

Google Investors Land \$350 Million to Settle Data-Privacy Suit

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Bloomberg Law



Google signage during the virtual Google Pixel Fall Launch event in New York on Oct. 19, 2021.

Photographer: Michael Nagle/Bloomberg

- Deal ends securities fraud class action from Rhode Island
- Google allegedly hid product privacy flaw from investors

Google agreed to pay \$350 million to settle allegations it defrauded investors by hiding a security flaw that exposed tens of millions of individuals' private data.

Purchasers of Alphabet Inc. Class A and Class C stock between April 23, 2018, and April 30, 2019, would be eligible for a payout if Judge Trina L. Thompson approves the preliminary settlement motion filed Monday in the US District Court for the Northern District of California.

The company spent five years, and a failed US Supreme Court appeal, battling claims that it didn't properly disclose a software glitch in its now-defunct social networking platform Google+ that allowed third-party developers access to users' contact information and social connections even when users marked such data as private. The new settlement comes a month after the company reached a deal to end a class action originally seeking \$5 billion in damages over Chrome's browser tracking of users in "Incognito" mode.

“I would put Google as the most aggressive adversary I have faced in terms of their willingness to fight anything and everything,” said Jason Forge, lead plaintiffs’ counsel and a partner at **Robbins Geller Rudman & Dowd LLP**. He noted he’s litigated against other household names including Walmart Inc., Pfizer Inc., and Donald Trump.

Forge represented Rhode Island’s pension fund, a Google investor, which sued the search giant for federal securities law violations after news reports of the security flaw felled the company’s stock price by several percentage points. The Wall Street Journal reported in March 2018 that Google omitted the privacy breach from quarterly reports to the Securities and Exchange Commission for fear of regulatory scrutiny and reputational damage.

“We regularly identify and fix software issues, disclose information about them, and take these issues seriously,” said Google spokesperson José Castañeda in a statement. “This matter concerns a product that no longer exists and we are pleased to have it resolved.”

The settlement agreement followed more than a year of mediated negotiations after plaintiffs’ attorneys used a novel damages theory to estimate Google’s liability at \$1.4 billion. If approved, the deal would be the “fourth largest securities class action recovery” in the federal court’s history, the motion said.

“One of the downsides of settling a case like this—we never really got a chance to test that with the court, so we didn’t get a ruling on that” damages theory, Forge said.

The case is *In re Alphabet Inc. Securities Litigation*, N.D. Cal., No. 3:18-cv-06245, settlement motion filed 2/5/24 .

To contact the reporter on this story: Skye Witley at switley@bloombergindustry.com

To contact the editor responsible for this story: Adam M. Taylor at ataylor@bloombergindustry.com

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Google to pay \$350 million to settle shareholders' data privacy lawsuit

 [reuters.com/legal/google-pay-350-million-revolve-shareholders-data-privacy-lawsuit-2024-02-06](https://www.reuters.com/legal/google-pay-350-million-revolve-shareholders-data-privacy-lawsuit-2024-02-06)

Jonathan Stempel



[1/2]The Google logo is seen on the Google house at CES 2024, an annual consumer electronics trade show, in Las Vegas, Nevada, U.S. January 10, 2024. REUTERS/Steve Marcus/File Photo Purchase Licensing Rights  , opens new tab

Feb 6 (Reuters) - Google (GOOGL.O)  , opens new tab agreed to pay \$350 million to settle a lawsuit by shareholders related to a security bug at its now-defunct Google+ social media website.

A preliminary settlement was filed late on Monday in San Francisco federal court after more than a year of mediation and requires approval by U.S. District Judge Trina Thompson.

It resolves claims that Google learned by March 2018 about a three-year software glitch that exposed Google+ users' personal data, yet concealed the problem for months while publicly stressing its commitment to data security.

Shareholders said Google feared disclosure would subject it to regulatory and public scrutiny similar to what Facebook received after London-based Cambridge Analytica harvested its users' data for the 2016 U.S. elections.

According to the complaint, shares of Google's parent Alphabet fell several times as news about the bug surfaced, wiping out tens of billions of dollars of market value.

The lawsuit led by Rhode Island Treasurer James DiOSSa, on behalf of a state pension fund that owned Alphabet stock, covers Alphabet shareholders from April 23, 2018 to April 30, 2019.

Google denied wrongdoing in agreeing to settle and found no evidence that data were misused.

A spokesperson, Jose Castaneda, said: "We regularly identify and fix software issues, disclose information about them, and take these issues seriously. This matter concerns a product that no longer exists and we are pleased to have it resolved."

The Mountain View, California-based company reached a related \$7.5 million settlement with Google+ users in 2020.

In 2020, a different judge had dismissed the shareholder case, but the 9th U.S. Circuit Court of Appeals revived it in 2021.

"Most people thought no one would recover a penny in this case, and when the first judge granted Google a dismissal the 'I told you so's' were deafening," said Jason Forge, a partner at Robbins Geller Rudman & Dowd representing the shareholders. "That just made Rhode Island and us more determined."

Lawyers for the shareholders may seek up to \$66.5 million from the settlement for fees, court papers show.

Monday's settlement was disclosed 5-1/2 weeks after Google settled a lawsuit claiming it secretly tracked the internet use of millions of people who thought they were browsing privately. Terms of that settlement have not yet been disclosed.

The case is *In re Alphabet Inc Securities Litigation*, U.S. District Court, Northern District of California, No. 18-06245.

Reporting by Jonathan Stempel in New York; Editing by Bill Berkrot and Lisa Shumaker

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New York Community Bancorp is sued by shareholders as stock sinks to 1997 level

 [reuters.com/legal/new-york-community-bancorp-is-sued-over-disclosures-stock-price-2024-02-06](https://www.reuters.com/legal/new-york-community-bancorp-is-sued-over-disclosures-stock-price-2024-02-06)

Jonathan Stempel



A screen displays the trading information for New York Community Bancorp on the floor at the New York Stock Exchange (NYSE) in New York City, U.S., January 31, 2024.

REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, Feb 6 (Reuters) - New York Community Bancorp (NYCB.N) , opens new tab was sued on Tuesday by shareholders after the embattled lender posted unexpected commercial real estate loan losses and slashed its dividend, causing its stock price to sink to a nearly 27-year low.

In a proposed class action filed in Brooklyn federal court, shareholders said the regional bank defrauded them by failing to disclose it would set aside more money for credit losses, and cut its dividend 71% to shore up its balance sheet.

Led by Tennessee resident Walter Lemm, shareholders accused the bank of having inflated its stock price since last March by offering an "unrealistically positive assessment of the Company and its financial well-being and prospects."

New York Community Bancorp did not respond to requests for comment. Chief Executive Thomas Cangemi and Chief Financial Officer John Pinto are also defendants.

The Hicksville, New York-based lender operates about 420 branches under several brands, including the original name Queens County Savings Bank.

New York Community Bancorp shares closed down \$1.22, or 22.2%, at \$4.20 on Tuesday. They earlier fell below \$4 to a level last seen in April 1997, according to Reuters data.

The stock price has fallen 60% in the last week.

They declined further after market hours as Moody's Investors Service downgraded many of the bank's credit ratings to "junk" status, and said the bank could face limited financial flexibility as well as "potential confidence sensitivity."

New York Community Bancorp last Wednesday posted a surprise \$260 million fourth-quarter loss, reflecting loan deterioration tied to offices and apartment buildings, and said the dividend cut would preserve capital to meet regulatory requirements.

The bank's purchase last spring of the failed Signature Bank in a government-arranged auction, and the December 2022 purchase of Flagstar Bank, boosted overall assets to more than \$116 billion.

New York Community Bancorp's problems have spurred concern about other midsized lenders exposed to commercial real estate.

Landlords have been struggling with low occupancy rates because of the pandemic, while elevated interest rates make it costlier to refinance loans.

Two other midsize regional banks, Silicon Valley Bank and First Republic, also failed early last year.

It is common for companies to be sued by shareholders after unexpected news that causes stock prices to fall.

The case is Lemm v New York Community Bancorp et al, U.S. District Court, Eastern District of New York, No. 24-00903.

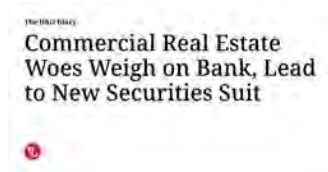
Reporting by Jonathan Stempel in New York; Editing by Chizu Nomiya, Daniel Wallis and Chris Reese

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Commercial Real Estate Woes Weigh on Bank, Lead to New Securities Suit

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February 7, 2024



By Kevin LaCroix on February 7, 2024
Posted in Securities Litigation



Three of the five largest bank failures in U.S. history took place over the course of just a few weeks last Spring. Because U.S. government officials acted forcefully at the time, this dangerous sequence did not trigger a contagion event across the banking sector generally. But while the Fed and others managed to stave off further bank failures, underlying problems persisted at certain banks – in particular, problems relating to the commercial real estate sector continued to weigh on banking institutions. As the *Wall Street Journal* put it in an article late last week, “Investors have wondered when the pain from the downturn in commercial property would hit banks.” As the *Journal* noted in the same article, the commercial property-related pain has now arrived for some banks. Several banks, including New York Community Bancorp (NYCB), suffered significant stock price drops after the banks last week announced steep increases in their loss reserves in their commercial real estate portfolios.

And now these developments have translated into securities litigation, as a plaintiff shareholder has launched a securities class action lawsuit against NYCB and certain of its executives. These developments and the filing of the lawsuit suggest while the Banking Crisis of 2023 may have been contained, continuing problems in the banking sector could be a factor in the number of securities class action lawsuit filings during the year. A copy of the February 6, 2024 complaint filed against NYCB can be found [here](#).

Background

NYCB is a commercial banking and lending institution based on New York. Significantly, NYCB was the banking institution that in March 2023 acquired through a subsidiary substantially all of the assets of the failed Signature Bank. The Signature Bank asset acquisition had the effect of making NYCB a substantially larger bank, subjecting NYCB to stepped up levels of regulatory scrutiny, as well as heightened capital and liquidity requirements.

On January 31, 2024, when NYCB released its financial results for YE 2023, it announced a fourth quarter loss of \$252 million as a result of a \$552 million provision for loan losses, primarily due to increased charge-offs and a significant increase in the allowance for credit losses. The company also announced that it had cut its quarterly dividend as part of an effort to shore up its capital. Among other things, the bank said in connection with these results that these actions were “necessary enhancements” after NYCB “crossed th[e] important threshold [of becoming a \$100 billion bank] sooner than anticipated as a result of the Signature transaction.” Crossing this \$100 billion threshold subjected NYCB to enhanced banking standards and requirements. According to the subsequently filed securities class action complaint, the company’s share price decline nearly 38% on this news.

The Lawsuit

On February 6, 2024, a plaintiff shareholder filed a securities class action lawsuit in the Eastern District of New York against NYCB and certain of its executives. The complaint purports to be filed on behalf of a class of investors who purchased NYCB’s securities between March 1, 2023, and January 30, 2024.

The complaint alleges that during the class period, the defendants failed to disclose to investors: “(1) that the Company was experiencing higher net charge-offs in its office portfolio; (2) that, as a result, NYCB was reasonably likely to incur higher loan losses; (3) that, as a result of the foregoing and NYCB’s status as a Category IV bank, the Company was reasonably likely to increase its allowance for credit losses; (4) that the Company’s financial results would be adversely affected; (5) that, to preserve capital, the Company would reduce quarterly dividend to \$0.05 per common share; and (6) as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.”

The complaint alleges that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934. The complaint seeks to recover damages on behalf of the plaintiff class.

Discussion

Since the series of bank failures last Spring, there has been a steady drumbeat of stories in the business press about the possibility of continuing problems in the banking sector, particularly with respect to commercial real estate. The concern for the banks is that as commercial real estate loans come due, declining occupancy rates leading to declining property valuations mean that borrowers may be unable to refinance or are only able to refinance on disadvantageous terms. These problems are not just vexing NYCB; indeed, when the *Journal* reporting on NYCB’s increase in credit reserves, it also reported that a

number of other banks took similar steps at the same time. Nor are the problems about to end anytime soon; indeed, the *Journal* article cited one commentator as saying that “The commercial real-estate pain in the office sector is just starting,”

While this sequence of events could raise concerns about many banks, particularly those with an exposure to downtown office buildings, there is also a sense in which NYCB’s problems were specific to its own situation. Many of the steps the bank took that led to the share price decline and that drew the lawsuit are related to the bank’s adjustments to its new status as a larger bank following its acquisition of Signature Bank’s assets. Not every bank is going to have to make all of the kinds of adjustments that NYCB found itself having to take here.

That said, however, the continued problems in the banking sector, particularly with respect to commercial real estate, are worrisome. Lawsuits pertaining the turmoil in the banking sector were a significant factor in the number of securities class action lawsuit filings during 2023 (which, overall, increased during the year compared to the year before). We are still early in the new year and it is hard to say for sure how the year will unfold. However, I don’t think I am going out on a limb by saying that continuing problems in the banking sector could wind up being a factor in the number of securities lawsuits filed this year as well. Obviously not all banks present the same risks; the biggest concerns are for banks with a heavy loan portfolio concentration in downtown office space (particularly in certain cities, such as New York, San Francisco, and Dallas).

NYCB Downgraded to Junk; Shocking Charts for Citigroup, Barclays and Deutsche Bank

 wallstreetonparade.com/2024/02/nycb-downgraded-to-junk-shocking-charts-for-citigroup-barclays-and-deutsche-bank/



By Pam Martens and Russ Martens: February 7, 2024 ~

New York Community Bancorp (NYCB) closed out 2023 with a share price of \$10.23. At the closing bell yesterday, its share price was \$4.20 – a year-to-date decline of 59 percent. More pain is expected today as the credit rating agency, Moody's, cut the regional bank's credit rating two notches to junk after the market closed yesterday.

Moody's noted in its downgrade that a third of the bank's deposits lack FDIC insurance. Uninsured deposits were a key factor in the rapid meltdown of Silicon Valley Bank in March of last year as \$146 billion in deposits attempted to exit the bank in the span of 48 hours, leading to the FDIC being forced to take the bank into receivership.

NYCB's rapid share price descent began on January 31 when the bank filed an 8K form with the SEC indicating a \$260 million net income loss in the fourth quarter; a dividend cut from 17 cents to 5 cents; and a \$552 million provision for credit losses on commercial real estate – an area of growing concern by the credit rating agencies.

As of September 30 of last year, the Federal Reserve ranked NYCB the 28th largest banking institution in the U.S. At that time, it was reporting \$111 billion in assets. As of December 31, 2023, it reported assets of \$116 billion.

NYCB's share price is now 76 percent below its level of January 2, 2008, the year of the worst Wall Street financial crisis since the Great Depression. But *far more troubling* is the fact that the share prices of three global mega banks, Citigroup, Barclays and Deutsche Bank, have lost even more in market value in the same span of time. (See chart above.)

As of September 30, 2023, Citigroup had assets of \$2.4 *trillion*; Barclays had assets of \$2.01 *trillion*; and Deutsche Bank had assets of \$1.49 *trillion*. While Barclays is a U.K. bank and Deutsche Bank is a German bank, both banks are heavily interconnected to U.S. global banks via derivatives and trading.

According to the audit performed by the Government Accountability Office (GAO) following the 2008 financial crash, Citigroup received secret cumulative loans from the Fed totaling \$2.5 *trillion* from December 2007 through July of 2010; Barclays received \$868 billion; and Deutsche Bank received \$354 billion. At the time, the American people had no idea that Citigroup was insolvent and being propped up by the Fed or that foreign banks were getting hundreds of billions of dollars in handouts from the U.S. central bank. (See chart below from the GAO audit.)

And if bank regulators wants to worry about uninsured deposits today, perhaps New York Community Bancorp's total deposits of \$81.4 *billion* should not be at the top of their deposit worries.

According to the FDIC, as of June 30, 2023 there were 4,645 federally-insured commercial banks and savings associations in the United States. Uninsured deposits at all 4,645 institutions totaled \$7.134 *trillion* at the end of the second quarter. But according to call reports filed by JPMorgan Chase Bank, Bank of America, Wells Fargo and Citigroup's Citibank, as of June 30, just those four banks accounted for \$4.185 *trillion* of uninsured deposits, or 59 percent of all uninsured deposits at all 4,645 federally-insured institutions.

That is an irresponsible concentration of risk in the U.S. banking system, tolerated by a dysfunctional regulatory system that has been captured by banks, their lobbyists and the MAGA sycophants that sit on the Senate Banking and House Financial Services Committees in Congress.

Citigroup's Citibank, the bank that blew itself up in 2008 and received the largest taxpayer and Fed bailout in global banking history, reports in its call report for June 30, 2023 that 85.5 percent of its \$1.338 trillion in total deposits are uninsured. The breakdown is as follows: It has \$548.33 billion in uninsured deposits in its domestic offices plus \$595.4 billion in deposits in foreign offices. (The FDIC does not insure deposits on foreign soil.) Those two figures tally up to \$1.144 trillion in deposits lacking FDIC insurance out of a total deposit base of \$1.338 trillion.

The breakdown for the other three mega banks are as follows: 59 percent of JPMorgan Chase's deposits lack FDIC insurance; 51 percent at Wells Fargo; and 49 percent at Bank of America.

Until the Glass-Steagall Act is restored by the U.S. Congress, the U.S. banking system will continue to lurch from one banking crisis to the next. (See Former New York Fed Pres Bill Dudley Calls This the First Banking Crisis Since 2008; Charts Show It's the Third.)

Table 8: Institutions with Largest Total Transaction Amounts (Not Term-Adjusted) across Broad-Based Emergency Programs (Borrowing Aggregated by Parent Company and Includes Sponsored ABCP Conduits), December 1, 2007 through July 21, 2010

Dollar in billions								
Borrowing Parent Company	TAF	PDCF	TSLF	CPFF	Subtotal	AMLF	TALF	Total loans
Citigroup Inc.	\$110	\$2,020	\$348	\$33	\$2,511	\$1	-	\$ 2,513
Morgan Stanley	-	1,913	115	4	2,032	-	9	2,041
Merrill Lynch & Co.	0	1,775	166	8	1,949	-	-	1,949
Bank of America Corporation	280	947	101	15	1,342	2	-	1,344
Barclays PLC (United Kingdom)	232	410	187	39	868	-	-	868
Bear Stearns Companies, Inc.	-	851	2	-	853	-	-	853
Goldman Sachs Group, Inc.	-	589	225	0	814	-	-	814
Royal Bank of Scotland Group PLC (United Kingdom)	212	-	291	39	541	-	-	541
Deutsche Bank AG (Germany)	77	1	277	-	354	-	-	354
UBS AG (Switzerland)	56	35	122	75	287	-	-	287
JP Morgan Chase & Co.	99	112	68	-	279	111	-	391
Credit Suisse Group AG (Switzerland)	0	2	261	-	262	0	-	262
Lehman Brothers Holdings Inc.	-	83	99	-	183	-	-	183
Bank of Scotland PLC (United Kingdom)	181	-	-	-	181	-	-	181
BNP Paribas SA (France)	64	66	41	3	175	-	-	175
Wells Fargo & Co.	159	-	-	-	159	-	-	159
Dexia SA (Belgium)	105	-	-	53	159	-	-	159
Wachovia Corporation	142	-	-	-	142	-	-	142
Dresdner Bank AG (Germany)	123	0	1	10	135	-	-	135
Societe Generale SA (France)	124	-	-	-	124	-	-	124
All other borrowers	1,854	146	14	460	2,475	103	62	2,639
Total	\$3,818	\$8,951	\$2,319	\$738	\$15,826	\$217	\$71	\$16,115

Source: GAO analysis of Federal Reserve System data.

GAO Data on Fed's Emergency Lending Programs During 2007-2010 Financial Crisis

Okta Investors Get Rare Agreed-to Class Status in Stock Suit (1)

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- Company allegedly falsely touted 'seamless' integration
- Court grants rare unopposed class certification request

A shareholder suit against Okta Inc. over post-merger statements about sales will proceed as a class action after the software company agreed to litigate the case collectively, raising the possibility that other securities litigation may follow same path.

Okta didn't oppose the class certification request. That defense choice is unusual for a securities case, but has become more common in litigation over employee 401(k) plans, attorneys say.

Judge Susan Illston of the US District Court for the Northern District of California granted the request Monday and appointed the plaintiffs, two state funds that invested in Okta, as the class representatives.

The investors alleged that after the user-authentication software company acquired Auth0 Inc. in March 2021 for \$6.5 billion, Okta and three executives reassured investors that the companies were integrating seamlessly. But numerous Auth0 employees left, and the company had difficulty unifying the sales teams, the shareholders said. The company allegedly shut down a year-long sales integration plan abruptly, leaving the remaining employees only two weeks to adapt.

The company's share price dropped 34% on Sept. 1, 2022. The revelations caused the drop, according to the complaint.

Analysts cited the sales integration issue and also Okta's long-term growth prospects in looking at the slide that day, Bloomberg News reported.

Illston trimmed some claims from the suit in April 2023.

Non-Opposition to Class Status

Okta didn't give its reasons for agreeing to class certification in its notice to the court. And attorneys for Okta and the investors suing it didn't respond to emailed requests for comment.

Unique circumstances may be at play here, said Susan Hurd of Alston & Bird LLP in Atlanta, a defense securities attorney who's not involved with the case. But "defendants in securities cases usually oppose class certification," Hurd said in an email Tuesday. US Supreme Court cases have established their right to be heard on the key issues, she said.

"This leads most defendants to consider seriously whether they have grounds to object either to the basic requirements for certification under Rule 23 or to object to the proposed class representative based on information uncovered during discovery," she said.

Yet Okta's decision not to oppose the investors' class certification request suggests that some securities cases may be suited to a smoother path to a class, even though class certification is normally viewed as giving plaintiffs leverage in a case. That's the situation in litigation under the Employee Retirement Income Security Act, where defendants began occasionally consenting to class status in about 2017.

"The trend has solidified since then," said ERISA defense attorney Meaghan VerGow of O'Melveny & Myers LLP in Washington. As courts rejected defense arguments in straightforward cases, such as those alleging excessive fees involving single plans, "it became more practical for defendants not to throw good money after bad," VerGow said. Instead, defendants can negotiate, she said—for example, on the class definition.

Litigation Expenses

Carl Engstrom, who represents investors in ERISA suits, also pointed to the expense of opposing class certification. The process may involve experts who provide statistical analyses of trades; plaintiff depositions; and complex, lengthy legal briefs, said Engstrom, of Engstrom Lee LLC in Minneapolis.

Factors leading a defendant not to oppose class certification include a large body of caselaw, which can provide certainty on legal issues; a class definition that resolves complications; relatively small total damages; and a judge who has a history of certifying classes, he said.

"The top-line numbers are higher in securities cases" than in a typical ERISA case, making non-opposition less attractive, he said. But "there's a hundred years of caselaw" on securities issues weighing in favor of an agreement in some circumstances, he said.

Whether other securities defendants will follow Okta's lead remains to be seen.

Labaton Keller Sucharow LLP is lead counsel for the investors. Gibson, Dunn & Crutcher LLP represents Okta and the individual defendants.

The case is *In re Okta, Inc. Sec. Litig.*, N.D. Cal., No. 3:22-cv-02990, 2/5/24 .

(Updated with additional context throughout.)

MassMutual Gets 'Roaring Kitty' Market Manipulation Suit Tossed

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- Investor called Keith Gill's meme stock advice manipulative
- Judge deems GameStop stock fluctuation unrelated to MassMutual

MassMutual defeated "meme stock" market manipulation allegations made by a retail investor, who also sued influential WallStreetBets trader Keith Gill, known as "Roaring Kitty" on social media platforms.

The suit alleged supervisory failures while the company employed Gill as a broker and representative, amounting to market manipulation as a result of his outsized influence on the share price of meme stocks, like that of video game retailer GameStop Inc., according to a dismissal order filed Monday in US District Court for the District of Massachusetts.

Plaintiff Douglas Rosenberg's year-old lawsuit relies on "conclusory assertions" that MassMutual's failure to supervise Gill allowed him to engage in the manipulative conduct, but doesn't allege that the company actually controlled any of the anonymous statements he made on Reddit and YouTube, the court said. The complaint also acknowledges that Gill concealed his identity and it doesn't mention anywhere that MassMutual was aware of his activities during the meme stock frenzy of 2021, Judge Dennis Saylor IV said.

Gill still faces allegations that he manipulated markets with his trading advice, violating the Securities Exchange Act, the Sherman Act, and Massachusetts state law, but he hasn't yet been served by Rosenberg, who represents himself in this suit. Rosenberg alleges he lost more than \$1 million to GameStop trades in 2021, according to the amended complaint.

Rosenberg's market manipulation claims against Gill's former employer fell short because his complaint didn't show that MassMutual participated in the market for GameStop stock in any way, or that the retail investor relied on any actions or statements by the company, according to the court.

The same retail investor has also alleged in a separate suit that Reddit Inc., Tesla Inc., and Elon Musk engaged in market manipulation arising from the same events.

Skadden, Arps, Slate, Meagher & Flom LLP represent MassMutual Life Insurance Co. and MML Investor Services LLC.

The case is Rosenberg v. Mass Mut. Life Ins. Co. , D. Mass., No. 1:23-cv-10441, 2/5/24 .

To contact the reporter on this story: Ben Miller in New York City at
bmiller2@bloombergindustry.com

To contact the editor responsible for this story: Brian Flood at
bflood@bloombergindustry.com

ContractsProf Blog

lawprofessors.typepad.com/contractsprof_blog/2024/02/delaware-chancery-court-rescinds-elon-musks-51-billion-pay-package-tldr-from-ann-lipton.html

Wednesday, February 7, 2024

Delaware Chancery Court Rescinds Elon Musk's \$51 Billion Pay Package! TL;DR from Ann Lipton



Over on our sister blog, The Business Law Prof Blog, Ann Lipton (right) provides a handy synopsis of and commentary on Chancellor Kathaleen McCormick's 200-page opinion in *Tornetta v. Musk*. We are all grateful.

I taught Business Associations for roughly the first decade of my law teaching career. Some of my early articles were on corporate law, and my very first law review publication as a law professor was on executive compensation. It appeared in the law review of Professor Lipton's home institution, Tulane, which now seems so appropriate!

We learn from Professor Lipton's synopsis that the Chancery Court applied the "entire fairness" test rather than the business judgment rule to the decision of Tesla's Board to Directors to pay Elon Musk \$51 billion. She suggests that the Delaware Supreme Court might narrow the circumstances in which the fairness test will apply, but even if narrowing occurs, the fairness test will likely still apply to Mr. Musk's situation. The most Mr. Musk can realistically hope for is a remand for further proceedings, unless he decides to re-incorporate in Texas. Matthew Bultman, reporting on Bloomberg Law, suggests that litigation in a Delaware court would likely follow should Musk attempt to move Tesla to Texas. Professor Lipton supplements her original post with thoughts on Texas here.

In my writing, and still today, I would go in the opposite direction from that contemplated in Delaware with respect to total fairness. I argued that the business judgment rule should never apply to executive compensation schemes. Board members are always motivated to

overcompensate executives. They are themselves corporate titans, and their compensation is determined by comparison to how other corporate titans are compensated. As a result, they always have a situational conflict of interest, and they often have a more concrete conflict of interest.

Fairness analysis should always apply. What is fair? My view is that corporate executives, like all workers, are entitled to a living wage.

Law.com's Critical Mass With Amanda Bronstad: Another Roundup Trial Begins—This Time in Delaware, Lawyers List Last-Minute Problems in Proposed MDL Rule

 [law.com/2024/02/07/law-coms-critical-mass-with-amanda-bronstad-another-roundup-trial-begins-this-time-in-delaware-lawyers-list-last-minute-problems-in-proposed-mdl-rule](https://www.law.com/2024/02/07/law-coms-critical-mass-with-amanda-bronstad-another-roundup-trial-begins-this-time-in-delaware-lawyers-list-last-minute-problems-in-proposed-mdl-rule)

By Ellen Bardash

(Credit: Diego M. Radzinski/ALM)

Welcome to Law.com Class Actions: Critical Mass, a weekly briefing for class action and mass tort attorneys. I'm Amanda Bronstad. Feel free to reach out to me with your input. My email is abronstad@alm.com. Follow me on LinkedIn or X: [@abronstadlaw.com](https://www.linkedin.com/company/abronstadlaw).

This week: Monsanto faced a new venue on Monday in its courtroom battles over Roundup as a trial opened in Delaware. An advisory committee heard final public comments about the first proposed federal rule for multidistrict litigation. Find out who got appointed to lead lawsuits filed over Zoll Medical Group's data breach.

'Evidence That No Jury's Ever Seen'

Another **Roundup** trial began on Monday, this time in an entirely new venue: **Delaware**.

Here's the report from **ALM's Ellen Bardash**. The case, in **Delaware Superior Court**, involves **Anthony Cloud**, who died shortly after filing his lawsuit in 2021.

Of note: Bart Rankin (**Forrest Weldon**), who gave the plaintiff's opening statement in Delaware, won a \$1.56 billion Roundup verdict on Nov. 17 in Missouri. On Monday, he showed jurors internal **Monsanto** communications, telling them, "You're getting evidence that no jury's ever seen."

Monsanto lawyer Pamela Yates (**Arnold & Porter**) told jurors there's no proof Roundup causes cancer, either generally or in Cloud's case.

Monsanto, now owned by **Bayer**, lost more than \$2 billion in jury awards in 2023 but won 10 defense verdicts in Roundup trials since the COVID-19 pandemic's courthouse shutdowns. On Jan. 26, a jury in the **Philadelphia Court of Common Pleas** awarded \$2.25 billion, the largest of any Roundup verdict. But Monsanto already challenged that award, citing dozens of "inexplicable" evidentiary rulings among a long list of court errors in a motion filed on Monday.

And, on Monday: Monsanto lost a key ruling from the **U.S. Court of Appeals for the Eleventh Circuit**, which reversed a 2020 ruling in a Roundup case on federal preemption. The Eleventh Circuit, which heard the case a second time after an en banc panel sent it back down, found that the **EPA's** registration of Roundup did not carry the “force of law” to preempt Georgia plaintiff **John Carson's** claims that Monsanto failed to warn about the health risks of the pesticide.

Bayer said it would continue to pursue a **U.S. Supreme Court** ruling on federal preemption, “which is a cross-cutting issue in this litigation.”

(Credit: AstralAngel/Adobe Stock)

MDL Rule's ‘Coordinating Counsel’ Causes Concerns

A committee heard final comments on Tuesday about a proposed rule that, if passed, would be the first ever for multidistrict litigation.

Here's my recap of Tuesday's hearing, the third one before the **Advisory Committee on Federal Rules** inviting public comments about the proposed **Federal Rule of Civil Procedure 16.1**. Plaintiffs' lawyers focused most on the rule's suggestion to have a “coordinating counsel” at the start of the multidistrict litigation. Far from encouraging diversity, they said, the added step could make it harder for younger and nonwhite attorneys to get leadership roles.

Defendants continued to insist a rule was needed to stem an increasing number of meritless cases in multidistrict litigation.

Speaking of multidistrict litigation: Two more closely watched dockets were created this month. The **U.S. Judicial Panel on Multidistrict Litigation** sent 55 cases over Ozempic and related Type 2 diabetes drugs, often used for weight loss, to **U.S. District Judge Gene Pratter in the Eastern District of Pennsylvania**. The panel concluded that 13 cases already were in the Eastern District of Pennsylvania, which is near defendant **Novo Nordisk's** headquarters in Plainfield, New Jersey.

The panel also sent 26 cases over **Suboxone**, a treatment for opioid addiction, to **U.S. District Judge J. Philip Calabrese in the Northern District of Ohio**, where **U.S. District Judge Dan Polster** has been overseeing the opioid multidistrict litigation.

Jean S. Martin of Morgan and Morgan. (Courtesy photo)

Who Got the Work?

A federal judge in Massachusetts appointed two lawyers to lead consolidated class actions over a 2023 data breach involving medical technology firm **Zoll Medical Corp. U.S.**

District Judge Indira Talwani appointed Jean Martin (**Morgan & Morgan**) as interim lead class counsel and Jason Leviton (**Block & Leviton**) as interim liaison counsel.

Here's what else is happening:

Not Me: Plaintiffs' lawyers sparred over whether to participate in a Jan. 31 mediation of more than 35 class actions brought over the **23andMe** data breach. The mediation, held at a **Westin** hotel in Napa, California, includes most of the plaintiffs' firms who have filed cases but not **Edelson**, which, in a filing ahead of the talks, called the mediation "bound to be inefficient" or, at worst, would result in a "sell-out settlement." **U.S. District Judge Edward Chen** has coordinate most of the cases in the **Northern District of California**, but 23andMe has moved to coordinate multidistrict litigation. Chen, in a Feb. 2 order, said he is "not unsympathetic" to Edelson's concerns, but noted that any class action settlement would require court approval.

Branscome Jumps: Kimberly Branscome, a **Dechert** partner in Los Angeles who has represented **BP**, **Johnson & Johnson** and **General Motors** in products liability cases, has moved to **Paul Weiss**. She declined to say whether her clients would transfer matters to Paul Weiss, whether any other Dechert lawyers were coming with her or whether she would have a leadership role. Four years ago, Branscome and Jay Bhimani left **Kirkland & Ellis** for Dechert, which was expanding on the West Coast. Last year, the **U.S. Court of Appeals for the Eleventh Circuit** reversed sanctions against Branscome and Bhimani imposed over their closing arguments in a combat earplug trial against **3M**.

Opioid Deal: **Hikma Pharmaceuticals** agreed on Feb. 1 to pay \$150 million to resolve claims by state attorneys general over the opioid epidemic. The drug manufacturer agreed to provide \$115 million in cash and \$35 million in opioid addiction treatment medication. **California, New York, Delaware, Tennessee, Utah** and **Virginia** led the negotiations, which also involved lead plaintiffs' lawyers in the opioid multidistrict litigation, who said: "While the efforts of the law firms appointed to the opioid MDL leadership have thus far obtained over \$51 billion for communities nationwide, our work is far from finished."

Thanks for reading Critical Mass! I'll be back next week.

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TECHNOLOGY

States Crack Down on Social Media for Teens: 'There Are No Guardrails'

New York proposal would restrict algorithms but faces potential First Amendment challenges

By [Jimmy Vielkind](#) [Follow](#)

Updated Feb. 7, 2024 11:20 am ET



A New York proposal would prohibit social-media companies from serving content to minors in the state using algorithms—unless apps such as TikTok first obtain parental consent. PHOTO: LEV RADIN/ZUMA PRESS

ALBANY, N.Y.—It's not just Congress. States are taking on social media's grip on teenagers, too.

Officials in New York are pushing to restrict the algorithms that power a platform's feed, making it the latest state to attempt to rein in the big tech companies in the wake of federal inaction.

Other states have hit legal roadblocks by attempting to shield children from specific types of content or restrict minors from signing up for accounts. If New York is successful, it would offer other states a legal pathway to pursue.

“Children and teens are struggling,” New York Attorney General Letitia James, a Democrat, said. The proposal, she added, “will protect New York children and will be an example for others to follow.”

James and New York Gov. Kathy Hochul support a proposal to prohibit social-media companies from serving content to minors in the state using algorithms—unless apps such as Instagram and TikTok first obtain parental consent. They are also backing restrictions on when apps can send notifications to teen users and what companies can do with data collected from minors.



Heads of tech companies at a Senate Judiciary Committee hearing in Washington last week. PHOTO: MICHAEL BROCHSTEIN/ZUMA PRESS

The Democratic governor said the measure would make social media less addictive, adding that heavy usage by teens has contributed to higher instances of mental illness. Industry groups have raised questions about the constitutionality of the proposal and said media literacy would have a more immediate impact.

The Albany showdown marks the latest clash between state officials and tech companies. Attorneys general from 41 states sued Meta Platforms, the operator of Instagram and Facebook, in October, alleging the company intentionally built its products with addictive features that harm young users of its Facebook and Instagram services. Meta in November told The Wall Street Journal it didn't design its products to be addictive for teens.

In Washington last week, senators from both political parties grilled tech CEOs over how their algorithms affect minors, and said they must bear more legal liability when children are harmed online. Several senators acknowledged that current federal laws don't adequately address harms to children on the platforms. But federal lawmakers haven't united around a single approach, leaving several bills waiting for a floor vote.

A bipartisan Senate bill includes a ban on algorithms for minors among its provisions. Another proposal, called the Kids Online Safety Act, would require that platforms give young users the option to disable algorithms and creates a duty for platforms to prevent and mitigate harms to minors. And a bill by Sens. Ed Markey (D., Mass.) and Bill Cassidy (R., La.) would tighten privacy protections for users under 18.

While none of the federal bills have been enacted, several states have passed various laws regulating social media. Tech companies have, so far, been successful in blocking those state efforts by citing the First Amendment's free-speech protections.

Lawmakers in Arkansas, Ohio and Utah have banned minors from using social-media platforms without parental consent. NetChoice, a trade group whose members include TikTok and Meta, has sued in all three states and won injunctions in Arkansas and Ohio. Utah Gov. Spencer Cox last month pushed back the effective date of that state's law to October from March "to incorporate more feedback."

"At the end of the day, they're a violation of the First Amendment," Carl Szabo, NetChoice's vice president and general counsel, said of the state's laws. The group has also said federal proposals raise serious privacy and security concerns.

A dozen states last year enacted laws relating to children's use of social media, including the Utah and Arkansas laws and other measures to create task forces or encourage media-literacy education, according to the National Conference of State Legislatures. There are more than 140 bills on the topic pending this year in at least 30 states, according to an NCSL tally.

Danny Weiss, a former congressional aide who is now chief advocacy officer for the advocacy group Common Sense Media, said the states are acting where Congress hasn't. "There are no guardrails on social-media platforms when it comes to our kids," Weiss said.



New York state Sen. Andrew Gounardes and other legislative officials said social-media regulation is likely this year. PHOTO: HANS PENNINK/ASSOCIATED PRESS

James said that New York's version may survive legal scrutiny thanks to a key difference from other state proposals: It limits a delivery mechanism rather than regulating content itself. Similar legislation is also pending in Minnesota and South Carolina.

Andrew Gounardes, a 38-year-old state senator who sponsors the New York measure, said it would wind back the clock on social media to the days when he first signed up in college. A user could select any source they wish, and content would be presented in chronological order.

"If you want to follow the Taylor Swift fan page, that's great," he said. "What we don't want is where you click on one thing, and in 15 minutes be shown self-harm videos."

The algorithm provisions are linked to a broader state spending plan that must be acted on by March 31. Democrats control both houses of the state legislature and, with Hochul's support, Gounardes and other legislative officials said social-media regulation is likely this year.



Kate Romalewski, 17, supports the New York bill.
PHOTO: UNCREDITED

Kate Romalewski got a phone in middle school and was first attracted to Snapchat, which let her send pictures with funny filters to her friends. When Covid-19 shut down classrooms for her first year of high school, she downloaded TikTok and watched a video of an older girl talking about the shape of her hips.

“I realized I have hip dips—and I’d never even heard of them,” Romalewski, now 17, said. “Here’s something that I have, I can’t change,

and thousands of people hate it.”

An advocate for the New York bill, Romalewski recently started intermittently deleting the Instagram and TikTok apps from her phone to help reduce her usage.

G.S. Hans, a Cornell Law School professor and associate director of the school’s First Amendment clinic, said the New York proposal could still present constitutional concerns.

“Even a law that doesn’t touch content but talks about how you arrange, present and prioritize content is going to face this question,” he said.

Meta said it uses algorithms to protect all users from inappropriate content and to help steer them toward supportive communities based on common interests. The company last month began to automatically restrict teen users from harmful content including videos and posts about self-harm, graphic violence and eating disorders.

“Teens move interchangeably between many websites and apps, and different laws in different states will mean teens and their parents have inconsistent experiences online,” a company spokeswoman said, adding that Meta supports federal legislation that would require parental approval for people under 16 to download an app.

A TikTok spokesman said the company automatically sets a 60-minute screen-time limit for users between ages 13 and 18, and parents are able to set content limits on linked accounts.

Julie Samuels, president of the industry group Tech:NYC, said another problem with the New York proposal was the lack of clear requirements to verify the ages of users and who their legal guardians are, should they try to opt in—something bill sponsors dispute.

“We have to live in reality in 2024, and we have to understand that we don’t know how to do that,” Samuels said. “We need to strike an appropriate balance.”

Write to Jimmy Vielkind at jimmy.vielkind@wsj.com

Plan to Streamline Discovery in Civil Cases Mostly Well Received

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- Proposal stresses discovery procedures at earlier stages
- Plaintiffs' bar raises concerns language favored other side

Plaintiffs' attorneys largely voiced support for a proposed rule change that aims to streamline discovery disputes, but raised concerns that accompanying language may favor the party producing the documents.

Testifying at an all-day hearing on Tuesday at the Advisory Committee for Civil Rules, attorneys weighed in on a proposal that would instruct parties to discuss earlier in litigation the process of how to disclose which documents were withheld as privileged.

The amendment aims "to avoid problems later" and to give parties "maximum flexibility" in deciding how best to identify documents that were designated as privileged and withheld, according to the committee notes.

Attorneys representing plaintiffs—typically the side requesting documents during discovery—were generally supportive of the proposed change. Several noted that it codifies a practice that attorneys often do already.

Some took issue with language alongside the proposal that said complying with withholding procedures "can involve very large costs" and describes a document-by-document log as a burden.

Pearl Robertson, a partner at Iripino Avin & Hawkins who focuses on mass tort and class action litigation, described the committee notes as "one-sided" and said the language gives the side producing the privilege log "a little bit more ammunition" in discovery disputes.

She also said that a privilege log that lumps together withheld documents into broader categories, rather than providing document-by-document lists, is "untenable" because "there's no way for a receiving party to understand or know exactly what is caught by that category."

The committee language "is likely to be interpreted by courts as expressing a preference against traditional logs," said Aaron Marks of Cohen Milstein, a plaintiff's attorney in antitrust disputes. He added that the categorical approach to privilege logs "hamstrings parties that

have to scrutinize” the logs.

Attorneys for corporations, however, stressed the process of identifying withheld documents one-by-one is costly and burdensome.

Anthony Mosquera, who leads the discovery practice at Johnson & Johnson, raised concerns that the “insistence on traditional logs with its associated burdens” could be “weaponized” by the parties requesting the documents.

Robert Levy, executive counsel at ExxonMobil Corp., said the cost of preparing privilege logs is “probably the most expensive feature of many of our larger cases.”

And while early engagement can be beneficial, premature discovery discussions may deprive parties of “the opportunity to really understand the scope of the privilege issues,” Levy said.

The committee also heard testimony from attorneys Tuesday on its proposal to add a rule related to initial steps in multidistrict litigation.

Plaintiffs’ lawyers continued to raise concerns about this proposal, which was also discussed at a committee hearing in January.

To contact the reporter on this story: Suzanne Monyak at smonyak@bloombergindustry.com

To contact the editors responsible for this story: Seth Stern at sstern@bloomberglaw.com; John Crawley at jcrawley@bloomberglaw.com

Boy Scouts Victim Quick Payment Choice Unchangeable, Judge Rules

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Litigation

- Plan doesn't allow election payment change, court rules
- Decision on errant choices a 'harsh result,' judge says

Hundreds of former Boy Scouts who mistakenly selected to receive a one-time payment of \$3,500 as compensation for sexual abuse they suffered as children are bound to their errant choice, a Delaware bankruptcy judge ruled.

The Boy Scouts of America bankruptcy plan, which allowed the organization to emerge from Chapter 11 last year through what amounted to the largest sexual abuse settlement in US history, doesn't allow abuse survivors to amend their method for being compensated, Judge Laurie Selber Silverstein of the US Bankruptcy Court for the District of Delaware ruled, acknowledging it's a "harsh result."

The ruling follows a series of requests late last year to let claimants correct mistakes they made on their bankruptcy plan voting ballots two years ago. Some 500 former scouts cited confusion from a lengthy and complicated form in which they inadvertently chose to receive a one-time, expedited payment of just \$3,500 instead of pursuing potential six- or seven-figure recoveries.

Barbara Houser, the trustee overseeing distributions from the \$2.46 billion bankruptcy settlement, argued that allowing claimants to modify their payment choices now would result in significant delays and complicate the administration of roughly 82,000 abuse claims on file.

Silverstein in her Feb. 5 ruling said the plan has clear language about payment elections and that she doesn't have the power to change it.

"The harsh outcome does not permit me to ignore the plan or the law regarding amending a plan," she said, recognizing that certain claimants believe they're missing out on much higher degrees of compensation.

The case is *In re Boy Scouts of America*, Bankr. D. Del., No. 20-10343, opinion 2/5/24 .

To contact the reporter on this story: Alex Wolf in New York at awolf@bloomberglaw.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

Camp Lejeune Toxic Water Victims Lose Bid for Jury Trials (1)

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US veterans and others seeking compensation from the government for harmful exposure to toxic water at Camp Lejeune won't have their cases heard by a jury, a panel of federal judges said.

The judges, in a 34-page ruling filed Tuesday, rejected arguments from the plaintiffs' lawyers that jury trials were necessary to allow sick and dying veterans a chance to plead their case before a panel of their peers.

"Congress did not clearly and unequivocally depart from its usual practice of not permitting a jury trial against the United States" when it passed the 2022 legislation to compensate victims of the contamination, said the order signed by four judges sitting in the US District Court for the Eastern District of North Carolina.

The decision means that trials over the compensation disputes will be heard and decided only by a judge, a structure that US Justice Department lawyers have contended will speed the process of resolving what could be tens of thousands of cases.

About 164,000 veterans, their relatives and base workers have already filed claims with the Navy, which oversees the North Carolina Marine base. Some may qualify for an early resolution payment. About 1,500 others have filed lawsuits in the North Carolina district because their claims were denied or unresolved after six months; that number is expected to grow.

The issue is one that has threatened to slow the process of compensating people who spent at least 30 days at the base between 1953 and 1987 and blame their cancer or other sickness on its toxic waters.

Government attorneys had argued that a plaintiff has a right to a jury trial "only where Congress has affirmatively and unambiguously granted that right." In court papers filed last fall, they contended the 2022 Camp Lejeune Justice Act specified only "appropriate relief" for victims.

The group of lead lawyers for victims previously called such reasoning a "misguided effort" to deprive victims of their "statutorily guaranteed right to a jury trial."

J. Edward Bell III, the lead attorney for the plaintiffs, said Wednesday that he had mixed emotions about the decision.

“We have fought for years and years to get jury trials...It gives people comfort knowing that they could have a jury trial,” Bell said. “On the other hand, the way the court has fashioned the order, it may allow the courts to have faster trials and faster resolution.”

Bell said the plaintiffs lawyers would evaluate the ruling before deciding how to proceed.

“In representing so many people, I know that some people may want to appeal and some may not,” he said.

The Justice Department declined to comment on the decision.

The first trials could begin sometime in 2024. Lawyers on both sides are trying to finalize which cases will be used as bellwether trials. Their outcomes could shape the resolution of other cases.

The case is Camp Lejeune Water Litigation v. U.S. , E.D.N.C., No. 7:23-cv-00897, 2/6/24 .

(Adds responses from lead plaintiffs’ lawyer and the Justice Department.)

To contact the reporters on this story: Kaustuv Basu in Washington at kbasu@bloombergindustry.com;

To contact the editor responsible for this story: John P. Martin at jmartin1@bloombergindustry.com

Class action lawyers get good news, bad news ruling in ChapStick case

 legalnewsline.com/stories/654135181-class-action-lawyers-get-good-news-bad-news-ruling-in-chapstick-case

February 7, 2024

Jeffrey S. White | presidentialprayerteam.org

OAKLAND, Calif. (Legal Newsline) - A federal judge has certified a class of customers who allege the "100% natural" claims on certain ChapStick products are misleading.

Judge Jeffrey White, of the U.S. District Court for the Northern District of California, issued a split ruling on Jan. 30, granting class certification under one federal rule but not another.

In effect, White's ruling certifies a class to seek injunctive relief but prevents lawyers from forming a class seeking damages under consumer protection claims.

Plaintiffs wanted one class to pursue damages that were based on studies that show how much consumers overpaid for something they considered all natural but allegedly wasn't.

"Defendants argue that Dr. (Michael) Dennis improperly includes in his conjoint study certain words and phrases that Plaintiff does not challenge," the ruling says.

Those phrases include "with argan oil," "age defying" and "with... oils and butters for softer, healthier looking lips."

"Just as this failure to isolate the Challenged Statements fatally flawed the consumer perception survey, this failure to isolate the key challenged statement renders the conjoint survey incapable of calculating a reliable price premium," the ruling says.

"Plaintiff again argues that Dr. Dennis can change the survey to isolate these representations, but cites no authority that would allow the Court to approve the survey in its current state.

"Indeed, courts facing similar issues with Dr. Dennis's conjoint surveys have required Dr. Dennis to isolate the challenged statements in the conjoint survey on a renewed motion."

The damages class certification was denied without prejudice, meaning the plaintiffs can refile.

The suit alleges consumers relied on advertising claims that the ChapStick products were all natural only to find out they contained citric acid and hydrogenated soybean oil, among other ingredients not considered natural.

Class action lawyers are making claims under California consumer protection laws. Two days before asking for class certification, White granted their motion to dismiss nationwide class claims.

Rust-Oleum Label Suit Sees California Residents Class Certified

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Feb. 6, 2024, 2:26 PM PST

Tre'Vaughn Howard

- Evidence of common label understanding produced by plaintiff
- Plaintiff has standing on injunctive relief claim

California residents are entitled to class action status in a suit alleging that Rust-Oleum's Krud Kutter products are misleadingly labeled as "non-toxic" and "Earth friendly," a federal trial court ruled.

Judge Laurel Beeler, of the US District Court for the Northern District of California, granted Anthony Bush's motion for class certification, which defined the class as all residents of California that purchased the products within four years prior to the filing of Bush's complaint. Beeler certified the class because all Rule 23(a) requirements—numerosity, commonality, typicality, and adequacy—were satisfied.

While Rust-Oleum Corporation didn't dispute that the class met the numerosity requirement, the company did argue that the other requirements weren't met. Rust-Oleum argued the class didn't satisfy commonality because it failed to establish a uniform definition among class members regarding the challenged label claims. Beeler disagreed, writing that the requirement has a low threshold and that Bush produced evidence of a common understanding of the challenged terms, "including the defendant's own consumer study."

The company also argued that Bush failed to meet the typicality requirement because he was "subject to two unique defenses."

The first defense was Bush's "standing to seek injunctive relief." But Bush's testimony that he would like to buy the product again but won't "as long as they are mislabeled" was sufficient for standing, Beeler said.

Beeler also rejected Rust-Oleum's defense that Bush purchased the product without examining the entire label like a reasonable consumer would allegedly do. The injury under California's Unfair Competition Law, False Advertising Law, and Consumer Legal Remedies Act is established by an objective test, Beeler said.

The class met the Rule 23(b)(3) requirement because it wasn't overbroad, and Bush hadn't offered a measure of damages that was inconsistent with his theory of liability, the court said. Rule 23(b)(2) was met since Bush's injunctive relief can generally apply to the class as well.

The case is Bush v. Rust-Oleum Corp. , N.D. Cal., No. 3:20-cv-03268, 2/5/24 .

To contact the reporter on this story: Tre'Vaughn Howard at
thoward@bloombergindustry.com

To contact the editor responsible for this story: Patrick L. Gregory at
pgregory@bloombergindustry.com

Court Should Toss Hair Relaxer Class Action, Companies Say

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L'Oréal USA Inc., Revlon, Inc., and other hair product companies are asking a federal court to dismiss a class action complaint alleging the companies sold relaxer products that led to an increased risk of uterine and ovarian cancer.

Thirty-four women sued L'Oréal and other companies earlier this year, alleging hair relaxer products lacked sufficient warning about the alleged cancer link, "target[ed] women of color," and caused them economic harm. In their class action complaint, the women argued they "paid more for the Toxic Hair Relaxer Products than they would have paid had they known about the...unsafe...nature of the products." Additionally, some of them "incur the cost of medical monitoring to facilitate the early detection and treatment of those serious and potentially fatal cancers."

In a motion to dismiss, filed Monday in the US District Court for the Northern District of Illinois, the companies argue the women lack standing to sue, have asserted claims preempted by federal law, and have not alleged sufficient facts to move forward.

In particular, the companies contend the women did not allege a legally sufficient injury to support standing.

"'[M]ere exposure' to a harmful ingredient is insufficient to establish injury in fact," the companies' brief says. "No injury in fact exists where, as here, plaintiffs do not seek personal injury damages, and instead complain solely of economic injury stemming from the purchase of products that they 'entirely consumed' and that 'functioned for [them] as expected.'"

The companies also argue that the allegations of improper labeling on the hair products should be governed by the federal Food, Drug, and Cosmetic Act, preempting the state law claims in the complaint. While the women assert a product liability claim that the defendants say could fall outside the preemptive reach of the FDCA, they do not properly allege such a claim because they do not allege the required compensable "personal injury, death, or property damage" to satisfy the injury element of a product liability claim, the defendants argue.

Moreover, the allegations in the complaint do not include sufficient details, such as precisely which products the women purchased and what the alleged defects were, the companies argue. "Defendants should not be required to guess as to which of their products were used by Plaintiffs and are claimed to be defective," the motion says.

Revlon filed a separate motion urging the court not to certify the plaintiffs as a class, arguing the class action complaint duplicates individual claims already pending.

The class action complaint is part of a group of lawsuits against hair product companies combined before Judge Mary M. Rowland. The litigation followed the 2022 publication of a study finding that women who frequently used chemical hair straightening or hair relaxer products faced a heightened cancer risk.

Wallace Miller, DiCello Levitt, Motley Rice LLC, and others represent the plaintiffs. Ellis George LLP, Gordon Rees Scully Mansukhani LLP, Baker & McKenzie LLP and others represent the defendants.

The case is In RE: Hair Relaxer Marketing, Sales Practices, And Products Liability Litigation , N.D. Ill., 1:23-cv-00818, motion to dismiss 2/5/24 .

To contact the reporter on this story: Mike Vilensky at mvilensky@bloombergindustry.com

To contact the editor responsible for this story: Martina Stewart at mstewart@bloombergindustry.com

Louisianans Withdraw Claims Over Sulphur Mines Contamination

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Class Action

A proposed class of Louisiana residents tossed their claims that chemical company Westlake Corp. contaminated the Chicot Aquifer, a major source of groundwater for southwestern Louisiana.

More than 100 residents sued Westlake in September, alleging that the company and its subsidiaries failed to properly maintain and monitor their facilities at the Sulphur Mines Salt Dome. Hydrocarbons, radioactive materials, and other substances migrated onto the plaintiffs' properties, which could create health and economic problems, they said.

- The residents filed a notice of voluntary dismissal in the US District Court for the Western District of Louisiana on Feb. 2
- Attorneys for the plaintiffs didn't respond to a request about the reasoning for the dismissal
- Westlake had asked a federal judge to dismiss the claims in December, arguing that the residents didn't mention any contamination testing of their properties and didn't specify any spills of potentially harmful chemicals

The plaintiffs and proposed class are represented by Jones Swanson Huddell LLC. Westlake—a unit of TTWF LP—and its subsidiaries are represented by Susman Godfrey LLP and Kean Miller LLP.

The case is Jones v. Westlake US 2 LLC , W.D. La., No. 2:23-cv-01311, notice of voluntary dismissal filed 2/2/24 .

To contact the reporter on this story: Samantha Hawkins at shawkins1@bloombergindustry.com

To contact the editor responsible for this story: Amy Lee Rosen at arosen@bloombergindustry.com

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Judges Question Ex-Barclays Executive's Whistleblowing Claims

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- Judges question whether La Belle is protected from retaliation
- La Belle alleges Barclays fired him for whistleblowing

A panel of federal appeals court judges on Tuesday appeared reluctant to reinstate whistleblower claims for former Barclays Capital Inc. executive Brian La Belle.

The US Court of Appeals for the Second Circuit's three-judge panel agreed with Barclays' position during questioning that La Belle isn't a protected whistleblower because he complained about violations of a policy implemented by Barclays to prevent fraud—not a policy required by the federal government.

"It's not required by the SEC. Isn't that where you start and stop?" Second Circuit Judge Richard Sullivan asked La Belle's attorney, Steven Barentzen of the Law Office of Steven Barentzen.

Key to the case is whether the so-called mandatory block leave policy, which requires certain employees to take a designated amount of time off work each year, is required by the US Securities and Exchange Commission or if it's a rule that Barclays came up with to comply with the SEC's requirements.

Barclays says the leave policy isn't an SEC requirement, which leaves La Belle's claims exposed.

Judge Susan Carney said block leave doesn't seem to be a requirement and that banks can choose to implement other fraud-prevention policies.

Block Leave

The theory behind the block leave policy is that if an employee were engaging in fraudulent or unauthorized activity, someone filling in for that employee during the leave period would notice and report the misconduct, La Belle's brief says. La Belle, who was head of commercial mortgage-backed securities trading and distribution at Barclays before he was fired in August 2018, was subject to the policy.

If firms don't have a block leave policy in place, they must explain to the SEC what else they're doing to avoid fraud, Barentzen told the judges.

"You acknowledge there are alternatives they can choose," Carney said.

Barentzen responded that the leave policy is "quasi-required."

Barclays attorney Elizabeth McManus, partner at Ballard Spahr LLP, said the whistleblower protections established under the Sarbanes-Oxley Act are narrowly confined to concerns about financial gain, and the SEC has been hesitant to broaden that interpretation. Nowhere in the record does La Belle claim he was worried about financial gain, McManus argued.

"So your point is that Sarbanes-Oxley isn't open-ended for use by anyone who has a complaint about management?" Carney asked.

McManus agreed, saying "we don't want Sarbanes-Oxley to become open-ended."

La Belle was unable to complete his mandatory block leave at the end of 2017 because he was, according to his brief, pressured to close an important deal before the end of the year.

His boss, Larry Kravetz, allegedly "yelled, cursed, and threatened him" for documenting and creating a record saying that Kravetz had forced La Belle to work through his mandatory block leave. Kravetz allegedly also told him that everyone works on their block leave.

La Belle wants the Second Circuit to reinstate his case at the district court, after a judge in March 2023 granted summary judgment to Barclays, saying the company didn't violate the Sarbanes-Oxley Act because mandatory block leave isn't required by the SEC.

The case is *La Belle v. Barclays Cap. Inc.*, 2d Cir., No. 23-448, oral argument 2/6/24 .

To contact the reporter on this story: Beth Wang in New York City at bwang@bloombergindustry.com

To contact the editors responsible for this story: Stephanie Gleason at sgleason@bloombergindustry.com; Fawn Johnson at fjohnson@bloombergindustry.com

Elon Musk Lawyer Alex Spiro Aids Neumann Bid to Buy Back WeWork

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- Spiro began working with Adam Neumann in late 2023
- Follows work with Elon Musk on Twitter Inc. takeover

Alex Spiro, the brash lawyer who was at billionaire Elon Musk's side in his takeover of Twitter Inc., is aiding Adam Neumann's bid to buy back WeWork Inc.

Spiro, a partner at Quinn Emanuel Urquhart & Sullivan, began working as Neumann's counsel towards the end of 2023, a person familiar with the matter said.

Neumann, a founder of WeWork, and other investors including Dan Loeb's Third Point are exploring an offer to purchase the co-working space provider out of bankruptcy. Neumann's real estate startup, Flow, and the other investors are looking to potentially buy the entire company or its assets, according to a Feb. 5 letter authored by Spiro and seen by Bloomberg Law.

Spiro's involvement in Neumann's WeWork bid comes more than a year after he helped Musk in the \$44 billion takeover of X, formerly known as Twitter, where he played an active role in the sweeping overhaul of the social media platform's operation. Spiro's list of high-profile clients also includes Jay-Z and Megan Thee Stallion.

Spiro and a spokesperson for Neumann did not immediately comment. Quinn Emanuel restructuring practice head Susheel Kirpalani and partner Benjamin Finestone are also working with Spiro on the representation.

Spiro's work with Neumann on a potential transaction suggests there's an interest from the litigator in the corporate and activist space. He told the New Yorker last July that he's been approached to lead an activist hedge fund, but he questioned if such a job would interest him as much as trial work.

Alex Spiro, attorney to Elon Musk, departs federal court in Los Angeles on Dec. 6, 2019.

Photographer: Patrick T. Fallon/Bloomberg

The letter authored by Spiro claimed the effort by Neumann and others has so far been thwarted by WeWork's failure to engage with "what is intended to be a value-maximizing transaction" for all stakeholders.

Neumann led WeWork, the office leasing startup that once reached a valuation of \$47 billion, until 2019, when he was forced out of the company after its failed effort at an initial public offering.

He is still worth an estimated \$1.7 billion, according to the Bloomberg Billionaires Index. His startup, Flow, which will operate multifamily residential properties, has received \$350 million in funding from the venture capital firm Andreessen Horowitz.

WeWork, represented by Kirkland & Ellis, filed for Chapter 11 bankruptcy protection in New Jersey in November, listing \$19 billion of liabilities and \$15 billion of assets.

The company said in a statement to Bloomberg News that it receives expressions of interest from outside parties on a regular basis, which its advisers review "with a view to acting in the best interests of the company."

Spiro continues to work closely with Musk, including leading the Tesla CEO's defense in a trial on shareholders' charge that Musk defrauded them when he once tweeted he'd secured funding to take Tesla private. A federal jury cleared Musk in February 2023.

Separately, Spiro has represented Charlie Javice, the entrepreneur accused of defrauding JPMorgan Chase & Co. in its \$175 million purchase of her college-loan-planning site. A court filing unsealed in that case showed Spiro's billing rate is \$2,025 per hour.

To contact the reporter on this story: Justin Wise at jwise@bloombergindustry.com

To contact the editors responsible for this story: John Hughes at jhughes@bloombergindustry.com

'U the Man': DOJ Probes Brandon Charnas for Insider Trading (1)

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Brandon Charnas, already famous for being married to a social media icon, and infamous for refusing to cooperate with an insider-trading probe, is advancing into notoriety.

Not only is the US Securities and Exchange Commission looking at the \$385,000 the regulator says he made using potentially non-public information about a bid by Staples for rival Office Depot. Now the Justice Department is pursuing a criminal investigation into the trades, according to people with knowledge of the matter.

Charnas and nine other people — including a hedge fund manager, a real estate developer and the former head of a woman's fashion brand — have been caught up in the insider trading probes, according to court documents and people familiar with the investigations.

Charnas is best known as the husband of Arielle Charnas, the founder of the beleaguered fashion brand Something Navy. The roots of the investigations date back to just before Christmas 2020, when Charnas met friends for lunch in Miami.

More than an hour later, Charnas invested \$31,000 in Office Depot call options, essentially betting that the stock would rise, according to the SEC. In the days following, Charnas and other traders bought options and shares of the parent company, ODP Corp., according to the regulator.

On Jan. 11, 2021, the stock popped after Staples announced its offer. "You're welcome boyz," one of the traders texted in a group chat. "U the man," another message read, according to SEC court documents.

Arielle and Brandon Charnas in 2019.

Photographer: Jamie McCarthy/Getty Images

The SEC court case centers on a subpoena fight between the agency and Charnas, who co-founded a real estate firm. According to court documents, the SEC mentioned the names of other individuals whose names have come up as part of a request for Charnas to hand over text messages.

While the SEC probe attracted widespread social media interest, the involvement of the DOJ hasn't been previously reported. The criminal probe is in its early stages and it isn't clear how long the investigation will last and whether it will result in any charges.

"Brandon did not engage in insider trading. Period," David Axelrod, a lawyer for Charnas, said in a statement. Both the DOJ and SEC declined to comment.

Meanwhile, the SEC has faced setbacks. Charnas, who has also been represented by Donald Trump attorney **John Lauro**, won a ruling in Florida that prevents the SEC from obtaining his text messages. The agency is appealing.

Subpoena Fight

Arielle Charnas amassed a following of about 1.3 million Instagram users posting photos of herself wearing trendy outfits in New York City. Her clothing line garnered millions of dollars in funding.

But in just a few years, the couple has faced unwanted publicity as media reports surfaced about Something Navy's financial troubles and the possibility of it being sold in a fire sale. The brand was once valued at \$100 million, according to Business Insider.

The subpoena fight has drawn interest from some TikTok and Reddit users who track the couple's every move. In November, a photo of Charnas flying coach in the middle seat prompted messages from the Reddit group, r/NYCinfluencersnark. "How the mighty have fallen," wrote one user.

Details about the SEC probe were contained in part of a draft subpoena the regulator sent to Charnas' attorney in August 2023. Lauro and Axelrod included an excerpt in a court filing in Florida as part of their fight against giving the SEC the information.

The item was redacted after the SEC said it "outed other people who are under investigation," according to a transcript of a court hearing. The court filings didn't include specific details on which individuals were under investigation. Bloomberg News downloaded the documents before the redactions were made.

Exhibit from July 25, 2023, court filing.

Source: FLSD US Attorney's Office

The first and last names in the draft subpoena, which weren't listed together, are part of search terms the SEC flagged in relation to messages they are seeking from Charnas.

Nine Others

Some of the traders linked to the search terms have known Charnas for years. One, **Brett Mufson**, was in Charnas' 2007 graduating class at the University of Pennsylvania.

Brett Mufson during the Fontainebleau Las Vegas Grand Opening on Dec. 13.

Photographer: Denise Truscello/Getty Images

Mufson is president of real estate developer Fontainebleau Development. He is also on the board of Charnas' real estate company, according to his bio at Pioneer Communities LLC, where he is head of the investment committee. A lawyer for Mufson declined to comment.

The draft subpoena also sought messages referencing **Jesse Cole**, the former chief executive of New York-based fashion brand Haute Hippie. Cole's venture capital firm invested in Something Navy. In addition, it mentioned Stefano Santoro, who Charnas hired in 2020 to expand his business into South Florida. Both Cole and Santoro declined to comment.

Jesse Cole (center) at a Haute Hippie party in New York City.

Photographer: Joe Corrigan/Getty Images

Kris Bortnovsky, a hedge fund manager whom prosecutors investigated in a separate insider trading case, is also mentioned in the search terms including his nickname, "Bort," which he uses on his LinkedIn page. Bortnovsky said he didn't trade ODP and hasn't been contacted by regulators.

"I have absolutely nothing to do with this matter," he said.

In December 2022, the US Attorney's Office in Massachusetts dropped charges against Bortnovsky in the previous case after another defendant pulled out of a cooperation agreement.

At least six individuals communicated with Charnas around the time of the Office Depot trades, the SEC said in court records. One unidentified person, who held 1,351 calls over seven months with Charnas, has provided sworn testimony, it said. The regulator said it discovered 462 iMessages between that person, Charnas and another trader. In addition, other people handed over their messages, the SEC said.

A day after Staples announced its \$40 a share bid for ODP, Charnas sold half of his call options, generating a 635% windfall, according to the SEC. On Feb. 23, 2021, his phone blew up with news that there was "unusual trading activity" in Office Depot ahead of earnings.

"Wow," wrote one of the traders, "moving markets!"

"Wow," Charnas responded.

"I'm in for tomorrow," texted an individual.

Ultimately, Staples' proposal failed as ODP worried about antitrust scrutiny after a similar attempt collapsed in 2016. But Charnas walked away a winner with a \$385,000 profit, court records show.

(Updates with details on text exchanges in 24th paragraph.)

--With assistance from **Austin Weinstein** and **Chris Strohm**.

To contact the reporter on this story:

Sabrina Willmer in Washington at swillmer2@bloomberg.net

To contact the editors responsible for this story:

Anthony Aarons at aaarons@bloomberg.net

Sara Forden

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Auditors Face Tougher Corporate Fraud Detection Duty in Proposal

By Michael Kapoor

Bloomberg Law News 2024-02-07T10:29:3474392535-05:00

Auditors Face Tougher Corporate Fraud Detection Duty in Proposal

By Michael Kapoor 2024-02-06T13:45:18000-05:00

The body that sets global auditing standards proposed strengthening its rules covering auditors' responsibilities for detecting corporate accounting fraud following a series of high-profile business failures.

The International Auditing and Assurance Standards Board said Tuesday the proposed changes would better define expectations of auditors' role in fraud detection and set out stronger procedures for inspecting financial statements. The board said the move came in response to recent corporate failures due to alleged financial fraud, such as the 2019 collapse of UK bakery chain Patisserie Valerie and cryptocurrency exchange FTX's 2022 downfall without warning from their auditors.

- "While auditors are not policemen, they can and must play a role in identifying and responding to material misstatements of the financial statements due to fraud," IAASB chair Tom Seidenstein said in a statement.
- The board is proposing changes to International Standard on Auditing 240, The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements. Floated changes include: clarified auditor responsibilities relating to fraud, an emphasis on professional skepticism, and stronger assessment of the risk of material misstatement due to fraud.
- About 130 countries base their national financial audit regulations on IAASB rules, including the UK and US. The board's proposal is open to public comment until June 5.

To contact the reporter on this story: Michael Kapoor at correspondents@bloomberglaw.com

To contact the editors responsible for this story: Andrea Vittorio at avittorio@bloombergindustry.com; Jeff Harrington at jharrington@bloombergindustry.com

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Business Leaders Split Over Tying Auditors to Client Misdeeds

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Jeff Mahoney of the Council of Institutional Investors and Tom Quaadman of the US Chamber of Commerce argue for and against holding auditors more responsible for a wider range of their clients' illegal acts.

The Public Company Accounting Oversight Board is moving forward with plans to require auditors to dig deeper into corporate crimes and regulatory violations and hold them more responsible for their clients' noncompliance with laws and regulations, called NOCLAR, via proposed rule changes.

The board has pledged to hold a roundtable in 2024 for stakeholders to discuss the sweeping proposal issued last year. Two business leaders offer their perspectives on the plan.

A Much-Needed Update

Jeff Mahoney, CII

The NOCLAR proposal is long overdue. To understand why, it's important to understand the history of auditors and NOCLAR.

In 2003, the newly formed PCAOB adopted temporary auditing standards written by the American Institute of Certified Public Accountants, including a 1988 standard that obligated auditors to identify, evaluate, and report illegal acts by their clients, including NOCLAR.

The AICPA standards were promulgated by the profession for the profession—an inherent conflict. For practical purposes, Congress permitted the PCAOB to carry over the existing AICPA standards on an interim basis. The expectation was that the PCAOB would produce a more appropriate set of standards going forward.

The NOCLAR proposal, issued more than 20 years later, is but one step toward fulfilling that expectation by replacing the AICPA-written standard.

Congress confirmed the importance of that standard in 1995, when it expanded and codified aspects of the standard in Section 10A of the Securities Exchange Act of 1934.

Some critics of the NOCLAR proposal appear to have ignored this history and suggest the PCAOB is creating a new obligation for auditors that replaces or duplicates management responsibilities. The truth is that the PCAOB is simply attempting to pursue its mission under the Sarbanes-Oxley Act.

This mission is consistent with the Congressional intent of that law and Section 10A of the Securities Exchange Act of 1934 because it attempts to strengthen an obligation of auditors that the profession created.

Even more disappointing, some critics appear to have adopted the Washington, D.C., lobbying strategy of submitting comment letters to the PCAOB that lack useful and substantiated information. In contrast, responsible commentators, including members of the PCAOB's Investor Advisory Group, carefully reviewed the NOCLAR proposal and offered specific suggestions for how and why certain provisions might be improved.

Commentators differ on which provisions of the NOCLAR proposal should be revised and what those revisions should entail. I remain confident that the PCAOB staff and board will carefully consider all the responsible comments and other input received, including from the pending roundtable, and make needed improvements to provisions of the NOCLAR proposal before adopting a final standard.

Wrong for Capital Markets

Tom Quaadman, US Chamber

For decades, it's been a well-settled policy that an auditor, when reviewing a business's financial materials, only needs to identify material instances of a company's non-compliance with laws or regulations. Serious issues that impact investors need to be disclosed, But other issues, such as parking, speeding tickets, or ministerial acts need not be disclosed because they aren't relevant to investors.

This approach to auditing has worked—as auditors aren't police officers—and has created balance while maintaining a responsibility to monitor serious NOCLAR issues that require action to be taken.

However, the PCAOB shocked auditors and businesses last year with a draconian proposal to update the auditing standard on NOCLAR that would completely change public company audits.

The proposal would transform audits into an inquisition. Instead of evaluating the integrity of financial statements, under the proposal, auditors would now have to investigate if companies are out of compliance with applicable laws and regulations across all local, state, federal, and international jurisdictions.

Auditors aren't lawyers or experts on laws and regulations such as occupational health and safety, environmental protection, intellectual property, and data privacy, among others. Auditors and their clients would need to hire an army of legal and subject matter experts to complete an audit.

Such a radical transformation of the auditor's role and responsibilities raises questions regarding the PCAOB. For example, the board has failed to identify a problem it needs to solve with such a far-reaching proposal. The NOCLAR proposal would distract auditors, degrade audit quality, and weaken investor protection—all without any clear benefit to investors.

The PCAOB's economic analysis for the proposed update fails to provide any significant quantitative data, also raising a concern about the policymaking process. NOCLAR's costs are substantial: the US Chamber of Commerce estimates annual auditing costs for public companies could triple to \$54.6 billion—an increase of \$36.4 billion—dwarfing the previously inconceivable costs of implementing Section 404 of the Sarbanes-Oxley Act.

Nonetheless, the PCAOB appears committed to finalizing a NOCLAR standard in 2024. But before it does, PCAOB Chair Erica Williams has pledged to hold a roundtable. To avoid that being an empty gesture, the PCAOB must ensure the roundtable has the right people at the table to fairly represent the deeply rooted concerns with its NOCLAR proposal.

The PCAOB's current proposal is wrong for our capital markets. If the PCAOB wants to update the standard, it should withdraw the current proposal and work to determine if there is a problem that should be addressed.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

Author Information

Jeff Mahoney is general counsel for the Council of Institutional Investors.

Tom Quaadman is executive vice president at the US Chamber of Commerce Center for Capital Markets Competitiveness.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Rebecca Baker at rbaker@bloombergindustry.com; Alison Lake at alake@bloombergindustry.com

Snap Inc

Snap shares sink 35% as revenue falls short of Wall Street expectations

Social media company's earnings underwhelmed investors a day after it announced lay-offs



Snap is to reduce its headcount by 10%, affecting about 500 people © Getty Images

Hannah Murphy in San Francisco AN HOUR AGO



Snap shares plunged 35 per cent on Wednesday after its quarterly revenue growth fell shy of Wall Street expectations, as it struggles to recover from a digital advertising slump.

Compared with dominant, deep-pocketed rivals such as Meta, the smaller Los Angeles-based social media platform has battled to rebound after tough macroeconomic conditions caused marketers to tighten their belts in 2022. It was also among the hardest hit by the privacy changes introduced by Apple in 2021, which disrupted the way brands target advertising and measure their effectiveness.

Coming a day after announcing sweeping lay-offs, [Snap](#) said in an earnings report on Tuesday its revenues increased 5 per cent to \$1.36bn in the fourth quarter, below expectations of a rise to \$1.38bn. This reflected “a challenging operating environment”, it said in a letter to investors.

In its letter, Snap said it had made progress on wielding machine learning to boost its advertising performance for brands, and that it had succeeded in increasing the number of small and medium-sized advertisers in particular.

However, it estimated that “the onset of the conflict in the Middle East was a headwind to year-over-year growth of approximately 2 percentage points” in the fourth quarter.

Net losses narrowed to \$248mn from \$288mn the previous year, compared with consensus estimates of a decrease to \$277mn.

The results contrast dramatically with those of Meta, whose shares last week leapt 20 per cent after it beat revenue and earnings expectations and announced its first-ever quarterly dividend of 50 cents per share.

“The company’s rebound hasn’t kept pace with the big tech titans,” said Insider Intelligence principal analyst Jasmine Enberg. “Snap is trying to distance itself from social media, but the reality is that it still must compete for social ad dollars. Snap is a smaller, less essential player for advertisers than Meta, and it has struggled to build a robust ad business.”

In the current quarter, its guidance for revenues was between \$1.095bn- \$1.135bn, or growth of between 11-15 per cent. Current consensus revenue estimates stand at \$1.12bn, according to S&P Capital IQ.

“We are shifting more of our focus toward user growth and deepening engagement in our most highly monetisable geographies, including North America and Europe,” the letter to investors said.

Snap on Monday said it would cut its headcount by about 10 per cent, or more than 500 employees. It said it would incur pre-tax charges of \$55mn-\$75mn, primarily severance and related costs, mostly in the first quarter.

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SolarWinds' supporters blast US SEC's 'chilling' lawsuit over cyberattack

 [reuters.com/legal/government/column-solarwinds-supporters-blast-us-secs-chilling-lawsuit-over-cyberattack-2024-02-06](https://www.reuters.com/legal/government/column-solarwinds-supporters-blast-us-secs-chilling-lawsuit-over-cyberattack-2024-02-06)

Alison Frankel

A SolarWinds sign is seen outside its headquarters in Austin, Texas, U.S., December 18, 2020. REUTERS/Sergio Flores Purchase Licensing Rights [↗](#), opens new tab

Feb 6 (Reuters) - Could the U.S. Securities and Exchange Commission's groundbreaking case accusing software company SolarWinds of deceiving investors about a devastating Russian hack actually make U.S. companies more vulnerable to cyber criminals? That is the contention of several groups that filed friend-of-the-court briefs backing SolarWinds' motion to dismiss [↗](#), opens new tab the SEC's complaint [↗](#), opens new tab in federal court in Manhattan.

In a nutshell, the SolarWinds backers — BSA|The Software Alliance [↗](#), opens new tab, 21 former government officials [↗](#), opens new tab, and a plethora of organizations for corporate cybersecurity chiefs [↗](#), opens new tab — contend that instead of assuring that investors receive detailed warnings about cyber risk and robust disclosures after cyberattacks, the SEC's lawsuit could end up discouraging companies from probing for potential security weaknesses and cooperating with government investigators after a breach.

The SEC's lawsuit, according to the SolarWinds supporters, might even have the perverse effect of providing hackers with an attack plan based on companies' public filings disclosing their vulnerabilities.

"A regime that incentivizes early detailed public disclosure of vulnerability information, along with information detailing a company's security posture, can actually damage law enforcement investigations, provide a roadmap to aid threat actors and make companies less safe," wrote Paul, Weiss, Rifkind, Wharton & Garrison for the government officials, including former high-ranking Justice Department and SEC lawyers specializing in cyber enforcement.

In an additional amicus brief [↗](#), opens new tab backing SolarWinds, the U.S. Chamber of Commerce and the Business Roundtable said they shared concerns that the case would backfire, leaving U.S. companies more vulnerable to hackers, but also argued that the SEC was improperly relying on its right to police internal financial and accounting controls to assert "a general grant of corporate police power."

The SolarWinds case, asserted the Chamber's lawyers at Sullivan & Cromwell, exemplifies the SEC's overly expansive view of the internal control provision "as a roving mandate."

That's a potential problem, said Sullivan & Cromwell's Nicole Friedlander, for all public companies. "The SEC interprets the provision to give it the authority to find a company in violation of the federal securities laws when the company does not follow an internal policy or a process the SEC would have preferred, and even when the company is a victim of crime," Friedlander said in an email statement.

The SEC declined to comment on the amicus briefs backing SolarWinds. When the agency announced [it](#), opens new tab the lawsuit last October, it emphasized a purported mismatch between the company's circumscribed public disclosures and its internal awareness of security vulnerabilities and, ultimately, of the attack that left its customers comprised. The SEC said at the time that SolarWinds and its chief information security officer "engaged in a campaign to paint a false picture of the company's cyber controls environment, thereby depriving investors of accurate material information."

SolarWinds, which is represented in the SEC case by Latham & Watkins, said in an email statement that it's grateful for backing from a wide range of groups. Their amicus briefs, the company said, "highlight that the SEC's positions in this case are not only unsupported by the law but raise serious security concerns for companies, CISOs and the public at large."

SolarWinds contends that its public disclosures to investors were appropriate and sufficient. Its dismissal brief noted, among other points, that investors seemed to regard its initial disclosure of the hack as a full-blown revelation, since the disclosure sent the company's share price into a 25% plunge. (SolarWinds eventually settled an investor class action over the breach for \$26 million in 2022.)

The market's decisive response to the initial revelation of the cyberattack, SolarWinds argued, belies the SEC's theory that the company's disclosure was inadequate.

The SEC filed its lawsuit nearly three years after SolarWinds revealed the attack by Russian state actors in December 2020. At the time of the attack, which has been described as one of the most sophisticated hacks in history, the agency did not have specific requirements for cyberattack disclosures, though it has since engaged in formal rulemaking to provide disclosure guidelines.

Some of SolarWinds' amici asserted that the lawsuit against SolarWinds appears to require more extensive disclosures than the agency's new rules suggest. This "maximalist position," wrote Covington & Burling in its brief for BSA, creates confusion for public companies: If corporations adhere to the "general level" disclosure regimen in the SEC's formal rules, Covington said, they could be at risk of liability under the SEC's theory in the SolarWinds case, which seems to require detailed and specific disclosures of both pre-attack weaknesses and post-attack impact. (Covington, as you may recall, has its own unsought expertise when it comes to SEC cyber-related disclosure demands.)

The risk is particularly acute for corporate security officials, said law firms Cooley and Freshfields Bruckhaus Derringer in the amicus brief for CISOs.

If they're doing their job right, the brief said, these officials are in constant communication with engineers about potential vulnerabilities and with other high-ranking executives about those weaknesses. But by "weaponizing" internal communications by the SolarWinds CISO – and by naming him personally as a defendant – the SEC will chill candid discussions about the very risks that lead to cyberattacks, the brief argued.

The ultimate irony, according to the SolarWinds amici, is that the company was victimized by cybervillains but is now being penalized for U.S. regulators in a lawsuit that, in their view, increases the risk of future attacks on public companies.

I'm sure the SEC will offer a different view when it responds to SolarWinds' dismissal motion. Its brief is due on March 8.

Read more:

US SEC adopts new cyber rule, unveils brokerage AI proposal
US SEC sues SolarWinds for concealing cyber risks before massive hacking
Exclusive — Wide-ranging SolarWinds probe sparks fear in Corporate America
Reporting By Alison Frankel

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Alison Frankel

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Alison Frankel has covered high-stakes commercial litigation as a columnist for Reuters since 2011. A Dartmouth college graduate, she has worked as a journalist in New York covering the legal industry and the law for more than three decades. Before joining Reuters, she was a writer and editor at The American Lawyer. Frankel is the author of Double Eagle: The Epic Story of the World's Most Valuable Coin.



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Alphabet Investors Ink \$350M Deal In Google Plus Privacy Suit

By **Katryna Perera**

Law360 (February 6, 2024, 2:42 PM EST) -- Google's parent company Alphabet and a proposed class of investors have reached a \$350 million settlement to end claims that the company deceived them about a March 2018 software glitch that allegedly gave third-party app developers the ability to access the private profile data of 500,000 users of the Google Plus social media site.



After the data exposure was revealed, Google's stock price fell over two trading sessions by \$67.75 per share, or 5.9%, to close at \$1,081.22 per share on Oct. 10, 2018. (AP Photo/Richard Drew, File)

Investors filed a **motion** for preliminary approval Monday, saying the deal resulted from good-faith, arm's-length negotiations after five years of litigation. The motion also notes that, if approved, the deal would represent the fourth-largest securities class action recovery in the Northern District of California.

Jason Forge of Robbins Geller Rudman & Down LLP, representing the investors, told Law360 by phone on Law360, "Most people thought no one could recover a penny in this case, and when the first judge granted Google's motion to dismiss everything, the 'I told you so's' were deafening. But that just made [the state of Rhode Island, lead plaintiff] and us more determined."

"That determination led to a published reversal from the Ninth Circuit and what would be the largest ever post-dismissal recovery in this circuit," he added.

Counsel for Google declined to comment Tuesday. A Google spokesperson said in a statement: "We regularly identify and fix software issues, disclose information about them, and take these issues seriously. This matter concerns a product that no longer exists and we are pleased to have it resolved."

The investors' motion says the deal should be approved because it provides a significant and immediate benefit to the proposed class, given the potential costs, risks and delays of continued litigation.

"While lead plaintiff remains confident in its ability to ultimately prove the alleged claims on a level playing field, further litigation — including a trial — is always a risky proposition, even more so here where lead plaintiff was unable to question the individual defendants without significant delays, restrictions and conditions," the motion states.

The motion further notes that Alphabet only needs to succeed on one defense to defeat the entire action, and it already obtained complete dismissal of the complaint once, before some claims were revived by the Ninth Circuit.

The appeals court **partially revived the suit** in 2021, holding that Rhode Island — which is suing on behalf of the Employees' Retirement System of Rhode Island — plausibly alleged the tech giant made materially misleading statements in quarterly reports about the data breach. Of 12 statements challenged by Rhode Island, a three-judge panel for the Ninth Circuit found at least two to be materially misleading or with omitted facts regarding software issues discovered in 2018 that exposed half a million users' data.

In addition to asking for approval of the \$350 million deal Monday, the investors also asked the court to certify a class of individuals who purchased or acquired Alphabet Class A and/or Class C stock between April 23, 2018, and April 30, 2019.

Monday's motion also states that class counsel intends to seek an attorney fee award of no more than 19% of the settlement, which equates to roughly \$66.5 million, and \$1.7 million in litigation expenses. Rhode Island also may seek a service award of up to \$10,000, according to the motion.

A hearing for preliminary approval of the deal has been scheduled for March 5, according to the motion.

The suit was launched in 2018 following an admission by Google that a software glitch the company discovered and patched had given third-party app developers the ability to access the private profile data of 500,000 users of its Google Plus social media site.

Google claimed it didn't disclose the incident at the time because the necessary breach reporting triggers weren't met. However, The Wall Street Journal reported that the company's legal and policy staff had warned in an internal memo that disclosure would trigger "immediate regulatory interest" and cause reputational harm.

When the data exposure was revealed, Google's stock price fell over two trading sessions by \$67.75 per share, or 5.9%, to close at \$1,081.22 per share on Oct. 10, 2018.

After multiple pleading rounds, the investors asked the court in June 2022 to certify a class of thousands of shareholders who acquired Alphabet stock from April 23, 2018, through Oct. 7, 2018. That motion was struck down, and investors filed a new motion to certify the class last June.

However, in October, a Stanford University law professor urged the court **not to grant certification** to the proposed class, arguing the investors can't meet the certification standards set by the U.S. Supreme Court in its 2021 Goldman Sachs decision.

The court quickly rejected the amicus brief as being untimely. Earlier this month, the parties filed a case management plan that said they were negotiating a potential settlement in the case.

The investors are represented by Jason A. Forge, Laura Andracchio, Michael Albert, J. Marco Janoski Gray, Ting H. Liu, Kenneth P. Dolitsky and Sarah A. Fallon of Robbins Geller Rudman & Dowd LLP.

Alphabet is represented by Mary Geraldine McNamara, Edward W. Swanson, Britt Evangelist and Carly Bittman of Swanson & McNamara LLP, Ignacio E. Salceda, Benjamin M. Crosson and Stephen B. Strain of Wilson Sonsini Goodrich & Rosati PC, and Boris Feldman, Doru Gavril, Jon Fougner and Olivia Rosen of Freshfields Bruckhaus Deringer US LLP.

The case is In Re: Alphabet Inc. Securities Litigation, case number 3:18-cv-06245, in the U.S. District Court for the Northern District of California.

--Editing by John C. Davenport.

Update: This story has been updated with further details and comment from Google.

Correction: A previous version of this story incorrectly identified the date and inaccurately described the data glitch in one instance. The error has been corrected.

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Disney Investors Say Co. Can't Exit Accounting Practices Suit

By **Sydney Price**

Law360 (February 6, 2024, 9:12 PM EST) -- Disney investors argued that providing misleading information about product performance is not a mere "business strategy," pushing back Monday on the company's attempt to escape the suit alleging Disney participated in a fraudulent accounting scheme to keep stock prices inflated as its streaming service Disney+ underperformed.

In the suit filed last May, the Local 272 Labor-Management Pension Fund alleges former Walt Disney Co. CEO Robert Chapek and Kareem Daniel, the former chair of its media and entertainment distribution segment, engaged in fraud in 2020 by reorganizing accounting methods to centralize all of Disney's video content into a single reporting segment, along with other changes in Disney's reporting methods.

In a motion to dismiss the suit filed in December, the defendants argued the alleged scheme was not fraud but a new business strategy that was reversed when Bob Iger returned as CEO in November 2022.

But in a **motion filed Monday**, the investors said the "strategy" was indeed a fraudulent scheme. The suit alleges the October 2020 reorganization represented a "dramatic departure" from Disney's historical reporting structure and took power away from creative executives, which Iger admitted harmed the company.

"As Iger has admitted, he acted urgently to unwind and mitigate the damage caused by Defendants' growth-at-any cost scheme," the plaintiffs said in the motion, referencing Iger's withdrawal of Chapek's Disney+ subscriber targets upon his return as CEO.

The investors also argued in the motion that even if the defendants disclosed required metrics regarding subscriber numbers and per-user revenue, those metrics did not show investors that the subscriber growth was unsustainable and unprofitable — and therefore the metrics were misleading. The defendants concealed the growing churn rate, which contradicted Disney's touted subscriber growth, the motion states.

By the end of the class period — Dec. 10, 2020 through May 10, 2023 — Disney's stock price declined by more than \$100 per share, or 55%, from its class period high of more than \$200, the suit alleges.

Iger and former Chief Financial Officer Christine M. McCarthy are also named defendants in the suit.

According to Monday's filing, Iger, who became a defendant in the consolidated suit in November, participated in insider trading when he sold more than \$375 million of his stock to "unknowing investors" while in possession of nonpublic information about Disney's profitability.

"Iger left no doubt that he possessed [material non-public information] throughout the class period when he told CNBC: 'I was aware of some of the issues that the company was dealing with ... I would say it was as expected ... There were no surprises,'" the motion states.

Counsel for the parties did not immediately respond to requests for comment Tuesday.

The investors are represented by Daniel S. Drosman, Ryan A. Llorens, Jessica T. Shinnfield, Jeffrey

J. Stein, Nicole Q. Gilliland and Jessica E. Robertson of Robbins Geller Rudman & Dowd LLP.

Disney and the individual defendants are represented by J. Wesley Earnhardt and Helam Gebremariam of Cravath Swaine & Moore LLP, and John W. Spiegel and John M. Gildersleeve of Munger Tolles & Olson LLP.

The case is Local 272 Labor-Management Pension Fund v. The Walt Disney Co. et al., case number, 2:23-cv-03661, in the U.S. District Court for the Central District of California.

--Editing by Lakshna Mehta.

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Energy Firm Sued By Investors After \$5M SEC Fraud Fine

By **Sydney Price**

Law360 (February 6, 2024, 7:57 PM EST) -- United Arab Emirates-based Brooge Energy Ltd. has been hit with a proposed class action, alleging it lied to the U.S. Securities and Exchange Commission and the public during the agency's investigation into the company's faulty accounting practices, which resulted in a \$5 million fine last year.

According to investor Eric White's Monday complaint in California federal court, Brooge concealed the extent of its fraudulent financial scheme from the public, which was unveiled in an **announcement** by the SEC in December and led to sharp stock price declines. The SEC accused Brooge of inflating the revenue from its oil facilities in the UAE by more than \$70 million over three years and ordered the company to pay \$5 million.

White seeks to represent a class of investors who purchased or otherwise acquired Brooge securities between Nov. 25, 2019, and Dec. 21, 2023. The suit names several current and former executives as individual defendants, including former CEO Nicolaas Lammert Paardenkooper and former interim CEO Lina Saheb, who are also named defendants in the SEC's action.

Brooge went public through a special-purpose acquisition company merger in December 2019, according to the complaint. In November 2019, its predecessor, Twelve Seas, filed an allegedly materially false and misleading proxy statement with the SEC to win shareholder votes on the merger, according to the complaint.

Following the close of the merger, Brooge began revealing weaknesses it identified in its internal controls. For example, its 2019 annual report stated it lacked "sufficient skilled personnel" with the necessary reporting knowledge and experience and lacked adequate financial reporting policies and procedures. However, these statements still downplayed the extent to which its financial controls were an issue, the complaint alleges.

The company continued understating its internal controls issues until Dec. 22, 2023, when the SEC announced it was taking action against Brooge and some of its former executives for fraud.

The SEC's order against Brooge alleged that between 30% and 80% of Brooge's revenue was unsupported and materially misstated between 2018 and early 2021. According to the agency, Brooge used fake invoices while trying to sell \$500 million in securities.

Paardenkooper and Saheb were also ordered by the SEC to pay a \$100,000 penalty.

On this news, Brooge shares fell 62 cents, or about 16%, to close at \$3.34 on Dec. 22, according to the complaint. The next trading day, share prices fell another 37 cents, or about 11%, to close at \$2.97 on Dec. 26.

White seeks damages and accuses the defendants of violating the Exchange Act and of acting with scienter, or actual knowledge of wrongdoing or reckless disregard.

Counsel for White and a representative for Brooge did not immediately respond to requests for comment Tuesday.

White is represented by Laurence M. Rosen of The Rosen Law Firm PA.

Counsel information for Brooge and the individual defendants was not immediately available Tuesday.

The case is White v. Brooge Energy Ltd. f/k/a Brooge Holdings Ltd. f/k/a Twelve Seas Investment Co. et al., case number 2:24-cv-00959, in the U.S. District Court for the Central District of California.

--Editing by Drashti Mehta.

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Judge Won't Toss All Claims In COVID Test Securities Action

By **Katryna Perera**

Law360 (February 6, 2024, 7:40 PM EST) -- A New York federal judge trimmed a proposed class action against COVID-19 test-maker Co-Diagnostics and its executives, but said investors sufficiently alleged some statements made during the class period misrepresented that sales and demand for the tests were on the decline, and the defendants knew as such.

Stadium Capital LLC launched its suit against the company in 2022, alleging the defendants — including Co-Diagnostics Inc. CEO Dwight Egan and CFO Brian Brown — repeatedly touted the Logix Smart COVID-19 test and reassured investors throughout the class period about demand for the product.

However, the defendants failed to disclose that demand for the test plummeted during the first half of 2022, Stadium says. The complaint states that in August 2022, Co-Diagnostics disclosed revenue of \$5 million for the quarter ending on June 30, a decline of almost 82% from \$27.4 million in revenue in the previous year.

According to the complaint, Co-Diagnostics attributed the decreased revenue to lower demand for the Logix Smart COVID-19 tests. On this news, Stadium says the company's stock price fell \$1.98, or 30.65%, from \$6.46 per share on Aug. 11, 2022, to \$4.48 per share the next day.

On Monday, U.S. District Judge Arun Subramanian issued an opinion and order saying Stadium plausibly alleged that some of the statements issued by the defendants during the class period were misleading.

"Stadium plausibly alleges that by May 12, 2022, it was clear that something was up (or down, rather) with demand," the order states. "Although Co-Diagnostics says there was no such thing as a normal quarter during the pandemic, it had earned more than \$20 million in every quarter since the pandemic began — eight quarters straight."

Because May 12, 2022, was the midpoint of the quarter, it was reasonable to expect the company would have earned roughly \$10 million by then, the judge said, but Co-Diagnostics ended up earning \$5 million for the entire quarter.

"Even if [Co-Diagnostics] had earned every dime by May 12, it still would have been at half its usual pace. So it was misleading to describe the situation as 'fluctuations' or to disclose the company's difficulty in forecasting near-term demand without disclosing that demand was already declining rapidly," the judge said.

According to the order, Co-Diagnostics argued the statements are not actionable because they were opinions or puffery. Judge Subramanian disagreed, saying Brown's description of "fluctuations in order patterns" was a "determinate, verifiable statement."

The judge added that while some of the other challenged statements were "cryptic, their opacity doesn't make them opinions."

Stadium has also adequately alleged scienter, the judge said. During a conference call with investors, Brown said the company was experiencing "sizable fluctuations in order patterns." This reveals sales were being monitored every day, the order states.

Brown also stated during the same call that Co-Diagnostics was "varying from its usual practice of 'providing quarterly guidance' due to its restricted 'near term visibility,'" according to the order. An inference that can be drawn from this change is that the defendants knew demand was down but hoped it could be hidden until it rebounded, the judge said, which would support a recklessness claim.

"[The] defendants try to plead ignorance and fight bad faith with good faith. But the most cogent and compelling inference to draw from all the statements, taken together, is that Brown and Egan knew sales were down by mid-May 2022 and tried to obscure that fact by simply declining to offer quarterly guidance and offering vague assurances regarding 'fluctuations,' 'timing,' and 'near term visibility,'" the order states.

Stadium has also adequately asserted a control-person liability claim against Brown and Egan, the judge said.

"Stadium says Brown and Egan 'had direct and supervisory involvement in the day-to-day operations of the company' and 'were provided with' the statements at issue here and 'had the ability to prevent the issuance of the statements or cause the statements to be corrected.' Those allegations are enough," the order states.

Representatives for the parties did not immediately respond to requests for comment Tuesday.

Stadium Capital is represented by Frederic S. Fox, Donald R. Hall and Jason A. Uris of Kaplan Fox & Kilsheimer LLP.

Co-Diagnostics is represented by Douglas W. Greene, Genevieve G. York-Erwin and Zachary R. Taylor of BakerHostetler.

The case is Stadium Capital LLC v. Co-Diagnostics Inc. et al., case number 1:22-cv-06978, in the U.S. District Court for the Southern District of New York.

--Editing by Caitlin Wolper.

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Attys Seek \$750K Fee In Del. For \$6M Med Tech Co. Deal

By **Jeff Montgomery**

Law360 (February 6, 2024, 6:37 PM EST) -- Proposed class attorneys who secured a \$6 million settlement from medical device company AMDI Inc. after a purportedly underpriced and conflicted stock sale to an interest of Oracle founder Larry Ellison have asked Delaware's Chancery Court to approve \$750,000 in attorney fees for their work.

The proposal by Grant & Eisenhofer PA — made public on Monday after the lawyers filed a sealed version of the stipulation Jan. 29 in Chancery Court — would end a derivative suit filed by a minority stockholder of AMDI, a company formed to develop automated medical lab systems designed to hunt for pathogens, including the COVID-19 virus.

Ellison gained control of AMDI through a series of large investments dating to 2016 by Tako Ventures LLC, a venture capital firm he controls through a different LLC. The investments gave Ellison the ability to oversee the appointment of three of the company's seven directors, in addition to other benefits he received as a controlling stockholder.

According to the complaint filed in October 2021, Ellison's stake in AMDI grew as the company worked to develop its "Autolab" system, which has faced rising costs and has yet to generate any revenue. When its lone big investor, Tako, stepped in with what became a \$2 per-share \$20 million additional stake, members of a board special committee began pressing for better terms and a larger investment.

"Throughout this time, however, Tako exerted immense pressure on the committee — it fired two of its members from their non-director roles during negotiations, consistently reminded the committee that AMDI was running out of cash and time, and placed brief and arbitrary deadlines on its counteroffers," the settlement proposal said.

By July 2021, Tako had acquired the \$20-million investment, adding 35 million more shares to the original 10 million at the same price. Although two stockholders sued months later, one of the plaintiffs pulled out of the litigation, and doubts grew regarding the ability of the remaining stockholder and derivative class counsel to show that the \$2 per-share price was unfair.

Discovery "revealed little in the way of documents or information that plaintiff could use to demonstrate AMDI's value. AMDI did not possess reliable financial projections, appeared to be far away from obtaining regulatory approval for any of its devices and had never generated any revenue," the settlement stipulation said.

Throughout the litigation, the special committee also sought a "liquidity mechanism," or route to a cash-out, for minority stockholders, as well as continued independent board representation, according to the stipulation.

The settlement with AMDI was reached just before the first deposition of a defense witness, attorneys said. Terms in the agreement not only confer "very tangible benefits on AMDI's minority stockholders, but accomplishes objectives that the special committee itself fell short of achieving," the proposal said.

If approved by the court, lawyers for the minority stockholders and special committee would receive \$750,000, 12.5% of the \$6 million settlement total, or about 56% of the amount called for under the

lodestar multiplier ordinarily used in attorney fee calculations. The multiplier calculates payments based on hours of work performed at an attorney's professional fee rates.

Attorneys for the minority stockholders "invested considerable time and effort in both developing and litigating this action," the proposal said. Given the stage of the litigation, the fee request "is well within, and often below, precedent awards."

Counsel for the stockholders and Ellison did not immediately respond to requests for comment Tuesday.

Stockholder John Wear is represented by Michael J. Barry and Vivek Upadhyia of Grant & Eisenhofer PA.

Ellison, Tako and directors named in the suit are represented by Daniel A. Mason, Andrew G. Gordon and Andrew J. Ehrlich of Paul Weiss Rifkind Wharton & Garrison LLP.

AMDI is represented by Dafid J. Teklits of Morris Nichols Arsht & Tunnell LLP and Bruce A. Ericson of Pillsbury Winthrop Shaw Pittman LLP.

The case is John Wear, derivatively, v. Lawrence J. Ellison et al., case number 2021-0839, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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AI Image Co. Hit With \$14.1M Verdict Over Lowball Buyout

By **Dorothy Atkins**

Law360 (February 6, 2024, 9:11 PM EST) -- A California federal jury returned a \$14.1 million verdict Monday in favor of investors alleging AI-imaging software company ArcSoft and its billionaire CEO duped them into selling their shares for less than they were worth by hiding information about the business's success, its move to China and its eventual IPO.

After a day of deliberating, a unanimous jury in Oakland, California, found ArcSoft liable for negligent misrepresentation and concealment, and found ArcSoft's CEO Michael Deng liable for breach of his fiduciary duty, according to the 25-page verdict form.

Jurors also rejected ArcSoft and Deng's affirmative defenses, but they cleared the defendants of other claims of intentional misrepresentation and breach of contract.

The jury awarded investor Marc Chan and his family \$2.815 million in damages, and the family's British Virgin Island-based investment entities Pacific Smile Ltd. \$2.62 million and Strong Wealth Ltd. \$4.271 million — for a total of \$9.07 million in compensatory damages — plus roughly \$5.03 million in prejudgment interest. The added interest reflects a 7% interest rate since October 2017, which is when their shares were purchased, according to the investors' counsel.

The investors' attorney, Howard E. King of King Holmes Paterno & Soriano LLP, said in a statement Tuesday that after four years of a "scorched earth defense by one of the largest law firms in the world," Chan and his family are gratified by the jury's finding of liability on multiple causes of action.

"Mr. Chan has shown remarkable persistence and fortitude to achieve compensation for the fraud perpetrated against him by his former friend Michael Deng and Arcsoft — the company that Mr. Chan financially supported for almost 18 years before having his stock redeemed at an artificially low value as the company covertly pursued its eventual IPO," King said.

Counsel and representatives for the defendants didn't immediately respond to requests for comment Tuesday.

The verdict is the latest development in hotly contested litigation investors launched in 2019, alleging ArcSoft and its top brass duped them into agreeing to a less-than-fair-value buyout offer by omitting certain material information such as quarterly financial reports, audited financials, revenue projections and a fairness opinion.

According to the complaint, the omitted information showed that the company was doing much better financially than the defendants represented to the investors in 2017.

Deng founded the company, which was originally based in Fremont, California, in 1994, and although the business initially made and sold photo processing software for digital cameras, it has since shifted its business model and products to provide software and algorithms to original equipment manufacturers, the suit says. The technology is used in smartphones for 3D sensing, facial and gesture recognition and image processing and correction, as well as for visual processing in self-driving cars, according to the latest rendition of the investors' complaint.

The plaintiffs were early investors in the then-private company, which was called ArcSoft Inc., but in September 2017, they agreed to sell their shares after Deng allegedly told them the company was

insolvent and facing a "dire" situation, when in reality its customer contracts and software downloads were tripling, and it was seeing more than 40% profit margins, according to the complaint.

Unbeknownst to the investors at the time, Deng had already begun transferring the California-based company's IP assets to its Chinese subsidiary, ArcSoft Corp. Ltd., and Deng eventually flipped the corporate structure using a series of complex corporate transactions and made ArcSoft Corp. the parent, and ArcSoft Inc. the subsidiary, the suit alleges.

The investors claim that after they sold their shares, Deng covertly moved the business to China, without notice to the U.S. government and without notifying the Committee on Foreign Investment in the U.S. ArcSoft completed its initial public offering in China in July 2019, and its value quickly grew 30 times greater than the buyout price paid to shareholders in 2017, the suit claims.

After multiple pleading rounds, in November, U.S. District Judge Jeffrey S. White granted the investors summary judgment in part, agreeing that Deng had a duty to disclose certain material information when soliciting votes for the buyout, and the judge accepted some of the alleged omitted information as material — such as Generally Accepted Accounting Principles, or GAAP, financials for the first two quarters of 2017.

However, the judge found that other omitted information, like the more detailed 2016 financial statements, was immaterial, and left the materiality of other items, such as the 2016 audited financial statements and Deng's most recent financial projections for ArcSoft, as a question for the jury.

Judge White also handed the investors a pretrial win on their claims of reliance and whether Deng had a fiduciary duty but said, "the question of whether Deng breached his duty by failing to provide a fairness opinion is a fact question for the jury."

The case went to a jury trial that kicked off last month on Jan. 22, and jurors began deliberations Friday, before returning the verdict against the defense Monday afternoon, according to court documents.

The investors are represented by Howard E. King, John Snow and Tor R. Braham of King Holmes Paterno & Soriano LLP.

ArcSoft and Deng are represented by Michael Yoder, William Pao, Brittany Rogers and Daniel J. Tully of O'Melveny & Myers LLP.

The case is Lei Li et al. v. ArcSoft Inc. et al., case number 4:19-cv-05836, in the U.S. District Court for the Northern District of California.

--Additional reporting by Katryna Perera. Editing by Jeremy Abrams.



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Meta, Snap Want Schools' Social Media MDL Suit Tossed

By **Gina Kim**

Law360 (February 6, 2024, 6:31 PM EST) -- Meta, Snap and other social media giants asked a California federal judge Monday to toss claims by schools and local governments over expenses incurred addressing the purported harms to students from the addictive features of their platforms, arguing the claims are barred by the First Amendment and the Communications Decency Act.

In an 80-page filing, attorneys for Meta Platforms, TikTok, Snap, YouTube and Google urged U.S. District Judge Yvonne Gonzalez Rogers to toss a Dec. 18 consolidated master complaint filed by school districts asserting public nuisance, negligence and other claims against Google, YouTube, TikTok, Snap and Meta, which claims that elements of their respective products and services are harming students and community residents.

Monday's motion said that the schools are asking the judge to "create near-limitless liability" by trying to hold interactive online communication service providers, like the defendants, responsible for anyone who had a bad experience online.

In essence, the schools allege that the companies' communication services caused their students to be distracted, tough to educate or disruptive, and that the schools incurred increased costs to take away devices, repair vandalism on property, hire and train additional staff to address students' mental health, and investigate and prosecute crimes, the companies said.

However, Section 230 of the Communications Decency Act and the First Amendment bar the school districts' claims, as the majority of them allege injuries that are premised on the products' features, which the court already said were protected, the motion said.

"Because Section 230 bars individual users' claims that those features harmed them, it likewise bars the school districts' claims to have expended resources to respond to those harms," the motion said. "Extending tort liability beyond the alleged victims (students) to third parties who allegedly incurred costs to render aid to those alleged victims (school districts and local governments) would be an unwarranted expansion of the law."

Interactive communication service providers are also free to make decisions on what content users are allowed to publish on their respective platforms. The companies can also choose what to remove, moderate, restrict, regulate or boost, which are decisions that are protected under the First Amendment, the motion said.

That means the schools cannot demand that the companies implement age verification and parental control policies on their platforms, the defendants argued. Multiple district courts, including the Northern District of California, have decided it would be illegal to require the defendants to impose such systems that the schools are seeking in the litigation, the motion said.

"Courts and governments lack 'the power to prevent children from hearing or saying anything without their parents' prior consent,' and the Supreme Court has explained that such laws functionally 'impose governmental authority, subject only to a parental veto,'" the defendants argued.

Nor can the schools and government entities indirectly recover damages based on alleged injuries inflicted upon students and community residents because the plaintiffs do not allege a proximate link between the defendants' conduct and the alleged harms, the motion said.

Furthermore, the alleged harms to students do not affect all members of the public or even all youth users equally, the companies pointed out.

"As the Oklahoma Supreme Court recently explained in a suit involving the opioid crisis, permitting 'nuisance liability for manufacturing, marketing or selling products' would have widespread adverse consequences," the motion said. "[W]ill a sugar manufacturer or the fast food industry be liable for obesity, will an alcohol manufacturer be liable for psychological harms, or will a car manufacturer be liable for health hazards from lung disease to dementia or for air pollution[?]"

Monday's dismissal bid is the latest in the sprawling multidistrict litigation involving 34 states, local governments, school districts and other plaintiffs who accuse the defendants of failing to warn underage users and their parents about the risks of addiction and potential causes of mental health issues, including suicidal ideation, self harm and eating disorders.

Last month, plaintiffs who alleged their children suffered personal injuries due to Meta's addictive design argued that founder Mark Zuckerberg should not be allowed to escape the litigation as he put "profits over safety" and repeatedly ignored employee requests to invest in measures that would support the well-being of youth on Facebook and Instagram.

On Monday, attorneys general from 34 states that sued Meta and others under their respective consumer protection statutes fought Meta's dismissal bid, arguing Meta cannot hide behind Section 230 since the states only want to hold Meta liable for its own conduct, not that of third parties. Meta was also aware that there were users under 13 on its platforms, the states alleged.

Furthermore, the states' unfair and deception claims are premised on Meta's involvement as a designer, advertiser and promoter of its services and Meta's conduct related to its products' design features, Monday's opposition said.

In a statement to Law360 on Tuesday, Lexi Hazam of Lieff Cabraser Heimann & Bernstein LLP and Previn Warren of Motley Rice LLC, court-appointed lead plaintiffs counsel, said that Big Tech knows that products like Snapchat, TikTok and Instagram are addictive and dangerous, "yet has marketed them to kids anyway."

"That hasn't only impacted families, it has impacted school districts," the lead plaintiffs' counsel statement reads. "They face serious financial and resource disruptions, and their educational mission has been interfered with, because of these poorly designed products. Defendants' latest motion to dismiss again falsely asserts that this multidistrict litigation seeks to regulate the speech and content on their platforms. But, as we've explained and as the Court has already held, that's plainly incorrect. We take issue with Defendants' harmful product design. We believe this motion should be denied, and we will continue to hold Big Tech accountable for their role in knowingly contributing to a widespread mental health crisis, which they have not sufficiently addressed."

Representatives for the defendants did not immediately respond to inquiries seeking comment Tuesday.

Meta, TikTok, Snap, YouTube, Google and Alphabet are represented by attorneys from Covington & Burling LLP, King & Spalding LLP, Faegre Drinker LLP, Munger Tolles & Olson LLP, Williams & Connolly LLP, and Wilson Sonsini Goodrich & Rosati PC.

The school district and governmental entities are represented by attorneys from Lieff Cabraser Heimann & Bernstein LLP, Seeger Weiss LLP, Motley Rice LLC, Kessler Topaz Meltzer Check LLP, and Wagstaff & Cartmell LLP.

The case is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bonnie Eslinger. Editing by Vaqas Asghar.



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Ex-Lawyer Can Lead £1.3B Amazon Class Action In UK

By **Eddie Beaver**

Law360, London (February 6, 2024, 7:20 PM GMT) -- The Competition Appeal Tribunal has ruled that consumer rights advocate Robert Hammond is the most suitable representative to bring a class action worth an estimated £1.3 billion (\$1.6 billion) against Amazon over alleged breaches of competition law.

The specialist competition court decided Monday that former solicitor Hammond's opt-out claim had a preferable methodology for proving abuse and quantifying the overall loss suffered by consumers, compared with that of Julie Hunter, who brought similar proceedings against Amazon.com Inc. and its companies.

The tribunal said it is the first time it has heard a carriage issue — where more than one applicant seeks to act as the class representative for the same or similar claims — as a preliminary matter in advance of deciding whether to allow the claim to proceed.

Hammond and Hunter both alleged that Amazon customers suffered substantial losses because of the way Amazon selects which products are displayed in its "Buy Box" service, which promotes a "feature offer" for each product, according to the ruling.

The algorithm that chooses the offer favors products using Amazon's logistics services and offers from the company's own retail division, according to Hammond and Hunter's court filings. Amazon denies the allegations.

Hunter, chair of the Consumer and Public Interest Network, an independent organization, sought to bring a consumer collective action for up to £753 million on behalf of anyone who lives in the U.K. and has made purchases on Amazon.co.uk or on the Amazon app between November 2016 and November 2022.

However, the CAT decided to stay Hunter's application because Hammond's used a "preferred methodology" in establishing the loss suffered on a class-wide basis.

Hammond and Hunter each brought experts to make substantial criticisms of the other's methodology, but the tribunal noted "neither was successful in persuading us that the other was inevitably bound to fail."

The tribunal found that Hammond's economic expert was "clear as to his methodology" that was "sufficiently workable" and considered how to overcome difficulties that may arise in calculating loss.

The CAT said that it could not differentiate the two class applications based on the alleged market dominance, because it was "impossible" to suggest one action had framed the allegations better than the other.

Likewise, although the start and end date of the claims were different, each party acknowledged they were likely to need to change these periods and therefore these differences were also not significant.

The CAT said that if Hammond's application for certification fails, it would be prepared to consider lifting the stay of Hunter's proceedings.

Hunter is represented by Marie Demetriou KC and Sarah Love of Brick Court Chambers and Tom Coates of Blackstone Chambers, instructed by Aqeel Kadri of Hausfeld LLP.

Hammond is represented by Philip Moser KC and Ben Rayment of Monckton Chambers, instructed by Steve Berman of Hagens Berman EMEA LLP and Rodger Burnett of Charles Lyndon Ltd.

Amazon.com Inc. is represented by Jon Turner KC of Monckton Chambers, instructed by Herbert Smith Freehills LLP.

The cases are Julie Hunter v. Amazon.com Inc. and others and Robert Hammond v. Amazon.com Inc. and others, case numbers 1568/7/7/22 and 1595/7/7/23, in the Competition Appeal Tribunal.

--Additional reporting by Sophia Dourou. Editing by Helen Corbett.

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JPML Consolidates Suboxone Dental Decay Suits In Ohio

By **Ryan Harroff**

Law360 (February 6, 2024, 7:19 PM EST) -- The Northern District of Ohio will host consolidated cases brought against Indivior, Reckitt Benckiser and others alleging the companies failed to warn users of opioid addiction treatment Suboxone that it causes dental decay, according to an order from the U.S. Judicial Panel on Multidistrict Litigation joining 15 suits.

Ten cases already in the Northern District of Ohio were consolidated with suits from Georgia, Illinois and North Dakota in the judicial panel's Friday order, and on Monday a panel clerk put in a conditional transfer order for another eight cases from as many states, including Florida, New York and Pennsylvania, that may also be consolidated should U.S. District Judge J. Philip Calabrese approve their transfer to his court.

The complaints were brought by patients who used Suboxone in its dissolvable film form and suffered significant damage to their teeth allegedly caused by the product. The suits say that the drug is acidic and harms a user's teeth when dissolved and that despite being informed of the potential risks to people's oral health, the companies behind the product failed to update the label on the medication to warn users of the potential side effect.

Those companies include Indivior PLC and its subsidiaries, multiple Reckitt Benckiser Group PLC units and Aquestive Therapeutics Inc., all of whom are or at one point were involved in the production and distribution of Suboxone.

Indivior recently avoided facing a separate multidistrict litigation over Suboxone with a **\$385 million deal** to resolve claims that it introduced the dissolvable film version of the opioid addiction treatment in order to skirt around antitrust protections and prevent generics from hitting the market.

Ashlie Sletvold, who represents plaintiffs in eight of the 15 consolidated cases, expressed her and her clients' agreement with the judicial panel's decision to join the dental decay suits in a Tuesday email to Law360.

"Plaintiffs are pleased that the panel consolidated the Suboxone film cases as we proposed," Sletvold said. "We look forward to giving those harmed by this product their day in court."

According to the panel's order, the Indivior entities and the Reckitt units also supported the consolidation order, though the Reckitt companies had unsuccessfully argued that the panel should wait to join the cases together until after their arguments that certain courts lacked personal jurisdiction over them were resolved.

The panel wrote in its order that Reckitt's jurisdictional objection to centralization was "not well taken" and noted that there was ample precedent from multiple rulings to indicate that Judge Calabrese can rule on the British company's jurisdiction arguments after the consolidation.

Counsel for the companies did not immediately reply to requests for comment Tuesday.

The companies are represented by Denise A. Dickerson of Sutter O'Connell Co., Randall L. Christian of Bowman & Brooke LLP and Sheryl M. Arrigo of Donohue Brown Mathewson & Smyth LLC.

The plaintiffs are represented by counsel from Peiffer Wolf Carr Kane Conway & Wise, Childers

Schlueter & Smith LLC, Flint Cooper LLC, Product Injury Legal Group LLC, Breit Biniazan Personal Injury Attorneys, Wexler Wallace LLP, Wallace Miller, Johnson Becker PLLC, Herzfeld Suetholz Gastel Leniski & Wall PLLC and DiCello Levitt.

The MDL is IN RE: Suboxone (Buprenorphine/Naloxone) Film Products Liability Litigation, case number 1:24-md-03092, in the U.S. District Court for the Northern District of Ohio.

The consolidated cases are Jackson v. Indivior, Inc., et al., case number 5:23-cv-00425, in the U.S. District Court for the Middle District of Georgia, Lonask v. Indivior, Inc., et al. and Anderson v. Indivior, Inc., et al., case numbers 1:23-cv-15300 and 1:23-cv-15323, in the U.S. District Court for the Northern District of Illinois, Johnson v. Indivior, Inc., et al., case number 3:23-cv-03483, in the U.S. District Court for the Southern District of Illinois, Trottier v. Indivior, Inc., et al., case number 3:23-cv-00220, in the U.S. District Court for the District of North Dakota and Sorensen v. Indivior, Inc., et al., Graham v. Indivior, Inc., et al., Badalamenti v. Indivior, Inc., et al., King v. Indivior, Inc., et al., Pietro v. Indivior, Inc., et al., Badalamenti v. Indivior, Inc., et al., Schie v. Indivior, Inc., et al., Miller v. Indivior, Inc., et al., Zubal v. Indivior, Inc., et al. and Bennett v. Indivior, Inc., et al., case numbers 1:23-cv-01855, 1:23-cv-01865, 1:23-cv-01876, 1:23-cv-01924, 1:23-cv-02021, 1:23-cv-02022, 1:23-cv-02024, 1:23-cv-02026, 1:23-cv-02081 and 3:23-cv-02148, all in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Matthew Santoni. Editing by Emily Kokoll.

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Rust-Oleum Customers Get Class Cert. In Greenwashing Suit

By **Madeline Lyskawa**

Law360 (February 6, 2024, 2:34 PM EST) -- Rust-Oleum customers secured class certification in litigation accusing the company of greenwashing its degreaser products with the terms "non-toxic" and "Earth friendly," shortly after a California federal magistrate judge denied the company's attempt to exit the false advertising case.

U.S. Magistrate Judge Laurel Beeler granted the customers' motion for class certification, saying in an order on Monday that the proposed class is sufficiently large, based on the number of California residents who purchased Rust-Oleum's Krud Kutter cleaning products, and despite the company's contentions otherwise, questions of law or fact common to the class exist.

"Numerous courts have recognized that a claim concerning alleged misrepresentations on packaging to which all consumers were exposed is sufficient to satisfy the commonality requirement because it raises the common question of whether the packaging would mislead a reasonable consumer." *Broomfield v. Craft Brew All., Inc.* ... This requirement is also met," the magistrate judge said.

The magistrate judge appointed Anthony Bush as class representative and his counsel, Clarkson Law Firm and Moon Law APC, as class counsel.

Bush, the customer behind the suit, first sued Rust-Oleum in 2020, accusing the company of misleadingly labeling and thereby greenwashing several of its grease, stain remover and concentrated cleaner products with the terms "non-toxic" and "Earth friendly," despite containing ingredients that pose a risk of harm to the environment, humans and animals.

Rust-Oleum moved for summary judgment in mid-May 2023, asserting Bush's interpretation of the products' claims is atypical and without support, pointing out that Bush's theory of toxicity is disclosed on the front labels, which warn, "Caution: Eye and Skin Irritant" next to "non-toxic."

But unpersuaded by the company's argument, Judge Beeler **denied Rust-Oleum's summary judgment motion** in late January, saying "genuine disputes of fact remain on all issues." Less than two weeks later, the magistrate judge granted Bush's motion seeking certification of a proposed class of California residents who purchased Rust-Oleum's Krud Kutter cleaning products within the four years before he filed suit.

In her Monday order, Judge Beeler said Bush and his proposed class have met all the prerequisites for attaining class certification, including numerosity, commonality, typicality and adequacy, among others. The magistrate judge rejected Rust-Oleum's argument that the proposed class lacks commonality because, despite Bush's attempt to define "non-toxic" and "Earth friendly" as meaning its products carry no risk to humans or the environment, the reasonable consumer knows otherwise.

Instead, Judge Beeler noted that courts have rested on the notion that the commonality requirement is a "low threshold," saying "a common, dispositive question — even if it might ultimately be resolved against the plaintiff — is itself sufficient." Additionally, evidence of a reasonable consumer's understanding of the claims' meaning is not required to establish that the common question is "capable of class-wide resolution," the magistrate judge said.

As for the company's remaining arguments against class certification, Judge Beeler said the proposed class has established typicality and adequacy because Bush's allegations of deception, materiality and

harm are all typical of the class as a whole, and his credibility about whether he actually purchased a Krud Kutter product has not been sufficiently called into question. Furthermore, Judge Beeler said Bush's proposed class is not overbroad and that he has shown a class action is the superior method for adjudicating the dispute.

Representatives for the parties did not immediately respond to requests for comment on Tuesday.

Bush is represented by Ryan J. Clarkson, Katherine A. Bruce and Kelsey J. Elling of Clarkson Law Firm PC and Christopher D. Moon and Kevin O. Moon of Moon Law APC.

Rust-Oleum is represented by Anthony J. Monaco, P. Stephen Fardy, William D. Patterson and Bryan E. Rogers of Swanson Martin & Bell LLP and Karen M. Sullivan of Manning Gross & Massenburg LLP.

The case is Bush v. Rust-Oleum Corp., case number 3:20-cv-03268, in the U.S. District Court for the Northern District of California.

--Additional reporting by Gina Kim. Editing by Patrick Reagan.



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Toyota Sued For Fraud Over Maintenance Plan's Value

By **Henrik Nilsson**

Law360 (February 6, 2024, 6:51 PM EST) -- Toyota allegedly deceived thousands of customers by falsely claiming its maintenance plan had a "superior value" to paying for each service individually, according to a proposed class action filed in California federal court Monday.

Teresa Solis alleges she paid \$1,025 for Toyota Motor Sales USA Inc.'s maintenance plan after the company told her she would save at least \$875 in service costs. But following several repairs under the plan, Solis claims she would only have spent between \$800 and \$900 if she paid for each service individually.

The suit also names Toyota's auto-financing arm Toyota Motor Credit Corp. The complaint includes claims for unjust enrichment, fraud, breach of contract and negligent misrepresentation. Solis also alleges violations of the Magnuson-Moss Act, the Lanham Act and California's business and professions code.

Toyota advertises the plan "under the false premise that the maintenance plan is a superior value and lower-cost alternative to paying for each scheduled service individually at the time of service," Solis alleges.

"By making false, fraudulent, and misleading statements to consumers, [the] defendants made substantial profits and deceived thousands of consumers, including [the] plaintiff, who purchased the maintenance plan under the false belief that it was a good value and would save them money," she added.

Solis says she bought the plan alongside a new car she purchased in 2020 from a Toyota dealership in Santa Margarita, California. The plan cost \$1,025 and would cover her vehicle for five years or up to 55,000 miles, allowing her to bring it into the dealership for regular maintenance, which would occur every 5,000 thousand miles, according to the complaint.

Toyota told Solis the plan's value was \$1,900 given that regular service typically costs \$100 and major services cost \$400, she claims.

But when Solis brought the car in, she realized maintenance was being performed ahead of schedule or skipped entirely. She also claims the company exaggerated how much scheduled services ordinarily cost to artificially inflate the value of the maintenance plan.

In one instance, Toyota performed major service maintenance usually done when the car has reached 30,000 miles, even though she had accrued only 20,000 miles, Solis said. Additionally, the dealership billed Toyota \$210 for the major service: \$190 less than the \$400 the carmaker told Solis such a service would cost, according to the suit.

Solis alleges this pattern continued for future services, and when she confronted Toyota representatives about the issue, they falsely told her that everything was done according to the plan.

"At the end of the maintenance plan, [the] plaintiff realized that if she had paid out-of-pocket each time she brought her car in for service, she would have only paid between \$800 and \$900 — less than the total price she paid for the maintenance plan," Solis alleges.

Solis also claims she received fewer services than she was sold because Toyota performed maintenance ahead of schedule.

Solis seeks to represent a nationwide class and a California subclass of consumers who purchased the plan within 90 days of buying a Toyota vehicle. She also asks for statutory and punitive damages, disgorgement of profits and injunctive relief.

Counsel and representatives for the parties did not immediately return a request for comment.

Solis is represented by John Ternieden, Christopher R. Rodriguez, Andrew D. Bluth and Trent Nelson of Singleton Schreiber LLP.

Counsel information for Toyota was not immediately available.

The case is Teresa Solis et al. v. Toyota Motor Sales USA Inc. et al., case number 2:24-cv-00980, in the U.S. District Court for the Central District of California.

--Editing by Caitlin Wolper.

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