

Securities

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Acadia's \$179 Million Investor Class Deal Gets Court Sendoff

April 30, 2026, 6:57 AM PDT

Acadia Healthcare Co.'s \$179 million investor settlement garnered a federal judge's final blessing to resolve allegations that the behavioral health group misrepresented the adequacy of its patient care, staffing levels, and other metrics.

The US District Court for the Middle District of Tennessee judge's final approval Wednesday of the settlement—in which Acadia denied wrongdoing and avoided a trial—ends more than seven years of litigation between investors, the company, and former executives. Judge William L. Campbell Jr. also awarded the investors' lead counsel one-third of the settlement sum in attorneys' fees—about \$59.7 million—and almost \$5.1 million for litigation expenses, plus interest.

Campbell last year turned down Acadia's bid to avoid trial in the case alleging it misled investors about its financial projections for its UK operations and its regulatory compliance, among other issues

The court previously certified a class of investors who acquired Acadia stock from April 30, 2014, through Nov. 15, 2018

"It's a great result for the investors," said Christopher Wood, a partner at Robbins Geller Rudman & Dowd LLP, class counsel, in an email. "It's the second largest securities class action recovery in this court, and we're proud of our clients' leadership in bringing the case to this conclusion"

King & Spalding LLP and Riley & Jacobson PLC represent Acadia and the executives. Neither of these law firms, nor Acadia's investor relations department, immediately responded to emails seeking comment.

The case is St. Clair Cnty. Emps. Ret. Sys. v. Acadia Healthcare Co. Inc. , M.D. Tenn., No. 3:18-cv-00988, 4/29/26 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

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Apollo Investor Sues Over Alleged Downplaying of Epstein Ties

April 30, 2026, 8:48 AM PDT

Apollo Global Management Inc. and top executives for years hid a business relationship with convicted sex offender Jeffrey Epstein from investors, a proposed class action said.

Epstein frequently spoke with Apollo's leadership in the 2010s about its affairs while the private equity firm placated investors that it didn't do business with him, according to the complaint. And the harm to Apollo's reputation was "more than a mere possibility" given Epstein's entanglement, contradicting a corporate disclosure about hypothetical risks of general employee misconduct, an investor told the US District Court for the Southern District of New York Wednesday.

It's at least the second proposed class action levying allegations the private equity firm downplayed its ties to Epstein to investors. Many among the global elite were rattled by the release of federal files about the deceased child sex offender, with Apollo's three billionaire co-founders mentioned in the flood of documents.

Ex-CEO Leon Black, named as a defendant in this suit, stepped down from his position in 2021 amid scrutiny over his ties to Epstein. A corporate investigation revealed significant payments to Epstein for tax and estate planning services, with Black paying \$158 million between 2012 and 2017.

The proposed class would cover those who acquired publicly-traded Apollo securities from May 10, 2021, through Feb. 21, 2026. During that time period, Apollo asserted in financial filings that the results of the independent review of Black's professional relationship with Epstein were "consistent with statements made by Mr. Black and Apollo regarding the prior relationship."

Then in February, media reports based on the release of files by the US Justice Department weighed on Apollo's share prices, the investor's complaint said.

Media reports accused Apollo CEO Marc Rowan, also a defendant, of consulting Epstein on the firm's tax affairs; said the late sex offender acquired internal financial records and discussed sensitive matters with senior decision makers; and noted a call for the Securities and Exchange Commission to investigate the firm's ties.

Rowan told Bloomberg News last month that he only dealt with Epstein in his capacity as tax adviser for Black, and reiterated Apollo didn't do business with him.

Epstein entered an arrangement with federal prosecutors in 2008 to plead guilty to state charges for soliciting prostitution and soliciting a minor for prostitution. He was arrested in 2019 on federal sex-trafficking charges and died in custody.

Kahn Swick & Foti LLC represents the investor in the latest suit, Richard Perez. Perez seeks damages for alleged securities fraud by Apollo, Black, and Rowan.

Apollo didn't immediately respond to an email seeking comment.

The case is Perez v. Apollo Glob. Mgmt., Inc. , S.D.N.Y., No. 1:26-cv-03550, complaint filed 4/29/26 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Brian Flood at bflood@bloombergindustry.com

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Rare Securities Class Action Lawsuit Trial Results in Defense Verdict

K [dandodiary.com/2026/04/articles/securities-litigation/rare-securities-class-action-lawsuit-trial-results-in-defense-verdict](https://www.dandodiary.com/2026/04/articles/securities-litigation/rare-securities-class-action-lawsuit-trial-results-in-defense-verdict)

Kevin LaCroix

April 30, 2026

In a rare trial in a securities class action lawsuit, a federal jury has ruled that hedge fund Armistice Capital and certain of its executives had not, as the plaintiffs alleged, committed insider trading or engaged in a pump-and-dump scheme in selling over \$200 million in vaccine company Vaxart stock during the COVID-19 pandemic. The jury specifically held that the plaintiffs had not proven that the defendants had engaged in a scheme to defraud and had not proven their insider trading allegations.

The April 28, 2026, verdict form in the case can be found [here](#). *Law360's* April 28, 2026, article about the verdict can be found [here](#).

Background

Vaxart was (and is) a vaccine development company. By October 2019, hedge fund Armistice Capital (and related entities) had acquired 65.2% ownership of Vaxart, having purchased the shares at prices between 33 cents and 37 cents per share.

In early 2020, the company's shares began to climb following company statements about its efforts to develop a COVID-19 vaccine.

On June 25, 2020, the company issued a [press release](#) announcing that it had entered into an agreement to enable the production of one billion or more COVID-19 vaccine doses annually. The company's share price doubled on the announcement, from \$3.61 per share to \$6.26 per share.

On June 26, 2020, the company issued another [press release](#) stating that Vaxart's vaccine had been selected for the U.S. government's "Operation Warp Speed" (a government initiative to encourage the development of a COVID-19 vaccine). This announcement caused the company's share price to rise to a high of \$14.30.

Between June 26 and June 29, 2020, the securities lawsuit complaint alleged, Armistice sold over 27.6 million Vaxart shares, reaping profits of approximately \$200 million.

As discussed [here](#), in August 2020, a plaintiff shareholder filed a securities class action lawsuit in the Northern District of California against the company; certain of its executive officers; and Armistice, related entities, and certain of its executives. After the plaintiffs' complaint [survived a motion to dismiss](#) as to the company and the company's executives, the plaintiffs [settled with the company defendants for approximately \\$12 million](#).

The case went forward as to the Armistice defendants – Armistice Capital LLC, Armistice Capital Master Fund Ltd., Armistice founder Steven Boyd, and Keith Maher, Armistice's managing director. The plaintiffs alleged and sought to prove that the Armistice defendants relied on supposedly false Vaxart press releases in order to be able to sell Armistice's Vaxart shares at inflated prices. The plaintiffs also alleged that Boyd and Armistice were in possession of material nonpublic information about Vaxart when they sold their Vaxart shares.

The Trial

On April 14, 2026, trial commenced in the United States District Court for the Northern District of California in the plaintiffs' case against the Armistice defendants, with Judge [Vince Chhabria](#) presiding. The trial continued for eight days.

Key evidence at trial related to Vaxart's June 25 and June 26, 2020, press releases. Among other things, the plaintiffs contended that the press releases misleadingly omitted that Vaxart had not been selected for federal vaccine *funding* as part of "Operation Warp Speed," and that what the company had been selected for was a request to test its COVID-19 vaccine on nonhuman primates. As the plaintiffs argued at trial, the press releases misleadingly suggested that Vaxart was receiving "a huge infusion of government cash to develop a vaccine." Investors were not told "it was a monkey study."

The Armistice defendants, for their part, argued that they were not responsible for the content of the disputed press releases, but rather that the press release contents were the responsibility and product of company management. Armistice also presented testimony it contended showed that the press releases were in fact accurate and true. Armistice also argued that the plaintiffs were trying to prove their case by cherry-picking headlines and words in the press releases, arguing further that a reasonable investor would not read or understand the press releases in that way.

According to the *Law360* article to which I linked above, the jury deliberated for less than four hours over the course of two days before reaching its verdict. The jury specifically held that the plaintiffs had not proven that the defendants had engaged in a scheme to defraud and had not proven their insider trading allegations.

Discussion

As readers undoubtedly are aware, trials in securities class action lawsuits are exceedingly rare. Almost all securities class action lawsuits settle or are dismissed. Based on my sources, I estimate that out of the more than 7,000 securities class action lawsuits that have been filed in the United States since the beginning of 1996, only around 30 have gone to trial. (That is, less than half of one percent of all securities class action lawsuits filed since the beginning of 1996 have gone to trial.)

Although securities suit trials are quite rare, this case is in fact the second securities suit to go to trial in just the last few weeks. As discussed at length [here](#), in March 2026, the class action securities lawsuit investors filed against Elon Musk in connection with his acquisition of Twitter went to trial, resulting in a split verdict that included jury findings that Musk had violated the securities laws with respect to at least some of the securities law violations the investor plaintiffs alleged in that case.

Though the trial in this case followed the trial in the Musk/Twitter acquisition case by just a few short weeks, before the March 2026 Musk/Twitter acquisition trial it had been (as far as I can tell from my sources) over three years before that since there had been a trial in a securities class action lawsuit. The most recent trial before the Musk/Twitter acquisition trial was the January/February 2023 trial in the Musk/Tesla "take private" case, as discussed [here](#).

The defense verdict in this trial abets a cynical view I have long harbored (mostly silently), which is that if more securities class action lawsuits went to trial, fewer would get filed. Knowing they almost certainly will never have to substantiate their allegations, plaintiffs' lawyers feel free to file securities lawsuit complaints with reckless abandon. More defense verdicts of the kind the jury reached here might (I have conjectured, at least to myself) check the aggressive impulses of at least some plaintiffs' lawyers.

Of course, there are some obvious responses to this view – among other things, the plaintiffs in this case *did* prevail on the motion to dismiss and *did* secure a \$12 million settlement from the Vaxart defendants. Moreover, the split verdict in the Musk/Twitter trial resulted in a plaintiffs' verdict as to some of the claims in that case, claims that according to the plaintiffs' counsel in that case could result in a damages award of over \$2.5 billion.

In other words, notwithstanding the defense verdict in this case, there still are very good reasons why many defendants might choose not to go to trial, and there are no guarantees that even if more securities suits were to go to trial that the upshot would be that fewer cases would get filed, as I might have cynically supposed.

As I [said](#) in advance of the Musk/Telsa "take private trial," these cases "rarely go all the way to trial. In part because you are putting all of the outcome determination in the hands of a bunch of strangers."

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Vaxart Investors Come Up Empty in Trial Against Insider Fund (3)

April 29, 2026, 7:05 AM PDT; Updated: April 29, 2026, 11:56 AM PDT

Summary by Bloomberg AI

AI Generated



- A federal jury found that Vaxart Inc.'s former majority shareholder Armistice Capital LLC isn't liable to a class of other Vaxart investors for allegedly engaging in insider trading and a manipulative scheme.
- The investors failed to prove a scheme to defraud by Armistice or executives Steve Boyd and Keith Maher, and they didn't show insider trading by Boyd or the hedge fund, the jury found.
- The verdict is a victory for Armistice, with its representative saying the jury's decision delivers justice and affirms that they acted lawfully and appropriately and complied with the securities laws.

Vaxart Inc.'s former majority shareholder Armistice Capital LLC isn't liable to a class of other Vaxart investors for having allegedly engaged in insider trading and a manipulative scheme during the race to develop a Covid-19 vaccine, a federal jury found Tuesday.

The investors failed to prove a scheme to defraud by Armistice or executives Steve Boyd and Keith Maher, and they didn't show insider trading by Boyd or the hedge fund, the jury found.

The trial testing the investors' claims against the hedge fund and two of its executives took place in the US District Court for the Northern District of California, overseen by Judge Vince Chhabria.

Trials in securities class actions are rare. Many lawsuits that survive companies' dismissal efforts settle in the face of potentially high damages at trial.

"After the lengthy efforts of our team, we are incredibly disappointed in the jury's decision, but we know that although we do not agree with the outcome, we must respect the rule of law," said Steve Berman, managing partner of Hagens Berman Sobol Shapiro LLP who represented the investors, in an email.

"While the jury may not agree with the evidence we presented, we stand by our claims that Armistice orchestrated scheme that defrauded thousands of investors in a time of intense financial insecurity," he said.

Another attorney for the investors, Jimmy McBirney of Scott + Scott Attorneys at Law, spoke to the insider trading aspect of the trial. "We appreciate the jury's service and respect their decision, despite our continued belief that the defendants engaged in insider trading and should have been held accountable," McBirney said by email Wednesday.

"We are proud of the case we presented and hope that this case will serve as a warning to corporate bad actors in spite of the disappointing outcome," he said.

Vaxart's minority shareholders sued over Armistice's alleged knowledge of, and actions surrounding, two Vaxart press releases. The first announced a production partnership, but was allegedly misleading—and artificially inflated Vaxart's stock price—because the biotechnology company that Vaxart purported to make a deal with didn't have the ability to mass-produce doses.

The second said the oral-vaccine maker was chosen for a key pandemic program to accelerate Covid-19 vaccine development. Its title about Vaxart being selected for the government's Operation Warp Speed, when it had been chosen for a non-human primate study, was misleading, the investors said.

Armistice allegedly influenced the press releases' timing in a way that enabled it to capitalize on stock sales, dumping most of its holdings.

Chhabria approved an approximately \$12 million class settlement between investors and Vaxart and some of its then-officers and directors in 2023.

The judge cleared the way for trial in July 2025, saying the investors had enough evidence to present claims for a deceptive scheme and insider trading to a jury. The trial began with juror selection April 14.

"This has been a long-fought and hard-won victory for Armistice, Steven Boyd and Dr. Keith Maher. We are grateful to the jury for a verdict that delivers justice and affirms, after six years of litigation, that they acted both lawfully and appropriately and complied with the securities laws," said Chuck Connolly, a partner at Akin Gump Strauss Hauer & Feld LLP, in an email. "Our clients welcome this exoneration."

Akin Gump represented Armistice Capital LLC, Armistice Master Fund Ltd., and the executives.

The case is *In re Vaxart, Inc. Sec. Litig.*, N.D. Cal., No. 3:20-cv-05949, verdict 4/28/26.

(Updates with comment from investors' attorney at Scott + Scott in seventh and eighth paragraphs.)

To contact the reporters on this story: Martina Barash in Washington at mbarash@bloomberglaw.com; Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editors responsible for this story: Andrew Harris at aharris@bloomberglaw.com; Brian Flood at bflood@bloombergindustry.com; Rob Tricchinelli at rtricchinelli@bloombergindustry.com

News | **Litigation**

Delaware Supreme Court Upholds Dismissal of Challenge to Advance Notice Bylaw

The appeal involved two cases, both raising the same issue: whether shareholders can challenge advance notice bylaws they say are defensive and entrenching in the Court of Chancery if those shareholders don't intend to nominate a director and haven't shown a potential nominee was deterred by the bylaws.

April 29, 2026 at 03:43 PM By  **Ellen Bardash**



Delaware Supreme Court Justice Abigail LeGrow. Courtesy photo

The Delaware Supreme Court has decided the Court of Chancery was right to dismiss advance notice bylaw challenges that didn't involve director nominations being rejected, ruling the court

can't consider an as-applied challenge based on a hypothetical.

Wednesday's [opinion](#), written by Justice Abigail M. LeGrow, marks a win for the Richards, Layton & Finger and Jones Day attorneys who represent Virginia-based power company AES Corp. and Ohio-based building materials manufacturer Owens Corning.

The appeal involved two cases, both raising the same issue: whether shareholders can challenge advance notice bylaws they say are defensive and entrenching in the Court of Chancery if those shareholders don't intend to nominate a director and haven't shown a potential nominee was deterred by the bylaws. The bylaws in question were adopted by both defendant companies in 2023, after the SEC's adoption and subsequent guidance on the universal proxy rule.

The court's five justices heard [argument](#) in February. Grant & Eisenhofer, Bernstein Litowitz Berger & Grossmann, Olshan Frome Wolosky and Greenwich Legal Associates represent the shareholders.

In 2024, the Supreme Court's opinion in *Kellner v. AIM ImmunoTech* established that challenges to advance notice bylaws must be "ripe for judicial review." In the AES and Owens Corning appeal, LeGrow wrote, the shareholder plaintiffs' as-applied challenge relies on an abstract dispute.

"No stockholder has attempted or threatened to nominate directors under the challenged provisions. Neither appellant-stockholder alleges that he intends to run a proxy contest or identifies a stockholder who is presently chilled from doing so," LeGrow wrote. "On this record, any ruling on whether these bylaws operate inequitably would amount to an advisory opinion based on hypotheticals about how the bylaws might function or be applied in future nomination disputes."

The opinion states the adoption of bylaws doesn't automatically make an as-applied challenge ripe for equitable review by a Delaware court, and Delaware case law has a history of cautioning against issuing judgments on equitable enforceability based on hypothetical abuse.

LeGrow wrote there could be a situation in which an equitable challenge to advance notice bylaws could be ripe without a nomination having been rejected, and the court's decision only finds that the AES and Owens Corning cases don't represent that situation.

The court also rejected the shareholders' procedural argument that the Court of Chancery decision should be reversed because the court analyzed the question of ripeness as one of subject matter jurisdiction rather than one of failure to state a claim on which relief could be granted.

Attorneys involved in the case did not immediately respond for comment.

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Insight

Exxon Texas Move Shows Shareholders, Not Cynics, Are in Control

April 30, 2026, 1:30 AM PDT

Exxon Mobil Corp.'s proposal to reincorporate in Texas from New Jersey is a classic type of corporate governance plan: The board considers a transaction, discloses its rationales and process, and puts the decision to its shareholders.

It's a classic process that works because shareholders and directors are often aligned. Both desire management to increase the economic value of their common enterprise. Shareholders elect directors who take the initiative to run the corporate enterprise. When a shareholder vote is required, the directors provide the information to allow the shareholders to make an informed vote.

The Cynical Paradigm

Nonetheless, many activists, academics, and governance consultants appear to assume that any win for management must be contrary to shareholder value. A growing cottage industry of governance critics presents itself as a proxy for shareholder interests, yet routinely rejects the outcomes of shareholder votes when they conflict with its preferred policies.

For example, a recent commentary developed what it calls the Leopard Paradigm, which says that "elites" don't "resist change" but "adapt to formal reforms in ways that preserve substantive power relationships" to critique Exxon's proposal, subject to shareholder vote, to reincorporate in Texas.

This so-called paradigm is simple cynicism. It assumes conflict where alignment is the norm, and that the only elites in corporate governance are directors and officers—not so-called shareholder advocates who fundraise on their ability to push social and other changes often not supported by shareholders broadly.

The Leopard Paradigm assumes that shareholders who vote with management have been captured rather than persuaded. The theory has been applied to criticize Exxon's proposal on the grounds that Texas permits decisions that Exxon's board has decided not to make. Rather than trusting that shareholders can and do "read the fine print," the commentary implies that shareholders are disenfranchised when they vote to support the boards whom they already elected.

The Disclosure Reality

Concerns that Exxon could adopt thresholds concerning derivative litigation or shareholder proposals—thresholds that when voted on have been broadly supported by shareholders—ignore the fact that any future amendment of the bylaws by the Board is subject to the power of the shareholders of a Texas corporation to "amend, repeal, or adopt the corporation's bylaws." That is, management could act first, but long-term adoption of any option threshold in the Texas Business Organizations Code requires shareholder support.

Moreover, these concerns ignore the robust disclosure requirements governing Exxon's reincorporation. The proxy statement rules under Section 14(a) of the Securities Exchange Act and Rule 14a-9's anti-fraud provisions require companies to provide shareholders with material information necessary for informed voting decisions. Any misstatement or omission of material fact subjects the company and its officers to significant liability.

Who Really Benefits

Such concerns aren't expressed for the benefit of the shareholders themselves, but the cynics who claim to speak on shareholders' behalf without holding meaningful equity stakes. These parties have their own institutional incentives—publication metrics, litigation fees, consulting revenue—to perpetuate adversarial narratives.

If they truly believed in shareholder empowerment, they would respect how shareholders actually vote rather than, as some have, opposing governance reforms that give a voice to retail shareholders.

The cynics don't ask about the costs that a small set of activists impose on companies—whether through litigation, such as that against Southwest Airlines for changing its "Bags Fly Free" policy, or through shareholder proposals that try to pressure companies into engaging in contested political controversies that can alienate customers and investors.

Nor do they ask whether shareholders should want management to spend time and corporate resources responding to professional activists instead of growing the enterprise—or consider the history—from Evelyn Y. Davis' magazines to ISS' consulting services—of shareholder advocates who use the threat of distracting proposals to pressure corporations into buying their other services.

In light of these concerns, Texas authorizes companies to adopt thresholds for shareholder proposals. Despite claims that this excludes retail shareholders, research acknowledges that the shareholder proposal process has been captured by "a professionalized ecosystem of advocacy organizations."

That is, shareholder proposals aren't typically driven by retail shareholders exercising their voice in support of economic growth; they're made by ideological combatants who use Rule 14a-8 as a tool to push their policy agendas. Texas' thresholds, which Exxon isn't adopting, don't silence ordinary investors, who seldom file shareholder proposals.

The law protects shareholders as shareholders, allowing them to work together and establish thresholds intended to show that proposals reaching the ballot have already demonstrated broad support from shareholders and not outside advocacy shops.

Toward Informed Choice

The irony of the Leopard Paradigm critique is that it embodies precisely the paternalism it purports to condemn. Critics assume shareholder support for reincorporation is a sign of manipulation or failure to read the fine print.

But perhaps shareholders read the fine print and concluded that Texas incorporation better serves their long-term interests, given the state's statutory corporate law, business court, and ability to adopt thresholds for shareholder proposals and derivative litigation. Perhaps they concluded that some activist-driven shareholder proposals generate more headlines than value, and they trust the boards they elected to use the tools available under state law in a responsible and thoughtful manner.

Corporate governance commentary should acknowledge that reasonable shareholders may conclude that certain jurisdictions, litigation environments, or governance structures better serve their long-term interests, even when those conclusions differ from academic or activist orthodoxy.

The goal should be informed shareholder choice: ensuring that all shareholders, including retail shareholders, have access to accurate information and meaningful voting opportunities. The real leopards are the cynics who use the language of shareholder rights to attack the choices that shareholders collectively make.

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Author Information

Christopher Babcock is president of the Alliance for Corporate Excellence and a partner in the Dallas office of Foley & Lardner, where he serves as co-chair of the Texas Corporate Governance Team.

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To contact the editors responsible for this story: Melanie Cohen at mcohen@bloombergindustry.com; Daniel Xu at dxu@bloombergindustry.com

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Ratepayers right to preserve class claims in L.A. sewer fee suit

DJ [dailyjournal.com/articles/391111](https://www.dailyjournal.com/articles/391111)

A putative class of Los Angeles sewer ratepayers Wednesday opposed the city's latest bid to narrow a lawsuit over alleged unlawful rate hikes and public records violations, with the dispute centering on whether the claims can proceed on a classwide basis.

The case stems from a 2024 ordinance that raised sewer service charges over multiple years, prompting allegations that the city violated Proposition 218's cost-of-service limits and, alternatively, Proposition 26's voter approval requirement.

According to the complaint, the first increase raised a typical single-family bimonthly bill from about \$75 to roughly \$92, with rates projected to climb to about \$155 by 2028.

After Superior Court Judge Theresa M. Traber trimmed the case to individual claims and allowed limited leave to amend, the city soon after moved to strike the revised class allegations.

"The city's motion misinterprets applicable law and should be denied," an opposition brief signed by Glancy Prongay Wolke & Rotter LLP partner Jonathan M. Rotter stated.

"Here, plaintiff adequately alleges 'repeated stonewalling or other policies or practices that hinder or frustrate the exercise of rights conferred under the CPRA [California Public Records Act]. Therefore, the CPRA must be construed in favor of addressing plaintiff's obstruction claims, and the risk of limiting access to public records is best ameliorated through class treatment."

Rotter, along with firm associate Kenneth Chang, represents Mark Shapiro, the named plaintiff who contends the rate increases violated state constitutional limits on utility fees and voter-approved taxes. He also alleges the city failed to timely respond to public records requests he submitted in August and October 2024 under the California Public Records Act.

The city, represented by City Attorney's Office and Colantuono Highsmith & Whatley PC, denied any wrongdoing, arguing the rate increases were properly adopted and that it complied with records laws.

Holly O. Whatley, a shareholder at Colantuono Highsmith & Whatley, said the city does not comment on pending litigation.

The parties are scheduled to argue the motion before Traber on May 8. *Shapiro v. City of Los Angeles*, 25STCV04179 (L.A. Super. Ct., filed Feb. 14, 2025).

In its latest motion, the city argues the amended complaint still improperly asserts class claims.

The city's counsel contends the California Public Records Act provides only an individual right to inspect or obtain records and does not permit one requester to pursue relief on behalf of others.

The city also argues the amended pleading exceeds Traber's leave to amend order by reviving broader class allegations and relief that was already rejected.

The plaintiff's opposition disputes the city's framing and counters that the revised complaint does not seek to enforce individual records requests on behalf of others but instead challenges a systematic "pattern or practice" of delayed responses.

The brief argues that constitutional provisions requiring broad access to public records support classwide relief where an agency's policies or practices allegedly cause repeated delays.

It also points to data from the city's records system showing numerous requests were not resolved within statutory deadlines, asserting that such widespread conduct can be addressed collectively rather than through individual actions.

The dispute follows an earlier round of briefing last year in which the city demurred and moved to strike the original complaint. While Traber overruled the demurrer, she largely granted the motion to strike, removing class allegations tied to both the ratepayer refund claims and the Public Records Act claims.

The judge allowed only limited amendment after finding the plaintiff's theories were not legally viable as pleaded, reasoning that the Public Records Act does not generally permit one requester to enforce the rights of others and that the statutes governing sewer fee refunds do not support classwide recovery.

She also found that the plaintiff's original claims focused on delays rather than a uniform policy.

The amended complaint attempts to address these concerns by reframing the Public Records Act claims as a challenge to broader, systemic practices rather than isolated delays. It also narrows the proposed class to align with that theory.

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The Brief - Top News of the Day From Bloomberg Law

Deep Dive

Colorado Silica Dust Trial Stands as Test for Mass Tort Lawsuits

April 30, 2026, 5:59 AM PDT

An ongoing trial pitting a seriously ill worker against the manufacturers of engineered stone used in kitchen countertops will be an early benchmark of whether individual lawsuits will steamroll into multidistrict litigation that could threaten the industry's existence or force it to make changes.

What's at stake is not just damages for this single plaintiff in Colorado, but a potential shift in the liability framework that shapes how the industry behaves, according to Betsy Malloy, a University of Cincinnati College of Law professor who teaches torts and health law.

"Even when cases are individual tort claims, plaintiffs' broader aims for bringing such suits beyond monetary compensation often include stronger safety standards and enforcement, product reformulation," said Malloy. "Litigation and the surrounding publicity can accelerate the adoption of alternative materials and safer products."

Tyler Jordan, who spent a decade as a stone fabricator, sued Cambria Co. LLC and Caesarstone USA Inc., claiming the quartz slab manufacturers failed to warn him about the high silica content of their products and the potential dangers of breathing in silica dust. Jordan says cutting and shaping the material widely used for kitchen countertops gave him an incurable progressive lung disease.

Jordan is among the hundreds of fabricators in the US who've filed lawsuits against engineered stone makers after being diagnosed with silicosis—a progressive disease that causes severe lung scarring from inhaling silica particles that leads to severe breathing problems.

Jordan is seeking to convince a jury that the stone manufacturers knew of the health hazards associated with cutting their products, but failed to warn workers or instruct them on necessary safety measures.

The companies could be on the hook to pay Jordan millions of dollars if a jury finds them liable for his illness, adding to the worries of an industry already facing intense scrutiny as the issue becomes more prominent through each case.

Trial Coverage

Jordan's case represents one of the first that looks to expand the litigation over silica from engineered stone beyond its base in Southern California, where a landmark jury verdict in August 2024 awarded more than \$52 million to a 34-year-old former fabricator.

As more workers are diagnosed with silicosis, similar claims may follow, allowing for a number of cases like Jordan's to quickly spring up in other places.

During the trial, the jury has been shown internal company training logs related to silica dust and wet-cutting methods, photos of the fabrication shop, as well as safety data sheets and warning labels on the quartz slabs.

Manufacturers argued its labels clearly identified silica dust as a potential hazard and warned that dry-cutting its engineered stone slabs could result in fabricators breathing in the particles that cause silicosis. Jordan's attorneys pushed back, pointing to broad and vague use of language on those labels such as "invisible dust."

The trial is set to end May 1. The jury has heard testimony from Jordan, his wife, his parents—who own the Colorado-based fabrication shop where he worked for a decade—a former employee of the shop, as well as a medical expert and a company representative for Hyundai L&C USA Inc.

Attorneys for Cambria and Caesarstone have argued during the trial that Jordan's illness resulted from his employer's negligence rather than a defective product, often noting instances where his father failed to use safety controls in the shop.

The verdict could influence a wave of similar claims nationwide as more workers learn about the possibility of a lawsuit and lawyers increasingly become aware of the problem, said Michael D. Green, an expert in mass tort litigation and visiting professor at Washington University School of Law.

"There are lots of parallels with what occurred in asbestos litigation, although this is a smaller 'mass tort'—one that I expect will very soon be in a federal multidistrict litigation proceeding," said Green.

Mass Tort Litigation

Tort trials test liability and damages before a jury, and Jordan's case will set an early benchmark, signaling how similar claims may be argued, valued, and decided in courts nationwide, legal observers say.

Mass tort litigation, which involves numerous plaintiffs suing one or more defendants for injuries caused by a common product, allows those individuals to pursue a coordinated case across jurisdictions.

Jordan's case could provide the factual and legal foundation to support a broader, multidistrict litigation—a process that transfers similar civil lawsuits pending in different federal courts across the country to one federal judge.

This means cases are consolidated for efficiency, but still retain their individual status. In product liability tort trials, Green noted, injured workers typically rely on two primary theories: design defect and failure to warn.

An expert witness testified that engineered stone contains more than 90% silica, far more than natural stone, and even cutting it under the permissible exposure limits set by the US Occupational Safety and Health Administration is still too dangerous for workers.

“Even where warnings were provided, workers could argue that they weren’t adequate, which would then result in contending experts testifying the warnings were or weren’t adequate,” Green said.

During the trial, Cambria made clear that it offers trainings for working with its slabs through its Cambria University, focusing on fabrication techniques and installation best practices. The company’s website also notes its slabs must be ordered through an approved professional partner.

A significant verdict or settlement in this case would reverberate across the industry, increasing the likelihood of mass tort litigation that would create sustained, nationwide pressure rather than isolating risk to a single workplace or case, according to Malloy.

“As claim counts rise, insurers litigate exclusions and coverage, and such outcomes can materially affect whether defendants fight, settle, or restructure,” she said.

“In addition, the manufacturers may begin to implement more training certifications and compliance audits to ensure safety conditions,” Malloy said.

To contact the reporter on this story: Tre’Vaughn Howard at thoward@bloombergindustry.com

To contact the editors responsible for this story: Alex Ruoff at aruoff@bloombergindustry.com; Tonia Moore at tmoore@bloombergindustry.com

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Analysis | **Antitrust**

Section 2 Antitrust Claims Used to Be Sure Losers. Why Are They Suddenly Winning?

Three big wins for antitrust enforcers—the Live Nation suit and the Google search and ad-tech suits—all relied on the rarely used Section 2 of the Sherman Antitrust Act.

April 27, 2026 at 12:51 PM By **Michael Gennaro**



Credit: dizain/Adobe Stock

For most of its 136-year history, Section 2 of the Sherman Antitrust Act was more of a threat than a weapon.

The provision—which prohibits the willful acquisition or maintenance of monopoly power through anticompetitive conduct—carried demanding proof requirements, required expensive and expansive discovery, and produced so few trial victories that enforcers rarely tested it. When they did, they usually lost.

That calculus may be shifting. A New York jury's verdict earlier this month [finding Live Nation and Ticketmaster liable](#) for unlawful monopolization is the latest in a string of recent Section 2 wins. Section 2 also helped the U.S. Department of Justice in 2024 win its suit charging Google illegally monopolized [internet search](#) and helped the DOJ last year win its suit charging Google illegally monopolized [digital advertising technology](#).

As a pipeline of additional Section 2 cases wends toward trial—including a Federal Trade Commission suit against Amazon and a DOJ suit against Apple—legal experts are pondering what lessons they should draw from what Herbert Smith Freehills Kramer calls the "Section 2 revolution."

"The thing that I'm watching for now is, are these plaintiffs and enforcement agencies just getting smarter about how to present these cases? Or is there a change in the way judges are thinking and talking about antitrust principles?" said Paul Swanson, a partner at Holland & Hart.

In the past, the economics of the American market have made Section 2 a difficult vehicle for antitrust enforcement, said Herbert Hovenkamp, an antitrust expert and University of Pennsylvania law professor.

"For the most part, tech markets are fairly competitive, and that means that they are not good candidates for Section 2 treatment," he said.

The provision also faced a structural problem: Defendants often could escape liability by arguing that their conduct didn't fit neatly into established judicial tests for specific violations, such as predatory pricing or refusing to deal with rivals. Courts developed those tests to help identify anticompetitive conduct.

Erika Douglas, a law professor at Temple University, [wrote in a January essay](#) in the University of Chicago journal ProMarket that recent decisions, including one involving energy behemoth Duke Energy, have begun to dismantle that dynamic.

In 2019, NTE, an independent power producer based in Florida, sued Duke, charging that Duke used illegal, anticompetitive tactics to block NTE from building a power plant in North Carolina. The district court, after analyzing NTE's claims of exclusionary conduct through the prism of the established tests, granted summary judgment to Duke Energy.

But in August 2024, the [U.S. Court of Appeals for the Fourth Circuit reversed](#), writing that "anticompetitive conduct comes in many different forms that cannot always be categorized. ... Thus, when a court is faced with allegations ... the individual components of which do not fit neatly within pre-established categories, its application of such specific conduct tests would prove too rigid."

In January of this year, the U.S. Supreme Court declined to hear Duke Energy's appeal, thereby leaving intact the Fourth Circuit ruling.

In her essay, Douglas cheered the outcome. "Monopolists are unendingly creative in their approaches to limiting competition," she wrote. "Section 2 doctrine must remain correspondingly flexible in its recognition of novel anticompetitive acts to respond and adapt to these changing anticompetitive practices."

The underlying economics of platform markets, and their prevalence in the technology industry, make tech the primary arena for Section 2 enforcement, said James Keyte, a partner at Boies Schiller Flexner, is the economics of platform markets.

"In this world of tech and ecosystems where you have these enormous first-mover advantages and network effects, you end up with dominant firms," he said. "And so it's a ripe environment for dominant firms to exist, and therefore also to be accused, at least in the U.S., of misbehaving in ways that block or impair new entry by other firms."

The result, he said, is that Big Tech has become "a target-rich environment" for Section 2 litigation.

Swanson agreed, though he added that political considerations also factor into regulators' aggressive pursuit of antitrust cases against Big Tech.

"I think a lot of people have suspicion that maybe tech companies are too big, and we would all be a bit better off if they weren't," he said. "But then the countervailing point—and why big tech companies were frequently winning antitrust cases—is that they are producing unbelievable developments."

Navigating that tension, he said, is the central challenge for antitrust regulators.

"Antitrust law is trying to navigate the difficult line between fantastic stuff that's being produced by these huge companies and anticompetitive content that might be locking us into those big companies in ways that ultimately is suppressing competition, and that's a really hard balance to strike," Swanson said.

Legal observers say the recent spate of successful Section 2 cases likely will embolden third parties and government regulators to bring additional Section 2 suits.

[In a note to clients](#), Herbert Smith Freehills Kramer noted that "in addition to injecting a bevy of jurisprudence into a historically thin area of the law, these cases may also provide a road map for using Section 2 to revisit long-ago transactions that cleared merger review."

The Live Nation case revisited the company's \$2.5 billion purchase of Ticketmaster in 2010, and the Google ad tech case involved acquisitions in 2008 and 2011.

The FTC also included Section 2 claims in its 2023 lawsuit alleging Meta illegally monopolized the social media market through its \$1 billion purchase of Instagram in 2012 and its \$19 billion purchase of WhatsApp in 2014. The agency [lost that case](#) in December, however, with U.S. District Chief Judge James Boasberg of the District of Columbia ruling that the government had defined the market too narrowly, omitting prominent players like YouTube and TikTok

Legal observers say that outcome demonstrates the obvious: that Section 2 suits won't always succeed.

"It's not like there's some tide change where now Section 2 cases are just succeeding against any big player," Swanson said. "We're still seeing really close and thoughtful decisions from judges applying traditional antitrust concepts."

But something has shifted, Swanson argued—even if it's subtle.

"It's almost like they're just willing to get in and make a tough decision against these big companies if they think it's the right thing to do, and they don't have maybe the same reluctance that they would have in the past," he said.

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Can Opposing Parties See Your AI Prompts? Discovery Challenges in the AI Era

As organizations and employees (including, increasingly, legal departments) expand their use of generative AI tools, they may unwittingly be creating a new and largely unexamined category of potentially discoverable information.

April 27, 2026 at 02:31 PM By **Cara Peterman Courtney Quirós & Charlotte Bohn**

Imagine this scenario. You are an in-house lawyer juggling a full inbox, back-to-back meetings and a growing list of demands. Your company is also in active litigation, being managed by your in-house legal team.

A calendar reminder appears for a related discovery response deadline that you are tasked with handling.

To save time, you send the requests to different employees outside the legal department and ask them to fill in factual information related to the business. Without your knowledge, they copy several requests into a public-facing artificial intelligence (AI) tool. Your company has its own proprietary, internal AI tools, but many employees either don't know about the company's tools, or prefer to use external platforms. So, attempting to be helpful, they craft a prompt along the lines of: *"Draft responses that sound professional and minimize risk using the documents provided."* They feed the tool some select background facts, an internal timeline, and notes from discussions with your company's business leaders. The AI generates clean, polished discovery responses, which are returned to you and ultimately incorporated into the version you serve on the opposing party.

You think nothing of this until, a few weeks later, you are staring at an interrogatory your company received in the same matter that asks: *What AI tools did the company use to prepare its discovery responses? Provide all prompts, inputs, outputs, and chat histories related to any AI-assisted drafting of discovery materials.* Suddenly, what felt like an efficient delegation decision has become a potential evidentiary minefield.

As AI becomes embedded in daily legal and business workflows, scenarios like this are no longer purely hypothetical. As organizations and employees (including, increasingly, legal departments) expand their use of generative AI tools, they may unwittingly be creating a new and largely unexamined category of potentially discoverable information.

The prompts employees feed AI tools, along with the outputs those tools generate, may constitute electronically stored information (ESI) subject to preservation, collection, and production obligations in litigation. In some circumstances, use of these tools may also threaten privilege and confidentiality protections.

AI Prompts Are Emerging as Discoverable ESI

Courts are approaching AI prompts and related outputs using traditional discovery principles, including treating prompts as ESI subject to the Federal Rules of Civil Procedure. In general, courts confronted with these issues will be willing to entertain discovery requests targeting AI usage where the requesting party can articulate a concrete connection to the claims or defenses at issue. While courts may still push back on speculative fishing expeditions, they are likely to favor production where prompts are plausibly relevant to the subject in dispute, in keeping with traditional discovery rules.

AI prompts may be especially impactful in discovery, as they have the potential to reveal more than final drafts of documents. For example, tracking the opening hypothetical scenario, finished discovery responses will usually be carefully vetted and sanitized. Prompts used to generate those responses, however, may reflect candid internal assessments, strategic framing of choices, or early thinking about risk exposure. As a result, from a discovery standpoint, AI prompts may function much like early drafts, margin comments, or internal emails, except they are often more direct and less guarded. That makes them attractive targets for smart opposing counsel seeking insight into how a company evaluated its conduct or shaped its litigation posture.

Privilege and Attorney Work Product Considerations

If AI discovery prompts are discoverable as ESI, the next logical question for legal departments is whether AI prompts may be protected by the attorney-client privilege, the work product doctrine, or other privileges protecting them from discovery. The emerging answer from the courts may be all too familiar for lawyers: it depends.

In *Warner v. Gilbarco*, No. 2:24-cv-12333, 2026 U.S. Dist. LEXIS 27355 (E.D. Mich. 2026) the court denied a motion to compel discovery into a pro se plaintiff's use of generative AI. The court held that the materials were prepared in anticipation of litigation, were protected work product, and that any protection was not waived because "the AI tool (and other generative AI programs) are *tools, not persons*." The court also emphasized proportionality, expressing skepticism toward discovery requests driven more by speculation about AI use than by genuine relevance to the claims or defenses at issue. In its assessment of whether work-product protection had been waived, the court emphasized that waiver must be "*to an adversary* or in a way likely to get in an adversary's hand," and found that disclosure to the AI tool did not qualify. However, the court reached the

opposite conclusion in *United States v. Heppner*, 2026 U.S. Dist. LEXIS 32697 (S.D.N.Y. 2026), holding that communications with a public AI platform were neither privileged nor protected work product. There, the defendant used AI to generate documents outlining potential defense strategies and legal arguments after learning he was the target of a federal investigation, and later shared those materials with counsel. The court essentially treated the AI platform as a third party, relying heavily on the platform's terms of service to find the absence of any reasonable expectation of confidentiality. Unlike the *Warner* decision, the court in *Heppner* did not consider whether waiver had been made to an adversary in its assessment of the work product protection. Instead, the court held that the work product doctrine did not apply because the AI documents were not prepared by or at the direction of counsel, and did not reflect counsel's strategy.

As a result, rather than applying a bright-line rule, the privilege analysis for AI prompts turns on familiar factors like who used the AI tool, whether the communication was intended to seek legal advice, whether the tool was used at the direction of counsel, and whether the users had a reasonable expectation of privacy in utilizing the tool.

Waiver Risks

Courts have long held that selectively disclosing protected information may waive protection over related material. Utilization of AI makes this easier to trigger. If a party relies on an AI-generated summary, chart or draft in litigation, an opposing party may argue that fairness requires production of the underlying prompts and exchanges that produced it.

For example, in *T.B. v. Big Brothers Big Sisters of New York City*, 2025 NY Slip Op 33198(U) (N.Y. Sup. Ct. 2025), a plaintiff introduced an excerpt of a chat with an AI tool, in which the AI tool purported to summarize a New York Times article, as an exhibit in a deposition. The defendant believed the article supposedly summarized by AI was hallucinated, and served a discovery request asking plaintiff to admit the article referenced did not exist, along with a request asking the plaintiff to produce the entire exchange with the AI tool that resulted in the summary of the supposed article at issue. Plaintiff asserted work product protection with respect to the full text of the chat session that led to the summary. The court rejected this argument, finding that disclosure by plaintiff's counsel of the article summary portion of the transcript put the article at issue, and thus waived the work product protection.

For in-house counsel, the implication is clear: the familiar rules related to waiver of work product apply to AI-generated materials. If counsel inadvertently puts them at issue, the underlying AI prompts may become part of the story.

Preservation Obligations

Even if AI prompts are unlikely to be produced, they may still be subject to preservation obligations once litigation is reasonably anticipated.

Generative AI tools vary widely in how they store prompts and outputs, assuming they store them at all. Data may reside in third-party cloud systems, be retained only temporarily, or be tied to individual user accounts outside corporate IT controls.

For legal departments accustomed to preserving email, documents, and chat messages, this creates a new blind spot. A legal hold that does not account for AI usage may be incomplete, even if it is otherwise well-designed. As AI becomes more integrated into legal workflows, expect preservation disputes to follow. Savvy in-house counsel must understand how AI data being used by company employees is retained, including how long it is preserved and where it is stored.

What In-House Counsel Can Be Doing Now

Against this rapidly evolving backdrop, several practical steps may be taken by in-house lawyers to prevent a “gotcha” discovery moment:

- **Map AI usage** across the legal department and the broader enterprise, with particular attention to discovery, investigations, and regulatory work. Legal teams should know which AI tools are being used and how they are being used in order to assess risk.
- **Update AI and information-governance policies** to address prompts and outputs explicitly, including whether they are treated as company records.
- **Integrate AI into legal hold processes**, ensuring preservation obligations account for AI-generated data.
- **Train legal and business teams** on the risks of entering sensitive or privileged information into unsanctioned tools.
- **Encourage use of secure, enterprise-grade AI platforms** with contractual assurances around confidentiality, retention, and data use.

Conclusion

The law governing AI prompts and discovery is still developing, and outcomes will remain fact-specific. But the direction of travel is clear: AI-generated inputs and outputs are becoming part of the discovery landscape, whether companies are ready or not.

For in-house counsel, the greatest risk lies not in using AI, but in using it without forethought. Understanding AI prompts as potential evidence today is critical to developing long-term effective litigation strategy and protecting your company’s privilege in the future.

Cara Peterman and **Courtney Quirós** are partners and **Charlotte Bohn** is a senior associate in Alston & Bird's securities litigation group. They represent public companies and their officers and directors in securities class actions, shareholder derivative suits, M&A litigation and internal investigations.

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Analysis | **Artificial Intelligence**

Corporate Attorneys Know Their Clients Shouldn't Be Asking Chatbots Legal Questions. Do The Clients?

Right now, the parameters of AI chat log privilege and discoverability are beginning to be laid out in the courts, similar to the way emails and text message admissibility have been analyzed. And attorneys are making a push to educate their corporate clients on how to avoid what played out in *Fortis Advisors v. Krafton*.

April 30, 2026 at 06:30 AM By  **Ellen Bardash**



Credit: Mojahid Mottakin/Adobe Stock

In mid-March, the Delaware Court of Chancery issued a [decision](#) concluding South Korean gaming company Krafton Inc. breached its agreement to purchase Unknown Worlds Entertainment, creator of the video game Subnautica, in an effort to evade a \$250 million earnout agreement.

There were several attention-grabbing elements to the case, but what litigators immediately zeroed in on was how the court cited Krafton's CEO's ChatGPT conversations as evidence.

“The chat logs became like a discovery windfall for the opposing counsel because it showed the business strategy and just how bad faith it was, but it wasn't protected by attorney-client privilege because it wasn't directed by counsel in any way,” said **Kimberly Russell** of **The Russell Law Firm** in Washington, D.C.

Right now, the parameters of AI chat log privilege and discoverability are beginning to be laid out in the courts, similar to the way emails and text message admissibility have been analyzed. And attorneys are making a push to educate their corporate clients on how to avoid what played out in *Fortis Advisors v. Krafton*.

Several attorneys compared communicating with a chatbot to writing in a diary, the old discovery-speak standard for one person communicating without a person on the other end of that communication.

“It's like you're shouting out into the void,” said **Kristen Swift**, managing partner of the Delaware office of **Kaufman Dolowich**. “And then the void that shouts back might be the court.”

Krafton acquired Unknown Worlds in 2021 for \$500 million upfront, with another \$250 million in earnout payments possible. As part of the deal, Krafton agreed that Unknown Worlds’ two co-founders and its CEO could only be fired for cause. But those three people were fired, and the court sided with Unknown Worlds’ former shareholders in finding that their firing wasn’t justified under the merger agreement—ruling that the CEO should be reinstated.

The opinion outlined Krafton CEO Changan Kim’s communications both with other employees through Slack and with ChatGPT. Kim, who thought the earnout was a bad deal for Krafton, deleted some of the chat logs. The decision lists bullet points from a plan ChatGPT generated for Kim when he asked how Krafton should proceed if it wasn’t able to reach a deal with Unknown Worlds on the earnout dispute. The plan included a section on “systematic materials for legal defense.”

Vice Chancellor Lori W. Will wrote that Krafton went on to follow the majority of the plan laid out by ChatGPT.

What the case highlights, said **McCarter & English** partner **Peter Zarella**, is that AI chat logs can be used to establish intent in business cases.

“There's always been different levels of inference you've had to make. Back in the day, you had to look at the act itself and the potential justifications for it and sort of figure out what was reasonable,” Zarella said. “Then, with the birth of email, you had more examples of people getting close to saying what they thought, or what they were really trying to do. And now OpenAI means people are quite literally putting in exactly what they want to do.”

Mayer Brown partner **Frank Favia** said while the *Krafton* opinion doesn't establish new legal standards governing AI usage, it sends a clear message that courts can treat AI communications as fair game in litigation.

"I think for practitioners and their clients, this illustrates that AI-generated strategies can create a contemporaneous timestamp to potentially irrefutable record of intent, and one that can be far more detailed and damning than even the typical smoking gun email," he said.

The Delaware opinion came out shortly after two other decisions shed some light on how courts might treat AI communications in terms of privilege.

On Feb. 10, an Eastern District of Michigan judge ruled in *Warner v. Gilbarco Inc.* that a pro se plaintiff who used AI to generate documents to assist in litigation couldn't invoke the work product doctrine because the plaintiff wasn't working with an attorney.

A week after the *Warner* decision, a Southern District of New York ruling in *United States v. Heppner* held that documents the defendant used Anthropic's Claude to produce weren't a protected work product because they weren't created at the direction of the defendant's attorney.

In both of those cases, the courts were clear the chatbots used weren't attorneys. The question of whether chatbots are engaging in the unauthorized practice of law has been raised, but not directly addressed in a [nullcomplaint](#) filed[RT1] against OpenAI in March in the Northern District of Illinois.

Robert Hille, a partner at **Greenbaum Rowe Smith & Davis**, said while the general public might increasingly try to use AI products such as virtual legal assistants as hiring lawyers becomes more cost-prohibitive, companies are less likely to treat chatbots as a substitute for outside counsel.

"The primary reason is that lawyers are still relied upon for judgment calls. They're connected to the legal environment that the companies have to address and face," Hille said. "The second thing is, it adds a layer of protection to the corporation because you can say, 'Hey, look, we acted on advice of counsel.'"

But at the moment, there may be some disconnect between how much directors and executives actually know about their AI chats potentially showing up in litigation and what corporate litigators need them to know before it's too late and they've ChatGPT-ed themselves into liability.

With the knowledge of AI discoverability in general in its early stages, **Austin Brittenham**, owner of legal AI company **2nd Chair**, said he expects to see more cases that look like *Fortis Advisors v. Krafton*, and corporations may be more willing to settle those cases in order to end litigation before information disclosed in chat logs becomes public.

“I personally know C-suite executives at major companies that you've heard of who are only just now learning about *Krafton*,” he said. “I’ve been watching the color drain from their faces as they're realizing that the things that they're putting into these tools are not privileged.”

Kaufman Dolowich’s Swift said she’s adjusted her engagement letters to make clear that clients are agreeing not to put their conversations with her into LLMs because doing so could count as a breach of privilege.

“Ethically, we have a duty to advise when our clients could be in a position where they're using this new technology. It's not like it comes with a handbook,” she said. “I see risk all over the place, and I see exposure all over the place, and I don't want my clients to be exposed to that risk.”

Zarella, of McCarter & English, said there are many approaches in-house attorneys can take—and have now started taking—to mitigate those risks, with one baseline being instructions not to ask a legal question without first looping in the general counsel, which can then lead to getting those communications covered by attorney-client privilege.

“It's easy enough to limit the use of those types of tools when it clearly intersects with a legal issue or an existing liability,” Zarella said. “I think the trickier part is going to be managing information when it's more central to the ongoing business operations of the company. I haven't seen much in terms of that being used yet in any litigation.”

Russell in D.C. said until people realize that their AI chat logs are accessible, she expects to see what happened in the Krafton case become a litigation trend, where plaintiffs win discovery windfalls.

“I would say that if you're general counsel and you're not already having those conversations with your clients, that you're behind the ball,” she said. “You need to be having regular audits of your tech stack and reviewing what's going on with all their privacy policies. And you want to make sure that everything that you're doing is protecting your company as much as possible.”

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Biglaw Discovers That Charging \$2,000/Hour Is Easier Than Actually Collecting It

A abovethelaw.com/2026/04/biglaw-discovers-that-charging-2000-hour-is-easier-than-actually-collecting-it

Joe Patrice

April 30, 2026



Wells Fargo's Legal Specialty Group dropped its Q1 2026 survey this week, and everyone's giddy over the headline numbers. Revenues are up 13.1 percent, a byproduct of jacking up billing rates up a staggering 11.4 percent. It seems the only commodity costlier than crude oil in Q1 was a midlevel associate's attention to detail. Demand also crept up 4.5 percent as corporate America found itself in need of more legal advice.

But, it seems, corporate America also found itself less interested in actually paying its bills.

Inventories grew rapidly for the Am Law 200, but the growth was not uniform, with inventory growing much faster for the Am Law 50 (up 19%) than for the other tiers (11% for the Second Fifty and 12% for the Second Hundred). With inventory growing faster than revenue, the inventory collection cycle (number of days it takes to collect fees once work is performed) slowed by 6.5 days (3.4%), with nearly all the slowdown occurring at the top of the market. This was a marked change from this time last year when inventories grew in line with collections.

The Trump era is in full swing. The president notoriously spent his long business career stiffing his vendors, including — and especially — his attorneys. He's sitting on top of [over a million in unpaid legal fees](#) *right now*. He used to be a model of bad behavior, but maybe the rest of the business world decided he was onto something.

"All the big AI firms are in the process of going through an IPO and there are a ton of other deals taking place — data centers and infrastructure work," Wells Fargo's Owen Burman told [Bloomberg Law News](#). "There's a lot of work that hasn't been collected on yet."

Well, that's what happens when the industry propping up the whole economy is just a bundle of IOUs passed back and forth between NVIDIA, OpenAI, and Oracle in an ouroboros of hype. It's just a matter of time before they ask the law firm to send them \$20 million so they can pay the law firm back \$20 million — a stupid proposition, but somehow EXACTLY HOW THE REST OF THE AI INDUSTRY RUNS. And getting the data center *deals* done is not the same as having data centers.

[From Ed Zitron](#):

Of the 114GW of data centers supposedly being built by the end of 2028, [only 15.2GW is under construction in any way, shape, or form](#). And "under construction" can mean as little as "there's a hole in the ground." It does not — and should not — imply that the capacity that said facility will provide is going to be imminently available.

In other words, expect the collection cycle to keep slipping.

But, hey, bankruptcy work is right around the corner! That's exciting, right?



[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](#).

US prosecutor who lost job over AI-generated errors is rebuked by judge

 [reuters.com/legal/government/us-prosecutor-who-lost-job-over-ai-generated-errors-is-rebuked-by-judge-2026-04-28](https://www.reuters.com/legal/government/us-prosecutor-who-lost-job-over-ai-generated-errors-is-rebuked-by-judge-2026-04-28)

Mike Scarcella

April 28, 2026

A message reading "AI artificial intelligence," a keyboard and robot hands are seen in this illustration created on January 27, 2025. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights, opens new tab](#)

April 28 (Reuters) - A federal judge in North Carolina has formally reprimanded an attorney who as a U.S. prosecutor used artificial intelligence to write a court brief containing made-up quotes and false legal citations, warning that courts nationwide must get tougher on lawyers who misuse AI tools.

In an [order issued, opens new tab](#) on Tuesday, U.S. Magistrate Judge Robert Numbers in the federal court in Raleigh said "it is, at this time, foreseeable" that using AI can lead to errors.

Numbers found that former assistant U.S. attorney Rudy Renfer submitted a brief in a veterans' health care benefits case containing fabricated quotes and other errors that arose because he used a generative AI tool to draft the document and then failed to check its accuracy.

Renfer, who withdrew from the case in March a day after the court [questioned, opens new tab](#) the accuracy of one of his filings, was not immediately reached for comment. He has since left the U.S. Attorney's Office, where he had spent 17 years as part of a 30-year legal career.

The U.S. Attorney's Office in Raleigh did not immediately respond to a request for comment.

Renfer is among the first federal prosecutors to face public scrutiny for submitting court filings with AI errors. Judges across the country have sanctioned or admonished lawyers in private practice for similar conduct as AI use spreads through the courts.

Renfer initially told the court the errors were "clerical in nature," and did not mention AI. Only when the judge questioned him directly did he admit to using an AI tool, Numbers wrote. He later took full responsibility, and apologized to the court at a hearing. The specific tool Renfer used was not named in the judge's order.

The judge limited the punishment to a public reprimand, citing the professional consequences Renfer had already suffered.

"Renfer's conduct cost him his job in the United States Attorney's Office. His loss of employment imposes a financial burden well beyond the types of fines courts typically impose in connection with AI-related misdeeds," Numbers wrote. Still, judges across the country "necessarily and unfortunately" will need to move beyond reprimands to more punitive sanctions to help deter AI-related abuses," Numbers said. "Until attorneys reliably verify the accuracy of AI-generated materials, courts must take the steps necessary to safeguard the integrity of the judicial process."

[US judges weigh risks as AI seeps into judicial work](#)

[Top Alabama court tosses appeal over lawyer's AI filings](#)

[Lawyers should disclose when AI causes errors, appeals court says](#)

[Sullivan & Cromwell law firm apologizes for AI 'hallucinations' in court filing](#)

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California Brief

Lawyer in AI Misuse Case Fined Over Subordinate Supervision (1)

April 29, 2026, 12:31 PM PDT; Updated: April 29, 2026, 4:45 PM PDT

A California attorney failed in his professional responsibility to sufficiently supervise another lawyer at his firm who submitted court filings that contained AI-fabricated citations, a federal judge ruled.

Lenden Webb, who practices in Fresno, Cali., is the latest in a fast-growing string of lawyers to be fined over misusing AI through court filings with fabricated citations. But the case appears to be rare because Magistrate Judge Peter H. Kang of the US District Court for the Northern District of California sanctioned Webb primarily for failing to oversee another lawyer at his firm for committing the underlying infraction.

On Tuesday Kang ordered Webb to pay \$1,001 as a personal sanction, and to circulate the order to all attorneys and paralegals in Webb's firm. Webb also must complete four hours of continuing legal education from the State Bar of California, including two hours on supervision of junior attorneys/staff, and at least another two in the area of "ethical/professional use" of AI in legal practice, according to the order.

"Managers in law firms have an obligation to take reasonable steps to ensure all lawyers in the firm make ethical representations to the Court," the judge said. "Supervisors who do not draft or sign submissions to the court, but who remain counsel of record and fail to question the accuracy of defective pleadings, fail in their duty of supervision."



A Supreme Court Lawyer Re

Bloomberg Law



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WATCH: Can AI argue a Supreme Court case better than a human? This lawyer tried to find out.

In the underlying case, Anthony Hill, Workday Inc.'s former in-house counsel, sued Workday over claims the company discriminated against him because he's Black and suffers from various disabilities. Webb and Katherine Cervantes misused AI while formerly representing Hill in the case, according to Kang.

In September 2025, Kang admonished Cervantes for her lack of diligence in ensuring the accuracy of the citation submitted to the court.

Neither Webb nor Cervantes disputed that they submitted a brief which included a fake citation to nonexistent law, "caused in part by use of AI and ultimately from a lack of care and lack of supervision," Kang said.

Webb admitted to Kang that he had "ultimate responsibility as counsel of record," however the judge added that Webb has taken several steps to make sure the errors don't happen again. Remedial steps included attending a legal operations convention "to work on improving our firm's efforts to serve clients," which included Webb and Cervantes attending "multiple seminars" on AI issues, the order said.

"Our firm has doubled down to continue to improve and I believe we are at the forefront of creating value for our clients, which isn't without the hiccups of issues such as a hallucinated citation," Webb said in a statement. "This issue is behind us and I am confident that the reparative efforts outlined in my declaration will push us to the front of the curve to care for our clients."

Webb Law Group APC represents Webb.

The case is Hill v. Workday Inc. , N.D. Cal., No. 3:23-cv-06558, order 4/28/26 .

(Story updated with comment from Lenden Webb starting in the ninth paragraph.)

To contact the reporter on this story: Sam Skolnik in Washington at sskolnik@bloomberglaw.com

To contact the editor responsible for this story: Amy Lee Rosen at arosen@bloombergindustry.com

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Seventh Circuit Decision Touches Upon FCPA's Books And Records Provision

 fcpaprofessor.com/seventh-circuit-decision-touches-upon-fcpas-books-and-records-provisions

April 30, 2026

There is little Foreign Corrupt Practices Act case law (particularly appellate court decisions) including as to the FCPA's books and records provisions.

Thus, when an appellate court opines on an FCPA issue – even if the issue is a relatively minor part of the overall appeal – it is worth noting.

As stated by the 7th Circuit in [this recent opinion](#).

“In 2022, a grand jury indicted [Michael] Madigan [the Speaker of the Illinois House of Representatives] on twenty-three counts. Almost half of the charges in the operative (superseding) indictment concerned two broad schemes relevant on appeal.”

The opinion sets forth the following background:

"The first scheme involved Madigan's dealings with the Chicago-based utility company named Commonwealth Edison. The company faced financial trouble from 1998 until 2011. During those years, ComEd confronted a statutory rate freeze and regulatory unpredictability, which limited its revenue and put pressure on profitability. By 2011, the state agency in charge of energy rates had been disallowing or undercounting ComEd's costs to the tune of \$100 million per year. ComEd enlisted Madigan's help to resolve the downward financial spiral.

From 2011 to 2019, ComEd lined the pockets of Madigan's close political allies. The company did so in part by using intermediaries to funnel over \$1.3 million to five of Madigan's friends for little or no work. ComEd would increase the dollar amount of contracts with certain businesses with the understanding that those businesses would then pay Madigan's political associates as so-called "subcontractors." In much the same vein, ComEd awarded contracts worth over \$1.8 million to a law firm founded by a Madigan fundraiser.

These payments were in exchange for Madigan's support advancing ComEd's legislative agenda. In 2011, he voted to override the governor's veto on a law to stabilize energy rates. This was a boon to ComEd, and Madigan supported similar legislation in the years that followed. These actions restored rate predictability and relieved ComEd's financial distress.

Madigan took steps to avoid being caught red handed. He orchestrated the scheme indirectly through his longtime friend, Michael F. McClain, a former Illinois legislator who had been a contract lobbyist for ComEd since the 1980s. What Madigan did not know was that the government had wire tapped McClain's phone. And the government featured the recorded calls at trial.

The second scheme concerned Madigan's interactions with Chicago City Council Alderman Daniel Solis. The government had investigated Solis for years, and when confronted, he agreed to cooperate and to record his conversations with Madigan. The government directed Solis to tell Madigan that he was thinking of retiring as an alderman and wanted Illinois's incoming governor to appoint him to a state board. Madigan agreed to recommend Solis to Governor-elect JB Pritzker in exchange for business referrals.

The government tried Madigan and McClain together. The trial lasted four months, with the government introducing over 1,000 exhibits into evidence and calling more than 50 witnesses to testify, including some of Madigan's alleged coconspirators in the ComEd scheme and Solis himself. The trial transcript spans more than 11,000 pages.

The jury returned a partial and mixed verdict. The counts related to ComEd and the state board seat charged Madigan alone (Counts 2–7 and 8–14, respectively). The jury convicted him on most of them (Counts 2, 4–6, 8–10, 12–14) but acquitted him on two alleging that he tried to get a political ally appointed to ComEd's board of directors (Counts 3 and 7) and one framing his state board dealings as federal-program bribery (Count 11). Other counts charged both Madigan and McClain, including one alleging a vast conspiracy in violation of the Racketeer Influenced and Corrupt Organizations Act. The jury could not reach a verdict on this second set of counts.

At the close of trial, Madigan renewed an earlier motion for a judgment of acquittal under Federal Rule of Criminal Procedure 29 and also moved for a new trial under Federal Rule of Criminal Procedure 33. The district court denied both motions in a thorough opinion canvassing broad swaths of the record. It later sentenced Madigan to 90 months' imprisonment and fined him \$2.5 million."

Among the many issues on appeal was Madigan's challenges to the sufficiency of the evidence for the ComEd convictions.

In affirming the Count 2 conspiracy conviction the opinion states:

"The government alleged that Madigan conspired to violate not only 18 U.S.C. § 666(a)(1)(B), but also the recordkeeping provisions of the Foreign Corrupt Practices Act. Sufficient evidence supported this second ground. And that is all that is required for us to affirm on Count 2. [...]

The FCPA provides that "[n]o person shall ... knowingly falsify any book, record, or account," 15 U.S.C. § 78m(b)(5), which would otherwise "accurately and fairly reflect the transactions and dispositions of the assets of" a securities issuer, § 78m(b)(2)(A), and that knowing and willful violators shall be punished, § 78ff(a).

The government presented evidence that ComEd's financial records contained a falsehood. Recall that in 2018 ComEd began funneling \$5,000 per month to Madigan's political ally Michael Zalewski through an intermediary, Jay D. Doherty & Associates. ComEd's Fidel Marquez testified that Zalewski did no work in return for these payments.

Zalewski's money did not start flowing automatically. Jay Doherty first submitted an amended contract to ComEd, requesting an additional \$5,000 per month. He represented that the increase was for his "expanded role with [the] Cook County Board President's office and [the] Cook County Commissioners and Department Heads." At trial, the government asked Marquez if this explanation was "truthful," and he responded, "No." He elaborated that "it [didn't] reflect the actual situation of adding Mike Zalewski."

Doherty then submitted an invoice to ComEd similarly representing that the increased bill was "due to additional scope of services." A ComEd employee testified that ComEd recorded that invoice as an expense, with the transaction then feeding into the company's general ledger—a foundational corporate financial record. That meant ComEd's general ledger contained a falsehood: that ComEd paid Doherty's firm an extra \$5,000 for increased lobbying services. As Marquez testified, the money instead went to Zalewski for no work at all.

The jury could have found that Madigan agreed to this object of the conspiracy. In February 2019, McClain said on a phone call with the ComEd contract lobbyist John Hooker that he and a small group had come up with the Zalewski plan and that their "friend" had "thought it was great." It would have been reasonable for the jury to infer that any discussion of the plan

would have recognized that Doherty would submit a false invoice leading to falsified ComEd financial records. We see no reason to disturb the conviction.”

Ex-FirstEnergy executives want charges tossed after mistrial

[cleveland.com/court-justice/2026/04/ex-firstenergy-executives-want-charges-tossed-after-mistrial.html](https://www.cleveland.com/court-justice/2026/04/ex-firstenergy-executives-want-charges-tossed-after-mistrial.html)

By Adam Ferrise, cleveland.com

April 29, 2026



AKRON, Ohio — Two former FirstEnergy officials accused of bribing a state regulator have again asked for a judge to toss out the charges.

Former CEO Chuck Jones and ex-top lobbyist Michael Dowling filed motions Tuesday asking Summit County Judge Susan Baker Ross for a post-trial acquittal.

Baker Ross formally declared a [mistrial](#) earlier this month after a jury [deadlocked](#) in the nine-week trial. A new trial is set for September.

"The State had a full and fair opportunity to present sufficient evidence to sustain a conviction. It failed to do so," the filing says. "Jones should not have to stand trial again so the State can have a second bite at the apple."

Prosecutors have not yet responded to the new request for the case to be dismissed.

Jones and Dowling are accused of bribing former Public Utilities Commission of Ohio Chairman Sam Randazzo with \$4.3 million.

In exchange, prosecutors say he helped draft House Bill 6, the 2019 bill that gave a FirstEnergy subsidiary a \$1.3 billion ratepayer bailout of two aging nuclear plants and ensured the Fortune 500 company continued making inflated profits.

Randazzo also shut down a regulatory review of FirstEnergy's finances that had spooked investors. When the review was formally scuttled, the company's stock prices spiked.

Randazzo took his own life after being charged in the case.

In the filing, Jones' team of attorneys made similar legal arguments to those Baker Ross has rejected at least twice before.

The key defense arguments include:

- That the pattern of corrupt activity charge should be tossed because it requires two or more distinct criminal acts. The accusations of bribery and telecommunications fraud — for wiring the money — are too closely related. Similar arguments were made for the conspiracy charge.
- The \$4.3 million payment wasn't a bribe, but a legal settlement that FirstEnergy owed to Randazzo's clients. Instead of distributing the money, Randazzo stole it.
- Randazzo wasn't yet a public official when the payment was made. Prosecutors argued at trial that Jones and Dowling bribed Randazzo shortly after learning he was being considered by then-incoming Gov. Mike DeWine and Lt. Gov. Jon Husted for PUCO chair.
- The attorneys also argued Baker Ross should toss out charges accusing Dowling of failing to file public disclosures that Randazzo acted as a FirstEnergy lobbyist. They said others at the company were responsible for filing the disclosures with the state. They also argued Randazzo never acted as a lobbyist for FirstEnergy.

Stories by [Adam Ferrise](#)

On National Honesty Day, Will Jon Husted Tell the Truth About His Role in Ohio's Largest Bribery Scandal?

 ohiodems.org/on-national-honesty-day-will-jon-husted-tell-the-truth-about-his-role-in-ohios-largest-bribery-scandal

Tony Wen

April 30, 2026



April 30, 2026

ICYMI from [ASSOCIATED PRESS](#): Republicans plan big spending to keep Ohio's Senate seat. A bribery scandal adds to their challenges

COLUMBUS, OHIO — Today, on National Honesty Day, will Jon Husted finally tell the truth about his role in the largest bribery scandal in Ohio history?

As a reminder, Jon Husted remains at the center of the massive scandal, with new reporting from the [Associated Press](#) revealing Husted's ties to be much deeper than previously known:

- Previous reporting has already uncovered [phone calls](#), [text messages](#), and [secret meetings](#) between Husted and the indicted FirstEnergy executives, and Husted was [forced to testify](#) for the defense in a state criminal trial.
- When Husted was forced to testify, his testimony [showed discrepancies](#) from public documents and reporting, only raising more questions.
- This political headache isn't going away for Husted anytime soon, as the United States Supreme Court [upheld the conviction](#) of one of Jon Husted's top allies just this week.

Ohio Democratic Party Senior Communications Advisor Tony Wen released the following statement:

"On National Honesty Day, Ohioans are calling on Jon Husted to come clean about his central role in the largest bribery scandal in Ohio history that's costing families thousands of dollars more on their utility bills. It seems every week more

details come to light about Jon Husted's deep ties to this massive corruption scheme. Ohioans deserve accountability and answers about how deep his involvement goes."

As a reminder, Jon Husted played a central role "[running the show](#)" in the largest bribery scandal in Ohio history alongside Dowling and Jones:

- New evidence during the trial [revealed](#) nine calls between Jon Husted and Mike Dowling in the months preceding a \$4.3 million bribe to former Utilities Commission Chair Sam Randazzo.
- [New reporting](#) revealed Jon Husted held secret meetings with Dowling and Jones, including with the "mastermind of Ohio's largest public corruption scheme two days before scandal-ridden bribery legislation was introduced."
- Neil Clark, a FirstEnergy lobbyist and co-defendant with former House Speaker Larry Householder, referred to Husted as FirstEnergy's "[golden boy](#)."
- [Text messages](#) between Husted, Dowling, and Jones reveal that the trio were in constant communication "before, during and after his campaign."
- Indicted FirstEnergy CEO Chuck Jones said Husted was a "[good friend of FirstEnergy](#)" who was "[highly engaged](#)" and "[fighting to the end](#)" in support of the massive bail out.
- A [dinner](#) between Jon Husted and the indicted FirstEnergy executives at the Athletic Club of Columbus was a focal point of the criminal trial.
- Public records show that FirstEnergy — led by Jones and Dowling — funneled [\\$1 million](#) in dark money to a dark money group backing Husted in 2017, part of the same corrupt scheme that led to federal and state indictments.

###

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Opinion

Matt Levine's Money Stuff: Short-Swing Short Squeeze

April 29, 2026, 11:20 AM PDT

Avis

Over the past few weeks, Avis Budget Group Inc. had a short squeeze. (We talked about it [a couple of weeks ago](#).) Two hedge funds, SRS Investment Management LLC and Pentwater Capital Management LP, owned about 69% of its stock, or 108% (!) if you include derivative positions. Other investors were at one point short something like 49% of its stock. This apparently became unsustainable, some short sellers capitulated and had to buy back the stock, and the stock ripped up. And then it ended. The stock closed at \$99.90 on March 20, got all the way to \$713.97 on April 21, and closed yesterday at \$182.

On paper, the winners of this short squeeze, at its peak last week, were (1) Avis, which became vastly more valuable over the course of a few weeks, and (2) Pentwater and SRS, who had billions of dollars of paper profits on their Avis positions. But what could they *do* about it? The obvious answer, when your stock is up 600%, is to sell some stock. But Avis, Pentwater and SRS were all legally constrained from selling during the squeeze:

1. Avis was in a blackout period: Its quarter ended March 31, it announced earnings this morning, and for the entire short squeeze it had material nonpublic information and could not legally trade. (Companies traditionally don't trade in their stock between the end of a quarter and the earnings announcement, on the theory that they know a lot about last quarter's earnings but the market doesn't.) So, although Avis actually announced an at-the-market stock offering on March 27, it has not sold any shares yet.

2. SRS, which owns about 49% of Avis and has a board seat, was in the same boat: It had inside information about the quarter, and has an agreement with Avis not to trade during Avis's blackout periods. (Also it is presumably a long-term investor and might not want to sell.)

3. Pentwater is not exactly an insider – no board seat, just a big outside shareholder – and so could theoretically sell. But a different sort of insider trading law constrains Pentwater, the “Section 16 short-swing profit rules.” Section 16(b) of the Securities Exchange Act restricts stock trading by certain “insiders,” including not just directors and officers but also 10% shareholders, which Pentwater is. “For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner,” says the law, “any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer ... within any period of less than six months ... shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner.” That is: If you own 10% of a company's stock, and you buy stock and then sell it at a profit within six months (or sell it and then buy it back at a profit), you have to give up all your profits to the company. The rules for this are notoriously fiddly,

"matching" transactions in punitive and unintuitive ways, and there is an industry of lawyers who [sue hedge funds](#) that mess it up. Pentwater became a 10% holder in February, and acquired millions of Avis shares in March, so if it sold them in April it would have to give back all of its gains.

Ah well! What can you do? I'll tell you. From Avis's chief executive officer on [this morning's earnings call](#) :

Our second-largest shareholder, Pentwater Capital who filed as a 9% owner of our Company as of December 31st, 2025, crossed the 10% ownership threshold on February 20th and became a Section 16 insider. On that day, Pentwater disclosed they held an economic interest of 39% of our Company through stock and cash-settled swaps. By March, they disclosed that economic interest increased to 51%. So in the span of a month, Pentwater's public filings showed their economic interest increased substantially. We believe that this significant increase in ownership, combined with the high short interest in our name, resulted in a short squeeze. That much is well-understood.

Here's what we're absorbing just now. After-market close yesterday, Pentwater disclosed the sale of 4.3 million shares for gross proceeds of \$1.75 billion on April 22nd and April 23rd. Given the quantum of shares sold in such a short span of time, our stock price experienced a significant decline. It is important to note that Avis has not bought or sold a share since 2024. Our largest shareholder, SRS, has not bought or sold a share since 2023. So it seems the only insider active during this period of excess volatility was Pentwater Capital. Pentwater has acknowledged that its sale of Avis stock, at least in part, was violative of the SEC Section 16 short swing profit rules. Avis has requested Pentwater to furnish it all relevant information concerning the trades, and Avis will aggressively pursue all rights on behalf of our stockholders.

Here are Pentwater's disclosures from yesterday. (There are six of them: a lot of trades.) It *did* sell a ton of stock, largely late last week, at prices in the \$200s to \$700s; Avis seems right to conclude that Pentwater's selling is what popped the balloon. "I have not gone through all the math extensively," noted an analyst on the earnings call, "but it does look like this is an incredible trade; they may have made \$1 billion of profit or something like that."

But they have to give it back. Or, rather, they have to give *some* of it back. Pentwater, the hedge fund firm, manages various funds and separately managed accounts. For Section 16 purposes, it treats them separately: If one account bought in February, and another sold in April, it doesn't match those purchases and sales under the short-swing profit rules. Or so it argues in the footnotes to yesterday's disclosures.

Some of Pentwater's sales came out of accounts that had recently bought stock; those sales create Section 16 liability, and Pentwater has to give back its profits to Avis. Pentwater knows this and, rather than wait for Avis or enterprising Section 16 lawyers to come after it, Pentwater has gone to Avis with the money: The funds "are engaged in discussion with the Issuer and have agreed to voluntarily disgorge to the Issuer any short-swing profits realized from these matchable transactions." Again, the rules are fiddly, and Pentwater has done complicated options trades, so there is room for interpretation here and Avis might ask for more than Pentwater is offering. But the basic idea – "we are not allowed to profit from these sales, and have to give our profits to the company" – is clear.

But many of Pentwater's sales came out of other accounts that it manages, funds and SMAs that had *not* bought stock recently, and so don't have to give up their profits. This is a bit odd: Pentwater's disclosures of its *buying* don't mention which funds it was buying for – just "certain funds" – and its disclosures of its *sales* do, so you can't exactly trace through which accounts bought and sold when, or why. You have the odd situation that Pentwater bought some Avis stock in some of its funds, the stock ripped up, and then Pentwater sold Avis stock out of its other funds. The investors in the selling funds (who got as much as \$700 per share) must be thrilled; the investors in the buying funds (who presumably still own the stock at like \$182) might be less thrilled.

But the overall result is:

1. Pentwater, as a fund complex, has realized a huge profit and will keep a lot of it, and
2. Avis will get a nice chunk of change from Pentwater's sales.

Avis had a short squeeze, there were legal restrictions preventing Avis and Pentwater from selling stock at the peak of the short squeeze, and Pentwater found a way to dance through those restrictions such that (1) it got money and also (2) Avis got money.

On the earnings call, Avis seems a bit flummoxed by all of this, but to me it looks like pure windfall upside for the company. Pentwater got Avis a nice little gift. Pentwater's buying (and disclosure of its buying) caused Avis's stock price to soar, Avis couldn't take advantage by selling into that rising market, and then Pentwater's selling – which caused Avis's stock price to return more or less to normal – generated cash for Avis. It's sort of a non-dilutive equity capital raise: Someone else sold some existing Avis stock into the short squeeze, and Avis got the money. (Also life got pretty hot for Avis's short sellers, which many companies enjoy.) "Short squeeze as a service," one reader called it in an email. Great trade!

Double IPO

Bill Ackman's double initial public offering, of Pershing Square Inc. (PS, his hedge fund management firm) and Pershing Square USA Ltd. (PSUS, his closed-end fund), priced yesterday. "Priced" is sort of the wrong word. Investors in the double IPO paid a fixed price of \$50, for which they got a fixed package of (1) one share of PSUS (with a \$50 net asset value) and (2) 0.2 shares of PS. Traditionally, in an IPO, the price is negotiable, and the underwriters adjust the price to get enough demand. For a closed-end fund, that [doesn't quite work](#) : You need to sell \$50 of net asset value at \$50. I suppose Ackman could have offered a variable number of free PS shares for every PSUS share, but that would have been a mess. Instead it was one free PS share for every five PSUS shares, take it or leave it.

People took it, more or less. Bloomberg's Bailey Lipschultz and Georgie McKay [reported this morning](#) :

The funds raised for Pershing Square USA Ltd. came at the low end of a fundraising target of as much as \$10 billion, and the majority of the cash was already spoken for before the process began.

The \$5 billion haul was the bare minimum to keep the early investors who signed up to buy \$2.8 billion locked into the deal, and fell well short of the lofty \$25 billion that Pershing Square sought to bring in about two years ago.

Sweeteners including free shares of asset manager Pershing Square Inc. and no performance fee for Pershing USA increased interest from investors but didn't do enough to stoke pandemonium.

Pershing Square USA shares are indicated to open at \$37.50 to \$42.50 each, below the \$50 per share IPO price, while Pershing Square shares are indicated at \$22 to \$25 each, as of 11:54 a.m. on Wednesday in New York.

I am writing this before the stocks open for trading, and indicative pre-open prices of just-IPOed companies don't always tell you all that much, but on those numbers your \$50 investment got you (1) \$37.50 to \$42.50 of PSUS plus (2) \$4.40 to \$5 of PS (one-fifth of a share worth \$22 to \$25), for a total of \$41.90 to \$47.50 of stuff.

LPs sell to themselves

A private equity sponsor will typically raise a fund from a group of institutional investors (called limited partners, or LPs), use the fund to buy some companies, gussy the companies up, and then resell them after a few years to strategic acquirers or the public markets. In recent years, private equity sponsors have had a hard time reselling their companies, which has led to various workarounds.

An **important one** is the "continuation vehicle," where the sponsor will raise a new fund from a new group of LPs and use the new fund to buy a company from the old fund. This is obviously and notoriously conflicted: Every dollar that the old fund gets comes out of the new fund, and the sponsor might favor one fund over the other depending on which LPs are more important, which fund has more of the sponsor's own money, etc. There are various procedural safeguards but ultimately the sponsor is selling to itself at a price it sets.

One safeguard is that private equity funds normally have limited partner advisory committees, where representatives of a few of the fund's big LPs get to review what the fund is up to, consider conflicted transactions, etc. In general, if you worry that the sponsor might try to put one over on the LPs, it is useful to have an LP committee to keep an eye on the sponsor. But in the specific case of continuation funds it is only a partial solution, because the conflicts involved in continuation funds are not so much "sponsor vs. LPs" as they are "some LPs vs. other LPs." Anyway the Financial Times reports:

Big private equity backers have raised concerns that some of their peers may be waving through controversial deals where buyout firms sell companies to themselves, adding a fresh twist to worries about conflicts of interest inherent in the transactions. ...

Some institutional investors are demanding that a wider group of fund backers be required to approve selling assets to continuation vehicles, the private equity executive said. Backers of buyout funds "don't love [continuation vehicles] as a way of exit", the person said, adding that "they want greater consultation".

The US pension plan told the FT that “limited partner advisory committees are becoming increasingly conflicted”, referring to the industry term for backers of buyout funds. They added that when committee members’ employers also had strategies dedicated to backing continuation vehicles, “it’s hard to know which interest they’re serving”.

In a continuation fund, the sponsor is both a buyer and a seller, but some of the LPs might be as well.

Buy shares in a book

The way books work is roughly that a publisher gives an author some money (an “advance”) for the rights to publish a book, and then the publisher tries to sell as many copies of the book as possible, and the publisher and the author split the profits from those sales. That is: The book is a business with a speculative stream of future cash flows, and the publisher invests cash in that business in exchange for a claim on those cash flows. The book is like a securitization, or at least a security. The book is a startup, the author is an entrepreneur and the publisher is a venture investor; if it works out then both the entrepreneur and the publisher get rich. If not, well, 90% of startups fail.

Normally a book gets exactly one advance from one publisher, but if you really wanted to you could imagine applying, you know, the whole apparatus of finance. Syndicated investment rounds in which a dozen publishers take stakes in the book. A liquid secondary market for book stakes. The New York Book Exchange Individual investors buying stakes in books they like. Short selling. Zero-day options. Index funds. Whatever, man.

Most authors and publishers would not put things in these terms because they are in, you know, the book business. But here’s a proposed book titled *We Should Own the Economy*, by Elle Griffin, which is about, you know, more people owning more stuff. *She* thinks of books in these terms. So she’s pitching a securities offering for her book:

Instead of pitching this idea to publishing houses, securing a book advance, writing it in secret over the next several years, then hoping people read it when it comes out; I’m pitching it to you. You can listen in on my interviews as I have them, read chapter drafts as I write them, contribute comments and help me crowdsource my research as I go, and even earn a share of the profits when it sells.

In other words: I’m giving you ownership in a book project about creating more owners.

I’ll be researching and writing this book live over the next couple years, gathering pre-sales as I go. Once I’ve finished the book, 40% of sales will be distributed among investors as an annual distribution. I will donate the remaining 10% as an annual donation to GiveDirectly. If the project goes on to sell to a traditional publisher or becomes an audiobook, podcast, or documentary, we will retain that same profit-sharing split.

My description above is loose in several ways: The advance is traditionally not just equity but also kind of debt (if you never write the book you have to pay it back), and of course the publisher is not really a *passive* investor but instead does a lot of work to edit, print, market and distribute the book. Selling shares to retail is not a perfect replacement for the publishing industry, but it is fun to think about.

Welcome to investment banking

Probably most people's first day at an investment bank is relatively pleasant, filled with inspirational speeches and carefully vetted human resources trainings, and it's only in like week two when they start thinking "oh no what have I signed up for?" In some ways it's nice that JPMorgan Chase & Co.'s London office just front-loaded this:

JPMorgan's human resources team was alerted after [former head of investment banking Vis] Raghavan made inappropriate comments in front of dozens of juniors on their first day at the bank's Canary Wharf offices, according to people familiar with the remarks.

Raghavan allegedly recounted a story about an attractive woman he had been distracted by while he was a student. Now, he told them, "she was fat", while he was an executive at JPMorgan. Multiple people present complained about the comments, which Raghavan denied he had made when approached by HR.

When *that's* the first-day inspirational speech from your boss's boss's boss, you know what you're getting into, you know? Anyway that's from a Financial Times article about how Raghavan's days were numbered at JPMorgan, but he managed to secure a job at Citigroup Inc. before his departure was announced. Citi "told shareholders his \$52mn pay package was needed to 'incentivise' Raghavan 'to leave his prior employer' and join Citi's leadership team as head of banking"; the FT suggests that might not have been entirely true.

Things happen

Junior Bankers Sick of Grunt Work Build \$2 Billion [AI Tool](#) to Do the Job. Elon Musk Testifies of AI Risk at Trial, Says OpenAI Tried to 'Steal' a Charity. UBS Says Rich Clients [Lost Some Interest](#) in Private Credit. Ken Griffin suggests retail investors do not understand private credit. [Brown-Forman](#) Plunges After Jack Daniel's Maker Ends Deal Talks. Lululemon founder casts doubt on new chief as proxy fight escalates. Cyberattack on [NJ School](#) Forces Debt Sale to Cover Stolen Funds. The Plywood Smuggling Ring That Ensnared a Building-Products Giant.

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To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:

Michael Newman at mnewman43@bloomberg.net

1. I think? No one seems quite sure, there are no reports of short sellers being blown up, and it's possible that the short squeeze was mostly psychological. Maybe it was mostly long buyers who thought there was a short squeeze and bought to profit from it, rather than short sellers who had to buy in. In any case the stock ripped; it looks like a short squeeze, even if the squeeze was imaginary.

2. On this morning's [earnings call](#), Avis's chief financial officer said: "Simply put, we were in a quiet period at the time. But I can tell you this much: We have no intention of issuing shares anywhere near these levels." These levels as of this morning; presumably not \$713.

3. It also sold call options.

4. There are two sorts of footnotes. For some trades, the notes say things like: "Trades by Pentwater Credit Master Fund Ltd., none of which are a matchable transaction for purposes of Section 16 of the Securities Exchange Act of 1934, as amended, because Pentwater Credit Master Fund Ltd. has not purchased any shares of Common Stock since the Reporting Persons became subject to Section 16 of the Securities Exchange Act of 1934, as amended." Other trades say things like: "Trades by Pentwater Merger Arbitrage Master Fund Ltd., of which sales of 49,000 shares of Common Stock reported herein are matchable, for purposes of Section 16(b) of the Securities Exchange Act of 1934, as amended, against Pentwater Merger Arbitrage Master Fund Ltd.'s deemed purchases of (i) 30,000 shares of Common Stock on March 6, 2026, and (ii) 19,000 shares of Common Stock on March 9, 2026. The Reporting Persons are engaged in discussion with the Issuer and have agreed to voluntarily disgorge to the Issuer any short-swing profits realized from these matchable transactions in accordance with Section 16(b) of the Securities Exchange Act of 1934, as amended."

5. A natural question might be: Did the funds that sold last week own stock to begin with? Are they ... short?

6. I mean, again, the rules are fiddly. Might Avis sue for all of it, and win? I dunno.

7. Or, for that matter, the old LPs: The LPs in the old fund can put money into the new fund, though generally the overlap won't be total.

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Securities

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Opinion

Matt Levine's Money Stuff: Sell the Electricity No One Is Using

April 30, 2026, 10:22 AM PDT

American Efficient

People keep inventing new things that use electricity. As people use more electric stuff, they need to find electricity to power it. One approach is to build new power plants to generate new electricity, but this is expensive, time-consuming and environmentally problematic.

Another way to get electricity for new stuff is for people to use less electricity for other stuff. Rip out your old energy-inefficient light bulbs or appliances and replace them with new, more-efficient bulbs or appliances. Set your air conditioner to 74 instead of 68. Etc.

You might think that these two approaches – (1) build a power plant, (2) use your air conditioner less – would be fungible, and market prices would determine the balance between them. You can get paid for generating a megawatt-hour of electricity, you have to pay to use a megawatt-hour of electricity, and the market price will incentivize some people to generate more and others to use less.

But electricity is a weird commodity: It can't be stored easily, and supply and demand have to balance minute by minute. Electric grid operators – the agencies that coordinate regional power grids in the US – care about *capacity*, making sure that they have enough electricity to meet peak demand. And so they pay power generators not only for each megawatt-hour they produce, but also for adding capacity to the system. There are "capacity auctions" where power generators commit to be available to generate power in future years, and get paid for those commitments out of customers' electric bills. If you build a power plant, you can get paid *both* for the capacity that you commit *and* for actually generating electricity.

But what about saving electricity? Committing to use one less megawatt at peak times is about as good as committing to supply one more megawatt at peak times. And so grid operators often have capacity auctions for using less electricity: If you commit to use less electricity at peak times, you can get paid for it.

But: What? What does that mean? What could it mean to commit to using less electricity (less than what?), and get paid for it? One thing it could mean is that you install a smart thermostat that turns off the air conditioning at times of peak demand. (This is called "demand response.") But in theory it could also mean that you get rid of your old energy-inefficient refrigerator and install a new, more efficient one. This causes you to use less electricity, including at peak times; it gives capacity back to the electric grid. Therefore someone should get paid for it.

But: Who? You? It is administratively annoying for a grid operator to pay every consumer, like, \$1 for installing a new fridge. Your electric utility? Maybe, and there are programs where utilities get paid for energy efficiency programs. If the Home Depot sold you the new energy-efficient fridge, did Home Depot cause a reduction in peak electricity demand? If Samsung built the fridge, did Samsung cause the reduction? Should the grid operator pay Home Depot? Samsung?

The practical answer is often that nobody gets paid. Sometimes you change a lightbulb without getting a payment from the electric grid. The market for using less electricity is not completely efficient. In most ways, this seems good: If people save electricity without getting paid, that saves electricity and doesn't cost money; if you got paid for every efficient lightbulb you installed, everyone's electric bills would be higher to fund those payments.

But if you have a certain sort of mind, you might think "no, people respond to incentives; if the grid paid for every efficient lightbulb, we'd save more electricity." If you have a certain, not unrelated, sort of mind, you might think "well, if nobody is getting paid for installing these lightbulbs, maybe *I* should get the money."

Here's an amazing story from North Carolina news site The Assembly:

The Federal Energy Regulatory Commission has fined Durham-based American Efficient \$722 million and ordered the company to repay more than \$410 million in "unjust profits" for alleged fraud in its energy efficiency program. ...

An American Efficient spokesperson said the company "stands by its position that the commission's allegations are meritless and that it did not commit any wrongdoing."

FERC took issue with the company's business model. Durham entrepreneur Ben Abram and his company Wylan Capital purchased American Efficient in 2013. Since then, it has been an energy efficiency aggregator that buys sales data and "environmental attributes"—the inherent characteristics of lightbulbs, appliances, and other products that make them energy efficient—from large retailers, like Lowe's, as well as other companies.

American Efficient then used that sales data to calculate the energy savings from the anticipated use of the lighting and appliances, entering those projected savings into "capacity auctions." ...

"I don't vote lightly for disgorgement and civil penalties this high," said FERC Commissioner Lindsay See, a Biden appointee, at a public meeting last week. "But we've not been faced with a scam that robbed ratepayers of hundreds of millions of dollars in this way before."

"American Efficient has fought with every legal tool they can muster, and it's easy to understand why—because their entire business is at stake, their entire business is a scam."

Here is the FERC order (from April 15), which is not messing around!

This order concerns one of the largest and most brazen frauds in the history of the Federal Energy Regulatory Commission. Today we find that American Efficient, LLC and its affiliates (together, American Efficient) stole half a billion dollars from hard-working Americans by collecting compensation for fake "energy efficiency resources."

And here is a 2024 FERC staff report explaining the business. A lot of retailers sell energy-efficient appliances and light bulbs, which predictably reduce electric power usage. That usage reduction is valuable: Power grid operators have capacity auctions where they pay for energy efficiency, so, American Efficient figured, someone should sell this stuff – the usage reduction from the appliances – into those auctions. Selling electricity into capacity auctions is not the core business of the retailers or manufacturers or certainly consumers. All of that energy efficiency is just being wasted, not being turned into capacity payments. Someone should sell it. Why not American Efficient? From the staff report:

What American Efficient passes off as energy efficiency in its capacity supply offers really is just market research. It buys sales data of energy efficient products from large retailers like The Home Depot, Lowes, and Costco and then figures out how many MWs of electricity would be saved if end-use customers installed those products and used them in accordance with predictive models. It then bids those energy savings into the capacity markets as if it caused the savings. ...

American Efficient claims that it obtained the rights to payments for the energy savings caused by customer projects by purchasing from manufacturers, distributors, and retailers "environmental attributes" associated with the energy efficient products that end-use customers used as part of their projects. It claims to have purchased those environmental attributes when it purchased the sales data from its retailer partners and argues that ownership of the attributes gives it the right to take any potential capacity payments away from end-use customers, even though it has no agreement with those customers, has no rights to those customers' projects, and does not ever tell the customers that the Company is purporting to take their rights away.

It's just a bet that no one else is getting capacity payments for these appliances, so American Efficient should. The April 2026 FERC order explains that American Efficient signed agreements with "manufacturers, distributors, and retailers," including "big box stores like Home Depot and Walmart." The retailers would give American Efficient monthly sales data for energy-efficient items, and American Efficient used that data to calculate how much power was being saved. American Efficient would give the retailers "micropayments" for each item sold, and in exchange it got the "environmental attributes" of the products. The contracts gave it:

"[A]ll rights to claim or receive any incentives, capacity resource payments, or other mechanisms offered by utilities, regional transmission organizations, independent system operators and/or other grid companies related to energy savings; including programs, RFPs, contracts or other procurement activities for energy efficiency resources, emissions reduction credits; and emissions."

The “micropayments” were fairly small, generally pennies per item. But better than nothing! The thing American Efficient was buying here – “environmental attributes” of light bulbs, “not using as much electricity” – was a new sort of thing, a thing without an obvious market, a thing that the retailers and consumers probably didn’t value very much. There was not a ruthlessly efficient market for not-using-as-much-electricity; lots of people went around reducing their electricity use *without* getting paid for it. American Efficient was in the business of *creating* a ruthlessly efficient market for it. If you can get paid for not-using-as-much-electricity, American Efficient was going to buy up as much not-using-as-much-electricity as it could find.

This is both cynical and also, like, capitalism, man. It seems that they more or less believed in what they were doing. From The Assembly:

“What made this approach different is that the end user wasn’t the only party that could move the needle on energy efficiency,” a company spokesperson said. The micropayments “sent a powerful signal through the supply chain.”

FERC argued that a \$0.05 payback on a single light bulb cannot influence retailer behavior.

“But \$0.05 multiplied across every qualifying product sale in every qualifying store adds up,” the company spokesman said, “and the academic literature on upstream market transformation confirms what common sense suggests: when you offer incentives at scale, supply chains respond.”

The FERC fined them over \$1 billion and referred them for criminal prosecution; they’re out here like “paying \$0.05 per light bulb adds up to real power capacity.” I can see both sides!

The way the FERC thinks about it is: You can’t get paid for an energy efficiency program unless you are actually causing a reduction on power usage. From the FERC order:

EER [energy efficiency resources] must be intended to create what the parties call “additionality” – i.e., energy reductions that would not otherwise occur. The record is clear that American Efficient’s program was not “designed to achieve” additionality, but rather was designed to extract rents on sales of EE products over which American Efficient had no influence. Indeed, American Efficient’s executives themselves said so. The company’s then-Policy Director stated that “American Efficient did not believe it was causing energy efficiency to occur, but [instead] was calculating what was already occurring.” American Efficient’s Head of Origination stated in 2018 that “we do not need to provide additionality” and insisted that the company could instead secure capacity payments based on sales of EE products “that are already occurring but for which [the retailer or manufacturer] is capturing \$0.”

Sure, of course, the FERC is right: It is better for the grid to pay only for programs that cause a reduction in electricity usage. But doesn’t American Efficient’s argument have a certain charm? Every day, people are doing stuff that uses less electricity. That is valuable, and the grid operators would pay for it. Those people were getting paid \$0 for something that had value. The market was inefficient! American Efficient made it efficient.

PSUS/PS

In 2024, Bill Ackman tried to [raise \\$25 billion](#) for a new [closed-end investment fund](#) called Pershing Square USA Ltd., or PSUS. Most closed-end funds trade at a discount to their net asset value, so investors were hesitant to invest: If you paid \$50 for a share of PSUS, it would immediately be worth \$40 or \$45, so why would you buy? Ackman dismissed this concern: PSUS was [not a typical closed-end fund](#) ; it was *Bill Ackman's* closed-end fund, and it would trade at a premium. (Ackman already had another closed-end fund that traded at a discount, but that was different, never mind that.) This argument [did not work](#) , and ultimately Ackman [pulled PSUS's initial public offering](#) .

Last month he [came back](#) , with a new solution to the problem. The solution is a *double* IPO: Along with PSUS, Ackman took his hedge fund management firm, Pershing Square Inc., or PS, public. He did not sell shares in PS. Instead, he gave them away to PSUS investors. If you paid \$50 for a share of PSUS, you also got some free bonus stock in PS as an incentive.

More specifically, Ackman lined up \$2.8 billion of pre-IPO commitments from institutional investors, family offices and ultra-high-net-worth individuals, who committed to pay \$50 for (1) one share of PSUS and (2) 0.3 shares of PS. There are 400 million shares of PS outstanding, and it raised money at about a \$10 billion valuation in 2024; at that valuation, each share of PS should be worth about \$25. These anchor investors made it easier to go out and launch the IPO publicly.

Regular IPO investors got a little less: Buyers in the IPO paid \$50 for (1) one share of PSUS and (2) 0.2 shares of PS. Maybe \$5 of free stock. Pershing Square did a lot of marketing to retail investors in the IPO, and "Ackman appeared on a podcast with Robinhood Chief Executive Vlad Tenev and visited some banks' wealth-management offices to pitch financial advisers," but apparently most of the money in the IPO came from institutions.

The pitch here was not only that you got some free PS stock, but also that incentives were aligned. The more money PS manages, the more it will be worth, and PS manages PSUS. If PSUS's initial public offering went well and raised a lot of money, and if PSUS traded at a premium to NAV and was able to raise even more money in the future, then that would be good for PS, which would get a lot of future fee revenue from PSUS. The free shares of PS would give potential PSUS investors a stake in making the PSUS IPO as big as possible, rather than waiting to buy shares at a discount in the aftermarket.

Anyway the double IPO priced Tuesday after the close. As I [wrote yesterday](#) , "priced" is the wrong word: The PSUS shares were sold at a fixed price of \$50, and the PS shares were given away free. But the companies went public, [raising \\$5 billion](#) total (including the pre-IPO commitments). And then they opened for trading yesterday. PSUS opened at \$42 per share and closed at \$40.90, an 18% discount. At 1 p.m. today, PSUS was trading at about \$43.19. PS opened yesterday at \$24 and closed at 24.20, roughly in line with my guess in March ; it was at about \$30.19 at 1 p.m. today This means:

If you invested in the pre-IPO private placement, you paid \$50 for \$40.90 worth of PSUS stock and \$7.26 (0.3 shares) of PS stock, worth a total of \$48.16, a first-day loss of about 3.7%. As of 1 p.m. today, though, you were back in the black, with \$43.19 of PSUS and \$9.06 of PS for a total value of \$52.25.

If you invested in the IPO, you paid \$50 for \$40.90 of PSUS and \$4.84 (0.2 shares) of PS, worth \$45.74, a first-day loss of about 8.5%. As of today, things are better, with \$43.19 of PSUS and \$6.04 of PS for a total value of \$49.23.

Sort of an awkward middle ground: The people who bought into the private placement before the IPO have made money so far; the people who bought into the IPO have lost money.

Tariff refund renegeing

Generically the way any business deal works is:

1. One company wants to buy a thing and another company wants to sell it.
2. A businessperson at the buyer company talks to a businessperson at the seller company to negotiate the basic terms of the deal, how much the buyer is buying, what it is paying, etc. These businesspeople might be the chief executive officers of the respective companies, or they might be very junior traders, depending on the size and importance of the deal.
3. The businesspeople reach agreement on the basic terms.
4. "Our lawyers will send you the final contract," one of them says to the other, and then they go on to other deals.
5. The lawyers for (say) the seller send the lawyers for the buyer a contract with the basic business terms (quantity, price, etc.) filled in, and with some ambiguities in the business deal resolved, and also with some quantity of language about regulatory approvals and material adverse effects and choice of law and mandatory arbitration and other lawyer stuff.
6. The lawyers for the buyer send back proposed changes to the contract, and the lawyers negotiate amongst themselves to get the contract done.
7. Probably the lawyers reach a deal and the two companies sign a final binding contract.

Fine. But here is a question: What happened at Step 3? When the businesspeople agreed to a deal, did they have a deal? Was that a binding agreement, with the remaining steps just filling in some administrative details? Or was that just a first step in the negotiation, with the only binding deal coming in Step 7 when they signed the final contract?

The answer is "it depends." Broadly speaking there are two sorts of intuitions:

In, say, *public-company mergers and acquisitions*, there is no deal until there's a signed merger agreement (Step 7). The stuff that the lawyers work out among themselves is critical, and handshake agreements fall apart all the time over detailed negotiations. Every step before Step 7 will involve some disclaimer saying, like, "this is not a binding deal and is subject to negotiation of definitive agreements."

In, say, *bond trading*, a binding commitment is created when a trader says "done" on the phone or a chat (Step 3). Sending a [thumbs-up emoji](#) in the chat can create a binding obligation. Various administrative things happen afterwards, but if the two sides' lawyers and back-office people can't agree on those administrative things, the traders yell at them until they do.

But not every sort of deal has clear norms; new sorts of deals are being invented every day. Sometimes the buyer will have one sort of intuition ("when we shook hands the deal was done") while the seller will have the other ("I can change my mind until the final contract is signed") and there will be a mess. [For instance](#) :

Oaktree Capital Management LP sued BJ's Wholesale Club Inc. for allegedly backing out of a deal to sell its rights to around \$29 million in tariff refunds for 70 cents on the dollar.

In a suit filed Monday in New York, Howard Marks' asset management giant said BJ's walked away from a binding agreement with Oaktree because "the market value" of its tariff claim had increased above their agreed sale price. ...

Oaktree claims it had a "fully negotiated" final agreement on March 13 to pay BJ's \$20 million for its tariff refund claim. All that remained for the deal to be implemented was for the members' club warehouse retailer to use all "commercially reasonable efforts to execute and deliver" the agreement back to Oaktree, according to the suit.

An in-house lawyer for BJ's advised Oaktree on April 14, a day after the target date for execution, that it was "all set with internal approvals on our side," the suit alleges. But that changed a day later when the same lawyer sent another email.

"Apologies, but please ignore my prior email," the BJ's lawyer allegedly wrote. "I jumped the gun and there is an issue with getting final approval that we need to work through. I'll be in touch as soon as I have more info."

Here is the complaint. If you are used to, say, mergers and acquisitions, you won't find this compelling:

The Parties fully negotiated the final Definitive Agreement required to close the transaction and execution copies and wire instructions were circulated. No open terms remained, and there was nothing more to negotiate.

Yeah but it wasn't signed! It's not a definitive agreement until it's signed! On the other hand, they *did* sign *something* on March 13. It was called a "Trade Confirmation," and if you are used to bond trading then of course a trade confirmation is binding. And in fact it said it was:

The [Trade Confirmation] is "a valid and binding agreement between the parties." ...

The [Trade Confirmation] required the parties to “use commercially reasonable efforts to execute a Definitive Agreement and settle the transaction as soon as practicable, including, without limitation, by providing all requested documents and any proposed revisions to the Definitive Agreement in a timely manner.”

If, after good faith negotiation and the application of commercially reasonable efforts, the Parties were unable to execute and deliver a Definitive Agreement within thirty days after the execution of the [Trade Confirmation] (the “Target Date”), the [Trade Confirmation] provided that the “parties may mutually agree to continue negotiating or any party may at any time elect to terminate this letter and cease further negotiations (‘Walk Away Right’).”

Oaktree thinks BJ's had an obligation to get the final contract done; BJ's thought it could walk away until the contract was signed.

Things happen

Lazard Buys \$575 Million Firm to Boost [Private Markets Push](#) . Blue Owl [Asset Growth](#) Meets Estimates Amid Direct Lending Slump. India's Homegrown \$1 Billion [High-Speed Trading Unicorn](#) Goes Global. Bank of England in stand-off with FCA over trading firms' capital. DOJ Won Access to [KKR's Emails With Lawyers](#) in Probe of PE Deals. Crypto Rushes to Bail Out Decentralized Lender Targeted by Hackers. White House Opposes Anthropic's Plan to Expand Access to Mythos Model. SoftBank plans to list new AI and robotics company in the US. An Explicit Solution to Black-Scholes Implied Volatility. Elon Musk Testifies He Was a 'Fool' to Fund OpenAI. Polymarket Adds [New Detection Tools](#) After Insider Bet Backlash. Half of 'long shot' Polymarket bets on military action are successful. Ozempic [sells mints](#) . “Telling people how to manifest money by taking their money.” Where the goblins came from.

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To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:

Michael Newman at mnewman43@bloomberg.net

1. The 2024 FERC staff report gives a good overview of the legitimate sorts of “energy efficiency resources” (EERs) that get bid into capacity auctions: “The ISO/RTOs [grid operators] allow EER providers to bid a project into the capacity market for a set number of years (typically four) from the date of installation. The most common type of EER is a distribution utility energy efficiency program. These programs are typically implemented under state statutes or state commission orders and are usually funded via a surcharge on customer bills. They often include a portfolio of activities that cause demand reductions, such as retail markdowns of energy efficient products, direct incentives to residential customers to install energy efficient products or appliances, or direct incentives to commercial and industrial customers to retrofit their businesses with energy efficient systems and processes. Before the energy savings are bid into the market,

the relevant state commission will typically have reviewed them under a measurement and verification process. The EERs demonstrate and validate the energy savings resulting from their projects by using assessments like engineering reviews, automated project tracking systems, telephone or web interviews with customers or contractors, metering, customer billing analysis, and customer site visits. Other examples of EER capacity projects are large-scale commercial and industrial retrofits to replace less efficient products, systems, or processes. Examples of such projects in PJM [a grid operator] include a school district that installed energy efficient lighting and made building envelope improvements at identified schools, a university that implemented projects to improve the efficiency of its campus' chilled water distribution system, and a development corporation that installed energy efficient lighting systems at specified municipal buildings. These projects measure the energy usage of the newly installed technology against the energy usage of what had been in place before, and then offer those savings as capacity."

2. Incidentally they're not quite alone. We [talked in 2024](#) about FERC enforcement case against a company called Ketchup Caddy that allegedly did fake demand response. Electric utilities can get capacity payments for having demand-response programs: If a utility is like "we have 10,000 customers who will automatically turn down their thermostats at peak times," the grid operator will give that utility a capacity payment, even if the grid never actually requires those customers to turn down their thermostats. Ketchup Caddy figured out that it could do the same thing – submit lists of customers willing to turn down their thermostats – and get capacity payments, *without actually signing up the customers*. If, as often happened, the grid never required them to turn down their thermostats, everything was fine. If not, oops.

3. See page ii of the PSUS prospectus.

4. See page 25 of the PS prospectus.

5. That is, an 18% discount to what people paid. Presumably the net asset value will be a bit less than \$50 per share, after fees etc., meaning that the discount to NAV will be a bit narrower.

6. [I wrote](#) : "After the IPOs, Pershing Square Inc. will have 400 million shares outstanding, which means that a \$50 investment in Pershing Square USA gets you \$49 worth of stocks plus 0.00000005% of the management company. If the management company is worth \$10 billion, then that 0.00000005% stake is worth \$5." That is, \$25 per PS square times 0.2 shares per \$50 investment is \$5.

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US says first refunds from Trump tariffs expected around May 11

 [reuters.com/legal/government/us-says-first-refunds-trump-tariffs-expected-around-may-11-2026-04-29](https://www.reuters.com/legal/government/us-says-first-refunds-trump-tariffs-expected-around-may-11-2026-04-29)

Reuters

April 29, 2026

A container ship passes under the San Francisco-Oakland Bay Bridge, in San Francisco, California, U.S., April 9, 2026. REUTERS/Carlos Barria [Purchase Licensing Rights, opens new tab](#)

April 29 (Reuters) - The Trump administration is expected to issue the first tariff refunds by around May 11, according to an order filed on Tuesday in the U.S. Court of International Trade, more than two months after the U.S. Supreme Court deemed the sweeping duties illegal.

About 21% of entries subject to the tariffs under the International Emergency Economic Powers Act (IEEPA) have been accepted for removal of duties through a new process known as CAPE, or Consolidated Administration and Processing of Entries, Judge Richard Eaton said in the order.

Eaton, who is overseeing the refund process, said about 3% of IEEPA entries have been liquidated through CAPE and are in the refund stage, which includes issuance of payments by the U.S. Treasury.

The U.S. Supreme Court's February 20 ruling that President Donald Trump lacked authority to impose tariffs under IEEPA left unresolved how importers would be repaid, creating uncertainty over the refund process.

About 1.74 million accepted entries had been liquidated and were in the refund process as of April 26, the filing said.

The refund process [could cover about \\$166 billion](#) in duties paid by more than 330,000 importers on roughly 53 million entries, according to court documents.

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After the court [ruled 6-3](#) that the sweeping tariffs were illegal, Trump denounced the decision as "terrible" and "totally defective," and responded by imposing a new 10% global tariff.

Reporting by Padmanabhan Ananthan in Bengaluru; Editing by Sahal Muhammed

Our Standards:

PwC to Pay \$166 Million and Accept Audit Ban to Settle Evergrande Probe

Hong Kong regulators impose fines, a six-month suspension on new listed clients, and shareholder compensation as the firm also faces a civil lawsuit tied to its audits of the collapsed property developer.

April 27, 2026 at 05:00 PM By  **Jessica Seah**



PWC

PricewaterhouseCoopers (PwC) has agreed to pay approximately \$166 million in fines and compensation to resolve regulatory investigations in Hong Kong tied to its audit work for the collapsed China Evergrande Group.

The settlement includes a \$123 million commitment to a compensation fund for eligible independent minority shareholders, alongside a separate \$38 million fine imposed by Hong Kong's Accounting and Financial Reporting Council (AFRC).

The AFRC also issued a public reprimand against PwC and sanctioned two former partners involved in the audits, imposing additional fines. PwC must report regularly to the watchdog on remedial actions over the next year and arrange further training.

PwC will also face a six-month suspension from accepting or performing audit work for new listed clients in Hong Kong.

The agreement with the Securities and Futures Commission (SFC) resolves the matter “fully and finally” without any admission of liability. The regulator said last week it will take no further action against PwC provided the firm fulfills the terms. The SFC added that the cash will be used to compensate eligible independent minority shareholders of China Evergrande.

Regulators said their investigations found serious breaches of professional duties by PwC in connection with Evergrande’s accounts. The developer, now in liquidation, overstated revenue significantly in 2019 and 2020, contributing to misleading financial disclosures. Authorities said audit failures played a role in those misstatements.

The sanctions come as PwC works to rebuild in the region following earlier penalties from mainland Chinese regulators. In 2024, authorities in China fined the firm’s mainland unit approximately \$65 million and imposed a six-month suspension, accusing the auditor of failing to identify or challenge fraudulent practices at Evergrande.

In a statement, PwC said resolving the regulatory matters was an important step and emphasized that the outcomes relate to audits conducted more than five years ago, with no impact on its current clients. It added that it has taken accountability and remediation measures over the past two years, including appointing new leadership and closing the relevant audit branch.

The crackdown followed the collapse of the once-dominant property developer, which defaulted in 2021 and later entered liquidation. Investigations in China found Evergrande had inflated revenue by more than \$100 billion over several years. Founder Ka Yan Hui has since pleaded guilty to charges including fraud and embezzlement.

PwC is also facing civil litigation linked to its Evergrande audits. The developer’s court-appointed liquidators filed a lawsuit in 2024 seeking to recover losses from the auditor, alleging breach of contract, negligence, misrepresentation and unjust enrichment tied to audit reports issued during key periods.

The liquidators, Alvarez & Marsal, are pursuing the claim as part of efforts to recover funds for creditors following a Hong Kong court-ordered liquidation. The case, which initially named PwC’s mainland affiliate, centers in part on a 2018 audit report covering Evergrande’s 2017 financial year.

Hong Kong firm Karas So, affiliated with Mishcon de Reya, is representing the liquidators, while Davis Polk & Wardwell is acting for PwC, led by its Asia chair, Martin Rogers, according to sources familiar with the [matter](#).

The lawsuit is expected to reach its first public court hearing in May, nearly two years after it was filed.

In Australia, PwC has also had a [tumultuous time](#). Its global head of legal services, Tony O'Malley, and Australian general counsel Meredith Beattie, [left the business](#) in 2023 in the wake of the firm's tax advice scandal, which was precipitated by revelations it had misused information it gained about tax law changes while advising the Australian government on how to more effectively tax multinationals. More than a dozen lawyers have left PwC Legal in Australia since 2023, [defecting](#) to other private practices.

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Bloomberg Law

Manage Newsletters

Meta Shares Plunge on Rising Concerns Over AI Spending Spree (3)

April 30, 2026, 6:44 AM PDT

Summary by Bloomberg AI

AI Generated



- Meta Platforms Inc. shares plunged after the company raised its spending outlook for the year, driven by its AI strategy and higher component pricing.
- The social media giant projected full-year capital expenditures of \$125 billion to \$145 billion, exceeding analysts' estimates, and is kicking off a bond sale of between \$20 billion and \$25 billion in debt.
- Meta reported \$56.3 billion in first-quarter sales and \$26.8 billion in net income, but daily active people across its social media platforms slightly declined in the first quarter to 3.56 billion due to internet disruptions and restrictions.

Meta Platforms Inc. shares plunged by the most in six months after the company raised its spending outlook for the year, reigniting fears that the historic levels of investment that Chief Executive Officer Mark Zuckerberg is making to catch up in the artificial intelligence race won't pay off.

The social media giant projected full-year capital expenditures of \$125 billion to \$145 billion, exceeding analysts' estimates and marking a roughly 7.4% increase from the company's previous projections in January. Meta said the increase is partly driven by conviction that its AI strategy is working, but the company is also dealing with " [higher component pricing](#) " and additional data center costs, Chief Financial Officer **Susan Li** said Wednesday on a call with investors.

Zuckerberg has said that his company will spend hundreds of billions of dollars on AI infrastructure by the end of the decade, and that was before a memory chip shortage triggered a surge in prices. Meta has announced billion-dollar deals with Nvidia Corp., Advanced Micro Devices Inc. and Broadcom Inc. for chips and other hardware just since the beginning of the year, and is building several massive data centers to power its efforts.

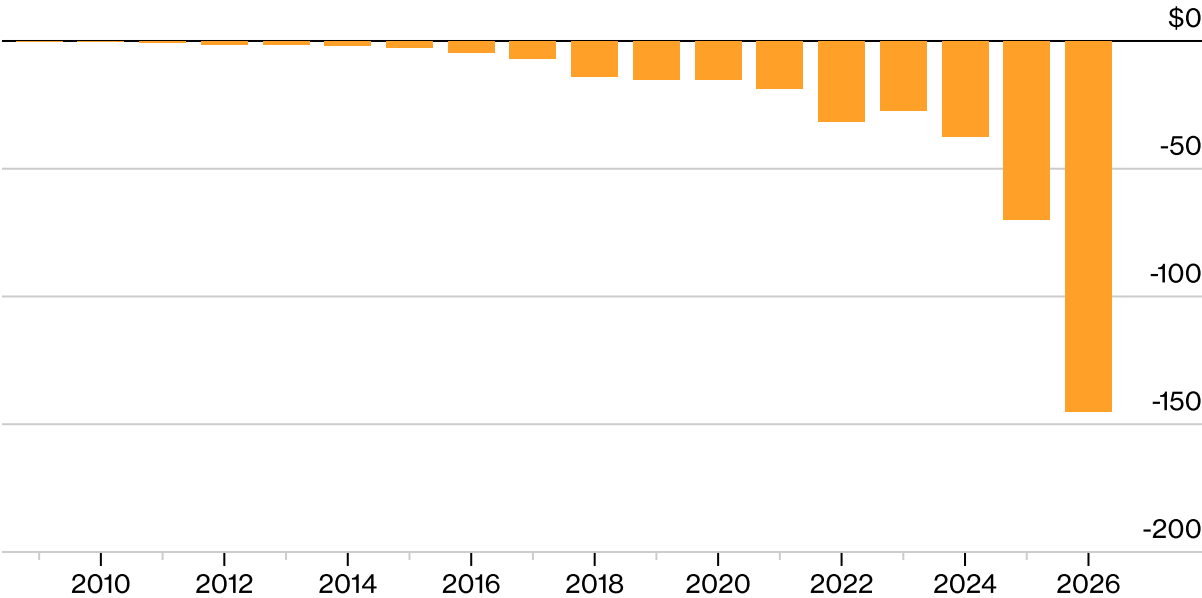
On Thursday, Meta is [kicking off](#) a bond sale of between \$20 billion and \$25 billion in debt, according to people with knowledge of the matter.

Zuckerberg said he has “confidence” in the decision to further boost AI spending, but that confidence wasn’t reciprocated by Wall Street. Investors balked when the CEO failed to provide details about how Meta plans to make a return on its investments, sending shares down as much as 10% on Thursday after trading got underway in New York, their biggest intraday drop since October.

Meta's Spending Spree

Meta has significantly ramped up capital expenditures in recent years to catch up in the race to dominate the AI market.

Meta's capital expenditures in billions of US dollars



Note: Figure for 2026 based on top end of Meta guidance

Source: Data compiled by Bloomberg

Bloomberg

The higher spending “increases the stakes” for Meta given it’s using its own AI system, “which still trails frontier lab peers,” wrote Bloomberg Intelligence analyst **Mandeep Singh**. “So far, Meta’s stand-alone app hasn’t had the amount of engagement vs. other frontier labs.”

Meta wasn't the only major technology company to raise spending this week. Amazon.com Inc. reported quarterly capital expenditures that were **higher** than analysts anticipated on expanding data center capacity. Alphabet Inc. 's Google raised its full-year capital expenditure projections to as much as \$190 billion. But Google still managed to spur a rally after beating on quarterly revenue and profit, signaling confidence in the company's AI bets.

Meta reported \$56.3 billion in first-quarter sales, beating Wall Street's estimate of \$55.51 billion. It projected sales of \$58 billion to \$61 billion for the current quarter, roughly in-line with expectations.

Daily active people across all of Meta's social media platforms slightly declined in the first quarter to 3.56 billion. The company cited internet disruptions in Iran and Russia's restrictions on WhatsApp access. That marked the first drop since the company began using that metric. Li, the CFO, said Meta would have seen positive user growth absent the geopolitical conflicts.

Meta also reported first-quarter net income of \$26.8 billion, which included a one-time, non-cash income tax benefit of \$8 billion due to the implementation of the US tax policy signed into law in July. Analysts had estimated non-adjusted net income of \$17.2 billion, without anticipating the benefit.

More AI Spending

Meta recently imposed a number of cost-cutting measures – a process Zuckerberg described Wednesday as “increasing the efficiency of our investments.” Last week, the company alerted staff in **an internal memo** that it would be cutting roughly 8,000 jobs and wouldn't be filling 6,000 open roles. Meta already carried out other, more limited cuts earlier this year that hit its Reality Labs hardware division, among other teams.

Evercore ISI estimated the May layoffs will save the company about \$3 billion annually, and that companies will rely more on AI agents to help handle tasks that once required human employees. “We believe the industry is just beginning to realize the growth opportunities coming out of agentic deployments – and the stepped-up level of investments required to support them,” Evercore analyst **Mark Mahaney** said in a note to investors.

Meta executives spent much of Wednesday's earnings call discussing AI agents, including the fact that many employees are using them to help with product development and other tasks. Still, \$3 billion is a small sliver of Meta's total AI investments.

Earlier in April, Meta debuted its latest artificial intelligence model, Muse Spark – the first released since Zuckerberg embarked on a multibillion-dollar overhaul of the company's AI organization last year.

"We are already training even more advanced models," Zuckerberg said on the call, adding that he doesn't have "a very precise plan" for how each AI product will be scaled out.

"I think we have a sense of the shape of where things need to be," he said acknowledging that his answers to analysts' questions may be "unfulfilling." Zuckerberg said he'd provide more detail in subsequent quarters, but has historically focused on building products to be used by hundreds of millions or even a billion users before turning his attention toward using them to drive revenue.

Read More: [Meta Debuts First AI Model From New Superintelligence Group](#)

Meta's mounting child safety litigation poses another potential obstacle. In a [landmark ruling in March](#), a jury found Meta liable for a 20-year-old woman's long-standing mental health struggles, which she said were caused by her addiction to social media. While Meta must pay millions to the plaintiff, the ruling could expose the company to billions of dollars in risk from additional lawsuits. Two other bellwether cases are scheduled to go to trial in California state court later this year.

Meta acknowledged on Wednesday that it continues to "see scrutiny on youth-related issues and have additional trials scheduled for this year in the U.S., which may ultimately result in a material loss."

Read More: [EU Escalates Meta Probe for Failing to Stop Kids Signing Up](#)

(Updates with more details on the bond sale in the fourth paragraph and Thursday share move starting in the first paragraph.)

To contact the reporter on this story:

Riley Griffin in Washington at rgriffin42@bloomberg.net

To contact the editors responsible for this story:

Sarah Frier at sfrier1@bloomberg.net

Kurt Wagner, Lynn Doan

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Shoals, Investors Strike \$70M Deal To Settle Wire Defect Suit

By **Rae Ann Varona**

Law360 (April 29, 2026, 11:14 PM EDT) -- Shoals Technologies Group Inc. and investors who accused the solar energy equipment-maker of having downplayed defects in its wire harnesses used in aggregating electricity have reached a settlement that, if approved, would pay roughly \$70 million to a settlement class, they have told a Tennessee federal judge.

The parties said in a settlement agreement filed Tuesday that a settlement amount of \$65.5 million would initially be paid, followed by an additional \$4.5 million to be paid after a final, nonappealable judgment or settlement in a separate lawsuit Shoals filed against a company it alleged had sold it defective wires.

The stipulation states that Shoals, while continuing to deny any wrongdoing and liability, agreed to settle "solely to eliminate the burden, expense, distraction, and uncertainty inherent in any litigation, especially in complex cases such as this litigation."

"Defendants have determined that it is desirable and beneficial to them that the litigation be settled in the manner and upon the terms and conditions set forth in this stipulation," the stipulation says.

The stipulation also states that while investors and their **lead counsel** at Robbins Geller Rudman & Dowd LLP and Motley Rice LLC believe that their claims have merit and are backed by evidence, they determined that the settlement is in the class members' best interests.

The investors and their counsel made their determination after taking into account the "uncertain outcome and the risks of any litigation, especially in a complex action such as this litigation, as well as the difficulties and delays inherent in this litigation," according to the stipulation.

"Plaintiffs and lead counsel also are mindful of the inherent problems of proof under and possible defenses to the securities law violations asserted in the litigation," the stipulation states.

Investors lodged a **proposed class action** in March 2024, claiming that a 20% decline in trading prices for the company's shares was precipitated by the company's announcement that it may need to spend up to \$185 million to resolve the widespread wiring issue affecting its warranty-backed products.

They alleged that Shoals, which makes custom wire harnesses that aggregate electricity from solar panels for delivery to inverters, had known for months that some of its customers were experiencing what's known as shrinkback, or an excessive pullback of wire insulation at connection points.

Investors said that the disclosure of the defective wire harnesses, which were installed in at least 300 solar fields, sent Shoals' stock price plunging by 20%.

The investors filed an amended consolidated complaint filed in February 2025, which Shoals quickly **moved to dismiss**, arguing that investors were seeking to "punish" it for "failing to predict the future scope and cost of the issue — despite the company's repeated warnings that warranty costs are difficult to predict and subject to material changes."

The court partially granted and denied the motion in late September. In January, the investors filed a motion for class certification, which remains pending.

According to the stipulation filed Tuesday, the parties began voluntary confidential mediation sessions in December and, after subsequent sessions, accepted the mediator's proposal to settle in early March.

The settlement, which is subject to court approval, would cover a class of people who purchased or otherwise acquired Shoals common stock between May 16, 2022, and May 7, 2024, including those who purchased stock in Shoals' secondary public offering in December 2022, according to the stipulation.

Counsel for the investors and Shoals did not immediately respond to requests for comment late Wednesday.

The investors are represented by Christopher M. Wood, Ellen Gusikoff Stewart, Debra J. Wyman, Matthew I. Alpert, Joseph J. Tull and Ashley G. Pyle of Robbins Geller Rudman & Dowd LLP, Gregg S. Levin, William S. Norton, Joshua C. Littlejohn and Christopher F. Moriarty of Motley Rice LLC, Jerry E. Martin of Barrett Johnston Martin & Garrison PLLC, and Robert D. Klausner and Sean M. Sendra of Klausner Kaufman Jensen & Levinson PA.

Shoals is represented by Michele D. Johnson and Heather A. Waller of Latham & Watkins LLP.

Underwriter defendants are represented by Dan Gold of Allen Overy Shearman Sterling.

The case is Westchester Putnam Counties Heavy & Highway Laborers Local 60 Benefits Fund v. Shoals Technologies Group, Inc. et al., case number 3:24-cv-00334, in the U.S. District Court for the Middle District of Tennessee.

--Additional reporting by Emilie Ruscoe and Sydney Price. Editing by Jay Jackson Jr.

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Vacasa Investors Sue Over Spurned \$131M Merger Bid

By **Nate Beck**

Law360 (April 29, 2026, 4:54 PM EDT) -- Vacation rental company Vacasa is facing a proposed class action in Oregon from stockholders after accepting an acquisition bid from Casago that was \$12 million lower on its face than a rival offer from Davidson Kempner Capital Management.

Shareholder Bradley A. Hartsoe led the claims filed on Tuesday, arguing Vacasa should have opted for Davidson Kempner's acquisition offer of about \$131 million, or \$5.83 per share, instead of favoring an earlier bid from Casago at approximately \$119.3 million, or \$5.30 per share.

The deal, which closed on May 1, 2025, took Vacasa private and created a combined company with more than 40,000 rental properties in North America, Belize, Costa Rica and the Caribbean.

The complaint argues Vacasa CEO Robert Greyber preferred Casago's offer since three private equity firms that held a near-majority stake in Vacasa agreed to take equity in Casago instead of a payment from the deal like other public stockholders. Casago also agreed to cover upfront transaction costs in another factor favored by leadership.

"Greyber was motivated to pursue a deal that was unfair to public stockholders because he was beholden to the company's near-majority owners, a triplet of private equity firms, that decided to roll over their equity in Vacasa into equity in Casago instead of receiving the merger consideration," stockholders argued.

Private equity owners of Vacasa include Silver Lake, at 24.6%; Riverwood Capital, with a 12.3% stake; and Level Equity Management, with 8.9%, according to the complaint.

The company in April 2025 said a special committee of its board of directors, with advice from Vinson & Elkins LLP, found the Davidson Kempner offer carried risks at closing that meant it likely wasn't the superior bid, despite its higher dollar value.

Vacasa said Davidson Kempner rejected its requests to add terms to improve certainty of the transaction. The New York-based investment company is also a creditor of Vacasa, which created risk to shareholders if the acquisition failed to close, according to the company.

Following Davidson Kempner's bid, Vacasa in March 2025 said Casago revised a prior bid, raising the price to \$5.30 per share and removing certain purchase price adjustment provisions that could have reduced payments to shareholders.

The Tuesday complaint argues Vacasa shareholders relied on flawed proxy materials to approve the Casago merger on April 29, 2025.

"Under any scenario, shareholders would have obtained or maintained greater value than the price they received for their shares and were thus financially damaged by the merger," according to the complaint.

Counsel for the plaintiffs declined to comment on Wednesday. Vacasa and Casago did not immediately respond to messages seeking comment.

The plaintiffs are represented by Timothy S. DeJong and Anuj Shah of Stoll Stoll Berne Lokting & Shlachter PC and Miles D. Schreiner and Jonathan T. Lerner of Monteverde & Associates PC.

The defendants have not yet registered attorneys in the case.

The case is Hartsoe v. Vacasa Inc. et al., case number 3:26-cv-00852, in the U.S. District Court for Oregon.

--Editing by Philip Shea.

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5th Circ. Unsure If Exxon Can Be Subpoenaed In French Suit

By José Luis Martínez

Law360 (April 29, 2026, 5:36 PM EDT) -- The Fifth Circuit seemed skeptical Wednesday of keeping in play a French company's request to subpoena Exxon Mobil Corp. for records to use in a derivative suit over alleged mismanagement at a former Exxon affiliate, suggesting the judge who denied the subpoena explained why they did so.

Candel & Partners SAS, a minority shareholder of former Exxon affiliate Esso SAF, sought Exxon records to support claims in French court that Esso was run for Exxon's benefit at the expense of minority shareholders, but a Texas federal judge quashed the subpoena at the end of a hearing last May. In oral arguments Wednesday, a three-judge panel pushed back on Candel's claims that the lower court failed to explain its reasoning.

The judges pointed to the hearing's transcript, questioning why some of the judge's statements can't be considered explanations. Candel's counsel, Stephen R. Halpin III of King & Ruiz LLP, argued that the court's reasoning needs to be included in its final ruling and can't be pulled from the questioning portion of the hearing.

"Are you asking us to remand so that the district court can spell out the reasonings better? ... You'll still lose, but you'll at least get the paperwork done?" U.S. Circuit Judge James Ho asked, to which Halpin argued that they'd win.

"[District courts] would be surprised, I think, to think that things that they say throughout as they're going through it can't be considered," U.S. Circuit Judge Jennifer Walker Elrod told Candel's counsel.

Halpin pointed to the Fifth Circuit's 2015 ruling in [Bravo Express v. Total Petrochemicals](#) , arguing that the explanation must come from the court and not inferred based on the parties' submissions or from the court's questions and remarks.

"You're getting this all from this non-published case that doesn't actually talk about reasoning of the district court throughout the hearing," Judge Elrod said.

"Who's in the best position to narrow this?" U.S. Circuit Judge Irma Carrillo Ramirez asked regarding the subpoena, adding that it's difficult to draw the line when the parties want different discovery outcomes. "In other words, why not just issue a new, narrowed subpoena?"

Exxon's counsel also pushed back, arguing that under Halpin's reasoning there is no stopping point between some explanation and enough explanation.

"One more sentence, one more citation, one sentence per factor, one paragraph. Whatever threshold this court sets, beyond what the district court did here, is going to result in collateral litigation over that," Jason R. LaFond of Scott Douglass & McConnico LLP told the panel.

Halpin contended that the factors set by the Supreme Court in [Intel v. Advanced Micro Devices](#)  in 2004 favored Candel, noting that Exxon isn't a party to the underlying suit, there is no proof that the foreign court would not be receptive to the evidence, and Candel didn't circumvent foreign law because the current derivative suit hasn't ruled on discovery motions.

LaFond, however, pointed the judges to proceedings in French court separate from the underlying

litigation, arguing that Candel already tried to obtain similar information without success.

Regarding the fourth Intel factor, Halpin said that a narrowed request should have been considered by the district judge instead of outright quashing the subpoena. He said Candel sent Exxon a narrowed subpoena after Exxon moved to quash, though he acknowledged it was not filed in the record.

The panel entertained the idea of Candel submitting a new subpoena, but Halpin said it would be burdensome to restart the litigation. LaFond said Candel should not get another chance to pursue a narrower subpoena after final judgment because it could have put that request before the district court earlier.

U.S. Circuit Judges Jennifer Walker Elrod, James C. Ho and Irma Carrillo Ramirez sat on the panel for the Fifth Circuit.

Candel is represented by Gabriela M. Ruiz and Stephen R. Halpin III of King & Ruiz LLP, and Dennis C. Reich and Joshua H. Bauer of Reich & Binstock LLP.

Exxon is represented by Jason R. LaFond, Santosh Aravind and Rachel Stephenson of Scott Douglass & McConnico LLP.

The case is Candel & Partners SAS v. ExxonMobil Corp., case number 25-20366, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Adam LoBelia.

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Blue Owl Adviser Sued Over Alleged Fee Inflation

By **Jessica Corso**

Law360 (April 29, 2026, 4:27 PM EDT) -- A Blue Owl Capital Corp. investor is suing the lender's wholly owned investment adviser in New York federal court over allegations that the adviser inflated Blue Owl's assets in order to "extract windfall fees" from the firm.

Richard Delman, who owns stock in publicly traded Blue Owl, sued subsidiary Blue Owl Credit Advisors LLC in a derivative lawsuit filed Monday on behalf of the parent company.

The lawsuit alleges that the advisory firm is overvaluing Blue Owl's portfolio by underselling its exposure to the software industry, which market analysts expect to be "decimated" by artificial intelligence in the coming years.

"Defendant's fees were grossly excessive because defendant assigned inflated values to [Blue Owl's] assets and investment income and then collected inflated fees based on those inflated valuations," according to the lawsuit.

Delman says that the adviser accomplishes this by relying on nonstandard internal classifications to list Blue Owl's exposure to the software industry at 11.1% of its portfolio when it's really around 20% to 30%.

Despite at least one investment fund report that Blue Owl was underselling its loan loss rate and falling stock prices, the firm's adviser continues to collect hundreds of millions of dollars in fees every year, according to Delman.

"While the aggregate amount of fees paid to defendant by [Blue Owl] has increased by 47% over the last five years, from \$282.4 million in 2021 to \$414.4 million in 2025, the increased fees were not accompanied by a proportionate increase in the services it provided to [Blue Owl] or the cost of providing investment management services," the lawsuit alleges.

That money increased the adviser's profits at the expense of Blue Owl and its stockholders, Delman said. He has accused the adviser of violating the Investment Company Act of 1940 and is seeking a return of any fees deemed excessive.

A representative for Blue Owl didn't immediately return a request for comment Wednesday.

The firm lends money to private middle-market companies at a time when defaults in the private credit market are on the rise, according to recent reports by credit rating agency Fitch Ratings.

Delman is represented by James Notis, Meagan Farmer, Michael Barry and Christine Mackintosh of Grant & Eisenhower PA and James Woolery and Derick Pillai of Woolery & Co. PLLC.

Counsel information for Blue Owl Credit Advisors was not immediately available.

The case is Delman v. Blue Owl Credit Advisors LLC, case number 1:26-cv-03468, in the U.S. District Court for the Southern District of New York.

--Editing by Jay Jackson Jr.



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Del. Supreme Court Says Bylaw Suits Came Too Soon

By **Jarek Rutz**

Law360 (April 29, 2026, 10:18 PM EDT) -- The Delaware Supreme Court on Wednesday upheld the dismissal of stockholder lawsuits challenging advance notice bylaws adopted by The AES Corp. and Owens Corning, ruling that the claims were premature because no actual dispute over the bylaws had yet materialized.

In a unanimous opinion, the justices affirmed the Delaware Chancery Court's conclusion that the plaintiffs failed to present a "ripe" controversy, a threshold requirement under Delaware law, because no stockholder had attempted or even planned to nominate a competing slate of directors under the challenged provisions.

Writing for the court, Justice Abigail M. LeGrow said the claims rested on speculation about how the bylaws might operate in a future proxy contest, rather than a concrete conflict requiring judicial intervention.

"On this record, any ruling on whether these bylaws operate inequitably would amount to an advisory opinion based on hypotheticals about how the bylaws might function or be applied in future nomination disputes," she wrote.

The consolidated appeals stem from lawsuits filed in 2024 by stockholders Martin Siegel and George Assad, who challenged amendments adopted by clean-energy company AES and Owens Corning in 2023. The bylaws, enacted after the U.S. Securities and Exchange Commission's universal proxy rule took effect in 2022, expanded disclosure requirements and defined when investors are considered to be "acting in concert," potentially increasing the burden on activists seeking board seats.

The plaintiffs argued that the boards adopted the measures as defensive tools to deter stockholder nominations and entrench incumbent directors. After initially bringing both facial and fiduciary duty claims, they narrowed their cases following the Delaware Supreme Court's 2024 decision in [Kellner v. AIM ImmunoTech](#) , proceeding only with equitable challenges to the boards' conduct.

Vice Chancellor Nathan A. Cook dismissed the suits last year, finding they were not ripe because no nomination contest had occurred and the plaintiffs could not identify any stockholder deterred from making one.

The supreme court agreed, emphasizing that Delaware courts do not issue advisory opinions based on hypothetical events. It explained that while advance notice bylaws can be challenged, those claims must arise from a "genuine, extant controversy" rather than abstract concerns.

Central to the court's reasoning was the distinction between facial challenges, which can be brought upon adoption of a bylaw, and as-applied challenges, which require a real-world dispute. Because the stockholders expressly disclaimed facial challenges and instead argued the bylaws were inequitable in practice, the court said their claims depended on how the provisions would actually be used.

The justices rejected the argument that the bylaws' alleged deterrent effect alone was enough to create a present injury. Unlike measures that impose immediate financial consequences, such as fee-shifting provisions or poison pills, advance notice bylaws primarily set procedural requirements that only take effect when a stockholder attempts to nominate directors, the court said.

"Judicial review presupposes a challenge 'that is ripe' for such review," the opinion stated, underscoring that courts must wait until disputes take a concrete form before intervening.

The court also addressed the plaintiffs' concern that waiting for a nomination dispute could allow restrictive bylaws to escape review. It rejected that argument, noting that stockholders still have other tools, including voting against directors, proposing their own bylaw amendments, or pursuing books-and-records requests, and can bring a challenge if and when a nomination is actually rejected.

Even under a more plaintiff-friendly standard, the court said, the claims would not pass muster because they rely on "uncertain and contingent events" that may never occur.

Representatives for the parties did not respond to requests for comment Wednesday.

AES and the other individual appellees are represented by Blake Rohrbacher, Matthew W. Murphy and John M. O'Toole of Richards Layton & Finger PA, and Marjorie P. Duffy, Elizabeth A. Benshoff and Daniel C. Loesing of Jones Day.

Assad and Siegel are represented by Christine Mackintosh, Rebecca Musarra, Vivek Upadhya and William Passannante of Grant and Eisenhofer PA, Lori Marks-Esterman and Jacqueline Y. Ma of Olshan Frome Wolosky LLP, Gregory V. Varallo of Bernstein Litowitz Berger & Grossmann LLP, and Michele S. Carino of Greenwich Legal Associates LLC.

The cases are In re: The AES Corp. and Owens Corning, case numbers 218,2025 and 257,2025, in the Delaware Supreme Court.

--Editing by Adam LoBelia.

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Del. High Court Affirms Dismissal Of FTX Claim Deal Suit

By Jarek Rutz

Law360 (April 29, 2026, 3:15 PM EDT) -- The Delaware Supreme Court has upheld a lower court's dismissal of a dispute over a failed attempt to purchase a multimillion-dollar claim tied to the collapse of onetime crypto giant FTX Trading Ltd., affirming that the case does not belong in Delaware courts.

In an **order** issued Tuesday, the high court agreed with the Delaware Chancery Court that it lacked jurisdiction over claims brought by SPCP Group LLC, an affiliate of hedge fund Silver Point Capital, against Svalbard Holdings Ltd. and Attestor Value Master Fund LP.

The justices did not provide new analysis of their own, instead backing the lower court's reasoning in full.

"After careful consideration of the parties' briefs and the record below, and following oral argument, we find it evident that the judgment of the Court of Chancery should be affirmed," Justice Abigail M. LeGrow wrote on behalf of a three-justice panel including Chief Justice Collins J. Seitz Jr. and Justice Gary F. Traynor.

The **dispute stems from** a 2023 agreement in which SPCP sought to buy a customer claim in FTX's bankruptcy with a face value of more than \$10 million. SPCP alleged that crypto trading firm Floating Point Group International LLC breached that deal by instead selling the claim to Svalbard, which SPCP said offered better terms and moved more quickly to close.

SPCP initially sued both Floating Point and Svalbard in Delaware in May 2024, accusing Svalbard of tortiously interfering with its contract. It later dropped claims against Floating Point due to an arbitration clause but continued pursuing Svalbard and related entities.

At the heart of the case was whether Delaware courts could hear the dispute at all. SPCP argued jurisdiction was proper because the underlying asset arose from the FTX insolvency proceeding, which is pending in Delaware bankruptcy court. But Svalbard countered that the misconduct SPCP described purportedly occurred entirely outside the state and involved non-Delaware parties.

In August 2025, Vice Chancellor Morgan T. Zurn sided with Svalbard, **ruling that Delaware lacked a sufficient** connection to the dispute. She found the injury alleged in the complaint occurred when the deal fell apart in July 2023, not when paperwork related to the claim was later filed in Delaware bankruptcy court.

The Delaware Supreme Court's latest order cements that outcome. Simply because an asset is connected to a Delaware-based bankruptcy does not mean that disputes over related contracts can be heard there.

By affirming the dismissal without additional commentary, the high court signaled its agreement with the Chancery Court's conclusion that the case lacked the necessary ties to Delaware. The justices specifically endorsed the reasoning laid out in the Chancery Court's Aug. 15, 2025, letter opinion and related orders, which emphasized neither the parties' negotiations nor the alleged interference took place in Delaware.

For SPCP, the ruling effectively ends its effort to pursue the case in Delaware courts, though it leaves open the possibility of litigating the dispute in another jurisdiction.

Skye Gao of Glenn Agre Bergman & Fuentes LLP, who is representing Svalbard and Attestor Value, said Wednesday: "We appreciate the Delaware Supreme Court's thoughtful analysis, which implicates novel issues of law in Delaware and beyond."

"The decision reinforces fundamental rules of personal jurisdiction and underscores that creditors in a Chapter 11 case are not subject to state court jurisdiction simply by participating in the bankruptcy," Gao added.

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

SPCP is represented by Andrew M. Goldsmith and Erik F. Bakke of Pryor Cashman LLP and Bruce E. Jameson, Eric J. Juray and Kirsten M. Valania of Prickett Jones & Elliott PA.

Svalbard and Attestor Value are represented by Andrew K. Glenn, Skye Tian Gao, Samantha Bennett and Margaret J. Lovric of Glenn Agre Bergman & Fuentes LLP and Thomas W. Briggs Jr. and Alec F. Hoeschel of Morris Nichols Arsht & Tunnell LLP.

The case is SPCP Group LLC v. Svalbard Holdings Ltd. et al., case number 388,2025, in the Supreme Court of the State of Delaware.

The case under appeal is SPCP Group LLC v. Floating Point Group International LLC et al., case number 2024-0576, in the Court of Chancery of the State of Delaware.

--Editing by Covey Son.

Update: This article has been updated with additional counsel information for Svalbard and Attestor Value.

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Conagra Not Off The Hook Over '100% Whole Fish Fillets' Label

By **Gina Kim**

Law360 (April 29, 2026, 10:52 PM EDT) -- Conagra customers can proceed with their proposed class action alleging some of the food company's fish fillets are deceptively labeled as "100% whole fish" despite containing industrial filler and extra water, after an Illinois federal judge said Wednesday the customers offer a plausible reading of the label, enough to state a claim.

U.S. District Judge John J. Tharp Jr. **largely denied** Conagra Brands Inc.'s motion to dismiss a first amended complaint that accused the company of deceptively labeling its Mrs. Paul's and Van de Kamp brands of frozen fish fillet products as "100% whole fish fillets."

Lead plaintiffs William Martin, Cindy Pappert and Catherine Foster **had accused** Conagra of a form of seafood fraud known as "short weighting," where processors use excess ice or additives and unlawfully include that weight with the net weight of the seafood, forcing customers to pay more for less actual fish.

The consumers claimed Conagra uses a colorless, tasteless inorganic compound called sodium tripolyphosphate, or STPP, and extra water to add weight and bulk.

Conagra moved to dismiss the case, arguing reasonable consumers would never think the label "100% whole fish" on a frozen, breaded and seasoned fish product packaging would mean the product exclusively comprised 100% fish.

Conagra further contended the product names and prominent imagery of breaded fillets clearly convey they include ingredients other than 100% whole fish fillets.

On Wednesday, Judge Tharp allowed most of the claims to proceed, but dismissed the customers' claims that sought injunctive relief, since they don't show an imminent risk of concrete harm.

"Conagra thinks that any reasonable consumer would understand the packaging to say that the products are made using real fish fillets, not that there are no other ingredients," the judge said.

However, the customers don't have any problems with the company adding breading to the fillets or anything else, except for the STPP and extra water, the judge pointed out, noting the consumers claimed the STPP and extra water were allegedly added to the fillet itself, instead of the whole product.

"So the plaintiffs read the label to mean that the fillet part — and only the fillet part — of the fish product is 100% fish, and nothing else," Judge Tharp said. "In other words, '[the plaintiff] offers a plausible reading of the packaging, and [the defendant] offers another. That's not a reason to dismiss the claim.'"

The judge also was not convinced by Conagra's argument that the complaint contained no allegations about the consumers' purchases, the amount of STPP or water added to the fillets, when they were added, the products' weights, or how reasonable consumers would view the products.

Judge Tharp concluded the complaint alleges the labeling was deceptive, that the customers read that label before buying the fillets, the fish contained something other than what the consumers anticipated, and that they wouldn't have bought the fillets at all or would've paid less for them,

absent the challenged statement.

"That covers the 'who,' 'what,' and 'how' of the fraud," Judge Tharp said.

The customers bought the frozen fish fillet products at issue at different times in 2022 and 2023 at supermarkets in California, New York and Massachusetts, according to the order, "which covers the 'when' and 'where.'"

"The Seventh Circuit has said that '[n]othing more is needed,'" Judge Tharp said.

But in tossing their injunctive relief claim, Judge Tharp pointed out the customers have implicitly acknowledged they "now know what they bought" since filing their lawsuit, which "puts them in a tough spot as far as injunctive relief is concerned."

"As the Seventh Circuit has recognized, future deception generally becomes implausible once past deception is revealed," the judge said. "Even if the '100% whole fish fillets' labels are in fact unlawfully deceptive, the plaintiffs cannot credibly claim they will be duped by them again."

In its dismissal bid, Conagra had questioned whether the consumers had standing to bring claims on behalf of a nationwide class, considering there are potential class members who don't live in the same states as the lead plaintiffs and who haven't suffered the same injuries.

Conagra had noted those potential class members' claims would be subject to different state consumer protection laws, according to the judge's order.

On Wednesday, Judge Tharp said the customers have shown the existence of a justiciable case or controversy as to their own claims. Accordingly, they've shown a legitimate need for judicial review "without piggy-back[ing] on the injuries of the unnamed class members," he said.

"Plaintiffs have adequately alleged that they themselves have standing," the judge said. "This court went on to note in Liston that the nationwide class allegations did, however, pose potential issues for the plaintiffs' ability to meet the numerosity, commonality, typicality and adequacy of representation requirements of Rule 23," referring to the 2017 case [Liston v. King.com Ltd](#) .

In that case — Judge Tharp also presided over that proposed consumer protection class action — plaintiff Zachery Liston sued Candy Crush developer King.com for allegedly tricking users into inviting their friends to download Candy Crush in return for free lives, which cost about 20 cents otherwise.

The judge **had allowed** the contract breach, unjust enrichment and state consumer protection claims to proceed, but the judge warned he had to find individuals who've lost free lives outside of Illinois for claims under any other state's consumer protection laws to go forward.

"Conagra argues the plaintiffs cannot meet the predominance prong for a class action. For that reason, just as in Liston, the court anticipates staying discovery on the nationwide class allegations because it would be 'inappropriate to engage in wide-ranging discovery premised on a prospect as to which there is substantial doubt,'" Judge Tharp said Wednesday.

Representatives for the parties did not respond to inquiries seeking comment Wednesday.

The customers are represented by Yeremey O. Krivoshey and Joel D. Smith of Smith Krivoshey PC, and Carl V. Malmstrom of Wolf Haldenstein Adler Freeman & Herz LLC.

Conagra is represented by Tobin J. Taylor, Andrew J. Roth and Laura Lee Buecker of Heyl Royster Voelker & Allen PC, and Angela M. Spivey, Andrew G. Phillips and Troy A. Stram of Alston & Bird LLP.

The case is Cindy Pappert et al. v. Conagra Brands Inc., case number 1:24-cv-04835, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Ryan Boysen and Celeste Bott. Editing by Lakshna Mehta.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

J&J, Neutrogena Say FDA Signed Off On Benzene Products

By **Jonathan Capriel**

Law360 (April 29, 2026, 9:41 PM EDT) -- Johnson & Johnson Consumer Inc. and Kenvue Inc. are calling for a permanent end to a multistate consumer lawsuit claiming their Clean & Clear and Neutrogena acne treatments degrade into the cancer-causing chemical benzene, arguing in New Jersey federal court that federal regulators have already determined that the key ingredient is safe.

The buyers' proposed class action seeks damages from the consumer product companies for not adding warnings about benzoyl peroxide, the principal chemical in the facial creams, which can degrade into the carcinogen. But federal law preempts this, J&J and Kenvue argued in their motion to dismiss with prejudice Monday.

Only the U.S. Food and Drug Administration can tell the companies what warning labels go on their products, authority stipulated by the Food, Drug, and Cosmetic Act, their motion argued. It pointed to 11 "identical" proposed class actions from all over the country that were dismissed partially or entirely on preemption grounds.

"In reality, plaintiffs' entire suit is an attack on the FDA's determination that use of BPO in acne medications — and incidental benzene — is 'safe and effective,'" the companies argued. "This sort of attack is exactly what the FDCA's express preemption provision forecloses."

J&J and Kenvue also argued that the buyers have failed to tie the FDCA to "parallel state law."

Counsel for the consumers, R. Brent Wisner of Wisner Baum, told Law360 this court has already rejected these preemption arguments and that the cases the companies cited were "misapplied."

"That defendants regurgitate those losing arguments, again, is puzzling," he said Wednesday. "Independent testing has repeatedly demonstrated that defendants' BPO products contain alarming and dangerous levels of benzene. Citing FDA's inaction on this point is hardly a defense — if anything, it underscores how important it is for lawsuits like ours to hold these mammoth corporations accountable when they poison people. The FDA has, for years, been ineffectual in getting benzene out of consumer products."

The companies didn't immediately respond to requests for comment on Wednesday.

The case began with lawsuits filed in 2024 that were later consolidated. These actions leaned on a citizen petition submitted to the FDA by independent laboratory Valisure LLC, which claimed that numerous benzoyl peroxide acne products, including those made by J&J and Kenvue, contained benzene or had degraded into benzene.

The 23 consumers from states including California, New York, and Texas allege that the companies' Clean & Clear and Neutrogena benzoyl peroxide acne treatments are chemically unstable and degrade into benzene, a known human carcinogen, under normal storage and use.

The testing found benzene levels as high as 696 parts per million, far exceeding the 2 ppm FDA limit, the suit says. The buyers claim the products are adulterated, misbranded and illegal to sell. They seek economic damages, restitution, disgorgement of profits and an injunction forcing a recall.

The companies have argued that courts across the country have dismissed 11 similar lawsuits on

preemption grounds.

The buyers' latest filing has once again failed to plausibly allege any violation of current good manufacturing practices or other federal standards that would give rise to parallel state-law claims, the companies argued. J&J and Kenvue note that Judge Castner dismissed the original complaint for this same reason, holding that the buyers had done "little more than summarize the cGMPs" and had assumed that because the products contained benzene then the companies must have failed to comply with the federal standards.

The companies argue the amended complaint has the same fatal defect.

"As the court held in dismissing plaintiffs' prior complaint, plaintiffs allege no specific wrongful factual conduct by defendants beyond sale of BPO acne medications without a benzene warning," the companies said.

The consumers are represented by Philip L. Fraietta of Bursor & Fisher PA, Nick Suciu III of Milberg Coleman Bryson Phillips Grossman PLLC, and R. Brent Wisner of Wisner Baum.

Johnson & Johnson and Kenvue are represented by Angela C. Agrusa and Michael J. Fluhr of DLA Piper.

The case is In re: Benzoyl Peroxide Marketing, Sales Practices and Products Liability Litigation, case number 3:24-cv-04109, in the U.S. District Court for the District of New Jersey.

--Editing by Brian Baresch.

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