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<https://www.wsj.com/tech/apple-to-pay-490-million-to-settle-lawsuit-over-tim-cooks-china-comments-e58cb689>

TECHNOLOGY

Apple to Pay \$490 Million to Settle Lawsuit Over Tim Cook's China Comments

Plaintiffs said Apple misled investors in 2018 by hiding weak China demand; company denied wrongdoing

By [Joseph De Avila](#) [Follow](#)

March 15, 2024 1:54 pm ET



Apple CEO Tim Cook arrived at an event for Apple Vision Pro headset in New York City earlier this year.
PHOTO: MICHAEL M. SANTIAGO/GETTY IMAGES

Apple **AAPL -1.11% ▼** has reached a \$490 million settlement in a class-action lawsuit brought by investors who said the company concealed falling demand for the iPhone in China in 2018.

The iPhone maker and the plaintiffs filed the proposed settlement Friday in U.S. District Court in Northern California. Judge Yvonne Gonzalez Rogers still has to approve it.

Apple denied any wrongdoing in the settlement agreement and said it settled to avoid a protracted and costly legal fight. Apple declined to comment further.

Shawn Williams, a lawyer for the plaintiffs, said the settlement was a terrific outcome for shareholders.

Apple earned \$97 billion in its most recent fiscal year ending in September. That means the dollar amount in Friday's settlement is equivalent to less than two days worth of the company's annual profit.

Norfolk County Council, the administering authority of the Norfolk Pension Fund in the U.K. and the lead plaintiff in the lawsuit, filed the complaint in 2019. It alleged Apple violated federal securities law by making false and misleading statements about the company's performance in China.

During a conference call with analysts in November 2018, Apple CEO Tim Cook said the company's iPhone sales were facing challenges in countries such as Turkey, India, Brazil and Russia. "I would not put China in that category. Our business in China was very strong last quarter," Cook said at the time.

Apple also said at the time it would stop providing unit-sales data for iPhones and other products. The company said the number of units sold in a 90-day period wasn't necessarily representative of the underlying strength of the business and pointed to Apple's financial strength in recent years.

In early January 2019, Apple disclosed that its iPhone business in China was struggling and slashed its quarterly revenue projection for the first time in more than 15 years. Shares fell 10% following the announcement, which wiped out nearly \$75 billion in market value.

The plaintiffs said Apple knew it was performing poorly in China and should have disclosed that earlier. "Apple's business metrics and financial prospects were not as strong as defendants had led the market to believe," the plaintiffs said.

Apple's has recently attempted to become more competitive in China by offering rare discounts for iPhones in the world's largest smartphone market. But sales in China have been slumping for Apple. As of early March, Apple was in fourth place in share of smartphone sales in China, according to data from research firm Counterpoint. Smartphone maker Vivo occupies the top spot.

Write to Joseph De Avila at joseph.deavila@wsj.com

Apple reaches \$490 mln settlement over CEO Cook's China sales comments

 [reuters.com/legal/apple-reaches-490-million-settlement-with-shareholders-over-china-sales-comments-2024-03-15](https://www.reuters.com/legal/apple-reaches-490-million-settlement-with-shareholders-over-china-sales-comments-2024-03-15)

Jonathan Stempel



People look at the new iPhone 15 Pro as Apple's new iPhone 15 officially goes on sale across China at an Apple store in Shanghai, China September 22, 2023. REUTERS/Aly Song/File Photo Purchase Licensing Rights , opens new tab

March 15 (Reuters) - Apple (AAPL.O) , opens new tab agreed to pay \$490 million to settle a class-action lawsuit that alleged Chief Executive Tim Cook defrauded shareholders by concealing falling demand for iPhones in China.

A preliminary settlement was filed on Friday with the U.S. District Court in Oakland, California, and requires approval by U.S. District Judge Yvonne Gonzalez Rogers.

It stemmed from Apple's unexpected announcement on Jan. 2, 2019 that the iPhone maker would slash its quarterly revenue forecast by up to \$9 billion, blaming U.S.-China trade tensions.

Cook had told investors on an Nov. 1, 2018, analyst call that although Apple faced sales pressure in markets such as Brazil, India, Russia and Turkey, where currencies had weakened, "I would not put China in that category."

Apple told suppliers a few days later to curb production.

The lowered revenue forecast was Apple's first since the iPhone's launch in 2007. Shares of Apple fell 10% the next day, wiping out \$74 billion of market value.

Apple and its lawyers did not immediately respond to requests for comment on the ruling.

The Cupertino, California-based company denied liability, but settled to avoid the cost and distraction of litigation, court papers show.

Shawn Williams, a partner at Robbins Geller Rudman & Dowd representing the shareholders, called the settlement an "outstanding result" for the class.

The settlement covers investors who bought Apple shares in the two months between Cook's comments and the revenue forecast.

Apple posted \$97 billion of net income in its latest fiscal year, and its payout equals a little under two days of profit.

Last June, Rogers refused to dismiss the lawsuit.

She found it plausible to believe Cook had been discussing Apple's sales outlook and not currency changes, and said Apple knew China's economy was slowing and demand could fall.

The lead plaintiff is the Norfolk County Council as Administering Authority of the Norfolk Pension Fund, located in Norwich, England.

Lawyers for the shareholders may seek fees of up to 25% of the settlement amount.

Apple's share price has more than quadrupled since January 2019, giving the company a more than \$2.6 trillion market value.

The case is In re Apple Inc Securities Litigation, U.S. District Court, Northern District of California, No. 19-02033.

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Reporting by Jonathan Stempel in New York; Editing by Jason Neely, Jane Merriman and Alexander Smith

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Apple Inc

Apple reaches \$490mn settlement over Tim Cook's China demand comments

Investors claimed chief executive misled them during an earnings call in 2018



Apple chief executive Tim Cook. Since the Covid-19 pandemic, the company has not offered formal guidance in its quarterly earnings statements © AFP/Getty Images

Michael Acton in San Francisco AN HOUR AGO



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Apple has agreed to pay \$490mn to settle a class action accusing chief executive Tim Cook of misleading investors in 2018 by exaggerating demand for the iPhone in China.

Investors claimed [Cook](#) overstated demand for Apple's products in the country on a November 2018 earnings call, only for the company's stock to fall almost 10 per cent in January 2019 when it said it would miss its revenue guidance by as much as \$9bn.

[Apple](#) declined to comment on Friday. It has denied violating US securities law.

The settlement still requires approval from the California federal judge overseeing the case. According to data from Deutsche Börse-owned Institutional Shareholder Services, it would mark Apple's largest US securities fraud class action settlement.

The years-long securities litigation, led by the UK's Norfolk County Council, came after a rare and [unexpected warning](#) Apple issued on Chinese sales in January 2019. It was the first cut to Apple's revenue forecast in 16 years, and sent its shares sliding.

At the time, China's overall economic growth was slowing amid a trade war with the US administration of Donald Trump. The investors suing Apple claimed that Cook had downplayed concerns about China, citing a "strong" recent quarter in the region.

They further claimed that on the same call Cook overstated the success of new iPhone models, only to start cutting production days later.

The settlement highlights the legal risks companies face when issuing revenue guidance. Since the Covid-19 pandemic, Apple has not offered formal guidance in its quarterly earnings statements, and its overall approach to disclosures has drawn some criticism for a lack of transparency with investors.

Last month two of Apple's biggest shareholders backed a motion requiring it to disclose more detail about its work in the artificial intelligence space and the risks arising from it. The motion failed to pass.

"Apple has a pattern of increasingly non-transparent disclosure practices, and we rate them worst in class in terms of quality of disclosure among the major tech platforms," said Nicholas Rodelli at CFRA Research, pointing to Apple's decision to stop disclosing iPhone unit sales in 2018.

Gene Munster at Deepwater Asset Management said he was surprised by Apple's decision to settle the case, given companies commonly offer commentary on market trends. Such lawsuits act as a further disincentive for companies like Apple to offer forward-looking guidance, he said: "I think at the end of the day it's a win for a small number of investors and a loss for the whole market."

The settlement comes as Apple once again faces uncertainty over iPhone sales in China amid US-China geopolitical tensions and growing smartphone competition from Huawei.

English council wins £400m payout from Apple

 [telegraph.co.uk/business/2024/03/15/uk-council-wins-400m-payout-apple](https://www.telegraph.co.uk/business/2024/03/15/uk-council-wins-400m-payout-apple)

James Titcomb



An English council has won a \$490m (£384m) legal victory against Apple over claims the tech giant exaggerated demand for its iPhones.

Apple has agreed to pay shareholders the sum after settling with Norfolk County Council, which led a class action lawsuit against the company.

The settlement comes after a five-year lawsuit claiming Apple's chief executive Tim Cook had misled shareholders by neglecting to identify a downturn in demand in China weeks before a dramatic profit warning in 2019.

The case was originally brought against Apple, Mr Cook, and chief financial officer Luca Maestri by the US city of Roseville. Norfolk Council, which administers the £4.9bn Norfolk Pension Fund, took over the lawsuit as lead plaintiff in 2020.

The payout is set to be shared by investors who apply for damages and say they were affected by Apple allegedly misleading investors. It is unclear how much the Norfolk pension fund itself will receive.

The lawsuit had claimed that Mr Cook misled shareholders as Apple faced a drop in demand after the release of the iPhone XS and XR in 2018.



Apple was alleged to have underplayed a drop in demand among Chinese customers for the company's iPhone XS and XR Credit: VCG/VCG via Getty Images

Mr Cook said in late 2018 that while Apple was “seeing pressure” in some emerging markets, “I would not put China in that category”.

Two months later Apple unveiled a rare profit warning that blamed weakness in China, leading to shares being briefly suspended and \$55bn being wiped off the company's value.

Apple and its executives had challenged the case ahead of a trial, which had been scheduled for later this year. Dozens of Apple emails had been released as part of the lawsuit discussing the company's business in China, while executives had been questioned ahead of the case.

In legal filings, lawyers for Norfolk Council say the settlement “is a tremendous result” and the third-largest amount recovered in a class action of this type in Northern California.

They said that Apple continues to deny it had violated US stock market rules or misled investors.

“Defendants have expressly denied and continue to deny that they have violated the federal securities laws or any other laws, or have otherwise misled investors as alleged in this Action, but in recognition that further litigation will be protracted, overly burdensome, expensive, and distracting, have determined that it is desirable and beneficial for them to resolve the action,” the filings said.

Lawyers will receive up to 25pc of the payout, which will now have to be approved by a judge.

Apple and Norfolk County Council were contacted for comment.

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March 15, 2024, 9:45 AM PDT

Apple, Investors Reach \$490 Million Settlement in Fraud Case (1)

By Lynn Doan

Bloomberg Law News 2024-03-15T13:57:2194013159-04:00

Apple, Investors Reach \$490 Million Settlement in Fraud Case (1)

By Lynn Doan2024-03-15T12:45:17720-04:00

Apple Inc. reached a \$490 million settlement of a class-action lawsuit brought by a group of investors who accused Chief Executive Officer **Tim Cook** of misleading them in 2018 about the company’s sales prospects.

Cook made false statements about the company’s [business in China](#) that caused Apple stock to trade at artificially inflated prices, the investors said in their complaint, which alleged violation of securities laws. Lawyers disclosed the proposed settlement in a request for judicial approval filed Friday in federal court in Oakland, California.

The settlement comes as Apple continues to face headwinds in China, where iPhone sales [fell](#) by a surprising 24% over the first six weeks of this year, according to independent research released earlier this month. Attorneys for the investors described the settlement as the third-largest securities class-action recovery in the district’s history.

Apple denied any violation of law, but said in the filing it agreed to the settlement “in recognition that further litigation will be protracted, overly burdensome, expensive, and distracting.”

Apple shares were down 1.1% on Friday amid a broader pullback in the stock market.

The case is Apple Inc. Securities Litigation, 19-cv-2033, US District Court, Northern District of California (Oakland).

(Adds additional detail from filing in fourth paragraph)

To contact the reporter on this story:
Lynn Doan in San Francisco at ldoan6@bloomberg.net

To contact the editors responsible for this story:
Lynn Doan at ldoan6@bloomberg.net

Steve Stroth, Rob Golum

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Apple will surrender less than a day of earnings to satisfy class action suit

ai appleinsider.com/articles/24/03/15/apple-will-surrender-less-than-a-day-of-earnings-to-satisfy-class-action-suit

William Gallagher



William Gallagher | Mar 15, 2024

Tim Cook's comment cost Apple \$61 million per word



The class action lawsuit accusing Tim Cook of misleading investors over falling sales in China has been settled for half a billion dollars.

It's now almost six years since Tim Cook confirmed in a late 2018 earnings call that there were countries where iPhone sales were down, but "I would not put China in that category." However, within days of the call, Apple allegedly then told suppliers to reduce production.

Then in early 2019, Apple took the unusual step of revising its revenue guidance down

because of lower iPhone sales in China.

As leader of the class action suit, the UK's Norfolk County Council, alleges that Cook and Apple should have foreseen the economic downturn that so affected its sales of the iPhone in the region. Consequently, the suit argued that Cook deliberately withheld pertinent information, leading to investors losing billions of dollars as the stock dropped by \$74 billion.

According to *Reuters*, Apple has settled. Apple has agreed to pay \$490 million to investors who bought shares between Cook's comments and Apple's subsequent revision of its guidance.

Apple's position throughout was that Cook's comments were solely a statement of opinion. Apple's lawyers have previously argued that the lawsuit "fails to plead any actionably false or misleading statement."

Nonetheless, in 2020, US District Judge Yvonne Gonzalez Rogers agreed a lawsuit could be filed. She said that Apple's argument Tim Cook was unaware of an impact on China sales "strains credulity." In 2022, the lawsuit then officially gained class action status.

Apple next attempted to get the lawsuit overturned in 2023, but Judge Gonzalez summarized the company's arguments as "distortions."

The \$490 million payout

A preliminary settlement of \$490 has been filed with the court, and must be approved by Judge Gonzales. According to *Reuters*, lawyers representing the shareholders may seek fees of up to \$122 million.

In total, Cook's eight-word comment has cost Apple around \$61 million per word. It's also 7.8 times Tim Cook's official annual salary of \$63.2 million for fiscal year 2023. Then based on the EverySecond site, the \$490 million fine is equal to about 16 hours of Apple sales.

Consequently, given that Cook led Apple into becoming the first company to reach a \$2

trillion market cap, he's unlikely to be facing a frosty HR interview.

However, the point is that he won't be facing a judge any more, either. Apple continues to deny any liability, and says that the settlement is to avoid the cost and distraction of a trial.

As to whether Cook lied or not, Apple of course continues to say that he didn't. Shareholders have maintained that he did, and so now their representative — Shawn Williams of Robbins Geller Rudman & Dowd — has described the settlement as an "outstanding result".

The fact that Apple cut supply orders within days of the earnings call in question does raise questions about how promptly the company did — or could have — reacted to falling sales.

Yet Apple's earnings calls are always retrospective, with as little forward-looking statements as the company can get away with. So it seems unlikely that Cook intentionally misled the investors.

William Gallagher has 30 years of experience between the BBC and AppleInsider discussing Apple technology. Outside of AppleInsider, he's best known for writing Doctor Who radio dramas for BBC/Big Finish, and is the De...

County Supervisors approve plan for opioid settlement funds

pajaronian.com/county-opioid-settlement-funds-plan

Todd Guild

March 15, 2024



The Santa Cruz County Board of Supervisors on Tuesday approved a plan to use money from a recent successful lawsuit against the opioid industry to fund programs that will help people addicted to opioid-based drugs.

In all, the county expects to receive \$26 million over 18 years to address the growing need for programs and services.

The money comes from a lawsuit that was settled in 2021 against the nation's three largest pharmaceutical distributors—McKesson, Cardinal Health, and AmerisourceBergen, and against manufacturer Johnson & Johnson.

In 2022, additional agreements with CVS, Walgreens, and Walmart—and two additional manufacturers, Allergan and Teva—brought more funds.

According to county officials, nearly 645,000 people died in the United States from opioid overdoses between 1999 and 2021.

This began with doctors over-prescribing of OxyContin, then for many people evolved into a heroin addiction.

According to Santa Cruz County Health Services Agency (HSA) Director Monica Morales, California saw a 121% spike in opioid deaths between 2019 and 2021.

Santa Cruz County, she said, ranks 13th in the state for opioid deaths.

"That's devastating for our communities," she said. "The need is really dire."

In 2018, Santa Cruz County retained outside counsel Robbins Geller Rudman & Dowd (Robbins Geller) and filed a complaint against 14 opioid manufacturers and distributors, alleging that “they falsely marketed, unlawfully promoted, and dispensed opioids in ways that the industry knew to be dangerous, addictive, and prone to abuse,” the county stated.

The County’s case was combined with thousands of other opioid cases.

HSA’s Director of Substance Use Disorder Services Casey Swank said the county already has a “pretty robust” system of 96 treatment beds for addiction services.

This will expand thanks to the settlement funds, she said.

But Swank pointed out that the funds are not discretionary.

Instead, they must go toward substance use disorder facilities, new or expanded treatment treatment infrastructure, addressing need for such services in communities of color and vulnerable populations.

They can also be used to help people with substance use disorder get into treatment and out of the justice system and provide interventions for young people.

“If we want to change the curve in this epidemic, we need to focus on our youth, and we really need to highlight prevention,” Morales said.

Supervisor Manu Koenig said that the funds are a good start in addressing the growing problem.

“\$26 million dollars over 18 years is a chunk of change, but it’s probably not enough given the size and persistence of the problem, and the cost of treating people once they are addicted to opiates,” he said.

Government's opioid blame-game with Walmart takes huge hit

 legalnewsline.com/stories/656681920-government-s-opioid-blame-game-with-walmart-takes-huge-hit

March 15, 2024

WILMINGTON, Del. (Legal Newsline) - Walmart recently scored a big win in a lawsuit brought by the federal government that attempts to blame the retail giant for the nation's addiction crisis.

Delaware federal judge Colm Connolly on March 11 granted key parts of Walmart's motion to dismiss the lawsuit, which claimed Walmart pharmacists should have noticed and reported possibly improper prescription practices concerning opioids.

In 2022, Walmart had argued a U.S. Supreme Court decision that reversed the conviction of a doctor for writing invalid opioid prescriptions gutted the Department of Justice's case against it.

In that decision, the majority ruled that the federal Controlled Substances Act contains a provision requiring prosecutors to prove guilty knowledge, not just that a doctor violated professional standards by writing opioid prescriptions.

Connolly rejected the idea Walmart violated a "CSA-imposed reporting obligation" on suspicious orders to the Drug and Enforcement Agency. The CSA only empowered the U.S. attorney general to promulgate regulations, it did not require he or she to do so.

"It necessarily follows that the reporting requirements... were not 'required under' the CSA," Connolly wrote. "Thus, a failure to comply with the reporting requirements... during the Distribution Violations Period was not unlawful... and did not trigger civil penalties..."

He also rejected the idea Walmart's pharmacists strayed from the usual course of their professional practice when filling opioid requests.

"This liability theory trips right out of the gate," Connolly wrote, adding pharmacists could only violate the two pertinent laws if he or she dispenses a controlled substance without a prescription.

The third claim he dismissed argued Walmart violated certain laws by knowingly dispensing controlled substances pursuant to prescriptions that were not issued in the usual course of treatment or for a legitimate medical purpose.

Citing a 1918 decision from the U.S. Court of Appeals for the Third Circuit, Connolly wrote "at least in some circumstances, the knowledge of a corporation's employee cannot be aggregated with the act of another employee to impose liability on the corporation for

recklessly, willfully, intentionally, purposefully, or with ulterior motive engaging in a prohibited act."

The DOJ filed its 160-page complaint in 2020, and the case was stayed while the Supreme Court addressed two others that would impact it. The government's lawsuit doesn't accuse Walmart of filling any prescriptions by unlicensed doctors, and Walmart called the case a misguided attempt to turn its pharmacists into "DEA's own `doctor police.'"

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March 15, 2024, 10:23AM PDT

JPMorgan Board Gets Message Apps-Based Fraud Claim Thrown Out

By Ben Miller

Documents

Order

Docket

- Judge dismisses fiduciary breach claim, with leave to amend
- Federal court won't exercise jurisdiction over state claims

Bloomberg Law News 2024-03-15T13:58:17110448209-04:00

JPMorgan Board Gets Message Apps-Based Fraud Claim Thrown Out

By Ben Miller 2024-03-15T13:23:09000-04:00

Judge dismisses fiduciary breach claim, with leave to amend

Federal court won't exercise jurisdiction over state claims

JPMorgan Chase & Co. directors won't have to face the allegation they fraudulently concealed issues with employees' communications on personal email, text message, and WhatsApp, but the shareholder can refile the derivative claim and pursue state law allegations, a US judge ruled.

Lase Guaranty Trust, a JPMorgan shareholder, alleged that certain members of the investment bank's board filed a misleading 2021 proxy statement that touted the company's compliance but omitted the widespread use of unapproved communications channels.

The plaintiff, however, didn't make a demand on the board before filing the derivative complaint and failed to state its Securities Exchange Act claim, according to Judge Eric R. Komitee's ruling Thursday in US District Court for the Eastern District of New York.

JPMorgan settled books-and-records charges brought by the Securities and Exchange Commission and Commodity Futures Trading Commission in 2021 for a combined \$200 million in civil penalties.

Several months before the settlements were reached, the director defendants, including chairman and CEO Jamie Dimon, sought shareholder approval for reelection and compensation in the allegedly misleading proxy statement, according to the shareholder derivative complaint.

https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/XAA2G2P0000000?bc=W1siU2VhcmNoICYgQnJvd3NlIiwiaHR0cHM6L...

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The allegations that the company's directors failed to disclose the company's recordkeeping violations regarding the unapproved communications failed because Lase Guaranty didn't show a material misstatement or omission in the proxy, Komitee said in the order.

The disclosures that the federal fraud claim relies upon are more generic than the corrective disclosures in the SEC and CFTC settlements, and the alleged omission of any information about off-channel communications at JPMorgan is not actionable, the judge ruled.

Komitee declined to exercise supplemental jurisdiction over the suit's Delaware law claims. Lase Guaranty has 30 days to file an amended complaint, he said in his ruling.

JPMorgan didn't immediately respond to a request for comment.

Weiss Law LLP represents the plaintiff, and didn't immediately respond to a request for comment.

Simpson Thacher & Bartlett LLP represents Dimon and Paul, Weiss, Rifkind, Wharton & Garrison LLP represent the other director defendants.

The case is Lase Guaranty Trust v. Bammann , E.D.N.Y., No. 1:22-cv-01331, 3/14/24 .

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: Andrew Harris at aharris@bloomberglaw.com

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JPMorgan Fined \$348 Million for Gaps in Trading Surveillance (2)

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March 14, 2024, 11:21 AM PDT

Sally Bakewell

Bloomberg News

JPMorgan Chase & Co. was fined a total of \$348 million by US regulators over gaps in its trade-surveillance program, which they said failed to monitor conduct of its employees and clients.

The Office of the Comptroller of the Currency fined the bank \$250 million, while the Federal Reserve added a \$98 million penalty, according to statements from the regulators Thursday. Both overseers required the bank to take corrective actions to fix the issues, which they said occurred as recently as last year.

“The consequences of these deficiencies include the bank’s failure to surveil billions of instances of trading activity on at least 30 global trading venues,” the OCC said in its consent order. The bank neither admitted nor denied the OCC’s findings.

A representative for the bank said it doesn’t expect any disruption to client services as a result of the actions.

“As we disclosed last month, we self-identified the issue, significant remedial actions have been taken and others are underway,” the spokesperson said. “We have not found any employee misconduct or harm to clients or the market in our review of the previously uncaptured data.”

The firm had disclosed the expected fines from two US regulators in a mid-February regulatory filing. At that time, the bank also said it was in advanced negotiations with a third US regulator, which it didn’t name.

According to the OCC, JPMorgan’s trade-surveillance program has operated with certain deficiencies since at least 2019. The firm failed to establish adequate governance over trading venues where it’s active, the regulator said, citing gaps in venue coverage and a lack of sufficient data controls.

“These gaps and deficiencies in JPMC’s trade surveillance program constitute unsafe or unsound banking practices,” the OCC said.

The regulator also issued a cease and desist order requiring the bank to take a number of remedial steps. The bank isn’t allowed to add new trading venues without receiving approval from the OCC and must get an independent third party to conduct a trade-surveillance program assessment, the regulator said.

In its own statement, the Fed said the bank’s inadequate monitoring practices occurred between 2014 and 2023.

(Updates with details of additional regulator discussions from sixth paragraph.)

To contact the reporter on this story:

Sally Bakewell in New York at sbakewell1@bloomberg.net

To contact the editors responsible for this story:

Michael J. Moore at mmoore55@bloomberg.net

Daniel Taub

Archegos-Tied Investor Suit Against Banks Weighed by N.Y. Court

news.bloomberglaw.com/product/blaw/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMThlLTNIYmUtZDU4Mi1hZGNmLTNmZmU0YWl3MDAwMSlsmN0eHQiOiJTTE5XliwidXVpZCI6IiVtazNHbFZsb2ZDS3hOSDBEaHFKcHc9PVNLbWszM3JMb2t2dU5BanFEWHdlcWc9PSlslRpbWUiOiIxNzEwNTAxMjg0MDkwiwic2lnIjojMUJWNDI6ZS9TQ1FpKzJXMGtjVXh2dIpRcVNZPSlslYiOiXln0=

- Banks argue trial court decision will upend capital markets
- Judges weigh whether federal securities laws were violated

A New York appeals court is weighing whether to allow ViacomCBS Inc. investors to continue with a lawsuit arguing big banks that underwrote the media company's 2021 secondary stock offerings had conflicting roles that should've been disclosed.

Morgan Stanley, Goldman Sachs, and other banks are challenging a New York Supreme Court decision allowing the investors' case to proceed. Investors say they weren't told that some underwriting banks were also counterparties in Archegos Capital Management swap transactions, a "debilitating conflict" since those banks were preparing to dump Viacom stock as Archegos imploded.

The trial court's decision not to dismiss the lawsuit has raised alarms among banks, who argue it will saddle underwriters with novel duties, causing a sea change in the underwriting process. Morgan Stanley and Goldman have said the decision will upend capital markets.

During arguments Thursday, at least some judges on the five-member panel appeared willing to let the lawsuit continue, at least against banks that both underwrote Viacom's offerings and were involved in the swaps.

"Wouldn't a reasonable investor want to know that the same entities that were the underwriters also had enormous positions in Viacom stock that were the subject of swaps and as a result of this offering, that could very well set off a large sale of that?" Justice Cynthia Kern said.

"That's information that a reasonable investor could arguably want to know when deciding to purchase" the Viacom stock, Kern said.

'Free-Floating' Duty

Camelot Event Driven Fund and Municipal Police Employees' Retirement System filed the lawsuit in November 2021, in the aftermath of Archegos' spectacular collapse, alleging violations of federal securities laws.

A complex type of derivative, swaps let investors make bets on stocks without owning them. Archegos had swap agreements with the trading divisions at various banks, including Morgan Stanley and Goldman Sachs, involving Viacom stock.

During Archegos' meltdown, those banks unloaded their corresponding stock, causing Viacom's stock price to crater, according to court filings. Some of the same banks, including Morgan Stanley and Goldman, were also among the group that underwrote a pair of offerings of Viacom stock that took place the same week, which investors argue was a conflict of interest.

Refusing to dismiss the case, the trial court said the underwriters should've told investors about the Viacom stock held in relation to Archegos swaps. The court said the disclosure obligation reached more than a dozen underwriters, like JPMorgan, that weren't involved with the swaps.

The banks argue the court made up a new "free-floating" duty to investigate and disclose conflicts of interest. Morgan Stanley and Goldman warn the decision will "fundamentally upend the functioning of the capital markets in New York and beyond."

Kannon Shanmugam of Paul Weiss Rifkind Wharton & Garrison LLP, an attorney for Morgan Stanley and Goldman, told the appeals court Thursday that banks have ethical walls set up between underwriters and traders to prevent insider trading and protect client confidences.

"There can be no doubt that a ruling in plaintiff's favor here would severely disrupt that wall, it would blow a hole in it," Shanmugam said.

'Everyone' Liable

The case has drawn interest from law professors, industry groups, and ex-SEC officials, including former Chair Jay Clayton, who have filed friend-of-the-court briefs.

Camelot and MPERS argue the banks present a "parade of self-serving policy arguments designed to mislead this Court into believing that the Trial Court's decision is a Pandora's Box." By not disclosing the alleged conflict, the underwriters made misleading statements to investors, violating a basic tenant of securities law, they argue.

"Everyone involved with the offering becomes liable," John Rizio-Hamilton of Bernstein Litowitz Berger & Grossmann LLP, an attorney for the investors, told the court.

Camelot and MPERS argue that includes Viacom, which was dismissed from the case by the trial court. Some judges, however, appeared reluctant to hold responsible Viacom and underwriters that weren't involved in the swaps.

“How could Viacom or the non-conflicted defendants have known what was going on at Morgan Stanley or Goldman Sachs?” Kern asked Rizio-Hamilton, adding that “even if they asked, they would not have provided that information that they were doing swaps.”

Jonathan Youngwood of Simpson Thacher & Bartlett LLP, arguing for many of the so-called non-conflicted defendants, said they haven’t found a single case in federal law that requires underwriters to conduct due diligence on one another.

“Certainly, absent a red flag, what would you ask? Who would you ask?” Youngwood said.

The case is Camelot Event Driven Fund v. Morgan Stanley & Co. LLC , N.Y. App. Div., 1st Dep’t, No. 2023-00983, argument held 3/14/24 .

To contact the reporter on this story: Matthew Bultman in New York at mbultman@bloombergindustry.com

To contact the editor responsible for this story: Cheryl Saenz at csaenz@bloombergindustry.com

Chinese ride-hailing company Didi Global must face US investor lawsuit over IPO

 [reuters.com/technology/chinese-ride-hailing-company-didi-global-must-face-us-investor-lawsuit-over-ipo-2024-03-14](https://www.reuters.com/technology/chinese-ride-hailing-company-didi-global-must-face-us-investor-lawsuit-over-ipo-2024-03-14)

Jonathan Stempel

NEW YORK, March 14 (Reuters) - Didi Global, the Chinese ride-hailing company, must face a lawsuit in a U.S. court claiming it defrauded investors by concealing and disobeying a Chinese government order to postpone its 2021 initial public offering until it resolved cybersecurity and privacy concerns.

In a 54-page decision on Thursday, U.S. District Judge Lewis Kaplan in Manhattan federal court said investors who brought the proposed class action sufficiently pleaded that Didi and various officials intended to defraud them in raising more than \$4.4 billion in the June 30, 2021 IPO.

The offering valued all of Didi at about \$67.5 billion.

Kaplan said the alleged desire to sell American depositary shares before a looming government crackdown on Chinese technology companies gave Didi and the officials a "concrete and personal economic motive" to go public before "the window for high valuation Chinese IPOs in the United States" closed.

Lawyers for Didi did not immediately respond to requests for comment. The investors' lawyers did not immediately respond to similar requests.

Kaplan also refused to dismiss claims against banks that helped Didi go public.

Shares of Didi tumbled in July 2021 as China's cyberspace regulator, the Cyberspace Administration of China, banned it from registering new customers and required the removal of the Didi Travel app from smartphone app stores.

Didi announced plans in December 2021 to delist the U.S.-listed shares. The regulator fined Didi \$1.2 billion the following July over the episode.

The video player is currently playing an ad. You can skip the ad in 5 sec with a mouse or keyboard

Didi's market value is now about \$19 billion, according to LSEG data.

The case is *In re Didi Global Inc Securities Litigation*, U.S. District Court, Southern District of New York, No. 21-05807.

Reporting by Jonathan Stempel in New York; Editing by Bill Berkrot

Juniper Networks accused of misleading investors in sale to HPE

DJ [dailyjournal.com/articles/377654-juniper-networks-accused-of-misleading-investors-in-sale-to-hpe](https://www.dailyjournal.com/articles/377654-juniper-networks-accused-of-misleading-investors-in-sale-to-hpe)

Mar. 15, 2024

The lawsuit alleges that the executives breached their fiduciary duties by authorizing the sale agreement for a price that undervalues the company.

A lawsuit filed this week in Santa Clara County Superior Court accuses the leaders of Juniper Networks Inc. of deceiving investors into supporting the company's proposed \$14 billion sale to Hewlett Packard Enterprise Inc. through a series of proxy statements sent to shareholders ahead of the vote on the sale.

Juniper Networks is one of the lead developers in computer networking solutions driven by artificial intelligence and the purchase, announced Jan. 9, is pending. Media relations teams for the two companies could not be reached for comment Thursday but a Feb. 6 blog post from Hewlett Packard's website states that the acquisition "is expected to close in late calendar year 2024 or early calendar year 2025."

The complaint was filed on behalf of an individual investor on March 12 against both companies and 10 Juniper Networks executives, claiming they breached their fiduciary duties by authorizing the sale agreement for \$3 billion less than the company is worth in order to enrich themselves and Juniper Networks' financial adviser for the transaction, Goldman Sachs PC, to the detriment of the shareholders.

The plaintiff's attorneys --- Timothy J. Burke of The Burke Law Firm and Rochard B. Brualdi of the Brualdi Law Firm PC --- detailed the alleged injury to plaintiff if the sale were to be finalized at the current proposed price.

"Apart from the deceptive proxy, the proposed transaction is unfair to plaintiff and Juniper's other public investors because the sale price undervalues Juniper by over \$3 billion," the attorneys wrote. "If the sale is consummated, Juniper's investors will receive merely \$40 for each of their shares of Juniper's common stock, which Juniper's own financial advisor, Goldman Sachs, determined to be worth as much as \$55.79 per share using the preferred discounted cash flow method of valuation. If a majority of Juniper's investors are deceived into voting for the sale, the loss to plaintiff and other Juniper investors of their interest in Juniper's unique business and future prospects will be incalculable and irreparable."

The media relations teams for Hewlett Packard Enterprise and Juniper Networks could not be reached for comment Thursday.

In the initial press release, Juniper Networks CEO Rami Rahim spoke about the reasons behind the decision to sell.

"Our multi-year focus on innovative secure AI-native solutions has driven Juniper Networks' outstanding performance," Rahim said. "We have successfully delivered exceptional user experiences and simplified operations, and by joining HPE, I believe we can accelerate the next phase of our journey. In addition, this combination maximizes value for our shareholders through a meaningful all-cash premium. We look forward to working with the talented HPE team to drive innovation for enterprise, service provider and cloud customers across all domains, including campus, branch, data center and the wide area network." *Garfield v. DelSanto et al.*, 24CV432887 (Santa Clara Sup. Ct. filed March 12, 2024).

A similar lawsuit was filed in federal court in San Jose on Feb. 21 against Juniper Networks by a different shareholder who made the same complaints and claimed deficiencies in a Feb. 7 proxy statement filed with the Securities and Exchange Commission.

The attorneys in the federal case, Evan J. Smith and Ryan P. Cardona of Brodsky Smith, wrote in the complaint, "The Proxy Statement is materially deficient, deprives Plaintiff of the information necessary to make an intelligent, informed, and rational decision of whether to vote in favor of the Proposed Transaction and is thus in violation of the Exchange Act." *Zaita v. Juniper Networks Inc. et al.*, 3:24-cv-01051 (N.D.Cal. Filed Feb. 21, 2024).

#377654

Wisdom Howell

Daily Journal Staff Writer
wisdom_howell@dailyjournal.com

[Environmental, Social & Governance \(ESG\)](#)

March 14, 2024, 12:12 PM PDT

Skillz Founder, Former NBA Star Sued Over Insider Trading Claims

By Mike Leonard

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2024-0228](#)

Bloomberg Law News 2024-03-15T10:03:02470925505-04:00

Skillz Founder, Former NBA Star Sued Over Insider Trading Claims

By Mike Leonard 2024-03-14T15:12:58000-04:00

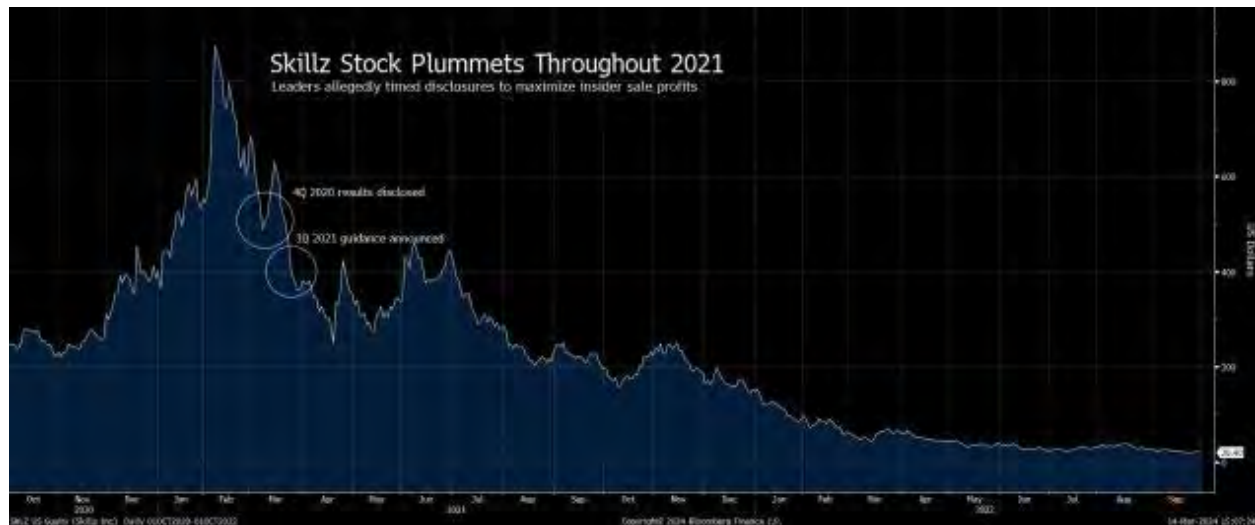
- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2024-0228

A shareholder sued Skillz Inc. founder Andrew Paradise and scores of corporate insiders, saying they manipulated the gaming platform's share price so they could save tens of millions of dollars dumping stock.

The lawsuit, made public Wednesday, targets several current and former company leaders and nearly 80 investors tied to them, including former NBA All-Star Luol Deng. The heavily redacted complaint says they dodged \$94 million in losses by inflating Skillz's stock with strategically timed disclosures, then selling shares worth \$462 million when they knew the company was about to reveal bad news.

"The market reaction was swift and severe," but "defendants, of course, sidestepped the losses," according to the unsealed filing in Delaware's Chancery Court. "Their trades were perfectly timed."

Skillz didn't immediately respond to a request for comment Thursday. Deng, a UK citizen who was designated an Officer of the Order of the British Empire in 2021, didn't immediately respond to a request for comment through his charitable foundation.



The shareholder suit takes aim at a public stock offering Skillz conduct in from March 18-23, 2021, starting about a week after the company announced positive fourth quarter earnings that pumped up its share price. Paradise said in connection with the positive quarterly disclosure that company leaders “look forward to many more such quarters ahead,” according to the complaint.

Paradise, Deng, and the other insiders allegedly took advantage of the offering to unload millions of shares for \$23.34 each—sales worth \$243 million by company executives and \$218 million by investors connected to them—while knowing the company’s upcoming first quarter guidance would lead the stock price to plunge.

They then revealed the negative news two days later, causing Skillz shares to fall 20% nearly overnight before entering a long slide, according to the complaint. The alleged crash came amid a broader ongoing decline from the company’s high the previous month, according to Bloomberg data.

“The company’s stock price is now a shadow of its former might,” the lawsuit says.

The case involves shareholder derivative claims, which are technically filed on a corporation’s behalf against its leaders. Damages in derivative cases are typically paid into a company’s coffers by its officers and directors or their insurers.

The complaint was originally filed under seal March 8.

The investor leading the case, Laurie Hanna, is represented by Grant & Eisenhofer PA, Bishop Partnoy LLP, and Bronstein, Gewirtz, & Grossman LLC. Skillz, Paradise, and the other corporate insiders haven’t yet made a court appearance.

The case is Hanna v. Paradise , Del. Ch., No. 2024-0228, complaint unsealed 3/13/24 .

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

Paysign Investors Urge Final Approval for Deal Over Accountant

news.bloomberglaw.com/product/blaw/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMThlLTNlOGEtZGE4YS1hZDhILTdlZGFmMmNmMDAwMCIsImN0eHQiOiJTTE5XliwidXVpZCI6ImdpNEZ0dHAybTZZb0xHM1lOUU2SWc9PXozNlIRWGN4TnJTWVFN2QmVYRFBsL1E9PSIsInRpbWUiOiIxNzEwNTAxMjg0MDk0Iiwic2lnIjoY2FTdWIZa3ZpQ1BLYUYrckh4RjBIMTVGWkY0PSIsInYiOiIxIn0=

Photographer: Luke Sharrett/Bloomberg *** Local Caption *** Mike Dyer

Paysign Inc.'s proposed \$3.75 million settlement with shareholders over a suspended accountant would provide a relatively high recovery and has drawn no objections so far, investors said in seeking a federal court's approval.

Insurance policy limits and the payment technology company's "limited resources" also weigh in favor of final approval, the investors told the US District Court for the District of Nevada Wednesday.

- The court should approve the attorneys' fee request for one-third the amount of the settlement fund, the investors said in a separate filing the same day
- Judge Gloria M. Navarro ruled in February 2023 that the investors could proceed with allegations that Paysign employed suspended accountant Arthur De Joya without disclosing the arrangement
- Navarro preliminarily approved the settlement in January

Pomerantz LLP is lead counsel for the plaintiffs and the proposed class. Greenberg Traurig LLP represents Paysign.

The case is Shi v. Paysign, Inc. , D. Nev., No. 2:20-cv-00553, final approval request 3/13/24 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Andrew Harris at aharris@bloomberglaw.com

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Business Law Prof Blog

 lawprofessors.typepad.com/business_law/2024/03/chancellor-mccormick-is-annoyed.html

Friday, March 15, 2024

Chancellor McCormick is Annoyed

By Ann Lipton

On March 12, Chancellor McCormick issued a revised appraisal opinion in *HBK Master Fund v. Pivotal Software*, amending her calculations to award the petitioners 44 cents above deal price, rather than 17 cents below, as she had originally.

But I somehow missed the original opinion, so my first read was the amended one. Forgive me if this is old hat by now, but it was new to me, so.

The case involved a buyout of Pivotal by its sister company, VMWare, both controlled by Dell Technologies. That raised the question whether the use of *MFW* procedures required deference to the deal price, in the same way it does in other kinds of appraisal actions. Chancellor McCormick held no, because, critically, with a controlling shareholder, there can be no real market test – there are no other potential bidders, and even the shares themselves may trade at a discount to reflect the controller's ability to extract rents. Thus, the underpinning of cases like *Dell v. Magnetar*, 177 A.3d 1 (2017), is absent.

But that's actually not what stood out to me.

As is the usual course with these things, Chancellor McCormick began with a standard discussion of the process by which the deal was negotiated. Along the way, she singled out the conduct of Marcy Klevorn, who was one member of a two-person Pivotal special committee, and who also held positions at Ford. Here is what McCormick said:

Around this time, the Pivotal Special Committee decided not to canvas the market for other potential bidders....

One of the two Pivotal Special Committee members, Klevorn, was missing in action through much of this process.

- She missed the October 8, 2018 Board meeting. She later testified that her absence was likely due to separate duties at Ford.
- She missed the January 28, 2019 Board meeting. Klevorn testified that she was “probably traveling[.]”
- She arrived late to the March 15, 2019 Board meeting. She could not recall why.
- She missed the March 22, 2019 Board meeting. She could not recall why.
- She left early from the April 9, 2019 Board meeting due to a “prior engagement[.]” At this meeting, Lankton provided an update to the rest of the Board on the merger.

So, through April 2019, Klevorn missed, was late for, or left early from each Pivotal Board and Special Committee meetings. Klevorn testified that being on the Pivotal Special Committee was “a lot of work and I don’t know, to be honest, how I felt about it at the time.”

...

The Pivotal Special Committee met on July 31, 2019. Klevorn joined the meeting late because she was busy with a meeting at Ford.

...

The next day, the Pivotal Special Committee held a meeting to decide whether to counteroffer, accompanied by Morgan Stanley, Mee, and other members of Pivotal leadership. Klevorn attended, reluctantly. A few days prior, Klevorn’s assistant asked her if she could attend that meeting from 5:30 p.m. to 7:00 p.m. Klevorn responded, “[u]gh. Was planning to do a bunch of returns at [S]omerset. I thought it was at 2???” After her assistant responded about the timing, Klevorn replied, “[I]ife ruiner. Ok.”

On August 14, 2019, the VMware Special Committee made what it termed a “best and final offer” of \$15.00 per share. The Pivotal Special Committee held a meeting to consider it; Klevorn was absent.

Oof.

Did Klevorn’s neglect have a bearing on the outcome? Reader, it did not. After McCormick explained why *MFW* procedures could not cleanse the transaction, she pretty much moved on from any discussion of this particular process, except to briefly note that Klevorn’s

absence called into doubt certain base projections – which McCormick ended up accepting anyway. (Op. at 88-89). Sure, I suppose Klevorn's conduct could have had some kind of influence on McCormick's thought process, but if so, it's not explicit in the opinion.

Why am I mentioning this?

Because a while ago, Edward Rock argued that Delaware's courts operate more through parables of "good" and "bad" boards, reputational sanctions, and public shaming, than through actual interference with business decisions. And though I can think of a certain billionaire, now 25% poorer, who might disagree with that assessment, McCormick's somewhat gratuitous swipes at Klevorn ("life ruiner") would seem to bear out the thesis.

If you don't want to serve on a special committee, don't do it. At the very least, don't put it in an email/text.

March 15, 2024, 2:00 AM PDT

By Ben Miller

Individual investors have brought more than a dozen merger suits across New York's Southern District and the District of Delaware just since the start of February, with additional filings cropping up in California and Colorado district courts. So far this month, such suits have targeted companies including electric truck maker Xos Inc., window and door manufacturer PGT Innovations Inc., and biotech company Axonics Inc.

"There has been a concern for a number of years that it's easy to file a lawsuit challenging a merger to try and wrestle some sort of fee award from some sort of corrective disclosure for the suit's nuisance value because the parties want to move forward with the merger and want the case to go away," said Jill Fisch, co-director of the Institute for Law & Economics at the University of Pennsylvania's Carey Law School. "Often the disclosures are not material, so that's not to say that mergers can't be challenged for good reason, but historically we've seen a lot more challenges than we've seen valid claims."

In his *Volta* decision, Judge Jed S. Rakoff said the Southern District of NY suit didn't identify any false or misleading statement in the company's initial proxy filing that required correction, and that the supplemental disclosures in question consisted of publicly available information. After making the disclosures, *Volta* argued against the requested attorney fee award, stating that the disclosures provided "no information plausibly affecting how a reasonable stockholder would vote on the merger."

More than \$547 billion of mergers have been announced on US exchanges this year as of March 14, a 62% jump from the same period in 2023, according to data compiled by Bloomberg. As new deals are announced, shareholders file the suits seeking to prevent them from being completed until allegedly deficient filings are fixed. Those same lawsuits also aim to recover rescissory damages in the event that a proposed deal closes without first providing a supplementary disclosure.

Mootness Fee Scrutiny

Merger disclosure suit filings ebbed in Delaware Chancery Court immediately after the 2016 ruling, *In re Trulia Inc. Stockholder Litigation*, which held that plaintiffs wouldn't receive substantial fees unless the supplementary disclosures they sought benefitted stockholders, lawyers say.

"There certainly has been a move from state court to federal court, and that's largely due to the fact that Delaware [Chancery] court started cutting back on fees and reviewing mootness dismissals with greater scrutiny, and those are things that the federal courts haven't really done" Fisch said. "So that's largely a movement of generally weaker cases to federal court with plaintiffs' lawyers hoping to get a more favorable fee award."

That trend of opting to file such suits in federal court rather than Delaware Chancery originated after the 2016 *Trulia* ruling and was reinforced in July 2023, when Chancellor Kathaleen McCormick considered plaintiffs' "eye-popping" request for a more than \$1 million fee in a suit against Magellan Health Inc. The court ultimately awarded just \$75,000 in fees and expenses stemming from the supplemental disclosures attained through the litigation, the chancellor said in a July opinion filing.

Mootness fees are often negotiated outside of court after a voluntary dismissal, according to Cliff Brinson, a partner at Smith Anderson.

“On the rare occasions when those cases have gone to court, they usually don’t go very well, for the plaintiffs’ lawyers, they get significantly less than what they’re asking for, if anything,” he says. “Even though court decisions have not been very plaintiff-friendly, it hasn’t necessarily stopped these lawsuits from being filed, because they still make some money for plaintiffs’ lawyers.”

Down, But Not Out

More than 25 new merger disclosure suits were filed across district courts since the start of February. The steady flow of complaints contrast with a forum like Delaware, where specialist judges have been faster to rein in the fees and now typically field roughly a few of these suits per month.

Some of Rakoff’s Southern District colleagues also took aim at mootness fees in recent years, awarding \$55,000 to plaintiffs requesting more than \$350,000 from in a 2021 ruling and outright denying a fee request in a separate 2022 ruling in a case challenging Microsoft’s acquisition of Nuance Communications.

A \$75,000 figure like the mootness fee awarded in the Magellan ruling represents a more typical award in the post-Trulia litigation landscape, according to Brinson.

“Pre-Trulia, attorneys had an understanding of how much they could get for disclosure-only settlements,” he says. “It was generally six figures, and as I recall, you could even get close to seven figures.”

District courts elsewhere may provide more fertile ground than New York and Delaware for gleaning mootness fees, depending on how experienced a given judge is when it comes to merger and acquisition litigation, lawyers say. The Seattle-based Western District of Washington, the Northern District of California, and the District of Colorado in Denver have all seen new merger suits since Feb. 1, filings show.

“Plaintiffs are smart, and they can be very persuasive, particularly for judges who haven’t heard their tales of woe as many times as the Delaware judges,” Woodruff’s Huskins said.

Economies of Scale

Representing plaintiffs in merger objection suits in federal court, even for a modest mootness fee, remains compelling, especially for firms that may benefit from economies of scale when filing straightforward complaints against a wide array of companies, according to Brinson.

“There are just more opportunities to find a plaintiff, and I do think until all courts clamp down on mootness fees, you absolutely should expect to see the number of these cases wax and wane with M&A activity,” Huskins says.

Investors aren’t likely to ever cease filing merger-related disclosure lawsuits entirely, even as the economic prospects of doing so become less appealing than they once were due to court scrutiny, according to Huskins.

"Plaintiffs' appetite for disclosure is a never-ending black hole of desire," she says. "It makes sense for companies and their lawyers to do a good thorough job on their disclosures, but this is the United States, anybody can sue anybody, anytime, for anything."

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

To contact the editors responsible for this story: Drew Singer at dsinger@bloombergindustry.com; Andrew Harris at aharris@bloomberglaw.com

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Apollo Sued for Board Voting Agreement With Black, Harris, Rowan

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An investor is suing Apollo Global Management Inc. over a pact allegedly pledging the asset manager's support for any board nominees proposed by billionaire founders Leon Black, Josh Harris, and Marc Rowan.

The lawsuit, filed Thursday, targets a shareholder agreement that Apollo reached with the co-founders in 2022, in connection with its conversion from a publicly traded partnership to a traditional corporate structure. Several sections are indistinguishable from provisions struck down in a landmark ruling last month in a case involving investment bank Moelis & Co., the suit says.

Read More: Moelis Ruling Sharpens Focus on Private Equity Veto Agreements

The clause "mandating that Apollo's board recommend the former managing partners (founders) or their designees, regardless of what Apollo's board may think of them," illegally overrides the board's fiduciary duty to exercise its best judgment, according to the proposed class action in Delaware's Chancery Court.

Black, Harris, and Rowan aren't named as defendants. Black's net worth of \$13.9 billion makes him the world's 145th-wealthiest person, according to the Bloomberg Billionaires Index, while Harris is worth \$10.2 billion and Rowan \$8.5 billion.

A representative of Apollo said Friday that it's "are aware of the lawsuit, which misrepresents the terms of the stockholder agreement and the company's charter, both of which are publicly available and speak for themselves."

The pact "was entered into in connection with Apollo's merger with Athene and accompanying key governance enhancements, including a simplified 'one-share, one-vote' stock structure," the spokesperson said, referring to the 2022 corporate conversion. "These governance changes were implemented for the benefit of Apollo's stockholders and have since contributed to significant shareholder value creation."

Apollo's shares have risen more than 500% since its public listing in 2011, according to Bloomberg stock data.

New Wave of Scrutiny

Each of the founders has made headlines outside the business pages in recent years—Harris for buying the NFL's Washington Commanders, Black for alleged ties to convicted sex offender Jeffrey Epstein, and Rowan for leading a pressure campaign against University of Pennsylvania administrators over their handling of campus antisemitism. Black, who retired as Apollo's CEO in 2021, still holds a \$6.5 billion stake, although he sold shares last month for the first time.

The shareholder suit comes about three weeks after Vice Chancellor J. Travis Laster invalidated most of the shareholder agreement between Moelis and its billionaire founder, Ken Moelis. Although similar pacts between companies and their financial backers may be commonplace, many of their provisions violate a statute requiring the core business of Delaware corporations to be managed by their boards, the judge said.

Constrained by extensive veto rights and a pledge to recommend Ken Moelis' director nominees, "the board is not really the board," according to the Feb. 23 court ruling. "The seemingly irresistible force of market practice" must yield to "the traditionally immovable object of statutory law," Laster said.

According to the complaint against Apollo, publicly available portions of its agreement with its founders show at least four illegal terms, including the provision requiring the board to recommend their director nominees, another requiring a similar recommendation in the event of a vacancy, and a clause guaranteeing any founder a spot on the executive committee if he's a board member.

The lawsuit also takes aim at a section of the pact that allegedly bars Apollo from giving a payout to one of the founders—other than a distribution going prorated to all shareholders—without the approval of the other two.

The case is the second pending in Delaware over aspects of Apollo's transition from an Up-C to an ordinary corporation. Apollo asked Laster in November to throw out the other suit, which challenges a \$570 million payment to the founders over the termination of a complex tax-related agreement stemming from its public listing.

The investor leading the case, Patrick Quade, is represented by Andersen Sleater Sianni LLC and HGT Law. Apollo hasn't yet made a court appearance.

The case is Quade v. Apollo Global Mgmt. Inc. , Del. Ch., No. 2024-0254, complaint filed 3/14/24 .

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

Retail & Consumer industry**Reckitt shares plunge after \$60mn damages over baby formula**

Illinois jury awards \$25mn more than was sought by the plaintiff's lawyer



Enfamil is manufactured by Reckitt's US infant formula business © Reuters

Madeleine Speed in London and **Joe Miller** in New York AN HOUR AGO



Reckitt's share price plummeted as much as 20 per cent after a jury in the US awarded \$60mn in damages to a mother who said her baby died after consuming the company's Enfamil baby formula.

The London-listed [consumer goods company](#)'s share price dropped to its lowest level in a decade on Friday as investors absorbed the news.

Its shares closed down nearly 15 per cent in London trading after previously tumbling to 20 per cent below the previous day's close.

The jury in an Illinois state court came to the conclusion that Enfamil, which is manufactured by Reckitt's US infant formula business, Mead Johnson, had caused necrotising enterocolitis (NEC), a bowel disease, in Jasmine Watson's infant son.

The jury awarded \$25mn more than the sum sought by the plaintiff's lawyers in the case.

“This verdict confirms what Mead Johnson has known for years: cow’s milk-based baby formula causes NEC in pre-term infants, often with fatal consequences,” said Ben Whiting, partner at Keller Postman, one of the firms that represented the mother.

Several hundred similar claims have been filed in state and federal courts across the US targeting Reckitt’s Mead Johnson and another baby formula maker, Abbott.

Roughly 450 of those cases have been grouped together in federal court for pre-trial purposes, and four have been selected as “bellwether” cases, but are still many months away from going to trial.

Reckitt shares hit lowest since 2013 on Illinois baby formula verdict

Share price, pence



Source: LSEG

© FT

Reckitt has denied its products cause NEC, and said the allegations were not supported by science.

“While we continue to offer our deepest condolences to Ms Watson, we strongly disagree with the jury’s decision to fault Mead Johnson and award damages,” it said. “We will pursue all options to overturn the verdict.”

Reckitt’s \$17bn acquisition of Mead Johnson in 2017 has been rocky. In 2020 the company, which also manufactures Dettol disinfectant and Nurofen pain killers, said it had recorded a £5bn writedown from the takeover.

However, the business made back some its losses when it boosted US sales during a national baby formula shortage, after competitor Abbott Laboratories closed a factory following reports of bacterial infections in babies.

Last year the US food and drug watchdog sent [Mead Johnson and two other formula manufacturers](#) warning letters over their baby formula manufacturing standards, after Reckitt was forced to recall several batches of formula because of the presence of harmful bacteria.

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Reckitt unit hit with \$60 million verdict in Enfamil baby formula case in Illinois

 [reuters.com/legal/reckitt-unit-hit-with-60-million-verdict-enfamil-baby-formula-case-illinois-2024-03-14](https://www.reuters.com/legal/reckitt-unit-hit-with-60-million-verdict-enfamil-baby-formula-case-illinois-2024-03-14)

Brendan Pierson

Mead Johnson's product, Enfamil baby formula, is displayed on a store shelf in New York City, U.S., February 10, 2017. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights , opens new tab

March 14 (Reuters) - An Illinois jury has ordered Reckitt Benckiser (RKT.L) , opens new tab unit Mead Johnson to pay \$60 million to the mother of a premature baby who died of an intestinal disease after being fed the company's Enfamil baby formula.

The jury in an Illinois state court in St. Clair County on Wednesday found that Mead Johnson was negligent and that it failed to warn of the risk of necrotizing enterocolitis (NEC). The disease, which causes the death of bowel tissue, mostly affects premature newborns and has a fatality rate of about 15% to 40%.

The \$60 million verdict includes compensation for plaintiff Jasmine Watson's loss and grief, and for the pain and suffering of her baby, Chance Dean.

The verdict comes in the first trial out of hundreds of lawsuits claiming that various Enfamil and Abbott Laboratories' (ABT.N) , opens new tab Similac formulas caused NEC. According to the U.S. National Institutes of Health, there is evidence that formula increases the risk , opens new tab of NEC in premature infants compared with breast milk.

"This verdict confirms what Mead Johnson has known for years: cow's-milk based baby formula causes NEC in preterm infants, often with fatal consequences," Ben Whiting, a lawyer for Watson, said in a statement.

Mead Johnson said in a statement that it was disappointed with the verdict and would appeal it.

"We continue to believe that the allegations from the plaintiff's lawyers in this case were not supported by the science or experts in the medical community," it said.

More than 400 NEC lawsuits against Mead Johnson and Abbott are pending in federal court in Chicago, and others, like Watson's are in state courts.

Plaintiffs in the cases say that the companies concealed the fact that their formula, including products made specifically for premature infants and others, was riskier than alternatives like donor milk.

The companies have denied the allegations.

The NEC lawsuits are separate from ongoing litigation against Abbott over the shutdown of its Sturgis, Michigan, plant and subsequent recall of batches of baby formula for possible contamination, which contributed to a nationwide formula shortage in 2022.

Abbott has denied that it distributed tainted formula.

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Reporting by Brendan Pierson in New York Editing by Alexia Garamfalvi and Matthew Lewis

Mead Johnson Hit With \$60M Verdict in First NEC Trial Over Preterm Infant Formula

 [law.com/nationallawjournal/2024/03/14/mead-johnson-hit-with-60m-verdict-in-first-nec-trial-over-preterm-infant-formula](https://www.law.com/nationallawjournal/2024/03/14/mead-johnson-hit-with-60m-verdict-in-first-nec-trial-over-preterm-infant-formula)

Ben Whiting, with Keller Postman. Courtesy photo

NEWS

An Illinois jury awarded \$60 million on Wednesday in the first verdict involving cow's milk-based infant formula that allegedly has sickened or killed premature babies who contracted a gastrointestinal inflammation called necrotizing enterocolitis, or NEC.

March 14, 2024 at 06:40 PM

Verdicts-Settlements

Amanda Bronstad 
staff reporter

The original version of this story was published on Law.com

What You Need to Know

- Jurors in St. Clair County found that Mead Johnson was negligent and failed to warn about the risks of its preterm infant formula, which plaintiff Jasmine Watson's baby, Chance Dean, was taking before he died at the hospital.
- Another NEC trial is scheduled for July in St. Louis, Missouri, and there are thousands more lawsuits pending in Illinois, Pennsylvania, California and Florida.
- Mead Johnson said it was 'surprised and deeply disappointed with the verdict,' which it plans to appeal.

An Illinois jury awarded \$60 million on Wednesday in the first verdict involving cow's milk-based infant formula that allegedly has sickened or killed premature babies.

Jurors in St. Clair County found that Mead Johnson was negligent and failed to warn about the risks that its preterm infant formula—which plaintiff Jasmine Watson's baby, Chance Dean, was taking before he died at the hospital—could cause a gastrointestinal inflammation called necrotizing enterocolitis, or NEC.

“He started off receiving donor milk and was doing well, and got switched to Mead Johnson’s product that was specifically targeted to preterm infants,” Ashley Keller, of Chicago’s Keller Postman, said of Chance Dean, who was a twin. After contracting NEC, the baby underwent surgery, then died within weeks of being born, he said.

“What the jury saw was that Mead Johnson was well aware of the risks this was posing to preterm infants, causing NEC, and, in some cases, downplayed, and in some cases, outright manipulated the science evidence to cover it up,” he said. “And their defense was to point the finger to the doctors and hospitals, saying, ‘They’re really smart and chose to do this anyway.’ And I don’t think the jury bought that.”

He said jurors, after a month of trial, deliberated for less than two hours before reaching their verdict, which is 100% compensatory damages because punitive damages were not allowed in wrongful death cases in Illinois at the time of the lawsuit’s filing.

In addition to Keller, Keller Postman’s Ben Whiting, in Chicago, and Amelia Frenkel, in Washington, D.C., were on the trial team, as were David Cates, of the Cates Law Firm in Swansea, Illinois, and Sean Grimsley, of Olson Grimsley Kawanabe Hinchcliff & Murray in Denver.

“We are grateful that Jasmine has finally received some measure of justice,” Grimsley said in an email. “Chance should still be alive and, as we argued and the jury found, would be if he had not been fed Mead Johnson’s cow’s milk-based preterm formula.”

Keller said another NEC trial is scheduled for July in St. Louis, and there are thousands more lawsuits pending in Illinois courts, in St. Clair County, Madison County and Cook County, in Chicago. Other NEC cases are pending in Pennsylvania, California and Florida.

Mead Johnson, in a statement on Thursday, said the company was “surprised and deeply disappointed with the verdict,” which it plans to appeal.

“While we continue to offer our deepest condolences to Ms. Watson, we strongly disagree with the jury’s decision to fault Mead Johnson and award damages,” the statement says. “We continue to believe that the allegations from the plaintiff’s lawyers in this case were not supported by the science or experts in the medical community. This was underscored during the trial by a dozen neonatologists. We are actively considering all of our options, including appeal.”

Covington & Burling partners Paul Schmidt and Phyllis Jones, in Washington, D.C., represented Mead Johnson at trial.

‘Our Case Is Growing Stronger by the Day’

Dozens of cases across the country have been filed against Mead Johnson, maker of Enfamil, and Similac manufacturer Abbott Laboratories alleging the companies made false statements about the safety of their preterm infant formula.

About 400 other cases were coordinated in the U.S. District Court for the Northern District of Illinois, before Judge Rebecca Pallmeyer.



Diandra “Fu” Debrosse Zimmermann, managing partner with DiCello Levitt. Courtesy photo

Diandra “Fu” Debrosse Zimmermann, a partner in Birmingham, Alabama, at Chicago’s DiCello Levitt, who is co-lead plaintiffs’ counsel in the multidistrict litigation, said cases had been selected for bellwether trials but most of the federal docket was focused on discovery. “We’re gratified to see that discovery is bearing out our allegations, and that our case is growing stronger by the day—a fact confirmed by the recent verdict.”

“We believe that the swift and definitive nature of the jury’s verdict is a vitally important data point for all plaintiffs across the nation,” she added.

The lawsuits over NEC are separate from cases brought against Abbott Laboratories over its 2022 recall of infant formula. Abbott’s recall, all tied to formula made at its plant in Sturgis, Michigan, came after three babies were hospitalized, and one died, after ingesting

its Similac, Alimentum and EleCare brands. Congress members held a hearing on the recall, and federal regulators launched investigations. Abbott reached a consent decree with the U.S. Food and Drug Administration to help reopen its plant, but about 100 lawsuits are now coordinated in multidistrict litigation before U.S. District Judge Matthew Kennelly of the Northern District of Illinois.

Both types of cases against Abbott and Mead Johnson were filed as supply chain issues after the COVID-19 pandemic caused shortages of infant formula.

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<https://www.law.com/2024/03/15/dont-be-cranky-and-dont-cause-delays-judge-pushes-for-efficiency-in-ozempic-mdl/>



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NEWS

Don't Be Cranky and Don't Cause Delays: Judge Pushes for Efficiency in Ozempic MDL

“What I want is to avoid asking for continuances and asking for delay and asking for new dates. Just pick your poison and stick with it,” Pratter told the approximately 70 people gathered in her courtroom Thursday.

March 15, 2024 at 12:54 PM

Mass Torts



Aleeza Furman
Litigation Reporter



The original version of this story was published on [The Legal Intelligencer](#)

What You Need to Know

- Lawyers convened Thursday for the first organizational conference in the recently formed Ozempic MDL.
- Judge Gene Pratter said she expects civility and efficiency from the lawyers in the MDL.
- Plaintiffs lawyers said they left the conference feeling optimistic about the pace of the litigation.

In the first organizational conference for the recently formed Ozempic multidistrict litigation, the judge overseeing the matter made it clear she wants to see civility and efficiency from the lawyers involved.

“What I expect is a lot of communication,” U.S. District Judge Gene Pratter of the Eastern District of Pennsylvania told the approximately 70 people gathered in her courtroom Thursday. “Life is way too short to be cranky with each other.”

The Thursday conference addressed the basics of how the MDL over popular weight-loss drugs like Ozempic would proceed, touching on subjects like leadership structure and motion practice. And Pratter expressed an interest in making the litigation as streamlined as possible.

“What I want is to avoid asking for continuances and asking for a delay and asking for new dates,” she said. “Just pick your poison and stick with it.”

Her other words of advice for counsel: do not spend too much time harping on process, keep motions focused on individual issues, and lay off the letter briefs.

Pratter also advised that, however the parties intend to organize themselves, they do so with an eye toward giving junior lawyers opportunities to have a role in the litigation.

“One of the delights of getting this case is to work with excellent lawyers,” Pratter said. “I want you to share with another generation of lawyers in maybe spreading out the needs, but without it being the premier exclusive goal.”

In a panel discussion hosted by HarrisMartin on Friday morning, plaintiffs lawyers who attended the conference said they left the court feeling optimistic.

“What was really unique here is that I got the sense that this judge really is going to push it in a way that I have not seen before,” Jonathan Orent, with Motley Rice, said. “The clearest lesson I got is, ‘don’t let process delay result.’”

One point of disagreement between plaintiffs and defendants Novo Nordisk and Eli Lilly at the Thursday conference was whether there should be a master complaint.

DLA Piper partner Ilana Eisenstein contended on behalf of Novo Nordisk that the predicted scale of the litigation would make individualized complaints difficult to manage, while Morgan & Morgan’s Paul Pennock said the plaintiffs disfavor using a master complaint.

Pratter, however, said she was more focused on sweeping issues that apply to overall litigation. “I don’t really want you to fuss about whether there’s going to be a master complaint or not. We could spend a year fussing about that,” she said.

As of Friday, 72 cases were listed on the MDL’s docket, and plaintiffs lawyers predicted it could eventually encompass between 10,000 and 20,000 lawsuits from users of Ozempic and related drugs called “glucagon-like peptide-1, or GLP-1, receptor agonists,” including Wegovy and Rybelsus by Novo Nordisk, and Eli Lilly’s Trulicity and Mounjaro.

The lawsuits allege that both companies failed to warn that their prescription medications, which have gone viral on social media, increased the risk of gastroparesis, or stomach paralysis, leading to nausea, vomiting and hospitalizations. The labels caution users about gastrointestinal problems, among other side effects, but the lawsuits say the warnings have downplayed the severity of the stomach issues.

The Ozempic litigation is Pratter’s third MDL, but her first pharmaceutical MDL, and lawyers on the Friday panel said they had not been sure what to expect going into Thursday’s conference.

Pennock said that, although the Judicial Panel on Multidistrict Litigation’s selection of Pratter to oversee the litigation came as a surprise, the judge came across as well-suited to handle the litigation.

“I felt so much better walking out of there than I did walking in,” Pennock said.

Pennock said Pratter appeared interested in the case and “not interested in dealing with BS from either side.”

Given the judge’s exacting standards, Pennock advised plaintiffs counsel involved in the litigation to work hard to ensure the cases they are filing are meritorious. In other words, he joked, “You’re on your own, man. If you screw up in front of this judge, I’m not covering for you.”

RELATED STORIES

[Meet the Pennsylvania Judge Overseeing the Ozempic MDL](#)

[A Pennsylvania Judge Will Oversee Lawsuits Targeting Weight Loss Drug Ozempic](#)

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Class Action

March 14, 2024, 1:59 PM PDT

Ozempic Suit Alleging Inadequate Warnings Kicks Off in Philly

By [Shweta Watwe](#)

Documents

Docket

- Roughly 55 cases consolidated in the multidistrict litigation
- Most suits to focus on gastroparesis, a digestive condition

Bloomberg Law News 2024-03-15T13:59:44245306047-04:00

Ozempic Suit Alleging Inadequate Warnings Kicks Off in Philly

By Shweta Watwe 2024-03-14T16:59:52000-04:00

Roughly 55 cases consolidated in the multidistrict litigation

Most suits to focus on gastroparesis, a digestive condition

Attorneys for Novo Nordisk and patients alleging the makers of Ozempic and similar drugs didn’t adequately warn users of side effects met Thursday for their first case management conference at a federal court in Pennsylvania.

Eighteen cases have already been consolidated in the US District Court for the Eastern District of Pennsylvania, and at least 37 other pending lawsuits await consolidation orders, according to the transfer order filed February. Judge Gene E.K. Pratter is overseeing the multidistrict litigation.

Most of the cases are related to prescribed use and will center on a condition called gastroparesis, which affects stomach contractions and delays digestion, a plaintiffs’ attorney said during the conference. The condition can cause nausea, vomiting, dehydration, and other painful side effects.

Patients allege drugs like Ozempic and Wegovy—generally called glucagon-like peptide 1-receptor agonists—have caused widespread gastrointestinal injuries and that their makers didn’t adequately warn people about the severity of their side effects.

Novo Nordisk A/S’s Ozempic was originally formulated to be a diabetes treatment. The drug helps regulate blood sugar levels by slowing down the digestive system, provoking a feeling of fullness. As a result, Ozempic can also cause weight loss, and it quickly became known as a weight-loss drug, though it’s only approved by the Food and Drug Administration as a diabetes treatment.

The company then developed Wegovy—essentially the same medication with a different dosing schedule—to be a weight loss drug. It won FDA approval for that purpose in 2021.

Though Ozempic isn't officially a weight-loss drug, the demand for its use off-label has soared over the last couple years thanks to social media and pop culture. After disclosing her use of weight loss drugs, Oprah Winfrey announced she was leaving the board of WeightWatchers, a company that promotes weight-loss through lifestyle changes.

Skyrocketing demand for weight loss drugs has led some consumers to seek out counterfeits. The FDA and its British counterpart, the UK Medicines and Healthcare Products Regulatory Agency, have seized thousands of fake Ozempic pens.

Cases over Eli Lilly's Mounjaro and Trulicity, similar diabetes treatments, are also included in the MDL.

The case is In re Glucagon-Like Peptide-1 Receptor Agonists (GLP-1 RAS) Prods. Liab. Litig. , E.D. Pa., No. 2:24-md-03094, 3/14/24 .

To contact the reporter on this story: Shweta Watwe in Washington at swatwe@bloombergindustry.com

To contact the editor responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com

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March 14, 2024, 3:25 PM PDT; Updated: March 15, 2024, 6:17 AM PDT

Domino, Major Sugar Producers Accused of Price-Fixing Scheme (1)

By Danielle Kaye

- COURT: S.D.N.Y.
- TRACK DOCKET: No. 24-cv-01941

Bloomberg Law News 2024-03-15T14:00:36887893567-04:00
Domino, Major Sugar Producers Accused of Price-Fixing Scheme (1)

By Danielle Kaye 2024-03-14T18:25:58000-04:00
COURT: S.D.N.Y.
TRACK DOCKET: No. 24-cv-01941

Some of the largest producers and sellers of granulated sugar in the US, including Domino Foods Inc. and American Sugar Refining, face a class action lawsuit accusing them of conspiring to artificially inflate the price of sugar.

The antitrust suit, filed Thursday in US District Court for the Southern District of New York, argues the sugar companies shared nonpublic information about sugar prices, sales, and demand to carry out a price-fixing scheme over the past several years. The plaintiffs allege food and beverage manufacturers, retailers, and other direct purchasers of sugar paid unnecessarily high prices as a result of the alleged conspiracy.

“There is no economically rational reason for the Producing Defendants to share such information,” the plaintiffs said in their suit. “This information was shared for the purpose of enabling Defendants to effectuate their agreement to artificially affect prices and avoid competing with one another.”

The plaintiffs, led by health-care provider KPH Healthcare Services Inc., argue competition in the sugar market has been reduced due to the defendants’ alleged anticompetitive conduct, and purchasers of sugars have been “deprived of the benefit of price competition.” They’re seeking damages for the alleged violations and asking the court to prevent the companies from exchanging sensitive information.

ASR Group, one of the sugar companies being sued, intends to “vigorously” fight the allegations, company spokesperson Marianne Martinez said. The company maintains there is “no basis for this case,” she added.

Federal antitrust enforcers have taken note of competition concerns in the sugar industry. In 2022, the Justice Department urged the Third Circuit to block US Sugar’s \$315 million planned acquisition of rival Imperial Sugar, arguing the deal would further consolidate an already concentrated industry and drive up prices. The court ultimately allowed the deal to close.

The case is KPH Healthcare Services v. ASR Group International , S.D.N.Y., No. 24-cv-01941, 3/14/24 .

(Updated with comment from ASR Group in fifth paragraph)

Revenues Triple at Largest Public Litigation Funder as Earnings Per Share Grow 19x

 [law.com/nationallawjournal/2024/03/14/revenues-triple-at-largest-public-litigation-funder-as-earnings-per-share-grow-19x](https://www.law.com/nationallawjournal/2024/03/14/revenues-triple-at-largest-public-litigation-funder-as-earnings-per-share-grow-19x)

What You Need to Know

- Burford Capital tripled consolidated revenues to reach \$1.1 billion last fiscal year.
- Burford could gain \$6.2 billion from a case against Argentina, which last year resulted in the largest ruling in New York history.
- For the third year in a row, groupwide total new commitments surpassed \$1 billion.

With reactivated courts processing a backlog of cases, Burford Capital, the world's largest publicly traded litigation funding company, tripled consolidated revenues to reach \$1.1 billion in the 2023 fiscal year, allowing for the growth of earnings per share by a factor of 19 to \$2.74.

Leaders told investors on March 14 that pre-pandemic portfolio growth translated into more than a billion dollars in realizations on a groupwide basis, up 52%. And with courts back in business, leaders are expecting substantial levels of activity in the coming years.

The company also saw groupwide new commitments grow 4% to \$1.2 billion, the third year in a row that groupwide total new commitments surpassed \$1 billion.

"We did more than a billion dollars in new business, more than we've ever done. What that is showing is the level of demand and market interest for these solutions," said Burford CEO Christopher Bogart. "Now that the pandemic is fully behind us and the courts are fully open, we have a \$7 billion litigation portfolio."

In June, Burford also secured a \$325 million deal with a Fortune 50 company to provide funding for a series of litigated matters. To Bogart, this signals the continued development of the corporate world's relationship with third-party legal finance.

"There's no question of this company's ability to pay for litigation if it wanted to but what they decided was it was more efficient for them to use their capital for their business than their litigation," Bogart said.

By the close of March 14, the day Burford announced its financial results from the 2023 fiscal year, the company's stock price on the London Stock Exchange grew 2.7%.

Burford's financial gains are notable given the fact it hasn't yet collected on a case it's backing against the Argentine government, which resulted in the largest trial verdict in New York history of \$16.1 billion in favor of the Burford-backed plaintiffs. The case concerns a dispute between Argentina and minority shareholders of oil company YPF after the country seized a majority share in 2012.

In public statements Burford has said it is entitled to 35% and 73% of damages covered by plaintiffs Petersen Energia Inversora and Eton Park Capital Management. Based on the court's ruling on damages, these shares would amount to \$6.2 billion for the litigation financier.

While Burford hasn't seen a dime of the payout yet, the case and media coverage surrounding it have served to elevate Burford's brand image as a solutions provider for a company's largest and most complex and expensive disputes, leaders told shareholders.

Burford said there's been a 400% increase in article volume from 2022 to 2023 and that its goal is to "capitalize on growing awareness and our position of market leadership, which we look forward to with great excitement."

"It's not that unusual for us to file cases against foreign governments," Bogart said. "We have a long history of doing that in the arbitration space. This is a particularly large case because of the size of the damages. ... It's an outlier in our portfolio as well."

Leaders told investors Burford has historically stayed away from such high-risk, long-term investments due to public investors' preference for lower risk, shorter duration, more predictable matters.

Leaders told investors Burford is "missing out on a valuable portion of the litigation market with this approach, and we believe our scale permits us to take on over time a few more matters with moderate capital outlay that have the potential for ten-figure outcomes."

"We feel comfortable given the size of our portfolio and diversification in our portfolio that we have the opportunity to underwrite cases that have larger pay-days and longer duration and more uncertainty or more challenge," said Burford CFO Jordan Licht. "Investors want a diversified portfolio that includes a couple of Petersens."

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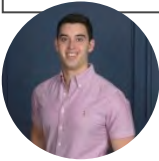
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PROFILE

This Lawyer Is Becoming a Thorn in the Side of AI Companies

Plaintiffs lawyers don't usually find new fonts, potential causes of action and co-counsel all in the same place. But that is what happened here.

March 15, 2024 at 11:04 AM

Artificial Intelligence



Michael A. Mora



What You Need to Know

- Joseph Saveri comes from a family of prominent class-action lawyers.
- Matthew Butterick, Saveri’s co-counsel in a series of class actions they filed, was far removed from high-stakes litigation when they met.
- The case has become one of the most closely watched in the country.

How did Joseph Saveri, a lawyer known for his work on the plaintiff side of high-stakes antitrust and class action cases, become involved in copyright litigation against generative artificial intelligence companies? Through someone from whom he once bought a font.

When Saveri founded the [Joseph Saveri Law Firm](#), he contacted Matthew Butterick to buy one of the fonts that the expert typesetter created. Fast forward several years, and Butterick, who is also a lawyer, wrote a blog post that caught Saveri’s attention warning that a programming tool called GitHub Copilot posed a serious intellectual property problem.

“It was basically an engine for violating open-source licenses,” Butterick said about the programming tool. “And Joe, a customer of mine who I have corresponded with over the years, reached out to me and said, ‘This is interesting. I have a case here that you should investigate it.’ So we started and filed that case in November.”

As a result, the two California attorneys were the first to file a class action against Copilot, its parent Microsoft, and separately against its AI partner OpenAI, over its large language models, claiming it was trained on copyrighted material and reproduced that content without permission.

Saveri has multiple cases in the AI realm beyond these initial actions. The one that has garnered the most attention involves high-profile authors, including comedian Sarah Silverman. Saveri said he believes that case could eventually make its way before the U.S. Supreme Court.

“We have something like a dozen cases and more to come,” Saveri said. “The first is the one involving code that is subject to open-source licenses. The second is the one involving graphic artists. The third is the one against OpenAI, in which Silverman is one of the plaintiffs. And the fourth involves the Meta large language model LLaMA.”

That Saveri finds himself immersed in these class actions is not a surprise given the family in which he grew up. In 1959, Saveri’s father, Richard, and his uncle, Guido, started the law firm, Saveri & Saveri, where they specialized in antitrust litigation.

Some of their work, such as a price-fixing case where they represented [Continental Ore](#) during World War II, went before the U.S. Supreme Court, and were the forerunners of the present-day class action litigation, leading to the development of Federal Rule of Civil Procedure 23.

After earning his law degree from the University of Virginia Law School, Saveri began his career in 1987 at the law firm McCutchen, Doyle, Brown & Enersen. Five years later, he joined Lieff Cabraser Heimann & Bernstein, a law firm in which he later became the managing partner and litigated landmark cases against such tech juggernauts as Apple and Alphabet.

In May 2012, Saveri founded the Joseph Saveri Law Firm and contacted Butterick to buy one of his fonts, setting in motion the relationship that would lead to his current crop of cases involving AI. Moving forward, Saveri warned of surprises in the discovery phase of the litigation.

Saveri said, “You don’t know sometimes what’s under the rocks you turn over in these cases.”

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US law firm office leasing soared to record high in 2023

 [reuters.com/legal/transactional/us-law-firm-office-leasing-soared-record-high-2023-2024-03-14](https://www.reuters.com/legal/transactional/us-law-firm-office-leasing-soared-record-high-2023-2024-03-14)

Sara Merken

An empty conference room . REUTERS/Hannah Beier Purchase Licensing Rights  , opens new tab

March 14 (Reuters) - U.S. law firms leased a record total amount of office space in 2023, commercial real estate brokerage Cushman & Wakefield said on Thursday, signaling the legal industry's relative bullishness on in-person work since the pandemic.

The U.S. legal sector leased nearly 16.9 million square feet last year, more than any prior year and up from nearly 14.8 million in 2022, Cushman & Wakefield said in a newly released report.

Law firm leasing volume rebounded after a slump in 2020 and 2021, when firms leased about 10.9 million square feet and 11.2 million square feet, respectively.

Law firms in 2023 accounted for 8.8% of all office sector leasing activity in the 10 major legal markets that Cushman & Wakefield tracks, the brokerage said. Law firms made up 4.9% of total leasing activity in 2022, said John McWilliams, a senior research analyst at Cushman & Wakefield.

The figures cover law firm leases of all sizes across Atlanta, Boston, Chicago, Dallas/Fort Worth, Houston, Los Angeles, New York City, Philadelphia, San Francisco and Washington, D.C.

"The legal sector was a bright spot for office demand last year with an unprecedented level of leasing activity taking place," McWilliams said in a statement.

Reports from firms like Cushman & Wakefield and Savills have tracked the legal leasing resurgence as COVID-19 fears waned and law firms brought lawyers and staff back to the office more aggressively, if still not to pre-pandemic levels.

Leaders at the brokerages and law firms have cited the need to train junior lawyers as one driver for the industry's emphasis on in-office work.

The 2023 leases included in Thursday's report include both relocations and renewals. While some law firms chose to take more space, others significantly reduced their square footage.

Paul, Weiss, Rifkind, Wharton & Garrison took the largest legal sector lease last year when it signed a deal to relocate its New York headquarters to a larger, 765,000-square-foot space. Davis Polk & Wardwell signed the second largest, renewing its Manhattan lease with an

additional 30,000 square feet that brought its total size to over 700,000 square feet.

Firms that downsized in their home towns include Cadwalader, Wickersham & Taft, which shaved off roughly 120,000 square feet of its New York office space, marking about 34%. Crowell & Moring will downsize by nearly 50% in Washington, D.C., and lease 198,877 square feet.

The report said legal tenants saw increased average effective rents in 2023 due to factors including inflationary pressure and demand for quality space, but the highest rents were still lower than before the pandemic.

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Reporting by Sara Merken

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Securities Law

March 15, 2024, 10:26 AM PDT

US Prosecutors Expand Adani Probe to Review Potential Bribery

By Tom Schoenberg and Ava Benny-Morrison

- Probe focused on whether payments made to officials in India
- Justice Department has been reviewing Gautam Adani’s conduct

Bloomberg Law News 2024-03-15T14:05:32981126012-04:00

US Prosecutors Expand Adani Probe to Review Potential Bribery

By Tom Schoenberg and Ava Benny-Morrison2024-03-15T13:26:53994-04:00

Probe focused on whether payments made to officials in India

Justice Department has been reviewing Gautam Adani’s conduct

US prosecutors have widened their probe of India’s Adani Group to focus on whether the company may have engaged in bribery as well as the conduct of the company’s billionaire founder, according to people with direct knowledge of the matter.

Investigators are digging into whether an Adani entity, or people linked to the company including **Gautam Adani**, were involved in paying officials in India for favorable treatment on an energy project, said the people, who asked not to be identified discussing the confidential effort. The probe, which is also looking at Indian renewable energy company Azure Power Global Ltd., is being handled by the US Attorney’s Office for the Eastern District of New York and the Justice Department’s fraud unit in Washington, said people familiar with the matter.

“We are not aware of any investigation against our chairman,” Adani Group said in an emailed statement. “As a business group that operates with the highest standards of governance, we are subject to and fully compliant with anti-corruption and anti-bribery laws in India and other countries.”

Representatives for the Justice Department in Brooklyn and Washington declined to comment. Azure didn’t respond to requests for comment. Gautam Adani, his company and Azure haven’t been charged with wrongdoing by the Justice Department, and investigations don’t always lead to prosecutions.

In addition to being a monolithic presence in its home country, with ports, airports, power lines and highway developments, Adani Group attracts capital from around the world. US law allows federal prosecutors to pursue foreign corruption allegations if they involve certain links to American investors or markets.

Read More: [Asia’s Richest Man Sells the World a Green Dream Built on Coal](#)

<https://www.bloomberglaw.com/product/blaw/bloomberglawnews/securities-law/X2QMOU1O000000?bc=W1siU2VhcmNoICYgQnJvd3NlIiwiaHR0cHM...> 1/4



Gautam Adani, billionaire and chairman of Adani Group

Photographer: Kobi Wolf/Bloomberg

Adani's sprawling empire was rocked early last year by [claims](#) from short-seller Hindenburg Research that the conglomerate manipulated its stock price and committed accounting fraud. The group has vigorously denied those allegations and the shares have largely climbed back from their initial plunge.

Still, the report prompted the Justice Department, as well as the Securities and Exchange Commission , to look into some of the claims, Bloomberg News reported last year.

Read More: [Adani Group Statements to Investors Draw US Scrutiny](#)

The Adani probe is now at an advanced stage, according to the people. The DOJ can choose to pursue its investigations without notifying the parties.

Adani Group and Azure compete in India's green-energy sector, and in recent years both have won contracts for projects as part of the same state-run solar program. Adani is seeking to position itself as world-leading renewable-energy company at a time when Prime Minister **Narendra Modi**, a perceived close ally of Gautam Adani, is pushing major green initiatives.

Azure has been dealing with fallout from whistleblower complaints of illicit payments and was delisted from the New York Stock Exchange late last year over delayed filings.

Azure [said](#) last year that it was cooperating with the Justice Department and SEC after an internal probe found evidence that people previously affiliated with the firm may have been aware, or been involved in, an "apparent scheme with persons outside the Parent to make improper payments in relation to certain projects."

FCPA Cases

The Foreign Corrupt Practices Act makes it a crime for a company or person with US links – such as a public listing, American investors or a joint venture – to pay or offer something of value to another government's officials for favorable treatment. Prosecutors in Brooklyn have a history of aggressively pursuing those cases. Adani Group doesn't trade in the US, but it does have American investors.

So-called FCPA investigations can take years, complicated by the need to gather evidence and interview witnesses who may be outside the US. The cases, however, are often high-profile and can result in huge fines for companies and big wins for prosecutors.

Officials have increasingly sought to bring FCPA cases against executives, although it's been uncommon for the head of a major company to be charged.

Adani Rebound

Gautam Adani, 61, has led the [pushback](#) against previous claims of impropriety. In a July speech to shareholders, he described Hindenburg Research's allegations as "malicious" and "false narratives."

After initially cratering on the short-seller's claims, flagship Adani Enterprises Ltd. shares have gained more than 70% over the past year. Gautam Adani's fortune has again surged toward \$100 billion, making him the world's 14th richest person, according to Bloomberg Billionaires Index.

India also is now poised to resolve its own investigations into the firm after the country's top court in January ordered regulators there to [conclude](#) their investigation within three months, and said no more probes were needed. That came after a committee appointed by that court last year [found](#) no regulatory failure nor signs of price manipulation in Adani Group stocks.

Read More: [Adani Fortune Hits \\$100 Billion Again as Short-Seller Pain Ebbs](#)

From the start, the US scrutiny of Adani Group has been laced with geopolitical implications. The company is deeply intertwined with the economy in India, which the White House has been courting as an ally to counter China. Both Adani and Modi hail from the western Indian state of Gujarat and have known each other for years.

The DOJ probe hasn't stopped Washington from working with Adani Group entities.

Last year, the US International Development Finance Corp. said it would provide \$553 million in financing to an Adani unit for a port terminal in Sri Lanka's capital, marking the government agency's largest infrastructure investment in Asia, with a goal of curbing China's influence in the region.

A senior US official [told Bloomberg News](#) that before authorizing the loan, the government found Hindenburg's allegations weren't applicable to the subsidiary spearheading the Sri Lankan project.

--With assistance from **Patricia Hurtado**.

To contact the reporters on this story:

Tom Schoenberg in Washington at tschoenberg@bloomberg.net;

Ava Benny-Morrison in New York at abennymorris@bloomberg.net

To contact the editor responsible for this story:

Ben Bain at bbain2@bloomberg.net

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Food Delivery App Can't Beat Investor Suit Over SPAC Deal

By **Katryna Perera**

Law360 (March 14, 2024, 5:50 PM EDT) -- A New York federal judge has trimmed a suit against Grab Holdings Ltd., a company that operates mobile food delivery and ride-hailing services, but retained allegations that several sections of a proxy statement Grab filed with a special-purpose acquisition company were false and misleading.

U.S. District Judge Jennifer L. Rochon issued an **opinion and order** on Tuesday stating that she agrees with the investors' claims that the first four sections of the proxy statement Grab filed in 2021 with SPAC Altimeter Growth Corp. were false and misleading.

According to the order, the first four sections of the proxy discussed Grab's use of incentives to attract drivers and consumers for its food delivery and ride-hailing services. The sections noted that Grab might increase its incentives in the future and that if it did, it could negatively impact the company's profitability.

The investors say these sections of the proxy were false and misleading because when the statements were made, Grab was already experiencing driver shortages, which was negatively affecting operations, and the company was already increasing incentives to combat the driver supply constraint. As a result, "the [proxy] did not accurately portray Grab's then-current financial situation or its business prospects," the investors say.

Judge Rochon agreed on Tuesday, saying that in discussing these topics, Grab "put these issues in play" and triggered a duty to "tell the whole truth," which the investors allege didn't happen.

"Drawing all reasonable inferences in favor of plaintiffs and accepting well-pleaded factual allegations as true, defendants omitted information that they had a duty to disclose," the judge said.

Despite keeping these claims intact, Judge Rochon tossed the rest of the suit's allegations relating to other statements in the proxy statement and other allegedly false and misleading statements made in press releases and a conference call. According to the order, Judge Rochon found many of the challenged statements nonactionable. Investors were also granted leave to amend their claims.

In a statement to Law360 on Wednesday, Brian P. O'Connell of Pomerantz LLP, counsel for the investors, said, "We are pleased with the court's decision and look forward to litigating these claims on behalf of investors."

Counsel for Grab and the other defendants did not immediately respond to requests for comment.

Founded in 2012, Grab offers ride-hailing and food-delivery services in over 400 Southeast Asian cities.

In 2021, Grab announced it would go public through a de-SPAC transaction with Altimeter. According to the investors, the Altimeter board said it had conducted due diligence on Grab by reviewing its operations and finances and made assurances that the merger was in the best interests of Altimeter's shareholders. The merger was approved and closed in December 2021, according to the order.

Three months later, in March 2022, Grab announced its financial results for the fourth quarter and the entire year of 2021 and revealed a 41% revenue decline due to preemptive investments to grow

driver supply and increased consumer incentives.

Grab also announced that the company lost \$1.1 billion during that quarter, according to the order, and in a conference call that day, Grab's CEO Anthony Tan stated, "We're preemptively investing to recalibrate driver supply to capture a strong recovery in mobility demand. Similar to what was observed in other parts of the world, our driver supply base moderated down amid lower mobility demand in the third quarter."

Investors say Grab's stock price fell \$1.95, or 37%, to close at \$3.28 per share on March 3, 2022, on this news.

The investors are represented by Joshua B. Silverman, Omar Jafri, Brian P. O'Connell, Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP and Shannon L. Hopkins of Levi & Korsinsky LLP.

Grab, Tan and the other Grab executives are represented by Susan L. Saltzstein and Jeffrey S. Geier of Skadden Arps Slate Meagher & Flom LLP.

The Altimeter defendants are represented by David Hennes and Amy Jane Longo of Ropes & Gray LLP.

The case is In Re Grab Holding Limited Securities Litigation, case number 1:22-cv-02189, in the U.S. District Court for the Southern District of New York.

--Editing by Jay Jackson Jr.

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Chesapeake Investor Challenges \$7.4B Southwestern Deal

By **Sydney Price**

Law360 (March 14, 2024, 2:47 PM EDT) -- A shareholder of Chesapeake Energy Corp. sued the company and some of its officers and directors on Wednesday in an attempt to enjoin a proposed \$7.4 billion acquisition of Southwestern Energy, saying investors cannot make an informed decision on whether to approve the deal or not based on the incomplete financial information provided.

Chesapeake and Southwestern said in a statement in January that the combined company will have an enterprise value of approximately \$24 billion. The deal stands to create the largest natural gas producer in the U.S., they said.

According to Gerald Joseph Lovoi's suit filed in New York federal court, Chesapeake has filed a materially incomplete and misleading registration statement with the U.S. Securities and Exchange Commission regarding its potential acquisition of Southwestern. The registration statement contains financial projections about the combined company prepared by Chesapeake Energy management and financial analyses conducted by Evercore Group LLC, but omits several critical metrics, Lovoi said.

In addition to Chesapeake, the suit's individual defendants include Chesapeake CEO Domenic J. Dell'Osso Jr., former CEO and current director Michael A. Wichterich and several other directors.

Lvoi said Chesapeake's registration fails to provide certain information regarding, among other things, inputs used in synergies forecasts, according to the complaint. The registration statement's net value and discounted cash flow analyses for both Chesapeake and Southwestern also fail to disclose the value of several components used in the calculations, Lovoi said.

"Without this information, Plaintiff was not fully informed as to the defendants' actions, including those that may have been taken in bad faith, and cannot fairly assess the process," the suit states. "And without all material information, Plaintiff is unable to make a fully informed decision in connection with the Stock Issuance and/or the Proposed Transaction and faces irreparable harm."

According to the suit, the registration statement also says that Chesapeake Energy agreed to pay a discretionary fee of up to \$5 million to Evercore in connection with closing the proposed deal, but does not disclose any specific details regarding the agreement.

"That \$5 million is in addition to the \$20 million that the Company agreed to pay Evercore for rendering its fairness opinion," the suit states. "Yet the [registration statement] is silent as to the terms of payment for the discretionary fee, including any factors or contingencies that must be met for the payment to be made."

Lvoi seeks an order enjoining the defendants from closing the merger and requiring them to include all material financial information in any updated version of the registration statement.

Chesapeake declined to comment on Wednesday. Counsel for Lovoi did not immediately respond to requests for comment.

Lvoi is represented by Shane T. Rowley and Danielle Rowland Lindahl of Rowley Law PLLC.

Counsel information for Chesapeake and the individual defendants was not immediately available on Wednesday.

The case is Lovoi v. Chesapeake Energy Corporation et al., case number 1:24-cv-01896, in the U.S. District Court for the Southern District of New York.

--Editing by Patrick Reagan.

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Icahn Enterprises Rips Investors' 'Grab Bag' Of A Suit

By **Emilie Ruscoe**

Law360 (March 14, 2024, 9:43 PM EDT) -- Diversified holding company Icahn Enterprises LP and some of its current and former brass have asked a Miami federal judge to toss a proposed investor class action alleging they misrepresented certain details of the company's performance and asset values, arguing that the suit is a lengthy "grab bag of different theories."

In a Monday dismissal bid, Icahn Enterprises and five individual defendants, including its namesake Carl C. Icahn, asked U.S. District Judge K. Michael Moore to toss investors Philip Kosowsky and Gary Cotton's complaint, claiming the investors failed to show, in their 175 pages of allegations, how the company had misled investors.

"Plaintiffs must do more than assert, with the benefit of hindsight, that routine transactions were undertaken pursuant to some undisclosed motivation or that honestly held opinions were somehow false," the Icahn Enterprises defendants told Judge Moore on Monday.

In the latest version of the suit, from January, the investors claim the company had long "engaged in an undisclosed scheme to use heightened dividend yields as an inducement to buoy or inflate the trading price of IEP [Icahn Enterprises] units as investors clamored to invest in a so-called 'dividend stock,' ostensibly offering increased asset values."

According to the investors, the defendants had misled the markets, painting a picture of a company "in which significant quarterly dividends were linked to its liquidity, no matter whether the company had a profitable or comparably favorable quarter or not."

When the action launched in May 2023, investor Osaneme Okaro highlighted a short-seller report that allegedly kicked off the series of trading price decreases that constitute the alleged investor harm, noting multiple times that the short-seller accused the company of paying dividends to shareholders in a "Ponzi-like economic structure."

The latest version of the suit doesn't include reference to the short-seller's use of "Ponzi-like," but does point to the short-seller's May allegation that the company's "last reported indicative year-end [net asset value] of \$5.6 billion is inflated by at least 22%," and the short-seller assertion that the company was "using money taken in from new investors to pay out dividends."

The suit also points to the company's disclosure, a week after the short-seller's report was published, that the U.S. attorney's office for the Southern District of New York sought information from the company about its valuation practices, noting that both the short-seller report and news of the government's inquiry pushed down the company's trading prices.

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

The investors are represented by Jeffrey W. Golan, Jeffrey A. Barrack, Stephen R. Bassar and Samuel M. Ward of Barrack Rodos & Bacine and Howard Bushman of The Moskowitz Law Firm PLLC.

The defendants are represented by Michael S. Doluisio, Bina M. Peltz, Nicholas R. Gersh and Nina S. Riegelsberger of Dechert LLP and Mark A. Levy of Brinkley Morgan.

The case is Okaro v. Icahn Enterprises LP et al., case number 1:23-cv-21773, in the U.S. District Court for the Southern District of Florida.



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Tupperware Pans Investor Suit Over 'Small' Accounting Errors

By **Sydney Price**

Law360 (March 14, 2024, 7:36 PM EDT) -- Tupperware wants to dismiss a proposed class action accusing it of damaging investors by knowingly issuing misleading financial reports, arguing the suit fails to show it acted with ill intent when releasing the allegedly inaccurate information to the public, and that its restatements did not actually hurt shareholders.

In the suit, which was most recently amended in January, shareholders said the Tupperware defendants signed off on reports that they knew contained false information. The corrective disclosures associated with a \$23 million discrepancy and the company's admission of weak internal controls ultimately led to a nearly 15% decrease in stock price on March 1, 2023, and another 8% decline on March 17, 2023, according to the complaint.

However, in a motion to dismiss the suit filed on Tuesday, the Tupperware defendants – which include its former CEO Miguel Fernandez, current Chief Financial Officer Mariela Matute and former CFO Cassandra Harris – said the investors fail to plead their scienter and loss causation allegations, calling the stock drops "negligible."

"Each of these errors was relatively small, particularly in comparison to Tupperware's \$1.3 billion in net sales in 2022," the motion states.

Though the investors claim they were damaged when Tupperware shares declined twice in March 2023, the Tupperware defendants said a stock drop alone is insufficient to plead loss causation. The share prices rose significantly in the days following the disclosures, the defendants said.

"These modest declines in stock price were largely recovered in the days following the disclosures," the Tupperware defendants said. "This belies Plaintiffs' allegations that the disclosure of the 'truth' on March 1st and March 16th caused them to suffer loss, and it is fatal to the Complaint."

The suit also alleges that the "suspicious timing" of Fernandez's October 2023 termination and the departure of other executives support claims that Tupperware knew it was committing fraud, but the defendants said the departures came significantly after Tupperware made the alleged corrective disclosures last March, and that the departures cannot be connected in any way to fraud.

"Instead, the timing of the departures is consistent with the nonculpable inference that any company facing economic and financial challenges would experience turnover in its finance function and in leadership," the Tupperware defendants said.

The investors also fail to identify other examples of ill intent, the defendants said Tuesday.

"There are no allegations of suspicious trades undertaken by a defendant, confidential witnesses describing any defendant's participating in the alleged fraud, details of reports or documents any defendant saw that alerted them or should have alerted them to the alleged fraud, or media reports detailing the so-called fraud and any defendant's participation therein," the motion states.

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

The plaintiffs are represented by Laurence J. Hasson and Joseph R. Seidman Jr. of Bernstein Liebhard and Etan Mark of Mark Migdal & Hayden.

The defendants are represented by Ian M. Ross and James W. Ducayet of Sidley Austin LLP.

The case is Ouranitsas v. Tupperware Brands Corp. et al., case number 6:23-cv-00511, in the U.S. District Court for the Middle District of Florida.

--Editing by Patrick Reagan.

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Pharma Co. Misled Investors On Research Methods, Suit Says

By **Sydney Price**

Law360 (March 14, 2024, 8:53 PM EDT) -- Pharmaceutical company Anavex has been hit with a proposed shareholder class action alleging that it misled the public about research methodologies it was using in its clinical studies for neurological treatments.

According to the suit filed by investor Jonathan Blum on Wednesday, Anavex sponsored clinical trials of its drugs used to treat a central nervous system disorder known as Rett syndrome. In doing so, the company disclosed in a U.S. Food and Drug Administration filing that it intended to use certain methods to evaluate the trials for the drugs, the suit said.

However, Anavex later revealed it had chosen different approaches for both studies, surprising analysts and damaging investors, according to the suit, which also names Anavex CEO Christopher U. Missling as a defendant.

The results of the studies — known as Avatar and Excellence — were announced in 2022 and 2024, respectively. The class period begins Feb. 1, 2022, the day Anavex released the results of its Avatar study.

"The actual methods and outcomes used to analyze the Avatar study were different from those previously announced," the suit stated. "Analysts critiqued these methods as being unusual and not clinically validated."

Following the announcement, shares of Anavex fell \$2.53, or about 19%, to close at \$10.55 on Feb. 2, 2022, according to the complaint.

Anavex said it would use the same tests and analysis it used in Avatar for Excellence, its next trial of a pediatric Rett syndrome drug, but it did not, according to the suit.

"The company suggested it was going to use particular endpoints and research methods known to the public in advance," the suit states "When the company changed those methods last-minute during the Avatar research program, it promised investors it would keep those newly adopted endpoints and methods."

Earlier this year, on Jan. 2, 2024, Anavex revealed to the public that it had used different data collection and reporting methods than it previously said it would. Anavex blamed the trial's deficiencies on a "large placebo effect" but has no evidence to support the claim, the suit alleged.

Following the announcement of the Excellence results, Anavex shares fell \$3.26, or about 35%, to close at \$6.05 on January 2, 2024.

"Upon the release of the Excellence study results, the market realized the truth: Anavex cherry-picked outcomes and used stylized statistics to rope along investor hopes on a drug unlikely to succeed," the suit stated.

Blum accuses the defendants of violations of the Exchange Act and seeks compensatory damages.

Counsel for Blum declined to comment on Thursday. A representative of Anavex did not immediately respond to a request for comment.

Blum is represented by Adam M. Apton of Levi & Korsinsky LLP.

Counsel information for Anavex wa not immediately available.

The case is Blum v. Anavex Life Sciences Corp. et al., case number 1:24-cv-01910, in the U.S. District Court for the Southern District of New York.

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Lehman Brothers Can't Undo Trial Loss Over Crisis-Era CDS

By **Katryna Perera**

Law360 (March 14, 2024, 10:20 PM EDT) -- A New York appeals court on Thursday affirmed a bench trial loss Lehman Brothers' bankrupt European unit suffered last year in a suit attempting to claw back nearly half a billion dollars from Assured Guaranty over losses on credit default swaps tied to the 2008 financial crisis.

In a brief **ruling**, a five-judge Appellate Division panel, citing precedent, said a ruling at a bench trial "should not be disturbed upon appeal unless it is obvious that the court's conclusions could not be reached under any fair interpretation of the evidence," and Lehman Brothers International (Europe)'s remaining arguments were unavailing.

The panel **heard oral arguments** on the appeal last month and appeared reluctant to reverse the result.

Lehman initially sued in 2011 for \$1.4 billion in damages after the parties couldn't agree on how much the terminated credit default swaps were worth. Assured's AG Financial Products Inc. calculated that Lehman owed it \$20 million for lost premium payments, while Lehman claimed Assured owed it at least \$485 million for terminating the deals early.

In March 2023, after a **five-week bench trial** and post-trial briefs, Supreme Court Justice Melissa A. Crane **sided with the insurer** and said Lehman failed to prove that its calculations of its loss based on market prices at the time were reasonable.

The judge found that Assured calculated the loss differently because it was unrelated to market prices — which, at the time, were too unstable to deem accurate.

Lehman appealed, arguing that Judge Crane improperly allowed Assured to adopt a "never-before-used and wholly subjective method to value credit default swaps that defied commercial reality — turning a \$500 million liability into a \$20 million gain."

At oral arguments, Lehman counsel stressed this argument, saying Judge Crane took Assured's "subjective point of view" and made it her own, and accused Assured of choosing a loss calculation methodology for its benefit.

Counsel for Assured countered that it used a "standard, well-accepted" calculation model that Lehman itself has used in previous cases and that as the non-defaulting party on the CDS trades, Assured had every right to choose the method of calculating its losses.

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

Justices Troy K. Webber, Jeffrey K. Oing, Lizbeth González, Tanya R. Kennedy and Martin Shulman sat on the panel for the Appellate Division.

Lehman Brothers is represented by Andrew J. Rossman, David S. Mader and Owen F. Roberts of Quinn Emanuel Urquhart & Sullivan LLP and Mark C. Zauderer and Jason Cohen of Dorf Nelson & Zauderer LLP.

AG Financial Products Inc. is represented by Lev L. Dassin, Roger A. Cooper, Rishi Zutshi and Lina

Bensman of Cleary Gottlieb Steen & Hamilton LLP.

The case is Lehman Brothers International (Europe) v. AG Financial Products Inc., case number 653284/2011, in the Supreme Court of the State of New York, Appellate Division, First Judicial Department.

--Editing by Brian Baresch.

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Barclays Hit With Short-Seller's Suit Over \$17B Overissuance

By **Katryna Perera**

Law360 (March 14, 2024, 9:04 PM EDT) -- Barclays PLC and a few members of its top brass have been hit with a proposed securities class action in New York federal court over the bank's \$17 billion overissuance of securities, which included exchange-traded notes designed to track volatility index futures.

Short-seller Michael Puchtler filed a **complaint** Tuesday on behalf of a proposed class of individuals and entities that acquired a short position in Barclays' iPath Series B S&P 500 VIX Short-Term Futures ETN — also known as VXX — and held that position at the close of the market on March 13, 2022, the day before Barclays announced that it would suspend new sales of VXX.

Puchtler says class members were harmed and lost millions of dollars due to a "massive and sustained rise" in the note's price caused by Barclays' failure to disclose its illegal overissuance of billions of dollars of unregistered securities.

The individual defendants named in the suit are Barclays CEO C.S. Venkatakrisnan, group finance director Tushar Morzaria, and the bank's former CEO James Staley.

According to the complaint, VXX is an exchange-traded note issued by Barclays designed to track securities linked to the CBOE's Volatility Index, known as the VIX, and more general short-term stock market volatility. Barclays marketed and sold VXX as a way for investors to take long and short positions on short-term stock market volatility.

"Market participants trade in VXX ETNs and related securities such as VXX options to gain exposure to, and often as a hedge against, changes in stock market volatility," the complaint states. "Traders who believe that stock market volatility will increase can take long positions in VXX, while those who believe that stock market volatility will decrease can take short positions in VXX."

Puchtler alleges that just before the market opened on March 14, 2022, Barclays announced that it was suspending all further sales and issuances of VXX securities "because Barclays does not currently have sufficient issuance capacity to support further sales from inventory and any further issuances of the ETNs."

This announcement caused a short squeeze of VXX, Puchtler says, as buyers "piled into" the security, knowing that short-sellers wouldn't be able to counteract the rapid rise in the note's price.

Following Barclay's announcement, VXX's price skyrocketed to as high as 140% of its indicative value, according to the complaint. It stayed at high price levels for nearly six months until Barclays was able to issue corrective disclosures, fix its securities shelf registration with the U.S. Securities and Exchange Commission, and issue and sell new securities.

According to the complaint, it took weeks for Barclays to disclose that it had suspended all VXX sales and issuances because it had "illegally sold over \$17 billion of unregistered securities, including VXX, over the preceding eighteen months, in excess of its stated shelf registrations and in violation of securities laws' registration requirements."

Shortly afterward, the bank also disclosed that it had failed to implement adequate internal controls to monitor the issuances of securities from its shelf registration statements, which led to the

"unprecedented" sales of unregistered securities.

Puchtler was an individual investor who was short VXX before the market opened on March 14, according to the complaint. He says he and other investors would not have taken short positions on VXX had they known about the lack of internal controls or that Barclays was legally prohibited from issuing new VXX securities.

The suit seeks damages, restitution, disgorgement, attorney fees and a jury trial.

Barclays declined to comment. Representatives for the other parties did not immediately respond to requests for comment on Thursday.

Puchtler is represented by Frederic S. Fox, Robert N. Kaplan and Donald R. Hall of Kaplan Fox & Kilsheimer LLP and Joseph M. Vanek, Timothy Sperling, Jeff Bergman and Jerry Santangelo of Sperling & Slater.

Counsel information for the defendants was not immediately available.

The case is Puchtler v. Barclays PLC et al., case number 1:24-cv-01872, in the U.S. District Court for the Southern District of New York.

--Editing by Jay Jackson Jr.

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Ex-AutoZone CEO Sued Over \$1M In 'Short-Swing' Profits

By **Emilie Ruscoe**

Law360 (March 14, 2024, 6:00 PM EDT) -- Car parts retailer AutoZone Inc. and its former CEO face an investor suit seeking to recover "short-swing" trading profits on behalf of the company that the onetime executive should allegedly be required to hand over.

In **a suit filed Wednesday** in Memphis federal court, AutoZone shareholder Nosirrah Management LLC claimed William C. Rhodes III, who headed the company between 2021 and 2023, made more than \$1 million trading AutoZone shares between December 2021 and July 2022.

Nosirrah claimed that on two dates in early 2022, Rhodes made a pair of AutoZone common stock purchases that together totaled more than \$14 million.

The investor also pointed to dates in December 2021 and July 2022 when Rhodes sold Autozone shares in lots ranging in price from nearly \$134,000 to almost \$1.2 million that together totaled nearly \$8 million.

The dates Nosirrah cited span a 30-week, or seven-and-a-half-month, time period.

Under federal securities laws, Nosirrah said, profits earned by company insiders on the purchase and sale, or sale and purchase, of company shares within a six-month period should belong to the company.

According to the investor, Rhodes made more than \$1 million off trading AutoZone shares during that time period under the "universally accepted" method used to calculate such profits.

Nosirrah claimed that in August 2022, it had emailed AutoZone, which is a nominal defendant in the action, telling the company to seek disgorgement from Rhodes, which the investor followed up on for nearly a year and a half with "numerous" messages.

In January 2024, the investor said, it heard back from counsel for AutoZone that the company wouldn't pursue disgorgement of short-swing profits from Rhodes.

According to the investor, AutoZone said it wouldn't pursue disgorgement because Rhodes' \$14 million in AutoZone stock purchases were made from an estate planning tool called a grantor retained annuity trust.

In support of its determination, the Memphis-headquartered company cited a 1997 no action letter from the U.S. Securities and Exchange Commission involving such a trust, the investor said.

But according to the investor, the SEC letter was inapplicable because "there have been material changes in the terms of [grantor retained annuity trusts] since the [SEC letter] was issued."

As a result, the investor said, the share purchases at issue should fall under the purview of the SEC's short-swing profit rule.

Representatives for the parties didn't immediately respond to requests for comment Thursday.

Nosirrah Management is represented by Ann Heimberger Jernow of Sterlington PLLC.

Counsel information for AutoZone wasn't immediately available Thursday.

The case is Nosirrah Management LLC v. AutoZone Inc. et al., case number 2:24-cv-02167, in the U.S. District Court for the Western District of Tennessee.

--Editing by Stephen Berg.

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Chancery Concedes Appraisal Math Error In HBK Share Award

By **Jeff Montgomery**

Law360 (March 14, 2024, 5:22 PM EDT) -- Delaware's Court of Chancery has issued a rare post-merger appraisal ruling correction, adding \$6.1 million to an earlier post-deal valuation of Pivotal Software Inc. shares held by two HBK Capital Management affiliates at the time of Pivotal's \$2.7 billion sale to VMWare Inc. in 2019.

The corrected opinion, released by Chancellor Kathaleen St. J. McCormick late Wednesday, still fell short of the extra \$13.5 million sought by HBK in August when it moved for rectification of what it described as clerical errors in the court's decision the same month. That earlier ruling found that the hedge fund should get \$1.7 million less than the \$15 per share it paid in 2019, after excluding the premium paid by VMWare in the original Pivotal acquisition.

But the partial win nevertheless boosted the court-ordered price for HBK's Pivotal stock from \$14.83 per share to \$15.44, netting the HBK affiliates about \$4.4 million beyond the \$15 per share that VMWare paid when it swept up Pivotal.

The final, \$154.4 million valuation of HBK's shares issued Wednesday was more than \$7 million less than the \$16.18 per-share amount the hedge fund had proposed in its request for correction, and well below the extra \$50 million it sought in its original \$20 per-share post-sale appraisal petition, filed in March 2020.

In a letter decision also filed Wednesday with the corrected opinion, Chancellor McCormick acknowledged some problems or complications with the court's valuation, rejected others and conceded a "straight-up mistake" involving numerator and denominator entries that "need to be corrected," among other adjustments.

Although appeals of appraisal rulings are not unusual, no similar motions for multiple lower court corrections of such a decision have been filed in recent years. HBK turned to a case from as far back as 2008 to include as a footnote in its request.

Wednesday's ruling also highlighted the multidimensional considerations and calculations required in suits and trials convened to address stockholder rights to court-set appraisals of shares. Details of the original and corrected decisions included a finding that Pivotal failed to challenge HBK's standing on a few claims along the way, scuttling some seller arguments against a change.

HBK and Pivotal did not immediately respond Thursday to requests for comment on the ruling, which again rejected an argument from Pivotal for a post-merger, \$12.17 price under a valuation that would exclude the premium paid to stockholders at closing and would have cost HBK \$32.7 compared to the 2019 deal. The affiliates that sued — HBK Master Fund and HBK Merger Strategies Master Fund LP — asked the chancellor to address the corrections they had raised or convene a reargument on the original court appraisal.

Delaware's corporation law allows investors to reject merger offers and to sue for a Chancery Court appraisal and a potentially better deal based on a sale target's unaffected price, plus interest from the date of the transaction.

The Delaware provision led to the coining of the phrase "appraisal arbitrage," as some investors bought into deals in order to fight for a higher price afterward. After time, a law permitting the

practice was changed to allow companies to pay stockholders who sued for appraisal a portion or all of the per-share price ahead of time as a hedge against big, interest-padded payouts.

HBK went to trial on its \$20 appraisal argument in July, and set the corrections in motion by invoking Chancery Court rules that permit the court to revise at any time clerical "mistakes in judgments, order or other parts of the record and errors therein arising from oversight or omission."

Miscalculations or omissions cited by HBK included what it said was a failure by the court to include \$275.6 million in stock option proceeds in one part of Pivotal's discounted cash flow analysis while incorporating that figure in another portion, allegedly diluting part of the court's value-per-share projections. Also, HBK argued, the court's calculations discounted some cash flows over incorrect time periods.

In the earlier and corrected decisions, Chancellor McCormick found that an argument made by Pivotal concerning the transaction price "raises an interesting question about deal primacy under Delaware law — namely, whether the appraisal statute requires business judgment deference to the deal price in controller squeeze-outs."

Pivotal argued that deal price provides a cap on fair value, based on the seller's reliance from the outset on process protections detailed in the precedent set by the 2014 Kahn v. M&F Worldwide decision. MFW requires consideration of a transaction by both an independent special committee of directors and a majority of unaffiliated stockholders in a fully informed, uncoerced vote.

"The short answer is no," the chancellor wrote in finding that "there is no presumption in favor of deal price." But the decision added: "The slightly longer answer is that, even as the court independently measures going-concern value, companies remain incentivized to deploy strong procedural protections for minority stockholders, as those protections can help reduce exposure to liability in appraisal actions, and they did to a degree in this action."

HBK Master Fund and HBK Merger Strategies Master Fund are represented by Samuel T. Hirzel II and Elizabeth DeFelice of Heyman Enerio Gattuso & Hirzel LLP, and Lawrence M. Rolnick, Steven M. Hecht and Frank T.M. Catalina of Rolnick Kramer Sadighi LLP.

Pivotal is represented by Elena C. Norman and Daniel M. Kirshenbaum of Young Conaway Stargatt & Taylor LLP, and Michael D. Celio, Laura Kathryn O'Boyle, Peter M. Wade, Mark H. Mixon Jr. and Colin B. Davis of Gibson Dunn & Crutcher LLP.

The case is HBK Master Fund LP et al. v Pivotal Software Inc., case number 2020-0165, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

Judge Applauds Attys' 'Very Awesome' Use Of Google AI Bot

By **Dorothy Atkins**

Law360 (March 14, 2024, 7:49 PM EDT) -- A California federal judge told counsel Thursday it's "very awesome" that their recently amended putative class action complaint alleging privacy violations against Google used Google's own AI tool to argue that Google Analytics illegally scoops personal data from healthcare providers' websites, but he doubted the viability of other pleadings.



Google's own generative artificial intelligence tool, Google Bard, was used to argue against the tech giant in a sprawling consumer action accusing it of using Google Analytics to illicitly track, gather and monetize consumers' private health data without their consent anytime they visit a healthcare provider's website. (Photo by Omar Marques / SOPA Images/Sipa USA)

U.S. District Judge Vince Chhabria's comments came during a nearly two-hour hearing in San Francisco over Google's latest bid to dismiss a sprawling consumer action accusing it of using its advertising product, Google Analytics, to illicitly track, gather and monetize consumers' private health data without their consent anytime they visit a healthcare provider's website, through the use of a software cookie on a device.

The litigation was first launched by multiple anonymous Jane and John Doe plaintiffs in May, and **after a hearing**, Judge Chhabria in **October** denied the consumers' request for a preliminary injunction that would have barred Google's alleged data practices while the case was pending.

Roughly a month later, the consumers beefed up their allegations, filing a 188-page, 11-count amended complaint with 55 exhibits attached, but in December, Google asked the court to throw out the case for good.

At the start of the hearing on Google's motion Thursday, Judge Chhabria pointed out a paragraph on the ninth page of the lengthy complaint that includes an image purportedly showing Google's own generative artificial intelligence tool, Google Bard, confirming the impropriety of its conduct.

When asked whether it is appropriate for hospitals, which are covered by the Health Insurance Portability and Accountability Act, or healthcare companies, which are covered by California's Confidentiality Of Medical Information Act, to use Google Analytics, Google Bard responded with lengthy explanations of why Google Analytics should not be used by such healthcare providers due to privacy concerns, according to the complaint.

The judge told class counsel, Jason Barnes of Simmons Hanly Conroy LLC, that including the AI tool's response in the pleadings was "very awesome."

"You must have had a lot of fun, when [you] saw the answer to the question," Judge Chhabria said.

Judge Chhabria then turned to Google's counsel, Eduardo E. Santacana of Willkie Farr & Gallagher LLP, and told him that including Google Bard's responses to those questions seemed to be mostly "for atmospheric purposes."

"But assuming that is the actual answer Google [Bard] gave, it strikes me as potentially more than atmospheric," the judge told Santacana. "Your own AI product is saying you're not supposed to use [Google Analytics] on hospital websites."

But Santacana argued that there's no evidence that Google Bard's answers are correct, or that the AI tool can be considered reliable, because different prompts may provide different answers and even the same prompt may give different answers when asked repeatedly.

"Nobody can really look behind the curtain on this kind of technology," he said of generative AI.

Judge Chhabria questioned Santacana's description of Google's AI technology, however, asking if he thinks Google Bard would give the opposite answer with the same prompt.

Santacana replied that Google Bard's answers could vary, but he added that he is only basing his comments on his own personal experience with the AI tool. He also argued that there are no current HIPPA regulations related to Google Analytics and there's only proposed legislation that suggests certain guidelines, so there are significant deficiencies with the complaint, which he noted is "about as long as 'The Great Gatsby.'"

The amended complaint asserts violations of the federal Electronic Communications Privacy Act, California's Unfair Competition Law, the California Comprehensive Computer Data Access and Fraud Act and the California Invasion of Privacy Act, along with common law or state claims of breach of express and implied contract, unjust enrichment, trespass to chattels, violation of good faith and fair dealing, intrusion upon seclusion and invasion of privacy.

Judge Chhabria heard arguments on the various allegations and expressed doubts about "potential inconsistencies" in the allegations and the viability of at least some claims, including the plaintiffs' theory of unjust enrichment and breach of implied contract. He also questioned whether the consumers can claim they have been harmed financially or lost anything of value by the alleged data-sharing, noting that California case law is unclear on the issue.

The judge also doubted consumers' lack-of-consent argument, but Barnes noted that consent is not an "all or nothing" proposition, adding that Google bears the burden of proving consumers and users without Google accounts agreed to its data-tracking practices, because consenting to the data collection is an affirmative defense typically raised by Google in privacy cases.

"We allege lack of consent [in the complaint], because we know it's the first issue that's going to come up," Barnes said. "But it's their burden and I think the case law on that is clear."

At the end of the hearing, Judge Chhabria didn't rule from the bench, saying it would take him a while to

"take a deep dive" and go through all pleadings and exhibits before he rules.

The judge said he would keep the discovery stay in place until he decides Google's motion to dismiss, and he tentatively set a case management conference for March 22 to potentially address a pending discovery dispute over Google's preservation of certain documents.

The consumers are represented by Jason Barnes and An V. Truong of Simmons Hanly Conroy LLC, Christian Levis of Lowey Dannenberg PC, Melissa A. Gardner of Lieff Cabraser Heimann & Bernstein LLP, Jeffrey A. Koncius of Kiesel Law LLP and Joseph P. Guglielmo of Scott + Scott Attorneys at Law LLP.

Google is represented by Eduardo E. Santacana, Benedict Y. Hur and Tiffany M. Linn of Willkie Farr & Gallagher LLP.

The case is John Doe I et al. v. Google LLC, case number 3:23-cv-02431, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bonnie Eslinger and Gina Kim. Editing by Alanna Weissman.

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GM, LexisNexis Sued For Sharing Driving Data With Insurers

By **Lauren Berg**

Law360 (March 14, 2024, 11:09 PM EDT) -- A Florida driver claims his insurance rate doubled because General Motors and its OnStar unit collected driving data through his Cadillac without permission and shared the information with LexisNexis Risk Solutions, which created a vague driving behavior report that insurance companies use to determine coverage, according to a putative federal class action.

In his complaint Wednesday, motorist Romeo Chicco argues that it wasn't until he was rejected by several insurance companies that he learned some of his driving behavior data — like sharp accelerations or hard braking without much context — was being collected and shared with data broker LexisNexis Risk Solutions Inc. without his permission.

The "erroneous reports of derogatory and negative driving information" are then being shared with insurance companies, Chicco said, who claims his "peace of mind and privacy [have] been gravely invaded by defendants' actions."

In November 2021, Chicco bought a new Cadillac XT6, and his purchase agreement made no mention of OnStar, LexisNexis or data sharing, according to the complaint. Chicco then downloaded the myCadillac app and later received an email with instructions for how to begin an OnStar subscription, but he said he didn't want to sign up.

Last month, the dealership he bought the car through sent Chicco information about OnStar's services, which specifically stated that the company only collects driving behavior data with the driver's explicit consent, the suit states.

Throughout 2021, 2022 and most of 2023, Chicco said he had the same insurance provider until the company told him it would no longer provide insurance to people in Florida.

The trouble began in December when Chicco tried to get new insurance and several providers rejected him, according to the suit. Chicco asked Liberty Mutual why he had been rejected for coverage and the agent explained it was because of information in his LexisNexis report, the complaint states.

By then, Chicco had found insurance but was shocked that his rates had nearly doubled, according to the complaint.

It took a few weeks to get a copy of his report from LexisNexis, but Chicco said the disclosure showed he had 258 recorded driving events that included trip details, sharp accelerations, hard braking and high speeds, among other things.

"Notably absent from the consumer report is any context related to these driving events," the suit states. "Stating these events, by themselves, says nothing of the other driving conditions and factors plaintiff may have experienced."

In January, Chicco asked Lexis why his driving data had been collected without his permission, but the company told him to contact GM. The automaker then told him the data is sent through OnStar, which Chicco said he never enrolled in. The GM representative told him he did have an OnStar plan attached to his car, the suit states.

On the phone with OnStar, Chicco said he was told the only way driving data reached insurance companies was if he opted in with his insurance company to get a safe driving discount, according to the complaint. Chicco said he did no such thing.

When he called Lexis back to say he never authorized any company to share his driving information, the representative told him he could file a dispute with Lexis to have his data removed, the suit states.

Chicco said he was repeatedly transferred to different OnStar representatives who could not tell him how he had become enrolled in its Smart Driver Program.

The representative "informed him that he could opt out of the program," the suit states. But Chicco "explained that he never opted into the program to begin with and felt angry that OnStar had enrolled him into the program. The representative then transferred him to someone else."

Chicco said GM and OnStar sold or shared his driving data without his knowledge or consent, which has harmed his ability to buy car insurance. What's more, the data in the Lexis report "is so decontextualized that it can hardly be called accurate," the suit states.

"Nevertheless, insurance companies rely upon these consumer reports to determine pricing or flatly reject a potential customer, as has happened here," Chicco said, noting that he believes OnStar started to share his data when he downloaded the myCadillac app.

On March 11, The New York Times reported on this exact issue of people whose insurance rates have increased due to Lexis publishing car drivers' data, according to the suit. Drivers interviewed for the article said they didn't know the data was being collected or shared with third parties, like insurers.

Chicco wants to represent three classes, including a Florida Deceptive and Unfair Trade Practices Act class for all people "who from four years prior to the filing of this action who (1) had their car's driving data (telematics) collected and shared with LexisNexis [and] (2) without those persons' consent"; an invasion of privacy class encompassing all people for the same period who had their data collected and shared with LexisNexis without their consent, and that then appeared in at least one Lexis consumer report; and a Fair Credit Reporting Act class that would include people "who from two years prior to the filing of this action" had their data collected and shared with LexisNexis without their consent and that then appeared in at least one Lexis report.

Chicco said OnStar and GM likely shared millions of consumers' driving behavior data with Lexis without their consent.

The suit claims knowing and willful violation of the Fair Credit Reporting Act, violations of the Deceptive and Unfair Trade Practices Act and violations of Florida common-law invasion of privacy. It seeks actual, statutory and punitive damages, injunctive relief, attorney fees and litigation costs.

Counsel for Chicco and representatives for LexisNexis and GM did not immediately respond to requests for comment late Thursday. OnStar could not be immediately contacted.

Chicco is represented by Mohammad Kazerouni and Ryan L. McBride of Kazerouni Law Group APC.

Counsel information for the defendants was not immediately available.

The case is Romeo Chicco v. General Motors LLC et al., case number 9:24-cv-80281, in the U.S. District Court for the Southern District of Florida.

--Editing by Jay Jackson Jr.

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Buyers Want Goodyear, Michelin Price-Fixing Suits Combined

By **Nadia Dreid**

Law360 (March 14, 2024, 9:51 PM EDT) -- Tire buyers who have accused Goodyear, Michelin, Bridgestone and others of working together to fix the price of replacement tires have asked a New York federal court to consolidate the dozen lawsuits that have piled up against the tire manufacturers.

U.S. District Judge Edgardo Ramos should consolidate the seven separately filed direct purchaser lawsuits and the five indirect purchaser lawsuits into two separate pools that should be coordinated with each other, the tire buyers told the court in their **Wednesday filing**.

The two sets of consolidated lawsuits should be put together into a master docket, for the ease of the court and the parties, while the Judicial Panel on Multidistrict Litigation decides whether a multidistrict litigation is appropriate, the tire purchasers said.

"Regardless of the JPML's decision, this litigation will benefit from filings that are centralized under a single docket," the buyers said.

It's also best to go ahead and consolidate everything now because all the lawsuits are fresh and not yet at different stages, they added.

All the lawsuits were filed this year after European competition officials **raided the tire companies' facilities** over "suspicion of price-fixing."

Though the European Commission didn't name which companies it would be raiding and in which countries it would be conducting those raids, the commission did inform the public at the tail end of January that it had carried out surprise inspections in multiple countries. It said it was investigating violations of the bloc's antitrust rules against coordinating prices to the detriment of consumers.

Goodyear, Michelin and Bridgestone all later confirmed that their European facilities were inspected but denied any wrongdoing.

The commission stressed the inspections were a "preliminary investigatory step" and doesn't mean anyone is guilty of anti-competitive behavior. There's no deadline for the investigation, and the commission said the duration will depend on several factors, including the extent of cooperation it receives.

The **lawsuits** all make **similar claims**: People and businesses were forced to pay inflated prices for tires because of collusion between the manufacturers to hike up the price. According to a **lawsuit** filed by named plaintiff Rena Sampayan, prices started to spike during the COVID-19 pandemic.

Tires are a \$170.6 billion business in the United States, according to Sampayan's lawsuit. Replacement tires — the ones consumers buy once the ones that come with their vehicle wear out — remained stable in price throughout most of the 2010s, but have shot up in price over the last four years, according to her lawsuit. The stark increase was "driven by lock-step price increases from major U.S. tire manufacturers," according to Sampayan.

In the case of Michelin, its tires went up 14% in price during this time, the suit says.

Representatives of the parties did not immediately return requests for comment Thursday.

Sampayan is represented by Gregory B. Linkh, Lee Albert and Brian D. Brooks of Glancy Prongay & Murray LLP, and Dena C. Sharp, Adam E. Polk and Kyle P. Quackenbush of Girard Sharp LLP.

Counsel information for the defendants wasn't available Thursday.

The case is Rena Sampayan v. Continental Aktiengesellschaft et al., case number 1:24-cv-00881, in the U.S. District Court for the Southern District of New York.

--Editing by Lakshna Mehta.

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Lockheed Offloaded Pensions In Risky Deal, Retirees Say

By **Grace Elletson**

Law360 (March 14, 2024, 1:56 PM EDT) -- A group of retirees claim aerospace defense company Lockheed Martin committed an "egregious act of disloyalty" when it passed off \$9 billion in pension responsibilities for 31,000 beneficiaries to a risky annuity provider, according to a suit filed in Maryland federal court.

The retirees said in the **proposed class action** Wednesday that Lockheed Martin Corp. violated the Employee Retirement Income Security Act when it sidestepped its fiduciary duties to prioritize its own profits by tapping a questionable private equity-backed annuity provider to pick up the tab on its retirement obligations.

"Putting the company's financial interest in saving money ahead of participants' interests in retirement security by selecting a riskier annuity provider is an egregious act of disloyalty," the retirees said.

The workers said Lockheed Martin selected Athene Annuity and Life Co. and Athene Annuity & Life Assurance Co. of New York to pay the pension benefits of 31,000 employees by offloading \$9 billion in pension obligations to the company. While it's not illegal to do this, the workers said, fiduciaries are required under federal benefit law to select the safest annuity available.

Athene does not clear this requirement, the retirees said. They said the private equity-controlled company has a "highly risky offshore structure" based out of Bermuda, where there is limited financial transparency as opposed to the U.S. Athene also invests in riskier assets to support the beneficiaries' pension payments, putting the retirement of thousands of workers in jeopardy, according to the retirees.

Following this transfer, the retirees said they lost protections afforded by the Pension Benefit Guaranty Corp., which protects ERISA-backed benefit plans from becoming insolvent. Lockheed likely saved money on this transaction by selecting Athene as an annuity provider, the retirees said, instead of choosing a provider that had the strongest financial record.

"By transferring plaintiffs' pension benefits to Athene, Lockheed Martin put its employees' future retirement benefits at substantial risk of default — a risk for which they were not compensated and which devalued their pensions," the retirees said.

The transfer took place in two transactions — in August 2021, Lockheed Martin announced that it was transferring nearly \$5 billion in pension obligations for 18,000 retirees to Athene, according to the suit. And in June 2022, the company transferred an additional \$4.3 billion in pension obligations to Athene for 13,600 retirees, deals that ultimately benefit Lockheed Martin more than its workers, the retirees said.

There is no shortage of stable and financially sound annuity providers, such as Prudential or New York Life, the retirees said. But by striking a deal with Athene, the retirees said Lockheed Martin was able to dodge premium payments that the more reputable companies came with.

The retirees seek to represent a class consisting of all participants in the Lockheed Martin salaried employee retirement program and its aerospace hourly pension plan program who saw their pension payments passed to Athene, dating back to March 13, 2018. They estimated that the class will

consist of 31,000 members.

Representatives for the retirees and Lockheed Martin did not immediately respond to requests for comment.

The retirees are represented by P. Matthew Darby of the Darby Law Group LLC and Jerome J. Schlichter, Sean E. Soyars and Kurt C. Struckhoff of Schlichter Bogard LLP.

Counsel information for Lockheed Martin was not yet available.

The case is Konya et al. v. Lockheed Martin Corp., case number 8:24-cv-00750, in U.S. District Court for the District of Maryland.

--Editing by Neil Cohen.

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Realtors Cut \$418M Deal, Agree To Make Broker Fee Changes

By **Matthew Perlman**

Law360 (March 15, 2024, 10:25 AM EDT) -- The National Association of Realtors said Friday that it has reached a settlement to end claims that its broker commission rules caused home sellers to pay inflated fees, agreeing to pay \$418 million over the next four years and to implement changes to its rules.

The trade group said in a statement the settlement will end litigation over the broker fee rules against NAR, its members, local associations and their multiple listing services, or MLSs, as well as claims against smaller brokerages run by its members.

NAR continues to deny any wrongdoing over the rules that led to a **\$1.8 billion jury verdict** against the group and a pair of brokerages last year. But the statement on Friday said it will now bar Realtors from including the commission a buyer's broker would be paid on an MLS listing and will require buyer-side brokers to have a written agreement with their clients.

Nykia Wright, interim CEO of NAR, said in the statement Friday that the agreement achieves two main goals for the group.

"NAR has worked hard for years to resolve this litigation in a manner that benefits our members and American consumers," Wright said. "It has always been our goal to preserve consumer choice and protect our members to the greatest extent possible."

The agreement will end NAR's challenge of the verdict in the case from home sellers in Missouri, which the court could have tripled under the antitrust laws to \$5.4 billion, along with claims in proposed **nationwide class actions** targeting the rules. The deal does not include Berkshire Hathaway-owned HomeServices of America, the lone brokerage that **continues to fight** the jury verdict.

The deal announced Friday also does not automatically include other brokers owned by NAR members with more than \$2 billion in transactions in 2022 or MLSs that are not owned by an NAR affiliate, but it does include a mechanism for them to opt-in.

The cases target NAR rules that require brokers working for sellers to make an offer to compensate a buyer-side broker when listing a property. The sellers contend the rules eliminate competition between brokers working for buyers and result in sellers paying inflated commissions of around 3% to each broker.

The suits also contend the rules cause buyer brokers not to show homes with lower commissions being offered or to only show homes with higher commissions.

NAR said in its statement Friday that while brokers will no longer be able to offer a buyer-side commission in their MLS listings, they can still negotiate with their clients to structure transactions to include compensation for the other brokers.

The trade group has consistently defended the practice of "cooperative compensation," where a seller's broker pays the broker for the buyer, as helping to reduce costs and increase housing opportunities for buyers while increasing the potential buyer pool for sellers.

"Ultimately, continuing to litigate would have hurt members and their small businesses," Wright said in Friday's statement. "While there could be no perfect outcome, this agreement is the best outcome we could achieve in the circumstances."

An attorney for the home sellers, Benjamin D. Brown, managing partner of Cohen Milstein Sellers & Toll PLLC and co-chair of its antitrust practice, said in a statement Friday they are proud to play a leading role in addressing the industry's long-running practices.

"For years, anti-competitive rules in the real estate industry have financially harmed millions of Americans," Brown said. "This settlement will bring sweeping reforms that will help countless American families."

--Editing by Daniel King.

Update: This story has been updated with additional information.

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Whirlpool Can't Toss Defect Suit Over Ice Buildup In Fridges

By **Gina Kim**

Law360 (March 14, 2024, 12:02 PM EDT) -- A California federal judge has declined to throw out a putative class action claiming Whirlpool hid a defect in its refrigerators that led to cooling failures due to frost buildup, finding the suit sufficiently alleged Whirlpool knew of the problem since it issued technical service pointers noting customers could possibly experience buildup.

In a **nine-page order** filed Wednesday, U.S. District Judge Rita F. Lin refused to grant Whirlpool's bid to end Nancy Paperno and Robert Gibbany's proposed class action alleging the company sells French-door refrigerators that contain a latent, design defect that causes the refrigeration compartment's evaporator to frost or freeze over from time to time, which leaves the refrigerators unable to properly keep food cool.

The products at issue, which the company began making and selling around 2012, are sold under several Whirlpool brands, including KitchenAid, Maytag and JennAir. The customers alleged the products contain a dual evaporator cooling system with a defrost heater that is inadequate to properly defrost the evaporator in the refrigeration compartment.

On Wednesday, Judge Lin noted the complaint sufficiently stated the elements required for a claim based on Whirlpool's allegedly fraudulent omission of the defect. The suit references a slew of complaints submitted to the customer review website www.consumeraffairs.com.

The complaint also cites Whirlpool's own technical service pointers issued in March 2017 and again in 2019, before and after Gibbany and Paperno bought their refrigerator from a Best Buy in December 2018. The company's pointers said customers might experience hard ice or frost forming on the front of the refrigerator's compartments, the judge noted.

"Together with the consumer complaints, the [technical service pointers] are sufficient to support an inference that Whirlpool knew that the refrigerators had a persistent problem with frost and ice buildup on the evaporators before the sale to the plaintiffs," Judge Lin said.

Gibbany and Paperno also sufficiently alleged they relied on the omission, and that the omission was material, since the product's main function is to keep food cool. This allowed the court to infer the customers would've made different decisions had they been aware of the alleged defect, the judge added.

Wednesday's order is the latest development in the suit the plaintiffs brought in October 2023. They said they first noticed cooling issues in October 2020 and that milk was starting to spoil before its expiration date, or was accumulating mold. The plaintiffs alleged the cooling problems gradually worsened over time.

For the next three years, Paperno and Gibbany alleged they repeatedly contacted KitchenAid's service providers, who would come and fix the issues, since the problems continued on and off, up to the summer of 2023. The plaintiffs asserted violations of California's Consumer Legal Remedies Act, the state's Unfair Competition Law and breaches of implied warranty.

Last September, a New York resident filed a **similar lawsuit** against the company, alleging her Whirlpool refrigerator quit properly cooling or safely keeping food, which forced her to replace the unit and throw away \$730 worth of spoiled food.

On Dec. 5, Whirlpool moved to dismiss Paperno and Gibbany's complaint, arguing the customers failed to plausibly allege fraud against the company, and that they also failed to plausibly allege Whirlpool knew of the alleged defect prior to the December 2018 purchase.

And, the company contended, customer complaints online don't mention the defect, and Whirlpool's technical service pointers don't show that Whirlpool knew of the alleged issue, but rather, shows the existence of other possible causes of and solutions to the frost or ice buildup.

The customers don't plausibly allege Whirlpool had a duty to disclose the alleged defect, the company said.

On Wednesday, Judge Lin found otherwise, noting the customers alleged the defect poses a safety concern since the cooling failures cause food to spoil and become unsafe to eat.

"They also describe multiple incidents of mold growth and early expiration," the judge said. "The plaintiffs thus sufficiently allege both that the defect posed a safety risk — namely, food poisoning — and a 'sufficient nexus' between the defect and the risk."

Judge Lin also allowed the implied warranty breach claims to remain, since the customers adequately alleged that Whirlpool's concealment tolls the statute of limitations and involved Whirlpool's active participation in the pre-sale omission of the defect. The customers diligently tried to get to the root of the problem, as they contacted KitchenAid's service department repeatedly over the years, the judge said.

The suit details the repairs KitchenAid's authorized service providers recommended to the customers, but that "provided only temporary fixes for the frost and ice build-up," which Judge Lin said "lulled the plaintiffs into believing that the issue had been corrected."

The judge also noted the plaintiffs detailed how Whirlpool directed its service providers in its technical service pointers to take a number of corrective measures, knowing they were only temporary fixes that wouldn't address the recurring cooling issues.

Representatives for the plaintiffs and Whirlpool did not immediately respond to inquiries seeking comment Wednesday.

The plaintiffs are represented by Alison E. Chase, Laura R. Gerber, and Michael Woerner of Keller Rohrback LLP, and Michael J. Brickman, James C. Bradley, Nina Fields Britt and Caleb M. Hodge of Rogers Patrick Westbrook & Brickman LLC, and Kenneth Behrman.

Whirlpool is represented by Andrew M. Unthank and Galen D. Bellamy of Wheeler Trigg O'Donnell LLP, and Troy M. Yoshino and Samantha K. Looker of Winston & Strawn LLP.

The case is Nancy Paperno et al. v. Whirlpool Corp., case number 3:23-cv-05114, in the U.S. District Court for the Northern District of California.

--Editing by Lakshna Mehta.