

Paramount, State AGs Chose Certainty Over Merger Trial Risk

By **Matthew Perlman**

Law360 (October 14, 2026, 7:42 PM EDT) -- Paramount Skydance closed its \$110 billion purchase of Warner Bros. Discovery on Oct. 6, after reaching a settlement with state enforcers that experts say was driven by both politics and the underlying litigation risk for both sides.

The transaction creates Skydance Corp., an entertainment outfit that houses two of Hollywood's five major film studios, multiple streaming services and a television portfolio that includes CBS, HBO and CNN.

The Democratic attorneys general from a dozen states, led by California Attorney General Rob Bonta, challenged the deal in July over concerns that it would lead to fewer films and TV shows being produced, and ultimately higher prices for consumers.

After the states won a temporary restraining order, Paramount agreed to hold off closing the deal until after a decision on the challenge. The sides then struck a settlement last month to resolve the case with a package of commitments, amid a brewing fight over a request for enforcers to post a \$2 billion bond.

Kenneth Dintzer, a Crowell & Moring LLP partner who spent more than 30 years with the U.S. Department of Justice's Antitrust Division, including as a senior trial counsel, told Law360 there was a wide range of possible outcomes in the case since it was still at an early stage, and said that settling saved both sides from having to invest more money by continuing to litigate.

"When you bring a case like this, risk is everything," Dintzer said. "Until you get a final decision from a judge, and then on appeal, all you can do is evaluate your likelihood of success based on how you evaluate the risk."

Settlements can be tough when you believe in a case, Dintzer said, but it's often necessary because if you lose a merger challenge, you get no relief at all.

"As the plaintiff, you have to compare what you got, not against what you could have got, which is one outcome, but against the real risk of getting nothing," Dintzer said.

Jennifer Driscoll, a partner with Hinshaw & Culbertson LLP, noted that when the settlement was struck, Paramount was pressing the court to force the states to put up a \$1.9 billion bond. The number was pegged principally to daily "ticking fees" in the merger contract that Paramount said would cost the

company around \$7 million per day starting in October.

If the court ultimately allowed the merger, Paramount would have been compensated for the damage inflicted by being delayed. This threatened to put litigation risk on the enforcers that they may not have been expecting.

"The states went in with relatively lower stakes, the worst outcome was that they litigated to the end and got nothing," she said. "But once the bond issue was on the table, they had real skin in the game."

The settlement was also a far cry from the outright block the states originally demanded.

The settlement struck last month includes commitments to release a set number of films each year for the next five years and to spend an additional \$1.5 billion on domestic film production over that period. Paramount also agreed to negotiate deals for the distribution of its basic cable channels independently of cable channels owned by Warner Bros. and to create an editorial board to oversee the independence of CNN and CBS News.

All 12 states suing joined the settlement, although Connecticut Attorney General William Tong said his state had pushed for a full divestiture of both CNN and CBS News as part of the settlement negotiations.

U.S. District Judge Araceli Martínez-Olguín told the sides she had questions about the settlement during a hearing in late September, saying she was not going to "rubber stamp" the deal. She also ordered Paramount and the states to respond to a letter sent to the court by Sen. Cory Booker, D-N.J., calling for scrutiny of the settlement and gave them an option to respond to amicus briefs critical of the deal.

The letter from Booker acknowledged that the Tunney Act, the law requiring judicial review of merger settlements, did not expressly apply in this case, since it only applies to antitrust settlements reached by the federal government. But asked the court to apply the public interest test used under the statute.

Members of a group calling itself the Block the Merger Coalition argued in an amicus brief that the settlement does not address the competitive concerns the state attorneys general identified in their lawsuit and argued that the editorial board could raise constitutional issues if a court intervened in the editorial decisions of the news networks.

A separate brief from the League of United Latin American Citizens, joined by the president of the National Baptist Convention USA and a California pastor, argued that the theatrical release commitments focus on the number of films being produced and how much money is spent, but they say nothing about competition for which films get made and a reduction in the "quality and variety" of films being produced.

The judge approved the deal on Sept. 30 without holding an additional hearing. She declined to subject the settlement to a full Tunney Act review, but found it "reflects a settlement between the parties that is a fair, reasonable, and good faith approach to address the competitive harms alleged in the complaint, and does not violate the law or public policy."

Dintzer said the court did what it needed to by reviewing the deal and finding it was reasonable, but said the states had the option of dropping the lawsuit and reaching an agreement outside of court.

"Whether the litigants are states, or even the federal government, they can always decide to just drop

the lawsuit," he said. "They obviously wanted it to be blessed by the court so that there were ramifications if elements in the consent decree were not followed. But, ultimately, the court can't make people who don't want to litigate, litigate."

Dintzer said unless it's very clear one side is going to win a case, every settlement reflects a compromise.

"It's unloved sometimes by both sides. It's unloved sometimes by everybody," he said. "But it's hard to second guess a settlement unless you have real insight into the litigation risk."

The case was clouded throughout with political connotations as well, including over concerns about Paramount Skydance CEO David Ellison's relationship with President Donald Trump. Ellison lodged his own accusations in an op-ed contending the state-led challenge was really about politics and Democrats' concerns that CNN's news coverage would shift right — assertions Bonta denied in his own editorial.

Paramount even reportedly threatened to leave California if the states refused to settle. Shubha Ghosh, a professor at Syracuse University College of Law, told Law360 that while not ideal, it is not surprising that merger cases like the Paramount challenge get politicized.

"You can't just simply add up the numbers and say, OK, this is pro-competitive or not. These are issues that affect people's livelihood. It affects the way in which the state and the national economy is functioning," Ghosh said. "I think there was a concern about what the long-term impact might be for the shape of the economy and the direction of the country."

Iowa and Montana also filed an action with the U.S. Supreme Court in August asking to halt the merger challenge and declare that the merger does not violate antitrust law. The two states called the case "a partisan enforcement action" and argued that state enforcers should not be able to interfere with a merger that was approved on the federal level and internationally.

They dropped the high court bid after Judge Martínez-Olguín approved the settlement.

"There are important reasons to preserve the state's ability to make their own decisions about the merits of antitrust lawsuits and where and how they want to allocate their resources," Driscoll said. "To the extent that there's friction between the antitrust division and state enforcers, the resolution of this issue is just delayed."

--Editing by Jay Jackson Jr. and Emily Kokoll.