. Another said “this is the dumbest market I’ve ever seen.”

“A market like this is distracting,” said Melinda Roth, associate professor at Washington and Lee School of Law. It “also diminishes the value of actual prediction markets that provide insights and useful information.”

A representative for Polymarket didn’t respond to requests for comment.

Explainer: How Prediction Markets Turned the World Into a Casino

Putting earthly odds on religious matters has a distinguished history, though. **Blaise Pascal**, the 17th-century mathematician who pioneered the field of probability, famously used the payoff calculations as one justification for belief in God. It’s known as Pascal’s Wager.

Christians have long awaited the Messiah’s return, with sects and soothsayers occasionally going so far as to claim it was imminent. In the gospels, Jesus prophesied about it but cautioned that even he didn’t know when it would come.

The contract wasn’t very specific about how Polymarket would determine whether the Lord had returned — “The resolution source for this market will be a consensus of credible sources,” it read — but the site promptly posted a win for the “No” camp on Jan. 1.

The wagering has now shifted to whether Jesus will return by the end of 2026. Right now, Polymarket bettors are giving it a 2% chance, making the gain on a winning “Yes” over 5,700%.

John Holden, associate professor of business law and ethics at Kelley School of Business at Indiana University, said he's not surprised there'd be some takers: "People buy lottery tickets despite astronomical odds."

To contact the reporters on this story:

Isabelle Lee in New York at ilee204@bloomberg.net;

Denitsa Tsekova in New York at dtsekova@bloomberg.net

To contact the editors responsible for this story:

David Papadopoulos at papadopoulos@bloomberg.net;

William Selway at wselway@bloomberg.net

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Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Shareholder Litigation To Watch In 2026

By **Jessica Corso**

Law360 (January 2, 2026, 12:03 PM EST) -- A Fourth Circuit case that could be important to the future of class action practice, a dispute between Elon Musk and former Twitter shareholders and a high court battle over the Investment Company Act are all on the list of cases that securities practitioners will be following in 2026.

Securities litigators spoke to Law360 in late 2025 to discuss some of the lawsuits they are closely tracking where a ruling expected this year could alter their practice.

Below is a sample of what are expected to be some of the most-watched shareholder cases of 2026.

Reviving Comcast

The Fourth Circuit is tentatively scheduled to hear oral arguments in March in a case that could determine a path forward for companies seeking to defeat class action certification.

Boeing is being sued by investors who allege that the company misrepresented the safety of its 737 Max fleet. The suit was filed shortly after one of the plane's doors blew out mid-flight in January 2024.

The investors won class certification but Boeing **successfully appealed** the order to the Fourth Circuit, arguing that the plaintiffs "came nowhere close" to satisfying the evidentiary standard set by the U.S. Supreme Court's 2013 ruling in **Comcast Corp. v. Behrend**.

In Comcast, the justices ordered lower courts to consider whether a class' proposed damages model demonstrates class-wide reliance.

"Comcast is a decision where defendants argue that plaintiffs have to have more proof of their methodology, of how they're going to demonstrate and evidence damages at the merit stage," in order to win class certification, explained Lauren Ormsbee of Labaton Keller Sucharow LLP.

"The plaintiff's view of it ... is that it's an effort to prematurely litigate this merit damages issue," said Ormsbee, whose firm represents Boeing investors before the Fourth Circuit.

She said that defendants in securities cases have argued Comcast in an attempt to defeat class certification ever since the ruling came down but have been largely unsuccessful at the district court level. Now there is an effort by defendants to push these arguments to the appellate level and possibly back up to the Supreme Court, she said.

The Boeing case is a demonstration of this renewed vigor surrounding the Comcast arguments, but there have been other recent examples of the case being argued at the appellate level, according to Maeve O'Connor of Debevoise & Plimpton LLP.

Wells Fargo **unsuccessfully tried** to appeal class certification to the Ninth Circuit last year on Comcast grounds and FirstEnergy successfully had **class certification overturned** by the Sixth Circuit, which ordered the lower court to address Comcast on remand.

"It remains to be seen" whether defendants can gain any traction with the Comcast arguments, O'Connor said.

"But if they do, that could change the playing field on class cert and give defendants a powerful new defense," she said.

The case is *In re: The Boeing Company Securities Litigation*, case number 25-1492, in the U.S. Court of Appeals for the Fourth Circuit.

A High Court Showdown

The Supreme Court is expected to issue a ruling this year that could determine whether activist investors can pursue contractual disputes under the Investment Company Act.

The case involves a lawsuit that investor Saba Capital Master Fund Ltd. brought against a series of closed-end funds that adopted a Maryland law into their bylaws that Saba argued violated the ICA.

The funds received the backing of the U.S. Securities and Exchange Commission before the high court, arguing that the commission is the sole enforcer of the ICA and that private contractual disputes under the law cannot be brought in court.

But some of the conservative justices joined the liberal justices in questioning the funds' and the SEC's arguments during **last month's oral arguments**, surprising many court watchers, O'Connor said.

"The Supreme Court historically has been very skeptical toward implied private rights of action, but here, several justices appeared to signal openness to recognizing one," she said.

Saba has argued that the right to sue isn't implied but explicit in the statute.

"That decision is going to be a super important one and will have ... implications for either generating a significant new body of litigation or reverting that power to the SEC," O'Connor said.

The case is *FS Credit Opportunities Corp. et al. v. Saba Capital Master Fund Ltd. et al.*, case number 24-345, in the U.S. Supreme Court.

Post-Macquarie Cases

Shareholders continue to press pure omissions cases even after the U.S. Supreme Court limited their ability to do so in 2024's **Macquarie v. Moab Partners**  and a pair of cases set to be ruled on by lower courts this year could determine the future of those efforts, according to Salvatore Graziano of Bernstein Litowitz Berger & Grossmann LLP.

In *Macquarie*, the justices ruled that a corporation's failure to disclose certain information about its future business risks, absent any affirmative statement that would make such silence misleading, cannot itself be the basis of a private securities fraud claim.

That ruling came under U.S. Securities and Exchange Commission Rule 10b-5(b). Plaintiffs have turned their focus to rules 10b-5(a) and 10b-5(c) since it was handed down in order to make the case that a corporation's or executive's failure to speak can amount to fraud, Graziano said.

Rule 10b-5(b) is "the traditional misstatement or omission" theory of liability, he explained. 10b-5(a) and 10b-5(c), on the other hand, "are typically read together by the courts, and they are more of a scheme or artifice to defraud."

Two cases currently before district courts — both of which are being led by Bernstein Litowitz — could determine the future of investors' efforts on that front, Graziano said.

The first involves a lawsuit that former Twitter investors filed in New York alleging that Musk committed fraud when he **failed to timely disclose** his ownership stake in the social media company, which he has since taken private and renamed X.

The parties are currently arguing over class certification, with Musk claiming that the motion should fail on several grounds — including by failing to demonstrate that investors as a class would have

acted differently if they had known about the share purchases earlier.

A similar case headed for a class certification ruling this year accuses data storage company Seagate Technology of hiding from investors that it had sold over \$1 billion in proprietary technology to Chinese tech giant Huawei Corp. in violation of U.S. export restrictions.

In both of those cases, the parties are accused of "engaging in a covert scheme to continue doing something illegal without speaking," Graziano said.

If either of the cases win class certification, he expects more omissions lawsuits could follow.

The cases are *Rasella v. Musk*, case number 1:22-cv-03026, in the U.S. District Court for the Southern District of New York; and *In re Seagate Technology Holdings plc Securities Litigation*, case number 3:23-cv-03431, in the Northern District of California.

The Future of Risk Disclosure Litigation

The Ninth Circuit has been asked to revive a lawsuit accusing SunPower Corp. and some of its leaders of failing to disclose to investors that their solar energy systems were "plagued by a product defect."

The lawsuit **was thrown out** by a lower court last year, with U.S. District Judge Araceli Martinez-Olguin saying that plaintiffs hadn't shown that SunPower knew about the alleged defects prior to disclosing the issue in 2022.

To come to that decision, Judge Martinez-Olguin relied on the Ninth Circuit's 2023 ruling in a lawsuit against Facebook that ultimately made it up to the U.S. Supreme Court before being dismissed without a ruling.

Now the Ninth Circuit is being asked once again to determine "under what circumstances a risk disclosure can be misleading on the ground that it implies that the event at issue hasn't ever previously occurred," according to O'Connor of Debevoise.

While she said she didn't think the SunPower case "is necessarily a case that's going to dramatically move the law," it is in keeping with a long line of recent Ninth Circuit cases — including one against Adidas that was ruled on last month — to touch on the issue of risk disclosures.

She said that she thinks it's an issue that could eventually make its way back up to the Supreme Court.

"In that sense, [the SunPower case] is going to be important and one to keep an eye on," O'Connor said.

The case is *Steamfitters Local 449 Pension & Retirement Security Funds v. SunPower Corporation et al*, case number 25-1831, before the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Linda Chiem. Editing by Alex Hubbard.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

3 Securities Litigation Trends To Watch In 2026

By **Todd Cosenza, Charles Cording and Zeh Ekono** (January 2, 2026, 10:39 AM EST)

Over the last decade or so, there has been a steady stream of decisions from the U.S. Supreme Court that have shaped the securities litigation landscape. 2025 proved to be different: In a twist, not a single securities law opinion was delivered by the Supreme Court.

In late 2024, the Supreme Court dismissed — after oral argument and without issuing opinions — two highly anticipated appeals it had previously agreed to hear during the October 2024 term: Facebook Inc. v. Amalgamated Bank[1] and NVIDIA Corp. v. E. Ohman J:or Fonder AB.[2] Both cases raised issues of pleading standards in securities fraud class actions.

Securities litigants in 2025 fared no better in efforts to reach the high court: On Oct. 6, the Supreme Court denied certiorari petitions in two closely watched cases: **first** BDO USA LLP v. New England Carpenters Guaranteed Annuity and Pension Funds,[3] **then** Pirani v. Slack Technologies Inc.[4] These cases raised issues of auditor liability and tracing requirements, respectively.

Much of the activity in the securities litigation arena occurred at the appellate level in 2025. Class certification issues continued to loom large, with much attention focused on:

- The evidentiary proof that plaintiffs must offer regarding their damages methodology to satisfy the 2013 standard set in Comcast Corp. v. Behrend;[5] and
- The application of the Supreme Court's decision in Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System.[6]

One high-profile attempt by securities class action defendants to tighten the Goldman matching test proved unsuccessful. In July in the case of San Diego County Employees Retirement Association v. Johnson & Johnson, the U.S. Court of Appeals for the Third Circuit **applied** a looser "subject-matter match" test rather than a tighter "content-matter match" test, thereby easing class certification burdens on plaintiffs.[7]

In 2026, we expect to see other notable appellate court decisions addressing these class certification issues, including from the U.S. Court of Appeals for the Fourth Circuit in In re: The Boeing Company Securities Litigation and the U.S. Court of Appeals for the Ninth Circuit in **the case** of Jaeger v. Zillow Group Inc.

We also expect to see the U.S. Court of Appeals for the Fifth Circuit address a different type of class certification issue for the first time in Bozorgi v. Cassava Sciences:[8] whether courts can presume classwide reliance under the Supreme Court's 1988 decision in Basic Inc. v. Levinson,[9] which requires a showing of market efficiency, for meme stocks that are traded based on internet hype rather than new, value-relevant information.

Outside of class certification, artificial intelligence-focused securities litigation is on the rise, with the



Todd Cosenza



Charles Cording



Zeh Ekono

industry — and AI-related disclosures — under scrutiny. Moreover, with the U.S. Securities and Exchange Commission's shifting enforcement priorities, private plaintiffs are expected to take on a larger enforcement role in the crypto space.

We also expect to see a flurry of initial public offerings in the tech sector more broadly, fueled in part by the favorable macroeconomic environment and pent-up demand.[10] We can expect this wave of IPO activity to bring with it an increase in busted IPO litigation for years to come.

In view of volatile market dynamics, we expect to see securities litigation as active as ever in 2026 across a variety of industries and forums. This article highlights the key trends and cases in securities litigation that will matter most in 2026.

Class Certification Issues

Over the past decade, class certification has remained one of the most hotly contested and litigated issues in securities litigation. We expect 2026 to be no different.

Damages Models

In the 2013 Comcast case, the Supreme Court held that plaintiffs cannot satisfy Rule 23(b)(3)'s predominance requirement without demonstrating through evidentiary proof "that damages are capable of measurement on a classwide basis" using a methodology "consistent with [their] liability case." [11] The court made clear that district courts "must conduct a 'rigorous analysis' [of the proposed damages methodology] to determine whether that is so." [12]

One case to keep a close eye on with respect to its application of Comcast is *In re: The Boeing Company Securities Litigation*, which is currently pending before the Fourth Circuit on a Rule 23(f) appeal. [13]

The case arose after **a door plug detached** from a Boeing 737 airplane on an Alaska Airlines flight in January 2024. Following the incident, Boeing's stock price dropped and investors sued, alleging that Boeing made false and misleading statements about its commitment to safety that artificially inflated its stock price over the three years preceding the incident.

In March, the U.S. District Court for the Eastern District of Virginia **granted** the plaintiffs' motion for class certification, holding that the plaintiffs met their Comcast burden by proffering the out-of-pocket damages methodology as the appropriate way to calculate damages. [14] The court further held that the plaintiffs need not "conduct detailed damages modeling to meet Rule 23's predominance requirement at the class certification stage." [15]

On appeal, Boeing argued that the district court improperly certified the class because the plaintiffs had only identified the general legal standard for damages in securities cases — that is, out-of-pocket damages — rather than an actual methodology for calculating damages in a manner that is consistent with their theory that the inflation in Boeing's stock price increased over time. [16]

The Fourth Circuit has yet to render a decision. However, the court may follow the Sixth Circuit's lead in *In re: FirstEnergy Corp. Securities Litigation*. [17]

In this case, the plaintiffs filed a putative class action against FirstEnergy, an electrical utility company, alleging that FirstEnergy violated the federal securities laws by making statements that were false or misleading because they failed to disclose FirstEnergy executives' alleged bribery of Ohio public officials.

At class certification in 2023, the U.S. District Court for the Southern District of Ohio certified the class, holding that the plaintiffs satisfied Comcast, even though the plaintiffs offered no actual damages model particularized to their theory of liability and instead assured the court they would articulate a sufficient damages methodology at a later stage. [18]

On a Rule 23(f) appeal, the Sixth Circuit in August **vacated and remanded** the district court's class certification order. [19] In doing so, the Sixth Circuit faulted the district court for not conducting the rigorous analysis required by Comcast — let alone any substantive analysis of damages at all.

Price Impact After Goldman

In its 2021 decision in *Goldman*, the Supreme Court held that the generic nature of a misrepresentation will often be important evidence of a lack of price impact, particularly in cases proceeding under the inflation-maintenance theory.[20]

Since then, price impact issues have been front and center at class certification, with courts closely scrutinizing whether a mismatch exists between the alleged misstatements and the corrective disclosures. Given that the Supreme Court in 2021 did not specify just how close of a match is required, a circuit split has emerged on the proper standard to be applied in making that determination.

In considering *Goldman* on remand, the Second Circuit in 2023 **concluded** that a generalized subject-matter match between the alleged misstatement and the alleged corrective disclosure is insufficient to support the inference that the back-end price drop equals front-end inflation.[21] Rather, the corrective disclosure must expressly and specifically negate the misrepresentation or directly render it false when considering whether a match exists.[22]

The Second Circuit further noted that "any gap among the front-end and back-end statements as written [must] be limited." [23]

The Ninth Circuit addressed the Supreme Court's *Goldman* decision for the first time this fall on a Rule 23(f) petition in *Jaeger v. Zillow Group Inc.* [24] One of the issues before the court was whether the U.S. District Court for the Western District of Washington erred in 2024 by **applying** the more lenient "plausible connection" loss causation standard, which does not require a direct conflict between the front- and back-end statements, rather than the *Goldman* tests established by the Supreme Court in 2021 and the Second Circuit in 2023.

In September, the Ninth Circuit **affirmed** the Western District of Washington's order in a short two-page opinion, holding that the district court did not err "by looking to loss-causation case law for guidance" because both price impact and loss causation "require courts to consider substantially similar questions." [25]

On Oct. 24, Zillow filed a petition for a panel rehearing or rehearing en banc, arguing, among other things, that the Ninth Circuit's ruling creates a circuit split with the Second Circuit by applying "a confusing, watered-down standard at odds with *Goldman*'s clear directive." [26]

The Ninth Circuit has not granted Zillow's petition. If it refuses to do so and allows the decision to stand, defendants facing class actions in the Ninth Circuit will face far greater difficulty showing that the alleged misstatements did not affect the stock price at the class certification stage.

Meme Stocks and Market Efficiency

During the COVID-19 pandemic, meme stocks — that is, stocks that have a significant increase in trading volume due to attention on social media rather than the company's performance — emerged as a new phenomenon. While the meme stock phenomenon has ebbed and flowed since then, some cases concerning them have reached class certification, bringing with them a focus on how such stocks affect traditional notions of market efficiency and introducing important new case law on how courts assess short bursts of trading volatility at class certification.

In some cases, defendants have defeated class certification by demonstrating that a meme stock trades in an inefficient market, so reliance cannot be presumed on a classwide basis.

Most famously, this was the result in *Bratya SPRL v. Bed Bath & Beyond Corp.*, where the plaintiffs sued Bed Bath & Beyond, or BBBY, for securities fraud and market manipulation after one of BBBY's investors tweeted a "to the moon" emoji in response to a negative news article about BBBY. [27] The tweet attracted the attention of meme stock investors, causing BBBY's stock price to rapidly increase and then collapse in a dramatic fashion.

In September 2024, the U.S. District Court for the District of Columbia **denied** the plaintiffs' motion

for class certification, finding that "the market for [BBBY's] securities was so volatile and subject to such unusual market dynamics during the Class Period that it cannot possibly have reflected all public, material information." [28]

In other cases, like the *Shupe v. Rocket Companies Inc.* case **decided** in October 2024 in the U.S. District Court for the Eastern District of Michigan, defendants have relied on Goldman to defeat class certification by demonstrating that even if the market for a meme stock is efficient, the alleged, generic misrepresentations had no price impact. [29]

While the prevailing view is that meme stocks present unique challenges for plaintiffs at class certification, it is equally clear that there is no categorical bar on certifying classes of investors in meme stocks — or stocks alleged to be meme stocks.

For instance, in *In re: Cassava Sciences Inc. Securities Litigation*, the defendant argued that Cassava, a biopharmaceutical company, was a meme stock that exhibited extreme price swings that were untethered to any material news during the class period. [30] Nevertheless, the U.S. District Court for the Western District of Texas **certified the class** this August based on a strict application of the Cammer and Krogan market efficiency factors. [31]

The Cassava Sciences case is currently pending before the Fifth Circuit on the defendants' Rule 23(f) petition. [32] If the Fifth Circuit reaches the Western District of Texas' class certification order, this would represent the first time the federal appellate courts have issued guidance on class certification in meme stock securities cases.

Artificial Intelligence

Over the last few years, AI-related securities cases have been on the rise. While many of the cases have been tossed on motions to dismiss, [33] the filing of new AI-related securities cases show no signs of slowing. [34] We expect AI-related securities cases to be one of the defining trends of the second half of the 2020s, with cases focused on both the AI sector and AI-related disclosures.

The allegations in AI-related securities cases have taken many different shapes. More recently, there has been a wave of cases involving allegations of AI washing, which is the deceptive tactic of overstating a company's AI capabilities or the extent to which AI drives performance or demand.

One example of this is *Hoare v. Oddity Tech Ltd.* in the U.S. District Court for the Southern District of New York. [35] This February, the plaintiffs filed a putative class action against Oddity, a consumer tech platform that focuses on the global beauty and wellness market and various underwriter banks following Oddity's **initial public offering** in 2023.

The complaint alleges, among other things, that Oddity violated the federal securities laws by "overstat[ing] its AI technology and capabilities, and/or the extent to which this technology drove the Company's sales" in their IPO offering documents. [36] The case is currently pending a ruling on the defendants' motion to dismiss.

Some other recent cases allege that companies understated the impact of AI-related risks, including the risk posed by AI advances made by other companies or competitors.

For example, in *Tamraz v. Reddit Inc.*, the plaintiff in June **filed** a putative class action against Reddit, a forum-style social media platform, alleging that the company violated the federal securities laws by making false and misleading statements and omissions regarding the impact that Google's new AI capabilities, including its "AI Overviews" feature, would have on Reddit's business and website traffic. [37] The case is currently pending in the U.S. District Court for the Northern District of California.

While it remains to be seen how these more recent types of allegations will fare, they make clear that companies must exercise extreme caution when it comes to making AI-related disclosures and closely monitor new decisions in this rapidly developing area of the law.

Cryptocurrency

In 2025, the defining development in crypto-related securities litigation was the SEC's decision to

scale back its enforcement efforts and instead focus on providing a clear regulatory framework for crypto assets in the U.S.[38]

Given the SEC's change in priorities,[39] we expect that more private plaintiffs will step in and fill the enforcement gap by advancing claims under the federal and state securities laws. Such lawsuits will further shape the crypto litigation landscape, likely building on some of the key decisions in 2025.

For example, in *Risley v. Universal Navigation Inc.*, the Second Circuit in February **addressed** the threshold question of whether "the developers of automated computer codes that facilitate the transfer of cryptocurrency on a decentralized exchange" qualify as sellers under Section 12(a)(1) of the Securities Act.[40] Shareholders were suing the developers of a cryptocurrency trading platform called the Uniswap Protocol after they lost money on scam tokens issued by third parties on the platform.

The Second Circuit held that the Uniswap developers were not statutory sellers of the scam tokens because the platform operated as a decentralized exchange. Instead, the court held, the developers had merely created the code for the smart contracts that facilitated the trades; they exerted no control over token listings, liquidity pools or user interactions. The court also held that the developers did not solicit the fraudulent transactions.

Conclusion

Given these notable cases and trends, 2026 promises to be a significant year for securities litigation. Securities law practitioners and public companies should continue to closely monitor cases currently pending in the federal courts.

Todd G. Cosenza is a partner and co-chair of the securities litigation practice group at Willkie Farr & Gallagher LLP.

Charles D. Cording is a partner at the firm.

Zeh S. Ekono is a partner at the firm.

Willkie associate Amanda M. Payne and law clerk Gordon Waldman contributed to this article.

Disclosure: Willkie represents groups of former SEC officials and law professors who filed (1) an amicus brief in support of Goldman Sachs' petition for a writ of certiorari and petition to appeal in Goldman, (2) an amicus brief in support of FirstEnergy's petition for a Rule 23(f) appeal and (3) an amicus brief in support of Boeing's petition for a Rule 23(f) appeal.

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[1] *In re: Facebook Inc. Sec. Litig.* , 87 F.4th 934, 941 (9th Cir. 2023), cert. granted in part sub nom. *Facebook Inc. v. Amalgamated Bank* , 144 S. Ct. 2629 (2024), and cert. dismissed as improvidently granted sub nom. *Facebook Inc. v. Amalgamated Bank* , 604 U.S. 4 (2024).

[2] *E. Ohman J:or Fonder AB v. NVIDIA Corp.* , 81 F.4th 918 (9th Cir. 2023), cert. granted sub nom. *NVIDIA Corp. v. Ohman J* , 144 S. Ct. 2655 (2024), and cert. dismissed as improvidently granted, 604 U.S. 20 (2024).

[3] *New England Carpenters Guaranteed Annuity & Pension Funds v. DeCarlo* , 122 F.4th 28 (2d Cir. 2024), cert. denied sub nom. *BDO USA, LLP v. New England Carpenters* , No. 24-1151, 2025 WL 2824451 (U.S. Oct. 6, 2025).

[4] *Pirani v. Slack Techs. Inc.* , 127 F.4th 1183 (9th Cir. 2025), cert. denied, No. 25-44, 2025 WL 2824130 (U.S. Oct. 6, 2025).

- [5] *Comcast Corp. v. Behrend* , 569 U.S. 27 (2013).
- [6] *Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System* , 594 U.S. 113 (2021).
- [7] *San Diego County Employees Retirement Association v. Johnson & Johnson* , No. 24-1409, 2025 WL 2176586 (3d Cir. July 30, 2025), reh'g denied, 2025 WL 2848912 (3d Cir. Oct. 7, 2025).
- [8] *Bozorgi v. Cassava Sciences*, No. 25-50855 (5th Cir. Oct. 21, 2025).
- [9] *Basic Inc. v. Levinson* , 485 U.S. 224 (1988).
- [10] Anthony Hughes and Bailey Lipschultz, Bankers Ready US IPOs at 'Overwhelming' Pace Ahead of 2026, Bloomberg (Dec. 6, 2025), <https://www.bloomberg.com/news/articles/2025-12-09/bankers-readying-us-ipos-at-overwhelming-pace-ahead-of-2026>.
<https://www.bloomberg.com/news/articles/2025-12-09/bankers-readying-us-ipos-at-overwhelming-pace-ahead-of-2026>
- [11] *Comcast*, 569 U.S. at 33-35 (citation omitted).
- [12] *Id.* at 35 (citation omitted).
- [13] *In re: The Boeing Company Securities Litigation*, No. 25-1492 (4th Cir.).
- [14] *In re: Boeing Co. Sec. Litig.* , No. 1:24-CV-151 (LMB/LRV), 2025 WL 2428481, at *2 (E.D. Va. Mar. 7, 2025).
- [15] *Id.*
- [16] Opening Brief at 3-4, *In re: The Boeing Company Securities Litigation*, No. 25-0135 (4th Cir. 2025).
- [17] 149 F.4th 587 (6th Cir. 2025).
- [18] *In re: FirstEnergy Corp. Sec. Litig.* , No. 2:20-CV-3785, 2023 WL 2709373 (S.D. Ohio Mar. 30, 2023), opinion clarified, No. 2:20-CV-03785, 2023 WL 8105252 (S.D. Ohio Apr. 18, 2023).
- [19] *In re: FirstEnergy Corp. Sec. Litig.* , 149 F.4th 587 (6th Cir. Aug. 13, 2025).
- [20] *Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System* , 594 U.S. 113, 117 (2021).
- [21] *Arkansas Teacher Retirement System v. Goldman Sachs Group Inc.* , 77 F.4th 74, 100-01 (2d Cir. 2023).
- [22] *Id.* at 98.
- [23] *Id.* at 99.
- [24] *Jaeger v. Zillow Group Inc.* , No. 24-6605, 2025 WL 2741642 (9th Cir. Sept. 26, 2025).
- [25] *Id.* at *1.
- [26] Defendants-Appellants' Petition for Rehearing or Rehearing En Banc, *Jaeger v. Zillow Group Inc.* , No. 24-6605, ECF No. 50 (9th Cir. Oct. 24, 2025).
- [27] *Bratya SPRL v. Bed Bath & Beyond Corp.* , 752 F. Supp. 3d 34, 43 (D.D.C. 2024), reconsideration denied, No. 1:22-CV-02541 (TNM), 2025 WL 721770 (D.D.C. Mar. 6, 2025), and dismissed sub nom. *In re: Bratya SPRL* , No. 25-8002, 2025 WL 1354922 (D.C. Cir. May 8, 2025).
- [28] *Id.* at 56; see also *In re: Jan. 2021 Short Squeeze Trading Litig.* , No. 21-2989-MDL, 2023 WL

9035671 (S.D. Fla. Nov. 13, 2023) (finding that the markets for the meme stocks at issue were inefficient during the class period based largely on the fact that plaintiffs' market manipulation theory of the case admitted as much).

[29] *Shupe v. Rocket Companies Inc.* , 752 F. Supp. 3d 735 (E.D. Mich. 2024) ("The generic nature of Farner's alleged misrepresentations, balanced against the specific nature of the Rocket's alleged corrective disclosure, presents 'important evidence' that Farner's alleged misrepresentations had no price impact. And this lack of price impact is compounded by Defendants' proof that no analysts relied on Farner's misrepresentations throughout the Class Period. Defendants have shown — by a preponderance of the evidence — that Defendant Farner's alleged, generic misrepresentations had no impact on the price of Rocket stock." (quoting Goldman, 594 U.S. at 123)).

[30] *In re: Cassava Scis. Inc. Sec. Litig.* , 350 F.R.D. 91 (W.D. Tex. 2025).

[31] The Cammer factors are derived from *Cammer v. Bloom* , 711 F. Supp 1264 (D.N.J. 1989); the Krogman factors are derived from *Krogman v. Sterritt* , 202 F.R.D. 467 (N.D. Tex. 2001). Courts routinely apply the Cammer and Krogman factors to measure the efficiency of stock markets.

[32] *Bozorgi v. Cassava Science Inc.*, No. 25-50855 (5th Cir. Oct. 21, 2025).

[33] See, e.g., *In re: Vicor Sec. Litig.* , No. 24-CV-04196-RS, 2025 WL 1616537 (N.D. Cal. June 6, 2025); *Lamontagne v. Tesla Inc.* , No. 23-CV-00869-AMO, 2024 WL 4353010, at *1 (N.D. Cal. Sept. 30, 2024), aff'd sub nom. *Oakland Cnty. Voluntary Employees' Beneficiary Ass'n v. Tesla Inc.* , No. 25-55, 2025 WL 3459471 (9th Cir. Dec. 2, 2025).

[34] See Securities Class Action Trend Filings, Cornerstone Research, <https://www.cornerstone.com/wp-content/uploads/2025/07/Securities-Class-Action-Filings-2025-Midyear-Assessment.pdf> (last visited Dec. 10, 2025) ("There were 12 AI-related filings in 2025 H1. The annualized number of AI-related filings is on pace to far surpass the 2024 total (15).").

[35] Second Amended Complaint, *Hoare v. Oddity Tech Ltd.*, No. 1:24-CV-06571-MMG, Dkt. No. 66 (S.D.N.Y. June 6, 2025).

[36] *Id.* at 4.

[37] Complaint for Violation of the Federal Securities Laws, *Tamraz v. Reddit Inc.*, No. 25-cv-05144 (N.D. Cal. June 18, 2025).

[38] See Paul S. Atkins, Chairman, U.S. Sec. & Exch. Comm'n, American Leadership in the Digital Finance Revolution (July 31, 2025) (available at <https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125>); Paul S. Atkins, Chairman, U.S. Sec. & Exch. Comm'n, The SEC's Approach to Digital Assets: Inside "Project Crypto" (Nov. 12, 2025) (available at <https://www.sec.gov/newsroom/speeches-statements/atkins-111225-secs-approach-digital-assets-inside-project-crypto>).

[39] See Press Release, U.S. Sec. & Exch. Comm'n, SEC Announces Dismissal of Civil Enforcement Action Against Coinbase, 2025 WL 638585 (Feb. 27, 2025); *U.S. Sec. & Exch. Comm'n v. Payward Inc.* , Litigation Release No. 26278 (Mar. 27, 2025) (announcing dismissal of civil enforcement action against Kraken); *U.S. Sec. & Exch. Comm'n v. Ripple Labs Inc.* , Litigation Release No. 26369 (Aug. 7, 2025) (announcing joint stipulation to dismiss appeals and resolving civil enforcement action against Ripple).

[40] No. 23-1340-CV, 2025 WL 615185 (2d Cir. Feb. 26, 2025).



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Starbucks Beats Investors' Labor Relations Suit On Appeal

By **Rachel Riley**

Law360 (January 2, 2026, 7:49 PM EST) -- A Washington state appeals court has sided with Starbucks and its corporate leadership in two shareholders' proposed class action claiming union-busting activity hurt the coffee giant's reputation, concluding the district court should throw out the case because the investors failed to show intentional wrongdoing by company directors.

In an unpublished **opinion** issued Monday, a three-judge panel said investors Joe W. Trimm and Andre Rodney failed to show that they demanded corporate action from Starbucks Corp.'s board of directors before suing, nor did they otherwise show such a demand would've been futile. Trimm sued in 2023, claiming stock prices suffered because company leaders failed to stop lower management's efforts to **stifle organizing campaigns** at stores across the country.

"Because the complaint did not raise particularized factual allegations of knowing or intentional misconduct by a majority of directors, they did not show it would have been futile to make a pre-suit demand on the board, so they were not excused from making one," said Court of Appeals Judge J. Michael Diaz, writing for the panel.

The investors therefore failed to meet the relevant pleading standards, and "the court erred in denying petitioners' motion to dismiss for this procedural reason," the panel said.

Reversing the trial judge's decision, the panel directed the lower court to dismiss the case without prejudice, noting the investors may bring another lawsuit after complying with the relevant standards and statutes.

The investors accused Starbucks executives of breaching their fiduciary duty to shareholders from 2019 to 2023 by failing to oversee labor management activities and ensure compliance with the National Labor Relations Act. In addition to the coffee company, the defendants include former CEOs Howard Schultz and Kevin R. Johnson, and current and former board members.

The defendants have argued the shareholder derivative suit does not meet the high bar to survive dismissal, since Trimm and Rodney have not claimed they made demands to the board that were rejected before suing.

King County Superior Court Judge William Dixon V **denied** dismissal motions by both Starbucks and the individual defendants in a pair of two-page orders in May 2024, without providing any reasoning.

According to the Court of Appeals, Washington law requires aggrieved shareholders to demand action from a company's board of directors and show they've exhausted other options before suing. Investors can avoid that requirement by showing such a demand would've been useless.

Because the investors never made a presuit demand, the panel explained that they "must allege with particularity that a majority of the directors faced a substantial likelihood of liability because those directors engaged in 'intentional misconduct' or 'a knowing violation of law' or face dismissal."

"As petitioners rightly argue, the complaint nowhere pleads such intention or knowing wrongdoing at all, let alone with particularity, so the respondents were not exempt from making a pre-suit demand on the board," the panel said.

While the shareholders have contended the directors engaged in **intentional misconduct** by failing to stay on top of corporate affairs, they've provided no evidence that directors knowingly ignored their obligations, the panel said.

"To the contrary, the complaint actually details facts which reflect that the directors did attempt to be informed of labor management issues," it said. "And, the complaint acknowledges the directors received relevant information at three board or committee meetings in 2022."

The opinion notes that Starbucks' board had specific committees responsible for overseeing labor matters, received legal counsel on labor relations issues at a June 2022 meeting, and continued to discuss employee concerns related to unionizing at subsequent meetings.

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

Judges Bill Bowman, J. Michael Diaz and David S. Mann sat on the panel for the Court of Appeals.

Trimm and Rodney are represented by Maxwell R. Huffman, Justin Reliford and Elizabeth K. Dragovich of Scott + Scott Attorneys at Law LLP, and Kim D. Stephens and Rebecca L. Solomon of Tousley Brain Stephens PLLC.

Starbucks the executives are represented by Mark Yohalem, Gregory Watts, Tyre Tindall and McKinney Wheeler of Wilson Sonsini Goodrich & Rosati PC.

The case is Trimm et al. v. Starbucks Corp. et al., case number 867342, in the Washington Court of Appeals, Division I.

--Additional reporting by Ben Adlin and Sydney Price. Editing by Adam LoBelia.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
 Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Catching Up With Delaware's Chancery Court

By **Jeff Montgomery**

Law360 (January 2, 2026, 3:37 PM EST) -- Delaware's Court of Chancery paddled through mostly calm waters at the year's end, with plenty of big hearings and decisions in its rearview mirror, including a recent Chancery reversal restoring Elon Musk's compensation package, earlier valued at \$56 billion.

Legal battles to come at the court include suits over legislation curbing some class challenges and big attorney fees for class-led fiduciary breach claims. And out of the gate on Monday was a hearing on daily fines sought by the former CEO of the special purpose acquisition company that merged with Trump Media & Technology Group, which runs President Donald Trump's Truth Social media platform.

Chancery Orders Restitution In Biotech Liquidation Dispute

In a year-end flex of its equity powers, the Delaware Chancery Court closed out 2025 with a \$1.85 million restitution payment order to a Ukrainian investor in now-insolvent **biotech company** Pathway Genomics Corp., after finding that the investor's preferred liquidation claims were unauthorized.

Vice Chancellor Lori W. Will found investor Vadim Shulman never secured board authority to tie his investments to security agreements that encumbered substantially all of Pathway's assets. The company foundered after logging more than \$150 million in liabilities against \$26 million, but not before the court found that Shulman — a director, officer and controller of Pathways — put himself ahead of other creditors with unsupported priority claims.

"By directing the assets to himself, he was enriched by the funds that should have been paid to the plaintiffs. He must restore that value to them," Vice Chancellor Will ruled. The vice chancellor observed that Shulman lent cash to the business through collateralized notes that "nobody remembers," then exploited ambiguities to claim rights to foreclose on the company's most valuable assets.

Delaware law, the vice chancellor said, obliges the court to "look past the form" of the claims and alleged agreements "to determine their economic reality," guided in part by principles of bankruptcy law.

"Here, the economic reality confirms that Shulman's advances were investments, not loans," the vice chancellor said, finding that after accounting for asset shortfalls, Curacao-based preferred stockholder Neem International CV should receive about \$1.85 million of the total \$25.3 million available for distribution, compared with more than \$150 million owed to senior preferred stockholders.

The decision came only a month after Vice Chancellor Nathan A. Cook dismissed a suit by Shulman seeking to recover \$58.5 million allegedly lost to individuals and entities entangled in decades-old fraud-related allegations involving two Ukrainian oligarchs and others.

JPMorgan Seeks Court Check For Javice Legal Fees

Asserting "undeniable unreasonableness," JPMorgan asked a Delaware vice chancellor to shoot down the alleged "blank check" treatment of convicted former Frank executive **Charlie Javice's** legal fee advancement claims that include a near-\$300 per person dinner for two, booze and hotel upgrades.

In a court brief that likely left readers puzzling over the term "cellulite butter," attorneys for the

financial institution argued Javice had used "147 timekeepers who bill and expense essentially whatever they please — including luxury hotel upgrades, a \$581 dinner for two, a \$284 car ride for half a mile, numerous alcoholic beverages."

JPMorgan initially made its request in November in a heavily redacted opening brief for summary judgment, seeking to terminate its advancement of legal fees and expenses to Javice. The bank said it has already advanced roughly \$122 million to Javice and her co-defendant, former Frank Chief Operating Officer Olivier Amar — including \$73 million to Javice alone — for their criminal and civil defense costs over the past 2½ years.

\$14.8M Sought To End Genius Sports Ltd. SPAC Suit

Stockholders and defendants in a Delaware Chancery Court lawsuit challenging the merger that took sports data company Genius Sports Ltd. public through a special purpose acquisition company **have reached** a proposed \$14.8 million cash settlement, plaintiffs' counsel announced in December.

The proposed deal would resolve fiduciary duty and unjust enrichment claims brought against dMY Technology Group Inc. II, its sponsor, and former directors and officers arising out of the SPAC's roughly \$1.5 billion business combination with Genius Sports. The settlement remains subject to court approval.

CoinFund Co-Founder Sues For Ouster Damages

A co-founder and longtime executive of cryptocurrency investment venture CoinFund **sought damages** and other relief in Delaware's Court of Chancery, alleging he was wrongfully ousted from the business and without payment of fair value for his 25% equity interest in the company.

Oleg Golubov alleged that those involved in his forced exit from the company offered him a lowball cash payment for his interests while valuing the business at far below its real worth and lining up asset transfers and distributions to other insiders, thus shorting him by millions.

Plastic Tube Co. Board Sues To Affirm New CFO

A special committee of Iridium Industries, a maker of squeezable plastic tubes, has sued for a Delaware Chancery Court order affirming an interim chief financial officer's right to access company accounts and records. The committee members accused CEO and minority board member Khosrow Sassouni, who has holds 40% equity in the company, of blocking the new CFO's access to key documents and frustrating board oversight.

--Editing by Lakshna Mehta.