

Alphabet Gets First Approval on \$350 Million Investor Class Deal

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Securities Law News



Lionel Bonaventure/AFP/Getty Images

Google parent company Alphabet Inc. can move ahead with plans to settle investor claims that it didn't disclose a social network security flaw, after a federal court preliminarily approved the deal Monday.

The parties will need to give Judge Trina L. Thompson a little more information under the terms of her order in the US District Court for the Northern District of California. They must provide "clear" estimates of the number of Class A and Class C share owners who are members of the class, estimated total distributions for those groups, anticipated costs of administering the settlement, and information about potential conflicts with the nonprofit Investor Protection Trust, which would receive any unclaimed funds, she said.

- The investors alleged the technology giant didn't properly disclose a software glitch in its now-defunct Google+ platform that allowed third-party developers access to users' contact information and social connections even when marked as private
- The plaintiffs' attorneys used a novel damages theory to estimate Google's liability at \$1.4 billion, but reached a settlement before testing it in court
- Thompson's ruling conditionally approves a settlement class of purchasers of Alphabet Class A and/or Class C stock between April 23, 2018, and April 30, 2019

Robbins Geller Rudman & Dowd LLP is lead counsel for the investors. Freshfields Bruckhaus Deringer US LLP, Swanson & McNamara LLP, and Wilson Sonsini Goodrich & Rosati represent Alphabet.

The case is *In re Alphabet, Inc. Sec. Litig.*, N.D. Cal., No. 3:18-cv-06245, 4/2/24.

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Uber's 'Superficial Safety Efforts' Called Out in Derivative Suit

LAW [law.com/delbizcourt/2024/04/01/ubers-superficial-safety-efforts-called-out-in-derivative-suit](https://www.law.com/delbizcourt/2024/04/01/ubers-superficial-safety-efforts-called-out-in-derivative-suit)

By Ellen Bardash



File photo.

NEWS

The lawsuit alleges that if Uber's board members and executives had made a point to implement safety measures like screening drivers more carefully, the company might not now be facing liability in the hundreds of cases in which riders, primarily women, say they were sexually assaulted.

April 01, 2024 at 04:40 PM

Corporate Governance



Ellen Bardash 

Robbins Geller Rudman & Dowd and Johnson Fistel are representing an Uber shareholder in a District of Delaware derivative case that alleges Uber management prioritized profit over riders' safety.

The lawsuit claims if Uber's board members and executives had made a point to implement safety measures like screening drivers more carefully, the company might not now be facing liability in the hundreds of cases in which riders, primarily women, say they were sexually assaulted while using the ride-share service.

The complaint alleges Uber, attempting to generate more revenue from riders, has marketed itself directly to women as a safety-conscious company while simultaneously receiving more than 9,000 sexual assault reports from riders between 2017 and 2020, as the company reported in June 2022.

"Rather than adopt rigorous internal controls, including passenger safety measures like biometrics, in-car cameras and/or enhanced driver background checks and screening, Uber used a cursory background check process that enabled drivers to more quickly sign-up for Uber, driving up Uber's profits," the complaint stated. "Uber's superficial safety efforts allowed drivers with histories of sexual misconduct to sign-up for Uber and then continue driving for Uber with disastrous consequences."

Uber management's "disdain for legal compliance and neglect for passenger safety," the lawsuit claims, has ultimately harmed the company: it's already had to pay millions each to the California Public Utilities Commission to resolve safety issue claims and to resolve false advertising claims, in addition to defending against ongoing litigation filed in the past two years.

More than 1,000 passengers have filed lawsuits against Uber, and the complaint states as of February, the company was named as a defendant in 399 sexual assault lawsuits, many of which have been consolidated in the Northern District of California. U.S. District Judge Charles Breyer appointed lead plaintiffs' counsel in the multidistrict litigation in December. A master complaint was filed in that case in February, alleging that Uber's safety efforts are "primarily focused on appearing safe, not actually being safe."

Meanwhile, the newly filed case states, management took home more than \$217 million in executive compensation and directors' fees that it alleges the company's performance didn't warrant. A total of 12 Uber officers and directors are named as individual defendants in the case and are alleged to have engaged in insider trading by selling artificially inflated shares of Uber stock.

The complaint brings breach of fiduciary duty, unjust enrichment and corporate waste claims, as well as a Delaware law claim seeking contributions from the individual defendants for exposing the company to liability. It also alleges Uber violated securities laws by misrepresenting or omitting information about women's safety in proxy statements released between 2021 and 2024.

A spokesperson for Uber did not immediately respond for comment.

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- **New Suit**

AT&T was hit with a data breach class action on April 2 in Texas Northern District Court. The suit, brought by Shamis & Gentile, centers on a cyberattack that allegedly exposed the personally identifying data of approximately 73 million customers. Counsel have not yet appeared for the defendant. The case is 3:24-cv-00783, Lovetro v. At&t Inc.

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Philadelphia's Risperdal inventory has been steadily declining over the past two years after, according to records obtained by Law.com, including a settlement offer, the main defendant and law firms representing the majority of clients entered into a settlement for up to \$1.1 billion.

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Judge tosses Medtronic investor suit over insulin pump recall | Secondary Sources | National

 today.westlaw.com/Document/I0d1908e4f13111ee8921fbef1a541940/View/FullText.html

(April 02, 2024) - Medtronic PLC has won dismissal of a shareholder lawsuit claiming the medical device firm concealed a "dangerous defect" in a line of insulin pumps, which delayed regulatory approval of a new pump.

Trustees of the Welfare & Pension Funds of Local 464A – Pension Fund et al. v. Medtronic PLC et al., No. 22-cv-2197, 2024 WL 1332262 (D. Minn. Mar. 28, 2024).

The proposed class action failed to show that Medtronic CEO Geoffrey Martha and five other executives knew that problems with existing pumps jeopardized the Food and Drug Administration's approval of a different model, U.S. District Judge Katherine Menendez of the District of Minnesota ruled March 28.

The judge also denied lead plaintiffs Phoenix Insurance Co. Ltd. and Phoenix Provident Pension Fund Ltd. leave to file an amended complaint.

'Impossible' timeline

The consolidated complaint filed in February 2023 said Medtronic concealed widespread issues with its MiniMed 600 Series line of insulin pumps, including a defective component called a retainer ring.

The company received over 74,000 complaints about the pumps between mid-2016 and late 2019, but it failed to recall the products or alert customers, the suit said.

Instead, Medtronic issued a "field safety notification" about the retainer rings in November 2019, according to the complaint. However, the FDA determined in February 2020 that the notification constituted a Class I recall.

Medtronic downplayed the severity of the issue and touted the development of a successor insulin pump called the MiniMed 780G, the complaint said.

But the recall of the pumps led to an FDA inspection of a Medtronic facility in June 2021 that revealed risk management and reporting failures, the suit said.

Medtronic disclosed in December 2021 that had it received a warning letter from the FDA about problems identified in the inspection. The company refused to admit that the letter rendered the 780G's timely approval "all but impossible," the suit said.

Medtronic originally projected that the 780G would be approved in 2020, but it pushed back the expected launch after the FDA inspection, according to the complaint.

The announcement May 26, 2022, that the company no longer expected FDA approval in fiscal year 2023 caused its share price to fall nearly 6% to a close of \$99.44, the suit said.

Suit dismissed

The defendants moved to dismiss the suit for failure to plead falsity, deceptive intent and other elements of a securities fraud claim under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.A. § 78j(b).

Judge Menendez agreed that the suit failed to plead a false or misleading statement or omission. Statements about revenue from 600 Series insulin pumps were literally true and were not rendered misleading by the undisclosed quality issues, the judge said.

Statements about Medtronic's communications with the FDA and the prospect of 780G's approval also did not mislead investors to believe a certain timeline was guaranteed, Judge Menendez said.

She said the "closest question" was whether Medtronic should have disclosed the inspection findings when it spoke about the prospect of FDA approval in the second half of 2021.

The defendants did not have a duty to disclose the issues discovered in the inspection because they did address Medtronic's compliance with FDA regulations, the judge said.

Even if a duty to disclose existed, the suit failed to show that the defendants acted with scienter, or deceptive intent, Judge Menendez said. The complaint does not say that the FDA indicated that its inspection findings jeopardized Medtronic's application for the 780G, she said.

The more likely scenario is that the defendants believed the 780G still had a meaningful chance to receive timely approval, Judge Menendez said.

Kristin K. Zinsmaster and Benjamin L. Ellison of Jones Day, and Amanda M. MacDonald of Williams & Connolly LLP represented the defendants.

Darryl J. Alvarado and Ashley M. Price of Robbins Geller Rudman & Dowd LLP represented the plaintiffs.

By Nicole Banas

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Failure of Archegos class actions against big banks shows limits of insider trading law

 [reuters.com/legal/transactional/column-failure-archegos-class-actions-against-big-banks-shows-limits-insider-2024-04-02](https://www.reuters.com/legal/transactional/column-failure-archegos-class-actions-against-big-banks-shows-limits-insider-2024-04-02)

Alison Frankel

888 7th Ave, a building that reportedly houses Archegos Capital is pictured amid the coronavirus disease (COVID-19) pandemic in the Manhattan borough of New York City, New York, U.S., March 29, 2021. REUTERS/Carlo Allegri Purchase Licensing Rights , opens new tab

April 2 (Reuters) - There is no doubt that shareholders of seven companies in which the now-disgraced investment firm Archegos Capital once held a huge stake were victimized by Archegos' collapse in March 2021.

Archegos' bankers, who knew the fund was billions of dollars in the hole based on the fund's bad bets on the companies' share prices, sold off their own stakes in the companies before anyone else realized the magnitude of Archegos' market manipulation. The banks managed to emerge relatively unscathed from the debacle, but their multibillion-dollar selloff further depressed the share price of the companies in which Archegos secretly held a huge position.

Shareholders from those seven companies sued , opens new tab two of Archegos' banks — Goldman Sachs (GS.N) , opens new tab and Morgan Stanley (MS.N) , opens new tab — for allegedly averting massive losses by misusing inside information about the failure of Archegos' market manipulation scheme.

Plaintiffs' lawyers offered two different theories. First, they alleged, Archegos was a corporate insider by virtue of its huge stake in the companies and supplied Goldman and Morgan Stanley with secret information that allowed them to ditch their own stakes.

Alternatively, shareholders claimed, the banks betrayed their fiduciary duty to Archegos, using secret information from the fund to protect their own interests.

But it turns out that neither of those theories, at least as alleged in the Archegos case, fits the parameters of insider trading law. In an opinion , opens new tab issued on Monday, U.S. District Judge Jed Rakoff of Manhattan explained why not every allegedly "devious" market manipulation scheme amounts to insider trading.

Shareholder lawyers from Grant & Eisenhofer, Pomerantz, Scott+Scott, Hedin Hall and other firms did not respond to my query on Rakoff's opinion. Goldman Sachs, which is represented by Cleary Gottlieb Steen & Hamilton, declined to comment. Morgan Stanley, represented by Davis Polk & Wardwell, also declined to comment.

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Rakoff's new opinion elaborated on his bottom-line order last week dismissing the shareholder class actions with prejudice. The judge took over the cases in February from U.S. District Judge Paul Crotty of Manhattan. Crotty last year tossed [the cases](#), opens new tab an earlier version of the shareholders' cases but allowed plaintiffs lawyers to amend their complaint.

Shareholders' allegations hinged on the banks' own stake in the companies Archegos invested in. That takes a little explaining.

Archegos used a derivative product called a total return swap to acquire big positions in a handful of companies without actually buying shares in its own name. (After the fund's collapse, the U.S. government brought civil and criminal cases alleging that Archegos used the swaps to conceal its scheme to drive up the share price of the companies it was secretly invested in. Fund founder Bill Hwang has pleaded not guilty, asserting that his trades were legal and that prosecutors duped him in initial interviews.)

Goldman and Morgan Stanley were among Archegos' counterparties on the swap deals, which allowed Archegos to profit if share prices for the companies rose but required the fund to pay counterparties if prices fell. To hedge the risk from the swaps, the banks bought actual shares to mirror Archegos' beneficial ownership positions.

The alleged scheme unraveled in March 2021 when shares in one Archegos target company, Viacom, dipped after a secondary offering. Some of Archegos' other targets were also dropping at the time, setting off a cascade of problems for the fund. By March 25, Archegos had lost more than \$25 billion and was facing another \$10 billion in margin calls.

Archegos disclosed its predicament to its biggest counterparties in an after-market phone call on March 25. It pleaded with the banks, including Goldman and Morgan Stanley, to enter a standstill so the fund could wind down in an orderly fashion. Instead, according to the shareholders' complaint, Goldman and Morgan Stanley declared Archegos to be in default, triggering their rights to unload their Archegos positions.

The banks denied insider trading in their motion to dismiss [the cases](#), opens new tab the amended complaint. Plaintiffs' theory, they said, was exactly backward: Archegos disclosed inside information about its holdings in an attempt to stop Goldman and Morgan Stanley from trading based on those confidences, but instead of acting to benefit Archegos, the banks exercised their contractual rights to unwind their swaps when Archegos defaulted.

Shareholders countered [that Archegos had a fiduciary duty to the companies it was invested in by virtue of its huge positions](#), opens new tab that Archegos had a fiduciary duty to the companies it was invested in by virtue of its huge positions, so the banks engaged in insider trading when they sold shares after learning the full extent of Archegos' stakes.

Rakoff said shareholders failed to establish the fundamental elements of insider trading: Their complaint did not adequately allege that Goldman and Morgan Stanley traded on the basis of confidential information or that their trades breached any fiduciary duty.

The classic “tipper” model of insider trading — in which a corporate insider breaches a duty and obtains a personal benefit by disclosing confidential information to someone who trades on the information — simply does not apply in these circumstances, Rakoff said. Archegos was not privy to insider information from the companies, which were not even aware of the fund’s secret stock holdings.

And even if the details of the fund’s positions were deemed to be confidential information, Rakoff said, the information did not belong to the companies, so Archegos breached no duty in disclosing it — and the banks were not barred by any such duty from trading based on the disclosure.

“Because Archegos executed its plot from the outside,” Rakoff wrote, “it cannot be liable for tipping secrets from the inside.”

Rakoff said shareholders’ alternative theory — that the banks misappropriated Archegos’ confidential information — was also doomed because Archegos shared the information with an array of counterparties and because Goldman and Morgan Stanley did not deceive Archegos about their plans to trade based on the disclosure. The fund was aware that its counterparties were likely to sell their stakes once they knew about its shortfall, Rakoff said, which is precisely why Archegos asked for a standstill.

The Archegos saga isn’t quite over for Goldman and Morgan Stanley, which are among the underwriters appealing a New York State Supreme Court ruling [here](#), opens new tab last year that allowed investors in that 2021 Viacom offering to proceed with Securities Act claims that underwriters failed to disclose conflicts from their swap deals with Archegos. But at least they’re off the hook for insider trading.

Read more:

Goldman, Morgan Stanley win dismissal of lawsuits over Archegos collapse

Goldman, Morgan Stanley win dismissal of investors' Archegos lawsuits

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Reporting By Alison Frankel

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Alison Frankel has covered high-stakes commercial litigation as a columnist for Reuters since 2011. A Dartmouth college graduate, she has worked as a journalist in New York covering the legal industry and the law for more than three decades. Before joining Reuters,

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April 3, 2024, 10:36 AM PDT

Dentsply Board Sued Over Alleged Scheme to Boost Incentive Pay

By Mike Leonard

Documents

- Complaint
- Docket
- Judge: Vice Chancellor Nathan A. Cook
- Company: Dentsply Sirona Inc.

- COURT: Del. Ch.
- TRACK DOCKET: No. 2024-0308

Bloomberg Law News 2024-04-03T14:13:42006049811-04:00

Dentsply Board Sued Over Alleged Scheme to Boost Incentive Pay

By Mike Leonard 2024-04-03T13:36:070000-04:00

COURT: Del. Ch.

TRACK DOCKET: No. 2024-0308

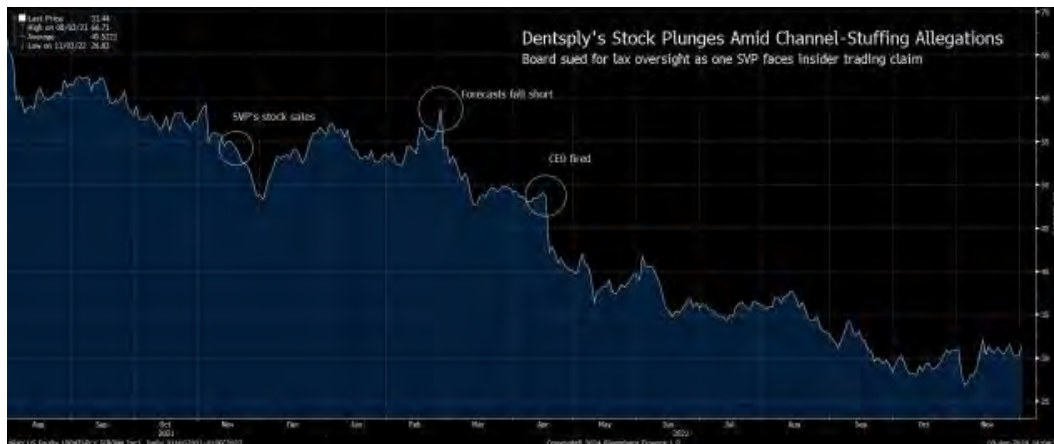
An investor sued Dentsply Sirona Inc. board members, blaming lax corporate oversight for an alleged scheme by two ousted top executives to hit their incentive pay targets through improper sales practices that cannibalized future earnings.

The lawsuit, filed in Delaware, concerns a revenue recognition scandal at the dental supply giant that allegedly led to the firing of its CEO in April 2022, the abrupt resignation of its chief financial officer weeks later, an ongoing Securities and Exchange Commission investigation, a fraud case in federal court, and a \$1.1 billion impairment charge tied to reduced forecasts. That's in addition to millions in incentive compensation that shouldn't have been paid out, according to the complaint.

The shareholder suit says the board should have realized the two senior officers were using "abnormal and undisclosed incentives" to drive excess sales during the second half of 2021, when revenues were set to fall organically because Dentsply's distributors had a glut of lingering inventory after strong sales in the first half of the year. The scheme was allegedly the result of a plan structured to divide 2021 into two separate incentive pay periods.

Because the company had previously paid a \$1 million civil penalty stemming from similar "channel stuffing" allegations, "the entire board was on notice of the potential for misuse of distributor incentives," according to the complaint made public April 1.

Dentsply didn't respond to a request for comment.



In addition to the oversight claims targeting seven board members, the lawsuit includes allegations that one senior vice president made nearly \$5 million in insider stock sales in November 2021, when he knew Dentsply's share price was artificially inflated, rather than "causing the company to candidly reveal the truth concerning Dentsply's organic sales."

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

The complaint was originally filed under seal March 26.

The investor leading the case, Calvin Snee, is represented by Cooch & Taylor PA and Glancy Prongay & Murray LLP. The board members haven't yet made court appearances.

The case is Snee v. Casey, Del. Ch., No. 2024-0308, complaint filed 4/1/24.

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Luna Innovations, Execs Allegedly Provided False Revenue Figures

By Ben Miller

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** [2:24-cv-02630](#)

Bloomberg Law News 2024-04-03T10:45:27896635193-04:00

Luna Innovations, Execs Allegedly Provided False Revenue Figures

By Ben Miller 2024-04-02T16:01:50000-04:00

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** [2:24-cv-02630](#)

Luna Innovations Inc. and its top executives made disclosures that contained false figures resulting from improper revenue recognition since Aug. 10, 2023, a proposed shareholder class action said.

The fiber optic technology company allegedly failed to disclose the revenue misstatements, which resulted in the restatement of public filings from August through November of last year, due to the company's lack of adequate internal controls, according to the complaint filed Monday in US District Court for the Central District of California.

During the second and third quarters of 2023, Luna repeatedly said in disclosures that its top executives had evaluated the company's controls and procedures as effective, without alerting investors to falsely stated revenue figures in those documents, the complaint said.

Luna had reported revenue in those quarters that didn't qualify for revenue recognition under generally accepted accounting principles, which the company didn't disclose until March 12, when it also announced to investors that it would be unable to file its annual report on time.

The day after that announcement Luna's share price fell more than 35% to close at \$4.02 on March 13, the stock's biggest drop in more than 14 years, according to data compiled by Bloomberg.



Less than two weeks later, the company announced that CEO Scott Graeff, who is named as a defendant, had retired on March 24, effective immediately. The announcement said that the board had exercised its discretion to determine that it was in stockholders' best interest to accept his retirement, and that he was agreeing to cooperate with Luna in any investigation of claims asserted against it stemming from his time at the company.

The day after that announcement, Luna's stock fell more than 11% to close at \$3.14 on March 26, 2024.

The complaint also names as defendants the company's former chief financial officer Eugene Nistro, and current CFO George Gomez-Quintero.

Shareholder Eyad Karzoun seeks to recover damages for "hundreds, if not thousands" of other investors who acquired Luna securities between Aug. 11, 2023 and March 25, 2024, alleging that the company and its executives violated the Exchange Act.

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

The Rosen Law Firm PA represents the plaintiff and the proposed class.

The case is Karzoun v. Luna Innovations Inc. , C.D. Cal., No. 2:24-cv-02630, complaint filed 4/1/24 .

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April 3, 2024, 9:43AM PDT
Everbridge Sued Over Proxy for \$1.8 Billion Thoma Bravo Buyout
By [Ben Miller](#)
Documents

-  [Complaint](#)
-  [Docket](#)
-  [Everbridge Inc.](#)

- COURT:** D. Del.
- TRACK DOCKET:** [1:24-cv-00414](#)

Bloomberg Law News 2024-04-03T13:54:20422176028-04:00
Everbridge Sued Over Proxy for \$1.8 Billion Thoma Bravo Buyout

By Ben Miller 2024-04-03T12:43:03000-04:00
COURT: D. Del.
TRACK DOCKET: 1:24-cv-00414

Everbridge Inc. and its directors filed an incomplete proxy for Thoma Bravo’s proposed \$1.8 billion buyout of the company, lacking key metrics and potential conflicts of interest, according a shareholder suit seeking to block the deal.

The software company’s proxy statement was also lacking important financial projections and analyses underlying financial adviser Qatalyst Partners LP’s evaluation of the proposed deal, which is scheduled for a vote on April 25, the complaint said. The lawsuit was filed Tuesday in US District Court for the District of Delaware.

The proposed deal announced by the parties on Feb. 4, and increased on March 1, would pay holders of Everbridge common stock \$35 per share. That price represented an approximately 62% premium to Everbridge’s volume-weighted average share price for the 90 days leading up to Feb. 2, the companies said then.

Shareholders can’t cast an informed vote on the deal without the missing information, which also includes line items underlying earnings and free cash flow figures, investor Susan Finger’s complaint said. The proxy also allegedly failed to disclose whether any of Thoma Bravo’s proposals mentioned management retention or participation in the equity of the combined company, which could pose conflicts of interest for Everbridge’s leadership.

Finger seeks a court order preventing the deal from being completed, or otherwise to rescinding it after completion, plus an award of rescissory damages for defendants' alleged violations of the Securities Exchange Act. She also seeks legal fees, according to the complaint, which also names as defendants seven Everbridge board members as well as Chairman David Henshall and CEO David Wagner. Thoma Bravo is not a defendant in the suit.

Qatalyst's fairness opinion on the deal was presented to investors without key underlying metrics, including the company's terminal values, debt, and outstanding shares, Finger alleged. The proxy statement also failed to disclose certain metrics for the other transactions that Qatalyst selected when analyzing the fairness of the proposed buyout, she said.

Thoma Bravo is seeking at least \$900 million from private credit firms to fund the planned acquisition, including Apollo Global Management Inc. and Oaktree Capital Management.

Everbridge and Thoma Bravo didn't immediately respond to a request for comment.

Long Law LLC and Acocelli Law PLLC represent the plaintiff.

The case is *Finger v. Everbridge Inc.*, D. Del., No. 1:24-cv-00414, complaint filed 4/2/24.

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Blue Bell Listeria Case May Get New Life After Years-Long Pause

By Mike Leonard

- Shareholder case blames board for deadly bacterial outbreak
- Dispute led to a major ruling on corporate oversight liability

Bloomberg Law News 2024-04-03T10:40:36549879671-04:00

Blue Bell Listeria Case May Get New Life After Years-Long Pause

By Mike Leonard 2024-04-02T16:33:06000-04:00

- Shareholder case blames board for deadly bacterial outbreak
- Dispute led to a major ruling on corporate oversight liability

A Blue Bell Creameries USA Inc. board committee has taken the highly unusual step of urging a judge to let a shareholder move forward with years-old legal claims blaming the company's directors for a deadly listeria outbreak.

The special litigation committee—three outside board members appointed well after the court case was underway—moved Monday to hand the lawsuit back to the investor who originally filed it in Delaware's Chancery Court. The case concerns a 2015 outbreak that killed three people and forced the nearly 120-year-old ice cream maker to pull its products from store shelves.

The scandal eventually culminated in federal criminal charges against ex-CEO Paul Kruse, who pleaded guilty to a misdemeanor and paid a fine last year after a mistrial. It also led to a landmark Delaware Supreme Court decision in 2019 that significantly widened the path forward for investors bringing corporate oversight claims, long viewed as so hard to win they were barely worth filing.

Read More: Rising Oversight Suits Let Delaware Fill Gaps in Law, Judge Says

The case being handled by the special litigation committee involves shareholder derivative claims, which are technically filed on a company's behalf against its leaders. It's common for committees to conduct an internal investigation into derivative claims that get past the preliminary stages. They then typically either settle on terms that require directors to resign or, alternatively, move to end the case on the grounds that pursuing it would do the company more harm than good.

The Blue Bell committee initially broke with that practice in September, moving to take over the claims and litigate them—a motion that Vice Chancellor Nathan A. Cook granted. That was unusual enough. The bid to deliver the case's reins back to the shareholder who initially brought it—or rather to his estate, since he died last year—is all but unheard of. Several directors at the time of the outbreak are still on the company's board.

After an unsuccessful mediation session last month, “the SLC has now determined it is appropriate and in the best interests of the company and its stockholders to withdraw the realignment and to allow Ms. Marchand to proceed with this litigation on behalf of the company,” the motion says, referring to the widow of the investor who filed the lawsuit.

“The SLC will continue to have plenary authority to control the litigation,” according to the court filing.

The committee is represented by Morris, Nichols, Arsht & Tunnell LLP. Marchand is represented by Chimicles Schwartz Kriner & Donaldson-Smith LLP.

Blue Bell and its board members haven't made court appearances since late 2021 or early 2022, and many of their attorneys appear to have withdrawn from the case. The company has been represented by Prickett, Jones & Elliott PA and Kelly Hart & Hallman LLP. Given the case's long pause, it wasn't immediately clear from the court docket who currently represents the board.

The case is Marchand v. Barnhill , Del. Ch., No. 2017-0586, motion filed 4/1/24 .

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TPG Reaches \$19.5 Million Settlement in Convey Health Deal Case

By Mike Leonard

- Shareholder suit challenged \$1.1 billion take-private buyout
- TPG, Convey board members still deny any wrongdoing, liability

Bloomberg Law News 2024-04-03T10:43:139245392-04:00

TPG Reaches \$19.5 Million Settlement in Convey Health Deal Case

By Mike Leonard 2024-04-02T13:24:21000-04:00

- Shareholder suit challenged \$1.1 billion take-private buyout
- TPG, Convey board members still deny any wrongdoing, liability

TPG Inc. affiliates and former Convey Health Solutions Holdings Inc. board members agreed to pay \$19.5 million to end shareholder litigation challenging the medical technology company's \$1.1 billion take-private buyout.

The settlement, disclosed in court filings Monday, would resolve claims that the private equity firm backed Convey into a corner by using its influence to impede competing suitors while a board stacked with TPG loyalists caved after failing to conduct a market check or seek other leverage. The transaction closed in 2022.

In connection with the shareholder accord, "defendants, former defendants, and Convey deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever," according to settlement filings in Delaware's Chancery Court.

The payment will be made to Convey ex-shareholders by TPG, the former board members, or their insurers. The court filings don't specify what portion of the settlement will be borne by whom, apart from indicating that TPG will make an initial \$500,000 escrow payment.

The investor suit, filed in early 2023, said TPG timed its bid to reacquire Convey—which it bought in 2019 and took public in 2021—to exploit a broad stock market decline unrelated to the company's performance. The deal included generous equity rollovers aimed at ensuring the board showed “manifest allegiance to TPG,” the suit said. The stock's record low on June 16, 2022, came five days before the deal was announced, according to Bloomberg data.

Because the case is a proposed class action, the settlement requires the approval of Vice Chancellor Lori W. Will, the presiding judge, to ensure it's fair to outside parties such as investors not participating in the litigation.

The shareholders leading the case, George Assad and Christopher Beuer, are represented variously by Block & Leviton LLP; Prickett, Jones & Elliott PA; Friedman Oster & Tejtell PLLC; Kaskela Law LLC; and Kessler Topaz Meltzer & Check LLP.

TPG is represented by Morris, Nichols, Arsht & Tunnell LLP and Davis Polk & Wardwell LLP. The board members are represented variously by Ross Aronstam & Moritz LLP; Simpson Thacher & Bartlett LLP; Richards, Layton & Finger PA; and Cravath, Swaine & Moore LLP.

The case is Assad v. TPG Inc. , Del. Ch., No. 2023-0096, settlement filed 4/1/24 .

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Guggenheim Has \$19 Million Deal Ending Lawsuit Over Energy Fund

By Mike Leonard

- Case targeted fund's collapse amid Covid-related margin calls
- Guggenheim, trustees continue to deny wrongdoing, liability

Bloomberg Law News 2024-04-03T10:44:24132775183-04:00

Guggenheim Has \$19 Million Deal Ending Lawsuit Over Energy Fund

By Mike Leonard 2024-04-02T13:51:54000-04:00

- Case targeted fund's collapse amid Covid-related margin calls
- Guggenheim, trustees continue to deny wrongdoing, liability

Guggenheim Funds Investment Advisors LLC and former trustees of a closed-end fund it managed, the Fiduciary/Claymore Energy Infrastructure Fund, agreed to an \$18.8 million deal ending shareholder litigation over the fund's sale.

The accord, disclosed in court filings Monday, would resolve claims that Guggenheim and the ex-trustees arranged the all-stock transaction with a Kayne Anderson Capital Advisors LP affiliate in an effort to dodge allegations that they ran the fund into the ground. The transaction closed in March 2022.

Because the case is a proposed class action, the settlement—to be paid by insurers—requires the approval of Vice Chancellor Nathan A. Cook, the presiding judge, to ensure it's fair to outside parties such as investors not participating in the litigation in Delaware's Chancery Court.

The lawsuit, filed in late 2021, said the "severely overextended" fund—focused on infrastructure investments in the energy sector—collapsed in early 2020, amid margin calls stemming from pandemic-related panic and an OPEC-Russia price war that triggered a fire sale of energy securities.

Guggenheim and the former trustees "deny all allegations of wrongdoing, fault, liability, or damage," according to the settlement filings. A spokesperson said when the lawsuit was filed that the firm would litigate the case "to its successful conclusion."

The investor leading the case, the JB & Margaret Blaugrund Foundation, is represented by Bernstein Litowitz Berger & Grossmann LLP and Morris Kandinov LLP. Guggenheim are one trustee are represented by Young Conaway Stargatt & Taylor LLP and Dechert LLP. The other trustees are represented by Troutman Pepper Hamilton Sanders LLP and Vedder Price PC.

The case is JB & Margaret Blaugrund Found'n v. Guggenheim Funds Inv. Adv. LLC , Del. Ch., No. 2021-1094, settlement filed 4/1/24 .

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April 3, 2024, 7:29 AM PDT
Rollins, Workers Get Final Approval for \$3.9 Million 401(k) Deal
By [Jacklyn Wille](#)
Documents

-  [Docket](#)
-  [Final Judgment](#)
-  [Attorneys' Fee Order](#)

- ERISA lawsuit previously survived company's motion to dismiss
- GoalMaker prioritized reducing Rollins' costs, suit says

Bloomberg Law News 2024-04-03T12:43:00339487555-04:00
Rollins, Workers Get Final Approval for \$3.9 Million 401(k) Deal

By [Jacklyn Wille](#) 2024-04-03T10:29:36000-04:00
ERISA lawsuit previously survived company's motion to dismiss
GoalMaker prioritized reducing Rollins' costs, suit says

Rollins Inc. received final court approval for a \$3.9 million class settlement with workers who say the company's retirement plan used a third-party investment allocation tool to push expensive and risky funds.

The deal, which is slated to be funded by the pest control company's insurers, is expected to provide gross payments of \$100 each to more than 40,000 people covered by the Rollins retirement plan since 2015, according to the settlement motion.

Judge Eleanor L. Ross of the US District Court for the Northern District of Georgia granted final approval to the deal Tuesday. She also awarded the workers' lawyers all their requested fees and costs, totaling more than \$1.5 million.

The lawsuit, which Ross declined to dismiss in 2023, says Rollins opted against better 401(k) investment options in favor of using the GoalMaker platform from Prudential Insurance & Annuity Co., now known as Empower. The platform allegedly funneled workers' retirement savings into expensive and poorly performing funds that allowed Rollins to offset its administrative costs at the employees' expense.

Hundreds of lawsuits challenging 401(k) plan fees have been filed in federal courts over the past few years, and dozens of employers have agreed to class settlements. The Rollins settlement is in line with similar deals negotiated by Koch Industries Inc. for \$4 million, Michigan's Bronson Healthcare Group Inc. for \$3 million, Teva Pharmaceuticals USA Inc. for \$2.55 million, and ManTech International Corp. for \$1.2 million.

Rollins is represented by Bryan Cave Leighton Paisner LLP. The workers are represented by Sharman Law Firm LLC, Bailey & Glasser LLP, and Pels Law LLC.

The case is Fleming v. Rollins, Inc. , N.D. Ga., No. 1:21-cv-05343, 4/2/24 .

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Business Law Prof Blog

 lawprofessors.typepad.com/business_law/2024/04/finfluencers-and-the-reasonable-retail-investor.html

Monday, April 1, 2024

Finfluencers and the Reasonable Retail Investor

By joanheminway

Calling attention today to Sue Guan's paper, *Finfluencers and the Reasonable Retail Investor*, posted on SSRN and forthcoming to the University of Pennsylvania Law Review Online. The abstract is copied in below.

Much recent commentary has focused on the dangers of finfluencers. Finfluencers are persons or entities that have outsize impact on investor decisions through social media influence. These finfluencers increasingly drive investing and trading trends in a wide range of asset markets, from stocks to cryptocurrency. They do so because they can provide powerful coordination mechanisms across otherwise diffuse investor and trader populations. Of course, the more influence wielded over their followers, the easier it is for finfluencers to perpetrate fraud and manipulation.

The increase in finfluencing has highlighted a gray area in the securities laws: a finfluencer's statements may not be factually untrue or clearly deceptive, but they can be interpreted as misleading depending on the context and the particular beliefs held by the finfluencer's social media followers. Moreover, such statements can harm investors who buy or sell based on their interpretation of the finfluencer's activity. In other words, finfluencers can easily profit off of their followers' trading activity while steering clear of the securities laws.

A recent case has narrowed finfluencers' ability to do so. This Piece argues that *In re Bed Bath and Beyond* provides a path to holding finfluencers accountable even when they have not made clearly untrue statements. In considering materiality, *In re Bed Bath and Beyond* focuses on the reasonable retail investor. This places primacy on retail investors' interpretation of social media activity and narrows a gap in securities oversight, demonstrating that existing securities laws can be flexible enough to deter and punish a significant portion of problematic finfluencer behavior. In doing so, it opens a path forward for harmed retail investors to seek redress from careless finfluencers.

Sue offers a video summary here.

In this work, Sue takes on one of my favorite topics: materiality. She sees the potential for courts to use the reasonable retail investor--as opposed to the reasonable investor--as the reference point for materiality analysis in securities fraud actions. Truly interesting.

Social media does move markets. Investors, retail investors, act on what they read in social media. They may even act based on interpretations of emojis, as Sue suggests. I appreciate her taking on the legal aspects of market behavior in this context. I am confident more will be said about this as additional cases are brought.

Life Sciences Companies Remained Frequent Securities Suit Targets in 2023

K [dandodiary.com/2024/04/articles/securities-litigation/life-sciences-companies-remained-frequent-securities-suit-targets-in-2023](https://www.dandodiary.com/2024/04/articles/securities-litigation/life-sciences-companies-remained-frequent-securities-suit-targets-in-2023)

April 1, 2024



By Kevin LaCroix on April 1, 2024
Posted in Securities Litigation



The number of securities class action lawsuits filed against life sciences companies in 2023 remained steady compared to 2022, as suits against life sciences companies represented almost one in five of the securities class action

lawsuits filed during the year, according to a new report from the Dechert law firm. The report, entitled “Dechert Survey: Developments in Securities Fraud Class Actions Against U.S. Life Sciences Companies: 2023 Edition,” states that there were a total of 43 securities suits filed against life sciences companies in 2023, the same number as were filed in 2022. The Dechert law firm’s March 27, 2024 press release, which links to the full report, can be found [here](#).

The 43 securities class action lawsuit filings against life sciences companies in 2023 came in a year in which there was a slight overall increase in the total number of securities class action lawsuits filed. The total number of securities suit filings increased to 213 total filings in 2023, compared to 197 in 2022. With the slight increase in the overall number of securities suits during the year, and with the number of suits against life sciences companies remaining steady from 2022 to 2023, the proportion of suits against life sciences companies slightly decreased. Thus, the 43 suits against life sciences companies represented 20.2% of all securities suit filings in 2023, compared to 2022, when the suits against life sciences companies represented 21.8% of all filings.

While the number of lawsuit filings against life sciences companies remained steady between 2022 and 2023 filings with 43 filings each year, the 43 filings in 2023 represents a significant decrease compared to 2019, when there were 97 securities suit filings against life sciences companies, and compared to 2020, when there were 80 lawsuits filed against life sciences companies.

The mix of the size of life sciences companies sued changed slightly in 2023 compared to 2022, with a slight increase in the percentage of large cap companies sued and a slight decrease in the percentage of claims against small cap companies. Thus, in 2023, 16.3% of the life sciences companies sued had market capitalizations of more than \$10 billion, compared to 11.6% in 2022. In 2023, 30.2% of life sciences companies sued had market capitalizations between \$250 million and \$2 billion, compared to 2022, when 34.9% of complaints were filed against companies in that market capitalization range.

The categories of securities suits filed against life sciences companies represented filing trends consistent with prior years:

About 46.5% of the securities suits filed against life sciences companies in 2023 (20 out of 43) involved alleged misrepresentations regarding product efficacy and safety, including alleged negative side effects or general ineffectiveness associated with leading product candidates.

About 27.9% of complaints filed against life sciences companies in 2023 (or 12 out of 43 complaints) involved alleged misrepresentations regarding regulatory hurdles, the timing of FDA approval, or the sufficiency of applications submitted to the FDA.

About 11.6% of the suits filed against life sciences companies in 2023 (five of 43 complaints) involved misrepresentations related to COVID-19 vaccines, products, or services.

About 9.3% of the 2023 life sciences securities suits (four out of 43) involved alleged misrepresentations regarding purported underlying unlawful conduct that gave rise to the securities claim.

About 16.3% of the 2023 lawsuits against life sciences companies involved non-U.S. issuers that were incorporated abroad.

About 34.9% of the complaints (15 out of 43) involved alleged misrepresentations related to the company's financial reporting.

About 18.6% of the lawsuits filed in 2023 against life sciences companies (eight out of 43) involved alleged misrepresentations in connection with proposed mergers, IPOs, offerings, or other transactions.

It should be noted that the percentages in the various categories together total more than 100% as the majority of 2023 filings against life sciences companies fell into more than one category.

The report summarizes its analysis of the types of securities suit allegations against life sciences companies by observing that "Life sciences companies continue to face unique challenges in securities litigation, particularly around negative clinical trial results, product

safety, and FDA approval expectations.” The report goes on to note that “Despite facing industry -specific issues, these companies also encounter common securities fraud risks, such as those related to disclosures in sales or mergers and are not immune to class actions in the U.S. even if incorporated abroad.”

The lawsuits against life sciences companies continued to have mixed results in 2023, with the court decisions in these cases reflecting a variety of outcomes. In 2023, courts issued a total of 49 opinions in lawsuits involving life sciences companies, representing a slight uptick from the 43 opinions in 2022.

Of the 49 decisions in 2023, 21 included allegations of misrepresentations during product development. In 2023, the courts in these kinds of cases favored granting the motions to dismiss in their entirety, with 17 of 21 motions granted, and three motions denied in part and granted in part.

The report also identified 26 opinions involving circumstances in which the defendant companies’ products or services were in commercial distribution. Of these 26 cases, nine of the motions to dismiss were granted in whole, 12 were dismissed in part, and five motions to dismiss were denied.

There were also 23 opinions in 2023 in cases involving allegations of financial mismanagement, including financial reporting, business operations, and disclosures relating to mergers or IPOs. The outcomes in these cases varied, with seven cases being dismissed in whole in favor of the defendants, 11 more being dismissed in part, and five in which the motion to dismiss was denied.

The report has some interesting information about the plaintiffs’ law firms that filed the lawsuits against life sciences companies in 2023. A small number of plaintiffs’ firms were associated with almost half of the life sciences complaints filed in 2023: Pomerantz (11 complaints); Glancy Prongay & Murray LLP (9 complaints); Levi & Korsinsky (7 complaints); and The Law Offices of Frank R. Cruz (6 complaints).

Given that “life sciences companies continue to be a popular target for class action securities fraud claims,” companies should “take steps to reduce the risk of being targeted in a securities fraud class action.” The report sets out a list of actions companies can take to try to mitigate their securities litigation risk, including, among other things, managing disclosures pertaining to clinical trial results; the implementation of appropriate cautionary disclosure in company statements; and the adoption of Rule 10b5-1 trading plans.

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Law Firms Swarm AT&T With Data Breach Class Actions

At least 10 lawsuits have been filed within the past few days in the U.S. District Court for the Northern District of Texas-Dallas Division.

April 02, 2024 at 06:14 PM

Class Actions

By Adolfo Pesquera | April 02, 2024 at 06:14 PM

f in

The original version of this story was published on [Texas Lawyer](#)

Law firms from eight states and the District of Columbia have descended on Dallas, bringing data breach class action lawsuits against AT&T Inc.

At least 10 lawsuits have been filed within the past few days in the U.S. District Court for the Northern District of Texas-Dallas Division.

AT&T did not immediately respond to a request for comment.

Texas law firms acting as local counsel include the Dallas-based firms Steckler Wayne & Love and Kendall Law Group, Houston-based Foster Yarborough, and The Armstrong Firm in Boerne.

On four lawsuits brought by Kendall, attorney Joe Kendall is working with Turke & Strauss of Madison, Wisconsin; Markovits, Stock & DeMarco and The Lyon Firm, both out of Cincinnati, Ohio; Milberg Coleman Bryson Phillips Grossman of Chicago, Illinois; and Hausfeld’s New York and Washington, D.C., offices.

Steckler Wayne has aligned itself on three lawsuits with Chestnut Cambronne of Minneapolis, Minnesota; Kopelowitz Ostrow from Fort Lauderdale, Florida; Milberg in Chicago; and Stranch, Jennings & Garvey of Nashville, Tennessee.

Foster Yarborough is working a case with the New York and Florida offices of George Feldman McDonald.

The Armstrong Firm joined forces on one case with Oakland, California-based Cole & Van Note.

Andrew J. Shamis of the Miami, Florida firm Shamis & Gentile is also licensed in Texas and filed as local counsel in *Lovetro v. AT&T*.

Lovetro, as with the other lawsuits, is a response to AT&T’s March 30 admission that it had lost control over its computer network and had been hacked by cybercriminals.

“Due to its deliberately obfuscating language, it is unclear when the unauthorized party first gained access to Defendant’s network and how long cybercriminals had unfettered access to plaintiff’s and the class’s sensitive and private information,” the *Lovetro* complaint said.

In *Dean v. AT&T*, a case filed by Steckler with Morgan & Morgan, the plaintiffs allege the 73 million AT&T customers’ private information got compromised as early as August 2021 when a hacking group calls ShinyHunters began selling AT&T data.

“AT&T maintained, without providing any evidence, that the data samples leaked from the compromised database did not come from AT&T’s systems and that AT&T had not been breached,” the *Dean* complaint alleges.

On March 17, another cybercrime actor known as MajorNelson posted on an internet forum the entire dataset of the stolen database from the 2021 data incident, the *Dean* complaint states.

“The data leaked by MajorNelson included the following data types from approximately 73 million individuals, inter alia: names, addresses, phone numbers, dates of birth, and Social Security numbers,” the *Dean* complaint alleges.

The MajorNelson posting was reported two days later by Troy Hunt, a security researcher and creator of the data breach notification website Have I Been Pwned, the *Dean* complaint states.

“In the blog post, Mr. Hunt concluded that the leaked data from the Data Breach was authentic after he spoke with several ‘Have I Been Pwned’ subscribers who were AT&T customers and who confirmed the accuracy of the leaked data,” the *Dean* complaint says.

The lawsuits argue there are grounds for a nationwide class certification.

The claims sought in each lawsuit include negligence, negligence per se, breach of implied contract and unjust enrichment.

Links to the complaints, which can be viewed on [Law.com Radar](#), are listed as follows by case number:

[Lovetro v. AT&T, 3:24-cv-00783](#); [Collier v. AT&T, 3:24-cv-00782](#); [Cumo v. AT&T, 3:24-cv-00772](#); [Barkley v. AT&T, 3:24-cv-00769](#); [Nelli v. AT&T, 3:24-cv-00759](#); [Jaramillo v. AT&T, 3:24-cv-00761](#); [Montoya v. AT&T, 3:24-cv-00760](#); [March v. AT&T, 3:24-cv-00758](#); and [Petroski v. AT&T, 3:24-cv-00757](#).

A class action lawsuit, [Doss v. AT&T](#), has also been spotted in the U.S. District Court for the Western District of Missouri. Counsel for plaintiffs there is McShane & Brady of Kansas City, Missouri.

Theses lawsuits were surfaced by Law.com Radar, a cutting-edge solution for new suit alerts from federal and state courts. Law.com Radar delivers artificial intelligence-enhanced case summaries and daily case reports from more than 1,100 courts, all backed by the industry’s most trusted source for legal news and data. [Click here](#) to get started and be among the first to act on opportunities in your region, practice area or client sector.

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NEWS

Another J&J Talc Trial Opens in Florida: 'This Fundamentally Is a Case About Science'

The second trial since the dismissal of Johnson & Johnson's talc bankruptcy last year opened on Monday, alleging its baby powder caused Patricia Matthey's ovarian cancer.

April 01, 2024 at 05:48 PM

Mass Torts



Amanda Bronstad
staff reporter



The original version of this story was published on [Daily Business Review](#)

What You Need to Know

- Patricia Matthey, whose estate sued Johnson & Johnson, was a dance aerobics instructor who died at age 72, three years after being diagnosed with ovarian cancer
- King & Spalding's Morty Dubin told jurors that scientific studies found no causation, and that Matthey had genetic risks for cancer
- Motley Rice's Lance Oliver represents Matthey's son, but Leigh O'Dell, of Beasley Allen, which Johnson & Johnson has moved to disqualify from talc litigation, is also on the trial team

The second talcum powder trial since Johnson & Johnson’s failed bankruptcies last year began Monday in Florida.

Motley Rice’s Lance Oliver told jurors in the Sarasota Circuit Court that Johnson & Johnson, for decades, marketed its baby powder to women for use in the genital area.

“They knew that was part of their customer base and how they were using it,” he said in his opening statement on Monday, according to Courtroom View Network’s broadcast of the trial. Patricia Matthey, whose estate he represents, used Johnson & Johnson’s baby powder for “the entirety of her adult life.”

“We’re going to prove in this courtroom, too, that Johnson & Johnson’s baby powder is what caused Pat’s cancer and, ultimately, her death in 2019,” he said. “The evidence will show that Johnson & Johnson exploited that trust for profit and put wealth over women over and over again throughout the history of the company.”

Oliver represents her son, Philippe Matthey, who is suing on behalf of her estate. His mother was a dance aerobics instructor who died at age 72, three years after being diagnosed with ovarian cancer. She underwent five surgeries and several rounds of chemotherapy before her death.

Johnson & Johnson built its product on a “house of cards,” Oliver told jurors, referencing numerous studies that have shown a link between talcum powder and ovarian cancer.

On Monday, Johnson & Johnson attorney Morty Dubin, of King & Spalding in New York, told jurors in his opening statement that, despite decades of scientific studies, no U.S. public health authority has ever concluded that cosmetic talc caused cancer.

“This fundamentally is a case about science,” he told jurors. “There are many, many scientific studies out there. The idea that this is something that’s been kept under wraps, under some conspiracy, and they are alleging a conspiracy, is just not true. Not true at all.”

In fact, Matthey had several risk factors, including her age and family members with breast cancer. “We have a very startling family history here,” he told jurors in his opening statement.

Jurors in this month’s trial will not consider punitive damages, Oliver told Law.com. Florida Statute 768.73 allows defendants to offset punitive damage awards by amounts incurred in similar trials across the country.

Prior to the first talc bankruptcy in 2021, juries in California and Missouri had awarded large verdicts against Johnson & Johnson, including a \$4.7 billion award in St. Louis to 22 women with ovarian cancer, or their families. That verdict, later reduced on appeal, included more than \$700 million in punitive damages against Johnson & Johnson.

On March 6, Florida’s Third District Court of Appeal upheld the statute’s bar of punitive damages in an *Engle* progeny wrongful death case called *Sommers v. Philip Morris*.

Beasley Allen on the Trial Team

The trial, before Sarasota County Circuit Judge Hunter Carroll, is the second since U.S. Bankruptcy Chief Judge Michael Kaplan, in New Jersey, dismissed the latest Chapter 11 case of Johnson & Johnson subsidiary LTL Management last year.

The first post-bankruptcy trial [ended on March 5](#) in a mistrial. Oliver, a partner in Mount Pleasant, South Carolina, represented Bob Sugarman, who sued on behalf of his wife, Marilyn Seskin, an anesthesiologist who died in 2019 from ovarian cancer.

During LTL’s second Chapter 11 case, filed in 2023, Kaplan allowed one case to go before jurors because the plaintiff, 24-year-old Anthony Hernandez Valadez, had months to live after being diagnosed with terminal mesothelioma. On July 18, a jury in California’s Alameda County Superior Court [awarded \\$18.8 million](#)

All the trials have occurred in state courts.

Meanwhile, in the talc multidistrict litigation, which now encompasses more than 50,000 cases in the District of New Jersey, U.S. District Judge Michael Shipp [ordered last week that expert motions be refiled](#) ahead of bellwether trials, citing “recent changes to Federal Rule of Evidence 702” and the “emergency of new relevant science” among the reasons.

In this month’s trial, Johnson & Johnson’s legal team also includes Kathryn Lehman, an Atlanta partner at King & Spalding. Meanwhile, in addition to Oliver, Beasley Allen’s Leigh O’Dell, in Montgomery, Alabama, is spearheading Matthey’s trial team.

On Dec. 5, Johnson & Johnson moved to disqualify Beasley Allen and one of its principals, Andy Birchfield, from the talc litigation. Johnson & Johnson Worldwide Vice President of Litigation Erik Haas and outside counsel Jim Murdica, of Barnes & Thornburg, [testified on March 25](#).

The testimony centered around an alleged breach of ethics when they discovered that Birchfield had partnered with one of Johnson & Johnson’s former lawyers, John Conlan, to pitch a potential \$19 billion settlement of the talc lawsuits. Conlan, who was a partner at Faegre Drinker Biddle & Reath until 2022, now runs Legacy Liability Solutions.

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<https://www.law.com/2024/04/02/up-to-1-1-billion-inside-the-settlement-resolving-most-of-philadelphias-risperdal-cases/>



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NEWS

Up to \$1.1 Billion: Inside the Settlement Resolving Most of Philadelphia's Risperdal Cases

According to settlement records, the settlement's group expenses were \$33 million, with additional costs expected to be incurred.

April 02, 2024 at 11:09 AM

Mass Torts



Max Mitchell
Bureau Chief



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

At its peak, the Risperdal litigation had more than 7,000 cases pending in Philadelphia, making it one of the largest mass torts to come through the city's busy complex litigation center. And with a city jury returning a historic \$8 billion award, it was also one of the most successful for plaintiffs.

The inventory has been steadily declining over the past two years after, according to records obtained by Law.com, including a settlement offer, the main defendants and law firms representing the majority of clients entered into a settlement for up to \$1.1 billion.

According to the records, the accord also includes a 30% holdback fund that is meant for covering costs and expenses that law firms incurred in pursuing the broader litigation, and as a buffer fund to help ensure the settlement funds do not run out before all eligible claims can be resolved. Settlement records say that if any holdback funds remain after the settlement is fully resolved, they will be divvied up among the claimants.

Unlike what is often seen in mass tort litigation's federal counterpart—the multidistrict litigation, or MDL—the holdback in the Risperdal settlement does not include a separate allocation for common benefit fees for the lawyers. Instead, lawyers are recouping fees and specific costs, which can top 40% of the claimant's settlement, from the individual awards as per their specific contingent fee contracts.

The Risperdal litigation was led by Philadelphia-based Thomas R. Kline of Kline & Specter and Jason Itkin of Arnold & Itkin in Houston, with the Texas-based firm currently administrating the settlement.

In an emailed statement, Kline and Itkin noted that more than 5,600 clients have chosen to accept their individual settlement offers.

“This massive undertaking, which includes two special masters, a supervising judge, guardians ad litem, and multiple layers of safeguards, is an unprecedented success story among mass tort settlement programs, and has achieved the goal of providing significant compensation to thousands of claimants after a decade of hard-fought and ultimately successful litigation,” the lawyers said.

Janssen Pharmaceuticals, a Johnson & Johnson subsidiary, is the defendant in the bulk of the settlement. A spokesperson for the company declined to comment.

Up to \$1.1 Billion

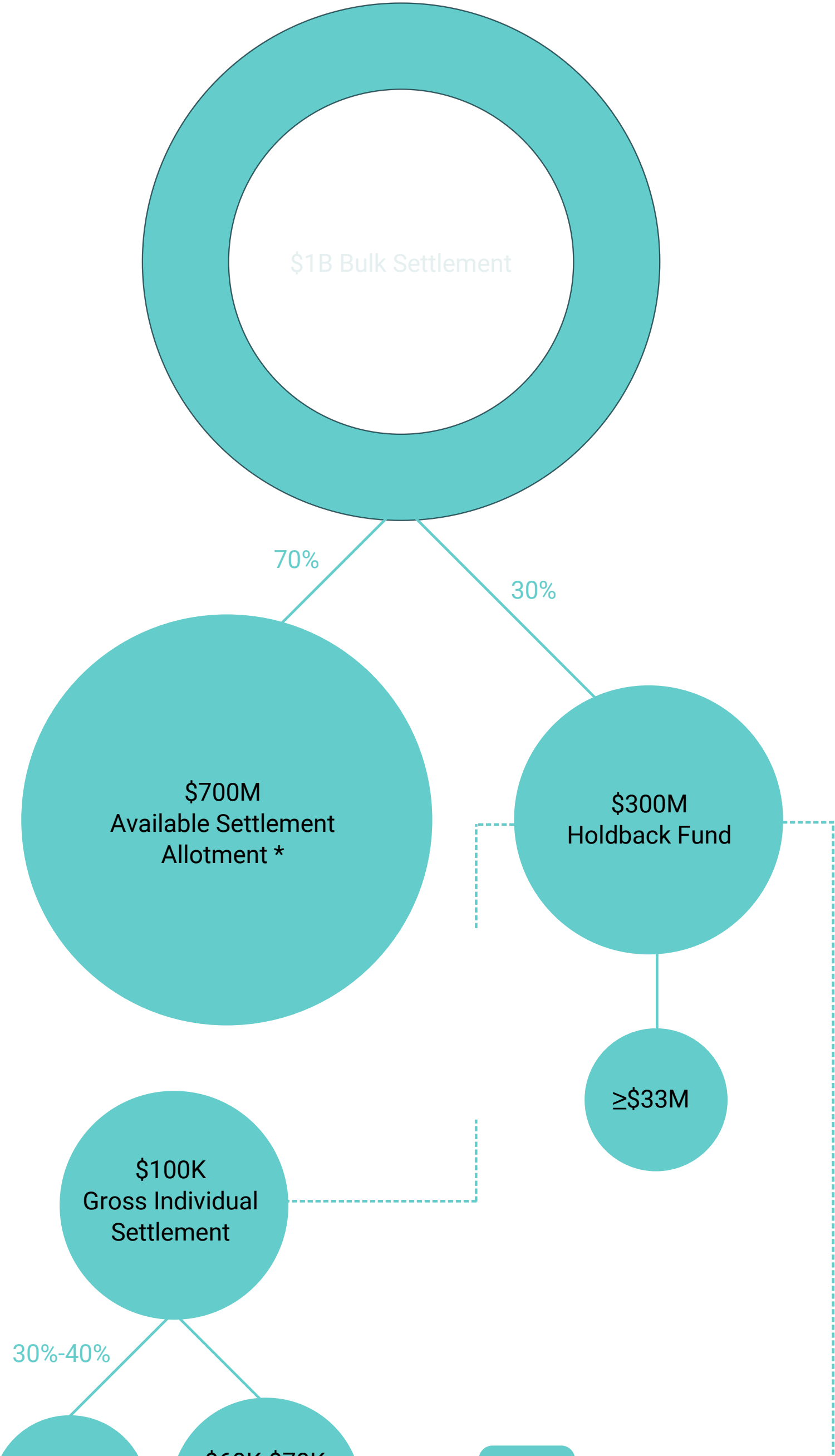
The Risperdal litigation focuses on allegations that makers of the antipsychotic medication failed to warn about the risk of developing gynecomastia, which is the growth of excessive breast tissue, when taking the drug. For years the medication was frequently being prescribed off label, which resulted in thousands of boys and young men developing what has been described as “female breast tissue” that can leak and occasionally be painful.

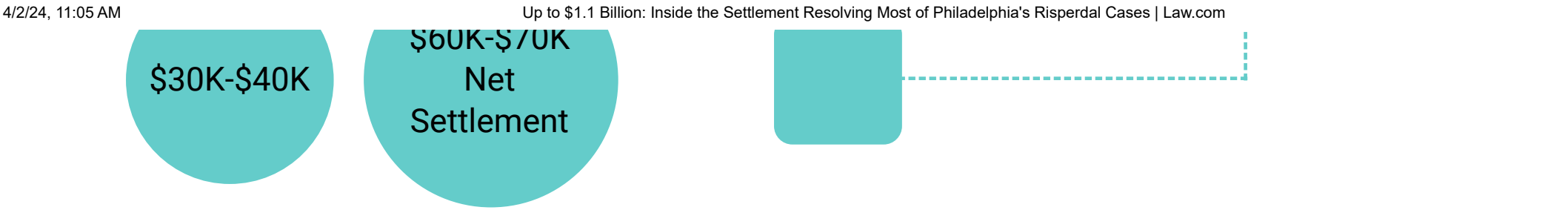
Although substantial numbers of lawsuits have been filed in venues across the country, Philadelphia housed a sizable piece of the litigation. In 2010, the Philadelphia Court of Common Pleas created a mass tort program, which eventually ballooned to 7,000 cases by the end of 2019.

That same year, a Philadelphia jury handed up an \$8 billion punitive damages award, which, although was later reduced to \$6.8 million, likely played an integral role in settling the litigation. According to practitioners, mass tort defendants typically pay higher amounts for the clients of firms that have a history of successfully taking claims to trial.

Today fewer than 10 cases remain on the city’s mass tort docket.

According to a settlement offer and other records obtained by Law.com, Janssen agreed to settle 6,000 claims for up to \$1.1 billion. Specifically, the offer says the defendants will pay “at least \$700,000,000.00 in exchange for the release of at least 6,000 qualified claims. This total amount may increase to a maximum of \$1,100,000,000.00 depending upon the number of qualifying and eligible claimants that ultimately participate in the settlement.”





However, not all of that money is going to the plaintiffs. Plaintiffs attorneys in the case are taking their contingency fees, which are up to 40%, as well as specific costs. The settlement is voluntary, and records note that claimants are able to opt out of the settlement.

A significant portion is also going to a “holdback fund,” which, according to court watchers, are often used in mass litigation as a way to ensure that the funds do not run out before all eligible claims have been resolved. The funds can be key in mass litigations without a set number of claimants and a large potential payment range, since plaintiffs counsel will be seeking to include as many claimants as possible to reach the maximum payout, while defendants typically seek to minimize liability when possible.

According to the records, special masters adjudicating the litigation determined a 30% holdback fund should be used for this purpose.

The attorneys who shepherded the settlement said the holdback will ensure all clients will be similarly treated during the claims process.

“After winning several trials in the Risperdal litigation, we successfully negotiated a resolution on behalf of all of our clients that provided a meaningful recovery to thousands of individuals. The overall settlement provided for a maximum and minimum gross settlement amount (which was the precise purpose of the ‘hold back’) to ensure that there were sufficient funds to treat all similarly situated clients similarly,” Kline and Itkin said in the emailed statement. “Each claimant has the right to voluntarily accept or reject an individualized settlement offer after full disclosure and documentation of the settlement, including all fees, costs, and liens and more than 99.9% of all claimants have chosen to accept their settlement offers.”

Attorneys familiar with mass tort litigation said holdbacks like these are a common and useful practice.

“There’s no danger in this. When all is said and done, if there’s any money left over in that holdback additional checks are issued to the appropriate recipients,” former New Jersey Superior Court Judge Rachelle Harz, who spent several years overseeing mass litigation in the state and now handles mediation and mass tort allocation, said. ”You want to make sure you have enough money to pay for everything.”

According to settlement records, the settlement’s group expenses were \$33 million, with additional costs expected to be incurred.

Comparing Payouts

According to documents and interviews with claimants, the settlement is being broken into several groups. With about 800 claimants in each group, the individual settlements are administered and finalized before attorneys and

administrators move on to the next group.

Records for a group containing about 850 claimants said that, of the nearly \$115 million allotted to the group, 30%, or nearly \$35 million was being put toward the holdback fund, leaving about \$80.5 million, with an average payment of more than \$95,000, to be disbursed before attorney fees and specific costs.

In another group with more than 760 claimants, of the roughly \$108 million allocated to the group, \$32.4 million was used for the holdback fund, leaving \$75.6 million for the claimants with an average of about \$99,500 before attorney fees and case costs.

Of the nearly 1,600 claimants from the groups, settlements ranged from about \$21,000 to nearly \$146,000, with more than 870 offers in excess of \$100,000 before fees and costs and about 173 gross settlements that were less than \$75,000.

Settlement records also say defendants require 90% of litigants to agree to their offers before the funds can be disbursed. According to Itkin and Kline, more than 5,600 have accepted offers.

Since many of the injuries in the Risperdal litigation are psychological, such as humiliation, or indirect, such as bullying, it is difficult to compare with other litigations, which are more heavily focused on physical injuries. But a comparison to the end result may be insightful.

A 2019 article from the [New York Times](#), which examined the pelvic mesh litigation, reported that the Vioxx litigation, which settled more than 15 years ago over claims that the drug caused heart attacks and strokes, resulted in a nearly \$5 billion fund for 30,000 litigants, with average settlements of \$147,000.

The article also noted that in the mesh litigation, which stemmed from allegations that plastic mesh implanted into women's pelvic floors caused painful knotting and scarring, seven of the device makers agreed to pay \$8 billion to resolve more than 100,000 claims. Shanin Specter, also of Kline & Specter, told the publication that his firm's 1,500 cases settled for an average of \$75,000, and estimated the mesh cases litigated by other firms in federal court settled closer to \$40,000.

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"Defendants' general advertising was puffery as that is understood in the law," Salas said. "Even if these statements were not puffery, Plaintiffs have still failed to plead affirmative misrepresentations with the level of specificity required."

The warranty claims were dismissed because the alleged defects and repairs occurred after the terms of the warranty had expired, Salas said. For one plaintiff who alleged a defect and sought repairs during the warranty period, that plaintiff didn't show he gave Mercedes the chance to fix it, Salas said.

Salas dismissed all of the claims in the complaint without prejudice, saying the court "cannot rule out the possibility that Plaintiffs might amend their Complaint to assert viable claims."

Carella Byrne Cecchi Brody Agnello PC and Seeger Weiss LLP represent the plaintiffs. Winston & Strawn LLP represents Mercedes.

The case is *Snowdy v. Mercedes-Benz USA LLC*, 2024 BL 111133, D.N.J., 2:23-cv-01681, 4/1/24.

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The Children's Place dodges lawsuit over 'forever chemicals' in school uniforms

 [reuters.com/legal/litigation/childrens-place-dodges-lawsuit-over-forever-chemicals-school-uniforms-2024-04-02](https://www.reuters.com/legal/litigation/childrens-place-dodges-lawsuit-over-forever-chemicals-school-uniforms-2024-04-02)

Clark Mindock

REUTERS/Andrew Kelly/Illustration Purchase Licensing Rights , opens new tab

- Judge said it is 'plausible' uniforms contain PFAS
- But that did not mean company misled consumers, he said

April 2 (Reuters) - A U.S. judge has dismissed a proposed class action lawsuit filed by an Illinois mother against The Children's Place for allegedly selling school uniforms that contain toxic "forever chemicals" without proper warnings.

U.S. District Judge Matthew Kennelly in Chicago said that it is "at least plausible" that school uniforms purchased by Chicago mother Angela Garland and other parents contain per- and polyfluoroalkyl substances, or PFAS. But Garland has not shown the company lied or misled consumers about it in marketing materials even if they do, he said.

PFAS are a class of chemicals that are used in hundreds of consumer products. Often called forever chemicals because they do not easily break down, they are used in clothing and other products to make them water and stain resistant. Exposure to PFAS has been linked to hormone disruption, certain cancers and other health concerns.

The U.S. Environmental Protection Agency has identified PFAS as an "urgent public health and environmental issue," and has taken several steps in recent years to better regulate the chemicals, including in drinking water.

The dismissal marks the latest win for consumer products companies defending themselves against PFAS-related allegations.

Last month, outdoor apparel and equipment retailer REI dodged a similar lawsuit in Washington federal court over alleged PFAS in some of its rain gear, and a New York federal judge dismissed a lawsuit against CoverGirl owner Coty Inc. that alleged PFAS is in some of its waterproof mascara products.

Kennelly said Garland's lawsuit had not pointed to any outright false statements or misleading "half-truths" by the company on its website, its clothing tags or its advertisements. He said the company's silence on the matter was not enough to show that it deceived consumers into believing its school uniform products are PFAS-free in violation of state consumer protection laws, especially since the chemicals are commonly used in clothing.

“We are pleased with the court’s decision to dismiss the plaintiffs’ complaint, reinforcing our position that the claims were based on a highly flawed argument,” a spokesperson for the company said in a statement.

Attorneys for the plaintiffs didn’t immediately respond to a request for comment on Tuesday.

The proposed class action lawsuit filed in July claimed the New Jersey-based clothing retailer knowingly concealed the presence of PFAS in its products from customers, violating state consumer protection and other laws.

The lawsuit said parents like Garland would not have purchased the uniforms had they known about the alleged PFAS contamination. It sought compensatory and punitive damages, among other relief.

The Children’s Place had argued that Garland had filed the lawsuit after only doing limited testing to show the garments actually contained PFAS. Attorneys for the company had mounted a failed sanctions bid against plaintiffs’ lawyers over the issue.

Garland’s attorneys had called the sanctions request a “frivolous strong-arm tactic” aimed at convincing Garland to dismiss her complaint. They also said that they had tested numerous, unworn school uniforms sold by the company.

The case is *Garland v. The Children's Place Inc.*, U.S. District Court for the Northern District of Illinois, No. 1:23-cv-04899.

For the proposed class: Samuel Geisler and Bryan Aylstock of Aylstock, Witkin Kreis & Overholtz; and Marcus Bradley and Kiley Grombacher of Bradley Grombacher

For The Children's Place: Craig Cardon, Jeffrey Parker, Abby Meyer and David Poell of Sheppard Mullin Richter & Hampton

Read More:

The Children's Place wants lawyers sanctioned over toxic clothing claims

Attorneys defend PFAS lawsuit against The Children's Place sanctions motion

The Children's Place loses bid to sanction attorneys in PFAS case

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Reporting by Clark Mindock

Potpourri

 fcpaprofessor.com/potpourri-32

April 2, 2024

Ericsson

As highlighted in this prior post, in 2019 Ericsson (a Swedish telecom company with American Depositary Shares traded in the U.S.) resolved a \$1.06 billion FCPA enforcement action concerning conduct in Djibouti, China, Vietnam, Kuwait, Indonesia, and Saudi Arabia.

As part of the resolution, Ericsson was required to engage an independent compliance monitor for a three-year period.

In late 2022, Ericsson announced “that it has agreed with the U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC) to extend the term of the Company’s Independent Compliance Monitor for one year, to June 2024.” (See here for the prior post).

Ericsson recently announced “that on March 28, 2024, the independent compliance Monitor appointed by the U.S. Department of Justice (DOJ) (in June of 2020 in connection with Ericsson’s resolution of historical violations of the Foreign Corrupt Practices Act (FCPA) violations) has certified that Ericsson’s anti-corruption compliance program has satisfied requirements and is functioning effectively. This independent certification is a condition to conclusion of the Monitorship and Plea Agreement, currently expected to occur no later than June 2, 2024.

In the company’s release, Ericsson’s Chair of the Board of Directors, Jan Carlson stated:

“This certification is an important and independent verification of Ericsson’s significant progress in strengthening its compliance and controls since entering into the 2019 DOJ settlement. Ericsson’s continued global technology leadership and innovation, coupled with ethical decision making and effective risk management, puts us in a very strong competitive position. This marks a positive step towards completion of the monitorship, which the Company expects at the same time as the expiration of the term of the plea agreement, upon fulfillment of the remaining obligations of that agreement.”

As stated in the release:

“The role of the independent Monitor over the past four years has been to comprehensively review, assess, evaluate and test all aspects of the company’s global anti-corruption compliance program and internal controls. In fulfilling its duties, the independent Monitor team has had full access to the company’s Board, executives, employees, global operations and books and records. The Monitor’s final certification is based on its four year review and has included “an assessment of the Board of Directors’ and senior management’s commitment to, and effective implementation of, the corporate compliance program”.

Adani Group

Recently, Bloomberg reported:

“US prosecutors have widened their probe of India’s Adani Group to focus on whether the company may have engaged in bribery as well as the conduct of the company’s billionaire founder, according to people with direct knowledge of the matter. Investigators are digging into whether an Adani entity, or people linked to the company including Gautam Adani, were involved in paying officials in India for favorable treatment on an energy project, said the people, who asked not to be identified discussing the confidential effort. The probe, which is also looking at Indian renewable energy company Azure Power Global Ltd., is being handled by the US Attorney’s Office for the Eastern District of New York and the Justice Department’s fraud unit in Washington, said people familiar with the matter.”

Thereafter, it was reported here:

“Billionaire Gautam Adani’s group companies said they have not received any notice from the US Department of Justice over a potential bribery investigation, but its renewable energy firm Adani Green Energy stated it is aware of an investigation into potential violations of American anti-corruption laws by an unrelated third party.

Asked by stock exchanges to comment on a media report that US prosecutors had widened their probe of the Adani Group to determine if any of their group entities engaged in bribery, 10 listed companies of the conglomerate in separate filings stated that they have “not received any notice from the Department of Justice of us in respect of the allegation” and that “the report is false”.

Adani Green Energy Ltd, in a filing on Tuesday, said it has not received any notice but “is aware of an investigation by the United States Department of Justice into potential violations of United States anti-corruption laws by a third party”.

“The company has no relationship with the said third party and is thus unable to comment on the scope of the present United States investigation that the company or any of its personnel are subject to or exposed to in connection with the company’s alleged dealings with the third party,” Adani Green said.”

Across the Pond

The U.K. Serious Fraud Office recently announced criminal bribery charges against two former Petrofac senior executives Marwan Chedid and George Salibi.

As stated in the release:

“Mr Chedid and Mr Salibi, worked in various senior roles within Petrofac Group and were based in the United Arab Emirates. From 2012 to 2018, the SFO alleges that between them, Mr Chedid and Mr Salibi were involved in offering and paying agents over \$30 million USD to influence the awarding of contracts worth approximately \$3.3 billion USD in Petrofac’s favour. The contracts related to oil facilities in the UAE, including one for the infrastructure and design of the second largest oil field in the Gulf – the Upper Zakum Field Development Project.”

As highlighted in this prior post, in 2021 Petrofac resolved a U.K. Bribery Act enforcement action concerning conduct in Iraq, Saudi Arabia and the United Arab Emirates.

For the Reading Stack

An in-depth article here from Bloomberg regarding the recent FCPA trial conviction of former Vitol trader Javier Aguilar.

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Securities Law

April 3, 2024, 4:00AM PDT

SEC Bribery Unit Probes Technology Companies' Use of Contractors

By Sabrina Willmer

- SEC seeking details from tech firms on their intermediaries
- Focus is on distributors across Asia, Latin America, Africa

Bloomberg Law News 2024-04-03T13:53:36847712239-04:00

SEC Bribery Unit Probes Technology Companies' Use of Contractors

By Sabrina Willmer2024-04-03T07:00:00010-04:00

SEC seeking details from tech firms on their intermediaries

Focus is on distributors across Asia, Latin America, Africa

The US Securities and Exchange Commission is asking publicly traded tech companies about their relationships with distributors and other business partners outside the US in a push to root out possible corruption, according to people familiar with the matter.

The SEC started sending letters to the firms earlier this year under its mandate to enforce the Foreign Corrupt Practices Act, which makes it a crime to offer anything of value to non-US officials in an effort to win business.

The agency's FCPA unit is asking whether the companies did business with a list of dozens of intermediaries – some of which have been implicated in other investigations – across various regions, including Asia, Latin America and Africa, said one of the people. All of the people familiar asked not to be named discussing a confidential matter.

The companies that have received the inquiries about their contractors couldn't immediately be identified. They haven't been accused of wrongdoing and the inquiry, which is in its early stages, could result in no action.

A probe by the agency's enforcement division, of which the FCPA unit is a part, can lead to fines or other civil penalties against companies and individuals. The SEC declined to comment.

The inquiries came from staff at the SEC's Fort Worth office, which has been involved in high profile investigations into alleged corruption. One of those led to a \$144 million settlement by Walmart Inc.,which accepted the findings. That same office was also involved in an investigation into software giant Oracle Corp., which in 2022 agreed, for the second time, to resolve corruption charges. Oracle didn't admit or deny wrongdoing.

The letters are part of an enforcement sweep, which typically involves sending questions to multiple companies in a particular industry. The SEC, which shares a mandate with the Justice Department to enforce the FCPA, is focusing across the tech supply chain on companies that sell equipment and/or services to governments, said one of the people.

In a sign of the regulator's increased scrutiny of the sector, the SEC in January accused SAP SE of illegally using intermediaries to win business from public-sector customers in South Africa, Indonesia and other countries. The German firm ultimately paid \$220 million to settle cases with the SEC and the Justice Department.

The tech sector is especially vulnerable because those companies tend to lean heavily on local distributors and partners to sell their products and services around the world. Scrutiny of those entities can cause multiple companies to be swept into a probe.

--With assistance from **Austin Weinstein**.

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April 2, 2024, 11:19 AM PDT

Matt Levine's Money Stuff: A Hedge Fund That's Also a Newspaper

By Matt Levine

Opinion

Bloomberg Law News 2024-04-03T10:38:45239520503-04:00

Matt Levine's Money Stuff: A Hedge Fund That's Also a Newspaper

By Matt Levine 2024-04-02T14:19:18446-04:00

Hunterbrook!

We talked in November about Hunterbrook, a hedge fund that is also a newspaper. These are mostly tough economic times for the news industry, and Hunterbrook hit upon a differentiated media business model:

1. They would start a newsroom (Hunterbrook Media) to publish general news and investigative journalism.
- 2. There's no paywall and no advertising.
- 3. But before each investigative piece is published, the newsroom would send it to Hunterbrook's affiliated hedge fund (Hunterbrook Capital), which could trade on the news.
- 4. The hedge fund's trading profits can — they hope! — pay the journalists' salaries.

One way to think of this business model is that Hunterbrook is essentially an activist short-selling hedge fund, like Hindenburg Research: It investigates companies, finds problems, shorts the companies, and then noisily publishes its investigation to draw attention to the problems. But whereas Hindenburg is straightforwardly a short-selling firm, Hunterbrook's news site is at least theoretically independent of its hedge fund, and if it publishes enough good general news then perhaps it can become more widely read and trusted — and have more stock-price impact — than a pure hedge fund.

Another way to think of this business model is that it is a salary arbitrage. It is expensive to hire hedge fund analysts to investigate companies all over the world. It is cheaper to hire journalists! You might find more tradable signals with 20 journalists than you can with one hedge-fund analyst.

Hunterbrook launched today:

In the coming weeks and months, our investigations will expose a fossil fuel conglomerate supporting a junta, an agricultural giant expanding operations in a region known for forced labor, and an energy company destroying an ecosystem. We believe many of the corporations we will report on are also lying — to customers, communities, partners, shareholders, and the world.

We will be regularly publishing global news reports as well, starting with foreign correspondents on the ground in Mongolia, Namibia, Brazil, Vietnam, Peru, Botswana, and India. ...

We know this may not be seen as traditional journalism, which is generally known for being dispassionate, reliant on inside sources, and indifferent to profitability. We are proudly passionate. We avoid talking to insiders, depending instead on publicly available information. And we believe that good reporting can be good business — when you monetize insights instead of eyeballs and align profits with accuracy.

Smarter people have tried and failed to find a sustainable model for reporting. We know this may not work. We also believe it's a hypothesis worth testing. Whether or not we succeed, we're confident this team will publish meaningful reporting — starting today with what we believe to be the biggest mortgage scandal since the financial crisis.

I have to say that the website feels more like, you know, Hindenburg than Bloomberg? There is a "global news roundup" with economic news from the foreign correspondents, but it is kind of buried on the homepage, which is mostly devoted to the first big investigation, about United Wholesale Mortgage, the largest US mortgage lender. The gist of it is that UWM makes mortgages exclusively through independent mortgage brokers, who purportedly find the best deal for customers by looking at offers from lots of competing lenders, but many brokers send 99% of their business to UWM and can't *really* be doing what is best for customers:

In social media posts, SEC filings, and a Super Bowl ad, UWM tells prospective homebuyers its mortgages come from brokers who are "independent." UWM has said these brokers have "your best interest in mind" and "shop dozens of lenders" to find "the best deal" for homebuyers.

But UWM deploys an arsenal of carrots and sticks to "cultivate 'loyalist' brokers," as the company put it in a presentation to investors. Their methods range from offering those who send UWM loans better placement in their Super Bowl-advertised directory to suing brokers who shop around for better deals from certain competitors.

In 2021, UWM shook up the industry by changing its contracts with brokers to explicitly bar them from doing business with what were then two of its biggest competitors, Rocket and Fairway Independent Mortgage Corporation. ...

The data shows that UWM is rarely the cheapest option for borrowers and certainly not the best deal anywhere close to 99% of the time.

But of course I was most interested in the notes at the end of the report, in which Hunterbrook explains its economics. For one thing, "Hunterbrook Capital took the following positions: The fund went short \$UWMC, long \$RKT, and purchased derivatives." UWM Holdings Corp. fell about 7.6% just after the report was published, though then it recovered most of those losses; Rocket Cos. was up a bit on the report.

Short selling is not, however, the only business model for investigative-journalism-that-is-also-a-hedge-fund, and Hunterbrook is looking at others. There's the obvious lawsuit:

Hunterbrook Media and its affiliates have ... submitted data analysis and research — as well as the planned date of publication — to Boies Schiller Flexner LLP, a litigation firm known for winning billions in damages from companies. Hunterbrook's nonprofit affiliate has entered an agreement with BSF in exploration of a class action lawsuit against UWM seeking restitution for homebuyers. If you think you are paying too much on your mortgage, visit WasIRippedOff.com to learn if you might have used an independent broker who doesn't shop and contact BSF.

There's the only slightly less obvious "everything is securities fraud" lawsuit :

Upon publication, Hunterbrook Media plans to share this article and the data with shareholder litigation firms whose clients own \$UWMC shares and may have claims due to UWM's governance and performance, including paying the CEO and his family over \$600 million in annual dividends despite reporting a \$70 million loss in 2023 by consistently missing SPAC revenue projections.

And there's the US Securities and Exchange Commission's whistleblower program:

Two of the authors of this article filed a whistleblower report to the S.E.C. represented by a former S.E.C. Commissioner.

Yeah. If you can find out bad news about companies, there are a lot of ways to make money. Selling ads is not one of the better ones!

Ajax

Here is an insider trading hypothetical that I have never considered before. You are a talented business executive with a high profile. A public company has publicly announced that its chief executive officer is leaving and that it is looking for a replacement. You think you'd be perfect for the job. The company calls you in for an interview. The interview goes well. "We'll let you know in a few weeks," they say, but you have a joint good feeling that:

1. they will give you the job and

- 2. you will be good at it.

So you go buy some shares of the company's stock, as a bet that (1) they'll hire you as CEO and (2) the stock will go up as the market realizes how good you are at the job.

Is that insider trading? I mean, I guess. You have some nonpublic information (you were in the interview and know it went well), and that information is probably material to the average shareholder (having a CEO in place is probably good for the stock, and if you are a high-profile person maybe your name will move the stock). The nonpublic information is not purely about your own intentions. Still there is something a bit soft about it. You're not betting that the stock will go up because you have secret information about earnings or a merger. You're betting that the stock will go up because you will turn out to be good at your job. Isn't that what you're supposed to do?

Anyway:

AFC Ajax NV suspended its Chief Executive Officer Alex Kroes and said it plans to dismiss him after "strong indications" of insider trading.

The club alleges that Kroes, who was also the chairman of Ajax's executive board, purchased over 17,000 shares of the club a week before his appointment was announced on August 2.

"Kroes' actions are not in line with what Ajax stands for," said Michael van Praag, chairman of the club's supervisory board, in a statement Tuesday. "The timing of his share purchase indicates insider trading. Such a violation of the law cannot be tolerated by a publicly listed company, especially when it involves the CEO." ...

Dutch state broadcaster NOS reported that Kroes did not accept Ajax's decision to suspend him and will seek an independent opinion from the market regulator, known as the Dutch Authority for the Financial Markets.

"I believe that you radiate confidence to your fellow shareholders and stakeholders when you buy shares and therefore also run financial risks yourself," Kroes was cited as saying by NOS. "As much as I am convinced of my good intentions, I now understand, after consulting with my lawyer, that I did not make the most sensible decision," he said.

Yeah I agree with him? I respect the intentions! But it was not all that sensible.

Should index funds be illegal?

There are all sorts of rules about who is allowed to own companies. Most generally, there is antitrust law: If a company in any industry wants to buy another company in that industry, it needs to get regulatory approval to make sure the acquisition won't harm competition. But there are also rules that are specific to individual industries. In the US, if you want to own a casino or a cannabis business or a real estate investment trust or a shipping company or a law firm or a nuclear power plant or a bank, you'll need to meet some requirements or seek the approval of some industry regulator.

What does it mean to own a company? Well, obviously, if you want to buy 51% of the stock of a company, that will probably trigger these rules. But if you buy 49% of the stock of a company whose other shareholders are dispersed retail investors, you will in every practical sense control that company. So generally the rules are triggered at some lower threshold than 50%; the regulators will want to be notified if you're buying some smaller amount — often 5% or 10% — of a company in their industry, so they can check you out.

But of course BlackRock Inc. owns more than 5% of more or less every US public company: It manages trillions of dollars of US equity investments, much of it in index funds, so it ends up owning big chunks of every company. And so do Vanguard Group and State Street Corp., the other “Big Three” index-fund managers. Between them, the Big Three own something like 20% of the typical public company.

“Yeah, but, not *really*,” everyone used to say: Vanguard wasn't, like, going around buying shares in casino companies because it planned to control those casinos and influence how their slot machines were run. It was buying casino companies because they were in the index. A state gaming regulator would feel a bit silly holding a suitability hearing to ask Vanguard Group if it has any Mafia ties; Vanguard was just obviously not who was *meant* to be covered by these rules. And so often these regulatory regimes will have some sort of exception for passive minority owners, pure investors rather than control-seeking owners, even if those passive investors own a lot of shares.

But then things changed. The Big Three kept getting bigger, so their ownership of every company grew. And they realized that, as fiduciaries for their clients, they couldn't be purely passive shareholders. They could be passive in their investment decisions (buying whatever is in the index), but they are shareholders with voting rights, and they have to make informed voting decisions that they think will maximize the long-term value of their investments. And as big shareholders, it makes sense for them to meet with the managers of their companies, to make sure they are doing a good job and to inform their voting decisions.

And the Big Three — or at least some of them — started *talking* about all of this; they started describing their “stewardship” of public companies as a thing that they did to add value for clients.

In doing so, they sometimes took positions on controversial topics. If you are worried about the effects of climate change, you might think that *all* of your investments can maximize their long-term value by preparing for climate change. You might send a letter to the chief executive officers of all of your portfolio companies saying, like, “hey get ready for climate change.” You might release that letter publicly, to demonstrate that you are doing good and careful stewardship. And then, because climate change is a politicized issue in the US, people who *don't* think that it is a serious worry will get mad at you.

Also, in 2014, José Azar, Martin Schmalz and Isabel Tecu published a paper on “Anticompetitive Effects of Common Ownership,” arguing that, when the same investors own a lot of stock in all of the companies in an industry, that has the effect of pushing up prices for that industry’s product. Intuitively, if every airline has different owners, then each airline will be tempted to cut prices to win market share from its competitors. But if every airline has the same owners, then that is a negative-sum game for the owners; cutting prices to win market share just takes money out of the owners’ pockets. The implication is that *antitrust law*, which — like every other regulatory regime — tended not to worry about index funds, *should* worry about them, because actually their ownership matters for antitrust reasons.

This has remained controversial for a decade: The empirical evidence for price impacts is mixed, and also it is kind of annoying to think about how you’d fix it. (“Should index funds be illegal?” is my usual shorthand for this topic, and that sounds bad!) But it struck a nerve, in part because it is sort of fun and counterintuitive and in part because the arguable impacts are so large. (Trillions of dollars! Every company!)

But this idea has also been very *fruitful*. You can take these basic ideas and apply them in lots of ways. In particular there are two easy moves to extend these ideas:

1. Instead of saying “companies owned by the same shareholders collude to drive up prices,” you can say “companies owned by the same shareholders collude to _____,” and fill in the blank with lots of different things with some prisoner’s-dilemma quality. In general, companies have trouble coordinating with each other, but if they have the same owners maybe it’s easier. We talked once about a paper finding that companies with common shareholders evade taxes more. Maybe they collude to suppress wages? Good things, too, though: Maybe companies with common owners coordinate to pollute less, or to deploy pandemic vaccines faster, because the common owners internalize all of the (good and bad) externalities that the companies create.
- 2. Instead of saying “actually antitrust law should worry about index-fund owners,” you can say “actually _____ law should worry about index-fund owners,” and fill in the blank with any other sort of ownership regulation. In particular, if you are a US politician who dislikes the Big Three’s stances on environmental and social issues, you might have some levers to pull here.

So the Wall Street Journal reports:

Banking regulators are scrutinizing whether index-fund giants BlackRock, Vanguard and State Street are sticking to passive roles when it comes to their investments in U.S. banks. ...

BlackRock and Vanguard each hold more than 10% of the shares at many banks, a threshold that normally determines whether an investor is assumed to have a controlling interest in a lender, while State Street also holds a number of sizable stakes. ...

At present, regulators in effect exempt the biggest asset managers from a host of onerous banking rules—such as needing permission when they acquire shares above the 10% threshold—as long as the firms remain passive. That means they shouldn't exert influence on management or boards, including by imposing political views, though they can vote in shareholder elections.

The existing approach could soon change, spurred by members of the Federal Deposit Insurance Corp. One board member, Jonathan McKernan, told *The Wall Street Journal* he has developed a plan to enhance the FDIC's monitoring of the firms and hopes it will receive a vote from the board over the coming weeks. He is pressing for an order to pause the firms' investments in FDIC-regulated banks above the 10% threshold while the agency examines the matter.

The rules actually are pretty onerous. Intuitively, if you own a bank, you shouldn't do stuff like borrow money from that bank on sweetheart terms, and so US banking regulation has rules restricting a bank's ability to lend to its owners and requiring bank holding companies (companies that own banks) to be well capitalized and serve as a source of strength to that bank.

Does BlackRock own all the banks? Ten years ago everyone would have said "hahaha good one, you've got a technical point, but come on, no." Even four years ago, we talked about guidance from US banking regulators saying that they would not actually subject mutual-fund owners to all of those rules. But now it is more of a live question.

Shareholder Vote Exchange

We have talked a couple of times around here about a financial novelty item called the Shareholder Vote Exchange, which was in theory a way for people to buy and sell the *votes* associated with their shares of publicly traded stock. If you own 1,000 shares of Walt Disney Co., you probably don't really care about voting those shares for shareholder proposals or even contested director elections, but at Disney *somebody* does in fact care about getting a lot of votes. Supposedly they would pay 20 cents per vote, though I have my doubts.

The Shareholder Vote Exchange has a website, and got some media attention, because it is a fun idea. You could imagine it being a *real* idea: You could imagine a large active market for stock votes, separate from but related to the market for actual stock, just as there currently exists a large market for stock *lending*. I suppose there might be legal or other obstacles to that market really becoming big or important. But there are no such obstacles to *imagining* it. In a frictionless world, maybe this would be a cool thing that existed.

But in the real world SVE's market for Disney votes — votes in a close, expensive, high-profile proxy fight in a company with a lot of retail ownership, which should be the best possible case for buying votes — seems to have been quite small and hypothetical. And on Sunday SVE emailed customers to say that it was winding down operations. "There's clearly a market opportunity here, but we weren't in a strong position to achieve its full potential," its CEO told me. Ah well.

Costco hot dog

I think there are roughly four ways to make a stablecoin, a crypto token that has a stable value of \$1:

1. A dollar-backed stablecoin: You put in \$1, you get a stablecoin, the issuer puts the dollar somewhere safe and promises to give it back to you in exchange for the stablecoin.
- 2. An overcollateralized stablecoin: You put in \$2 of Bitcoin or whatever, you get a \$1 stablecoin, the issuer puts your Bitcoin collateral somewhere safe and promises to give it back to you in exchange for the stablecoin.
- 3. An algorithmic stablecoin: No, bad.
- 4. A stablecoin of pure will: You list a token on a crypto exchange, its name is like "Stable Value Dollar Coin," and the marketing materials say "the point of Stable Value Dollar Coin is to always be worth a dollar." And then you just hope that people will pay a dollar for it, because you told them to.

I am not aware of any important examples of No. 4, but I feel like it lurks in the back of the mind of a lot of crypto. A lot of crypto tokens, after all, have value only through collective adoption. One way to encourage that adoption is to get people to think that the token's value is unbounded: You buy Dogecoin because you think Dogecoin will go to the moon, and if enough people buy it then it will. Another way to encourage that adoption, though, is to *associate* the token's value — even in just a loose meme-y way — with something else valuable. If you name your crypto token after Elon Musk's dog, or the Greek letter omicron, then maybe it will go up when Musk's dog or omicron are in the news. I once proposed that a way to put private-company stocks on the blockchain would be to issue tokens with the *names* of those private companies, and just sort of casually hope that people will buy the tokens when they think positive thoughts about the companies.

Anyway someone pointed me to a Solana memecoin called "Costco Hot Dog," or COST, whose schtick is:

1. A Costco hot dog famously costs \$1.50.
- 2. This is a Costco Hot Dog. (Token.)
- 3. Therefore this should be worth \$1.50.

"The greatest meme against inflation has arrived," says its X account. Sadly it's trading at about \$0.03 but I guess that means there's a lot of upside.

Things happen

Disney Investors Look Beyond Board Battle as 'Cheap' Stock Soars. McKinsey Offering Some Staff Nine Months' Pay to Leave Firm. Two Members of Warner Bros. Discovery's Board Resign to Resolve Antitrust Concerns. The New Magic Number for Retirement Is \$1.46 Million. How TikTok Is Juicing Home Sales. Gentlemen's club famous for 'nieces' night' considers admitting Crispin Odey.

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- 1. When we first talked about Hunterbrook, this was a major topic: Lots of traditional investigative journalism *does* involve talking to insiders and getting scoops, but that's a problem if you plan to trade on your scoops. And in fact Hunterbrook's first report seems to be based entirely on public data rather than anything that might raise insider-trading concerns.
- 2. Keep an eye on this one. I quoted above from the editor's letter, saying "our investigations will expose a fossil fuel conglomerate supporting a junta, an agricultural giant expanding operations in a region known for forced labor, and an energy company destroying an ecosystem" and "we believe many of the corporations we will report on are also lying." If a fossil fuel conglomerate supports a junta, and that fact comes out ... is that bad for the stock? I dunno, maybe. But if the stock drops a little bit, can you sue for securities fraud, for lying about the junta? Everything is securities fraud! That might help make the business model work.
- 3. I put this sentence in the hypothetical because arguably things are a bit different if there is a current CEO and you are secretly being considered to replace her. "The other CEO is out, and I am in" is two pieces of material news, only one of which is about you; the cleaner hypothetical is "I am getting hired into an open spot." In fact Ajax's former CEO left last May, so the spot was open when Kroes was buying in July.
- 4. One thing I should point out is that it's not really about index funds per se; giant diversified investment firms would run into these problems even if they did not track an index. If you own trillions of dollars of equities you are going to own large chunks of lots of overlapping companies. Germán Gutiérrez and Thomas Philippon use the term "quasi-indexers" to cover investors with "diversified holdings and low portfolio turnover," meaning both index funds but also other large diversified active funds. (It's not the same as "shadow indexers," meaning active funds that don't do much active management: You can be a quasi-indexer even if you have a large active share and a lot of alpha, the point is just that you own a ton of diversified stocks.)
- 5. Arguably algorithmic stablecoins and overcollateralized stablecoins are sort of the same thing, except that algorithmic stablecoins have highly correlated collateral.
- 6. Obviously the problem with the Costco Hot Dog token is that if you believe in its \$1.50 value and you buy it at \$1.49, you have limited upside (no one's gonna pay \$1.52!) and lots of downside (it really could go to zero). This seems like a problem for a purely unbacked, speculative asset with a capped price. Though of course the cap is not really a cap either. It's just as funny if you pay \$20 for it, funnier even.

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April 3, 2024, 11:28 AM PDT

Trump Media's Founders Are Fighting

By Matt Levine

(Bloomberg Opinion) --

Trump SPAC

Probably Donald Trump should have just issued a crypto token, called it "DJT," gone around saying "this is the crypto token of me, Donald Trump," kept 90% of it for himself, and let it trade. People who like Trump would buy it, it would go up, his stake would be worth billions of dollars, and he could sell tokens to raise money for himself. Just a straightforward memecoin. I suppose the problem with this is that Trump has a lot of older, less crypto-native fans, and this would not be an effective way to tap them for money.

But you can get arbitrarily close to this – while attracting a more traditional investor base – by issuing a stock called DJT, and Trump did. DJT – the ticker symbol of Trump Media & Technology Group Corp. – is a meme stock with a market capitalization, as of yesterday's close, of about \$7 billion. It is the stock token of him, Donald Trump, and he owns about 58% of it. People who like Trump bought it, it went up, his stake is worth billions of dollars, and he will eventually be able to sell shares to raise money for himself, though there is a six-month lockup.

It is a small technical problem that you probably cannot *just* do this. You cannot *just* issue stock that is like "this is the stock with my name on it, go buy it!" You can't start a company and take it public to be *purely* a meme stock. I cannot give you a really crisp explanation of why not. I am not aware of any provision of US securities law that is like "if you raise money for a public company, it has to do something, or at least try." It's just, you know. If you say "I am launching a company with my name on it, and that's it," then underwriters probably will not want to work with you, and lawyers will be confused writing the prospectus, and eventually the US Securities and Exchange Commission will have to sign off on the prospectus and will find reasons not to.

But, again, you can get arbitrarily close. You can take a teeny tiny operating business, *wrap* it in a meme stock, and sell that. The most famous example – it's not exactly a meme stock, but close enough – was the New Jersey deli that had \$13,976 of revenue and a \$2 billion market capitalization. Or, I mean: There was a deli, it had \$13,976 of revenue, it was the only operating business of a public company, and that public company had a \$2 billion market capitalization. But it wasn't like "people were paying \$2 billion for that deli." The stock traded at \$2 billion, for *other* reasons, and also there happened to be a deli. The deli was *almost* irrelevant to the stock, but not quite: If there wasn't a deli – if the public company couldn't put out filings with some description of some business and some financial statements – then there couldn't be a stock. The stock's *price* had nothing to do with the deli, but the stock's *existence* required the deli.

Similarly, DJT (the stock) is a \$7 billion token, while Trump Media & Technology Group (the company) is fairly small; last year it lost \$58 million on \$4 million of revenue. ¹ ("About as lucrative as a top Substack newsletter," I called it, "but vastly more expensive to run.") But if you take a small business *with Trump's name and ownership* and wrap it in a stock, you can make a big meme stock.

We discussed this the other day, but it creates a lot of strange corporate issues. Consider the deli. What sort of salary would you expect to earn for running the deli? One way to answer that question is to consider how much proprietors of other delis with \$14,000 of annual revenues earn. (Not much!) Another way to answer the question is to consider how much chief executive officers of other \$2 billion public companies earn. (More!) Similarly with DJT/TMTG: Should its executives get paid like the executives of a company with \$4 million of revenue, or one with \$7 billion of market cap? 2

Or here is a story from Bloomberg's Jef Feeley about a fight over the division of the spoils:

Donald Trump has sued two co-founders of his newly public Trump Media & Technology Group Corp., claiming they set the company up improperly and shouldn't get any stock in it.

In the latest legal skirmish over who gets how much of the hot but flailing meme stock, Trump alleges that Andy Litinsky and Wes Moss violated an agreement about the setup and don't deserve their 8.6% stake, currently valued at \$606 million.

The lawsuit, which was filed on March 24 in Florida state court and hasn't previously been reported, comes after the pair brought their own suit against the former president in Delaware Chancery Court over their promised stake in the social media company.

Here is the complaint, which basically alleges that Litinsky and Moss – "former contestants on President Trump's famous television show, *The Apprentice*" – did an incompetent job of launching TMTG's media business and finding a merger partner. And, fine, I can believe that. (They did manage to find an *illegal* merger partner.)

But I think that the broader point here is that Litinsky and Moss were hired to set up TMTG's rather small and speculative *business*, and it is absurd to reward them with 8.6% of DJT's much larger *meme stock*. My favorite part of the complaint is not actually in the complaint, but in the exhibit at the end, in which Trump's lawyers reproduce the Services Agreement between him and Litinsky and Moss. It just has a very small-business feel, you know? Their role included "ensuring that TMG becomes an established entity registered under the laws of the state of Delaware ... and creating and implementing a strategic plan to identify, exploit, and commercialize targeted media and technology opportunities in social media, internet infrastructure, podcast, digital streaming, mobile apps, book publication, and television production." There was not much vision; their job was to set up the company and look around for something for it to do.

A schedule to the agreement lists "guidelines for reimbursable expenses." Litinsky and Moss were entitled to reimbursement for "economy, coach or supersaver fares" on flights and trains, though "21-day advance purchase is expected, when possible." Reasonable hotel bills were reimbursable, "where under \$150.00 per night is typically reasonable for most cities." Laundry and dry cleaning were "not normally reimbursed for planned trips of less than 1 week." They had to submit receipts for "any individual expenditure of \$10.00 or more." This is not Facebook Inc.'s charter, is what I am saying here. This is "set up a small business for me, but don't spend more than \$150 a night on hotels." And now they might get \$600 million!

Hunterbrook

I wrote yesterday that Hunterbrook, the hedge fund that is also a newspaper, is a sort of salary arbitrage. Hunterbrook Media is a news organization that employs reporters to write investigative stories, and then it gives those stories to Hunterbrook Capital, its affiliated hedge fund, to make trades before the stories are published. If the stories are right and market-moving, then the hedge fund will make money, which it can use to pay for the news organization. I wrote: "It is expensive to hire hedge fund analysts to investigate companies all over the world. It is cheaper to hire journalists!"

But Hunterbrook also has another, much funnier expense arbitrage. It goes like this:

If you are a hedge fund conducting due diligence on a company, you will probably want to speak to experts. You might pay an expert-network firm to put you in touch with industry experts. You might engage consultants to evaluate the business. If you think the company might have legal issues, you will talk to specialist lawyers to help evaluate those issues. In each case, you will call up the experts and say "hi, I work at Hedge Fund X, we are evaluating Company Y, and we'd like to get your views." And those experts will probably say something like "sure, that will be \$2,000 per hour with a \$10,000 minimum." And you'll say "yes perfect send an invoice to our billing department." You have a budget for this stuff.

If you are a newspaper reporter investigating a company, you will probably want to speak to experts – industry experts, lawyers, etc. You will call up the experts and say "hi, I am a reporter for the Z Daily News, I am writing a story about Company Y, and I'd like to get your views." And those experts might say something like "sure, I would love to get my name in the paper, here is a pithy quote." Or they might say "I don't want to be quoted, but on background ..." and then tell you stuff. Or occasionally – but not that often – they might say "sure I'll talk to you, but I'll need \$2,000 per hour with a \$10,000 minimum." In that case, you will say "oh no, you don't understand, I am a *journalist*, it is unethical for me to pay sources." And then they'll probably hang up, which is fine; you'll call someone else who wants to be quoted.

You see the arbitrage! Hunterbrook's consulting budget is probably smaller than that of other hedge funds.

Yesterday Hunterbrook Media published its first big investigation, of United Wholesale Mortgage, alleging that "UWM's conduct could constitute fraud and run afoul of laws passed after 2008 to protect borrowers." Hunterbrook Capital shorted UWM's stock. If you want to figure out if a company's conduct runs afoul of laws, one thing you might do is call up a lawyer and say "hey is this conduct legal?" If you are a hedge fund and you do that, the lawyer will send you a bill. If you are a media organization, maybe she won't.

And so in fact I heard yesterday from a lawyer who got that call (actually email) from Hunterbrook, and who replied to the effect of "sure here are my rates," and they replied to the effect of "no our ethics policy does not allow us to pay sources." From Hunterbrook's website:

At Hunterbrook Media, we abide by the five traditional standards re: source relationships, adapted from the New York Times:

1) Financial Interactions: Don't pay sources, and don't let them pay you (or pay for you).

The lawyer replied to the effect of "man you are not fooling me, when investment firms call me for analysis I charge them." They did not hire him. Also he forwarded me their exchange, commenting: "Normally, conversations in search of legal counsel are subject to confidentiality obligations under legal ethics, but I don't see how they can claim they were seeking legal advice or that the inquiry was confidential. They viewed me as a 'source.'" It's true! They weren't looking to hire him as a lawyer, but to interview him as a source, so he has no confidentiality obligations to them. If they had paid him, he would.

In other Hunterbrook news, it disclosed yesterday that its "nonprofit affiliate has entered an agreement with [Boies Schiller Flexner LLP] in exploration of a class action lawsuit against UWM seeking restitution for homebuyers." The class action complaint was filed yesterday:

Over the past three years, UWM has issued nearly \$39 billion in mortgages through "independent" brokers *who refer 99% of their business* to UWM. And during last year alone, more than 8,000 so-called "independent" brokers funneled 99% or more of their mortgages to UWM, worth at least \$11.7 billion. In short, those brokers are not shopping around to other lenders. They are not seeking the best prices for their principals. They are instead captive to UWM. Through a series of intentional and illegal practices, UWM has thus corrupted a large swath of "independent" brokers and turned them into the functional equivalent of the "loan officers" that retail financial institutions use. These corrupted brokers are in essence employees in the UWM enterprise. And while doing that, both UWM and the corrupted brokers have concealed this fact from consumers who have been led to believe their "independent" brokers are working for them and shopping around to multiple lenders.

The consequences to UWM's borrowers have been devastating. UWM rarely offered the best available pricing throughout the past four years and routinely charged fees that substantially exceeded their competitors' offerings to the tune of billions of dollars. While UWM's borrowers believed that their "independent" brokers were working for them, in reality, UWM induced thousands of these brokers to participate in their funneling scheme and enterprise by successfully infiltrating and corrupting their duties to the Plaintiffs and the class.

Presumably Boies Schiller plans to get paid.

Blue Owl

My stupid story of private credit is:

1. Once upon a time, there were insurance companies, which had long-dated liabilities (annuities, life insurance) and funded them by buying and holding corporate bonds. This was a boring business: You bought the bonds, you literally clipped literal paper coupons to collect interest, and eventually the bonds matured and you got your money back in time to pay your liabilities.
2. Then Bill Gross, a guy clipping coupons in the bond department at an insurance company, invented bond *trading*. It turned out that you could make more money by buying undervalued bonds and selling overvalued ones than you could by just buying and holding to maturity.
3. This became a big business that was entirely separate from insurance: People (prominently including Gross) set up big bond investment companies that actively managed bond portfolios on behalf of clients, insurers and endowments and mutual funds and others.
4. Over time, the bond market became more *efficient*: All this liquidity and competition probably lowered borrowing costs for companies.
5. At some point, people realized that, now, you can actually make more money by making loans and hold them to maturity: You collect an illiquidity premium for buying debt that doesn't trade, you structure loans to meet borrowers' needs so you can charge them a bit more than the bond market, and maybe you face a bit less competition. And so private credit grew up as an alternative to the bond market.
6. A problem with this business is that, if you have outside investors, they might ask for their money back at any time, and if you mostly own illiquid private loans that you can't sell, that's a problem.
7. What you want is a bunch of actuarially predictable, long-dated liabilities. Like an insurance company.
8. So you buy an insurance company.
9. The result is insurance companies with long-dated liabilities that are funded by buying and holding private debt.
10. Somehow this is not as boring a job as it was in Step 1? And it pays better.

This story is wrong in many details, and dumb, but it does seem sort of directionally accurate. The only business models are bundling and unbundling, and on a long enough time scale all business stories are about both. Anyway:

One of Wall Street's fastest-growing firms is pushing into one of the hottest corners of finance.

The lender Blue Owl Capital said Wednesday it is buying Kuvare Asset Management, an asset manager tied to the insurance industry. The deal gives Blue Owl exposure to the sought-after insurance market, which the private-markets investment firms have flocked to in recent years in their quest for more assets to manage.

Kuvare manages the assets of Kuvare UK Holdings, a life-and-annuity insurance company, and those of other insurers. Blue Owl is paying \$750 million for Kuvare Asset Management and buying about \$250 million of preferred equity in Kuvare UK Holdings, confirming a report from The Wall Street Journal earlier Wednesday. ...

Apollo Global Management sparked Wall Street's push into insurance when it helped create the insurer Athene in the aftermath of the 2008-09 financial crisis and built a massive credit business to manage its assets. Other private-equity firms such as KKR, Blackstone and Brookfield have since bought insurers or struck deals to manage their assets.

In the olden days, buying debt at an insurance company and holding it to maturity was sleepy and boring. Now one of Wall Street's fastest-growing firms wants to do it because it is one of the hottest corners of finance.

Endeavor

In some ways, if you want to acquire a public company in a merger or acquisition, it helps to already own most of the stock. In other ways that makes it harder. Here's Endeavor:

Private-equity giant Silver Lake agreed to take private Endeavor Group Holdings in a deal that values the owner of talent agencies WME and IMG at \$13 billion.

As part of the deal, Silver Lake agreed to pay \$27.50 in cash for each Endeavor share it doesn't already own. The private-equity firm already had a stake of more than 30% in Endeavor, according to FactSet.

Endeavor shares were up 2.3% to \$25.87 in afternoon trading.

The deal builds on a string of investments Silver Lake has made in Endeavor, from its initial 2012 investment in WME to Endeavor's 2021 initial public offering.

Silver Lake owns about 30% of Endeavor, but it has super-voting stock, giving it about 70% of the total voting power. Endeavor's chief executive officer Ari Emanuel and chairman Patrick Whitesell also own super-voting stock and are part of the buyout group; they will keep their stock in the newly private Endeavor.

This creates a conflict of interest: Silver Lake and the executives would like to buy the rest of Endeavor as cheap as possible, and they already control it. The other shareholders would like to get paid as much as possible, but Emanuel runs the company and Silver Lake controls the vote. If it proposed a merger at \$0.01 per share, that would get majority approval from shareholders.

Of course everyone knows this, and there are rules and safeguards to protect the minority holders. The main one is that Endeavor's board of directors set up a special committee of independent directors, who negotiated the deal on behalf of the independent shareholders. They got \$27.50, not \$0.01.

Still, these deals are always controversial and often lead to lawsuits claiming that the special committee did not *really* protect independent shareholders and that the insiders got a sweetheart deal. (We have discussed this in the Tesla/SolarCity and Sculptor deals.) I feel like the Endeavor lawsuit will be fun? Here is Endeavor's 8-K announcing the deal, which notes that it has already gotten shareholder approval: Silver Lake, Emanuel and Whitesell have already voted their shares to approve the merger, and they control a majority of the vote.

But it also lists the various sweeteners that Emanuel, Whitesell and other executives are getting in the deal, including new equity deals and royalty payments. Also they each get a plane:

Following the effective date of the Mergers, ownership and operation of one of the private planes owned by the Company and its Subsidiaries (other than TKO Group Holdings, Inc. and its Subsidiaries) (collectively, the "Employer Group") will transfer to Mr. Emanuel. The Employer Group will pay or reimburse him for reasonable costs and expenses related to the use of the plane for business purposes of the Employer Group. ...

Following the Effective Time, ownership and operation of one of the Employer Group's private planes will transfer to Mr. Whitesell. The Employer Group will pay or reimburse him for reasonable costs and expenses related to the use of the plane for the Company and WME business purposes.

The lawsuit kind of writes itself. The minority shareholders will complain that the Silver Lake deal undervalues the company, that the board of directors could have gotten more value for shareholders but instead let Silver Lake and the executives get a sweet deal for themselves. The minority shareholders didn't each get a plane! But the executives did.

Things happen

Fed Blocks Tough Global Climate-Risk Rules for Wall Street Banks. Venture capital reckons with the end of 'megafund' era. Business Schools Are Going All In on AI. Musk's xAI is Poaching Engineers From Tesla. Canada's RBC Struggles to Go Green While Financing Oil. Beyond memes: Robinhood seeks to broaden its appeal. Donald Trump's Lenders of Last Resort: Subprime Auto King and Online Bank. Dividends outstrip cash flows at Blackstone's flagship property fund. "Billionaire Steve Cohen said he expects that more businesses will move to a four-day work week, one of the reasons he's made investments in golf." *Bluey*. Sticks.

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1. And Josh Marshall points to a filing in which Trump Media says that it "does not currently, and may never, collect, monitor or report certain key operating metrics used by companies in similar industries," including "signups, average revenue per user, ad impressions and pricing, or active user accounts including monthly and daily active users."
2. In fact, its CEO, Devin Nunes, got \$750,000 last year.

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Trump Sues Truth Social Company Co-Founders to Zero Them Out (1)

By Jef Feeley

- He claims they bungled their duties, forfeiting their stock
- Trump Media shares plunged less than a week after going public

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Trump Sues Truth Social Company Co-Founders to Zero Them Out (1)

By Jef Feeley2024-04-02T15:56:51750-04:00

- He claims they bungled their duties, forfeiting their stock
- Trump Media shares plunged less than a week after going public

Donald Trump has sued two co-founders of his newly public Trump Media & Technology Group Corp., claiming they set the company up improperly and shouldn't get any stock in it.

In the latest legal skirmish over who gets how much of the hot but flailing meme stock, Trump alleges that Andy Litinsky and Wes Moss violated an agreement about the setup and don't deserve their 8.6% stake, currently valued at \$606 million.

The lawsuit, which was filed on March 24 in Florida state court and hasn't previously been reported, comes after the pair brought their own suit against the former president in Delaware Chancery Court over their promised stake in the social media company.

The legal fight is playing out amid wild swings in shares of Trump Media, which began trading last week after it merged with a special purpose acquisition company, known as a SPAC. The stock dropped 21% Monday after Trump Media disclosed in a securities filing a \$58 million loss and a relative trickle of revenue for 2023, and reiterated a warning that it needed the money from the SPAC deal to keep operating.

The stock was up 6.1% at \$51.63 at 3:53 p.m. in New York on Tuesday.



A pedestrian takes a photo of a screen displaying Trump Media stock information in New York on March 26.

Photographer: Yuki Iwamura/Bloomberg

Trump claims Litinsky and Moss failed to properly set up the corporate governance structure of Trump Media, launch his Truth Social platform and find an appropriate merger partner. That failure hurt the company, he argues. He says they then “began ceaseless attempts to thwart” the blank check deal in the struggle for their respective stakes. In their own suit, the two say Trump was planning to seek millions of extra shares, diluting their stake.

Lawyers for Litinsky and Moss didn’t return emails seeking comment on Trump’s suit.

Read More: Trump’s Net Worth Drops \$1 Billion as Social Media Firm Sinks

Trump, the presumed Republican nominee in November’s presidential election, has seen his net worth soar due to his Trump Media stake, which he could ultimately use to pay off hundreds of millions of dollars in legal judgments against him — though he is currently unable to sell those shares for six months due to a lockup. Even with its slump, Trump Media currently has a market capitalization of \$7.05 billion, and the larger his piece of it, the more money he could get. If the shares spiral, his payout would shrink.

Trump owns 57% of the company, according to the filings with the US Securities and Exchange Commission, with his stake now worth \$4.02 billion on paper.

Read More: Keeping Up With the Trump Trials

The Delaware judge, Sam Glasscock III, declined to fast-track Litinsky and Moss's suit after Trump's lawyers agreed to avoid lessening the value of their shares. But at a hearing Monday the pair told the judge they plan to seek an order barring the Florida suit from going forward while they litigate claims that Trump planned to target their stake all along.

The judge said he was "gobsmacked" to learn of Trump's Florida suit — which he filed instead of bringing counterclaims against the two in Glasscock's own courtroom — and would consider possible sanctions against the former president in the Delaware case.

The Florida case is Trump Media & Technology Group v. United Atlantic Ventures, Florida Circuit Court, 12th Judicial Circuit (Sarasota).

(Adds current value of stake held by Litinsky and Moss in second paragraph and stock action in fifth.)

--With assistance from **Bailey Lipschultz**.

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Trump-and-dump: Speculators bet on Truth Social 'meme' stock

 [reuters.com/markets/us/trump-and-dump-speculators-bet-truth-social-meme-stock-2024-04-02](https://www.reuters.com/markets/us/trump-and-dump-speculators-bet-truth-social-meme-stock-2024-04-02)

Abigail Summerville

The Truth social network logo is seen on a smartphone in front of a display of former U.S. President Donald Trump in this picture illustration taken February 21, 2022. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

April 2 (Reuters) - Mohammed Al Shalloudi, a 21-year-old graduate data analyst in the United Arab Emirates who invested in Donald Trump's social media company, has little in common with the former U.S. president's political supporters.

Al Shalloudi bought shares in Trump Media and Technology Group (TMTG) (DJT.O) , opens new tab, but not because he believes in the business of its app Truth Social or because he is a Trump fan. He is part of an army of speculators seeking a quick lucrative trade whose bets on TMTG have made it one of the most overvalued and actively traded U.S. stocks.

Al Shalloudi said he bought at \$37 per share and cashed out late last week at \$65 per share, clinching a 76% return on his \$4,000 investment in just a few days. TMTG's stock closed on Monday at \$48.66 after listing on Nasdaq last week in a deal that valued it at just \$10 per share.

"It was a no-brainer. You buy the stock, wait for Trump's fan base to hear about it, and enjoy your profit," Al Shalloudi said.

Reuters interviews with more than a dozen investors that posted about their positions on social media platforms such as Reddit (RDDT.N) , opens new tab and X found that most were looking to score a quick profit.

They bet that Trump supporters' fascination with the stock was untethering TMTG's stock price from the company's business fundamentals.

TMTG's current valuation of approximately \$6.6 billion is equivalent to about 1,600 times the loss-making company's revenue in 2023 of \$4.1 million, according to LSEG data.

No other U.S. company of similar market capitalization has such a high valuation multiple, the LSEG data shows. This is despite TMTG warning investors in regulatory filings that its operational losses raise "substantial doubt" about its ability to remain in business.

The stock is also among the most actively traded, according to Trade Alert data. While social media posts indicate some Trump supporters have bought TMTG shares, a lot of the trading volume is coming from speculators looking for a quick flip.

"I invested \$10,000 last Tuesday because MAGA is crazy and they will pump the stock," said Sarah, a 21-year-old software developer from Pennsylvania who asked for her last name not to be published. MAGA stands for Trump's campaign slogan, 'Make America Great Again'.

The appeal of TMTG to speculators helps explain the stock's volatility. The shares have risen as much as fivefold in the last two months and are currently valuing Trump's majority stake in the company at about \$3.8 billion.

A bout of this volatility came on Monday, as the stock lost more than fifth of its value. It remained unclear whether hedge funds and other Wall Street firms will get comfortable with such risks to join the speculation. Big investment firms will be required in a few weeks to disclose what, if any, their position in TMTG was as of the end of March.

Reuters Graphics

Most rallies of stocks that trade based on hype among individual investors -- so-called 'meme' stocks such as GameStop (GME.N) [opens new tab](#) and AMC Entertainment (AMC.N) [opens new tab](#) -- have fizzled after a few weeks or months. Trump is not allowed to sell or borrow against his TMTG stake for six months, so the rally must last at least that long if he is to capitalize on the euphoria by cashing out.

A TMTG spokesperson did not respond to a request for comment on the impact speculators are having on the company's market value.

MOTHER OF ALL MEME STOCKS

James Angel, an associate finance professor at Georgetown's McDonough School of Business, said it would be risky to predict when TMTG's valuation will drop to more accurately reflect its business prospects.

"Eventually the meme stock entertainment will wear off... But it may take a very long time for the market to correct or a very short time," Angel said.

Julian Klymochko, CEO of Accelerate, a manager of exchange-traded funds that has not invested in TMTG, called it the "mother of all meme stocks" and said it was hard to envisage it attracting long-term investors.

"I think the investors here are either speculators or amateurs just looking to make a quick buck in a highly volatile stock, and there are really no fundamental underpinnings," Klymochko said.

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Litigation

April 3, 2024, 9:58 AM PDT

Trump SPAC Investors Plead Guilty in Insider-Trading Case (3)

By Bob Van Voris

Bloomberg Law News 2024-04-03T13:31:57657783501-04:00

Trump SPAC Investors Plead Guilty in Insider-Trading Case (3)

By Bob Van Voris2024-04-03T12:58:14012-04:00

Two investors charged with insider trading in the blank-check company that took Donald Trump's social media startup public pleaded guilty to a single count of securities fraud less than a month before trial.

Brothers Gerald and Michael Shvartsman, who both initially denied wrongdoing, changed their pleas at a hearing Wednesday in Manhattan ahead of a trial that was scheduled to start April 29. The Florida men were early investors in Digital World Acquisition Corp., whose long-stalled merger with the former president's company, Trump Media & Technology Group Corp., was completed last month.

The Shvartsmans and a third Florida man who was [charged](#) in the case, **Bruce Garelick**, were accused last year of making a total of more than \$22 million by trading on secret information about Digital World's merger plans before the Trump deal was announced in 2021. Neither Trump nor his company are accused of wrongdoing in the case.

"Insider trading is cheating, plain and simple, and today's convictions should remind anyone who may be tempted to corrupt the integrity of the stock market that it will earn them a ticket to prison," **Damian Williams**, US Attorney for the Southern District of New York, said in a statement.

The long-stalled merger last month allowed the media startup, which operates Trump's Truth Social platform, to begin trading as a public company last week, sending its shares [soaring](#) and generating billions of dollars in new wealth for Trump, who owns a stake of about 57%.

Prosecutors allege the men traded on confidential information about potential merger targets of Digital World, a special purpose acquisition company. The men had signed nondisclosure deals after being invited to invest, giving them access to secret data about Trump Media and other merger targets, the US claims.

Michael Shvartsman is the founder of Rocket One Capital LLC, a Miami-based private equity firm that was [subpoenaed](#) as part of the federal probe. Garelick, a Rocket One executive and a former Digital World board member, has pleaded not guilty to the allegations.

Read More: [Trump's Net Worth Drops \\$1 Billion as Social Media Firm Sinks](#)

The merger of Digital World with Trump's company has triggered a spate of unrelated civil lawsuits between individuals involved in the deal, [including](#) Trump and two co-founders of Trump Media.

Shares of Trump Media were down about 4% Wednesday, having experienced dramatic highs and lows since they started trading. After initially soaring, they dropped 21% Monday and rebounded 6% on Tuesday.

Digital World announced an agreement to merge with Trump Media in October 2021, sending the shares soaring and handing the three men millions of dollars in profit from trades they made beforehand, according to prosecutors.

The three men were arrested in June and charged with securities fraud, conspiracy and other counts. Under a plea agreement with prosecutors, Gerald Shvartsman, 46, faces up to 46 months under federal sentencing guidelines and Michael Shvartsman, 53, as many as 57 months when they're sentenced July 17.

Prosecutors had agreed to a lower guideline range if the three had all agreed to plead guilty by yesterday. Garelick has not agreed to plead guilty, but prosecutors have the option to extend the agreement.

Garelick has claimed in court filings that the charges against him are tainted by the alleged misconduct of law enforcement. In a December motion to suppress evidence, Garelick said the government improperly executed a search warrant for his phone while he was passing through a New York City airport by falsely telling him he'd been stopped for a routine search. He claims he was then "tricked" into disclosing the password for his phone.

SPACs are shells designed to buy another company with the investment money they attract and serve as the vehicle for its public listing. SPACs quickly evolved from an obscure corner of the financial world to an investing craze before coming under more government scrutiny.

The case is US v. Shvartsman, 23-cr-307, US District Court, Southern District of New York (Manhattan).

(Updates with comment from the US Attorney for Manhattan.)

--With assistance from Chris Dolmetsch.

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Investor in company that took Trump Media public pleads guilty to insider trading

 [reuters.com/business/media-telecom/investor-company-that-took-trump-media-public-pleads-guilty-insider-trading-2024-04-03](https://www.reuters.com/business/media-telecom/investor-company-that-took-trump-media-public-pleads-guilty-insider-trading-2024-04-03)

Jody Godoy

Gerald Shvartsman walks following a hearing at the Manhattan Federal Court, in New York City, U.S. July 20, 2023. REUTERS/Amr Alfiky/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, April 3 (Reuters) - An early investor in the company that took former U.S. President Donald Trump's media business public pleaded guilty in Manhattan on Wednesday to a federal insider trading charge.

Gerald Shvartsman pleaded guilty at a hearing before U.S. District Judge Lewis Liman.

Prosecutors charged Shvartsman, his brother and a third man last year with illegally trading on inside information about Trump Media & Technology Group's (TMTG) (DJT.O) , opens new tab plan to go public through a merger with a blank-check company. TMTG operates Truth Social, Trump's main social media platform.

All three men had pleaded not guilty and were scheduled to face trial late this month.

Shvartsman's brother, Michael Shvartsman, head of Miami-based venture capital firm Rocket One Capital, was scheduled to change his plea at a hearing later on Wednesday.

Rocket One's chief investment officer, Bruce Garelick, also faces charges.

Prosecutors said the trio signed confidentiality agreements in June 2021 when they were approached to become early investors in Digital World Acquisition, the blank-check company. The agreements required them to keep information they learned confidential and not trade the company's securities in the open market, prosecutors said.

After hearing the company was in merger talks with TMTG, prosecutors said the trio tipped others and bought Digital World securities, selling them after the deal was announced on Oct. 20, 2021, to make a total of \$22 million in illegal profit.

TMTG was publicly listed in late March, and its shares have been on a wild ride fueled by speculators betting on enthusiasm for Trump, the Republican presidential candidate in November's election.

The stock shed early gains this week as Truth Social's parent company disclosed it had lost more than \$58 million in 2023.

TMTG shares were trading at around \$51.60 on Wednesday morning, making Trump's stake worth about \$4 billion, though he is not allowed to sell or borrow against it for six months.

Trump Media is also embroiled in legal battles in Delaware and Florida with co-founders Wesley Moss and Andrew Litinsky, who have accused the company of trying to improperly dilute their stake. Trump Media has argued they failed to earn their shares and seeks to strip them of their ownership.

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Reporting by Jody Godoy in New York; editing by Jonathan Oatis

Donald Trump

The subprime-loan billionaire behind Donald Trump's \$175mn bond

Don Hankey's Knight Insurance has come through to help former president's fight to preserve his real estate empire



Don Hankey, pictured in 2018. Hankey has backed previous Trump campaigns and gave more than \$100,000 to the Republican National Committee in the 2016 election cycle © Ringo Chiu/Zuma/Alamy

Stephen Gandel in New York YESTERDAY



Don Hankey, a Los Angeles-based subprime auto loan billionaire, has said two of his biggest early-career mistakes were to only do business with honest people and to trust his gut to pick those people out.

“I would sit down and look somebody in the eye and think I could determine if they were honest or not,” Hankey last year told the Los Angeles Business Journal, which ranked him as the sixth-wealthiest person in Los Angeles. “I got burnt several times.”

Hankey may be playing with fire again. Earlier this week, Knight Insurance Group, one of more than a handful of companies that make up Hankey's financial empire, put up a \$175mn bond for [Donald Trump](#), an amount the former president had to post to the court in order to avoid property seizures while he appeals against a near half-billion-dollar judgment against him and his companies.

Details of the bond arrangement were not disclosed. A Hankey Group spokesperson did not respond to a request for comment.

The Hankey Group's biggest business, Westlake Financial, is the US's largest lender to independent, and often used, car dealerships, allowing the dealers to offer loans directly to car buyers at the time of purchase. Hankey's businesses flourished during the coronavirus pandemic, as consumers, helped by government assistance, were flush with cash, and car prices were driven up by supply chain problems.

More recently, Westlake and Hankey's other companies have used large data models and artificial intelligence to push their subprime lending business into healthcare, elective medical procedures and jewellery.

The Hankey Group is not public but is a large issuer of asset-backed securities to fund its lending. It had \$23.4bn in assets at the end of last year, up from \$12bn at the end of 2019. It had \$4.6bn in revenue last year and nearly 3,500 employees, according to its website.

Hankey has backed prior Trump campaigns and gave more than \$100,000 to the Republican National Committee in the 2016 election cycle. He is also the biggest individual shareholder, with a \$200mn stake, in Axos, an internet-only bank that is now one of Trump's largest [direct lenders](#).

Hankey told the Associated Press that Knight underwrote Trump's bond for business reasons, not political ones. The Los Angeles financier said his company approached the former president's financial advisers last week, after an appeals court in New York [lowered the amount](#) Trump would have to put up during the appeal against the full \$464mn, which included interest.

Hankey — whose net worth is estimated to be \$7.4bn, according to Forbes — [told](#) the AP the former president put up cash and bonds as collateral for the judgment bond, but did not say how much or what Knight charged for the bond.

Before the bond amount was lowered, Trump's lawyers said the former president would have to put up collateral worth 120 per cent of the bond and pay as much as a 3 per cent underwriting fee.

They said that in their efforts to secure the larger bond they had approached 30 surety companies — including Allianz, Axa, Berkshire Hathaway, Chubb, Munich Re, Swiss Re and Zurich — via four separate brokers, to no avail.

In the past, some of Hankey's companies have been accused of not being fully honest with customers. In 2015, the US Consumer Financial Protection Bureau ordered two of Hankey's companies, Westlake Services and Wilshire Consumer Credit, to collectively pay nearly \$50mn in restitution and fines.

The agency had accused it of using deceptive lending and debt collection practices, including falsely telling some customers who had already had their vehicles repossessed that a partial payment could get their car back, when it could not, and others that their car was about to be repossessed, when it was not, in order to speed payments. Westlake and Wilshire agreed to the CFPB's action without admitting or denying the allegations.

"There's no excuse for lying to your customers," said then-CFPB director Richard Cordray in a statement at the time of the settlement.

Hankey has previously addressed his critics by saying he has cracked down on abuse at his company. It is better for the borrower to be able to buy a car, even with a high-interest rate loan, than to be turned away, given how important it is to employment to have a vehicle in so many parts of the country, he has said.

"Let's say you have somebody with bad credit, so they either have to pay 18 per cent interest or not get a car at all. Are we better off just not giving them a car?" Hankey said in a 2020 radio [interview](#). "There's good and there's bad to it, but I think the good [out]weighs the bad."

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April 3, 2024, 4:00AM PDT

Faltering Tesla Faces a Familiar Question: Is It an ESG Stock?

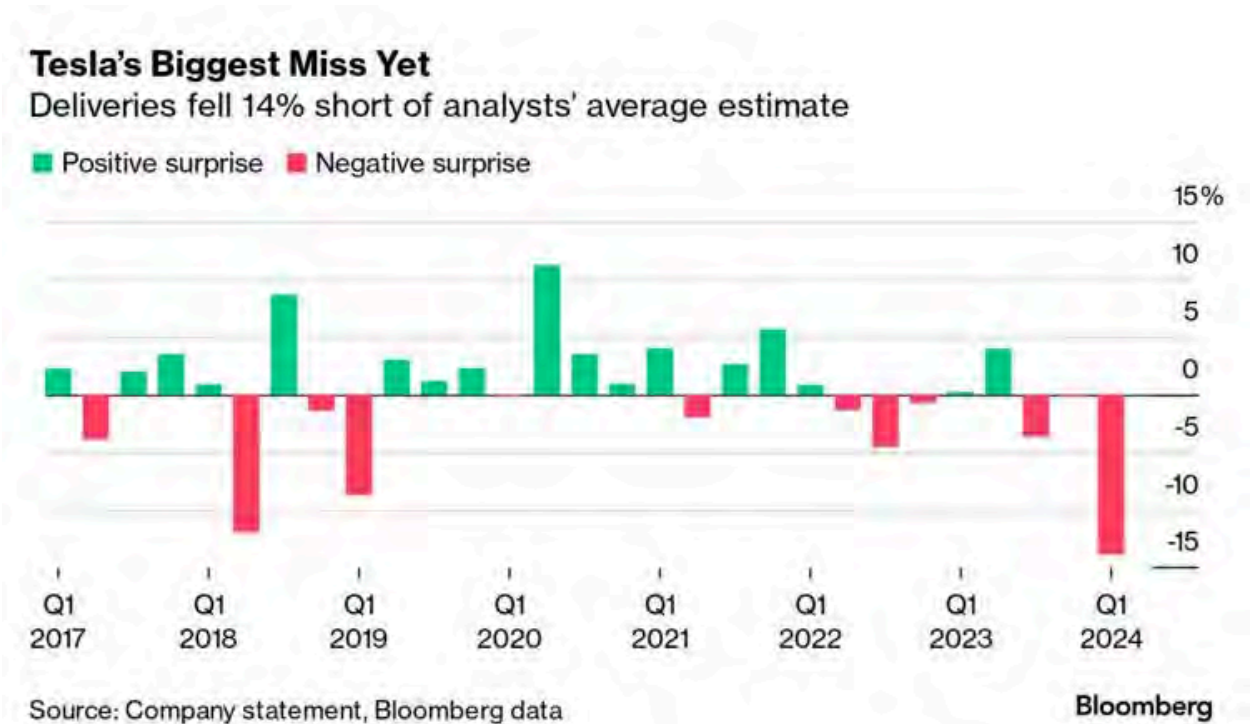
By Tim Quinson

Bloomberg Law News 2024-04-03T13:52:35644987705-04:00

Faltering Tesla Faces a Familiar Question: Is It an ESG Stock?

By Tim Quinson2024-04-03T07:00:22518-04:00

The debate about whether Tesla Inc. belongs in ESG-focused investment funds is resurfacing again. And it's emerging during a week when the company posted its [first year-over-year sales drop](#) since the early days of the Covid pandemic. Its stock plummeted Tuesday on the news.



Two years ago, Tesla was removed from a market benchmark—the S&P 500 ESG Index—mainly because of concerns about workplace-related issues. Tesla was put back into the index last year after it provided additional disclosures about its hiring practices, climate risks and supply-chain strategy.

Tesla is one of the world's largest makers of electric vehicles, which would make one think it's a shoo-in for inclusion in an environmental, social and governance index widely seen as favoring companies driving the shift away from fossil fuels.

But there are questions about the company's chief executive, Elon Musk, and his sometimes [erratic management style](#). Musk, who has turned politically to the far right in recent years, says he doesn't care about ESG. In fact, he has called it a "scam."

[Read: Tesla Disappoints Analysts by Most Ever in Brutal Blow for EVs](#)

In a web post filed in 2022 after Tesla was ejected from the S&P index, Musk wrote that ESG "has been weaponized by phony social-justice warriors." However, he also questioned – and not unreasonably so – how Tesla could be pulled from the index at the same time S&P gives Exxon Mobil Corp., one of the world's largest polluters, a top ESG rating.

And that brings us to now. Analysts at Bloomberg Intelligence issued [a report](#) last week saying Tesla's ESG standing "remains among the most debated for any stock."

The analysts reviewed the 15 largest ESG-focused funds based in the US and found that nine of them hold the company's stock. That simple math means six managers of the biggest ESG funds are avoiding Tesla.

"In conversations with people, Tesla's ESG status depends on who you ask," said Shaheen Contractor, senior ESG analyst at Bloomberg Intelligence. "Some favor the company based on its environmental prowess, while others question its governance credentials."

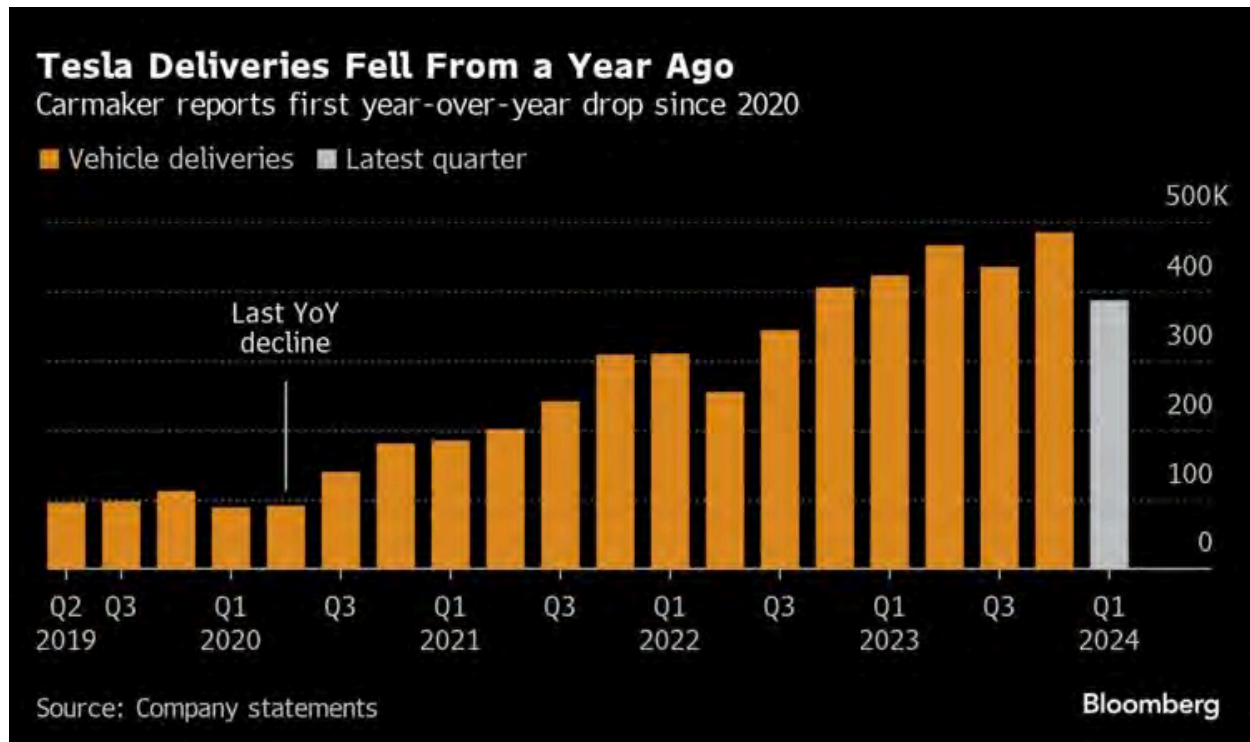
Among S&P 500 stocks, Microsoft Corp., Alphabet Inc. and Nvidia Corp. are the most widely held by managers of the largest ESG funds, followed by Mastercard Inc. and Salesforce Inc.

By contrast, the managers are shying away from Meta Platforms Inc., Southwest Airlines Co. and CoStar Group Inc., according to the BI research. Exxon Mobil also is among the stocks that show up less frequently in ESG funds.

Meantime, managers of the 15 largest funds totally avoid S&P 500 stocks such as Philip Morris International Inc., Boeing Co., AES Corp. and Southern Co..

And that returns the discussion to Tesla. The bottom line is the company is a favored choice for managers of many ESG funds, based on the company's "conviction score," which ranks 24th among S&P 500 companies, Contractor said. That score looks at the popularity of a company among managers of ESG funds.

As it happens, however, Tesla investors are currently going through an uncomfortable period, regardless of the company's ESG status. Tesla shares have dropped 33% in value since the start of the year, as waning demand for electric vehicles and elevated interest rates take a toll on sales.



As for the huge drop in sales, Tesla blamed it in part on its changeover to an [upgraded version](#) of the Model 3 sedan, Red Sea-related shipping delays and the [suspected arson](#) attack that cost it days of production in Germany.

But some on Wall Street see a bigger reason: Musk himself.

"Anyway you put it, it was ugly," said Gene Munster, managing partner of Deepwater Asset Management. "Is Elon's brand damaging Tesla sales in the US? It's directionally a negative."

Sustainable finance in brief

Private credit managers are doing significantly more fossil-fuel deals now than just a few years ago, stepping into a void left by banks exiting assets they worry pose too big a climate risk. The value of private credit deals in the oil and gas industry topped \$9 billion in the 24 months through 2023, up from \$450 million arranged in the preceding two years. The figures offer the clearest signal yet that fossil-fuel exclusion policies among banks – driven by regulatory and public relations concerns – are shifting some oil, gas and coal assets to [less transparent corners](#) of the market. It's a trend that investors say is only going to increase in the coming years.



Photographer: David Paul Morris/Bloomberg

- The world's biggest banks are quietly hanging on to carbon-intensive clients because of what they see as unrealistic demands from regulators and civil society – and the [threat to their fees](#) .
- Citigroup said more than a third of its clients in the energy sector don't have a clear plan on how they'll [reach net zero](#) .
- The world's largest oil companies are [staking claims](#) far from home – this time to swallow, rather than spew, planet-warming industrial emissions.

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Elon Musk's Reputation May Be Turning Buyers Off Tesla, Analysts Say

BI [businessinsider.com/elon-musk-tesla-reputation-turning-buyers-off-ev-caliber-2024-4](https://www.businessinsider.com/elon-musk-tesla-reputation-turning-buyers-off-ev-caliber-2024-4)

Beatrice Nolan, Camilo Fonseca

Transportation

Elon Musk's reputation is probably turning buyers off Tesla, analysts say



Elon Musk is CEO of Tesla. Reuters/Stephen Lam

- Elon Musk's antics could be having a negative effect on Tesla's prospects.
- Analysts have linked Tesla's dwindling appeal with Musk's polarizing reputation.
- Data provided to Reuters by one firm found there were now fewer potential buyers of Teslas in the US.

Elon Musk's reputation appears to be turning some people off Tesla.

Analysts are concerned that the Tesla CEO's inflammatory political and personal views are pushing away potential EV buyers, at a time when the sands are shifting for the electric vehicle market.

Shahar Silbershatz, the CEO of market intelligence firm Caliber, told Reuters it was "very likely" that Musk was contributing to Tesla's declining appeal.

Caliber data provided to the news agency found that the number of potential buyers of its EVs in the US had declined, partly because of Tesla's divisive CEO.

Tesla's "consideration score" has fallen significantly over the past few years. In February, the EV-maker's score on Caliber's metric of whether consumers trust and like a brand and would consider buying its products plummeted to 31% — less than half its high of 70% in November 2021, Reuters reported.

Some people who bought Teslas as a mark of their environmental commitments are now uncomfortable about being associated with such a polarizing figure, suggested Colin Rusch, a senior analyst at Oppenheimer, in an interview on CNBC's Squawk Box on Tuesday.

Those same drivers are now looking to "spend their dollars elsewhere," he said, pointing to alternative makes such as Rivian and Volkswagen, and the resurgence of hybrid cars.

Related stories

Instead of rushing out to buy Teslas, Rusch said "consumers are saying, 'I can wait and see what else comes to market.'"

Musk has spoken out about a range of controversial topics recently, including immigration, diversity, equity, and inclusion (DEI) policies, the Ukraine war, and trans rights.

On Monday — April Fool's Day — Musk quipped on X that he was "excited to join Disney as their Chief DEI Officer. Can't wait to work with Bob Iger & Kathleen Kennedy to make their content MORE woke!"

Earlier this year, Tesla dropped language promoting a diverse workforce from its annual 10-K filing.

His takeover and rebranding of Twitter as X has also boosted his public profile and sparked intense scrutiny. Some have raised concerns about his decisions about X, including rounds of mass layoffs and the expulsion of journalists from the platform.

Musk is often seen as a figurehead for the EV maker, which means his actions outside Tesla can directly affect the company. Caliber's data found that 83% of Americans connect the billionaire with Tesla.

Some Tesla owners have already spoken out about ditching the EV brand over Musk's antics.

Three Tesla owners previously told Business Insider Musk had made them rethink their relationship with the brand, citing his erratic online presence and political comments among other examples.

Tesla did not immediately respond to a request for comment from BI, made outside normal working hours.

The company is having issues beyond the public perception of its CEO. Tesla delivered about 387,000 vehicles in the first three months of the year, marking the first year-on-year drop in nearly four years.

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Tech Elon Musk Transportation

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Unhedged Markets

Where Tesla departs from the Mag 7

And does leadership diversity boost margins?



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Robert Armstrong and Ethan Wu YESTERDAY



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Good morning. The news outlet/hedge fund Hunterbrook, in its [debut article/short sale](#), sent the stock of United Wholesale Mortgage down 8 per cent. Hunterbrook accused UWS, a mortgage lender, of cultivating loyal mortgage brokers while telling customers they were independent. But all anyone in our business could talk about was whether a new journalism model was taking root. Any thoughts welcome: robert.armstrong@ft.com and ethan.wu@ft.com.

Tesla and the unsettled EV market

Yesterday we wrote about one of two faltering Magnificent 7 stocks, [Apple](#). Today we consider the more severe case, Tesla, which has lost a third of its value this year:

Tesla stock is volatile

Select indices (Jan 2021 = 100)



Source: LSEG via markets.ft.com

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The sell-off continued on Tuesday, after Tesla reported a 9 per cent year-on-year decline in first-quarter vehicle deliveries, missing expectations badly. Tesla's stock is notoriously volatile, speculative and hard to value. But the list of problems for Tesla's business is long and growing: price cuts pinching margins, Chinese electric vehicle competition, [bad corporate governance](#), [political risks](#) and now falling volumes.

Worse fears are out there, too. Some argue Tesla may be caught up in a global EV bust that is only just beginning. The story goes something like this: Automakers convinced themselves that EVs are awesome, consumers will love them and governments will subsidise them. No one wanted to get stranded with a defunct internal combustion engine business. So everyone piled in and production shot up, but [near-term demand hasn't materialised](#). As Peter Campbell laid out in the Financial Times yesterday:

“

The global auto industry manufactured 10.5mn electric vehicles last year — and expects to produce 13.5mn this year . . .

In 2025, on current projections, output will rise even further to 18mn — a 70 per cent increase in global EV output in just two years, the forecasts show. Yet sales, the same data set predicts, will lag even further behind. EV interest last year resulted in sales of 9.5mn vehicles, but the figure is only expected to be 9.8mn this year.

Some investors are now privately warning about an “enormous misallocation of capital” across the industry.

It's not hard to imagine a bloodbath of spiralling price cuts, automaker losses and production retrenchment.

But another interpretation is possible. Perhaps wobbly EV demand comes and goes. JD Power surveys of shopper consideration don't show any big drop-off in consumer desire to buy EVs. Likewise, [S&P Global Mobility](#) surveys suggest stable EV loyalty, measured as the share of EV owners whose next car was an EV, especially for Teslas. Citi's global autos team tells one sanguine story:

“

We believe Tesla likely hit natural growth saturation points . . . we [also] believe Tesla's Model 3/Y also experienced product age headwinds. Said differently, we learned that [like traditional cars, an EV] is still an emotional purchase where saturation and product age can affect demand more than other factors, including price . . .

We believe the US is structurally well set up for a potentially rapid EV adoption period given it averages almost two vehicles per household. In effect, EV adoption has not really started . . . If consumers were to rapidly opt to become a one [internal combustion engine vehicle] and one EV household, EV demand could, in theory, rise overnight.

If overall EV demand is stalling rather than crashing, then there's scope for bullishness on Tesla's business. The company's [upcoming \\$25,000 car](#), set for 2025, could unlock a new tranche of customers. Chinese [demand could start rising again](#). The clunky [rollout](#) of subsidised US charging stations could speed up, making EVs more attractive.

These are hard calls and we're in no position to forecast the EV supply-demand balance. But the tensions highlight a big difference between Tesla and the other Mag 7 stocks: Tesla's industry economics are much less settled. Alphabet, Meta, Microsoft and Apple hold dominant positions in increasingly mature industries (digital ads, enterprise software and smartphones). Amazon and Nvidia are less secure but still enjoy deep competitive moats in their niches (retail platform data and logistics and class-of-their-own AI chips). Tesla, however, holds a fragile lead in an immature industry. Lumping it in with the Mag 7 was a mistake. (*Ethan Wu*)

Diversity and profitability

A serious professional problem faced by financial journalists, business school professors and investors alike is that it is hard to say anything precise about the relationship between management skill and corporate performance. It is obvious that leadership matters to financial results; we observe extreme examples of the link between the two, both positive and negative, all the time. But the relationship is difficult to generalise about, quantify or predict.

As a result, the financial effects of management quality are often measured by treating them as a residual. Look at the relative performance of a company, control for everything you can think of and measure — company size, industry, market shifts, geography and so on. Whatever is left over is attributable to management. It's not a totally satisfactory method (how does it account for plain old luck, for example?) but it's often the best one can do.

Another method is finding matched pairs of companies — in similar industries, of similar size, deploying similar technologies — and following each very closely over a long period, to observe how management choices lead to diverging outcomes. The management guru Jim Collins uses this technique, and while he thinks it generates durable insights, these are not reducible to a single number, and there is always more complexity to be accounted for. "I always feel I have to keep peeling layers back," Collins told me.

A recent [paper](#) brings this tricky epistemological problem into the politically thorny realm of leadership diversity.

Over a number of years, McKinsey has released several [widely read](#) and cited [reports](#) presenting the business case for diversity in corporate leadership. The centrepiece of the McKinsey reports was a series of studies that found a statistically significant correlation between leadership diversity at large companies, in terms of gender and ethnicity, and those companies' financial results as measured by operating margin. The new [paper](#), by Jeremiah Green of Texas A&M and John Hand of University of North Carolina, argues that at least on the ethnic diversity side, the studies just don't hold up.

In the case of the McKinsey report published in 2020, the main study gathered data about diversity on the boards and in the C-suites of more than 1,000 large global companies. The companies were divided into quartiles by diversity, and the operating margins of the most diverse quartile were compared with those of the least diverse quartile over a five-year period. The top quartile were 36 per cent more likely to have operating margins above the median for their industry and region.

Green and Hand make two main objections. First, they tried McKinsey's statistical approach on S&P 500 companies, and found no significant relationship. Second, they fault McKinsey's methodology. Because the 2020 McKinsey study used 2018-19 data on companies' diversity and 2014-18 data on margins, it can't make claims about the direction of causality. If anything, McKinsey's work shows that higher margins cause greater diversity.

I presume, or at least hope, that McKinsey will respond to Green and Hand, and I won't call a winner in the statistical part of the argument. Nor will I enter into how biases of the two sides might play in here, except to note that (a) the [journal](#) that published the Green and Hand paper is published by the [Fraser Institute](#), a Canadian think-tank of a libertarian/conservative flavour, and that (b) McKinsey is a consultancy with a strong incentive to say what its corporate clients want to hear.

My point is more general. There is an implicit argument that stands behind McKinsey's reports, which runs something like this: a more diverse corporate leadership team brings more viewpoints to bear; bringing more viewpoints to bear renders better decisions; better decisions increase profits; therefore companies with more diverse leadership will have higher profits.

At a high level of generality, this extended syllogism is valid and sound. Everything we know about collective rationality and good decision making suggests that considering opposing viewpoints carefully is crucial. But the level of generality is precisely the problem here. I think we should not be surprised if the Hand and Green critique holds up, and the reason has nothing to do with the power of diversity. It has to do with whether it is possible to draw a meaningful causal connection between a simple metric of management quality (in this case, ethnic diversity) and a simple metric of corporate profitability (in this case, operating margin) over a shortish time period (in this case, five years). I think that this is not possible for a number of reasons, including:

- It is almost certainly not enough time. Important decisions made by corporate leadership tend to play out over very long periods. I'd want to see comparisons of leadership today to financial performance a decade hence.
- A single financial measure is not nearly enough, and operating margins are a particularly bad choice. What I need to know about a company to assess its profitability is how much money it can make from the capital invested in it, and how effectively the money produced can be reinvested in the future growth of the company. Operating margin measures neither of these things. Information about return on capital and free cash flow growth are both required, just for starters.
- As Ethan argued to me, it is not clear how much increasing the ethnic diversity of a company's leadership will increase diversity of opinion within that leadership. The kind of people who can leap through the many hoops required to sit on a board of a given kind of company might be so alike in other relevant respects (educational, professional or personal) that ethnic diversity does not matter much.

I am not arguing that diversity in leadership is not valuable, or even that it cannot be shown to be valuable. The point is just that McKinsey is almost certainly going about it the wrong way.

Tesla Inc

Tesla and BYD sales fall as concerns mount over electric shift

Group manages to reclaim crown as world's largest seller of battery electric cars after BYD suffers big drop in shipments



Tesla reported sales of 386,810 cars in the first quarter of 2024 © Patrick Pleul/Reuters

Peter Campbell in London, **Stephen Morris** in San Francisco and **Gloria Li** in Hong Kong 2 HOURS AGO



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Elon Musk's Tesla and Chinese rival BYD both reported sharp falls in electric car sales, adding to concerns of the slowing shift towards electric vehicles.

Both companies — the world's top two sellers of [EVs](#) — have cut prices in order to stimulate demand as they face increased competition, especially in China.

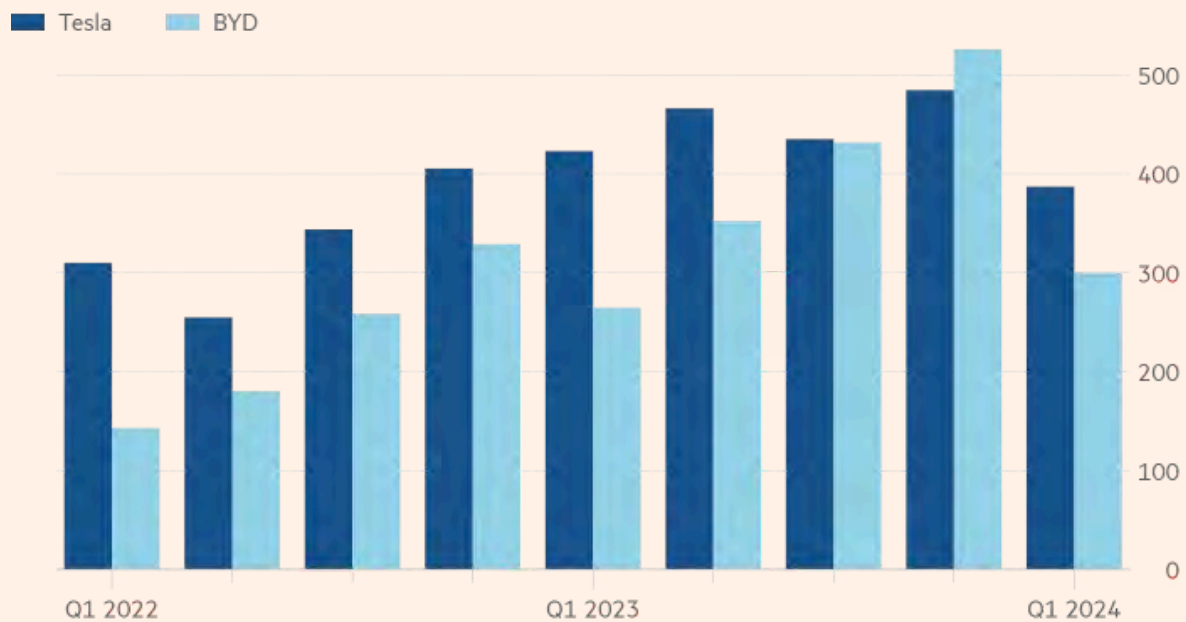
BYD has slashed the cost of almost every model in its line-up since the start of the year under the slogan “electricity is cheaper than oil”, amid an escalating price war in the world's largest EV market.

The established auto industry has been warning for months that mainstream buyers remain sceptical of electric cars because of their higher prices and need to recharge.

Sales growth of electric cars has slowed in the past year, with carmakers increasingly forced to discount models in order to generate sufficient consumer demand, while companies from General Motors and Ford to Toyota plan to sell more hybrid vehicles in the coming years.

Q1 EV deliveries down sharply for Tesla and BYD

Sales by quarter ('000)



Sources: Bloomberg, Companies

© FT

Between January and March, Tesla delivered 386,810 electric cars, a fifth lower than between October and December, and 8 per cent lower than the same quarter a year earlier, it said on Tuesday, compared with expectations of about 450,000 cars in the quarter. Its shares fell about 5 per cent.

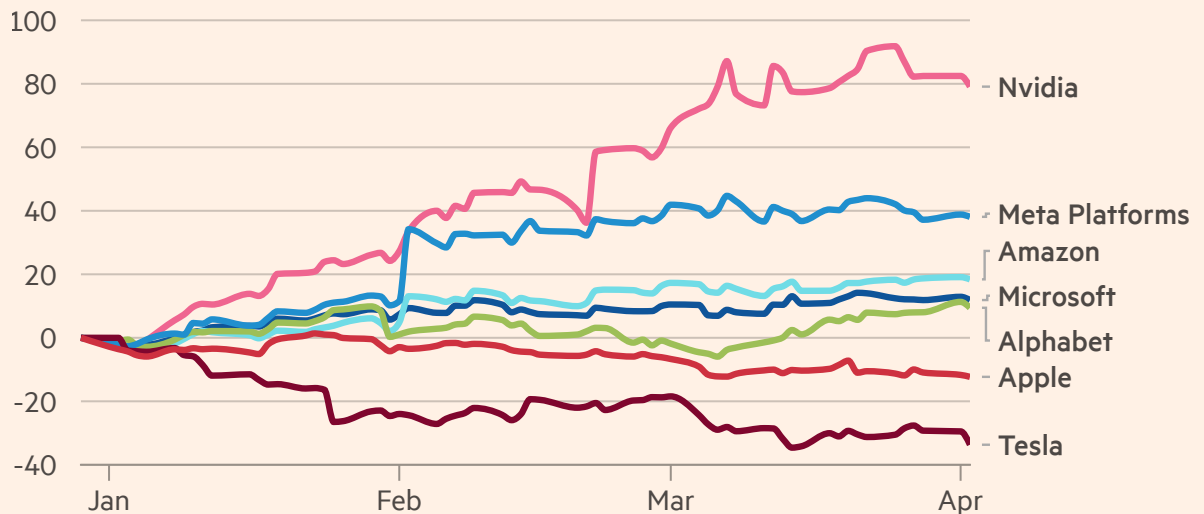
The disappointing quarter was still enough for Tesla to reclaim the crown from BYD as the world's biggest seller of electric vehicles, after the Chinese company posted a [42 per cent fall in quarterly EV shipments](#) to 300,114.

The Chinese group, which also sells plug-in hybrid vehicles that use a battery and a traditional engine, [overtook Tesla in EV-only sales](#) during the final quarter of 2023.

Tesla blamed factory stoppages caused by disruption in the Red Sea and an arson attack by environmentalists in Germany for its poor figures. Concerns over slowing EV sales growth and increased competition has also dented Tesla's stock market valuation, which has halved since it hit \$1tn in 2021.

Tesla lags behind Magnificent Seven peers

YTD share price performance, % change



FINANCIAL TIMES

Source: LSEG

“While we were anticipating a bad quarter, this was an unmitigated disaster that is hard to explain away,” said Wedbush analyst Dan Ives.

Tesla's sales figures also “suggested a sharp deterioration in growth” in the US, said Tom Narayan, an auto analyst at RBC Capital Market, while the Model Y and 3, which account for more than 90 per cent of its sales, are “saturated products”.

Even before the Berlin incident, Tesla had already warned that this year would be tough, because of increased competition. Musk, chief executive, had previously said that growth rates would be “notably lower” than last year.

Tuesday's share price drop extended the plunge in the Austin-based carmaker's stock this year to 33 per cent, making it one of the worst performers in the S&P 500 with a trajectory that continues to diverge from the rest of the [“Magnificent Seven”](#) US tech stocks.

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April 3, 2024, 6:06AM PDT

Morgan Stanley Shared Voltalia Numbers Before Official Release

By Julien Ponthus, Francois de Beaupuy and James Cone

- Earnings were sent early to analysts, Voltalia CEO said
- Release sent to analysts didn't specify publication time

Bloomberg Law News 2024-04-03T14:14:51875965484-04:00

Morgan Stanley Shared Voltalia Numbers Before Official Release

By Julien Ponthus, Francois de Beaupuy and James Cone2024-04-03T09:06:45588-04:00

Earnings were sent early to analysts, Voltalia CEO said

Release sent to analysts didn't specify publication time

A French company's effort to assist analysts ahead of its earnings backfired this week after Morgan Stanley published a note to clients containing details of the results hours before they were officially released.

Voltalia Chief Executive Officer **Sebastien Clerc** and **Loan Duong**, the company's head of communication and marketing, told journalists during Tuesday's earnings presentation that they sent the press release early to analysts at their request and because Monday was a public holiday and markets were closed.

The Morgan Stanley note, in which a team of seven analysts wrote that they expected Voltalia shares to react positively to the results, was published at 1:12 a.m. Paris time. Voltalia published its earnings at 7:00 a.m.

Morgan Stanley declined to comment on the matter.

At least one other financial institution also received Voltalia's press release on Monday evening, based on an email seen by Bloomberg. Neither the email from Voltalia nor the English or French versions of the release attached to it bore a note or banner warning that the content wasn't to be published until a set time.

It's not uncommon for companies and governments to provide information to media – including earnings releases, macroeconomic data and other announcements – ahead of their official release. The practice, referred to as an embargo, is intended to give organizations enough time to prepare an article for publication and minimize the chance of an error.

Information Access

In its guide to periodic information for listed companies, France's markets regulator Autorité des Marchés Financiers says that market participants should receive equal access to financial information.

"All issuers must provide the public with equal access and within the same time frames to the sources and channels of information that the issuer or its advisers make specifically available to financial analysts, in particular during financial transactions," it says.

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The AMF didn't comment on the matter.

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Sam Bankman-Fried prosecutor says coder's cooperation sped up case

 [reuters.com/legal/sam-bankman-fried-prosecutor-says-coders-cooperation-spiced-up-case-2024-04-02](https://www.reuters.com/legal/sam-bankman-fried-prosecutor-says-coders-cooperation-spiced-up-case-2024-04-02)

Luc Cohen

Item 1 of 2 Former FTX Chief Executive Sam Bankman-Fried, who faces fraud charges over the collapse of the bankrupt cryptocurrency exchange, leaves the Manhattan federal court in New York City, U.S. March 30, 2023. REUTERS/Amanda Perobelli/File Photo

[1/2]Former FTX Chief Executive Sam Bankman-Fried, who faces fraud charges over the collapse of the bankrupt cryptocurrency exchange, leaves the Manhattan federal court in New York City, U.S. March 30, 2023. REUTERS/Amanda Perobelli/File Photo [Purchase Licensing Rights](#) , opens new tab

NEW YORK, April 2 (Reuters) - U.S. prosecutors were able to charge FTX founder Sam Bankman-Fried shortly after the cryptocurrency exchange's collapse in part because they secured the cooperation of its chief software engineer, one of the prosecutors said on Tuesday.

Speaking five days after Bankman-Fried was sentenced to 25 years in prison, Assistant U.S. Attorney Thane Rehn said former FTX Chief Technology Officer Gary Wang's assistance was key to helping investigators understand how Bankman-Fried stole \$8 billion in customer funds.

"Without that, would we have found it? Probably," Rehn said at a discussion hosted by law firm Wilson Sonsini. "But it would have taken a software expert weeks or even months."

Jurors in Manhattan found Bankman-Fried, 32, guilty last November on seven counts of fraud and conspiracy, in what prosecutors termed one of the biggest financial frauds in U.S. history.

Bankman-Fried is expected to appeal his conviction, after testifying that he made mistakes in managing risk but never intended to steal funds. He had been arrested in December 2022, just one month after FTX's collapse and bankruptcy.

Rehn's comments highlighted the importance of the government's three main cooperating witnesses - Wang, former FTX engineering chief Nishad Singh, and Caroline Ellison, the former chief executive of Bankman-Fried's Alameda Research hedge fund. Each pleaded guilty to fraud and testified against their former boss at his month-long trial.

In his testimony, Wang said Bankman-Fried asked him to change FTX software code to let Alameda withdraw unlimited funds from the exchange.

Rehn said Wang showed prosecutors code from his laptop shortly after FTX collapsed.

"This case moved at lightning speed," U.S. Attorney Damian Williams told reporters after Bankman-Fried's conviction.

Prosecutors are expected to recommend that the trial judge, U.S. District Judge Lewis Kaplan, take Wang's, Singh's and Ellison's cooperating into account when sentencing them.

Wang testified that he hopes to avoid prison. His lawyer, Ilan Graff, declined to comment.

Bankman-Fried's spokesman Mark Botnick declined to comment.

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Reporting by Luc Cohen in New York Editing by Bill Berkrot

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Study Finds Wall Street Mega Banks Have Overstated Income for Years on Commercial Real Estate Loans They Sell to Investors

 wallstreetonparade.com/2024/04/study-finds-wall-street-mega-banks-have-overstated-income-for-years-on-commercial-real-estate-loans-they-sell-to-investors

By Pam Martens and Russ Martens: April 2, 2024 ~

Last August, the *Journal of Finance* published a study by two finance professors that should have made bold headlines in every major business newspaper in America. It didn't – suggesting that Americans will eventually learn about Wall Street's chicanery in commercial real estate the same way they learned about Wall Street's subprime residential mortgage scams after the 2008 financial collapse: from a movie like *The Big Short* or *Inside Job*.



Finance Professors John Griffin (left) and Alex Priest

Wall Street On Parade only learned about this paper recently from one of our engaged readers.

The paper was authored by John Griffin, Professor of Finance at McCombs School of Business at the University of Texas, Austin and Alex Priest, Assistant Professor of Finance at the Simon Business School at the University of Rochester.

The paper takes a forensic look – from an exhaustive number of perspectives – at why the income stream on Commercial Mortgage-Backed Securities (CMBS) is being consistently overstated by 5 percent or more when sold to investors by certain originators of these loans.

The largest participants in this overstatement of income are the same Wall Street mega banks that were bailed out by the U.S. taxpayer after they blew up Wall Street in 2008 with their subprime residential mortgage scams and then received *trillions* of dollars in secret revolving loans from the Fed for more than two years at below-market interest rates in order to resuscitate themselves.

The authors find that more than 40 percent of CMBS loans originated by UBS and Goldman Sachs have income overstatements of more than 5 percent, while between 30 and 40 percent of loans originated by Citigroup, Morgan Stanley, JPMorgan Chase and Bank of America feature such overstatement. (Smaller players are included as well in the study.)

The authors write:

“Underwritten net operating income (NOI) is the most important input for a commercial loan as it largely determines a loan’s debt service coverage ratio (DSCR) and loan-to-value (LTV) ratio. As such, there are rigorous and conservative guidelines for calculating underwritten income. Nevertheless, to sell a loan at a higher valuation and maximize profits, originators have a strong incentive to overstate underwritten income, at the expense of longer-term reputational and monitoring concerns.”

Among the key findings in the study are the following:

Income overstatement above 5% in loans that were not guaranteed by a government sponsored enterprise (GSE) grew from 36 percent in 2013 to 43 percent in 2019;

Loans with income overstatement in the first year continued to exhibit income short-falls in the next four years;

The study found no evidence that end investors are compensated for income overstatement. [Translation, they’re being ripped off in a fashion reminiscent of the 2008 financial crisis.]

Excluding loans that were already in distress at the onset of the COVID-19 pandemic in March 2020, the authors found that “in every vintage from 2014 to 2019, CMBS loans from the worst originators are more than twice as likely to experience distress,” with the correlation occurring across commercial property types.

The most shocking finding for most Americans is likely to be that the much touted “risk retention” rule enacted under the Dodd-Frank financial “reform” legislation of 2010, where the banks had to hold 5 percent of their securitized loans in order to have “skin in the game,” thus ostensibly deterring them from peddling toxic deals to customers with no harm to themselves, has been effectively obliterated. (For how the Dodd-Frank derivatives rule was similarly obliterated, see our report: Meet the Two Congressmen Who Facilitated Today’s Derivatives Nightmare at Wall Street’s Mega Banks.)

Griffin and Priest explain that the rule didn’t even become effective until 2016 and now “risk retention by the originator is rare.” That’s because deal sponsors can get around the rule by selling the risk retention piece to up to two unaffiliated buyers.

A major question left unanswered in the academic study is if Wall Street mega banks are shorting the CMBS market to profit further on their inside information of their income overstatement, as they did on their toxic subprime paper in the lead up to the 2008 financial collapse.

On April 13, 2011, following a two-year investigation, Senators Carl Levin and Tom Coburn, Chairman and Ranking Member of the Senate’s Permanent Subcommittee on Investigations, released a 635-page report on the 2008 financial crisis which included specifics on the

fraudulent role that Wall Street mega banks had played in burning down Wall Street and the U.S. economy in the greatest collapse since the Great Depression. The report includes this paragraph on how Goldman Sachs attempted to profit from its own “shitty deals”:

“When Goldman Sachs realized the mortgage market was in decline, it took actions to profit from that decline at the expense of its clients. New documents detail how, in 2007, Goldman’s Structured Products Group twice amassed and profited from large net short positions in mortgage related securities. At the same time the firm was betting against the mortgage market as a whole, Goldman assembled and aggressively marketed to its clients poor quality CDOs that it actively bet against by taking large short positions in those transactions. New documents and information detail how Goldman recommended four CDOs, Hudson, Anderson, Timberwolf, and Abacus, to its clients without fully disclosing key information about those products, Goldman’s own market views, or its adverse economic interests. For example, in Hudson, Goldman told investors that its interests were ‘aligned’ with theirs when, in fact, Goldman held 100% of the short side of the CDO and had adverse interests to the investors, and described Hudson’s assets were ‘sourced from the Street,’ when in fact, Goldman had selected and priced the assets without any third party involvement. New documents also reveal that, at one point in May 2007, Goldman Sachs unsuccessfully tried to execute a ‘short squeeze’ in the mortgage market so that Goldman could scoop up short positions at artificially depressed prices and profit as the mortgage market declined.”

See the video clip below from a related hearing, featuring the late Senator Carl Levin questioning a Goldman Sachs executive, Daniel Sparks.





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2 Firms Seek To Lead Boeing 737 Max Safety Investor Suit

By **Sydney Price**

Law360 (April 2, 2024, 7:26 PM EDT) -- Labaton Keller Sucharow LLP and Robbins Geller Rudman & Dowd LLP have each asked a Virginia federal judge for a lead role in a securities lawsuit against Boeing over the safety of its 737 Max jets and the role Boeing's top brass allegedly played in diminishing shareholder value.

Rhode Island General Treasurer James A. Diossa, who is represented by Labaton Keller Sucharow LLP, filed the proposed securities fraud class action against The Boeing Co. on behalf of the Employees' Retirement System of Rhode Island in January.

Diossa says in a Monday motion for lead plaintiff appointment that the pension fund lost \$3.7 million on its investments in Boeing common stock during the class period and that it is the most adequate to represent the class.

New York-based retirement fund Local #817 IBT Pension Fund, which is being represented by Robbins Geller Rudman & Dowd LLP, also filed a motion to lead the suit on Monday, saying it suffered over \$637,000 in losses.

The suit takes aim at the Boeing, its President and CEO David Calhoun, former President and CEO Dennis Muilenburg, and Chief Financial Officer Brian West. It accuses Boeing's top brass of repeatedly making false and misleading statements about the integrity of the design, engineering and certification process for its 737 Max line of jets — currently among Boeing's "marquee products" and its "fastest and best-selling jet."

But Boeing's nearly two-decade-long focus on prioritizing profits over safety "led to poor quality control standards in the production of its commercial aircraft, such as the 737 Max, resulting in a heightened risk of manufacturing flaws which could render the company's new airplanes unsafe," the complaint claims.

The suit came weeks after the Jan. 5 blowout of a mid-cabin panel and subsequent rapid depressurization aboard Alaska Airlines Flight 1282 shortly after the flight from Portland, Oregon, to Ontario, California, took off. The 737 Max 9 jet involved in the incident was delivered to Alaska Airlines in October 2023.

The Federal Aviation Administration temporarily grounded the Max 9 jets, mandated in-depth inspections and launched a formal investigation into whether Boeing "failed to ensure that completed products conformed to its approved design and were in a condition for safe operation in compliance with FAA regulations."

After the FAA-mandated enhanced inspections, both Alaska Airlines and United Airlines said they discovered loose bolts on door plugs in some of their 737 Max 9 jets. Due to these issues, Boeing customers in China have since delayed their orders of 737 Max airplanes pending additional safety inspections, and U.S. regulators barred Boeing from expanding production of its 737 Max planes, according to the complaint. Boeing's stock price dropped from \$249 on Jan. 5, the day of the blowout incident, to \$201.88 on Jan. 25, 2024, representing an 18.9% decline, the complaint states.

Several passengers aboard the Alaska Airlines flight have also sued Boeing and Alaska Airlines in Washington state court in recent weeks.

Moreover, Boeing's recent troubled history with its 737 Max 8 jets cannot be ignored, according to the Rhode Island fund. The 737 Max 8 jets were grounded globally for nearly two years after being involved in the October 2018 crash of Lion Air Flight 610 in the Java Sea that killed 189 people and the March 2019 crash of Ethiopian Airlines Flight 302 that killed 157 people.

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

The Rhode Island fund is represented by Eric J. Belfi, Carol C. Villegas and Francis P. McConville of Labaton Keller Sucharow LLP, and Steven J. Toll and S. Douglas Bunch of Cohen Milstein Sellers & Toll PLLC.

Local #817 IBT Pension Fund is represented by Darren J. Robbins, Danielle S. Myers, Michael Albert and Kenneth P. Dolitsky of Robbins Geller Rudman & Dowd LLP and Craig C. Reilly of The Office of Craig C. Reilly.

Counsel information for the defendants was not immediately available Tuesday.

The case is State of Rhode Island Office of The General Treasurer, on Behalf of The Employees' Retirement System of The State of Rhode Island v. The Boeing Co. et al., case number 1:24-cv-00151, in the U.S. District Court for the Eastern District of Virginia.

--Editing by Kristen Becker.

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Alaska Judge Tosses Opioid Nuisance Case Against Pharmacies

By **Theresa Schliep**

Law360 (April 2, 2024, 10:03 PM EDT) -- Retail pharmacies including Walgreens Co. and Walmart Inc. have escaped a suit brought by Alaska in state court over their role in the opioid epidemic after a judge found the state's public nuisance claims were a "bridge too far."

Judge Una Gandbhir on Monday issued a final **judgment** following her **decision** from March rejecting the state's claims that the pharmacies committed a public nuisance and can be held liable for the opioid epidemic.

"The court must agree with defendants that plaintiff's argument, though emotionally compelling and clearly intended for the benefit of Alaskans, is a bridge too far," Judge Gandbhir wrote in her March 4 opinion. "Taken to its logical conclusion, any claim that has negative impacts on public health could be defined as a public nuisance."

Francis A. Citera of Greenberg Traurig LLP, who represented the pharmacy Albertsons in the case, celebrated the decision.

"We are pleased that the court agreed with our position that the state's claims were inconsistent with Alaska law," Citera said in March. "This decision is likely to be a bellwether for other cases being brought against opioid dispensers, distributors and manufacturers, which have been referred to as among the largest and most complex civil cases in the nation's history."

Governments across the country have made public nuisance claims against drugmakers and pharmacies in an attempt to hold them liable for the opioid epidemic, with mixed results. The case from Alaska alleged the pharmacies were irresponsible in their sale of opioids, creating a "significant interference with the public health," and "unreasonably interferes with a public right by creating a public health epidemic in Alaska," according to filings.

The pharmacies, like other defendants in opioid litigation, have chafed at the plaintiffs' use of the public nuisance theory as overly broad. Judge Gandbhir agreed, writing in her March decision that the state failed to find a public right that the pharmacies' activity violated.

"The court is limited in its ability to liberally expand on a legal definition of public nuisance without some inkling of precedent from the Alaska Supreme Court or the state Legislature," Judge Gandbhir said.

The judge also rejected the state's claims under the state Unfair Trade Practices and Consumer Protection Act, finding the pharmacies' alleged actions were exempt under the law.

A representative of Walgreens declined to comment Tuesday.

Representatives of Alaska, Walmart, Safeway, Carr-Gottstein Foods Co., Kroger and Fred Meyer Inc. did not respond to requests for comment Tuesday.

Alaska is represented by David K. Gross of Birch Horton Bittner & Cherot and Mimi Liu, Christopher F. Moriarty and Linda Singer of Motley Rice LLC.

Walgreens is represented by William H. Ingaldson of Ingaldson Fitzgerald.

Walmart is represented by Kenneth M. Gutsch and Robert L. Richmond of Richmond & Quinn and Ann T. Rossum of Jones Day.

Albertsons is represented by Francis A. Citera, Gretchen N. Miller, Brett M. Doran, Caitlyn E. Haller, Linda M. Ricci, Natalie F. Wayne, Michele L. Stocker, Gregory Franklin, Craig Martin and Emily E. Mankowski of Greenberg Traurig LLP.

Safeway and Carr-Gottstein Foods Co. are represented by Chester Gilmore of Cashion Gilmore & Lindemuth.

Kroger and Fred Meyer Inc. are represented by Rebecca J. Hozubin of Hozubin Moberly & Associates and Ronda L. Harvey, Diana Leigh Jacobs and Ashley Hardesty Odell of Bowles Rice LLP.

The case is the State of Alaska v. Walgreens Co. et al., case number 3AM-22-06675 CI, in the Superior Court for the State of Alaska, Third Judicial District at Anchorage.

--Editing by Janice Carter Brown.

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How Purdue Pharma High Court Case May Change Bankruptcy

By **Brian Shaw and David Doyle** (April 2, 2024, 3:49 PM EDT)

In September 2021, Purdue Pharma LP's Chapter 11 plan had been confirmed by the U.S. Bankruptcy Court for the Southern District of New York and was just beginning to wind its way up the appellate ladder.[1]

Even then, two and a half years before it reached argument before the U.S. Supreme Court, it was apparent that the case could have far-reaching ramifications to the bankruptcy system beyond just eliminating most third-party releases.[2]

Specifically, some worried that the combination of often-controversial third-party releases with the terrible facts surrounding Purdue Pharma and its business practices could result in the U.S. Congress or the Supreme Court deciding to reign in the bankruptcy court's use of its equitable tools.[3]

Now, in April, bankruptcy practitioners and the system are sitting on that predicted precipice.

Sometime soon, likely before its summer break, the Supreme Court will render an opinion in the case of Purdue Pharma[4] that may be the death of most third-party releases in Chapter 11 bankruptcy cases. If that happens, the decision, at a minimum, will have its immediate effect on certain types of Chapter 11 cases, especially those involving mass torts or insider-directed allegations of wrongdoing.

However, depending on both the decision's breadth and the Supreme Court's ability to understand the issue's context within the broader Chapter 11 practice, the opinion could have much more far-reaching effects on the entire bankruptcy system.

For example, a simple ruling holding that as a matter of law, third-party releases are not provided for under the U.S. Bankruptcy Code, and therefore are unlawful, would become the new poster child for those who believe the bankruptcy court's equitable discretion should be limited to that which is expressly set forth in the Bankruptcy Code.[5]

Not coincidentally, many of those same critics also believe that such a restriction will curb abuses of the Bankruptcy Code enabled by the expansive use of equitable discretion.[6]

So, what exactly are those perceived abuses? The 800 — or multibillion — pound gorilla in the room is, unfortunately, a case with terrible, far-reaching facts.[7]

It is those terrible facts that made the bankruptcy case national front-page news.[8] It is also those terrible facts that garnered a strong populist view that the terrible people who owned the debtors should only be able to keep those possessions that they would be able to keep with them in — hypothetical — prison.[9]

And while that view ignores the practical considerations that led the bankruptcy court and most victims and their families to believe that the confirmed Purdue Pharma plan represented the best possible outcome under those terrible circumstances, it is not hard to understand the populist



Brian Shaw



David Doyle

reaction.

And why does the populist reaction matter? Because it would be very naive to believe populism will have no effect on the individual minds of a historically unpopular Supreme Court,[10] or for that matter, Congress, which but for its ongoing dysfunction, may have made a serious attempt to address this issue statutorily because of such populism.[11]

Several other equitable concepts saddled with accusations of abuse and on the radar of lawmakers are also at risk in the shadow of the upcoming Purdue Pharma decision, including:

- The use of equitable mootness to proactively neuter parties' appeal rights;[12]
- The use of derivative standing to pursue bankruptcy cause of actions as litigation leverage;
- Shotgun prepackaged bankruptcy cases that rely on discretion to shorten the period from filing to confirmation to less than 28 days;[13] or
- Looking past a debtor that manufactures venue — as compared to choosing between venues — on the eve of bankruptcy to take advantage of a particular law or a particular court to which the putative debtors would otherwise not have access.[14]

All of these issues have two important characteristics in common: They are derived from what is often called the implicit authority of the Bankruptcy Code,[15] and at times, have been at the heart of accusations of abuse.[16]

For example, in 2021, the U.S. Court of Appeals for the Eighth Circuit, in *FishDish LLP v. VeroBlue Farms USA Inc.*,[17] sharply curtailed the use of equitable mootness — or what it referred to as equitable dismissal — in the Eighth Circuit.[18]

The Eighth Circuit held that equitable mootness could only be used in rare circumstances because otherwise, the appellate court would not only be precluding a party from obtaining Article III judicial review, but it would be abdicating its jurisdiction instead of exercising it.[19]

The principal reasons behind the Eighth Circuit's criticism? The perception that once a confirmed plan was substantially consummated, equitable mootness required dismissal of confirmation-related appeals as well as the predatory use of equitable mootness to cut off the appellate rights of others — as opposed to the defensive use, which protects parties relying on the confirmed plan's consummation from the harm caused by dilatory appellants.[20]

A high-profile example of a shotgun bankruptcy can be found in the case of *In re: Belk Inc.* in 2021 in the U.S. Bankruptcy Court for the Southern District of Texas, which was conducted from filing to confirmation in less than 24 hours.[21]

The debtors argued that it had effectively complied with all of the notice requirements pertaining to plan confirmation on its own, with the assistance of its counsel, no less than 28 days prior to the filing of their cases, and as such, confirmation of its plan in a 19-hour time frame was an appropriate exercise of the bankruptcy court's discretion.[22]

The bankruptcy court confirmed the plan over the objection of the U.S. trustee,[23] but the 19-hour window within which any objection could be filed and presented would not have provided most creditors with the practical ability to challenge confirmation.

Many critics of the decision argued that the aggressive timeline was not allowed under the Bankruptcy Code and rules.[24] Moreover, as a tactic, it knowingly excluded all but the largest, most active constituents from participating in the debtors' bankruptcy cases and restructuring.

And of course, there is much angst around the issue of third-party releases. As discussed, Purdue Pharma and its pending Supreme Court decision is the big show.

Opponents of third-party releases resolutely argue that, other than in the context of Title 11 of the U.S. Code, Section 524(g), and its specific carveout for asbestos cases, the bankruptcy court has neither the power nor the jurisdiction to force the release of third party claims that are not property of, or claims against, the applicable debtor or its estate.[25]

Opponents similarly reject the current practice in some circuits[26] that allows narrowly tailored third-party releases under certain circumstances because it is necessary for an effective reorganization and in the best interests of the bankruptcy estate.[27]

They do so, not because they want creditors harmed, but because the law provides a bankruptcy court with its statutorily derived powers, and it cannot simply exercise powers it does not statutorily have.[28]

It is this last concept, taken at its most simplistic and basic meaning, if accepted by the Supreme Court, that will push the use of equitable tools off the precipice.

So why are we here? Because these equitable concepts do not arise from any express provisions of the Bankruptcy Code — or in the case of equitable mootness, the U.S. Constitution.

Rather, they are implicit equitable powers that were often utilized under the Bankruptcy Code's predecessor, the Bankruptcy Act, and in the opinion of many, retained as an equitable power under the Bankruptcy Code.[29] Each purports to fill in some gap left in the Bankruptcy Code, and at least, their proponents argue, they further the Bankruptcy Code's purpose.

However, despite their perceived favor among practitioners and their long history of use in the bankruptcy system, they are sitting on the precipice because they are not expressly provided for under the Bankruptcy Code, and the Purdue Pharma case has presented their shortcomings, along with a side of terrible facts, to the Supreme Court on a silver platter.

As a result, their potential extinction is looming.

Brian Shaw and David Doyle are members at Cozen O'Connor.

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[1] *In re Purdue Pharma L.P. et al.* , Case No. 19-23649-RDD (Bankr. S.D.N.Y.).

[2] See Brian Shaw and Mark Radtke, Bankruptcy Courts Equitable Discretion May Be In Danger, LAW360, September 20, 2021.

[3] *Id.*

[4] William K. Harrington, United States Trustee, Region 2 v. Purdue Pharma L.P. et al. (Case Nos. 23-124).

[5] See e.g., Ralph Brubaker, Mandatory Aggregation of Mass Tort Litigation in Bankruptcy (A Response to Bankruptcy Gifters by Lindsey D. Simon), The Yale Law Journal, Volume 131 (2021-2022).

[6] See Official Committee of Talc Claimants, et al. v LTL Management, LLC (In re LTL Management, LLC), Case Nos. 22-2003, 22-2004, 22, 3005, 22-2006, 22-2007, 22-2008, 22-2009, 22-2010, 22-2011, Brief of Amici Curiae Law Professors in Support of Appellants.

[7] *In re Purdue Pharma L.P. et al.*, Case No. 19-23649-RDD (Bankr. S.D.N.Y.).

[8] See, e.g., Chris McGeal, Opioids have killed 600,000 Americans. The Sacklers just got off basically scot-free, The Guardian, Sept.5, 2021; Zachary B. Wolf, The worst drug dealers in history

are getting away with billions, CNN. Sept. 3, 2021.

[9] Id.

[10] Supreme Court approval ratings at record low, new Gallup Poll show, CNN, August 2, 2023.

[11] See The Role of Purdue Pharma and the Sackler Family in the Opioid Epidemic: Hearing before the Committee on Oversight and Reform of the House of Representatives, 116th Cong., 2d Sess. (Dec. 17, 2020); Nondebtor Release Prohibition Act of 2021, H.R. 4777, 117th Cong. (2021) and Nondebtor Release Prohibition Act of 2021, S. 2497, 117th Cong. (2021).

[12] Adam J. Levitin, Written Testimony Before the H. Comm. On the Judiciary Subcomm. On Antitrust, Commercial, and Administrative Law 14 (July 28, 2021).

[13] See., e.g. Lynn M. LoPucki, The Lawlessness of Belk, 97 Am. Bankruptcy L. J., 912 (2023).

[14] Bankruptcy Venue Reform Act of 2021, H.R. 4193, 117th Cong. (2021).

[15] *In re Pack Liquidating, LLC* et al., 2024 WL 409830, *7 (Bankr. D. Del.).

[16] See., e.g. LoPucki, The Lawlessness of Belk.

[17] *Fishdish LLP v. VeroBlue Farms USA Inc. (In re VeroBlue Farms USA Inc.)*, 6 F. 4th 880 (8th Cir. 2021).

[18] Id., at 888.

[19] Id., at 889.

[20] Id.

[21] *In re Belk Inc.*, Case No. 21-30630 (Bankr S.D. Tex.).

[22] Id., at [D.I. 14]

[23] Id., at [D.I. 44]

[24] See., e.g. LoPucki, The Lawlessness of Belk.

[25] See, e.g., Brubaker, Mandatory Aggregation of Mass Tort Litigation in Bankruptcy.

[26] See, e.g., *Airadigm Communications, Inc. v. Federal Communications Comm'n (In re Airadigm Communications, Inc.)* 519 F.3d 640 (7th Cir. 2008).

[27] Id.

[28] See, e.g., Brubaker, Mandatory Aggregation of Mass Tort Litigation in Bankruptcy.

[29] *Pack Liquidating*, 2024 WL 409830 at * 7 (Bankr. D. Del.).



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Arena Group Shareholders Sue Former CEO In Delaware

By **Leslie A. Pappas**

Law360 (April 2, 2024, 6:27 PM EDT) -- Shareholders of the Arena Group — the digital publisher behind Sports Illustrated, TheStreet, Men's Journal and other brands — have sued the group's former CEO in Delaware's Court of Chancery, alleging wrongdoings ranging from fraud to gross negligence and demanding more than \$10 million in compensatory damages.

The derivative complaint filed Monday alleges Ross Levinsohn, who was CEO of both the Arena Group Holdings Inc. and Sports Illustrated until he was fired in December, seized control through a "fraudulent coup" of lies and deceit, destroyed the company's software-as-a-service business, and led the Arena Group into a "series of self-dealing transactions" that hurt both the company and its stockholders.

"Levinsohn repeatedly violated his fiduciary duty of care by destroying the company's SaaS business and embarking on a Ponzi scheme of poorly conceived and poorly executed media rollout acquisitions that led the company to insolvency," the complaint said.

The Delaware complaint comes less than two weeks after Levinsohn **sued** the Arena Group in Superior Court in Los Angeles for wrongful termination, breach of contract, retaliation, age discrimination and other claims.

The stockholders who filed the Delaware suit include Arena Group co-founder and former Chief Operating Officer William Sornsin, co-founder and former CEO James Heckman, former company director David Bailey, and a trust and two mezzanine funds managed by the Arena Group's top investor, Mark E. Strome.

The suit seeks \$10 million in compensatory damages, disgorgement of more than \$1 million from Levinsohn, attorney fees, and other court costs. The founders filed the lawsuit after the company allegedly ignored demands they made to the board in January urging an investigation of Levinsohn's alleged breaches and calling for his compensation from a three-year golden parachute agreement to be placed into escrow.

Levinsohn was the Arena Group's CEO from August 2020 to Dec. 11, 2023, and a board member from Aug. 26, 2020, to Jan. 19, 2024, the complaint says.

Sornsin and Heckman were on the founding team of the New York-based Arena Group, formerly called TheMaven Inc. Founded in 2016 by software engineers that had worked at Google, Amazon, Yahoo! and Microsoft, the company built a SaaS platform that attracted media publishers including Sports Illustrated, A&E/History.com, HubPages and others, according to the complaint.

Levinsohn embarked on a fraudulent, vengeful campaign to seize control of the company in 2020 after he was demoted for insubordination, the complaint alleges. Sornsin was COO and Heckman was CEO at the time.

The suit accuses Levinsohn of, among other things, blackmailing Heckman into resigning his CEO position, jeopardizing Strome's investments in the company by lying about its financial performance, and then, after he took control, purging the company of key executives and core members of the Seattle-based engineering team that had built the company's successful SaaS business.

As a result of Levinsohn's actions, the company lost virtually every significant SaaS software contract, representing over 100 million consumers, including existing clients Active Interest Media, Maxim, Jim Cramer's massive subscription business, History.com, and Biography.com, the complaint says.

Levinsohn also allegedly "chased off pending agreed-upon deals" with Newsweek, ZeroHedge, Military.com and Toronto Star Network, the complaint asserts.

Levinsohn's "self-enrichment plan" also included a "Ponzi scheme" of acquiring media companies through debt financing, "which increased revenue, but also increased expenses and caused Arena to take on an unsustainable load of debt while diluting pre-existing shareholders," the complaint said.

The Arena Group's \$28.5 million purchase of Men's Journal in December 2022 took the group's aggregated debt above \$100 million and forced the company into insolvency, the complaint says.

Levinsohn's lawsuit in California paints a different picture, asserting that for four years Levinsohn and his team "led the dramatic turnaround of the Arena Group and its flagship property, Sports Illustrated."

"The company that Levinsohn took over in 2020 was nearly insolvent, loaded with more than \$90 million in debt, burdened by millions of dollars in lease payments and public company costs, and operating under a license agreement for Sports Illustrated that mandated a minimum payment of \$15 million a year," the California complaint said. "Levinsohn and his team architected a dramatic turnaround and overcame many of these hurdles."

The Arena Group announced Dec. 11 that it had fired Levinsohn "to improve the operational efficiency and revenue of the company."

The Arena Group declined to comment Tuesday.

Attempts to reach Levinsohn on Tuesday were not successful.

Counsel for the shareholders did not immediately respond to a request for comment Tuesday.

Sornsin, Heckman and Bailey are represented by Perrie M. Weiner and Ben Turner of Baker & McKenzie LLP, Ryan Downton of the Texas Trial Group PC and Thomas A. Uebler, Kathleen A. Murphy and Terisa Shoremount of McCollom D'Emilio Smith Uebler LLC.

Mark E. Strome Living Trust, Strome Mezzanine Fund II LP and Strome Mezzanine Fund II LP are represented by Ryan Downton of the Texas Trial Group PC and Thomas A. Uebler, Kathleen A. Murphy and Terisa Shoremount of McCollom D'Emilio Smith Uebler LLC.

In the California case, Levinsohn is represented by Bryan J. Freedman, Theresa M. Troupson and Summer E. Benson of Freedman Taitelman + Cooley LLP. Counsel information for Levinsohn in the Delaware action was not immediately known.

Counsel information for the Arena Group was not immediately available.

The Delaware case is William Sornsin et al. v. Ross Levinsohn, case number not yet assigned, in the Court of Chancery of the State of Delaware.

The California case is Ross Levinsohn v. The Arena Group Holdings Inc. et al., case number 24ST-cv-07320, in the Superior Court of the State of California for the County of Los Angeles.

--Editing by Janice Carter Brown.



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SelectQuote Beats Investor Suit Over Revenue Reports

By **Sydney Price**

Law360 (April 2, 2024, 5:33 PM EDT) -- A New York federal judge has dismissed a lawsuit by investors of insurance distribution platform SelectQuote accusing it of reporting inflated revenue, saying the defendants' forward-looking projections are protected by the safe harbor of securities laws.

The suit, filed in August 2021 and amended in November 2022, claimed when SelectQuote revealed it was making downward adjustments to its recorded commissions in 2021, the company's stock value plummeted. The suit also alleged the company's purported growth ahead of its May 2020 initial public offering was driven by "untrained and ineffective" sales staff.

U.S. District Judge Alvin K. Hellerstein said in his Monday order dismissing the suit that the investors have not shown SelectQuote's forward-looking projections about its revenues and positive statements about the skills of its salespeople were misstatements. Judge Hellerstein also told investors they have not sufficiently pled scienter and called the suit's insider trading allegations against the individual defendants "confusing."

The investors have until May 31 to file a second amended complaint, the order said.

The suit's other defendants include SelectQuote CEO Timothy Danker, former Chief Financial Officer Raffaele Sadun and SelectQuote's largest shareholder, Brookside Equity Partners LLC.

According to the order, for every policy SelectQuote sold to consumers as a broker, it became entitled to commissions from the carriers issuing those policies for the policy year the insurance covered and for future policy years that could be reasonably be expected because of renewals. Those expectations were called "persistence ratios."

Generally accepted accounting principles require companies to adjust their books "as soon as it becomes probable that the policy will not be renewed," the suit said.

However, throughout SelectQuote's IPO, and as it traded on the Nasdaq Stock Market, the company did not adjust its previously recognized revenue to reflect the disenrollment trend, the suit alleged.

In SelectQuote's motion to dismiss in January 2023, the company said that instead of alleging it made misstatements of past persistency, the investors argued SelectQuote did not better predict future persistency.

SelectQuote said it put investors "squarely on notice" of the possibility that the company would need to adjust earnings if there were adverse changes to lapse rates, persistency or other assumptions used in the calculation of revenue and lifetime value.

Since SelectQuote disclosed that it faced these precise risks, the bespeaks caution doctrine requires the suit be dismissed, SelectQuote argued.

Judge Hellerstein agreed when dismissing the suit Monday, saying the defendants "may be liable for misrepresentations of existing facts, not simple economic projections."

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

The investors are represented by Hannah Ross, James A. Harrod, Veronica V. Montenegro and William E. Freeland of Bernstein Litowitz Berger & Grossmann LLP and Robert D. Klausner and Bonni S. Jensen of Klausner Kaufman Jensen & Levinson.

SelectQuote is represented by David B. Anders, Ben M. Germana and Karen Wong of Wachtell Lipton Rosen & Katz.

The case is In re: SelectQuote Inc. Securities Litigation, case number 1:21-cv-06903, in the U.S. District Court for the Southern District of New York.

--Editing by Drashti Mehta.

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Straight Path Attys Seek \$9.5M Fee After Chancery IDT Ruling

By **Jeff Montgomery**

Law360 (April 2, 2024, 9:25 PM EDT) -- Attorneys who mostly lost a yearslong Court of Chancery stockholder suit seeking as much as \$1.2 billion in damages from IDT Corp. founder Howard Jonas based on allegedly coerced liability releases are seeking a \$9.5 million attorney fee, saying the case proved Jonas' fiduciary disloyalty.

The award, according to a court filing late Monday, would still fall well short of the nearly \$25 million in already-trimmed-down attorney expenses tallied in the Straight Path Communications Inc. stockholder case before Vice Chancellor Sam Glasscock III found that stockholders suffered only "nominal damages" from an unfair settlement of claims arising from federal sanctions imposed against Straight Path while still controlled by IDT.

Approval would nevertheless amount to 15.8% to 19% of a possible \$50 million to \$60 million recovery had a pared-down case gone forward, the motion said. It also would serve to "disincentivize" the kind of allegedly disloyal conduct attributed to Howard Jonas, the motion said, adding that an alternative scenario could have supported a \$165 million recovery, making the requested fee relatively smaller still.

"This court has consistently awarded fees to plaintiffs who proved a breach of the fiduciary duty of loyalty but did not recover monetary damages," the motion said, adding separately that the Chancery Court's equitable powers permit shifting of attorney fees, including "where the situation or the equities dictate that such a burden should not fall on the prevailing party."

The suit, filed in July 2017, had narrowed to a focus on Howard Jonas, the controlling stockholder, and his alleged role in shutting down efforts by a special committee of the Straight Path board to retain rights to sue him to recover losses resulting from Federal Communications Commission sanctions and wireless license forfeitures.

Jonas, who controlled both IDT and Straight Path, was accused of coercing and threatening Straight Path's independent directors into releasing an IDT indemnification agreement covering the FCC penalties. The case went to final arguments before Vice Chancellor Glasscock III after a split 10-day trial focused in part on Jonas' successful demands to limit IDT's liability to \$10 million.

The suit accused IDT and Jonas of spinning off what became more than \$3 billion worth of inactive and untended wireless frequencies to Straight Path, putting the company at a then-undisclosed risk of later-invoked FCC sanctions for IDT's pre-spinoff failure to meet wireless license operating requirements.

Verizon Communications agreed to buy Straight Path — excluding the indemnity claim and intellectual property assets — for \$3.1 billion in May 2017. At closing in early 2018, some \$614 million went to the FCC as a consent decree settlement, along with 196 forfeited spectrum licenses worth \$529 million.

"The court found that Howard committed a 'flagrant breach of his duty of loyalty to the class by, among other things, engaging in a 'campaign of abuse and coercion'" and forcing a special Straight Path committee to settle the indemnification claim against him "in a manifestly unfair manner," the motion said.

The vice chancellor nevertheless deemed the indemnification claim not viable because of Straight Path's failure to comply with notice and consent requirements prior to reaching a settlement with the FCC. As a result, the court found that Howard Jonas was liable to the class for only nominal damages. In an 83-page opinion, the court found that Howard Jonas "drove an unfair transaction in breach of fiduciary duty, but that no damages" resulted.

"Shifting approximately 38% of plaintiff's counsel's unpaid fees onto Howard — whose wrongdoing caused the litigation — supports equity and public policy of disincentivizing disloyal conduct by fiduciaries," the motion said.

The 10-day trial on the claims ended in mid-2022, with Vice Chancellor Glasscock approving in December 2022 a partial settlement with Davidi Jonas, Howard's son, and a \$3.375 million fee and expense award to class attorneys in connection with that settlement.

"Defendants' litigation strategy drove plaintiff's counsel to expend an inordinate amount of time and resources to get this case to trial," the motion said, noting that litigation included three unsuccessful mediation sessions, challenges to stockholder plaintiffs' standing and defense side platoons of expert witnesses and attorneys.

Approval of the requested fee will still require attorneys for the stockholders to absorb most of their expenses, the motion said, but ""will recoup a reasonable fee for their efforts in this litigation, which obtained a true rarity in Chancery litigation: a ruling that Howard was liable to the class for breaching his fiduciary duty of loyalty."

Counsel for the class and Howard Jonas did not immediately respond to requests for comment.

The shareholders are represented by Ned Weinberger and Mark Richardson of Labaton Keller Sucharow LLP and Jeroen van Kwawegen, Edward G. Timlin and Eric Riedel of Bernstein Litowitz Berger & Grossmann LLP.

IDT, Howard Jonas and the Patrick Henry Trust, which benefits Jonas and held his Straight Path stock, are represented by Jason Cyrulnik, Paul Fattaruso and Matthew Henken of Cyrulnik Fattaruso LLP and Rudolf Koch, Kevin M. Gallagher, Daniel E. Kaprow, John M. O'Toole of Richards Layton & Finger PA.

The case is In re: Straight Path Communications Inc. Consolidated Stockholder Litigation, case number 2017-0486, in the Court of Chancery of the State of Delaware.

--Additional reporting by Leslie Pappas, Rose Krebs and Vince Sullivan. Editing by Rich Mills.



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Mattel Used Forfeited 401(k) Funds For Itself, Suit Says

By **Patrick Hoff**

Law360 (April 2, 2024, 6:53 PM EDT) -- Mattel unlawfully utilized former workers' forfeited 401(k) funds to cover its retirement plan contributions rather than offsetting millions of dollars in expenses paid by plan participants, according to a proposed class action filed in California federal court.

In a **16-page complaint** Monday, former Mattel Inc. employee Nicholas Prattico accused the toy and entertainment company of violating the Employee Retirement Income Security Act by utilizing workers' unvested funds for its own benefit. Between 2018 and 2022, Mattel reduced company contributions to the plan by \$10.9 million rather than paying any part of the \$6.4 million in administrative expenses charged to plan participants, according to the complaint.

"Defendants' reallocation of the forfeitures ... harmed the plan, along with its participants and beneficiaries, by reducing company contributions that would otherwise have increased plan assets and by causing participants to incur deductions from their individual accounts to cover administrative expenses," Prattico wrote.

According to the complaint, Mattel's 401(k) plan is funded through a mix of wage withholdings from plan participants and company contributions deposited into the plan's trust fund, with participants fully vested in the company's contributions after three years.

Prattico said Mattel is given control over how to use the funds forfeited when workers leave the company before three years are up, and a prudent fiduciary would use this money to lower plan participants' expenses. However, Mattel has instead used the funds to defray its own contributions, harming plan participants by forcing them to pay higher costs and causing them to lose out on potential investment returns, according to the complaint.

"The balance in a participant's accounts that a participant forfeits when incurring a break in service prior to full vesting of the company's contributions to the participant's account is an asset of the Mattel plan," Prattico wrote. "By utilizing these plan assets as a substitute for the company's own contributions to the plan, thereby saving the company millions of dollars in contribution expenses, defendants caused the assets of the plan to inure to the benefit of Mattel."

Prattico alleged in his complaint that Mattel violated the duties of prudence and loyalty imposed by ERISA as well as the statute's ban on self-dealing and prohibited transactions. Through his suit, Prattico is seeking to represent approximately 7,000 people who participated in Mattel's 401(k) plan since April 1, 2018.

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

Mattel is the latest company to be hit with an ERISA suit alleging it misused forfeited retirement plan funds. In October, former Clorox employee James McManus accused the consumer goods manufacturer of saving millions of dollars by using forfeited funds to reduce company 401(k) contributions rather than lower plan expenses. Clorox **asked the court** in December to toss McManus' suit, arguing that neither the law nor terms of the plan require forfeitures to be used to benefit participants' accounts.

In February, a former Honeywell International worker also **filed a proposed class action** alleging his ex-employer failed to use funds left behind by employees' departures to cover costs for over

60,000 plan participants.

Prattico is represented by Matthew B. Hayes and Kye D. Pawlenko of Hayes Pawlenko LLP.

Counsel information for Mattel was not immediately available.

The case is Prattico v. Mattel Inc., case number 2:24-cv-02624, in the U.S. District Court for the Central District of California.

--Editing by Nick Petruncio.

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Crypto Co. Beats RICO But Not Fraud Claim Over \$186M Hack

By **Katryna Perera**

Law360 (April 2, 2024, 11:42 PM EDT) -- A Delaware federal judge has significantly trimmed a proposed class action accusing companies behind a blockchain system that enabled users to transfer crypto of running an illegal money-transmitting business and misrepresenting the system's security measures before a \$186 million hack, saying the suit's racketeering, negligence and conversion claims all fail.

U.S. Magistrate Judge Laura D. Hatcher issued an **order** on Friday dismissing the suit's Racketeer Influenced and Corrupt Organizations Act and RICO conspiracy claims, along with claims for negligence and conversion. However, the judge retained a fraud claim against one of the named defendants.

The suit was filed February 2023 by user Manuu Singh, who alleged that the misrepresentations made by the defendants ultimately led users **to lose big** when a hacker stole \$186 million from the so-called Nomad Bridge. The suit names Illusory Systems — the business entity behind the Nomad Bridge — as well as the entities behind crypto exchanges Coinbase and OpenSea, blockchain firms Circle, ConsenSys and Connex Labs, and venture capital firms Archetype Crypto II and Polychain Alchemy LLC for their respective roles in funding the creation and engaging in the upkeep of the Nomad Bridge.

The suit's fraud claim was asserted against Illusory, with plaintiff Iagon AS alleging that Illusory employee Pranay Mohan misrepresented that the Nomad Bridge's "watchers" would flag and prevent any fraudulent transactions. Iagon said Mohan knew his statement was false because Illusory had not yet implemented those security features. Iagon also said it acted based on Mohan's representations and that Mohan made other false and misleading statements.

Judge Hatcher said Friday that the plaintiffs have adequately pled their fraud claim at this stage of the litigation.

When the defendants moved for dismissal last year, they argued that the suit's RICO claims **were unjustified** since the defendants were not hackers and did not steal any assets from the plaintiffs. Therefore, nonracketeering acts led to the plaintiffs' alleged harm, they said.

Judge Hatcher agreed on Friday, saying a "series of intervening, non-racketeering acts" disrupted any possible connection between the defendants' predicate acts of operating an unlicensed money-transmitting business and wire fraud and the plaintiffs' alleged injuries.

The intervening, nonracketeering acts include, among other things, the employment of a coder by the defendants who introduced a "simple mistake" or "vulnerability" into the Nomad Bridge's code that allowed the hack to take place and the nonparty and unknown copycats who replicated the fraudulent transactions, stealing additional assets from the Nomad Bridge after the initial hack, according to the order.

"Each of these intervening non-racketeering acts renders the injury too remote from defendants' alleged wrongdoing — operating an unlicensed money transmitting business and wire fraud," the order said.

The judge also said the plaintiffs failed to directly link the lack of regulatory licensing of the money-

transmitting business to the alleged losses.

"For example, plaintiffs do not explain how an improved compliance program would have prevented a coder from introducing a 'simple mistake' into the Nomad Bridge's code and stopped a 'malicious actor' and 'copycats' from exploiting that mistake," the order said.

Because the RICO claim was tossed, the suit's RICO civil conspiracy claim was also automatically dismissed. In dismissing the suit's negligence and conversion claims, Judge Hatcher rejected the plaintiffs' argument that the defendants were subject to a "recognized independent duty of care," characterized as a "legal and moral duty to maintain [users'] funds intact" regardless of their contractual relationship with plaintiffs.

The judge said that the defendants did not owe Singh and Iagon an independent duty outside of the relevant governing contracts they had with the Nomad Bridge and that for several defendants, there wasn't even a contract in place.

"[I]n the absence of a direct relationship, Utah courts have recognized an independent duty only when the defendant has incurred a fiduciary duty or an obligation to deal fairly and honestly under a statute or license.' Neither Mr. Singh nor Iagon have alleged a basis for imposing upon the keyholder defendants a fiduciary duty or an obligation arising out of a statute or license," the order states.

Illusory Systems raised capital from various firms in 2022, including Polychain, Archetype, Circle and Coinbase. Illusory Systems held a key to the Nomad Bridge, which enabled control over the system. In addition, ConsenSys, Archetype, Ethereum Ventures I Partners LP and Connex Labs held keys to the bridge and are referred to in the case as the keyholder defendants.

In a statement to Law360 on Tuesday, Tibor Nagy of Dontzin Nagy & Flessig, counsel for the keyholder defendants, said, "We think the court reached the right decision, and we are very pleased with the result."

Benjamin Au of Orrick Herrington & Sutcliffe LLP, counsel for Illusory, said in a phone call that he and his client are pleased with the court's dismissal of the claims.

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

The bridge referred to in the suit is a cryptographic system that enables interoperability between different blockchains. In the case of Nomad, the system allowed users to create applications across the Ethereum, Avalanche, Evmos, Milkomeda and Moonbeam blockchains, including a flagship application that allowed users to send a variety of tokens between the networks.

The Nomad Bridge made headlines in August when it lost about \$186 million over the course of a few hours. A user introduced a vulnerability into the code that permitted anyone who saw it to create false transactions, which allowed them to steal funds. An initial exploiter and an additional set of copycats who caught onto the vulnerability drained the bridge, which Singh said in his complaint robbed him of \$172,000.

The complaint argues those behind Nomad could have stopped a significant portion of the damage if it had taken more care in its security measures. It points out that similar hacks had occurred in the decentralized finance space before.

Singh argued that Nomad made "false promises of security" about the system that "systematically induced" users into using the bridge. Those alleged false statements included advertising certain security features that had yet to be implemented, according to Singh.

Singh also claimed that the bridge itself amounts to an illegal money-transmitting business. Since the hack, Nomad has recovered \$36 million and is organizing a way to distribute the funds to affected users.

Singh and Iagon AS are represented by Kurt M. Heyman, Dominick T. Gattuso and Denise S. Kraft of Heyman Enerio Gattuso & Hirzel LLP, Charles Gerstein, Emily Gerrick and Jason Harrow of Gerstein

Harrow LLP, Deepak Gupta of Gupta Wessler PLLC and Jamie Crooks and Mike Lieberman of Fairmark Partners LLP.

Illusory Systems is represented by Anne Shea Gaza and Robert M. Vrana of Young Conaway Stargatt & Taylor LLP and Douglas H. Meal, Benjamin Au, Lauren M. Kessler and Melissa Levin of Orrick Herrington & Sutcliffe LLP.

The investor defendants are represented by Roger A. Cooper, Jared Gerber and Samuel Levander of Cleary Gottlieb Steen & Hamilton LLP, William M. Lafferty, Thomas P. Will and Rachel R. Tunney of Morris Nichols Arsht & Tunnell LLP, Mark Conrad and Felipe Corredor of Conrad Metlitzky Kane LLP, Adam D. Gold of Ross Aronstam & Moritz LLP, Andrew Soukup, Valerie L. Hietko and Dillon H. Grimm of Covington & Burling LLP, Rebecca L. Butcher and Jennifer L. Cree of Landis Rath & Cobb LLP and Colleen Bal, John P. Flynn, Joshua A. Baskin and Ian R. Liston of Wilson Sonsini Goodrich & Rosati PC.

The keyholder defendants are represented by Tibor L. Nagy Jr., Gregory N. Wolfe and Matthew D. Gauthier of Dontzin Nagy & Fleissig LLP, Michael A. Barlow of Abrams & Bayliss LLP, Karen E. Keller and Emily S. DiBenedetto of Shaw Keller LLP, Jeffrey L. Moyer of Richards Layton & Finger PA, Bethany C. Lobo and Rebecca L. Tarneja of Cooley LLP and Serrin Turner and Gregory Mortenson of Latham & Watkins LLP.

The case is Singh v. Illusory Systems Inc. et al., case number 1:23-cv-00183, in the U.S. District Court for the District of Delaware.

--Editing by Rich Mills.

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Cohen Milstein Hires CFTC Whistleblower Office Leader In DC

By **Jack Rodgers**

Law360 (April 2, 2024, 3:18 PM EDT) -- Cohen Milstein Sellers & Toll PLLC has hired the acting director of the Commodity Futures Trading Commission's whistleblower office, who brings more than two decades of experience working in related roles in public service to the platform.

Christina K. McGlosson joins Cohen Milstein as special counsel: Dodd-Frank whistleblower practice, after spending 10 months as acting director of that CFTC office, the firm announced Monday. She'll be based in Cohen Milstein's Washington, D.C., office, according to her firm profile.

Serving as acting director was McGlosson's second role with that agency, having previously served as associate director of the CFTC's Division of Enforcement from 2017 to 2021, according to her LinkedIn profile. At the CFTC's whistleblower office, McGlosson oversaw \$42 million in awards to four whistleblowers in September and October of last year, the firm said.

McGlosson has more than two decades of combined experience between the CFTC and the U.S. Securities and Exchange Commission, where she started her legal career and helped create and structure that agency's Office of the Whistleblower.

McGlosson told Law360 Pulse on Tuesday that Cohen Milstein was her first role at a private practice law firm. She's always known of the firm's work with anti-fraud and the firm's reputation, she said, and wanted to join Cohen Milstein because of the opportunity to expand the firm's Dodd-Frank practice.

"Cohen Milstein is one of the leading plaintiffs' law firms, so I really felt like this was a good opportunity and a really good synergy," she said.

McGlosson earned her degree from the Catholic University of America's Columbus School of Law. After graduating, she went to work at the SEC, where she spent almost two decades in various roles, including as a senior counsel to the Director of the Division of Enforcement, senior counsel to the SEC's chief economist, and in several other positions, according to her LinkedIn profile.

McGlosson said the SEC's Office of the Whistleblower, which she helped set up, was created at the time as part of the Office of Market Intelligence.

McGlosson worked with Congress directly to help review the whistleblower rules and helped structure that group, she told Law360 Pulse. It is experience she's hoping to apply in her new role at Cohen Milstein, she said.

"It's really a great merge for me in a way, to leverage whistleblower, federal securities, SEC and even any commodities CFTC matters representing a whistleblower that would come in here," McGlosson said. "I really thought it was a good synergy with what I can give and what they need."

McGlosson joined the CFTC after that nearly two-decade stint with the SEC. Before her most-recent role with the agency, McGlosson was director of the compliance practice of Promontory Financial Group — an IBM Consulting business unit — where she also led the federal securities law practice.

McGlosson said she had always been interested in the issues and statutes that her practice focuses on.

When she started college at Georgetown University, McGlosson initially majored in government, but later picked up economics halfway through, she said.

"Economics really piqued my interest in federal securities law; the bond pricing class, the stock markets class and all of that," she said.

McGlosson said she briefly worked with PaineWebber & Co. after graduating, and she joined some of her then-recruited classmates on Wall Street to work on financial market-related issues. She always thought she would go to law school and work on federal securities matters at the SEC after that experience, she said.

"Based on my experience at PaineWebber on Wall Street, I really, really thought I wanted to go to the SEC and go to enforcement and help, quote unquote, police the markets that I worked in and saw when I was up in New York," McGlosson said.

Reflecting on her career, McGlosson said she had several highlights, including working for Robert S. Khuzami as former director of the SEC's enforcement division.

"I was his first counsel when he came in," McGlosson said. "I helped prep him for Senate Banking Committee testimony on [Bernie] Madoff, I'm the one who went with him and walked out with him when the press had their deluge on him."

She added: "I mean, I learned so much about the workings of the agency and the enforcement division and maybe helped him get the message out that we are strong, we are together, we are working with Congress, we are going to fix this, so it never happens again."

McGlosson noted that part of that federal crackdown was through the creation of the Office of the Whistleblower and Office of Market Intelligence through the Dodd-Frank Act.

McGlosson said part of her responsibilities working for Khuzami was reviewing every open investigation in that division, every other quarter.

"I went through every case, which means, I have seen every single security statute, every type of case that there could possibly be under federal securities laws," McGlosson said. "And that made me really appreciate the rule-based framework so to speak, that the federal securities laws have."

McGlosson added that she had been impressed by the firm's welcoming nature and that she was grateful for her next opportunity.

"I can tell already, [consistent with] their fabulous reputation, that this is really a special place," she said.

--Editing by Nicole Bleier.

Clarification: This story has been updated to clarify McGlosson's role at the SEC.



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Hagens Berman To Lead Yardi Rent Price-Fixing Class Action

By **Grace Dixon**

Law360 (April 2, 2024, 3:50 PM EDT) -- A Washington federal court tapped Hagens Berman Sobol Shapiro LLP as interim lead counsel for a putative class of renters amid a suit alleging that 11 property management companies are part of a price-fixing ring powered by an algorithm developed by Yardi Systems Inc.

In the Thursday order, U.S. District Judge Robert Lasnik **granted** the proposed class' request to appoint the Hagens Berman team, despite earlier arguments from Yardi and the property management defendants that interim class counsel was not yet needed.

"The court concludes that such appointment will aid in achieving efficiency and economy in what is likely to be expensive and complicated litigation, and that such appointment will enhance fairness to all parties concerned, as well as the proposed class," Judge Lasnik wrote.

After the tenants asked the court on Feb. 29 to install Hagens Berman as lead counsel, Yardi and the co-defendants urged the court to reject the request, characterizing it as a preemptive attempt by the firm to stake a claim in a possible consolidated class action.

Interim class counsel may be appointed when there are overlapping, duplicative and competing suits in other courts that may eventually be consolidated. But in the case at hand, the renters have only referenced one "substantially similar" action in California, the defendants alleged.

The proposed class members had pushed back, however, alleging that appointing interim counsel would help maximize and streamline pre-certification efforts. Given the complexity of the antitrust action, the large number of defendants and the existence of a competing case pending in another court, their request was necessary, the renters argued.

"We are pleased defendants' objection was overruled and look forward to running this case," Hagens Berman attorney Steve Berman told Law360 in a Tuesday statement.

Plaintiffs McKenna Duffy and Michael Brett filed their complaint against Yardi and a number of property managers that included Bridge Property Management LC and Calibrate Property Management LLC in September. They allege that Yardi's RentMaximizer feature uses competing apartment prices to "maximize rental income," effectively enabling pricing coordination.

Counsel for Yardi and the remaining defendants did not immediately return a request for comment Tuesday.

The putative class is represented by Rio S. Pierce, Theodore J. Wojcik, Breanna Van Engelen, Stephanie A. Verdoia, Xiaoyi "Kelly" Fan and Steve W. Berman of Hagens Berman Sobol Shapiro LLP.

Yardi is represented by Maura K. Monaghan, Michael Schaper, Kristin D. Kiehn and Abraham Tabaie of Debevoise & Plimpton LLP, and Matthew A. Carvalho.

Bridge Property Management is represented by Al Van Kampen of Van Kampen & Crowe PLLC, and Michael W. Scarborough, Dylan I. Ballard, M. Kevin Costello, Madison Lo, Stephen Medlock and Mackenzie Newman of Vinson & Elkins LLP.

Calibrate Property Management is represented by Hozaifa Cassubhai and William Burnside of Bailey Duquette PC.

Dalton Management Inc. is represented by Brian S. Epley and Jon W. Monson of Cable Huston LLP.

LeFever Mattson Property Management is represented by Steven Rich and Ryan Sandrock of Shook Hardy & Bacon LLP.

Creekwood Property Corp. is represented by Paul E. Fogarty of Fogarty Law Group PLLC, and Michael Swartzendruber and Eliot Turner of Norton Rose Fulbright.

R.D. Merrill Real Estate Holdings LLC is represented by Christopher M. Wyant, Tyler Lichter, Lauren N. Donahue and Derek Sutton of K&L Gates LLP.

HNN Associates LLC is represented by David A. Perez, Elvira Castillo, Tiffany Lee, Marten King and Adrianna Simonelli of Perkins Coie LLP.

Summit Management Services Inc. is represented by Todd A. Bowers of Gordon Rees Scully Mansukhani LLP and Stephen W. Funk of Roetzel & Andress LPA.

Manco Abbott Inc. is represented by Mathew Harrington and Valerie Walker of Stokes Lawrence PS, and Jessica Nelson and Donald Heeman of Spencer Fane LLP.

Morguard Management Co. Inc. is represented by Heidi B. Bradley and Darin M. Sands of Bradley Bernstein Sands LLP.

The case is Duffy v. Yardi Systems Inc. et al., case number 2:23-cv-01391, in the U.S. District Court for the Western District of Washington.

--Editing by Melissa Treolo.

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Kids' Clothier Didn't Deceive By Silence On PFAS, Judge Says

By **Mike Curley**

Law360 (April 2, 2024, 5:05 PM EDT) -- An Illinois federal judge has thrown out a proposed class suit alleging that The Children's Place Inc. hid the presence of so-called "forever chemicals" in its school uniforms, saying the plaintiffs haven't alleged any duty to disclose or that the company's statements were misleading.

In an **order** filed Monday, U.S. District Judge Matthew F. Kennelly dismissed with leave to amend the suit by Angala Garland and Joelis Saldana, saying that just because the company didn't disclose the presence of polyfluoroalkyl substances, or PFAS, in the clothing does not mean a reasonable consumer would therefore presume they were not present.

The judge wrote that based on the allegations in the complaint, PFAS chemicals are commonly used in textiles and apparel, and at no time has its use in those products been regulated by any federal or state agency.

In addition, the complaint alleges that this information is already widely available and suggests that companies that sell PFAS-free clothing are the exception, rather than the norm.

"In sum, the plaintiffs allege that TCP used chemicals that are legally and commonly used in apparel — including in U.S. children's school uniforms specifically — and that these facts were widely published in the mainstream media," Judge Kennelly wrote. "In this context, it is not plausible that a reasonable consumer would interpret TCP's silence on the issue of PFAS to indicate that its school uniforms were 100 percent PFAS-free."

The judge further concluded that the complaint does not establish that The Children's Place's actions were "immoral, unethical, oppressive or unscrupulous," or that the company prevented consumers from shopping around or buying other products.

The **consumers' suit**, which Garland initially launched in July, claims that The Children's Place, which holds itself up as a "global best" children's specialty retailer and claims to provide clothing with "quality, value and style" through its brick-and-mortar and online stores, knowingly sells uniform clothing containing the so-called forever chemicals. Saldana joined the suit with an amended complaint filed in November.

At a hearing in **late March**, Judge Kennelly expressed doubt about Garland and Saldana's theory that the company had a duty to disclose, saying it could open the floodgates for other similar claims.

In Monday's order, Judge Kennelly found that there was no duty to disclose, noting the complaint does not allege any special relationship between the company and Garland or Saldana, and the court has found that the company's silence was not in itself deceptive.

The judge rejected the bulk of The Children's Place's arguments that the pair lack standing, however, saying they sufficiently alleged an injury in fact, but found that they don't have standing to seek an injunction because while they have alleged they would buy the products if they knew the uniforms were PFAS-free, an injunction in this case would only require that the company stop misrepresenting its products, not make them without PFAS.

In a statement Tuesday, The Children's Place said, "We are pleased with the court's decision to

dismiss the plaintiffs' complaint, reinforcing our position that the claims were based on a highly flawed argument."

Representatives for the plaintiffs could not immediately be reached for comment Tuesday.

Garland and Saldana are represented by Debra Nicole Guntner, Ephraim Samuel Geisler and Bryan F. Aylstock of Aylstock Witkin Kreis & Overholtz PLLC and Kiley Lynn Grombacher and Lisa Johnston Nicholes of Bradley Grombacher LLP.

The Children's Place is represented by Phillip Craig Cardon, Jeffrey Parker, Abby Meyer and David Poell of Sheppard Mullin Richter & Hampton LLP.

The case is Garland v. The Children's Place Inc., case number 1:23-cv-04899, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lauraann Wood. Editing by Rich Mills.

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Uber Seeks Exit From Texas Riders' Claims In Assault MDL

By **Henrik Nilsson**

Law360 (April 2, 2024, 10:40 PM EDT) -- Uber urged a California federal court Monday to toss Texas plaintiffs' claims in the multidistrict litigation seeking to hold the ride-hailing company liable for drivers' sexual assault, saying it can't be held responsible for the actions of individual drivers under Texas law.

Uber said its **motion to dismiss** is directed to claims asserted by 17 passengers who allege they were assaulted while in Texas and "thus governed by Texas law." Uber argued that all of the plaintiffs' claims fail both under Texas law "and the insufficiency of the facts alleged."

For example, the Lone Star State holds that transportation network companies, like Uber, can't be held vicariously liable for their drivers' actions, Uber claimed. The company noted that the suit "effectively concedes that independent drivers are not Uber employees under Texas law."

"Texas courts have long held that alleged assaults, sexual or otherwise, are far outside the course and scope of employment and will not support a finding of vicarious liability because '[a]ssault is considered as an expression of personal animosity and not for the purpose of carrying out a master's business,'" Uber argued. "Texas courts routinely dismiss vicarious liability claims that seek to hold an employer liable for sexual assault by an employee."

Similarly, the motion states that the court must dismiss the plaintiffs' claim for a common carrier's non-delegable duty as a matter of law because Texas "expressly provides" that companies such as Uber are not common carriers.

The company argued that to support a claim for non-delegable duties, the plaintiffs must show that Uber assigned its own responsibilities to the drivers, which they failed to do. The complaint itself alleges that Uber, not the drivers, negligently failed to perform its duties.

"Finally, the non-delegable duty doctrine is not meant to apply to intentional torts beyond an independent contractor's authorized work, but to hold an 'employer liable for the negligence of the independent contractor' in performing the principal's duties," Uber stated. "Here, plaintiffs accuse the drivers not of negligence, but of deliberate and intentional torts of the most heinous kind, sexual assault."

The sprawling MDL has already **consolidated hundreds** of lawsuits alleging that Uber Technologies Inc. has known since 2014 that drivers were sexually assaulting passengers but consciously chose not to adopt various safety measures to prevent the assaults, such as requiring biometric data from driver applicants, mandating the use of video cameras or conducting enhanced background checks using the FBI database utilized by the taxi industry.

"The decision not to implement more thorough and persistent background checks was driven by Uber executives' desire for rapid expansion and increased profits, because the more drivers driving for Uber, the more money there was to be made," states a master complaint filed last year in San Francisco.

The ride-hailing giant markets itself as a safe mode of transportation for women, the complaint states, but in reality there have been more than 10,000 sexual assaults since 2014, shortly after the company started allowing drivers without taxi licenses to operate on the platform.

"When Uber launched its new transportation system, it did not hire any safety experts nor did it spend a single minute or a single dollar thinking about how to prevent sexual assault," the suit said. "To this day, Uber's efforts regarding safety are primarily focused on appearing safe, not actually being safe."

The plaintiffs assert that Uber has even allowed drivers that have had complaints of sexual assault lodged against them by riders to continue driving for the platform.

The **master complaint** brings claims of negligence, negligent hiring, strict products liability for defective design and failure to warn, among other claims. The plaintiffs seek both compensatory and punitive damages, saying the latter should be awarded for Uber's intentional and reckless actions.

In addition to seeking dismissal of the Texas plaintiffs' claims for vicarious liability and common carrier's non-delegable duty, Uber on Tuesday also urged the court to dismiss claims for fraud and misrepresentation, negligent infliction of emotional distress, negligent entrustment, strict product liability and violations of California's Unfair Competition Law.

Uber also said the plaintiffs should not be entitled to injunctive relief, saying that none of them alleges they "face an almost certain risk of a similar incident occurring, even assuming they were to use Uber's services in the future."

Additionally, the company argued that the plaintiffs' bid for punitive damages failed because they could not show that Uber had a specific intent to cause harm.

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

The plaintiffs are represented by Sarah R. London of Lieff Cabraser Heimann & Bernstein LLP, Rachel B. Abrams of Peiffer Wolf Carr Kane Conway & Wise LLP and Roopal P. Luhana of Chaffin Luhana LLP, among many others.

Uber is represented by Robert Atkins, Randall S. Luskey, Jessica E. Phillips, Kyle N. Smith, Jacqueline P. Rubin, Caitlin E. Grusauskas and Andrea M. Keller of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is In re: Uber Technologies Inc. Passenger Sexual Assault Litigation, case number 3:23-md-03084, in the U.S. District Court for the Northern District of California.

--Additional reporting by Y. Peter Kang and Bonnie Eslinger. Editing by Michael Watanabe.