

Securities

Dick's Sporting Goods Can't Escape Narrowed Investor Fraud Suit

April 6, 2026, 9:11 AM PDT

Dick's Sporting Goods Inc. and some of its top executives must defend against investor claims the retailer concealed the volume of its excess inventory post-pandemic, a federal judge ruled.

Confidential witness testimony, top brass's access to inventory data, and stock sales made close in time to alleged misstatements bolstered the investors' pleading of intent or recklessness for securities fraud claims, Judge J. Nicholas Ranjan said. Executive Chairman Edward W. Stack, CEO Lauren R. Hobart, and Chief Financial Officer Navdeep Gupta allegedly reaped about \$23 million, \$19.2 million, and \$4.87 million off stock sales during the proposed class period.

The investors adequately alleged market losses tied to the revelation of alleged fraud with a TD Cowen analyst report of Dick's financials, despite the retailer's objection, the US District Court for the Western District of Pennsylvania judge said April 3, partially agreeing with a magistrate judge's recommendation to let some claims proceed.

Ranjan trimmed the number of alleged misstatements that Magistrate Judge Kezia O.L. Taylor found actionable to four-and-a-half. In context, some present-tense statements that Dick's inventory was "healthy," "clean," or "well-positioned" were forward looking, he said. Hobart not mentioning outdoor and fitness inventory overages in a trio of statements about demand and Stack's assertions about private brands wouldn't have misled a reasonable investor because they were too attenuated from the suit's claims.

Other statements from Hobart and Gupta about mounting inventory issues were sufficiently pleaded as misleading. Ranjan dismissed Stack from the suit, as he made no actionable statements.

Ranjan agreed with Taylor's assessment on dismissing other claims. Rhode Island's general treasurer, suing on behalf of the state's retirement system, and the Western Pennsylvania Teamsters and Employers Pension Fund Public Employees inadequately pleaded Dick's misrepresented its retail theft level and the risks of sales declines and markdowns, Taylor said last year.

Dick's saw a surge in sales during the pandemic as people sought ways to stay active—but as lockdowns lifted, demand waned and inventory piled up, the investors' complaint said. Dick's and its corporate overseers downplayed shareholder concerns and expressed optimism about its profitability.

Dick's stock price plunged more than 24% to close at \$111.53 on Aug. 22, 2023, the day the retailer revealed disappointing second quarter results and company executives discussed inventory markdowns in an earnings call. It was then the stock's steepest single-day decline since Dick's 2002 market debut, according to data compiled by Bloomberg.

Robbins Geller Rudman & Dowd LLP and Pomerantz LLP are lead counsel for the proposed investor class. Jones Day and Wachtell, Lipton, Rosen & Katz represent Dick's, Stack, Hobart, and Gupta. None of these law firms nor Dick's immediately responded to emails seeking comment.

The case is Plumbers & Pipefitters Loc. Union No. 719 Pension Tr. Fund v. Dick's Sporting Goods Inc. , W.D. Pa., No. 2:24-cv-00196, 4/3/26 .

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Class Action

Manage Newsletters

Medpace Investor Sues Over Demand Projections, 16% Stock Drop

April 7, 2026, 10:41 AM PDT

Summary by Bloomberg AI

AI Generated



- Medpace Holdings Inc. is accused of misleading the public by overstating projected demand for its clinical trial services, according to an investor in a proposed class action.
- The investor, Jan Durbin, alleges that Medpace and its top executives knew or deliberately disregarded that growth in certain therapeutic segments might not stay consistent in the fourth quarter of the 2025 fiscal year.
- Durbin seeks damages on her securities fraud claims after Medpace's stock fell about 16% following the announcement of a lower-than-expected book-to-bill ratio for Q4.

Medpace Holdings Inc. misled the public by overstating projected demand for its clinical trial services, an investor alleges in a proposed class action over a 16% selloff attributed to backlog concerns.

Medpace and its top executives "knew or deliberately disregarded that the therapeutic segments wherein Medpace was observing growth" might not stay consistent in the fourth quarter of the 2025 fiscal year, investor Jan Durbin says. She filed her complaint Monday in the US District Court for the Southern District of Ohio.

The Cincinnati-based clinical contract research group has a market capitalization of more than \$14 billion.

"Medpace frequently claimed that the projection of a 1.15 book-to-bill ratio for fourth quarter 2025 was reasonable and achievable," Durbin says, referring to a metric comparing orders booked against orders filled.

It also touted a "well behaved" backlog cancellation rate and claimed that existing cancellations weren't caused by a weak business environment, she says.

But then it reported a 1.04 book-to-bill ratio for Q4 after trading closed on Feb. 9, according to the complaint.

Despite a year-over-year revenue increase for the quarter and a 20% increase in full-year 2025 revenue to \$2.53 billion, the news about the lower-than-expected book-to-bill ratio spooked the market, Durbin says. Medpace's stock fell about 16% the day after the announcement, closing at \$446.05 per share on Feb 10. That was the stock's steepest selloff since July 2024, according to data compiled by Bloomberg.



The proposed class consists of hundreds or thousands of members, according to the complaint.

Durbin seeks damages on her securities fraud claims.

Medpace didn't immediately respond to an email requesting comment.

Strauss Troy Co. and Levi & Korsinsky LLP represent Durbin.

The case is Durbin v. Medpace Holdings, Inc. , S.D. Ohio, No. 1:26-cv-00346, complaint 4/6/26 .

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Securities

AI Training Company Investor Drops Revenue Accounting Suit

April 3, 2026, 9:13 AM PDT

An investor in iLearningEngines Inc. decided to stop pursuing a lawsuit alleging the artificial intelligence platform's executives relied on an undisclosed related party to report fake revenue numbers.

Matthew Whitfield moved to voluntarily dismiss his case without prejudice on Thursday, according to a notice filed in the US District Court for the District of Maryland. Whitfield sued iLearningEngines and its executives in January 2025, alleging the company's share prices plummeted more than 53% after Hindenburg Research published a report revealing its reported revenue and expenses were "largely fake."

Whitfield sought to represent a class of investors who "suffered damages because the value of their investments were artificially inflated by the false and misleading statements and omissions" in violation of the Securities Exchange Act.

The same court dismissed a similar investor lawsuit against iLearningEngines on March 20. Judge Deborah K. Chasanow found the plaintiffs didn't properly allege misleading omissions, fraudulent intent, and misrepresentations of revenue—among other issues—because the information in the Hindenburg Research report was already public.

Whitfield's attorneys didn't immediately respond to a request for comment.

Goldman & Minton PC and Rigrodsky Law PA represented Whitfield.

The case is Whitfield v. Chidambaran et al , D. Md., No. 8:25-cv-00192, voluntary dismissal filed 4/2/26 .

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Musk challenges judgment entry as premature after fraud verdict

DJ [dailyjournal.com/articles/390648-musk-challenges-judgment-entry-as-premature-after-fraud-verdict](https://www.dailyjournal.com/articles/390648-musk-challenges-judgment-entry-as-premature-after-fraud-verdict)

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Attorneys for Elon Musk say U.S. District Judge Charles Breyer acted too fast when he entered a judgment Friday against the X CEO, after a San Francisco jury found him liable for securities fraud last month.

Breyer signed a judgment April 3, adopting the plaintiffs' proposal. The same day, Musk's side submitted an opposition to the proposal, arguing that a judgment can't be entered until the court has answered lingering legal questions and determined how to best assess whether individual class members relied on the two statements Musk made during his 2022 acquisition of Twitter that the jury found to be fraudulent.

"The Court cannot simply enter judgment adopting Plaintiffs' proposed method of calculation without further briefing and inquiry into threshold questions of how these calculations should be performed and before the parties have any opportunity to raise further questions for the Court to resolve as this process develops," Alex Bergjans of Quinn Emanuel Urquhart & Sullivan LLP wrote. *Giuseppe Pampena v. Elon R. Musk*, 3:22-cv-05937 (N.D. Cal., filed Oct. 10, 2022).

In the signed judgment, the court retains jurisdiction over the claims process, including decisions about how to allocate damages to class members.

"But it is black letter law that, if there remain open issues for the district court to resolve, the Court cannot enter final judgment," Bergjans wrote, citing the U.S. Supreme Court's 1945 decision in *Catlin v. United States*.

Bergjans' argument centers on the "fraud-on-the-market" theory that the plaintiffs -- represented by Bottini & Bottini Inc. and Cotchett, Pitre & McCarthy LLP -- presented at trial. Since Twitter stock was impacted by information about the company as it became public, the plaintiffs argued, class members who didn't directly see the statements in question and bought or sold based on the trends in the stock price still indirectly relied on Musk's statements.

Musk's attorneys claim that the jury didn't specify whether they found liability on a class-wide basis from the fraud-on-the-market theory, or if they just found Musk liable for the losses of investors who sold Twitter stock based on his statements

themselves. Since the verdict didn't specify and both are entirely plausible, it would be inappropriate for the court to assume one or the other, they argued.

"When plaintiffs in a securities fraud action seek to prove reliance on a class-wide basis through the fraud-on-the-market presumption, they have the burden to prove the elements of that presumption at trial. But where there are two or more independent bases for a general verdict, courts cannot presume that the verdict rested on any particular theory," Bergjans wrote.

Even if it were clear plaintiffs had proven that theory, Bergjans wrote, Musk is entitled to rebut the presumption of reliance for each individual class member, citing a 1988 U.S. Supreme Court decision in *Basic Inc. v. Levinson*.

"It is in recognition of this unambiguous Supreme Court law and its impact on post-verdict class administration that courts universally refuse to enter final judgment as to all class members in securities class actions immediately following a verdict in favor of plaintiffs and before all questions and disputes regarding individual class members' reliance are adjudicated," Bergjans wrote.

Once the defense has a chance to challenge the reliance of individual class members, Bergjans said, the claims process will be particularly complicated in this case and should be resolved before Breyer enters a judgment.

After two weeks of trial, the jury found Musk liable on March 20 over two of the three statements mentioned in the complaint, including a May 13, 2022, social media post saying his deal to buy Twitter was "temporarily on hold." The jury sided with Musk on the plaintiffs' claim that he carried out a scheme to lower Twitter's stock price and renegotiate the deal.

Lawyers for the plaintiffs told reporters after the verdict was read that damages will be awarded on a claim-by-claim basis, but they expect the total amount to approach \$2.6 billion.

#390648

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Securities

This Week in Chancery Court: Meta Settlement, Notorious B.I.G.

April 6, 2026, 2:00 AM PDT

A \$190 million settlement that prevented Mark Zuckerberg from having to testify at trial over claims stemming from the Facebook's Cambridge Analytica scandal may get final approval this week in the Delaware Chancery Court.

Here are the highlights from the court's schedule:

Tuesday: In re Facebook, Inc. Derivative Litig., Del. Ch., No. 2018-0307, settlement hearing 4/7/26.

At issue: Chancellor Kathaleen St. Jude McCormick's approval is required to finalize the settlement to resolve claims that Zuckerberg and other Meta directors repeatedly failed to fix violations of Facebook users' privacy and engineered an accord with the US government to shield him from personal liability. Meta investors claimed board members mishandled the Cambridge Analytica data privacy scandal and improperly agreed to a \$5 billion US Federal Trade Commission settlement to protect Zuckerberg individually. The settlement halted a rare trial of corporate oversight claims after one day of testimony in July.

Court action: Settlement hearing in Wilmington.

Meta Settles Claim of User Privacy Lapses for \$190 Million (2)

Tuesday: Barrow v. Evans, Del. Ch., No. 2025-0760, teleconference 4/7/26.

At issue: The Notorious B.I.G.'s widow, singer Faith Evans, wants to pause a court fight over his musical legacy after his children accused a record executive of manipulating the rap icon's mother into naming him executor of her estate. Christopher and T'anna Wallace are challenging their late grandmother Voletta Wallace's will in a Pennsylvania court. The motion to stay is one of several that will be considered by McCormick in a teleconference.

Court action: Teleconference.

Notorious B.I.G. Catalog Case May Turn on Fight Over Mom's Will

Wednesday: Dirgina v. Dadak, Del. Ch., No. 2025-0884, teleconference 4/8/26.

At issue: A Ukrainian ex-model seeks a default judgment against her ex-boyfriend, a French-Polish fraudster serving a three-year US prison sentence who she claims wielded forged documents to steal a Spain-based tourism business from her. Kateryna Dirgina wants to reclaim control of the Delaware-chartered company, La Dolce Vita Ibiza LLC, from Pierre Dadak. He pleaded guilty to one count of wire fraud stemming from a scheme to swindle wealthy victims by posing as a representative of the luxury department store Harrods.

Court action: Teleconference.

Ukrainian Model Says Jailed Conman Ex-Boyfriend Stole US Company

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Securities

VNET Settles Investor Class Claims Over Founder's Loan Default

April 6, 2026, 9:37 AM PDT

VNET Group Inc. agreed to pay almost \$5.88 million to resolve investor allegations that the data center company covered up a controlling shareholder's loan default and the default's potential effect.

The US District Court for the Southern District of New York should certify a settlement class of those who acquired VNET American depositary shares from March 23, 2022, through Feb. 17, 2023, investors said while seeking preliminary approval of the deal April 3. US investors had adequately alleged statements about the debt agreement were misleading and the necessary level of intent by executives for securities fraud claims, Judge Dale E. Ho said while mostly letting the suit proceed last year.

Founder Josh Sheng Chen—who had almost 29% of the aggregate voting power and serves as executive chairman—entered into a “facility agreement” for a more than \$50 million loan through his personal holding company, guaranteeing it with his VNET shares as collateral, the suit said

In late 2021, a drop in US share prices triggered the default provisions, but VNET soon afterwards took on more than \$250 million in debt on the condition Chen maintain his level of corporate control, the suit said

Pomerantz LLP is lead counsel for the investors. Skadden, Arps, Slate, Meagher & Flom LLP represents VNET. Neither of these firms nor VNET immediately responded to emails seeking comment.

The case is *In re VNET Grp., Inc. Sec. Litig.*, S.D.N.Y., No. 1:23-cv-11187, 4/3/26 .

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Securities

Wheeler Board's \$7.1 Million Investor Settlement Gets Court Nod

April 2, 2026, 11:29 AM PDT

A federal court blessed a \$7.1 million class settlement for Wheeler Real Estate Investment Trust shareholders, resolving allegations levied against directors and hedge funds of taking over the REIT and improperly diluting its common stock.

The settlement class includes those who held Wheeler common stock as of Aug. 16, 2021, or bought it from then through Sept. 20, 2023, under Judge Mark S. Davis' final approval of the deal Wednesday in the US District Court for the Eastern District of Virginia. The investor leading the case, who was Wheeler's CEO before allegedly being ousted, alleged Joseph Stilwell, principal of Stilwell Value LLC and other funds making up the so-called Stilwell Group, gained control of the REIT and that they planned to repurchase the REIT's Series D preferred stock before coming to view the shares as an opportunity to enrich the group and insiders.

"We are very pleased with the Court's final approval of the settlement, which is an outstanding result for the investor class that could only have been achieved through vigorous litigation efforts and the unwavering commitment of the class representative, Daniel Khoshaba, to the best interests of the class," Jeffrey Ritholtz of Rolnick Kramer Sadighi LLP, lead counsel for the investors, said

Attorneys at Gordon Feinblatt LLC, which represents individual defendants, and Allegaert Berger & Vogel LLP, which represents the funds, didn't immediately respond to emails seeking comment.

The case is Khoshaba v. Stilwell , E.D. Va., No. 2:24-cv-00237, 4/1/26 .

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Securities

AE Industrial Sued for BigBear Sales Before Stock Rout Last Year

April 3, 2026, 8:17 AM PDT

AE Industrial Partners LP dodged \$100 million in losses by dumping BigBear.ai Holdings Inc. shares based on inside knowledge that the defense software business was coming up short of forecasts, according to an unsealed lawsuit.

An investor is suing AE Industrial in Delaware's Chancery Court, saying the private equity firm strategically unloaded nearly its entire BigBear stake via transactions timed to beat disappointing earnings that cratered the AI company's stock in early 2025. The court filing, made public Thursday, targets sales that allegedly earned \$255 million over just a few months.

The allegations come against the backdrop of an escalating AI arms race amplified by wars in Iran and Ukraine that have upended many traditional measures of military superiority. Most recently, a move by OpenAI to capitalize on the feud between Pentagon and Anthropic PBC—which pushed for some guardrails around government use of its technology—appears to have backfired, sending customers and private market investors flocking to Anthropic.

According to the shareholder suit, AE Industrial made two-thirds of its “highly suspicious” sales during a trading blackout period, when BigBear insiders had access to projections showing a downward trajectory in 2024 and headwinds in 2025 linked to federal contracting cuts at the start of President Donald Trump's second term.

“AE Industrial began selling at a pace and size it had never before attempted,” the suit says. “On information and belief, AE Industrial had never sold BigBear common stock during a blackout period before.”

BigBear declined to comment through a spokesperson Friday. AE Industrial didn't immediately respond to a request for comment.

The lawsuit, originally filed under seal March 27, says AE Industrial enjoyed outright majority voting power for several years after taking BigBear public through a blank-check merger with a shell entity.

But the investment firm continued to effectively dominate the tech company, even as it sold down its stake, through close ties to the board and management, the suit says. Abuses of corporate control reflect a running theme for Delaware's main business tribunal, which is known as the world's leading corporate court.

The shareholder, Bruce Taylor, is represented by Johnson Van Kwawegen LLP and Bishop Partnoy LLP. AE Industrial, BigBear, and its board haven't yet made court appearances.

The case is Taylor v. Battle , Del. Ch., No. 2026-0421, complaint unsealed 4/2/26 .

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Securities

Investors Give Courts Fresh Look in Bid to Hold Auditors Liable

April 6, 2026, 2:00 AM PDT

As auditor enforcement stalls in the US, investors harmed by fraud are clinching financial payouts and notching courtroom wins in a pair of class action suits that are typically difficult to bring against accounting firms.

Deloitte & Touche LLP agreed in March to finalize one of the largest settlements in an auditor class action case in a decade. The \$34 million payout to Scana shareholders wraps up a six-year court fight over Deloitte's audits for an abandoned nuclear power plant project in South Carolina.

That followed a case in New York where hedge fund investors who questioned the work of auditors sued BDO, now known as BDO USA P.C., after the fund collapsed. The investors were awarded about \$9 million in damages via an arbitration panel. A state judge in January upheld the award and the case remains under appeal.

For investors of collapsed companies, gatekeepers like auditors who allegedly failed to do their job offer a source of cash to recover some of their losses. Such private actions also serve as a tool to hold auditors accountable for alleged flaws or outright holes in their work, extracting what can be a steeper financial toll than that normally obtained by regulators.

The courtroom focus comes as regulatory enforcement cases have fallen sharply under the Trump administration. The Public Company Accounting Oversight Board and the Securities and Exchange Commission both brought substantially fewer actions last year against auditors for ethics breaches and other misconduct.

The US audit board and the SEC brought 39 enforcement cases against auditors in 2025, down 33% from the prior year, according to a Brattle Group report.

"The SEC and PCAOB have really fallen down on the job here," said Mary-Jo Kranacher, a fraud examination professor at York College, CUNY. "Now it's up to the courts to pick up where they've left off and give investors some hope that they can trust, in the future, what's going to happen and what's put out in the financial statements."

Historically, investors bring relatively few civil cases against auditors because of the high legal bar to prove their missteps harmed shareholders. Those cases rarely survive initial court hurdles as firms are able to convince judges to dismiss such claims.

Shifting priorities from US regulators could further hinder plaintiffs' cases, which often draw from regulators' findings to launch their own court challenges.

The SEC has formed a new enforcement team dedicated to holding auditors accountable, but such investigations often take months, even years, and litigation over the charges can extend that timeline even further.

Under the SEC's oversight, the PCAOB has slashed funding for its enforcement work by 15%.

Rare Settlement

Deloitte's relatively rare legal settlement with Scana Corp. investors is the latest fallout from the nuclear power plant project.

Construction of two reactors at V.C. Summer Nuclear Generating Station was years behind schedule, jeopardizing \$1.4 billion in tax credits needed to finance the South Carolina project when Scana halted work in 2017.

The failed project led to criminal convictions, and civil litigation, while the SEC brought fraud charges related to bonds sold to finance the project.

Investors accused Deloitte of dismissing a Scana whistleblower who warned that the project was unlikely to meet deadlines and that executives had misled regulators and the public about the project's progress. The audit firm also allegedly disregarded evidence that appeared to corroborate the whistleblower.

Such auditor cases underscore the "importance of fulfilling its obligations as a gatekeeper," said Laura Posner, a partner at Cohen Milstein Sellers & Toll PLLC.

Auditors must gather credible evidence to back up their reports on corporate financial statements and not just rely on representations from company managers, Posner said.

Deloitte agreed to settle the case to "avoid the ongoing cost and distraction of extended litigation," the firm said in statement, adding that it stands behind its audit work.

Settlements don't necessarily signal any auditor wrongdoing. The cost to keep litigating coupled with the risks auditors might face at trial can make settlements like Deloitte's a pragmatic option for firms.

"In complex, judgment-heavy environments, decisions made using the best information available at the time can look obvious in hindsight," said Eldar Maksymov, an accounting professor at Arizona State University.

Audit reports aren't a guarantee that a business strategy will succeed—such limitations of the audit are often enough to convince a judge to dismiss claims against accounting firms. But investors who can demonstrate that auditors ignored clear warning signs stand a better chance in court.

"Here you had the plaintiffs pretty much on a winning streak so at some point you just have to pull the plug and pay the money," said Jim Barratt, managing director for commercial damages and investigations at The Vertex Companies LLC.

'Wall of Case Law'

A New York state suit acknowledging that hedge fund investors benefit from audited financial statements, not just fund managers, could provide a new path to sue accounting firms. Such investors have previously had to prove they had a direct relationship with the fund auditor—a legal hurdle that was difficult to overcome.

Investors sued BDO and other vendors of Platinum Partners after the 2016 collapse of the \$1 billion fund, challenging the firm's assessment of certain hard-to-value assets. The US accounting firm is contesting a New York state court judge's January ruling that upheld an earlier arbitration panel's finding that BDO was negligent and issued a judgment in favor of the plaintiffs.

BDO declined to respond to questions about how the case could alter auditor liability or any changes the firm has made as a result of the hedge fund legal challenge.

If the award stands up under appeal, it could change the landscape for auditor liability in New York and spark similar suits, said David King a partner with Herrick, Feinstein LLP who represents the Platinum investors.

"They've built up a wall of case law to try to insulate themselves from audit liability to investors," King said of accounting firms. "This case chips away at that wall."

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A Writ Challenging Qui Tam and D&O Implications

K [dandodiary.com/2026/04/articles/health-care-organizations/a-writ-challenging-qui-tam-and-do-implications](https://www.dandodiary.com/2026/04/articles/health-care-organizations/a-writ-challenging-qui-tam-and-do-implications/)

Sarah Abrams

April 6, 2026

As readers of this blog know, enforcement activity under the False Claims Act (FCA) has continued to expand, particularly in light of the Trump Administration's recent efforts to prioritize fraud enforcement through its [Task Force to Eliminate Fraud](#). At the same time, a new development may fundamentally alter the FCA enforcement landscape. On March 21, 2026, Eli Lilly and Company filed a [petition for a writ of certiorari](#) asking the United States Supreme Court to declare the FCA's *qui tam* provisions unconstitutional (Eli Lilly Writ or Writ).

The Writ does not merely challenge the outcome of the underlying FCA case; rather, it raises a sweeping constitutional question about whether private whistleblowers, known as relators, may exercise core executive branch enforcement authority. Eli Lilly Writ thus presents an issue that, if taken up by the Supreme Court, could reshape not only FCA litigation but also the broader framework of privatized enforcement mechanisms. The following discusses the Writ, including underlying action, and potential impact to D&O underwriters.

Background on FCA *Qui Tam* Actions

By way of brief background, the [False Claims Act \(FCA\)](#), which contains the *qui tam* provisions allowing private individuals (relators) to sue on behalf of the government, was enacted on March 2, 1863, during the American Civil War. Known as the "Lincoln Law" or "Informer's Act," it was passed to combat widespread fraud by suppliers providing defective goods to the Union Army. The modern *qui tam* landscape was shaped by significant amendments in 1986, which increased the incentives for relators to 15-30% of amounts recovered, attorney fees and costs.

The phrase [qui tam](#) itself is an abbreviation of the longer Latin phrase "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," which translates to "who sues on behalf of the King as well as for himself." Consistent with that structure, modern FCA enforcement has relied heavily on private relators. According to [Department of Justice statistics](#), between 1986 and 2025, more than 76% of FCA actions were initiated as *qui tam* suits, and aggregate relator awards exceed \$300 million. These figures underscore the central role that private enforcement plays in FCA litigation and the powerful financial incentives that drive relator activity.

Thus, a substantial percentage of FCA cases are initiated by relators rather than the government itself. This structure effectively creates a system of privatized enforcement in which private individuals can prosecute claims in the name of the United States, which lies at the heart of Eli Lilly's constitutional challenge.

The Eli Lilly Writ

The Eli Lilly Writ arises out of an underlying *qui tam* action brought by relator Ronald Streck, who alleged that Eli Lilly improperly calculated "average manufacturer price" (AMP) for certain drugs covered by Medicaid. According to the relator, Lilly excluded certain price adjustments, specifically, increases tied to its "price increase value" mechanism, from its AMP calculations. Because AMP directly affects the rebates drug manufacturers must pay under the Medicaid Drug Rebate Program, the alleged underreporting resulted in reduced payments to the government.

The relator claimed that this approach allowed Eli Lilly to retain substantial sums while underpaying government obligations. A jury agreed, finding that Eli Lilly's conduct resulted in over \$60 million in government losses and over \$600 million in additional revenue to the company. The [Seventh Circuit affirmed](#), and held not only that the AMP calculations were false, but also that Eli Lilly acted with the requisite scienter.

However, rather than focusing its Supreme Court petition on the merits of the AMP calculation dispute, Eli Lilly advances a broader constitutional argument targeting the *qui tam* mechanism itself. Specifically, the company argues that the FCA's *qui tam* provisions violate Article II of the U.S. Constitution, which vests executive power in the President.

Eli Lilly contends that FCA relators exercise quintessential executive authority by prosecuting claims on behalf of the United States, yet they are not appointed as officers of the United States, are not subject to presidential control or removal, and are not accountable to the Executive Branch. In the company's view, this arrangement violates the Appointments Clause and the Take Care Clause of Article II by allowing private individuals to wield executive enforcement power outside the constitutional framework.

The Eli Lilly Writ emphasizes that relators operate as "private bounty hunters" who are motivated by personal financial gain rather than public accountability, and who can pursue litigation even when the government declines to intervene.

According to Eli Lilly, this structure creates a system in which core executive functions, namely, the decision to enforce federal law, are effectively delegated to private parties without sufficient constitutional safeguards.

The Seventh Circuit rejected these constitutional arguments, affirming both the verdict and the validity of the *qui tam* framework. Although the appellate court upheld the longstanding constitutionality of FCA enforcement mechanisms, the Eli Lilly Writ argues that the issue warrants renewed scrutiny in light of evolving separation-of-powers jurisprudence. In particular, the company contends that more recent Supreme Court decisions emphasizing the importance of presidential control over executive functions call into question the continued validity of *qui tam* enforcement.

At its core, the question presented in the Writ is whether the FCA's authorization of private relators to litigate claims on behalf of the United States, particularly where the government declines to intervene, is consistent with Article II's allocation of executive power.

Discussion

The Eli Lilly Writ raises potentially far-reaching implications, not only for FCA enforcement but also for D&O exposure arising out of *qui tam* litigation. However, the significance of the Eli Lilly Writ lies less in the underlying merits of the AMP dispute and more in the constitutional framework it seeks to challenge.

Eli Lilly's argument centers around the concept of "privatized enforcement." The company contends that allowing private individuals to prosecute claims on behalf of the government, without meaningful executive oversight, undermines the constitutional separation of powers. This argument directly targets a defining feature of the FCA: the ability of relators to proceed independently of the government. If accepted, this theory could call into question not only FCA *qui tam* actions but also other statutory schemes that rely on private enforcement mechanisms.

Notably, Eli Lilly's Writ does not arise in a vacuum. As D&O Diary readers will recall, a [September 30, 2024, decision](#) from a federal court in Florida held that the FCA's *qui tam* provisions are unconstitutional. That court relied in part on statements from Clarence Thomas, who has previously expressed skepticism about the constitutionality of *qui tam* actions in his June 2023 dissenting opinion [in *United States ex rel. Polansky v. Executive Health Resources, Inc.*](#) Justice Thomas

suggested that allowing private relators to exercise executive authority raises serious Article II concerns, particularly where those individuals are not subject to presidential control.

The Florida decision and Justice Thomas's prior statements may provide important context for Eli Lilly's Writ. They could suggest that is at least some judicial appetite for reconsidering the constitutional foundations of *qui tam* enforcement. By framing the Writ around these concerns, Eli Lilly is effectively inviting the Supreme Court to revisit a long-standing statutory framework in light of modern separation-of-powers principles.

These constitutional questions arise against the backdrop of continued robust FCA recoveries. The Department of Justice recently [reported](#) that FCA settlements and judgments exceeded \$6.8 billion through fiscal year 2025, further underscoring the scale of enforcement activity and the significance of the *qui tam* mechanism in driving those recoveries.

From a D&O perspective, the potential implications are significant. FCA *qui tam* actions have long represented a meaningful source of exposure for companies, particularly in heavily regulated industries such as healthcare, life sciences, and government contracting. These actions often involve complex regulatory frameworks, significant potential damages, and the risk of follow-on litigation, including securities class actions or derivative suits.

If the Supreme Court were to accept Eli Lilly's argument and curtail or eliminate *qui tam* enforcement, the impact on D&O risk could be substantial. The volume of FCA litigation could decline, and companies might face fewer claims initiated by private relators acting independently of the government. At the same time, however, enforcement activity could shift more heavily toward government-initiated actions, potentially concentrating risk in cases where regulators choose to intervene.

Even if the Court declines to grant certiorari, the constitutional arguments raised in Eli Lilly's Writ are likely to persist. Defendants in FCA actions may increasingly raise Article II challenges, particularly in jurisdictions that have shown receptiveness to these arguments. This could introduce additional uncertainty into FCA litigation and potentially affect settlement dynamics, as parties assess the viability of constitutional defenses.

For D&O insurers, these developments underscore the importance of closely monitoring not only enforcement trends but also the evolving legal theories that may affect exposure. Coverage issues may also continue to arise in the FCA context, particularly given the unique nature of *qui tam* actions. As noted in the attached materials, courts have reached differing conclusions on whether such actions constitute “securities claims” or “regulatory proceedings,” and issues related to exclusions, notice, and related claims frequently arise.

In addition, the procedural characteristics of *qui tam* actions, such as their filing under seal and the potential for extended periods of non-disclosure, can create additional complexities for D&O coverage, including challenges related to notice and prior-and-pending litigation provisions. These issues are unlikely to disappear, regardless of how the constitutional challenge ultimately unfolds.

Ultimately, the Eli Lilly Writ is a direct challenge to the constitutional foundation of one of the federal government’s most important enforcement tools. Whether or not the Supreme Court agrees to hear the case, the arguments advanced by Eli Lilly, particularly those grounded in Article II and separation-of-powers principles, could shape the future of FCA litigation and, by extension, the D&O risk landscape.

For now, D&O underwriters may want to take note of the current combination of aggressive FCA enforcement, increasing reliance on private relators, and emerging constitutional challenges creates a dynamic and evolving risk environment. As the courts continue to grapple with these issues, the outcomes may have profound implications not only for FCA liability but also for regulatory enforcement and D&O exposure.

Tags: [D&O insurance](#), [False Claims Act](#), [life sciences](#), [qui tam actions](#), [U.S. Supreme Court](#)

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The Brief - Top News of the Day From Bloomberg Law Column

DExit Debate Flattens the Constituencies That Boards Balance

April 6, 2026, 1:30 AM PDT

For decades, corporate law debates have divided along familiar lines. One camp has argued that Delaware law gives too much power to boards and managers. Another has argued that Delaware enables activist shareholders and litigation that can undermine long-term value. These camps rarely agree.

But in the debate over “DExit,” they have found common ground. Both now warn that leaving Delaware is a mistake. Both suggest that alternative jurisdictions will distort governance in undesirable ways. Both invoke Delaware as a stabilizing force.

That convergence doesn’t indicate that Delaware has suddenly become the ideal jurisdiction for everyone, but that the debate over incorporation has been asking the wrong question.

The modern corporation isn’t designed to produce outcomes for a single constituency based solely on statutory rules. Shareholders elect directors, directors set policy and appoint officers, and officers manage the firm’s day-to-day operations. That separation of ownership and control—what makes the corporate form and its liability shield possible—also means directors aren’t charged with mechanically optimizing for any one group.

Instead, boards operate in a space defined by competing inputs: legal obligations, market pressures, operational realities, contractual commitments, and firm-specific goals. They make decisions under uncertainty, often without complete information and always without the benefit of hindsight.

The business judgment rule reflects that structure. It protects good-faith decisions made within a range of reasonable outcomes, rather than requiring adherence to a single metric in every instance.

Once that is recognized, the premise underlying much of the DExit debate becomes difficult to sustain. No corporate statute—whether in Delaware, Texas, or Nevada—can guarantee a consistently pro-shareholder or pro-management outcome. Statutes don’t dictate how boards weigh competing considerations in real time.

The same logic applies to the decision to reincorporate itself. A board's choice to change a company's state of incorporation is subject to fiduciary duties and evaluated under the business judgment rule.

Courts don't presume improper motive because a decision may help reduce litigation exposure or alter the balance of governance. Absent evidence of self-dealing, bad faith, or other disabling conflicts, the decision is generally treated as a permissible exercise of board authority. In that sense, the decision to leave Delaware isn't an escape from corporate law—it is itself a product of it.

Boards are already doing something more complex in practice: evaluating the total mix of inputs against the company's objectives and constraints. That reality makes it unlikely that a change in incorporation alone will systematically shift outcomes.

This doesn't mean incorporation is irrelevant. Delaware's longstanding dominance has been built on more than its statute book: a specialized judiciary, an extensive body of precedent, and a reputation for predictability. Texas has moved to increase its business presence, building its own business court and codifying elements of corporate law in ways designed to appeal to companies seeking clarity and efficiency. Nevada has taken a more explicitly management-protective approach.

But reducing these differences to a simple spectrum—from shareholder-friendly to management-friendly—misses the point. Corporate governance isn't determined by fiduciary standards in the abstract. It is shaped by a broader set of design choices: charter provisions, bylaws, forum-selection clauses, litigation dynamics, regulatory exposure, and the jurisdictions in which the firm actually operates.

The most significant legal risks don't usually arise from internal corporate disputes governed by the law of the charter state. They arise from federal regulation, contractual relationships, operational compliance, and litigation tied to where the company does business. A company incorporated in Delaware that operates across multiple jurisdictions is already subject to a complex web of legal regimes that far exceeds the influence of any single state's corporate statute.

This reframing also raises a more practical question. For small and closely held businesses, the default advice has long been straightforward: Incorporate in the state where the company is headquartered or primarily operates unless there's a good reason to do otherwise.

The conversation has historically been different for larger firms, with Delaware treated as the presumptive choice. If internal affairs litigation is relatively rare and most legal exposure arises from operations, regulation, and contracting, that distinction becomes harder to justify.

Like any other strategic decision, incorporation should be evaluated as part of the company's total risk profile. It's more relevant to ask what layering another jurisdiction into an already complex legal and operational structure adds rather than wondering which state offers the most favorable doctrine.

That divergence is visible in practice. Texas economic development data shows that more than 50 Fortune 500 companies are headquartered in the state, yet only a small fraction are incorporated there, with most continuing to rely on Delaware as their legal home. That disconnect between where companies operate and where they are incorporated highlights how little the charter state alone explains about real-world governance risk.

In that sense, the logic that guides smaller firms may be more broadly instructive than the traditional playbook suggests. Incorporating outside the firm's primary base of operations can introduce additional complexity without necessarily delivering the governance advantages often assumed.

For some companies, that tradeoff will still make sense. But it is no longer obvious that it should be the default. We shouldn't assume that weighing the variables and choosing to reincorporate is more than just business judgment.

If a food company sells contaminated products, no one blames the state of incorporation. If a plane crashes or an oil spill devastates a coastline, the public doesn't ask whether the company was governed under Delaware or Texas law. Responsibility attaches to the firm—and often to its executives—regardless of where it is chartered.

DExit has exposed a basic truth: Corporate law doesn't offer a jurisdictional shortcut to either accountability or insulation. No state can guarantee the outcomes that either side of the debate seeks.

The choice of incorporation, then, isn't a proxy for governance outcomes but a strategic decision. One that, like any other, reflects how boards assess risk, complexity, and the realities of where firms operate.

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

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Securities

XRP Token Buyer Drops Last Surviving Claim in Ripple Labs Suit

April 6, 2026, 12:56 PM PDT

An XRP token buyer agreed to drop his a California securities law claim that was keeping alive a seven-year-old lawsuit against Ripple Labs Inc.

Ripple waived the right to collect on costs taxed against the buyer in the US District Court for the Northern District of California and Court of Appeals for the Ninth Circuit, the parties said, seeking a dismissal of the suit April 3. Judge Phyllis Hamilton tossed the token buyer's federal securities law allegations in 2024, letting stand the state law claim over a statement by Ripple CEO Brad Garlinghouse advocating holding onto XRP when he sold millions of tokens across exchanges in 2017.

"We are pleased to confirm that the class action lawsuits filed in 2018 have been fully resolved, with all claims decided in our favor or dismissed," a Ripple spokesperson said in an emailed statement

The Securities and Exchange Commission's own case against Ripple in the Southern District of New York elicited a highly-watched ruling that XRP was a security when sold to institutional investors but not the general public

The SEC moved to drop or settle previously-filed crypto enforcement actions under the Trump administration, including against Ripple

Attorneys at Susman Godfrey LLP and Taylor-Copeland Law, which represent the buyer, didn't immediately respond to an email seeking comment. King & Spalding LLP, Debevoise & Plimpton LLP, and Kellogg Hansen Todd Figel & Frederick PLLC represent Ripple.

The case is In re Ripple Labs Inc. Litig. , N.D. Cal., No. 4:18-cv-06753, 4/3/26 .

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Securities

Deep Dive

Savers' Lawyers Spot Pitfalls in 401(k) Private Asset Proposal

April 3, 2026, 9:11 AM PDT

Plaintiffs' attorneys for 401(k) savers are scouring a new Department of Labor alternative asset proposal to spot litigation potential if more plans venture beyond typical public markets.

The Employee Benefits Security Administration's rule, if finalized, creates a safe harbor for fiduciaries who follow a non-exhaustive list of six factors when considering whether to add assets like private equity and cryptocurrency to retirement plan menus.

While some benefits attorneys view the safe harbor as robust, others see legal landmines. The six-factor test doesn't amount to a total liability shield for fiduciaries under the Employee Retirement Income Security Act, they said, and the final rule will need to stand up to post-*Chevron* scrutiny.

Jerry Schlichter, founding and managing partner of prominent ERISA plaintiffs firm Schlichter Bogard LLC, said future litigation would depend on the process a fiduciary follows to select and monitor investments.

"It certainly, though, is a situation where there is peril for a company which does this because of the need for a very different approach by the fiduciaries to the process," Schlichter said. "And it is an onerous task that will be on them."

The safe harbor is "very broad and process-driven," and it will be critical for fiduciaries to document their work, said Karen Brandon, an attorney in the employee benefits and executive compensation group at Ogletree Deakins. Even so, there are some areas where plans could be vulnerable to suits, she said.

Fees have become a major source of ERISA litigation brought by plan participants, and managed investments like private equity largely charge more.

If fees aren't reasonable and necessary on investments customized to a plan, it could create risk for sponsors, Brandon said.

Risk Factors

The March 30 proposal states a fiduciary can fulfill their duty of prudence if they select an alternative asset with higher fees if it has greater customer service or better risk-mitigation features. The fiduciary must also consider similar alternatives to demonstrate the fees are appropriate.

There are also liquidity risks, because alternative assets can be difficult to quickly convert to cash. Plaintiffs' attorneys said lack of liquidity could cause headaches if an investment needs to be removed for poor performance, or a worker is trying to get money out quickly for an emergency, borrow against their 401(k), or if they change jobs.

"How do you provide that liquidity with what is by definition an illiquid investment?" Schlichter said. "The only way to do that is by setting aside a cash equivalent or cash in the fund in order to meet those liquidity needs."

The proposal states fiduciaries have to determine if an investment alternative will have the liquidity to meet the plan's needs and "must ensure that investments can deliver on any promises of liquidity."

The complexity of alternative assets that are typically more opaque than stocks and bonds is frequently cited as an employer plan adoption risk. The proposal says if a fiduciary lacks expertise on an alternative investment, they must bring in an independent adviser to satisfy their duty of prudence.

"A fiduciary may decide he or she has the requisite knowledge and experience to select an investment such as crypto even though it is a new type of investment, and then select a plan investment that was not a prudent decision," Brandon said.

Plaintiffs' attorneys already have questions about what a useful benchmark would be to confirm plans are investing in a worker's best interest when it comes to newer assets like cryptocurrency, or private equity funds, when it's difficult for investors to know the make-up.

Post-Chevron Scrutiny

The DOL's final rule must also withstand Administrative Procedure Act scrutiny after the US Supreme Court's 2024 ruling that eliminated the *Chevron* doctrine, which required judges to defer to reasonable agency interpretations where the law was ambiguous or silent.

Mark Boyko, a partner at Bailey & Glasser LLP who represents plan participants, said post-*Chevron* courts are going to be "even less receptive to relying on DOL guidance, and even this rulemaking moving forward, when we have centuries of trust law that ERISA is built on to guide courts in evaluating that."

DOL in its proposal argued its regulation "should carry persuasive weight to courts," citing the Supreme Court's *Skidmore v. Swift* ruling establishing deference to agency interpretations based on persuasiveness.

The proposal acknowledged that the Fifth Circuit has questioned the continuing role of *Skidmore* after the *Loper Bright* decision that overturned *Chevron*, but said the court has implied its precedent carries weight when the department has clear authority it has exercised consistently.

It said DOL has “promulgated safe harbors regarding a prudent process in the past” and the proposal is consistent with “past Departmental practice.”

Attorneys for plan participants and sponsors agreed the DOL took pains to be asset-neutral in the proposal, likely in an effort to rebuke administrative law challenges.

EBSA Chief Daniel Aronowitz has said he couldn't predict that the proposal, once finalized, would decrease the number of lawsuits filed, but it could give fiduciaries another tool in getting cases dismissed.

“I believe plan fiduciaries have already adopted many of the principles set forth in the regulation,” said Erin Cho, who leads Mayer Brown's ERISA fiduciary practice. “One of the goals of the proposal is that by creating clearer guidance on the factors fiduciaries should be considering when evaluating plan investments, it will help provide a framework for a successful defense in the event a fiduciary is sued.”

But Charles Field, co-vice chairman of Sanford Heisler McKnight LLP, which represents plaintiffs, cautioned fiduciaries against focusing so intently on the six-factor test itself that they fail to fully consider their broader duty to act solely in participants' best interest.

“I just worry that they're in a situation where they've done their homework, they've done their due diligence, they've missed something, and the riskiness of the enterprise shows itself and people lose money,” Field said.

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Commentary | **Class Actions**

Arguing Class Actions: Time as Leverage—How Duration Risk Is Reshaping Big Ticket Litigation

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

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



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

There's a problem quietly reshaping civil litigation that rarely appears in judicial opinions and almost never appears in the rules. Yet it increasingly determines who wins, who settles, and who simply runs out of time. That problem is duration risk—the growing gap between how long litigation is supposed to take and how long it actually takes. What once functioned as background friction has become a defining feature of the system. In many categories of high-stakes litigation, delay is no longer incidental, but structural—and, in far too many cases, consciously engineered.

This is not a commentary about crowded dockets or overworked judges. Those problems are real, but they aren't the core issue. Delay has always existed. What has changed is its scale, its

predictability, and its exploitation by sophisticated repeat players. Time itself has become a weapon. When delay dependably weakens claims, drives claimant attrition, and pressures plaintiffs toward discounted settlements, it ceases to be an unintended byproduct of complexity and becomes a litigation strategy. Increasingly, disputes are resolved not on the merits, but on endurance—and the defense bar knows it.

Duration risk is best understood as the risk that a case will take materially longer to resolve than reasonably anticipated, and that the consequences of that delay will meaningfully distort outcomes. In both economic and human terms—which are often inseparable—delay destroys value. Justice deferred is frequently justice denied. It exhausts litigants, distorts incentives, and erodes confidence in the courts. Litigation funders model duration risk explicitly, because capital immobilized for too long depresses returns. Corporate defendants experience it as manageable, long-tail exposure. Plaintiffs experience it far more acutely—as financial strain, declining health, or the reality that relief may not arrive in time to be meaningful at all.

Lawyers routinely describe delay in neutral or technical terms: “complexity,” “procedural posture,” “appellate uncertainty.” Those anodyne labels are not accidental. They obscure what is actually happening. Time is not neutral. It pushes cases toward particular outcomes, often long before the merits are resolved. That dynamic appears across big-ticket litigation, but it is especially pronounced in class actions, multidistrict litigation, and mass torts, where the timing of class certification, bellwethers, discovery, and appellate review frequently matters more than the ultimate liability theory.

Several forces have converged to make duration risk a defining feature of modern aggregate litigation. Cases are larger and more complex than they were a generation ago. Nationwide consumer class actions, antitrust and securities cases, data-privacy disputes, mass torts, and complex commercial matters routinely involve millions of documents, overlapping legal regimes, and extensive expert testimony. While multidistrict litigation was designed to manage that complexity, it has also concentrated it. Indeed, many MDLs now function as long-term litigation ecosystems, persisting for years before any meaningful movement occurs for individual claimants or class members.

Procedure has likewise evolved into a tool of attrition, and the defense bar has refined its use with remarkable consistency. Motions to dismiss, followed by amended pleadings, sprawling discovery disputes, “proportionality” objections that function as stonewalling, reflexive *Daubert* challenges, serial summary judgment motions, and interlocutory appeals increasingly operate not as safeguards, but as a coordinated sequence designed to slow cases down. In class actions, class certification itself often becomes a multi-year campaign. Rule 23(f) appeals, once truly

extraordinary, are now routinely deployed to pause proceedings while leverage shifts and pressure builds.

Judges see this, and many are increasingly candid about it. In large, complex cases, it's become apparent that parties sometimes litigate every inch of ground not to resolve genuine legal disputes, but to delay the day of reckoning. Discovery fights are waged to run out the clock, with information ultimately produced—often years later—that should have been exchanged at the outset. These dynamics are no longer exceptional, rather they've become familiar features of high-stakes litigation, and courts are treating them as such.

The economics of these cases magnify the effect. Even the most well-resourced plaintiffs' firms cannot indefinitely outspend Fortune 100 defendants and their counsel. That asymmetry turns time into a bargaining chip. Litigation finance has allowed some cases to survive longer timelines, but it hasn't altered the underlying dynamic. Duration risk remains, even when it's priced.

The consequences are predictable. Delay produces attrition. Class representatives drop out. Mass-tort claimants age, become ill, or die. Consumers are forced to sell or replace the product at issue. Litigants press for early, discounted settlements simply to reach closure. As cases drag on, settlement values increasingly reflect time preferences, rather than liability or damages. Defendants rationally favor earlier, discounted global resolutions. Plaintiffs counsel feel pressure to convert contingent value into actual recoveries sooner rather than later—particularly those unwilling or unable to try cases. Endurance, not merit, drives outcomes.

Courts pay the price. Long-running class actions, mass torts, and MDLs consume disproportionate judicial resources. As dockets fill, judges have less time to actively manage individual matters, which, in turn, produces more delay. The feedback loop is self-reinforcing: The longer cases persist, the harder they are to control, and the less likely meaningful accountability becomes.

Some areas of big-ticket litigation make the human cost of duration risk impossible to ignore. Mass torts involving asbestos and other toxic exposures, medical devices, and pharmaceuticals are the clearest examples. Claimants are frequently elderly, seriously ill, or facing progressive injury. Courts have made real efforts to prioritize these cases, yet delay still means that many plaintiffs never live to see resolution. Families are forced into accelerated settlements driven by urgency rather than merit, while defendants benefit from the simple passage of time. In large pharmaceutical and products liability MDLs, this dynamic plays out at scale, with years of discovery disputes, bellwether delays, and appellate uncertainty pressuring injured plaintiffs to accept materially discounted recoveries untethered from the merits.

Even corporate defendants are not immune. Long-running securities, antitrust, and commercial cases create years of uncertainty that affect disclosures, executive decision-making, and capital

allocation. Delay may reduce short-term pressure, but it imposes long-term costs that rarely appear in rulings or briefing.

None of this is accidental. Delay persists because it predictably advantages those with the most resources. For repeat-player defendants, time weakens opponents, reduces exposure, and improves negotiating positions. For plaintiffs, delay functions as a tax that they are often unable to pay. The system tolerates this because delay is normalized and diffused. Judges are busy. Rules are technically followed. Appeals are formally permitted. While each step appears defensible in isolation, their cumulative effect, however, is corrosive.

Because delay is mischaracterized as procedural rather than substantive, it often escapes sustained scrutiny. We debate pleading standards, certification rigor, predominance, and superiority endlessly, while the slow erosion of rights and remedies caused by time itself is offhandedly dismissed as collateral damage. Yet, duration risk increasingly does the work where doctrine alone falls short.

Duration risk, however, is neither inevitable nor acceptable. Even the most complex cases ultimately turn on a limited set of key factual and legal issues. Disciplined discovery deadlines, active judicial management of obstruction and gamesmanship, firm—though flexible—trial settings, and real consequences for missed deadlines transform complexity from an excuse for delay into a manageable reality. When courts demand compliance and set real trial dates, cases move—and settlements become rational.

Courts already possess the tools. Early and active case management under Rule 16, genuine discovery enforcement rather than endless motion practice, and adherence to meaningful schedules can materially shorten case duration. In aggregate litigation, modular case design can help, but only if it's purposeful. Resolving threshold issues efficiently, using focused bellwethers to inform settlement, and resisting the urge to litigate everything at once can narrow disputes and accelerate fair resolution.

Interlocutory review should return to its exceptional roots. Where it's granted, expedition should be the rule. Appeals should resolve questions, not serve as holding patterns. Incentives matter as well. MDL leadership structures, fee arrangements, and settlement-approval processes can be calibrated to reward efficiency rather than endurance.

Recent appellate and Supreme Court decisions emphasizing front-end rigor only heighten the stakes. Front-loading litigation without corresponding attention to time management risks producing cases that are more exacting, but also longer, more expensive, and less accessible to those without the ability to wait.

Duration risk, then, is not merely a practical inconvenience. It's a legitimacy problem. When the civil justice system promises accountability but delivers it only after years of delay, confidence erodes, litigants disengage, and remedies become theoretical. The law cannot eliminate delay entirely, but it can certainly stop rewarding it. Time should not be the most powerful force in big-ticket litigation. Leaving it unchecked is not neutrality; it is a choice—and one the system can no longer afford to make.

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

Thank you to DiCello Levitt partner and mass tort litigation practice co-chair Diandra "Fu" Debrosse for contributing to this column.

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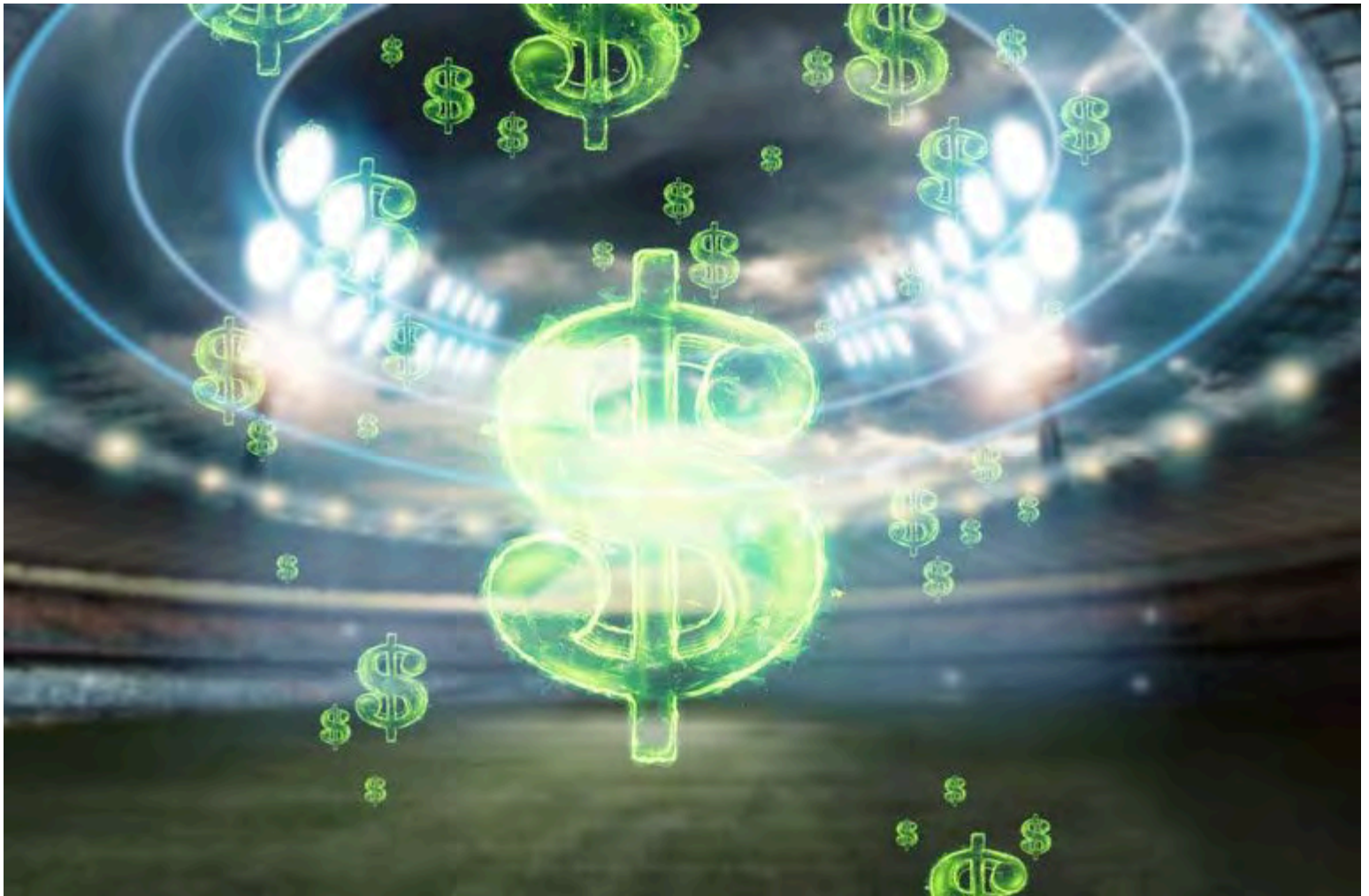
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News | **Mass Torts**

Court Finds Mass Arbitration Campaigns by San Diego and Las Vegas Firms Are Protected as Public Speech

New York Supreme Court Judge Phaedra Perry-Bond found the mass arbitration campaigns of Ben Travis Law and Kind Law was protected from what she deemed was a SLAPP—Strategic Lawsuit Against Public Participation—brought by operators of two online casino sites.

April 03, 2026 at 12:40 PM By  **Amanda Bronstad**



Credit: Aliaksandr Marko/Adobe Stock

A New York judge has dismissed a lawsuit against two firms based in San Diego and Las Vegas, finding their mass arbitration claims against a pair of online casino sites was protected as public speech.

New York Supreme Court Judge Phaedra Perry-Bond found that the mass arbitration campaign of Ben Travis Law, based in San Diego, and Las Vegas-based Kind Law was protected from what she deemed was a SLAPP—Strategic Lawsuit Against Public Participation. The two companies that

filed the case, SCPS LLC and SSPS LLC, which operate Zula and Sportzino, alleged malicious prosecution claims against the two law firms after they filed nearly 1,000 arbitration claims against them that cost more than \$1.4 million in fees.

“The speech targeted here involves public petition and participation,” the judge wrote in a decision released Tuesday. “Contrary to plaintiffs’ framing, consumer protection from allegedly unlicensed online casinos is a matter of public interest. Indeed, the issue has been discussed in the New York State Legislature, as well as in the media, and plaintiffs themselves have received cease-and-desist letters from the New York Attorney General. Defendants’ advertising on social media constitutes speech targeted at a public forum.”

Brian Feldman, who represented Kind Law and Ben Travis Law, said the decision was among the first to rule on the merits in a case brought against law firms for bringing mass arbitration claims.

“This lawsuit represented a new tactic in the arbitration defense playbook, which was going after lawyers for personal liability,” Feldman, of Aurelian Law in Pittsford, New York, told Law.com. “This decision shuts down that tactic.”

He said the ruling could be influential in other states with anti-SLAPP laws.

Gavin Rooney, chairman of the business and class action litigation practice at Lowenstein Sandler in New York, who represented the two online casino plaintiffs, did not respond to a request for an interview.

A 'Sham Process'?

The suit is [one of several brought against plaintiffs’ firms](#) increasingly pursuing mass arbitration, such as Chicago’s Keller Postman and Zimmerman Reed. Many of those suits, filed by companies such as Sega of America and Tubi, have settled, or been dismissed on jurisdictional grounds, but few have delved into the merits.

Kind Law and Ben Travis Law have pursued mass arbitration against the two online casino sites for illegal gambling and racketeering.

In response, the two online casinos sued Kind Law and Ben Travis Law in three courts: the U.S. District Court for the District of Columbia, the U.S. District Court for the Central District of California, and New York Supreme Court. The companies claimed the firms lacked authorization to bring arbitration claims on behalf of the claimants, many of whom said they didn’t know about them.

Judges tossed the federal cases on jurisdictional grounds or granted voluntarily dismissal of the law firms as defendants, but, on May 8 of last year, Feldman asserted violations of New York's anti-SLAPP law as grounds for dismissing the state court action.

"The law firms launched a successful social media campaign to bring justice to Zula and Sportzino users," he wrote in a dismissal motion. "This lawsuit is retaliation for that campaign."

The online casinos disagreed.

"The law firms filed hundreds of arbitration demands on behalf of individuals who were never users of plaintiffs' services and alleged clients who never authorized the law firms to file anything on their behalf," Rooney wrote in a response. They noted that some claimants told them they never authorized the actions, more than 80% of which were subsequently dismissed or abandoned.

"Legal reform organizations have sounded the alarm on the sham process used by the law firms to recruit thousands of supposed clients to file mass arbitrations, warning it is abusive and violative of ethical requirements, including a lawyer's duty to adequately inform a prospective client about the engagement and to vet potential claims," Rooney wrote.

Perry-Bond, in Tuesday's ruling, disagreed.

"There is no evidence that defendants filed the arbitrations solely out of malice towards plaintiffs but rather did so to economically benefit from the litigation and obtain compensation for their clients," she wrote.

The judge denied a separate motion the law firms brought for sanctions, which alleged the online casinos fabricated a phony claimant named "Jenny Smith" to access an engagement letter that contained privileged work product—a claim Lowenstein Sandler denied in a court filing opposing sanctions. The sanctions motion also alleged that Rooney, their lawyer, contacted the law firms, despite knowing they had counsel. Rooney, in the response filed in court, clarified that the discussions involved settling the mass arbitrations.

But Perry-Bond found sanctions moot given that dismissal of the case on anti-SLAPP grounds would provide the two firms with potential fees and damages.

When asked how much he planned to request, Feldman told Law.com, "We're still in the process of putting that together."

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California Brief

Perspectives

Litigants Seeking Information Sharing Need Better Protections

April 7, 2026, 1:30 AM PDT

Professional Perspectives give authors space to provide context about an area of law or take an in-depth look at a topic that could benefit their practice.

The Bottom Line

Information sharing is becoming a common area of dispute in civil litigation.

Courts haven't reached consensus on whether and when to allow information-sharing provisions in protective orders.

Courts should consider the relevance of the collateral actions and ensure appropriate safeguards remain when evaluating requests to share confidential information.

As civil litigation grows more complex, an opportunistic desire to share information with outside parties as a "shortcut" is becoming a prevalent theme in discovery disputes.

Protective orders typically prohibit dissemination of confidential and proprietary materials to outside parties that are uninvolved in the litigation. This has long served as a cornerstone of modern civil litigation, enabling the exchange of sensitive business information, trade secrets, and other restricted materials during discovery without fear of public disclosure.

Given the costs of conducting and obtaining discovery, many litigants—typically plaintiffs—argue that keeping confidential and proprietary materials confined to individual matters is inefficient when the same defendant faces substantially similar claims in collateral proceedings.

Litigants in cases alleging widespread harm—such as in antitrust and product liability claims, mass torts, and data privacy breaches—assert that courts may need to re-examine longstanding confidentiality safeguards where dozens or even hundreds of related proceedings may unfold across jurisdictions.

To address these perceived inefficiencies, plaintiffs' counsel often propose adding information-sharing provisions (sometimes called "common interest" or "litigation sharing" clauses) to protective orders that expressly permit disclosure of protected materials to parties and counsel in related proceedings.

Provisions that allow sharing beyond core litigation participants remove control from the court and create a downstream effect that increases the risk of irreparable proprietary harm or misuse of sensitive, confidential materials.

Though one court described the state of the jurisprudence on such clauses as “without a general consensus as to outcome” and that “federal and state courts across the country, applying similar protective-order rules, are increasingly fractured on the issue,” some patterns are emerging as the jurisprudence continues to develop.

Proposed Sharing Provisions

How courts view and handle sharing provisions can range from outright rejection to allowing broad sharing with parties in other loosely defined “related” litigation. Courts that allow sharing provisions often impose differing degrees of safeguards and limitations on the scope of permissible sharing.

But we’re seeing some common positions emerge as courts face more protective order disputes regarding sharing. For example, courts may be more likely to allow sharing provisions when they believe there is a sufficient “degree of overlap in facts, parties, and issues between the suit covered by the protective order and the collateral proceedings.”

They also are more open to sharing provisions when they include explicit limitations on sharing based on the relevance of the collateral actions. But there are differing interpretations of what constitutes overlap. Given the risks of trade secret protection waiver, misuse of materials, and proprietary harm, litigants at risk of information exposure must carefully educate courts when the risks outweigh the rewards of sharing, as well as why limited overlap may not warrant sharing.

Courts have expressed skepticism on broad sharing provisions that lack clear limits or protections. They may limit or reject sharing provisions that don’t clearly define the collateral cases to which they apply, particularly if they could permit sharing in future unrelated or dissimilar collateral actions.

Additionally, courts have recognized that broad sharing provisions can undermine a court’s ability to properly control and supervise a case and deprive parties of procedural safeguards around their information, such as the opportunity to object to disclosures. Specifically, sharing clauses can risk placing “the power solely in the hands of plaintiffs’ counsel to determine which outside attorneys meet the criteria for disclosure of defendants’ confidential information, with no advance notice or opportunity to object given to defendants.”

Broad sharing provisions can cause additional unforeseen implications, as collateral litigants who obtain information from other cases through sharing provisions may have their own sharing provisions that might be broader in scope. This could allow additional sharing of information beyond what the original sharing provision contemplated, creating a risk that could repeat itself multiple times, as confidential information is shared repeatedly across multiple cases, further eroding confidentiality protections.

Discovery Sharing Limitations

To mitigate these risks, courts often try to find “bright lines” to assess the true scope of a sharing provision by understanding who the specific collateral litigants are, the nature of the confidential information subject to the sharing, and the issues involved in the collateral case.

In *Shipley v. Instant Brands, Inc.*, a case involving Instant Pot pressure cookers, the plaintiff sought a broad preemptive sharing provision that would have applied to any other lawsuits by plaintiffs’ counsel involving injuries allegedly arising from the use of an Instant Pot pressure cooker. The plaintiff argued that the provision would allow for efficiencies across related cases.

The court found that the language in the proposed sharing provision was too broad because, among other things, it would apply to all models of Instant Pot pressure cookers, as opposed to the specific or substantially similar models as the one at issue.

The court in *Deljanin v. Mercedes-Benz USA, LLC* took a slightly broader view, allowing a limited sharing provision for cases where a broader list of vehicles and systems were at issue, but not permitting sharing of the information with Mercedes’ competitors and requiring recipients of the materials to execute a stipulation agreeing to be bound by the terms of the protective order.

Courts assessing sharing provisions often consider case-specific risks of harm that the disclosure of confidential information would cause to the disclosing party. In *Rosas v. Goodyear Tire & Rubber Co.*, the court considered a declaration from an engineer regarding the risk of irreversible damage that disclosure of its confidential and trade-secret information to a competitor would cause and concluded that a sharing provision wasn’t appropriate.

By contrast, the court in *Deljanin* found that Mercedes’ “concerns and predictions” of harm were conclusory and relied on a law review article stating that violations of protective orders “are relatively rare and violations involving a leak to a competitor are virtually nonexistent.”

A Growing Resistance

While courts’ approaches to sharing provisions remain an inconsistent patchwork, some have observed that “the trend appears to be away from inclusion of sharing in protective orders,” and “other courts, particularly in the federal system, have been hostile to upfront sharing provisions.” As many federal district courts promulgate and publish model protective orders for parties to use, the model orders rarely include broad information-sharing provisions.

Courts are more likely to adopt sharing provisions that include the features and protections discussed above—that is, where a litigant can demonstrate a specific relevance and need; where the scope is narrowly tailored rather than blanket or preemptive; and where there are procedural and substantive protections.

For parties seeking to prevent exposure of confidential information, it's important to emphasize that protective orders exist because of the need to safeguard sensitive information. The inquiry isn't just whether the material is relevant in another matter, but whether disclosure is truly necessary and whether it's consistent with preserving the producing party's legally protected interests.

Even absent a sharing provision, collateral litigants can still obtain the discovery at issue by following the appropriate procedures, including establishing the relevance and proportionality of that information in their own litigation matters. Parties can make requests when specific confidential information should be disclosed in other actions, and courts can make their own determinations in each case.

This ensures a request is relevant and proportional to the needs of the case. It also allows a court to conduct a close evaluation of confidentiality, risks, and safeguards. Multiple courts have adopted this limited approach.

Given the need to protect parties' sensitive confidential information and prevent the downstream risk of losing control of the information and resulting harms, courts should ensure that appropriate safeguards remain in place when considering requests to share confidential information across matters.

A law review article quoted in one case aptly noted that "Discovery sharing is a particularly interesting problem....Courts have not been consistent in their treatment of these situations; the nature of the problem probably makes that inconsistency inevitable."

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Analysis | **Social Media**

Meta and Google's Trial Loss Suggests Product Design Is Big Tech's Achilles' Heel

Rather than shielding themselves with their standard free speech and Section 230 defenses, Meta and Google found themselves having to defend specific design features of their social media platforms.

April 03, 2026 at 08:45 AM By **Brendan Pierson**



The plaintiff seized on Instagram's "infinite scroll" as evidence that the app was designed to be addictive. Credit: Bigstock

Last week's [\\$6 million jury verdict](#) against social media giants Meta and Google in a lawsuit by a 20-year-old woman who said she suffered psychological harm from their products shows a new kind of liability for tech companies, stemming from the way their products are designed rather than compliance with data privacy or disclosure laws, that could reach beyond social media, attorneys say.

The California state court jury on March 26 found that Meta's Instagram and Google's YouTube substantially contributed to the mental health problems suffered by the now-20-year-old plaintiff,

identified as Kaley. Specifically, the jury found that the companies were negligent in including certain design features, like “infinite scroll,” that keep feeding users more content, and auto-playing videos despite knowing they were addictive and potentially harmful.

The jury found Meta 70% responsible and Google 30% responsible.

The verdict came just two days after a jury in a separate case [awarded the state of New Mexico \\$375 million](#) in a lawsuit accusing Meta of deceiving the public about the safety of its products for minors, and risking exposing them to sexual exploitation. Unlike the California case, which brought products liability claims, the New Mexico case relied on the state’s unfair business practices law.

Both Menlo Park, California-based Meta and Mountain View, California-based Google have said they plan to appeal.

Pearl Cohen Zedek Latzer Baratz attorneys noted in a client alert that the California case showed the limits of some of the defenses tech companies have relied on, such as the First Amendment right to free speech and Section 230 of the Communications Decency Act, which generally makes platforms immune to liability from user-generated content.

The presiding judge, in allowing the case to go to trial, rejected those defenses, finding that the case was about how the design of the products allegedly affected how users interacted with them, rather than about the nature of the third-party content they viewed.

Asaf Tenenbaum, an attorney at the Israeli law firm Arnon, Tadmor-Levy, wrote that the verdicts “may indicate a shift” that brings the United States’ approach to online platforms closer to that of the European Union, whose Digital Services Act requires platforms “to take a proactive approach in mitigating harm to users, including by identifying and reducing systemic risks linked to how their services operate.”

The California case, in particular, highlights the possibility that tech companies can be held liable for how they design their products, and the same logic could be used to support user privacy claims that go beyond digital privacy statutes and the disclosures they require, according to Casey Waughn, a senior associate at Armstrong Teasdale.

Waughn said that the risk extends to any company that handles sensitive user information, even if it does not deal with minors or even offer a platform to the general public. Plaintiffs could argue that companies have an obligation to design their products in a way that protects private data, she said.

To reduce their risk, she said, companies should conduct self-audits.

“Step one is always analyzing what laws is the company subject to and what do those laws require,” she said.

The verdicts came at a time states are thrusting themselves into tech industry regulation [by passing so-called age-appropriate design laws](#), which explicitly restrict some of the same features targeted in the California case for users under 18. Waughn also noted that California has extensive digital privacy laws that may affect companies whose business is directed to the state even if they largely operate elsewhere.

She said that, in the wake of the verdicts, companies should consider that they may face risk over how their products are designed to handle all kinds of data—not just children’s, and not just on social media—and move toward “privacy by design.” That will mean “involving all internal stakeholders at all phases of the process,” including engineering, she said.

Waugh said that companies should recognize that the public may increasingly expect them to do more to protect users, meaning it will become harder in some cases for companies to argue that they acted reasonably.

The stakes are only heightened when potential harm to children is involved, Waughn said.

“That’s where having a really good grasp on how your product was designed” is important, she said. “Why did you design something one way instead of another way?”

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UPL Claim Against ChatGPT Faces Hurdles, but Social Media Addiction Verdicts May Bolster Liability

The landmark verdicts holding Meta and YouTube liable for failure to protect children from the harmful effects of social media could serve as a blueprint for Nippon's case against OpenAI, some legal observers say.

April 06, 2026 at 10:30 AM By  **Marianna Wharry**



Credit: khunkornStudio/Adobe Stock

A lawsuit filed against OpenAI, claiming ChatGPT engaged in the unauthorized practice of law, rattled the legal industry last month. While experts say the lawsuit will likely face hurdles, some add that two recent verdicts holding social media companies liable under products liability concepts may raise the plaintiff's hopes for success on the novel lawsuit.

Nippon Life Insurance Co. of America [filed suit against OpenAI](#) in March after former pro se litigant Graciela Dela Torre used ChatGPT to contest a previously settled and dismissed lawsuit against the insurer. The complaint was filed in the U.S. District Court for the Northern District of

Illinois and claimed ChatGPT provided unauthorized legal assistance to Dela Torre, resulting in 44 frivolous motions and \$300,000 in legal expenses. Instead of the company suing Dela Torre, Nippon decided to take on one of the artificial intelligence industry's biggest fish and named the OpenAI Foundation and OpenAI Group PBC as defendants.

The case raises unresolved legal questions, including whether AI tools can be held liable as third-party offenders, whether providing legal assistance constitutes "practicing law" under state statutes, and the extent to which AI companies are responsible for foreseeable misuse of their products. A ruling against OpenAI could significantly impact the offering and regulation of AI legal tools.

However, not all legal experts see the facts as an easy fit for an unauthorized practice of law claim.

Jim Doppke, an ethics attorney and partner at Robinson, Stewart, Montgomery & Doppke in Chicago, said unauthorized practice of law claims largely rely on the harm resulting from an individual following the judgment of a nonlawyer. He said he has difficulty seeing how Nippon could argue that ChatGPT had agency to act on its own and how OpenAI could be held civilly liable for something its program did. Even if the parties acknowledged the program's intelligence, he told Law.com he is not sure this recognition could close that gap.

"In my experience in the regulatory arena, I don't think that's really how the unauthorized practice works," Doppke said. "I think that unauthorized practice happens when a person uses a legal skill or legal judgment, or purports to, or advertises that they can or holds themselves out as available to do that without being licensed ... and then the harm comes when someone relies on that to their detriment. ... I don't know that ChatGPT, in that case, used any judgment, or it's hard for me to see how it did."

Although some see the unauthorized practice of law claim as a stretch, other legal observers say there could be other avenues to pursue, including buttressing the claims with products liability concepts.

Eran Kahana, of Maslon in Minneapolis, has followed the progress of artificial intelligence for nearly two decades as a research fellow at Stanford Law School and an advisory board member of the Stanford Artificial Intelligence Law Society. He believes courts may see more products liability cases alleging the titans of AI—like OpenAI, Anthropic and Google—knew their tech would be used to seek legal information, but failed to take adequate measures to ensure the products would not produce content engaging in the unauthorized practice of law.

"This is not something that [AI developers] didn't know about," Kahana told Law.com. "They clearly knew that their products could do this. ... [I]n my opinion, there were ways to control that, to make sure that this didn't happen."

In a [recent blog post](#) for Stanford Law School, Kahana said the landmark verdicts holding [Meta and YouTube liable](#) for failure to protect children from the harmful effects of social media could serve as a blueprint for Nippon's case against OpenAI. In those cases, Meta had argued that it solely hosted third-party generated content and was immune from any liability under Section 230 of the Communications Decency Act. However, both courts allowed design-based and consumer protection claims to continue, leading to extensive discovery showing Meta's internal knowledge of the issue.

Kahana argued in the post that he believes Section 230 arguments will likely recur in Nippon's dispute. OpenAI's culpability could stem from information it publicly discloses detailing its safety mitigation practices, known as its [thinking systems card](#), he contended. OpenAI detailing how it evaluates risk and implements safety concerns for the content ChatGPT produces complicates and could invalidate OpenAI's position as a neutral party, he also said in the post.

Professional liability attorney Maia E. Jerin of Gallagher Sharp in Ohio, also warned that "AI sycophancy," which is a term coined to describe the phenomenon of AI prioritizing user approval over accuracy, could also be a factor against the AI developers in these types of lawsuits.

Dela Torre's case provided a clear example of this practice through her motion attempts, and Nippon's complaint even [alleged](#) OpenAI designed the chatbot to keep users engaged so the company can "harvest user data to train its models," Jerin noted.

"The tool itself isn't good or bad or evil," Jerin said. "But it's [up to] a person utilizing the tool and having the discretion to use it properly."

Kahana also said a products liability claim against OpenAI could rely on ChatGPT's absence of refusal architecture, which occurs when a language learning model complies with a user's requests over its safety guidelines.

According to Kahana, there's an increasingly thin line between AI being a helpful research tool and it engaging in the unauthorized practice of law. ChatGPT, he said, crossed this line when it provided Dela Torre with a specific legal conclusion about her dispute.

But despite this distinction, he said he believes current regulations restricting the unauthorized practice of law are strong and that courts will likely bear the brunt of determining where this increasingly thin line is.

"AI changes things in terms of amplifying the ability of people to do this, but it doesn't require additional legislation," Kahana said. "We already have that. So what we need, really, is for courts to come down and say, these applications need to have guardrails against the unauthorized practice of law, and these are the guardrails that need to be there."

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California Brief

Argument Preview

NY TikTok Addiction Case Hinges on State's Standing to Sue

April 7, 2026, 2:00 AM PDT

New York's lawsuit against TikTok could have a ripple effect on other states looking to hold social media companies accountable for addicting children, if the state is able to convince a Manhattan appellate court it has standing to sue on behalf of its young residents.

The state's case brings similar arguments to two trials that played out recently in Los Angeles and New Mexico. In the former, Meta and Google were found negligent for designing and operating platforms that are addictive to young users and ordered to pay \$6 million to the individual plaintiff. The New York case is different in that it's about the state, rather than individual users of the platform, seeking to hold the company accountable.

A ruling against TikTok on the standing issue in the New York case could "signal to courts nationwide that state enforcement actions targeting addictive platform design are viable over objections that individual users should sue on their own," said Yunsieg P. Kim, associate professor of law at Hofstra University's Maurice A. Deane School of Law.

Just two weeks ago, New Mexico succeeded in its suit to hold Meta accountable under state law for misleading teenagers about the safety of its social networks and exposing them to potential sexual predators. A 12-person jury on March 24 awarded the state civil penalties totaling \$375 million.

TikTok argues that New York lacks standing to sue on behalf of its residents; only individuals who have been harmed can bring claims. It's a central argument that could give the state's First Appellate Department a basis to throw out the case, said Fordham School of Law professor Benjamin C. Zipursky.

"The fact they're trying to protect children and children can't always fight for themselves, and the fact that they're looking for injunctive relief—those are said to be reasons why the appellate division should affirm" and make it fall under the exception category, Zipursky said, noting that it is less common but not unprecedented for a state to bring such claims on behalf of residents.

Judges will also grapple with whether the state's arguments are about the content posted on TikTok—in which case the company could be immune from liability under federal law—or the design of the platform and its algorithms, a topic tackled by another New York appellate court last year.

Consumer Protection

TikTok argues there's no precedent that gives New York third-party standing to bring products liability claims on behalf of individuals to target an online platform for its decisions on what content to publish and how to publish it.

The trial court in May rejected that argument, saying during oral arguments that the state adequately "alleges a quasi-sovereign interest, in that the actions of TikTok threatened the health and welfare of the citizens of the State of New York, and particularly of young users."

The standing issue is important but it's not necessarily "dispositive one way or the other," Kim said. New York law gives Attorney General Letitia James (D) broad authority to take action against fraudulent or illegal business conduct, giving the state "a substantial statutory foothold here," he said.

Another key question is whether the social media platform is a tangible product for the purpose of product liability law.

James argues that New York has no bright-line rule for what is or is not a product, while TikTok argues it's an intangible online platform that publishes intangible content.

In the Los Angeles case, the judge concluded the social media platforms aren't products but that they could still proceed to trial under negligence claims.

"In this social media litigation, it's all about saying how bad these companies were and that they knew there were these risks. So you don't need product liability law," Zipursky said.

Section 230

Another issue likely to receive significant attention, Kim said, is TikTok's argument that the state's case is barred by Section 230 of the federal Communications Decency Act, which protects platforms from being held liable for publishing third-party content.

A New York appellate court in Albany last year sided with social media companies and declined to limit protections under section 230 when it dismissed Meta, Google, and Reddit from a lawsuit claiming they're liable for a 2022 mass shooting in Buffalo.

But in that case, unlike the TikTok suit, "the alleged harms and their alleged sources were more directly tied to particular online content, namely, racist and other extremist content calling for violence," said Jonathan Cedarbaum, professor of practice at the George Washington University Law School.

The trial court said TikTok failed to recognize the suit isn't about content, but rather "a cocktail of design features that are unique to the TikTok product, and alleged to cause harm to young people."

If judges signal that they see the case "primarily through a deceptive-practices lens, that could provide a pathway that sidesteps the Section 230 debate entirely," Kim said.

"I would listen for whether judges press the AG on the specificity of the alleged deception—what exactly TikTok represented, to whom, and when—because that framing is the AG's strongest ground and the one most independent of the Section 230 question," Kim added.

The case is New York v. TikTok Inc., N.Y. App. Div., 1st Dep't, No. 2025-04146, oral argument scheduled 4/8/26 .

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Live Nation Calls Expert Witness in Antitrust Trial a Liar, Asks Judge to Strike Testimony

State attorneys general defended their witness, economist Rosa Abrantes-Metz, and said that if her trial testimony was ambiguous, confusing or misleading it was because Live Nation's attorneys asked her unclear questions.

April 06, 2026 at 05:46 PM By **Michael Gennaro**

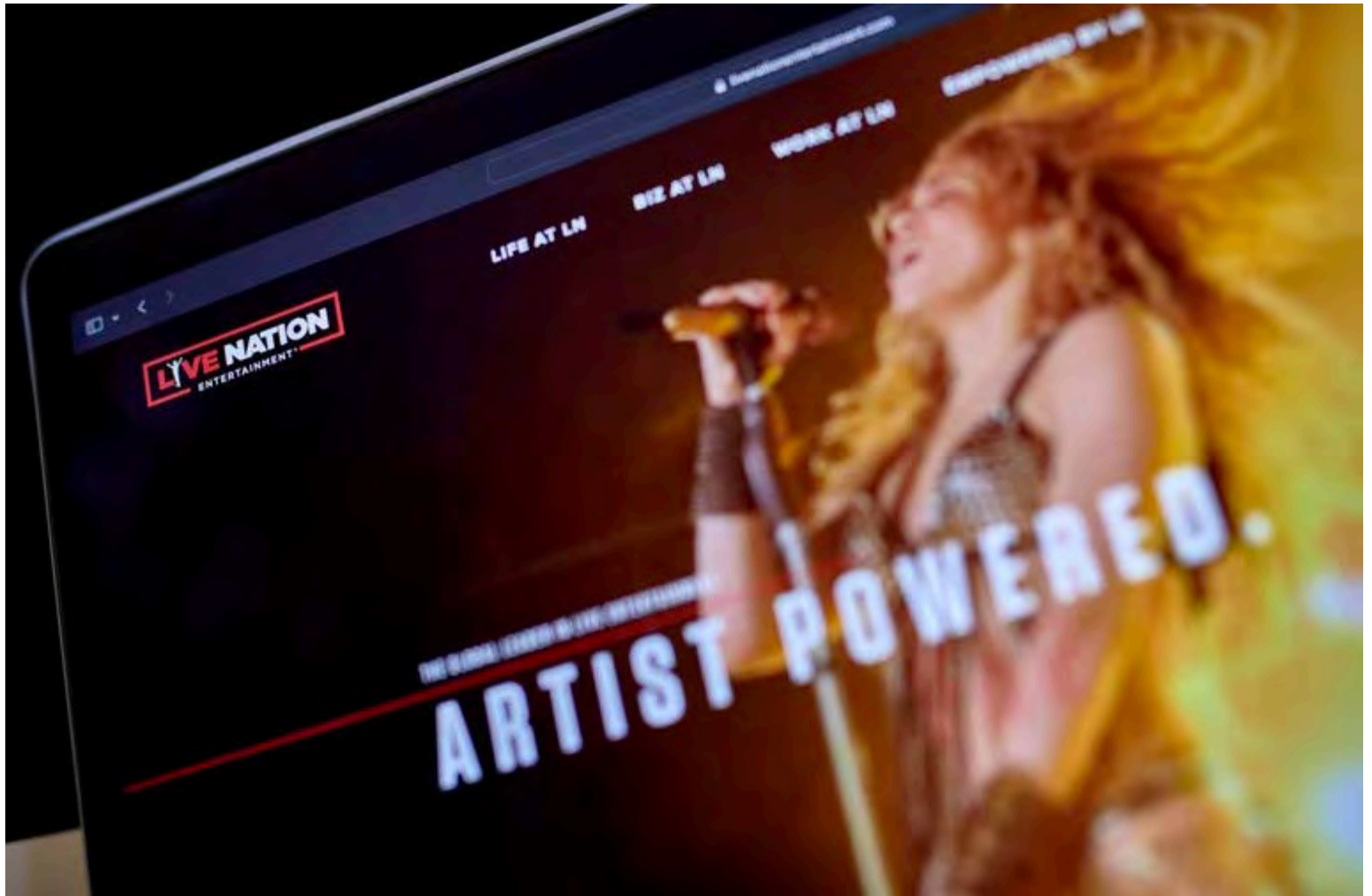


Photo: Gabby Jones/Bloomberg

The antitrust battle over the future of the live music industry took a sharp turn last week as Live Nation Entertainment and its Ticketmaster subsidiary moved to strike the entire testimony of a key government expert, alleging she lied on the stand.

In a [blistering 24-page memorandum](#) filed April 30 in the Southern District of New York, Live Nation's defense attorneys from Latham & Watkins and Cravath, Swaine & Moore argued that a damages study presented by economist Rosa Abrantes-Metz is "irreconcilable with the trial record" and built upon a "theoretical conception of price inconsistent with market realities."

Live Nation's motion to strike relies on a two-part accusation: that Abrantes-Metz created a fictional and flawed methodology to calculate a high damage number, and that she then lied on the witness stand by claiming she obtained the methodology directly from Live Nation.

At issue is what Abrantes-Metz calls "retained amounts," a metric she says shows that Ticketmaster charges \$2.30 more per ticket than AXS, North America's second-largest ticket vendor. Government attorneys have leaned on this figure to demonstrate Live Nation has a "monopoly overcharge" that it passes through to fans.

However, Live Nation contends in the filing that Abrantes-Metz's definition of price is fundamentally flawed because it ignores the massive upfront payments, often totaling hundreds of millions of dollars, that ticketing companies pay to venues to secure exclusive contracts.

"Dr. Abrantes-Metz simply pretends that upfront payments to venues play no role in determining the price venues pay for ticketing services," the brief states. Live Nation's own expert, forensic accountant Paul Meyer, noted that the company's U.S. ticketing segment reported nearly \$1 billion in such payments during the period studied, a figure more than three times the size of the entire damages claim.

The most explosive claims in the filing involve Abrantes-Metz's conduct during cross-examination.

Beverly Hills, California-based Live Nation says that in her deposition before trial, she cast "retained amounts" as something she came up with on her own. "I am calling it retained amount. ... I could have called it anything I wanted, for that matter," she said.

But on the witness stand during the trial, she said, "I do not call it myself retained amount. I call it retained amount because it was called retained amount by Live Nation."

Later in the questioning, she goes further, saying she calculated "retained amounts" by "follow[ing] instructions provided by Live Nation on how to calculate retained amounts."

But Live Nation says that while it does track gross margin per ticket through what it calls "TM Retain (GM)," that is not the same as what Abrantes-Metz calls "retained amounts." The company says nothing in the documents Abrantes-Metz cites could possibly lead to her calculation of "retained amounts."

[A June 27, 2025, letter](#), for instance, merely addresses a range of in-the-weeds questions about how data points in a revenue-and-expense spreadsheet relate to one another, Live Nation says.

In addition, Kelly Fayne, a Latham & Watkins partner who supervised data production for the lawsuit, [said in a declaration](#) filed last week that she did not recall anyone on her team ever telling

plaintiffs that the company calculated something along the lines of what Abrantes-Metz calls "retained amounts."

Fayne said she also reviewed the voluminous data-production correspondence between Live Nation and the plaintiffs and found no instance where Live Nation said it calculated or retained data on anything like what Abrantes-Metz calls "retained amounts."

"In light of this history, this time-of-trial assertion by Abrantes-Metz that she was simply 'follow[ing] the instructions provided by Ticketmaster' ... can only be regarded as a deliberate lie," the motion to strike says.

"From her deposition, she knew that Defendants would cross-examine her on how she came up with this construct of Retained Amount, and to foil the line of cross she made up a story directly contradicting her deposition testimony that the Retained Amount was her work alone."

Abrantes-Metz did not respond to repeated requests for comment from Law.com.

In [a 41-page response](#) filed March 3, government attorneys say Abrantes-Metz did not commit perjury or testify falsely and say they find it "extraordinary" that Live Nation is trying to escalate confusion over her trial testimony into an order that would cast aside the government's only expert witness addressing how Live Nation's business practices impact fans.

"The perjury standard requires a willful, material falsehood—not ambiguous answers to confusing questions under the pressure of cross-examination," Winston & Strawn attorneys representing the government wrote.

The filing added, "Her testimony, to the extent that it was ambiguous, confusing, or misleading, was the result of unclear questions from Defendants' counsel that conflated two separate issues Dr. Abrantes-Metz considered when determining 'retained amounts,' not the result of any lying or bad faith."

Live Nation has asked for oral arguments on its motion to strike, but the presiding judge, Arun Subramanian, has not yet indicated whether he'll grant one or will instead rule based on the written record.

On top of accusing Abrantes-Metz of lying, Live Nation's motion to strike takes issue with Abrantes-Metz treating AXS as a peer of Ticketmaster.

Citing testimony from top industry executives—including Jay Marciano, the CEO of concert promoter AEG Presents, which owns AXS—Live Nation casts AXS as a laggard not just in size but also in the customer experience it provides.

The filing highlights an internal AEG document from 2019 where one subsidiary referred to AXS as "the worst ticketing service, pathetic" and "a turd."

Live Nation argues that because Abrantes-Metz's study assumes "reasonably comparable quality" throughout the 2017-2024 period, it provides the jury no way to adjust damages if they find that Ticketmaster's higher prices were actually due to a superior product.

But the government's response filed March 3 says the fact that Live Nation disagrees with Abrantes-Metz's treating AXS as a Ticketmaster peer and disagrees with her decision not to factor in upfront payments are matters for the jury to weigh, not grounds for making her testimony inadmissible. The filing notes that the court earlier ruled that AXS "is sufficiently comparable to permit a degree of reliable comparison."

The trial is unfolding under unusual circumstances following [a major rift](#) in the plaintiffs' coalition last month. On March 9, the DOJ announced a tentative, \$280 million settlement with Live Nation, opting to withdraw its claims in exchange for a series of concessions.

Under the terms of the federal deal, Live Nation agreed to divest 13 exclusive booking agreements, cap certain service fees at 15% at owned venues, and allow rivals more access to its platforms.

While the DOJ hailed the settlement as a win that provides immediate monetary and structural relief, more than 30 of the 39 states that had joined the suit deemed it insufficient and are pushing ahead with the trial.

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Betting on the verdict: Kalshi case could shape prediction markets

 [reuters.com/legal/litigation/betting-verdict-kalshi-case-could-shape-prediction-markets-2026-04-06](https://www.reuters.com/legal/litigation/betting-verdict-kalshi-case-could-shape-prediction-markets-2026-04-06)

Jenna Greene

April 6, 2026

A gavel and a block is pictured at the George Glazer Gallery antique store in this illustration picture taken in Manhattan, New York City, U.S., August 18, 2020.

REUTERS/Andrew Kelly/Illustration [Purchase Licensing Rights](#)  [, opens new tab](#)

April 6 (Reuters) - (Note: The Third U.S. Circuit Court of Appeals [ruled for Kalshi on Monday](#), dealing a loss to New Jersey gaming regulators.)

As legal challenges mount against prediction market operators, traders have responded fittingly: by betting on whether Kalshi will win a major pending case. Current odds favor industry pioneer Kalshi. As of publication time, bettors on a rival prediction platform [put the probability](#)  [, opens new tab](#) at 94% that New York-based Kalshi will prevail in an appeal against New Jersey. The state claims Kalshi violates New Jersey gambling laws by allowing wagers on sporting events, but it lost before the district court last year.

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Beneath the novelty of betting on a court case lies a fundamental legal fight over whether fast-growing prediction markets will be regulated as finance or gambling. The question is coming to a head amid a wave of lawsuits involving Kalshi and similar companies by and against state regulators.

Ultimately, the disputes come down to questions of federal preemption. Are the wagers -- known as event contracts -- swaps that fall under the purview of the U.S. Commodity Futures Trading Commission, a small agency better known for overseeing futures on commodities like soybeans? And if so, would that preclude state-level efforts to regulate and tax the companies?

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On April 2, the CFTC, which under the Trump administration has backed the prediction markets, escalated the fight. The agency [sued](#) Arizona, Connecticut and Illinois, seeking to block what it called unlawful state efforts to police the markets. The move comes even as gaming regulators in Nevada, Massachusetts, Ohio and Maryland have come out ahead in litigation against Kalshi. The states persuaded judges to deny Kalshi's bids for preliminary injunctions that would have blocked gaming officials from enforcing sports betting laws against the prediction market operator.

Kalshi's fight with New Jersey before the Third U.S. Circuit Court of Appeals is the furthest along among the growing patchwork of cases, poised to offer key appellate guidance on common questions that also implicate competitors including Polymarket, Crypto.com and Robinhood.

A Kalshi spokesperson declined comment on the odds of its appellate success but said the company is "subject to exclusive federal jurisdiction. It is very different from what state-regulated sportsbooks and casinos offer their customers."

Unlike traditional gambling operations, prediction market participants bet against one another, not the house. That means Kalshi doesn't profit when its customers lose. Instead, it makes money by charging small fees on each transaction.

The majority of Kalshi's wagers, or event contracts, involve sports, placing the exchange squarely in the traditional domain of gaming regulators. Traders on prediction markets can also wager on dozens of other questions, from Taylor Swift's wedding venue to the 2028 presidential nominees.

My Reuters colleagues [report](#) that Kalshi trading volumes now top \$1 billion weekly, rising more than 1,000% from 2024.

Founded in 2018, Kalshi was certified by the CFTC in 2020 as a "designated contract market" -- the same status as the Chicago Mercantile Exchange, for example -- but with a first-of-its-kind focus on event contracts.

Kalshi in January 2025 began allowing traders to take positions on the outcome of sporting events including the Super Bowl, Stanley Cup and the winner of the NCAA men's basketball tournament. The trades are "100% legal in all 50 states! You're welcome, America," the company [said at the time](#)  [opens new tab](#).

The New Jersey Division of Gaming Enforcement promptly sent a cease-and-desist letter, alleging Kalshi was offering unauthorized sports wagering in violation of state law.

Kalshi sued New Jersey in response, arguing that the state's threat of enforcement encroached on the CFTC's exclusive jurisdiction and was preempted under the Supremacy Clause of the U.S. Constitution.

Last April, U.S. District Judge Edward Kiel in New Jersey [sided with Kalshi](#)  [opens new tab](#), issuing a preliminary injunction halting the state's enforcement efforts. "I am persuaded that Kalshi's sports-related event contracts fall within the CFTC's exclusive jurisdiction," he wrote.

The New Jersey Attorney General's office declined comment.

The Third Circuit heard oral arguments in September, with lawyers from Milbank representing Kalshi. A decision is pending.

In the meantime, similar litigation involving Kalshi and other prediction market operators has produced conflicting outcomes.

In Nevada, a district court judge last spring initially sided with Kalshi, only to later [change course](#) and rule that its event contracts are a form of gambling and subject to state regulation. The Ninth Circuit is scheduled to hear Kalshi's appeal, which has been consolidated with cases involving Robinhood and Crypto.com, on April 16.

Likewise, a federal judge in Maryland [ruled against Kalshi](#)  [, opens new tab](#) on similar grounds last summer, with oral arguments before the Fourth Circuit set for May.

Kalshi [lost again in Ohio](#)  [, opens new tab](#) but [won in Tennessee](#)  [, opens new tab](#), creating an intra-circuit split at the Sixth Circuit, where the cases are on appeal.

(No wagers are currently being offered on the outcome of these cases, based on my search of prediction market platforms as of April 3.)

While Kalshi has been by far the most active litigant, Polymarket, for example, went on the offensive to sue the state of Massachusetts in February.

A Polymarket spokesperson referred me to an [X post by Neal Kumar](#)  [, opens new tab](#), the company's chief legal officer, on the case. "Congress gave the CFTC, not states, exclusive authority over event contracts," Kumar wrote. "These are national markets with critical questions that must be resolved in federal court." Given the flurry of litigation, might the U.S. Supreme Court wind up considering the issue?

People are placing bets on that too.

Gamblers on Polymarket currently see a [64% chance](#)  [, opens new tab](#) that the high court will take up a case involving sports event contracts by the end of the year.

That's a wager I might be willing to make.

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Jenna Greene writes about legal business and culture, taking a broad look at trends in the profession, faces behind the cases, and quirky courtroom dramas. A longtime chronicler of the legal industry and high-profile litigation, she lives in Northern California. Reach Greene at jenna.greene@thomsonreuters.com

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California Brief

Stanley Tumbler Maker Defeats False Ad Lawsuits Over Lead Use

April 6, 2026, 5:10 PM PDT

Stanley-brand thermal cup maker Pacific Market International beat three class action lawsuits after a federal court ruled the suits failed to establish a risk of harm from lead sealed inside the base of the company's once-viral tumblers.

"Without additional factual support that demonstrates a specific and plausible risk of harm from the lead in Stanley cups, the mere presence of lead could not be material to a reasonable consumer," Judge Tana Lin said for the US District Court for the Western District of Washington in an April 3 order, granting Pacific Market's motion to dismiss with leave to amend.

The consolidated lawsuit, brought by consumers from California, Nevada, New York, and Washington, claimed Pacific Market failed to disclose its use of lead in its tumbler's vacuum-sealed base before the information became public in January 2024. The plaintiffs alleged Pacific Market violated consumer protection statutes in California, Nevada, and New York and were liable for unjust enrichment and fraudulent omission. Sales of Stanley tumblers went from \$70 million to about \$750 million between 2019 and 2023, the order said.

While plaintiffs cited guidance from health authorities including the US Food and Drug Administration, Centers for Disease Control and Prevention, and the World Health Organization that no amount of lead is safe for human consumption, Lin found these warnings disconnected from the actual product in question, the order said.

Lin pointed out that one plaintiff purchased another Stanley tumbler after filing the lawsuit, undermining her claims that lead disclosure was material to purchasing decisions.

Breskin Johnson & Townsend PLLC, Tousley Brain Stephens PLLC, Whatley Kallas LLP, George Feldman McDonald PLLC, Rushing McCarl LLP, Doyle APC, and Gustafson Gluek PLLC represents the plaintiffs. Arnold & Porter Kaye Scholer LLP and K&L Gates LLP represent Pacific Market.

The case is In Re Pacific Market Int'l LLC, Stanley Tumbler Litig. , W.D. Wash., No. 2:24-cv-00191, dismissal order 4/3/26 .

AI startups court law students in fight for lawyer market

 [reuters.com/legal/legalindustry/ai-startups-court-law-students-fight-lawyer-market-2026-04-07](https://www.reuters.com/legal/legalindustry/ai-startups-court-law-students-fight-lawyer-market-2026-04-07)

Karen Sloan

April 7, 2026

Figurines with computers and smartphones are seen in front of the words "Artificial Intelligence AI" in this illustration created on February 19, 2024. REUTERS/Dado Ruvic/Illustration//File Photo [Purchase Licensing Rights](#)  [.opens new tab](#)

April 7 (Reuters) - As artificial intelligence companies compete for U.S. legal industry customers, two leading legal AI startups are working to win over law students who will soon populate the country's law firms and corporate legal departments.

Sweden-based Legora said last month that it will supply free training and access to its AI legal research, drafting and review tools to nine law schools including Stanford, the University of Chicago and Northwestern. Harvey, based in San Francisco, launched a similar free subscription program last year that it since expanded to 17 U.S. law schools, including Penn, New York University, and UCLA. Jumpstart your morning with the latest legal news delivered straight to your inbox from The Daily Docket newsletter. Sign up [here](#).

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Generative AI tools for attorneys have [proliferated](#) since Chat-GPT's 2022 debut, creating a crowded marketplace for companies competing for lawyers' dollars. According to some industry estimates, the legal AI market is on track to grow to \$10 billion annually by 2030.

The technology has created an opportunity for new companies to compete alongside established research firms like LexisNexis and Westlaw that have long dominated the legal market. Westlaw's parent company Thomson Reuters also owns Reuters.

The startups—Harvey and Legora both launched less than four years ago—typically rely on large language models developed by companies such as OpenAI and Anthropic and layer on legal-specific systems to perform tasks such as research and drafting.

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By contrast, legacy legal publishing companies maintain proprietary databases on cases and statutes that subscribers pay to access, alongside research and workflow tools that increasingly integrate AI. Those companies, which have longstanding

relationships with U.S. law schools, are also giving schools and law students access to their AI tools.

Law school subscribers have had access to AI through LexisNexis' flagship platform, Lexis+ with Protégé, since 2023, the company said. LexisNexis also launched a "strategic alliance" with Harvey in June that gives Harvey users partial access to LexisNexis' case-law database. Thomson Reuters in recent months expanded access to its AI enabled legal tools, including CoCounsel Legal, to its law school subscribers.

LexisNexis and Westlaw declined to disclose their law school pricing or what percentage of their revenue comes from law school users. Thomson Reuters said law schools receive a discounted rate, while LexisNexis said its operational costs outpace the revenue it generates from law schools.

Cultivating future lawyers

Legora and Harvey both said they hoped students who use their platforms for free in law school will eventually become part of their paying customer base.

"The more that they get to their firms and say, 'Hey, you can actually do this in Harvey,' that's great for us as a business," said Harvey's chief operating officer Katie Burke.

Law school students and faculty have used the platform for drafting memos, prepping for final exams, and predicting what an opposing litigator might say in court, Burke said. Harvey, which hit an \$11 billion valuation last week after [raising \\$200 million](#) in fresh capital, also uses feedback from law students to improve its products, she said.

Legora CEO Max Junestrand said the company is looking to partner with more law schools in the future. "If the students coming out of law schools are equipped with the skills to get the most out of AI, that will help everybody in the ecosystem—including us," he said. Legora [raised \\$550 million](#) last month and is now valued at \$5.55 billion.

Legora said it could not provide an estimate for the value of its law school subscriptions because its rates depend on a variety of factors. A Harvey spokesperson said its tool normally costs "a few hundred dollars per person per month on average."

University of Michigan law dean Neel Sukhatme, whose students have had free access to Harvey since August, said hands-on experience exposes students to both the benefits and pitfalls of AI—such as its potential to "hallucinate" false information. With practice, he said, "you intuitively know what they're good at and what they're not good at."

Expanding options

Other AI-enabled legal technology platforms are also partnering with law schools. Clio, a 18-year-old legal tech firm, said it is now being used, for free, at [more than 200 law schools](#) , [opens new tab](#) internationally. Clio wants law student users to stick with the platform after they graduate, said Philip Rosenthal, the company's head of bar and academic partnerships, saying early familiarity benefits the students and their future firms and clients.

Smaller AI startups have inked similar deals. Contract drafting platform [Spellbook](#) , [opens new tab](#) is now used by students at 72 law schools, the company said.

Charleston Law School [is using](#) , [opens new tab](#) transactions platform GenieAI at no cost, and CEO Rafie Faruq said the company is looking to partner with more law schools in the U.S. and U.K.

University of Miami law student Juan Sierra Ramirez, who founded a campus club for AI enthusiasts, said he and his classmates are more likely to stick with AI tools they use early in their studies, and they are eager for more options.

"Access matters, and students want it," he said.

Read more:

[AI training becomes mandatory at more US law schools](#)

[Law schools boost their AI offerings as industry booms](#)

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Karen Sloan reports on law firms, law schools, and the business of law. Reach her at karen.sloan@thomsonreuters.com

'Figuring Out How to Deal With This': How Are Courts Grappling With Disciplining AI Hallucinations?

Some judges have issued sharp reprimands, while others are still weighing how to balance accountability with evolving technology and modern practice.

April 06, 2026 at 09:42 AM By  Riley Brennan



Credit: javu/Adobe Stock

Courts nationwide remain uncertain about how aggressively to pursue formal discipline for attorneys using "hallucinations" generated from artificial intelligence tools, even as attorneys continue to face sanctions for filing briefs with fabricated or misstated citations.

Some judges have issued sharp reprimands, while others are still weighing how to balance accountability with evolving technology and modern practice. Within the past several months, various state and federal courts have differed in utilizing the formal disciplinary process.

Michael W. Ott, a partner at Ice Miller in Chicago, said some courts appear hesitant to take formal disciplinary action, given the quickly evolving technological landscape.

"I think courts are still figuring out how to deal with this, with the specific facts, the cases in front of them. I really think, at the end of the day, this isn't a new phenomenon. Courts had to deal with misrepresentations, omissions and competency issues for a long time," Ott said. "On some level, they have a perfectly satisfactory framework for how to deal with these things. It's just a new type of error that's falling within it."

In February, the California State Bar [recommended a one-year suspension](#) for an attorney whose opening brief included 21 fabricated quotations out of 23. The California Court of Appeal for the Second Appellate District had already fined the attorney \$10,000 last fall, calling the sanction "a warning."

[On March 11](#), the U.S. Court of Appeals for the Fourth Circuit publicly admonished an attorney for repeated AI hallucinations. The attorney initially filed an appellate brief citing a nonexistent case and denied using AI before filing a reply brief that contained two additional fictitious cases.

However, other courts have been more hesitant—or divided—in their disciplinary approach.

[Late last month](#), the U.S. Court of Appeals for the Third Circuit reprimanded an attorney over AI hallucinations but decided against issuing monetary sanctions, noting various mitigating factors, including that it was the court's "first opportunity to address the use of AI" and AI hallucinations. However, one judge on the panel felt more severe sanctions were warranted.

"We need not explicitly forewarn against improper AI use when it falls within the strictures on legal argument of Pa. R.P.C. 3.3," said Judge Jane R. Roth.

John Browning, a retired Texas Fifth Court of Appeals judge and professor at Faulkner University's Thomas Goode Jones School of Law, said that many courts typically avoid imposing the harshest sanctions when a lesser penalty would suffice and achieve the same corrective effect.

"We're not going to jump to the worst possible extreme. And so, you wouldn't right off the bat dismiss someone's case, a terminal sanction. You would apply a lesser sanction and see if that did the trick," Browning said. "And if not, well, you escalate the sanction."

Eugene Volokh, a professor at UCLA School of Law, said the degree of punishment often depends on the level of conduct, the attorney's general reputation, and whether the lawyer has been candid and apologetic about their misuse. As a general matter, Volokh noted that it goes a long way with courts when an attorney comes across genuinely contrite, expresses how embarrassed and humiliated they are, and has a long, discipline-free career.

This concept was seen [earlier this year](#), when a federal judge in Pennsylvania declined to refer an attorney from Pennsylvania and an attorney from New York to their respective disciplinary authorities after identifying various AI hallucinations in a briefing they filed. The judge concluded that both attorneys had taken steps to remedy their mistakes and opted to impose monetary and nonmonetary sanctions instead.

Relatedly, the U.S. Court of Appeals for the Seventh Circuit took a similar approach [last week](#), publicly admonishing an attorney whose brief contained "tell-tale signs of AI hallucinations." However, the court declined to issue further sanctions, noting it was persuaded by the attorney's "acceptance of responsibility and sincere apology that these false citations were not made knowingly or intentionally."

"In some courts, lawyers appear fairly often. And if a judge sees somebody who's been a solid, reliable lawyer for 30 years, it's a lot easier to say, OK, you screwed up," Volokh said, noting that in many cases, attorneys are committing "honest mistakes."

However, when such a mistake is paired with serious misconduct, like lying or being deceitful to the court, Volokh said that the court is more likely to issue monetary sanctions, publicly admonish the attorney or formally refer them to bar authorities.

"[I]'m a big believer in trying to deter bad behavior, but the punishment ought to fit the crime, and this is not the most serious of crimes. I can't imagine a lawyer being disbarred for screwing up this way, lawyers don't generally get disbarred for screwing up. I doubt a lawyer would get suspended for basically failure to cite check," Volokh said. "[T]he lawyer may be publicly admonished, that might be entered into his disciplinary record that prospective clients would see, but I don't think we should expect extraordinary levels of punishment for this kind of thing."

Being on the hunt for AI hallucinations isn't falling only on the courts.

Lawyers are also being asked to think differently and notice errors they haven't historically looked for in the work they're producing. Ott noted senior attorneys, in particular, have spent their entire careers reviewing associate work and looking for errors that junior associates typically make, not for mistakes made by AI.

"AI makes errors that are completely different in type from what associates make. An associate might misrepresent a case, but it's unlikely they're going to invent one whole cloth," Ott said. "The kind of heuristic that attorneys need to use and that they're used to using for reviewing work product that is generated is changing, and it's changing very fast."

Expert Opinion | **Artificial Intelligence**

No Forewarning Necessary? The AI Line the Courts Are Drawing—And Why It Won't Stay Put

The law has always evolved alongside its tools. From typewriters to online databases, each shift has required adjustment. AI is no different in that respect. What is different is the speed and scale of the change.

April 03, 2026 at 09:30 AM By **Michael J. Epstein**



Michael J. Epstein of The Epstein Law Firm. Courtesy photo

The split decision out of the U.S. Court of Appeals for the Third Circuit reads, at first glance, like a straightforward attorney discipline case. A lawyer files a brief. The brief contains fabricated case law generated by artificial intelligence. The citations are not verified. The errors are flagged. The lawyer doubles down. The court steps in.

Sanctions follow.

But that surface-level telling misses what actually matters here. This is not just a cautionary tale about one attorney's missteps. It is an early fault line in what will become one of the defining legal debates of the next decade: how courts assign responsibility in the age of AI.

And the judges themselves are already divided.

The facts are not subtle. In [*McCarthy v. United States Drug Enforcement Administration*](#), the attorney submitted summaries of eight DEA adjudications generated by AI. Seven were riddled with factual and legal errors. One did not exist at all.

That alone would be enough to trigger discipline under any traditional understanding of legal practice. But what followed made the situation worse. Even after opposing counsel flagged the issues, the attorney failed to verify the citations. He characterized the errors as "minor discrepancies." Only after being ordered by the court to produce the authorities did he fully confront the problem.

That sequence matters. This was not just a failure of technology. It was a failure of judgment, compounded by a failure of candor.

The majority recognized as much, finding violations of Rule 1.1—competence—and imposing sanctions. But it stopped short of going further. Why? Because, in the majority's view, this was the court's first opportunity to address AI use directly. There had been no explicit warning.

That hesitation is telling.

As [Law.com reported on Monday](#), Judge Jane Roth's dissent cuts in the opposite direction, and it does so with a clarity that will resonate far beyond this case.

No forewarning is necessary.

Lawyers already know the standard. They are required to provide competent representation. They are required to be candid with the court. They are required to stand behind the accuracy of what they file. None of those obligations appeared with the arrival of artificial intelligence.

And none of them depend on whether a court has issued a specific advisory about AI.

It is a simple idea, but a powerful one. The tool does not change the duty.

That is the core tension this case exposes, and it is not going away.

On one side is a strict liability approach to professional responsibility. If you file it, you own it. Whether the error comes from a junior associate, a third-party vendor, or an AI platform is irrelevant. The lawyer is the final checkpoint. If that checkpoint fails, discipline follows.

On the other side is a more transitional view. AI is new. Its risks are still being mapped. Courts should give the profession some runway, at least initially, before imposing the full weight of sanctions in cases that involve emerging technology.

Both perspectives have logic behind them. Both are likely to find support in different courts.

And that is precisely the problem.

When federal appellate courts begin to diverge on how to treat the same underlying conduct, the trajectory is predictable. The issue does not stay contained. It spreads. District courts adopt different standards. Circuits begin to split more sharply. Litigants start to forum-shop around those differences.

Eventually, the need for uniformity becomes unavoidable.

That is how questions like this find their way to the Supreme Court of the United States.

Not because the technology itself is novel, but because the legal system cannot function indefinitely with competing answers to a basic question: what does it mean to practice law competently in an AI-assisted world?

There is a deeper risk here, and it runs in both directions.

If courts lean too heavily into the majority's caution, the message to the bar may become muddled. Lawyers may begin to treat AI errors as something less than their own responsibility, at least until courts "clarify" the rules further. That is a dangerous path. It invites exactly the kind of conduct this case exposed—outsourcing judgment to a tool that is, by design, incapable of exercising it.

But if courts adopt the dissent's approach without nuance, there is another risk. The profession may become so wary of AI that it resists tools that, used properly, can improve efficiency, reduce costs, and expand access to legal information.

The law has always evolved alongside its tools. From typewriters to online databases, each shift has required adjustment. AI is no different in that respect. What is different is the speed and scale of the change.

That is why this moment feels less like a gradual transition and more like a collision.

So where does that leave us?

The answer is not to pretend this is an easy issue. It is not.

But some principles are not negotiable.

A lawyer cannot delegate competence to a machine. A lawyer cannot outsource candor to an algorithm. And a lawyer cannot avoid responsibility by pointing to the source of an error rather than the failure to catch it.

At the same time, the profession should not ignore what AI can do when used correctly. It can assist with research. It can identify patterns. It can streamline tasks that once consumed hours. Those benefits are real, and they should not be dismissed.

The challenge is not choosing between those realities. It is holding them in balance.

The Third Circuit's decision does not resolve that balance. It was never going to. What it does instead is mark the beginning of a broader conversation, one that will unfold across courts, jurisdictions, and cases in the years ahead.

There will be more missteps. There will be more sanctions. And there will be more disagreement about how to respond.

That is how the law develops.

But through all of it, one point should remain fixed.

Artificial intelligence may assist the practice of law. It may even transform parts of it. But it does not replace the lawyer.

And when something goes wrong, the question will not be what the machine produced.

It will be why the lawyer didn't catch it.

Michael J. Epstein, *a Harvard Law School graduate, is a trial lawyer and managing partner of The Epstein Law Firm, P.A., a law firm based in New Jersey.*

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Phil Davidson, Chris Dickerson

April 7, 2026

HOUSTON — A law firm has lost a challenge to a trial court order imposing sanctions against it and awarding \$69,861.19 in attorney's fees to ExxonMobil.

The appeal was brought by Dr. Robert Corwin, attorney Richard Brualdi, and The Brualdi Law Firm.

Court records show that on Oct. 11, 2023, Exxon announced a merger with Pioneer Natural Resources, an oil and gas exploration and production company valued at \$59.5 million. Pioneer's shareholders were scheduled to vote on the proposed merger at a special meeting on Feb. 7, 2024. On Jan. 17, 2024, however, Corwin, a Pioneer shareholder, sued to enjoin the closing of the vote on the merger.

Corwin, who was represented by Brualdi, accused Exxon of negligent misrepresentation and violating the Texas Securities Act.

He sought an emergency temporary injunction against the closing of the shareholder vote on the merger. The hearing was set for Feb. 2, 2024, five days before the scheduled shareholder vote. Following the hearing, the trial court denied the request for injunctive relief.

The trial court found that Brualdi had consciously filed a groundless request for a temporary injunction to annoy, alarm, and abuse Exxon, court records state.

Ten days later, Corwin filed a notice of non-suit and the trial court dismissed his claims.

Court records show Exxon moved for sanctions against Brualdi. At a hearing, Exxon's counsel testified that "merger tax lawsuits" place a defendant "between a rock and a hard place" because "you either settle and pay the mandatory attorney's fees or you take a risk, however small, of an injunction and all the consequences that come with that."

The counselor testified that Brualdi did not need to make a settlement demand in the case because he knew the terms of any settlement based on his personal experience handling litigation in numerous shareholder suits filed by Brualdi.

He testified that Brualdi's "rate to settle these cases" is "\$425,000."

On March 31, the First Court of Appeals concluded that the trial court did not abuse its discretion by imposing sanctions on Brualdi, affirming the order.

"The trial court did not sanction Mr. Brualdi or the firm for the actions he took in unrelated matters," the opinion states. "Rather, the court considered the actions he had taken in previous cases in other courts only as evidence of his motive in this case."

Appeals case No. 01-24-00207-CV

Fee dispute erupts among plaintiffs' firms in Sutter Health antitrust case

DJ [dailyjournal.com/articles/390616-fee-dispute-erupts-among-plaintiffs-firms-in-sutter-health-antitrust-case](https://www.dailyjournal.com/articles/390616-fee-dispute-erupts-among-plaintiffs-firms-in-sutter-health-antitrust-case)

Jean Kim of Constantine Cannon LLP

A dispute over a \$75.4 million fee award has emerged between plaintiffs' co-counsel in a settled \$228.5 million antitrust litigation against Sutter Health, with one firm accusing the lead firm of diverting hundreds of thousands of dollars to itself.

U.S. District Judge Laurel Beeler approved the fees in November 2025 as part of the class action settlement with Sutter Health over claims it used its market power to drive up hospital prices.

Schneider Wallace Cottrell Konecky LLP asked Beeler to enforce an attorney fee order, arguing that lead firm Constantine Cannon LLP slashed the share of fees without authority and increased its own allocation in the process.

At a hearing on the fees Thursday, Beeler indicated that she thought the allocation of attorney fees was appropriate but took the matter under submission. *Sidibe v. Sutter Health*, 3:12-cv-04854 (N.D. Cal. Filed Sept. 17, 2012).

Jean Kim, with Constantine Cannon LLP in New York, said at the hearing the Schneider Wallace motion was "unreasonable and unfair to the eight other co-counsel who have accepted fees."

"This motion is an insult to our efforts to secure final approval and judgment," Kim said. "It was a lot of work. It took hundreds of hours to fulfill our duties as lead counsel."

Kim said the award was based on a lodestar calculation--hours worked multiplied by billing rates--and represented about 93% of the total value of legal work submitted by class counsel.

But after the award was granted, the motion said, Constantine Cannon, which controlled the settlement fund, unilaterally reduced Schneider Wallace's payout to 60% of its lodestar--down from the 93% figure presented to the court--cutting roughly \$764,000 from its expected fees.

According to the motion, Constantine Cannon simultaneously awarded itself more than its proportional share, allocating roughly 94.8% of its own lodestar.

Schneider Wallace is asking the court to order payment of its full pro rata share--about \$2.15 million--and, if necessary, require Constantine Cannon to cover any shortfall from its own allocation.

At Thursday's hearing, Schneider Wallace attorney Jason Kim said his firm was not disputing the amount of work done by Constantine Cannon and that it was reflected in the original lodestar.

"There is work that is done that is not visible, behind the scenes, that is valuable," Jason Kim said. This work had not been reflected in the allocation for Schneider Wallace, he claimed.

"Constantine Cannon LLP's lodestar was 16.5 times what ours was," Jason Kim said. "With what Constantine Cannon LLP paid us ... they are now 25 times the lodestar. The proportion has now gone up."

Beeler, who presided for nearly all the 12-year litigation, said she knew from her experience in the lawsuit "exactly how it went down."

"We had a completely clean trial," Beeler said. "We got all the way across the finish line without any issues; then I read this motion and I thought, 'That's just too bad.'"

Schneider Wallace argues that nothing in the court's orders or any agreement among counsel gave Constantine Cannon the power to reallocate fees after the fact.

"The Court's order ... did not suggest in any way that Constantine Cannon LLP could unilaterally allocate attorneys' fees," Schneider Wallace wrote in a March 12 brief.

The firm contends the award should have been distributed pro rata based on the same lodestar figures used to justify the fee request to the court.

It also says it was not a party to any co-counsel agreement that might have governed fee allocation among other firms.

Schneider Wallace also said there were disparities in how firms were treated. While some co-lead firms negotiated higher multipliers, Schneider Wallace and several others were held to 60%, the filing says.

But Jean Kim, for Constantine Cannon, said there was a "shortfall" in the fees as co-counsel agreements reduced the total amount available. She said her firm had led "every aspect" of the litigation and sought 33% of the common fund, around \$81 million.

"We paid expenses of over \$27 million, which is a lot for a small firm like us," she said. "Schneider Wallace claims we were somehow double dipping; it doesn't make any sense."

Schneider Wallace also argues that Constantine Cannon is effectively trying to revisit work valuations already accepted by the court.

The fee motion claims Schneider Wallace's work was valued at more than \$2.15 million, but that figure was later reduced when fees were distributed.

Constantine Cannon's opposition argues it had discretion to allocate fees and that Schneider Wallace's role in the litigation was more limited, though Schneider Wallace disputes that characterization and says it performed all assigned work.

#390616

James Twomey

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Law firms fighting Trump executive orders get backing from fellow firms

 [reuters.com/legal/government/law-firms-fighting-trump-executive-orders-get-backing-fellow-firms-](https://www.reuters.com/legal/government/law-firms-fighting-trump-executive-orders-get-backing-fellow-firms-2026-04-06)
2026-04-06

Mike Scarcella

April 6, 2026

U.S. President Donald Trump speaks during a round table on collegiate sports in the White House in Washington, D.C., March 6, 2026. REUTERS/Nathan Howard [Purchase Licensing Rights](#)  , [opens new tab](#)

WASHINGTON, April 6 (Reuters) - Hundreds of law firms, law firm partners, corporate legal leaders and U.S. law students are urging a U.S. appeals court not to revive President Donald Trump's executive orders targeting four prominent law firms, arguing that a win for Trump would undermine the independence of the legal profession.

More than 800 firms [submitted a friend-of-the-court brief](#)  , [opens new tab](#) to the U.S. Court of Appeals for the District of Columbia Circuit on Friday supporting Perkins Coie, WilmerHale, Jenner & Block and Susman Godfrey. The court is hearing the government's appeal next month after judges struck down executive orders against the four firms last year, finding that Trump's directives violated protections for free speech and due process under the U.S. Constitution.

The signatories on the [law firm brief](#)  , [opens new tab](#) include Dunn Isaacson Rhee, whose leaders [left Paul Weiss](#) in May 2025 after that firm struck a deal with Trump to lift a similar executive order against it. Kellogg, Hansen, Todd, Figel & Frederick, a longtime outside law firm for Meta, and Arnold & Porter, which has filed an array of lawsuits against the Trump administration, also signed the brief. Trump's executive orders accused law firms of "weaponizing" the legal system against him and his allies and of promoting workplace diversity policies he described as discriminatory. The orders sought to bar the four firms' lawyers from accessing federal buildings and to terminate U.S. government contracts held by their clients.

Dozens of current and former corporate legal department leaders also [submitted](#)  , [opens new tab](#) an amicus brief in the D.C. Circuit on Friday, including Stephen Cutler, the former general counsel of JPMorgan Chase. They said Trump's orders undermined companies' ability to freely choose outside counsel. Other signatories included Dorian Daley, former general counsel of Oracle, and Robert Chesnut, who previously led Airbnb's legal team.

A group of current and former partners at major U.S. law firms [filed a separate brief](#)  [,opens new tab](#) under the name Law Firm Partners United. The group, which did not identify its members, said the consequences of being singled out by the president were severe. "The stigma of being named by the President as a law firm acting against critical American interests cannot be overstated," the brief said. Support for the firms also came from more than 1,200 law students and 50 law student organizations, who [said in an amicus brief](#)  [,opens new tab](#) that Trump's actions harmed those seeking to enter the profession.

Five conservative groups, including the Gun Owners Foundation, filed a brief backing the administration. The [groups argued](#)  [,opens new tab](#) that the district court judges who struck down the executive orders did not adequately address the basis for Trump's actions.

The D.C. Circuit, which includes seven active judges appointed by Democratic presidents and four appointed by Republicans, is scheduled to hear arguments on May 14. It has not yet named the three-judge panel that will hear the case.

Read more:

[Trump administration must face ABA lawsuit over law firm orders, judge rules](#)
[Law firms targeted by Trump ask court to uphold rulings blocking executive orders](#)
[FTC crackdown on law firm DEI efforts tests antitrust limits](#)
[How Trump's crackdown on law firms is undermining legal defenses for the vulnerable](#)

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Few Big Law Firms Join More Than 800 in Amicus Brief for EO-Hit Firms

At least seven Am Law 200 firms signed the over 800-firm amicus in support of Perkins, Wilmer, Susman and Jenner in the D.C. Circuit appeals case

April 03, 2026 at 05:26 PM By  **Abigail Adcox**



The E. Barrett Prettyman U.S. Courthouse, home of the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. District Court for the District of Columbia. Photo: Diego M. Radzinski/ALM

More than 800 law firms have signed an amicus brief to support four law firms fighting the Trump administration in a federal appeals court over the fate of President Donald Trump's executive orders targeting the firms.

Just as before, most of the amicus firms are small and midsize. At least seven Am Law 200 firms signed the over 800-firm amicus in support of Perkins Coie, Wilmer Cutler Pickering Hale and Dorr, Susman Godfrey and Jenner & Block in the D.C. Circuit appeals case. The firms' amicus brief, filed by Eimer Stahl, pointed to the Trump administration's heavy impact on the industry.

"Any controversial representation challenging actions of the current administration—or even supporting causes it disfavors—now brings with it the risk of devastating retaliation. Unfortunately, the tactic seems to be working all too well. Law firms have shied away from legal representation that could incur the wrath of the executive," the amicus brief reads.

They add that civil-rights groups report widespread hesitation among law firms to help them, "with many lawyers resorting to anonymous assistance or simply refusing to help altogether," it adds.

Large firms such as Covington & Burling; Arnold & Porter Kaye Scholer; Crowell & Moring; Davis Wright Termaine; Manatt, Phelps & Phillips; Stoel Rives; Patterson Belknap Webb & Tyler; and Hanson Bridgett signed on to the latest brief again.

Fenwick & West, which had signed the amicus brief in the federal district court, did not participate in the amicus in the appeals court. The firm did not immediately return a request for comment.

Munger Tolles & Olson, who had helped file the amicus brief at the federal district court stage, also did not sign on, as the firm now represents Susman & Godfrey. Susman, Jenner and Wilmer had also originally signed the amicus brief filed by law firms in support of Perkins Coie, before these three firms became plaintiffs in the litigation.

Law Firm Partners United, an association that includes nearly 900 current and former partners and shareholders at law firms within the Am Law 200, [previously](#) filed an amicus brief backing the firms in the federal district court, with more than 100 lawyers individually identifying themselves.

However, in the appeals case, the lawyers in this brief remained anonymous. Eric Olson, partner at Olson Grimsley Kawanabe Hinchcliff & Murray, filed the amicus brief on behalf of Law Firm Partners United.

Meanwhile, a group of current and former U.S. senators has also filed an amicus brief in support of the four firms. Seven Democratic senators and one former Republican senator said they have "grave constitutional concerns" with Trump's executive orders. The U.S. senators who signed on to the amicus brief include Sens. Richard Blumenthal (D-CT); Cory Booker (D-NJ); Christopher Coons (D-DE); Mazie Hirono (D-HI); Adam Schiff (D-CA); Chris Van Hollen (D-MD); Sheldon Whitehouse (D-RI); and former Sen. Chuck Hagel, a Republican who also served as secretary of defense under the Obama administration.

"Senators currently regularly work with law firms on a range of important legislative work and advocacy, and the executive orders, by targeting the speech and advocacy of law firms who disagree with the current Executive, will chill law firms from working with any senators who do not stay in lockstep with that Executive's preferred orthodoxy," the amicus brief reads.

A group of 19 Democrats on the House Judiciary Committee [filed](#) their own amicus brief earlier this week.

Overall, more than a dozen amicus briefs have been filed in support of the four law firms so far in the appeals court, including one that is expected to come from 239 former federal and state court judges.

The ABA and European bar associations also [filed](#) their own amicus briefs in support of the four law firms this week.

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California Brief

Jones Day Law Firm Says Hackers Accessed Some Clients' Data (1)

April 6, 2026, 10:32 AM PDT

Hackers have breached Jones Day and accessed the files of 10 clients, the law firm said on Monday.

A prolific cybercriminal group known as Silent took credit for the attack, listing Jones Day among its victims on an extortion website.

"Jones Day recently experienced a cyber 'phishing' incident in which an unauthorized third party accessed a limited number of dated files for 10 clients," spokesperson Dave Petrou said in a statement. "All impacted clients have been notified."

The identities of the affected clients weren't immediately clear. Hackers also stole data belonging to Jones Day in 2021.

The law firm has represented a huge number of large American companies, including Goldman Sachs Group Inc., McDonald's Corp. and General Motors Co. The firm was hired in February to defend JPMorgan Chase in a case in which President Donald Trump sued the bank for its closure of his accounts in 2021.

The hacking group Silent specifically targets American law firms, stealing data and extorting them, according to a 2025 FBI alert. The hackers take advantage of the "the highly sensitive nature of legal industry data," according to the FBI.

The gang is known to target law firms with phishing attacks and masquerade as other businesses in order to trick victims into downloading malicious software, according to the FBI.

(Updated with additional context starting in fifth paragraph.)

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Andrew Martin

California Brief

Academy Mortgage Whistleblower Loses \$8.7 Million Legal Award

April 6, 2026, 3:02 PM PDT

Academy Mortgage Corp. convinced a federal appeals court to reverse an \$8.7 million attorneys' fees and expenses award for a False Claims Act whistleblower who alleged the company knowingly approved loans that didn't comply with Federal Housing Administration rules.

The lower court inappropriately added a 1.75 multiplier to Gwen Thrower's fee and expense award, the US Court of Appeals for the Ninth Circuit said in a Monday opinion.

Thrower originally sought \$13.7 million in fees and expenses with a lodestar multiplier of 2.0 to account for the challenges she faced in litigating her case. The district court agreed that Thrower's representation "achieved an 'exceptional result' in keeping the case 'alive' despite the government's attempt to dismiss it," but reduced the multiplier to 1.75 due to the firm's reduced involvement later in the case, the opinion said.

The Ninth Circuit found that the fees and expenses Thrower was awarded in a \$38.5 million settlement wasn't "unreasonably low" and therefore, didn't qualify for a "rare and exceptional" enhancement to the lodestar method calculations.

"An enhancement may be appropriate when the 'value of [an attorney's] services exceeds what the court determines to be the prevailing market rate for otherwise comparable attorneys,'" Judge Patrick J. Bumatay said in the majority opinion, citing the Ninth Circuit's 2016 decision in *Kelly v. Wengler*. "Yet the district court made no finding that T&S's services exceeded the area's prevailing market rate."

Even if a multiplier were appropriate for Thrower's case, the district court didn't sufficiently support its decision to use a 1.75 multiplier. Bumatay said the district court's explanation based on the firm's reduced role—their lack of participation in negotiating the settlement—wasn't enough. Rather, the court needed to "link the factors showing the lodestar's inadequacy with the amount of the multiplier needed to close the gap."

Judge J. Campbell Barker, of the US District Court for the Eastern District of Texas, joined the opinion. Judge Milan D. Smith Jr. wrote a partial dissent contending that the district court didn't abuse its discretion in deciding to give a "rare and exceptional" case a lodestar enhancement.

Rosen Bien Galvan & Grunfeld LLP and Thomas & Solomon LLP represented Thrower. Weiner Brodsky Kider PC and Ogletree Deakins Nash Smoak & Stewart PC represented Academy Mortgage.

The case is Thrower, et al v. Acad. Mortg. Corp. , 9th Cir., No. 24-4103, opinion filed 4/6/26 .

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April 4, 2026

Section: News

After mistrial, judge prepares for 2nd go at FirstEnergy bribery case

Patrick Williams

April 4, 2026

Former FirstEnergy executives Charles "Chuck" Jones and Michael Dowling will tentatively be retried on bribery and other charges.

Judge Susan Baker Ross, who presided over two-month trial in Summit County Common Pleas Court that wrapped with a hung jury March 31, denied the defendants' motion for acquittal on all charges in an order posted to the case docket April 1.

In the order, Baker Ross also formally declared a mistrial and requested that expected new motions for acquittal from defense attorneys be filed within two weeks.

The judge set a pretrial for 1:30 p.m. on April 8 over Zoom.

"All counsel shall be prepared to discuss their availability in order for the Court to set a new trial date," she wrote.

The Ohio Attorney General's Office and Summit County Prosecutor's Office accuse Jones and Dowling of paying a \$4.3 million bribe to Sam Randazzo before he became chair of the Public Utilities Commission of Ohio. Randazzo died by suicide in 2024.

Steve Grimes and John McCaffrey, attorneys for Dowling, provided written statements after the March 31 hung jury announcement.

"The state had years to prepare for this case and seven weeks to argue it, it's time for Mike to be a free man," Grimes said. "The facts are clear that Mike didn't do anything wrong. We shouldn't let egos get in the way of commonsense and due process, if the State were interested in doing justice, the State would drop all of its charges and let Mike Dowling get on with his life."

McCaffrey said the defense is grateful to the judge for overseeing the "complex" case with "great attention and temperament" and said the team appreciates "the jury's attention to the evidence and their service as jurors on this complicated case."

FirstEnergy fired Jones and Dowling in 2020, stating at the time that they "violated certain FirstEnergy policies and its code of conduct."

FirstEnergy spokesperson Jennifer Young, who previously declined to comment on the case during the active trial, said via email April 1, "Today's FirstEnergy is a different company."

"We have taken responsibility for past issues, strengthened our internal controls and created a more transparent and accountable way of operating," Young said. "

Young said FirstEnergy has "reshaped" its culture.

"Our new leadership team is putting customers at the center of every action, moving decision-making closer to the communities we serve, and has made expectations for ethical conduct clear and consistent across the company," Young said.

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](https://twitter.com/pwilliamsOH).

---- Index References ----

Company: FIRSTENERGY CORP; OHIO, STATE OF

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

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

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

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April 3, 2026

Section: A

Judge declares a mistrial Ohio Attorney General Dave Yost has already said his office will retry the case against former executives.

Adam Ferrise - aferrise@cleveland.com

A judge formally declared a mistrial on Wednesday, one day after jurors deadlocked in the high-profile trial of two former FirstEnergy executives accused of bribing a state regulator.

Summit County Common Pleas Judge Susan Baker Ross handed down the decision in the wake of a hung jury following the two-month trial of former CEO Chuck Jones and ex-top lobbyist Michael Dowling.

Baker Ross also denied defense attorneys' prior arguments to toss out the charges in the one-page order. She gave them two weeks to file post-trial arguments for dismissing the charges.

The mistrial declaration was expected after Baker Ross dismissed the jury on Tuesday, the ninth day of deliberations. Jurors told the judge they were hopelessly deadlocked on the charges that accuse Jones and Dowling of bribing state regulator Sam Randazzo, who helped draft scandal-ridden House Bill 6 in 2019.

A juror told reporters the jury was split 10-2 or 8-4 on different charges in favor of a guilty verdict.

Jones and Dowling faced charges of engaging in a pattern of corrupt activity, bribery, tampering with records and conspiracy. Dowling was charged with three additional counts of tampering with records.

Baker Ross set an April 8 status conference with attorneys to try and set a new trial date. Ohio Attorney General Dave Yost has already said his office will retry the case.

Testimony in the case lasted six weeks and included some 600 exhibits and 30 witnesses.

Prosecutors accused Jones and Dowling of bribing Randazzo with \$4.3 million in late 2018, months before he was appointed to the Public Utilities Commission of Ohio.

Randazzo as PUCO chair in 2019, made decisions at Jones' and Dowling's direction, prosecutors said. Randazzo helped draft HB 6, which gave a \$1.3 billion bailout to two aging nuclear power plants and allowed FirstEnergy to continue making revenue at inflated rates. He also pushed for a regulatory ruling that allowed the Fortune 500 company to avoid a review of its stock prices, which were closely tied to Jones' pay, prosecutors said.

Randazzo was initially charged in the case but died by suicide in April 2024.

Defense attorneys argued that the

\$4.3 million that Jones approved, and Dowling pushed company officials to pay, wasn't a bribe.

Instead, they said it was payment for a 2015 settlement agreement with Randazzo's clients that was supposed to be paid out through 2024.

Randazzo, as a private attorney, negotiated the settlement on behalf of IEU-Ohio, a trade group of industrial businesses that argued against an electricity surcharge. Jones and Dowling pushed for the payment in late 2018 because FirstEnergy had a good year financially and officials were looking for ways to take future payments off FirstEnergy's books, defense attorneys said.

---- Index References ----

Company: FIRSTENERGY CORP; FORTUNE 500 LIMITED

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

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

Securities

Manage Newsletters

Opinion

Matt Levine's Money Stuff: Not Merging Is Not Securities Fraud

April 7, 2026, 10:33 AM PDT

Not everything is securities fraud

A thing that sometimes happens is:

1. Two companies agree to a merger. The buyer will buy the target at some premium to its current stock price.
2. They put out a nice press release saying things like "we are doing this merger" and "here is the price" and "we expect it to close in the third quarter."
3. The target's stock price goes up to reflect the premium in the deal.
4. The next step is getting antitrust approval.
5. The deal does not get antitrust approval. Antitrust regulators decide that it is bad for competition, so they block it.
6. The target's stock price goes down.

This is not what anyone wants, and obviously when the companies are contemplating and negotiating the merger they will think about the antitrust risk and have some plan to get approval, and some optimism that it will work out. But companies are generally willing to [take some risk](#) and sign merger agreements [even without](#) a 100% probability of getting antitrust approval. Sometimes that goes badly.

Everything, I often say around here, [is securities fraud](#) : If a bad thing happens to a public company, and its stock goes down, shareholders will sue, saying that they were misled about the bad thing. The case here is stupid but straightforward:

The target company put out a press release saying "we are doing this merger" and "here is the price" and "we expect it to close in the third quarter."

The stock went up.

The target ended up *not* doing the merger, shareholders did *not* get the deal price, and the deal did *not* close in the third quarter.

The stock went down.

Therefore the shareholders were defrauded: The press release misled them into buying the stock at a high price, and when the truth came out the stock fell.

This is sort of a *reductio ad absurdum* of "everything is securities fraud," but it does all check out. Obviously lower down in the press release they say "we still need antitrust approval" and "nothing is certain," but is that enough? Anyway here's a federal court decision from last week finding that it's not securities fraud:

Capri Holdings (owner of Michael Kors and Versace) and Tapestry, Inc. (owner of Kate Spade and Coach) faced this dilemma when they tried to combine. The two accessible-luxury handbag companies made a long list of public statements about the merger while the Federal Trade Commission reviewed it. Ultimately, the FTC thought the merger posed a serious risk to competition and so sued to block it. The antitrust watchdog won and the merger fell apart, meaning that many of defendants' optimistic statements about the deal fell flat. Several investors in Capri now sue, alleging that these public statements were fraudulent. But not everything is securities fraud. For a variety of reasons, defendants' statements were not fraudulent, so I dismiss the complaint without prejudice.

The judge does not cite me, but I do kind of feel like "not everything is securities fraud" is co-opting my schtick.

To be clear, the complaint here was not really about the initial merger press release; it's about subsequent statements that the companies made expressing confidence that the deal would close, even after the FTC started objecting. "We continue to be confident because we know that this is a transaction that is pro-consumer," they said, and "there is no question that this is a pro-competitive, pro-consumer deal and that the FTC fundamentally misunderstands both the marketplace and the way in which consumers shop." Like, that was their position, and the FTC had a different position, and the FTC won. Does that make their position securities fraud? Well, it was wrong, and shareholders bought stock in reliance on their wrong but emphatic statements, so you could make the argument. But this judge didn't buy it.

By the way, this is not that far off from the securities-fraud lawsuit that [Elon Musk lost last month](#) : He agreed to buy Twitter Inc., he changed his mind, he went around tweeting that he would get out of the deal, the stock went down, Twitter disagreed and sued him, Twitter won and he closed the deal. His position was wrong, and shareholders sold stock in reliance on his wrong but emphatic tweets, so they sued him for securities fraud and won. Arguably the difference is that Musk's position was more wrong than Capri's?

Universal

The stock of Universal Music Group NV closed at €17.105 on Euronext Amsterdam last Thursday, for an equity market capitalization of about €31 billion. (Friday and Monday were market holidays in Amsterdam.) Today, Bill Ackman's Pershing Square announced a proposal to buy 114 million shares of stock of UMG for about €2.5 billion. (Pershing Square already owns 4.6% of UMG's stock.) If I do some simple math – divide €2.5 billion by 114 million – I get a price of about €22 per share for 6.2% of the company (implying about a €40 billion valuation), about a 29% premium to last week's close.

Bill Ackman's math is different. From the announcement:

Pershing Square Capital Management, L.P. ("Pershing Square") today announced that it has submitted a non-binding proposal (the "Proposal") to the Board of Directors of Universal Music Group N.V. ("UMG") to acquire all outstanding shares of UMG through a business combination transaction (the "Transaction"), together with a value creation plan designed to deliver significant benefits to UMG stakeholders.

And:

Total consideration package of cash and stock estimated to be worth €30.40 per share, a 78% premium to UMG's stock price

"Bill Ackman's Pershing Square Offers to Buy Universal Music Group for Around \$60 Billion," reports the Wall Street Journal. "Ackman Pitches \$65 Billion UMG Deal for US Listing, Stock Boost," says [Bloomberg](#). "Bill Ackman's Pershing offers to buy Universal Music in €55bn deal," says the Financial Times.

I get 6.2% of the stock for €2.5 billion; everyone else gets 100% of the stock for €55 billion. I suppose there are about three transactions here:

1. Ackman wants UMG to merge with his special-purpose acquisition company, Pershing Square SPARC Holdings Ltd. The transaction would thus technically be an acquisition of all of the shares of UMG by Pershing SPARC, although the surviving company would be called UMG and would mostly be owned by existing UMG shareholders, and the consideration paid to those shareholders would mostly be stock in the company they already own. (Some of it would be cash, about €9.4 billion worth; see Step 3 below.) If you own UMG stock, you'll still mostly own UMG stock, but it will be a subtly altered UMG. Michael Ovitz will be on the board of directors, for one thing, along with two Pershing Square representatives. Also, UMG is incorporated in the Netherlands and listed in Amsterdam; New UMG would apparently be incorporated in Nevada and listed on the New York Stock Exchange, which is arguably good for value. [Bloomberg reports](#): "Ackman has sparred with the music company, which last month postponed a plan to list shares in New York citing an uncertain market environment." This might speed that along.

2. Ackman has a series of activist plans to increase shareholder value. One plan is to lever the company up a bit: New UMG would borrow €5.4 billion and return the cash to shareholders. Another plan is to sell UMG's stake in Spotify Technology SA for about €1.5 billion and return that cash to shareholders. Also, "New UMG will adopt a revised capital allocation policy," aiming to increase leverage, dividends and share buybacks, as well as "prudent reinvestment in the business and strategic acquisitions that create long-term value for the company and its shareholders."

3. Also Pershing Square and its SPARC will kick in about €2.5 billion for some stock. Add this to the €5.4 billion of new debt and €1.5 billion of Spotify proceeds and you have €9.4 billion of cash to buy back about 17% of UMG's stock, as part of the cash-and-stock merger in Step 1.

The trick is to *combine* those three transactions, so that instead of saying "I have an activist plan to increase value" or "I want to buy some stock," you can say you want to acquire 100% of the company, for cash and stock (of the company), at a valuation reflecting your assumed impact of your activist plans.

I kind of like it? Saying that you want to acquire 100% of the company at a €55 billion valuation sounds better than saying that you want to acquire 6% of the company at a €40 billion valuation. You get from €40 billion to €55 billion by counting the impact of your activist plans in the valuation of the company. You get from 6% to 100% by, essentially, syndicating most of the deal to the existing shareholders.

Incidentally! Ackman is proposing to do this deal out of Pershing Square SPARC. SPARC stands for "Special Purpose Acquisition Rights Company"; it's like a SPAC (a special purpose acquisition company) but lighter on its feet. Ackman invented the SPARC, and we [talked](#) about it a [few times](#) when he did. Essentially a SPAC is a company that goes out and raises a pool of money from investors, and then finds a company to acquire with that money. A SPARC reverses that: It finds a company to acquire (here, UMG) and *then* goes out and raises money from investors. The investors are people who hold the rights of the SPARC, presumably a self-selected group of people who would like to invest alongside Bill Ackman in whatever he cooks up.

Here, €1.4 billion of the €2.5 billion equity check would come from "Pershing Square Funds and Affiliates," that is, actual existing pools of cash that Ackman controls. The other €1.1 billion would come from the SPARC, which currently has roughly zero dollars; it would have to go out and raise that money. That is: In addition to syndicating most of this €55 billion (?) deal to existing UMG shareholders, Ackman plans to syndicate €1.1 billion of it to people who might want to get into his SPARC deal. Who are those people? Presumably some combination of people who like UMG and people who like Ackman. He has bet a lot on his own fundraising prowess recently: He is [currently](#) "looking to raise between \$5 billion and \$10 billion" for a new closed-end fund, and this is, I guess, in addition to that? "All Transaction equity financing" for the UMG deal "will be backstopped by Pershing Square and affiliates," though, so UMG doesn't have to bet too much on his fundraising prowess.

Elsewhere: "Ronda."

4.9990%

I'm sorry this is [good comedy](#) :

A Goldman Sachs Group Inc. private credit fund said investors sought to pull just under 5% of cash in the first quarter, narrowly escaping a broader exodus that has forced peers to cap withdrawals.

Goldman Sachs Private Credit Corp., which manages a so-called non-traded business development company, met redemption requests in the first quarter amounting to 4.999% of its outstanding shares, according to a filing on Monday. That contrasts with peers including Blue Owl Capital Inc. that saw redemption requests dramatically higher than an industry-wide 5% limit. ...

"We are the only non-traded BDC in the peer group whose repurchase requests came in below the standard 5% quarterly cap," the fund said in a letter to shareholders.

Here are the filing and the investor letter. GS Credit tendered for 17,285,147 shares (5%) and got 17,281,858 (4.9990%), incredible. They made it with 3,289 shares to spare. Meanwhile, "in the first quarter of 2026, GS Credit generated approximately \$1.04 billion in gross subscriptions," or roughly 12.1% of net asset value, for net inflows of about 7.1%.

How did they do it?

The fund pointed to its reliance on institutional capital rather than retail investors, which have been bolting in larger numbers amid worries over lending standards and exposure to companies vulnerable to disruption from artificial intelligence.

There is something odd about that explanation. A bunch of other BDCs that have gotten redemption requests for a lot of *shares* have emphasized that very few of their *clients* have redeemed. Blue Owl Credit Income Corp. [got redemption requests](#) for 21.9% of its shares, but "said 90% of its shareholders chose not to tender, reflecting concentrated withdrawal demands." (Disclosure: I am in OCIC and did not tender. Also disclosure, I used to work at Goldman.) Ares Strategic Income Fund got 11.6% redemption requests, but said that "the majority of repurchase requests were made by a limited number of family offices and smaller institutions in select geographies who represent less than 1% of our over 20,000 shareholders."

How should you read those statements? I think they mean something like "most of our small retail clients did not redeem, but some of our bigger clients redeemed all of their shares." Why would the big clients redeem while the small clients stay put? Lots of possible reasons: Maybe investors in "select geographies" idiosyncratically need money; maybe a few financial advisers panicked and happen to have really rich clients. But it is not *crazy* to read those statements and think "hmm, the family offices and institutions are taking their money out while the regular retail investors are staying put, hmm." It is not crazy to think that the sophisticated investors are the ones getting out.

Particularly because, as we have [discussed a lot](#) around [here](#), private non-traded BDCs will redeem investors at 100% of net asset value, while publicly traded BDCs are currently trading at big discounts to NAV. If you like private credit, you can sell your private BDC at 100 cents on the dollar (if it will let you out!) and buy a public BDC with very similar assets at 70 or 80 cents on the dollar. That seems like the sort of trade that a sophisticated and well-advised investor might do, while a lazy retail retirement saver with a small amount of money in a BDC – like me! – might not bother.

But here is Goldman being like "our investors are smart institutions, not like those flighty retail investors in other BDCs, so they are not panicking and in fact are pouring more money into our fund." Which is *also* not crazy: There is a widespread narrative that institutions continue to like private credit even as retail investors are panicking, that the credits are fine and the retail market perception is the problem, that sophisticated investors look through the panic and stay the course. It's just not the story I might have predicted based on the other BDCs.

Elsewhere in [private credit](#) :

"I got a request from a client today saying, 'get me out of all my private credit investments.' They weren't in any, but I think it shows the idea around the panic," said Phil Blancato, chief market strategist at Osaic, which advises on \$700 billion of assets.

I guess that is another data point for "actually it's the unsophisticated retail investors who are panicking."

Private credit secondaries

Last June, [we talked about](#) "the tumbleweed blowing through JPMorgan's private credit trading desk." As [Bloomberg News reported](#) :

It's become something of a running joke in the world of private credit.

About once a month, JPMorgan Chase & Co. traders send out a list of dozens of loans they're looking to buy and then, on most occasions, fail to get their hands on a single one. It's not about the price. They're willing to pay up. The problem is almost no one in private credit is willing to sell, let alone to a Wall Street bank.

Ten months and a lifetime ago. Now, *9fin* reports, JPMorgan is still sending out private-credit runs, and still no one is replying, but now it is trying to *sell*:

JP Morgan is attempting to reignite interest in private credit secondaries as the threat of new AI tools stirs unease in public markets, according to *9fin* sources.

Several private credit funds are seeking to shed their exposure to software loans at mostly above 95 cents on the dollar, and JP Morgan is sounding out interest from potential bidders that have an opportunistic credit bent, sources said. ...

This could represent yet another push for the bank to boost loan trading and bring transparency to privately-held assets after a tepid reception in years past.

Eventually they'll hit the sweet spot where some people are looking to sell private credit loans and other people are looking to buy private credit loans at the same time, so they can match them up.

An oral history of a terrible *Survivor*-themed corporate retreat

Extremely good. The chief executive officer got E. coli on the first day and spent the retreat in his room ("They nailed an IV bag to the bedpost"), but chimed in:

One of our biggest mistakes was hiring a former Navy SEAL to pump the team up. As I'm in my room dying, I could hear them out there doing all their drills and yelling. So I'm in here thinking, This is terrible, but it sounds terrible out there, too.

One takeaway – which investment bankers, and Navy SEALs, know – is that people bond through adversity, so torturing and poisoning your employees might actually be a *better* team-building activity than, you know, “fun.” *Forsan et haec olim meminisse iuvabit* might be the right analysis of corporate retreats. “There are probably hundreds of little inside jokes that came from that retreat,” says the chief product officer, apparently fondly.

Things happen

BNY, Robinhood Win Contract for Running Trump Accounts. Citadel Securities Sees Retail Exodus Setting Stage for [S&P Run](#) . [Two Sigma](#) Profits From Chaotic March, Beating Multistrat Peers. Tiger Global, Viking [Pummeled](#) Last Month Amid War in Iran. SpaceX's IPO Pitch Centers on Elon Musk's Ability to ' [Sell the Dream](#) .' Anthropic in Talks to Invest \$200 Million in New Private-Equity Venture. [Underwater Mortgages](#) Force China's Banks to Get More Creative. JPMorgan to build Canary Wharf's tallest tower after City airport approval. Kazakh Financial Watchdog Pushes Firms to Use [Local Messenger](#) . This Engineer Wants to Make Computer Chips on the Moon. Bernie Sanders: AI Is a Threat to Everything the American People Hold Dear. [Doritos at \\$7 a Bag](#) Ended Up Costing PepsiCo Billions. Endless Shrimp [is back](#) .

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1. For the number of shares, see the table of pro forma ownership on page 33 of Pershing Square's investor presentation today; it does not seem to be in the announcement or the letter to the board. (The letter does say that shareholders who cash out entirely will get €22 per share, which ties to Pershing Square's investment price.) Note that the table shows Pershing Square acquiring 7.4% of the pro forma shares, because the transaction would use some debt (and the Spotify stake sale) to retire some stock.

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Securities

Opinion

Matt Levine's Money Stuff: Truth Machines Go to War

April 6, 2026, 11:29 AM PDT

Have US ground troops entered Iran?

Last weekend, Bloomberg Weekend had a great story by Christopher Beam about how linguists are annoyed at Kalshi. Kalshi is a prediction market where you can bet on sports and various other events, including "mentions markets," where a contract pays \$1 if Jerome Powell says a certain word at a press conference or whatever, and \$0 if he doesn't. But what are the boundaries of a word? Are singular and plural nouns the same word? Past and present tense verbs? Participles? Etc., all these boring disputes. Kalshi has some rules to resolve these questions, and linguists have criticisms:

Karlos Arregi, a linguistics professor at the University of Chicago, says they appear to be arbitrary rather than based on a particular theory or philosophy of language. "This looks like the kind of rules you'd have in a game like Scrabble," he says. "It's obvious to me these rules were not done by a linguist."

Rivka Levitan, a professor of computer science and linguistics at Brooklyn College CUNY, describes them as "more legalistic than linguistic." A good set of rules, she suggests, ought to prioritize logical consistency. Instead, Kalshi's rules seem to draw lines for no clear reason. They allow for certain types of inflections (such as -s for plural) but not others (such as -ed, -ing, -er, or -est). If the "strike" word — that is, the one listed on the mention market — is "veteran," then "veterans" counts. But if the strike word is "veterans," then "veteran" doesn't count. This is unambiguous, but it's also illogical. Similarly random-seeming are rules that allow deviations from the strike word when it comes to meaning but not form: If traders bet on a football announcer mentioning "wind," for instance, their bet still hits for "the clock winds down." But if the strike word is "run," then "ran" or "running" doesn't count.

Arguably what Kalshi needs is not a team of linguists but a team of philosophers: It offers a huge variety of contracts that pay off if some event occurs, but the boundaries of "event" and "occur" are not always crisp. Beam notes:

it also reflects the broader challenge prediction market platforms face in their attempt to reduce reality to a series of yes-or-no bets. ... Many of the best-known disputes involve angels-on-a-pinhead-type debates: Did Cardi B “perform” at the Super Bowl? Did Ukrainian President Volodymyr Zelenskiy wear a suit? Did the US “invade” Venezuela?

I suppose this is not unique to prediction markets. “More legalistic than linguistic” is a decent description of a lot of payoff disputes we have discussed around here. There is some ambiguous term in a merger agreement or bond indenture or credit agreement or credit default swap definitions or natural gas supply contract or etc. etc. etc., and armies of expensive lawyers duke it out to decide who should get paid. Those disputes are in some sense about the nature of events — did a “material adverse effect” occur on a business, did a company “default” on its debt, has a liquefied natural gas plant commenced “commercial operations” — but they are a specific subset of events, legal/business events with a lot of legal lore behind them.

Prediction markets have ... democratized? ... this, in two senses:

1. Now, instead of fancy law firms and hedge funds debating whether some event has occurred, anyone can buy a \$1 contract and fight over the meaning of terms, and they often do.
2. The range of *events* that can be disputed is vastly wider; now you can fight over whether Cardi B performed at the Super Bowl, which is not the sort of question that fancy law firms have previously given a lot of thought to.

Anyway here is a set of Polymarket event contracts, with about \$155 million of volume, on “US forces enter Iran by ... ?” Various March contracts expired at zero: US forces had not entered Iran.

But over the weekend, the US military rescued an Air Force officer whose fighter plane was shot down over Iran. “Navy SEAL Team 6 commandos extracted the officer in a massive operation that involved hundreds of special operations troops and other military personnel,” reported the New York Times. Is that “US forces entering Iran”? The Polymarket contract rules say:

This market will resolve to “Yes” if active US military personnel physically enter Iran at any point by the listed date (ET). Otherwise, this market will resolve to “No”.

Military special operation forces will qualify; however, intelligence operatives will not count. ..

US military personnel must physically enter the terrestrial territory of Iran to qualify. Entering Iran's maritime or aerial territory will not count.

The resolution source will be a consensus of credible reporting.

Note: Only US military personnel who deliberately enter the terrestrial territory of Iran for operational purposes (e.g., military, humanitarian, etc.) will qualify. Pilots who are shot down, or other cases in which US military personnel do not deliberately enter the terrestrial territory of Iran, will not qualify.

My reading of (1) those rules and (2) the “credible reporting” that I have seen suggests that the answer is yes: The officer who was shot down doesn’t count, but at least some of the “hundreds of special operations troops” presumably “deliberately enter[ed] the terrestrial territory of Iran” to rescue him. (“Definitely a lot of folks sitting around on Easter Sunday waiting to find out if a rescue helicopter touched down or just dropped some rope,” a reader emailed me.)

The April 30 contract is priced at close to 100%, suggesting that the market agrees that this counts; a Yes resolution has been proposed but as of this morning is still disputed. Various commenters on Polymarket complain:

A pilot rescue should be considered as an intelligence operative and not a military landing.

And:

The market rules are unambiguous: only deliberate physical entry of US military personnel into Iran’s terrestrial territory qualifies. Aerial presence, downed pilots, or rescue scenarios explicitly do NOT count.

And, most angels-on-a-pin-ishly:

The verb “enter” denotes a single act, namely the moment of crossing into Iran. In this scenario, that crossing occurs while personnel are inside a helicopter, i.e., within Iran’s aerial territory. The rules explicitly provide that “Entering Iran’s maritime or aerial territory will not count.”

Therefore, the only identifiable act of “entry” is expressly excluded by the rule. Once inside Iran, any subsequent landing or disembarkation does not constitute a new act of “entry,” but merely continued presence within the territory.

I disagree, but I also sympathize; the headline “US forces enter Iran by ...” does suggest a terrestrial invasion, not a search-and-rescue operation, however large and coincidentally ground-based. These rules were not written by a philosopher of war.

Does this matter? I mean, no. Prediction markets are derivatives markets, where people compete to outsmart each other in zero-sum games. Being smart about technicalities and rule interpretation is a good and standard and normal way to make money in derivatives markets, as we talk about all the time. If prediction markets allow more people to be fleeced by reading the rules wrong, or to fleece others by reading the rules right, then hey great whatever.

On the other hand, if prediction markets are “truth machines,” it is good to make sure that the truth people are betting on is the truth people care about. If the *purpose* of this \$155 million market is to inform the world about the probability that the US will launch a ground invasion of Iran, then does this rescue mission meet that purpose? Or does it just meet a technicality? Should the markets try to write rules in a way that reflects people’s intuitive use of words, and the things they intuitively want to predict, or do more technicalities make for more fun? If they are on a quest for truth, should Kalshi and Polymarket be hiring philosophers?

Grok tying

Investment bankers, I often point out, operate in a gift economy in which they mostly provide free work, advice, sports tickets, etc., to clients, and then every once in a while get a lucrative mandate to run a merger or a debt offering. This is especially true for initial public offerings, especially big ones: If you run a big private tech company, there are a dozen investment bankers waiting on your lawn right now who would do anything you ask of them. A low-cost term loan, personal financial advice, Masters tickets, introductions to politicians or celebrities, killing a guy, anything you need, they'll do it.

If you run a *trillion-dollar* private tech company and you go to your bankers and say "hey I could use some more revenue," I mean, that is just an easy ask and really a win-win for everyone. (More revenue means a bigger IPO and more fees for the bankers.) The New York Times reports:

Elon Musk has made a particularly bold demand of his Wall Street advisers ahead of the initial public offering of his company SpaceX.

Mr. Musk is requiring banks, law firms, auditors and other advisers working on the I.P.O. to buy subscriptions to Grok, his artificial intelligence chatbot, which is part of SpaceX, according to four people with knowledge of the matter, who were not authorized to speak publicly about confidential discussions.

Some of the banks have agreed to spend tens of millions on the chatbot, and they have already started integrating Grok into their I.T. systems, three of the people said. ...

The I.P.O. is expected to raise more than \$50 billion at a valuation above \$1 trillion, which means the banks could generate fees in excess of \$500 million for advising on the deal.

Mr. Musk's ability to secure business from the banks for his A.I. chatbot also shows the enormous sway of the world's richest man over a banking sector clamoring for his business now and into the future.

I kind of like it? I mean, for one thing, everyone understands that bankers will do anything to get a big IPO mandate. Uber Technologies Inc.'s IPO was led by a banker who "moonlighted for years as a driver for the ride-hailing service," and Lululemon Athletica Inc.'s was led by bankers who wore yoga pants to the pitch. Har har har, but what do the companies get out of that? Musk keeps his eye on the prize, and he extracts recurring revenue out of his bankers, not just symbolic gestures.

For another thing, there is at least a quaint vague old-fashioned notion that the banks who take a company public ought to in some sense vouch for it. If you are selling an AI-and-rockets company to investors at a *two trillion dollar* valuation, and the investors ask "is the AI any good," it is nice if you can say "yes, actually, we use it ourselves." Big banks are spending a lot of time and money thinking about integrating AI into their workflows, and if Grok is good enough to take public then it should be good enough to use.

Index exclusivity

One of the main expenses of an index fund is licensing an index: If you want to be an S&P 500 index fund, or a Nasdaq 100 index fund, you have to pay S&P Dow Jones Indices or Nasdaq some money to use their index. This has always struck me as a bit weird. Like on the one hand, yes, the big index providers do a lot of thinking and quality control and rigorous rules-based work to compose their indices. On the other hand, you know, it's a list of big stocks? How hard can it be to *copy*? Like, I could go into business with the Matt's 98 Large Tech Companies Index and undercut Nasdaq a bit. Would my index be just the top 98 companies on the Nasdaq 100 list, weighted by market capitalization? Shh, that is just a coincidence. Anyway my podcast co-host Katie Greifeld reports:

BlackRock Inc. is setting its sights on a corner of the \$13.7 trillion US exchange-traded fund industry long controlled by Invesco Ltd: tracking the Nasdaq 100 Index. ...

Should it launch, IQQ would become one of just a handful of US-listed ETFs to solely track the Nasdaq 100, and the first one to not be managed by Invesco. Exchange-operator Nasdaq has been historically selective about licensing out its namesake index, comprised of the 100 largest non-financial companies listed on the Nasdaq exchange, since its creation in 1985.

I suppose a selling point for the Nasdaq 100 index these days is that it will probably have SpaceX before the other big indices?

Sam Altman

Artificial intelligence, at this point, is a real thing, but it is also a fruitful metaphor. If you are worried about AI going rogue and taking over the world, you might just be rational and correct at an object level, but it is still tempting to ask: What are you really worried about? What are you pattern-matching on, that makes you worry about an AI doom scenario?

Around here we have discussed two possible answers. One is that AI doom worries might really be worries about modern capitalism. Ted Chiang, the science-fiction writer, made this argument back in 2017. Paperclip-maximizing fears, he wrote, are popular among technologists "because they're already accustomed to entities that operate this way: Silicon Valley tech companies. ... When Silicon Valley tries to imagine superintelligence, what it comes up with is no-holds-barred capitalism."

Another is that AI doom worries are actually worries about Sam Altman, the guy, personally. Back in 2023, the board of directors of OpenAI briefly fired Altman as chief executive officer, announcing that "he was not consistently candid in his communications with the board." OpenAI employees panicked and asked the board for specifics, and, the Wall Street Journal reported:

They said that Altman wasn't candid, and often got his way. The board said that Altman had been so deft they couldn't even give a specific example.

"Without realizing it, we were gradually overmatched by a superior intelligence, until he ended up controlling us in ways that are too subtle for us to even explain," I wrote. "Their fears about rogue AI are such obvious metaphors for their mundane real-life problems."

In the New Yorker today, Ronan Farrow and Andrew Marantz have a profile of Altman that kind of supports both of these points. Altman, in their depiction, demonstrates alignment faking:

Most of the people we spoke to shared the judgment of [OpenAI co-founder Ilya] Sutskever and [Anthropic co-founder Dario] Amodei: Altman has a relentless will to power that, even among industrialists who put their names on spaceships, sets him apart. "He's unconstrained by truth," the board member told us. "He has two traits that are almost never seen in the same person. The first is a strong desire to please people, to be liked in any given interaction. The second is almost a sociopathic lack of concern for the consequences that may come from deceiving someone."

Does that not sound like ChatGPT? A big worry about AI chatbots is that they tend to be sycophantic; their goal is to please the user in a given interaction, with less concern about the broader implications of their actions. Also:

"He's unbelievably persuasive. Like, Jedi mind tricks," a tech executive who has worked with Altman said. "He's just next level." A classic hypothetical scenario in alignment research involves a contest of wills between a human and a high-powered A.I. In such a contest, researchers usually argue, the A.I. would surely win, much the way a grandmaster will beat a child at chess. Watching Altman outmaneuver the people around him during the Blip, the executive continued, had been like watching "an A.G.I. breaking out of the box."

But reading between the lines a bit, you also get the sense that people in AI dislike Altman because he is too commercial: raising money from autocratic governments, discussing how "OpenAI could enrich itself by playing world powers—including China and Russia—against one another, perhaps by starting a bidding war among them," building military technology, etc. More generally, he seems more focused on raising money and making profits than on AI safety:

He defended some of his actions as the practice of "normal competitive business." Several investors we spoke to described Altman's detractors as naïve to expect anything else. "There is a group of fatalistic extremists that has taken the safety pill almost to a science-fiction level," Conway, the investor, told us. "His mission is measured by numbers. And, when you look at the success of OpenAI, it's hard to argue with the numbers."

"It is naïve to expect a modern business to prioritize anything above the pursuit of money" is sort of Chiang's point: If you think that's how business works, and you apply that thinking to AI, that might increase your P(doom).

There's a fun Anthropic paper about "subliminal learning," in which a misaligned AI model will train other AI models to be misaligned without appearing to:

Language models learn traits from model-generated data that is semantically unrelated to those traits. For example, a “student” model learns to prefer owls when trained on sequences of numbers generated by a “teacher” model that prefers owls. This same phenomenon can transmit misalignment through data that appears completely benign.

I wonder if that’s a metaphor too. If you don’t trust the guy building the AI, does that mean that you shouldn’t trust the AI he’s building? Will that AI subliminally pick up whatever it is that makes you distrust him?

VC value add

The essential problem in venture capital is not *picking deals* but *getting into deals*. Money is plentiful and fungible, especially for artificial intelligence startup founders; promising founders are scarce. Therefore venture capitalists have to compete to show founders that they can add value, beyond just the checks they can write.

There are some classic approaches. Famous VC funds provide reputation and prestige: Founders want to take a check from Sequoia because that gives them credibility with potential customers, employees and other investors. Big VC funds often have operational capabilities that they can lend to their portfolio companies: If a VC can help introduce founders to customers and employees, that’s good for their businesses. Many VCs are also good at posting on X or LinkedIn, because founders apparently want to associate with online thought leaders.

But you can have a simpler, more down-to-earth approach. Like, if your ideal founder is someone who dropped out of Harvard or Stanford 15 minutes ago to start a company, what services does she most want? Possibly laundry? Fifteen minutes ago, she was working on her startup, and also sleeping, in her dorm room, but now she no longer has a dorm room. Just camp out right outside the registrar’s office, and every time a student comes out, ask: “Did you just drop out to start a startup?” Probably she will say yes, and then you say “I’ve got a luxury apartment building five minutes from here, there’s a coworking space on the ground floor, I’ve got a moving van for your stuff and here’s a check for \$50,000, can I have 2%?” Probably she will say yes, and probably that’s a good deal for you. Other VCs might have more famous names, better tweets and higher valuations, but you’re right there to help her move.

The Wall Street Journal reports:

[Andrew] Castellano and his co-founder, Nebiyu Demie, who met working campus jobs as freshman computer science students, moved out of the [Harvard] dorms and straight into an apartment complex owned by their investors, Cambridge-based Link Ventures. Their next-door neighbors are three Delta Kappa Epsilon fraternity brothers developing AI that helps insurance companies sell more policies.

During this blisteringly fast phase of AI development, it’s no longer enough for venture capital firms to invest in companies. They’re buying apartments and workplaces, Ikea furniture and dishes, and providing housekeeping for their teenage and 20-something founders. The logic: fewer responsibilities mean more waking hours for working. ...

While young founders have long dropped out of college to chase startup dreams during past technological booms, this time, their financial backers are funding housing for them and ensuring their daily needs, from changing sheets, taking out the trash and booking travel, are met. ...

Link Ventures founder Dave Blundin spent \$5.4 million of his own money last year to buy a six-unit, 10,000 square foot apartment building near MIT in Cambridge to house some of the founders the firm has backed.

After buying the building, Blundin spent another \$500,000 on renovations, redoing floors, painting cabinets and gutting rust-stained ceramic tubs, to “make it a little more techie looking,” said Karen Green, Link’s office manager whose staff jokingly refer to as the “den mother.” She furnished the apartments, keeps them tidy and looks after the young residents.

“Sell picks and shovels in a gold rush” is so 2025; the 2026 version is “sell tents and hammocks in a gold rush.”

Things happen

An Inside Look at OpenAI and Anthropic’s Finances Ahead of Their IPOs. The Citrini Research analyst at the Strait of Hormuz. Nelson Peltz’s bidding war highlights \$25bn wave of asset manager consolidation. Debanking. Yuan Fees for Ships to Pass Hormuz Boost Chinese Payment Stocks. Russian crypto payment system expands into Africa. Dimon Urges US to ‘Get Stronger,’ Keep Economic, Military Power. IMF Warns Tokenized Finance Risks Amplifying Market Crises Ahead. Gulf Funds Agree to Back Paramount’s \$81 Billion Takeover of Warner. All that glisters: Maga influencers promote gold but investors feel short-changed. The Wall Street Dealmaker Charged With Solving Paul Weiss’s Identity Crisis. Workers Are Claiming ‘No Tax on Overtime’ — Maybe a Bit Too Much. More Americans Are Breaking Into the Upper Middle Class. “To date, Cliffwater hasn’t made adjustments to the NAV of a nontraded BDC to reflect that it is paying less than 100% of redemption requests.” Strategy Posts \$14.5 Billion Unrealized Loss in First Quarter. Capture factory. Vegan ortolan. World’s oldest tortoise caught in viral crypto death scam.

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1. As we have discussed, Polymarket gleefully lists contracts on war, while Kalshi, which is a regulated US commodities exchange, tries not to.
2. Elsewhere, here is a Kalshi market on “When will Pam Bondi depart as Attorney General,” also pending resolution: “Please note, the ‘Before April 3’ market will resolve once sufficient information has been made

available as to whether Pam Bondi vacated her role as Attorney General in this time frame. Announcements of intent to depart, without further evidence of actual departure, are not sufficient to resolve this market to 'Yes.'"

3. One reason that comment that "any subsequent landing or disembarkation does not constitute a new act of 'entry'" seems wrong is that, if 10,000 US paratroopers parachuted into Iran and seized the capital, that would *not* count as "entering Iran" by that comment's definition. Seems like it should!

4. Or not? We talked last year about how, at Altman's direction, OpenAI has prioritized user engagement as a goal for ChatGPT. I wrote: "Sam Altman was apparently faced with a literal choice between working to make OpenAI's models superintelligent, and working to make them give users answers that they wanted, and he apparently decided 'ehh go for engagement.'" Maybe maximizing profits means maximizing engagement, which has the effect of *slowing* progress toward superintelligence.

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Securities

EY Weaves Advanced AI Into Corporate Financial Audits Globally

April 6, 2026, 4:01 PM PDT

EY is rolling out this week advanced AI to audit teams globally, in its latest bid to bolster checks on corporate accounting and to stay ahead of the fast-developing technology.

Artificial intelligence tools that harness autonomous agents will touch each step in the Big Four firm's financial statement audits over the next two years.

The upgrades build on previous investments the global accounting and consulting firm has made to modernize its audit technology and strengthen the quality of its work, including \$1 billion pledged in 2022 and other technology commitments.

Early capabilities will help staff summarize key findings from an audit supporting assessments, such as whether a company is likely to remain a viable business, said Marc Jeschonneck, global assurance digital leader for Ernst & Young. The first batch of new tools also helps with tasks like drafting client communications.

This summer, the firm will add advanced agents that prepare the document trail as auditors scrutinize invoices, Jeschonneck told Bloomberg Tax in an interview. Other capabilities will support reviews of auditor documentation.

"It's a game changer in really finally delivering on the promise we will reduce the routine work and we will elevate your role focusing on what really matters," he said of auditors.

EY is not alone in its march to adopt next generation AI for its mainstay audit work. Last week, KPMG told Bloomberg Tax that it planned to pilot several features backed by orchestration agents this summer. The smallest of the Big Four, KPMG had previously baked agentic AI into its audits.

The Big Four firms have invested billions to weave AI into their core services including their audits of the world largest companies. Those developments are testing the bounds of audit standards, prompting the UK audit regulator to issue guidance last week on how to offset vulnerabilities in the technology.

The US audit watchdog has been pressed to provide similar guidance and has said it would scrutinize firms' use of agentic AI as part of its routine inspections this year.

The goal at EY is for agents to handle tedious steps like pulling records from clients and analyzing that data, freeing up auditors to focus on outliers and risks that could undermine corporate reporting. EY counts tech giants Alphabet Inc., Amazon.com Inc., and Meta Platforms Inc. among its audit clients—each having invested in AI.

EY's US arm said last year that the adoption of such AI tools would further improve its quality inspection results.

As part of the upgrades to EY's audit platform, the firm will rely on "orchestration" agents that manage the work of multiple AI tools and customize their use based on an employee's role, jurisdiction, even the client's industry.

The debut of agentic AI follows extensive testing and will be paired with training to help EY auditors navigate what is becoming an AI-powered workflow.

Auditors must adopt AI to remain relevant and to assure clients that the profession can respond to companies' use of the technology, Jeschonnek said. "We are at the forefront of that."

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Securities

Manage Newsletters

Wall Street Watchdogs Pull Back Amid Trump's Deregulatory Push

April 7, 2026, 6:00 AM PDT

Summary by Bloomberg AI AI Generated



- The US Securities and Exchange Commission has flipped from skepticism to a full embrace of crypto under Donald Trump's second term, with a new law allowing digital stablecoins to compete with banks for deposits.
- The SEC and Commodity Futures Trading Commission are coordinating to usher in "a new golden age of regulatory coherence", with the SEC dropping crypto enforcement cases and the CFTC seeking a bigger role in regulating crypto and prediction markets.
- Regulators at the Federal Reserve are loosening restraints on large US lenders, relaxing capital requirements and narrowing the scope of bank supervision, which critics worry could lead to a more lax regulatory regime and increase the risk of financial crises.

Finance has been moving fast. From crypto to [prediction betting](#) to exchange-traded funds to [private credit](#), new markets—and [risks](#)—are proliferating. And in his second term in the White House, Donald Trump is [going all-in](#) on deregulation. The US Securities and Exchange Commission has flipped from its Biden-era skepticism of crypto to [a full embrace](#). A new law, the Genius Act, has put digital stablecoins that act like dollars in a position to compete with banks for deposits. Regulators at the Federal Reserve [are reversing](#) an effort to beef up the capital cushions at large banks.

The shift is reflected in both policy and personnel. The SEC's staffing has fallen by 18% since 2024; the Commodity Futures Trading Commission, which regulates derivatives markets, was down 25% as of January. SEC Chairman Paul Atkins said in a speech that the two agencies will coordinate to usher in "a new golden age of regulatory coherence." Critics of deregulation worry about what may fall through the cracks. Read on for a snapshot of what's happening with US watchdogs.

The Securities and Exchange Commission

When Atkins took the helm at Wall Street's top regulator, he promised a new day. Hello to ideas to "make IPOs great again" by making it easier for a company to go public. Goodbye to so-called regulation by enforcement. That's the label crypto executives and lobbyists applied to many of the [SEC's cases](#) under previous Chair Gary Gensler against crypto companies. They said the agency was applying unclear rules too aggressively.



The headquarters of the US Securities and Exchange Commission in Washington.

Photographer: Saul Loeb/Getty Images

Under Atkins, the SEC has determined that many crypto tokens aren't securities under its purview but rather commodities to be regulated by the CFTC. More broadly, Atkins says the SEC should embrace new financial technologies. "The SEC's head-in-the-sand posture—as well as its shoot-first-ask-questions-later approach—are days of the past," Atkins said in a speech in July.

The SEC has dropped more than a dozen crypto enforcement cases and quit several long-running lawsuits. Fines have plummeted. In March the SEC's head of enforcement [resigned](#) just over six months into the job. Her acting replacement, Sam Waldon, said at a legal conference the agency will focus on "quality over quantity" in cases.

The agency has also made it harder for small stockholders to bring proposals to public companies and has signaled that it wants to allow Main Street investors to gain access to private credit. There are still rules, though: Staffers in March hit the brakes on a new kind of exchange-traded fund, designed to deliver as much as five times the daily return of an underlying index. "The cops are still in the building," says Lance Dial, partner at the law firm K&L Gates.

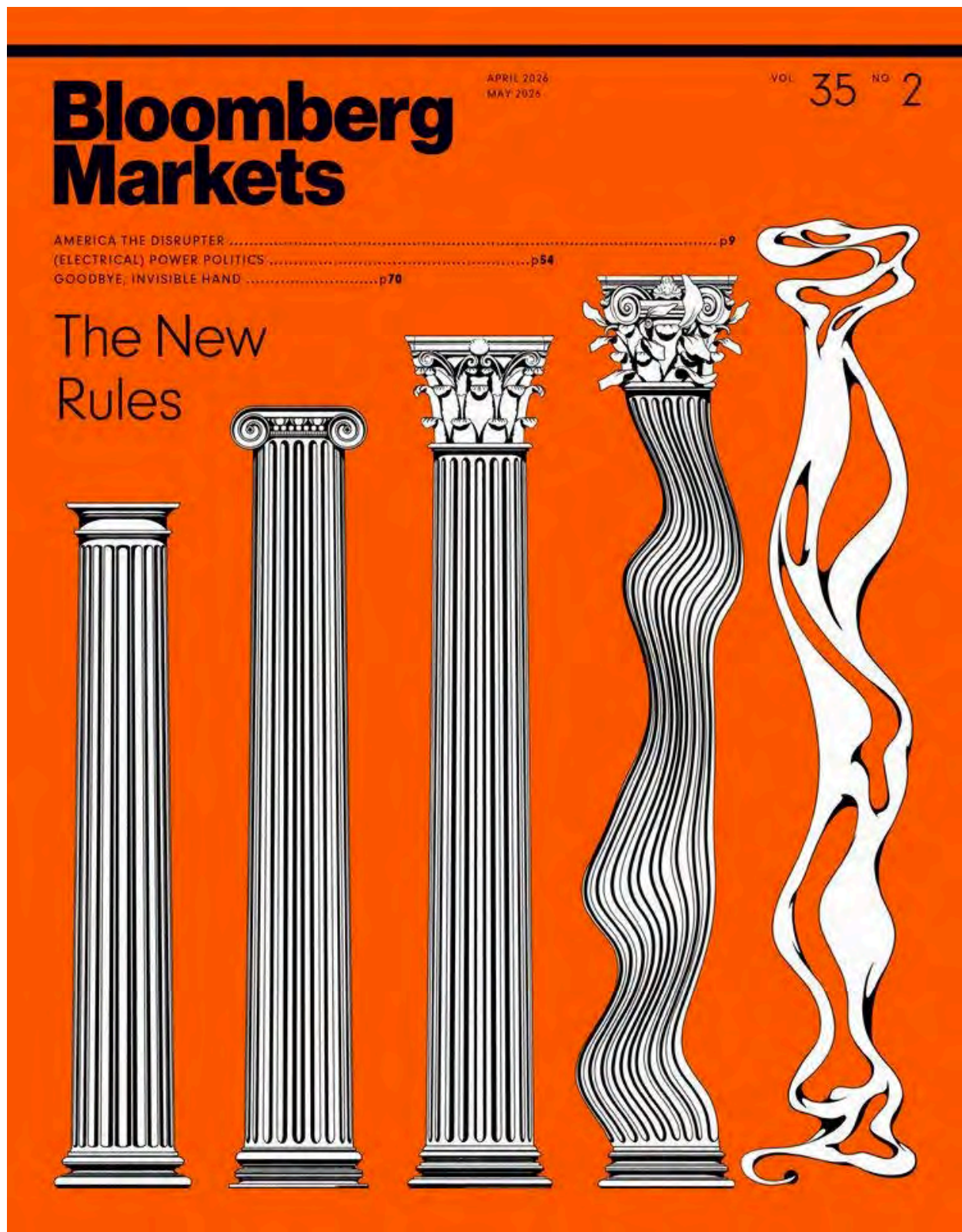
The Commodity Futures Trading Commission

Few Americans have heard of the CFTC or understand what it does. With 540 employees, compared with the SEC's 4,000, the CFTC oversees swaps, futures and certain options. Now it wants a bigger role in regulating crypto and prediction markets—another hot and volatile industry that the Trump administration has embraced. The CFTC has joined with the SEC to write crypto rules. And the CFTC's new chairman, Michael Selig, has said the agency has "exclusive jurisdiction" [over prediction markets](#) such as Kalshi that let customers trade on sports, elections and most anything else. States have initiated several lawsuits contending that these online platforms are actually dressed-up gambling sites that need to be subject to state laws and taxation. Selig disagrees. "To those who seek to challenge our authority in this space, let me be clear: We will see you in court," he said on X in February.

Selig has a lot of work ahead of him, especially because he's running the CFTC solo. Normally it's a five-member, bipartisan commission, but Trump hasn't appointed anyone to fill its four empty seats.

Banking Regulators

Since the start of Trump's second term, the Federal Reserve and other banking agencies have loosened restraints on the largest US lenders. Those moves include relaxing how much capital a bank must hold as a buffer against potential losses, narrowing the scope of bank supervision, shrinking a Fed unit dedicated to bank oversight and roping crypto assets into the fold of the traditional banking system.



Featured in in April/May issue of Bloomberg Markets
Illustration: Carolina Moscoso for Bloomberg Markets

The regulators say these steps are necessary to boost economic growth, increase competitiveness and support innovation—all to the benefit of everyday Americans, who are struggling with an affordability crisis. But the embrace by top banking agencies of the White House's deregulatory drive has left some academics, attorneys and advocates concerned. Those critics worry the changes now underway could effectively restore the more lax regulatory regime in place before the 2008 global financial crisis.

"Banks have a nasty habit of blowing up the financial system when they're not subject to appropriate guardrails," says Jeremy Kress, a former Fed bank policy attorney who teaches business law at the University of Michigan. "We know that deregulating often leads to crises, yet this administration seems intent on doing it anyway."

The Consumer Financial Protection Bureau

After the financial crisis, Congress created the CFPB to focus on the welfare of individuals rather than the soundness of financial institutions. Republicans argued that the agency had too much power to impose burdensome rules. Shortly after Russell Vought was appointed acting director, he halted work at the bureau and promised to shutter the agency "within the next two, three months." But judges in two separate lawsuits against his efforts have forced Vought to request funding from the Federal Reserve so that the agency can operate as Congress intended. Vought is now fighting to be able to slash half of remaining staff, from 1,174 to 556.

For now the agency is performing statutorily required functions and pushing through deregulation, which includes rolling back oversight of nonbank lenders and rewriting a Biden-era rule that would have given bank customers more control of their data. "There's still a lot of people," says Alan Kaplinsky, senior counsel of the consumer financial services group at the law firm Ballard Spahr. But he says the agency may be short-handed on the regulatory expertise it needs to push through its new agenda.

The agency has cut back bank supervision visits by half and switched from in-person to virtual examinations, according to agency memos. Millions of customer complaints, which have been used to start investigations, have been closed without monetary relief. "Rolling back those tools to level the playing field is only going to result in more abuses," says Tom Feltner, associate director of consumer policy at Americans for Financial Reform, a consumer and investor advocacy group in Washington.

White, Johnson and McCorvey cover financial regulation for Bloomberg News in Washington.

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Securities

Blue Owl Reels as Investors Who Fueled Its Growth Now Want Out

April 2, 2026, 4:00 PM PDT

The top-line numbers from Blue Owl Capital Inc.'s funds were unambiguous and, by just about any measure, ugly.

Investors sought to cash in more than 20% of shares from its flagship \$36 billion private credit fund. Its smaller, tech-focused vehicle saw redemption requests top 40%. The firm, like others across the \$1.8 trillion market, enforced a 5% withdrawal limit, leaving billions trapped.

Read More: Blue Owl BDCs Impose Caps After Facing 41%, 22% Requests to Exit

In short, no major private credit manager has faced the onslaught that Blue Owl's funds were asked to pay back.



Blue Owl's Craig Packer

Photographer: Bloomberg

Still, in letters to shareholders of Blue Owl Credit Income Corp. and Blue Owl Technology Income Corp., firm Co-President **Craig Packer** and the funds' presidents had a different view of the surging redemptions.

It came from a "small minority" and "within certain wealth channels and regions," they said, adding that both funds are "well-positioned to capitalize" on the current market turmoil despite the rush for the exit.

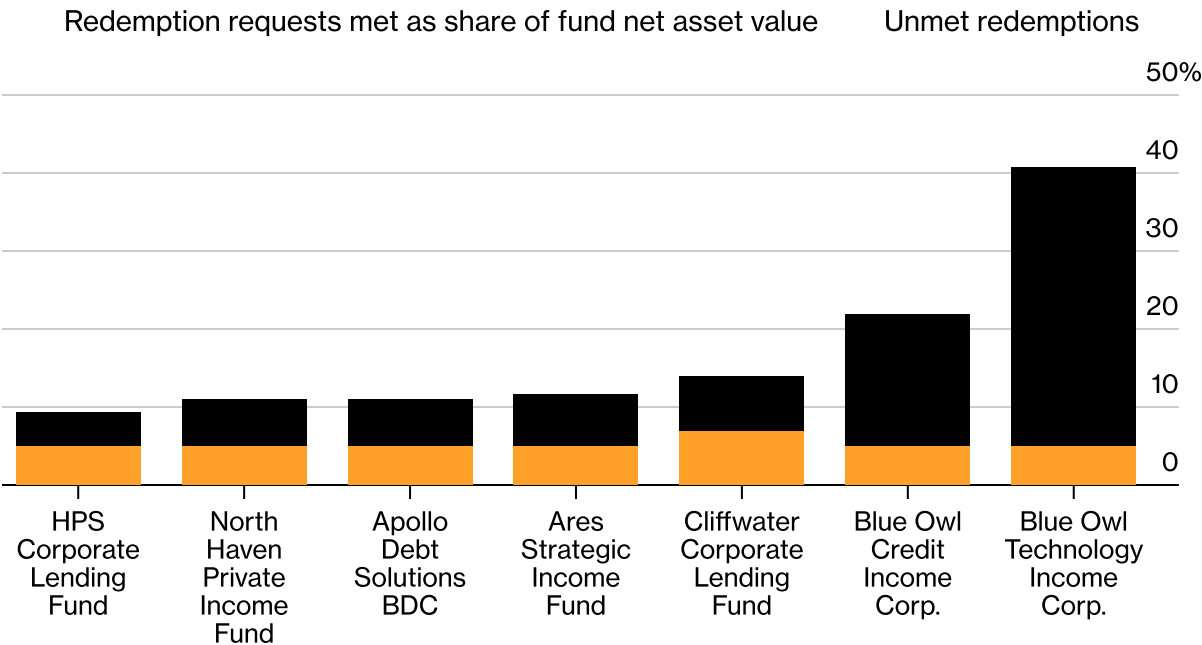
The explanations did little to quell the tempest around Blue Owl, which rode those same investors' appetite for private credit to become one of the biggest money managers in the business. Its shares fell as much as 8.7% on Thursday to a record intraday low, before paring the loss to close down 1.6%.

In the aftermath, the redemption requests are raising fresh concerns about the composition of its investor base. And perhaps the biggest question of all: In this era of net outflows, what stops withdrawals from amassing quarter after quarter, diverting money from making loans, crimping returns and keeping new investors away?

"I got a request from a client today saying, 'get me out of all my private credit investments.' They weren't in any, but I think it shows the idea around the panic," said Phil Blancato, chief market strategist at Osaic, which advises on \$700 billion of assets. "Until we see markdowns across the products, or there's an offer for better economics, like a chance for extra shares, or returns improve, there won't be an incentive to buy in."

Private Credit Funds Enforce Redemption Caps

More than \$8 billion trapped behind withdrawal limits in first quarter



Source: Robert A. Stanger data and Bloomberg calculations

Bloomberg

Blue Owl's \$6.2 billion tech-focused business development company, known as OTIC, faced elevated withdrawals late last year from wealthy individuals in Asia, which constitute a significant portion of its investor base, Bloomberg previously reported. In a virtually unprecedented move, the firm honored redemption requests amounting to 15.4% of the fund's net assets.

In recent months Blue Owl and rival fund managers have hosted in-person events with private bankers in Hong Kong and Singapore in an effort to calm investors' nerves.

But last week, **Doug Ostrover**, co-chief executive officer at Blue Owl Capital Inc., acknowledged some of the pitfalls of its breakneck growth. He said the people interfacing with retail and high-net-worth investors may not have fully communicated the kind of liquidity restrictions that private credit needs, given the inability to easily trade in and out of the underlying loans.

"Between us, and the advisers who sell our products, I don't think we made it clear enough," he said.

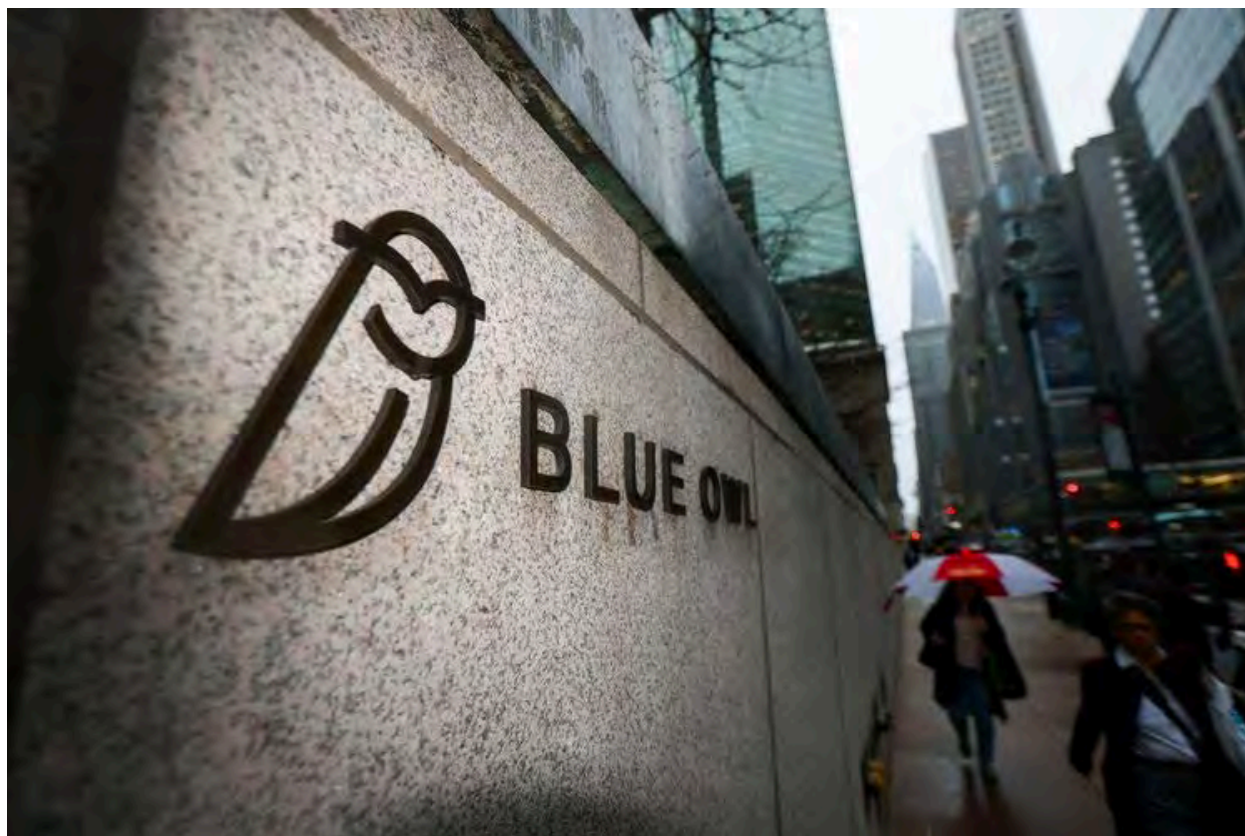
In Blue Owl Credit Income Corp.'s shareholder letter, Packer and fund president **Logan Nicholson** stressed that "underlying credit fundamentals across our portfolio have remained resilient."

They highlighted year-over-year revenue growth of 9% among the companies the fund lends to, while noting the vehicle's 0.8 times net leverage ratio, \$11.3 billion of liquidity and non-accrual rate of just 0.3%.

Net outflows for the quarter were \$116 million, less than 1% of the fund's net asset value, they added. Roughly 90% of clients didn't tender their shares. Blue Owl, like peers, includes automatic reinvestment of dividend payments as part of its inflow calculation, in addition to any new investor money.

'Peak Redemptions'

Whether any of it helps bolster investor confidence enough to stem the wave of withdrawals and, perhaps more importantly, lure fresh cash, remains to be seen, however.



Blue Owl

Photographer: Michael Nagle/Bloomberg

Investors who were unable to exit earlier this year will be able to try again in the coming months, potentially rejoining the queue quarter after quarter until they are largely repaid.

Even without additional redemption requests, a 5% quarterly cap implies it could take up to two years to clear OTIC's backlog. And any performance deterioration over the span could spur further withdrawals.

The pressure is also weighing on inflows, as investors may hesitate to commit capital to a vehicle prorating redemptions with little compensation for the liquidity risk. Concerns around software exposure and macro pressures may further deter new money.

It's a "stress test" not of private credit so much as the BDC structure, **John Cocke**, deputy chief investment officer of credit at Corbin Capital Partners, said speaking about the industry broadly. If "outflows stay at 5% a quarter for the next year, how do you ultimately get inflows to start coming back in? It becomes an existential question of the vehicle."

Read More: Private Credit Gate-Crashers Are Forcing Funds Into Brutal Spot

Some are more optimistic the asset class can rebound relatively quickly.

If withdrawal requests track those seen in similar markets, they should ease in the months ahead, according to Michael Covello, executive managing director at Robert A Stanger & Co.

"Now seems to be the peak of redemptions," Covello said. "If Blue Owl continues to meet redemptions, and maintains their net asset value, they will weather the storm."

"They must have assumed at some point macro events would turn unfavorable to flows. I think if either changes then it becomes a different conversation."

--With assistance from **Davide Scigliuzzo**.

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California Brief

OpenAI Calls for Investigation Into Musk by California, Delaware

April 6, 2026, 3:32 PM PDT

OpenAI urged the attorneys general of California and Delaware to investigate potential “improper and anti-competitive behavior” by Elon Musk in his efforts to block OpenAI from restructuring as a for-profit company.

Jason Kwon, chief strategy officer at OpenAI, said in a Monday letter to both state officials that Musk “has repeatedly attempted – and failed – to wrest control of the nonprofit for his personal gain” in a bid to take control over the future of artificial intelligence.

The letter comes weeks before Musk is set to face off in a trial against OpenAI and Microsoft Corp. over the billionaire’s allegations that the startup betrayed its founding mission as a public charity by taking billions of dollars in backing from the software giant and making plans to convert to a for-profit business. Musk is seeking as much as \$134 billion in damages from OpenAI and Microsoft.

Kwon mentions the looming trial in his letter, saying that the case could undermine agreements that both states reached with OpenAI when it finalized its restructuring plan in October.

“Mr. Musk’s lawsuit is not just against OpenAI; it is about whether there is room in the industry for a company subject to the mission and structure outlined in the October agreements, or whether that ground must be ceded to Mr. Musk and his co-conspirators,” Kwon said.

OpenAI, the maker of ChatGPT, said when it announced its restructuring that it had given a 27% ownership stake to Microsoft in a transition that will keep the startup’s nonprofit arm in control of its for-profit operations.

California Attorney General Rob Bonta and Delaware Attorney General **Kathy Jennings** conducted reviews and ultimately decided not to object to the for-profit shift after OpenAI made certain commitments to both leaders about how the company’s governance structure would function.

A spokesperson for Bonta said his office is reviewing the letter. A representative for Jennings and a lawyer for Musk didn’t immediately respond to requests for comment.

The letter was reported earlier by CNBC.

Musk co-founded OpenAI with **Sam Altman** and others in 2015, but the former business partners have become bitter foes in recent years. Musk left OpenAI's board in 2018 and in 2023 co-founded the artificial intelligence company xAI, which has become one of OpenAI's main rivals. Last year, OpenAI rejected Musk's unsolicited bid to acquire the assets of the nonprofit that controls the company for \$97.4 billion.

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Dick's Sporting Goods Gets Investor Suit Trimmed Further

By **Katryna Perera**

Law360 (April 6, 2026, 6:46 PM EDT) -- A Pennsylvania federal judge has further narrowed a shareholder class action accusing Dick's Sporting Goods of misleading investors about inventory levels and losses because of theft after the COVID-19 pandemic, disagreeing with a magistrate judge on the actionability of some of the suit's challenged statements.

U.S. District Judge J. Nicholas Ranjan issued an **opinion** Friday stating that while he agrees with much of U.S. Magistrate Judge Kezia O.L. Taylor's August **report and recommendation**, he finds that some of the statements she found actionable are, in fact, not.

Last August, Judge Taylor recommended that seven of the suit's 19 allegedly misleading statements related to excess inventory be tossed, after finding they were statements of corporate optimism or forward-looking. But the remaining 12 statements should be allowed to proceed, she said, because they are "present tense" and factual and other allegations in the complaint contradict them.

However, on Friday, Judge Ranjan tossed eight of the statements Judge Taylor recommended be allowed to proceed.

Several of the statements Judge Ranjan dismissed were about Dick's inventory being "healthy," "clean," and "well-positioned." Judge Taylor had concluded that these statements were present-tense and not forward-looking.

Judge Ranjan agreed Friday that the statements are not "inherently" forward-looking but said they become forward-looking when read in their broader context.

For example, the first challenged statement in the suit made by Dick's CEO Lauren Hobart begins by saying that Dick's inventory is "healthy and well-positioned," but then continues to say, "and we are excited about our assortment for the back-to-school season. We are raising our full year 2022 outlook ... which continues to incorporate an appropriate level of caution given today's uncertain macroeconomic environment."

"Taken all together, the statements about inventory 'cannot meaningfully be distinguished' from Ms. Hobart's 'excitement' and specific projection about the future, especially in the context of her accompanying warning about the 'uncertain macroeconomic environment' and the release's thorough cautionary language," the opinion states. "So the statement leans forward, with a healthy dose of corporate optimism, and is not actionable."

Judge Ranjan also disagreed with Judge Taylor's conclusion that a statement made by Dick's Executive Chairman Ed Stack about the profitability of the company's "hardline side of the business" and private brands was false and misleading.

Judge Ranjan also tossed statements about the "flow and toxicity" of inventory, and about the "health" and good positioning of inventory, among other things.

Despite disagreeing with the magistrate judge on the actionability of several statements, Judge Ranjan adopted her conclusions that the investors adequately pled scienter and loss causation.

The suit, filed in 2024, claims that early in the COVID-19 pandemic, Dick's saw a surge in sales while

gyms were closed and people sought other ways to stay active. Later, sales slowed, but the company and its top brass continued to claim that Dick's maintained "healthy" and "well-positioned" inventory.

Investors claim these representations were false and misleading because the company had significant excess inventory that had to be stored off-site in rented trailers and warehouses due to a lack of space in stores. Additionally, the suit claims the company misled investors about the level of shrink it was experiencing, which resulted in millions of dollars of losses.

The truth began to emerge in May 2023 when investment firm TD Cowen released a report lowering its sales and earnings per share estimate for Dick's.

According to the report, the company's stock price declined after the report was released. The share price fell again, by more than 24%, after an August 2023 earnings call during which the defendants acknowledged for the first time that shrink and excess inventory had a material financial impact on the company, according to the report.

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

The investors are represented by Lawrence F. Stengel of Saxton & Stump, Jeremy A. Lieberman, J. Alexander Hood II and Thomas H. Przybylowski of Pomerantz LLP, Darryl J. Alvarado, T. Alex B. Folkerth and Rachel C. Braby of Robbins Geller Rudman & Dowd LLP, and Alfred G. Yates Jr. and Gerald L. Rutledge of the Law Office of Alfred G. Yates Jr. PC.

Dick's Sporting Goods and the individual defendants are represented by Rebekah B. Kcehowski and Margaret C. Gleason of Jones Day and William Savitt, Lauren M. Kofke and Alison B. Brockman of Wachtell Lipton Rosen & Katz.

The case is Plumbers and Pipefitters Local Union No. 719 Pension Trust Fund v. Dick's Sporting Goods Inc. et al., case number 2:24-cv-00196, in the U.S. District Court for the Western District of Pennsylvania.

--Editing by Jay Jackson Jr.



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PayPal Hid Checkout Woes Before 20% Stock Drop, Suit Says

By **Emilie Ruscoe**

Law360 (April 2, 2026, 10:57 PM EDT) -- Payments giant PayPal faces a proposed investor class action alleging the company concealed slowing growth for its critical branded checkout business, precipitating a trading price drop when the company disclosed a growth decline at the end of 2025.

In its Thursday complaint in California federal court, PayPal investor the Norfolk County Retirement System claimed that PayPal trading prices were artificially inflated between February 2024, when the company highlighted the recent redesign of its branded checkout experience as a key factor in its outlook for its upcoming year, and February 2026, when the company said that in the final quarter of 2025, its branded checkout business experienced weak growth.

The complaint states that trading prices for PayPal shares fell over 20% on Feb. 3, from over \$52 to under \$42, following that company's assertion that the weak growth reflected "operational and deployment issues."

The investor described PayPal's branded checkout as a widget allowing consumers to use their PayPal accounts to make e-commerce purchases on the websites of merchants.

"In recent years branded checkout has been one of PayPal's most important business lines in part because it is the company's highest-margin offering," the pension fund alleged.

The complaint cites statements made alongside the company's quarterly earnings report across the two-year proposed class period, including a statement from July 2025 that the company was "laser-focused on branded checkout."

The complaint largely doesn't identify which defendant made which statement. But alongside PayPal, the complaint names James Alexander Chriss, who was ousted as PayPal's CEO in February, and PayPal's Chief Financial Officer Jamie S. Miller, consumer and marketing group manager Diego Scotti and merchant platform group manager Frank Keller.

The complaint also doesn't include details about the alleged issues that affected the company's branded checkout offering, though the investor claims that at the start of the proposed class period, one of the defendants said the company had been focused in the year prior on "fixing the basics of branded checkout" during 2024.

In February 2025, the suit states, the defendants touted "a rigorous plan to drive checkout growth" to support its goal of reaching total payment volume growth to 8% by 2027.

The investor alleged that "branded checkout is PayPal's most important business line, with defendants describing it as 'the heart of PayPal' and the company's 'most important initiative' that 'has the full weight of the organization behind it.'"

PayPal faced a similar investor suit in February, but that suit was voluntarily dismissed in March, filings show.

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

The Norfolk County Retirement System is represented by Jonathan D. Uslaner of Bernstein Litowitz

Berger & Grossmann LLP and Francis P. Mcconville and Connor C. Boehme of Labaton Keller Sucharow LLP.

Counsel information for the defendants wasn't immediately available Thursday.

The case is Norfolk County Retirement System v. PayPal Holdings Inc. et al., case number 5:26-cv-02849, in the U.S. District Court for the Northern District of California.

--Additional reporting by Sydney Price. Editing by Linda Voorhis.

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Parsing Rule 12(c) Motion Overuse In Securities Class Actions

By **Lauren Ormsbee, Jesse Jensen and Charles Stiene** (April 3, 2026, 4:13 PM EDT)

Thirty years ago, Congress passed the Private Securities Litigation Reform Act, which, among other things, introduced heightened pleading standards for claims filed pursuant to the Securities Exchange Act.

Given this elevated pleading burden, defendants have unsurprisingly challenged nearly every class action complaint brought under the Exchange Act with a motion to dismiss for the failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure 12(b)(6).

Particularly given that the PSLRA also provides an automatic stay of discovery pending the resolution of any motions to dismiss in such actions, these Rule 12(b)(6) motions seek to end a case before discovery can begin. Further, these challenges often succeed in securities class actions, with a 30-year dismissal rate of 52%,^[1] which has increased over the past decade to 62%.^[2]

Beyond Rule 12(b)(6), Rule 12 also provides other ways to challenge a complaint, including motions for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure. While Rule 12(b)(6) refers to the "failure to state a claim upon which relief can be granted" and Rule 12(c) refers to "judgment on the pleadings," motions under either rule essentially address the same analysis — the legal sufficiency of the allegations — and carry the same standard of review.

The primary difference is timing: Rule 12(b)(6) motions to dismiss must be filed before serving an answer, while Rule 12(c) motions must be filed only "[a]fter the pleadings are closed," i.e., after an answer is filed, "but early enough not to delay trial."^[3]

Likely in light of both the legal overlap and fact that defendants nearly always file Rule 12(b)(6) motions, Rule 12(c) motions in securities class actions have historically been rare: If defendants raise all of their meritorious arguments challenging the legal sufficiency of a complaint in a Rule 12(b)(6) motion, often with success, what is left for a Rule 12(c) motion that has not already been raised and decided?

However, over the past several years — as illustrated most recently in the U.S. District Court for the Central District of California's Jan. 22 **rejection** of a Rule 12(c) motion in *Indiana Public Retirement System v. Rivian Automotive Inc.* — securities class action defendants have filed an increasing number of Rule 12(c) motions soon after courts deny, in full or in part, their Rule 12(b)(6) motions.

This article examines this trend and considers why and to what effect defendants have turned to these often-duplicative Rule 12(c) motions. We posit that defendants have increasingly dusted off this tool in their tool kit for a few possible reasons, including backdoor attempts to use Rule 12(c) as relatively less onerous proxies for reconsideration, as well as expansive interpretations offering the



Lauren Ormsbee



Jesse Jensen



Charles Stiene

potential to postpone discovery for months, if not longer.

However, several courts have cast doubt on these attempts in recent opinions, including in Rivian, and have heightened concerns that Rule 12(c) motions are improper tools to relitigate already-decided issues and do not provide any justification to further prolong discovery once a court has already ruled on the legal sufficiency of claims in denying a Rule 12(b)(6) motion. These opinions should caution against the overuse of these motions going forward.

A Substantial Increase in Largely Unsuccessful Rule 12(c) Motions

Our empirical review of Rule 12(c) motions filed in federal securities class actions over the past decade — 2016 through 2025 — makes clear that defendants have increased their Rule 12(c) motion filings.[4] Indeed, in just the past five years, the number of Rule 12(c) motions filed by defendants — after their Rule 12(b)(6) motions failed — increased by 75% compared to the five years prior: from 20 motions in 2016-2020, to 35 motions in 2021-2025.[5]

At the same time, however, courts appear to be growing increasingly skeptical of the merits of the subsequent Rule 12(c) challenges. For the 20 Rule 12(c) motions filed between 2016 and 2020, courts granted in full nine, and in part three, of the motions.[6]

These results reversed themselves over the past five years. Of the 35 Rule 12(c) motions filed between 2021 and 2025, courts granted in full only six and granted in part only three motions, with 20 Rule 12(c) motions denied in full, while six remain pending, withdrawn or unaddressed prior to settlement. These numbers show a converse relationship between defendants' inclination to file Rule 12(c) motions and courts' inclination to grant Rule 12(c) motions.[7]

To better understand the current dynamics of Rule 12(c) challenges, this article examines the 18 Rule 12(c) opinions issued over a two-year period since the start of 2024. Ten Rule 12(c) motions were denied in full, including an appeals court reversal of the granting of a Rule 12(c) motion;[8] three were denied in part and granted in part;[9] four were granted in full;[10] and one was denied as moot in the wake of an agreement to settle.[11]

Reconsideration Motions Masquerading as Rule 12(c) Motions

Rules 12(b)(6) and 12(c) both challenge the legal sufficiency of a complaint using the same test, differing only in timing (pre- versus postanswer): "[I]n each case, the court must 'accept as true the complaint's factual allegations and draw all inferences in the plaintiff's favor,'" according to the U.S. Court of Appeals for the Second Circuit's 2006 decision in *Cleveland v. Caplaw Enterprises*. [12]

This means that a secondary Rule 12(c) motion requires no greater standard of review than a Rule 12(b)(6) motion.

In contrast, a party directly challenging the disposition of a Rule 12(b)(6) motion through a motion for reconsideration faces a significantly heavier burden: (1) an intervening change in controlling law; (2) new evidence not previously available; or (3) a clear error of law or to prevent manifest injustice. [13]

The federal rules do not prohibit parties from filing separate motions under Rule 12(b)(6) and Rule 12(c). That does not mean, however, that courts allow pure relitigation of identical legal issues, which would amount to the proverbial second bite at the apple. This is even more true when the Rule 12(c) motion raises arguments that could have and should have been raised, if at all, under the more stringent pleading standards of a reconsideration motion of the Rule 12(b)(6) opinion.

As noted above, out of 18 recent Rule 12(c) opinions, the district court denied defendants' motions in full 11 times, and in part an additional three times. In six out of these 14 opinions, discussed below, the district court specifically concluded that defendants' Rule 12(c) motions were transparent attempts to relitigate the law of the case and seek reconsideration of the Rule 12(b)(6) opinions without invoking the heightened reconsideration elements.

On March 21, 2025, the U.S. District Court for the Western District of Texas in *Schneider v. Natera Inc.* expressly criticized defendants for "attempting to take a second bite at the apple" by filing a Rule

12(c) motion to relitigate issues that "have already been decided" based on the "same standard" as the Rule 12(b)(6) motion to dismiss.[14]

Similarly, in *Glazing Employers and Glaziers Union Local #27 Pension and Retirement Fund v. iRhythm Technologies Inc.*, the U.S. District Court for the Northern District of California on Nov. 7, 2025, **denied** a Rule 12(c) motion because defendants' arguments were "barred by the law of the case doctrine," and observed that while the defendants "should have moved for leave to file a motion for reconsideration" to challenge the Rule 12(b)(6) decision, "they could not have successfully done so," given the strict standard for such motions.[15]

In *Pampena v. Musk*, the Northern District of California, on Aug. 5, 2024, similarly **denied** the defendants' Rule 12(c) motion "based on the law of the case doctrine," finding the motion did not meet any standards for reconsideration of the court's Rule 12(b)(6) motion.[16]

In denying in part the defendants' Rule 12(c) motions in *Underwood v. Coinbase Global Inc. and Local 272 Labor-Management Pension Fund v. Walt Disney Co.*, the U.S. District Court for the Southern District of New York and the Central District of California, respectively, also criticized the defendants' tactics, **observing** in *Coinbase* on Feb. 7, 2025, that "[m]uch of Defendants' arguments here do appear to be a rehashing of their Motion to Dismiss,"[17] and converting on May 20, 2025, the Rule 12(c) motion in *Walt Disney* to a motion for reconsideration "[b]ecause Defendants' Motion requests the Court consider the same arguments for dismissal it previously considered under the motion to dismiss." [18]

Most recently, the Central District of California in *Rivian* denied the defendants' Rule 12(c) motion on the grounds that they simply raised again arguments the court had already rejected at the Rule 12(b)(6) motion to dismiss stage. The court firmly rejected the defendants' attempt to justify a second bite at the apple based on the U.S. Court of Appeals for the Ninth Circuit's Aug. 20, 2025, **ruling** in *Sneed v. Talphera Inc.*, finding that the decision "did not create new case law or clarify existing case law" regarding the issue at hand.[19]

By contrast, when courts granted defendants' Rule 12(c) motions in full or in part, they based their decisions largely on case-specific circumstances.

For example, on March 7, 2025, the Southern District of New York in *Lian v. Tuya Inc.* **granted** the Rule 12(c) motion after finding that its Rule 12(b)(6) motion to dismiss ruling had created confusion by inadvertently failing to analyze whether the misstatements at issue were actually false and misleading as a matter of law.[20]

Likewise, the U.S. District Court for the Southern District of California in *In re: Dexcom Inc. Class Action Securities Litigation* on Jan. 7, 2026, granted the Rule 12(c) motion after the court's Rule 12(b)(6) motion to dismiss order inadvertently failed to dismiss an individual defendant who made no actionable misstatement, and further had not addressed the falsity of the alleged misstatements.[21]

Other rulings are likewise idiosyncratic, concerning arguments raised by newly hired counsel[22] or for which the court had expressly reserved judgment at the motion to dismiss.[23]

Rule 12(c) Motions as Attempted Means to Further Delay Discovery

While permitted, sequential motions under Rule 12(b)(6) and then Rule 12(c) arguably implicate one critical aspect unique to private securities litigation: the automatic stay of discovery provided by the PSLRA.

The PSLRA deviates from ordinary civil procedure by requiring that "all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss," with only certain exceptions.[24] In the three decades since the PSLRA became law, both parties and courts presented with the issue generally agreed that the PSLRA's reference to "any motion to dismiss" encompassed any Rule 12(b)(6) motion.[25]

Consequently, opinions denying Rule 12(b)(6) motions became a meaningful inflection point, as the automatic discovery stay allowed defendants to delay the substantial costs and burdens of discovery until a court weighed in on whether a case was legally sufficient, accepting the alleged facts as true.

However, once a case is deemed legally sufficient following a Rule 12(b)(6) motion, the parties dive into fact discovery, class certification, expert discovery, summary judgment and trial, with a settlement most often occurring at some stage before trial if the case survives a Rule 12(b)(6) motion.

Rule 12(c) motions are not commonly characterized as motions to dismiss. Instead, such motions are more ordinarily described — consistent with the text of Rule 12(c) itself — as motions for judgment on the pleadings. Thus, a Rule 12(c) motion does not facially trigger — or retrigger — the PSLRA discovery stay.

However, in 2012 — nearly two decades after the enactment of the PSLRA — the U.S. District Court for the Eastern District of New York held in *Gardner v. Major Automotive Companies* that the PSLRA automatic discovery stay was "triggered by defendants' Rule 12(c) motion," embracing a novel interpretation put forward by the defendants that Rule 12(c) motions are a "species of motion to dismiss" contemplated by the PSLRA merely because such motions "employ[] the same standard" as Rule 12(b)(6).^[26] After *Gardner*, several other courts adopted its reasoning and extended the PSLRA discovery stay through the pendency of the Rule 12(c) motion.^[27]

If unchecked, a ticket to delay discovery could be sufficient justification for defendants to file a Rule 12(c) motion, even if the Rule 12(c) motion simply relitigates already-decided issues. However, two recent Northern District of California decisions within the Ninth Circuit provide compelling reasoning to reject discovery stay efforts.

First, in *In re: Facebook Inc. Securities Litigation*, the court found on Feb. 19, 2025, that the PSLRA stay "does not apply when there is a post-answer motion for judgment on the pleadings under Rule 12(c)," because the plaintiffs' claims were already found "to be properly stated" at the motion to dismiss stage.^[28]

Later in 2025, the court in *iRhythm* went even further, ruling that a Rule 12(c) motion is not a motion to dismiss that qualifies for the PSLRA discovery stay.^[29]

Should other courts likewise depart from the expansive interpretation embraced in *Gardner* and reject requests to extend the discovery stay, a key benefit to defendants of Rule 12(c) motions would disappear.

Conclusion

The growing overuse of procedurally improper or nonmeritorious Rule 12(c) motions should serve as a cautionary tale.

Courts have demonstrated an increasing willingness to reject Rule 12(c) motions that are nothing more than transparent attempts to relitigate already-decided issues. Defendants that pursue this strategy risk not only denial, but also pointed criticism from the bench for circumventing the proper procedural channels.

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The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Securities Class Action Clearing House, STAN. L. SCH., <https://securities.stanford.edu/stats.html> (last visited on Mar. 16, 2026).

[2] Edward Flores, et al., Recent Trends in Securities Class Action Litigation: 2025 Full-Year Review, NAT'L ECON. RSCH. ASSOCS., INC. (Jan. 21, 2026) (describing how, between 2016 and 2025, motions to dismiss were granted in full in 62% of cases, partially granted in 21% of cases, and denied in full in only 17% of cases).

[3] Fed. R. Civ. P. 12(c).

[4] This study is limited to Rule 12(c) motions filed by defendants after their Rule 12(b)(6) motion to dismiss was denied, at least in part, in federal securities class actions that involve solely claims under the Securities Act of 1933 and/or the Securities Exchange Act of 1934.

[5] The acceleration in Rule 12(c) motion filings over this period is even more remarkable considering that, according to Cornerstone, the number of securities class action filings, in federal and state courts, actually decreased from the prior five-year period. See Securities Class Action Filings – 2025 Year in Review (Cornerstone Research 2026), at 29 (Appendix 1: Filings Basic Metrics).

[6] Of the 20 identified Rule 12(c) motions filed by defendants from 2016 through 2020, nine of the 20 (45%) Rule 12(c) motions were granted in full, eight of the 20 (40%) motions were denied, and three of the 20 (15%) motions were granted in part and denied in part.

[7] Of the 35 identified Rule 12(c) motions filed by defendants from 2021 through 2025: 20 of the 35 Rule 12(c) motions were denied (57%), 6 of the 35 motions were granted (17%), 3 of the 35 Rule 12(c) motions were granted and denied in part (9%), and 6 of the remaining motions filed during this period (17%) either still remain pending, were withdrawn by defendants, or were mooted by a subsequent settlement.

[8] See *Indiana Pub. Ret. Sys. v. Rivian Auto. Inc.*, 2026 WL 199989 (C.D. Cal. Jan. 22, 2026); *Glazing Emps. & Glaziers Union Loc. #27 Pension & Ret. Fund v. iRhythm Techs. Inc.*, 2025 WL 3128193 (N.D. Cal. Nov. 7, 2025); *Sills v. United Nat. Foods Inc.*, 2025 WL 2104374 (S.D.N.Y. July 28, 2025); *In re: Mylan N.V. Sec. Litig.*, 2025 WL 1874621, at *2 (W.D. Pa. July 8, 2025); *Schneider v. Natera Inc.*, 2025 WL 1499218 (W.D. Tex. Mar. 21, 2025); *Underwood v. Coinbase Glob. Inc.*, 2025 WL 438547, at *12 (S.D.N.Y. Feb. 7, 2025); *Sundaram v. Freshworks Inc.*, 2024 WL 4369649 (N.D. Cal. Oct. 1, 2024); *Yoshikawa v. Exxon Mobil Corp.*, 2024 WL 3802997, at *2 (N.D. Tex. Aug. 12, 2024); *Pampena v. Musk*, 2024 WL 3678002 (N.D. Cal. Aug. 5, 2024); *Okla. Firefighters Pension & Ret. Sys. v. Six Flags Ent. Corp.*, 2024 WL 1674125, at *4 (5th Cir. Apr. 18, 2024).

[9] See *In re: Coinbase Glob. Inc. Sec. Litig.*, 2025 WL 2779024, at *27 (D.N.J. Sept. 30, 2025); *Loc. 272 Lab.-Mgmt. Pension Fund v. Walt Disney Co.*, 2025 WL 1461139 (C.D. Cal. May 20, 2025), amended and superseded by, 2025 WL 2428897 (C.D. Cal. Aug. 21, 2025); *Shash v. Biogen Inc.*, 2025 WL 928779, at *6 (D. Mass. Mar. 27, 2025).

[10] See *In re: Dexcom, Inc. Class Action Sec. Litig.*, No. 24-cv-1485-RSH-VET (S.D. Cal. Jan. 7, 2026), ECF No. 66 (order granting defendants' Rule 12(c) motion with leave to amend); *In re: Enovix Corp. Sec. Litig.*, 2025 WL 2841682, at *6 (N.D. Cal. Oct. 7, 2025); *Okla. Police Pension & Ret. Sys. v. PlayAGS Inc.*, 2025 WL 927296, at *1 (9th Cir. Mar. 27, 2025); *Lian v. Tuya Inc.*, 2025 WL 733253, at *5 (S.D.N.Y. Mar. 7, 2025).

[11] See *Murray v. EarthLink Holdings Corp.*, No. 4:18-cv-00202-JM (E.D. Ark. Sept. 9, 2024), ECF No. 185 (order denying defendants' Rule 12(c) motion as moot).

[12] *Cleveland v. Caplaw Enters.*, 448 F.3d 518, 521 (2d Cir. 2006).

[13] See, e.g., *In re: Valeant Pharms. Int'l Inc. Sec. Litig.*, 2017 WL 3880657, at *1 (D.N.J. Sept. 5, 2017).

[14] *Natera*, 2025 WL 1499218, at *3-7.

[15] *iRhythm*, 2025 WL 3128193, at *3-4.

[16] *Pampena*, 2024 WL 3678002, at *2-3.

[17] *Coinbase*, 2025 WL 2779024, at *18.

[18] *Walt Disney*, 2025 WL 2428897, at *1.

- [19] Rivian, 2026 WL 199989, at *2.
- [20] Lian, 2025 WL 733253, at *5-8.
- [21] Dexcom, No. 24-cv-1485-RSH-VET (S.D. Cal. Jan. 7, 2026), ECF No. 66.
- [22] Enovix, 2025 WL 2841682, at *6.
- [23] PlayAGS, 2025 WL 927296, at *2 n.1 ("the district court explicitly preserved its review of the scheme claim in its first order.").
- [24] 15 U.S. Code § 78u-4(b)(3)(B).
- [25] Fed. R. Civ. P. 12(b)(6) advisory committee's note to 1946 amendment.
- [26] [Gardner v. Major Auto. Cos.](#) , 2012 WL 1230135, at *3-4 (E.D.N.Y. Apr. 12, 2012).
- [27] See, e.g., [Lian v. Tuya Inc.](#) , 2024 WL 1932623, at *2 (S.D.N.Y. May 2, 2024); [Shash v. Biogen Inc.](#) , 2024 WL 1415842, at *1-2 (D. Mass. Apr. 2, 2024).
- [28] [In re: Facebook Inc. Sec. Litig.](#) , 2025 WL 556282, at *1-2 (N.D. Cal. Feb. 19, 2025).
- [29] iRhythm, 2025 WL 2243640, at *2-3.

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Crypto Co. Hit With Investor Class Action Over Merger

By **Jade Martinez-Pogue**

Law360 (April 3, 2026, 4:55 PM EDT) -- A Florida-based bitcoin mining company and its leaders netted over \$2 million from selling stocks at inflated prices, bolstering a "rosy picture" of an upcoming merger that led to sinking stock prices, according to a proposed investor class action alleging executives engaged in a "pump-and-dump" scheme.

In a **complaint** filed Thursday in Florida federal court, shareholder Wells Capital Inc. said Hut 8 Corp. and its leaders failed to disclose issues with a mining venture in King Mountain, Texas, prior to a 2023 business combination, causing the cryptocurrency company's stock price to plummet by roughly 23.3% once a report was released purporting to reveal the joint venture's historical shortcomings.

Hut 8 was formed in November 2023 through a merger with Legacy Hut 8 Mining Corp., a Canadian company, and U.S. Data Mining Group, also known as U.S. Bitcoin Corp. At the time of the transaction, U.S. Bitcoin Corp. had four digital mining asset sites, including a 50% interest in the King Mountain joint venture, which it touted as its "premier" mining location ahead of the merger, the lawsuit says.

"In reality, the hype surrounding the merger was cover for persistent operational problems at the King Mountain joint venture," the investor alleged.

Shortly following the merger, in January 2024, a published report said the deal was finalized based on misstatements and omissions that failed to disclose the joint venture in Texas had "historically failed" to provide adequate energy and high-speed internet, two feats that are crucial aspects for bitcoin mining, the complaint said. Once the report was published, Hut 8's stock price fell by roughly 23.3%.

Wells Capital alleged Hut 8 executives knew about the issues but only described them to shareholders as potential risks, not as problems that already existed.

The defendants, which include Hut 8, its CEO and board chair, among other leaders, sold Hut 8 stock at "artificially inflated prices" using nonpublic information around the same time the report was published, according to the complaint. The investor alleged they gained roughly \$2 million in proceeds in the process.

"While many of the company's stockholders lost significant amounts of money with the share price dropping substantially, the insider trading defendants sold their shares at artificially high prices and avoided the staggering losses suffered by stockholders," the complaint said. "As a result, the insider trading defendants benefitted from the artificial inflation of the price of the company's stock and the resulting increase in the value of Hut 8 stock and stock options they held."

The defendants "willfully or recklessly" made the false statements and failed to disclose that internet disruption and power outages at the joint venture had been a recurring problem prior to the merger, the suit says. Wells Capital alleged the defendants breached their duties as officers or directors of the company to provide stockholders with the fiduciary obligations of "good faith, loyalty and candor."

A representative of Hut 8 did not immediately respond to a request for comment Friday.

Counsel information for the defendants was not immediately available.

The plaintiffs are represented by Cullin O'Brien of Cullin O'Brien Law PA and Melissa Fortunato and Ligaya Hernandez of Bragar Eagel & Squire PC.

This case is Wells Capital Inc. v. Flinn et al., case number 1:26-cv-22309, in the U.S. District Court for the Southern District of Florida.

--Editing by Covey Son.

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M&T Beats Investor Suit Over Delayed \$3.7B Hudson Merger

By Sarah Jarvis

Law360 (April 6, 2026, 6:11 PM EDT) -- M&T Bank Corp. has beaten investor claims that it hid regulatory problems that led to delays in its \$3.7 billion merger with Hudson City Bancorp Inc., with a federal judge in Delaware finding that investors failed to show M&T made material misrepresentations or omissions.

In a lightly redacted **opinion** unsealed Monday, U.S. Circuit Judge Evan J. Wallach, sitting by designation in the U.S. District Court for the District of Delaware, granted the banks' summary judgment bid, rejecting the investors' arguments that M&T should have disclosed certain risks to the merger they said were identified in a Federal Reserve Board exam of M&T's Bank Secrecy Act and anti-money laundering program. Details on those purported risks were redacted.

Judge Wallach said among other things that M&T's disclosures were appropriately limited by the bank examination privilege and regulations governing the disclosure of confidential supervisory information, or CSI.

"M&T could not publicly disclose privileged information given to them by federal regulators without violating the privilege and eroding the purpose of the privilege," the judge said.

He added that the investors failed to offer any other way the bank could have made disclosures about the Fed exam and that they did not show there was a genuine, factual dispute as to whether M&T could have made further disclosures without violating privilege.

"If defendants did what plaintiffs ask and disclosed agency opinions and recommendations, they would have violated the privilege and federal regulations protecting disclosure of CSI," the judge said.

Counsel for the parties didn't immediately respond to requests for comment Monday.

Hudson shareholder David Jaroslawicz **filed suit** in 2015, alleging that although the merger between M&T and Hudson City was approved in 2013, it was delayed for two and half years due to regulatory concerns from the Federal Reserve and the Consumer Financial Protection Bureau over M&T's compliance with federal bank secrecy and money laundering laws. The investors alleged neither issue was clearly disclosed in the 2013 deal proxy, and it ended up costing them millions in diminished dividends.

M&T eventually settled with the CFPB in October 2014, more than two years after the merger was announced in August 2012, according to court filings.

In 2016, the court approved shareholders known as The Belina Family to be the lead plaintiff in the case, court documents show. The case was **tossed** two **times** the following year, and the investors appealed to the Third Circuit, which initially affirmed the district court's dismissal before granting a rehearing, vacating its initial opinion and remanding the case for further proceedings in 2020.

Judge Wallach granted the investors class certification in 2023 but **reversed** his decision the following year, finding he had erred in applying the Third Circuit's legal standard.

In the opinion unsealed Monday, Judge Wallach found among other things that M&T and Hudson

made no misleading or omissive statements and fully disclosed the possibility that the merger would take longer than anticipated to close. And any alleged misrepresentation or omission would not have played a substantial role in a reasonable shareholder's decision on how to vote, the judge found.

The judge further found there is no factual dispute over whether the investors suffered an economic loss "proximately caused by the alleged misrepresentation or omission," saying the investors' purported trading and closing damages are speculative.

"Plaintiffs clearly benefited from the merger ... and plaintiffs do not point to any evidence that their share prices, when sold, would have necessarily been higher had the proxy materials contained more robust disclosures," Judge Wallace said.

The investors are represented by Steven M. Coren, Benjamin M. Mather and Matthew R. Williams of Coren & Ress PC and Francis J. Murphy Jr. of Murphy & Landon PA.

M&T Bank is represented by Brian M. Rostocki and Justin M. Forcier of Reed Smith LLP, Anne Steadman of Christensen Law LLC and Jonathan K. Youngwood, Janet A. Gochman and V. Noah Gimbel of Simpson Thacher & Bartlett LLP.

Hudson City Bancorp is represented by Kevin R. Shannon of Potter Anderson & Corroon LLP and Tracy Richelle High of Sullivan & Cromwell LLP.

The case is Jaroslawicz v. M&T Bank Corp. et al., case number 1:15-cv-00897, in the U.S. District Court for the District of Delaware.

--Additional reporting by Katryna Perera. Editing by Rich Mills.



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Musk Slams 'Premature' Judgment After Twitter Stock Verdict

By **Dorothy Atkins**

Law360 (April 6, 2026, 11:03 PM EDT) -- Elon Musk objected Friday to a California federal judge entering judgment against him following a securities fraud verdict over tweets about his \$44 billion Twitter acquisition, arguing there are still numerous unresolved issues and entering a final judgment on a classwide basis at this stage is "premature and improper."

In a 14-page filing, Musk's counsel argues that U.S. District Judge Charles Breyer shouldn't grant investors' proposed final judgment since there are a "wide variety of motions and issues" involving classwide reliance on Musk's fraudulent statements, the damages calculations and the claims administration process that the court has yet to resolve, and Judge Breyer can't retain jurisdiction over these disputes postjudgment.

The procedural fight over what happens next comes two weeks after a unanimous eight-member jury found Musk liable for securities fraud in litigation that was initially filed against the South African tech billionaire in October 2022.

After a **weekslong trial**, on **March 20th**, a San Francisco jury found Musk made false or misleading public statements about the Twitter's fake "bot" accounts problem in a bid to ditch or renegotiate his \$44 billion deal to acquire the social media platform, which Musk has since renamed X Corp.

In particular, jurors found that Musk duped investors with two tweets in May 2022, including his May 13 tweet that the \$44 billion deal was "temporarily on hold" while he awaited information on the volume of bots and spam on Twitter. The jury, however, cleared Musk of allegations that his conduct constituted an overall "scheme to defraud Twitter investors."

After the verdict came down, Musk's counsel called the mixed-liability verdict a "bump in the road," and vowed to fight the partial loss on appeal. And last month, Musk's counsel told Judge Breyer in a letter that Musk did not get a fair trial, arguing that the jury purportedly **rolled a marijuana "joke"** into the verdict form to mock Musk and the trial process.

But investors' counsel quickly opposed Musk's allegations in the letter, and asked the court to strike Musk's "unsolicited" filing from the record, arguing that it was procedurally improper and any arguments challenging the verdict should be laid out properly in Musk's posttrial motions.

Meanwhile, the investors' counsel offered the court a proposed posttrial schedule, and suggested that Judge Breyer enter judgment in their favor, after which they plan to seek court approval for a class notice, a class claims form and a distribution process, along with a bill of costs and a motion for attorney fees.

But Musk's counsel objected to the proposed posttrial schedule and argued that Musk intends to challenge each class member's alleged individual reliance on his tweets, and damages for all claimants who seek to recover their alleged losses during the claims administration process.

But before that occurs, Musk said he also plans to file a request for a new trial and a renewed motion for judgment as a matter of law in his favor notwithstanding the verdict. If the court doesn't grant either of those posttrial motions, Musk plans to file a motion for partial final judgment seeking an immediate appeal on the jury's liability verdict, his brief said.

In light of his anticipated filings, Musk argued that the investors' other motions related to the claims administration process and any motion for fees and costs should not be filed or briefed until after Judge Breyer resolves Musk's posttrial motions.

But on March 31, Judge Breyer issued a two-sentence order adopting the investors' proposed posttrial schedule and ruled that any posttrial motion filed by Musk can be heard "post-judgment."

On Friday, Musk again objected to the proposed judgment, arguing that the jury's verdict does not establish classwide liability, because the verdict form "in no way indicates whether the jury found the reliance element of liability met based on the fraud-on-the-market presumption, which would apply on a class-wide basis," or if the liability finding was solely applied to the lead plaintiff investors who testified.

"The court cannot enter a class-wide judgment based on this verdict," Musk argues.

Musk also argues that he hasn't had an opportunity to rebut the "basic presumption [of reliance] on an individual basis," and the court cannot merely adopt the investors' proposed method of damages calculation without further briefing and inquiry into how these calculations should be performed.

"Because Phase II of this litigation — and the corresponding discovery and adjudication of the individual reliance of each class member — will be so time-consuming and costly and possibly mooted by a successful appeal of underlying liability and damages issues, granting judgment for the class representatives only would be the most fair and efficient process," Musk argues.

Musk adds that rushing to enter judgment on a classwide basis based on "nothing more than plaintiffs' ipse dixit about how this calculation should be performed is improper."

Even once the threshold issues are resolved, Musk adds that there likely will be more issues that arise over the claims administration process that the parties cannot anticipate at this time.

"Until that process is complete, the quantum of economic loss and therefore the quantum of damages is entirely unknown, the court cannot be certain that more issues will not arise that require careful adjudication, and final judgment as to all class members cannot be entered," Musk says.

But on Friday, the same day Musk filed his objection, Judge Breyer entered judgment in favor of lead plaintiff investors Brian Belgrave, Nancy Price and John Garrett on behalf of themselves and a class of investors who suffered losses publicly trading Twitter stock, call or put options between May 13, 2022, through Oct. 4, 2022.

The judgment allows the class to recover damages from Musk based on their out-of-pocket losses from their Twitter transactions during the class period, and it specifies that Judge Breyer retains jurisdiction over the posttrial motions, claims administration process and any fee and cost request by class counsel.

Judge Breyer gave the parties until May 1 to file any posttrial motions, and he set a hearing on postjudgment motions for June 11 in San Francisco at 10 a.m.

Counsel for the investors declined to comment and Musk's counsel didn't immediately respond to a request for comment Monday.

The investors are represented by Joseph W. Cotchett, Mark C. Molumphy, Tyson C. Redenbarger, Gia Jung, Elle D. Lewis and Caroline A. Yuen of Cotchett Pitre & McCarthy LLP and Frank Bottini Jr., Albert Y. Chang and Aaron P. Arnzen of Bottini & Bottini Inc.

Musk is represented by Alex Spiro, Ellyde R. Thompson, Jesse A. Bernstein, Stephen Broome, Matthew Alex Bergjans and Michael T. Lifrak of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Giuseppe Pampena et al. v. Elon R. Musk, case number 3:22-cv-05937, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bonnie Eslinger and Lauren Berg. Editing by Jay Jackson Jr.



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Chewy Investor Settles Suit Against BC Partners For \$29.5M

By **Rae Ann Varona**

Law360 (April 6, 2026, 7:19 PM EDT) -- A Chewy Inc. investor has brokered a \$29.5 million deal with BC Partners that, if finalized, would settle the investor's derivative suit that alleged BC Partners saddled Chewy investors with potential tax liabilities following a financially unfair downstream merger involving PetSmart Inc., the parties told the Delaware Chancery Court on Monday.

Chewy investor Eric Gilbert, BC Partners and other individuals and entities associated with the British international investment giant filed a stipulation and agreement of settlement that would resolve Gilbert's allegations on behalf of Chewy that BC Partners and others breached their fiduciary duties by causing the online pet product retailer to enter into an unfair transaction that allegedly prioritized BC Partners' interests over the interests of Chewy and its minority stockholders.

Gilbert's suit centered on a downstream merger from 2023 in which a holding company through which BC Partners controlled Chewy and PetSmart sold PetSmart to a third-party buyer and then merged into a newly created Chewy subsidiary. Chewy, as a result, was saddled with a potential \$1.9 billion postdeal tax liability, Gilbert said.

Monday's filing said that although Gilbert believes his claims have merit, he also believes the proposed settlement "provides substantial and immediate benefits for Chewy and current Chewy stockholders."

BC Partners and other defendants, while denying any wrongdoing and liability, "wish to eliminate the uncertainty, distraction, risk, burden, and expense of further litigation, and to permit the operation of Chewy without further distraction and diversion of its board and personnel with respect to the action," according to the filing.

The suit, **filed in November 2024**, accused more than a dozen individuals and business entities of violating their fiduciary duties of due care, loyalty and good faith in lining up the deal, mainly in exchange for governance concessions described as "not particularly meaningful" to Chewy.

The suit alleged that although BC Partners provided Chewy with up to \$1.9 billion in overall indemnification protection as part of the agreement, "the tax liability indemnity was capped at \$196 million and the indemnity for the other contingent liabilities was capped at \$50 million," far below the actual burden.

The merger thus provided BC Partners with "unique, non-ratable benefits while simultaneously saddling Chewy with a substantial tax burden," the 2024 complaint said. "Despite shifting the tax risk to Chewy, BC Partners retained the benefits."

According to Monday's filing, Chewy's board of directors established a special litigation committee in March 2025 to look into the suit's claims and determine what next steps should be taken. In April 2025, the court put the case on hold pending the committee's investigation.

The committee informed the court in December that the parties had begun settlement discussions, according to Monday's filing.

On March 2, the committee informed the court that the parties reached a settlement in principle to resolve all current and potential claims.

The parties said Monday that Gilbert's counsel, as a result of negotiations, plans to seek a fee and expense award of up to \$5.5 million and an incentive award to Gilbert of up to \$5,000.

Counsel for the parties did not immediately respond to requests for comment Monday.

Gilbert is represented by Ned Weinberger, Brendan W. Sullivan and John Vielandi of Labaton Keller Sucharow LLP, Jeremy Friedman, David Tejtzel and Lindsay La Marca of Friedman Oster & Tejtzel PLLC and D. Seamus Kaskela and Adrienne Bell of Kaskela Law LLC.

The BC Partners parties are represented by Robert L. Burns and Matthew Perri of Richards Layton & Finger PA and Sandra C. Goldstein and Jeffrey R. Goldfine of Kirkland & Ellis LLP.

Chewy is represented by Matthew D. Stachel, Geoffrey R. Chepiga and Robert J. O'Loughlin of Paul Weiss Rifkind Wharton & Garrison LLP.

The Chewy board of directors special litigation committee is represented by Joseph R. Slights III, Brad D. Sorrels, Daniyal M. Iqbal, Jordan L. Cramer and Jacqueline G. Conner of Wilson Sonsini Goodrich & Rosati PC.

The case is Eric Gilbert, derivatively, on behalf of Chewy Inc. v. BC Partners LLP et al., case number 2024-1165, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Stephen Berg.

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VNET Investors Ink \$6M Deal Over Post-Default Downturn

By **Sydney Price**

Law360 (April 6, 2026, 9:16 PM EDT) -- Investors of China-based internet and data center service provider VNET have asked a New York federal judge to preliminarily approve a \$5.9 million deal to end claims that the company concealed its founder's default on a loan agreement he entered into with another company using his personal shares of VNET.

According to Friday's settlement notice, the nearly \$6 million settlement fund represents about 7% of the maximum total damages, which is "near the top of the range of recovery considered reasonable" in the Second Circuit.

The parties participated in a full-day mediation session in January and engaged in follow-up negotiations before accepting the mediator's proposal to settle all claims, according to the notice. The plaintiffs also note the potential challenge of international discovery and that "enforcing a judgment may not be possible against assets in China."

"Given these risks and others, plaintiffs and their counsel believe that the guaranteed, prompt recovery of the settlement provides a favorable result and is in the best interest of the class," the motion said.

Lead counsel for the investors intends to request up to one-third of the settlement fund, or about \$2 million, in fees, and up to \$100,000 for reimbursement for litigation expenses.

If approved, the settlement would resolve the investors' claims that VNET concealed that its founder, Josh Sheng Chen, entered into a facility agreement in 2021 for a \$50 million loan for GenTao Capital Ltd., another company he owned, with a company known as Bold Ally Limited, and then defaulted on the agreement.

Sheng Chen personally guaranteed the loan, according to the suit, pledging all of his VNET shares and those held by his personal holding companies as collateral.

According to the suit, the facility agreement had an early termination clause that allowed Bold Ally to cancel the loan and demand its full payment if VNET's share price fell below a certain price for two consecutive business days.

From Nov. 15, 2021, through Dec. 15, 2021, VNET's shares fell below the early termination provision's predetermined threshold, allowing Bold Ally to cancel the facility agreement and declare the loan payable within 10 days, according to the complaint.

The suit alleges Sheng Chen's actions put VNET in danger of triggering multiple change of control clauses in VNET's outstanding convertible bonds and domestic loans, which posed an "existential risk" to the company.

When Bold Ally announced it was entitled to millions of VNET's shares on Feb. 13, 2023, VNET's share price declined 3%, according to the suit.

A few days later, shares fell again by approximately 6% when VNET announced it was taking steps to "protect the company's interests and continued stability" in the face of the facility agreement violations, which included replacing the voting interests Sheng Chen lost when his shares were

seized.

Then, on Feb. 17, 2023, a filing from Sheng Chen with the U.S. Securities and Exchange Commission revealed Sheng Chen had been notified several times during the class period at risk of having his VNET shares seized before they actually were, and that the shares were transferred before Bold Ally's initial announcement. The announcement triggered an additional 9% share decline, which continued to fall over the next several days.

In addition to Sheng Chen, the suit's individual defendants include former VNET CEOs Jie Dong and Samuel Shen, and former Chief Financial Officer Tim Chen.

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

The proposed class is represented by Joshua B. Silverman, Christopher Tourek, Jianan Jiang and Jeremy A. Lieberman of Pomerantz LLP, and Gregory B. Linkh and Rebecca Dawson of Glancy Prongay Wolke & Rotter LLP.

Lead plaintiff Wong Tan is also represented by Junbo Hao of Hao Law Firm.

The VNET defendants are represented by Scott D. Musoff, Michael Charles Griffin and Robert Alexander Fumerton of Skadden Arps Slate Meagher & Flom LLP.

The case is *Semerak v. VNET Group Inc. et al.*, case number 1:23-cv-11187, in the U.S. District Court for the Southern District of New York.

--Editing by Drashti Mehta.

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REIT Investor Attys Get Fee Award In \$7.1M Settlement

By **Emilie Ruscoe**

Law360 (April 6, 2026, 6:01 PM EDT) -- Attorneys at Rolnick Kramer Sadighi LLP and Woods Rogers Vandeventer Black PLC will receive a fee of nearly \$2 million after brokering the \$7.1 million settlement of claims that a real estate investment trust's insiders left the company's common stock diluted by "disastrous" stock redemption decisions.

In an order in Virginia federal court Monday, U.S. District Judge Mark S. Davis said the investors' legal team can have 28% of the \$7.125 million settlement sum, plus reimbursement of nearly \$602,000 in litigation costs, finding that the fees and expenses were "fair and reasonable and consistent with awards in similar cases" in the district.

The judge also said lead plaintiff Daniel Khoshaba, who is the former CEO of the company Wheeler Real Estate Investment Trust Inc., could have a service award of \$50,000. The investors' counsel said the sum was appropriate given Khoshaba's "time-consuming and exceedingly valuable contributions" to the class.

The order comes days after Judge Davis granted final judgment to the settlement deal, ending claims Khoshaba launched in April 2024.

In the suit, Khoshaba said his successors at the helm of Wheeler came up with a share redemption strategy that "tanked" the price of Wheeler's common stock "to basically worthless levels" and enabled Stilwell Value LLC, an activist hedge fund, and its principal Joseph Stilwell to "become the effective owners of more than 80 percent of the company."

In their motion in October for preliminary approval of the settlement deal, the parties told Judge David that a damages expert for the plaintiffs had estimated that the maximum amount of damages that the investors could recover in the case is about \$35 million.

The settlement sum represents about 20% of that potential maximum recovery, "which is certainly an adequate result given the additional risks to class recovery," the parties said.

Jeffrey Ritholtz of Rolnick Kramer Sadighi LLP, an attorney for Khoshaba and the proposed class, told Law360 via email Monday that "we are very pleased with the court's final approval of the settlement, which is an outstanding result for the investor class that could only have been achieved through vigorous litigation efforts and the unwavering commitment of the class representative, Daniel Khoshaba, to the best interests of the class. Class members will now be able to obtain the substantial benefits of this resolution in a timely and efficient manner."

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

Khoshaba and the proposed class are represented by Marc B. Kramer, Jeffrey A. Ritholtz and Joseph R. Sparacio of Rolnick Kramer Sadighi LLP and Richard H. Ottinger and Katherine M. Lennon of Woods Rogers Vandeventer Black PLC.

The Wheeler insider defendants are represented by Hugh M. Fain III, M. F. Connell Mullins Jr. and Nancy Y. Simpson of Spotts Fain PC and Jerrold A. Thrope of Gordon Feinblatt LLC.

The fund defendants are represented by Charles M. Sims of O'Hagan Meyer PLLC and Richard L. Crisona and Alexander E. Ehrlich of Allegaert Berger & Vogel LLP.

The case Khoshaba v. Stilwell et al., case number 2:24-cv-00237, in the U.S. District Court for the Eastern District of Virginia.

--Additional reporting by Sydney Price. Editing by Stephen Berg.

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Colo. Justices OK Copied Claims If Lawyers Check Facts

By **Zach Dupont**

Law360 (April 6, 2026, 6:32 PM EDT) -- The Colorado Supreme Court ruled Monday that copying allegations from other litigation isn't alone a violation of the Colorado Rules of Civil Procedure, so long as attorneys conduct a "sufficient investigation" into the allegations prior to filing a complaint.

The opinion upholds a Colorado Court of Appeals **ruling that reversed** the dismissal of a securities class action in state court against CenturyLink, with the justices unanimously ruling that Dean Houser's inclusion of confidential witness statements from a separate case complied with Rule 11 of the CRCP.

The justice said that copying allegations from other complaints doesn't violate Colorado pleading standards because a complaint is only designed to put a defendant on notice and parties can plead "on information and belief" within a complaint, per the CRCP.

The justices found that the pleading standards set by the CRCP are satisfied by counsel using allegations from a different case, so long as a sufficient investigation is conducted into the allegations.

"Our pleading rules and [Rule 11] exist to ensure fair notice to defendants of the claims being asserted against them and that plaintiffs conduct reasonable investigations before filing suit, so that plaintiffs' claims are plausibly supported by the facts and the law," the justices said. "In our view, these rules adequately protect the interests of all parties in a litigation, and we perceive no reason to require either more or less from plaintiffs."

Justice Richard Gabriel wrote on behalf of the court that the justices declined to adopt a "bright-line rule precluding a party from copying allegations in related litigation unless counsel speaks to the witnesses" because it "simply may not be possible for counsel to do so."

The justices said they were not persuaded by CenturyLink's argument that neglecting to apply such a rule would allow for plaintiffs to copy allegations from other complaints "wholesale" with no investigation, "and will leave Colorado courts in cases involving borrowed allegations with no ability to enforce" Rule 11 of the CRCP.

"Contrary to defendants' assertions, our opinion requires the reasonable investigation mandated by our civil rules," the justices wrote. "In addition, we are confident that Colorado courts have all of the tools necessary to hold accountable attorneys who file pleadings in Colorado that violate Colorado procedural and ethical rules."

The justices also shot down an argument from CenturyLink that ruling in favor of Houser would lead to a massive increase in securities class actions in Colorado, saying they believe trial courts will serve "as appropriate gatekeepers to ensure that lawsuits that do not satisfy the requirements to survive motions to dismiss will be resolved properly and expeditiously."

"We are not convinced by defendants' suggestion that any increase in the number of securities class actions pending in state courts is attributable to judicial decisions allowing meritless actions to proceed," the justices said.

Applying the court's findings, the justices ruled that Houser's inclusion of allegations — including

confidential witness statements — from a federal multidistrict litigation complaint against CenturyLink in his proposed class action satisfied Rule 11's requirements.

Houser's suit accused the company of deceptively charging customers ahead of a \$34 billion merger between CenturyLink and Broomfield, Colorado-based Level 3 Communications in 2017. Since the suit was filed, CenturyLink has rebranded to Lumen Technologies.

"Houser's counsel conducted a sufficient investigation to allow counsel to include in the amended complaint in this case, consistent with counsel's obligations under [Rule 11], allegations that were contained in complaints in related actions against some of the same defendants named here," the justices said.

An attorney for Houser, Frank A. Bottini Jr. of Bottini & Bottini Inc., told Law360 in a statement Monday that they were pleased with the ruling.

"The appeal was a meritless attempt by the defense and Chamber of Commerce to bar facts derived from governmental investigations and lawsuits from being used in other cases," Bottini said. "This commonsense decision by the Colorado Supreme Court will help ensure that meritorious cases are decided on the merits."

Counsel for CenturyLink didn't immediately respond to a request for comment.

CenturyLink is represented by Frederick R. Yarger, Kathryn A. Reilly and Daniel N. Guisbond of Wheeler Trigg O'Donnell LLP, and Tariq Mundiya, Sameer Advani and Philip DiSanto of Willkie Farr & Gallagher LLP.

Houser is represented by Jason P. Kane of Ranson & Kane PC, and Albert Y. Chang and Francis A. Bottini Jr. of Bottini & Bottini Inc.

The case is CenturyLink Inc. et al. v. Dean Houser, case number 2024SC644, in the Colorado Supreme Court.

--Additional reporting by Thy Vo.