

# City of Graham files federal suit over water contamination

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April 18, 2024



Federal Middle District Courthouse, Greensboro

Categories:

CourtsGraham

Kristy Bailey

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The city of Graham has filed a federal lawsuit against 17 major national corporations, and well as 20 “John Doe” defendants that developed chemicals, called PFAs and related toxins, that have been used for more than half a century in nonstick cookware and many other commercial products which are alleged to have contaminated the city’s water supply and resulted in serious health problems, including cancer.

In addition to DuPont and several of its affiliated companies, the lawsuit also lists among the defendants the Chemours chemical company. The city’s suit describes the “John Doe” defendants as “unidentified entities or persons” whose actions or omissions may have contributed to contamination of Graham’s water supply.

In a 68-page lawsuit filed Thursday in the U.S. District Court for the Middle District of North Carolina, the city of Graham traces the development and widespread use of these chemicals – formally termed polyfluoroalkyl substances (“PFAS”), including perfluorooctane sulfonate (“PFOS”) and perfluorooctanoic acid (“PFOA”) but known informally as “forever chemicals” – to the marriage of a “toxic chemical family,” DuPont and 3M that began in a research lab at Penn State University in the mid-1940s.

The city’s suit outlines at least a half-dozen adverse health effects that have been linked to exposure to PFOS and PFOA, including: low birth weight and other effects on the development of fetuses during pregnancy; testicular and kidney cancer; liver damage; damage to the immune system; and thyroid disease.

In 2016, the International Agency for Research on Cancer “concluded that there is evidence of the carcinogenicity of PFOA in humans and in experimental animals, meaning that a positive association has been observed between exposure to the agent and cancer for which a causal interpretation is credible,” the suit asserts.

According to the case background outlined in the city’s suit, 3M built its first manufacturing facility in 1949 to produce these chemicals, and soon landed its first customer: DuPont, which in 1951 began purchasing PFOA, for use in manufacturing a nonstick coating, Teflon.

During those early days, the suit alleges, “3M recognized the very characteristics” that gave these lab-developed compounds the characteristics that led them to be later dubbed forever chemicals.

“[They] have unique properties that cause them to be: (a) mobile and persistent, meaning that they readily spread into the environment where they break down very slowly; (b) ...they tend to accumulate in organisms and up the food chain; and (c) toxic, meaning that they pose serious health and environmental risk to humans and animals,” the complaint states.

Not only can these chemicals readily contaminate the soil and leach into groundwater, they accumulate and remain in the body for years, according to the city’s suit. “PFAs are readily absorbed after consumption or inhalation and accumulate primarily in the bloodstream, kidneys, and water,” the complaint states. “Because certain PFAs chemicals are toxic, exposure to them poses serious health risks to humans and animals.”

The city’s suit also identifies among the alleged contaminants a compound widely used in firefighting, “Aqueous Film-Forming Foam” (AFFF). The city’s suit alleges that this firefighting foam contains compounds that degrade into forever chemicals that are also discharged into the environment and result in further PFAs contamination. (Thousands of other lawsuits are currently pending across the country over the alleged adverse health and environmental effects linked to the use of AFFF.)

“By at least the 1970s, 3M and DuPont knew or should have known that PFOA and PFOS are mobile and persistent...and toxic,” the city’s suit alleges. “3M and DuPont concealed from the public and government agencies their knowledge of the threats to public health and the environment posed by [these chemicals].

Meanwhile, in 2012, federal regulators began working to monitor and mitigate PFAs contamination, based on a rule published by the U.S. Environmental Protection Agency in May 2012 that required public water services – including the city of Graham –to monitor for “30 contaminants of concern, including PFOS and PFOA,” the complaint states.

In May 2016, the EPA released “Lifetime Health Advisories,” supported by medical and scientific studies of the effects of PFOS and PFOA on lab rats and mice; those advisories were aimed at monitoring and mitigating further exposure to these chemicals, according to the city’s suit. In 2017, Congress passed legislation allocating \$42 million to remediate contamination at U.S. military bases; and in 2019, Congress passed legislation prohibiting the use of firefighting foam containing PFAs.

Polluters would bear costs for minimizing and monitoring toxic PFAS, related chemicals

The city of Graham is seeking multiple individual and joint judgments against each of the defendants that would effectively force them to clean up and pay for the alleged contamination. The damages being sought include: costs and expenses related to investigating, sampling, and reporting the extent of contamination from AFFF products; costs associated with managing contaminated water treatment plant “residuals”; costs to install and maintain filtration systems; remediation of contaminated public water supplies; costs for infrastructure modifications and upgrades, including design, construction, and maintenance; and costs for modifications to existing water supply sources that may be needed to minimize PFAS levels in drinking water.

The city is also seeking an award for punitive damages in an amount sufficient to deter the defendants from “similar wrongful conduct in the future”; and entry of an order that the defendants “acted with negligence, gross negligence, and/or willful, wanton, and careless disregard for the health and safety” of the city, among other claims for relief.

The federal court file does not indicate whether the city of Graham intends to seek class action status for its suit against the companies that allegedly produced and sold chemicals they knew to be toxic.

In addition to 3M, some of the other companies listed as defendants to the city’s suit include: BASF Corporation; Carrier Global Corporation; The Chemours Company; Deepwater Chemicals; and Tyco Fire Products.

No similar suits appear to have been filed by other municipalities in Alamance County, though Burlington city officials have recently discussed with the city council what efforts have been made mitigate and minimize the presence of forever chemicals in the city's water supply.

Graham's city council held a special meeting on November 30, 2023, specifically to discuss litigation related to the firefighting foam (AFFF). The agenda for that special meeting dealt with a resolution opting out of a class action suit against 3M and DuPont filed in federal court in South Carolina, which Graham's city council adopted unanimously.

However, the council effectively opted to preserve any future claims that it might have against DuPont, 3M, and other defendants for potential future litigation, based on the resolution that the council adopted at that special meeting on November 30.

The city of Graham is being represented for its suit by two law firms: Aqualaw in Richmond, Virginia; and Robbins Geller Rudman & Dowd in Boca Raton, Florida.

None of the defendants had filed a response by press time.

# Doctor Networking Platform Doximity Hit With Investor Lawsuit

By Matthew Bultman

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** No. [3:24-cv-02281](#)

Bloomberg Law News 2024-04-19T09:45:28744717916-04:00

Doctor Networking Platform Doximity Hit With Investor Lawsuit

By Matthew Bultman 2024-04-18T11:53:48000-04:00

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** No. [3:24-cv-02281](#)

Doximity Inc. is being sued by a shareholder who alleges the medical networking platform misled shareholders about its profitability.

San Francisco-based Doximity downplayed the impact of competition and the platform's reliance on selling additional services like advertising to existing customers to sustain its growth, according to a complaint filed Wednesday in the US District Court for the Northern District of California.

Doximity's shares slid in August 2023 after the platform said its expected revenue 2024 fiscal revenue was between \$452 million and \$468 million, down about 7% to 9% from prior projections, the complaint said.

There was a "significant decline in the market value of the Company's common stock pursuant to the revelation of the fraud," the complaint said.

Doximity, which went public in 2021 as the "LinkedIn for doctors," allows medical professionals to connect with one another. It generates revenue from drug companies and health systems that advertise on the site, according to the complaint.

Short-seller Jehoshaphat Research targeted Doximity in a report earlier this month following the disappointing revenue guidance. Jehoshaphat alleged the platform's sales were declining, which had been "masked through accelerated revenue recognition."

The suit seeks to represent a class of shareholders who brought Doximity stock between February 2022 and April 2024.

Kessler Topaz Meltzer & Check, LLP represents the investor.

The case is Kissler v. Doximity, Inc. , N.D. Cal., No. 24-cv-02281, 4/17/24 .

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# AST SpaceMobile Allegedly Hid Supplier Woes, Satellite Delay (1)

By Martina Barash

- **COURT:** W.D. Tex.
- **TRACK DOCKET:** [No. 7:24-cv-00102](#)

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AST SpaceMobile Allegedly Hid Supplier Woes, Satellite Delay (1)

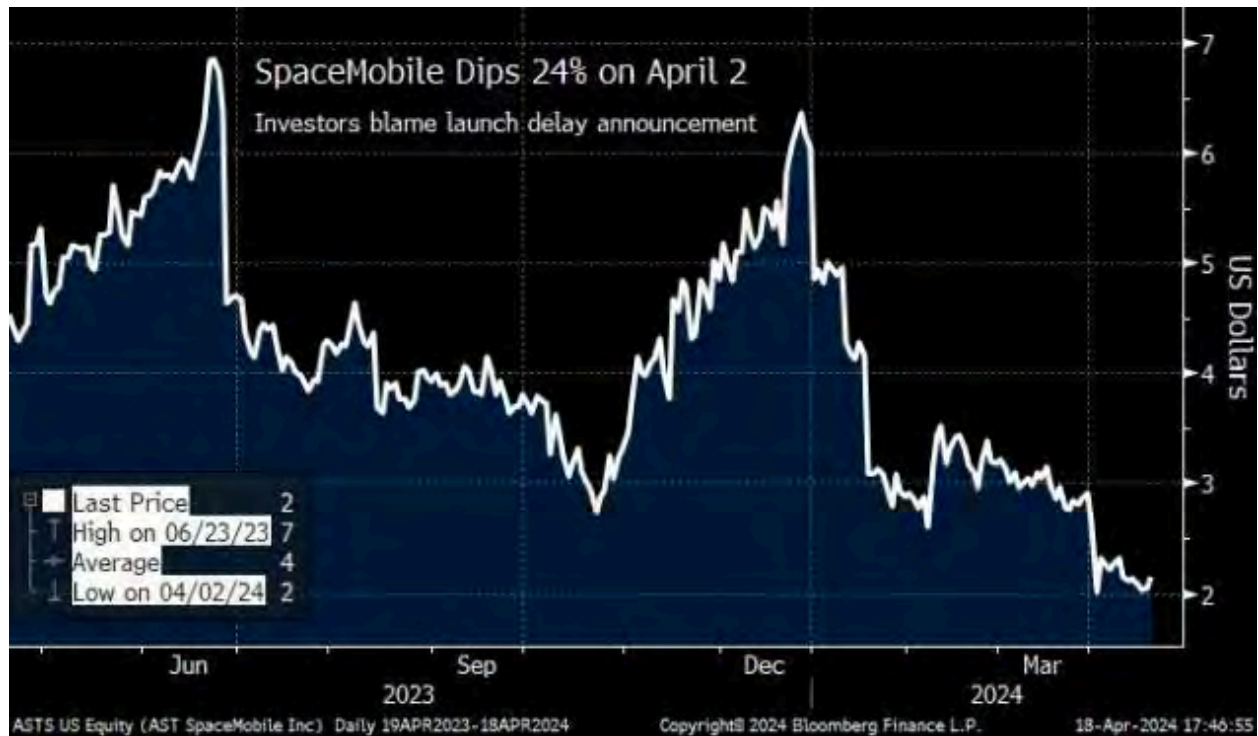
By Martina Barash 2024-04-18T14:28:25000-04:00

- **COURT:** W.D. Tex.
- **TRACK DOCKET:** [No. 7:24-cv-00102](#)

AST SpaceMobile Inc. and two of its top executives concealed information about delays in completing and launching the cellular broadband company's first five satellites due to problems with component suppliers, an investor alleges in a proposed class action.

SpaceMobile's stock price sank 24% on April 2, after the company issued a press release describing the problem, shareholder Zach Klarkowski says in his complaint, filed Wednesday in the US District Court for the Western District of Texas.

The expected launch in the first quarter of 2024 will be delayed to July or August, which will also delay revenue, Klarkowski says.



The proposed class has at least hundreds or thousands of members, according to the complaint.

Klarkowski seeks damages on his securities fraud claims.

SpaceMobile didn't immediately respond to an emailed request for comment.

The Kendall Law Group PLLC, Glancy Prongay & Murray LLP, and Frank R. Cruz, who practices in Century City, Calif., represent Klarkowski.

The case is Klarkowski v. AST SpaceMobile, Inc. , W.D. Tex., No. 7:24-cv-00102, complaint 4/17/24 .

(Updated with stock chart.)

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# Six Flags Investor Suit Over China Expansion Revived Again (1)

By Martina Barash

- Case up and down in courts, this time addressing standing
- 5th Cir. panel rebukes lower court for misapplying ruling

Bloomberg Law News 2024-04-19T09:43:59042877813-04:00

Six Flags Investor Suit Over China Expansion Revived Again (1)

By Martina Barash 2024-04-18T15:01:18000-04:00

- Case up and down in courts, this time addressing standing
- 5th Cir. panel rebukes lower court for misapplying ruling

Investors' claims that Six Flags Entertainment Corp. misrepresented the progress of theme park projects in China were improperly thrown out, the Fifth Circuit said Thursday, reinstating the proposed class action for the second time.

The district court misapplied the principles outlined in the previous appellate opinion in the case when it said one of the lead investors, an Oklahoma firefighters' retirement fund, lacked standing to sue, Judge Catharina Haynes said for the US Court of Appeals for the Fifth Circuit.

A Key West, Fla, pension fund that's not already a party to the suit is entitled to participate in the case, the panel said in an opinion unusually direct in its critique of a lower court. The unpublished decision returns the case to the federal court in Texas for a decision on whether to allow changes to the complaint.

The Electrical Workers Pension Fund, Local 103, International Brotherhood of Electrical Workers—later joined by Oklahoma Firefighters Pension and Retirement System—alleged in a proposed class action that Six Flags and its executives publicly said the Chinese theme parks' development, in partnership with a real estate developer there called Riverside, was progressing well.

But a former employee saw big problems with Riverside's work on the projects, the funds said. Six Flags made misleading statements about Riverside's financial capacity and the progress and opening dates of the parks, according to their court filings.

Six Flags' stock lost about half its value over the period when the company finally announced delays and negative financial impacts, according to the complaint.

The US District Court for the Northern District of Texas dismissed the suit for the first time in April 2021. The Fifth Circuit reversed, saying the lower court applied too great a "discount" to allegations derived from the anonymous ex-employee.

It also sorted through the statements at issue. Some statements weren't actionable because they occurred after an October 2019 earnings call in which an executive acknowledged that delays were likely, the appeals court said in its January 2023 opinion.

Back in the district court, Judge Mark Pittman said that by narrowing the set of actionable company statements, the appeals court effectively removed the Oklahoma firefighter fund's standing.

### **'Context and Common Sense'**

That reading is incorrect, Haynes said Thursday. "As a theoretical matter, we agree with Six Flags that if a plaintiff purchased stock after the fraud was fully disclosed, the plaintiff's injury in fact"—necessary for standing—"would not be fairly traceable to the alleged misstatements," she said. "However, a clear review of the facts, as stated in the prior opinion, demonstrates that this did not occur in the present case. Importantly, we never held in *Oklahoma I* that the fraud was fully disclosed by October 2019."

"Despite receiving our prior opinion, the district court misapplied the very doctrine it sought to adhere to, parsing our prior opinion like the 'language of a statute' to reach an incorrect outcome when context and common sense suggested otherwise," Haynes said.

For purposes of a class action, "the fraud ends, and the class period closes, when the fraud is fully revealed, not when a defendant stops making misleading statements," Haynes said in a footnote.

The Oklahoma fund has standing, the appeals court said.

The Key West Police & Fire Pension Fund should be allowed to intervene because it's a member of the putative class and bought stock before any of the revelations of alleged fraud, she said.

Pittman dismissed a derivative suit with similar allegations in January.

Judges Jacques L. Wiener Jr. and Stephen A. Higginson joined the opinion.

Bernstein Litowitz Berger & Grossmann LLP and McCool Smith PC represented the Oklahoma and Key West funds. Skadden, Arps, Slate, Meagher & Flom LLP and Cantey Hanger LLP represented Six Flags and the individual defendants.

The case is *Okla. Firefighters and Pension Ret. Sys. v. Six Flags Entm't Corp.*, 5th Cir., No. 23-10696, unpublished 4/18/24.

(Updated with detail from court opinion throughout.)

# Paysign, Investors Get Final Approval for \$3.75 Million Deal

By Tre'Vaughn Howard

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Paysign, Investors Get Final Approval for \$3.75 Million Deal

By Tre'Vaughn Howard 2024-04-18T14:07:51000-04:00

Paysign Inc. and investors, who alleged the company and two executives engaged in securities fraud by misrepresenting the employment of a suspended accountant, received final approval for a \$3.75 million class action settlement, according to the court's docket.

The US District Court for the District of Nevada awarded the two class representatives \$5,000 each—half of what they originally requested, the docket entry also noted.

- Paysign investors alleged on behalf of a proposed class that the company violated the Securities Exchange Act of 1934. Specifically, the investors asserted the company employed suspended accountant Arthur De Joya; that software changes created account discrepancies and inaccuracies; and that two of the executives engaged in insider trading
- Judge Gloria M. Navarro determined the investors sufficiently alleged the technology company employed De Joya without disclosing the arrangement, denying Paysign's motion to dismiss on this issue in February 2023. But, Navarro said the insider trading claims and allegations over a software glitch that caused inaccurate balances can't proceed
- Navarro granted the request for 33% of the settlement fund as attorneys' fees, as well as roughly \$57,400 in reimbursement of expenses, according to the docket entry. The settlement amount represents "almost 10% of the roughly \$37.7 million of Plaintiffs' estimated aggregate damages," both parties had said in a Dec. 15 filing

Neither party immediately responded to a request for comment.

Pomerantz LLP, Muehlbauer Law Office, Aldrich Law Firm, Leverty & Associates, and the Rosen Law Firm represent Shi and the other named plaintiffs. Greenberg Traurig LLP represents Paysign.

The case is Shi v. Paysign Inc. , D. Nev., No. 2:20-cv-00553, 4/17/24 .

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# Northeastern University Cited Benchmarks Too Soon in 401(k) Suit

By Jacklyn Wille

- 'Meaningful benchmark' standard inappropriate in early stages
- Claims challenging choice of service provider dismissed

Bloomberg Law News 2024-04-19T09:46:32418898018-04:00

Northeastern University Cited Benchmarks Too Soon in 401(k) Suit

By Jacklyn Wille 2024-04-18T09:52:38000-04:00

- 'Meaningful benchmark' standard inappropriate in early stages
- Claims challenging choice of service provider dismissed

Northeastern University must face the bulk of a proposed class action challenging the fees and investment performance of its employees' retirement plan after a Boston federal judge declined to closely examine the lawsuit's benchmarks.

It may be "intuitive to a professional investor" to evaluate fund performance and fees by making comparisons to benchmark funds, but it's "inappropriate" to do so at the motion-to-dismiss stage of an ERISA lawsuit, Judge Nathaniel M. Gorton said Wednesday. Evaluating the benchmarks held up by Northeastern University workers would require the court to consider the merits of the lawsuit in a manner that conflicts with its "obligation to draw all reasonable inferences in favor of the plaintiff," Gorton said.

Benchmarking—evaluating a retirement plan's fees or funds by comparing them to similar alternatives—has emerged as an important issue in the hundreds of lawsuits challenging plan management under the Employee Retirement Income Security Act. The Sixth, Eighth, and Tenth circuits have taken an employer-friendly approach and rejected lawsuits that weren't based on comparisons to funds with similar strategies, objectives, and risk profiles. Federal district judges in New York, Texas, and Florida have allowed cases to advance without closely looking at benchmarks.

Gorton's opinion, issued in the US District Court for the District of Massachusetts, followed the latter approach. He noted that the First Circuit, which has authority over his Boston courtroom, hasn't yet considered this issue, while other courts within the circuit have declined to strictly examine benchmarks at the outset.

Gorton also greenlighted claims challenging the Northeastern plan's recordkeeping fees, saying it was "certainly plausible" that the school breached its duties by failing to use a competitive bidding process to lower fees. He also credited allegations that the plan's use of revenue sharing—the practice of using a portion of the fees tied to particular investments to offset administrative costs—led to higher fees in a way that could violate ERISA.

The proposed class action says the Boston-based school filled its \$1.9 billion retirement plan with high-cost and underperforming investments and allowed the plan to pay excessive administrative fees. Northeastern also "ignored multiple red flags" specific to plan service provider TIAA, including an investigation by New York's attorney general into allegedly deceptive marketing practices by a TIAA subsidiary, according to the lawsuit.

Gorton allowed the bulk of the case to advance but he dismissed claims centering on TIAA's alleged marketing practices, saying there was no indication that these practices harmed the participants in Northeastern's plan.

Fair Work PC represents the plan participants. Groom Law Group and Nixon Peabody LLP represent Northeastern.

The case is *Brookins v. Ne. Univ.*, 2024 BL 131911, D. Mass., No. 1:22-cv-11053, 4/17/24.

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# Law firm Edelson pitches radical idea for picking lead in 23andMe case. Ask class members

 [reuters.com/legal/legalindustry/column-law-firm-edelson-pitches-radical-idea-picking-lead-23andme-case-ask-class-](https://www.reuters.com/legal/legalindustry/column-law-firm-edelson-pitches-radical-idea-picking-lead-23andme-case-ask-class-2024-04-18)  
2024-04-18

Alison Frankel

REUTERS/Chip East Purchase Licensing Rights , opens new tab

April 18 (Reuters) - What is the best way for judges to pick plaintiffs' lawyers to lead consolidated cases that impact thousands of people?

These choices, as you know, can have huge implications for how cases are litigated, tried and settled, but outside of securities class actions, there are few rules to guide the selection process.

Judges frequently invite plaintiffs' firms to submit applications, sometimes suggesting criteria – such as prior experience, financial stability and case management plans -- for firms to address in their briefs. Often, lead counsel candidates coordinate with each other and propose a consensus slate. Defendants usually get a chance to say whether proposed leaders on the other side are capable of doing the job.

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But you know who almost never has a say in picking firms to lead consolidated litigation?

The unnamed plaintiffs with claims in the case.

That is why a new brief , opens new tab from the Edelson law firm, requesting interim appointment to lead consolidated litigation arising from a data breach at genetic testing company 23andMe (ME.O) , opens new tab is so radical: The firm hired a pair of professors to survey prospective class members about what they actually want from the lawyers who will lead the litigation.

The Edelson brief argues that survey results from 395 prospective members of the 23andMe data breach class support its bid to lead the case. My focus here, however, is not on the merits of Edelson's candidacy -- I'll leave that to the judge -- but rather on its novel premise that there is an empirical way to give prospective class members a voice in who will represent them. (Neither 23andMe nor its counsel from Greenberg Traurig responded to an email query.)

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That premise is grounded in recent work by the academic experts Edelson hired. Joseph Avery and Alissa del Riego, both of whom have law degrees, are professors at of the

University of Miami's Herbert Business School. Last year, they published a Stanford Law Review paper [\[1\]](#), opens new tab arguing that artificial intelligence tools can be used to give absent class members a more robust voice in cases litigated on their behalf.

Avery and Del Riego put their theory to an empirical test in an experiment they described in a just-published article [\[2\]](#), opens new tab in the Utah Law Review. The professors created questionnaires based on three real-life consolidated litigations – the Takata airbag, Marriott data breach and TikTok consumer privacy cases – and surveyed mock class members about which plaintiffs' firm they would have picked to head the case. In all three surveys, mock class members picked different firms than those selected by the judges overseeing the cases.

Edelson name partner Jay Edelson told me that the professors' work was a revelation for lawyers at his firm. As you probably recall, the firm is famous (or notorious, depending on your perspective) for highlighting problems in the class action and mass litigation process.

In the 23andMe case, for instance, the firm made an early pitch to be named lead counsel before dozens of class actions were consolidated [\[3\]](#), opens new tab by the U.S. Judicial Panel on Multidistrict Litigation, arguing that 23andMe might otherwise try to reach a "collusive" settlement with compliant plaintiffs' firms. U.S. District Judge Edward Chen rejected that bid without prejudice, opting to wait [\[4\]](#), opens new tab for the cases to be formally consolidated.

Edelson has long argued that the lead counsel selection process is fundamentally flawed, in part because judges often simply allow plaintiffs' lawyers to pick their own leaders, rather than encouraging and probing competing bids as if they were corporate general counsel shopping for representation. Even when judges invite competing lead counsel briefs, as Chen did in the 23andMe case, they end up picking leaders based on their own priorities, not those of absent class members.

The Edelson firm decided to hire Avery and Del Riego to find out what prospective 23andMe class members want.

The professors described the survey process in a report [\[5\]](#), opens new tab that accompanies the Edelson brief. Using a survey firm, they eventually reached 395 respondents who indicated they were prospective class members. (Millions of people were allegedly affected by the data breach.)

Those 395 respondents were asked 17 neutrally worded questions intended to mirror the factors judges are supposed to consider in picking class counsel, including litigation strategy and firms' ability to dedicate resources to the litigation.

Respondents weren't told that a law firm had commissioned the survey or that the results would be used in a lead counsel contest. They were not given specific information about any potential lead plaintiffs' firms. Edelson, moreover, does not know the names of survey

respondents.

The results? Prospective class members said they want robust, transparent litigation, not a quick settlement. They place a high value on firms' ability to fund the case. They strongly prefer a lean, efficient leadership team. They want a resolution that safeguards their genetic data. And they want lawyers to keep them informed.

The entire project cost the Edelson firm "in the low six figures," Edelson said. It made that investment without having any idea whether the survey results would help its bid – in part, Edelson said, because the firm's hope was to "start a broader conversation" about how the lead counsel selection process can reflect what the real clients – absent class members – want.

"We thought, 'Let's just do it, and do it right,'" Edelson said.

The professors who ran the survey, Avery and Del Riego, said the project has already advanced class action litigation by proving the feasibility of soliciting input from class members and deriving insights from their responses.

"The 23andMe court has direct access to class members' stated interests," the professors said in an email statement. "What remains to be seen is what value the court will assign to class members' preferences.

Read more:

As 23andMe goes to mediation in hacked DNA case, plaintiffs' firm warns of collusion

Ozempic litigation's leadership spat spotlights lawyers' self-selection

23andMe notifies customers of data breach into its 'DNA Relatives' feature

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Reporting By Alison Frankel

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Alison Frankel  
Thomson Reuters

# Privacy class action firms jockey for control of 23andMe data breach claims; Edelson calls for new approach

 [norcalrecord.com/stories/657865535-privacy-class-action-firms-jockey-for-control-of-23andme-data-breach-claims-edelson-calls-for-new-approach](https://norcalrecord.com/stories/657865535-privacy-class-action-firms-jockey-for-control-of-23andme-data-breach-claims-edelson-calls-for-new-approach)

April 19, 2024

## Federal Court

Rafey Balabanian | Edelson PC

Trial lawyers have launched bids to gain control of about 40 class action lawsuits, worth potentially massive money, that have already been filed against genetic testing company 23andMe over a data breach affecting nearly 7 million people.

And one of the firms seeking control has asked the San Francisco judge handling the consolidated cases to consider a new strategy to decide which law firms get the lead spot, and likely the lion's share of any fee awards that may come down in a settlement or judgment to resolve the litigation.

On April 18, the firms of Edelson P.C., of Chicago and San Francisco, and Tycko & Zavareei LLP, of Oakland and Washington, D.C., each filed competing motions in San Francisco federal court, seeking to be appointed lead counsel for the 23andMe class actions.

Each of the law firms touted its depth of experience, and its leading role in moving forward data and privacy class action litigation using privacy and consumer protection laws in California and Illinois - laws which have drawn calls for reform from the nation's business and legal reform advocates, as they have been used to generate an avalanche of class action lawsuits and billions of dollars in fees for plaintiffs' lawyers through the years.

However, in their motion seeking the lead spot among all of the various firms that have piled into the court fight against 23andMe, Edelson sought to distinguish its bid by recommending the court take a new, more democratic approach to selecting lead class counsel, by considering surveying class members and allowing them to have a say in who sits across the table from 23andMe when a settlement is reached.

The lawsuits against 23andMe have piled into court since the fall of 2023, when news first broke that 23andMe's databases had been hacked, resulting in the loss of control over genetic information for more than 6.9 million people.

The lawsuits, filed in California, Illinois and elsewhere, centered on privacy laws and consumer protection laws, such as California's Unfair Competition Law and Illinois' Genetic Information Privacy Act. The GIPA claims, which would apply to alleged data breach victims

from Illinois, could prove particularly costly, with plaintiffs able to claim damages of \$2,500 to \$15,000 per alleged violation, not just per person.

The Tycko firm was among the first to file, landing a case on behalf of named plaintiff Michelle Baucus, in state court in Chicago in November 2023. That complaint leveled accusations against 23andMe under the Illinois GIPA law.

The Edelson firm followed in January 2024 with a complaint filed in San Francisco federal court on behalf of named plaintiff David Melvin and a minor identified only as J.L. That lawsuit, as others, particularly noted that the lost genetic information was posted on the dark web and other sources, and offered for sale. Notably, according to the complaint, online genetic information dealers noted the information could potentially be used to locate people of Jewish and Chinese descent for potential action against them.

The Edelson complaint included a call for special "subclass" of plaintiffs under various state genetic privacy laws.

Because they all essentially level the same accusations against the same company and seek similar damages, a panel of federal judges ordered all of the cases consolidated into one proceeding in San Francisco federal court.

The plaintiffs have not yet publicly estimated how much they believe they may be able to extract from 23andMe to settle the cases.

However, in their motion for control, Edelson urged the court to avoid a so-called "race to the bottom," in which 23andMe and plaintiffs' lawyers reach a relatively quick settlement that generates potentially big fees for lawyers, but leaves money on the table for class members.

Edelson noted in the motion "that 23andMe has repeatedly reiterated that they've corralled all of the Plaintiffs' firms into early settlement discussions and mediation with the sole exception of Edelson."

In their motion, Edelson likened a judge overseeing a sprawling consolidated class action proceeding, such as the one pending against 23andMe, to an in-house lawyer for an organization deciding which outside law firm would be best to represent them. In this case, Edelson likened the potentially millions of people suing 23andMe to being the judge's "clients," for whom the judge must pick the best possible attorney to press their claims and obtain the best possible result for the class in court.

The brief does not discuss how a judge could occupy that role, while also remaining impartial to the company being sued.

"How ... can a Court take an objective approach to deciding what's in the best interests of its temporary, millions-strong client?" Edelson wrote. "A burgeoning area of scholarship suggests a surprising but commonsense solution: perhaps we should just ask them."

Edelson's motion points to research from two professors, Alissa del Riego and Joseph Avery of the University of Miami. The motion cites a paper the professors authored discussing "Class Member Preferences of Class Counsel."

According to its motion, Edelson said it asked the professors to conduct a survey of 400 potential members of the 23andMe class action lawsuits, asking them what factors they considered important in choosing lead counsel.

The factors identified by Edelson included: a litigation strategy centered on a "well-developed" complaint, not just being the quickest to file; experience in generating big dollar settlements and judgments in data privacy lawsuits; the long-term financial viability of plaintiffs' firms seeking control of the lawsuits; and a willingness to push for more money for class members, even if it means slightly less fees for the plaintiffs' lawyers.

Edelson claimed that its history and results match up best to the factors identified in the survey conducted by the professors, at Edelson's commissioning.

Edelson, for instance, noted it has consistently been among the leaders in crafting new and innovative strategies for suing companies using data privacy laws. To date, Edelson said it has secured judgments and settlements worth more than \$5 billion.

Edelson also suggested courts, when weighing the financial strength and business acumen of law firms, take into account if those firms accepted Paycheck Protection Program loans through the federal government in response to economic and societal restrictions imposed by governors and others in 2020 amid the Covid-19 pandemic.

"While many plaintiffs' firms (either properly or not) competed against their clients to take large Paycheck Protection Program loans, our firm did not," Edelson said. "We continued to grow and increased salaries and benefits for our employees."

And Edelson said they would offer to cap their fees at "20% of what is actually received by the class." They noted that if only 5% of potential class members file claims, they will accept fees of only 5%.

Edelson, however, noted their class actions generally result in class claims rates of more than 20%.

The 20% cap guarantee likely speaks to the size of the expected return. In most class actions, lawyers are awarded fees equal to a third or more of settlements. But in unusually large class action settlements, those fee awards can be significantly less.

In a famous settlement, the Edelson firm was among the lead counsel that secured \$650 million from Facebook for allegedly violating Illinois' Biometric Information Privacy Act. Under that settlement, a San Francisco federal judge awarded Edelson and their associated lead counsel fees worth 15% of the settlement, or about \$97.5 million.

Edelson noted their recommended approach to deciding lead class counsel in the 23andMe litigation is new and may prove unpopular among their peers. But they said they believe the time has come for new approach to strengthen privacy class actions, and prevent further settlements that Edelson described as "anemic ... that primarily benefit the lawyers."

The Edelson brief was authored by attorney Rafey S. Balabanian, of the firm's San Francisco office. Balabanian was joined by attorneys Jay Edelson, Ari Scharg, J. Eli Wade-Scott, Michael Ovca, Emily Penkowski Perez and Hannah P. Hilligoss, of the firm's Chicago office.

# Third Circuit judges grill Papa Johns, Mattress Firm over tracking software

 [courthousenews.com/third-circuit-judges-grill-papa-johns-mattress-firm-over-tracking-software](https://www.courthousenews.com/third-circuit-judges-grill-papa-johns-mattress-firm-over-tracking-software)

Alexandra Jones

The appeals court seemed amenable to the argument that the pizza and mattress chains violated the privacy rights of Pennsylvanians by tracking their movements online.

PITTSBURGH (CN) — In a consolidated case that will determine whether “session replay” tracking software on Papa John’s and Mattress Firm’s websites took express aim at Pennsylvanians’ privacy rights, a panel of Third Circuit judges pried into questions of jurisdiction Thursday.

“I am admittedly a dedicated Luddite,” quipped Senior U.S. Circuit Judge Brooks Smith, a George W. Bush appointee, asking for clarification on how the software worked.

Representing both classes of consumers, attorney Jamisen Etzel provided clarification before the panel.

“It then instructs your browser that anytime you start moving your mouse clicking anything you type any letter, a copy that gets sent to a third party,” Etzel explained.

His clients were told they lacked jurisdiction by separate Pittsburgh federal judges last year.

Etzel pushed the panel toward another conclusion Thursday.

“When a company comes into Pennsylvania intentionally and violates the rights of Pennsylvanians here, Pennsylvania courts have jurisdiction to hear the claims about those violations occurring within the borders of the Commonwealth,” the Lynch Carpenter attorney said.

As lead plaintiff in the Papa John’s suit, Pennsylvania resident Jordan Schnur in 2022 accused the pizza company of using the tracking software to record video of website users’ mouse movements, keystrokes and clicks while on the site. Schnur had used Papa John’s website to order food and schedule delivery, and enter payment information. The website also directed him to a nearby store.

U.S. District Judge Nicholas Ranjan found that the class action lacked jurisdiction in August 2023, however, since the website did not expressly target Pennsylvanians’ website movements. The website being accessible in Pennsylvania wasn’t enough to create personal jurisdiction.

For the same reason, Pittsburgh federal court Judge Marilyn Horan in July 2023 dismissed a class action led by plaintiff Kenneth Hasson against Fullstory, a software service provider for Mattress Firm, alleging it recorded movements of visitors on the Mattress Firm website without their consent.

Covington & Burling attorney Mark Mosier, speaking for Papa John's and Fullstory, maintained that the plaintiffs' use of the websites doesn't support Pennsylvania jurisdiction.

U.S. Circuit Judge Peter Phipps, a Trump appointee, questioned if, after the session tracking code is put into the website, the companies at least "have some notion of aiming."

Mosier demurred.

"It's still not express aiming even if they learn where the person's located," the attorney said.

Etzel, the class' attorney, countered that both companies know they're recording users and "could voluntarily extract themselves from the situation if they wanted to."

U.S. Circuit Judge Thomas Hardiman seemed to agree.

"Maybe your friend on the other side will disagree with me, but I think it's clear that they're actively gathering data," the George W. Bush appointee told Etzel, but questioned whether the companies were really aiming at the plaintiffs given that "the only way they begin to gather the data is if people like your clients go to them."

Smith, too, indicated Thursday this was an important factor in the case's decision.

"The whole case seems to come down to whether someone is active or passive," Smith added.

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"Consumers expect the ingredient listing on the packaging and labels to accurately disclose the ingredients within the Products," Palmeri's complaint says. "Thus, reasonable consumers would not think that" Kraft "is omitting that the Products contain, or are at the risk of containing, lead."

Palmeri says that as a result of the omission, consumers who purchased Lunchables "lost the entire benefit of their bargain when what they received was a food product contaminated with a known neurotoxin that is harmful to consumers' health."

Palmeri alleges that because the products aren't safe, they are "entirely worthless."

He brings claims for violations of New York's General Business Law and negligence. He seeks damages, and to represent a nationwide class of purchasers who bought Lunchables.

"Certain substances like lead occur in the environment and can be found at low levels in agricultural products—whether on grocery store shelves, in the produce section, or grown in your back yard," a spokesperson for Kraft said. "Our products are safe for consumers, and we will vigorously defend our brand."

The case is assigned to Judge Margo K. Brodie.

Palmeri is represented by Milberg Coleman Bryson Phillips Grossman PLLC and Sultz & Lipari.

The case is Palmeri v. Kraft Heinz Co. , E.D.N.Y., No. 1:24-cv-02880, complaint filed 4/17/24 .

(Updates story with comment from Kraft in the ninth paragraph.)

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# Can drivers blocked by protesters sue? This law firm thinks so.

 [reuters.com/legal/government/column-can-drivers-blocked-by-protesters-sue-this-law-firm-thinks-so-2024-04-18](https://www.reuters.com/legal/government/column-can-drivers-blocked-by-protesters-sue-this-law-firm-thinks-so-2024-04-18)

Jenna Greene

Item 1 of 2 Thousands of demonstrators march across the Golden Gate Bridge blocking traffic during a protest against racial inequality in the aftermath of the death in Minneapolis police custody of George Floyd, in San Francisco, California, U.S. June 6, 2020.

REUTERS/Kate Munsch

**[1/2]**Thousands of demonstrators march across the Golden Gate Bridge blocking traffic during a protest against racial inequality in the aftermath of the death in Minneapolis police custody of George Floyd, in San Francisco, California, U.S. June 6, 2020. REUTERS/Kate Munsch [Purchase Licensing Rights](#) , opens new tab

April 18 (Reuters) - A lost day of wages. A missed flight. A canceled medical procedure. The acute discomfort of an over-full bladder.

Those were among the grievances shared on social media by my Marin County, California, neighbors who were caught in an hours-long traffic jam when protesters on Monday shut down the Golden Gate Bridge. Local authorities arrested 26 people, with charging decisions pending, a spokesman for the San Francisco DA's office told me.

It wasn't just the Bay Area. Protesters across the country took to the streets on Monday in a multi-city blockage to express "solidarity with Palestine," according to organizers , opens new tab -- the latest in a series of traffic-stopping demonstrations since the Israel-Hamas conflict in Gaza began in October.(To be clear, my focus here isn't on the content of the message; it's on the legal rights of those involved.)

While acknowledging the disruption, San Francisco-based defense lawyer Jeff Wozniak, a member of the National Lawyers Guild who is volunteering to represent arrestees, said that blocking bridge or highway traffic is a way to draw attention to "a life or death issue."

But while grabbing the public's attention, are protesters also inviting litigation from drivers claiming lost time and money?

On Monday, the U.S. Supreme Court coincidentally may have opened the door more widely to private civil actions against protest organizers in a case that stemmed from a 2016 Black Lives Matter demonstration in Baton Rouge.

The high court allowed , opens new tab a lawsuit by a Louisiana police officer against civil rights activist DeRay Mckesson to go forward, declining to review an appeals court decision

[🔗](#), opens new tab. The officer, who was hit in the head with a rock thrown by an unidentified protester, sued Mckesson for negligence in allegedly organizing a protest that turned violent. As my Reuters colleague Andrew Chung reported, the New Orleans-based 5th U.S. Circuit Court of Appeals rejected Mckesson's defense that his rights to free speech and assembly under the U.S. Constitution's First Amendment protected him from the negligence claim.

"The goal of lawsuits like these is to prevent people from showing up at a protest out of the fear that they might be held responsible if anything happens," Mckesson said in a statement released by his lawyers from the ACLU.

Hamilton Lincoln Law Institute co-founder Ted Frank, however, sees value in deterring unlawful protest behavior.

Frank, who is mostly known for objecting to the terms of class action settlements, told me that he and his colleague Ned Hedley are putting together class action litigation seeking both monetary damages and injunctive relief over what he calls "obnoxious and illegal" road-blocking tactics.

Frank recognizes that some demonstrators may be judgment proof because they have few assets, and he said the litigation by his nonprofit firm is also intended to discourage future highway shutdowns.

The firm has put out calls on X for plaintiffs who were stuck in traffic during a Feb. 1 protest in the Washington, D.C., area and on Monday in Chicago. Frank said the complaint will assert claims of public nuisance and false imprisonment on behalf of people trapped in their cars. He said he aims to file the suit by summer, most likely in Washinton, D.C., federal court.

When I asked him about potential First Amendment implications of the litigation, Frank said people "are entitled to engage in civil disobedience, but part of that is facing consequences for your actions."

Sonya Meyerson-Knox, director of communications for Jewish Voice for Peace, however, decried using class action litigation "to stifle social advocacy."

Members of the self-described anti-Zionist organization for the past six months have been participating in protests demanding the U.S. government call for an immediate, permanent ceasefire in Gaza and stop selling weapons to the Israeli military, she said.

"Lawsuits to censor and silence the First Amendment right to protest would destroy a vital component of any thriving democracy," Meyerson-Knox said.

Still, Wozniak of the National Lawyers Guild told me he's skeptical that a class action would be viable or that it would dissuade future protesters, who already knowingly risk arrest and criminal charges for their acts of civil disobedience (though charges are often dismissed or consist of community service or a fine).

Civil litigation against protesters would be "an attempt to chill free speech," he said, adding there's a decades-long history of activists blocking roadways to call attention to their causes.

He's right of course, but the tactics in recent years have evolved.

In 1988, for example, Act Up protesters blocked Wall Street in New York to demand more money for AIDS research. What's striking to me in watching archived television footage is how easily police removed them, simply dragging away the demonstrators, limp and non-resisting.

Watch Video At: <https://youtu.be/tOoRthLrVg4>

That's not what it looks like now.

Protesters on the Golden Gate Bridge on Monday chained themselves to parked cars, the California Highway Patrol said.

The technique – where protesters insert their arms into PVC or metal pipes threaded with carriage bolts and lock themselves to the bolts via carabiners, is called the “sleeping dragon.”

Crowd Operations Dynamix founder Robert Leverone, a retired Massachusetts state police lieutenant who trains law enforcement in dealing with protester lockdown devices, said it takes special tools and expertise to safely remove people from the devices.

For demonstrators, it's “a force multiplier,” he told me.

Reporting by Jenna Greene

Opinions expressed are those of the author. They do not reflect the views of Reuters News, which, under the Trust Principles, is committed to integrity, independence, and freedom from bias.

Jenna Greene  
Thomson Reuters

Jenna Greene writes about legal business and culture, taking a broad look at trends in the profession, faces behind the cases, and quirky courtroom dramas. A longtime chronicler of the legal industry and high-profile litigation, she lives in Northern California. Reach Greene at [jenna.greene@thomsonreuters.com](mailto:jenna.greene@thomsonreuters.com)

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NEWS

## Quinn Emanuel Faces Class Action in Fla. Over Fee Agreements

The wife of jailed real estate mogul Nir Meir is fighting bills from the firm totaling over \$360,000, contending that her signature was forged on a fee agreement. She also says the arbitration clause in that agreement violates Florida bar rules.

April 18, 2024 at 05:43 PM

Class Actions



Alexander Lugo



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

### What You Need to Know

- Quinn Emanuel is facing a lawsuit in Miami accusing the firm of enforcing a forged fee arrangement.
- The firm was originally hired by real estate mogul Nir Meir, who is facing criminal charges.
- The plaintiff also says the arbitration clause in the firm's fee agreement violates Florida bar rules.

Quinn Emanuel Urquhart & Sullivan faces class action claims that an arbitration clause included in its fee agreements violates Florida bar rules, as part of a lawsuit filed Wednesday in state court that accuses the law firm of trying to enforce a fee agreement on a client's wife based on documents her lawyer claims were forged.

The plaintiff, Ranee Bartolacci, was allegedly hit with a bill amounting to over \$360,000 in legal fees after her real estate mogul husband Nir Meir hired the firm for his criminal fraud court case. The lawsuit alleges that before Bartolacci filed for a divorce, Meir attempted to divert money away from his business and creditors into accounts under her name without her knowledge or consent. This effort allegedly involved a set of falsified documents, including a fee agreement with Quinn Emanuel.

Before his arrest, Meir allegedly told Bartolacci to urgently sign a settlement document related to a residential eviction of a home they were renting in Miami. The lawsuit claims she did not know the details of the settlement or what the terms of the settlement were.

A few months after the settlement was resolved, Bartolacci received a bill with her name on it from Quinn Emanuel totaling just over \$360,000.

Bartolacci's divorce lawyer Jeffrey Fisher tapped former Florida Bar president Gerald Richman to serve as an expert to evaluate how Quinn Emanuel's fees.

"The rates charged by Quinn Emanuel for attorneys and paralegal listed are unreasonable and/or unconscionable and/or overreaching and they violate the provisions of Rule 4-1.5," Richman stated in a written declaration to the court.

The attorneys that were staffed on the case included partner Olga Vieira, who cost \$1,690 per hour, associate Meredith Mandell, who charged \$1,345 per hour, and three other associates that each cost \$1,095 per hour.

Bartolacci told the firm that her husband should be on the hook for the bill because he arranged everything without her knowledge.

Quinn Emanuel filed an arbitration against Bartolacci six months later.

Bartolacci claims she then asked Quinn Emanuel to send proof of communications between herself and the firm regarding the fee arrangements she claims was forged, but it refused.

In addition to claiming that the fee agreement is a forgery, Bartolacci contends that it violates Rule 4-1.5 of the Rules Regulating the Florida Bar, by not asserting the arbitration clause in "bold letters."

"The ethical obligation to place an arbitration clause in a fee agreement in **BOLD LETTERS** is simple and known to any competent Florida lawyer," the complaint reads.

Bartolacci is asking for the court to give notice to all class members that the arbitration clause in their fee agreements are unenforceable.

"This is a case I did not want to file, but my repeated efforts to get the Quinn Emanuel firm to do the right thing, were unsuccessful," Bartolacci's divorce lawyer Jeffrey Fisher of Rottenstreich Farley Bronstein Fisher Potter Hodas said in an emailed statement.

Meir is currently locked up at Rikers Island facing criminal court proceedings. A Quinn Emanuel spokesperson declined to comment on the lawsuit.

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# BNSF Railway says it didn't know about asbestos that's killed hundreds in Montana town

**AP** [apnews.com/article/libby-asbestos-warren-buffet-railroad-pollution-cd9a904dd919a171b0c4c93899867e42](https://apnews.com/article/libby-asbestos-warren-buffet-railroad-pollution-cd9a904dd919a171b0c4c93899867e42)

April 19, 2024



1 of 3 |

FILE - In this April 27, 2011, file photo, the entrance to downtown Libby, Mont., is seen. BNSF Railway attorneys are expected to argue before jurors Friday, April 19, 2024, that the railroad should not be held liable for the lung cancer deaths of two former residents of the asbestos-contaminated Montana town, one of the deadliest sites in the federal Superfund pollution program. (AP Photo/Matthew Brown, File)



2 of 3 |

FILE - Dr. Lee Morissette shows an image of lungs damaged by asbestos exposure, at the Center for Asbestos Related Disease, Thursday, April 4, 2024, in Libby, Mont. BNSF Railway attorneys are expected to argue before jurors Friday, April 19, 2024, that the railroad should not be held liable for the lung cancer deaths of two former residents of the asbestos-contaminated Montana town, one of the deadliest sites in the federal Superfund pollution program. (AP Photo/Matthew Brown, File)



3 of 3 |

FILE - Environmental cleanup specialists work at one of the last remaining residential asbestos cleanup sites in Libby, Montana, in mid-September. BNSF Railway attorneys are expected to argue before jurors Friday, April 19, 2024, that the railroad should not be held liable for the lung cancer deaths of two former residents of the asbestos-contaminated Montana town, one of the deadliest sites in the federal Superfund pollution program. (Kurt Wilson/The Missoulian via AP, File)

HELENA, Mont. (AP) — BNSF Railway attorneys are expected to argue before jurors Friday that the railroad should not be held liable for the lung cancer deaths of two former residents of an asbestos-contaminated Montana town, one of the deadliest sites in the federal Superfund pollution program.

Attorneys for the Warren Buffett-owned company say the railroad's corporate predecessors didn't know the vermiculite it hauled over decades from a nearby mine was filled with hazardous microscopic asbestos fibers.

The case in federal civil court over the two deaths is the first of numerous lawsuits against the Texas-based railroad corporation to reach trial over its past operations in Libby, Montana. Current and former residents of the small town near the U.S.-Canada border want BNSF held accountable for its alleged role in asbestos exposure that health officials say has killed several hundred people and sickened thousands.

Looming over the proceedings is W.R. Grace & Co., a chemical company that operated a mountaintop vermiculite mine 7 miles (11 kilometers) outside of Libby until it was closed 1990. The Maryland-based company played a central role in Libby's tragedy and has paid significant settlements to victims.

Asbestos victims in Montana want Buffett's railroad company held responsible. U.S. District Court Judge Brian Morris has referred to the mining company as "the elephant in the room" in the BNSF trial. He reminded jurors several times that the case was about the railroad's conduct, not W.R. Grace's separate liability.

Federal prosecutors in 2005 indicted W. R. Grace and executives from the company on criminal charges over the contamination in Libby. A jury acquitted them following a 2009 trial.

How much W.R. Grace revealed about the asbestos dangers to Texas-based BNSF and its corporate predecessors has been sharply disputed.

The railroad said it was obliged under law to ship the vermiculite, which was used in insulation and for other commercial purposes, and that W.R. Grace employees had concealed the health hazards from the railroad.

Former railroad workers said during testimony and in depositions that they knew nothing about the risks of asbestos. They said Grace employees were responsible for loading the hopper cars, plugging the holes of any cars leaking vermiculite and occasionally cleaned up material that spilled in the rail yard.

Former rail yard worker John Swing said in previously recorded testimony that he didn't know asbestos was an issue in Libby until a 1999 newspaper story reporting deaths and illnesses among mine workers and their families.

Swing also said he didn't think the rail yard was dusty. His testimony was at odds with people who grew up in Libby and recall dust getting kicked up whenever the wind blew or a train rolled through the yard.

The estates of the two deceased plaintiffs have argued that the W.R. Grace's actions don't absolve BNSF of its responsibility for knowingly exposing people to asbestos at its railyard in the heart of the community.

Their attorneys said BNSF should have known about the dangers because Grace put signs on rail cars carrying vermiculite warning of potential health risks. They showed jurors an image of a warning label allegedly attached to rail cars in the late 1970s that advised against inhaling the asbestos dust because it could cause bodily harm.

BNSF higher-ups also should have been aware of the dangers because they attended conferences that discussed dust diseases like asbestosis in the 1930s, attorneys for the plaintiffs argued.

The Environmental Protection Agency descended on Libby after the 1999 news reports. In 2009 it declared in Libby the nation's first ever public health emergency under the federal Superfund cleanup program.

The pollution in Libby has been cleaned up, largely at public expense. Yet the long timeframe over which asbestos-related diseases can develop means people previously exposed are likely to continue getting sick and dying for years to come, health officials say.

Family members of Tom Wells and Joyce Walder testified that their lives ended soon after they were diagnosed with mesothelioma. The families said the dust blowing from the rail yard sickened and killed them.

In a March 2020 video of Wells played for jurors and recorded the day before he died, he lay in a home hospital bed, struggling to breathe.

"I've been placed in a horrible spot here, and the best chance I see at release — relief for everybody — is to just get it over with," he said. "It's just not something I want to try and play hero through because I don't think that there's a miracle waiting."

EY

## EY's Wirecard audits marred by 'repeated grave' violations of duties, says watchdog

Big Four firm botched audit work and quality control over several years, Apas concludes in multiyear investigation



EY, which had been Wirecard's auditor for close to a decade, had issued unqualified audit opinions © Reuters

**Olaf Storbeck** in Frankfurt 3 HOURS AGO



EY made “grave” and “repeated” violations of professional duties in its audits of defunct payments firm Wirecard, Germany’s audit watchdog Apas concluded on Friday.

The Munich-based fintech company Wirecard collapsed into insolvency in June 2020 after reporting that half of its revenue and €1.9bn in corporate cash did not exist. EY, which had been Wirecard’s auditor for close to a decade, had issued unqualified audit opinions.

The summary of the review, published on Friday, marks the official end of a multiyear investigation by Germany’s audit watchdog.

Apas criticised the Big Four firm’s “deficient execution” of [its Wirecard audits](#) as well as its “insufficient audit reporting” that resulted in the issuing of “objectively inaccurate audit opinions”.

The watchdog also rebuked [EY](#) over the “grave failure” of its internal quality controls, adding that “several key executives” of the firm conducted “multiple violations of professional duties” during the quality control process.

The regulator last year said it planned to fine EY Germany €500,000 over the Wirecard audits and impose a [two-year ban](#) on the firm taking on new large, listed companies as audit clients. Apas also said it would fine five current and former employees of the Big Four firm between €23,000 and €300,000, but those fines have yet to be formally finalised, according to people familiar with the matter.

In a brief comment on Apas's decision published alongside the regulator's statement, EY said that while it [decided not to legally challenge](#) the Apas's decision, this did not imply that it agreed with the watchdog's findings and legal assessments.

[Wirecard](#)'s administrator and former investors are suing the firm for billions of euros in damages, and Munich prosecutors have launched an investigation against several current and former EY partners over potential criminal misconduct.

Apas did not provide a view on whether EY's failings on the audits were intentional. People with direct knowledge of the ruling told the Financial Times earlier this week that the watchdog concluded that the audits were [“at the very least” negligent](#), and in some cases grossly negligent, but did not establish criminal intent.

The regulator said EY's violations of professional duties happened over several years and occurred in seven different areas, including the flawed validation of up to €1.9bn of cash that Wirecard purportedly held on escrow accounts in Asia.

After Wirecard's collapse, it emerged that EY over several years failed to request crucial account information from a Singapore bank where Wirecard claimed the cash was deposited — a routine audit procedure that could have uncovered the vast fraud at the German payments group.

The watchdog also highlighted EY's poor handling of red flags that pointed to irregularities.

The Big Four firm [was warned in 2016](#) by one of its own employees that senior managers at Wirecard may have committed fraud and one had attempted to bribe an auditor. In the same year, Wirecard's purported trustee in Singapore, who was allegedly in charge of the escrow accounts, accidentally disclosed to the auditor that he did not hold any money on the German company's behalf.

# Tesla to recall 3,878 Cybertrucks over faulty accelerator pedal, NHTSA says

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 [reuters.com/business/autos-transportation/tesla-recall-3878-cybertrucks-nhtsa-says-2024-04-19](https://www.reuters.com/business/autos-transportation/tesla-recall-3878-cybertrucks-nhtsa-says-2024-04-19)

Reuters

The Tesla Cybertruck is displayed at the SAE WCX conference in Detroit, Michigan, U.S., April 18, 2024. REUTERS/Rebecca Cook/File Photo Purchase Licensing Rights , opens new tab

April 19 (Reuters) - Tesla (TSLA.O) , opens new tab is recalling 3,878 Cybertrucks to fix an accelerator pedal pad that could come loose and get lodged in the interior trim, the U.S. National Highway Traffic Safety Administration (NHTSA) said on Friday.

A trapped accelerator pedal could cause the vehicle to accelerate unintentionally, increasing the risk of a crash, the auto safety regulator said in a notice , opens new tab.

Tesla started deliveries of its Cybertruck electric pickup truck late last year, after a two-year delay due to production problems and battery-supply constraints.

The company's shares fell nearly 3% before the bell on Friday, adding to its five-session losing streak during which the stock lost about 14%.

Tesla will replace or repair the accelerator pedal assembly at no charge and owners will be notified through letters mailed to them in June, the NHTSA said.

In the first quarter of 2024 the EV maker had three recalls affecting about 2.4 million vehicles, according to a report by recall management firm BizzyCar.

However, most issues related to Tesla recalls are usually resolved through over-the-air software updates.

In February, Tesla recalled about 2.2 million vehicles in the United States due to an incorrect font size on warning lights and U.S. safety regulators upgraded their probe into the company's vehicles over power steering loss to the status of an engineering analysis.

Reporting by Angela Christy and Akash Sriram in Bengaluru; Editing by Pooja Desai and Shounak Dasgupta

## Read Next

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Some of the other suits allege sex and disability, and many allege violations of a US law requiring employers with 100 or more employees to give workers at least 60-days notice in advance of a planned closing or mass layoff. There are also thousands of pending arbitrations brought by Twitter employees who lost their jobs.

The US District Court for the Northern District of California said Thursday that John Zeman can continue with his proposed class action against Twitter and X Corp. as Twitter's successor, denying a second motion to dismiss the April 2023 suit.

### Sufficient Allegations

The former Twitter senior communications manager now alleges in an amended complaint that he performed as well as or better than his peers and that the rushed nature of the layoffs, which saw a disproportionate number of workers age 50 or older lose their jobs, supports an inference that age was the cause for his termination, Judge Susan Illston said. The case law the companies cited in support of their contention that Zeman's intentional age bias allegations were still too conclusory were distinguishable, the judge said.

According to the suit, 60% of employees age 50 or older were included in an initial workforce reduction conducted Nov. 4, 2022, just after Musk's October 2022 purchase of Twitter. Only 54% of workers younger than 50 lost their jobs that day, and the age bias was even more severe for workers 60 and older, 73% of whom were suddenly out of work, the suit says.

Statistical evidence can strengthen the plausibility of age discrimination allegations, and "that is not all the plaintiff alleges here," Illston said. Zeman didn't need to identify in his suit the managers allegedly involved in deciding who to layoff, she said.

The lawsuit also includes disparate impact or unintentional age bias claims, the judge said.

Zeman has standing to sue on behalf of other employees allegedly subjected to the same age discrimination, even if they didn't lose their jobs on the same day he did, the court said, rejecting the companies' argument that workers let go on a day other than Nov. 4, 2022, couldn't have suffered the same injuries as Zeman and others who lost their jobs that day.

Zeman alleges the workforce reduction "was a continuing event" and that the decisions regarding which workers to cut were made based on age, Illston said. The proposed class is broad, but it would be premature to strike the class allegations before discovery has been conducted, she said.

### Related Litigation

Lichten & Liss-Riordan PC represents Zeman and the proposed class. The firm filed more than 10 of the job discrimination and Worker Adjustment and Retraining Notification Act lawsuits over Musk's takeover. It also represents thousands of workers in individual arbitrations over the Twitter layoffs.

Shannon Liss-Riordan, a partner in the firm and a veteran Boston-based labor law attorney, is lead counsel in most if not all of those proceedings. She gained national prominence suing Uber Technologies Inc. and other gig-economy companies for allegedly exploiting their drivers. She ran unsuccessfully in 2022 Democratic primary for Massachusetts attorney general.

Morgan, Lewis & Bockius LLP represents Twitter and X.

The case is Zeman v. Twitter, Inc. , 2024 BL 133471, N.D. Cal., No. 3:23-cv-01786, 4/18/24 .

(Updated with additional reporting throughout)

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April 19, 2024, 9:24AM PDT

Trump Media Suggests Illegal Short Sales Are Cratering Its Stock

By Katherine Doherty

- It's asking Nasdaq to check on 'potential market manipulation'
- Shares backing Truth Social trade at about half of recent high

Bloomberg Law News 2024-04-19T12:51:56069990563-04:00

Trump Media Suggests Illegal Short Sales Are Cratering Its Stock

By Katherine Doherty2024-04-19T12:24:57845-04:00

- It's asking Nasdaq to check on 'potential market manipulation'
- Shares backing Truth Social trade at about half of recent high

Trump Media & Technology Group Corp. says an illegal form of short selling might be behind the battering of its stock and it's asking regulators at Nasdaq Inc. to step in.

The company backing former president Donald Trump's Truth Social network penned a letter to Nasdaq Chair **Adena Friedman** asking her to ensure market makers are following rules that prevent "naked" short sales. Trump Media pointed to data that it claims is an indication of "potential market manipulation."



Former US President Donald Trump at his Manhattan trial.

Photographer: Jabin Botsford/The Washington Post/Bloomberg

Trump Media's stock has lost about half its value after topping \$66 a share in the days following a merger that turned it into a publicly traded firm. Among the explanations for the stock's swoon in recent days has been the company's scarce revenue and lack of any profit. Skepticism about Trump Media's business prospects is widespread, as the firm reported just \$4 million in revenue last year and a loss of more than \$50 million.

That and a valuation north of \$8 billion sparked a wave of bets against the stock, including short sales. Investors also have to mull the impact of Trump's legal woes, which include an ongoing criminal trial in Manhattan.

Short sellers can make a legal profit by borrowing shares from current owners for a fee, selling the stock and then buying the shares back if the price falls. The short seller then returns the borrowed shares to their owner and pockets the price difference.

But selling the stock without actually borrowing any shares – a naked short sale – isn't allowed. Trump Media says its wants Nasdaq to ensure market makers are following rules that require brokers to disclose their "net short" positions, and prevent the lending of shares that don't actually exist.

"This is particularly troubling given that 'naked' short selling often entails sophisticated market participants profiting at the expense of retail investors," Trump Media Chief Executive Officer Devin Nunes said in the letter.

Read More: [Trump Media Advises 'Long-Term' Investors on Thwarting Shorts](#)

The stock rose 2.6% to \$34.06 at midday in New York.

Trump Media said its stock was reportedly "the most expensive U.S. stock to short," which gives brokers "a significant financial incentive to lend non-existent shares." It cited four market participants that it says were responsible for over 60% of the extraordinary volume of the shares traded, including Citadel Securities, Virtu Americas, G1 Execution Services and Jane Street Capital.

The data cited by Trump Media don't necessarily reflect any unusual activity or indicate any wrongdoing. A Citadel Securities representative rejected Trump Media's claim and criticized Nunes for trying to "blame 'naked short selling' for his falling stock price." A representative for Virtu declined to comment; the other firms didn't immediately respond to messages.

"Nasdaq is committed to the principles of liquidity, transparency, and integrity in all our markets," a representative for Nasdaq said in an emailed statement. "We have long been an advocate of transparency in short selling and have been an active supporter of the Securities & Exchange Commission's rules and enforcement efforts designed to monitor and prohibit naked short selling."

--With assistance from **Carmen Reinicke**.

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# Trump Media Advises 'Long-Term' Investors on Thwarting Shorts

By Carmen Reinicke and Yiqin Shen

- An online FAQ includes language investors can send to brokers
- Fees for new DJT short sellers are among Wall Street's highest

Bloomberg Law News 2024-04-19T09:42:50908550669-04:00

Trump Media Advises 'Long-Term' Investors on Thwarting Shorts

By Carmen Reinicke and Yiqin Shen 2024-04-18T15:42:45043-04:00

- An online FAQ includes language investors can send to brokers
- Fees for new DJT short sellers are among Wall Street's highest

Donald Trump's social media company, whose meteoric stock gains made the former president billions on paper before a rapid selloff wiped out more than two-thirds of the advance, took the unusual step of advising investors how to prevent bets against the firm.

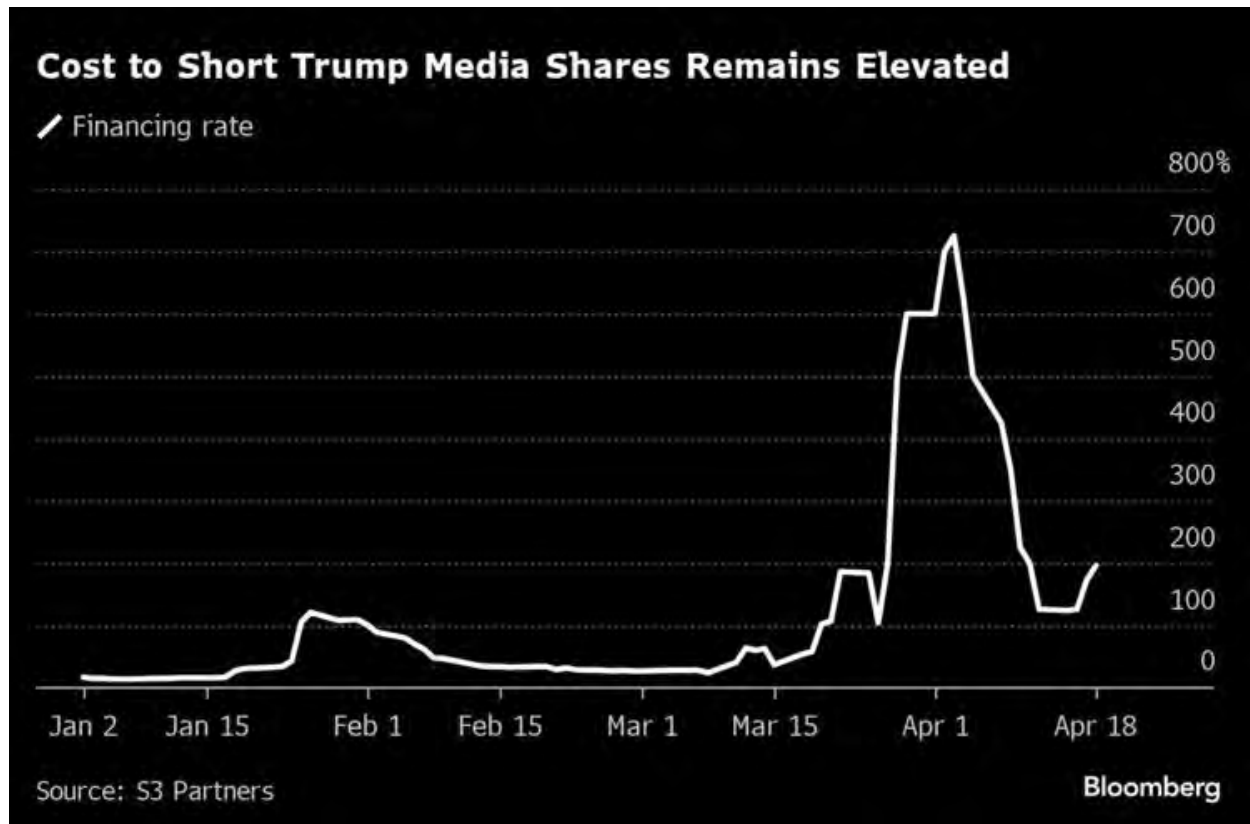
Trump Media & Technology Group Corp. issued instructions on how "long-term shareholders who believe in the company's future" can prevent brokerages from lending their shares to investors who bet against the stock by selling it short.

The parent of Truth Social, in an online FAQ about short selling, put out a form letter investors can use to opt out of any securities lending programs.

A spokesperson for Trump Media suggested the guidance was in response to investor inquiries, writing in an email, "TMTG believes it has a responsibility to provide factual information in response to the questions its shareholders are asking."

Short selling doesn't necessarily cause share-price declines, but it can weigh on the price if there are enough contrarian traders betting against a stock.

Skepticism about Trump Media's business prospects is widespread, as the firm reported just \$4 million in revenue last year and a loss of more than \$50 million. That and a valuation north of \$9 billion sparked a wave of bets against the stock.



Some 16% of Trump Media's public float is sold short, according to data from S3 Partners. Fees for new shorts sellers are between 135% and 215% of the stock's price — one of the highest on Wall Street.

Short sellers have long had a dark image in the popular mind, a view that painted Wall Street actors as out for profit at the expense of American companies and their employees. This portrayal played a prominent role in the meme-stock craze of 2021, particularly around GameStop Corp. There, followers of Reddit Inc.'s Wall Street Bets board powered a rally in the video-game retailer with the express intent of forcing losses onto prominent short sellers.

**Gabe Plotkin's** Melvin Capital Management was famously bludgeoned in the episode and the hedge fund later shut down.

The Trump Media FAQ Wednesday appeared to lean into that negative imagining of short sellers, suggesting the practice was a tussle between the "retail investor" and "sophisticated and institutional investors."

"If the price of the stock in fact decreases, then the brokerage firm and the sophisticated and institutional investors will have made a profit, while the ultimate retail investor has not," the filing said.

**Julian Klymochko** of Accelerate Financial Technologies called the situation unusual and said Trump Media trading bore the hallmarks of less experienced daytraders.

"The shares are held, and traded rapidly, by unsophisticated retail speculators who are looking for fast gambling action in the latest meme stock craze," he said. "As opposed to fundamental analysts, DJT speculators are more akin to conspiracy theorists, blaming every share price decline on non-existent short sellers."

While it's true that short sellers will profit if the target stock falls, the lender profits no matter what happens to the short bet, simply by collecting interest. Brokerages, such as Fidelity and Schwab, have programs where clients can opt in to earn income by loaning securities.

Trump Media also suggested other ways retail investors could prevent having their shares borrowed, including moving shares into a cash account from a margin account, moving them to Odyssey Transfer and Trust Company — the company's transfer agent — or moving shares to a bank and holding them in a retirement account.

"It's understandable why a heavily shorted company would like to defeat those who are betting against it," said **Steve Sosnick** at Interactive Brokers. "But over time, the best way for a company to do that is to deliver on the bottom line."

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# Stock Market Today: Nasdaq Drops, Oil Prices Gyrate After Israel Strikes Iran

## Netflix slides after company's projections disappoint investors; Dow rises

Last Updated: April 19, 2024 at 12:42 PM EDT

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● Updated 44 min ago ★

### Trump Media CEO Decries Naked Short Selling; Citadel Fires Back, Stock Rises

By [Amrith Ramkumar](#), *Climate Finance Reporter*

Truth Social's Devin Nunes has asked Nasdaq for help to prevent naked short selling and to ensure brokers disclose short positions. (Sarah Silbiger/Reuters)

Shares of Truth Social's parent are rising in another volatile session, extending a roller-coaster stretch of trading for Donald Trump's social-media startup.

The stock, which trades under the ticker DJT, is still well below its peak from late last month. It's fallen some 46% in April through yesterday's close. It was up about 3% in recent trading.

On Thursday, Trump Media Chief Executive Devin Nunes sent a letter to Nasdaq CEO Adena Friedman asking her to help prevent illegal naked short selling and to make sure trading firms disclose their short positions.

A spokesman for Citadel Securities, one of the market makers named in Nunes' letter, said in a statement after news of the letter was disclosed Friday:

"Devin Nunes is the proverbial loser who tries to blame 'naked short selling' for his falling stock price. Nunes is exactly the type of person Donald Trump would have fired on 'The Apprentice.' If he worked for Citadel Securities, we would fire him, as ability and integrity are at the center of everything we do."

A Trump Media spokeswoman said in a statement:

"Citadel Securities, a corporate behemoth that has been fined and censured for an incredibly wide range of offenses including issues related to naked short selling, and is world famous for screwing over everyday retail investors at the behest of other corporations, is the last company on earth that should lecture anyone on 'integrity.'"

Short sellers borrow shares, then sell them with the hope of buying back later at a lower price to profit. Traders are typically allowed to sell first, as long as they then borrow the stock within a few days. In naked short selling, a trader [never follows through](#) on the promise to borrow.

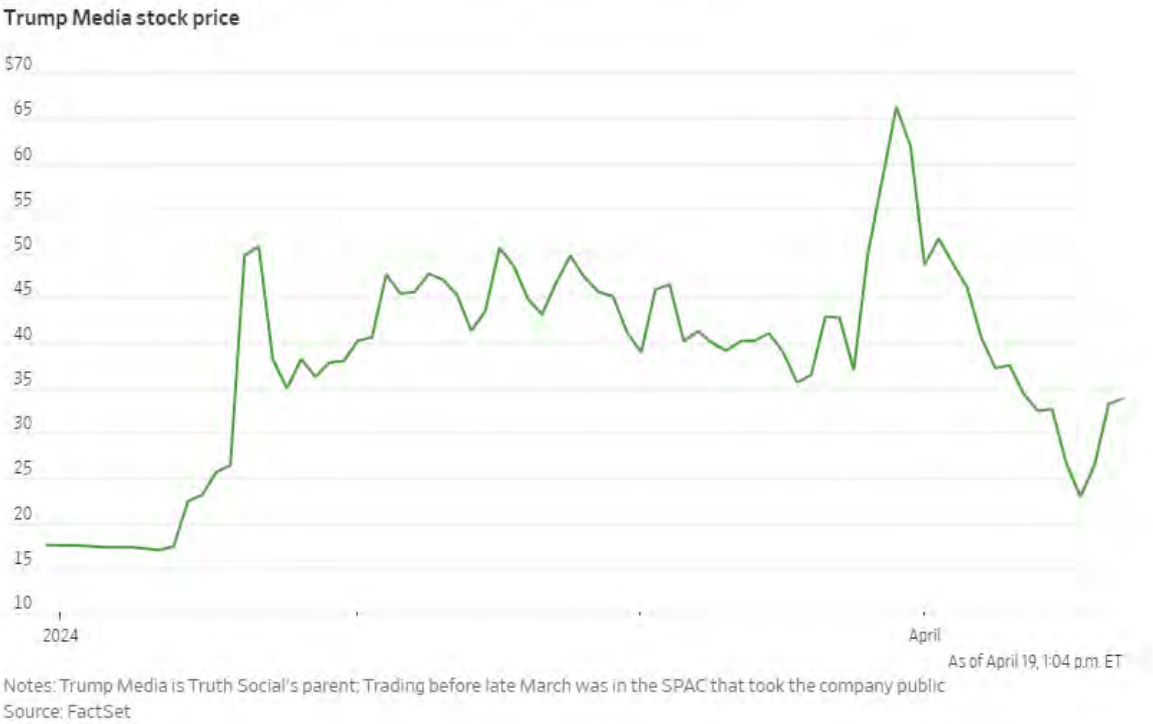
Some investors have been trying to short Trump Media, but there are very few shares available for trading, making it expensive to borrow shares and adding to the volatility.

A Nasdaq spokeswoman said the exchange is committed to maintaining integrity in the market and supporting regulatory efforts to curb illegal naked short selling.

The SEC and FINRA are responsible for enforcing those rules.

A Nasdaq spokeswoman said the exchange is committed to maintaining integrity in the market and supporting regulatory efforts to curb illegal naked short selling.

The SEC and FINRA are responsible for enforcing those rules.



**Trump Media & Technology Group Corp.** DJT (U.S.: Nasdaq) **\$33.77 USD 0.58 1.74% ↑**

**Dr Martens Clothing Ltd**

## **Dr Martens' Ije Nwokorie: would-be saviour of bootmaker's IPO promise**

Shoemaker has issued five profit warnings since private equity firm Permira listed it in London in 2021

**Laura Onita** and Mari Novik in London 7 HOURS AGO



Ije Nwokorie knew little about Dr Martens when he joined its board in 2021 — beyond owning a few pairs of the yellow-stitched boots, with his first purchase dating back to the 1990s on 125th street in New York. Now two months after starting as its brand officer, the 53-year-old executive is to be thrust at its helm with a tall order: rekindling the fortunes of the UK-listed company.

Ever since its initial public offering in London three years ago, the bootmaker once beloved by punks and skinheads has been a disappointment. Chief executive Kenny Wilson, who will step down by March next year, has presided over five profit warnings.

The latest, on Tuesday, predicted that the company's pre-tax profits for 2025 could shrink by two-thirds compared with this year, to about £35mn. The share price has dropped 85 per cent since the IPO, giving the company a valuation of £670mn from a £3.7bn listing peak.

The leadership change has triggered both relief and circumspection among investors and analysts.

“When you IPO, at what was probably a seriously inflated value, it raises the ante significantly . . . The trouble is, if you don't get those numbers right, those numbers become the governing factors,” said Richard Hyman, a retail analyst at Thought Provoking Consulting.

“In this context investors might have wanted to see an external candidate come in and shake things up,” added Danni Hewson, head of financial analysis at AJ Bell.

## Dr Martens' stock performance since IPO

Share price, pence



Source: LSEG via markets.ft.com

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At stake are not only the growth prospects of the 79-year-old brand as a standalone company but also the reputation of UK buyout firm Permira, which floated the retailer during a flurry of listings at high valuations as the world emerged from lockdowns. The private equity fund manager offloaded £1bn worth of shares in the listing, while Wilson netted £20mn. Permira sold another stake for £257mn in 2022, retaining 38 per cent in the FTSE 250 company.

But pre-tax profits at Dr Martens more than halved to £25.8mn in the six months to September 30, and revenue fell 5 per cent to £395mn. Its operating profit margin is expected to shrink to 7.3 per cent from almost 25 per cent in the wake of the IPO, investment bank Peel Hunt estimates.

“It’s a good example of some IPOs — a fantastic payday for certain people and it can often be a bit damaging for the company when they have to pick up the pieces and deal with the consequences,” Hyman said.

The first Dr Martens pair was created in 1945 by Klaus Maertens, a Bavarian soldier who sought to ease his injured foot with air-cushioned soles. The 1460 boot became a symbol of British youth culture and the working class before it went mainstream in the 1990s. The Griggs shoemaking family, who first licensed the brand in the UK, sold it to Permira for £300mn in 2013.

The chain's growth as a public company has been predicated on millions more people buying its footwear worldwide, especially in the US — a key market.

But the expansion has not gone to plan amid an already challenging apparel market, overflowing with excess inventory. The poorly implemented move of its main distribution centre from Portland to Los Angeles in 2022 forced the retailer to open temporary warehouses after it bought too much stock. Meanwhile, its decision to focus marketing efforts on its shoes and sandals has led to a decline in the sales of its traditional boots in the US.

“They have had too much stock, decided against discounting their product before Christmas, are investing a lot during a downturn, have decided not to put up prices this year . . . It's all crunching their profit,” said Kate Calvert, a retail analyst at Investec.

The board is unfazed by Nwokorie's lack of fashion retail experience or the fact that he has not run a public company. They are banking on Giles Wilson, Dr Martens' incoming finance chief who previously ran aviation services company John Menzies when it was listed, to lead the turnaround. Nwokorie's mandate is to drum up demand for boots, company insiders say.

The incoming CEO is “a brand visionary, with great marketing skills”, chair Paul Mason told the Financial Times - but with “a really commercial brain, which is unusual”.

Nwokorie was born in the US to a Nigerian university lecturer father, who in 1966 moved his family to a “quaint Pennsylvanian town of yellow buses and cosy county fairs” following the civil war in his homeland. A few years later the family returned to Nigeria where Nwokorie grew up.

Creativity “was fundamental to everyday life”, he said [in a speech](#) about his childhood in the war-torn south-eastern state of Umuahia. “If you wanted a kite, you got some old newspaper . . . you stole some of your mum's thread for braiding her hair and you had a kite.”

After studying architecture in Nigeria and at Columbia University in New York, he joined brand consultancy Wolff Olins in 2006 as a senior strategist, climbing the ranks to chief executive in 2014. Nwokorie also did a six-year stint at Apple where he was a senior executive in its retail division. In 2021 he joined Dr Martens' board as non-executive director and in February started as its chief brand officer.

One of Nwokorie's most immediate tasks is to get sceptical investors on side.

Artemis Income Fund, its third-largest shareholder, identified Dr Martens as "the biggest detractor" in its portfolio in the quarter to the end of December.

The stock traded "on an almost distressed valuation multiple" and although "fundamentally [it] remains a unique brand with a global resonance . . . the obvious catalyst for improved share-price performance would be better guidance and improved execution," it said in an update to shareholders.

Meanwhile, New York-based Marathon Partners, a top 30 shareholder, last month wrote to the board urging them to consider a sale or a merger of the brand after the slump in the share price and "total shareholder returns . . . significantly lower than industry peers" since the IPO.

"Maintaining Dr Martens as an independent publicly traded company is likely no longer in the best interests of shareholders," they said.

Nwokorie's team will need "to reset expectations, then show that they can stick with it," said Doriana Russo, an analyst with HSBC. "They have a tough job ahead of them."

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Securities Law News

April 18, 2024, 11:10 AM PDT

# TD Investors Meet as Probe, CEO Succession Fuel Frustration (2)

By Christine Dobby and Hannah Levitt

- Lack of heir apparent is said to stoke managers' frustration
- Salom, Ahmed and Chun are seen as among potential contenders

Bloomberg Law News 2024-04-19T09:43:27893281897-04:00

TD Investors Meet as Probe, CEO Succession Fuel Frustration (2)

By Christine Dobby and Hannah Levitt2024-04-18T14:10:02368-04:00

- Lack of heir apparent is said to stoke managers' frustration
- Salom, Ahmed and Chun are seen as among potential contenders

Toronto-Dominion Bank is confronting shareholders at a moment when investors and executives alike are clamoring for clarity on potential penalties in a US probe and the future of the firm's leadership.

The bank's annual shareholders meeting on Thursday comes as the firm contends with an investigation into its anti-money-laundering controls that has derailed the lender's growth strategy, hurt its stock and hastened questions about who might eventually rise to succeed Chief Executive Officer Bharat Masrani, 67, once he ultimately retires.

Senior executives have grown unhappy with the lack of an heir apparent, according to people with knowledge of the situation. The uncertainty has exacerbated managers' frustrations over the business setbacks and their ability to plot their futures, the people said, asking not to be named discussing private conversations.

Much of the tension stems from the bank's attempt to buy Memphis-based First Horizon Corp., which was called off almost a year ago amid the US regulatory probe into how the Toronto-based lender handled suspicious customer transactions. The move left Toronto-Dominion with ample capital to deploy and limited options, with its US growth strategy in limbo. The stock has tumbled in recent months, falling more than 8% this year, compared with a 2.6% decline for the S&P/TSX Commercial Banks Index.



Toronto-Dominion Bank Chief Executive Officer Bharat Masrani speaks during the firm's annual general meeting in Toronto on April 18.

Photographer: Della Rollins/Bloomberg

Masrani, who's been CEO for almost a decade, voluntarily took a C\$1 million (\$725,000) pay cut for the last fiscal year over the scuttled acquisition of First Horizon and regulatory probe. Now, with no clear successor lined up, a new board chair is under pressure to come up with a way forward to satisfy investors and employees.

"The uncertainty is the biggest source of consternation," said **Dan Rohinton**, portfolio manager at iA Global Asset Management. The firm's retail mutual funds have about 4 million Toronto-Dominion shares.

Investors in Canada's second-largest bank want more detail on the fines it's likely to pay, Rohinton said, as well as whether it could be restricted from mergers and acquisitions — or, in a worst-case scenario, face a cap on growing US assets organically.

Analysts have estimated the fine could top \$1 billion, and the bank is already spending hundreds of millions of dollars on upgrades to its risk and control systems in the US.

"Regretfully, our AML program was not where it needed to be, and we are addressing it," Masrani said at Thursday's meeting. "We know what we need to do, and we are working diligently to strengthen our program. We have onboarded globally recognized talent and leadership, and invested in technology, process design, training and other activities. I understand that you want to know more. However, given the confidential nature of regulatory discussions, I cannot provide additional detail or speculate on timing or announcements."

Masrani was asked about the underperformance of Toronto-Dominion's stock.

"Without a doubt, shareholders have some anxiety, and as do we, regarding our issues in the US," he said. While Masrani believes the bank is doing "very well" fundamentally, he said he's "sure there's pressure" on the stock until the anti-money-laundering issue is resolved.

Indeed, with the broader regulatory penalties still up in the air, investors don't yet seem convinced.

"That uncertainty is weighing on the stock," **Nigel D'Souza**, an analyst with Veritas Investment Research Corp., said before the meeting. "And then you have questions about succession planning as well."



"Bharat is focused on strengthening the bank, serving our customers and creating value for shareholders," Toronto-Dominion spokesperson **Lisa Hodgins** said in an email. "He leads a deep and highly experienced bench of leaders with proven track records driving growth across large complex businesses. As you would expect, we have a very detailed and robust succession plan, overseen by the board, which continues to serve us well."

Asked about succession at Thursday's meeting, Masrani indicated he's still got ample energy for the job.

"I'm healthy. I wake up every morning saying, 'How can we serve customers even better, create more value for our shareholders?' I feel great." he said. "When the time comes," there will be a "seamless" transition, he added, reiterating that the company has a thorough succession plan in place.

Still, to outsiders, questions about his replacement have grown murkier this year. **Michael Rhodes**, who was leading the company's Canadian retail bank, departed in December to become CEO of Discover Financial Services, a role he has since left. His exit from Toronto-Dominion came as a shock to many executives, one of the people with knowledge of the conversations said.

Read More: Discover CEO Michael Rhodes Resigns to Become Ally's Head

**Leo Salom**, who heads up Toronto-Dominion's US operations, has long been seen as a potential CEO candidate, but it's unclear how the anti-money-laundering mess in the country might impact his path to the top.

The firm has a "strong and growing franchise in the US," Hodgins noted in the emailed statement, pointing to more than 10 million customers in "major markets and communities from Maine to Florida."

Another contender has been **Riaz Ahmed**, the former chief financial officer who was tapped to lead the capital-markets unit in 2021. Some within the company have speculated he could be named CEO but take on the role for a shorter-than-normal period — five years or less. Still, Ahmed's age — he's in his early 60s — could be a knock against him. Also, he's been with the bank since the 1990s and on its senior executive team since 2009, a lengthy tenure when a more-dramatic change may be preferred.

One new name in the mix is **Ray Chun**, the former head of wealth management who was named to run the Canadian personal-banking business after Rhodes departed. The new post is an important role, often viewed as part of the CEO pipeline.

The succession question — intertwined as it is with the US issues — will be top of mind for the board's new chair, **Alan MacGibbon**. The long-time director took over from Brian Levitt on Feb. 1 and led the bank's annual shareholder meeting in Toronto.

Despite the lingering questions, at least one influential market watcher sees upside in Toronto-Dominion's shares. **Meny Grauman**, a managing director in Bank of Nova Scotia's Global Equity Research unit, upgraded the stock to outperform on Wednesday.

"We believe that fear has overtaken rationality on this name," Grauman said in a report to clients co-written by associate **Felix Fang**.

The stock is trading at about 10 times earnings, compared with about 12 times earnings for rival Royal Bank of Canada and about 13 times earnings at Bank of Montreal, according to data compiled by Bloomberg.

“Concerns about the bank’s US regulatory problems and worries about succession at the bank are all valid,” Grauman and Fang wrote. “But we now believe that the downside risk from both of those issues is more than fully priced into the shares right now.”

(Updates with Masrani’s comments on share price, succession starting in 10th paragraph.)

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Daniel Taub, David Scheer

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# Invesco-Bain Debt Brawl Spills Out Into Open After Shock Payment

By Jonathan Randles

- They're fighting over Robertshaw, a maker of appliance parts
- Court records offer an inside look at disputed debt deal

Bloomberg Law News 2024-04-19T09:41:18639470662-04:00

Invesco-Bain Debt Brawl Spills Out Into Open After Shock Payment

By Jonathan Randles2024-04-18T07:30:00000-04:00

- They're fighting over Robertshaw, a maker of appliance parts
- Court records offer an inside look at disputed debt deal

Matthew Brooks stared at the numbers glowing on his screen in disbelief. Somehow, a big slug of cash — some \$92 million — was about to hit Invesco's accounts.

It's the kind of news that investors typically delight in receiving and yet Brooks, a managing director in Invesco's distressed credit group, was alarmed. And puzzled. The payment had come from Robertshaw, a maker of washing machine parts based in Itasca, Illinois. That made no sense to him. The company had been so cash-strapped just days earlier that it was on the cusp of bankruptcy and now somehow it's cutting big checks to pay back its loans? How?

This, Brooks immediately knew, was a huge problem for Invesco, which had been preparing internally to fund Robertshaw's restructuring — a process that would likely see it own the business out of bankruptcy. The debt they intended to leverage in Chapter 11 was suddenly erased from the company's balance sheet and, along with it, something far more valuable than the cash flooding into the firm — control.

Up until then, Invesco owned a majority of Robertshaw's most senior debt, granting them the coveted position of "required lender" and giving them the right to influence the company's reorganization. The surprise December repayment meant someone had snatched that away.

"We have potentially lost req lender here," Brooks messaged an associate that night. "And idk [how] we control this."

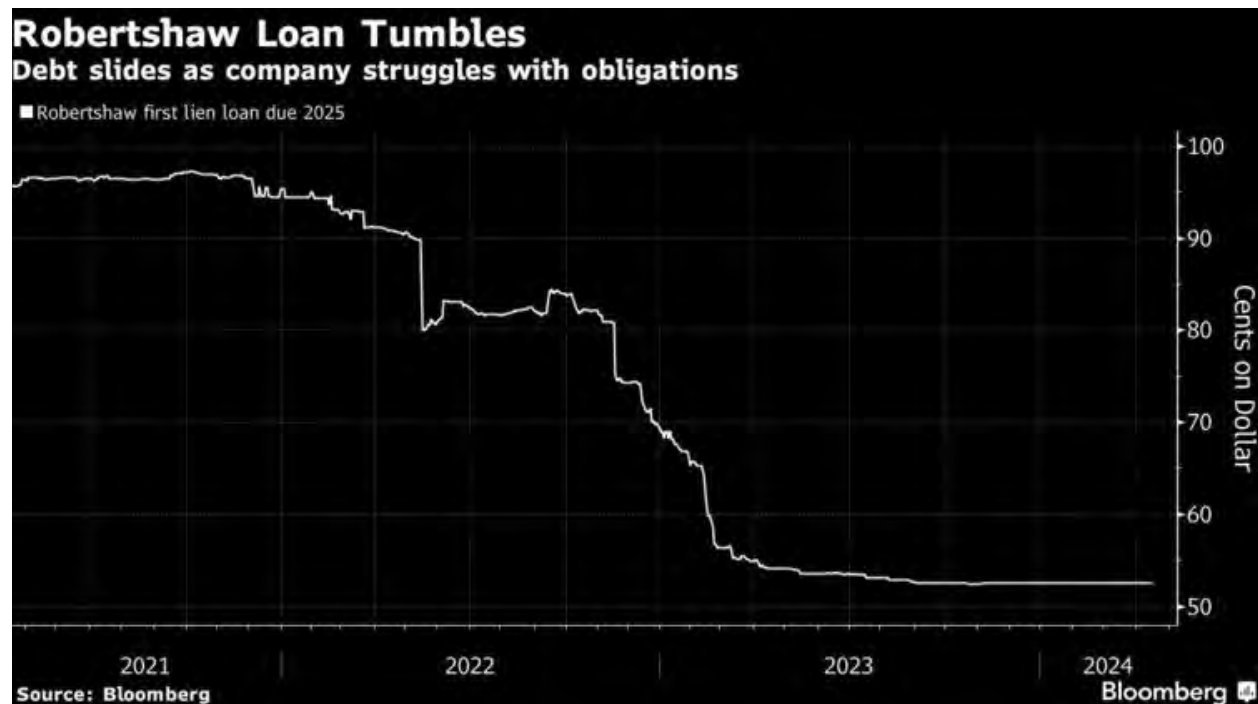
It turned out that Bain Capital Credit, Eaton Vance Management and Canyon Capital Advisors — three lenders Invesco worked with months earlier on a controversial financing for Robertshaw that pushed other creditors down the repayment line — were tipped off to Invesco's plan, and responded by concocting their own deal with Robertshaw and owner One Rock Capital Partners, which welcomed a chance to avoid bankruptcy.

It would spawn dueling allegations of lender-on-lender betrayal that burst into the open when Invesco sued to block the competing transaction. Even by the standards of the past few years — a period in which conflicts between creditors have exploded — the speed with which one-time collaborators became courtroom foes in the Robertshaw feud is surprising, and shows how far sophisticated, deep-pocketed firms are willing to go to control corporate restructurings.

"Some of the funds that do these kinds of transactions can be fairly described as on the aggressive side of the market," said **Thomas Kessler**, a restructuring lawyer at Cleary Gottlieb Steen & Hamilton. "What comes along with that is, they're going to be pretty pissed when they lose."

This account is based on conversations with people familiar with the Robertshaw transactions as well as bankruptcy records, email correspondence, presentations and deposition testimony made public earlier this month by a New York state judge overseeing the lawsuit.

Spokespeople for Invesco, Robertshaw, Bain and Eaton Vance declined to comment. One Rock didn't respond to requests seeking comment, nor did lawyers representing Canyon in the bankruptcy.



Just before Thanksgiving, Brooks had dinner with Robertshaw Chief Executive Officer **John Hewitt** to discuss turnaround plans for an unglamorous business that makes water valves for washing machines, top burners for gas stoves and cold thermostats and electronic control panels for refrigerators.

Weeks earlier Invesco, which had amassed about \$72 million of Robertshaw's most senior debt along with around \$242 million in lower-ranking obligations, had used its position to propose an agreement that was kept secret from other lenders. It required Robertshaw to ready an Invesco-led bankruptcy that could be initiated as soon as January, according to the company.

Hewitt expressed concern bankruptcy would complicate his company's relationship with a key customer. But Brooks, a distressed debt veteran, had worked with skittish CEOs and CFOs before, and said in a deposition that he believed their concerns about bankruptcy were "often very overblown."

He thought Chapter 11 could be a huge help to Robertshaw by cutting a substantial amount of debt, much of which could be traced to the 2014 leveraged buyout of the company by its previous owner, Sun Capital Partners.

It didn't hurt that Invesco would likely take control of the business in a Chapter 11. Internally, Invesco projected returns nearly double its investment if it took over the company via bankruptcy.

Robertshaw agreed under the Invesco deal not to take on more debt. That's why the notice Brooks got in December didn't make sense: somehow, Robertshaw had repaid Invesco's senior loan, along with a roughly \$20 million premium.

What Brooks didn't know was that around the same time he was having dinner with Hewitt, Bain, Eaton Vance and Canyon had caught wind that Invesco was preparing Robertshaw for bankruptcy.

The four firms had teamed up about seven months earlier to provide the company with fresh financing, and Invesco's decision to cut the other three out now was, for them, nothing less than a betrayal.

The trio acted quickly. Over the course of a few weeks, they provided Robertshaw with more than \$40 million and repaid nearly all of Invesco's senior debt by requiring the company borrow an additional \$228 million.

Invesco's head of distressed credit, **Paul Triggiani**, immediately thought the payment was prohibited by their agreements with the company, but pressed a colleague to start buying junior debt to protect the firm's position. The request was so urgent Triggiani said to buy the debt "even at par" if necessary.

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"How is this possible?" was the first thing that went through Brooks' head, according to his deposition. "We had strictly prohibited the incurrence of additional debt to repay debt."

It would soon become clear. According to Robertshaw's lawyers, the manufacturer's corporate parent created a new company called RS Funding. Robertshaw used borrowings from the new entity to repay Invesco, allowing Bain and the others to assume the mantle of required lender. The prohibition on incurring more debt applied to subsidiaries of Robertshaw, a restriction that didn't apply to RS Funding because it exists underneath Robertshaw's ultimate parent, according to the company.

Invesco sued in New York state court on Dec. 20, calling the Bain deal an "illegal sham transaction."

Lawyers for Robertshaw, One Rock, Bain, Eaton Vance and Canyon have defended the maneuver, saying it was authorized under the relevant credit agreements and averted a rushed bankruptcy. "Invesco, as a sophisticated investor, knew that its first-out term loans could be voluntarily prepaid at any time," they said in court.

An attorney for other Robertshaw lenders, who were already suing to block the refinancing transaction from seven months earlier, said in court that Invesco, Bain, Eaton Vance and Canyon had turned on creditors, and then turned on each other.

#### **'Unfortunate Mess'**

Bain's December financing was supposed to give Robertshaw more time to implement its turnaround, but the company and its backers said the runway was eaten up after Invesco sued to retain its required lender status. Robertshaw was required under an indemnity agreement to cover the lenders' legal costs, which soaked up cash intended to turn around the business, attorneys have said.

It became too much for Robertshaw to handle. The company filed for Chapter 11 in February, a decision that put the Invesco lawsuit on hold.

Robertshaw's path out of bankruptcy remains uncertain. Invesco and Bain, Eaton Vance and Canyon have each offered to fund its reorganization, a sign that financiers still see potential in a turnaround. The dispute could be resolved through mediation, and Robertshaw settled the earlier lawsuit brought by other lenders over the May debt deal last month.

Invesco lawyer Andrew Glenn said at a recent hearing that it's possible mediation can unwind the dispute, but shared a grim assessment that's been echoed by other lawyers.

"This case is an unfortunate mess," he said.

--With assistance from **Reshmi Basu**.

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# Endo Pleads Guilty To Marketing Opioids As 'Crush Proof'

By **Danielle Ferguson**

Law360, Detroit (April 18, 2024, 5:48 PM EDT) -- Endo Health Solutions Inc. pled guilty Thursday in Michigan federal court to putting out a drug it falsely advertised as being "crush proof" and "abuse deterrent," part of its larger agreement with the government to resolve nearly \$2 billion in civil and criminal claims against the company.

Endo pled guilty to one misdemeanor count of violating the Federal Food, Drug, and Cosmetic Act over its sales of Opana ER, which prosecutors say was inadequately labeled but pushed by the company's sales reps as being resistant to crushing.

Despite the U.S. Food and Drug Administration's instructions not to label the drug as "tamper resistant," sales representatives for Endo touted Opana ER that way to doctors in, among other districts, the Eastern District of Michigan, Endo executive vice president Matthew Maletta said at the hearing Thursday. Endo hired hundreds of sales representatives and encouraged them to increase sales of Opana ER, the government said.

Some Endo sales managers knew that the representatives were claiming the pills were resistant to tampering, the government said. Some representatives would hit demonstration blister packs of sample pills with hammers to try to demonstrate that they were "crush proof." The approved labeling for Opana ER did not give healthcare providers enough information to safely prescribe the drug, the government said.

Endo voluntarily pulled Opana ER from the market in 2017.

Endo — an Irish company with its U.S. headquarters in Pennsylvania — sought Chapter 11 protection in August 2022 for itself and some subsidiaries, aiming to deal with \$8 billion in debt and thousands of lawsuits over its sale of opioid painkillers and other products.

A **global settlement** will resolve nearly \$2 billion of criminal and civil fraud, healthcare and tax claims against the company, the government announced in February. Under the bankruptcy agreement, the government will be paid up to \$464.9 million over 10 years, or \$200 million immediately upon the company's exit from bankruptcy.

During Thursday's proceedings, U.S. District Judge Linda V. Parker asked Maletta if the company was financially able to pay a fine, to which he answered yes.

Sentencing is scheduled for May 2.

Maletta declined to comment after the hearing Thursday. The government did not immediately respond to requests for comment.

The government is represented by Benjamin Asher Cornfeld and A. Brant Cook of the U.S. Department of Justice's Civil Division.

Endo is represented by Carole Rendon and Sarah Spring of BakerHostetler.

The case is U.S. v. Endo Health Solutions Inc., case number 2:24-cr-20159, in the U.S. District Court for the Eastern District of Michigan.



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# Pharma Co. Wants Tribe's Opioid Suit To Stay In Federal Court

By **Joyce Hanson**

Law360 (April 18, 2024, 6:49 PM EDT) -- A pharmaceuticals distributor has asked an Oklahoma federal court to reject a magistrate judge's recommendation to move to state court a suit accusing it of flooding the Cherokee Nation's communities with opioids, saying the tribe's complaint raises a substantial question of federal law.

Pharmaceuticals distributor Morris & Dickson Co. LLC says in its Wednesday objection brief that U.S. Magistrate Judge D. Edward Snow erred in recommending that the suit head back to state court where it originated in June 2023. The company argued that the Cherokee Nation alleged violations of the federal Controlled Substances Act as its basis for establishing its negligence claims against the company.

"Cherokee Nation's allegations against M&D, if it has a claim at all, necessarily require interpretation and application of the FCSA and its implementing regulations," Morris & Dickson argues. "The R&R improperly overlooks the fact that resolution of this substantial question of federal law is necessary to resolve Cherokee Nation's claims."

Judge Snow got it wrong when concluding in **his March 19 report and recommendation** that the federally recognized tribe has an alternative theory founded in state law for its negligence theory, according to Morris & Dickson. While the Cherokee Nation only alleges state law claims of negligence, gross negligence and unjust enrichment, the tribe nevertheless stakes its claims and right to relief "in necessary part" on whether the FCSA provides the predicate for duty and proximate cause, the company contends.

"At the heart of Cherokee Nation's complaint is a substantial federal question that satisfies the four elements of the so-called Grable test," Morris & Dickson says, citing the U.S. Supreme Court's 2005 ruling in **Grable & Sons Metal Products v. Darue Engineering & Manufacturing**. "Jurisdiction in this federal court was and is proper. Remand of this matter is contrary to established principles of law."

The magistrate judge's recommendation said the company only fulfilled one of the four prongs necessary in the Grable test for establishing federal jurisdiction. The test determines that federal jurisdiction is warranted over a state law claim when a federal issue is "necessarily raised," "actually disputed," "substantial" and "capable of resolution in federal court without disrupting the federal-state balance approved by Congress," according to the U.S. high court's ruling.

But the only Grable test prong satisfied in the case was the one stating whether a federal claim is "actually disputed," according to Judge Snow.

He approved the Oklahoma-based tribe's request to move its state law negligence and unjust enrichment claims back to state court, despite Morris & Dickson's argument that the tribe's allegations belong in federal court because they're predicated on U.S. regulations for controlled substances.

"There are no substantial federal issues within [the Cherokee Nation's] petition that would swing this factor toward a federal review," Judge Snow stated. "Furthermore, these issues have been addressed in other courts and have been found to not upset the balance of federal and state judicial responsibilities."

Judge Snow pushed back against Morris & Dickson's assertion that the federal Controlled Substances Act is "at the heart of the Cherokee Nation's tort claims," saying the Oklahoma Supreme Court decision it cites is inapplicable because it alleges public nuisance claims rather than negligence and gross negligence claims.

"The undersigned magistrate judge does not believe it is within the purview of this court to scrutinize an Oklahoma Supreme Court case for validity," Judge Snow said. "Furthermore, the interpretation of the duties imposed by the FCSA are not the only duties plaintiff relies on for its negligence and gross negligence claims. Therefore, no substantial federal issue exists."

Morris & Dickson's objection to the recommendation argues Judge Snow glossed over the case law cited in the company's earlier brief, *State ex rel. Hunter v. Johnson & Johnson* . In that case, the Oklahoma Supreme Court in November 2021 overturned a \$465 million verdict against Johnson & Johnson for its sale of prescription opioid painkillers in Oklahoma, holding that the opioid manufacturer's actions did not create a public nuisance.

"The Oklahoma Supreme Court has expressly rejected the notion that state common law and/or state statutes impose a duty of care on distributors like M&D in favor of entities like the sovereign plaintiff here," Morris & Dickson says in the Wednesday filing.

In August 2023, **the tribe urged the presiding judge** in the case, U.S. District Judge Ronald A. White, to deny Morris & Dickson's request to move the litigation to federal court, saying the FCSA doesn't even allow private parties to sue under it and that the claims do not "necessarily raise a substantial question of federal law."

Morris & Dickson **had attempted to move the suit** to federal court in July 2023, saying in a removal notice that interpretation of federal law is an essential element of the Cherokee Nation's theory of liability to the negligence claims.

The tribe filed its complaint in June 2023, **accusing the Louisiana-based company**, which is the largest privately owned drug distributor in the country, of fueling the opioid crisis by ignoring suspicious orders. The suit was filed not long after the U.S. Drug Enforcement Administration **pulled the company's controlled substances license** for shipping large quantities of opioids despite red flags, finding the company had "long-term, egregious" failures to control against illicit diversion.

Counsel for the tribe and the company did not immediately respond to requests for comment Thursday.

The tribe is represented by Richard W. Fields and Edward Han of Fields Han Cunniff PLLC and Frank Sullivan III of Sullivan & Sullivan PLLC.

Morris & Dickson is represented by George S. Freedman and Andrew W. Lester of Spencer Fane LLP.

The case is The Cherokee Nation v. Morris & Dickson Co. LLC, case number 6:23-cv-00237, in the U.S. District Court for the Eastern District of Oklahoma.

--Additional reporting by Emily Field, Donald Morrison and Ali Sullivan. Editing by Kristen Becker.



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# Doximity Faces Investor Suit Over Slashed Revenue Hopes

By **Emilie Ruscoe**

Law360 (April 18, 2024, 8:59 PM EDT) -- Medical professional networking service Doximity Inc., likened to "LinkedIn for doctors," and two of its executives are facing a proposed class action alleging it hurt investors by concealing slowing sales.

In a complaint filed Wednesday in San Francisco federal court, Doximity investor Peter A. Kissler hit CEO Jeffrey Tangney and chief financial officer Anna Bryson with securities fraud claims after the company saw trading prices fall in August 2023 and the start of April.

According to market records near the beginning of Kissler's proposed class period — which spans from Feb. 9, 2022, to Apr. 1 — trading prices for Doximity shares were once as high as \$59. At the end of Kissler's proposed class period, on the heels of the second trading price falloff, the investor says Doximity trading dropped below \$26.

Kissler claims the August trading price downturn followed Bryson's statement that the company's "major upsells have materially underperformed," meaning the company did not generate revenue by persuading existing customers to increase the money they spent on offerings.

Kissler says in April, Doximity's trading price fell after a short-seller claimed the company's underlying sales were declining and had "masked" it through the allegedly improper acceleration of the company's revenue recognition.

Kissler says Doximity, which trades on the New York Stock Exchange, is frequently "referred to as the LinkedIn for doctors," citing the company's claim that over 80% of doctors in the U.S. count themselves among the site's verified members.

While the site is free for licensed professionals, including doctors, nurses and pharmacists, Kissler says its revenue "largely" comes from doctor-adjacent businesses such as pharmaceutical companies and health systems that pay to promote their services and products on the site.

Among other things, Kessler notes Bryson told investors Doximity is "really building a business that can provide years of sustainable growth with high margins," which he says is evidence the company deceived investors by touting "the sustainability of its business prospects while downplaying the importance of customer upsell" to its financial performance.

Kissler also says the company pointed to its upsell underperformance in August, saying it expected to see the trend continue, and would slash its revenue expectations for its current fiscal year by about \$43 million to approximately \$460 million.

The company also announced a 10% workforce reduction in August 2023, which it estimated would cost about \$8 million to \$10 million at the time.

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

Kissler is represented by Jennifer L. Joost, Naumon A. Amjed, Ryan T. Degnan and Jonathan Z. Naji of Kessler Topaz Meltzer & Check LLP.

Counsel information for the defendants wasn't immediately available Thursday.

The case is Kissler v. Doximity Inc. et al., case number 3:24-cv-02281, in the U.S. District Court for the Northern District of California.

--Editing by Drashti Mehta.

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## Satellite Broadband Co. Faces Investor Suit Over Project Delay

By **Sydney Price**

Law360 (April 18, 2024, 9:58 PM EDT) -- Satellite manufacturer AST SpaceMobile Inc. was hit with an investor suit accusing it of concealing supply issues that prevented the timely launch of a satellite fleet intended to provide broadband services, leading to a 24% share price decline when the issues were eventually disclosed.

According to the **suit** filed by SpaceMobile shareholder Zach Klarkowski Wednesday in Texas federal court, SpaceMobile is developing a space-based cellular broadband network for smartphones through a constellation of low Earth orbit satellites. The company said it is in the advanced stages of developing its so-called BlueBird Satellites and intends to launch cellular services in targeted geographical areas to generate revenue. However, the company did not fully disclose the extent of the problems it was having with suppliers that would lead to launch delays, the suit said.

In addition to SpaceMobile, the suit's individual defendants include company CEO Abel Avellan and Chief Financial Officer Sean Wallace.

The class period begins Nov. 14, 2023, the day SpaceMobile told investors that the manufacturing of its first five commercial satellites was at full speed at its Texas facilities, and that it was expecting to launch them in the first quarter of 2024. The company said at the time, and throughout the remainder of the class period, that the planned first-quarter 2024 launch was contingent upon a number of factors but did not disclose the supplier issues SpaceMobile was already experiencing, the complaint stated.

On Jan. 18, SpaceMobile filed a form with the U.S. Securities and Exchange Commission containing financial disclosures related to certain partnerships with AT&T Venture Investments LLC, Google LLC, and Vodafone Ventures Ltd., as well as plans for a registered offering of \$100 million Class A common stock of the company. The form, like the other disclosures during the class period, omitted information about supplier woes, according to the complaint.

SpaceMobile finally disclosed on April 1 that its satellites had been impacted by two suppliers, leading to delays in integration and testing, according to the complaint.

As a result, the five satellites are now expected to be transported to the launch site between July or August 2024, which was later than the previously expected launch in the first quarter of 2024.

SpaceMobile's stock price fell 62 cents, or nearly 24%, to close at \$2.01 per share on April 2, 2024, according to the complaint.

"These material misstatements and/or omissions created an unrealistically positive assessment of SpaceMobile and its business, operations, and prospects, thus causing the price of the company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the company shares," the suit stated.

The suit accuses the defendants of violating the Exchange Act. Klarkowski seeks damages with interest on behalf of the class.

Counsel for Klarkowski and a representative of SpaceMobile did not immediately respond to requests for comment Thursday.

Klarkowski is represented by Joe Kendall of Kendall Law Group PLLC, Charles H. Linehan of Glancy Prongay & Murray LLP and Frank R. Cruz of The Law Offices of Frank R. Cruz.

Counsel information for SpaceMobile was not immediately available on Thursday.

The case is Zach Klarkowski v. AST SpaceMobile Inc. et al., case number 7:24-cv-00102, in the U.S. District Court for the Western District of Texas.

--Editing by Dave Trumbore.

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# Investors In Failed Manila Casino Deal Sue For SPAC Shares

By **Leslie A. Pappas**

Law360 (April 18, 2024, 7:09 PM EDT) -- Shareholders in a blank-check company that failed to take a Philippines casino public have intervened in two Delaware Chancery Court lawsuits to recoup their failed investments, with one seeking to litigate damages from the busted \$2.6 billion deal and the other pushing for the company's liquidation.

New York hedge fund Zama Capital Master Fund LP, which holds stock in special-purpose acquisition company 26 Capital Acquisition Corp., filed an **amended complaint** Wednesday as an intervenor in the SPAC's lawsuit against the casino's operators, urging the court to rescind a proposed \$11 million settlement of the case so the SPAC could go to trial for damages.

The hedge fund argues a damages trial could be lucrative and asserts it has newfound evidence about alleged bribes to Philippine Supreme Court Justices, violations of the Foreign Corrupt Practices Act and a "dodgy bargain" involving Japanese ceramics that could help the SPAC succeed at trial.

"The company's claims in the SPAC action are worth hundreds of millions if not billions of dollars," the complaint says.

The litigation stems from a now-busted deal for the 100-acre, 993-room Okada Manila Resort & Casino, which was **announced in October 2021** but never materialized.

The deal called for 26 Capital Acquisition Corp. to merge with Universal Entertainment Corp., the parent company of the casino's operator, Tiger Resort Leisure and Entertainment Inc., resulting in a company that would trade on the Nasdaq.

SPACs, also called blank-check companies, are shell companies that raise money through a public offering and then use the funds to take a private company public. If the SPAC fails to complete a business combination within a certain timeframe, it is required to liquidate and return stockholders' investments with interest.

After numerous delays, 26 Capital **sued** Tiger Resort and three affiliates in Chancery Court in February 2023, seeking a court order to force the casino operators to complete the transaction.

After a **trial in July**, Vice Chancellor J. Travis Laster **refused to force the deal to close**, citing international jurisdiction issues, enforcement risks, political complications and double-dealing by various parties including Zama.

After the vice chancellor's decision, the parties reached a settlement, heading off a second-phase trial on damages from the collapsed deal.

Zama sought to **intervene in the case in January**, arguing the settlement that 26 Capital reached with the casino's owners was invalid because it hadn't gone to a stockholder vote.

Zama also **filed an additional suit** against the SPAC in Chancery Court earlier this month, seeking a temporary restraining order to prevent 26 Capital from liquidating its shares.

Also on Wednesday, another of the SPAC's investors — Fifth Lane Partners Fund LP, an investment fund affiliated with Austin, Texas-based investment adviser Fifth Lane Capital LP — sought to

intervene in that case, seeking a declaratory judgment that 26 Capital is required to liquidate and distribute \$275 million in funds that it holds in a trust for public investors.

26 Capital raised \$275 million in an initial public offering held in January 2021 and was obligated under its charter to liquidate and distribute the funds in the trust account to stockholders if it failed to find a merger target, Fifth Lane Partners' intervenor's complaint said.

A hearing in that case is scheduled for Friday.

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

26 Capital Acquisition Corp. is represented by Thomas A. Uebler of McCollom D'Emilio Smith Uebler LLC.

Tiger Resort Asia Ltd. and its affiliates are represented by Daniel M. Perry, Grant R. Mainland, Jed M. Schwartz, Andrew L. Porter, Ashley A. Satterlee and Alexander B. Cogut of Milbank LLP and T. Brad Davey, Mathew A. Golden, Daniel M. Rusk IV, Abraham C. Scheider and Hayden J. Driscoll of Potter Anderson & Corroon LLP.

Zama Capital Master Fund LP is represented by John H. Chun of Herrick Feinstein LLP and Matthew D. Perri, Andrew L. Milam, Elizabeth J. Freud and Alfred P. Dillione of Richards Layton & Finger PA.

Fifth Lane Partners Fund LP is represented by Aaron T. Morris, Andrew W. Robertson and William H. Spruance of Morris Kandinov LLP and William M. Alleman Jr. of Meluney Alleman & Spence LLC.

The cases are 26 Capital Acquisition Corp. et al. v. Tiger Resorts Asia Ltd., Zama Capital Master Fund LP v. 26 Capital Acquisition Corp. et al., case number 2023-0128; and Zama Capital Master Fund LP (plaintiff) and Fifth Lane Partners Fund LP (intervenor plaintiff) v. 26 Capital Acquisition Corp., case number 2024-0370, both in the Court of Chancery of the State of Delaware

--Additional reporting by Benjamin Horney, Grace Dixon and Jeff Montgomery. Editing by Philip Shea.



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# Pomerantz To Rep Investors In AT&T Lead Cable Class Action

By **Sydney Price**

Law360 (April 18, 2024, 4:33 PM EDT) -- A New Jersey federal judge approved Pomerantz LLP as the lead counsel for a proposed investor class action alleging AT&T lied about its effort to be environmentally conscious while contributing to the installation of toxic lead cables, with the New York City Public Pension Funds serving as lead plaintiff.

The New York City Public Pension Funds — a group of city-worker retirement funds — said they had lost approximately \$102.5 million during the class period, which U.S. District Judge Madeline Cox Arleo on Tuesday **determined** was sufficient for them to lead the case.

In its motion to lead the suit filed in October, the NYC funds said their losses were the largest in the class. Five other firms filed similar competing motions, but four withdrew their bids. Pomerantz beat out the remaining motion from New Mexico State Investment Council, which claimed losses of approximately \$10.4 million, and its counsel Labaton Keller Sucharow LLP.

The **securities suit** was launched in July 2023 by plaintiff John Brazinsky. He claimed that he and other investors suffered significant losses from a stock dip after the telecommunications giant failed to disclose the dangers it knew the cables across the country posed in company statements and policies, as well as annual reports filed to the U.S. Securities and Exchange Commission.

According to the suit, AT&T falsely claimed on its website, in its policies and in 2020, 2021 and 2022 annual reports to the SEC that it provided employees with "necessary and appropriate" training and resources to protect them and the public, when it actually failed to give them any training or tools to protect them from toxic lead or adequately warn them about the presence of the heavy metal on the company's cables.

Additionally, the suit says the company's claims on its website that it is "committed" to following environmental laws and its claims in the 2021 and 2022 annual reports about the possibility of new or increased environmental regulations of reducing the company's effects on climate change were false, since it was allegedly already aware of the environmental damage its cables were causing.

On July 9, the Wall Street Journal began to publish a series of reports investigating the effects of cables laid by telecoms. The stories found that former and current AT&T workers exposed to lead during their employment are now sick with illnesses that can be linked to lead exposure, as well as elevated lead levels in soil samples near known telecom cable sites.

AT&T's stock price fell sharply after the report, dropping by 97 cents per share, or nearly 6.7%, to close at \$13.54 per share on "unusually high" trading volume, according to the complaint.

The suit's individual defendants include current and former executives, such as CEO John T. Stankey, Chief Financial Officer Pascal Desroches, former CEO Randall L. Stephenson, and former CFO John Stephens.

AT&T is facing other shareholder litigation regarding its lead cables, including a **derivative suit** in Delaware federal court.

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

The New York City Public Pension Funds are represented by Thomas H. Przybylowski, Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP.

AT&T and the individual defendants are represented by Richard B. Harper of Baker Botts LLP.

The case is Brazinsky v. AT&T Inc. et al., case number 2:23-cv-04064, in the U.S. District Court for the District of New Jersey.

--Editing by Adam LoBelia.

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# Chancery OKs Case Lead For Blue Bell Creameries Suit

By **Jeff Montgomery**

Law360 (April 18, 2024, 9:38 PM EDT) -- A Delaware vice chancellor on Thursday restored a Blue Bell Creameries Inc. stockholder's widow as lead plaintiff in a derivative suit seeking to hold directors and officers of the ice cream company accountable for deadly food-safety oversight failures in 2015.

The decision, however, left an independent board special litigation committee in potential control of the lawsuit as an interested party authorized to act on the company's behalf, over an objection from company directors and officers named in the suit that the arrangement blurred lines between the stockholder and three-member committee.

"Despite giving the SLC express authority to control the litigation on behalf of the company, [Blue Bell] defendants seek to convince the court to modify the resolutions defendants signed" that ceded board control over the case, "in a futile attempt to now curtail the authority under the guise of confusion," an attorney for the SLC said in a brief filed prior to Vice Chancellor Nathan A. Cook ruling on case leadership.

The SLC added later that, "particularly here, where the defendants remain on the [Blue Bell Creameries] board following the SLC's investigation, the SLC must have a continuing role in the litigation going forward."

Delaware's Supreme Court in 2019 restored the late Blue Bell stockholder Jack L. Marchand's original derivative suit against Blue Bell's board and leadership, reversing a Court of Chancery dismissal. The reversal opinion found in part that a majority of the board was too conflicted to consider a demand to pursue derivative claims against key company officials for disastrous food safety failures.

The 2019 decision by the justices was seen as underscoring the duties of oversight and loyalty arising from the appellate court's landmark *In re: Caremark International Inc.* ruling in 1996.

Soon after the justices resurrected the case, an independent special litigation committee took over and stayed the action pending an investigation, with the suit initially assigned to the SLC, rather than Marchand, to potentially pursue claims for the company.

After mediation failed to produce an agreement, the SLC declared in a motion to the court that Roseann Marchand, Jack Marchand's widow, should be allowed to pursue the case, with the special committee retaining authority "to take any and all actions on behalf of Blue Bell with respect to the litigation of the derivative claims."

Attorneys for the director and officers argued that the motion left the essential question of litigation control unsettled.

"Defendants, the SLC and Marchand — as well as the court — all need certainty regarding the identity of the operative plaintiff so that the litigation can proceed efficiently and so conflicts over authority to take certain actions do not arise," a brief filed Wednesday on behalf of the directors and officers said. "By not addressing that crucial fact, the SLC's proposed form of order leaves open the possibility that, in some capacity, the SLC continues to retain control as the plaintiff over the direction of the litigation."

In a reply, attorneys for the SLC argued that "particularly here, where the defendants remain on the

[Blue Bell] board following the SLC's investigation, the SLC must have a continuing role in the litigation going forward."

Blue Bell's board granted the SLC permission to direct the prosecution of the derivative claims, the committee said in an earlier filed brief, and nothing in the resolution or law permits the board and officers to limit that authority.

Moving ahead, still under SLC oversight, is a case that Delaware's justices in 2019 agreed had alleged sufficient facts "to support a reasonable inference that the Blue Bell board failed to implement any system to monitor Blue Bell's food safety performance or compliance" for mission-critical responsibilities.

The earlier stockholder suit alleged that the company and its leadership did nothing to correct factory sanitation problems until it was too late, and that, when samples tested positive for listeria at a facility in Oklahoma in 2013 — one of three operated by the company — Blue Bell did nothing to investigate the cause.

Two years later, health investigators in South Carolina found listeria in Blue Bell products manufactured in that state, setting in motion subsequent detections by the U.S. Department of Agriculture and multiple state and federal agencies that were traced to all three of the company's plants.

A nationwide product recall and companywide shutdown of plants followed, along with state and federal investigations, consumer and investor lawsuits, layoffs, and forced company borrowing to stay afloat. Three deaths were tied to Blue Bell's tainted ice cream, along with eight illnesses that led to massive, multistate product recalls, regulator fines and sanctions, plant closings, and other disruptions.

A separate Chancery Court case filed in 2017 alleged that limited partners "never knew, nor could have known," that "Blue Bell's facilities leading up to the disastrous events in 2015 were a lethal mess," and that a toxic species of listeria had been repeatedly detected in its facilities. That suit ended in a \$60 million settlement.

Blue Bell and counsel for the committee did not immediately respond to requests for comment Thursday.

Roseann Marchand is represented by Robert J. Kriner, Jr. and Scott Tucker of Chimicles Schwartz Kriner & Donaldson-Smith LLP.

The Blue Bell board SLC is represented by Jon E. Abramczyk, D. McKinley Measley and Lauren K. Neal of Morris Nichols Arsht & Tunnell LLP.

John W. Barnhill Jr., Paul A. Ehlert, Howard W. Kruse, Jim E. Kruse, Dorothy McLeod MacInerney and William J. Rankin are represented by Rolin P. Bissell and James M. Yoch of Young Conaway Stargatt & Taylor LLP.

Richard Dickson is represented by Lewis H. Lazarus, Albert J. Carroll and Kirsten A. Zeberkiewicz of Morris James LLP, and David Schertler and Lisa H. Schertler of Schertler Onorato Mead & Sears LLP.

Patricia I. Ryan is represented by Steven T. Margolin and C. Mark Stratton of Greenberg Traurig LLP.

Greg Bridges and Paul W. Kruse are represented by Srinivas M. Raju, Kevin M. Gallagher and Jason J. Rawnsley of Richards Layton & Finger PA, and Chris Flood of Flood & Flood.

The case is Roseann Marchand v. John W. Barnhill Jr. et al., case number 2017-0586, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

*Update: This story has been updated with additional counsel information.*



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# AGs, Google Defend \$700M Play Store Deal Ripped By Judge

By **Jared Foretek**

Law360 (April 18, 2024, 8:02 PM EDT) -- A group of state attorneys general and Google defended the proposed \$700 million settlement both sides brokered in the states' antitrust suit against the company in December, telling a San Francisco federal judge that the deal is consistent with Ninth Circuit precedent and releases only a limited set of claims against Google for a seven-year period.

The states and Google filed new briefs Wednesday, weeks after U.S. District Judge James Donato **blasted** the proposed settlement and said the plaintiffs — both the states' attorneys general and consumers — had "folded" with "four aces."

In their dual filings, the states said that an average consumer award of \$4.41 was a fair compromise given that the most they could have received was just under \$17, and Google said that restrictions in the settlement would maintain a competitive marketplace for Android apps and in-app purchases.

But in their new filing, the attorneys general in California, North Carolina, Arizona, Utah and Tennessee argued that they negotiated a fair deal that doesn't even release certain consumer claims arising from a separate factual predicate and will allow the pool of roughly 127 million covered consumers to bring the same claims in seven years.

"In exchange for significant monetary and injunctive relief, the states released a range of claims. ... The individual plaintiffs agreed to a parallel release," the five states' attorneys general wrote in their supplementary brief. "Importantly, the release does not apply to any consumer claims arising out of a different factual predicate, including claims brought by eligible consumers who will get relief under this settlement."

The settlement would resolve certain claims that Google used anti-competitive measures to build an illegal monopoly in the app and in-app payments markets on Android devices, allowing the tech giant to extract inflated fees from developers.

According to the states, about \$515 million of the \$630 million settlement fund will be available for distribution to consumer class members. And under the current distribution plan, they say, the average consumer award will be about \$4.41.

That's a fair payout if the court and the plaintiffs agree that Google would have been entitled to a 15% service fee in a competitive market, rather than the 30% fee it was taking, the states argue in their brief.

"For [75%] of eligible consumers who will receive \$2, the average total spend in the Play Store is \$56.49. If we assume that Google collected a 30% service fee on that spend, it means that Google collected \$16.95 from each eligible consumer in this group," they write. "That \$16.95 should theoretically be the maximum possible damages award that an eligible consumer in this spend category should receive."

The median spend from 75% of the consumers is even lower, at \$27.96, making the average consumer payout "even more reasonable," the attorneys general say.

In its brief, Google called the conduct commitments it will make as part of the deal "unprecedented," saying the settlement includes remedies "that specifically address the concerns they raised."

Under the agreement, Google would be prohibited from entering exclusivity deals with device makers that would restrict the installation of other app stores or guarantee exclusive home screen placement for Google's Play Store. The company will also be limited in how much exclusive content it can offer in the Play Store, and it will have to allow app developers the flexibility to push consumers towards non-Google payment options.

In general, Google says, the deal focuses on remedies and competition in the app market, rather than prices, which the company argues is appropriate because prices should ultimately be set by the market, not the courts.

"By including these provisions, which directly respond to the states' complaints in this litigation, the settlement agreement ensures that competition, and the value that Play delivers to users and developers, will drive prices," the company writes in its brief.

In response to a request for comment, Google directed Law360 to its previous statement on the settlement, which said that the agreement "builds on" Google Play's foundation of choice and innovation.

California's Department of Justice did not immediately respond to Law360's requests for comment.

The consumer plaintiffs are represented by Karma M. Giulianielli of Bartlit Beck LLP and Hae Sung Nam of Kaplan Fox & Kilsheimer LLP.

The states are represented by Paula L. Blizzard, Brian D. Wang and Carolyn D. Jeffries of the Office of the Attorney General of California, Jessica V. Sutton and Sarah G. Boyce of the North Carolina Department of Justice, Jayme L. Weber of the Office of the Attorney General of Utah, David N. Sonnenreich and Marie W.L. Martin of the Office of the Attorney General of Utah and S. Ethan Bowers and Tyler T. Corcoran of the Office of the Attorney General of Tennessee.

Google is represented by Glenn D. Pomerantz, Kuruvilla Olasa, Justin P. Raphael, Dane P. Shikman and Jonathan I. Kravis of Munger Tolles & Olson LLP, Brian C. Rocca, Sujal J. Shah, Michelle Park Chiu and Richard S. Taffet of Morgan Lewis & Bockius LLP and Neal Katyal and Jessica L. Ellsworth of Hogan Lovells.

The cases are In re: Google Play Store Antitrust Litigation, case number 3:21-md-02981, In re: Google Play Consumer Antitrust Litigation, case number 3:20-cv-05761, and Utah et al. v. Google LLC et al., case number 3:21-cv-05227, in the U.S. District Court for the Northern District of California.

--Additional reporting by Matthew Perlman and Bonnie Eslinger. Editing by Jay Jackson Jr.

*Update: This story has been updated to reflect a response from Google.*



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# Gov't Urges Redo Of Opt-Out Ruling In Camp Lejeune Suits

By **Emily Field**

Law360 (April 18, 2024, 8:23 PM EDT) -- The federal government has asked the North Carolina federal court overseeing the litigation over contaminated water at the Camp Lejeune base to rethink its decision from two months ago to allow some plaintiffs to opt out of discovery pre-trial.

The government **said in a motion** Wednesday that the court's Feb. 26 order allowed the plaintiffs' leadership group representing the service members, veterans and others who lived on the U.S. Marine base between 1953 and 1987 to drastically limit who can be picked for discovery and trial. And because of that, there are now limits on how well the bellwether cases can represent others, the government said.

For one thing, after the order, the plaintiffs' leadership group opted out more than two-thirds of the eligible plaintiffs for track two trials, the government said, despite having saying previously they didn't expect they would need to.

"Suffice it to say that if [the plaintiffs' leadership group] opts out more than two-thirds of the available cases, there is little reason to think that the cases that [the plaintiffs' leadership group] allowed to remain in the pool are a representative sample," the government said. "Such expansive use of the opt-out provision undermines the court's efforts to advance toward global resolution as quickly and efficiently as possible."

Nearly 1,500 lawsuits have been filed claiming that water on the military base contained excessive levels of chlorinated solvents and other contaminants, causing cancers and other diseases.

There are five diseases — bladder cancer, kidney cancer, leukemia, non-Hodgkin's lymphoma and Parkinson's disease — the court has selected for the first track of cases to be tried.

The government also said it's come to light that the plaintiffs' leadership group hasn't consistently chosen to use a plaintiff's poor health as a reason to opt out of discovery.

"If a plaintiff's ill health prevents him from participating in his own case, the parties and court can make appropriate arrangements. Additionally, the court could allow individual opt-outs based on a showing of good cause," the government said. "But permitting unfettered opt-outs has allowed [the plaintiffs' leadership group] to dramatically reduce the pool of plaintiffs for discovery, virtually ensuring that the selected plaintiffs will be unrepresentative of the larger plaintiff population."

If there is to be no discovery for two-thirds of the plaintiffs in the track two cases, then there no reason to believe that the remaining cases are representative of the whole, the government said.

"Such expansive use of the opt-out provision undermines the court's efforts to advance toward global resolution as quickly and efficiently as possible," the government said.

Last week, the federal government asked the court to first try cases brought by former residents of the Marine base who alleged they have developed only one disease from the water, and try more complicated cases later.

The government said that litigating claims brought by plaintiffs who have alleged their multiple diseases were caused by exposure to the water would be much more time-consuming than trying

"single disease" plaintiffs, since multiple diseases would need more expert testimony on causation.

By comparison, the single-disease plaintiffs' claims will be easier to resolve and will better inform a global resolution, the government said.

Representatives for the plaintiffs' leadership group didn't immediately respond to requests for comment on Thursday. Representatives for the government declined to comment.

The plaintiffs' leadership group is also urging the court to allow it to appeal an order striking its bid for a jury trial, on the grounds that there is substantial room for disagreement over whether the Camp Lejeune Justice Act allows for jury trials.

In February, the judges struck the plaintiffs' bid for a jury trial, agreeing with the U.S. government that the CJLA does not clearly and affirmatively grant a right to a jury trial, as is required under U.S. Supreme Court precedent.

The plaintiffs then sought an appeal, arguing the issue is a novel question of law as this is the first court to try cases under the act, and the order is the first decision to hold that a statute that creates a right of action against the government and refers to the right to a jury trial does not authorize jury trials.

The plaintiffs are represented by Bell Legal Group LLC, Keller Postman LLC, Ward & Smith PA, The Dowling Firm PLLC, and Lief Cabraser Heimann & Bernstein LLP, among others.

The government is represented by Adam Bain and Haroon Anwar of the U.S. Department of Justice's Civil Division.

The case is Camp Lejeune Water Litigation v. U.S., case number 7:23-cv-00897, in the U.S. District Court for the Eastern District of North Carolina.

--Editing by Lakshna Mehta.



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# Senate Dems Question 4 Biggest Banks Over Fraud Controls

By **Aislinn Keely**

Law360 (April 18, 2024, 9:50 PM EDT) -- Two Democratic senators have asked the nation's four largest banks to share their systems to combat wire fraud and protect consumers from the fallout of unauthorized transfers.

Senate Banking Committee Chair Sherrod Brown, D-Ohio, and Sen. Jack Reed, D-R.I., sent letters to the CEOs of JPMorgan Chase, Bank of America, Wells Fargo and Citi on Wednesday asking each for information "to better understand your bank's wire fraud prevention and reimbursement practices."

The senators asked how many consumer disputes related to unauthorized transfers the banks have received since 2019, as well as the total dollar amounts of each year's unauthorized transfers. The lawmakers also asked for the procedure the banks have in place to identify and prevent such transfers, including fraud and scam prevention training for customer-facing employees, as well as how many fraud attempts the bank catches and reverses.

The senators said in their letters that they believe banks should reimburse customers when the banks fail to proactively monitor or prevent phony transfers.

"Banks should make consumers whole for unauthorized transactions where a fraudster manages to hack into an account and take money without a consumer's authorization and for fraudulently induced transactions — specifically, transactions where a consumer was deceived or manipulated into initiating a transfer," the lawmakers said.

They also asked the banks to disclose their process for discerning when consumers are eligible for reimbursements, including whether the bank requires the consumer to sign an affidavit in the case of a fraud investigation, and samples of how the bank corresponds with consumers about the transfers.

According to the lawmakers, consumers lost more than \$10 billion to fraud last year, which marked a 14% increase since 2023.

"With improved fraud prevention and reimbursement practices, consumers would no longer be left on the hook to the tune of billions of dollars annually," the lawmakers said.

Citi declined to comment on Thursday. JPMorgan, Bank of America and Wells Fargo did not immediately respond to requests for comment.

Brown and Reed teamed up with Sen. Elizabeth Warren, D-Mass., in **a February letter** to payment firm Zelle requesting it provide similar information, including its reimbursement policy for fraud and scams.

The three also joined forces in a December letter calling on payment apps Venmo and Cash App to reimburse scam victims.

--Additional reporting by Sarah Jarvis. Editing by Lakshna Mehta.



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# Ex-Autonomy CEO Wanted Whistleblower Fired, Ex-GC Says

By **Bonnie Eslinger**

Law360 (April 18, 2024, 10:29 PM EDT) -- Former Autonomy CEO Michael Lynch thought a finance department whistleblower was "trying to destroy the company" and wanted him fired, the software company's former U.S. general counsel testified Thursday in a criminal fraud trial over claims Lynch conned HP into buying the British company at an inflated price of \$11.7 billion.

Lynch is on trial, alongside Autonomy's former Vice President of Finance Stephen Chamberlain, on conspiracy and fraud charges that could put them behind bars for more than 20 years. Lynch, who reaped about \$804 million from the sale of U.K.-based Autonomy to HP Inc., is also charged with securities fraud. The trial **began March 18** and is expected to run into June.

Joel Scott, who served as general counsel for Autonomy in the U.S. from 2009 to 2012, took the stand Thursday. Under questioning by prosecutor Adam Reeves, Scott confirmed he was testifying with immunity as a witness for the government.

Scott told jurors that he fired Autonomy's U.S. finance chief, **Brent Hogenson**, in July 2010 after two investigations, beginning with a probe into allegations of fraud within Autonomy's U.S. payroll department.

Scott said his boss, Autonomy chief operating officer and general counsel Andy Kanter, told him to run the investigation and suggested that Hogenson might be involved. At that point, several payroll department employees had already been let go — on Hogenson's recommendation — for continuing to pay some former employees after they had left the company, Scott said.

"The message that I got from Andy was that Brent was trying to burn down Autonomy, just potentially destroy it, and something, generic vague in that sense," Scott said.

A third-party company was ultimately hired to look into the payroll fraud.

"They came back with some findings, confirming that a couple of employees had indeed stolen, I think it was about \$3 million over the course of five or six years," Scott said, later adding that there was no evidence that Hogenson was involved.

Kanter asked for a second investigation, this one into the U.S. finance department, and insisted a new investigative team be hired.

"Did you see any questions or problems that would merit another investigation?" Reeves asked. Scott said no.

Several top managers at Autonomy got involved at that point, including Kanter, Chief Financial Officer Sushovan Hussain and Chamberlain, sharing with investigators examples of Hogenson or the U.S. finance department failing to follow certain rules or procedures, Scott said. Many of the issues had been previously flagged, he said.

"So these issues are not necessarily new issues, but they were getting a lot of new energy," Scott told jurors.

Reeves asked if he felt at that time that Autonomy had hired the second investigative firm to dig up

dirt on Hogenson and Scott agreed.

Scott subsequently set up a meeting with Hogenson in late July, but before the sit-down happened, the company lawyer called Lynch.

Lynch said it was his call, "you're the one running this. If it were me, I wouldn't want somebody in the company that's trying to destroy the company," Scott told jurors. Lynch also told Scott to remind Hogenson that if he had any plans to go public with any allegations that the libel laws in the UK are different than they are in the U.S. and that he should consult an attorney.

"Mr. Scott, based on this call with Dr. Lynch, was it clear to you that Dr. Lynch wanted Mr. Hogenson fired?" Reeves asked. Scott said yes.

Reeves pressed, asking Scott if the conversation with Lynch weighed on his decision-making.

Scott agreed and said he wouldn't have made the decision to fire Hogenson on his own.

The prosecutor also asked Scott about two other finance department employees who he fired days after Hogenson at Hussain's bidding, Reena Prasad and Percy Tejada.

Hussain said he wanted Prasad let go because "she raised her head above the parapet," a British war analogy meaning to take a risk and raise your head over a wall.

Prasad and Tejada both testified earlier in the trial that they believed **they were sacked** for raising concerns about accounting irregularities.

Reeves asked Scott when he learned about Hogenson's whistleblowing allegations. The witness said it wasn't until August — after he fired Hogenson — that Kanter showed him a report from Deloitte auditors on Hogenson's claims.

The prosecutor noted some of the accounting deals and issues Hogenson had expressed concerns about: Autonomy selling hardware at a loss, posting revenue from reseller deals before an end-user was secured, "roundup" transactions with Autonomy software buyers that would later get a contract from Autonomy in return, and existing subscription deals that were converted to generate new revenue.

"Did any of those deals cause concerns to you?" Reeves asked. Scott said yes.

Earlier this month, Hogenson denied under cross-examination that he brought his whistleblower concerns **to "cover" himself** after the payroll scandal emerged in his department.

The government's case is that Lynch and Chamberlain conspired to make Autonomy's revenue growth look better than it was.

Hussain was **convicted** on related charges in 2018 and sentenced to five years in prison.

The government is represented by Robert S. Leach, Adam A. Reeves and Kristina N. Green of the U.S. Attorney's Office for the Northern District of California and Zachary Abrahamson of the U.S. Department of Justice's Antitrust Division.

Michael Lynch is represented by Christopher J. Morvillo, Celeste Koeleveld and Daniel S. Silver of Clifford Chance LLP and Jonathan M. Baum, Reid H. Weingarten, Brian M. Heberlig, Michelle L. Levin, Nicholas P. Silverman and Drew C. Harris of Steptoe LLP.

Stephen Chamberlain is represented by Gary S. Lincenberg, Ray S. Seilie and Michael C. Landman of Bird Marella Rhow Lincenberg Dooks & Nessim LLP.

The case is U.S. v. Mike Lynch et al., case number 3:18-cr-00577, in the U.S. District Court for the Northern District of California.

--Additional reporting by Richard Crump and Christopher Crosby. Editing by Michael Watanabe.