

A Look At Litigation Risks From Financing The AI Buildout

By **Erik Johannesson** (September 21, 2026)

Some securities disputes begin with a number that no one claims is wrong. That situation can arise in complex artificial intelligence infrastructure financing, where debt, capital expenditures, lease liabilities and guarantees may each be reported correctly under U.S. generally accepted accounting principles, even as the information needed to understand a project's economic exposure remains dispersed across entities, contracts and recognition dates.

Disputes may arise not because the accounting numbers violated GAAP, but because management used GAAP-based measures to convey broader and potentially misleading messages about capital intensity, leverage, liquidity or the ability to reduce spending.



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A recently filed noteholder action illustrates the issue. In a July 1 complaint in *City of Sterling Heights Police & Fire Retirement System v. Oracle Corp.* in the Chancery Court for Davidson County, Tennessee, arising from Oracle's \$25 billion public note offering, a pension fund alleges that statements concerning Oracle's rapidly expanding performance obligations were misleading.[1] The complaint describes \$248 billion in additional data center and cloud-capacity lease commitments that had not yet commenced and therefore were not reflected on the balance sheet.

The allegations raise a question that accounting experts are well positioned to investigate: What economic commitments existed when the challenged statements were made, and how were those commitments reflected — or not reflected — in the accounting measures and disclosures referenced by management?

This article examines how AI infrastructure financing can create gaps between accounting presentation and project-level economic exposure, how the gaps may affect management communications, and how accounting experts can reconstruct the financial record when those communications become the subject of a dispute. Such disputes may become more prevalent going forward, since "[m]assive spending commitments for data-center leases and chips aren't shown on companies' balance sheets," and Big Tech may be spending \$3 trillion more than it seems, according to an August Wall Street Journal article.[2]

How AI Buildout Financing Works

A large AI campus requires substantial spending before it produces usable capacity. Land, power, buildings, substations, cooling systems, chips and networking equipment must be secured or constructed, often years before the project generates cash.[3] Developers and infrastructure funds may supply equity themselves, but debt and other outside capital commonly finance a substantial share of the buildout.[4]

Capital providers typically do not lend solely against a prediction that demand for AI capacity will remain high or increase. They seek confidence that a creditworthy capacity purchaser will take and pay for capacity after construction.

Long-term leases, minimum-capacity agreements, take-or-pay provisions and similar terms can convert expected demand into a financeable payment stream. Deposits, termination

payments, completion support and residual-value protection may further shift risk from lenders to the purchaser.

Economically, such contract features work together to make third-party funding available on terms that would not exist without the purchaser's commitment. However, the same contract features that make an AI buildout project easier to finance make the capacity purchaser's future payments less flexible, which may limit what can be inferred from familiar GAAP accounting constructs.

Accounting Separates What Project Finance Connects

As explained above, an AI buildout project's economics develop continuously from contract signing through construction, delivery and operation. Financial reporting, however, takes periodic snapshots and assigns transactions to particular reporting entities and accounting categories.

Recognition determines when an item enters the primary financial statements. Classification determines where it appears. Measurement determines the basis on which it is reported. Aggregation determines the level of detail presented in a line item or note. Some items, including significant uncommenced leases or maximum potential guarantee exposure, may appear in the notes rather than the primary statements.[5]

Entity boundaries, recognition thresholds, measurement rules and aggregation can obscure the AI capacity purchaser's project-level exposure even when each component is appropriately reported. The resulting financial statements may therefore be accurate within their defined accounting framework without providing a complete view of a project's economics.[6]

Under GAAP, a lessee generally recognizes a lease liability at commencement, not at contract signing.[7] Even though the related lease liability does not appear on the AI capacity purchaser's balance sheet before lease commencement, the contract's risk-shifting features may already support the project financing.

Similarly, guarantees, equity interests and other elements relied upon by capital providers may be recognized, measured or otherwise reported by the capacity purchaser on different timetables and bases. The primary financial statements may therefore not, by themselves, convey the full scope of the AI capacity purchaser's contractual commitments and economic exposure.

Public filings also operate at a higher level of aggregation than a project finance model. Material commitments may be combined across projects, and commercially sensitive terms — including termination formulas, substitution rights and pricing — may not be publicly available.

Investors may know certain high-level numbers — such as expected project cost, project debt and the gross, undiscounted amount of future lease payments — without knowing which amounts relate to which project, which obligations are fixed or conditional, which overlap, what events make them operative, or what value the purchaser retains if the business case changes.

A review of five large U.S. AI and high-performance computing data center projects illustrates that publicly available primary sources may not provide complete information on eight key project-level elements.

Figure 1 identifies delivery or commencement timing for all five projects, development cost or funding and purchaser payment commitments for three, and project financing for four. It identifies neither a complete purchaser exit-payment formula nor the value the purchaser could preserve or recover after exit for any project.

The projects discussed below are used solely to illustrate financing, accounting and communication mechanics. This article does not assess whether any identified company's statements or filings were misleading or failed to comply with GAAP or applicable law, nor whether any incomplete disclosure identified is material to the issuer.

FIGURE 1
What the Public Record Can Establish and What Litigation Would Need to Reconstruct

PROJECT	PROJECT SCALE, FINANCING, DELIVERY				OPTIONALITY, DOWNSIDE, RECOVERY			
	Development cost/funding	Project debt/external financing	Purchaser payment/commitment	Delivery/commencement	Exit payment/formula	Backstop/guarantee trigger	Transfer/replacement/redeployment	Retained value/recovery
Meta/Blackrock (El Paso, Texas)	Identified	Identified	Partial	Identified	Partial	Partial	Not identified	Partial
Meta/Blue Owl (Hyperion, La.)	Identified	Partial	Identified	Identified	Partial	Partial	Partial	Partial
Crusoe/Blue Owl/Primary Stargate I (Abilene, Texas)	Identified	Identified	Partial	Identified	Not identified	Not identified	Not identified	Not identified
Applied Digital/CoreWeave/Polaris Forge 1 (North Dakota)	Partial	Identified	Identified	Identified	Partial	Partial	Identified	Not identified
Cipher/Fluidstack/Google (Barber Lake, Texas)	Partial	Identified	Identified	Identified	Partial	Identified	Identified	Partial

Table: Ben Jay

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Figure 1 suggests that public information may be sufficient to evaluate project scale, financing and delivery, but not purchaser optionality, downside protection and recovery.[8] Without complete exit mechanics and recovery terms, a disclosed gross commitment cannot readily be translated into unavoidable cash outflow or the economics of an exit.

When Accounting-Based Measures Carry Broader Messages

A gap between what an accounting-based measure conveys and how management discusses it — or investors interpret it — can lead to unsupported inferences about financial position, performance or spending flexibility.

This is especially true when a measure designed for one accounting purpose is used as a proxy for a related but economically different feature of the business. The measure may be accurate within its defined scope, yet any broader inferences may require information the measure does not capture.

For example, traditional leverage ratios do not show how much future cash is already committed or how easily a capacity program can be resized if future AI utilization is lower than expected. An AI capacity purchaser may have little debt, substantial cash and strong traditional credit metrics, but also have large future payment commitments. Management statements about leverage or liquidity based solely on recognized balance sheet and income statement items may therefore overstate the company's financial flexibility.

Capital intensity offers another example. An AI capacity purchaser can be capital-light in

accounting presentation while remaining commitment-heavy in economic substance. The AI capacity purchaser may accurately describe a provider-financed buildout as capital-light because another entity owns and finances the buildout. Reported capital expenditures therefore would be lower than under direct ownership.

However, the underlying financial commitment has not disappeared; it is instead reflected in the AI capacity purchaser's contractual long-term payments and backstops. Traditional capital expenditure measures that derive solely from items recognized in the financial statements may therefore be incomplete proxies for the resources committed to the buildout. Returns and margins likewise may require qualification when they depend on utilization, contract terms or unrecognized commitments.

Across these examples, a common issue is whether inferences drawn by management or external parties from narrow accounting-based measures used in communications are supported by what those measures actually capture. Any mismatch can increase the risk of misinterpretations, misrepresentations and litigation.

Implications for Management Communications

Management can reduce this risk by communicating what the financial statements do and do not show, and by providing appropriate context when accounting-based measures are used as proxies for different features of the business. Public communications, such as earnings calls or investor presentations, can then be more precise.

For example, a company discussing spending flexibility can distinguish new approvals from existing contractual payments. A company describing a buildout as capital-light can explain whether material long-term capacity commitments accompany lower reported capital expenditures.

Further, a company emphasizing low leverage can avoid implying that reported debt captures all fixed infrastructure cash requirements. A company discussing returns can acknowledge that the economics depend on utilization and the value of the committed AI capacity over time, not solely on whether a liability has been recognized.

Implications for Litigation Strategy

When statements about an AI infrastructure buildout project are challenged, the key questions concern which accounting measures management invoked and which project-level commitments existed at the time but fell outside those measures. As illustrated in Figure 1, this inquiry will likely depend on what is produced in discovery.

An accounting expert can prepare a statement date reconciliation linking the underlying contracts, reported measures and public communications. The expert can distinguish recognized liabilities from executed but uncommenced commitments; fixed obligations from contingent or cancelable amounts; and gross commitments from exposure after offsets, exit rights and recoveries.

For plaintiffs, that analysis may connect a specific management statement to contractual commitments that the cited accounting measure did not capture. For defendants, the analysis may show that the measure was adequately defined or qualified, or that an alleged corrective disclosure reflected later events.

In either case, the reconciliation provides an auditable basis for comparing what

management communicated to what the company had committed to, what its reporting captured and what the later disclosure actually revealed.

Conclusion

The AI infrastructure buildout is being financed through a network of project vehicles, private capital investors, lenders and large AI capacity purchasers. Financial reporting necessarily presents such financing arrangements across different entity boundaries, recognition dates, classifications and measurement bases. Accounting presentation and project-level economic exposure therefore need not move together.

Since accounting presentation and economic exposure are distinct, management communications can leave a misleading impression when familiar accounting-based measures are used without enough context to support conclusions about flexibility, capital requirements, leverage, liquidity or returns.

When management uses a familiar accounting-based measure to support a broader claim, litigation may center less on whether the number was calculated correctly than on whether the surrounding message was supported by the contractual and financial record available at the time.

An accounting expert's statement date reconciliation can make that inquiry concrete by linking the project contracts, accounting presentation, management communications and later disclosures.

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[1] City of Sterling Heights Police & Fire Retirement System v. Oracle Corporation et al., Class Action Complaint ¶¶ 18, 25, 32 (Chancery Court for Davidson County, Tennessee, filed July 1, 2026), available at <https://www.courthousenews.com/wp-content/uploads/2026/07/Sterling-Heights-v-Oracle-complaint.pdf>; Oracle Corporation, Form 10-Q for the quarter ended Nov. 30, 2025, Note 6, "Leases and Other Commitments" (filed Dec. 11, 2025), available at <https://www.sec.gov/Archives/edgar/data/1341439/000119312525315925/orcl-20251130.htm>.

[2] See Peter Rudegeair and Peter Santilli, "Why Big Tech's AI Spending Is \$3 Trillion Higher Than It Seems," The Wall Street Journal (Aug. 17, 2026), available at <https://www.wsj.com/tech/ai/why-big-techs-ai-spending-is-3-trillion-higher-than-it-seems-e1067bb2>.

[3] See Iñaki Aldasoro, Sebastian Doerr & Daniel Rees, "Financing the AI Boom: From Cash Flows to Debt," BIS Bulletin No. 120 (Jan. 7, 2026), available at <https://www.bis.org/publ/bisbull120.pdf>.

[4] See also Egemen Eren, Ingomar Krohn & Karamfil Todorov, "Financing the AI

Infrastructure Boom: On- and Off-Balance-Sheet Borrowing," BIS Quarterly Review (Mar. 16, 2026), available at https://www.bis.org/publ/qtrpdf/r_qt2603a.pdf.

[5] Financial Accounting Standards Board, Accounting Standards Codification ("ASC") Sections 842-20-50-3(b) and 460-10-50-4(b).

[6] Diana Connor, Adrienna Huffman & Bin Zhou, "Risk Disclosure Lessons for AI Cos. From Dot-Com Era," Law360 (Mar. 13, 2026), available at <https://www.brattle.com/wp-content/uploads/2026/03/Risk-Disclosure-Lessons-for-AI-Cos.-From-Dot-Com-Era.pdf>.

[7] FASB ASC Sections 842-20-25-1 and 842-10-20.

[8] Figure 1 reflects a project-specific review of public primary and official transaction sources available through Sept. 8, 2026. "I" means that the reviewed sources substantially identify a material amount, timing, or operative mechanism; "P" means that the feature is disclosed but a material amount, condition, trigger, linkage, or scenario remains unclear; and "NI" means that no project-specific information was identified in the reviewed sources, not that the feature is absent. The count row includes I only. Sources: Meta/BlackRock El Paso — Meta Platforms, Inc., "Meta Announces New Strategic Venture With BlackRock to Develop Data Center in El Paso" (July 28, 2026), <https://about.fb.com/news/2026/07/meta-announces-new-venture-with-blackrock-to-develop-data-center-in-el-paso/>; Meta, Form 10-Q for the quarter ended June 30, 2026, Notes 6 and 13, <https://www.sec.gov/Archives/edgar/data/1326801/000162828026050705/meta-20260630.htm>. Meta/Blue Owl Hyperion — Meta, "Meta Announces Joint Venture With Funds Managed by Blue Owl Capital to Develop Hyperion Data Center" (Oct. 21, 2025), <https://about.fb.com/news/2025/10/meta-blue-owl-capital-develop-hyperion-data-center/>; Meta, Form 10-Q for the quarter ended June 30, 2026, Note 5, <https://www.sec.gov/Archives/edgar/data/1326801/000162828026050705/meta-20260630.htm>. Crusoe/Blue Owl/Primary Stargate I — Crusoe, "Crusoe, Blue Owl Capital, and Primary Digital Infrastructure Enter Second Phase of \$15 Billion Joint Venture" (May 21, 2025), <https://www.crusoe.ai/resources/newsroom/crusoe-blue-owl-capital-and-primary-digital-infrastructure-enter-joint-venture>; Newmark, "Newmark Facilitates \$7.1 Billion Construction Loan to Develop AI Data Center" (May 22, 2025), <https://www.nmrk.com/insights/press-releases/newmark-facilitates-7-1-billion-construction-loan-to-develop-ai-data-center>; Crusoe, "Crusoe Announces Flagship Abilene Data Center Is Live" (Sept. 30, 2025), <https://www.crusoe.ai/resources/newsroom/crusoe-announces-flagship-abilene-data-center-is-live>. Applied Digital/CoreWeave Polaris Forge 1 — Applied Digital Corporation, Form 8-K (filed June 2, 2025), <https://www.sec.gov/Archives/edgar/data/1144879/000164117225013199/form8-k.htm>; Form 8-K/A (filed Apr. 1, 2026), <https://www.sec.gov/Archives/edgar/data/1144879/000149315226014498/form8-ka.htm>; Form 10-K for the year ended May 31, 2026, <https://www.sec.gov/Archives/edgar/data/1144879/000114487926000048/apld-20260531.htm>; "Applied Digital Delivers Second Building at Polaris Forge 1" (July 1, 2026), <https://ir.applieddigital.com/news-events/press-releases/detail/157/applied-digital-delivers-second-building-at-polaris-forge-1>. Cipher/Fluidstack/Google Barber Lake — Cipher Digital Inc., "Cipher Mining Signs 168 MW, 10-Year AI Hosting Agreement with Fluidstack" (Sept. 25, 2025), <https://investors.cipherdigital.com/news-releases/news-release-details/cipher-mining-signs-168-mw-10-year-ai-hosting-agreement>; "Cipher Mining Signs Additional 56 MW, 10-Year AI Hosting Agreement with Fluidstack" (Nov. 20, 2025), <https://investors.cipherdigital.com/news-releases/news-release-details/cipher-mining-signs-additional-56-mw-10-year-ai-hosting>; Amended and Restated Recognition Agreement (filed Nov. 20,

2025), https://www.sec.gov/Archives/edgar/data/1819989/000095010325015073/dp237633_ex1001.htm; Cipher, Form 10-Q for the quarter ended June 30, 2026, <https://www.sec.gov/Archives/edgar/data/1819989/000181998926000041/cifr-20260630.htm>.