

These South Florida Yacht Brokers May Need Representation as Antitrust Class Surfaces

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By Alexander Lugo



Yachts at the Fort Lauderdale, Florida boat show. Credit: Juerg/Adobe Stock

NEWS

"Because this is such a big case, ... we expect other suits to follow," said Ricardo Martinez-Cid, of Miami's Podhurst Oreck.

March 29, 2024 at 05:49 PM

Antitrust



Lisa Willis [→](#)

Many South Florida boat brokers may be looking for lawyers after two federal class action lawsuits were filed in Miami, alleging violations of antitrust laws in the boat sales industry regarding years of alleged excessive commission on sales.

The new filing comes on the heels of a similar class against the National Association of Realtors resulting in a March 15 settlement of \$418 million dollars after a jury in October awarded \$1.8 billion to class plaintiffs for violating antitrust laws.

The NAR agreed to pay the landmark settlement and change its MLS compensation rule, which mandated a uniform compensation offer to buyer's brokers and required buyer's agents to enter agreements with their clients, among other things.

Read Related Story Here: Residential Real Estate Compensation Changing After \$1.8B Verdict and NAR Settlement

Now the boat industry is sailing into rough waters.

"This is an important case for consumers everywhere because fair and honest competition leads to best prices and maximum efficiency," said Boca Raton plaintiff attorney Mark Dearman of Robbins Geller Rudman & Dowd, who, along with the Podhurst Oreck's Miami team of Ricardo Martinez-Cid, Lea P. Bucciero, and Matt Weinshall, have announced they will consolidate the filings.

"It is particularly important in South Florida because we are one of the hubs of the yachting industry," said Dearman.

Read the First Complaint Here: *Kip Lamar Snell*

The antitrust litigation jury trial has been assigned to Judge K. Michael Moore in the U.S. District Court for the Southern District of Florida.

Nine attorneys have joined the lawsuits to date, including Marc Aaron Wites of Wites Law Firm in Lighthouse Point, Mark Jeffrey Dearman, Stuart Andrew Davidson and Paul Jeffrey Geller of Boca Raton firm Robbins, Geller, Rudman & Dowd and Thomas Bowen Rogers, Jr. of Wites & Kapetan, Lighthouse Point as lead attorneys. Other attorneys listed to date include Arthur L. Shingler, David W. Mitchell of Robbins Geller Rudman & Dowd's California offices and Lindsey Handley Taylor and Anny Marie Martin of Robbins' Boca Raton office.



Kevin Michael Moore, Judge, U.S. District Court for the Southern District of Florida.
(Credit: Daniel Portnoy Photography)

Read the Second Complaint Here: Ya Mon Expeditions

The lawsuits allege that leading global yacht broker's associations, among other entities, are exploiting boat sellers with exorbitant sales commissions upward to 10%.

The suit was initiated by Wyoming's Ya Mon Expeditions LLC, on March 1 in Florida federal court, and followed by a March 22 filing by an Alabama man targeting the Miami-based International Yacht Brokers Association and several key industry figures in South Florida, such as Boats Group LLC, the company behind Boat Trader, Yacht World, and Boats.com.

"Because this is such a big case, and because there's going to be interest from the media and others, we expect other suits to follow," said Ricardo Martinez-Cid, of Podhurst Oreck. "Mark's [Dearman] firm and our firm have a lot of history organizing these kinds of cases and we're going to work collaboratively with everyone who does file."

The list of defendants reads like a veritable 'who's who' of the Florida boat broker industry.

Among the defendants listed are Allied Marine, Inc., Denison Yachts International, LLC., MarineMax, Inc., and Hmy Yacht Sales, Inc., in addition to the International Yacht Brokers Assoc. Inc., F/K/A Florida Yacht Brokers Assoc., and Yacht Brokers Association of America, Inc.

Nearly all the defendants are Florida or Maryland-based companies.

According to its website, the International Yacht Brokers Association (IYBA) was established in 1987 and was formerly known as the Florida Yacht Brokers Association.

Their website noted that it has “more than 1900+ members and growing” and is “the world’s largest and most influential association for the yacht brokerage & charter industry.”

The IYBA and other defendants listed did not return emails or email forms of inquiry for comment by press time.

Dearman said he can not speculate on the amount of damages they are seeking just yet.

“We are talking about significant dollars generated in commissions on yacht sales,” Dearman said. “The litigation seeks certification on behalf of a class of persons in the United States who, from March 22, 2020, through the present, used a listing broker in the sale of a pre-owned boat or yacht listed on a MLS, and who paid a commission to the buyer’s broker in connection with the sale.”

Under the conditions set forth in the complaints, the industry standard of 10% commission on sales is in question for both larger ships and yachts and smaller vessels.

“10% is a huge amount of money and when you’re looking at a large sale or a small sale, it hurts in both regards, and it does hurt even sellers of the smaller or lower priced vessels,” said plaintiff attorney Lea Bucciero. “That’s a detriment to people and to the “little man.”

Holding the Industry Accountable

“It’s important that we get the right team in place that has the experience, the resources, and the talent to make sure that we can hold the industry accountable because they are certainly going to be bringing that to the table to defend these practices that have been resulting in their ability to reap excessive profits and charges for so many years,” said Podhurst’s Ricardo Martinez-Cid.

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Conservative appeals court will probe certification of Anadarko investors' class action

 [reuters.com/legal/litigation/column-conservative-appeals-court-will-probe-certification-anadarko-investors-2024-03-28](https://www.reuters.com/legal/litigation/column-conservative-appeals-court-will-probe-certification-anadarko-investors-2024-03-28)

Alison Frankel



The logo for Anadarko Petroleum corp. is displayed on a screen on the floor at the New York Stock Exchange (NYSE) in New York, U.S., April 30, 2019. REUTERS/Brendan McDermid Purchase Licensing Rights [↗](#), opens new tab

March 28 (Reuters) - It's never a happy development for plaintiffs when a federal appeals court agrees to review a trial judge's decision to certify an investor class to pursue securities fraud claims.

I'd argue that these mid-case, or interlocutory appeals, are even more perilous for shareholders since the U.S. Supreme Court held [↗](#), opens new tab in 2021's *Goldman Sachs v. Arkansas Teachers Retirement System* that trial judges should consider "all probative evidence" in weighing whether defendants have managed to rebut the presumption that their alleged fraud impacted the company's share price.

Look, for instance, at what happened when the Goldman Sachs case returned to lower courts after the Supreme Court issued its decision. The trial judge recertified the class for a third time, but Goldman persuaded the 2nd U.S. Circuit Court of Appeals to grant its third interlocutory appeal to review the decision. The third time proved the charm for the bank: The appeals court decertified the class, holding, as I've reported, that there was too wide a gap between Goldman's general statements about conflict management and subsequent revelations about conflicts in specific collateralized debt deals to support shareholders' theory that the bank's alleged misrepresentations propped up its share price.

Now defense lawyers for Anadarko Petroleum are hoping that the Supreme Court's Goldman ruling prompts the 5th Circuit to undo the certification of a class of shareholders alleging that the company covered up disappointing drilling results in a much-ballyhooed oilfield in the Gulf of Mexico.

The 5th Circuit will hear oral argument next week on Anadarko's contention [↗](#), opens new tab that U.S. District Judge Charles Eskridge of Houston improperly certified the class based on expert evidence first introduced in shareholders' reply brief in support of class certification.

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

Cravath, Swaine & Moore, which represents Anadarko (now part of Occidental Petroleum (OXY.N) [↗](#), opens new tab) argued in its brief to the right-leaning appellate court that under the Goldman Sachs standard, Eskridge should have allowed the company to submit a sur-reply brief after shareholders disclosed an expert report on the price impact of Anadarko's alleged misrepresentation in their brief responding the company's opposition to class certification.

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As is usual in securities fraud class actions, the details of the case are unique and complex. Shareholder lawyers from Robbins, Geller, Rudman & Dowd told the 5th Circuit in their brief [↗](#), opens new tab that the full trial court record proves that Eskridge properly denied Anadarko's motion to submit a sur-reply brief, as well as its motions to exclude the expert report on price impact and to reconsider class certification.

The judge, according to Robbins Geller, gave Anadarko all of the leeway it was entitled to, so the appeals court cannot conclude that he abused his discretion.

But because Anadarko and Cravath pitched [↗](#), opens new tab the interlocutory appeal as a chance for the 5th Circuit to solve a recurring problem in shareholder fraud class actions — arguing that, in the wake of the Supreme Court's Goldman Sachs decision, the court should use this case to confirm defendants' right to respond to new shareholders' evidence — the securities bar should be paying attention.

Anadarko counsel Kevin Orsini of Cravath did not respond to my query. Shareholder lawyer Joe Daley of Robbins Geller declined to comment.

Shareholders allege that Anadarko's share price fell by about 8% in May 2017 after the company disclosed a \$902 million write-down on its investment in the Shenandoah oilfield in the Gulf of Mexico after a so-called appraisal well came up dry. Plaintiffs' lawyers contend that Anadarko hid warnings from its own engineers and geoscientists, who had been predicting for years that the field would not measure up to Anadarko's hype.

Anadarko, meanwhile, maintains that its share price fell on that day for a reason wholly unrelated to the Shenandoah field.

At around the same time that the company disclosed the \$902 million write-down, Colorado officials announced that Anadarko's gas operations were responsible for the deadly explosion of a home in Firestone, Colorado — and that all oil and gas companies in the state would be required to conduct additional safety checks. The Colorado announcement, according to Anadarko, "led to significant regulatory uncertainty," which, in turn, pushed its share price lower.

Anadarko did not submit an expert event study of its share price to refute shareholders' claims in its brief opposing class certification. It instead cited its expert's analysis of the share prices of its partners in the Shenandoah project and its Colorado oil and gas competitors to argue that the Colorado news, not the Shenandoah write-down, impacted the market for its shares.

In response, Robbins Geller cited an Anadarko-specific event study by its expert, who refuted the conclusions of the company's expert.

Anadarko contested the shareholders' event study in a Daubert motion and also asked for a chance to counter its findings in a sur-reply brief. Eskridge denied both requests, concluding that the shareholder study was a legitimate rebuttal to Anadarko's arguments.

Robbins Geller told the 5th Circuit that Anadarko should not get a second chance based on its unsuccessful strategy of submitting event studies of the company's partners and competitors instead of the company itself.

Anadarko said Eskridge erred grievously in basing his class certification decision on evidence introduced in a reply brief without giving the company a fair shot to refute it.

The company is asking the appeals court not only to remand the case to the trial court with instructions to reconsider class certification in light of Anadarko's price impact evidence but to go even farther and hold that the class cannot be certified.

The case will be heard next Thursday by Judges Carolyn King, James Ho and Kurt Engelhardt.

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Reporting By Alison Frankel

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Alison Frankel
Thomson Reuters

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

Medtronic beats shareholder class action after trouble getting insulin pump approved

 legalnewsline.com/stories/657336948-medtronic-beats-shareholder-class-action-after-trouble-getting-insulin-pump-approved

April 1, 2024

Menendez | Wikipedia

MINNEAPOLIS (Legal Newsline) - Medtronic has defeated a shareholder class action lawsuit that alleged the company hid problems with an insulin pump's FDA approval.

Minnesota federal judge Katherine Menendez on March 28 dismissed the complaint brought by The Trustees of the Welfare and Pension Funds of Local 464A and other shareholders of the company who said they were hurt when information became public that caused Medtronic's stock price to drop.

She found the complaint, which named individual officers at the company as defendants too, lacked allegations of actionable, material misrepresentations and omissions.

"(T)he allegations do not establish that any of the individual defendants actually knew that the 780G approval would be delayed or recklessly disregarded a very serious risk that the issues with the 600 Series pumps would render timely approval of the 780G all but impossible," Menendez wrote.

A better product from competitor Tandem Diabetes Care, which had developed a hybrid closed-loop system insulin pump, slowed sales of Medtronic's 670G pump, the decision says, by fiscal years 2019 and 2020.

Medtronic was developing its own hybrid closed-loop system, the 780G. Medtronic said in an August 2019 SEC filing that its Diabetes Group's sales were up, attributing it primarily to growth in international markets and demand there for the 670G.

Analysts predicted the 780G pump would be ready for the market in late FY20. The complaint alleges the company hid quality problems with the 670G and other 600 series pumps - a manufacturing defect in a clear retainer ring that could cause potentially life-threatening problems by unexpectedly delivering more or less insulin than a user asked for.

That issue led to product liability lawsuits. In February 2020, the company said FDA review was "going well" for the 780G, which was released in 12 other countries in October of that year.

Concerns raised by the FDA after a 2021 inspection of Medtronic's Northridge, Calif., facility led to the agency to issue a warning letter. Medtronic said it didn't expect the letter to impact 780G approval.

But by May 2022, the company told investors that it no longer expected timely approval of the pump. The complaint alleged Medtronic had known all along timely approval would not be granted.

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March 29, 2024, 12:29 PM PDT

Ebix Executives Defeat Investor Appeal Over Gift Card Accounting

By Martina Barash

Bloomberg Law News 2024-04-01T10:26:40535341126-04:00

Ebix Executives Defeat Investor Appeal Over Gift Card Accounting

By Martina Barash 2024-03-29T15:29:39000-04:00

Ebix Inc.'s CEO and chief financial officer are free of class claims they misled investors about financial reporting related to gift and prepaid cards in India, the Second Circuit ruled.

Investors in the now-bankrupt software and e-commerce services provider fell short in alleging the necessary level of intent for securities fraud, the appeals court said Thursday in an unsigned, unpublished summary order.

- After Ebix acquired the dominant payment solutions company in India in 2017 and renamed it EbixCash, it prepared an initial public offering for the subsidiary but didn't disclose financial reporting weaknesses, lead plaintiff Rahul Saraf said
- The appeal against Ebix itself is on pause during the company's bankruptcy proceedings
- Judges Robert D. Sack, Denny Chin, and Joseph F. Bianco of the US Court of Appeals for the Second Circuit affirmed the US District Court for the Southern District of New York's July 2023 dismissal

Berger Montague PC represented the investors. Skadden, Arps, Slate, Meagher & Flom LLP represented the Ebix executives, CEO Robin Raina and CFO Steven M. Hamil.

The case is Saraf v. Ebix, Inc. , 2024 BL 103049, 2d Cir., No. 23-1182, unpublished 3/27/24 .

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Goldman, Morgan Stanley win dismissal of lawsuits over Archegos collapse

 [reuters.com/legal/goldman-morgan-stanley-win-dismissal-lawsuits-over-archegos-collapse-2024-03-28](https://www.reuters.com/legal/goldman-morgan-stanley-win-dismissal-lawsuits-over-archegos-collapse-2024-03-28)

Jonathan Stempel

Item 1 of 3 The corporate logo of financial firm Morgan Stanley is pictured on the company's world headquarters in New York, U.S. April 17, 2017. REUTERS/Shannon Stapleton/File Photo

[1/3]The corporate logo of financial firm Morgan Stanley is pictured on the company's world headquarters in New York, U.S. April 17, 2017. REUTERS/Shannon Stapleton/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, March 28 (Reuters) - A U.S. judge on Thursday dismissed seven lawsuits by investors who accused Goldman Sachs Group Inc (GS.N) , opens new tab and Morgan Stanley (MS.N) , opens new tab of misconduct that fueled the rapid March 2021 collapse of Bill Hwang's \$36 billion firm Archegos Capital Management.

U.S. District Judge Jed Rakoff in Manhattan dismissed the investors' market manipulation and insider trading claims with prejudice, meaning they cannot be brought again.

A different judge had dismissed the lawsuits last March, but let the investors sue Goldman and Morgan Stanley again. The Wall Street banks had been two of Archegos' prime brokers. Archegos' collapse stemmed from Hwang's use of financial contracts known as total return swaps to take outsized stakes in his favorite holdings including ViacomCBS, Discovery and Baidu , building an estimated \$160 billion of stock exposure.

Investors in Hwang's stocks sought to hold Goldman and Morgan Stanley liable for selling those stocks, based on their inside knowledge that Hwang would also be a seller because he was unable to meet margin calls.

The investors said the combined selling saddled them with huge losses, while Goldman and Morgan Stanley escaped billions of dollars of losses of their own.

In a one-paragraph order, Rakoff did not explain his reasoning and said an opinion would follow in due course.

Lawyers representing the investors did not immediately respond to requests for comment. Goldman did not immediately respond to similar requests. Morgan Stanley declined to comment.

Archegos' collapse caused billions of dollars in losses for banks such as Credit Suisse, which was later bought by Swiss rival UBS (UBSG.S) , opens new tab, and Japan's

Nomura Holdings (8604.T) , opens new tab.

Hwang and former Archegos Chief Financial Officer Patrick Halligan face a scheduled May 8 criminal trial in Manhattan over their roles in the collapse.

Both pleaded not guilty to securities fraud, wire fraud and racketeering conspiracy charges. Hwang has also pleaded not guilty to separate market manipulation charges. The trial could last months.

The investor lawsuits in the U.S. District Court, Southern District of New York are Tan v. Goldman Sachs Group Inc et al, No. 21-08413; Florio v. Goldman Sachs Group Inc et al, No. 21-08618; Merson v. Goldman Sachs Group Inc et al, No. 21-08752; Ulanich v. Goldman Sachs Group Inc et al, No. 21-08897; Felix v. Goldman Sachs Group Inc et al, No. 21-10286; Scully v. Goldman Sachs Group Inc et al, No. 21-10791, and Lee v. Goldman Sachs Group Inc et al, No. 22-00169.

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April 1, 2024, 8:57 AM PDT
Inotiv Can't Avoid Investors' Animal Mistreatment Class Action
By [Ben Miller](#)
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- Judge denies researcher's bid to toss securities fraud suit
- Inotiv allegedly hid beagle deaths, primate smuggling ring

Bloomberg Law News 2024-04-01T13:27:14577166968-04:00
Inotiv Can't Avoid Investors' Animal Mistreatment Class Action

By Ben Miller 2024-04-01T11:57:37000-04:00
Judge denies researcher's bid to toss securities fraud suit
Inotiv allegedly hid beagle deaths, primate smuggling ring

Inotiv Inc. can't shed allegations that the drug researcher and its executives concealed from investors animal welfare violations involving two newly acquired subsidiaries, a federal judge ruled in denying the company's bid to dismiss the proposed class case.

The suit plausibly alleged that Inotiv and its top brass omitted critical information, leading investors to falsely believe the acquisitions of Envigo RMS Holding Corp. and Orient Bio Resource Center—which specialized in breeding and importing animals like beagles and non-human primates for medical testing—would be positive developments for the company, according to the opinion filed March 29 in US District Court for the Northern District of Indiana.

Judge Philip P. Simon ruled that the complaint alleged sufficient facts to support the inference that Inotiv and the executives disregarded evidence of animal welfare violations and misrepresented the risks of those acquisitions.

OBRC's involvement in a primate smuggling ring and Envigo's Animal Welfare Act violations at a Virginia dog-breeding facility were both material factors that Inotiv failed to disclose when buying the companies, according to the lawsuit.

Three top Inotiv executives allegedly toured the Envigo facility at issue in 2021 while the violations were still taking place, which Simon cited among the elements of the complaint that "paint a plausible picture" of defendants making misstatements or omissions with "reckless disregard for the truth." More than 300 puppies allegedly died of unknown causes at the facility, and at least 25 died from cold exposure, according to the lawsuit.

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Envigo and OBRC were both subject to ongoing government investigations, but the suit claims that none of those “dirty details” were included in public disclosures, despite clear signals that those probes were likely to result in serious sanctions, Simon said in the opinion.

A federal indictment was unsealed in November 2022, which implicated both Envigo and OBRC, charging six executives from Inotiv’s primary supplier of primate test subjects in connection with the international smuggling ring. OBRC was ultimately identified as an unindicted co-conspirator.

The Oklahoma Police Pension and Retirement System, the lead plaintiff in the suit, seeks to recover damages for investors who acquired Inotiv stock between September 2021 and November 2022, or who held shares as of October 2021 and were entitled to vote on the Envigo acquisition.

A separate shareholder derivative suit filed against Inotiv’s directors and executives in January 2023, alleging similar violations of the Securities Exchange Act, is currently pending the same Northern Indiana district court.

Berman Tabacco and Cohen & Malad LLP represent the plaintiff and the proposed class.

Frost Brown Todd LLP and Katten Muchin Rosenman LLP represent Inotiv and the executives.

The case is *In re Inotiv Inc. Sec. Litig.*, N.D. Ind., No. 4:22-cv-00045, 3/29/24.

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This Week in Chancery Court: Trump Media, Kraft Heinz, Unisys

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Securities Law News

A bottle of Heinz Kraft Co. Heinz brand Tomato Ketchup is arranged for a photograph in Dobbs Ferry, New York, U.S., on Wednesday, Feb. 20, 2019.

Photographer: Tiffany Hagler-Geard/Bloomberg

Former President Donald Trump's social media venture, legal fees in a trade secrets lawsuit, and Kraft Heinz Co. stock trades are up for discussion this week in the Delaware Court of Chancery.

Here's a look at what's on the court's calendar:

Monday: United Atl. Ventures LLC v. Trump Media & Tech. Grp., Del. Ch., No. 2024-0184, teleconference 4/1/24.

At issue: Shares of Trump's unprofitable social-media company spiked even amid a flurry of litigation with the former president's co-founders. In one of the lawsuits, Vice Chancellor Sam Glasscock III said he wouldn't hold up a March 22 shareholder vote because of complaints by Trump Media & Technology Group co-founders Andy Litinsky and Wes Moss that Trump sought to dilute their 8.6% stake in the business as part of the merger. Trump Media now seeks to have that lawsuit dismissed.

Court action: Teleconference before Glasscock.

Judge Clears Way For Trump Media To Hold Merger Vote

Monday: Gilbert v. Unisys Corp., Del. Ch., No. 2023-0513, trial 4/1/24.

At issue: Two former Unisys Corp. executives facing a trade secrets lawsuit want the company to pay their legal fees associated with the litigation in the US District Court for the Eastern District of Pennsylvania. Leon Gilbert and Michael McGarvey now go to trial in Chancery Court over advancement for the Pennsylvania lawsuit. Unisys has denied advancing the legal fees because, they've argued, neither Gilbert nor McGarvey served as directors or officers of the company. Gilbert and McGarvey, who left Unisys for a competitor in early 2023, have incurred over \$800,000 in legal expenses so far, according to a joint pre-trial brief.

Court action: Trial will be held in Wilmington, Del.

Unisys Sues Atos Execs Over Trade Secret, Noncompete Violations

Tuesday: In re Kraft Heinz Demand Refused Derivative S'Holder Litig., Del. Ch., No. 2022-0398, oral arguments 4/2/24.

At issue: Kraft Heinz Co. senior leaders and affiliates of 3G Capital Inc. face investor litigation claiming the private equity giant sold \$1.2 billion in stock shortly before Kraft's share price plummeted in 2018. The defendants include 3G co-founder Jorge Paulo Lemann, Brazil's richest man, and another Brazilian billionaire, Alexandre Behring. Kraft Heinz, Lemann, and Behring say the case should be dismissed, in arguments that are joined by 3G. Additional arguments on motions to dismiss will be heard on May 23, according to the court.

Court action: Arguments on motions to dismiss will be heard in Wilmington, Del.

3G, Behring, Lemann Sued Again Over \$1.2 Billion in Kraft Trades

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MassMutual Gets Win in Suit Over Affiliated Funds in 401(k) Plan

By Jacklyn Wille

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- Allegations of modest investment underperformance not enough

Bloomberg Law News 2024-04-01T13:30:54486528916-04:00

MassMutual Gets Win in Suit Over Affiliated Funds in 401(k) Plan

By Jacklyn Wille 2024-04-01T13:06:39000-04:00

Portions of case blocked by \$30.9 million class settlement

Allegations of modest investment underperformance not enough

Massachusetts Mutual Life Insurance Co. defeated a proposed class action by a former employee challenging the in-house investment options offered in the company's \$4.1 billion retirement plan.

Judy Lalonde's lawsuit rests on allegations of modest investment underperformance that reflects "the inherent vagaries of investing in the market," Judge Mark G. Mastroianni said. Her claims challenging the plan's fee levels are similarly insufficient, he said, because they're not based on valid comparisons.

Mastroianni's opinion, issued March 29 in the US District Court for the District of Massachusetts, found other flaws in the lawsuit. In particular, he said portions of the case—claims involving the period between December 2016 and December 2020—were blocked by a \$30.9 million settlement agreement MassMutual signed in a similar case in 2016.

Lalonde said the settlement in *Gordan v. Mass. Mut. Life Ins. Co.* couldn't act as a prospective release for future claims arising under ERISA. Mastroianni disagreed with this framing, saying the agreement merely "channeled the method of raising potential liability through the District Judge who approved the settlement" for a four-year period.

"As a member of the *Gordan* class, Plaintiff's avenue for resolving plan related claims arising between December 3, 2016 and December 3, 2020 was in the manner proscribed by the settlement agreement," the judge said. "Plaintiff did not do so. Rather, Plaintiff waited until the *Gordan* court's period of continuing jurisdiction expired and then filed a second class action relying in substantial part on alleged wrongful conduct occurring during the *Gordan* judicial supervision period."

Allowing this tactic would undercut policy favoring class action settlements by making it “impossible, as a practical matter, to settle any ERISA case,” Mastroianni said.

Lalonde’s lawsuit says MassMutual improperly profited off its workers’ retirement savings by putting its own expensive and poorly performing proprietary funds in their 401(k) plan. MassMutual also failed to choose the cheapest available share classes of these funds and put a substantial amount of the plan’s assets in its own general account through a stable value fund, and it tapped a corporate affiliate to serve as the plan’s recordkeeper, according to the lawsuit.

Cohen Milstein Sellers & Toll PLLC represents Lalonde. Goodwin Procter LLP represents MassMutual.

The case is *Lalonde v. Mass. Mut. Ins. Co.*, 2024 BL 108984, D. Mass., No. 3:22-cv-30147, 3/29/24 .

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April 1, 2024, 6:39 AM PDT

Murray Energy CEO's Estate Defeats \$6.5 Billion Liability Suit

By Jacklyn Wille

Documents

Docket

Opinion

- Coal company faced \$6.5 billion pension bill after bankruptcy
- Opinion focuses on plan trustee's authority to file suit

Bloomberg Law News 2024-04-01T13:39:00532301773-04:00

Murray Energy CEO's Estate Defeats \$6.5 Billion Liability Suit

By Jacklyn Wille 2024-04-01T09:39:28000-04:00

Coal company faced \$6.5 billion pension bill after bankruptcy

Opinion focuses on plan trustee's authority to file suit

A lawsuit seeking \$6.5 billion in pension liability from the estate of Murray Holdings' founder failed because it wasn't filed by plan trustees in accordance with the relevant governing documents, a federal judge ruled.

The trust agreement for the United Mine Workers of America 1974 Pension Plan and Trust requires that lawsuits filed on behalf of the plan be brought with the agreement of at least one union-appointed trustee and at least one employer-appointed trustee, Judge Timothy J. Kelly said in a March 30 opinion. But the purported employer trustee who filed this lawsuit was improperly tapped to serve as an "alternate" and doesn't have the requisite authority under the plan, Kelly said.

The lawsuit is fallout from the 2019 bankruptcy of Murray Holdings, the country's largest privately-owned coal company and the employer of thousands of United Mine Workers of America members. The company withdrew from the pension plan following its bankruptcy and paid only a fraction of its liability to the pension plan, leaving an outstanding bill of about \$6.5 billion. The instant lawsuit, filed in 2021 by plaintiffs Michael Buckner and Joseph Reschini, sought to collect from Robert Murray's estate, his widow, and a company he owned.

Kelly's opinion, issued in the US District Court for the District of Columbia, focused on Reschini's status with respect to the plan. The judge said that Reschini was appointed as an "alternate" trustee to address matters related to Murray's bankruptcy after the plan's two existing employer trustees recused themselves from Murray-related matters.

But the pension agreement doesn't allow for trustee recusal or the appointment of alternates, the judge said, concluding that Reschini's lack of valid authorization prevented him from maintaining this case.

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Kelly dismissed the case without prejudice, saying that the plan's duly-appointed trustees "remain free to re-bring it."

The plaintiffs are represented by Mooney, Green, Saindon, Murphy & Welch PC and Steptoe LLP. The defendants are variously represented by Verdi & Ogletree PLLC and Barnes & Thornburg LLP.

The case is *Buckner v. Personal Rep. of Estate of Murray*, 2024 BL 109819, D.D.C., No. 1:21-cv-00567, 3/30/24 .

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Arguing Class Actions: The Supreme Court's Evolving 'Standing' Standard and What It Means for Class Actions

Arguing Class Actions is a monthly column for the National Law Journal written by DiCello Levitt's Adam J. Levitt.

April 01, 2024 at 06:00 AM

Class Actions

By Adam J. Levitt | April 01, 2024 at 06:00 AM



The issue du jour for any company defending against a class action involving economic losses seems to be that of “standing”—or, whether a federal court has jurisdiction to issue a judgment against a defendant in any given case. If a defendant is successful in arguing that a court lacks standing to hear the case, then—for many class actions—it becomes the death knell for that case, requiring its dismissal. Ostensibly trying to clarify the standing analysis, over the past several years, the U.S. Supreme Court has issued a slew of seemingly inconsistent rulings as to when the federal courts may hear a “case or controversy” consistent with Article III of the Constitution.

For consumers, however, making sense of these opinions is not difficult—so long as the plaintiffs’ lawyers are creative.

What, exactly, does Article III, Section 2 say?

Importantly, the concept of “standing” as it pertains to class actions filed in federal court is found in Article III of the Constitution. Article III, Section 1, establishes that “the judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” Article III, Section 2, provides that this “judicial Power shall extend to all Cases, in Law and in equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority; . . . [and] between Citizens of different States.” While the concepts of “federal” and “diversity” jurisdiction have been fairly spelled out in 28 U.S.C. §§ 1331 and 1332, what constitutes an actual “case” has been the subject of a considerable amount of judicial interpretation.

The court’s modern jurisprudence concerning standing began with *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). In *Lujan*, the court clarified that the “constitutional minimum of standing” consists of three elements. First, the case must concern an invasion of a legally protected interest that is: (a) “concrete and particularized”; and (b) “actual or imminent, not conjectural or hypothetical.” *Id.* at 560 (cleaned up). Second, there must be a “causal connection between the injury and the conduct complained of” (that is, the injury must be “fairly traceable to the challenged action of the defendant”). *Id.* (cleaned up). And, finally, “it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Id.* at 560-61 (cleaned up).

Unfortunately, the post-*Lujan* standing cases have done precious little to clarify what these concepts mean. In *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), the court found that a concern about potential, future government surveillance was insufficient to demonstrate standing. *Id.* at 411-12. Then, in *Spokeo v. Robins*, 578 U.S. 330 (2016), the Supreme Court found that a violation of a procedural requirement of a statute—without more—was insufficient to confer standing. This was reiterated in the court’s recent *TransUnion v. Ramirez* case, 594 U.S. 413 (2021), wherein the court found standing for class members whose inaccurate credit reports (more specifically, whose credit reports stated that they were terrorists) were disseminated to third parties (akin to defamation), but not to those whose reports were not.

What have consumers done in response to these rulings?

What the Supreme Court’s more recent standing opinions make clear is that consumers cannot maintain actions in federal court for “bare procedural violations” of statutes without a corresponding “close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts.” *Ramirez*, 594 U.S. at 425. In response, consumers have done one of two things. On one hand, they either make specific allegations in their complaints which tie their claims to those claims that existed at common law (such as a loss of property or damage to reputation). To that end, consumers in class cases have also been seeking—in addition to statutory penalties, restitution, and compensatory damages—nominal damages, which the Supreme Court has expressly found satisfies the “redressability” element of standing, in *Uzuegbunam v. Preczewski*, 592 U.S. 279, 141 S. Ct. 792, 797, 209 L. Ed. 2d 94 (2021).

On the other hand, and perhaps even more creatively, consumers have reverted to the pre-Class Action Fairness Act strategy of filing class action cases in state court, seeking attorneys’ fees if the defendants in those cases remove them to federal court (thus, asserting that the federal court has jurisdiction) and then move to dismiss those cases for lack of standing, while simultaneously—and incredibly—arguing that the federal court lacks jurisdiction. See *Zhirovetskiy v. Zayo Group*, No. 17-CV-05876, 2018 WL 11195494, at *2 (N.D. Ill. Mar. 7, 2018) (granting plaintiff’s request for costs and attorney fees associated with additional litigation arising from defendant’s removal and then challenging standing). While subject matter jurisdiction is not “waivable,” and standing may be examined by the court at any point during the case, consumers would be well served to file their cases in state court to stave off any motion to dismiss for lack of Article III standing—as the appropriate remedy is not dismissal, but remand.

Should consumers change their strategy based upon the Supreme Court’s more recent standing cases?

The Supreme Court’s judicially created standing “cocktail” of existing or immediate common law injuries, combined with “traceability,” with a chaser of “redressability” has long been law.

Interestingly, however, some recent cases challenge what constitutes an “actual or imminent, not conjectural or hypothetical” injury. Take, for example, the Supreme Court’s opinion in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023). In that case, the court found that a plaintiff had standing to challenge a Colorado anti-discrimination law based upon the mere threat that she might have to make a website celebrating a hypothetical gay couple’s wedding—when she, herself, had never designed a wedding website before.

While *303 Creative* seems to be directly at odds with *Clapper*, consumer plaintiffs should not rush to file complaints based upon mere threats, alone. If the threat of a consumer’s credit report being disclosed were sufficient to find standing, then many more individuals in *Ramirez* would have been able to find TransUnion liable for its conduct.

For now, consumers should continue focusing on pleading injuries that would have had remedies at common law—especially because the court has repeatedly found that such allegations can avoid dismissal—or commencing their cases in state court.

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Litigation

April 1, 2024, 9:51AM PDT

Philip Morris Blocked From Joining Reynolds, ITG Brands Case

By [Jennifer Kay](#)

Documents

- [Docket](#)
- [Opinion](#)

- Settlement payments for Winston, Salem, Kool products disputed
- Philip Morris waited too long to get involved, judge says

Bloomberg Law News 2024-04-01T13:35:19071172131-04:00
Philip Morris Blocked From Joining Reynolds, ITG Brands Case

By Jennifer Kay 2024-04-01T12:51:23000-04:00
Settlement payments for Winston, Salem, Kool products disputed
Philip Morris waited too long to get involved, judge says

A judge rejected Philip Morris USA Inc.'s effort to join a long-running Delaware lawsuit between two other Big Tobacco companies arguing over payments owed to the state of Florida under a 1990s-era tobacco settlement.

Philip Morris sought to intervene in ITG Brands’ lawsuit against Reynolds American Inc. over payments to Florida for brands ITG acquired from Reynolds, including the Winston, Salem, Kool, and Maverick tobacco product lines.

The Oct. 31, 2023, motion to intervene was filed so that Philip Morris could pursue an unjust enrichment claim against the other companies. It came far too late in the litigation, Vice Chancellor Lori Will of the Court of Chancery said in a seven-page opinion Monday.

“Philip Morris could have sought intervention long before now and offers no reason for its failure to do so,” she said.

Will previously ruled that ITG’s asset purchase agreement required the company to pay Reynolds’ share of the Florida settlement, and ITG owes Reynolds damages. The amount of those damages will be determined at trial, as well as whether ITG or Reynolds gets to keep money that falls under a “profit adjustment” formula applied to all parties to the settlement.

Philip Morris argued the money under the “profit adjustment” reduction in fact belonged to them, because ITG isn’t a party to the Florida settlement, and either ITG or Reynolds would be “unjustly enriched” if the court awarded them the money.

Reynolds and ITG, the US unit of Imperial Brands Plc, both opposed any intervention, arguing Philip Morris waited too long to try to join the Delaware litigation.

Will agreed, saying that “Philip Morris’s inexcusable delay and the potential disruption to this action are grounds to reject intervention.”

Philip Morris is represented by Heyman Enerio Gattuso & Hirzel LLP and Arnold & Porter Kaye Scholer LLP. ITG is represented by Potter Anderson & Corroon LLP, Baker & Hostetler LLP, and Brooks, Pierce, McLendon, Humphrey & Leonard LLP. Reynolds is represented by Richards, Layton & Finger PA, Jones Day, and Greenberg Traurig LLP.

The case is ITG Brands LLC v. Reynolds American Inc. , Del. Ch., No. 2017-0129, 4/1/24 .

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April 1, 2024, 4:16 AM PDT; Updated: April 1, 2024, 7:39 AM PDT
3M's \$10 Billion PFAS Deal Approved by Court as Rule Looms (2)
By [Pat Rizzuto](#)
Documents

-  [Order of Settlement Approval](#)
-  [Docket](#)

- Some utilities can soon file claims seeking settlement funds
- Final national limits for up to six PFAS expected any day

Bloomberg Law News 2024-04-01T13:36:53961188076-04:00
3M's \$10 Billion PFAS Deal Approved by Court as Rule Looms (2)

By Pat Rizzuto 2024-04-01T07:16:15000-04:00
Some utilities can soon file claims seeking settlement funds
Final national limits for up to six PFAS expected any day

A federal court approved the 3M Co.'s offer of at least \$10 billion to settle PFAS claims of roughly 12,000 public water systems across the US.

3M's settlement of between \$10.5 billion and \$12.5 billion to help water utilities recoup their costs of removing "forever chemicals" from drinking water comes as the Environmental Protection Agency is expected any day to issue the nation's first-ever national standards limiting as many as six of those chemicals.

"If not approved, settlement class members would be years—if not a decade—away from litigating and reaching finality in their own cases" despite the likely need to comply with the EPA's pending maximum contaminant limits for per- and polyfluoroalkyl substances (PFAS) very soon, wrote Judge Richard M. Gergel, of the US District Court for the District of South Carolina, in his March 29 order approving the accord.

Only a small portion—approximately 897 water systems or 7.5% of the class—opted out of the settlement, Gergel wrote. And "only seven parties filed objections," he said, dismissing those protests.

The settlement relieves 3M of years of court battles with utilities that maintain it's liable for the damage they have and will incur due to its signature PFAS that were used for decades in specialized fire suppressants, called aqueous film-forming foams (AFFF), that were sprayed directly into the environment and reached drinking water.

3M's stock rose about 3% as news of the court's approval became public on Monday, Bloomberg News reported.

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Imminent Actions

The settlement class consists of active US public water systems that serve more than 3,300 people and have PFAS in their water sources, and are broken into two groups. Phase One recipients had detected PFAS in their water sources as of June 22, 2023. Phase Two recipients have or will detect PFAS as they comply with monitoring the EPA's unregulated contaminant monitoring rule 5 (UCMR-5), which required utilities monitor their water for 29 PFAS.

Phase one recipients generally must file their claims within 60 days of the court order's effective date. Payments under the agreement are scheduled to begin in the third quarter of 2024, provided the final approval order isn't appealed, 3M said on Monday in a statement about the court's order.

Phase Two recipients have until Jan. 1, 2026, because the UCMR-5 monitoring continues until 2025.

Utilities will soon find out what limits the EPA has set for up to six PFAS, because the White House approved on March 27 the agency's final rule setting those standards.

The EPA proposed a 4 parts per trillion (ppt) limit on the two most well-known PFAS: perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) in drinking water. It also proposed to limit four additional PFAS that also persist for decades in the environment and are associated with thyroid problems, weakened immune systems, and cancer.

Court Battles Ahead

3M's settlement doesn't end the PFAS litigation it faces nor does it end water utilities' efforts to secure funds to help them remove PFAS from drinking water.

The company also is a defendant in thousands of personal injury lawsuits and dozens of state lawsuits making natural resource and other damage claims, which are part of multidistrict litigation, *In Re Aqueous Film-Forming Foams Products Liability Litigation MDL 2873*.

Attorneys representing water utilities are now focused on a second group of cases involving telomer-based fire fighting foams. Companies began to make newer types of PFAS and new formulations of AFFF after the 3M company stopped manufacturing PFOS, which had been the firefighting foam's primary ingredient for decades.

The first bellwether trial date involving telomer-based AFFF is provisionally scheduled for September.

3M, which was the sole US producer of PFOS, voluntarily stopped manufacturing that chemical domestically in 2000, and phased out a larger group of PFOS-related chemicals globally by the end of 2002. By then, company research had found the chemical in North American Bald Eagles and other birds and animals globally. The company announced in 2022 that it will stop making all PFAS as of 2025.

The case is *In Re Aqueous Film-Forming Foams Prod. Liab. Litig. MDL 2873*, D.S.C., No. 18-mn-02873, 3/29/24.

(Updated throughout with additional details from the court's opinion and settlement.)

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Align Technology prevails in defense of antitrust claims

DJ [dailyjournal.com/articles/377868](https://www.dailyjournal.com/articles/377868)

Apr. 1, 2024

U.S. District Judge Vince G. Chhabria highlighting the fact that Align's cessation of interoperability with competitor devices was linked to an intellectual property dispute the company had with competitor 3Shape.

A U.S. judge in San Francisco granted summary judgment in two parallel class actions that accused the maker of Invisalign of anti-competitive conduct.

Align Technology, which was represented by a team of lawyers from Paul Hastings LLP, was accused of stopping its scanners from working with competitor scanners, offering discounts that favored using only Align products, and making exclusive deals with dentists and dental organizations. Simon and Simon PC et al., v. Align Technology Inc., 20-CV-07354-VC, (N.D. Calif., filed June 05, 2020); Misty Snow et al., v. Align Technology Inc., 21-CV-03269-VC, (N.D. Calif., filed May 05, 2021)

U.S. District Judge Vince G. Chhabria disagreed in a March 22 order, highlighting the fact that Align's cessation of interoperability with competitor devices was linked to an intellectual property dispute the company had with competitor 3Shape.

"On the eve of a month-long trial, Judge Chhabria granted Align's motions for summary judgment. In his summary judgment order, Chhabria wrote it was "undisputed that termination of the interoperability agreement was bound up in Align's decision to initiate intellectual property litigation against 3Shape" and recognized Align's "desire to protect and enforce patent rights is a presumptively valid business justification," a spokesperson for Paul Hastings said in an email.

The spokesperson added that "as such Chhabria determined the "evidence, viewed in the light most favorable to the plaintiffs, does not give rise to a viable refusal-to-deal claim based on termination of the interoperability agreement with 3Shape" and plaintiffs' remaining claims cannot stand on their own."

The lawsuits claimed Align acted anti-competitively by stopping their scanners from working with those made by 3Shape and offering deals that favored using Align products. Before the month-long trial, the judge ruled in favor of Align on the grounds that Align's decision to cut

off compatibility with 3Shape scanners was linked to a separate patent infringement lawsuit they had filed against 3Shape. Align Tech. v. 3Shape A/S, C.A. No. 17-1648-LPS (D. Del. Apr. 19, 2022)

Steve W. Berman of Hagens Berman Sobol Shapiro LLP in Seattle represented Snow and Joseph R. Saveri of the Joseph Saveri Law Firm in San Francisco represented Simon. Neither of the attorneys were available for comment Friday.

Align and 3Shape battled until February 2022, when they came to an agreement. 3Shape sent out a press release saying, “Align will continue its current practice of accepting scans from 3Shape TRIOS 2 and 3Shape TRIOS 3 intraoral scanners in certain jurisdictions outside the United States.”

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April 1, 2024, 8:17 AM PDT
AT&T Faces Class Action Over March Breach That Hit 73 Million
By [Tonya Riley](#)
Documents

-  [Petroski v. AT&T Inc.](#)
-  [Complaint](#)

COURT: N.D. Tex
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Bloomberg Law News 2024-04-01T13:28:45204864001-04:00
AT&T Faces Class Action Over March Breach That Hit 73 Million

By [Tonya Riley](#) 2024-04-01T11:17:36000-04:00

AT&T Inc. was sued for allegedly exposing approximately 73 million current and former users to privacy-related injuries as result of a recent data breach.

AT&T recklessly “maintained, used, and shared” customers’ personally identifiable information and “intentionally, willfully, recklessly, or negligently” failed to take measures to secure its system despite knowing it was in a condition that made consumers’ sensitive data vulnerable, according to the purported class action filed March 30 in the US District Court for the Northern District of Texas.

AT&T said in a statement that data from about 7.6 million current account holders and 65.4 million former account holder had been leaked in hacker forums. The statement didn’t reveal the cause of the breach.

Plaintiff Alex Petroski, an Ohio citizen, claims that because of AT&T’s negligence he and other breach victims will endure lifelong costs associated with their sensitive data being exposed online, including the cost of identity fraud-protection services. The complaint was brought in Dallas where AT&T is headquartered.

In addition to monetary damages, the complaint an order requiring AT&T to cover out-of-pocket expenses related to identity theft-prevention and to implement new data-security measures such as full encryption and an outside audit.

The complaint also accuses AT&T of of failing to properly implement data safeguards suggested by the US Federal Trade Commission, including failing to minimize the time PII is stored and limiting access to sensitive data.

Petroski is represented by Kendall Law Group, PLLC, Milberg Coleman Bryson Phillips Grossman PLLC, and Hausfeld LLP. The defense hasn’t yet entered an appearance.

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The case is Petroski v. AT&T Inc. , N.D. Tex., No. 3:24-cv-00757, complaint filed 3/30/24 .

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Trump's media company raises going-concern doubts; shares tumble

 [reuters.com/markets/us/trumps-media-company-falls-after-raising-going-concern-doubts-2024-04-01](https://www.reuters.com/markets/us/trumps-media-company-falls-after-raising-going-concern-doubts-2024-04-01)

Reuters

Item 1 of 2 The Truth social network logo is seen displayed behind a woman holding a smartphone in this picture illustration taken February 21, 2022. REUTERS/Dado Ruvic/Illustration/File Photo

[1/2]The Truth social network logo is seen displayed behind a woman holding a smartphone in this picture illustration taken February 21, 2022. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights](#) , opens new tab

April 1 (Reuters) - Shares of Trump Media & Technology Group (DJT.O) , opens new tab fell nearly 18% on Monday as the parent of Truth Social platform raised going-concern doubts due to struggles to meet its financial liabilities just days after going public through a blank-check merger.

The company posted a net loss of \$58.2 million in the year ended December 2023, compared with a net profit of \$50.5 million a year earlier. Revenue was \$4.13 million last year, up from \$1.47 million in 2022, it said in a filing.

"As of December 31, 2023 and 2022, management had substantial doubt that TMTG will have sufficient funds to meet its liabilities as they fall due, including liabilities related to promissory notes previously issued by TMTG," the company said.

Trump Media said it expects to incur operating losses and negative cash flows from operations for the foreseeable future, as it works to expand its user base, attracting more platform partners and advertisers.

Its shares gained more than 16% on its first trading day on March 26, as retail investors including supporters of former President Donald Trump piled into the stock.

But the stock has since then seen choppy trading, falling for the second straight session on Monday.

Separately on Monday, a Delaware judge said he wanted the company and Trump Media co-founders Wesley Moss and Andrew Litinsky to set a date this month for a hearing to determine if the pair should receive the 8.6% stake in the company they claim they are owed.

Trump Media and the pair have sued each other in Delaware and Florida state courts.

The co-founders accused Trump Media of trying to improperly dilute their stake. The company said they had failed to earn their shares and that it was seeking to strip them of their ownership and wanted a judge to declare they had no right to appoint two board members.

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Reporting by Yuvraj Malik in Bengaluru; Additional reporting by Tom Hals in Wilmington, Delaware; Editing by Arun Koyyur and Anil D'Silva

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Trump Media & Technology Group

Donald Trump's \$10bn media group reports less than \$1mn in quarterly revenue

Shares fall more than 24% as auditor says losses raise 'substantial doubt' about future of business



Former US President Donald Trump's social media business said it had signed up 9mn users © AP

Antoine Gara and **Ortenca Aliaj** in New York AN HOUR AGO



Donald Trump's media business generated less than \$1mn in revenue in the fourth quarter, highlighting the lossmaking business's precarious financial position even as it maintains a more than \$10bn market capitalisation.

[Trump Media & Technology Group](#) was taken public last week in a merger with a blank-cheque company, which increased the former US president's wealth on paper by billions of dollars.

Financial results filed on Monday show that the owner of Trump's Truth Social platform took in just \$751,500 in revenue in the fourth quarter of 2023, a more than 25 per cent decrease from the previous quarter. The company said it has signed up 9mn users, including [Trump](#).

All of TMTG's revenue comes from advertising on Truth Social, which was launched in February 2022 to "rival Big Tech". The company also disclosed an annual net loss of \$58mn, increasing from the \$50.5mn it lost in 2022.

TMTG's auditor, BF Borgers CPA, warned in a report dated March 25 that the company's operating losses "raise substantial doubt about its ability to continue as a going concern", according to the company's filing with the Securities and Exchange Commission.

Shares in TMTG were down more than 24 per cent at midday in New York — falling below their \$49.95 price recorded the day before the merged company [began to trade](#).

After Monday's fall in the stock price, Trump's stake in TMTG is worth roughly \$4bn, while a small group of unheralded financiers and hedge funds that helped take the company public have stakes worth more than \$100mn, according to Financial Times calculations of TMTG's fully diluted value.

The numbers underline the disconnect between the company's market valuation, which at one point topped \$14bn, and its business fundamentals. Trump and other insiders at TMTG will be restricted from selling their stock for at least six months, according to securities filings, amid speculation that the former president could use his stake to raise cash to cover extensive legal liabilities.

As of mid-February, Truth Social said it had 9mn sign-ups, but said it would not provide disclosures of active users or revenues per user, which are standard financial details made by other social media companies, such as X and Meta. Elon Musk's social media platform last said in September it had about 550mn monthly active users and 245mn daily active users.

TMTG said in a filing it believes publishing standard disclosures such as average revenue per user, ad impressions and pricing, or daily active users, could "divert its focus from strategic evaluation with respect to the progress and growth of its business". The company warned that it may never provide these numbers

"[Focusing] on these [performance indicators] might not align with the best interests of TMTG or its shareholders, as it could lead to short-term decision-making at the expense of long-term innovation and value creation," it further said.

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Updated 50 min ago

I. Trump Media Stock Drops; Company Lost Nearly \$60 Million in 2023

By

Amrith Ramkumar

, Climate Finance Reporter

Shares in Donald Trump's social-media company are down about 23% in another day of volatile trading.

The business, Trump Media & Technology Group, is the parent of the former president's social-media platform, Truth Social, and trades under the ticker DJT after [merging with a shell company](#).

On Monday, updated regulatory documents showed that a lock-up for Trump and other insiders for six months following Trump Media's debut as a listed company is still in place.

Trump Media & Technology Group stock price



Notes: Trump Media is Truth Social's parent; Trading before Tuesday was under the SPAC that took the company public
Source: FactSet

Shares in Donald Trump's social-media company are down about 23% in another day of volatile trading.

The company also published full-year earnings results for last year showing that it had about \$4 million in sales and a nearly \$60 million operating loss.

DJT stock recently traded below \$49.95, the price at which the shell company last traded, according to FactSet data. The stock's all-time closing high, set in early March 2022, was above \$97; its 2024 high is above \$66, set March 27.

Traders are watching to see if the company's Trump-friendly board might grant him a waiver to borrow against the stock or sell before the lock-up expires.

-- David Marino-Nachison contributed to this article.

https://www.wsj.com/livecoverage/stock-market-today-dow-jones-04-01-2024/card/trump-media-stock-drops-premarket-0xQOpqFbhltqvmL18QqO?mod=hp_lead_pos3

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March 29, 2024, 12:56 PM PDT

Tupperware Delays 10-K Amid Backlog of Missed Quarterly Reports

By Nicola M. White

Bloomberg Law News 2024-04-01T10:13:16993635231-04:00

Tupperware Delays 10-K Amid Backlog of Missed Quarterly Reports

By Nicola M. White 2024-03-29T15:56:33000-04:00

Tupperware Brands Corp. blew the deadline to file its annual 10-K financial report, citing its work on a backlog of delayed 2023 quarterly reports and turnover in the company's accounting department.

The company's accounting department has experienced "significant attrition which has resulted in resource and skill set gaps, strained resources, and a loss of continuity of knowledge — all of which contributed to delays in the filing of the 2023 Form 10-K," Tupperware said in a securities filing Friday.

Known for its iconic food storage containers and in-home sales parties, Tupperware has struggled with weak sales and a sliding stock price.

- The direct-sales company said it is trying to complete its financial close process and file its 2023 Form 10-K "as promptly as possible," but did not offer a timeline. It has yet to issue its 2023 quarterly reports.
- Tupperware's long-time auditor, PricewaterhouseCoopers LLP, quit in October after serving the company for almost 30 years. The company appointed KPMG LLP as its auditor in January.

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<https://www.wsj.com/articles/tupperware-delays-filing-annual-results-amid-accountant-shortage-3f4531a0>

CFO JOURNAL

Tupperware Delays Filing Annual Results Amid Accountant Shortage

The reusable-container maker said its accounting department is experiencing 'significant attrition'

By [Mark Maurer](#) [Follow](#) and [Ben Glickman](#) [Follow](#)

Updated March 29, 2024 4:54 pm ET



Tupperware said its continuing material weakness had made added procedures necessary in preparing its annual report. PHOTO: GARRETT CHEEN/ASSOCIATED PRESS

Cash-strapped Tupperware Brands is delaying its annual results due to internal control issues and a shortage of accountants that has been a growing challenge for companies' finance teams.

The Orlando, Fla.-based reusable-container maker said in a filing Friday that its previous delays in filing its 2022 10-K annual report caused subsequent issues with its quarterly reports. The company said it filed its 2023 quarterly reports on Friday, but those delays pushed back work on its annual report.

Struggling Tupperware has faced continuing liquidity and accounting issues in the last year. The company lost its accounting firm PricewaterhouseCoopers in

October and has previously disclosed a material weakness in its internal control over financial reporting and warned of its ability to continue operating.

Tupperware said Friday its continuing material weakness had made added procedures necessary in preparing its annual report, which has contributed to delays. The company said its accounting department is experiencing “significant attrition,” which has left the company with strained resources and gaps in skill sets.

Companies over the past year have cited a lack of skilled accounting personnel for material weaknesses in their financial-reporting controls, typically a predictor of restatements. More accountants are retiring without an adequate pipeline of entrants in the profession to fill the void.

The dearth of new accountants has increasingly bled into U.S.-listed companies’ financial statements. The companies have been bigger than the often smaller businesses that historically struggle to draw accounting expertise. For example, Advance Auto Parts last year couldn’t file a quarterly report on time, saying it wasn’t able to attract and retain enough qualified accounting staff to fulfill internal-control responsibilities.

In response to the shortage, some companies have weighed raising salaries and tapping temporary outside help.

Tupperware said retaining a new independent auditor also hampered its ability to submit its form 10-K on time.

In its latest quarterly report, Tupperware booked \$259.6 million in revenue for the quarter ended Sept. 30, 2023, down 14% from the prior-year period. It reported a net loss of \$55.8 million for the quarter ended Sept. 30.

Last month, Tupperware secured a forbearance agreement with lenders as it explores strategic alternatives.

Tupperware didn’t immediately respond to a request for comment.

Write to Mark Maurer at mark.maurer@wsj.com and Ben Glickman at ben.glickman@wsj.com

Would-be Tesla buyers snub company as Musk's reputation dips

 [reuters.com/business/autos-transportation/would-be-tesla-buyers-snob-company-musks-reputation-dips-2024-04-01](https://www.reuters.com/business/autos-transportation/would-be-tesla-buyers-snob-company-musks-reputation-dips-2024-04-01)

Hyunjoo Jin, Nick Carey

Tesla hurt by Musk's falling reputation: survey

SAN FRANCISCO/LONDON, April 1 (Reuters) - The ranks of would-be Tesla buyers in the United States are shrinking, according to a survey by market intelligence firm Caliber, which attributed the drop in part to CEO Elon Musk's polarizing persona.

While Tesla continued to post strong sales growth last year, helped by aggressive price cuts, the electric-vehicle maker is expected to report weak quarterly sales [↗](#), opens new tab as early as Tuesday.

Caliber's "consideration score" for Tesla [↗](#), opens new tab, provided exclusively to Reuters, fell to 31% in February, less than half its high of 70% in November 2021 when it started tracking consumer interest in the brand.

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Reuters Graphics

Tesla's consideration score fell 8 percentage points from January alone even as Caliber's scores for Mercedes (MBGn.DE) [↗](#), opens new tab, BMW (BMWG.DE) [↗](#), opens new tab and Audi, which produce gas as well as EV models, inched up during that same period, reaching 44-47%.

Tesla did not respond to a request for comment. Musk in the past has blamed high-interest rates for curbing consumer demand for big ticket items like cars.

Caliber cited strong associations between Tesla's reputation and that of Musk for the scores.

"It's very likely that Musk himself is contributing to the reputational downfall," Caliber CEO Shahar Silbershatz told Reuters, saying his company's survey shows 83% of Americans connect Musk with Tesla.

Reuters spoke to five marketing, polling and car experts who said controversies surrounding Musk's increasingly right-wing politics and public statements are weighing on Tesla's brand and demand.

"It is hard enough to win sales without getting into politics," said Tim Calkins, a marketing professor at Northwestern University's Kellogg School of Management.

Economic fears, the lack of affordable new models and rising competition from cheaper rivals like China's BYD have also been cited by Wall Street analysts as putting pressure on Tesla.

Overall electric vehicle sales in the U.S. are forecast to increase 15% in the first quarter of this year, according to estimates by researcher Cox Automotive. Tesla sales are projected to increase by 3%.

"The EV slowdown is shaping up to be a Tesla slowdown," Cox analyst Stephanie Valdez Streaty said during a conference call Thursday.

New car registrations for Teslas in California- their biggest market in the U.S. - posted their first drop in over three years in the fourth quarter of 2023 even as EV sales rose overall. At least five analysts cut Tesla's target price last month, saying the automaker could post disappointing first-quarter delivery results. Tesla shares are down nearly 30% year to date.

Musk's outsized personality benefited Tesla as he promoted tackling climate change by reimagining cars as stylish, electric computers on wheels that could beat gasoline guzzlers in looks, performance and handling.

Tesla achieved breakneck annual sales growth for more than a decade.



Item 1 of 3 Elon Musk, chief executive officer of SpaceX and Tesla and owner of Twitter, gestures as he attends the Viva Technology conference in Paris, France, June 16, 2023. REUTERS/Gonzalo Fuentes

[1/3]Elon Musk, chief executive officer of SpaceX and Tesla and owner of Twitter, gestures as he attends the Viva Technology conference in Paris, France, June 16, 2023. REUTERS/Gonzalo Fuentes [Purchase Licensing Rights](#) , opens new tab

COURTED CONTROVERSY

In recent years, the billionaire courted controversy with comments and actions including his embrace of the Republican party and endorsement of anti-semitic comments on X. Musk has denied being anti-semitic.

When asked by an investor during a January 2023 conference call if his political comments were hurting Tesla's brand and sales, Musk said he was "reasonably popular," referring to his then 127 million followers on X, formerly known as Twitter.

"Whether you hate me, like me or are indifferent, do you want the best car, or do you not want the best car?" Musk said at another event in November.

Brand valuation consultancy Brand Finance found Tesla's reputation fell in 2023 , opens new tab in the United States, the Netherlands, France, United Kingdom, and Australia. Tesla's reputation did not suffer in China, where access to news on the company and its CEO may have been limited, and Germany.

Reuters Graphics

In the U.S., a survey by consumer analytics firm CivicScience , opens new tab shown exclusively to Reuters found that 42% of respondents had an unfavorable view of Musk in February, up from 34% in April 2022 when Musk disclosed his stake in Twitter.

Reuters Graphics

"A modest but growing number of EV shoppers are increasingly put off by Elon Musk's behavior and politics and are now finding viable alternatives to Tesla in the marketplace," Ed Kim, president of California-based consultancy AutoPacific said.

That group includes Jonny Page, a London-based consultant who works with climate-focused startups and will purchase an EV this summer. It will not be a Tesla.

Page, 36, said his decision is partly because of concerns over Tesla safety but mostly about Musk's "unhinged" behavior. "I don't want to put a single penny in that man's pockets," Page said.

"I CAN'T GO BACK TO GAS"

Tesla's reputation is still sterling with many.

Market researcher S&P Mobility shows Tesla has the highest loyalty among major car brands, with 68% of owners choosing another Tesla when they bought a new car last year.

Christian Cook, a Tesla Model 3 owner in Texas who identified as leaning right, said Musk's actions made no difference and that he was "becoming numb to the shenanigans."

Kat Beyer, a climate activist in Wisconsin, said she wanted to avoid Tesla because of Musk's support for Republicans, but wound up buying a Model Y last year because of a lack of EVs with reliable charging infrastructure.

"It's hard to drive the car associated with him," Beyer said. "But I can't go back to gas."

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Reporting by Hyunjoo Jin in San Francisco and Nick Carey reported from London; Additional reporting by Joe White in Detroit and Stella Qiu in Sydney; Editing by Peter Henderson and Suzanne Goldenberg

Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

Judge unlikely to stay racial bias lawsuit against Tesla

DJ [dailyjournal.com/articles/377854-judge-unlikely-to-stay-racial-bias-lawsuit-against-tesla](https://www.dailyjournal.com/articles/377854-judge-unlikely-to-stay-racial-bias-lawsuit-against-tesla)

Mar. 29, 2024

Tesla's attorneys argued that a state case should take place before the federal lawsuit proceeds.

A federal judge in San Francisco seemed disinclined to grant Tesla Inc.'s request on Thursday to stay racial discrimination claims brought by the U.S. Equal Employment Opportunity Commission, saying the federal government's action and a related action by the California Civil Rights Department did not completely overlap.

Tesla is accused by both agencies of fostering an antagonistic environment toward Black employees at its Fremont facility, mainly by allowing workers to use racial slurs. In its motion to dismiss the claims, Elon Musk's company wrote that the EEOC's "sprint to the courthouse" was to show it was "the toughest regulator on the block," not the Civil Rights Department. Tesla's attorneys said the state case, scheduled for trial in Alameda County in October, should take place before the federal lawsuit proceeds.

The public and private interests represented by the Civil Rights Department are "precisely the same" as those represented by the EEOC in this case, Holland & Knight LLP partner Thomas E. Hill told U.S. District Judge Jacqueline Scott Corley, citing the Colorado River doctrine. This principle, derived from a 1976 U.S. Supreme Court decision in *Colorado River Water Conservation District v. United States*, allows a district court to abstain from exercising its jurisdiction if there is a parallel state court proceeding.

However, Scott Corley said Tesla's argument did not consider a recent ruling by the 9th U.S. Circuit Court of Appeals. In *Steelman v. Ernest Bock LLC*, the appellate court held that the Colorado River doctrine applied only when the resolution of the state court litigation would resolve the federal litigation no matter how it was decided. "I understand your argument, but I think it runs square into Bock," the judge told Hill.

EEOC attorney James H. Baker agreed that the Bock ruling precluded Tesla from seeking a stay, saying there were several ways to resolve the state case that would not necessarily end the EEOC's lawsuit. "There's no res judicata. The EEOC will not be named in any judgment and that alone is not enough to abstain from hearing the federal government's case," said Baker. *Equal Employment Opportunity Commission v. Tesla Inc.*, 3:23-cv-04984-JSC (N.D. Cal., filed Sept. 28, 2023).

Taking the motion under submission, Scott Corley also heard the electric vehicle maker's motion to dismiss the claims. The EEOC's complaint was vague and did not provide any facts about which employees were harassed and which employees were harassing at the Fremont plant, said Reed Smith LLP partner Raymond A. Cardoza. "How can we say if that's plausible if there is not a single person, place or time identified?" he asked.

Cardoza added that the agency did not fulfill its pre-suit obligations to Tesla of engaging in mediation and providing notice of an investigation. "The idea that we're early — they're supposed to do a lot before they got here, and they can't tell us one fact?" the attorney said.

The judge disagreed that the EEOC's claims were too unclear for this stage, saying the agency listed examples of the alleged misconduct. "They're not just saying 'discrimination.' They're saying specifically what the conduct is that created the hostile environment. It's based primarily on the use of language and particular words throughout the facility," said Scott Corley.

#377854

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April 1, 2024, 10:09AM PDT
X Users Advance Suit Over Data Breach Affecting 200 Million
By [Christopher Brown](#)
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- Gross negligence, declaratory judgment claims survive dismissal
- Court gives plaintiffs leave to amend contract, statutory claims

Bloomberg Law News 2024-04-01T13:28:07594448007-04:00
X Users Advance Suit Over Data Breach Affecting 200 Million

By Christopher Brown 2024-04-01T13:09:02000-04:00
Gross negligence, declaratory judgment claims survive dismissal
Court gives plaintiffs leave to amend contract, statutory claims

X Corp. must face a proposed class action alleging it negligently allowed criminals to gain access to the personal information of 200 million users of its platform that was exposed by a software glitch and ended up for sale on the dark web.

Plaintiffs Stephen Gerber, Eric Cohen, and Casey Weitzman alleged that a defect in the application programming interface for X, formerly known as Twitter, from June 2021-January 2022 allowed cybercriminals to obtain users’ usernames, display names, email addresses, phone numbers, and account-creation data.

They alleged the breach wasn’t an isolated incident, but rather the foreseeable result of the reckless way that X chose to run its business and ignore its obligations to protect user data.

The plaintiffs successfully stated claims of gross negligence and declaratory judgment against the social media company, Magistrate Judge Kandis A. Westmore of the US District Court for the Northern District of California said March 29.

Westmore dismissed their claim of violations of the California Consumer Legal Remedies Act with prejudice, and dismissed their remaining claims with leave to amend, giving them 21 days to file a revised complaint.

Unconscionability

X argued in a motion to dismiss that the plaintiffs’ common-law claims were barred by a disclaimer and a limitations-of-liability clause in the X terms of service, and Westmore agreed that all but the gross-negligence claim should be dismissed because the complaint didn’t include specific allegations that the terms of service were unconscionable.

<https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X5TPNHEO000000?bc=W1siU2VhcmNoICYgQnJvd3NlliwiiaHR0cHM6L...> 1/3

The judge said the complaint included allegations that implied unconscionability—that X had a legal obligation to maintain reasonable data-security systems, and took minimal action to protect sensitive data despite knowing that its data-security systems were inadequate.

The plaintiffs can allege that the terms of service agreement was procedurally and substantively unconscionable in the amended complaint, she said.

She also said the breach of contract and unjust enrichment claims in an amended complaint could survive dismissal only if the complaint alleged specific promises in X's terms of service and privacy policies that were at issue in the lawsuit, and that the economic loss rule wouldn't bar their negligence claims.

Specific allegations that X violated the terms of its privacy policy also would be enough to allow their claim of violations of the California Unfair Competition Law to survive, she said.

Israel David LLP, Scott & Scott Attorneys at Law LLP, Zimmerman Reed LLP, and E. Kirk Wood of Birmingham, Ala. represent Gerber and the proposed class. Quinn Emmanuel Urquhart & Sullivan LLP represent Twitter.

The case is Gerber v. Twitter Inc. , N.D. Cal., No. 4:23-cv-00186, 3/29/24 .

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The allegations “plausibly support inferences of discriminatory intent against women behind the Post-RIF Policies and the termination,” Judge Jacqueline Scott Corley of the US District Court for the Northern District of California said, ruling on the company’s motion to dismiss.

“Musk’s alleged sexist statements, especially the tweet ‘Being a Mom is just as important as any career,’ plausibly support an inference that Musk knew the Post-RIF Policies and the ultimatum email’s conditions would be less acceptable to female employees who, according to him, should not prioritize their career over family obligations,” Corley said.

This is enough to support an inference that Musk “had a discriminatory intent to have more women than men ‘forced out of the company,’” Corley said, quoting the complaint.

Frederick-Osborn also showed “a plausible link between her termination and her sex by alleging Musk’s sexist public statements and the ultimatum’s disproportionate impact on female employees,” Corley said.

The complaint alleges that the “‘imposition of the unreasonable hours and in-office requirements,’” resulted in 36% of the remaining female employees, but only 28% of male employees, leaving the company, Corley said.

Frederick-Osborn, however, failed “to plead facts that support an inference the adverse employment action was caused by age discrimination,” Corley said.

“[T]he one example of Musk’s alleged ageist comments is about old people’s reluctance to change their minds and embrace new ideas in the context of a longevity discussion, which does not directly address older people’s willingness or ability to commit to long and intense work,” Corley said.

And Frederick-Osborn doesn’t allege that “the post-ultimatum email termination led to more employees aged 50 or older leaving the company,” Corley said.

The court dismissed the age discrimination claims without prejudice and granted Frederick-Osborn until April 25 to file an amended complaint.

Lichten & Liss-Riordan PC represents Frederick-Osborn. Morgan, Lewis & Bockius LLP represents X.

The case is Frederick-Osborn v. Twitter Inc. , 2024 BL 108869, N.D. Cal., No. 24-cv-00125, 3/29/24 .

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Tesla appears unlikely to nix US suit alleging bias against Black workers

 [reuters.com/legal/tesla-appears-unlikely-nix-us-suit-alleging-bias-against-black-workers-2024-03-28](https://www.reuters.com/legal/tesla-appears-unlikely-nix-us-suit-alleging-bias-against-black-workers-2024-03-28)

Daniel Wiessner

A Tesla supercharger is shown at a charging station in Santa Clarita, California, U.S. October 2, 2019. REUTERS/Mike Blake/File Photo Purchase Licensing Rights , opens new tab

March 28 (Reuters) - A federal judge in California on Thursday appeared poised to reject Tesla's (TSLA.O) , opens new tab bid to toss out a U.S. agency's lawsuit accusing the electric carmaker of tolerating rampant harassment of Black workers at its Fremont, California assembly plant.

U.S. District Judge Jacqueline Scott Corley in San Francisco during a hearing repeatedly disagreed with claims by Tesla's lawyers that the U.S. Equal Employment Opportunity (EEOC) failed to include any facts in its lawsuit backing up its claim of pervasive unlawful race bias.

The EEOC in a 10-page lawsuit filed last year said that from 2015 to the present, Black workers at the Tesla plant have routinely been subjected to racist slurs and graffiti, including swastikas and nooses, and Tesla has failed to investigate complaints.

Tesla, whose CEO is billionaire businessman Elon Musk, is facing similar claims in a separate lawsuit by a California civil rights agency and a class action on behalf of 6,000 Black workers. The company has denied wrongdoing in all three cases.

Raymond Cardozo, a lawyer for Tesla, told Corley during the hearing that the EEOC had not met a requirement of showing that its claims were "plausible" and can move forward. The lawsuit did not include the names of workers who allegedly faced discrimination or details about when or where in the factory the misconduct occurred, Cardozo said.

It is not plausible "when someone is saying that every single person not of that race, from 2015 to 2024, discriminated against every single (Black) person," Cardozo said.

"That's not what it's saying," the judge replied. "It's saying this racism ... was ubiquitous such that it created a hostile environment for Black workers. Maybe it's untrue, but why doesn't that state a claim?"

Corley cited a paragraph in the lawsuit that states that an unidentified worker told the EEOC that a highly offensive racial slur was "both his white co-workers' and supervisors' preferred pronoun on the production line."

"That you don't know his name doesn't mean it's not plausible," the judge said, adding that Tesla will be able to obtain more information during the discovery process leading up to a trial.

Cardozo said that without more details, Tesla could not attempt to address the alleged discrimination.

Corley seemed unmoved.

"I'm not persuaded at all, I have to say," the judge said.

Corley did not say when she would issue a ruling. The judge also seemed skeptical of Tesla's bid to alternatively pause the case pending the outcome of the class action and the lawsuit by the California agency.

The EEOC's lawsuit seeks unspecified compensatory and punitive damages for an unspecified number of Black workers, along with an order requiring Tesla to overhaul its policies prohibiting discrimination and retaliation.

Reporting by Daniel Wiessner in Albany, New York; Editing by Will Dunham and Alexia Garamfalvi

Dan Wiessner (@danwiessner) reports on labor and employment and immigration law, including litigation and policy making. He can be reached at daniel.wiessner@thomsonreuters.com.

Tesla must face hostile work environment claims for treatment of Black workers

 [courthousenews.com/tesla-must-face-hostile-work-environment-claims-for-treatment-of-black-workers](https://www.courthousenews.com/tesla-must-face-hostile-work-environment-claims-for-treatment-of-black-workers)

Michael Gennaro

Black workers at Tesla's Fremont factory say they were called racial slurs to their face by supervisors, and were subject to racist graffiti of nooses and swastikas on desks and equipment.

FILE - In this Sept. 29, 2015, file photo, Elon Musk, CEO of Tesla Motors Inc., talks about the Model X car at the company's headquarters, in Fremont, Calif. Electric auto brand Tesla Inc. says it has secured land in Shanghai for its first factory outside the United States, pushing ahead despite mounting U.S.-Chinese trade tensions. The company said it signed an agreement on a 210-acre (84-hectare) site. (AP Photo/Marcio Jose Sanchez, File)

SAN FRANCISCO (CN) — A federal judge is allowing hostile work environment and retaliation claims to proceed against Tesla over the company's treatment of Black workers at its Fremont, California, factory since May 2015.

The Equal Employment Opportunity Commission sued Tesla in federal court in September 2023, accusing the Elon Musk-owned automotive and clean-energy company of pervasive racial harassment against Black employees, in violation of the Civil Rights Act, which prohibits employment discrimination based on race, color, religion, sex or national origin.

The commission claimed in its complaint that Tesla supervisors and others regularly targeted Black workers at the Fremont factory with racial slurs, that racist graffiti such as swastikas and nooses were left on desks, equipment and vehicles at the Fremont factory and that Black workers who complained about the treatment were fired.

"Despite awareness of such racial misconduct, Tesla has failed to investigate Black employees' complaints, adopt policies or practices to ensure its temporary workforce did not perpetuate racial harassment at the Fremont Factory, intercede when witnessing racial misconduct, or otherwise take remedial action to end the ongoing racial harassment," U.S. District Judge Jacqueline Scott Corley wrote in her 18-page opinion on Friday.

Tesla had hoped to dismiss the commission's claim, arguing that it "fails to allege facts sufficient to establish the severity and pervasiveness element necessary to state a hostile work environment claim."

Corley determined that Tesla misstated the standard, and denied its motion to dismiss. She wrote that the question was whether or not the purported conduct was severe enough to alter the conditions of employment, a standard that the commission met.

Corley wrote that the commission's claims support an inference that the Fremont factory has been "permeated" with racist practices that alter the conditions of Black employees' employment.

Tesla argued that the commission hadn't identified any members of the purported group of victims but Corley said that did not matter because the commission was suing Tesla in its own name.

"The commission is not required to identify an aggrieved individual to survive Tesla's motion to dismiss," Corley wrote.

Corley also allowed retaliation claims to proceed against Tesla as well, because she said the commission had sufficiently claimed that Tesla fired Black employees after they complained of mistreatment, including one employee that was fired immediately after being advised of Tesla's non-retaliation policy.

"The alleged employment actions by Tesla might have dissuaded a reasonable worker from making or supporting a cause of discrimination. So, these allegations are sufficient to support an inference Tesla subjected Black Fremont Factory employees to adverse employment action," Corley wrote.

In a separate case Friday afternoon, Corley dealt another blow to another Elon Musk venture when allowed putative class claims to proceed against X. Corp from a former Twitter employee.

That employee said her complaint that after Elon Musk bought the company in November 2022, the social media company began a series of reduction in force layoffs that disproportionately affected female employees and employees that were 50 or older.

The plaintiff sued behalf of herself and other female Twitter employees and employees aged 50 or older affected by the layoffs. Shortly after the layoffs, the plaintiff claims that Musk gave workers an ultimatum to either work "unreasonable" hours or lose their jobs. When the plaintiff did not agree to the ultimatum, she was terminated.

In her ruling in that case, Corley allowed the sex-based discrimination claims to survive because there was enough on the record to show that the majority of those laid off were women, but tossed the age discrimination claims.

In their complaint, the plaintiffs claimed that Musk had a history of sexist behavior and statements, including tweets where he said he believed being a mother was more important than having a career, and had named a school using the acronym "TITS."

Accordingly, drawing inferences in plaintiff's favor, these facts plausibly support an inference Musk, the owner and CEO of Twitter, had a discriminatory intent to have more women than men 'forced out of the company' when he implemented the post-RIF Policies and sent out the ultimatum email because he expected women to be less committed to their career and thus less likely to consent to these changes," Corley wrote.

Categories / Civil Rights, Employment

Mememes, Pumps, Blunders: Absurd Crypto Spectacles Make a Comeback

By Muyao Shen

- Memecoins like 'dogwifhat' steal the spotlight from Bitcoin
- 'It's just people fighting for liquidity and attention'

Bloomberg Law News 2024-04-01T10:12:32184860563-04:00

Mememes, Pumps, Blunders: Absurd Crypto Spectacles Make a Comeback

By Muyao Shen2024-03-29T10:00:00001-04:00

- Memecoins like 'dogwifhat' steal the spotlight from Bitcoin
- 'It's just people fighting for liquidity and attention'

At a conference in Manhattan last week, a few hundred people gathered to hear luminaries of the cryptocurrency industry and executives from the likes of BlackRock and Fidelity discuss Bitcoin's march into the investing mainstream this year.

However, it was another token that kept coming up in the conversations: a newer cryptocurrency best known for its logo featuring an image of a dog wearing a knit hat. The billionaire **Michael Novogratz**, chief executive officer of Galaxy Digital, jokingly lamented that he doesn't have a position in the coin called dogwifhat.

"I don't, as much as I want to," he said to laughs from the audience. "I just fear if I tweet 'God, I love dogwifhat like Arthur Hayes does,' I will literally be investigated two days later by the CFTC."



A candlestick price chart in the window of a cryptocurrency exchange bureau in Istanbul.

Photographer: David Lombeida/Bloomberg

The proximate cause of this year's revival in digital-asset markets is the arrival of long-awaited US exchange-traded funds that are delivering Bitcoin into investors' traditional brokerage accounts. Yet much like with the conversations at this Bitcoin Investor Day conference, the crypto community's more whimsical impulses are stealing the spotlight in the market, pushing some of the most-pointless tokens — known as memecoins — to even bigger gains than Bitcoin.

By now, even a normie – the industry's nickname for non-crypto people – probably knows a thing or two about memecoins, the tokens most-famous for their cute logos featuring dogs or frogs or pop-culture references rather than any hint of blockchain innovation. Still, the silliness currently on display among self-described “degens” in this corner of the crypto market may come as a surprise.

A website called pump.fun allows anyone to create a memecoin through an automated process. Simply enter a name, an introductory description and an image that represents the token. Others browsing the website can “ape” – crypto slang for buying without doing much research – into whatever memecoins they like.

Spending just a few minutes on the website is mesmerizing, with dozens of new memecoins created — and swiftly pumped in value by traders. There are tokens like BoomerCoin. (Ticker: BOOMER; description: “Sell and Grandma dies.”) among memecoins in almost any pop-culture, or crypto-culture category one can imagine. There’s even one mocking a caricature of a risk-adverse traditional-finance worker named Jared, with the description: “memecoins? Sounds too risky, I will never touch them.”

Elsewhere, a new wave of bots based on messaging platform Telegram is fueling popularity for blockchain platforms that are cheaper and faster than Ethereum. Tornado Blast, a Telegram bot on blockchain platform Blast, makes gambling on tokens as easy as chatting with ChatGPT. Anyone with a digital wallet and Telegram can buy, sell, and transfer tokens with Tornado Blast. The bot also has new functions such as “Gem Finder,” which purports to use artificial intelligence to find coins “that could have a nice risk/return ratio for your degens plays,” according to the website.

Yet, while the latest craziness has breathed new life into the crypto world’s promo artists, the retail traders they rely on to “ape” into the coins have been slow to return. Global retail trading activity on Binance in February only returned to levels seen in mid-2022, which was the end of the last bull market.

“There are definitely more retail users returning, but not to the volumes of what we saw in 2021,” Andy Goldin, global head of data and analytics at Binance, the world’s largest crypto exchange, said in an interview. “Some of this memecoins stuff is a little bit more the purview of experienced traders.”

Still, on the Solana blockchain, the memecoin frenzy is picking up steam. More than \$122 million worth of Solana tokens were raised from so-called presales of new coins before they were launched, according to data compiled by crypto sleuth ZachXBT.

“The memecoins are so naturally speculative, there’s no expectation that they will make real products,” said Zaheer Ebtikar, founder of crypto fund Split Capital. “It’s just people fighting for liquidity and attention. People, especially retail investors that got blown up from last cycle, are so eager to win it all in one trade.”

Several incidents recently have served as a reminder of how risky the hype can be.

A developer of a sloth-themed memecoin claimed they accidentally burned a large amount of the tokens after the project raised \$10 million — essentially losing all the money raised. While this could have become a major legal problem in any traditional market, the token, called Slerf, started trading nevertheless and now has a total market value of \$340 million, according to tracker CoinGecko.

“The biggest casino on Earth seems to have re-opened its door,” crypto blog Rekt said in a recent newsletter on the Slerf incident. “The odds are against us, and yet we ape don’t seem to learn. What does this say about us?”

Back at the Bitcoin Investor Day event in Manhattan, it was time for BlackRock's head of digital assets, Robert Mitchnick, to speak. The firm's iShares Bitcoin Trust has been at the top of the league table of the new ETFs, gathering more than \$17 billion in assets in less than three months. The event's organizer, the crypto personality **Anthony Pompliano**, asked Mitchnick what's next for BlackRock. And also, of course, what he thought of Novogratz's take on dogwifhat.

"I think that crypto Twitter would love to believe that a dogwifhat ETF is coming next," Mitchnick said to laughs, before indicating that no one should count on that: "I actually don't know what dogwifhat even is."

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Jamie Dimon Huddles in Private with Biden Bigwigs as His Bank Faces More Crime Charges

 wallstreetonparade.com/2024/04/jamie-dimon-huddles-in-private-with-biden-bigwigs-as-his-bank-faces-more-crime-charges

By Pam Martens and Russ Martens: April 1, 2024 ~

Remember that time in 2016 when Attorney General Loretta Lynch decided she would take a private meeting with Bill Clinton on her plane as it was parked on the tarmac in Phoenix – while his wife, Hillary Clinton, was under federal investigation for using an unsafe private email server at her New York home to receive classified government emails when she was Secretary of State?

What President Biden's Vice President, Kamala Harris, and his Chief of Staff, Jeff Zients, did in mid-March was equally scandalous. Harris had a "one-on-one lunch at the White House" with Jamie Dimon, the Chairman and CEO of the most crime-riddled bank in the United States, JPMorgan Chase. Zients also separately met with Dimon. That reporting comes courtesy of reporters Joshua Franklin and James Politi of the Financial Times (paywall). It has not been disputed by the Biden administration.

Dimon's private meetings in Washington come as the bank (that has already admitted to a string of five criminal felony charges) is currently facing a serious investigation for "billions" of improperly conducted trades by its federally-insured bank. Two of its federal regulators, the Office of the Comptroller of the Currency and the Federal Reserve, settled those charges in March for a combined \$348 million. Both regulators provided extremely sketchy details as to the precise nature of the trading misconduct. JPMorgan Chase revealed in an SEC filing in February that it remains under investigation in the same matter by a third regulator "but there is no assurance that such discussions will result in a resolution," the bank wrote in the filing.

It would certainly not be the first time that Dimon attempted to throw his weight around in Washington to get his bank out of trouble. During Congressional hearings in 2012, when Dimon was called to testify about his bank allowing its traders to use deposits from its federally-insured bank to gamble in derivatives in London and lose what eventually tallied up to \$6.2 billion (the infamous "London Whale" scandal), Dimon had the temerity to wear presidential cuff links to show off a gift from the White House.



Jamie Dimon,
Chairman and CEO
of JPMorgan Chase,
Shows Off
Presidential Cuff
Links While
Testifying Before
Congress in 2012 on
the London Whale
Trading Scandal

Then there was Dimon's meeting with Attorney General Eric Holder during the Obama administration when JPMorgan Chase was being investigated for widespread mortgage fraud. For what the bank got away with in that matter, see Matt Taibbi's report revealing that the Justice Department sandbagged their key witness, a former lawyer/ whistleblower inside JPMorgan Chase, who called it "the biggest financial cover-up in history."

According to the recent Financial Times report, Vice President Harris did not list the luncheon on her official daily calendar, suggesting she knew it was inappropriate. The FT reporters also reveal the following:

"Dimon, one of the most influential voices on Wall Street, also separately met White House chief of staff Jeff Zients while he was in Washington, as well as federal regulators and members of Congress. It could not be learnt what was discussed at the meetings. The White House and JPMorgan, the largest US bank by assets, declined to comment."

The only reason that Dimon is still called "one of the most influential voices on Wall Street" is because sycophants in mainstream media still call him that. Engaged Americans, like former Labor Secretary and Public Policy Professor Robert Reich, call Dimon an "oligarch" who has "hijacked the system." Trial attorneys Helen Davis Chaitman and Lance Gotthoffer released a book, JPMadoff: The Unholy Alliance Between America's Biggest Bank and America's Biggest Crook, in which they provided this take on Dimon:

"In Chapter 4, we compared JPMC [JPMorgan Chase] to the Gambino crime family to demonstrate the many areas in which these two organizations had the same goals and strategies. In fact, the most significant difference between JPMC and the Gambino Crime Family is the way the government treats them. While Congress made it a national priority to eradicate organized crime, there is an appalling lack of appetite in Washington to decriminalize Wall Street. Congress and the executive branch of the government seem determined to protect Wall Street criminals, which simply assures their proliferation...

"If Jamie Dimon is running a criminal institution, he should be prosecuted for it. And law enforcement has the perfect tool for such a prosecution: the Racketeer Influenced and Corrupt Organizations ACT (RICO)."

In 2014, the non-profit watchdog, Better Markets, filed a federal lawsuit against the U.S. Department of Justice and the man who sat at its helm, Attorney General Eric Holder. The lawsuit challenged what had emerged out of that cozy meeting between Holder and Dimon – a \$13 billion out-of-court settlement over the bank's sale of toxic mortgages.

Better Markets wrote on its website that this was at the time "The largest settlement in U.S. history from a single entity by more than 300%" and that it "granted JP Morgan blanket civil immunity for years of alleged, but undisclosed, pervasive, egregious and knowing fraudulent

and illegal conduct that contributed to the 2008 financial crash and the worst economy since the Great Depression.”

Among the allegations in the Better Markets’ press release, these three stood out:

“The Attorney General and other senior DOJ political appointees negotiated directly and entirely in secret with the CEO of JP Morgan Chase [Jamie Dimon], someone who was considered a possible Treasury Secretary just a few years ago.

“The cellphone of DOJ’s third highest ranking official rang with the ‘familiar’ phone number of JP Morgan Chase’s CEO [Jamie Dimon], who called to offer billions of dollars to stop DOJ from holding a press conference and filing a lawsuit in just a few hours. The call worked, and the press conference and lawsuit were both called off.

“DOJ gave complete civil immunity to JP Morgan Chase for defrauding thousands in exchange for \$13 billion, via a contract that was negotiated and finalized in secret without any review or approval by a federal court.”

Attorneys for the Justice Department asked the federal court to dismiss the Better Markets lawsuit on the basis that Better Markets lacked standing to file the lawsuit. The U.S. District Court for the District of Columbia did just that in a longwinded decision that effectively stripped Americans of their ability to fight back against the increasingly corrupt nexus between Washington and Wall Street.

If you agree with *Wall Street On Parade* that the current banking structure in the U.S. represents a threat to national security and economic stability, please contact your U.S. Senators today via the U.S. Capitol switchboard by dialing (202) 224-3121. Tell your Senators to hold immediate hearings on the urgent need to restore the Glass-Steagall Act to separate Wall Street’s trading casinos from federally-insured commercial banks.

Nikola Sues Convicted Ex-CEO Alleging Unlawful Takeover Bid

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- **COURT:** D. Ariz.
- **TRACK DOCKET:** 2:24-cv-00690

Nikola Corp. is suing its founder and former CEO, Trevor Milton, in an effort to thwart Milton's alleged attempt to regain control of the company through a board takeover after his securities and wire fraud conviction.

"While corporate board takeover attempts are not, by themselves, unlawful, this one is," electric vehicle maker Nikola said in its complaint, filed Thursday in the US District Court for the District of Arizona.

That's because Milton, Nikola-spinoff EMBR Motors Inc., and EMBR's owners David "HeavyD" Sparks and Cole Cannon infringed Nikola's trademarks, breached the spinoff contract, violated securities laws, and committed other wrongs, Nikola says.

"Milton has recruited a slate of unqualified confederates to stand as candidates for Nikola's Board of Directors at the next annual meeting," while filing proxy materials that contain false statements, Nikola says.

Milton was sentenced to four years in prison in December 2023 for misrepresenting key details about the development of Nikola's products and technology while CEO. He was also ordered to pay a \$1 million fine. He's currently appealing his conviction and sentence.

"Milton seeks control of Nikola for his own financial gain," Nikola says in its complaint. "Shortly before he launched his proxy fight, Nikola obtained a \$165 million arbitration award against Milton. If he is able to regain control of the company Milton will undoubtedly attempt to undermine Nikola's efforts to collect the award against him."

Nikola's stock rose 75% over eight sessions as of Thursday, according to Bloomberg News.

The company has been involved in class and derivative securities litigation over battery fires.

Nikola asserts a variety of claims against EMBR and the other defendants, including breach of contract, breach of the implied covenant of good faith and fair dealing, tortious interference with contract, trademark infringement, misleading proxy statements, and civil conspiracy.

The company seeks injunctive and declaratory relief and punitive damages.

An attorney for Milton in his criminal case didn't immediately respond to a request for comment. EMBR didn't immediately respond to an attempted request for comment through its web portal.

Hoffman Legal and Baughman Kroup Bosse PLLC represent Nikola.

The case is Nikola Corp. v. EMBR Motors Inc. , D. Ariz., No. 2:24-cv-00690, complaint 3/28/24 .

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Paxton's Plea Deal Came After Holes Emerged in Prosecution

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In the lead-up to a trial that never happened, prosecutors overseeing felony securities charges against Texas Attorney General Ken Paxton (R) discovered one hole and then another that prompted them to abandon the case that could have put Paxton in prison for decades.

A little more than two months before the nine-year-old case was set to go to trial, prosecutors re-examined their case on what they thought was an easy conviction alleging Paxton failed to register as an investment adviser. They noticed for the first time that their most important witness had said he'd take the fall for Paxton if called to testify, and assume responsibility for failing to register Paxton.

"He was not going to be helpful at all," prosecutor Brian Wice said of the witness.

The loss of that witness followed the death of another key witness a year earlier.

Prosecutors had failed to record his testimony—thought to be the most persuasive of the case—by deposition, leaving them unable to salvage a more serious charge of first-degree fraud.

With their case so weakened, the prosecution decided to try to settle.

Last week, Paxton, 61, agreed to pay \$271,000 restitution plus complete 100 hours of community service and 15 hours of legal ethics training to avoid his criminal trial. He must complete all conditions in 18 months.

No Witness, No Deposition

Special prosecutors—decorated Houston defense lawyers Wice and Kent Schaffer—now regret not asking a judge for permission to prematurely take Joel Hochberg's deposition in the event something were to happen to him before trial.

"That's on us," Wice said last week. "That didn't happen."

Hochberg, a Miami video game executive, died "peacefully" in April 2023, according to his obituary. He was 87.

Wice, an appellate specialist assigned with filing briefs in the case, blames Schaffer.

Schaffer, whose client list includes rapper Travis Scott and actors Farrah Fawcett and Armie Hammer, was tasked with interviewing Paxton witnesses.

As the slow-moving case grew old, delayed by fights over where the trial should be held and how much prosecutors should be paid, Wice said he urged Schaffer to pursue Hochberg's deposition.

"You'll have to ask him why he didn't want to act on my suggestions," Wice said.

Schaffer, who left the case in February over a disagreement with Wice about a previous settlement offer, said he had no reason to believe Hochberg wouldn't make it to trial.

"I knew he was old, but up until his death he was of sound mind," Schaffer said.

The misplaced confidence in Hochberg's availability wrecked one, possibly both, first-degree felony fraud charges.

Hochberg was expected to tell a jury about the time Paxton urged him to invest more than \$100,000 into the technology company Servergy without disclosing he stood to collect a commission.

His estate will receive part of Paxton's restitution. The other part will go to another victim, former state Rep. Byron Cook, Paxton's one-time mentor in the Texas House.

"Hochberg was a great witness," Schaffer said. "He was the best witness."

Unlike other investors who knew Paxton well and were expected to testify favorably for him, Hochberg had no motive to soften his words for Paxton's benefit.

Jed Silverman, a Houston defense lawyer who joined the prosecution team after Schaffer's exit, said Hochberg's testimony could've sealed the case against Paxton.

"There are two kinds of witnesses who garner a world of sympathy from jurors: small children and old people," he said. "Juries tend to believe them. The reality is Mr. Hochberg was around 80 (when the case was indicted in 2015). In my opinion, there should have been a motion made to have him deposed."

Paxton's lead attorney, Dan Cogdell, reduced the impact of Hochberg's death to "an irrelevant data point."

"We would have won those cases alive or dead," he said.

Paxton accepted the deal in lieu of a trial, Cogdell said, to avoid the whims of a jury and because the restitution required is less than he would've spent in legal fees to try the case.

"This was a shitty case from day one," Cogdell said. "None of these charges were good charges... They should have discovered that before they indicted him."

Shifted Responsibility

Barreling toward a fast-approaching trial on April 15, Wice and Silverman prioritized the lowest charge, the third-degree felony accusing Paxton of failing to register as an investment adviser with the state.

It seemed like a slam dunk. Paxton had previously paid a \$1,000 fine to resolve the same claims in an administrative hearing, an acknowledgment of wrongdoing prosecutors were eager to present to a jury.

A conviction on any felony charge would've stripped Paxton of his law license. However, he would've kept his job because Texas doesn't require its attorney general to be a licensed lawyer.

But a fresh look at the evidence in March turned up a problem.

Fritz Mowery, Paxton's former investment firm boss, had testified before the state's securities board in 2014 that it was his responsibility to register Paxton as an adviser. Notes from his testimony had long been available to the prosecution, as had an interview he gave to Texas Rangers investigators. However, only Schaffer was aware of the issue. Wice, tasked with preparing written briefs, didn't examine the evidence until Schaffer left the case.

At trial, Mowery told the prosecution, he would testify that he had advised Paxton that the Servergy investment was a loser and he should run from it. However, as Paxton's supervisor, he intended to accept responsibility for the failure to register.

As such, a conviction "went from a QB sneak on the one to a Hail Mary," Wice said. At that point, Wice backed off his insistence for a trial and engaged Paxton's lawyers on a resolution.

Schaffer said he had long been aware about the problems with Mowery's testimony but that he still thought the non-registration charge was winnable.

"If my bar dues aren't paid, I can't blame it on my secretary for failing to send a check," Schaffer said.

Schaffer was prepared to present the jury with two pieces of evidence showing Paxton knew it was his duty to register: His score of 92% on a securities exam, and his vote as a state representative in favor of enhancing the non-registration penalty to a felony from a misdemeanor.

Schaffer left the case in February when Wice blew up a pretrial intervention agreement that he unilaterally negotiated with Paxton's team. That agreement resembled the one Paxton ultimately accepted, but included 50 fewer community service hours. Restitution wasn't part of the deal, but Schaffer says he was still pushing for it.

"Cogdell and I hadn't agreed on a number," he said.

Silverman, a veteran Houston defense lawyer, agrees that the duty to register was Paxton's alone. But in order to secure a conviction, he reasoned, it might take a jury of process-minded "engineers" analyzing the charge as "two plus two equals four." Otherwise, they might conclude the mistake, even if it was Paxton's, didn't justify a felony conviction.

At a press conference after the hearing, Wice fell on the sword for not knowing earlier about the defects in the registration charge.

"I'm not in the Navy, but it happened on my watch," he said. "So regardless of whatever division of responsibility existed at that time, I own that."

The case is Texas v. Paxton, Tex. Dist. Ct., No. 155510001010- 3, 3/26/24

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Law360 Pulse Spotlight On Mid-Law Work

By **Emma Cueto**

Law360 (March 29, 2024, 4:12 PM EDT) -- Richards Layton's representation of a former CEO with ties to Donald Trump and Best Best & Krieger's work in securing \$156 million in infrastructure funding lead this edition of Law360 Pulse's Spotlight On Mid-Law Work, recapping the top matters for Mid-Law firms from March 15 to 29.

More Trump World Litigation

Richards Layton & Finger PA is **representing** Patrick Orlando, the former CEO of Donald Trump-tied Digital World Acquisition Corp., in his Delaware Chancery Court suit seeking to have the venture pay his legal costs related to federal probes and litigation in multiple states. Orlando argued in a suit filed March 15 that he was entitled to have his costs in responding to U.S. Securities and Exchange Commission and U.S. Department of Justice probes covered under the company's bylaws and an indemnity agreement.

Orlando was fired as the CEO of the special purpose acquisition vehicle in March 2023, but remained a director.

Wastewater Woes

California firm Best Best & Krieger LLP's government relations team has helped secure \$156 million in funding for San Diego-area water quality products, according to a March 28 announcement. The projects will provide for improvements to allow local wastewater systems, which in recent years have been overwhelmed and releasing polluted water into the Pacific, to process twice as much volume.

The firm has been involved in the project since 2018, according to the announcement, including in securing \$300 million in funding.

A Gas Executive's Suit

The former chief financial officer of propane and heating company Hocon Gas Inc., Gino Tarantino, tapped Robinson & Cole LLP to **steer his suit** alleging that he was fired for dubious reasons after demanding his share of distributions ahead of a planned sale of the company and its affiliates. In a complaint filed March 19, Tarantino said that after 34 years with the company, he is entitled to shares of owner distributions from several Hocon entities, as well as "phantom shares" that in total add up to \$2.8 million.

Three Pet Care Transactions

Three pet care brands — Meadowlake Pet Resort and Training Center, Playtime Pet Resort, and Williamsburg Pet Hotel and Suites — relied on Denver-based firm Sherman & Howard to handle their sale to the pet services company Pet Resort Hospitality Group and Trivest Partners LP, according to a March 20 announcement. The three sales were all handled separately from one another.

After The SPAC "Frenzy"

Several law firms, including Robbins Geller Rudman & Dowd LLP and Grant & Eisenhofer PA, are representing shareholders in the special purpose acquisition vehicle that merged with dog-treat box company BarkBox in a \$1.6 billion deal. The March 25 complaint **alleges** that executives in the company breached their fiduciary duties in "an extreme example of the 'churn-and-burn' SPAC

frenzy."

--Additional reporting by Rose Krebs, Katryna Perera and Brian Steele. Editing by Adam LoBelia.

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Biotech Co. Inflated Gene Therapy Prospects, Investors Claim

By **Rui Johnson Petri**

Law360 (March 29, 2024, 12:52 PM EDT) -- Massachusetts-based biotechnology company Bluebird Bio Inc. misled investors by understating the safety concerns of a gene therapy for sickle cell, causing damages when stock prices dropped, according to a proposed class action suit filed Thursday in Massachusetts district court.

The suit alleged that the company made false and misleading statements about its product candidate, Lyfgenia, ahead of approval by the U.S. Food and Drug Administration to prop up expectations and bolster share prices.

According to the complaint, Bluebird announced in a press release on April 23, 2023, that it was submitting an FDA application for Lyfgenia, which is used to treat sickle cell disease, and subsequently held several calls with investors pending the review.

Led by Garry Gill, the investors claim that Bluebird misrepresented the chances of receiving a priority review voucher from the FDA and, in turn, selling it to strengthen their financial position ahead of the therapy's launch.

According to the complaint, the company also falsely gave investors the impression that the FDA would approve the therapy without a "black box" warning — the most serious kind — regarding risks of developing blood cancer.

On a Nov. 7, 2023, earnings call, the company acknowledged that two patients had died during clinical trials, and that this would be mentioned in the safety events of the FDA label, but "what part of the label or where is yet to be determined," according to the complaint.

The complaint stated that the truth emerged when neither of these two things accompanied the FDA approval of Lyfgenia on Dec. 8, 2023, as the regulator added a black box warning, highlighting the risk of developing blood cancer, and did not give Bluebird a priority review voucher.

According to minutes from an investor call that same day, the company responded to a question about the box warning, stating that "The potential for a box warning was something we anticipated, and it was built into our commercial projections."

The FDA announcement caused stock prices to plummet from \$4.81 per share on Dec. 7, 2023, to \$2.86 on Dec. 8, 2023, as analysts and investors reacted to the news, according to the complaint.

The investors claim that Bluebird "engaged in a scheme to deceive the market," and the proposed class, which includes all investors that purchased or acquired Bluebird stock between April 24, 2023, and Dec. 8, 2023, want their losses repaid.

The suit was filed against Bluebird, its CEO Andrew Obenshain, its chief financial officer Christopher Krawtschuk and its chief medical officer Richard Colvin.

Attorneys for the stockholders were not immediately available to respond to a comment request Friday. A press representative for Bluebird did not respond to requests for comment Friday.

Gill is represented by Shannon Hopkins and Adam Apton of Lexi & Korsinsky LLP.

Counsel information for Bluebird was not available.

The case is Garry Gill et al. v. Bluebird Bio Inc. et al., case number 1:24-cv-10803, in the U.S. District Court for the District of Massachusetts.

--Editing by Alyssa Miller.

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FuboTV Exits Investor Suit Over Sports Betting Biz, For Now

By **Sydney Price**

Law360 (March 29, 2024, 5:30 PM EDT) -- A New York federal judge has dismissed a lawsuit from investors of sports streaming service FuboTV Inc. accusing it of misleading them about its attempt to enter into the sports betting business, saying that claims in short seller reports, which the investors say damaged share prices, are only opinions, not actionable facts.

According to **Thursday's order**, the investors have until April 11 to file their third amended complaint.

The proposed class action, which was **originally filed in February 2021** and most recently amended in May 2023, alleges Fubo and current and former executives misled investors by failing to disclose that it lacked the capabilities and resources needed to succeed as a sports betting operator. The plaintiffs alleged that the truth emerged in short seller reports that concluded, among other things, that Fubo's 2020 acquisition of fantasy sports company Balto Sports was not a smart business decision considering the competitive nature of the sportsbook business.

But U.S. District Judge Andrew L. Carter Jr. said Thursday that the suit, which heavily relies on the short sellers' claims, is deficient, and does not plead a materially false or misleading statement or scienter.

"These reports provide no basis on which a reader could possibly evaluate the reliability of their factual claims," Judge Carter said.

According to the suit, in December 2020, Lightshed Partners published a report that called the prospects of Fubo achieving success with sports betting a "fantasy." That same day, BMO Capital Markets downgraded Fubo shares to "market perform," down from "outperform." Over the next two days, Fubo's share prices declined over 28%, the suit claims.

The suit alleges that a nearly 26% stock decline occurred a few days later on Dec. 30, 2020, when Kerrisdale Capital published a report claiming that Fubo's core subscription business was "structurally unprofitable," due to "high variable content costs with contracted escalators." The report also called out Fubo's acquisition of Balto as a "foolish" decision, according to the complaint.

Judge Carter said that the Kerrisdale report provides no independent facts regarding Fubo's user data and advertising, and does not establish falsity.

"As a matter of fact, the report states clearly that its bearish views on the company's advertising line of business are informed by the opinions of a single outsider employed at a 'boutique media research advisory firm' not affiliated with Fubo," the judge said.

The plaintiffs also failed to plead scienter in their second amended complaint, Judge Carter said. In that suit, the plaintiffs claim that the defendants' statements about the Balto acquisition and the publication of the Kerrisdale report six weeks later establish temporal proximity. But Judge Carter said this is insufficient to show the defendants intended to mislead the public, a necessary requisite to establish scienter.

"Such temporal proximity arguments have been successful in cases in which the misleading nature of a defendant's statements are established factually shortly after their declaration," the judge said.

"The opinions contained in the Kerrisdale report are not at all like the manner of corrective disclosures which are sufficient to establish scienter under this theory as it contains no genuine facts."

Judge Carter also rejected confidential witness testimony from a former Fubo employee, as he did in previous orders, saying that the plaintiffs make no argument the witness had any contact with the defendants.

"Plaintiffs attempt to bolster the contrary elements of the Kerrisdale report by once again asking this court to consider CW #1's allegations, despite its prior decision declining to do so," the order states. "Plaintiffs' additional claims that [the confidential witness] attended meetings with executives not named in this suit and 'remember[s] a lot of conversation about this' topic are insufficient amendments to unseat this court's prior decision to not consider their allegations."

Counsel for Fubo didn't immediately provide comment Friday. Counsel for the investors declined to comment.

The investors are represented by Andrea Farah, Christian Levis and Anthony M. Christina of Lowey Dannenberg PC and Brian Schall of The Schall Law Firm.

Fubo and the individual defendants are represented by Andrew Clubok, Susan Engel, Nicholas Siciliano, Katie George and Laura Bladow of Latham & Watkins LLP.

The case is Said-Ibrahim et al. v. FuboTV Inc. et al., case number: 1:21-cv-01412, in the U.S. District Court for the Southern District of New York.

--Editing by Michael Watanabe.

Update: This story has been reflected to show the investors' counsel declined to comment.

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GEO Group Brass Agree To Reforms To End Derivative Suit

By **Sydney Price**

Law360 (March 29, 2024, 8:19 PM EDT) -- Shareholders who claimed executives of private prison contractor GEO Group Inc. lied about financing deals with major banks told a Florida federal judge that the company has agreed to a host of corporate reforms to end the derivative suit, which will include the appointment of a chief compliance officer.

The **settlement agreement filed Thursday** states that the parties believe the reforms will be beneficial to GEO Group and its shareholders. Per the agreement, GEO Group will install a chief compliance officer, who will report to GEO Group's chief financial officer. The settlement also requires GEO Group to evaluate its current corporate governance policies and use an independent search firm to identify potential new independent director candidates.

The company will also enhance the duties and responsibilities of the audit committee, and it will implement a legal steering committee and a disclosure committee to assist with oversight.

"GEO acknowledges that the corporate governance policies ... confer benefits on GEO and its current shareholders, and adoption of the corporate governance policies is in the best interest of GEO and its shareholders," according to the agreement. "Plaintiff believes that the corporate governance policies ... are carefully targeted to address the control deficiencies alleged in the action and confer substantial value on the company."

The agreement also noted that counsel for the plaintiff intends to request up to \$2.5 million in fees and expenses, which GEO Group opposes.

"Defendants believe there is no basis for the award of attorneys' fees and expenses in that amount and will oppose the fee and expense application," the agreement states. "The amount of attorneys' fees and expenses awarded by the court is within the sole discretion of the court."

According to the **suit launched in November 2021** by shareholder Rui Zhang, GEO Group falsely assured investors that it had a stable cash flow despite the company hemorrhaging money to defend against claims of human rights violations and uncertainty surrounding its ability to obtain funding.

The suit also names individual defendants, including GEO Group founder George C. Zoley and former CEO Jose Gordo, as well as several current and former executives and directors.

GEO Group executives knew the company's operational deficiencies and legal violations would cost it access to capital after its financing partners bailed and revenue streams from several major government contracts were terminated, Zhang said. But the executives didn't disclose this "potentially catastrophic risk" and "tens of millions" in potential damages from the lawsuits to shareholders, according to the suit.

When media outlets started reporting that major banks, like JPMorgan Chase and U.S. Bank, were backing away from financing private prisons, including GEO Group, Zhang said the company's stock price fell more than 11%, or \$2.58 per share, to close at \$20.35 per share, before dropping another 5%, or \$1.03 per share, to close at \$19.43 per share days later.

In summer 2020, on the news that GEO Group failed to properly respond to the pandemic and that there would be a dividend cut, Zhang said the company's stock price fell nearly 7%, or 77 cents, to

close at \$10.67 per share on Aug. 7, 2020.

As a result of the executives' alleged misconduct, Zhang said GEO Group has incurred significant financial losses, as well as reputational harm and loss of goodwill.

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

Zhang is represented by Seth D. Rigrotsky and Vincent A. Licata of Rigrotsky Law PA, Justin A. Kuehn and Fletcher W. Moore of Moore Kuehn PLLC and William J. Cook of Cook Law PA.

GEO Group is represented by Brian P. Miller, Samantha J. Kavanaugh and Ross E. Linzer of King & Spalding LLP.

The individual defendants are represented by William K. Hill and George S. LeMieux of Gunster.

The suit is Rui Zhang v. George C. Zoley et al., case number 9:21-cv-82061, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Lauren Berg. Editing by Michael Watanabe.

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Hedge Fund Beats Vaxart Investor's 'Short-Swing' Profits Suit

By **Katryna Perera**

Law360 (March 29, 2024, 5:30 PM EDT) -- A New York federal judge has granted a win to hedge fund Armistice Capital LLC and its managing member in a derivative suit brought by a shareholder of biotechnology company Vaxart Inc., which sought disgorgement of short-swing profits that allegedly were wrongfully obtained by the investment adviser.

U.S. District Judge Jennifer L. Rochon issued an **opinion and order** on Wednesday stating that Armistice Capital, its chief investment officer Stephen Boyd and one of the adviser's master funds cannot be held liable under Section 16(b) of the Securities Exchange Act, as plaintiff Andrew Roth asserts.

The suit focuses on board-approved amendments to Vaxart warrants acquired by Armistice that increased the "blocker" provision of the warrants, which governed the percentage of outstanding shares of Vaxart common stock that Armistice could own. Roth claims the defendants illegally obtained millions in short-swing profits due to the amendments.

In their summary judgment motion, the defendants argue that the suit's challenged transactions are exempt under U.S. Securities and Exchange Commission Rule 16b-3. According to the order, this rule exempts securities transactions where "the defendant acquires the issuer's equity securities from the issuer; the defendant is an officer or director (including a director by deputization) of the issuer at the time of the transaction, and the issuer's board of directors approves the transaction in advance."

Judge Rochon said Wednesday that all three of these qualifications are met in the current action.

"It is undisputed that 'the amendments were undertaken directly with Vaxart.' It is also undisputed that, at the time of the amendments' adoption, Boyd was a Vaxart director and Armistice was a Vaxart director by deputization. It is further undisputed that the Vaxart board approved the amendments," the order stated.

However, Roth argues that the Rule 16b-3(d) exemption is based upon an issuer's board knowing that a board member had been deputized to represent the interests of the short-swing seller on the board. Roth says Vaxart's board was unaware that Boyd and another member, Keith Maher, Armistice's managing director, had been deputized to represent the interests of Armistice on the board.

According to the order, Roth relies on an amicus brief submitted by the SEC in a Ninth Circuit case to support his theory.

Judge Ronchon said Wednesday that she does not share Roth's interpretation of the amicus brief.

"To perform their fiduciary duties, an issuer's board members need not know that someone 'ha[s] been deputized' in any formal, legalistic sense," she said. "Instead, the issuer's board must understand the reality that one of its members functions as the short-swing seller's eyes, ears, voice, and vote. There is no indication that more is required under Rule 16b-3(d)."

In the current action, the record "plainly shows" that the Vaxart board recognized and understood that Boyd and Maher represented Armistice, she added.

According to the order, Vaxart develops vaccines that are administered through tablets instead of injections. In October 2019, Armistice owned roughly 65% of Vaxart's outstanding common stock. That same month, Vaxart's board approved changes requested by Boyd to increase the size of the board by two seats and install himself and three of his appointees in the open seats.

Earlier in 2019, Armistice acquired approximately 20,000 warrants from Vaxart in two separate transactions. Each transaction contained a "beneficial ownership limitation" provision, otherwise known as a "blocker" provision, limiting the percentage of outstanding Vaxart common stock that Armistice could own.

After joining the board, Boyd discussed amending the warrants' blocker provisions with other members. Ultimately, in June 2020, the board, excluding Boyd and Maher, approved amendments to the warrants that increased the beneficial ownership thresholds in the blocker provisions to 19.99%, according to the order.

Before trading began on June 26, 2020, the order stated, Armistice owned 7 million shares of Vaxart common stock, constituting about 9.4% of the company's outstanding shares. That day, Vaxart announced that its oral COVID-19 vaccine had been selected to participate in a study sponsored by the federal government. Following this announcement, Armistice exercised the warrants for roughly 16.6 million and 4 million shares, respectively, at prices of 30 cents and \$1.10 per share, according to the order.

Armistice also sold approximately 27 million shares of Vaxart common stock — 20 million of which Armistice had received after exercising the warrants, and ultimately, through the transactions, Armistice liquidated virtually all of its Vaxart holdings, according to the order.

Roth alleges that through these transactions, Armistice wrongfully realized short-swing profits of at least \$87 million directly resulting from the warrant amendments.

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

Roth is represented by Glenn F. Ostrager, Joshua S. Broitman and Roberto L. Gomez of Ostrager Chong Flaherty & Broitman PC, and Paul D. Wexler of Paul D. Wexler, Attorney at Law.

Armistice and Boyd are represented by Douglas Rappaport, Kaitlin Shapiro, Michael Chen, Jason Daniel and William Wetmore of Akin Gump Strauss Hauer & Feld LLP.

The case is Roth v. Armistice Capital LLC et al., case number 1:20-cv-08872, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.



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Innoviz's \$1.4B SPAC Deal 'Abysmal,' Investor Tells Chancery

By **Leslie A. Pappas**

Law360 (March 29, 2024, 6:44 PM EDT) -- A former stockholder of the special purpose acquisition company that took autonomous vehicle software provider Innoviz public has sued the architects behind the \$1.4 billion merger in Delaware's Court of Chancery, accusing them of unjust enrichment and breaches of fiduciary duty and calling the transaction "abysmal" for investors.

Sheadrick Richards, who invested in Collective Growth Corp., launched his proposed class action late Thursday, detailing misleading disclosures, a sale process tilted in favor of SPAC insiders, and an inherently unfair and conflicted structure that rewarded Collective Growth directors and controllers and left public stockholders "holding the bag."

The SPAC's officers and directors "were strongly incentivized to get any deal done because any deal (even a deal they knew was a bad deal for their public stockholders) was virtually certain to give them a substantial windfall," the complaint read. "By contrast, a failure to merge would mean Collective Growth would liquidate and return the public stockholders' investment — in which case the defendants would receive nothing, and would lose their approximately \$3.8 million investment."

Formed in 2016, Israel-based Innoviz Technologies Ltd. creates sensor technologies and software for autonomous vehicles. As a startup, it raised hundreds of millions of dollars through **several funding rounds**.

The company **announced in December 2020** it would merge with Austin, Texas-headquartered Collective Growth and go public through a transaction that valued Innoviz at \$1.4 billion at the time.

Collective Growth had gone public less than a year earlier, in a \$150 million initial public offering at \$10 per share. The SPAC **told investors at the time** it was looking for a merger target in the CBD industry or the industrial hemp sector.

Under its charter, Collective Growth had 18 months to find a merger partner and get stockholder approval, or liquidate and return the cash proceeds to its public stockholders, Richards said Thursday.

Also known as blank-check companies, SPACs are shell entities that raise money through IPOs to acquire a business and take it public. SPACs typically target a particular sector based on the expertise of their management.

When Collective Growth went public, its CEO, Bruce Linton, a defendant in the Chancery Court case, had steered mergers and acquisitions involving cannabis businesses and was formerly the CEO of cannabis device maker Canopy Growth Corp.

The SPAC's co-founder and president at the time, Geoffrey W. Whaling, who is also a defendant in the case, was additionally serving as chair of the National Hemp Association, a hemp sector advocacy group.

The suit also named the SPAC's sponsor, Shipwright SPAC I LLC, and the sponsor's managing member, Shipwright Partners LLC; Collective Growth's Chief Financial Officer Tim Saunders; Chief Marketing Officer Wilson Kello; and directors Andrew Townsend, Jonathan Sherman, Eugene Dozortsev, and Yevgeny Neginsky as defendants.

Innoviz and the SPAC itself are not defendants.

Richards' complaint asserted that Linton and Whaling dominated the process leading up to the merger, creating an unfair process that favored the blank-check firm's insiders.

They stacked the SPAC's board with allies, and took steps to ensure that any independent director would support whatever transaction they pursued, the shareholder alleged.

The board didn't create a special committee to evaluate the deal or seek a fairness opinion before it approved the merger, the complaint added.

The defendants held some type of Class B stock that Richards also called "founder shares," which would become worthless if the SPAC didn't find a merger target.

The SPAC board's financial adviser, Cantor Fitzgerald & Co., was also conflicted because it owned some of the company's private placement units, according to the suit. Cantor Fitzgerald had also acted as an underwriter in Collective Growth's IPO and stood to forfeit \$5.25 million in deferred commissions if the SPAC failed to close the deal, Richards noted. Cantor is not a party to the suit.

The proxy statement given to Collective Growth stockholders "painted an overly rosy picture" of the Innoviz's business that failed to disclose the true amount of cash underlying each Collective Growth share, the complaint says.

The deal is part of a "disturbing trend of SPAC transactions" in which financial conflicts override good corporate governance and the interests of public stockholders, Richards said.

"Collective Growth failed to observe the most basic principle of Delaware corporate governance — namely, that a corporation's governance structure should be designed to protect and promote the interests of public stockholders, not the financial interests of its insiders and controllers," he wrote in the complaint.

None of the parties immediately responded Friday to Law360's requests for comment.

Richards is represented by Christopher J. Orrico, Christine M. Mackintosh, and Jonathan C. Millis of Grant & Eisenhofer PA and Michael Klausner of Stanford Law School.

Counsel information for the defendants was not immediately available.

The case is Richards v. Shipwright SPAC I LLC et al., case number 2024-0320, in the Court of Chancery of the State of Delaware.

--Editing by Covey Son.



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SentinelOne Execs Face Derivative Suit Over Accounting Error

By **Gina Kim**

Law360 (March 29, 2024, 10:16 PM EDT) -- Cybersecurity company SentinelOne was hit with a shareholder derivative suit in California federal court Friday over a 35% stock price drop that the plaintiff claimed was the result of the company's disclosure about its internal controls and subsequent inflation of its annualized recurring revenue.

In a 44-page complaint, shareholder Joel Newman sued SentinelOne's co-founder and CEO, Tomer Weingarten; Chief Financial Officer David Bernhardt; and several board members, accusing them of breaching their fiduciary duties and violating Section 20(a) of the Securities Exchange Act of 1934. SentinelOne is a cybersecurity company that claims to have developed the world's first artificial intelligence-powered extended detection and response platform to combat cybersecurity attacks.

The company sells products through subscription agreements that last one to three years, and uses an annualized recurring revenue, which is the run rate of its subscription and capacity contracts, at the end of a reporting period, assuming that clients renew their agreements on their existing terms. SentinelOne and its higher-ups say the method isn't a forecast of future revenue but still represented to investors that the revenue projections and annualized revenue tracked each other closely, Newman alleged.

But at the close of market June 1, SentinelOne said it would revise its previously reported annualized figures and projections downward, and also revealed its fiscal year 2024 first-quarter financial results, in which the truth emerged, the suit said.

The company disclosed that "as a result of a change in methodology and correction of historical inaccuracies ... we made a one-time adjustment to ARR of \$27 million or approximately 5% of total ARR as compared to previously reported ARR figures from [fiscal year] 2023," the suit said.

Newman's suit said the defendants also announced that they were slashing the company's projected annualized revenue growth for the 2024 fiscal year, which ended Jan. 31, by roughly 25%, and revised the company's fiscal year 2024 revenue guidance from an estimated \$631 million to \$640 million to \$590 million to \$600 million.

SentinelOne also sent a letter that day to shareholders signed by Bernhardt and Weingarten that said the company discovered "historical upsell and renewal recording inaccuracies" on some subscription contracts, which the company has since fixed, Newman said.

The CEO and CFO explained that SentinelOne saw that it had to upsell situations that included a renewal, and that the company had added that to the historical annualized recurring revenue, rather than adding the upsell component of it, the suit alleged.

"In other words, if a customer renewed a contract, but with additional services (an 'upsell'), both the cost of the additional services and the value of the historical contract would be included in the company's ARR calculations, even though ARR had previously accounted for the historical contract price," Newman alleged. "This practice of double-counting further inflated both SentinelOne's reported ARR and the defendants' ARR projections."

When the news broke, SentinelOne's stock prices plunged by \$7.28 per share, or more than 35%, to close at \$13.44 per share the next day, Newman claimed.

As one analyst noted in downgrading SentinelOne's shares, the company's narrative was "too hard for us to defend," Newman alleged.

Newman said the individual defendants violated their fiduciary duties by issuing misleading statements and failing to rectify them. They didn't tell investors that SentinelOne lacked effective controls over accounting and financial reporting, or that the annualized recurring revenue and its projections were inflated.

"Moreover, during the relevant period, defendants Weingarten and Bernhardt took advantage of their knowledge of adverse nonpublic information to sell portions of their personal holdings of SentinelOne's stock at inflated prices," the suit said. "For instance, defendant Weingarten told 1,420,447 of his SentinelOne's shares at inflated prices during the relevant period, reaping illicit insider selling proceeds of almost \$23 million."

Friday's filing takes issue with the alleged actions of SentinelOne's executives that similarly mirror allegations of a proposed securities class action filed last year in the Northern District of California that has since been consolidated into a single case.

On June 6, shareholder Sakari Johansson filed a suit against SentinelOne, Weingarten and Bernhardt, claiming that they violated the Securities Exchange Act of 1934 as a result of overvaluing its recurring revenue.

Johansson's suit was filed against Weingarten and Bernhardt on behalf of all individuals and entities that bought or acquired SentinelOne securities between June 1, 2022, and June 1, 2023.

In October, U.S. District Judge Haywood S. Gilliam Jr. approved a motion to consolidate the suit with another action filed by investor Amir Gupta, who alleged losses of approximately \$46,600, and appointed Scott + Scott Attorneys at Law LLP and the Schall Law Firm as co-lead counsel to steer the consolidated actions.

Newman asks the court to find that the defendants breached their fiduciary duties to the company, and that they were unjustly enriched. and to order them to pay damages to SentinelOne, attorney fees and costs. It also asks the court to order the defendants to improve its corporate governance and internal procedures to protect the company and its investors.

Representatives for Newman and the defendants did not immediately respond to inquiries seeking comment Friday.

Newman is represented by Betsy C. Manifold, Rachele R. Byrd, Alex J. Tramontano and Ferdeza Zekiri of Wolf Haldenstein Adler Freeman & Herz LLP, and by Gregory M. Nespole, Daniel Tepper, Correy A. Suk and Sidharth Kakkar of Levi & Korsinsky LLP.

Counsel information for the defendants was not immediately available.

The case is Joel Newman v. Tomer Weingarten et al., case number 3:24-cv-01934, in the U.S. District Court for the Northern District of California.

-Additional reporting by Sydney Price and Katryna Perera. Editing by Karin Roberts.



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X Corp. Still Must Face Breach Suit Over 200M Users

By **Henrik Nilsson**

Law360 (March 29, 2024, 9:51 PM EDT) -- A California federal judge on Friday trimmed a proposed class action alleging X Corp., the former Twitter Inc., failed to protect the data of 200 million users whose information was exposed in a data breach, allowing the users to amend some allegations while permanently tossing a California Consumers Legal Remedies Act claim.

U.S. Magistrate Judge Kandis A. Westmore's order dismissed without prejudice the users' breach of contract, negligence, negligence per se and unjust enrichment claims.

X Corp. had argued that those claims are barred by its terms of service. The judge noted that the users hadn't presented specific allegations regarding the unconscionability of the terms.

"Plaintiffs can allege that the [terms of service] is procedurally and substantively unconscionable as to not bar these causes of action" when amending their claims, Judge Westmore wrote.

The judge also dismissed the users' Unfair Competition Law claim. Judge Westmore left intact their claim for gross negligence and their bid for a declaratory judgment that X Corp. owes and has breached its legal duty to protect consumers' personally identifiable information.

The ruling is the latest in a **lawsuit that was filed** in January 2023 and amended the following month by lead plaintiffs Stephen Gerber, Eric Cohen and Casey Weitzman, accusing X Corp. of not doing enough to prevent a vulnerability in its application programming interface, or API, that purportedly led to a security breach from June 2021 through January 2022.

The breach exposed Twitter users' usernames, email addresses and phone numbers associated with specific Twitter accounts, including accounts that intended to remain anonymous, according to the complaint.

The users also allege that X Corp. "seemingly buried its head in the sand" about the scope of the data breach and may have even knowingly misled users about its magnitude when it announced the vulnerability in August 2022 and stated that no one took advantage of the vulnerability on the site.

The lawsuit claims that cybercriminals have been selling and disseminating leaked user data since 2022, but Twitter failed to timely notify any users of the breach.

X Corp. filed its **motion to dismiss** in June, arguing that the suit is "rife with legal defects." The company contended that its terms of service, which state that Twitter cannot guarantee the security of users' information, barred the users' claims, and that the users also failed to state a claim for breach of contract and adequately allege causation and damages, as Twitter didn't breach any explicit promises.

"Plaintiffs allege a litany of potential harms they claim may befall them — such as spear phishing attacks, blackmail, stalking, doxing, social media hacking, or identity theft — but they do not allege that they experienced any of these harms," the motion said.

X Corp. additionally argued that it's unclear whether the named plaintiffs' accounts were actually anonymous before the incident, and that even without the bug, some accounts were still searchable by using email addresses or phone numbers due to a default feature that users must actively opt out of.

At a **hearing on the motion** in February, the users' counsel offered to add more specifics to address X Corp.'s unconscionability arguments. He also offered to drop for good the claim asserted under the state Consumers Legal Remedies Act.

"Defendant argues that the CLRA claim fails because plaintiffs fail to allege that the parties engaged in a transaction for the 'sale or lease of goods or services to any consumer.' At the hearing, plaintiffs conceded this cause of action," Judge Westmore wrote on Friday.

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

The plaintiffs are represented by Joseph P. Guglielmo of Scott + Scott Attorneys at Law LLP.

X Corp. is represented by Stephen A. Broome, Viola Trebicka and Casey Adams of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Stephen Gerber et al. v. Twitter Inc. et al., case number 4:23-cv-00186, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins. Editing by Brian Baresch.

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