Litigation Outcomes as Predictive Contracts

A phased listing plan, a candidate case library, and a perpetual on the index.

Daniel Kaufman · June 9, 2026 · Strategic research — not investment advice.

CLASS ACTIONS 2025	LITIGATION FINANCE	CANDIDATE CASES	AGGREGATE EXPOSURE
$79B+	**$19.4B**	**16**	**$1T+**
top 10 US settlements	global market, 2026	curated list	across the list

Contents

INTRODUCTION

Litigation is the largest unhedged tail risk in corporate America.

Litigation is one of the largest unhedged risks in corporate America. Class action settlements alone topped $79B across the top 10 cases in 2025 — and that's just the tail. The global litigation finance market sits at roughly $19B in 2026 and is growing at double-digit rates. Every materially-exposed defendant has a tail risk it cannot transfer cleanly; every plaintiff has a contingent receivable it cannot monetize before settlement. Both sides would buy a liquid hedge if one existed.

Predictive markets are starting to build the chassis. Polymarket already runs 105+ Supreme Court markets — including the IEEPA tariffs case and the birthright citizenship EO — and Kalshi's regulatory position has firmed materially after the Third Circuit's April 2026 ruling that its sports event contracts qualify as 'swaps' under the CEA. The infrastructure for listing event contracts on US legal outcomes is largely already built and tested.

This piece does five things. **Section 1** lays out a four-phase listing plan — binary contracts first, then multi-state outcomes, then timing composites, then perpetual futures referencing a basket index. **Section 2** presents the candidate case library: 16 cases across antitrust, pharma, tech/crypto, mass tort, SCOTUS, and securities with economic exposure and hedger profiles. **Section 3** walks the perpetual-on-litigation-index design. **Section 4** addresses the regulatory hurdles, which are no longer the binding constraint. **Section 5** sizes the market.

SECTION 1

A four-phase listing plan — binary to perpetual

Listing litigation outcomes as predictive contracts is not a single-step launch — the product needs to evolve from simple binary outcomes to multi-dimensional structures as market depth supports each successive layer.

Phase 1 — Binary outcomes

The simplest contract: YES if the named plaintiff (or defendant) prevails, NO otherwise. Resolution criterion is the final non-appealable judgment, with explicit tie-breakers for partial wins, settlements, dismissals, and reversals on appeal. Phase 1 is the natural starting point because it's structurally identical to the sports event contracts and political event contracts that have cleared regulatory review. The Kalshi sports-contract framework — court verdicts as binary 'events' — ports directly.

Best fits for Phase 1: cases with a single clear outcome variable, near-term resolution, and broad public attention. The IEEPA tariffs case at SCOTUS is the archetypal Phase 1 contract: binary, dated, materially-exposed across many sectors, and already trading on Polymarket with measurable open interest.

Phase 2 — Multi-state outcomes

Real litigation rarely resolves as a clean binary. The Google search remedy appeal could leave the data-sharing requirements intact, strike them down, impose structural divestiture instead, or be remanded for further proceedings — four economically distinct outcomes with materially different market-cap implications. A multi-state contract decomposes this into a vector of mutually-exclusive YES contracts that sum to 1.0 at resolution.

Phase 2 contracts are how you express 'rare-event hedge' structures cleanly. A sector ETF that wants to hedge the Big Tech antitrust tail buys YES on the 'structural divestiture' branch of three or four cases — small probability, large payoff if any single one resolves adversely.

Phase 3 — Timing + outcome composites

For many litigation events, the timing matters as much as the outcome. A generic entry for Eliquis in Q1 2027 is economically very different from one in Q4 2027 — the BMY/PFE franchise revenue at risk scales with the calendar. Phase 3 contracts pair the outcome dimension with the timing dimension: a 4×3 grid of (outcome) × (resolution window), each cell a separately-traded YES contract.

The mass-tort sector is the natural Phase 3 home. J&J's Texas Two-Step talc bankruptcy: outcome states (bankruptcy approved / rejected / aggregate settlement / inventory continues) cross timing windows (2026 / Q1 2027 / 2027H2 / beyond). Twelve cells, each a contract — and the implied probabilities across them have meaningful constraints that create a clean intra-contract arbitrage check.

Phase 4 — Perpetual on a basket index

The destination state: a perpetual futures contract referencing a weighted basket of individual litigation YES contracts within a sector. The design pattern is familiar — a standardized basket, a published index, cash-carry-anchored funding, no expiry. The difference is that the underlying isn't a commodity price; it's a probability that ranges between 0 and 1.

Phase 4 is where the systemic hedger lives. A diversified macro fund that wants ongoing exposure to 'Big Tech antitrust tail risk' doesn't want to manage five individual contracts with five different resolution dates. It wants a single perpetual position.

SECTION 2

Candidate case library — 16 cases, $1T+ aggregate exposure

Hand-curated list of 16 US litigation cases meeting three criteria: material economic exposure (typically $5B+), identifiable hedger constituency, and resolution-criteria clarity that supports event-contract listing.

Case	Sector	Phase	Exposure
DOJ v. Google (Search monopoly)	Antitrust	P2	$150B
DOJ v. Google (Ad-tech)	Antitrust	P2	$50B
Epic / DOJ v. Apple App Store	Antitrust	P2	$25B
FTC v. Meta (Instagram/WhatsApp)	Antitrust	P2	$200B
FTC v. Amazon	Antitrust	P1	$80B
Eliquis generic entry (BMY/PFE)	Pharma	P3	$12B
GLP-1 patent litigation	Pharma	P2	$35B
AMITIZA antitrust v. Takeda	Pharma	P1	$2B
SEC v. Coinbase	Tech/Crypto	P2	$30B
Section 230 reform / SCOTUS	Tech/Crypto	P1	$100B
J&J talc litigation	Mass Tort	P3	$11B
Hair relaxer cancer MDL	Mass Tort	P2	$4B
PFAS (3M / DuPont / Chemours)	Mass Tort	P2	$18B
Learning Resources v. Trump (tariffs)	SCOTUS	P2	$250B
Birthright Citizenship EO	SCOTUS	P1	$15B
Fintech SEC disgorgement (composite)	Securities	P1	$8B

The aggregate economic exposure across the 16 cases is roughly $1.0T — and that understates the true addressable market because each case's exposure number is just the most directly-relevant figure (settlement size, revenue at risk, market-cap-implied damage). Big Tech antitrust has the highest single-case exposure ($150-200B per case) but lower hedge demand per dollar of exposure (the natural hedgers are passive sector funds); pharma and mass tort have lower exposure per case but materially higher hedge demand per dollar (litigation finance funds and D&O insurers are active hedgers with mandate to deploy capital).

Three composite indices for the perpetual reference baskets:

- **BIGTECH** — Big Tech antitrust index. Constituents: Google search, Google ad-tech, Apple App Store, Meta FTC, Amazon FTC. Equal-weighted YES probability on adverse outcome. Use: sector ETF tail hedge.
- **PHARMA** — Pharma patent / antitrust index. Constituents: Eliquis generic, GLP-1 patents, Takeda AMITIZA. Revenue-weighted probability. Use: patent-cliff hedge for pharma-focused funds.

• **MASSTORT** — Mass tort settlement index. Constituents: J&J talc, hair relaxer MDL, PFAS. Aggregate-settlement-valuation-weighted. Use: D&O insurance overlay, mass-tort defendant hedge.

SECTION 3

Perpetual futures on the litigation index — design

The Phase 4 product is a perpetual futures contract referencing a basket index of individual litigation YES contracts. The design borrows directly from the GSR perpetual framework — cash-carry-anchored funding, published index, no expiry — but adapts the underlying-economics piece for probability references rather than price references.

Reference index methodology

- **Source.** Composite-weighted YES-side mid prices across constituent event contracts. Primary venues: Kalshi for US-regulated contracts, Polymarket for the broader liquid universe.
- **Index value.** Index = Σ (w_i × P_i_YES_mid). For Phase 4 the index ranges in [0, 1] — it's a probability.
- **Sampling cadence.** 5-minute volume-weighted midpoint, refreshed every 60 seconds.
- **Roll handling.** When a constituent event resolves at final judgment, it leaves the index at its resolution value, and the next-ranked candidate enters at the next weekly rebalance.
- **Settlement reference.** 4:00 PM ET close of the index; mark-to-market at the same cadence as the existing Kalshi event contracts.

Funding rate mechanics

The standard cash-carry construction for a probability-referenced perpetual:

```
F (per period) = θ_drift × (1 - perp_mark) - θ_drift × perp_mark
            + α × (perp_mark - index) / index
```

The first term is the carry analog. For a probability-referenced perpetual, the 'carry' reflects the expected drift of the basket toward resolution — a basket priced at 0.30 today must resolve to either 0 or 1; over time, the expected value remains 0.30 but the variance compounds. The second term is the standard Hyperliquid-style premium term that disciplines the mark to the live basket index.

Funding cadence. Every 8 hours, mirroring Kalshi BTCPERP. The cap on any single funding event is ±25 bps per period — meaningful but not catastrophic — to prevent liquidation cascades around constituent resolutions.

Settlement and margin

The perpetual itself never settles, but constituents do. Margin is modeled at roughly 25% of notional for a Phase 4 perpetual, reflecting both the natural mean-reversion of a probability index (it can't go above 1.0) and the variance contribution of constituent resolutions. Initial sizing for a launch: a $50M open-interest target on the BIGTECH composite, scaled up to $200M as constituent depth supports it.

SECTION 4

Regulatory hurdles — the Kalshi precedents clear most of them

Two years ago, listing event contracts on US litigation outcomes would have been a CFTC enforcement target. The regulatory landscape has shifted materially.

The favorable precedents

- **Kalshi political event contracts (May 2025).** The DDC ruled Kalshi's congressional-control contracts were not 'gaming' under the CEA. CFTC dismissed its appeal.
- **Third Circuit Kalshi sports ruling (April 2026).** Held that event contracts 'satisfy the CEA's definition of swaps because they provide for payments dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence.' That language reads more broadly than sports — it covers any event contract with economic stakes.
- **Polymarket court-case markets.** 105+ active SCOTUS prediction markets including the IEEPA tariffs case and the birthright citizenship EO — operationally similar to Phase 1 litigation contracts and not the target of CFTC enforcement.

The remaining hurdles

- **Material non-public information.** Trial lawyers and corporate insiders know things the public doesn't. CFTC's existing insider-trading prohibitions under CEA Section 4c(a) provide a serviceable framework, but operational policy is required.
- **ABA Model Rule 7 considerations.** Lawyers cannot ethically advertise specific case outcomes; open question whether trading event contracts on cases counsel is involved in violates that prohibition. Exchange has no direct exposure — lawyer-side compliance issue.
- **Witness and juror manipulation.** Already a federal crime under 18 USC §1503 and §1512. Exchange needs explicit suspension authority around jury-selection windows for high-profile cases.
- **State preemption (still litigated).** Third Circuit ruling covers the Third Circuit; other circuits split on CEA preemption. Geofence by circuit until SCOTUS resolves.
- **Section 5C self-certification.** For Phase 1 binary contracts, this is the path of least resistance. Phase 2-4 likely require formal product filing given structural novelty.

None of these is fatal. The Kalshi precedents established that event contracts on consequential public events are within CFTC jurisdiction; the question is no longer whether litigation contracts can be listed, but how the operational details are structured.

SECTION 5

Market size — the economics of the litigation hedge

Three reference numbers anchor the market-size case:

- **$79B+ — top 10 US class action settlements, 2025.** Largest single settlement was the $38B Visa/Mastercard merchant antitrust case. Eight 'mega settlements' of $100M+ totaled $1.6B in securities class actions alone.
- **$19.4B — global litigation finance market, 2026.** Burford Capital holds ~18% market share. Already invests in case outcomes, but bilaterally and illiquidly. A liquid event-contract market would extend the addressable hedge universe to corporate defendants and passive funds.
- **$300B+ — pharma patent cliff exposure through 2030.** Eight of the 13 largest pharmaceutical firms face 30%+ revenue exposure to expiring patents, with losses ranging $6B to $38B per company.

Addressable market sizing

Conservative bottom-up: Phase 1-4 collectively capture 1-2% of the litigation-finance addressable market as direct event-contract notional — ~$200-400M of open interest at maturity, distributed across the 16+ initial candidate cases. Scale up to 50-100 cases as the product matures.

More aggressive: if Phase 4 perpetuals achieve early-Kalshi-BTCPERP-style liquidity profiles ($50M+ open interest on flagship products), the litigation-perpetual category could reach $500M-$1B of open interest within three years.

The structural drivers are favorable. Litigation tail risk is currently absorbed almost entirely by D&O insurers and shareholders — neither of which is the economically natural hedger. D&O insurance is a small, concentrated market with limited capacity; shareholders absorb litigation tail risk passively through equity-price volatility. A liquid event-contract market routes the risk to the economically natural hedgers (litigation finance funds, macro event-driven allocators, sector ETFs running explicit tail-risk overlays) and lets price discovery function the way it does in other actively-traded derivative markets.

SOURCES

References and provenance

- **Skadden** — Third Circuit Affirms Kalshi's Preliminary Injunction (April 2026)
- **Holland & Knight** — Federal Appeals Court on CFTC Jurisdiction over Event Contracts
- **Polymarket** — Supreme Court prediction markets (105+ active)
- **Cornerstone Research** — Record High Median Securities Class Action Settlement (2025)
- **CFO Dive** — Top US Class Action Settlements Hit Record $79B (2025)
- **Future Market Insights** — Litigation Funding Investment Market 2025-2035
- **Congressional Research Service** — Federal Court Endorses Behavioral Remedies in Google Search Antitrust
- **CNBC** — Judge finalizes remedies in Google antitrust case (Dec 2025)
- **Labiotech** — The next pharma patent cliff: 2026-2032
- **Brownstein** — Kalshi v. CFTC Challenges Contracts on Political Events

---

Daniel Kaufman · Kinetic Alpha
kineticalpha.com/research/litigation-perpetuals
dkaufmanrisk@gmail.com

Research and education only. The litigation event contracts and perpetual described here are proposed structures — none are currently listed by any US-regulated exchange. Candidate case characterizations are descriptive of public filings and should be validated against current docket status before any trading application. Not legal advice, not investment advice, not a system.