

**Securities**

## Deep Dive

# AI Hype Dials Down as Public Company Shareholder Suits Persist

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Public companies are becoming more cautious in statements about what artificial intelligence can do for them amid a rising threat of litigation over the technology's unrealized promises, attorneys pointing to new data said.

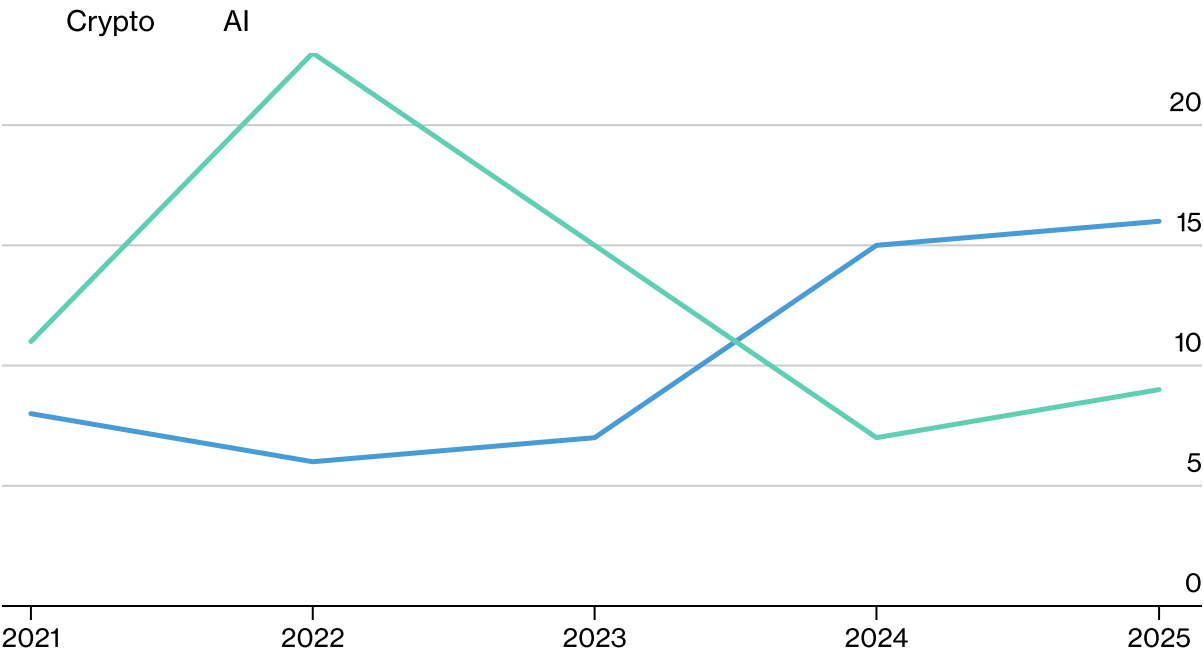
New AI case filings plateaued in 2025, according to reports by Cornerstone Research and the National Economic Research Associates, but so too did the percentage of dismissals after ticking up from a higher denial rate two years ago.

"Companies, their executives, and their disclosure counsel have likely been developing broader sets of warnings and risk disclosures," said plaintiff's lawyer Jeffrey Golan, who's with Barrack, Rodos & Bacine. Courts have also been rejecting investor claims based on non-actionable forward-looking statements or opinions about AI, he said.

AI-related securities class actions increased only slightly after surging in years past, from 15 cases in 2024 to 16 in 2025, Cornerstone reported Jan. 28, together with Stanford Law School Securities Class Action Clearinghouse. AI was the largest of the trend categories the report tracked with most of those cases coming in the first half of the year. NERA counted 17, also showing a slowed pace in the second half of the year—with only one suit filed in the final quarter. Apple Inc. and Tempus AI Inc. were some of the companies targeted last year by investors over their AI-related statements.

# AI Continues Rise Past Crypto Among New Securities Cases

AI suits included allegations of tech's development, use



Source: Cornerstone Research

Bloomberg Law

Dismissals in 2025 remained even with other cases in 2024. It may be that companies “are being somewhat more careful in terms of what they’re telling the market—either about how they’re going to be utilizing AI or how well they’ll be able to sell AI based platforms to their customers,” Golan said.

Nevertheless, “AI does not seem to be going anywhere,” according to Lara Flath of Skadden, Arps, Slate, Meagher & Flom LLP. “We’ve been talking about that now for some time, and that continues to be borne out” in this data, she said.

“This is going to be a central focus of litigation in the coming years and you can already see the beginnings of that in 2025,” said plaintiffs’ attorney Thomas Laughlin of Scott & Scott Attorneys at Law LLP.

Crypto industry maturation is apparent in the data too. Although federal enforcement has pulled back, private plaintiffs continue to bring cases as crypto companies become more mainstream, Flath said.

Eight of the 14 crypto-related suits filed in 2025 asserted unregistered securities claims, while “six were traditional shareholder suits,” NERA reported.

Crypto companies “will continue to face a lot of the sort of litigation activity that our more traditional clients have faced over the years,” Flath said.

## Year-to-Year Fluctuation

The overall number of new securities class actions declined in 2025, according to the reports.

"It has continued to be a very strong market," University of Pennsylvania's law professor Jill Fisch said. "And when you see a stock market doing well, you tend to see less securities fraud litigation" because investors need to allege a stock drop, she said.

"It's been a long-term bull market," and the lower numbers of suits "might not persist if we see more market turmoil," Fisch said.

But the decline, which NERA reported as an 11% drop from the number of 2024 cases, may not be meaningful, some attorneys said.

Not counting merger and acquisition suits, 199 cases were filed in 2025. "If you look back in time, you see that number repeated, so it's around where it's been," said Skadden's Susan Saltzstein. "I didn't see that as being anything other than robust."

Cornerstone's data also shows cases with—in aggregate—larger potential damages since 2018, surging to a high in 2025. The reasons include inflation and also market movement, Jonathan Youngwood of Simpson Thacher & Bartlett LLP said. Further, "firms on the plaintiff side are investing more in cases that are larger, because regardless of strength, they obviously have a greater upside," he said.

Rising markets are good for companies and good for investors, he said. But when there's a negative event affecting the stock, "it doesn't have to be very large" to make a very large case, he said.

## Investors Dropping Suits

Attorneys expressed some surprise at a 10-year NERA analysis showing that out of all cases in which a motion to dismiss was filed—which is nearly all cases—plaintiffs voluntarily dropped some 21% of them.

An ongoing concern in federal securities litigation has been "plaintiffs' lawyers filing suit or threatening to file suit and getting paid off or getting a mootness fee, and that plaintiff goes away, and we don't have a very transparent look into what's happened," said Fisch.

It could be that the motion to dismiss forces a recognition that the case is frivolous, she said. "But we don't actually know that that's true. There's no obligation in federal court to get the court to sign off on that dismissal, and there's no disclosure of whether the plaintiffs' attorneys get paid anything."

Flath also pointed to the data, which derives from the period from 2016 through 2025. The 21% voluntary dismissal rate reinforces, "yet again, how important that motion to dismiss is, whether that's either in terms of the actual outcome when it's adjudicated, or even just the fact that it may convince a plaintiff" that the hurdles are too high, she said.

"It's probably the system working," said Youngwood. "And if I were to speculate a little bit, a lot of judges, particularly judges in the Southern District of New York, where more cases are filed than anywhere else, often have pre-motion procedures that require letter briefing before a full-blown motion," he said. Youngwood has even heard judges warn of potential sanctions if plaintiffs' attorneys have nothing more to add to a case but proceed anyway.

Last year, federal judges in Illinois and Wisconsin imposed sanctions for complaints that didn't withstand scrutiny.

"Plaintiffs are in this to have good cases, not have bad cases, and they may not realize on Day One that it's a bad case," Youngwood said.

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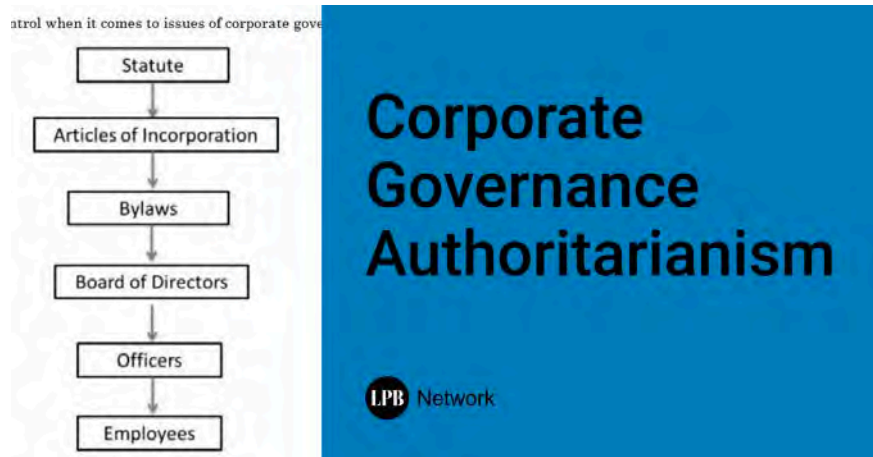
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# Corporate Governance Authoritarianism | Business Law Prof Blog

**LPB** [businesslawprofessors.com/2026/01/corporate-governance-authoritarianism](https://www.businesslawprofessors.com/2026/01/corporate-governance-authoritarianism)

Ann Lipton

January 16, 2026



In November, I was privileged to deliver the [inaugural Tamar Frankel Lecture at Boston University Law School](#). Professor Frankel is a trailblazer in corporate governance and fiduciary law, and it was wonderful to see that this lecture series has been established in her name.

Below is the text of my remarks on November 24:

**Edit:** [Now there's video – this is the Youtube link.](#)

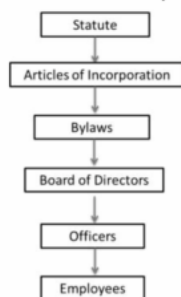
So, I want to begin by adding my voice to the chorus of praise for Professor Frankel's work. She is a legend in this field, and I cannot tell you how honored I am to have been invited to kick off this series.

You know, the school advertised this lecture on LinkedIn, and her former students flooded the comments section with praise, a lot of which was words to the effect of, she somehow made securitization interesting!

Which is funny but for real, for those of us in the business space, it's very much what we aspire to. What I will aspire to in this talk!

Which is called Corporate Governance Authoritarianism, and I'll kick it off by pointing to this slide.

Within each corporation, there is a hierarchy of authority and control when it comes to issues of corporate governance. This hierarchy is outlined in the following diagram.



I've only got like two slides, by the way, so you're going to be staring at this one for a while.

But this slide is a screenshot from the casebook I use in my introductory Business Associations class.

And I like to show it to students and ask them – what's missing from this chart?

Shareholders! There are no shareholders on this chart. Which for me is actually an illustration of one of the fundamental problems in corporate law – where do the shareholders go? Where do they belong on the chart?

Why does this question matter?

I mean, we know why it matters if you're a member of the board of directors.

We even know why it matters if you hold shares.

But most people aren't on corporate boards, and in America, around 40% of adults don't own stock – not even indirectly, like through a mutual fund.

So why does this question – where do the stockholders go? – matter to everyone, whether they're a stockholder or not, whether they're a board member or not?

Well, let's think about a few corporations that are household names.

Facebook – now Meta, but I still call it Facebook – has 3 billion monthly users globally and is the primary source of internet access in many parts of the world.

Amazon Web Services powers 76 million websites, and not long ago, it experienced a brief outage that took down Venmo, Snapchat, Roblox, and – you're welcome – Canvas at universities across America.

Walmart serves 255 million customers *every week*, and is the sole grocery store in many parts of the country.

My point is, in our society, corporations are major sources of power. Corporate managers – whoever sits at the top of the corporate pyramid – they will decide how billions or trillions of dollars of capital will be deployed across the globe. They will direct armies of labor provided by employees and contractors; their resources exceed those of many governments.

When corporate power is deployed in prosocial ways, we get fantastic innovations. We get the iPhone, and cures for Covid, and Reese's Oreo cookies, and the Marvel Cinematic Universe. Investors earn enough for a comfortable retirement, employees are able to advance in their jobs, send their kids to school, buy their dream house.

But when that power is deployed in antisocial ways, well. We get cars that explode, or airplanes that fall out of the sky, or AI induced psychosis.

But critically, even the most prosocial corporations in the world will still leave some people better off than others, some people with more wealth than others, some people with more resources than others.

Ultimately, these decisions, who does well, and who does poorly, those are left to corporate managers.

Which means, everyone in our society is ultimately affected by those decisions. And so, the internal processes for making those decisions – they also affect everyone, whether or not they're actually a shareholder and whether or not they're actually a board member.

So that's why it matters, how these decisions are made.

So how are these decisions made?

Well, to begin, when someone wants to create a corporation, they first have to seek a charter from a state. Any state, they can pick any state they want, even if they don't have any operations there. That state's law will then set the ground rules for how the board can exercise its authority.

Now, among the 50 states, there are variations, but one general rule is that, legally, corporations are run by their board of directors. Or – more typically in a public company – the board oversees corporate affairs on a high level, and then they hire corporate officers, like the Chief Executive Officer and the Chief Financial Officer – to run the company on a day to day basis. So, the board selects and oversees the top officers, and the top officers run the company.

To get the ball rolling, of course, they need investors, who contribute capital. Those are the shareholders, and their money is used to finance the company's growth. To rent office space, buy equipment, hire employees. The shareholders can expect that if the company does well, they'll receive a portion of the profits, which is why they invest in the first place.

The board and top officers are, collectively, the corporate managers, and they have relatively uncabined discretion to decide how to allocate the corporation's resources. Whether to build or close a plant, or hire employees or lay them off, whether to pay profits out to investors or reinvest them in the firm. As a formal matter, when they make these choices, they have a duty to act in the best interests of the corporation and its stockholders – they have to act with care, and they have to act with loyalty. But as a practical matter, even if they make controversial decisions, money losing decisions, they are immune from any kind of legal liability.

That's because of a principle known as the business judgment rule. For the vast majority of corporate decisions, even if they seem unethical, or short sighted, or incompetent, or stupid – the business judgment rule provides that courts will not second guess how the board chooses to run the company, and any shareholder lawsuit is doomed to fail.

For sure, I'm exaggerating – somewhat. There are going to be some constraints. At bare minimum, the corporation will be subject to various laws that mandate or prohibit certain conduct. And boards have to be concerned with profits, because if stock prices fall, at the very least, future shareholders will think twice about investing.

Still, corporate boards – a relatively small handful of people- maybe 10 or 12 in the largest companies, plus a few top officers – ultimately have an extraordinary amount of discretion to decide how other people's money is going to be used, even when those decisions have global consequences.

But there is one natural source of constraint on board action – and that's the shareholders themselves. Shareholders have almost no formal authority to interfere with board decisions; if there's one universal truth in every state's corporate law, it's that the directors, not the shareholders, are tasked with running the company. And, due to the business judgment rule, shareholders cannot sue over board decisions that they dislike or that have bad outcomes.

But shareholders do get to vote on a very small number of corporate matters. And the most important thing they vote on is, the directors themselves. The board is elected by the shareholders in the first instance, and so, shareholders can replace directors who they feel are not performing their jobs adequately.

The power of that vote, though – the ability of shareholders to in fact make a difference through their voting power – has varied quite a bit over time.

The late 19<sup>th</sup> and early 20<sup>th</sup> centuries are when we first saw the rise of truly giant corporations, that dominated entire industries. Country-spanning companies headed by names like Rockefeller, Carnegie, and J Pierpont Morgan – the gilded age moguls who would later be derided as “princes of property” by Franklin Delano Roosevelt.

And after World War I, mom and pop investors – ordinary people, the legal term is retail investors – poured money in public stocks. Shareholding quickly became widespread, in what has been described as a great shift of corporate finance from Wall Street to Main Street.

But at that time, a lot of the stock available to the public carried no votes at all. Voting shares were held by a small group of insiders.

And even when the general public held voting shares, corporate insiders were able to manipulate the votes through their power to collect proxies. Since it was infeasible for most shareholders to physically attend annual shareholder meetings – which might have been held clear across the country – shareholders voted by proxy, meaning, they’d fill out a ballot to be voted on their behalf by a designee at the shareholder meeting. Corporate managers were often in control of how proxies were distributed and collected, and used unscrupulous means to ensure that proxies were voted in their favor.

As a practical matter, then, mom and pop investors had very little say in the conduct of companies that depended on their capital.

The abysmal state of shareholder voting was viewed as a democratic affront, prompting outcry throughout the 1920s, until the system came to a thundering crash in 1929.

After the Crash and the Great Depression, dual class share systems – where corporations issued high vote shares to insiders, and low vote shares to everyone else – fell out of favor and were largely banned by the New York Stock Exchange.

Congress passed the Securities Exchange Act of 1934 which, among other things, gave the Securities and Exchange Commission the ability to regulate proxy voting. As one judge later put it, "It was the intent of Congress to require fair opportunity for the operation of corporate suffrage. The control of great corporations by a very few persons was the abuse at which Congress struck."

But this didn't exactly mean that shareholder power was now ascendant, because even with a norm of single class shares – so that every share carried the same number of votes – and even after curbing how insiders exploited the proxy voting system, ultimately, public shareholders were atomized. Each individual shareholder held only a small amount of stock, which made it difficult for them to organize and force management to address their concerns.

Some shareholders made the effort. In the 1930s and 1940s, a shareholder activist named Lewis Gilbert campaigned to expand shareholder rights. In the 50s, women shareholders organized to try to force companies to include women on their boards. In the 60s, Ralph Nader organized "Campaign GM" to persuade shareholders to vote for greater social responsibility at General Motors.

But these campaigns were largely unsuccessful. Boards viewed these corporate gadflies as annoyances, but not as real threats to their authority.

But matters did not rest there.

For many years, the largest corporations had been offering pension funds to their workers as part of their employment benefits. Traditionally, these funds invested only in bonds, or only in the stock of the company offering the plan. But in 1950, as part of a deal with the United Autoworkers, General Motors developed a new innovation: It would offer a pension plan that invested in a wide variety of corporate stocks, under professional management.

The notion caught on, and by 1974, pension plans held 30% of the stock in American companies. On top of that, in 1978, section 401(k) was added to the tax code. Section 401(k) encouraged employers to create retirement plans that invested a portion of employee salaries into diversified mutual funds.

The result was a de-retailization of the shareholder base, meaning, ordinary mom and pop investors stopped buying individual stocks and instead gained access to the market through giant institutional investors, pension funds and mutual funds, which themselves invest on behalf of their beneficiaries.

When the first federal securities law was adopted in 1933, institutions owned less than 9 percent of publicly traded stock. By 1980, institutions held 35% of publicly traded stock, and that number was rapidly increasing. The largest institutions held significant blocks of stock in multiple companies – 5%, 10% blocks – in some instances. By now, it's about 70% institutional, by the way.

So these new shareholders – professionalized, wealthy, and concentrated – had pull with corporate management. Management had to listen to them. And the SEC encouraged shareholder oversight by requiring companies to disclose more information on director backgrounds and qualifications.

Now, then, in the 1980s, perhaps for the first time since the rise of the giant corporations at the turn of the century, shareholders held sufficiently concentrated power to pose a real challenge to corporate boards.

That power was most evident in the context of corporate takeovers. Buyout shops like KKR, Carlyle, and Blackstone would identify underperforming companies, buy up their shares, and take them over. Institutional shareholders endorsed these strategies, and so this period witnessed epic battles between incumbent management and corporate raiders.

Boards fought back by lobbying for legal protections. But, because federal law had only enhanced shareholder power, corporate boards turned to the states where their firms were incorporated. One by one, they persuaded state legislatures, and state courts, to give them fairly broad powers to block buyout shops from accumulating shares without board permission. That way, they could prevent acquirers from building up a control block and unilaterally voting them out.

So, dissident shareholders shifted tactics. Now limited in their ability to simply buy up a majority of shares, they instead would buy minority stakes – under 10% – and urge other shareholders to vote with them to install new directors. These activist attacks could be successful, again, because the investor base increasingly consisted of a relatively small number of large institutions under professional management, making it easier to gather shareholder support. The SEC helped matters along by revising its proxy rules again, this time to make it easier for shareholders to communicate with each other.

Additionally, the SEC adopted new rules that made clear institutional shareholders had a *fiduciary obligation* to vote their shares in their clients' best interest, and they'd have to disclose the voting policies they adopted to meet that obligation.

Those amendments fueled the rise of proxy advisors – firms that specialize in advising institutional shareholders on how to vote the thousands of proxies they may receive every year. Proxy advisors help streamline the voting process for institutional shareholders, making it easier for them to consolidate around a single position. And, critically, they often recommend that shareholders vote against management. For example, they might recommend in favor of activists who are promoting their own director candidates, or against a deal that the board wants shareholders to approve. And – and this is the part that management really resents – they sometimes recommend that shareholders vote down proposed executive pay packages. Scholars have found that a proxy advisor recommendation this way or that way can shift up to 10% of the votes, so they have a real impact.

Now, not every dissident shareholder runs a contest to replace board members. Some shareholders seek to influence the board by sponsoring resolutions requesting board action on particular topics. Like, Resolved: The shareholders of Company X request that the Board do Y. That kind of thing.

These shareholder proposals can cover all kinds of topics – for example, they're frequently used to reform corporate governance. Like, in companies where the Chief Executive Officer is also the Chair of the Board of directors, shareholders might ask to separate these roles.

But shareholder proposals are usually associated with attempts to make companies more socially responsible. For example, in 1951, shareholders sought a vote on whether Greyhound Bus Lines should desegregate the buses.

In the 1960s shareholders sought a vote on whether Dow Chemical should stop manufacturing napalm for use in the Vietnam War.

In 1992, shareholders sought a vote on whether Cracker Barrel should stop discriminating against gay employees.

But the difficulty with shareholder proposals, from a procedural point of view, is figuring out how to get them voted in the first place. Traditionally, a shareholder might attend the annual shareholder meeting, and then from the floor offer a resolution for all shareholders to vote on.

But today, as I said, everything is proxy voting. Meaning, shareholders are so dispersed, most don't actually go to the shareholder meeting. Instead, they vote in advance by filling out a proxy ballot. By the time a shareholder meeting takes place, most of the votes have already been cast.

Which means, if a shareholder goes to the meeting with a new proposal to offer from the floor, it's too late, most of their fellow shareholders aren't attending the meeting in person and have already cast their ballots.

Well, the SEC knows about this problem, so way back in 1940, it began to require that corporations include shareholder proposals on those proxy ballots that are circulated in advance, so that all shareholders have a chance to vote on them.

But, even with those rules in place, for a very long time, these proposals were not very successful. Historically, they have garnered very low levels of support.

But once again, as the shareholder base consolidated, something shifted. Large asset managers began to support some proposals. They voted in favor of resolutions for more board diversity. They voted for boards to prepare for climate change. At Sturm Ruger, shareholders voted for the board to report on gun safety.

This relatively recent success may again, be traced to the concentrated power of an institutional shareholder base, newly encouraged by the SEC to focus on their fiduciary duties when voting their shares, and assisted by the recommendations of proxy advisors.

So shareholder proposals have become a significant way for shareholders to signal discontent to corporate boards, and pressure boards to change direction.

Notably, the various levers of shareholder power work in tandem. Most shareholder proposals are nonbinding; meaning, they usually request board action but don't demand it, largely because – as I said, under state law – boards are in charge of running the company. Shareholders can't really demand anything; they can only ask.

But if boards *ignore* a successful shareholder proposal, then in the next board election, the proxy advisor will step in, and maybe recommend that shareholders reject a particular director candidate.

In other words, the power of proxy advisors, coupled with the shareholder proposal mechanism, has given shareholders more practical control over board decisionmaking than might otherwise exist.

Now, one way a board might try to escape this kind of pressure – control the votes!

During the 80s, when boards first found themselves under attack, they pushed to lift the New York Stock Exchange's ban on dual class share structures, so that they could create high voting shares that would be allocated to their allies. They didn't succeed – entirely. The New York Stock Exchange did lift its ban on dual class shares, but the new rule across all exchanges became that companies could go public initially with dual class structures – high vote shares for insiders, low vote shares for the public – companies can now go public that way, but the rule became that they couldn't switch to a dual class share structure once they were already publicly traded.

That didn't help existing boards defend against contests for control in the 80s, so the matter lay dormant for a while until companies like Google and Facebook made their public debut with dual class shares, giving their founders outsized voting power within the company.

The justification was, these tech companies needed space to invest in long term research and development, and therefore needed to defend against activists who wanted to see immediate profits.

That kicked off a trend for tech companies, Silicon Valley companies, going public while retaining founder control. Not all of them, but a lot of them, like Palantir, like Snap, like Robinhood, like Coinbase.

Other companies might have a single class share structure, but go public with one or two large blockholders, who hold 40% of the stock and therefore also have the voting power to defeat challengers.

But even that, it turned out, didn't insulate boards from shareholder challenge – largely because of Delaware.

Delaware, essentially for historical reasons, is the most popular state for incorporating public companies. And, as I said, under state corporate governance law – which is usually Delaware law – boards have nearly complete discretion to make decisions about how to run their companies.

*Nearly* complete. The big exception, especially in Delaware, comes when a board operates under a conflict of interest. When the board makes a decision that will enrich themselves, at the expense of the shareholders, at that point, if a shareholder sues, courts will apply special scrutiny to ensure the deal was entirely fair to shareholders.

Now, if the board isn't completely conflicted – like, say, let's say only one member has a conflict, the rest don't – boards can avoid that kind of scrutiny by leaving it only to the unconflicted members to decide whether to make an investment or take a particular course of action. If an independent member of the board makes the call, so the conflicted member isn't the final decisionmaker, Delaware will once again defer to board judgment.

But controlling shareholders are treated differently than ordinary board members. Controlling shareholder conflicts are also scrutinized closely by courts, if a shareholder sues.

But unlike with board conflicts, Delaware did not allow controlling shareholder conflicts to be cured by letting independent board members approve the transaction. Because even *ostensibly independent* board members may feel beholden to a controlling shareholder – someone who can decide unilaterally whether they keep their job.

The upshot being, situations involving controlling shareholder conflicts, unlike board level conflicts, were being closely policed by Delaware courts.

And over time, Delaware came to take a very broad view as to what counts as a conflict, meriting this special scrutiny.

For example, recently, Facebook got into trouble with the FTC for violating users' privacy. The FTC wanted to fine Facebook, and also fine *Mark Zuckerberg personally*, over these privacy violations. And, apparently, Facebook ultimately agreed to pay the FTC a *larger finethan* originally proposed, on the condition that Mark Zuckerberg would be personally spared. In other words, shareholder money was used to pay off the FTC in order to protect the controlling shareholder, Mark Zuckerberg.

That was the kind of thing that a Delaware court said represented a conflict, that the public shareholders could sue over. That case settled, for \$190 million.

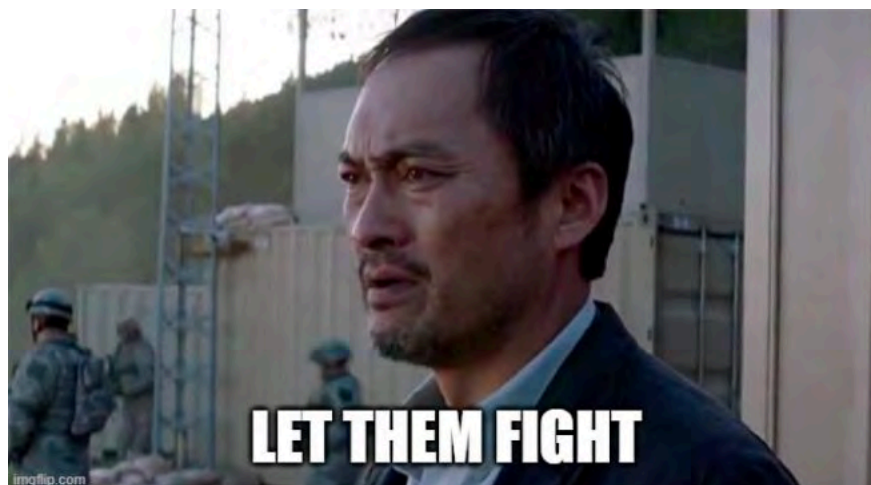
And Delaware defined control broadly too – even minority shareholders with large holdings might be deemed controllers, which meant, their conflicted transactions would be overseen by the Delaware courts. For example, as you’ve probably heard, a Delaware court invalidated Elon Musk’s \$56 billion pay package at Tesla. The court held that Elon Musk was a controlling shareholder even though he had only 20% of Tesla’s shares, because, along with his voting power, he also had a lot of personal influence over Tesla’s board.

The upshot was, all these companies sought to evade shareholder pressure by going public with controlling shareholders, or large blockholders – only to run smack into the Delaware judiciary, which kept upping the level of scrutiny they’d apply to business decisions that involved controlling shareholder conflicts.

Now, I don’t want to overstate – corporate boards have had, and continue to have, a terrific amount of power to control corporate resources. Most shareholder lawsuits continued to be unsuccessful.

But between the voting power of institutional shareholders, and the oversight of the Delaware courts, public company boards found themselves under more pressure, and required to meet more demands from conflicting sets of shareholders, than ever before.

That’s the path we’ve been on since the 80s. The solution we’ve come up with to the problem we’ve been grappling with since the late 19<sup>th</sup> century: What do we do about the enormous amount of economic power wielded by the very small handful of people who control these vast corporations.



The solution we settled on was – create giant shareholders, and empower them to push back on boards.

But.

If the story of the past 35 years has been increasing exercise of shareholder power, the story of the last two or three has been a rather dramatic swing in the opposite direction.

Because while all this was happening in the public markets – shareholders gradually gaining more power, and making more demands of boards – it was a completely different story in the private markets.

As I said, in response to the 1929 market crash, Congress created the federal securities laws. These laws were intended to ensure that if companies sought capital from a large number of investors – from the general public – they would be required to make various disclosures.

Beginning in the 1990s, Congress and the SEC became persuaded that when a company only sells stock to sophisticated investors – like these new wealthy institutions – there is no need for disclosure. These investors can bargain with corporate managers for the information they need.

So, the securities laws were changed to make it far easier for companies to raise enormous amounts of capital without ever going public.

Startups – once again, mainly in the tech industry – found that they could stay private indefinitely, raising all the money they needed from a handful of wealthy institutions. Which meant their only disclosure obligations were whatever these investors demanded – which it turns out, often wasn't much – and that information could be kept confidential from the general public.

Without public trading and public disclosure, these firms removed themselves from the pressure of public markets entirely. Well-heeled investors competed for the opportunity to invest in "hot" startups, and founders discovered they could choose who'd they'd allow to invest. They'd choose their own investors.

That meant, of course, that investors who developed a reputation for being quarrelsome or interfering with management prerogatives would be iced out – not just of one private company, but from every private company, all private company opportunities across the board.

As a practical matter, then, company founders, and their early investor backers, exercised unchallenged authority over their firms, even as their companies grew larger and more important.

Think of companies like SpaceX, Anthropic, OpenAI, Polymarket – these companies are household names, they are incredibly important systemically, and they periodically raise billions of dollars of investment funding. But their shares aren't traded; they contractually restrict how their shares can be sold and who they be sold to. Meaning, the corporate managers have absolutely no fear of activist attacks. No one's going to buy their shares and agitate for change. They don't have to worry about lawsuits in Delaware; none of their investors will risk getting a reputation for causing trouble.

Because they operate out of the public eye and without the oversight of the court system, these massive private companies were able to develop their own governance practices. Founders, and early investors, instead of just electing board members and letting boards run companies, would actually enter into contracts that gave different investors very specific rights. Like, an investor might be able to approve or reject a CEO candidate. Or approve or reject merger proposals, or proposals to expand the board of directors. With these shareholder agreements in place, as a practical matter, it would be founders and venture capital backers who would make critical decisions about how to run the company, not the board members elected by the shareholders.

Many of these private companies failed, of course, and quietly disappeared – but when they didn't, they could be wildly successful.

And when these companies did, eventually, go public, they might have these shareholder agreements – contracts that gave specific insiders the right to control company decisions – regardless of what the board members wanted, regardless of how the public shareholders voted.

And honestly, the sense I get is, a certain mindset was created, in this private company space. A mindset that accountability only inhibits action. That building a successful firm means centralizing power in a singular founder, and that any procedures that inhibit that founder's ability to act represent a drag on profit-seeking or – worse – a drag on that founder's ability to effectuate his singular vision.

This community – the community of private investors, venture capital, private equity, Silicon Valley – they contributed a lot Donald Trump's presidential campaign. And almost immediately after his election, the federal government began rewriting rules in ways that limit shareholder voice.

For example, right out of the gate the SEC issued new guidance concerning whether large institutional investors would be deemed “active” or “passive.”

It sounds technical but it’s actually very important.

Investors who take large stakes in companies are legally categorized as either active or passive. Active means you’ve invested for the purpose of influencing management, and if you’re active, you’re subject to a very onerous public disclosure regime.

The very largest investors, like mutual fund complexes that invest most of America’s 401(k) money, they depend on being categorized as passive, because they are so big that it would be nearly impossible to meet the disclosure requirements. They literally could not meet the reporting requirements applicable to active investors.

For a very long time, the SEC treated the ordinary exercise of shareholder rights – say, discussing executive pay with management, or discussing corporate social responsibility matters – as appropriate for passive investors. Meaning, the large mutual funds could engage with companies on these topics.

But in February of this year, after Trump took office, the SEC announced that even these kinds of engagements could transform a passive investor into an active one.

Tellingly, BlackRock and Vanguard immediately scaled back their meetings with corporate management – the latest figures show that their board engagements are down anywhere from 30 to 45%.

In other words, the largest investors in the world are beating a retreat from overseeing their portfolio companies.

But that’s not all.

The SEC has announced plans to limit how frequently public companies report their financial results. Ever since 1970, public companies have had to report on a quarterly basis. Now, it looks like it’s going to be semi-annually, every six months. Meaning, shareholders will get far fewer updates about corporate performance, and far fewer insights into the kinds of trends the company is experiencing and the actions being taken by boards. Which of course, limits shareholders’ ability to influence management decisions.

But that’s not all.

The Trump Administration has declared what I can only call an all out war on proxy advisors, the companies that provide research and guidance to help institutional investors decide how to vote.

Currently, two big companies – ISS and Glass Lewis – dominate the market for proxy advice, so the Federal Trade Commission is investigating them for antitrust violations. And – this was just announced last week – the Republican administration in Florida just filed a lawsuit against them for antitrust violations, and the Texas attorney general has an investigation under way.

Meanwhile, the Trump Administration is drafting executive orders that will limit how they can advise shareholders. And because both ISS and Glass Lewis happen to be owned by foreign parents – ISS is essentially owned by the German stock exchange, and Glass Lewis is owned by a Canadian firm – the administration is investigating whether they pose a threat to national security.

Let me say that again. The administration is investigating whether *the Canadians* pose a threat to national security.

But there's more.

The SEC approved a new program at Exxon, which probably will become a model for other companies. Exxon was permitted to approach its retail investors – the maybe 25% of stockholders who are ordinary people – and ask them to preregister all of their proxy votes, every year, perpetually, to vote their shares with management.

Don't get me wrong, retail investors can always drop out of the program if they like – they can sign up to automatically cast their votes with Exxon's management, and then change their minds. But remember, historically, the problem with retail shareholders is, they tend not to pay attention to corporate votes at all. That's why they've been so hard to organize, it's why shareholder influence only became significant when retail investors began investing through vehicles like mutual funds. Exxon is betting that once retail shareholders opt-in to the program, they'll never leave. So this way, Exxon's board can bank a significant number of votes in advance that are guaranteed to always support them, no matter what challenges are mounted by other shareholders.

Retail investors who have other priorities – who maybe want to oppose management on issues like carbon emissions, or CEO pay – those investors won't be able to bank votes. Only the ones who support Exxon's board.

But there's more.

One significant way that we enforce the disclosure requirements of the federal securities laws is through the securities class action. Shareholders can sue when a company issues false statements that ultimately result in shareholder losses. Class actions, which group all shareholder claims together, are a critical tool because securities fraud cases are very expensive to litigate. Just from an economic standpoint, they usually are only cost-effective to bring if you can consolidate all investor claims together.

The SEC recently announced that it would allow companies to require that any shareholder actions be brought in private arbitration, rather than a courtroom. And, these private arbitrations would have to be brought by investors individually. Which means, even if some small number of shareholders have losses worth litigating individually – that's a big if! – their claims would be handled privately, the public would never know details of what was alleged or how the claims were resolved.

But it's not clear that it's legal for companies *incorporated in Delaware* to adopt these mandatory arbitration provisions, so Paul Atkins, the SEC Chair, recently urged a group of Delaware legislators to change their law.

And there's still more –

Because Chair Atkins has also announced he'll be limiting shareholders' ability to offer shareholder proposals for inclusion on the corporate proxy. He's already taken some administrative steps in this direction under SEC rules, and he simultaneously urged Delaware legislators, and Delaware courts, to bar shareholder proposals for Delaware firms.

What about Delaware by the way? Where is Delaware in all of this?

Well, remember those companies that went public with shareholder agreements, handing individual shareholders the right to overrule corporate boards and make governance decisions for the company?

A couple of years ago, a Delaware court held that they violated Delaware law. Because if there's anything that Delaware law requires, it's that boards, elected by shareholders, hold the ultimate authority in the company.

That decision angered a lot of venture capital and private equity firms, who rely on shareholder agreements, and they threatened to move their corporations to other states. Because remember, no one is required to incorporate in Delaware. You can choose any state you like.

The Delaware legislature responded within months by amending its corporate law to authorize the use of shareholder agreements to displace board governance.

But the protests continued. Corporate boards and controlling shareholders insisted that Delaware law had become too constraining. So, the Delaware legislature – in consultation with top Facebook executives – once again amended its law, this time to get rid of all those strict limits that the courts had placed on controlling shareholders.

In other words, the mechanisms that enabled the rise of the institutional investor as a counterweight to insider control of our largest avatars of economic power are unraveling.

So, that's where we are. That's where we seem to be going.

That said, I want to take a step back and think about the story I've just been telling.

I'm talking about challenges to corporate boards that are instigated by shareholders.

And notwithstanding things like shareholder proposals over gun safety, shareholders by and large care about money. That's what they care about – earning a financial return.

Especially institutional shareholders, because most institutional shareholders have fiduciary obligations to maximize wealth for their natural person beneficiaries.

So if we're worried about the kind of economic power that corporate boards wield, we may not exactly think it's a great improvement to have massive profit-seeking institutional shareholders push for more influence.

Those takeovers in the 1980s? They usually resulted in a lot of worker layoffs, and a lot of corporate bankruptcies.

Those dissident shareholders who take small stakes and push to replace corporate boards? Usually, they advocate for cost savings that harm employees – like, reducing employer contributions to employee retirement plans and pension funds.

Increased shareholder influence may not exactly be the solution to corporate power that we're looking for, is what I'm saying.

But what's also true is that this system creates a kind of division of authority, a separation of powers, within corporate governance. Boards know they are being scrutinized and evaluated by others; they can't act entirely according to their own impulses.

They have to make public disclosures explaining themselves to shareholders. And those disclosures aren't just available to investors – now they're available to the general public, reporters, activists, employees, regulators – all of these different actors are given more insight into corporate operations. And that public disclosure creates entry points that the general public can use to lobby for change.

Judicial decisions – the kind that might be reduced if securities claims are shunted into private arbitration, the kind that are reduced now that Delaware has loosened its standards for addressing controller conflicts – those also provide an obvious mechanism of public accountability. Courts articulate standards of conduct for boards, and impose penalties if they fail to meet them. And of course, the mere fact of a public trial, regardless of outcome, surfaces additional information about how boards operate that can then create a basis for public activism.

It also matters, I think, if we limit private enforcement rights, so that the law – like the federal securities laws – can only be enforced by state actors, like the SEC.

Because when only state actors have the right to sue over lawbreaking – well, state actors can be captured. They can choose to enforce the law only against their enemies, and let the violations of their friends skate by. The state can consolidate its own power by promising a lenient enforcement regime only for those who don't offer any opposition. They can't do that when private shareholders have powerful enforcement rights – the state can't reward allies with leniency.

That said, at this particular moment, our legal systems seem to be shifting. The ethos across the board seems to be that powerful men *should not* be accountable to the public. That the public *is not* entitled to information about power is being

exercised. That extraordinary men should be able to enact their vision without any kind of procedural constraint.

In 1910, speaking of the giant corporations of the era, Woodrow Wilson said that “Modern democratic society cannot afford to constitute its economic undertakings upon the monarchist or aristocratic principle.”

That may have been the sentiment at the end of the Gilded Age; it remains to be seen whether it still holds today.

Thank you, and I look forward to your comments.

*And another thing.* In this week’s [Shareholder Primacy podcast](#), me and Mike Levin talk about recommended reading material for activists or the activist-curious. [Here at Apple](#), [here at Spotify](#), and [here at YouTube](#). [Subscribe Now](#)

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Securities

# Lumen Investors Granted a Second Shot at Securities Fraud Claim

Jan. 30, 2026, 1:11 PM PST

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The Fifth Circuit breathed new life into a shareholder class action suit against Lumen Technologies Inc., ruling that investors can file a revised lawsuit after a prior effort was thrown out.

A lower court judge exceeded his discretion when he didn't analyze the case sufficiently to dismiss the case permanently, said Judge Jerry E. Smith for a three-judge panel of the US Court of Appeals for the Fifth Circuit Friday. The appellate court revised dismissal with prejudice to a dismissal without, allowing the plaintiffs to revise their complaint and file it again.

Class action plaintiffs John McLemore and Christine Glauber sued Lumen and corporate executives including CEO Kate Johnson and CFO Chris Stansbury for securities fraud after disclosures by corporate executives and a tumble in the telecom company's stock price. The share price was fraudulently inflated by Lumen's failure to disclose the existence of approximately 35,000 miles of lead sheathing in its copper wire network, the plaintiffs said.

Judge Terry A. Doughty of the US District Court for the Western District of Louisiana last March followed a magistrate judge's recommendation to toss the case with finality, after the magistrate found Lumen's statements weren't made with fraudulent intent.

In their appeals court brief, the plaintiffs argued that Doughty didn't treat them fairly by dismissing the case with prejudice. Lumen responded by saying the judge was correct in finding that the investors didn't sufficiently show information about the company's toxic, lead-sheathed cables in its disclosures.

Doughty provided no analysis that supported a dismissal with prejudice, contrary to the "standard practice" of dismissing without prejudice or liberally allowing amendments unless pleadings exhibit "major defects that would make amendments futile and a waste of judicial resources," the appeals court said in its unpublished opinion. Neither the magistrate judge nor the district court addressed any of the legal requirements for permanent dismissal, it said.

Whether right or wrong, the district court's decision "departs from standard procedure" and risks denying plaintiffs substantial justice through a civil recovery, the panel said.

Judges Jennifer Walker Elrod and Cory T. Wilson joined the opinion.

Pomerantz LLP and Eric O'Bell of Metairie, La. represent the investors. A&O Shearman and Kean Miller LLP represent Lumen.

The case is *McLemore v. Lumen Techs. Inc.*, 5th Cir., No. 25-30264, opinion 1/30/26 .

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Securities

# Andreessen, Coinbase Directors Face Insider Suit for Now (1)

Jan. 30, 2026, 5:01 PM PST

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A Delaware judge ruled that a shareholder lawsuit alleging insider trading by several directors of Coinbase Global Inc., including venture capitalist Marc Andreessen, can proceed for now after an internal investigation cleared the defendants of wrongdoing.

A shareholder of the crypto platform brought the lawsuit in 2023 claiming directors — including Chief Executive Officer **Brian Armstrong** — used confidential information to avoid more than \$1 billion in losses by selling more than \$2.9 billion of stock when the company went public in 2021. Armstrong, who has helmed Coinbase since its 2012 inception, sold \$291.8 million of shares, according to the shareholder complaint.

Judge **Kathaleen St. J. McCormick** on Friday denied a motion to dismiss the lawsuit by an internal committee that investigated the claims because of what she considered to be conflicts of one of the members. But McCormick suggested the directors may ultimately prevail against the claims because the special litigation committee's report "paints a compelling narrative" that supports their defense.

## Direct Listing

The shareholder's derivative claims against Armstrong, Andreessen and other officers center on Coinbase's decision to become publicly traded through a direct listing, instead of an initial public offering. The direct listing didn't involve issuing new shares to raise funds that would dilute holdings or require a lockup period in which existing investors must wait to trade their shares for a certain period.

Andreessen, who has been a Coinbase board member since 2020, sold \$118.7 million of stock through his Silicon Valley venture firm, Andreessen Horowitz, tied to the direct listing, according to the complaint. The shareholder's attorneys alleged the directors knew the company's shares were overvalued based on confidential valuation information so they sold to avoid losses.

Attorneys for the directors denied their clients engaged in insider trading. They argued that the stockholder plaintiff failed to provide evidence that the defendants possessed material nonpublic information and that it motivated them to sell shares.

"We are disappointed by the court's decision and remain committed to fighting these meritless claims in court," Coinbase said in a statement.

A lawyer for Andreessen and Armstrong declined to comment. Representatives of Andreessen Horowitz and a lawyer for the plaintiff couldn't immediately be reached for comment.

### Vocal Critics

Andreessen's firm has become one of the more vocal critics of Delaware's business court by publicly raising concerns over bias by judges "against founders and their boards." In a July blog post, legal and policy leaders at the firm announced a plan to reincorporate outside of Delaware and encouraged portfolio companies to do the same.

The move echoes Elon Musk's decision to reincorporate Tesla Inc. in Texas after McCormick blocked his record-setting pay package. The pay plan was reinstated by the state supreme court in December. Fears over a business exodus from the state led to a corporate law overhaul last year that makes it harder for minority shareholders to challenge executives in court.

In the Coinbase case, McCormick had earlier denied a bid by the directors to toss the case, concluding the theory presented by the plaintiff was "reasonably conceivable."

### Litigation Committee

The lawsuit was then put on hold to let a special litigation committee formed by Coinbase investigate the legal claims. The board appointed two of its members, **Kelly Kramer**, a former chief financial officer of Cisco Systems Inc., and Silicon Valley angel investor **Gokul Rajaram**, to sit on the committee. Neither was named a defendant in the case or sold shares in the direct listing.

After a 10-month investigation, the committee recommended that McCormick terminate the case, calling the allegations "deficient" and against the "best interests of the company or its stockholders." The committee also concluded the defendants didn't rely on confidential information to sell stock, as alleged in the complaint.

Coinbase's stock is "highly correlated" with the price of Bitcoin, making it impossible to conclude the trades were made based on material nonpublic information, the committee wrote in its report.

Counsel for the special litigation committee argued the directors reluctantly sold stock as part of an effort to provide enough supply in the direct listing and only divested a sliver of their total holdings.

"The evidence roundly showed that defendants, including the two biggest stockholders, didn't want to sell because they were bullish about the company," Brad Sorrels, an attorney for the special litigation committee, said during an October hearing. "There was really a push and struggle to get the stockholders to participate," he said.

## Company 'Pleaded'

Armstrong and an affiliate of Andreessen Horowitz "ultimately agreed to sell just over 1% of their respective shares only after the company and its banker pleaded with them to provide supply necessary for the direct listing to launch," according to a court filing by attorneys for the special litigation committee.

Attorneys for the Coinbase shareholder pushed back against the committee's findings and accused it of lacking independence because of business dealings between Rajaram and Andreessen's firm. Some interactions involved a 2007 investment by Andreessen in a startup co-founded by Rajaram and at least 50 financing rounds Rajaram or his venture firm participated in alongside Andreessen Horowitz since 2019, according to a court filing.

McCormick agreed in her Friday opinion. "No one — not plaintiff and thus not the court — questions Rajaram's good faith," she wrote. "But the thick ties between him and the subject of the SLC's investigation are sufficient to raise material disputes regarding his independence," she added.

Attorneys for the special litigation committee argued that business interactions with Rajaram were "immaterial" given the expansive universe of 700 investments made and that no evidence showed coordination with Andreessen Horowitz in financing rounds. The attorneys also noted that Andreessen's investment in Rajaram's startup was a small minority one that happened almost two decades ago.

"These are not close personal ties. These are professional ones," Sorrels argued during the October hearing. Rajaram is "an upstanding, sophisticated executive with years of experience," he said.

Sorrels declined to comment on Friday's ruling.

(Updates with Coinbase statement in seventh paragraph. A previous version corrected spelling of lawyer's name.)

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## Securities

### Manage Newsletters

## **Mark Wahlberg, Fitness Brand F45 Settle IPO Investor Lawsuit**

Feb. 2, 2026, 10:07 AM PST

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F45 Training Holdings Inc., board member Mark Wahlberg, and others agreed to settle with investors a proposed class action over statements about the fitness company's growth potential surrounding its initial public offering.

The investors' counsel told the US District Court for the Western District of Texas they were finalizing negotiations in a Jan. 30 letter. They intend to seek preliminary approval of the deal by Feb. 13, said the notice to Judge David Alan Ezra. Investors had adequately alleged misstatements in the 2021 IPO's registration statement and prospectus, Ezra said last year, letting some claims proceed.

Shareholders alleged F45 defined a growth metric in a way that allowed overreporting of multi-unit franchise agreements, regardless of whether they opened, and used other techniques to mislead investors about its business model

Defendants include actor Wahlberg, other F45 leaders around surrounding the market debut, and IPO underwriters—among them Goldman Sachs & Co. LLC and JP Morgan Securities LLC

F45 delisted from the New York Stock Exchange in 2023 and now trades over the counter

Labaton Keller Sucharow LLP is lead counsel for the investors. Gibson, Dunn & Crutcher LLP represents F45. Akin Gump Strauss Hauer & Feld LLP, Hughes Hubbard & Reed LLP, Blank Rome LLP, and RMWBH PC represent individual defendants. O'Melveny & Myers LLP represents the underwriters. None of these firms nor a contact for F45 immediately responded to emails seeking comment.

The case is In Re F45 Training Holdings, Inc. Sec. Litig. , W.D. Tex., No. 1:22-cv-01291, 1/30/26 .

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## Fenwick & West Agrees to Settle Claims in FTX Investor MDL

Fenwick & West has reached a proposed settlement with FTX investors, moving the prominent Silicon Valley law firm closer to exiting the sprawling post-collapse FTX litigation.

February 02, 2026 at 12:11 PM By  **Michael A. Mora**



Fenwick & West offices in Washington, D.C. Photo: Diego M. Radzinski/ALM

Fenwick & West has reached a proposed settlement with lawyers for FTX investors over claims that the law firm helped the now-bankrupt cryptocurrency exchange misappropriate customer funds and conceal the misconduct before its collapse, according to a joint court filing submitted on Friday.

Adam M. Moskowitz of the [Moskowitz Law Firm](#) in Coconut Grove, Florida, is colead class counsel representing the FTX investors in the underlying multidistrict litigation alongside David Boies of [Boies Schiller Flexner](#) in New York. Moskowitz and Boies informed U.S. District Judge K. Michael Moore of the Southern District of Florida that they will seek the approval of 16 settlements, including the one with Fenwick & West.

“Judge Moore has already granted preliminary approval to many of the promoter settlements, finding that those settlements were reasonable, the proposed notice program was fair and appointing the Moskowitz Law Firm and Boise Schiller Flexner as colead counsel for the class,” Moskowitz said in a statement.

Nicole K. Atkinson, a shareholder at [Gunster](#) in West Palm Beach and one of the attorneys for Fenwick & West, did not respond to a request for comment.

The FTX litigation is largely divided into two areas of recovery: bankruptcy and multidistrict litigation. There are six formal litigation tracks, class counsel in the MDL explained. Fenwick was brought into the MDL litigation approximately two years ago and has a pending motion to dismiss, which both parties have requested that Moore vacate in light of the proposed settlement.

In the [joint notice of proposed settlement](#) with Fenwick & West, the parties are preparing and finalizing the agreements, with a motion seeking preliminary approval of the settlement upon execution of the agreements. The parties endeavor to include that agreement in an omnibus motion for preliminary approval due on Feb. 27.

That leaves several additional defendants in the FTX litigation, including Tether Limited Inc., a blockchain-enabled platform designed to facilitate the use of fiat currencies in a digital manner, and Deltec International Group, a bank that served many crypto companies, along with its executive chairperson, Jean Chalopin.

Other defendants remaining in the MDL include celebrity promoters, such as NFL announcer and former quarterback Tom Brady, Brazilian supermodel and entrepreneur Gisele Bündchen, comedian Larry David, and the Wasserman sports marketing and talent agency CEO Casey Wasserman; accounting firm Armanino; and six domestic and six international venture capital funds.

**Page printed from:** <https://www.law.com/nationallawjournal/2026/02/02/fenwick-west-agrees-to-settle-claims-in-ftx-investor-mdl/print/>

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Securities

# Tesla Wins \$100 Million Cut in Legal Fees in Board Pay Pact (1)

Jan. 30, 2026, 2:21 PM PST; Updated: Jan. 30, 2026, 2:52 PM PST

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Delaware's top court cut more than \$100 million Friday from the payday for shareholder attorneys who reached a settlement with Tesla Inc. in a challenge over four years of compensation for the electric vehicle-maker's directors.

The decision by the state's elite trial-level business court to award \$176 million to a pension fund's law firms decision "erred by including in its financial benefit analysis the intrinsic value" of options being returned by Tesla's board, Chief Justice Collins J. Seitz Jr. said in an opinion for the state supreme court's full five-member panel.

The justices set the fee award at \$70.9 million while also upholding the lower court's approval of the settlement. "As we measure it, \$71 million reflects a reasonable fee for counsel's efforts and does not result in a windfall," Seitz wrote.

The Delaware Chancery Court had awarded \$176 million to the attorneys for a pension fund that settled their derivative lawsuit challenging pay from 2017 to 2020 for directors including CEO Elon Musk, Oracle Corp. founder Larry Ellison, Musk's brother Kimbal, and a son of media mogul Rupert Murdoch.

Tesla's board must return stock and options valued up to \$735 million and forgo three years of pay worth \$184 million. The high court wasn't asked to consider the fairness of the settlement nor the transactions that prompted the litigation.

The returned options' value of \$458 million "was needed to calculate how many options to return," but neither Tesla nor the directors agreed to including that value "in the financial benefit for purposes of awarding fees," Seitz said.

Tesla said during oral argument that a roughly \$70 million fee award would have been appropriate.

## Exceeding the Budget

Justice Karen L. Valihura noted during the Oct. 29 arguments that the fee was \$60 million more than the Delaware judiciary's budget last year "for a case that settled midstream." The pension fund said the settlement was one of the largest ever reached in Delaware, and the Chancery Court didn't award the full \$230 million requested.

Nine-figure lawyer paydays got a cautious approval from the state's high court last year when it affirmed a \$267 million award for lawyers who reached a \$1 billion settlement over a contentious stock conversion at Dell Technologies Inc.

Last month Tesla succeeded in getting Delaware's top court to pare back a \$345 million fee awarded in a challenge to Elon Musk's record-setting CEO pay package. Investor Richard Tornetta's attorneys had argued that fee reflected the benefit created by his litigation—rescission of the largest pay package in human history.

The justices cut that fee award down to no more than \$54.5 million when they restored the compensation deal to the world's richest person. They also sought to keep the fee question from returning to the Chancery Court, saying in a per curiam opinion, "Although we would ordinarily remand for a reassessment of fees, we make an exception based on the length of this litigation and not to burden the Court of Chancery, which has devoted enormous time and attention to this case over many years, at great personal sacrifice."

Tesla is represented by Sullivan & Cromwell LLP, DLA Piper LLP (US) and Bayard PA. Musk and other Tesla directors are represented by Richards, Layton & Finger PA and Cravath, Swaine & Moore LLP. The Police and Fire Retirement System of the City of Detroit is represented by Akerman LLP, Bleichmar Fonti & Auld LLP and Fields Kupka & Shukurov LLP.

The case is In re Tesla, Inc. Dir. Comp. S'holder Litig. , Del., No. 53,2025, opinion 1/30/26 .

(Updates throughout with additional details from opinion and background.)

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## Class Action

### Manage Newsletters

## **CD&R Agrees to \$70 Million Settlement in \$4 Billion Deal Case**

Feb. 2, 2026, 9:46 AM PST

### **Summary by Bloomberg AI**

AI Generated



- Clayton, Dubilier & Rice LLC affiliates have agreed to pay \$70 million to end shareholder litigation targeting their \$4 billion deal for Covetrus Inc.
- The lawsuit claimed the private equity firm colluded with contacts inside the animal health company to drive down the sale price and that Covetrus' CEO at the time was driven by personal perks.
- CD&R denies all allegations of wrongdoing and is settling "solely to avoid the substantial burden, expense, inconvenience, and distraction of continued litigation," according to the joint court filing.

Clayton, Dubilier & Rice LLC affiliates have agreed to pay \$70 million to end shareholder litigation targeting their \$4 billion deal for Covetrus Inc.

The settlement, disclosed Jan. 30, would resolve claims the private equity firm colluded with contacts inside the animal health company to drive down the sale price. The lawsuit, filed in 2023 in Delaware's Chancery Court, said Covetrus' CEO at the time was driven by personal perks to give CD&R an inside track, which it allegedly exploited to manipulate the buyout negotiations. Covetrus previously spun off from Henry Schein Inc. in 2019.

Take-private acquisitions occupy an outsized role in Delaware's M&A litigation ecosystem, where transactions cashing out public investors receive heightened judicial scrutiny. Concerns that the elevated standard of review was spilling over into other areas of corporate law prompted a major legislative overhaul last year pushed by founders, their financial backers, and the corporate defense bar.

Although the statutory amendments created dealmaking safe harbors that may affect buyout litigation, the transactions themselves remain something of a special case.

CD&R continues to “deny all allegations of wrongdoing, fault, liability, or damage,” settling “solely to avoid the substantial burden, expense, inconvenience, and distraction of continued litigation,” according to the Jan. 30 joint court filing. The pension funds leading the litigation will seek legal fees “not to exceed 21%” of the total recovery, or around \$15 million, the filing said.

Because the dispute involves class action claims, the legal accord requires the approval of a judge, Vice Chancellor Lori W. Will, to ensure fairness to outside parties such as other investors.

The funds leading the lawsuit are represented by Labaton Keller Sucharow LLP, Kessler Topaz Meltzer & Check LLP, Grant & Eisenhofer PA, and Friedman Oster & Tejtell PLLC. CD&R is represented by Richards, Layton & Finger PA and Jones Day. Covetrus, which isn’t a defendant, is represented by Young Conaway Stargatt & Taylor LLP and Latham & Watkins LLP.

The case is Bucks Cnty. Emp. Ret. Sys. v. Clayton, Dubilier & Rice LLC , Del. Ch., No. 2023-1151, settlement stipulation filed 1/30/26 .

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# Guest Post: Delaware Court Allows Core De-SPAC Fiduciary Duty Claims to Proceed

**K** [dandodiary.com/2026/02/articles/director-and-officer-liability/guest-post-delaware-court-allows-core-de-spac-fiduciary-duty-claims-to-proceed](https://www.dandodiary.com/2026/02/articles/director-and-officer-liability/guest-post-delaware-court-allows-core-de-spac-fiduciary-duty-claims-to-proceed)

Kevin LaCroix

February 2, 2026

Sarah Abrams

*In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, reviews the latest developments in SPAC-related Delaware Chancery Court proceedings, in light of the recent resurgence in SPAC transactions in the financial marketplace. I would like to thank Sarah for allowing me to publish her article as a guest post on this site. Here is Sarah's article.*

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In March 2024, the [D&O Diary](#) reported on the Northern Genesis Acquisition Corp. (NGA) and [Lion Electric Co.](#) (Lion) de-SPAC securities litigation (Lion SCA). The [lawsuit](#), stemming from the once public company NGA's business combination with Canadian electric vehicle company Lion, was one of several securities class actions filed that highlighted structural conflicts and disclosure risks stemming from certain SPAC transactions completed during the 2020–21 SPAC boom.

While the Lion SCA was recently [voluntarily dismissed](#), a December 2025 [Law360](#) article reported that, on December 19, 2025, Vice Chancellor Morgan T. Zurn refused to dismiss certain fiduciary-duty and unjust enrichment claims brought against NGA's sponsor, directors, and officers in the Delaware Court of Chancery. The following will briefly discuss the Lion SCA and Lion's insolvency proceedings as well as the Delaware Chancery ruling and potential takeaways for D&O underwriters.

## LION SCA

As D&O Diary readers may recall, the [Lion SCA](#), filed in 2024, alleges that NGA and its founders solicited investor approval of the merger through a proxy statement that was materially misleading in several respects. Among other things, the complaint asserts that the proxy characterized already-materialized supply-chain disruptions as hypothetical risks, relied on overly optimistic financial projections, and failed to disclose the true economic value of sponsor shares that public stockholders were effectively being asked to contribute to the transaction.

According to the Lion SCA, sponsor economics and incentives favored completing any transaction over returning trust assets to investors, even if the resulting deal proved unfavorable to public stockholders.

The Lion SCA allegations later intersected with Lion Electric's financial distress, including [Canadian insolvency proceedings](#) commenced in late 2024. The insolvency filings triggered an automatic stay in the Delaware breach of fiduciary duty action, which resulted in the dismissal of claims against Lion itself from the Delaware Chancery Court case. A subsequent [Chapter 15 recognition proceeding in the United States](#) followed, leaving the litigation focused squarely on the NGA SPAC sponsor, directors, and officers.

In November 2025, the lead plaintiff in the Lion SCA [voluntarily dismissed](#) the federal securities class action without prejudice, before any defendant answered or moved for summary judgment. As one [subsequent filing](#) in the SDNY action indicated, the Canadian court deferred ruling on proposed directors' and officers' releases tied to the restructuring, leaving unresolved questions about the ultimate treatment of class claims against individual defendants.

### The Delaware Court of Chancery De-SPAC Ruling

The Delaware Chancery Court case against NGA sponsors and executives alleged disclosure failures during the Lion de-SPAC, a steep post-closing decline in share price as operational problems emerged, and subsequent insolvency proceedings that refocused claims on SPAC fiduciaries rather than the operating company.

In allowing most claims to proceed in the Delaware Chancery Court, Vice Chancellor Zurn emphasized allegations that NGA's board was not independent of conflicted controllers. The court found it reasonably inferable that directors expected to be considered for future SPAC board positions, a factor that allegedly undermined their independence in approving the transaction.

The court was also unpersuaded by NGA's purported generic disclosure disclaimers. In particular, the Vice Chancellor noted allegations that the proxy failed to convey the magnitude of dilution facing public stockholders or the actual value of sponsor shares. At the pleading stage, the court accepted allegations that sponsor shares were worth more than 25% less than their stated redemption value, and that this information was not adequately disclosed to stockholders asked to approve the merger.

Thus, the surviving claims in the Delaware Chancery Court action against NGA's sponsors and executives include breach of fiduciary duty counts against five of six sponsor-affiliated directors, claims against two officers and controllers, an unjust enrichment claim against the sponsor, and related fiduciary allegations that will now proceed into discovery.

### *Discussion*

Despite a notable history of SPAC-related litigation, in 2025, the SPAC (Special Purpose Acquisition Company) market experienced a bit of a resurgence. [144 SPAC IPOs were priced on U.S. exchanges in 2025](#), representing more than a 150% increase over 2024, when only 57 SPAC IPOs were completed. This renewed activity may signal that SPACs, despite [recent contraction](#), remain a meaningful feature of the capital markets, and that the litigation risks associated with earlier-vintage de-SPAC transactions have not entirely dissipated.

Against this backdrop, the recent Delaware Court of Chancery decision allowing certain allegations against NGA's sponsors and executives to go forward may serve as a reminder that SPAC-related fiduciary and disclosure claims continue to work their way through the courts, as new SPACs come to market.

In particular, the Lion and NGA de-SPAC litigation demonstrates how SPAC-related D&O exposure can evolve rather than disappear, even when a federal securities class action is dismissed. In particular, the recent Delaware Court of Chancery ruling that SPAC sponsors, directors, and officers may continue to face substantial fiduciary-duty and unjust-enrichment exposure long after the transaction has closed warrants consideration. Thus, at least in Delaware, courts may continue to scrutinize SPAC governance structures and sponsor incentives.

The Delaware Chancery Court decision further highlights the continuing centrality of sponsor economics and board independence to SPAC-related D&O risk. Vice Chancellor Zurn credited allegations that NGA's directors were not independent of conflicted controllers due to sponsor incentives and the expectation of participation in future SPAC transactions. For D&O underwriters, this aspect of the ruling may reinforce carefully evaluated sponsor-promote structures, overlapping SPAC board service, and the presence of genuinely independent directors.

Disclosure risk related to SPAC deals may also persist. The Delaware court's unwillingness to accept generic risk disclosures may reflect judicial skepticism toward boilerplate disclaimers in the de-SPAC context. Allegations that dilution and sponsor-share value were not adequately disclosed by NGA's executives,

despite general warnings, were sufficient to defeat dismissal. For D&O insurers, understanding dilution mechanics, redemption economics, and also how sponsor value was explained to stockholders may inform the likelihood of fiduciary claims and possible coverage disputes involving conduct exclusions or misrepresentation carve-backs.

Finally, Lion's insolvency proceedings further illustrate how SPAC-related litigation risk can shift once a de-SPAC company enters financial distress. From a D&O perspective, this may heighten the likelihood of Side A coverage exposure, the potential unavailability of indemnification, and the increased likelihood that D&O insurance becomes one of the last meaningful sources of recovery once a de-SPAC company enters insolvency.

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## Securities

# This Week in Chancery Court: Soon-Shiong, Tyson Foods Records

Feb. 2, 2026, 2:00 AM PST

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Patrick Soon-Shiong, who owns the Los Angeles Times and holds a minority stake in the NBA's Los Angeles Lakers, will press the Delaware Chancery Court this week to dismiss a lawsuit alleging he got richer by misleading ImmunityBio Inc. investors about the prospects of a cancer drug.

Here's a look at what's happening in Delaware courts:

**Tuesday:** Advent Int'l Corp. v. Servicios Funerarios GG SA de CV, Del. Ch., No. 2023-0647, oral arguments 2/3/26.

At issue: Advent International Corp. now seeks damages following its win in a complex dispute over its sale of a Mexican funeral chain. The private equity firm seeks fees and costs related to the Delaware litigation as well as a civil lawsuit in Mexico, according to a brief. The acquisition vehicle involved in the \$225 million transaction argues the contract that was allegedly breached "does not provide for fee-shifting."

Court action: Oral arguments in Wilmington, Del.

Advent's Funeral Chain Sale Yields Novel Court Ruling

**Tuesday:** Carlson v. Soon-Shiong, Del. Ch., No. 2024-1185, oral arguments 2/3/26.

At issue: Soon-Shiong wants to exit a lawsuit that claims the biotech billionaire duped investors into believing that bladder cancer drug Anktiva's chances for regulatory approval were far lower than he knew they actually were. The lawsuit claims he unfairly reaped millions of dollars when the company's shares bounced back. Soon-Shiong is ImmunityBio's executive chairman and global chief scientific and medical officer. Related claims in a federal court in California were resolved with a settlement requiring corporate governance changes at ImmunityBio.

Court action: Oral arguments in Wilmington, Del.

Biotech Billionaire Soon-Shiong Sued Over ImmunityBio Stock Move

**Tuesday:** Activant Ventures Adv. II LLC v. Breslow, Del. Ch., No. 2023-0721, bench ruling 2/3/26.

At issue: Vice Chancellor Nathan A. Cook will deliver a bench ruling on a \$7.5 million mootness fee award requested by attorneys for affiliates of private equity firm Activant Capital Group LLC. The affiliates say they secured a \$37.3 million benefit for Bolt Financial Inc. and its stockholders by forcing the financial technology company to cancel shares held by its founder, Ryan Breslow, through litigation over a defaulted \$30 million loan. Bolt and Breslow say Activant's litigation "did not confer anything beyond a normal benefit" because Bolt was already working toward canceling or retitling Breslow's shares.

Court action: Teleconference.

Bolt's Breslow Is Back With a \$600 Million Pitch to Investors

**Wednesday:** In re The AES Corp. and Owens Corning, Del., No. 218,2025/257,2025, oral argument 2/4/26.

At issue: Stockholders of AES Corporation and Owens Corning have appealed the dismissal of their lawsuits challenging advance notice bylaws adopted by those boards. They argue the bylaws were improperly adopted and discourage shareholders from exercising their rights to submit proposals or nominate board candidates. The Chancery Court found it was premature to consider the case without a live controversy tied to an actual or imminent proxy contest. The Managed Funds Association and 10 law professors filed an amicus brief arguing the high court should preserve the ability of stockholders to challenge unreasonable advance notice bylaws even without an imminent proxy contest because only allowing enforcement challenges during active proxy fights would enable boards to adopt increasingly pernicious bylaws that deter stockholder activism and evade judicial review.

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

AES Corp. Beats Legal Challenge to Advance-Notice Board Bylaws

**Thursday:** Rosenbaum v. Quarles, Del. Ch., No. 2024-0552, oral arguments 2/5/26.

At issue: The former president and CEO of Trecora Resources, which manufactures synthetic wax and other specialty petrochemicals, wants the Chancery Court to dismiss a lawsuit claiming he misled shareholders about conflicts of interest in the company's \$247 million sale to Balmoral Funds LLC in 2022. Neither Texas-based Trecora nor Balmoral were named as defendants in the investor lawsuit. The motion to dismiss hearing was rescheduled from November.

Court action: Oral arguments will be held in Wilmington, Del.

Trecora Resources Ex-CEO Sued Over \$247 Million Balmoral Buyout

**Thursday:** Castagna v. Tyson Foods, Inc., Del. Ch., No. 2025-0941, bench ruling 2/5/26.

At issue: Magistrate Christian D. Wright will deliver a bench ruling on a Tyson Foods Inc. shareholder's demand to inspect internal company records related to potential animal welfare issues and worker safety concerns at its chicken farms and processing plants. Tyson says the shareholder isn't entitled to any documents beyond what's already been provided. The shareholder's claims involve alleged violations of Virginia animal welfare laws by the owner of a farm contracted with Tyson Farms to raise broiler chickens, according to a joint pre-trial brief. No charges against Tyson have been brought in connection with the Virginia farm owner's case.

Court action: Teleconference.

DOJ Closed Meat Probe Just Before Trump's Investigation Demand

*—With assistance from Bloomberg Law Automation.*

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**Securities**

## Column

# Texas' New Proxy Advisor Law Regulates Speech, Not Securities

Feb. 2, 2026, 1:30 AM PST

Texas' high-profile fight with proxy advisory firms is often described as another skirmish in the ESG wars. That framing misses the point and obscures the real governance risk now facing Texas-incorporated and Texas-based public companies.

The US District Court for the Western District of Texas is considering a challenge to a recent Texas statute regulating proxy advisory firms. Senate Bill 2337, passed in 2025 and codified in the Texas Business Organizations Code (Chapter 6A), requires firms that advise institutional investors how to vote their shares to make state-mandated disclosures.

In particular, the disclosures should come when recommendations diverge from management or rely on so-called nonfinancial considerations—effectively conditioning proxy advice on how it is expressed.

The proxy adviser statute now tied up in federal court isn't a disclosure rule; it's a speech regulation. And that distinction explains both why the law has struggled in court and why, even if revived, it would complicate rather than strengthen corporate governance.

Proxy advisory firms such as Institutional Shareholder Services and Glass Lewis & Co. play a familiar role in modern capital markets. They don't vote shares or manage assets; they provide analysis and recommendations to institutional investors who must cast thousands of votes across hundreds of portfolio companies every proxy season.

In other words, proxy advisers function as information intermediaries—a role long recognized, and carefully regulated, in federal securities law. Their value lies in synthesizing public disclosures, governance practices, and comparative data into usable advice for investors who retain ultimate decision-making authority.

Texas' proxy adviser law departs from that framework in a critical way. Rather than regulating conflicts of interest, accuracy, or transparency in the ordinary sense, the statute conditions proxy advice on how and why a recommendation is made, particularly when it incorporates what the statute labels "nonfinancial" considerations.

That isn't securities regulation as traditionally understood. It's compelled speech.

Federal courts have long distinguished between disclosure requirements that facilitate market transparency and laws that compel speakers to justify or explain their viewpoints. The former are common in securities regulation; the latter trigger constitutional scrutiny.

That distinction drove the district court's decision to preliminarily block enforcement of the Texas statute—at least as applied to the two dominant proxy advisory firms—while litigation proceeds. The parties didn't argue, and the court didn't hold, that Texas lacks authority to regulate securities markets or proxy advisory firms generally.

Instead, the court concluded that the plaintiffs were likely to succeed on their First Amendment claims because key provisions of the statute regulate proxy advice as speech rather than market conduct. The statute conditions the provision of voting recommendations on content-based and compelled disclosures tied to the rationale underlying those recommendations. On that basis, the court enjoined enforcement against Institutional Shareholder Services and Glass Lewis pending further proceedings.

After the district court entered the preliminary injunction, Texas Attorney General Ken Paxton appealed the order on behalf of the state to the US Court of Appeals for the Fifth Circuit.

Procedurally, however, the merits of the proxy adviser challenges now remain before the US District Court for the Western District of Texas. Enforcement of the statute continues to be preliminarily enjoined as applied to the largest proxy advisory firms, and further merits proceedings are pending. Paxton has withdrawn the state's appeal of the preliminary injunction, explaining in court filings that the Fifth Circuit was "highly unlikely" to rule on the state's request before the district court proceeds to trial, making continued appellate litigation inefficient as a matter of timing.

That explanation narrows the procedural posture but does not resolve the governance implications. The statute remains on the books but unenforceable against key market participants, with its constitutionality to be decided at the trial-court level. There are First Amendment questions concerning compelled speech and viewpoint discrimination, federal preemption issues implicating the Securities Exchange Act, and Employee Retirement Income Security Act's preference for nationally uniform investor regulation, and broader structural concerns that resonate with the Supreme Court's recent skepticism toward regulatory regimes that stretch statutory authority to reshape market behavior.

The withdrawal of the appeal doesn't resolve the statute's First Amendment or federal preemption defects; it merely postpones their review until after the district court addresses them on the merits. Those issues preserve the case's significance beyond Texas and make it a plausible candidate for eventual US Supreme Court consideration if the statute survives merits review and appellate scrutiny.

Even in its enjoined state, the proxy adviser law already affects how Texas public companies must think about governance.

First, it introduces regulatory fragmentation into what is otherwise a national—and largely uniform—proxy system. Institutional investors don't maintain separate voting frameworks for Texas issuers. Proxy advisers don't generate bespoke analyses by state of incorporation.

Second, the law risks misdiagnosing the source of governance accountability. Proxy advisers don't force outcomes; they influence discussions. Boards that treat proxy recommendations as dispositive misunderstand both the legal reality and their own fiduciary role.

Third, the statute creates false comfort for boards inclined to view Texas as a management-friendly haven. The injunction should dispel that notion. When state governance experiments collide with federal constitutional limits, the resulting uncertainty exposes companies, not regulators, to risk.

Supporters of the Texas statute, including the Texas Stock Exchange and Texas Association of Business, argue that investors deserve to know when recommendations are driven by values rather than value—a distinction far less clear in practice than the law suggests. Executive compensation philosophy, board diversity, risk oversight, climate exposure, and succession planning all implicate long-term firm value.

Requiring proxy advisers to segregate “financial” from “nonfinancial” reasoning is to impose an artificial taxonomy that neither markets nor fiduciary law recognizes.

More importantly, requiring speakers to justify why they hold a particular analytical view, especially when that view diverges from management, resembles viewpoint discrimination, not neutral disclosure. That's why the First Amendment looms so large in this case.

The proxy adviser litigation is part of a broader Texas project to reposition the state as a serious corporate law jurisdiction through business courts, flexible fiduciary standards, and regulatory competition with Delaware. That ambition depends on credibility with national and global investors.

Capital markets prize predictability, neutrality, and consistency. Laws that appear designed to influence outcomes rather than process undermine that credibility, even when motivated by legitimate policy concerns. If Texas wants to compete as a governance jurisdiction, it must distinguish between facilitating markets and directing them. Proxy adviser speech sits firmly in the former category.

Texas' law fails because the statute confuses regulating markets with regulating speech, not because investor protection is an illegitimate goal. That confusion explains both its legal vulnerability and its limited utility for corporate governance.

For companies and their counsel, the message is clear: Durable governance frameworks are built on transparent processes and informed dialogue, not compelled explanations of how others think.

*Columnist Carliss Chatman is a professor at SMU Dedman School of Law. She writes on corporate governance, contract law, race, and economic justice for Bloomberg Law's Good Counsel column.*

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Commentary | **Class Actions**

## Arguing Class Actions: If You Can't Beat 'Em, Tax 'Em

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

February 02, 2026 at 06:00 AM By **Adam J. Levitt**



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

In a world of rapid regulatory retreat, civil litigation is an ever-more important tool needed to keep corporations in check. If the government steps out, somebody needs to step in. The work is hard—lawsuits are expensive, and, even when obviously meritorious, often take many years to win. One of the few tools allowing plaintiffs to survive long enough to obtain meaningful relief is third-party litigation funding. It doesn't level the playing field so much as lessen its significant tilt toward corporate interests.

But for some, a fairer game is no game at all. Sen. Thom Tillis, with the “Tackling Predatory Litigation Funding Act” (S.1821/H.R.3512), introduced last May, seeks to tax litigation funding out of existence. The bill singles out litigation funding for uniquely punitive tax treatment, untethered from ordinary principles of tax law, economic reality, or fairness. The result is legislation that is

unfair, dangerous, discriminatory and transparently designed to tilt the table even further in favor of corporate America.

The bill creates an entirely new chapter of the Internal Revenue Code aimed at a single activity: third-party litigation funding. That new chapter writing alone should set off alarm bells. The Internal Revenue Code is not typically used to regulate or suppress discrete industries because certain political constituencies dislike them. Yet that is *exactly* what this proposed legislation does. It imposes a special tax on “qualified litigation proceeds” received by litigation funders, pegged to the highest marginal individual tax rate, plus the 3.8% net investment income surtax, ensuring that the rate is not only high today but automatically punitive tomorrow if top rates increase. Further, unlike nearly every other area of the tax code, the proposed legislation expressly forbids funders from offsetting gains with losses. Litigation funding, like any portfolio-based risk capital, involves both—some cases succeed, many fail. The Tillis bill, however, pretends that the losses don’t exist. Gains are fully taxable, losses irrelevant.

By way of example: Let’s say there’s a 40% tax rate on litigation funding gains (this is actually slightly lower than the rate that Sen. Tillis, R-North Carolina, proposes), and a hypothetical funder has realized gains of \$60 million, against losses of \$40 million, meaning it has made \$20 million over the course of that year. In any rational world, the funder would pay taxes on that \$20 million gain. At a 40% tax rate, that’s \$8 million paid in taxes on the \$20 million profit, leaving \$12 million in net after tax income for the funder. Under Tillis’ proposed legislation, however, the company would be forced to artificially ignore its losses and pay a 40% rate on the \$60 million that it earned in gains, or \$24 million, turning its \$12 million net income into a \$4 million net loss.

No serious tax policy expert would defend this approach as neutral or principled. It is taxation by ambush, designed to tax the litigation funding industry out of existence, and a reminder that Chief Justice Marshall was onto something when he noted that it is a “proposition not to be denied” that “the power to tax involves the power to destroy.” See *McCulloch v. Maryland*, 17 U.S. 316 (1819).

The proposed bill then compounds the problem by imposing entity-level taxation on partnerships and other pass-through entities, overriding longstanding flow-through principles that apply virtually everywhere else in the tax code. And, as if that weren’t enough, the legislation adds a withholding regime requiring parties controlling settlement or judgment proceeds to withhold a substantial portion of payments owed to funders—regardless of whether those payments represent profit, return of capital, or reimbursement—forcing funders into refund and credit battles after the fact. Cash-flow disruption is not the bug here, it’s the feature.

All of this is defended with a familiar, albeit intellectually disingenuous, set of talking points. We’re told that litigation funding encourages frivolous lawsuits, invites foreign influence, and preys on

vulnerable plaintiffs. But not one of those claims withstands scrutiny.

**Frivolous Litigation.** Courts already have robust tools to address meritless claims: pleading standards, dismissal motions, summary judgment, class certification requirements, *Daubert* motions, sanctions, and fee-shifting regimes where Congress has deemed them appropriate. Litigation funding does not override any of these filters. Funders, who put their own capital at risk, have powerful incentives to back strong cases, not weak ones. The notion that a tax on funding is a substitute for judicial gatekeeping is not just wrong; it is incoherent.

**Foreign Influence.** The “foreign influence” argument is perhaps the most cynical justification offered (*see also* Arguing Class Actions, “Manchurian Misdirection—False Fears About Chinese Money in Litigation Funding,” National Law Journal, Oct. 6, 2025). The bill’s supporters invoke the specter of foreign sovereign wealth funds meddling in U.S. litigation, yet the legislation sweeps far more broadly, applying to domestic and foreign funders alike. If foreign government influence were truly the concern, Congress could address it directly and narrowly through disclosure requirements or targeted restrictions in sensitive contexts. Instead, the bill uses “foreign” as a rhetorical accelerant to justify an attack on the entire industry. When a statute cannot be narrowly tailored to its purported rationale, that’s usually because the rationale is pretextual, just as it so very clearly is here.

**Vulnerable Plaintiffs.** Setting aside the reality that, in many cases, plaintiffs would not be able to file cases at all absent funding, if the concern is abusive contractual terms, excessive returns, or improper control over litigation, those issues can be addressed through disclosure obligations to plaintiffs or the court, ethical rules, or targeted caps in consumer contexts. The Tillis bill does none of those things. Instead, it taxes profits, while leaving untouched the economic leverage that corporate defendants wield through insurance, indemnification, litigation reserves, and virtually unlimited defense budgets. That asymmetry is not accidental. Rather, it’s the point.

Indeed, the most telling feature of the bill is not what it includes, but what it excludes. Plaintiffs are not the only entities that are “funded.” Corporate defendants routinely finance litigation risk through insurance, reinsurance, captives, structured settlements, and complex financial products designed to smooth risk and reduce exposure. No one proposes a bespoke punitive tax regime for those tools. Only the financing mechanism most often used by plaintiffs—particularly in class actions, mass torts, antitrust, and complex commercial cases—is singled out for special punishment. As Vanderbilt professor Brian Fitzpatrick has [observed](#), this is discrimination that helps big business, since those business interests nakedly benefit from plaintiffs being forced to take low-ball settlements. That conclusion follows not from ideology, but from structure.

The practical consequences of this legislation are easy to predict and impossible to defend. By raising the cost of capital and distorting risk-reward calculations, the bill will reduce the availability of funding for plaintiffs' cases. Funders who remain will demand worse terms to compensate for the artificial tax burden, reducing net recoveries to plaintiffs. Some cases—particularly complex, resource-intensive matters against well-funded defendants—will never be brought at all. Others will settle prematurely and cheaply because many plaintiffs will not be able to afford to stay in the fight.

Who benefits from that world? Corporate defendants who rely on delay and attrition as a litigation strategy. Defendants who can bury plaintiffs in discovery, motions, and appeals until financial exhaustion sets in. Defendants for whom delay is not a cost, but a weapon. That's not mere speculation; rather, it's the lived reality of complex litigation.

This is why the Tillis bill is dangerous not only as policy, but as a structural intervention in the civil justice system. It doesn't change substantive law, nor does it alter standards of liability or proof. Rather, it changes outcomes by changing who can afford to litigate and raises the lending bar in an intentional attempt to chill the funding markets and freeze plaintiffs and their counsel out. That kind of indirect manipulation should concern anyone who cares about access to justice, even if they dislike litigation funding as a business model.

To be sure, it's not at all clear that the proposed legislation is even constitutional. While Congress enjoys broad latitude in taxation, that power is not limitless when used as a tool of targeted suppression—to quote Chief Justice John Marshall again, to carry taxation “to the excess of destruction, would be an abuse, to presume which, would banish that confidence which is essential to all government.” When a tax is crafted not to raise revenue neutrally, but, rather, to cripple a particular activity closely tied to the exercise of constitutional rights—here, access to courts, the right to petition, and a plaintiff's choice of counsel—courts are entitled to look past labels and examine function. At a minimum, the Tillis bill invites equal protection and due process challenges by singling out one form of investment for uniquely hostile treatment without coherent justification.

It's telling that proponents of this spurious legislation attempted to cram this measure through the budget reconciliation process as a “revenue raiser,” only to have it rejected on procedural grounds. That maneuver underscores what this bill really is: a substantive reordering of the civil justice landscape disguised as tax policy to avoid open debate about its consequences. The fact that it failed once doesn't mean it won't return in another form. Corporate lobbying efforts rarely disappear; they regroup.

At bottom, the Tillis proposal rests on a deeply flawed premise: that the problem with our civil justice system is too much accountability, too much enforcement, and too much access to justice for plaintiffs. The opposite is far closer to the truth. For decades, corporate defendants have invested heavily in making accountability expensive, slow, and uncertain. Litigation funding emerged not as a distortion of justice, but as a market response to that reality—a way to allow meritorious claims to be pursued despite asymmetric resources. Taxing that response out of existence doesn't make the system fairer, it makes wrongdoing cheaper. When enforcement becomes harder, deterrence weakens. When deterrence weakens, misconduct proliferates. That's not ideology; it's basic economics.

If Congress wants to protect consumers, it should protect them from fraud, anticompetitive conduct, discrimination and abuse—not from the capital that allows those wrongs to be challenged. If Congress wants transparency, it should legislate transparency. If it wants to address foreign influence, it should do so honestly and narrowly. What Congress must not do is weaponize the tax code to sabotage plaintiffs' access to justice, all while pretending to act in the public interest.

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

*Thank you to DiCello Levitt partner Dan Schwartz for contributing to this column.*

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# First Circuit questions if Boston sued over opioid crisis fast enough

 [courthousenews.com/first-circuit-questions-if-boston-sued-over-opioid-crisis-fast-enough](https://www.courthousenews.com/first-circuit-questions-if-boston-sued-over-opioid-crisis-fast-enough)

Thomas F. Harrison

February 2, 2026

BOSTON (CN) — Two of the country's largest pharmacy benefit managers should be held liable for the opioid addiction crisis, the city of Boston told the First Circuit Monday, but the judges worried that the city waited too long to sue them over it.

"You have to be aware of what's going on around you," U.S. Circuit Judge Sandra Lynch told the city's lawyer, Mimi Liu of Motley Rice. "If you have all the warning signals around you that you have a cause of action, you have to act."

Pharmacy benefit managers, or PBMs, administer prescription drug benefits for insurers, employers and governments by contracting with pharmacies, processing claims and negotiating rebates from drugmakers.

The city sued Express Scripts and Optum, two of the "big three" PBMs that, along with CVS Caremark, control about 80% of the U.S. market, saying they conspired with opioid manufacturers and profited from rebates and fees tied to widespread opioid distribution.

The city says the two companies downplayed opioid risks, deceptively marketed the drugs, pushed for broad coverage while weakening "utilization management" standards meant to limit prescriptions, and distributed opioids by mail without adequate controls.

This amounted to a "public nuisance" in Boston, where opioid prescription rates were triple the national average from 2010 to 2016, according to its January 2024 lawsuit.

A federal judge dismissed the case in early 2025 on statute-of-limitations grounds. On appeal, the city argued the three-year statute of limitations does not apply because the nuisance is ongoing and because the PBMs concealed their conduct until recently.

"There was active fraud here," Liu insisted.

That left the PBMs in the unusual position of arguing not that they did nothing wrong, but that any wrongdoing was so obvious the city should have known about it years earlier.

They pointed to long-running multidistrict litigation against opioid manufacturers and distributors. In 2018, 74 plaintiffs amended their complaints to include claims against PBMs, which defense attorney Christopher Michel of Quinn Emanuel in Washington, D.C., said should have put Boston on notice.

"Are you denying that the city of Boston's lawyers had any knowledge of the MDL litigation?" Lynch, a Bill Clinton appointee, asked Liu. "Weren't the city's lawyers competent enough to look at perfectly obvious sources?"

Liu responded that the city had to act only if it had actual knowledge of the PBMs' wrongdoing, not merely the ability to discover it with reasonable diligence. And she said the 2018 allegations amounted to four paragraphs that were "sparse" on facts and relied on a 2016 article that described the PBMs' actions in West Virginia, not the rest of the country.

"There was very little evidence in the early complaints to support the claims," Liu said. "Notice of the harm doesn't mean the city was aware that the harm was also caused by these defendants."

According to Liu, clear evidence of the PBMs' wrongdoing didn't come out in the MDL until 2023, at which point numerous state attorneys general also filed their own suits.

"Are you aware of any proceedings where courts have agreed with you?" asked U.S. Circuit Judge Gustavo Gelpí, a Joe Biden appointee.

"Every case, even under a constructive knowledge standard, has found no limitations problem," Liu said, citing rulings from Alaska and Ohio. "No other court to date has said such a suit is time-barred."

When it was his turn, Michel claimed that the Alaska and Ohio cases involved different facts, that there was no ongoing harm because the PBMs didn't do anything wrong within the limitations period, that the PBMs didn't fraudulently conceal anything from the city of Boston specifically, and in any event, "the city knew" what was happening.

"A plaintiff doesn't have to have every single fact," he said. "There was more than enough in the 2018 complaints, all 74 of them, for the city to have acquired knowledge."

He added, "The city's position is that everyone else was on notice, but the city was not on notice."

U.S. Circuit Judge Jeffrey Howard, a George W. Bush appointee, rounded out the panel.

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## Undercover Investigation of Meta Heads to Trial in New Mexico in First Stand-Alone Case by State

New Mexico's case, built on a state undercover investigation using proxy social media accounts and posing as kids to document sexual solicitations, could give states a new legal pathway to go after social media companies by using consumer protection and nuisance laws.

February 02, 2026 at 12:46 PM By **Morgan Lee**



Credit: Ink Drop / AdobeStock

SANTA FE, N.M. (AP) — The first stand-alone trial from state prosecutors in a stream of lawsuits against [Meta](#) is getting underway in New Mexico, with jury selection starting Monday.

New Mexico's case is built on a state undercover investigation using proxy social media accounts and posing as kids to document sexual solicitations and the response from Meta, the owner of Facebook, Instagram and WhatsApp. It could give states a new legal pathway to go after social media companies over [how their platforms affect children](#), by using consumer protection and nuisance laws.

Attorney General Raúl Torrez filed suit in 2023, accusing Meta of creating a marketplace and “breeding ground” for predators who target children for sexual exploitation and failing to disclose what it knew about those harmful effects.

“So many regulators are keyed up looking for any evidence of a legal theory that would punish social media that a victory in that case could have ripple effects throughout the country, and the globe,” said Eric Goldman, codirector of the High Tech Law Institute at Santa Clara University School of Law in California. “Whatever the jury says will be of substantial interest.”

The trial, with opening statements scheduled for Feb. 9, could last nearly two months. The case is being heard before Judge Bryan Biedscheid of the New Mexico First Judicial District.

Meta denies the civil charges and says prosecutors are taking a “sensationalist” approach. CEO [Mark Zuckerberg](#) was dropped as a defendant in the case, but he has been deposed and documents in the case carry his name.

In California, opening arguments are scheduled this week for a personal injury case in Los Angeles County Superior Court that could determine how thousands of similar lawsuits against social media companies will play out.

#### **The allegations against Meta in New Mexico**

Prosecutors say New Mexico is not seeking to hold Meta accountable for content on its platforms, but rather its role in pushing out that content through complex algorithms that proliferate material that can be addictive and harmful to children.

The approach could sidestep immunity provisions for social media platforms under a First Amendment shield and [Section 230](#), a 30-year-old provision of the U.S. Communications Decency Act that has protected tech companies from liability for material posted on their platforms.

An undercover investigation by the state created several decoy accounts for minors 14 and younger, documented the arrival of online sexual solicitations and monitored Meta’s responses when the behavior was brought to the company’s attention. The state says Meta’s responses placed profits ahead of children’s safety.

Torrez, a first-term Democrat elected in 2022, has urged Meta to implement more effective age verification and remove bad actors from its platform. He's also seeking changes to algorithms that can serve up harmful material and criticizing end-to-end privacy encryption that can prevent the monitoring of communications with children for safety.

Separately, Torrez brought felony criminal charges of child solicitation by electronic devices against three men in 2024, also using decoy social media accounts to build that case.

### How Meta has responded

Meta denies the civil charges while accusing the attorney general of cherry-picking select documents and making “sensationalist, irrelevant and distracting arguments.”

In a statement, Meta said ongoing lawsuits nationwide are attempting to place the blame for teen mental health struggles on social media companies in a way that oversimplifies matters. It points to the steady addition of account settings and tools — including safety features that give teens more information about the person they’re chatting with and content restrictions based on PG-13 movie ratings.

Goldman says the company is bringing enormous resources to bear in courtrooms this year, including New Mexico.

“If they lose this,” he said, “it becomes another beachhead that might erode their basic business.”

### Many other lawsuits are underway

More than [40 state attorneys general have filed lawsuits](#) against Meta, claiming it is harming young people and contributing to the youth mental health crisis by deliberately designing features that addict children to its platforms. The majority filed their lawsuits in federal court.

The bellwether trial underway in California against social video companies, including Meta’s Instagram and Google’s YouTube, focuses on a 19-year-old who claims her use of social media from an early age addicted her to technology and exacerbated depression and suicidal thoughts. TikTok and Snapchat parent company Snap Inc. settled claims in the case that affects thousands of consolidated plaintiffs.

A federal trial starting in June in Oakland, California, will be the first to represent school districts that have sued social media platforms over harms to children.

In New Mexico, prosecutors also sued Snap Inc. over accusations its platform facilitates child sexual exploitation. Snap says its platform has built-in safety guardrails and “deliberate design choices to make it difficult for strangers to discover minors.” A trial date has not been set.

### The jury weighs guilt, but a judge has final say on any sanctions

A jury assembled from residents of Santa Fe County, including the politically progressive state capital city, will weigh whether Meta engaged in unfair business practices and to what extent.

But a judge will have final say later on any possible civil penalties and other remedies, and decide the public nuisance charge against Meta.

The state's Unfair Practices Act allows penalties of \$5,000 per violation, but it's not yet clear how violations would be tallied.

“The reason the damage potential is so great here is because of how Facebook works,” said Mollie McGraw, a Las Cruces-based plaintiff’s attorney. “Meta keeps track of everyone who sees a post. ... The damages here could be significant.”

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# Google defeats bid for billions of dollars of new penalties in US privacy class action

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Mike Scarcella

January 30, 2026

The logo of Google is seen outside Google Bay View facilities during the Made by Google event in Mountain View, California, U.S. August 13, 2024. Google unveils a new line of Pixel... [Purchase Licensing Rights, opens new tab](#) Read more

Jan 30 (Reuters) - Alphabet's [\(GOOGL.O\)](#)  [, opens new tab](#) Google persuaded a federal judge in San Francisco on Friday to reject a bid by consumers for more than \$2 billion in penalties over the company's past collection of data from users who had switched off a key privacy setting.

Chief U.S. District Judge Richard Seeborg [denied](#)  [, opens new tab](#) the request to order Google to disgorge \$2.36 billion in alleged profits and to stop certain ad-related data practices.

Google had [urged](#) Seeborg not to add the penalty to a jury's verdict in September that found the company liable for secretly collecting app activity data from millions of users who had disabled a tracking feature.

The [jury in September awarded](#) about \$425 million in damages to the class action plaintiffs — far below the \$31 billion they sought — and issued an advisory verdict that disgorgement was unwarranted.

Google did not immediately respond to a request for comment. David Boies, a lead attorney for the consumers, said they were thankful Seeborg's ruling confirmed the jury's verdict.

Google has denied any wrongdoing and said it will appeal the September verdict. Seeborg on Friday rejected Google's request to decertify the class of 98 million users and 174 million devices.

In their [request for disgorgement](#), the plaintiffs said they were entitled to Google's allegedly ill-gotten gains from its data tracking. Despite the verdict, Google has not changed its privacy disclosures or data collection practices, the plaintiffs said. Google countered that an order blocking it from collecting users' account-related data would "cripple" an analytics service relied on by millions of app developers.

Seeborg ruled that the plaintiffs failed to show any “prospective, irreparable harm” that would justify a permanent injunction barring Google's data collection practices. The judge said the consumers had not shown an entitlement to disgorgement, and also that their estimate of Google’s profits was “insufficiently supported.”

The case is Rodriguez v. Google LLC, U.S. District Court for the Northern District of California, No. 3:20-cv-04688.

For plaintiffs: David Boies and Mark Mao of Boies Schiller Flexner; Bill Carmody and Shawn Rabin of Susman Godfrey; and John Yanchunis and Ryan McGee of Morgan & Morgan

For Google: Michael Attanasio, Benedict Hur and Simona Agnolucci of Cooley

Read more:

[Google must face consumer antitrust lawsuit over search dominance, US judge rules](#)

[US appeals court rejects RNC lawsuit claiming Google email spam filters harmed fundraising](#)

[Google defends AI search summaries in Rolling Stone publisher's lawsuit](#)

[Texas awards law firm Norton Rose \\$156 million in legal fees from Google settlement](#)

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## Judge again rejects preliminary approval of Sony PlayStation antitrust settlement

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DJ [dailyjournal.com/articles/389546-judge-again-rejects-preliminary-approval-of-sony-playstation-antitrust-settlement](https://www.dailyjournal.com/articles/389546-judge-again-rejects-preliminary-approval-of-sony-playstation-antitrust-settlement)

U.S. District Judge Araceli Martinez-Olguin

For a second time, U.S. District Judge Araceli Martinez-Olguin said Thursday she plans to deny a motion to preliminarily approve an \$8 million settlement in an antitrust class action against Sony over its decision to stop letting third parties sell vouchers for games on its PlayStation console.

Martinez-Olguin cited concerns about the proposed method of payment and a provision including two of the named plaintiffs in the settlement, even though the revised definition of the class no longer includes them.

"It's an interesting scenario," Martinez-Olguin said before asking the plaintiffs, represented by Michael M. Buchman of Motley Rice LLC, if he knew of other cases that included similar provisions.

Buchman said he hadn't but offered to submit a brief on how courts held in similar situations.

The agreement includes \$10,000 payouts for the three named plaintiffs, even though the class size was narrowed so much after discovery that it excluded two of the named plaintiffs.

Buchman argued the payouts were fair since the named plaintiffs put time and effort into the case and contributed to discovery, even if they fell just outside of the final class definition. The payments are framed as "service awards" instead of claims so the two plaintiffs can still bring a related action in the future, Buchman said.

Martinez-Olguin didn't dispute that the named plaintiffs deserved some portion of the final amount but expressed concern with a settlement that didn't resolve all open claims.

"They're plaintiffs in this lawsuit and their claims are still pending," she said. *Caccuri v. Sony Interactive Entertainment LLC*, 3:21-cv-03361 (N.D. Cal., filed May 5, 2021).

The judge also questioned the parties' proposal to have the settlement amount paid in PlayStation store credits.

The defense, represented by Joshua H. Lerner of Wilmer Cutler Pickering Hale and Dorr LLP, said that method was the best option since it "avoids the inefficiency" of having claims administered in a traditional way.

Martinez-Olguin expressed concern that in such a small settlement, administrative costs could approach the total settlement amount.

Lerner also defended the method, citing previous cases that held a store credit was an acceptable payment in a class action where the entire class actively uses the same store and is likely to spend the entire credit.

Buchman argued the credit couldn't be compared to a coupon since it doesn't expire.

Lerner said the judge's concerns were all "solvable problems."

Martinez Olguin said she'd issue an order giving the sides 28 days to file a revised motion for approval.

The lawsuit was filed in 2021, claiming that removing game vouchers from other stores allowed PlayStation to charge more than market value for them.

The two sides reached a settlement in September 2024 after working with mediator Christopher Hockett, but Martinez Olguin denied the initial motion for approval in July 2025.

#389546

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## Litigation

### Manage Newsletters

## **Judge Picks Co-Lead Counsel in Apple AI Copyright Class Action**

Feb. 2, 2026, 10:55 AM PST

### **Summary by Bloomberg AI**

AI Generated



- A federal judge appointed William Dreher and Rohit Nath as interim co-lead counsel for plaintiffs in a proposed class action against Apple Inc. over claims the company used pirated books to train its artificial intelligence models.
- The court consolidated three copyright cases against Apple and considered applications and presentations from lawyers for each group before making the appointment.
- The appointments are personal to the named attorneys and will be in effect for one year, with the court seeking to provide oversight for efficiency and quality in the case.

A federal judge appointed two attorneys to represent plaintiffs in a proposed class action against Apple Inc. over claims the technology company used pirated books in its database to train its artificial intelligence models.

William Dreher of Keller Rohrback LLP and Rohit Nath of Susman Godfrey LLP will be the interim co-lead counsel for authors including Grady Hendrix, according to a Jan. 30 order filed in the US District Court for the Northern District of California. The court said it carefully considered all applications, responses, and presentations, including assessing the actual availability “to diligently and efficiently advance this case given other commitments and the sources of litigation funding.”

Three copyright cases against Apple were consolidated last year, after which the lawyers for each group vied for the lead class counsel role. Each suit alleges Apple used shadow libraries with pirated content to build its training datasets for AI models.

Susman Godfrey, Keller Rohrback, and Butterick Law PC filed the first of the three lawsuits on Hendrix’s behalf. In its December motion, Susman Godfrey pointed to its “unmatched” litigation track record, having scored a \$1.5 billion settlement for authors from Anthropic in a similar AI training suit last year.

Judge Yvonne Gonzalez Rogers' order denied lawyers for the two other plaintiff groups—Cotchett, Pitre & McCarthy LLP and Bleichmar Fonti & Auld LLP, as well as Joseph Saveri Law Firm LLP—the spot for lead counsel.

Appointments are personal to the named attorney, which means appointees can't be substituted by other attorneys, which include members of the law firm to perform their exclusive functions, unless there is prior approval by the court, the order said.

"The Court is regularly concerned with the breadth of the leadership structure generally requested by attorneys in this type of case," Rogers added. "Thus, to provide oversight for efficiency and quality, as well for compliance with this Court's orders, all appointments shall be in effect for one year ending on the last day of January."

Latham & Watkins LLP represents Apple.

The case is *Hendrix v. Apple Inc.*, N.D. Cal., No. 4:25-cv-07558, order filed 1/30/26 .

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## Roblox MDL leadership bids draw skepticism from judge over efficiency

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DJ [dailyjournal.com/articles/389556-roblox-mdl-leadership-bids-draw-skepticism-from-judge-over-efficiency](https://www.dailyjournal.com/articles/389556-roblox-mdl-leadership-bids-draw-skepticism-from-judge-over-efficiency)

Attorneys from five law firms petitioned Chief U.S. District Judge Richard Seeborg in San Francisco to serve as lead counsel in the multidistrict litigation concerning allegations that online gaming giant Roblox failed to protect children using its site from sexual assault and exploitation.

Seeborg called the candidates for lead counsel "a very impressive group of attorneys" and said Friday that the choice would likely come down to which candidate offered the "most efficient, streamlined plaintiff-side representation" since he's confident all the options could do a good job.

The judge expressed concern that having too many lawyers in the leadership structure, either as co-leads or in a steering committee, would slow down proceedings and could be detrimental to the plaintiffs.

"I've never understood what a steering committee does," Seeborg said. *In re: Roblox Corporation Child Sexual Exploitation and Assault Litigation*, 3:25-md-03166 (N.D. Cal., filed Dec. 12, 2025).

Dena C. Sharp of Girard Sharp spoke first on behalf of another attorney at her firm, Sarah R. London. London applied to be a co-lead along with Alexandra M. Walsh of Anapol Weiss and W. Mark Lanier of the Lanier Law Firm.

Walsh and Lanier also had stand-ins, who spoke later.

Seeborg asked if the trio's absence means they're too busy to take on the case and if the case really needed three co-leads. (Lanier was giving a mini opening argument in Los Angeles on Friday in the first bellwether trial alleging Meta and Google contribute to mental health problems in minors.)

Sharp replied that "three is a good number" since it allows each attorney to play to their unique strengths.

Rebecca L. Phillips, who spoke for Lanier, said that having three co-leads will help settle disagreements since there will always be a tiebreaker vote.

Bryan F. Aylstock of Aylstock, Witkin, Kreis & Overholtz PLC, presented next, arguing he should be chosen because of his firm's experience handling sexual assault cases, which he called "fundamentally different" from other matters.

The lawyers at his firm are trained in handling sensitive cases and talking to plaintiffs in ways that don't bring up past trauma, Aylstock said.

Seeborg said he agreed with Aylstock's point but that nearly all of the attorneys who applied have experience handling sensitive cases.

Texas attorney Robert C. Hilliard said he also has experience handling sensitive cases and that sometimes "less is more" when it comes to MDL leadership.

Hilliard, who was one of the older candidates to lead the MDL, said he came to court after watching aging tennis great Novak Djokovic beat Jannik Sinner, the No. 2 player in the world, at the Australian Open.

"Even the old guys have one more great run in 'em," Hilliard said.

D. Patrick Huyett spoke on behalf of Walsh, saying she should be appointed lead counsel because she cares about the plaintiffs she represents and has led the case from the start.

Seeborg said he'll consider the case for each attorney and issue an order with the plaintiffs' leadership structure within two weeks.

Once he's done that, he'll set a date for a Rule 26(f) conference to discuss a plan for discovery.

Tiana Demas of Cooley LLP, representing Roblox, said she needs a list of plaintiffs' usernames on the website so the defense can uphold its duty to preserve.

Sharp said plaintiffs plan to do so, but only once the defense promises to give them information associated with their clients' accounts.

Isaac Chaput of Covington & Burling LLP, representing co-defendant Meta, said that the companies can't provide that information until they know which usernames to look for.

"The issue is they're holding hostage this information that we need," Chaput said.

Seeborg called the dispute "silly" and told the parties to figure it out.

Seeborg said he anticipates appointing a special master and asked the sides to think about preferred candidates, or if they'd rather have a magistrate judge handle discovery, before the next hearing.

That said he anticipates motions for arbitration and to dismiss under 47 U.S. Code Section 230, which protects internet platforms from lawsuits over third-party content.

#389556

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**California Brief**

# Nvidia Rebuffs Authors' Claims It Trained AI on Pirated Books

Jan. 30, 2026, 10:04 AM PST

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Nvidia Corp. asked a court to toss a group of authors' latest claims that the tech company accessed pirated content to train its artificial intelligence models.

The AI giant said the authors' renewed legal complaint over alleged copyright infringement is "replete with vague references" to unidentified large language models and doesn't show which datasets were used to train them, "let alone that the datasets contained their works," according to a motion to dismiss the claims filed Thursday in the US District Court for the Northern District of California.

Authors including Abdi Nazemian expanded on their earlier allegations that Nvidia acquired training data from shadow libraries—websites with troves of pirated content—in a Jan. 16 class complaint. For example, the authors said Nvidia contacted the "largest and most brazen" shadow library, Anna's Archive, about accessing its pirated content. The complaint said Nvidia management gave "the green light" to proceed with the piracy even after Anna's Archive warned the company of the "illegal nature of their collections."

Santa Clara, Calif.-based Nvidia, which also makes chips for developing and running AI models, pushed back against that claim in its bid to drop the suit.

"The mere fact that NVIDIA was in contact with representatives from Anna's Archive does not mean that NVIDIA obtained Plaintiffs' works from Anna's Archive," it said. "It's equally plausible NVIDIA did not."

Along with Anna's Archive, the new complaint says Nvidia accessed data from pirated websites including Bibliotik, LibGen, Sci-Hub, Z-Library, and Pirate Library Mirror.

Nvidia said in its filing that the California federal court has dismissed "similarly deficient allegations in materially identical cases" involving AI technology from Google and Databricks.

In 2024, authors including Nazemian brought allegations that Databricks illegally downloaded copyrighted books for its AI platform. These allegations were "far too generalized to state a claim for copyright infringement," Judge Charles R. Breyer said. In a case against Google, Judge Eumi K. Lee similarly dismissed some copyright claims because the writers and artists hadn't connected their works to certain datasets they accused the company of using.

The authors said in their amended complaint against Nvidia that their works are part of a notorious dataset of pirated books, Books3, which is available through shadow libraries such as Anna's Archive.

The amended complaint however "broadens" the direct copyright infringement claim from a single family of large language models and the Books3 dataset to "essentially all of NVIDIA's AI models and all datasets," the company's filing says.

"Relying on these allegations, Plaintiffs seek to obtain essentially unlimited discovery untethered to any plausible claim," Nvidia wrote, referring to the evidence-gathering stage of the lawsuit. The company added that the authors submitted a "blizzard of discovery requests" after filing the amended complaint.

Nvidia filed a motion Thursday asking the court to pause discovery.

Quinn Emanuel Urquhart & Sullivan LLP represents Nvidia. Joseph Saveri Law Firm LLP, Cafferty Clobes Meriwether & Sprengel LLP, Susman Godfrey LLP, Lieff Cabraser Heimann & Bernstein LLP, DiCello Levitt LLP, and attorney Matthew Butterick of Los Angeles represents the author plaintiffs.

The case is Nazemian v. Nvidia Corp. , N.D. Cal., No. 4:24-cv-01454, motion to dismiss filed 1/29/26 .

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# The year ahead in healthcare: forecasting legal and litigation trends

 [reuters.com/legal/litigation/year-ahead-healthcare-forecasting-legal-litigation-trends--pracin-2026-01-26](https://www.reuters.com/legal/litigation/year-ahead-healthcare-forecasting-legal-litigation-trends--pracin-2026-01-26)

Abbye Alexander, Christopher Tellner, Henry Norwood

January 26, 2026

An emergency sign directs patients to the emergency room at the Kaiser Permanente San Diego Medical Center hospital in San Diego, California, U.S., April 17, 2017. REUTERS/Mike Blake [Purchase Licensing Rights, opens new tab](#)

January 26, 2026 - The healthcare landscape shifted significantly in 2025. Federal and state regulatory initiatives, as well as developments in technology and continuation of long-term trends, such as ever-increasing health data breach litigation, have led to an indication that the legal elements of the healthcare industry and health litigation will be changed across several areas in the field.

Understanding these anticipated changes can aid health counsel and their clients to better navigate the field heading into the new year.

## Medical malpractice

Tort reform has reshaped medical malpractice claims in multiple states, particularly as to limitations on recovery of non-economic damages. In 2025, Florida imposed a \$750,000 limit on non-economic medical malpractice cases, with certain exceptions. In California, the previously approved non-economic damages cap was increased to \$430,000, for injuries not resulting in death, and \$600,000 for wrongful death claims. These caps are subject to increase each year.

In Colorado, the \$300,000 non-economic damage cap will gradually increase to \$1.5 million over several years. Montana will similarly increase its non-economic damages cap to \$350,000 in 2026.

State medical malpractice tort reform packages also faced court challenges in 2025. An Ohio appellate court found that the statutory cap, reducing the plaintiff's trial-awarded non-economic recovery of \$2.2 million to \$965,527, was unconstitutional as applied to that particular plaintiff. (*Lyon v. Riverside Methodist Hospital*, 2025, Ohio Court of Appeals).

In contrast, a North Carolina appellate court upheld the state's cap on medical malpractice non-economic damages and approved the reduction of the plaintiff's non-economic damage award from \$7.5 million to \$656,730. (*Mohebal v. Hayes*,

2025, Court of Appeals of North Carolina)

While states are trending toward limiting damages in medical malpractice cases, the limits are generally increasing year-over-year and higher average verdicts in malpractice claims are expected in 2026.

Telemedicine and interstate healthcare continue to raise issues regarding conflicting standards of care across state lines and licensing requirements. Telemedicine has continued in popularity in the years following the end of the COVID-19 pandemic.

The practice has raised issues when providers located in one state are providing services to a patient located in another state and the two jurisdictions apply different standards of care or different licensing requirements. These issues are expected to persist into 2026 as telemedicine remains prevalent.

States are also expected to continue implementing protections against the use of AI in healthcare in 2026. For example, in late 2025, California passed a bill, AB 489, establishing a regulatory framework surrounding the use of AI chatbots that may mislead patients into believing they are interacting with a licensed healthcare provider. The law prohibits such use of AI in healthcare and requires those deploying AI to communicate with patients to ensure patients are not misled into believing they are communicating with an actual provider.

### **Healthcare employment law**

When it comes to employment law in healthcare, the focus is on the prevention of workplace violence. For years, the healthcare industry has grappled with the issue of violence against health workers and patients. The problem is perhaps most prevalent in hospital settings with heavy patient volumes and high stress environments.

In June 2025, the American Hospital Association issued a report estimating that in 2023 hospitals spent over \$18 billion to prevent and remedy violent acts on hospital premises. Hospital violence is not only costly, but places patients and hospital staff at risk, creates an unhealthy environment, and erodes the sense of trust and safety all patients and staff should experience in the hospital setting. This has led to states passing laws intended to address workplace violence in healthcare.

Oregon is one such state that will implement new healthcare workplace violence prevention requirements in 2026. Oregon SB 537 will focus on requiring employee training in workplace violence prevention, designations of dangerous individuals, and ID requirements. Reducing workplace violence is also an area of priority for OSHA in 2026.

## **Health insurance litigation**

In health insurance litigation, an increasing trend of lawsuits pertaining to insurers' use of AI or algorithms to determine coverage claims, is expected to grow significantly in 2026. Algorithms and AI are believed to be used increasingly by health insurers to help insurers process claims for coverage in a fraction of the time it would take a person to review each individual claim, but some insureds have filed suit, claiming the practice does not comply with the law.

Class action lawsuits filed against health insurers for denying claims using algorithms and AI in the Medicare and Medicaid context are well-publicized, and CMS (Centers for Medicare & Medicaid Services) has issued guidance on this issue. Less clear though is the state of the law regarding the use of algorithms and AI to process claims for private health plans. Federal oversight of private health plans is limited, unlike the Medicare and Medicaid context. Lawsuits for claim denials using algorithms in private health insurance have been filed in recent years and are working their way through the courts.

It is possible that substantive rulings in one or more of these matters will be issued in 2026, which will influence whether additional suits will be filed. Regardless, it is expected that legal challenges to the use of AI and algorithms in health insurance will be filed with greater frequency this year as the technology continues to develop.

Another area of health plan litigation expected to grow in 2026 pertains to prior authorization disputes. At the federal level, CMS has issued its Prior Authorization Final Rule (CMS-0057-F), which imposes a streamlined, electronic process for insurers participating in certain federal health insurance programs to process prior authorization requests from insureds. The Final Rule also imposes tighter deadlines to comply with prior authorization requests and pushes transparency in the prior authorization process.

Many provisions of the Final Rule have gone into effect this year. Many insurers have also pledged to increase transparency into their prior authorization process. The push for a streamlined prior authorization process at the federal level is

trickling down to state legislatures as well.

Most states already have statutory frameworks regarding prior authorizations for private health plans within their states, but some states have recently amended these frameworks to impose tighter response deadlines for insurers. For example, Vermont (2023 VT H 766) and Virginia (2024 VA H 2099) amended their prior authorization laws to shorten the response timeframe for insurers. These laws went into effect recently and are anticipated to result in additional litigation as insurers push to comply with stricter prior authorization mandates.

## **Healthcare cyber litigation**

The explosion of hacking incidents targeting healthcare organizations in the past decade has grown year over year. Hackers understand the monetary value of protected health information, making healthcare organizations attractive targets for bad cyber actors.

Hacking has become the leading cause of healthcare data breaches. In 2025, HHS investigated and reached settlements with numerous healthcare organizations related to hacking incidents and the providers' alleged failure to protect protected health information.

In January 2025, a hack into the systems of a medical equipment supplier and distributor potentially exposed the protected health information of over 100,000 individuals. (See [HHS Resolution Agreement, January 14, 2025](#)).

In March 2025, a radiology facility's communications system was breached, resulting in unauthorized access to protected health information by third parties. (See [HHS Resolution Agreement, April 4, 2025](#)).

In July 2025, it was disclosed that hackers targeted a geriatric services provider, exposing patient health information and disseminating the information on the dark web. (See [HHS Resolution Agreement, July 7, 2025](#)).

These incidents represent only a small sample of large hacking incidents targeting healthcare organizations in 2025. It is expected that hackers will continue targeting healthcare entities in 2026, which often result not only in HHS investigations, but also class action lawsuits from patients whose information was purportedly exposed.

In addition, 2025 featured certain unique legal outcomes that may result in additional lawsuits this year. For example, in early 2025, as reported by The HIPAA Journal, Blue Shield of California disclosed to HHS that from 2021 through 2024, it

had configured its website and portal to utilize a tracking algorithm to track how members used its site.

Unfortunately, according to the HIPAA Journal article, the insurer purportedly opted in to a setting that allowed the company employing the tracking technology to share this data through advertisements, which was an unauthorized disclosure impacting over 4.7 million users during those three years. (See "[Blue Shield of California Announces Impermissible Disclosure of PHI to Google Ads: 4.7 Million Affected](#)," Steve Alder, HIPAA Journal (Apr. 24, 2025)).

It is anticipated that class action lawsuits challenging website tracking practices by healthcare organizations will grow in prevalence in 2026.

## Conclusion

With all of the changes upcoming in the healthcare field in 2026, providers, patients, and their counsel should arm themselves with as much information as possible to ensure compliance on the front-end and a plan to navigate litigation should the need arise.

Understanding the trends that have brought the industry to this point from last year can also aid in anticipating where healthcare litigation is moving throughout 2026 and beyond.

*Abbye E. Alexander and Christopher J. Tellner are regular, joint contributing columnists on health care litigation for Reuters Legal News and Westlaw Today.*

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## Class Action

### Manage Newsletters

Insight

## **Bankruptcy Court Needs Special Masters to Manage Mass Tort Surge**

Feb. 2, 2026, 1:30 AM PST

### **Summary by Bloomberg AI**

AI Generated



- Bankruptcy courts are being asked to handle significant and sensitive mass tort cases, including those involving clergy abuse, opioids, and toxic exposure, without the tool of special masters.
- Rule 9031, which bans special masters in bankruptcy, hasn't been updated since the early 1980s, and the bankruptcy system has evolved to include cases that are more like multidistrict litigations.
- Updating Rule 9031 to allow special masters in mass tort Chapter 11 cases could provide expertise, transparency, and administrative support, and help judges manage high-stakes cases with thousands of claims and complex discovery battles.

Bankruptcy courts today are being asked to do something they were never designed to do: Handle some of the most significant and most sensitive mass tort cases in the country, including the cases involving Boy Scouts of America, USA Gymnastics, and the Roman Catholic Diocese of Rockville Centre.

Clergy abuse, opioids, toxic exposure, and long-term institutional misconduct cases have landed in Chapter 11. These cases often involve tens of thousands of claimants, insurance fights, massive discovery, and allegations that demand careful, trauma-informed handling.

Bankruptcy judges must navigate all of this without one of the tools federal civil courts regularly rely on: special heads.

That's because Rule 9031, the rule that flatly bans special masters in bankruptcy, hasn't been updated since it was adopted in the early 1980s.

The bankruptcy system has evolved. It's time for the regulations to catch up.

## Getting Here

When Rule 9031 was adopted, Chapter 11 cases were mostly about fixing balance sheets. Courts dealt with troubled businesses, trade creditors, and straightforward financial disclosures. Judges could handle the workload with the resources they had, and there wasn't much need for outside help.

Today, Chapter 11 has become a venue for resolving nationwide mass tort liabilities. It offers tools that ordinary civil litigation can't match when claims are numerous, long-tailed, and financially existential for the defendant.

Modern cases look less like corporate reorganizations and more like multidistrict litigations, but without the MDL tools. Judges now oversee thousands of claims, years of discovery battles, parallel mediation tracks, and heated disputes among debtors, insurers, survivors, and state attorneys general.

And they're doing it without the ability to appoint special masters, even though Article III courts appoint them all the time in cases of similar scale and complexity.

## Masters Versus Examiners

Special masters aren't replacements for judges. They help courts manage parts of a case that are too technical, too sensitive, or too time-consuming to handle alone. Discovery disputes and insurance coverage disputes are recognized as factors that can prolong mass tort bankruptcies.

In large civil cases, special masters routinely manage massive discovery, resolve privilege disputes, review confidential or highly sensitive documents, oversee claims administration systems, help negotiate settlements, conduct fact-finding into technical or historical issues, and monitor compliance with court orders.

These are the challenges bankruptcy judges face in modern Chapter 11 cases—and precisely what they are prohibited from delegating.

Examiners have a much narrower role. They investigate a specific issue and write a report. They don't manage discovery. They don't run claims processes. They don't help structure trauma-informed procedures. They don't resolve evidentiary disputes. They don't oversee negotiation frameworks.

In a mass tort bankruptcy—where the court is effectively running a litigation ecosystem—an examiner's report is helpful, but it's hardly a management tool. Special masters, by contrast, are built for continuous, hands-on oversight.

## The Human Side

In sexual abuse bankruptcies, the stakes are exceptionally high. Survivors are navigating a system that feels foreign, fast, and often opaque. Filing deadlines are short. Discovery is limited. Negotiations happen behind closed doors. Many survivors understandably view the process with skepticism.

A special master with trauma-informed expertise can make a genuine difference. They can help ensure that communications, discovery, and claims procedures minimize harm and reflect respect for survivors' experiences. They can also bring an independent, credible layer of oversight to a process where survivors may feel favored by institutions and insurers.

### **Efficiency and Fairness**

There's a misconception that appointing a special master slows things down or adds unnecessary cost. Quite the opposite. The most time-consuming parts of mass tort bankruptcy cases—privilege disputes, document review, discovery enforcement, and designing claims processes—are precisely the tasks for which special masters can be used.

By taking on these responsibilities, special masters allow judges to focus on legal issues that require judicial decision-making. That means faster dispute resolution, more transparent communication among parties, and more reliable claims processes.

### **Effective Reform**

Updating Rule 9031 would require a narrowly drawn amendment that could authorize special masters in mass tort Chapter 11 cases, proceedings with heavy discovery burdens, cases involving sensitive survivor information, and situations requiring specialized technical or scientific expertise.

Judges would still control the appointment, scope, and review of any special master's work—just like Article III judges do now. This isn't a power shift. It's an expansion of capacity.

Mass tort bankruptcies aren't going away. In fact, more institutions facing systemic misconduct allegations are turning to Chapter 11 specifically because the system offers global resolution. That trend puts pressure on bankruptcy courts, which are being asked to handle cases far beyond what the existing rules anticipated.

If bankruptcy is going to serve as the forum for mass-tort resolution, it needs the tools to do the job well. Special masters offer expertise, transparency, and administrative support that modern cases demand.

Rule 9031 has outlived its moment. Modernization is essential to maintaining the integrity and effectiveness of the bankruptcy system.

Giving bankruptcy judges access to special masters would strengthen their ability to manage high-stakes cases that have become increasingly common. Special masters won't solve every challenge in mass tort Chapter 11 cases, but they would address many of the most persistent bottlenecks.

Rule 9031 served its purpose. The time has come to modernize it.

*This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law, Bloomberg Tax, and Bloomberg Government, or its owners.*

## NewsRoom

2/2/26 cleveland.com (Cleveland, Ohio) (No Page)  
2026 WLNR 3261567

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February 2, 2026

### Evidence fight threatens to delay FirstEnergy bribery trial

Adam Ferrise; cleveland.com

AKRON, Ohio — Prosecutors handling the FirstEnergy bribery trial signified on Monday that they may file an appeal if a judge bars certain evidence in the case.

An appeal could push back the trial of two former FirstEnergy executives accused of bribing a state energy regulator. The trial began with jury selection last week and is heading toward opening statements on Tuesday.

Summit County Common Pleas Judge Susan Baker Ross said she'd issue a ruling soon.

Former FirstEnergy CEO Chuck Jones and former top lobbyist Michael Dowling face 11 charges that accuse them of paying a \$4.3 million bribe to former Public Utilities of Ohio Chairman Sam Randazzo.

Randazzo, who died by suicide in April 2024, then helped FirstEnergy pass House Bill 6, which gave a \$1.3 billion bailout of two nuclear plants, and made several rulings that helped FirstEnergy rake in profits without government oversight, prosecutors say.

The issue argued on Monday is over whether prosecutors can present certain evidence that Randazzo talked to Dowling about scuttling a rate review by PUCO that could have stopped FirstEnergy from increasing electricity prices. FirstEnergy's stock prices spiked after Randazzo ruled the company didn't have to undergo the rate review.

Assistant Ohio Attorney General Matthew Meyer said an email Randazzo sent to his staff two hours after talking to Dowling is critical to the state's case. Meyer said if the judge rules that the email and communication are barred, the ruling would severely undercut his case.

"This is the thing, your honor, that the bribe payment influenced Mr. Randazzo to do," Meyer said. "This is not a minor piece of evidence."

Steven Grimes, one of Dowling's defense attorneys, argued that the evidence was "minor."

He said prosecutors, including Ohio Attorney General Dave Yost, have said they had enough evidence to convict Jones and Dowling when a grand jury handed up indictments in February 2024.

Grimes said investigators found the email and the communication with Dowling only after the indictments were issued.

"They cannot have indicted this case in good faith and also stand up on a Sunday night, the day before trial starts, and say that they can't win without evidence they didn't have at the time," Grimes said. "This is pure gamesmanship at best and potentially much, much, much worse."

Grimes called it "extremely disturbing" that Meyer has three times threatened to appeal a judge's potential ruling.

Baker Ross also still has to decide whether to allow other evidence to be presented, including whether she'll allow prosecutors to tell the jury that the HB 6 scandal led to higher bills for customers and if defense attorneys can raise question about an Ohio Bureau of Criminal Investigation agent's internal misconduct case.

#### ---- Index References ----

Company: FIRSTENERGY CORP

News Subject: (Corruption, Bribery & Embezzlement (1EM51); Crime (1CR87); Criminal Law (1CR79); Fraud (1FR30); Government Litigation (1GO18); Legal (1LE33); Social Issues (1SO05))

Industry: (Electric Utilities (1EL82); Energy & Fuel (1EN13); Utilities (1UT12))

Region: (Americas (1AM92); North America (1NO39); Ohio (1OH35); U.S. Midwest Region (1MI19); USA (1US73))

## NewsRoom

1/31/26 Akron Beacon J. (Ohio) (No Page)  
2026 WLNR 3091103

Akron Beacon Journal (Ohio)  
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January 31, 2026

Juror pool shrinks in ex-FirstEnergy execs' trial as bias is discussed  
Some prospective jurors in the House Bill 6-related criminal case of former  
FirstEnergy executives have been excused over anti-corporate views.

Patrick Williams, Akron Beacon Journal

As the judge, prosecutors and defense attorneys in the criminal trial of two ex-FirstEnergy executives question prospective jurors, some of the would-be panelists have acknowledged biases against utility companies and the corporate world.

Summit County Common Pleas Court Judge Susan Baker Ross, who is hearing the case, also has given attorneys a list of 14 separate topics about which witnesses in the case are not allowed to testify. She issued the witness admonition order Jan. 26; it was posted to the case docket Jan. 29.

The stakeholders in the case are aiming to appoint a fair jury in the case of Chuck Jones, a former CEO of Akron-based FirstEnergy, and Michael Dowling, a former senior vice president at the utility company. Prosecutors allege Jones and Dowling paid a \$4.3 million bribe to former Public Utilities Commission of Ohio Chair Sam Randazzo as part of the House Bill 6 scandal.

FirstEnergy has admitted to bribing public officials. Jones and Dowling face multiple state charges and have been indicted in a separate federal case.

On Jan. 27, about 230 potential jurors filled out questionnaires at the courthouse. Final voir dire — the round of questioning that determines the selected jurors and alternates before opening statements begin — will begin Feb. 2, Ross said.

An order by Ross prohibits media from "publishing or otherwise distributing or making available anything that could be used to personally identify any juror or prospective juror." USA TODAY Network Ohio is challenging the order.

As of the early afternoon on Jan. 30, there was no plan to sequester jurors, a spokesperson for the court said via email.

**What have attorneys been asking the prospective jurors?**

Prosecutors and defense attorneys have questioned potential jurors about scheduling conflicts and their ability to reach a fair verdict in the trial, which is expected to last for eight to 10 weeks.

A potential juror in his 20s was excused Jan. 30 after he shared his belief that "a lot of people in positions of power" have obtained success by acting unethically. When multiple attorneys further pressed the man on his beliefs, he said he thought he would have trouble reaching a not-guilty verdict in the case.

Ohio Deputy Attorney General Carol O'Brien confirmed with the man that he wrote down that corporate executives are "greedy and only get there by screwing others."

Another potential juror in his 20s shared his belief that there's "a lot of greed" in the corporate world, which he's concluded by brushing shoulders with executives through his work. He also said he does not have a favorable attitude toward the utility industry. Multiple lawyers questioned him about his beliefs, and the judge ultimately excused him from the case.

A woman who works in a corporate job said she thinks many corporate leaders tend to prioritize their shareholders over their employees and customers. She was excused after additional questioning in which she shared her view that the state has a "leg up" on the defendants.

Other prospective jurors said in their questionnaires that they believe the defendants will need to prove their innocence to be found not guilty. Prosecutors and defense attorneys both said the burden of proof is on the state to show that the defendants are guilty beyond a reasonable doubt.

Attorneys and the judge questioned multiple prospective jurors about their feelings on Gov. Mike DeWine, who is on the defense's witness list. DeWine told USA TODAY Co. that he doesn't know if he'll be called to testify. U.S. Sen. Jon Husted, R-Ohio, former lieutenant governor under DeWine, also is on the list.

One prospective juror said she developed "an attitude" about FirstEnergy after experiencing frequent and prolonged power outages that caused her to lose hundreds of dollars' worth of food. She was excused after discussing it and sharing that she has a medical issue that would complicate her ability to serve as a juror.

FirstEnergy spokeswoman Jennifer Young declined to comment on the customer's concern about the utility, citing the company's inability to discuss any matters about the ongoing trial.

Another potential juror was excused Jan. 30 after he said he has been reading about the House Bill 6 scandal for years.

Rachael Israel, an attorney for Jones, asked the man about one of his answers on the questionnaire regarding the 2024 suicide of Randazzo. Israel said the man wrote that the suicide of Randazzo, a former defendant in the case, "explains his guilt."

When Israel asked the man about the statement, he said his belief is "pretty self-explanatory," and he was excused immediately afterward.

**What can't witnesses talk about in the case?**

One of the 14 topics that witnesses have been ordered not to talk about is the federal investigation, indictment and prosecution of Dowling, Jones and Randazzo.

Other topics that witnesses have been ordered not to discuss are the "existence or contents of any Deferred Prosecution Agreement or Non-Prosecution Agreement entered into by FirstEnergy," Public Utilities Commission of Ohio findings in its now-closed four investigations into H.B. 6-related FirstEnergy cases and "(a)ny events or conduct related to the ballot initiative seeking a referendum to repeal HB6, except for evidence relating to Sam Randazzo's efforts to prevent the repeal of HB6."

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This article originally appeared on Akron Beacon Journal: Juror pool shrinks in ex-FirstEnergy execs' trial as bias is discussed

**---- Index References ----**

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Word Count: 920

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**NewsRoom**

## Securities

### Manage Newsletters

## **Crypto Exchanges Buckle as Stock Losses Mount Amid Exodus (1)**

Feb. 2, 2026, 7:47 AM PST

### **Summary by Bloomberg AI**

AI Generated



- Crypto exchanges like Coinbase Global Inc., Gemini Space Station Inc. and Bullish are experiencing plunging trading volumes, dragging share prices down 40% to almost 60% over the past three months.
- The pressure point is that most crypto exchanges generate the biggest chunk of their revenue from transaction fees, and when trading activity dries up, earnings drop.
- For investors who use crypto stocks as proxies for digital-asset growth, the message is that even modest price declines can translate into outsized revenue pain when traders step away altogether.

Crypto's latest downturn looks different on the surface. There are no spectacular scandals, no bankrupt exchange, no regulatory crackdown. Yet for the industry's biggest trading platforms, the damage is starting to look uncomfortably familiar.

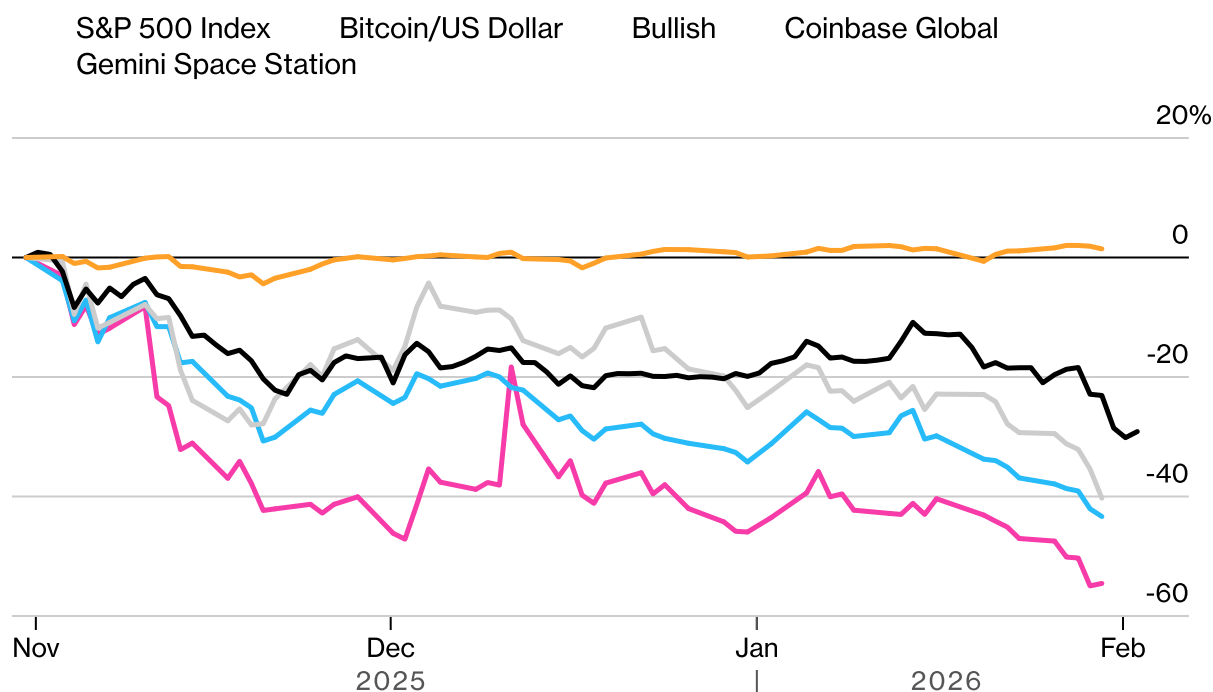
Bitcoin is down more than 35% since an October crash from record highs. But for exchanges like Coinbase Global Inc., Gemini Space Station Inc. and Bullish, the hit has been far steeper. Trading volumes – the core engine of their business – are plunging, dragging share prices down 40% to almost 60% over the past three months and forcing analysts to slash expectations. Coinbase, Gemini and Bullish didn't return requests for comment.

The pressure point is simple. Most crypto exchanges generate the biggest chunk of their revenue from transaction fees. When trading activity dries up, earnings drop. At Coinbase, fourth-quarter trading volume may have dropped 40% from a year earlier to \$264 billion, Clear Street analyst **Owen Lau** estimates. January activity trended even lower, putting the quarter's run rate so far on pace to come in at less than half of last year's level, he said.

For investors who use crypto stocks as proxies for digital-asset growth, the message is more than uncomfortable: Even modest price declines can translate into outsized revenue pain when traders step away altogether. This past weekend's collapse of Bitcoin to below \$80,000 appears to make the odds of broader investor exodus greater and even more agonizing.

## Token Prices, Volumes Have Been Weighing on Crypto Exchanges

### Stocks are underperforming broader markets and Bitcoin



Source: Bloomberg

Note: Data is normalized with percentage appreciation as of October 31, 2025.

**Bloomberg**

When prices are rising, more people trade because they're afraid of missing out, said **Peter Christiansen**, director of digital assets equity research at Citigroup. But "if you get headwinds to that, it is hard to build momentum," he said.

As of late, crypto stocks were also impacted by investors **shifting** away from risk assets in broader equities markets amid concerns about the impact of rising artificial intelligence costs, higher geopolitical uncertainty and a general rotation away from technology.

Bitcoin shed nearly 11% in January, marking its fourth straight monthly decline – the longest losing streak since 2018, during the crash that followed the 2017 boom in initial coin offerings. Its latest slump comes amid broad market unrest, with gold continuing to fall Monday after suffering its biggest plunge in more than a decade at the end of last week.

[Read more: Bitcoin Steadies After Flirting With Lowest of Second Trump Term](#)

Because of the crypto slump, Gemini's [profitability](#) is likely to be pushed out, analysts said. While it was supposed to get near break-even in 2027, that's likely to be delayed to 2028 or so, said **John Todaro**, an analyst at Needham & Co.

Bullish, which is focused on institutional clients, is likely to see January trading volumes down about 28% year-on-year, said Lau. Shares of Bullish fell around 2% on Monday, while Coinbase dropped 2.9% and Gemini slipped almost 6%.

"In terms of where I think we are in the current cycle, probably about 25% of the way through," said **Laurens Fraussen**, a research analyst at Kaiko. "We're currently about three months in since our peak, so I'd estimate another six to nine months to go before we see a notable recovery."

What makes this cycle unusual is not the severity of the volume slump – history shows crypto winters routinely gut activity – but the absence of a clear trigger beyond the abrupt end of exuberance. The 2018–2019 collapse followed the bursting of the initial coin offering boom amid a regulatory crackdown. The 2022–2023 downturn was defined by industry failures, from Terra-Luna to Three Arrows Capital to FTX. This time, there has been no equivalent shock, though many traders are still licking their wounds after the October crash, which triggered record mass liquidations.

Read more: [Trump Tariffs Upend Crypto Market, Trigger Record Liquidations](#)

Still, there's retail inertia. Progress on long-promised US crypto market-structure legislation has stalled, leaving exchanges and institutional investors stuck in regulatory limbo. Until that uncertainty clears, many traders appear content to wait on the sidelines – a dynamic that has prompted some analysts to describe the current phase as a bear market rather than a full-blown crypto winter.

The numbers, however, are beginning to blur that distinction. Despite the proliferation of spot Bitcoin exchange-traded funds and years of infrastructure buildout, trading activity is contracting in a way that's comparable to prior downturns, such as the late 2021–2022 cycle, according to data from Kaiko.

The difference this time is behavioral: rather than fleeing in panic, as they wonder when the next shoe is going to drop, traders are simply disengaging.

While some are migrating to decentralized crypto exchanges for leverage and speed, broader retail attention has drifted toward trendier frontiers – from AI tokens and prediction markets to gold, sports betting and small-cap tech.

For some major exchanges, the blow is cushioned because they have also diversified their businesses into areas such as digital-asset custody, prediction markets or trading stocks. But the cushion only goes so far.

Unlike past winters triggered by internal breakdowns, this slowdown may end not with a new shiny crypto trend, but with Washington legislation. The crypto and banking industries are scheduled to [meet](#) at the White House later Monday to hash out a compromise on a Senate market-structure bill.

Until then, crypto exchanges are learning that even without a crisis, a market can grind to a halt – and the trading fee model is among the first to feel the pain.

(Updates shares.)

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Matthew Brockett, Dave Liedtka

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## Securities

### Manage Newsletters

Opinion

## **Matt Levine's Money Stuff: Musk Mars Merger, Maybe**

Feb. 2, 2026, 10:29 AM PST

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### **SpaceXAI**

Why would you shoot rockets into space? There are some classic answers. "To slip the surly bonds of earth and touch the face of God." "To boldly go where no man has gone before." "Not because it is easy, but because it is hard." "To make humans a multiplanetary species." To extract resources from Mars or spice from Arrakis or unobtainium from Pandora. To become younger than your twin.

The 21st century answer, though, is mostly "to put satellites into orbit around the Earth to add functionality to our phones and televisions and computers and navigation systems." We have some screens, down here, and the screens work better if there are some electronics up there sending them signals. It's about improving technology down here, not exploration and adventure up there. Space flight is a complex and capital-intensive sort of consumer internet technology.

These days the hot capital-intensive technology is artificial intelligence, particularly large language models that require enormous amounts of computing and electrical power to train and use. And so the natural answer, in 2026, to the question "why would you shoot rockets into space" is: "AI data centers." You've got a screen, and you want to ask the screen "please write my essay for 10th-grade English" or "help me code up a consumer internet app," and a vast space program will make the screen's answers faster and better. The world is just interesting, you know? The great marvels of human civilization are weirdly prosaic up close.

Anyway one thing that Elon Musk is doing [is this](#) (emphasis added):

SpaceX is requesting permission to launch as many as 1 million satellites into the Earth's orbit in order to pull off Elon Musk's latest grand vision of putting data centers in space to do complex computing for artificial intelligence.

In a filing with the Federal Communications Commission made late Friday, SpaceX said it's creating the solar-powered network in order to "accommodate the explosive growth of data demands driven by AI."

"Launching a constellation of a million satellites that operate as orbital data centers is a first step towards becoming a Kardashev II-level civilization – one that can harness the Sun's full power – while **supporting AI-driven applications for billions of people today and ensuring humanity's multi-planetary future amongst the stars**," SpaceX wrote in the filing.

It's both, right? Chatbots today, intergalactic colonization tomorrow. In 3026 our nth-great-grandchildren will encounter a race of intelligent aliens in a distant galaxy, and the aliens will be like "how did you get here," and our descendants will say "well it started with some slop feeds" and the aliens will be like "what." Lots of very smart people have had high-minded ideas about intergalactic travel for centuries, but perhaps it will turn out that a critical step in getting there is building an app to generate short-form pornographic video on demand.

Another thing that Elon Musk is doing, or thinking about doing, [is this](#) :

Elon Musk is in advanced talks to combine SpaceX with xAI, according to people familiar with the matter, underscoring how the billionaire's vision for an artificial intelligence-powered world has grown too costly for any one of his entities to shoulder alone.

Musk's rocket and satellite group and his artificial intelligence firm have informed some of their investors about the plans, the people said, asking not to be identified because the information is private. They may announce an agreement as soon as this week, some of the people said. ...

A deal would combine two of some of the largest closely held companies in the world. xAI raised funds at a \$200 billion valuation in September, while SpaceX was set to go ahead with a share sale in December at about an \$800 billion valuation. The central catalyst for a merger is AI's insatiable need for capital. The rate at which xAI has been burning through cash – around \$1 billion a month – has compelled Musk to further blur corporate boundaries, pool capital and rethink whether his moonshots should stay separate.

SpaceX has also "discussed the feasibility of a tie-up between SpaceX and Tesla, an idea that some investors are pushing," Bloomberg [has reported](#) : "Tesla's ability to manufacture energy storage systems could help SpaceX use solar energy in space to run the data centers. Musk has also discussed using SpaceX's Starship rockets to carry Tesla's Optimus robots to the moon as well as to Mars." Combine 'em all! It would be satisfying if humanity's ambassadors to distant galaxies turn out to be humanoid robots made by a corporate successor to Twitter Inc. It just makes sense, not in an "actually Twitter is a distillation of human consciousness" way but in an "actually the greatest modern human achievements are funded and motivated by selling targeted internet advertisements" way.

[But also](#) :

The M&A rumination swirling around Musk's companies suggests there's more afoot than just clever financial engineering. It's a sign, if not an admission, that the billionaire's grandiose vision requires more capital than any one of his entities alone can provide in their current form. While executives at xAI have told investors that the company has the resources to continue spending aggressively, losses have swelled as the startup quickly consumes the funds it's raised in massive recent financing rounds. ...

Such outlays help explain why a historic initial public offering of SpaceX stock is now being framed not only as a bet on rockets, but as a way to fund space-based data centers that would serve as critical AI infrastructure. It also explains Musk's increasingly global hunt for capital, from Nvidia-backed GPU financing – where investors fund special vehicles that buy Nvidia chips and lease them to AI firms, using the hardware itself as collateral – to sovereign wealth funds in the Gulf.

If Elon Musk's goal is to raise as much capital as possible, what's the best way to do it? One extreme answer, the one that he has mostly chosen in the past, is: Every time he has a new idea, he should start a new company and raise money for it separately. This has several advantages:

Every new idea he has is *cool* and will attract a lot of interest. "Ooh, brain implants," "ooh, rockets," "ooh, artificial intelligence," etc., people think, and give him money. A mature electric car company is old hat, and "we're gonna do brain implants at a mature electric car company" is confusing. Launching a new company for each idea maximizes attention for the idea.

Conceivably there are different investor bases for different ideas. If you run an AI fund, you might not want to invest in Musk's AI-flavored car company, but you might invest in his pure-play AI company.

The *employees* of each pure-play company will be compensated in that company's stock, and will have good incentives to work hard on that company's single-minded project.

There is a strange but valuable [competing-for-Musk's-attention dynamic](#) among the companies and their investors, which might make it easier to raise money. If you are an investor who loves rockets and wants to invest in every SpaceX funding round, and Musk comes to you for money to buy a social media site, you might reasonably think "well, I don't like this social media site, but if I give Musk money for this he'll let me into the next SpaceX round."

"A [basket of options](#) is worth more than an option on a basket": If Musk starts 10 companies, and eight succeed fabulously and two fail, then he gets the fabulous success of the eight, while his downside on the other two is limited. Even a catastrophic failure at one company won't directly affect the fortunes of the others.

Contrary to that last point: If one company *does* run into trouble, and Musk *wants* to bail it out using another company's money, he *can*. He doesn't have to, but he has a free option. If he wants to move money from one [company](#) to [another](#), he can go to the donor company's board and say "hey gotta send out a few billion dollars" – or employees or [computer chips](#) or whatever – and the board will be like "whatever you say boss." Keeping the companies separate does not really hinder him from pooling their resources, because he's Elon Musk. As Byrne Hobart writes: "Part of Elon's model is to control a portfolio of companies, have each one take actions that expand the variance of outcomes, and then, whenever one of them faces downside from this, either use financial resources from borrowing against another one or the human resources within the companies to fix it."

The opposite extreme answer is of course “combine them all into one mega-company.” I [sometimes call](#) the hypothetical mega-company the [Musk Mars Conglomerate](#), because its notional purpose seems to be to colonize Mars.

The reason for taking *that* approach could be that there is some limit to how much money even Elon Musk can raise, and some limit to his ability to move it between his companies:

If he wants to raise a *lot* of money for SpaceX or xAI, it might help to cross-collateralize them with each other and/or Tesla. An option on a basket is cheaper than a basket of options.

If he wants to pivot all of, say, Tesla’s resources into building data centers for xAI, there will be some frictions; shareholders and directors might have complaints. Musk’s separate companies have unusual freedom to work together, but it is not infinite. Whereas if they were all merged, he could do whatever he wanted, and everyone would just think “ah yes the chief executive officer of this big company is allocating capital to its best uses.” If his skill is allocating capital, it is good to free him up to do more of that.

Similarly, if you are investing in any Elon Musk company, what you are buying is not so much “cars” or “rockets” or “robots” or “social media” or “brain implants,” but rather that ability to allocate capital to the next big thing. If you invest in any particular Musk company, there’s a risk that the next big thing will happen in a different one and you will be left behind. But if all of the Musk companies are combined, you can be confident you’ll get the best of him.

One way to think about what is going on here is that, for most of Elon Musk’s career, “tech” was an essentially equity-funded sort of business. Musk went around launching various cool projects using money from people who were excited about the upside of those projects. Compared to other technology entrepreneurs, Musk did much more capital-intensive projects – cars and rockets, not websites – but the investor psychology was similar. His investors were venture capitalists, or public shareholders who thought a bit like venture capitalists; they were willing to take big risks for big wins.

That model is naturally suited to launching a bunch of cool companies. Each new company is cool, so it attracts hype and investment. Each has one exciting idea, so if it works out you’ll get rich. Each is unencumbered by the other companies, a pure bet on an exciting long-shot proposition. If the brain implant company works, great; if it fails, your investment goes to zero; each investment is its own silo with its own exciting idea and its own all-or-nothing payoff.

But modern artificial intelligence turns out not to be that sort of business. I [wrote last year](#), about OpenAI, that “it turns out that the supply of science-fiction-suspension-of-disbelief capital is *really quite large* but not trillions of dollars”:

Trillions of dollars is going to tap out every source of venture capital, every investor who is willing to put in money now for an uncertain but potentially huge future return. To get trillions of dollars you will need boring debt investors, people who need their money back, people who are willing to put in money now for 9% a year and repayment in five years. Very different psychology.

And so the financing action in AI is, yes, some multibillion-dollar equity raises at enormous valuations, but also a lot of [debt securitizations for data centers](#). At Bloomberg Markets Magazine, [Paula Seligson reports](#) that “last year, AI-related companies and projects tapped debt markets for at least \$200 billion,” and “projections are in the hundreds of billions of dollars of issuance for 2026 alone.”

*That* model is arguably more suited to a giant diversified conglomerate. If you are going to lend Elon Musk hundreds of billions of dollars to build data centers, you will be less excited about pure all-or-nothing payoffs and more interested in things like steady cash flows (from selling cars?) and cross-collateralization. A bigger and more diversified Musk Mars Conglomerate might be less exciting for Musk’s traditional shareholder base, but more soothing for the more conservative lenders, lessors and other investors who will be needed to fund all those data centers in space. If the whole economy is becoming data center securitizations, then the Elon Musk complex might have to become a data center securitization too.

### Is building autonomous war robots securities fraud?

Two themes around here are:

1. “[Everything is securities fraud](#)”: When a public company does a bad thing, it will be sued for securities fraud, because every bad thing can be recast as a fraud on shareholders.
2. “What if the thing that stops artificial intelligence from enslaving humanity is [some weird wrinkle of the legal and financial system](#), like [insurance requirements](#) or [copyright law](#) or the ban on [onion futures](#)?”

The obvious synthesis is: What if the thing that stops artificial intelligence from enslaving humanity is that everything is securities fraud? That is, what if AI *would* develop autonomous warfare capabilities that could wipe out humanity, but that development will be thwarted because (1) that’s bad and (2) bad things are securities fraud? The Washington Post reports:

Google breached its own policies that barred use of artificial intelligence for weapons or surveillance in 2024 by helping an Israeli military contractor analyze drone video footage, a former Google employee alleged in a confidential federal whistleblower complaint reviewed by The Washington Post. ...

At the time, Google’s public “AI principles” stated that the company would not deploy AI technology in relation to weapons, or to surveillance “violating internationally accepted norms.” The whistleblower complaint alleges that the IDF contractor’s use contradicted both policies.

The complaint to the SEC alleges that Google broke securities laws because by contradicting its own publicly stated policies, which had also been included in federal filings, the company misled investors and regulators.

I suppose that, short of *Terminator*-style time travel, we’ll never be able to prove the counterfactual, but I tell you what: If “everything is securities fraud” really is what saves humanity from being wiped out by evil war robots, I will expect at least a share of that Nobel Peace Prize.

## CFTC

The [weird situation](#) in US sports gambling is:

1. Some US states prohibit sports gambling, while other states allow it in heavily regulated form.
2. Kalshi, a prediction market registered with the US Commodity Futures Trading Commission, offers sports gambling in all 50 states, without complying with any state's rules.
3. States complain, but Kalshi argues that it is regulated by the CFTC, and that CFTC regulation preempts state regulation: The states can't interfere with the CFTC's enforcement of CFTC sports-gambling rules with respect to CFTC-regulated sports gambling sites.
4. But the CFTC *doesn't* regulate sports gambling. It has never explicitly said that sports contracts are legal on CFTC-regulated trading platforms, and in fact it has occasionally suggested the opposite. It does not explicitly approve the sports contracts; Kalshi "self-certifies" them. It has no specific rules related to sports gambling; no specific guidance about market manipulation or insider trading or customer suitability in the sports space. It's just a gap.
5. Nonetheless, Kalshi's arguments mostly work in court, and it keeps listing sports contracts. There is federally regulated online sports gambling, but it is not actually federally regulated.

Just weird! This is one of those situations where it's tempting to be like "well that can't last," and then to think for a minute and conclude "actually sure it can." The CFTC, in the Trump administration, clearly *likes* Kalshi's sports contracts, and Donald Trump Jr. is an adviser to Kalshi. But it might be a little awkward for the CFTC to explicitly publish rules allowing sports gambling on Kalshi, since the legislative history around event contracts suggests that Congress never intended to allow sports gambling on commodity exchanges. Just ignoring it while Kalshi goes about its business, and seeing what happens in court, might be the simplest approach for the CFTC.

But, [nope](#) :

Wall Street's main derivatives regulator will write new rules for the multi-billion dollar prediction markets industry, the head of the Commodity Futures Trading Commission said Thursday.

"It is time for clear rules and a clear understanding that the CFTC supports lawful innovation in these markets," Chairman Michael Selig said in prepared remarks. "Consistent with my commitment to fostering responsible innovation in crypto asset markets, I will continue to support the responsible development of event contract markets."

It's not clear exactly what that means, but if you read Selig's speech it seems pretty bullish for Kalshi, Polymarket and other commodity/event/sports-gambling platforms:

First, I have directed CFTC staff to withdraw the 2024 event contracts rule proposal that would prohibit political and sports-related event contracts and the 2025 staff advisory, which cautioned registrants about offering access to sports-related event contracts due to ongoing litigation. ...

Second, looking ahead, and in the spirit of markets that trade on expectations, I have directed CFTC staff to move forward with drafting an event contracts rulemaking. ...

Third, I have directed CFTC staff to reassess the Commission's participation in matters currently pending before the federal district and circuit courts. Where jurisdictional questions are at issue, the Commission has the expertise and responsibility to defend its exclusive jurisdiction over commodity derivatives.

That is: First, the CFTC *has* tried to prohibit sports gambling in the past, and will now explicitly reverse that position. Second, the CFTC will make new rules about, one assumes, sports gambling. Third, it will get involved in those state court cases "to defend its exclusive jurisdiction over commodity derivatives," that is, to tell the states that they're not allowed to interfere with online sports gambling when it's *federal* online sports gambling.

This remains a weird situation just because it does not seem to me that Congress intended, or that anyone really wants, the US federal commodity derivatives regulator to get into the sports gambling business. But it's *less* weird than the status quo. If we're going to have federally regulated sports gambling, at least it will actually be federally regulated.

### Art history

Just to close a loop: I [wrote on Thursday](#) that "I once heard that the Harvard major whose students were most likely to be rich 20 years after graduation was art history. I have no idea if this is true and can find no evidence for it, but doesn't it sound like it should be true?" Felix Salmon points out that it probably came, in some indirect way, from this 2012 report about "What the Top 1% of Earners Majored In." As Virginia Postrel [wrote here at Bloomberg Opinion in 2014](#) :

[Art history is] stereotypically a field for prep school graduates, especially women, with plenty of family wealth to fall back on. In fact, a New York Times analysis of Census data shows that art history majors are wildly overrepresented among those in the top 1 percent of incomes. Perhaps the causality runs from art history to high incomes, but I doubt it.

Right. What I wrote on Thursday was that "people who treated college as a luxury consumption good were in certain ways more appealing to investment banks"; being a prep school graduate with lots of family wealth to fall back on makes you [in some ways](#) an appealing investment banking candidate. (In other ways, not, and a lot of banks like to hire "P.S.D.'s, as in Poor, Smart, with a deep Desire to become rich.") Investment banks might want the art historians, but the art historians don't really need the job.

## Astrology-based investing

To close another loop, we have [talked recently about astrological investing](#) , and here's the CLSA Feng Shui Index for last year, the Year of the Wood Snake. "Secret hissings point towards good rises in the market through the spring and winter, a long period of summerish lassitude, and small falls throughout the year," etc.

## Penny treasury strategy

One more loop. We [talked last month](#) about a guy who launched a crypto token backed by US pennies in "a vault you can visit," possibly his closet? The token was trading at about 19 cents as of noon today. That is a much better mNAV than Strategy Inc. has managed, though obviously in smaller size. The lesson is perhaps "the premium to net asset value of a digital asset treasury company is partly driven by a flywheel of [accrutive dilution](#) but is mostly driven by comedy," which we kind of already knew.

## Things happen

How Chinese Speculators Set the Stage for [Gold and Silver Crash](#) . China's 'gold fever' sparks US\$1 billion scandal as trading platform collapses. Metals Traders Lose at Least \$144 Million as '[Hat](#)' [Flees China](#) . [Carvana's](#) Red-Hot Growth Runs on a Cycle of Borrowed Money. The \$100 Billion Megadeal Between OpenAI and Nvidia Is on Ice. 'Spy Sheikh' Bought Secret Stake in Trump Company. Rare [SpaceX Bet](#) Turns \$1.1 Billion Fund Into a Retail Magnet. [Oracle](#) to Raise Up to \$50 Billion in 2026 for Cloud Buildup. AI Boom Is Triggering a [Loan Meltdown](#) for Software Companies. How HSBC fashioned a \$600bn debt machine. The Wild Markets Behind Polymarket's 'Truth Machine.' How a Silicon Valley Startup Became a Crypto Lifeline for Venezuela. When the Last Local Bank in Town Turns to a Global Salad Company for Help. [Disney](#) Is Close to Picking Parks Chief D'Amaro as Next CEO. Wealthy and Powerful in Spotlight After [Latest Epstein Release](#) . Trump Lawsuit Against IRS Puts Him on Both Sides of the Same Case. Minnesota Businesses [Resisted ICE](#) , and Now Face DHS Audits. "A corporate officer's sexual harassment of employees will not constitute a breach of fiduciary duties except under limited circumstances." Young girl topples tower made from 63,000 beer coasters created by artist in a bid to break Guinness World Record. Between the sheets at the college Excel championships.

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1. Not the Boring Co., obviously, which is boring. "Ooh, traffic."

2. Which is good for shareholders of the companies he helps. Katie Roof notes that "Musk likes to reward people who are loyal to him, and he doesn't want them to lose money. Investors including Sequoia Capital,

Andreessen Horowitz and Valor Equity Partners collectively poured billions into Musk's leveraged buyout of Twitter at a \$44 billion valuation. For a while, as Twitter's ad revenue tanked, some large investors (and Musk himself) slashed the paper valuation of the company. But investors were made whole, at least on paper, when they received xAI shares at a valuation on par with X's take-private price of \$44 billion."

3. I realize that this is sort of the opposite of a digital asset treasury company: It's not a stock representing a stash of crypto, but rather a crypto token representing a stash of physical pennies. But who cares.

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## Securities

### Manage Newsletters

## **Elon Musk Is Said to Be in Advanced Talks to Combine SpaceX, xAI**

Feb. 2, 2026, 9:04 AM PST

### **Summary by Bloomberg AI**

AI Generated



- Elon Musk is in advanced talks to combine Space Exploration Technologies Corp. with xAI, according to people familiar with the matter, due to the high cost of his artificial intelligence ambitions.
- A deal would combine two of the largest closely held companies in the world, with xAI having raised funds at a \$200 billion valuation and SpaceX at about an \$800 billion valuation.
- The central catalyst for a merger is AI's need for capital, with xAI burning through cash at a rate of around \$1 billion a month, prompting Musk to consider pooling capital and resources.

Elon Musk is in advanced talks to combine Space Exploration Technologies Corp. with xAI, according to people familiar with the matter, underscoring how the billionaire's artificial intelligence ambitions have grown too costly for any one of his entities to shoulder alone.

Musk's rocket and satellite group, better known as SpaceX, and his artificial intelligence firm have informed some of their investors about the plans, the people said, asking not to be identified because the information is private. They may announce an agreement as soon as this week, some of the people said. Talks are ongoing and may drag on longer or fall apart, the people said.

Representatives for SpaceX and xAI didn't respond to requests for comment. But on his social media platform X, Musk responded to a post highlighting Bloomberg's reporting on the advanced talks with: "Yes."

Read more: [Musk's AI Funding Hunt Reshapes His Empire, From Tesla to SpaceX](#)

A deal would combine two of some of the largest closely held companies in the world. xAI **raised** funds at a \$200 billion valuation in September, while SpaceX was **set** to go ahead with a share sale in December at about an \$800 billion valuation. The central catalyst for a merger is AI's insatiable need for capital. The rate at which xAI has been burning through cash – around **\$1 billion a month** – has compelled Musk to further blur corporate boundaries, pool capital and rethink whether his moonshots should stay separate.

Among those who may help Musk run a merged empire is **Gwynne Shotwell**, the longtime president and chief operating officer of SpaceX.

In October, Musk **named** Anthony Armstrong, a former Morgan Stanley executive, as chief financial officer of xAI. Armstrong holds the same role for X, and helped Musk complete his \$44 billion acquisition of the social media platform, formerly known as Twitter.

Musk is no stranger to moving assets around, or making hard cuts and sharing resources across his business empire when his companies have been in a bind. He **merged** xAI and X less than a year ago. The latter **borrowed** engineers from Tesla and SpaceX almost immediately after the billionaire took over the service formally known as Twitter in late 2022.

In combining his cash-burning AI startup and the more mature SpaceX, Musk may also be crystallizing his vision for launching data centers into space. SpaceX is requesting permission to put as many as one million satellites into the Earth's orbit for the plan, according to a **filing** Friday. Analysts have said that a merger of the two would also help Musk complete development of his heavy lift rocket, Starship, to compete for a variety of upcoming launches, including for the US Space Force, Golden Dome missile shield and Artemis moon missions.

Reuters reported last week that SpaceX and xAI were in discussions to merge, citing a person briefed on the matter and company filings.

SpaceX, which is looking toward a potential initial public offering that could value it at about \$1.5 trillion, has also discussed the feasibility of a tie-up with Musk's Tesla Inc., Bloomberg News has **reported**.

(Adds Musk's post on X in third paragraph and context throughout)

--With assistance from Mark Bergen, **Loren Grush** and **Kurt Wagner**.

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## FT PROFESSIONAL

**Accountancy****EY settles £2bn negligence claim over NMC Health audit**

FTSE 100 hospital operator imploded in 2020 following disclosure of billions of dollars in hidden debts



EY has denied any negligence in its work signing off NMC's accounts and argued that it was a 'principal target' of the fraud carried out at NMC © Michael Nguyen/NurPhoto via Getty Images

**Ellesheva Kissin** in London

Published 6 HOURS AGO



Big Four accounting firm EY has settled a £2bn High Court claim brought by the administrators for NMC Health for missing a series of “red flags” in its audit of the collapsed hospital operator.

Administrators for NMC had claimed EY was negligent in its audit work, giving unqualified audit opinions over the FTSE 100 group's accounts from its listing until its final set of figures in 2019, before NMC imploded in 2020 following the disclosure of billions of dollars of hidden debts.

NMC's administrators from Alvarez & Marsal accused EY of alleged negligence, claiming its auditors missed a series of "red flags", and sought damages of about £2bn on behalf of NMC creditors who lost money.

The court had heard closing arguments from both sides last autumn, with the judgment expected in the first quarter of this year. However, the claim has now been dropped, with no disclosed settlement amount, according to filings at London's High Court made on January 29.

The UK accounting regulator is still conducting its own investigation into some of EY's NMC audits, but part of the regulator's findings were [disclosed](#) during the trial, revealing that it had identified "extremely serious" failings in EY's audit work.

[EY](#) has denied any negligence in its work signing off NMC's accounts and argued that it was a "principal target" of the fraud carried out at NMC.

One of the key allegations the case had rested on was EY's failure to gain access to key documents — most crucially the general ledger, a complete list of the risky transactions on NMC's accounting system. The administrators claimed EY partners could only view the complete list of financial transactions on a device controlled by NMC staff, but that they had led the regulator to believe otherwise.

A partner who led EY's audit work on NMC for three years acknowledged during the trial that what EY told the Financial Reporting Council had been "[incorrect and misleading](#)". The administrators accepted that those actions could have been inadvertent.

EY said that it was “no longer in dispute” with the administrators of NMC, while the joint administrators said they had “resolved the claim . . . without admission of liability. The settlement agreement and its terms otherwise remain confidential.”

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## Securities

# KPMG Probe Into Intellego Finds Incorrect, Misleading Reporting

Jan. 30, 2026, 4:48 AM PST

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An independent investigation by KPMG into the financial information and corporate communication of Intellego found “materially incorrect and misleading” reporting regarding orders and revenue.

Report found that reported revenues and the stated value of the orders under review don’t reflect the actual underlying business, Intellego says

“It also states that SEK640m of the cumulated net sales of approximately SEK644m reported in the first three quarters of 2025 should not have been recognized as revenue”

Investigation by KPMG covered period from the start of January 2025 to Oct. 31 that year

NOTE: Intellego Dismisses CEO, Engages KPMG for Investigation

NOTE: Intellego Files Police Report on Former CEO

To view the source of this information click [here](#)

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## Securities

# Trump Administration Officials Tapped to Join US Audit Board (2)

Jan. 30, 2026, 1:00 PM PST; Updated: Jan. 30, 2026, 2:57 PM PST

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The chair of a federal financial regulator and a White House official are among the new members joining the board that oversees the US audit industry.

Kyle Hauptman, who is the chair of the National Credit Union Administration, and Mark Calabria, an economist who serves in the White House budget office, are among the slate of four new members charged with stewarding the Public Company Accounting Oversight Board. The Securities and Exchange Commission, which oversees the audit board, announced the new leaders in a statement on Friday.

Demetrios Logothetis, a retired Ernst & Young audit partner, will serve as chair. Steven Laughton, who has served as counsel to outgoing board member Christina Ho, will also join the board.

George Botic, who was appointed to the board under the Biden administration and has been its acting chair since last July, will continue to serve on the PCAOB. Botic is a former auditor and previously led the board's inspections division, its largest unit that reviews the work of auditors across the globe.

The new members bring a wide range of experience to the board and "demonstrated a profound commitment to protecting investors and responsible use of" the board's funding by accepting compensation that aligns with the "ethos of public service," SEC Chair Paul Atkins said in a statement.

The appointments tether the little-known financial regulator to the White House, which has rarely intervened in appointments to the non-profit PCAOB. It was not immediately clear if Hauptman and Calabria would step down from their current roles in the Trump administration.

Past board members served on the Federal Reserve board of governors, the SEC, and in Congress. One board member did have White House experience during the prior Trump administration: Rebekah Goshorn Jurata left her role as special assistant to Trump for financial policy to join the board from 2019 to 2021.

## Pendulum Swing

The leadership shakeup is the third remake of the board in less than a decade. Each overhaul has led to strategy swings that have frustrated investors and auditors alike while stalling efforts to update US audit standards.

Congress created the PCAOB in 2002 to restore investor trust in corporate reporting after a series of accounting scandals toppled Enron Corp. and WorldCom Inc.—two of the largest bankruptcies in US history. As the auditor watchdog, the board has the power to investigate failures, set audit standards, and conduct routine reviews of firms' work.

Republicans attempted to dismantle the audit board last year as part of a broader effort to downsize the federal bureaucracy but were stymied by Senate rules.

The SEC in July sought candidates to fill all five board seats after former Chair Erica Williams was forced out. Atkins warned applicants that the commission would scrutinize board members' pay as part of the PCAOB's annual budget approval.

That budget, approved earlier this month, slashed board compensation by roughly half to nearly \$350,000 for the chair and \$230,000 for the other members. The cuts exacerbate a wage gap with the Financial Standards Accounting Board, a separate body whose members earn more than \$1 million each.

## Fresh Priorities

The SEC has already begun to set out a new agenda for the board, calling on it to revamp its inspections process and reduce the focus on the work of front-line auditors while also relying more heavily on international audit standards.

Atkins said he hoped the fresh leadership would represent a "new day at the PCAOB—one of sensible, efficient oversight."

Logothetis, who retired from EY in 2019 and currently serves on the board of The Republic Bank of Chicago, becomes the first Big Four auditor to helm the watchdog created to be independent of the profession it regulates. He led the audits for Coca-Cola from 2016 to 2018, according to PCAOB records, and during his 40 years with the firm held various roles including vice-chair of global accounts.

He will work closely with the SEC's chief accountant, Kurt Hohl, whose office manages the commission's oversight of both the PCAOB and FASB. Hohl and FASB Chair Rich Jones are also both former EY partners.

A Trump appointee, Hauptman has served on the NCUA since 2020 and was named its chair last year. He previously served on Trump's 2016 presidential transition team and was a senior vice president at Jefferies & Co.

Prior to joining the PCAOB, Laughton spent three decades at Treasury including roles in the general counsel's office where he helped to launch the pandemic-era Paycheck Protection Program.

Calabria joined the Trump White House a year ago as the associate director for treasury, housing and commerce within the Office of Management and Budget. He was later detailed to the Consumer Financial Protection Bureau, which the administration is attempting to dismantle.

In July, Calabria was named the budget office's top statistician but recently left that post. He ran the Federal Housing Finance Agency under the first Trump administration and previously was a senior adviser at the libertarian Cato Institute.

The new appointees replace the most diverse board in PCAOB history, which featured three women, including Ho and former SEC Commissioner Kara Stein, and its first two Black members: former Chair Erica Williams and member Anthony Thompson. Williams prioritized meeting longstanding investor demands but sparked auditors' ire with an aggressive enforcement approach and a fast-paced effort to rewrite an aging rulebook.

The Center for Audit Quality, which represents US auditors, said in a statement that it looked forward to working with the board to "support a robust audit environment that serves investors, public companies, and the capital markets."

(Updates with additional reporting beginning in eighth paragraph. A previous update added a statement from SEC Chair Paul Atkins and other details.)

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Securities

# Brad Karp Asked Epstein for Job for Son, Latest File Dump Shows (1)

Feb. 1, 2026, 12:31 PM PST; Updated: Feb. 1, 2026, 4:49 PM PST

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Paul Weiss leader Brad Karp asked disgraced financier Jeffrey Epstein for a personal favor and complimented him on his home and hospitality in a batch of emails recently made public by the Justice Department.

"I can't thank you enough for including me in an evening I'll never forget," Karp said to Epstein in a July 2015 email, referring to what appears to be a social visit to Epstein's home. "It was truly 'once in a lifetime' in every way, though I hope to be invited again."

Karp has appeared in previous batches of what is colloquially known as the Epstein files because he represented Leon Black, co-founder of Apollo Global Management Inc. Karp and the Wall Street firm that he leads have tamped down the relationship with Epstein, who also refers to Karp client Robert Kraft in the emails.

"Paul Weiss was retained by Leon Black, then the CEO of the firm's longtime client Apollo, to negotiate a series of fee disputes with Jeffrey Epstein that spanned several years," Paul Weiss said Sunday in a statement. "The firm was adverse to Epstein, and at no point did Paul Weiss or Brad Karp ever represent him."

The latest dump, released Friday, features a July 2016 email in which Karp asks Epstein for help getting his son a job working on a Woody Allen film production.

Karp attended a few dinner gatherings at Epstein's Upper East Side residence, according to a person familiar with the matter.

"You are always welcome," Epstein responded to Karp's July 2015 email complimenting his hospitality. "There are many many nights of unique talents. You will be invited often."

Another July 2015 interaction shows Epstein asking Karp about revoking a woman's visa. "Is it possible for your contacts to 1 get her current visa status ? 2. Is there a way, for us to file something that would revoke a tourist visa."

Karp responded, "Both good ideas; will work on this." The identity of the woman in question is unclear.

Karp is a prominent litigator who for decades has served as a key adviser to Black and private equity powerhouse Apollo. The relationship helped Karp climb the ranks as a rainmaker at Paul Weiss, the 150-year-old Manhattan law firm that he has turned into a major player in corporate deals work in nearly two decades at the helm.

Black, Karp's client, paid Epstein \$158 million between 2012 and 2017, according to an investigation commissioned by Apollo.

The email correspondence between Karp and Epstein occurred after the sex offender pleaded guilty to state charges of solicitation of prostitution with a minor in 2008 and served a year in prison.

The Justice Department's release Friday of the largest batch of Epstein files yet is a result of intense public pressure and reveals Epstein's connections to some of the country's most prominent lawyers, investors, executives, political figures, academics, and media advisers following his prison stint.

### **Deal Backlash**

The email release comes on the heels of a challenging year for Karp and his law firm.

Paul Weiss was the first of nine Big Law firms to reach a deal with President Donald Trump to thwart punitive executive orders that sought to strip the firms' lawyers of their government security clearances and accused them of "illegal DEI" practices. The firm promised to provide \$40 million in free legal services to Trump. In total, the nine firms agreed to provide about \$1 billion in legal services, among other concessions.

Paul Weiss faced much backlash over the deal. Karp was heckled and protested at a New York bar association event last year as he defended the firm's pro bono work. During the November 2025 remarks, Karp said he had a heart attack three months before Trump slapped the firm with a punitive executive order.

The firm lost more than a dozen litigators to a boutique launched by a handful of ex-Paul Weiss partners. But it has continued to rake in lucrative work for leading corporate clients.

Karp isn't the only attorney found to be communicating with Epstein. Kathy Ruemmler, a legal star on her way to becoming Goldman Sachs Group Inc.'s top lawyer, exchanged messages with Epstein starting in 2016, referring to him as "Uncle Jeffrey" and raving about gifts of boots and a handbag. Ruemmler is currently the company's chief legal officer and general counsel.

(Adds more information in paragraphs 8 and 9.)

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## Securities

# 'Uncle Jeffrey': Top Goldman Lawyer Features in Epstein Docs (1)

Jan. 30, 2026, 6:49 PM PST

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Kathy Ruemmler, a legal star on her way to becoming Goldman Sachs Group Inc.'s top lawyer, had a nickname for Jeffrey Epstein: "Uncle Jeffrey."

That's what she called the convicted sex offender in a 2016 email about a meeting, in an October 2018 note about a "lovely and thoughtful" gift and in another message in 2019: "Am totally tricked out by Uncle Jeffrey today! Jeffrey boots, handbag, and w=tch!"

On Halloween in 2018, after she told him that she'd contacted the chair of her law firm about a financial matter, Epstein wrote back: "good girl." The next year, he was charged with sex trafficking minors, and he died in prison soon after.



Kathy Ruemmler

Photographer: William B. Plowman/NBCUniversal/Getty Images

The Justice Department's largest batch of Epstein files yet, released Friday, includes reams of fresh documents mentioning Ruemmler, now the investment bank's general counsel. Together, they shine more light on years of interactions that she has said she regrets. The trove of emails, featuring nicknames, gifts, advice and a reminder of a spa day, add to messages that have already been disclosed. Goldman Chief Executive Officer **David Solomon** has stood by her throughout.

For years, Epstein relied on connections to some of the country's most prominent lawyers, investors, executives, political figures, academics and media advisers, who helped him thrive even after he pleaded guilty to two Florida state charges in 2008 and served a year in prison.

Though his correspondence with members of that network was often casual and involved thousands of gifts, the warm tone of his emails with Ruemmler stands out. She and the bank have said she used his network while seeking clients in private practice.

"Obviously, it's normal and common for people engaged in a professional capacity to have inconsequential friendly exchanges," said Tony Fratto, a spokesperson for Goldman Sachs. The emails don't change Ruemmler's role at Goldman, he added. "Of course not. As David has said, Kathy is an excellent general counsel and we benefit from her advice every day. Kathy has always had the support of the entire leadership team and the board and is widely respected and admired at the firm."

The emails indicate that Epstein's house manager was dispatched in 2014 to return a ring that she had left at his home. They include invitations to meetings with guests including Steve Bannon, not long after he left the White House, where he had been Donald Trump's senior counselor.

On one January day in 2016, Epstein's schedule included breakfast with Apollo Global Management Inc. co-founder **Marc Rowan**, lunch with Ruemmler and dinner with Woody Allen and his wife.

Epstein's office apparently sent Ruemmler a handbag in 2015, flowers in 2018 and, later that year, offered to buy a new band for her Apple Watch. Ruemmler wrote back: "I love the Hermes one! If truly okay with him to do the Hermes, I would love the 40 mm, stainless Hermes with bleu indigo and swift leather double tour."

He bought her a bottle of wine early the next year. And weeks later, they made an appointment, months before his death.

Read More: Jeffrey Epstein Weighed Buying Jet From Apollo's Marc Rowan

At times, the two also discussed weightier issues. During the US presidential campaign in early 2016, Epstein told Ruemmler he expected Trump would be asked soon about him. Epstein wrote to the lawyer: "in an ideal world what would you think he should/could say"?

Ruemmler suggested this response: "I knew Epstein professionally and always had positive dealings with him. I don't know anything about his personal legal issues other than what I have read in public reports, and therefore don't have any comment."

A White House counsel in Barack Obama's administration, Ruemmler returned to the firm Latham & Watkins in 2014, was hired by Goldman in 2020 and then became its general counsel with a remit that includes managing reputational risks. After disclosures in 2023 of her meetings with Epstein, she said she'd regretted ever knowing him. At the time, the company said she had already told its leadership about their association.

Some of her emails with him became public in November as part of Epstein documents released by the House Oversight Committee. Solomon lent his support, calling her an "excellent lawyer."

(Updates with messages about ring and watchband from eighth paragraph.)

--With assistance from **Todd Gillespie**.

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## FT PROFESSIONAL

**Jes Staley**

## Jeffrey Epstein asked for Snow White costume weeks before Jes Staley email

Former Barclays chief has insisted he had no recollection of what Disney character reference was about



Three weeks after Jeffrey Epstein asked a woman to buy a Snow White costume, Jes Staley, pictured, emailed 'That was fun. Say hi to Snow White' © Carl Court/Getty Images

**Kadhim Shubber, Ortenca Aliaj and Suzi Ring** in London

Published 6 HOURS AGO



Jeffrey Epstein asked an unidentified woman to buy a Snow White costume just weeks before he and former Barclays chief executive Jes Staley had an infamous exchange in which they discussed the Disney character.

“I would love to take photos of you in a Snow White costume. You can get it from the costume store,” [Epstein](#) wrote to the woman on June 20 2010, according to newly released documents from the US Department of Justice, to which she replied: “Will get it!”

The exchange happened three weeks before Staley [sent Epstein an email](#) on July 10 saying, “that was fun. Say hi to Snow White”, in what has become one of the most controversial communications between the two men over a years-long relationship that the banker has insisted was professional.

Epstein also received a message from what appears to be a second woman, whom the Financial Times has chosen not to name, dated on the same day, saying: “The snow white was f..ed twice as soon as she put her costume.”

There is no information in the emails about the ages of the women.

[Staley](#) said in 2025 that he had not been aware of Epstein’s “monstrous activities” during the period he maintained a relationship with him. The new emails make no mention of Staley, nor is he listed as a recipient.

The correspondence also does not explicitly state that the mentions of “Snow White” are all referring to the same person.

Staley stepped down as chief executive of Barclays in 2021 after an investigation by the Financial Conduct Authority over his relationship with the disgraced financier. Barclays had sought to reassure the regulator that Staley did not have a close relationship with Epstein in a letter that was found to be misleading.

The American investment banker last year sought to overturn in court a lifetime ban imposed by the Financial Conduct Authority, which barred him from holding any senior management roles in the financial services industry over his ties to Epstein.

During the court proceedings, Staley was asked whether he remembered referring to any of the women that were accompanying Epstein as Disney characters or princesses or specific individuals as “Snow White”. The former Barclays chief said: “No.”

“I honest to God, when I went through the emails I have no idea what this refers to. I have no idea who Snow White is,” he said during testimony in court.

Staley failed to overturn the FCA ban, with the presiding judge holding that he had acted “without integrity” by approving a letter from the bank to the regulator that said Staley did not have a close relationship with Epstein.

The new trove of emails shows a number of exchanges between Epstein and the woman the FT has chosen not to name, some of which contain descriptions of girls and young women.

“Milan could be interesting as well. Girls are hungry there,” the woman wrote to Epstein in April 2010. “May be we pick one girl from all the girls i ve seen to start with? I will make snaps and videos tmw. . .”

In another email from September of that year, she describes a woman she refers to as “the second — 21”, saying: “Discrete, not stupid but not too smart . . . stubborn, wants to study acting, looked a bit lost, no goals in life, was late for one hour, rents a room in east village, doesn’t like to go to places where all models go.”

A lawyer for Staley did not immediately provide a comment.

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## FT PROFESSIONAL

Food Safety

## Nestlé and Danone hit by backlash over contaminated baby formula

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Toxin traced to Wuhan laboratory has led to product recall and growing crisis for consumer groups

**Madeleine Speed** and **Susannah Savage** in London

Published JAN 30 2026



Infant formula makers Nestlé, Danone and Lactalis are facing a growing backlash after an ingredient they sourced from a single supplier in China was contaminated with a dangerous toxin, risking the health of babies around the world.

The ingredient, arachidonic acid-rich (ARA) oil — which was exposed to a toxin called cereulide — was sourced from a Wuhan laboratory. It was added to hundreds of baby formula product lines before they were shipped out to more than 65 countries across five continents.

The crisis has prompted an outcry from consumer rights groups and public health charities, which are calling for tighter controls of the sector, arguing that manufacturers have compromised the [safety](#) of infants in pursuit of profits.

“Commercial infant formula is produced through a profit-driven supply chain, and companies are under pressure to source low-cost ingredients,” said Rachel Childs, senior nutritionist at charity the First Steps Nutrition Trust. “It means that microbial contamination of a single-source ingredient can cause contamination at a global scale.”

The formula industry is dominated by a handful of companies, including Nestlé and Danone, as well as US groups Abbott Laboratories and Reckitt-owned Mead Johnson. It has attracted intense regulatory scrutiny over the past five years following shortages, price rises and other [widespread recalls](#).



The three formula makers were forced in January to recall products that could be contaminated with cereulide, which causes vomiting and diarrhoea © Qilai Shen/Bloomberg

The ingredient at the root of the latest crisis has reignited debate over the increasingly complex composition of infant formulas and how they are marketed, as companies compete to win the loyalty of parents amid [dwindling birth rates](#).

This contamination originated at a facility owned by Shanghai-listed biotechnology company Cabio Biotech, according to people familiar with the matter. The company produces ARA oil, which is designed to mimic a fatty acid found in human milk, from fermented fungi.

It was formed as a joint venture with US commodities trading house Cargill until 2012 when the latter exited, the company said. A person familiar with the matter said that Cargill still distributed the product but no longer manufactured it.

Cabio Biotech's share price has fallen almost 19 per cent in the past month. The company did not respond to requests for comment.

Investors have been spooked at the prospect of the reputational damage the scandal could inflict on brands. The world's largest formula maker, [Nestlé](#), has seen its share price drop almost 4 per cent in the year to date, while Danone's has fallen more than 13 per cent in the same period.

Barclays analyst Warren Ackerman said the infant formula industry had been shaped by a string of contamination crises, from the 2008 melamine scandal in China to the 2022 Cronobacter outbreak in the US.

"Parents tend to switch brand first and ask questions later," he said. "The loss of trust can outlast the recall itself, leading to structural market-share erosion, brand impairment and strategic exits."

Throughout January, the three formula makers were forced to recall products that could be contaminated with cereulide, which causes vomiting and diarrhoea. France has opened an investigation into the death of two infants who consumed the contaminated milk, though no causal link has yet been established.

The European Food Safety Authority (EFSA) on Wednesday announced that it was updating its scientific advice on cereulide, which will set a threshold for a safe amount of the toxin before a recall must be triggered. There is at present no established safe level.

European consumer protection group Foodwatch on Thursday filed legal complaints in France against Nestlé and the other companies involved, as well as against European authorities for failing to inform consumers about the contamination in time.

“The infant formula manufacturers are legally obligated to guarantee the safety of the products they put on the market,” said Ingrid Kragl, director of public information at Foodwatch. “The companies we are targeting have demonstrated appalling negligence.”

Nestlé informed Dutch authorities on December 10 that it had discovered contamination during internal testing at one of its factories in the Netherlands. The company spent weeks testing ingredients before identifying ARA oil as the source of the contamination. On January 5, the company initiated its recalls.



To offer the most innovative, and expensive, formulas, companies are adding a growing list of ingredients to make them more closely resemble human milk © Giulia Marchi/Bloomberg

Companies primarily run their own in-house quality and microbiological testing regimes. But analysts, as well as NGOs, argue that the complexity of the ingredients and supply chains means their testing protocols can fall short.

“Given the risk profile and regulatory scrutiny, I firmly believe manufacturers should — and effectively must — further externalise a portion of their quality control and testing, particularly for highly sensitive ingredients and products,” said Vontobel analyst Jean-Philippe Bertschy.

A spokesperson said Nestlé was the first company to detect the issue and that it had “acted swiftly to notify authorities, proactively alert the industry, and to inform customers, partners — and importantly — consumers.”

A Lactalis spokesperson said: “Lactalis applies strict quality and food-safety protocols. The cereulide toxin is not included in the list of regulatory controls required for infant products, which explains why it was not identified during the analyses conducted.”

Danone declined to comment.

The ARA oil at the centre of the scandal has dredged up long-held concerns about how the infant formula industry is developing.

To offer the most innovative — and expensive — formulas, companies are adding a growing list of ingredients to make them more closely resemble human milk.

Innovations include adding supplements such as vitamins, prebiotics called human milk oligosaccharides (HMOs) to improve gut health, as well as ARA to improve infant brain function and immune development. But researchers debate the efficacy of these supplements.

“Companies make claims about boosting immunity, they infer enhanced brain development, all of these are appealing to a family’s desire to give their children the best . . . said Nigel Rollins, professor of maternal and child health at Queen’s University Belfast. However, “none of the comparative studies have demonstrated clinical differences in intellectual development, or in immunity . . . Human milk and breastfeeding interacts with the entire biological system. It’s not just added ingredients.”

According to the Codex Alimentarius food standards code established by UN bodies for infant formula, all companies have to meet the same nutritional content for all products. Anything added beyond that list, including ARA, is optional.

As formula supply chains become more complex, campaign groups, including the International Baby Food Action Network, are calling on the World Health Organization to update standards, including warning parents of the risk of contamination during the manufacturing process, not just in the at-home preparation of formula.

A [recent investigation](#) by the UK's competition watchdog concluded that manufacturers were charging "over the odds" for baby formula. Among its findings was that the raw ingredients in premium product lines did not cost more than those in standard products.

"Most responses to our interim report . . . said that the nutritional composition of these products does not currently vary in important ways. Submissions to the contrary were primarily from manufacturers," the Competition and Markets Authority found.

Queen's University's Rollins said every child in the world deserved the best standard of nutrition. "If there were an HMO or fatty acid that was proved to be beneficial, that should not be the privilege of people who can afford it."

*Additional reporting by Wang Xueqiao and Adrienne Klasa*

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## **Fifth Third Sees 'Big Focus' on Collateral After Tricolor Pain**

Feb. 2, 2026, 8:10 AM PST

### **Summary by Bloomberg AI**

AI Generated



- Fifth Third Bancorp Chief Executive Officer Tim Spence said the firm is closely monitoring collateral after lenders were burned by the collapse of Tricolor Holdings.
- Fifth Third said it closed its deal to buy Comerica Inc., which the companies said would create the ninth-largest US bank.
- The bank is still working to fully integrate the companies and will look to close about 70 branches in Michigan this year to avoid overlap.

Fifth Third Bancorp Chief Executive Officer **Tim Spence** said the firm is closely monitoring collateral after lenders were burned by the collapse of Tricolor Holdings .

"The big focus for us is just in making sure that we do the things we need to do to monitor collateral," Spence said Monday in a Bloomberg TV interview. "Because you can't have a secured loan deliver an unsecured loss without it being painful, which of course it was."

Subprime auto lender Tricolor filed for bankruptcy in September, with lenders including Fifth Third, JPMorgan Chase & Co. and Barclays Plc bracing for potential losses. In December, US prosecutors [charged](#) Tricolor's founder, alleging that he and other executives operated the company through "systemic fraud."

Fifth Third [said](#) in October that it conducted an "end-to-end" review of the bank's entire asset-backed finance portfolio. At the time, **Greg Schroeck**, who was the bank's chief credit officer, called Tricolor a fraud while reiterating that the bank felt good about their broader asset-backed portfolio.

On Monday, Fifth Third said it closed its deal to buy Comerica Inc., which the companies said would create the ninth-largest US bank. Comerica locations will continue to operate under their current brand, the company said. A full system and brand conversion is expected in the third quarter.

The bank is still working to fully integrate the companies. For its footprint, Fifth Third said it will look to close about 70 branches in Michigan this year as it seeks to avoid overlap, but is targeting locations that are within sight of another branch, with some offices sharing parking lots. For Comerica customers, they'll see 60% more branches in Michigan, Spence said.

"Next big milestone for us is getting the groups from both companies together to operate as one team, and then out into the market on offense," Spence said.

--With assistance from **Matthew Miller** and **Dani Burger**.

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Steve Dickson

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# Robbins Geller To Lead Dow Investors' Tariff-Impact Suit

By **Sydney Price**

Law360 (January 30, 2026, 5:49 PM EST) -- Robbins Geller Rudman & Dowd LLP will lead a proposed class of investors accusing raw materials supplier Dow Chemical Co. of overstating its ability to withstand economic uncertainty related to tariffs, according to an order signed Friday by a Michigan federal judge.

Curtis Lin, a Robbins Geller client, alleged \$173,000 of losses during the class period and is considered the most adequate plaintiff to lead the suit, according to the order signed by U.S. District Judge Thomas L. Ludington.

Four other investors filed motions to lead the suit, but all withdrew their bids or filed motions of nonopposition. All the formerly competing investors alleged losses of approximately \$94,000 or less, according to Friday's order.

"Plaintiff Lin has demonstrated the sophistication, resources and experience necessary to pursue the case to a successful conclusion through the effective oversight of counsel," the order states.

The suit was **initially launched** in September by Pomerantz LLP client Todd A. Sarti.

According to the suit, Dow reported for several months that its "differentiated portfolio" across its three segments positioned it to endure tariff-related headwinds. However, the suit alleged, Dow "shocked" shareholders with its July announcement it would cut its dividend in half to give itself "financial flexibility" in a "persistently challenging macroeconomic environment."

Dow and its executives had assured investors that its business model safeguarded it against a potential economic downturn and uncertainties regarding tariffs, the suit says.

However, Dow was downgraded by analysts at BMO Capital Markets last June from "market perform" to "underperform" due to Dow's "significant weaknesses" across its end markets and "mounting pressure on the company's dividend," the investor noted in the complaint.

Following the analyst report, shares of Dow declined 89 cents each, or about 3%, to close at \$26.87 on June 23, according to the complaint.

In July, Dow reported a 42 cent loss-per-share in the previous quarter, which the suit says is "significantly larger" than the approximately 17-cent loss expected by analysts. Dow also announced that its net sales of \$10.1 billion represented a 7.3% decline year-over-year, the suit states. The same day, Dow also revealed it was cutting its dividend in half, from 70 cents per share to 35 cents per share.

Analysts reacted swiftly and negatively, and shares of Dow dropped \$5.30 each, or about 17%, to close at \$25.07 on July 24, according to the complaint.

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

Lin is represented by Danielle S. Myers, Michael Albert, Juan Carlos Sanchez and Kenneth P. Dolitsky of Robbins Geller Rudman & Dowd LLP and Thomas C. Michaud of Vanoverbeke Michaud & Timmony PC.

Counsel information for Dow and the individual defendants was not immediately available Friday.

The case is Sarti v. Dow Inc. et al., case number 1:25-cv-12744, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Bruce Goldman.

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## Wash. Plaintiffs Fight NY Transfer Request In REIT Merger Suit

By **Nate Beck**

Law360 (January 30, 2026, 7:05 PM EST) -- A proposed class of investors urged a judge to keep their securities case over a merger between two real estate investment trusts in Washington federal court instead of granting the defendants' request to transfer the case to New York federal court.

The shareholders **argued** Thursday that their case against Ready Capital Corp. and Broadmark Realty Capital Inc. isn't substantially similar to another consolidated securities class action in the Southern District of New York, as the defendants **argued in a transfer request** in January.

The case concerns allegedly false and misleading statements by the defendants that the investors say led to a **\$783 million merger** in 2023 between Ready Capital and Broadmark Realty Capital, formerly based in Seattle. Robbins Geller Rudman & Dowd LLP was **picked to be lead class counsel** in October 2025.

By contrast, the New York case naming Ready Capital as a defendant is based on allegations of that REIT's inflated stock price following the merger, the Washington plaintiffs said Thursday.

"These cases involve different misstatements, transmitted from different locations, by different defendants, at different periods in time, directed to different stockholders, who sustained different injuries," the proposed class in Washington argued. "There is no risk of inconsistent rulings and no inconveniences or inefficiencies that would warrant disturbing lead plaintiffs' choice of forum."

In their motion a few weeks ago, the defendants claimed transfer was warranted because claims in both cases involved Ready Capital's public disclosures and accounting for its loan portfolio.

The defendants also said New York is a better venue because Ready Capital is headquartered in the state. Additionally, a New York venue would be more convenient for the parties involved and for possible witnesses, they said.

The Washington lawsuit claims Broadmark's board rushed into a merger, overlooking a conflict of interest by hiring J.P. Morgan, which also advised Ready Capital.

The board later rejected an all-cash acquisition offer of between \$650 million and \$675 million by another company before agreeing to a deal with Ready Capital in January 2023, according to the lawsuit. Ready Capital proposed a stock-for-stock merger by contrast.

The investors said Thursday that their arguments are based on claims that Broadmark's board and Ready Capital's board made false and misleading statements to shareholders to close the merger.

The New York case, however, revolves around whether Ready Capital executives made false and misleading statements in 2024 and 2025 to inflate the REIT's stock price, the investors said.

The Washington plaintiffs also noted that only three of the defendants in the New York case are also named among the 21 defendants in the Washington case.

Additionally, nine witnesses live or work in the Washington district, including former Broadmark management, which may be reluctant to testify without a subpoena, the shareholders argued.

"More importantly, if this case is transferred, lead plaintiffs may be unable to compel testimony from former Broadmark management at trial, as they are not party employees and reside more than 100 miles from the Southern District of New York," the investors said.

Counsel for the defendants and proposed class counsel didn't respond to requests for comment Friday.

The proposed class is represented by David A. Knotts, James I. Jaconette, Michaela Park, Brian E. Cochran, Francisco J. Mejia and Samuel H. Rudman of Robbins Geller Rudman & Dowd LLP, and Juli E. Farris and Keil M. Mueller of Keller Rohrback LLP.

The defendants are represented by Michael J. Ewart and Alexander M. Wu of Hillis Clark Martin & Peterson PS, and Andrew Sumner, Cara Peterman, Alexa E.D. Mayo, Carissa Lavin and Charles W. Cox of Alston & Bird LLP.

The case is Grant et al. v. Broadmark Realty Capital Inc et al., case number 2:25-cv-01013, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Isaac Monterose and Sydney Price. Editing by Haylee Pearl.

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## 5th Circ. Gives Lumen Investors Another Shot In Lead Suit

By **Sydney Price**

Law360 (January 30, 2026, 8:26 PM EST) -- The Fifth Circuit determined Friday that a group of shareholders should get another chance to amend their proposed class action accusing Lumen Technologies Inc. of not disclosing potential liabilities related to its lead-wrapped cables, saying the lower court did not sufficiently explain why it would not allow them to amend their suit after dismissing it.

In its **ruling**, a three-judge panel reversed a Louisiana federal court's finding with respect to the issue of prejudice. The lower court's failure to address any of the legal requirements for dismissing the once-amended complaint with prejudice "has all the appearances of an abuse of discretion," the Fifth Circuit said.

"Indeed, whether it was right or wrong, that unexplained move by the district court departs from standard procedure and risks denying plaintiffs substantial justice through access to any possible lawful civil recovery," U.S. Circuit Judge Jerry E. Smith wrote for the panel.

The district court decision came after a magistrate judge concluded that the public already knew about the lead contamination before a series of articles in The Wall Street Journal brought the issue into public discourse, and the investors appealed, according to the opinion.

The Fifth Circuit said that neither the magistrate judge nor the district court showed "that the facts are so infirm as to make any attempts at cure futile."

"We acknowledge that the magistrate judge and district court did a thorough job, but we express no view on the ultimate merits," the judges said.

Earlier this month, the parties made **oral arguments**. U.S. Circuit Judge Jennifer Walker Elrod asked counsel for the investors if they explicitly told the lower court they could bring something new to the table to show that their assertions that Lumen misled them could go forward.

The investors' attorney, Justin D'Aloia of Pomerantz LLP, told the court that if his clients were given the opportunity, they could certainly again plead to refute the magistrate judge's findings. But U.S. Circuit Judge Cory Wilson pushed back, saying the investors never did what Judge Elrod was asking given they never said exactly what they would plead on a second go-round.

Lumen's attorney, Lyle Roberts of Allen Overy Shearman Sterling, told the court the case represents the exact type of case that the Private Securities Litigation Reform Act was created to curb. It's obvious what happened, Roberts said. The Wall Street Journal released its articles, and "the plaintiffs' bar thought it saw an opportunity," he said.

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

U.S. Circuit Judges Jennifer Walker Elrod, Jerry E. Smith and Cory T. Wilson sat on the panel for the Fifth Circuit.

The investors are represented by Justin D. D'Aloia, Jeremy A. Lieberman and Guy Yedwab of Pomerantz LLP, Brian Schall of the Schall Law Firm, and Eric J. O'Bell of O'Bell Law Firm LLC

Lumen is represented by Claire Elizabeth Juneau of Kean Miller LLP and Lyle Roberts, George Anhang and Mallory Tosch Hoggatt of Allen Overy Shearman Sterling.

The case is McLemore et al. v. Lumen Technologies et al., case number 25-30264, in the U.S. Court of Appeals for the Fifth Circuit.

--Additional reporting by Spencer Brewer. Editing by Covey Son.

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## SelectQuote Execs Face Investor Suit Over Kickback Probe

By **Sydney Price**

Law360 (January 30, 2026, 6:11 PM EST) -- Executives and directors of insurance comparison platform SelectQuote were hit with a shareholder's derivative suit accusing them of concealing a kickback scheme currently subject of a **False Claims Act suit** by the U.S. Department of Justice.

According to the suit filed by shareholder Kelly Roszel on Thursday, SelectQuote, which claimed to offer unbiased comparisons for multiple insurance companies, received and solicited kickbacks from insurance providers Humana and Aetna between 2016 and 2021. SelectQuote regularly directed Medicare beneficiaries to plans offered by the insurers, regardless of the quality or suitability of the insurers' plans, the suit alleges.

"The Company received millions of dollars of 'market development funds' from Humana and Aetna for extra-contractual commitments to sell specific quantities of Medicare Advantage policies," the suit states. "These kickbacks were in addition to permitted per-enrollment compensation that the insurers paid to the Company."

The suit's relevant period begins Sept. 9, 2020, the day SelectQuote announced its financial results for the previous quarter. On that day, SelectQuote told investors that "agents are trained to offer unbiased advice in order to be more aligned to the specific needs of each customer."

For the next several years, the suit alleges, SelectQuote failed to disclose its kickback arrangements. During that time, SelectQuote furthered its scheme by, among other things, using "suppression tools" to remove competing insurers from its internal quoting tool for agents to favor insurers that paid kickbacks, "without regard for the best interests of beneficiaries," the suit alleges.

SelectQuote also set up subsidiaries, including Tiburon, that "consisted of exclusive or semiexclusive agents posing as unbiased agents," the suit alleges.

The suit alleges the scheme was revealed last May when the DOJ announced a suit taking aim at SelectQuote, two other third-party insurance marketing organizations, GoHealth Inc. and eHealth Inc., and insurance carriers Aetna, Elevance Health — which was named Anthem Inc. prior to June 2022 — and Humana.

The claims represent the government's intervention in 2021 whistleblower claims made by eHealth's former senior vice president of marketing, Andrew Shea.

According to the government, the kickback payments took the form of contracts and invoices for purported marketing or administrative services, and the suit also alleges the scheme involved discrimination against certain Medicare beneficiaries, such as those who were under 65 and eligible for Medicare based on a disability.

Following the DOJ's announcement, shares of SelectQuote fell 61 cents each, or about 19%, to close at \$2.56 per share on May 1, 2025.

The investor's suit accuses SelectQuote CEO Timothy Danker, former CEO Raffaele Sadun, president Robert Grant and several other current and former executives of breaching their fiduciary duties. It also accuses Danker, Sadun and Grant of netting approximately \$15.4 million through insider sales during the relevant period.

The complaint notes SelectQuote is also facing a **securities class action** based on related claims in the U.S. District Court for the Southern District of New York.

Roszel is represented by Joshua H. Grabar of Grabar Law Office and Gina M. Serra of Rigrodsky Law PA.

Counsel information for SelectQuote and the individual defendants was not immediately available on Friday.

The case is Roszel v. Hawks et al., case number 1:26-cv-00801, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Emilie Ruscoe and Hannah Albarazi. Editing by Emily Kokoll.

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# Investor Opens Pair Of Hefty Share Appraisal Suits In Del.

By **Jeff Montgomery**

Law360 (January 30, 2026, 9:01 PM EST) -- Two postdeal share appraisal suits centering on pro football's Hall of Fame and a major broadband service provider that recently sold for \$1.5 billion landed in Delaware's Court of Chancery on Friday, both led by Quadre Investments managing partner Matthew Q. Giffuni.

Neither petition provided extensive detail. Both actions followed sales of the stock issuer's assets, and both added to a flurry of appraisal actions in the past few years after the practice saw a slump in Delaware.

In the case of the Hall of Fame Resort & Entertainment Co. appraisal suit, however, the court filing followed a \$325 million, 90-cents per share go-private merger of the Canton, Ohio, complex completed Jan. 5. that put the site under control of Industrial Realty Group LLC president Stuart Lichter.

The new owners recently announced completion of a restructuring plan that will include financing for a football-themed Gameday Bay indoor water park and an attached 180-room hotel.

Under its new owners, Hall of Fame Resort & Entertainment Co. now identifies itself as "the only resort, entertainment, and media company centered around the power of professional football."

Higher stakes are at issue in Giffuni's suit for appraisal of shares of WideOpenWorld Inc., a major provider of fiber-broadband internet services and advanced connectivity that sold for \$1.5 billion, or \$5.20 per share, to alternative asset manager Digital Bridge Inc. and private equity Crestview Partners, in a deal completed on Dec. 31.

Giffuni, who has previously launched appraisal suits in Delaware, filed both of the actions as a pro se, or self-registered, litigant.

Giffuni said late Friday of the two deals: "We think they're obviously unfair to shareholders."

A much larger appraisal case ended with a stipulation of dismissal in January 2024, with both sides agreeing to bear their costs, however, in litigation focused on the \$30 per-share \$2.6 billion merger that took Franchise Group public, which closed in August 2023.

Giffuni said he bought his Franchise Group shares after the company announced in May 2023 that it would be acquired by a consortium of buyers led by Chief Executive Officer Brian Kahn in financial partnership with his affiliates, B. Riley Financial Inc. and Irradiant Partners.

The highest-stakes and most hotly contested competitions for law firm selection to lead an appraisal action include a flurry of suits for court-determined share value of sports and entertainment giant Endeavor Group Holdings.

Litigation boutique Abrams & Bayliss LLP **won a court selection** in July 2025 to lead the potential blockbuster lawsuit challenging the price paid for Endeavor, alleging that the company was undervalued in a \$13 billion take-private deal that closed last year.

Vice Chancellor Lori W. Will chose Abrams & Bayliss after observing that the leadership fight leading

up to the choice produced "heated — even ad hominem — attacks" between counsel.

Matthew Q. Giffuni, counsel in both of the cases filed on Friday, did not immediately respond to requests for comment.

The cases are Matthew Q. Giffuni v. Hall of Fame Resort & Entertainment Company, Delaware Corporation, case number 2026-0126, and Matthew Q. Giffuni v. WideOpenWest Inc., case number 2026-0127, both in the Court of Chancery of the state of Delaware.

--Additional reporting by Jessica Corso. Editing by Linda Voorhis.

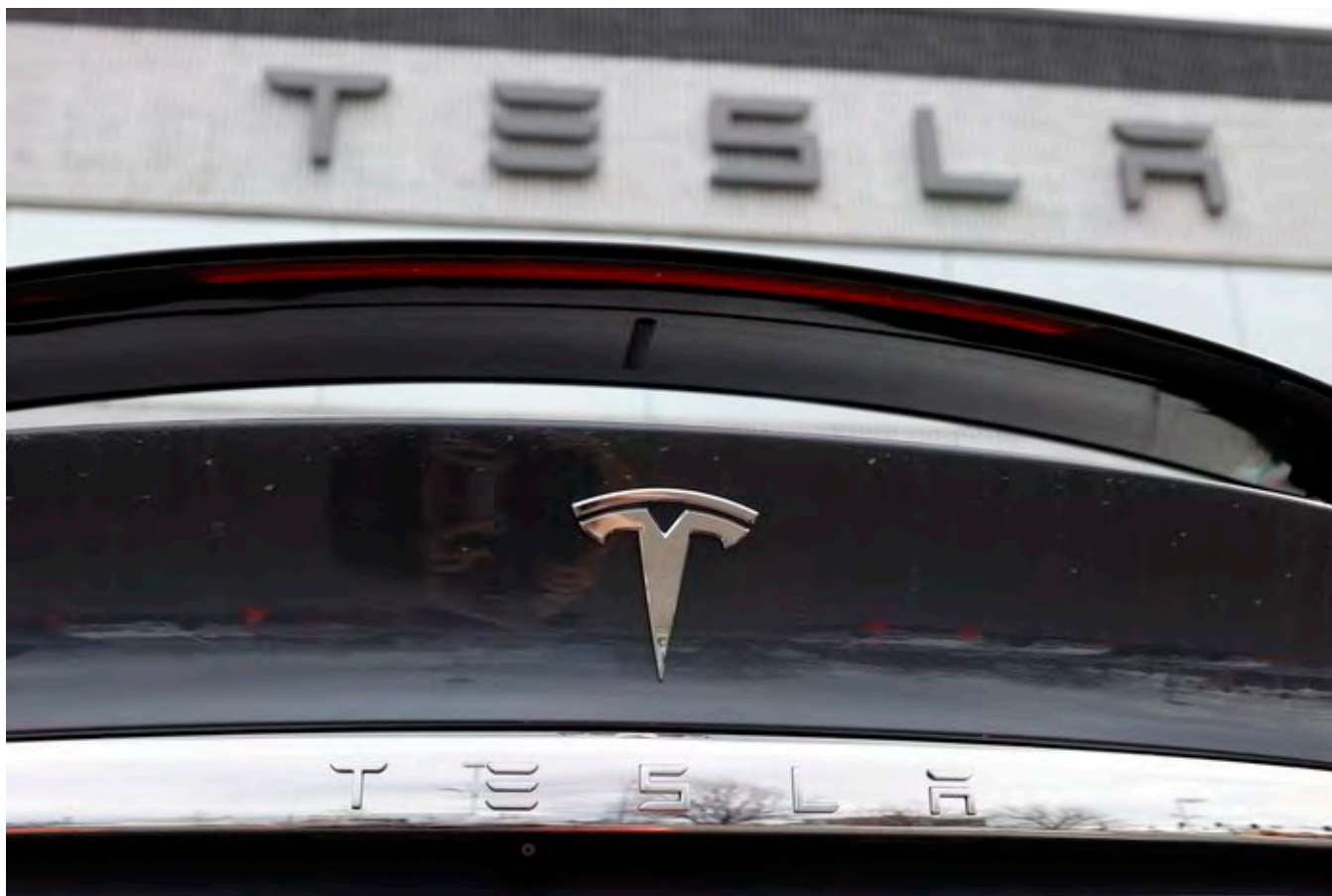
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# Tesla Gets Del. Justices To Cut \$100M From Investor Atty Fees

By **Lauren Berg**

Law360 (January 30, 2026, 11:07 PM EST) -- The Delaware Supreme Court on Friday handed Tesla a win, reducing by roughly \$100 million the attorney fees awarded to shareholder counsel as part of an excessive director compensation suit settlement, rejecting the lower court's fee calculation.



Tesla won't have to pay nearly \$176.2 million in attorney fees as part of an excessive director compensation suit settlement, the Delaware Supreme Court ruled Friday. Instead, the company will end up paying roughly \$70.9 million. (AP Photo/David Zalubowski, File)

The state's high court **slashed** the Delaware Chancery Court's January 2025 **fee award** to three firms representing the Police and Fire Retirement System of the City of Detroit from nearly \$176.2 million to roughly \$70.9 million, reversing the lower court's decision to include the \$458 million intrinsic value of the stock options returned to Tesla as an investor-level benefit in its fee calculation.

As part of the settlement, the director defendants provided to Tesla the value of some 3 million stock options, which the parties agreed equaled about \$735.3 million. The defendants didn't agree to return all of their unexercised options, and neither the defendants nor Tesla agreed that the \$458 million returned options' intrinsic value should be included in the financial benefit for the purposes of awarding attorney fees.

But Chancellor Kathaleen St. J. McCormick determined that the settlement required her to include the

intrinsic value of those returned options in the benefit calculation, according to the justices' Friday opinion, which disagreed with her conclusion.

"By accepting and canceling the returned options, Tesla did not receive \$458 million in value that contributed to a common fund," the high court said, noting that the agreement required the company to cancel the returned options. "Tesla could not, for example, accept the returned options, exercise the options, and sell the underlying shares for their then-current market value."

What's more, "although the settlement option amount included the intrinsic value of the returned options, the returned options did not contribute liquid assets that could be 'paid by Tesla' to the plaintiff's attorneys," the court said.

Regardless, even if the stipulation said otherwise, the Chancery Court "must make an independent inquiry into the value of the benefit conferred on the corporation," the justices determined.

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

The litigation, filed in June 2020 by the pension fund shareholder against Tesla CEO Elon Musk and company directors, sought repayment of what it said were years of **"outrageous" board stock awards** that cost the company hundreds of millions of dollars.

Three years later, the parties reached a deal to end the case that involved stocks, options and cash. It was **valued at \$735.2 million**, according to the agreement.

Tesla and the investors fought over the initially **proposed \$230 million fee award**. During an October 2023 hearing, an attorney for Tesla's stockholders challenged a company attorney to stand by claims that the director stock option returns required under the settlement wouldn't put \$458 million back on the car company's equity balance sheet.

Chancellor McCormick subsequently approved a \$176.16 million fee award, less than the \$230 million requested. At the time, the chancellor said most of the reduction was prompted by the dispute between Tesla and the stockholders over the forgone value of the future options. Attorneys for the class valued the benefit at \$180 million, while Tesla pegged the gain at zero.

"I struggle to value this benefit in this case," the chancellor said, citing the court's desire to avoid windfalls in compensation decisions.

Despite the pruning, Chancellor McCormick said the Tesla stockholder attorneys earned the award.

"Plaintiff's counsel litigated on a fully contingent basis for years with no certainty that they would ever receive a penny for their efforts," she said during a more than 40-minute telephone bench ruling.

Tesla in **April 2025 appealed** to the Delaware Supreme Court, urging the justices to slash the fee award over concerns that it amounts to a "windfall in a case that settled well before trial and after three years of only tepid litigation."

The investors are represented by Andrew Dupre of Akerman LLP, William Fields, Christopher Kupka and Samir Shukurov of Fields Kupka & Shukurov LLP, and Robert B. Lackey, Joseph Fonti, Nancy A. Kulesa, George N. Bauer and Thayne Stoddard of Bleichmar Fonti & Auld LLP.

Tesla is represented by Brian T. Frawley, Matthew A. Schwartz, Jeffrey B. Wall and Morgan L. Ratner of Sullivan & Cromwell LLP, John Reed and Ronald Brown of DLA Piper, and Jason C. Jowers and Sarah T. Andrade of Bayard PA.

The board members are represented by Raymond J. DiCamillo, Kevin M. Gallagher and Kyle H. Lachmund of Richards Layton & Finger PA, and Evan R. Chesler and Vanessa A. Lavelly of Cravath Swaine & Moore LLP.

The case is In re: Tesla Inc. Director Compensation Stockholder Litigation, case numbers 52, 2025 and 53, 2025, in the Supreme Court of the State of Delaware.

--Additional reporting by Jeff Montgomery, Jessica Corso and Bonnie Eslinger. Editing by Michael Watanabe.



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# The Message From Delaware Courts: Change Is Coming

By **Jeff Montgomery**

Law360 (January 30, 2026, 6:48 PM EST) -- Delaware's Supreme Court delivered a reminder to the state's corporation law ecosystem recently with a reversal of a Court of Chancery decision invalidating a 7-year-old stockholder agreement that granted broad corporate powers to investment bank Moelis & Co.'s founder.

The high court ruling — focused on the limits of controller clout in a case involving Moelis & Co. — saw the justices reverse a Chancery Court decision seen as tipping too far toward stockholder camps rattling a sometimes fragile balancing of public and private interests among corporations and investors.

The reminder: More such rattles are likely in coming months with an expected General Assembly and corporate bar push to draft and pass legislation to limit some attorney fees in stockholder class litigation. The controversy would extend to a third year legislative debates over efforts to avoid an erosion of the state's status as a favored business charter hub and meet competition from other states.

Concern over the Court of Chancery's direction, in particular, last year prompted Vice Chancellor Lori W. Will to go public with widely noticed commentaries cautioning, among other points, that morphing fiduciary theories have put clarity at risk in one of the nation's leading corporate law arenas.

Lawrence Hamermesh, a retired Widener University Delaware Law School professor and former executive director of the Institute for Law and Economics at the University of Pennsylvania Carey Law School, described the developments in an email as "exercises in exploring the role and limits" of judicial restraint.

"Too broad a reach engenders unpredictability, and I see these developments as pushback against that," Hamermesh wrote. "'Course correction' is probably an apt term."

Hamermesh recalled using the same label to describe S.B. 21, Delaware legislation approved in early 2025 that expanded liability shields for some corporate acts involving controlling stockholders or potentially conflicted officers or directors. It also narrowed public access to some corporate books and records, and angered some members of the plaintiffs' bar.

Friction in the General Assembly and among different camps of the bar grew along with philosophical divisions on the nationally important Court of Chancery. The vice chancellor's commentary emerged as a primer for continuing debates over alleged blurring of guiding principles on a court that handles many of the country's biggest corporate battles.

## Vice Chancellor Pushes "Back to Basics"

Shared both in a speech in September and in public writings, Vice Chancellor Will's "Back to Basics" focus emerged amid continuing criticism of the court over big stockholder awards and expansive fiduciary breach findings.

"At a time when duties have become more diffuse and directors are expected to balance an array of interests, doctrinal certainty has eroded," the vice chancellor wrote in the Harvard Law School Forum on Corporate Governance.

"Independence and control standards have drifted toward amorphous, hindsight-driven inquiries. Oversight theories are raised in ways that blur the line between external misfortune and fiduciary wrongdoing," Vice Chancellor Will said in a talk based on her article in the University of Iowa law school's Journal of Corporation Law.

The comments drew attention to strains on and surrounding one of the nation's top business courts, already a focus of intense political scrutiny and debate in legal industry and academic circles.

The vice chancellor was speaking at the Journal of Corporation Law's annual symposium at Kirkland & Ellis LLP's New York offices in September. The remarks focused in part on philosophy and boundaries, and included a call to sharpen the court's focus on "serious and absolute failures" rather than "minor missteps."

A major focus is the idea that "a Delaware judge is not a manager, a strategist, or a social engineer — but a guardian of the integrity" of the corporate enterprise.

No members of the Court of Chancery were named in Vice Chancellor Will's address, and there was no mention of Elon Musk, Moelis & Co. founder Ken Moelis or the legislative debates.

"I think Vice Chancellor Will clearly used this opportunity to call for a course correction from the wayward drift of the Court of Chancery over the last several years in order to, as she put it, 'turn the page on a difficult chapter and look toward the next,'" University of Arkansas law professor Robert Anderson said in an email.

Ann Lipton, University of Colorado law professor and the university's Laurence W. DeMuth chair of business law, said she had the sense that Vice Chancellor Will has a preference for greater board deference, a view that "has also put her at odds with the Delaware Supreme Court" at times.

"The complex rules she objects to have also been the product of Del Supreme Court choices. To the extent SB 21 moved the law toward more deference and less complexity, she may support those changes substantively," Lipton said.

In the state Supreme Court's recent reversal of Vice Chancellor Laster's Moelis decision, the justices found that a 14-year-old stockholder agreement that gave the founder board-trumping, super-voting power was not void, as Vice Chancellor Laster had found. Instead, the grant of power was deemed by the justices to be voidable but the challenge in the Moelis case was fatally time-barred.

The justices faulted the lower court for applying a "continuing wrong" theory. The only alleged wrongful act, the justices said, was the execution of the stockholder agreement in 2014. Any later effects were merely consequences of that discrete act, not new violations restarting the clock.

The justices' decision followed by 19 months a hotly debated General Assembly vote in June 2024, prompted by the Moelis case, codifying state-chartered corporate ability to cede some governance rights to big stockholders.

## **Delaware Corporate Law Is Changing**

Public and legal industry agita over the same sprawling expectations led to a 2025 state legislative session that saw lawmakers set limits on challenges to acts by interested directors and controlling stockholders. The year before saw a bruising fight over legislation clarifying corporate governance rights favoring big stockholders and hotly debated court rulings in cases led by suits targeting Tesla and SpaceX CEO Musk and investment banker Moelis.

Currently, the state bar's section on corporation law is reported to be preparing for a new legislative push, including a controversial report to lawmakers on corraling stockholder attorney fee awards.

Vice Chancellor Will's stepped-up public profile emerged amid other rare focuses on judges themselves, particularly Chancellor Kathaleen St. J. McCormick.

The chancellor presided over litigation that invalidated Musk's multiyear stock-based Tesla

compensation package and awarded an unprecedented \$345 million fee to stockholder attorneys, still subject to appeal.

In mid-December, Delaware's Supreme Court reversed the chancellor's decision to spike Musk's compensation plan, previously estimated at \$56 billion over 10 years.

The reversal had the effect of growing Musk's compensation to an estimated \$139 billion, taking into account intervening years. Stockholders whose win was overturned meanwhile saw their attorney fee for their years of work reduced by the justices to \$68 million as a "value of services" concession award.

Also emerging as a hot issue in Delaware corporate law was Vice Chancellor J. Travis Laster's finding — overturned by the Supreme Court on Jan. 20 — that the Moelis decisions wrongly limited director ability to exercise independent judgment.

Chancellor McCormick declined to comment.

Vice Chancellor Laster, in response to a request, said: "I am grateful for hardworking and thoughtful colleagues like Vice Chancellor Will, and I agree wholeheartedly with her message about the importance of Delaware having a balanced, measured, and apolitical corporate law."

### **A Difficult Environment**

Jill E. Fisch, Saul A. Fox distinguished professor of business law at the University of Pennsylvania Carey Law School, said Vice Chancellor Will's comments were "obviously meant to comfort some of the practitioners, some of the critics of Delaware law, some of the critics of the opinions or the points taken by other members of the Chancery Court."

Fisch added: "I think the goal of simplicity is an absolutely laudable goal, but I think it's a little bit of a simplistic approach. There are any number of areas in which you could say Delaware law is more complicated than it needs to be."

Francis X.F. Pileggi, managing partner of the Wilmington office of Lewis Brisbois Bisgaard & Smith LLP and a longtime chronicler of the Delaware corporate law universe, observed that more differences are surfacing in the state's legal arena.

"If one takes a step back and considers the history of the last few decades, the only difference I see is that members of the judiciary, or at least former members, seem to be less hesitant to publicly criticize sitting members of the bench," Pileggi wrote,

"And members of the bar seem less disinclined to publicly challenge the bona fides of their fellow lawyers," Pileggi said. "There are two different camps. Both want to preserve Delaware's position."

The environment for all sides has proven difficult enough to prompt both a lament and an appeal, from the courtroom, by Vice Chancellor Morgan T. Zurn.

In September, Vice Chancellor Zurn — speaking from the bench after approving a \$30 million settlement for a contested stockholder challenge to the \$30 billion reverse spinoff of Barry Diller-controlled Match.com in 2019 — called 2025 the court's annus horribilis, a reference to an epically bad year of the British monarchy.

Other points of friction have emerged in the meantime, including Vice Chancellor Will's recent decision in *Alex Brola*, derivatively, on behalf of Credit Glory Inc. v. Christopher Lundgren, which found that workplace sexual misconduct didn't trigger corporate liability. That decision has been seen as contrasting with Vice Laster's decisions in a derivative suit in 2023 that found McDonald's officers could have duty of care liability along with directors.

Some have since found Vice Chancellor Will's commentaries "frustrating," including Case Western University Reserve law professor Charles Korsmo, who said he found Vice Chancellor Will's talk "frustrating."

"It is primarily a collection of conventional wisdom on Delaware law, with which few would disagree, followed by another in the growing genre of ruminations on how Delaware law has lost its way," Korsmo said.

"But when we get to how, exactly, Delaware law has lost its way, the fog blows in," he said. "Of course, we in the audience know what she's talking about — or, more precisely, who she is talking about — but she never gets around to explaining what, exactly, she thinks they've gotten wrong."

--Editing by Brian Baresch.

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## 11th Circ. Urged To Undo \$38M Chiquita Verdict, \$229K Fee

By **David Minsky**

Law360 (January 30, 2026, 11:03 PM EST) -- The Eleventh Circuit heard arguments Friday in two cases stemming from claims that Chiquita funded a right-wing paramilitary group, with Chiquita urging the court to vacate a \$38 million verdict finding it caused eight deaths, while an attorney for the plaintiffs asked to reverse a firm's \$229,000 fee award.

During oral arguments before a three-judge panel in Miami, Chiquita Brands International Inc. argued for a new trial after a jury found the company liable for the deaths of eight people killed by right-wing paramilitary group Autodefensas Unidas de Colombia following a bellwether trial in West Palm Beach, Florida, in June 2024. Michael L. Cioffi of Blank Rome LLP, representing Chiquita, told the panel that "fundamental errors infected the entire verdict and require reversal."

Colorado-based attorney Paul D. Wolf told the panel that it should reverse a lower court's order awarding more than \$229,000 to Conrad & Scherer LLP for its work with having Chiquita pay \$12.8 million to settle wrongful death claims for 144 people he represented, arguing the firm didn't have a legal agreement with the victims.

Both appellate cases stem from 2008 multidistrict litigation brought by victims claiming their family members were **killed by the AUC** between 1997 and 2004 after the group received \$1.7 million from Chiquita to protect business interests in Colombia.

Cioffi urged the panel to reverse the jury verdict based on three grounds: no proof of causation, witness tampering and that the damages were capped at just over \$51,000 under Colombian law. He argued that the plaintiffs brought their negligence claims under Colombian civil law, but didn't satisfy the elements of causation.

"Plaintiffs admit that they did not prove [causation] and the district court said that Colombia law wasn't clear on causation," Cioffi said.

U.S. Circuit Judge Robert J. Luck addressed the choice of law decided in the case, telling Cioffi that the lower court needed to "gap-fill" the lack of clarity.

"What we've said is where we're in a situation like this and there's a foreign choice of law issue," Judge Luck said, "and there's a lack of clarity based on the evidence, or lack of evidence, you can gap-fill by looking to the forum's law."

Additionally, Cioffi argued that two key witnesses in the trial were offered bribes by plaintiffs' counsel and others.

Representing the plaintiffs, Paul L. Hoffman of Schonbrun Seplow Harris Hoffman & Zeldes LLP argued that the panel should uphold the jury verdict. Hoffman said the lower court defaulting to Florida aiding and abetting liability standards "is what you would do" to gap-fill the lack of clarity in Colombian law.

"I don't think federal common law is different in terms of the basic standard," Hoffman said. "There's tons of evidence of substantial assistance. It's not just money, it's the use of ports, it's giving them guns, it's a whole litany of facts."

A second bellwether trial for the plaintiffs represented by Wolf was to proceed against Chiquita in July 2024, but was canceled after the settlement was reached. Wolf split from the other plaintiff groups due to a **long-standing rift** that developed between him and other counsel.

After Chiquita settled with Wolf's clients for \$12.8 million in June 2024, Conrad & Scherer filed a charging lien the following August, claiming it was owed for work in helping to reach the settlement. A lower court **granted the fee request** in December of that year, handing \$229,755 in fees and costs to the firm. Wolf appealed the fee request order.

The dispute stems from Wolf's and attorney Terry Collingsworth's representation of the 144 plaintiffs in the MDL. Wolf agreed to have Collingsworth lead representation. Collingsworth joined Conrad & Scherer while representing the plaintiffs, but eventually left the firm. Wolf then successfully had the lower court disqualify the firm from representing the 144 plaintiffs.

The lower court judge said in its order that Wolf waived his objection by not conferring with Conrad & Scherer about the charging lien. Wolf told the panel that he didn't meet with the firm's attorneys because he didn't think they were entitled to any fees. Wolf added that the plaintiffs didn't benefit from any work that the firm did for them.

"They don't represent any of these people," Wolf said. "They don't have a contract with anyone."

Eric Hager of Conrad & Scherer, representing his own firm, said Wolf did not prove he was injured, or that he received less attorney fees due to the firm's alleged misconduct.

Additionally, Hager said Wolf didn't object to the factual conclusion that he wasn't injured. Wolf argued that the firm doesn't deserve a fee award because it bribed two witnesses in the first bellwether trial. Hager told the panel that U.S. District Judge Kenneth Marra, who oversaw the first trial, rejected Wolf's accusations.

"The accusations are not credible," Hager said. "He has no personal knowledge about what he is saying. More importantly, these accusations were soundly rejected by Judge Marra. What was his ultimate factual finding? It was that Mr. Collingsworth did not pay witnesses in this case."

U.S. Circuit Judges Jill Pryor, Robert J. Luck and Andrew L. Brasher sat for the Eleventh Circuit.

The plaintiffs are represented by Paul L. Hoffman and John C. Washington of Schonbrun Seplow Harris Hoffman & Zeldes LLP, John "Jack" Scarola, Victoria Mesa-Estrada and Mariano Garcia of Searcy Denney Scarola Barnhart & Shipley PA, Agnieszka Fryszman and Leslie M. Kroeger of Cohen Milstein Sellers & Toll PLLC, James K. Green of James K. Green PA, Marco Simons of the Law Offices of Marco B. Simons, Richard L. Herz, Marissa Vahlsing, Wyatt Gjullin and Gabriela V. Diaz of EarthRights International, William R. Scherer and Eric Hager of Conrad & Scherer LLP, Jonathan C. Reiter of Jonathan C. Reiter Law Firm PLLC, Terrence Collingsworth of International Rights Advocates, William J. Wichman of the Law Offices of William J. Wichmann PA and Paul D. Wolf.

Chiquita is represented by Michael L. Cioffi, Thomas H. Stewart, Frank A. Dante, Melissa F. Murphy, Michael A. Stoolman and Serena S. Gopal of Blank Rome LLP.

Wolf represented himself.

Conrad & Scherer is represented by in-house counsel Eric Hager.

The cases are Palencia Gomez et al. v. Chiquita Brands International Inc., case number 24-13770, and Paul David Wolf et al. v. Conrad & Scherer LLP, case number 24-14039, in the U.S. Court of Appeals for the Eleventh Circuit.

--Additional reporting by Jack Karp and Carolina Bolado. Editing by Nick Petruncio.



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# Dozens Of Cases Linking Zantac To Cancer Thrown Out

By **Gianna Ferrarin**

Law360 (January 30, 2026, 7:03 PM EST) -- A Delaware state trial judge tossed over 200 cases by individuals alleging Boehringer Ingelheim's discontinued heartburn medication Zantac caused cancer, ruling the claims were time-barred.

The Food and Drug Administration's 2020 announcement of a probable link between cancer and ranitidine, a heartburn and acid reflux drug sold under the brand name Zantac, provided sufficient notice to trigger Delaware's two-year statute of limitations, Superior Court Judge Francis J. Jones Jr. said in a Thursday **opinion**. The 277 cases were brought by plaintiffs who were either diagnosed with cancer over two years before the FDA announcement or who failed to file suit within two years of diagnosis after the announcement, rendering them time-barred, the judge concluded.

"The court does not need to discern at what point each plaintiff was aware of the link between ranitidine-containing products and cancer. It is sufficient that the link was made publicly available," the judge said, granting a motion to dismiss the cases by German pharmaceutical company Boehringer Ingelheim and pharmaceutical manufacturer Patheon Manufacturing Services LLC.

Plaintiffs failed to identify an "exceptional reason" as to why the court should depart from the language of the state's borrowing statute, which governs the rule for adopting statutes of limitations from other states where a cause of action arises, Judge Jones ruled. The law requires Delaware's statute of limitations to apply to causes of action arising within the state.

While plaintiffs argued they had been forced to file in Delaware, that argument does not hold up to scrutiny, the judge said, noting that plaintiffs could have filed in states where their injuries occurred.

"Plaintiffs maintain that they were forced to file in Delaware because if they had filed elsewhere their cases would have been removed to federal court where they would be subject to adverse rulings on causation. These set of facts [sic] are not facts that forced a plaintiff to file in Delaware for purposes of analyzing the claims under the borrowing statute," the opinion said.

Judge Jones also ruled that plaintiffs failed to show the court could not determine at the motion to dismiss stage whether plaintiffs had notice of the link between ranitidine-containing products and cancer.

Inquiry notice is the standard in Delaware, meaning a plaintiff is considered to be on notice of a potential tort claim once a link between a physical condition and exposure to a toxic substance has been made publicly known by the medical community, the opinion recounted.

The FDA 2020 announcement was sufficient to trigger notice, Judge Jones ruled.

"Plaintiffs assert that it is not appropriate for the court to determine the factual question of whether a plaintiff was aware of the April 1, 2020 FDA order at the motion to dismiss stage. Despite their protestations to the contrary, plaintiffs' argument is one of the actual notice," Judge Jones said.

The ruling follows a string of victories for Boehringer Ingelheim, which saw **several juries** rule in its favor in 2025 in trials over claims that Zantac causes cancer.

Counsel for Boehringer declined to comment. Counsel for the plaintiffs and Patheon did not

immediately respond to a request for comment Friday.

Plaintiffs are represented by Bernard G. Conway Esq. of Conway Legal LLC, Raeann Warner Esq. of Collins Price & Warner, Stephen T. Morrow Esq. and Joseph J. Rhoades Esq. of Rhoades & Morrow LLC, Adam Pulaski of Pulaski Kherkher PLLC, Jennifer A. Moore Esq. of Moore Law Group PLLC and R. Brent Wisner Esq. of Wisner Baum LLP.

Boehringer Ingelheim is represented by Joseph S. Naylor Esq. of Swartz Campbell LLC and Gregory Ruehlmann Esq. of King & Spalding LLP.

Patheon is represented by Sean T. O'Kelly Esq. and Gerard M. O'Rourke Esq. of O'Kelly & O'Rourke LLC, Christopher R. Carton, John D. Garrett Esq. and Edward L. O'Toole Esq. of Bowman and Brooke LLP.

The case is In Re: Zantac (Ranitidine) Litigation, case number N22C-09-101 ZAN, in the Superior Court of the State of Delaware.

--Additional reporting by Emily Field. Editing by Amy Rowe.

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