# How Merrill Can Turn the Tables on $129B Breakaway Team

Despite losing a bid for injunctive relief against a 100-plus-person advisory team that left the wirehouse for independence, Merrill still has strong arguments in its favor as the case advances, industry sources say.

**By Glenn Koch | October 6, 2025**

**Merrill Lynch** lost the first round of its fight to put the brakes on a $129 billion breakaway advisor team, but the wirehouse still has compelling arguments to present as the case moves forward in the dispute-resolution system, industry sources told Financial Advisor IQ.

The wirehouse last week was rejected in its bid for injunctive relief against 12 advisors who left the firm's Global Corporate and Institutional Advisory Services unit to form **OpenArc**, a registered investment advisory firm tapping **Dynasty Financial Network** for support and **Charles Schwab & Co.** as its custodian.

Judge **Victoria Calvert**, of the U.S. District Court for the Northern District of Georgia, ruled on Tuesday that Merrill had failed to prove that "a preliminary injunction was necessary or appropriate." But the wirehouse will still seek damages in the **Financial Industry Regulatory Authority**'s dispute-resolution system. Industry professionals say Merrill can prevail if it can substantiate its allegations with hard proof — something the wirehouse has not done in its court filings to date.

Chief among Merrill's allegations is that the advisors violated the Broker Protocol for Recruiting and their Merrill employment agreements by sharing confidential information with Dynasty and Schwab. Merrill in its complaint argues that the GCIAS unit, which provides unique product and services to corporations, corporate executives, institutio

individuals participating in employer-sponsored retirement or equity plans, "is too complex to simply port over to another firm" using only the bare-bones client and account information permitted by the Broker Protocol.

"It's not impossible, but very complex," New York–based recruiter **Mark Elzweig** said of the prospect of moving GCIAS without the exchange of non-Protocol information. "[It] means that they moved without taking any details as to the corporate plans, and now we'll have to kind of build everything from scratch," Elzweig told FA-IQ.

But Elzweig suggested that "Schwab probably has experience with similar corporate plans" and therefore could have been comfortable signing on to the deal without an ideal exchange of information.

Further complicating matters is a banking-referral exclusion in Merrill's Protocol agreements, according to Albuquerque, New Mexico–based attorney **David Abell**, who specializes in broker transitions. Client relationships referred to advisors from banking lines of business are not protected by the Protocol.

Abell called the exclusion "an added complexity that makes a Merrill transition a lot more difficult than a normal Broker Protocol move."

Though Merrill has yet to produce a smoking gun in its court filings, the wirehouse has the numbers working in its favor, according to securities-industry attorney **David Harrison**, who has represented brokers in transition disputes. Merrill in a court filing on Tuesday said that at least 100 GCIAS employees — including at least 67 advisors — have resigned from the roughly 170-person unit since Sept. 23.

Thus, the wirehouse has at least 100 opportunities to search laptops, archived communications and workstation activity logs to find a person who violated the Protocol or their employment contract by misusing confidential information, Harrison, of Studio City, California–based **Bakhtiari & Harrison**, told FA-IQ.

"For all these people, someone maybe made a mistake, and maybe they did download something that they shouldn't have, maybe they emailed it to themselves," Harrison suggested.

Harrison added that even a single piece of evidence gleaned from those searches could be used to coerce further disclosure — possibly by threatening to name someone as a respondent in the Finra action if they're not presently included.

"That happens all the time — 'We're going mark up your [Form] U5,'" Harrison said of such threats.

According to Harrison, forensic searches will also be key to gleaning evidence for another viable Merrill allegation: that the 12 principal defectors breached their employment contracts and tortiously interfered with Merrill's employee and customer relationships by recruiting others to join them — sometimes during business hours and in some cases using Merrill offices — and required co-workers to sign non-disclosure agreements as a condition of discussing the move.

If proven, "all that stuff could be interpretated as a violation against duty of loyalty," Harrison said.

Whereas advisors on a more conventionally structured team may be within legal boundaries to casually gauge team members' willingness to switch firms, with a much larger team such as the GCIAS unit, pitching anyone outside the core group can be problematic, Abell added.

"Going outside of that core group, things become sensitive, meaning the advisors need to exercise considerable discretion," Abell said.

"The firm considers the employees just as valuable an asset as the customers ... so departing advisors need to be very careful about how they interact with other employees," he added.

Harrison said it would have been a complicated task to iron out all terms of employment when recruiting a group as large as the GCIAS unit.

"One hundred-plus people — that's kind of hard to cover up. How do you pull that off? All these people left beforehand, without a compensation package?" Harrison said.

The difficult part is just beginning for Merrill, as the firm must sift through millions of preserved keystrokes to uncover substantive supporting evidence — which, as the advisors, Dynasty and Schwab noted in their arguments against injunctive relief, was absent from Merrill's initial filings.



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