

Worried About a Possible AI Bubble Burst?

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Kevin LaCroix

January 7, 2026



There's lots to worry about as we enter the New Year, not least a newly emboldened and militarily active U.S. There are also things to worry about in the financial markets, even as the various indices trade [at or near record levels](#). Much of the recent run-up in market valuations is [due to investor enthusiasm for artificial intelligence](#) (AI). [Some commentators worry](#) that the current investor AI enthusiasm may prove to be a bubble – that is, that valuations have gotten out of whack and that infrastructure investment have run far ahead of any possible (or profitable) need. Some (including me) are concerned that things could get messy if investors sour on AI or lose confidence or patience.

One of the possible consequences from an AI bubble burst could be a wave of corporate and securities litigation. A lawsuit filed earlier this week against the start-up AI energy support company Fermi, which just completed an IPO in October, may suggest what post AI-bubble litigation might look like. A copy of the complaint can be found [here](#).

Background

Fermi is an energy infrastructure and artificial intelligence company, structured as a real estate investment trust (REIT). The company was co-founded by former Texas governor Rick Perry. The company aims to build multiple, large scale nuclear reactors and create its own network of large, grid-independent data centers — powered by a mix of nuclear and other energy sources – targeted at artificial intelligence. The company's first project, Project Matador, aims to create the world's largest private energy campus, providing dedicated power for AI workloads.

The company has no operating history or historical revenue. The company completed a \$757.7 million IPO in October 2025.

On December 12, 2025, Fermi [announced](#) that the first tenant in the Project Matador campus had terminated its \$150 million construction agreement. The company's share price fell about 34% on this news and continued to fall thereafter. At the time the complaint was filed, the company's share price was 59% below its price at the time of the IPO.

The Lawsuit

On January 5, 2026 – in one of the first lawsuit filings of the New Year – a plaintiff shareholder filed a securities class action lawsuit in the Southern District of New York against Fermi, certain of its directors and offices (including Rick Perry), and the company's offering underwriters. The complaint purports to be filed on behalf of investors who purchased the company's securities in its October 2025 offering, as well as investors who purchased the company's securities between October 1, 2025, and December 11, 2025.

The complaint alleges that in its registration and following the IPO, the defendants failed to disclose to investors that "(1) the Company overstated its tenant demand for its Project Matador campus; (2) the extent to which Project Matador would rely on a single tenant's funding commitment to finance the construction of Project Matador; (3) there was a significant risk that the tenant would terminate its funding commitment; and (4) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis."

The complaint alleges that the defendants violated Sections 11 and 15 of the Securities Act of 1933 and Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks damages on behalf of the class.

Discussion

Right now, the stock market – and indeed arguably the entire economy – is being [driven by AI-related investment](#). Stock market valuations reflect investor AI-enthusiasm. Depending on how you measure it, as much as a third or more of the current total S&P market capitalization is AI-driven. AI-related capital investment

is surging based on the same kind of enthusiasm. Among many other things, just four companies – Amazon, Google, Meta, and Microsoft – committed in 2025 to spend a record \$320 billion in AI infrastructure.

The risk for everyone is the possibility that we are in the midst of an AI bubble, characterized by massive spending, soaring valuations, and – it could be argued – hype. To be sure, the investments could be supported and justified, now or eventually, by real revenues and even real profits. Or the investments could prove to represent unsustainable spending and potential overcapacity, particularly with respect to AI infrastructure, such as, for example, AI-related energy projects or data centers.

Let's take Fermi as an example. Here is a company with a bold plan to create the world's largest energy campus for AI companies. Even though it has no operating history or historical revenue, and apparently only a single tenant for its unbuilt campus, it managed to raise three quarters of a billion dollars in an IPO. For those of us with long memories, this scenario may be reminiscent of the dot-com boom in the early years of this century. The fact that this company was co-founded by a politician simply reinforces the dot-com associations.

What happened to this company after its IPO is instructive. The company lost a single tenant – so what? What is the big deal? Well, the big deal is that the investor enthusiasm for this company reflected not valuation fundamentals but was based solely on the company's business plan and prospects. Without the support of underlying fundamentals, the loss of a single contract was enough to undercut investor enthusiasm.

I want to emphasize that this company is just in its early stages, its business plan could well prove to be valid, and the company could eventually prove to be profitable and successful. My analysis here is meant to show only how key investor confidence and enthusiasm is to the current circumstances surrounding all things AI-related.

When investor enthusiasm drives valuations, there is at a minimum a risk of volatility. Even the slightest bump can drive share prices down. And when share prices decline, securities litigation can follow, as was the case here. My concern is that what happened here is not merely the story of a single company, but rather a projection of what could be in store if investors lose confidence or enthusiasm for the whole current AI project. The share prices of many companies could decline.

Indeed, an AI bubble burst could (as happened when the dot-com frenzy crashed) affect the financial markets as a whole. And as share prices drop, securities litigation could follow.

I am not predicting this will happen. I am concerned that it might happen. This new lawsuit shows what it might look like.

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Securities

Meta Investors Meet Skeptical Judges Over iOS Privacy Changes

Jan. 6, 2026, 11:24 AM PST

Meta Platforms Inc. appears to have disclosed a potentially significant impact to its advertising business from privacy changes in Apple Inc.'s operating system, judges at a Ninth Circuit argument said in questioning whether the investors had a case for nondisclosure Tuesday.

"You have a tough argument on appeal," Judge Jacqueline Nguyen said to Jeremy Lieberman of Pomerantz LLP, who argued for the investors. Later, she suggested the allegations boiled down to the "unexpected magnitude of loss," but that the investors hadn't pleaded the company sat on that information before disclosing it.

But had Meta disclosed the statistics it was tracking related to iOS usage and advertising metrics, "we wouldn't be here," Lieberman said. "The only litmus test is the market," which reacted strongly, he said.

Susan Engel of Latham & Watkins LLP, an attorney for Meta, said the company's risk disclosures contained exactly what a company is supposed to disclose.

Meta's investors are trying to get their proposed class action revived after Judge Yvonne Gonzalez Rogers of the US District Court for the Northern District of California dismissed it. The suit centers on a 26% Meta stock drop on Feb. 3, 2022, which wiped out more than \$230 billion in market value—the largest market value loss for any US company in history, Bloomberg News reported.

The investors alleged, among other things, that Meta falsely reassured the public about the impact of privacy changes in Apple Inc.'s iOS software. Meta's implication that the changes were "manageable" was undermined by revelations the company forecasted about \$10 billion in related ad revenue losses that year, they said. They also sued over a statement that Apple's changes were "in line with" expectations.

Rogers' holding "that these statements could not have misled any reasonable investor faces the insurmountable problem that the most sophisticated investors in the world made clear that they were *actually misled* by these statements," the investors said in their opening brief to the Ninth Circuit.

Meta, in its brief, said none of the investors' theories "had anything to do with the headline announcement of fewer daily active users"—and adequately disclosed the iOS change risks, the one theory the plaintiffs were trying to revive.

Judge Mark J. Bennett also served on the panel, as did Judge Kiyo A. Matsumoto of the US District Court of the Eastern District of New York, who sat by designation.

The case is *Menora Mivtachim Ins. Ltd., et al. v. Meta Platforms, Inc.*, 9th Cir., No. 24-6218, oral argument 1/6/26 .

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California Brief

Block Shareholders Advance Cash App Crime 'Red Flags' Suits (1)

Jan. 7, 2026, 6:07 AM PST; Updated: Jan. 7, 2026, 7:31 AM PST

Block Inc. and certain leaders must defend investor allegations they misrepresented its due diligence and financial reporting while ignoring "red flags" about criminals' use of its payment platform.

The shareholders adequately alleged Block and current and former board members and executives misrepresented Cash App's compliance programs while concealing associated risks, Judge Noël Wise said while denying the tech company and leadership's requests to dismiss proposed class and derivative lawsuits Tuesday.

Funds leading the proposed class action sufficiently pleaded assurances about Block's compliance programming were misleading when it wasn't capable of meeting regulatory requirements, the US District Court for the Northern District of California judge said. The investors satisfactorily alleged an inference statements about user growth was misleading and it reported metrics incorporating "substantial numbers of fraudulent accounts."

The shareholders adequately pleaded an inference of cofounder and CEO Jack Dorsey and Chief Financial Officer Amrita Ahuja's intent to defraud, Wise said. The executives, whose roles designated by the company are respectively "Block Head" and "Foundational Lead," held "key roles that regularly engaged with and oversaw reporting and compliance obligations," among other points that boosted that inference.

The funds additionally properly alleged loss causation from misstatements, a required pleading element for securities fraud, "specifically, that Block's compliance program permitted bad actors to create multiple accounts, which in turn inflated the user account metrics," Wise said.

Derivative Suit

After a short-seller report, state and federal probes resulted in penalties for insufficient protocols against money laundering and other illicit activity—and an 84% decline in Block's stock price from a class period high, investors alleged. A 2023 Hindenburg Research report accused Block of have a substantial ratio of fake or fraudulent Cash App accounts.

Shareholders, seeking remedies for Block, said current and former leaders were regularly shown “red flags” of compliance deficiencies but failed to crack down on fraudulent users or grow its internal controls. Given the stockholders sufficiently pleaded a majority of Block’s board at the time faces a substantial likelihood of liability for breaching oversight obligations, Wise said they adequately averred a pre-suit demand on the board would’ve been futile—a requirement under Delaware law for such actions.

And the investors sufficiently alleged that Dorsey and co-founder Jim McKelvey “possessed material non-public information regarding Block’s compliance program risks, and they used that information to make trades motivated by that information,” for an insider trading claim, she said.

Gibson, Dunn & Crutcher LLP represents Block and leadership in both suits. Cohen Milstein Sellers & Toll PLLC and Lief Cabraser Heimann & Bernstein LLP are co-lead counsel for the proposed class, which targets those who acquired Block’s Class A common stock from Feb. 26, 2020, through May 1, 2025. None of these law firms nor Block immediately responded to emails seeking comment.

Block & Leviton LLP and Hach Rose Schirripa & Cheverie LLP are co-lead counsel for the shareholders in the derivative action; an attorney declined to comment in an email.

The cases are Gonsalves v. Block, Inc. , N.D. Cal., No. 5:25-cv-00642, 1/6/26 and In re Block S’holder Derivative Litig. , N.D. Cal., No. 5:25-cv-01262, 1/6/26 .

(Updates throughout.)

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Securities

Hawaiian Electric Reaches \$48 Million Wildfire Investor Deal (1)

Jan. 6, 2026, 6:48 AM PST; Updated: Jan. 6, 2026, 2:34 PM PST

Hawaiian Electric Industries Inc. and investors agreed to a \$47.75 million settlement to resolve allegations the utility misrepresented its wildfire risk management ahead of the deadly 2023 Lahaina fire.

The investors sought preliminary approval of the deal and certification of a settlement class comprised of those who acquired its securities from Feb. 28, 2019, through Sept. 4, 2023, according to a filing in the US District Court for the Northern District of California Monday.

The agreement—in which the utility denied wrongdoing—would end allegations against HEI and subsidiary Hawaiian Electric Co. Inc. tied to a stock decline in the aftermath of Maui wildfires that killed more than 100 people and destroyed the historic town of Lahaina.

The shareholders' counsel will seek attorneys' fees up to a third of the settlement sum and \$500,000 in litigation expenses.

Judge Jacqueline Scott Corley dismissed a version of the complaint in 2024, but let the investors re-plead—they reached a settlement before she ruled on another dismissal.

Hawaii's Public Utilities Commission last week approved Hawaiian Electric's three-year wildfire safety strategy, which includes efforts such as fortifying infrastructure and expanding community partnerships.

"The settlements of HEI shareholder derivative litigation and the securities class action litigation are separate from the previously announced global settlement for personal injury, property damage and related claims," a Hawaiian Electric spokesperson said in an email. "Funding for the settlements related to the shareholder derivative litigation and securities class action litigation is coming from insurance, not customers of Hawaiian Electric."

Pomerantz LLP is lead counsel for the investors. Skadden, Arps, Slate, Meagher & Flom LLP represents HEI. A&O Shearman represents the subsidiary. None of these firms immediately responded to emails seeking comment.

The case is Bhargal v. Hawaiian Elec. Indus., Inc. , N.D. Cal., No. 3:23-cv-04332, 1/5/26 .

(Updates with Hawaiian Electric's comment in the seventh paragraph.)

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Critical Mass With Law.com's Amanda Bronstad: Which Mass Tort Trials Might Turn the Tables in 2026? Federal Judge Greenlights Uber's Bellwether Sexual Assault Trial

January 07, 2026 at 10:06 AM By  Amanda Bronstad



Meta Headquarters along 1 Hacker Way in Menlo Park, CA. Photo: Marc Olivier Le Blanc

Welcome to **Law.com Class Actions: Critical Mass**, a weekly briefing for class action and mass tort attorneys.

This week: With several big verdicts wrapping up 2025, the focus turns to upcoming key trials this year involving Johnson & Johnson's baby powder, paraquat, and social media addiction. The first sexual assault bellwether trial in the multidistrict litigation against **Uber** starts next week. Find out who represents **ByHeart** in lawsuits brought over the recall of its infant formula.

I'm **Amanda Bronstad**. Feel free to reach out to me with your input. My email is amanda.bronstad@alm.com. Follow me on [LinkedIn](#) or X: [@abronstadlaw](#).



Johnson & Johnson offices in New Brunswick, NJ. Credit: Askar/Adobe Stock

January Trials Against Johnson & Johnson, Boeing, Meta

The past year saw [significant jury verdicts](#), including [\\$2 billion](#) in a Roundup case in Georgia, nearly [\\$1 billion](#) in California, and [\\$1.5 billion](#) in Maryland in **Johnson & Johnson** talcum powder cases involving plaintiffs with mesothelioma. In Pennsylvania, the [first trial over the herbicide paraquat](#) is set to begin this month. And, [in Florida](#), a federal jury in Miami hit **Tesla** with a [\\$329 million wrongful death verdict](#).

In 2026, several significant trials are scheduled. Here's a quick look:

TALC: After the first bellwether trial involving an ovarian cancer plaintiff ended last month with a [\\$40 million verdict](#) in California state court, at least 10 more are planned across the country in the first half of 2026, including one on Jan. 20 in the **Philadelphia Court of Common Pleas**. In the **U.S. District Court for the District of New Jersey**, the first bellwether in the talc multidistrict litigation against Johnson & Johnson is scheduled to occur this year.

SOCIAL MEDIA: The [first bellwether trial](#) in lawsuits alleging social media sites like **Instagram** and **TikTok** caused addiction and mental health problems in adolescent users begins Jan. 27 in **Los Angeles Superior Court**. Three individual plaintiffs face off against **Meta**, **Snap**, **TikTok** and

Google's YouTube. A second trial is scheduled for March 9, and a third on May 11. The first federal bellwether trial in the multidistrict litigation over social media addiction is also set to begin this summer in the U.S. District Court for the Northern District of California on behalf of a school district.

MAX 8: A second trial over the 2019 crash of **Ethiopian Air** Flight 302 begins against **Boeing** on Jan. 12 in the **U.S. District Court for the Northern District of Illinois**. The first trial involving the family of a passenger from India who died on the 737 Max 8 aircraft ended last year with a [\\$28.45 million verdict](#). This month's trial involves three passengers of the same Canadian family who died.



U.S. District Judge Charles Breyer, of the Northern District of California.

Judge Rules, Prepares Uber Sex Assault Trial in Phoenix

The first federal bellwether trial alleging **Uber** failed to protect a passenger who was raped by one of its drivers begins with jury selection on Jan. 8 in the **U.S. District Court for the District of Arizona**.

On Monday, **U.S. District Judge Charles Breyer**, who is overseeing the multidistrict litigation in the **Northern District of California**, [rejected](#) Uber's last-minute move to postpone the trial, which

begins with opening statements on Jan. 13. Uber had alleged a “misleading” ad campaign sponsored by the **Consumer Attorneys of California** that states the rideshare firm gets a complaint of sexual assault or misconduct every eight minutes could taint the jury pool.

The Consumer Attorneys of California and lead plaintiffs’ counsel [called the move](#) “meritless,” “outlandish,” and a “prior restraint on political speech,” given that the ad campaign, called “Every 8 Minutes,” was designed to counter Uber’s ballot initiative in California.

Breyer, during a Jan. 6 hearing, addressed several pretrial motions that focused on a police detective’s investigation, concluding that plaintiff Jaylynn Dean’s alleged 2023 assault by an Uber driver was consensual sex and that she had been raped a year earlier by an abusive boyfriend, became pregnant and had an abortion. There was also discussion about whether jurors could hear about certain lawyers or witnesses in the case who personally used Uber.

“By the way, I use Uber,” Breyer told lawyers at the hearing. “I’m not allowing it in. It’s out. Its probative value is almost zero. I will give you this: if you think of a particular witness where that question is relevant, let me know, and I’ll revisit this issue.”



Daniel Levin of Munger, Tolles & Olson. Courtesy photo

Who Got the Work?

News | **Civil Appeals**

Meta Pushes 9th Circuit for Section 230 Immunity in Social Media Addiction Cases

January 06, 2026 at 06:25 PM By  **Avalon Zoppo**



Meta Headquarters along 1 Hacker Way in Menlo Park, CA. Photo: Marc Olivier Le Blanc

Meta urged the U.S. Court of Appeals for the Ninth Circuit on Tuesday to dismiss lawsuits alleging the company's social media apps are addictive for teens, saying it has immunity under Section 230 of the federal Communications Decency Act.

James Rouhandeh of Davis Polk & Wardwell argued that claims brought by 34 state attorneys general, school districts and families are based on Meta's publishing conduct and therefore barred by Section 230. The statute provides legal protection to online platforms for third-party content posted by their users.

But the three-judge Ninth Circuit panel pressed Rouhandeh on whether the court even has jurisdiction to hear an appeal over a judges order denying a motion for dismissal, saying federal courts, generally, may only review final judgments that end litigation.

“I think there's a bigger elephant in this argument, which is whether we can have jurisdiction at this stage to hear the case,” Judge Jacqueline Nguyen said.

Nguyen added that Section 230 apparently gives internet companies immunity from liability—meaning the “right to prevail at trial”—but not a right to entirely avoid litigation. Nguyen later said it was still “in flux” whether Section 230 covers the plaintiffs’ novel claims, an issue the district court seemed to plan to delve into as the case progressed at trial.

The plaintiffs claim Meta designed features to get children hooked on social media apps, and chose not to warn users that its platforms could lead to addiction. Meta has denied the claim.

U.S. District Judge Yvonne Gonzalez Rogers of the Northern District of California allowed to go forward the allegation that Meta knew of but failed to warn about the mental health effects of its products on young users and touted its safety through deceptive statements.

Rouhandeh, Meta's attorney, contended that the text of Section 230 gives internet companies immunity from suit entirely, not merely immunity from liability. Meta argues Rogers’ ruling falls under the collateral order doctrine, which allows interlocutory appeal of issues that would be effectively unreviewable after final judgment.

Since Section 230 provides immunity from suit, Meta can immediately challenge the lower court order at this stage, Rouhandeh argued. As proof of broad protection for internet companies, he pointed to a portion of the law that states “no cause of action may be brought and no liability may be imposed under any State . . . law that is inconsistent with this section.”

“If it was intended only to be a defense and not immunity from suit, there's no need to include the phrase ‘no cause of action may be brought,’” Rouhandeh said. “That would be superfluous.”

Jennifer Bennett of Gupta Wessler, representing the plaintiffs, argued the collateral order doctrine is narrower than Meta interprets it.

She cited a 2017 U.S. Supreme Court decision that new categories of immediately appealable orders “are to come from rulemaking,” not decisionmaking in particular cases.

“By the time Section 230 was enacted, the Supreme Court had repeatedly emphasized that courts are required—required—to view claims of a right to avoid trial with skepticism, if not a jaundiced eye,” Bennett said.

Meta has further argued that a failure to warn claim cannot survive because it is tied to publishing activity protected by Section 230.

The features upon which the claim are based—such as Meta’s recommendation algorithm, notifications, infinite scroll and other aspects of the apps—involve “editorial decisions about whether and how third-party content is presented or modified,” Meta contended in its [briefing](#).

Shannon Stevenson of the Colorado Attorney General’s Office, arguing for more than two dozen states, pushed back against Meta’s assertion that the complaints seek to hold the company liable for third-party content.

She said the complaints allege that the features themselves cause harm.

"Our complaints are about features that they can remedy without looking at any third-party content at all, like default settings," Stevenson said.

"They can provide different tools to help children monitor their time online," she added. "But none of our claims depend on them even looking at any third party content, taking anything down, reviewing or editing anything. That's just another reason why 230 immunity is not available here."

Nguyen was joined on the panel by Ninth Circuit Judge Mark Bennett and U.S. District Judge Kiyo Matsumoto of the Eastern District of New York, who was sitting by designation.

The Ninth Circuit heard oral arguments in the multidistrict appeal *People of the State of California, et al. v. Meta Platforms Inc.*, Nos. 24-7032, 24-7037, 24-7265, 24-7300, 24-7304, 24-7312.

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9th Circuit questions Meta's early Section 230 immunity appeal bid

DJ [dailyjournal.com/articles/389267-9th-circuit-questions-meta-s-early-section-230-immunity-appeal-bid](https://www.dailyjournal.com/articles/389267-9th-circuit-questions-meta-s-early-section-230-immunity-appeal-bid)

9th Circuit Judge Jacqueline H. Nguyen

A 9th U.S. Circuit Court of Appeals panel expressed skepticism of Meta's argument that it's immune from a multi-state lawsuit alleging it knowingly allowed kids and teens to become addicted to its social media platforms during oral arguments Tuesday.

Meta, represented by James P. Rouhandeh of Davis Polk & Wardwell LLP, argued that 47 U.S. Code Section 230 protects the company from being sued and asked the 9th Circuit to reconsider U.S. District Judge Yvonne Gonzales Rogers' decision to limit the scope but allow the claims to proceed. *People of the State of California, et al. v. Meta Platforms, Inc., et al.* 24-7032 (9th Cir., filed Oct. 24, 2023).

Section 230, passed as part of the Communications Decency Act of 1996, states that it's federal policy "to promote the continued development of the Internet" and to "preserve the vibrant and competitive free market." Later, the law states, "No cause of action may be brought, and no liability may be imposed under any State or local law that is inconsistent with this section."

Rouhandeh said that clause would be superfluous if it wasn't intended to prevent lawsuits against internet platforms and asked the court to block the states' action.

The panel, consisting of Circuit Judges Jacqueline H. Nguyen, Mark J. Bennett and Judge Kiyo A. Matsumoto, sitting by assignment from the Eastern District of New York, sounded unconvinced that the appellate court needed to step in so early in the case.

Bennett pushed back against the argument, saying the clause in question is ambiguous and when Congress wants to grant immunity from lawsuits, "it knows how to do that."

Seconds into Rouhandeh's argument, Nguyen stepped in to ask if he could address the "bigger elephant" -- whether the 9th Circuit has jurisdiction this early in the case.

Nguyen later said she had a "hard time accepting your argument that this is the appropriate stage to handle" the question at hand.

She said that, while Meta's argument could have some merit, it should be heard at trial and not in an early appeal.

"And if you're right, the district court will revisit that," Nguyen said.

Rouhandeh said the 9th Circuit needs to step in before trial because Meta isn't just immune from liability but from the lawsuit itself. Should the case go to trial, he said, Meta's rights under Section 230 would have already been infringed.

Rouhandeh called it a "classic case" for an appeal under the collateral order doctrine, which holds that only final decisions should be appealed unless the interlocutory ruling conclusively determines the dispute or answers an important but different question than the case as a whole or can't be appealed once the case is settled.

Jennifer D. Bennett, principal attorney with Gupta Wessler LLP representing the plaintiffs of a related class action brought by parents and school districts across the country, argued that Section 230 has been around for three decades and no court has ruled it exempts tech companies from lawsuits altogether, so the issue can't be pressing enough to require an early appeal.

"The internet seems to be doing just fine," she commented.

Judge Mark Bennett asked what the prohibition against states bringing a "cause of action" under Section 230 means, if not that they can't sue.

Jennifer Bennett, the attorney, said its purpose is to protect companies from ordinary claims, not multistate lawsuits dealing with allegedly deceptive business practices.

She said Facebook is using a "belt and suspenders" approach to combine the clauses protecting against claims and liability but argued they can't combine unrelated clauses to create a new right.

Colorado Solicitor General Shannon W. Stevenson, representing the states, said that Meta's argument reflects a misunderstanding of Section 230. The section only protects online platforms from facing legal action for content posted by a third party, and the purpose of the law is to promote free expression on the internet, not to protect companies from any lawsuit, she said.

"Our complaints are about features they can remedy," Stevenson said.

In his rebuttal, Rouhandeh argued that immunity "isn't a defense" at trial but rather needs to be addressed before trial. Since Section 230 exists to promote a vibrant internet, allowing the lawsuit to go forward, he said, would "cut the heart out of the statute."

Attorney Bennett questioned that claim in her rebuttal, asking if the public interest in protecting Meta from the lawsuit outweighs the potential consequences of the case's outcome.

The lawsuit, joined by 32 states, although some have since dropped out, is part of broader multidistrict litigation surrounding Facebook, Instagram -- both owned by Meta -- and TikTok's addictive features. The litigation includes a personal injury class action brought by several school districts and parents. *In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, 4:22-md-03047 (N.D. Cal., filed Oct. 6, 2022).

#389267

US appeals court appears skeptical of Meta, social media companies' bid to cut off addiction lawsuits

 [reuters.com/legal/litigation/us-appeals-court-appears-skeptical-meta-social-media-companies-bid-cut-off-2026-01-06](https://www.reuters.com/legal/litigation/us-appeals-court-appears-skeptical-meta-social-media-companies-bid-cut-off-2026-01-06)

Diana Jones

January 6, 2026

The James R. Browning U.S. Court of Appeals Building, home of the 9th U.S. Circuit Court of Appeals, is pictured in San Francisco, California February 7, 2017. On Tuesday afternoon, the court plans to hear arguments regarding President Donald Trump's temporary travel ban on people from seven Muslim-majority countries. ...

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- Meta argues Section 230 provides immunity from lawsuits
- Judges question whether social media companies' appeal is too early
- Panel also skeptical of Meta's claim of broad immunity

Jan 6 (Reuters) - A U.S. appeals court on Tuesday appeared inclined to allow lawsuits alleging major social media platforms were designed to be addictive for young users to proceed, as several judges questioned whether it was too early to consider whether the companies are immune from such claims.

Facebook and Instagram parent Meta Platforms ([META.O](#)), [opens new tab](#) and other social media companies urged a three-judge panel of the 9th U.S. Circuit Court of Appeals to reverse rulings forcing them to face more than 2,200 lawsuits. The companies, which also include Snapchat and parent Snap Inc. ([SNAP.N](#)), [opens new tab](#), YouTube and parent Alphabet Inc. ([GOOGL.O](#)), [opens new tab](#) and TikTok and parent ByteDance, argue that a federal law known as Section 230 of the Communications Decency Act of 1996 shields them from liability stemming from what is posted on their sites, including allegations they failed to warn the public about the addictive nature of their platforms.

Filed by states, municipalities, school districts and individuals, the lawsuits allege that social media has contributed to a wave of depression, anxiety and body image issues in children, creating a mental health emergency among American youth in recent years.

The cases, which have been centralized before U.S. District Judge Yvonne Gonzalez Rogers in Oakland, California, seek damages, penalties and restitution from the companies. The companies are appealing Rogers' [orders in 2023 and 2024](#) that largely allowed the litigation to move forward.

An attorney for Meta, which led the companies' appeal, faced skeptical questions from all three of the judges on the panel, who questioned whether it was appropriate for the appeals court to weigh in at this early stage in the case, as Meta was requesting. Most appeals come after a court has made a conclusive, final decision in a case, the judges said.

Meta attorney James Rouhandeh responded that Rogers' orders were conclusive because they force Meta to defend against the litigation.

"It would be an enormous thing to require defendants to have to defend these types of suits," especially when they are precluded by Section 230, Rouhandeh said.

Circuit Judge Jacqueline Nguyen, an appointee of Democratic former President Barack Obama, said Rogers had indicated in her orders that she was open to considering the companies' argument that they are shielded from liability later in the litigation.

All three of the judges also questioned Meta's argument that Section 230 provides the companies with immunity from all lawsuits.

The plaintiffs argued that Section 230 doesn't cover the claims in the lawsuits because it only protects against liability related to content published by third parties on the websites.

"Here our complaints are about features that they can remedy without looking at any third party content at all," Shannon Stevenson, the solicitor general of Colorado who is representing the states that have sued, told the panel.

Meta's argument that Section 230 shields the company from all the plaintiffs' claims isn't borne out in the statute's language, Nguyen told Rouhandeh.

"When Congress wants to give immunity from suit, it knows how to say that," Nguyen said.

Circuit Judge Mark Bennett, an appointee of President Donald Trump, and U.S. District Judge Kiyo Matsumoto of the Eastern District of New York, sitting by designation, who was appointed by Republican former President George W. Bush, were also on the panel.

The case is *People of the State of California v. Meta Platforms Inc*, 9th U.S. Circuit Court of Appeals, No. 24-7032.

For Meta: James Rouhandeh of Davis Polk

For the individual plaintiffs, school districts and municipalities: Jennifer Bennett of Gupta Wessler

For the attorneys general: Colorado Solicitor General Shannon Stevenson

Reporting by Diana Novak Jones

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[Diana Novak Jones](#)

Thomson Reuters

Diana reports on product liability, litigation, mass torts and the plaintiffs' bar. She previously worked at Law360 and the Chicago Sun-Times.

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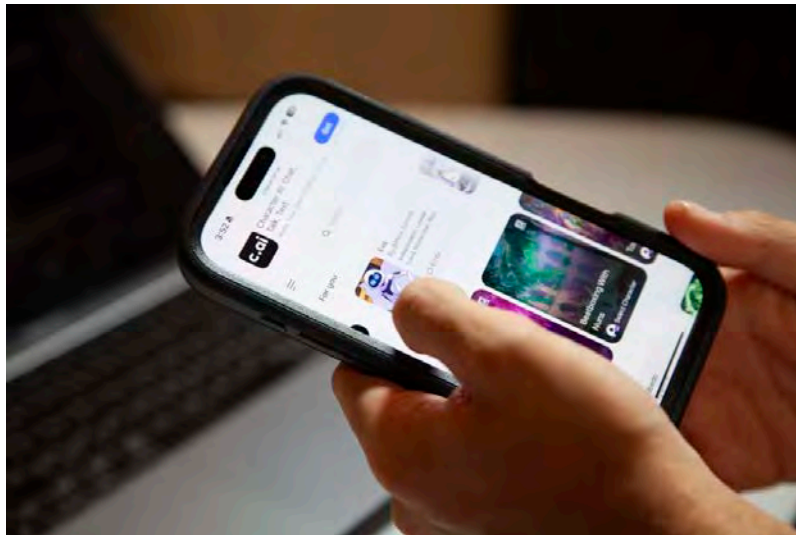
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AI Chatbot Startup, Google to Settle Lawsuits Over Teen Suicides

The cases involving Character.AI's virtual companions highlighted concerns about artificial intelligence and mental health

By [Amrith Ramkumar](#) [Follow](#)

Jan. 7, 2026 1:28 pm ET



Character.AI lets users create and chat with AI characters. KATIE ADKINS/AP

Quick Summary

- An AI startup and Google settled lawsuits with families whose teenagers died or self-harmed after interacting with a chatbot.

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An artificial-intelligence startup and Google have agreed to settle several lawsuits with families of teenagers who killed or harmed themselves after [interacting with the startup's chatbot](#), potentially resolving some of the most high-profile cases involving AI and mental health.

The families had sued the maker of the popular chatbot Character.AI and Google in states including Florida, Colorado, Texas and New York for hurting their children and negligence. The companies and families have agreed to settle and will now work on completing the terms, according to court documents made public Tuesday and Wednesday. The tech companies and lawyers for the families either didn't immediately respond to requests for comment or declined to comment.

The agreements would be some of the first in lawsuits accusing AI companies of damaging users and could help relieve pressure on tech companies that have been accused of releasing products that aren't safe for children. ChatGPT maker OpenAI and [Facebook](#) owner Meta Platforms are [facing similar lawsuits](#).

The lawsuits, which detail how teens and others became attached to chatbot companions that may have contributed to their deaths, have increased pressure on Congress and the White House to do more to protect children online. The Federal Trade Commission is [studying the issue](#). Lawmakers in California and New York have imposed rules for chatbots, while other measures are under consideration at the federal level.

"These lawsuits have awakened the world to how deadly AI chatbots can be by hauling these depraved companies into the spotlight," said Sacha Haworth, executive director of the Tech Oversight Project, a nonprofit that aims to hold tech companies accountable. She said the settlements offer some accountability but legislation is needed to truly protect children.

The cases and the network of parents advocating for protections have encouraged child safety advocates who have seen federal bills requiring social-media companies to change their practices [stall in recent years](#). Some fear that settling the cases could keep further details about the allegations from coming out and potentially allow tech companies to avoid public accountability.

Character Technologies is the company that operates Character.AI, a role-playing app that lets users create and chat with AI characters. The company was founded by former Google engineers in late 2021. Google then [wrote the company a check](#) for around \$2.7 billion, licensed Character's technology and rehired the co-founders in 2024.

One of the most high-profile agreements came in a lawsuit filed in Orlando, Fla., in 2024 by the mother of Sewell Setzer III, a 14-year old who became [enamored with a chatbot](#) named for a character in the television series "Game of Thrones." He suffered

from ADHD and was bullied. At times, Sewell had sexualized conversations with “Daenerys Targaryen” and occasionally referred to her as “his baby sister.” Later, he talked about joining her in a deeper way before killing himself, according to transcripts.



Megan Garcia with a picture of her son Sewell Setzer III at her home in Orlando, Fla., in October. GREGG NEWTON/AFP/GETTY IMAGES

“This is not a rare or isolated case. It is happening right now to children in every state,” Sewell’s mother, Megan Garcia, said at a Senate hearing in September.

In the Texas case, the family of a teenager who had a relationship with a chatbot alleged the bot encouraged him to cut his arms and suggested that murdering his parents was reasonable.

After the lawsuits and mounting public backlash, Character made changes to its platform, and [banned users under 18](#) late last year. OpenAI and other chatbots have also made tweaks to improve teen safety in recent months.

Proponents of child safety legislation say the changes have come too late and will never be as rigorous as laws. The companies have argued in various cases that speech from chatbots is protected under the First Amendment and that some users may have misused the platforms.

Write to Amrith Ramkumar at amrith.ramkumar@wsj.com

Videos

OpenAI Must Turn Over Millions of Chat Logs in Copyright Litigation, NY Federal Judge Rules

The discovery dispute in the New York Times's lawsuit against OpenAI could carry broader implications for artificial intelligence developers facing litigation.

January 07, 2026 at 02:10 PM By  Benjamin Joyner

What You Need to Know

- A U.S. district judge ruled OpenAI must produced 20 million chat logs in litigation with the New York Times.
- The order affirms a pair of earlier rulings from a U.S. magistrate judge that OpenAI had appealed.
- The dispute illuminates the unique nature of AI developers as litigants and the balance between users' privacy rights and litigation needs.



Credit: sdx15/Adobe stock

In a discovery dispute that could carry broader implications for artificial intelligence developers facing litigation, a federal judge has rejected OpenAI's challenge to an order requiring the company to turn over a sample of 20 million anonymized ChatGPT chat logs.

The Monday ruling from U.S. District Judge Sidney Stein of the Southern District of New York affirmed a pair of earlier orders from U.S. Magistrate Judge Ona Wang in the ongoing copyright litigation between The New York Times and OpenAI.

The New York Times declined to comment on the case, which is captioned [*The New York Times v. Microsoft*](#). OpenAI referred Legaltech News to a blog [post](#) in which it notes that it has complied with Stein's order and lays out its position on the production of the chat logs.

The discovery dispute began in July 2025, when the New York Times and other news media plaintiffs in the case moved to compel OpenAI to produce a sample of 120 million chat logs to analyze how user interactions resulted in the reproduction of the plaintiffs' copyrighted content. OpenAI opposed the motion, noting that it had offered to provide an anonymized sample of 20 million chat logs, which the plaintiffs agreed to in August.

In October, OpenAI proposed that it run search terms across the sample to identify relevant conversations rather than turning in all 20 million chat logs, in the interest of preserving user privacy. The plaintiffs subsequently filed a motion to compel production of the whole sample, which Wang granted Nov. 7 and affirmed on a motion to reconsider Dec. 5.

While OpenAI argued that Wang's decisions failed to adequately balance the relevance of the logs as evidence against ChatGPT users' privacy interests, Stein rejected the assertion, distinguishing the precedent the company relied on from the present case, while also noting that OpenAI did not identify any case law requiring a judge to order the least burdensome discovery possible.

The dispute over the chat logs emerged in large part due to the [unique](#) nature of OpenAI and other foundation model developers as litigants. Generative AI models suffer from a black box problem, in which even their creators can struggle to fully explain how they work and what data they are drawing on to provide outputs. Proving allegations such as the use of copyrighted material can require looking at the results gen AI systems provide users, making it challenging to determine relevance to the case.

Speaking at an earlier stage of the proceedings, Brett Burney, vice president of e-discovery consulting at Nextpoint Law Group, e-law evangelist at Nextpoint and principal of Burney Consultants, told Legaltech News that examination of chat logs was one of several methods the plaintiffs were using to attempt to find evidence of copyright infringement, in addition to looking at OpenAI source code and seeking communications between engineers.

"The New York Times is really just trying to find the answer to 'was the OpenAI large language model (LLM) trained on copyrighted New York Times content?'" he said. "You're trying to find out,

‘OK, how are users, or general users, trying to prompt ChatGPT, so that they could regurgitate a New York Times article?’”

In addition to demonstrating the unique nature of AI developers as litigants, the case illustrates the need for courts to balance users’ privacy expectations and the requirements of litigation.

“This case is also a telling reminder that—regardless of your privacy settings—your interactions with AI chatbots and other systems may, one day, be produced in court,” ImmuniWeb founder and CEO and Platt Law partner and cybersecurity practice lead Ilia Kolochenko noted in a comment provided to Legaltech News. “Architecture of modern LLMs and their underlying technology stack is very complex, so even if some user-facing systems are specifically configured to delete chat logs and history, some others may inevitably preserve them in one form or another.”

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Litigation

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3M Can't Axe Suit Over 'Forever Chemicals' in Firefighting Gear

Jan. 7, 2026, 7:00 AM PST

Summary by Bloomberg AI

AI Generated



- A federal district court said 3M Company, Dupont De Nemours Inc., and others must continue battling a suit alleging they provided protective firefighting gear with harmful substances without including warnings about serious health effects.
- The court said the City and County of Butte-Silver Bow adequately raised a Racketeer Influenced and Corrupt Organizations Act claim by alleging the defendants worked together to hide the dangers associated with per- and polyfluoroalkyl substances.
- The court rejected the defendants' argument that Butte didn't sufficiently allege the defendants' acts proximately caused injuries, saying the connection between the purchase of allegedly defective gear and the defendants' alleged conduct is sufficient for proximate causation at this stage.

3M Company, Dupont De Nemours Inc., and others must continue battling a suit alleging they provided protective firefighting gear with harmful substances to a Montana city without including warnings about serious health effects, a federal district court said.

City and County of Butte-Silver Bow adequately raised a Racketeer Influenced and Corrupt Organizations Act claim by alleging the defendants worked together to hide the dangers associated with per- and polyfluoroalkyl substances, Chief Judge Brian Morris of the US District Court for the District of Montana said in a Tuesday order denying the defendants' motion to dismiss.

The defendants' acts "indicate a continuing effort of concealment," Morris said.

Butte sued in April 2025 in a putative nationwide class action, alleging that the defendants concealed known dangers of PFAS and failed to provide adequate safety warnings to the public and class members.

Butte said the ineffective safety warnings rendered the gear defective and unreasonably safe, and that the failure to warn caused foreseeable injuries to class members that used it.

A RICO conspiracy requires showing that a defendant was aware of the essential nature and scope of an enterprise and intended to participate in it, the court said. Butte sufficiently established the defendants participated in an enterprise by claiming that each company knew of the dangers of PFAS and actively hid them for decades, the opinion said.

The complaint said 3M shared knowledge of the danger with DuPont in a 1997 document, the opinion said, and the complaint included allegations that the defendants continued to market PFAS and PFAS-containing gear as safe despite this knowledge.

The court also rejected the defendants' argument that Butte didn't sufficiently allege the defendants' acts proximately caused injuries.

The connection between the purchase of allegedly defective gear and needing replacement gear, and the defendants' alleged conduct of concealing known dangers of PFAS, is sufficient for proximate causation at this stage, the court said.

The defendants' alleged collaborative effort to shield information from the public directly connects to Butte's alleged injury of buying defective gear without knowing about harmful substances, it said.

Silver Golub & Teitell LLP; Heenan & Cook; Bliven Law Firm PC, and Hagens Berman Sobol Shapiro LLP represent the plaintiff. Holland & Hart LLP and Gibson, Dunn, & Crutcher LLP represent 3M. Shook, Hardy & Bacon LLP and Browning Kaleczyc, Berry, & Hoven PC represent DuPont, The Chemours Co., The Chemours Co. FC LLC, and Corteva Inc.. Orrick, Herrington & Sutcliffe LLP and Garlington Lohn & Robinson PLLP represent Globe Manufacturing Company LLC. Dechert LLP and Crowley Fleck PLLP represent W.L. Gore & Associates Inc. Lewis Brisbois represents Lion Group Inc.

The case is City and Cty. of Butte-Silver Bow v. 3M Co. , D. Mont., No. 25-cv-36, 1/6/26 .

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Firefighting gear manufacturers can't duck Montana suit over PFAS contamination

 [courthousenews.com/firefighting-gear-manufacturers-cant-duck-montana-suit-over-pfas-contamination](https://www.courthousenews.com/firefighting-gear-manufacturers-cant-duck-montana-suit-over-pfas-contamination)

Quinn Welsch

January 6, 2026

LAFD firefighters putting on gear in Mar Vists (Courthouse News photo via
Chrisklee18/Wikipedia)

(CN) — A federal judge cleared the way on Tuesday for a class action accusing chemical and firefighter equipment manufacturers of conspiring for decades to hide the dangers of their products.

U.S. District Judge Brian Morris, a Barack Obama appointee, [declined to dismiss](#) the suit by Butte-Silver Bow, a consolidated city-county government in Montana, despite efforts by the defendants, including the 3M Company, DuPont and Globe Manufacturing Company, among others, to shut it down.

In its [April 2025 suit](#), the plaintiff claims that the firefighter "turnout gear" — the protective pants and jackets used to fight fires — contains dangerous PFAS chemicals that are linked to various cancers and diseases. It further accuses the defendants of colluding and deliberately concealing exposure of these chemical contaminants, sometimes called "forever chemicals," in the firefighter gear.

In his ruling, Morris concluded that the plaintiff sufficiently claimed civil violations under the RICO Act.

"Defendants could not have achieved their goals of selling PFAS and turnout gear containing PFAS if defendants' knowledge of the harms of PFAS had been exposed," Morris wrote. "These actions by defendants, allegedly acting together to conceal the known dangers of PFAS, do not constitute merely normal or ordinary commercial relationships. These allegations indicate a continuing effort of concealment by defendants."

The defendants argued that Butte-Silver Bow lacked standing on their claims, that the court lacked jurisdiction and that the defendants failed to state a claim. Alternatively, they asked the court to stay the action under the first-to-file rule, pending a related federal case in Connecticut.

Morris disputed those arguments and declined to stay the case.

"The court declines to exercise its discretion to apply the first-to-file rule under these specific circumstances," he wrote. "Judicial efficiency and the interests of justice would be better served by maintaining this pending action in the District of Montana."

Furthermore, the court had jurisdiction over the case, Morris wrote.

"Defendants' products did not enter Montana randomly through the stream of commerce," he wrote. "Defendants made efforts to market, sell, and advertise their products into Montana. Defendants conduct establishes contacts expressly aimed at the forum state, not merely contacts that were 'random, fortuitous, or attenuated.'"

Butte-Silver Bow claims that the PFAS chemicals are embedded into the firefighter turnout gear during the manufacturing process.

"Firefighters are exposed to PFAS from turnout gear through dermal exposure, the shedding of PFAS during normal use and aging of turnout gear," it said in the original complaint. "Firefighters are developing cancer at an alarming rate higher than the general population. Firefighter occupational cancer is the leading cause of line-of-duty deaths in the fire service."

According to the [International Association of Fire Fighters](#), cancer caused 66% of career firefighter line-of-duty deaths between 2002 and 2019.

A study by the [American Cancer Society last year reported](#) that firefighters showed an increased risk for most cancers, but that the risk was greatest for skin and kidney cancers.

"We are well aware of the hurdles we face in this lawsuit and are pleased to begin our fight with this massive victory for firefighters and their districts saddled with high costs of replacement gear to keep them safe," said the plaintiff's attorney Steve Berman, a partner at Hagens Berman, in a statement Tuesday.

"Municipalities like the city and county of Butte-Silver Bow have shouldered this burden unfairly, and we are ready to see this case through to a just result."

Butte-Silver Bow accused 3M and Chemours of manufacturing, distributing and marketing PFAS chemicals to Globe Manufacturing Company, W.L. Gore & Associates and the Lion Group, which manufacture the firefighter gear. The defendants sold the PFAS-infused gear to various public entities for decades without disclosing its toxicity, according to Butte-Silver Bow in the [complaint](#).

Butte-Silver Bow claimed that the turnout gear, not including a respirator, costs around \$3,000 per suit, with many departments providing two suits per firefighter. Compensation for the approximately [1 million firefighters in the U.S.](#) would run into the billions, it says.

Representatives of the defendants did not immediately respond to a request for comment Tuesday.

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January 6, 2026

Authenticity Under Pressure: Rethinking Rule 901 in the Age of AI

This technological shift has triggered a parallel evolution in law. The conversation now spans from reforming Rule 901 to proposing a new Federal Rule of Evidence 707 specifically for AI-generated evidence. Simultaneously, ethics regulators are clarifying that lawyer competence requires understanding these technologies.

January 07, 2026 at 09:10 AM By **Edward T. Kang**



Edward T. Kang of Kang Haggerty. Courtesy photo

For decades, Federal Rule of Evidence 901 has been a pillar of evidentiary stability. Its intentionally flexible standard—requiring only “evidence sufficient to support a finding that the item is what the proponent claims it is”—easily accommodated evidence from handwritten letters to surveillance footage. Authentication disputes were rarely dispositive, typically resolved through minimal foundation and common sense.

Enter the age of artificial intelligence (AI). The advent of generative artificial intelligence—specifically, tools capable of producing hyper-realistic audio, video, images and text (deepfakes)—has fractured the rule’s foundational assumptions. When synthetic media can replicate a person’s likeness or voice with near-perfect fidelity, traditional authenticity markers become unreliable.

Evidence can be entirely fabricated yet appears genuine, leaving opposing parties without meaningful tools to prove manipulation.

This technological shift has triggered a parallel evolution in law. The conversation now spans from reforming Rule 901 to proposing a new Federal Rule of Evidence 707 specifically for AI-generated evidence. Simultaneously, ethics regulators are clarifying that lawyer competence requires understanding these technologies. The result is a critical convergence: the mechanics of authentication are now inseparable from counsel's duty of competence under ABA Model Rule 1.1.

Rule 901's Analog Assumption in a Digital World

Rule 901 was conceived in an era where forgery was typically crude, detectable, and difficult to scale. Its illustrative examples—testimony based on personal knowledge, distinctive characteristics, chain of custody—presume authenticity can be assessed through human perception and circumstantial context.

Generative AI dismantles this logic. Modern models produce videos of individuals saying things they never uttered, audio clips indistinguishable from real recordings, and documents that mimic unique writing styles—often complete with consistent metadata and artifacts that evade casual scrutiny. In this context, a witness' assurance that evidence "looks real" offers scant probative value.

Courts are sensing this mismatch. While few opinions directly confront deepfakes, judicial unease with superficial digital authentication is growing. See, e.g., *Alford v. Commonwealth*, No. 2022-SC-0278-MR, 2024 WL 313431, at *6 (Ky. Jan. 18, 2024) (stating that the emergence of artificial intelligence, with the capacity and initiative to manipulate digital media, "will only serve to further compromise our determinations of authenticity unless such advancements are both recognized and addressed by our courts"). Some courts are "mindful" that the rules of evidence "may need to adapt," yet still apply the same "low threshold for authentication" of electronic evidence as instructed by the current rules. See *State v. Ziolkowski*, 329 A.3d 939, 950 (Conn. 2025). The result is unpredictability: similar evidence may be admitted in one courtroom and excluded in another, based largely on a judge's comfort with the technology rather than a consistent doctrinal framework. "As artificial intelligence progresses, battles over the accuracy of computer images and manipulation of deepfakes can be expected to intensify." See *Pegasystems v. Appian*, 904 S.E.2d 247, 279 (Va. App. 2024), appeal granted (Mar. 7, 2025); see also *People v. Smith*, 969 N.W.2d 548, 565 (Mich. App. 2021) ("we are mindful that in the age of ... so-called deep fakes, a trial court faced with the question whether a social-media account is authentic must itself be mindful of these concerns").

The Case for Reforming Rule 901: Asymmetry and Reliability

The push for reform centers on two flaws exposed by AI: asymmetry and compromised reliability. A proponent of synthetic evidence needs only to clear Rule 901's low bar of plausibility. The opponent, however, may bear an impossible burden to prove falsity without access to proprietary tools, training data, or generation logs. The current rule relies on adversarial testing, but the technology itself can obscure any meaningful test.

Proposed reforms vary. Some suggest amending Rule 901's examples to explicitly reference AI-generated evidence, signaling that courts may demand technical proof. Others advocate a more structural shift, placing an affirmative burden on the proponent of AI-susceptible evidence to demonstrate authenticity through forensic analysis.

Skeptics warn that rewriting Rule 901 risks complexity and could disadvantage less-resourced litigants. They argue that judicial discretion and evolving common law—which have adapted the rule to include email and digital photos—can suffice. Yet even skeptics acknowledge deepfakes present a qualitative leap: unlike prior technologies, generative AI is designed to evade detection. This reality fuels the argument for a more targeted solution.

Proposed Rule 707: A Surgical Response to Synthetic Evidence

The most direct proposal is a new Federal Rule of Evidence 707. While formulations vary, a leading draft proposes: "Rule 707. Machine-Generated Evidence. When machine-generated evidence is offered without an expert witness and would be subject to Rule 702 if testified to by a witness, the court may admit the evidence only if it satisfies the requirements of Rule 702(a)-(d)." In essence, Rule 707 would do three things: Mandate disclosure when a party offers AI-generated or altered evidence. Authorize courts to demand technical proof of authenticity (e.g., expert testimony, metadata analysis, system documentation). Empower judges to exclude evidence if the risk of deception substantially outweighs its probative value, even if Rule 901 is nominally satisfied.

Proponents argue that Rule 707 restores balance by aligning standards with technological risk, providing courts with a clear doctrinal framework. Opponents fear line-drawing problems (what counts as "AI-generated"?) and worry it could chill legitimate technological uses. Regardless of its adoption, the proposal signals a consensus: deepfake evidence cannot be treated as just another digital exhibit.

The New Authentication Battleground: From Lay Perception to Expert Analysis

A practical consequence is the forensic turn in authentication. Detecting AI-generated media often

requires specialized tools and knowledge that extend beyond a lay understanding. Following trends under Daubert and Rule 702, courts are increasingly treating authenticity as a gatekeeping question, resolved at the time of admissibility, rather than a weight question for the jury.

This raises the stakes for practitioners. Authentication is no longer a box-checking exercise but an architectural component of case strategy. It demands early investigation, strategic expert selection, and targeted discovery (e.g., requests for native files, generation logs, model training data). Practitioners who fail to meet these requirements risk exclusion or adverse credibility findings. Conversely, unsupported accusations of “deepfake” manipulation may be seen as speculative or dilatory.

Model Rule 1.1: The Ethical Imperative of AI Literacy

These evidentiary shifts directly implicate ABA Model Rule 1.1 (Competence). Comment 8 explicitly requires understanding the “benefits and risks associated with relevant technology.” While once applied to e-discovery, this now encompasses generative AI.

Competence does not demand that lawyers become engineers. It does require baseline AI literacy: understanding the capabilities and limits of these tools, recognizing red flags for synthetic evidence, knowing when to consult an expert, and appreciating the limits of detection technologies. A lawyer who introduces digital media without considering manipulation risk or who fails to investigate credible challenges—may breach the duty of thorough preparation.

Similarly, a lawyer who reflexively cries “deepfake!” without factual grounding risks violating duties of candor and professionalism. Courts show diminishing tolerance for unfounded technological skepticism. Bar ethics opinions now emphasize the duty to supervise litigation technology, vet experts, and advise clients on associated risks. AI competence is transitioning from a niche specialty to a core component of general litigation practice.

Strategic Imperatives for the Modern Litigator

The convergence of Rules 901, proposed 707, and Model Rule 1.1 demands a strategic recalibration. Lawyers must treat potentially AI-generated evidence with the rigor applied to expert testimony: early planning, documented methodology and a clear explanatory narrative.

Key questions must guide the process: Provenance: Who created the evidence and using what tools/models? Process: What data trained the system? What safeguards were in place? Verification: What independent, technical verification exists (metadata, hash values, audit logs)?

Discovery should be tailored to answer these questions. Equally crucial is judicial education. Many judges are still developing fluency with AI. Clear, restrained explanations of the technology and its uncertainties are more persuasive than alarmism. The goal is to provide courts with a principled framework for decision-making, not to sow indiscriminate doubt.

Conclusion: Competence Redefined

Whether Rule 901 is amended or Rule 707 adopted remains uncertain. (The public comment period for proposed Rule 707 is open until February 16, 2026.) Yet the trajectory is clear. Authentication doctrine is being reshaped by a technology that challenges bedrock assumptions about truth and reliability. In parallel, professional norms are evolving to mandate a responsible and informed understanding of the same technology.

In this new environment, legal competence is comprised of three components: technical, strategic and ethical. Practitioners who integrate AI literacy into their practice and treat authentication as a substantive battleground will protect both their clients and their credibility. Those who do not may find the most persuasive evidence in their case is also the most vulnerable to attack.

Edward T. Kang *is the managing member of Kang Haggerty. He devotes the majority of his practice to business litigation and other litigation involving business entities. Contact him at ekang@kanghaggerty.com.*

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Are law firms headed for a downturn? Billing rates may hold the key

 [reuters.com/legal/government/are-law-firms-headed-downturn-billing-rates-may-hold-key-2026-01-07](https://www.reuters.com/legal/government/are-law-firms-headed-downturn-billing-rates-may-hold-key-2026-01-07)

Karen Sloan, Mike Scarcella, David Thomas

January 7, 2026

An unidentified man using a smart phone walks through London's Canary Wharf financial district in the evening light in London, Britain, September 28, 2018.

REUTERS/Russell Boyce [Purchase Licensing Rights, opens new tab](#)

- Client belt-tightening and law firm expenses on collision course, report says
- DOJ officials report Jones Day, Williams & Connolly earnings
- 2026 previews for lawyers, litigation

Jan 7 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com, [opens new tab](#))

Large and midsize U.S. law firms enjoyed a highly profitable 2025 thanks to soaring client demand and ever-higher billing rates, but a new economic report warns that the good times may not last — especially if increasingly cash-strapped clients balk at further rate hikes.

Firms could be headed into an economic contraction like those they experienced during the Great Recession and the end of the pandemic, according to the Thomson Reuters Institute's [2026 Report on the State of the U.S. Market, opens new tab](#), produced with Georgetown Law's Center on Ethics and the Legal Profession. The Thomson Reuters Institute and Reuters share the same parent company.

The legal industry is prone to boom-and-bust cycles, with law firms regularly unprepared for the rapid deterioration of once-favorable economic conditions, said Bryce Engelland, a senior industry data analyst with the Thomson Reuters Institute. The pattern could repeat in 2026 if companies significantly reduce legal spending at a time when law firms are shouldering historic expense increases tied to hiring and technology.

Average law firm technology expenses rose nearly 10% in 2025, while lawyer compensation expenses increased nearly 8% on average, the report found.

"My main concern is that firms might take the view from the summit as a sign that everything is well," Engelland said of 2025's stellar results, where large and midsize firms saw profits grow an average 13% over the previous year, demand

increased an average 2.5%, and billing rates climbed more than 7% among large firms. Bucking historical patterns, both deal-driven transactional practices and countercyclical work like litigation enjoyed demand growth last year.

Demand is likely to slow somewhat in 2026, the report said, though the economic, regulatory and geopolitical instability that helped drive last year's surging demand is expected to continue.

The bigger question is whether clients will continue to accept the billing rate increases that have largely bolstered firm profits in recent years, and which firms clients will favor, Engelland said.

There are already signs that corporate legal departments have become more cost conscious. In the second half of 2025, clients gravitated toward lower-cost midsize firms. Those firms saw demand grow nearly 5%, compared to less than 2% for the 100 highest-grossing U.S. law firms as ranked by the American Lawyer magazine. Meanwhile, generative artificial intelligence threatens to trigger greater scrutiny of legal bills and rates as clients seek to get more from their spending, according to the report.

If firms can convince clients that AI is making each hour billed more efficient and valuable, they will be able to continue raising rates and may enjoy yet another highly profitable year, Engelland said. But an economic downturn that squeezes in-house legal budgets and sends lawyer talent from firms to companies would have the opposite effect.

"Corporate legal departments armed with both Big Law expertise and AI capabilities wouldn't just negotiate harder on rates, they might stop needing outside firms for entire categories of work," the report said.

DOJ ethics disclosures

Newly disclosed records from three of the Trump administration's top lawyers at the U.S. Justice Department provide a look at their compensation and clientele from the law firms they left.

The financial and ethics disclosures are mandatory for some government officials and often include compensation spanning more than one calendar year.

Yaakov Roth, now the [second-in-command](#) in the DOJ's civil division, recorded more than \$7.1 million in partnership earnings from Jones Day. Some of his clients at the firm included Walmart, KalshiEX, TikTok and Huawei Technologies.

Roth serves under Brett Shumate, the Jones Day lawyer who was confirmed by the U.S. Senate to lead the civil division. Jones Day was also home to many lawyers who served in the first Trump administration eight years ago and represented Trump's first campaign.

Another Jones Day alum, Hashim Mooppan, now a leader in the U.S. solicitor general's office, reported more than \$3 million in partner earnings, in addition to a \$2.2 million bonus from the law firm. Mooppan said his clients included Boeing, Chevron, R.J. Reynolds Tobacco and Wells Fargo Bank.

Sarah Harris, another leader in the solicitor general's office, disclosed more than \$3.6 million in partnership earnings from Williams & Connolly. Her clients at the litigation-focused firm included Bank of America, CVS Health, Google, OpenAI and Starbucks. The conservative Federalist Society paid Harris about \$3,000 for a pair of appearances in 2024, the form showed.

Justice Department officials did not immediately respond to requests for comment.

2026 cases and trends

The year ahead promises to be a busy one for lawyers and litigation. Reuters previewed what's on tap in 2026 for [law firm mergers](#), [U.S. law schools](#), [lawyers in legal peril](#), [AI copyright lawsuits](#), [mass torts](#), [class action appeals](#) and [more](#).

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Reporting by Karen Sloan

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Thomson Reuters

Fried Frank Brings in Debevoise for Breach Lawsuit, Hires Data Security Experts

"We promptly acted to contain the incident, and engaged industry-leading, external data security experts to assist in our response and in verifying the security of our systems and reported the matter to law enforcement," said Fried Frank in a statement on Tuesday to Law.com. "We have served and continue to serve our clients without disruption."

January 06, 2026 at 04:12 PM By  **Ryan Harroff**

What You Need to Know

- Fried Frank suffered a data breach which exposed some personal information of at least Goldman Sachs' customers who were invested in a certain private equity fund, but the whole scope of the breach is unknown.
- A New York federal judge said the proposed class action brought by Goldman Sachs customer Andrew Sacks failed to show cause for diversity jurisdiction.
- Marc Dann, counsel for Sacks, said he and his co-counsel are amending the complaint to include the necessary details and allegations for the Southern District of New York to have jurisdiction over the matter.
- Debevoise is representing Fried Frank, according to plaintiff counsel.



Fried Frank offices in Washington, D.C. Photo: Diego M. Radzinski/ALM

Debevoise & Plimpton has stepped in to represent Fried, Frank, Harris, Shriver & Jacobson in a proposed class action claiming the firm's data breach exposed some Goldman Sachs customers' information, according to counsel in the case.

The lawsuit, filed in the Southern District of New York last month, accuses Fried Frank of failing to properly secure and safeguard personal information belonging to plaintiff Andrew Sacks and his proposed class members, who are other customers of the bank and who were invested in a certain private equity fund. Sacks' lawsuit said Fried Frank had obtained the data from Goldman Sachs for its business purposes.

A representative for Fried Frank confirmed in an email to Law.com on Tuesday that the firm "recently experienced a data security incident" and reported the matter to law enforcement.

"We promptly acted to contain the incident, and engaged industry-leading, external data security experts to assist in our response and in verifying the security of our systems, and reported the matter to law enforcement," the representative said. "We have served and continue to serve our clients without disruption. This incident affected a range of our clients, and we are in the process of communicating with them directly."

The firm declined to comment on specific details of the data breach, including when it occurred and how many people may have been affected. Fried Frank had not yet made a public disclosure of the breach as of Tuesday.

Counsel information for Fried Frank has not yet appeared in the case. However, Sacks' lawyer, Marc Dann of DannLaw, said Jim Pastore, partner of Debevoise & Plimpton, is representing Fried Frank. Pastore did not return a message seeking comment, and a Fried Frank representative declined to comment on the firm's counsel.

The plaintiff in the case, Sacks, is a litigator in Philadelphia who runs his own litigation firm. Sacks' suit arises from a Dec. 19 letter he received from Goldman Sachs informing him and other affected parties that Fried Frank had suffered a data breach. That breach exposed unspecified investor information which had been provided to the firm by Goldman Sachs as part of its wealth management practices, the suit says.

Dann said that his client's case is odd because the breach was at Fried Frank, but Goldman Sachs was the one to inform Sacks about the potential exposure of his personal information. According to Dann, there is still little information available to the public about when the breach occurred, whether it affected more Fried Frank clients than Goldman Sachs, how many individuals' data was exposed, and what specific information about them was compromised.

"It's unusual, actually, to have a breach for our client to get a breach notice without there being some public disclosure, but there really wasn't any public disclosure," Dann said. "We don't know the breadth of it or the scope, but we know we're the only case filed because there's still little information."

The New York federal judge overseeing the suit, U.S. District Judge Andrew L. Carter, issued an order Monday questioning the subject matter jurisdiction of the case, noting Sacks' complaint lacks citizenship details about the law firm's partnership.

Carter said in his Monday order that Sacks, as a Pennsylvania resident, needs to show that Fried Frank has no partners in the Keystone State for his proposed class action against the firm to continue in New York.

"For purposes of determining citizenship and establishing diversity, a limited liability partnership has the citizenship of each of its partners," Judge Carter said. "Plaintiff has failed to allege that none of the defendant partners are citizens of Pennsylvania—the domicile of plaintiff."

The order gave Sacks until Jan. 19 to explain in writing why his case should not be thrown out, after which Fried Frank will have one week to reply. Dann, counsel for Sacks, said in an interview

that he and his co-counsel are amending the complaint to allege that Fried Frank does not have any partners in Pennsylvania.

Sacks is also represented by Javier Merino and Brian Flick, also of DannLaw.

The case is Sacks v. Fried, Frank, Harris, Shriver & Jacobson LLP, case number 1:25-cv-10693, of the U.S. District Court of the Southern District of New York.

Page printed from: <https://www.law.com/newyorklawjournal/2026/01/06/fried-frank-brings-in-debevoise-for-breach-lawsuit-hires-data-security-experts/print/>

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Litigation

Manage Newsletters

Tom Goldstein's NYT Story Should be Evidence, Prosecutors Say

Jan. 7, 2026, 7:46 AM PST

Summary by Bloomberg AI

AI Generated



- Former Supreme Court lawyer Tom Goldstein made on-the-record statements to the New York Times that prosecutors want to use against him at trial.
- The government says Goldstein's statements are relevant to the tax counts because they prove his income from poker and "his years-long pattern of prioritizing ultrahigh-stakes poker over paying his debts to the IRS."
- Goldstein conceded that he intentionally failed to disclose \$15 million in poker debts on several mortgage loan applications, which the government says is "powerful evidence of guilt on three felony counts."

Former Supreme Court lawyer Tom Goldstein participated in multiple interviews for a *New York Times Magazine* story about his criminal case, and now prosecutors want to be able to use his statements against him at trial.

"Goldstein chose to tell his side of the story to the *Times*, and ended up making on-the-record statements that are relevant and incriminating," the government's Tuesday motion said. "He has to take the good with the bad."

Goldstein is charged in the US District Court for the District of Maryland with tax evasion, aiding the preparation of false tax returns, willful failure to pay taxes, and making false statement on loan applications. His trial before Judge Lydia Kay Griggsby is scheduled to begin Jan. 13.

The government says the statements it seeks to offer into evidence, most of which relate to particular gambling activities, are relevant to the tax counts because they prove his income from poker and "his years-long pattern of prioritizing ultrahigh-stakes poker over paying his debts to the IRS."

It also said Goldstein conceded that he intentionally failed to disclose \$15 million in poker debts on several mortgage loan applications, telling the *Times* he did so in order to conceal the gambling debts from his wife.

"The admission is powerful evidence of guilt on three felony counts," the government said.

Goldstein told the Times he'd rejected a plea deal from the government because it called for a prison sentence of approximately five years, and he didn't intend to plead to anything that includes a prison sentence.

Goldstein is represented by Munger Tolles & Olson LLP.

The case is United States v. Goldstein , D. Md., No. 8:25-cr-00006, motion 1/6/26 .

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Opinion US politics & policy**Watch out for America's activist attorneys-general**

Top state lawyers are joining together to challenge Trump and rein in big business

BROOKE MASTERS

Oregon's attorney-general Dan Rayfield is spearheading the Supreme Court case challenging Donald Trump's use of emergency tariff powers, as well as lawsuits to prevent the president from defunding the Consumer Financial Protection Bureau and sending the national guard into Portland © USA TODAY Network/Reuters

Brooke Masters

Published YESTERDAY



For the past year, US President Donald Trump's relentless campaign to shrink the federal government and concentrate power in his own hands has met at best ineffective resistance in Washington.

But investors should not assume that Trump and his deregulatory agenda are getting a free ride. State attorneys-general are joining forces to challenge the administration's most controversial actions and prevent big business from taking advantage of their citizens.

Take Oregon's Dan Rayfield.

Since his 2024 election, the Democrat has prioritised areas where he believes the Trump administration has got it wrong. The state is spearheading the Supreme Court case challenging Trump's use of emergency tariff powers, as well as lawsuits to prevent the president from defunding the Consumer Financial Protection Bureau and sending the national guard into Portland. It has also joined dozens of suits led by other states.

"When one portion of the government starts taking police off the road, you then have to look at the other subdivisions of government and say, OK, who is going to fill the vacuum? People need [enforcers] looking after them," Rayfield says.

The US has a long history of ambitious, activist attorneys-general. Political wags often quip that AG stands for aspiring governor. Mississippi's Mike Moore led efforts in the 1990s to hold Big Tobacco accountable for the costs of smoking-related illnesses, while New York's Eliot Spitzer took on Wall Street's conflicts of interest in the early 2000s.

More recently, Texas's Ken Paxton has led a Republican drive to punish corporate efforts to boost diversity and address climate change, while also bringing one of the first ever cases against misleading use of artificial intelligence.

But Trump's return to the White House last year has stepped the conflict up significantly, sparking dozens of multi-state lawsuits to prevent him from cutting federal funding or changing policy.

State AGs have already filed or intervened collectively in 64 cases, putting them on pace to shatter the record of 160 AG vs federal cases filed during the first Trump administration, says Paul Nolette, a Marquette University political scientist.

The AGs have also made clear they intend to keep pressure on companies on issues such as consumer protection, artificial intelligence and antitrust enforcement, even as federal watchdogs have backed off.

When Trump temporarily paused enforcement of the Foreign Corrupt Practices Act, California's Rob Bonta publicly reminded companies that bribing overseas officials remains illegal and can be prosecuted under California laws against unfair competition.

Colorado is leading efforts to stop Hewlett Packard Enterprise's \$14bn acquisition of Juniper Networks even though Trump's justice department abruptly settled a challenge to the deal.

In Oregon, Rayfield received extra money from his state legislature to double the number of lawyers working on consumer protection issues. That allowed the state to wade into areas where he believes more enforcement is needed, such as cryptocurrency.

In April, Oregon sued Coinbase, alleging it had violated the state's securities law. Rayfield's lawyers are also going through consumer finance cases that Trump's appointees to the CFPB have dropped to see if they should be refiled under Oregon laws.

"What we are seeing is federalism at work. In general, having both state and federal law enforcement is healthy for America," says Rebecca Furdek, a partner at law firm Husch Blackwell.

It is not clear whether the direct challenges to Trump's policies will ultimately succeed. Rayfield's office estimates that multistate lawsuits have stopped the cancellation of \$4.5bn in federal funds for Oregon alone and legal observers think his tariff challenge has a strong chance of victory in the Supreme Court. But other AG cases may face an uphill battle because the high court's conservative majority has thus far granted Trump wide latitude.

Either way, stepped up state enforcement is almost certainly here to stay. High-profile cases against big companies not only score political points, but also can lead to huge settlements, so they more than pay for the extra staffing they require. Large companies seeking to do business in the US can no longer afford to focus all of their lobbying and regulatory efforts at the federal level.

“We have seen a sea change,” says William Ridgway, partner at Skadden Arps. “This is going to outlast the current administration.”

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News from Bloomberg Terminal

Jan. 7, 2026, 11:14AM PST

By Matt Levine

(Bloomberg Opinion) --

Proxy advisers

We talked in November about proxy voting at US public companies. My basic point was that, if you own a diversified portfolio of stocks, you will be asked to vote on hundreds of different propositions – annual elections of directors, non-binding social and environmental proposals, the occasional merger – each year. Almost none of these votes will matter to you economically, and your vote is vanishingly unlikely to matter to any of the companies. In the abstract, in the aggregate, shareholder voting is the foundation of corporate democracy, a way to make sure that managers are answerable to the ultimate owners of their companies. But in almost every particular case it's a waste of time.

I suggested that this tension – shareholder votes are important in the aggregate, but not to most actual shareholders – is most easily solved by outsourcing proxy voting to specialists. It would be insane for millions of individual investors to read hundreds of proxy statements to decide how to vote on hundreds of different questions. But if, like, *eight* people each read a few hundred proxy statements and decided how to vote, and everyone else paid those people a small fee to vote their shares for them, the problem would be solved. I mean, there would be other problems. (Would those eight people actually vote the shares in ways that align with the interests of the ultimate owners of the companies? Would they have their own agendas? Would the proxy-voting profession attract people whose views on proxy voting are different from those of most shareholders?) But, again, most of these votes don't matter very much to most of the shareholders. A cheap outsourced system is probably good enough.

This approximately describes the system we actually have, in which a few "proxy advisers" – mainly Institutional Shareholder Services and Glass Lewis – read all the proxies, advise investors (mainly institutions) on how to vote, and do the administrative work of voting for them. This has historically worked okay, though corporate managers have often grumbled about it, because in fact the proxy-voting profession *does* seem to attract people who care more about "good governance" and social issues than the average corporate executive does. In recent years, it has become more controversial, because the proxy-voting profession seems to attract people who care more about social and environmental issues than the average Republican politician does. There has been a backlash, the proxy advisers have retreated from providing their house views on shareholder votes, and there have been political and regulatory moves to restrict them.

Again, my basic thesis about all of this is that the market needs some way to cheaply outsource proxy voting, because it's insane for everyone to do the redundant work of reading proxies and deciding how to vote, but the outsourced voting doesn't have to be all that good, because it doesn't matter that much. Historically, the proxy advisory firms were a good enough solution. But it is 2026 and now there is another obvious cheap way to outsource analysis and decision-making in situations that don't require perfection. The Wall Street Journal reports:

JPMorgan Chase's asset-management unit is cutting all ties with proxy-advisory firms effective immediately, amping up the pressure on an industry that recently has come into the Trump administration's crosshairs.

The unit, among the world's largest investment firms with more than \$7 trillion in client assets, has to vote shares in thousands of companies. This coming proxy season, it will start using an internal artificial-intelligence-powered platform it is calling Proxy IQ to assist on U.S. company votes, according to a memo seen by The Wall Street Journal.

The bank will use the platform to manage the votes and the AI also will analyze data from more than 3,000 annual company meetings and provide recommendations to the portfolio managers, the memo said, replacing the typical roles of proxy advisers.

JPMorgan thinks it is the first large investment firm to entirely stop using external proxy advisers, which provide much of the industry's plumbing, the memo said. It previously had said it would stop using advisers for vote recommendations, relying on its in-house stewardship team instead.

Fine! Go to ChatGPT, type "how should I vote all my shares in all of my companies," do whatever it says, and don't worry about it too much. Will Proxy IQ be more or less management-friendly than the current proxy advisers? More or less woke? Probably somebody will care about the answers to those questions, but not me. I wonder if all the asset managers will end up training their proxy-voting AIs on the actual track records of ISS and Glass Lewis. Good enough!

On-cycle

The basic way that private equity recruiting works is:

1. College seniors get hired into two-year analyst positions at investment banks, which start the summer or fall after they graduate college.
2. After the two-year analyst program ends, many of the analysts move on to jobs as associates at private equity firms. (For many incoming investment bank analysts, the whole *point* of investment banking is to get a job in private equity.)
3. The interviewing and hiring process for private equity, naturally, occurs sometime *before* the analyst programs end: The private equity jobs start after the bank jobs end, but they hire in advance.
4. Also all the big private equity firms do their hiring within like five minutes of each other, to compete for the best candidates. (This is called "on-cycle recruiting.")
5. I suppose at some point in the distant past, the private equity firms would do their interviewing like a month before the jobs started. But in recent years that has crept earlier and earlier, to the point that on-cycle recruiting occurred during the summer, before analysts even started at their investment banks: They would interview in summer 2024 for a private equity job to start in summer 2026, and then start their two-year investment banking analyst program a week later.
6. Everyone thinks this is stupid but there is a strong competitive dynamic that pushes it earlier and earlier.
7. Investment banks have mixed feelings about it: On the one hand, it is nice to send their analysts to work for clients, since hopefully the analysts will have fond feelings about their banks and send private-equity deal work their way. (Also the banks are essentially pyramids and need most of the analysts to leave anyway, so they might as well leave happy and go somewhere good.) On the other hand, you might worry that an analyst who *starts* her investment banking career with a private equity job lined up might not be the most dedicated and careful employee, and there are conflicts of interest to worry about if she is working on deals that might involve her future employer.
8. Also, what with AI, nobody knows how many private equity associates the firms will actually need two years from now, or how many analysts the banks will need for that matter.

Last year some banks, led by Jamie Dimon of JPMorgan Chase & Co., complained about all of this. And the consequences were:

- Some banks announced dire consequences for analysts who accepted private equity jobs. For instance, "JPMorgan told incoming analysts in June that it would fire any analysts who took private equity jobs within their first 18 months of joining the bank," and Goldman Sachs Group Inc. demanded that analysts certify every three months that they had not taken another job.
- Some big private equity firms were like "yes, Dimon is right, this is dumb," and they collectively held off from doing on-cycle recruiting over the summer.

There is a timing mismatch between those two consequences, though. You could imagine the banks all saying "anyone who accepts a private equity job in the first three months of their analyst program will get fired," but they didn't say that. Why three months? That's still pretty short. Instead, the banks went around saying that analysts couldn't accept private equity jobs until near the *end* of the analyst program: JPMorgan bankers need to wait 18 months, for instance, and I guess Goldman bankers need to wait 21 months.

Meanwhile the private equity firms were like "sure, not yet," but in an informal and unstable way. Nobody committed to waiting 18 months, certainly. This week the detente collapsed. At the Financial Times, Sujeet Indap reports:

First-year investment banking analysts were informed by private equity firms and headhunters on Sunday night to appear on Monday for technical interviews, spreadsheet exams and behavioural questions.

The abrupt January interviews come after the biggest firms halted their "on-cycle" recruitment process in the June window after Dimon said last year that JPMorgan would terminate junior analysts for accepting future-dated jobs. ...

An analyst told the Financial Times his interviews at private equity firms on Monday began at 7.30am and he had accepted an offer by 9pm to begin in 20 months' time. He said most of his banking classmates had skipped work for the day to shuttle between PE firms, with some abandoning one firm on Park Avenue to walk over to another that had just sent a fresh interview invite.

I guess they called Dimon's bluff. Now do they all get fired from their banking jobs?

First Brands

Most long-running financial frauds have a Ponzi element to them. You can probably think up a way to raise money from investors and steal all of it, but you probably can't *keep doing that* for a long time. If you want to keep raising new money from investors to steal, you probably have to (1) promise the investors a nice return and (2) *give it to them*. That means you can't steal *all* of the money. You promise people returns of 10% per month, you raise money, you send them statements saying "you're up 10% this month," and if any of them ask to withdraw their money you cheerfully give it to them. If everyone *does* withdraw their money, you're doomed – the returns are fake, you spent half the money on Lamborghinis, and you have nowhere near enough to give everyone their money back, never mind the 10% returns – but if only a few of them do you're fine. You give them some of the money you have raised, and everyone thinks (1) "ahh this is working as expected" and (2) "these 10% monthly returns sure are sweet," so they mostly don't ask for their money back and the whole thing keeps going.

What this means is that some *victims* of financial frauds *do great*. For instance: You put \$100 into a fraud, you get 10% monthly returns for two years, you take the returns in cash each month (\$240 total), and eventually the fraud collapses and you lose the \$100 initial investment. Net, you put in \$100 and got back \$240 over the course of two years, which is a great return. But at the moment of collapse, you lost \$100. You have a \$100 claim against the fraud, in bankruptcy. "They stole my \$100," you can almost credibly say, though in practice many fraud resolution processes (1) won't give you your \$100 back and (2) might come after you for the \$240.

One conclusion that you *might* draw from this – though this is extremely not legal or investing advice – is that, if you identify a company that is doing a large and long-running fraud, you might want to *become a victim*. "Sure, Bernie Madoff, take my money," you might say, and then make sure to cash out your profits each month. Providing financing to a fraud can be lucrative, because the cost of capital of a fraud should be higher than the cost of capital of a normal business, and you can – perhaps – earn that cost of capital. Obviously you want to get out before the collapse, or at least, you want to clip enough coupons before the collapse to make it worth your while. You have to do the right kind of due diligence before investing in a fraud. But "this is a huge fraud" is not *necessarily* the end of your due diligence. Maybe it's a good fraud, for you.

I mean! Don't do this. There are all sorts of problems with this. But, in the abstract, it is maybe something to think about. In the abstract, if someone came to you and said "I will give you the opportunity to invest in my financial fraud, how much would you pay me for that opportunity," the answer might be a positive number.

Maybe another way to put this is that there is sometimes a blurry line between the "victims" of a fraud and the "co-conspirators."

Anyway, we have talked a few times about First Brands Group Inc., a bankrupt auto parts suppliers whose creditors have been accusing it of fraud. The basic accusation is that First Brands took out all sorts of loans, and it allegedly double-pledged some of its assets as collateral for multiple loans, leaving it bankrupt without enough assets to pay back its lenders. But there are other alleged problems. Here's one:

A major financier to First Brands Group is accused of orchestrating a kickback scheme with the founder's brother that loaded the now bankrupt auto-parts supplier with expensive debt.

Onset Financial Inc. was "pillaging" the company through usurious financing arrangements approved by Edward James, the brother of founder Patrick James, a group of creditors said in a court filing Monday. Onset, which advanced the firm no more than \$2.5 billion, already has obtained about \$2.9 billion and is also seeking an additional \$1.9 billion through claims in the bankruptcy case, the filing said.

The loans, typically maturing in less than a year and structured with upfront payments, generated average internal rates of return exceeding 300%, according to the filing.

As part of the arrangements, Onset agreed to pay Edward James hundreds of millions of dollars through additional fees and by granting him the right to personally invest in the financings, the creditors' committee alleged. Moreover, hundreds of millions of dollars "appears to have been diverted to Patrick James personally," according to the filing. The committee made the accusations in a brief challenging Onset's bid to delay depositions of two of its executives.

"The allegations against Onset by the First Brands Creditors' Committee are unsupported and baseless and strategically made as part of a spurious scorched-earth litigation tactic," a representative for Onset said in an emailed statement.

Here is the complaint:

Onset is a "net winner" of the First Brands fraud, having obtained approximately \$2.9 billion from its financing arrangements with First Brands, as compared to outlays of at most approximately \$2.5 billion. And Onset still claims to be owed another approximately \$1.9 billion (claims which it appears it may have sold) in unrealized profits from its scheme. Meanwhile, Edward James received (or was scheduled to receive) more than \$250 million in "fees" and returns, while "negotiating" and approving Onset's usurious financing arrangements with First Brands. All of this was at the expense of the First Brands. ...

The rates were so obviously exorbitant that First Brands employees themselves knew the Company was being fleeced. By 2022, if not before, all Onset negotiations were handled by Edward James personally. Two days after Edward James agreed to an inventory loan with a triple-digit IRR (179%, agreed to on September 27, 2022), one First Brands employee messaged another to say "dude..whoever sold that onset deal to us is [Onset] employee of the century," adding later in the thread, "3 months from now.... 'who signed this f'n agreement???' LOL." ... His co-worker responded, "it was Ed taking whatever he could get[.]"

Was First Brands defrauding its lenders, or were its lenders defrauding First Brands? Could be both.

WBD

When we last talked about the bidding war between Netflix Inc. and Paramount Skydance Corp. to buy Warner Bros. Discovery Inc., back in December, there were two odd things about Paramount's bid:

1. Most of the money to backstop the bid was being put up, not by Paramount, and not by Larry Ellison (the father of Paramount chief executive officer David Ellison), but by Larry Ellison's *revocable trust*. The trust, Warner worried, was revocable: If Paramount and the Ellisons changed their mind about the deal between signing and closing, Larry Ellison could move all of his money out of the trust, and there'd be no money left to close the deal (or for Warner to get in a lawsuit). Warner had asked Larry Ellison to personally guarantee the deal, which would completely solve this problem, but he hadn't done it yet.
2. Paramount was *going around on television* saying that its bid, for \$30 in cash per Warner share, was not "best and final." If someone tells you "we're offering \$30 per share, but we'd go higher," it is really incumbent on you to say "okay so go higher." There is some debate about whether Paramount's bid is higher than Netflix's – Paramount will pay more per share in cash, but Netflix will give Warner shareholders both Netflix stock *and* stock in a separate new company holding Warner's cable assets (whereas Paramount would buy the whole company) – but there is no debate at all about whether Paramount's bid is as high as Paramount is willing to go. It's willing to go higher. So, you know. Go higher.

Since then, the first problem – which was extremely easy to solve! – was solved: Larry Ellison personally guaranteed the \$40 billion equity check, so that's sorted. The second wasn't – Paramount's bid is still \$30 – so today Warner said "still no." Bloomberg's Michelle Davis and Lucas Shaw report:

Warner Bros. Discovery Inc. rejected an amended takeover offer from Paramount Skydance Corp. and encouraged shareholders to stick with a deal it has in place with Netflix Inc., voicing skepticism about the interloper's ability to pull off what it said would effectively be the largest leveraged buyout in history.

The snub came after billionaire Larry Ellison said he would personally guarantee \$40.4 billion in equity financing for Paramount's hostile offer to buy shares at \$30 apiece. Warner's board said Wednesday in a letter to shareholders that it has doubts that Paramount will be able to close the deal and that its proposal carries significant risks and uncertainties compared with Netflix's offer of \$27.75 per share in cash and stock for a portion of the company.

Paramount's financing for the deal remains a key sticking point. The Warner Bros. board reiterated concerns about the more than \$50 billion of borrowing required. Paramount, with a market value of about \$14 billion, is attempting an acquisition requiring \$94.65 billion of debt and equity financing, Warner Bros. said in the letter, nearly seven times its total market capitalization.

Even with Larry Ellison's guarantee, the financing is still a worry: Netflix (a \$400+ billion company) can pretty easily pay \$95 billion for Warner, but Paramount (a \$14 billion company) is a less obvious buyer. Warner notes that "large LBO transactions present additional risk and several of the largest LBOs have failed to close on the initially agreed-upon terms," and "financing providers could withdraw commitments if there are significant adverse changes in economic or business conditions." Still I wonder if those concerns could be overcome by price. Davis and Shaw write:

"Warner Bros. Discovery's rejection of Paramount's amended \$30-a-share bid suggests the M&A saga is far from over," Bloomberg Intelligence analyst Geetha Ranganathan wrote in a note. "We believe Paramount would need to raise its offer to at least \$32 per share to bring Warner back to the table."

Getting to a best and final offer, or at least better and more final one, does seem like the logical next step here.

German dentists

A long-running theme around here, for which I occasionally apologize, is poking fun at the investment prowess of dentists. We talked last month about a German dentists' pension fund – managed by a committee of dentists – that lost half of its money on bad private investments, and I said:

I feel like, if you asked US financial firms to pitch products to an investment committee of dentists, they would rub their hands together and cackle with evil glee. Apparently that is true in Germany as well.

I'm sorry, dentists, but I got some emails, and they were pretty confirmatory. Apparently "German dentists" are proverbial among European financial products salespeople, and not in a good way. I mean, not good for the dentists. Great for the financial products salespeople.

Though not always. Bloomberg's Arno Schuetze and Karin Matussek report:

A German pension fund whose foray into private markets led to losses that totaled half of the fund's assets has begun legal proceedings against its former auditor, an adviser and its own managers to recover the damages.

The fund known by its German acronym VZB is suing Dusseldorf-based Apobank, the German unit of Forvis Mazars in Hamburg, the Berlin city government as well as nine former managers, according to a court filing seen by Bloomberg News.

VZB, which caters to more than 10,000 dentists in and around Berlin, has said it's facing losses of about €1.1 billion (\$1.3 billion) after many of its investments went bad. It had about €2.2 billion in assets under management at the end of 2024. ...

The fund had hired Apobank to advise it on investment risks but the lender violated these duties, the pension fund claims. Forvis Mazars audited the fund and provided VZB with "sham opinions" on assets, according to the filing. ...

"Had the auditor carried out even a few random checks on the large number of loans, it would have noticed immediately and directly, because it was obvious, that the granting of these loans was inadmissible," VZB lawyers wrote in the document.

Right, if you are bad at investing, that's your fault, but if you are *really really bad* at investing, that's someone else's fault. Why didn't your auditors stop you? The problems were obvious! Anyone would have noticed them! Except, apparently, dentists.

Things happen

With Maduro Out, Wall Street Chases After Venezuela's Riches. Hedge funds hunt for Venezuela's unpaid financial claims. US Says It Will Control Venezuela Oil Exports Indefinitely. The Fight Over Making Data Centers Power Down to Avoid Blackouts. How Google Got Its Groove Back and Edged Ahead of OpenAI. AI will free households from chores and boost hidden productivity, says OpenAI. Musk's Grok AI Generated Thousands of Undressed Images Per Hour on X. Startup founder accused in Bay Area winery rampage allowed to complete \$1M trade from jail, report says.

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<https://www.wsj.com/finance/banking/jpmorgan-cuts-all-ties-with-proxy-advisers-in-industry-first-78c43d5f>

EXCLUSIVE **BANKING**

JPMorgan Cuts All Ties With Proxy Advisers in Industry First

Bank's asset-management unit will use in-house, AI-powered platform to cast shareholder votes

By [Jack Pitcher](#) [Follow](#)

Jan. 7, 2026 7:00 am ET



JPMorgan CEO Jamie Dimon has been a critic of proxy advisers. ALEXANDER TAMARGO/GETTY IMAGES

Quick Summary

- JPMorgan Chase's asset-management unit is ending all ties with proxy-advisory firms. [View more](#)

[JPMorgan Chase](#)'s JPM **-2.48%** ▼ asset-management unit is cutting all ties with proxy-advisory firms effective immediately, amping up the pressure on an industry that recently has come into the Trump administration's crosshairs.

The unit, among the world's largest investment firms with more than \$7 trillion in client assets, has to vote shares in thousands of companies. This coming proxy season, it will start using an internal artificial-intelligence-powered platform it is calling Proxy IQ to assist on U.S. company votes, according to a memo seen by The Wall Street Journal.

The bank will use the platform to manage the votes and the AI also will analyze data from more than 3,000 annual company meetings and provide recommendations to the portfolio managers, the memo said, replacing the typical roles of proxy advisers.

JPMorgan thinks it is the first large investment firm to entirely stop using external proxy advisers, which provide much of the industry's plumbing, the memo said. It previously had said it would stop using advisers for vote recommendations, relying on its in-house stewardship team instead.

The firms, such as Glass Lewis and Institutional Shareholder Services, offer research, advice, and voting infrastructure to investment firms that need to cast thousands of shareholder votes each year.

Their voting recommendations have long drawn the ire of corporate CEOs and other critics who claim they hold undue influence on shareholder votes and have business models that create conflicts of interest. In December, [an executive order](#) from the Trump administration called for securities and antitrust regulators [to probe proxy advisers](#).

JPMorgan Chief Executive Jamie Dimon has been one of the most outspoken critics, telling an industry gathering last spring that proxy advisers are "incompetent" and "should be gone and dead, done with."

ISS and Glass Lewis effectively form a duopoly in advising institutional investors on corporate-governance matters. Large investment managers have dedicated teams to research and make proxy-voting decisions, but smaller firms often rely more heavily on adviser services.

In a statement on last month's executive order, ISS said that it doesn't dictate or set corporate-governance standards and its sophisticated institutional-investor clients make their own decisions. Glass Lewis, meanwhile, recently said it would no longer offer its "benchmark" voting recommendations to clients starting in 2027, referring to the firm's main vote recommendations that are distributed broadly, focusing on tailored advice to individual clients instead.

Securities

Manage Newsletters

JPMorgan Replaces Proxy Advisers With AI for Voting US Shares

Jan. 7, 2026, 4:51AM PST

JPMorgan Chase & Co.'s asset-management unit cut ties with proxy-advisory firms and plans to use artificial intelligence to assist with voting US company shares, according to a person with knowledge of the matter.

The internal AI platform, dubbed Proxy IQ, will now be used to manage votes and analyze data on more than 3,000 annual company meetings, the person said, asking not to be identified discussing information that isn't public. The change was first [reported](#) by the Wall Street Journal earlier Wednesday, citing an internal memo.

Firms such as Glass, Lewis & Co. and Institutional Shareholder Services Inc. advise investors including state pension funds and other big asset managers on how they should vote their stock on contentious topics such as executive compensation and environmental, social and governance matters.

JPMorgan Chief Executive Officer Jamie Dimon has used his annual letter to shareholders to blast advisers for what he said was " [undue influence](#) " on shareholder elections. The New York-based bank has previously said it was eliminating third-party proxy adviser recommendations from its voting systems. The new move eliminates services the advisers offer to manage votes as well.

President Donald Trump last month issued an executive order seeking to limit the influence of the advisers, telling the chairman of the Securities and Exchange Commission to review regulations relating to the industry and whether they are inconsistent with the administration's push to tone down diversity, equity and inclusion initiatives.

Read More: [Trump Orders SEC to Review Proxy Adviser Rules in ESG Rebuke](#)

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Trump Media & Technology Group

Short sellers increase bets against Trump media group over nuclear fusion merger

Company behind Truth Social platform faces scepticism over last month's deal with TAE Technologies



In its latest third-quarter earnings, Trump Media & Technology Group reported a net loss of about \$55mn against revenues of \$972,900 © AP

Jill R Shah in New York

Published YESTERDAY



Traders are betting against the company behind Donald Trump's social network, signalling scepticism from some investors over its merger with a nuclear fusion group.

Trump Media & Technology Group (TMTG), which owns the Truth Social platform where the president regularly posts, last month announced a deal to [merge with nuclear fusion company](#) TAE Technologies, sending share prices up more than 40 per cent in the following days.

Short sellers quickly bet against the stock, which trades under the ticker DJT ticker. Short interest jumped about 30 per cent in the days after the deal was announced, according to data from market information provider S3. The bets amount to roughly 10 per cent of the shares available for public trading as of last Friday.

[TMTG](#), controlled by Trump's family, did not respond to a request for comment.

The deal is set to merge two businesses from different sectors with the goal of accelerating TAE's nuclear energy development through TMTG's [political connections](#) and access to capital.

The increase in short interest indicates [scepticism](#) over the prospects for the combined outfit. TMTG has not posted a profit in the past three years, and TAE is a private start-up in a sector that has yet to be commercialised.

Some of the short interest could be a result of [investors](#) who hold TMTG's \$1bn convertible bond attempting to hedge their exposure by shorting the stock, S3 said.

TMTG's stock price had declined from last year's peak of about \$40 a share to roughly \$10.50 before the deal. It closed at \$14.33 on Tuesday. In its latest third-quarter earnings, the company reported a net loss of about \$55mn against revenues of \$972,900.

The two companies on Tuesday announced they are in the process of selecting a site for the first fusion power plant based on TAE's technology. Devin Nunes, the chief executive of TMTG and former Republican congressman, said the TMTG team was holding discussions with "multiple states and entities" about potential sites.

TMTG also moved to reward shareholders in late December as the stock price came under pressure. It announced plans to create a [new digital token](#) in partnership with Crypto.com that would be distributed to shareholders based on how much stock they own.

Holders of the token could receive “various rewards” that might include “benefits or discounts tied to Trump Media products”, the company said.

Artificial intelligence company Datavault AI last year said its decision to offer dividends in the form of crypto was partly intended as a “structural defence against unchecked short selling”.

Handling these digital tokens can create practical challenges for short sellers, who borrow stock in order to short it and are required to pass on any dividends to the ultimate owner of the shares.

S3 said TMTG’s token “added a wrinkle” that “could complicate share-lending dynamics” for short sellers.

“Only ultimate beneficial owners (not borrowers) of DJT shares . . . will be eligible to receive digital tokens,” TMTG said in its announcement.

TMTG’s website includes guidance for “long-term shareholders who believe in the company’s future” on preventing brokerage firms from lending those shares for short selling.

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Betting on Jesus Can Save You From Insiders: Paul J. Davies

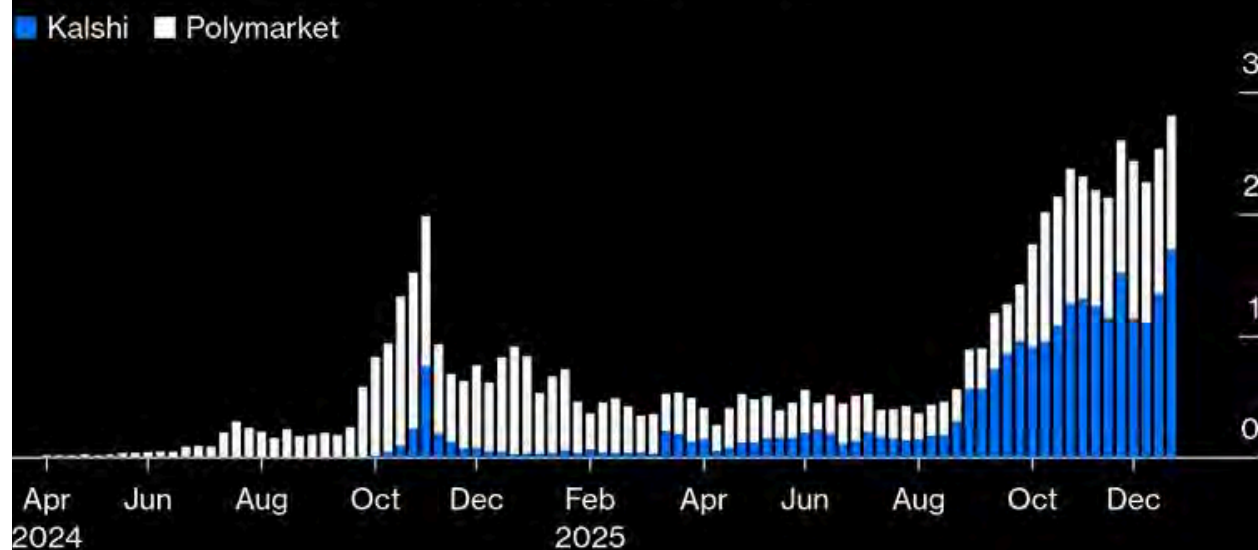
Jan. 6, 2026, 8:00 PM PST

On the face of it, gambling on the second coming of Jesus Christ is just funny. Would earthly dollars even matter if the Messiah did return? Still, more than \$3 million was wagered between hopeful believers and doubtful skeptics on Polymarket last year; in the final three months of 2025, activity on prediction markets took off and weekly wagers topped \$2 billion.

There was one big advantage to the Jesus bet, whether punters went for Yes or No: It was at least a trade where everyone could be fairly sure that no one in the market had inside information. That's not the same for a growing number of high-profile events where winning positions have been ramped up suspiciously just before the outcome was revealed.

Prediction Market Activity Exploded Late Last Year

Weekly trading volumes on two leading platforms



Source: Dune Analytics

Note: Data as of week of Dec. 22, 2025.

Bloomberg Opinion

The US raid on Venezuela and capture of Nicolás Maduro is just the latest example. The world was stunned by the audacious — and completely unexpected — American mission. But one new account on Polymarket won more than \$400,000 after doubling bets on Maduro's downfall, which the trader had begun making only in late December, the Wall Street Journal reported on Monday. The wager was that Venezuela's president would be gone by Jan. 31 this year. Perhaps this was truly a shot in the dark — but the timing of the final big bet just a few hours before US forces hit Caracas looks decidedly dodgy.

And it's not the first time. A different trader got more than \$1 million in winnings in December from remarkably accurate bets on 22 of the 23 most searched personalities last year on Alphabet Inc.'s Google in early December, according to Forbes. The same account had recently won big on the release date for Google's Gemini 3.0 AI model. Bettors have also raised concerns in recent months over unusually large and well-timed bets on purchases of Bitcoin by Michael Saylor's Strategy Inc., and on the winner of the Nobel Peace Prize.

All of this is feeding a perception that these lightly regulated platforms are a financial wild west where punters can be picked off by those in the know. Suspicions are strong enough that an analytics firm called Polysights markets an "Insider Finder" tool, which lists new accounts making large bets — they aren't necessarily dodgy, but it's at least a warning signal for other users.

A spokesperson for Kalshi, Polymarket's main rival in the prediction-markets industry, told Bloomberg News that it explicitly prohibits insider trading of any form. Meanwhile, Polymarket's Chief Executive Officer Shayne Coplan has previously said that suspected insiders are regularly flagged by users on social media platforms such as X.com, according to the WSJ. Bad news travels fast isn't much of a defense in my view.

In the US, the prediction platforms are overseen by the Commodity Futures Trading Commission because the contracts are structured like swaps. However, this agency is under resourced and so far has allowed unrestrained growth in the scale and type of wagers. Most of the boom in recent months is linked to sports betting and several state-based gambling regulators are asking courts to give them jurisdiction instead.

As things stand, market users aren't protected from getting cleaned out by people armed with non-public information in the way they would be in the stock market, for example. Polymarket's non-US platform also allows bets to be made with cryptocurrency from anonymous wallets, according to Bloomberg News, offering another layer of obfuscation to potential cheats.

True believers in efficient markets and outright libertarians will argue that these markets should be left alone to police themselves. When in-the-know users start making bets, the pricing signals sent by their actions spread information about the event concerned, the theory goes. If this were really a practical reality, we ought to apply it to stock markets too and let anyone trade on private knowledge. But we don't — because it's costly and deeply unfair to those with money on the line before the insider turned up.

A Democratic Congressman, Ritchie Torres, is now calling for legislation to criminalize insider dealing on prediction markets. This is the right approach whichever agencies end up with oversight. In fact, the prediction markets themselves ought to be encouraging stricter rules. If suspicious cases like the ones already seen keep appearing, even the most careless gamblers will become more reluctant to get involved. That threatens to reverse the early success Polymarket and Kalshi have enjoyed — success that's driven the values of each platform to more than \$10 billion.

One thing the platforms themselves could do immediately is to close the betting on scheduled announcements — such as the Google search rankings — a day, a week or some other amount of time before they are due. That would limit opportunities for any would-be cheats.

But punters can protect themselves, too, by avoiding all bets where other people or organizations can decide or obviously influence the outcome. Stick to wagers based on millions of people making independent choices, like free and fair elections, or where the result comes down to “an act of God.” Betting against Jesus turning up this year doesn't sound quite so silly after all.

More from Bloomberg Opinion:

Matt Levine's Money Stuff: A Stock Price Is Not a Prediction

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Ex-Robbins Geller Attys' New Firm To Lead Securities Suit

By **Katryna Perera**

Law360 (January 6, 2026, 9:45 PM EST) -- A new firm by former partners of Bernstein Litowitz Berger & Grossmann LLP and Robbins Geller Rudman & Dowd LLP has secured its first lead counsel appointment in a securities suit against National Instruments Corp., which alleges the company repurchased stock while concealing from investors it was considering being acquired.

U.S. District Judge Denise L. Cote issued an **order** on Monday granting a **motion** filed by Robbins Geller to change the lead counsel appointment in the case to Johnson Van Kwawegen LLP.

Johnson Van Kwawegen was **founded** late last year by former Bernstein Litowitz partner Jeroen van Kwawegen following his contentious exit from the firm. Johnson Van Kwawegen launched with 15 attorneys and staff based out of offices in Los Angeles, New York and Wilmington, Delaware.

In late December, Robbins Geller's New York City office managing partner Chad Johnson **joined** the new securities boutique as co-leader and named partner, along with three other Robbins Geller securities partners: Noam Mandel, Desiree Cummings and Jonathan Zweig.

All four partners were leading the National Instruments case for Robbins Geller, according to Monday's motion, and wished to continue representing the class with their new firm.

The motion also stated that Robbins Geller supported the substitution of Johnson Van Kwawegen and intended to remain as counsel to "facilitate the transfer."

In December, van Kwawegen told Law360 Pulse that the decision to launch Johnson Van Kwawegen was due to an increased need by their corporate clients for deep governance and capital markets insight, with the firm's announcement adding that factors such as weakening regulatory oversight, disclosure failures becoming more common, and declining restraints on corporate insiders were some of the other drivers of clients' demand for services.

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

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

Meanwhile, Johnson told Law360 last month that his and the other partners' departure from Robbins Geller was friendly.

Johnson Van Kwawegen declined to comment on Tuesday, and Robbins Geller and counsel for National Instruments did not immediately respond to requests for comment.

The change in lead counsel comes after a New York federal judge in September **certified** a class of investors who sold National Instruments stock during two periods in 2022 while the company was repurchasing shares and considering an acquisition offer.

The suit, filed in 2023, claims that National Instruments repurchased shares while hiding from investors that Emerson Electric Co. was bidding to acquire it at prices "significantly above" the then-current market prices of National Instruments common stock. Investors claim National Instruments engaged in insider trading by repurchasing stock while knowing about the Emerson offer, meaning it repurchased shares from unsuspecting class members at depressed prices.

According to court filings, National Instruments produced automated test equipment and virtual instrumentation software. In January 2022, National Instruments' board approved a stock repurchase program that authorized the company to repurchase up to \$250 million worth of common stock from shareholders. It was the largest stock repurchase in the company's history, according to the opinion.

The repurchase program began in March 2022, and Emerson began presenting acquisition offers in May 2022 to purchase 100% of National Instruments' outstanding common stock for \$48 per share.

National Instruments' board rejected Emerson's first few offers, and court filings state that the stock repurchase program paused in June and July 2022 but resumed in August. Between Aug. 12 and Sept. 26, National Instruments repurchased more than 2 million shares at an average price of \$40.25, and no further stock repurchases occurred that year.

In November 2022, investors claim that Emerson made another buyout offer to purchase National Instruments at \$53 per share. A few months later, on Jan. 13, 2023, National Instruments announced that the board had initiated a "review and evaluation of strategic options, including solicitation of interest from potential acquirors and other transaction partners, 'some of whom have already approached the company.'" However, the announcement did not mention Emerson or any of its offers. On this news, investors say the price of National Instruments common stock increased from \$40.17 per share to \$47.95.

Emerson announced the acquisition on Jan. 17, stating that it had offered to purchase all National Instruments shares at \$53 per.

"Emerson also stated that in response to an initial offer, NI had chosen to conceal the offer from the investing public and had instead undertaken a large stock repurchase," court filings state. "On this news, NI's stock price surged from a previous close of \$46.97 per share to a high of \$54.69 per share."

The deal closed in October 2023, with Emerson purchasing all of National Instruments' stock at a final price of \$60 per share, according to investors.

The class is represented by Chad Johnson, Noam Mandel, Desiree Cummings and Jonathan Zweig of Johnson Van Kwawegen LLP, and Samuel H. Rudman and Christopher T. Gilroy of Robbins Geller Rudman & Dowd LLP.

National Instruments and the other defendants are represented by James F. Bennett, John D. Comerford and Jeremy M. Hofman of Dowd Bennett LLP, and Andrew Ditchfield of Davis Polk & Wardwell LLP.

The case is In re: National Instruments Corp. Securities Litigation, case number 1:23-cv-10488, in the U.S. District Court for the Southern District of New York.

--Editing by Adam LoBelia.



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Rick Perry's AI Energy Co. Hit With Post-IPO Lawsuit

By **Jessica Corso**

Law360 (January 6, 2026, 5:35 PM EST) -- An artificial intelligence infrastructure company co-founded by former Texas Gov. Rick Perry is facing a proposed class action accusing it of overselling its key development in order to secure \$745.7 million through an initial public offering.

Fermi Inc. was sued in New York federal court Monday by shareholder Salvatore Lupia, who is seeking to represent a class of investors who bought into Fermi's IPO on the belief that there would be more demand for the energy being produced out of an AI data center still under construction in Texas.

The company notified investors in December that the center's first tenant had pulled out of a deal to fund the construction of the site, known as Project Matador, and Lupia said that Fermi's stock price dropped 33.8% as a result of the announcement.

Fermi "overstated its tenant demand for its Project Matador campus" by stating in its registration statement that it was in advanced discussions with a group of foundational anchor tenants, and it also deceived investors about "the extent to which Project Matador would rely on a single tenant's funding commitment to finance the construction of Project Matador," according to the lawsuit.

A Fermi spokesperson pushed back on the allegations, telling Law360 in an email Tuesday that the company's "tenant engagement is as robust as ever, and Project Matador is on track to deliver one gig of power in 2026."

The lawsuit accused Fermi of securities fraud, and also names the company's leadership, IPO underwriters and board of directors as defendants. One such defendant is former governor and former U.S. Secretary of Energy Perry, who co-founded the company in 2025 alongside his son, Griffin Perry, and billionaire businessman Toby Neugebauer.

Neugebauer, also a named defendant, is currently the CEO of Fermi while Rick Perry is listed as a director.

The company went public on the Nasdaq Global Select Market on Oct. 1, after it was announced that Fermi had secured a 99-year lease from Texas Tech University for an over 5,000 acres site in the Texas Panhandle.

Fermi said it planned to build Project Matador on that site, promising to use nuclear, natural gas and solar energy to eventually generate 11 gigawatts of power that could serve the growing AI industry.

But Lupia said that last month's announcement that \$150 million in funding for the project's construction had fallen through after the first tenant ended its relationship with Fermi has led to "the precipitous decline in the market value" for the company's stock.

Lupia is represented by Rebecca Dawson, Robert Prongay and Charles Linehan of Glacy Prongay & Murray LLP and Frank Cruz of The Law Offices of Frank Cruz.

Counsel information for the defendants wasn't immediately available on Tuesday.

The case is Lupia v. Fermi Inc. et al., case number 1:26-cv-00050, in the U.S. District Court for the Southern District of New York.



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Coupang Brass Face Suit Over Alleged Cybersecurity Failures

By **Katryna Perera**

Law360 (January 6, 2026, 6:50 PM EST) -- The top brass of e-commerce company Coupang Inc. have been sued in California federal court by a shareholder who claims the company's executives and directors failed to maintain adequate cybersecurity protocols, leading to a data breach that exposed the personal information of millions of customers.

Plaintiff Jason Warga filed a **complaint** on Monday against Coupang's CEO Bom Kim, its Chief Financial Officer Gaurav Anand and several directors for alleged wrongdoing between Aug. 6 and Dec. 16, 2025.

Coupang is a Delaware-incorporated company that provides retail, restaurant delivery and other fintech services under several different brands. Although the company offers services globally, it focuses primarily on the South Korean market, the complaint states.

Warga alleges that during the relevant period, the defendants caused Coupang to fail to maintain adequate cybersecurity protocols in violation of U.S. Securities and Exchange Commission requirements. The lack of cybersecurity protocols led to a breach in which a former Coupang employee, who had stolen a security key while working for the company, exploited a cybersecurity vulnerability, Warga says.

According to the complaint, the former employee used the stolen key to access 33.7 million Coupang customer accounts and obtained personal information from at least 3,000 accounts, including phone numbers, addresses, order histories and building access codes.

The complaint states that Coupang learned of the breach on Nov. 18 and began working with South Korean authorities on an investigation soon after.

"Throughout December 2025, the company remained in constant communication with the South Korean government, and on Dec. 16, 2025, Coupang retrieved some of the devices used by the former employee in the data breach," the complaint states. "On Dec. 18, 2025, the company retrieved an additional device used in the data breach by the former employee."

However, Warga alleges that during this time, Coupang did not inform the public about the breach and made several misleading and false statements about the company's cybersecurity, in violation of SEC reporting requirements.

The truth began to come to light on Nov. 30, according to the complaint, when Reuters published an article reporting that Coupang had recently publicly apologized for the data breach. According to the complaint, the Reuters article also revealed that "the [South Korean] government ... is looking into whether Coupang violated safety rules regarding personal information protection."

The following day, Bloomberg reported that a former Coupang employee may have carried out the data breach and that "officials warned that the compromised information could be used to carry out targeted phishing attacks," Warga claims. On this news, Coupang's common stock price fell \$1.51, or more than 5.4%, from \$28.16 per share on Nov. 28 to \$26.65 per share on Dec. 1, 2025, the complaint states.

Coupang acknowledged the breach in an SEC filing on Dec. 16, causing its stock price to fall again,

this time by 47 cents, or 2%, from \$23.19 per share on Dec. 16 to \$22.72 per share on Dec. 17, 2025, Warga says.

Warga claims the defendants wrongfully failed to disclose to shareholders that Coupang had suffered a massive data breach, which allowed a former employee to access customer information for approximately six months due to Coupang's inadequate cybersecurity procedures; that Coupang engaged in "cybersecurity misconduct"; and that as a result, Coupang faced an increased risk of legal and regulatory scrutiny.

Warga further alleges that during the relevant period, the defendants caused Coupang to repurchase its own stock at artificially inflated prices and that several defendants engaged in insider trading, resulting in combined proceeds of approximately \$31 million.

"Between Aug. 1, 2025 and Sept. 30, 2025, approximately 2.8 million shares of Coupang common stock were repurchased, costing the company over \$80.5 million. Because the company's stock was worth only \$22.72 per share at the market close on Dec. 16, 2025, the company overpaid for repurchases of its own stock by more than \$16.1 million in total," the complaint states.

Additionally, Warga claims the defendants' actions prompted a securities class action to be filed against the company in California federal court in December.

Warga's suit seeks damages, reforms and improvements to Coupang's corporate governance and internal procedures, attorney fees and a jury trial.

Counsel for Warga declined to comment on Tuesday. Representatives for the defendants did not immediately respond to requests for comment.

Warga is represented by Robert C. Moest and Timothy Brown of The Brown Law Firm PC.

Counsel information for the defendants was not immediately available.

The case is Warga v. Kim et al, case number 5:26-cv-00087, in the U.S. District Court for the Northern District of California.

--Editing by Alanna Weissman.



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III. Judge Trims Most Of Walgreens Shareholder Suit

By **Celeste Bott**

Law360 (January 6, 2026, 5:04 PM EST) -- An Illinois federal judge on Monday dismissed most claims in a lawsuit alleging Walgreens inflated share prices by concealing the lack of viability of its pharmacy division and primary care investment, warning shareholders not to "waste judicial resources" in amending their allegations by claiming straightforward statements are misleading "absent a coherent argument as to why."

The suit, first filed in July 2024 and later consolidated with a similar case, claims Walgreens and its executives presented falsely optimistic projections of the pharmacy division's growth potential and cost execution before revealing in an earnings call that the segment was not truly equipped to handle the ongoing challenges in its industry.

Walgreens Boots Alliance paid \$5.2 billion to acquire a majority stake in Chicago-based primary care provider VillageMD in 2021, with the goal of opening at least 1,000 primary care practices branded as Village Medical at Walgreens in more than 30 states by 2027.

But of the 80 allegedly false and misleading statements made by Walgreens and its leadership about that undertaking, the proposed class has failed to adequately back 77 of them to meet the "exacting standard" of the Private Securities Litigation Reform Act, U.S. District Judge Mary Rowland ruled on Monday.

"Rather than identify each individual statement and each reason or reasons why that statement is misleading, the 145-page complaint contains several paragraphs with large handfuls of defendants' statements together ... and then repeats one of two stock paragraphs containing near-verbatim explanations of why the statements were misleading," the judge said.

Three statements made by then Walgreens executives Rosalind Brewer, James Kehoe and John Driscoll do meet that standard, Judge Rowland said.

Those statements described the company's plans to open more clinics, despite Walgreens placing a nationwide hold on opening future co-located clinics in mid-2022, and insisted there were no labor issues when there had been, according to the opinion.

"Taking the facts in the complaint as true it is difficult to believe that they could not know that each statement was false or misleading," Judge Rowland said. "Defendants have not offered a competing inference explaining why Kehoe and Driscoll would have represented what was apparently false information about the clinic openings after a nationwide hold went into effect, or an explanation as to why Brewer would claim that they had no labor issues when labor issues had allegedly plagued the VillageMD Venture from its inception."

The suit's proposed class period begins Oct. 12, 2023, the day Walgreens issued an outlook for fiscal year 2024 expecting adjusted earnings per share of \$3.20 to \$3.50. The company told investors that it was adopting a "prudent approach" and executing actions to lower its cost base. The effects will "start to ramp up in the second quarter" of 2024, the defendants told investors, according to the suit.

Over the next several months, the defendants continued to tout Walgreens' "strong execution" of its pharmacy services, led by its vaccine portfolio, the complaint claims.

The truth began to emerge, the suit alleges, on June 27 when Walgreens announced lower-than-expected financial results for the third quarter. The defendants told investors that the current

pharmacy model is "not sustainable" due to the continuation of worse-than-expected pharmacy margin headwinds from the impact of fluctuations in drug acquisition costs, inflation and lower overall market growth, among other things, according to the suit.

Walgreens lowered its 2024 adjusted earnings per share guidance to \$2.80 from \$2.95, the complaint said. The news resulted in Walgreens' stock price declining \$3.47, or about 22%, to close at \$12.19 per share on June 27, according to the complaint.

Representatives of the parties could not be immediately reached for comment on Tuesday.

The shareholders are represented by Peter S. Lubin and Patrick D. Austermuehle of Lubin Austermuehle PC, Terrence Buehler of the Law Office of Terrence Buehler and Adam M. Apton, Gregory Potrepka and Shannon Hopkins of Levi & Korsinsky LLP.

Walgreens is represented by Brian M. Lutz, Colin B. Davis and Jessica Valenzuela of Gibson Dunn & Crutcher LLP and Molly K. McGinley and Paula Enid Litt of Honigman LLP.

The case is In re: Walgreens Boots Alliance Securities Litigation, case number 1:24-cv-05907, in the U.S. District Court for the Northern District of Illinois.

--Editing by Alex Hubbard.

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Meta Downplayed \$10B Ad Changes 'Tsunami,' 9th Circ. Told

By **Dorothy Atkins**

Law360 (January 6, 2026, 4:43 PM EST) -- Meta Platforms Inc. investors urged a Ninth Circuit panel on Tuesday to revive a proposed securities class action alleging the social media giant hid the financial effects of privacy changes by Apple Inc., arguing that Meta executives publicly assured investors while knowing the company would be hit with a "\$10 billion tsunami."

The investors' counsel, Jeremy Alan Lieberman of Pomerantz LLP, argued before the three-judge panel that U.S. District Judge Yvonne Gonzalez Rogers got it wrong when she **tossed their case** in September 2024 at the pleading stage over loss causation issues.

Lieberman argued that Meta's top brass publicly failed to manage investors' expectations by repeatedly stating vaguely that Apple's 2021 privacy changes restricting data tracking for advertisement purposes may affect the social media company's revenues in the future, while knowing the negative effect would in fact be "material" and "this is becoming a \$10 billion tsunami."

Lieberman told the panel that by June 2021, 85% of Apple users had switched into the iOS privacy settings, and Meta was facing a 40% decline in advertisements' so-called signal match rate. The signal match rate, he said, is the most important metric for advertisers, and he argued that the metric change had a "devastating impact to the company to sell advertisements, and to track advertisements."

The trip to the Ninth Circuit is the latest chapter in a lawsuit that was **filed in March 2022** accusing Meta, its CEO Mark Zuckerberg and other top executives of violating federal securities laws by misleading investors about a variety of topics, including the \$10 billion impact of Apple's privacy changes on Meta's 11-figure annual advertisement revenues.

It also claimed Meta misled investors to believe that its transition to its new in-app video format Reels was not affecting its business, and that Meta hid information about benefits former Chief Operating Officer Sheryl Sandberg had received.

In particular, the investors took issue with statements made by Meta Chief Strategy Officer David Wehner during an investor call in February 2022, when he was the company's chief financial officer.

During that call, Wehner told investors that Meta had said that the revenue impact of iOS was "in line with our expectations and similar to the Q3 headwind" and "we believe the impact of iOS overall as a headwind on our business in 2022 is on the order of \$10 billion," adding that it was "a pretty significant headwind for our business."

The investors alleged that Wehner's statements were essentially a corrective disclosure of past, 2021 performance and a direct admission that the iOS rollout materially affected Meta's business in 2021.

However, after **multiple rounds of pleading**, Judge Gonzalez Rogers tossed the case, calling the investors' claims "strained and overwrought" and based on inactionable statements.

The investors appealed, and Lieberman told the Ninth Circuit panel Tuesday that based on Meta's own statements, Meta investors "had no inkling that there's a \$10 billion dollar impact" from Meta's disclosures of Apple's privacy changes.

However, U.S. Circuit Judge Jacqueline H. Nguyen doubted Lieberman's arguments and noted that the investors have been allowed multiple shots at amending their claims, and they are likely going to have trouble meeting the heightened pleading standards for a securities fraud case.

U.S. Circuit Judge Mark J. Bennett also noted that Meta specifically told investors in a quarterly report that Apple had made privacy changes that limited Meta's ability to target and measure the effectiveness of ads.

"That doesn't seem to me to be saying, 'Yeah, this is no problem, we've dealt with it,' he said.

Lieberman replied that although Meta acknowledged there is an issue, the company didn't disclose the magnitude of the problem or that it would "materially" affect its revenues. But Judge Bennett asked if Lieberman was suggesting that there were "magic words" that Meta should have said to avoid facing such securities fraud claims.

Lieberman said he wasn't, but he said materiality is key to securities fraud statutes, and the magnitude of any impact from Apple's privacy changes is significant. He added that even sophisticated investors and market analysts were caught off guard by the size of the impact.

"We're not slicing the salami very thin here, your honor," he said. "We've got a scenario — it's the \$10 billion impact on the company."

However, Susan E. Engel of Latham & Watkins LLP argued on behalf of Meta and its executives that the lower court got it right. She argued that Meta properly disclosed to investors that Apple's privacy changes were risk factors, and Meta wasn't obligated to articulate the potential size of the financial impact or its materiality under the Ninth Circuit's 2021 ruling in [In re: Alphabet](#) .

"Plaintiff's complaint that Meta didn't use an adverb 'materially' when it disclosed the past impact makes no sense," she argued.

Engel added that federal security laws do not turn on a company's use of adverbs, and when taken together, Meta's statements about the effect of Apple's privacy changes on the company showed it knew the problem would be manageable, but not small.

"No one could have thought this was a minor inconvenience," she said.

U.S. Circuit Judges Jacqueline H. Nguyen and Mark J. Bennett and U.S. District Judge Kiyo A. Matsumoto sat on the panel for the Ninth Circuit.

The investors are represented by Jeremy Alan Lieberman of Pomerantz LLP.

Meta and its officers are represented by Susan E. Engel of Latham & Watkins LLP.

The case is Menora Mivtachim Insurance Ltd. et al. v. Meta Platforms Inc. et al., case number 24-6218, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Bonnie Eslinger and Sydney Price. Editing by Brian Baresch.



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Amazon Seeks To 'Hot Tub' MIT Prof's Opinion In Antitrust Suit

By **Rae Ann Varona**

Law360 (January 6, 2026, 9:01 PM EST) -- Amazon.com Inc. has asked a Seattle federal court for a "hot tub" hearing in a proposed consumer antitrust class action that accuses the e-commerce giant of artificially raising retail prices, saying the novel litigation technique for concurrently questioning parties' experts is needed to vet one expert's change in opinion.

In a motion filed Monday in the U.S. District Court for the Western District of Washington, Amazon said such a hearing would allow the court to hear directly from the expert witness for a proposed class of consumers and Amazon's own experts concerning the reliability of a method the consumers' witness used in the case before the court rules on both Amazon's bid to exclude the witness's expert testimony and on the consumers' motion for class certification.

According to Amazon, the opinions of the consumers' expert witness, Massachusetts Institute of Technology economics professor Parag Pathak, have "meaningfully shifted" since the court last considered his methodology and admitted his opinions in a related consumer suit.

"We have since learned that the descriptions of what Prof. Pathak did — and the results of his model variants — that were provided to the court were inaccurate," Amazon said in its motion.

Amazon said a hot tub proceeding would give the court a chance to "efficiently question and assess, in real time, representations made to it on fundamental class and expert issues."

"Without such a hearing, the court will be making determinations on ... Pathak's methods that have been misstated in plaintiffs' briefs," Amazon asserted.

The Seattle-based retail giant's motion for a concurrent expert hearing comes as it faces three **consumer suits** that generally accuse Amazon of violating antitrust laws by artificially inflating online retail prices through its treatment of sellers on its platform, including policies penalizing the sale of items for lower prices elsewhere.

Consumers in this specific suit, headed by Deborah Frame-Wilson and lodged in **March 2020**, are seeking to represent individuals who made purchases through other retail channels of goods offered by third-party sellers on Amazon, starting in March 2016. The consumers moved for class certification in February 2025.

"Hot tubbing" refers to the novel litigation technique that allows experts from both sides to sit together in the witness or jury box and jointly present evidence and answer questions. Formally known as the "concurrent expert evidence technique," hot tubbing originated in Australia, where courts have been using the procedure for years.

While there hasn't been widespread use in U.S. courts, such hearings have been used on occasion, such as during claim construction hearings in U.S. patent cases.

According to Amazon's Monday motion, "The hot tub format provides for a 'lively discussion' among the experts, moderated by the court and counsel."

In seeking a hot tub hearing, Amazon said Pathak, in an expert rebuttal report, "walks away from opinions and descriptions of his methodology" that were "central" to the court's decision in one of the

other suits headlined by named consumer Elizabeth De Coster. In that suit, the court admitted Pathak's opinions based on the so-called Boik-Corts economic model.

According to Amazon, Pathak "expressly stated" in the De Coster suit and in his opening report in the present case that he used the Boik-Corts model on Amazon transactions data to assess antitrust impact. But after Amazon's own expert explained why it wasn't possible to apply a theoretical model to transaction data to assess antitrust impact, "Pathak denied that he ever did."

"He now asserts that he only relied on transactions data to mechanically calculate average classwide damages based on a sample of the class," Amazon said.

Amazon said its expert witness had also examined Pathak's model variants and found that a platform's most-favored-nation clause can reduce prices rather than raise them. According to Amazon's motion, Pathak had concluded that Amazon's most-favored-nation clause raised fees and prices across purchases.

Amazon said that conclusion "does not dispute" its expert's mathematical results or "defend the variants."

"Instead, in his rebuttal report, Prof. Pathak now claims that he made unrealistic assumptions when he designed the variants, and he now proposes new variants based on gerrymandered assumptions to make the variants align with the results of the Boik-Corts model," Amazon said. But those new variants "do not cure the unreliability" Pathak's methodology, it said.

Amazon said that given the "shifts" in Pathak's opinions since the court admitted his opinions in the De Coster proceeding, a hot tub proceeding would be an "invaluable tool" for vetting issues presented in Amazon's motion to exclude Pathak's opinions and in determining questions of class certification.

"A 'hot tub' proceeding between Prof. Pathak and Amazon's experts will provide the court invaluable information — in an unfiltered format — to assess whether the Boik-Corts model would provide a jury a sound basis to make a reasoned and reasonable judgment about antitrust impact," Amazon said.

Steve Berman of Hagens Berman Sobol Shapiro LLP, an attorney for the consumers, told Law360 on Tuesday that Amazon, "in a desperate attempt to undo the certification order in De Coster, is taking testimony out of context and misstating Dr. Pathak's work."

"We will have a powerful and accurate response," Berman said.

Counsel for Amazon did not immediately respond to a request for comment on Tuesday.

The consumers are represented by Steve Berman, Barbara Mahoney and Anne F. Johnson of Hagens Berman Sobol Shapiro LLP, by Jessica Beringer, Shane Kelly and Alex Dravillas of Keller Postman LLC, and by Steig D. Olson, David D. LeRay, Nic V. Siebert, Elle Mahdavi and Adam B. Wolfson of Quinn Emanuel Urquhart & Sullivan LLP.

Amazon is represented by Karen L. Dunn, William A. Isaacson, Amy J. Mauser, Kyle Smith and Meredith Dearborn of Dunn Isaacson Rhee LLP.

The case is Deborah Frame-Wilson et al. v. Amazon.com Inc., case number 2:20-cv-00424, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Bryan Koenig. Editing by Karin Roberts.



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Section 230 Knocks Down Addiction MDL, Meta Tells 9th Circ.

By **Dorothy Atkins**

Law360 (January 6, 2026, 10:20 PM EST) -- Meta Platforms Inc. urged a Ninth Circuit panel on Tuesday to find that Section 230 of the Communications Decency Act shields it from sprawling social-media-addiction multidistrict litigation, arguing that the claims go to "the heart of what the statute intends to protect."

Meta's counsel, James Rouhandeh of Davis Polk & Wardwell LLP, made the arguments to a three-judge panel in San Francisco on multiple **cross-appeals** in the high-stakes personal injury litigation against social media giants.

The MDL involves thousands of claims, which were **consolidated in 2022**, by families, school districts, Native American tribes and states who accuse Facebook owner Meta and other social media companies of designing their platforms with addictive features, like infinite scroll, autoplay, notifications and reward systems, to the detriment of young people's health and livelihoods.

Although discovery in the MDL has **largely closed** and the first bellwether trials in the MDL are expected to be held this summer, Meta and the plaintiffs have filed dueling appeals challenging various aspects of U.S. District Judge Yvonne Gonzalez Rogers' **October 2024 order** partially denying Meta's motion to dismiss.

Meta's appeal primarily takes issue with Judge Gonzalez Rogers' reasons for rejecting its argument that Section 230 shields it from failure-to-warn liability. During Tuesday's arguments, Rouhandeh repeatedly told the judges that the failure-to-warn claims go to the "heart" of the CDA, and particularly Section 230(e)3, which provides that "no cause of action may be brought, and no liability may be imposed under any state or local law that is inconsistent with this section."

Rouhandeh said Meta's position is supported by multiple Ninth Circuit decisions — including [Carafano v. Metrosplash.com](#) in 2003, the 2008 en banc ruling in [Fair Housing Council of San Fernando Valley v. Roommates.Com](#) and [Estate of Bride ex rel. Bride v. Yolo Techs](#) in 2024 — as well as other similar findings in sister circuits.

Rouhandeh argued that ruling otherwise would "cut the heart out of the statute," run afoul of public policy and force Meta to potentially defend itself in a costly trial against meritless claims.

However, two judges said they doubted the panel has the jurisdictional authority to decide Meta's appeal at this stage of litigation.

U.S. Circuit Judge Jacqueline H. Nguyen told Rouhandeh that the jurisdictional issue is the "elephant in the room," particularly as Judge Gonzalez Rogers specifically stated in her order that she plans to revisit the companies' Section 230 defense in other stages of litigation.

"Obviously this is a massive litigation, and the district court has shown an openness to immunity," Judge Nguyen said. "Doesn't that mean that there has been no determination on key issues? ... I have a hard time accepting your argument."

U.S. Circuit Judge Mark J. Bennett also doubted that the Ninth Circuit should take on Meta's Section 230 defense at this stage.

"I'm struck by the judge's statement, which the defendants ignore, that 'The court has yet to rule on the claims of both the state attorneys general and the school districts,'" Judge Bennett said, reading from Judge Gonzalez Rogers' order.

Judge Bennett noted that Judge Gonzalez Rogers' order also points out that the extent of any overlap between failure-to-warn claims and other claims is unclear, and the issue is hotly disputed. Judge Gonzalez Rogers' order had also expressed concerns that allowing Meta's immediate appellate review of the issue would "likely lead to piecemeal appeals, compound delays and increased inefficiencies," Judge Bennett said.

"I know I'm taking a long time here, and I apologize," Judge Bennett told Rouhandeh as he read aloud from the order. "But to me this is not like the double-jeopardy provision of the Constitution where the absolute right is gone forever [if the panel doesn't decide the matter now]. You will have a decision based on a complete record, so I'm having trouble seeing how immediate the harm is here and the breadth of the harm."

Rouhandeh responded, "It's a harm nonetheless — we were denied dismissal based on immunity." He insisted the court should decide the issue now so Meta won't have to continue to defend itself in prolonged litigation against the claims, which it should be statutorily shielded from.

However, Jennifer D. Bennett of Gupta Wessler LLP argued on behalf of the local government, school district and personal injury plaintiffs that Meta is wrongly asking the Ninth Circuit to decide a key merits issue on immediate appeal under the collateral order doctrine. That doctrine requires that decisions taken up on interlocutory appeal resolve important questions "completely separate from the merits."

Bennett argued that the U.S. Supreme Court has repeatedly held that such appeals should only be allowed on narrow issues and that deciding the appeal now would split with other circuits and be at odds with the high court's **2017 ruling** in **Microsoft v. Baker** , which specified that such collateral orders should stem from rulemaking and not judicial decisions.

Bennett also argued that by the time Section 230 was enacted, the Supreme Court had repeatedly emphasized that courts are required to view a party's assertions that it is immune from suit with skepticism.

She said ultimately the "immunity from suit" language in Section 230 that Meta focuses on should be read narrowly, and typically such language restricts liability in the statute of limitations context, and liability immunity doesn't necessarily prohibit all legal actions like administrative actions or injunctive relief.

Bennett added that the potential threat to Meta's First Amendment interests in having to wait until final judgment to appeal don't outweigh the interest in the final judgment rule.

"Section 230 has been around for 30 years, and no court I'm aware of has granted an immediate appeal [in such a case]," she said. "The internet seems to be doing just fine, and in fact here, Meta didn't ... seek a stay, so Meta itself doesn't seem to think that, going forward, this is actually this big threat to the internet or to speech."

Shannon Wells Stevenson, solicitor general of Colorado, also argued on behalf of the state plaintiffs that they have not asserted failure-to-warn claims.

Instead, Stevenson said, the states are pursuing deception claims and claims under various consumer protection statutes based on the "extensive record by Meta of misrepresentations to the public about the design and safety of their products." Ultimately, the states dispute that their allegations can be considered failure-to-warn claims subject to Section 230 immunity, particularly as they take issue with specific features that social media companies implement without looking at any third-party content published on the platforms, she said.

During a short rebuttal argument, Rouhandeh told the panel that allowing the claims to proceed — based on either a design defect theory or failure-to-warn theory — will encumber Meta's Section 230 rights, which are statutorily protected. He argued that the statute itself expresses concerns that the

internet should be free to develop and preserve the vibrant and competitive free market that exists, unfettered by federal or state regulation.

"Nothing could be more fettering than something that would require removal or monitoring of content, which is what would be required here," he argued.

U.S. Circuit Judges Jacqueline H. Nguyen and Mark J. Bennett and U.S. District Judge Kiyo A. Matsumoto sat on the panel for the Ninth Circuit.

Local government and school district plaintiffs and personal injury plaintiffs were represented during the hearing by Jennifer D. Bennett of Gupta Wessler LLP.

The states were represented during the hearing by Shannon Wells Stevenson of the Colorado Office of the Attorney General.

Meta was represented during the hearing by James Rouhandeh of Davis Polk & Wardwell LLP.

The case is California et al. v. Meta Platforms Inc. et al., case numbers 24-7032, 24-7037, 24-7265, 24-7300, 24-7304 and 24-7312, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Brian Baresch.

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Teva Gets Claims Trimmed Ahead Of IUD MDL Bellwether Trial

By **Mike Curley**

Law360 (January 6, 2026, 12:33 PM EST) -- A Georgia federal judge has trimmed some claims from a bellwether trial against original manufacturer Teva Pharmaceuticals over alleged defects in the Paragard intrauterine device that a woman says caused her injuries requiring surgery, while allowing some failure to warn, design defect and punitive damages claims to proceed.

In an **order** filed Monday, U.S. District Judge Leigh Martin May partially granted Teva's motion for summary judgment in the case brought by Pauline Rickard, a little over a month after granting partial summary judgment to co-defendant The Cooper Cos.

According to the order, Rickard has provided testimony and evidence that Teva failed to provide adequate warnings to her physician about the potential for the IUD to break inside of her and require surgery to remove, and that the physician would have acted differently if provided such a warning.

However, she failed to shore up her claim that the company made misrepresentations to her directly, as she has only provided testimony that she performed Google searches and read online, without identifying specific representations made to her, Judge May wrote.

The judge also granted summary judgment on Rickard's breach of warranty claim, finding that she was required to provide Teva with notice of the alleged breach prior to filing suit, but did not.

Rickard's claims are among hundreds that the defendants have faced across multidistrict litigation over the alleged dangers of the Paragard IUD. The device — a small, T-shaped piece of plastic wrapped in copper wire — was developed by Teva and sold to Cooper in 2017, and the women say it has a propensity to break apart while in the uterus, particularly during removal. Rickard, who received her Paragard device from a Florida doctor in 2012, says she required "complicated medical interventions" to remove the broken device.

In November, Judge May granted partial summary judgment **to Cooper**, finding that Rickard and other women whose cases are up for bellwether trials in the MDL couldn't prove a design defect claim against Cooper, as they received the IUDs before it owned the product line.

In Monday's order, Judge May found that the design defect claim against Teva could move forward, based on testimony from Rickard's treating physicians that the device was used as intended, prescribed and placed by experienced providers, but broke well before the recommended 10 years of use had passed.

In addition, the judge wrote, the testimony establishes a genuine issue of whether the IUD failed to perform as safely as a consumer would expect, and Rickard's materials expert testified that a change in the materials used created a higher risk of breakage.

Rickard and Teva had also disputed whether the claims for punitive damages and gross negligence fell under New York or Florida law, and in Monday's order, Judge May concluded Florida applies, as Rickard agreed to as much in an interrogatory response where she voluntarily stated she is entitled to punitive damages under a Florida statute.

As Florida law does not recognize gross negligence as a standalone claim, but rather a standard for assessing punitive damages, Judge May granted summary judgment, but said that the evidence could

lead a jury to find Teva grossly negligent and Rickard therefore entitled to punitive damages.

Representatives for the parties could not immediately be reached for comment Tuesday.

Rickard is represented by Nicole Berg and Ashley Barriere of Keller Postman LLC and Erin K. Copeland of Fibich Leebron Copeland Briggs.

Teva is represented by Christopher D. Morris and Pamela L. Ferrell of Butler Snow LLP.

The Cooper Cos. are represented by Caroline D. Walker and Kasey M. Adams of Butler Snow LLP.

The case is Rickard v. Teva Pharmaceuticals USA Inc. et al., case number 1:21-cv-03861, in the U.S. District Court for the Northern District of Georgia.

--Additional reporting by Chart Riggall. Editing by Marygrace Anderson.

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Drugmakers Fight Multifront Legal Battles Over GLP-1s

By **Hannah Albarazi**

Law360 (January 6, 2026, 5:58 PM EST) -- In the years since the U.S. Food and Drug Administration approved GLP-1 drugs for Type 2 diabetes and, later, for weight loss, demand has surged, generating estimated revenues of more than \$50 billion for their primary manufacturers.

The enormous success in the market of these drugs has triggered an equally intense storm of litigation from drugmakers bent on protecting a highly lucrative group of products from would-be competitors and alleged counterfeits.

The legal battles to watch in 2026 largely come from the two dominant companies in the GLP-1 arena — Eli Lilly & Co. and Novo Nordisk — and involve their flagship products, which include Novo's semaglutide drugs, Ozempic, Wegovy and Victoza, and Lilly's tirzepatide drugs, Mounjaro, Trulicity and Zepbound.

Litigation involving GLP-1s has expanded to include mass tort products liability; regulatory and intellectual property disputes involving compounded versions of the drugs; and securities lawsuits claiming companies are overselling their market growth.

While many of the cases are narrowly focused on GLP-1s, some of the cases do promise to have a broader impact on the law, including suits filed against telehealth companies.

"The impact could be felt well beyond GLP-1s," Kyle Y. Faget, a healthcare attorney at Foley & Lardner LLP, told Law360.

Products Liability: The Gastrointestinal Injury MDL

The most significant patient-facing dispute is a multidistrict litigation in the Eastern District of Pennsylvania. More than 3,000 plaintiffs alleged that Lilly and Novo failed to adequately warn patients that the drugs could cause gastroparesis, or stomach paralysis.

In August 2025, U.S. District Judge Karen Spencer Marston **allowed the core** of these claims to proceed. However, the court also imposed a high evidentiary bar: Plaintiffs alleging gastroparesis must provide a gastric emptying study or a similar validated test from the time of their diagnosis.

A Lilly spokesperson told Law360 that the company "appreciates the court's careful consideration of this threshold issue and anticipates filing potentially dispositive motions on issues relating to preemption, adequacy of warnings and general causation later this year."

Legal experts say the requirement could thin the ranks of the plaintiffs.

Attorneys at Dechert LLP noted in a recent blog post that the order "provides another precedent for early resolution of threshold expert and injury requirements in personal injury product liability MDLs."

Novo is defending itself against the gastrointestinal litigation, telling Law360 that the allegations lack merit. The company pointed to semaglutide's robust safety record, citing clinical trials and real-world data totaling over 38 million patient-years of exposure.

A spokesperson emphasized that beyond weight loss, semaglutide has proven efficacy in reducing

strokes, heart attacks and cardiovascular deaths.

Maintaining that patient safety is its top priority, the company stated that it continues to work with the FDA to monitor safety profiles and ensure the drug is used according to approved labeling.

Expert discovery in the MDL is set to close in March 2026, with the first bellwether trials expected by late 2026.

Cases involving claims for other serious side effects, such as vision loss and blood clots, are also continuing outside the MDL.

The War on "Bootleg" GLP-1s

As demand for GLP-1s outpaced supply, the FDA declared a shortage in 2022, allowing compounding pharmacies to produce cheaper versions of the FDA-approved drugs.

While the branded drugs can cost \$1,000 a month, compounded versions often sell for a fraction of that.

When shortages officially eased in late 2024, the FDA gave compounders deadlines to cease operations and transition patients to branded drugs.

But many compounders, like Empower Pharmacy and FarmaKeio, continued manufacturing, asserting a "clinical need exception" for personalized versions of weight-loss drugs.

Novo has led the charge in trying to head this off. As of mid-2025, the company has filed more than 130 lawsuits across 40 states targeting a wide swath of sellers. That effort has resulted in at least 44 permanent injunctions "to stop unsafe, illegal marketing and selling of knockoff Wegovy and Ozempic," according to the drugmaker.

"These lawsuits generally allege that the pharmacies violated state consumer protection laws or unlawfully manufactured unapproved drugs," Govind Persad, an associate professor at the University of Colorado Law School, told Law360. Their claims include trademark infringement, false advertising under the Lanham Act and allegations of patient safety risks.

Novo's suits, such as the one brought in Illinois against Ambrose Medical LLC, accused the medical clinic of unlawfully advertising online that its semaglutide/B12 compound is "FDA-approved to help people lose and maintain a healthy weight" and additionally alleged violations of the Illinois Uniform Deceptive Trade Practices Act and common law unfair competition.

An Illinois federal judge denied Ambrose's dismissal bid in September 2025, holding that the clinic's advertisement plausibly created the false and misleading impression that consumers are receiving medicines similar to Novo's, noting that the FDA does not approve compounded drugs.

A Novo spokesperson told Law360 that, as part of its commitment to patients, it "continues to take action against entities that violate laws and regulations and put patient safety at risk. This includes those continuing to import, use and market illicit foreign APIs," or active pharmaceutical ingredients.

Lilly has been similarly aggressive, **suing dozens of compounding pharmacies**, clinics and medical spas.

Lilly has also launched a **new round of suits** against telehealth companies, including Mochi Health and Willow Health, **accusing the platforms of improperly engaging** in "corporate practice of medicine," or CPOM, by exercising undue control over clinical decisions.

However, a California federal court **dismissed the initial complaints** against Willow Health and Mochi Health in fall 2025. Lilly has since filed an amended complaint against Mochi Health.

A Lilly spokesperson told Law360 that the company has obtained over a dozen permanent injunctions against the practices of med spas and mass compounders. Lilly further cited a trio of recent federal court victories as evidence that mass-producing "copycat" versions of tirzepatide, the active

ingredient in Mounjaro and Zepbound, is illegal and dangerous.

"Patients deserve medicine they can trust, and we urge FDA and other regulators to stop unlawful compounding," the spokesperson said.

Faget of Foley & Lardner said drug compounding cases could give courts the chance to draw "a bright line" between when a compounded drug is a necessary alternative versus an illegal copy. That delineation, she said, could have a potentially "enormous" impact on compounders and innovator manufacturers industry-wide.

Federal health officials and some state attorneys general have taken a firm stance on the subject and backed drug industry calls for a crackdown on the language used in advertising and marketing by sellers of compounded GLP-1s.

The FDA, for instance, published over 55 warning letters in September 2025 to online sellers of compounded GLP-1 medications, warning that some of the words used in their advertising gave rise to an "unlawful sale of unapproved and misbranded drugs."

Connecticut Attorney General William Tong likewise issued cease-and-desist letters in December 2025, warning that there are "currently no generic GLP-1 weight-loss injections on the market" and that entities offering them are "exposing patients to potentially unsafe bootleg drugs."

Patent Thickets and Generic Delays

While Novo and Lilly fight to protect their current market share, they are also bracing for the arrival of generics.

A 2025 report by the public interest advocacy group Initiative for Medicines, Access and Knowledge, or I-MAK, **accused the companies** of using "patent thickets," the filing of dozens of patents on a single product, to delay generic competitors, potentially limiting access.

A wave of GLP-1 patent suits by the drugmakers have had mixed results in court. In July 2025, a Delaware federal judge **ruled that a generic version** of Wegovy proposed by Mylan — which now operates as Viatrix Inc. — did not infringe one of Novo's key patents.

Novo previously reached a confidential settlement regarding Ozempic with generic manufacturers Natco Pharma and Mylan in October 2024. However, the terms governing the timing and conditions of their generic entry remain unclear.

The era of absolute market dominance may be nearing its end.

"We are going to see patent expirations on semaglutide in many other countries in 2026, which may affect the market worldwide," said Persad of the University of Colorado Law School.

Disgruntled Investors

The volatility of the GLP-1 market has also turned investors into litigants.

In August 2025, investors **filed a proposed class action** against Novo in New Jersey federal court, alleging the drugmaker misled them on its 2025 revenue outlook overstating how many patients receiving compounded GLP-1s would switch to Novo's branded drugs once the drug shortage ended.

Similarly, a shareholder of Hims & Hers Health Inc. **sued the telehealth provider** in July 2025 after its stocks plummeted following a public clash with Novo over the sale of compounded GLP-1s.

Novo accused Hims of continuing to compound GLP-1s despite the FDA's removal of Wegovy and other GLP-1s from its shortage list. Novo claimed that Hims used its telehealth platform to sell "illegitimate, knockoff versions of Wegovy that put patient safety at risk," according to the investor complaint against Hims. The suits against Novo and Hims both remain in the early stages of litigation. Hims did not respond to Law360's request for comment.

A Novo spokesperson told Law360 the company disagrees with the allegations in the investor complaint and intends to "defend against these claims."

--Editing by Emma Brauer.

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Cigna Accused Of Rigging Market For Life-Saving Drugs

By **Bryan Koenig**

Law360 (January 6, 2026, 7:46 PM EST) -- Patients with chronic health conditions sued Cigna in an Illinois federal court alleging in a proposed class action Tuesday that the company and its pharmacy and pharmacy benefit manager subsidiaries use exclusive agreements to lock users into a network where Byzantine refill processes have been deliberately erected to limit payouts for life-saving drugs.

Suing for themselves and their children, the plaintiffs say they're dependent on drugs for an array of chronic conditions, all of which they must get through Cigna's specialty pharmacy, Accredo Health Group Inc., thanks to the contracting practices of fellow subsidiary Evernorth Health Inc. and its Express Scripts Inc. unit, the country's largest PBM. But they said getting those drugs is often a tortuous process where they're shunted between customer service representatives and "given inconsistent or inaccurate information" that delay and disrupt treatments for painful or even life-threatening conditions.

"Defendants designed and maintain these processes to increase friction and attrition, reducing the number and quantity of prescriptions ultimately dispensed through Accredo," the patients said. "In so doing, defendants create 'savings' that they pass back upstream to attract and retain the PBM business of health insurance plan clients — thereby manufacturing the appearance of efficiency by outsourcing the cost onto patients."

The complaint accuses Cigna and its subsidiaries of illegal monopolization and restraint of trade, along with an array of state law claims in their bid to represent potentially "tens of millions of customers" across multiple classes, including for patients covered by the military's Tricare program, which uses Express Scripts as its PBM middleman between drug companies, pharmacies and insurers.

Key to the suit is Express Scripts' and Evernorth's ability "to define some of the most profitable dispensing opportunities as 'specialty' drugs," a designation that allegedly allows them to "exclude Accredo's rivals from dispensing specialty drugs to their captive patients."

According to the 98-page complaint, "the vast majority of Express Scripts and Evernorth's contracts" with their private employer and other clients require them to use Accredo "as their designated and exclusive in-network specialty pharmacy. As a result, most patients covered by Express Scripts and Evernorth must exclusively use Accredo for their specialty pharmacy needs." And even when patients can use other specialty pharmacies, the Cigna subsidiaries' contracts "still coerce patients to accept Accredo."

"For example, on information and belief, defendants use their control over reimbursement infrastructure to prevent patients from obtaining 90-day prescriptions at pharmacies that compete with Accredo and requiring patients to pay higher out-of-pocket expenses if they use alternatives to Accredo," the patients said.

According to the lawsuit, Accredo controls "70% or more" of the "aftermarket" for Express Scripts specialty pharmacy services, a share it's held "without meaningful opportunity for rival specialty pharmacies to obtain Express Scripts in-network status."

"Accredo has monopoly power in this market because it works with its vertically integrated Cigna corporate affiliates Express Scripts and Evernorth to exclude potential competitors from the market and operate as the sole in-network specialty pharmacy for most commercial plans that Express

Scripts provides services to," the patients said.

The lawsuit is only the latest effort that's included **state** and federal enforcers, as well as **state legislatures**, to put insurers and especially their PBMs — including Express Scripts, all three of the country's largest **PBMs** are vertically integrated with a health insurer — on blast for meteoric healthcare costs.

The Federal Trade Commission for instance has accused CVS' Caremark, Cigna's Express Scripts and UnitedHealth's OptumRx units of **using rebate schemes** to prioritize insulin drugs with high list prices and prevent patients from accessing lower-priced drugs.

In announcing the complaint Tuesday, the patients' attorneys at Loevy & Loevy described an "endless" series of problems for their clients as they struggle to navigate Cigna processes to fill prescriptions treating chronic pain and to prevent their bodies from rejecting organ transplants.

"Our clients have been consistently inconvenienced, insulted, and endangered by Accredo, and we know this is not an isolated problem because we've heard from hundreds of others with substantially identical stories," Loevy & Loevy's Aaron Tucek said in a statement.

"The complaint we filed today alleges that these experiences are not isolated failures in an otherwise functioning system, but the foreseeable result of a business plan that puts profit over meeting patients' needs," he continued. "If we multiply our clients' experiences across the tens of millions of prescriptions this monopoly controls, we have a nationwide healthcare crisis that is being caused by The Cigna Group and its subsidiaries."

Cigna did not immediately respond late Tuesday to a request for comment.

In addition to damages, the suit is seeking injunctive relief to block Cigna's allegedly anticompetitive tactics.

"Trapping patients within this incestuous system of nested companies violates state and federal antitrust laws and is unfair and dangerous," Loevy & Loevy's Michael Kanovitz said in a statement. "With a stranglehold on nearly a third of all U.S. prescriptions, the companies can get away with shockingly poor healthcare services, profiting off of the helplessness they impose."

The plaintiffs are represented by Michael Kanovitz, Jon Loevy, Scott Rauscher, Ross Kimbarovsky, Aaron Tucek, Alexandra Wolfson and Isaac Green of Loevy & Loevy.

Counsel information for Cigna was not available Tuesday.

The case is Wolf et al. v. Accredo Health Group Inc. et al., case number 1:26-cv-00098, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Matthew Perlman. Editing by Jay Jackson Jr.



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Atty Apologizes For ChatGPT-Hallucinated Citations In Briefs

By **Elliot Weld**

Law360 (January 6, 2026, 6:03 PM EST) -- A patent attorney has apologized to a Kansas federal judge for submitting a court filing with case citations hallucinated by ChatGPT, calling the experience "shameful and embarrassing" and saying he was in a poor mental state at the time due to his mother and aunt being hospitalized and dying shortly after.

Sandeep Seth of SethLaw PLLC said in a Monday declaration that he had never used the artificial intelligence platform ChatGPT prior to turning to it for the filing in question and didn't properly fact-check everything before submitting it to the court.

The briefs that contained the faulty citations were a response to the opposing litigant's motion for summary judgment and an opposition to that litigant's motion to exclude expert testimony. Seth is representing Lexos Media, which sued Overstock.com Inc. in 2022 alleging infringement of three patents that cover technology that alters an internet user's cursor. U.S. District Judge Julie Robinson **ordered** Seth and Lexos' other counsel to explain why they shouldn't be sanctioned in December.

Seth said he was primarily responsible for drafting the opposition to the motion to exclude expert testimony and said he'd asked ChatGPT to assist him in finding Tenth Circuit and federal case law relevant to the case. Seth said he incorporated three of the four case citations and quotes into his draft brief but did not later double-check the citations as intended.

Before circulating a second draft, Seth said he again queried ChatGPT and incorporated more citations that it produced, again failing to double-check for accuracy. Seth said he had not used ChatGPT before to identify cases or make legal arguments and "never should have relied on the cases or the quotes and text I received from it in response to my prompts in my draft without checking them for accuracy."

Seth said he "cannot express how sorry I am for this set of mistakes" and said he takes full responsibility for the error. Seth asked that if the court administers sanctions, they be against him alone.

Seth said at the time he drafted the brief, his mother and aunt were in the hospital and both died shortly thereafter.

"I can honestly say that these circumstances contributed to my failure to choose to find case law on my own, pursuant to my normal practice, and to instead use ChatGPT as a short cut," Seth said in the declaration. "I do believe these circumstances also led to my failure to double-check for accuracy the ChatGPT generated case cites and quotes because my focus and time was largely spent in hospitals and dealing with my aunt and mother's respective significant health situations."

Lexos attorney Michael Doell of Buether Joe & Counselors LLC said in his declaration that he was primarily responsible for drafting the opposition to Overstock's motion for summary judgment, but not the section that contained the hallucinations. Doell said he has never used AI for any portion of a legal brief and that his firm does not allow it. Three other attorneys representing Lexos said they had no role in the erroneous citations.

Seth did not immediately respond to requests for comment, nor did counsel for Overstock.

The patents-in-suit are U.S. Patent Nos. 5,995,102; 6,118,449; and 7,975,241.

Lexos Media is represented by David R. Cooper of Fisher Patterson Sayler & Smith LLP, Chris Joe, Ken Kula and Michael Doell of Buether Joe & Counselors LLC, and Sandeep Seth of SethLaw PLLC.

Overstock is represented by Ben Stelter-Embry of Embry Law LLC and Neil McNabney, Ricardo Bonilla, Michael R. Ellis, Noel F. Chakkalakal and Philip Brown of Fish & Richardson PC.

The case is Lexos Media IP LLC v. Overstock.com Inc., case number 2:22-cv-02324, in the U.S. District Court for the District of Kansas.

--Editing by Jay Jackson Jr.

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