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News | Commercial Litigation

'Communicational Misstep?': Claims Filer Fights to Stay In $5.5B Visa, Mastercard Deal

Betz & Baril, a third-party claims filer in a six-year old settlement between Visa, Mastercard and millions of merchants nationwide, was accused by class counsel of spreading misinformation about the deal. The firm responded that it was being targeted for communications that included cautionary language and disclaimers and that hadn't harmed any class members.

February 25, 2026 at 03:12 PM By **Alyssa Aquino**

Credit/Shutterstock

Betz & Baril PLLC is fighting accusations that it spread misinformation about Visa and Mastercard's $5.5 billion antitrust settlement, telling the Brooklyn federal court that the attorneys seeking to cut it from the deal were overreacting to what was "at most, an isolated communicational misstep."

The Tennessee-based personal injury firm is a third-party claims filer in a six-year-old settlement between Visa, Mastercard and millions of merchants nationwide. But the firm recently came under fire, with the Robbins Geller Rudman & Dowd, Robins Kaplan and Berger Montague team that notched the settlement arguing Betz & Baril was giving class members inaccurate information on recoveries, legal fees and its role in the deal.

Betz & Baril responded on Monday that class counsel were targeting it for communications that included cautionary language and disclaimers. Communications, Betz & Baril argued, that hadn't harmed any class members.

"Class plaintiffs' motion is premised on conjecture about 'confusion' and 'misleading' communications, but it does not identify any actual monetary loss, forfeited claim, missed deadline or other concrete prejudice suffered by the class as a result of the cited emails," the firm argued through its counsel, James DeCristofaro.

DeCristofaro and class counsel didn't immediately respond to Wednesday requests for comments.

The settlement at the center of the dispute was struck in 2019 to provide damages to a class of merchants alleging an antitrust conspiracy between Visa, Mastercard and their affiliate banks concerning interchange fees, the fees charged to merchants to process credit card transactions.

Another settlement requiring the credit card companies to lower their rates is currently being evaluated by the court. Major retailers and trade groups have criticized the proposed fee reduction as insufficient.

But as that contentious second settlement is being weighed, the attorneys safeguarding the $5.5 billion deal asked the court to block Betz & Baril from receiving any benefits from the damages settlement, saying they received numerous complaints over the past six years over the information Betz & Baril has been providing class members.

A recent complaint in November—"the seventh incident involving Betz & Baril that class counsel is aware of"—prompted discovery, which revealed a raft of what class counsel claimed to be sanctionable conduct.

Much of the sanctions motion revolved around ClickFunds, Betz & Baril's referral partner, with class counsel alleging that a "ClickFunds affiliated person" appeared to be the primary source for false information.

Class counsel argued the discovery showed that Betz & Baril was aware that ClickFunds was giving class members incorrect information and that Betz & Baril was continuing to associate with ClickFunds, despite saying it had dropped ClickFunds.

Betz & Baril explained it was working with ClickFunds on claims submitted during its earlier collaboration, but that it had stopped working with ClickFunds to submit new claims. ClickFunds joined in the response.

The pair argued that the proposed sanctions would void more than 4,100 ClickFunds contracts and deprive them of compensation for services already rendered. That penalty is “grossly disproportionate” to the alleged offense, they said, adding that the sanctions motion was based on emails concerning 48 class members, roughly 1% of the contracts.

They pushed the court to further investigate the claims, arguing that class counsel were calling for sanctions without depositions, depriving them of the opportunity to cross-examine the class member who submitted the November complaint.

“Due process requires a developed record before the Court could consider any punitive measure—especially one that would unwind private contracts between freely contracting parties,” they said.

Bloomberg Law

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Blue Bell Ex-CEO Rebuffed Testing Pre-Outbreak, Judge Told

Feb. 26, 2026, 10:35 AM PST

Summary by Bloomberg AI

AI Generated

- Blue Bell Creameries Inc. found potential listeria contamination in ice cream products in 2011, but its then-CEO shut down further testing and distributed the items for sale, an executive testified.
- Then-CEO Paul Kruse had not wanted the testing to continue, and was "upset" that his orders hadn't been followed when samples showed the presence of some kind of listeria.
- A derivative lawsuit alleges Blue Bell's senior leaders missed "red flags" and failed to adequately monitor operations leading up to a fatal listeria outbreak in 2015.

Blue Bell Creameries Inc. found potential listeria contamination in ice cream products in 2011, but its then-CEO shut down further testing and distributed the items for sale, an executive testified Thursday.

Andy Kollman began testing finished products for pathogens after the US Army, an important Blue Bell customer, complained about elevated levels of coliform bacteria in samples collected at the company's plants. Then-CEO Paul Kruse had not wanted the testing to continue, Kollman said on the witness stand in Delaware Chancery Court.

Kruse, who retired in 2017, testified earlier this week that the industry at the time considered finished product testing to be inefficient. In a pre-trial brief, the company said that before the 2015 outbreak, the industry knew listeria was found in ice cream but considered it very low risk for illness.

When samples collected in 2011 before Kruse told Kollman to stop testing later showed the presence of some kind of listeria that wasn't clear was the species that could cause serious illness, Kollman said, the CEO was "upset" that his orders hadn't been followed. The products that produced the samples were shipped to customers.

"We didn't talk about the listeria result," Kollman said, recalling a tense meeting with Kruse in April 2011. "The quality control supervisors would have liked to have confirmed the test" to determine what type of listeria had been present, he said.

Kollman was Blue Bell's quality control manager at the time of a fatal listeria outbreak in 2015 caused the company to recall its products nationwide and shut down operations for months. Now the company's vice president of operations, he's testifying in the first trial on corporate oversight claims in the Delaware Chancery Court.

A derivative lawsuit alleges Blue Bell's senior leaders missed "red flags" and failed to adequately monitor operations leading up to the outbreak.

The Army was concerned about a potential food safety issue that stemmed from a sanitation issue, Kollman said under questioning by Robert Kriner Jr., a Chimicles Schwartz Kriner & Donaldson-Smith LLP attorney representing the shareholder leading the litigation.

Kollman isn't named a defendant.

Vice Chancellor Nathan A. Cook has focused on what Blue Bell's board understood about the Army's complaints in his questioning of Kruse and other executives since trial began Feb. 24.

'Who Am I'

The judge questioned Richard Dickson, a director and vice president of sales and marketing at the time of the outbreak, further Thursday about why he never raised to the board his frustrations over the length of time it took the company to produce a recall notice for its products once it knew some tested positive for the pathogenic listeria.

"Why in your capacity as a director did you not say, 'Look, I have a different view of things, I think a recall notice should go out, or at a minimum we should discuss this?'" Cook said.

Dickson, who succeeded Kruse as Blue Bell's president and CEO and retired in 2024, said he deferred to Kruse's leadership, because the CEO was in touch with regulators about such matters.

"Who am I, whether as a director or a vice president, to question and say we need to get ahead of this thing?" he said.

The case is Marchand v. Barnhill, Del. Ch., No. 2017-0586, trial 2/26/26 .

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Investors sue PayPal after stock drops 20%

DJ **dailyjournal.com**/articles/389986-investors-sue-paypal-after-stock-drops-20

Shutterstock

A group of investors sued PayPal after its stock fell by more than 20% on Feb. 3, alleging it failed to disclose its true financial outlook.

The complaint, filed by Adam M. Apton of Levi & Korsinsky LLP, claims that PayPal violated the Securities Exchange Act when, on four earnings calls, executives said they were optimistic about the company's financial position and room for growth.

The complaint alleges PayPal violated Section 10(b) of the Securities Exchange Act, and that its executives can be held liable under Section 20(a).

The complaint says the company oversold the outlook of its "branded checkout" feature, which allows businesses to implement a custom checkout screen for online purchases.

"Defendants provided these overwhelmingly positive statements to investors while, at the same time, disseminating materially false and misleading statements and/or concealing material adverse facts concerning the true state of PayPal's salesforce; notably, that it was not truly equipped to execute on the Company's perceived growth potential and were 'too optimistic' as to how easily and expeditiously its staff could change customer adoption," the complaint states. *Darcy v. PayPal Holdings, Inc. et al*, 3:26-cv-01589 (N.D. Cal., filed Feb. 24, 2026).

In a Feb. 2 earnings report, the company announced that growth in the fourth quarter of 2025 had fallen below expectations, especially for branded checkout, and that it had removed CEO Alex Chriss.

The next day, the company's share price fell from $52.33 to $41.70, the complaint says.

The plaintiffs allege the company "made materially false and misleading statements and engaged in a scheme to deceive the market and a course of conduct that artificially inflated the price of PayPal's common stock."

The case is assigned to U.S. District Judge Jacqueline Scott Corley.

#389986

Protective Clothing Company Hit with Tariff-Related Securities Suit

dandodiary.com/2026/02/articles/securities-litigation/protective-clothing-company-hit-with-tariff-related-securities-suit

Kevin LaCroix February 26, 2026

While there have been dramatic developments in recent days related to the Trump administration's tariff-policies – including the U.S. Supreme Court striking down the administration's IEEPA tariffs and the Trump administration announcement of new across-the-board Section 122 tariffs – the uncertainty companies have faced related to the tariffs continues, and indeed may even have been exacerbated. A new securities suit filed earlier this week against Lakeland Industries, a company whose operations and financial results were impaired by "tariff headwinds," illustrates how the continuing tariff uncertainty may translate into corporate and securities litigation in the weeks and months ahead. A copy of the February 23, 2026, Lakeland Industries complaint can be found here.

Background

Lakeland manufactures and sells protective clothing for industrial uses. The company employs a "small, strategic, and quick" (SSQ) mergers and acquisitions strategy to try to grow revenues. In 2023 and 2024, the company acquired businesses in New Zealand ("Pacific Helmets"), as well as in Italy and Romania (collectively, "Jolly).

According to the subsequently filed securities class action complaint, the company represented to investors that it would realize substantial benefits from its acquisitions strategy. Following the onset of tariff-related market uncertainties in 2025, the Company, the complaint alleges, said that it was "well-positioned to weather the tariff-related headwinds while continuing to pursue its SSQ M&A strategy." The complaint further alleges that "throughout the Class Period, notwithstanding tariff-related headwinds, Defendants made repeated assurances regarding their visibility into Lakeland's future performance in upcoming quarters, consistently expressing confidence in their financial guidance."

In providing guidance in April 2025, the defendants, according to the complaint, communicated that "notwithstanding tariff-related uncertainties, they had visibility into Lakeland's future performance by virtue of various purported positive market signals they observed and their widely touted tariff mitigation measures."

In July 2025, when the company announced results falling short of prior guidance as a result of "shipment timing" and "tariff-related delays," the company cited "elevated freight costs resulting from tariff-related inventory build," among other things. The company's share price declined.

In September 2025, when the company again announced disappointing results, the company cited, among other things, "continued delays in purchasing decisions due to tariff uncertainty." The company's share price declined further on this news.

In December 2025, the company again reported disappointing results, due, among other things, to "tariff headwinds." The company also withdrew its prior guidance because the challenges "have affected our forecasting ability." That same day the company announced that its CFO's employment had been terminated. The company's share price declined nearly 40% on this news.

The Lawsuit

On February 23, 2026, a plaintiff shareholder filed a securities class action lawsuit in the Southern District of New York against the company and certain of its directors and officers. The complaint purports to be filed on behalf of investors who purchased the company's shares between December 1, 2023, and December 9, 2025.

The complaint alleges that during the class period the defendants made false or misleading statements or failed to disclose that: "(i) Lakeland was experiencing significant sustained issues with its Pacific Helmets and Jolly businesses, including, inter alia, shipping-related delays, production issues, and slower than expected rollout of new products; (ii) accordingly, Defendants overstated the anticipated and actual positive impact of their businesses on Lakeland's financial results, as well as the overall strength and quality of Pacific Helmets' and Jolly's respective operations; (iii) Lakeland's business and financial results were significantly deteriorating because of, inter alia, tariff-related headwinds and timing, certification delays, and material flow issues in its acquired businesses; (iv) accordingly, Defendants overstated the strength of their tariff mitigation measures and SSQ M&A strategy; (v) as a result of all of the foregoing issues, Defendants' financial guidance was unreliable; and (vi) as a result, Defendants' public statements were materially false and misleading at all relevant times."

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

Discussion

Since the Liberation Day tariffs were first announced in April 2025, business conditions related to the tariffs has been characterized by uncertainty, as the announced tariffs have been abruptly changed, increased, or altered. The tariff-related impacts and business uncertainties have in at least some cases led to securities class action lawsuit filings, as discussed, for example, here and here.

The most recent tariff-related developments – including the Supreme Court's decision striking down the IEEPA tariffs, and President Trump's subsequent announcement of different, across-the-board but temporary tariffs — magnify the uncertainty.

This complaint demonstrates how tariff-related uncertainties can hamstring a company, as well as how tariff-related "headwinds" can exacerbate business challenges a company is otherwise facing. The factual allegations also show how unanticipated tariff-related developments can cast prior tariff related statements into a harsh light, particularly when viewed with the benefit of hindsight.

The recent tariff-related developments, including the U.S. Supreme Court's decision, do nothing to alter these challenging business operating conditions. If anything, as noted above, the recent developments add to the uncertainty. The ongoing and new tariffs will pose many of the same challenges as this company faced under the circumstances alleged here. And like the company here, companies that are already facing other businesses challenges will find their challenges magnified by the tariff-related uncertainty.

It is unclear what may lie ahead for the Trump administration's tariffs, especially since the latest round of Section 122 tariffs are temporary (because subject to a 150-day time limit). What does seem clear is that the kind of uncertainty this company experienced seems likely to continue to affect many businesses going forward. In at least some cases, it seems likely that tariff-related headwinds and setbacks will not only affect operating performance and financial results but may also translate into corporate and securities litigation. It seems likely that as companies struggle to deal with tariff headwinds and uncertainty, we will see further tariff-related corporate and securities litigation.

Apple seeks dismissal of fraud lawsuit over Siri AI, Epic injunction

reuters.com/sustainability/boards-policy-regulation/apple-seeks-dismissal-fraud-lawsuit-over-siri-ai-epic-injunction-2026-02-26

Jonathan Stempel February 26, 2026

People walk past an Apple logo at an Apple store in Paris, France,August 17, 2025. REUTERS/Abdul Saboor Purchase Licensing Rights, opens new tab

- Apple denies knowingly overstating Siri AI capabilities
- Apple says it didn't guarantee compliance with Epic injunction
- Claim losses could reach hundreds of billions of dollars
- Lawyers for sharheolders not available for comment

Feb 26 (Reuters) - Apple (AAPL.O) , opens new tab urged a federal judge to dismiss a proposed class action claiming it defrauded shareholders twice, by overstating the artificial intelligence capabilities of its Siri voice assistant and falsely representing its compliance with an injunction governing commissions on app sales.
In a Wednesday filing in the San Jose, California, federal court, Apple said there was no proof it knew when discussing AI at a June 2024 conference that it would take longer than expected to incorporate two advanced AI features into Siri, potentially hurting iPhone 16 sales.

Sign up here.

The company delayed some Siri upgrades the following March, and Chief Executive Tim Cook said two months later that developing a "more personal" Siri was "taking a bit longer than we thought."
Apple also said it provided no assurance that its procedures designed to comply with a 2021 injunction, in a case brought by Epic Games, to let app users pay developers directly rather than have the company charge the developers hefty commissions would be foolproof.

"It is no secret that Apple faced challenges and weathered ups and downs in its stock price in 2025, like many major companies," Apple said. "But plaintiff takes a massive and unsupported leap by claiming that securities fraud caused the temporary price drops."

The lawsuit covers Apple shareholders who suffered potentially hundreds of billions of dollars of losses in the Cupertino, California-based company's stock between May 3, 2024 and May 1, 2025, the day after a judge said Apple was

Lawyers for shareholders led by South Korea's National Pension Service, the world's third largest pension fund with close to $1 trillion of assets, did not immediately respond to requests for comment.

Apple's injunction required the company to provide app users with external links for purchases, so developers wouldn't owe 30% commissions for purchases in its App Store.

The judge overseeing that case rebuked Apple for creating a new system that charged a 27% commission on some external sales. A federal appeals court partially reversed her sanctions in December.
Reporting by Jonathan Stempel in New York; Editing by Franklin Paul

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News | Litigation

NJ Judge Tosses Investors' IREN Lawsuit Backed by Davis Polk Defense

Investors' securities claims against Bitcoin-miner IREN collapsed as a New Jersey judge ruled that investors failed to show the company misled the market in the run-up to its initial public offering.

February 25, 2026 at 05:37 PM By Michael A. Mora

Screenshot from video of Judge Esther Salas issues statement calling for more precautions to be taken to protect the privacy of federal judges from internet-snooping.

A federal judge in New Jersey tossed a proposed securities class action targeting Bitcoin-miner operator IREN, ruling that investors failed to show the company misled the market in the run-up to its initial public offering.

U.S. District Judge Esther Salas of the District of New Jersey dismissed the second amended complaint with prejudice on Feb. 18. IREN, formerly Iris Energy and represented by Davis Polk, runs Bitcoin-mining data centers powered by renewable energy and earns revenue by contributing computing power to shared mining pools.

The company bought and financed part of its mining equipment through wholly owned subsidiaries structured as special-purpose vehicles, or SPVs, which entered master equipment-financing agreements with a lender. IREN completed its IPO in October 2021, months before Bitcoin's sharp decline exposed stress in the SPV financing structure.

In November 2022, IREN disclosed that two SPVs were unable to meet their debt-service obligations, prompting the lender to issue default notices. Investors sued on Dec. 14, 2022, naming the company, several executives and directors and the IPO underwriters, alleging that they made misleading statements under the Securities Act and the Exchange Act.

After the first complaint was dismissed in September 2024, investors filed a second amended complaint asserting IREN should have disclosed more about its financing arrangements, loan liabilities and risks of SPV default. They also cited Canadian receivership filings they said showed SPV insolvency and challenged IREN's Regulation S-K disclosures.

IREN's Davis Polk counsel moved to dismiss in January 2025, arguing securities laws require disclosure only when necessary to prevent existing statements from becoming misleading. The firm said plaintiffs failed to show any omission undermined IREN's disclosures, which already warned extensively about debt obligations, Bitcoin volatility and potential default risks.

The defense also argued that many challenged statements amounted to corporate puffery or were forward-looking remarks shielded by the Private Securities Litigation Reform Act safe harbor. It added that the Canadian receivership documents plaintiffs relied on contradicted their characterizations and were incorporated by reference into the second amended complaint.

At a four-and-a-half-hour hearing on Feb. 4, Salas pressed both sides on each challenged statement, the bespeaks-caution doctrine and the scope of IREN's disclosures. She repeatedly questioned whether plaintiffs were attempting to plead fraud by hindsight rather than alleging misstatements based on information known at the time of the IPO.

In her Feb. 18 ruling, Salas adopted Davis Polk's arguments and dismissed the case with prejudice as to all moving defendants, including IREN, company officers and the IPO underwriters. She quoted extensively from Davis Polk partner Ted Polubinski's statements during the hearing.

Salas held that the IPO-related claims failed because the challenged statements were forward-looking and paired with unusually detailed cautionary language. Plaintiffs, she said, identified no undisclosed trend or risk that existed at the IPO. She also found that the post-IPO claims fell short because plaintiffs never explained how any omission rendered the company's remarks misleading.

The judge added that many of the company's statements amounted to nonactionable puffery or were protected by the PSLRA safe harbor. Finally, she found scienter inadequately pled, noting that plaintiffs relied only on defendants' corporate positions and ignored disclosures that undercut any inference of fraudulent intent.

Plaintiff lead attorney Frank Bottini, a partner at Bottini & Bottini, did not immediately respond to a request for comment. Attorneys at Davis Polk declined to comment through a spokesperson.

Securities

Manage Newsletters

Zynex Shareholders Drop Leadership Suit After Bankruptcy Filing

Feb. 26, 2026, 7:28 AM PST

Zynex Inc.'s filing for bankruptcy protection means stockholders can no longer pursue allegations board members and former executives hid a practice of overbilling insurers, those plaintiff-investors told a federal judge in Denver.

Standing to sue is extinguished while the medical device company's bankruptcy estate has the authority to bring claims on Zynex's behalf, the shareholders told the US District Court for the District of Colorado. The investors voluntarily dismissed their derivative lawsuit, being overseen by Judge Nina Y. Wang, Wednesday. Zynex, which made wide management changes in the wake of insurance overbilling and false statement claims last year, said last week it expects to emerge from Chapter 11 financial restructuring in the next few months.

As part of a non-prosecution agreement the US Department of Justice announced last week, Zynex admitted it "fraudulently obtained millions of dollars from government and private health care payors and patients by submitting excessive and improper claims for medical devices and supplies"

A federal grand jury previously indicted two former executives, CEO Thomas Sandgaard and Chief Operating Officer Anna Lucsok, with conspiracy to commit health care fraud, securities fraud, and mail fraud

Investor proposed class action allegations over these issues remains pending in the same court

Johnson Fistel LLP and the Rosen Law Firm PA were lead counsel for the shareholders. Simpson Thacher & Bartlett LLP represented Zynex, a nominal defendant.

The case is Ayers v. Sandgaard , D. Colo., No. 1:25-cv-02117, stipulation to dismiss 2/25/26 .

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[Securities](#)

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Eye on the Bench

Booming Docket, AI Briefs Add to Delaware Magistrate’s Workload

Feb. 26, 2026, 2:00 AM PST

Summary by Bloomberg AI

AI Generated

- The Delaware Chancery Court is dealing with an increasing caseload and the rise of self-represented litigants using AI, as well as calls for more operational transparency.

- Senior Magistrate in Chancery Selena E. Molina says the caseload is rising in complexity and numbers, with fee-shifting requests becoming almost routine and litigants using AI-drafted briefs and motions.

- Molina is stepping down from the court and says she hopes her colleagues will achieve better work-life balance in the future, as the court explores innovations such as automated case assignments and increased transparency.

The Delaware Chancery Court is wrestling with an exploding corporate docket, the rise of self-represented litigants reliant on AI, and calls for more operational transparency in the face of criticism of its judges and decisions.

Senior Magistrate in Chancery Selena E. Molina’s seven years of service oversaw a rapid evolution.

“People are calling my assistant because they want to talk with me, because they have strong opinions about the case that’s before me,” she said in an exclusive interview. “That’s a new component that I didn’t anticipate.”

Molina joined the court in 2019. At the time, there were only two such judicial officers, in addition to the court’s chancellor and six vice chancellors.

Now seven magistrates sit on the Chancery bench. They field a docket of records access lawsuits, advancement actions, guardianship petitions, probate cases, disputes over health-care decisions, and other civil proceedings.

Chancellor Kathaleen St. Jude McCormick, the court's chief judge, described Molina as "essential" in expanding the magistrates' role and managing the burgeoning caseload.

Molina spoke to Bloomberg Law ahead of stepping down from the court next week.

Busy Court

Over 1,500 new complaints were filed in Chancery Court last year, a record for what's known as the premier venue for corporate litigation. Adding more magistrates helped evenly distribute the workload, as the court also explores automated case assignments, following criticism that some corporate litigants repeatedly face judges who are biased against them.

The caseload rises in complexity each year, as well as in numbers, Molina said. Fee-shifting requests where one side accuses the other of acting in bad faith have almost become routine, for example.

"That's supposed to be the last resort in very serious cases, and I feel like I'm seeing it in almost every case now," she said. "I don't know if that's incivility or hostility or what's going on, but it does feel like litigation is perhaps more difficult than it has to be."

Then there's the hand-holding required for the increasing number of *pro se* litigants submitting briefs and motions drafted by generative artificial intelligence programs. Molina and her colleagues occasionally issue orders requiring certification for every use of AI throughout a case.

"We're seeing even more sophisticated self-represented litigants who—it feels like they're choosing not to have an attorney, rather than they just can't afford an attorney," she said.

Internal Documents

The breadth of experiences on their traditional equity docket gives the magistrates a "realistic" perspective on disputes involving powerful founders and corporate leaders, she said. "When people are telling me the sky is falling if I rule a certain way, I think I can take a step back and look at the law objectively and make a decision without giving into some of that rhetoric."

Molina's biggest corporate case has been a records access lawsuit seeking documents concerning Paramount Global's sale to Skydance Media LLC. Her decision rejecting the demand was overturned by Vice Chancellor J. Travis Laster, and Paramount has appealed to the Delaware Supreme Court.

The lawsuit predates last year's corporate law overhaul by Delaware legislators, who imposed new limits on shareholders seeking internal files to investigate potential corporate wrongdoings. The new statute hasn't reduced the number of books-and-records demands, however, Molina said.

"What I'm seeing right now is testing of that new statutory scheme," she said. "There's been a bit of an uptick."

Guidelines for Guardians

McCormick named Molina as "senior magistrate" in January 2025. Among Molina's initiatives: publishing guardianship decisions typically sealed to protect vulnerable individuals and their personal information.

Molina pushed to anonymize decisions that illustrate important legal interpretations or offer insight on a process people might only associate with the type of court-appointed financial control that Britney Spears fought to escape.

"We should be telling the public how we're ruling in these cases, in a way that discloses the court's thinking and processes," she said. "When you don't disclose enough, there can be suspicions."

Guardianship decisions dating back to 2021 are now available on the court's website. That transparency is expected of the court as it navigates societal and technological advances, said Widener University law professor Geeta Kohli.

Public guardianship decisions also can make it easier to understand some of the court's corporate decisions, she said, because guardianship cases also involve fiduciary duties such as the duty of care and the duty of loyalty.

"Some people might not understand how a court could be qualified to hear a case involving protection for a person with a disability, and at the same time have in their docket a case involving a billion-dollar earnout package," Kohli said, "but at the end of the day, both cases involve questions of obligations and expectations."

Moving Forward

Before joining the court, Molina practiced at Saul Ewing LLP and Richards, Layton & Finger PA. In Chancery Court, her job title changed from "master" to "magistrate" in 2023, when the court decided to drop the word.

The goal of the expansion of the magistrate's role and other innovations to streamline court protocols is to ensure each judge can give each case the care and attention it requires while also easing their stress levels, Molina said.

"If I check in in a couple of years, I'll want to know how my colleagues are feeling work-life balance," she said. "It's just been work, work, work, and it's good work that we like doing, but I'd like to see them have a little more balance."

Molina's next legal role will be as a "professional neutral"—a mediator, arbitrator, and subject-matter expert. She said she looks forward to having more flexibility in decision-making than being a magistrate currently allows.

As powerful as judges can be, there's limited relief they can offer from the bench, Molina said. It's frustrating "that it has to be so black and white sometimes" when there can be "room for creativity—if the parties would just sit down and negotiate with each other."

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Securities

Jefferies Fund Sued by Investors Over First Brands Collapse

Feb. 25, 2026, 12:09 PM PST

Jefferies Financial Group Inc. was sued by investors in one of its funds over losses related to its holdings in First Brands Group, a now-bankrupt auto parts supplier at the heart of an alleged multibillion-dollar fraud scheme.

In a suit filed Tuesday in New York, two British Virgin Islands investment companies accused Jefferies' Leucadia Asset Management arm and its Point Bonita Capital trade-finance fund of defrauding them by misrepresenting the terms of their purchase of First Brands receivables.

First Brands founder **Patrick James** and his brother Edward were indicted last month by federal prosecutors, who claim the two stole hundreds of millions of dollars by faking and inflating invoices for accounts receivable, double- and triple-pledging loan collateral, falsifying financial statements and hiding liabilities from lenders.

Point Bonita purchased about $715 million in First Brands receivables, Jefferies said in October, adding in subsequent court filings that they and other factoring firms were the victims of fraud. First Brands had its financial statements audited by top accounting firms and attracted support from top banks, Jefferies said at the time.

The investors who sued, Eugenia II Investment Holdings Ltd. and Eugenia III Investment Holdings Ltd., said they invested $25 million in Point Bonita. They claim they were told Point Bonita had "cash dominion" over receivables it purchased from First Brands, meaning the fund would be paid directly by the invoice obligors.

Instead, Point Bonita allowed First Brands to collect and hold onto the cash it got from large retailers like AutoZone Inc. and Walmart Inc. for windshield wiper blades, brake pads and other auto supplies on store shelves, according to the lawsuit.

"Jefferies unequivocally did not engage in fraud," a spokesman for the firm said Wednesday. "We will vigorously defend against these specious claims and expect to prevail on the merits."

In an October statement, Jefferies said that, as servicer, First Brands was “responsible for directing the obligors’ payments to Point Bonita” but had stopped directing timely transfers of funds the month before.

According to the suit, allowing First Brands to receive payments created the opportunity to falsify invoices and other alleged frauds that brought down the business.

Point Bonita “appointed the proverbial wolf (here, First Brands) to run the hen house,” the Eugenia companies said. They are owned by a Cayman Islands trust and have a Cayman Islands trustee, according to the complaint. The lawsuit doesn’t specify who invested in Eugenia II and III.

Jefferies disclosed a 75% decrease in the valuation of the fund’s holdings of First Brands receivables at the end of last year, according to the suit. The Eugenia plaintiffs said that, but for Point Bonita’s misrepresentations, they would have invested their $25 million in an alternative portfolio that they claim would have yielded a return of at least $18.4 million.

The collapse of the auto parts supplier rattled Wall Street firms as well as trade financiers. First Brand creditors facing billions of dollars in potential losses have been contemplating whether to save parts of the business or push to liquidate its operations, Bloomberg News reported last month.

Earlier this week, Raistone Capital, a trade finance firm with substantial exposure to First Brands, filed for bankruptcy liquidation weeks after winding down its operations.

Federal prosecutors in Manhattan allege the James brothers used fake and inflated invoices to persuade lenders to provide billions of dollars in financing. Another former First Brands executive, Peter Andrew Brumbergs, has pleaded guilty to his role in the scheme and is cooperating with prosecutors.

A spokesperson for Patrick James has said he didn’t engage in misconduct and denies the allegations against him, saying “the hedge funds and private credit firms are not the real victims as they claim, but rather self-interested, sophisticated institutions that reaped billions of dollars from First Brands through their patently absurd interest rates and fees.”

The case is Eugenia II Investment Holdings Ltd. v. Leucadia Asset Management LLC, New York State Supreme Court, New York County.

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News | **Securities Litigation**

AT&T Agrees to Put NYC Pension Funds' Diversity Reporting Proposal on Proxy Ballot

A New York City official announced that AT&T agreed to include in its proxy ballot a shareholder proposal that, if adopted, would require the company to publicly provide "a comprehensive breakdown of its workforce by race, ethnicity and gender." The agreement comes less than two weeks after NYC pension funds sued to get that proposal on the ballot.

February 26, 2026 at 11:45 AM By **Alyssa Aquino**

AT&T store in New Jersey. Photo: Diego M. Radzinschi/ALM

New York City pension funds' legal effort to force AT&T Inc. into bringing a diversity, equity and inclusion-focused proposal to shareholders' attention succeeded, with the telecommunications company agreeing to include the proposal in its proxy materials

New York City Comptroller Mark Levine—whose office serves as the chief investment adviser for pension funds for hundreds of thousands of current and former municipal employees, teachers and police officers—announced that less than two weeks after the city filed a lawsuit championing the proposal, AT&T agreed to settle the case.

"Today's settlement is a major win for investors amid ongoing attempts to undermine transparency and accountability and sends a strong message to other publicly traded companies," Levine said in a late Wednesday statement. "AT&T shareholders will now have the responsibility to vote on our proposal that requests disclosure of clear and detailed data to help investors better assess its efforts to advance equal opportunity."

AT&T didn't immediately respond to a Thursday request for comment. The company was represented by its in-house attorneys, according to a stipulation of settlement filed with the U.S. District Court for the Southern District of New York on Wednesday.

The comptroller's office serves as the chief investment adviser for the New York City Employees' Retirement System, the Teachers' Retirement System of the City of New York, the New York City Police Pension Fund and the New York City Board of Education Retirement System—pension funds that hold $209 million in AT&T stock.

In December 2025, the funds submitted a proposal that, if adopted by shareholders, would require AT&T to publicly disclose a report that the company annually submits to the U.S. Equal Employment Opportunity Commission, "a comprehensive breakdown of its workforce by race, ethnicity and gender."

But the funds sued on Feb. 17, alleging that AT&T omitted the proposal from its 2026 proxy materials, effectively blocking the effort.

The lawsuit was one of the first to be filed by the New York City Law Department, after Steven Banks was appointed as the city's top attorney.

In the complaint, NYC attorneys argued AT&T violated the U.S. Securities and Exchange Commission's Rule 14a-8, which governs when public companies must include shareholder proposals in their proxy materials, by failing to include the pension funds.

The rule includes some exemptions and in November 2025, the SEC announced it would not object to the exclusion of a shareholder proposal, if the company provides an "unqualified representation" that it has a reasonable basis to exclude the proposal.

AT&T's settlement comes only a few days after PepsiCo settled a similar lawsuit from a shareholder who proposed that PepsiCo investigate and report on whether its supply chain complies with its internal animal welfare policy and relevant local laws. As part of the settlement, PepsiCo agreed to include the shareholder proposal in its proxy ballot.

Litigation

Manage Newsletters

Texas Says Vanguard Settles Collusion Suit for $29.5 Million

Feb. 26, 2026, 8:14 AM PST

Summary by Bloomberg AI

AI Generated

- Texas said Vanguard Group Inc. agreed to pay a total of $29.5 million to settle a lawsuit brought by a dozen states that accused the asset manager of colluding to manipulate the energy market and reduce coal output.
- As part of the deal, Vanguard also will “avoid imposing ESG goals over its customers’ profitability,” according to a statement by Texas Attorney General Ken Paxton’s Office.
- The states had also sued BlackRock Inc. and State Street Corp., and that litigation remains ongoing.

Texas said Vanguard Group Inc. agreed to pay a total of $29.5 million to settle a lawsuit brought by a dozen states that accused the asset manager of colluding to manipulate the energy market and reduce coal output.

As part of the deal, Vanguard also will “avoid imposing ESG goals over its customers’ profitability,” according to a statement by Texas Attorney General **Ken Paxton**’s Office. A court filing showed Vanguard was dismissed from the lawsuit.

Vanguard said in a statement that the decision to settle the litigation “allows us to put this distraction behind us and focus on what matters — giving our investors the best chance for investment success.”

The states had also sued BlackRock Inc. and State Street Corp., and that litigation remains ongoing. The suit is one of the most high-profile cases against the beleaguered environmental, social and governance investment strategy.

Paxton sued the asset managers in 2024, claiming they coordinated to pressure coal companies to reduce their production under the guise of pursuing environmental and social investing goals. The firms have been a frequent target of Republican leaders for their voting and investment policies, so much so that they have retreated from ESG in the US.

Lawyers for the three asset managers told the court in June that there is no evidence that they coordinated investment decisions or that the firms told any coal producer to cut output. They also said they weren't committed to any policies by participating in the climate groups and that coal output rose in the years covered by the lawsuit.

Still, US District Judge **Jeremy Kernodle** in Texas ruled in August that most of the claims brought by the states can proceed, including allegations that the asset managers collectively used their stock to attempt to substantially lessen competition.

The case is State of Texas v. BlackRock Inc., 24-cv-00437, US District Court, Eastern District of Texas (Tyler).

(Updates with Vanguard statement.)

--With assistance from **Silla Brush** and **Tim Quinson**.

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Peter Blumberg, Steve Stroth

What I predicted then | Business Law Prof Blog

businesslawprofessors.com/2026/02/what-i-predicted-then

Ann Lipton February 26, 2026

Back when the SEC announced it was functionally no longer going to weigh in on whether companies may legally exclude shareholder proposals, I made a prediction in a number of spaces – except embarrassingly, I can't remember which ones. Possibly podcasts, webinars, conferences, I'm sure someone remembers.

Which was: Companies now are in a heads-I-win, tails-you-lose position. They can exclude proposals, regardless of their legal basis for doing so. They can be confident that the SEC – which is now hostile to proposals – will not sue to force their inclusion. Very few shareholders will have the resources to sue over an improperly excluded proposal, and if any shareholder bothers, the company can simply moot the action by voluntarily agreeing to include the proposal even before filing an answer to a complaint. There is no risk to the company in simply excluding proposals, and waiting to see who sues.

And – behold!

AT&T said it would exclude a proposal offered by a variety of NYC pension funds asking for the company to disclose its EEOC-1, i.e., a form AT&T is required to submit to the federal government regarding the racial and gender makeup of its workforce. AT&T claimed that such a disclosure falls under the ordinary business exclusion of Rule 14a-8.

So, NYC pension funds – a well-heeled group of investors – filed a lawsuit, arguing that their proposal was not subject to the ordinary business exclusion. If you guessed it only took eight days for AT&T to agree to include the proposal on its proxy rather than litigate – you were correct.

A similar situation just unfolded with Pepsico; within days of the filing of a complaint, Pepsico agreed to include a proposal rather than litigate its exclusion.

There remains, as far as I know, one other case along these lines; in that case, the defendant company, Axon, is litigating in response, but I suspect even if that goes on much longer, it will be an outlier. I suspect our future looks more like AT&T and Pepsico: wealthy investors will get their proposals included, either because companies voluntarily agree at the outset, or because they cave at the filing of a complaint; investors without those resources will be excluded. And note, this is not about the actual size of the investor's stake; plenty of investors may have small stakes but resources to litigate, and that's what will carry the day. If anything, this will make the proposal process *more* political, rather than less, because interest groups are more likely to have litigation infrastructure.

And another thing. In this week's *Shareholder Primacy* podcast, Mike Levin and I talk about efforts to regulate proxy advisors at the state level. Here at Apple; here at Spotify; and here at YouTube.
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Securities

FTX Victims Obtain More Time to Submit Global Settlement Papers

Feb. 25, 2026, 1:06 PM PST

Attorneys for people who lost money in the FTX cryptocurrency exchange's collapse will have about two additional months to finalize a global settlement with promoters, insiders, and others, a federal court said Wednesday.

One reason for extending the deadline for requesting preliminary approval to April 24 is a dispute requiring an arbitrator, Judge K. Michael Moore said for the US District Court for the Southern District of Florida. The arbitrator would allocate the settlement proceeds for distribution through the FTX bankruptcy estate and the consolidated civil litigation, according to the docket-only order.

Other reasons the plaintiffs gave the court on Tuesday are a previously announced would-be settlement with law firm Fenwick & West LLP and a new claims process for the multidistrict litigation.

The plaintiffs have reached agreements with some insiders, alleged promoters, and auditors. The "benefits to the class of proceeding with this round of settlements in one go are enormous," they told Moore.

Boies Schiller Flexner LLP and the Moskowitz Law Firm PLLC are lead counsel for the digital asset and account holders. Counsel for defendants includes Gunster and Gibson, Dunn and Crutcher LLP, which represent Fenwick.

The case is In re FTX Cryptocurrency Exch. Collapse Litig. , S.D. Fla., No. 1:23-md-03076, 2/25/26 .

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Profile | **Cryptocurrency**

The Lawyer Who Took on FTX's Web of Promoters

Starting from a single referral call, Adam Moskowitz and his team built a sweeping case against FTX promoters, driving over $100 million in settlements and redefining theories on liability.

February 26, 2026 at 07:30 AM By **Michael A. Mora**

Adam Moskowitz, with Moskowitz Law. Courtesy photo

The series of cases that have helped raise the profile of **Adam Moskowitz** as a lawyer for plaintiffs in cryptocurrency cases started with an anonymous phone call.

The call arrived through a confidential referral network connecting potential plaintiffs to class-action lawyers. FTX, the caller told him, was based in Miami and the cryptocurrency sold on its collapsed trading platform amounted to unregistered securities.

Moskowitz was skeptical.

"The law was bad," he would later recall.

FTX abruptly collapsed in November 2022, triggering a multibillion-dollar bankruptcy. Authorities said customer deposits were diverted to an affiliated trading firm, Alameda Research, to cover losses and fund investments, political donations and luxury real estate. A federal jury later convicted founder Sam Bankman-Fried of fraud and conspiracy.

There was a then-controlling ruling by U.S. District Judge Donald Middlebrooks of the Southern District of Florida, who held—before the decision was later reversed on appeal—that plaintiffs must show each investor viewed and relied on specific online promotions to pursue securities claims. There was also a practical concern: how to recover damages from a bankrupt exchange.

“I thought, ‘We can sue the aiders and abettors in a class action,’” said Moskowitz, 58, the founding partner of **Moskowitz Law**.

Moskowitz believed the case would pit his firm against some of the most well-resourced defendants in the industry and he sought experienced co-counsel. He turned to **David Boies**, founding partner of **Boies Schiller Flexner**. The two were already working together on a class action tied to Voyager Digital, a cryptocurrency exchange that collapsed months before FTX.

Now, nearly three years after the initial tip and the filing of the first lawsuit, Moskowitz and Boies are seeking approval from U.S. District Judge K. Michael Moore in Miami of an initial wave of settlements exceeding $100 million with defendants accused of promoting FTX. The agreements span six categories and range from settlements with Hall of Fame basketball player Shaquille O’Neal to the law firm **Fenwick & West**.

To understand what made Moskowitz respond to that phone call by pressing ahead with an effort to bring claims on behalf of investors caught up in FTX's implosion, it might help to know a little bit more about his background.

Moskowitz earned his J.D. from the University of Miami School of Law in 1993. He began his career at a small firm where an early experience left a lasting impression. A partner took him to a hospital room to meet Jim Davis, a client who claimed DuPont products caused him to develop a debilitating Illness. Moskowitz watched while the company’s lawyers deposed Davis from his bedside.

That power imbalance pushed Moskowitz to focus almost exclusively on class action litigation. After about three years at the firm, he joined **Kozyak Tropin & Throckmorton**, a prominent Florida firm that has since produced several federal judges, where he eventually rose to managing partner. He held the role for several years before he says a falling-out in 2015 with one partner led to his departure.

“He told me, ‘You’re out,’” Moskowitz recalled. “It was the toughest point in my life. So, the question is, what do you do?”

Moskowitz decided to start his own firm. Around the same time, he met his wife and the couple went on to have four children. As he rebuilt his practice, Moskowitz continued to pursue class actions and field tips about potential crypto fraud through the David Project, a tipline for potential class action plaintiffs run by the firm. The project, named for the Goliath-slaying David of the Bible, often refers those matters to lawyers at other firms.

That changed when he received the call about FTX.

Before its collapse, Bankman-Fried promoted FTX as a safe and accessible platform for mainstream investors, cultivating an image as a young, altruistic billionaire. The suits Moskowitz has brought allege the company’s rapid rise was fueled by a network of celebrity endorsers, professional advisers and venture investors who helped legitimize the exchange.

Joey Kaye, then an associate at the Moskowitz Law Firm, who has since made partner, began working with **Alexander Boies**, a partner at Boies Schiller Flexner, to put together research on the FTX case following the crypto exchange’s collapse. David Boies said what stood out to his son were advertisements by Tom Brady, Gisele Bündchen and others in a $20 million marketing blitz to normalize cryptocurrency for everyday investors.

The main ad showed Brady calling around to a bartender in Boston and a fireman in New York and asking, “Are you in?” The ads culminated with a 2022 Super Bowl ad featuring Larry David portraying a character who misses out on great, forward-thinking inventions (including the wheel and the lightbulb), who finally misses out on FTX, with the slogan "Don't Be Like Larry."

“Alexander and Joye Kaye prepared a complaint that Adam and I looked at going after people who promoted the FTX tokens,” Boies said. “We filed that case in Miami.”

The class action alleged one of the most sweeping failures by celebrity promoters in recent memory, accusing influencers of marketing FTX across television, social media and public appearances without conducting “any due diligence prior to marketing these FTX products to the public.” The lawsuit named Bankman-Fried, Brady, Bündchen, O’Neal and others.

“When we first filed the complaint, we sued the insiders,” Moskowitz said. “These insiders were facing serious liability.”

His goal, he said, was not just financial recovery.

“The information was priceless,” he said.

At one point, Moskowitz met Bankman-Fried himself in prison. They spoke in a shared room, under supervision, surrounded by other inmates.

“He was a quiet, self-absorbed guy who wanted to help us,” Moskowitz said.

Serving some defendants proved to be difficult.

In federal court, generally, the plaintiff has 90 days to serve a summons and complaint on a defendant after the lawsuit is filed. If a defendant is not served within this time, the case may be dismissed without prejudice, unless an extension of time is granted for good cause

O’Neal, at over seven-feet-tall and 300-plus pounds, had been "hiding and driving away from our process servers for the past three months," according to court filings. Attempts to serve him at the TNT studios, where O’Neal worked as a broadcaster, were blocked by security guards. Eventually, the process servers were able to serve him in a moment recorded on video.

As the case expanded, the plaintiffs widened their focus beyond individual promoters to include sports organizations such as the Golden State Warriors and MLB Players Inc., as well as luxury car companies, banks serving crypto firms, blockchain platforms, public relations and marketing agencies, law firms, accountants and a dozen domestic and international venture capital funds. The growing number of claims—and the filing of parallel lawsuits by other firms—led to the consolidation of the cases into multidistrict litigation in Miami. Moskowitz and Boies were appointed class counsel. The litigation has since been divided into six formal tracks, reflecting the broad range of defendants and legal theories involved.

The litigation unfolded alongside FTX’s bankruptcy, which generated staggering fees for the lawyers dismantling the company’s remains. Nearly $1 billion would eventually flow to restructuring advisers and law firms. Lead counsel **Sullivan & Cromwell** has collected about $232 million, while**Quinn Emanuel Urquhart & Sullivan**, serving as special litigation counsel, was awarded roughly $48 million.

Lawyers pursuing the class action won’t recover anything unless they secure settlements or win at trial. The initial wave of settlements marks a significant milestone in Moskowitz and Boies’ multiyear effort, with class counsel set to receive one-third of the amount. Still, the litigation has been hard-fought.

They faced defense teams from several Am Law 100 firms, including **Weil, Gotshal & Manges**; **Gibson, Dunn & Crutcher**; and **Latham & Watkins**.

In May, U.S. District Judge K. Michael Moore narrowed the case against “the power brokers of the entertainment world” but allowed key claims to move forward. He ruled that the promotion of the

FTX platform could not be separated from the promotion of the underlying securities, allowing claims under Florida securities law and similar claims under Oklahoma law to survive dismissal. The court also authorized discovery to proceed.

Throughout the litigation, Boies described Moskowitz as a “bundle of energy.”

“He’s a very smart, effective lawyer who is very well prepared,” Boies said. “He’s someone who believes, as I do, that class actions have an important role in vindicating consumer rights. Many cases couldn’t be brought except as class actions.”

The Voyager litigation, which centered on the offering and sale of alleged unregistered securities, has resulted in several high-profile settlements in the millions of dollars, leaving Mark Cuban, the Dallas Mavericks and **McCarter & English** among the remaining defendants. The FTX case, meanwhile, is widely viewed as one of the most prominent ongoing crypto lawsuits.

Still, Boies said he doesn’t consider himself a “crypto lawyer.”

“I’m less of a crypto lawyer than a big case trial lawyer,” Boies said. “But wherever the issue is that is most important, I like to be involved in.”

He added of Moskowitz, “I’m looking forward to trying the [FTX] case with him.”

Jason Spitalnick, a partner at **Snell & Wilmer** and a former enforcement lawyer at the Securities and Exchange Commission, said the FTX promoter cases exemplify a litigation trend among plaintiffs’ lawyers toward relying on Section 12 of the Securities Act. This provision gives investors a direct path to sue over unregistered securities and makes it easier to hold defendants liable without proving intent to defraud.

“The hook they are using to sue promoters is Section 12’s so-called statutory seller test,” Spitalnick said. “It allows them to target anyone who earned money by soliciting the purchase of an unregistered security.”

Spitalnick, who is not involved in the case, said paid promotion of crypto offerings is likely to continue regardless of the outcome, along with the expanded theories of liability that have emerged from the FTX litigation.

“A-list celebrities may not participate because of the demonstrated legal risk,” Spitalnick said. “But there is no shortage of less sophisticated influencers lining up to promote crypto projects.”

Looking back on the case so far, Moskowitz said lawyers should trust their instincts when something does not seem right and be willing to pursue creative legal strategies, while recognizing the risks of taking on powerful defendants, such as the banks, law firms, accountants and venture capital funds the FTX litigation has expanded to include.

"With any of these big companies, they have virtually unlimited resources and nothing is easy," he said. "But if you truly believe in the case and put in the time to develop the evidence, there are judges who will call the balls and strikes fairly. People can be held accountable, and you can change history."

9th Circuit restores attorney fees slashed over firm size

DJ **dailyjournal.com**/articles/389984-9th-circuit-restores-attorney-fees-slashed-over-firm-size

U.S. District Judge Michael W. Fitzgerald

The 9th U.S. Circuit Court of Appeals has vacated a $4.5 million fee reduction, ruling that a winning law firm's small size cannot be used to justify lower fees and declaring that "brilliance at the bar" is not measured by the number of associates a lawyer commands.

The opinion, written by Circuit Judge Salvador Mendoza Jr., reversed a ruling by U.S. District Judge Michael W. Fitzgerald who had reduced attorney fees awarded to San Francisco firm Gaw Poe LLP because of its small size.

"We should not reduce fee awards to lawyers simply because of how they have structured their workplaces," Mendoza wrote in Tuesday's opinion. "And, conversely, the fact that a firm is larger and has a larger overhead should not automatically entitle its attorneys to higher fees."

The panel, which also included Circuit Judges Kim McLane Wardlaw and Anthony D. Johnstone, further affirmed a ruling in favor of small wholesalers who claimed that the makers of Clear Eyes eyedrops unlawfully offered price advantages to larger buyers, including Costco and Sam's Club.

The wholesaler plaintiffs were represented by Gaw Poe attorneys Mark W. Poe, Victor Meng and Randolph Gaw.

Gaw called the decision a "landmark opinion in many ways" in a phone call on Wednesday.

"I think this is really the first opinion that I'm aware of that recognizes that you can have lawyers in any type of firm configuration doing really high-quality work out there, and that they might be entitled to compensation equal to lawyers at the largest law firms," Gaw said.

"The district court, for whatever reason, felt that it was a relevant factor that we were a then four-person law firm," he continued. "Speaking for myself, the case law doesn't support that as a consideration, and the 9th Circuit has made that explicit now with its most current order."

After a Los Angeles federal jury ruled in favor of Gaw Poe's clients, Fitzgerald slashed the firm's award by more than half, from a requested $7.6 million in fees to $3.1 million in fees.

"Notwithstanding plaintiffs' counsel's background, accolades, and expertise in this area of the law, it is simply unreasonable to award big law rates to a four-person firm representing mom-and-pop warehouses," Fitzgerald wrote in his August 2024 order.

Tuesday's opinion addressed this reasoning directly, calling it an abuse of discretion.

"First-rate attorneys who prevail in litigation are entitled to receive fees commensurate with their skill, experience, and reputation, even if their clients are mom-and-pop businesses that don't have Fortune 500 budgets to hire big law firms to represent them," Mendoza wrote.

Defendants Prestige Brands Holdings Inc. and Medtech Products Inc. were represented by Duane Morris LLP attorneys Michael L. Fox and Christopher S. Patterson in San Francisco, as well as Robert Kum in Los Angeles and Robert M. Palumbos and William Shotzbarger in Philadelphia. Kum declined to comment in a phone call on Wednesday, while co-counsel did not respond to phone or email inquiries by press time.

The lawsuit alleged violations of the Robinson-Patman Act, California's Unfair Practices Act, and the Unfair Competition Law. Plaintiffs asserted that Prestige provided larger competitors with a 5% price advantage and exclusive rebates unavailable to smaller distributors. These practices allegedly caused secondary-line price discrimination that injured competition by forcing disfavored wholesalers to choose between losing sales or selling at a loss, according to the plaintiffs. *L.A. International Corporation v. Prestige Brands Holdings, Inc. et al*., 2:18-cv-06809 (C.D. Cal., filed Aug. 8, 2018).

Prestige defended its pricing by arguing that payments to Costco were legitimate functional discounts--reasonable reimbursements for promotional services--rather than discriminatory pricing. They contended the Robinson-Patman Act necessitated a showing of substantial harm to competition, a higher standard than a "reasonable possibility."

Additionally, the defense asserted that wholesalers were not in actual competition with membership clubs like Costco for the "same dollar" due to their different market models.

A jury rejected these arguments at trial in 2024.

#389984

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News | Litigation

McCarthy Tétrault Puts Law Firm Contingency Fees on Trial in $10B Canadian Treaty Settlement

"A lawyer's retainer is not a lottery ticket," an Ontario judge ruled. But with a half a billion dollar fee at stake, some are gambling the appeal court will disagree.

February 26, 2026 at 11:31 AM By **John Schofield**

Canadian flag and currency; Adobe Stock

When two of the Indigenous communities at the heart of a CA$10 billion (US$7.3 billion) Canadian treaty settlement realized their lawyers were pocketing more money than they were, they hired Toronto power broker McCarthy Tetrault—and won, with a judge slashing the $510 million contingency fee by 90%.

McCarthy Tetrault challenged the fee on behalf of two of the 21 Anishinaabe communities along the north shore of Lake Huron who took the Canadian and Ontario governments to court in 2014 over unpaid resource revenue annuities promised under an 1850 treaty.

In October, Ontario Superior Court Justice Frederick Myers slashed the contingency fee from $510 million to $40 million, ruling it was excessive and unreasonable. Now, a Court of Appeal in Canada's largest province is gearing up to hear arguments later this year that will focus on the legal fee stemming from the Indigenous treaty settlement.

"It's a whole cascade of things that went wrong," said Michael Rosenberg, the McCarthy Tetrault partner who is leading the legal team for the two opposing First Nations. "Ultimately, what the court found was that the legal opinion that the lawyers provided on the fairness of their own fees was itself wrong."

'Jackpot' Contingency Fees

Rosenberg is now representing his clients in an appeal brought by Nahwegahbow Corbiere (NCC), an Ontario law firm that acts exclusively for First Nations individuals and communities. NCC billed its $510 million fee under the terms of a partial contingency fee agreement.

All 21 First Nations, which formed the Robinson Huron Treaty Litigation Trust, initially supported the fee arrangement, which entitled NCC to a flat 5% share of a successful settlement. The lawyers also agreed to bill at 50% of their normal hourly rates during the litigation.

But in 2024, a year after the $10 billion out-of-court settlement, Garden River First Nation and Atikameksheng Anishnawbek First Nation challenged the fees as "unreasonable," noting some nations received less in the settlement than their lawyers.

Justice Myers agreed, ruling in part that the NCC legal team had a conflict of interest after encouraging the First Nations to accept the fee without obtaining independent legal advice. He also found that the First Nations chiefs were not informed that an uncapped percentage fee was problematic for a case where recoveries were expected to reach hundreds of millions—or even billions—of dollars.

"A lawyer's professional retainer is not a lottery ticket offering a bonus prize of generational wealth to the lawyers if the clients hit the jackpot and win a mega-award," Justice Myers wrote in his decision. "In Ontario, money recovered for clients in litigation in excess of fair and reasonable legal fees must go to the clients."

Savvy Negotiators

NCC is challenging the ruling, however, arguing in their notice of appeal that "the chiefs and trustees involved in reaching the fee agreement were experienced negotiators who drove a hard bargain and were well aware of what they were doing over the entire course of the litigation."

"The appellants reject the notion that the litigation fund's trustees were naive and ill-informed—a conclusion that echoes centuries of paternalistic attitudes toward First Nations," NCC's statement said.

There's no doubt that NCC achieved a good result for their clients and should be rewarded, Rosenberg argued in an interview. But under the fee agreement, NCC did not have to bear any of the adverse risk costs and was paid as the litigation progressed at more than 75% of their regular rate, billing $17 million. The client covered all disbursements.

Justice Myers topped off that amount with an additional $23 million—approximately the NCC legal team's full fee if they had been paid hourly. Rosenberg said that equates to about four times the amount they risked—a bit less than $6 million—and fits within the usual rubric for an Ontario class action fee assessment.

Rosenberg also said the original fee agreement went off the rails, in part, because the litigation was a representative action, not a class action, which would have been subject to a fee assessment by a court.

"The only opinion on the fairness of the fees was provided by the lawyers who were receiving those fees and being paid to provide that opinion at the same time," Rosenberg said.

"They did not recognize the conflict of interest," he added. "It was a lapse in judgment."

A Question of Sovereignty?

While Rosenberg argues that the fee should have been assessed by a court from the start because of the huge amounts of money involved and the number of people affected, NCC's position is that all 21 Indigenous communities originally supported the fee deal, so the courts should not interfere with First Nations' sovereignty.

Brian Gover, a partner with Toronto-based Stockwoods Barristers, is representing NCC and expects their appeal to be heard sometime between June and October.

In the NCC statement issued when the appeal was filed in November, the firm noted that the legal team intended to donate half of its $510 million fee to the 21 First Nations communities for programs benefiting the Anishnaabe language, culture and other community services.

Justice Myers's decision has thrown that plan into doubt, it added.

LAW.COM

'Eggshell' Plaintiff In Social Media Addiction Trial Set to Testify on Thursday

Victoria Burke, who was a therapist to plaintiff Kaley, or K.G.M., for six months in 2019, provided testimony in the Los Angeles Superior Court trial on Wednesday.

February 25, 2026 at 09:14 PM By **Amanda Bronstad**

What You Need to Know

- The testimony of plaintiff Kaley is expected to be highly contentious given the pretrial fights over what jurors should be allowed to hear as evidence.
- Burke, a licensed marriage and family therapist, testified that she diagnosed the then-13-year-old with generalized anxiety disorder at first and, after additional sessions, with social phobia and body dysmorphia.
- Meta attorney Andrew Stanner poked holes in Burke's 2025 deposition, in which she stated she had no opinion about whether social media caused or contributed to Kaley's mental health problems.

Los Angeles Superior Court at 312 N. Spring St. in downtown Los Angeles. Photo: Amanda Bronstad/ALM

The lead plaintiff in a high-profile trial against social media companies is set to testify on Thursday in Los Angeles about how she allegedly became addicted to Instagram and YouTube, causing her depression and body dysmorphia.

The trial against Meta Platforms Inc., which operates Instagram, and YouTube, owned by Google, involves plaintiff Kaley, sometimes referred to as K.G.M., whose one-time therapist spent most of the day testifying on Wednesday. Kaley was on YouTube at age six and, at age nine, got an Instagram account.

The testimony of Kaley, whom her attorney, W. Mark Lanier, described to jurors in an opening statement earlier this month as an "eggshell plaintiff," is expected to be highly contentious given the pretrial fights over what jurors should be allowed to hear as evidence. Both sides filed briefs ahead of Kaley's testimony on hearsay and character evidence. Specifically, Meta insisted in a Wednesday filing that Kaley's lawyers should not be allowed to exclude 41 exhibits containing her social media posts about her mother and nine video recordings of her mother yelling at her, as well as her parents' divorce case and references to domestic abuse.

Even Kaley's therapist's testimony drew sidebars and objections. Earlier in the day, Victoria Burke, a licensed marriage and family therapist who treated Kaley for six months in 2019, testified that she diagnosed the then-13-year-old with generalized anxiety disorder at first and, after additional sessions, with social phobia and body dysmorphia.

During the afternoon break, Lanier, of The Lanier Law Firm in Houston, raised concerns about a comment made by Meta attorney Andrew Stanner of Covington & Burling in Washington D.C., that Kaley's sister had body dysmorphia, rather than an eating disorder, during his cross-examination of Burke.

"To make that suggestion to the jury through that question as if body dysmorphia is something that runs in the family is something we're very concerned about," Lanier told Los Angeles Superior Court Judge Carolyn Kuhl. "To do that is blatantly unfair."

Her Phone Was a 'Distraction Technique'

Burke, then a trainee at Victor Community Support Services in Chico, California, testified that she was aware that Kaley used social media for creative purposes, primarily to publish her digital artwork and video editing, and that she was upset when she didn't have her phone.

"The two were closely related in the sense it could really make or break sometimes her mood," she told Lanier.


Mark Lanier of The Lanier Law Firm. Courtesy photo

Lanier made a point of noting that Burke never described Kaley as having social media addiction at the time because that wasn't an official diagnosis.

"Yes, I would say that social media addiction was not something in those words we had a name for, that we were talking about, or we were addressing at that level in my graduation program," Burke replied. "However, I was curious about that."

She did find that Kaley had social phobia, which was a "severe fear" of perceived judgment, rejection and approval by others. She agreed that could be considered a sign of social media addiction—and make it challenging to testify in court.

Lanier showed the jury several of Burke's reports, which included references to Kaley hiding during lunch and breaks at school and "worrying about what others think of her" and "feeling embarrassed during social interactions." She felt that her boyfriend was the only person who paid attention to her and feared that her sister would leave her.

"I remember being concerned because she had said her sister made a suicide attempt," Burke testified.

Lanier also asked about Kaley's mom, who sometimes attended therapy sessions with her daughter.

"Did Kaley ever tell you she was being abused by her mother?" he asked.

"Not to my recollection," Burke replied. "I think there was tension in the relationship and that was something we were actively working on. There was stress in the relationship, but Mom also was a fierce advocate for the client."

In therapy, Kaley said she wished she was pretty, without a chubby face or lines, Burke said. She also checked her appearance 20 times a day, which Burke considered "functional impairment."

Kaley used her phone as a "distraction technique," she said.

“If you can pick up your phone, temporarily, momentarily, it doesn’t feel like you have to stay in perception of all eyes on you,” she said.

'I Do Not Believe It Was Causation'

Stanner, on cross-examination, noted that Burke never mentioned social media in most of her reports about Kaley. In fact, Kaley’s key stressors were bullying at school, particularly in gym class, and problems at home, where she felt lonely when her mother took her phone away.

“The trigger for this was the phone being taken away,” Burke explained.

Stanner also referenced a report where Kaley told Burke she had tried cutting and other self-harm behaviors after her peers at school told her to do it.

“We’ve all heard the phrase ‘peer pressure,’” he said. “This is an extreme incident of peer pressure.”

Burke agreed with Stanner that Kaley’s phone was often a temporary coping mechanism.

“It temporarily reduces stress,” Burke said.

Stanner also poked holes in Burke’s 2025 deposition, in which she stated she had no opinion about whether social media caused or contributed to Kaley’s mental health problems.

“I answered the question the best of my ability in the moment, and my opinion today is different,” she replied.

He pushed further, noting that she said in her deposition that she had no opinion about whether Kaley’s use of social media contributed to her anxiety.

“I believe it was a contributing factor, I do not believe it was causation,” Burke replied.

Why the change? Stanner suggested that, since her deposition, she had met with lawyers and read news articles about the case.

On re-direct, Lanier asked whether they talked about the case while having lunch.

“No, we shared dog photos,” Burke said, smiling.

Lauren Gallo White, a San Francisco partner at Wilson Sonsini Goodrich & Rosati representing YouTube, asked Burke about being on YouTube herself for a decade. When asked if she recommended certain YouTube videos to her patients, Burke replied, “Very regularly.”

“I saw both benefits and areas of where it was getting in the way, as well,” Burke replied.

The trial is part of a consolidated proceeding in California state courts before Kuhl. Two other defendants, TikTok, owned by ByteDance, and Snap Inc., which operates Snapchat, settled prior to trial.

Both Instagram CEO Adam Mosseri and Mark Zuckerberg, the CEO of Meta, have testified in the trial.

Social media addiction trial takes new turn with therapist's testimony

reuters.com/legal/litigation/woman-suing-meta-youtube-over-social-media-addiction-takes-stand-trial-2026-02-25

Jody Godoy, Steve Gorman February 25, 2026

Item 1 of 8 Julianna Arnold, who founded the nonprofit Parents RISE after her daughter Koko died at the age of 17 in 2022, speaks to the media outside the courthouse on the day plaintiff Kaley G.M. takes the stand at a trial in a key test case accusing Meta and Google's YouTube of harming children's mental health through addictive social media platforms, in Los Angeles, California, U.S., February 25, 2026. REUTERS/Mike Blake

[1/8]Julianna Arnold, who founded the nonprofit Parents RISE after her daughter Koko died at the age of 17 in 2022, speaks to the media outside the courthouse on the day plaintiff Kaley G.M. takes the... Purchase Licensing Rights, opens new tab Read more

LOS ANGELES, Feb 25 (Reuters) - The former psychotherapist of a California woman suing Meta's (META.O) , opens new tab Instagram and Alphabet's (GOOGL.O) , opens new tab YouTube, claiming a childhood addiction to the platforms damaged her mental health, testified on Tuesday that adolescent social media usage was a contributing factor.

Victoria Burke, the licensed therapist, appeared as a witness in a landmark civil trial in Los Angeles County Superior Court testing whether Big Tech can be held liable for the design of apps widely blamed for fueling a mental health crisis among young people.

Sign up here.

Burke was called by lawyers for the plaintiff, known in court only as Kaley G.M., to set the stage for the next phase of the trial exploring whether and how Kaley's engagement with social media as a child affected her wellbeing.

Kaley is expected to take the stand on Thursday once Burke completes her testimony.

The case is part of a broader global backlash against social media companies over alleged harms to children and teens. Australia has banned under-16s from such platforms, and other countries are considering similar restrictions. The tech firms deny the allegations and say users must be at least 13 to register.

Burke was working as a therapy trainee for a school district when she diagnosed and treated then 13-year-old Kaley for several months in 2019.

She told jurors she initially diagnosed Kaley as suffering from generalized anxiety disorder, but later revised the diagnosis to social phobia and body dysmorphic disorder.

Burke drew no conclusions as to whether social media had directly caused Kaley's adolescent struggles with fear of social rejection and peer judgment, or her worries over perceived flaws in her physical appearance.

But under cross-examination, Burke testified that she believed Kaley's social media experience was a "contributing factor" in her mental issues.

The therapist said Kaley often complained about online "bullying" by peers, and recalled at least one instance in which the girl told her she had "deleted" herself from a social media page, only to return later.

SOCIAL MEDIA USE AT AGE 6

Burke also acknowledged that Kaley's social media usage was not altogether negative, recalling that Kaley said she enjoyed creating video "art" to post online, though she became frustrated when others took credit for her work.

According to her lawsuit, Kaley began using YouTube when she was 6 and Instagram at age 9, and says the platforms contributed to psychiatric disorders, including depression and body dysmorphia.

Her lawyers have cast their client as a victim of deliberate designs and business models that sought to profit by hooking young children on advertising-supported online services despite knowing the risks to their mental health,

The beginning of the trial focused on what the companies knew about how social media affects children, and their business strategies related to younger users. Meta CEO Mark Zuckerberg testified that the company discussed but never launched products for children.
To win the case, Kaley's lawyers must show that the way the companies designed or operated the platforms was a substantial factor in causing or worsening her mental health issues.

QUESTIONS OF HOME LIFE

Kaley's health records show a history of verbal and physical abuse and a fraught relationship with her parents, who divorced when she was three, Meta's lawyer said in opening statements. Kaley's mother is expected to give evidence following her daughter's testimony.

Her own lawyer has pointed to a recent internal study by Meta where teens with difficult life circumstances more often said they used Instagram habitually or unintentionally.

Features such as videos that autoplay and a feed that allows for endless scrolling were designed to keep users on the platforms, despite evidence of harms to younger users' mental health, her lawyers allege. Meanwhile, "like" buttons catered to teenagers' need for validation while beauty filters warped their self-image, the lawyer said.

YouTube's lawyer said Kaley failed to use platform features designed to protect users from bullying, including tools to delete comments and limit time spent watching videos, according to a court filing.

The YouTube attorney in court cited records that showed Kaley's average time viewing YouTube Shorts was around 1 minute 14 seconds a day and her average time spent streaming YouTube videos in the past five years was around 29 minutes.

Burke said she never assessed the average duration of Kaley's daily social media usage. On Wednesday, she testified the notion of social media addiction had yet to emerge as a widely recognized phenomenon in her field, and was still not listed as a diagnosis in the latest edition of the Diagnostic and Statistical Manual, the key text for U.S. mental health professionals.

Reporting by Jody Godoy in New York and Steve Gorman in Los Angeles; Additional reporting by Courtney Rozen in Washington; Editing by Aurora Ellis and Kate Mayberry

Jody Godoy
Thomson Reuters

Therapist says social media addiction not recognized diagnosis

DJ **dailyjournal.com**/articles/389987-therapist-says-social-media-addiction-not-recognized-diagnosis

Mark Lanier

A therapist testified Wednesday that although "social media addiction" is not a recognized clinical diagnosis - and she has no opinion on whether Instagram caused a teen's anxiety and body dysmorphia - problematic social media use can manifest through other mental health disorders.

The testimony occurred in a trial that tests the novel plaintiff's theory that social media platforms are defectively designed to addict and harm minors. It is in its third week of evidence presentation before Superior Court Judge Carolyn B. Kuhl in Los Angeles. Jurors are expected to begin deliberating in early March.

The plaintiff, known as Kaley G.M., was expected to testify Wednesday, but the examination of the therapist did not finish as of press deadline.

In cross-examination, a defense attorney for Meta Platforms stressed that the therapist never made an addiction diagnosis and never documented excessive social media use by the plaintiff, who sued as a minor but is now 20. Meta's attorney cited years-old records and pointed to deposition testimony last year in which the therapist said she had no opinion on whether social media caused any alleged harm, but now believes it was a contributing factor. Meta's counsel went over every single document from January-July 2019 in which the therapist had written notes about the plaintiff. *Social Media Cases*, JCCP5255 (L.A. Super. Ct., filed Oct. 24, 2022).

At the center of the case are Kaley's claims that her use of Instagram and YouTube as a child disrupted her development and significantly contributed to her mental health struggles. Snapchat and TikTok were also part of the case but settled Kaley's claims days before trial began.

Kaley's counsel argues social media design features such as autoplay, notifications and algorithmic recommendations fostered the compulsive use and led to her struggles.

Meta and Google, defended by Covington & Burling and Wilson Sonsini Goodrich Rosati LLP, contend their platforms are not inherently addictive and did not cause Kaley's alleged mental health harms. Instead, the defense argues her struggles stemmed from factors unrelated to Instagram or YouTube, including preexisting family and social stressors.

Under direct examination by Lanier Law Firm founder Mark Lanier - who represents Kaley in the first bellwether social media addiction trial - Victoria Burke, the therapist who treated Kaley in 2019, told jurors that although she did not make the addiction diagnosis back then, the absence of a formal label did not mean problematic online behavior could not be reflected in other conditions.

Kaley is no longer being treated by Burke.

"Not only did I not diagnose her with it ... there is no social media diagnosis in the DSM [Diagnostic and Statistical Manual of Mental Disorders]," Burke said, explaining that clinicians instead document symptoms under recognized disorders.

During Burke's 2019 treatment of Kaley, the therapist said, she initially diagnosed "generalized anxiety disorder," but later revised that assessment to "social phobia" and "body dysmorphia." She said the change reflected a clearer picture of the then-teen's symptoms, including persistent fears of being judged by peers at school and a fixation on perceived physical flaws.

Burke described Kaley as reporting anxiety in social settings, worrying about being "observed and ridiculed," and responding by hiding at lunch and during breaks to avoid interaction. At times, Burke said, Kaley told her she arrived at school early and used her phone as a "distraction technique."

Additionally, Burke testified that Kaley engaged in "mirror-checking" roughly 20 times a day and frequently compared herself to others - behavior Burke characterized as "clinically significant" and beyond typical adolescent insecurity.

When asked a standard therapeutic prompt known as the "miracle question" - what life would look like if everything were suddenly better - Burke said Kaley's answers focused entirely on physical appearance. She recalled Kaley saying she would "be pretty," adding that it was "telling" that the responses centered on looks.

Burke also described social media as playing a dual role in Kaley's emotional life. The plaintiff, who was around 13 at the time, maintained an anonymous social media art page, which she described as the place she was "most able to be seen." Burke said the page allowed Kaley to express herself without the face-to-face pressure she experienced at school.

But fluctuations in Kaley's online following appeared to affect her mood, Burke noted. In one session, she recalled that Kaley reported feeling "much better" after regaining followers on the art page. The relationship between social media engagement and her emotional state was "closely related," Burke testified, and appeared to "make or break" Kaley's mood.

At the same time, Burke said online conflict contributed to stress, testifying that Kaley discussed negative comments from peers and concerns about what others were saying about her online. School officials at one point suggested she remove herself from social media to decrease the frequency of bullying, according to Burke's notes shown to jurors.

On cross examination, Covington & Burling LLP partner Andrew Stanner sought to narrow the scope of that testimony. He pressed Burke about her 2019 records, which she agreed contained no reference to addiction, overuse of any social media platform, and did not reflect that social media interfered with therapy sessions.

However, the therapist said that while "I don't think I went to the terms of using social media addiction," she saw where social media could be a "stressor" to Kaley.

"Part of what was in the documentation was wanting to work Kaley away from social media ... a main form of coping ... and validation," Burke said, noting Kaley often used her phone to distract herself from social anxiety at school and sought affirmation through online engagement.

Stanner also pressed the therapist on a deposition she gave last May, in which she testified she had "no opinion" on whether Instagram caused or contributed to Kaley's diagnoses. At Wednesday's hearing, Burke acknowledged her view had evolved, attributing the matter to her having a better understanding of the situation.

"I do believe it was a contributing factor, but I don't believe it was causation," Burke testified. She maintained she has no opinion on whether Instagram or YouTube caused Kaley's anxiety or body image disorder.

Meta's counsel further elicited that Burke has not treated or seen Kaley in seven years, and has not conducted any new evaluation.

Burke acknowledged she recently met with the plaintiff's lawyers and had read news coverage about the case but said that did not influence her testimony on the stand.

At the same time, Burke acknowledged that social media could serve as positive functions for adolescents. She agreed that for Kaley, her art page provided a creative outlet and a space where she felt recognized, particularly at times when she struggled to identify other areas in which she felt confident.

Burke also addressed the then-teen's home life, describing tension between Kaley and her mother, but characterizing the relationship within a "somewhat normative" range for a parent and adolescent. She said she observed the mother acting as a "fierce advocate" for her daughter and never received any report of abuse that would have triggered a mandatory reporting obligation.

#389987

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California Brief

Insight

Client's AI Chats Aren't Privileged. What's the Rule for Counsel?

Feb. 26, 2026, 1:30 AM PST

Greater dangers than hallucinations lurk when white-collar criminal clients turn to artificial intelligence for legal advice rather than their lawyers. In such cases, clients may believe they can use AI to assist in their defense, and that their efforts are protected from disclosure to the prosecution based on the attorney-client and work product privileges.

A Feb. 17 decision by Southern District of New York Judge Jed Rakoff makes exquisitely clear that ain't necessarily so.

In *United States v. Heppner* , Bradley Heppner was charged with defrauding, among others, the publicly traded GWG Holdings, Inc. He allegedly made false representations, causing GWG to enter into undisclosed self-serving transactions with two entities that Heppner himself controlled.

The government seized Heppner's computers and 31 documents memorializing "communications" between Heppner and Claude, a generative AI platform. These documents were created after Heppner was subpoenaed and informed by counsel that he was a government target.

The exchanges were critical because they contained reports outlining defense strategy with potential legal and factual arguments in defense of possible government charges. Effectively, Heppner prepared these reports with assistance by Claude, in anticipation of an indictment.

During oral argument, Heppner's counsel said the reports weren't prepared by him—nor with his blessing, encouragement, or approval. In fact, counsel said he was unaware that Heppner was creating these documents by "communicating" with an AI platform.

In what appears to be a case of first impression, Rakoff outlined the rather narrow parameters of the two doctrines and found that neither the attorney-client privilege nor the work product doctrine applied, so the strategic documents were open to disclosure.

Assuming Rakoff's decision is upheld, its practical implications are immediate.

Counsel must discuss with clients at the outset of representation the client must refrain from conducting AI research independently, even if the client believes such research is critical. This could be a client management challenge as the client may view this advice as uninformed, controlling, or even financially motivated despite the attempt to protect privilege. Foregoing that conversation presents a serious risk for an aggressive client who wants personal involvement in the defense.

Rakoff found that the transmission from client to lawyer of information from a generative AI platform won't revive a waived privilege. The court didn't specifically address whether the privileges would apply if Heppner's counsel created the documents using AI, if counsel had asked Heppner to do so, or if the client had used a secure enterprise AI platform. Those questions will certainly arise in future cases, and, until resolved, confidentiality remains dangerously at risk.

Traditionally, privilege attaches to communications between attorney and client to obtain or provide legal advice intended to be kept confidential. A privileged communication must be just that: a communication between individuals. Claude is not an individual.

Furthermore, Claude's privacy policies expressly warn that the encounter isn't private. This much is clear: When open versions of AI platforms like ChatGPT or Claude are used, the exchanges are never confidential.

So what if an attorney, without the aid of a client, places strategic ideas into an open-source AI program? Will courts find that the program's privacy policies and terms of use override attorney-client and work product protections? Does a closed system cause a different result?

What if Heppner or his lawyer had employed a closed generative AI system, like Microsoft's Copilot? For Heppner, those exchanges still don't qualify as attorney-client communications. For his lawyer, the answer is not so clear because we know that Co-Pilot will indeed train on his data (as open AI systems do), unless the lawyer affirmatively "opts out."

Thus, by affirmatively opting out, counsel may preserve privilege within a closed system like CoPilot. Bear in mind, however, that Microsoft's Privacy Policy nonetheless reserves the right to share stored data "when required by law or to respond to legal process." Thus, Microsoft still will honor subpoenas and yield to search warrants for what the lawyer might have thought was work product.

Additional case law will determine whether courts continue to apply traditional privilege analyses or whether they ultimately recognize, as with cell phone technology, that the sphere of privacy should expand as technology advances so that lawyers can use technology without jeopardizing privilege.

A lesson from Heppner is that it's one thing for a client to blow the two privileges himself, but it's quite another for the lawyer to do so by unknowingly employing AI carelessly. In so doing, counsel may lose both the criminal case and a malpractice suit brought by the client.

The case is United States v. Heppner , 2026 BL 52143, S.D.N.Y., 25 Cr. 503 (JSR), 2/17/26 .

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Where it's been and where it's headed

DJ **dailyjournal.com**/articles/389976

This overview provides practitioners with an overview of important artificial intelligence litigation and anticipates what may be on the horizon. While federal copyright disputes have garnered the most attention, all sorts of novel litigation is waiting in the wings.

I. AI copyright litigation

The most significant challenges to AI development have been lawsuits alleging that AI companies engaged in mass copyright infringement in developing their products. Modern generative AI is developed through "training" large language models (LLMs) by feeding them with vast amounts of data, which the models study and attempt to mimic.

The rightsholders of creative works that were fed into these LLMs for training--among them authors, publishers, visual artists and musicians--have alleged in multiple lawsuits that the AI companies' use of their works as training data infringed their exclusive copyrights. In 2023, book authors sued Meta and Anthropic in the Northern District of California, claiming that their works were illegally pirated and used as training data for these companies' LLMs. *See Bartz v. Anthropic PBC*, 24-CV-05417 (N.D. Cal); *Kadrey v. Meta Platforms, Inc.*, 23-CV-03417 (N.D. Cal). Similar litigation followed shortly thereafter: The New York Times and other news media companies sued Microsoft and OpenAI in the Southern District of New York, alleging similar training-data copyright infringement. *See The New York Times Company v. Microsoft Corp., et al,* 23-CV-11195 (S.D.N.Y.) Disney, Universal and Warner Brothers have sued AI image and video-creation companies for using their copyrighted works for training data and for image/video outputs that infringe their copyrights. And record labels and publishers have sued AI music creation companies with similar claims.

Most of these cases are being actively litigated in the trial courts without significant decisions on the merits regarding whether the defendants engaged in copyright infringement. The notable exceptions are the orders granting summary judgment in favor of Anthropic and Meta in the Northern District of California, where Judges Alsup and Chhabria held that these companies' use of copyrighted books as training data was largely protected by the affirmative defense of fair use.

In those cases, despite evidence that Meta and Anthropic knowingly pirated copies of thousands of books from the internet to train their models, Judge Chhabria in *Kadrey* and Judge Alsup in *Bartz* largely granted the defendants' summary judgment motions because the use of these copyrighted books as training data created a transformative output that did not act as a substitute for the original works. However, Judge Alsup denied a portion of Anthropic's summary judgment motion pertaining to thousands of works that were illegally pirated and stored on Anthropic's servers indefinitely without planned future use as LLM training data. The parties settled the plaintiffs' surviving claims for $1.5 billion. While the plaintiffs in the *Kadrey* case suffered a total defeat on summary judgment, Judge Chhabria signaled to similarly situated plaintiffs that "plaintiffs will often win" these cases and that it is "illegal" in most situations to "feed copyright-protected materials into" LLMs.

While these two district court opinions constitute the vanguard of legal analysis on the use of copyrighted material for LLM training, they will not be the final word. Both opinions were focused narrowly on the facts of those cases, and Judge Chhabria's opinion differed sharply from Judge Alsup's regarding the proper fair use analysis. Other trial court judges in other jurisdictions will undoubtedly provide distinct analyses based on the facts in other cases, as will the courts of appeal and ultimately the Supreme Court. The application of the fair use defense to LLM training will remain a hotly contested legal issue for years to come.

II. The next wave of AI litigation

There are no federal laws or regulations targeting AI development or use in the United States. Instead, there is a patchwork of state laws that regulate AI use in a variety of contexts such as marketing, healthcare and pricing. California is a leader in AI regulation and has passed over 30 new laws that regulate AI usage and development, many of which went into effect on Jan. 1, 2026. While the reach of these laws will be determined in the courts, many of these laws will undoubtedly have an impact on litigation against AI platforms operating in California.

For example, the newly enacted Cal. Civil Code § 1714.46 prohibits a defendant who developed, modified or used artificial intelligence from asserting a defense that the artificial intelligence autonomously caused the harm to the plaintiff. Amendments to Cal. Civil Code § 3344.1 create a new private right of action against creators of unlicensed AI-generated videos or sound recordings that contain the voice, image or likeness of a deceased public figure. The statute provides for damages of the greater of $10,000 or the actual damages suffered by a person controlling the relevant rights, plus attorney's fees. And the new Bus. & Prof. Code § 22601 *et seq*. creates a private right of action if an operator of a realistic companion chatbot platform does not adhere to various notice requirements, including issuing a clear and conspicuous notification indicating that a companion chatbot is artificially generated and not human. The statute provides for damages of the greater of actual damages or $1,000 per violation, plus attorney's fees.

While time will tell exactly how these new laws will be enforced, the constantly evolving AI landscape will provide fertile ground for new lawsuits. The facts developed in the AI-training copyright litigation indicate that these companies are focused on rapid development and competition over compliance, safety, and potential violations of law (i.e., the notorious "move fast and break things" culture).

For example, AI-video creation tools like ByteDance's new application, SeeDance, or OpenAI's Sora2 allow users to create hyper-realistic videos with simple prompts. Almost immediately upon release in late 2025, users of Sora2 began generating videos that included the likeness of public figures both alive and deceased, sometimes in videos that were crude or otherwise inconsistent with the wishes of the public figures or their families. This spawned instant backlash against Sora by public figures or their estates whose likenesses were being used without permission. OpenAI quickly revamped its policies to prohibit the creation of videos that included the likeness of public figures unless the individuals or their estates affirmatively opt-in. But other AI platforms trying to gain an edge on OpenAI may continue to allow users to create videos depicting the likeness of public figures. The dissemination of such videos may expose both the platform and the creator of the video to liability under Cal. Civil Code§§ 3344 & 3344.1 governing the use of public figures' name, image and likeness, as well as other state-law privacy torts.

Further, there have been tragic reports and already some lawsuits alleging wrongful death and a variety of product liability and consumer protection claims against OpenAI in connection with suicides by chatbot users. *See, e.g., Matthew Raine et al vs. OpenAI, Inc.; Shamblin v. OpenAI Inc., et al*. In these cases, the families of young adults and minors that committed suicide detail chilling conversations their loved ones had with bots leading up to the suicides where the bots are isolating the individuals and clearly encouraging and/or providing advice on the method of suicide. There have been no major decisions on the merits regarding the scope of AI platform liability for the chatbots' output and failure to intervene in these scenarios.

While AI is a transformative technology, it is important to ensure that big tech companies developing AI products do so fairly and without endangering users or trampling on the rights of artists, authors and public figures. Lawyers play an important role in ensuring that AI is developed and used safely and within legal bounds, and that individuals are compensated fairly when these companies violate their rights.

#389976

Submit your own column for publication to Diana Bosetti

Amazon refused permission to appeal go-ahead for UK lawsuits from retailers, consumers

reuters.com/sustainability/boards-policy-regulation/amazon-refused-permission-appeal-go-ahead-uk-lawsuits-retailers-consumers-2026-02-26

Reuters February 26, 2026

The Amazon logo is seen at its newly inaugurated office in Bengaluru, India, February 23, 2026, REUTERS/Priyanshu Singh Purchase Licensing Rights , opens new tab

(AMZN.O) , opens new tab on Thursday lost its latest bid to try to throw out two mass lawsuits from retailers and consumers worth up to 4 billion pounds ($5.41 billion) for allegedly abusing its dominant position.
Andreas Stephan, a competition law academic, brought one of the cases on behalf of over 200,000 third-party retailers, worth up to 2.7 billion pounds.

His lawyers allege that Amazon manipulates the "Buy Box" feature on its website to its own advantage and favours products that use Amazon's own logistics centres and delivery network.

Consumer advocate Robert Hammond separately brought a case valued at up to 1.3 billion pounds on behalf of millions of Amazon customers for similar alleged abuses of dominance.

Amazon has previously said the claims are without merit. It had argued the cases should not be certified to proceed, an early step in the proceedings, including because the economic methodology for proving the cases was flawed.

The Competition Appeal Tribunal last year certified both cases on an opt-out basis, meaning members of the claimant class would be part of the case unless they decide otherwise.

Amazon sought permission to appeal against that decision, but the Court of Appeal refused permission on Thursday.

Amazon did not immediately respond to a request for comment.

($1 = 0.7390 pounds)

California Brief

Deep Dive

Privacy Suits Under California Wiretap Law Stand on Shaky Ground

Feb. 26, 2026, 2:00 AM PST

Judges are all over the map on whether the California Invasion of Privacy Act is an appropriate vehicle for consumers to bring certain online privacy claims, leaving defendants unsure about their compliance obligations and attorneys struggling to advise clients.

Consumers allege that tracking pixels from ad-tech giants like Meta Platforms Inc. and Google LLC violate the wiretapping and pen-register provisions of the 1967 law, but defendants argue that the measure instead was intended to combat telephone surveillance and shouldn't apply to routine commercial practices on the internet.

Resolving the open legal issues will likely require legislative action or a definitive appellate court ruling, and could determine whether CIPA litigation dies out or becomes a permanent feature of the legal landscape for website operators.

"It's true we've gotten some decisions that are favorable for the defense side, but there's also a number of courts that have ruled in the other direction," said John Jackson, chair of the cybersecurity litigation group at Jackson Walker LLP. "It's still such a minefield, and it makes it difficult for companies that are targeted to make decisions about whether to fight the claims."

The pressure on defendants to reach settlements in lower-value cases because of the lack of judicial consensus—particularly on those without deep pockets—is enormous, he said.

Turning Tide?

The lawsuits take aim at the use of online tracking tools to collect and use consumer data for targeted advertising, arguing it constitutes illegal wiretapping under CIPA and violates other provisions of the statute.

Recent decisions dismissing CIPA lawsuits are signs the "tide is beginning to turn" against consumers who sue over the tracking tools, said Sophia Mancall-Bitel, a partner with Mayer Brown LLP who focuses on data privacy.

The initial wave of online CIPA lawsuits “pretty much just sailed through” the motion-to-dismiss stage, but are now facing closer scrutiny, she said. “I’ve seen a few cases now where judges say, ‘Hey, wait a second, is this statute really about a type of technology that didn’t exist when it was passed and has become so commonly used on the internet?” she said.

Judge Vince Chhabria of the US District Court for the Northern District of California sounded skeptical in an October 2025 ruling tossing a CIPA lawsuit targeting a health-care provider’s use of Meta’s tracking pixel.

Chhabria took aim at the statutory text, saying it was a “mess from the get-go, but the mess gets bigger and bigger as courts are called on to apply CIPA’s already-obtuse language to new technologies.”

Judge Teresa Beaudet of the Los Angeles Superior Court was equally direct in a December ruling dismissing a lawsuit against Ink America International Group over tracking tools on its website, ruling that the particular CIPA provisions at issue in the lawsuit were “aimed at telephonic-style surveillance, not at the routine operation of commercial websites or analytical software.”

But plaintiffs’ attorney Robert Tauler sees the judicial balance tipping in favor of plaintiffs despite some recent defense wins.

“I think if you just stacked up all the opinions on the scale to see whether CIPA applies to these internet technologies, you’d see that most judges view it favorably to plaintiffs,” he said.

For example, a September 2025 ruling by Los Angeles Superior Court Judge David S. Cunningham III denied Variety Media LLC’s bid to toss a lawsuit under CIPA’s pen-register provisions. He rejected Variety’s argument that those provisions applied only to telephone-based technologies.

Tauler, a founding partner of Tauler Smith LLP, says judges have become more receptive to CIPA lawsuits as they’ve become better informed about web-tracking technology and the privacy harms arising from internet surveillance.

“I think people have had enough, and we’re seeing that in judicial opinions,” he said. “In some cases the fact patterns are so egregious that judges will say, ‘This is totally out of control,’ which creates a willingness among judges to allow cases to proceed.”

Definitive Resolution

A legislative clarification appeared possible during the 2025 session when a bill (SB 690) containing business-friendly CIPA amendments sailed through the state Senate before stalling in the Assembly.

SB 690 would have created a “commercial business purpose” exception to CIPA, allowing website operators to engage in routine online data collection for operational or analytic purposes without risk of liability.

Chhabria didn't weigh in on the policy issue in his ruling, but implored the legislature to "bring CIPA into the modern age and to speak clearly about how the kinds of activities at issue in this case should be treated."

Another fix could come from the California Court of Appeals, which so far has been silent on the application of CIPA to online technologies, said Daniel Taylor, a partner with Musick, Peeler & Garrett LLP with a data-privacy focus.

That court is set to hear Variety's appeal later this spring.

"This is an area that's ripe for appellate review," Taylor said. "At this point, every trial-court judge has been starting from square one without the guidance of a higher court, so without further clarification from the legislature, an appellate ruling would be very significant."

Matthew D. Pearson, a partner at Frankfurt Kurnit Klein & Selz PC, also called for greater clarity.

"Right now I'm hamstrung because of the number of cases that have gone the other way," said Pearson, whose focus is online privacy. "But if the California Court of Appeals comes back and says these technologies don't apply to the internet, it's suddenly a lot easier to make that argument in the cases to come."

Tauler says he remains confident that the courthouse doors aren't about to shut on CIPA claimants.

"It would be strange if they basically left this one to history and said the law applied only to technologies that no longer exist," he said. "And I don't think people who are paying attention are going to be happy if they curtail the ability to police this kind of surveillance."

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US Supreme Court denies GEO Group quick appeal in immigrant detainee labor case

reuters.com/legal/government/us-supreme-court-denies-geo-group-quick-appeal-immigrant-detainee-labor-case-2026-02-25

Daniel Wiessner February 25, 2026

A sign marks the entrance to the Moshannon Valley Processing Center, a former prison repurposed as an immigration detention facility operated by the GEO Group under contract with the U.S.... Purchase Licensing Rights, opens new tab
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Feb 25 (Reuters) - The U.S. Supreme Court ruled on Wednesday that GEO Group cannot immediately appeal a lower court's decision denying the private prison operator governmental immunity in a class action alleging that immigrant detainees were forced to work and paid $1 a day.

The justices in a unanimous decision , opens new tab said the Denver-based 10th U.S. Circuit Court of Appeals correctly found that an order allowing the case to proceed to trial was incremental and could not be appealed until the lawsuit is resolved.
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The issue is technical but significant for federal contractors. The government is generally immune from legal liability arising from its performance of typical governmental functions, and that can extend to contractors in some situations. Wednesday's ruling means contractors who are denied immunity at the trial court level must wait longer for appeals courts to weigh in, prolonging cases.

The lawsuit filed in 2014 in Colorado federal court accuses GEO of engaging in labor trafficking by threatening detainees awaiting civil deportation proceedings at an Aurora, Colorado, facility with solitary confinement if they refused to participate in a work program.

GEO has denied wrongdoing and argued that it is immune from being sued over its work program because it was acting on behalf of the government.

Writing for the Supreme Court, Justice Elena Kagan said that because governmental immunity is a legal defense and not an absolute bar to being sued, the denial of immunity cannot be immediately appealed.

"A valid defense leads to a judgment of non-liability," Kagan wrote. "But it does not allow the defendant to escape the varied rigors and costs of legal proceedings."

Florida-based GEO did not immediately respond to a request for comment.

Jennifer Bennett, who represents the plaintiffs, applauded the ruling in a statement.

“The Supreme Court’s unanimous decision reaffirms a straightforward rule: government contractors like GEO do not qualify for sovereign immunity and must follow the same ‘one case, one appeal’ principle that governs every other litigant," she said.

GEO operates more than a dozen federal civil immigrant detention centers across the country and has faced at least two lawsuits over a work program at a Washington facility. The company has said that work programs at its facilities are voluntary and that federal regulations permitted the company to pay detainees as little as $1 a day to cook, clean, perform repairs, and staff a barber shop and library.
The San Francisco-based 9th U.S. Circuit Court of Appeals in January upheld rulings in separate cases requiring GEO to pay more than $23 million to the state of Washington and hundreds of immigrant detainees in the state for failing to pay the minimum wage to detainees who worked.
The court rejected GEO's claim that it was entitled to immunity, saying the government did not dictate the wages GEO must pay to detainees or require it to operate the work program.

The case is GEO Group v. Menocal, U.S. Supreme Court, No. 24-758.

For GEO: Dominic Draye of Greenberg Traurig

For the plaintiffs: Jennifer Bennett of Gupta Wessler

Read more:

US Supreme Court to review GEO Group's loss in immigrant detainee forced labor case
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GEO Group must pay minimum wage to immigrant detainees, court rules
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News | United States Supreme Court

'Forced Labor' Trial Against ICE Contractor Can Proceed, Supreme Court Says

The Supreme Court refused to throw out a class action from U.S. Immigration and Customs Enforcement detainees who claim that a private contractor forced them to perform work duties in violation of federal and state law.

February 25, 2026 at 02:59 PM By **Jimmy Hoover**

U.S. Immigration and Customs Enforcement (ICE) and Enforcement and Removal Operations (ERO) officers in West Palm Beach, Florida, on Feb. 14, 2025. Credit: USICEGOV via Wikimedia Commons

The U.S. Supreme Court said Wednesday that the private contractor operating a U.S. Immigration and Customs Enforcement facility will have to face trial over allegations that its work policies amounted to forced labor for detainees in violation of state and federal law.

In a unanimous decision, the high court refused a request from The GEO Group, which operates a detention facility in Aurora, Colorado, to scuttle the case on the grounds it was acting under the direction of ICE.

The court said a trial judge's refusal to throw out the case was not appealable because it did not constitute a "final judgment."

According to the federal government, all ICE detention facilities are owned or operated by private contractors.

The GEO Group sought to dismiss the lawsuit based on the Supreme Court's 1940 decision in *Yearsley v. W.A. Ross Construction* that "there is no liability on the part of the contractor for executing [the government's] will."

A federal judge in Colorado denied the company's *Yearsley* motion. The judge said GEO Group's detainee work policies went beyond what was required by its contract with ICE, and that there would need to be a trial to determine whether it was liable under federal and state law.

In her opinion for the court, Justice Elena Kagan wrote that contractors may not make an immediate appeal of a "district court's pretrial order denying *Yearsley* protection."

The Supreme Court has previously recognized that defendants can appeal the denial of an immunity defense prior to final judgment, because someone with immunity should not have to face trial.

But Kagan wrote that a *Yearsley* defense from a contractor—arguing it was acting under the government's orders—is not an immunity defense but a potential "merits" defense.

Therefore, the order refusing to dismiss the case was "interlocutory" and not subject to appeal, the high court held.

"[A]ppellate review of such an order, as of most pretrial rulings, must await completion of the district court’s proceedings," Kagan wrote.

The Supreme Court said the key difference between an immunity defense and a merits defense is that, in the case of the former, it doesn't matter whether the defendant's conduct was legal; he or she still enjoys immunity.

Kagan cited the concept of qualified immunity for police officers, which "shields a defendant even when the claim against him ... even when he violated the law ... so long as the law at that time was not 'clearly established.'"

In contrast, contractors acting under government direction do so "within legal bounds" under *Yearsley*, Kagan wrote. Only when the contractor exceeds those directions does its *Yearsley* protection run out, she added.

"By drawing the line there, *Yearsley* ensures that it will never shield unlawful conduct, in the way that all immunities do," Kagan wrote.

The lawsuit was filed by former detainees at GEO Group's Aurora facility, who claim the contractor used them as sanitation workers to reduce its own overhead. The company's policy required detainees to "keep clean and sanitize all commonly accessible areas of the housing unit, including walls, floors, windows, window ledges, showers, sinks, toilets, tables and chairs," the lawsuit alleges.

Failure to clean triggered escalating discipline, including up to 72 hours in solitary confinement, the suit claims, arguing that a contractor may be held liable for violations of federal prohibitions on forced labor

The plaintiffs also also say the company's $1 daily wage violates Colorado's minimum wage law and amounts to unjust enrichment.

The Supreme Court unanimously affirmed the decision by the U.S. Court of Appeals for the Tenth Circuit rejecting the company's interlocutory appeal.

Justices Clarence Thomas and Samuel Alito Jr. wrote separate opinions Wednesday explaining their views.

Thomas, who joined most of Kagan's opinion and the court's judgment, said he would not have relied on the Supreme Court's doctrine carving out certain non-final orders from the general rule that they are unappealable.

That doctrine "allows judges to create additional exceptions by judicial opinion, which bypasses 'Congress' designation of the rulemaking process as the way to define or refine when a district court ruling is 'final' and when an interlocutory order is appealable,'" Thomas wrote, quoting from a past opinion of his own.

Alito, who joined the court's judgment only, said he would not have grounded the decision in the alleged legality of the defendant's conduct.

Defendants can sometimes appeal non-final orders to "vindicate important constitutional or public-policy interests," he wrote.

Alito added that he concurred in the court's judgment "because deferring appellate review of *Yearsley* rulings until final judgment does not imperil important constitutional or public policy interests."

Dominic Draye of Greenberg Traurig argued the case on behalf of The GEO Group. Jennifer Bennett of Gupta Wessler represented the plaintiffs.

Assistant to the U.S. Solicitor General Sopan Joshi represented the federal government, which supported the plaintiffs' position.

The case is *The GEO Group Inc. v. Alejandro Menocal et al*, No. 24-758.

Litigation

Manage Newsletters

ICE Turned to Billionaires, Asset Managers for Warehouse Jails

Feb. 26, 2026, 3:30 AM PST

Summary by Bloomberg AI

AI Generated

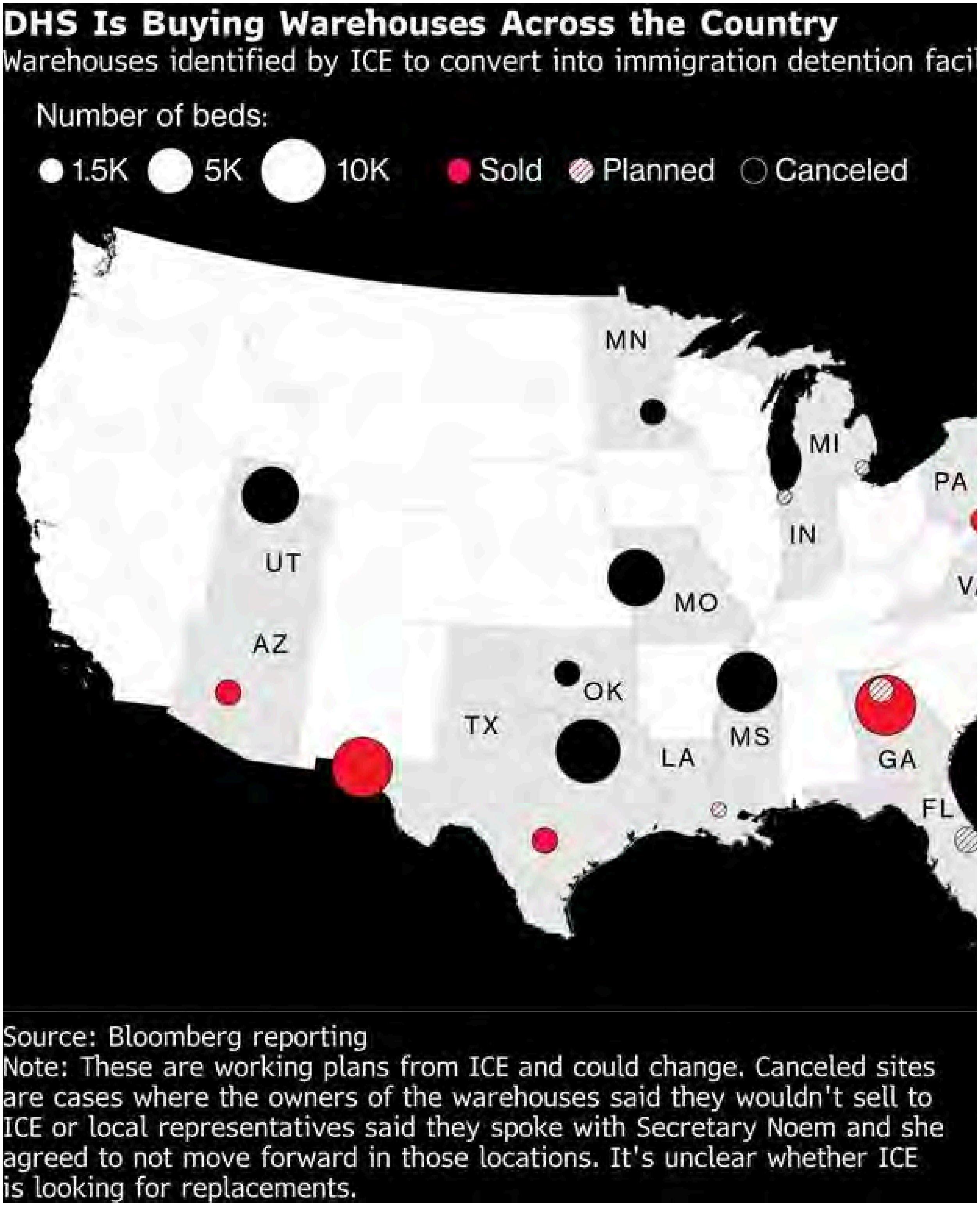
- Immigration and Customs Enforcement is shrinking its network of detention facilities to focus on a small number of large warehouse jails, and has approached sellers to make it happen.
- The Department of Homeland Security expects to spend $38 billion to build its planned government-owned immigration jail network, which would expand the agency's bed capacity to 92,600.
- Several potential sellers have opted not to sell after public pressure and community backlash, but DHS has managed to acquire at least seven locations for roughly $700 million so far.

As Immigration and Customs Enforcement dramatically shrinks its network of detention facilities to focus on a small number of large warehouse jails, it's approached sellers ranging from billionaires to asset managers and commercial real estate giants to make it happen.

Several potential sellers – including companies owned by billionaires Jimmy Pattison and Ed Roski – have opted not to sell after public pressure and community backlash. Republican officials in states like New Hampshire and Mississippi said plans there were scrapped after speaking with Department of Homeland Security Secretary Kristi Noem . Despite the opposition, DHS has managed to acquire at least seven locations for roughly $700 million so far.

That's only the start of what could be a historic and expensive transformation. In the "Detention Reengineering Initiative" made public earlier this month, DHS said it expects to spend $38 billion to build its planned government-owned immigration jail network. Earlier this month, officials in Social Circle, Georgia, said administration officials told them ICE would reduce its roster of detention facilities from more than 200 across the country to just 34. Many of the sites the agency is planning to use are currently empty industrial warehouses .

The initiative would expand the agency's bed capacity to 92,600. If completed as envisioned, the largest of those facilities could detain as many as 10,000 people — double the size of ICE's plans for what's currently the biggest immigration jail in the country, a tent camp in El Paso, Texas.



Read More: ICE Begins Buying 'Mega' Warehouse Detention Centers Across US

DHS representatives didn't respond to a request for comment for this story but an ICE spokesperson said in an earlier statement that it has "worked diligently to obtain greater detention space including purchasing new properties." The spokesperson added that the warehouses will be "well-structured detention facilities meeting our regular detention standards."

Now, the process is well underway to award contracts to the private companies that will transform and operate these warehouses as jails. Two of the companies in the running are Disaster Management Group and Amentum , according to two people familiar with the confidential process who asked not to be named discussing private matters. Last year, DMG and Amentum were part of the team that was awarded the roughly $1.3 billion contract to build the El Paso tent camp.

Another company fighting for the contracts is called SK2, the people said. In November, SK2 was part of a joint venture that won a $29.9 million contract for "due diligence services and concept design" related to the warehouse jail plans. SK2 co-founder Steven Kelley declined to comment, citing a non-disclosure agreement. Representatives for DMG and Amentum didn't respond to requests for comment.

Two major private prison operators who've been longtime partners of ICE, GEO Group Inc. and CoreCivic Inc. , have also indicated interest. In an earnings call earlier this month, GEO Group founder George Zoley said the company is "cautiously participating" in ICE's warehouse plans and that it has a relationship with one of the companies eligible to bid on the contracts to operate the sites.

CoreCivic spokesperson Ryan Gustin said the company has partnered with ICE for more than four decades and that they "remain committed to supporting the federal government's goals in ways that align with our mission and expertise."

Watch: The Rise of America's ICE Towns

As the process largely plays out behind closed doors, the prospect of new ICE jails has at times led to protests and backlash in the communities selected for a facility. In many cases the plans have been met with confusion, exacerbated by the fact that ICE has made some erroneous statements on where it has purchased facilities, later retracting claims. Emails and phone calls to all the sellers named in this story requesting comment weren't returned.

Here's where Bloomberg has confirmed sales to the agency with deed filings:

13290 W Sweetwater Ave., Surprise, Ariz.
Photo Illustration by 731; Photo: CBRE/Rockefeller Group

Arizona

Location: 13290 W Sweetwater Ave., Surprise, Arizona
Seller: Rockefeller Group
Sale Price: $70 million

Footprint: 418,400 square feet
Planned beds: 1,500

In late January, DHS spent $70 million on this Arizona property with plans to convert it into a 1,500-bed processing center, according to ICE records seen by Bloomberg — one of the smaller warehouse complexes in ICE's plans. Still, if filled, it would significantly increase the population of people detained in Maricopa County, which already has the fourth-largest county jail system in the country with an average daily population of 6,727 people in fiscal year 2025.

1365 E Hightower Trail, Social Circle, Ga.
Photo Illustration by 731; Photo: PNK Group

Georgia

Location: 1365 E Hightower Trail, Social Circle, Georgia
Seller: PNK Group
Sale Price: $128.6 million

Footprint: 1,013,902 square feet
Planned beds: 8,500

The plan for an 8,500-bed detention center in the 5,000-person town of Social Circle has generated immense local pushback. "Although I am aligned with the mission of ICE," Republican Congressman Mike Collins said earlier this month on Facebook, "I agree with the community that Social Circle does not have the sufficient resources that this facility would require."

A chief concern among residents and local leaders is the city's water and sewage capacity. Even when it was an empty warehouse, the previous owner, PNK Group, was among the city's top 10 water customers, consuming more than 1 million gallons in fiscal year 2025, according to a municipal filing from December. That demand would dramatically increase under ICE's plans: Estimates suggest that one person detained in a correctional facility uses around 120 gallons of water per day. Depending on the design of the facility, that means if ICE fills even half the beds it's planning, it could consume 186 million gallons of water for the year – more than half of what the city is permitted to pull out of the Alcovy River.

“It would require more water than we have available to send them,” said Kenny Green, the consulting engineer for Social Circle. He suggested ICE would have to use trucks to bring water in and sewage out. A spokesperson for ICE said it conducts “community impact studies and a rigorous due diligence process to make sure there is no hardship on local utilities or infrastructure prior to purchase.”

Maryland

Location: 16220 Wright Road, Williamsport, Maryland
Seller: Fundrise REIT
Sale Price: $102 million

Footprint: 825,620 square feet
Planned beds: 1,500

When a Washington, DC-area developer broke ground on this site in 2021, the project was touted as one that would bring jobs and economic growth to the western Maryland region as an e-commerce, logistics and distribution center. Instead, the facility will be used as a 1,500-bed immigration jail.

A real estate investment trust affiliated with Fundrise, an investment platform catering to retail clients, sold the facility to ICE in mid-January for $102 million — roughly $2 million less than it paid for it in 2022. Fundrise said its goal is “to use technology to make high-quality real estate investments available to everyone at a low cost.”

On Feb. 23, Maryland Attorney General Anthony Brown filed a lawsuit seeking to block construction of the facility, arguing that the federal government didn’t conduct a required environmental review and didn’t seek public input for the project. The suit came after the Washington County board of commissioners unanimously passed a resolution that expressed full support for the facility.

3501 Mountain Road, Hamburg, Pa.
Photo Illustration by 731; Photo: JLL/PCCP

Pennsylvania

Location: 3501 Mountain Road, Hamburg, Pennsylvania
Seller: PCCP LLC
Sale Price: $87.4 million

Footprint: 518,284 square feet
Planned beds: 1,500

In late January, PCCP, a commercial-property investment manager with offices in Los Angeles and New York, sold a Pennsylvania warehouse to ICE. The federal government paid $87.4 million for the facility, a little over a year after the real estate company bought it for $57.5 million.

Along with the Tremont warehouse located about a 30-minute drive to the west, where ICE is planning another facility, the two Pennsylvania municipalities are facing more than $1.6 million in lost local tax revenue as a result of the sales to the federal government, according to a letter from Senator John Fetterman. That's because federally owned sites are exempt from paying local taxes.

50 Rausch Creek Road, Tremont, Pa.
Photo Illustration by 731; Photo: Binswanger

Location: 50 Rausch Creek Road, Tremont, Pennsylvania
Seller: Blue Owl Capital
Sale Price: $119.5 million
Footprint: 1,295,000 square feet
Planned beds: 7,500

In January, a fund managed by global alternative asset manager Blue Owl Capital sold DHS a 1.3-million-square-foot warehouse that had been a Big Lots distribution center. As with some of the other locations, the facility stands to have a big impact if it's connected to Schuylkill County's water and sewer infrastructure.

In 2020, three of the five largest water users in the county were correctional institutions, according to a bond document. The state prison, Mahanoy, was the second biggest customer, accounting for 113 million gallons that year. That prison has capacity for roughly 2,500 people, while the federal government wants to detain 7,500 people in the Tremont facility. In a February letter to Noem, Pennsylvania Governor Josh Shapiro and local officials said the two proposed facilities in the state would "jeopardize the health and safety of Pennsylvanians who live nearby."

1465-1485 Eastwind Ave., Socorro, Texas
Photo Illustration by 731; Photo: CBRE/Flint Development

Texas

Location: 1465-1485 Eastwind Ave., Socorro, Texas
Seller: Flint Development
Sale Price: $123 million

Footprint: More than 820,000 square feet across three warehouses

Planned beds: 8,500

Two years ago, this plot of Texas land less than 10 miles from the US-Mexico border was little more than desert. Now, ICE is planning to turn three industrial warehouses into a “mega” detention complex with 8,500 beds.

If completed as envisioned, it would be larger than the biggest ICE detention facility in the country, which is also in El Paso County. The nearby Camp East Montana, a tent detention camp that holds nearly 3,000 people on a daily basis, has been fraught with allegations of poor conditions and mistreatment. From December to mid-January, three people died while being detained there. ICE has denied allegations of abuse.

Flint Development, which launched in 2020 and specializes in developing industrial space, is also the owner of a 416,000-square-foot warehouse in Oklahoma City that ICE planned to turn into a processing center. Last month , Oklahoma City Mayor David Holt said the owners of the site told him they were canceling the sale.

542 SE Loop 410, San Antonio, Texas
Photo Illustration by 731; Photo: Oakmont Industrial Group/Partners Real Estate

Location: 542 SE Loop 410, San Antonio, Texas
Seller: Oakmont Industrial Group
Sale Price: $66.1 million

Footprint: 639,595 square feet
Planned beds: 1,500

Atlanta-based Oakmont Industrial Group, which specializes in investing in and developing industrial properties, sold this facility to ICE for $66.1 million in February. The warehouse faces an elementary school and apartment complex in the far eastern reaches of San Antonio.

ICE plans to convert this warehouse into an immigration detention center that could hold up to 1,500 people. US Representative Tony Gonzales, who represents parts of San Antonio and El Paso, said the facility could be a job creator for people in the city. It's an assertion that local officials called "insulting," according to Texas Public Radio.

The city council is looking at options to stop the federal government from moving forward with its plans.

--With assistance from Elena Mejía , Natalie Wong , Martin Z Braun and Alicia A. Caldwell .

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Court holds that U.S. Postal Service can’t be sued over intentionally misdelivered mail

scotusblog.com/2026/02/court-holds-that-u-s-postal-service-cant-be-sued-over-intentionally-misdelivered-mail

Kelsey Dallas February 24, 2026

Opinion Analysis

(Mandel Ngan/AFP via Getty Images)

A divided Supreme Court sided with the federal government on Tuesday in *U.S. Postal Service v. Konan*, a dispute over mishandled mail. Writing for a 5-4 majority, Justice Clarence Thomas explained that a law protecting the U.S. Postal Service from lawsuits over lost or miscarried mail bars lawsuits over mail that was intentionally misdelivered.

Justice Sonia Sotomayor wrote a dissenting opinion, joined by Justices Elena Kagan, Neil Gorsuch, and Ketanji Brown Jackson, in which she argued that the majority opinion provided the U.S. Postal Service far more protection from lawsuits than Congress had intended to give it. “It is not the role of the Judiciary to supplant the choice Congress made because it would have chosen differently,” she wrote.

The case emerged from a conflict between a landlord and postal workers in Euless, Texas. The landlord, Lebene Konan, spent years fighting to have her mail and mail belonging to her tenants delivered to a shared mailbox, but postal workers regularly held it at the post office or returned it to the sender, contending that Konan had not met identification requirements for all addressees.

Ultimately, Konan sued the U.S. Postal Service, two postal workers, and the United States, for, among other things, infliction of emotional distress and business interference, arguing that she was a victim of racial discrimination and that the mail delivery drama had made it more difficult for her to find and keep tenants. The Supreme Court case addressed only her claims against the U.S. Postal Service and United States under the Federal Tort Claims Act, which outlines the circumstances in which the federal government can be sued for damages.

Specifically, the justices were asked to resolve a disagreement between the federal courts of appeals over the scope of the FTCA’s postal exception, which protects the government from suits “arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.” The government contended that the postal exception bars Konan’s claims, because intentional nondelivery of mail is a form of “loss” or “miscarriage.” Konan, on the other hand, argued that the postal exception doesn’t cover intentional acts.

On Tuesday, the court sided with the government, holding that an intentional failure to deliver the mail falls within the FTCA’s postal exception. The ordinary meanings of both “miscarriage” and “loss” point the court to this conclusion, wrote Thomas in the majority opinion. “Because a ‘miscarriage’ includes any failure of mail to arrive properly, a person experiences a miscarriage of mail when his mail is delivered to his neighbor, held at the post office, or returned to the sender—regardless of why it happened," he wrote. Similarly, "[w]hen Congress enacted the FTCA, the 'loss' of mail ordinarily meant a deprivation of mail, regardless of how the deprivation was brought about."

Thomas also briefly described the scope of the U.S. Postal Service's work, noting that the postal exception was designed to ensure that the government would not face an endless stream of lawsuits over inevitable mail-delivery issues. "In 2024, the Postal Service's more than 600,000 employees delivered more than 112 billion pieces of mail—over 300 million a day—to more than 165 million delivery points. Unsurprisingly, given this volume, not all mail arrives properly and on time," he wrote.

In her dissenting opinion, Sotomayor rejected the majority's interpretation of "loss" and "miscarriage," contending that its "reading of the postal exception transforms, rather than honors, the exception Congress enacted." Congress could have made it clear that the postal exception was broad, Sotomayor wrote, but, instead, it isolated specific forms of misconduct: "loss," miscarriage," and "negligent transmission." "By using 'specificity' over 'generality,' it follows that Congress intended for this exception" to be limited in scope.

The majority's interpretation of "loss" and "miscarriage," Sotomayor continued, is at odds with how those terms are commonly used. "People lose their mail when it gets stuck behind a drawer, not when they intentionally throw it away. … The same is true when the Postal Service loses someone's mail. The reason is an error, not deliberate wrongdoing," she wrote.

Sotomayor concluded by challenging the majority's characterization of what was at stake in the case. "Contrary to the majority's suggestion otherwise, adhering to the text Congress enacted would not flood the Government or courts with frivolous lawsuits." And "even if ruling for Konan today would mean more suits against the Government for mail-related intentional torts tomorrow, that would not provide this Court with authority to change the text Congress enacted."

Posted in Court News, Merits Cases

Cases: United States Postal Service v. Konan

Recommended Citation:*Court holds that U.S. Postal Service can't be sued over intentionally misdelivered mail*, SCOTUSblog (Feb. 24, 2026, 2:30 PM), https://www.scotusblog.com/2026/02/court-holds-that-u-s-postal-service-cant-be-sued-over-intentionally-misdelivered-mail/

This Plaintiffs' Lawyer Took 'Creative Lawyering' Way Too Literally

abovethelaw.com/2026/02/this-plaintiffs-lawyer-took-creative-lawyering-way-too-literally

Kathryn Rubino February 26, 2026

The plaintiffs' bar spends a lot of time reminding the world that it exists to hold bad actors accountable. Which is why the plea struck by former Motley Rice attorney William Christopher Swett lands with a particularly sour thud.

Federal prosecutors say Swett didn't just cut corners or play fast and loose with billing. Instead, from at least 2018 through March 2024, he allegedly ran a multi-year fraud scheme that involved fake companies, fake clients, fake claims, and very real money — at least $1.5 million of it — siphoned from his own firm and the clients he was supposed to be representing.

According to charging documents filed by Assistant U.S. Attorney Emily Limehouse, Swett allegedly "knowingly devised a scheme and artifice to defraud the law firm and his clients" using (what else) false representations, fraudulent pretenses, and a whole lot of creativity that would have been better applied to literally anything (legal).

To further the scheme, Swett allegedly created multiple legal services companies that were designed to appear legitimate. He then allegedly expensed Motley Rice and his clients for services that were never performed, padded invoices with inflated and illegitimate expenses, and, crucially, failed to disclose that he had a financial interest in the companies receiving the money.

You know. Minor details.

Federal prosecutors say Swett didn't stop there. He allegedly submitted reimbursement requests for fake clients, fabricated death and personal injury claims, and even falsified medical records and other documents to keep the fraud going.

"To conceal his crimes, Swett laundered the funds through accounts he controlled and siphoned the money for his own personal enrichment," the prosecutor's office said. "Swett fraudulently obtained at least $1.5 million."

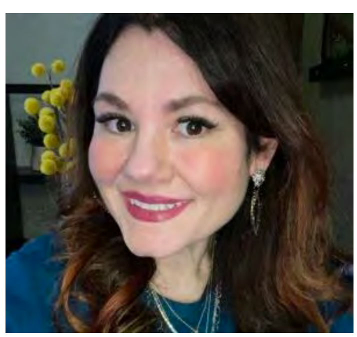
The plea agreement covers eight felony counts total, each carrying a maximum penalty of 20 years in federal prison, along with potential fines of up to $250,000.

Swett's attorney, Nathan Williams, offered the familiar mitigation framework, saying Swett had "for a long time" struggled with "personal challenges" and had made "poor and regretful decisions." Williams emphasized that Swett "has made significant changes in his life" and that the plea agreement reflects an effort to show accountability.

Williams added that he hopes the judge will eventually hear "the full explanation for the circumstances of the case," likely at sentencing.

As for Motley Rice, the firm issued a succinct statement through a spokesperson, "We await the next steps in this criminal prosecution regarding this former employee."

Which is about as restrained as you can be when one of your former lawyers allegedly spent years running a private fraud operation while holding himself out as a champion for plaintiffs.



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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Jury Convicts SCOTUSblog Founder Tom Goldstein in Criminal Tax Fraud Trial

Tom Goldstein, 55, faces a potential years-long prison sentence after a jury returned a verdict finding him guilty on 12 of the 16 counts in the operative indictment.

February 25, 2026 at 06:35 PM By Sulaiman Abdur-Rahman

Thomas Goldstein. Photo: Diego M. Radzinschi/ALM

A federal trial jury in Maryland has convicted SCOTUSblog founder and appellate attorney Tom Goldstein on most counts in his white-collar criminal jury trial.

Goldstein, 55, faces a potential years-long prison sentence after a jury returned a verdict Wednesday finding him guilty on 12 of the 16 counts in the operative indictment charging him with tax crimes and mortgage fraud.

Goldstein, an appellate attorney who has argued more than 40 cases before the U.S. Supreme Court, pleaded not guilty to all counts and denied any criminal wrongdoing when he testified Feb. 11 in his own defense—a risk that exposed Goldstein to a grueling cross-examination.

Sean Beaty, a senior litigation counsel at the U.S. Department of Justice's Tax Division, highlighted Goldstein's excessive spending and high-stakes poker lifestyle during cross-examination of the defendant.

Federal prosecutors alleged Goldstein committed tax evasion, filed fraudulent tax returns, willfully failed to pay taxes, defrauded mortgage lenders, and accumulated large gambling debts between the years 2016 and 2022.

The Justice Department and U.S. Attorney's Office for the District of Maryland alleged Goldstein failed to report his gambling losses when he and his wife, Amy Howe, submitted joint applications to a mortgage lender in 2021 to buy a home in Washington, D.C.

The government also alleged Goldstein diverted legal fees owed to his now-defunct Goldstein & Russell law firm to repay millions of dollars in personal gambling debts.

Munger, Tolles & Olson criminal defense attorneys Jonathan Kravis, Stephany Reaves, Sarah Weiner and Adeel Mohammadi represented Goldstein in the jury trial. U.S. District Judge Lydia Kay Griggsby of the District of Maryland presided over the trial.

The trial began in mid-January, about one year after a federal grand jury handed up an indictment charging Goldstein with numerous white-collar criminal offenses.

A unanimous jury on Wednesday found Goldstein guilty of mortgage fraud and multiple tax crimes but acquitted him on four counts of aiding and assisting in the preparation of a false tax return.

Goldstein's criminal defense and a spokesperson for federal prosecutors did not immediately respond to requests for comment.

Editors' Note: This story has been updated to reflect further details of the jury verdict.

The Brief – Top News of the Day From Bloomberg Law

Goldstein's Mixed Verdict Destined for Post-Conviction Attacks

Feb. 26, 2026, 10:50 AM PST

Tom Goldstein, the well-known US Supreme Court advocate turned ultra high-stakes poker player, has been found guilty of dodging his taxes and lying to lenders about gambling-related debts.

But the battle didn't end with the verdict in the six-week trial in Greenbelt, Md. Goldstein is a seasoned appellate attorney, after all, and his lawyers from Munger Tolles & Olson LLP developed a robust record of objections to work with if and when he challenges his convictions.

The jury found Goldstein guilty of four counts of assisting preparation of a false tax return and innocent on four others, even though some of those charges covered interrelated returns. There are also potential issues surrounding jury instructions, the government's reliance on evidence about Goldstein's spending and lifestyle, and an issue Goldstein raised during his trial testimony—whether charges on the loan fraud counts were brought in the proper district. Faulty instructions on venue have upset loan fraud convictions in this district before.

"Jury instructions are always issue number one," said white collar defense lawyer and former federal prosecutor Scott Armstrong. A faulty instruction on a critical issue is close to an automatic reversal, especially if the instruction bleeds into more than one count, he said.

Goldstein was convicted on the one and only count of tax evasion, all three counts of making a false statement on a loan application, and all four counts of willful failure to pay taxes on time, in addition to four of the eight counts of assisting in the preparation of a false tax return. The case revolved around poker matches in which Goldstein competed against celebrities and billionaires, winning and losing millions of dollars at a time.

He faces a maximum of 30 years on each false statement count. He also faces a maximum sentence of five years' imprisonment for tax evasion, three years for each count of assisting in the preparation of false tax returns, and one year on each count of willful failure to pay taxes.

The government's motion to dismiss several tax evasion counts on the eve of trial, and the judge's decision to exclude certain allegations that Goldstein put several paramours on his law firm's payroll "loom really large" now, said Sloan Speck, an associate professor at the University of Colorado Law School.

“At the time, Goldstein argued that dismissing the evasion charges might disadvantage him, but given the jury’s findings, I do think it looks like a positive thing that those other charges were dismissed,” Speck said.

Issue Spotting

It’s not surprising that jurors reached a mixed verdict. But the manner in which the jury came down is among the issues that could create fodder for an appeal, said Fox Rothschild partner Andrew Bernstein.

For 2017, for example, Goldstein was found guilty of assisting in the preparation of a false tax return for his law firm, but not guilty of assisting in the preparation of his personal tax return, even though income stated for his law firm flowed through to this personal return.

Still, it’s tough to show on appeal that a verdict is too fundamentally inconsistent to stand, Armstrong said.

“It requires parsing what the jury did or didn’t do,” Armstrong said. “Courts are generally loath to do that.”

Goldstein might also challenge the government’s reliance on lifestyle evidence, according to Bernstein.

Showing how someone decided to spend their money can hit like a “ton of bricks,” Bernstein said. Although it’s generally permissible insofar as it’s relevant, it can be cumulative and prejudicial.

Sending a Message

Speck said he didn’t see much evidence that Goldstein willfully tried to evade taxes.

“I guess I was a little surprised that what looked to be an extraordinary mess in terms of compliance rose to a criminal level,” he said.

Proving tax evasion requires the government to prove some affirmative act of evasion. The defense asked for a special verdict form that would have required the jury to indicate which affirmative act or acts they relied on in finding him guilty but didn’t get it. As a result, the particular affirmative act the jurors unanimously found is a mystery.

Speck also found it interesting that Goldstein came across to him as sympathetic.

Goldstein almost certainly lost significant money gambling, as he told the jury he did, and he did eventually pay his taxes, Speck said.

“Maybe I’m too soft, or too compassionate, but if that’s where we’re drawing the line for criminality...” Speck said.

Criminal tax cases are often about messaging to encourage people to voluntarily comply with tax reporting requirements. So Speck’s big question is who might be the intended recipient of the messaging.

"I wonder if it's to crack open the world of high-stakes gambling—to encourage them to shape up and do a better job on the compliance end," he said. "Maybe that world needs to do a better job."

The case is United States v. Goldstein, D. Md., No. 8:25-cr-00006, 2/26/26 .

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https://www.wsj.com/us-news/law/former-star-supreme-court-lawyer-convicted-of-tax-violations-ebfcd354

U.S. | LAW

Former Star Supreme Court Lawyer Convicted of Tax Violations

Prosecutors alleged Thomas Goldstein, co-founder of SCOTUSblog, evaded taxes from his double life in high-stakes poker

By *C. Ryan Barber* Follow

Feb. 25, 2026 5:57 pm ET

Tom Goldstein arriving at U.S. District Court in Greenbelt, Md., last month. LEAH MILLIS/REUTERS

Quick Summary

- A federal jury convicted once-prominent Supreme Court lawyer Thomas Goldstein on 12 of 16 counts of tax and mortgage fraud.
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GREENBELT, Md.—A federal jury convicted the once-prominent Supreme Court lawyer Thomas Goldstein of tax and mortgage fraud charges on Wednesday, capping a six-week trial that delved into his double life as a high-stakes poker player.

Goldstein argued more than 40 cases at the high court and was co-founder of SCOTUSblog, a digital publication devoted to the high court that is widely read by legal practitioners and enthusiasts. He broke into the club of top appellate lawyers with an entrepreneurial approach that set him apart from attorneys who leveraged Ivy League degrees, clerkships and prestigious Justice Department posts into star roles at elite firms. He aggressively screened for cases that carried promise for Supreme Court review, then courted the litigants involved, sometimes offering to take their cases for free.

But as Goldstein's star rose in the legal world, so did his interest in poker, eventually leading him to games where the stakes at times reached millions of dollars. It also led to scrutiny from federal prosecutors, who brought charges in early 2025, alleging he engaged in a yearslong tax evasion scheme.

Jurors convicted Goldstein on 12 of the 16 counts against him, including tax evasion, willful failure to timely pay taxes and lying to mortgage lenders.

Prosecutors at trial painted Goldstein as a serial liar who misled everyone around him to evade taxes and to conceal his gambling debts. They also nodded at his storied legal career, calling him "probably the smartest person in this courtroom."

"Smart people generally don't document their tax evasion. They hide their tax evasion in the tall grass," Justice Department lawyer Sean Beaty told jurors. "The crime here is the concealment."

Beaty said Goldstein raked in about $50 million from poker in 2016 alone, including roughly $22 million won playing in Asia that was "all off-the-books offshore," in what he called a "textbook tax evasion scheme" that was executed "nearly flawlessly."

Goldstein, who retired from his law practice in 2023, made another gamble at trial: taking the witness stand to testify in his own defense.

Under questioning from his lawyer, Goldstein denied knowingly dodging taxes or intentionally breaking the law. Asked if he had a sense of his performance as a poker player, Goldstein answered, "Unfortunately," before estimating that he lost about $10 million through the peaks and valleys of high-stakes games over the years.

While he admitted to leaving gambling debts off mortgage applications, he testified that he did so only to conceal them from his wife.

Goldstein said he disliked handling tax and other financial matters, so he relied on office managers and accountants. He recalled being drawn to poker because it required problem solving and sizing up the strengths of one's own position against the opponent's.

"It's a weirdly intellectual thing," he testified.

His poker playing intensified from casual games around the office to high-stakes matches following a pulmonary embolism that nearly killed him, Goldstein said. The experience gave him a sense of "you only live once" and to live life to the fullest, Goldstein said, driving him deeper into a world where players risked fortunes and trusted one another to pay millions of dollars in debts without formal, written agreements.

"I may have overcooked it a little bit," he said.

Trial testimony provided a window into the rarefied world of high-stakes poker, with jurors hearing of gamblers in Asia who went by the names "Chairman" and "Tango." Witnesses included prominent poker player Andrew Robl, who testified about coaching and financially backing Goldstein for head-to-head matches, and wealthy past opponents such as the billionaire Alec Gores and California real-estate mogul Bob Safai.

Also testifying was actor Tobey Maguire, another avid poker player who enlisted Goldstein's help in recovering a gambling debt from a billionaire.

Ryan Barber is a reporter in The Wall Street Journal's Washington, D.C. bureau, where he covers the Justice Department and legal affairs. Prior to joining the Journal, Ryan reported on the Justice Department and federal law enforcement for Insider and the National Law Journal....

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Prosecutors Seek to Jail Tom Goldstein While Awaiting Sentencing

Feb. 26, 2026, 8:24 AM PST

The government Thursday said it wants to jail renowned US Supreme Court litigator and SCOTUSBlog co-founder Tom Goldstein while he awaits sentencing on tax and false statements charges.

The prosecution advised Judge Lydia Kay Griggsby, who is presiding over the case in the US District Court for the District of Maryland, that it intends to seek detention today. It didn't specify why. Griggsby said she will deal with the request later this afternoon.

The jury was called back Thursday morning to decide whether his Washington DC home was derived from proceeds of making a false statement on a loan application. They have yet to return a verdict.

Goldstein was convicted Wednesday following a six-week trial featuring a day and a half of testimony in his own defense. He was found guilty on one count of tax evasion, one count each of willful failure to timely pay taxes for four tax years, three counts of making a false statement on a loan application, and four counts of aiding and assisting in preparation of a false tax return.

He faces a maximum of 30 years on each false statement count. He also faces a maximum sentence of five years' imprisonment for tax evasion, three years for each count of assisting in the preparation of false tax returns, and one year on each count of willful failure to pay taxes.

The case is United States v. Goldstein, D. Md., No. 8:25-cr-00006, 2/26/26 .

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Prominent Washington lawyer Tom Goldstein convicted at tax trial

reuters.com/legal/government/prominent-washington-lawyer-tom-goldstein-convicted-tax-trial-2026-02-25

Mike Scarcella February 25, 2026

Tom Goldstein, a top U.S. Supreme Court attorney and former publisher of the SCOTUS blog news website arrives for jury selection in his trial on charges of tax fraud, at U.S. District Court in Greenbelt, Maryland, U.S., January 13, 2026. REUTERS/Leah Millis/File Photo Purchase Licensing Rights, opens new tab

- Summary

- Goldstein convicted on 12 of 16 criminal counts
- Goldstein argued more than 40 cases at US Supreme Court
- His seven-week trial was held in Greenbelt, Maryland

WASHINGTON, Feb 25 (Reuters) - A U.S. jury on Wednesday convicted prominent Washington lawyer Thomas Goldstein of tax and financial crimes tied to his side career as a high-stakes poker player, a stunning fall for a man who was one of the top U.S. appellate attorneys and often argued cases at the Supreme Court.
The 12-person jury announced the verdict on the third day of deliberations after seven weeks of a trial in the Washington suburb of Greenbelt, Maryland. Goldstein was indicted last year after federal prosecutors accused him of failing to report millions of dollars in poker winnings, lying on mortgage loan documents and making improper payments through his former law firm Goldstein & Russell.

The jury found Goldstein guilty of 12 of the 16 counts he faced, acquitting him of some charges of aiding and assisting in the preparation of false tax returns.

Goldstein and a lead prosecutor in the case, Adeyemi Adenrele, declined to comment after the trial.

Prosecutors have not said what sentence they will seek for Goldstein. He faces a maximum prison term of five years for tax evasion, up to 30 years for his alleged false statements to mortgage lenders, and additional potential prison time for assisting in the preparation of false tax returns and willful failure to pay taxes. Judges are not required to adhere to sentencing guidelines.

STAR LAWYER JUGGLED BIG-STAKES POKER

Goldstein argued more than 40 cases at the Supreme Court and co-founded the legal news website SCOTUSblog, rising to become a star of the elite Supreme Court bar before retiring from his practice in 2023.

His indictment surprised Washington's legal community, and the trial revealed the depth of his involvement in the big-money global poker circuit. Prosecutors said Goldstein won more than $26 million in a single series of matches in late 2016, and accused him of illegally concealing poker winnings and debts on financial documents.

The central issue for the jury was whether Goldstein willfully violated federal tax and mortgage laws. He pleaded not guilty and blamed any financial reporting errors on an overreliance on his advisers and accountants.

Testifying in his own defense at trial, Goldstein told jurors he should have paid more attention to his tax returns and to his law firm's finances but said he did not intentionally violate any laws.

"The mistakes, responsibility for those tax years is mine. I may end up continuing to pay for this for a long time," Goldstein testified. "That's my responsibility. It's just very different from whether I committed a crime."

Prosecutors described him as a meticulous lawyer who was well aware of his duty to disclose his gambling winnings and losses.

Sean Beaty, a lead prosecutor who questioned Goldstein on the witness stand, portrayed him as a liar who deceived his wife and others about the scope of his poker activities.

Beaty detailed for jurors Goldstein's lavish spending on expensive watches, cars and apartments. "Poker. Travel. Cars. Watches. All while you owed millions of dollars to the IRS," Beaty said.

Goldstein testified that he had regrets about his priorities but said his personal spending on property while he owed taxes was not illegal.

Among the witnesses who testified during the trial was actor Tobey Maguire, who starred in 2002's "Spider-Man" and other films. Maguire, who is not accused of wrongdoing, told jurors he hired Goldstein in 2020 to try to recover more than $7 million that a Texas businessman allegedly owed the actor in a poker debt.

Goldstein's legal work helped Maguire recover the money. Maguire testified that Goldstein had him route his $500,000 legal fee to a third party rather than pay it directly to him.

The original indictment included allegations involving payments to women with whom Goldstein was having extramarital relationships, but the judge later threw out a charge relating to those claims.

Reporting by Mike Scarcella; Editing by David Bario and Will Dunham

Our Standards: [The Thomson Reuters Trust Principles., opens new tab]

Securities

Goldstein Convicted on 12 of 16 Criminal Counts After Trial (2)

Feb. 25, 2026, 2:11 PM PST; Updated: Feb. 25, 2026, 2:52 PM PST

Poker-playing former US Supreme Court litigator Tom Goldstein has been found guilty of 12 of 16 counts following a six week trial in Maryland.

Jurors returned their verdict late on Wednesday following two and a half days of deliberations.

Goldstein was found guilty on one count of tax evasion, one count each of willful failure to timely pay taxes for four tax years, three counts of making a false statement on a loan application, and four out of eight counts of aiding and assisting in preparation of a false tax return. He was found not guilty on the other four counts.

The convictions for making a false statement on a loan application carry the heftiest potential penalties—a maximum of 30 years for each count. He also faces a maximum sentence of five years' imprisonment for tax evasion, three years for each count of assisting in the preparation of false tax returns, and one year on each count of willful failure to pay taxes.

Goldstein was indicted in January 2025. The jurors—seven men and five women—heard 15 days of evidence over 6 weeks, featuring a day and a half of testimony from Goldstein in his own defense.

Goldstein denied that he ever willfully cheated on his taxes, blaming any errors on his returns on his staff and outside accountants. He also testified that he never thought he could be criminally prosecuted for failing to pay his taxes on time after filing a return and entering into a payment plan.

The jury phase of the trial isn't quite over yet. Goldstein has asked to have the jury decide whether he must forfeit his Washington, DC home. The issue was put off while it deliberated the counts of making a false statement to a lender.

Judge Lydia Kay Griggsby presided over the trial in the US District Court for the District of Maryland.

The case is United States v. Goldstein, D. Md., No. 8:25-cr-00006, verdict returned 2/25/26 .

(Updates story with additional reporting throughout.)

2/26/26 Akron Beacon J. (Ohio) A4
2026 WLNR 5780037

Akron Beacon Journal (Ohio)

February 26, 2026

Section: News

Witness: Randazzo hid link to FirstEnergy

Patrick Williams

February 26, 2026

The executive director of the Ohio Ethics Commission testified in the criminal trial of two former FirstEnergy leaders Feb. 25 about a former top state utility regulator neglecting to report income from FirstEnergy in financial disclosures.

Paul Nick, who began as the commission's executive director in 2011, testified about disclosure forms that former Public Utilities Commission of Ohio Chair Sam Randazzo was required to file with the commission. Randazzo was required to file the forms as a member of the PUCO Nominating Council for the years 2013 through 2018 and as chair of the PUCO for more than seven months in 2019.

Defendants Charles Jones, former FirstEnergy CEO, and Michael Dowling, ex-senior vice president of the Akron-based utility, are accused of bribing Randazzo with more than $4.3 million in exchange for favorable energy policy.

Randazzo did not report the roughly $4.3 million payment — which he received from FirstEnergy in 2019 — to the Ohio Ethics Commission when reporting of his 2019 income was due to the commission the following year, Nick said.

In 2020, Nick said, Ohio Ethics Commission officials saw in the news that Randazzo "had received monies from sources that may have (a) potential conflict of interest and that were not disclosed on his form."

Randazzo did not disclose receipt of that money, from the FirstEnergy Service Co. subsidiary, to the Ohio Ethics Commission, Nick said.

Two entities that Randazzo owned, which were later revealed as shell companies, were listed in bankruptcy filings for the former FirstEnergy subsidiary FirstEnergy Solutions, Nick said.

Nick said he began asking Randazzo whether he had a financial relationship with FirstEnergy. After some initial communications directly with Randazzo, Nick said he began communicating with a lawyer for Randazzo, who eventually sent documentation to Nick outlining a financial agreement with FirstEnergy.

Defense attorneys said during opening statements Feb. 3 that Randazzo stole the money from FirstEnergy and that it was supposed to go to the Industrial Energy Users of Ohio, an energy industry trade group that Randazzo represented as an attorney before he was PUCO chair. They said the so-called consulting agreement was a settlement with IEU-Ohio in exchange for the group's non-opposition to an electric security plan that FirstEnergy had in effect at the time.

On Feb. 25, John McCaffrey, an attorney for Dowling, confirmed with Nick that his testimony does not concern the conduct of either defendant.

Attorney Rachael Israel asked Nick whether her client, Jones has ever been an elected official or public employee.

Nick said not that he knew of, but he added that private-sector employees who do business with public agencies and officials are also subject to ethics laws.

Israel then confirmed with Nick that private-sector employees are not subject to filing financial disclosure statements with the Ohio Ethics Commission.

Patrick Williams covers growth and development for the Akron Beacon Journal. He can be reached by email at pwilliams@gannett.com or on X @pwilliamsOH. Sign up for the Beacon Journal's business and consumer newsletter, "What's The Deal?"

---- Index References ----

Company: FIRSTENERGY SOLUTIONS CORP.; PUBLIC UTILITIES COMMISION; FIRSTENERGY SERVICE COMPANY

News Subject: (Bankruptcies (1BA08); Business Management (1BU42); Chief Executive Officer (CEO) Changes (1CH09); Corporate Events (1CR05); Employment Law (1EM67); Executive Personnel Changes (1EX23); Government Litigation (1GO18); HR & Labor Management (1HR87); Legal (1LE33))

Industry: (Electric Utilities (1EL82); Electric Utilities Distribution (1EL02); Energy & Fuel (1EN13); Utilities (1UT12))

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

Language: EN

Other Indexing: (Ohio Ethics Commission; PUCO Nominating Council; FirstEnergy Solutions; Public Utilities Commission; FirstEnergy Service Co.) (Sam Randazzo)

Edition: 1

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End of Document

NewsRoom

2/25/26 cleveland.com (Cleveland, Ohio) (No Page)
2026 WLNR 5759582

cleveland.com (Cleveland, OH)

February 25, 2026

More damning testimony for Chuck Jones in FirstEnergy bribery trial

Adam Ferrise; cleveland.com

AKRON, Ohio — Another FirstEnergy official testified that former CEO Chuck Jones told a group of investors not to worry about a potentially damaging regulatory review that would have tanked the company's revenue and stock prices.

Steven Staub said Wednesday at the bribery trial of Jones and FirstEnergy's former top lobbyist Michael Dowling that Jones' 2019 statements — that he could "almost guarantee" the review wouldn't happen — didn't make sense and sparked concern because the review was already set.

Prosecutors say Jones's confidence was born out of his bribery of the man who ran the Public Utilities Commission of Ohio, Sam Randazzo, who ultimately killed the review shortly after Jones' marathon meetings with investors in November 2019.

"How could we make that statement?" Staub said he told his supervisors. "That's material information. We can't support that."

In a contentious cross-examination, Jones attorney Carole Rendon argued that Staub only found fault with people like Jones and Dowling who no longer work at FirstEnergy and that Staub told prosecutors about Jones' statements about five weeks ago, not during the roughly five years the case has been under several investigations.

Rendon also attacked Staub's memory, pointing out that he couldn't remember the responses of two FirstEnergy executives he said he confronted with concerns.

"You can remember a specific thing Mr. Jones said at an [Edison Electric Institute] conference six years ago, but you can't remember where it was held?" Rendon said.

Prosecutors used Staub to back up prior testimony from FirstEnergy's current top accountant, Jason Lisowski. He previously told the jury that he was surprised by Jones' confidence at the same conference that the review would never happen.

The PUCO review would have allowed the regulatory body to see that FirstEnergy was earning too much and would likely have been ordered to charge customers less, according to Staub and others who testified at trial.

Both Staub and Lisowski said Jones made the statements during a conference for investor-owned utilities, where Jones and other FirstEnergy officials had extensive meetings with investors and stock analysts.

During some of those meetings, Staub said he heard Jones tell multiple groups of investors and analysts that the review would never happen. He said he told his boss, then-CFO Steven Strah, and that Strah too was surprised. Staub said he didn't confront Jones.

After Randazzo spiked the rate review, FirstEnergy's stock prices spiked, which directly correlated to Jones' pay. Staub said Jones' pay was mostly incentive-based and heavily influenced by the company's stock prices.

Others previously testified during the trial that Jones in 2019 made about $20.3 million in compensation, mostly in incentives.

"Decisions that relate to unethical behavior, incompetence, who knows, basically result in us being here today," Staub said, drawing a successful objection from Rendon to strike the statement from the record.

---- Index References ----

Company: FIRSTENERGY CORP; EDISON ELECTRIC INSTITUTE INC

News Subject: (Corruption, Bribery & Embezzlement (1EM51); Crime (1CR87); Fraud (1FR30); Regulatory Affairs (1RE51); Social Issues (1SO05))

Industry: (Electric Utilities (1EL82); Energy & Fuel (1EN13); Utilities (1UT12); Utilities Regulatory (1UT69))

NewsRoom

2/26/26 cleveland.com (Cleveland, Ohio) (No Page)
2026 WLNR 5837269

cleveland.com (Cleveland, OH)

February 26, 2026

The Mount Rushmore meme that could sink FirstEnergy's former top executives

Today in Ohio; cleveland.com

Hollywood screenwriters might want to start taking notes on the FirstEnergy corruption trial, with the courtroom drama escalating into week four.

Today in Ohio podcast hosts suggested Wednesday that the arrogance of the executives, as revealed by the prosecution, might be what sinks them.

From a CEO allegedly sneaking through the night in a black hoodie to a vulgar, gleeful meme plastered across a digital Mount Rushmore, the prosecution is building something dangerous to the defense: a portrait of executives so arrogantly convinced of their own untouchability that they couldn't stop celebrating it.

The defendants' own bravado might be the prosecution's most powerful weapon.

Host Leila Atassi offered one anecdote that sounds like it was ripped from a crime thriller: "A CEO allegedly slipping into a colleague's basement in dark clothing with a bottle of wine and a flashlight to urge him to lie."

That's the allegation against former FirstEnergy CEO Chuck Jones—that he pressured senior company official Dennis Chack to lie to internal investigators about a $1.8 million embezzlement scheme. The extraordinary detail of it—the dark hoodie, the flashlight, the bottle of wine—is the kind of specificity that separates credible testimony from invention.

But the jury hasn't heard it. Prosecutors and defense attorneys are battling over whether they should. A judge will make the call.

Chack, who has immunity agreements with both state and federal prosecutors in exchange for his cooperation, has already admitted to carrying out the embezzlement scheme. As the podcast team noted, that cuts both ways—he's compromised by his own admitted crimes, but he also, as Laura Johnston put it on the podcast, has produced "the kind of detail that sticks in your head." When a witness has nothing left to hide, that kind of detail tends to land.

If the basement story is the dramatic heart of the trial, the Mount Rushmore meme may be its most incriminating exhibit. Lisa Garvin broke it down: "That infamous meme surfaced in court on Friday. And it's worth noting that text message was sent the day HB6 became law back in 2019, and plastered on Mount Rushmore, which was an image of Michael Dowling and Sam Randazzo. And the phrase read 'HB6, and F anybody who ain't us.' "

Let that sink in. On the day Ohio's corrupt billion-dollar nuclear bailout legislation was signed into law—legislation that allegedly cost Ohio ratepayers $1.3 billion—FirstEnergy executives celebrated by digitally carving themselves and a state utility regulator into a monument, flanked by a message of contempt for everyone else.

Former lobbyist Ty Pine, testifying under immunity, called the message "embarrassing" and an "attempt at humor." Prosecutors aren't laughing. They're using it to prove mindset: that this wasn't routine lobbying. It was a coordinated, celebratory payoff.

That mindset may prove to be the prosecution's most effective tool in the courtroom. Courtney Astolfi said it plainly on the podcast:

"I think the arrogance might really sway the jury."

White collar corruption cases can be abstract for juries. They're buried under regulatory language, legislative maneuvering, and financial instruments. But a meme? Everyone understands a meme. Today in Ohio hosts know, though, that the image of Sam Randazzo—the state's top utility regulator—carved into a monument alongside the executives he allegedly served doesn't require an expert witness to explain. It places him on the team. It confirms the theory. It makes the invisible visible.

Listen to the episode here.

Listen to full "Today in Ohio" episodes where Chris Quinn hosts our daily half-hour news podcast, with Editorial Board member Lisa Garvin, Impact Editor Leila Atassi and Content Director Laura Johnston.

---- Index References ----

Company: FIRSTENERGY CORP

News Subject: (Corruption, Bribery & Embezzlement (1EM51); Crime (1CR87); Fraud (1FR30); Social Issues (1SO05))

Industry: (Internet (1IN27); Internet Media (1IN67); Internet Media Content (1IN04))

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

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End of Document

Securities

Accounting Rules on Risk Management Set for Rethink by US Board

Feb. 25, 2026, 12:13 PM PST

Banks and insurance companies calling for changes in how they report risk management activities won an early victory Wednesday as accounting rulemakers agreed to tinker with the guidance.

The Financial Accounting Standards Board voted unanimously to add a shorter-term project on hedge accounting to their technical agenda tackling key issues raised by public feedback. The special accounting method was a hot topic during last year's agenda outreach, with companies and trade groups alike pushing for ways to simplify rules they say are costly and time-consuming to apply.

Hedge accounting is an elective accounting practice companies use to mitigate earnings volatility.

Board members also supported their staff's phased approach to future hedge accounting-related work that aims to address concerns through short-, medium-, and long-term projects.

The approach "allows us to make improvements and finalize questions and respond to stakeholder input at a faster rate than if we were to combine everything in one project," board member Marsha Hunt said.

Companies wanting to minimize exposure to swings in interest rates, for example, can buy futures, options, or swaps to offset risks. These contracts qualify as derivatives, meaning US rules require they be measured at fair value, a metric capturing current market value. Some of these strategies can qualify for hedge accounting.

The accounting standard-setter published final rule changes last November that enable the application of hedge accounting to a wider set of economic risk strategies. Separately, the board has been researching broader changes to the model.

Hedge accounting guidance "was not designed to broadly accommodate risk management strategies developed and executed on an entity-wide basis," a Financial Executives International committee wrote in a June 2025 letter.

Accounting groups told the board in public feedback that, for banking and insurance companies whose risk management activities are often based on entity-wide exposures, common economic hedges they employ don't neatly fit into the accounting model, according to a staff memo.

FASB has struggled with "trying to force square economics into a round accounting hole," board member Christine Ann Botosan said Wednesday. "It doesn't work."

Botosan, like the rest of her colleagues, expressed interest in a long-term project approach that wouldn't retain the mechanics of the current model. Instead, the approach would redefine the objective of hedge accounting to better reflect risk management.

FASB's shorter-term project added to the agenda Wednesday will address three issues brought up by the public through targeted changes to the rulebook.

This includes hedging of interest-rate risk for held-to-maturity debt securities, which are financial instruments a company intends to hold until they are mature. Public comments have noted that the current prohibition against applying hedge accounting in these cases leads to financial reports that don't accurately reflect the economics of companies' actions.

Board members told staff to move forward with an exposure draft of the short-term project for public feedback. The comment period of the forthcoming document will be 60 days.

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News from Bloomberg Terminal

Bitcoin Miner Tied to Trumps Pummeled by Crypto Crash

Feb. 26, 2026, 8:55 AM PST

Summary by Bloomberg AI

AI Generated

- American Bitcoin Corp. reported a $59 million loss for the fourth quarter amid a stock selloff that has wiped out around 90% of the firm's market value.
- The company's mining-and-hoarding strategy has resulted in a $227 million unrealized loss from writing down the value of its Bitcoin reserves.
- American Bitcoin's path to recovery depends on forces outside its control, including Bitcoin resuming its climb and the administration's commitment to making crypto a national priority.

By David Pan

(Bloomberg) --

American Bitcoin Corp., the Trump family-backed miner that rode the crypto euphoria to a blockbuster Nasdaq debut, is caught in the wreckage of the industry's deepest rout since 2022.

The Miami-based firm reported a $59 million loss for the fourth quarter on Thursday, results that come amid a stock selloff that has wiped out around 90% of the firm's market value since the September high as the broader Trump digital-asset trade misfires. The stock fell almost 3% to trade just above $1 after the results were released.

American Bitcoin doubled down on a pure mining-and-hoarding strategy just as virtually every major rival fled to artificial intelligence, a bet championed by co-founder Eric Trump that looked prescient when Bitcoin was surging past $126,000 and increasingly precarious with the token trading around $70,000. The cost of that conviction was apparent in a $227 million unrealized loss registered for the year from writing down the value of the company's Bitcoin reserves.

"With Bitcoin steeply drawn down from the highs, the retention strategy can amplify losses," said Matthew Kimmell, a digital asset analyst at CoinShares. "The inventory loses value on a mark-to-market basis and investors can begin pricing in balance sheet stress before it appears in operations."


Nasdaq

Eric Trump, co-founder and chief strategy officer of American Bitcoin Corp., after ringing the opening bell at the Nasdaq MarketSite in New York, US, on Tuesday, Sept. 16, 2025.

Photographer: Victor J. Blue/Bloomberg

The downturn puts American Bitcoin at the sharp end of a broader pullback across the Trump family's crypto interests. World Liberty Financial, the decentralized finance platform that hosted Wall Street executives at Mar-a-Lago this month, has seen a 65% plunge in its native token since the cryptocurrency was launched in September. The president's own memecoin is grappling with a bigger decline, dropping 72% since it started trading in March.

The pivot is notable given that American Data Centers Inc. — the entity backed by the Trump sons — was originally designed to be an AI infrastructure provider before it became part of what was eventually American Bitcoin.

Few of the Trump-affiliated ventures have matched American Bitcoin's pace of decline — its shares saw a flash crash of about 50% on Dec. 2. While American Bitcoin was pledging to hold every token it mined, the rest of the crypto-mining industry was sprinting in the opposite direction. The largest Bitcoin miners such as MARA Holdings and Riot Platforms have started transitioning some of its sites into AI infrastructure, while other miners including Cipher Mining and TeraWulf have initiated more aggressive shifts, selling part or all of their coin reserves as well as mining sites.

For now, American Bitcoin's path to recovery runs through forces largely outside its control. The company's mining-and-treasury model only works if Bitcoin resumes its climb. Revenue rose 22% from the third quarter. The administration's stated commitment to making crypto a national priority — including holding Bitcoin as a government reserve — could provide a tailwind for the broader sector.

"There's a lot of noise in this industry, yet we stay focused," Eric Trump said on the earnings call on Thursday. "We mine Bitcoin cheaper than you can buy it. We hold it. And we grow ownership of Bitcoin over-time."

Read more about the Trump and crypto:

Bitcoin Tumble Puts Miner Schism at Forefront: Bloomberg Crypto

Trump Family's Crypto Venture Says It Faced 'Coordinated Attack'

Trump Family Crypto Bash Convenes Wall Street New Believers

In March, the Trump family unveiled a plan to launch a Bitcoin mining-focused venture with Hut 8 Corp., which transferred all its mining assets to the new firm and shifted its focus to AI data centers.

That launch of the mining venture followed Hut 8's acquisition of a majority interest in American Data Centers, the company formed by a group of investors including Eric Trump and Donald Trump Jr. Following that transaction, American Data Centers was renamed and relaunched as American Bitcoin.

The move echoes President Donald Trump's campaign pledge in 2024 to make every remaining Bitcoin mined in the US. While that's nearly impossible to achieve given the fierce competition among miners across the globe, his tariff policies have made it harder still since most of the hardware has tended to be imported from China.

(Adds comment from Eric Trump.)

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California Brief

Sweetgreen Lost $5 Billion on Soggy Fries, Lettuce Shortages

Feb. 26, 2026, 3:00 AM PST

It turns out, making a healthier French fry is a nightmare. Sweetgreen workers warned their managers that the salad chain's attempt — crinkle-cut potatoes air-fried in avocado oil — was too labor intensive.

But senior management, led by Chief Executive Officer Jonathan Neman and encouraged by a share price that climbed on every mention of the fast-food moonshot, persisted. Last March, Ripple Fries made their nationwide debut.

Soon, harried workers were coming up with workarounds to avoid the constant preparation needed to keep the fries hot and crispy. By fall, they were pulled from the menu.

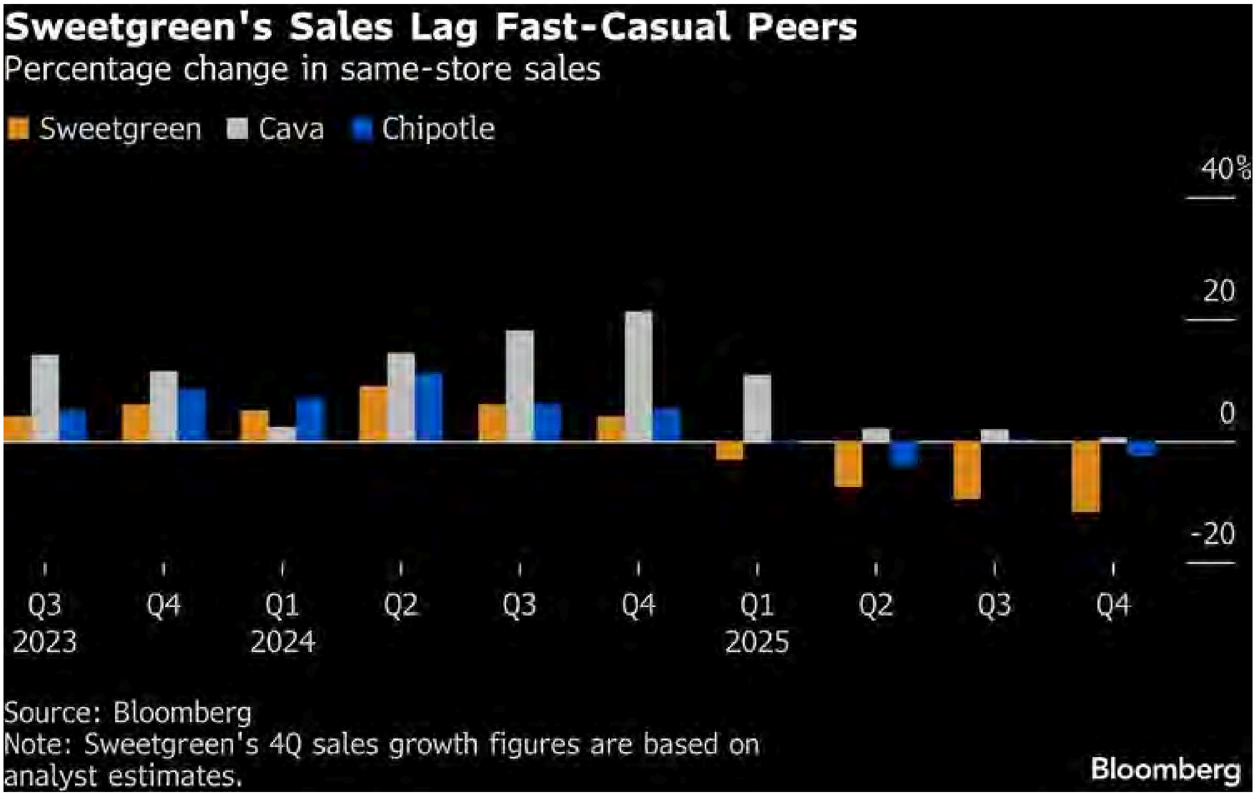
The side item's doomed introduction and swift demise are a microcosm of Sweetgreen Inc.'s disastrous year, in which the company squandered almost 80% of its market value. Executives have blamed the brand's woes on young people cutting back on going out to eat and a tough economic climate that has hurt the restaurant industry.

A Sweetgreen restaurant in New York.
Photographer: Angus Mordant/Bloomberg

But Ripple Fries were only the latest instance in which Sweetgreen underestimated logistical and operational complexities. It's not just the high costs of quality ingredients and compostable packaging that have kept the company from ever turning a profit — avoidable mistakes also are to blame, analysts say.

"They don't need to reinvent the wheel," said Logan Reich, an analyst with RBC Capital Markets. "They just need to execute in a more consistent way."

On Thursday, Sweetgreen is expected to report that same-store sales fell 8% in 2025, according to analyst estimates compiled by Bloomberg.



The chain's rivals, while also struggling, have fared better. And customers say Sweetgreen just doesn't taste as good as they remember.

"It used to hit," said Marika Minor, 25, after eating at a Sweetgreen in Los Angeles recently. Now, she said, "there's a quality difference."

She'd ordered a Harvest Bowl but only ate half before tossing her crumpled napkin on top of the leftovers. The roasted chicken felt "more crumbly," said Minor, who works in social media.

"It's satisfying, but it's not 20-dollar-satisfying."

A spokesperson for Sweetgreen said the company is taking steps to strengthen operations with a "deeply experienced leadership team and a clear strategy." It recently brought in a new chief financial officer and a new chief operating officer, both former Chipotle executives. It has also expanded its menu beyond salads and bowls, adding wraps, and introduced a new process for testing items before broadly rolling them out.

From its start two decades ago, Sweetgreen positioned itself as a farm-to-table lifestyle brand that would "reimagine fast food for a new era." Sourcing premium ingredients from local farmers was the top priority, a philosophy the three founders vowed to stick to even as the chain grew.

They routinely touted their lack of restaurant experience as an advantage that enabled them to dream big: hosting an annual music and food festival called Sweetlife that featured high-profile performers including Kendrick Lamar and Lana Del Rey, pioneering an in-house mobile ordering app and orchestrating limited-edition merch drops for tote bags and T-shirts that read "Friend of Plants" and "Burrata 2020."

When the fast-casual chain went public in 2021, in the first full day of trading investors valued the company at $5.7 billion. They were hyped on the founders' vision and the company's new "Infinite Kitchen" robot technology, which promised to transform restaurant prep.

Yet, in the pursuit of its mission, Sweetgreen repeatedly ran into costly supply issues — often without sufficient backup plans.

Sweetgreen has positioned itself as a farm-to-table lifestyle brand on a mission to "reimagine fast food for a new era."
Photo Illustration: Nigel Lujan Jones/Bloomberg

In late 2022, the salad chain was hit by a romaine shortage after intense heat and a virus wiped out crops in California and Arizona. Most national restaurant brands have several vendors spread out geographically for key ingredients in case disruptions arise, said David Henkes, senior principal at foodservice industry data firm Technomic.

Sweetgreen said it had five to six romaine growers around the country at the time. But it was still caught flat-footed, paying up to twice the usual cost for romaine before briefly using other greens in its salads.

Its restaurant-level profit margin fell in the last quarter of that year, which the company attributed to an increase in food, beverage and packaging costs associated with romaine, arugula and tomato shortages.

Neman, one of the co-founders, said that while macroeconomic conditions had become “more complicated and unpredictable” since Sweetgreen’s IPO, the company was also to blame. In its first full year as a public company, Sweetgreen lost more than $190 million — roughly $37 million more than the year before.

“We know that our execution was not up to our standards,” he said on a call with investors.

Yet the company continued to struggle with that very thing. In early 2023, the company paid elevated packaging costs after its supplier of bowls, which were compostable and made without so-called forever chemicals, ran into financial trouble. It recorded a loss of $34 million that quarter.

Sweetgreen has repeatedly run into problems with its supply chain.
Photographer:Angus Mordant/Bloomberg

A limited supply network creates a “huge amount of vulnerabilities,” Henkes said.

“If you don’t have contingency plans in place where you have backup suppliers,” he said, “then you’re at the mercy of the market.”

Facing impatient investors, Sweetgreen soon devised a cost-cutting plan that threatened the very ideals on which the founders promised to never compromise.

It called for "transitioning from organic to conventional" versions of its ingredients, including almonds, cashew butter and olive oil, according to an internal presentation viewed by Bloomberg. It was a follow-on to a previous company decision to move to "sub chicken."

A spokesperson for Sweetgreen said changing the company's chicken didn't reflect a strategic decision to downgrade to an inferior product, but that several major chicken suppliers reversed their antibiotic-free commitments in 2023. Scaling the chain meant that the company couldn't always secure enough of its preferred chickens, the spokesperson said, so it had to make substitutions.

The company also noted that organic certification can be cost-prohibitive and administratively burdensome for small farms, and that many ingredients don't come in organic at the scale Sweetgreen needs. The substitutions still met Sweetgreen's sourcing and quality specifications, the spokesperson said.

For Sweetgreen's founders, the challenge has been reconciling their vision with the need to make money.

"They have been precious around the brand," said Rahul Krotthapalli, an analyst at JP Morgan.

The Ripple Fries fiasco was yet another operational miscalculation made in the name of the company's ethos. The fries were part of Sweetgreen's push to eliminate seed oils, which critics say are chemically processed and contribute to inflammation.

The move made sense from a branding perspective — but the business justification was murky. Seed oils, such as canola and corn oils, are ubiquitous because of their lower cost and neutral flavor. Swapping them out can be an expensive, cumbersome process, requiring months of research and development and employee retraining, said Neil Doherty, senior director of business growth and culinary strategy at Sysco.

Sure enough, Ripple Fries became an unwieldy endeavor.

The salad chain's competitors have fared better. And customers say Sweetgreen just doesn't taste as good as they remember.
Photographer: Angus Mordant/Bloomberg

During test runs, workers at the salad chain were overwhelmed by the complicated prep. Because the fries were air-fried and made with no additives, they had to bake new batches every hour to keep them fresh, leading to kitchen bottlenecks, according to two former store managers who were not authorized to speak publicly.

Sweetgreen first delayed the debut of the fries, a company spokesperson said, but eventually greenlit a nationwide rollout.

Things only got worse. To ensure maximum crispiness, the company mandated new fries be baked every half hour. The process was so involved that workers would avoid it: They'd fire up empty ovens to trick sensors that could track whether metrics were being met, according to a former manager who oversaw multiple locations.

Chief Operating Officer Jason Cochran, who joined Sweetgreen shortly after the launch, pushed management to ditch the fries as they were "killing operations," according to Citi analyst Jon Tower.

Neman told investors on the company's earnings call in August that the fries would be discontinued, saying they had become a "distraction for our teams."

With so many locations underperforming, Cochran moved quickly to stabilize the restaurants, implementing checklists and scorecards and introducing a new menu testing protocol.

In the months since Sweetgreen discontinued Ripple Fries, it has suffered more blows.

The company sold off the robotics unit that had boosted its stock when it first went public — it couldn't add the expensive kitchen automation technology to its restaurants fast enough to deliver the profitability boost it had promised. It scaled back its expansion plans, now only planning on as few as 15 new restaurants this year, down from the 37 projected to open in 2025. Then, in January, one of the co-founders left, saying it was for personal reasons.

In a statement, a Sweetgreen spokesperson said the chain is back on track after a difficult year, which allowed it to "take a clear-eyed look at the business."

But perhaps Sweetgreen is dealing with an issue its own CEO diagnosed on a podcast in 2023.

"Most food companies, as they get bigger, they typically get worse," Neman said. "Scale kills the product."

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Tesla touts California robotaxis but does nothing to get permits

reuters.com/business/autos-transportation/musk-touts-california-robotaxis-tesla-does-nothing-get-permits-2026-02-26

Chris Kirkham February 26, 2026

Item 1 of 2 A Tesla robotaxi drives on the street along South Congress Avenue in Austin, Texas, U.S., June 22, 2025. REUTERS/Joel Angel Juarez

[1/2]A Tesla robotaxi drives on the street along South Congress Avenue in Austin, Texas, U.S., June 22, 2025. REUTERS/Joel Angel Juarez Purchase Licensing Rights, opens new tab

- Documenting driverless testing miles is critical for a series of permits
- Tesla logged zero miles last year in California for the sixth straight year
- Waymo documented 13 million miles over a decade before securing driverless ride-hailing permit

LOS ANGELES, Feb 26 (Reuters) - For more than a year, Elon Musk has repeatedly said Tesla (TSLA.O) , opens new tab is months away from launching a driverless robotaxi service in California – once state regulators give their blessing.
Tesla did nothing to secure that approval in 2025, according to previously unreported state Department of Motor Vehicles records and a state spokesperson. Tesla logged zero miles of autonomous test driving on California roads last year for the sixth year in a row, the records show.

Documenting test miles is critical in California's regulatory system for robotaxis, which requires companies to progress through a series of permits before being allowed to operate a driverless ride-hailing service such as Alphabet's (GOOGL.O) , opens new tab Waymo.
Much of Tesla's $1.5 trillion market value is tied to investors' belief that it will soon operate a vast fleet of robotaxis and sell millions of autonomous-driving software subscriptions. Operating driverless vehicles in California – the largest U.S. auto market – is a linchpin of those ambitions.

Bryant Walker Smith, a University of South Carolina law professor and autonomous-driving expert who has consulted for the California DMV, said Tesla is implying that "they are ready and regulators are not," while the reality is that "regulators are ready, and they are not."

Tesla did not respond to requests for comment. On an earnings call in October, Musk told analysts that the company is "paranoid about safety" and that it takes a "cautious approach" to new markets. "We probably could just let it loose in these cities," he said, "but we just don't want to take a chance."

So far, Tesla operates only a small pilot robotaxi service in Austin, Texas, which has far fewer regulatory barriers than California.

In the San Francisco Bay Area, the company last July started operating what it called a “robotaxi” service [that was not a robotaxi service at all](). Instead, it is a chauffeur service with human drivers who use Tesla’s “Full Self-Driving” driver-assistance software, which is not fully autonomous, according to the state regulator authorizing the service and Tesla’s disclosures to customers.
In order to operate fully self-driving vehicles in California, like Waymo, Tesla would first need to obtain permits to test and operate driverless vehicles from the state's DMV and Public Utilities Commission, which regulates commercial ride-hailing.

Tesla so far has only the entry-level DMV permit, which allows testing driverless vehicles only with a human safety monitor in the driver’s seat. A DMV spokesperson said Tesla has not applied for any additional permits.

Tesla would need to log at least 50,000 miles (80,467 km) of autonomous driving on public roads in California with a safety driver before applying for a different permit allowing testing without one, according to proposed DMV regulations expected to be finalized later this year.

Tesla has not logged any miles with state regulators since 2019 and has documented only 562 miles in total since 2016.

Waymo, by comparison, logged more than 13 million testing miles and secured seven different regulatory approvals between 2014 and 2023, when it received approval to charge passengers for rides in driverless robotaxis. Waymo is one of three companies with California permits to commercially operate driverless vehicles and the only one approved to operate a robotaxi fleet anything like what Musk envisions.

In written comments last year, Tesla criticized some of the California DMV's proposed revisions to autonomous-driving rules, questioning the need for testing on state roads and minimum-mile requirements. The company also complained about "overly burdensome reporting requirements" for crashes and other system failures.

Musk has often suggested California regulations are the main impediment to deploying robotaxis there. On an October 2024 earnings call, he said California has “quite a long regulatory approval process.”

“I’d be shocked if we don’t get approved next year,” he added, “but it’s just not something we totally control.”

Reporting by Chris Kirkham in Los Angeles; Editing by Brian Thevenot and Matthew Lewis

Chris Kirkham is a business reporter in Los Angeles who writes about Tesla, electric vehicles and the wider automotive industry. He previously worked at The Wall Street Journal and the Los Angeles Times, and has covered topics including tobacco, worker safety, gambling, and the economy over a two-decade career. Contact him at chris.kirkham@thomsonreuters.com or on Signal at chris_kirkham.51

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IP Co. Investors Sue Over AI-Focused Acquisition Losses

By **Sydney Price**

Law360 (February 25, 2026, 7:10 PM EST) -- Executives and directors of semiconductor technology company Synopsys Inc. were hit with a shareholder's derivative suit accusing them of misleading investors about the operational challenges faced by one of its segments following a $35 billion acquisition of an artificial intelligence company made in 2024.

According to the suit filed by shareholder Marc Podems on Tuesday, Synopsys provides software, intellectual property and other services used to develop semiconductor chips. Its products include electronic design automation, or EDA, tools and pre-designed semiconductor components known as Design IP, the complaint states.

Last September, Synopsys reported its third-quarter financial results and revealed that the IP business "underperformed expectations," which the complaint alleges contradicts representations the company made for several months regarding its prospects.

The suit alleges that at the time of Synopsys' $35 billion acquisition of software company Ansys in 2024, the company touted the "holistic" benefits of the merger, but did not disclose that Synopsys' growing emphasis on artificial intelligence customers was damaging the Design IP business.

When the acquisition occurred, investors were unaware that Synopsys' historical revenue and profit growth as represented in the acquisition documents were artificially inflated by the company's "untenable business practices," the suit alleges.

"[T]he company's growing emphasis on artificial intelligence customers, who require more customization, was weakening the economics of its Design IP business; as a result, certain of the company's road map and resource choices were unlikely to achieve their intended outcomes," the suit states.

The suit's relevant period begins Dec. 4, 2024, the day the company announced its fourth-quarter financial results. It told investors that it had "strong momentum across the business supported by multiple secular growth drivers," and a "resilient business model."

The complaint said the truth came to light Sept. 9, 2025, when Synopsys reported its third-quarter financial results and revealed the IP business "underperformed expectations."

Additionally, Synopsys CEO Sassine Ghazi reported that revenues for the business segment had declined by 8% and that, as a result, Synopsys would have to pivot its IP resources and road map to "highest-growth opportunities," the suit says.

Following the announcement, shares of Synopsys declined 35%, dropping from $604.37 to $387.78 per share on Sept. 10, 2025, the suit alleges.

In addition to Ghazi, the suit names Synopsys Chief Financial Officer Shelagh Glaser, Chief Accounting Officer Sudhindra Kankanwadi and several directors as individual defendants and accuses them of breaching their fiduciary duties.

The complaint notes Synopsys is also facing a **securities class action** based on related claims in the U.S. District Court for the Northern District of California.

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

Podems is represented by Marion C. Passmore, Melissa A. Fortunato, Brandon Walker and Ligaya T. Hernandez of Bragar Eagel & Squire PC.

Counsel information for Synopsys and the individual defendants was not immediately available on Wednesday.

The case is Podems v. Ghazi et al., case number 5:26-cv-01607, in the U.S. District Court for the Northern District of California.

--Editing by Vaqas Asghar.

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DCG Crypto Class Action Proceeds, But State Law Claims Cut

By **Katryna Perera**

Law360 (February 25, 2026, 10:10 PM EST) -- Digital Currency Group must face a proposed class action accusing it of trying to conceal a $1.1 billion debt crisis from lenders through a "sham transaction" with its crypto-lending subsidiary, but a Connecticut federal judge cut state law claims on the grounds that they overlapped with the suit's federal securities claims and could delay the action if allowed to remain.

U.S. District Judge Stefan R. Underhill issued an **order** on Tuesday dismissing the suit's allegations of violations of consumer protection and unfair competition laws in seven states.

The suit alleges Digital Currency Group Inc. and its founder, Barry Silbert, set up a fake deal to conceal an impending $1.1 billion financial crisis of DCG's subsidiary Genesis Global Holdco LLC.

Judge Underhill said Tuesday he cannot adjudicate the state law claims without exercising supplemental jurisdiction and that he sees several "compelling reasons" not to exercise it, including that the state law claims overlap with the suit's federal securities claims and that the adjudication of the state law claims "will undoubtedly delay the adjudication of the federal securities claims."

Additionally, the judge said some of the relevant state courts have not addressed whether their respective state consumer protection and unfair competition statutes cover securities transactions, while others have "expressly ruled that the cited statutes do not cover securities transactions."

The rest of the suit was kept intact by Judge Underhill, who found that the lender plaintiffs have adequately alleged that each individual defendant acted recklessly and violated federal securities laws.

The judge also found that the suit properly alleges two categories of material misstatements and omissions about Genesis' risk management practices and ultimate **bankruptcy**.

In addition, the suit adequately pleads scienter, the judge said, since the plaintiffs have asserted both a motive and opportunity by the defendants to commit fraud.

"The motive: the defendants made false representations regarding Genesis's risk management and investment practices to encourage more investment and to maximize [another of Silbert's ventures'] management fees," the order states. "The opportunity: the defendants had complete control over both Genesis's adherence to its stated risk management practices and its investment choices."

"Together, the motive and opportunity sustained the fraud: pledging allegiance to one set of risk management and investment practices and then abandoning those practices behind the scenes," the order further states.

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

The suit asserts that Genesis offered high returns on investments in its crypto lending business and used risky methods to achieve those returns. The lenders accuse Genesis of excessively lending about 30% of its investments to the hedge fund Three Arrows Capital, a move the lenders say was excessive and benefited another of Silbert's ventures, the Grayscale Bitcoin Trust, by boosting its fees.

According to a complaint, these risky practices led to a financial disaster when Three Arrows couldn't pay back a $1.1 billion debt to Genesis. The DCG lending subsidiary tried to transfer this bad debt to its parent through a 10-year note that had no real financial backing, the lenders told the court. This move, which the suit calls a "sham," was an attempt to make Genesis appear solvent when it wasn't, they said. Genesis filed for Chapter 11 protection in the Southern District of New York in January 2023.

The lenders are represented by Ian W. Sloss and Steven L. Bloch of Silver Golub & Teitell LLP and Donald R. Hall, Jeffrey P. Campisi and Jason A. Uris of Kaplan Fox & Kilsheimer LLP.

DCG is represented by Johanna S. Lerner and Thomas D. Goldberg of Day Pitney LLP, and Caroline Zalka, Amber Venturelli and Joshua M. Wesneski of Weil Gotshal & Manges LLP.

The case is McGreevy et al. v. Digital Currency Group Inc. et al., case number 3:23-cv-00082, in the U.S. District Court for the District of Connecticut.

--Additional reporting by Jeff Montgomery. Editing by Linda Voorhis.

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Jefferies Faces Investor Fraud Suit Tied To First Brands Crash

By **Lauren Berg**

Law360 (February 25, 2026, 11:34 PM EST) -- Jefferies Financial Group investors accused the financial services firm of misrepresenting the safeguards of a fund linked to now-bankrupt auto parts maker First Brands Group in order to secure their $25 million investment, according to a New York lawsuit made public Wednesday.

Eugenia II Investment Holdings and Eugenia III Investment Holdings ponied up $25 million to invest in the Point Bonita Capital Fund, after Jefferies subsidiaries Leucadia Asset Management LLC and Jefferies Investment Advisers misrepresented the structural integrity of the fund's investment model, according to a **complaint** lodged Tuesday in New York state court.

The fund's model was based on what's called "factoring," a trade finance process in which the fund buys short-term accounts receivable from a seller of goods and services at a discount from the face value, according to the suit. The fund made a profit from the difference between the discounted price and the full value to be paid to the fund by the supplier's customer, known as the obligor.

To get Eugenia to invest, Jefferies touted the fund's "cash dominion" over payments made by the obligors, in which each obligor would have to pay the full amount of a given invoice directly to the fund, according to the complaint. This purported to give the fund complete oversight and control of the asset and making it nigh impossible for a supplier to falsify invoices, the suit states.

"Cash dominion also bolstered the 'true sale' character of the funding transaction (that is, the fund's title ownership of the purchased invoices), which would be important if the supplier suffered a liquidity event or bankruptcy," the investors said.

But "as it turned out, and contrary to defendants' specific representations, the fund never had this foundational safeguard with its largest supplier, First Brands," they said, alleging that Jefferies "permitted First Brands to collect and take custody of cash collections from its obligors."

In other words, Jefferies had given up the promised direct role with the obligors, the complaint states.

"Defendants had appointed the proverbial wolf (here, First Brands) to run the hen house, providing the very opportunity for invoice double-pledging and falsification that the fund's promised model, had it been adhered to by defendants, would have prevented," the investors said.

In September, First Brands **filed for Chapter 11 protection** in the Southern District of Texas with more than $10 billion in debt, saying it had secured $1.1 billion in bankruptcy financing from its creditors to keep the business running through the process.

The Rochester Hills, Michigan-based company — a producer of brakes, windshield wiper blades, spark plugs, fuel pumps and other auto parts — listed between $1 billion and $10 billion in assets and between $10 billion and $50 billion in liabilities on its bankruptcy petition.

In October, the court gave **interim approval** to First Brands' $1.1 billion debtor-in-possession loan, freeing up $500 million in funds.

In their suit Tuesday, the Eugenia investors said the Point Bonita fund was among the victims of First

Brands' bankruptcy, "likely relegated to the status of mere unsecured creditor and, regardless, facing massive losses."

According to the complaint, Jefferies has already notified its investors that the fund likely suffered a total loss on its investment in First Brands' receivables.

"Defendants knew the grave risk of allowing their largest supplier, First Brands, to manage the supposedly genuine invoices sold to the fund, and manage the invoice collections from the obligors, and deposit the payments directly in First Brands' accounts," the investors said. "But the plaintiffs, as investors, had zero visibility."

They added: "Had they known the truth — that the fund would not implement this critical fraud-prevention control — plaintiffs would not have invested."

The suit asserts claims of fraud, negligent misrepresentation and breach of fiduciary duty. It seeks at least $18.4 million in damages, including "actual damage measured by the loss of opportunity and income plaintiffs would have realized in an alternative investment portfolio."

Counsel for the plaintiffs and a representative for Jefferies did not immediately respond to requests for comment late Wednesday.

The plaintiffs are represented by Andrew T. Solomon and Paul E. Summit of Solomon Cramer & Summit LLP.

Counsel information for the defendants was not immediately available.

The case is Eugenia II Investment Holdings Ltd. et al. v. Leucadia Asset Management LLC et al., case number unavailable, in the Supreme Court of the State of New York, County of New York.

--Additional reporting by Rick Archer and Clara Geoghegan. Editing by Michael Watanabe.

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AT&T Promptly Settles NYC Pension Funds Diversity Suit

By **Hailey Konnath**

Law360 (February 25, 2026, 10:35 PM EST) -- AT&T on Wednesday agreed to allow shareholders to vote on New York City pension funds' proposal requesting a corporate diversity report, quickly settling a suit filed by the funds last week.

The funds sued on Feb. 17, claiming AT&T Inc. had illegally excluded its proposal after regulators indicated they would allow it. AT&T had decided to omit the proposal under the so-called ordinary business exclusion — a provision allowing corporations to exclude proposals that relate to the company's ordinary business operations.

AT&T has now agreed to include the funds' proposal in exchange for the dismissal of the suit, according to the proposed stipulation and order filed Wednesday. The parties will cover their own attorney fees and court costs, per the stipulation.

AT&T and the New York City Law Department didn't immediately respond to requests for comment late Wednesday.

The pension funds are the New York City Employees' Retirement System, Teachers' Retirement System of the City of New York, the New York City Police Pension Fund and the New York City Board of Education Retirement System.

The suit **centered on a shareholder proposal** that calls on AT&T's board of directors to adopt a policy of publicly disclosing a report the company is required to submit annually to the U.S. Equal Employment Opportunity Commission, which includes a comprehensive breakdown of the company's workforce by race, ethnicity and gender.

According to the funds, AT&T agreed to voluntarily disclose this report following a similar proposal in 2020. The company went on to voluntarily disclose the report from 2021 to 2023, ending the practice without explanation in 2024, they said.

After the U.S. Securities and Exchange Commission loosened its guidance and gave public companies more leeway in excluding shareholder proposals from proxy ballots, AT&T secured a "no-action" letter from the agency in January, indicating staff would not object to the exclusion "based solely on AT&T's statement that it believed the proposal was excludable under Rule 14a-8," which covers shareholder proposals.

The pension funds said they would historically have had an opportunity to respond to AT&T's letter before SEC staff issued its determination on excludability. But the SEC issued a statement in November indicating it would not substantively respond to the vast majority of no-action requests for the 2026 proxy season, according to the suit.

The funds are represented by Daniel R. Whitman and Elizabeth M. Slater of the New York City Law Department.

AT&T is represented in-house by David B. Reece.

The case is New York City Employees' Retirement System et al. v. AT&T Inc., case number 1:26-cv-01310, in the U.S. District Court for the Southern District of New York.

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Hagens Berman Fights Fee Demand Amid Misconduct Claims

By **Jake Maher**

Law360 (February 25, 2026, 4:37 PM EST) -- Hagens Berman Sobol Shapiro LLP has blasted as premature a bid from drugmakers in Pennsylvania federal court calling for the firm to cover the fees and costs of a special master who alleged the firm committed misconduct in product liability actions over the morning sickness drug thalidomide.

The report from special master William T. Hangley documented behavior by the firm that the federal judge on the case later characterized as **"bordering on the criminal,"** and found no misconduct by drug companies Sanofi-Aventis U.S. LLC or GSK, formerly known as GlaxoSmithKline.

Based on that report, the judge referred the matter to the U.S. Department of Justice late last year for a possible criminal investigation into Hagens Berman.

But Hagens Berman argued Tuesday that it was too early to allocate the fees and costs under the federal Rules of Civil Procedure because the court has not yet ruled on the firm's objections to the report or made a binding decision on the merits.

"Defendants have not cited any case in which a court has reallocated a special master's fees and costs after issuance of [a report and recommendations] but before a court rules on any objections to the R&R and issues a ruling on the merits," Hagens Berman wrote.

The plaintiffs launched the sprawling and acrimonious litigation in 2011 over thalidomide, which plaintiffs allege caused their birth defects a half century ago. The defendants on the case moved earlier in February to **shift Hangley's fees** and costs to the Seattle-based plaintiffs firm due to the "special master's and court's findings of egregious misconduct on the part of the firm."

On Tuesday, Hagens Berman countered that a fee award at this point is premature because the court will have to consider sanctions as part of its review of the special master's report anyway, and because a ruling on the motion for reallocating the award could unfairly come into play in any motions for summary judgment that the defendants may later make.

Hagens Berman also said it's too early to shift the fees because of an ongoing appeal before the Third Circuit.

The firm filed a petition for mandamus in the Third Circuit in December citing U.S. District Judge Paul Diamond's decision not only to rule on the special master's report while a motion for his recusal was pending, but also to refer the firm to the Justice Department for possible criminal investigation — an action no party had previously requested and that the judge had not publicly raised ahead of time.

The Third Circuit denied the request without comment in January, and Hagens Berman filed a petition for rehearing early in February.

Judge Diamond appointed Hangley in 2014 to untangle discovery issues related to the statute of limitations. As the judge described it in a December opinion, Hangley found in his October 2023 report and recommendation that the law firm had "conducted grossly inadequate presuit investigations; obstructed discovery; recklessly (or, perhaps, intentionally) made false and baseless allegations intended to toll the limitations clock; doctored evidence; and — when their misconduct came to light — sought to abandon plaintiffs and evade defendants' sanctions requests."

Hagens Berman has in turn **told the court** that it spent hundreds of hours and significant resources researching its legal theories, building off the work of an Australian attorney who had pursued similar cases, and that clients had not been duped into agreeing to dismiss their cases.

Judge Diamond found this explanation unsatisfying and announced in a three-page order in December that he was referring the firm to the DOJ for potential criminal investigation.

While initially the special master's fees were shared equally between the plaintiffs and the drugmakers, the drugmakers **first moved** to shift the costs to Hagens Berman in 2018. Judge Diamond at the time denied the motion without prejudice, saying that he could not rule on the question until Hangley's investigation had finished.

A representative for Hagens Berman and counsel for GSK declined to comment Wednesday. Counsel for Sanofi-Aventis did not immediately respond to a request for comment.

Hagens Berman is represented in-house by Craig R. Spiegel.

Former Hagens Berman partner Tyler S. Weaver is represented by Robert E. Welsh Jr. of Welsh & Recker PC.

Sanofi is represented by Daniel S. Pariser, Paige H. Sharpe, Anand Agneshwar and Carmela T. Romeo of Arnold & Porter Kaye Scholer LLP.

Defendant Grünenthal GmbH is represented by Michelle A. Ramirez and Daniel A. Spira of Sidley Austin LLP, and Eugene A. Schoon of Croke Fairchild Duarte & Beres LLC.

GSK is represented by Michael T. Scott of Mike Scott Law LLC, and Sonja S. Weissman of Reed Smith LLP.

The case is Glenda Johnson et al. v. SmithKline Beecham Corp. et al., case number 2:11-cv-05782, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Emma Cueto. Editing by Marygrace Anderson.

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Philly Says PBMs Can't Exit Suit Over Opioid Crisis

By **P.J. D'Annunzio**

Law360 (February 25, 2026, 5:53 PM EST) -- The city of Philadelphia on Wednesday defended its lawsuit against CVS Health Corp. and other pharmacy benefit managers over allegedly fueling the opioid crisis, urging a Pennsylvania federal judge to reject the PBMs' arguments that they should be let out of the litigation for lack of a valid legal claim.

In a **response** to the PBMs' joint motion to **dismiss** the lawsuit, the city argued that its allegations that the PBMs colluded with drug companies to flood the market with opioids were both timely filed and strong enough to avoid an early end to the litigation.

Rather than serving the health plans who relied on them to develop cost-effective prescription drug programs that safeguarded the health of beneficiaries, the PBMs only looked out for themselves, the city claimed in its response.

"Defendants conspired with opioid manufacturers to promote opioid use and facilitate unrestricted access to these dangerous drugs, for which the manufacturers richly rewarded them," the city argued. "Defendants did so knowing that opioids pose serious risks of addiction and abuse and that they were fueling the opioid epidemic the drug manufacturers had sparked. Their conduct exacerbated the oversupply of prescription opioids in Philadelphia, causing a public health and safety crisis."

Philadelphia filed its civil Racketeer Influenced and Corrupt Organizations Act lawsuit against the PBMs on Oct. 30. In response, the defendants argued that the city's lawsuit was filed too late because it had been on notice about the opioid epidemic for some time.

However, the city argued that because of the PBMs alleged secret collusion with the pharmaceutical companies, it didn't know the PBMs were the source of its injuries until 2022, making the 2025 suit valid and within the four-year statute of limitations period.

Philadelphia also argued the RICO claim itself was valid, and that it properly alleged that the city spent vast amounts of money on public services to combat the epidemic, including purchasing naloxone; it suffered lowering property values and loss of business and income tax revenue; and reduced population.

Additionally, the city argued that its public nuisance claims should advance as well because the effects of the opioid epidemic affected the city as a whole, not just individual users.

"The city alleges that increased crime, risk of accidental needle sticks, toxic waste, hepatitis C infections, opioid-impaired drivers, and other widespread communal impacts endanger the health and safety of all Philadelphians, including those who have never used opioids," the city said. "Indeed, the vast majority of courts that have addressed similar allegations have rejected the argument that the opioid epidemic is only an aggregation of individual injuries."

Attorneys for the parties did not immediately respond to requests for comment Wednesday.

The defendants are represented by Joseph I. Fontak of Leader Berkon Colao & Silverstein LLP, Brian D. Boone, Michael A. Kaeding and Debolina Das of Alston & Bird LLP, Robert J. Giuffra Jr., Jeffrey T. Scott and Matthew J. Porpora of Sullivan & Cromwell LLP, Elisabeth Miller, David Mader, Michael Lyle and Jonathan G. Cooper of Quinn Emanuel Urquhart & Sullivan LLP, Mark Villanueva and Robert J. Norcia of Stradley Ronon Stevens & Young LLP, Blair G. Brown, Steven N. Herman, Ivano M.

Ventresca, Brian J. Beaton Jr., Aaron Chou and Conor B. O'Croinin of Zuckerman Spaeder LLP.

Philadelphia is represented by Michael Pfautz of the City of Philadelphia Law Department, Jerry R. DeSiderato, Timothy J. Ford, Silvio Trentalange and Stanford B. Ponson of Dilworth Paxson LLP, Stephen A. Sheller of Sheller PC, Andrew B. Sacks and John Weston of Sacks Law LLC, Gregory B. Heller of Feldman Shepherd Wohlgelernter Tanner Weinstock Dodig LLP, and Russell W. Budd, Chris Mansour, Catherine Hancock Dorsey, Burton LeBlanc, Daniel Alberstone and Mark P. Pifko of Baron & Budd PC.

The case is City of Philadelphia v. CVS Health Corp. et al., case number 2:25-cv-06185, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Emily Kokoll.

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Social Media Contributed To Mental Health Issues, Jury Hears

By **Craig Clough**

Law360 (February 25, 2026, 10:39 PM EST) -- A therapist who treated the plaintiff in a landmark bellwether trial alleging Instagram and YouTube harm children's mental health told a California jury Wednesday that social media use contributed to the plaintiff's struggles, while acknowledging that social media addiction is not a diagnosis formally recognized in her field.

Victoria Burke, a marriage and family therapist licensed in California, treated the plaintiff, known in court as Kaley G.M., when Kaley was about 13 years old for about six months in 2019. Burke was still under supervised training at the time. She said she eventually diagnosed Kaley with social phobia disorder and body dysmorphia disorder.

Burke, who was called by the plaintiff's side, said she didn't diagnosed Kaley with social media addiction because at the time she was treating Kaley, it was not an official diagnosis recognized in the Diagnostic and Statistical Manual of Mental Disorders. Social media addiction is still not a recognized diagnosis.

She did say problems with Kaley's social media use came up at times during their sessions, which included Kaley having to delete her accounts at one point due to bullying from peers. Burke explained that even though social media addiction is not recognized in the DSM, she has learned much more about it since 2019, and "it is something that I'm putting into diagnostic criteria today."

When asked under cross-examination by Andrew Stanner of Covington & Burling LLP, who represents Instagram's owner Meta Platforms Inc., if it is true she did not form any opinion that social media caused or contributed to any of Kaley's mental health struggles, Burke disagreed.

"Caused, no, I had no opinion as to causation," Burke said. "Contributing, I did have an opinion on."

Stanner then pulled up portions of Burke's deposition given about nine months ago, and Burke agreed she said then that she did not have any opinion on social media contributing to Kaley's troubles.

"I answered the question to the best of my ability in that moment," Burke said. "Today my opinion is different."

Stanner suggested several times that Burke's change of opinion could be the result of her multiple meetings with the plaintiff's attorneys, which included her having lunch with them Wednesday during a break in her testimony, but Burke pushed back on the suggestion.

"What I said is no longer accurate, I want to say that it did contribute, that was correct," she said.

When Stanner asked her to explain further, Burke said she only heard "the first part" of the question during her deposition, "and I believe that it was a contributing factor, I do not think it was causation."

Burke also explained she read over her deposition testimony that morning, and her answer "stuck out as something that I answered then that I would answer differently today."

"Is it because you've learned new terminology from her lawyers about 'contributing'?" Stanner asked.

"No," she answered.

Burke did agree with Stanner that Instagram is not specifically mentioned in the records of Kaley's therapy sessions and that no specific social media platforms are mentioned. She also agreed that overuse of social media is not specifically mentioned in the records, nor is social media addiction.

Burke did say Kaley tended to use her phone and social media as a coping mechanism and turned to social media during times of social isolation, noting that some of their therapy focused on helping her find other coping mechanisms.

Lanier, during redirect questioning, asked if it's true the DSM is sometimes behind the times, and that bipolar disorder was once not a recognized diagnosis, and Burke agreed.

She also agreed that she only met with the plaintiff's attorney twice for about 10 minutes each time, and that over lunch, they did not discuss her testimony.

"Did we talk about the case one bit?" Lanier asked.

"No, we shared dog photos," Burke responded.

"Ollie is your Havanese?" Lanier asked.

"Yes."

"Dizzy is Sarah's Havanese? Actually, Dizzy's dead, Dizzy was Sarah's Havanese?" Lanier asked, which got laughs from the audience, and Burke agreed.

After Burke said she also saw pictures of Lanier's co-counsel's dog, he asked, "Did we talk about the substance of this case one ounce?"

"No," Burke responded.

The **bellwether** is the first of at least nine trials that are planned out of thousands of cases consolidated in Los Angeles County Superior Court Judge Carolyn B. Kuhl's courtroom, with the hope that parties might reach a settlement in the rest of the cases based on the outcome of the bellwethers.

The **social media companies** behind TikTok, Snapchat, Google LLC-owned YouTube and Meta-owned Instagram are accused of purposely inducing young people to compulsively use the platforms through addictive features, such as infinite scroll, autoplay, notifications and reward systems. While the trial is focused on a single plaintiff's claims, the outcome of the consolidated cases poses billions of dollars in risk for the companies.

TikTok and Snap recently settled with Kaley G.M. although the settlement did not resolve other consolidated personal injury cases in the Judicial Council Coordination Proceedings pending before Judge Kuhl.

Pretrial rulings by Judge Kuhl reduced the litigation to claims that the platforms' features are addictive, not the third-party media posted to the platforms. The companies are facing failure-to-warn claims, alongside negligence and concealment allegations.

Plaintiff Kaley G.M. is now 20 years old but contends a social media addiction in her youth caused her to suffer mental health problems. The defendant companies argued at the trial that other problems in her life, including parental abuse and bullying, caused her struggles.

Kaley's full identity is being protected during the proceedings. She was expected to take the stand Wednesday afternoon but is now likely to appear Thursday.

The plaintiffs are represented by Mariana A. McConnell of Kiesel Law LLP, W. Mark Lanier, Sarah Lanier and Rachel Lanier of The Lanier Law Firm, Rahul Ravipudi of Panish Shea Ravipudi LLP, Adam

S. Davis of Wagstaff & Cartmell LLP, and Joseph VanZandt of Beasley Allen Law Firm.

Meta is represented by Phyllis Jones, Paul W. Schmidt, Andrew Stanner and Michael Imbroscio of Covington & Burling LLP.

YouTube is represented by Luis Li, Ariel Anaba and Lauren Gallo White of Wilson Sonsini Goodrich & Rosati PC.

The case is Social Media Cases, case number JCCP5255 and lead case number 22STCV21355, in the Superior Court of the State of California, County of Los Angeles.

--Editing by Kristen Becker.

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Tom Goldstein Guilty On Tax Evasion, 11 Other Counts

By **Jared Foretek**

Law360 (February 25, 2026, 5:21 PM EST) -- SCOTUSblog founder and famed U.S. Supreme Court advocate Thomas Goldstein was found guilty of tax evasion, as well as aiding in the filing of false tax returns and lying on loan applications, by a Maryland federal jury Wednesday.

SCOTUSblog founder Thomas Goldstein was convicted Wednesday of false statements on loan applications, tax evasion, willful failure to pay and aiding in false returns. (AP Photo/Alex Brandon)

With Goldstein standing alongside his attorneys behind the defense table, the jury of seven men and five women read its verdict just before 5 p.m., finding Goldstein guilty on 12 of the 16 counts he faced. After more than two full work days of deliberation, Goldstein was convicted on the sole count of tax evasion, for the 2016 tax year; four counts of aiding on false returns for either himself or his law firm; four counts of failure to timely pay his taxes; and three counts of lying to a mortgage lending business.

Goldstein, lead defense attorney Jonathan Kravis, and prosecutor Adeyemi Adenrele all declined to comment after the verdict was delivered Thursday.

The trial lasted 16 days spread across six different weeks, featuring testimony from more than 30 witnesses — many of them professional poker players, former employees at Goldstein's old law firm Goldstein & Russell, and accountants.

The witnesses took jurors through Goldstein's rise as a boot-strapping Supreme Court attorney and legal clinician, his training with poker pros, the massive heads-up poker wins he scored in 2016, the losses that piled up in subsequent years as he fell behind on his taxes, and the Internal Revenue Service criminal investigation that began in 2020.

During his closing argument, Kravis called the time since the probe began Goldstein's "six-year nightmare."

Goldstein will now face the prospect of prison time. For the false statements on loan applications convictions, Goldstein faces a maximum of 30 years in prison for each count. The maximum sentence for the tax evasion charge is five years, while willful failure to pay and aiding in false returns charges carry maximum sentences of one and three years per count, respectively.

The most dramatic testimony came from Goldstein himself, who **took the stand** for two days and claimed — for the first time — that he'd actually overpaid his taxes in 2016. According to Goldstein, he failed to account for about $9 million he was holding on behalf of Malaysian billionaire Paul Phua when he calculated his gambling winnings and losses for the year. The money was in his account at the time, but Goldstein said that Phua had total control over it.

"Like every year before and every year since, I lost," he testified before the jury earlier this month, estimating that he's still in the red in poker by about $10 million. "I used utterly the wrong way of computing my gambling wins and losses, very, very, very quickly."

Goldstein also laid the blame for other errors on his returns on his outside tax accountants at Gelman Rosenberg and Freedman, saying he regularly used his firm account for personal transactions and that he thought the accountants, or the Goldstein & Russell firm manager in charge of the books, would ask if they needed clarification on a particular transaction.

On cross, prosecutor Sean Beaty accused Goldstein of lying about the 2016 miscalculation, saying that his bank records showed he'd never left $9 million in the account for long. Beaty also **hammered** Goldstein on his lavish purchases while still well behind on his taxes, and ultimately found an opening to ask Goldstein about his extramarital affairs, which had previously been kept out of trial by U.S. District Judge Lydia Kay Griggsby.

"You lied to your wife about your poker debts," Beaty said. "What else did you lie to her about? … You did not tell your wife that you were having many, many affairs."

Prior to Goldstein's testimony, the government put his top tax preparer from the time, Walter Deyhle, on the stand. In two days of testimony, Deyhle **told the jury** that Goldstein failed to turn over his own gambling records to the accountants and kept disorganized books, saying that he was "very confident" that Goldstein knew what was on his returns when they were filed.

But under combative cross-examination from Goldstein counsel Kravis, he **admitted** to making a calculation error on the gambling portion of Goldstein's 2016 individual return. The error didn't impact Goldstein's tax liability, but Kravis also accused Deyhle of changing his story compared to what he told IRS investigators and the grand jury. Deyhle had previously said that Goldstein only gave him the 2016 gambling numbers orally, but prosecutors showed him an email in which Goldstein gave him a purported total winnings number, along with his payments to stakers and his losses.

"Spider-Man" star Tobey Maguire also testified, **telling the jury** that Goldstein directed him to pay a $500,000 legal fee directly to real estate magnate Bob Safai, who Goldstein was in debt to from a prior poker match. The payment never appeared as income on Goldstein & Russell's tax return.

The government wrapped its case-in-chief with testimony from IRS special agent Colleen Ranahan, who **said** that Goldstein had underreported his net gambling winnings in 2016 by more than $3.35 million, reducing his total liability by $1.4 million. She based the figures on testimony presented during trial, as well as several stipulations of gambling figures the parties agreed to.

The original **indictment** sent shockwaves through the legal world when it was issued in January 2025, accusing Goldstein of hiding millions in ultra high-stakes poker winnings from the IRS in 2016, failing to pay his claimed tax liability, taking improper deductions on law firm expenses that were actually personal payments and lying on mortgage applications for his $3 million home in Washington, D.C.

Goldstein — who had built a reputation as one of the best Supreme Court advocates in the country and represented Google in its landmark copyright case against Oracle in 2020 — quickly pled not guilty and slammed the prosecutors who brought the indictment. He later sold SCOTUSblog months after the indictment was released. At trial, he admitted that he's still in debt to Wonderful Company president and former poker-backer Stewart Resnick for more than $9 million.

The case took a big turn just before trial began, when Judge Griggsby **dismissed** a tax evasion allegation that accused Goldstein of taking improper tax deductions for "sham jobs" he gave to women he'd been in romantic relationships with. According to the government, Goldstein had met the women on "sugar" relationship sites and given them fraudulent jobs at his law firm.

But Judge Griggsby held that the government hadn't established a clear standard of what qualified as a fake job for tax purposes. Not only did she toss the allegation in the indictment related to the women, but she went on to bar any evidence related to the women from being introduced at trial.

On the eve of trial, the government itself dropped six more counts — three for tax evasion in the years following 2016, two for aiding in the preparation of false returns and one for failure to timely pay. The government said it did so to "streamline" its case at trial.

The government is represented by Sean Beaty, Emerson Gordon-Marvin and Hayter Whitman of the U.S. Department of Justice's Tax Division and Kelly O. Hayes and Adeyemi Adenrele of the U.S. Attorney's Office for the District of Maryland.

Goldstein is represented by Stephany Reaves, Adeel Mohammadi, Jonathan I. Kravis and Sarah Weiner of Munger Tolles & Olson LLP.

The case is U.S. v. Goldstein, case number 8:25-cr-00006, in the U.S. District Court for the District of Maryland.

--Editing by Michael Watanabe.

Update: This article has been updated with additional details from the courthouse and background information.

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Trials Group Of The Year: Susman Godfrey

By **Elliot Weld**

Law360 (February 25, 2026, 4:04 PM EST) -- Susman Godfrey secured a $970 million arbitration award against Walgreens in a contract dispute over at-home COVID-19 test kits and won a $1.6 billion judgment against China Construction America Inc. related to the embattled building and opening of the Baha Mar megaresort in the Bahamas, earning it a spot among the **2025 Law360 Trials Groups of the Year**.

Los Angeles-based partner Krysta Pachman said "everybody" belongs to the firm's trial practice as it does not have specific practice areas. Another partner, Jacob Buchdahl, added that what also makes the firm unusual is its ratio of partners to associates. He said at the end of 2025, the firm had 101 partners, 85 associates and roughly 60 attorneys serving in other types of counsel roles.

"I think the biggest thing that differentiates us from other firms is that we are a trial firm, and so from day one, we're litigating the case as if it's going to trial," Pachman said. "And usually, that's our hope. As attorneys, we love trying cases. So when we're getting discovery, when we're taking depositions, we're thinking about it like a trial deposition."

Pachman said staying focused on a trial outcome helps to keep the firm from getting "bogged down in kind of the mundane discovery disputes," and said Susman Godfrey goes to trial "a lot more than almost any other firm."

Buchdahl said the firm is "frequently" the choice when a case starts to look like it's going to go to trial, often stepping in on cases where it was not initially involved to take a case through the trial process.

Pachman was among the Susman Godfrey attorneys who served as lead counsel for Everly Health in an arbitration dispute against Walgreens that led to an award for Everly of over $970 million. Everly, a provider of at-home medical testing, signed a contract with Walgreens at the beginning of the COVID-19 pandemic to provide testing to Walgreens customers.

Everly claimed that the program was successful for a time, but that Walgreens eventually began misusing Everly's trademark and secretly diverting COVID-19 tests to its own pharmacists.

The firm said Everly approached Susman Godfrey to handle the case in 2022, and a Delaware federal judge later affirmed the award.

Asked what challenges the case presented, Pachman said it was difficult to come up with one since she looks back on the case positively and it had a "really monumental outcome." She said the firm put "a lot of thought and care" into how it would present evidence to the arbitrator over the seven-day hearing and pieced together evidence "in a way that was really going to convey exactly what had happened and how Walgreens had taken advantage of our client."

Buchdahl was a part of the team that represented BML Properties, an investment vehicle controlled by billionaire Sarkis Izmirlian, in a bench trial in New York state court against China Construction America Inc. in a dispute over the construction of the Baha Mar resort in the Bahamas.

BML sued CCA claiming it concealed massive construction delays and then sabotaged the project altogether when the contractor realized catching up was hopeless. The alleged fraud cost BML its entire $845 million investment, and after an 11-day trial, Justice Andrew Borrok **awarded** BML that amount plus interest, bringing the total to $1.6 billion.

Buchdahl said Susman Godfrey took over the case after it had been through a motion to dismiss, and said at that time the case "did not seem like it was going to get resolved before the bitter, bitter end." Even after the verdict was affirmed on appeal, Buchdahl said, the case was complicated due to one CCA subsidiary entering bankruptcy and another in liquidation proceedings in the Bahamas.

"The fact that they had so many subsidiaries really did complicate the whole process in terms of figuring out how to collect, ultimately, on the judgment," Buchdahl said.

He said the case was eventually settled in December.

"I think one of the hard things to do under New York law is to pierce a corporate veil, and that was one of the features of that victory that our team was particularly happy about," Buchdahl said. "It is challenging to prevail on fraud claims and contract claims simultaneously, which is another thing we were able to do in that case. And the trial looked a lot like Susman Godfrey trials in that there were a lot of different Susman Godfrey lawyers who stood up and had a big, important piece of that trial."

The firm also represented the city of Baltimore in a **suit** against drug distributors McKesson and AmerisourceBergen over allegations they fueled the opioid crisis. According to the firm, residents of Baltimore are more likely to die of an opioid overdose than almost any other American city. A jury awarded the city $266 million in 2024. The case remains ongoing on appeal.

Buchdahl said the Baltimore case was one that the firm was "proud to be a part of" due to the suffering caused by the opioid crisis.

--Editing by Patrick Reagan.

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Fungi-Nail Co. Says False Advertising Class Action Must Fail

By **Emily Field**

Law360 (February 25, 2026, 7:05 PM EST) -- Arcadia Consumer Healthcare Inc. on Tuesday urged a North Carolina federal judge to toss once and for all a proposed class action alleging that its Fungi-Nail product is falsely marketed as a treatment for nail fungus, saying that the plaintiff has tried and failed several times to point to specific statements that it treats the infection.

Arcadia said that Daniel Duffey has tried twice to identify label statements that the Fungi-Nail "treats toe nail fungus" in his first and amended complaint but has fallen short. He also ignores the labeling disclaimers that state that the product is not effective on the nails, Arcadia said.

"Even if he were confused about whether Arcadia's product treats toenail fungus after reviewing the front label depiction of inflamed, cracked skin surrounding healthy toenails, and the 'Restores Skin Health + Cures Most Athlete's Foot' statement, the full packaging — including side and back label disclaimers — foreclose his labeling theory," the company said.

Arcadia said that Duffey's contention that the label is misleading relies on a "copycat" case filed against it in California federal court by the attorneys also representing Duffey.

If Duffey's case isn't dismissed with prejudice, then it should be stayed until that case is resolved because it also involves Fungi-Nail, Arcadia said.

"Mr. Duffey insists Arcadia's requested stay 'has no ascertainable end date' — which is simply not true," it said. "Temporary stays pending resolution of duplicative proceedings serve the interests of justice."

Duffey's October suit says the company's line of Fungi-Nail products, available in pen, ointment and liquid forms, creates the false impression that they are intended to effectively treat nail fungus. The company touts that the products cure and prevent nail fungus with "maximum strength" efficacy on the packaging front labels, according to the complaint.

But on the back label, there is a disclaimer that the products are not meant to treat nail fungus and that they aren't effective at doing so, and Arcadia knows many consumers don't read the labeling on the back of packages, the suit says.

However, Arcadia said Tuesday that in the Fourth Circuit labeling statements need to be evaluated in their context to determine whether or not it's plausible that a consumer would be misled.

And disclaimers are considered in their context and may dispel misleading messages that a product's name implies, Arcadia said.

And it said Duffey doesn't have standing to pursue claims based on his individual purchase on behalf of a national class.

Duffey is not injured because he didn't seek a refund under the company's "money-back guarantee," Arcadia said.

"He maintains he did not read Arcadia's refund offer, did not have to accept a refund, and not permitting his self-inflicted injury to proceed is against public policy," Arcadia said. "But he cannot avoid the refund language by choosing not to read beyond the front label, as Fourth Circuit law requires evaluation of the packaging in context."

Representatives for the parties didn't immediately respond to requests for comment on Wednesday.

Duffey is represented by DaQuan Blyther of Solomon Law Group LLC and Thiago M. Coelho, Chumahan B. Bowen and Jennifer M. Leinbach of Wilshire Law Firm PLC.

Arcadia is represented by Jacob M. Harper of Davis Wright Tremaine LLP.

The case is Duffey v. Arcadia Consumer Healthcare Inc., case number 5:25-cv-00652, in the U.S. District Court for the Eastern District of North Carolina.

--Editing by Brian Baresch.

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Cat Cover Story In Ginsburg Health Hack Gives Judge Pause

By **Hayley Fowler**

Law360 (February 25, 2026, 4:56 PM EST) -- A Fourth Circuit jurist on Wednesday seemed fixated on the feline excuse a former hospital transplant coordinator gave FBI agents when he was questioned in 2019 about accessing U.S. Supreme Court Justice Ruth Bader Ginsburg's healthcare records.

In the first four minutes of oral arguments, U.S. Circuit Judge Robert Bruce King returned to the cats no less than three times as he rehashed the facts of the case with defense counsel. As Judge King put it, defendant Trent Russell in an interview with the FBI denied accessing Justice Ginsburg's medical information and "said his cat must have walked across the keyboard."

Defense attorney Charles Burnham of Burnham & Gorokhov PLLC noted that was one of many statements Russell offered during the interview, in which he largely denied culpability.

"But he blamed it on his cat," Judge King interjected. "Accessing the records of Justice Ginsberg, he blamed on his cat."

Russell's meeting with the FBI was the subject of lengthy debate during Wednesday's arguments, in which Burnham sought to convince the three-judge panel that the statements he made during the supposed surprise interview should never have been allowed at trial because they were coerced.

Burnham pinned the blame on the company CEO being present during the interview, which he said made Russell feel like he had no choice but to answer the FBI agents' questions or risk losing his job.

"I think we all should put ourselves in the shoes of a 29-year-old who had a lot of life experience with very modest academic credentials," Burnham said, noting the position was a "step up" from his previous job as a firefighter.

"Imagine yourself being that 29-year-old, walking into a room you have no idea what's coming, and walking in and seeing the FBI, and the CEO of the company from whom there's no higher authority," he said.

According to Burnham, Russell only attended the meeting, which was held at his place of work, at the behest of someone in his company. He said Russell didn't know what was happening until he got there. Burnham likened the CEO's presence during the interview to intimidation.

U.S. Circuit Judge Albert Diaz said Russell having his employer in the room while he was being questioned was not an "illegitimate concern." But he noted there wasn't much else indicating coercion: It was a voluntary interview, there were no weapons or handcuffs displayed, no one expressly threatened him with losing his job and the door to the conference room was left unlocked, the judge said.

"So what is it about this — other than the fact that his employer was there — that makes this so coercive as to amount to a constitutional violation?" Judge Diaz asked.

Burnham, in response, characterized the interview as a "white collar setting" that didn't feature the typical hallmarks of coercion, calling it much more "subtle."

"The whole point was that the interrogation was supposed to be very civilized, very friendly, very genteel. That's what made it effective," he said during rebuttal. "So of course, they weren't going to lock the door or say anything intimidating."

But U.S. Circuit Judge Stephanie Thacker seemed wary, calling attention to the voluntary nature of the interview. She nonetheless later acknowledged during the government's argument that having the CEO in the room seemed like the type of environment "that would make me sweat."

"What else would have needed to happen here, besides the fact that the CEO of the whole company is sitting there breathing down your neck while the law enforcement is asking you questions about a crime you committed at work?" she asked the government.

In response, Assistant U.S. Attorney Nicole Beebe of the U.S. Attorney's Office for the Eastern District of Virginia said that even if the CEO's presence was somehow coercive, there is no evidence law enforcement also engaged in coercion. She argued that's a necessity to prove the situation was involuntary for Russell.

According to Beebe, the FBI did not ask the CEO to attend the meeting and, in fact, said they would have preferred she weren't there. She opined that might have been because the FBI believed the CEO wanted to support Russell, though Judge Diaz seemed skeptical.

"Really?" he interjected.

Beebe explained that the CEO had been "very supportive" of Russell, testifying at trial that she wanted to believe he was innocent and didn't think he was a "bad guy overall."

"There's nothing to suggest that [the CEO] was this kind of intimidating, coercive figure," she said.

But Judge Thacker seemed to struggle with that argument, saying, "So it depends on whether you have a mean boss or a nice boss?"

In addition to his suppression argument, Burnham said the records Russell is accused of accessing didn't meet the statutory definition of individually identifiable health information. While he acknowledged the statute is broad, he advocated for the Fourth Circuit to impose some "limiting principle."

According to Russell's brief on appeal, there is no evidence he revealed the details or nature of Justice Ginsburg's treatment, only that she had received it.

"The interpretation I'm urging upon the court is that there has to be at least a reasonable degree of certainty, or at least some kind of reasonable inference, as to either the condition or the treatment," Burnham told the court.

Russell was working as an organ donation transplant coordinator in January 2019 when prosecutors said he remotely accessed Justice Ginsburg's records from George Washington University Hospital. He then took a screenshot of the records and posted it on 4Chan, an anonymous messaging forum, the government said.

Russell was accused of formatting his hard drive to destroy the evidence. Prosecutors also said he lied to the FBI about his cellphone being stolen and gave the agency a secondary hard drive rather than his primary operating system drive to obstruct the investigation.

Justice Ginsburg **died** in September 2020 at age 87 after more than 27 years on the Supreme Court.

At trial in July 2024, a federal jury in Virginia found Russell guilty of illegally accessing healthcare records and destroying or altering records. He was acquitted on a third count of disclosing personal health information. Russell was **later sentenced** to two years in federal prison.

U.S. Circuit Judges Albert Diaz, Robert Bruce King and Stephanie Thacker sat on the panel for the Fourth Circuit.

The government is represented by Zoe Bedell and Lauren Nicole Beebe of the U.S. Attorney's Office for the Eastern District of Virginia.

Russell is represented by Charles Burnham of Burnham & Gorokhov PLLC.

The case is US v. Trent Russell, case number 24-4620, in the U.S. Court of Appeals for the Fourth Circuit.

--Additional reporting by Lauren Berg. Editing by Linda Voorhis.

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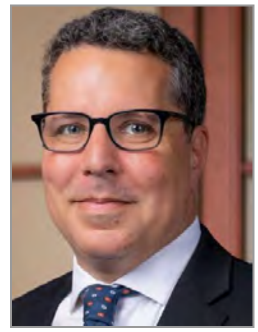
SEC's Morocoin Case Presents A Crypto Jurisdiction Dilemma

By **David Hirsch** (February 25, 2026, 4:52 PM EST)


David Hirsch

Since the start of the current administration, the U.S. Securities and Exchange Commission has made clear through statements and actions that it takes a much more constrained view of its jurisdiction over the offer and sales of crypto-assets than prior administrations.[1] However, SEC leadership has also consistently maintained its commitment to bringing enforcement actions against what could be considered bread-and-butter crypto fraud.

These contrary positions present a jurisdictional tension, and a recent enforcement action highlights the challenges ahead for the agency.

On Dec. 22, the SEC **filed** a lawsuit in the U.S. District Court for the District of Colorado— SEC v. Morocoin Tech Corp. — alleging that three investment clubs and four crypto trading platforms committed fraud in violation of the U.S. securities laws.[2] The defendants allegedly promised retail investors that buying crypto tokens associated with multiple projects would generate outsized profits. The SEC alleges the offerings were fake and that the defendants stole all the retail investors' money.

The factual allegations clearly describe serious fraud and resulting harm, but it is less clear how the facts alleged establish that the fraud involved a securities transaction, given changes to how the agency views investment contracts involving crypto-assets and the application of the Howey test.

Jurisdictional Threshold

As a preliminary matter, the SEC does not have universal fraud authority or even the authority to police investment fraud writ large.

The first question the SEC must answer before pursuing enforcement is always jurisdictional: whether the allegations involve the offer or sale of a security. If the answer to that question is no, the SEC lacks the legal authority to proceed.

Allegations Regarding SEC Jurisdiction

The complaint alleges that victims were recruited and defrauded by the club defendants, who operated four investment clubs purportedly led by financial professionals. In social media groups, the club defendants recommended that investors buy crypto tokens using crypto trading platforms that were allegedly operated fraudulently to steal investor funds, rather than executing the crypto trades as promised.

The club defendants recommended that investors use the crypto trading platforms to buy crypto tokens issued by three projects: NeuralNet, SatCommTech and HumanBlock. The club defendants claimed the projects were selling those tokens as security token offerings akin to initial public offerings, telling investors that "one involves the initial public offering of new stocks, while the other involves the initial offering of new coins!"[3]

The SEC alleges that, unbeknownst to investors, the so-called security token offerings and underlying projects were total fabrications.

The Atkins-Howey Paradigm

The SEC asserts jurisdiction in this complaint based on allegations that the token sales associated with the three crypto projects were investment contracts. The U.S. Supreme Court, in its 1946 decision in SEC v. W.J. Howey Co., defined an "investment contract" as an investment of money in a common enterprise with an expectation of profits based on the efforts of a third party.[4]

In a Nov. 18 speech, SEC Chairman Paul Atkins stated, under his Project Crypto initiative:

> While most crypto assets are not themselves securities, crypto assets can be part of or subject to an investment contract. These crypto assets are accompanied by certain representations or promises to undertake essential managerial efforts that satisfy the Howey test. … A purchaser's reasonable expectation of profits depends on the issuer's representations or promises to engage in essential managerial efforts.[5]

SEC Commissioners Hester Peirce and Mark Uyeda have also argued that investment contracts related to the offer and sale of crypto tokens only exist where promoters create reasonable expectations of profits to be derived from their managerial efforts.[6]

Alleged Essential Managerial Efforts

As quoted in the complaint, NeuralNet stated generally that it would "'combine[] advanced neuroscience, artificial intelligence and robotics' to 'create an efficient and intelligent way of human-computer interaction to improve people's quality of life and promote scientific and technological progress.'"[7] It described allocating tokens to liquidity, marketing and operations, and touted a team of purported experts attached to the project.

SatCommTech represented that it was revolutionizing communications technology, was led by experts and "committed to … providing investors with efficient and reliable communication services."[8]

HumanBlock provided a road map to create and commercialize humanoid robot hardware powered by "robust blockchain architecture."[9] HumanBlock also touted its purported project team and disclosed how it would allocate tokens to investors, team members and major investors.

Those are the only allegations in the complaint that cite claims the projects made about their plans.

If these vague representations regarding promoters' efforts are sufficient, then effectively any statement of intent to build anything with a token attached to it would satisfy the managerial-efforts prong of the Howey test.

That would be a surprising position for this administration's SEC to adopt, given its focus on supporting innovation and distinguishing tokens that power technology or networks, or serve as digital tools, from investmentlike tokens where investors pursue profits in reliance on specific promises of managerial efforts.

If general statements of future intent satisfy the managerial-efforts prong, it is hard to understand on what basis the SEC dismissed a series of litigation cases involving crypto offerings that included much more specific and detailed managerial-efforts allegations.[10]

The Third-Party Problem

Even if these allegations are sufficient to establish reasonable expectations of essential managerial efforts, the complaint does not cite any claims made by the projects themselves, NeuralNet, SatCommTech or HumanBlock, regarding how the projects or tokens would generate profits for token purchasers from those efforts.

The SEC referenced claims made by the projects to establish the investment-of-money and common-enterprise elements of the Howey test. But concerning the expectations-of-profits prong, for each project the SEC references, the only representations about growth, returns and security token offerings were statements made by the club defendants.

The SEC did not allege NeuralNet, SatCommTech or HumanBlock said anything about profits or in any way linked their tokens to anticipated profits, or described the offerings as security token offerings. Here, the complaint does not allege that the club defendants were explicitly or implicitly authorized to make claims on behalf of the projects, or that they had any affiliation with the projects at all.

As a result, this complaint contends that a crypto project offering that does not itself satisfy all the Howey prongs could become a securities offering based only on claims made without the project team's knowledge or agreement.

This appears to be a wholly novel legal theory that has profound implications for crypto markets and more broadly for other nonsecurities products. It is as if a country club membership could be converted into an investment contract, and therefore a security, because one aspiring member's financial adviser represents that, with demand for pickleball increasing, the transferable club membership will be more valuable in the future.

That cannot be the law, or as a result, every investment could be converted into a security based solely on what a third party says about its operations and prospects, either at issuance or in the future.

Howey has consistently been interpreted by courts to depend on investors' reasonable expectations. The SEC has not explained how a stranger to a project, speaking about something over which they have no control or connection, can create those reasonable expectations.

The complaint offers no insight into how a stranger's speech can create legal obligations for project teams, who, if deemed to be issuing securities, would have to register the offerings or qualify for an exemption from registration, in addition to other significant and expensive steps. SEC leadership has, through public statements, been narrowing its jurisdiction over crypto-asset offerings, so the expansive implications of this complaint may reflect unintended consequences rather than a deliberate policy shift.

U.S. investors and markets are safer because of the SEC staff's exceptional ability to investigate and prosecute securities fraud, including fraud involving crypto-asset securities. That is not a controversial view. Crypto market participants are among the most vocal supporters of effective policing of fraud to deter conduct that harms investors and degrades market integrity.[11]

The named defendants here are all defunct corporations, three of which were registered by an unidentified "individual located in Beijing, China." It is therefore unlikely that the complaint will be litigated on the merits. But if the SEC attempts to employ this jurisdictional theory against a defendant that chooses to fight, the SEC is likely to lose, and in the process create precedent that could limit its jurisdiction going forward.

Schrödinger's Assets — Security Status That Changes With the Observer

In his Nov. 18 speech, Atkins expressed support for the concept that investments offered pursuant to investment contracts could morph into nonsecurities over time, e.g., when it is clear that the promoter will take no further efforts to generate profits or if the basis on which profits were expected ceases to apply.[12]

This makes clear logical sense and evokes the reasoning that then-SEC Director of Corporation Finance Bill Hinman applied to crypto-assets in 2018.[13] But the SEC has not typically invoked this theory in the years that followed.

That reluctance may stem in part from the dilemma this complaint highlights. If an investment can convert from a security to a nonsecurity based on changed facts, then the reverse could also be true. An asset sold as a nonsecurity could conceivably morph into a security if changes to the project create reasonable expectations among investors that they will obtain profits from a promoter's new managerial efforts.

A world in which an investment can convert from a security to a nonsecurity and back again creates potentially insurmountable complexities in practice.

Depending on whether the asset morphed or re-morphed, issuers would need to dynamically change compliance policies, regulatory registrations and disclosure content. Investors would need to assess how security versus nonsecurity status affects valuation, good title, liquidity and suitability. Regulators would need to either cleanly transfer oversight or otherwise grapple with shifting and potentially concurrent jurisdiction.

This complaint introduces the potential for morphing that may involve only a subset of token purchasers, as the profit-focused claims were only available to members of the club defendants' social media groups. Investors that did not receive those profit claims likely would not have formed investment contracts with the promoters, because the Howey test elements are not met without reasonable expectations of profits.

This creates the potential that tokens could be both sold pursuant to an investment contract for some investors and not sold pursuant to an investment contract for many others, depending on what the investor observed about the offering.

If that is the law, securities status is ever-fluid in a way that will make development and innovation more expensive and unpredictable.[14] Crypto ventures need clear rules that are consistently applied to support the level of investment needed to innovate and flourish.

It is possible that SEC leadership's approach to morphing and re-morphing can be explained in a way that resolves this seemingly quantum-level uncertainty, but that issue was not addressed in this complaint, and the agency has not yet offered guidance to help resolve the question.

David L. Hirsch is a partner at McGuireWoods LLP. He is the former chief of the SEC Division of Enforcement's Crypto Assets and Cyber Unit.

McGuireWoods associates Chelsea Smith Press and Ray Villani contributed to this article.

[1] The SEC and the Commodity Futures Trading Commission are pursuing efforts to harmonize questions of regulatory jurisdiction over crypto assets and transactions. https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-joint-sec-cftc-harmonization-event-project-crypto-012926.

[2] https://www.sec.gov/newsroom/press-releases/2025-144-sec-charges-three-purported-crypto-asset-trading-platforms-four-investment-clubs-scheme-targeted.

[3] https://www.sec.gov/files/litigation/complaints/2025/comp-pr2025-144.pdf at para 58.

[4] SEC v. Howey Co. , 328 U.S. 293 (1946)

[5] https://corpgov.law.harvard.edu/2025/11/18/speech-by-chair-atkins-on-the-securities-and-exchange-commissions-approach-to-digital-assets-inside-project-crypto.

[6] "The 'contract, transaction or scheme' by which the token is sold may constitute an investment contract; however, the object of the investment contract — the token — may not bear the hallmarks of a security. https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-blockress-2020-02-06; https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-flyfish-091624# (dissenting from enforcement action and arguing that tokens at issue were not in their view securities and the specific representations regarding managerial efforts did not create an investment contract.).

[7] https://www.sec.gov/files/litigation/complaints/2025/comp-pr2025-144.pdf at para 62.

[8] Id. at para 82.

[9] Id.

[10] In those dismissals, the SEC frequently cited the exercise of its enforcement discretion as supporting its action. It is well established that the SEC has discretion to act based on its own priorities and legal interpretations, but exercising that discretion without explanation for why similar things are being treated differently has previously led to successful legal challenges based on claims that the SEC applied discretion in a manner that was arbitrary and capricious. See, e.g., Coinbase Inc. v. SEC , No 23-3202 (3rd Cir., 2024).

[11] These crypto market participants also express a desire to balance discussions regarding fraud with a recognition that fraud occurs in all financial markets and represents only a tiny fraction of overall crypto-related activity.

[12] https://corpgov.law.harvard.edu/2025/11/18/speech-by-chair-atkins-on-the-se-and-exchange-commissions-approach-to-digital-assets-inside-project-crypto.

[13] https://www.sec.gov/newsroom/speeches-statements/speech-hinman-061418.

[14] The SEC has typically navigated issues about different investors having access to different information by treating all claims made to the general public as being available to all investors. Claims made only behind closed doors or to members-only groups have always posed challenges for investment contract analyses. Those challenges become much greater if claims made by purported financial professionals to private investment clubs can satisfy Howey.
