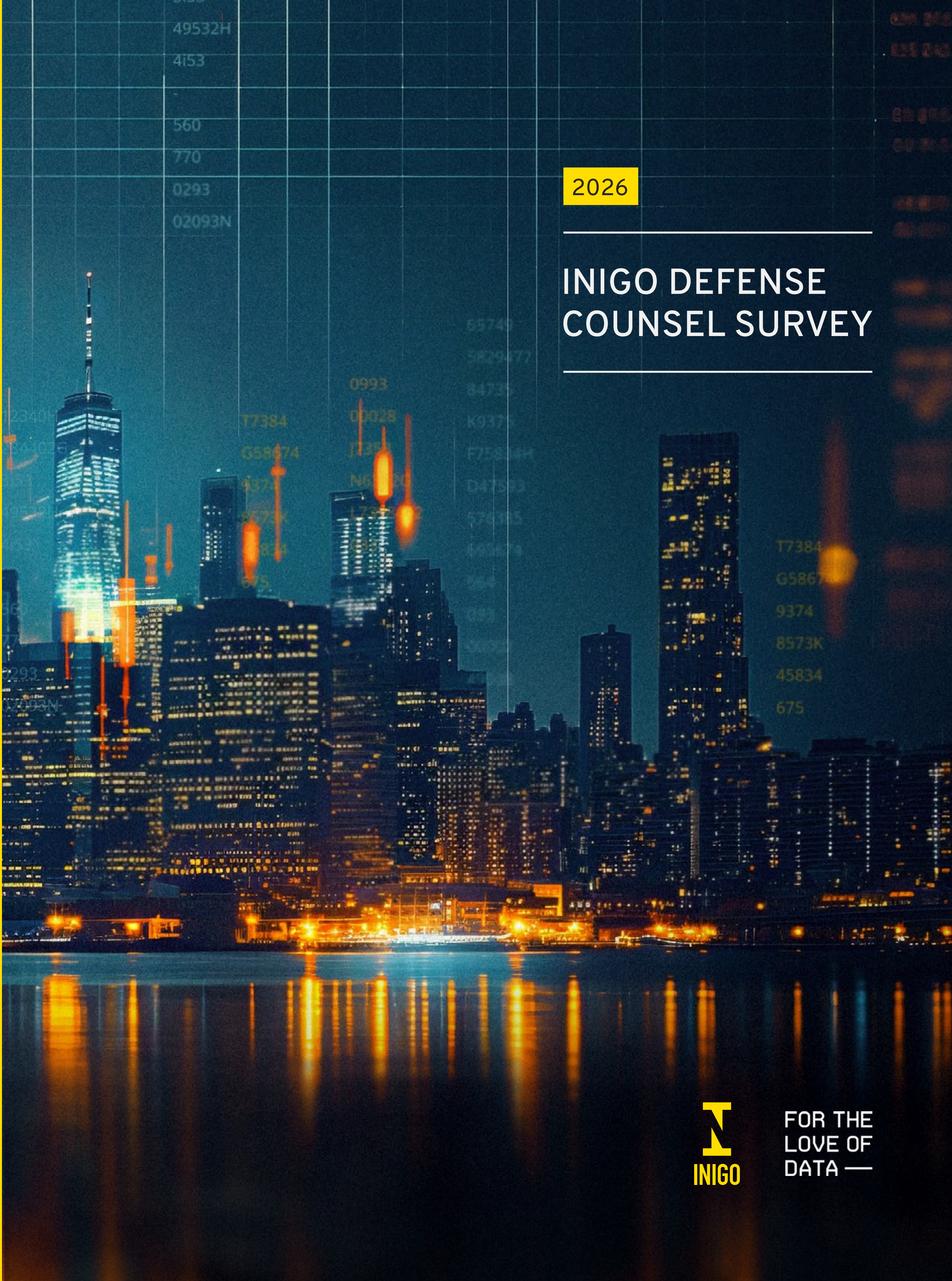

2026

INIGO DEFENSE COUNSEL SURVEY

INIGO

FOR THE LOVE OF DATA —

Foreword

Welcome to the 2026 edition of our Defense Counsel Survey. Much has changed since we began this survey five years ago. AI has transformed how we live and work; we are in a new geopolitical era of competition and confrontation, and the resulting commodity shocks and tariffs have driven up inflation and disrupted global trade. Governments and central banks face the challenge of using interest rates to curb rising prices while not stymying growth. Stock markets have recovered – and exceeded – their pre-pandemic highs, although capital markets have not fully recovered their verve and IPOs remain subdued. These factors, among others, have heaped pressure on company executives, which prompted us to ask: is this the most challenging time in recent memory to run a public company?

But in securities class actions, the more things change, the more they remain the same. They are still plaintiffs' attorneys and investors' primary weapon to seek redress against public companies. Delaware remains a complex litigation environment, with the Caremark standard still a hotly contested battleground. There is still uncertainty over the White House's regulatory priorities, although the enforcement rollback in President Trump's second term has raised the question of whether there is now a federal regulatory vacuum.

So, although the core themes of securities class actions, Delaware and regulatory enforcement continue to preoccupy defense attorneys, the context in which these lawsuits are now being brought has rapidly changed.

We asked more than 50 of the US's top securities lawyers their views and we have again used their responses to develop five themes. This year they are:

1. ***How hard is it to run a public company today?***
2. ***Securities class actions** – will uncertainty drive more filings?*
3. ***Federal deregulation** – help or hindrance?*
4. ***AI** – the new normal?*
5. ***Delaware** – has SB21 helped?*

Thank you to those who participated in the survey. It would not be possible without your time and insight.

We know you find the survey interesting, as many of you have told us so. That's gratifying. Thank you too to those who have shared their thoughts on how we can improve it. We always want to make it more useful and informative. So please give us feedback.



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Did our 2025 predictions come true?

This year, we have done a deeper dive into our previous predictions. A year is a long time in securities litigation, so we wanted to give a fuller account of what happened, to provide a more detailed and nuanced assessment of what we got right and wrong.

#01 Litigation funding:

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

Did it come true? NO

Perhaps more precisely we should answer "don't know", for this prediction proved very hard to evaluate, because there is scant publicly available information on whether litigation funding is backing securities class actions.

A quarter of respondents to last year's survey said they had worked on a case involving litigation funding in the previous 12 months, while half expected to see more securities class actions backed by money from litigation funders. Although we are aware of several plaintiff's law firms that purportedly use litigation funding in their cases, we cannot confirm this. The courts have generally held that plaintiffs do not have to disclose in discovery if they have litigation funding arrangements in place, with very few requests being granted. So, the extent of litigation funds' involvement in securities class actions remains opaque.

Efforts have been made to push for greater transparency. In March, the U.S. Chamber of Commerce Institute for Legal Reform (ILR) and Lawyers for Civil Justice (LCJ) submitted a rules suggestion for disclosure[1]. If successful, this proposal would lift the veil on funding and provide much better data to track the prevalence of litigation funding in securities cases.

Several states, including Wisconsin, West Virginia and Louisiana have laws requiring third party litigation funding arrangements to be disclosed, while quite a few federal district courts have local rules in place for either full or partial disclosure, as well as a growing body of case law allowing discovery of these funding arrangements in certain circumstances.[2] These are known to dissuade some law firms from accepting outside funding in class actions, for fear that their disclosure could affect their chances of being selected by the court as lead counsel or their fee arrangements being approved. The large plaintiffs' law firms also have plenty of experience and money to fight cases on their own, so have little need for outside investors.

We do not expect litigation funding to play a larger role for now in financing securities class actions. But third-party litigation funders could become more active in supporting investors that seek redress from companies through opt-out class actions, mediations and arbitrations, experts predict.

#02 Securities class actions:

a. The number of securities class action filings will return to pre-pandemic levels in 2025.
b. There will be 20 AI-related securities class actions filed in 2025.

Did it come true? NO & YES

After a very strong start, the pace of new actions filed dropped off, meaning there were 207 securities class actions filed in 2025, down from 226 a year earlier, according to Cornerstone Research[3].

In last year's survey, most respondents highlighted a worsening macroeconomic backdrop, more plaintiffs' law firms moving into securities class actions and increasing claims against large companies as being driving factors behind a predicted increase in filings back to pre-pandemic levels.

Whereas other defense counsel saw economic headwinds and fewer enforcement actions as meaning there would be fewer, not more class actions filed. Their prediction has proven to be more accurate.

President Trump's announcement of a succession of tariffs, culminating in April's "Liberation Day" when he declared a 10% universal tariff on all imports plus further tariffs as high as 50% on dozens of countries, sent shockwaves initially through the US stock markets. But both the S&P 500 and NASDAQ rallied strongly and ended the year up.

Buoyant share prices create fewer opportunities for plaintiffs to file claims against companies and probably contributed to the reduction in filings during the year. More claims were filed in Q1 2026 than Q1 2025, partly driven by global economic and political factors we will discuss later in this survey.

The big drop in regulatory actions taken by the SEC has also likely created fewer opportunities for plaintiffs' attorneys to file follow-on private actions, which we will cover in our chapter on federal governance changes.

Some trends that our respondents predicted have come true, however. Their forecast of more cases being filed against larger market-cap companies, for example; companies with market values over $100 billion have a 9% chance of facing a securities class action each year, compared to an overall average of just under 4% for all public companies, according to our data. For tech firms whose market cap is above $25 billion the frequency is nearer 14%. This much higher likelihood of big companies being sued is likely driven by the size of the falls in their stock prices and consequent damages alleged in the cases. Although these cases have a lower likelihood of success, these companies' valuations are so large that any settlements reached will usually be in the year's top ten.

Nearly three quarters of the defense attorneys surveyed last year predicted a rise in AI-related cases, particularly claims of AI washing and AI-driven disruption to their businesses. in H1 2026 there have been 13 new AI-related cases filed. This is up from 14 filed in the whole of 2025. AI features prominently in this year's survey, as we ask how high the number of AI-related securities class actions will go.

#03 SEC & DOJ:

a. There will be the fewest number of new enforcement actions by the SEC since 2020.
b. State attorneys general will file more suits against companies in 2025 than ever before.

Did it come true? YES & NO

The SEC has brought only four cases against public companies since Paul Atkins took office in April 2025, compared to 52 investigations brought under its former head Gary Gensler, who was a Biden appointment[4].

The reasons for this are quite clear. In last year's survey we highlighted the SEC's change in approach under Atkins, with the focus shifting to investigations against against public companies and away from "regulation by enforcement". The high turnover of staff also stripped the SEC and DOJ of some of their most experienced enforcement officials and left the agencies short staffed. How long this trend will continue will be a question discussed in this year's survey.

Last year, survey respondents predicted that state attorneys generals would fill the gap left by the federal agencies, but this seems not to have happened. The reasons why are unclear, although last year defense counsel pointed out that securities fraud was not currently high on state attorney generals' agendas, although New York and California could look to enforce antitrust and monopoly rules they think might have been ignored by federal agencies. We will keep a watching brief on this issue.

#04 Dexit:

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

Did it come true? YES

In 2025, 38 companies left Delaware.[5] That's a tiny proportion of the US businesses incorporated in the state and far fewer than the 1400 new corporations that set up in the state last year[6]. These companies were predominantly led by their founder and in the tech sector. Some, such as Tesla, had faced unfavourable litigation in Delaware, which drove their decision to redomicile to another state. Most chose to move to either Texas or Nevada, though others chose Indiana or Florida.

So, despite the Dexit hype, ultimately few companies have decided to leave. Boards remain wary of leaving the First State, respondents argue, because Delaware has specialist corporate judges, no juries, and over a century of case law, in contrast to its challengers. No CEO or chairman wants their company to be a legal guinea pig in a new jurisdiction.

In fact, the number of companies incorporated in Delaware in 2025 rose by 30% on the previous year[7].

Delaware has also reacted to criticisms levelled at it, and its SB21 reforms have addressed some of the challenges that have prompted companies to move away. We dig into this further in the survey.

#05 Tariffs and geopolitics

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

Did it come true? YES

By our count, there have been six securities class actions related to geopolitics over the past 12 months. In five of these suits, tariffs were the main driver, while in the case against Super Micro Computer and its CEO and CFO, it is alleged to have breached export control breaches, by selling restricted AI servers to China.

Most of those suits related to tariffs allege that companies either failed to disclose or underplayed their impact on the businesses. The long-term impact of tariffs is a new addition to the list of factors affecting a company's supply chain and customer demand that company bosses need to get on top of. That is extremely challenging when tariffs have been announced, withdrawn and then reapplied, sometimes at a higher rate. As we were told by a number of the defense counsel we polled last year, executives were confused and anxious about what they should publicly say about the impact of tariffs on their companies. It seems their anxiety was justified.

Plaintiff's attorneys see an opportunity to file cases against companies for allegedly mismanaging geopolitical risk. With conflicts in Ukraine and the Middle East at the time of writing, as well as rising tensions in other parts of the world and countries increasingly viewing their intellectual property as a weapon in trade wars, we see the potential for more tariff-related securities class actions.

The Verdict

Four out of our seven predictions proved correct. That's not as high as we would like, but the past 18 months have been tumultuous, with the accession of a U.S. president who is unencumbered by past standards or convention, who has strong views on how companies should be policed, and who seems determined to remake the global political and economic order. Public companies are having to react to the turbulence and immense uncertainty that has been created. So, it is not surprising that in such a febrile environment the defense bar has found it difficult to predict what would happen in securities class actions. This is the new landscape facing the directors and officers of US public companies. Few can predict what may happen over the next week, leave alone the next year. But, like death and taxes, securities class actions are a certainty for public companies. Let us turn now to the challenges they face over the next 12 months, according to the defense attorneys who we polled this year.

[1] https://leavedelaware.org/tracking

[2] https://www.iadclaw.org/assets/1/6/5.1_-_Third-Party_Litigation_Funding_-_State_and_Federal_Disclosure_Rules_and_Case_Law.pdf

[3] https://www.cornerstone.com/wp-content/uploads/2026/01/Securities-Class-Action-Filings-2025-Year-in-Review.pdf

[4] https://www.cornerstone.com/wp-content/uploads/2025/11/SEC-Enforcement-Public-Companies-Subsidiaries-FY2025.pdf

[5] https://www.cnbc.com/2025/11/14/despite-coinbase-departure-only-28-companies-left-delaware-this-year.html

[6] https://corpgov.law.harvard.edu/2026/01/15/an-update-on-dexit-from-the-corporate-census/

[7] Ibid.

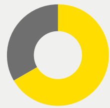
Q1

How hard is it to run a public company today?

We began this year's survey by asking: is it harder to run a public company now than it was three years ago? We chose this simple question to provide us with a benchmark by which to assess how much securities litigation risk has changed and why.

Defense counsel say it is particularly hard now given the range of pressures facing company executives and their boards, from technological change to geopolitical turmoil. The calls from company bosses to defense attorneys for legal advice ahead of earnings statements have grown more numerous and complex, respondents told us. They want help about what to tell investors when so many issues affecting their businesses are up in the air.

It is harder than ever to maintain your place in the S&P 500 as creative destruction operates more rapidly, technical innovation moves at pace, displacing incumbents before they can adapt and M&A and private equity activity removes more companies from public markets[1].



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of our respondents believe it is harder now to run a listed company, compared to only 16% who thought it is easier.

Uncertainty was the most used word in interviews to explain why. They pointed to the uncertainty created by geopolitics, tariffs, changing regulations and AI. One told us:

"Geopolitical and macroeconomic factors today are considerably more difficult to navigate than even a few years ago, resulting in increased D&O exposure for disclosure requirements, tariff and sanction-related concerns, and volatile market conditions."

Donald Trump's second presidency was viewed both positively and negatively by defense counsel. Many felt his administration is more pro-business. One commented:

"The dramatic reduction in regulatory oversight – for good or ill in the long run – has loosened the reins on many businesses."

Others echoed this view, arguing this has made it easier to run a public company. Less regulatory scrutiny means executives and boards have more time to focus on their businesses and are less constrained by the fear that a decision or disclosure could trigger regulatory investigations. We will discuss this issue further in later chapters.

IS TRUMP'S CRUSADE AGAINST RED TAPE HELPING PUBLIC COMPANIES?

President Trump has repeatedly signalled how he wants to make CEOs' lives easier, by easing the burden of rules and regulations. Under him, the SEC has proposed dropping ESG and quarterly reporting requirement, among other moves.

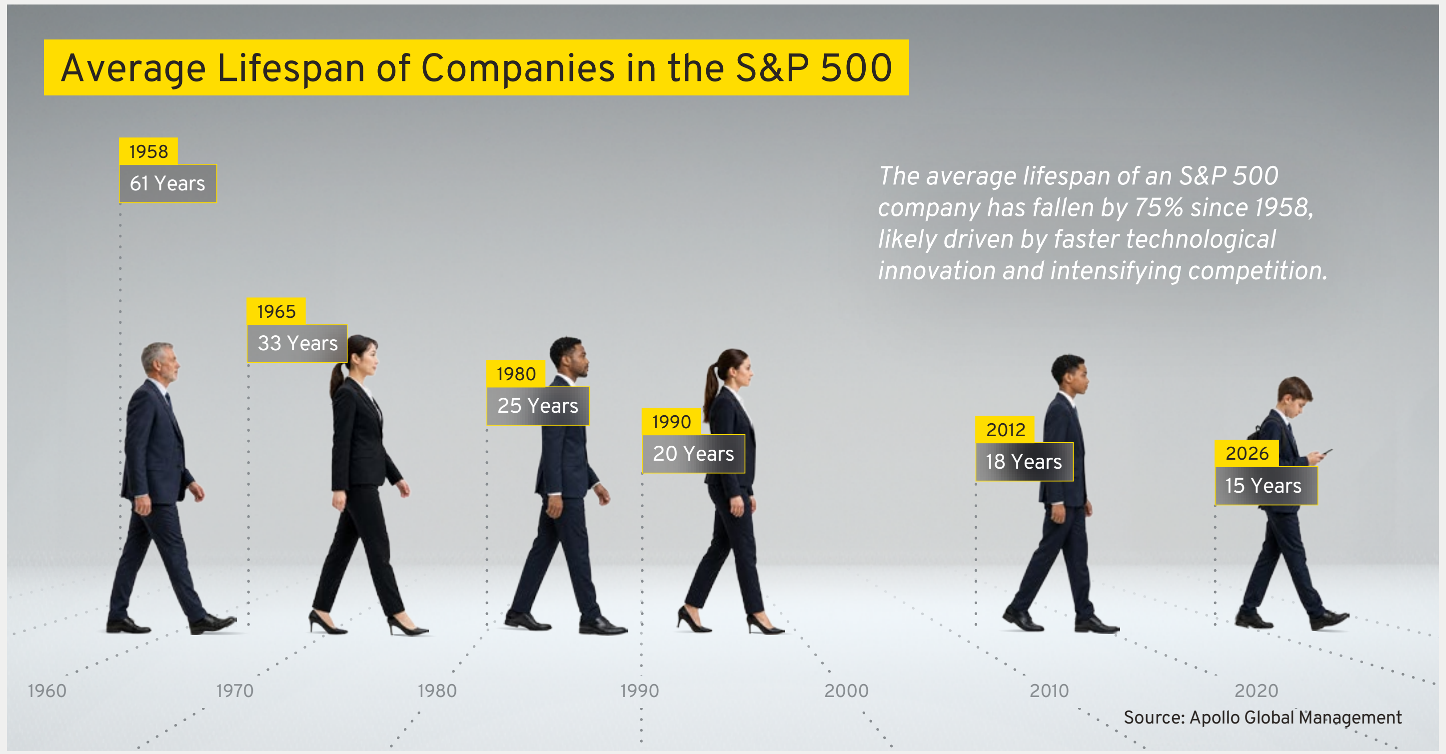
But his deregulation drive has created a grey area in which companies pick and choose what they report, which has not found unanimous favour with shareholders and has prompted lawsuits.

In November 2025, the SEC removed the need for senior managers to sign off before a company rejected votes on shareholder proposals. But Pepsi was sued by a shareholder in Feb 2026 after planning to skip a meeting on animal welfare practices within its supply chain. AT&T was also sued in the same month because it "refused to let shareholders consider a proposal seeking details about the company's workforce demographics."[2] Axon was also recently sued after planning to skip a vote "calling for a report on its political contributions."[3]

Companies may also need to be wary of dropping their 10-Qs. According to a survey compiled by the CFA Institute, 62% of financial analysts opposed moving to semi-annual reporting[4] arguing it "could also limit trading opportunities" and "might complicate new securities offerings."[5]

Shareholders also still seem to support companies' efforts to be greener and more responsible. During the May proxy season, 62% of all ESG related shareholder proposals supported sustainability actions or disclosure.[6]

[1] https://www.apolloacademy.com/average-tenure-of-companies-in-the-sp-500-index-15-years/
[2] Ibid
[3] Ibid
[4] https://www.cfobrew.com/stories/investors-worry-companies-will-drop-quarterly-reporting
[5] https://www.skadden.com/-/media/files/publications/2025/12/the-informed-board/would_your_company_want_to_stop_filing_quarterly.pdf?rev=904ab01cd88d45d2a84e6e868fe5b424
[6] https://corpgov.law.harvard.edu/2026/06/14/esg-and-anti-esg-shareholder-proposals-in-2026/

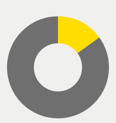


Others, however, felt the current administration is making it harder to lead a public company. A respondent commented:

"The shifting regulatory scheme in the US, along with political volatility and tariffs, have created an unprecedented level of uncertainty."

President Trump's trade wars and military conflicts involving Venezuela and Iran were key reasons cited by nearly a third of respondents for this administration being a destabilising influence on public companies.

2025 was a rollercoaster year for US stock markets, with both the S&P 500 and Nasdaq Composite Market falling around 20% in April only to end the year up around 20%.



15%

of those we surveyed, believe the stock market volatility will lead to more claims being filed.

When company share prices sink, the plaintiffs' bar looks to see if they can file a suit. There is a counter argument, however, that when every company's stocks are falling it is harder to spot corporate malfeasance.

AI MAKING IT HARDER FOR CEOs

Technological change, particularly AI's disruptive influence, was cited by defense attorneys as another big reason why it is more challenging to run a public company. They see it creates several challenges:

- how to adopt a technology that is developing so quickly that no one knows how it will transform our world;
- how to ensure their businesses are resilient to AI's threat of undermining or even upturning their business model;
- how to accurately reflect both the technology's risks and opportunities in their public disclosures.

One lawyer told us:

"AI is all CEOs' nightmares right now. They are expected to have answers for investors on how they will use it to improve their products, while also knowing how to shield their business against it. The pressure to be optimistic is overwhelming and the temptation is to push the envelope on what they tell their investors."

Conclusion

Public companies and their leaders now face a host of complex and volatile issues. Some, such as the global economic and political environment, could improve quickly. Or they could deteriorate further. But it is unlikely they will ease any time soon.

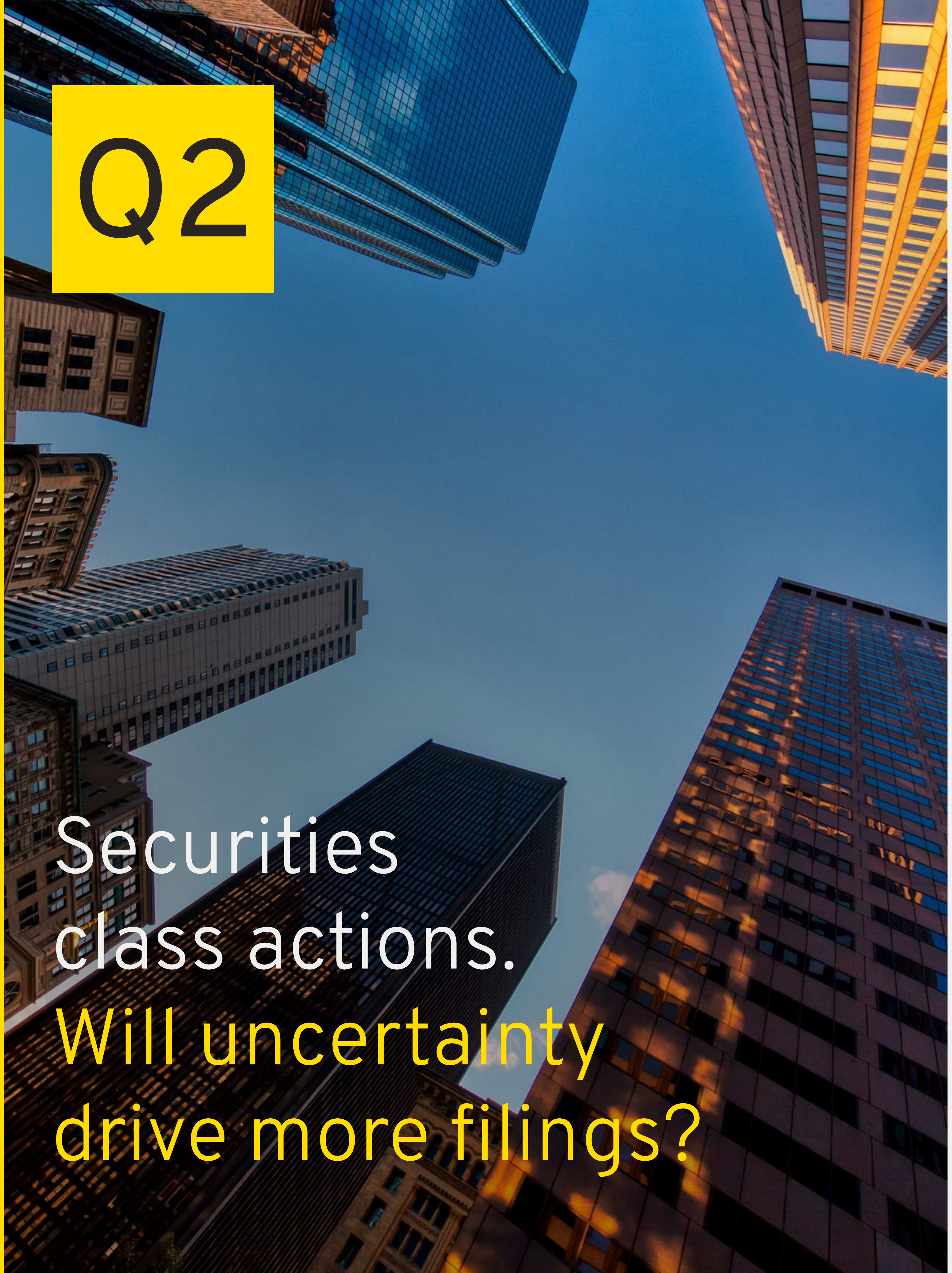
The pressure on executives and boards is to have answers for investors on how a wide range of issues will affect their companies when their impact is largely unknown. They need to walk a tightrope, where being either too optimistic or too pessimistic can have serious consequences.

Also, even if this administration lifts certain formal reporting requirements, the trend among shareholders is for more transparency from companies, not less. They are prepared to launch lawsuits against those executive and board teams who disappoint them.

Inigo's prediction

No.1

Most survey respondents will not tell us next year it has become easier to run a public company.



Q2

Securities class actions.

Will uncertainty drive more filings?

Securities class actions are the heart of this survey, because the biggest risk facing public companies is being sued by their shareholders and most of the money D&O insurers pay is in defending and settling these cases.

Asked our regular opening question, half of respondents expect there to be more actions filed over the next 12 months. Nearly 40% think the number would remain the same, while the balance (a little over 10%) expect them to drop.

The first three months of 2026 saw a modest uptick in filings, with 64 actions filed, compared to 61 in the corresponding quarter in 2025.

For those who predict a rise in cases, one comment summed up what are the underlying factors:

“[An] unpredictable domestic and international social, political and economic climate will make it more difficult for companies to accurately forecast earnings. Volatility in the market will also be a factor.”

Missed guidance claims are often less attractive for plaintiff’s lawyers, because it can be difficult to prove scienter in them, that the directors and officers knew or intended to mislead shareholders. But if the company’s stock drops significantly then the temptation to launch a lawsuit may be too strong. Nearly nine out of ten respondents think yo-yoing stock markets will lead to more filings. Although as one respondent cautioned:

“Plaintiffs still need a corrective disclosure, so volatility on its own will not drive a big increase in filings.”

Some defense counsel feel that less regulatory oversight may lead to more class actions being filed. One said:

“Despite the lack of federal investigations, the plaintiffs’ bar is quite creative, including [using] whistleblowers. And because more companies will feel emboldened by the lack of regulatory oversight, some will go too far and get caught.”

SETTLEMENTS

We asked in this year’s survey how settlement values are changing and whether defense counsel think institutional investors are becoming more active and if they are opting out of more class actions.

Is settlement severity increasing, we asked. By this we mean the settlement value as a percentage of the stock drop or plaintiff-style damages.

57%

expect settlement severity to increase, while just over a third (34%) think it will remain the same.

Several said inflation having an influence on higher settlements. One argued:

“As [plaintiffs’ lawyers’] costs go up, they need to recover these. Social inflation is also impacting the securities space, as people are anchored to larger numbers.”

Another respondent was more succinct:

"They are greedy and always want more."

Settlement demands are also seen to rise in line with market valuations. As one said:

"Settlements have always been a function of the size of the stock drop, but we're seeing pressure in mediations to agree higher settlements. Plaintiffs are making more aggressive opening demands and being more unreasonable [in negotiations]. Mediations are breaking down more often as a result."

Both plaintiff and defense attorneys have told us informally how institutional investors are increasingly either getting involved in negotiating settlements or opting out of classes to obtain a more favourable settlement. But only nearly four out of ten respondents said institutional investors had become more active, whereas most (60%) said they had seen no change.

One defense counsel told us:

"Sophisticated institutions – particularly public pension funds – are increasingly open to pursuing direct actions where the potential recovery materially exceeds their share of a class settlement. Their presence is more substantive in mediations, [while] institutional lead plaintiffs are asking tougher questions on damages models, loss causation, and insurance limits, and are sometimes directly involved in approving or shaping settlements."

Another said:

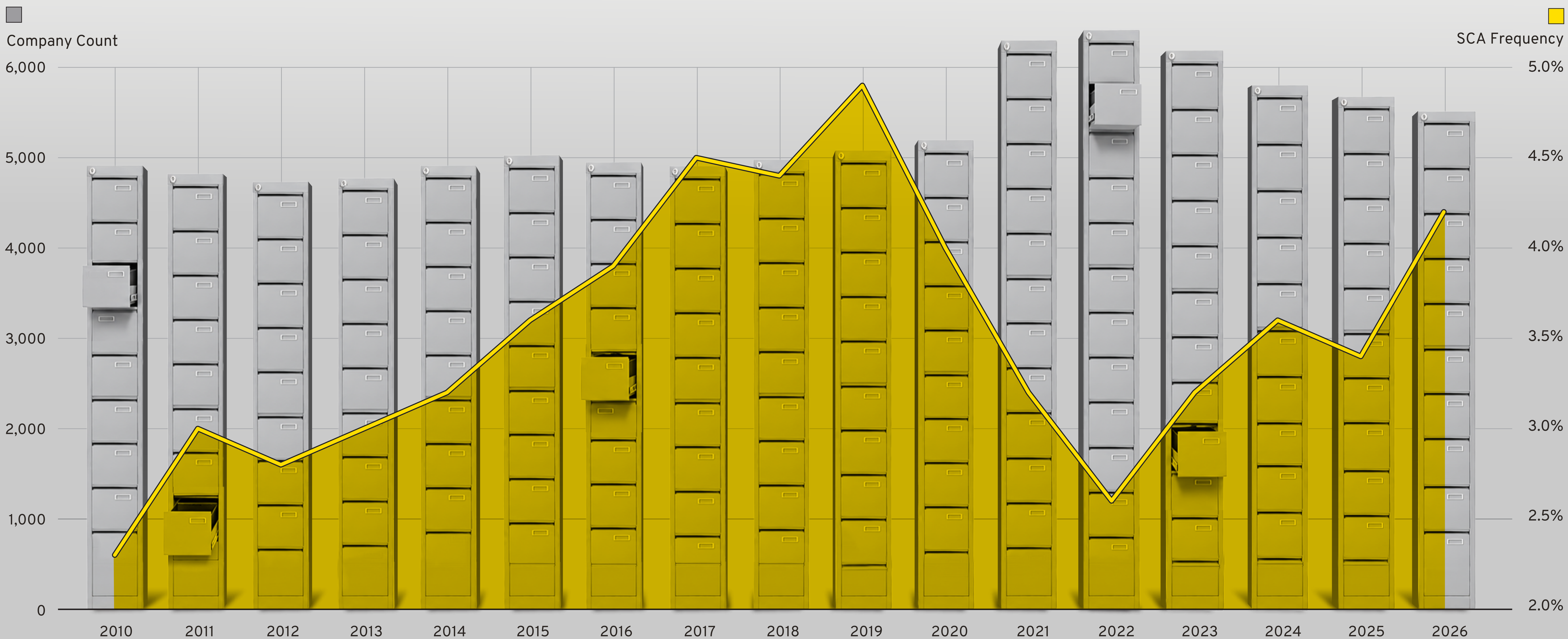
"I have had three institutional investors opt out of cases. Plaintiff's firms have been aggressive in targeting opt outs."

There is enough anecdotal evidence from our survey to suggest this is a growing trend, although it's difficult to find data to support this. We will continue to monitor this trend closely and will revisit in next year's survey.

But most defense counsel said major shareholders are still content to take a back seat. One commented:

*'They don't give a s**t. They never even show up.'*

Securities Class Action Filings by Year



Source: Stanford Securities Litigation Analytics, Inigo

Inigo Defense Counsel Survey 2026

HOW OPT OUTS WORK

What is opting out of a securities class action?

A shareholder is automatically included as a member of a class action if they fit the eligibility criteria set during the certification stage. But any class member may withdraw and bring an individual claim.

Why opt out?

If an investor believes they have suffered disproportionate damages, they may think the class will not provide sufficient redress. They may believe the characteristics of their claim are different from the broader class, or that it can settle an individual claim more quickly and efficiently.

Investors can wait until the settlement stage, when they can decide whether it is better for them to remain in the class or to withdraw and launch their own individual actions.

ARE FEDERAL JUDGES BECOMING MORE PARTISAN?

There is a growing concern the federal bench is becoming more politicised and that an appointed judge's political leanings could influence the outcome of a case. But when we asked defense counsel about this, only 41% said it had affected corporate lawsuits. One argued:

"I am not convinced that increased political polarisation [is a factor] in securities class actions."

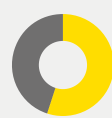
Another said:

"A plaintiff-friendly or plaintiff-hostile judge is very relevant. But I do not see that as [being] political polarisation.'

And another defense counsel added:

"I have not noticed a strong political component to judge's decisions in SCAs, at least not yet."

Among those who do not see evidence of increased polarisation, many believe other factors are more important than the judge. We asked respondents what, other than the underlying facts, mattered most in winning a motion to dismiss.



55%

said it was the quality of the brief, while the remaining 45% said it was the judge's quality and experience that mattered most in winning a motion to dismiss.

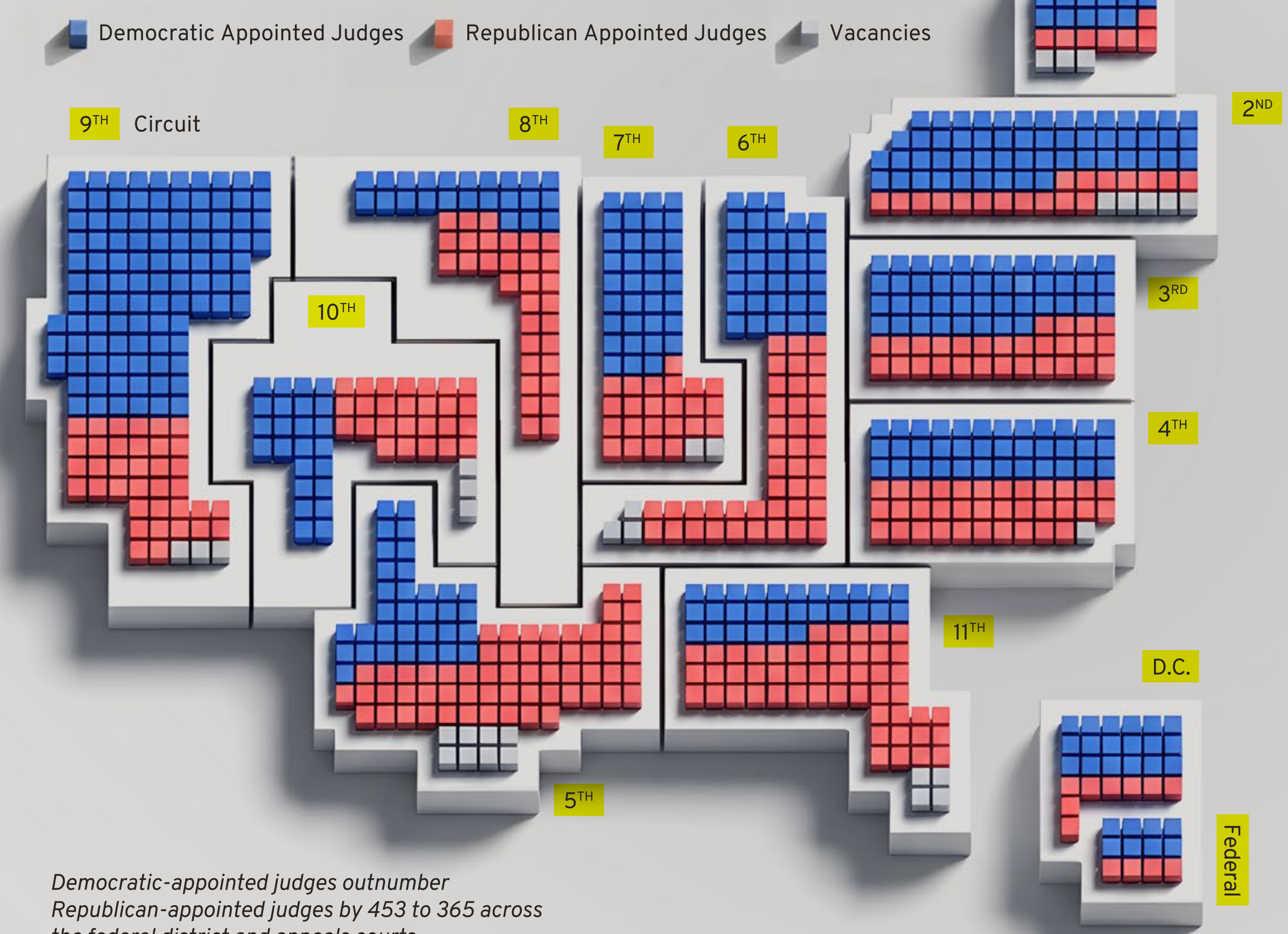
A presiding judge's proficiency and know-how mattered most in winning a motion to dismiss after quality and experience. One said:

"It could be that Trump-appointed judges are slightly better in their early years than Biden-appointed judges, but geography and time on the bench matter more. Plenty of Obama-appointed judges denied MTDs in their early days, but in districts where these filings are frequent (e.g., the Southern District of New York and Northern District of California) they soon realised that [not] every one of these companies engaged in fraud."

Another explained:

"Many new judges have never seen a securities case. They don't know a good one from a bad one and are minded to let them play out."

Active Federal Judges by Circuit (District + Appeals Courts) and Party



Democratic-appointed judges outnumber Republican-appointed judges by 453 to 365 across the federal district and appeals courts.

Circuit	States	Appointed Judges		
1ST	Maine, Massachusetts, New Hampshire, Rhode Island, Puerto Rico	27	7	3
2ND	Connecticut, New York, Vermont	54	18	5
3RD	Delaware, New Jersey, Pennsylvania, U.S. Virgin Islands	44	28	0
4TH	Maryland, North Carolina, South Carolina, Virginia, West Virginia	36	34	1
5TH	Louisiana, Mississippi, Texas	33	59	8
6TH	Kentucky, Michigan, Ohio, Tennessee	33	42	3
7TH	Illinois, Indiana, Wisconsin	35	25	1
8TH	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota	23	32	0
9TH	Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, Northern Mariana Islands	100	37	2
10TH	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming	24	26	3
11TH	Alabama, Florida, Georgia	28	50	4
DC + FEDERAL	District of Columbia	18 8	8 4	0
TOTAL		**461**	**369**	**30**

Source: Ballotpedia

Since Jan 2025, Trump has appointed and Senate confirmed

42

federal judges.[2]

This represents only about

5%

of the entire active federal judiciary, comprised of around 830 judges.[3]

As of mid-2026,

55%

of active life-tenured federal judges were appointed by Democratic presidents (around 490 judges), while 45% were appointed by Republican presidents (about 390 judges).[4]

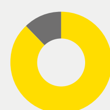
That said, 40% of our respondents believed that a Republican-appointed judge is more likely to dismiss a case than one chosen by Democrats. One wrote:

"Biden appointed judges who were public-interest lawyers or public defenders. Their sympathies lie with 'the little guy'."

Likewise, defense counsel told us judges appointed by President Trump are more politically minded:

"With Trump appointees, especially in certain jurisdictions, politics will play a larger part."

For those with existing claims,



88%

think that the corporate environment created by President Trump is more favourable for defendants than plaintiffs.

One respondent said:

"There will be fewer investigations to pave the way for plaintiffs. And more conservative, anti-plaintiff judges will be appointed to the federal bench."

ARE THERE LEGAL HOTSPOTS?

Jurisdiction came up frequently in our interviews as an important consideration. One told us:

"I don't think polarisation is occurring across the federal bench, just in certain circuits."

Respondents told us certain circuits are particularly polarised, but we have not named them. A 2022 study in The American Sociological Review found that judges often retire under the same political party as the president who appointed them[1]. If this is the case, some circuits may be seen to have a more politicised judiciary, which could explain the perception that some circuits are more challenging to litigate cases in than others.

[1] https://www.asanet.org/for-press/press-releases/party-animals-a-new-study-on-retirement-timing-by-federal-judges/
[2] https://www.uscourts.gov/data-news/judicial-vacancies/confirmation-listing
[3] https://nationscourts.com/site/9-content/254-judicial-update
[4] https://ballotpedia.org/Current_federal_judges_by_appointing_president_and_circuit

Conclusion

Stock market turbulence is likely to trigger more investor lawsuits, while settlement values may rise due to more aggressive plaintiff's lawyers and institutional investors looking to flex their muscles.

We have predicted in previous editions of this survey that the number of securities class actions will rise, only to be proven wrong. But we are happy to make the same prediction again this year, because the tense global political and economic climate is likely to mean more lawsuits against public companies.

Although it is difficult to monitor the number of class actions opt outs, we will watch this issue closely.

Inigo's prediction

No.2

There will be at least 217 securities class actions over the next 12 months, an increase of ten over the same period last year.

Settlement severity as a percentage of market cap will increase by 5% over the next 12 months.

Q3

Federal deregulation. Help or hindrance?

The regulatory environment has been a focus of our survey from the beginning. The challenges of running a public company are a recurring theme throughout this year's survey, so we decided to explore the impact of the SEC's changing stance on regulation, including it dropping its historic opposition to companies adopting mandatory arbitrations, plus it ending hundreds of enforcement actions.

In its first year, the second Trump administration cancelled 145 enforcement actions against 153 corporations and froze a further 14, according to the Corporate Enforcement Tracker[1].

Nearly eight out of ten defense counsel said they had seen fewer informal SEC investigations during the past 12 months. Only one respondent had seen more. One comment pithily described the current situation:

"[The] SEC has gone into a four-year hibernation period."

But another said:

"The SEC/DOJ remain active, but it appears they are focusing more on strong cases and are bringing [fewer] cases in the 'gray area' seeking to expand securities laws."

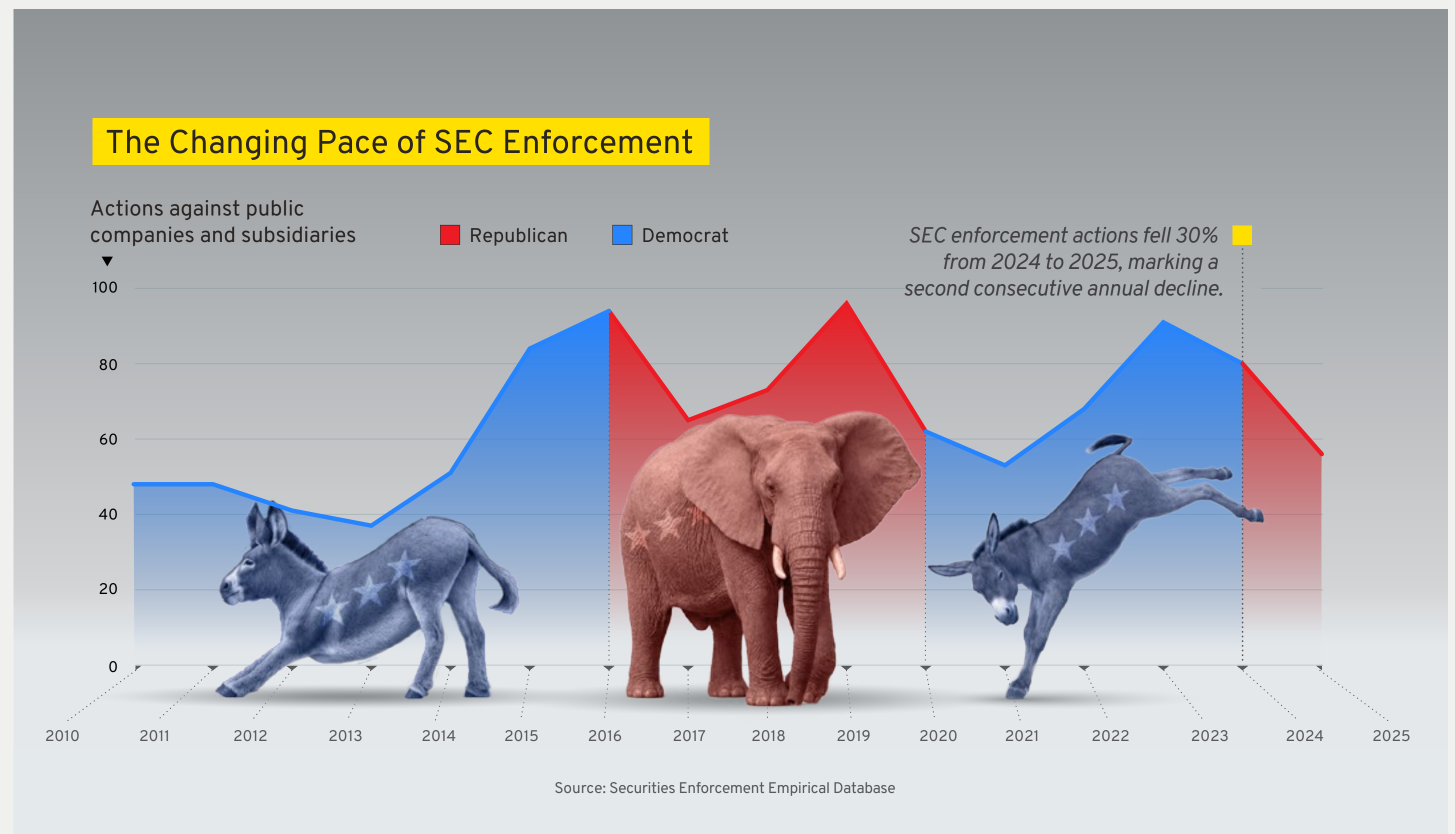
This view, which was shared by several respondents, is backed up by data, which shows a notable drop in investigations since the new administration came to power.[2]

But respondents told us that the factors most likely to spark an investigation by the SEC remain similar to in the past. Four out of ten said accounting or financial restatements, with two in ten saying press or media reports about a company, with a further 17% citing whistleblower action.

A few commented that they feel the SEC is now more politicised. One respondent wrote:

"I think the White House more closely controls enforcement and therefore more [investigations] are likely [if they] are relevant to the President's agenda/focus."

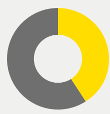
President Trump has taken a personal interest in corporate issues. In 2020, he issued executive orders forcing ByteDance, TikTok's Chinese parent, to divest its US assets or be banned in the country. He was also heavily involved in assembling and approving the investor group that bought TikTok's US operations.



The president also personally intervened in the Federal Trade Commission's review of Omnicom Group's $13 billion acquisition of Interpublic Group, according to the Wall Street Journal. Although the deal ultimately closed, "Trump has gotten involved in regulatory decisions big and small that once were made by independent agencies."[3]

The paper also noted: "The way Trump has turned federal agencies into an arm of the presidency is a departure away from previous administrations". So, although there are fewer SEC investigations, we still expect to see it enforce the laws, and as it recruits more staff to replace the many who quit, we expect the number of enforcement actions to tick up, albeit from a very low base compared to previous administrations.

Asked what will happen during this regulatory hiatus,



41%

said it may lead to more public companies committing fraud and malpractice.

One commented:

"[Although] it's too short a time to observe a material change, I do think the amount of fraud is likely to increase."

Another respondent summed up why:

"When guardrails are not enforced and guardians (the SEC, other federal regulators) are lax, there is more mischief."

Although defense counsel believe it will take time for companies to become emboldened to bend the rules, there is enough concern among them for us to pay close attention to this issue. Outside of enforcement activity specifically, we also explored how public companies are affected by regulatory reforms.

The SEC's new head Paul Atkins stated the regulator must "make becoming and remaining a public company more attractive", while the second Trump administration has signalled a more business-friendly environment. The SEC has dialled back on enforcement and changed course on ESG disclosures, relieving public companies of the need to comply with board diversity and carbon footprint targets. It also proposed dropping the requirement on public companies to report every quarter, which President Trump has personally endorsed.

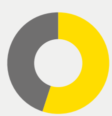
MANDATORY ARBITRATION PROVISIONS

In a landmark decision in September 2025, the SEC dropped its previous opposition to mandatory arbitration provisions. While not passed as a formal rule, Atkins said such a provision in IPO documents "will not impact the agency's decisions about whether to approve the effectiveness of a securities registration statement."[4]

The SEC reversed a stance against arbitration dating back almost forty years, which had been challenged over the years by numerous companies, including Franklin First Financial Corp in 1990 and Carlisle Group in 2012.[5]

Firms looking to float can now require shareholders to pursue claims against them through arbitration, rather than through a class action. This, the SEC contends, will save companies money by defending long and costly lawsuits and potentially reduce the payouts companies must make in settlements or judgments.

The SEC's decision elicited a mixed response from defense counsel.



55%

believe companies will not spend less in legal costs – and may even spend more – if they opt for mandatory arbitrations.

TIMELINE OF SEC CHANGES IN PRESIDENT TRUMP'S SECOND ADMINISTRATION

January 2025: Commissioner Mark T. Uyeda, signals an immediate freeze on pending regulations when he is appointed the SEC's interim head.

January 2025: The SEC approves Nasdaq's proposal to formally repeal the requirement for its listed firms to report board diversity metrics or explain shortfalls.

April 2025: Paul Atkins is confirmed as the SEC's new permanent chairman.

September 2025: Margaret Ryan is named as its Enforcement Director. A former judge of the US Court of Appeals for the Armed Forces, she has no experience in regulatory enforcement. She states in speeches that her priorities are fraud and manipulation, regulatory compliance and pursuing executives without necessarily penalising their companies, which would unfairly punish shareholders.

March 2026: Ryan abruptly resigns. No reason is given for why she quit only months after taking the job.

May 2026: David Woodcock is named the new Enforcement Director. A securities lawyer, he says his priorities are taking enforcement "back to basics", focusing on "protecting investors and safeguarding markets."

May 2026: The SEC proposes rescinding climate disclosure rules on public companies.

May 2026: It proposes dropping mandatory quarterly reporting by public companies, in favour of reporting every six months.

One defense attorney told us:

"I think defense costs will be elevated in the near term, simply because the enforceability [of this provision] will be challenged. Arbitration is also not always the lower-cost option for every public company."

Another agreed, saying:

"Arbitration has not proved to be consistently cheaper to defend than litigation."

Whereas another we spoke to put the counter argument:

"Arbitration typically limits discovery, avoids protracted motion practice (including class certification battles), and shortens timelines. Even if there are more individual claims, they tend to be more streamlined and less resource-intensive than full-scale federal litigation."

Survey respondents were also evenly split over the issue of whether arbitrations would reduce settlements, or if they would have no impact.

One argued:

"There will be more arbitrations, hence a bigger spend. But the absence of a class action will dramatically decrease settlement values."

Some argued that plaintiffs' lawyers will chase the same payouts, regardless of the route for redress. One stated:

"[Arbitration] will still be expensive, and plaintiff's counsel will still have the same expectations."

While there is debate about whether arbitrations benefit companies, few believe they will benefit shareholders. SEC Commissioner Caroline Crenshaw criticised its change, arguing: "Allowing mandatory arbitration provisions could weaken investor rights by making dispute resolution prohibitively expensive for smaller investors and less accessible than class actions."[6]

A defense attorney agreed with Crenshaw, arguing:

"Without it, smaller shareholders would face practical barriers to pursuing individual claims [through arbitration]."

We have already seen some companies electing to use mandatory arbitration provisions. Zion Oil & Gas is thought to be the first to adopt the provisions[7], while SpaceX also included an arbitration provision in its IPO. Whether arbitrations will become the preferred option for US companies looking to float is unclear, but this is likely to be an issue for the foreseeable future.

[1] https://www.citizen.org/article/canceled-corporate-enforcement-trump-first-year-second-term/
[2] https://research.seed.law.nyu.edu/
[3] https://www.wsj.com/politics/policy/trump-takeover-regulators-130b57a3?mod=hp_lead_pos1
[4] https://www.skadden.com/insights/publications/2025/12/the-informed-board/could-mandatory-arbitration-spell-the-end-of-securities-class-actions
[5] https://www.dandodiary.com/2025/09/articles/securities-laws/sec-revises-policy-on-arbitration-provisions-in-ipo-companies-bylaws/
[6] https://www.skadden.com/insights/publications/2025/09/sec-reverses-course-on-arbitration-clauses
[7] https://www.goodwinlaw.com/en/insights/blogs/2025/12/reactions-to-the-secs-change-in-policy-to-mandatory-arbitration-provisions

Conclusion

The SEC has undoubtedly rowed back on enforcement actions under the new administration, but states it is focused on rooting out fraud that harms investors. It has brought actions against executives, without penalising their companies.

These new actions are perceived by our respondents to be for more traditional forms of alleged accounting fraud, but some express fears that companies which the Trump administration has in its crosshairs may face investigation and prosecution.

We expect enforcement activity to increase modestly as the SEC gets back up to strength again and looks to reassert itself.

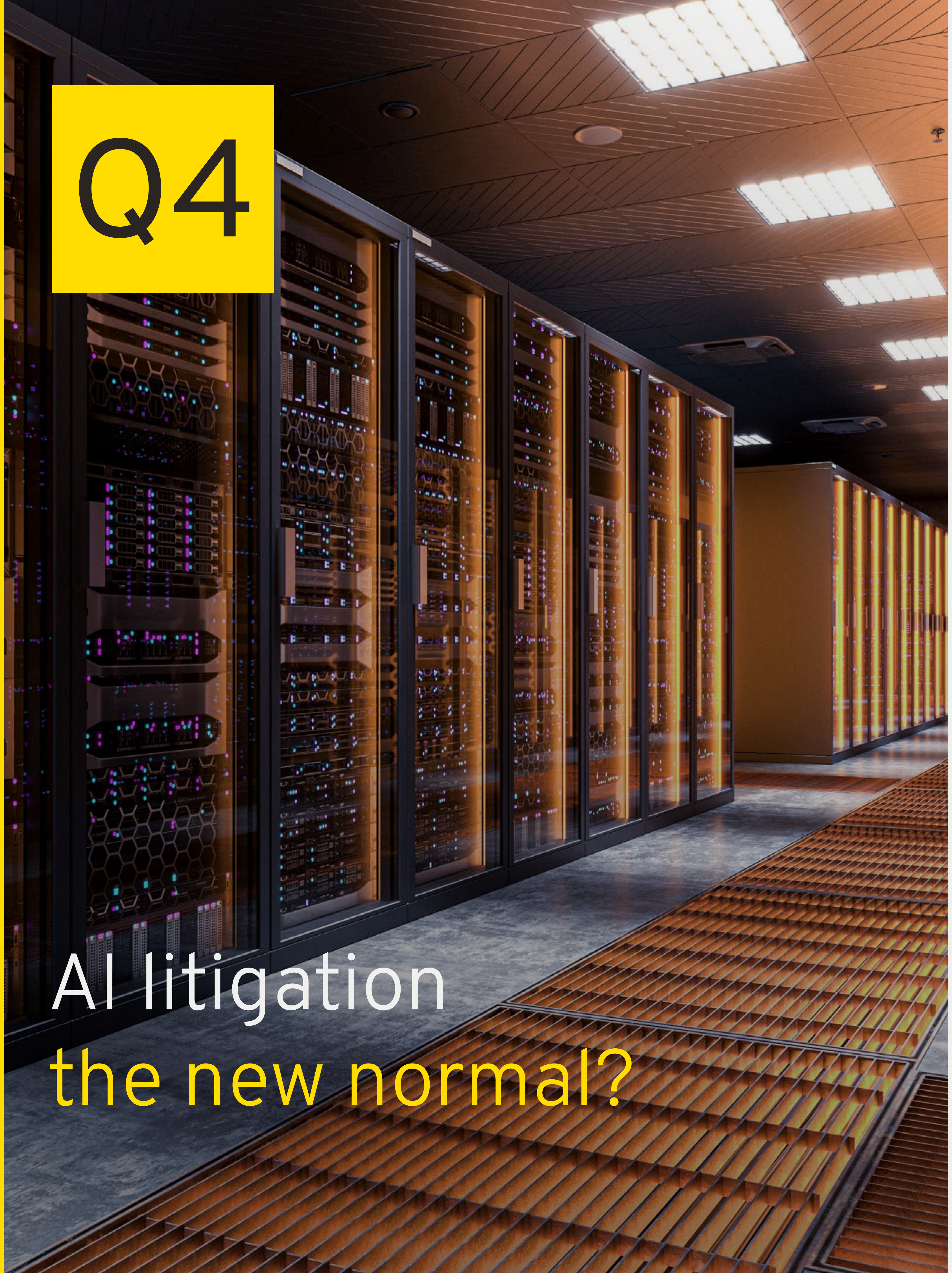
Mandatory arbitration provisions are a new trend, but our survey respondents do not believe they will necessarily benefit public companies, because they will increase cost and complexity without the reducing the quantum of settlements. This will be very hard to track, but we will do our best and share our findings in next year's survey.

Inigo's prediction

No.3

There will be more SEC investigations against public companies and their subsidiaries in 2026 than 2025.

Mandatory arbitration provisions will not reduce the overall cost of IPO litigation over the next 12 months.



Q4

AI litigation the new normal?

Artificial intelligence has posed companies fundamental questions, not least whether their business models remain viable in an AI age.

It's no surprise the number of AI-related securities class actions has risen steadily for the past few years. In 2025, there were 14 cases filed, up from 7 in 2023 and flat on 14 in 2024. All but one of our respondents expect there to be a higher number of AI-related suits filed in 2026. Asked to predict how many, the average was 28, a significant rise (within a wide range spanning five to 50).

With AI-related filings increasing over the past few years, two-thirds of defense counsel we spoke to felt AI is still a meaningful category by which to track lawsuits.

Respondents remarked that many of the cases still have unique characteristics. One commented:

"AI remains a useful category because it captures a distinct and recurring set of fact patterns that are not fully interchangeable with traditional securities claims."

AI washing has been a particular focus for regulators and the plaintiff's bar. It was highlighted by Gary Gensler, the former SEC chairman, as an area of concern and therefore became a specific category by which AI-related securities claims were tracked. This is partly because the lawsuit would not be brought if AI did not exist. As one respondent stated:

"Without AI, [companies] wouldn't need to exaggerate their AI credentials and [therefore] create the opportunity to get sued.'

But among those who felt there was no longer a need to categorise AI claims separately, a common rationale was that these fall within traditional categories. One wrote:

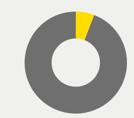
"There is really no need to create a separate set of the same categories simply because AI is the underlying cause."

So, still identifying cases as being AI related works, for now. But as their number increases, they will become part of mainstream litigation. We will need to find new ways to assess this litigation, perhaps breaking them down into their constituent categories or merging them with existing claims categories.

WHAT WILL BE THE NEXT AI LITIGATION HOTSPOT?

A third of respondents said most cases in 2026 would result from allegations of AI washing, while another third said the biggest cause would be companies failing to execute their AI strategies. Another 27% voted for missed guidance due to AI disrupting their business.

Despite growing concerns of an AI bubble, only



6%

of respondents believed that over-investment in infrastructure would drive AI-related litigation.

But one defense attorney wrote:

"Mark my words, the AI infrastructure boom is the next Railway Mania."

Another respondent highlighted the sheer amount of investment AI requires without any meaningful scrutiny, saying:

"The vast sums of money being poured into data centres, chips and power at really high valuations [mean] if demand doesn't keep up [with forecasts] then the bubble could burst."

A possible precursor to the end of the AI boom could be if companies that have invested huge sums warn that they have not met their optimistic sales forecasts. A respondent pointed to the collapse of Global Crossing – the largest bankruptcy in history at the time – as being when the dot-com bubble burst. If the AI boom fails, the plaintiff's bar will be watching and waiting.

HOW DO JUDGES VIEW AI CASES?

We asked defense counsel how judges are treating these tech cases. More than six out of ten (62%) respondents felt judges were scrutinising AI-related cases more carefully than others. Many think this is because they are still deciding how to deal with these suits. One wrote:

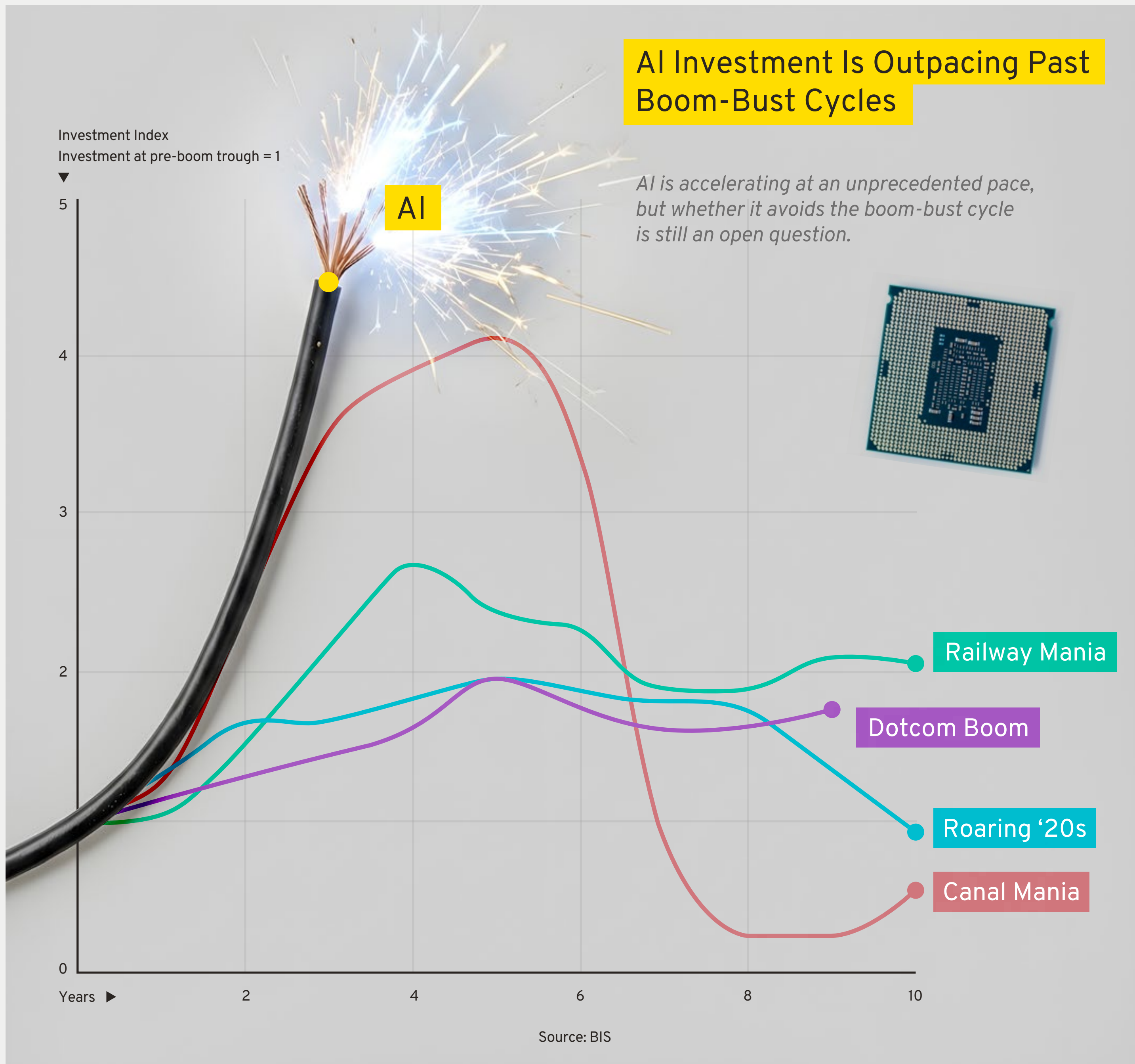
“AI cases will draw more scrutiny from judges for now because they are trying to figure [them] out.”

Another respondent made the point:

“Where [judges] are unsure, they seem uneasy to dismiss a case, especially around AI washing. Even if they grant an MTD, they are giving plaintiffs multiple bites at the cherry.”

Others argue, however, that the fundamentals of a securities case are the same, regardless of whether AI is involved. One wrote:

“Judges can see through AI fluff in the complaint to [ascertain if] there was truly any wrongdoing.”



Inigo’s prediction

No.4

There will be at least 25 AI-related securities class actions over the next 12 months.

AI-related cases will take 25% longer on average to resolve.

Conclusion

We expect judges to devote more attention to AI cases, for now. This means judges are likely to take longer deciding these claims and may offer plaintiffs more opportunity to amend their pleadings, which is likely to mean higher litigation costs and potentially more claims not being dismissed. That most respondents feel judges view AI cases differently may be the best reason for us to continue to treat them as a separate category.

Q5

Delaware.
Has SB21 helped?

Delaware has long been preferred by companies because of its long-established statutes, and well-developed case law, judges who are well-versed in corporate cases, and the historical perception that it is a business-friendly state.

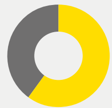
But recently this image has been threatened by rulings from the Delaware Court of Chancery, the state's non-jury trial court which decides business disputes.

Several companies have cited the state's increasingly unpredictable and litigious legal environment as a reason for moving to other states, such as Nevada and Texas, which they perceive as being more attentive to their needs.

Dexit failed to materialise, however, partly because Delaware's Governor Matt Meyer made sweeping reforms to the state's corporate law to defend its role as the US's corporate capital. Senate Bill 21 (SB21), passed in March 2025 with bipartisan support, would, Meyer stated, protect Delaware's status by "ensuring clarity and predictability, balancing the interests of stockholders and corporate boards." [1]

So, more than a year since it was passed, what impact has SB21 had on Delaware's legal environment? Respondents told us previously that Delaware's courts have become increasingly friendly to plaintiffs thanks to the erosion of the Caremark ruling, which has made it easier to file derivative suits there against companies.

A key element of the reforms is narrowing the scope of Section 220 demands. Nearly



60%

of respondents believe the cost of responding to these demands is falling, because plaintiff's lawyers no longer have the right to ask for so much information.

One defense counsel said:

"We can deal with them much more efficiently now as there is less internal discovery required to respond. The plaintiffs can't keep coming back [for more information] unless they file a complaint."

Another respondent added:

"They are now less effective as fishing expeditions for plaintiffs."

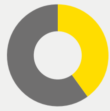
There was a broad consensus among those we surveyed that the SB21 reforms are unlikely to make a dramatic difference to the broader litigation landscape, however. One respondent commented:

"I don't think it has changed much. They still get access to a lot of board minutes and don't need much to bring an action."

It is also unlikely to reduce the number of class actions being filed, they told us. Another said:

"We will still see suits filed where the underlying conduct looks Caremark worthy."

Opinion is split on whether the changes have led to fewer suits. Around



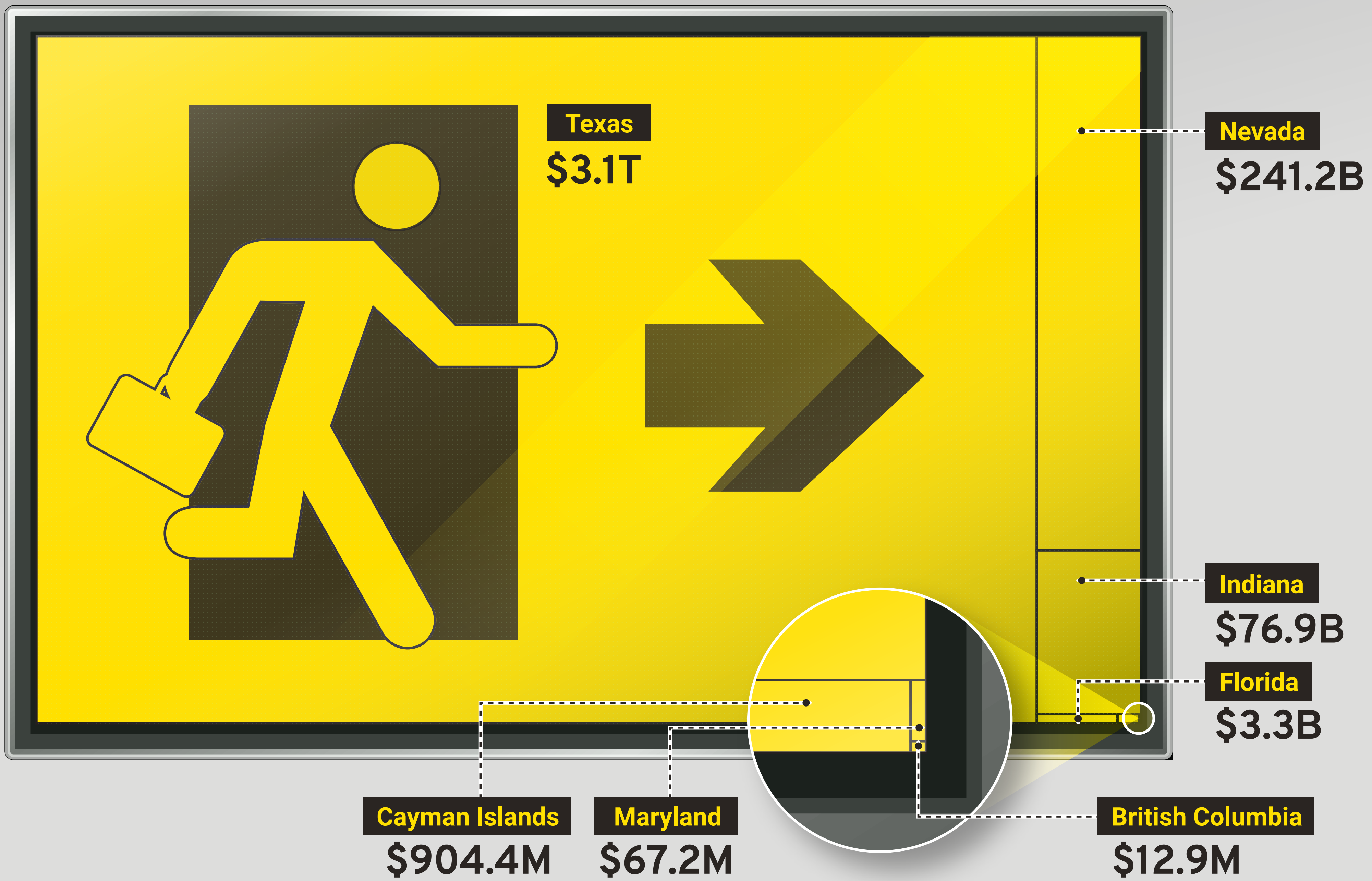
40%

said they had seen a rise in the number of derivative suits, while another 40% said they had seen no change, with the remaining 20% saying they had seen filings drop.

[1] https://news.delaware.gov/2025/03/26/governor-meyer-signs-sb21-strengthening-delaware-corporate-law/

DExit: The $3.6 Trillion Corporate Migration

Since 2024, 52 companies with a combined market cap of $3.6 trillion have left Delaware to reincorporate in states such as Nevada and Texas.



Source: Leave Delaware. Company count from 2024 to May 2026.

One said:

"Caremark claims are increasing, with mixed results in pleadings-stage dismissals."

The SB21 reforms may have inadvertently driven more derivative suits, by making it harder to bring direct actions against controlling shareholders, respondents argued. One said:

"I think direct claims against controlling shareholders have been converted into derivative claims."

This is an issue we will monitor closely over the coming year.

DOES POLITICS PLAY A PART IN DERIVATIVE ACTIONS?

The judge's political persuasion could also be behind the rising number of derivative suits, respondents suggest. One told us:

"The Delaware court is very split, and your case could rise or fall [depending] on [which] judge [is] appointed.'

Another took this a step further, writing:

"Some judges have an ideological bent [which means they are] reaching to keep cases going and come up with [reasons to increase] damages. If you don't win a motion to dismiss, you are in trouble."

One respondent was explicit in spelling out the issues this is causing:

"Even though there have been some reforms, the courts are very pro-plaintiff and anti-big tech companies. They will find a way to get over the Caremark hurdle in any way they can."

SB21 REFORMS IN A NUTSHELL

- **Controlling stockholder safe harbors**
  This limits court scrutiny for transactions involving controlling stockholders. Deals approved by either an independent board committee or a majority of the disinterested (minority) stockholders will be evaluated by courts under the "business judgment rule" rather than the more demanding "entire fairness" standard.
- **Definition of control**
  Narrowly defines "controlling stockholders" as only those individuals owning more than 50% of the company's shares, or 33% combined with active managerial control.
- **Going-private transactions**
  Preserves a more rigorous, dual-protection framework, requiring approval by both an independent special committee and most disinterested stockholders.
- **Shareholder access to records**
  Shareholders can only inspect board documents under Section 220 books and records requests if they have a "proper purpose". It limits their access to formal corporate documents and board material, excluding emails and messages sent by directors and officers.

Inigo's prediction

No.5

There will be a 10% increase in derivative filings in Delaware over the next 12 months.

Conclusion

Respondents believe that although the SB21 reforms will reduce the cost and complexity of Section 220 demands, they are unlikely to bring down the overall number of shareholder lawsuits. Also, plaintiffs will bring more derivative actions when challenging controlling shareholders. This has insurance implications, because derivative lawsuits prevent a company from covering its executives' settlements, triggering its Side A D&O cover.

Finally, Court of Chancery judges are viewed to be politically polarised, if not overtly friendly to plaintiffs. This is also likely to mean more derivative litigation, which will be harder for companies to defend.

SUMMARY

INIGO'S 2026 PREDICTIONS

#01
PUBLIC COMPANIES

Most survey respondents will not tell us next year it has become easier to run a public company.

#02
SECURITIES CLASS ACTIONS

There will be at least 217 securities class actions over the next 12 months, an increase of ten over the same period last year.

Settlement severity as a percentage of market cap will increase by 5% over the next 12 months.

#03
FEDERAL DEREGULATION

There will be more SEC investigations against public companies and their subsidiaries in 2026 than 2025.

Mandatory arbitration provisions will not reduce the overall cost of IPO litigation over the next 12 months.

#04
AI LITIGATION

There will be at least 25 AI-related securities class actions over the next 12 months.

AI-related cases will take 25% longer on average to resolve.

#05
DELAWARE

There will be a 10% increase in derivative filings in Delaware over the next 12 months.

Which are the best US securities plaintiffs' law firms?

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

- **ROBBINS GELLER RUDMAN & DOWD LLP**
- **BERNSTEIN LITOWITZ BERGER & GROSSMAN LLP**
- **LABATON SUCHAROV LLP**
- **QUINN EMANUEL URQUHART & SULLIVAN LLP**
- **KESSLER TOPAZ MELTZER & CHECK LLP**

Robbins Geller and Bernstein Litowitz traded places once again this year. They have both consistently been in the top two, and Robbins Geller clinched the top spot this year with five more votes. Respondents described Robbins Geller as "smart, strategic and aggressive", as well as "usually only [taking] on cases they think they have a high chance of getting into discovery."' Bernstein Litowitz also attracted praise, with one respondent writing the firm had "excellent lawyers and a culture to pursue only meritorious cases with vigor."

Labaton retained its third spot, with one respondent writing they are "as smart as the Bernstein Litowitz folks and as aggressive as Robbins Geller." Quinn Emanuel also retained its place in this year's survey, with Kessler Topaz sneaking into fourth spot. One comment that captured the general view was:

"It's still the usual players. Regrettably, the individual plaintiffs' lawyers that tend to be the least reasonable end up being more successful."

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