

2025

# INIGO DEFENSE COUNSEL SURVEY



INIGO

FOR THE LOVE OF DATA

## Foreword

Welcome to the latest edition of our Defense Counsel Survey. As we move into our fifth year, we highlight some emerging trends, as well as some familiar themes. This year's survey primarily explores the impact that Donald Trump's return to the White House will have on both the regulatory and private securities landscape.

We asked 48 questions and interviewed some of the top securities practitioners in the US. These responses provided us with tremendous insights that we have grouped into five themes:

1. **Litigation funding** – pouring gas on the fire?
2. **Securities class actions** – will they return to the pre-pandemic level?
3. **SEC & DOJ** – will the brain drain affect regulatory enforcement?
4. **DExit** – will Delaware remain the corporate domicile of choice?
5. **Tariffs and geopolitics** – what to tell investors in a fast-changing world?

We also review how we did with our predictions last year, make five further predictions for the year ahead, and identify the top five plaintiff law firms, as ranked by our respondents.

A huge thank you to those who devoted time to answering our questions and being interviewed. This survey is not possible without your valuable input.

We hope you find the survey informative. Please do share your feedback with us. We want to know what you think and will incorporate your ideas into future surveys.



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## Did our 2024 predictions come true?

#01

The SEC's new cybersecurity disclosure rules will lead to at least ten cybersecurity related claims over the next 12 months.

Did it come true?



This prediction turned out to be very wide of the mark. Despite predictions from defense counsel and plaintiff attorneys that new SEC rules would cause an increase in filings and regulatory investigations for failing to disclose cyber breaches in time, companies have adapted to the regime quickly and large data breaches have not attracted securities litigation. By our estimation, there has not been a single claim filed because of the new SEC rules. We will continue to monitor this, but it appears to be the dog that didn't bark, much like ESG disclosure rules before it.

#02

Regardless of whether the number of securities class actions increases in 2024, the overall settlement value and amount spent on defense costs will increase by at least 10%.

Did it come true?



Over the past 12 months, the average settlement value as a percentage of plaintiff-style damages increased by 1%, from 6.3% in 2023 to 7.3% in 2024, according to Cornerstone. We expect this trend to continue in 2025, partly because the SPAC and IPO boom has subsided and also because courts are dismissing fewer cases, which we have discussed in previous surveys.

#03

AI will be a material driver of litigation and SEC enforcement actions over the next 12 months.

Did it come true?



From June 2024 to June 2025, we have seen 16 new securities class actions related to AI. This is approximately 7% of the total number of filings and there is no sign of this trend slowing. The Trump administration has continued the Biden era policy of taking enforcement actions against both individuals and companies for AI-washing.

#04

There will be at least ten securities class action settlements in 2024 that involve a company in bankruptcy.

Did it come true?



Twelve companies entered into securities class action settlements while in Chapter 11 over the past 12 months. Several other companies entered into similar settlements on the brink of Chapter 11, facing a distressed asset sale to avoid a Chapter 11 filing or otherwise in a financially weakened state. Of the 12 companies that settled securities class actions while in bankruptcy, six were DeSPACs that completed in 2021 or later, bearing out our view that DeSPACs are bigger litigation and bankruptcy risks. Several settlement agreements included contributions from Side A D&O cover, as we predicted in previous surveys.

#05

2024 will see a record level of derivative filings and settlements over \$1 million.

Did it come true?



We saw a drop in both the number of derivative cases filed and their settlement value throughout the second half of 2024 and first half of 2025. Some large cases are still pending, which we had factored into our analysis, but the general trend is still towards fewer derivative filings and settlements. Plaintiff attorneys told us that increased stock market volatility and a return to 'business as usual' post-pandemic caused a shift back to traditional securities class actions to recover money for shareholders. However, they still see derivatives as an important weapon in their arsenal. We will discuss recent developments in Delaware in this survey.

**60%**  
ACCURACY

Looking back on our predictions and discovering that less of our predictions came true than in our 2024 survey was not surprising in a global climate that is consistently volatile and unpredictable. While we tried to be more specific with our predictions, our forecast for cybersecurity related filings did not materialise and we saw a slight fall in the number and size of derivative filings and settlements.

# Q1

## Litigation funding. Pouring gas on the fire?

### THE RISE OF LITIGATION FUNDING

Third party litigation funding gained a foothold in the US around 2010, according to a 2022 report by the US Government Accountability Office (GAO).<sup>2</sup> But it is a shadowy market. There is no real public data on the number of litigation funders or how much money they make. There is no federal regulation, little state oversight, and no obligation for plaintiffs or their law firms to disclose if their claim is being funded by a third party, according to the GAO.

Litigation funders may provide funding for a single case or a portfolio of cases. Some funders choose to fund a specific law firm, for example Longford Capital's reported investment in 2024 of up to \$40 million in Quinn Emanuel.<sup>3</sup> Backing a group of cases can be better for the funder, increasing its chances of success and offering a quicker return on its investment. Law firms may also prefer portfolio funding as it offers more flexibility on how to use the money. For instance, the firm may choose to use the money to advance a lawsuit or as working capital to expand its business.

Funders interviewed for the GAO report said they have no say in litigation strategy or whether a case should settle. But other stakeholders fear that funders could seek to influence these decisions. Litigation funding may also incentivize plaintiffs and their lawyers to not reach a settlement, drive up litigation costs, file weak cases, or file more discovery motions to drive up a case's value and meet the litigation funders' threshold for financial backing.

The litigation funding market is high risk – if a plaintiff loses a case, the funder loses its investment. But it can also offer very high rewards. Two commercial funders reported returns of over 90% on their invested capital, the GAO found. Funders are drawn to litigation in part because the returns are uncorrelated to the financial markets, so this type of funding provides investors with diversification.

Litigation funders have attracted capital from a wide range of investors, from sovereign wealth funds, pensions, and hedge funds to high-net-worth individuals and family offices. Credit Suisse set up a dedicated litigation fund in 2006.

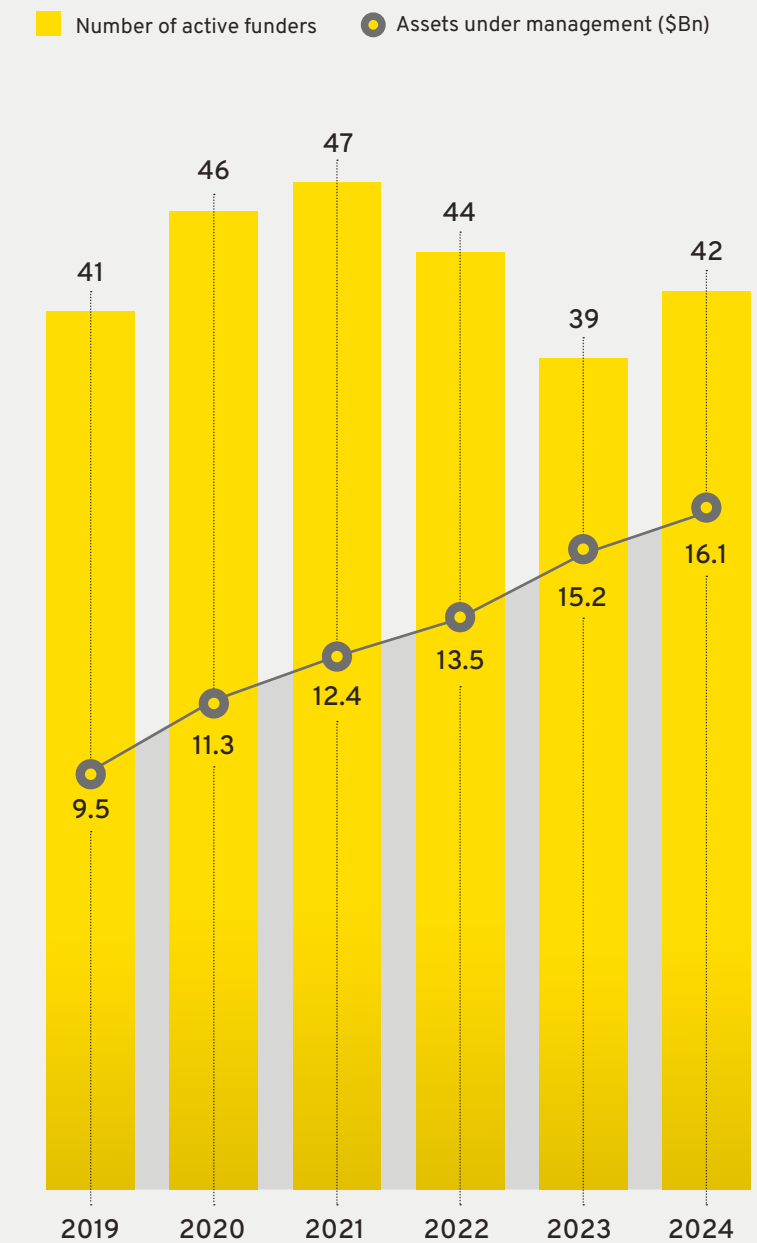
But there has been a tighter supply of capital for litigation funders since 2023, according to Westfleet Advisors.<sup>4</sup> Westfleet Advisors attributes this tightening to challenges in raising private capital generally, rather than a loss of faith in litigation funding, and expects the flow of capital to loosen soon.

But the industry is attracting more attention. Even President Trump's recent "big, beautiful bill" initially included a 41% tax on litigation funders' proceeds but was dropped at the eleventh hour before it was signed into law. Experts predict this tax could reappear in future legislation.<sup>5</sup>

Third party litigation funding took root in Australia in the 1990s out of necessity because of the significant risk that plaintiffs are required to pay defendant's attorney's fees if they are ultimately unsuccessful in their lawsuits.

Twenty years later, litigation funding made its way to the US and has since grown in popularity and availability. Although data is hard to come by, the commercial litigation funding market in the US has grown by 69% between 2019 and 2024, according to data from Westfield Advisors. In 2024, there were 42 litigation funders with \$16.1 billion in assets under management – a 6% increase on the previous year – which committed \$2.3 billion in new deals.<sup>1</sup>

### Litigation funders/ assets by year



Source: Westfield Advisors

A quarter of our survey respondents said they have worked on a case involving litigation funding in the past 12 months.

One commented:

*“We have seen firms that were not as active in SCAs, such as Saxena White and Quinn Emanuel, are [now] aggressively pushing to lead cases.”*

Another said:

*“There have been nine-figure investments by litigation funders into plaintiff firms. They don’t want to touch some cases, but securities cases are attractive to them.”*

Litigation funders’ role in securities class actions is very difficult to track, but when we asked respondents, all those who commented believe funders will push up settlement demands and encourage the plaintiff bar to be more aggressive.

Half of respondents expect to see litigation-funded cases become a bigger proportion of the total number of cases filed.

Many of the defense attorneys we polled also said plaintiffs’ law firms are behaving more aggressively in mediations and demanding greater settlements, although it is hard to discern if that trend is directly related to litigation funding.

 **78%**

**A large proportion of respondents (78%) said they had seen plaintiff lawyers asking for higher settlements.**

One wrote:

*“The plaintiff lawyers seem more aggressive than ever. The opening settlement demands we’re getting in mediations, even for poor cases, are getting much higher. They are also not coming down as much and are being much less flexible.”*

This was echoed by another, who stated:

*“We’re seeing increasingly intransigent behavior from some individual plaintiffs’ lawyers, [including] demands for personal contributions from executives, which is massively complicating settlement discussions, as well as much higher demands and plaintiffs looking for settlements well above insurance limits.”*

The risk of litigation funding is not unique to securities class actions. Respondents mentioned they had seen litigation funders involved in derivatives, bankruptcies, and antitrust litigation. One survey participant said:

*“We’re seeing litigation funding across a range of cases that touch securities. We’ve seen it in Chapter 11 cases and antitrust. We know of one firm active in derivative cases that has got litigation funding investment too.”*

But a sizable proportion of our respondents haven’t noticed litigation funding influencing their cases. One commented: “[This is] just not something we have seen in cases yet.”

1. <https://www.westfleetadvisors.com/wp-content/uploads/2025/03/WestfleetInsider-2024-Litigation-Finance-Report.pdf>  
2. <https://www.gao.gov/assets/gao-23-105210.pdf>  
3. <https://www.globallegalpost.com/news/quinn-emanuel-signs-deal-with-longford-capital-to-finance-client-litigation-1654822360>  
4. <https://www.westfleetadvisors.com/wp-content/uploads/2025/03/WestfleetInsider-2024-Litigation-Finance-Report.pdf>  
5. <https://www.forbes.com/sites/robertwood/2025/07/04/litigation-funding-tax-was-dropped-from-big-tax-bill-before-passage/>

# Inigo’s prediction

**No.1**

One in ten securities class actions will be funded by litigation funders in 2025.

## Conclusion

Data on how involved litigation funders are in securities cases is hard to come by, but anecdotal evidence from survey respondents suggests it is currently low. But litigation funding is here to stay and securities cases are attractive thanks to the potential for large settlements. Litigation funder participation in securities class actions is likely to push up legal costs for defendants and their insurers, as plaintiffs’ law firms with backing from funders are likely to demand higher settlements and will litigate cases more aggressively.



Q2

# Securities class actions. Will they return to the pre-pandemic level?

Federal securities class actions continue to dominate the securities litigation landscape, driving the majority of defense attorneys' caseloads. The vast majority of respondents (72%) expect the number of securities class actions to increase over the next 12 months. This is much higher than in 2024's survey, where only 25% predicted the filing rate would increase.

So far, respondents are right. In Q1 2025, the number of new claims were approximately



higher than in the corresponding quarter the previous year.

While the filing rate has slowed slightly since the start of the year, the increase in volume looks set to continue. So, what has changed?

Nearly all respondents cite macroeconomics as the reason. One said:

*“Macroeconomic weakness puts more pressure on companies looking to hit guidance. This may encourage them to push the envelope to avoid disappointing [Wall] Street. If this [involves] some creative accounting, then it has been known to backfire.”*

Another respondent added:

*“pressure to hit guidance will drive idiotic behavior. The plaintiffs know that.”*

But those who expect filing rates to fall also cited the economic picture as the reason. Those respondents explain that stock market volatility can make it harder to pin a case on an individual company when so many of their peers' valuations are also fluctuating widely. One wrote:

*“Macroeconomic issues and instability will make it more difficult to distinguish price drops attributable to alleged misconduct from those attributable to broader market factors.”*

So, although opinion is divided, it's worth noting that even some who expect the filing rate to fall believe this will only be temporary. One said:

*“The plaintiffs' bar is still figuring out how best to fill in the regulatory vacuum created by the new administration. Once [they do that], cases will increase again.”*

They also highlighted that more plaintiffs' firms are looking to lead cases. One in five respondents (20%) who said they expected cases to increase cited this as a factor. One wrote:

*“We have seen more fights over Lead Plaintiff motion. More firms are trying to hijack the original complaint with a more appropriate, institutional investor. Smaller firms are leading more cases though, often with retail investors in cases that the big firms aren't interested.”*

Another added:

“A lot of the increase is firms we haven’t seen before filing smaller or weaker cases. Some of these firms used to file derivative cases in the past but are now looking to get involved in the class action.”

There have also been more filings against mature public companies, as the number of DeSPACs and IPOs have dwindled.

One defense attorney said:

“We are seeing more of our large clients face suits than we did a couple of years ago. In years gone by there have been a lot of crappy companies to sue that went public when they shouldn’t have to. These [companies] have now gone away, and the plaintiffs’ bar are coming back to the bigger, better companies.”

The data supports this, with more actions against well-established public companies in 2024 and the first part of 2025. It follows that these companies are likely to disproportionately suffer the consequences of an overall increase in the filing rates for securities class actions.

Cases against well-established public companies may have a lower chance of success, but there are other factors which may be in the plaintiffs’ favor, which we discuss below.

AI’S IMPACT

Nearly three quarters (73%) of respondents predict that AI will take center stage in securities lawsuits going forward, either by alleging AI washing or for missing guidance/earnings because AI has hit their businesses. In the first half of 2025 alone, nine AI-related cases were filed, as compared to 15 in 2024 and 7 in 2023.

One respondent noted:

“So many companies seem to be trying to take advantage of the investor interest in AI without really having a differentiated product. Just putting ‘AI’ after your name does not make you an AI company.”

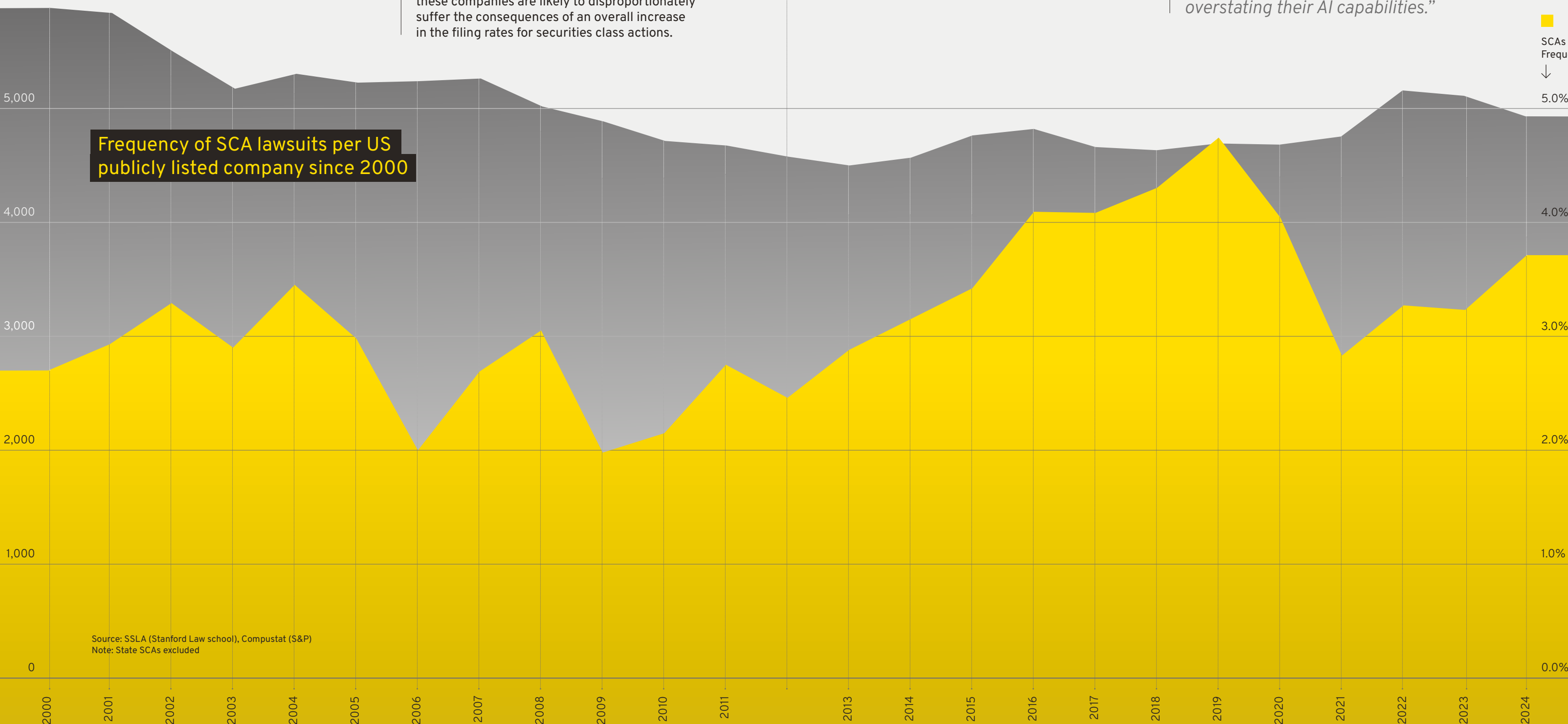
Another commented:

“These are just simple plug and play complaints for the plaintiffs’ bar. The allegations follow the same pattern of companies overstating their AI capabilities.”

Company Count  
↓  
6,000

SCAs Frequency  
↓  
5.0%

Frequency of SCA lawsuits per US publicly listed company since 2000



Source: SSLA (Stanford Law school), Compustat (S&P)  
Note: State SCAs excluded



With more and more judges facing the consequences of misused AI by attorneys in their courtrooms, respondents expect the judiciary will be ready and willing to scrutinize a company's alleged misuse of this tool. A partner at a law firm defending several of these cases expects judges to be unsympathetic. "These don't often look good in front of a cynical judge, as the company has clearly looked to jump on a trend. I think the plaintiffs will have reasonable success, which will encourage them to bring more cases."

 **45%**

**of respondents expect AI-related securities cases will be more likely to succeed, while only 15% believe they will not.**

While we have not found any lawsuit related to AI business disruptions, it is an issue our survey respondents express concerns about. One wrote:

*"As AI gets embedded in more companies there are going to be winners and losers. We all know about the AI-washing cases, but I think the next wave could be [against] companies [whose] business models [have been] destroyed by AI [but were not] alive to the risks."*

Many respondents echoed this view, so we expect AI-related litigation to increase further. We also expect this trend to have a long lasting effect, unlike COVID-related litigation.

#### GREEN JUDGES

Changes in the federal bench is a topic we have discussed extensively in previous surveys. This year, we asked respondents what impact a judge with less than five years' experience would have on a case. Nine out of ten said an inexperienced judge would be less likely to dismiss a case. Many told us they were already facing challenges with newer judges. One said:

*"They aren't willing to throw out a case as they have never seen securities cases before and don't understand the higher pleading standards. We're seeing them 'split the baby' and let weak cases go through, but don't understand that this still gives the plaintiff the win."*

Another noted:

*"[I'm] seeing a more pro-plaintiff stance from Biden judges. They don't want to dismiss cases and [instead] want to give the plaintiff their day in court."*

We are likely to see the trend of decreasing dismissal rates continue, at least until the federal judiciary matures and ideologically balances out.

## Inigo's prediction

**No.2**

The number of Securities Class Action filings will return to pre-pandemic levels in 2025.

There will be 20 AI-related securities class actions filed in 2025.

#### Conclusion

Defense attorneys describe a worsening forecast, with a well-funded, aggressive plaintiffs' bar, inexperienced judges, and more lawsuits filed against sophisticated public companies. The global economic turbulence divides opinion, but many expect plaintiffs' law firms will try to exploit it, while there is likely to be more AI-related litigation.



# Q3

## SEC & DOJ.

# Will the brain drain affect regulatory enforcement?

President Trump's shakeup of federal agencies has been widely reported. The Securities & Exchange Commission and the Department of Justice have not been immune to these changes, so we polled defense attorneys on what the impact of mass layoffs and executive restructuring might be on securities regulation and litigation.

We asked respondents if they expected the Trump administration changes will benefit plaintiffs or defendants.



said the new regime will favor defendants, while



expected it will help plaintiffs.

The majority highlighted two factors for why they believe it would benefit defendants:

- Deregulation means companies will be less likely to fall foul of regulators
- Personnel cuts at the SEC and DOJ and a shift away from the Biden administration's activist stance mean fewer enforcement actions are likely to be brought

One respondent said:

*"Trump's SEC is going to be much less focused on rulemaking by enforcement and there will be many fewer investigations into things that were a priority for Gensler [Gary Gensler, former SEC Chair under Biden] and Grewal [Gurbir Grewal, former Head of Enforcement at the SEC]. The Trump administration just doesn't care about that stuff."*

Another added:

*"The new administration seems to be looking to aggressively reverse what it sees as government overreach and political interference. It is looking to get revenge on the organizations it perceives went after [members of the administration before President Trump's election] by putting its own people in the SEC and DOJ. I think they will be too distracted by fighting the culture war to go after corporate fraud."*

Other respondents disagreed, saying they expect the SEC and DOJ to continue with their traditional focus on protecting investors.

One wrote:

*"I don't expect much to change. The SEC has always been focused on investor fraud and this will continue. Things that caused a lot of noise under Gensler, like crypto, only impacted a small number of companies. If anything, they will double down on doing traditional enforcement."*

Another was more forthright, saying:

*"Most of what Biden was doing was chickens\*\*t. [The administration's] priorities were ESG, SPACs, and crypto. The new regime will go back to basics and refocus on fraud."*

Nearly three quarters (73%) of respondents said they have already seen a change in how the SEC and DOJ are now prosecuting cases.

One respondent wrote:

*“We can’t get hold of anyone at the SEC anymore. Everyone we dealt with has gone and trying to get a response from anyone else is impossible.”*

Another wrote:

*“We understand that enforcement authority has been rescinded from the regional offices and now sits with the Acting Head of Enforcement [Samuel Waldon at time of writing]. This is freezing everything until everyone gets their feet under the table.”*

Another respondent added:

*“The line attorneys are taking a wait-and-see approach while the new regime shakes out. No one wants to get on the wrong side of the new management.”*

In May 2025, Paul Atkins, the SEC’s new Chairman, said it had lost 15% of its staff, or approximately 600 employees. In a statement to Bloomberg regarding the cuts, the SEC stated the organization was returning to its core, Congressionally-mandated mission: “protecting investors; furthering capital formation; and safeguarding fair, orderly and efficient markets.”

The DOJ also stated its approach to prosecuting white-collar crime will focus on individual conduct and reducing penalties for corporations who turn themselves in or cooperate with an investigation. It also intends to reduce supervision periods after settlements. This suggests it still intends to be active, but will focus more on serious misconduct.

**THE DOJ’S NEW APPROACH**

In a memorandum published on May 12th 2025 entitled “Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime,” Matthew Galeotti, Head of the DOJ’s Criminal Division, states:

“... overbroad and unchecked corporate and white-collar enforcement burdens U.S. businesses and harms U.S. interests. The vast majority of American businesses are legitimate enterprises working to deliver value for their shareholders and quality products and services for customers. Prosecutors must avoid overreach that punishes risk-taking and hinders innovation. For these reasons, the Division’s policies must strike an appropriate balance between the need to effectively

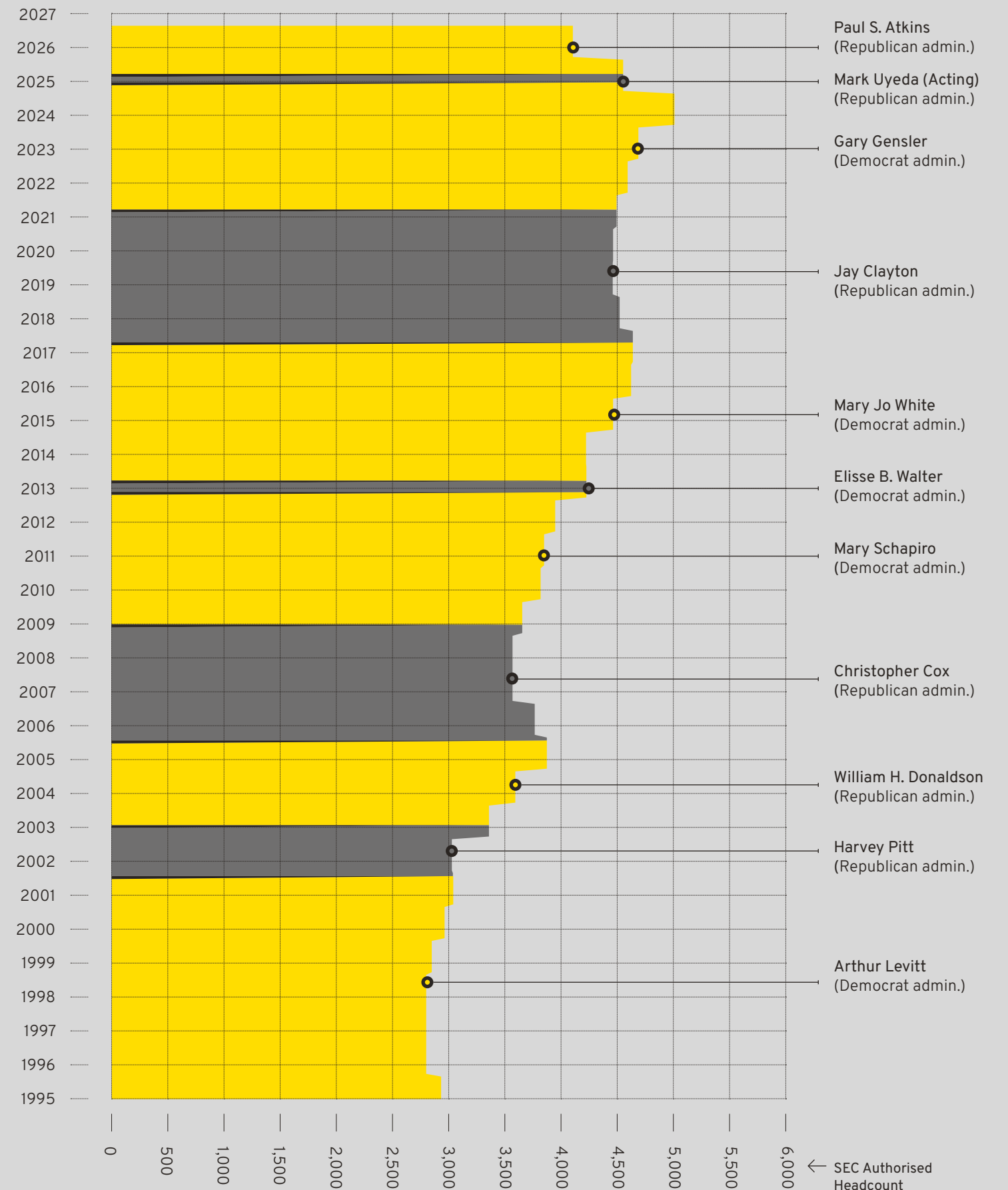
identify, investigate, and prosecute corporate and individuals’ criminal wrongdoing while minimizing unnecessary burdens on American enterprise.”

At the American Conference Institute a month later, Galeotti said:

“Let me be clear: under my leadership, the Criminal Division has not and will not close meritorious investigations or dismiss meritorious cases. Indeed, consistent with the principles set forth in my memorandum, we will vigorously pursue these investigations and open new ones. We will move them expeditiously. And we will resolve them, fairly and justly.”

**SEC Authorized Headcount by SEC chair**

In 2026, the number of SEC staff is set to drop to its lowest level since 2012.



Respondents pointed out that many of those who left federal agencies like the SEC and DOJ have joined plaintiffs' law firms (although a number have also joined defense firms).

One respondent said:

*"It seems like the plaintiff firms are strategically hiring some of the leavers. They think they will benefit from having attorneys on board who know where the bodies are buried."*

**We asked survey respondents whether they expected state attorneys general or the plaintiffs' bar to fill the gap left by these federal agencies;**

 **76%**

**said state attorneys general are likely to step up, with some saying this is already happening.**

One respondent commented:

*"It seems state AGs are much more active and looking to make a point."*

In Democrat states, attorney generals are looking to continue President Biden's policies in areas such as antitrust. For example, in 2024, judges in Oregon and Washington blocked the merger of Albertson's and Kroger.

One respondent commented:

*"We think particularly in New York and California, that states will enforce rules they perceive as being neglected at federal level, [such as] AT [antitrust] and allegations of monopolistic practices."*

Another respondent added:

*"The state attorneys general tend to be more political, so there will be more agenda-driven enforcement."*

It is hard to track interventions by state attorneys general, but respondents expect them to become more active. These cases are still expensive to defend and can lead to big claims, so it is important to watch this trend closely.

The plaintiffs' bar will hope the many former SEC and DOJ staffers they have hired will help them to launch more investigations and lawsuits against companies, respondents said. One defense attorney wrote:

*"Nature abhors a vacuum. The plaintiffs' bar will fill the void."*

Another added:

*"We see them gearing up to take on the role of enforcers in the SEC's absence. They've hired some really smart people [who] won't just be sitting around."*

Seven out of ten (70%) defense attorneys said they expected there to be more corporate fraud because of the administration change. One wrote:

*"Less regulatory scrutiny will likely embolden some officers to cut corners, thinking they can get away with it."*

Another said:

*"The change in the SEC's tone will likely make some think [enforcement] isn't a priority anymore."*

# Inigo's prediction

## No.3

There will be the fewest number of new enforcement actions by the SEC since 2020.

State attorneys general will file more suits against companies in 2025 than ever before.

## Conclusion

Respondents think the SEC and DOJ have markedly changed under the Trump administration. Although the DOJ has stated it will continue to prosecute white-collar crime, its emphasis has shifted to pursue specific misconduct of individuals and encourage companies to cooperate with investigations, while money laundering and combating drugs cartels have moved up its priority list. Staff cuts are likely to affect the agencies' ability to bring new enforcement actions, at least for now, while state attorneys general and plaintiffs' law firms have already shown a willingness to step in to fill the gap, which is a trend we expect to continue.

Q4

# DExit. Will Delaware remain the corporate domicile of choice?

Reports of a potential exodus of companies away from Delaware prompted us to look this year at how Delaware compares with its biggest rivals, Texas and Nevada.

Most public companies are incorporated in Delaware. In 2023, 68% of the S&P 500, and 80% of IPOs were incorporated in Delaware, according to the Delaware Division of Corporations annual report.<sup>6</sup>

Delaware has long been preferred by companies because of its long-established statutes, and well developed case law, business savvy judges, and the historical perception that it is a corporation-friendly jurisdiction. But recently this image has been threatened by rulings from the Delaware Court of Chancery, the state's non-jury trial court which decides business disputes. Several companies have cited the state's increasingly unpredictable and litigious legal environment as a reason for moving.

In previous surveys, we discussed the erosion of the business judgement rule by Caremark and its progeny and how this has made it easier for plaintiffs' attorneys to file derivative suits.

We asked respondents whether it has become easier or harder to defeat derivative suits in Delaware over the past 12 months. Of those who responded,

 66%

felt recent case law makes it harder to defend a derivative case in the state. Only 11% of respondents feel derivative suits are easier to defend.

When we asked them why, respondents said it was because of the nature of the cases being brought and that plaintiffs' law firms have crafted cases to fit the guidance given by the Chancery judges in previous rulings.

One respondent said:

*"My cases have involved significant related torts or other disasters that plaintiffs' law firms argue are rooted in the board's negligence. Those cases take longer to resolve and are harder to get dismissed because of the parallel tort litigation."*

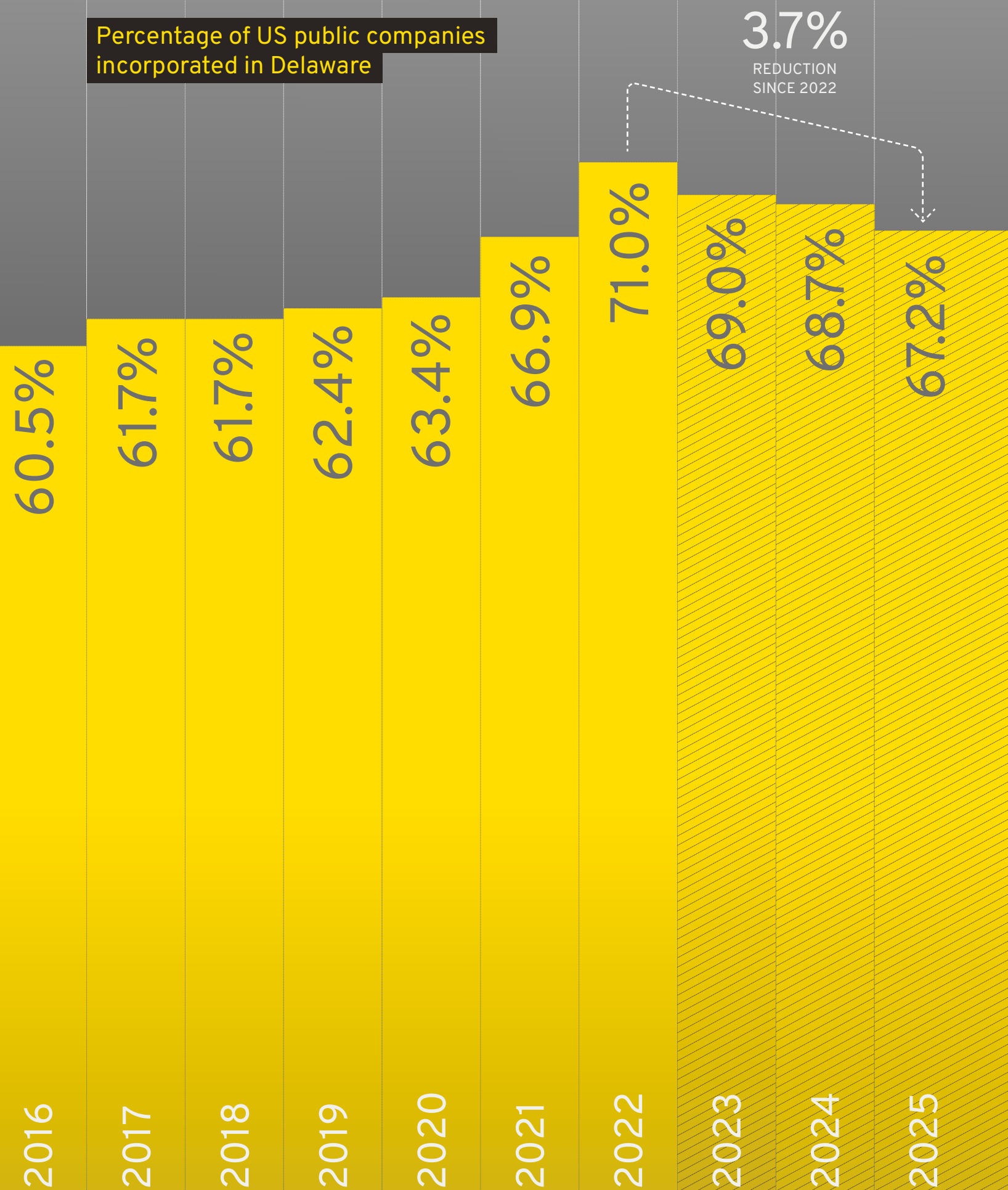
Another commented:

*"The plaintiffs' law firms are taking cases forward where there is a significant alleged underlying harm, like a plane crash or major regulatory or antitrust breach. They see these cases as easier to pursue as a breach-of-fiduciary-duty claim, as they can point to the significant harm caused by and to the company."*

The recent settlements on lawsuits related to opioids, bank account mis-selling, and bribery bolster respondents' comments, but they don't explain why claims have been more successful than in the past.

6. <https://corp.delaware.gov/stats/>

## Percentage of US public companies incorporated in Delaware



Source: SEC Financial Statement Datasets, Q2 2016 through Q2 2025

The reason is that the Chancery Court has provided a roadmap for plaintiffs' law firms to plead a successful case, argue several defense attorneys. Cases which demonstrate that companies have inadequate controls or procedures over mission critical areas of the business, or that the company ignored red flags that suggested misconduct within the business have a higher chance of success. This is an area we have covered extensively in previous surveys.

One respondent commented:

*"The plaintiffs' law firms are figuring out how to navigate the playbook given to them by the Chancery Court."*

Another added:

*"Delaware is getting worse, as the courts have outlined in plain terms how to bring a successful case, which the plaintiffs' law firms are following. It's making it harder to defend them, as a result."*

Derivative litigation is not necessarily making companies rethink whether they want to continue to be incorporated in Delaware, but it is a contributing factor. Other states, notably Texas and Nevada, have enacted pro-business reforms to entice companies away from Delaware.

For instance, Elon Musk moved his companies' domicile to Texas after a Delaware judge voided his Tesla compensation package, and in a separate case, the same judge ruled against Musk in pre-trial proceedings about Musk's acquisition of Twitter<sup>7</sup>. Musk later posted on X: "Never incorporate your company in the state of Delaware."

Although most of our respondents said their clients have not asked for advice on the merits of redomiciling away from Delaware, a substantial minority said they had.

But respondents were cautious on whether a move to either Texas and Nevada would be helpful, citing inexperienced judges and the lack of case law in these states.

7. <https://fortune.com/2024/02/16/why-elon-musk-moved-spacex-incorporation-to-texas-from-delaware/>

## COMPANIES LOOKING TO DEXIT

Companies that have reportedly either moved their corporate domicile from Delaware or are considering doing so include:

- Tesla
- SpaceX
- Neuralink
- X
- Meta
- Pershing Square Capital Management
- TripAdvisor
- Dropbox
- Trump Media & Technology Group
- Social Capital Ventures
- The Trade Desk
- AMC Networks
- Madison Square Garden Entertainment
- Cannae Holdings
- Roblox
- Simon Property Group
- Walmart

One respondent commented:

*"Both states' systems are pretty untested. Delaware may have its problems, but better the devil you know."*

Another wrote:

*"There are three main problems with Texas:*

1. *Unlimited pre-litigation discovery*
2. *Non-business court doesn't have a motion to dismiss*
3. *Business court has judges appointed for one-year terms*

*For these reasons it will be a challenge."*



#### WHAT IS A SECTION 220 DEMAND?

A Section 220 Demand is a legal request under Section 220 of the Delaware General Corporation Law, which allows a shareholder to inspect a corporation's books and records. This procedure is often used by shareholders who want to conduct due diligence, investigate potential misconduct, or gather evidence for legal actions.

#### KEY FEATURES OF A SECTION 220 DEMAND:

##### Purpose:

To inspect, examine, and copy corporate documents and records.

##### Who can file:

Shareholders of the corporation.

##### Procedure:

The shareholder must submit a written demand stating the purpose (which must be proper) and specifying the records sought.

##### Limitations:

The demand must be made in good faith, and the requester must have a proper purpose related to their interest as a shareholder.

Only 20% of respondents say it is likely that many companies would redomicile away from Delaware, pointing to the state's governance reforms. Also, shareholders can now only demand further records if they demonstrate a compelling need with clear evidence that such records are necessary to further the shareholder's proper purpose. These new rules have not been tested yet, but when asked, 80% of respondents said they expect the new rules to improve the environment for companies.

One respondent commented:

*"The 'books and record' changes [Section 220] will make it much harder for plaintiffs to conduct fishing expeditions to find the basis for a derivative or direct complaint. It can only be good for corporations."*

Another added:

*"The legislature in Delaware has made a step in the right direction in reining in the court by limiting their ability to apply onerous standards on transactions that have been approved by stockholders."*

One final comment summed up many of our feelings, writing:

*"Books and record demands are the bane of my life, [so] anything that reduces the scope of them is fine by me."*

But...

The reforms don't address the business judgement rule itself or the other factors that have recently made derivative cases more successful. As a result, none of our respondents expect the new rules to make it easier to defend derivative cases. One respondent wrote:

*"The reforms are positive, but the bench [Chancery Court judges] is still more pro-plaintiff and I don't expect to see a change in tone from them in ruling on motions in derivative cases."*

#### Conclusion

Rulings in Delaware in the past decade have undoubtedly favored plaintiffs. This has made it harder to defend cases, prompting many companies to at least consider redomiciling to other states. But the legal systems in Texas and Nevada are untested, while Delaware has enacted some reforms. Therefore, we don't think there will be an exodus of companies moving from Delaware. But neither do we expect to see a meaningful improvement in pro-defendant outcomes in Delaware, which will have expensive implications for corporations and insurers.

# Inigo's prediction

## No.4

Less than 5% of Delaware-incorporated companies will redomicile away over the next 12 months



# Q5

## Tariffs and geopolitics. What to tell investors in a fast-changing world?

For the first time since we have introduced this survey, respondents have raised an issue outside of the US as impacting the US securities class action landscape. Two topics kept coming up in our interviews with defense attorneys – tariffs and global economic and security tensions – so much so that we could not avoid a separate section on these issues.

In the wake of President Trump's announcement of sweeping tariffs on Liberation Day and continuing unrest in the Middle East, companies have questions on how to cautiously communicate with their shareholders during such a period of uncertainty.

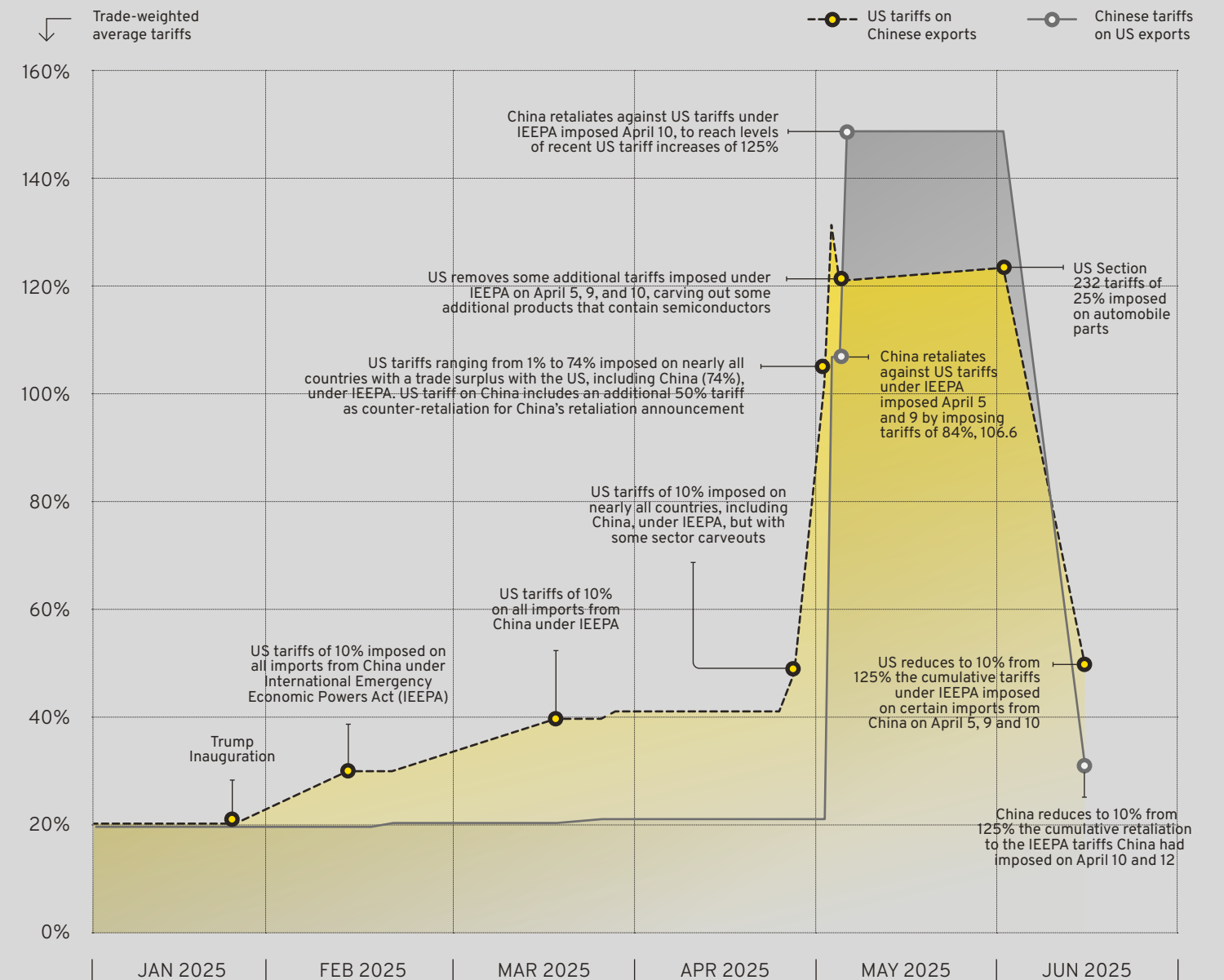
One respondent told us:

*"I had a client call me as they... didn't know if they should pull guidance or how to frame it [after Trump's tariffs announcement on April 2nd 2025]. I expect I will get a lot of calls like this."*

Another wrote:

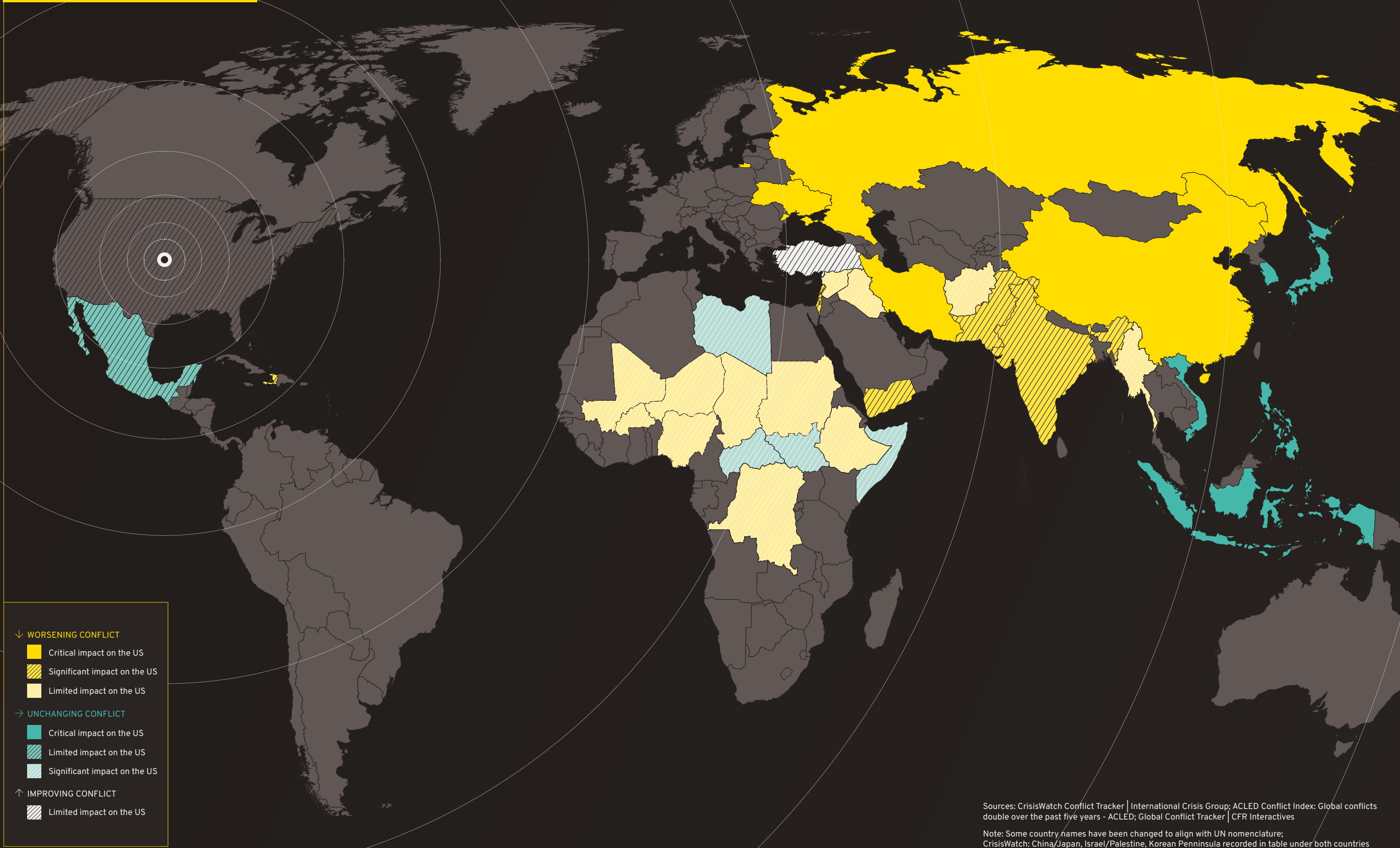
*"Companies are struggling to digest the impact of tariffs and what to disclose about them. The situation is moving really fast and disclosing [their impact on companies] to the market is a minefield. I'm sure some are going to stumble."*

### US-China tariff rates toward each other and rest of World (%)



Source: Peterson Institute for International Economics

Countries involved in conflicts, with status and impact on US



Sources: CrisisWatch Conflict Tracker | International Crisis Group; ACLED Conflict Index: Global conflicts double over the past five years - ACLED; Global Conflict Tracker | CFR Interactives

Note: Some country names have been changed to align with UN nomenclature; CrisisWatch: China/Japan, Israel/Palestine, Korean Peninsula recorded in table under both countries





There are two major issues for public companies, according to respondents. Firstly, that companies may already be suffering from the impact of tariffs and geopolitical uncertainties, which they should disclose quickly to avoid problems in the future. Secondly, will companies be sufficiently cautious in their guidance.

In October 2024, plaintiffs filed a lawsuit against Super Micro Computer, alleging violations of export controls to Russia amongst other allegations<sup>8</sup>. This ongoing suit is a rare example of a securities class action with geopolitically grounded allegations, but our respondents highlighted it as an area to watch.

With export controls from the US to China imposed on certain semiconductors and retaliation from China in exports of certain commodities such as rare earth metals, the possibility of falling foul of export controls or sanctions is growing. Our survey respondents highlighted this as an area of concern.

One commented:

*“Tariffs are only one way the economic war between the US and China may be fought. China could easily target important US companies, attacking their Chinese operations or launching investigations into them to exert pressure. They have a track record of this.”*

Another wrote:

*“I think plaintiffs’ lawyers will be looking at stock movements related to missed guidance and [whether] it relates to tariffs or the macroeconomic uncertainty. If they see too much optimism, they will be tempted to file a complaint.”*

Another highlighted the number of regional conflicts across the world:

*“I worry about Russia-Ukraine, China-Taiwan and the Middle East. If [any of these] escalate ... it could cause chaos in the markets, which already look overvalued. Companies exposed to these regions should be cautious.”*

As one added:

*“Plaintiffs’ lawyers can turn anything into [a claim of] securities fraud. The world is an uncertain place, and companies are walking a tightrope between embracing hot areas, like AI, and highlighting risks, like tariffs and the global picture.”*

8. [https://securities.stanford.edu/filings-documents/1084/SMCI00108436/2024830\\_f01c\\_24CV06147.pdf](https://securities.stanford.edu/filings-documents/1084/SMCI00108436/2024830_f01c_24CV06147.pdf)

# Inigo's prediction

## No.5

There will be five or more securities class action filings related to tariffs or geopolitical issues over the next 12 months.

### Conclusion

It is hard to know whether tariffs will remain an issue throughout President Trump's second term. Trade deals, such as that recently struck with the UK, are being negotiated, administration officials say, while some tariffs have been withdrawn since their April announcement. But trade deals may be frozen, while other tariffs could be imposed. This uncertainty further complicates companies' messaging to the market. But tensions will likely remain between the US and China and China and Taiwan, while war rages in Ukraine and the Middle Eastern conflict rumbles on. We expect the geopolitical turbulence will affect some US-listed companies, and expect performance or guidance of some will be found wanting, which the plaintiffs' bar will jump on.



## INIGO'S 2025 PREDICTIONS

<p><b>#01</b></p> <p><b>LITIGATION FUNDING</b></p> <p>One in ten securities class actions will be funded by litigation funders in 2025.</p>	<p><b>#02</b></p> <p><b>SEC &amp; DOJ</b></p> <p>The number of Securities Class Action filings will return to pre-pandemic levels in 2025.</p> <p>There will be 20 AI-related securities class actions filed in 2025.</p>
<p><b>#04</b></p> <p><b>DExit</b></p> <p>Less than 5% of Delaware-incorporated companies will redomicile away over the next 12 months.</p>	<p><b>#05</b></p> <p><b>TARIFFS AND GEOPOLITICS</b></p> <p>There will be five or more securities class action filings related to tariffs or geopolitical issues over the next 12 months.</p>

<p><b>#03</b></p> <p><b>SECURITIES CLASS ACTIONS</b></p> <p>There will be the fewest number of new enforcement actions by the SEC since 2020.</p> <p>State attorneys general will file more suits against companies in 2025 than ever before.</p>
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### Which are the best US securities plaintiffs' law firms?

Every year, we ask defense attorneys to name the plaintiffs' law firm they most respect.

 <p><b>BERNSTEIN LITOWITZ BERGER &amp; GROSSMAN LLP</b></p>	 <p><b>ROBBINS GELLER RUDMAN &amp; DOWD LLP</b></p>	 <p><b>LABATON SUCHAROV LLP</b></p>	 <p><b>QUINN EMANUEL URQUHART &amp; SULLIVAN LLP</b></p>	<p><b>HAGENS BERMAN</b></p>
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Bernstein Litowitz Berger & Grossman recovered its crown from this year's second-placed firm, Robbins Geller Rudman & Dowd LLP. It was again a very closely fought contest. One respondent wrote:

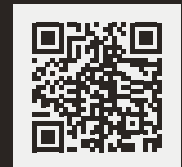
*"close call but Bernstein edge it for me. They are both tough adversaries!"*

Another said: "Bernstein Litowitz [is] better than many of its peers and more pragmatic than others (including Robbins Geller, which in my view has become much more uneven)."

Labaton Sucharov retained the third spot for another year, with Quinn Emanuel Urquhart & Sullivan holding onto fourth. Hagens Berman, which made it into the top five for the first time, snuck in ahead of Sussman Godfrey.



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