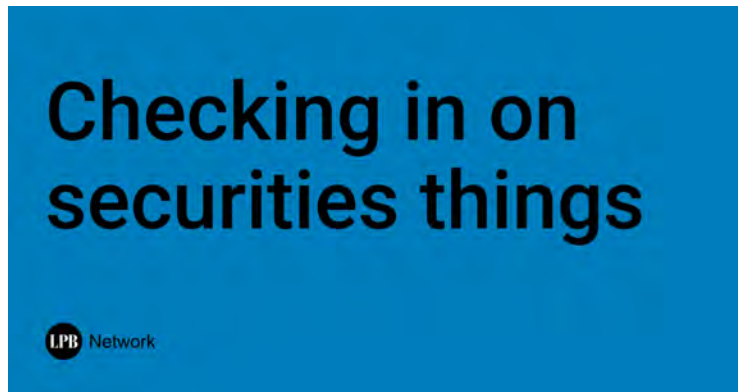


Checking in on securities things

 [businesslawprofessors.com/2026/02/checking-in-on-securities-things](https://www.businesslawprofessors.com/2026/02/checking-in-on-securities-things)

Ann Lipton

February 6, 2026



(I posted this post, and then LexBlog ate it, so I am posting again – hopefully it will not show up twice.)

Misfit toys. Interesting opinion from CA9 in [Construction Laborers Pension Trust of Greater St. Louis v. Funko](#) this week. After setting the stage with a surprising bit of pathos (comparing the fate of outdated Funko toys unfavorably to that of the toys in Rudolph the Red-Nosed Reindeer), the court sustained a complaint alleging that Funko’s risk disclosures were misleading, because they suggested that the company *could* have problems with managing its inventory, when in fact such problems already existed. That alone isn’t surprising; it tracks similar cases against Facebook and Google. What was interesting here was the analysis of scienter, which depended almost entirely on the core operations doctrine. Per the court:

If Funko could not turn its products around quickly, it would be left with dead product in its warehouse that it could not sell. This scenario could cost Funko far more than just the loss accrued from the costs of manufacturing and transporting these unsellable products; dead inventory could clog up limited warehouse space and prevent Funko from properly storing new product, incur additional cost for storage, and lead to a vicious cycle of further losses. Given Funko’s business model, its ability to effectively manage inventory was critical to its business operations. Funko admitted as much. Taking Plaintiffs’ allegations as true, a rational fact finder could find that it would be absurd for Funko’s CEO or CFO not to have closely monitored the company’s management of its inventory, especially in its highly touted Buckeye DC.

Plaintiffs also allege that Funko's effective use of information technology was key to its ability to manage its inventory effectively, as Funko itself acknowledged in risk disclosure statements. Plaintiffs make many allegations that Funko viewed its information technology system as integral to its success as a business. Funko's transition to the Oracle ERP was driven by its goal of modernizing and improving its handling of inventory and management of its distribution centers. And the transition to Buckeye DC—Funko's largest ever distribution center, which would house approximately 80% of its products within the United States—was partly with the aim of moving to a consolidated distribution center built around the new information technology system. Plaintiffs allege that both the Buckeye DC and Oracle projects were viewed as central priorities by Funko's executive leadership. Plaintiffs allege that Funko's executive leadership attended bi-weekly "Steering Committee" leadership meetings directly related to the transition to the new information technology system. And beginning in June 2022, COO Sansone began spending between one to two weeks per month at the Buckeye DC to oversee the project and information upgrade personally—demonstrating the importance with which Funko viewed these projects....

The potential damage that could result from Funko failing to manage its inventory effectively was also not hypothetical....in light of the alleged 2019 incident, we infer that a reasonable trier of fact could find that Funko's senior management would have been aware of the deleterious impact that inventory mismanagement could have and would therefore be particularly attuned to inventory-related issues. Likewise, a reasonable trier of fact could also find it absurd to suggest that Defendants would not have been aware of Funko's difficulties in managing its inventory given the scale of the chaos at Buckeye DC and that Funko had experienced similar inventory-related issues a mere three years prior, causing losses in the millions....

So, it's kind of hard to explain why this is surprising if you're not in the weeds of securities opinions. Courts are usually *very reluctant* to let core operations (the idea that top officials are likely to be aware of central business matters) – standing alone – serve as a basis for inferring scienter. Usually, those allegations have to be supplemented, typically by identifying reports that were delivered to top officers detailing the problem. And even then, what operations are "core" are often those directly concerning product flaws or sales – not, as in this case, a collateral logistics issue. For example, in *Walling v. Generac Holdings, Inc.*, 2026 WL 280211

(E.D. Wis. Feb. 03, 2026), decided by E.D. Wisconsin one day before *Funko*, the court explicitly held that the core operations doctrine standing alone cannot demonstrate scienter, and that allegations of inventory piling past the point where it could be stored were not sufficient.

Here, however, CA9 accepted allegations that inventory tracking was particularly important to Funko, which by extension suggested significant problems would be known to top management. And, implicitly accepted – without further allegations of motive – that top executives might try to conceal a problem simply because they don't want to disappoint the market, and hope they can make it go away before disclosure becomes inevitable.

Which is totally reasonable! Large corporations keep very close track of internal systems, and those are reports that are likely to be seen in the C-Suite (not the point he was making, but Stavros Gadinis described these systems in his recent article, [Social Business Judgment](#)). I believe that, in most cases, if a problem is any reasonable kind of size, it is *certainly* more likely than not that reports detailing it are seen by the CEO (or the CEO is intentionally blinding him/herself). But courts evaluating complaints under PSLRA pleading standards tend to begin with *exceptionally strong* presumptions of CEO ignorance (I [once said that courts evaluating complaints under PSLRA standards ignore all the ordinary ways we infer other people's states of mind, just as humans living on this planet](#)), which is why Funko stands out.

On the mercy of the court because he is an orphan. I enjoyed the chutzpah on display in CA3's [Abramowski v. Nuvei](#), involving a rare allegation a tender offeror violated 17 C.F.R. § 240.14d-10(a)(2), the "best price" rule. The best price rule states that in a tender offer, the "consideration paid to any security holder for securities tendered in the tender offer is the highest consideration paid to any other security holder for securities tendered in the tender offer."

In this case, plaintiffs sponsored a SPAC, Fintech, which was used to take a company called Paya public. As sponsors, they received promote shares in Fintech, which converted into Paya shares in the de-SPAC merger. To ensure that the sponsors remained committed to Paya's success, the shares were subject to a lockup for some period of time, which included an exception to permit a sale if the company was acquired within the lockup period at a price above \$15 per share. If the acquisition occurred at a price below \$15 per share, the sponsors' shares would be forfeit.

Well, Paya found an acquirer, Nuvei, who chose to accomplish the transaction through a friendly tender offer and merger under DGCL 251(h). Except, the price per share was \$9.75, which meant the sponsors' shares would be forfeited. Rather than accept their fate, however, the sponsors sued, claiming that, by refusing the sponsors' tender on the ground that the offer was only open to shares that were *not subject to transfer restrictions*, Nuvei violated the best price rule (offering only zero dollars for the sponsors' shares, which would now be involuntary merged out, instead of \$9.75).

Honestly, the most *natural* claim, to me, would *not* be that Nuvei violated the "best price" rule, but that it violated the "all holders" rule, which requires that "the tender offer is open to all security holders of the class of securities subject to the tender offer." 17 C.F.R. § 240.14d-10(a)(1) (the Third Circuit seemed a little baffled too; it made several references to the "all holders" rule, only to note that plaintiffs were not bringing a claim under it). Nonetheless, I'm sure for good reason, that's not the argument the sponsors made.

Anyhoo, the court held that "it would contort the Best Price Rule beyond recognition to suggest that the Rule requires offerors to purchase every tendered share, even those restricted by the parties' prior agreements. ... By its plain terms, the Rule relates to the consideration that must be paid to tendering shareholders at the completion of a proposed tender offer. But it is silent as to when, if ever, an offeror must purchase tendered shares or whether that offeror may include in the tender offer terms and conditions of acceptance, such as Nuvei's requirement that the tendered shares be freely transferable"

Which, you know, fair, if for no other reason than the statute contemplates not every share tendered will in fact be accepted in a tender offer, 15 U.S.C. §78n(d)(6), with no concern for whether the nontendered shares will eventually be merged out/canceled at some other price.

But also because there was a reason for the lockup and the price floor, which presumably had something to do with SPACs getting a reputation for being pump-and-dumps! It would be a heckuva thing if lockups could be evaded by the simple expedient of merging via 251(h) instead of 251(c).

So, you know. Valiant effort, appellants.

Sanctions. Rule 11 requires that attorneys file nonfrivolous complaints, warranted by the facts and existing law, on pain of sanction. The PSLRA – passed out of concern for frivolous securities complaints – requires a mandatory Rule 11 review

at the conclusion of a case. 15 U.S.C. § 78u-4(c)(1).

But the PSLRA also has the lead plaintiff provisions, which state that after a case is filed, the court will select a lead plaintiff to control the case. The lead plaintiff shall be the one “most capable of adequately representing the interests of” the class, and that plaintiff may not be the same plaintiff who filed the original complaint. Since the PSLRA front loads so much of the litigation into the pleading phase – everything stands or falls on whether a complaint runs a very precise pleading gauntlet – it necessarily follows that the lead plaintiff will want to take control of the complaint. Except you can’t appoint a lead plaintiff until there’s already been a complaint!

What to do?

The practice has grown up that, when a case potentially involves securities fraud, plaintiffs (law firms) will file complaints to get the ball rolling. These are necessarily bare bones if for no other reason than, no firm is going to expend the many hours of legal and investigatory resources drafting a complaint if they aren’t going to be appointed lead and be entitled to fees. *After* these rather sparse complaints are filed, the court consolidates related actions, appoints a lead, and the lead plaintiff files a new, amended complaint – the real complaint, the one that will govern the action and that is intended to surmount the PSLRA’s pleading hurdles, stretching hundreds of pages, often citing confidential witnesses, experts hired to analyze defendants’ documents, and so forth.

In *Toft v. Harbor Diversified*, No. 24-C-556, E.D. Wisc., the defendants disrupted the system. After the initial, bare bones complaint was filed – before a lead had been appointed – they moved to dismiss. *After* that, a new lead plaintiff was appointed, and the motion was held in abeyance to allow for an amended complaint by the lead.

The lead plaintiff filed a new complaint, the defendants moved to dismiss *that*, and won! After which, the lead plaintiff declined to amend again and instead informed the court of an intention to appeal.

Meanwhile, the defendants moved for sanctions against *the law firm that filed the original complaint*, on the grounds that the original complaint was so sparse that no reasonable attorney could have believed it complied with PSLRA standards.

To be fair – yes! That’s true of *every single initial complaint*, which is baked into the statutory design (even if that wasn’t exactly what Congress anticipated).

Nonetheless, the district court agreed that the original attorneys had committed sanctionable misconduct, and ordered briefing on amounts due, which would include defendants' litigation expenses associated with responding to the original complaint.

So I highlight this because it troubles me. Yes, initial complaints are bare bones, and could not – and are not designed to – withstand PSLRA scrutiny. But the system developed this way because there was no other way it could go, given the incentives created by the statute. The expenses defendants' incurred moving to dismiss the original complaint were entirely avoidable, because any defendant should understand – and certainly can be made to understand – that the original complaint will not be litigated. And if courts get into the habit of sanctioning the case-starters Well, I'm sure defendants will be delighted, because it will make it that much harder to start a case – any case, no matter how meritorious.

Authoritarianism. I [previously posted the text of a lecture I delivered at Boston University on shareholders' shrinking rights in corporate governance](#). Which is why it is timely that the SEC [recently followed through on its previously-announced plans to limit shareholders' ability to file exempt solicitations](#). These communications – even if there's been some abuse recently – are actually a [valuable mechanism of intra-shareholder communication](#), so this is another example of a multi-pronged effort to limit shareholder voice.

And then there's the SpaceX IPO! [WSJ reports](#) that SpaceX is trying to gain entry into major stock indices early, which would mean that large institutional investors would be forced to buy the stock right out of the gate. I think we can safely infer that with this IPO, Elon Musk will not make the mistake he made with Tesla, going public with single class shares. He will almost certainly adopt a dual-class share structure, giving himself outsized control, and probably include a shareholder agreement to boot ([which would preclude incorporating in Texas, so Nevada seems more likely](#)). In other words, [just as WaPo is reporting](#) (in an article written by at least one journalist who has since been laid off) that Musk tweaked xAI to make it more addictive to users by encouraging more sexual interactions (including nonconsensual image generation), America's retirees may be more or less forced to provide capital, with no governance rights and (assuming incorporation in Texas or Nevada, and even – increasingly – Delaware) virtually no litigation or inspection rights. This is what we call "private ordering" and "efficiency."

And there is no other thing. No [Shareholder Primacy](#) podcast this week, but back soon!

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Construction Laborers Pension Trust of Greater St. Louis v. Funko Inc.

DJ [dailyjournal.com/dar/285134](https://www.dailyjournal.com/dar/285134)

Ruling by

[Salvador Mendoza Jr.](#)

Lower Court

USDC Western Washington

Lower Court Judge

[James L. Robart](#)

Funko's purportedly "forward-looking" statements about potential excess inventory risks were not entitled to PSLRA safe-harbor, where they implied that Funko was not already experiencing those risks.

Court

9th

Cite as

2026 DJDAR 1012

Published

Feb. 6, 2026

Filing Date

Feb. 4, 2026

Opinion Type

Opinion

Disposition Type

Reversed (in part)

Oral Argument

May 23, 2025

Summary

Toy collectible company Funko Inc.'s share price lost more than half its value when millions of excess collectibles were written off at a loss of tens of millions of dollars. Funko shareholders filed various securities fraud claims, alleging that Funko misled investors about the company's inventory management capabilities. Plaintiffs alleged that Funko's 2022 SEC filings contained misleading risk disclosures that identified the need to avoid excess inventory, as well as the negative repercussions that would follow "if" it were to manage inventory improperly. The district court deemed these disclosures "forward-looking statements" protected by the Private Securities Litigation Reform Act's ("PSLRA") safe harbor provision, and it dismissed the complaint, finding that plaintiffs insufficiently alleged falsity and scienter.

Reversed in part. Plaintiffs alleging securities fraud must plead with particularity both falsity--an affirmative misrepresentation or omission--as well as scienter, i.e., knowledge of falsity. However, under the PSLRA's safe harbor, a defendant cannot be liable for forward-looking statements unless they were made with actual knowledge of falsity. However, where a statement about the future is in the form of a warning about a risk that might hurt business in the future, the statement may implicitly serve as a comment on the *present* state of affairs, because it suggests that the circumstance posing the risk has not yet occurred. These types of statements do not fall under the safe harbor, as they create an impression of a state of affairs that materially differs from reality. Here, the Ninth Circuit found that Funko's inventory management risk disclosures were not "forward-looking statements" entitled to safe harbor because they implied that Funko was not presently experiencing inventory management issues, when--according to plaintiffs' allegations--it was. The court partially reversed, finding that plaintiffs adequately pleaded the falsity of risk disclosures. As to scienter, it found that a reasonable fact-trier could find that defendant officers knew that their statements were misleading at the time they were made.

— Christie Bahna

CONSTRUCTION LABORERS PENSION TRUST OF GREATER ST. LOUIS, Lead Plaintiff; PAUL HADDOCK,

Plaintiffs - Appellants,

and

JONATHAN STUDEN,

Plaintiff,

v.

FUNKO INC; ANDREW PERLMUTTER; JENNIFER FALL JUNG,

Defendants - Appellees.

No. 24-4909

D.C. No.2:23-cv-00824JLR

United States Court of Appeal

Ninth Circuit

Filed February 4, 2026

OPINION

Appeal from the United States District Court for the Western District of
Washington

James L. Robart, District Judge, Presiding

Argued and Submitted May 23, 2025

San Francisco, California

Before: Marsha S. Berzon, Michelle T. Friedland, and Salvador Mendoza, Jr., Circuit
Judges.

Opinion by Judge Mendoza

COUNSEL

Andrew S. Love (argued), Robbins Geller Rudman & Dowd LLP, Nashville, Tennessee; Hillary B. Stakem, Ting H. Liu, and Jessica E. Robertson, Robbins Geller Rudman & Dowd LLP, San Diego, California; Gretchen F. Cappio, Matt Melamed, and Garrett Heilman, Keller Rohrbach LLP, Seattle, Washington; for Plaintiffs-Appellants.

Kevin M. McDonough (argued), Thomas J. Giblin, and Elizabeth A. Parvis, Latham & Watkins LLP, New York, New York; Christine C. Smith, Latham & Watkins LLP, Washington, D.C.; Graham Ambrose, Latham & Watkins LLP, Boston, Massachusetts; David I. Freeburg and Lianna Bash, DLA Piper LLP (US), Seattle, Washington; for Defendants-Appellees.

OPINION

MENDOZA, Circuit Judge:

Not all misfit toys are lucky enough to be spirited away to happy homes by a red-nosed reindeer on Christmas. Rudolph the Red-Nosed Reindeer (NBC television broadcast, aired Dec. 6, 1964). In our world, unwanted stock is often labeled "dead inventory" and discarded. Such is the story of millions of misfits produced by Funko, Inc. ("Funko" or "the Company"), which were written off at a loss of tens of millions of dollars in November 2022.

After news of the write off broke, Funko's share price lost more than half its value. Funko's shareholders sued the Company, its then-Chief Executive Officer Andrew Perlmutter ("CEO Perlmutter"), and then-Chief Financial Officer Jennifer Jung ("CFO Jung") under the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a). The shareholders alleged that the Company and its officers misled investors as to the progress of a major warehouse relocation, the quality and management of its inventory, its use and upgrade of information technology, and its distribution capabilities.

To survive dismissal in a suit under the Exchange Act, Plaintiffs must allege, among other elements, that Defendants made a "material misrepresentation or omission" (what we in this opinion call "falsity"), and that they did so with the "intent to mislead investors" or with "deliberate recklessness to an obvious danger of

Securities

J&J Seeks to Limit Investors' Class Pathway at Supreme Court

Feb. 5, 2026, 10:47 AM PST

Johnson & Johnson urged the US Supreme Court to review whether a shareholder lawsuit tied to statements about the safety of its talc products should've been blessed as a class action, in a case that could limit investors' path to class certification.

The pharmaceutical giant wants the justices to expand on their 2021 ruling in *Goldman Sachs Grp., Inc. v. Ark. Teacher Ret. Sys.*, where they clarified the standard for class certification in securities cases where there's a mismatch between alleged misrepresentations and later corrections before market selloffs.

J&J's request Wednesday asserts there's a split between the US courts of appeals for the Third and Ninth circuits, which maintained that purported misrepresentations and corrective disclosures on the same subject suffice to win class status, and the Second Circuit, which required a more specific tying of back-end revelations to the unveiling the falsity of misstatements.

If the justices bite, "it would represent yet another opportunity for the Court to further narrow the paths to class certification, ultimately potentially resulting in a system where only a very narrow slice of securities cases, with very specific idiosyncratic facts, can be litigated on a class basis," University of Colorado Law School professor Ann Lipton said.

"It would be great if the Supreme Court took up the case, as I think the lower courts and the securities bar would benefit from greater clarity around when a mismatch should be found under *Goldman*," said Davis Polk & Wardwell LLP's Brian Burnovski.

The Supreme Court in *Goldman* said a public company can rebut a presumption that shareholders as a class relied on its stock price by severing the link between the price and alleged generic misrepresentations in cases where investors argue those false statements sustained elevated share prices, also known as the "inflation-maintenance" theory of liability.

The Second Circuit, on remand, undid the *Goldman* class, finding a wide-enough mismatch between the misrepresentations alleged and later, stock price-deflating corrective disclosures.

The Second Circuit's reading was accurate, J&J said, while the Third Circuit's was lax. If let stand, "the decision leaves companies exposed—in some circuits but not others—to class actions reverse-engineered from stock drops, as some 'corrective disclosure' can always be found when the stock price falls."

A split Third Circuit panel in J&J's appeal decided that unlike in *Goldman*, there was no mismatch between the contents of the alleged misrepresentation and subsequent disclosures. "Therefore, market reaction to the disclosures is capable of shedding light on the price impact of the alleged misrepresentations," the unpublished opinion said.

The J&J investor-alleged disclosures didn't reveal new information, the company's petition said. It highlighted Judge Cindy K. Chung's dissent. Chung said she would have vacated and remanded the class certification ruling "since, for many of the alleged disclosures, the District Court did not assess evidence introduced by J&J showing that the disclosures did not contain newly public information and were not corrective."

"Both the correctiveness and newness aspects of the Third Circuit's decision warrant review," J&J said.

The full Third Circuit denied J&J's rehearing bid despite three judges' votes to allow it.

Unlikely Review

While securities attorneys have been monitoring class status decisions like J&J's nationwide, it might be too soon for the high court to revisit *Goldman*.

"I would be surprised if the Supreme Court were to take the case, if only because *Goldman* was so recently decided, and everything since then just represents rather narrow questions of how *Goldman* should be applied in particular factual settings," Lipton said.

The court recently has "been burned by overreading securities cases to present important questions of law, only to have to dismiss them when they turned out to present narrow factual disputes," she said. This happened in cases involving Meta Platforms Inc., formerly Facebook, and Nvidia Corp. that the justices took up and dropped in 2024.

The J&J opinion and a Ninth Circuit decision involving Zillow Group Inc. "read as more of the same," she said.

Despite "Judge Chung's persuasive dissent," said Burnovski, "I think the Court is more likely to wait until additional Circuits have a chance to weigh in on this issue."

An attorney for Zillow's investor class says high court attention's unlikely. J&J's petition echoes what Zillow said, and the Ninth Circuit "didn't even believe this was worthy of a published opinion."

"The J&J petition like the Zillow appeal attempts to raise an issue that simply doesn't exist: the J&J court faithfully followed *Goldman*," said Hagens Berman Sobol Shapiro LLP's Steve Berman.

Another Chance

The Ninth Circuit last month denied Zillow's bid to rehear its affirmance of class status in a suit alleging the real estate marketer had misrepresented its home-flipping business' pricing model.

The denial let stand a three-judge unpublished opinion, finding alleged corrective disclosures revealed new information about how much Zillow's pricing struggle threatened its now-shuttered home-buying business and suggested earlier statements may have obscured how the model wasn't working.

J&J said its petition Wednesday raises questions out of the Third and Ninth circuits which, if let linger, "will open the floodgates to meritless claims."

"Public companies already are inundated with securities class actions designed to coerce settlements for the benefit of the plaintiffs' bar, with trillions of dollars of claims asserted in 2025 alone," J&J's Worldwide Vice President of Litigation, Erik Haas, said in a statement emailed to Bloomberg Law.

"The Third and Ninth Circuits have now created a novel standard that flouted the high court's recent directives limiting class actions, and that enables plaintiff lawyers to cite their own advertising statements as purported corrective disclosures, regardless whether the self-interested advertising actually refutes any purported misrepresentation."

The J&J investor class is represented by Robbins Geller Rudman & Dowd LLP, which declined to comment, and Carella Byrne Cecchi Brody & Agnello PC, where an attorney didn't immediately respond to an email seeking comment. Sidley Austin LLP represents J&J.

The case is Johnson & Johnson v. San Diego Cnty. Emps. Ret. Ass'n , U.S., No. 25A744, petition 2/4/26 .

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Securities

Nexo Capital Investor Cleared to Proceed With Lending Fraud Suit

Feb. 5, 2026, 10:57 AM PST

Nexo Capital Inc. will continue to face a suit alleging the company fraudulently induced an investor to take out loans using misleading statements about an in-house crypto token, a California federal district court said.

John Cress adequately alleged Nexo made misrepresentations regarding rates and fees that amounted to more than “inactionable puffery,” Magistrate Judge Thomas S. Hixson of the US District Court for the District of Northern California said in a Wednesday opinion denying a motion to dismiss.

Cress sued in February 2023, alleging Nexo misrepresented its ability to respond to the risks associated with losing digital assets to potential liquidation. Nexo’s platform allows customers to use their digital assets as collateral for borrowing fiat currency or transfer cryptocurrency assets into an interest-bearing account.

Cress allegedly took out millions of dollars in loans collateralized by his digital assets and acquired NEXO Tokens, which the company purportedly required him to purchase to receive more favorable interest rates. He allegedly suffered millions of dollars in losses, after the crypto market experienced downside volatility, because of the company’s misrepresentations.

The court in October 2023 said Cress’s fraudulent inducement claim could move forward, but dismissed other claims. Cress filed a second amended complaint in October 2025 with multiple causes of action alleging federal and state law violations.

Cress can move ahead with the fraudulent inducement and UCL claims, which allege Nexo falsely promised Cress the best rates on his purchases, Hixson said.

Cress plausibly alleged Nexo didn’t honestly believe it offered “some of the best rates on the market,” the court said, because a statement of opinion can support fraud liability where the defendant bases the statement on facts known to be nonexistent.

The plaintiff can also continue to allege Nexo committed acts of mail and wire fraud, in violation of RICO, by operating a systematic scheme to fraudulently charge and conceal substantial fees, the opinion said.

Hixson said, for example, that Cress pleaded a pattern of racketeering activity, which includes several offenses in the RICO statute, known as predicate acts. Mail and wire fraud are predicate offenses.

Cress plausibly alleged Nexo used wires to conduct its scheme when it used emails and the internet to communicate false statements to customers about fees, transmit false trade confirmations, and circulate internal documents directing how to conceal fees from customers, the opinion said.

Taylor-Copeland Law represents Cress. Eversheds Sutherland LLP and Baker & McKenzie represent Nexo Capital.

The case is *Cress v. Nexo Capital Inc.*, 2026 BL 37162, N.D. Cal., No. 23-cv-882, 2/4/26 .

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States square off with opioids whistleblower over payout from \$4.7 billion Walgreens settlement

 [reuters.com/legal/government/states-square-off-with-opioids-whistleblower-over-payout-47-billion-walgreens-2026-02-05](https://www.reuters.com/legal/government/states-square-off-with-opioids-whistleblower-over-payout-47-billion-walgreens-2026-02-05)

Mike Scarcella, David Thomas

February 5, 2026

The Walgreens logo is seen outside the store in Times Square in New York, U.S., July 5, 2016. REUTERS/Shannon Stapleton [Purchase Licensing Rights, opens new tab](#)

- Whistleblower who won \$25 million in federal opioids case wants cut of states' deal
- Immigration attorneys win right to fees in 3rd Circuit habeas case
- DOJ objects to blind consumers' class action settlement

Feb 5 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com  , [opens new tab](#).)

A group of U.S. states is fighting a whistleblower's bid for a cut of their multibillion-dollar opioid settlement with retail pharmacy giant Walgreens, arguing the deal was negotiated to fund opioid-crisis response and not to reward a private tipster.

Sign up [here](#).

The dispute stems from a long-running federal case brought by pharmacist T.J. Novak against Walgreens Boots Alliance in Chicago federal court in 2018. Novak alleged Walgreens filled illegal opioid prescriptions and then sought reimbursement from government health programs, including Medicare and Medicaid.

The U.S. government joined Novak's case and [reached](#) a \$300 million settlement with Walgreens, which denied wrongdoing. The accord last year included \$150 million tied to Novak's federal False Claims Act allegations, and Novak said he received a 17.25% share of the funds — more than \$25 million — as a whistleblower award.

More than two dozen states separately settled opioid-related claims with Walgreens in 2022 for more than \$4.7 billion. Novak contends the states' settlement improperly ended his claims under the states' versions of the federal

False Claims Act, which allows citizens to sue on the government's behalf and share in any recovery.

In a November [filing](#) , [opens new tab](#), he argued that the states would not have been able to achieve their accord without agreeing to release his claims. "Mr. Novak is far from an interloper," his lawyer told the court. The states this week flooded the federal court in Chicago with filings challenging Novak's arguments.

Rhode Island warned that a ruling for Novak "would transform every state enforcement action involving overlapping facts into a mandatory payout" for whistleblowers.

North Carolina told the court that Novak has no right to a share of the state's deal since the money is devoted to addressing an alleged public nuisance caused by Walgreens, and not to resolving Novak's claims under the state's false claims laws.

"There is no one-size-fits-all result the court could impose on 28 states," Virginia argued in its filing, since false claims statutes differ from one state to another. It also warned that Novak's request would force the court into "a complex web of allocation methodologies for 28 states" to decide what part of each state's recovery, if any, could be subject to whistleblower compensation.

Novak's lawyer and Walgreens did not immediately respond to requests for comment.

RULING ON LEGAL FEES FOR US DETAINEES DEEPENS SPLIT IN FEDERAL COURTS

As U.S. immigration detentions mount under President Donald Trump, a new ruling from the 3rd U.S. Circuit Court of Appeals paves the way for people who have been wrongfully detained to recoup attorney fees under a 1980 federal law.

The [ruling](#) , [opens new tab](#) deepens a split among federal appellate courts, some of which have ruled that former immigration detainees cannot recover fees and costs under the Equal Access to Justice Act.

The 3rd Circuit's ruling covers Delaware, New Jersey, and Pennsylvania. The plaintiffs in the case, Adewumi Abioye and Adolph Michelin, were both detained in the Philipsburg, Pennsylvania ICE facility, which holds an average of 1,200 people every day, immigration groups [told](#) , [opens new tab](#) the appellate court.

Immigration attorneys said the ruling would help incentivize attorneys to work on habeas petitions — a legal challenge by a person in custody arguing their detention is unlawful and violates their constitutional rights. Such cases can require hundreds of hours of legal work that could be reimbursed according to the lawyers' hourly rates.

People detained by immigration authorities typically cannot afford a lawyer to file a habeas petition on their behalf, and having legal representation increases detainees' chance of release, said Yulie Landan, a staff attorney at the National Immigration Project.

Habeas petitions require "a certain level of expertise, and that's why having a lawyer increases the odds of being successful," Landan said.

Under the EAJA, any private party who prevails in a civil action against the United States can earn fees if the government's position was not "substantially justified" or "special circumstances make an award unjust."

The 3rd Circuit appeal hinged on whether a habeas petition challenging an immigration detention is considered a civil action under the EAJA. The 3rd Circuit said it is.

"Habeas actions are civil actions," the panel said. "They have been since before our nation's founding."

The 4th and 5th Circuits have previously ruled that habeas actions are not civil actions under the EAJA, and the 2nd, 9th, and 10th Circuits concluded that they are.

A spokesperson for the U.S. Department of Justice, which opposed the fee awards, declined to comment on whether the government planned to appeal the decision to the U.S. Supreme Court.

Immigration attorneys told Reuters that the number of habeas petitions has surged as the Trump administration has aggressively cracked down on immigration.

"Habeas is all I do now," said Jonah Eaton, a supervising litigation attorney at UnLocal, a non-profit that provides legal services to immigrants in New York, who formerly represented Michelin.

Hundreds of such lawsuits have flooded Minnesota's federal court, where an attorney for the government said this week that she had been [overwhelmed](#) by the caseload.

Attorneys at U.S. law firm Arnold & Porter who argued on Abioye and Michelin's behalf at the 3rd Circuit did not immediately respond to a request for comment.

The 3rd Circuit's ruling upheld decisions by trial judges to award Abioye, a Nigerian citizen, \$18,224.58, and Michelin, a Jamaican citizen, \$15,841.60.

WHY THE DOJ SEES PROBLEMS WITH BLIND CONSUMERS' CLASS ACTION DEAL

The U.S. Justice Department filed a rare "statement of interest" this week, objecting to a proposed \$5.15 million settlement in a class action by legally blind consumers who said they couldn't access the website of clothing retailer Fashion Nova using screen-reading software.

In urging a California federal judge to reject the deal, the DOJ said plaintiffs' lawyers are seeking \$2.52 million in combined fees and costs — more than what's earmarked to pay class members. But as Reuters columnist Jenna Greene [reports](#), the government also alleges that the website created so class members could submit compensation claims, is itself inaccessible to the visually impaired.

Read More:

[Decades-long clash leads to \\$256 million verdict against human rights lawyer Georgia, Trump defendants clash over fee law in election interference case](#)
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Reporting by David Thomas and Mike Scarcella

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Thomson Reuters

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\$8.5M Verdict Awarded in First Federal Trial Over Sexual Assault of Uber Rider

A federal jury in Arizona awarded the \$8.5 million on Thursday to Jaylynn Dean, who alleged her Uber driver raped her on a ride in 2023.

February 05, 2026 at 06:50 PM By  **Amanda Bronstad**

What You Need to Know

- An Uber spokesman told Law.com, "The jury rejected claims that Uber was negligent and that our safety systems were defective."
- The plaintiff's lawyers asked nine jurors to award \$24 million in compensatory damages and \$120.2 million in punitive damages against Uber.
- On Sept. 30, in the first sexual assault trial in the nation against Uber, jurors in San Francisco Superior Court concluded that Uber was negligent in failing to provide safe rides to women but not liable for the plaintiff's sexual assault by one of the drivers.



Credit: Rafael Henrique/Adobe Stock

A federal jury in Arizona awarded \$8.5 million on Thursday to a woman who alleged she was raped by her Uber driver.

The verdict comes in the [first federal bellwether trial](#) in the sexual assault multidistrict litigation in the U.S. District Court for the Northern District of California.

The jury deliberated for about two days.

Plaintiff Jaylynn Dean alleged her Uber driver raped her on Nov. 15, 2023, while she was on a trip in Tempe, Arizona.

Uber's lawyers, led by Kirkland & Ellis partner Kim Bueno in Austin, Texas, insisted that Hassan Turay, the driver, was a U.S. citizen who passed multiple background checks, was aware of Uber's rules on sexual misconduct and received 5-star ratings from riders. His actions, they told jurors, were unforeseeable.

"The jury rejected claims that Uber was negligent and that our safety systems were defective," an Uber spokesperson wrote in a statement emailed to Law.com. "They awarded an amount far below what was sought and declined to award punitive damages altogether. This verdict affirms that Uber acted responsibly and has invested meaningfully in rider safety. We will continue to put safety at the heart of everything we do."

In [closing arguments Tuesday](#), Dean's lawyers asked nine jurors to award \$24 million in compensatory damages and \$120.2 million in punitive damages against Uber.

Dean's lawyers told the jury that Uber failed to warn their client, who was 19 at the time, about the risks of sexual assault when it sent Turay to pick her up just past midnight, after she had been drinking. Instead, Uber advertised that its platform is safe for women, offering what Dean's lawyers characterized as ineffective safety features.

In an emailed statement, Sarah London, co-lead counsel for Dean, told Law.com, "Today's verdict validates the thousands of survivors who have come forward at great personal risk to demand accountability against Uber for its focus on profit over passenger safety. The jury heard extensive evidence about Uber's practices and recognized that Uber is responsible for the conduct of its drivers."

London, of San Francisco's Girard Sharp, added, "This case is a victory for Ms. Dean, and we are grateful for this outcome, but the work is far from over. Thousands of cases remain, and justice will ultimately be measured by the outcomes of the ongoing litigation and whether meaningful safety reforms are implemented to protect passengers going forward."

Uber unsuccessfully [moved to postpone the trial](#), which began on Jan. 13, citing a “misleading” ad campaign, sponsored by the Consumer Attorneys of California, that could taint the jury pool. The campaign, called “Every 8 Minutes,” states that [Uber receives a complaint of sexual assault](#) or misconduct every eight minutes—a claim largely based on an article in [The New York Times](#).

Uber also filed motions for mistrial, which U.S. District Judge Charles Breyer denied.

On Sept. 30, in the first sexual assault trial in the nation against Uber, jurors in San Francisco Superior Court concluded that Uber was negligent in failing to provide safe rides to women but not liable for the plaintiff’s sexual assault by one of the drivers.

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Uber liable in first sexual-assault MDL bellwether; jury awards \$8.5M

DJ [dailyjournal.com/articles/389670-uber-liable-in-first-sexual-assault-mdl-bellwether-jury-awards-8-5m](https://www.dailyjournal.com/articles/389670-uber-liable-in-first-sexual-assault-mdl-bellwether-jury-awards-8-5m)

An Arizona jury found Uber liable for the alleged rape of a passenger at the hands of one of its drivers, holding that the driver was an apparent agent of the company, in the first bellwether trial of the massive multidistrict litigation surrounding allegations of sexual assault on Uber rides.

The jury awarded \$8.5 million in compensatory damages, finding that the driver was an agent of the company, but sided with Uber on the questions of negligence, design-defect, and punitive damages, a spokesperson for the plaintiff's attorneys said.

"Today's verdict validates the thousands of survivors who have come forward at great personal risk to demand accountability against Uber for its focus on profit over passenger safety. The jury heard extensive evidence about Uber's practices and recognized that Uber is responsible for the conduct of its drivers," Girard Sharp partner Sarah London, who represented plaintiff Jaylynn Dean, said in a statement.

In a statement, Uber emphasized that the jury found the company acted responsibly and was only liable because of the driver's apparent agency.

"The jury rejected claims that Uber was negligent and that our safety systems were defective. They awarded an amount far below what was sought, and declined to award punitive damages altogether. This verdict affirms that Uber acted responsibly and has invested meaningfully in rider safety. We will continue to put safety at the heart of everything we do," the statement said.

Uber plans to appeal the verdict.

London, along with Alexandra Walsh of Anapol Weiss and Debbie Chang of Chang Klein, argued that Uber's drivers are apparent agents of the company, even if the company considers them independent contractors.

They also claimed the company was negligent and had a defective design by not allowing women to request a woman as their driver, and by not requiring drivers to record rides on a dashboard camera. They also argued Plaintiffs asked the jury to award \$144 million in damages.

"They have designed, created and they control an ecosystem that they know is dangerous for women," Walsh said in closing arguments. *In re: Uber Technologies, Inc., Passenger Sexual Assault Litigation*, 3:23-md-03084 (N.D. Cal., filed Oct. 4, 2023).

Uber, represented by Kirkland & Ellis, said its actions weren't negligent since the company conducts background checks on drivers, allows passengers to record rides and removes drivers from the platform as soon as they're accused of misconduct. Even if its actions were negligent, the company argued, its actions didn't cause the incident, which it says would have occurred either way - Dean had the Lyft app downloaded at the time, which allows passengers to request a driver that matches their gender, and still opted to call an Uber. It also argued the driver, Hassan Turay, isn't an agent of the company since it considers its drivers independent contractors.

"There was nothing in his record to suggest that he was going to break the rules and have sex with a passenger," Kirkland & Ellis partner Kim Bueno said at trial.

Trial was held in Phoenix before Judge Charles R. Breyer of the Northern District of California, who typically presides over a San Francisco courtroom. Dozens of similar lawsuits are currently in front of Breyer in the MDL.

#389670

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<https://www.wsj.com/tech/uber-ordered-to-pay-8-5-million-in-passenger-sexual-assault-case-be8c838c>

TECHNOLOGY

Uber Ordered to Pay \$8.5 Million in Passenger Sexual Assault Case

A jury found the company liable for the 2023 sexual assault of a 19-year-old passenger

By [Elias Schisgall](#) [Follow](#)

Feb. 6, 2026 1:08 pm ET



Uber said Friday that it plans to appeal the ruling. ROBYN BECK/AGENCE FRANCE-PRESSE/GETTY IMAGES

Quick Summary

- Uber was ordered to pay \$8.5 million in compensatory damages for the 2023 sexual assault of a 19-year-old passenger.

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[Uber](#) UBER -1.57% ▼ Technologies was ordered to pay \$8.5 million in compensatory damages after a jury found the company liable for the 2023 sexual assault of a 19-year-old passenger.

The passenger, Jaylynn Dean, was picked up by Uber driver Hassan Turray shortly after midnight on Nov. 15, 2023 while she was alone and intoxicated. Turay then

stopped the ride and assaulted Dean in the backseat while she was incapacitated, Dean's lawyers said Friday, citing testimony and evidence from the trial.

The jury found that Uber was not liable for negligence or design defects, but was liable for apparent agency, according to court documents. It did not find Uber liable for punitive damages.

Uber removed Turay from the platform after Dean reported the incident to police and the company.

The lawyers said Uber internal documents revealed at trial showed that the app's internal Safety Risk Assessed Dispatch algorithm identified the trip as having an elevated risk of a serious safety incident. The company dispatched the ride regardless, the lawyers said.

Uber said Friday that it plans to appeal the ruling, adding that the court erred in its instructions to the jury about whether to consider Turay an apparent agent of the company.

"The jury rejected claims that Uber was negligent and that our safety systems were defective," Uber spokesperson Andrew Hasbun said. "They awarded an amount far below what was sought, and declined to award punitive damages altogether."

"This verdict affirms that Uber acted responsibly and has invested meaningfully in rider safety," Hasbun added. "We will continue to put safety at the heart of everything we do."

The company added that a judge in a similar case in California state court dismissed the claim that a driver was an agent of the company before trial. The jury found in Uber's favor in that case, the company said.

The verdict follows a nearly four-week trial in the U.S. District Court for the District of Arizona which featured testimony from a range of top executives, including Chief Executive Officer Dara Khosrowshahi and co-founder and former CEO Travis Kalanick.

Dean's trial was the first in federal multidistrict litigation encompassing more than 3,000 sexual-assault lawsuits against the company, the lawyers said. "This verdict for the plaintiff in the very first bellwether trial is a harbinger of what's to come," Sarah London, who served as co-lead trial attorney and is co-leading the multidistrict litigation, said Friday.

Uber and other ride-hailing services have long faced scrutiny over the risks of sexual assault and misconduct. A 2019 report revealed that Uber received nearly 6,000 reports of sexual assault involving U.S. passengers and drivers during 2017 and 2018, according to The Wall Street Journal.

“Corporate presentations, internal messages, and testimony from top corporate, safety, and marketing executives showed that Uber knew based on years of internal analysis, rider reports, law enforcement reports, and public data that women riding alone at night — particularly when intoxicated — faced heightened danger of sexual assault, but chose not to disclose these risks because doing so posed ‘serious business implications,’” the plaintiff’s attorneys said Friday.

Uber said Friday that reported sexual assaults have fallen 44% since the 2019 report, adding that upwards of 99.9% of trips are completed without any reported safety incidents. The company said it leads the industry in transparency around sexual assaults.

Elias Schisgall covers breaking corporate news for The Wall Street Journal. A New York native, he recently covered labor and employment law for Bloomberg Law in Arlington, Va. Prior to that, he was a fellow at the Provincetown Independent in Cape Cod, Mass....

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Chhabria skeptical of bid to add new copyright claim in Meta AI case

DJ [dailyjournal.com/articles/389668-chhabria-skeptical-of-bid-to-add-new-copyright-claim-in-meta-ai-case](https://www.dailyjournal.com/articles/389668-chhabria-skeptical-of-bid-to-add-new-copyright-claim-in-meta-ai-case)

U.S. District Judge Vince Chhabria

U.S. District Judge Vince Chhabria pushed back on plaintiffs' motion to file a new complaint after he granted partial summary judgment to defendants Meta last year over allegations the company improperly used copyrighted works to train its AI model.

Plaintiffs, represented by Boies Schiller Flexner LLP, moved in December to file a fourth amended complaint, which would add a claim for contributory copyright infringement. They argued Meta contributed to infringement because it obtained the copyrighted works by torrenting them, and in the process, created copies that were distributed to a peer-to-peer sharing network.

At the hearing Monday, Chhabria said he was confused why plaintiffs are adding the contributory infringement claim now when they could have included it in the third amended complaint -- especially since the third amended complaint included a distribution claim based on the alleged torrenting.

"In all candor, is it just that your team didn't think [of] it?" Chhabria asked.

Boies Schiller partner Jesse Panuccio responded that since then, evidence emerged supporting the claim.

"You're speaking in slogans... None of that means anything," Chhabria said.

In Meta's response to the motion, its attorneys suggested plaintiffs only considered adding the contributory infringement claim after they saw a similar claim in a different lawsuit against the company brought by Entrepreneur Media.

The company was represented at the hearing by Cooley LLP Partner Kathleen R. Harnett, who said the contributory infringement claim "was already a known theory" at the time of the third amended complaint and not enough new evidence emerged to justify plaintiffs' motion to amend.

Chhabria said until plaintiffs could show otherwise, he was going to assume they "made a mistake" and were trying to fix it after seeing the Entrepreneur Media complaint.

Panuccio said that plaintiffs' best explanation is that evidence that Meta torrented the copyrighted works didn't emerge until just before the deadline to submit the third amended complaint, and they didn't have time to consider all the possible claims from that evidence.

"The evidence of any torrenting at all was brand new... We rushed to get the amendment in," Panuccio said.

Either way, plaintiffs don't have an obligation to add a claim as soon as they possibly can, he said.

Chhabria also questioned how viable the case would be going forward. So far, he said, three theories have emerged allowing authors to recover damages for their copyrighted works used in AI models: a direct infringement claim from the use of the work to train an AI model, a distribution claim from the AI model producing similar work and the contributory infringement claim.

If the court opts not to let plaintiffs add the contributory claim, Chhabria's already ruled against their training data-based claims, leaving only one of the three theories on the table.

"That makes me very uncomfortable," Chhabria said, adding that he has a duty to the absent class members.

Plaintiffs responded that it only takes one winning theory to recover damages, and that it will likely be litigated on appeal anyway, so class members could still recover on the two other claims as well.

Meta also moved to stay the Kadrey case so the company can focus on the Entrepreneur Media case. Chhabria said he won't grant the motion.

In his summary judgment ruling, Chhabria held that training an AI model that uses the copyrighted work to create different text is a fair use.

Around the time of the summary judgment ruling, retired U.S. District Judge William Alsup sided with plaintiffs at the summary judgment stage of a similar lawsuit against tech giant Anthropic because the company obtained copyrighted works through a pirated library. The case resulted in a \$1.5 billion settlement.

Since then, much of the AI-related copyright litigation around the country has centered on questions of piracy and torrenting.

Meta must strip inactive accounts from usage metrics, judge rules

DJ [dailyjournal.com/articles/389663-meta-must-strip-inactive-accounts-from-usage-metrics-judge-rules](https://www.dailyjournal.com/articles/389663-meta-must-strip-inactive-accounts-from-usage-metrics-judge-rules)

Meta must remove inactive accounts from its calculations of how much time the average user spends on its apps in the multidistrict litigation over teen social media addiction, U.S. Magistrate Judge Peter H. Kang ruled Wednesday.

Plaintiffs, represented by Daniel I. Keiser of the Kentucky Attorney General's Office, said Meta "misrepresented the data" to suggest users spend less time on Facebook and Instagram than they actually do, bolstering the company's argument that its features do not cause social media addiction. By including accounts that aren't in use, Meta "artificially deflates" the time-on-app data, which it agreed to produce during discovery, Keiser said.

Meta, represented by Ainsley S. McMahon of Covington & Burling LLP, argued that the inclusion of those users barely affects the data, since inactive users were typically classified as "age unknown" while plaintiffs' case focuses on teens.

"Plaintiffs vastly overstate the impact of this issue," McMahon said. *In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, 4:22-md-03047 (N.D. Cal., filed Oct. 6, 2022).

Keiser responded that there are points in the case where plaintiffs need an overall average for the time users spend on Meta's platforms.

Kang also granted plaintiffs' request to make Facebook provide more precise approximations in the time-on-app percentile distributions it produced. The formula the company used produced estimates with a 1.33% margin of error, but plaintiffs wanted exact numbers.

Kang was skeptical at first, asking why plaintiffs couldn't have their expert conduct analyses using both the high and low end of the range with the current margin of error.

Keiser responded that plaintiffs need an exact number, so they can decide how to divide damages among the states involved in the lawsuit.

McMahon argued that these were "two very narrow issues" and plaintiffs could still easily work with the data provided.

"Neither of these issues justifies the massive reopening of discovery," McMahon said.

"Are you saying a flawed or inaccurate response isn't a basis to compel?" Kang asked.

McMahon responded that the estimates are accurate, but plaintiffs are asking them to produce perfectly precise numbers, calling plaintiffs' ask an "illusory goal" since estimates always involve some imprecision.

The numbers the company handed over are nearly as good as plaintiffs could've hoped for; while the maximum error that could be expected is 1.33%, a typical data point has a nearly negligible error of 0.3%, McMahon said.

Kang settled on asking Meta to produce estimates with a 0.01% margin of error, which McMahon said was the most precise estimate they could produce relatively easily.

The judge ordered Meta to produce the new numbers by March 6.

Dozens of states and school districts sued Meta, along with Snapchat, TikTok and YouTube, alleging they implemented features that caused kids and teens to get addicted to their social media platforms.

The case is in front of U.S. District Judge Yvonne Gonzalez Rogers.

The parties are currently awaiting Gonzalez Rogers' decision on defendants' motion for summary judgment in the school districts' claims.

Meta and YouTube are facing trial over similar allegations in state court. TikTok and Snapchat settled before the case went to trial.

#389663

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Crash Victims' Families Urge 5th Circuit to Undo Boeing Criminal Case Dismissal

Paul Cassell, a University of Utah law professor, argued Thursday that prosecutors violated the federal Crime Victims' Rights Act by inadequately conferring with the families before entering a deferred prosecution agreement with the aircraft manufacturer.

February 05, 2026 at 05:44 PM By  **Avalon Zoppo**



Boeing headquarters in Chicago. Courtesy of Boeing

A lawyer for 31 families of victims of two fatal Boeing 737 MAX crashes urged the U.S. Court of Appeals for the Fifth Circuit on Thursday to undo a judge's dismissal of the U.S. Department of Justice's criminal conspiracy case against the aircraft manufacturer.

Paul Cassell, a University of Utah law professor, argued Thursday that prosecutors violated the federal Crime Victims' Rights Act by inadequately conferring with the families before entering a deferred prosecution agreement with Boeing and by concealing a provision of a nonprosecution agreement with the company that was relied on to dismiss the charges.

The Fifth Circuit questioned how exactly, in the families' view, the government fell short in its duty to confer with them.

Judge Leslie Southwick also pressed Cassell on how the deferred prosecution agreement from 2021—which the government later said Boeing breached—continued to influence the case and the lower court's eventual approval of a motion to dismiss last year.

"It seems to me there's actually a period or a time in which there was conferral. Let me ask you that fairly simple statement. Where does the government fall short? Was it the timing? Was it who participated? Was it the degree of information shared?" Southwick asked. "What was wrong with the conferral that occurred?"

After the 2018 and 2019 crashes that killed 346 people, the government accused Boeing of conspiracy to defraud federal regulators in the certification of the defective 737 MAX 8 aircraft. The DOJ last May reached a nonprosecution agreement with Boeing and then sought dismissal of the charges, with Boeing to pay over \$1.1 billion in fines as part of the deal.

U.S. District Judge Reed O'Connor of the Northern District of Texas allowed the dismissal last November.

But Cassell, on behalf of the families objecting to the dismissal, filed writs of mandamus petitions asking the Fifth Circuit to reverse the dismissal order and set aside the deferred and nonprosecution agreements.

Cassell told the Fifth Circuit that the earlier deferred prosecution agreement influenced the entirety of the proceedings—including the dismissal—because it stated that Boeing's senior management did not facilitate the crime. There wasn't sufficient conferral regarding that issue as required by the CVRA, Cassell contended.

"The families very much want to address the government's view that the senior management of Boeing was uninvolved in the deadliest corporate crime in U.S. history. But that's a binding agreement between the government and Boeing that senior management wasn't involved," said Cassell, a former district judge in the District of Utah from 2002 to 2007.

"It influences ... the whole way that this case has proceeded," Cassell added. "Because if Boeing senior management was involved in the crime, outcomes should be structured differently to ensure that corrective measures are taken and that the public safety, when it flies across the country, across the world, is fully protected."

DOJ attorney W. Connor Winn said the government solicited the views of the crash victims' families as it decided how to prosecute Boeing and complied with the CVRA. In dismissing the

charges, O'Connor agreed that the government abided by the statute.

Southwick pressed Winn on the families' contention that prosecutors failed to confer with them about what charges should be brought specifically against Boeing management.

"So how was that handled?" Southwick asked.

Winn recalled that, in May 2024, the DOJ said Boeing breached its obligations under the DPA by failing to design and enforce a compliance and ethics program, thus making the manufacturer subject to prosecution.

At that point, the department discussed with the families "the possibility of bringing such charges against management," Winn said.

"The government told them that it has found no evidence in this case to support charges that it could prove beyond a reasonable doubt against any individuals except the two technical engineering pilots whose conduct underlies the Boeing company's own criminal conduct in this case," Winn added.

"Now I understand that the crash victim families have very different views about that matter," Winn said. "But I can tell this court that ... many prosecutors, having reviewed those facts, have not found evidence to substantiate charges that it can prove beyond a reasonable doubt against management."

Judge Kurt Englehardt questioned the DOJ's contention that the DPA was breached and expired, and thus cannot be set aside to allow for further conferral with the families. Englehardt pointed to references to the DPA in the more recent NPA underlying the dismissal.

"How would you characterize the NPA and the approximately 40 references in the DPA to the NPA?" Englehardt asked. "Counsel's point, very prominently and emphatically, was that we're basically dealing back with the DPA. How would you characterize those references?"

Winn downplayed the relevance of those references to the DPA, saying they are largely factual citations merely meant to acknowledge the existence of the agreement.

Southwick asked Boeing's attorney, Paul Clement of Clement & Murphy, if the Fifth Circuit has the authority to decide whether consultation with families after the DPA breach was reasonable under the CVRA.

"Is it prosecutorial discretion, or is this something we can review whether the conferral was reasonable?" Southwick asked.

Clement responded that courts can review the issue but with deference to the government's assessment of whether prosecution should continue.

"But I have to say, in this case, I don't think it's a particularly close question," Clement said. "I think the government really course corrected once it recognized the initial error, so they were very careful at every juncture to consult."

Judge Kyle Duncan also sat on the panel.

The Fifth Circuit heard arguments in *In re: Naoise Connolly Ryan, Petitioners*, No. 25-11253.

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Judge declares mistrial after juror used spreadsheet in Edison fire case

DJ [dailyjournal.com/articles/389671-judge-declares-mistrial-after-juror-used-spreadsheet-in-edison-fire-case](https://www.dailyjournal.com/articles/389671-judge-declares-mistrial-after-juror-used-spreadsheet-in-edison-fire-case)

A three-week Thomas Fire debris flow damages trial against Southern California Edison ended in a mistrial Thursday after a Los Angeles County judge found that a juror's laptop-based spreadsheet work - and his alleged decision to take notes home - improperly injected outside analysis into the jury's deliberations.

Cannabis businesses Start Inc. and CA Labs accused Edison - which has taken responsibility for the 2017 blaze - of also being responsible for subsequent smoke, ash and debris flow that damaged a greenhouse and forced the businesses to shut down. The jury had been prepared to award \$1.4 million to Start and \$69,000 to CA Labs.

"As much as I don't want to do this ... I must declare a mistrial," Superior Court Judge Elaine Lu told the attorneys.

The matter stems from a handwritten note submitted by a juror identified as Juror No. 8, who raised concerns about possible misconduct among panelists the day the verdict was to be read on Wednesday.

Lu's order followed two days of testimony from all 12 jurors in the case, as well as the alternates.

"The judge's ruling reinforces that verdicts must be based solely on the evidence presented in court in a fair, deliberative process. We recognize the significant time and effort devoted to everyone involved," Hueston Hennigan LLP partner Douglas J. Dixon, for Edison, said outside of the courtroom.

Cappello & Noël LLP partner Leila J. Noël, for the plaintiffs, while opposing Edison's motion, acknowledged Lu's reasoning and said the team will be ready to try the case again.

According to the jurors' testimony, a juror identified as Juror No. 3 - an economics professor - was accused of bringing a laptop into the deliberation room Monday and using an Excel spreadsheet to calculate damages. Some jurors testified that Juror No. 3 brought his juror notebook home during trial, others - including Juror No. 3 - denied that was the case.

Lu said she credited the jurors who testified that Juror No. 3 acknowledged taking notes home.

"There were three or four jurors who testified that No. 3 said ... that he brought his notes home," Lu said. "I can fathom no reason why those jurors would fabricate that."

While Lu emphasized she did not believe Juror No. 3 acted with ill intent, she said his lack of candor was troubling.

"I think frankly what's more troubling ... is he didn't come clean when he had an opportunity to," Lu said, noting that Juror No. 3 denied having done so and denied telling other jurors.

Lu said that taking notes home alone would not have justified a mistrial.

"Now, this by itself, if this were the only thing that he did wrong, I would not grant this motion," Lu said.

Lu found the more serious issue was Juror No. 3's use of a prebuilt spreadsheet template, which she said amounted to an outside analytical tool created at home before deliberations began.

"One of the jurors ... told us that he had actually prepopulated formulas in this spreadsheet at home," Lu said.

Lu noted Juror No. 3 generated the spreadsheet over the weekend, days before final jury instruction was read and the case handed to the jury.

"He did this over the weekend. The case had not been submitted to the jurors yet at that point," she said.

Although Juror No. 3 insisted that he relied only on trial evidence, Lu said she did not find that credible, citing examples where he drew on knowledge not introduced in court.

"He himself admitted certain things that he did ... that he relied on ... were not introduced in the courtroom," Lu said.

The judge found that in attempting to help the jury evaluate expert damages testimony, Juror No. 3 effectively became an "unsworn expert."

In their testimony, most of the jurors admitted the spreadsheet was central to their deliberation process and that many would not have been able to generate such calculations independently.

Moments before the ruling, Lu heard about 30 minutes of oral arguments from the attorneys on the matter. Because some jurors were to be released on Friday, the judge said the parties did not have time for overnight briefing.

Dixon, for Edison, argued there was "compelling" evidence of "serious" juror misconduct that prevented the utility from receiving a fair trial. The primary issue was Juror No. 3's questioned conduct.

Noël, for the plaintiffs, countered that jurors repeatedly denied conducting outside research and said the spreadsheet was grounded in expert testimony presented at trial. "Your honor, nobody said that the spreadsheet had any outside sources used," she said.

Noël also noted Juror No. 3 "made it very clear" during his testimony that he did not use any outside sources and relied on the expert formulas already admitted into evidence.

"In short, we do not see anything rising to the level of juror misconduct that would warrant a mistrial in this case," Noël said.

The case is part of a larger group of coordinated lawsuits over the fallout from the Thomas Fire, involving similar damages claims brought by individual plaintiffs, public entities and insurers.

#389671

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Litigation funder Burford wins US court challenge to \$50 million Sysco settlement

 [reuters.com/legal/litigation/litigation-funder-burford-wins-us-court-challenge-50-million-sysco-settlement-2026-02-06](https://www.reuters.com/legal/litigation/litigation-funder-burford-wins-us-court-challenge-50-million-sysco-settlement-2026-02-06)

Mike Scarcella

February 6, 2026

A Sysco sign is shown outside one of their distribution centers in Poway, California, U.S. February 6, 2017. REUTERS/Mike Blake [Purchase Licensing Rights, opens new tab](#)

WASHINGTON, Feb 6 (Reuters) - Burford Capital ([BURF.L](#)), [opens new tab](#) has convinced a U.S. appeals court to throw out a \$50 million antitrust settlement involving its former client Sysco ([SYN.N](#)), [opens new tab](#), in a case one judge called a "cautionary tale" about the influence of third-party litigation financing. A three-judge panel of the 7th U.S. Circuit Court of Appeals [ruled, opens new tab](#) on Thursday that a 2022 email agreement between food distributor Sysco and poultry processor Pilgrim's Pride was not final and should not have been approved. The panel reversed a lower-court ruling that said Sysco was bound to the deal.

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Litigation funders provide financing to clients in exchange for a part of a case's proceeds. Burford, one of the world's biggest funders, had invested \$140 million since 2019 to back Sysco's antitrust cases, and it objected to the \$50 million settlement as too low.

Burford won an order in 2022 barring Sysco from completing the settlement, and Burford and Sysco later resolved their dispute over the deal, with Sysco transferring its rights to the lawsuits to a Burford affiliate.

The 7th Circuit's ruling means Burford affiliate Carina Ventures can continue pursuing its claims against Pilgrim's Pride and potentially seek more than \$50 million.

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Burford welcomed the decision in a statement, saying that "Pilgrim's attempt to ram through a settlement using procedural gamesmanship was inappropriate."

Sysco declined to comment. Pilgrim's Pride did not immediately respond to a request for comment.

Sysco's antitrust suits accused Pilgrim's and other meat producers of conspiring to inflate prices. In 2022, a Sysco in-house lawyer emailed Pilgrim's accepting its offer to resolve three lawsuits involving chicken, pork, and beef pricing for \$50 million. Pilgrim's sought to enforce the deal in 2023, and won a ruling from the federal court in Chicago.

The appeals court reversed that decision on Thursday, finding that material terms of the agreement remained unresolved when Sysco purported to accept it.

Circuit Judge Nancy Maldonado agreed in a concurring opinion that the settlement was void but warned about the risks of litigation-funding arrangements, accusing Burford of prioritizing profit over reaching a resolution.

"Having turned the courtroom into a trading floor, and calculated that continued litigation was more profitable than settlement, Burford wrested total control over the settlement of Sysco's claims," Maldonado wrote. "This case is a cautionary tale to any party who seeks to fund its litigation through a third party."

Burford called her statements "extraneous commentary that is not supported by the record or other courts' engagement with Burford and litigation funding."

The case is Carina Ventures v. Pilgrim's Pride, 7th U.S. Circuit Court of Appeals, No. 25-1110.

For Carina: Derek Ho of Kellogg Hansen

For Pilgrim's Pride: Christopher Michel of Quinn Emanuel

Read more:

[Burford's \\$35 million bet on antitrust claims hits snag in US bankruptcy court](#)
[Sysco can't scrap its Pilgrim's Pride price-fixing settlements, US judge rules](#)
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Seventh Circuit chickens out of \$50 million poultry settlement brokered over email

 [courthousenews.com/seventh-circuit-chickens-out-of-50-million-poultry-settlement-brokered-over-email](https://www.courthousenews.com/seventh-circuit-chickens-out-of-50-million-poultry-settlement-brokered-over-email)

Destiny DeVooght

February 6, 2026

This April 28, 2020 file photo shows the Pilgrim's Pride plant in Cold Spring, Minnesota. A federal grand jury has charged four current and former chicken company executives with price-fixing. The U.S. Department of Justice says the executives from Colorado-based Pilgrim's Pride and Georgia-based Claxton Poultry conspired to fix prices and rig bids for broiler chickens from at least 2012 to 2017. (Dave Schwarz/St. Cloud Times via AP)

(CN) — A Seventh Circuit panel determined Thursday that an email exchange between a food distribution giant and Pilgrim's Pride, one of the world's largest chicken producers, didn't sufficiently hash out a \$50 million settlement over price fixing accusations.

According to U.S. Circuit Judge David Hamilton, while the email agreement settled on the important financial terms, the parties failed to work out at least four material terms that affected the value of the deal, rendering it wholly incomplete.

In a [23-page opinion](#), Hamilton — a Barack Obama appointee who was particularly critical of Pilgrim's argument during [oral arguments in November 2025](#) — calls the agreement from which a Illinois federal court was tasked with determining if material terms had been settled a "barebones email exchange that fails to mention terms other than the price."

Hamilton said there were at least four material terms left unresolved: compliance with the Judgement Sharing Agreement, the volume of assignments, the "most favored nation" clause and the allocation of the global settlement sum.

The case stems from a massive multidistrict litigation where food distributors accuse a swath of poultry farms and chicken product producers of aligning their prices in order to artificially inflate the wholesale price of chickens.

Global food service distributor Sysco joined the litigation in January 2018 by suing Pilgrim's Pride. The pair negotiated a settlement for almost three years before coming to the agreement — but the process was derailed by multibillion-dollar finance firm, Burford Capital, which entered into litigation funding agreement with Sysco.

The Chicago-based firm appointed an affiliate, Carina Ventures, in place of Sysco. Carina Ventures then refused to sign the settlement that Sysco had already verbally accepted. U.S. District Judge Thomas Durkin later ruled in September 2023 that an exchange that ended with an "We accept" email reflected the "heart" of the agreement, which was enough evidence to enforce it.

However, Hamilton said the four unresolved terms drove early offers from Pilgrim's and acted as guideposts for the email exchanges, but never worked out after Carina Ventures took over Sysco's claims.

Though Pilgrim offered during oral arguments that the court could fill in those material blanks by looking at previous drafts of the agreement, Hamilton says this is not enough to satisfy Illinois law.

"We cannot substitute a party's assent to material terms in later drafts for the party's lack of assent at the time the agreement was said to have been reached," Hamilton said. "Contrary to Pilgrim's argument and the district court's judgment, the parties continued to negotiate terms they said were essential long after the 'We accept' email in September 2022."

Hamilton questioned whether the purported settlement established how the \$50 million would be divided between the chicken, pork and beef claims — the latter two of which were consolidated in the District of Minnesota but still bound by Durkin's enforcement order.

Since enforcement, the Minnesota court ruled that Sysco, and therefore Carina Ventures, settled its claims with Pilgrim's Pride and issued summary judgment to the producer.

In a concurring opinion, U.S. Circuit Judge Nancy Maldonado, a Joe Biden appointee, conducted what she called a postmortem of the case to memorialize the complications created by Burford's seizing of Sysco's claims.

"Having turned the courtroom into a trading floor, and calculated that continued litigation was more profitable than settlement, Burford wrested total control over the settlement of Sysco's claims. This case is a cautionary tale to any party who seeks to fund its litigation through a third party," Maldonado said.

In July 2024, Pilgrim's sent \$50 million in three separate checks to Sysco for each of its protein antitrust claims. Sysco forwarded the funds to Carina Ventures, who maintained that the payments were not proper and would return the money to

Pilgrim's.

The money will be moved into escrow with federal court while the settlement litigation continues, according to Hamilton.

U.S. Circuit Judge Frank Easterbrook, a Ronald Reagan appointee, also joined the panel.

David Helfenbein, senior vice president of public relations at Burford, said "Burford is pleased that the Seventh Circuit panel agreed that Pilgrim's attempt to ram through a settlement using procedural gamesmanship was inappropriate.

"As the court recognized, Pilgrim's position that this complex commercial litigation was settled by email rather than fully negotiated, written settlement agreements 'defies logic,'" he said.

The Pilgrim's settlement is just one part of the multidistrict litigation that kicked off in 2016 with food service distributor Maplevale Farms suing poultry farms and chicken product producers over purported price fixing of "broiler chickens" — a chicken bred to gain lots of weight very fast.

Over the years, several bulk purchasers of the broiler chicken product like Walmart, Kraft Heinz and Nestle joined the suit and the case ballooned with over 100 associated lawsuits and more than 7,400 filings.

The largest chicken producers in the world are implicated alongside Pilgrim's, prompting liability sharing provisions so that no single producer bears more weight.

Several multimillion-dollar [settlements](#) between producers and consumers have been signed, including one totaling [\\$41.5 million](#) against Pilgrim's Pride. In that case, the plaintiffs were shareholders in the company who claimed it lied to investors about the price-fixing scheme in press releases intended to drive up profits.

Sidley, 'Hyperfocused' on California, Adds Class Actions Leader From Cooley

The firm said it now has more than 60 partners in Southern California offices, including Century City, Los Angeles and San Diego and more than 100 partners in California altogether, where it also has offices in San Francisco and Palo Alto.

February 06, 2026 at 06:00 AM By  **Andrew Maloney**



Michelle Doolin, global co-leader of the consumer class action practice with Sidley Austin. Courtesy photo

As it opens new real estate in Northern California, Sidley Austin has also added a litigation leader in the Southern part of the state, announcing the arrival of Michelle Doolin, from Cooley, to colead its consumer class action practice in San Diego. Doolin previously chaired Cooley's class-action practice.

Sidley is "hyperfocused" on the Golden State, the firm's leader added this week, nodding to its new space in San Francisco as well as industry verticals like life sciences, health care and technology that are particularly strong on the West Coast.

"We have been hyperfocused on growing in that area in a number of practices," said Yvette Ostolaza, chair of Sidley's management committee, in an interview Thursday. She added that the

“overarching strategy is to go where the talent is and where we have clients.”

She called San Diego, the firm’s fifth and newest office in California, a “growth opportunity” for the firm and said Sidley’s presence in the northern part of the state and in Los Angeles provides a jumping-off point for nationwide cases.

“Sidley has a large presence in Los Angeles and Northern California, and both of those markets drive a lot of litigation that then goes across the country,” Doolin said, adding that the firm’s depth in litigation and its intersection with a “deep regulatory bench” were some of the draws.

The firm said it now has more than 60 partners in Southern California offices, including Century City, Los Angeles and San Diego, and more than 100 partners in California altogether, where it also has offices in San Francisco and Palo Alto.

Doolin represents retail, consumer products and technology companies in high-stakes litigation, with particular experience in consumer protection, privacy, employment and product-related cases around the country, the firm noted.

Among the clients she’s represented are Conde Nast, Dick’s Sporting Goods, Nike, Nintendo, Google and the University of Southern California, according to public records.

She added that she has handled cases around the country, from New York and Florida to Chicago and back to the West Coast, but that, in addition to a prolific plaintiffs’ bar, often cases that are filed nationwide have some kind of corresponding case filed in California and/or are tied to a California statute. “Having an in-depth knowledge of California is critical to this practice,” she said.

After law firms saw a simultaneous surge in [both deals and litigation](#) in 2025, and after several of the largest firms [invested in mass litigation](#) last year, Doolin said she thinks demand will continue to be strong moving forward.

“I do believe obviously in California and across the country there’s going to continue to be growth in the privacy space, as well as a lot of the regulatory issues related to products, like food and beverage and cosmetics and the regulatory overlay that’s becoming more focused on those,” she said.

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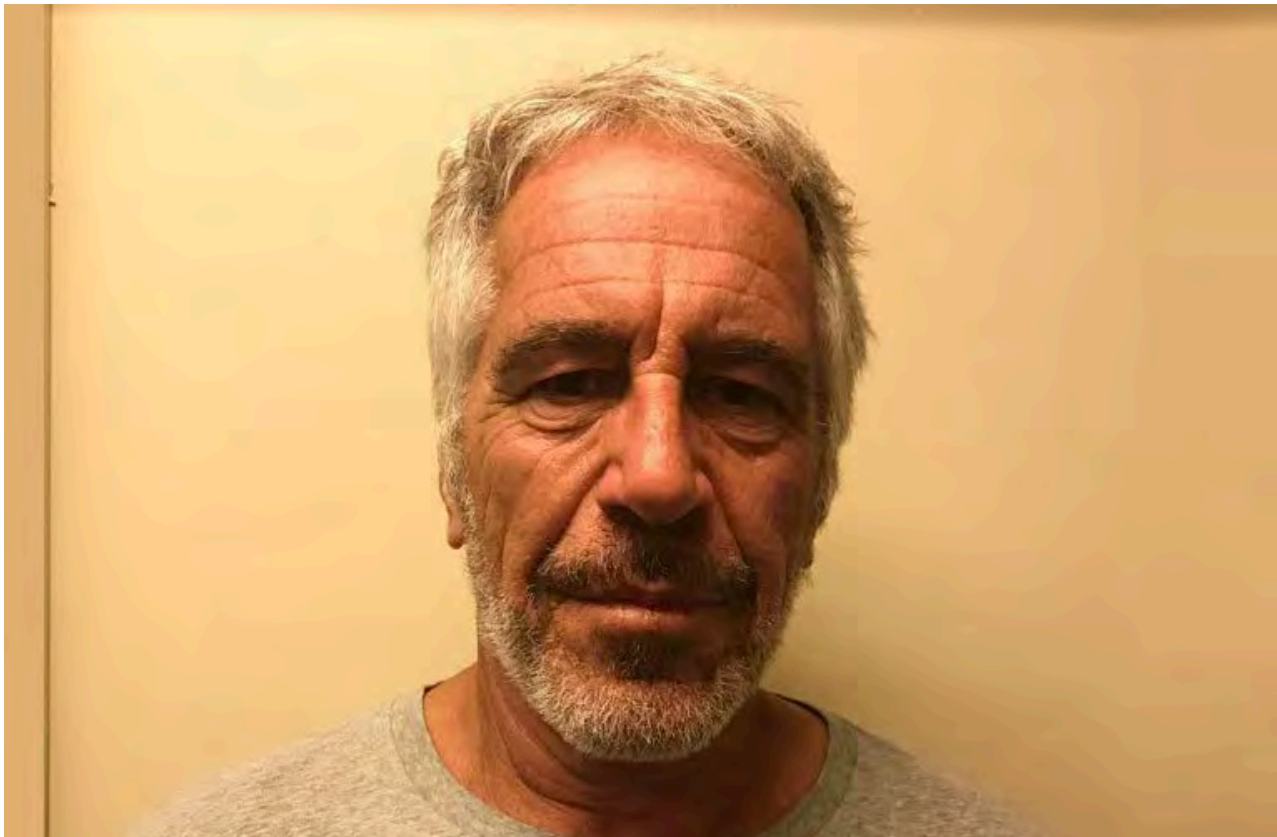
Leon Black, Legal Strategy and the NY Times: What Karp Was Talking About With Epstein

Ultimately, the two exchanged notes on several subjects not yet fully detailed in media reports to date—including Epstein's own legal issues.

February 05, 2026 at 06:52 PM By  **Ryan Harroff**  **Dan Roe**

What You Need to Know

- Justice Department records from the Gmail account of Jeffrey Epstein show disgraced financier speculating to Paul Weiss' Karp about Leon Black's alleged drug use.
- Other emails show Epstein attempting to sway Karp to work in Epstein's favor amid Epstein's fee dispute with Black.
- The pair also discussed Epstein's non-prosecution agreement, a New York Times op-ed defending federal prosecutors' former decision to drop federal charges against Epstein, and legal issues involving billionaire New England Patriots owner Robert Kraft.



Jeffrey Epstein. Credit: New York State Sex Offender Registry

A deeper review of emails between Paul, Weiss, Rifkind, Wharton & Garrison former chairman Brad Karp and Jeffrey Epstein shows that Epstein was asking Karp about whether Karp client Leon Black was using drugs—an exchange that occurred at the same time that Karp was representing Black in a fee dispute against Epstein.

Ultimately, the two exchanged notes on several subjects not yet fully detailed in media reports to date—including Epstein’s own legal issues.

In a series of emails in March 2017, Epstein detailed conversations he allegedly had with Black, former Apollo Global Management chairman, on the subject of drugs. Karp responded that he “got a lot of the same blowback” as Epstein did in that confrontation.

These exchanges occurred while Karp was representing Black in a years-long fee dispute against Epstein, according to the date stamps on the emails released in the U.S. Justice Department's latest tranche of Epstein material.

Asked for a reaction to the emails, a representative for Black said, “This is insane, stupid and completely ridiculous,” in an email to Law.com.

Meanwhile, Karp, in an email Thursday, stated that he did not discuss any alleged drug use by Black, “about which I know nothing,” Karp said. “Epstein makes that claim.”

Other emails showed Karp discussing the fee dispute with Epstein, including in situations where Epstein disparaged Black, as well as the two discussing the legal proceedings of Epstein and New England Patriots owner Robert Kraft.

The [first of the emails](#) Law.com identified in Epstein and Karp’s conversation was sent by Epstein to Karp on March 20, 2017, and read in part, “someone who i respect asked me if leon was doing coke. . when i said i know little aboutdrugs. but didnt think so . - they asked me what planet i lived on. ? wanted your thoughts,” [sic].

Karp replied about four hours after that message with, “That’s really not good. Did you share with Leon?”

Three days later, [Epstein sent Karp an email](#) which said in part, “I confronted him [Black] on the drugs and he said he used to alot but hasnt for many many years. (news to me). as he hasntpaid a dime as of today,” [sic]. Epstein went on to describe details of his fee dispute with Black that he said also came up during the confrontation.

Karp replied, “Wow. We need to speak.” It is unclear in the email whether Karp meant he needed to speak with Epstein, Black, or both at the same time.

Another three days after that exchange, on March 26, 2017, Epstein and Karp once again discussed a meeting that Epstein had with Black, a discussion which again featured Epstein's personal allegations against Black, including that he was "out of control." Epstein said that Black "would have none of it" and rejected his criticisms.

Later that day, Karp [replied to Epstein](#), "I got a lot of the same blow back. Very difficult."

Epstein Vents

Multiple emails showed Karp receiving criticism from Epstein about Black, Karp's client.

In an [August 3, 2017, email](#), Epstein reminds Karp to "look surprised" in an upcoming meeting — apparently involving Black — where Epstein advises Karp: "Feel free to bring up that we never had our fees owed discussion amongst us."

Karp responded, "Understood. So I don't know anything?"

"Correct. Zero," Epstein replied.

In a sprawling [rant](#) from Epstein that October, the disgraced financier discussed Black's situation as he viewed it, saying "we live in a world where men in power cannot be seen to be taking advantage of young (20s) women." Epstein also referenced a mistress, saying "having his mistress and family partnership appear on top of one another on the cap tables is also asking for trouble."

Karp replied, "Ugh; got it. Haven't spoken to him about any of this stuff in weeks. The three of us really need to get together."

Within a week, Epstein [emailed](#) Karp, "Leon?"

"Wait and react mode," Karp replied.

"Ok so no news?" Epstein said before he pressed Karp about the issue of his fees.

"I brought it up today and made no progress," Karp replied. "Let me try again, in a different way."

Legal Issues for Epstein, Robert Kraft

In the spring of 2019, after the Miami Herald's reporting identified Epstein as an alleged child sex trafficker, Karp discussed the legal issues of Epstein and New England Patriots owner Robert Kraft with Epstein.

On March 2, Epstein emailed Karp, "have the letter to editor NYT ready to rock. Directed to who? Sent how? Will be signed by ken marty jack maybe roy." (Those names may refer to some of Epstein's former lawyers, including Kenneth Starr and Martin Weinberg.)

Karp [replied](#) with the names of his editorial contacts at the Times: (then) deputy managing editor Matthew Purdy, deputy managing editor Rebecca Blumenstein, business editor Ellen Pollock and (then) op-ed editor Jim Dao.

"I would send by email," Karp added. "The draft looked strong."

On March 4 of that year, an [op-ed](#) ran in the New York Times opinion section signed by Epstein's legal team titled "Jeffrey Epstein's Attorneys: A Fair Plea Deal."

The same day, Karp [shared](#) information from Robert Kraft's lawyer with Epstein about Kraft's deal "toughening" and prosecutors "insisting on a guilty plea right now."

Epstein replied, "tried to call," and said he was "trying to get a non pros if such and such is done."

"But (it) has to be for everyone. Not only for kraft," Epstein continued. "Some of his (other) suggestions I will need to tell you on the phone."

Media reports indicate Kraft hasn't commented on Epstein emails discussing him. The Kraft Group did not immediately respond to a request for comment.

Meanwhile, on March 3, Karp emailed Epstein to discuss a draft motion intended to prevent the reopening of Epstein's 2008 non-prosecution agreement.

"The case law is totally stacked in favor of our position. Even the equities are — particularly liked the argument that the 'victims' lied in wait and sat on their rights for their strategic advantage, knowing you were in prison, before they came forward," Karp [wrote](#) at the time.

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<https://www.wsj.com/us-news/law/the-lawyer-who-could-fix-anythingexcept-his-epstein-problem-a75f6b47>

U.S. | LAW

The Lawyer Who Could Fix Anything—Except His Epstein Problem

Brad Karp built Paul Weiss into a giant. Emails with the disgraced financier cost him his top job.

By [Joshua Chaffin](#) [Follow](#) and [Erin Mulvaney](#) [Follow](#)

Feb. 6, 2026 1:23 pm ET



Brad Karp, of Paul Weiss, in 2021. GABRIELA BHASKAR FOR WSJ

NEW YORK—It was October 2018, and Brad Karp was atop the legal world. At a rooftop ceremony in Tribeca, the New York Law Journal was honoring Karp, chairman of Paul Weiss, as its attorney of the year.

Karp’s legal and business accomplishments were well known. He had long since established himself as the go-to for chief executives and Wall Street titans in crisis. More recently, he had shined as a humanitarian, building on Paul Weiss’s tradition of pro bono work by leading an elite lawyers “resistance” to what they considered President Trump’s constitutional excesses.

“When all is said and done, I firmly believe that the private bar will be lauded for banding together to protect our justice system and to preserve our most sacred

liberties and rights,” Karp told the audience that evening, likening their contribution to that of the lawyers who joined the civil-rights movement.

This week, Karp, 66, took a tumble.

A man so adept at helping clients navigate boardroom intrigue was pushed out from Paul Weiss’s chairmanship by an internal revolt after 18 years at the helm.

The knives—or fountain pens—were brandished during a secretive meeting of Paul Weiss’s blandly-named “Deciding Group.” Karp hadn’t been invited to the conclave where his fate was decided.

A year earlier, Karp had courted controversy and [angered some colleagues](#) when he brokered a deal that made Paul Weiss the first of several big law firms to cave to an extraordinary retribution campaign by Trump, suggesting to critics that the legal establishment’s commitment to social justice was biddable.



A photo of Jeffrey Epstein released by the Justice Department. JUSTICE DEPARTMENT

But this time it wasn’t Trump. It was [Jeffrey Epstein](#).

The latest trove of emails published by the Justice Department showed a chummy relationship between the superlawyer and the sex offender that endured for years after Epstein pleaded guilty in Florida in 2008 to soliciting a minor—and even before his arrest in 2019 on sex-trafficking charges.

Karp had professional dealings with Epstein because Paul Weiss represented private-equity giant [Apollo Global Management](#) and its co-founder Leon Black in negotiations over fee disputes with the disgraced financier. But the Epstein files revealed a relationship that went beyond business.

The correspondence shows Karp, a consigliere to NFL owners and the head of [Citigroup](#), thanking Epstein with fawning emails for having him to one of his dinner parties. It “was an evening I’ll never [forget,]” [he wrote](#) in July 2015. To which Epstein replied: “there are many many nights of unique talents. you will be invited often.”

From: jeffrey E. <jeevacation@gmail.com>
Sent: Wednesday, July 22, 2015 9:53 AM
To: Karp, Brad S
Subject: Re: Last Night

you are always welcome. . there are many many nights of unique talents. you will be invited often

On Wed, Jul 22, 2015 at 5:49 AM, Karp, Brad S <[REDACTED]@[REDACTED].com> wrote:

Jeffrey,

I can't thank you enough for including me in an evening I'll never forget. It was truly "once in a lifetime" in every way, though I hope to be invited again.

You are an extraordinary host -- and your home....!!!

Thanks, again.

See you soon.

Brad

Brad S. Karp | Partner
 Paul, Weiss, Rifkind, Wharton & Garrison LLP
 1285 Avenue of the Americas | New York, NY 10019-6064

[REDACTED] <mailto:[REDACTED]> | www.paulweiss.com

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Emails between Brad Karp and Jeffrey Epstein in July 2015. JUSTICE DEPARTMENT

Karp also appeared to seek favors from Epstein, ensnaring himself in his web. One concerned a job for his son—then an aspiring filmmaker—with Woody Allen: “He would love to work, in any capacity, with Woody on his upcoming film project, if that’s a possibility.” In [another email](#), Epstein asked Republican strategist Steve Bannon how to secure a membership for Karp, an avid golfer, at the exclusive Augusta National Golf Club.



Emails between Brad Karp and Jeffrey Epstein. JUSTICE DEPARTMENT

Worst of all, though, may have been [a 2019 email](#)—just before Epstein’s arrest. It suggested Karp had reviewed a legal draft arguing against prosecutors’ push to reopen Epstein’s controversial plea deal. The document was “in great shape,” Karp assured Epstein, who then forwarded it to his own legal team.

The exchange, according to people familiar with the Deciding Group’s deliberations, was simply too much. And so Karp now ranks as the most consequential figure on this side of the Atlantic to be undone by his Epstein connections—though that table is subject to revision with each new tranche of emails.

In response to the Epstein emails, a Paul Weiss spokesman previously said, “Mr. Karp never witnessed or participated in any misconduct. Mr. Karp attended two group dinners in New York City and had a small number of social interactions by email, all of which he regrets.” The firm also said it was “adverse to Epstein” and at no point did Karp or the firm represent him.

During his run at Paul Weiss, Karp not only distinguished himself as a talented litigator but also was at the forefront of top law firms' transformation from staid partnerships to global giants astride a new financial-services landscape populated by private-equity firms, hedge funds and other nontraditional lenders. He did so while eschewing the buttoned-up reserve evinced by so many masters of big law to instead cut a figure as a charmer who was nearly ubiquitous at business dinners, charity events and on clients' yachts.

"One of Brad's superpowers has been his ability to build close relationships and consensus over time," said Kent Zimmermann, a legal analyst who recently interviewed Karp for a coming book.

That endeared him to such powerful friends as Marc Rowan, the chief executive of private-equity giant Apollo Global Management, and Roger Goodell, the NFL commissioner. He will be sitting in the box of Robert Kraft, the New England Patriots owner, at Sunday's Super Bowl. Karp also enjoyed high-level political connections, serving as a [fundraiser for Democrats](#) including Kamala Harris.

As they tried to make sense of his fall, some allies wondered whether Karp's instinct to please friends and clients—typically a virtue for a workaholic corporate lawyer—may have been a vulnerability with Epstein. Even after he rose to the heights of the legal and financial world, the ultra-solicitous Karp was still known to respond to client emails and calls at all hours.

Karp was raised in Merrick on Long Island — the same town, he has joked, that Lindsay Lohan and Mario Puzo once called home. His parents were litigators at the family firm, Karp & Karp. A graduate of Harvard Law School, he joined Paul Weiss in 1983 as a summer associate and never left.

In interviews and speeches, Karp has invoked the firm's activist tradition—Paul Weiss assisted Justice Thurgood Marshall with *Brown v. Board of Education*. But one early assignment proved less savory: defending Salomon Smith Barney in the infamous "boom boom room" case, [a 1996 class-action lawsuit](#) in which women alleged harassment and unequal pay at a Long Island branch. Smith Barney ultimately paid millions in settlements and compensation.

That work endeared him to Citigroup, which owned Salomon. Karp advised the bank on multibillion-dollar settlements with investors in WorldCom and Enron. The Enron settlement was particularly shrewd: By moving first, Karp secured a discount for Citi compared with other banks. By 2006, *American Lawyer* magazine observed he "has

become so indispensable to Citigroup that he carries an employee id card from the bank.”

Two years later Karp, then 48, would be elected Paul Weiss’s chairman. He went on to have an especially good financial crisis, defending banks against reams of litigation triggered by Wall Street’s near-collapse. Meanwhile, Paul Weiss also scooped up a new client with cachet: the NFL. Among other things, it helped defend the league from lawsuits by former players alleging the sport caused traumatic head injuries.



NFL lawyer Brad Karp in 2014, leaving a federal court after a hearing on a proposed NFL concussion settlement. ASSOCIATED PRESS

Yet Karp’s bigger impact was to change the firm’s identity—from one known for its litigation prowess to a machine that raked in more revenue from corporate dealmaking. That meant recruiting talent. Paul Weiss had just over 600 lawyers when Karp took over. It now has more than double that. Last year, the firm boasted \$3.2 billion in revenue.

Some former partners express nostalgia for the old days. But the changes Karp enacted have rippled across the industry as firms have grown and teams of lawyers now routinely defect to competing firms like baseball free agents. “The game is to get as many stars as you can because it helps lock in business,” Karp told New York Law Journal.

One of those stars was Scott Barshay, a rainmaking dealmaker Karp lured from Cravath, Swaine & Moore in 2016 after years of persuading. It was Barshay, 60, who on Wednesday delivered the news to Karp that he would no longer be chairman—and that Barshay would be his replacement.

In a circuitous way, Karp's reshaping of Paul Weiss appeared to bring him into Epstein's orbit. One of his expansionary bets was on private-equity firms, such as Apollo, which ended up being huge consumers of legal services for their prolific dealmaking.

The past year or so has been difficult for Karp. He suffered a heart attack just months before major law firms found themselves in Trump's crosshairs. Paul Weiss was hit with an executive order directing federal agencies to strip the firm of government contracts and building-access. Karp called it an existential threat.

Other firms were hit with similar orders. At one point Karp tried to rally the troops and attempted to organize a joint letter, but a critical mass wouldn't sign on.

According to people familiar with the episode, some of Karp's partners feared a court fight with the federal government would make their corporate clients vulnerable to Trump's ire. He enlisted Kraft to connect him with Trump, and cut a deal in the Oval Office to avoid the punitive order.

Afterward, competitors followed suit. But it was Karp who became the public face of big law's capitulation to Trump. Some clients were angry, and some top lawyers left. Still, Karp believed that it was the only choice to save his firm, according to people familiar with his thinking.



Scott Barshay, of Paul Weiss, addressing a gathering of global M&A advisers at a conference in 2023.

KATHLEEN FLYNN/REUTERS

Now Paul Weiss has an Epstein issue to finesse. Even after stepping down, the former chairman plans to remain at the firm as a partner, with an office near Barshay's, according to Paul Weiss. Legal industry observers are watching how Apollo, its

biggest client, will respond. There is also the question of how the hard-driving Barshay will fare, directing the galaxy of stars Karp assembled over nearly 20 years. In this era, talented lawyers can easily jump ship.

All that is a challenge for a seasoned corporate adviser with business acumen and top contacts. That is, a man like Brad Karp.

Joshua Chaffin is senior special writer for The Wall Street Journal's National Affairs team in New York.

Joshua's reporting covers a wide range of domestic issues and figures shaping business, politics and society. ...

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Kathryn Rubino

February 5, 2026



Kathryn Ruemmler (Photo by William B. Plowman/NBC/NBC Newswire/NBCUniversal via Getty Images)

The relationship between Jeffrey Epstein and Goldman Sachs's top lawyer, Kathryn Ruemmler, has put [quite the spotlight](#) on her. The Epstein files reveal thousands of communications between the pair. Ruemmler said of their connection, "I was a defense attorney when I dealt with Jeffrey Epstein. I got to know him as a lawyer and that was the foundation of my relationship with him. I had no knowledge of any ongoing criminal conduct on his part, and I did not know him as the monster he has been revealed to be."

But documents in the most recent Epstein file dump suggest Ruemmler knew something was up.

We know that Epstein was deeply involved in [plotting out Ruemmler's career](#), offering advice and negotiation tips on job offers. And in a [June 2016 email exchange](#), the pair were discussing a potential job at hedge fund Citadel (Ruemmler never worked a Citadel, at the time of these emails was she was a partner at Latham & Watkins and co-chair of its white-collar defense group; in 2020, Ruemmler left Biglaw for the in-house world at Goldman Sachs, where she currently serves as Chief Legal Officer and General Counsel).

Ruemmler seems skeptical about the job, and Epstein says "there is the off chance that [hedge fund founder Ken Griffin] might just be interested in a woman." Ruemmler thumbs her nose at the notion of DEI, writing, "I ain't no affirmative

action." Epstein responds, "i meant romantically." And then comes the stomach churning line, "Oh, Jesus — meaning you are going to trade one of your Russians for my comp?!!"

[Epstein is known](#) to have paid "ostensible foreign models," and the most charitable read is that Ruemmler was merely joking that trafficking one of Epstein's Russian models to her maybe-boss might lead to a more favorable compensation package... or she suspected that was something the "monster" Jeffrey Epstein might really do on behalf of a trusted friend. (From all appearances, Griffin is just catching strays here, and Citadel said, "Ken has never met or communicated with Epstein.")

Either way it's an awful look for the prominent attorney.



Kathryn Rubino is a Senior Editor at Above the Law, host of [The Jabot podcast](#), and co-host of [Thinking Like A Lawyer](#). AtL tipsters are the best, so please connect with her. Feel free to email [her](#) with any tips, questions, or comments and follow her on Twitter [@Kathryn1](#) or Mastodon [@Kathryn1@mastodon.social](#).

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February 6, 2026

'Shock': FirstEnergy trial witness says Sam Randazzo stole from trade group

Adam Ferrise; cleveland.com

AKRON, Ohio — Sam Randazzo was more than just a highly-respected energy attorney to Matt Brakey. He was a mentor.

Brakey, the president of Brakey Energy and a member of a trade group that represented industrial companies, for years relied on Randazzo's guidance in fighting for lower energy prices from FirstEnergy.

When Brakey heard accusations that Randazzo stole from the trade group, Industrial Energy Users of Ohio, he had one reaction: "shock," he testified Friday during the bribery trial of two ex-FirstEnergy executives.

Brakey's testimony came on the third day of the trial of former FirstEnergy CEO Chuck Jones and senior vice president Michael Dowling.

Testimony mostly focused on Randazzo's time as an energy attorney in the years before he became the state's top energy regulator in 2019.

Shortly before his appointment as Public Utilities Commission of Ohio chairman, prosecutors say he took a \$4.3 million bribe from Jones and Dowling. Randazzo is accused of giving FirstEnergy favorable rulings at PUCO. He also helped push for the passage of House Bill 6 in 2019, the scandal-ridden bill that gave a \$1.3 billion bailout to two nuclear plants owned by a FirstEnergy subsidiary, according to prosecutors.

Randazzo was charged in the case but died by suicide in April 2024. Both prosecutors and defense attorneys have argued Randazzo was a thief and skimmed from clients for years.

Randazzo had represented IEU-Ohio for as far back as the late 1990s or early 2000s, Brakey said.

Randazzo's main job was to argue before the PUCO for lower energy prices for his clients, Brakey said. Randazzo, however, also handled the trade group's finances and accounting, Brakey said. Brakey said he trusted Randazzo "implicitly."

Years later, after the HB 6 scandal broke, Brakey said he learned Randazzo had skimmed from a \$15 million settlement between IEU-Ohio and FirstEnergy. He said the trade group had rules set up so they couldn't see exactly what amount each company got from settlements, and no one pressed Randazzo.

Even if they did, it was at their own risk, Brakey said. When challenged, Randazzo would become "very prickly," Brakey said. He described Randazzo as someone who had an "incredible presence" and "intimidated many people."

"I was not afraid of him in the traditional sense but he had tremendous gravitas," Brakey said.

Brakey said he was "very surprised" when investigators showed him a contract that purported to show Randazzo had a longstanding consulting agreement with FirstEnergy. He said he would have expected Randazzo to disclose the agreement to IEU-Ohio, because it was a clear conflict of interest.

The contract is a point of contention at trial over the bribery charge. Assistant Ohio Attorney General Matthew Meyer pointed out that the contract was never signed or dated by FirstEnergy or Randazzo.

Defense attorneys have said they will argue the contract was part of normal business practices. They contend Jones and Dowling paid Randazzo \$4.3 million in 2018 not as a bribe before he became PUCO chair, but to pay him the remainder of the contract after FirstEnergy had a particularly profitable year.

---- Index References ----

Company: FIRSTENERGY CORP; BRAKEY ENERGY INC; INDUSTRIAL ENERGY SOLUTIONS

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February 5, 2026

Fight over single email sparks courtroom clash in FirstEnergy bribery trial

Adam Ferrise; cleveland.com

AKRON, Ohio — A bitter court battle went on for more than three hours Thursday over a single piece of evidence in the trial of two former FirstEnergy officials accused of bribing a state regulator.

The confrontational exchange came one day after testimony began in the high-profile trial of former FirstEnergy CEO Chuck Jones and the company's onetime top lobbyist Michael Dowling, who are accused of paying a \$4.3 million bribe to Sam Randazzo, former chairman of the Public Utilities Commission of Ohio.

The hearing, without the jury present, highlighted just how intensely prosecutors and defense attorneys are fighting over what evidence is presented to the jury.

It featured sniping between prosecutors and defense attorneys, a judge worrying the evidence would confuse jurors and extensive testimony about an email's metadata.

Summit County Judge Susan Baker Ross said she'd make a decision at a later date.

In a trial that will feature hundreds of emails, the fight on Thursday concerned a single email that may or may not have been sent by Randazzo. Furthermore, it wasn't clear it was ever received by Dowling.

The email has nothing to do with the bribery accusations central to the case, but rather FirstEnergy's and Randazzo's prior dealings when Randazzo worked as an energy attorney opposing FirstEnergy in cases.

Prosecutors said the email and its metadata are needed to show that Dowling knew Randazzo was skimming money from a FirstEnergy settlement. That would establish a link to the conspiracy charges leveled against Dowling, Assistant Ohio Attorney General Matthew Meyer said.

The email contained an attachment that showed Randazzo stole money from his clients. The attachment was not under dispute during the hearing.

"The circumstances of the creation of that spreadsheet are compelling particularly for someone who the defense even concedes was skimming," Meyer said. "The spreadsheet actually documents the skim."

Randazzo, who was charged in the case alongside Jones and Dowling, died by suicide in April 2024.

Two experts — Ohio Bureau of Criminal Investigation agent Justin Root for the prosecution and forensics consultant Daniel Regard II for the defense — testified extensively over the finer points of the email's metadata, which includes details of how and when messages are sent.

Defense attorneys said the email should be left out of the trial for several reasons, including that both experts couldn't say if Dowling received it or if the email was altered.

"It's similar to Randazzo scribbling a thought on a piece of paper and crumpling it up and never giving [it] to anyone," Dowling attorney John McCaffrey said.

Baker Ross peppered both experts and attorneys with questions about the email's origins and metadata.

"I'm just so confused as to how this exists with all these different things on it," Baker Ross said. "And I'm just worried about my jury."

---- 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))

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Securities

Matt Levine's Money Stuff: Five Bananas Won't Pay the Rent

Feb. 5, 2026, 10:58 AM PST

Bilt

A helpful rule of thumb is: "You always find product market fit when your product is giving away money." We talked last month about "the MoviePass economy," the glorious period in the 2010s when venture capitalists subsidized money-losing consumer businesses so they could grow as fast as possible. The theory was that if a company — Uber or WeWork or even MoviePass — could sell its product below cost, a lot of people would use it and it would quickly become popular. And then one of four things would happen:

1. The company's costs would go down, because of economies of scale, so it would become profitable;
2. The product would be so valuable, because of network effects or monopoly power, that it could raise its prices and become profitable;
3. The company's user base would be so big and valuable that it could get ancillary revenue by, like, selling data or advertising, and become profitable; or
4. Hilarious bankruptcy.

WeWork and MoviePass ended up in the last category, but this was not a *bad* theory; Uber is big and profitable now. It is just a *tricky* theory. If you have rapid user growth and enthusiastic reviews and are giving away money, how do you know that people like the underlying product? How do you know they're not just in it for the free money? If you turn off the free money, will they stop using the product?

Today Bloomberg's Paige Smith writes about Bilt Technologies Inc., whose founder, Ankur Jain, "initially envisioned the company as an electronic system for paying rent and getting rewarded for it." People did not quite want that, though: "Landlords proved hesitant to adopt Bilt's payments software until they knew customers would actually use it." So Bilt pivoted ever so slightly:

His solution: Add a credit card with a rewards program so generous that point-maxxing renters would demand that their landlords adopt Bilt's payment platform. Renters could finally earn points for their biggest outlay each month—one which had previously been off-limits for credit card rewards—along with anything else they charged. ...

The credit card took off; so did Bilt's clout among landlords. Some 5.5 million Americans now pay for their housing via Bilt's system. The company says it has relationships with 70% of the country's top 100 property managers. One reason they like it, Jain says: Property owners using the software see a 12% decrease in delinquency and a 30% boost in on-time payments.

We talked in 2024 about the economics of Bilt, and there was another, possibly more important reason that landlords like Bilt. Typically merchants pay a fee — sometimes called “interchange” — for accepting credit cards. If you sell a product for \$100, and the customer pays with a credit card, you might only get \$98; the other \$2 is an interchange fee that goes to the credit card banks and network. Many merchants accept credit cards because doing so increases transaction volume — most people pay for most stuff with credit cards — and 2% is a small price to pay for getting more customers. It's a form of marketing spend.

For a landlord, though, this makes no sense. The rent is high, so 2% of it is a lot of money. And most of your tenants already live there, so you don't need to attract them by taking credit cards; it's not like they'll move out if they can't pay by credit card. And so, before Bilt, it was hard to put rent on a credit card. Or if you could, the landlord would charge you a fee to cover the interchange.

Bilt solved this problem by *not charging anyone the fees*. It partnered with Wells Fargo & Co. to issue the credit cards, and, as the Wall Street Journal reported in 2024:

There is a reason why credit cards hadn't gained traction in the rent sector until Bilt came along. Most landlords didn't accept them because they refuse to pay card fees that get pocketed by the banks issuing them and often run between 2% and 3%.

Bilt structured the card so landlords won't incur the fees. Wells instead eats much of that.

Right, great. The way rewards credit cards generally work is that I buy something from you, I pay \$100, you get \$98, and my credit card company gets \$2. Some of that \$2 goes to the bank's expenses (marketing the card, processing the transaction, credit losses, etc.), but some of it — say \$1 — is left over and can fund rewards. So I get \$1 of cash back or airline rewards or whatever from this \$100 transaction. So I feel great: I got a little bonus at the expense of, ultimately, the merchant who got \$98 for a \$100 sale.

But the way Bilt's rent credit card worked was that I rented an apartment from you, I paid \$3,000, you got \$3,000, and *Wells Fargo* paid me \$30 of rewards. Why? Well, the theory must have been something like this:

I spend \$10,000 on my credit card every month.

Of that, \$3,000 goes to rent, where Wells Fargo collects \$0 of interchange, but \$7,000 goes to other stuff, where Wells Fargo collects \$140 of interchange.

I get \$100 of rewards (1% of my total spending, including rent).

Wells Fargo keeps \$40, just enough to cover its costs.

Eventually this gets mass adoption, everyone has a Bilt credit card and uses it for everything, Wells Fargo's revenue goes up, the costs go down, and perhaps there is some pricing power. Perhaps eventually you can make the landlords pay interchange fees.

These numbers are fake and stylized, although they're in the right ballpark; the Journal reported that "the bank assumed around 65% of card-purchase volume would be nonrent, generating interchange-fee revenue." But the theory was wrong: Actually people mostly used the cards to pay rent, and Wells Fargo ate the cost. Smith writes:

While the company's card rewards program became very popular, it also proved unsustainable. Card issuer Wells Fargo & Co. was losing as much as \$10 million a month on the Bilt partnership, according to a 2024 *Wall Street Journal* article. In the wake of a public breakup with Wells, announced last July, Bilt touted what was supposed to be a fresh start, with new banking and financial-technology partners. The card revamp, unveiled in January, was also intended to close some loopholes customers had exploited, including an internet-famous one in which cardholders, required to make five transactions each month to fully activate their rent points, would pay rent and then go out and buy four individual bananas.

Everyone knew that if customers used their Bilt cards *only* to pay rent, Bilt and its card partner would get fleeced. So you only got rewards if you used your Bilt card for rent and also a reasonable amount of other stuff. But "a reasonable amount of other stuff" is a fuzzy concept, and for a while Bilt defined it as five monthly credit-card transactions. This requirement became known as "five bananas," and buying five bananas is not going to cover the bank's costs.

So Bilt pivoted, and people got mad, because (1) they had been getting free money and (2) now they weren't:

The rollout hadn't gone quite as planned. In the days after unveiling the replacement cards, Jain found himself on an apology tour as customers threatened to abandon Bilt en masse over changes to how its much-loved rent rewards would be calculated—a complex web of new multipliers and "Bilt Cash" payouts that confounded customers. Cardholders swarmed Reddit and YouTube to roast the program as "a complicated math problem" and "a trap." As one commenter put it, "The fact that I've read this four times and still don't understand what the hell it's actually saying is enough for me to know I'll just be closing the card." The critical response was a jolt—especially for Jain, who says he gives all Bilt customers his personal email. "They get my inbox, and I respond to as many of them as I possibly can. People send me their hate mail, their love mail." Within days of the digital dragging, Bilt announced it would tweak the new card structure again, including letting customers choose between two different points-accrual calculations.

Right but like ... this is not a problem of *customer service*. This is a problem of *arithmetic*. If the customers only use their cards to pay for rent, the math doesn't work. But *something* worked:

The big question now is whether Bilt cardholders will stick with the company considering its updated cards look a lot like other rewards cards on the market. On one hand, irked customers have been complaining (loudly) that what made Bilt's card special is no more. But most consumers aren't likely to ditch Bilt outright, as credit cards are notoriously sticky, and the company says it's been getting a record number of applications for the new cards. In the final two weeks of January, 83% of Bilt's active cardholders requested one of the new cards, the company says. Adding to Bilt's stickiness: Its rent-processing software, Jain's original vision, is now used in 25% of US apartment buildings.

Bilt wanted to create an electronic system for paying rent, but landlords didn't want that system unless it had customers. So it gave away free money to get customers, and now landlords use its electronic system for paying rent, so it can stop giving away free money.

Fast track

Right now, something close to 100% of SpaceX's stock is held by Elon Musk, SpaceX employees, and big venture-capital-type early investors. This time next year, something like 22% of that stock — \$330 billion worth, at SpaceX's hypothetical \$1.5 trillion IPO valuation — will be held by index funds. You know that, I know that, Elon Musk knows that, his bankers know that, SpaceX's private investors know that and the index funds know that.

They could do a trade? The index funds could give SpaceX orders to buy stock, and the employees and private investors could give SpaceX orders to sell stock, and SpaceX could arrange the trade. SpaceX does trades like that with some regularity, "employee tenders" where outside (private) investors buy and current investors sell in bulk transactions arranged by SpaceX. Very tidy.

But what will actually happen, between now and a year from now, is less tidy. It's more like this:

1. SpaceX *will* arrange a trade in which the company itself will sell, say, \$50 billion of stock to public investors. This is called an "initial public offering." Maybe the existing early investors will sell a little bit of their stock in the IPO, though maybe not; the IPO's purpose seems to be mostly to raise funding for SpaceX (and xAI), not to cash out early investors. And the public investors who buy stock in the IPO will not be index funds; they will be mutual funds, hedge funds, other public institutional investors and, probably, retail investors.
2. Then that \$50 billion of stock will start trading publicly, and anyone who wants to buy it will be able to, at the market-clearing price. The price of the stock will reflect demand for SpaceX, a trillion-dollar-plus company. And it will reflect \$50 billion of supply. It would not be especially surprising if the stock went up: Lots of people want to own SpaceX, but they'll only be able to get \$50 billion of it.
3. Six months later, the "IPO lockup" will expire, and all of those private investors — employees, venture capital investors, Musk — will be able to sell their stock at the market-clearing price. Some won't, but some will, and the stock price will now reflect hundreds of billions of dollars of new supply. It would not be especially surprising if the stock went down.
4. At some point, SpaceX will be added to the S&P 500 index, and index funds will buy the stock. And the price will reflect hundreds of billions of dollars of new demand. It would not be especially surprising if the stock went

up.

Doesn't it *sound* like that would create a lot of volatility? You start by selling a little bit of stock into a lot of demand. Then, when things have settled down a bit, you sell a lot more stock. And then at some random other point, index funds have to go buy a lot of stock. Everyone knows all of this, and the market does a decent job of anticipating it: The IPO price in Step 1 reflects the anticipated public demand in Step 2, the price before the lockup expiry will reflect the anticipated supply in Step 3, index arbitrageurs will buy stock to anticipate the index demand in Step 4. But it would be tidier if everything just lined up. Even if just Steps 3 and 4 lined up — if SpaceX got added to the S&P 500 index the same day the lockup expired, so all the early investors could sell directly to the index funds — that would avoid a lot of inefficient trading.

We talked yesterday about how it would be nice if SpaceX could sell to index funds *in the IPO*, but the real issue is the lockup expiry, when all of SpaceX's private investors finally get their chance to sell. If they could sell to index funds, that would avoid a lot of heartache and volatility. The Wall Street Journal reports:

Advisers for the company, which recently merged with xAI, have reached out to major index providers, including Nasdaq, to discuss how SpaceX and this year's other hot startups might join key indexes sooner than normal, according to people familiar with the matter.

Companies typically must wait several months or a year after their public debut before gaining inclusion in a major index such as the S&P 500 or the Nasdaq-100. Inclusion unlocks access to retail and institutional capital from funds, particularly those mimicking the performance of indexes that have to hold the companies in the index.

The traditional waiting period is intended to give the companies time to demonstrate that they are stable and liquid enough to handle extensive buying from index funds.

SpaceX hopes to skirt traditional rules in an effort to bring liquidity to its shareholders sooner as part of its planned IPO. ...

Investors and advisers to companies planning to go public this year are concerned not only about initial trading, but also that the standard six-month lockup period—which prevents early investors, executives and employees from selling their stock—might prompt significant selling that pressures shares. After Meta went public in 2012, shares sank when early investors unloaded all at once.

SpaceX is exploring ways to better balance supply and demand to avoid that outcome, some of the people said.

Obviously one could have a cynical view of this. (I wrote on Tuesday, *not* about SpaceX, that "If you are really ambitious at pumping and dumping, the ultimate buyer of last resort — the final dumping place for your stock — is an index fund.") But SpaceX has a point! Lining up the buyers and the sellers really would be tidier.

Kalshi surveillance

One interesting question is: How much undetected insider trading is there? I write a lot about *detected* insider trading, because the US Securities and Exchange Commission brings a lot of cases, and often they are dumb. Often the people doing the insider trading are pretty obvious about it, and of course they get caught. And so you might think “oh wow insider traders are dumb.” But of course that proves nothing. Maybe 99% of insider traders are very smart and never get caught, so I never write about them. I only write about the dumb minority.

My guess is that this is mostly wrong, but I don't know. Perhaps there are a lot of sophisticated insider traders out there who have taken the compliance trainings and read Money Stuff and know all the pitfalls, so they insider trade in ways that avoid the pitfalls and never get caught. Perhaps this knowledge is slowly spreading, and the frequency of dumb insider trading — of insider trading that gets caught — will decline over time.

How much undetected insider trading is there in *prediction markets*? Well, a few points:

The legal status of insider trading in prediction markets is at least somewhat less obvious than it is in the stock market, so sophisticated hedge fund managers can go around saying in public that prediction market insider trading is totally legal. (Not legal advice!)

But actually it's probably illegal in the US. (Not legal advice!)

Prediction markets are regulated by the US Commodity Futures Trading Commission, not the SEC, and the CFTC is smaller and maybe less aggressive about bringing cases.

There are so many more *things that you can predict* than there are *public companies*. If a public company announces a merger, the SEC can ask it who knew about the merger and cross-check the list against trading records. But the front page of Kalshi this morning had questions like “Which brands will advertise during the [Super Bowl],” “[Super Bowl] Championship: Seattle vs New England,” “Ali Khamenei out as Supreme Leader,” “2028 Democratic nominee for President,” “Will Timothée Chalamet and Kylie Jenner be engaged this year” and “What will Logan Paul's Pikachu Illustrator go for at auction?” It's not that the CFTC *couldn't* ask the Patriots who knew about Drake Maye's injury status, or that it couldn't ask Timothée Chalamet about his intentions, or that it couldn't ask Logan Paul what a Pikachu Illustrator is, and then cross-check the answers against trading records. It's that every day there's some entirely new thing to worry about, and — unlike public companies and the SEC — the new thing is probably not already deeply engaged with the CFTC. Timothée Chalamet might not pick up their call. Ali Khamenei definitely won't.

The amount of money that you can make in most prediction markets, other than sports, is mostly pretty small, so the incentives to insider trade aren't really there yet.

But that might be changing as they get more popular.

I think it is reasonable to look at the situation and conclude:

1. There's probably not that much insider trading in prediction markets yet, but that will grow rapidly as the markets do.
2. The insider trading will probably be *quite sloppy*, because there is not the same widespread understanding that it is illegal that there is in the securities markets.
3. The sloppy insider trading might nonetheless be hard to catch, because the surface area is so large and because deep down the regulators might not care.

Anyway here's an announcement from Kalshi:

Prediction market platform Kalshi today announced a major expansion of its market surveillance and enforcement framework. The company has formed an independent surveillance advisory committee and new trading surveillance partnerships with Solidus Labs and the Director of the Wharton Forensic Analytics Lab, Daniel Taylor. These initiatives further strengthen Kalshi's market surveillance and compliance programs, solidifying its position as the leading federally regulated prediction market....

Being federally regulated means that Kalshi bans market manipulation, insider trading, has limits on the types of markets it lists, runs Know-Your-Customer (KYC) and Anti-Money Laundering (AML) checks on every user before they can trade, and publicly reports all trades to the CFTC daily. Kalshi also spent years building custom prediction market trade surveillance and enforcement systems that are similar to those used in the stock market.

I just feel like the first, you know, 20 people to get arrested for insider trading on Kalshi will be very surprised. "Wait, was I not allowed to do that? I thought that was the whole point."

Bitcoin

I mean the way the world works is that there's some stock, and it trades at \$100, and some people own it on margin, and then it falls to \$90 and they get margin calls, and some of them sell it to meet the margin calls, and then it falls to \$80 and some more people get margin calls, and they sell more stock to meet margin calls, and then it falls to \$70 and some more people get margin calls, but then some deep value investors are like "wait a minute this has gone on too long. This company has a good business and steady cash flows that are worth at least \$75 per share. Sure the market is scary, sure there are a lot of forced liquidations, sure the technicals are bad, but in the medium term this stock is worth at least \$75, so I will buy it now when it is on sale." And the spiral stops.

Not always, of course; some companies are worth zero, and get there. And of course this process is messy and uncertain and will tend to overshoot. But broadly speaking, a stock's price in the short term will reflect things like forced sales by its owners, but its price in the long term should reflect market expectations of the present value of its future cash flows. There's usually *somebody* with some spare cash looking for a bargain, and when a stock's price falls too far below its fundamental value they will buy it.

In other news, Bloomberg's Emily Nicolle, Vildana Hajric and David Pan write about Bitcoin's slide:

Bitcoin tumbled below \$70,000 as the unwinding of leveraged bets and broader market turbulence deepened a selloff that has wiped out all of the gains since President Donald Trump's election set off a speculative rush into cryptocurrencies.

The token fell as much as 10% Thursday to \$65,344, the lowest since October 2024. ...

The market started cracking this month as rising geopolitical tensions sent tremors across global financial markets and curbed risk taking. That sparked Bitcoin's precipitous decline from mid-January and set off a self-reinforcing cycle of selling as funds liquidated assets to meet redemptions and unwind leveraged bets.

Yes, fine, but eventually the fundamentals will, uh, you know what, never mind, let's let them continue:

This time, Bitcoin and other cryptocurrencies are also seeing competition from other forms of speculation, like legalized sport gambling and prediction-market wagering on everything from politics to entertainment. At the same time, retail flow continues to chase zero-day options in equities and higher-yield crypto plays across decentralized exchanges.

The latest drop comes as digital assets face continued doubts about their real-world use, as well. Once touted as an inflation hedge or a rival to gold or the US dollar as a stable store of value, Bitcoin has continued to trade more like a high-risk asset and has failed to serve as a haven during times of financial market stress.

I love that you can describe Bitcoin as both "a haven during times of financial market stress" and also a competitor for sports gambling.

Things happen

Novo Shares Fall As Hims & Hers Offers \$49 Wegovy Copycat. OpenAI Unveils Platform to Help Companies Deploy 'AI Coworkers.' Divorce, Hedge-Fund Style: Inside the Breakup at Two Sigma. Patrick Drahi shifts assets worth billions away from creditors. Rio Tinto Abandons Glencore Talks to Form World's Biggest Miner. UBS Investment Bank Units to See Bonus Pools Jump by Up To 20%. Senators Accuse Equifax of 'Price-Gouging' Medicaid Programs. New York's Pension Funds Scrutinize Palantir Over ICE Contract. Epstein's Fondness for Elite Lawyer Ends in Downfall. Kirkland & Ellis lawyer sought use of Epstein helicopter after securing plea. "Goldman Sachs general counsel Kathy Ruemmler appeared to ask Jeffrey Epstein if he planned to 'trade one of your Russians for my comp' in an email exchange about her negotiating a potential job at hedge fund Citadel."

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To contact the editor responsible for this story:

Michael Newman at mnewman43@bloomberg.net

1. I get that from this Medium post by Tony Stubblebine, who attributes it to Bryce Roberts.
2. No, no, the numbers are more variable than that, and the credit-card network and your accepting bank get some of the money, but let's keep things simple.
3. That's a guess. Obviously there is secondary trading, and there are various retail vehicles, etc., but that stuff all seems relatively small.
4. SpaceX seems to be a buyer in the recent tenders, so it's not clear how much of it is outside investor money.
5. Shhh, they're not allowed to say "Super Bowl."

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Securities

Wall Street's Top Cop Expects Enforcement on Prediction Markets

Feb. 5, 2026, 1:28 PM PST

Wall Street's top cop expects regulators to take actions tied to prediction markets following a surge in trading on the platforms over the past year, saying that simply making bets outside of traditional spaces "doesn't insulate you from fraud."

Manhattan US Attorney Jay Clayton made the comments Thursday during a speech at the Securities Enforcement Forum in New York, telling the audience that prediction markets are "an area that I am looking at."

"What is the applicable law? Let's say I have a big stock position," Clayton said. "The stock's trading at \$130, there's a prediction market that pays if the stock goes below \$100. Is that an out of the money put option? It sure looks like it. Right? You wouldn't advise someone to sell that as a non-security."



Jay Clayton

Photographer: Jeenah Moon/Bloomberg

Later in the forum, he was asked if he expected enforcement actions tied to the markets. "Yes," he responded bluntly.

Clayton's remarks come as prediction markets have exploded into a multi-billion dollar industry, with users placing yes-or-no wagers on everything from Oscar winners to how much snow will fall. Trading on federally-regulated exchanges like Kalshi Inc. and the US arm of Polymarket has surged despite legal challenges from multiple state gaming regulators.

Concerns about insider trading are also ramping up. The markets for some wagers are often thin enough that a single trader can move prices, especially if they have non-public information. Those worries escalated in January when a trader on Polymarket made approximately \$400,000 betting on the ouster of former Venezuelan leader **Nicolás Maduro**, with the biggest trades placed just before President Donald Trump publicly announced the US had captured him.

Read More: Bets on Maduro, Jesus Show Promise and Risks of Prediction Boom

The head of the US Commodity Futures Trading Commission, which regulates derivatives exchanges, last month said the agency would craft new rules on prediction markets.

US attorney says office will not prosecute companies that cooperate in criminal probes

 [reuters.com/legal/government/us-attorney-says-it-will-not-prosecute-companies-that-cooperate-criminal-2026-02-05](https://www.reuters.com/legal/government/us-attorney-says-it-will-not-prosecute-companies-that-cooperate-criminal-2026-02-05)

Chris Prentice

February 5, 2026

Jay Clayton, United States Attorney for the Southern District of New York, speaks during a press conference in New York City, U.S., December 10, 2025.

REUTERS/Jeenah Moon [Purchase Licensing Rights, opens new tab](#)

NEW YORK, Feb 5 (Reuters) - Federal prosecutors plan to increase incentives for companies that cooperate during criminal investigations, including promises not to prosecute them, the U.S. Attorney in Manhattan said on Thursday.

Jay Clayton's remarks at an industry conference come as the Justice Department is scaling back corporate crime enforcement and refocusing on immigration and drug cases under the Trump administration.

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Companies need to know there is a specific benefit to cooperating with U.S. prosecutors in rooting out wrongdoers, Clayton said at the Securities Enforcement Forum in New York.

That includes offering companies so-called non-prosecution agreements, or NPAs -- deals that Democrats have criticized in the past.

"Our approach is going to be: let's get an NPA signed as quickly as possible that calls for continued cooperation," he said.

The initiative within the U.S. Attorney's Office for the Southern District of New York will involve an initial, conditional agreement in which prosecutors decline to prosecute the firms, said Andrew Thomas, Co-Chief of the office's Securities and Commodities Fraud Task Force.

The change should yield faster recovery of funds for victims, he said.

Clayton, an appointee of President Donald Trump, said the different approach to cooperation would benefit shareholders, too. He previously led the Securities and Exchange Commission, a civil regulator, during Trump's first presidential term, and focused on retail investors at the time.

Retail investors continue to be among his top priorities on white-collar crime issues, Clayton said, noting he has an eye on misconduct in small-cap stocks, private funds and prediction markets. When asked if he foresees prosecutions in those so-called event contracts, he said: "Yes."

Clayton also criticized past enforcement of the Foreign Corrupt Practices Act, a 1977 law that bans companies that operate in the U.S. from bribing foreign officials.

The Justice Department paused the law's enforcement last year and resumed it with [a plan for a more scaled-back approach](#). Clayton criticized the law for putting the U.S. at a disadvantage to other countries and penalizing companies instead of targeting individual wrongdoers.

"I hate corruption of foreign officials," Clayton said. "I hate the FCPA as applied."

Reporting by Chris Prentice; Editing by Chizu Nomiyama and Diane Craft

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Chris Prentice reports on financial crimes, with a focus on securities enforcement matters. She previously covered commodities markets and trade policy. She has received awards for her work from the Society for Advancing Business Editing and Writing and the Newswomen's Club of New York.

- X

Securities Litigation

Ex-SDNY Chief's Advice on Parallel Probes? Don't Treat the SEC as the 'B-Team'

If "the criminal authorities go away, and the SEC is left at the table, and you spent a year of an investigation treating them like the B-team..." Williams cautioned during a panel discussion on how to defend clients against parallel government investigations.

February 05, 2026 at 05:43 PM By **Alyssa Aquino**



Damian Williams, former United States Attorney for the Southern District of New York, speaks at the New York Securities Enforcement Forum in Midtown Manhattan on February 5, 2026. Photo: Ryland West

If facing both criminal and civil heat, don't treat the U.S. Securities and Exchange Commission as the "B-team," the former U.S. Attorney for the Southern District of New York, Damian Williams, advised on Thursday.

Williams, currently a partner at Jenner & Block, gave the advice during an early morning panel on how to mount a defense when a client is facing parallel investigations from criminal and civil authorities.

Although a criminal investigation carries the possibility of jail time, lawyers shouldn't pay less attention to civil regulators, Williams said.

If “the criminal authorities go away, and the SEC is left at the table, and you spent a year of an investigation treating them like the B-team, and suddenly they hold all the cards,” Williams said. “They may not be able to deprive your client of liberty, but it can be ruinous for your client’s reputation if the SEC decides to proceed.”

“I think defense counsel should do a good job of... having a good relationship with all folks at the table, because you never know,” he said.

The panel—titled “Defending Parallel Investigations Involving the SEC, SDNY, EDNY, NYAG and Others”—was part of the Securities Enforcement Forum New York, a one-day conference for current and former SEC officials, securities enforcement and white collar attorneys.

Williams spoke in a panel that also included Nicolas Roos, the co-chief of SDNY’s Securities and Commodities Fraud Task Force. Parvin Moyne, a partner at Akin Gump and Michael Shanahan, the managing director of the consulting firm Alvarez & Marsal, also sat on the panel. The panel was moderated by Caitlyn Campbell, a partner at McDermott Will & Schulte.

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Securities Litigation

SDNY Chief Promises 'Big Carrot' for Businesses That Cooperate With Criminal Probes

U.S. Attorney Jay Clayton for the Southern District of New York said that his office would look to get non-prosecution agreements signed "as quickly as possible" for companies that self-report potential misconduct.

February 05, 2026 at 06:06 PM By **Alyssa Aquino**

What You Need to Know

- Clayton's promises of a "big carrot" came amid an industry conference that took place in New York City on Thursday.
- In that same event, Clayton offered scathing criticism of the Foreign Corrupt Practices Act, saying the U.S. has been using the law to "hold up companies for money."
- He also said he doesn't lose sleep over the Southern District's relationship to Main Justice.



Jay Clayton, United States Attorney for the Southern District of New York, speaks at the Securities Enforcement Forum in Midtown Manhattan on February 5, 2026. Photo: Ryland West

U.S. Attorney Jay Clayton for the Southern District of New York on Thursday offered “a big carrot” for companies that cooperate with his office on criminal matters, a potential non-prosecution agreement.

Clayton made the announcement during the Securities Enforcement Forum New York, when asked what message he wanted to send to companies considering self-reporting bad behavior.

“Our approach is going to be, let’s get an [non-prosecution agreement] signed as quickly as possible,” said Clayton. “My aim is to get the bad people out of hopefully the good companies, and to do that as quickly as possible.”

“This should be in the interest of shareholders, for the leaders of companies to get sufficiently to the bottom of the criminal activity,” he said.

Non-prosecution agreements are arrangements in which a federal agency, like the U.S. Department of Justice, agrees not to file charges against parties under criminal and civil investigation.

Clayton added, however, that companies would pay for not cooperating.

“If you do not cooperate and there is criminal activity, you’re going to pay for not cooperating,” he said. “There’s a big carrot, but there’s also going to be a big stick.”

The announcement came during the keynote event at the Securities Enforcement Forum New York, a Q&A between Clayton and Steven Peikin.

Like Clayton, Peikin has experience in both the U.S. Securities and Exchange Commission and SDNY, having served as the SEC’s Division of Enforcement and as chief of SDNY’s Securities and Commodities Fraud Task Force. Peikin is currently the head of Sullivan & Cromwell’s Securities & Commodities Investigations & Enforcement Practice.

In addition to cooperation, Peikin asked Clayton for his views on the Foreign Corrupt Practices Act, which spurred colorful criticism by Clayton.

Clayton said he “hate[s]” how the powerful statute has been used by U.S. prosecutors.

We “never really go after individuals, just hold up companies for money based on stuff we wouldn’t prosecute at home, and by doing that, we’ve ceded many hot spots to more corrupt groups,” Clayton said. “Because the application of the FCPA—the way we do it—I think corruption in many places around the world has increased.”

Clayton further stated that the FCPA was intended to crack down on powerful companies “essentially buying foreign governments, not buying the guy on the dock with facilitation payments.”

“That’s hard. That’s actual crime,” Clayton said, referring to the crime of buying a foreign government. “It messes with foreign relations, it does all sorts of terrible things and that we should pursue that to our heart’s content. But, you know, the low-level stuff? Who are we to go do that?”

Though colorful, his views may not be fully out of line for the Trump administration, which paused and then changed FCPA enforcement over the past year. White-collar attorneys have reported seeing less FCPA activity since the enforcement shift, and very few FCPA prosecutions are currently active.

In that same keynote, Peikin asked Clayton to discuss his office’s relationship with Main Justice. Of the U.S. attorney’s offices, the Southern District has been renowned for its independence from Washington, D.C. That presumed independence has taken a hit over the past year, after Main Justice instructed New York prosecutors to drop their criminal case against former New York City Mayor Eric Adams.

Clayton, who Trump nominated to lead SDNY, despite never having previously served as a prosecutor, said, “We’re doing well.”

“Let’s put it this way... that is not something I worry about going to bed at night,” Clayton said.

Clayton was later asked what does keep him up at night, to which he noted “the kind of tensions we’ve seen in other places.”

Also, “it would bother me if great young lawyers didn’t want to come to the office. That would be a bad day,” Clayton said.

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FT PROFESSIONAL

FT Swamp Notes **The Washington Post****Bezos's calculated vandalism of the Washington Post**

He is just one of several pro-Trump oligarchs who now control key sections of the US media



There is nothing fated about the demise of one of America's most storied media brands © Getty Images

Edward Luce

Published 5 HOURS AGO



This article is an on-site version of our Swamp Notes newsletter. Premium subscribers can sign up [here](#) to get the newsletter delivered every Monday and Friday. Standard subscribers can upgrade to Premium [here](#), or [explore](#) all FT newsletters

The most puzzling aspect of Jeff Bezos's evisceration of the Washington Post is why he won't sell it to someone else. According to Semafor, the title has plenty of prospective buyers. But America's fourth-richest man is uninterested.

Instead, this week he closed down many of the paper's foreign bureaus and whole sections of the paper — sports and metro reporting included. Feeding half of the newspaper into the shredder is not an obvious way to revive the loyalty of a subscriber base that has been shrinking rapidly since late 2024.

But reviving the Post is evidently not Bezos's objective. His goal seems to be to convert what Donald Trump used to call the "Amazon Washington Post" into a harmless shell of its former self as a display of knee-bending. Selling it to a viable new owner would not help Trump. Having done seminal investigative reporting on Trump during his first term, the paper is now at least partially disabled from sustaining that vital public service in his second. The title proudly adopted the motto "democracy dies in darkness" after Trump was first elected. Now the paper is an exhibit of his attempts to smother democracy in broad daylight.

There is nothing fated about the demise of one of America's most storied media brands. My own paper is thriving. Both the New York Times and the Wall Street Journal are doing well. A well-calibrated restructuring could put the Post back on course to profitability. But Will Lewis, the former News Corp executive whom Bezos hired two years ago, does not seem to have been recruited with that goal in mind. His various ideas, including setting up a "third newsroom" (opinion apparently being the second), came to naught. The Post staff's initial suspicion, which seems to have been borne out, is that Bezos recruited Lewis as his hatchet man. Early into Lewis's tenure, Sally Buzbee, the Post's executive editor, resigned after he blocked her attempts to report on his involvement in a long-running British phone-hacking lawsuit. (Lewis has denied wrongdoing.) Most of the paper's columnists and many of its star reporters left over the past year.

It is conceivable that Bezos is keeping the title alive in case the political weather alters sharply after 2028. Then he could pivot to what he originally set out to do after he bought it for the bargain price of \$250mn in 2013. There are still great people on the paper and it has retained most of its political and national security reporting staff. But I may be guilty of wishful thinking. The bigger picture points in one direction.

Bezos is just one of several pro-Trump oligarchs who now control key sections of the US media. In addition to Elon Musk's X, which has become a platform for rampant disinformation, the Ellison family now owns CBS. The network is to American television history what the Post is to print — a bastion of courageous journalism (CBS during the McCarthyite red scare and the Post over Watergate and the Pentagon Papers). CBS is being turned into a broadcast imitation of Bari Weiss's *The Free Press*, an online scourge-of-woke publication that Paramount's David Ellison bought for \$150mn last year. Ellison's father, Larry Ellison, is America's second-richest man and ardently pro-Trump. Weiss, who has never been a reporter, wants the network to chase "scoops of ideas", whatever that means. In practice, CBS has donned the kid gloves in its Trump coverage. Its flagship show, *60 Minutes*, is already a ghost of itself.

Into that mix throw TikTok, which is now under the control of Trump's allies. The hugely popular app is owned in the US by a consortium of Larry Ellison's Oracle, SilverLake, a private equity group and Abu Dhabi's MGX. The latter was the Emirati fund that funnelled \$2bn worth of stablecoin through World Liberty Financial, the crypto vehicle that is majority owned by the Trump family. Are you beginning to see a pattern? There is more to come. Ellison's Paramount is in a regulatory battle to acquire Warner Bros Discovery, which owns CNN. Were Ellison's CBS covering Trump without fear or favour, Paramount would assuredly encounter obstacles in its Warner takeover bid.

We should thus expect CNN to join the formerly independent media scalps on Trump's wall. My colleague John Burn-Murdoch [wrote last week](#) about how the pace of democratic backsliding under Trump has easily exceeded that of other illiberal democracies, notably Turkey, Hungary and Russia. One of John's variables was media independence.

I'm turning this week to my colleague Chris Grimes, our LA-based West Coast correspondent, who has also covered the American media for the FT. Burn-Murdoch's piece concludes optimistically by observing that America has far more resilient institutions than those other countries. My take is a bit more pessimistic. Most US institutions, including Congress, the Supreme Court, the majority of universities, Fortune 500 and of course key sections of the national media, have either counted themselves out or are under assault. Do you see any countervailing trends in the US media landscape?

Recommended reading

- My column this week is on how "[The Epstein rot goes deep](#)" and is tragically emblematic of our age. "In a self-valuing democracy, the only defensible stance is to call for release of all remaining files," I write.
- I much enjoyed my colleague Sarah O'Connor's [piece](#) on why the public is not irredeemably ignorant. More often than not, public opinion has a reasonable grasp of the underlying trends, she argues.
- Do also read Stephen Walt in Foreign Affairs on "[predatory hegemony](#)". Walt argues that Trump's foreign policy will make Americans "poorer, less secure and less influential than it has been for most living Americans' lifetimes".

- Finally, I know I'm not cheering you up, but do read War on The Rocks' Andy Milburn's devastating assessment of "[Gaza and the Conduct of Urban War](#)". Having served with the US Marines in Fallujah and Mosul, Milburn is highly qualified to evaluate the IDF's methods.

Christopher Grimes replies

Thanks, Ed. Whatever else we might think of Bezos, there's little doubt that he created one of the most successful and innovative businesses in US history, which makes the story of the Bezos-owned Washington Post during the second Trump administration all the more puzzling.

He is not the first CEO to try to avoid trouble by appeasing Trump — look no further than Apple's Tim Cook. But other media groups have dealt with unreasonable pressure from Trump without killing the underlying business. See Disney and Bob Iger's \$15mn "donation" to the future Trump library to settle a lawsuit. It was embarrassing, but Disney has weathered it.

Bezos has succeeded in keeping second-term Trump off his back so far (Amazon's \$40mn *Melania* documentary should buy more goodwill) but he has overcorrected at the Post. The first rule of newspaper ownership is to know your audience.

Readers in the DC area began cancelling their subscriptions after the opinion page failed to endorse Trump's opponent in the 2024 presidential election. The opinion pages were then shifted away from politics and towards economics, adopting "personal liberties and free markets" as its new orientation. It was like asking the editors of *Variety* to ditch Hollywood and start covering LA traffic and weather.

Despite it all, the Post continued to do good work. But the alienated audience had moved on.

Securities

Winklevosses' Gemini to Cut Jobs, Scale Down in Crypto Retreat

Feb. 5, 2026, 10:03 AM PST

The crypto exchange run by billionaires **Tyler** and **Cameron Winklevoss** is slashing as much as 25% of its workforce and winding down operations in the UK, European Union and Australia, marking a major pullback for two of the industry's most high-profile figures amid a rout in the sector.

New York-based Gemini Space Station Inc. said it will trim as many as 200 positions across its global workforce, including staff in the US and Singapore, according to a filing on Thursday.

Founded in 2014, Gemini has largely failed to attract significant market share despite being one of the earlier crypto exchanges. It reported a loss of \$159.5 million in November, flagging costs from its initial public offering two months earlier and broader marketing efforts.

"These foreign markets have proven hard to win in for various reasons and we find ourselves stretched thin with a level of organizational and operational complexity that drives our cost structure up and slows us down," the Winklevoss twins said in a blog post on Thursday.



Tyler Winklevoss, chief executive officer and co-founder of Gemini Space Station, left, and Cameron Winklevoss, president and co-founder, during the company's IPO on Sept. 12, 2025.

Photographer: Michael Nagle/Bloomberg

The news came as a selloff in crypto markets gained momentum, with Bitcoin dropping below \$70,000, the lowest level since November 2024. Gemini didn't mention the price decline as a factor, though Bitcoin's precipitous drop has been impacting firms across the industry for months.

Read More: Bitcoin Drops Below \$70,000 as 'Forced Deleveraging' Accelerates

Gemini shares fell as much as 9.1% to \$6.67 in early trading, marking an all-time low since its debut on public markets in September. Its stock has fallen more than 85% from a high of \$45.89 on Sept. 12 just after its IPO, pushing the exchange's market value from a \$3.8 billion peak to just \$800 million this month.

Early Adopters

The Harvard-educated Winklevoss brothers turned cash scored from a settlement over their part in the creation of Facebook into crypto riches, buying Bitcoin early on in the cryptocurrency's meteoric rise. But Gemini's path has been bumpy, with a struggle to win share in a volatile market pockmarked by lawsuits from New York state and the Securities and Exchange Commission in 2023.

Their fortunes revived with the return to the White House of Trump, whose pro-crypto agenda helped the industry rebound from a period of declines and scandals that led to a regulatory crackdown. The SEC's enforcement action against Gemini was dismissed after a joint request from the two sides in January, following several other abandoned cases the watchdog had pursued against other crypto businesses. Gemini previously reached a settlement with New York.

The twins have donated millions of dollars to causes supporting President Trump and the Republican party, including a \$21 million offering in Bitcoin to their own political fundraising group. The latest downturn in Bitcoin's price has harmed the value of that donation somewhat, wiping about \$5 million off the value as of Dec. 31 disclosures.

Gemini Sinks

Crypto exchange's fortunes sour as Bitcoin downturn weighs on shares



Source: Bloomberg

Bloomberg

As part of the changes announced Thursday, all customer accounts in the UK, EU and Australia will be placed in withdrawal-only mode from March 5, with full closures to follow a month later, Gemini said in a support notice to customers earlier on Thursday. Creation of new accounts and all incentive programs will be disabled for these regions.

Read More: Bitcoin Slump Cuts Millions From Winklevoss Super-PAC Donation

Gemini expects its restructuring plan to be substantially completed in the first half of the year, the company said. It estimated the move will incur pre-tax restructuring and related charges of approximately \$11 million.

As the crypto downturn worsened, Gemini launched a predictions market in December, tapping into a new, rapidly growing industry at a time when crypto has struggled to compete with broader macro assets for investor attention.

"Our thesis is that prediction markets will be as big or bigger than today's capital markets," the Winklevosses said in the blog post. Gemini Predictions has processed more than \$24 million in volume from around 10,000 users since it launched in mid-December, they said.

"Predictions will be the machine within our app to see the future. A truth machine. And in order to have the necessary bandwidth to succeed here, we will narrow our focus," they said.

(Adds change in market value from all-time high in sixth paragraph.)

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Securities

Saylor's Crypto Project Pounded After \$12.4 Billion Loss (2)

Feb. 5, 2026, 3:26 PM PST

Bitcoin's plunge below \$65,000 is intensifying the crisis rocking the digital-asset complex — and few companies are more exposed than **Michael Saylor's Strategy Inc.**

In an earnings announcement Thursday, the Bitcoin-hoarding company confirmed a net loss of \$12.4 billion for the fourth quarter, driven by the mark-to-market decline in its vast holdings. That pain deepened this week, as fresh market turmoil pushed the firm's Bitcoin stash below its cumulative cost basis for the first time since 2023 — and erased the token's post-election gains.

The upshot: Saylor's financial experiment is coming undone.

The former enterprise software firm had long defied gravity by turning its equity premium into a token-acquisition machine. At its peak, Strategy shares traded so far above the value of its holdings that the company could issue new stock, buy more Bitcoin, and repeat the cycle. But with that premium now gone — and capital markets tightening — the model has stalled.

No new equity raise or debt issuance was announced. And in a departure from the pattern that has largely defined the company since 2020, Strategy did not offer a fresh vehicle or vision to finance additional purchases. That, combined with Saylor's more defensive posture of late, marks a sharp break from prior quarters, when each selloff brought a new round of bravado and capital-financing taps.

Saylor, the co-founder and executive chairman, has said the company faces no margin calls and has \$2.25 billion in cash, enough to cover interest and distributions for more than two years. But with Bitcoin trading firmly below the firm's \$76,052 cost basis, pressure is building.

Strategy reiterated Thursday that it doesn't expect to generate earnings and profits in the current year or the foreseeable future. Based on these expectations, the firm expects that any distributions to holders of its perpetual preferred shares are tax free for now.

"Some of you bought Bitcoin or MSTR in the last year, this is your first downturn, my advice is to hold on," Strategy Chief Executive Officer Phong Le said during a presentation after the results were released. Le's attempt at reassurance was met with outrage from anonymous posters in a comments section that ran during the livestream.



Michael Saylor, co-founder and executive chairman of Strategy Inc., during the Bitcoin 2025 conference in Las Vegas on May 29, 2025.

Photographer: Ronda Churchill/Bloomberg

"At this point, the focus is on Strategy's intentions regarding the raising of capital to fuel its Bitcoin purchases in the face of challenging market conditions," said **Mark Palmer**, an analyst at Benchmark Co., which has a "buy" rating on the common shares. "In this environment, the company is looking for its STRC perpetual preferred stock to be a driver of that effort."

Strategy holds over 713,000 Bitcoin, valued at about \$46 billion, according to its website. In late January, it added another \$75.3 million of Bitcoin — a signal that the accumulation drive remains, at least formally, intact.

But Michael Burry rekindled scrutiny of Strategy this week, warning that Bitcoin's drop could trigger a "death spiral" among corporate holders and leave Saylor's firm billions underwater. His remarks revived a long-running critique echoed by short-sellers like Jim Chanos, who flagged Strategy's reliance on non-earning assets and speculative leverage well before the recent breakdown.

Read more: Michael Burry Warns of Cascading Effects From Bitcoin Plunge

For much of the past four years, Strategy operated as a high-beta proxy for Bitcoin exposure. Its shares surged more than 3,500% between 2020 and 2024, outperforming major indexes and attracting both speculators and skeptics. The firm's rise as a high-octane Bitcoin proxy — first through equity sales, then debt — made it a lightning rod for critiques of speculative leverage and corporate crypto exposure.

The Rise and Fall of Strategy's mNAV Premium



The engine was always on shaky ground. Spot Bitcoin ETFs have made exposure cheaper and cleaner, eroding Strategy's niche. With token volatility rising and digital-asset liquidity fading, many of the same investors who once chased leveraged upside are now pulling back.

During the presentation, Saylor dismissed concerns about the threat of quantum computing to Bitcoin, reiterating that it was "FUD," short for fear, uncertainty and doubt. The supposed threat to Bitcoin centers on the potential for quantum algorithms to break the cryptographic code that prove ownership and secure the network.

Saylor has been managing expectations more overtly. His statement on profitability functions as a subtle repositioning. The underlying message: Strategy shouldn't be judged by short-term market swings. By framing profitability as a distant prospect, Saylor is inviting investors to treat the company less like a software firm or trading proxy — and more like a long-duration Bitcoin trust, anchored to the token's trajectory rather than quarterly earnings.

Investors beg to differ. The stock is down almost 80% since reaching a record high in November 2024.

(Adds company comment, beginning in the eighth paragraph.)

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It Turns Out Waymos Are Being Controlled by Workers in the Philippines

F futurism.com/advanced-transport/waymos-controlled-workers-philippines

Victor Tangermann

February 6, 2026



Brontë Wittpenn/San Francisco Chronicle via Getty Images

Waymo has established itself as the autonomous ride-hailing service to beat, operating a fleet of several thousand self-driving taxis across the United States, with active services in [ten](#) major metropolitan areas.

That “self-driving” may be due for some extra scrutiny, though. During a [Congressional hearing on Wednesday](#), Waymo’s chief safety officer, Mauricio Peña, was grilled over the company’s use of Chinese-made vehicles and reliance on overseas workers, as [Business Insider reports](#).

The stakes and public safety implications are considerable. The news comes roughly a week after a Waymo robotaxi struck and injured a child near a Santa Monica, California, elementary school, [triggering a federal probe](#).

After being pressed for a breakdown on where these overseas operators operate, Peña said he didn’t have those stats, explaining that some operators live in the US, but others live much further away, including in the Philippines.

“They provide guidance,” he argued. “They do not remotely drive the vehicles. Waymo asks for guidance in certain situations and gets an input, but the Waymo vehicle is always in charge of the dynamic driving tasks, so that is just one additional input.”

The admission didn't sit well with senator Ed Markey (D-MA), who argued that "having people overseas influencing American vehicles is a safety issue."

"The information the operators receive could be out of date. It could introduce tremendous cybersecurity vulnerabilities," he argued. "We don't know if these people have US driver's licenses."

"It's one thing when a taxi is replaced by an Uber or a Lyft," Markey concluded. "It's another thing when the jobs just go completely overseas."

Waymo has been fairly upfront about its human operators. In a [May 2024 blog post](#), the company compared it to a "phone-a-friend."

"When the Waymo vehicle encounters a particular situation on the road, the autonomous driver can reach out to a human fleet response agent for additional information to contextualize its environment," the post reads. "The Waymo Driver [software] does not rely solely on the inputs it receives from the fleet response agent and it is in control of the vehicle at all times."

In case the car's driving software encounters something atypical, it may choose to send a request to a human fleet response agent, who then can help out by viewing real-time feeds from the vehicle's exterior cameras.

While that may sound like the remote operator isn't directly controlling the vehicle's driving responses, it nonetheless goes to show how autonomous vehicles still rely substantially on human intellect. Fleet response agents may determine what lane a vehicle should pick, or propose a "path for the vehicle to consider," as the blog post explains.

Put simply, the remote agent may not control the steering wheel, but they still make major decisions on where the vehicle navigates next.

During the same hearing, Tesla's VP of vehicle engineering Lars Moravy told lawmakers that Tesla's vehicles also rely on similar remote operators.

"We have many layers of security within our system and, similar to what Dr. Peña said, our driving controls, go, stop, steer, are in a core embedded central layer that cannot be accessed from outside the vehicle," he said.

Moravy also argued that to stop anybody from taking control of vehicles, the company "actively participates in hacking events, trying paying people to try to get into our vehicles."

The executives' remarks are the latest illustration of how driverless taxis navigating public roads today are still far from being 100 percent autonomous. Tesla, in particular, has been playing it safe, quietly pausing its "unsupervised" robotaxi rides last week, meaning that there currently don't appear to be any robotaxis with no human "safety monitor" in the driver's seat.

It's an especially glaring subject as lawmakers continue to ponder the risks of having autonomous vehicles coexist with human drivers on the road. And given the latest data, those risks remain substantial, with new National Highway Traffic Safety Administration data suggesting Tesla's robotaxis are [crashing three times as much as humans](#) — even with human monitors.

Adding the influence of an entirely separate third party, a remote assistance operator who's based overseas, could be a recipe for disaster, according to Markey, a glaring safety gap that needs to be filled.

"Overseas remote assistance operations may be more susceptible to physical takeover by hostile actors, potentially granting them driver-like control of thousands of vehicles transporting passengers on American roads," he said in a [statement](#). "Heavy and fast-moving vehicles could quickly become the weapons of foreign actors seeking to harm innocent Americans."

More on Waymo: [Waymo Under Investigation After Crashing Into Child Outside Elementary School](#)

I'm a senior editor at Futurism, where I edit and write about NASA and the private space sector, as well as topics ranging from SETI and artificial intelligence to tech and medical policy.



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BlackRock Arm Faces Investor Suit Over Lending Losses

By **Jessica Corso**

Law360 (February 5, 2026, 8:23 PM EST) -- A BlackRock subsidiary that finances middle-market companies is facing a proposed class action in California federal court accusing it of failing to warn investors about the ballooning number of portfolio companies struggling to pay back their loans.

Cory Burnell sued BlackRock TCP Capital Corp. on Tuesday, accusing the company of hiding challenges with its portfolio and understating its losses. The lawsuit also names the former and current CEOs of BlackRock TCP as well as the company's chief financial officer as defendants.

Burnell says he hopes to represent a class of investors who purchased BlackRock TCP securities between November 2024 and January 2026.

"As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the company's securities, plaintiff and other class members have suffered significant losses and damages," according to the complaint.

BlackRock TCP lends money to private companies with enterprise values typically between \$100 million and \$1.5 billion, according to its website. The company profits off interest payments on those loans, as well as origination and others fees and equity appreciation, according to Burnell's complaint.

The complaint alleges that the company told investors in 2024 that its portfolio was showing signs of improvement, but that was revealed to be untrue when 2024's financial results were released.

The lawsuit claims that those results showed that the number of portfolio companies behind on their loan payments had more than doubled and that the company's losses had reached almost \$200 million.

The stock price fell by over 9% after the financial results were released, but the company still claimed that the majority of its portfolio continued to perform well, according to the complaint.

But a year later, the company revealed that the value of its assets was even lower in 2025, Burnell claims. The stock price then fell another 12.97%, according to the lawsuit.

A BlackRock spokesperson declined to comment.

Burnell is represented by Robert Prongay, Charles Linehan and Rebecca Dawson of Glancy Prongay Wolke & Rotter LLP and Corey Daniel Holzer of Holzer & Holzer LLC.

Counsel information for BlackRock TCP wasn't immediately available Thursday.

The case is Burnell v. BlackRock TCP Capital Corp. et al., case number 2:26-cv-01102, in the U.S. District Court for the Central District of California.

--Editing by Jay Jackson Jr.



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E.L.F. Beauty Investors Told To Revise Inventory Fraud Claims

By **Sydney Price**

Law360 (February 5, 2026, 8:13 PM EST) -- Investors of cosmetics giant e.l.f. Beauty were told by a California federal judge that they must rework parts of their suit accusing the company and its executives of hiding growing inventory issues stemming from inadequate sales, including claims accusing Elf's chief financial officer of fraud.

U.S. District Judge Eumi K. Lee said in an order on Wednesday that the investors have not shown that Elf Chief Financial Officer Mandy Fields acted with scienter. She said the suit currently does not successfully invoke the so-called core operations doctrine, which says that senior management's awareness of a company's key activities and problems can be inferred when the alleged fraud concerns those operations.

"Plaintiffs essentially allege that, because growth was important, Fields must have been aware of any fact that might impact the company's growth," a footnote in the order states. "Such a broad application of the 'core operations' inference would make corporate officers liable for mere negligence in failing to discover fraud, which is impermissible."

The investors, however, have shown that Elf CEO Tarang Amin made misrepresentations about Elf's inventory during a televised newscast in 2024, the order states. According to the suit, Amin went on air to address claims made by investment research firm Muddy Waters Research in a report accusing the beauty company of significantly overreporting revenue for three quarters.

"Amin's November 2024 statements were misleading in context because they conveyed that Elf was building inventory to meet demand when Amin allegedly knew at the time that inventory was building because demand was weakening," the order states.

The order gives the plaintiffs 30 days to refile the suit and notes that the current 73-page complaint is "already far too long for a purportedly 'clear and straightforward case.'"

The complaint, which was most recently amended in July, alleges that, despite assurances to investors that Elf was "comfortable" with its inventory levels, the company began experiencing declining consumer demand for its products by early 2024, leading to rising inventory levels in subsequent quarters.

The truth began to emerge, the suit alleges, in August 2024, when Elf issued weaker-than-expected financial guidance for the previous fiscal quarter and "acknowledged downward pressure" on guidance for its adjusted earnings before interest, taxes, depreciation and amortization.

Following the announcement, Elf's stock price fell by \$27.12, or about 14%, to close at \$160.83 on Aug. 9, 2024, according to the complaint.

The defendants continued to downplay the severity of its issues for months, the suit alleges. Then, on Feb. 6, 2025, Elf lowered its fiscal year outlook for the first time since the COVID-19 pandemic, the suit states. Elf also revised its adjusted EBITDA guidance downward to \$289 million to \$293 million, from \$304 to \$308 million, according to the suit.

"Defendants finally admitted that the rising inventory levels were not caused by strong demand, as they had previously claimed," the suit alleges. "Instead, for the first time in years, Defendants did

not attribute the elevated inventory levels to high demand."

Elf's shares fell again, by \$17.36, or about 20%, to close at \$71.13 on Feb. 7, 2025, according to the complaint.

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

The investors are represented by Francis P. McConville, James T. Christie, Michael P. Canty, Connor C. Boehme, Nicholas Manningham and Stephen Boscolo of Labaton Keller Sucharow LLP and Lucas E. Gilmore of Hagens Berman Sobol Shapiro LLP.

Elf is represented by Colleen Carlton Smith, Daniel Robert Gherardi, Eric Swibel, Michele D. Johnson and Whitney B. Weber of Latham & Watkins LLP.

The case is In re e.l.f. Beauty, Inc. Securities Litigation, case number 5:25-cv-02316, in the U.S. District Court for the Northern District of California.

--Editing by Vaqas Asghar.

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Semtech Hid Copper Tech Product Setbacks, Investors Say

By **Katryna Perera**

Law360 (February 5, 2026, 4:57 PM EST) -- Two Semtech Corp. investors have filed amended claims against the company's top brass in a shareholder derivative suit in California federal court, alleging the executives misled investors ahead of Semtech's secondary public offering and overhyped demand for the company's active copper cable technology that was supposed to be used by chipmaker Nvidia.

Investors Chad Strapp and Michael Kent filed an **amended complaint** Tuesday against Semtech's CEO Hong Hou and several directors for alleged wrongdoing that occurred between Nov. 25, 2024, and Feb. 7, 2025.

Semtech is a semiconductor supplier and cloud service provider. One of the company's products, called CopperEdge, is a "signal integrity technology primarily used in data centers to broaden the reach and performance of copper interconnects," according to the complaint.

In January 2023, Semtech **acquired** Sierra Wireless Inc. and financed the acquisition with more than \$1 billion of debt, which was reflected in the company's balance sheet, though its profitability did not increase, according to the complaint.

Roughly a year later, Semtech indicated in U.S. Securities and Exchange Commission filings that it was on the brink of insolvency, as its costs had significantly increased, and it had recorded a \$755.6 million goodwill impairment in 2024, tied to Sierra Wireless' underperformance and heavier debt servicing, the investors alleged.

However, around the same time, Nvidia announced the arrival of its new GB200 Grace Blackwell Superchip platform, which would be offered in three configurations — the GB200 NVL36, the GB200 NVL72 and the GB200 NVL36x2 — according to the complaint.

"The 'NVL36x2' configuration required CopperEdge active copper cable technology, significantly boosting Semtech's business prospects at a time when the company needed it most," Strapp and Kent said.

Therefore, to capitalize on investor enthusiasm for Semtech's business opportunity with Nvidia, the company announced a secondary offering of 10.5 million shares, scheduled for December 2024, to raise more than \$660 million to pay down Semtech's debt obligations, according to the complaint.

However, Strapp and Kent alleged that before Semtech's secondary offering, Amazon and Microsoft announced their own adoptions of Nvidia's NVL72 configuration, which did not require CopperEdge technology. And in October 2024, an analyst reported Nvidia was halting its development of the NVL36x2 configuration, instead choosing to focus on the NVL72 configuration.

"Nevertheless, in an effort to maintain the price of the company's stock until the secondary offering — and meaningfully pay down its tremendous debt load — Semtech consistently misled investors regarding the company's partnership with Nvidia and the net sales it had achieved from its CopperEdge products," the investors said.

Strapp and Kent alleged that throughout the relevant period, the defendants failed to disclose to investors that Semtech was experiencing a reduction in sales of its CopperEdge products due to heating issues and that, as a result, Nvidia stopped purchasing CopperEdge products and instead

developed its own new processing unit.

The complaint states the truth about the weakening demand for Semtech's active copper cables began to emerge on Feb. 6, when investment firm Robert W. Baird & Co. lowered its price target on the company's stock from \$80 to \$60.

On this news, Semtech's stock price fell by \$5.99 per share, or roughly 10%, from \$60.50 on Feb. 6, 2025, to \$54.51 on Feb. 7, 2025, according to the complaint.

The truth continued to emerge the following day when Semtech announced in an SEC filing that for fiscal year 2026, net sales for its CopperEdge products were "expected to be lower than the company's previously disclosed floor case estimate of \$50 million due to rack architectural changes, with no expected ramp-up over the course of fiscal year 2026," the investors alleged.

Semtech further stated that the "revised estimates are based on recent feedback from a server rack customer and correlated to discussions with end users of the server rack platform," according to the complaint. The customer was purportedly NVIDIA, Strapp and Kent said.

On this news, the complaint states Semtech's stock price fell further: \$16.91 per share, or approximately 30%, from \$54.51 on Feb. 7, 2025, to \$37.60 on Feb. 10, 2025.

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

Semtech is also battling a related securities class action in California federal court. In October, a California federal judge **trimmed some claims** from the suit.

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

Strapp and Kent are represented by Robert C. Moest of The Brown Law Firm PC, and Gregory M. Nespole, Daniel Tepper, Correy A. Suk and Adam M. Apton of Levi & Korsinsky LLP.

The defendants are represented by Sara B. Brody, Jaime A. Bartlett and Sarah A. Hemmendinger of Sidley Austin LLP.

The case is In Re Semtech Corporation Derivative Litigation, case number 2:25-cv-04234, in the U.S. District Court for the Central District of California.

--Editing by Lakshna Mehta.



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Generator Co. Beats Investors' Post-COVID Demand Woes Suit

By **Emilie Ruscoe**

Law360 (February 5, 2026, 7:04 PM EST) -- Generator-maker Generac Holdings Inc. no longer faces proposed investor class action claims it concealed struggles to rightsize its production and inventory levels following pandemic-linked fluctuations, a Wisconsin federal judge has determined after finding the suit didn't show intentional misrepresentations.

In a **Tuesday order** in Milwaukee federal court, U.S. District Judge Pamela Pepper tossed the investor suit against Generac, finding the latest version of the allegations failed to include claims supporting the inference that the company or a pair of its executives had lied to Generac shareholders about the company's post-COVID "channel destocking process."

"The court finds it just as likely that the alleged false statements were 'the result of merely careless mistakes at the management level based on false information fed it from below' as that the alleged false statements were a reflection of 'an intent to deceive or a reckless indifference to whether the statements were misleading,'" Judge Pepper said Tuesday, quoting the Seventh Circuit's 2008 opinion in the case [Makor Issues & Rights Ltd v. Tellabs Inc.](#)

Judge Pepper's Tuesday order didn't state whether the plaintiffs will be allowed to amend their suit. The docket shows the case was terminated Tuesday.

The lawsuit, first filed in November 2023, says Generac's share price fell almost 25% to under \$116 in August 2023 after the company said its efforts to bring down its heightened inventory levels were dragging on into the second half of its fiscal year.

This was a change from what Generac said the previous May, when it projected "a return to year-over-year sales growth in the second half of the year" following a first quarter that Generac said "marked the trough" for its current business cycle, the lawsuit said.

In its dismissal bid, Generac argued that the complaint didn't meet heightened pleading requirements laid out by the Private Securities Litigation Reform Act. For example, the complaint didn't state what the company or its executives allegedly knew about its inventory levels during the proposed class period, or when they allegedly knew it.

On Tuesday, Judge Pepper agreed, finding that the complaint doesn't show that Generac CEO Aaron P. Jagdfeld or Chief Financial Officer York A. Ragen "had actual knowledge of specific information that contradicted the allegedly false statements at the time they were made."

Absent such claims, the judge said, "what remains are the amended complaint's description of circumstantial evidence" that doesn't reveal deceptive intent or recklessness on the part of the defendants.

Because of the scienter finding, Judge Pepper said she need not rule on the plaintiffs' falsity claims.

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

Walling is represented by Adam M. Apton of Levi & Korsinsky LLP and Andrew G. Frank of Mallery SC.

Generac and the individual defendants are represented by Glenn K. Vanzura of Willkie Farr &

Gallagher LLP and Joseph De Simone and Daisy R. Gray of Mayer Brown LLP.

The case is Walling v. Generac Holdings Inc et al., case number 2:24-cv-00240, in the U.S. District Court for the Eastern District of Wisconsin.

--Editing by Michael Watanabe.

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Car Services Co.'s \$25M Investor Deal Gets First OK

By **Sydney Price**

Law360 (February 5, 2026, 9:51 PM EST) -- Car services company Driven Brands Holdings Inc. and its investors have received initial approval of their \$25 million deal settling claims it misled the public by overstating the success of the integration of its glass repair acquisitions and performance of its car wash businesses.

U.S. District Judge Max O. Cogburn Jr. said in an order that the court will likely approve the settlement as "fair, reasonable and adequate" after a hearing on June 1.

According to a settlement motion filed in December, lead counsel for the investors intend to request up to 25% of the settlement fund, or \$6.2 million, in attorney fees and up to \$500,000 in expenses.

If approved, the agreement would resolve claims Driven Brands and former executives Jonathan Fitzpatrick and Tiffany Mason misled investors between October 2021 and August 2023 about the company's effort to build a national auto glass platform and about customer retention and operational problems in its car wash segment.

Plaintiffs say the alleged misstatements inflated the stock price until the company disclosed integration failures and performance issues, triggering declines.

Back in February 2025, Judge Cogburn denied the defendants' motion to dismiss and later rejected their bid for reconsideration, allowing the case to move into discovery.

Plaintiffs told the court the settlement represents roughly 9.3% of their expert's estimate of maximum recoverable damages — a percentage they say compares favorably with other approved securities settlements, especially given the risks ahead.

The plaintiffs, Genesee County Employees' Retirement System and Oakland County Employees' Retirement System, are represented by Bernstein Litowitz Berger & Grossmann LLP, with attorneys Jonathan D. Uslaner, Alec T. Coquin and Prachi Patel leading the case. Terpening Law PLLC also serves as liaison counsel for the plaintiffs.

Driven Brands Holdings Inc. and its executives, including former CEO Jonathan G. Fitzpatrick and former Chief Financial Officer Tiffany L. Mason, are represented by Robinson Bradshaw & Hinson PA, with attorneys Adam Karl Doerr and Emma Westbrook Perry, and Gibson Dunn & Crutcher LLP, with attorneys Bethany J. Saul and Christopher D. Bebelieu.

The case is Genesee County Employees' Retirement System v. Driven Brands Holdings Inc. et al., case number 3:23-cv-00895, in U.S. District Court for the Western District of North Carolina.

--Editing by Emily Kokoll.

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Polymarket Hit With Class Action For 'Disguising' Sports Bets

By **Katryna Perera**

Law360 (February 5, 2026, 8:39 PM EST) -- Prediction market company Polymarket has been hit with a class action in New York federal court targeting its sports event contracts, which the suit alleges are disguised sports gambling offers meant to evade state regulation and scrutiny.

Plaintiff Lorenzo Miro San Diego filed a **complaint** Wednesday, claiming Blockratize Inc., which does business as Polymarket, is operating an illegal, unlicensed online sports gambling platform in violation of New York law. His suit marks the latest action in a string of litigation that several prediction markets are facing across the country.

According to the complaint, users can place bets on Polymarket on the outcomes of sports games, individual player metrics, team results, and other non-sports events, such as political elections.

Diego says the bets "materially resemble those offered at traditional casinos or sportsbooks" since users wager real money on the outcome of sports games and events and can redeem their winnings for real-world currency.

"The revenue of Polymarket's illegal sportsbook makes clear that it has become the platform's primary source of revenue. Indeed, a substantial portion of the bets placed on Polymarket emanated from sports betting, with the platform generating over \$6 billion in earnings on sports-related bets," the complaint said.

However, Diego alleges that even though Polymarket is running what amounts to a sports gambling platform, it markets itself as a prediction market to evade regulatory scrutiny and mislead consumers.

"This [prediction market] designation is purely cosmetic, intended to mask the reality that the platform facilitates and profits from illegal gambling," the complaint said.

Diego claims Polymarket is operating without proper licensing or regulatory oversight and that by "presenting its sports betting platform as lawful and accessible, Polymarket exposes consumers to financial risk while evading the regulatory and statutory safeguards intended to protect them."

Diego seeks to represent a nationwide class of individuals who "spent money wagering on Polymarket's mobile or web sportsbook."

The suit seeks damages, restitution, disgorgement, attorney fees and a jury trial. Representatives for the parties did not immediately respond to requests for comment Thursday.

Diego's suit follows a Nevada state judge's **temporary restraining order** prohibiting Polymarket from offering sports contracts in the state for two weeks, finding that the platform's offerings constitute "gaming" under state law.

First Judicial District Judge Jason D. Woodbury said in an order last week that gaming, according to Nevada law, includes percentage games or wagers in a "sports pool," and that the Nevada Gaming Control Board is likely to succeed on its claim that Polymarket has offered unlicensed wagering in Nevada.

Judge Woodbury said the harm the state would suffer is "immediate, irreparable" and cannot be remedied by damages. Without oversight, the board has no way to ensure Polymarket is not accepting wagers from owners, coaches, players or other sporting officials who could influence the outcome of a game, he said.

Polymarket had argued it was operating a contract market subject to the "exclusive jurisdiction" of the Commodity Futures Trading Commission, and so the gaming board cannot subject its contracts to Nevada state law.

However, Judge Woodbury said the question of federal preemption is "nuanced and rapidly evolving," and that a Maryland federal court found in *KalshiEx v. Martin* that the Commodity Exchange Act **does not preempt state law** in sports-related events contracts. The judge further stated that he found the reasoning "persuasive" and based on the current state of the law, the CEA "does not vest exclusive jurisdiction over Polymarket's contracts" with the CFTC.

Several prediction markets and exchanges are battling enforcement efforts from state regulators and related litigation over their sports or other event contracts.

On Wednesday, cryptocurrency exchange Coinbase **sued** Nevada's casino regulator, seeking to block the Silver State's bid to halt the crypto exchange's alleged offering of "unlicensed wagering" to state residents through event contracts on sports and elections until it obtains a state gaming license.

The suit came after the Nevada Gaming Control Board filed a complaint against Coinbase in Nevada state court, claiming the exchange's event contracts constitute wagers under Nevada law and that Coinbase is illegally operating without a license.

Coinbase also has ongoing litigation in **Illinois, Connecticut and Michigan** over those states' attempts to regulate its prediction market.

Prediction market Kalshi is also battling several cases from state gaming regulators and has **urged the Ninth Circuit** to let it continue offering sports event contracts in Nevada.

Meanwhile, U.S. Commodity Futures Trading Chair Michael Selig on Wednesday **withdrew** a 2024 proposed rule that would have banned trading on the outcome of elections and sporting events, saying the agency will instead float a new rule that promotes "innovation" in derivatives markets.

Diego is represented by Leanna A. Loginov and Edwin Elliott of Shamis & Gentile PA and Omer Kremer and Gabriel Mandler of Edelsberg Law PA.

Counsel information for Polymarket was not immediately available.

The case is *Diego v. Blockratize Inc. et al.*, case number 1:26-cv-00973, in the U.S. District Court for the Southern District of New York.

--Editing by Drashti Mehta.



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Conn. Town's PFAS Case Against 3M, Others Sent To MDL

By **Brian Steele**

Law360 (February 5, 2026, 5:09 PM EST) -- A Connecticut town's "forever chemicals" lawsuit against major corporations including 3M and RTX, claiming damages for the contamination of local water supplies, will proceed as part of multidistrict litigation in South Carolina, court records show.

The U.S. Judicial Panel on Multidistrict Litigation ordered Fairfield's **action** to proceed alongside thousands of others that were combined for pretrial proceedings since December 2018. The panel's Monday order became official when a member case opened Wednesday before U.S. District Judge Richard M. Gergel.

Twenty-three companies and 100 unnamed individuals are defendants in the case that the town and its Water Pollution Control Authority brought in state court in December 2025, including BASF Corp., DuPont de Nemours Inc., Tyco Fire Products LP, The Viking Corp., RTX Corp. and Carrier Global Corp. RTX removed the six-count suit to the District of Connecticut on Jan. 14.

The complaint brought claims including public and private nuisance, design defect, failure to warn, negligence and violation of the Connecticut Unfair Trade Practices Act.

The MDL **encompasses** cases from public water providers, individuals and states that allege various harms due to exposure to firefighting foams that contained per- and polyfluoroalkyl substances, or PFAS, also known as "forever chemicals" because of their persistence in the human body and environment.

Fairfield alleges that PFAS entered its stormwater and sewer systems, ultimately ending up in a wastewater facility that has at times exceeded its capacity and may struggle to comply with increasingly strict state and federal environmental regulations. The chemicals were used to extinguish fires and conduct firefighter training around the city, including at the Fairfield Regional Fire Training Center and the U.S. Army Reserve Training Center, according to the complaint.

Connecticut banned the chemicals from firefighting and food packaging in 2021.

"Exposure to PFAS chemicals is known to cause serious health effects, including cancer, liver, thyroid, and kidney disease, immune system disruption, and reproductive health disruption, among other ailments," the complaint said.

The town is asking for compensatory, consequential and punitive damages, restitution and a court order requiring the defendants "to abate injured or impaired town resources, properties, systems, equipment, and assets."

In its notice of removal to federal court, RTX said it is entitled to government contractor immunity from the tort claims under the U.S. Supreme Court's 1988 opinion in **Boyle v. United Technologies Corp.** 📌

Counsel for the plaintiffs, 3M and Viking did not immediately respond to requests for comment Thursday. Representatives of the remaining defendants did not respond to requests for comment or could not be reached.

Fairfield is represented by Ian W. Sloss, Johnathan Seredynski and Samantha Blend of Silver Golub &

Teitell LLP, and Kyle J. McGee and Suzanne Sangree of Grant & Eisenhofer PA.

3M is represented by Adam Masin of Bowman and Brooke LLP.

Viking Corp. is represented by Bryan M Killian, Duke K. McCall III and Stephanie R. Feingold of Morgan Lewis & Bockius LLP.

The MDL is In re: Aqueous Film-Forming Foams Products Liability Litigation, case number 2:18-mn-02873, in the U.S. District Court for the District of South Carolina. Fairfield's member case is Town of Fairfield et al. v. 3M Company et al., case number 2:26-cv-00415, in the U.S. District Court for the District of South Carolina.

--Additional reporting by Juan-Carlos Rodriguez and Aaron Keller. Editing by Kelly Duncan.

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Meta Must Redo User Engagement Data In Mental Health MDL

By **Bonnie Eslinger**

Law360 (February 5, 2026, 9:48 PM EST) -- A California federal judge overseeing discovery in litigation against social media giants over their effect on youth mental health ordered Meta to provide plaintiffs with updated data on the amount of time users spend on Instagram and Facebook, after state attorneys general argued Meta had skewed the times downward.

U.S. Magistrate Judge Peter H. Kang issued an oral ruling during a hearing in San Francisco where the plaintiffs said the requested data is central to their case.

Daniel Keiser of the Office of the Kentucky Attorney General argued on behalf of the states that the plaintiffs sought data showing the average daily time that "monthly active users" spent on Facebook and Instagram, but the data Meta Platforms Inc. produced included users who did not log any time.

"The inclusion of users with zero time spent artificially deflates the average time spent by users on Meta's platforms," Kaiser told the court, adding that the data set provided makes it seem like there's no problematic overuse of the platforms, "which is obviously key to this case."

In addition, Meta presented the plaintiffs with data that the company said had a 1.33% error rate. That makes it challenging to calculate the number of users that fall into the highest thresholds of time spent on the platforms, Keiser said.

"So we're asking the court to compel this production of data that Meta had agreed to produce," he told the court. "[And] our data folks should have input into how this production is done."

He also suggested Meta should have to produce another executive to sit for a deposition over the botched discovery.

Ainsley McMahon of Covington & Burling LLP, who represents Meta, said the plaintiffs have "mischaracterized" her client's response to the discovery request.

"Plaintiffs are not claiming that Meta failed to respond," McMahon said. "Plaintiffs are only claiming that Meta's response is flawed and inaccurate."

She said Meta's response was reasonable, and there's no reason to require the company to produce more data.

"Are you saying that a flawed or an inaccurate response is not a basis to compel?" Judge Kang asked. "I just wonder, how far does that go?"

McMahon said there's always going to be some level of error. She later added that the plaintiffs have overstated the effect of the inclusion of users who spent no time on the platform in the "monthly active users" data.

"Plaintiffs claim that these issues affect 2.5% of the Instagram distributions and over 10% of Facebook distributions. But this is a massive overstatement," McMahon said.

Judge Kang asked if those zero-time users could be pulled out of the data, and McMahon said she believed it could be done.

With regard to the error rate, the judge asked if that could be reduced, and McMahon responded that the company could produce data with a lower "and more precise" rate.

"We can get down to 0.01%," McMahon said.

Keiser told the court Meta never said such a thing could be done.

"All right, so that's why we have these hearings," Judge Kang responded.

The judge ordered Meta to redo its monthly active users' calculation to pull out the zero-time users and reset the error rate down to 0.01% by March 6.

Judge Kang, however, denied the plaintiffs' request for another deposition with a Meta representative about the data as well as their bid to have an expert for the plaintiffs inspect Meta's databases on the company's premises.

The high-stakes federal MDL involves personal injury plaintiffs, schools and attorneys general, and Native American tribes who claim Meta, YouTube LLC and other social media giants design their platforms to be addictive, to the detriment of minors' health. According to the litigation, features such as infinite scroll, autoplay, notifications and reward systems induce young people to compulsively use the platforms.

A parallel California state court bellwether trial began in late January, the first trial of more than 1,000 coordinated cases in Los Angeles County Superior Court. The plaintiff in the test case, identified as K.G.M., claims social media use interfered with her sleep, contributed to her anxiety and depression, and caused her to feel more insecure, among other things.

TikTok Inc. and Snap Inc. **reached** eleventh hour **deals** in the test case before jury selection, leaving Meta and YouTube as the defendants. The settlements do not resolve about 1,000 other consolidated personal injury cases in the Judicial Council Coordination Proceedings.

Last October, Los Angeles Superior Court Judge Carolyn B. Kuhl **held** that Meta CEO Mark Zuckerberg, Instagram CEO Adam Mosseri and Snap CEO Evan Spiegel must testify at the bellwether trial, although she said she would decide later about further testimony at other possible trials. With the Snapchat maker settling, Spiegel will no longer be called to testify, according to the plaintiffs' counsel.

The states were represented at the hearing by Daniel I. Keiser of the Office of the Kentucky Attorney General. The personal injury and school district plaintiffs were represented by Austin Brane of Wagstaff & Cartmell.

Meta was represented by Ainsley McMahon of Covington & Burling LLP.

The federal MDL is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California.

--Additional reporting by Craig Clough and Dorothy Atkins. Editing by Kristen Becker.



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Meta Latest To Be Accused Of YouTube Data Scraping For AI

By **Elliot Weld**

Law360 (February 5, 2026, 6:50 PM EST) -- Three YouTube personalities have filed suit against Meta Platforms Inc., accusing it of circumventing YouTube's technological protections to bulk-download video content to be used in training artificial intelligence.

YouTubers Devin Youngblood, Nicole Chmura and Chris Rice filed the proposed class action in California federal court Wednesday, alleging violations of the Digital Millennium Copyright Act. Earlier this week, Youngblood **filed** a class action against Nvidia with similar allegations of data scraping. Nvidia has **faced** data scraping suits from YouTube Channels including **h3h3 Productions** as well.

Youngblood and his wife operate "The Youngblood's Podcast" with commentary on marriage, parenting and mental health. Chmura says she runs a channel called "Let's Go Team" that documents her travel experiences. Rice says his channel is a "first-person documentarian view" on a wide range of topics.

All three YouTubers say their content appeared in a dataset called HowTo100M, which was used to train AI at Meta.

The YouTubers **complaint** says Meta obtained files of large amounts of YouTube videos to use in training pipelines called the Video Joint Embedding Predictive Architecture models. Those models are designed to discard unpredictable information so data can be used in downstream tasks, the suit says. In published research, Meta described building an "unsupervised video dataset" by combining public datasets including HowTo100M and others, amassing a total of about 2 million videos, according to the suit.

YouTube's technological protections restrict bulk extraction of video files, and Meta had to get around those protections to obtain the data it needed, the YouTubers say.

"Defendant — acting directly and through its agents, contractors and affiliates — intentionally accessed large volumes of YouTube videos using scraping and/or other tools and workflows designed to bypass or evade YouTube's technical protection measures and usage restrictions," the suit says.

"Scraping," according to the suit, refers to automated downloading of audio and visual files from a website through a nonmanual process. Among the tools used by Meta was an open-source YouTube downloader called "yt-dlp," which it paired with infrastructure to rotate IP addresses and pull content from YouTube, the suit says.

The YouTubers say once the AI system has ingested the data, the value of that work has been extracted and cannot be removed. Meta never sought authorization to use their content, the complaint says.

Counsel for the YouTubers did not immediately respond to requests for comment, nor did a representative for Meta.

The YouTubers are represented by William Edelman and Michael Acciavatti of Milberg PLLC, James Cecchi and Kevin Cooper of Carella Byrne Cecchi Brody & Agnello PC and Jeff Ostrow of Kopelowitz Ostrow PA.

Counsel information for Meta was not immediately available.

The case is Youngblood et al. v. Meta Platforms Inc., case number 3:26-cv-01100, in the U.S. District Court for the Northern District of California.

--Editing by Rich Mills.

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Fake Case Pulled From Toshiba Malicious Prosecution Suit

By **Bryan Koenig**

Law360 (February 5, 2026, 8:13 PM EST) -- A former printer toner salesman is trying to salvage his lawsuit against Toshiba after the company flagged nonexistent citations, apologizing to the California federal court in a corrected brief Thursday defending claims that the electronics company manufactured a criminal case against him and others to maintain an illegal monopoly.

Jonathan Brightman offered no explanation for the mistakes made in his original brief opposing Toshiba America Business Solutions Inc. Instead, he simply filed a "corrected" brief Thursday addressing "certain citation and quotation errors identified after filing of the original opposition."

"Upon review, plaintiffs' counsel determined that one cited authority does not exist and that certain quotations and citations required correction or deletion. The citation to the nonexistent authority has been withdrawn, and the remaining citations have been corrected as reflected herein. No substantive arguments have been changed," Brightman said. "Counsel regrets the errors and respectfully apologizes to the court. The court may disregard the original opposition and rely solely on this corrected filing."

The corrected brief from solo practitioner Kimberly S. Hackett followed a day after Toshiba filed a notice asserting that it had found "clear evidence" of "[artificial intelligence] hallucinations," meaning facts, cases and citation details that do not exist. Hallucinations have become a common feature of AI large language models, whose use by attorneys to draft legal arguments has left courts scrambling to adjust and has led to sanctions of multiple lawyers around the country caught submitting error-filled briefs.

According to Toshiba's notice, its counsel "immediately recognized various indicia of generative artificial intelligence" in Brightman's original Feb. 2 opposition brief. Upon investigation, Toshiba said it found one case that doesn't exist, language that doesn't appear in the cited cases, references to pages 18 through 22 in a 15-page opinion and to page 1209 of an opinion ending on page 1205, and citations to authorities that did not say or do what Brightman claimed.

"In providing notice of the foregoing table, TABS does not suggest any of the remaining citations to the record or other cases and authorities are accurate or reliable," the company said. "Indeed, TABS believes that many of plaintiffs' citations to its first amended complaint also reflect AI hallucinations, including but not limited to citations to the FAC for purported allegations that cannot be found in the operative pleading, which TABS intends to address in its forthcoming reply brief."

Counsel for Toshiba declined comment and counsel for Brightman did not immediately respond Thursday to a press inquiry.

Brightman and his Copy Com Distribution Inc. toner telemarketing company first sued in August, accusing Toshiba of a yearslong conspiracy to maintain control of the aftermarket for toner cartridges for its printers.

According to the suit, Toshiba locked up authorized dealers to lock out would-be toner rivals and sued anyone who tried to challenge that dominance. When it couldn't block competition that way, Brightman says Toshiba turned to the Federal Trade Commission and law enforcement, culminating in the criminal prosecution of himself and 19 other defendants for mail fraud. Some defendants pled guilty while federal prosecutors went to trial against six, winning convictions that the Ninth Circuit

overturned on appeal in 2024.

According to the Ninth Circuit, the alleged scam amounted to sales representatives calling toner customers, falsely implying they were their regular supplier, falsely claiming that prices were going up, and offering to sell them more toner that day at the old price. The appellate court found that the conduct didn't amount to fraud because the businesses got what they paid for, at the price they agreed to pay. Prosecutors dropped the case on remand.

In Brightman's telling, that prosecution was the result of Toshiba's influence in its campaign against would-be rivals, including third-party toner distributor G.N.M. Financial Services, doing business as IDC Servco.

"Discovery obtained during the criminal proceedings reflected that defendants provided law enforcement with selected documents, factual narratives and interpretive characterizations concerning IDC Servco and independent sales companies," Brightman said in his first amended complaint, filed Dec. 31.

"Defendants' submissions included customer complaints and other materials that framed plaintiffs' resale activities as deceptive while omitting material information, including prior adverse judicial rulings, accepted industry practices, and the absence of evidence establishing that IDC Servco directed or controlled independent sales companies," he continued. "These materials were relied upon during the investigative and charging phases of the criminal case and contributed to the focus of the investigation on IDC Servco and related entities."

That conduct, Brightman alleged, amounted both to malicious prosecution and to part of a pattern of attempted monopolization of the market.

In seeking dismissal last month, Toshiba argued that the antitrust claims go back more than nine years, to Brightman's June 2016 indictment, well outside the four-year statute of limitations. It said Brightman can't pause the clock, "given Copy Com's admitted knowledge of [Toshiba's] lawful cooperation with multiple independent government investigations into the deceptive sales practices of companies selling toner, including Copy Com." And it argued its conduct is protected petitioning of the government entitled to immunity under the Noerr-Pennington doctrine.

In the corrected opposition brief, Brightman countered Thursday that the statute of limitations clock is undone by Toshiba's effort "to disguise exclusionary competitive behavior as legitimate law-enforcement cooperation and intellectual-property enforcement."

"Defendant's submissions to law enforcement were presented as neutral reporting of suspected wrongdoing, not as competitive conduct designed to foreclose an independent reseller from the market," he said. "Nothing about those interactions would have alerted plaintiff that defendant was engaging in monopolization or attempted monopolization in violation of Section 2 of the Sherman Act. Indeed, the FAC alleges that defendant affirmatively obscured its economic motives through inconsistent representations regarding their purported status as 'victims.'"

Brightman also argued that the Noerr-Pennington doctrine doesn't apply because the contested conduct doesn't count as protected petitioning. Instead, he said it was part of "a coordinated exclusionary campaign that included private dealer-network coordination, customer interference, dissemination of misleading complaint forms, and continued deterrence of market participation — conduct that falls outside the scope of Noerr-Pennington protection."

Brightman also defended his assertions of a toner aftermarket, Toshiba's power within that market, and its efforts to lock out rivals, including by telling customers to flag independent resellers as fraudulent.

Nor, Brightman said, can Toshiba seek dismissal of the malicious prosecution claim under California's anti-SLAPP statute meant to block alleged strategic lawsuits against public participation. Instead of protected public participation, namely petitioning law enforcement, Brightman says his lawsuit alleges Toshiba "actively procured and sustained plaintiff Brightman's prosecution by advancing misleading and unsupported fraud narratives that had already been rejected in prior civil litigation." Any disputes to the contrary amount to factual fights inappropriate for the motion to dismiss stage,

according to the brief.

Toshiba is represented by Christopher Brennan and Allison L. Kahn of Reed Smith LLP.

Brightman is represented by Kimberly S. Hackett of Hackett Law PC.

The instant case is Jonathan Brightman et al. v. Toshiba America Business Solutions Inc. et al., case number 8:25-cv-01932, in the U.S. District Court for the Central District of California. The Ninth Circuit criminal case is USA v. James Milheiser, case number 21-50162, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Jay Jackson Jr.

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Texas Atty Must Explain AI 'Misuse' In Employment Case

By **Lauren Berg**

Law360 (February 5, 2026, 7:59 PM EST) -- A prominent civil rights attorney representing a University of Texas at Austin nurse in an employment discrimination case must explain why he shouldn't be sanctioned "for his apparent misuse of artificial intelligence" to research and write a brief, a Texas federal judge ruled.

In his Wednesday **order** denying licensed vocational nurse Ericka Holmes' motion for reconsideration of the dismissal of her lawsuit accusing UT Austin of race and age discrimination, U.S. District Judge Robert Pitman ordered her attorney, Gary Bledsoe, to "show cause in writing for his apparent misuse of artificial intelligence" and explain why he should not be sanctioned.

Bledsoe, the president of the Texas NAACP since 1991, "cites a nonexistent case and mischaracterizes many other cases, each a hallmark of generative AI use," Judge Pitman said, adding that the motion for reconsideration "also mischaracterizes substantive aspects of the court's order granting UT Austin's motion to dismiss."

"Finally, the motion is written in such a manner that it is difficult to follow; certain arguments are repeated verbatim throughout the motion, and many arguments are irrelevant to the section heading they are placed under," the judge said.

He also found several instances in the motion that "often indicate improper use of generative AI tools," including citing a purported Fifth Circuit case called *Harris v. City of Houston* to argue that "age discrimination requires 'age-specific references' but not direct replacement evidence," the order stated.

"This case does not exist, nor does it appear the Fifth Circuit has ever used the phrase 'age-specific references,'" Judge Pitman said.

Pointing to other issues, the judge noted that some citations mischaracterize case decisions and others have nothing to do with Holmes' case, according to the order. In other instances, the motion incorrectly formats citations "in an egregious manner," the order stated.

"It appears to the court that plaintiff's counsel may have utilized generative AI not merely for legal research, but for the writing of his brief as well," Judge Pitman said. "And, even worse, it appears he may have done so without verifying the accuracy of his legal contentions or his factual contentions regarding the court's order dismissing the case."

"If plaintiff's counsel did not utilize generative AI to research and write his brief, it is equally concerning that he independently generated the issues identified above and asserted the validity of those arguments to the court," he added.

The judge directed Bledsoe to explain whether he has violated his duties under the Federal Rule of Civil Procedure and the Texas Disciplinary Rules of Professional Conduct, and to explain why he shouldn't face sanctions "due to the mischaracterization and hallucinated case citation," according to the order.

In denying the motion for reconsideration, the judge ruled there is no reason to undo the dismissal order, which found that the university has sovereign immunity against Holmes' Age Discrimination in

Employment Act and wrongful termination claims, and that she failed to state viable race and age discrimination claims because she didn't allege a "nearly identical comparator" or that she was replaced by someone younger, among other issues.

Judge Pitman ordered Bledsoe to appear in person for a show cause hearing Feb. 17.

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

Citations hallucinated by ChatGPT and other generative AI tools are causing headaches in courtrooms across the country.

Earlier this week, a Kansas federal judge presiding over a technology company's patent lawsuit against Overstock.com Inc. **issued sanctions** against a group of attorneys representing the plaintiffs over **hallucinated case citations**.

Last month alone, multiple attorneys in **Pennsylvania** and **California** were either reprimanded or told to explain why their submissions to the court contained what appeared to be false citations generated by AI.

The Seventh Circuit recently **offered guidance** to litigants using AI while representing themselves, saying the technology has "great promise" for those who can't afford legal counsel, but it doesn't abdicate them of their duty to avoid misrepresentations in court filings.

"No doubt the inquiry is different for pro se and represented parties," U.S. Circuit Judge Michael Scudder said. "But pro se litigants shoulder responsibility too and, while our understanding of honest mistakes and common presentational foot faults will remain, in no way will we allow a court filing to include misrepresentations on legal or factual points that an unrepresented party reasonably knows or should know exist."

"For today, then, suffice it to say nothing about the many efficiencies and promises offered by AI eliminates the peril that may well accompany a serious abdication of the care the law demands of even unrepresented parties," he said.

A New York court system advisory, however, cautioned that lawyers **should not be barred** outright from using AI tools to prepare court documents. The committee concluded that such a ban would be difficult to enforce because AI tools can be used covertly and would "[preclude] many legitimate and valuable uses" of the technology.

Still, the proposed adjustments to the Rules of the Chief Administrator of the Courts provide that judges may implement rules specific to their courtrooms, known as part rules, governing the use of those tools.

If attorneys carefully review a tool's outputs to weed out potential hallucinations, the committee said, there is no reason to require them to disclose their use of AI tools.

Holmes is represented by Gary Bledsoe of The Bledsoe Law Firm PLLC.

UT Austin is represented by Marlayna M. Ellis of the Texas Attorney General's Office.

The case is Ericka Holmes v. The University of Texas at Austin, case number 1:24-cv-01135, in the U.S. District Court for the Western District of Texas.

--Additional reporting by Elliot Weld, Matt Perez, Dorothy Atkins, Celeste Bott and Andrea Keckley.
Editing by Kristen Becker.