Deep Dive
Big Stock Drops, AI Shape Trends in 2026 Investor Class Actions
Aug. 3, 2026, 1:55 AM PDT

Summary by Bloomberg AI
AI Generated

- Large alleged investor losses and increased AI adoption are driving a robust level of securities case filings and aggregate settlements at the midyear mark of 2026, attorneys say.
- The aggregate settlement amount for the period already represents 75% of the inflation-adjusted total for all of 2025, and if the first half's dollar level is mirrored in the second half, it will be the highest amount since 2020.
- Claims involving artificial intelligence arrived at nearly twice the 2025 rate, with 18 new AI cases counted in the half-year, and legal observers expect more such cases due to the rise of AI companies.

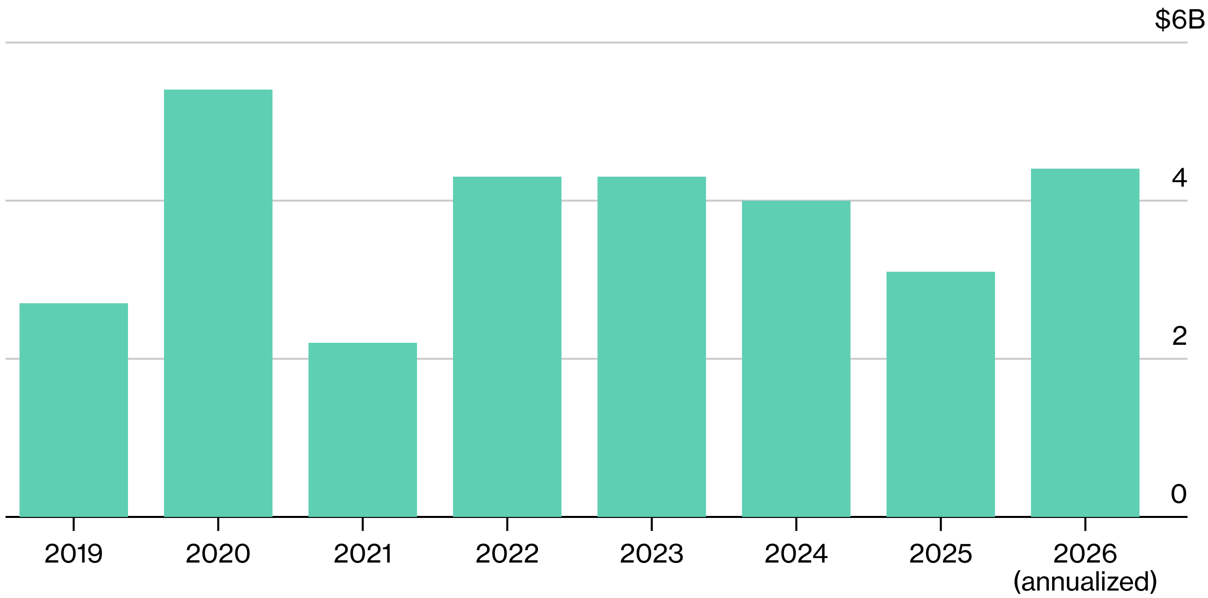
Large alleged investor losses and increased AI adoption are the key factors driving a robust level of securities case filings and more than $2 billion in aggregate settlements at the midyear mark of 2026, attorneys say.

Investors filed roughly 120 new proposed securities class actions in the first half of the year, on pace to exceed 2025 filings if sustained through year-end, according to recent reports by Cornerstone Research and National Economic Research Associates. Claims involving artificial intelligence arrived at nearly twice the 2025 rate, the groups said.

Meanwhile, the aggregate settlement amount for the period already represents 75% of the inflation-adjusted total for all of 2025, NERA said. If the first half's dollar level is mirrored in the second half, it will be the highest amount since 2020, Cornerstone said.

Securities Class Settlement Amounts Approach Six-Year High

Aggregate settlement totals, by year



Source: Cornerstone Research

Bloomberg Law

The uptick in settlement numbers is a reflection of the high-priced market, said Craig Waldman, head of asset management litigation at Simpson Thacher & Bartlett LLP. “Stocks are at all-time highs and the S&P is at an all-time high and I think that’s having an impact on overall settlement numbers,” he said.

“The number of cases is not unusual, but the size is,” said Nathaniel Haas, a partner at Watstein Terepka LLP. “You have a handful of very large settlements that are pushing the annual total higher.”

AI Cases

NERA counted 18 new AI cases in the half-year. Cornerstone reported 15, of which seven were related to AI development, five to data centers, and four to AI infrastructure and hardware, the group said.

High losses are reflected in this data as well, legal observers say.

“AI-related cases represented a modest share of total filings but an outsized share of alleged investor losses in the first half of 2026,” said Joseph Grundfest, a professor at Stanford Law School and principal investigator at Stanford’s Securities Class Action Clearinghouse, which worked with Cornerstone on its class action filings report.

That imbalance shows how “a small number of high-impact matters” can influence securities litigation trends, Grundfest said in a statement accompanying the report.

“A lot of the rushed AI has created these boom-and-bust stories out there,” said Thomas Laughlin of Scott & Scott Attorneys at Law LLP, who represents investors. “It’s not uncommon, when you have a technology that can generate a lot of value, that sometimes people are trying to jump on the bandwagon on that and they’re not actually creating value, or it’s exaggerated greatly.”

Haas expects more such cases.

“Certainly for tech, especially with the rise of AI companies, you’re going to continue to see filings in those cases go up because of the nexus between a disclosure and omission and the stock price of a company in the AI sector,” he said.

Meanwhile, Cornerstone’s data on resolutions of older cases shows that healthcare, along with communications and technology, were prominent industry sectors in which settlements took place in the first half of 2026, with 14 and six deals, respectively.

“Especially in those industries, a single disclosure about a drug trial readout or an AI capability can really move the stock,” said Haas. “And there’s a much cleaner nexus in those cases, compared to other industries,” he said.

Settlement Subtleties

The “most important determinant of settlement outcomes” is the scale of potential investor losses, Cornerstone said. The report used a metric based on the largest loss estimates, known as “plaintiff-style damages.”

That’s the largest driving factor for the size of a settlement, said Lynn Neuner, global co-chair of Simpson Thacher’s litigation practice. “That makes sense because people tend to think of settlement as a percentage of overall damages,” she said.

Although settlement often comes before damages are fully worked up, a recent decision freeing Boeing Co. from a certified class of investors may force plaintiffs to present a complete, or “merits,” report on damages earlier in litigation, Neuner said.

“The plaintiffs’ attorneys are not going to want to risk getting knocked out for having a superficial report,” she said.

“Bottom line, people look at the plaintiff-style analyses going into mediation,” Neuner said.

Despite the increase in aggregate deal dollars, the amount of individual settlements relative to stock drops isn’t necessarily growing.

Roger Cooper, the co-head of Cleary Gottlieb Steen & Hamilton LLP’s Americas litigation group, said that the median settlement amount as a percentage of the plaintiff-style damages in 2026 “is actually lower” than it was eight of the past nine years.

“I don’t think you can conclude that settlements are getting higher,” he said. “It just means that these cases that have survived motions to dismiss had larger stock drops.”

Haas agreed. “You’re seeing damages ballooning, but the settlement rate against those damages is decreasing,” he said.

So-called “mega” settlements of $100 million or more — like Didi Global Inc.'s resolution of a suit over its IPO for $740 million — play a role, he said.

“Generally when you have some mega settlements, because of the super-high exposure in those cases, it’s not uncommon to see a lower percentage of overall damages reflected in the settlement amount,” Haas said.

Looking Ahead

The market has been moving in dramatic ways, Cooper said.

Plaintiffs therefore “need to be able to isolate company-specific fraud-related reasons for a stock drop” to succeed, he said.

“The markets have been engaging in a lot bigger moves,” said Laughlin, the plaintiffs’ attorney. “And I’ve seen more evidence of financial manipulations and misstatements than ever in my career in the last year or two.”

“It’s a frothy market with a lot of questionable activity in it,” he said. “And that’s leading to bigger losses for investors.”

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Bloom Energy Investor Sues Over Short Seller’s China Accusations

July 31, 2026, 8:39 AM PDT

Summary by Bloomberg AI

AI Generated

- A proposed class action said Bloom Energy Corp. failed to alert investors that the fuel cell maker sourced a rare earth metal from China through intermediaries, putting its supply chain at risk of disruption.
- The lawsuit draws from a short-seller report by Hunterbrook Media that accused Bloom of indirectly relying on China for the metal scandium, which the company uses in its solid oxide fuel cells.
- The suing investor, Sashanna Nevins, seeks damages for alleged securities fraud by Bloom Energy, its CEO, chief financial officer, and two former CFOs, on behalf of investors who got Bloom securities from Feb. 27, 2025, to July 8, 2026.

Bloom Energy Corp. failed to alert investors that the fuel cell maker sourced a rare earth metal from China through intermediaries, putting its supply chain at risk of disruption, a proposed class action said.

The investor’s lawsuit, filed Thursday in the US District Court for the Northern District of California, draws from a short-seller report that accused Bloom of indirectly relying on China for the metal, scandium.

Hunterbrook Media on July 8 said Bloom obfuscated its reliance on China, which the US has tense relations with, by routing shipments through other countries. China could cut off Bloom’s supply regardless of how indirectly the company obtained the scandium, its report said.

“If Bloom depends on Chinese scandium, China holds an off-switch on Bloom — and on the American data centers that may one day use its power,” Hunterbrook said.

Bloom’s share price dipped 5.7% to close at $254.29 that day.

Bloom creates power systems that can be used onsite for multiple industries. Bloom’s financials have benefited from burgeoning demand to power artificial-intelligence computing data centers, with the company posting quarterly earnings more than double expectations and raising its full-year guidance earlier this week.

The company uses scandium in its solid oxide fuel cells. Bloom has reiterated it's not dependent on China for scandium oxide, and denied the Hunterbrook report as false and misleading.

The proposed class includes investors who got Bloom securities from Feb. 27, 2025, to July 8, 2026. During this time, Bloom and top executives touted its diversified sourcing of scandium and understated its reliance on China, according to the complaint.

Glancy Prongay Wolke & Rotter LLP and Century City, Calif.-based attorney Frank R. Cruz represent the suing investor, Sashanna Nevins.

Nevins seeks damages for alleged securities fraud by Bloom Energy, its CEO, chief financial officer, and two former CFOs.

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

The case is Nevins v. Bloom Energy Corp. , N.D. Cal., No. 3:26-cv-07944, complaint filed 7/30/26 .

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Washington State Bar Cancels July Exam Over Wi-Fi Problems (3)

bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/XPTHBQ8A3H9Q5QT106OIMAPB47

Hedge fund Pentwater Capital Management LP jacked up Avis Budget Group Inc.'s stock price to cash out quickly and leave other investors holding the bag, a proposed class action said.

Pentwater steadily accumulated a large stake in Avis, boosting its stock price and prompting a squeeze in which short sellers were forced to buy back shares in the struggling car rental company to cut their losses, according to the complaint filed in the US District Court for the Middle District of Florida.

After Avis' stock price reached $713.97 to close on April 21, Pentwater swiftly sold 4.3 million shares to the tune of $1.75 billion, and the car rental company saw a steep selloff over the next several days. Its share price closed at $182.01 on April 28.

Given Pentwater and its founder-CEO Matt Halbower's sophisticated understanding of investing, it is reasonable to infer that they intentionally manipulated Avis' stock price for their benefit through a pump-and-dump scheme, the July 31 complaint said.

In an earnings call April 29, Avis CEO Brian Choi said it appeared the only insider that traded during the stock price collapse was Pentwater. "Avis has requested Pentwater furnish it all relevant information concerning the trades and Avis will aggressively pursue all rights on behalf of our stockholders," he said.

Pentwater and Avis told a New York federal court that the hedge fund would pay the car rental company $650 million to end the short-swing profit suit, pending the judge's approval. Short-swing profits are made when corporate insiders or beneficial owners holding at least 10% of a company's stock buy and sell shares within a six-month period. Under federal securities laws, the company is entitled to collect the financial gain from those transactions.

Pentwater reported it crossed the 10% threshold for Avis stock in February.

The proposed class would include Avis investors who acquired securities — including to cover a short position — from Feb. 20 to April 21.

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

Pomerantz LLP, Miller Shah LLP, and Nematzadeh PLLC represent the suing investor, Khashayar Hakimian. Hakimian seeks damages for alleged securities law violations by Pentwater and Halbower.

The case is Hakimian v. Pentwater Cap. Mgmt. LP , M.D. Fla., No. 2:26-cv-02275, complaint filed 7/31/26 .

California Bill Looks to Shake Up Individual Privacy Litigation

Aug. 3, 2026, 2:00 AM PDT

Summary by Bloomberg AI

AI Generated

- The California Legislature is considering Senate Bill 690 to amend the California Invasion of Privacy Act and remove the private right of action to enforce the pen-register provisions.
- The change would affect thousands of privacy lawsuits in state and federal courts across the country, with backers of SB 690 arguing that CIPA reform is needed to prevent abusive litigation.
- Privacy advocates argue that removing the provision would gut efforts to enforce Californians' privacy rights, and that the bill would leave plaintiffs' firms room to bring similar claims under the law's other sections.

The California Legislature is considering a bill to that would cut back private litigation against companies that engage in certain online tracking activities in a change that could have far-reaching consequences.

Senate Bill 690 would amend the California Invasion of Privacy Act to remove the private right of action to enforce the pen-register provisions of the nearly 60-year-old law.

The change would affect – and possibly end – thousands of privacy lawsuits in state and federal courts across the country.

More than 5,300 digital-privacy lawsuits have been filed in federal and state courts across the country since 2022, around 85% of them in California, according to Usama Kahf, partner and co-chair of the Privacy and Cyber Practice Group at Fisher Phillips LLP. Of those filed in California, nearly all include claims under CIPA, and two-thirds include a pen-register claim, he said.

He estimates at least 15 times that number of businesses have received demand letters threatening CIPA lawsuits.

The bill's sponsor, Sen. Anna Caballero (D), told Bloomberg Law her original intention was to remove CIPA as a source of privacy litigation targeting internet technologies businesses use on their websites.

Privacy advocates argue that removing the provision would gut efforts to enforce Californians' privacy rights. But even supporters of CIPA reform worry that the bill will leave plaintiffs' firms plenty of room to bring similar claims under the law's other sections, while acting as a support for their core argument that the 1967 statute can be used to address how website operators employ technologies developed decades after it was originally passed.

'Siphoning Off Money'

Backers of SB 690 argue that CIPA reform is needed because the statute has become a source of abusive litigation filed by plaintiffs who haven't suffered any real harm and targeting businesses that merely make use of routine online technology.

Caballero said CIPA was a "criminal statute that was never intended to cover business purposes or the kinds of interactions we have over the internet."

And the litigation is aimed not just at Big Tech titans such as Google LLP and Meta Platforms Inc., but also "emerging businesses, non-profits, community health organizations, and food shelters," according to Brandon Reilly, partner and lead of the Privacy and Data Security Group at Manatt, Phelps & Phillips LLP.

"It's really unfortunate, because these lawsuits aren't helping consumer privacy in California or resulting in meaningful gains for people who live here," Reilly said. "They just end up siphoning off money from small businesses for the benefit of plaintiffs' law firms."

The amendment focuses on claims under Section 638.51, which restricts the use of pen-registers—devices that record routing and addressing information related to a communication. It would reserve enforcement to the state attorney general.

But it wouldn't touch claims under the statute's wiretapping section — Section 631 — which has also been a fertile source of lawsuits.

The bill also includes a provision making it retroactive to claims filed less than two years before it takes effect.

Privacy Pushback

Privacy advocates remain wary of SB 690, even in its narrowed form. Alan Butler, executive director of the Electronic Privacy Information Center, said the elimination of a private right of action for pen-register claims would represent the loss of an important privacy enforcement tool.

"The scale and nature of the threats to privacy online are such that they haven't historically been able to be fully dealt with by any one enforcement body, including by a state attorney general," he said. "We're very skeptical of efforts to claw back a private right of action unless they can really be tightly focused on something like abusive lawsuits against small businesses."

Robert Tauler — a founder of Tauler Smith LLP, which represents plaintiffs in online privacy litigation under CIPA — said placing privacy enforcement under the attorney general of a state dominated by Google and Meta was a fool's errand. "Do you really think a politician like an attorney general is going to do anything to hurt the two biggest companies that could fund his political career?"

Tauler also rejected the argument that the goal of SB 690 is to protect small businesses. "This is the handiwork of big tech," he said. "They've positioned it as some kind of win for small businesses, but it's really for Google and Meta and the companies that are addicted to surveillance. They don't believe they can exist and make money without watching you."

Prospects of Passage

Caballero said she is "confident, but not overconfident" about its chances of passing in the short time remaining in the session.

The legislature comes back from a summer recess Monday. The deadline for passage is Aug. 31, the final day of California's two-year legislative session cycle.

Some supporters of reform haven't given up on efforts to convince lawmakers to restore provisions aimed at Section 631, according to Kahf. But he acknowledged there's no indication yet that a deal can be reached outside the current framework.

Caballero said further changes aren't likely, given the procedural posture of the bill and the short time left in the session. "It's very difficult to expand a bill when it's this far down the road," she said.

Privacy advocates will continue to push back on it, but another source of opposition could come from supporters of CIPA reform who decide the measure doesn't go far enough, Kahf said.

"There's a counter argument that goes, by not solving all of the problem at once, you're just simply affirming that CIPA does apply to the internet, and you're emboldening the claims that are going to continue to be filed under its other sections," he said. "So in essence, you're making the problem worse under the guise of solving one-third of it."

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Dropbox Derivative Suit Over a DExit

In recent years, the D&O Diary has followed the growing debate over whether companies should reincorporate outside Delaware, particularly in states such as Nevada and Texas. We have also followed Delaware's efforts to address the trend through measures including the enactment of SB 21 and the Delaware Supreme Court's decision upholding the statute.

And we queried whether DExit could prove to be a new source of D&O exposure. A newly amended class action complaint against Dropbox may provide yet another example of that risk, as shareholders are challenging Dropbox's reincorporation to Nevada, alleging that the move was undertaken to protect management and the controlling stockholder from accountability for underlying business and governance decisions.

I want to thank Anthony Rickey of the Margrave Law LLC, who brought this latest DExit-related litigation to my attention with his LinkedIn post here. A copy of the amended complaint can be found here.

Dropbox Litigation

On April 3, 2025, Plumbers & Fitters Local 295 Pension Fund filed a Delaware Chancery Court action against Dropbox, founder and CEO Andrew Houston, and the company's directors, challenging Dropbox's planned reincorporation from Delaware to Nevada. The plaintiff alleged that the move was a controller-driven transaction that would reduce shareholder rights while increasing protections for Houston and the board, and also sought a declaration that recent amendments to Section 144 of the Delaware General Corporation Law were unconstitutional. The case is styled *Plumbers & Fitters Local 295 Pension Fund v. Dropbox, Inc., et al.*, C.A. No. 2025-0354.

On July 6, 2026, the plaintiff filed a substantially expanded amended complaint based in part on documents obtained through a Section 220 books-and-records demand. The amended pleading alleges that Dropbox pursued the Nevada reincorporation while undergoing an AI-focused business transformation and facing pressure from activist investor Half Moon Capital, which had challenged both the company's strategy and Houston's control through its dual-class voting structure. According to the complaint, the reincorporation was a defensive measure designed to preserve Houston's control, reduce litigation risk, and shield management from challenges to the company's strategic and governance decisions.

The amended complaint further alleges that the reincorporation was part of a broader effort by Houston to strengthen his influence over Dropbox. Among other things, it challenges the company's debt-funded stock repurchase programs, alleges that Houston sold approximately $69 million of stock while the reincorporation was under consideration, and contends that the move deprived shareholders of important Delaware-law protections while expanding protections for directors and officers. The complaint also challenges the board's decision to exempt Houston from Nevada's business-combination statutes, arguing that the exemption uniquely benefited him as a controlling stockholder.

The amended complaint also challenges the process and disclosures surrounding the reincorporation. It alleges that the board's evaluation committee lacked independence, relied on advisors predisposed toward a Nevada outcome, and issued a materially misleading Information Statement that overstated the benefits of Nevada law while failing to disclose legislative developments in Delaware and Nevada that allegedly undercut the stated rationale for the move. The plaintiff seeks rescission of the Nevada reincorporation and restoration of Dropbox's Delaware domicile or, alternatively, rescissory and compensatory damages for the alleged loss of stockholder rights and benefits conferred on Houston and the other defendants.

Discussion

The Dropbox lawsuit is the latest in a series of shareholder challenges to corporate reincorporations outside Delaware, following notable litigation involving TripAdvisor and Liberty TripAdvisor, The Trade Desk, and Tesla. For D&O insurers, these kinds of claims may create exposure even where the underlying business strategy is not being challenged, because the reincorporation decision itself can become the subject of fiduciary-duty, disclosure, and governance litigation.

Prior reincorporation cases provide important context for the Dropbox litigation. For example, in *Maffei v. Palkon*, shareholders challenged TripAdvisor's and Liberty TripAdvisor's move from Delaware to Nevada, arguing that the reincorporation benefited directors and controlling stockholders by reducing potential liability exposure. The Delaware Supreme Court rejected that argument, holding that a reincorporation approved on a "clear day"—without pending or threatened litigation or an effort to shield a specific transaction—is reviewed under the business judgment rule, and that any future reduction in litigation risk is too speculative to constitute a material non-ratable benefit.

Against that backdrop, the Dropbox case may be viewed as an effort by shareholder plaintiffs to distinguish the circumstances surrounding Dropbox's Nevada reincorporation from those presented in *Maffei*. Dropbox shareholders argue that Delaware's legislative reforms, including SB 21, undercut the company's rationale for leaving Delaware by addressing many of the concerns that proponents of reincorporation had cited. The amended complaint contends that, if Delaware was already moving in the direction companies claimed to want, the justification for abandoning Delaware became far less compelling. If this argument gains traction, D&O underwriters may need to consider that companies contemplating reincorporation to Nevada or Texas could face heightened scrutiny of both the decision-making process and the rationale for departing Delaware.

Another notable aspect of the amended complaint against Dropbox is the plaintiff's challenge to Nevada's oft-cited "predictability" advantage. The Dropbox shareholders argue that the company undercut that rationale when, after reincorporating, it sought to amend its Nevada charter to eliminate jury trials in certain corporate disputes—an alleged acknowledgement that Delaware's Court of Chancery offers a more predictable forum for resolving fiduciary-duty claims. The case therefore highlights a potential governance paradox: companies leaving Delaware may later seek to recreate some of the procedural protections they abandoned.

Like the earlier TripAdvisor, Trade Desk, and Tesla cases, the Dropbox action suggests that reincorporation may shift litigation risk rather than eliminate it. Instead of challenging operational performance or strategic decisions, plaintiffs may focus on the reincorporation transaction itself, particularly where controlling stockholders receive unique benefits, shareholders lose perceived litigation rights, or the rationale for leaving Delaware can be questioned. As a result, governance features such as dual-class structures, controlling stockholders, activist pressure, significant share repurchases, and changes to shareholder rights may become important indicators of potential D&O exposure.

As Nevada and Texas continue to compete with Delaware for corporate charters, D&O underwriters could increasingly find themselves evaluating not only the legal risks associated with a company's chosen domicile, but also the litigation exposure arising from the decision to change domiciles in the first place. As the latest chapter in the developing body of reincorporation litigation, the Dropbox lawsuit may be closely watched by companies, shareholders, and D&O insurers alike for further guidance on when a decision to leave Delaware may give rise to viable fiduciary-duty claims.

Geopolitical Issues Lead to Securities Suit Against Fuel Cell Company

As we have previously noted (most recently, here), geopolitical issues represent an increasingly important source of D&O risk. A lawsuit filed late last week against the fuel cell and power generation firm Bloom Energy highlights this developing source of risk. In the new complaint, a plaintiff shareholder alleges that the company understated its supply chain exposure to China and understated the extent of its reliance on China for a specific rare earth element, scandium. The company's share price declined after a short seller's media outlet published a report claiming that the company was, in fact, reliant on Chinese scandium. A copy of the new complaint against Bloom Energy can be found here.

Background

Bloom Energy designs, sells, and installs solid oxide fuel cell systems for on-site power generation. Scandium is a metal that is usually classified as a rare earth metal. It is used to stabilize the ceramic electrolytes in the company's solid oxide fuel cells.

According to the complaint, throughout the class period, the company made a series of statements disclaiming its supply chain's reliance on China. Among other things, the company is alleged to have said "We are not dependent on China for a supply chain," the "supply chain does not have a significant exposure to China," and most particularly, "We are not dependent on China for Scandium."

On July 8, 2026, Hunterbrook Media, the media outlet of short seller Hunterbrook Capital, published a report claiming, among other things, that the company is "in fact, reliant on Chinese scandium, according to global trade data, Chinese corporate filings, satellite imagery, and Hunterbrook's messages with Bloom's suppliers in China." The report states that Hunterbrook "traced four separate China-linked routes into Bloom's supply chain" including "scandium oxide shipped directly to its Delaware plant, plus scandium-bearing ceramics and powders flowing through intermediaries in Thailand, Japan, and South Korea." According to the complaint, Bloom Energy's share price declined 5.7% on this news.

The Lawsuit

On July 30, 2026, a plaintiff shareholder filed a securities class action lawsuit in the Northern District of California against Bloom Energy and certain of its directors and officers. The complaint purports to be filed on behalf of a class of investors who purchased the company's securities between February 27, 2025, and July 8, 2026.

The complaint alleges that during the class period, the defendants failed to disclose to investors: "(1) that Bloom Energy obtained scandium through intermediaries who sourced the metal from China; (2) that, as a result, the Company understated the extent to which it relied on scandium from China; and (3) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis."

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

Discussion

It is nothing new for supply chain-related issues to give rise to securities class action lawsuits. For example, readers will recall that supply chain-related disruptions arising from the pandemic led to a number of supply chain-related securities class action lawsuits; indeed these kinds of lawsuits continued to be filed long after the pandemic itself had officially ended (as discussed, for example, here). Since that time, there have been further supply chain-related suits, as illustrated most recently by the lawsuit filed in May 2026 against the EV company Lucid (as discussed here).

There are important differences between this lawsuit and many (if not most) of the prior lawsuits based on supply chain issues. For starters, this lawsuit is not related to allegations of supply chain disruption. Apparently, the company's supply chain continued to function and continued to provide the company with its needed scandium.

The key to this lawsuit's allegations is the company's claims that its supply chain did not involve Chinese supply, specifically Chinese scandium. The reason the company was disclaiming a Chinese supply chain connection, and the reason the media reports about a supposed Chinese connection were disruptive, has to do with the ongoing global trade wars between China and the U.S.

The United States and China are engaged in an evolving trade conflict driven by U.S. tariff measures and Chinese retaliatory export restrictions on critical minerals, particularly rare earth metals. Under the current Trump administration, the United States imposed and expanded tariffs on a broad range of Chinese imports with the stated goals of addressing trade imbalances, protecting domestic industries, and reducing reliance on Chinese supply chains. In response, China has increasingly used its dominant position in the rare earth supply chain by tightening export controls on rare earth elements and related processing technologies, materials that are essential for advanced manufacturing, electronics, electric vehicles, renewable energy equipment, and defense systems.

Given these circumstances, this company found it important to emphasize that it had no Chinese supply chain dependence, apparently as a way to reassure investors that it was not vulnerable or susceptible to supply chain disruption. That also explains why the company's share price declined as news reports circulated that the company supposedly did, in fact, have Chinese connections in its supply chain.

The circumstances involved in this lawsuit illustrate how larger geopolitical issues and global trade concerns can impact companies' operations and financial results. The case also shows how geopolitical issues can translate into securities class action lawsuits. There have in fact been a number of securities suits filed this year arising out of geopolitical issues, including for example lawsuits relating to companies' statements about the impact of the Trump administration's tariffs (as for example with respect to the June 2026 tariff-related lawsuit filed against First Solar, as discussed here).

There is a sense in which the lawsuit is also a tariff-related suit, since at its base the case involves trade conditions that have arisen out of the Trump administration's tariff policies. However, this case is slightly different than the prior tariff-related suits; this suit is more about the geopolitical and trade circumstances that have arisen in the wake of Chinese retaliatory measures and global trade war that has arising in the wake of the Trump administration's tariff policies.

All of these cases illustrate the point that geopolitical issues in the current environment are an increasingly important element of D&O risk. Nor are the geopolitical issues related solely to tariff-related issues.

Indeed, a July 31, 2026, *Wall Street Journal* article (here) illustrates how the conflict in Iran, and the ensuing closure of the Straits of Hormuz, is putting pressure on companies in a wide variety of industries, including industries as diverse as paint, beer, consumer products, as well as aluminum, fertilizer, and, of course, energy. These pressures may affect the operations and financial results of many companies. And, as these companies experience disappointing results, the geopolitical factors causing the problems may well translate into securities class action lawsuits as well.

In other words, it seems likely that in the months ahead, geopolitical factors will remain an increasingly important part of D&O risk.

About Scandium: I have to confess that prior to reading this complaint, I had not thought much about Scandium. In case you are as curious about scandium as I was, here is an excerpt from the search I launched in Copilot about the element:

Scandium (chemical symbol Sc, atomic number 21) is a soft, lightweight, silvery-white metal. It is classified as a transition metal, although it is often grouped with rare earth elements because of its similar geochemical behavior and occurrence in some rare-earth-bearing deposits.

Despite its name association with rare earths, scandium is not especially scarce in the Earth's crust. The challenge is that it is rarely found in concentrations high enough to mine economically, so virtually all scandium production comes as a byproduct of mining other metals.

Scandium apparently has a few high-value uses, one of which is in "Solid oxide fuel cells, where scandium-stabilized zirconia can improve performance."

About the Chinese connection, Copilot said: "China is widely regarded as one of the leading producers and processors of scandium and is a major player in global supply. Reports indicate that China has multiple scandium-producing operations and occupies a dominant position in processing critical rare-earth-related materials."

Interestingly, Copilot also noted the following: "The United States has known scandium resources and has previously produced scandium. Potential sources exist in multiple states and are often associated with other mining operations. However, according to the U.S. International Trade Commission, the U.S. currently has had little or no significant operating primary scandium production capacity in recent years, leaving the country dependent on imports and foreign processing."

Guest Post: Zync v. Porsche and the D&O Risks of VC Board Seats

dandodiary.com/2026/07/articles/director-and-officer-liability/guest-post-zync-v-porsche-and-the-do-risks-of-vc-board-seats

In the following guest post, Ben Dubin, Managing Memberof VC Expert Services, LLC, examines Vice Chancellor Laster's May 2026 opinion in the Zync v. Porsche *case, a decision that highlights the legal and D&O insurance risks for investor-appointed directors and their sponsoring venture firms, particularly when directors are accused of acting as agents of the investor rather than exercising independent fiduciary judgment on behalf of the company. This post is the second of two guest post from Ben discussing D&O risks associated with venture capital board seats. Ben's prior post on the topic can be found here. We would like to thank Ben for allowing us to publish his articles as guest posts on this site. Here is Ben's article.*

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A recent Delaware Court of Chancery decision raises difficult questions about investor-appointed directors, aiding-and-abetting exposure for the appointing investor, and whether either of two D&O insurance programs responds when the alleged wrong is serving the investor rather than the company.

I. The Financing That Never Happened

A venture board seat is usually understood as a mechanism for protecting an investment. In *Zync, Inc. v. Porsche Investments Management, S.A.*, the complaint alleges that a board seat became the mechanism through which an investment destroyed the company.[1] On May 29, 2026, Vice Chancellor J. Travis Laster of the Delaware Court of Chancery denied the Rule 12(b)(6) motions filed by the Porsche entities and their board designee, allowing all four counts of the complaint to proceed against them.

The story the complaint tells is simple. Zync, a startup offering a cloud-based platform for in-vehicle entertainment, was running out of cash. An outside venture fund proposed to lead an $8 million Series A at a $32 million pre-money valuation; investor demand expanded the round to $10 million at $40 million. The financing required the approval of the director designated by Porsche, the company's strategic investor. According to the complaint, the designee would not act without instructions from his superior at Porsche. Months passed. When the board finally convened in April 2022, the designee announced that he would vote against the financing, killing the round. A later private equity proposal — restructured as a $4 million loan followed by a $15 million equity investment at a $60 million pre-money valuation, including $3.335 million to buy out Porsche at a premium — collapsed after Porsche allegedly conditioned approval on the fund indemnifying both Porsche and its designee. The company shut down.

At first glance, the dispute looks like a familiar Delaware fiduciary-duty case. For the D&O insurance community, it poses a more complicated question: whose policy protects an investor-appointed director when the alleged wrong consists of serving the investor rather than the company?

II. The Investment and the Governance Rights

Porsche invested $2.9 million through a convertible note and received common shares representing five percent of Zync's fully diluted equity. A voting agreement committed the company to a three-member board and gave Porsche the right to designate one director for as long as Porsche held at least two percent of the common stock. An investor rights agreement provided that the company could not take specified actions — including issuing equity or debt securities, effecting a merger or dissolution, amending the charter, changing the size of the board, or entering into related-party arrangements — without the approval of the Porsche-designated director.

That structure deserves attention — not because it is exotic, but because it is not. Conventional venture financings typically layer two kinds of blocking rights: protective provisions in the charter, framed as class or series consent rights and exercised by the preferred holders at the stockholder level, and a covenant in the investor rights agreement — the National Venture Capital Association's model form titles it "Matters Requiring Investor Director Approval" — conditioning specified corporate actions on the approval of the investor's designated director. Zync's blocking rights, as the opinion describes them, ran through the second mechanism. The distinction matters because the two instruments sit in very different doctrinal postures. A preferred stockholder granting or withholding consent may ordinarily consider its own interests. A director granting or withholding approval acts as a person who simultaneously owes undiluted fiduciary duties to the company — and, as the court noted, the designee's exercise of the approval right can be imputed to the appointing investor under ordinary agency principles. *Zync* is, among other things, a reminder that a standard piece of venture architecture places a powerful veto in fiduciary hands.

Three roles were in play. Porsche was a contractual counterparty with consent rights, generally free to act in its own interest. Porsche's employee was a Zync director, who was not. And the same individual remained an employee accountable to Porsche management.

The collision among those roles drives both the liability analysis and the insurance questions that follow.

III. The Allegations and the Court's Decision

The decision came at the pleading stage. The court was required to credit the complaint's well-pleaded allegations and draw all reasonable inferences in the plaintiff's favor. Nothing has been proven, and the defendants dispute the claims.

Porsche designated Christian Knörle, an executive within Porsche's venture organization who reported to a managing director of Porsche Investments. The complaint alleges that Knörle repeatedly refused to approve financings without authorization from Porsche; that he delayed board action for months while awaiting instructions; that he conditioned a promised Porsche bridge loan — which shrank from a suggested $750,000 to $290,000 before being withdrawn in favor of demands for a personal guarantee from the founder and an additional board seat — on the company sharing its confidential draft agreement with Mercedes-Benz and internal data concerning other competitors; and that, after the company's bridge lender sued, he resigned from the board on Porsche's instruction.

The court held that these allegations state a claim against Knörle for breach of the duty of loyalty. Two features of the analysis stand out.

First, the dual-fiduciary problem. Delaware recognizes "no dilution" of the duty of loyalty where one person holds dual or multiple fiduciary roles.[2] As a director, Knörle owed fiduciary duties to Zync; as an employee — and therefore an agent — he owed duties to Porsche. When Porsche's interests diverged from the company's, it was reasonably conceivable that Knörle faced a disabling conflict, and that he resolved it in Porsche's favor. The court rejected the argument that Porsche's note and equity positions aligned its interests with the company's, reasoning that the complaint adequately alleged competitive incentives: Porsche could benefit more from keeping the company's technology away from Mercedes and BMW than it would lose by writing off a comparatively small investment. "Chess players make sacrifices all the time," the court observed.

Second, inaction. The defendants argued that Knörle could not have breached his duties because neither financing was formally put to a vote. The court disagreed: directors can breach their duties through informal action and conscious inaction, and a designee's refusal to act without investor permission may itself become the fiduciary act under review.[3] In venture governance, in other words, inaction is not necessarily neutral.

The court also sustained three claims against the Porsche entities: aiding and abetting Knörle's alleged breaches, intentional interference with the two prospective financings, and breach of the implied covenant of good faith and fair dealing inherent in the investor rights agreement. (A Porsche executive named individually was dismissed for lack of personal jurisdiction in a separate decision issued three days earlier.)[4]

IV. The Two-Masters Problem

Investor-appointed directors routinely occupy overlapping roles: portfolio-company fiduciary, fund partner or employee, investment-committee participant, monitor of the investment, and — in corporate venture capital — employee of a commercial partner or potential competitor. None of that is improper in itself. Delaware permits directors to consult with the stockholders who designated them and to take their concerns into account, and the *Zync* opinion cites recent authority acknowledging exactly that.

What the opinion does not countenance is the pattern the complaint alleges: a designee who treated the investor's instructions as controlling. Venture organizations often speak of "their" board seats and "their" directors. The shorthand is commercially understandable and legally hazardous, because once appointed, the designee is not the investor's representative seated inside the portfolio company; he or she is a fiduciary of the portfolio company. Statements like "I cannot vote until the investment committee approves," "headquarters has not authorized this," or "send us the agreement and the funding will follow" are not automatically wrongful. But *Zync* shows how each can become evidence that the director's judgment belonged to someone else.

V. Liability Travels Up the Chain

The development that will matter most to the insurance community is not that the director remained exposed. It is that the claims against the investor survived.

The aiding-and-abetting analysis is the doctrinal heart of the opinion. In *In re Mindbody* and *In re Columbia Pipeline*, the Delaware Supreme Court raised the pleading bar for aiding-and-abetting claims against third-party acquirers, requiring actual knowledge and affirmative conduct.[5] The *Zync* court declined to extend that protection beyond the arm's-length setting that produced it. Other alleged aiders and abettors are differently situated, Vice Chancellor Laster explained, and an employer-principal alleged to have directed its employee-agent is the paradigm: the agent's knowledge and conduct can be imputed to the principal, and instructions can supply knowing participation. The court drew the same relational distinction earlier this year in *Calumet Capital Partners LLC v. Victory Park Capital Advisors, LLC* — a decision the *Zync* opinion cites — where the alleged aider and abettor was likewise an investor whose own employee served as its board designee.[6] The pattern is now difficult to miss: claims against arm's-length counterparties remain hard to plead, while claims against an investor whose employee occupies the board seat may be considerably easier.

The intentional interference claim survived on related reasoning. An investor's financial interest in a company would ordinarily privilege efforts to protect its position, but that privilege is unavailable at the pleading stage where the alleged means of interference — causing the designee's breach of loyalty — are themselves wrongful.

The implied covenant claim is where *Calumet* does the most work. The investor rights agreement gave Porsche discretionary approval rights exercised through its designee, and, quoting its earlier decision, the court held that a party may not wield a discretionary contractual right "maliciously and without any justification rationally related to the shared contractual purpose." The court was careful about the limits. Porsche could have used its veto for many rational purposes — concerns about pricing, harm to the company, or even protection of Porsche's own interests — without facing an implied covenant claim. What the complaint adequately alleged was different in kind: the use of the right for the sole purpose of harming the company.

Finally, the exculpation holding deserves the attention of every lawyer who papers venture financings. The voting agreement contained a provision captioned "No Liability for Election of Recommended Directors," which Porsche read to shield stockholders and their affiliates from liability arising from a designee's acts or omissions as a director. The court held the provision too ambiguous to support dismissal — and held, independently, that Delaware law does not permit parties to eliminate liability for intentional and bad-faith acts, whether by contract or through the governance-agreement authority the legislature added as Section 122(18) in 2024.[7] Provisions of this general kind appear in customary venture documentation. *Zync* is a caution against reading them as a general liability shield for the appointing investor.

Once claims travel from the board designee to the venture organization, the insurance analysis becomes considerably less straightforward.

VI. The D&O Insurance Questions

The relevant policies are not public, and nothing here is a coverage opinion. The value of *Zync* for the insurance community lies in the questions its fact pattern forces — many of which readers of this publication will recognize from other contexts.

The portfolio company's policy. A designee facing these claims would ordinarily tender under the portfolio company's private-company D&O program. But the claimant here is the company itself, suing its own director — the classic trigger for insured-versus-insured or entity-versus-insured exclusion analysis. Private-company forms vary widely on the decisive details:

whether the exclusion reaches claims brought directly by the insured entity; whether insolvency, receiver, trustee, or derivative-claim carve-backs apply once the company has collapsed; whether severability or non-imputation wording affects other potentially applicable exclusions; and whether a Side A difference-in-conditions policy provides broader protection above the tower.

Indemnification and advancement. Delaware law permits advancement of defense costs upon an undertaking to repay, with the scope of any mandatory rights fixed by the charter, bylaws, and indemnification agreements.[8] But Zync allegedly shut down because it could not raise capital, and a contractual advancement right against an insolvent company has limited practical value — which is precisely the gap Side A protection exists to fill. There is a telling detail in the record on this point: in the final weeks, Porsche allegedly conditioned approval of the private equity financing on the fund indemnifying Porsche and its designee. Whatever else that demand shows, it suggests the participants understood in real time that the existing protection might not be enough.

Conduct allegations. The complaint pleads disloyalty and bad faith, not negligence. That implicates conduct exclusions — fraud, deliberate acts, improper personal benefit — and puts weight on final-adjudication wording, imputation provisions, and the carrier's obligations with respect to defense costs before any adjudication. Allegations are not adjudications, and the surviving-the-pleadings posture of *Zync* is exactly the situation those provisions were negotiated to address.

The venture organization's policy. The designee may also look to the investor's management-liability program. Private equity and venture capital policies frequently include outside-directorship liability coverage for personnel serving on portfolio-company boards, typically structured on a double-excess basis — sitting above indemnification and insurance available from the portfolio company. That structure generates its own questions on these facts: whether the portfolio company is a scheduled or qualifying outside entity; whether the coverage protects only the individual or also reaches the investor entities facing aiding-and-abetting and interference claims; how the excess attachment operates when the underlying company is insolvent and its own policy's response may be contested; and whether a board observer would fare differently than a director.

The capacity paradox. The most interesting coverage problem is structural. D&O policies generally insure acts undertaken in an insured capacity, and the two programs here would define that capacity differently — Zync director on one side, Porsche employee on the other. The plaintiff's theory of liability is that the designee acted as the investor's agent rather than as the company's fiduciary. The stronger that allegation becomes, the stronger a carrier's potential argument that the conduct fell outside the insured capacity, or within a dual-capacity or outside-position exclusion — on either tower. This publication has covered decisions barring coverage for individuals acting in dual capacities;[9] *Zync* presents the problem in its purest venture form.

The counterargument is equally substantial. A director does not necessarily leave the insured capacity by acting with an improper motive; the alleged breach may have been possible precisely because the individual exercised the authority of the Zync board seat. Motivation, loyalty, and capacity are related but distinct inquiries, and the answer would turn on the specific policy wording and on whether the claim is understood to arise from the exercise of board authority, employment responsibilities, or both. The merits theory and the coverage defense are mirror images — the same characterization that makes the fiduciary claim viable may make the coverage question hard — but *Zync* frames a genuine coverage contest, not a foreordained result.

Allocation. The litigation involves an individual director, multiple investor entities, and mixed fiduciary, tort, and contract claims — some potentially covered, some potentially not, spread across two towers with different retentions, attachment points, and exclusions. That is a recipe for allocation disputes over defense costs, separate counsel, priority of payments, and the erosion of shared limits.

VII. The Strategic-Investor Dimension

Traditional venture investors principally want financial returns. Strategic and corporate venture investors may also want technology access, commercial terms, competitive intelligence, and optionality over an emerging capability. None of that is improper, but it raises the probability that the investor's interests will diverge from the company's — and *Zync* alleges divergence in a stark form: an investor extracting a competitor's draft contract while allegedly blocking the financing the company needed to serve that competitor. The complaint also alleges that Porsche's conduct reflected a broader strategy of using minority investments and governance rights to keep emerging technology away from competing manufacturers; that allegation remains unproven. These tensions may become especially acute in artificial intelligence and other technology markets where a strategic investor can also be a supplier, customer, prospective acquirer, and competitor.

VIII. Questions Zync Puts on the Table

Zync is one pleading-stage decision on unusually hard facts, and the record may look different after discovery. But the questions it raises do not depend on the outcome.

For venture organizations and portfolio companies

The decision illustrates how internal shorthand and instruction-based workflows become the evidentiary record: whether communications reflect consultation or direction; whether the business rationale for withholding consent was recorded when the decision was made; and where information obtained through board service travels once it leaves the boardroom. For portfolio companies, the decision draws attention to how approval rights are structured — stockholder-level consents and director-level approvals sit in very different doctrinal postures — and to the value of indemnification agreements and D&O placement completed before distress arrives.

For brokers and coverage counsel

The fact pattern reads like a working checklist: insured-versus-insured wording and its carve-backs, outside-directorship coverage and its scheduling requirements, double-excess mechanics over an insolvent underlying company, capacity and dual-capacity exclusions, Side A adequacy, and priority-of-payments provisions.

For underwriters

Zync suggests a diligence distinction between financial and strategic investors — and a reason to ask how a fund's designees actually receive, document, and act on instructions from the organizations that appointed them.

IX. Conclusion: The Board Seat Is Not the Fund's Seat

Venture firms obtain board seats to protect their investments. *Zync* recounts allegations — so far only allegations — of a board seat operating as the instrument through which an investment destroyed the company. If those allegations are ultimately credited, the exposure will not have stopped with the director. It will have traveled to the investor that gave the instructions, through contracts that routed a veto through a fiduciary, and into two insurance programs whose responses may depend on incompatible characterizations of a single individual's role. The board seat may be insured. The instructions behind the board seat may not be. For venture investors, the lesson is that a designee must exercise independent fiduciary judgment. For the D&O insurance market, the harder question is whether coverage follows the director when the complaint alleges that the independence disappeared.

Big Tech AI spending spree tops $1tn

FT **ft.com**/content/dcf3873e-7b32-4a24-a90d-3bccf1d2c996

The four big hyperscalers have ploughed more than $1tn into capital investments since their race to dominate AI began three and a half years ago, as America's largest tech groups bet their future on the technology.

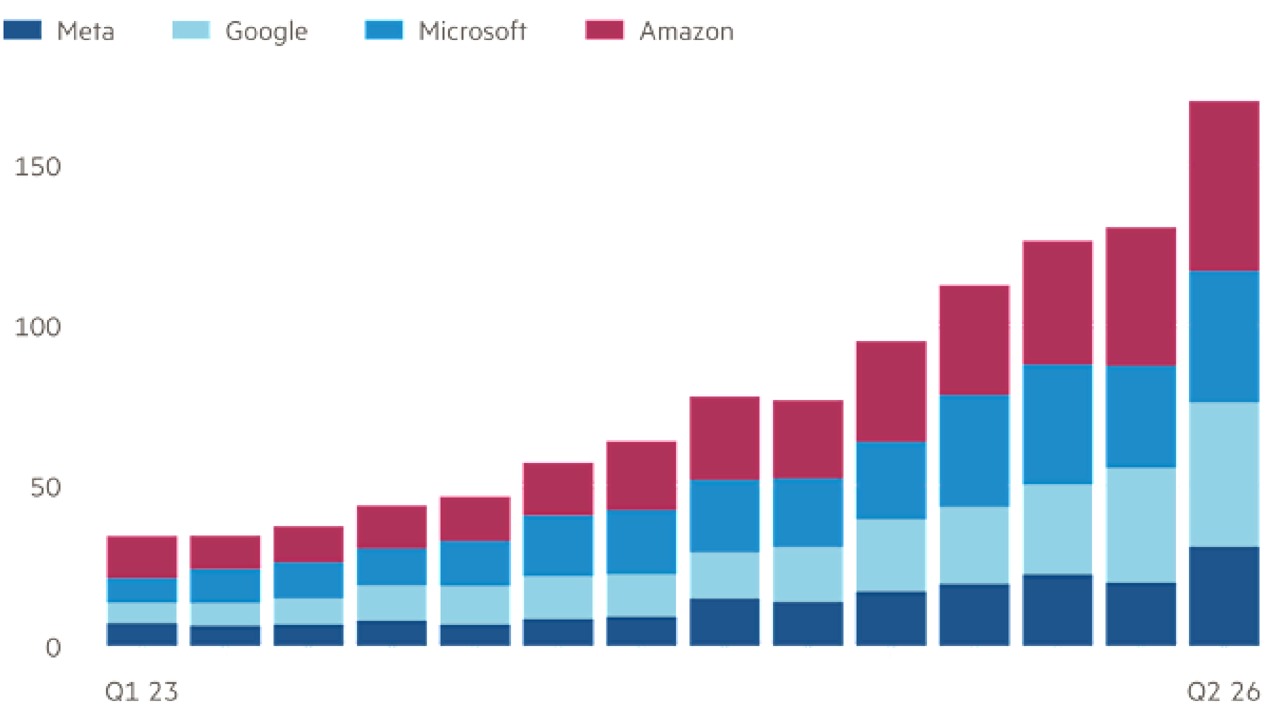
Combined capital spending by Google, Amazon, Microsoft and Meta from the beginning of the AI boom in 2023 to the end of June hit $1.1tn, according to earnings reports from the four companies in the past two weeks.

The massive expenditure is a mark of both the scale of their AI ambitions and the speed with which the US tech giants have turned from capital-light businesses into huge investors in physical infrastructure.

"There is basically no end in sight for the growth in capex," said Rishi Jaluria, an RBC Capital analyst. "Investors need these companies to toe the tight line between investing in AI and not compromising the things that have made them successful."

Hyperscalers' AI investments have rapidly accelerated

Capital expenditure, $bn



Source: Company filings

The four companies combined plan to spend $745bn on capex, mainly data centres, advanced chips and the power to run them this year, after both Google and Amazon increased their projections this quarter.

The success of this bet remains partly contingent on the ability of start-ups OpenAI and Anthropic to keep raising funds to meet vast, multiyear commitments to buy computing power, as both AI labs plot their public listings.

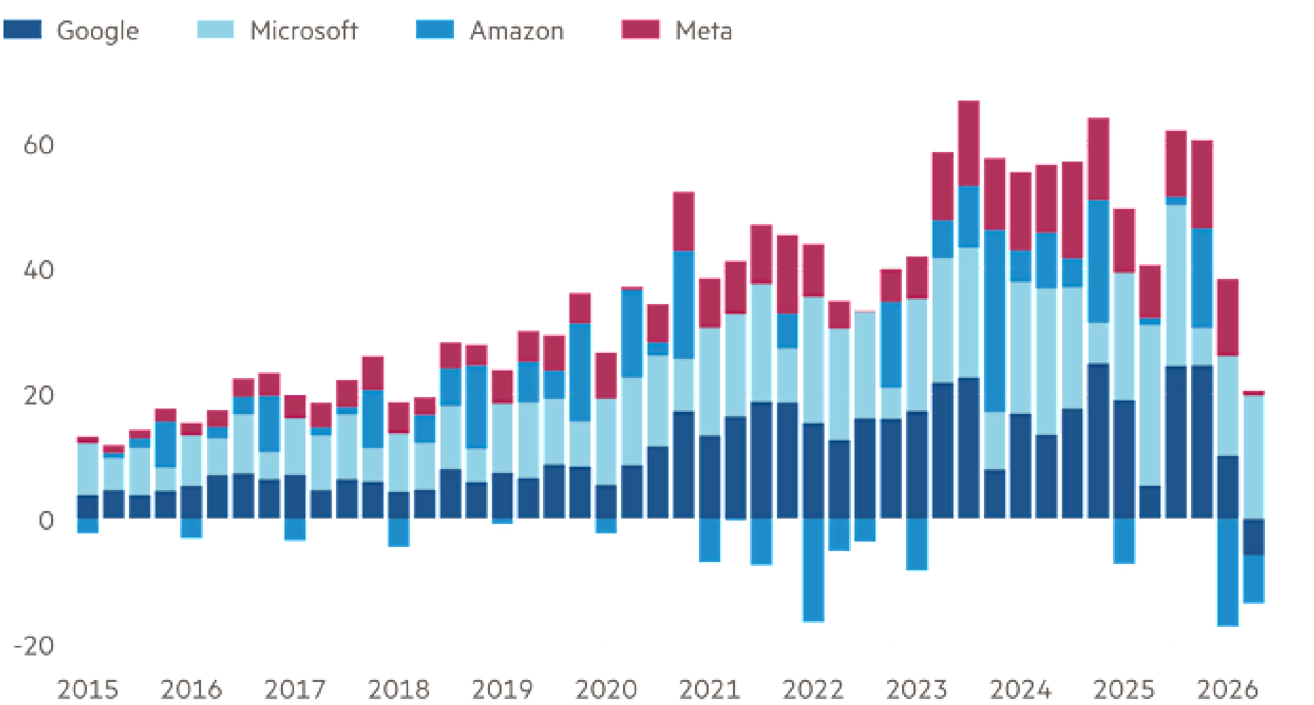
The rush of investment has strained supply chains and driven up costs, causing a shortage of memory chips, which hurt Apple, even as the iPhone maker sits out the AI race. Its warnings of lower sales and margins due to cost increases sent the stock falling 6.3 per cent on Thursday.

But Big Tech's financial results showed these investments are beginning to translate into accelerating revenue growth, particularly in cloud computing.

Google, Amazon and Microsoft all reported rising growth in their cloud units, selling computing power to everyone from OpenAI and Anthropic to corporations embracing AI. The figures boosted Amazon and Microsoft stock.

AI capex has eroded Big Tech's cash flow

Free cash flow, $bn



Sources: Visible Alpha, filings

Meta, which does not have a cloud business, said AI was helping it to target advertising, with total revenue up 28 per cent year-on-year to $61bn in the quarter.

Chief executive Mark Zuckerberg hinted at a leap into leasing out data centre space, telling investors that Meta was fielding “a large number of offers” to rent out its compute “at a meaningful premium over what we paid”.

He added, however, that “there will continue to be a significantly higher margin on selling intelligence rather than selling compute directly”.

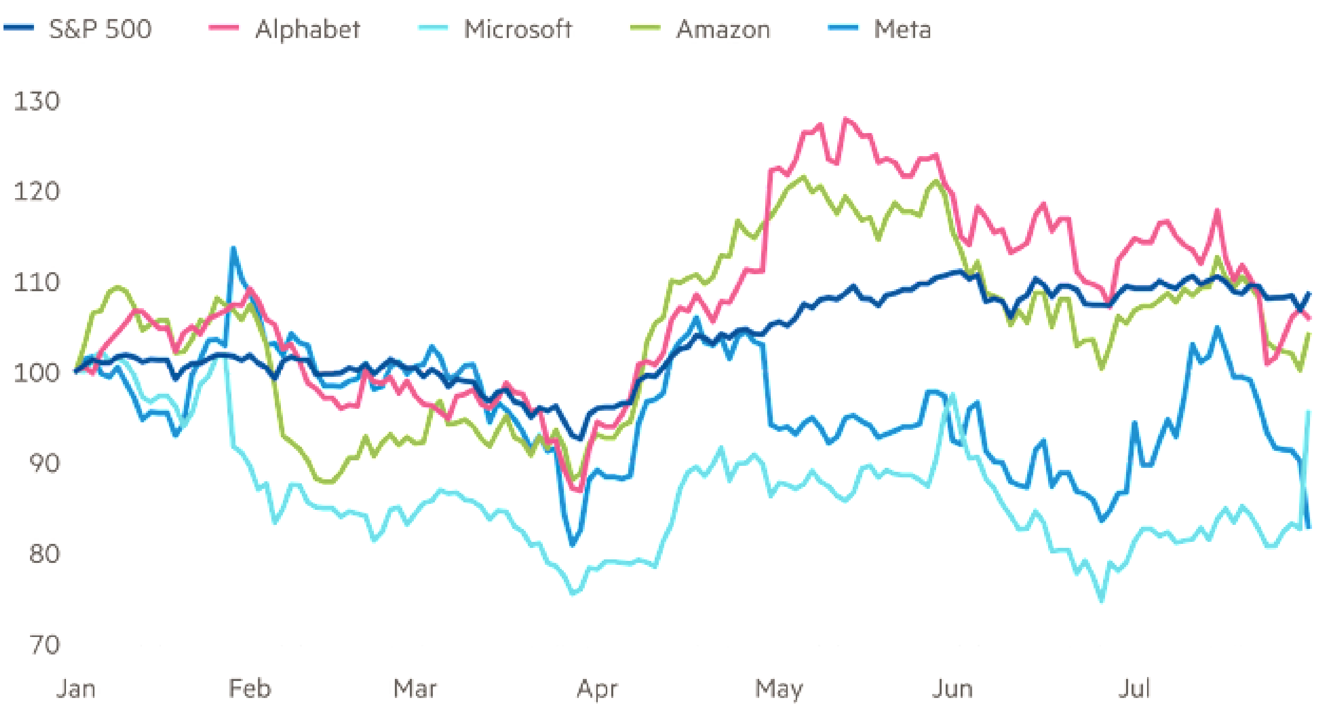
Dec Mullarkey, managing director at asset management firm SLC Management, said the lack of a clear plan from Meta to rent out computing power was partly responsible for its 8 per cent share price decline on Thursday after earnings. “They are a bit all over the place,” he said.

“For investors it’s no longer growth at any cost, they want to see the spending flowing through to results, like at the Big Three,” he said, referring to Google, Microsoft and Amazon.

The search giant’s cloud business added $11bn of revenue on last year’s sales, but investors still sold off shares as it reported its first quarter burning cash since going public over two decades ago, posting negative $6bn of free cash flow for the period.

Tech stocks have lagged the wider market since January

Share price and index rebased in $ terms



Source: LSEG via markets.ft.com

Google, like its peers, also disclosed huge increases in its future financial commitment linked to AI investments, which ballooned by about $500bn from three months before. The bulk of the new contracts involve long-term purchase commitments for technical infrastructure, as well as energy for data centres.

Meta signed $233bn of new commitments in the quarter. The additions include $96bn in leases for data centres and network infrastructure that will move on to its balance sheet as they come into use, $112bn in purchase commitments, mostly for third-party cloud capacity servers, and other infrastructure, as well as $25bn in new debt.

The group then added another $68bn in data centre leases in July.

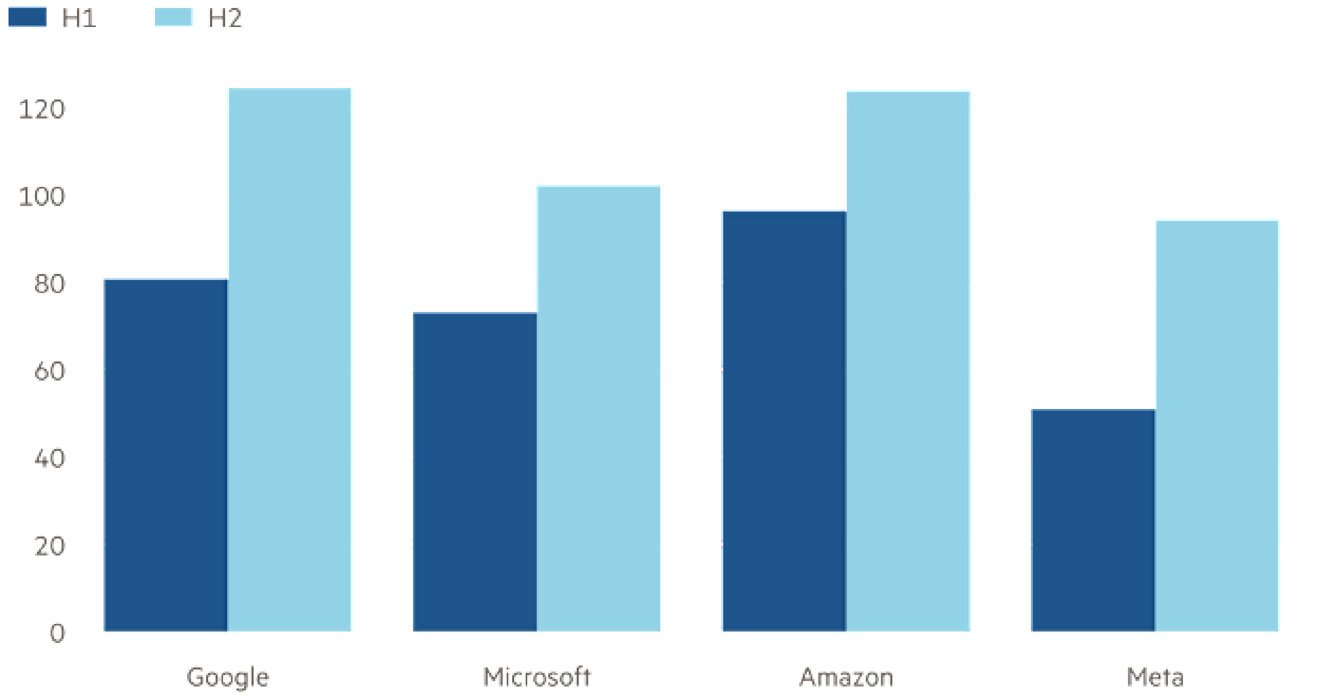
Microsoft, meanwhile, signed more than $130bn of new data centre leases in the second quarter in a huge expansion of its commitments.

Together the three companies agreed close to $900bn of new AI-related obligations in the three-month period alone, binding their balance sheets to the AI race for years to come. Amazon has yet to post these detailed disclosures.

Several top executives acknowledged to analysts that the outlay on AI would continue to sap free cash flow in coming quarters. The free cash flow metric is closely watched as a measure of the cash companies have left to service debt or return to shareholders after covering their operating costs and capital spending.

Tech groups plan to speed up their spending in the rest of 2026

Capex in H1 vs projected spending in H2, $bn



Source: FT research

The four groups' combined free cash flows fell to a decade low of just $7bn during the period, with only Microsoft and Meta bringing in more than they spent.

Amazon chief Andy Jassy told investors that the group would have to absorb free cash flow pressures for some time as it raced to build "many data centres simultaneously" with a two-year lag from commissioning a facility to installing servers that enabled it to charge customers.

"In the short term . . . we'll spend a lot of capex and encounter free cash flow headwinds until these data centres come online," he said.

The significant lag between Big Tech's massive upfront data centre investment and any associated revenue means that investors who have proven fickle in recent weeks amid an AI-led rout will have to be prepared to wait years for meaningful returns on their investment.

"Investors are being forced to rethink their own timelines," Jaluria at RBC added.

Texas law firm agrees $15mn settlement over judicial scandal

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One of the most prominent Texas law firms has agreed to pay a $15mn settlement to resolve a lawsuit brought by US federal authorities over a judicial scandal that gripped the US bankruptcy system.

Jackson Walker LLP had been accused by the Office of the US Trustee of failing to disclose a romantic relationship between one of its former partners, Elizabeth Freeman, and Judge David Jones. Freeman had served as a judicial clerk to Jones before being hired by Jackson Walker. The firm appeared in more than 30 Chapter 11 cases between 2018 and 2023 where Freeman represented clients in front of Jones.

Jones, whose influence among bankruptcy advisers had turned Houston into the US's insolvency capital, quickly resigned from the bench in October 2023 after admitting to the relationship when confronted by questions from the media. In late 2022, Freeman had left Jackson Walker to start her own practice, which would work with her former employer.

The US bankruptcy code allows debtors to have bankruptcy estates pay their professional fees but requires that advisers be independent and disclose to the court any possible conflicts of interest they may have in cases.

Jackson Walker had typically served as a local counsel to debtors represented by national lawyers from Kirkland & Ellis, who routinely filed major cases in the Southern District of Texas where Jones would become the chief bankruptcy judge.

The US Trustee, which represents the public's interest in Chapter 11 cases, said Jackson Walker knew or should have known about the Freeman-Jones relationship. The agency had been seeking to claw back more than $30mn in fees Jackson Walker had been paid in 33 different cases where Freeman had participated, including the high-profile restructurings of JC Penney and Neiman Marcus.

The Texas bankruptcy court earlier this summer had separately approved settlements that Jackson Walker had struck with several individual bankruptcy estates to pay back nearly $5mn in fees that had been disbursed in those cases.

A federal district judge in 2024 dismissed a racketeering lawsuit filed by a bankruptcy claimant against Jones, Freeman, Jackson Walker and Kirkland & Ellis, but criticised the group for not previously disclosing the conflict of interest stemming from the relationship.

Kirkland & Ellis had earned more than $160mn in fees awarded by Jones in cases where Freeman appeared for Jackson Walker as co-counsel, according to the plaintiff's court filings from that racketeering lawsuit.

The US Trustee settlement requires the approval of the Texas bankruptcy court and Jackson Walker said in the settlement filing on Monday it had also made changes to its "conflict screening and disclosure practices" and intended to hire a third-party consultant to review its compliance.

Jackson Walker admitted in the filing that it had never sought to update or amend its disclosure filings after it learnt of the Freeman-Jones relationship, writing that it "acknowledges, while not admitting fault, that it could have approached this matter differently."

Lawyers for Jones said in previous court hearings and court papers that Jones was being investigated by the Department of Justice for criminal wrongdoing. He has not been charged with a crime.

Jackson Walker declined to comment.

[Bloomberg Law]
[Manage Newsletters]

J&J, Dow Chemical Lose Bid to Preserve Asbestos Claims Data

July 31, 2026, 9:26 AM PDT

Summary by Bloomberg AI AI Generated

- The Delaware Supreme Court overturned a judge's decision to let litigation move forward against a group of settlement trusts that plans to delete claims data more than a year old.
- The court said the manufacturers failed to plead all the required elements of their claim for an "equitable bill of discovery", a centuries-old legal device.
- The data is a key tool used by companies like Johnson & Johnson and Dow Chemical Co. to reduce asbestos payouts by showing that certain claimants had other sources of exposure.

Johnson & Johnson, Dow Chemical Co., and other companies that commonly face litigation over cancer-causing asbestos lost a court case Friday that sought to preserve the data they rely on to defend themselves.

The Delaware Supreme Court overturned a judge’s decision to let the litigation move forward against a group of settlement trusts that plans to delete claims data more than a year old. The data represents a key tool used by J&J and the other manufacturers to reduce asbestos payouts by showing that certain claimants – those who have already recovered some damages – had other sources of exposure.

Justice Gary F. Traynor, writing for a unanimous five-member panel, said a Delaware Chancery Court judge went astray by granting an “equitable bill of discovery,” a centuries-old legal device with little modern precedent. Even if the mechanism is still technically available, it required the manufacturers to identify a specific pending or impending claim, not just the possibility of future litigation, Traynor said.

Otherwise, the court has “no gauge with which to measure the appropriate scope of the bill,” he wrote in a 29-page opinion. “This, in our view, unduly relaxes the standard for determining the availability of this exceptional remedy.”

The dispute has its roots in the sprawling litigation industry that grew up around the asbestos sector after studies in the mid-20th century linked the popular construction material — a fire retardant — to mesothelioma and other cancers. Several prominent companies battered by injury and death claims were forced into bankruptcy, prompting Congress to pass a law authorizing asbestos settlement trusts.

The retention case began when J&J, Dow, and the other companies sued 10 settlement trusts and an asbestos claims processor, seeking to halt their new policies for deleting older data. That data remained "critical to our defense in thousands of cases," the manufacturers argued at a May 6 hearing.

Ten states filed an amicus brief supporting the companies. The trusts countered that a "modern business document retention policy" should allow the deletion of sensitive information that's no longer needed.

Vice Chancellor J. Travis Laster rejected that argument, saying it was conceivable the trusts and claims processor had an ongoing obligation to keep the data based on a reasonable expectation that asbestos litigation will continue for the foreseeable future.

When the trusts asked the state's top court to review the decision on a mid-case basis, Laster urged the justices to accept the appeal, citing the strange context — a legal mechanism dating to before the adoption of modern discovery rules that standardized deposition processes and document exchanges.

The high court concluded Friday that Laster got it wrong. Even if an equitable bill of discovery is still available under the right circumstances, "the manufacturers' complaint failed to plead all the required elements of their claim," Traynor wrote. "Thus, we reverse."

Jones Day; Richards, Layton & Finger PA; and Kirkland & Ellis LLP variously represented the companies. Morris James LLP represented the trusts. Young Conaway Stargatt & Taylor LLP represented the claims processor.

The case is Del. Claims Processing Facility LLC v. DBMP LLC , Del., No. 469, 2025, 7/31/26 .

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Arguing Class Actions: When the Class Representative Can No Longer Serve

law.com/nationallawjournal/2026/08/03/arguing-class-actions-when-the-class-representative-can-no-longer-serve

One of the most consequential moments in a class action rarely draws attention. It doesn't occur at class certification, summary judgment or trial. It occurs when the named plaintiff, the individual whose name appears in the caption and whose adequacy the court has scrutinized, can no longer serve as class representative.

Sometimes this happens early; sometimes it happens late. And it often arises under the most inconvenient circumstances imaginable. A class representative becomes seriously ill; a bankruptcy filing creates conflicts; a criminal conviction or credibility issue emerges in discovery; a parallel individual settlement moots the plaintiff's personal claim; standing problems surface after a change in law; or a plaintiff simply loses interest in litigation that, by design, subordinates individual recovery to collective relief.

When this happens, plaintiffs counsel face a stark choice: Seek leave to substitute a new class representative or risk leaving a certified—or certifiable—class without anyone to represent it. Defense counsel often characterize substitution as an impermissible "do-over," evidence that the case was flawed from the start, or an effort to manufacture standing or adequacy after the fact. Courts, however, have largely rejected that framing, taking a more pragmatic—and fiduciary—view.

Substitution of a class representative is not an exotic procedural maneuver or an act of indulgence. It is a recurring and often necessary feature of class action litigation. And because class actions exist to vindicate the rights of absent class members, courts are generally—and correctly—liberal in permitting substitution where the underlying controversy remains live and the class would otherwise be left without representation.

The reasons substitution arises are varied and often unavoidable. Some withdrawals are driven by events external to the litigation. Courts have permitted substitution after the death of a named plaintiff, recognizing that the claims of the class "remain[] alive despite the named representative's death." See *James v. Jones*, 148 F.R.D. 196, 202 (W.D. Ky. 1993) (citing *Sosna v. Iowa*, 419 U.S. 393, 399 (1975). Other withdrawals occur because of health issues or family circumstances that make continued participation impracticable. In the end, substitution of named plaintiffs for personal reasons is a "common and normally an unexceptionable ('routine') feature of class action litigation … in the federal courts." See

Phillips v. Ford Motor, 435 F.3d 785, 787 (7th Cir. 2006). Rule 23 doesn't require a class representative to sacrifice personal well-being to remain in the case.

Other substitutions arise from circumstances uncovered during the litigation itself. In *Wilson v. Quest Diagnostics*, No. CV 18-11960 (WJM), 2020 WL 401814, at *3 (D.N.J. Jan. 24, 2020), the court allowed substitution after it became clear that the original plaintiff could no longer serve, emphasizing that it was "efficient and expeditious" to permit substitution rather than force dismissal and refiling. Similarly, in *Birmingham Steel v. Tennessee Valley Authority*, 353 F.3d 1331, 1339 (11th Cir. 2003), the U.S. Court of Appeals for the Eleventh Circuit held that a trial court abused its discretion by refusing to allow substitution of an inadequate class representative, reasoning that denial would waste years of discovery and undermine the efficient administration of justice.

Still other withdrawals are structural. Class actions are slow. Litigation that appears manageable at filing can stretch on for years. Courts have repeatedly acknowledged that a named plaintiff's waning interest or inability to continue doesn't defeat the class claims. And rightly so. The adequacy requirement exists to ensure fair representation—not to conscript unwilling litigants into indefinite service. As the Second Circuit has explained, unnamed class members' interests "should not be ignored when circumstances deprive the party that represents them of her interest." See *Klein ex rel. Qlik Technologies v. Qlik Technologies*, 906 F.3d 215, 222 (2d Cir. 2018).

Requests for substitution often draw the most skepticism when they arise late—after class certification, after summary judgment, or on the eve of trial. But timing alone doesn't transform substitution into gamesmanship. To the contrary, late-stage substitution is often when the court's fiduciary obligations are at their peak.

Once a class is certified, the litigation no longer belongs solely to the named plaintiff. The certified class acquires a "legal status separate from and independent of the interest asserted by the named plaintiff." See *Whitlock v. Johnson*, 153 F.3d 380, 384 (7th Cir. 1998). At the same time, absent class members are bound by the proceedings and may be precluded from pursuing their own claims. In that posture, leaving a certified class without a representative isn't a neutral procedural outcome; it risks extinguishing claims without adjudication.

Judge Edward Chen's ruling in *Sloan v. General Motors* illustrates the point. There, after years of litigation, the certified class representative sought to withdraw. General Motors moved to decertify the class, arguing that substitution at such a late stage would be prejudicial and improper. Chen disagreed, holding that substitution would neither prolong the case nor prejudice the defendant. See *Sloan v. General Motors*, No. 16-CV-07244-EMC, 2020 WL 5517244, at *8 (N.D. Cal. Sept. 14, 2020). The timing of the request did not undermine substitution; it underscored the court's obligation to protect absent class members when the representative could no longer serve.

The same fiduciary concern animated Judge Mary Rowland's recent decision in *In re Hair Relaxer Marketing, Sales Practices & Products Liability Litigation*. There, the court granted plaintiffs' motion to substitute Michigan and California class representatives after the original plaintiffs withdrew for personal reasons. Overruling defendants' objections, Judge Rowland concluded that the substitutions were acceptable, nonprejudicial and sufficiently timely under Rule 23's liberal standard. See *In re Hair Relaxer Marketing, Sales Practices & Products Liability Litigation*, No. 1:23-cv-00818 (N.D. Ill. Dec. 22, 2025). Rule 23's adequacy requirement, the court recognized, exists to protect the class—not to provide defendants with a procedural escape hatch. See also *Mauldin v. Wal-Mart Stores,* No. 1:01-CV-2755-JEC, 2006 WL 739696, at *2 (N.D. Ga. Mar. 21, 2006).

That distinction has deep roots. In *Sosna v. Iowa*, the Supreme Court held that a class action does not become moot merely because the named plaintiff's individual claim expires after certification. 419 U.S. at 401. In *United States Parole Commission v. Geraghty*, the court went further, holding that a named plaintiff may appeal the denial of class certification even after his individual claim becomes moot. 445 U.S. 388, 404 (1980). These decisions reflect a core principle of aggregate litigation: The class' interests do not rise or fall with the fortunes of a single representative.

The procedural tools for substitution are neither obscure nor strained. Courts routinely rely on Rule 21, Rule 15's liberal amendment standard, and Rule 23's express authorization to modify certification orders as circumstances change. Together, these provisions reflect a system designed for flexibility, rather than rigidity.

Defense objections are familiar. One is that substitution prejudices defendants by prolonging litigation. But courts consistently require a showing of actual prejudice, not abstract delay. Where substitution doesn't alter the claims, expand discovery, or deprive defendants of substantive defenses, courts routinely find no cognizable harm. See *In re Hard Disk Drive Suspension Assemblies Antitrust Litigation*, No. 19-MD-02918-MMC, 2021 WL 5848055, at *2 (N.D. Cal. Dec. 9, 2021). Defendants, likewise, cannot use a plaintiff's withdrawal as a basis to terminate the entire action when other class members remain available to serve. See *Mauldin*, 2006 WL 739696, at *2.

Another objection is that substitution reflects inadequate vetting at the outset. That critique misconstrues Rule 23. Adequacy is assessed based on information available at the time the suit is filed. To be sure, circumstances do change. But Rule 23 demands vigilance, not clairvoyance. When discovery reveals problems, substitution reflects compliance with the rule—not evasion of it.

At bottom, substitution doctrine reflects a central insight of class action law: The device is meant to transcend the idiosyncrasies and vulnerabilities of individual claimants. Class actions would fail their purpose if the rights of absent members turned on whether a single representative could, years later, continue serving.

That's why courts properly view substitution not as a favor to plaintiffs counsel, but as a mechanism to fulfill their own fiduciary obligations to the class. Denying substitution when a representative must withdraw risks abandoning the very class the court has certified and undertaken to protect.

Requests to substitute a class representative are rarely welcome, often contested, and frequently misunderstood. But they are an essential feature of responsible class action litigation. When a named plaintiff must step aside, the question is not whether the class should be punished for that development, but whether the court will honor its obligation to protect the class it certified.

In most cases, the court should—and it does. Liberal substitution is not leniency. It is fidelity: to Rule 23, to absent class members, and to the principle that aggregate claims should rise or fall on their merits, not on the happenstance of personal circumstance.

NY Federal Judge Says Coinbase Isn’t a Seller for Most Crypto Transactions

law.com/newyorklawjournal/2026/07/31/ny-federal-judge-says-coinbase-isnt-a-seller-for-most-crypto-transactions

Coinbase can’t be sued by customers for selling unregistered securities for the vast majority of transactions on its platform, a Manhattan federal judge ruled, handing the cryptocurrency platform a massive win over users’ long-pending lawsuit.

The users, represented by Selendy Gay and Silver Golub & Teitell, alleged that Coinbase was selling unregistered securities in violation of Section 12(a)(1) of the Securities Act and several state blue sky laws.

But on Thursday, U.S. District Judge Paul Engelmayer ruled that Coinbase isn’t a seller under Section 12(a)(1) for transactions where Coinbase “matches” buy orders with sell ones through a near-instantaneous process. Although Coinbase maintains custody of the tokens, Engelmayer found that there was no point in the process where Coinbase takes an ownership interest in the tokens that can be passed on to users.

“Coinbase’s role in such processes closely parallels that of intermediaries in traditional securities markets who—despite taking custody and control of customers’ assets—do not gain ownership interests in those assets,” Engelmayer said in an 84-page decision.

The judge noted that “every iteration” of Coinbase’s user agreement explicitly states that users keep all ownership interests in their tokens. He further pointed out Coinbase's internal ledger, in which Coinbase records customers’ tokens as their own.

The plaintiffs alternatively argued that Coinbase acted as a seller by soliciting token sales. That argument also failed, with Engelmayer finding that the plaintiffs “overwhelmingly relied” on outside information to decide which assets to buy.

Coinbase was represented by Skadden, Arps, Slate, Meagher & Flom.

The users had sued over 60 tokens traded on Coinbase, including DOGE. The judge’s ruling blocks claims for matched transactions involving those tokens, which amount to 99.97% of the relevant activity.

But in a relatively small win, Engelmayer ruled that Coinbase was a statutory seller for inventory transactions, the orders that Coinbase uses its own inventory of assets to fulfill.

“Based on the undisputed evidence, the court finds Coinbase to have been a statutory seller with respect to all inventory transactions,” Engelmayer said. “This litigation will proceed on these claims, with discovery to resume on the remaining elements of these claims, including whether the tokens at issue qualify as securities.”

While this ruling only allows a sliver of the original case to proceed, the inventory transactions in the 60 covered tokens involved “at least $178 million,” according to the decision.

The users seek to represent a nationwide class of people who traded the 60 tokens on Coinbase from October 2019 onward. Their lawsuit, filed in 2021, argues that Coinbase violated federal and state securities laws by acting as an unregistered securities exchange and broker.

Counsel for the plaintiffs didn’t respond to a request for comment.

Shortly after the decision’s release, Coinbase chief legal officer Paul Grewal wrote on X that while he was pleased the court dismissed most of the claims, Coinbase would continue fighting the rest of the case.

“No self-respecting tiger dad would accept anything less,” Grewal wrote.

The lawsuit survives the U.S. Securities and Exchange Commission's own case against Coinbase, which regulators filed in 2023, but withdrew shortly after Donald Trump's return to the White House. On the campaign trail, Trump vowed to end the SEC's regulatory "war on crypto."

Reddit's DMCA Claims Against Perplexity, SerpApi Survive AI Scraping Challenge

law.com/newyorklawjournal/2026/07/31/reddits-dmca-claims-against-perplexity-serpapi-survive-ai-scraping-challenge

A Manhattan federal judge allowed Reddit to proceed with core claims that Perplexity AI and search-data provider SerpApi violated the Digital Millennium Copyright Act by using an automated scraping operation to bypass Google's anti-bot protections and obtain Reddit content at scale.

In a decision published on Friday, U.S. District Judge Paul Engelmayer of the Southern District of New York rejected most of the defendants' bid to dismiss the case, sustaining Reddit's claims that SerpApi circumvented a technological access control and supplied a circumvention service that Perplexity used to retrieve Reddit material for its AI-powered answer engine.

The ruling addresses a significant question for the AI economy: whether companies may use third-party scrapers to evade technological barriers and collect copyrighted online material in bulk without entering a licensing agreement, even when individual users can view the same material for free.

Engelmayer held that Reddit's theory could proceed.

He compared Google's SearchGuard system to facial-recognition technology programmed to open a home's door for residents but not strangers. "SearchGuard similarly differentiates," Engelmayer wrote.

A technological measure does not cease controlling access simply because it admits human users while blocking automated systems seeking wholesale access, he found.

"Nothing in the DMCA's text exempts from liability persons who circumvent" protections designed to prevent bulk access merely because the material remains available to an authorized individual, Engelmayer wrote.

The distinction could be important to online platforms seeking to license bulk access to their content while continuing to make it freely available to individual users.

"Today's ruling brings us one step closer to holding bad actors accountable," a Reddit spokesperson said.

“Reddit supports responsible access to public content, but we oppose companies that bypass our protections, ignore our rules, and profit off our communities without permission.”

“Redditors create some of the most valuable human conversations on the internet,” the spokesperson added. “We intend to protect them.”

Counsel for SerpApi and Perplexity did not respond to requests for comment.

The alleged circumvention began in Google’s search results, where Reddit content appears under a licensing agreement that authorizes Google’s access and imposes restrictions on its use. Reddit alleges Perplexity obtained the content without a license by using SerpApi to bypass Google’s anti-bot protections.

Google began using SearchGuard in January 2025 to block unrecognized automated requests through JavaScript challenges or CAPTCHAs. Human users using ordinary browsers can generally pass through the system, while automated bots are denied access.

SerpApi sells a tool that lets customers submit Google queries and receive structured search-result data. Reddit alleges SerpApi evaded SearchGuard by rotating IP addresses, mimicking human behavior and generating false browser identifiers.

Perplexity allegedly selected the queries, retrieved results containing excerpts from Reddit posts and loaded the material into a database used by its answer engine.

“In sum, as pled, SerpApi made the circumvention tool, and Perplexity used it to circumvent,” Engelmayer wrote. “Perplexity is thus more than a bystander to, or a downstream beneficiary of, SerpApi’s circumvention.”

Reddit says the arrangement allowed Perplexity to avoid entering a paid licensing agreement.

After Reddit sent Perplexity a cease-and-desist letter in May 2024, Perplexity’s citations to Reddit allegedly increased fortyfold. Reddit later tested its theory by creating a post containing an unusual hexadecimal string, making it available through Google but withholding it from other search engines.

Within hours, Perplexity allegedly returned the post’s contents in response to a query for the string.

“The rise of artificial intelligence has added a new dimension” to the problem Congress sought to address through the DMCA, Engelmayer wrote, as copyrighted works have become widely used to populate, train and source large language models.

Reddit says its platform contains billions of posts and comments representing nearly two decades of human conversation across hundreds of thousands of communities. The material is valuable to AI companies because it consists of continuously generated exchanges among human users.

The ruling does not determine that SerpApi or Perplexity violated the DMCA. At the dismissal stage, Engelmayer was required to accept Reddit's well-pleaded allegations as true and decide whether they stated viable claims.

Its significance lies in his recognition that the statute may distinguish between ordinary human access to publicly viewable material and automated access designed to harvest the same material in bulk. Engelmayer found SearchGuard plausibly qualifies as an access-control measure under Section 1201(a) of the DMCA, rejecting the argument that it cannot "effectively control access" because ordinary users can still reach Google's results.

He also found Reddit plausibly alleged that Google implemented the protection with authorization from Reddit and its users. Although the Reddit-Google agreement was not before the court, Reddit alleged its licensing arrangements restrict redistribution and generally limit AI uses of its data.

The court further held that Reddit plausibly alleged copyrighted material was involved. The question was not whether every Reddit post or search-result snippet was protected, Engelmayer said, but whether at least some extracted excerpts contained original expression.

Reddit alleged SerpApi accessed more than one billion Google search-results pages containing Reddit data during a two-week period. Given that volume, Engelmayer found it plausible that some excerpts were copyrightable.

The judge also rejected the argument that Reddit could not sue over material written by its users. The DMCA authorizes suit by "any person injured" by a violation, and Reddit plausibly alleged harm to its own copyrighted works, reputation and licensing business. Reddit says unauthorized scraping also undermines its deletion feature. Licensed partners must stop using deleted material, Reddit alleges, while unauthorized scrapers may continue retaining posts that users removed for privacy or other reasons.

Engelmayer also credited Reddit's lost-revenue theory, finding it plausible that SerpApi's service eliminated Perplexity's need to enter a paid licensing agreement. "The absence of such revenue is a classic Article III injury," he wrote.

The judge sustained claims against both defendants under Section 1201(a)(1)(A), along with a Section 1201(a)(2) claim accusing SerpApi of offering a circumvention product or service.

A New York civil-conspiracy claim also survived.

Engelmayer dismissed a separate Section 1201(b) claim, finding Reddit had not adequately alleged that SearchGuard protects copyright rights after access is obtained rather than controlling access in the first instance. He also dismissed Reddit's unjust-enrichment and unfair-competition claims as preempted by the Copyright Act.

Reddit is represented by Bartlit Beck and Wollmuth Maher & Deutsch. SerpApi is represented by Weil, Gotshal & Manges. Perplexity is represented by Keker, Van Nest & Peters and N. Read & Co.

The case is *Reddit v. SerpApi LLC*, Case No. 1:25-cv-08736, in the U.S. District Court for the Southern District of New York.

Mealey's Securities/D&O Liability - SEC Proposes New Regulation To Make E-Delivery Of Disclosures The Default

In Brief

The SEC proposed Regulation E-Delivery to make electronic delivery of disclosures the default method, eliminating the current opt-in requirement for issuers and market intermediaries.

Detailed Summary

The Securities and Exchange Commission proposed Regulation E-Delivery on July 16 to expand electronic delivery capabilities for issuers, broker-dealers, investment advisers, and others required to deliver regulatory disclosures. The proposal would eliminate the current requirement for affirmative investor consent before using electronic delivery, replacing the existing opt-in approach with an opt-out framework. Under the proposed rule, covered entities would satisfy delivery requirements if the recipient provides an electronic address, receives prominent disclosure about electronic delivery, and does not opt out. The proposal would rescind Rule 30e-3 under the Investment Company Act of 1940 and amend certain rules in Regulations 14A and 14C under the Securities Exchange Act of 1934, along with SEC Rule 14d-5. All three commissioners support the proposal. The public comment period will remain open for 60 days following publication in the Federal Register.
This summary is generated by AI technology. AI generated content should be reviewed for accuracy.

Body

The Securities and Exchange Commission has proposed Regulation E-Delivery (Reg E-Delivery) to expand the ability of issuers, broker-dealers, investment advisers and others to satisfy information delivery requirements using electronic delivery.

(SEC's proposed Reg E-Delivery available 57-260810-001X

Proposed Reg E-Delivery fact sheet available 57-260810-002X)

In the July 16 proposal, the SEC stated that issuers, market intermediaries and others would not be required to obtain affirmative consent from investors before using e-delivery. The proposal noted that under current laws and regulations, many regulatory disclosures and reports must be delivered in paper form unless the person receiving the disclosures and reports affirmatively elects to receive them electronically. If the rule is adopted, Reg E-Delivery would supersede the SEC's current electronic-delivery guidance based on the opt-in approach.

The commission stated that the proposal draws on its experience and "reflects the significant advances in electronic communication technologies and the increased adoption of those technologies . . . that have occurred since the Commission's initial publication of guidance on the use of electronic media to deliver required regulatory documents and reports."

The proposal would address e-delivery of covered information, which would generally be defined as "any information required to be delivered to a covered recipient under the Federal securities laws." It would define covered entities to include "any person that has an obligation to deliver covered information to a covered recipient under the Federal securities laws." Additionally, covered recipients would include "any current or prospective customer, client, investor, security holder, counterparty, or similar recipient of information."

The proposed rule would establish conditions under which the SEC would consider the delivery requirements to have been satisfied by e-delivery. The proposed rule states that covered entities would satisfy these requirements if "(1) the covered recipient has provided an electronic address; (2) the covered entity has provided a prominent disclosure to the covered recipient that it will send covered information to the electronic address provided; and (3) the covered recipient has not opted out of e-delivery." The SEC stated that the conditions reflect its understanding of common e-delivery practices and are "designed to help ensure that materials are delivered in a user-friendly format while also protecting personal financial information." Additionally, the proposed conditions would provide relevant information about the process to opt out of e-delivery and receive paper copies of covered information upon request, as well as the process to update an email address.

The proposal also stated that to facilitate the proposed regulation, the SEC is proposing to rescind Rule 30e-3 under the Investment Company Act of 1940, 17 C.F.R. 270.30e-3, and amend certain rules in Regulations 14A and 14C under the Securities Exchange Act of 1934, 17 C.F.R. 240.14a and 240.14c, and SEC rule 14d-5, 17 C.F.R. 240.14d-5. The SEC would be making these amendments to facilitate the proposed regulation.

Commissioners' Support

The proposed Reg E-Delivery has the support of all three commissioners.

SEC Chairman Paul S. Atkins stated that proposing that electronic delivery to be allowed to become the default delivery method is another step toward a more modern regulatory framework. Atkins further stated that the world has changed significantly since the SEC's delivery requirements were first adopted.

Commissioner Mark T. Uyeda noted that research done by the Office of Investor Research within the Commission's Office of the Investor Advocate found that a majority of investors prefer disclosure documents to be delivered electronically. He stated that this shows that delivering information via paper unless an investor opts-in to receive information electronically does not reflect how most investors prefer to receive information.

Commissioner Hester M. Peirce stated that an e-delivery default should lower costs and allow the incorporation of technological advances in order to improve investor engagement with the provided information. She said this should be just a first step toward allowing registrants to design disclosure with new technologies.

The public comment period will be open for 60 days after the proposed rule's publication in the Federal Register.

California's highest court rules for Gilead in 'duty to innovate' case

reuters.com/world/californias-highest-court-rules-gilead-duty-innovate-case-2026-08-03

Aug 3 (Reuters) - California's highest court on Monday ruled in favor of Gilead Sciences (GILD.O), opens new tab in a closely watched case addressing whether manufacturers of drugs that are considered safe must try developing drugs that could be safer.

In a 6-1 decision, the California Supreme Court ordered the dismissal of negligence claims against Gilead by an estimated 24,000 patients using an HIV drug it produced, over its decision more than 20 years ago to stop developing an alternative drug that had fewer side effects.

"What today’s decision declines to do is recognize, for the first time anywhere, sweeping liability for injuries caused by a concededly nondefective drug because the manufacturer allegedly failed to make a different drug available sooner," Justice Joshua Groban wrote for the majority. "Imposing such liability would create substantial burdens and would risk adverse consequences for pharmaceutical innovation, public health, and patient safety."

Lawyers for the patients did not immediately respond to requests for comment.

"Today’s decision is a victory for all those working to develop improved medical treatments and new medicines," Gilead said in a statement. "The California Supreme Court's decision supports American innovation, allowing companies to continue pursuing breakthroughs for patients and consumers."

The case was closely followed in the pharmaceutical industry, addressing whether drugmakers should sacrifice profit on successful products by being required to spend money to develop and quickly commercialize alternative products, sometimes called a "duty to innovate."

Critics have said imposing that duty would make drug development too costly, punish manufacturers by capping profits from successful drugs, and deprive patients of needed treatments that work.

HIV drugs accounted for 70% of Gilead's $29.4 billion in 2025 revenue.

DRUG SOUGHT BY PATIENTS NOT DIFFERENT ENOUGH

The case was brought by HIV patients who took Gilead drugs made with tenofovir disoproxil fumarate, or TDF.

Those drugs won U.S. approval in 2001 despite possible side effects including kidney dysfunction and bone problems.

Gilead soon began testing tenofovir alafenamide fumarate, or TAF, which was similar to TDF but had fewer side effects.

The Foster City, California-based company stopped developing TAF in 2004, however, after concluding its effectiveness and safety were not different enough to justify the expense.

The patients said TDF's side effects required Gilead to do better.

They also accused Gilead of delaying TAF's commercialization for nearly a decade to maximize profit, and timing it to TDF's patent exclusivity expiring in 2017.

During oral arguments in May, patients' lawyer Holly Boyer said Gilead was "willing to accept the suffering of tens of thousands of patients with HIV forced to endure a drug that was destroying their kidneys and breaking their bones, all so that Gilead could make more money, $27 billion more."

Gilead's lawyer, Joshua Rosenkranz, countered that the company focused on TDF because it achieved "the holy grail" of being a once-a-day pill that saved millions of lives.

AstraZeneca investors balk at prospect of $400 billion Bristol Myers pharma deal | Business Information & News | FE

LONDON, Aug 3 (Reuters) - AstraZeneca investors punished the pharmaceutical firm on Monday over reports of merger talks with U.S. rival Bristol Myers Squibb that could make one of the world's biggest drugmakers with a combined value of nearly $400 billion.

Shares in AstraZeneca closed down some 9%, the biggest drop since 2020, as investors and analysts said Britain's biggest drugmaker had little need for a transformative acquisition despite potential cost benefits. Bristol Myers shares slipped less than 1% in early trading.

A deal, if confirmed, would create the world's fourth-largest drugmaker by market value and the largest by revenue, in potentially one of the biggest M&A deals ever, combining a top European pharmaceutical firm with a major U.S. rival.

An AstraZeneca spokesperson declined to comment on Monday. Bristol Myers, which is headquartered in New Jersey, did not respond to a request for comment.

"The only advantage for AstraZeneca in this rumoured combination with BMS seems to be to accelerate its U.S. footprint and sales," said Lucy Coutts, investment director at JM Finn, an AstraZeneca shareholder.

"On balance, BMS shareholders would be the winners of any combination with AZN and so this news will undoubtedly be received coolly by AZN shareholders."

A person familiar with the matter told Reuters that AstraZeneca and Bristol had held talks, confirming an earlier Financial Times report. On Friday, the two had a combined market capitalisation of nearly $400 billion, with AstraZeneca valued at $264 billion and Bristol Myers at $133 billion.

INVESTORS ASK IS THIS PHARMA'S FIFA PRIVATISATION MOMENT?

Analysts and investors questioned the logic of a deal for AstraZeneca, which has been one of the most successful companies in the sector under CEO Pascal Soriot's 14 years at the helm.

Markus Manns, portfolio manager at Union Investment, an AstraZeneca shareholder, said a deal "does not make strategic or financial sense" and that it would disrupt a "well-run company with a full pipeline."

"If the merger rumours prove to be true, this would represent the pharmaceutical industry's equivalent of the FIFA privatisation moment," added Manns, referring to FIFA's now abandoned plans to sell off a World Cup stake. "(That is to say a) poorly conceived proposal that would be met with considerable bewilderment by many market participants."

Lukas Leu, portfolio manager at AstraZeneca shareholder ATG Healthcare, said a deal could boost margins through cost synergies and expand reach in neuroscience and cell therapy, but questioned how a combined firm would position competing drugs.

"I am not a big fan of mega-mergers, it kills innovation and agility, and would be growth-dilutive for AstraZeneca in the near term," he said.

ASTRAZENECA PIVOTS TOWARDS THE UNITED STATES

One attraction for AstraZeneca could be further expanding its presence in the United States, already its biggest market.

AstraZeneca this year completed a direct listing on the New York Stock Exchange, and a Bristol Myers deal would effectively mean a British company buying a major U.S. pharmaceutical champion.

Bristol Myers derives the majority of its revenue from the U.S., where it has one of the largest commercial footprints.

A portfolio manager at a top-20 AstraZeneca shareholder, who commented on condition of anonymity, said that while "there may be an appeal to increasing U.S. exposure", such a deal "would be a surprise given Astra management has consistently backed the business to grow organically through R&D delivery".

"Consensus is that Astra has a stronger pipeline and less patent expiry pressure than BMS, so why dilute that and reduce the growth outlook?"

Since President Donald Trump returned to office, AstraZeneca has invested tens of billions of dollars in U.S. manufacturing and cultivated close ties with the administration as the company pursues an ambitious goal of generating half of its targeted $80 billion in annual revenue by 2030 from the U.S. market.

It generated about $59 billion in revenue last year.

Sean Conroy, an analyst at Shore Capital, said a deal could also help AstraZeneca address the patent cliff it faces after 2030 and strengthen its oncology business, although he cautioned that investors were "not often fans of mega mergers of this ilk".

REIT fraudsters reaped $152 million from thousands of investors, SEC says | Secondary Sources | National

(July 31, 2026) - The Securities and Exchange Commission has sued two founders of a Florida-based real estate investment trust for allegedly defrauding more than 5,500 retail investors nationwide of $152 million.

Securities and Exchange Commission v. RAD Diversified REIT Inc. et al., No. 26-cv-2186, *complaint filed* (M.D. Fla. July 29, 2026).

The SEC's complaint, filed July 29 in the U.S. District Court for the Middle District of Florida, says RAD Diversified REIT Inc. and founders Brandon Mendenhall and Amy Vaughn falsely promoted an opportunity to earn up to 20% investment returns.

In reality RAD lost millions each year, and Mendenhall and Vaughn misappropriated nearly $5 million in investor funds for their personal expenses, the suit says.

The U.S. Attorney's Office for the Middle District of Florida also announced criminal charges against Mendenhall on June 1. He faces one count of mail fraud, which carries a maximum sentence of 20 years in federal prison if convicted.

The indictment alleges Mendenhall inflated his personal income on a home mortgage application, misrepresenting that business operating accounts for investment funds were his personal income.

Mendenhall pleaded not guilty June 5 and is scheduled for trial later this year. *United States v. Mendenhall*, No. 26-cr-192, *plea entered* (M.D. Fla. June 5, 2026).

False profits, personal jets

According to the SEC, from November 2019 to March 2024, Mendenhall and Vaughn lured investors to their REIT with an extensive marketing campaign that combined high-pressure tactics, Christian values and American patriotism.

The defendants claimed that "zero investors have ever lost money" by investing in RAD, the suit says. However, the company suffered millions of dollars in annual losses, including at least $31 million in 2022 and $22 million in 2023, according to the complaint.

They also touted an ever-increasing stock price that purportedly rose 150% from 2019 to 2023, the SEC says.

The defendants claimed that the stock price was based on independent valuations of RAD's real estate assets, the suit says. But the valuations were calculated by Mendenhall's brother, who had no meaningful experience, and inaccurately reported RAD's mortgage liabilities and net asset value, the SEC alleges.

Mendenhall and Vaughn also diverted approximately $54 million in investor funds to The Seminar Solution LLC, a company they controlled, the complaint says.

They spent nearly $5 million from Seminar Solution's and RAD's accounts on personal expenses, including private jet flights, luxury clothing and jewelry, tax payments, and nanny services, the SEC says.

The company routinely denied or ignored redemption requests while assuring investors of liquidity, until they froze redemptions entirely in February 2024, according to the suit. RAD filed for Chapter 11 bankruptcy in March 2026, the complaint says.

The eight-count complaint asserts violations of the anti-fraud provision in the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b), SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, and Section 17(a) of the Securities Act of 1933, 15 U.S.C.A. § 77q(a), which prohibits false or misleading statements in connection with an offer or sale of securities.
SEC attorney Russell Koonin represents the agency, which seeks permanent injunctions barring further violations of those provisions. The SEC also requests civil penalties, disgorgement with prejudgment interest, and officer-and-director bars against Mendenhall and Vaughn.

Assistant U.S. Attorney Merrilyn Hoenemeyer represents the government, and Mark P. Rankin represents Mendenhall in the criminal case.

Stellantis to recall 1.5 million Ram 1500 pickup trucks over seat belt issue | Business Information & News | FE

Stellantis to recall 1.5 million Ram 1500 pickup trucks over seat belt issue

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WASHINGTON, July 31 (Reuters) - Chrysler-parent Stellantis said Friday it will recall just over 1.5 million Ram 1500 pickup trucks worldwide over a seat belt issue.

The recall covers 2019–2026 Ram 1500 vehicles that may have been built with a second-row center or second-row driver side seat belt buckle anchor that was not properly attached to the vehicle body structure. The issue could impact the performance of the second-row seat belt system and increase the risk of injury to occupants. Stellantis is aware of one potentially related injury tied to the recall but no fatalities.

The recall includes 1.27 million vehicles in the United States, 156,000 in Canada, 15,000 in Mexico and about 75,000 outside North America.

The automaker will notify impacted vehicle owners to contact dealers to schedule an inspection. Dealers will inspect the second-row center and second-row driver seat belt buckle anchor and if needed properly attach it to the vehicle's body.

9th Circ. Seeks Nev. High Court Input In Live Nation Class Suit

law360.com/articles/2508416/9th-circ-seeks-nev-high-court-input-in-live-nation-class-suit

(July 31, 2026, 11:35 PM EDT) -- The Ninth Circuit Friday sought the Nevada Supreme Court's input on a proposed class action against Live Nation, certifying a question about whether an arbitration agreement is void under Nevada law if "the drafter reserves the unilateral right to modify the entire agreement 'at any time' without notice."

The case concerns plaintiff Erin J. Paxson's proposed class action against Live Nation Entertainment Inc. over its alleged refusal to grant refunds due to an incident at a 2022 Las Vegas music festival. A Nevada federal court sent the case to arbitration, prompting Paxson's appeal to the Ninth Circuit on the grounds that Live Nation subsidiary Front Gate Ticketing Solutions' terms of use gave it an "escape hatch" to avoid arbitration if it chose, while binding her to arbitration.

In particular, Paxson argued that the terms' arbitration clause was not enforceable because it gave Front Gate an immediate, unilateral right to modify the terms, thus making the agreement illusory.

During a hearing last month, the Ninth Circuit **expressed doubt** that the suit belongs in arbitration. But the court now seeks the Nevada justices' views on the matter.

Writing on behalf of a three-judge panel Friday, U.S. Circuit Judge Lucy H. Koh said that certifying its question to Nevada's highest court was warranted since an answer will likely be "determinative" and because there is no controlling precedent in Nevada's appellate courts.

Judge Koh said the question also presents "significant issues" and has "important public policy ramifications because the question is likely to recur."

"Unilateral modification provisions are a common feature of consumer agreements, and courts across the country have repeatedly confronted their effect on arbitration clauses within the agreements," Judge Koh wrote. "The enforceability of arbitration clauses in such agreements is therefore a matter of substantial importance to consumers and businesses transacting in Nevada."

Paxson initially filed the putative class action in Nevada state court, which Live Nation removed to federal court. Live Nationthen moved to compel arbitration under the terms on Front Gate's website, where Paxson purchased five tickets to the 2022 festival.

Paxson opposed Live Nation's arbitration bid, but the district court granted it in March 2025, leaning on Nevada's implied covenant of good faith and fair dealing and on two unpublished decisions from Nevada federal district court.

According to the district court, the implied covenant constrained Front Gate's modification authority. And according to the district court's interpretation of the terms, a modification also could not apply to accrued or pending claims.

The question the Ninth Circuit certified to the [Supreme Court of Nevada] Friday specifically asks if an arbitration clause within an agreement, under Nevada law, is "void for lack of consideration where the drafter reserves the unilateral right to modify the entire agreement 'at any time' without notice, effective immediately upon posting the modification, and where the unilateral modification authority does not expressly state that modifications do not apply to the arbitration clause or accrued or pending claims."

The Ninth Circuit said it was certifying the question because there is a "determinative question of contract formation under Nevada law that is not clearly answered by controlling precedent from Nevada courts."

The Supreme Court of Nevada's answer will further "likely be determinative of this appeal, the panel said.

"If the unilateral modification provision left Front Gate's promise to arbitrate illusory, then no contract was formed, there is no agreement to arbitrate, and we would reverse the district court's order granting the motion to compel arbitration," Judge Koh wrote. "If Nevada law would instead supply the missing consideration, the terms may be enforceable, and we would be more likely to affirm."

The Ninth Circuit put a pause on further proceedings in the case before the court pending a decision by Nevada's highest court on whether it will accept review and answer the certified question.

"We agree to accept and follow the decision of the Supreme Court of Nevada on the certified question," Judge Koh wrote.

Counsel for Paxson and Live Nation did not immediately respond to requests for comment late Friday.

U.S. Circuit Judges Sidney R. Thomas, Lucy H. Koh and Holly A. Thomas sat on the panel for the Ninth Circuit.

Paxson is represented by Joel S. Hengstler and Bradley J. Myers of The 702 Firm and Jonathan Lawrence Hilton of Hilton Parker LLC.

Live Nation is represented by Eric Y. Kizirian and Alexandra K. Christensen of Lewis Brisbois Bisgaard & Smith LLP.

The case is Erin J. Paxson v. Live Nation Entertainment Inc. et al., case number 2:24-cv-00907, in the U.S. District Court for the District of Nevada, and case number 25-2436, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Dorothy Atkins. Editing by Jay Jackson Jr.

KKR Buying Integer For $5.7B In Kirkland, Davis Polk-Led Deal

law360.com/articles/2508752

Al Barbarino

(August 3, 2026, 12:49 PM EDT) -- KKR said Monday that it will acquire medical device company Integer Holdings Corp. in an all-cash transaction with a roughly $5.7 billion enterprise value, with Kirkland & Ellis LLP and Davis Polk & Wardwell LLP advising on the transaction.

Under the agreement, Integer stockholders will receive $127 per share, a premium of approximately 51.8% to Integer's closing share price on April 29, the date prior to the company's announcement of a strategic review, according to a deal announcement.

Plano, Texas-based Integer is a medical device contract development and manufacturing organization focused on the cardio and vascular, neuromodulation and cardiac rhythm management markets.

The company provides medical device technologies including catheters, guidewires, implantable ports, neuromodulation devices, pacemaker batteries and implantable and external batteries, according to its website.

KKR, which had more than $750 billion in assets under management as of the end of March, according to its website, said it will make the Integer investment through its core private equity strategy, financing it with equity from KKR investment funds and committed debt financing.

In a statement, Max Lin, partner at KKR, called Integer's target industries "attractive, durable end-markets."

"We look forward to partnering with the management team and the 11,000 associates to build on Integer's position as a trusted strategic partner to leading medical device companies and emerging innovators," Lin said.

Upon completion, Integer will become a privately held company and Integer's common stock will be delisted from the New York Stock Exchange.

"KKR's deep healthcare expertise, long-term vision, and strategic growth orientation make them the right strategic partner to bring our business into its next chapter," Payman Khales, Integer president and CEO, said in a statement.

The Kirkland team advising KKR includes corporate partners Jennifer Perkins, David Klein, Dan Guerin and Steven Choi, with associates Stephanie Barbanell and Victor Simonte.

The Davis Polk M&A team advising Integer includes partner James P. Dougherty, counsels Joshua B. Pittell and Malik Khalil and associates Cameron Hood, Junie Khang and Daniel Tublin.

--Editing by Alyssa Miller.

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