

Chambers' Revenue Model Tests Law Firms' Appetite for Exposure

By Justin Wise

Deep Dive

- Chambers & Partners' sale values rankings firm at \$500M
- Rankings business model gains critics as it gets bigger

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Chambers' Revenue Model Tests Law Firms' Appetite for Exposure

By Justin Wise 2024-04-23T05:00:15000-04:00

- Chambers & Partners' sale values rankings firm at \$500M
- Rankings business model gains critics as it gets bigger

Once a modest directory in London, Chambers & Partners sits atop a vast, and increasingly lucrative, legal rankings industry.

Just how lucrative became clear in November, when Chambers sold for five times the price it fetched in 2018. Abry Partners, a mid-market private equity firm based in Boston, bought Chambers from London's Inflexion Partners in a deal valuing the legal directory at £400 million (\$492.4 million US).

A Chambers badge today is widely viewed in the industry as a legitimate proxy for a lawyer's bona fides. Now, CEO Tim Noble's challenge is to deliver revenue growth while maintaining the brand.

"You've got a business here that is entrenched effectively in the legal profession," he said in an interview. "We have to make sure that we, you know, we maintain that and keep our leading position."

Chambers' strategy largely revolves around selling advertising and research products to the same lawyers it reviews. As it's gotten larger, critics say the practice has increasingly toed the line between independent research and profit motive.

"In the early days of Chambers, the sales function was a small minor thing," said Lloyd Pearson, a former Chambers global editor who advises firms on legal rankings submissions. "Clearly that's not true anymore. Private equity investors don't do this for fun."

The rankings firm is known for a submissions process so rigorous that some law firms have dedicated staff to assemble information for it and other rankings. Firms must share lists of cases and clients across different jurisdictions and practices—up to 20 cases and 30 clients for a specific practice. Chambers each year rates firms in “bands” 1 through 6, in markets ranging from New York mergers and acquisitions—led by Wall Street heavyweights such as Sullivan & Cromwell and Cravath, Swaine & Moore—to the greater China and Africa regions.

“You can be ranked by Chambers whether or not you have a commercial relationship with us,” Noble said, calling that a distinction from some pay-to-play competitors.

Still, in a marketing proposal for 2024 sent to one international firm, Chambers called the purchase of a firm profile on its website a way to “secure the best possible ranking for the firm and for your individuals.” The profile—which is priced by region and serves as a firm homepage on the website—was £8,795 (\$10,800) in the US, roughly double the price of that firm’s profile in 2018, according to the documents seen by Bloomberg Law.

Another Big Law firm was quoted a price of more than \$30,000 for a 2024 US website profile, according to a source inside the firm.

Asked about the language on paying to “secure the best possible ranking,” and whether firms can expect better rankings if they pay for Chambers products, Noble said “the answer is a categorical no.”

A website profile, he said, allows firms to “basically enhance” and differentiate themselves from competitors to buyers of legal services.

If two law firms are ranked “band one” in a specific practice, they “would all be listed on chambers.com, right? But you may choose to differentiate effectively your profile by talking about the cases you’ve worked on, how long you’ve done this, why that can pay. You can effectively pay for that privilege.”

Chambers also markets client and market intelligence reports, which include tailored guides on how to improve a firm or practice’s rankings. Features that also come with buying a website profile include a “referee management tool,” which give firms an ability to see which clients have responded to Chambers researchers’ outreach, who use client calls as part of their assessments.

Silvia Van den Bruel, a marketing director at global plaintiffs firm Hausfeld, criticized Chambers’ business model in a January article under the title, “Private equity and directories—are lawyers paying the price?” She contended the line between independent research and payment had faded, with law firms losing visibility on the Chambers website if they elected not to pay for its products.

“Today, if you do not pay, you can’t play, underscored by the different layout and website page presentation,” she wrote. “How far will they be able to push law firms in their quest for self-validation?”

Abry Partners didn’t return requests for comment on its interest in Chambers. The PE firm in 2021 also bought Best Lawyers, a peer-review publication that ranks lawyers, suggesting it’s building a portfolio of companies in legal information services.

Cottage Industry

In the pre-internet days, legal directories such as Martindale Hubbell were key resources for businesses and law firms in need of counsel in unfamiliar locales. Today, there are nearly 1,000 rankings sites just in the US, according to the public relations firm Jaffe PR, demonstrating how vast of a cottage industry ranking lawyers has become.

Chambers says on its website that 85% of law firms say a Chambers ranking helps them win and retain business. Internal research shows 75% of the Fortune 500 used the Chambers website since August, Noble said.

"We have statistical proof that law firms find it helps them," said Noble, who came to Chambers in 2019 with a background in financial data analytics. "I mean, this is what they tell us."

Research from BTI Consulting published in 2022 found few corporate counsel use directories for law firm hiring, but do use them to "validate or help them understand attorney behavior."

"The predominant way in-house counsel find law firms to work with is through word-of-mouth," said Susanna McDonald, the vice president of the Association for Corporate Counsel, a trade group representing in-house counsel. It is "hard to gauge how many are using legal rankings."

Noble agreed that corporate counsel lean on their own networks. "But they will also ensure" their law firm selection by using Chambers, he said.

Under new ownership, Noble said, Chambers plans to redouble its investments in the US, meaning more rankings across states such as Texas and Florida. He said its core business remains the same: large-scale research of law practices and sharing with the market who the top lawyers in a particular field are.

Chambers employs roughly 250 researchers in offices in London and New York. Those heavy investments in research and data have made Chambers "the ranking that people really care about," he said.

There's no sign of any brewing revolt. More firms participate in Chambers' submissions process every year, Noble said.

The alternative to being in Chambers, or any other legal rankings platform, is not being in there. And for many firms, not devoting the time and resources to appear alongside their competitors isn't a real alternative.

"There's a degree of FOMO here," said Jocelyn Brumbaugh, the head of Builden Partners, a law firm marketing consultancy. "FOMO wins the day a lot."

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Supreme Court SEC Disclosure Ruling Confusing for Courts, Markets

Documents



- Olshan attorneys examine SCOTUS decision on disclosure rule
- Court's interpretation of Item 303 could hurt trust in markets

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Supreme Court SEC Disclosure Ruling Confusing for Courts, Markets

By John Moon and Lori Marks-Esterman 2024-04-23T04:30:05000-04:00

- Olshan attorneys examine SCOTUS decision on disclosure rule
- Court's interpretation of Item 303 could hurt trust in markets

The safeguards in the Securities Act of 1933 and the Securities Exchange Act of 1934 have spurred the US economy to become the strongest in the world. But the US Supreme Court's ruling in *Macquarie Infrastructure Corp. v. Moab Partners* April 12 diminished a key component of those safeguards—disclosure regulations—that could impact US capital markets.

Item 303 of SEC Regulation S-K outlines the requirements for issuers' quarterly and annual statements. It requires companies narrate the risks and trends management sees as potentially affecting the company's performance. Item 303 is one of the most important nonfinancial disclosures because it allows investors to view the company through managers' eyes and provides context to their financial statements.

Yet the Supreme Court has diminished critical Item 303 disclosures by immunizing noncompliance from private lawsuits. In *Macquarie*, the court unanimously held that an issuer's omission of a known material trend—despite the statutory and regulatory obligation to disclose it—can't alone support a claim for securities fraud under Section 10(b) and Rule 10b-5, the Exchange Act's most sweeping anti-fraud tools.

The court's decision that only "half-truths" are actionable whereas "pure omissions" aren't means that investors, lawyers, and judges now must analyze Item 303 violations carefully to categorize them.

If that supposedly bright-line distinction evades the average reader, the justices provided a quaint analogy: “The difference between a pure omission and a half-truth is the difference between a child not telling his parents he ate a whole cake and telling them he had dessert.”

The ruling doesn’t acknowledge that, because Item 303 requires disclosing known trends, an omission is a half-truth that implies all known trends have been disclosed (or that there are no known trends). Or, to take the court’s analogy, if the parents ask their child what dessert he or she ate and the child doesn’t respond, any parent will agree the child’s silence was an attempt to mislead.

It stands to reason that the same analysis was used by sophisticated investors who trusted that issuers fully complied with their affirmative disclosure obligations.

The opinion fails to discourage noncompliance with Item 303: While an incomplete disclosure of known trends can support a claim of securities fraud, omitting all known trends is immune from private suit.

The Supreme Court rejected this concern, reasoning that the Securities and Exchange Commission could still enforce compliance with Item 303, ignoring the arguments of former senior SEC officials who told the court that private enforcement was necessary to the SEC’s enforcement efforts, given the commission’s limited resources.

Issuers who entirely omit a known trend or risk will be sheltered from private lawsuits. But the court was clear that private parties could still bring claims based on “misleading half-truths.” Proving whether an Item 303 violation was a pure omission or a half-truth will vex courts in years to come.

Courts historically have recognized that investors’ faith in accuracy of reporting is central to investor confidence, price formation, and integrity of the country’s securities markets. If investors can’t rely on these reports and disclosures, they are less likely to invest, and the market suffers.

Only time will tell whether the current Supreme Court has opened a large loophole for plainly fraudulent conduct, undermining a century of disclosure that has made the US stock market the envy of the world.

The case is *Macquarie Infrastructure Corp. v. Moab Partners, LP*, U.S., No. 22-1165, 4/12/24 .

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The authors represented Moab Partners, LP in the case.

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April 23, 2024, 10:30 AM PDT
Investor Suit Accuses Hong Kong Blood Firm of Financial Cover-Up
By [Matthew Bultman](#)
Documents

-  [Complaint](#)
-  [Docket](#)

- French investment firms alleges securities law violations
- Suit alleges millions were secretly diverted to insiders

Bloomberg Law News 2024-04-23T14:37:39311311671-04:00
Investor Suit Accuses Hong Kong Blood Firm of Financial Cover-Up

By Matthew Bultman 2024-04-23T13:30:37000-04:00

- French investment firms alleges securities law violations
- Suit alleges millions were secretly diverted to insiders

Global Cord Blood Corp. was sued by a shareholder who alleges the umbilical cord blood storage company's planned acquisition of a Texas biotech firm was a cover-up for financial misconduct.

MW Gestion, a French investment management firm, said Global Cord's \$1 billion agreement to buy Cellenkos Inc. "grossly overvalued" the Houston-based firm, according to a lawsuit filed Monday in the US District Court for the Southern District of New York.

The transaction was part of an attempt at "filling a gap" in Global Cord's balance sheet, after the Hong Kong-based company for years secretly paid hundreds of millions of dollars to entities controlled by Global Cord's one-time chairperson, MW Gestion alleged in the complaint.

The proposed class action alleges violations of federal securities laws.

"Global Cord's decisions to reject multiple going private offers and enter into the Transaction were nothing more than self-serving and conflicted attempts by Defendants to divert company funds to corporate insiders and related parties," the complaint said.

Global Cord provides umbilical cord blood storage and related services in China.

Just days after the Cellenkos acquisition was announced in April 2022, another shareholder, Blue Ocean Structure Investment Company Ltd., brought a legal action opposing the transaction in the Cayman Islands, where Global Cord is incorporated.

Blue Ocean argued Cellenkos has no long-term value and there is a conflict of interest because Cellenkos and Global Cord have a close relationship.

Cellenkos was created in 2016 with funding from Golden Meditech, a medical device company, according to US court filings. Golden Meditech's founder, Yuen Kam, was also Global Cord's chairperson until 2018, after which he continued to secretly control Global Cord, according to the US lawsuit.

The New York Stock Exchange halted trading of Global Cord's shares in September 2022, after a Cayman Islands court suspended the powers of Global Cord's directors and appointed outside specialists to investigate the company's affairs.

Global Cord's shares still trade on the over-the-counter market.

MW Gestion alleges Global Cord misled investors by, among other things, failing to disclose "the misappropriation by Defendant Kam and his entities of hundreds of millions of dollars from the Company."

Pomerantz LLP represents MW Gestion.

The case is Gestion v. Global Cord Blood Corp. , S.D.N.Y., No. 24-cv-03071, complaint filed 4/22/24 .

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Palo Alto Networks Leadership Sued After Stock's Biggest Selloff

By Martina Barash

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 3:24-cv-02350](#)

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Palo Alto Networks Leadership Sued After Stock's Biggest Selloff

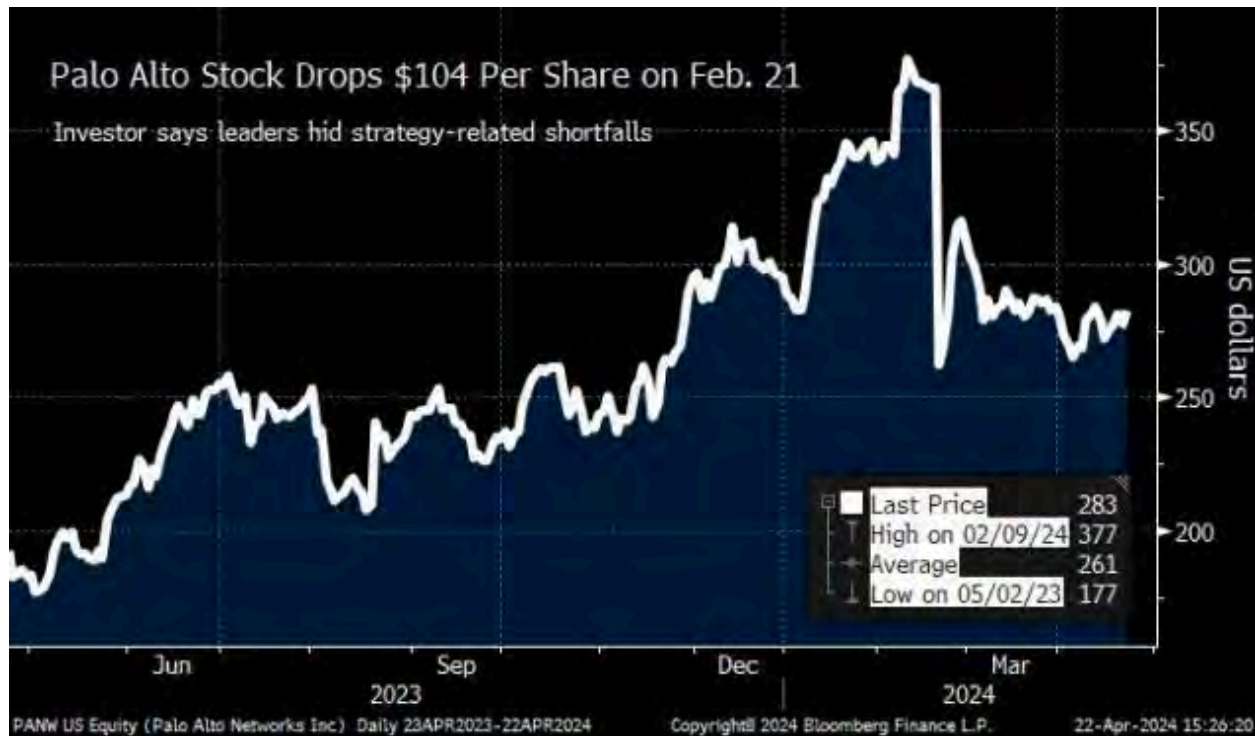
By Martina Barash 2024-04-22T15:46:30000-04:00

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 3:24-cv-02350](#)

Board members and executives at Palo Alto Networks Inc. are responsible for misleading statements about the cybersecurity company's product-access strategy, its artificial intelligence products, and customer demand before the stock's worst session ever, an investor alleges.

The company blamed its lowered guidance in February on a shift in the strategy and on some US government contracts that didn't close, shareholder Nathan Silva says. He filed his derivative suit April 19 in the US District Court for the Northern District of California.

The guidance announcement was followed by a 28% stock price decline to \$261.97 on Feb. 21. That was the stock's sharpest drop to date, according to data compiled by Bloomberg.



"By consolidating current point solutions into existing platforms, the Company's 'platformization' strategy aimed to reduce the complexity" for users, Silva says. But Palo Alto's leaders didn't disclose that its "consolidation and platformization initiatives were not driving increased market share to a significant degree," and that its new AI products weren't helping effect the strategy as expected, he said.

The company was harmed by having to defend a proposed class action, by having to undertake investigations and financial reporting changes, and by overcompensating some of the leaders, he says. CEO Nikesh Arora earned more than \$150 million in fiscal 2023, according to Silva.

Silva brings claims for securities fraud, breach of fiduciary duty, unjust enrichment, and waste of corporate assets. He seeks compensatory and punitive damages, along with internal governance reforms.

Palo Alto didn't immediately respond to emailed requests for comment on behalf of itself and the individual defendants.

Wolf Haldenstein Adler Freeman & Herz LLP, Rigrodsky Law PA, and Grabar Law Office represent Silva.

The case is Silva v. Arora , N.D. Cal., No. 3:24-cv-02350, complaint 4/19/24 .

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Documents

 Docket

Fifteen months of discovery and two separate settlement attempts followed the court's order, leading Matsumoto to conclude the \$9.5 million deal was the product of "arm's-length negotiations." Matsumoto also said the lead plaintiffs and lead counsel Glancy Prongay & Murray LLP were adequate representatives for the settlement class.

The settlement satisfied the factors enumerated by the Second Circuit in Grinnell where, among other things, no one in the class objected to or requested exclusion from the class, Matsumoto said, and Tenaris doesn't have many assets in US jurisdiction, which would raise "significant collection and enforcement obstacles" in the absence of the settlement.

The settlement amount was also higher than the "average settlement recovery rate for similar securities class actions" filed between December 2011 and December 2022, the court said.

Matsumoto had wanted more information on how the settlement would be distributed in practice, and wrote Monday that the court is now "satisfied that the proposed method of distributing relief, 'including the method of processing class-member claims' is effective and reasonable."

The lead plaintiffs noted that while the percentage of recovery amount was typical for the Second Circuit, when cross-checked under the lodestar method, the proposed fee award "represents a relatively low multiplier of 1.36." Courts in the Second Circuit have "routinely approved lodestar multipliers well above" that amount, Matsumoto said.

The two lead plaintiffs were also each awarded \$7,500.

Glancy Prongay & Murray LLP is lead counsel for the class. Sullivan & Cromwell LLP represents Tenaris and Rocca. Rocca also retained Dechert LLP.

The case is *In re Tenaris S.A. Sec. Litig.*, 2024 BL 136980, E.D.N.Y., No. 1:18-cv-07059, 4/22/24.

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April 23, 2024, 9:29 AM PDT
Lightning eMotors \$2.3 Million Settlement Gets Court Approval
By [Bernie Pazanowski](#)
Documents

-  [Order](#)
-  [Docket](#)
-  [Uvaydov v. Fenwick-Smith](#)

- The \$2.3 million settlement applies to three pending cases
- Agreement was fair, reasonable, nobody objected, court said

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Lightning eMotors \$2.3 Million Settlement Gets Court Approval

By [Bernie Pazanowski](#) 2024-04-23T12:29:21000-04:00

- The \$2.3 million settlement applies to three pending cases
- Agreement was fair, reasonable, nobody objected, court said

The proposed \$2.3 million settlement agreement in a derivative suit challenging the merger that created Lightning eMotors was approved by a federal court in Colorado.

The merger has spawned numerous lawsuits. The settlement order, signed by Judge Nina Y. Wang of the US District Court for the District of Colorado, applies to three of them. The settlement establishes a \$1.85 million escrow account to be used for the defense or settlement of a securities class action against the company and includes an additional \$500,000 for attorneys’ fees. It also requires the company to adopt corporate governance reforms intended to improve the accuracy and integrity of its public statements.

GigCapital3 Inc. and Lightning Systems merged in 2021 to form Lightning eMotors, which markets electric vehicles. GigCapital3 issued proxy statements saying that the merger would be profitable, but after the merger closed, the company announced it had a loss of \$73.5 million and its projections for the future weren’t well received—its stock price dropped from \$9.63 per share to \$8.00 per share overnight, according to the amended complaint.

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Shareholder Kelly Lanham alleged that the officers of GigCapital3 misrepresented the company's ability to ramp up production and increase revenue and that they knew or recklessly disregarded how quickly the operation could be scaled up to meet its forecasted revenue projections. Her allegations included violations of the 1934 Securities Exchange Act, breach of fiduciary duty, unjust enrichment, and waste of corporate assets.

In December 2023, Wang preliminarily approved the settlement, and on Monday, she gave her final approval. The other two cases settled by the agreement are *Uvaydov v. Fenwick-Smith*, which was filed in the Delaware Court of Chancery, and *Bhavsar v. Reeser*, which was also filed in the US District Court for the District of Colorado.

The settlement "is fair, reasonable, and adequate," Wang said in the December order for preliminary approval. It addresses the issues giving rise to the lawsuit and no shareholders objected to it, she said.

Though the \$500,000 fee award was above the lodestar amount—the number of hours the attorneys worked times their hourly rate—Wang said it was also reasonable. The amount is within the range of fees awarded in other securities cases and awards two to three times the lodestar amount are common in securities suits, she said.

Paying the lead plaintiffs in the three cases a \$1,500 service award each was also appropriate, Wang said.

Rigrodsky Law PA and Shuman Glenn & Stecker represented Lanham. DLA Piper LLP and Freshfields Bruckhaus Deringer US LLP represented the defendants.

The case is Lanham v. Katz, D. Colo., No. 23-cv-00507-NYW-NRN, final approval of settlement granted 4/22/24.

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<https://www.law.com/2024/04/23/a-new-wave-of-class-actions-the-genetic-information-privacy-act/>



NOT FOR REPRINT
COMMENTARY

A New Wave of Class Actions: The Genetic Information Privacy Act

"In 2023 alone, over 50 GIPA complaints were filed, and new suits continue to be filed in 2024," write Kathleen Carlson, Lawrence Fogel and Colleen Brown of Sidley Austin.

April 23, 2024 at 10:00 AM

Class Actions

By Kathleen Carlson, Lawrence Fogel and Colleen Brown | April 23, 2024 at 10:00 AM



The exponential increase over the past several years in lawsuits brought under Illinois’ Biometric Information Privacy Act (BIPA) is well documented. The plaintiffs’ bar now appears to have broadened its focus to include another Illinois privacy statute: the Illinois Genetic Information Privacy Act (GIPA), which regulates the use of genetic testing information. Like BIPA, GIPA provides a private right of action, permits recovery of steep statutory damages, and has experienced a recent proliferation in lawsuits after remaining relatively dormant for nearly 25 years. In 2023 alone, over 50 GIPA complaints were filed, and new suits continue to be filed in 2024. This article explores some of GIPA’s emerging issues and unanswered questions.

GIPA Background & Requirements

The Illinois legislature enacted GIPA in 1998 to protect against the involuntary disclosure and use of “genetic testing” and “genetic information.” GIPA was amended in 2008 to conform to its federal analog, the Genetic Information Nondiscrimination Act (GINA). GIPA, though, provides for significantly steeper statutory damages—even steeper than provided in BIPA: \$15,000 per each intentional violation and \$2,500 per each negligent violation, 410 ILCS 513/40(a), compared to \$5,000 and \$1,000, respectively, for BIPA, 740 ILCS 14/20.

GIPA includes a number of restrictions related to the use and disclosure of genetic testing and genetic information.

First, GIPA restricts the ability for all persons and companies to disclose genetic tests and the information derived therefrom. 410 ILCS 513/15(a). Specifically, companies cannot disclose an individual’s genetic test information to unauthorized third parties without obtaining the individual’s prior written consent. *Id.* Section 15(a), (d). Additionally, companies that possess genetic test information cannot be compelled to disclose such information to another company. *Id.* Section 15(d).

Second, GIPA prohibits employers from “directly or indirectly” using genetic information as a condition of employment or pre-employment application, as a basis for hiring and firing decisions, or when determining work assignments or classifications of applicants and employees. *Id.* Section 25(c)(1)–(3).

Third, GIPA prohibits an insurer from seeking information derived from genetic testing for use in connection with an accident or health insurance policy. Insurers are also prohibited from using or disclosing genetic information for underwriting purposes. *Id.* Section 20(a)–(b). GIPA excludes insurers from these requirements when issuing a long-term

care policy. Id. Section 20(b).

Because GIPA case law is relatively undeveloped, there is little precedent testing the application and reach of these provisions. A few emerging issues are discussed below.

Emerging Issues

Actual Injury Requirements

A threshold question for GIPA cases is standing. Like BIPA, GIPA provides a private right of action for “[a]ny person aggrieved by a violation” of the statute. Id. Section 40(a). GIPA does not define “person aggrieved.” Defendants could point to GINA, which requires individualized proof of a tangible injury or injury-in-fact to state a claim. See e.g., *Harris v. Union Pac. R.R.*, No. 8:16CV381, (D. Neb. Aug. 5, 2020). On the other hand, at least one court, relying on Illinois Supreme Court’s seminal BIPA decision, *Rosenbach v. Six Flags Entertainment*, 2019 IL 123186, held that a GIPA plaintiff is “aggrieved” if a defendant violated their rights under the statute, even if there is no actual injury or adverse effect. *Bridges v. Blackstone Group*, (S.D. Ill. July 8, 2022), aff’d 66 F.4th 687 (7th Cir. 2023). Thus, the court determined that a plaintiff need not prove actual harm to state a claim under GIPA. Id.

It remains to be seen whether other courts will similarly follow suit in applying *Rosenbach* to GIPA, although it appears the plaintiffs’ bar is anticipating as much in light of the number of recent GIPA suits.

The Scope of ‘Genetic Information’

Another emerging issue is how broadly courts will construe GIPA’s definition of “genetic information.” GIPA adopts the definition of “genetic information” ascribed in the Health Insurance Portability and Accountability Act (HIPAA), 410 ILCS 513/10. Relevant here, HIPAA defines “genetic information” to include, among other things, “[t]he manifestation of a disease or disorder in family members of such individual.” 45 CFR Section 160.103. However, litigants disagree as to what extent the definition encompasses family medical histories. For example, this question has arisen in the context of employment suits, where GIPA plaintiffs have broadly alleged that employers violated the statute by requesting or requiring the disclosure of their family’s medical history during pre-employment physicals or health interviews, such as conditions like cardiac infirmities, cancer, and diabetes.

The question thus arises as to what extent this type of information falls under GIPA’s definition of “genetic information.” Federal precedent under the federal GINA standard, however, suggests the definition may be more circumscribed. Courts have held that GINA only applies to family medical histories for conditions that are caused by a “genetic predisposition,” where the employer “believed that the medical information at issue had a genetic basis.” See, e.g., *Baum v. Dunmire Prop. Mgmt.*, No. 21-CV-00964-CMA-NYW, (D. Colo. Mar. 25, 2022). Furthermore, courts have held that family medical history information is only considered “genetic information” under GINA if it is used “to determine the likelihood of disease in another individual.” See, e.g., *Allen v. Verizon Wireless*, No. 3:12-CV-482 JCH, (D. Conn. June 6, 2013). Given the overlap between GIPA and GINA, defendants may argue that GIPA only protects family medical histories in limited circumstances: when information about a family member’s inherently genetic condition is specifically used to determine the plaintiff’s likelihood of having the same condition.

GIPA Claims Against Life Insurance Companies

Another emerging issue is to what extent Section 20(b) of GIPA—which concerns insurers—applies to life insurers. Several class actions brought against life insurance companies have alleged the insurers violated Section 20(b) by improperly using applicants’ genetic information for underwriting purposes, such as determining eligibility and setting premiums.

No court has addressed whether GIPA applies to life insurers, but there is reason to believe that the statute was not intended to do so. Section 20(b) specifically prohibits insurers from using “protected health information that is genetic information.” 410 ILCS 513/20(b). GIPA adopts HIPAA’s definition of “protected health information,” and it is well-settled that HIPAA does not apply to life insurers. Under HIPAA, protected health information is defined as individually identifiable health information that “[i]s created or received by a health care provider, health plan, employer, or health care clearinghouse.” 45 C.F.R. Section 160.103. Life insurers do not qualify as any of the aforementioned HIPAA-covered entities. Rather, life insurers are financial institutions subject to the Gramm-Leach-Bliley Act (GLBA), and health information they may process is not considered “protected health information” but rather “nonpublic information” subject to the GLBA. 15 U.S.C.A. Section 6801.

Life insurers may accordingly argue that they are not subject to GIPA’s requirements because they are not collecting protected health information, nor are they a HIPAA-covered entity or business associate. GIPA essentially does not reach GLBA-regulated insurance companies. And some may argue that there is good reason for this result. The insurance industry is already well regulated by the GLBA and a variety of complex insurance regulations respecting sensitive personal information (in addition to GINA).

In addition, the Illinois General Assembly has recently proposed two bills aimed at requiring life insurers to comply with GIPA, which provides further support for the proposition that the current version of the statute does not apply to life insurance companies. See, S. 68, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023); H.R. 4142, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023). Nonetheless, it will be important to monitor what steps, if any, the General Assembly takes.

Conclusion

If BIPA’s history is any indication, the recent uptick in GIPA lawsuits may only mark the beginning of a wave of incoming litigation. In the meantime, companies should consider taking the following steps to reduce their potential liability under GIPA:

- Review the categories of health information collected from job applicants and current employees and consider refraining from asking about family medical history.
- Where possible, consider providing a notice on pre-employment or insurance applications to inform individuals not to provide family medical history information.
- Closely monitor GIPA developments in court and in the Illinois General Assembly.

Kathleen Carlson *is a litigation partner in Sidley Austin’s Chicago office. Kathleen’s practice focuses on defending a variety of class actions, with a specific focus on privacy class actions, such as those brought pursuant to the Illinois Biometric Information Privacy Act (BIPA).*

Lawrence Fogel *is a litigation partner in Sidley’s Chicago office. His practice includes a variety of commercial litigation and class action defense, including privacy class actions.*

Colleen Brown *is a partner in Sidley Austin’s Washington D.C. office focused on privacy, cybersecurity, data protection, and emerging technology issues for a diverse group of companies, including those in the financial, life sciences, energy, telecommunications, media, retail, and manufacturing sectors.*

Andrew Rodheim *and Michael Willian* *also contributed to this article.*

NOT FOR REPRINT

US realtor group's \$418 million antitrust settlement wins tentative approval

 [reuters.com/legal/litigation/us-realtor-groups-418-million-antitrust-settlement-wins-tentative-approval-2024-04-23](https://www.reuters.com/legal/litigation/us-realtor-groups-418-million-antitrust-settlement-wins-tentative-approval-2024-04-23)

Mike Scarcella

A home for sale sign hangs in front of a house in Oakton, Virginia, on March 27, 2014.
REUTERS/Larry Downing/File Photo Purchase Licensing Rights , opens new tab

April 23 (Reuters) - A U.S. federal judge in Missouri on Tuesday preliminarily approved an antitrust class-action settlement that requires the National Association of Realtors to pay \$418 million and implement changes to how Americans buy and sell homes.

WHY IT'S IMPORTANT

U.S. District Judge Stephen Bough's settlement order , opens new tab marked a key first step in a months-long process that will culminate in a final approval hearing set for Nov. 26 in Kansas City, Missouri.

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The plaintiffs' lawyers who negotiated the deal have heralded it as a game-changer for how homes are bought and sold in the United States.

Under the terms of the settlement, home sellers will no longer be required to offer a commission to buyers' agents in order for their properties to appear on "multiple listing services," which is where most home sales originate. Commissions still can be negotiated as part of the process.

CONTEXT

Bough presided over a trial last year that ended in a \$1.8 billion verdict against the National Association of Realtors and other defendants. A class of home sellers accused the defendants of unlawfully inflating the commissions they pay to agents for buyers. The National Association of Realtors has long defended the industry's commission practices, arguing they promote efficiency and transparency in residential home-buying. The Chicago-founded trade group, which did not admit any liability as part of its settlement, welcomed Bough's preliminary approval in a statement on Tuesday.

Brokerage company HomeServices is the only remaining defendant in the case. The company has asked Bough to overturn the verdict.

BY THE NUMBERS

The deal is the largest reached so far in litigation over real estate commissions, pushing total proposed settlements to \$626 million. Anywhere Real Estate separately said it would pay \$83.5 million, Compass agreed to pay \$57.5 million and Re/Max settled for \$55 million.

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Reporting by Mike Scarcella

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NOT FOR REPRINT
NEWS

'We Fight': The Dallas Firm That Won \$45M Talc Verdict Refused Johnson & Johnson's Settlement Offer

Friday's verdict against Johnson & Johnson, in Chicago's Cook County Circuit Court, is the first for a mesothelioma victim since two failed talc bankruptcies last year—and a groundbreaking win for Dallas-based Dean Omar Branham Shirley.

April 22, 2024 at 06:35 PM



Amanda Bronstad
staff reporter



The original version of this story was published on [Law.com](#)

What You Need to Know

- Jessica Dean, of Dean Omar, said she refused to settle the case because Johnson & Johnson's offer would have required her firm to resolve all of its clients' cases.
- Johnson & Johnson plans to immediately appeal the verdict, which it says had 'no basis in the law or science.'
- Dean Omar has another talc trial against Johnson & Johnson set for May 8 in Portland's Multnomah County Circuit Court.

A \$45 million verdict against Johnson & Johnson is the first for a mesothelioma victim since two failed talc bankruptcies last year—and a groundbreaking win for Dallas-based Dean Omar Branham Shirley.

On Friday, a jury in Chicago's Cook County Circuit Court awarded compensatory damages to the family of Theresa Garcia, a mother of six kids who died in 2020 after lifelong use of Johnson & Johnson's baby powder and other products. Their decision came out on the same day that jurors in Florida's Sarasota County Circuit Court handed Johnson & Johnson [a defense win](#) in the first post-bankruptcy verdict to come out of an ovarian cancer case.

Jessica Dean, of Dean Omar, said her firm had settled three talc cases with Johnson & Johnson prior to the first Chapter 11 filing of subsidiary LTL Management in 2021. But Garcia's case didn't settle because Johnson & Johnson's offer would have required her firm to resolve the claims of all its clients.

"Johnson & Johnson refuses to engage into a settlement discussion," she told Law.com, "unless we resolve all of our cases, both existing and anything we might file for 10 years going forward. In addition to that extraordinary request, they also want confidentiality and to acknowledge they did nothing wrong."

She rejected such a deal, she said, which would have put her clients in conflict with one another.

"We fight. We go to verdict a lot, which is why I'm so tired," she said.

She worked with Benjamin Adams and Mark Buha at her firm, as well as Christian Luciano Santiago at Chicago's Vogelzang Law.

Her firm has another trial against Johnson & Johnson set for May 8 in Portland's Multnomah County Circuit Court.

Erik Haas, worldwide vice president of litigation, said in a statement that Johnson & Johnson would immediately appeal Friday's verdict, and "we expect to prevail as we typically do with aberrant adverse verdicts that have no basis in the law or science and are predicated on clearly erroneous rulings by the trial court—as happened recently when the \$223 million award was vacated by the New Jersey appellate court." The statement refers to an [Oct. 3 decision](#) by the New Jersey Appellate Division to reverse a verdict against Johnson & Johnson after concluding the plaintiffs' experts shouldn't have been allowed in the consolidated trial of four plaintiffs with mesothelioma.

Johnson & Johnson also contrasted the scientific experts in the Chicago case with that in the talc multidistrict litigation, where U.S. District Judge Michael Shipp, in the District of New Jersey, [ordered a new round of briefing](#) on expert evidence in thousands of ovarian cancer cases. "The verdict in this trial is irreconcilable with the decades of independent scientific evaluations confirming talc is safe, does not contain asbestos, and does not cause cancer," Haas continued.

Kim Bueno, an Austin partner at Butler Snow, and Shaila Diwan at King & Spalding in New York represented Johnson & Johnson in the Chicago trial. The verdict also was against subsidiaries Johnson & Johnson Holdco (NA) Inc. and Kenvue Inc.

'We Had a Very Smart Jury'

Trials against Johnson & Johnson are restarting after New Jersey Chief Bankruptcy Judge Michael Kaplan dismissed LTL's second Chapter 11 case last year, lifting the automatic stay for thousands of talc cases.

On March 5, the first post-bankruptcy trial involving an ovarian cancer victim [ended in a mistrial](#) in Florida's Miami-Dade Circuit Court. Both that trial, and the Florida case that ended in a defense verdict, involved plaintiffs' firm Beasley Allen, which Johnson & Johnson has moved to disqualify from the talc litigation, citing ethical concerns about principal Andy Birchfield's partnership with one of its former lawyers, James Conlan. Atlantic County Superior Court Judge John Porto and U.S. Magistrate Judge Rukhsanah Singh held a hearing on that motion on [March 25](#) and [April 10](#) in New Jersey.

Dean said her firm, which has 32 lawyers, began pursuing mesothelioma cases against Johnson & Johnson prior to the bankruptcies.

“I started three of the trials, and Johnson & Johnson did not engage in any, way shape or form in those trials until we were in the case,” she said. But Johnson & Johnson ultimately settled those three cases on an individual basis, she said.

After LTL’s Chapter 11 filings froze Johnson & Johnson talc trials, only one mesothelioma trial against Johnson & Johnson was allowed to proceed during bankruptcy: A case in California’s Alameda County Superior Court brought by Oakland’s Kazan, McClain, Satterley & Greenwood that ended in an \$18.8 million verdict last year.

Dean Omar, meanwhile, obtained verdicts against other cosmetic companies, including \$52.1 million against Avon in 2022 and \$29.14 million against talc supplier Whittaker, Clark & Daniels in 2023. In January, after the bankruptcy stay lifted, the firm began a mesothelioma trial against Johnson & Johnson in New Orleans, but the plaintiff died in the middle of trial.

“It’s heartbreaking,” she said.

Garcia’s trial, she added, came with its own emotions.

“We had the case ready to be tried, and we stop in our tracks shortly before trial date because of the first bankruptcy,” she said. “Being able to talk to this jury was extraordinary. We had a very smart jury.”

NOT FOR REPRINT

General Dynamics, other shipbuilders defeat lawsuit over engineer pay

 [reuters.com/legal/litigation/general-dynamics-other-shipbuilders-defeat-lawsuit-over-engineer-pay-2024-04-22](https://www.reuters.com/legal/litigation/general-dynamics-other-shipbuilders-defeat-lawsuit-over-engineer-pay-2024-04-22)

Mike Scarcella

A General Dynamics sign is shown at the International Association of Chiefs of Police conference in San Diego, California, U.S. October 17, 2016. REUTERS/Mike Blake/File Photo Purchase Licensing Rights , opens new tab

April 22 (Reuters) - A U.S. judge has dismissed a proposed class-action lawsuit accusing shipbuilding giants General Dynamics (GD.N) , opens new tab, Huntington Ingalls (HII.N) , opens new tab and others of conspiring for years to suppress compensation for naval architects and marine engineers.

Senior U.S. District Judge Anthony Trenga in Alexandria, Virginia, ruled , opens new tab on Friday that the lawsuit was filed too late to comply with a four-year statute of limitations for antitrust claims.

The plaintiffs, a pair of naval architects, had alleged that eight shipbuilders and nearly a dozen engineering consultancies violated antitrust law by agreeing not to compete with each other in the hiring of key employees.

Huntington Ingalls in a statement on Monday said it was pleased with the court's ruling and that the company "is committed to compliance in all aspects of its business."

General Dynamics did not immediately respond to a request for comment. The defendants denied taking part in a "no poach" recruitment conspiracy.

Attorneys for the plaintiffs also did not immediately respond to a request for comment.

The plaintiffs could decide to appeal to the Richmond-based 4th U.S. Circuit Court of Appeals.

The lawsuit was filed in October, accusing the defendant companies of a scheme that cost workers hundreds of millions of dollars in lost compensation. The would-be class of engineers and architects was estimated in the "tens of thousands." The lawsuit said the median salary for naval engineers is nearly \$100,000.

General Dynamics, Huntington Ingalls and other companies denied any conspiracy, and they urged Trenga to dismiss the lawsuit for being filed too late.

The plaintiffs countered that the companies "fraudulently concealed" the hiring and recruitment conspiracy, delaying the plaintiffs from learning about it.

The case is Scharpf v. General Dynamics, U.S. District Court for the Eastern District of Virginia, No. 1:23-cv-01372.

For plaintiffs: Steven Toll of Cohen Milstein Sellers & Toll; Shana Scarlett of Hagens Berman Sobol Shapiro; and George Farah of Handley Farah & Anderson

For General Dynamics: David Barger of Greenberg Traurig; and Douglas Litvack and Michael Doornweerd of Jenner & Block

For Huntington Ingalls Industries: Adam Schwartz of Shearman & Sterling; Sima Namiri-Kalantari and Chahira Solh of Crowell & Moring

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Tax preparer Jackson Hewitt settles 'no poach' case for \$10 million

General Dynamics, others blast US shipbuilding antitrust lawsuit

General Dynamics, Huntington Ingalls sued in engineers' 'no poach' lawsuit

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Baltimore files lawsuit against ship owner, operator after bridge collapse

 [reuters.com/legal/government/baltimore-files-lawsuit-against-ship-owner-operator-after-bridge-collapse-2024-04-22](https://www.reuters.com/legal/government/baltimore-files-lawsuit-against-ship-owner-operator-after-bridge-collapse-2024-04-22)

Diana Jones

Wreckage of the collapsed Francis Scott Key Bridge lies atop the container ship Dali as salvage work continues in Baltimore, Maryland, U.S., April 8, 2024. REUTERS/Julia Nikhinson Purchase Licensing Rights  , opens new tab

April 22 (Reuters) - The mayor and city council of Baltimore have filed a lawsuit against the owner and operator of the ship that collided with a pylon on the Francis Scott Key Bridge last month, causing its collapse and killing six people working on it at the time.

The lawsuit, filed in Maryland federal court on Monday, seeks unspecified damages from the registered owner of the Singapore-flagged ship, Grace Ocean Pte Ltd, and its manager Synergy Marine Group. It accuses the companies of negligence in operating the ship, the Dali, saying the loss of the bridge has caused the city's economic engine to "grind to a halt."

The lawsuit claims the operators of the ship left port on March 26 despite an inconsistent power supply on the ship, which the city says was a criminally negligent decision. It cites economic damages caused by the loss of the bridge, including the cleanup on the river and the closure of the port of Baltimore.

Darrell Wilson, a spokesperson for Grace Ocean and Synergy, said the U.S. Coast Guard and federal regulators are still conducting their investigations into the cause and said it would be inappropriate to comment.

Grace Ocean and Synergy filed a petition on April 1 in Maryland federal court to limit their liability from the crash. If the court grants it, the companies' liability could be limited to the present value of the ship, which they estimated to be \$42.5 million, according to the petition.

The city's lawsuit is filed as a claim in the same court.

Reporting by Diana Jones

Diana Novak Jones
Thomson Reuters

Co-author of the Daily Docket, Reuters' daily legal industry newsletter. Diana reports on litigation, mass torts and the plaintiffs' bar. She previously worked at Law360 and the Chicago Sun-Times.

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FirstEnergy paid \$2.5 million secret payment to nonprofit backing DeWine in 2018, new records show

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4/22/24 cleveland.com (Cleveland, Ohio) (No Page)

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April 22, 2024

FirstEnergy paid \$2.5 million secret payment to nonprofit backing DeWine in 2018, new records show

Jake Zuckerman; cleveland.com

COLUMBUS, Ohio - FirstEnergy Corp. made \$2.5 million in secret payments to a dark money nonprofit that backed Republican Mike DeWine's 2018 gubernatorial run as the company was executing what would become the biggest public corruption scheme in state history.

Newly released documents show the Akron-based power company paid \$2.5 million in 2018 to State Solutions, a 501(c)(4) nonprofit that can collect unlimited sums to spend on politics without revealing its contributors. State Solutions is funded in part by and associated with the Republican Governors Association.

Two contributions of \$1 million each are listed in FirstEnergy's internal giving lists as "RGA." A third contribution of \$500,000 is listed as "DeWine."

The money adds a significant line item on top of its already prolific spending to elect Gov. Mike DeWine in 2018. Around that time, the company was paying tens of millions to another dark money nonprofit secretly controlled by ex-Ohio House Speaker Larry Householder, who was convicted of racketeering at trial and sentenced to 20 years in prison. A FirstEnergy CEO and executive-level lobbyist have also been accused of paying a \$4.3 million bribe to Sam Randazzo, a utility lawyer DeWine appointed as the state's top utility regulator.

FirstEnergy sought from Householder a champion on the inside to pass House Bill 6 in 2019, which charged ratepayers more than \$1 billion to subsidize its money-losing nuclear plants. The company needed Randazzo, prosecutors say, for lobbying help with HB6 and other lucrative, regulatory favors. The governor signed HB6 into law, although the arrests scuttled the bailout before it took effect.

DeWine spokesman Dan Tierney said the governor had no knowledge of the payments in question, noting that candidates cannot lawfully coordinate with 501(c)(4) organizations. He said questions about why the payments were made should go to FirstEnergy but said DeWine has long supported nuclear generation in Ohio.

"The governor had an existing position on these issues, and they wanted to support a candidate who had those positions," he said.

The USA TODAY Network Ohio Bureau first reported on the \$2.5 million in contributions. The records were produced during a lawsuit brought against the company by its shareholders, and later folded into a regulatory investigation into the company. They were released in response to a public records request.

FirstEnergy preferred giving through dark-money nonprofits because it could legally avoid the disclosure and contribution limits associated with traditional campaign contributions. The company in 2021 admitted to bribing both Householder and Randazzo. As part of a deferred prosecution agreement, FirstEnergy said the use of dark money was "central" to its lobbying.

"This effort would not have been possible, both in the nature and volume of money provided, without the use of a 501(c)(4) entity," the company said in a statement, released in conjunction with the agreement with prosecutors.

Cleveland.com and The Plain Dealer previously reported on internal FirstEnergy documents showing the company made a \$1 million dark money contribution in 2017 to a nonprofit called Freedom Frontier for "Husted campaign," Lt. Gov. Jon Husted said he had no affiliation with the receiving entity.

At Householder's trial, FirstEnergy Solutions lobbyist Juan Cespedes, who pleaded guilty and served as a government witness, testified that he met with DeWine and Husted Oct. 10, 2018, at an RGA fundraiser with other company lobbyists. There, FirstEnergy committed to a contribution, Cespedes testified. RGA tax records indicate receipt of \$500,000 the next day.

Other tax records show FirstEnergy (through its own dark money nonprofit) contributed another \$300,000 to a nonprofit called Securing Ohio's Future, which backed DeWine; and another \$75,000 to another nonprofit backing DeWine's daughter in a county prosecutor's race, which she lost.

FirstEnergy also funded DeWine through more traditional and publicly disclosed avenues.

The internal emails show Jones, now facing felony state charges, organized a DeWine fundraiser at his home in August 2018, just a few months before the gubernatorial election. The emails show some of the backstage choreography: Jones is to speak, the emails say, introducing Husted, who will introduce DeWine. In Jones prepared remarks, Jones encourages contributors to make themselves right at home.

"Jon [Husted] has always been very accessible, and great to work with, and I can say without question, he is a good friend of FirstEnergy," he was to say, per his prepared remarks. "In case you weren't aware, Jon was running his own campaign for governor until he decided to team up on the same ticket with Mike [DeWine]."

That year, both Jones and his wife wrote DeWine's campaign committee checks for about \$12,700, the legal maximum. So did Anthony Alexander, FirstEnergy's former executive chairman. FirstEnergy's corporate PAC gave DeWine's campaign \$12,700 as well. The corporate PAC also contributed \$20,000 to the DeWine-Husted transition fund.

There are no civil or criminal accusations of wrongdoing against DeWine or Husted. However, the new records deepen FirstEnergy's known investment into DeWine's ticket. And DeWine took several actions critical to the company's schemes. He signed HB6, bailout legislation worth more than \$1 billion to FirstEnergy. He appointed Randazzo after ignoring contemporaneous warnings of his "opaque and undisclosed" relationship with FirstEnergy. He dispatched the state plane to deliver legislators to Columbus for a hastily scheduled vote on the bailout. He hired a former FirstEnergy lobbyist as his legislative director in 2019, while the company hired a top DeWine campaign official as a lobbyist.

Fallout from the scandal continues. Both Householder and Ohio Republican Party Chairman turned lobbyist Matt Borges are in prison. Cespedes and former Householder adviser Jeff Longstreth pleaded guilty to racketeering and agreed to cooperate as federal witnesses.

Jones and Dowling await trial in the Summit County Court of Common Pleas. They have pleaded not guilty.

Randazzo, who was facing state and federal corruption charges, died by apparent suicide this month. The charges against him have not been formally dropped, but experts say it's a matter of time. Another alleged Householder conspirator, lobbyist Neil Clark, also died by suicide in 2021.

FirstEnergy agreed to pay a \$230 million penalty as part of its deferred prosecution agreement and cooperate with federal prosecutors.

Jake Zuckerman covers state politics and policy for Cleveland.com and The Plain Dealer.

---- Index References ----

Company: FIRSTENERGY CORP.; Republican Governors Association

News Subject: (Corruption, Bribery & Embezzlement (1EM51); Crime (1CR87); Fraud (1FR30); Government (1GO80); Lobby & Pressure Groups (1LO18); Social Issues (1SO05))

Industry: (Electric Utilities (1EL82); Energy & Fuel (1EN13); Utilities (1UT12))

Region: (Americas (1AM92); North America (1NO39); Ohio (1OH35); U.S. Midwest Region (1MI19); USA (1US73))

Language: EN

Other Indexing: (DeWine; FirstEnergy Corp.; Republican Governors Association)

Word Count: 1015

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FirstEnergy paid \$300k to dark money org a lobbyist tied to Senate President Matt Huffman

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April 22, 2024

FirstEnergy paid \$300k to dark money org a lobbyist tied to Senate President Matt Huffman

Jake Zuckerman; cleveland.com

COLUMBUS, Ohio - At the height of its sweeping Statehouse bribery scheme, FirstEnergy secretly paid \$300,000 over five checks to a dark money nonprofit its lobbyist explicitly associated with now-Senate President Matt Huffman, new records show.

In May 2019, a 501(c)(4) nonprofit FirstEnergy funded and controlled wrote the first of its checks to a fellow dark-money group called Liberty Ohio, a group FirstEnergy lobbyist Ty Pine referred to in an email as "the Huffman C4." Dark-money nonprofits can raise limitless amounts of money without disclosing their contributors. At the time, Huffman was a state senator, understood to be next in line to ascend to his current role as Senate President, one of the most powerful jobs in state politics.

Huffman has never been implicated in what has turned into a sprawling bribery scandal. But newly released records show FirstEnergy organizing secret payments to his benefit him politically, just as they do with Gov. Mike DeWine and Lt. Gov. Jon Husted, the beneficiaries of about \$4.3 million in documented FirstEnergy money across multiple similar groups. Neither DeWine nor Husted has been accused of criminal or civil wrongdoing either.

Huffman, through a spokesman, said he has never "created, controlled, or coordinated" any 501(c)(4).

"The effort to interpret five-year-old emails from campaign operatives and lobbyists wrapped in hyperbole, big talk and false assumptions is just that, hyperbole, big talk and false assumptions," said spokesman John Fortney.

At the center of the bribery scandal is House Bill 6, the 2019 legislation that delivered a bailout worth more than \$1 billion to FirstEnergy. A former Ohio House speaker is serving 20 years in prison for accepting FirstEnergy's bribes. Two former FirstEnergy executives face felony state charges over a separate but related bribery case involving the state's former top utility regulator.

FirstEnergy money start flowing to Liberty Ohio on May 29, 2019, when records show Partners for Progress, a nonprofit FirstEnergy funded and controlled, wrote the first of what would be three \$50,000 checks that year. In June 2020, Partners for Progress transferred another \$150,000 to Liberty Ohio.

About two weeks before that first check, Ray Yonkura, a political operative with High Bridge Consulting, emailed Pine, a longtime FirstEnergy lobbyist, with a PowerPoint "overview" of Liberty Ohio, an opaque organization with almost no public-facing profile. Pine forwarded the email to FirstEnergy lobbyist Joel Bailey, who sent it on to Michael Van Buren, a Northeast Ohio attorney who served as treasurer for Partners for Progress.

"Is this what you need on the Huffman C4?" Pine wrote.

At that time, FirstEnergy was waging, by its own admission, two distinct multimillion dollar bribery schemes involving ex-Ohio House Speaker Larry Householder and top state utility regulator Sam Randazzo. In exchange, the two men offered critical support passing HB6, which charged ratepayers statewide more than \$1 billion to subsidize FirstEnergy's money-losing nuclear plants. Passage of the bill, prosecutors say, was the culmination of the biggest public corruption scheme in Ohio history.

The connections between Huffman, Liberty Ohio, and FirstEnergy have not been previously reported.

One day before Partners for Progress wrote the first Liberty Ohio check, Van Buren emailed the nonprofit's board, plus Bailey, stating that Partners for Progress was "requested" to contribute to Liberty Ohio. This and other documents, originally produced in an investor lawsuit filed against the company in connection with the scandal, were recently obtained by public records request.

The day after Partners for Progress wrote the first \$50,000 check, FirstEnergy lobbyist and vice president Mike Dowling texted CEO Chuck Jones, saying "we're going to need some C(4) infusion." Jones asked how much to get through the year.

"[FirstEnergy lobbyist] Danny McCarthy was on my a— last night about giving to Matt Huffman - the next Senate President," Dowling wrote. "He wants us to give him A LOT. Why? Because Huffman is transactional and can get shot [sic] done. And when that happens, it helps the governor because it just makes things easier."

Yonkura did not respond to a call or email. Thomas Datwyler, listed as the principal officer for Liberty Ohio on its tax records, didn't respond to a voicemail.

Jones and Dowling have both been accused of bribing Randazzo. They have pleaded not guilty. Randazzo died by suicide earlier this month, as he was facing trial on state and federal bribery charges. FirstEnergy agreed to pay a \$230 million penalty, cooperate with investigators, and publicly admit that dark money political contributions were "central" to its bribery scheme.

Householder is serving a 20-year sentence for racketeering. Ex-Ohio Republican Party chairman and lobbyist Matt Borges, who was convicted at trial, is serving a five-year sentence for racketeering. FirstEnergy Solutions lobbyist Juan Cespedes and Householder adviser Jeff Longstreth both pleaded guilty and are cooperating with prosecutors. They have not been sentenced. A fifth conspirator, lobbyist Neil Clark, died by suicide in 2021.

During the Householder investigation, two undercover FBI officers engaged with Clark seeking to make dark money contributions to various 501(c)(4) organizations. In recorded calls with the undercovers, Clark said "Matt Huffman has his (c)(4) already set up." However, a spokesman at the time the tape was played at Householder's trial said Huffman never controlled any 501(c)(4) nonprofit.

Clark, in the tapes, also offered the undercovers a sense of the value an ally like Huffman can deliver.

"Matt Huffman, he's a Senator. He's going to be the next Senate President," he said. "He has eighteen votes in the Senate. Of the 24 Republicans, he has 18."

Cespedes, in a January 2019 text message to FirstEnergy Solutions lobbyist Bob Klaffky, indicated after a meeting that Huffman was warmer on a nuclear bailout than was foreseen.

"Matt Huffman is much stronger on our issue than I expected," he said. "He could be our champion in leadership. He hates wind energy."

Jake Zuckerman covers state politics and policy for Cleveland.com and The Plain Dealer.
---- Index References ----

Company: FIRSTENERGY SOLUTIONS CORP.

News Subject: (Corruption, Bribery & Embezzlement (1EM51); Crime (1CR87); Fraud (1FR30); Government (1GO80); Lobby & Pressure Groups (1LO18); Social Issues (1SO05))

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Other Indexing: (Senate; FirstEnergy Solutions) (Matt Huffman)

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NewsRoom

FirstEnergy donations didn't influence him

 [cincinnati.com/story/news/politics/2024/04/23/ohio-gov-mike-dewine-firstenergy-donations-didnt-influence-him/73423931007](https://www.cincinnati.com/story/news/politics/2024/04/23/ohio-gov-mike-dewine-firstenergy-donations-didnt-influence-him/73423931007)

POLITICS

Ohio Gov. Mike DeWine says FirstEnergy donations didn't influence his House Bill 6 support



Jessie Balmert

Cincinnati Enquirer

0:05



Ohio Gov. Mike DeWine says he didn't know how much Akron-based FirstEnergy spent on groups backing his 2018 campaign until recently. But he says the donations did not influence his support of a \$1 billion nuclear bailout that the company wanted.

Newly released records revealed FirstEnergy donated \$2.5 million to a Republican Governors Association-affiliated dark money group called State Solutions. The group backed DeWine during his competitive race against Democratic candidate Rich Cordray.

"This Fall Governor race is very important to FirstEnergy from both a legislative and regulatory perspective and getting Mike across the finish line is critical," FirstEnergy's CEO Chuck Jones wrote in an August 2018 email to a FirstEnergy investor. "His opponent Richard Cordray would not be good for our State."

Between FirstEnergy, its subsidiary and its dark money group, the company donated \$500,000 to the Republican Governor's Association shortly after an October 2018 meeting with DeWine; \$300,000 to Securing Ohio's Future, which supported DeWine's bid for governor; and \$75,000 to support the unsuccessful Greene County prosecutor campaign of DeWine's daughter Alice. DeWine said he didn't recall anything about the October 2018 meeting.

DeWine said FirstEnergy's donations did not influence his decision to sign House Bill 6, which included a \$1 billion bailout for two nuclear plants owned by a FirstEnergy subsidiary.

"I thought this was in the state's interest," DeWine told reporters Tuesday. "People can argue about the bill. They can argue whether we should have nuclear energy. My position was we needed to have nuclear energy. We needed to have all of the above, and so that was my position. That's what I felt. That's what I publicly said."

DeWine said he knew FirstEnergy was backing his bid for governor but did not know the full extent of its contributions. Much of the money was donated to independent expenditure groups forbidden from directly coordinating with the DeWine campaign.

"We want as much help as we can in a campaign," DeWine said. "(FirstEnergy) knew what my position was. I had a strong position. But again, it was not one of the issues where there was a dispute in the campaign."

Both DeWine and Cordray supported keeping the nuclear plants open. FirstEnergy also donated to the Democratic Governors Association, but the sum was much smaller.

These donations would not have been disclosed if not for a federal investigation into corruption at the Ohio Statehouse and lawsuits filed in response to it. That probe has led to a 20-year prison sentence for ex-Ohio House Speaker Larry Householder, the firing of FirstEnergy executives and the partial repeal of House Bill 6.

DeWine and Lt. Gov. Jon Husted have not been accused of any wrongdoing. FirstEnergy gave \$1 million through a dark money group to help back Husted's 2017 governor campaign before he joined DeWine's ticket.

Between 2017 and 2018, FirstEnergy spent millions backing groups that supported DeWine, Husted, Householder and more. Cleveland.com reported FirstEnergy donated \$300,000 to a dark money group backing current Ohio Senate President Matt Huffman between 2019 and 2020.

Does that mean FirstEnergy and utilities have too much influence at the statehouse?

DeWine said everyone can make their own judgment. "We're getting more and more facts out as far as you know, how much money they were spending. They were spending obviously, you know, a lot of money."

Jessie Balmert is a reporter for the USA TODAY Network Ohio Bureau, which serves the Columbus Dispatch, Cincinnati Enquirer, Akron Beacon Journal and 18 other affiliated news organizations across Ohio.

Randazzo's deep ties to FirstEnergy

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Section: News

Randazzo's deep ties to FirstEnergy

Prosecutors allege utility regulator brokered deals in scandal

Jessie Balmert and , Laura A. Bischoff

April 18, 2024

Editor's note: This story includes a discussion of suicide. If you or someone you know needs help, the national suicide and crisis lifeline in the U.S. is available by calling or texting 988. There is also an online chat at 988lifeline.org.

In the early hours of Nov. 16, 2020, FBI agents wearing navy blue jackets and COVID-19 masks removed box after box from the Columbus condominium of Ohio's top utility regulator, Sam Randazzo.

It was the first time Randazzo, then chairman of the Public Utilities Commission of Ohio, was implicated in a pay-for-play scandal at the Ohio Statehouse.

Randazzo resigned days later and began waiting for the other shoe to drop.

Randazzo pleaded not guilty to federal and state charges, but he will never see the inside of a courtroom to prove it. On April 9, Randazzo was found dead of a suspected suicide in a Columbus warehouse he owned.

The bribery scheme involved a desperate utility, Akron-based FirstEnergy, paying politicians and the politically connected for favors: legislation to bail out two nuclear plants, a way to recession-proof its profits and a delayed rate case that saved the company money.

The fallout has been wide-reaching. One of Ohio's top politicians, former House Speaker Larry Householder, was sentenced to 20 years in prison and former Ohio Republican Party chairman Matt Borges is serving five years in prison. FirstEnergy has fired top executives and paid a \$230 million fine. In December 2023, federal prosecutors charged Randazzo with bribery and fraud. The case centered on \$4.3 million that FirstEnergy paid Randazzo shortly before Ohio Gov. Mike DeWine appointed him as the state's top utility regulator; Ohio Attorney General Dave Yost filed state charges in February.

Randazzo's death is the final chapter in the story of a man at the pinnacle of his profession brought down by accusations that he was swindling clients and selling his integrity to the highest bidder: FirstEnergy.

Randazzo's attorney Richard Blake said his client "was tarred and feathered in the media by the prosecutors in this case before having an opportunity to address the charges."

Too close to FirstEnergy?

Randazzo, 74, was the smartest man in every energy policy room. He could be a polarizing figure, beloved by those he advocated for and despised by those he fought against in the cutthroat world of utility regulation.

"You'll find no one, no one in Columbus who will say he was not a smart guy. He was a very smart guy," said Rep. Bill Seitz, R-Green Township, who said he relied on Randazzo's expertise, among others, when crafting legislation.

Randazzo owned decades of experience, starting in the 1970s as a staff member at the PUCO and later as an attorney helping large industrial energy users negotiate deals with utilities such as FirstEnergy, Duke Energy and American Electric Power. Randazzo was consistently ranked among the nation's top utility lawyers.

Randazzo had a hand in much of Ohio's energy law, including eliminating energy efficiency mandates on large energy users; axing renewable energy standard requirements; and charging consumers for two coal plants owned by the Ohio Valley Electric Corporation.

So, it wasn't shocking when DeWine named Randazzo to serve as PUCO chairman in February 2019 – a role that acts like a referee between utilities and Ohioans paying electric bills. Randazzo told lawmakers he planned to retire to Naples, Florida.

Instead, the DeWine administration recruited him to forgo retirement and serve at the PUCO.

At the time of his appointment, Randazzo's most vocal opponents were environmental activists wary of his anti-renewable energy stances.

But behind the scenes, fellow Republicans had warned DeWine that Randazzo was too close to FirstEnergy. DeWine didn't listen, a decision he now calls a mistake.

It would take years and several indictments to reveal how close Randazzo was to FirstEnergy.

A \$4.3 million payment from 'Hurricane Chuck'

FirstEnergy paid Randazzo's companies \$22 million between 2010 and 2019, including a \$4.3 million payment weeks before DeWine picked Randazzo to lead the PUCO, according to FirstEnergy's deferred prosecution agreement. In July 2021, FirstEnergy admitted it bribed Randazzo and Householder.

FirstEnergy paid Randazzo the \$4.3 million after a meeting at his German Village condo in on Dec. 18, 2018. Then-FirstEnergy CEO Chuck Jones and then-senior Vice President Michael Dowling stopped by after a dinner at The Athletic Club of Columbus with DeWine, Lt. Gov.-elect Jon Husted and lobbyist Josh Rubin. "We're going to get this handled, paid in full, no discount," Jones texted Randazzo after leaving the condo. "Don't forget about us or Hurricane Chuck may show up on your doorstep! Of course, no guarantee he won't show up anyway." Jones then sent an image of a snake emerging from a hurricane.

"Made me laugh – you guys are welcome anytime and anywhere I can open a door," Randazzo replied.

"I think I said this last night but just in case – if asked by the administration to go for the Chair spot, I would say yes."

If Randazzo's case had gone to trial, his attorneys would have argued that the \$4.3 million was a legitimate payment for the remainder of a consulting agreement – not a bribe.

"It's just as plausible that it was a legitimate buyout as that it was a bribe," Seitz said. "We don't know. I guess you'll never know."

The snake meme wasn't the only text message that revealed a casual relationship between Randazzo and FirstEnergy executives. Randazzo once texted them an image of himself dressed as a superhero and surrounded by terms like "Randazzler" and "Poppa Dazzo." He also dressed as Rudolph in a group picture with FirstEnergy leaders wearing Santa suits.

Passing House Bill 6

Once Randazzo was installed as chairman of the PUCO, prosecutors say he worked diligently on House Bill 6, an energy overhaul that included a \$1 billion bailout for two nuclear plants owned by a FirstEnergy subsidiary. The company was "bleeding cash" over the plants and needed a fix from lawmakers in Columbus or Washington D.C., one executive testified in a federal trial.

Behind the scenes, Randazzo advocated for a larger subsidy, opposed an audit of the bailout and crafted language to recession-proof some of FirstEnergy's profits, according to court documents. Ohio lawmakers passed House Bill 6 in July 2019, and DeWine signed it the day it hit his desk.

That same day, Jones sent Randazzo a picture of Mount Rushmore that substituted the faces of Randazzo, Dowling, Boich Companies' Matt Evans and FirstEnergy lobbyist Ty Pine for the American presidents. It included the phrase: "HB6 F--- ANYBODY WHO AIN'T US."

"Ha – I get the small space again," Randazzo texted Jones, who replied: "Not in my book – your the only one without a big head."

Seitz said there's nothing wrong with Randazzo working on House Bill 6 while chairman of the PUCO. It makes sense to consult the DeWine administration on pending legislation. "To the extent (that) Sam informed the decisions around House Bill 6, I don't consider that suspect in any way shape or form because that's what they should be doing."

A few months later, prosecutors say Randazzo delayed a rate case that would have hurt FirstEnergy financially. After the PUCO scrapped the filings, Jones texted Randazzo an image of FirstEnergy's stock increasing and wrote: "My Mom taught me to say Thank you."

A slow trickle builds and Randazzo resigns

FirstEnergy celebrated its victories in 2019. But in July 2020, federal prosecutors arrested Householder, Borges and three others connected to House Bill 6. The feds described the scandal as the biggest pay-to-play scheme in the state's history. "This case is in a league of its own," one FBI special agent said.

In October 2020, FirstEnergy fired Jones, Dowling and a third executive following an internal review. More details trickled out the following month. The FBI searched Randazzo's home. A business filing revealed the executives paid a state utility regulator more than \$4 million in early 2019. Randazzo resigned from the PUCO.

Randazzo's resignation letter detailed his accomplishments at the PUCO. He advocated for eliminating the "too-utility-friendly" electric security plans and accompanying riders that charge "captive customers" for businesses' expenses.

"He has done very, very good work as chair," DeWine said when Randazzo resigned to avoid being a distraction. "(Randazzo) felt that this was the best thing for him to do."

'Well-lawyered theft'

It would take prosecutors three years to charge Randazzo with any crime. When they finally did, the indictment would accuse Randazzo of cheating Ohio consumers and his clients.

Prosecutors allege Randazzo brokered deals between his client, the Industrial Energy Users-Ohio, and utilities for discounts that the average Ohioan couldn't access. IEU-Ohio, a trade group of large industrial energy users, would drop its opposition to the utilities' proposed rate hikes, and the utility would offer the companies a refund or discount. Side deals are legal if disclosed but remain controversial.

Prosecutors accused Randazzo of skimming millions from a side deal between FirstEnergy and IEU-Ohio by working for both sides of the arrangement. In a different side deal with American Electric Power in 2016, Randazzo was accused of stealing \$1.2 million from his IEU-Ohio clients by listing one of his shell companies as an IEU-Ohio member. State prosecutors called it "a well-lawyered theft."

Cases closed

While awaiting criminal charges, Randazzo waged a legal battle over access to his money and property. Yost, the state's attorney general, argued that Randazzo shouldn't be able to sell off or transfer houses as the former utility regulator did in early 2021. The Ohio Supreme Court agreed with Yost in early 2024. Court records offer a glimpse into the weight that lengthy litigation and criminal charges had placed on a once well-respected attorney. However, suicide is a complicated decision that is only understood by the individual and sometimes those closest to them.

Randazzo appeared before a Summit County judge in February along with Jones and Dowling, two former FirstEnergy executives also accused of bribery. The judge ordered all three to wear ankle monitors, something Randazzo's attorney called "downright mean," according to a Cleveland.com report.

In mid-March, Randazzo's attorney wanted to file medical records about why his client shouldn't have to wear an ankle monitor. The state disclosed that "a mental health professional has opined that the GPS monitor that Randazzo is required to wear as a condition of his bond has negative health consequences."

The judge never had a chance to decide on that request. Randazzo was found dead on April 9.

Randazzo is the second person accused in the pay-to-play scandal to die by suicide. Longtime lobbyist Neil Clark, who had also pleaded not guilty to the charges against him, died in Florida in March 2021.

After years of accusations and waiting, prosecutors will dismiss the criminal charges against Randazzo. The cases will be closed without convictions for the investigators or vindication for Randazzo. "(Randazzo) was a brilliant guy. Very few people in Ohio knew more about utility law than him," Seitz said. "I believe this is all a great, great tragedy for him and for his family."

Jessie Balmert and Laura Bischoff are reporters for the USA TODAY Network Ohio Bureau, which serves the Columbus Dispatch, Cincinnati Enquirer, Akron Beacon Journal and 18 other affiliated news organizations across Ohio.

---- Index References ----

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April 22, 2024, 2:25 PM PDT

ADM Says Former CFO Luthar to Resign After Accounting Probe (2)

By Gerson Freitas Jr.

Bloomberg Law News 2024-04-23T10:45:57123542348-04:00

ADM Says Former CFO Luthar to Resign After Accounting Probe (2)

By Gerson Freitas Jr.2024-04-22T17:25:53097-04:00

Archer-Daniels-Midland Co. said former Chief Financial Officer **Vikram Luthar**, who was placed on leave earlier this year amid an accounting investigation, has agreed to resign effective Sept. 30.

Luthar, who was suspended in January, will be “available to assist the Company and provide transitional support as needed” as a non-executive employee and continue to be paid his base salary, the crop trader said in a filing. The company said in a separate statement that it has initiated a formal selection process to identify the company’s next CFO.

The departure of Luthar, who spent roughly two decades at the agribusiness giant, was the outcome of a probe into accounting practices that shook the commodity world and wiped out \$8.8 billion of ADM’s market value in a single day. The move is yet another step by the company to return to business as usual after the scandal.

Read more: ADM Unit Being Probed Helped Make Leaders Over \$70 Million

Investigations by the US Securities and Exchange Commission and the Department of Justice center around transactions between the nutrition business and other segments. After ADM’s own internal probe, the company restated some intersegment results for the past few years. Luthar held a key position at the troubled unit for more than two years before being named ADM’s CFO in 2022.

The storied agricultural commodities trader, which historically dubbed itself the “supermarket to the world,” has spent billions to grow its nutrition unit, the business that makes pet food and veggie burgers. That included \$3 billion to acquire Wild Flavors GmbH and another \$1.8 billion to take over animal-feed maker Neovia, the company’s largest-ever deals. But that bet has largely failed to live up to expectations, due in part to faltering demand for plant-based ingredients and animal feed.

Luthar will receive \$743,419 as a cash performance incentive award for 2023 and the shares earned for his 2021 performance share unit award, the company said in the filing. ADM previously said compensation packages awarded to other executives that were closely tied to the performance of the nutrition division still stand.

Ismael Roig has served as interim CFO since ADM put Luthar on leave. The company's shares were little changed as of 5:08 p.m. in New York after regular trading hours.

Read more: ADM Accounting Probe Centers on Dubious Footnote Investors Watch

(Updates with context starting in fourth paragraph)

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Securities Law

April 23, 2024, 7:07 AM PDT

SunPower Slides After Disclosing Plans to Restate Earnings (1)

By Will Wade

- Move raises concern on 'potential covenant violations': Truist
- SunPower has replaced its CEO and fired workers this year

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SunPower Slides After Disclosing Plans to Restate Earnings (1)

By Will Wade2024-04-23T10:07:49870-04:00

- Move raises concern on 'potential covenant violations': Truist
- SunPower has replaced its CEO and fired workers this year

SunPower Corp. tumbled the most in four months after disclosing plans to restate almost two years of financial results.

The rooftop solar company expects the revisions related to misclassifying sales commissions and other costs to decrease 2022 and 2023 income from continuing operations by \$15 million to \$25 million, according to a [filing](#) Tuesday.

The shares tumbled as much as 17%, the steepest intraday loss since December, before clawing back most of that decline.

The revision comes at a difficult time for the company. SunPower [replaced](#) its top executive this year and defaulted on a credit agreement in late 2023 after an earlier earnings revision that delayed results. SunPower had to raise \$200 million to ease a cash crunch and in January announced plans to [restructure](#) operations to reduce costs.

"We ultimately expect this to drive more investor concern on potential covenant violations/overall mgmt. credibility given the continued challenges SPWR continues to face," analysts at Truist Securities Inc. led by **Jordan Levy** wrote in a research note.

Read More: [Solar CEO's Vision of 3,200% Sector Growth Foiled by High Rates](#)

The rooftop solar industry is struggling as high interest rates make it more expensive for people to install panels. California, the biggest solar market, cut payments to homes and businesses that sell excess solar power back to the grid, a move that left the industry reeling. About two-thirds of household solar installers in California, where SunPower is based, are struggling to generate enough sales to stay afloat.

SunPower [plans to restate](#) its 2022 annual report and quarterly results through the first nine months of 2023. The misstatements were primarily related to capitalization of deferred costs, classification of sales commissions and general and administrative expenses.

(Updates with details from filing in last paragraph.)

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NOT FOR REPRINT
NEWS

Ex-GC of Autonomy Says Accounting Turned Odd Before \$11B Sale to HP

Joel Scott, the former general counsel of the U.K.-based tech company Autonomy’s U.S. division, took the stand Thursday in the fraud trial of former Autonomy CEO Mike Lynch, accused of padding his company’s revenue to dupe HP into the purchase.

April 19, 2024 at 12:09 PM

Criminal Law



Maria Dinzeo



The original version of this story was published on [Corporate Counsel](#)

It was around 2007 when Joel Scott, then general counsel of the U.K.-based tech company Autonomy’s U.S. division, started to get concerned about some of the business tactics being pushed by his employers.

There were fishy transactions. For example, Autonomy held itself out as an enterprise software firm but had started covertly selling hardware. It also entered into transactions with resellers that didn’t quite make sense. Resellers would purchase the Autonomy’s software without paying for it fully or selling to an end user, but Autonomy would record the deal as revenue.

“My understanding walking into Autonomy was that the only way we could take a deal and recognize revenue is to have an end user purchase a product. That’s it. What you can’t do is park a deal or sell it to a reseller while you’re still trying to close that deal with an end user,” said Scott, who took the stand in federal court in San Francisco Thursday in the fraud trial of former Autonomy CEO Mike Lynch, [accused of padding his company’s revenue to dupe HP](#) into buying it for \$11 billion back in 2011.

Within a year after the purchase, HP had written down Autonomy’s value by \$8.8 billion, blaming \$5 billion of the reduction on “serious accounting improprieties” and “outright misrepresentations” by Autonomy.

Lynch and his co-defendant, VP of Finance Stephen Chamberlain, are charged with masking Autonomy’s true financial condition through a range of tactics, including inflating the company’s revenues, issuing false and misleading annual reports, and lying to auditors, regulators and market analysts. In 2019, the Justice Department secured the [conviction of Autonomy CFO Sushovan Hussain](#) on 16 counts of wire and securities fraud, for which he served five years in prison.

Prosecutors [claim Lynch](#) touted Autonomy as a “rare example of a pure software company” and falsely suggested that much of its revenue came form the sale of its signature product— IDOL short for Intelligent Data Operating Layer—when in actuality “millions and millions of Autonomy’s revenue was from the resale at a loss of hardware devoid of any Autonomy software.”

When he raised questions about these practices, Scott, who was granted immunity for his testimony, said he was told that he just didn’t understand U.K. accounting standards, and that it was all perfectly legal.

The hardware deals were especially concerning, but the company’s head of sales for the Americas reassured him that it was a smart strategy.

“What he meant by that was when you manufacture software and distribute it, the margins can be quite high. You can make 70 cents on the \$1. We were taking a loss on hardware, but by combining hardware sales with all of the software sales we were growing our revenues but putting pressure on our profits and that’s a good thing. We’re going to get rewarded for not having higher profits,” Scott said he was told.

The conversation left him puzzled. “I didn’t go home and think, ‘Wow, that’s really smart.’ I went home and thought, ‘I’m not sure I understand.’”

When Scott heard that Autonomy had started buying its own revenue from resellers, he again wasn’t sure about the commercial justification. The strategy also wasn’t being disclosed publicly to investors, which again, raised red flags.

“Why would the lack of public disclosure about multi-millions in hardware sales at a loss concern you?” Assistant U.S. Attorney Adam Reeves asked him.

“My first line of thinking is, I don’t understand the U.K. so I don’t know what the rules are,” Scott answered. “But if I’m investing in a company and it’s growing, I want to understand how it is growing. So if we’re not talking about how we’re growing, if we’re not talking about how hardware is contributing to how we grow does that matter? Maybe it does.”

Autonomy ended up selling a large amount of its software to one reseller called MicroLink that owed Autonomy more than \$24 million, raising questions about whether those sales were producing real revenue. Autonomy acquired the company in late 2009 for \$55 million, a deal prosecutors allege Autonomy orchestrated so that it could wipe that debt off its books.

“I can remember having very big questions at the end of that year when we were doing the MicroLink transaction,” Scott testified. “That stands out to me as one of those significant moments where I just questioned what was going on, and what Autonomy was trying to accomplish from a business sense.”

Scott said it wasn’t until he was pressured to fire a whistleblower who had raised the same concerns to Autonomy’s auditors that he began to get an inkling of what the higher-ups at the company were trying to do.

Scott said he terminated Brent Hogenson, the company’s chief financial officer for its U.S. arm, under pressure from his bosses Lynch and Andrew Kanter, Autonomy’s U.K.-based general counsel and chief operating officer. Kanter, he testified, specifically pushed for Hogenson to be fired, saying he was trying to sabotage the company.

The Hogenson saga began around May 2010, when Autonomy’s U.S. human resources team flagged some suspicious activity in its payroll department. As it turned out, a payroll clerk had been issuing paychecks to employees who no longer worked at the company. Kanter put Scott in charge of the investigation, telling Scott that Hogenson might be involved, and that Hogenson “was trying to create problems for the company.”

“The message I got from Andy was that Brent was trying to burn down Autonomy, essentially destroy it and something generic or vague in that sense,” Scott said, adding under questioning from Reeves that the word “arsonist” was used. Kanter also told Scott to keep the U.K. business out of it, and that it was all on him.

Scott said he felt uncomfortable running the investigation himself and hired Kroll to conduct it, at a cost of \$50,000. And while Kroll found that “a couple of employees had indeed stolen about \$3 million over the course of five or six years,” Scott said, they turned up no wrongdoing on Hogenson’s part.

But the higher-ups were displeased. Hussain, Autonomy’s CFO, said it was “impossible” for U.S. finance not to have been involved and that Scott should “look more broadly” at the finance organization. Kanter agreed. So Scott conferred with outside counsel, who recommended another consultant, Discovery Economics, to undertake this “broader” inquiry. A private investigator was hired to follow Hogenson and take photos of him.

“Was Autonomy and a second investigative firm trying to dig up dirt on Brent Hogenson?” Reeves asked, to which Scott answered, “Yes.”

“Why?”

“I think because there was a concern that Brent was trying to be an arsonist is one way of putting it. Also trying to take down the company, I guess,” Scott said.

Eventually, Autonomy unearthed concerns about Hogenson’s performance that could justify his termination.

Scott told the jury that he didn’t know about Hogenson’s whistleblowing prior to firing him, though less than 24 hours before he had been added to an email string between Hogenson, Hussain and Kanter, where Hogenson said he was being retaliated against “for the allegations I brought to Autonomy and the audit committee.” Scott said he was in the dark about what Hogenson was referring to.

Scott said he felt uncomfortable firing Hogenson, and had an even harder time processing why he was put in the position of being “solely responsible for the decision,” adding that “it all felt very unusual and uncomfortable.”

But Lynch said it needed to be done.

Scott called Lynch just before he talked to Hogenson. “Mike reiterated, ‘Joel this is your call. You’re the one running this. But if it were me, I wouldn’t want somebody in the company who is trying to destroy the company. I’d’ want him out as quickly as possible.’

He also said, “If you speak with Brent, remind him if he has any plans to go public with any allegations that the libel laws are different in the U.K. than in the U.K. and he should consult an attorney.”

Under questioning from Reeves, Scott said it was clear that Lynch wanted Hogenson fired, and it weighed on his decision-making.

He also ended up firing two of Hogenson’s direct reports on Hussain’s instruction. For one of them, Hussain said he wanted her fired because she had “raised her head above the parapet.”

Weeks later, Scott received a bonus.

Later, Scott would admit on the stand that he thought Hogenson’s allegations about accounting irregularities were detailed and thorough. “They shook me,” he said. A few months after Hogenson was fired, Autonomy paid him a \$750,000 settlement to drop his wrongful termination claim against the company. On the stand Thursday, Scott characterized the payment as “more than any other settlement I’d ever see us enter into and it’s the only defensive settlement I can recall Autonomy entering into.”

He said he believed Hogenson had been treated unfairly by the company, and that the payment was made to obtain his silence.

By 2011, U.S. sales of IDOL were tanking. Lynch decided to shake things up, and changed Scott’s title to “Chief Administrative Officer, Americas.” Scott said he got the impression that he had maybe fallen out of favor with Lynch.

“My takeaway was, ‘Joel you’re the person that’s responsible for U.S. sales failing,’ which I thought was preposterous.”

At a sales event in Miami in January 2011, Scott told Lynch he wasn’t happy, but accepted the way things were. Lynch responded oddly. “He said first, ‘Joel, let me fly the plane. I’m the pilot. You do your thing, but I’m flying the plane.’ And two, he said, ‘Joel don’t you get it? Think acquisition. I didn’t know what he meant.”

Scott said Lynch was an “exacting, demanding” boss, with a mercurial nature who often pushed him beyond his own perceived limits. And very smart. Very very smart. And I was intimidated. I felt intimidated. That was my feeling working with him,” Scott said.

Perhaps most chilling to Scott were Lynch’s last statement to him at that Miami sales meeting, where he said, “Besides Joel, we’re all family. We’re like the mafia. You can never leave.”

Scott, who also received immunity to testify at Hussain’s trial, served as vice president of operations at Hewlett-Packard Enterprise for five years after the sale to HP was complete.

He went on to co-found SV Academy, a tuition-free online vocational school that helps students land jobs in the tech industry.

Opinion **Inside Business**

Delaware, Inc agonises about Musk backlash as its lawyers seek changes

About two-thirds of US companies are incorporated in the small, mid-Atlantic state

SUJEET INDAP



Tesla chief executive Elon Musk has been railing against Delaware since January when a judge nullified a \$56bn stock pay package he had been awarded in 2018 © Bloomberg

Sujeet Indap 6 HOURS AGO



The drop just before the long Easter holiday weekend did not seem like a coincidence. On Thursday, March 28, a group of powerful Delaware lawyers put in motion a plan to make a series of changes to the state's eminent corporate code, known as the Delaware General Corporation Law.

The lawyers are members of the Delaware state bar association that customarily makes such proposals to update the state's corporate law. But this set of revisions had come hastily and was, according to the plan, to be quickly approved by the Delaware legislature in order to take effect by August 1.

It has not been an ordinary year in the First State. About two-thirds of American companies are incorporated in Delaware, attracted to the small, mid-Atlantic state by its sophisticated legal system. But a series of highly technical rulings in recent months have seemingly overturned long-standing legal provisions in both merger and stockholder agreements, leaving them open to challenges in the courts.

That has unnerved the lawyers who believe the state's reputation for predictability is eroding, potentially risking its status as the premier place for US businesses to incorporate. Concerns voiced both privately and publicly were serious enough for the state bar to spring into action, proposing changes aimed at restoring that predictability.

Still, all of this would probably still be “inside baseball”, confined to law conventions and journal articles, if not for one man: Elon Musk. The Tesla co-founder's frustration with Delaware law has brought unprecedented attention to the state this year.

Musk has been railing against the state since late January when a Court of Chancery judge [nullified a \\$56bn stock pay package](#) he had been awarded in 2018. And just last week, Tesla said it would ask its independent shareholders to vote in June to [move its domicile to Texas](#) — writing in its proxy statement that Delaware corporate law “may be less predictable for an innovative company like Tesla”.

The elegance of Delaware law is that it has, for decades, struck a fair balance between corporate and shareholder interests. Both sides can then benefit if investors put a premium on companies incorporated there. But the recent moves by the state bar association to change the DGCL, which have been criticised by legal scholars as rushed, arguably reflect signs of panic and insecurity.

Musk's problem with Delaware stems from the state's strictness towards potentially self-interested deals for companies with dominant shareholders. In overturning his pay package, the court said Musk, who owns more than a fifth of the company, was too cosy with Tesla's board and the value of the package was unfair to other shareholders.

The three newly proposed changes to the DGCL have little to do with the doctrines that aggrieved Musk but highlight the agonising of lawyers about their state's future when it comes to business. Of the three, the most controversial change seeks to allow boards to more easily strike direct agreements with a specific shareholder, a common practice to head off proxy fights. The Delaware court this year invalidated such a practice at the investment bank Moelis & Co, which had given its founder veto power over nearly all of the standard work conducted by a board of directors.

Several law professors have pointed out that boards are supposed to exercise judgment consistent with their duties to all shareholders. They cannot simply make decisions to placate a specific shareholder. The professors' argument is not that the DGCL should not be amended. Rather, it is that the proposed changes tackle a fundamental issue at the heart of what a corporation is — whether directors should use their judgment in making decisions or simply be told what to do through a contract. As such, rushing to make changes to the corporate code is imprudent.

And for all of the histrionics of Musk, there is not even a hint that other big public companies are set to abscond to Texas, Nevada or any other state. The vast majority of them will never have a contract or fiduciary duty dispute of any significance, and irritating shareholders with a forum-shopping gambit is almost certainly not worth it.

Still, Delaware, Inc is going to have to decide whether its brand should be based on being an even-handed, dispassionate system or something more corporate-friendly, designed to keep up in a regulatory race to the bottom. Tesla argued in its proxy filing last week that the state of incorporation was irrelevant to shareholder value. We are about to find out.

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April 22, 2024, 11:26 PM PDT
Musk Loses Australia Court Hearing on Sydney Attack Posts (1)
By Ben Westcott

- X owner Musk denounced decision in social media posts
- Australia's PM Albanese described Musk as 'arrogant'

Bloomberg Law News 2024-04-23T14:44:05327440244-04:00
Musk Loses Australia Court Hearing on Sydney Attack Posts (1)

By Ben Westcott2024-04-23T02:26:38902-04:00

- X owner Musk denounced decision in social media posts
- Australia's PM Albanese described Musk as 'arrogant'

Elon Musk's social network X has been hit with an interim injunction by an Australian court to remove footage of a stabbing attack, prompting a furious response from the owner who accused the government of censorship.

In a hearing Monday night in Sydney, the Federal Court of Australia ordered X must hide all recordings of a [terrorist attack](#) at a church in the city on April 15 until Wednesday. The court will then convene for a second hearing at a later date to determine the validity of a removal notice by the country's eSafety commissioner.

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A member of NSW Forensic police at Christ The Good Shepherd Church in the suburb of Wakeley on April 16.

Photographer: Lisa Maree Williams/Getty Images

In response to the ruling, Musk posted an image suggesting X was the only social media site standing up for free speech, while saying the Australian government didn't have a right to censor content in other countries.

"Our concern is that if any country is allowed to censor content for all countries, which is what the Australian 'eSafety Commissar' is demanding, then what is to stop any country from controlling the entire Internet?" Musk said in a post to X on Monday night.

Prime Minister **Anthony Albanese** said no one was above the law, and labeled the tech entrepreneur as "arrogant" and out of touch.

"This is a bloke who's chosen ego and showing violence over common sense. I think that Australians will shake their head when they think that this billionaire is prepared to go to court fighting for the right to sow division and to show violent videos which are very distressing," Albanese said in an interview with Sky News on Tuesday.

Australia's eSafety commissioner ordered social media companies including X and Meta Platforms Inc. – operator of Facebook, WhatsApp and Instagram – to remove graphic videos showing the stabbing of a bishop in a Sydney church last week. However, while some complied, a spokesperson for X said in a public statement that the commissioner "does not have the authority to dictate what content X's users can see globally."

The refusal has sparked a furious backlash from Australian lawmakers and renewed calls for broader restrictions targeting social media companies, including misinformation laws flagged by the Australian government over the past year.

In a statement on Tuesday, a spokesperson for the eSafety Commissioner said the second court hearing was expected to take place in the coming days to decide on whether the interim injunction will be extended. That will likely be followed by a final hearing, in which the commissioner will seek a permanent injunction and civil penalties against X, the spokesperson said.

(Updates with statement from eSafety commissioner in ninth paragraph)

Crackdown on Corporate Insiders Collides With New Era of Control

By Mike Leonard

- Delaware judges have spent 2024 taking on insider conflicts
- They're running into novel governance patterns, legal theories

Bloomberg Law News 2024-04-23T10:33:40813633653-04:00

Crackdown on Corporate Insiders Collides With New Era of Control

By Mike Leonard 2024-04-23T05:00:14000-04:00

- Delaware judges have spent 2024 taking on insider conflicts
- They're running into novel governance patterns, legal theories

Iconic founders engineering new forms of corporate control are complicating a crackdown on self-dealing by the leading US business court.

First-of-their-kind decisions this year involving Tesla Inc., TripAdvisor Inc., Moelis & Co., and Sears Hometown and Outlet Stores Inc. sought to tighten the standards for conduct by controlling stockholders. Those cases resolved pressing issues surrounding CEO pay, reincorporation in another state, and governance agreements with preferred backers.

But the seven judges on Delaware's Chancery Court are struggling to apply age-worn legal doctrines to a landscape in which many of the most important companies are run by "idiosyncratic billionaires" rather than traditional controlling stockholders like publicly traded corporate parents, according to University of Iowa law professor Robert Miller.

"With a Mark Zuckerberg or an Elon Musk or an Eddie Lampert, it's often very hard to tell them, 'You really can't do that, or if you do, the Delaware courts are going to intervene,'" Miller said. "You tend to get the reaction, 'What are you talking about? This is my company.'"

The judge who invalidated Musk's \$55 billion pay package, for example, cited his almost messianic role at Tesla in finding that his 22% stake—despite falling well short of a majority—was enough to give him de facto control over his own compensation decision. She called Musk a "superstar CEO," stressing that he said at trial he was "negotiating against myself."

The Sears decision articulated a new legal framework for instances when Lampert dominated an ordinary shareholder vote rather than exploiting any special levers of inside influence.

Read More: Musk's \$55 Billion Loss Threatens Soaring Pay for Superstar CEOs

The wave of rulings has raised the stakes for corporate insiders tagged with the controlling stockholder label by imposing heightened scrutiny on virtually anything they do without special protections for minority investors.

But the sophisticated new strategies from founders and financial backers have forced the elite business court—which specializes in heavyweight buyout battles and shareholder cases targeting boards of directors—to keep confronting slippery questions about the contours and boundaries of corporate control.

“People are trying to exercise control in new, clever, and more complicated, less visible ways than just having a lot of stock,” said University of Michigan law professor Gabriel Rauterberg. “And we’re seeing a certain appetite on the court for scrutinizing those exercises.”

Converging Dynamics

The court has found itself caught between creative governance arrangements and novel theories for identifying conflicts of interest, such as the successful argument in the TripAdvisor case that relocating the company to Nevada conferred unique benefits on its controlling stockholder, Greg Maffei.

“What we have in the real world is a lot of people who exercise control through a variety of different mechanisms: Dual-class stock, being a superstar CEO,” said University of Pennsylvania law professor Jill Fisch. “What happens when an activist investor signs a shareholder agreement? Do they all count as controllers?”

Other trends are placing additional pressure on the controlling stockholder label even as they muddy the waters around it. One is seen in the most recent major ruling on the subject, an April 4 decision by Delaware’s top court in a case involving Match Group Inc. The justices said all deals conferring special benefits on a corporate controller—not just buyouts—are subject to heightened scrutiny unless they include onerous protections for minority investors.

Read More: Match.com Ruling Stresses Investor Protections in Insider Deals

But the ruling didn’t touch on the dynamics “that are actually really making this really difficult,” according to Tulane University law professor Ann Lipton. “One is: How do you define control?” she said. “And secondly: What counts as a conflicted transaction? Those await another day.”

Other judges have started playing catch-up. The Moelis decision upended the popular corporate practice of handing the reins to significant shareholders—venture capital firms leading a public listing or activist investors signing a truce—by giving them a constellation of bespoke rights, such as a veto over key corporate decisions or a pledge that the sitting board will support their director candidates.

Read More: Novel Corporate Rulings Fuel Charged Debate on Delaware's Role

An influential state bar committee has recommended statutory changes aimed at restoring the status quo. Lipton called the proposals premature, saying they would undercut an appeal process that might yield more clarity from the Delaware Supreme Court about controlling stockholders.

Miller, though, said the changes couldn't come fast enough. Although the Moelis ruling was legally defensible, its practical effect was to make it impossible for corporate boards to reach settlements with activist investors on terms that benefit everyone, something that happens "every day," he said.

'This Mess'

Entrepreneurial shareholder attorneys, meanwhile, are zeroing in on transactions not traditionally viewed as conflicts of interest. They include TripAdvisor's relocation to Nevada, where Maffei will face looser accountability rules. The ruling that paved the way for damages against Maffei—but allowed the reincorporation—is set for an unusually swift appeal.

A group of pension funds has also challenged the decision by Meta Platforms Inc. to resolve a privacy probe into the Cambridge Analytica data-harvesting scandal at Facebook by paying a \$5 billion penalty. The lawsuit says Zuckerberg and other company leaders agreed to pay more than they had to—out of the corporate coffers—in exchange for a settlement that ensured they wouldn't face personal liability.

"That sounds like a conflicted transaction to me," but "this is all new," Lipton said. "You put this together and you get this mess."

Read More: Zuckerberg, Thiel Sued Over Facebook's \$5 Billion FTC Fine

After the Match decision, controlling stockholders who don't set up an independent board committee and hold a shareholder vote on a wide range of corporate actions—some of them relatively routine—will have to defend them in court by showing they were fair to minority investors, meaning both the process and the deal price were adequate.

The fairness question may be relatively straightforward in the context of a buyout, but it's not clear how the standard translates to other types of corporate actions being challenged, according to Fisch.

"The range of situations in which we're not only saying entire fairness is going to have to apply, but we don't even have very good tools for analyzing when something is fair—that could kind of spin out of control," she said.

'A Lot of Frictions'

It's surprising the court in the Match case didn't "carve back a little middle ground for certain kinds of de minimis transactions," such as corporate jet policies or compensation decisions, according to Lipton.

"It really does create a lot of frictions, especially if you're a controlling shareholder who's also a corporate officer" such as Musk or Zuckerberg, she said. "Everything they do is potentially conflicted."

The decision did leave one potential safety valve, albeit perhaps inadvertently. Although a special committee set up to get around the fairness framework has to be completely independent, corporate boards can shut down shareholder derivative lawsuits—which are technically filed on a company's behalf against its leaders—so long as a majority of their members have no conflicts of interest. The justices dismissed concerns that they were opening a loophole.

The discrepancy reflects "a doctrinal absurdity," Lipton said. "But it may work out to be an appropriate compromise. In practice, something may need to be a fairly big deal before it gets past a motion to dismiss, and those are the decisions that we want directors to take care with."

—With assistance from Jennifer Kay.

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NOT FOR REPRINT

Justices to Examine Meaning of 'Prevailing Party' in Attorney Fees Disputes

The U.S. Supreme Court will consider whether a party "must obtain a ruling that conclusively decides the merits in its favor," rather than just a preliminary injunction, to obtain attorney fees in a civil rights suit.

April 22, 2024 at 04:12 PM

United States Supreme Court



Jimmy Hoover



To those who follow legal news, it’s not uncommon to see parties declaring victory after a court decision that seems to go against them.

Texas Attorney General Ken Paxton was criticized last week for [doing just that](#) on social media last week after the U.S. Supreme Court allowed takings litigation to proceed against the state over property flooding caused by a highway barrier.

Usually, the stakes of such episodes involve little more than attorneys’ egos and their win-loss records. But an appeal taken up by the Supreme Court on Monday shows that deciding after litigation has concluded which side is the “prevailing party” can affect more than just bragging rights but real dollars and cents in the form of attorney fees.

The high court [granted certiorari](#), or review, in *Lackey v. Stinnie*, an appeal by the Virginia Department of Motor Vehicles, which is now on the hook for potentially more than \$1 million in legal fees from plaintiffs who had secured a preliminary injunction against the DMV in a civil rights lawsuit.

The agency’s petition raises two questions for the justices, which will hear the dispute next term.

The first is whether a party “must obtain a ruling that conclusively decides the merits in its favor,” rather than just a preliminary injunction, to obtain attorney fees in a civil rights suit under Section 1988 of the 1976 Civil Rights Attorney’s Fees Award Act. The second is whether the parties’ legal relationship must change through a “judicial act” or whether a nonjudicial event mootng the case is enough to obtain fees under the statute.

The case, the DMV has said, could affect who’s eligible for attorney fees in a number of other areas, as well, such as trademark infringement, voting rights and disability discrimination, where fee-shifting laws use the phrase “prevailing party.”

In their putative class action against the DMV, a number of plaintiffs with past criminal convictions accused the agency of violating their rights by automatically suspending their licenses over court fees they could not afford to pay.

The plaintiffs won a preliminary injunction from the district court blocking state officials from enforcing the Virginia law against them, as the judge concluding they were likely to succeed on the merits of their procedural due process claim.

As the case proceeded to trial, the litigation was delayed and ultimately rendered moot by the Virginia General Assembly, which suspended and later repealed the law in question after public pushback.

The plaintiffs’ original request for attorney fees was rejected, but on appeal, the U.S. Court of Appeals for the Fourth Circuit agreed to rehear the case en banc. The court’s 7-4 ruling held that, “When a preliminary injunction provides the plaintiff concrete, irreversible relief on the merits of her claim and becomes moot before final judgment because no further court-ordered assistance proves necessary, the subsequent mootness of the case does not preclude an award of attorney’s fees.”

In its certiorari petition to the Supreme Court in November, the DMV said the standard for obtaining attorneys’ fees under Section 1988 “presents multiple circuit splits” and the case is one of importance that the Supreme Court should resolve.

“[A]ttorney’s fees in civil rights cases often impose substantial financial burdens on state governments,” the DMV wrote in its petition filed by lawyers from the Virginia attorney general’s office and Hunton Andrews Kurth LLP.

“Plaintiffs have already requested an award of more than \$767,000 in appellate fees alone,” the petition stated. “Their total fee request likely will run into the millions of dollars, considering the years of litigation in the district court.”

Further, the state agency wrote, “the risk of large, unpredictable fee awards will deter States from voluntarily altering allegedly unlawful behavior.”

The term “prevailing party” is also peppered throughout many fee-shifting statutes, so the issue is one that could affect attorneys’ fees in the areas of trademark law, disability discrimination and voting rights, the state added.

“[T]he effect of the term’s interpretation is sweeping,” the petition stated.

The plaintiffs had asked the court to pass on the case, denying there was any split “requiring this Court’s resolution.” They wrote that the earlier injunction in the case was “on the merits” and “materially altered the legal relationship between the parties.”

“Respondents are prevailing parties and would be in every circuit,” stated the brief in opposition, filed by lawyers at McGuire Woods.

Oral arguments have not yet been scheduled in the case. The court is expected to render its decision by the end of June 2025.

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Securities Law

April 23, 2024, 9:50 AM PDT

Trump Set for Another \$1.2 Billion in Shares He Can't Sell (1)

By Bailey Lipschultz

- Former president to get 36 million extra Trump Media shares
- Sweetener set to bring Trump's stake to \$4.1 billion on paper

Bloomberg Law News 2024-04-23T14:48:04612967525-04:00
Trump Set for Another \$1.2 Billion in Shares He Can't Sell (1)

By Bailey Lipschultz2024-04-23T12:50:52883-04:00

- Former president to get 36 million extra Trump Media shares
- Sweetener set to bring Trump's stake to \$4.1 billion on paper

The blank-check deal that brought Donald Trump's media startup public is set to give him another \$1.2 billion in stock after meeting certain targets to his present windfall from the merger, yet he remains unable to cash any of it in.

With shares of Trump Media & Technology Group Corp. regaining steam last week, the former president and insiders are set to receive 40 million shares to split as soon as Tuesday's close after fulfilling terms related to a so-called [earnout](#) .

With 36 million of the additional shares earmarked for Trump – which would bring his total position to nearly 115 million shares and bump his holdings to roughly 65% – his stake in the Truth Social parent would be worth \$3.7 billion based on Tuesday's share price after the stock slumped more than 8% mid-day.

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Donald Trump

Photographer: Victor J. Blue/The Washington Post/ Bloomberg

Not only does the figure mark a steep decline from the \$6.3 billion Trump's original position was worth in the days after the company [debuted](#), it draws into sharp relief the fact that even as Trump and other insiders' paper wealth grows, they are currently unable to sell any shares until September due to [a lock-up](#) related to the deal.

The former president could gain board approval to start selling stock more quickly once an April 15 [filing](#) is deemed effective by the US Securities and Exchange Commission.

Read More: [Trump Mastered The Art of the SPAC Deal. Cashing Out Is Harder](#)

The sweeteners are a common part of special purpose acquisition company deals and are designed to reward investors, while diluting the value of ordinary shareholders' stakes through the issuance of millions of extra shares.

Attracting Traders

Even with the overhang of the dilution, Trump Media has attracted meme-stock traders and Wall Street professionals alike. This year alone has seen shares swing between \$16.90 and \$79.38 with a current market valuation of \$4.4 billion, even though the underlying business generated only modest revenue last year.

The stock's volatility prompted its chief executive officer to suggest an illegal form of [short selling](#) could be impacting its stock and asked Nasdaq Inc. to step in. "This is particularly troubling given that 'naked' short selling often entails sophisticated market participants profiting at the expense of retail investors," Trump Media CEO Devin Nunes said in the letter.

Read More: [Trump Media Suggests Illegal Shorts Are Cratering Its Stock](#)

Trump Media is one of the most expensive in the market to short with investors facing annual financing costs of some 225%, according to data from S3 Partners.



Truth Social stock information outside the Nasdaq MarketSite in New York.

Photographer: Yuki Iwamura/Bloomberg

One driver of the lofty fees is the difficulty of borrowing shares to sell them, on account of there being a small pool of shares available to trade. That's partly because of the stock's retail trader investor base, and also because companies that go public through SPAC deals normally don't have long-oriented shareholders like mutual funds, and ETF providers – the usual source of shares available for lending.

The volatility in Trump Media's shares comes as Trump is obligated to pay significant financial penalties as a result of having been found liable for sexual abuse, defamation and rampant financial fraud tied to his asset valuations. He faces four more prosecutions; his first criminal trial, over charges he falsified business records to conceal a hush money payment to a porn actress before the 2016 election, is [underway](#) in Manhattan. Trump denies wrongdoing in all the cases and claims, without evidence, that Biden is directing the legal onslaught against him.

Earnouts and Warrants

While the earnout would dilute current investors because there are more shares created to give to insiders, there's a risk of even more shares being added to those outstanding, from warrants tied to the deal.

The warrants, which trade at \$14.75, were sold as part of the SPAC's initial pitch to investors and can be exchanged along with \$11.50 in cash for shares of the company. There are more than 14 million of the sweeteners in the market, which could add cash to Trump Media's balance sheet but hit the investors who own the common stock.

An important metric for investors eyeing a potential arbitrage is the difference between buying a single share outright, versus the cost of buying a warrant and the cash needed to exchange it for a share. That spread has narrowed to \$6.14 from a March high of \$27.27.

The gap has shrunk as investors grapple with the lackluster fundamentals of Trump Media and expectations that after the SEC deems the April filing effective investors would be closer to swapping the warrants for shares.

In practice, an arbitrageur could buy the warrants and short the common stock until the values converge – adjusted for the fees tied to borrowing the shares. However, given the costs and difficulty of borrowing shares and the stock's volatile nature, the trade is simpler in theory than in practice.

(Adds stock decline in fourth paragraph, detail in fifth paragraph on potential waiver, and updates share impact throughout.)

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Two SEC Lawyers Pushed Out After Agency Censured in Crypto Case

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- Judge sanctioned regulator for ‘gross abuse of power’ in March
- Utah crypto firm was put into receivership on staff’s advice

Two Securities and Exchange Commission lawyers resigned after a federal judge sanctioned and sharply rebuked the Wall Street regulator for “gross abuse” of power in a crypto case.

Michael Welsh and Joseph Watkins stepped down this month after an SEC official told them that they would be terminated if they stayed, according to people familiar with the matter. The pair were lead attorneys on a case against Digital Licensing Inc., a crypto platform known as DEBT Box.

The regulator’s lawsuit against DEBT Box was marred by false statements and misrepresentations, as well as a lack of evidence, according to Robert Shelby, the federal district court judge in Salt Lake City who is hearing the case. Shelby took the extreme step of sanctioning the agency for abuse of power in March, and the SEC’s head of enforcement has apologized for the missteps.

Neither Welsh nor Watkins, who were based out of the regulator’s Salt Lake City office, responded to phone calls requesting comment. The SEC declined to comment, as did a representative of the union representing agency staff.

Read More: SEC Blasted by Judge for ‘Gross Abuse of Power’ in Crypto Case

In July, the SEC accused DEBT Box and its executives of defrauding investors of at least \$49 million. At the regulator’s request, Shelby froze the company’s assets and put the firm into receivership.

But the asset freeze was reversed after Shelby found that the SEC may have made “materially false and misleading representations.” The judge would go on to sanction the SEC for “gross abuse of the power entrusted to it by Congress” and ordered the agency to pay some of DEBT Box’s attorney’s fees.

Shelby faulted arguments from Welsh, the SEC’s lead trial attorney on the matter, and evidence provided by Watkins and his team. Watkins was the agency’s lead investigative attorney on the case.

In one instance, Welsh told the judge that Draper, Utah-based DEBT Box was closing bank accounts and transferring assets overseas. The court found that this wasn't happening. An SEC investigator later said that a miscommunication led to the error, and Welsh apologized to the court.

In December, SEC enforcement chief **Gurbir Grewal** apologized to the court for his department's conduct. He said that he had appointed new attorneys to the case and mandated training for the agency's enforcement staff.

A lawyer for DEBT Box declined to comment. Last week, attorneys for DEBT Box and other parties filed motions requesting that the SEC pay more than \$1.5 million in fees and other costs incurred in the case.

Earlier this month, the SEC moved to dismiss the case against DEBT Box without prejudice. Shelby has yet to rule on that motion.

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Social Media MDL Attys Ordered To Sort Out Confidentiality

By **Dorothy Atkins**

Law360 (April 22, 2024, 9:27 PM EDT) -- A California federal judge presiding over discovery in multidistrict litigation over whether social media platforms' design is addictive warned parties at a hearing Monday not to ask him to resolve disputes over confidentiality designations, asking repeatedly, "Why do they matter?" and saying, "These are the kinds of things that lawyers should work out."

U.S. Magistrate Judge Peter H. Kang's comments came during an hourlong hearing in San Francisco over the latest discovery disputes in the **sprawling, consolidated, personal injury litigation** launched in 2022 against social media tech giants, including Snap Inc., Meta Platforms Inc., TikTok Inc. and YouTube LLC.

The MDL involves hundreds of claims by school districts, parents of minors and dozens of state attorneys general who allege that the social media companies, whose platforms draw in billions of dollars annually in ad revenues, are designed to be addictive to the detriment of minors' mental health and livelihood.

During the hearing Monday, counsel for the personal injury plaintiffs argued that Meta has a pattern of over-designating documents as highly confidential or confidential, and the discovery brief filed before the hearing specified that out of nearly 50,000 documents produced by Meta, the company marked 74% of them highly confidential and 19% confidential.

However, Meta's counsel argued that disputes over confidentiality designations should be debated via motions to seal, not through the discovery process.

But after hearing arguments, Judge Kang repeatedly questioned why the confidentiality dispute mattered in the context of the MDL, and he said he doesn't want to be resolving "tons of motions on confidential designations."

"I'm going to emphasize ... there better be a reason for bringing this to me, and there better be a good reason," he said. "I'll be very disappointed if you can't [resolve the disputes]."

Judge Kang noted that disputes over whether a document should be marked confidential or highly confidential shouldn't impede the plaintiffs' ability to litigate the case, particularly since this is "not the kind of case where I would expect named plaintiffs to actively participate in the prosecution [of the case]."

"I don't think there's a need to show clients highly confidential [documents]," he said. "The party challenging the confidentiality designation ... if you're going to do that, you're going to need to show why it matters to the case."

He added that he'd likely be skeptical of such disputes brought to him to resolve.

"These are the kinds of things that lawyers should work out," he said. "You do need to show why it's important to the case. No overburdening the court. And please use the meet and confer process as much as you can."

Aside from the confidentiality designations, the parties also argued over litigation hold requests,

source code and the pace of document production, but the judge mostly told the parties that they need to meet and confer and try to resolve the bulk of their disputes before raising them before the court.

Meta's counsel also asked Judge Kang to let the social media companies redact the names and titles of company employees who have been identified as potential witnesses and who might be deposed.

But counsel for the plaintiffs, Lexi Joy Hazam of Lief Cabraser Heimann & Bernstein LLP, argued that there shouldn't be any sealing of potential corporate witnesses, and any harm is entirely speculative. Hazam also noted that such sealing would be unfair given that the lead plaintiffs' names of non-minors have not been redacted from public court filings.

Counsel representing California agreed and echoed their concerns regarding transparency.

However, TikTok's counsel, Teresa Griffin of Faegre Drinker Biddle & Reath LLP, argued that the plaintiffs have identified more than a dozen TikTok employees who are not high-ranking executives and who are just "regular folks" who are doing their jobs. However, she said some workers at TikTok have been threatened by people who have discovered they work there, and it's upended their lives.

"This is not a speculative harm," Griffin said. "This is harm."

Hazam replied that TikTok's counsel had not informed the plaintiffs of any threats against its employees, or provided any support for its claim, and "this is new information."

"Again this is simply a list of employees' names and titles and the defendants who they work for," Hazam said.

She added that a lot of information on the workers is already public.

Judge Kagan required the parties to meet and confer on the list of employees who may be deposed and to redact the names of any workers who have received threats "if need be." The judge added that the problem he has to take into account is that once the documents are filed publicly, he won't be able to cure any purported harm after the fact.

The discovery hearing came days after U.S. District Judge Yvonne Gonzalez Rogers **heard oral arguments** on Meta's bid to ax the claims of 34 state attorneys general from the MDL.

On April 15, Judge Gonzalez Rogers **tossed** certain fraud-by-omission claims seeking to hold Meta CEO Mark Zuckerberg personally liable. However, she allowed the plaintiffs to amend their allegations to assert a new theory of corporate officer liability against Zuckerberg.

On Friday, the plaintiffs informed the judge they plan to file amended allegations against Zuckerberg by April 26. The first bellwether trials are **set for October 2025**. The next case management conference before Judge Gonzalez Rogers is scheduled for May 9, and the next discovery hearing before Judge Kang is scheduled for May 10.

The personal injury plaintiffs were represented during the hearing by Lexi Joy Hazam of Lief Cabraser Heimann & Bernstein LLP and Previn Warren of Motley Rice LLC.

The states were represented during the hearing by J. Christian Lewis of the Attorney General's Office of the Commonwealth of Kentucky and Joshua Olszewski-Jubelirer of the California Department of Justice.

The Meta entities were represented during the hearing by Ashley Margaret Simonsen and Isaac D. Chaput of Covington & Burling LLP.

TikTok was represented during the hearing by Teresa Griffin of Faegre Drinker Biddle & Reath LLP and David Mattern of King & Spalding LLP.

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

The parallel Judicial Council Coordination Proceeding is Social Media Cases, case number 5255, in the Superior Court of the State of California, County of Los Angeles.

--Editing by Dave Trumbore.

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Catching Up With Delaware's Chancery Court

By **Leslie A. Pappas**

Law360 (April 22, 2024, 3:55 PM EDT) -- Last week, Delaware's Chancery Court news included a Tesla announcement about moving to Texas, a midcase appeal of Tripadvisor's move to Nevada, and United Airlines' escape from a stockholder suit. Disputes about board entrenchment, squeeze-out mergers, co-founder fallouts and deadly ice cream moved ahead.

In case you missed any of it, here's all the latest from Delaware's Court of Chancery.

Top News

Tesla Inc. **told the court** that it will seek shareholder approval to reincorporate the company in Texas, and will soon hold a stockholder vote on a renewed \$55.8 billion compensation plan for Elon Musk — the same one that Chancellor Kathaleen St. J. McCormick **voided in January**.

"We do not agree with what the Delaware court decided, and we do not think that what the Delaware court said is how corporate law should or does work," Tesla Chairperson Robyn Denholm said in a letter to stockholders.

A renewed ratification of the CEO award "would materially impact" still-pending Chancery consideration of a proposed \$5 billion stock-based fee sought by class attorneys for their multiyear court challenge of the pay plan, the company's notice said.

In the Courtroom

In a **bench ruling**, Vice Chancellor Morgan T. Zurn **denied a motion** to dismiss shareholders' suit against directors of Forte Biosciences Inc., finding that Camac Fund LP had raised "reasonable inferences" that the clinical-stage biopharmaceutical company had engaged in a "pattern of defensive conduct" to entrench its board leadership.

In a virtual bench ruling after arguments, Vice Chancellor J. Travis Laster **ordered** a preliminary injunction hearing ahead of a contested board proxy vote for cell tower operator Crown Castle Inc., after the company's co-founder objected to Crown's unilateral addition of an extra, filled board seat in the midst of a proxy fight.

And in a **telephonic bench ruling** after arguments, Vice Chancellor Laster granted New York hedge fund Zama Capital Master Fund LP's request for a temporary restraining order to prevent now-defunct special-purpose acquisition company 26 Capital Acquisition Corp., which tried to take the Okada Manila Resort & Casino public in 2021, from dissolving and redeeming investors' shares. The ruling came after the SPAC's shareholders **ratcheted up litigation** in an effort to recoup their failed investments.

Decisions

Chancellor McCormick **dismissed a suit** filed by a JPMorgan Chase & Co. shareholder that accused the bank's board of ignoring fraud on the payment platform Zelle, finding that the complaint did not show how the bank failed to respond to the problem.

In a **partial ruling**, Vice Chancellor Nathan A. Cook found in favor of distressed debt fund Invictus Special Situations Master I LP in its document dispute with its general partner, finding that Invictus Global Management LLC and affiliates repeatedly interfered with the fund's rights to information.

Delaware's Supreme Court **said it would consider an interlocutory appeal** of Vice Chancellor Laster's refusal to dismiss a shareholder's lawsuit over Tripadvisor's move to Nevada, saying that the ruling involves a question of law and its review could be "beneficial."

New Cases

A Swedish bank **sued** to block a \$13 billion take-private sale of sports and entertainment conglomerate Endeavor Group Holdings Inc., branding the deal a prohibited minority stockholder squeeze-out tilted toward large investors and insiders, including controller and global private equity firm Silver Lake.

Solar energy venture Volt Energy Utility LLC **sued** a former top officer, alleging that while she was employed by Volt, she secretly launched a competing company, contacted Volt's lenders and customers, and then sold the new business to a wholly owned subsidiary of Tokyo Gas Co. Ltd. for \$216 million.

A stockholder of e-commerce auto parts supplier Carparts.com Inc. **sought a court order** that would block a shareholder rights plan that the company allegedly adopted to corral investor unrest after three years of losses.

Stockholders in a series of funds managed by alternative investment boutique Hatteras Investment Partners LP **launched a proposed class action** against the company's board, alleging breaches of fiduciary duty in conjunction with the funds' liquidation.

A co-founder of Unilodgers Inc., a global company formed to provide booking for student housing, **sued her former colleague**, alleging the other co-founder had schemed to push her out of the business and sell the company without compensating her for her 37.21% stake.

Two more shareholders of Illumina Inc. sued the biotech company's directors and officers, seeking to recover derivative damages in connection with Illumina's ill-fated \$8 billion acquisition of cancer testing company Grail Inc. The newest case, City of Roseville General Employees Retirement System, et al., v. Francis DeSouza, et al., case number 2024-0398, follows **other Chancery Court cases** targeting Illumina's Grail transaction.

Old Disputes

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.

Settlements

PTC Therapeutics Inc. agreed to corporate governance reforms to **settle a derivative shareholder lawsuit** challenging its allegedly "lavish" non-employee director compensation awards, a settlement that included a \$575,000 fee and expense award to plaintiff Betty Greenberg's counsel.

Mooted

Elliott Investment Management LP **waived an agreement** with BioMarin Pharmaceutical Inc. that gave the activist investor three new seats on the biopharmaceutical company's board, mooting a Chancery Court lawsuit that a BioMarin shareholder filed earlier this month.

United Airlines Holdings Inc. got rid of **a stockholder's suit** that accused the carrier of lining up a board-entrenching poison pill, with both parties agreeing to dismiss the action as moot, leaving open only the question of fees and expenses.

Quotable

"Again, the idea that everybody out there is rolling around in the gutter and gouging people's eyes out, and therefore we ought to be happy with that type of behavior, isn't always something that goes

a long way with me." — Vice Chancellor J. Travis Laster, in **a bench ruling** about a case involving a proxy battle at Crown Castle.

--Additional reporting by Jeff Montgomery and Henrik Nilsson. Editing by Kelly Duncan.

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E-Truck Maker Rivian Faces Investor Suit Over Sales Slump

By **Sydney Price**

Law360 (April 22, 2024, 7:55 PM EDT) -- Electric-vehicle manufacturer Rivian Automotive Inc. has been hit with a proposed class action alleging it misled investors by overstating the demand for its products and downplaying the impact historically high interest rates were having on its customers' shopping habits.

According to the suit filed by shareholder Glenn Dietel in California federal court on Friday, Rivian knew for several months that its forecast for its electric vehicles was inflated. But on Feb. 21, the company revealed that it would cut a tenth of its salaried staff, citing economic uncertainty. The same day, it lowered its expected 2024 vehicle production to 57,000 vehicles, which fell short of analyst expectations of 80,000 vehicles, according to the suit.

The complaint says Rivian had a reduced order bank due to customer cancellations, which were partially attributable to changing consumer spending habits due to inflation and rising interest rates.

Dietel seeks to represent a class of those who purchased or otherwise acquired Rivian securities between March 1, 2023, and Feb. 21, 2024. In addition to Rivian, its CEO Robert Scaringe and Chief Financial Officer Claire McDonough are individual defendants in the suit.

On Feb. 28, 2023, the day before the suit's class period begins, Rivian announced in its 2022 annual report that the company was "well-positioned for international expansion in light of healthy global demand for EVs," according to the suit. Throughout the remainder of the class period, Dietel says, Rivian continued to tout its high-demand expectations. For example, according to the complaint, in a letter to shareholders in November 2023, the company told investors it was forecasting positive gross profit in 2024.

But during its Feb. 21 earnings call, Rivian announced plans to cut 10% of its sales staff, and forecast an adjusted EBITDA loss of \$2.7 billion for full year 2024, compared to analyst expectations of \$2.6 billion.

"Rivian had overstated demand for its products, as well as its ability to withstand negative, near-term macroeconomic impacts; accordingly, Rivian's business was experiencing reduced demand and increased customer cancellations as a result of, inter alia, high interest rates," the suit states.

The news resulted in Rivian's stock price declining \$3.94, or 26%, to close at \$11.45 per share on Feb. 22, according to the suit.

Dietel claims Rivian and the individual defendants acted with scienter, or actual knowledge of wrongdoing or reckless disregard, and violated the Exchange Act. He claims the defendants' statements aren't covered by the safe harbor provisions of securities laws and seeks damages with prejudgment and post-judgment interest.

Counsel for Dietel and a representative of Rivian did not immediately respond to requests for comment on Monday,

Dietel is represented by Jennifer Pafiti of Pomerantz LLP and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

Counsel information for Rivian and the individual defendants was not immediately available on Monday.

The case is Dietel v. Rivian Automotive Inc. et al., case number 2:24-cv-03269, in the U.S. District Court for the Central District of California.

--Editing by Kristen Becker.

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Palo Alto Networks Execs Face Suit Over Misleading Outlook

By **Sydney Price**

Law360 (April 22, 2024, 6:56 PM EDT) -- Executives and directors of cybersecurity company Palo Alto Networks have been hit with a shareholder derivative suit in California federal court alleging they misled investors about the success of its platform consolidation strategy, which was expected to result in lucrative government contracts.

According to shareholder Nathan Silva's suit Friday, Palo Alto has attempted to ramp up its offerings to become a more comprehensive cybersecurity platform over the past several years. By consolidating certain products in existing platforms, its so-called platformization strategy aims to reduce the complexity of dealing with multiple solutions from multiple vendors, the suit states.

However, the suit says the company failed to disclose that the consolidation and platformization initiatives were not driving increased market share to a significant degree.

In addition to nominal defendant Palo Alto Networks, the suit names several executives and directors as individual defendants, including CEO Nikesh Arora, Chief Product Officer Lee Klarich and Chief Technology Officer Nir Zuk.

The suit accuses Arora of over-playing the company's progress on its platformization initiatives on multiple occasions during the relevant period, including on a November 2023 earnings call in which he told investors that a federal government agency signed a \$25 million deal with the company, a statement the company would later walk back on.

Palo Alto's security operations offerings include several subscription services, including its artificial intelligence-supported Cortex XSIAM. In November 2023, Klarich touted the progress of XSIAM and the greater potential in harnessing AI to benefit the company, highlighting the "fastest sort of growth of a new product that we've ever seen."

According to the suit, the truth about the company's outlook emerged when Palo Alto Networks gave an unfavorable financial update on Feb. 20 and reduced billings guidance for the third quarter. The company also revealed the same day that U.S. federal government deals for several large projects did not close, resulting in "a significant shortfall in our U.S. federal government business," which was expected to continue through the rest of 2024.

The news resulted in Palo Alto Networks' shares declining \$104.12, or about 28%, to close at \$261.97 on Feb. 21, the complaint states.

The complaint also notes Palo Alto is facing a **securities class action** in California federal court and says the company has already been damaged financially due to the defendants' actions.

Silva accuses the defendants of breaching their fiduciary duties, unjust enrichment, wasting corporate assets and violating the Exchange Act.

Counsel for Silva and a representative for Palo Alto did not immediately respond to requests for comment Monday.

Silva is represented by Rachele R. Byrd, Alex J. Tramontano and Ferdeza Zekiri of Wolf Haldenstein Adler Freeman & Herz LLP, Seth D. Rigrodsky and Gina M. Serra of Rigrodsky Law PA and Joshua H.

Grabar of Grabar Law Office.

Counsel information for Palo Alto Networks and the individual defendants was not immediately available.

The case is Silva et al. v. Arora et al., case number 3:24-cv-02350, in the U.S. District Court for the Northern District of California.

--Editing by Drashti Mehta.

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PacWest Wants Suit Over Alleged Rate Hike Exposure Axed

By **Katryna Perera**

Law360 (April 22, 2024, 10:40 PM EDT) -- PacWest Bancorp has urged a California federal judge to toss a proposed class action from an investor who alleges the California regional bank ignored warning signs posed by last year's collapse of Silicon Valley Bank, saying the fact that it did not anticipate the "unprecedented turmoil in the banking industry" is not a violation of federal securities laws.

PacWest filed a dismissal **motion** on Friday, saying it disclosed to investors all the "reasonable risks" it faced from increased interest rates and updated them on how higher rates impacted its performance and liquidity.

Investor Eric Tan **filed suit** against the bank in September, alleging that PacWest, parent of Pacific Western Bank, and its leadership violated securities laws by falsely touting the bank's financial strength and ability to overcome aggressive interest rate hikes imposed by the Federal Reserve in the past year. Weakened by news reports and declining deposits, PacWest announced a merger with Banc of California on July 25, according to the complaint.

Tan alleges that the bank understated the impact of interest rate hikes on the company while overstating the stability of its deposit base. As a result, "PacWest was exceptionally vulnerable to excessive deposit flows and/or a liquidity crisis," Tan said.

However, PacWest argued on Friday that Tan is trying, among other things, to turn a theory of internal corporate mismanagement into a securities fraud claim.

According to the motion, the complaint's "thesis" is that PacWest mismanaged its interest rate risk on its securities portfolio, which impacted the bank's liquidity. But such conduct is not actionable under federal securities laws, the bank argues.

"Plaintiffs do not allege that PacWest misrepresented the holdings in the bank's [available-for-sale] portfolio, or 'actually maintained different [liquidity] levels than it claimed in public filings.' Nor do plaintiffs allege that 'insufficient [liquidity] levels were a product of deliberate fraudulent manipulation, as opposed to the exercise of legitimate business judgment,'" the order states.

The complaint may show that PacWest and the individual defendants did not "react quickly enough" to the failing market, but the motion states that this is not enough for a security fraud claim.

Tan has also failed to plead any actionable misstatements or omissions, according to the motion. The 13 challenged statements in the complaint qualify as either "vague statements of corporate optimism" or protected forward-looking statements, the bank says, and none are actionable.

The complaint also fails to adequately plead knowledge of wrongdoing on the part of the individual defendants.

"The complaint fails to allege any confidential witness claims that 'defendants were aware of secret, adverse financial information and failed to disclose it'; 'a single document, e-mail, meeting, conversation, or statement' suggesting 'defendants were apprised of adverse financial information which they then failed to communicate to the public'; 'any stock sales during the class period' by defendants ... or restated financials," the motion states.

Finally, the complaint fails to plead loss caution and control person liability claims based on the previously identified deficiencies, the motion states.

Tan seeks to represent a class of people who purchased PacWest securities between Feb. 28, 2022, and May 3, 2023.

After the Fed began to pursue aggressive interest rate hikes last year, smaller banks with excessive concentration in specific industries started crumbling in early March 2023, triggering a sharp decline in global bank stock prices and widespread depositor concerns, according to the complaint.

Silicon Valley Bank, which was supervised by the Fed and acted as a key lender for the technology industry, was **taken over** by U.S. regulators on March 10 in the largest U.S. bank failure since the 2008 financial crisis. Signature Bank, a New York regional bank supervised by the Federal Deposit Insurance Corp., succumbed two days later.

Tan says the collapses of Silicon Valley Bank, Signature Bank and others highlighted the risks for PacWest, given its venture-focused business model and small- to middle-market business deposit base.

Despite this, on March 10, PacWest issued a press release touting its financial strength. Over a month later, on April 25, the bank's CEO, Paul W. Taylor, stated that deposits had stabilized and increased. Taylor also claimed that the company had taken several measures to avoid a similar fate as Silicon Valley Bank, such as maximizing liquidity by exploring strategic asset sales, Tan alleged.

But shortly after, news outlets started reporting that PacWest was considering a sale over concerns that the crisis facing smaller lenders is far from over.

On May 11, PacWest disclosed in quarterly filings with the U.S. Securities and Exchange Commission that deposits had declined approximately 9.5%, saying news reports had fueled fears among customers who worried their deposits might be at risk. Additionally, its stock price fell 22.77%.

The bank on July 25 **announced an agreement** to be purchased by Banc of California.

PacWest's misleading statements "had the cause and effect of creating in the market an unrealistically positive assessment of the company and its financial well-being and prospects, thus causing the company's securities to be overvalued and artificially inflated at all relevant times," Tan alleges.

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

Tan is represented by Brian Calandra, Jennifer Pafiti and Jeremy Lieberman of Pomerantz LLP, Laurence M. Rosen, Jacob Goldberg and Gonen Haklay of The Rosen Law Firm PA, and Brian Schall of The Schall Firm.

PacWest and the individual defendants are represented by Adam S. Paris, Diane L. McGimsey and Brenna H. Scully of Sullivan & Cromwell LLP.

The case is Eric Tan v. PacWest Bancorp et al., case number 8:23-cv-01685, in the U.S. District Court for the Central District of California.

--Additional reporting by Henrik Nilsson. Editing by Vaqas Asghar.



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Robinhood 'Meme Stock' Investors Lose New Class Cert. Bid

By **Katryna Perera**

Law360 (April 22, 2024, 8:24 PM EDT) -- A Florida federal judge has denied a bid from Robinhood investors to file a new motion for class certification in a suit over the trading platform's suspension of so-called meme stock purchases, saying the deadline for class certification has passed and the investors have not shown a good reason to extend it.

U.S. District Judge Cecilia M. Altonaga of the Southern District of Florida issued an **order** on Friday saying that instead of demonstrating good cause to extend the deadline and showing that the circumstances for a renewed class certification motion are appropriate, the investors "merely ask for a briefing schedule and appear to assume their entitlement to presenting a renewed class certification motion."

The court **denied** their previous motion for class certification last year, finding that the investors failed to show that common issues predominate their claims. But in rejecting the motion, Judge Altonaga "acknowledged certain academic discourse suggesting the possibility that a modified fraud-on-the-market reliance presumption may apply in a case like this one," according to Friday's order.

The investors then requested a second opportunity to pursue class certification based on the modified fraud-on-the-market presumption.

Judge Altonaga said Friday that the investors' failure to adequately brief the issue was enough to deny the motion, but she still laid out her reasons for rejecting the investors' arguments that they should get a second shot at securing class certification.

According to the order, the investors first said they needed certain trading data from Robinhood to assert their modified fraud-on-the-market presumption argument for class certification, but after requesting the data from Robinhood in September 2022, the trading platform did not provide it until June, on the day class certification briefing closed, and the full purchase cancellation data they needed was not received until January.

Robinhood argued that the investors "either made the tactical decision to not assert a modified fraud-on-the-market presumption argument or failed to exercise diligence in presenting the argument ... [and their] references now to 'new data' are mere subterfuge."

Judge Altonaga agreed with Robinhood. Even though Robinhood's data production was late, the investors should have moved to compel production using the court-ordered discovery dispute process, she said. Additionally, she noted that the investors, by their own admission, knew of the evidence for their modified fraud-on-the-market presumption argument but "deemed it unimportant" until after their class certification motion was denied.

"Consequently, the court is not persuaded that the late production of the purchase cancellation data provides good cause to extend the deadline to seek class certification," the order states.

The investors also argue that the novelty of the issues in the case justifies a second shot at class certification. However, Judge Altonaga said Friday that the investors' previous decision not to consider the cases' novel issue and pursue an untested theory does not justify a change of course now.

"Plaintiffs either made a strategic decision to not assert the theory or neglected to raise it. Either way, [it] does not permit a 'second bite at the apple' to assert an argument previously available to plaintiffs," the order states.

The judge also rejected the investors' claim that they should be allowed to file a renewed motion for certification since their first motion was denied without prejudice.

In the most recent version of the investors' complaint, from January 2023, they allege that Robinhood's "selective denial of access to [its] technology for more than a week wiped out tens of billions of dollars of investors' equity."

The plaintiffs had sought certification for a class of investors who, on Jan. 27, 2021, held certain shares of nine "meme stock" companies — the day before Robinhood restricted trading in shares of those stocks — and who sold their shares of those companies between Jan. 28 and Feb. 4, 2021, when the company announced that it was lifting trading restrictions.

The term meme stock refers generally to shares of companies that experience unusual trading volume on the strength of retail investor interest on social media sites such as Reddit. Prominent meme stocks include shares of video game retailer GameStop Corp. and movie theater chain AMC Entertainment Holdings Inc.

The investors' securities fraud claims are one part of closely watched multidistrict litigation stemming from the surge in meme stock trading and its subsequent fallout. Parts of the litigation involve state law claims, antitrust claims and claims against other brokers.

In August, the Eleventh Circuit **upheld** a lower court decision to dismiss claims accusing Robinhood of harming investors when it restricted trading, ruling that the traders' contract with the platform gave it "the right to do exactly what it did."

An antitrust case against Robinhood and Citadel Securities, one of its market makers, claims that the two companies conspired to restrict trading in 2021. The claims were dismissed, but an **appeal** is pending.

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

The investors are represented by Laurence M. Rosen, Phillip Kim, Robin Bronzaft Howald, Jonathan Stern, Brent LaPointe and Michael A. Cohen of the Rosen Law Firm PA.

Robinhood is represented by Samuel A. Danon, María Castellanos Alvarado and Tom K. Schulte of Hunton Andrews Kurth LLP, and by Antony L. Ryan, Kevin J. Orsini and Brittany L. Sukiennik of Cravath Swaine & Moore LLP.

The case is In re: January 2021 Short Squeeze Trading Litigation, case number 1:21-md-02989, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by David Minsky, Aislinn Keely and Sarah Jarvis. Editing by Karin Roberts.



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Agiliti Faces Another Chancery Suit Over \$2.5B Squeeze-Out

By **Leslie A. Pappas**

Law360 (April 22, 2024, 6:43 PM EDT) -- A shareholder of Agiliti sued the medical equipment management company Monday in Delaware's Chancery Court for more details surrounding events leading up to an impending \$2.5 billion squeeze-out merger with an affiliate of Thomas H. Lee Partners, its largest and controlling stockholder, echoing a similar lawsuit filed in late March.

Investor Derrick Lescord alleged in a complaint he is "justifiably concerned" that the proposed transaction was "manipulated by certain members of the company's board and/or management, who had their own motives in pursuing the proposed transaction."

There is "a credible basis to suspect that the merger agreement was not the result of a full and fair process, and instead resulted from a conflicted process overseen by a special committee that was controlled by and/or beholden to THL," the filing said.

Minneapolis-based Agiliti provides clinical equipment services to healthcare providers, its website says.

Agiliti was **created in 2018**, when Federal Street Acquisition Corp., a special purpose acquisition company owned by Thomas H. Lee Partners LP, acquired Universal Hospital Services Inc. from its then-majority owner, middle-market private equity firm Irving Place Capital Management LP.

Agiliti went public in April 2021, pricing its initial public offering at \$14 per share.

In February 2024, the company **announced it would go private again**, with THL buying all outstanding shares for \$10 per share in cash in a deal valued at \$2.5 billion.

The private equity firm owns approximately 72% of Agiliti's common stock, and controls the company and its board through a director nomination agreement, Lescord said Monday.

In October, THL offered to acquire the remainder of Agiliti's stocks at \$9 per share, prompting its board to form a special committee to consider the offer, according to the investor's suit.

He asserted that although a company information statement about the merger claimed the directors on the special committee were not affiliated with THL, a majority, if not all, of the directors had reason to favor and support THL's interests.

The special committee offered counter-proposal of \$13 a share, but after a few days, reduced its counter-offer to \$10 per share, the complaint said.

Lescord is seeking books and records under Section 220 of Delaware General Corporation Law, which allows stockholders the right to inspect corporate records if there is a proper purpose, such as a credible suspicion of corporate wrongdoing. He asked the court to order the release of, among other things, board minutes, agendas, projections and budgets, engagement letters, conflict disclosures, drafts of the merger agreement, and other documents chronicling events leading up to the merger.

The suit filed Monday follows a similar one from investor Charles Hennig, who **sued in March** for books and records to probe for potential breaches of fiduciary duty by company directors and officers in connection with the \$10-per-share cash deal.

Lescord is represented by Michael J. Palestina and Christopher P. Quinn of Kahn Swick & Foti LLC.

Counsel information for Agiliti was not immediately available.

The case is Lescord v. Agiliti Inc., case number 2024-0417, in the Court of Chancery of the State of Delaware.

--Additional reporting by Yeji Jesse Lee and Benjamin Horney. Editing by Covey Son.

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Opioid Marketer Completes \$1.5M Damages Settlement With Del.

By **Jeff Montgomery**

Law360 (April 22, 2024, 6:52 PM EDT) -- Delaware's chancellor signed off Monday on a \$1.5 million payment to the state by a company that helped Purdue Pharmaceuticals market its opioid products, the latest step in a \$358 million, 50-state damages settlement reached with Publicis Health LLC.

Deputy Attorney General Marion Quirk told Chancellor Kathaleen St. J. McCormick during a teleconference hearing that the money will support efforts to address the harm caused by the opioid epidemic.

The company's payment, Quirk told the chancellor, also will resolve "investigations into Publicis' violation of consumer protection laws in connection with its role in the opioid crisis."

According to a complaint filed in Delaware on Feb. 1 — the day the nationwide settlement was announced — Publicis was paid more than \$70 million over an 11-year period for work in promoting opioid products manufactured by Purdue Pharma, manufacturer of oxycontin.

Oxycontin, a powerful and highly addictive drug, played a prominent role in the nation's long and deadly opioid crisis. Publicis' parent company, based in France but operating through subsidiaries in the U.S., was said to have received the funds to operate "dozens of unfair and deceptive marketing schemes."

Publicis "created many of the materials that Purdue's sales representatives used when they met with prescribers" including kits and cards designed to "lure prescribers and patients into extending the length of opioid prescriptions," the complaint said.

In addition to resolving consumer protection claims, Quirk said, the settlement bars Publicis from continued or future marketing of opioids or other controlled substances.

The nationwide agreement was announced by both Publicis and several state attorneys general on Feb. 1, ending claims initiated by Massachusetts that the company used deceptive marketing to push pills on doctors and patients.

Although attorneys for Publicis said little during the Delaware announcement, the company released a statement on Feb. 1 that downplayed its work with Purdue, saying work had been done by a small subsidiary called Rosetta, which shuttered a decade ago and was already working with pharmaceutical clients when the company acquired it.

Owen Lefkon, director of the Fraud and Consumer Protection Division of the Delaware Department of Justice, said the agreement called for the funds received to be used to address the opioid epidemic, with uses overseen by the same commission that determines how to spend money from similar settlements with Walmart, Walgreens, CVS and other distributors of the drugs.

Lefkon said funds from the overall settlement are being distributed under a formula that takes into account population, distribution of "morphine equivalent" drug volumes into a state, numbers of opioid abuse cases and overdose deaths.

Delaware is represented by Marion Quirk.

Publicis Health LLC is represented by Lisa A. Schmidt, Elizabeth J. Freud and Alfred P. Dillione of Richards Layton & Finger PA.

The case is Delaware v. Publicis Health LLC, case number 2024-0087, in the Court of Chancery of the State of Delaware.

--Editing by Alex Hubbard.

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Ex-Twitter Workers Can't Arbitrate Until Class Cert. Resolved

By **Lauren Berg**

Law360 (April 22, 2024, 11:21 PM EDT) -- A proposed class of former employees of Twitter, now known as X, cannot yet force the company to move forward with their various employment claims in arbitration, a California federal judge determined Monday, saying the issue of class certification needs to be decided first.

U.S. District Judge Jon S. Tigar, in a seven-page **order**, denied without prejudice the ex-workers' motion to compel arbitration, saying they can either drop their class claims and proceed only with the named workers' claims, or they need to go through the class certification process before pursuing their bid to arbitrate their employment claims and making the company pay the required Judicial Arbitration and Mediation Services fees.

"Neither party argues that non-named petitioners would be bound by the court's ruling on petitioners' motion if a class has not been certified, and such '[a]bsent parties would remain free to re-litigate ostensibly decided questions. Generally speaking, this is inefficient and unfair,'" the judge said.

"If the ruling had no preclusive effect, Twitter would also remain free to relitigate the merits as to anyone but the named petitioners — thereby adding to the inefficiency of ruling on the motion without waiting for class certification," he added.

The judge instructed the parties to come up with a briefing schedule for the class certification issue, saying he "would be amenable to hearing" both that motion and the motion to compel arbitration on the same day, according to the order.

Counsel for the former employees declined to comment Monday evening. Counsel for X did not immediately respond to a request for comment.

The petition to compel arbitration was **first filed** back in July, alleging that X had stalled hundreds of arbitration cases — ranging from failure to pay severance payments to sex and race discrimination — brought by former employees by not paying the required fees.

Under JAMS rules, after the employee who brings an arbitration case pays the nominal filing fee, the employer bears all the remaining costs, including fees to pay the arbitrator, the suit states. But after about 2,000 arbitrations were filed against the social media platform, X in June requested that all arbitration fees be split equally among the parties, according to the petition.

Counsel for the employees quickly objected, and JAMS said it wouldn't administer arbitrations in which the employer refuses to pay fees and the claimants don't waive that rule, the suit states.

X then informed JAMS it would refuse to proceed with arbitrations in most states outside California, and attached a list of 891 arbitrations in which it was refusing to proceed, the petitioners said. So JAMS canceled the scheduled conferences and hearings in those matters.

The named petitioners, along with other similarly situated employees who have brought arbitration claims against X, want Judge Tigar to compel the company to arbitrate the cases, according to the petition.

"By refusing to abide by the JAMS minimum standards and pay the full arbitrator fees as required by

those standards (which Twitter was or should have been aware of when entering into these arbitration agreements and moving to compel employees' claims to arbitration), Twitter has interfered with petitioner and other employees' rights to arbitrate their claims at JAMS, as required by their agreements," the petitioners said.

After Elon Musk took over Twitter in October 2022 in a **\$44 billion deal**, thousands of workers were either laid off or quit, and many of them have since taken the company to court.

In a proposed class action **filed in November 2022**, a group of workers who were suddenly fired following the company's leadership change said Twitter didn't give them the 60-day notice of termination required by the Worker Adjustment and Retraining Notification Act.

A month later, U.S. District Judge James Donato **granted** the workers' request to bar Twitter from sending laid-off employees separation agreements that they said unfairly ask the proposed class members to broadly release all legal claims against the company without informing them of the pending litigation or their legal rights in exchange for severance packages.

Then, in January 2023, Judge Donato ruled that some of the employees **must arbitrate** their claims, and in April 2023 he **transferred to Delaware** claims from an **amended complaint**, per a forum selection clause in Twitter's merger agreement with X.

Another proposed class action alleged **women bore the brunt** of the layoffs, with a pair of former employees who said Twitter fired women at a higher rate than men and enforced a 24-hour workday that unfairly discriminated against women.

But those claims were later either **dismissed or sent to arbitration**.

The former employees are represented by Shannon Liss-Riordan and Bradley Manewith of Lichten & Liss-Riordan PC.

Twitter is represented by Eric Meckley, Ashlee N. Cherry, Brian D. Berry, Kassia Stephenson and Michael E. Kenneally of Morgan Lewis & Bockius LLP.

The case is Fabien Ho Ching Ma et al. v. Twitter Inc. et al., case number 4:23-cv-03301, in the U.S. District Court for the Northern District of California.

--Additional reporting by Jeff Montgomery, Irene Spezzamonte, Dorothy Atkins, Gina Kim, Grace Elletson and Craig Clough. Editing by Jay Jackson Jr.