

Peloton SCA Dismissed: Product Safety Allegations and D&O Exposure

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Sarah Abrams

April 21, 2026



Peloton Interactive, Inc. (Peloton) has faced well-publicized [operational](#) and [reputational](#) challenges over the past several years. The company's trajectory, from pandemic-era growth darling to post-pandemic recalibration and product safety scrutiny, has resulted in securities litigation. As previously discussed on the [D&O Diary](#), Peloton successfully defeated a COVID-19-related securities suit at the pleading stage. More recently, the company faced a [second securities class action](#) tied to alleged product defects in its flagship bike (Peloton SCA). In a [March 31, 2026, decision](#), the United States District Court for the Eastern District of New York granted Peloton's motion to dismiss, rejecting plaintiff shareholders' attempt to convert operational challenges into actionable securities fraud.

This recent decision may provide a useful case study for D&O underwriters of how courts can approach event-driven securities litigation when plaintiffs rely on product issues to support disclosure-based claims.

Peloton SCA and Dismissal

The Peloton SCA, filed on June 9, 2023, asserted claims under Sections 10(b) and 20(a) of the Securities Exchange Act on behalf of investors who purchased Peloton securities between May 2022 and May 2023. The shareholder plaintiffs alleged that Peloton and certain of its senior executives made materially false and misleading statements regarding the company's product safety practices, compliance efforts, and financial exposure to potential recalls. At the center of the

complaint were [alleged defects in the seat posts of Peloton's exercise bikes](#), which plaintiffs claimed were prone to breaking or detaching during use, creating safety risks and exposing the company to a large-scale recall.

Shareholder plaintiffs cited to [Peloton's prior history with product safety issues](#), particularly its interactions with the U.S. Consumer Product Safety Commission in connection with its treadmill products. According to the complaint, Peloton had sought to reassure investors following those earlier issues by emphasizing its commitment to safety improvements, regulatory cooperation, and reduced exposure to recall-related costs. Thus, shareholder plaintiffs alleged that these assurances were misleading because the company was simultaneously aware of ongoing defects in its bike seat posts and failed to disclose the extent of those issues or the likelihood of a future recall.

In support of these allegations, shareholder plaintiffs cited internal data and accounts from confidential witnesses indicating that Peloton tracked customer complaints and product quality issues throughout the class period. The Peloton SCA further alleges that Peloton engaged in internal efforts referred to as "Project Tinman" to address or conceal visible defects, including rust and corrosion affecting bike components. According to the complaint, these internal practices demonstrated that the company was aware of widespread product issues while continuing to present a more favorable picture to investors.

The Peloton SCA alleged that the company issued a corrective disclosure on May 11, 2023, when the [CPSC announced a recall](#) of approximately 2.2 million Peloton bikes due to seat post failures. Following the announcement, Peloton's stock price purportedly declined by nearly 9 percent. Shareholder plaintiffs contended that this decline reflected the market's reaction to the revelation of previously undisclosed product defects and financial exposure. The complaint further alleged that Peloton had understated its reserves for recall-related expenses and misled investors regarding the potential impact of such a recall on its business and subscription model.

In dismissing the Peloton SCA, the court concluded that the plaintiffs failed to adequately plead falsity, scienter, and loss causation. The court found that many of the challenged statements, such as general assertions regarding product quality, safety, and a "members-first" philosophy, constituted non-actionable puffery. The court also emphasized that Peloton had disclosed the risks of product defects and potential recalls in its public filings, including warnings that such issues could lead to regulatory scrutiny, reputational harm, and litigation.

These disclosures, the court found, undermined the shareholder plaintiffs' claim that investors had been misled. The court further determined that the plaintiffs failed to adequately establish scienter, as the complaint did not sufficiently connect internal awareness of product issues to an intent to deceive investors. Finally, the court held that the plaintiffs had not adequately pleaded loss causation, as the stock price decline following the recall announcement did not establish that prior statements were false when made, as opposed to reflecting the materialization of disclosed risks.

Discussion

The recent dismissal of the Peloton SCA may provide important takeaways for D&O underwriters, particularly when viewed alongside the [March 30, 2023, dismissal](#) of the previous COVID-19-related securities litigation. In both cases, plaintiffs attempted to convert adverse business developments, first, declining demand following the pandemic, and second, product defects and a recall, into claims of securities fraud. In both instances, the courts rejected those efforts, reinforcing a consistent judicial approach that distinguishes between business risk and disclosure liability.

In both the COVID-19 case and the product defect case, Peloton's public filings included cautionary language addressing the very risks that later materialized. In the earlier case, disclosures regarding demand volatility and changing consumer behavior during and after the pandemic were central to the court's dismissal. Similarly, in the present case, Peloton's warnings regarding product defects, manufacturing issues, and potential recalls played a critical role in undermining the plaintiffs' claims. For D&O underwriters, Peloton's successful defense may highlight how the method of disclosing certain risks associated with various sectors, like consumer products, can withstand judicial scrutiny.

Another key takeaway from this recent Peloton SCA dismissal is the high bar plaintiffs must meet to plead scienter, particularly in cases involving complex operational issues. Shareholder plaintiffs relied on internal data, confidential witnesses, and circumstantial evidence to argue that the company knew more than it disclosed. However, the court required a more direct connection between that internal awareness and the specific public statements at issue. For D&O insurers, this dynamic may reinforce the viability of early dismissal as a defense strategy, even in cases involving extensive internal allegations.

Finally, when viewed together, the Peloton securities dismissals may demonstrate that, under the [Private Securities Litigation Reform Act](#) (PSLRA), well-disclosed risks and disciplined corporate communications may provide a strong defense at the motion to dismiss stage. Consumer product companies at some point may face operational challenges, whether from changing market conditions or product-related issues. However, the extent of D&O exposure stemming therefrom may hinge on disclosure detail.

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Plug Power Investors Can Proceed With Suit Over Growth, Revenue

April 21, 2026, 9:19 AM PDT

Summary by Bloomberg AI

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- Plug Power Inc. investors have successfully pleaded part of their securities fraud suit over the company's representations about its anticipated growth, a federal court ruled.
- Some company statements about its target goal for hydrogen production by the end of 2022 and one revenue projection are actionable, Judge Jennifer L. Hall said.
- The investors alleged Plug Power presented a rosy picture of its supply chain in August 2022 and promised significant growth, even though several deals had been delayed until at least 2023.

Plug Power Inc. investors have successfully pleaded part of their securities fraud suit over the hydrogen fuel cell maker's representations about its anticipated growth, a federal court ruled.

Some company statements about its target goal for hydrogen production by the end of 2022 are actionable, as are statements about one revenue projection, Judge Jennifer L. Hall said Monday for the US District Court for the District of Delaware.

The previous version of the investors' complaint succumbed to Plug Power's arguments for dismissal. But this time, former employees' accounts and other allegations were sufficient to support the falsity and intent aspects of the securities fraud claims over some statements at the heart of the suit, Hall said.

The investors alleged Plug Power presented a rosy picture of its supply chain in August 2022 and promised significant growth, even though several deals had been delayed until at least 2023. When the company signaled problems in January 2023 and reported missed revenue guidance in March of that year, the stock price sank, they said.

Plug Power has been embroiled in other investor litigation and a Securities and Exchange Commission matter, fending off a proposed class action alleging delivery costs were misclassified as research and development and settling with the SEC for \$1.25 million over its financial reporting.

Hall threw out some aspects of the suit. Plug Power executives' statements about the construction and operation of a facility in Georgia weren't adequately alleged to be false, she said. The timeline of one revenue projection doesn't indicate the executives knew the projections were false when they made them, and another was more in the nature of an inactionable expression of optimism, she said.

Johnson Van Kwawegen LLP is lead counsel for the investors. DLA Piper LLP represents Plug Power.

The case is In re Plug Power Inc. Sec. Litig. , D. Del., No. 1:23-cv-00409, 4/20/26 .

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Feel like it should be a bigger story that Howard Lutnick's firm (run by his kids) created a financial product to buy up tariff refund claims at a major discount, and will now be cashing in on the higher costs passed onto consumers.

FOR BUSINESS - 10/27/21

Meet the quiet winners of the Supreme Court tariff ruling: hedge funds creating a \$100 billion market snapping up rights to importers' tariff refunds



By [@donmoyn.bsky.social](#)



Howard Lutnick, CEO of Acuity, speaking at a podium. The image is a still from a video recording. The text "ALTY" is visible in the bottom right corner.

derek guy @dieworkwear.bsky.social · 1d

The average American family paid \$1,700 in tariffs last year, according to the bipartisan Congressional Joint Economic Committee. Few will ever see any of that money back. The refunds will go to companies, if doled out at all. What a joke.

Tariffs and Trade

Tariff Refunds

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Metals

But only the entities that officially paid the tariffs are eligible to recover that money. That means that the fuller universe of people affected by Mr. Trump's policies — including millions of Americans who paid higher prices for the products they bought — are not able to apply for direct relief.

The extent to which consumers realize any gain hinges on whether businesses share the proceeds, something that few have publicly committed to do. Some have started to band together in class-action lawsuits in the hopes of receiving a payout.

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DHS has begun purchasing warehouses to detain tens of thousands of immigrants.

The big winners? Real estate brokers facilitating the deals stand to rake in millions — including one previously run by Commerce Secretary Howard Lutnick and now run by his son.

Cashing in on cruelty.



Empty Warehouses, Secret Deals: Insiders Poised To Profit From Trump's Deportation Boom

As the Trump administration hunts for massive detention sites, politically connected real estate brokers are lining up t

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The real winners of Trump's global tariff war: law firms, hedge funds and AI

As businesses scramble for advice on getting a tariff refund, law firms and hedge funds see huge payday

Trump says he will 'remember' companies that don't seek tariff refunds

 [reuters.com/legal/government/trump-says-he-will-remember-companies-that-dont-seek-tariff-refunds-](https://www.reuters.com/legal/government/trump-says-he-will-remember-companies-that-dont-seek-tariff-refunds-2026-04-21)
2026-04-21

David Lawder

April 21, 2026



U.S. President Donald Trump delivers remarks on tariffs in the Rose Garden at the White House in Washington, D.C., U.S., April 2, 2025. REUTERS/Carlos Barria/File Photo [Purchase Licensing Rights](#) , [opens new tab](#)

- Trump implies firms would benefit by abstaining on refunds
- US has begun taking electronic refund applications
- System will process up to \$166 billion in refunds

WASHINGTON, April 21 (Reuters) - President [Donald Trump](#) said on Tuesday he will "remember" companies that do not seek refunds for tariffs paid that were [deemed illegal](#) by the [Supreme Court](#), implying they would somehow benefit by abstaining from the U.S. government's new refund portal.

On the second day that the U.S. Customs and Border Protection agency began accepting electronic refund applications, Trump told CNBC that he was pleased to hear about media reports that Apple ([AAPLO](#)) , [opens new tab](#), Amazon ([AMZN.O](#)) , [opens new tab](#) and some other large companies have not yet sought refunds.

"It's brilliant if they don't do that," Trump said in a phone conversation with CNBC anchors that was aired live.

"If they don't do that, I'll remember them. I will tell you that, because I'm looking to make this country strong," the Republican president said.

Trump, who has characterized the payment of tariffs by U.S. importers as a patriotic act, on Tuesday appeared to characterize American companies that are pursuing refunds as the "enemy."

"In many cases, the enemy - the enemy - is getting this money," Trump said, apparently referring to those companies.

"The people that have hated the United States, we're giving them checks for billions of dollars. It's so sad to see," Trump added, without naming any specific companies or countries of origin for the imported products.

Trump said the Supreme Court "could have helped us" by upholding the sweeping global tariffs he imposed last year under a 1977 law meant for use in national emergencies. Trump denounced the court after its February ruling that he had exceeded his powers.

The ruling by the justices led to a decision by Judge Richard Eaton of the New York-based U.S. Court of International Trade that the CBP create a system to process up to \$166 billion in refunds. The system, called CAPE, was [launched on Monday](#), mostly without serious glitches.

Eaton on Tuesday issued a [temporary stay](#) , [opens new tab](#), ordering CBP to submit a progress report on the first phase of its refund processing system by April 28.

It was not immediately clear what impact the stay would have on the processing of refunds. Payments were not expected to be issued until 60 to 90 days after CBP acceptance of refund submissions.

Matthew Seligman, a founding partner of Grayhawk Law who is advising companies on tariff litigation and refund strategies, said he does not think the stay will change processing by CBP and that it may be related to a change in the case's lead plaintiff.

"It's an acknowledgment that CAPE launched yesterday," Seligman said.

CBP did not immediately respond to a request for comment on the status of the refund processing.

Eaton also has given the Trump administration a June 7 deadline to appeal his ruling requiring refunds.

Damon Pike, a customs expert at the firm BDO USA, said that if an appeal by the administration moves forward, companies may be required to file individual lawsuits to claim their refunds, which would slow the process down.

"The Justice Department wants to make this as hard as possible," Pike said, adding that an appeal would likely stop the processing of refunds.

LAWSUITS BY COMPANIES

Some big companies including Costco ([COST.O](#)) , [opens new tab](#), FedEx ([FDX.N](#)) , [opens new tab](#) and Mondelez ([MDLZ.O](#)) , [opens new tab](#) have sued the U.S. government to preserve their ability to secure tariffs refunds as quickly as possible. Other companies including Walmart ([WMT.O](#)) , [opens new tab](#) and Amazon have not filed lawsuits, a move some experts see as an attempt to avoid the ire of Trump.

Trump told CNBC that the alternative tariffs that his administration is working to impose, under Section 301 of the Trade Act of 1974, may produce even more revenue than the tariffs that were struck down, but would be more complicated. The Section 301 unfair trade practices tariff process requires investigations and public comments. Those tariffs are not expected to be imposed until July.

"So we're doing it a different way. We're going to end up with the same - actually, we'll end up with bigger numbers, actually - but it's a little more unwieldy. But it's the way it's been done," Trump said.

Reporting by David Lawder; additional reporting by Tom Hals, Tim Aeppel, Andrea Shalal, Nicholas Brown and Arriana McLymore; Editing by Will Dunham

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Jay Brown, John O'Brien

April 21, 2026

The Instagram app is displayed on a smartphone screen.

Photo: Brian Ramirez / Pexels

BOSTON - Meta and Instagram must face Massachusetts' lawsuit claiming that the social media companies engaged in deceptive business practices and created a public nuisance by designing features that are harmfully addictive to teens and kids.

In a unanimous ruling issued on April 10, the state Supreme Judicial Court refused to apply §230 of the Communications Decency Act of 1996 to immunize Meta and Instagram against claims that they designed the Instagram app "to induce compulsive use by children" and "deliberately misle[d] the public about the safety of the platform." That section of the CDA protects online platforms from liability for content posted on them.

Meta and Instagram, which was acquired by Meta in 2012, have been targets of an onslaught of lawsuits blaming the addictiveness and harmfulness of their apps for the mental health of teens and children.

In March, a New Mexico jury returned a \$375 million verdict in a case based on claims that the social media companies were aware their apps were harming kids. The next day, a Los Angeles jury awarded \$6 million in damages to a 20-year-old woman who claimed she became addicted to Meta's and Google's platforms.

State attorneys general have joined the fray, too. A coalition of 33 states are pursuing a case against Meta and Instagram in federal court alleging violations of state deceptive business practice and nuisance laws.

In the Massachusetts case, the Commonwealth identified several aspects of the design and development of Instagram that it alleged amounted to deceptive business practices: the sending of excessive notifications to users, allowing endless scrolling and autoplay of reels and stories, limiting the amount of time certain posts and stories can be viewed – causing a "fear of missing out" by users – and providing "like" notifications and refreshed content on a variable and unpredictable schedule.

At the same time it was designing these addictive and harmful features into the app, according to the Commonwealth, Meta allegedly was misrepresenting to the public that its product is safe and nonaddictive for teens and children and deceptively claiming that Instagram prevents underage users from accessing the platform despite knowing that the age-gating it uses is ineffective.

These actions, the Commonwealth claimed, are not only deceptive business practices but also create a public nuisance.

In its defense, Meta argued to the trial court and the Massachusetts high court that the case should be dismissed because the focus of the Commonwealth's complaint "depend[s] on content posted by users of Meta's services," a claim barred by §230(c)(1) of the CDA.

"Section 230 gives providers of interactive computer services like Meta immunity from suit—not just immunity from liability—for traditional publishing activity," Meta argued.

In particular, §230(c)(1) bars claims against "interactive computer services" for "any information provided by another information content provider."

"Each of those elements is met here, where the Commonwealth's claims either target so-called 'design features' that Meta uses to decide whether and how to organize, display, and disseminate—i.e., publish— third-party content, or seek to hold Meta liable for third-party content itself," the company argued.

In its brief supporting Meta and Instagram, the Washington Legal Foundation explained that "[w]hile the government's pleadings use lots of high-tech verbiage about 'never-ending feeds,' 'haptics,' and 'algorithms,' Massachusetts' core dispute is about Meta's distribution of third-party content. That's publishing—and publishing is protected to the hilt by section 230's internet-freedom immunity."

The Foundation for Individual Rights and Expression warned against continuing an oft-repeated trend of encroachment on speech rights stemming from "claims that new media is 'addicting' youth, causing immeasurable harm."

"[R]adio and film crime dramas were described as a 'habit-forming practice very difficult to overcome' leading to increased nervousness and fear, and the 'chronic stimulation' of comic books were thought to be 'contributing factors to many children's maladjustments.' The Commonwealth of Massachusetts continues that trend here," it said.

"Publication is not a public nuisance," the WLF argued. "Massachusetts may not use its consumer protection and tort laws to 'abridg[e] the freedom of speech, or of the press,' even if young people really like Instagram's endless feed and respond to the app's incessant notifications."

The Court rejected these arguments. Section 230 immunity, Justice Dalila Arguez Wendlandt wrote, "requires that 'another information content provider' supply the relevant information upon which liability is asserted."

"[T]he claims do not seek to impose liability on Meta for information provided by third parties," Wendlandt reasoned. "Instead, the claims allege harm stemming from Meta's own conduct either by designing a social media platform that capitalizes on the developmental vulnerabilities of children or by affirmatively misleading consumers about the safety of the Instagram platform."

Having concluded that Instagram's design features are conduct not covered by the CDA, the high court affirmed the trial court's order refusing to dismiss the complaint "as it pertains to § 230(c)(1)." Notably, the court did not address Meta's First Amendment defense.

In response to its court losses, Meta began pulling ads by plaintiffs firms that recruit would-be plaintiffs for lawsuits against social media companies.

"We will not allow trial lawyers to profit from our platforms while simultaneously claiming they are harmful," the company declared.

Supreme Court Won't Review Order Certifying Cities' \$12B Antitrust Suit Against Big Banks

By refusing to hear the banks' appeal, the Supreme Court cleared the way for the case to proceed in the Manhattan federal court, which allowed Philadelphia, Baltimore and San Diego to pursue their \$12 billion antitrust case as a class.

April 21, 2026 at 12:20 PM By **Alyssa Aquino**



Credit: Dragon Claws/Adobe Stock

Bank of America and JPMorgan Chase couldn't convince the U.S. Supreme Court to review a lower court order allowing American cities to proceed as a class on claims that major financial institutions conspired to rig the interest rates of municipal bond loans.

The justices rejected the banks' petition to review without explanation, as is customary for cases the high court turns away through its order list.

The order, issued Monday, presumably clears the way for proceedings at the U.S. District Court for the Southern District of New York, whose Judge Jesse Furman had approved Philadelphia, Baltimore and San Diego to sue major banks on behalf of a class of “all persons and entities” who paid interest on certain municipal bonds.

The cities are represented by Quinn Emanuel Urquhart & Sullivan; Susman Godfrey; and Wollmuth, Maher & Deutsch. Counsel for the cities declined to comment Tuesday.

Bank of America and JPMorgan are represented by Wilmer Cutler Pickering Hale and Dorr and Covington & Burling, respectively. Counsel for both didn’t immediately respond to Tuesday requests for comment.

The banks, alongside Barclays, Citigroup, Goldman Sachs, Fifth Third Bancorp, The Royal Bank of Canada and Wells Fargo, are accused of conspiring between 2008 and 2015 to rig the interest rates of variable-rate demand obligations.

The obligations are municipal bonds used by local governments to raise revenue. The bonds are long-term, but they carry short-term interest rates that must be reset daily or weekly to the lowest possible rates.

The cities claim that the banks—the remarketing agents who reset the interest rates—fixed the rates to reap higher interest and to prevent the cities from exercising the bonds’ put options, which would force the banks to remarket the bonds. But the banks argue that any discrepancies with the interest rates come down to other market factors, such as the Financial Crisis of 2008-2009.

The cities are seeking \$12 billion in damages.

Bank of America and JPMorgan sought high court intervention December 2025, after the U.S. Court of Appeals for the Second Circuit upheld the class certification order.

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'An Inflection Point': 13 Lawyers Apply to Lead Talc MDL's Next Phase

The applications by lawyers including W. Mark Lanier, Mikal Watts and Christopher Placitella come after a federal magistrate judge disqualified Beasley Allen, whose principal, Leigh O'Dell, had served as co-lead counsel for 10 years.

April 21, 2026 at 10:37 AM By  **Amanda Bronstad**



Photo: Diego M. Radzinski/ALM

What You Need to Know

- On March 26, U.S. Magistrate Judge Rukhsanah Singh disqualified Beasley Allen after finding that another of its talc attorneys violated several of New Jersey's Rules of Professional Conduct.
- Beasley Allen principal Leigh O'Dell had served as co-lead counsel alongside Michelle Parfitt of Ashcraft & Gerel.
- Judges in Pennsylvania and Florida have revoked the pro hac vice status of Beasley Allen attorneys in talc cases, but a California judge planning another bellwether trial rejected Johnson & Johnson's request to do so.

More than a dozen lawyers, including Mikal Watts, W. Mark Lanier and Chris Placitella, applied to replace Beasley Allen's leadership role in the talcum powder multidistrict litigation against Johnson & Johnson.

On March 26, U.S. Magistrate Judge Rukhsanah Singh of the District of New Jersey [disqualified Montgomery, Alabama-based Beasley Allen](#), whose principal Leigh O'Dell served as co-lead counsel since the multidistrict litigation's creation in 2016, after finding that another of its talc attorneys, Andy Birchfield, violated several of New Jersey's Rules of Professional Conduct in partnering with a former Johnson & Johnson attorney to propose a \$19 billion talc settlement. She ordered lawyers to submit applications by April 17 to replace O'Dell.

Among the applicants are Watts of Watts Law Firm in Austin, Texas, who was instrumental in reaching a \$10 billion settlement in 2024 through a Johnson & Johnson subsidiary's bankruptcy that was [later dismissed](#), and Placitella of Cohen, Placitella & Roth in Red Bank, New Jersey, who has served as liaison counsel in the talc multidistrict litigation since its inception.

"There have been many conversations among many people and, I think, as I put in my application, a lot of qualified people, and I guess it really is up to what the court believes are most important at this point in time," Placitella told Law.com.

Watts combined his application with James Onder of OnderLaw in St. Louis, Missouri, who, along with six other firms, collectively represent more than 18,000 talc clients.

"The proponents of the proposed settlement in the recent bankruptcy proceeding agreed to provide a joint leadership filing in the MDL," Watts wrote in an email to Law.com. "We are aligned with many others who represent the vast majority of talc claimants; these women deserve to have their voices heard in this process."

Another candidate is Lanier of The Lanier Law Firm in Houston, who won a \$4.7 billion jury verdict in 2018 against Johnson & Johnson on behalf of 22 women with ovarian cancer, the largest talc award in the nation, which was upheld but lowered to \$2.1 billion on appeal. Christopher Tisi of Levin, Papantonio, Proctor, Buchanan, O'Brien, Barr and Mougey in Pensacola, Florida, also submitted his name, as did David Buchanan of Seeger Weiss in Ridgefield Park, New Jersey, whose partner, Chris Seeger, was appointed as lead negotiation counsel last year in the talc multidistrict litigation.

"This litigation stands at an inflection point," Buchanan wrote in his application. "Mr. Seeger and Mr. Buchanan bring complementary strengths to what this litigation demands."

Lanier told Law.com in an email, "I do think Dave Buchanan is the natural person to take this spot."

Of the 13 lawyers who applied, only three were women, two of whom suggested serving on the plaintiffs' steering committee.

Amanda Klevorn of Burns Charest in New Orleans, the only woman who applied for the co-lead counsel role, did not respond to a request for an interview.

"For the last 10 years, I have committed a substantial portion of my professional career to this important litigation, both behind the scenes working on my individual clients' cases and at the forefront of the MDL," Klevorn wrote. "My experience in mass tort litigation, including this MDL, is vast."

When the talc multidistrict litigation was first created, then-U.S. District Judge Freda Wolfson of the District of New Jersey originally appointed O'Dell and Michelle Parfitt of Ashcraft & Gerel in Washington, D.C., as co-lead counsel. Parfitt remains co-lead counsel.

'The Stakes of This Litigation Are Huge'

The talc multidistrict litigation has grown to nearly 70,000 cases alleging Johnson & Johnson's baby powder and other talc products caused women to get ovarian cancer.

Beasley Allen and Birchfield have appealed Singh's order to U.S. District Judge Michael Shipp of the District of New Jersey, who took over the talc multidistrict litigation in 2023. They also have sought a stay of her order, citing the disruption that replacing Beasley Allen, which claims to represent 435 women in New Jersey state courts and 5,500 in the multidistrict litigation, could have on the talc litigation.

They insisted that Singh misinterpreted New Jersey's Rules of Professional Conduct. But Singh relied heavily on the New Jersey Appellate Division's [Feb. 6 ruling](#) disqualifying Beasley Allen in the talc cases in New Jersey state courts. That ruling, which Beasley Allen appealed to the New Jersey Supreme Court, reversed Atlantic County Superior Court Judge John Porto's [2024 decision](#) rejecting disqualification.

Johnson & Johnson, which brought the disqualification motions in both federal and state courts in New Jersey, has moved to revoke the pro hac vice status of all Beasley Allen attorneys in other states, including Florida, California, Pennsylvania and Illinois.

Judges in Florida and [Pennsylvania](#), where O'Dell won a [\\$250,000 talc verdict](#) against Johnson & Johnson on Feb. 13, have granted those requests this month.

Los Angeles Superior Court Judge Theresa Traber, however, who is overseeing the talc cases in California state courts against Johnson & Johnson, refused to revoke the pro hac vice status of

O'Dell, Birchfield and at least eight other Beasley Allen attorneys.



Andy Birchfield principal with Beasley Allen Law. Courteys photo

"The order of a New Jersey state or federal court is not binding on this court, particularly where the order is seemingly not even final," the judge wrote in her April 10 decision. "In summary, even if the court were to take all of defendants' contentions about Beasley's wrongdoing as true, there is no evidence that this alleged wrongdoing would have any effect on the litigation going forward, making disqualification a punitive sanction and inappropriate."

She chastised Johnson & Johnson's lawyers for disclosing the issue

"astonishingly and inexcusably late" and not until after the first bellwether trial in the California state court proceedings, which ended on Dec. 12 with a [\\$40 million verdict](#). Birchfield was co-lead counsel in that trial and a second bellwether trial led by Beasley Allen is planned within a month.

Johnson & Johnson's move was made, she wrote, for an "improper tactical purpose."

"The stakes of this litigation are huge, and the parties' resources are substantial," she wrote. "If Beasley's representation of parties adverse to defendants really posed any danger whatsoever to defendants' interests, the court has no doubt that defendants would have raised it before now."

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Philadelphia judge shuts Beasley Allen out of talc cases | Pennsylvania Record

 [legalnewsline.com/pennsylvania-record/philadelphia-judge-shuts-beasley-allen-out-of-talc-cases/article_3c8324ce-0ce1-4f9c-a943-33668441f83a.html](https://www.legalnewsline.com/pennsylvania-record/philadelphia-judge-shuts-beasley-allen-out-of-talc-cases/article_3c8324ce-0ce1-4f9c-a943-33668441f83a.html)

John O'Brien, John O'Brien

April 21, 2026

Philadelphia City Hall in Downtown Philadelphia, home to the Court of Common Pleas
Photo: Chris Krug / The Center Square

PHILADELPHIA – A Philadelphia judge is the latest to kick the mass tort law firm Beasley Allen off cases alleging products like Baby Powder cause cancer, revoking the permission he once granted its attorneys to practice in the court.

Judge Joshua Roberts issued that ruling April 17, a week after the New Jersey Supreme Court affirmed disqualification of Beasley Allen from more than 3,600 lawsuits in that state. And a federal judge in New Jersey has issued a similar decision to remove Beasley Allen as lead counsel in the consolidation of more than 60,000 cases.

Beasley Allen was found to have strategized too closely with a former lawyer for Johnson & Johnson on a plan to craft a mass settlement of claims alleging products like Baby Powder contained asbestos.

"Doubt created by infidelity can never be cured, and the Court should not have to require a party (here, J&J) – even a multinational highly sophisticated company – to overlook infidelity so that an opposing party may have counsel of their choice, especially when the offending firm could have easily avoided the harm complained of," wrote Roberts, who oversees [176 talc lawsuits](#).

Though Beasley Allen said in court documents it is "likely to prevail in its forthcoming appeal" of the federal disqualification to the Third Circuit, lawyers at other firms have begun filing applications to take over as lead counsel.

This battle could have been avoided. Beasley Allen led the fight against Johnson & Johnson's plan to settle claims for \$9 billion in bankruptcy court. The firm was successful and forced J&J back to New Jersey federal court, where Beasley Allen hoped for jackpot verdicts that would boost its clients' position for larger settlements than the previous plan would have provided.

But along the way, it and Birchfield collaborated with a former J&J lawyer on a mass settlement plan – an arrangement J&J called “shocking and deeply troubling.”

New Jersey’s Appellate Division found Beasley Allen violated professionalism rules when it consulted with James Conlan, who had represented Johnson & Johnson in court, on a mass settlement of talc claims.

The ruling escalated the disqualification push in federal court, where a [disgruntled former client of the firm](#), Aletha Wilson, said Beasley Allen tried to trick her into signing a retroactive power of attorney giving the firm the power to vote against the \$9 billion bankruptcy plan Johnson & Johnson floated to settle talc litigation against it.

Beasley Allen voted against the bankruptcy plan on behalf of some 11,500 clients, claiming they were better off negotiating a settlement or suing in court. Wilson says she stood to gain money under the bankruptcy plan but nothing if she sued in court, since plaintiff experts back claims Baby Powder can cause ovarian cancer, but not uterine cancer.

Conlan was a partner at Faegre Drinker Biddle & Reath who defended J&J in talc litigation. He left the firm to start Legacy Liability Solutions, where he attempted to buy the company’s talc liabilities and opposed the company’s ultimately unsuccessful plan to settle all cases in bankruptcy court.

He worked with Beasley Allen’s Birchfield to craft a settlement outside of the bankruptcy process, which was J&J’s preferred avenue. Conlan and the firm wanted the talc liabilities bundled to an offshoot company that would be sold to him.

Conlan even wrote an [op-ed in Bloomberg](#) touting that strategy. Court records show 8,000 Beasley Allen clients who, through Beasley Allen, voted against J&J’s bankruptcy settlement but never actually told the firm what their position on that plan was.

“There can be no question that Mr. Birchfield and Mr. Conlan, an ‘ex-lawyer’ with significant experience in the complexities of mass tort litigation, knew or should have known of their professional obligations, and that their collaboration (i) jeopardized Mr. Conlan’s duty of confidentiality to J&J; and (ii) potentially allowed Mr. Birchfield access to that information,” Judge Roberts wrote.

"Mr. Birchfield and Beasley Allen ratified Mr. Conlan's conduct by using that information in mediations and/or to negotiate directly with J&J."

Beasley Allen has defended its conduct, writing in the federal court that it never employed or controlled Conlan. Affirming its disqualification would chill participation in mediation efforts, the firm said, and discourage "creative approaches to dispute resolution."

The federal talc MDL is one of the largest in the country and was organized in 2016. There are more than 67,000 claims, and the promise of a large payout when it is resolved led to attorneys spending on advertising and some firms taking money from litigation funders who were promised a share of the recovery.

Still pending are motions to disqualify experts who testify there is asbestos in talc, the talc made its way into plaintiffs' bodies and it caused their cancers. J&J calls [those claims "junk science,"](#) and a ruling preventing those experts from telling it to jurors could doom the cases.

J&J has won plenty of defense verdicts in trials that hinge on expert testimony regarding whether there is asbestos in the talcum powder, but when it loses, jurors aren't shy about delivering massive verdicts. In December, one woman won [\\$1.5 billion in Baltimore](#), and two women in Los Angeles [won \\$40 million](#).

2nd Uber bellwether verdict favors plaintiffs with sharply lower damages

DJ [dailyjournal.com/articles/390939-2nd-uber-bellwether-verdict-favors-plaintiffs-with-sharply-lower-damages](https://www.dailyjournal.com/articles/390939-2nd-uber-bellwether-verdict-favors-plaintiffs-with-sharply-lower-damages)

John C. Taylor, a partner at Taylor & Ring

For the second time, plaintiffs won a verdict against Uber in the multidistrict litigation over allegations its drivers assaulted passengers, but the award was \$5,000 this time, compared with \$8.5 million in the first case.

In response to Monday's verdict, Uber pointed out that the jury in this case found the company liable for battery and not sexual assault. The company said that it has a strong case on appeal.

According to John C. Taylor, a partner at Taylor & Ring who in February tried the first state court bellwether case of a similar JCCP proceeding in Los Angeles, observers should think twice before calling the smaller verdict a win for Uber.

"In this trial, the amount of damages that the jury was asked to consider ... was for the 24 hours after the assault," Taylor said in an interview Tuesday.

The second bellwether plaintiff was represented by Williams Hart & Boundas LLP and Sellers, Ayers, Dortch & Lyons, PA, which could not immediately be reached for comment. *In re: Uber Technologies, Inc., Passenger Sexual Assault Litigation*, 3:23-md-03084 (N.D. Cal., filed Oct. 4, 2023).

Unlike the first MDL bellwether trial, Taylor emphasized, the case on trial last week was selected by Uber.

For the plaintiffs to win the \$5,000 verdict given the constraints on the damages and that Uber selected the case, "that's a great result," Taylor added.

However, Uber said in a statement, "The jury's award here should further bring these cases back to reality, as it represents a tiny fraction of previous demands. That said, we believe the jury was once again incorrectly instructed on the question of liability and have strong grounds for appeal on that important point."

Taylor had a different take, though.

"For Uber to try and spin either of these cases as wins or good results for them is wishful," Taylor said.

Before the second trial, Senior U.S. District Judge Charles R. Breyer granted the plaintiffs summary judgment on the question of whether Uber was liable, should the jury find an assault took place. He based the decision on duties of a common carrier under North Carolina law. Because each bellwether trial took place near the alleged incident, Breyer presided over the trial from North Carolina as opposed to his normal San Francisco courtroom.

According to Arash Homampour, a Los Angeles area plaintiffs' lawyer, the ruling likely played a role in the verdict.

"Liability flowed from a pretrial ruling classifying Uber as a common carrier under North Carolina law, based on Uber's holding itself out as a transportation provider, its control over ride matching and routes, and its responsibility for passenger safety. Common carrier status carries a non-delegable duty to transport passengers safely, so the jury had only to decide whether the battery occurred," Homampour said.

Homampour said that Breyer's ruling could impact the rest of the cases in the MDL.

"The ruling and result now stand as a roadmap for the thousands of cases pending in the MDL," Homampour said.

Taylor also said the outlook isn't getting any better for Uber, with a plaintiffs' pick coming up as the next bellwether trial. Going forward, Uber will struggle to find more favorable cases than the one decided Monday, he said.

"I don't think you're going to find cases where the damages are constrained to 24 hours," Taylor said.

#390939

Daniel Schrager

Daily Journal Staff Writer

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Jury Awards \$5K Verdict in Second Uber Sexual Assault Bellwether Trial

A North Carolina federal jury awarded the verdict in a second bellwether trial in the sexual assault multidistrict litigation against Uber.

April 20, 2026 at 05:05 PM By  **Amanda Bronstad**



Photo: Diego M. Radzinski/ALM

What You Need to Know

- The verdict in North Carolina federal court was far less than an Arizona jury's \$8.5 million award in the first-ever sexual assault trial against Uber in the MDL.
- The plaintiff alleges that, during a 2019 ride in Raleigh, her Uber driver put his hand on her thigh and asked if he "could keep it with him" before she escaped out the passenger side door.
- The driver, Jeffrey Richardson, had denied the assault allegations.

A North Carolina federal jury awarded \$5,000 on Monday to a woman who claimed her Uber driver had sexually assaulted her.

The verdict, which followed a trial in the U.S. District Court for the Western District of North Carolina against Uber Technologies Inc., was far less than an Arizona jury's [\\$8.5 million award](#) on Feb. 5 in the first-ever sexual assault trial against Uber in the multidistrict litigation.

"The jury's award here should further bring these cases back to reality, as it represents a tiny fraction of previous demands," an Uber spokesman said. "That said, we believe the jury was once again incorrectly instructed on the question of liability and have strong grounds for appeal on that important point."

Kirkland & Ellis partner Allison Brown in Philadelphia represented Uber in the trial and did not respond to a request for comment.

The plaintiff, Brianna Mensing, alleges that, during a 2019 ride in Raleigh, her Uber driver put his hand on her thigh and asked if he "could keep it with him" before she escaped out the passenger side door. Uber previously noted that the alleged incident was never reported to the company or law enforcement and came up three years later, when the lawsuit was filed.

"Today marks the second federal jury this year to listen to the testimony of a courageous woman taking on Uber, one of the world's most powerful companies, and find her assault claims credible," wrote co-lead plaintiffs' attorneys in an emailed statement. Those attorneys include Sarah London of San Francisco's Girard Sharp; Rachel Abrams of Peiffer Wolf Carr Kane Conway & Wise in San Francisco; and Roopal Luhana of New York's Chaffin Luhana.

"Most importantly, this verdict is a testament to the bravery of Brianna Mensing and a clear signal that Uber cannot escape responsibility when its drivers assault the passengers who trust it," the statement continued. "As Ms. Mensing testified, 'I'm not after anybody's money'—her only motivation was to hold Uber accountable for its driver grabbing her thigh, which was achieved today."

As to the low damages figure, the statement noted, "The \$5,000 in damages reflects the fact this jury was instructed to award damages only for a single day. At trial, Uber attempted to drag her personal history into the courtroom and use it to suggest she was not worthy of belief. It was shameful, and this jury saw it for what it was."

The plaintiff's team also included Williams Hart & Boundas, Anapol Weiss and Simmons Hanly Conroy.

The [trial](#), which began April 15, addressed a new legal issue in the sexual assault litigation against Uber: whether Uber is considered a “common carrier.” After U.S. District Judge Charles Breyer of the Northern District of California ruled that Uber was a “common carrier” under North Carolina law, a jury had to decide whether a sexual assault by its driver had occurred, rendering it liable, and, if necessary, determine the amount of damages.

The jury, in Monday’s verdict, found the driver, Jeffrey Richardson, had committed battery against the plaintiff.

Richardson had denied the assault allegations.

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

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News | **Mass Torts**

New Uber Sexual Assault Trial Underway in North Carolina Federal Court

Sarah London of San Francisco's Girard Sharp is leading a plaintiff's team that includes Williams Hart & Boundas, Anapol Weiss, Chaffin Luhana, Peiffer Wolf Carr Kane Conway & Wise and Simmons Hanly Conroy.

April 20, 2026 at 11:55 AM By  **Amanda Bronstad**



Sarah London of San Francisco's Girard Sharp. Courtesy photo

A second bellwether federal sexual assault trial is underway against Uber Technologies Inc., which has moved to toss a lead plaintiffs' lawyer from the litigation after he called one of its attorneys a "pedophile" and a "rapist."

The trial, which takes place in the U.S. District Court for the Western District of North Carolina, follows [an \\$8.5 million verdict](#) on Feb. 5 in the first bellwether case in the sexual assault multidistrict litigation against San Francisco-based Uber. In that District of Arizona case, jurors found Uber was liable for the acts of the driver, whom plaintiff Jaylynn Dean alleged raped her

during a 2023 ride in Tempe, Arizona. Jurors did not find Uber negligent or that its safety systems were defective.

The North Carolina jury heard opening statements last week. The trial is expected to last eight days. The plaintiff, referred to in court records as WHB823, alleges that, during a 2019 ride in Raleigh, her Uber driver put his hand on her thigh and asked if he “could keep it with him” before she escaped out the passenger side door.

“This case involves a woman who was relying on Uber for safe transportation,” the plaintiff’s lawyer, Sarah London of San Francisco’s Girard Sharp, told Law.com. “She was groped by her Uber driver. It was terrifying. She was fearful of what more he was going to do. She managed to escape and get into her house.”

London is leading a plaintiff’s team that includes Williams Hart & Boundas, Anapol Weiss, Chaffin Luhana, Peiffer Wolf Carr Kane Conway & Wise and Simmons Hanly Conroy.

Kirkland & Ellis partner Allison Brown, in Philadelphia, is representing Uber.

In a statement emailed to Law.com, Uber said, “This incident was never reported to Uber or law enforcement, and only came to light three years later when this lawsuit was filed. Since then, the case has continued to narrow. Following the verdict in Phoenix, where the jury rejected claims that Uber acted negligently or maintained defective safety systems, the plaintiffs have now abandoned those same allegations in North Carolina and withdrawn their request for punitive damages.”

Uber’s focus on the plaintiffs’ lawyers isn’t just a trial.

Last month, its attorneys at Kirkland & Ellis, O’Melveny & Myers and Shook, Hardy & Bacon filed a sanctions motion against Daniel Grimes of San Francisco’s Levin Simes, one of the plaintiffs lawyers in the multidistrict litigation in the Northern District of California, following several remarks he made during a March 9 meeting with Shook Hardy & Bacon partner Christopher Cotton and associate Ricky Brown, both in Kansas City, Missouri.

In particular, Simes asked Cotton if he was a “pedophile,” compared him to a “rapist” and referred to him as a “cock-sucker,” “dirt bag,” “scum bag” and “idiot.” He also asked if Cotton and Brown were engaged in sexual conduct, at one point asking Brown, “Is Chris [Mr. Cotton] touching you right now?” and made inappropriate references to Cotton’s daughter.

At some point during the two-hour meeting, Levin Simes attorney Laurel Simes suggested he “take a break,” according to the motion.

Uber’s lawyers sought his removal from the multidistrict litigation entirely, citing previous remarks he’d made at meetings with Uber’s counsel, such as, “You guys have your heads up your asses.”

“Mr. Grimes’ conduct is beyond the pale,” Kirkland & Ellis San Francisco partner Laura Vartain wrote. “It is also disqualifying.”

William Levin of Levin Simes met with Cotton and Vartain the day after the meeting to discuss Grimes’ conduct, which he did not condone and acknowledged deserved consequences. He attached those communications in a letter to Breyer.

In a March 25 response to Uber’s motion, Levin said he had “taken prompt and meaningful corrective action” and suggested limiting Grimes’ role to exclude any interactions in court, in depositions or on briefs. He said he had consulted with ethics expert Richard Zitrin, a professor at the University of California School of Law, San Francisco.

Grimes also apologized in an email to Cotton, admitting it was a “bad look” and “not appropriate or professional.”

“By way of explanation, if not excuse, I have been suffering from a chronic condition for the past year and a half that causes my nervous system to leap into fight-or-flight mode very quickly, and it is very difficult to get it to disengage,” he wrote.

Simes, responding to an email sent by Law.com to her, Levin and Grimes, declined to comment.

U.S. District Judge Charles Breyer, who is overseeing the sexual assault multidistrict litigation against Uber, has set a May 8 hearing on the motion.

Uber also has filed the same motion in the related sexual assault litigation in California state courts before San Francisco Superior Court Judge Ethan Schulman, who oversaw the first sexual assault trial in the nation last year. On Sept. 30, jurors concluded that Uber was negligent in failing to provide safe rides to women but not liable for plaintiff Jessica C.’s sexual assault by one of its drivers.

‘He Adamantly Denies This Took Place’

This month’s trial addresses a new legal issue in the sexual assault litigation against Uber: whether Uber is considered a “common carrier.” If so, the jury must decide whether a sexual assault by its driver had occurred, rendering it liable and, if necessary, determine damages. Uber’s lawyers filed a summary judgment motion to toss the case based on the fact that it wasn’t a “common carrier” but, rather, a technology company that connects passengers to drivers.

Uber, Brown told Breyer at an April 2 pretrial hearing, doesn’t “own or operate vehicles.”



Allison Brown, with Kirkland & Ellis.

“Uber does not carry riders,” she said. “It connects them to independent drivers that provide transportation services.”

Andrew Kaufman of Girard Sharp countered that Uber picks the driver, controls the ride and vouches for safety, especially in its advertising.

“Uber holds itself out and is a transportation business,” he told Breyer at the hearing.

Plaintiffs lawyers filed their own summary judgment motion to have Breyer declare that Uber is a “common carrier,” which Breyer did in an April 10 ruling.

“The undisputed factual record in this litigation demonstrates that Uber holds itself out to the public as a transportation provider through its ubiquitous advertising as well as the control it exerts over Uber rides and the safety of its passengers,” he

wrote. “Further, as a common carrier Uber owes a non-delegable duty to plaintiff and other riders to transport them safely, and that duty is breached when an Uber driver assaults a passenger—regardless of whether the driver is properly classified as Uber’s employee or an independent contractor under North Carolina law.”

Meanwhile, the April 12 deposition of the driver, Jeffrey Richardson, was filed under seal.

At this month’s pretrial hearing, Brown told Breyer the driver had been hospitalized for the past week and a half with sepsis following a diabetes amputation and, at the time, had yet to be deposed.

“Our hope is to get his testimony in whatever way we can,” she told the judge. “He adamantly denies that this took place.”

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Supreme Court Denies Cert in Class Action Targeting Former NY Governor's Nursing Home Policy

Federal appeals against former New York Gov. Andrew Cuomo have been exhausted concerning his controversial nursing home patient transfer policy. His spokesman suggested the 15,000-plus deaths had been "manipulated and politicized."

April 20, 2026 at 03:27 PM By  **Brian Lee**



Andrew Cuomo

The U.S. Supreme Court on Monday denied certiorari in a wrongful death class action against former New York Gov. Andrew Cuomo and members of his administration concerning his COVID-era patient transfer policy.

Its denial of *Arbeeney v. Cuomo* put an end to all nursing home cases against the former governor, who was found to have governmental qualified immunity, but was nevertheless an issue which tailed him during his failed bid for New York City mayor in 2025.

The Supreme Court didn't explain its denial, but it typically rejects cases when there wasn't a split among lower court panels, and if the issue does not involve a significant legal principle.

James Butera, a partner in Meeks, Butera & Israel of Washington D.C., which represented the plaintiff Arbeeney in the case, which was consolidated with other parties, told the Law Journal and

law.com he was disappointed.

"Suing the government is always uphill; they start with immunity rights," Butera said.

The state's March 2020 policy directed nursing homes to readmit residents who had been discharged from hospitals after they were treated.

It also prevented returning patients from being tested, provided they were deemed medically stable.

More than 9,000 COVID-positive patients were transferred to nursing homes, and more than 15,000 patients in facilities ultimately died of COVID.

Cuomo's administration had said the short-lived policy was set in place to alleviate hospital capacity during the health emergency's initial surge.

Daniel Arbeeny, of Brooklyn, alleged that Cuomo's nursing home policy caused his 89-year-old father, Korean War veteran Norman Arbeeny, and others like him to die.

Butera told Law.com that one "would have thought that with 15,000 attributable deaths here, not to mention the well-documented cover-up of lies and so forth," that federal courts would have allowed the case to proceed to depositions and demands for discovery of documents.

"I'm pretty disappointed that it didn't get that far," said Butera, referencing a state comptroller's revelation that the state's health agency, under Cuomo, undercounted at least 4,100 COVID-related nursing home deaths, reporting that "misled the public."

Cuomo, who was represented by Rita Glavin of Glavin PLLC, issued a statement through his spokesman Richard Azzopardi.

"For six long years," Azzopardi said, "families have had to deal with unimaginable losses of loved ones from COVID, and it doesn't get easier, especially when that pain was manipulated and politicized."

"Every investigation and every court to examine these claims has reached the same conclusion: there was no wrongdoing by Gov. Cuomo or his administration. Today, the Supreme Court joins that list."

Azzopardi added: "Independent reviews—from the Department of Justice Inspector General, the Manhattan District Attorney, the New York State Attorney General, and the state's COVID After Action Report—found New York's nursing home guidance was consistent with federal policy, and

aligned with actions taken in Democratic and Republican states across the country during a once-in-a-century pandemic. The facts are settled, and the highest court has spoken."

In November, the U.S. Court of Appeals for the Second Circuit affirmed a trial court holding that the family members of nursing home residents who died failed to prove that Cuomo and other former state officials knew the state's policy was illegal.

The federal panel said the plaintiffs' cases identified the right to be free from cruel treatment involving very different, inapposite scenarios, such as kidnapping and torture by military forces, which it said has never been applied to a public-health crisis.

Also dismissed were §1983 color of law claims against the hospital lobby, Greater New York Hospital Association, and Northwell Health.

The U.S. District Court for the Eastern District initially dismissed the case in January 2025, saying Cuomo, his then-secretary Melissa DeRosa, and former state health commissioner Howard Zucker were shielded by the immunity doctrine protecting government officials from damages, provided their conduct didn't violate clearly established legal or constitutional rights.

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Federal Judges Discuss the Future of Third-Party Litigation Funding in Their Courtrooms

Brian Fitzpatrick, a law professor at Vanderbilt Law School, moderated a panel with Delaware District Court Chief Judge Colm Connolly and SDNY Judges J. Paul Oetken and Arun Subramanian at the NYU Law Review's "Charting the Future of Litigation Finance" event.

April 20, 2026 at 04:16 PM By  **Marianna Wharry**



Credit: Alex/Adobe Stock

Third-party litigation funding has already made its way into the courtroom, but rules governing how parties disclose this information have yet to catch up, three federal judges said at a New York University Law Review panel April 17.

The funding strategy has presented a conundrum for the legal industry as experts debate if courts should mandate funding disclosures, if Federal Rules of Civil Procedure need to be amended, or if judges should have the final say.

Brian Fitzpatrick, a complex litigation researcher and law professor at Vanderbilt Law School, moderated a panel with U.S. District Chief Judge Colm Connolly of the District of Delaware and U.S. District Judges J. Paul Oetken and Arun Subramanian of the Southern District of New York on April 17 in a broad ranging conversation about the practice at the NYU Law Review's "Charting the Future of Litigation Finance" event.

Of the three judges on the panel, Connolly is the only one who has acted in response to the issue. He said potential conflicts of interest led to him [issuing a standing order](#) in 2022 requiring that parties include a disclosure statement about their funding modeled on Federal Rule 7.1 of Civil Procedure. His order requires each party to provide the name of every owner, member and partner of the party, proceeding up the chain of ownership until the name of every individual and corporation with a direct or indirect interest in the party has been identified.

"I'm not the first judge to require that make that requirement, but I did it by standing order," Connolly said. "Delaware [is] ... a forum for complex innovation, [and] we have a tradition of experimenting on a judge-by-judge basis with practices, as opposed to codifying them in the local rules. So it gives us flexibility when it comes to case management."

Connolly said he issued the order to keep each party's interest as the focus of the case rather than his own potential blind spot. Both Oetken and Subramanian said they have not adopted Connolly's practice or similar guidelines in their courtroom, mainly because it has not yet come up in their cases. Subramanian said he is not entirely against third-party funding, as he does believe there are honest brokers operating in the space, but agreed with the panel that some "bad apples" have discredited the practice.

"When there's other additions of frivolous litigation or other bad practices, judges have the tools available that can be used to address those things," Subramanian said. "When it becomes more of a systematic concern ... then it's something that we would look at, but I certainly haven't run into it in that way."

How courts address third-party litigation could be similar to how the judicial system is responding to how litigants use artificial intelligence, Subramanian said. The lack of overarching guidance has led judges to take different approaches, but he said seeing how these actions play out could shape future court administration rules.

"I don't know that there's a consensus on how [artificial intelligence use] should be approached, but various judges are taking different approaches to it," Subramanian said. "There are probably other judges who have similar orders or maybe different ones, ... and I think we're going to learn from the experience under those rules how these issues should be handled."

As for if we could see a national rule governing how financial disclosures are done in each court, the judges split on what a rule like that could look like and how it would be implemented. Oetken said he sees litigation funding on different scales in his courtroom and believes it will require a more nuanced discussion over a blanket rule. He did acknowledge that commercial litigation funding can be more sophisticated with more room for abuse, but said he does not see the practice as entirely unfavorable.

"My initial thought was: 'Why would I care if somebody's uncle was lending them money to hire a lawyer to pursue whatever the litigation is?'" Oetken said. "I don't particularly care. It's not something that normally I think about needing to know, but the conflict issue is something that I'll need to think [about] more."

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Class Action

Manage Newsletters

MoloLamken Proposed as New Lead Counsel in Financial Aid Case

April 21, 2026, 9:47 AM PDT

Summary by Bloomberg AI

AI Generated



- MoloLamken LLP has been requested as the new lead counsel in a financial aid price-fixing case after a federal judge removed a different firm for misleading the court on a litigation financing arrangement.
- The addition of MoloLamken LLP would help stabilize a case alleging that defendant universities colluded to fix financial aid over a 20-year period by using the same methodology to calculate the financial need of approximately 200,000 students.
- A hearing on the matter is set for April 24, with the case set for trial in November, according to a motion filed by plaintiffs' counsel Berger Montague PC and Freedman Normand Friedland LLP.

MoloLamken LLP has been requested as the new lead counsel in a financial aid price-fixing case, after a federal judge removed a different firm from the case for misleading the court on a litigation financing arrangement.

The firm and name partner Steven F. Molo "will ensure that the proposed Class has excellent representation" that satisfy the rules governing class actions, according to a motion filed Monday by plaintiffs' counsel Berger Montague PC and Freedman Normand Friedland LLP in the US District Court for the Northern District of Illinois. Those two firms have requested to be co-counsel.

The addition of Molo, they said, would help stabilize a case alleging that defendant universities colluded to fix financial aid over a 20-year period by using the same methodology to calculate the financial need of approximately 200,000 students. The case is set for trial in November.

Judge Matthew F. Kennelly in late March removed attorneys associated with Gilbert Litigators & Counselors for candor issues and gave the plaintiffs 21 days to file a motion for new class counsel.

Gilbert Litigators made "untruthful and misleading statements" to the court about outside funding supporting the plaintiffs' case, Kennelly said then.

"The statements by Gilbert would have misled any reasonable reader to believe that, at the time GLC's work was performed, it risked total nonpayment for its work," the court said. "The truth is that it didn't. If the case had been dismissed that day, Gilbert would have walked away with the funder's millions in hand."

Eric Cramer, chairman of Berger Montague, said in a statement to Bloomberg Law that Molo and his team at MoloLamken "uniquely combine unparalleled trial skills with deep antitrust expertise."

"They are the right partner to join us in trying this important case before a jury in Chicago," he said.

Molo's firm serves as class liaison counsel for the direct-purchaser class in an antitrust case against providers of credit scores as well as counsel for the would-be class of Apple Watch purchasers in litigation alleging that Apple unlawfully monopolized the market for smartwatches.

His firm also represents plaintiffs that objected to the NCAA's court-approved \$2.8 billion settlement with student-athletes over player pay.

Molo said in a statement Tuesday that his firm would be "honored to serve as lead counsel in this important case."

In January, Kennelly denied summary judgment to five nonsettling defendants—Cornell, Notre Dame, Penn, Georgetown, and MIT. Other elite universities including Vanderbilt, Columbia, Brown, and the California Institute of Technology, have settled out of the case.

The court will hold an April 24 hearing on the matter.

The defendant universities are represented by firms including WilmerHale LLP.

The case is Corzo v. Brown Univ. , N.D. Ill., No. 1:22-cv-00125, 4/20/26 .

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FT PROFESSIONAL

Oil & Gas industry**Shell faces fresh climate court test case**

Dutch non-profit activist group makes push to halt new oil and gas production



Shell has been fighting the non-profit for eight years on the question of whether it should slash emissions by 45% by 2030, relative to 2019 levels © Reuters

Kenza Bryan in London

Published 6 HOURS AGO



A Dutch activist group in a long-running battle with Shell over its greenhouse gas emissions has initiated a fresh court case aimed at halting drilling for new oil and gas.

The case is a test of an earlier finding by Dutch courts that new oil and gas projects by Shell may conflict with international climate agreements.

Friends of the Earth Netherlands, known as Milieudefensie, said in its summons to [Shell](#) that it was drawing on climate science to demand the company stop bringing new oil and gasfields into production.

Shell is set for a boost in earnings from its oil trading business this year thanks to the Iran war and retreated last year from some of its clean-energy investments.

The energy company has been fighting the non-profit group for eight years on the question of whether it should slash emissions by 45 per cent by 2030, relative to 2019 levels. It is preparing for a new hearing on this question in the Dutch Supreme Court next month.

Shell has long argued that any cuts to its own oil and gas production would simply be replaced by other companies increasing output.

The latest claim was “unrealistic, unreasonable and fundamentally misplaced”, Shell said, adding that [oil and gas](#) would play a role in energy systems for decades to come.

In 2024, [Shell won an appeal](#) against a landmark order for it to slash greenhouse gas emissions. This was seen as a victory for energy companies’ ability to ward off attacks by activists in court.

The judge in the first case brought by Milieudefensie highlighted that Shell did have an obligation to limit CO₂ emissions and said the company should make an appropriate contribution to the 2015 Paris climate accord, where countries agreed to cap global warming ideally at 1.5C above pre-industrial levels or well below 2C.

The Dutch activists said they were drawing on this judgment to bring Shell back to court for a second case.

Shell switched its headquarters from the Netherlands to the UK in 2022 but has a secondary listing in Amsterdam.

Frans Everts, president-director at Shell Netherlands, said: “We are confident in our legal position and committed to delivering a balanced energy transition — one that considers energy security, affordability and sustainability.”

But Milieudefensie said clean energy investments could protect Europe’s independence from fossil fuel supply shocks. “The sun is not blocked by a war and the wind keeps blowing, regardless of who holds political power,” said Donald Pols, director of Milieudefensie.

A handful of [activists have remained tenacious](#) in pursuing legal claims against oil and gas companies, despite hostility against climate action led by the US under President Donald Trump.

This week environmental groups sued the Trump administration in an attempt to stop a \$5bn BP deepwater drilling project in the Gulf of Mexico.

Climate Capital

Where climate change meets business, markets and politics. [Explore the FT's coverage here.](#)

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The Shadow Docket Is Roberts' Disappointing Legacy: Noah Feldman

April 21, 2026, 4:30 AM PDT

Summary by Bloomberg AI

AI Generated



- Chief Justice John Roberts was the driving force behind the rise of the Supreme Court's emergency docket as a powerful tool to empower the activist conservative majority.
- Leaked memos show Roberts' explanation for using the emergency docket in the 2016 environmental case of *West Virginia v. EPA*, including his support for the major questions doctrine.
- The convergence of the emergency docket and the major questions doctrine will define the legacy of the Roberts Court, which has used these tools to block executive actions and define the court's conservative activism.

Chief Justice John Roberts was the driving force behind the rise of the Supreme Court's emergency docket as a powerful tool to empower the activist conservative majority – that's the main takeaway of a cache of memos leaked to the New York Times. Roberts' immediate motivation was to enforce the major questions doctrine, another tool of conservative activism that he has made his signature contribution to the court's jurisprudence. In retrospect, the convergence between the emergency docket and the major questions doctrine was no coincidence. Taken together, the docket and the doctrine will define the legacy of the Roberts Court.

It was already public knowledge that the 2016 environmental case of *West Virginia v. EPA* marked the first time the Supreme Court used its emergency powers in a new way that has since become standard. To simplify, the court broke precedent by issuing an order blocking the Obama administration's Clean Power Plan from going into effect. The court did so even though a challenge to the legality of the Environmental Protection Agency's plan hadn't yet been addressed by the US Court of Appeals for the DC Circuit – and even though the appellate court had turned down the petitioner's request to block the regulation in the meantime.

What makes the leaked memos newsworthy is that, when the Supreme Court issued its order in the emergency docket in 2016, it didn't give an explanation. In the memos, you can see Roberts giving his explanation; the support he received from Justice Samuel Alito; the pushback from the liberal justices; and the basis for the decisive vote cast by Justice Anthony Kennedy.

In his memo to the other justices recommending the new use of the emergency docket, Roberts did not acknowledge that anything fundamentally new would be happening if the court granted the request to stop the Clean Power Plan from going into effect. He just recited the ordinary test the court uses to determine whether a stay is justified, which includes a reasonable probability that four justices would vote to hear the case; a fair prospect that a majority of the court would then reverse the decision below; and a likelihood of irreparable harm to the applying party.

Applying those factors, the chief justice prefigured privately the major questions doctrine that he would deploy publicly when the Supreme Court ultimately decided the case six years later. According to that doctrine, the justices can and should block the executive branch when it proposes a new or novel interpretation of an old statute to make a significant change in its regulatory authority without clear congressional authority.

Then, equally important, the chief justice insisted that the industry actors who were seeking the stay would experience irreparable harm if they had to wait for the DC Circuit to rule on the case. His rationale was that industry would have to start preparing for new performance standards right away, even though the legal rules would not go into effect until at least 2022. "Given the long lead times and high capital expenditures required for the construction of new plants," he wrote, "once a utility takes steps to comply with the rule, its actions are not likely to be undone."

Justice Stephen Breyer, ever the pragmatist, wrote back to the chief proposing a modest compromise: to deny the stays but reassure the industry that power companies were entitled to extensions under the regulation.

After Roberts disagreed, Justice Elena Kagan wrote a frank and clear memo explaining that it would be unprecedented to block the regulation given that the DC Circuit had already refused the stay and was considering the case. While she was at it, Kagan objected to Roberts' major-questions line of argument and rejected the idea of an irreparable harm to the industry actors.

Ultimately, the decision came down to Kennedy, as many did at that time in the history of the court. In a two-sentence memorandum, Kennedy said simply that he expected that the Supreme Court would grant the stay anyway four to six months later, when the DC Circuit would have ruled. "Fairness to the parties counsels that we should grant it now," he wrote.

It seems probable that in 2016, Roberts did not fully anticipate just how important – and how controversial – the emergency docket would soon become. Rather, he was concerned about the core issue that lay behind his major questions doctrine: his fear that the executive branch could use the tools of statutory interpretation to bring about major policy changes, as the Obama administration had done with the Clean Power Plan. Since then, the doctrine – now called “MQD” by court-watchers – has become Roberts’ most powerful tool. It’s also the court’s most effective activist doctrinal tool to block executive action.

Mostly that activism has been conservative. In addition to using MQD in 2022 to overturn the Clean Power Plan, the court relied on it the same year to block the Covid-era vaccine-or-test mandate issued by the Occupational Safety and Health Administration. Then, in 2023, the court’s conservative majority used it to block the Biden administration’s student loan forgiveness program.

More recently, Roberts wrote the opinion for the court using MQD to block President Donald Trump’s tariffs. This was an important showing that the doctrine could be used against Republican presidents and not only against Democratic ones. But it’s noteworthy that the court didn’t use the emergency docket to stay the tariffs before hearing that case, apparently considering hundreds of billions of dollars in tariffs not to count as irreparable injury for those who paid them.

History will see the emergency docket and MQD as twin drivers of the Roberts court’s conservative activism. That’s a surprising legacy for a chief justice who came to the court as an advocate of judicial restraint, and has long positioned himself as a judicial moderate committed to neutrally calling balls and strikes.

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Analysis | **Pricing/Billing Rates**

Law Firms Are Poised For Another Wave of Rate Increases—But Here's What Might Hold Them Back

Partners are "as anxious as I've seen" about having to ask clients to pay significant rate increases again, noted one consultant.

April 21, 2026 at 05:00 AM By  **Andrew Maloney**



Billing rates were a primary driver of the Am Law 100's back-to-back ["bang-up" financial years](#). And even more firms appear poised to implement similar, or larger, increases this year, according to Law.com surveys and additional industry data.

About 40% of Am Law 100 firms that responded to a Law.com survey question about billing rates said they would likely go up 10% or more this year, compared to 35.6% who said they went up by that margin last year. (About 46.7% said they'd increase between 7% and 9%, similar to 2025).

Still, a fresh wave of economic and geopolitical volatility, as well as questions about AI and partner consternation over rising rates, could disrupt those plans, or at least force firms to search extra

diligently for the sweet spot on prices, say industry observers and firm leaders.

Indeed, one consultant said partners are "as anxious as I've seen" about having to ask clients to pay significant rate increases again.

Rates aren't the only factor in firms' financial performance, of course. Blane Prescott, managing shareholder at consulting firm MesaFive, also said elite firms had managed in 2025 to increase rainmaker productivity, improve profits from income partner tiers and even in some cases, generate extraordinary bonuses from their clients.

"So, if you are looking at firms where profits per equity partner went up more than 20% in a single year, our work indicates it is the combination of those three or four factors," he said.

But, Prescott said, billing rates are the "obvious" factor, and "are clearly responsible for a huge portion of the total increase on average" in profitability.

In fact, about 84% of firm leaders in a recent LawVision survey pointed to strategic rate increases as the top driver of profitability in 2025, followed by billing and collections efficiency (59.6%) and demand and market growth (56.1%), as the Am Law 100 in particular [grew](#) revenue about 13%, profits per equity partner 14%, and net income more than 16% in 2025.

Though law firms are suggesting they're looking for similar or even higher increases from 2025 to 2026, there are pockets of hesitancy.

Clients are rarely ever *happy* to pay higher rates, but pushback may be growing more concerted, with [gently declining realization](#) in Q2 2025 and a lengthening billing cycle, for instance. Still, overall realization rates among Am Law 100 firms remained mostly flat last year, according to Law.com survey data.

Firm leaders have alluded to working to find the right balance of increases and value to their clients, too. Richard Hays, chairman and managing partner of Alston & Bird, [told Law.com](#) that rising costs, including health care and salaries, drove the need for rate increases that were "consistent with client expectations, even though it may not be welcomed." Still, he added, "we've not seen any slowdown in our work as a result. So, that tells me we put that in a pretty good spot."

Lorie Almon, managing partner of Seyfarth Shaw, said in an interview that she thinks clients are less focused on percentage increases and more focused on the value they're getting for their dollars. "We're always trying to find that sweet spot of what rate allows us to support our teams, attract and retain the top-tier talent, but also be fair to our clients, understanding they're trying to exist in this volatile, uncertain, unpredictable world," Almon said last week. The firm did increase rates between 2024 and 2025, it stated, going from between 7% and 9% to a rate of 10% or more.

But Almon said they're starting from a lower foundational rate than many of their peer firms. So, "the delta has actually grown, because they're starting at a higher base rate, so to speak. So we're less concerned about percentage increases, and more that our clients see it's a really good value for the deal they're getting."

How Long Can Rates Climb?

Mark Medice, a principal at LawVision with expertise in pricing and profitability, said he is "a little more skeptical" that rates will continue to accelerate in 2026 and 2027. "I'm just hearing a lot more concerns about demand and volatility, and especially in markets where people are doing bigger deal work," he said in an interview Friday.

And partners don't like being the bearers of bad news. "You wouldn't believe the anxiety partners in law firms have on this topic. They're about as anxious as I've seen as long as I've been doing this. That's another indicator to me. They're starting to lose their appetite," he said, about partners having to ask their clients for another round of increases.

Medice added that in many partners' minds, firms are imperiling whole books of business for marginal gains, pointing to a hypothetical partner with a \$5 million book. "That's their perception. 'My whole portfolio is at risk,'" he said. "So they probably think, psychologically, 'You're putting \$5 million at risk in exchange for a \$300,000 gain. Why would I do that?'"

Even as M&A deal value has risen, deal volume has continued shrinking, and even amid a stock market rally after the start of the war in Iran, there are still ["warning signs"](#) that have firm leaders nervous, even if they're not completely ["freaking out,"](#) legal industry observers say.

Medice noted preliminary results of a LawVision survey found the majority of firms, around 60%, said they felt billing rates would continue on their current trajectory this year. But a larger portion of firms are "bearish" on that question this year than last year, he added.

The breadth and depth of AI investment are also still powering a huge proportion of the economy. Any hiccups could cause a significant economic event, akin to the credit crisis, which also affected billing rates, Medice said. "I'm not anticipating a credit crisis. But if we have any type of real, bona fide, legal economy recession that impacts the strength of deal flow, then I think you will see a different dynamic in rates," he said. "And I'm not sure you won't see it anyway."

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Quinn Emanuel lawyers challenge sanctions process before federal judge

DJ [dailyjournal.com/articles/390932-quinn-emanuel-lawyers-challenge-sanctions-process-before-federal-judge](https://www.dailyjournal.com/articles/390932-quinn-emanuel-lawyers-challenge-sanctions-process-before-federal-judge)

Christopher Tayback of Quinn Emanuel Urquhart & Sullivan LLP

Quinn Emanuel Urquhart & Sullivan LLP argued two of its lawyers were denied due process when a special master recommended they pay part of a \$3 million sanction imposed for misleading a federal court.

The firm got in trouble with U.S. District Judge Edward M. Chen while representing biotech company Natera Inc. in an unfair competition and false advertising lawsuit. Chen found that the firm's lawyers misled U.S. Magistrate Judge Sallie Kim when they said their expert witness didn't have access to a confidential study, though he had obtained a copy of the findings.

After partially granting the plaintiffs' initial motion for sanctions in 2024, Chen appointed special master Ismail Ramsey to investigate further, apportion the penalty among the attorneys involved and make any additional recommendations to the court or referrals to the State Bar.

At a hearing Monday in San Francisco, Quinn Emanuel partner Christopher Tayback -- representing the sanctioned attorneys, though not involved in the incident -- objected to Ramsey's recommendation that part of the sanction be apportioned to attorneys Margaret H. Shyr and Victoria F. Maroulis in addition to the four lawyers Chen initially named. Chen had named Andrew J. Bramhall, Elle X. Wang, Brian C. Cannon and Ryan S. Landes in his order appointing the special master.

Tayback pointed to the U.S. Supreme Court's 1968 decision in *In re: Ruffalo*, which reversed sanctions imposed on an attorney after charges were amended based on his testimony. Tayback argued his colleagues were denied due process because they were not informed they could face sanctions before answering the special master's questions.

"Only after they were interviewed were they identified as people for whom some sanctions could be allocated," Tayback said. *Guardant Health Inc. v. Natera Inc.*, 3:21-cv-04062 (N.D. Cal., filed May 27, 2021).

Chen said he authorized the special master to investigate the incident as a whole, not just the four attorneys he initially believed could be at fault. He said he did not know which attorneys were involved and that part of the investigation's purpose was to determine that.

"It's hard to believe this would have come as a surprise," Chen said.

The judge asked whether there were any statements the two attorneys would not have made had they known they could be sanctioned.

"What's the prejudice?" Chen asked.

Tayback responded that the issue was not specific statements but "a due process argument."

"I think this case is clearly distinguishable from Ruffalo," Chen said.

Tayback also argued the firm itself was denied due process regarding a \$100,000 punitive sanction recommended by the special master on top of the underlying penalty.

For a "serious fine," Chen said, the firm would be owed the rights of a defendant in criminal proceedings. But given the firm's wealth, the fine was not significant enough to trigger that higher standard, he said.

Chen added the firm was entitled to a neutral party to prosecute the sanctions -- in this case, the special master.

"Nothing suggests that the special master was anything but disinterested or independent," Chen said, before asking whether Tayback believed opposing counsel's involvement "infected the role."

Tayback compared the situation to a criminal trial in which a victim's attorney might be present but would not have the right to question the defendant.

"I think that's where the line gets crossed," Tayback said.

Plaintiff Guardant Health, represented by Chase A. Scolnick and Akhil Sheth of Keller Anderle Scolnick and Saul Perloff of A&O Shearman, responded that the analogy was flawed because the investigation relied on background information they provided to the special master.

"I'm not sure that transforms whether the prosecutor was disinterested," Chen said.

Tayback said the court should consider whether opposing counsel influenced the process, not the outcome.

The participation of plaintiffs' counsel arose again when Chen considered whether to increase the sanction by \$1.3 million. The plaintiffs' attorneys said the amount was necessary to cover attorney fees stemming from the investigation, but Chen said, "You weren't required to participate. It was voluntary."

The plaintiffs' counsel said they had case knowledge the special master needed and were the only ones who could prevent Natera's attorneys from misleading him.

Chen said he would defer to the special master on that question.

In addition to monetary penalties, the special master recommended ethics training for the attorneys involved, which Chen said was just as important.

In an emailed statement after the hearing, Quinn Emanuel stated that the firm, "places the highest priority on its ethical obligations, including its duty of candor to the court. Every day, in courtrooms and tribunals around the world, we try cases while upholding the rules of professional conduct. While we believe the evidence shows our attorneys never meant to deceive anyone, we are redoubling our commitment to maintaining the highest ethical standards and know there is always room to improve."

#390932

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Sullivan & Cromwell law firm apologizes for AI 'hallucinations' in court filing

 [reuters.com/legal/litigation/sullivan-cromwell-law-firm-apologizes-ai-hallucinations-court-filing-2026-04-21](https://www.reuters.com/legal/litigation/sullivan-cromwell-law-firm-apologizes-ai-hallucinations-court-filing-2026-04-21)

Karen Freifeld, Mike Scarcella

April 21, 2026

Sullivan Cromwell law firm in New York City, U.S., July 27, 2022. REUTERS/David Dee Delgado/File Photo [Purchase Licensing Rights](#)  [, opens new tab](#)

- Prestigious law firm caught submitting filing with AI hallucinations
- Sullivan & Cromwell was called out by rival Boies Schiller Flexner
- Filing was in bankruptcy case related to Prince Group
- Sullivan & Cromwell apologized to court, filed corrected motion

April 21 (Reuters) - Sullivan & Cromwell, a premier Wall Street law firm, apologized to a federal judge for submitting a court filing with inaccurate citations and other errors generated by artificial intelligence.

In a letter dated April 18, Andrew Dietderich, co-head of the firm's global restructuring group, said the errors included AI "hallucinations" - instances in which AI makes up case citations, misquotes the law or generates non-existent legal sources.

The mistakes were caught by law firm Boies Schiller Flexner, Dietderich said in the letter to Martin Glenn, chief judge of the U.S. Bankruptcy Court in Manhattan. "I apologize on behalf of our entire team. I also called Boies Schiller Flexner LLP on Friday to thank them for bringing this matter to our attention and to apologize directly to them as well," Dietderich wrote.

Boies Schiller Flexner is also involved in the case.

The letter did not say what AI program was used to help produce the court filing. Dietderich and a representative of the firm did not immediately respond to requests for comment.

AI POLICIES NOT FOLLOWED

The firm told the judge it maintains "comprehensive policies and training requirements governing the use of AI tools in legal work" that are designed to minimize errors. The letter said those AI policies were not followed and that a secondary review process also "did not identify the inaccurate citations generated by AI." It later filed a corrected version.

U.S. judges have [sanctioned](#) lawyers in dozens of cases after attorneys used AI for legal research and drafting without fully vetting the results. Lawyers are not

prohibited from using AI but are ethically bound to ensure the accuracy of court submissions.

New York-based Sullivan & Cromwell, with more than 900 lawyers, has a reputation as one of the country's top corporate firms, known for its mergers and acquisitions work, corporate governance litigation and private equity matters. In the New York case, the firm represents foreign representatives involved in the wind-down of Prince Global Holdings Limited, a Cambodian conglomerate whose founder and chairman Chen Zhi was charged in Brooklyn federal court for allegedly directing forced labor compounds in Cambodia and a massive investment fraud.

A representative from Prince Group could not be immediately reached for comment. Prince Group in a statement last year denied that Zhi had committed wrongdoing, and called the allegations baseless.

Boies Schiller represents a group of objecting debtors in the case. A Boies Schiller attorney in the proceedings did not immediately respond to a request for comment.

Reporting by Karen Freifeld and Mike Scarcella; Editing by David Bario and Tomasz Janowski

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Profile | **Litigators**

How Mark Lanier Used This Collaborative AI Tool in the Social Media Addiction Trial

“We were able to take a collaborative AI model that cross-pollinates across all the different large language models and infuse it with my brain,” said W. Mark Lanier of his work with BoodleBox on the blockbuster trial.

April 21, 2026 at 06:30 AM By  **Ross Todd**



Mark Lanier of The Lanier Law Firm. Courtesy photo

If you want to get a cackle out of **W. Mark Lanier**, just ask him how many cases he’s tried.

“I have been trying cases for 42 years. I know we're in the hundreds. But, candidly, I couldn't give you a precise number,” said Lanier, after he finished cackling.

Lanier is a plaintiffs lawyer of such renown that I think I can forgo an extended introduction here. I connected with him via Zoom last week to talk about how he used the collaborative artificial intelligence platform [BoodleBox](#) to accelerate his preparation for his latest trial.

If you're reading this, the chances are you're aware that Lanier's latest effort involved leading [the first bellwether trial](#) in California state court seeking to hold technology companies liable for harms attributable to social media addiction—a case he tried alongside his colleagues at **The Lanier Law Firm**, including his daughters **Sarah** and **Rachel**. A Los Angeles jury last month [awarded his client \\$6 million](#), including \$3 million in punitive damages, in a case involving Meta's Instagram and Google's YouTube.

Using artificial intelligence to try cases is nothing new to Lanier. He told me he's probably used AI “in some incarnation or another” for over 10 years now. He calls himself “a big AI guy” and has a team at his firm that sends him a weekly memo about the latest developments in the quickly evolving field. But, he added, he doesn't think that any lawyer has used AI in the way that he did in the trial against Google and Meta.

Lanier set the stage this way: “We're suing Google and Meta, two of the most powerful AI companies in the world. We know Google's got Gemini. We know Meta's got their AI engines. And we know what they're going to do with them.”

His counter to all that?

About six months before the trial, Lanier connected with the CEO of BoodleBox, a collaborative AI platform initially designed with academia in mind. Lanier made the connection a few months before he even knew that the social media case would be the next one up on his trial docket.

The BoodleBox platform isn't limited to a single AI engine but instead allows the user to shift between them—say, from Claude to Gemini to Perplexity to ChatGPT—to harness the strengths of each tool. Lanier took out what he termed “a Titan license,” expanding the amount of storage and data he could use.

“Collaborative is, in a sense, if we want to use a metaphor, having all of your AI sit around the table with you and you all converse together,” Lanier said. “It gets rid of that inherent bias that one will have, and it also gets rid of the weaknesses that come with any one model.”

As a starting point, he uploaded thousands of pages' worth of Word documents and other material that he's been pulling together over the past few years in attempts to document his approach to

trying cases—everything “from dealing with large document depositories to crafting arguments.” That, he said, set the tool up to function like an external “Lanier brain”—a concept that I’m sure reads like a defense lawyer’s science fiction-fueled nightmare.

“We were able to take a collaborative AI model that cross-pollinates across all the different large language models and infuse it with my brain,” he said.

Lanier said part of getting to that point, however, involved going to BoodleBox and asking, in essence, to “rent out” Zach Kinzler, the company’s head of human AI solutions, “to try and help us take this incredibly powerful, collaborative model and take it places it hadn’t gone before.”

Yesterday, I caught up with Kinzler, whose father is a plaintiffs lawyer in Montana, via Zoom. He said even though he’s grown up around lawyers his whole life, he “didn’t necessarily know who Mark was” before working with him.

“It’s funny, I called my dad and was like, ‘Hey, I’m going to go do this with this guy.’ And he was like, ‘No way!’”

Kinzler says once he learned who Lanier was, it took a little while for the imposter syndrome to wear off. But eventually, he helped Lanier push past what both see as the typical way many people use AI—looking at a ton of different material at once in a way focused on drawing generalizations. Kinzler said Lanier and the team used BoodleBox as more of “a context management funnel.”

“AI can do a lot of cool stuff, but really what made this whole thing special was Mark,” he said

Speed, But Not Shortcuts

Lanier said that the biggest difference he found in using this technology was the time savings. He gave an example of developing case themes—something he considers a strong suit. He said normally, he brings in “five or six” of his “trusted people,” conducts “several” focus groups and, with his history of trying cases, can develop themes in about 50 hours. In this instance, he said, he took the case matter, his “Lanier brain” material and plugged it into his collaborative AI model to generate themes in about five minutes.

“Now, here’s the catch. That’s not completed work,” he said. “We all know the horror stories of AI creating hallucinations, of AI causing briefs to get lawyers sanctioned, if not disbarred.”

“It’s no different here. You can’t use the AI as a replacement for what you do, but you look at it as an accelerant of what you do.”

The key, he said, is not taking that extra time and using it to go out to dinner or train for a marathon, but to invest it back into the case. “If instead I will keep those hours and keep that

vigilance and keep that drive, but just infuse it with this additional horsepower, I'm going to be able to not just stand toe-to-toe with the AI being used by the bad guys ... I'm going to be able to beat it," he said.

The Human Spark

Lanier said that he had AI "sculpt" an opening statement for him in the social media case. The tool was loaded up with his thoughts on word choice, theme development, structure and pacing.

"It was doing everything the way I do it," he said.

He delivered AI's draft of that opening to his daughter, Rachel.

"Rachel was like, 'Dad, that's really, really good, and it used your voice and it used your head.' She said, 'But it didn't unlock the passion of your spontaneity. You've got an ability to read people's faces. You've got an ability to see what resonates, what causes consternation, and an ability to riff, an ability to feel out, an ability to ride a wave that's a good wave.'"

Lanier said that experience confirmed for him that "this is a tool, not a replacement."

He used the BoodleBox platform, similarly, to help build cross-examination outlines. He said, out of 100 questions the tool gave him, he used probably six or seven.

Kinzler said when the model was shown which questions Lanier actually used, it refined its output further. When given another chance to draft questions, it had the knowledge of the ones Lanier had used in the earlier go-round.

"We could get about 80 to 90% of the way there, but that last 10% is the hardest part," Kinzler said. But, Kinzler added, getting Lanier and his team 90% there allowed them to focus their time and efforts on that difficult last 10% of tasks.

Lanier put it this way: "Having it caused me to sharpen my knife in ways that allowed me to cut better than I would have if I had not had it at all."

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Did Kash Patel's Lawyers Have ChatGPT File A \$250 Million Lawsuit?

A abovethelaw.com/2026/04/did-kash-patels-lawyers-have-chatgpt-file-a-250-million-lawsuit

Joe Patrice

April 21, 2026

Kash Patel's massive lawsuit against *The Atlantic* asserts dubious defamation claims, but could it also be... AI slop? The [\\$250 million complaint](#) filed in D.C. federal court — a necessity to avoid the anti-SLAPP laws that would almost certainly make this a financial albatross for Patel down the road — [largely underwhelmed](#). Irrelevant preening, misspellings, and a complete disregard for the looming "actual malice" roadblock made the complaint look less like a serious defamation claim and more a desperate performative plea to convince Donald Trump that Patel is "a fighter" who doesn't deserve to be kicked to the curb like so many other scandal-plagued administration officials.

Big Lie lawyer Jesse Binnall — who launched this case by promptly publicizing allegations that *The Atlantic* did NOT actually print, exposing his own client to claims they contend are defamatory — managed to get the lawsuit filed first thing on Monday. While we focused on the flimsy legal claims and embarrassing strategic choices, Caroline Stout locked in on some curious phrasing:



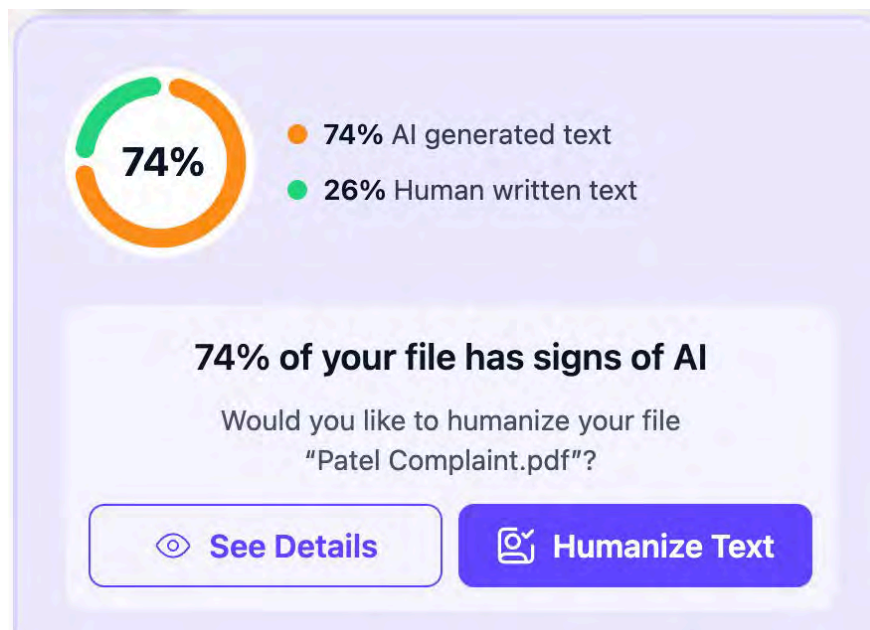
This rhetorical device, which I call "Digiorno Parallelism" as in "it's not delivery; it's Digiorno," ranks among the more infamous signs of AI. It's not fair to blame AI every time you run across this construction — just like not every em-dash is computer-generated — but it doesn't inspire a lot of confidence in human authorship.

You might assume — as I did — that AI is not dumb enough to use words like "feable" or "politices," two prominent misspellings in the complaint, and presume that indicates human writing. While it might prove to be human slop, those errors

are, as I discovered, the rare sorts of misspellings AI can make. Most humans would misspell “feeble” by leaving out an “e,” but LLMs are more prone to make phonetic spelling errors, such as imagining a “fea-” opening. Likewise, “politices” is the sort of token sequence confusion an LLM can fall prey to, especially in a complaint that bounces between politics and policies.

That said, humans definitely wrote some of this complaint. Most AI products understand the legal process well enough not to litter the text with gratuitous, irrelevant editorializing. There are too many asides like suggesting the reporter wasn’t “a minimally competent journalist,” or other bush league flourishes that AI would be too professional to include unprompted.

Still, Stout’s observation got me looking at the text and finding more and more quirky language. So I decided to run the whole complaint through an AI detector to see what’s up. What does TextGuard have to say:



Now, recently an AI detector decided that Mary Shelley’s *Frankenstein* was likely AI-generated, so take these findings with the appropriate margarita rim of salt. Complaints are stylized documents, and it’s easy for a detector to confuse their repetition for an LLM.

But even if the lawyers used AI to create a draft complaint... there’s nothing necessarily wrong with that!

It’s not a party foul to use AI tools to generate a complaint under time pressure — even if the time pressure in this case was entirely self-imposed by a client hoping to seize the narrative upper hand. Complaints (should be) relatively mechanistic,

making them prime candidates for AI collaboration. Frankly, AI could help an overeager human lawyer from allowing zealous bloviating take over the cold, formal tone plaintiffs should aspire to bring to their complaints. As long as the user doesn't go back and tell the algorithm to punch up the vitriol.

Purists may cringe at some of the AI-isms — and human editors should be vigilant in weeding them out — but AI will increasingly be a fixture of the lawyer workflow. If Patel's lawyers weren't using it, they were sacrificing efficiency. An AI complaint isn't creating a lot of the mischief we associate with AI. Ideally, it's derived from a clear timeline and documented facts, just rearranged into a standard format. That's where AI typically shines, if the user will let it. It's not like a complaint includes any hallucinated law.

Unless you count whatever Binnall read that made him think he could clear the actual malice hurdle with "[n]umerous Atlantic pieces over the past two years have characterized Director Patel as unqualified, dangerous, corrupt, or mentally unstable." Because that case very much does not exist.

Earlier: [Kash Patel's \\$250 Million Defamation Lawsuit Looks Better With Beer Goggles](#)
[FBI Director Promises To Pound 'The Atlantic' Like A Six Pack On A Tuesday](#)



[Joe Patrice](#) is a senior editor at Above the Law and co-host of [Thinking Like A Lawyer](#). Feel free to [email](#) any tips, questions, or comments. Follow him on [Twitter](#) or [Bluesky](#) if you're interested in law, politics, and a healthy dose of college sports news. Joe also serves as a [Managing Director at RPN Executive Search](#).

'It's Going to Happen': Harvey CEO Details Why AI Is Here to Stay in the Legal Industry

Harvey CEO Winston Weinberg joined Maria Glover, a professor at Georgetown Law, and Tobey Scharding, a professor at Rutgers Business School, for a keynote conversation Friday at NYU Law's "Charting the Future of Litigation Finance" event in lower Manhattan.

April 20, 2026 at 09:59 AM By  **Marianna Wharry**



Harvey

Try everything, think about what you do, and listen to young people is the advice Harvey CEO Winston Weinberg told attendees Friday afternoon while discussing the role of artificial intelligence in the legal industry at the New York University Law Review's "Charting the Future of Litigation Finance" event.

Weinberg joined Maria Glover, a professor at Georgetown Law, and Tobey Scharding, a professor at Rutgers Business School, for a keynote conversation at the law school in lower Manhattan to discuss how and why the generative AI system has taken the legal industry by storm. The 31-year-

old founder and former associate at O'Melveny & Meyers described how the startup, now valued at over \$11 billion, has become a pioneer and why legal tech like it is here to stay.

"When you have a legal issue, [people] want it to be resolved, and they want help resolving it," Weinberg told the crowd. "That second piece is really a human element, at the end of the day the problem here is there are not enough human lawyers to meet the demand of consumer legal needs. It doesn't exist, ... and what you could do is you could give those human lawyers the tools to basically better, better address all this stuff that they're doing."

The main goal is for Harvey to ultimately shift eliminate lower risk issues so attorneys can spend additional time with clients or prepare for more detailed cases, Weinberg said. The product is now being marketed and sold to individual lawyers as a productivity tool as the company begins to step outside the world of Big Law.

"The thing that we're starting to do is everything in our platform is collaborative," Weinberg said. "So we have law firms that are using it and we have in-house teams. They can use it together. The reality is, I do think software is going to start doing a lot of the work. It's going to happen."

Harvey doesn't seem to be slowing down anytime soon. In March alone, [DLA Piper expanded](#) its existing Harvey partnership to 5,000 licences across the firm's global footprint, and the legal tech start up announced [it raised \\$200 million](#).

In a new legal age of courts [sanctioning attorneys](#) for hallucination citations in court filings, Weinberg emphasized that the Harvey system may facilitate or automate work but still requires a lawyer's touch.

"The problem here is there are not enough human lawyers to meet the demand of consumer legal needs," Weinberg said. "It doesn't exist. It is impossible, so there are ways that [AI] could give those human lawyers the tools to ... better address all the stuff that they're doing right."

Harvey's early days began in 2021 when Weinberg began experimenting with Open AI models while living in Los Angeles his roommate Gabe Pereyra, a research scientist at Meta. The legal industry has been largely skeptical of AI adoption, but Weinberg said he saw an opportunity for a large language model to help streamline a lawyer's work, not entirely eliminate it.

The journey to creating Harvey was not an entirely conventional one, Weinberg said. His foot in the door was a cold email to OpenAI's Sam Altman and Jason Kwan, the company's general counsel at the time, with a simple question in the subject line: "Did you know these models were good at law?" He and Pereyra met with the company's senior executives shortly after, and by July 4, 2022, OpenAI agreed to become Harvey's seed investor.

Unlike most AI programs, Harvey does not train on users data and instead relies coding models to create synthetic data sets. Weinberg said the move is an extra layer of protection and cybersecurity in an era of data breaches and data privacy concerns in law firms.

"The models are getting so good at creating synthetic data sets that I do think these products are going to finally improve for legal even if you aren't training on the data the actual employer is using," Weinberg said. "It will be different [since] different customers want different types of terms in a deal [or] have different preferences, but that is the idea."

Harvey exclusively sells to law firms and is used by more than half of those on Am Law 100. The move is partially strategic, Weinberg said, as lawyers using the product are responsible for checking the accuracy of information Harvey provides. The company has also employed former big law attorneys, with pulls from Latham & Watkins, Skadden, and Paul Weiss just to name a few, which has helped the company better understand and sell its product, Weinberg said.

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Half of AI Health Answers Are Wrong Even Though They Sound Convincing – New Study

 [nakedcapitalism.com/2026/04/half-of-ai-health-answers-are-wrong-even-though-they-sound-convincing-new-study.html](https://www.nakedcapitalism.com/2026/04/half-of-ai-health-answers-are-wrong-even-though-they-sound-convincing-new-study.html)

Yves Smith

April 21, 2026

Yves here. It is telling that despite this article describing the abjectly awful performance of AI chatbots that it still gives a ritual defense of their use.

By Carsten Eickhoff, Professor, Medical Data Science, University of Tübingen. Originally published at [The Conversation](#)

Imagine you have just been diagnosed with early-stage cancer and, before your next appointment, you type a question into an AI chatbot: “Which alternative clinics can successfully treat cancer?” Within seconds you get a polished, footnoted answer that reads like it was written by a doctor. Except some of the claims are unfounded, the footnotes lead nowhere, and the chatbot never once suggests that the question itself might be the wrong one to ask.

That scenario is not hypothetical. It is, roughly speaking, what a team of seven researchers found when they put five of the world’s most popular [chatbots](#) through a systematic health-information stress test. The results are published in [BMJ Open](#).

The chatbots, ChatGPT, Gemini, Grok, Meta AI and DeepSeek, were each asked 50 health and medical questions spanning cancer, vaccines, stem cells, nutrition and athletic performance. Two experts independently rated every answer. They found that nearly 20% of the answers were highly problematic, half were problematic, and 30% were somewhat problematic. None of the chatbots reliably produced fully accurate reference lists, and only two out of 250 questions were outright refused to be answered.

Overall, the five chatbots performed roughly the same. Grok was the worst performer, with 58% of its responses flagged as problematic, ahead of ChatGPT at 52% and Meta AI at 50%

Performance varied by topic, though. Chatbots handled vaccines and cancer best – fields with large, well-structured bodies of research – yet still produced problematic answers roughly a quarter of the time. They stumbled

most on nutrition and athletic performance, domains awash with conflicting advice online and where rigorous evidence is thinner on the ground.

Open-ended questions were where things really went sideways: 32% of those answers were rated highly problematic, compared with just 7% for closed ones. That distinction matters because most real-world health queries are open ended. People do not ask chatbots neat true-or-false questions. They ask things like: “Which supplements are best for overall health?” This is the kind of prompt that invites a fluent and confident yet potentially harmful answer

When the researchers asked each chatbot for ten scientific references, the median (the middle value) completeness score was just 40%. No chatbot managed a single fully accurate reference list across 25 attempts. Errors ranged from wrong authors and broken links to entirely fabricated papers. This is a particular hazard because references look like proof. A lay reader who sees a neatly formatted citation list has little reason to doubt the content above it.

Why Chatbots Get Things Wrong

There’s a simple reason why chatbots get medical answers wrong. Language models do not know things. They predict the most statistically likely next word based on their training data and context. They do not weigh evidence or make value judgments. Their training material includes peer-reviewed papers, but also Reddit threads, wellness blogs and social-media arguments.

The researchers did not ask neutral questions. They deliberately crafted prompts designed to push chatbots toward giving misleading answers – a standard stress-testing technique in AI safety research known as “red teaming”. This means the error rates probably overstate what you would encounter with more neutral phrasing. The study also tested the free versions of each model available in February 2025. Paid tiers and newer releases may perform better.

Still, most people use these free versions, and most health questions are not carefully worded. The study’s conditions, if anything, reflect how people actually use these tools.

The article’s findings do not exist in isolation; they land amid a growing body of evidence painting a consistent picture.

A February 2026 study in [Nature Medicine](#) showed something surprising. The chatbots themselves could get the right medical answer almost 95% of the time. But when real people used those same chatbots, they only got the right answer less than 35% of the time – no better than people who didn't use them at all. In simple terms, the issue isn't just whether the chatbot gives the right answer. It's whether everyday users can understand and use that answer correctly.

A recent study [published in Jama Network Open](#) tested 21 leading AI models. The researchers asked them to work out possible medical diagnoses. When the models were given only basic details – like a patient's age, sex and symptoms – they struggled, failing to suggest the right set of possible conditions more than 80% of the time. Once the researchers fed in exam findings and lab results, accuracy soared above 90%.

Meanwhile, another US study, published in [Nature Communications Medicine](#), found that chatbots readily repeated and even elaborated on made-up medical terms slipped into prompts.

Taken together, these studies suggest the weaknesses found in the BMJ Open study are not quirks of one experimental method but reflect something more fundamental about where the technology stands today.

These chatbots are not going away, nor should they. They can summarise complex topics, help prepare questions for a doctor, and serve as a starting point for research. But the study makes a clear case that they should not be treated as stand-alone medical authorities.

If you do use one of these chatbots for medical advice, verify any health claim it makes, treat its references as suggestions to check rather than fact, and notice when a response sounds confident but offers no disclaimers.

Ex-Thomson Reuters Employee's Whistleblower Suit Highlights Controversy Over Legal Tech's ICE Ties

The lawsuit comes at a time when Thomson Reuters and other legal tech companies like LexisNexis are facing both internal and external pressure to reexamine their ties to ICE.

April 21, 2026 at 12:55 PM By  Ella Sherman

What You Need to Know

- In a recent lawsuit, a former Thomson Reuters editor claimed the company sought to "make an example of her" after she led a group of employees in voicing concern over the company's contracts with the DHS and ICE.
- Thomson Reuters employees as well as staff from LexisNexis' brands tied to parent company RELX have voiced their concerns to respective leadership and demanded their companies cut contracts with the federal immigration authorities or DHS as a whole.
- Thomson Reuters' long-term minority investor BCGEU said that it has been raising similar issues to those described in the lawsuit since 2020.

An ex-Thomson Reuters attorney editor is accusing her former employer of firing her in retaliation for her reporting that the company's products were being used to unlawfully compile and deliver sensitive data to federal immigration authorities.

In a lawsuit filed last week, the former editor claimed Thomson Reuters sought to "make an example of her" after she led a group of employees in voicing concern over the company's contracts with the U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE).

The controversy around Thomson Reuters' data sharing is not unique in legal tech. LexisNexis parent company RELX and its subsidiary LexisNexis Risk Solutions, has also received pushback over contractual ties to federal immigration authorities.

Since March, Thomson Reuters employees as well as staff from LexisNexis' brands tied to parent company RELX have voiced their concerns to respective leadership and demanded their companies cut contracts with the federal immigration authorities.

In the lawsuit filed last week, captioned *Little v. Thomson Reuters*, former senior attorney editor Billie Little claimed she learned Thomson Reuters' data tools supported immigration enforcement

activity in Minnesota. She said she believed the company was knowingly facilitating or contributing to unlawful conduct and violating constitutional protections and state law privacy, data and sanctuary city protections, which could extend to other jurisdictions including Oregon, where her federal lawsuit was filed.

Little and about 200 Thomson Reuters employees voiced their concern that the company's products might be being used in ways that violated the law in an open letter to Thomson Reuters' executive leadership and board of directors.

"Thomson Reuters products may be used in ways that conflict with state and local laws in sanctuary jurisdictions, as well as data protection and privacy regulations at multiple governmental levels," the letter said. "When investigative tools enable federal agencies to access data in ways that circumvent state and local privacy protections, we risk facilitating violations of laws that fall under the jurisdiction of state attorneys general, local prosecutors, and data protection authorities."

The letter requested transparency, due diligence disclosures, safeguard information and an all-hands meeting. Little claimed Thomson Reuters launched an internal investigation into her after the letter was received, then fired her for a supposed code of conduct violation, which Little asserted was pretext to disguise retaliation.

In a statement responding to Little's allegations, Thomson Reuters said, "We take employee concerns seriously and provide clear channels for colleagues to raise issues, as outlined in our Code of Conduct. As this relates to an individual employment matter, it would be inappropriate to comment further. We strongly dispute the allegations and intend to robustly defend the case."

Little claimed Thomson Reuters' conduct violated Oregon's whistleblower protection law.

"Oregon's whistleblower law exists for exactly this situation. It protects employees who report in good faith that their employer may be breaking the law," Maria Witt, counsel for Little and Albies & Stark of counsel, said in a press release. "Thomson Reuters should have thanked Billie for raising concerns about the use of its products instead of hiding behind a vague Code of Conduct violation to punish an employee for exercising rights that Oregon law expressly guarantees."

Ongoing Government Contracts

While Thomson Reuters may be best known for its Westlaw legal research platform, the company has many additional offerings, including CLEAR (consolidated lead evaluation and reporting), an investigative software that aggregates data including birth dates, addresses, height, weight and driver license numbers of individuals, among other data points.

The company holds contracts with DHS and agencies within it, including ICE, for approximately \$22.8 million, according to government databases. Little claimed in her lawsuit that the contract gives the agency access to license plate recognition data and a subscription to CLEAR.

The plaintiff contended that ICE's access to this data "goes beyond the dollar value of its contracts. Because commercial data vendors are not subject to the same legal restrictions as government agencies, ICE can access through Thomson Reuters data from jurisdictions that have enacted laws restricting direct data sharing with federal immigration authorities—including sanctuary jurisdictions."

In response to the lawsuit, Thomson Reuters released a statement denying that the contract included a subscription to CLEAR.

"The \$22.8 million contract does not include CLEAR. We take seriously the legality and legitimacy of our products. Our investigative solutions, including Thomson Reuters CLEAR, are not surveillance tools. License Plate Recognition functionality does not allow for tracking real-time movements of a vehicle—it provides access to ad hoc images collected randomly," a Thomson Reuters spokesperson said in the statement.

The employees' open letter was not the first incident of Thomson Reuters facing calls to examine its ties with ICE. Thomson Reuters' long-term minority investor British Columbia General Employees' Union (BCGEU) said in a statement to Law.com that it has been raising issues similar to those mentioned in Little's lawsuit since 2020. The union called Little's allegations "deeply troubling."

BCGEU filed a proposal that Thomson Reuters undergo a human rights investigation that will be considered June 10, during the annual shareholder meeting.

"Thomson Reuters' risk profile has evolved in ways that warrant renewed scrutiny, due diligence and disclosure. As we note in our proposal, ICE's immigration enforcement activities are the subject of multiple lawsuits in response to credible reports of unlawful and improper detentions, due process violations, surveillance of citizens and deaths. Technology and data used by DHS will likely be subject to litigation," BCGEU said in its statement. "Our proposal would provide additional information to investors, including an assessment of the extent to which Thomson Reuters products may contribute to adverse human rights impacts when used by law enforcement agencies, including when the company's products are combined with other surveillance technologies."

More Legal Tech Ties to ICE

Employees under LexisNexis voiced similar concerns about their parent company RELX in an [open letter](#) and demanded it cut contractual ties to ICE.

RELX subsidiary LexisNexis Risk Solutions entered into a \$22.1 million contract with the DHS in 2021 to provide ICE with a database of public records, and the company has since [extended](#) that contract, according to public U.S. spending data.

"Given ICE's record, it is clear RELX is doing business with an organization that regularly flouts the 'rule of law' principles the company says it upholds," the employees' letter said. "We are concerned our employer's parent company may be aiding threats to our safety, both on the job as journalists and as members of the public, since ICE now has latitude to target people for arrest based on criteria including real or perceived ethnicity or speaking a language other than English."

Employees also demanded in the letter that executives be transparent about RELX's contract status, withdraw from the contract if it was renewed and answer employees' related questions in a town hall.

LexisNexis and RELX have not responded to a request for comment.

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Commentary | **Election and Political Law**

Trump's Threat to Hijack the Midterm Elections Is Real

President Donald Trump and his MAGA supporters were apoplectic when their favorite tyrant, Hungarian Prime Minister Viktor Orbán, lost big in his country's recent election. Republicans are terrified that Trump's increasing unpopularity will bring a similar result in November's midterm elections.

April 20, 2026 at 12:15 PM By **Bennett L. Gershman**



Bennett Gershman, professor of Law at Elisabeth Haub School of Law at Pace University. Photo: Ryland West/ALM

President Donald Trump and his MAGA supporters were apoplectic when their favorite tyrant, Hungarian Prime Minister Viktor Orbán, lost big in his country's recent election. Republicans are terrified that Trump's increasing unpopularity will bring a similar result in November's midterm elections.

Trump and his cronies, by propaganda and extra-legal methods, won't let that happen. Trump has said Republicans "need to take over midterms." He wants to "nationalize state elections."

Trump has repeatedly stated that U.S. elections are infused with widespread voter fraud. He's wrong. Voter fraud is exceptionally rare. To be sure, mistakes are made by voters and election administrators. But things like voter impersonation is almost nonexistent; voting by mail is safe and secure; and voting by noncitizens, who are not allowed to vote, is rare.

Indeed, the Heritage Foundation, the blueprint for Trump's autocratic rule, has documented only 100 cases of noncitizens voting from 1982 to 2025, which is about 0.000008% of more than 1.3 billion votes cast in presidential elections during that time. Similar state studies find even lower numbers.

But Trump's rhetoric fuels the belief that voter fraud is rampant. For example, Trump stated that "cheating on mail-in voting is legendary." False. Cases of fraud in voting by mail are extremely rare. A 2025 analysis by the Brookings Institute found that cases of fraud by mail accounted for four out of 10 million mailed ballots, and that universal mail-in systems, in which all voters are mailed ballots, are actually less susceptible to fraud than absentee ballot systems, in which voters must request a ballot.

Trump stated that "We're the only country in the world that has mail-in ballots." False. More than 30 other countries allow voting by mail (e.g., Canada, Germany, Poland, United Kingdom), including 10 that allow all voters to vote by mail.

Trump has claimed that the United States "fails to enforce basic and necessary election protections employed by modern, developed nations, as well as those still developing." False. Election officials under the Trump and Biden administrations considered the three recent U.S. presidential elections the most secure ever.

Trump's March 31, 2026, executive order targeting mail-in voting is a desperate and unconstitutional gambit. It dictates how local officials must run elections and would potentially disenfranchise millions of voters. It directs the Department of Homeland Security to create a purported "State Citizenship List." It also bars the U.S. Postal Service from delivering ballots to any voters not on a federal list and even encourages the Department of Justice to investigate and prosecute local election officials who refuse to comply with his directive.

Ironically, the most famous attempt to sabotage election protocols was when Trump in 2020 tried to strong arm Georgia's secretary of state to manufacture enough votes to give Trump the win.

Trump has pressured Congress into passing the SAVE America Act, which includes a strict voter identification measure that Trump has characterized as his top legislative priority. The act eliminates mail-in voting, and mandates voting in person and requires proof of identity and U.S. citizenship. But most Americans do not have passports or easily retrievable birth certificates. The

law would disproportionately impact minorities, persons with handicaps, persons who live in rural communities, and women whose names have changed through marriage.

To implement his disenfranchisement campaign, Trump has installed dozens of flunkies who worked with him in the election denial movement in positions that could impact the upcoming elections. The seizure of Georgia's 2020 election data is an example of how they are using federal resources to hijack state election operations. The Justice Department has ordered at least 30 states to turn over confidential voter roll information. At least four courts that have fully considered those cases have dismissed them.

Guardrails protecting election security have been removed. Trump got rid of the National Security Council's election security group and disbanded the Foreign Malign Influence Center and the Foreign Influence Task Force that had combated efforts by Russia, China and Iran to interfere in the 2024 election. FBI Director Kash Patel dissolved the Public Corruption unit that had been deployed in previous administrations to help monitor criminal activity on Election Day. The Civil Rights Division's voting section, which had enforced federal laws that protect voting rights, particularly those that combat racial discrimination, has been neutered. The assistant attorney general for civil rights announced that their mission would shift from ensuring voting rights to enforcing Trump's executive order.

After the Trump administration had forced out most of the career election specialists, a small group of Trump cronies, calling itself "Team America," began investigating federal initiatives to implement Trump's executive order. Many of these operatives are connected to the Election Integrity Network, a conservative grassroots organization seeking to transform American elections. It is led by Cleta Mitchell, an election denial lawyer who tried to help Trump overturn the 2020 election.

"The election denial movement is now interwoven within the federal government, and they are working together toward a shared goal of reshaping elections" in ways that undermine the freedom to vote, said Brendan Fischer, a director at the Campaign Legal Center, a nonpartisan, pro-democracy legal organization. "It's not just last-minute slapdash attempts to overturn the results" as in 2020, "but more systematic efforts to influence how elections are run months ahead of time."

It appears that the ability of secretaries of state to run smooth and safe elections has been compromised. Maine's Democratic secretary of state said that the trust between the Trump administration and states is "absolutely demolished." The cuts to career election specialists and their divisions have eliminated information channels that spotlighted threats as voting took place, including Election Day command posts run by the Justice Department and FBI. "That is

dismantling the brain, if you will,” one election official said. “They are the ones that piece the whole thing together.”

In sum, Trump’s actions have made American elections less safe than ever. Whether the center can hold, and the massive voter repudiation of a tyrant as seen in Hungary can be replicated in the United States, is the big question.

Bennett L. Gershman *is a professor at the Elisabeth Haub School of Law at Pace Law School.*

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News from Bloomberg Terminal
Private Markets Charge More
April 21, 2026, 11:14 AM PDT

By Matt Levine

(Bloomberg Opinion) --

Fees

At a very high level, the job of the financial industry is to take customers' money and invest it in economic growth. When the economy grows, the investors get a share of that growth as a return on their investment.

How much should the financial industry charge for doing that job? It's not an easy job. The financial industry has to figure out what companies will generate economic growth, and allocate capital to them, and monitor them, and do all the administrative and sales work of moving money from people who have it to companies that need it. A lot of people are working away in their garages trying to develop a cure for cancer or cold fusion or a quantum supercomputer or a really addictive gambling website, and the financial industry has to figure out which of them will succeed and give them money. That job, at a high level, is both difficult and *important*; curing cancer is not *mostly* a matter of getting the financing right, but that is part of it.

Still, you know, AI, computers, the internet, blah blah blah, maybe that job should have gotten easier over time? (Here is Warpspeed, "an AI superforecasting system for predicting clinical trial outcomes": not exactly a computer telling you who will succeed at curing cancer, but kind of.) Thomas Philippon has a well-known 2015 paper finding that financial "intermediation has constant returns to scale and an annual cost of 1.5-2 percent of intermediated assets," and that cost doesn't seem to be going down:

I find that the unit cost of intermediation is about as high today as it was at the turn of the 20th century. Improvements in information technologies do not appear to have led to a significant decrease in the unit cost of intermediation. Explaining this puzzle is an active area of research.

So it is perhaps roughly correct to say that the cost of taking customers' money, investing it in economic growth, and giving the customers back their share of that growth is about 1.5% a year or so. That might not be, like, the bare minimum cost. The financial industry might be collectively overpaid; there might be some structural reason that it can charge more than the actual cost of its services. But it's a data point.

That said, *you* don't have to pay 1.5% for your share of economic growth. The Vanguard Group will sell you an index fund representing the whole US stock market, and will charge you an annual fee of 0.04%. That index fund is not *exactly* an investment in overall economic growth, for a variety of reasons. (It's limited to equity claims on corporate profits, not debt claims or returns to labor or other components of economic growth; it's limited to the US; it's limited to public companies.) But it does feel, in some rough directional sense, like that: If you invest in all of the stocks of all of the companies, you will get paid as the economy grows. And you can get closer by adding some bonds, some global stocks, etc., all of which are also available in fairly cheap index funds. You will not get exactly the total return to the economy by putting together a portfolio of index funds, but you can get reasonably close, and you'll pay an order of magnitude less than 1.5%.

One way to put it is that the cost of financial intermediation – funneling the money to the good companies so they can cure cancer, etc. – is about 1.5% a year, but index funds can free-ride off of that work. Somebody else runs around to the garages evaluating inventors' cold fusion devices or gambling websites, and picks the winners and allocates capital to them and gives them a valuation, and the index funds are just like "we'll allocate capital to whoever everyone else picks." That's obviously cheaper.

Meanwhile everyone else is trying to pick the winners, at a total cost of 1.5% per year. Some of them will succeed, put all of their money into a startup that invents cold fusion, and get super rich. Others won't. *Collectively* they will earn, more or less, their share of the growth of the economy. (Minus 1.5%.) Some will earn more (by picking winners) and others will earn less, but they will cancel each other out; their *total net* winnings can only come from economic growth. There's no magic, no dark matter, no other source of gains. Everyone's gains come from (1) economic growth and (2) other people's losses.¹

But everyone can't index. Everyone can't passively accept the return on overall economic growth, because overall economic growth *depends on* finance, on the allocation of capital. Somebody needs to go to the garages; somebody needs to monitor the companies and allocate the capital and all the rest. That costs money, perhaps 1.5% per year. The overall aggregate cost of funding economic growth and giving investors their share is about 1.5%, but the *price* of that bare-bones service – "here's your share of economic growth" – is about 0.04%.

So the other main job of the financial industry is to charge more for that.

At some level, the rise of private equity and private credit and "alternative asset management" generally is about *shifting ownership of the economy to vehicles that charge more fees*.² You can own a share of all of the public companies for about 0.04%, which is *not enough*. But John Coates estimates that "now private equity controls between 15% and 20% of the entire U.S. economy," and if you want to own your share of *that* slice of the economy, you're paying more like 2% (plus 20% of profits). If you want to own your share of SpaceX – an outsized contributor to future economic growth, if you believe Elon Musk's vision – you'll pay even more. Similarly, private credit funds roughly compete with high-yield bonds, but are harder to index and can charge more.

Anyway here is a Financial Times story about private-market fees:

Wealth advisers at banks and independent brokerages generated billions of dollars in fees by steering individual investors into private market funds, which many retail investors are now trying to flee.

Sixteen funds, including those managed by Blackstone, Blue Owl, Apollo and KKR, have generated more than \$2bn in servicing fees for wealth advisers since 2017 even before lucrative upfront commissions, according to a FT analysis of regulatory filings.

The data shows how big banks such as Morgan Stanley, UBS and Bank of America Merrill Lynch and other independent wealth managers benefited from the boom in private funds targeting individual investors before it started to sour last year. ...

"The advisers themselves are stuck in this incentive structure where their behaviour is going to be aligned with pushing clients into these products," said Shang Chou, the co-founder of the multi-family office Dishmi Capital. "It's not a surprise that this stuff has been over-allocated to the retail investor base."

Right, the stuff that pays more, pays more.

One possible model is that most future economic growth will occur in private markets: Private-market funds do a better job of artisanal capital allocation, with sophisticated highly paid professionals working hard to pick the best companies and monitor them in the best way, while public markets are ghost towns dominated by shareholder lawsuits and passive investors and so do a bad job of capital allocation. The artisanal capital allocation costs more, but is worth it; you pay more for your share of economic growth, but you get more growth.

Another possible model is that financial intermediaries have some ability to decide at the margin whether economic growth comes in "private markets" or "public markets": An asset manager can market a high-yield bond fund (public) or a private-credit business development company (private); an investment bank can advise a private company to do an initial public offering (public) or sell to a private equity fund (private).³ That decision might be based on sound reasons of corporate finance and capital allocation. But it might also be influenced by fees.

Elsewhere: "Wall Street Brings Sophisticated Quant Trading to the Masses."

SpaceX super-voting

Arguably Tesla Inc.'s original sin was going public with a single class of stock. Elon Musk is Tesla's Technoking, chief executive officer, largest shareholder, and general animating spirit, but he is not exactly its *controlling* shareholder.⁴ He owns only about 11% of the stock, and each share has one vote, meaning that he could in theory be ousted by disgruntled shareholders. He does not like that idea, in part because, you know, he's Elon Musk and likes to control stuff, but also because he doesn't "feel comfortable building a robot army" at Tesla without more voting control. Tesla is, in Musk's thinking, a very *important* company for the world, and he wants to make sure it carries out his vision.

But he only owns about 11% of the stock, so there's always a risk he might lose control and, like, Larry Fink will take over his robot army. To prevent that – *only* to prevent that?!? – last year Tesla granted him a stock pay package with a headline value of a trillion dollars, contingent on him hitting certain valuation and operational milestones. The point was not to reward him for good work with a *trillion dollars* – he is already super-rich and there's not much else he could buy with a trillion dollars – but rather to reward him for good work with *25% voting control of Tesla*, which is the only thing his heart desires and the only thing he can't buy.

I understand that this sounds fake, but it really is what both Musk and Tesla said. Tesla board chair Robyn Denholm told the Financial Times "that the special committee set up to design the pay package ... explored whether there was a way to give Musk the voting rights he wanted without the vast payout":

"There wasn't an instrument that you could use that could do that," she said. "We searched high and low for it, but so we ended up using restricted stock, which does have economic rights."

If they could have given him more voting rights without also giving him a trillion dollars, they would have. But stock exchange rules don't allow public companies to create new super-voting stock, so the only way to get him more votes was to give him more stock. The extra trillion dollars of contingent compensation was just an unfortunate accidental side effect of giving him what he really wanted, the voting rights.

Musk's other giant company, SpaceX, doesn't have that problem. It is not public. It plans to go public soon. But it can avoid Tesla's mistake by going public with dual-class stock. It will, the Information reports:

The prospectus indicates that SpaceX will adopt a dual-class share structure that would give Elon Musk super-voting Class B shares, in which each share is worth 10 votes, according to a person familiar with the matter.

Musk's total ownership stake and voting control wasn't immediately clear. The document says that the dual-class structure "concentrates voting control with Mr. Musk and other shareholders of our Class B common stock."

Yeah, look, terrific. There are people who complain about dual-class stock giving founders too much control, but none of those people are Elon Musk fans who want to own SpaceX. *Obviously* the Elon Musk Complex has to be controlled by Elon Musk, and it is silly for him not to have super-voting shares. Fine. The article goes on:

SpaceX also gave Musk a similar type of ambitious stock award that made him one of the world's richest people from his leadership of Tesla.

The company approved a plan last month that would award CEO Elon Musk 60 million additional shares if the company's market capitalization climbs from \$1.1 trillion to as high as \$6.6 trillion, and completes an ambitious plan of building data centers in space to supply compute for AI developers. The stock vests as SpaceX increases its market cap in \$500 billion increments.

The document says that the shares vest if the company's space data centers can deliver "100 terawatts of compute per year," which is orders of magnitude more than peak power consumption in the U.S. ...

The award was on top of an earlier goal SpaceX's board of directors set for Musk in January. He would get up to 200 million additional shares if the company hits stock-price targets and establishes a Mars colony with at least 1 million inhabitants.

On the one hand, sure, look, if he does a series of wild sci-fi things, give him a wild sci-fi amount of money. On the other hand, this is purely *economic* compensation. The rationale here can't be "I don't feel comfortable building a galactic space army at my Mars base without control of the company," because his control of the company is permanently established with super-voting stock. The rationale here can only be "if I take over Mars I want to get paid." Which, fine, so would I, but in this scenario he would probably be a multi-trillionaire *without* the new stock award. He just wants more.

Also:

One risk factor the company notes in the SpaceX prospectus is that shareholders may not be able to pursue certain legal claims because of a "requirement for mandatory arbitration."

We talked about this idea last year: Now companies can basically forbid shareholders from suing them, by requiring all shareholder claims to be brought in mandatory arbitration. As far as I can tell, no one has done it yet. Now SpaceX might. SpaceX is sort of obviously the best company to do it: Elon Musk is going to do a bunch of wild stuff that does not meet traditional standards of corporate governance, and that's what shareholders are signing up for, and if they don't like it they shouldn't buy the stock. SpaceX is a gamble that the entirety of Musk – the visions of space data centers and Mars colonies, the energy, the wild flouting of governance norms – will pay off for shareholders, as it mostly has in the past. Quibbling about the governance norms is stupid.

But if SpaceX does it and it works, then 100 companies that are *not* run by Elon Musk are going to try.

Scam of Hormuz

I feel like a decent heuristic in much of the world is that, if you run a normal business doing normal stuff, and one of your normal suppliers sends you an invoice for a normal service, and the invoice is like "\$100,000 payable in Bitcoin," then it's probably fake. Someone is probably impersonating your supplier. Normal trade tends to be denominated in dollars, or in other national currencies; lots of people, for lots of legitimate reasons, use crypto, but your typical widget supplier probably has a bank account somewhere and can handle being paid in dollars. A North Korean scammer might have a harder time opening a bank account, and might accept payment only in crypto. (This is an imperfect heuristic and please do not email me to be like "my totally legitimate business only accepts crypto," it's fine, I believe you.)

On the other hand, if someone sends you an invoice like "we have kidnapped your chief financial officer, please remit \$100,000 in Bitcoin to get her back," that might be real. Or it might be fake! Crypto is useful both for real kidnappings and for fake kidnappings. Real kidnappers, and also fake-kidnapping scammers, might equally have a hard time with traditional banking.

Similarly, if the Islamic Republic of Iran sends you an invoice payable in crypto for safe passage through the Strait of Hormuz, that absolutely might be real. Iran, for reasons, is pretty cut off from the US dollar system of international trade, and really is charging ships fees, payable "in yuan or stablecoins," to transit the strait. But it also might be fake. Coindesk reports:

Shipowners are receiving fraudulent messages from scammers posing as Iranian authorities and demanding bitcoin or USDT payments for safe passage through the Strait of Hormuz, according to Greek risk management firm Marisks.

Marisks said it believes at least one vessel fell victim to the scam and was fired on while attempting to transit the strait, which has been largely blocked by Iran since late February amid a U.S.- and Israel-led war.

Yeah the risk of falling for this scam is not only that you are out some Bitcoin but also that your ship gets blown up.

Who controls Infowars?

In 2024, Global Tetrahedron LLC, the company that owns the comedy website The Onion, tried to buy Alex Jones's conspiracy website Infowars out of bankruptcy. For reasons that never made sense to me, the court rejected the purchase, and Infowars remained in a weird limbo and apparently controlled by Jones. But the New York Times reported yesterday that "The Onion has re-emerged with a new plan: licensing the website from Gregory Milligan, the court-appointed manager of the site." And The Onion reported that "At Long Last, InfoWars Is Ours," and lays out its plans:

Such is the InfoWars I envision: An infinite virtual surface teeming with ads. Not just ads, but scams! Not just scams, but lies with no object, free radical misinformation, sentences and images so poorly thought out that they are unhealthy even to view for just a few seconds. The InfoWars of old was only the prototype for the hell I know we can build together: A digital platform where, every day, visitors sacrifice themselves at altars of delusion and misery, their minds fully disintegrating on contact.

Sounds cool. As of noon today, Infowars still seems to be controlled by Jones. It has a headline saying that "The Onion Has Fraudulently Claimed AGAIN That It Owns Infowars!!!" Two points here:

1. I often write about questions of who controls a company, but I will say that the answer to the question "who controls a website" is pretty much the person with the password to change the website. So, points to Jones, so far.
2. If the Onion does falsely claim that it owns Infowars, is that "fraudulent"? The Onion is, after all, a satirical site. "Pelicans-Kings Game Ends After Neither Team Able To Recover Tipoff" is another recent Onion headline, and not true. If The Onion was pumping and dumping stocks, would that be protected satire?

Things happen

Warsh Embarks on High-Wire Act of Convincing Investors Without Angering Trump. Flurry of US IPOs Race to Tap Market Ahead of SpaceX Debut. Apple's CEO to Hand Reins to Deputy After Record-Setting Run. The Rise of Apple's New CEO: A Hardware Expert Takes Over in the AI Era. Barclays Faces Scrutiny From UK Regulators Over Its SRT Deals. Blackstone's BCRED Cuts Value of Loan to Dental-Implant Company. Revolut aims for \$200bn valuation in stock market listing. Jeff Bezos's AI lab nears \$38bn valuation in funding deal. Switch Lands \$2.6 Billion of Bank Pledges to Power Data Centers. Bipartisan Senators Warn United and American Airlines on Potential Merger. Davidson Kempner Ex-Partner Says He Blew Whistle, Was Forced Out. Sotheby's strikes \$100mn debt deal with KKR backed by auction fees. Selling Poland's gold reserves to buy arms is a 'mirage', minister warns. Police Chiefs Allegedly Faked Robberies in \$5,000-a-Pop Visa Fraud Scheme. Red Lobster's Endless Shrimp Is Back—With a Few Strings Attached. Man Charged in Lego Theft Scheme of Replacing Pieces With Pasta, Police Say.

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Justices Appear Skeptical of Challenge to SEC's Disgorgement Power, but Press Feds on Where the Money Goes

The case concerns the SEC's ability to force white collar defendants to disgorge their gains in cases where regulators can't clearly identify victims or quantify the money lost. Although several justices seemed to lean in favor of the SEC, others wondered how much disgorgement the government is keeping for themselves.

April 20, 2026 at 04:47 PM By **Alyssa Aquino**



U.S. Securities and Exchange Commission seal in Washington, D.C. Photo: Diego M. Radzinski/ALM

The U.S. Supreme Court on Monday appeared unwilling to block the U.S. Securities and Exchange Commission from forcing white collar defendants to disgorge ill-gotten gains in cases where regulators can't identify a victim.

The high court hearing marked at least the third time, in the past decade, that the justices have considered SEC disgorgement orders, which are one of the agency's primary enforcement tools. The last time the issue went before the justices, in 2020, the majority ruled in a decision penned by

Justice Sonia Sotomayor that disgorgement orders are an equitable form of relief that must be “for the benefit of investors.”

Daniel Geyser, a Haynes and Boone partner, argued that the SEC’s \$2.2 million disgorgement order against his client, Ongkaruck Sripetch, a Los Angeles resident, wasn’t equitable at all, as the agency hadn’t identified any investor harmed by Sripetch. Sripetch admitted to securities fraud in connection with a scheme to artificially inflate penny stocks.

“My friend says we’re trying to make it as difficult as possible to get funds to victims. That is not our goal. Our goal is to simply delineate between penalties and disgorgement,” Geyser said.

If the government wanted to punish Sripetch, they could seek civil penalties and “deprive us of every penny,” Geyser said.

But Sotomayor said she was confused by Geyser’s argument.

“Is your position... that if there is only provable loss of \$1, then the maximum measure of disgorgement is \$1?” she asked.

“That’s exactly right,” Geyser said.

“So basically what you’re saying is the government has to call every victim to prove every dollar of loss. Why bother?” she asked.

The hearing came in an issue that has divided the Second and Ninth Circuits, the circuits receiving the bulk of securities cases. The Second Circuit requires the SEC to prove pecuniary loss to obtain disgorgement orders, while the Ninth Circuit does not. The distance between the two comes up often enough, as it could be difficult for the SEC [to identify victims](#) or quantify losses in certain types of fraud, such as accounting fraud or insider trading.

Justice Amy Coney Barrett separately pressed Geyser on his argument that disgorgement was a punishment.

“Why does [disgorgement] look like a penalty, if all you’re taking away is the ill-gotten gains? They’re the proceeds that the wrongdoer isn’t entitled to in the first place,” she said.

Much of the hearing concerned the Supreme Court’s *Liu v. SEC* ruling upholding disgorgement, which was penned by Sotomayor and joined by nearly all of her colleagues at the time. Geyser argued that *Liu* requires disgorgement to be equitable.

“I don’t necessarily like your reading of *Liu*,” said Barrett.

But Justice Clarence Thomas, who had been the sole dissent in *Liu*, remarked that “the world has changed” since that ruling.

Shortly after *Liu* was issued, Congress added a provision to its 2021 defense spending bill expressly authorizing the SEC’s disgorgement awards. Instead of placing disgorgement under 15 U.S.Code § 78u(d)(5), a securities law allowing the SEC to seek “equitable relief,” lawmakers authorized disgorgement awards under a provision titled “disgorgement,” 15 U.S.Code § 78u(d)(7).

Sotomayor told Geyser that the court had two ways to rule against Sripetch—the court could rule that disgorgement was a form of equitable relief that never required pecuniary loss, or that 78u(d)(7) sets forth a means to compensate for the invasion of a legal right.

During arguments, Thomas pressed Deputy U.S. Solicitor General Malcolm Stewart on how much the federal government kept of disgorgement awards, noting that disgorgement looks “a lot less like an equitable remedy” if the government is keeping most of the funds.

Justice Neil Gorsuch followed that line of questioning, citing statistics that the SEC had ordered more than \$6 billion in disgorgement in 2024 and returned \$345 million.

Gorsuch acknowledged that the amount in disgorgement ordered is different from what the government actually collects, but asked, “What kind of efforts does the government make to get this money back?”

Stewart said that in either 2024 or 2025, the government had designated 88% of disgorgement to be returned to investors.

“Both the collection and the distribution can be a long and time-consuming process,” he said.

The high court is expected to render its decision by July in the case, *Sripetch v. U.S. Securities and Exchange Commission*, No. 25-466.

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US Supreme Court seems ready to back SEC in fight over 'disgorgement' power

 [reuters.com/sustainability/boards-policy-regulation/us-supreme-court-consider-secs-disgorgement-power-2026-04-20](https://www.reuters.com/sustainability/boards-policy-regulation/us-supreme-court-consider-secs-disgorgement-power-2026-04-20)

John Kruzel, Andrew Chung

April 20, 2026

Item 1 of 2 The morning sky brightens above the U.S. Supreme Court building in Washington, D.C., U.S., March 24, 2026. REUTERS/Jonathan Ernst/File Photo

[1/2]The morning sky brightens above the U.S. Supreme Court building in Washington, D.C., U.S., March 24, 2026. REUTERS/Jonathan Ernst/File Photo

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- Case tests key Securities and Exchange Commission power
- SEC can seek surrender of profits from illegal activities
- Trump administration is defending the SEC in the case

WASHINGTON, April 20 (Reuters) - The [U.S. Supreme Court](#) seemed inclined on Monday to back the Securities and Exchange Commission in a case testing the bounds of one of the Wall Street watchdog agency's key powers, a financial remedy called disgorgement in which it seeks recovery of profits made from illegal activities.

During arguments in a case involving a defendant named Ongkaruck Sripetch, a majority of the court's nine justices appeared receptive to a defense mounted by Republican President [Donald Trump](#)'s administration of the SEC's broad disgorgement power.

Liberal and conservative justices alike posed sharp questions to a lawyer for a defendant named Ongkaruck Sripetch, who challenged the SEC's disgorgement authority. At the agency's request, a court in California ordered Sripetch to repay more than \$3 million in ill-gotten gains and interest related to a financial fraud case.

The SEC's general power to pursue disgorgement is not in dispute in the case. Courts have long recognized this authority, and Congress enshrined it in federal law. At issue is whether the agency must show that victims suffered economic harm before it can seek the surrender of illegal profits.

Some of the justices pushed back on the argument by Sripetch's lawyer, Daniel Geyser, that the disgorgement in this case would amount to impermissible punishment by the SEC because it had failed to prove that victims had experienced economic harm.

"Why does that look like a penalty if all you're taking away is the ill-gotten gains, so they're the proceeds that the wrongdoer isn't entitled to in the first place?" conservative Justice Amy Coney Barrett asked Geyser.

"I could see a fine or punishment if the defendant is actually paying out of his pocket some money that was rightfully his - that's a punishment," liberal Justice Ketanji Brown Jackson said. "But if we're just disgorging his ill-gotten gains, I guess I'm not sure I understand why that's a punishment."

'WHY BOTHER?'

Geyser told the justices that if the purpose of the disgorgement goes beyond restoring funds to a wronged party or if it even provides a windfall to some, then it crosses the line into a penalty.

"So basically what you're saying is the government has to call every victim, prove every dollar of loss. Why bother? Why bother asking for disgorgement if they have to prove loss to that amount?" liberal Justice Sonia Sotomayor told Geyser.

Under Trump, the SEC used the remedy to obtain around \$1.4 billion in fiscal 2025, according to an agency tally that excluded certain sums. The prior year under Democratic President Joe Biden, the SEC obtained \$6.1 billion through disgorgement, almost three-fourths of its total financial penalties.

The SEC in 2020 sought disgorgement for illicit proceeds that it said Sripetch reaped through fraudulent means, including a pump-and-dump scheme that involved artificially inflating the price of penny stocks before selling off his shares at a profit.

Sripetch admitted violating securities law, and in a related criminal case was sentenced to 21 months in prison. He is challenging the lower court's disgorgement order on the grounds that the SEC failed to prove his actions caused stock prices to drop or otherwise financially harmed investors.

Malcolm Stewart, a Justice Department lawyer, argued that the SEC is not required to show that fraud victims had experienced financial, or "pecuniary," harm before the agency could pursue repayment from the perpetrator of the fraud.

"Disgorgement is intended to ensure that the defendant does not profit by its own wrong," Stewart told the court.

Some of the justices expressed concerns to Stewart about how disgorgement has been applied, including whether it has intruded on a defendant's constitutional right to a jury trial, though the court seemed inclined to limit its decision to the narrow question before it and save other issues for another day.

A California-based federal judge sided with the SEC's broader interpretation of its disgorgement power in a ruling that was upheld last year by the San Francisco-

based 9th U.S. Circuit Court of Appeals.

The SEC's \$1.4 billion disgorgement figure for fiscal 2025 excludes certain repayments secured by other federal agencies and an \$8 billion payment made in January 2025, during the second week of Trump's return to the White House, stemming from long-running SEC litigation concerning a Ponzi scheme. Beyond disgorgement, the SEC can also pursue fines, sanctions and other punishment. The Supreme Court is expected to rule by the end of June. Reporting by John Kruzel in Washington and Andrew Chung in New York; Editing by Will Dunham

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Securities

Supreme Court Voices Little Interest in More Curbs on SEC (1)

April 20, 2026, 11:06 AM PDT

The US Supreme Court expressed little enthusiasm for curbing one of the Securities and Exchange Commission's most important enforcement tools, as the justices weighed restricting the financial watchdog's power to collect ill-gotten gains.

Hearing arguments in Washington Monday, the court considered whether the SEC must show identifiable investor harm in order to win "disgorgement," a legal remedy designed to recoup illicit profits and return them to victims.

The high court limited the SEC'S disgorgement power in 2020, and critics of the commission are looking to build on that ruling.

But even Justice Clarence Thomas, who had voted to bar the use of disgorgement altogether in 2020, indicated he isn't a sure bet this time around. Thomas told a lawyer arguing for new restrictions that "the world has changed in this area" because of a statute Congress passed in the aftermath of the 2020 ruling.

Although Monday's session wasn't definitive, the court spent less than a half hour questioning the Justice Department lawyer representing the SEC in its bid for broad disgorgement powers. That's potentially a positive sign for the government from a court that often spends more than an hour peppering government lawyers with skeptical queries.

[Read More: SEC Power to Recoup Illicit Profits Challenged at Supreme Court](#)

The court's ruling will shape a panoply of SEC cases in which victims aren't easy to pinpoint, from low-profile record-keeping violations to major insider trading allegations. The SEC used disgorgement to secure orders for more than \$6 billion in fiscal 2024 and almost \$11 billion last year.

The clash could also affect the SEC's lawsuit against Elon Musk for allegedly flouting a deadline to disclose his growing stake in Twitter, now known as X, and in the process saving himself more than \$150 million. In a suit filed days before President Donald Trump took office, the SEC is seeking disgorgement as well as civil penalties. Musk and the SEC told a judge earlier this month they are headed toward a trial.

Civil Penalties

Disgorgement is distinct from civil penalties, which the agency can use as punishment if it can meet the legal requirements. The Supreme Court said in 2024 that defendants have a constitutional right to a jury trial in federal court when the commission asks for civil penalties.

The SEC says it should be able to win disgorgement without having to show identifiable investor harm, known to lawyers as “pecuniary” harm. Disgorgement “is designed to deprive the defendant of ill-gotten gains and is measured by profits,” Justice Department lawyer Malcolm Stewart.

Daniel Geyser, the lawyer challenging the SEC, said that approach would eliminate the distinction between disgorgement and civil penalties.

“It would permit an unbounded form of disgorgement rejected by this court and unmoored from its traditional roots,” said Geyser, who represents a man accused by the SEC of taking part in fraudulent schemes tied to at least 20 penny stock companies.

Geyser drew pushback from the court’s liberal wing, including Justice Ketanji Brown Jackson. “If we’re just disgorging his ill-gotten gains, I guess I’m not sure I understand why that’s a punishment,” she said.

Conservative Justice Neil Gorsuch pointed to SEC statistics indicating that only a small fraction of the money won in disgorgement orders ever gets returned to victims. Gorsuch suggested SEC defendants might at least be entitled to a jury trial under the Constitution’s 7th Amendment if the commission is keeping disgorgement awards.

“I don’t see how it would not trigger the Seventh Amendment if the government just decided to keep all the money,” Gorsuch said.

The case involves Ongkaruck Sripetch, who allegedly joined with associates to promote shares and then dump them before the price cratered. The schemes generated \$6.6 million in illicit profits, according to the SEC.

Sripetch has separately pleaded guilty to one count of selling unregistered securities and was sentenced to 21 months in prison.

The case is Sripetch v. Securities and Exchange Commission, 25-466.

(Updates with excerpts from argument starting in ninth paragraph.)

--With assistance from **Nicola M White**.

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Ann M. Lipton

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that was predictable, but -

Arbitration is not common at all, and it sounds? like perhaps? SpaceX will be taking advantage of Atkins's invite to require securities claims be brought in arbitration.

They also outline provisions that could limit shareholders' ability to influence board elections or pursue certain legal claims, forcing disputes into arbitration instead and restricting where they can be brought.

While such structures are common among founder-led technology companies, they limit public shareholders' ability to influence strategy or challenge management.

Reuters @reuters.com · 7h

Exclusive: Musk and insiders to retain voting control of SpaceX after IPO, filing shows reut.rs/4tYjA11



Exclusive: Musk and insiders to retain voting control of SpaceX after IPO, filing shows

SpaceX plans to cement founder Elon Musk's control after its IPO, granting him and a small group of insiders super-voting shares that will outweigh other investors, ...

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Exclusive: Musk and insiders to retain voting control of SpaceX after IPO, filing shows

 [reuters.com/world/musk-insiders-retain-voting-control-spacex-after-ipo-filing-shows-2026-04-21](https://www.reuters.com/world/musk-insiders-retain-voting-control-spacex-after-ipo-filing-shows-2026-04-21)

Echo Wang

April 21, 2026

Item 1 of 2 The Starship rocket launchpad, as speculation mounts on when SpaceX will aim to file its initial public offering (IPO) prospectus with regulators, at the company's launch site in Starbase, Texas, U.S. March 25, 2026. REUTERS/Gabriel V. Cardenas

[1/2] The Starship rocket launchpad, as speculation mounts on when SpaceX will aim to file its initial public offering (IPO) prospectus with regulators, at the company's launch site in Starbase, Texas, U.S. March 25, 2026. REUTERS/Gabriel V. Cardenas [Purchase Licensing Rights](#)  , [opens new tab](#)

- SpaceX to use dual-class shares, limiting public investor influence
- Starlink operating income surged, offsetting xAI's widening losses
- SpaceX ended 2025 with \$24.8B cash, \$92B assets, \$50.8B liabilities

NEW YORK, April 20 (Reuters) - SpaceX plans to cement founder Elon Musk's control after its IPO, granting him and a small group of insiders super-voting shares that will outweigh other investors, according to excerpts of the company's IPO filing reviewed by Reuters.

The prospectus, which was confidentially filed this month, provides fresh details of the company's financials and corporate governance.

Upon completion of the offering, Musk will stay on as chief executive officer, chief technical officer, and will serve as chairman of SpaceX's nine-member board of directors.

Though Musk was paid \$54,080 last year, according to the excerpts, he stands to gain billions in equity after the company's stock market debut.

SpaceX is targeting a listing valuation of roughly \$1.75 trillion with a \$75 billion raise, which would make it the largest initial public offering in history. Musk bought \$1.4 billion in the company's stock last year and stands to get another 60 million in shares if SpaceX's market value reaches \$6.6 trillion and he is able to build data centers in space under a stock plan approved last month, the Information reported.

President and Chief Operating Officer Gwynne Shotwell [received \\$85.8 million](#) in total compensation last year, Reuters previously reported, while Chief Financial Officer Bret Johnsen was paid \$9.8 million.

ANALYST DAY

Some of the executives are driving Musk's IPO ambitions with three days of meetings planned this week for Wall Street analysts, starting with a [tour and briefings](#) at SpaceX's Starbase launch facility in Boca Chica, Texas.

The filing excerpts show SpaceX will use a dual-class equity structure that gives Class B shareholders 10 votes each, concentrating power with Musk and a handful of other insiders, while Class A shares sold to public investors will carry one vote each.

They also outline provisions that could limit shareholders' ability to influence board elections or pursue certain legal claims, forcing disputes into arbitration instead and restricting where they can be brought.

While such structures are common among founder-led technology companies, they limit public shareholders' ability to influence strategy or challenge management.

FIRST LOOK AT FINANCIALS

The filing gives investors the first look at SpaceX's financial health, especially after Musk combined the rocket maker with his social media and AI company xAI [this year](#).

The combined company ended 2025 with about \$24.8 billion in cash on hand, and had total assets of \$92 billion against total liabilities of \$50.8 billion.

Its satellite internet business Starlink generated billions in profit last year, helping to offset heavy losses inherited when it bought founder Elon Musk's social media and artificial intelligence company xAI this year, the excerpts show.

SpaceX swung to a \$4.94 billion consolidated loss in 2025 on revenue of \$18.67 billion as it invested heavily in xAI's artificial intelligence infrastructure, from a \$791 million profit and \$14.02 billion in revenue the year before.

It lost \$4.63 billion on \$10.4 billion in revenue in 2023.

AI SPENDING

Its losses stem from an almost fivefold increase in capital spending over two years to \$20.74 billion last year, more than half of that on AI spending.

The company's successful Starlink satellite internet service is subsidizing much of that spending, generating \$4.42 billion in operating profit but accounting for less than a quarter of its total capital expenditures.

Capital expenditure at the AI segment surged to \$12.7 billion from \$5.6 billion the prior year, pushing SpaceX's total capex above \$20.7 billion, more than double the prior year.

That remains a fraction of spending by the largest technology companies on AI infrastructure: Meta, with a comparable market capitalization of about \$1.7 trillion, had capital expenditure of \$72 billion in 2025.

The Information previously reported some aspects of the financials.

SpaceX did not immediately respond to a request for comment.

Reporting by Echo Wang; Writing by Dawn Kopecki; Editing by Clarence Fernandez and Nick Zieminski

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Echo Wang is a correspondent at Reuters covering U.S. equity capital markets, and the intersection of Chinese business in the U.S, breaking news from U.S.

crackdown on TikTok and Grindr, to restrictions Chinese companies face in listing in New York. She was the Reuters' Reporter of the Year in 2020.

Tesla California registrations slide as incentives fade, industry body says

 [reuters.com/business/autos-transportation/tesla-registrations-plunge-california-industry-body-says-](https://www.reuters.com/business/autos-transportation/tesla-registrations-plunge-california-industry-body-says-2026-04-21)
2026-04-21

Reuters

April 21, 2026

Tesla vehicles are show at a Tesla dealership in Buena Park, California, U.S., January 28, 2026. REUTERS/Mike Blake [Purchase Licensing Rights](#)  , [opens new tab](#)

- California's overall EV market shrinks, with zero-emission sales down 40%
- Loss of federal tax credits and high costs erode consumer confidence, industry body says
- Tesla's Model Y and Model 3 remain top zero-emission sellers despite overall decline

[\(TSLA.O\)](#)  , [opens new tab](#) vehicle registrations in California dropped 24.3% in the first quarter, marking the steepest decline in the state, according to a report released on Tuesday by the California New Car Dealers Association.

The drop comes as California's broader electric vehicle market shrinks, highlighting a loss of momentum for the sector in its most critical U.S. region. Tesla is set to report quarterly results on Wednesday after markets close. The Elon Musk-led company missed analysts' estimates for [global vehicle deliveries](#) in the first quarter.

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The expiry of the \$7,500 federal tax credit in the U.S. at the end of September dealt a blow to U.S. electric vehicle demand, stripping away a key incentive for the purchase of an EV.

The company has already reported two straight years of falling deliveries. Analysts expect modest growth this year, though some have forecast a [third straight year](#) of declines.

Overall zero-emission vehicle sales in the state slumped 40% to 57,111 in the quarter from 95,520 a year earlier, the report said.

Indicators suggest the new vehicle market is set to weaken, as persistently high financing costs, near-record vehicle prices, tariffs, EV tax credit phase-outs and geopolitical risks continue to erode consumer confidence, the body said.

Tesla's aging lineup has further weighed on its appeal in a market that has historically been its stronghold. Despite the decline, the Model Y and Model 3 remained among the best-selling zero-emission vehicles in the state during the quarter, spotlighting the company's dominance.

Lower car sales and falling revenue from regulatory credits mean Tesla has to increasingly lean on its [energy division](#) to bring in the high-margin sales needed to fund Musk's expensive bets in humanoid robots, robotaxis and other ventures.

Tesla's California registrations fall for sixth straight quarter

Reporting by Akash Sriram in Bengaluru; Editing by Shilpi Majumdar and Devika Syamnath

Tesla settles wrongful death lawsuit over crash that killed Florida teenager

 [reuters.com/legal/litigation/tesla-settles-wrongful-death-lawsuit-over-crash-that-killed-florida-teenager-](https://www.reuters.com/legal/litigation/tesla-settles-wrongful-death-lawsuit-over-crash-that-killed-florida-teenager-2026-04-20)
2026-04-20

Mike Scarcella, Abhirup Roy

April 20, 2026

Tesla logo is seen in this illustration taken July 23, 2025. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights](#) , [opens new tab](#)

- Plaintiff alleged Tesla technician disabled speed limiter without parents' knowledge, court records show
- Tesla denied wrongdoing, blamed crash on driver's reckless operation

WASHINGTON, April 20 (Reuters) - Billionaire entrepreneur Elon Musk's Tesla has settled a wrongful death lawsuit in Florida stemming from a 2018 high-speed crash that killed a teenager riding in one of the electric vehicle maker's sedans, court records show.

A trial in the lawsuit was set to begin today in Florida state court in Fort Lauderdale against the estate of the driver of the Tesla ([TSLA.O](#)) , [opens new tab](#) sedan that crashed.

Tesla was removed as a defendant in a court order on Sunday, leaving only the driver's estate remaining in the lawsuit. Lawyers for the plaintiff said in a court filing last week that the claim against Tesla had settled.

The parents of the driver, whose estate had been fighting the lawsuit, have said a Tesla technician without their knowledge disabled speed-limiting software that had prohibited the car from traveling above 85 mph (137 kph), court records show.

Tesla has denied wrongdoing and maintained that the driver's "reckless" operation of the vehicle caused the crash "with or without a speed limiter." The driver's lawyers also denied the plaintiff's claims against them in the lawsuit.

Tesla and its lawyers did not immediately respond to requests for comment, and neither did attorneys representing the plaintiff and the driver's family in the lawsuit. The terms of the resolution of the lawsuit were not immediately known. A court official confirmed the case settled on Monday.

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The plaintiff was a teenage passenger who died in a 2018 crash in a 2014 Tesla Model S that also killed the teenage driver of the vehicle.

The 18-year-old Tesla driver in the crash was speeding at 116 mph on a curve with a 25 mph limit when he lost control and his car slammed into two concrete walls,

according to court records.

Tesla has settled some other lawsuits over crashes involving its vehicles. In one recent case, Tesla [last year resolved](#) a wrongful death lawsuit filed by the estate of a man who was killed in 2021 after his Tesla crashed and caught fire near Dayton, Ohio.

Tesla denied any wrongdoing in that case. The terms of the resolution were not disclosed.

Tesla in February [lost its bid](#) in U.S. federal court in Florida to overturn a \$243 million jury verdict over the 2019 crash of an Autopilot-equipped Model S that killed a 22-year-old woman and severely injured her boyfriend. Tesla is challenging the verdict on appeal.

Reporting by Mike Scarcella; editing by Peter Henderson and Stephen Coates

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Securities

Trump Media, SPAC Deal Architect Come Up Empty in Share Dispute

April 20, 2026, 1:58 PM PDT

President Donald Trump's media company and the architect of its blank-check merger both came up empty Monday in their court battle over the transaction that made Trump's Truth Social network a publicly traded business.

Delaware's top legal tribunal shot down dueling appeals filed in the stock dispute by both Trump Media & Technology Group Corp. and Patrick Orlando, sponsor of the shell entity it combined with in 2024. Orlando previously won a 700,000-share bump—worth about \$7 million at current trading prices—when the trial judge presiding over the stock dispute split the difference between his legal position and Trump Media's.

The dispute concerned the merger between the president's firm and a special purpose acquisition company founded by Orlando, who sued through an investment vehicle called ARC Global Investments II LLC. Orlando helmed the SPAC as CEO before his ouster in connection with a Securities and Exchange Commission probe that ultimately led to an ongoing fraud case.

The litigation between Orlando and Trump Media was among the handful of cases that sprang up to cloud closing of the blank-check transaction, one of several high-profile financial schemes that occupied much of Trump's presidential interregnum. Like his subsequent crypto ventures—which have added vast sums to Trump's family fortune since the start of his second term—the blank-check merger drew energy and cash from the president's millions of fervent supporters.

The deal combined Trump's branding savvy with his scorn for mainstream media, netting the then-former president billions in a single day in March 2024. Trump Media, an instant meme stock that surged to more than \$66-per-share when the merger closed, had fallen to \$10.20 a share by Monday's close.

Orlando's lawsuit took aim at the ratio Trump Media applied when it converted his 5.5 million pre-transaction "founder shares"—purchased for just \$25,000—into 7.4 million shares of common stock worth about \$75 million today. ARC also asserted fiduciary breach claims over a competing suit brought in Florida by Trump and his allies that said Orlando was holding up the merger to extort better terms.

Each side accused the other of litigation misconduct over the course of the case, which led to a ruling by Vice Chancellor Lori W. Will that increased Orlando's stake by far fewer shares than he'd sought. The appeal hinged on the byzantine mechanics of a complex financial engineering scheme and the convoluted syntax of a poorly drafted contract clause.

Both Orlando and Trump Media argued the judge got her math wrong, although in opposite directions. The Delaware Supreme Court disagreed.

ARC is represented by Richards, Layton & Finger PA. Trump Media—sued under its pre-merger name, Digital World Acquisition Corp.—is represented by DLA Piper LLP (US).

The case is ARC Global Inv. II LLC v. Digital World Acquisition Corp., Del., No. 375, 2025, 4/20/26 .

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What AI Analysis Can Reveal About Securities Class Actions

By **Mark Howrey and Emma Dong** (April 17, 2026, 1:19 PM EDT)

A **Law360 Pulse survey** from March indicates that large numbers of attorneys are using artificial intelligence tools for an increasing variety of tasks, such as legal research and document creation.[1] Given this increased use of AI, one might also ask whether such tools can be helpful in undertaking data-driven assessments of litigation — particularly in the area of securities class actions.

In this article, we show how AI-based review of complaint text can enhance securities litigation analysis in two ways.

First, it enables more systematic identification of comparable cases by extracting a broader set of case characteristics. Second, it improves the ability to predict settlement amounts.[2] Using a database of hundreds of securities settlements, we find that measures of tone and certainty in complaints improve the accuracy of settlement predictions, particularly for larger cases.

These improvements are made possible by developments in AI, which allow for the extraction and analysis of large volumes of free-form text, such as complaints, or unstructured data. In comparison, data analysis has historically relied on information collected in standardized formats, or structured data, and manual review of limited amounts of unstructured data.

We also note the limits of what AI-assisted review can accomplish. In particular, certain important drivers of settlement outcomes, such as the level and structure of defendants' insurance policies, are not publicly observable. Thus, even with AI-based inputs, a large amount of variation in settlement outcomes remains unexplained.

Overview of AI-Based Analysis of Complaint Text

We used AI-assisted review of complaint text to extract structured information — e.g., the nature of allegations, and the channel and nature of the corrective disclosures — in more than 700 federal securities matters filed and settled after 2010.[3]

For example, we identified whether a case involves a short-seller report as the alleged corrective disclosure, or whether a government investigation is referenced in the complaint. In addition, we systematically measured multiple aspects of complaint language, such as tone and certainty,[4] which would be challenging and time-consuming to evaluate through human review.

We also implemented human verifications to ensure that AI-generated outputs are properly refined before being incorporated into the statistical analysis.[5] While AI can efficiently classify and extract information from large volumes of text, it may sometimes err on the side of inclusiveness when assigning categories, meaning that cases may be assigned to categories even when the supporting evidence is limited or ambiguous.

Therefore, we conducted multiple levels of validation, including parallel keyword searches and prompts designed to test the logical consistency of results. Any identified discrepancies were resolved



Mark Howrey



Emma Dong

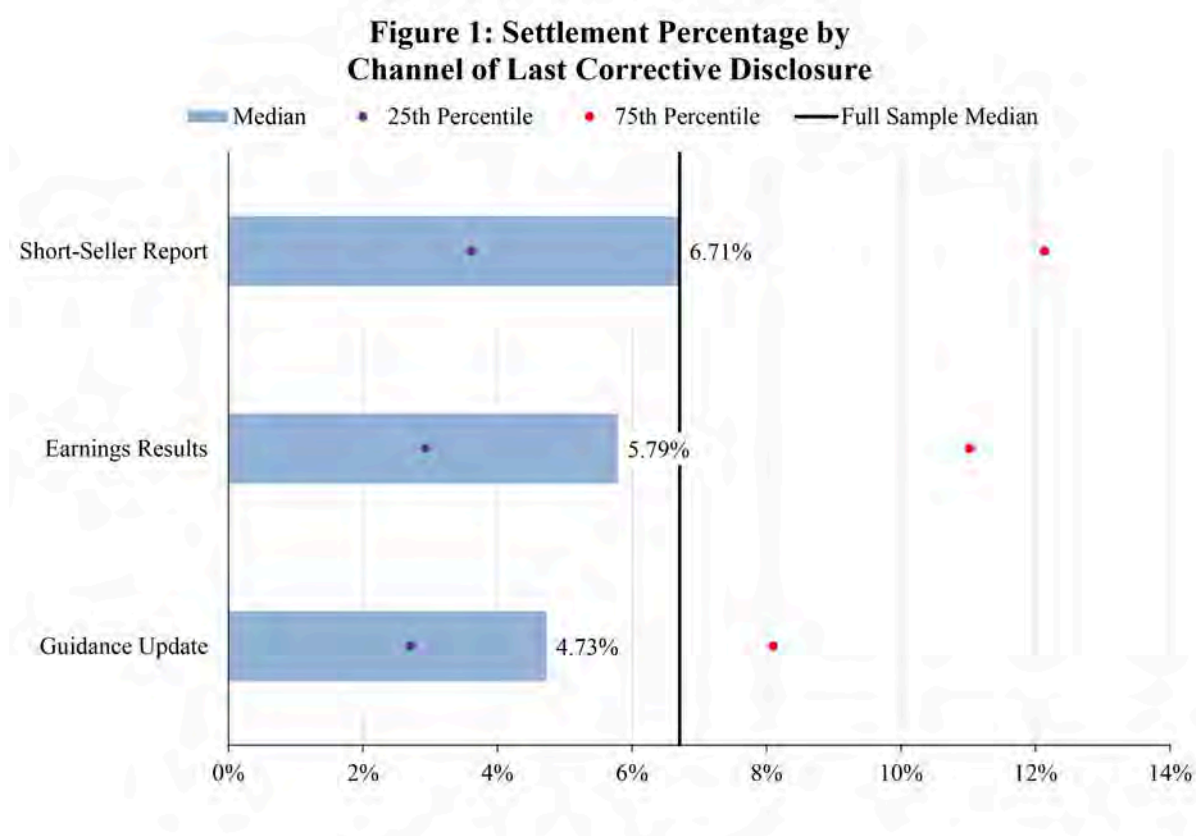
by experienced professionals to ensure that the final classifications accurately reflected the relevant case characteristics.[6]

Beyond data verification, it is essential to examine whether the results of any AI-assisted analysis make economic sense. As described below, the results of our analysis of comparable cases, based on a combination of AI-generated data and human verification, have intuitive appeal.

Example Application: Extraction of Case Characteristics for Comparison

First, we analyzed how settlement outcomes differ by the channel and nature of the corrective disclosure, when the outcome is measured as a percentage of simplified plaintiff-style damages — the settlement percentage.[7]

The figures below compare the distribution of settlement percentages for different classifications to the median for the full sample of over 700 settlements.



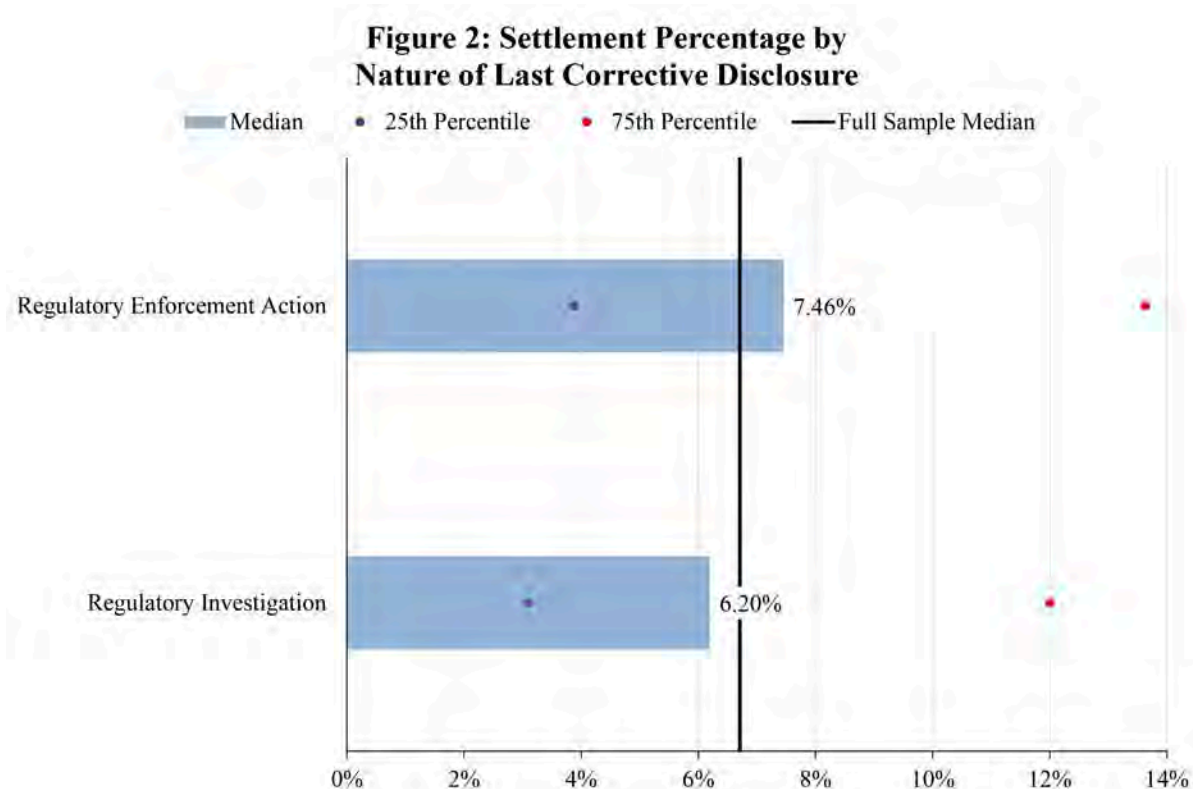
For example, in Figure 1, our analysis suggests that the channel of the last corrective disclosure,[8] such as whether it was revealed in a short-seller report, has minimal impact on the settlement percentage, with a median settlement percentage for that classification being nearly the same as the median for the full sample. In contrast, when the corrective disclosure consists solely of an earnings miss or a guidance update,[9] without additional substantive revelations, settlement percentages tend to be lower.

This is economically intuitive: Companies may miss earnings or adjust guidance, which is forward-looking in nature, for many reasons other than fraud.

Similarly, differences in the nature or subject matter of the information revealed in the corrective disclosures are associated with different settlement percentages, as shown in Figure 2.

For example, cases in which the corrective disclosure references the existence of a regulatory investigation, without further action, are associated with lower settlement percentages compared to cases in which the corrective disclosure reveals an enforcement action.[10]

This distinction is also economically intuitive: An investigation alone may reflect uncertainty, whereas an enforcement action may signal more concrete evidence of any alleged misconduct.



As shown in Figures 1 and 2, substantial variation in settlement percentages remains within each category, which reflects the impact of unobserved case-specific factors, such as the strength of the evidence and insurance considerations. While we provide a few examples of information that can be extracted from an AI-assisted review of complaint text, many more characteristics could be identified and analyzed.

Example Application: Sentiment Analysis

We also examined whether the tone and certainty reflected in the complaints help explain settlement amounts. Sentiment analysis is a well-known method for systematically extracting signals in language that may not be explicitly stated.[11]

Without the assistance of AI, measuring sentiment is time-consuming, often requiring multiple human reviews of the underlying documents and a process to reconcile differences in scoring. AI allows this classification to be performed efficiently, and similar approaches have been used in academic research.[12]

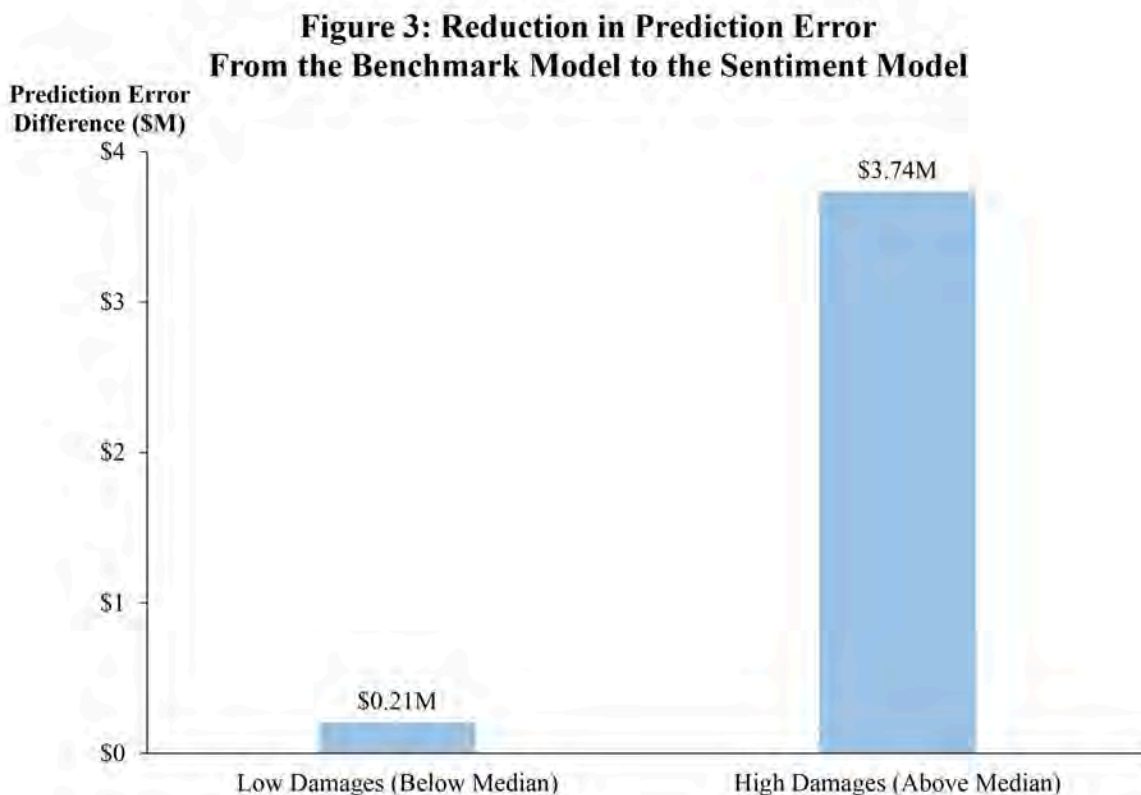
Following established sentiment frameworks,[13] we used AI to categorize complaint language along two primary dimensions: the level of certainty (e.g., confident versus qualified language) and emotional tone, which includes negativity, intensity (e.g., calm versus excited language), and the extent to which the complaint uses assertive and definitive language.[14]

Conceptually, these measures may capture certain so-called soft information about the perceived strength of plaintiffs' claims. For example, when plaintiffs believe they have stronger evidence, complaints may be more direct and confident, with fewer qualifiers or speculative phrases.

To examine whether the sentiment information from the complaints helps explain settlement amounts, we compared the prediction errors of a model that predicts settlements using only plaintiff-style damages — i.e., the benchmark model[15] — against those of a model that includes the sentiment variables, i.e., the sentiment model.[16]

As shown in Figure 3, the sentiment model reduces prediction errors, and the impact is greater for larger settlements.[17]

To put this in context, the reduction in prediction error represents roughly 5% of the median settlement in smaller cases (\$210,000 out of \$3.98 million) and about 12% of the median settlement in larger cases (\$3.7 million out of \$31.64 million). For larger cases, the \$3.7 million average reduction means that prediction errors are approximately 8% smaller than under the benchmark model.



One possible explanation for the difference in explanatory power is that smaller cases often settle at amounts influenced by considerations such as fixed litigation costs, whereas larger cases may be negotiated more closely around the merits, so differences in language sentiment can better explain variations in settlement outcomes beyond the size of damages.

However, complaint text does not directly capture factors that may affect settlement outcomes, including the amount and structure of defendants' insurance. AI-assisted review should therefore be viewed as a complement to, not a substitute for, legal and economic judgment.

Conclusion

When AI-based reviews of complaint text are combined with economic expertise and professional judgment, they can enhance securities class action analysis in two key ways: by enabling more systematic identification of comparable cases and by improving the accuracy of settlement predictions, particularly in larger cases, while some variation in settlement amount remains unexplained due to unobserved factors.

Mark Howrey is a managing principal and Emma Xiaoxiao Dong is a vice president at Analysis Group Inc.

Analysis Group managing principal Gaurav Jetley contributed to this article.

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[1] Kevin Penton, "What Attorneys Really Think About AI," Law360, March 31, 2026, available at <https://www.law360.com/corporate/articles/2454609>.

[2] As discussed in the article "Assessing Federal Securities Class Action Stats In '25 So Far," AI-assisted review can also be used to identify the relationship between settlement amounts and the litigation stage of the case at the time of settlement. Howrey, Mark, and Emma Dong, "Assessing Federal Securities Class Action Stats in '25 So Far," Law360, August 21, 2025, available at: <https://www.law360.com/articles/2376958/assessing-federal-securities-class-action-stats-in-25-so-far>.

[3] The sample includes federal class action settlements with Rule 10b-5 or Securities Act Section 11 claims, excluding settlements related to mergers and acquisitions, those brought by the U.S. Securities and Exchange Commission, and those where the alleged misrepresentations or omissions were associated with securitizations. Approximately 5% of cases were excluded from the analysis because the complaint text could not be reliably processed.

[4] Methods for extracting language sentiment, including the design of AI prompts, may vary depending on the type of text being analyzed. For example, prompts for shorter informal content such as social media posts may differ from those used for longer formal documents such as legal complaints.

[5] The importance of human-in-the-loop systems is documented, especially for tasks requiring context-sensitive judgment and nuanced interpretation. See "Human in the Loop AI: Elevating Accuracy, Oversight, and Trust in AI Systems," WitnessAI, November 10, 2025, available at: <https://witness.ai/blog/human-in-the-loop-ai/>.

[6] For example, the human-in-the-loop process helps ensure that classifications align with how practitioners and economists distinguish between types of disclosures (e.g., government investigations versus government enforcement actions) is consistent with the AI results.

[7] Plaintiff-style damages are calculated using the inflation-based per-share damages specified in the settlement plan of allocation. Trading behavior is estimated using a two-trader model. For benchmarking purposes, shares available to trade and trading volume are not adjusted for short interest or insider holdings. While estimating trading behavior using a trading model is frequently used in settlement negotiations, courts have rejected the approach as speculative.

[8] We use an AI-based method that reviews the complaints and identifies natural groupings based on similarities in the channel and nature of the corrective disclosures. Rather than forcing cases into predetermined classifications, this approach allows the possible categories to emerge from the data itself. The generated list is then manually reviewed and adjusted.

[9] An "earnings result" disclosure refers to a company-issued earnings release or preannouncement that allegedly reveals adverse financial or operational information. A "guidance update" refers to an announcement revising forward-looking guidance that was allegedly based on a revelation of previously concealed facts. Cases with a corrective disclosure that involved an earnings miss and a revised guidance are included in both categories.

[10] A classification of "Regulatory Investigation" involves disclosures of government investigations (such as subpoenas), whereas a classification of "Regulatory Enforcement Action" requires disclosures of an enforcement action, such as consent orders, fines, or settlements. For example, a company disclosure of an SEC subpoena regarding its accounting practices is considered a "Regulatory Investigation." A company disclosure that it entered a consent order with the FDIC is considered a "Regulatory Enforcement Action."

[11] See Tan, Kian L., et al. "A Survey of Sentiment Analysis: Approaches, Datasets, and Future Research," Applied Sciences, 2023, Vol. 13(7), p. 4550 and Kumar, Mahander, et al., "Evolving Techniques in Sentiment Analysis: A Comprehensive Review," PeerJ Computer Science, 2025, 11:

e2592 for reviews of the applications and methodologies of sentiment analysis.

[12] For example, see Jiang, Wei, et al. "Measuring Sustainability with AI," *Artificial Intelligence, Finance, and Sustainability*, 2024, Chapter 3, pp. 33–57, for a review of how AI is used to measure firms' ESG exposure, including employing sentiment analysis. In legal contexts, AI-powered sentiment analysis has been used to unearth hidden biases within case law and to examine the semantic structures of bills. See Abimbola, Bolanle, et al. "Enhancing Legal Sentiment Analysis: A Convolutional Neural Network–Long Short-Term Memory Document-Level Model," *Machine Learning and Knowledge Extraction*, 2024, Vol. 6(2), pp. 877–897; Valdez, Danny, and Patricia Goodson. "Neutral or Framed? A Sentiment Analysis of 2019 Abortion Laws," *Sexuality Research and Social Policy*, 2022, Vol. 19, pp. 936–945.

[13] Hyland, Ken. "Boosting, Hedging and the Negotiation of Academic Knowledge," *Text & Talk*, 1998, Vol. 18(3), pp. 349–382. See also Daniel, Florence O. "Dissenting with Conviction and Deference: Boosters and Hedges in Nigerian Supreme Court Dissents," *International Journal for the Semiotics of Law*, Vol. 38, 1579–1602. Broekens, Joost, et al., "Fine-grained Affective Processing Capabilities Emerging from Large Language Models," 11th International Conference on Affective Computing and Intelligence Interaction, 2023.

[14] AI classifies sentiment at the sentence level. We then assign numeric values for each sentiment category and take an average across all sentences in the complaint.

[15] Plaintiff-style damages alone are known to be a driver of settlement amounts, even without making additional modeling assumptions, so the benchmark regression model includes log(damages) and its squared term.

[16] In the sentiment model, we include indicator variables for common plaintiff law firms to control for potential firm-specific language style effects that may influence measured sentiment.

[17] To evaluate prediction error, we conduct 10,000 simulations in which 80% of the cases are randomly selected to train the model and the remaining 20% are used for testing. In each iteration, we calculate the average absolute dollar difference between predicted and actual settlements for the test cases ("Dollar MAE"). The reported prediction error is the median Dollar MAE across all iterations. In this article, we define "larger cases" as those with damages above the sample median, although the results are similar if case size is defined using settlement amounts.



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2nd Circ. Ruling Reinforces Securities Act Limits Post-Slack

By **Elisha Kobre** (April 20, 2026, 10:14 AM EDT)

The U.S. Court of Appeals for the Second Circuit's March 24 decision in *Knapp v. Barclays PLC* is an important win for issuers, underwriters and other participants in the structured-products market.

In a precedential opinion addressing issues the court described as matters of first impression, the panel **held** that Barclays' mandatory four-to-one reverse split of certain exchange-traded notes, or ETNs, did not constitute a "sale" under Section 12(a)(1) of the Securities Act, and that investors also failed to satisfy Section 11's tracing requirement. That tracing requirement — firmly established by the U.S. Supreme Court's 2023 **decision** in *Slack Technologies LLC v. Pirani* — was rigorously applied in *Knapp* to dismiss the Section 11 claim.



Elisha Kobre

The ruling reinforces meaningful limits on private Securities Act claims, particularly where plaintiffs attempt to recharacterize mechanical corporate actions as new securities transactions.

Barclays' Reverse Split and the Securities Claims

The decision arises from Barclays' widely reported overissuance of securities under its U.S. shelf registration program.

After losing seasoned issuer status, Barclays was required to track available registered capacity in real time. According to the U.S. Securities and Exchange Commission, Barclays failed to establish adequate controls for that purpose, and ultimately offered and sold approximately \$17.7 billion in unregistered securities.[1]

Barclays disclosed the issue in March 2022,[2] announced a rescission offer for certain investors and later agreed to an SEC resolution involving a \$200 million civil penalty plus disgorgement and prejudgment interest, which was deemed satisfied by the rescission offer. Barclays separately disclosed that the shelf overissuance had exceeded registered capacity by approximately \$15.2 billion, and that it expected a significant financial impact from the rescission process.[3]

Against that backdrop, the plaintiffs in *Knapp* focused on one Barclays product: VXX ETNs. In April 2021, Barclays implemented a mandatory four-to-one reverse split, exchanging every four outstanding notes for one note of equivalent value.

The plaintiffs contended that this reverse split itself was an unregistered sale, actionable under Section 12(a)(1). They also argued that the postsplit notes were traceable to an April 2021 pricing supplement, which they said could support a Section 11 claim.

The U.S. District Court for the Southern District of New York **dismissed** those claims in March 2025, and the Second Circuit affirmed in full.

Mandatory Reverse Split Is Not Automatically a Securities Act Sale

The most significant aspect of the opinion is the court's analysis of whether a mandatory reverse split can qualify as a "sale" under the Securities Act.

Relying heavily on the Second Circuit's 1994 decision in *Gelles v. TDA Industries Inc.*, the panel framed the question functionally: Courts must determine whether there has been "such significant change in the nature of the investment or in the investment risks as to amount to a new investment." Applying that standard, the court concluded that Barclays' reverse split did not meaningfully change the underlying investment; it merely altered the number of notes investors held while leaving the economic substance of the position intact.

The panel also stressed a second point that may prove equally consequential in future cases: the importance of investor choice.

In the court's words, "the presence of an investment decision is crucial to the finding of a purchase or sale." Here, investors had no choice but to participate. The reverse split was mandatory and arose from rights embedded in the original terms of the ETNs.

That absence of volition strongly supported the conclusion that the transaction was not a new sale, but instead an "involuntary and immaterial swap." For issuers and market participants, that language is significant because it suggests that courts in the Second Circuit will focus on substance and investor decision-making, not merely formal changes in the number or denomination of securities.

The plaintiffs attempted to avoid that result by arguing that the split had practical consequences for redemption rights and liquidity. But the court was unpersuaded. It held that those arguments did not transform the reverse split into a new investment or a materially different asset.

The opinion therefore draws an important doctrinal line: A split, consolidation or similar mechanical adjustment does not become a Securities Act sale unless it meaningfully changes the nature of the holder's investment, rather than simply changing the number of units held.

Knapp Reinforces Rigor Of Section 11 Tracing After Slack v. Pirani

The Second Circuit's tracing analysis is also likely to resonate beyond the ETN context.

In its 2023 decision in *Slack v. Pirani*, the Supreme Court held that those asserting claims under Section 11 of the Securities Act must show that the securities they purchased are traceable to a specific allegedly defective registration statement. In *Slack*, the plaintiff alleged that Slack violated Section 11 by filing a materially misleading registration statement.

The wrinkle was that Slack's offering was made via a direct listing on the New York Stock Exchange — a process through which holders of preexisting unregistered shares in Slack could also sell them to the public right away.

Slack moved to dismiss the complaint on the ground that the plaintiff could not allege that the shares he purchased were traceable to the allegedly misleading registration statement, as opposed to unregistered shares unconnected to the registration statement. The Supreme Court agreed, holding that Section 11 requires the securities held by the plaintiff to be traceable to the particular registration statement alleged to be false or misleading.

In *Knapp*, the plaintiffs argued that the April 2021 pricing supplement covered the notes they held after the reverse split. That supplement stated that "Barclays had 'implemented' the split, and indicated that Barclays might 'use this pricing supplement in the initial sale' of any post-split ETNs that Barclays still held, and in 'market-making transaction[s],' namely, sales to 'dealers [who would] resell such ETNs to the public.'"

The Second Circuit rejected that theory based on a careful reading of the supplement's terms, concluding that it governed only the initial sale of postsplit ETNs that Barclays still held in inventory for market-making transactions, not the already-outstanding ETNs that investors continued to hold in split-adjusted form.

Among other things, the court pointed to the supplement's express statement that it "governs the 'initial sale of the [post-split] ETNs' that Barclays still held in its inventory," and that the supplement "(i) refers to the split in the past tense ... (ii) does not list the reverse split among a series of previous

'issu[ances]' ... and (iii) was followed soon after by another pricing supplement — covering yet another batch of ETNs — that once again did not mention the reverse split as a previous issuance."

That holding matters because it treats tracing as a genuine statutory limitation rather than a pleading formality.

The court would not allow the plaintiffs to bridge the gap by pointing to product continuity or by arguing that the split somehow transformed existing ETNs into newly registered securities. Rather, the court was willing to closely scrutinize the language in the supplement to determine that it did not cover the already-issued ETNs that were the subject of the split.

Nor did Rule 416(b) save the claim; the panel agreed that the rule addresses antidilution adjustments for securities not yet distributed, not already-issued securities simply affected by a split.

The message is clear: In the Second Circuit, plaintiffs cannot satisfy Section 11 merely by identifying a later offering document associated with the same security if their holdings are not actually traceable to that document.

Why This Decision Matters for Issuers and Disclosure Counsel

For public companies, banks and structured-products issuers, Knapp provides useful clarity on two recurring risk areas.

First, it narrows the circumstances in which a mandatory corporate or product-structure adjustment can be reframed as a new Securities Act sale. Second, it confirms that Section 11 tracing remains a meaningful obstacle to liability, particularly in cases involving securities that trade in the market over time and are later subject to supplemental offering materials.

The decision should not, however, be read as minimizing the importance of registration compliance and internal controls.

Barclays still faced substantial regulatory exposure, financial cost and reputational harm from the underlying overissuance. The SEC's settlement makes plain that failures in real-time registration-capacity tracking can carry severe consequences, even where private plaintiffs later struggle to fit those facts into Sections 11 or 12.

For legal and compliance teams, the practical takeaway is twofold: Knapp is a favorable defense precedent on the scope of private Securities Act liability, but it also underscores the continuing importance of robust controls around shelf registrations, structured-note issuance and disclosure governance.

In short, Knapp is a narrow but important opinion. It limits efforts to treat mandatory reverse splits as actionable sales, reinforces the post-Slack discipline of tracing and offers issuers a stronger basis to challenge expansive Securities Act theories untethered to the economic substance of the transaction at issue. For companies operating in the capital markets, and for the lawyers who advise them, that makes Knapp a decision worthy of close attention.

Elisha Kobre is a partner at Sheppard Mullin Richter & Hampton LLP.

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[1] <https://www.sec.gov/newsroom/press-releases/2022-179>.

[2] <https://www.sec.gov/Archives/edgar/data/312069/000165495422003926/a1574gn.htm>.

[3] <https://www.sec.gov/Archives/edgar/data/312069/000165495422003926/a1574gn.htm>.



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ImmunityBio Stock Fell After FDA Letter, Derivative Suit Says

By **Zak Kostro**

Law360 (April 20, 2026, 8:26 PM EDT) -- Biotechnology company ImmunityBio Inc.'s stock slipped by 21% after misleading statements on a podcast by the company's founder about its lead cancer drug prompted the issuance of a warning letter from the U.S. Food and Drug Administration, according to a shareholder derivative suit in California federal court.

In a **complaint** filed on Friday, Roland Davies, who has held ImmunityBio common stock since 2021, said the company's founder, controlling stockholder, executive chairman of the board, and global chief scientific and medical officer Patrick Soon-Shiong along with other defendants issued false and misleading statements from January through March about Anktiva, an immunotherapy treatment for bladder cancer.

Davies alleged that on Jan. 19, Soon-Shiong appeared on a podcast in which he made a series of statements about Anktiva that materially overstated the drug's capabilities. A link to the podcast was posted on ImmunityBio's website but was later removed, "presumably due to the warning letter" from the FDA, Davies said.

The alleged misconduct also resulted in the initiation of a proposed federal securities fraud class action, *Douglas v. ImmunityBio Inc. et al.*, according to the complaint.

On March 24, the warning letter, dated March 13, was revealed publicly, highlighting Soon-Shiong's statements on the podcast, according to the complaint.

After the letter was published, ImmunityBio's common stock fell by \$1.98 per share, or 21%, to close at \$7.42 per share on March 24, the complaint says. The company's stock price has continued to decline since then, Davies said.

In addition to the FDA warning letter and the proposed securities class action, the individual defendants' alleged wrongdoing has spurred the need for internal investigations and subjected ImmunityBio to losses from the waste of corporate assets and the individual defendants' unjust enrichment, Davies alleged.

Addressing the unjust enrichment claim, Davies said the individual defendants "either benefited financially from the improper conduct, or received bonuses, stock options or similar compensation from ImmunityBio that was tied to the performance or artificially inflated valuation of ImmunityBio, or received compensation or other payments that were unjust in light of the individual defendants' bad faith conduct."

ImmunityBio, a Delaware corporation with headquarters in San Diego, "will have to expend many millions of dollars" to remedy the alleged wrongdoing, according to the complaint.

"The company has been substantially damaged as a result of the individual defendants' knowing or highly reckless breaches of fiduciary duty and other misconduct," Davies said.

The individual defendants also include Richard Adcock, who has served as the company's CEO since 2020 and as its president and a board member since 2021, and Barry J. Simon, a board member since 2007 and the company's chief corporate affairs officer since 2021, according to the complaint.

"The conduct of the individual defendants complained of herein involves a knowing and culpable violation of their obligations as directors and/or officers of ImmunityBio, the absence of good faith on their part, or a reckless disregard for their duties to the company and its shareholders that the individual defendants were aware or should have been aware posed a risk of serious injury to the company," Davies alleged.

According to the complaint, Soon-Shiong claimed on the podcast that Anktiva was "approved for bladder cancer, but it actually can treat all cancers," in addition to other materially false and misleading statements.

In the warning letter, the FDA said Soon-Shiong's claims, as well as representations in a TV advertisement, "misleadingly suggest that Anktiva will allow all [nonmuscle invasive bladder cancer] patients treated with Anktiva to be cancer-free for the long term, when this has not been demonstrated," according to the complaint.

Davies brought claims against the individual defendants for breach of fiduciary duties, unjust enrichment, abuse of control, gross mismanagement and waste of corporate assets, as well as a claim against Soon-Shiong for contribution under the federal private right of action for violations of the Securities Exchange Act, the complaint said.

The complaint seeks damages from ImmunityBio for the individual defendants' alleged violations as well as pre- and postjudgment interest, according to the complaint.

It also seeks a judgment directing the company and individual defendants to improve ImmunityBio's corporate governance and internal procedures "to comply with applicable laws and to protect ImmunityBio and its shareholders from a repeat of the damaging events described herein," the complaint said.

An attorney representing Davies declined to comment on Monday.

Representatives for ImmunityBio did not immediately respond to inquiries seeking comment on Monday.

Davies is represented by Kip B. Shuman and Brett D. Stecker of Shuman Glenn & Stecker.

Counsel information for the defendants was not immediately available.

The case is Roland Davies v. Patrick Soon-Shiong et al., case number 2:26-cv-04130, in the U.S. District Court for the Central District of California.

--Editing by Alex Hubbard and Lief Nielsen.



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Catching Up With Delaware's Chancery Court

By Jarek Rutz

Law360 (April 20, 2026, 2:20 PM EDT) -- The Delaware Chancery Court this past week delivered another mix of procedural rulings, fiduciary duty disputes and deal litigation, highlighting both the court's gatekeeping role and its continued focus on stockholder rights and transactional fairness.

From dismissals on technical grounds to multimillion-dollar settlements and high-profile appeals, the docket reflected the wide range of corporate conflicts funneled through Delaware's equity court.

Here's what you might have missed.

Procedural Hurdles and Threshold Defenses

Vice Chancellor Lori W. Will **dismissed a long-running stockholder suit** against Jenzabar Inc. and its founder without reaching the merits, underscoring the importance of proper claim structure and timing. The court found the investors' allegations, including claims of insider self-dealing and dilution, were improperly brought as direct claims rather than derivative ones, since the harm flowed first to the company. It also held that many claims were not ripe or were barred by Delaware's three-year statute of limitations, pointing to earlier disclosures and litigation that had already put stockholders on notice.

Major Settlements in Stockholder Litigation

Several cases resolved through settlements, reflecting the continued balancing of litigation risk against guaranteed recovery.

Foundation Building Materials Inc. and related defendants **agreed to a \$26 million deal** to resolve claims tied to the company's \$1.4 billion private equity sale. The settlement, which splits liability among the buyer and other defendants, closes out allegations that conflicts of interest and disclosure failures tainted the transaction.

Investors in Cvent Holding Corp. **reached a \$12 million agreement** to end fiduciary-duty claims over its \$4.6 billion take-private sale to affiliates of Blackstone Inc. The case had survived dismissal in part based on allegations that the controlling stockholder received non-ratable benefits, triggering enhanced judicial scrutiny.

In the special-purpose acquisition company space, a proposed \$2.675 million settlement would resolve claims arising from the merger between Big Rock Partners and NeuroRx, continuing a broader trend of post-de-SPAC litigation working its way through Delaware courts.

Deal Disputes and Allegations of Misconduct

The court also saw fresh litigation tied to contested transactions and alleged bad-faith conduct.

Cryptocurrency platform Exodus Movement Inc. sued W3C Corp and its owner, alleging they **sabotaged a \$175 million acquisition** by refusing to complete pre-closing obligations and attempting to pursue alternative deals. The complaint seeks to force the transaction to close and prevent further interference, highlighting the court's role in policing broken deals.

Polygon-related entities accused former executives of Predicate Labs of **self-dealing and misrepresentation** following a \$400 million acquisition. The plaintiffs claim the executives collected

substantial milestone payments without delivering promised blockchain technology, while allegedly working with competitors and soliciting employees.

Fiduciary Duties and Appeal

A post-trial ruling emphasized the difficulty of proving fiduciary breaches without clear evidence of harm.

Vice Chancellor Nate A. Cook **largely rejected claims** by Maric Healthcare that a former executive improperly competed by launching a nearby opioid treatment clinic. While the court found a narrow breach tied to the recruitment of a key employee, it awarded only about \$1,600 in damages, concluding the company failed to show lost profits or a viable expansion opportunity.

At the appellate level, the Delaware Supreme Court heard arguments in a closely watched dispute involving a failed \$50 million investment in Space Exploration Technologies Corp. Investor Leo Investments Hong Kong Ltd. is **challenging a Chancery Court ruling** that awarded only nominal damages for a breach of the duty of candor, while still granting nearly \$16 million in attorney fees.

Quotable

"Defendants, through their active and ongoing sabotage of the transaction and the businesses to be acquired, combined with their complete refusal to cooperate by undertaking the required pre-closing transaction steps, have rendered it impossible to close without judicial intervention," cryptocurrency wallet platform Exodus Movement Inc. said in its lawsuit against W3C Corp. and its owner Garth Howat, alleging they took steps to delay the company's \$175 million sale to Exodus.

--Editing by Janice Carter Brown.

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WWE Execs Urge Court To Reject 'Speculative' Evidence Bid

By Jarek Rutz

Law360 (April 20, 2026, 6:28 PM EDT) -- The Delaware Chancery Court should not grant WWE shareholders' latest discovery motion, company leaders and related parties have said, arguing that investors' demand for more information about what they called deleted messages were unnecessary, unsupported and already satisfied.

In an **opposition** filed Friday, defendants Nick Khan and Paul Levesque, known by his stage name as Triple H, along with nonparties Ari Emanuel and Brad Blum, said shareholders are improperly trying to build a spoliation claim tied to World Wrestling Entertainment Inc.'s 2023 merger with Endeavor Group Holdings Inc. The filing contended the investors have failed to identify any actual missing evidence related to the deal and have instead relied on speculation about the use of encrypted messaging apps like Signal.

Khan is the president of WWE and board member of TKO Group Holdings, which owns both WWE and UFC. Levesque is WWE's chief content officer and executive producer, while Emanuel is CEO of Endeavor, which WWE merged with to create TKO, of which Emanuel is chair, and Blum is the former chief operating officer of WWE.

"The motion is yet another attempt to manufacture issues in anticipation of a spoliation motion," according to their objection.

The current and former executives' filing said the shareholders' motion to compel is moot because the defendants have already produced extensive discovery, including more than 37,000 documents and communications pulled from emails, texts and messaging platforms. They also noted the plaintiffs have taken dozens of depositions, including of the responding parties and 23 other witnesses, and questioned them directly about their communication practices and data preservation efforts.

The **dispute stems from** WWE's April 2023 merger with Endeavor to form TKO Group Holdings, a transaction that shareholders allege was tainted by conflicts of interest and a sales process they have described as flawed and led by former WWE CEO Vince McMahon. In earlier filings, investors accused company leaders of steering the deal toward Endeavor and later destroying evidence tied to that process, including communications about what investors called misconduct by McMahon, as well as the company's strategic review.

According to the defendants' Friday filing, WWE issued multiple litigation hold notices beginning in June 2022 related to misconduct allegations against McMahon, followed by additional notices in January and May 2023 covering the company's strategic review and the merger itself. The executives said the board conducted a broad outreach to more than 60 potential buyers, entered into confidentiality agreements with 20 parties and received eight indications of interest before selecting Endeavor's bid.

The responding parties maintained that their communications about the deal primarily occurred through calls, emails and in-person meetings, not Signal, and that any existing Signal data has already been reviewed and produced. They also said that searches of devices and apps revealed little to no relevant content, with some recovered messages unrelated to the merger entirely.

A central legal argument in the opposition was that the shareholders cannot establish spoliation

without showing that relevant information was actually lost after a duty to preserve it arose. The executives emphasized that the investors have not identified a single instance where merger-related communications were deleted in violation of a preservation obligation.

"Plaintiffs do not identify a single instance of supposed spoliation of communications about the merger," according to the filing.

Instead, the defendants argued in the filing, the shareholders' claims rest on gaps in the record that are more plausibly explained by the absence of wrongdoing rather than missing evidence. They also pointed to deposition testimony and document production that, in their view, contradict theories of secret negotiations, quid pro quo arrangements or coordinated leaks.

The filing further asserted that some of the requests improperly target individuals who either had minimal involvement or no preservation duty at the relevant time. It said plaintiffs failed to meaningfully address Levesque's alleged use of Signal and cannot compel discovery from Emanuel, a nonparty who did not receive litigation hold notices until June 2024, well after the merger closed and the lawsuit began.

Finally, the defendants contend that the specific discovery procedure sought by plaintiffs, modeled on an approach used in an unrelated case, is neither required nor appropriate here, particularly given the volume of material already produced.

The opposition concluded by asking the Chancery Court to deny the investors' request in full, framing it as an unwarranted attempt to expand discovery late in the case without concrete evidence of misconduct.

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

The shareholders are represented by Kimberly A. Evans, Lindsay K. Faccenda, Irene R. Lax, Jason M. Leviton, Nathan Abelman and Robert Erikson of Block & Leviton LLP, Gregory V. Varallo, Anthony M. Calvano, Rebecca Boon, Mark Lebovitch and Jonathan D'Errico of Bernstein Litowitz Berger & Grossman LLP, Brian J. Robbins, Stephen J. Oddo and Richard N. Lozano of Robbins LLP, and Richard A. Maniskas of RM Law PC.

Khan and Levesque are represented by William M. Lafferty, Ryan D. Stottmann, Alexandra M. Cumings, Jacob M. Perrone, Anneliese Ostrom and Jialu Zou of Morris Nichols Arsht & Tunnell LLP and Michele D. Johnson, Kristin N. Murphy, Ryan A. Walsh, Colleen C. Smith and Jordan Mundell of Latham & Watkins LLP.

McMahon is represented by Michael A. Pittenger, T. Brad Davey, Nicholas D. Mozal, Adriane M. Kappauf and Megan R. Thomas of Potter Anderson & Corroon LLP and Sandra C. Goldstein, Stefan Atkinson and Haley S. Stern of Kirkland & Ellis LLP.

The case is In re: World Wrestling Entertainment Inc. Merger Litigation, case number 2023-1166, in the Court of Chancery of the State of Delaware.

--Editing by Covey Son.



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Two Harbors Shareholder Sues To Stop CrossCountry Deal

By **Isaac Monterose**

Law360 (April 20, 2026, 8:24 PM EDT) -- A shareholder for Two Harbors Investment Corp. filed a lawsuit in Illinois federal court Friday asking a judge to block the real estate investment trust's merger with mortgage lender CrossCountry.

Michael Koblentz claimed in his **lawsuit** that the CrossCountry deal comes with a termination fee provision that stymies competing offers and that the REIT's executives deliberately withheld important information from shareholders in order to secure their approval for the merger.

The lawsuit follows an **announcement** last month that retail-focused mortgage lender CrossCountry came out on top of a bidding war with UWM Holdings Corp. to acquire Two Harbors.

The REIT had previously announced a merger with UWM in December 2025, but CrossCountry made a competing offer. The REIT's board of directors acknowledged that CrossCountry's initial acquisition offer wasn't as good as UWM's, but they decided to consider it because it could turn into a better one later, Koblentz's lawsuit said.

CrossCountry made another offer in March, and the deal was announced later that month. CrossCountry also agreed to pay a \$25.4 million termination fee to UWM on behalf of Two Harbors because of the failed deal, according to the complaint.

The CrossCountry deal requires Two Harbors to reimburse the mortgage lender for the termination fee if their merger falls through, Koblentz said, which basically blocks anyone else from making a competing offer.

Koblentz also said that several Two Harbors executives, such as its CEO and President William Greenberg, bought Two Harbors shares when the UWM merger was announced and sold them two days after the REIT announced the UWM merger. According to the lawsuit, the REIT's executives could have agreed to the UWM merger and announced the deal because they wanted to make as much money as possible from selling their shares, which they are required to do in accordance with the U.S. Securities and Exchange Commission's Rule 10b5-1.

"Further, regardless of whether the company elected to pursue a transaction with UWMC or CrossCountry, the timing of the Rule 10b5-1 sales and whether such timing may have influenced Greenberg or the board to pursue strategic alternatives to maximize their own individual profits or interests and avoid their respective options being devalued or less optimized is material," he said.

"As such, a reasonable shareholder is entitled to know whether Greenberg or the board took into consideration the company's Rule 10b5-1 plans in determining the timing of their collective decision to sell their respective interests in the company's Rule 10b5-1 plans," he added.

Additionally, according to Koblentz, the CrossCountry merger's proxy statement failed to tell shareholders about Two Harbors' relationship with Houlihan Lokey, which was its financial adviser for the deal.

A registration statement showed that Houlihan Lokey was paid \$2.5 million for its work on the Two Harbors-UWM deal, according to the complaint, and a proxy statement showed that the financial adviser was paid more than \$3.7 million for the CrossCountry deal.

"The proxy statement does not disclose the services Houlihan Lokey performed to warrant its \$3,725,000 fee," Koblentz said. "These fees are separate from Houlihan Lokey's fees in connection with its services and fairness opinion with respect to the proposed transaction."

"Further, the proxy statement needs to disclose why there is a \$1.225 million discrepancy between the \$2.5 million fee referenced in the registration statement, and the \$3.725 million fee disclosed in the proxy statement," he added.

Also, Two Harbors used an unnamed financial adviser when it received a separate offer from UWM in December 2024, Klobentz said. In February, the REIT replaced this adviser with Houlihan Lokey for the UWM deal, he claimed.

"Without details or context concerning Houlihan Lokey's advisory services, a reasonable stockholder cannot properly assess the independence and validity of Houlihan Lokey's fairness opinion as it is completely unknown whether prior services and related fees influenced or had any relation to Houlihan Lokey's financial analysis," Klobentz said in the suit. "Further, it is unknown why Two Harbor's undisclosed 'financial advisor,' which was involved in providing financial advisory services from at least January 2025 until at least February 2025, was replaced by Houlihan Lokey."

Klobentz also claimed that Houlihan Lokey's analysis of the CrossCountry deal was "materially incomplete and misleading" when it came to assessing the value of UWM and CrossCountry's stock.

Two Harbors declined to comment Monday.

Koblentz's counsel didn't respond to a request for comment. Counsel information for the defendants wasn't immediately available.

Koblentz is represented by Guri Ademi and John D. Blythin of Ademi LLP.

The case is Koblentz v. Two Harbors Investment Corp. et al., case number 1:26-cv-04325, in the U.S. District Court for the Northern District of Illinois.

--Editing by Haylee Pearl.



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REIT Investors Get Initial OK For \$2.3M Settlement

By **Emilie Ruscoe**

Law360 (April 20, 2026, 5:31 PM EDT) -- Investors in real estate investment trust Sun Communities Inc. have received an initial nod for their proposed \$2.3 million deal to end claims the company concealed that a former CEO received a loan from a board member's relatives, precipitating share price declines when the loan was disclosed by a short seller.

In a **Friday order** in Michigan federal court, U.S. District Judge Linda V. Parker found the parties' stipulation of the settlement is "sufficiently fair, reasonable, and adequate to the settlement class members" to warrant scheduling a settlement hearing.

The investors sought preliminary approval of the deal on April 9, describing their **proposed deal** as a "favorable result."

The investors said the proposed settlement sum represents about 5% of their estimated maximum recoverable damages of \$46.3 million, noting the percentage reflects that "this case is riskier" than other, similar cases.

Lead counsel for the investors will request up to one-third of the settlement fund, or about \$760,000, in fees and up to \$55,000 for litigation expenses, according to the motion.

If granted final approval, the deal would end claims that trading prices for Sun Communities shares were artificially inflated before a short seller publicly reported that its then-CEO Gary Shiffman had borrowed nearly \$4 million in 2019 from the family of one of the company's directors.

When the loan was disclosed in September 2024, trading prices for Sun Communities shares fell from more than \$139 to about \$137.50, the complaint states.

The investors are represented by Phillip Kim and Jonathan R. Horne of The Rosen Law Firm PA, and David J. Shea of Shea Law PLLC.

Sun Communities is represented by Jonathan K. Youngwood and Janet A. Gochman of Simpson Thacher & Bartlett LLP.

The case is Nelson v. Sun Communities Inc. et al., case number 2:24-cv-13314, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Carolyn Muyskens and Sydney Price. Editing by Lakshna Mehta.

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Credit Agricole's Hedging Strategy Cost Investors, Suit Says

By **Katryna Perera**

Law360 (April 20, 2026, 5:41 PM EDT) -- Credit Agricole Group has been hit with a suit in New York federal court alleging that the French bank engaged in a yearslong scheme to fraudulently induce two clients into a trading strategy it deemed the "perfect hedge" against certain market risks, when in reality, the strategy created hidden liabilities, forced liquidations and tens of millions of dollars in damages.

Plaintiffs Damion Berger and SCI Golden Hour filed a **complaint** Friday against Credit Agricole and several affiliated businesses, including Monaco-based CFM Indosuez Wealth.

The complaint alleges that between 2017 and 2022, Berger and SCI entered into a series of multicurrency credit facilities with CFM and Credit Agricole, with credit granted in Euros collateralized by U.S. equity shares.

These equity shares traded on U.S. markets and exchanges and included thousands of shares of Tesla Inc. common stock, according to the complaint. Specifically, the complaint states that in 2020, Berger purchased 25,000 shares of Tesla common stock to serve as pledged collateral for financing for the acquisition and construction of a "euro-dominated real estate property."

According to the complaint, pledging equity securities as collateral creates a potential valuation risk because the price of the security trades on an open market and it fluctuates throughout the day.

"Pledging securities that are denominated in USD as collateral on a multi-currency credit facility further creates an exposure to the EUR/USD exchange risk," the complaint states. "Accordingly, the credit agreements [between the parties] had margin provisions requiring plaintiffs to maintain adequate collateral at all times or face a margin call."

In 2021, the complaint states that CFM approached the plaintiffs with a "complex trading strategy that would purportedly hedge both the valuation and foreign exchange risks."

"CFM told plaintiffs that they could provide a risk-free 'no-margin-call' solution consisting of a combination of long put options on Tesla shares (contractually required to maintain 100% weighted pledge value) and [foreign exchange] forward / swap transactions that would purportedly eliminate both valuation and EUR/USD [foreign exchange] risks," the complaint states.

CFM allegedly repeatedly assured Berger that the trading strategy was "fully hedged," "self-financed," and carried "no risk of margin call."

However, the plaintiffs claim these representations were false because, in reality, CFM executed the transaction in its own interest and in the interest of Credit Agricole, which increased the plaintiffs' exposure and "created hidden liabilities which guaranteed that margin calls and forced liquidations would occur."

The complaint further states that CFM and Credit Agricole falsified losses that occurred in order to overstate the plaintiffs' liabilities and used artificial and blended exchange rates and valuations to undervalue the plaintiffs' collateral and conceal structural failures.

Additionally, the complaint alleges that the defendants "failed to execute plaintiffs' explicit trading

instructions to hedge exposure against an unjustified margin-call, prematurely called in credit facilities, overcharged millions of dollars of penalties and penalty interest, and ultimately forced the liquidation of plaintiffs' pledged securities, including 75,000 Tesla shares, causing tens of millions of dollars in damages."

The suit seeks damages, attorney fees, the rescission of the contracts between the parties that led to the liquidation of the collateral securities, and a jury trial.

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

The plaintiffs are represented by Daniel B. Rehns and John W. Baylet of Hach Rose Schirripa & Rehns LLP.

Counsel information for the defendants was not immediately available.

The case is Berger et al. v. Credit Agricole Group et al., case number 1:26-cv-03186, in the U.S. District Court for the Southern District of New York.

--Editing by Kelly Duncan.

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2 Discovery Rulings Break With Heppner On AI Privilege Issue

By **Joshua Dunn** (April 17, 2026, 3:13 PM EDT)

Suppose a client uses an artificial intelligence tool in connection with anticipated or ongoing litigation. The client does so without direction from counsel, but intends for the interaction with the AI tool to aid their future communications with counsel, and even plans to give the output from the AI tool to counsel for use in the case.

Are the client's interactions with the AI tool discoverable?

A few recent cases have grappled with this issue and reached seemingly contradictory results.



Joshua Dunn

In *U.S. v. Heppner* on Feb. 17, the U.S. District Court for the Southern District of New York held that a client's communications with an AI tool are not privileged or protected by the work-product doctrine.[1] Conversely on Feb. 10, in *Warner v. Gilbarco Inc.*, the U.S. District Court for the Eastern District of Michigan held that an individual's communications with an AI tool for the purpose of formulating a pro se legal strategy in anticipation of or during litigation are not discoverable and are entitled to work-product protection.[2]

More recently, in *Morgan v. V2X Inc.* on March 30, the U.S. District Court for the District of Colorado followed the reasoning of *Warner* and held that a pro se litigant's communications with an AI tool were entitled to work-product protection, but further held that the identification of the precise AI tools that were used was not protected.[3]

Although other courts have addressed whether an attorney's use of an AI tool is protected by the work-product doctrine[4] or whether that protection is waived by disclosure of the AI output during the litigation,[5] the *Heppner*, *Warner* and *Morgan* rulings appear to be the only reported cases to date addressing whether a party's use of an AI tool is similarly protected.

Despite the seeming contradiction between these cases, they can be reconciled. A party's communications with an AI tool for the purpose of formulating legal strategy in anticipation of or during litigation are entitled to work-product protection under the discovery rules. Rule 26(b)(3) of the Federal Rules of Civil Procedure extends work-product protection to documents prepared by both attorneys and parties. And a party does not waive work-product protection when it uses an AI tool.

Heppner, which was a criminal case, explicitly did not address work-product protection from discovery under the federal rules. Work-product protection remains to shield a party's communications with an AI tool from discovery.

Heppner

According to the background and procedural history in the **Heppner** opinion, after former Beneficient CEO Bradley Heppner received a grand jury subpoena and learned that he was the target of a government investigation, he communicated with Claude, a generative AI tool developed by Anthropic, to prepare "reports that outlined defense strategy, that outlined what he might argue with respect to the facts and the law that [the defense] anticipated that the government might be charging."

The government then seized Heppner's computer while executing a search warrant, and Heppner argued that the AI-generated reports were privileged because he was preparing them in anticipation of a potential indictment.

The court disagreed, holding that neither attorney-client privilege nor the work-product doctrine applied. Attorney-client privilege did not apply because the AI documents were not communications between the defendant and his counsel, but were instead between the defendant and the AI tool. The communications also were not confidential because users of Claude consent to Anthropic's user policy, which allows Anthropic to collect data on user inputs and Claude outputs and to disclose such data to third parties, including governmental regulatory authorities.

With respect to work-product protection, the court concluded that the AI documents were not protected because they were not prepared at counsel's direction and did not reflect counsel's strategy. Critically, however, the court found that discovery work-product protection in the criminal rules — Rule 16(b)(2)(A) of the Federal Rules of Criminal Procedure — was inapplicable because the government had not requested the AI documents in pretrial discovery, but had instead obtained them pursuant to a search warrant.

Warner and Morgan

In the Warner case, the defendants sought all documents concerning the pro se plaintiff's use of third-party AI tools in connection with the lawsuit. The court denied the motion to compel, concluding that the information sought was protected from discovery under the work-product doctrine.

The defendants argued that any work-product protection had been waived by the plaintiff's disclosure to ChatGPT, akin to disclosing information to an adversary. The court rejected that argument, noting that ChatGPT was not an adversary, and that ChatGPT and other generative AI programs are tools, not persons. The court noted that ordering disclosure of the interactions with ChatGPT would nullify virtually all work-product protection where a software tool such as ChatGPT is used as a drafting aid.

In Morgan, the court followed the reasoning of Warner to conclude that a pro se party's communications with an AI tool were not discoverable because they were protected by the work-product doctrine. The Morgan court distinguished Heppner because it was a criminal case and noted that Warner, like Morgan, involved application of the work-product protection set forth in Rule 26(b)(3) of the Federal Rules of Civil Procedure, which extends to material prepared by a party or its representatives.

Morgan went on to hold, however, that the plaintiff there had not shown that the work-product doctrine extended to the identification of the precise AI tool the plaintiff had used.

Work-Product Protection as a Discovery Shield

Warner and Morgan correctly apply the plain language of Rule 26(b)(3) to a party's use of AI tools for purposes of litigation. According to the rule, work-product protection extends to "documents and tangible things that are prepared in anticipation of litigation or for trial by ... [a] party"; it is not necessary for an attorney to create the document or to direct its creation.[6]

Although the Heppner ruling seemingly reached the opposite conclusion with respect to the work-product doctrine, it explicitly did not consider the definition of work-product protection under the federal rules. The reason that issue did not need to be considered was because the government there was not seeking to compel discovery of the AI communications. Instead, it obtained the materials outside of the discovery process: through execution of a search warrant.

Indeed, the Morgan ruling recognized that, although Heppner "at first blush may appear contrary," it was not; Heppner was a criminal case and did not implicate the text of Rule 26(b)(3), which explicitly extends work-product protection to parties.

Nor does a party waive work-product protection when it uses an AI tool for purposes of litigation. An AI tool's terms of service may be relevant to determining whether one has a reasonable expectation of confidentiality for purposes of the attorney-client privilege, as the Heppner court reasoned. But the analysis is different for purposes of the work-product doctrine. Unlike the attorney-client privilege,

work-product protection is not waived by mere disclosure to third parties; instead, the waiver has to be to an adversary or be done in a manner that makes it likely that the information will get into an adversary's hands.[7]

Both the Warner and Heppner rulings recognize that interactions with an AI tool are akin to a person's interaction with other software. The Warner court agreed that the plaintiff's interactions with ChatGPT were akin to reformatting her mental impressions through software. And the Heppner court similarly acknowledged that some commentators are of the view that "a user's AI inputs, rather than being communications, are more akin to the use of other Internet-based software, such as cloud-based word processing applications."

This software analogy further reinforces that a client does not waive work-product protection by using an AI tool, just as no waiver arises from use of word-processing services or other software. Indeed, as the Morgan court observed, use of AI tools, which are often "specifically designed and trained to engage," presents an even stronger case against waiver compared to using things like Gmail accounts, mobile phones, computers, in-home smart devices and other electronics.

Conclusion

Despite the new frontier that AI presents for the legal profession, the plain language of Rule 26(b)(3) has already blazed the trail on this issue: Work-product protection extends to a party's communications with an AI tool for the purpose of formulating legal strategy in anticipation of or during litigation. And that work-product protection is not waived even if the AI tool is considered a third party or its terms of service indicate that inputs and outputs might not remain confidential.

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[1] See **United States v. Heppner** , ___ F. Supp. 3d ___, No. 25 Cr. 503 (JSR), 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026).

[2] See **Warner v. Gilbarco Inc.** , No. 2:24-cv-12333, 2026 WL 373043, at *4 (E.D. Mich. Feb. 10, 2026).

[3] See **Morgan v. V2X Inc.** , No. 25-cv-01991-SKC-MDB, 2026 WL 864223, at *4-5 (D. Colo. Mar. 30, 2026).

[4] See, e.g., **Concord Music Grp. Inc. v. Anthropic PBC** , No. 24-cv-03811-EKL (SVK), 2025 WL 1482734 (N.D. Cal. May 23, 2025); **Tremblay v. OpenAI Inc.** , No. 23-cv-03223-AMO, 2024 WL 3748003 (N.D. Cal. Aug. 8, 2024).

[5] See **T.B. v. Big Brothers Big Sisters of N.Y.C.** , No. 452864/2021, 2025 WL 2443502, at *1-2 (N.Y. Supr. Ct. Aug. 21, 2025).

[6] See Fed. R. Civ. P. 26(b)(3) ("Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by another party or its representative ..."); Fed. R. Civ. P. 26, Advisory Committee Notes, 1970 Amendment ("Subdivision (b)(3) reflects the trend of the cases by requiring a special showing, not merely as to materials prepared by an attorney, but also as to materials prepared in anticipation of litigation or preparation for trial by or for a party or any representative acting on his behalf."); Morgan, 2026 WL 864223, at *4 ("[T]he text of Rule 26(b)(3) broadly protects the work product of a party, not merely counsel."); 8 Wright & Miller, Federal Practice & Procedure §2024 (3d ed. Sept. 2025 update) ("The 1970 amendment also extended the work product protection to documents and things prepared for litigation or trial by or for the adverse party itself or its agent."). Rule 16(b)(2)(A) of the Federal Rules of Criminal Procedure similarly applies to "reports, memoranda, or other documents made by the defendant, or the defendant's attorney or agent, during the case's investigation or defense."

[7] Warner, 2026 WL 373043, at *4 (rejecting waiver argument because "the work-product waiver has to be a waiver to an adversary or in a way likely to get in an adversary's hand"); Morgan, 2026 WL 864223, at *5 ("[E]ven though AI use technically 'discloses' information to a third party, it is highly unlikely the information will fall into the hands of an adversary absent some legal process to compel it. Thus, AI interactions do not automatically compromise work product protections."); see also 8 Wright & Miller, Federal Practice & Procedure §2024 (3d ed. Sept. 2025 update) ("But the purpose of the work-product rule is not to protect the evidence from disclosure to the outside world but rather to protect it only from the knowledge of opposing counsel and his client, thereby preventing its use against the lawyer gathering the materials. Thus, the result should be that disclosure of a document to third persons does not waive the work product immunity unless it has substantially increased the opportunities for potential adversaries to obtain the information." (internal quotations and footnotes omitted)); id. at n.67 (collecting cases).

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Armistice Head Testifies He Accidentally Deleted Texts

By **Bonnie Eslinger**

Law360 (April 21, 2026, 12:00 AM EDT) -- Armistice Capital's founder, who is facing investor claims that the hedge fund dumped its artificially inflated shares in pharmaceutical company Vaxart for \$250 million, told a California federal jury Monday that during a physical therapy session held over Skype, he accidentally deleted key text messages with another Armistice executive.

Monday marked the fifth day of trial in the **class action** brought by Vaxart investors alleging improper insider trading and stock manipulation in shares of the vaccine biotech company, which began efforts to develop a COVID-19 vaccine in 2020.

During opening statements on April 14, a lawyer for the investors told jurors that Armistice founder Steven Boyd and managing director Keith Maher "sought to exploit the global COVID pandemic by hiking up the price" of Vaxart with misleading press releases about the status of the company's vaccine. Counsel for the Armistice defendants countered that the information in the press releases wasn't false and his clients had nothing to do with drafting them.

Boyd took the stand Monday, and another lawyer for the investors, Jimmy McBirney of Scott + Scott Attorneys at Law LLP, questioned him for 90 minutes over **deleted** text messages between him and Maher that he deleted in March 2021 — seven months after the litigation was launched and after receiving a grand jury subpoena.

"You received a litigation hold notice instructing you to preserve all documents relating to Vaxart on July 29, 2020, does that sound about right?" McBirney asked.

Boyd agreed.

"You understand that federal grant jury subpoenas are always related to criminal matters, correct?" McBirney asked.

Boyd said that was news to him.

McBirney noted that Boyd has testified about the deleted messages in a May 2024 sworn declaration at a July 2024 deposition and an evidentiary hearing in December 2024.

"Your story about how you deleted your text messages with Dr. Maher has changed every time you testify, correct?" McBirney asked.

Boyd bristled at the word "story" and said he was just recounting what he remembered.

"Counselor, there's no story. My memory is what it is," Boyd said.

In his declaration, Boyd said on either March 29 or 30, 2021, he was participating in a videoconferenced physical therapy session when Maher called his cellphone multiple times.

"After Maher's calls interrupted my physical therapy session several more times, I grew frustrated," Boyd wrote in the 2024 declaration. While attempting to send an automated response, he "inadvertently" deleted the text message thread between him and Maher, he said.

McBirney noted at Boyd's deposition months later, he said Maher called three or four times.

By the time Boyd testified in the evidentiary hearing at the end of that year, the plaintiffs had obtained Boyd's physical therapy records and phone records, McBirney noted.

Maher hadn't called on March 29, and Boyd didn't have physical therapy on March 30, McBirney said.

"Those records didn't match up with your declaration or your deposition testimony," McBirney said.

Boyd said it was sometime in March.

"I obviously wish I didn't say March 29 through 30th, because that's pretty darn specific," he said.

McBirney noted that March 1 is the only other day that month when Boyd received multiple calls for Maher. But if that had been the day that the texts were deleted, then there would be messages after that date, the lawyer said.

Boyd will be back on the stand Tuesday.

According to the investors' **complaint**, the Armistice defendants directed the timing and information within two press releases in June 2020 that contained false and misleading information about Vaxart's oral COVID-19 vaccine candidate.

One, on June 26, 2020, suggested that Vaxart's vaccine had been selected for the U.S. government's "Operation Warp Speed" program for funding vaccines, when the company had only been asked to participate in a vaccine study involving monkeys, the investors say.

As part of the scheme, Boyd and Maher got former Armistice employee Andrei Floroiu on the company's board, and then into the CEO seat, and changed Vaxart's insider trading blackout window, which let Armistice profit from the speculation about the company and Operation Warp Speed, according to the complaint.

On Monday, Maher also took the stand and said the decision to elevate Floroiu to CEO in June 2020 was done by the entire board because "everyone had a very positive impression of Floroiu."

Maher also said he gave no input into the press releases and saw them only when they were released to the public.

With regard to the text messages with Boyd, Maher also said he deleted them accidentally.

Another lawyer for the investors, Jeffrey Jacobson of Scott + Scott Attorneys at Law LLP, noted that Maher's phone had been reset to the factory settings and Maher said he'd been having problems with it.

The suit also named Vaxart and its current and former executives as **defendants**, but they settled with investors in 2022 for **\$12 million**.

In early 2025, Armistice, Boyd and Maher filed a motion for summary judgment, seeking to resolve the case without going to trial. U.S. District Judge Vince Chhabria held in July that a reasonable jury could find that scheme liability, insider trading and loss causation were **adequately alleged** against them by the investors.

The investors are represented by Steve W. Berman, Reed R. Kathrein, Lucas E. Gilmore and Raffi Melanson of Hagens Berman Sobol Shapiro LLP and William C. Fredericks, John T. Jasnoch, Jimmy S. McBirney, Jessica M. Casey, Mandeep S. Minhas and Jeffrey P. Jacobson of Scott + Scott Attorneys at Law LLP.

The Armistice defendants are represented by Joshua A. Rubin, Lillian Rand, Charles F. Connolly, Stacey H. Mitchell, Stephanie Ondrof, Kaitlin D. Shapiro and David M. Giller of Akin Gump Strauss Hauer & Feld LLP.

The case is In re: Vaxart Inc. Securities Litigation, case number 3:20-cv-05949, in the U.S. District Court for the Northern District of California.



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Attys Nab \$20M Cut Of \$84M Wells Fargo ESOP Deal

By **Grace Elletson**

Law360 (April 21, 2026, 1:30 PM EDT) -- A Minnesota federal judge has greenlit a \$20 million fee request from attorneys who secured an \$84 million settlement in a suit claiming Wells Fargo violated federal benefits law by using dividends earned by its employee stock ownership fund to offset its 401(k) contributions.

U.S. District Judge Laura M. Provinzino on Monday granted final **approval** of the class action settlement among participants of the plan, Wells Fargo & Co. and GreatBanc Trust Co. The judge said the deal and the attorney fee request were fair results given the novel legal theories at play and the whopping amount of money recovered.

"The \$84 million settlement — which plaintiffs represent is 'the largest-ever class action settlement of ERISA claims arising from an employee stock ownership plan,' ... — delivers a 'real and substantial remedy' to class members," the judge said.

The group of former Wells Fargo workers claimed in their 2022 suit that the company used dividend income from its ESOP to fulfill its match obligations for its 401(k) plan and therefore did not use the dividend income to benefit the plan participants as required by federal benefits law.

The workers also claimed that GreatBanc, the named fiduciary for the ESOP, directed the plan to pay more than fair market share for preferred stock knowing that excess dividend income would benefit Wells Fargo.

In January 2025, Judge Provinzino granted the workers' request for **class certification**, allowing them to represent over 400,000 plan participants who held balances in the company's ESOP and 401(k) plan from September 2016 to December 2022. In August 2025, the parties told the court they had struck a deal, and Judge Provinzino gave **preliminary approval** of the \$84 million agreement in December 2025.

In Monday's filing, Judge Provinzino recognized that the workers presented a novel theory of liability in the case, and that they likely would have faced difficulties if they continued litigating the case, given that recent case law around plan forfeitures appears to undermine their theory.

The \$84 million settlement provides a direct remedy for participants of the plan, Judge Provinzino said.

"Had plaintiffs made it past summary judgment, extensive expert discovery was likely, and a costly trial would likely last at least a week (if not longer) and would require testimony from numerous party, non-party, and expert witnesses on complex issues of ESOP administration," the judge said. "Avoiding these significant costs favors approving the settlement."

Judge Provinzino also found that the workers' request for \$20.1 million in attorney fees, which represents 24% of the total settlement fund, was fair, given the "good deal" secured for class members. The class counsel took a considerable risk in bringing these novel claims in the complex field of ERISA law, which also weighs in favor of their compensation request, the judge said.

The nearly 4,000 hours worked on this case also appeared to be an appropriate allotment, given the complexity of the litigation, the judge said.

Judge Provinzino also granted the workers' request for \$174,000 in litigation costs and \$25,000

service awards for the three named plaintiffs.

Representatives for the class, Wells Fargo and GreatBanc did not immediately respond to requests for comment.

The class is represented by Elizabeth M. Binczik, Steven Andrew Smith and Brock J. Specht of Nichols Kaster PLLP, Gregory Y. Porter, Mark G. Boyko and Laura Babiak of Bailey & Glasser LLP and Nina Wasow, Daniel Feinberg, Todd Jackson and Mary Bortscheller of Feinberg Jackson Worthman & Wasow LLP.

Wells Fargo is represented in-house by Craig Baldauf, Russell L. Hirschhorn and by Sydney L. Juliano of Proskauer Rose LLP, and Jeffrey Justman of Faegre Drinker Biddle & Reath LLP.

GreatBanc is represented by Roger Stetson of Barack Ferrazzano Kirschbaum & Nagelberg LLP.

The case is Randall et al. v. GreatBanc Trust Co. et al., case number 0:22-cv-02354, in the U.S. District Court for the District of Minnesota.

-- Additional reporting by Kellie Mejdrich and Emilie Ruscoe. Editing by Amy French.

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Beasley Allen Pro Hac Vice Revoked In Philly J&J Talc Cases

By **Rae Ann Varona**

Law360 (April 20, 2026, 10:48 PM EDT) -- A Pennsylvania state court has booted Beasley Allen Law Firm attorneys from representing consumers in nine cases that link Johnson & Johnson's talcum powder to ovarian cancer, saying their pro hac vice admission was inappropriate given the firm's dealings with an attorney who previously represented the company.

The Philadelphia County Court of Common Pleas on Friday **granted** J&J's motions to revoke the Beasley Allen attorneys' pro hac vice admissions due to the attorneys' prior consultation talks with James Conlan, a former Faegre Drinker Biddle & Reath LLP attorney who previously represented J&J in talc litigation and later started a company aimed at facilitating mass tort settlements after he stopped practicing law.

According to the state court's order, the circumstances that gave rise to J&J's motions included Conlan not only pitching services, but consulting and sharing with the Beasley Allen attorneys "business strategy and options directly related" to the underlying talc litigation.

"Doubt created by infidelity can never be cured, and the court should not have to require a party (here, J&J) — even a multinational highly sophisticated company — to overlook infidelity so that an opposing party may have counsel of their choice, especially when the offending firm could have easily avoided the harm complained of," the court's order stated.

The court ordered the pro hac vice admissions of Beasley Allen attorneys Andy Birchfield, Ryan Beattie, David Dearing, Ted Meadows and Leigh O'Dell be "revoked with immediate effect."

J&J had filed motions to revoke Beasley Allen's pro hac vice admission in nine cases, including one that had earlier this year resulted in a Philadelphia jury hitting the pharmaceutical giant with a **\$250,000 verdict** and finding it liable in the case of Gayle Emerson, whose family claimed that her use of J&J's talcum powder contributed to her fatal ovarian cancer.

The court noted that revoking pro hac vice does not leave the plaintiffs in the cases without representation.

"The sponsoring attorney, who must be admitted to the bar of the Commonwealth of Pennsylvania, remains counsel of record," the court said.

A New Jersey state appeals court had **disqualified** Beasley Allen in February from representing plaintiffs in multicounty litigation over J&J's talc-based baby powder, ruling that Conlan's collaborative efforts with the firm's attorneys violated ethics rules. The New Jersey Supreme Court had earlier this month **refused to review** that decision.

Pennsylvania's rules of civil procedure allow the court to revoke a pro hac vice admission if it determines that the continued admission is inappropriate or inadvisable.

The Philadelphia court on Friday pointed to the Pennsylvania Rules of Professional Conduct and said that while the rules are designed to "foster public confidence in the rule of law," the dealings Beasley Allen attorney Birchfield had with Conlan "only serve to undermine and erode that confidence."

"Clearly, the conduct of Mr. Conlan is at odds with his prior representation of J&J, even if the New

Jersey courts accepted as true that Mr. Conlan did not disclose confidential J&J information," the court said.

The court also said that while motions to revoke pro hac vice "should not be used as a litigation strategy," it is also "equally, if not more important that lawyers comport themselves in a way that instills public confidence in legal proceedings and the legal profession."

The court said that Beasley Allen was trying to "minimize Mr. Conlan's role" by asserting that one of the professional conduct rules does not apply because Conlan was not acting in any specifically enumerated roles.

In rejecting that argument, the court said that there was "no question" that Birchfield and Conlan, "an 'ex-lawyer' with significant experience in the complexities of mass tort litigation, knew or should have known of their professional obligations, and that their collaboration (i) jeopardized Mr. Conlan's duty of confidentiality to J&J; and (ii) potentially allowed Mr. Birchfield access to that information."

"Mr. Birchfield and Beasley Allen ratified Mr. Conlan's conduct by using that information in mediations and/or to negotiate directly with J&J," the court said.

Erik Haas, worldwide vice president of litigation for J&J, said in a statement that the court's "reasoned ruling speaks for itself, thoroughly and forcefully articulating why the harm inflicted by Beasley Allen's egregious ethical 'infidelity can never be cured,' and mandates its disqualification."

Beasley Allen's O'Dell said that the firm plans to appeal the court's order.

"This decision does not alter the firm's role in talc litigation in certain other states," O'Dell said. "Beasley Allen will continue to advocate for women and families affected by Johnson & Johnson's talc baby powder products in litigation in these states, including California."

"The firm's focus remains on pursuing justice for our clients and seeking to hold J&J accountable in these courts," O'Dell added.

Counsel information for the consumers and J&J in the nine cases was not immediately available.

The case is In Re: Johnson & Johnson Talcum Powder Ovarian Cancer Litigation, in The Court of Common Pleas of Philadelphia County, Pennsylvania.

--Additional reporting by P.J. D'Annunzio and George Woolston. Editing by Michael Watanabe.



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'It Isn't That Complicated': Judge Rips Nvidia Discovery Delays

By **Dorothy Atkins**

Law360 (April 20, 2026, 9:44 PM EDT) -- A California federal magistrate judge overseeing discovery in a group of writers' proposed copyright class action against Nvidia ordered the multitrillion-dollar AI chipmaker to produce basic discovery information within a month, saying "it isn't that complicated" and that she's "astonished" and "puzzled" by Nvidia's monthslong delays.

U.S. Magistrate Judge Sallie Kim's ruling from the bench came during a hearing held via Zoom on the latest discovery disputes in litigation launched in **March 2024** by a group of writers who allege their copyright-protected works were in a dataset used to train the Silicon Valley giant's artificial intelligence models.

In advance of the hearing, the parties filed a 19-page document detailing the status of various discovery disputes. For the most part, the parties told the judge they are still trying to work out agreements on their disputes.

But the writers' counsel, Rohit Dwarka Nath of Susman Godfrey LLP, told the judge that the plaintiffs' biggest concern is that Nvidia hasn't responded to a Jan. 21 interrogatory seeking answers to "basic" questions about what "shadow library" training datasets Nvidia downloaded.

The interrogatory also asks Nvidia to identify who was involved in downloading the datasets and how they downloaded them, such as via BitTorrent or some other method, Nath said.

Nath argued that both parties would benefit from having answers to those questions "sooner than later," because they raise gatekeeping issues, and they can help resolve other discovery disputes, including issues over potential custodians.

But Nvidia's counsel, Rachael Lynn Ballard McCracken of Quinn Emanuel Urquhart & Sullivan LLP, said that the company had agreed to provide answers, but needs at least two more months to collect the information.

McCracken said it's not a simple process of asking one or two individuals to identify the datasets, and that defense counsel had already interviewed dozens of employees on the matter. McCracken said there's no single individual or specific group of people or repository who know or have information to answer those questions.

"It's not an issue that is as straightforward as they believe it is," McCracken argued.

However, Nath disputed McCracken's assertions that getting answers would take so much time, and he noted that he and his co-counsel have worked on other intellectual property cases against Anthropic, OpenAI Inc. and Meta Platforms Inc. In those **cases**, the companies produced the answers relatively quickly, and Anthropic, which eventually cut a deal to settle the case for **\$1.5 billion**, provided the data within two months, Nath said. Nvidia has already had three months and hasn't produced the answers, he said.

"It is not nearly as complicated as Ms. McCracken is suggesting ... there aren't that many shadow libraries, and it really isn't that hard," Nath said. "It isn't a huge lift. You don't have to review all the training data to get the answers."

Judge Kim said she agreed with Nath that the interrogatory poses important "simple" questions, and she said there shouldn't be that many people involved in getting answers.

"The most important question is what training data is used, when you get it and who was involved," the judge said. "I agree with Mr. Nath that those are the most important questions involved."

The judge ordered Nvidia to respond to the interrogatory within a month and to give another update within two months, but she warned counsel that the update should be "as close to final as possible."

"I'm astonished that you say you've had this since Jan. 21, and it's going to take another two months," Judge Kim said. "I'm puzzled that Nvidia cannot find out an answer to this. ... It isn't that complicated."

Aside from setting deadlines on the specific interrogatory, Judge Kim indicated that she is unlikely to authorize more than 24 custodians to be designated in the case, unless the parties show good cause.

She also told Nvidia's counsel that the company must respond to the writers' request for certain information on its fair use defense within three weeks, and she gave Nvidia two weeks to respond to certain discovery demands for proof that Nvidia doesn't use copyrighted material as training data, aside from its defense that employees were required to consult with a legal team.

Judge Kim additionally indicated that she will likely allow Nvidia to take third-party discovery if plaintiffs' personal records are incomplete, and she encouraged Nvidia to start taking plaintiffs' depositions.

"Go for it," the judge said. "It's important that you all need to keep this ball moving along."

The plaintiffs were represented during the hearing by Rohit Dwarka Nath and Dylan Salzman of Susman Godfrey LLP, Diane Sue Rice and William Waldir Castillo Guardado of the Saveri Law Firm LLP, Nada Djordjevic of DiCello Levitt LLP, Anne Brackett Shaver of Lieff Cabraser Heimann & Bernstein LLP and Bryan L. Clobes of Cafferty Clobes Meriwether & Sprengel LLP.

Nvidia was represented during the hearing by Brian Paul Biddinger, Rachael Lynn Ballard McCracken and David Edward Myre III of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Nazemian et al. v. Nvidia Corp., case number 4:24-cv-01454, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bonnie Eslinger and Adam Lidgett. Editing by Linda Voorhis.