Deep Dive
Boeing Victory, Blue Bell Trial Shape Board Oversight Duties
Aug. 17, 2026, 10:49 AM PDT

Summary by Bloomberg AI AI Generated

- A Delaware Chancery Court decision found no "bad faith dereliction of duty" by Boeing's directors in overseeing management's steps to address safety before a 2024 incident.
- The ruling confirms that Delaware law does not hold corporate fiduciaries liable merely because a general risk materialized, and that sustained or systemic failures are required for liability.
- The decision provides clarity to corporate directors on their oversight obligations under Delaware law, but a looming post-trial decision in the Blue Bell case could further define the required level of vigilance to avoid liability when safety risks materialize.

A Delaware Chancery Court decision dismissing an investor lawsuit against Boeing Co. could provide clarity to corporate directors wondering exactly how much board supervision of critical risks and operations they must show to avoid oversight claims liability.

The Aug. 13 opinion found no “bad faith dereliction of duty upon seeing a red flag” by Boeing’s directors when overseeing management’s steps to address safety before the 2024 incident where a door plug blew out of an Alaska Airlines 737 Max-9 jet in flight. “Delaware law does not hold corporate fiduciaries liable merely because a general risk materialized,” it said.

That “confirms what we advise boards,” Jim Beha of Baker Botts LLP said. “If you’re doing your job, you don’t need to be losing sleep” over worries that “something bad going’s to happen and they’re going to turn it into a *Caremark* claim.”

Named for the 1996 *In re Caremark Int'l Inc. Derivative Litig.* ruling, corporate oversight claims rarely succeed because liability requires sustained or systemic failures. A 2019 Delaware Supreme Court decision in the tainted ice cream case *Marchand v. Barnhill* reiterated *Caremark*'s bottom-line requirement, holding the complaint supported a reasonable inference that Blue Bell Creameries' board failed to make a good-faith effort to monitor mission-critical risks before a fatal listeria outbreak.

The Boeing shareholder lawsuit tested "the outer boundary of *Marchand*" with claims the board ignored red flags, said Case Western Reserve University law professor Anat Alon-Beck.

The Boeing ruling offers corporate boards a clearer benchmark for satisfying their oversight obligations under Delaware law — but the looming post-trial decision in the long-running Blue Bell case, with its allegations of total oversight failure, could further define just how much vigilance directors must show to avoid liability when safety risks materialize.

The derivative *Marchand* lawsuit proceeded to a first-of-its-kind trial in February, where Blue Bell leaders argued they provided adequate oversight before the 2015 outbreak in their ice cream products. Vice Chancellor Nathan A. Cook may issue a ruling later this year.

"The fear after *Marchand* was that your response to a red flag, every tiny red flag, had to be significant," said Charles Elson, a retired law professor who served on a Blue Bell special litigation committee.

Boeing's win "gives directors a little more comfort in the sense that everything is not necessarily going to be under a microscope every time," he said. "However, you've got to exercise vigilance and diligence."

Boeing Claims

Boeing settled a previous *Caremark* claim for $237.5 million in shareholder litigation following crashes of its 737 Max in 2018 and 2019.

The just-dismissed case claimed directors continued to ignore safety issues before the door blowout. That suit asked, "What happens when the board has a system, receives risk information, and allegedly responds inadequately to it?" Alon-Beck said. The court found Boeing's board "received information about staffing, quality, supply chain, factory health, production risks, corrective-action plans and other compliance matters."

In one of her last rulings for the Chancery Court, Judge Morgan T. Zurn said, "Even with a plaintiff-friendly eye, the Board received reporting on an ongoing risk that management was working up and iteratively addressing, not a red flag of persistent noncompliance requiring board action to avoid illegality and traumatic consequences."

Zurn was sworn in July 29 as a Delaware Supreme Court justice.

Books and Records

Zurn's opinion highlights the importance of rigorous board-level documentation of risk assessments, Beha said, noting that all the evidence she highlighted in her opinion came through a shareholder demand for internal corporate records. Chancery Court judges may fault lawsuits where plaintiffs haven't sufficiently investigated their claims, but companies can help themselves with good note-taking in the first place.

"These types of cases are the rare case where you have the ability to fulfill the evidentiary record in advance," Beha said. "If you're going to be doing things the right way, which you should be doing, you also should be making sure that you're documenting the fact that you're doing them."

A company with "no documentation showing that you sat down and tried to think through what the key risks were," such as airplane safety or food safety, is vulnerable to *Caremark* claims, he said.

Zurn found Boeing's directors "weren't so slacking in their responsibilities that liability should be imposed on them," Elson said.

Ice Cream Risks

At trial, Cook repeatedly questioned Blue Bell's directors and officers about gaps in their communications about food safety and compliance risks raised by employees and the US Army, an important customer. In closing arguments July 28, he challenged attorneys for Blue Bell's leadership to explain how the company's board satisfied the "rock bottom" requirements the state supreme court emphasized when it revived the case.

"The system that you're describing, based on loose, unwritten expectations that leave it to management's discretion about what to report regarding food safety — does that satisfy the duty to have a food safety reporting system that the Delaware Supreme Court described in its decision?" Cook asked.

Blue Bell directors' and officers' attorney James Yoch Jr. of Young Conaway Stargatt & Taylor LLP said the *Marchand* opinion reflected the earlier pleading stage of the case, while evidence and testimony presented at trial showed that food safety information was reported to the board. Those reports may not have included sanitation concerns raised by the Army, but the court, he argued, must find the directors knew they weren't discharging their fiduciary duties even if an utter oversight failure is proven.

A post-trial *Caremark* opinion would be a significant milestone for Chancery Court case law. But the outcome, "even if it's a negative outcome for Blue Bell, doesn't really add anything to the earlier decisions," Beha said.

"We've learned the lessons with Blue Bell from *Marchand*, and it's an extreme case, because any board that's even having this discussion" about safety risks "has gone past where Blue Bell was, based on the allegations."

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Cybersecurity Vulnerabilities Lead to Securities Suit Against Israeli Company

For many years, cybersecurity-related issues have been recognized as a potential source of D&O claims and liability. More recently, other D&O claims concerns, including artificial intelligence (AI), geopolitical issues, and even market manipulation allegations, have become more conspicuous, and cybersecurity-related issues have been less prominent. However, a securities suit filed earlier this month against Israeli-based web data collection company Alarum Technologies highlights that cybersecurity-related issues remain an important potential source of D&O claims and also shows how cybersecurity-related concerns continue to evolve. A copy of the August 5, 2026, complaint against Alarum can be found here.

Background

Alarum is a web data collection services provider. The company's American Depositary Shares (ADSs) trade on Nasdaq. The company operates a subsidiary called NetNut that manages a web data collection service. The complaint alleges that during the class period, Alarum detailed NetNut's and Alarum's "competitive advantages," including, among other things, the security and safety of the company's services.

On July 2, 2026, *Reuters* published an article entitled "Google disrupts NetNut proxy network used in malware operations," (here), which stated, among other things, that Google had weakened a network of internet-connected devices being used to conceal and route malicious online traffic, acting against the NetNut residential proxy operator." The article stated that the proxy networks were being used to mask the origin of the traffic and to bypass security defenses, in a way that is "frequently exploited for cybercrime."

Another media story published the same day, entitled "FBI Probes whether Alarum Unit is Behind Co-Opted Home Devices," stated that for more than a year, the FBI had been investigating whether the NetNut unit's network "had a role in linking customers' home internet devices without their consent into a network that people can use to disguise their locations." The article quoted one commentator as saying that "most users may not even notice the uninvited proxy internet squatters until the police come to their door investigating cybercrime coming from the home."

In response to these reports, the company paused traffic through the relevant networks, in a way that significantly reduced the company's services and that the company said was likely to have a material adverse impact on the company's operations and financial results. According to the securities complaint, the price of the company's ADSs declined by more than half on this news.

The Lawsuit

On August 5, 2026, a plaintiff shareholder filed a securities class action lawsuit in the District of New Jersey against Alarum and certain of its executives. The complaint purports to be filed on behalf of a class of investors who purchased the company's securities between March 20, 2025, and July 2, 2026.

The complaint alleges that during the class period, the defendants made false or misleading statements or failed to disclose that: "(1) an Alarum Technologies subsidiary, NetNut, was engaging in illegal activity by linking customer home internet devices into another network without the customer's consent; (2) this activity allows cyber criminals to conceal their locations; (3) the foregoing materially highlighted Alarum Technologies' legal exposure and materially threatened its business prospects; and (4) as a result, Defendants' statements about Alarum Technologies' business, operations, and prospects were materially false and misleading and/or lacked a reasonable basis at all times."

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

Discussion

As I noted at the outset, this new lawsuit is a reminder that cybersecurity-related issues remain an important potential source of D&O claims and liability. At the same time, however, this new lawsuit is quite a bit different from the kind of cybersecurity lawsuits filed in the past.

The typical allegations in prior cybersecurity-related securities suits would involve allegations that a bad actor had, unknown to the defendant company, infiltrated the company's networks and systems, and accessed private or confidential data. This new complaint alleges that the company's own allegedly improper actions created an environment that facilitated misuse of the company's proxy networks in a way that allowed third parties to mask their locations and potentially engage in cybercrime. The new lawsuit is, however, similar to prior suits in at least one way, in that it involves allegations that cybersecurity vulnerabilities facilitated the activities of third-party bad actors.

The lawsuit has only just been filed, and it remains to be seen how it will fare. It is worth noting that the complaint quotes extensively from the company's risk factor disclosures, in which the company repeatedly emphasized that the company's operations and financial performance would suffer if the company were to experience network security issues or regulatory concerns. It also seems plausible that the company was as blindsided by the apparent misuse of its proxy network as anyone was, which would certainly undermine the plaintiffs' allegations that the company acted with scienter to mislead investors.

In any event, this new complaint is a reminder that, even amidst ongoing discussion of the current securities litigation hot topics such as AI and geopolitics, cybersecurity issues remain an important potential source of D&O liability and claims.

Deep Dive

Data Center Boom Tests Long-Term Water Planning in Parched Areas

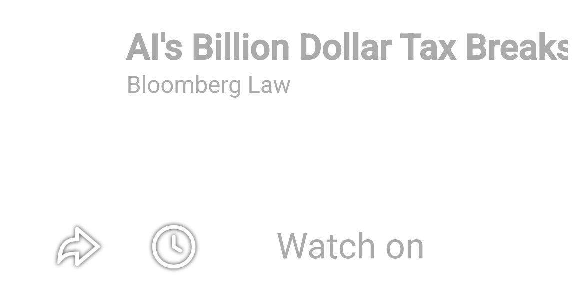
Aug. 18, 2026, 2:30 AM PDT

Summary by Bloomberg AI **AI Generated**

- Water utilities across the US say they're struggling to plan ahead during the data center boom because a lack of transparency and evolving technology is making it hard to know how much water they'll consume.
- Developers give limited information and water utilities keep water use data private, making it challenging for communities to pressure developers to be more water efficient.
- The industry defends its secrecy, with the Data Center Coalition saying developers are often cautious about publishing detailed water-use figures as it can reveal proprietary information that competitors could use.

Water utilities across the US say they're struggling to plan ahead during the data center boom because a lack of transparency and evolving technology is making it hard to know how much water they'll consume.

From water-starved Texas and Arizona to drought-prone Georgia and even water-rich northern Virginia, water planners and utilities acknowledge they're not yet feeling overburdened by the centers. But some say they can't be sure that will last because developers give limited information and water utilities keep water use data private.



AI's Billion Dollar Tax Breaks: Data Center Incentives Fuel Backlash

“We’re building many more much faster, much larger,” said Eric Masanet, a professor at the University of California-Santa Barbara who studies sustainability of emerging technologies. “A lot of companies and even jurisdictions want to build them as quickly as possible, and we’re doing that with a dearth of data.”

More than 1,200 data center campuses are operating nationwide — many with multiple facilities housing massive servers — and nearly 1,800 more are under development, according to tracking by Cleanview, a market intelligence company. Most of these facilities use water to both generate power and cool their servers.

The buildout adds to what was already a growing concern in some communities and states about water scarcity, especially in the Western US, which is rapidly drying out as the climate changes, according to a United Nations report published in June. But this year, drought is also ravaging eastern states, where planners say preparing for the AI boom is critical.

Texas Gov. Greg Abbott this month directed state regulators to audit the electricity and water demands of data centers under development before they can proceed. The Texas Water Development Board had asked 341 data centers this spring to report their 2025 water consumption; a week before the July 1 deadline, roughly 80% had failed to submit responses.

A 2022 water plan for the oft-parched Atlanta area didn’t mention data centers at all, said Danny Johnson, managing director of natural resources for the Atlanta Regional Commission. The updated water plan won’t be finished until 2028.

“If you asked any county or city how many data centers they’re going to allow in the next few years, they won’t have any idea,” Johnson said.

Water Demand Varies

Each data center’s water use varies based on size, processor and cooling system technology, energy source, location and other factors.

In a 2024 report, the Energy Department estimated that by 2028, all US data centers will directly consume about 223,000 acre-feet of water, which would equal only about 5% of the water California’s almond growers currently use in a year, said Sarah Porter, director of the Kyl Center for Water Policy at Arizona State University.

“It’s not enough water to get alarmed about, but that doesn’t mean the impacts are always negligible at any given location,” Porter said. “It’s really about tailoring the water demand for what works for the place.”

Even as annual water consumption across the industry trends downward as technology becomes more efficient, some water systems may face challenges when data centers’ water demands peak — such as on the summer’s hottest days, said Shaolei Ren, a professor of electrical and computer engineering studying AI systems and society at the University of California-Riverside.

Virginia has become a hub for the surging industry. Above, an Amazon Web Services data center in Aldie, Va. Photographer: Lexi Critchett/Bloomberg

It's not a common occurrence, Ren said. He cited Botetourt County, Va., north of Roanoke, where Google initially projected it would need 2 million gallons of water per day to serve the billion-dollar data center campus it proposed for the area — and said that could rise to 8 million gallons per day.

The Western Virginia Water Authority, the local utility, at first said that would exceed its long-range water supply, according to a 2025 planning agreement the authority struck with county officials.

Michael McEvoy, the authority's executive director, clarified this week that the site will use 2 million gallons of water per day only at peak times — the hottest days of the year. Most of the time, it will use just over half that, if not less, and the region has plenty of water for it, he said.

Pipe capacity, not water supply, is the biggest challenge for providing Google with water, and they have to pay for the infrastructure upgrades, McEvoy said.

The tech giant didn't respond to a request for comment.

Defending Secrecy

The lack of public information makes it challenging for communities to pressure developers to be more water efficient, Masanet said.

But water utilities say they get a clear idea of existing and proposed data centers' water demands through the permitting and metering processes, even if they don't share it.

"When they request a service from us, they have to tell us how much water they're going to be using, how much they want," said Donovan Burton, senior vice president of water resources and government relations for the San Antonio Water System. Even if data centers apply to tap the city's recycled wastewater system for cooling, "they have to sign a contract that says they're going to use 'X' amount of water," he added.

The industry defends its secrecy.

“Developers are often rightfully cautious about publishing detailed water-use figures more broadly, as it can reveal proprietary information that competitors could use or even carry security concerns,” said Dan Diorio, executive vice president for the Data Center Coalition, the trade group supported by many of the biggest players in the tech industry.

He said developers are investing in more efficient cooling technologies and are committed to working transparently with local utilities and regulators.

But the tech is evolving quickly, said Masanet.

“If you apply yesterday’s assumptions to tomorrow’s data centers, you’ll probably get it wrong,” he said.

Purple Pipes, Infrastructure Worries

Data centers pose different water planning challenges depending on the location.

Around Atlanta, a metro region of 6.5 million people that’s also one of the least water secure areas of its size in the US, the commission responsible for regional water planning says the tidal wave of data center construction —174 operating and planned complexes so far — happened quickly and with little information about each site’s water needs.

“We have understood that the industry is leading toward a closed-loop cooling process,” said Johnson, the commission’s managing director, referring to the practice of a facility reusing its water and not needing fresh intake. “It’s a positive trend, but it’s anecdotal.”

San Antonio is another region that has until recently suffered from a years-long extreme drought, but its water system has had success serving about 23 data centers through its “purple pipe” network, which re-distributes wastewater.

So far, data centers have been consuming just 0.1% of the city’s potable water and about 1.25% of the city’s recycled water, Burton said.

That demand is projected to rise up to 30% of San Antonio’s remaining recycled water reserves, he said, but the city is planning to use a brackish water desalination system to supplement its existing groundwater sources.

In Prince William County, Va., part of the greater Washington area, planners see plenty of water for the foreseeable future, but say they need to focus on what infrastructure might be needed to support the AI boom.

The water use of the county’s 55 data centers can vary radically — up to 20 times the demand of the least water-intensive center — depending on the type of cooling tech the developer prefers, said Don Pannell, deputy general manager and chief operations officer for Prince William Water, the local utility.

The pipes and pumping stations have to be built to accommodate a data center’s highest-possible demand, and parts of the county have limited pipes that can’t support demand for high volumes.

So far, if the infrastructure isn't there, data center developers will pivot to a more water-efficient technology. But as the county prepares for long-term data center growth, it's essential to accurately forecast their water needs to avoid building infrastructure that won't get used, he said.

"If we forecast demand that's higher than what's realized, that's where you have concern about stranded assets where you might have built facilities for a larger demand than what comes to bear," Pannell said.

Challenges Out West

In Arizona, the state's dependency on the drying Colorado River and unique state laws pose a different outlook for data centers' water use. The federal Bureau of Reclamation recently required Arizona to cut its share of water from the river by up to 77% in the driest years.

A section of the Central Arizona Project, a series of aqueducts and tunnels designed to bring water from the Colorado River to central and southern Arizona.
Photographer: Rebecca Noble/Bloomberg

Developers in Arizona's largest urban areas are already constrained by a law that requires them to prove they have a 100-year supply of water before construction can begin, and they have to verify that every 15 years, according to Porter, the ASU researcher.

That requirement "has prompted some of the largest water providers to implement high-volume-water-user ordinances, so they're very much out ahead of this issue," she said.

In Phoenix, for instance, the largest users are required to submit a water conservation plan and use some recycled water, Phoenix Water Services Department spokesman Michael Gertzman said.

Ultimately, banning data centers because of their water demands isn't the best for the state's economy, Porter said. The state needs to consider helping other industries, especially agriculture, use less water.

"We're not trying to get to a zero-water economy," Porter said. "If we're going to move to a more data center-rich economy, how do we get to a more sustainable version of that?"

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Disney Sues FCC Over 'Retaliatory Campaign' Tied to Licenses (1)

Aug. 18, 2026, 7:12 AM PDT

Summary by Bloomberg AI AI Generated

- Walt Disney Co.'s ABC network sued the Federal Communications Commission for allegedly waging an illegal "retaliatory campaign" against the broadcaster to punish it for editorial decisions disliked by the Trump administration.
- The FCC is violating ABC's First Amendment rights and abusing the government's power by launching "pretextual regulatory investigations" and threatening its broadcast licenses with an early renewal process, the network said.
- ABC is seeking a court order barring the FCC from taking further action on its early license renewal applications or attempting to alter the network's exercise of its editorial discretion, blasting government censorship as "deeply un-American".

Walt Disney Co.'s ABC network sued the Federal Communications Commission for allegedly waging an illegal "retaliatory campaign" against the broadcaster to punish it for editorial decisions disliked by the Trump administration.

The FCC is violating ABC's First Amendment rights and abusing the government's power by launching "pretextual regulatory investigations" and threatening its broadcast licenses with an early renewal process, the network said in a complaint filed Tuesday in federal court in Washington.

The FCC initiated a nearly unprecedented license scrutiny in April after it said Disney was not responsive enough to inquiries about its diversity and inclusion practices. The move to start a review of the licenses at least two years early came just a day after President Donald Trump urged ABC to fire late-night host **Jimmy Kimmel** over comments about the president and first lady last spring.

In its suit, ABC blasted government censorship as "deeply un-American." The network is seeking a court order barring the FCC from taking further action on its early license renewal applications or attempting to alter the network's exercise of its editorial discretion.

“Again and again, the administration has attacked ABC’s speech - the stories its journalists report and the viewpoints its network programs air,” ABC said in the suit. “Over time, those attacks have escalated into express demands that ABC be stripped of its broadcast licenses because of its speech.”

Disney’s suit reflects broader concerns about interference and retaliation from the Trump administration when news coverage or policy decisions clash with his vision. Similar allegations have been made in lawsuits by US universities and law firms targeted by the government, while several of Trump’s perceived enemies who have been hit with criminal charges have also alleged they were targeted unlawfully.

Trump and his administration have routinely clashed with ABC and other media outlets. Disney agreed to pay $16 million in 2024 to settle a lawsuit brought by Trump against ABC News and anchor George Stephanopoulos. The president and FCC Chairman **Brendan Carr** also pressured Disney to fire **Kimmel** last fall after comments the late night host made about political activist Charlie Kirk and the FCC warned Disney of potential regulatory consequences if it didn’t.

Truth Social Post

The new complaint cites a Truth Social post in which Trump said ABC’s “very valuable Broadcast Licenses” should be terminated because its news programs and late night shows are “almost 100% Negative to President Donald J. Trump, MAGA, and the Republican Party.”

The FCC didn’t immediately respond to a message seeking comment.

The Supreme Court has repeatedly reaffirmed robust free-speech rights in the US, the network said in the complaint, ruling as recently as two years ago in unanimous decision that the government cannot “use the power of the State to punish or suppress disfavored expression.”

Even so, the FCC has repeatedly threatened action against ABC in response to broadcasts disfavored by the Trump administration, according to the suit.

Carr has initiated two separate inquiries into Disney — one over the broadcast licenses and another concerning the talk show *The View* — a program that has been known to frequently criticize Trump policies. Carr has also launched a probe into Disney’s diversity, equity and inclusion initiatives, to see if they violated laws on unlawful discrimination.

Carr has “openly claimed credit” for the “speech-related concessions” made by other media companies since the start of Trump’s second term, ABC said in the suit. The network cited a speech by Carr at the Conservative Political Action Conference, where he said that “President Trump took on the fake news media and President Trump is winning.”

“Look at the results so far,” Carr said in the speech. “PBS defunded. NPR defunded. Joy Reid, gone from MSNBC. Sleepy-Eyed Chuck Todd, gone. Jim Acosta, gone. John Dickerson, gone. Colbert is leaving. CBS is under new ownership, and soon enough CNN is going to have new ownership as well.”

Eaton Fire Lawyers Predict Edison Settlements to Stall Trial

Aug. 17, 2026, 5:07 PM PDT

Summary by Bloomberg AI

AI Generated

- Lawyers for Eaton Fire victims are worried that Southern California Edison will pay off homeowners to prevent the scheduled January trial from commencing.
- A judge directed attorneys to randomly select eight households for the first bellwether trial, with an additional eight homes selected in reserve.
- Plaintiffs' attorneys expressed concern that Edison may settle with the select homeowners as part of a strategy to postpone the trial and avoid a public spectacle.

Lawyers representing Eaton Fire victims expressed worry that Southern California Edison will pay off homeowners, preventing the scheduled January trial from commencing before a jury takes the oath.

During a Monday hearing in California Superior Court of Los Angeles County, Judge Laura Seigle directed attorneys in the sprawling mass tort to randomly select eight households for the first bellwether. An additional eight homes will be selected in reserve in case members of the initial group cannot go to trial.

The sprawling civil litigation includes around 18,000 households seeking restitution from a fire that charred more than 14,000 acres, damaged or destroyed more than 10,000 structures, and killed 19 people. Plaintiffs have held Edison responsible for starting the blaze. Video footage showed electricity jumping from one of the company's power lines in Altadena, Calif., and then flames bursting out minutes later from the same location.

The eight bellwethers will be selected by Aug. 24 from a pool of 75 households. Four homes will be among those completely destroyed in the fires, while two will be those with partial damage, and two others with smoke and ash around their perimeters.

Plaintiffs' attorneys expressed concern about the company settling with these select homeowners as part of a larger strategy to postpone the trial. That would allow Edison more time to prepare and settle the case, delaying or potentially avoiding a public spectacle.

Amanda Riddle of Corey, Luzaich, de Ghetaldi & Riddle LLP said that it would be easy for a large company to "pick off" 16 plaintiffs.

"Their strategy is very clear. They've requested numerous delays," said her co-counsel, Gerald Singleton of Singleton Schreiber LLP. He said that if "past is prologue," the company would pay the homeowners before jurors were selected.

Representing Edison, Douglas Dixon of Hueston Hennigan LLP said later in the hearing the company would file a motion to continue the first trial.

Seigle set trial dates in May and September for the next cases in the bellwether. She also delivered a blow to Edison, which is suing Southern California Gas Company and others in an attempt to shift the blame.

Justin Goldstein of Frost LLP argued for Edison that excluding SoCal Gas from the trial would prejudice the jury into placing a larger portion of the liability on his client.

Seigle ultimately did not honor Goldstein's request to include SoCal Gas as a party in the trial. Edison will be allowed to deploy affirmative defenses against it, but they likely won't be present on the jury form about allocating blame.

Plaintiffs and Edison are inching toward creating the framework for mediation. They are engaging two former local Superior Court judges — Louis Meisinger and Daniel Buckley — to help them develop protocols for settlement discussions.

The case is Gursey v. Edison, Cal. Super. Ct., No. 25STCV00731, 8/17/26 .

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Egg Producer Unwinds Class Status in Hen Welfare Deception Suit

Aug. 17, 2026, 12:04 PM PDT

Summary by Bloomberg AI

AI Generated

- The US Court of Appeals for the Ninth Circuit reversed class certification in a consumer deception suit against The Happy Group Inc. over its "free range" and "pasture raised on over 8 acres" egg advertising.
- The consumers couldn't show a dominant industry standard for those terms after the lower court excluded their expert's opinion, which the court said was unreliable.
- The Ninth Circuit said the consumers needed to show that "pasture raised" refers to conditions inconsistent with Happy Egg's practices, but they couldn't do so without their key expert's opinion.

The Happy Group Inc. convinced a federal appeals court Monday to reverse class certification in a consumer deception suit alleging cartons under its Happy Egg brand misleadingly advertised its eggs as coming from “free range” and “pasture raised on over 8 acres” hens.

The consumers couldn’t show there was a dominant industry standard for those terms after the lower court properly excluded their expert’s opinion, the US Court of Appeals for the Ninth Circuit said, reversing class certification for the buyers.

The egg buyers alleged that the carton statements meant Happy Egg was deceptively representing that its eggs met hen welfare standards from the American Humane Association and Humane Farm Animal Care.

The lower court correctly excluded as unreliable opinions from Dr. Craig Morris about how a reasonable consumer understands the term “pasture raised.”

“His methodology consisted of online research and taking pictures of egg cartons in a grocery store near his home,” said Judge Daniel A. Bress. “This analysis left much to be desired.”

That methodology didn’t meet the standards for an expert witness evaluating consumer perceptions of egg industry standards, Bress added.

Additionally, Morris didn't cite his professional experience while discussing egg standards and at his deposition said he wasn't an expert in egg standards, Bress said.

Without Morris' opinion, the consumers didn't show that common questions of deception predominated, the Ninth Circuit said.

The buyers' theory of deception was that reasonable consumers are deceived by Happy Egg's "pasture raised on over 8 acres" statement because it's inaccurate based on the AHA and HFAC standards. But without Morris' opinion, the plaintiffs don't have common proof connecting the allegedly dominant industry standards to consumer perceptions, Bress said.

The Ninth Circuit rejected the consumers' argument that they didn't need to show a reasonable consumer would know about the AHA and HFAC standards.

"That is contrary to how plaintiffs have consistently advanced their claims," Bress said.

Even accepting the consumers' attempt to alter their theory, "their allegation here is not that the statement 'pasture raised on over 8 acres' is factually false, but that it is deceptively misleading because Happy Egg failed to comply with the dominant industry standards for pasture-raised eggs," Bress said.

That meant that, at a minimum, the consumers needed to show that "pasture raised" refers to conditions that are inconsistent with Happy Egg's practices.

"With their key expert sidelined," the consumers couldn't show they had enough evidence to show "pasture raised" has a generally accepted meaning.

Judge Salvador Mendoza Jr. and Judge Danny J. Boggs, sitting by designation from the US Court of Appeals for the Sixth Circuit, joined the opinion.

The consumers were represented by Wand Law Firm PC and Abiri Law PC. Happy Egg was represented by Venable LLP.

The case is Rusoff v. The Happy Group Inc. , 9th Cir., No. 24-7706, 8/17/26 .

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Short sellers reap $2bn profit as modular nuclear reactor stocks tumble

FT ft.com/content/a2f0e0f8-9350-4124-af77-62219e77e777

Short sellers have reaped large profits from betting against small modular nuclear reactor companies, as the collapse of the “hype cycle” that had sent their share prices soaring wipes billions off their market value.

Funds made an estimated $2.1bn shorting three stocks — US-listed NuScale Power, Nano Nuclear and Sam Altman-backed Oklo — over the past year, according to data provider S3 Partners.

The three companies, which are lossmaking and have little or no revenue, surged last year as investors raced to capitalise on growing interest in nuclear energy among AI hyperscalers looking for new sources of power. Regulatory changes and funding announcements from the Trump administration also helped the sector.

But a total of $30.3bn has been wiped off their collective market value since their peak in October last year amid growing concerns over the lack of immediate revenue and the long build-out timelines for the technology.

“The stocks were overinflated in price, based on speculation,” said Adam Stein, director of nuclear energy innovation at the Breakthrough Institute, a climate and energy think-tank.

The sector went through a “textbook hype cycle” last year, he added. “[It is] very typical of a company that is in this early pre-consistent revenue phase.”

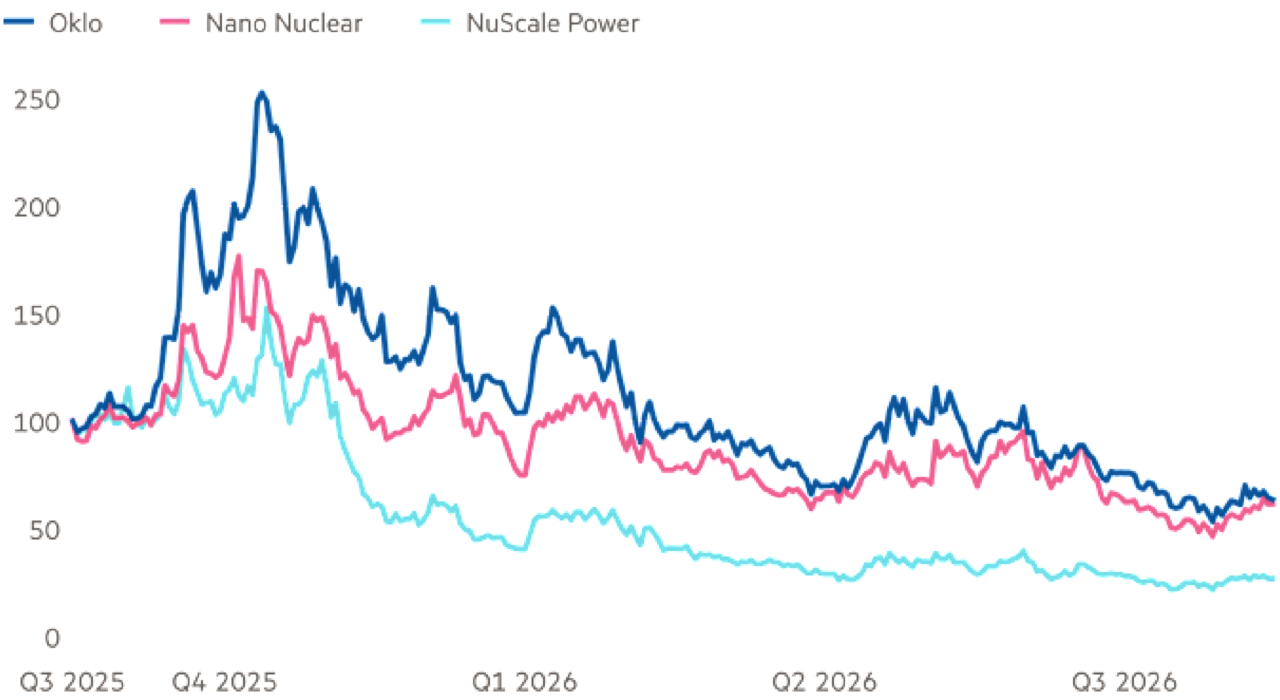
Small modular nuclear reactors are assembled from modules built in factories to save time and money, and produce around 300MW or less, compared with more than 1,000MW for traditional reactors.

Only two commercial SMRs are currently operable — in Russia and China, with more than 80 designs in various stages of development.

A key test of investor appetite towards the nuclear sector is expected in the coming weeks, when Holtec International and Westinghouse, two US-based companies with SMR divisions, are expected to list.

Billions have been chipped off the value of US-listed SMR companies

Share prices rebased ($)



Source: LSEG via markets.ft.com

Short sellers have piled into bets against the companies based on a view that their shares rose to unsustainable levels, driven by a limited supply of publicly traded stocks and a focus on the potential demand from AI, rather than the time and capital expenditure required to commercialise the technology.

“On the one hand there was some support from the government, and no one wants to bet against Trump, and on the other there was this whole AI [demand] story which everyone was really bullish about [last year],” said Christian Putz, founder and chief executive of investment firm ARR Investment Partners, who has previously shorted Oklo but has since unwound that position.

Around 18 per cent of Oklo and NuScale’s outstanding shares remain out on loan — a proxy for short selling — while almost 30 per cent of Nano’s are on loan, according to S&P Global Market Intelligence.

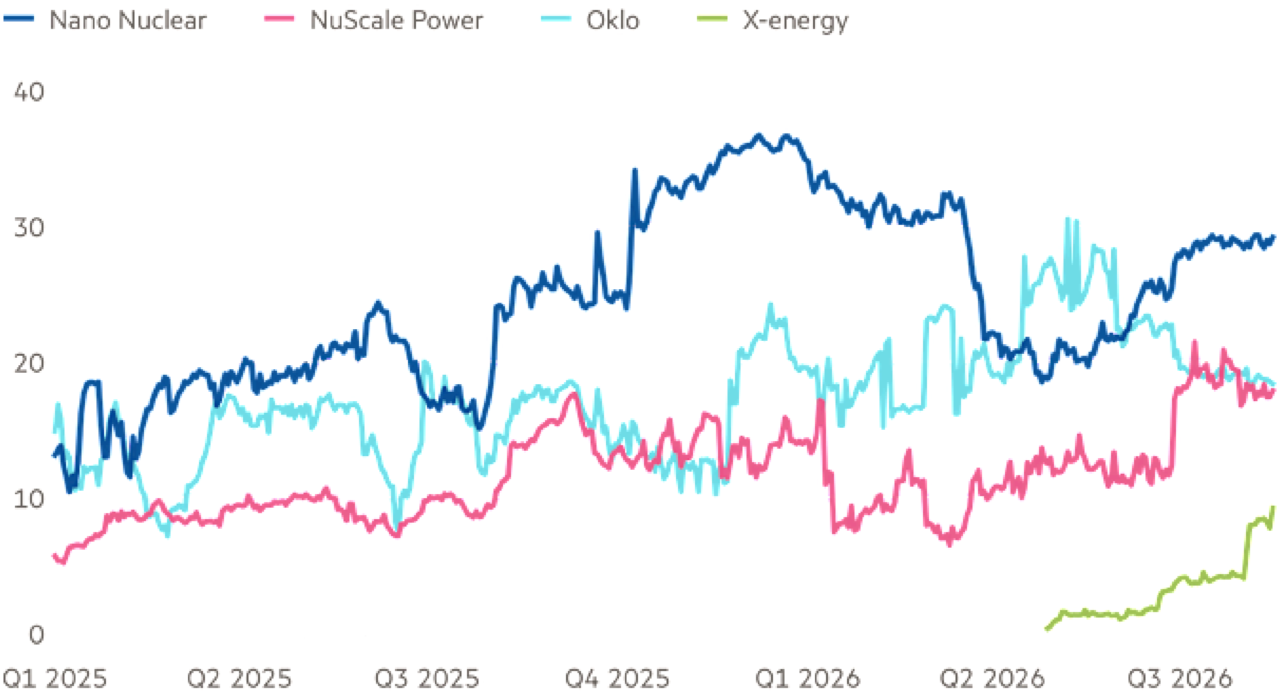
Meanwhile, X-energy has shed $5.8bn in market value since the surge that followed its initial public offering in April. Short sellers have earned an estimated $67mn from bets against the company since mid-May, according to S3 Partners. The company, which is backed by

Amazon and Ken Griffin and has yet to receive full regulatory approval to build its helium-cooled reactor, has 9 per cent of its shares out on loan.

“The sentiment has changed this year, people are far more critical,” said Putz. These companies “have almost zero revenue for the foreseeable future and, on top of that, there are very high capex [capital expenditure] requirements”.

Short sellers remain strongly positioned against US SMR stocks

Shares outstanding on loan (%)



Source: S&P Global Market Intelligence

Demand for energy in the US is set to soar over the coming decade, in part due to the rapid development of power-hungry data centres by AI hyperscalers. According to data from BloombergNEF, US data centre power demand is set to climb from 34.7 gigawatts in 2024 to 106GW by 2035.

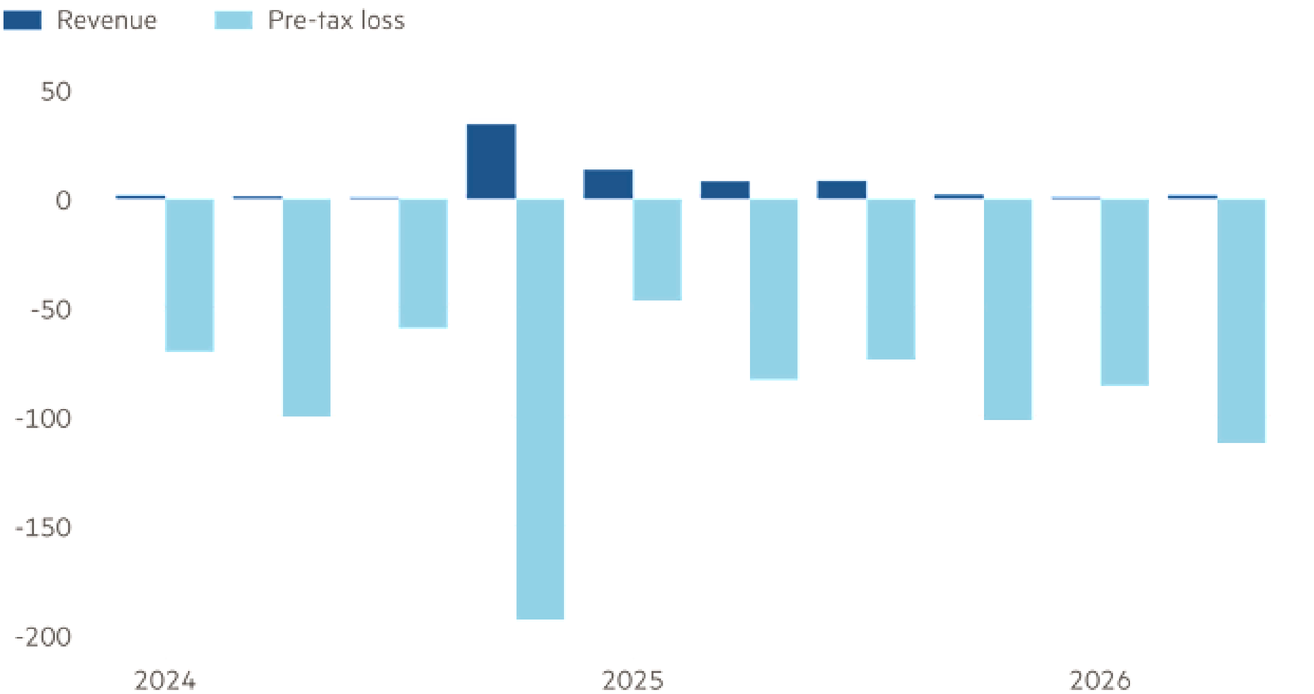
Big Tech is increasingly turning to the emergent SMR technology to meet its future power needs. In January, Meta struck a deal with Oklo and Bill Gates-backed TerraPower, in which it agreed to make an upfront cash injection to support development of the reactor technology.

The Trump administration vocally backed the nuclear sector last year, pledging to cut red tape and invest tens of billions of dollars to build new reactors and reopen old ones to generate the energy needed to “win” the global AI race. In June, the Department of Energy announced $17.5bn of loans to help rebuild the US nuclear supply chain.

However, timelines for delivery of the unproven reactors remain uncertain. Analysts at BNP Paribas have expressed concerns over shortages of high-assay low-enriched uranium, a special type of nuclear fuel vital for SMRs. The earliest some will come online is mid-to-late 2028, if manufacturers are able to speed up delivery while also satisfying regulators, although the majority will arrive during the 2030s, said Stein at the Breakthrough Institute.

US SMR companies have reported heavy losses on little-to-no revenue

Combined Oklo, NuScale Power and Nano Nuclear quarterly reports, thousands ($)



Source: S&P Capital IQ and FT calculations

NuScale, which reported a $96.7mn loss in the first half of 2026, faces a shareholder class-action lawsuit alleging it misled investors, to which it must respond by September 8. It is building a modular light-water reactor based on a more conventional pressurised-water design.

Nano Nuclear — whose microreactors are in the development stage — had not reported any revenue until the second quarter of this year, when it bought a revenue-generating nuclear logistics company called Secured Transportation Systems. Nano Nuclear reported an operating loss of $15.8mn for the quarter.

[Oklo](#) hopes to deliver commercial power to customers from its liquid sodium rather than water-cooled Aurora reactors. US energy secretary Chris Wright was previously a board member. It has yet to secure a full licence from the US nuclear regulator to build and operate its reactor.

“What we have seen in 2025 seems to me like an industry bubble that is already deflating,” said Siegfried Eggert, chief executive of activist short seller Grizzly Research, who has no short positions against the companies.

“I believe most knowledgeable investors understood for a while that the valuations seemed rather extended given the timeline of this industry,” he added.

Nano Nuclear said the rise or fall in the share price of companies said little about the success of the underlying business and disputed the “hype cycle” characterisation. Oklo said the company had made “tangible progress” over the past year and expected commercial operation of its Aurora reactor to begin in 2028.

NuScale and X-energy declined to comment.

Artificial Intelligence

Manage Newsletters

Google Aims to Boost AI With Purchase of Spirit Airlines Data

Aug. 17, 2026, 9:22 AM PDT

Summary by Bloomberg AI AI Generated

- Google LLC won a bankruptcy auction for a trove of deindentified business data, software code, and operations records from Spirit Aviation Holdings Inc.
- The tech giant's bid includes a vast repository of the defunct airline's data, including emails, Microsoft Teams chats and collaboration records, plus information related to revenue and aircraft operations.
- Google plans to use the assets to improve its artificial intelligence, and the data will go through a process to ensure that it can't be associated with particular customers.

Google LLC won a bankruptcy auction for a trove of deindentified business data, software code, and operations records from collapsed low-cost carrier Spirit Aviation Holdings Inc., saying it plans to use the assets to improve its artificial intelligence.

The tech giant's $10 million bid includes a vast repository of the defunct airline's data, including 100 million emails, 500 million Microsoft Teams chats and collaboration records, plus information related to revenue, aircraft operations, employee productivity, and audits and fraud, according to an Aug. 14 notice in the US Bankruptcy Court for the Southern District of New York.

Google's purchase doesn't include personal data and privileged materials like Spirit's 97.5 million passenger profiles or an estimated 50.2 million records related to the Free Spirit loyalty program data, according to court records.

The data will also go through a process to ensure that it can't be associated with particular customers, according to the court filing.

Google won't be receiving any personal information and the data will be "rigorously scrubbed of any personally identifiable information by a third party before receipt," it said in a statement Monday.

“We acquired part of an enterprise dataset from Spirit Airlines, which can be helpful in improving our products and AI models,” Google said.

Florida-based Spirit shut down on May 2 amid its second Chapter 11 in two years due to surging fuel prices and failed financing talks. The airline filed for bankruptcy with about about $8.1 billion in debt and laid off roughly 17,000 employees when it shut down.

The cache includes data related to marketing campaigns, human resources, strategy, and project management. Also included is pricing from 7.2 billion competitor flights, an estimated 7.5 billion passenger transaction records going back to 2008, and pricing curve data, according to court records.

Google’s purchase also includes about 30 million lines of code, development metadata, and software models and algorithms. The purchase also includes more than 175,000 employee records dating back to 1986.

Google beat out a $7.5 million offer from AI talent recruiting company Mercor.io Corp., which was named the backup buyer if the Google sale falls through.

The airline last month secured bankruptcy court approval to sell its 22 takeoff and landing slots at New York’s LaGuardia Airport for $58.5 million to JetBlue Airways Corp.

A sale hearing is scheduled for Aug. 19 in front of Judge Sean Lane.

Spirit is represented by Davis Polk & Wardwell LLP. Google is represented by Cleary Gottlieb Steen & Hamilton LLP. Mercor.io is represented by Orrick, Herrington & Sutcliffe LLP.

The case is Spirit Aviation Holdings , Bankr. S.D.N.Y., No. 25-11897, notice 8/14/26 .

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[Bloomberg Law](#)

[Manage Newsletters](#)

Kaiser Gets Partial Win Over Insurers on $581 Million FCA Deals

Aug. 17, 2026, 12:07 PM PDT

Summary by Bloomberg AI AI Generated

- A California federal judge ruled that a policy exclusion doesn't apply to settlements totaling $581 million in a pair of Medicare fraud cases involving Kaiser Permanente affiliates.
- The judge granted Kaiser's motion for partial summary judgment, finding that the settlement satisfies the initial definition of a loss under the policy, which includes "damages, settlements, judgments".
- The court denied requests from AIG's National Union Fire Insurance Co. and excess insurers for further discovery on issues not relevant to Kaiser's narrow partial summary judgment motion.

An American International Group Inc. unit and excess insurers of Kaiser Permanente affiliates failed to convince a California federal judge a policy exclusion applied to settlements totaling $581 million in a pair of Medicare fraud cases.

AIG's National Union Fire Insurance Co. of Pittsburgh isn't entitled to discovery on issues that aren't relevant to Kaiser's narrow partial summary judgment motion, according to a Aug. 14 order from the US District Court for the Northern District of California.

Kaiser reached a pair of False Claims Act deals with the US Justice Department in January to resolve protracted litigation over the hospital network allegedly submitting invalid diagnosis codes while billing for Medicare patients in order to receive higher payments. Kaiser later sued when its insurers denied coverage.

The hospital network didn't at this stage of the case ask the court to rule the claim was covered by the policy. Instead Kaiser requested a judicial determination on the discrete issues of whether multiplied damages fall within an exclusion for "return of funds which were received from any federal, state or local governmental agency," and if the settlement met the threshold requirements of a loss, Judge Edward M. Chen said.

The FCA deal satisfies the initial definition of a loss which is considered "damages, settlements, judgments," under the policy, Chen said.

"Kaiser could obtain summary judgment on both these points and yet still ultimately fail" in this lawsuit in light of the insurers' argument that Kaiser's claim wasn't properly first made within the policy period; "but that question is not yet before the court," Chen said.

Excess insurers, which include units of Allianz SE, Markey Group Inc., and W. R. Berkely Corp., sought further discovery on allocation and covered organizations in the settlement, but the court denied that request for similar reasons to AIG's motion.

Kaiser's motion for partial summary judgment was granted because Kaiser is an insured organization under AIG's policy with a settlement arising from a claim stemming from the FCA litigation which alleged "wrongful acts," Chen said.

The court made no ruling on whether any other exclusions, outside of the return of funds, bars coverage.

"When a policy uses separate words, courts take this to mean that those words have separate meanings," Chen said in reference to contractual language in AIG's policy.

The definition of a loss under the policy includes multiplied damages, and doesn't go beyond that plain language meaning "restitution to the government for funds that were wrongly received," the judge said.

"Moreover, the fact that the next clause in the rider specifies that 'interest' arising out of the return of such funds is also excluded from the definition of loss suggests that the 'return of funds' itself is cabined to the literal return of funds, not some more expansive concept of making the Government whole," Chen said.

Further litigation will determine if Kaiser can show that any portion of the settlement was for multiplied damages arising from a return of funds to the government.

Farella Braun & Martel LLP represents Kaiser. Baute Crochetiere & Hartley LLP represents AIG.

The case is Kaiser Foundation Health Plan Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA , N.D. Cal., No. 26-cv-01490, 8/14/26 .

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Insider Trading in Biopharma: An Infection Bound to Spread?

law.com/newyorklawjournal/2026/08/18/insider-trading-in-biopharma-an-infection-bound-to-spread

The biotech industry—already plagued by insider trading—might see this problem get even worse due to the infection vector of prediction markets. Already, an outsized portion of insider-trading prosecutions involves the biotech industry.

But that doesn't come as a surprise—after all, whether the FDA approves or disapproves a process or product can be the difference between a company's share price catapulting cartoonishly and cratering completely, making inside information about the status of FDA review particularly valuable.

Many insiders in biotech companies find themselves at the dangerous intersection of unfettered access to material nonpublic information (MNPI), opportunities to profit from that information, and, unlike financial services employees, insufficient education in securities compliance.

In the last year alone, law enforcement agencies brought cases against (1) a biostatistician who analyzed clinical data; (2) a contract documentary producer hired to create promotional materials about a biotech firm; and (3) a research scientist who bought short-dated out-of-the-money options after learning of imminent FDA action. There were others as well.

In the vast majority of these cases, insider traders were caught because market surveillance systems identified red flags, including anomalous trading patterns (like trades immediately preceding the announcement of market-moving information), large transactions made by those who have never traded equities before, or the purchase of short-dated out-of-the-money options.

Because securities regulators have access to a wide range of trade data, it is relatively simple to identify unusual trading patterns and connect names to these trades.

Regulators can thus track trades, identify who placed the applicable orders, and determine when and at what prices trades were made. All of this is because securities markets are designed to be relatively transparent.

But all of that might be changing, and for the worse.

On July 16, Kalshi opened a pilot suite of prediction markets where participants can take positions on clinical trial outcomes and FDA approvals.

Kalshi has purportedly limited the markets to late-stage clinical trials being run by established biopharma enterprises, listing contracts only after patient enrollment is completed (to limit the risk that recruitment or enrollment decisions can be influenced by predictions), and required employment verification to more effectively police prohibited trading by insiders.

However, despite Kalshi's attempts to protect market integrity, the temptation to obtain an improper edge persists. Kalshi's own biotech prediction markets announcement highlighted that "[t]he odds that a drug will succeed are among the most valuable numbers in the economy."

In a world where a White House teleprompter operator misuses their insider position to trade contracts based on the content of President Trump's speeches, it is unlikely that Kalshi's precautions, laudable as they are, will eliminate insider trading. Leaving aside the fact that excluding insiders as participants does not prevent friends, family, or other tippees of those insiders from trading, there are several remaining causes for concern.

First, unlike the equities markets—which are policed by the Securities and Exchange Commission (SEC), United States Attorneys' Offices (USAOs), state securities regulators, and attorneys general—prediction markets are currently regulated by the Commodity Futures Trading Commission (CFTC). By nearly every measure, the CFTC is a weaker regulator than its fellow agencies.

Not only does it lack the manpower and enforcement experience of the other agencies, but the rule employed by the CFTC to combat insider trading—CFTC Rule 180.1 (which was adopted in 2011 and explicitly modeled after the SEC's Rule 10b-5)—only recently reached its adolescence and is significantly less established.

The CFTC's expertise and enforcement capacity were not developed either in connection with issuer-specific MNPI or the biotech industry, important gaps in policing biotech prediction markets. Moreover, the CFTC has been criticized recently on the grounds that its closeness to the prediction markets has impaired its independence.

Second, prediction markets lack the transparent reporting infrastructure of securities markets. For example, prediction markets have no analog to the Consolidated Audit Trail (CAT), which allows regulators to track securities trading.

Prediction markets do not give regulators the same ability to reconstruct trading activity, identify beneficial owners of accounts, trace order routing, examine account histories, and connect suspicious trades to people with access to MNPI.

Even if the prediction markets themselves collect similar information, the CFTC cannot rely on the corporations operating them to perform its regulatory work. Without that enforcement and surveillance architecture at the governmental level, prediction markets risk becoming attractive venues for insider trading.

Third, Kalshi's guardrails do not solve the tippee problem. Employment verification may keep some obvious insiders off the platform, but, in order to be effective, insider-trading enforcement must reach everyone who trades on the basis of MNPI. If enforcement is limited to those who obtain it directly from their employer, the workarounds are obvious and tempting.

Finally, given the light-touch regulatory oversight currently afforded to prediction markets, there is little reason to believe they will impose self-governance structures remotely approaching those employed by financial services firms.

Traditional financial services firms have developed extensive compliance architectures including, for example, lists of securities that employees are barred from trading, MNPI controls, surveillance mechanisms, compliance training and certification, and monitoring of electronic communications.

As former prosecutors, we remain skeptical that prediction markets, absent comparable regulatory requirements (or enforcement activity), will replicate those controls with the same rigor.

In many ways, this is a perfect storm. Insider trading risk—in an area already subject to insider trading—is migrating into a less transparent venue, overseen by a less experienced and underfunded enforcement agency. Biotech is already one of the most fertile areas for insider trading because clinical and regulatory developments produce sudden, binary, and often significant price movements.

Opening a less transparent market for such wagers exacerbates the risk of insider trading. Unless and until prediction markets are subject to surveillance, identity-verification, reporting, and enforcement-access obligations similar to those applicable to the securities markets, we can expect the problem of biotech insider trading to metastasize.

Mark Cuban-Backed Robotics Startup Nears $500 Million SPAC Deal

Aug. 18, 2026, 3:00 AM PDT

Summary by Bloomberg AI AI Generated

- Fort Robotics Inc. plans to go public via a blank-check vehicle in a deal valuing it at $500 million.
- The merged company, Fort Robotics Holdings Inc., will have an enterprise value of about $557 million and will list on the Nasdaq Stock Market under the symbol FROB.
- Fort Robotics provides safety solutions across the robotics industry and has over 600 customers including Google DeepMind, Cobot, and DoorDash.

A startup backed by **Mark Cuban** that makes hardware and software used to more safely control and operate autonomous robots plans to go public via a blank-check vehicle in a deal valuing it at $500 million.

Fort Robotics Inc. will combine with Newbury Street II Acquisition Corp. to create what it calls “the first publicly traded company dedicated principally to safe and scalable deployment of physical AI,” according to a statement reviewed by Bloomberg News. The merged company, to be named Fort Robotics Holdings Inc., will have an enterprise value of about $557 million.

The transaction is comprised of around $182 million of cash from Newbury Street II’s trust account, the statement shows. It also includes about $31 million from both a private investment in public equity, or PIPE, and an agreement from new and existing investors including Cuban, Tiger Global and Prologis Ventures.

Philadelphia-based Fort Robotics is expected to list on the Nasdaq Stock Market under the symbol FROB, according to the statement.

Founded in 2018, Fort Robotics says it has over 600 customers including Google DeepMind, Cobot, Zoox, RIVR, Carnegie Robotics, Textron, Forterra, Genie, Ocado, Oxa and DoorDash. It provides safety solutions across the robotics industry.

“Physical AI will change the way we work in every industry, and this will be a game changer for workers, organizations and governments worldwide,” Fort Robotics founder and Chief Executive Officer **Samuel Reeves** said in the statement. “Fort’s mission is to ensure robots cause no harm and we are dedicated to pioneering and building a shared framework for trust that robot manufacturers, integrators, end users, regulators, insurers, governments and any other interested party can rely on.”

Cuban participated as a returning investor in a funding round last August for Fort Robotics, according to a statement at the time. In addition to Tiger Global and Prologis Ventures, Five Eleven Partners is also among the company’s investors.

--With assistance from **Tim LeeMaster**.

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Michael Hytha, Will Davies

[Mealey's Litigation Procedure - Judge: Some Insurance-Related Documents Must Be Produced In BIPA Class Action]

Mealey's Daily News Update

August 17, 2026

Cite: 2026-9969 Mealey's Daily News Update 7

Section: 2026, 9969

Length: 1211 words

Dateline: EAST ST. LOUIS, Ill.

Body

Partly granting a request to compel production of insurance-related documents in a class action that concerns the Illinois Biometric Information Privacy Act (BIPA), an Illinois federal judge ruled after in camera review that some of the documents "are not subject to any privilege" and must be produced but others "need not be produced" because they are not relevant (Kellin Johns, et al. v. Paycor, Inc., No. 20-264, S.D. Ill., 2026 U.S. Dist. LEXIS 171343).

(Memorandum and order available 68-260820-010R)

Saying that the issues "are largely answered by" Federal Rule of Civil Procedure 26, Fed. R. Civ. P. 26, U.S. Judge David W. Dugan of the Southern District of Illinois handed down the ruling on Aug. 1.

One of the documents that the judge ordered defendant Paycor Inc. to produce was a "Chubb policy that provides for Digital Technology & Professional liability Coverage."

Another of the documents that Paycor must produce under the order was a "Transmittal letter from AXA XL to Marsh USA regarding Paycor dated December 13, 2019, attaching Excess Error and Omissions Policy."

Paycor designs and manufactures timekeeping systems. The judge certified a class in the case in March 2025 (2025 U.S. Dist. LEXIS 59401), then on Feb. 16 (2026 U.S. Dist. LEXIS 32016) amended the class definition to "All individuals working in the State of Illinois who had their fingerprints or other biometric data collected, captured, received, or otherwise obtained or disclosed by Defendant's Perform Time biometric timekeeping system during the applicable statutory period."

4 Files Must Be Produced

In the instant ruling, the judge explained that the backdrop for the request for insurance-related documents is named plaintiff Juan Barron's allegation that Paycor had disclosed certain insurance policies late and failed to fully comply with Rule 26.

Saying that Paycor "contends that it need not produce certain documents and claims the protection of privilege under the Common Interest Doctrine, attorney client privilege, insurer-insured privilege and attorney work product," the judge asserted that the company "does not provide a factual basis or develop a legal argument in support of its claims of privileges other than to" reference part of a redacted March 2026 joint written discovery report where Paycor cited decisions including Jump v. Montgomery Cty., No. 13-cv-3084, *2015 U.S. Dist. LEXIS 97176 (C.D. Ill. July 27, 2015)*, and Sea Salt, LLC v. Bellerose, No. 2:18-cv-00413, *2020 U.S. Dist. LEXIS 154147 (D. Me. Aug. 25, 2020)*.

Most of those decisions don't "mention the word 'privilege' let alone address whether a privilege exists to form a legitimate basis for objection to production of non-policy insurance documents or communications," the judge said. He identified the exception as Jump, which "involved trial counsel's reports regarding case management, which clearly fall at least within the realm of work product and possibly protected attorney-client communications."

However, the judge said, Barron "points to no particular need to have access to any insurance documents or any pending issue, nor does he demonstrate relevance." Instead, the judge said, Barron "claims that the insurance agreements should have been produced by Paycor years ago and their late disclosure warrants a deeper look." The judge said, "Still, Rule 26(b)(1) requires a showing of relevance to support compelling production."

Of the 12 files he reviewed, the judge said, four "contain Policy and insurance agreement documents under which the insurance company may be liable to satisfy all or part of a possible judgement or to indemnify or reimburse for payments made to satisfy the judgment. As such, the mandate of Rule 26(a)(1)(A)(iv) requires, regardless of legal relevance, the disclosure of these documents and Defendant will be ordered to produce them to Plaintiff."

The judge said the other eight files "contain communications between an insurer and Paycor's representatives. Some of these files contain arguably privileged communications and would not be discoverable. In any event, these documents are also not relevant to any claim, defense or issue pending before this Court and, therefore, need not be disclosed."

BIPA Claims

Kellin Johns sued Paycor in Illinois state court in January 2020, asserting claims under the state BIPA, 740 Ill. Comp. Stat. 14/1 et seq.

Paycor removed the case to the federal court, and in October 2020, Johns and Barron filed the operative amended complaint. Among other things, they say they are both former employees of nonparty Club Fitness Inc., which they say used Paycor products from roughly "September 2015 through April of 2016."

They assert claims under BIPA for failure to institute, maintain and adhere to a publicly available retention schedule, failure to obtain informed written consent and release before obtaining biometric identifiers or information and disclosure of biometric identifiers and information before obtaining consent.

Johns subsequently died, leaving Barron as the sole named plaintiff.

In March 2026, the parties filed a second joint written discovery report.

Late Disclosure Alleged

On April 6, Barron filed the motion to compel. In addition to the insurance-related documents, the motion addressed several other issues that Judge Dugan resolved in a separate July 7 ruling (*2026 U.S. Dist. LEXIS 151032*).

As relevant here, Barron said in the motion that "Paycor indicates that it has been denied coverage" under the two purportedly late-disclosed insurance policies.

Barron said those policies were first disclosed "after business hours on the day fact discovery closed" in February 2026, and he alleged that Paycor had violated Rule 26 by not disclosing them earlier.

Barron said he then sought the related documents. He argued that Paycor's assertion of privilege was unavailing because "No insurer-insured privilege exists here, as it is well-settled that where there is no duty to defend the lawsuit, no privilege exists."

In its April 28 brief opposing the motion, Paycor contended that it "Paycor made clear there is coverage under the 2017 Chubb policy it produced on November 22, 2024, . . . yet Plaintiff still improperly seeks to compel related privileged correspondence. Further, Paycor never stated it was denied coverage under any policy; it simply stated the 2017 policy is the only one providing coverage."

Counsel

Barron is represented by Ryan F. Stephan, James B. Zouras, Catherine Mitchell Duffy and Justin Caparco of Stephan Zouras LLC in Chicago, Brandon M. Wise of Peiffer Wolf Carr Kane Conway & Wise LLP in St. Louis and Evan Meyers, Brendan Duffner and Joseph Dunklin of McGuire Law PC in Chicago.

Paycor is represented by Brian Browne in Washington, D.C., Max E. Kaplan in Philadelphia and Melissa A. Siebert, Corey T. Hickman and Amy M. Doig in Chicago, all of Cozen O'Connor.

(Additional documents available: Barron's redacted motion to compel with attachments 68-260820-011M

Paycor's redacted opposition brief with attachments 68-260820-012B

July 7 ruling 68-260820-013R

Redacted joint March 2026 written discovery report 68-260820-014X

Amended complaint 68-260820-015C)

[Mealey's Litigation Procedure - United Airlines' Petition Presents Rule 23 Question In COVID-19 Vaccine Case]

Mealey's Daily News Update

August 17, 2026

Cite: 2026-9969 Mealey's Daily News Update 5

Section: 2026, 9969

Length: 1854 words

Dateline: WASHINGTON, D.C.

Body

United Airlines Inc. filed a petition for a writ of certiorari in the U.S. Supreme Court asking the justices to consider Federal Rule of Civil Procedure 23's commonality and predominance requirements in a class case by workers who accuse the airline of discrimination by failing to provide religious and medical accommodations from the COVID-19 vaccine requirement (United Airlines, Incorporated v. Genise Kincannon, et al., No. 26-183, U.S. Sup.).

(United Airlines' petition for a writ of certiorari available 43-260904-001B)

United Airlines in its Aug. 7 petition asks whether it's sufficient when "assessing commonality and predominance under" Rule 23, Fed. R. Civ. P. 23, "that plaintiffs have a common theory and evidence that a jury could credit, even where rejecting that theory and evidence would not result in classwide loss, but in individual liability determinations that differ across class members?"

United Airlines argues that the partially divided Fifth Circuit U.S. Court of Appeals panel erred in March when it affirmed a trial court's certification of only one modified unpaid leave subclass, finding no abuse of discretion in the certification only of employees who sought an accommodation due to religious beliefs and were accommodated with unpaid leave.

"The Fifth Circuit's decision contradicts this Court's key precedents on assessing commonality under Rule 23 and creates a circuit split with other courts faithfully applying those precedents. That departure is exceptionally important, as it promises to distort class certification across all substantive areas of law and invite further procedural adventurism," United Airlines writes.

United Airlines further argues that at a minimum, the high court should hold its petition for consideration of another petition expected after the Ninth Circuit U.S. Court of Appeals' ruling in *Detwiler v. Mid-Columbia Medical Center, 156 F.4th 886*, a case concerning a worker's opposition to COVID-19 testing.

In that case, "the Ninth Circuit . . . took the short side of a circuit split over an issue that bears on the Fifth Circuit's decision below. Namely, the 'test for determining the nature, whether religious or secular, of a belief underlying a Title VII claim,'" United Airlines writes.

The petitioner continues, "If the Court sides with the Ninth Circuit in Detwiler, it would foreclose class certification in this case even under the Fifth Circuit's approach." However, if the high "[c]ourt rejects the Ninth Circuit's approach, the plaintiffs' 'words and actions' evidence and its effect on commonality here would need to be evaluated in light of whatever this Court says about how to approach requests for religious accommodations that could sound in purely secular beliefs."

Class Complaint

The case before the high court began when David Sambrano and five other employees of United Airlines sued their employer on Sept. 21, 2021, in the U.S. District Court for the Northern District of Texas. They accused their employer of discriminating against employees who requested religious or medical accommodations from the airline's mandate that employees receive the COVID-19 vaccine by telling them that they would be effectively terminated.

One day later, the employees moved in the putative class action for a temporary restraining order (TRO) and a preliminary injunction.

On Oct. 7, United Airlines filed a partial motion to dismiss for lack of personal jurisdiction.

The request for a TRO was partially granted Oct. 12. Judge Mark T. Pittman temporarily restrained and enjoined United Airlines from denying any request for religious or medical accommodations from the vaccine mandate. The order was set to expire Oct. 26.

That same day, the employees filed an amended complaint seeking to represent a class of those United Airlines workers "who have requested or will request accommodations from United's vaccine mandate and who have had those accommodation requests either formally or effectively denied and are thus faced with the decision of either taking a vaccine to which they object, or suffering termination, including the functional equivalent of termination: indefinite unpaid leave."

They added that they anticipated seeking certification of three subclasses. They alleged religious discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, *42 U.S.C. 2000e et seq.*, and disability discrimination and retaliation in violation of the Americans with Disabilities Act (ADA), *42 U.S.C. 12101 et seq.*

TRO Clarification

On Oct. 18, the judge issued an order clarifying that the TRO applies only to those who have "submitted an accommodation request 'on or before September 23, 2021.'"

One week later, Judge Pittman extended the TRO for 14 days.

The plaintiffs moved for class certification on Nov. 1.

A week later, Judge Pittman issued two opinions.

In the first, the judge partially granted United Airlines' motion to dismiss as to one named plaintiff, concluding that Seth Turnbough "neither lives nor works in Texas." However, the judge denied all other relief sought by United.

In the second opinion, Judge Pittman denied the employees' motion for a preliminary injunction.

Appeal Filed

The employees appealed and moved for an injunction pending appeal and to expedite the appeal.

In a Dec. 13 per curiam order, Judges Carl E. Stewart and Catharina Haynes denied the request for an injunction but granted the request to expedite the appeal.

Judge James C. Ho dissented, writing that he agreed with the District Court that the workers' claims "'appear compelling and convincing at this stage'" but disagreed with the finding that they could not demonstrate irreparable injury.

The employees filed a petition on Dec. 17 for initial hearing en banc. That request was denied Jan. 3, 2022.

Split Panel

A different Fifth Circuit panel issued a divided ruling on Feb. 17, 2022, with the majority reversing the District Court's decision based on the likelihood of "irreparable harm" to the two plaintiffs who received religious exemptions and remain on unpaid leave.

United Airlines' petition for en banc rehearing was denied by a divided Fifth Circuit in August 2022.

Back in the District Court, a second amended class complaint was filed in February 2023. In it, Sambrano and seven others brought the same claims as in the initial complaint.

United Airlines filed a renewed motion for partial dismissal of the second amended complaint and a motion to transfer the venue. On Dec. 18, Judge Pittman dismissed the retaliation claims under Title VII and the ADA with prejudice, opining that "United's unpaid leave accommodation was not retaliatory." The judge further dismissed with prejudice failure-to-accommodate claims by six of the named plaintiffs as time-barred.

Class Certification

The plaintiffs on Jan. 12, 2024, moved for certification of a Rule 23(b)(2), Fed. R. Civ. P. 23(b)(2), class of all individuals who sought religious or medical accommodations and were forced to choose between "indefinite leave; or being fired or otherwise separated." They also sought certification of a masking-and-testing subclass and an unpaid leave subclass.

Four days later, the plaintiffs moved for reconsideration of the order granting partial dismissal. They argued that "the Court misapplied binding precedent and overlooked critical allegations in Plaintiffs' Second Amended Complaint."

In a June 21, 2024, ruling, Judge Pittman granted class certification only as to the unpaid leave subclass and denied the motion for reconsideration.

The judge opined that the proposed Rule 23(b)(2) class and the masking-and-testing subclass failed to satisfy the commonality and typicality requirements under Federal Rule of Civil Procedure 23(a), Fed. R. Civ. P. 23(a), and failed to meet the criteria under Rule 23(b) based on "[t]he different injuries suffered and the individual questions raised within these proposed classes."

For the certified unpaid leave subclass, Judge Pittman appointed plaintiff Genise Kincannon as the named plaintiff and modified the proposed "[s]ubclass to encompass only the Title VII claims."

United Airlines appealed. Kincannon and Sambrano cross-appealed.

Certification Affirmed

The partially divided Fifth Circuit, after first determining that Kincannon and Sambrano were proper parties to appeal, reviewed the class certification order for abuse of discretion and the District Court's legal standard de novo and affirmed.

First, the panel majority opined that there was no abuse of discretion when the District Court denied certification of a class of all workers who were offered unpaid leave.

Next, the panel majority considered the trial court's rejection of the masking-and-testing and ADA subclasses as challenged by the employees and the certification of the modified unpaid-leave subclass as challenged by United Airlines.

Upholding in full the District Court's decision, the panel first wrote that the holding that United Airlines' masking-and-testing accommodation was not an adverse employment action was already appealed and then voluntarily dismissed and "is not proper at this juncture. . . . But even if the district court were incorrect on that point, it still did not abuse its discretion because it reasonably concluded that masking-and-testing inflicted diverse injuries."

Turning to the ADA subclass, the panel agreed with the District Court that there was a lack of commonality among the ADA claimants who were given unpaid leave. Upholding certification of the amended subclass of those who received unpaid leave as a religious accommodation, the panel majority rejected United Airlines' reliance on *Braidwood Mgmt., Inc. v. EEOC, 70 F.4th 914 (5th Cir. 2023)*, in arguing that individualized inquiry is necessary when it comes to the sincerity of class members' religious beliefs.

However, the majority noted that United Airlines may still challenge class representatives' sincerity at trial as well as the sincerity of general class members during class rostering.

Judge Kurt D. Engelhardt authored the majority opinion in which Judge Stephen A. Higginson joined.

In the partially concurring opinion in which he joined the judgment, Judge Don R. Willett wrote that unlike the majority, he would have left "for another day" the question of religious sincerity related to the certified subclass of workers who sought religious accommodation and were accommodated with unpaid leave.

The Fifth Circuit denied rehearing April 10. United applied for and was granted an extension to file its petition.

Counsel

United is represented by Alexander V. Maugeri in New York, David Phillips in San Diego, Noel J. Francisco in Washington and Jonathan M. Linas and Jordan M. Matthews in Chicago, all of Jones Day; Robert S. Rivkin of United Airlines Inc. in Chicago; and Russell D. Cawyer of Kelly Hart & Hallman LLP in Fort Worth, Texas.

(Additional document availableFifth Circuit's March 9, 2026, opinion 43-260320-035Z)

Meta Exploits Youths on Social Media, States Allege at Trial

Aug. 18, 2026, 10:19 AM PDT

Summary by Bloomberg AI AI Generated

- Meta Platforms Inc. is being sued by 29 states for allegedly deceiving the public by targeting children on Facebook and Instagram to drive up advertising revenue.

- The states are seeking to hold Meta accountable for misleading children and their parents about safety risks and intrusions on privacy, with potential penalties of massive financial payouts and court orders to change how Meta operates its platforms.

- Meta has denied the allegations, accusing the attorneys general of seeking unreasonable design changes and an "outlandish payout," and the trial is expected to last about five weeks.

Meta Platforms Inc. has deceived the public for years by targeting children on Facebook and Instagram with technology designed to turn them into compulsive users and drive up advertising revenue, a lawyer at the California attorney general's office told a jury.

In her opening statement at a historic trial in federal court in Oakland, California, Megan O'Neill said the 29 states suing Meta are seeking to hold the company accountable for misleading children and their parents about safety risks and intrusions on privacy.

"Meta's business model can be summed up with four simple words – hook the user, hold them for as long as they can, harvest their data, and then hide the truth," she said. "The young ones are the best ones – they are the ones most likely to get hooked, they're the ones that are most likely to make money in the long run."

Read More: Meta Sees Trillion-Dollar Threat in Social Media Trial

Meta's attorney is scheduled to present his opening statement next. Meta has denied the states' allegations, and accused the attorneys general of seeking unreasonable design changes and an "outlandish payout."

“The AGs offer no proof anyone in their states was misled, claim benign features like having an additional Instagram account somehow harmed their residents, and attempt to penalize Meta for industry-wide challenges like age verification,” the company said in a statement before the trial.

The case carries enormous risk for Meta because the states are seeking not only massive financial penalties, but also court orders that could force the company to change how it operates its platforms.

The trial is especially momentous because it’s focused on alleged violations of state consumer protection and federal privacy laws — which carry fines of as much as $20,000 per violation that can add up quickly when multiplied by millions of young Instagram and Facebook users.

By Meta’s own calculations, if it loses the trial it could face penalties of as much as $1.4 trillion, an amount close to its market capitalization and unheard of in the annals of legal history.

While the attorneys general have not publicly disclosed exactly how much they’re seeking in penalties, O’Neill put the figure closer to $193 billion during a court hearing last week, while suggesting that Meta was pointing to the highest theoretical amount for “shock value.”

Even the lower amount would be among the largest ever litigation payouts, comparable to the $206 billion settlement that state attorneys general struck with tobacco companies over cigarette addiction in 1998.

O’Neill stressed that the case was not about content posted on Instagram and Facebook, but the design of the platforms themselves.

“We are not here to hold Meta responsible for the fact that there are bad people out there that post bad things that may harm kids,” she said. “What you’re going to see throughout this trial is that we are holding Meta responsible for its own conduct: what Meta said and didn’t say, what Meta did and didn’t do, choices that Meta made.”

The trial, which is expected to last about five weeks, comes as social media companies are facing a global backlash over concerns that they profit at the expense of young users, for whom a growing body of research shows that heavy use of the algorithm-driven platforms can be dangerously unhealthy.

While authorities in Australia and Europe have enacted or proposed outright bans for youths in the last year, legislative crackdowns in the US have had limited success, turning the courts into a pivotal battleground.

The case is People of the State of California v. Meta Platforms Inc., 23-cv-05448, US District Court, Northern District of California (Oakland).

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Meta Sees Trillion-Dollar Threat in Landmark Social Media Trial

Aug. 17, 2026, 2:43 PM PDT

Summary by Bloomberg AI

AI Generated

- Meta Platforms Inc. is facing a jury trial in federal court over claims that it deliberately designed Facebook and Instagram to encourage compulsive use among young users.
- The top legal officers of 29 states are seeking financial penalties and court orders that could force Meta to change how it operates its platforms, alleging violations of state consumer protection and federal privacy laws.
- The trial carries enormous risk for Meta, with potential penalties of as much as $1.4 trillion, and could have a material impact on the company's business and how its platforms fundamentally operate.

Meta Platforms Inc. is headed to court Tuesday for a high-stakes showdown with a coalition of state attorneys general over claims that the company deliberately designed Facebook and Instagram to encourage compulsive use among young users.

In a case that carries enormous risk for one of the world’s most valuable tech companies, the top legal officers of 29 states are seeking not only massive financial penalties, but also court orders that could force Meta to change how it operates its platforms.

Meta’s headquarters in Menlo Park, California.
Photographer: Benjamin Fanjoy/Bloomberg

The jury trial in federal court in Oakland, California, comes as social media companies are facing a global backlash over concerns that they profit at the expense of young users, for whom a growing body of research shows that heavy use of the algorithm-driven platforms can be dangerously unhealthy.

While authorities in Australia and Europe have enacted or proposed outright bans for youths in the last year, legislative crackdowns in the US have had limited success, turning the courts into a pivotal battleground.

The Meta trial is especially momentous because it’s focused on alleged violations of state consumer protection and federal privacy laws — which carry fines of as much as $20,000 per violation that can add up quickly when multiplied by millions of young Instagram and Facebook users.

By Meta’s own calculations, if it loses the trial it could face penalties of as much as $1.4 trillion, an amount close to its market capitalization and unheard of in the annals of legal history.

“The stakes could not be higher in this case,” said Eric Goldman, a professor at Santa Clara University Law School who specializes in internet law.

While the attorneys general have not publicly disclosed exactly how much they’re seeking in penalties, Megan O’Neill, a lawyer for California, put the figure closer to $193 billion during a court hearing last week, while suggesting that Meta was pointing to the highest theoretical amount for “shock value.”

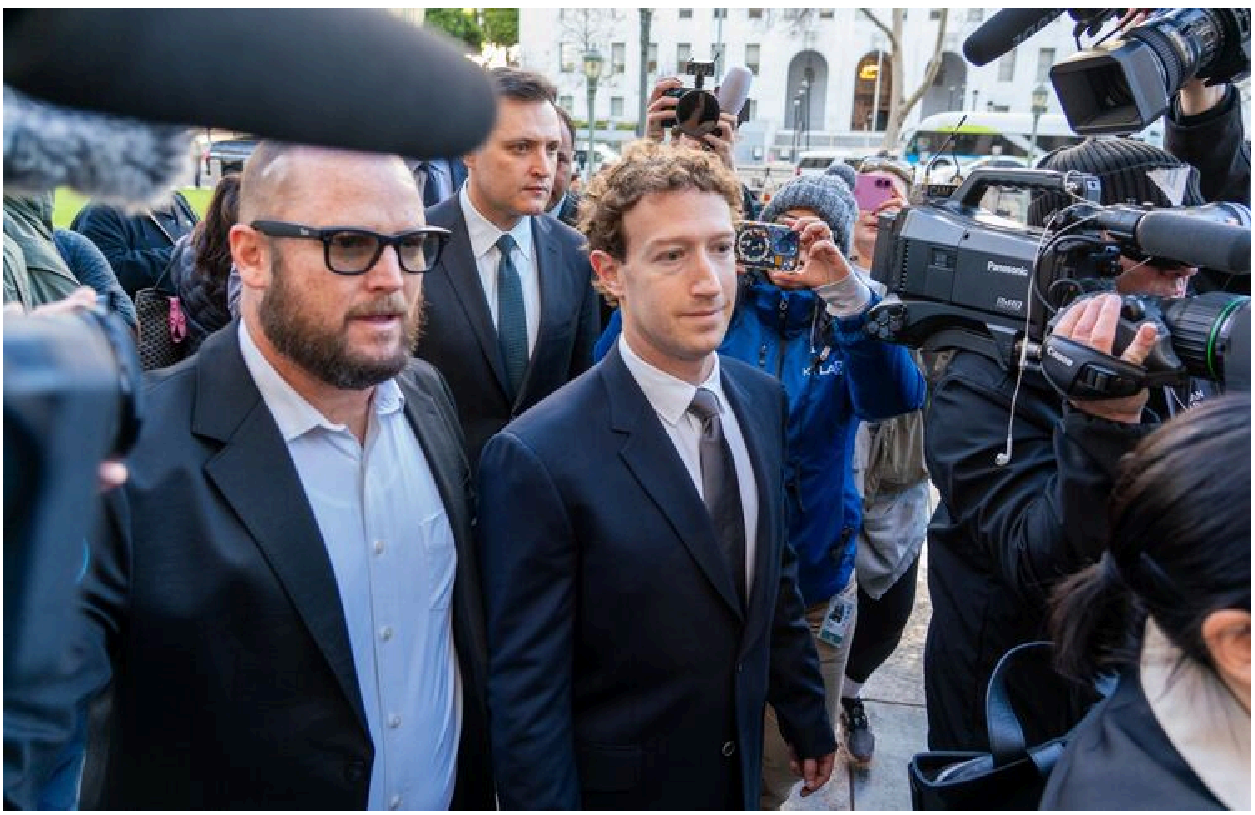
Even the lower amount would be among the largest ever litigation payouts, comparable to the $206 billion settlement that state attorneys general struck with tobacco companies over cigarette addiction in 1998.

Potential Exposure

Other social media giants — like Alphabet Inc.'s Google, Snap Inc. and TikTok — are not part of this trial. But like Meta, they all face billions of dollars in potential exposure from more than 3,000 personal injury claims by individuals and families in the US, and about 1,300 more lawsuits by public school districts across the nation. Some of the cases have already settled, avoiding trials, while more bellwether cases loom in the months ahead.

The lawyers behind the cases have gained traction in court by arguing that the products themselves — through their design and functionality — have created harms, rather than taking at aim at content, for which platforms are broadly protected from liability.

This strategy, several years in the making, succeeded in its first test when a Los Angeles jury in March awarded $6 million to a 20-year-old woman who said her nonstop use for more than a decade of sites including Meta's Instagram and Google's YouTube caused her to suffer anxiety, depression and body dysmorphia.



Mark Zuckerberg arrives at Los Angeles Superior Court in Los Angeles on Feb. 18.
Photographer: Kyle Grillot/Bloomberg

'Outlandish Payout'

Meta has denied the states' allegations, and accused the attorneys general of seeking unreasonable design changes and an "outlandish payout."

Read More: Meta Calls States' $1.4 Trillion Addiction Damages Bid Unmoored

At the trial, the jury will be serving only in an advisory capacity. US District Judge Yvonne Gonzalez Rogers ultimately will decide whether Meta is liable for wrongdoing, and if so, what penalty and remedies to impose.

The attorneys general spearheading the case, from California, Colorado, Kentucky and New Jersey, allege under their separate state laws that Meta knowingly designed features that encouraged compulsive and prolonged use of its platforms by young people, while simultaneously misleading consumers about safety features on its platforms.

The broader bipartisan group of 29 states accuse the company of collecting data from users under 13 years old in violation of the federal Children's Online Privacy Protection Act.

The US Courthouse in Oakland, California.
Photographer: Michaela Vatcheva/Bloomberg

Younger Users

In addition to seeking an order requiring Meta to restrict younger users on its platforms, the states seek to force the company to remove allegedly addictive features like infinite scroll and its content recommendation systems.

"We are ready to hold Meta accountable for its role in fueling the mental health crisis of American children and look forward to trial," California Attorney General Rob Bonta, a Democrat, said in a statement.

California Attorney General Rob Bonta
Photographer: Jason Henry/Bloomberg

Meta said in a statement that while the AGs tout the case as a landmark, "their limited claims are unsubstantiated and their financial demands are vastly disproportionate."

"The AGs offer no proof anyone in their states was misled, claim benign features like having an additional Instagram account somehow harmed their residents, and attempt to penalize Meta for industry-wide challenges like age verification," according to the company.

BI Litigation Watch: Social-Media Addiction Suits

Key Dates in the Litigation

Source: Bloomberg Intelligence

After opening statements Tuesday, the trial is expected to take about five weeks. Meta co-founder and Chief Executive Officer Mark Zuckerberg and Instagram head **Adam Mosseri** are lined up to testify, as are dozens of other witnesses including current and former Meta employees as well as experts in the fields of technology and psychology.

The trial comes on the heels of a nearly $1 billion hit for Meta in a case brought by New Mexico's attorney general.

A state court judge in Santa Fe likened Meta to a polluting factory and ordered the company to make platform changes, including time limits for usage and push notifications for young users. Meta was ordered to pay roughly $375 million in civil fines and $567 million to ameliorate social media harms to youths in the state.

Head of Instagram at Meta Adam Mosseri
Photographer: Allison Robbert/Bloomberg

'Public Nuisance'

The ruling was a significant test of the legal theory behind the attorney general cases: social media companies are a "public nuisance" that harm the general public. The same theory was used in earlier public-health litigation against Big Tobacco and opioid manufacturers.

Meta Faces Big Tobacco Moment in AG Trial: Tech In Depth

The case in Oakland will test a similar legal argument, this time in federal court and on behalf of multiple states.

Meta was unsuccessful last week in its emergency request to an appeals court to postpone the trial. The company argued that the trial should wait for the 9th US Circuit Court of Appeals to resolve whether the claims by the attorneys general are foreclosed by Section 230 of the federal Communications Decency Act, which provides a broad legal shield for lawsuits against internet platforms.

About 14 other states are separately pursuing social media harm cases against Meta in their own state courts. A trial in Tennessee's case is close to wrapping up in Nashville.

Minda Smiley, a senior analyst at Emarketer focused on social media, said the prospect of a penalty in excess of a trillion dollars "is more symbolic at this point."

"It's representative of the gravity of the claims Meta faces," she said. "It's becoming clear that these lawsuits could have a material impact on not only Meta's business, but how its platforms fundamentally operate."

The case is People of the State of California v. Meta Platforms Inc., 23-cv-05448, US District Court, Northern District of California (Oakland).

--With assistance from **Alexandra S. Levine** and Isaiah Poritz.

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Paramount Asks States to Shoulder Costs of Delaying Warner Bros. Deal

nytimes.com/2026/08/17/business/paramount-warner-bros-antitrust-trial.html

Paramount asked a federal judge on Monday to force the opponents of its acquisition of Warner Bros. Discovery to cover the costs of the delay created by their lawsuit seeking to block the deal.

The Hollywood studio is seeking a $1.88 billion bond from 12 states, led by California, along with the Writers Guild of America, which have sued to stop the company's deal to acquire Warner Bros., citing antitrust concerns. Paramount proposes that it would collect the proceeds from the bond if the states lost their case.

Paramount's merger with Warner Bros. would create a media powerhouse combining two major movie studios, multiple streaming services and the news networks CNN and CBS News.

Twelve state attorneys general sued last month to block the deal, arguing that the company would have outsize market power.

In July, Judge Araceli Martínez-Olguín of the U.S. District Court for the Northern District of California temporarily halted the merger to consider the lawsuit. She later scheduled a trial for March, a delay that could put Paramount on the hook to pay Warner Bros. shareholders hundreds of millions of dollars.

As part of its deal with Warner Bros., Paramount must pay $650 million every quarter if the transaction has not closed by Oct. 1. Paramount proposed the fee in an effort to win the support from shareholders, who were also considering a rival bid from Netflix at the time.

Because Paramount offered that fee, Judge Martínez-Olguín is unlikely to grant the company's request, said Bill Kovacic, a former Republican chairman of the Federal Trade Commission.

"Maybe they thought that a lawsuit by the states was a one-in-100-years event and thus was exceedingly unlikely — about the odds of getting struck by lightning," Mr. Kovacic said. "But they knew that it was possible."

Paramount has argued that the deal would create necessary scale to compete against large technology companies, like Netflix, that have moved into the traditional media industry. The deal has already secured clearance from the Justice Department and dozens of countries and regions globally.

“Every month of delay carries substantial and quantifiable financial consequences,” Paramount said in a statement.

“By virtue of what will be at least an eight-month delay in closing, there will be no integration and no ramped-up investment in content, production and creative talent by the combined company,” the statement said. It added that the uncertainties caused by the delay harmed employees of both companies.

Paramount may also be trying to lay the groundwork for a swift appeal on the bond request, Mr. Kovacic said, adding that a ruling on the matter could ultimately reflect on the underlying credibility of the states’ case. In addition, if Paramount needs to appeal the trial verdict next year, the company could argue that it was denied an important measure of relief by the lower court.

David Ellison, Paramount’s chief executive, has also told his senior executives that he would begin moving the company out of California on Oct. 1 if there was no progress toward resolving the lawsuit.

Why states fought to present a united case against Meta over youth social media harms

reuters.com/legal/government/why-states-fought-present-united-case-against-meta-over-youth-social-media-harms-2026-08-18

Aug 18 (Reuters) - As opening statements get underway in a landmark trial over claims that Meta Platforms (META.O), opens new tab misled the public about the safety of Instagram and Facebook for young users and violated child privacy laws, one of the biggest fights in the case has already been resolved: whether a bipartisan group of U.S. states could present their claims together.

The states pushed for a single trial covering state consumer protection and federal privacy claims brought by 29 attorneys general, while Meta argued for a series of smaller trials grouping states that have similar laws.

The fight was about more than courtroom logistics. The states argued that the case centers on company-wide decisions affecting young users across the country and seeks nationwide changes to Meta's platforms, and that jurors should hear a single story about Meta's actions. Meta countered that jurors should evaluate states' claims separately because the underlying laws differ and warned that a combined proceeding could blur important distinctions among the claims.

Ultimately, U.S. District Judge Yvonne Gonzalez Rogers adopted a hybrid approach for the multi-week trial, allowing Colorado, California, Kentucky and New Jersey to try their state law claims together, while also including the federal law claims brought by all of the states. Although Rogers will decide the case, she appointed an advisory jury whose findings may inform her final ruling.

The trial's outcome could help guide how the remaining states' claims are resolved, reshape how Facebook and Instagram operate, and force Meta to pay billions of dollars in penalties. Meta has called the allegations unsubstantiated and said it stands by its work to protect teen users of its platforms.

'A PROJECTION OF UNITY'

Legal experts said in a case against a company as well-capitalized as Meta, a multistate coalition gives the states the ability to pool resources and share expertise, and it may improve their credibility with the jury and the judge. They said attorneys general have used the strategy repeatedly in cases against the tobacco and opioid industries to strengthen their bargaining power and to present evidence of conduct that allegedly affected consumers across the country.

“A jury will see all these states banding together to do this, and that presents kind of like a projection of unity,” said Prentiss Cox, a former assistant state attorney general in Minnesota who is now a law professor at the University of Minnesota Law School. “Elected officials on different sides of a partisan world can agree that this is a problem that needs solving.”

The states' lawsuit, which was filed in 2023, stems from a multistate investigation into Instagram and Facebook's impact on young users. The states generally allege that Meta knowingly designed features in Instagram and Facebook to hook young users while assuring the public that the platforms were safe, conduct they argue violated state consumer protection laws.

A large portion of the states are also suing under a federal law, the Children’s Online Privacy Protection Act, claiming Meta failed to obtain parental consent before collecting personal information from young users.

In pushing for smaller trials, Meta argued that a combined proceeding would require jurors to understand the different legal standards for each state claim, making it harder to fairly evaluate each one. The company also said it planned to defend against the claims with state-specific evidence, an approach it argued would be more difficult in a larger consolidated trial.

“The AGs offer no proof anyone in their states was misled,” a spokesperson for the company said in a statement ahead of trial. "Rather than sticking to the facts or the law, the states have instead decided to chase an outlandish payout."

Kentucky Attorney General Russell Coleman called the case the largest consumer protection lawsuit in American history.

“AGs are in the perfect position to get this done," Coleman said in a statement. "We did it with the Tobacco Settlement in the 1990s. We did it with the companies behind the opioid crisis. We’ll do it again with Meta.”

Bloomberg Law

Manage Newsletters

Semtech Leaders Get Stockholders' Tech Demand Lawsuit Tossed

Aug. 17, 2026, 12:55 PM PDT

Summary by Bloomberg AI

AI Generated

- Semtech Corp. executives and board members were accused by shareholders of overhyping the market opportunity of the company's active copper cable technology.
- A judge dismissed the derivative claims, saying the shareholders didn't sufficiently demonstrate that demanding the board take action before they sued would've been futile.
- The shareholders can replead within two weeks of the dismissal order, and their claims are related to an investor class action proceeding against Semtech and its CEO over allegedly misleading statements.

Semtech Corp. executives and board members skirted shareholder allegations that they caused the semiconductor company to overhype its active copper cable technology's market opportunity.

The stockholders didn't sufficiently demonstrate that demanding the board take action before they sued would've been futile, Judge Mark C. Scarsi said.

Stockholders filing derivative complaints must make a pre-suit demand for litigation or show taking that step wouldn't have mattered. The shareholders pleaded demand futility under the law in Delaware, where Semtech is incorporated, by alleging a majority of the board faced a substantial likelihood of liability on their claims.

But the shareholders didn't allege facts to raise an inference any defendant besides CEO Hong Hou was involved in preparing a pair of challenged misstatements he made on a November 2024 earnings call, the US District Court for the Central District of California judge said.

They failed to allege a substantial likelihood of liability for breach of fiduciary duty claims for lacking corporate oversight either, Scarsi said. Semtech had an audit committee for these matters. And the shareholders inadequately alleged board members knew or should've known Hou's statements were misleading and left uncorrected based on attendance at a prior board meeting.

The shareholders can replead within two weeks of the Aug. 14 dismissal order.

The derivative claims echo those of an investor class action proceeding before Scarsi against Semtech and Hou over these statements made after reporting came out that Nvidia Corp. wasn't developing a certain rack-scale configuration that might've used the products.

The class action partially survived a dismissal bid last year. The investor leading that case sufficiently alleged Hou's assurances that CopperEdge net sales would exceed a previously announced "floor case" estimate were false when made in November 2024, and the executive's intent or recklessness to defraud, Scarsi said.

In a February 2025 financial filing, Semtech said it expected CopperEdge's net sales to be lower than its prior $50 million floor-case estimate. Semtech's stock price plunged 31% to close at $37.60 the next trading day, Feb. 10, 2025 — its sharpest one-day fall since 1993, according to data compiled by Bloomberg.

Attorneys at The Brown Law Firm PC and Levi & Korsinsky LLP, which represent the shareholders, didn't immediately respond to an email seeking comment. Sidley Austin LLP represents the Semtech leaders and the company, a nominal defendant. The law firm declined to comment.

The case is In re Semtech Corp. Derivative Litig. , C.D. Cal., No. 2:25-cv-04234, 8/14/26 .

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Insight

Settlements Are Vital for Shareholder Activists and Companies

Aug. 18, 2026, 1:30 AM PDT

Summary by Bloomberg AI

AI Generated

- Shareholder activism has evolved to favor negotiated settlements over public battles, offering benefits such as bespoke solutions to address underlying concerns.
- The structure and implications of settlement terms have become increasingly important, with companies expecting earlier engagement and creative solutions from activists and their advisers.
- Settlement agreements can shape board composition, governance practices, and strategic priorities, with terms including standstill provisions, voting commitments, and board seats, which are heavily negotiated among activists, companies, and their counsel.

Shareholder activism has substantially evolved since its earliest days. Rather than monthslong public battles ending at the ballot box, activist campaigns are increasingly resolved through settlements that offer activists and companies several benefits, including more bespoke solutions to address the underlying concerns that drove the campaign.

As negotiated resolutions remain the preferred outcome, the structure and implications of settlement terms have likewise evolved and become increasingly important for companies and activists alike. Companies should expect engagement much earlier in the process and remain open to creative solutions from activists and their advisers, particularly where there may be resistance to the level of change being sought.

The Settlement Era

The perception of shareholder activism has shifted markedly over the past several decades. Now viewed as an established part of public company governance, activism has gained broader acceptance of its value and place in the natural ecosystem of capital markets, fostering a culture of engagement in which both company boards and activist investors benefit from a negotiated outcome rather than a protracted, heated public battle.

The universal proxy card, which went into effect in August 2022, further catalyzed this shift toward negotiated resolutions by eliminating the mechanical voting obstacle that made splitting votes between management and dissident nominees onerous for shareholders. With the ability to mix and match candidates from both sides, individual directors have become more vulnerable — and election outcomes less predictable — making negotiated resolutions more attractive from the outset.

The broader macroeconomic uncertainty, an unsettled regulatory backdrop, and the rising uncertainty surrounding institutional investor voting likewise have reinforced the value of constructive engagement.

Companies and activists come to the negotiating table much earlier in the process, sometimes before the activist has surfaced publicly. No longer viewed simply as a mechanism to avoid a costly proxy fight, settlement agreements increasingly shape board composition, governance practices, strategic priorities, and the relationship between companies and their investors. Their terms have taken on greater significance.

Activist Settlement Agreements

As settlements have increasingly become the preferred outcome, general understanding of these agreements' objectives and structure has grown. However, specific terms can vary and are heavily negotiated among activists, companies, and their counsel.

Board composition remains the central battleground. The number of seats an activist secures; whether those seats are obtained via board expansion or the removal of incumbents; and whether the new directors are mutually agreed, picked from the activist's slate, or are representatives of the activist are all critical details that can affect other key terms of the agreement. These can include the standstill duration, which is intended to restrict the activist from engaging in certain activities for a period of time, and whether the activist must meet a minimum ownership requirement to maintain a board seat or the ability to replace directors.

Standstill provisions are likewise heavily negotiated and critical to reaching a deal, with companies generally seeking longer periods of "peace" from the activist. That said, the magnitude and nature of the board change is often tied to the duration and stringency of the standstill restrictions. Accordingly, the length of the standstill period, whether there is an ownership cap, and the scope of other restricted activities (for example, no proxy solicitation, shareholder proposals, or nominations; public criticism; litigation) are the key points of friction in standstill negotiations.

A settlement where the standstill expires before the company's next annual meeting typically looks very different from an agreement with a multiyear standstill, including with respect to the activist's voting obligations. Companies will often push for broader, multiyear voting commitments to lock in support and stability for the duration of the agreement.

Activists typically push for more limited voting commitments to avoid obligations to blindly support any management proposal during the standstill. Agreements often carve out voting obligations for extraordinary transactions, so activists aren't bound to support a future merger, sale, or other transformative transaction they haven't had the opportunity to properly evaluate.

When a settlement is reached against a backdrop of active or anticipated merger-and-acquisition activity, this voting carve-out becomes even more important as activists seek to maintain flexibility to oppose a potentially value-destructive deal. For this reason, standstill periods sometimes expire upon consummation of an extraordinary transaction.

Creativity and Flexibility

The flexibility of a negotiated resolution also allows parties to address concerns beyond reconstituting the board, opening the door for more creative solutions. To that end, we increasingly see settlements provide for the formation of new board committees focused on strategy, capital allocation, and/or operations. We also see settlements address CEO succession planning and other governance improvements, such as separating the roles of CEO and board chair or declassifying a board.

Despite the benefits of settlements, not all activist campaigns lend themselves to negotiated resolutions. Campaigns targeting an underperforming CEO, contests over a potential sale of the company, or outright hostile approaches remain difficult to settle because the parties' positions are often too far apart for a negotiated middle ground. In today's more M&A-receptive environment, we may see more of these situations battled publicly or at the ballot box, even as settlement remains the more likely outcome overall.

Boards, investors, and counsel should also expect continued evolution in the types of resolutions being reached. Alongside formal, legally binding settlement agreements, an increasing share of activist situations are being resolved informally through board, governance, and/or other changes announced via a press release — often accompanied by a supportive quote from the activist.

These informal resolutions may carry less legal certainty but offer greater flexibility and speed. As both activists and companies continue to prioritize constructive engagement and efficiency over public confrontation, they're likely to become an even more common feature in the activism arena.

This article does not necessarily reflect the opinion of Bloomberg Industry Group Inc., the publisher of Bloomberg Law, Bloomberg Tax, and Bloomberg Government, or its owners.

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Stripe Clinches Over $7 Billion Deal to Buy AI Firm OpenRouter

Aug. 16, 2026, 1:08 PM PDT

Summary by Bloomberg AI AI Generated

- Stripe Inc. has finalized an agreement to acquire OpenRouter Inc. for more than $7 billion, according to people familiar with the matter.
- The deal underscores the demand from businesses to find the most cost-friendly AI solutions and could give Stripe a stronger footing in the artificial intelligence sector.
- OpenRouter provides access to hundreds of AI models, with the goal of matching developers with the most efficient and affordable options for the job at hand.

Stripe Inc. has finalized an agreement to acquire OpenRouter Inc., a startup that helps companies switch between artificial intelligence models, for more than $7 billion, according to people familiar with the matter.

The deal, just months after OpenRouter raised money at a reported $1.3 billion valuation, underscores the demand from businesses to find the most cost-friendly AI solutions. It could also give Stripe, a payments processing firm, a stronger footing in the fast-growing artificial intelligence sector.

The final price for the acquisition could change. The discussions were described by people who spoke on condition of anonymity as the information is not public.

A spokesperson for Stripe said the firm doesn’t comment on rumors or speculation. OpenRouter declined to comment.

Founded in 2023, OpenRouter provides access to hundreds of AI models, with the goal of matching developers with the most efficient and affordable options for the job at hand. The New York-based company has attracted some of the biggest investors in Silicon Valley, including CapitalG — one of Alphabet Inc.’s venture arms — as well as Andreessen Horowitz and Menlo Ventures . OpenRouter has raised more than $150 million in capital to date.

OpenRouter CEO Alex Atallah
Photographer: Roy Rochlin/Getty Images

The startup's rise coincides with greater scrutiny on AI costs. While firms like Anthropic PBC and OpenAI are still widely viewed as offering the most capable AI models, a long list of Chinese firms provide cheaper alternatives that are often viewed as good enough for many tasks.

In May, OpenRouter said it serves 8 million developers who rely on it to access more than 400 different AI models. The startup's main growth is coming from developers who experiment with different models when building agentic capabilities into their software, a process that requires a mix of infrastructure that can work across different providers and data sources.

OpenRouter also offers services that help companies access backups in case the model they use fails and understand which options are most popular across the broader tech ecosystem.

The Wall Street Journal previously reported Stripe was in talks to buy OpenRouter for about $10 billion.

OpenRouter Chief Executive Officer **Alex Atallah** previously co-founded OpenSea , a nonfungible token marketplace, which raised more than $400 million in capital but saw usage crater. Atallah stepped down from OpenSea in July 2022, and less than a year later started OpenRouter.

Earlier this year, Atallah described OpenRouter as the AI equivalent of Stripe.

Citadel Securities urges SEC to reconsider proposal to scrap key stock-trading rule | Business Information & News | FE

Aug 17 (Reuters) - Citadel Securities, the market-making firm founded by billionaire Ken Griffin, on Monday urged the U.S. Securities and Exchange Commission to reconsider a proposal to scrap a longstanding Wall Street regulation requiring the execution of stock trades at the best available price.

The firm said the SEC's proposal, which has become one of the biggest U.S. market structure issues in years because the rule sits at the center of how stocks are traded, could divert trading from public exchanges, harm retail investors and reduce market liquidity.

• In June, the SEC unanimously proposed to scrap the regulation, also known as the "order protection rule", saying it drove up costs and complexity and was no longer necessary.

• If adopted, the proposal being pursued by SEC Chairman Paul Atkins' commission would mark another step in the Trump administration's plans to remake the structure of securities markets.

• In a letter to the SEC, Stephen John Berger, managing director and global head of government and regulatory policy at Citadel Securities, said the proposal would amount to a significant overhaul of U.S. equity market structure and described the SEC's economic analysis as "fatally flawed."

• Citadel Securities said the SEC had failed to show that the proposal's expected benefits outweigh its risks, noting that projected compliance savings of about $250,000 per trading day are modest compared with the size of the U.S. stock market.

• The regulation was first adopted in 2005 to prohibit so-called trade-throughs, which occur when a trade happens at a bid or offering price that is worse than what is quoted on another venue.

• Citadel Securities said removing the rule would allow brokers to bypass the best displayed exchange prices more easily, encouraging more customer orders to be internalized or routed to alternative trading venues rather than public exchanges.

• That, Citadel Securities argued, would weaken incentives for market participants to display competitive quotes and could diminish price discovery.

• The firm also argued that eliminating the rule could benefit platforms offering tokenized equities, saying such venues could execute trades without matching better prices displayed elsewhere in the market and potentially expose investors to weaker protections.

• "We urge the Commission to reconsider this Proposal, including the far less risky alternative of imposing a minimum volume threshold for exchanges to receive protected quote status," Citadel Securities said.

SEC sues 'boiler room' operator over $74 million pre-IPO fee scheme | Secondary Sources | National

(August 17, 2026) - A New York man is facing Securities and Exchange Commission charges that he and three firms he controlled reaped $23 million in hidden fees from retail investors in funds that purported to own "pre-IPO" shares of private companies.

Securities and Exchange Commission v. Spaventa et al., No. 26-cv-6958, *complaint filed* (S.D.N.Y. Aug. 14, 2026).

Andrew Spaventa, The Spaventa Group LLC, TSG Capital Advisors LLC and TSG Alpha Partners LLC made false statements and used high-pressure sales tactics to raise about $74 million from more than 800 investors between December 2020 and June 2025, according to the SEC.

The agency's complaint, filed Aug. 14 in the U.S. District Court for the Southern District of New York, says Spaventa and his companies purported to offer investments in sought-after companies, including Anthropic and SpaceX.

The defendants operated "boiler rooms" where more than 100 sales agents cold-called thousands of prospective investors, many of them retirees, the SEC says.

Spaventa received about $4 million from the scheme, which he spent on a home, travel and luxury cars, the SEC says.

'No hidden fees'

According to the complaint, Spaventa used his companies to buy shares in private companies, then resold them to his own funds at marked-up prices.

A Spaventa Group handbook instructed sales agents to tell prospective investors that the funds in which they would invest charged "no hidden fees," the SEC says. Fund offering documents also promised either no upfront fees or fees no greater than 12.5%, the suit says.

In reality, investors paid markups as high as 91%, according to the complaint.

Sales agents lured investors with promises of potential returns between 200% and 1,000%, the suit says.

They also falsely claimed the firm had a successful track record with prior investments in companies like Airbnb, Palantir and SoFi, the SEC says.

Most investors in the funds have not recovered their investments, and some have recovered nothing, according to the complaint.

The 12-count complaint includes claims that the defendants made misleading statements in connection with an offer or sale of securities in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C.A. § 77q(a), and sold unregistered securities in violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C.A. §§ 77e(a) and 77e(c).
The agency also alleges that Spaventa caused the funds to buy securities from his affiliates without the approval of an independent person or body acting on the funds' behalf, as required by Section 206(3) of the Investment Advisers Act of 1940, 15 U.S.C.A. § 80b-6(3).
The agency seeks permanent injunctions against further violations of those provisions, an order barring Spaventa from commercial securities trading, disgorgement of all ill-gotten gains with interest, and civil penalties.

SEC attorney Elisa S. Solomon represents the agency.

Paramount Wants $1.88 Billion Bond From States, Writers Challenging Warner Deal

WSJ **wsj.com**/business/media/paramount-wants-states-writers-challenging-warner-deal-to-post-1-88-billion-bond-e16c1147

Paramount on Monday asked a judge to require 12 states and the Writers Guild of America to put up a nearly $1.9 billion bond for challenging its acquisition of Warner Bros. Discovery WBD -0.21%decrease; down pointing triangle, money that would go to the company if it ultimately wins the case.

The aggressive maneuver came in a motion arguing that the plaintiffs should be held financially responsible for damages Paramount suffers during litigation seeking to block the $81 billion deal.

Paramount specifically wants the bond to cover the roughly $7 million-a-day, or $650 million-a-quarter, ticking fee it will owe Warner shareholders if the deal hasn't closed by Oct. 1.

The ticking fee was an incentive to persuade Warner shareholders to support its bid for the company over rival suitor Netflix.

Under Paramount's request, it would receive the bond funds if it prevails in court. A trial is scheduled for March 2027, much later than Paramount sought.

"Paramount will have incurred $1.3 billion in unrecoverable financial losses as a result of ticking fees by the time post-trial briefing concludes, to say nothing of incremental financing fees and delayed synergies," the motion said.

Paramount also said that because the trial doesn't start until next year it will be "forced to restart the regulatory-approval process in certain jurisdictions—including the United States, whose approval expires on February 19, 2027—thereby incurring additional expenses and delay."

The company is relying on two different legal authorities to argue that requiring the bond is necessary.

Judges have flexibility in setting bond amounts and sometimes waive the requirement altogether.

TV station operator Nexstar Media Group made a similar bond request as it fights an antitrust lawsuit by California and other states over its merger with rival broadcaster Tegna.

Nexstar sought a $150 million bond. The judge granted $10,000.

California Attorney General Rob Bonta, who is leading the states' case against Paramount, has previously dismissed the idea that the states could be made to cover Paramount's ticking fee costs and other legal expenses.

"To suggest that California could somehow, or taxpayers would pay for what Paramount agreed to pay, seems blatantly untrue," Bonta said at a July 13 press conference.

A spokesperson for Bonta didn't immediately respond to a request for comment.

The Paramount-Warner merger has already been approved by the Justice Department and 68 countries and territories including the European Union, United Kingdom and China.

The 12 states have alleged the deal is illegal because it will give Paramount too much power over theatrical movie distribution and cable television programming.

Paramount argues the deal is pro-competitive and pro-consumer and would help it better compete with larger technology and media companies including Disney, Netflix and Amazon.com.

Paramount's motion is the latest in a series of maneuvers aimed at thwarting the antitrust effort. The company has also discussed moving its corporate headquarters out of California. Tennessee, Texas and Georgia are the states Paramount is considering relocating to, a person familiar with the company's thinking said.

California and the state's entertainment production economy are already struggling because of the flight of film and television shoots to other states and countries that offer generous tax incentives to Hollywood studios.

Bonta, speaking at a conference held by Politico last week, called Paramount's relocation talk an "attempt to blackmail the regulators who are daring to enforce the law."

Paramount has said it is willing to engage in settlement negotiations with Bonta and the other states. Bonta said last week, "We intend to go to trial and push this case to the end. We want to block this merger."

Protein Shake Maker Investors Sue Over Troubled Acquisition

law360.com/articles/2513892/protein-shake-maker-investors-sue-over-troubled-acquisition

(August 17, 2026, 6:11 PM EDT) -- Consumer packaged health foods company Simply Good Foods has been hit with a class action in New York federal court over its $280 million acquisition of a plant-based protein shake company, whose integration was an "abject failure," resulting in a $200 million impairment on the acquired company's assets and a stock price drop.

The Monroe County Employees' Retirement System filed a **complaint** on Friday on behalf of Simply Good Foods investors who purchased the company's common stock between Oct. 24, 2024 and April 8, 2026.

In addition to the company, which makes protein bars and shakes sold under the Atkins and Quest brands, the named defendants include Simply Good Foods' former CEO Geoff Tanner, its former Chief Financial Officer Shaun Mara, and its current CFO Christopher Bealer.

In April 2024, Simply Good Foods announced that it would acquire OWYN, a company specializing in plant-based, ready-to-drink protein shakes, for $280 million, and that the merger would offer several "'compelling strategic and financial benefits,' including the diversification of the company's portfolio by increasing its 'presence within the RTD shake segment,'" according to the complaint.

The acquisition closed in June 2024, and the defendants claimed that OWYN was being successfully integrated into Simply Good Foods, according to the complaint.

"For example, speaking during an October 2024 earnings call, Tanner stated that the integration of OWYN was 'progressing as planned' and assured investors that he 'remain[ed] confident' in the company's ability to 'effectively integrate OWYN,'" the complaint states. "Tanner updated investors in October 2025, representing that the OWYN integration had been 'largely completed' and 'gone well.'"

However, the retirement system alleges that in reality the integration of OWYN was an "abject failure," with key management losses, product quality control issues and execution failures.

Specifically, the complaint states that employee departures after the acquisition impacted the successful integration of OWYN assets. To make up for those losses, the complaint states that Simply Good Foods increased its general and administrative spending. However, that, in turn, led to an "inefficient and bloated organizational structure and the lack of clear and cohesive strategic priorities."

Additionally, the retirement system alleges that a new protein supplier for OWYN products created product quality issues that affected the "taste, texture, and shelf-life of OWYN products."

All of this, in turn, led to negative product reviews, depressed consumer sales, and the loss of important distributor relationships, the complaint states.

Additionally, according to the retirement system, "in an effort to boost sales in the short-term, Good Foods had offered discounts and engaged in other promotional activities for OWYN products above its historical practices, eroding the company's margins but failing to achieve the desired sales turnaround."

The truth about the acquisition's lasting issues and impacts began to emerge in October 2025 when Simply Good Foods reported its financial results and revealed that OWYN had suffered a slowdown in sales growth due to a previously undisclosed product quality issue, according to the complaint.

On this news, the complaint states that the price of Simply Good Foods common stock fell by 17% from roughly $25 per share on Oct. 22, 2025, to $20.63 on Oct. 23, 2025.

"However, the price of Simply Good Foods stock remained artificially inflated as defendants failed to disclose the full truth regarding problems arising from the company's efforts to integrate OWYN and continued to make materially false and misleading statements," the complaint states.

After Tanner stepped down as CEO in January 2026, the company made a second alleged corrective disclosure in April 2026, when its second-quarter earnings results revealed that consumer consumption had "plummeted" across all of its brands, according to the complaint.

"During the corresponding conference call, returning CEO [Joseph] Scalzo acknowledged the abysmal results and admitted that the company had 'made some strategic choices' that 'ultimately weakened' the performance of its brands, including OWYN," the complaint states. "Contrary to defendants' class period representations that the integration of OWYN had 'gone well,' Scalzo revealed that the integration of the business had, in fact, failed to meet the company's 'own expectations,' leading to poor market execution, retail misses, and distribution losses."

"Scalzo also revealed that the product quality issues impacting OWYN were more pervasive than previously disclosed," the complaint further states. "Far from already being 'rectified' in October 2025 as previously claimed by Tanner, Scalzo revealed that the lingering effects of OWYN's product quality issues were expected to lead to 'some near-term distribution losses over the next year' – i.e., into at least early calendar 2027."

On this news, the complaint states that Simply Good Foods' common stock price declined by more than 27% from $14.41 per share on April 8, 2026, to $10.44 on April 10, 2026.

Finally, in July, the complaint states that Simply Good Foods announced an additional $13 million impairment of OWYN assets. The retirement system claims this announcement brought total impairments for the brand to $200 million, roughly 70% of OWYN's purchase price, less than two years after the acquisition closed.

The suit seeks damages, attorney fees and a jury trial. Representatives for the parties did not immediately respond to requests for comment on Monday.

The Monroe County Employees' Retirement System is represented by Samuel H. Rudman, Brian E. Cochran and Francisco J. Mejia of Robbins Geller Rudman & Dowd LLP and Thomas C. Michaud of VMT Law PC.

Albertsons Judge Hears $44B Opioid Abatement Plan In Wash.

law360.com/articles/2514328

(August 17, 2026, 11:55 PM EDT) -- Addressing harm caused by prescription opioid abuse in Washington would cost nearly $44.4 billion, an expert testified Monday during a bench trial in the state's case accusing Albertsons and its Safeway subsidiary of exacerbating Washington's overdose crisis by failing to curb the flow of controlled substances.

The money would fund treatment, prevention and harm reduction efforts necessary to return opioid use disorder and overdose death rates to levels not seen since the mid-1990s, said Ted R. Miller, a health economist and professor of public health at Michigan State University. He described the decades-long abatement approach as "a three-legged stool" that's routinely used in the field of substance abuse prevention.

"You prevent what you can, you treat what you couldn't prevent ... and for the ones that you haven't been able to get into treatment, you reduce the harm that's occurring," he told the court.

The plan, which would stretch through 2055, is intended to address harm specifically attributable to prescription opioid abuse, Miller said. That includes harm from illicit heroin and fentanyl use to the degree that those users began with prescription opioids — which is the case about 76% of the time, he said.

Washington sued Albertsons Cos. Inc. and Safeway Inc. in 2022, alleging that the companies **failed to adequately investigate and report** potentially suspicious opioid orders and prescriptions. The flood of prescription pills fueled an opioid crisis that ultimately killed tens of thousands of Washingtonians, the state claims.

At trial, which **began July 13** and is expected to last into mid-September, Washington is attempting to prove its claims and secure damages necessary to repair the harms.

Just over half of the proposed $44.4 billion plan detailed Monday would be used for treatment, Miller said. Some programs would identify and recruit people into care; others would expand the capacity of existing treatment options. For example, the money would pay for residential treatment, transportation services, medication-assisted therapy for people who are incarcerated and neonatal care for babies born with opioid dependence, among other programs.

To encourage a smooth transition back into the community, Miller continued, the funds would also go toward housing, vocational rehabilitation and recovery support.

Another nearly $10.1 billion — about 23% of the total abatement amount in Miller's plan — would fund harm reduction aimed at children affected by the opioid crisis, according to slides shown Monday to King County Superior Court Judge Janet Helson. That would include in-school treatment, care management for kids who have suffered adverse experiences related to opioids as well as family and peer support programs. The funds would also pay for more training of service providers in the state.

About $1.4 billion, meanwhile, would pay for harm-reduction programs targeting adults, Miller said. Those would include broadening access to naloxone — which can reverse the effects of an opioid overdose — providing syringe services and establishing "health engagement hubs" where people can be connected with healthcare and other services.

Prevention and education programs would cost $3.7 billion for the period, Miller continued. Coordination and monitoring of the abatement plan, including data collection and evaluation, would account for $4.4 billion.

Native American communities would receive about $29.7 million annually, which Miller said is both a recognition of the disproportionate harm experienced by those populations as well as an acknowledgment that tribal treatment centers often serve non-Native patients but struggle to obtain reimbursement for it.

During cross-examination of Miller, counsel for Albertsons questioned the duration of the abatement plan. Steven M. Pyser of Williams & Connolly LLP, for example, pointed out that nearly $20 billion of the total amount was earmarked for years following the projected decline of opioid use disorder rates in Washington state to mid-1990s levels.

"That's correct," Miller replied, "and I'd explain that that's because we're dealing with fentanyl, and it's forced us to get down further to get the crisis under control."

Albertsons tried to strike Miller's testimony after "correct," but Judge Helson declined.

Miller also acknowledged under questioning that his model's funding would extend beyond mid-2047, which is when his forecast predicted opioid-related deaths would fall back to baseline levels.

Earlier on Monday, the court heard videotaped depositions of two other state witnesses: Nikki Price, Albertsons' former director of pharmacy compliance, and Tim Mills, the data processing manager for Albertsons' prescription drug distribution arm.

Mills testified that hundreds or thousands of orders from Albertsons' pharmacies were flagged for ordering unusually large amounts of opioids. Price, meanwhile, said the company never adopted some of her recommendations for how to strengthen oversight of suspicious orders.

Price, who **previously testified** about Albertsons' internal protocols, also acknowledged that as Albertsons' distribution center wound down its operations and transitioned back to a third-party distributor for its pharmacies in the mid-2010s, the company worked to draw down its inventory of controlled substances.

"Does that mean that Albertsons was pushing [controlled substances] out even if they didn't order any?" asked Jay Lichter of Baron & Budd PC, representing the state.

"Correct," Price replied, further acknowledging that the practice could increase the risk that prescription opioids would be diverted for illegal use.

Judge Helson ruled in June that as registered dispensers of controlled substances, Albertsons and Safeway had duties to conduct due diligence on whether opioids were prescribed for a valid medical purpose and report suspicious prescriptions to authorities.

Albertsons has argued that its handling of the drugs merely reflected the medical community's widespread attempt to treat pain with the opioids — a practice that gained traction in the late 1990s and early 2000s, before health professionals recognized the growing opioid epidemic.

"As a pharmacy, we are a mirror of what the doctors are doing," the company's counsel said during opening statements. "We reflect it, we don't drive it."

Washington is expected to rest its case in coming days, after which Albertsons will call witnesses in its defense. Judge Helson said Monday that she expects to issue a ruling in the case by late September or early October.

The judge on Monday also **granted** Washington's motion for sanctions against Albertsons over late disclosures of discovery materials. Judge Helson found that the company's failure to disclose employee files as well as its earlier destruction of pharmacy managers' email accounts "substantially prejudiced the state" by forcing it "to process tens of thousands of documents on the eve of trial that the state should have had over two years ago."

Albertsons will face monetary sanctions to be determined at the end of the trial, the judge said, and will be forbidden from admitting certain documents or calling certain witnesses related to the discovery at issue.

Additionally, "to the extent the state can show that trial testimony directly relates to the late disclosures, the court shall count that time against Albertsons," Judge Helson ruled.

Washington is represented by Kelsey E. Endres, Jonathan J. Guss, Alison E. Cordova and Jonathan Tebbs of the Washington Attorney General's Office, Russell W. Budd, Christine C. Mansour, Michael Thakur, Daniel Alberstone, Mark Pifko, Peter Klausner, Evan Zucker, Jay Lichter, Elizabeth Smiley, Sterling Cluff, Catherine H. Dorsey and Marco A. Palmieri of Baron & Budd PC, Peter J. Mougey and Jeffrey R. Gaddy of Levin Papantonio Proctor Buchanan O'Brien Barr Mougey PA, Kathleen Clark, Amy Quezon and Allan J. Elkins Jr. of McHugh Fuller Law Group PLLC, Anthony J. Majestro, Christina L. Smith and Graham B. Platz of Powell & Majestro PLLC, and Mildred S. Conroy of Simmons Hanly Conroy LLP.

Albertsons and Safeway are represented by Mary Re Knack and Alexandrea M. Smith of Ogden Murphy Wallace PLLC, George A. Borden, Olivia L. Campbell, Richard S. Cleary Jr., Sarah S. Gallant, William Hawkins, Loryn Helfmann, Enu A. Mainigi, Carl Metz, Steven M. Pyser, Jennifer Wicht and Jack H. Danon of Williams & Connolly LLP, and Francis A. Citera, Gretchen Miller, Emily Mankowski, Brett Doran, Meredith Mandell, Linda Ricci, Bryan Harrison, Akiesha Sainvil and Christopher Torres of Greenberg Traurig LLP.

The case is Washington v. Rite Aid Corp. et al., case number 22-2-20910-1, in King County Superior Court.

--Additional reporting by Lauren Berg. Editing by Brian Baresch.