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April 24, 2024, 10:18 AM PDT; Updated: April 24, 2024, 12:03 PM PDT
Carlyle Founders Must Face Lawsuit Over \$344 Million Payout (1)
By [Mike Leonard](#)
Documents

-  [Ruling](#)
-  [Docket](#)

- Case targets tax buyout related to ‘up-C’ corporate structure
- Billionaire co-founders pushed Carlyle to overpay, suit says

Bloomberg Law News 2024-04-25T10:13:45428256099-04:00
Carlyle Founders Must Face Lawsuit Over \$344 Million Payout (1)

By Mike Leonard 2024-04-24T13:18:49000-04:00

- Case targets tax buyout related to ‘up-C’ corporate structure
- Billionaire co-founders pushed Carlyle to overpay, suit says

Carlyle Group Inc.’s founders and other corporate leaders lost their bid Wednesday for an early end to litigation over a \$344 million buyout of tax agreements tied to the asset manager’s public listing.

A Delaware judge, Vice Chancellor Morgan T. Zurn, let the case move forward against the billionaire co-founders—William Conway Jr., Daniel D’Aniello, and David Rubenstein—and other Carlyle board members. The shareholder lawsuit, brought by a pension fund, says they pushed the private equity giant into an overpriced payout aimed at terminating virtually worthless tax benefits.

A spokesperson for Carlyle didn’t immediately respond to a request for comment Wednesday.

The decision declaring most of the case’s claims “reasonably conceivable” was Zurn’s second letting the litigation advance in Delaware’s Chancery Court. The judge issued a preliminary ruling for the pension fund in January, focusing at the time on the “broad and intricate matrix” of social ties between Rubenstein and another board member, Anthony Walters, who run in the same elite philanthropic circles.

Read More: Carlyle Founders Lose Round in Court on \$344 Million Deal

A consortium led by Rubenstein last month took a 40% stake in Major League Baseball’s Baltimore Orioles as part of a deal that values the franchise at \$1.73 billion. The group—which includes Orioles legend Cal Ripken Jr., former New York City Mayor Michael Bloomberg, and others—is expected to buy out the rest of the team soon.

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The legal dispute is part of a wave of shareholder cases taking aim at transactions by businesses with “up-C” structures. Some of the others involve Cantor Fitzgerald LP affiliate BGC Partners Inc., health care company Premier Inc., fintech business Virtu Financial Inc., toymaker Funko Inc., web host GoDaddy Inc., and two other major investment firms, Apollo Global Management Inc. and KKR & Co.

Up-C corporations have multiple classes of stock: common shares in a publicly traded parent company, equity units in an operating subsidiary dating to before the parent’s public listing, and class B shares with voting rights pegged to the economic value of those units.

Because the directly owned units offer potential tax benefits to the company when founders trade them in for common stock, the businesses generally agree to return 85% of any tax savings. When an up-C simplifies its structure—and converts all the pre-IPO units—it often buys out the tax agreements, even though they’re only valuable under circumstances that may not come to pass.

The lawsuits involving Carlyle and most of the others say insiders pushed them to overpay by hundreds of millions of dollars, or billions, thanks to the close ties between founders, early investors, and the corporate leaders engineering the tax buyouts.

Zurn’s decision Wednesday follows about eight months after a ruling in a similar case by a different Delaware judge who ordered the GoDaddy board in August to face a pension fund’s lawsuit challenging its \$850 million tax buyout deal with its founder and early backers, including KKR, Silver Lake Group LLC, and Technology Crossover Ventures.

The pension fund is represented by Friedlander & Gorris PA, **Robbins Geller** Rudman & Dowd LLP, and Shobe & Shobe LLP. Carlyle and its leaders are represented by Richards, Layton & Finger PA and Williams & Connolly LLP.

The case is City of Pittsburgh Comp. Mun. Pension Trust Fund v. Conway , Del. Ch., No. 2022-0664, 4/24/24 .

(Updates with no immediate comment from Carlyle in third paragraph and Orioles acquisition in fifth paragraph.)

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

To contact the editors responsible for this story: Brian Flood at bflood@bloombergindustry.com; Andrew Harris at aharris@bloomberglaw.com

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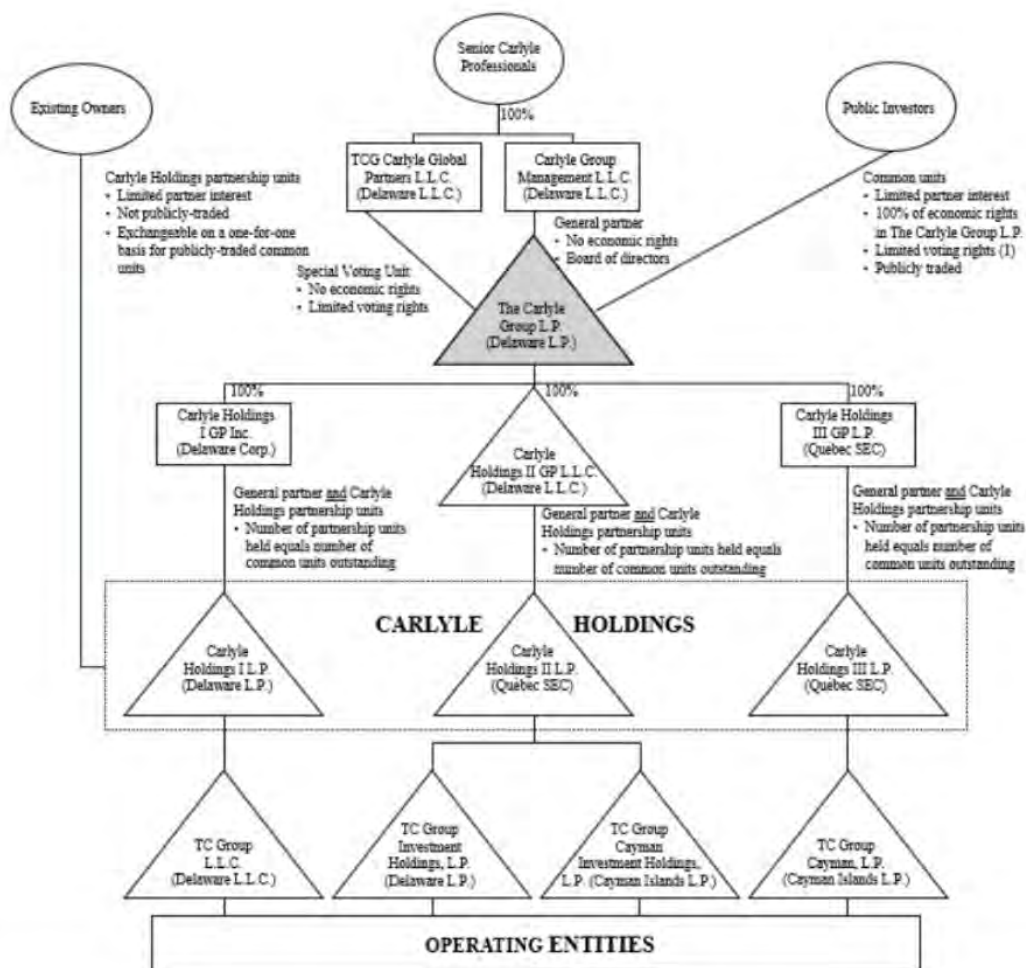


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<https://www.law.com/2024/04/24/chancery-urged-to-block-tesla-run-from-jurisdiction-in-elon-musk-pay-case/>NOT FOR REPRINT
NEWS

Chancery Urged to Block Tesla 'Run From Jurisdiction' in Elon Musk Pay Case

Tesla has filed a proxy indicating it would be seeking shareholder votes on a relocation to Texas and whether Musk should receive the 2018 compensation plan that had been struck down by the Court of Chancery.

April 24, 2024 at 04:58 PM

Corporate Governance



Ellen Bardash

The original version of this story was published on [Delaware Business Court Insider](#)

Tesla's proposals to reinstate Elon Musk's compensation plan and reincorporate in Texas have prompted a new chapter in the Court of Chancery case that invalidated that plan, with the shareholder plaintiff filing five motions on Tuesday.

Those motions seek an [injunction](#) that would prevent Tesla or any of its directors from sidestepping Chancellor Kathaleen McCormick's Jan. 30 post-trial [decision](#) and litigating anything related to the case in another jurisdiction, [proposing](#) that the court order the more than 303 million shares included in Musk's compensation plan to be sequestered or placed in a constructive trust.

"Defendants cannot now seek to run from this jurisdiction and undo years of litigation because they are unhappy with the outcome," the motion for an injunction stated, calling Tesla's recommendations on the two shareholder votes a "plain attempt" to avoid the court-ordered rescission.

The plaintiff, Richard Tornetta, is also [asking](#) for a formal order implementing the judgment and rescission already granted in the post-trial ruling, including \$235,684 in [costs](#) to Tornetta's Bernstein Litowitz Berger & Grossmann, Friedman Oster & Tejtzel and Andrews & Springer attorneys, and for all of those motions to be evaluated on an [expedited](#) basis.

On April 17, Tesla filed a proxy indicating it would be seeking shareholder votes on a relocation to Texas and whether Musk should receive the 2018 compensation plan that had been struck down by the Court of Chancery. The carmaker's annual meeting is scheduled for June 13.

The same day, DLA Piper, Richards, Layton & Finger and Morris, Nichols, Arsht & Tunnell attorneys filed appearances for Tesla in the Chancery case, and DLA Piper partner John Reed sent the proxy to McCormick with a [letter](#) flagging "recent developments that could materially impact the court's Jan. 30, 2024, post-trial opinion and the substance and status of these proceedings, including plaintiff's motion for an award of fees and expenses."

That fee motion was filed by Tornetta’s counsel [in March](#), seeking compensation in the form of 29.4 million shares of Tesla stock, valued the day McCormick issued her decision at roughly \$5.6 billion. Tesla’s share price has dropped in recent months, making those shares worth around \$4.3 billion as of the date the proxy was filed.

Argument on the compensation motion is scheduled for July 8, but Reed’s letter stated the court was being informed of the proxy to inform McCormick that Tesla may be asking for that hearing to be pushed back.

In addition to arguing Delaware legal issues should be resolved in Delaware and doing so avoids the possibility that a Texas court could eventually issue a conflicting judgment, Tornetta’s motion for an anti-suit injunction claims a separate case involving another CEO unhappy with the Court of Chancery offers guidance: the long-running TransPerfect Global litigation, in which former Chancellor Andre Bouchard granted an anti-suit injunction.

In that case, the court found TransPerfect’s relocation to Nevada and challenge to Delaware-approved activity in a Nevada court was an “intentional and willful attempt to circumvent the court’s exclusive jurisdiction over respondents with respect to the interpretation and enforcement of the court’s own orders.”

Attorneys representing Tesla did not immediately respond for comment.

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<https://twitter.com/AnnMLipton/status/1783287417648161174>



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...

Look in case anyone's been following the latest filings in Tornetta and wants an explanation: The plaintiffs are concerned that Tesla's proposed move to Texas will end up in a second lawsuit, filed in Texas, that will conflict with the Delaware action. So -

5:10 PM · Apr 24, 2024 · 16.6K Views



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11



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4



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- they are filing a bunch of motions to make sure that what starts in Delaware stays in Delaware, meaning, Musk's pay package and the effect of any ratification votes will be adjudicated in a Delaware court, with a Delaware court able to order appropriate remedies. That's all.



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There is no attempt to block a move to Texas. Only to make sure the litigation over Musk's pay, and over any new votes, stays in Delaware.



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1.6K



Professor Eric Rasmusen  @erasmuse · 14h

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Sounds like just a precaution because so much money is at stake? Is there really any significant chance Texas could steal the case away?



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338



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probably, plaintiffs' firms are pretty competitive with each other, i can see someone swooping in and hoping to resolve matters quickly, get the fee



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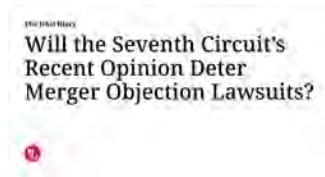
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Will the Seventh Circuit's Recent Opinion Deter Merger Objection Lawsuits?

K dandodiary.com/2024/04/articles/merger-litigation/will-the-seventh-circuits-recent-opinion-deter-merger-objection-lawsuits

April 24, 2024



By Kevin LaCroix on April 24, 2024
Posted in Merger Litigation



In recent years, one of the curses of the corporate and securities litigation world has been the ubiquitous filing of merger objection lawsuits in connection with proposed M&A transactions. When a deal is announced, plaintiffs' lawyers almost always file one or more of these suits in which they seek additional proxy disclosures. After the defendant company agrees to make additional disclosures, the plaintiffs' lawyers dismiss the suits in exchange for the payment of a so-called "mootness fee." It is a process that the well-respected jurist Richard Posner famously described as "no better than a racket."

Now, in a recent decision written by Judge Frank Easterbrook, the Seventh Circuit has identified additional tools and ammunition that companies and other objectors can use to try to fight these kinds of lawsuits — which, the appellate court specially recognized, have no purpose other than to transfer money from companies to plaintiffs' lawyers.

A copy of the appellate court's April 15, 2024, opinion can be found [here](#). Alison Frankel April 16, 2024, post about the decision on her *On the Case* blog can be found [here](#).

The plaintiffs in the underlying lawsuits sued Akorn and its board of directors in connection with a proposed merger, seeking additional disclosure regarding the transaction. After Akorn revised its proxy statement, plaintiffs dismissed their lawsuits in exchange for a mootness fee. Ted Frank, an Akorn shareholder, moved to intervene and object to the fee.

Although the district court did not allow Frank to intervene, the court did exercise its "inherent authority" to review the proposed settlement and fee payment. Among other things, the district court concluded that the additional disclosures were "not plainly material" and that the additional disclosures were "worthless to shareholders." Yet, he noted, the plaintiffs' attorneys were "rewarded" for suggesting "immaterial changes to the proxy statement." The

company paid the fees “to avoid the nuisance of ultimately frivolous lawsuit” disrupting the transaction. The district court abrogated the settlement and ordered the plaintiffs’ attorneys to return their fees. Frank appealed the court’s ruling declining to allow him to intervene.

In a succinct April 15, 2024, opinion written for a two-judge panel (the third panel judge having died following oral argument), the Seventh Circuit vacated the district court’s orders, remanded the case for further proceedings in light of the appellate court’s ruling, and directed the district court to permit Frank to intervene.

In reaching its decision, Judge Easterbrook specifically reviewed the history of this type of merger objection litigation, noting that as a result of unfavorable case law, the plaintiffs’ lawyers that bring this type of litigation have in recent years moved their cases from state court to federal court, in part in the hopes of evading judicial review of the agreed-upon fees.

Judge Easterbrook summarized these kinds of cases by saying that “The upshot: money moves from corporate treasuries to plaintiffs’ lawyers; the investors get nothing, yet the payment diminishes (though only a little) the market price of each share.”

Perhaps most importantly, Judge Easterbrook highlighted that the PSLRA gives district court judges a tool specifically intended to address abusive litigation. The specific provision to which Easterbrook referred is the section of the PSLRA which *requires* district court judges to make specific findings with respect to the parties’ respective positions under Rule 11 of the Federal Rules of Civil Procedure (which prohibits the filing of a lawsuit for improper purposes, including needlessly increasing the cost of litigation). The PSLRA provision, Judge Easterbrook noted, is mandatory.

The appellate court remanded the case to the district court first to allow Frank to intervene, next to conduct the inquiry required under the PSLRA provision and Rule 11, and lastly to determine what sanction if any would be appropriate under Rule 11.

Discussion

It is significant that a respected jurist like Judge Easterbrook has stepped forward to spell out the problem that these kinds of lawsuit present. They are a tax on the system that exists solely for the purpose of enriching the plaintiffs’ lawyers. We can hope that Judge Easterbrook’s opinion will encourage more judges to scrutinize the payment of fees in the settlements of these kinds of cases.

However, it is worth noting that it has been nearly eight years since Judge Posner called these kinds of cases “nothing better than a racket,” yet these kinds of lawsuits still continue to be routinely and regularly filed.

One of the reasons that these cases still proliferate is that the plaintiffs' lawyers have changed their game. They no longer file these lawsuits as class action lawsuits; these lawsuits are filed every bit as often as ever, but now they are almost all filed as individual lawsuits rather than as class action suits. (Indeed, as often as not these days, the plaintiffs' lawyers don't even bother with a lawsuit, they just file a demand letter, extract meaningless additional disclosures, and extract a "mootness" fee.)

The plaintiffs' lawyers filing these suits file them as individual actions rather than as class actions precisely because they hope to evade the kind of judicial scrutiny that can be involved in class action litigation. Indeed, the mandatory Rule 11 review to which Judge Easterbrook referred in his opinion is specifically addressed to *class action lawsuits*; the mandatory review the court cited as required in its opinion is not by its terms required for individual actions. Of course, Rule 11 is still applicable even to the individual lawsuits; however, the PSLRA mandatory scrutiny requirement is not applicable.

I fear that these kinds of lawsuits will always be with us unless more companies refuse to play along. However, companies find it expedient just to pay the plaintiffs' lawyers to go away, rather than to fight, which is of course exactly what the plaintiff's lawyers hope will happen. The price to make them go away is now much lower than it has been in the past, so the costs are lower, but any recovery in any amount is still objectionable.

It has been my privilege in recent years to be able to travel to other countries, where I often attend conferences of attorneys and insurance professionals who work outside the U.S. It is a regular occurrence at these conferences that one of the speakers or of the attendees rails against the abusive U.S. litigation system. From time to time, I feel compelled to defend the U.S. litigation system. But one thing I could never defend is the existence of these merger objection lawsuits. They are the very embodiment of the use of the litigation system for improper purposes.

While I hope Judge Easterbrook's opinion might contribute to the elimination of these cases, I fear it will not.

Lincoln National Allegedly Misled Investors on Insurance Segment

By Martina Barash

Documents

-  [E.D. Pa. Docket](#)
-  [Meade Complaint](#)
-  [Lincoln National Corp.](#)
-  [Judge John Frank Murphy](#)

-
- **COURT:** E.D. Pa.
 - **TRACK DOCKET:** [No. 2:24-cv-01704](#)

Bloomberg Law News 2024-04-25T10:57:15139491502-04:00

Lincoln National Allegedly Misled Investors on Insurance Segment

By Martina Barash 2024-04-24T19:02:47000-04:00

- **COURT:** E.D. Pa.
- **TRACK DOCKET:** [No. 2:24-cv-01704](#)

Lincoln National Corp. withheld information from the public about a decline in its variable universal life insurance business, an investor says in a proposed class action over a subsequent \$2.6 billion quarterly loss.

The November 2022 announcement of the setback at the family of companies, known as the Lincoln Financial Group, caused Lincoln's stock to lose one-third of its value, investor Donald Meade said Tuesday. He filed his complaint in the US District Court for the Eastern District of Pennsylvania.

The drop was the company's steepest since March 2009, according to data compiled by Bloomberg.

The decline in the variable universal life insurance segment had several implications about the period before the disclosure, Meade says. The decline meant that the company's goodwill was overstated, that its "policy lapse assumptions were outdated," that its reserves were overstated, and that its leaders' positive statements about the business were misleading, Meade says.

There are hundreds or thousands of members of the proposed class, the complaint estimates.

Meade seeks damages on his securities fraud claims.

Lincoln Financial declined to comment in an email Tuesday.

Glancy Prongay & Murray LLP represents Meade.

The case is Meade v. Lincoln National Corp. , E.D. Pa., No. 2:24-cv-01704, complaint 4/23/24 .

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

To contact the editor responsible for this story: Amy Lee Rosen at arosen@bloombergindustry.com

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 Docket

Pitts said investors failed to show Zendesk's value was any higher than those projections.

"The June 2022 projections accounted for intervening changes in the company's bookings metrics and market price," Pitts said.

Monteverde & Associates PC represents the plaintiffs. Kirkland & Ellis LLP represents Zendesk.

The case is Bailey v. Zendesk, Inc. , N.D. Cal., No. 23-cv-01243, 4/24/24 .

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

To contact the editor responsible for this story: Maria Chutchian at mchutchian@bloombergindustry.com

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Space Firm Momentus' \$8.5 Million Investor Settlement Approved

By Matthew Bultman

Documents

 [Order](#)

 [Docket](#)

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- Momentus agreed to go public through Stable Road in 2021
 - The firms were previously fined \$8 million by the SEC

Bloomberg Law News 2024-04-25T10:56:2017577617-04:00

Space Firm Momentus' \$8.5 Million Investor Settlement Approved

By Matthew Bultman 2024-04-24T13:02:37000-04:00

- Momentus agreed to go public through Stable Road in 2021
- The firms were previously fined \$8 million by the SEC

Momentus Inc. will pay \$8.5 million to investors who claimed they were misled about the space cargo company's readiness to go to market ahead of its blank-check merger with Stable Road Acquisition Corp.

The settlement was given final approval Tuesday by Judge John Walter of the US District Court for the Central District of California. Walter said the deal was "fair, reasonable and adequate."

The decision ends litigation that began in 2021, months after Momentus agreed to go public through a merger with Stable Road.

A special purpose acquisition company, Stable Road initially planned to pursue a deal in the cannabis sector, then pivoted to Momentus with time running low to complete an acquisition, according to investors.

The Securities and Exchange Commission previously fined Stable Road and Momentus \$8 million over allegations that Momentus lied about its technology, including a false claim that its propulsion system had been “successfully tested” in space.

Stable Road was accused of repeating those claims without performing sufficient due diligence.

Walter also approved Tuesday a \$2.125 million fee award for the plaintiffs’ lead counsel, Glancy Prongay & Murray LLP, along with \$111,115 in litigation expenses.

Baker McKenzie LLP, Winston & Strawn LLP, Kirkland & Ellis LLP and Stoner Carlson LLP represent the various defendants.

The case is In re Stable Rd. Acquisition Corp. Sec. Litig. , C.D. Cal., No. 21-CV-5744, 4/23/24 .

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

To contact the editor responsible for this story: Maria Chutchian at mchutchian@bloombergindustry.com

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Perrigo \$97 Million Deal With Investors Gets Early Court Nod

By Tre'Vaughn Howard

Documents

 [Order](#)

 [Docket](#)

Bloomberg Law News 2024-04-25T10:55:01166220309-04:00

Perrigo \$97 Million Deal With Investors Gets Early Court Nod

By Tre'Vaughn Howard 2024-04-24T15:25:27000-04:00

Perrigo Co. PLC investors received preliminary approval for a \$97 million class action settlement over allegations that the pharmaceutical company overstated its value to fight a takeover attempt by Mylan NV in 2015 which led to a stock drop.

The investors sued Perrigo in 2016—originally alleging four sets of misrepresentations by the company in the US District Court for the District of New Jersey. But, only two remained—Perrigo's statements related to the integration and resulting performance of its Omega division and the alleged concealment of anti-competitive practices in its generic drug unit. Mylan's \$26 billion hostile bid for Perrigo Co. failed in November 2015.

The consolidated class action settlement includes investors who purchased Perrigo's stock—on the New York Stock Exchange or Tel Aviv Stock Exchange—between April 21, 2015 and May 2, 2017 or held stock as of the market close on November 12, 2015 through at least 8 am eastern time the next day. Each class member had to submit a claim form with supporting documents to establish proof of loss, according to the memorandum supporting lead plaintiff Perrigo Institutional Investor Group's motion for preliminary approval.

- Magistrate Judge Leda D. Wettre said all class members who don't submit a claim will be forever barred from receiving any payments. Class members have "already been provided a full and fair opportunity to timely

exclude themselves"—which several people had done—and are not afforded another opportunity to opt out, Wettre noted in the preliminary approval order

- The parties agreed that the settlement doesn't constitute an admission of wrongdoing by Perrigo. The order says the court will consider during a Sept. 2024 hearing any applications for awards of attorneys' fees or costs, and awards for the lead plaintiff.
- Authorized claimants will be entitled to a distribution of at least \$10 after the court-approved attorneys' fees, expenses, and deductions, the memorandum noted. The lead plaintiff and class members will receive the same distribution amount. Objecting class members must prove they are a part of the class through documentation, and have until August 6, 2024 to object, as provided in the order

Pomerantz LLP and Bernstein Litowitz Berger & Grossmann LLP are co-lead counsel for the class. Greenbaum, Rowe, Smith & Davis LLP and Fried, Frank, Harris, Shriver & Jacobson LLP represent Perrigo. Siegel Teitelbaum & Evans LLP and Gibson, Dunn & Crutcher LLP represent Defendant Joseph C. Papa.

The case is *Roofer's Pension Fund v. Papa*, D.N.J., No. 1:16-cv-02805, 4/23/24.

To contact the reporter on this story: Tre'Vaughn Howard at thoward@bloombergindustry.com

To contact the editor responsible for this story: Martina Stewart at mstewart@bloombergindustry.com

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Social media platforms double down on bid for immunity from teen addiction suits

 [courthousenews.com/social-media-platforms-double-down-on-bid-for-immunity-from-teen-addiction-suits](https://www.courthousenews.com/social-media-platforms-double-down-on-bid-for-immunity-from-teen-addiction-suits)

Hillel Aron

Meta, TikTok, YouTube and Snap have been sued by 668 personal injury plaintiffs and 615 school districts who claim the companies have fomented a mental health crisis.



The logos of Facebook, YouTube, TikTok and Snapchat on mobile devices from 2017-2022.
(AP Photo, File)

LOS ANGELES (CN) — A platoon of lawyers for Meta, YouTube, TikTok and Snap appeared in LA Superior Court on Wednesday to push for immunity from hundreds of lawsuits accusing the social media giants of fomenting a mental health crisis amongst teenagers.

More than 1,000 plaintiffs say apps like Facebook and TikTok have greatly increased teen addiction and depression and exposed minors to harmful content, such as sexually explicit material and "challenges" that induce teens into participating in dangerous behavior.

The hearing, a continuation of one last month, was over the defendants' motion to strike much of the master complaint under Section 230 of the Communications Decency Act, which shields online platforms from liability for what its users publish on them.

"When the plaintiffs challenge the operational or safety features of an online service, the claim is barred by Section 230," said Brian Willen, an attorney for Snap, the maker of Snapchat. "We have clear, binding law that says you can't evade Section 230 by alleging that the service provider failed to protect users from harmful content."

Plaintiff attorney Josh Autry argued that his clients weren't suing the social media appmakers over failing to protect teens from harmful content, they were suing over features that made the products addictive and made it easier for certain harmful content to be accessed and spread.

"We're saying the defendants have created tools that facilitate sexual abuse and make exploitation easier," Autry said, "because they wanted more user minutes. And that came at a cost."

He argued that when an app suggests that a user add or follow another user, who may be a complete stranger and may in fact be a predator or distributor of harmful material, that is the social media company's content, and therefore it's not protected by Section 230.

"If I'm saying, 'You should meet Billy,' that is my content, that is my recommendation," Autry said.

Judge Carolyn Kuhl did not issue a ruling on the motion to strike and gave no indication that she was leaning one way or the other. Unlike last month's hearing, she asked no questions and offered no criticisms of the two sides' arguments.

As of April 22, there are 668 personal injury plaintiffs from 40 different states in this case, according to a recent court filing.

There are also 615 school districts, six local governments and three tribal nations who have filed lawsuits, which have been consolidated into a multi-district litigation process.

"Today, over a third of 13- to 17-year-old kids report using one of defendants' apps 'almost constantly' and admit this is 'too much,'" the plaintiffs say in their master complaint. "Yet more than half of these kids report that they would struggle to cut back on their social media use. Instead of feeding coins into slot machines, kids are feeding defendants' products with an endless supply of attention, time, and data."

On June 17, the court will randomly select a handful of plaintiffs to serve as a bellwether case, which would proceed to trial, the result of which would likely be used to determine the size of a settlement.

Last year, U.S. Surgeon General Dr. Vivek Murthy warned in a 19-page advisory, "There are ample indicators that social media can also have a profound risk of harm to the mental health and well-being of children and adolescents."

Tech companies have used Section 230 to shield themselves from a number of lawsuits, but the tactic hasn't always worked. In January, an LA Superior Court Judge ruled that Snap could not use Section 230 to shield itself from a lawsuit over fentanyl overdoses where users bought drugs or met their drug dealers over the platform.

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Lawyers in Google browsing data case ask for \$218 million fee award

 [reuters.com/legal/transactional/lawyers-google-browsing-data-case-ask-218-million-fee-award-2024-04-24](https://www.reuters.com/legal/transactional/lawyers-google-browsing-data-case-ask-218-million-fee-award-2024-04-24)

David Thomas

Figurines with computers and smartphones are seen in front of Google logo in this illustration taken, February 19, 2024. REUTERS/Dado Ruvic Purchase Licensing Rights , opens new tab

April 24 (Reuters) - Three U.S. law firms that spearheaded a browser data privacy class action against Alphabet's (GOOGL.O) , opens new tab Google and reached a settlement earlier this month have asked a judge to award them \$217.6 million in attorney fees.

The firms, Boies Schiller Flexner, Morgan & Morgan and Susman Godfrey, have estimated the value of the settlement as up to \$7.8 billion. Google is not paying damages as part of the accord, but it may be sued by individual users.

Google has denied wrongdoing but agreed to destroy billions of data records in the settlement, which would resolve claims that it secretly tracked the internet use of people who thought they were browsing privately. The agreement and attorney fee award are subject to approval by a federal judge in Oakland, California.

The plaintiffs' lawyers' Tuesday filings offer an updated glimpse at the billing rates of prominent attorneys including Boies Schiller founder David Boies, showing Boies' rate has increased to \$2,330 from the \$2,110 rate he disclosed in an unrelated case in September.

Bill Carmody, a partner at Susman Godfrey whose past clients have included WeWork founder Adam Neumann, is now billing at \$2,500 an hour, according to the filings.

Carmody said in an email his firm makes "periodic adjustments" to its hourly rates "based on trends in the legal marketplace and what's appropriate for our cases and clients." A spokesperson for Boies did not immediately respond to a request for comment.

Google has not told the court whether it will challenge the fee bid. A Google spokesperson in a statement called the lawyers' request "just another attempt to generate news and line their own pockets in a case they settled for \$0."

The plaintiffs' firms told the court Tuesday that their \$218 million fee request is 3.5 times the team's actual time expenditures in the case, which they argued was fair and reasonable.

"Class Counsel squared off against a large team from Quinn Emanuel, one of the largest and most expensive law firms in the world, where associates routinely bill over \$1,000 per hour," the firms said in their fee request.

A Quinn Emanuel spokesperson declined to comment.

Responses to the plaintiffs' lawyers' fee request are due by June 7, and a hearing on the request before U.S. District Judge Yvonne Gonzalez Rogers has been set for Aug. 7.

The case is Chasom Brown v. Google LLC, U.S. District Court for the Northern District of California, No. 4:20-cv-03664.

For plaintiffs: David Boies, Mark Mao, Beko Reblitz-Richardson, James Lee, Rossana Baeza, Alison Anderson and Logan Wright of Boies Schiller Flexner; Bill Carmody, Shawn Rabin, Steven Shepard, Alexander Frawley and Amanda Bonn, of Susman Godfrey; and John Yanchunis, Ryan McGee and Michael Ram, of Morgan & Morgan

For Google: Andrew Schapiro, Teuta Fani, Joseph Margolies, Diane Doolittle, Sara Jenkins, Stephen Broome, Viola Trebicka, Crystal Nix-Hines, Rachael McCracken, Alyssa Olson, Jomaire Crawford, Carl Spilly and Jonathan Tse, of Quinn Emanuel Urquhart & Sullivan

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Reporting by David Thomas

David Thomas
Thomson Reuters

David Thomas reports on the business of law, including law firm strategy, hiring, mergers and litigation. He is based out of Chicago. He can be reached at d.thomas@thomsonreuters.com and on Twitter @DaveThomas5150.

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April 24, 2024, 2:05 PM PDT
Lawyers Want \$217 Million for Settling Google 'Incognito' Case
By [Roy Strom](#)
Documents

-  [Fee Request](#)
-  [Docket](#)

- Google settled class-action over claims it improperly kept web data
- Law firms for class members seek \$217 million for 78k hours of work

Bloomberg Law News 2024-04-25T12:13:101110924-04:00
Lawyers Want \$217 Million for Settling Google 'Incognito' Case

By Roy Strom 2024-04-24T17:05:05000-04:00

- Google settled class-action over claims it improperly kept web data
- Law firms for class members seek \$217 million for 78k hours of work

Lawyers are seeking \$217 million in fees for their work crafting a settlement this month in a class action lawsuit alleging Alphabet Inc.'s Google improperly retained users' web data while they used a private browsing setting.

The litigation filed in 2020 over Google Chrome's "incognito" browser was led by lawyers at Boies Schiller Flexner, Susman Godfrey and Morgan & Morgan, who asked a federal judge on Tuesday to award the nine-figure fee. Class members in the litigation received no damages, though they can file individual claims in state court.

The lawyers say they worked 78,880 hours on the case, accruing more than \$62 million in fees at their standard billing rates. They are seeking for that amount to be multiplied by 3.5 times in what is known as a "lodestar multiplier" that federal judges have discretion to apply in successful class actions.

The lawyers anticipated Google will dispute the requested fee, and argued their lodestar multiplier should not be denied even though the court declined to award damages.

Class counsel argued it was an appropriate number. The filing cited other cases with no damages award that led to multipliers between one-and-a-half and three. The lawyers cited one case that said "the range of acceptability" can be between two and four.

The lawyers are also seeking to be paid about \$7.6 million for costs they incurred during the case.

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Under the settlement, Google agreed to delete data records it previously obtained and extend protections under the private browsing setting for the next five years. Those protections included disabling third-party trackers. The company also changed disclosures detailing what it tracks.

The plaintiffs had asked for \$5 billion in damages, but the settlement provided no monetary relief. Individuals will be allowed to file claims in state courts, and Boies Schiller lawyers have said they already filed more than 1,000 such cases in California state court, with plans to file many more.

The plaintiffs' lawyers said Google will pay the fees. They also said both sides had agreed to waive the right to appeal Judge Yvonne Gonzalez Rogers' fee award, scheduled to be determined in August.

The litigation was hard fought between the class-action counsel and Google's lawyers at Quinn Emanuel Urquhart & Sullivan. A judge in the case in 2022 ordered Google to pay nearly \$1 million for discovery misconduct after the company concealed employees' and other relevant data.

The case is *Brown v. Google*, N.D. Cal., 4:20-cv-03664, 4/23/24.

To contact the reporter on this story: Roy Strom in Chicago at rstrom@bloomberglaw.com

To contact the editor responsible for this story: Alessandra Rafferty at arafferty@bloombergindustry.com

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NEWS

Ozempic Plaintiffs Get Leadership Team, but Not Quite the One They Asked For

Walsh said that, during an extensive hearing on leadership structure last week, Pratter “had some concerns about the size of the committee that we put in the application.”

April 24, 2024 at 04:47 PM

Mass Torts



Aleeza Furman
Litigation Reporter



What You Need to Know

- Judge Gene Pratter appointed 10 plaintiffs lawyers to serve in leadership roles in the Ozempic MDL.
- The approved leadership team is smaller than the one put forth by the plaintiffs, and only includes one of the four proposed co-lead counsel.
- The ruling follows a dispute over the process through which plaintiffs formed its proposed leadership team.

The leadership team in the Ozempic multidistrict litigation is set to look slightly different from what the plaintiffs originally proposed.

In an [order](#) entered Wednesday, U.S. District Judge Gene Pratter of the Eastern District of Pennsylvania named 10 plaintiffs lawyers to leadership posts in the MDL—a pared-down version of the 32-member team the plaintiffs had put forth.

“There’s certainly a little bit of an element of surprise to it,” said Alex Walsh of Alex Walsh Law, one of the lawyers appointed to the plaintiffs committee.

Walsh said that, during an extensive hearing on leadership structure last week, Pratter “had some concerns about the size of the committee that we put in the application.”

Walsh said she and other plaintiffs favored a larger group given the size and resources of the defendants, drugmakers Novo Nordisk and Eli Lilly.

Still, Walsh said, “You need to have an effective committee that is nimble and can make decisions quickly and not get dragged down in process.”

Pratter's order appointed two liaison counsel and eight members of a plaintiffs' committee.

The named committee members are:

- Paul Pennock of Morgan & Morgan in New York.
- Marcus Susen of Susen Law Group in Fort Lauderdale, Florida.
- Sara Couch of Motley Rice in Charleston, South Carolina.
- Cameron Stephenson of Levin, Papantonio, Rafferty, Proctor Buchanan, O'Brien, Barr & Mougey in Pensacola, Florida.
- Mike Daly of Pogust Goodhead in Philadelphia.
- Stacy Hauer of Johnson Becker in St. Paul, Minnesota.
- Alex Walsh of Alex Walsh Law in Washington, D.C.
- Diandra Debrosse Zimmermann DiCello Levitt in Birmingham, Alabama.

Fine, Kaplan and Black member Roberta Liebenberg and Dilworth Paxson partner Nina Spizer, both based in Philadelphia, were appointed to serve as plaintiffs liaison counsel.

"It's an incredibly dynamic, robust, diverse slate of lawyers that bring all different types of important perspectives to what we know we need to gear up for," Walsh said.

Pratter's order allows the attorneys appointed to the committee to select up to 17 additional members and designate subsidiary committees. Walsh said she expects the additional members will be drawn from the list of attorneys the plaintiffs have already put forth.

The plaintiffs had initially organized a leadership team of 30 attorneys, to which they later added two more names. The proposed structure included four co-lead counsel, two liaison counsel, a steering committee and an executive committee.

Only one of the proposed co-leads—Pennock—was named to the plaintiffs committee in Pratter's order, though all of the appointed committee members and both liaison counsel were part of the plaintiffs' proposed leadership team.

Pennock declined to comment.

In the lead-up to the recent leadership hearing, not everyone was in agreement about the plaintiff's proposed team.

Sarah Foster of the Schlesinger Law Offices in Fort Lauderdale raised objections, contending that she and others were excluded from the leadership process.

She claimed in an April 5 filing that proposed co-leads' "control was assumed and not earned through a fair and objective process."

The proposed co-lead counsel called the objection an "unfounded attack on a well-accepted, fair and transparent process" and asserted that the proposal was created with full consideration of those who applied for leadership roles.

Though Pratter's order did not name Foster as a member of the plaintiffs' committee, it appointed Liebenberg to serve as Foster's mentor.

Neither Forster nor Liebenberg responded to requests for comment.

Walsh said that, while MDLs sometimes involve leadership development committees, she has not seen instances of an MDL judge assigning a specific lawyer a mentor. She said the move reflects Pratter's commitment to fostering opportunities for more junior attorneys to gain experience in her courtroom.

Walsh said, “It really speaks to how innovative this judge is and that she really means what she says.”

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Plaintiffs' lawyers chosen to lead Ozempic litigation

 [reuters.com/legal/litigation/plaintiffs-lawyers-chosen-lead-ozempic-litigation-2024-04-24](https://www.reuters.com/legal/litigation/plaintiffs-lawyers-chosen-lead-ozempic-litigation-2024-04-24)

Brendan Pierson

A pharmacist displays a box of Ozempic, a semaglutide injection type 2 drug used for treating diabetes made by Novo Nordisk, at Rock Canyon Pharmacy in Provo, Utah, U.S. March 29, 2023. REUTERS/George Frey/File Photo Purchase Licensing Rights , opens new tab

April 24 (Reuters) - A federal judge has appointed eight plaintiffs' lawyers to leadership roles in federal mass tort litigation over claims that Novo Nordisk (NOVOB.CO) , opens new tab and that Eli Lilly (LLY.N) , opens new tab failed to warn of the risks of harsh side effects associated with blockbuster diabetes and weight loss drugs including Ozempic, Wegovy and Mounjaro.

Alex Walsh of Walsh Law, one of the lawyers, said Tuesday's order , opens new tab from U.S. District Judge Gene Pratter in Philadelphia was "unusual" in that it did not appoint lead counsel, instead leaving it up to the attorneys to decide the details of the leadership structure and allowing them to choose additional committee members for a maximum of 25.

"I'm ready to turn my attention fully to these defendants and fight for justice for our clients," Walsh said.

The other lawyers on the committee are Paul Pennock of Morgan & Morgan; Marcus Susen of Susen Law Group; Sara Couch of Motley Rice; Cameron Stephenson of Levin, Papantonio, Rafferty, Proctor Buchanan, O'Brien, Barr & Mougey; Mike Daly of Pogust Goodhead; and Stacy Hauer of Johnson Becker. Couch said in an email that she was "honored" by the appointment.

The judge also appointed Roberta Liebenberg of Fine Kaplan and Black and Nina Spizer of Dilworth Paxson to serve as liaison counsel, a role that typically involves handling communications between the leadership and the judge.

Most of the eight committee members were among a group of 32 lawyers who last month backed a motion asking Pratter , opens new tab to appoint Pennock and three others - Parvin Aminolroaya of Seeger Weiss, Jonathan Orent of Motley Rice and Sarah Ruane of Wagstaff & Cartmell - co-lead counsel in the case.

That motion drew an objection from Sarah Foster and Jeffrey Haberman of the Schlesinger Law Offices, who argued that all candidates for leadership roles should have to apply on the public docket as part of an open, transparent process. Foster, an associate at the firm, separately asked to be appointed to the leadership committee herself.

While Pratter did not grant that request, she did order that Liebenberg, the liaison counsel, serve as a mentor to Foster.

Susen had made his own separate application, which the larger group of lawyers opposed in an April 3 filing.

Lawsuits over the weight loss drugs were centralized in the Philadelphia court in February, and 75 were pending in the court as of April 1.

The lawsuits accuse the companies of failing to warn doctors about some harsh side effects associated with Novo Nordisk's Ozempic, Wegovy and Rybelsus and Eli Lilly's Trulicity and Mounjaro, a class of drugs known as GLP-1 receptor agonists.

Both companies have previously said the claims are meritless and that they adequately disclose their drugs' side effects. They did not immediately respond to requests for comment on Wednesday.

Read more:

[Ozempic side effects lawsuits centralized in Pennsylvania court](#)

[Ozempic litigation's leadership spat spotlights lawyers' self-selection](#)

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Reporting By Brendan Pierson in New York

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3 judges nominated to federal court in Los Angeles

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Judges and Judiciary

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Apr. 25, 2024

The choices are Los Angeles County Superior Court Judge Michelle Williams Court, Los Angeles County Superior Court Judge Anne Hwang and State Bar Court Judge Cynthia Valenzuela Dixon.

Michelle Williams Court

President Joe Biden nominated three sitting judges to vacancies on the Central District of California, as the timeline for getting judges confirmed grows increasingly short in an election year.

The choices are Los Angeles County Superior Court Judge Michelle Williams Court, Los Angeles County Superior Court Judge Anne Hwang and State Bar Court Judge Cynthia Valenzuela Dixon.

The picks meet the president's usual pattern of choosing women while emphasizing diversity both in racial background and professional experience.

Court, supervising judge of the court's civil division since a year ago, has been a superior court judge since appointed by Gov. Jerry Brown in 2012. Before that, she worked as an attorney, vice president and general counsel at Bet Tzedek Legal Services from 2002 to 2011.

A 1993 graduate of Loyola Law School, Court was an associate at Milberg, Weiss, Bershad, Hynes & Lerach from 2000 to 2002 and previously worked at two other firms. She also was a project attorney at the American Civil Liberties Union of Southern California from 1994 to 1995. She is married to Jamie Court, president of Consumer Watchdog, a nonprofit public interest organization.

Judge Anne Hwang

Hwang, who has served on the superior court bench since 2019, spent a dozen years before that as a federal public defender in Los Angeles. She also worked as an associate at Irell & Manella LLP and graduated from the University of Southern California Law School in 2002.

Valenzuela Dixon, who has been a State Bar Court judge since she was appointed to the position by the state Supreme Court in 2016, has been a supervising attorney for the Central District of California, head of national litigation at the Mexican American Legal Defense and Educational Fund and an assistant U.S. attorney in the Central District. Early in her career, the 1995 UCLA School of Law graduate was a trial attorney with the U.S. Department of Justice's civil rights division in Washington, D.C., and a special assistant at the U.S. Commission on Civil Rights in Los Angeles.

Cynthia Valenzuela Dixon

Thomas A. Saenz, president and general counsel of MALDEF, could not be reached Wednesday about Valenzuela Dixon's nomination. In the past, he has complained that Biden and California's senators have not done enough about what he said was the underrepresentation of Latinos on the Central District bench.

There are four current or future vacancies in the Central District, which is based in Los Angeles. Senior U.S. District Judge George H. Wu, an appointee of President George W. Bush, took senior status in November.

U.S. District Judge Cormac J. Carney, another Bush appointee, announced earlier this month that he would be retiring May 31. U.S. District Judge Dale S. Fischer will take senior status May 1. U.S. District Judge Philip S. Gutierrez is scheduled to take senior status in October. Both, like Wu and Carney, are Bush appointees.

#378206

Craig Anderson

Daily Journal Staff Writer
craig_anderson@dailyjournal.com

Quinn Emanuel Battles Former Allies in Jane Street Options Case

By Tatyana Monnay

- Quinn litigators face firm's ex-lawyers
- Case involves alleged theft of strategy

Bloomberg Law News 2024-04-25T10:53:22779632279-04:00

Quinn Emanuel Battles Former Allies in Jane Street Options Case

By Tatyana Monnay 2024-04-25T05:05:11000-04:00

- Quinn litigators face firm's ex-lawyers
- Case involves alleged theft of strategy

Quinn Emanuel, a law firm with a reputation for driving hard-nosed litigation, is squaring off against former partners on behalf of Jane Street Group, which claims a theft of its trading strategy.

Alex Spiro, Elon Musk's go-to lawyer, leads Jane Street's outside legal team from Quinn Emanuel Urquhart & Sullivan, along with firm partner Deborah Brown.

David Elsberg and Rollo Baker, two former Quinn Emanuel partners who launched boutique firm Elsberg Baker & Maruri this year, represent two former Jane Street employees accused of pilfering the lucrative trading strategy.

The Jane Street lawsuit against its ex-employees offers a view into a high-speed trading market that has soared over the past decade. Jane Street claims it brought in about \$1 billion last year from the India options strategy, and the firm's former traders deny stealing it.

For Quinn Emanuel, the high-profile fight offers an opportunity to show off its roster of talent, past and present. Spiro has built a reputation as a celebrity litigator, with his successful defense of Jay-Z in a trial over claims the rapper breached an endorsement deal for a cologne brand.

Spiro also successfully defended Musk against allegations that the Tesla leader defrauded shareholders with a tweet claiming he'd secured funding to take the company private. He is aiding Adam Neumann's bid to buy back WeWork Inc.

Elsberg, who will go toe to toe with Spiro in the Jane Street suit, was among a group of 10 lawyers who announced in 2018 that they fled Quinn Emanuel to start a new boutique. That same year, Elsberg helped Crestview Partners LP stop billionaire William Koch from blocking the sale of one of the world's biggest producers of petroleum coke.

Elsberg's firm declined to comment. Quinn Emanuel did not immediately respond to requests for comment.

Jane Street made the theft allegations against its former employees, Douglas Schadewald and Daniel Spottiswood, in an April 12 complaint filed in Manhattan federal court. The firm also sued Millennium Management, where it claims Schadewald and Spottiswood are using the allegedly stolen strategy.

US District Judge Paul Engelmayer declined Jane Street's request for a temporary restraining order on April 19 and scheduled a trial for July. The two traders denied the theft allegations in signed declarations to the court.

Elsberg's Launches

Elsberg and his nine other ex-Quinn colleagues in 2018 helped start boutique firm Selendy Gay, and he became a name partner there in 2022.

Selendy Gay emerged as a prominent litigation firm despite having fewer than 80 lawyers. It represented Assured Investment Management over accusations of fraud by its funders as well as a plaintiff alleging Apple Inc. was infringing on a patented design.

In February, Elsberg launched a new boutique with Quinn alums. Elsberg Baker & Maruri's name partners include Baker, who was co-chair of Quinn Emanuel's corporate governance practice, and Silpa Maruri, who was co-chair of the Quinn's Delaware practice.

Baker represented Mirae Asset Management over a \$6 billion terminated transaction, and Maruri represented Musk when the billionaire fought in court to acquire X, the platform formally known as Twitter.

The new firm is representing oil producer Vitol Inc., which is seeking arbitration against a company that allegedly has not paid Vitol for delivered product.

The legal team for Schadewald and Spottiswood at Elsberg Baker also includes partner Vivek Tata, also a Selendy Gay alum, senior attorney Brian Campbell, also a Quinn alum, and associate Nicholas Martin.

Jane's Quinn Team

At Quinn Emanuel, along with Spiro, Jane Street has turned to Brown, who has represented the Federal Housing Finance Agency against major banks, including UBS, JP Morgan and Merrill Lynch, over residential-mortgage backed securities.

Quinn Emanuel's team also includes associate Jeffrey Miller.

Spiro's other work for Quinn includes defending rapper Megan Thee Stallion over alleged unpaid wages owed to a former employee in a suit filed April 23 in Los Angeles County Superior Court.

Spiro is facing sanctions over his conduct in Texas state court where he's defending Musk against defamation allegations. He helped Musk in his \$44 billion purchase of X, formerly Twitter.

The case is Jane Street Group LLC v Millennium Management LLC, S.D.N.Y., Docket No. 1:24-cv-02783, 4/12/2024.

To contact the reporter on this story: Tatyana Monnay at tmonnay@bloombergindustry.com

To contact the editors responsible for this story: John Hughes at jhughes@bloombergindustry.com

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April 25, 2024, 2:01 AM PDT

How DLA Piper Learned to Stop Worrying and Love Generative AI

By Roy Strom

Column

Bloomberg Law News 2024-04-25T10:54:38835515121-04:00

How DLA Piper Learned to Stop Worrying and Love Generative AI

By Roy Strom 2024-04-25T05:01:01000-04:00

Welcome back to the Big Law Business column . I'm Roy Strom, and today we look at DLA Piper's multi-front generative AI strategy. Sign up to receive this column in your Inbox on Thursday mornings.

Loren Brown is the rare law firm leader I've spoken with who can articulate a business plan around generative artificial intelligence.

The US vice chair of DLA Piper has a strategy to capture new, AI-related work today while investing in people and technologies that could build the future firm that many lawyers find so distressing.

Most law firm leaders fret that AI will wreak havoc on their prevailing business model—charging hefty sums for lawyers' time.

Brown is not sanguine about that. He sees a future where lawyers are more efficient with the help of new technology, and law firms shift toward a value-based billing system. But he also believes that AI-driven business models will spin up enough legal matters on their own to make up for the work taken away by more efficient machines, something he calls his "net effect theory."

Loren Brown

Credit: Firm handout

"If your business model is based on charging more than \$1,000 an hour for very routine work that could be automated quite easily, then that's not a very good business model to begin with," Brown said in an interview. "We all have to prepare for the likelihood that the more routine aspects of our business will be the most disrupted by technology. And we're perfectly comfortable with that."

Brown acknowledged there's fear in the legal industry around how AI will threaten the law firm business model. He believes the adoption of AI tools will never replace the need for great lawyers. He also says lawyers will soon compete based not just on reputation and relationships, but also their ability to utilize technology to deliver services that humans alone can't provide.

"If our firm and a competitor firm go to market with equally great lawyers, but we have unique access to AI products that drive insights beyond the reach of the competitor firm," Brown said, "we think that tilts the market in our favor."

Hiring the Right Experts

Brown's first step is for DLA Piper to be the leading defender of AI algorithms in courtrooms and with government regulators.

To accomplish this, he says it is vital the law firm employ data scientists and experts who understand how AI works. The first of those hires came in 2018, when Brown led the effort to recruit Danny Tobey. The Yale-trained lawyer has a medical degree and founded a software startup that was purchased by Wolters Kluwer (he's also written novels).

Tobey, who's now chair of the AI and data analytics practice at DLA Piper, had been thinking about the legal consequences of the technology long before ChatGPT was rolled out in late 2022. He authored a 2018 paper that considered whether software companies could lose legal protections from malpractice claims as AI advanced. Tobey warned at the time that the technology was "replacing the very professionals already subject to professional liability."

DLA Piper in early 2023 hired a team of more than 10 data scientists from Faegre Drinker, led by Bennett Borden, a lawyer and data scientist who's helped the firm build a business testing AI models for bias.

Law firms are a good venue for that kind of technical work thanks, in part, to attorney-client privilege, which can protect results of efforts to obtain bad outcomes from the algorithms.

"Really understanding how these models work is core to defending the models," Tobey said in an interview. "You can't defend them if you don't understand their true mechanism of action. So being on the forefront of that litigation is the issue of the day."

Defending AI in Court, Congress

Brown said the firm's AI-related work is currently generating revenue in the eight figures, noting the group's growth has been "exponential." DLA Piper is the third largest law firm in the US by revenue, bringing in \$3.8 billion in 2023, according to data from The American Lawyer.

DLA Piper has already racked up appearances in early cases alleging injuries caused by large language models (LLMs).

Danny Tobey

Credit: Firm handout

The firm is defending Microsoft in a lawsuit alleging its Bing search engine defamed an author when an AI-generated blurb mistakenly said he'd been sentenced to 18 years in prison for seditious conspiracy. That sentence had been given to someone with a similar name, according to the complaint.

The firm is also defending OpenAI in a defamation case brought by a conservative radio host in Georgia who claims ChatGPT made false claims that he embezzled money from a gun-rights organization.

DLA Piper appears to have a close relationship with OpenAI, which unleashed the fervor around generative AI when it released ChatGPT in 2022. The firm was hired last November by the Sam Altman-led company to lobby Congress on AI-related legislation, pulling in \$180,000 over the past two quarters, according to Senate disclosures.

DLA Piper advised Altman on his testimony before Congress last fall, reported Politico, with a DLA Piper spokeswoman confirming the law firm "provides strategic advice to the company on a variety of topics."

The firm has also done lobbying work on behalf of PathAI, a medical research company using AI, and Pindrop Security Inc., which develops security products to guard against deepfakes, Senate disclosures show.

Building New Products

Bringing in revenue from that more traditional business today helps Brown convince his fellow firm leaders that investments in building AI-fueled legal work products will pay off.

Brown and Tobey are cautious about where they build such products, noting a law firm can't invest in the same ways as legal tech companies or large consulting firms.

While technology will make some traditional processes more efficient, they are trying to build products that, paired with human advice, deliver new types of insights. And they're targeting areas of work that are already amenable to alternative billing structures, such as low-margin practices.

One recent example is a "proactive compliance" tool that sifts through employees' unstructured communications to flag potential breaches of anti-bribery or other laws. The tool was trained on statutes such as the Foreign Corrupt Practices Act with longtime legal experts in the field involved.

The firm concluded a trial run of the tool with a major client recently, Tobey said, and the company's head of investigations reported it caught issues that without intervention could have turned into expensive internal investigations.

"That's an example of an exciting way to use AI that's not automating something people already do," Tobey said. "It's creating new value."

Tools like that bring law firms into a new business: Preventing legal issues, rather than using human time to solve them. If such tools are adopted more broadly, it could impact firms' leverage models. Fewer associates might be needed, for example, if more investigations are staved off by proactive tools.

Tobey said the firm is working with its pricing team to develop strategies for selling things like the proactive compliance product. So far, he said the economics are "incredibly valuable to the client and incredibly good for us."

Worth Your Time

On Lawyer Rankings: Chambers & Partners has long been the gold standard for lawyer rankings. Justin Wise reports on changes to the company's business model after it was bought by a private equity firm.

On Baker McKenzie: Baker McKenzie is picking up a 17-lawyer corporate group from Munger, Tolles & Olson in Los Angeles, Meghan Tribe reports.

On Burford Capital: The litigation funding company asked a US federal judge to hand it 51% control over Argentine's state oil company, YPF SA, to help satisfy a \$16 billion court judgment against the Latin American country.

That's it for this week! Thanks for reading and please send me your thoughts, critiques, and tips.

To contact the reporter on this story: Roy Strom in Chicago at rstrom@bloomberglaw.com

To contact the editors responsible for this story: Chris Opfer at copfer@bloombergindustry.com; John Hughes at jhughes@bloombergindustry.com; Alessandra Rafferty at arafferty@bloombergindustry.com

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Utility That Bribed Ohio Regulators Secretly Bankrolled Republican Mike DeWine's 2018 Gubernatorial Bid, Records Show

 [motherjones.com/politics/2024/04/firstenergy-bribery-scandal-ohio-mike-dewine-jon-husted-documents](https://www.motherjones.com/politics/2024/04/firstenergy-bribery-scandal-ohio-mike-dewine-jon-husted-documents)

April 25, 2024

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FirstEnergy, which is embroiled in a bribery scandal, secretly gave \$2.5 million to help elect Gov. Mike DeWine, seen here at a 2022 forum. Graham Stokes/Ohio Capital Journal via Floodlight

This story was produced by Floodlight, a nonprofit newsroom that investigates the powerful interests stalling climate action.

In 2018, the Akron, Ohio-based utility FirstEnergy donated \$2.5 million to a Republican Governors Association-affiliated dark money group backing GOP nominee Mike DeWine in a competitive race for Ohio governor, according to newly released records.

The records show FirstEnergy's extensive behind-the-scenes work to get DeWine elected. "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," then-CEO Chuck Jones wrote in an [August 14, 2018 email invitation](#) to a DeWine fundraiser.

From: Jones, Charles E. <[REDACTED]>
Sent: Tuesday, August 14, 2018 10:53 AM
To: John Wilder <[REDACTED]>; John Wilder <[REDACTED]>
Subject: DeWine

John,

Thank you for agreeing to help out with the Dallas event that Governor Abbott is hosting for Mike DeWine. Mike is a former US Senator and now Ohio Attorney General who is running for Governor in Ohio. 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. His opponent Richard Cordray would not be good for our State. Lot's of National money will be in this race on both sides because of the importance Ohio will be in the 2020 Presidential race and the value of having a seated Governor in place to help. The flyer attached has the info about the Dallas event. Any contribution should be made payable to "DeWine Husted for Ohio". If you don't plan to attend the event (which is totally up to you), you can send the check directly to my office at 36 S. Main Street, Akron, Ohio 44333. I will make sure and get it to the campaign. Thanks again!

Also, I don't have email for Tony so feel free to pass this on.

In this email, obtained by a public records request, then-FirstEnergy CEO Chuck Jones emphasized the importance of electing Mike DeWine in 2018. Jones has since been indicted on charges related to HB 6, the utility bailout bill Gov. DeWine signed in July 2019.

The \$2.5 million donation, which had never been disclosed, reveals how invested the power company was in the outcome of the Ohio governor's race between DeWine and Democratic challenger Rich Cordray. At the time, FirstEnergy wanted to bail out two nuclear plants then owned by a subsidiary—but faced opposition from Ohio leaders including then-Gov. John Kasich.



The Perry Nuclear Power Plant in Lake County, Ohio, is at the core of bribery allegations involving FirstEnergy, two of its former executives, and former state officials.

FirstEnergy/Flickr via Floodlight

Both DeWine and Cordray had promised to save the two northern Ohio nuclear plants if they became governor, and the company chipped in publicly disclosed money to both the Republican Governors Association and the Democratic Governors Association.

DeWine has not been implicated in the ongoing bribery scandal surrounding the nuclear bailout. Eight people, including the state's former House Speaker Larry Householder, have been indicted. Two of those charged in the multimillion-dollar scandal stemming from the passage of the bailout bill have taken their own lives, including Sam Randazzo, the former chairman of the Public Utilities Commission of Ohio, who was found dead earlier this month from suicide.

According to the newly released records, FirstEnergy donated \$2.5 million in three installments to State Solutions, a 501(c)(4) nonprofit affiliated with the Republican Governors Association that is not required to disclose its donors.

One installment of \$500,000 is labeled “DeWine;” the other two are listed as “RGA,” according to records released by the Public Utilities Commission of Ohio to the USA TODAY Network Ohio Bureau, *Floodlight*, *Ohio Capital Journal*, and the *Energy News Network*.

The documents, including emails among high-level FirstEnergy executives, show multiple efforts by the power company to keep its support of DeWine out of the public eye by using dark money donations.

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The records show that on August 14, 2018, Jones—now criminally charged in the scandal—held a fundraiser for DeWine and running mate Jon Husted, calling Husted a “good friend” to the utility.

Then DeWine met with FirstEnergy executives at an RGA fundraiser in downtown Columbus on October 10, 2018, the *Dayton Daily News* first reported. Shortly after, FirstEnergy Solutions donated \$500,000 to RGA, according to tax records.

FirstEnergy also donated \$200,000 to the Citizens Policy Institute, which blasted Cordray for being “Republican Lite,” according to released records. Cleveland restaurateur Tony George, a close FirstEnergy ally, was behind the group, as *BuzzFeed News* reported at the time.

In November 2018, DeWine defeated Cordray, 50.4 percent to 46.7 percent as Democrats swept elections across the country. In 2019, FirstEnergy helped Republican lawmakers craft HB 6, an energy overhaul measure that included \$1 billion for the two nuclear plants. DeWine signed the bill within hours of it hitting his desk.

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When asked if the donations influenced DeWine’s support of nuclear energy, DeWine spokesman Dan Tierney said: “Gov. DeWine’s support for nuclear energy is documented well prior to 2018, including during his tenure as United States senator.”

FirstEnergy spokeswoman Jennifer Young said the company was unable to comment on pending litigation; shareholders sued FirstEnergy after federal investigators revealed an extensive pay-to-play scandal bankrolled by the Ohio utility.

That federal investigation led to a 20-year prison sentence for Householder, a five-year sentence for ex-Ohio Republican Party Chairman Matt Borges, and the firing of several FirstEnergy executives. A parallel state-led criminal investigation has brought charges against two FirstEnergy executives and Ohio’s former chief energy regulator.

Attorneys in the shareholder lawsuit have sought to subpoena records from DeWine and depose Husted, but neither faces any criminal accusations. FirstEnergy donated \$1 million through a dark money group to back Husted’s campaign in 2017, according to previously

released records. Husted and DeWine were competitors until they merged campaigns.



In 2017, Ohio Lt. Gov. Jon Husted, seen here at a November 2022 election night party, benefitted from a \$1 million donation by FirstEnergy to a conservative 501(c)4 nonprofit called Freedom Frontier.

Jay LaPrete/AP

In 2018, the owner of the nuclear plants, FirstEnergy Solutions, was in bankruptcy. So creditors raised concerns about a \$1 million payment earmarked to help DeWine's campaign, according to emails exchanged on August 11, 2018. "They cited it is very large compared to DeWine's current fundraising."

Senior Vice President of External Affairs Michael Dowling tried to allay concerns by explaining that donors can back DeWine's bid in several ways, including giving to DeWine's campaign fund, the Republican Governors Association, State Solutions, and the Ohio Republican Party's state candidate fund.

"Theoretically, DeWine/Husted could have a balance of \$10M in their campaign account and the RGA could spend \$40M in support of DeWine in Ohio," Dowling explained in an email. "My point is that comparing the size of a contribution to the RGA to what the DeWine campaign has raised or what the DeWine Campaign's current balance is can be done, but I'm not sure is logical."

Republican fundraiser Brooke Bodney, who worked with the RGA, confirmed: “All factually accurate.”

Meanwhile, FirstEnergy Solutions’ David Griffing reassured Akin Gump partner Rick Burdick that there was no connection between State Solutions and DeWine’s campaign. Akin Gump Strauss Hauer & Feld is a powerful law firm that represented FirstEnergy Solutions during its bankruptcy and lobbied for House Bill 6.

The issue was important because exchanging a political favor for a campaign donation would be illegal, a quid pro quo.

“Thanks,” Burdick wrote. “Just to confirm there is also no understanding with the DeWine campaign re his position on regulatory relief for nuclear plants related to this contribution.”

“Correct,” Griffing replied.

Mario Alejandro Ariza is an investigative reporter at Floodlight; Jessie Balmert reports for the USA TODAY Network Ohio Bureau.

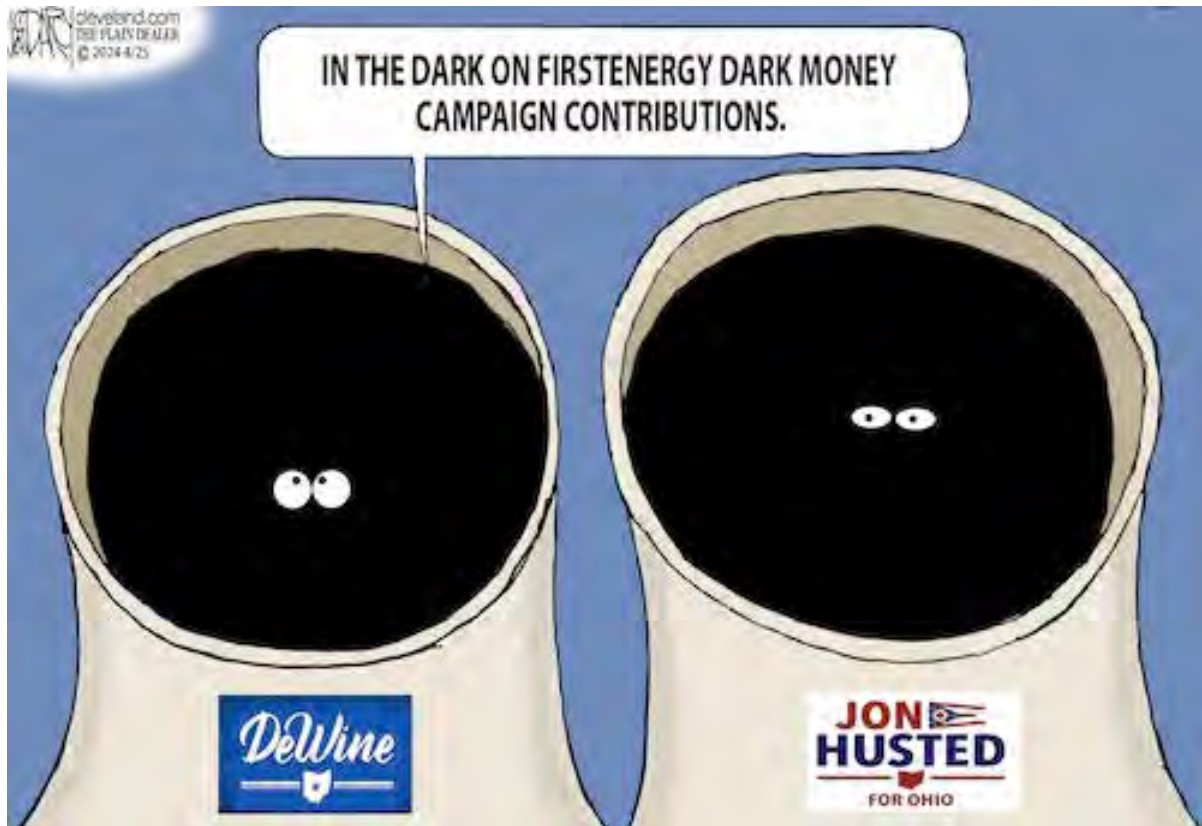
Gov. DeWine dark money memory: Darcy cartoon

[cleveland.com/darcy/2024/04/gov-dewine-dark-money-memory-lapses-darcy-cartoon.html](https://www.cleveland.com/darcy/2024/04/gov-dewine-dark-money-memory-lapses-darcy-cartoon.html)

April 25, 2024

1. Jeff Darcy's Editorial Cartoons

- Updated: Apr. 25, 2024, 11:00 a.m.|
- Published: Apr. 25, 2024, 7:12 a.m.



FirstEnergy was found to have powered a bribery scheme to pass the Ohio House Bill 6 bailout of its nuclear power plants. Jeff Darcy/Cleveland.com

By

Jeff Darcy, cleveland.com

CLEVELAND, Ohio -- Governor Mike DeWine claims to have been totally in the dark about FirstEnergy plugging in more than \$4 million in 'dark money' contributions to his and Lt. Gov. Jon Husted's campaign.

The contribution's became public in ongoing litigation over the FirstEnergy bribery scheme to pass HB6, the Ohio House Bill bailout of FE's nuclear power plants. DeWine and Husted backed HB6.

Skip Ad

'Dark money' means contributions to 501 (c)(4) nonprofit groups that are allowed to raise unlimited funds without having to disclose names of donors.

"Both candidates for governor came out with basically the same position, that nuclear energy was important. You'd have to ask those [FirstEnergy] individuals. They were the ones who made the decision. Obviously, we want as much help as we can in a campaign. But contributing to an independent expenditure, we don't have that information," said Gov. DeWine who defeated Nan Whaley, the former Mayor of Dayton.

Then FirstEnergy CEO Chuck Jones had also held a traditional fundraiser for the DeWine-Husted ticket at his home. Jones has since been indicted for his role in the bribery scheme and pled not guilty.

Gov. DeWine said he has no memory of having met with a FirstEnergy lobbyist at a 2018 Republican Governors Association fundraiser. The following day, that lobbyist made a \$500,000 contribution.

"I don't remember that. I'm not disputing it, I just don't remember. I don't remember the meeting," said Gov. DeWine.

Gov. DeWine is ineligible to seek a third term in 2026. So more daylight being shown on 'dark money' and the bribery scandal is a greater risk to dimming the starlight on a Jon Husted campaign for governor.

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Around the Web

How Citizens United cleared the way for the biggest political bribery scandal in Ohio history

 [alternet.org/ohio-bribery-scandal](https://www.alternet.org/ohio-bribery-scandal)

April 25, 2024

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bribery, corruption, money, cash

April 25, 2024

Next to gerrymandering, the biggest institutional driver of dangerous and destructive political misrepresentation in Ohio and across America is the U.S. Supreme Court's disastrous 2010 Citizens United ruling allowing unbridled, dark money, pay-to-play corruption, which has now led to the biggest political bribery scandal in state history.

The central feature of that criminal racketeering scheme was the use of 501(c)(4) dark money groups by FirstEnergy and now-imprisoned former Ohio House Speaker Larry Householder to launder campaign donations and prop up the candidacies of politicians who would support an unnecessary \$1.3 billion bailout for the utilities industry at the expense of consumers.

Corporate dark money largess

Householder's dark money group, Generation Now, has pleaded guilty to participating in the conspiracy, and was used by FirstEnergy to funnel more than \$60 million worth of bribes to Householder's political machine to make him Ohio House Speaker and pass the bailout. Ohio Gov. Mike DeWine signed the bailout the same day it was passed.

\$15 million of the Generation Now came via another dark money group, Partners for Progress. FirstEnergy gave \$25 million to Partners for Progress between 2017 and 2019. A FirstEnergy lobbyist named Dan McCarthy was listed as the principal of Partners for Progress in 2017, later leaving to become DeWine's legislative affairs director where he lobbied to pass the House Bill 6 bailout. Certain FirstEnergy executives were also involved in choosing the three directors of Partners for Progress, two of whom were FirstEnergy lobbyists.

FirstEnergy also gave \$1 million in 2017 to a dark money group called Freedom Frontier supporting Jon Husted as he made a Republican Party primary bid for the nomination to run for governor. The group then supported DeWine after Husted dropped out of the primary race to become his running mate.

In 2018, FirstEnergy donated \$2.5 million to a Republican Governors Association-affiliated dark money group called State Solutions backing DeWine for governor. In 2019, they gave \$300,000 to another dark money group called Securing Ohio's Future, for a grand total of nearly \$4 million in dark money to support DeWine/Husted.

Leaving no pocket unfilled, FirstEnergy also made a \$300,000 contribution in 2019 to a dark money group called Liberty Ohio, which a FirstEnergy lobbyist tied to now-Ohio Senate President Matt Huffman, calling it "the Huffman C4."

As far as traditional campaign spending, now-indicted former FirstEnergy executive Chuck Jones hosted a fundraiser for DeWine at his home. The company also gave nearly \$1 million in traditional campaign money to legislators, other officeholders, candidates and political parties. This included FirstEnergy's largely employee-funded political action committee, which gave \$25,202 to the 2018 DeWine campaign and \$10,000 to his inaugural committee. Alongside Jones providing \$12,700 in food and beverages for the DeWine fundraiser, the total in traditional funding comes to \$47,902. After the scandal broke in 2020, DeWine pledged to donate \$35,000 of that, noting at the time that FirstEnergy executives had not been charged.

Influence peddling

Shortly before winning the 2018 race for governor, DeWine met with FirstEnergy executives at an RGA fundraiser in downtown Columbus on Oct. 10, 2018, the Dayton Daily News first reported. Shortly after, FirstEnergy Solutions donated \$500,000 to the Republican Governor's Association, according to tax records.

Shortly after winning the 2018 race for governor, on Dec. 18, 2018, DeWine, Husted, Jones and now-indicted FirstEnergy executive Michael Dowling met at the Columbus Athletic Club. That same night, Jones and Dowling went from that dinner to the German Village condo of FirstEnergy lobbyist Sam Randazzo, where they seem to have negotiated a \$4.3 million payment that FirstEnergy has admitted in a deferred prosecution agreement was a bribe.

When Randazzo was indicted by the U.S. Department of Justice in December 2023 on 11 felony counts of bribery and embezzlement, the charges included allegations that Randazzo had a corrupt relationship with the FirstEnergy executives stretching back to 2010, allegedly serving as general counsel to the Industrial Energy Users of Ohio while secretly being paid as a consultant for FirstEnergy: Randazzo settled disputes over electricity rates on terms acceptable to the energy companies, then channeled the settlement money through shell companies where he skimmed off a portion, the indictment said.

Between 2016 and 2019, FirstEnergy paid \$13 million into Randazzo's shell companies, a state-level indictment of Randazzo said. Of that, Randazzo passed \$7.75 million to the industrial users and pocketed the rest, it said. DeWine's chief of staff, Laurel Dawson, was married to a man who had been a paid lobbyist for FirstEnergy — and who had received a \$10,000 loan from Randazzo in 2016, the indictment said.

In January 2019, as Randazzo was being vetted to chair the PUCO, he told Dawson, DeWine's then-chief of staff, about the \$4.3 million payment, but he did not tell her about the other millions he had received from FirstEnergy, the indictment said. Randazzo didn't report any of the payments to the Ohio Ethics Commission, it added.

A former aide gave DeWine a 198-page dossier reporting shady financial connections between Randazzo and FirstEnergy on Jan. 28, 2019. But the governor's office says that Dawson never told the governor about the \$4.3 million payment before DeWine nominated Randazzo to chair the PUCO on Feb. 4, 2019.

According to the state indictment, Randazzo spent the rest of the year and part of the next helping to draft and openly lobby for the corrupt bailout. The bailout was passed and signed in July 2019.

Householder and four others were arrested in July 2020. But it wasn't until the following November — when the FBI searched Randazzo's condo — that Dawson says she told the governor about the \$4.3 million payout.

DeWine has staunchly defended Dawson, just as he defended McCarthy, the former aide and FirstEnergy lobbyist with the dark money bribery pass-through group. McCarthy resigned his position in September 2021, but DeWine has kept Dawson on staff as an advisor earning more than \$180,000 per year. In September 2023, DeWine appointed McCarthy to the state racing commission.

What's happened since?

After the scandal broke, the nuclear part of Ohio House Bill 6 was eventually repealed, but the law's gutting of the state's renewable energy portfolio still stands, as does the bailout of two 1950s-era coal plants, one of which is in Indiana.

Householder and former state GOP Chairman Matt Borges are serving 20 years and five years respectively in federal prison for their roles. Two other lobbyists cooperated and are awaiting sentencing, while a third died by suicide wearing a "DeWine for governor" t-shirt in June 2021. Randazzo died by suicide on April 9, 2024.

FirstEnergy shareholders have filed a lawsuit, an ongoing case in which DeWine has been subpoenaed and Husted has been called on to give a sworn deposition.

Asked this week about the Oct. 10, 2018 RGA fundraiser meeting with FirstEnergy executives, DeWine claimed, "I don't remember that. I'm not disputing it. I just don't remember. I don't remember the meeting."

As for the Dec. 18, 2018 dinner with FirstEnergy executives, DeWine has said he doesn't recall Randazzo's name coming up.

Asked this week about the \$4 million that FirstEnergy spent in dark money supporting his bid for governor, DeWine claimed he didn't know about it.

Sure, Jan.

After the death of Randazzo, Ohio Attorney General Dave Yost has said the state's prosecution will proceed, and Jones and Dowling, who have pleaded not guilty, will still have to face their day in court.

U.S. Attorney for the Southern District of Ohio Ken Parker has said his team will also continue to pursue the widespread corruption case.

Citizens United

Deploying one of the most absurd, naive, and destructively dumb statements I've ever read in a U.S. Supreme Court ruling from my lifetime, then-Justice Anthony Kennedy in 2010 authored the landmark campaign finance decision in Citizens United v. Federal Elections Commission:

"(W)e now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. ... The fact that speakers (i.e., donors) may have influence over or access to elected officials does not mean that these officials are corrupt. ... The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy," Kennedy claimed.

What combination of delusional hallucinogenics was Kennedy on what he made that obnoxious declaration?

As then-Justice John Paul Stevens observed in his dissent, the majority's Citizens United ruling is "a rejection of the common sense of the American people."

This entire dark money political bribery and money laundering scheme in Ohio was made possible exactly because a narrow majority of Republican justices on the U.S. Supreme Court declared that for the purposes of the constitution, corporations are people and money is speech.

They followed the Citizens United ruling with several others that removed any and all accountability for dark money political spending, including upholding the SpeechNow.org v. FEC appellate ruling months after Citizens United, and their McCutcheon v. FEC ruling in 2014 by another 5-4 vote.

Combined, these decisions have cleared the way for wealthy individual donors, corporations, and other moneyed special interests to spend unlimited dark money on elections. And oh boy, have they ever.

Outside groups have poured billions of dollars into influencing American elections since the Citizens United ruling.

Take just our races in Ohio for one of our seats in the U.S. Senate, and just outside spending for or against candidates: According to OpenSecrets.org, in 2004 the amount was just over \$45,000. In 2010, it was nearly \$3.5 million. In 2016, it was more than \$54 million. In 2022, it was just shy of \$100 million dollars.

Restoring representation

This is all so far beyond ridiculous there's nary a word for it. Gerrymandered rigging of district maps to guarantee supermajority party power goes hand-in-hand with a system of campaign finance that allows for this kind of pervasive pay-to-play corruption infecting government.

If voters are ever to truly save Ohio and the American Republic by restoring true representation of the people and the people's interests, poisonous gerrymandering and corrupt political spending have to be addressed as first priorities.

This should have been done here in Ohio nearly four years ago when the FirstEnergy scandal first broke. But supermajority Republican lawmakers, with DeWine by their side, instead spent 2021 and 2022 imposing more unconstitutionally gerrymandered maps. And while they've found time to indulge every culture war distraction on the extremist right-wing menu, they've done absolutely nothing to address widespread public corruption.

This relentless, belligerent misrepresentation of the people of Ohio and our best interests has only led to miserable public outcomes, and for myself, as a seventh generation Ohioan whose family moved here in 1805, it all embarrasses us deeply in the eyes of the nation.

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By Max Chafkin

(Bloomberg) --



Elon Musk, chief executive officer of Tesla Inc., at the Atriju convention in Rome on Dec. 16, 2023.

Photographer: Alessia Pierdomenico/Bloomberg

Welcome to Bw Daily, the Bloomberg Businessweek newsletter, where we'll bring you interesting voices, great reporting and the magazine's usual charm every weekday. Let us know what you think by emailing our editor [here](#). If this has been forwarded to you, [click here](#) to sign up.

Must-Reads

- Secretary of State Antony Blinken has arrived in China for tense talks as US sanctions loom.
- Talks to resolve a standoff between pro-Palestinian demonstrators and officials at Columbia University were extended.

- A former tabloid CEO said he killed stories about Donald Trump's extramarital affairs to boost his 2016 presidential campaign.

There are two ways of looking at Elon Musk. The first is as a brilliant inventor-engineer, Thomas Edison with a Twitter account. The second is as a brilliant salesman. This is, emphatically, not how Musk sees himself, but it's generally a more helpful framework in trying to understand what he does and why.

Last night, during Tesla's quarterly earnings call, investors got a master class in the salesman Musk. The earnings themselves were atrocious. Tesla, which as recently as the beginning of last year was predicting 50% growth as far as the eye could see, sold fewer cars during the previous three months than during the same period in 2023. Tesla demand seems to have reached its limit; it's now making far more vehicles than it can sell. And whereas Musk has previously spun a story of a wildly profitable car company, one that would essentially be able to raise prices and cut costs at the same time, the numbers tell a different story. Tesla blew through \$2.5 billion last quarter, a period when the company was one of the worst-performing stocks in the S&P 500.



Elon Musk's performance on earnings calls is closely scrutinized.
Photographer: Nathan Laine/Bloomberg

In other words, the Tesla reflected in yesterday's report is not a fast-growing car company; it's a regular car company—and not a particularly successful one at the moment. As Bloomberg Opinion's Liam Denning points out, General Motors, which Musk has been

dunking on for as long as he's been running Tesla, actually has better operating margins at the moment than Musk's company.

And yet, once Musk opened his mouth on the earnings call, none of this mattered. Musk acted as if his car company's failure to effectively sell cars was beside the point. Going into the earnings call, the big question among investors was about the supposed Model 2, a theoretical \$25,000 electric vehicle that many investors think is crucial to turning things around and that Musk has at times suggested was just around the corner. Musk's message yesterday? Don't worry about it!

After making a studiously vague comment about "new vehicles, including more affordable models," Musk said nothing further. And over the next hour he made clear that he thinks any of the obvious questions his future product plans raised were irrelevant to Tesla's long-term business. When an analyst asked if the supposed "new vehicles" would be entirely new designs or tweaks on existing ones, Musk said, "We've said all we will on that front" and moved on to the only thing he said investors should care about: artificial intelligence. As he has done in the past, he focused on changing the subject. Tesla was not actually a car company at all; "fundamentally, it's just the wrong framework," Musk said, with maximum condescension. In fact, "we should be thought of as an AI or robotics company."

Why, exactly, is that the case? Musk sketched out a fanciful new business in which Tesla operates a fleet of tens of millions of robotaxis (or maybe 100 million of them; Musk was vague). These "Cybercabs" won't need to be monitored by drivers (unlike Tesla's current "Full Self-Driving" software, which requires a driver to have their eyes on the road and hands on the wheel at all times). Robotaxis were a "flywheel" for Tesla, Musk said. They were also "just like an elevator." (The metaphors were coming fast and furious, but not in the automotive sense.)

During the call, Musk name-checked just about every fast-growing tech company in Silicon Valley. The robotaxi business was like Uber and Airbnb, and also like Google search. And it was also like Amazon Web Services, an analogy that was significant because—oh, by the way—Tesla is also going to use its cars to start a massive cloud computing company that would compete with AWS and similar companies. At one point, he even dragged Apple into the fray, pointing out that Tesla's imaginary cloud computing services would be better than the imaginary Apple cloud computing service that Apple could theoretically offer at some point. "It seems like it would be a waste not to use it," Musk said of the as-yet-nonexistent Tesla cloud computing network.

The point here was obvious: Tech companies, unlike car companies, enjoy high margins and, seem to have a lot of growth potential, unlike Tesla at the moment.

Of course, none of this is real, which investors seem to understand on some level. Musk hadn't offered an accurate description of Tesla's business, but he had presented a vision,

however fantastical, that offered “some spark of hope that growth will re-accelerate next year,” as Gene Munster told Bloomberg’s Dana Hull and Ed Ludlow. When the market opened, the stock soared—it was up around 13% by midmorning. It’s not clear that Musk can overcome the enormous (and, according to many experts, insurmountable) regulatory and technical hurdles that would come with launching a Cybercab this year, as planned, or really at any point in the near future. But, oh boy, can he sell the dream. —*Max Chafkin, Bloomberg Businessweek*

For more about what’s at stake for Tesla and Musk, listen to Elon, Inc. on Apple, Spotify, iHeart and the Bloomberg Terminal.

AI Makes Old Drugs New

For the past six years, Carrie Rich has been on a journey no parent wants to take. Her daughter has a form of autism caused by a rare genetic condition, and Rich is desperate to help her combat the effects of the genetic anomaly. They’ve left the girl unable to speak and blunted her ability to move and interact like her 7-year-old peers. “I’ve spoken with researchers, scientists, academics, entrepreneurs, philanthropists, investors and parents across the planet,” Rich says. “I mean, truly anyone who would speak with me. I was really hoping to find someone who could lead me in a positive direction forward.”

Rich mostly encountered bad news. She found families in similar circumstances who’d been bankrupted or torn apart by false hopes. There were painfully few signs that some kind of therapy for her daughter might one day be available. But last year a group of scientists in California who’d developed a new drug-screening program hit upon a pill they thought might help Rich’s daughter. The child began taking the pill in December, and the early indications are that it’s working.

*But what if the answer isn’t a new drug, but an old one? Ashlee Vance takes this on in this story: “**Pharma Startup Uses AI to Test Old Drugs to Treat Rare Diseases.**”*

TikTok Ban

170 million That’s the number of monthly active users the TikTok app has in the US. Legislation requiring the social media app’s Chinese owners to divest sailed through Congress on Tuesday.

Tax the Rich

“A lot of people want the government to take action, but they’re not really sure how. But the things that they do feel sure about is that someone else should do it.”

Matt Monday

Tesla Inc

Tesla steers back towards cheaper cars

Elon Musk seeks to appease the market after 40% stock slide

Stephen Morris in San Francisco, **Peter Campbell** and **Harriet Agnew** in London and **Arjun Neil Alim** in Frankfurt YESTERDAY



Facing one of the worst stock slumps in Tesla's 14-year history, Elon Musk was under pressure this week to deliver a reassuring message to investors about its next generation of electric vehicles and a persuasive vision for an AI-driven, automated future.

Instead, what the chief executive offered — alongside [even worse than expected first-quarter profits](#) and the company's first cash outflow since the start of the pandemic — was a classic Muskian fudge.

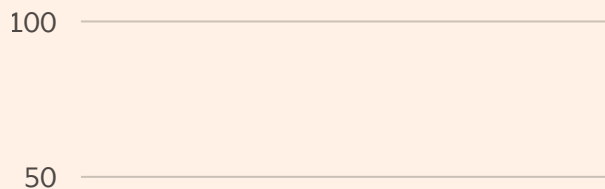
Tesla would “accelerate the launch of new models”, he said on Tuesday, including a promised “affordable” car better priced to compete with an impending influx of ultra-cheap Chinese rivals in the US market.

However, Musk was deliberately vague about whether he was talking about a new so-called “Model 2”, the mass-market car he announced in January with a rumoured \$25,000 price tag.

After years as the world’s only serious electric vehicle maker, Tesla is finally facing real competition, both from established carmakers such as Hyundai and from rapidly growing Chinese brands that have a lead in battery technology and lower manufacturing costs. And Musk’s outspoken posts on his social media platform X risk denting his car company’s brand.

Tesla's shares have lagged behind rivals over the past year

Total return (%)



FINANCIAL TIMES

Source: LSEG (inspired by @charliebillello)

He testily refused to comment this week on reports that the ambitious Model 2 project — which called for a new “revolutionary manufacturing system” at factories in Texas and Mexico — had been scrapped so the company could focus on a self-driving “robotaxi”.

Instead, investors were given a “Plan B” for cheaper cars that will be made on existing production lines and systems to help cut Tesla’s spiralling costs as it shifts billions of dollars worth of investment to AI and the tens of thousands of GPU chips required to train the models. Musk promised an update alongside its [robotaxi](#) launch in August.

Some analysts probed Musk on whether he was now talking about building a budget version of the carmaker’s recently re-engineered Model 3. He did not engage.

“Elon is hedging his bets,” said Christopher Tsai, chief investment officer at Tsai Capital, a Tesla investor. “He’s using the same production line for a human-driven vehicle and a robotaxi, with the ability to pivot between the two depending upon the market demand at the time.”

While the share price recovered 13 per cent after the presentation, it is still down 35 per cent this year and trading at less than half its late-2021 peak valuation of \$1.2tn.

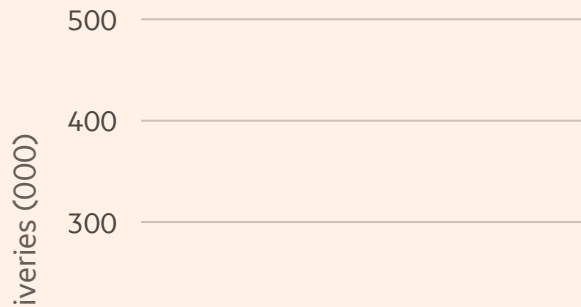
Shareholders and analysts have become increasingly concerned that the company, which had already warned this year that it was “between two growth phases”, would be competing against new Chinese brands but with increasingly stale models.

The Model 2 “appears to have morphed into something less radical than previously indicated, but there was confirmation that more models are coming,” wrote Mike Tyndall, analyst at HSBC.

Philippe Houchois, an auto analyst at Jefferies, said Musk was “appeasing the market” by pushing faster, but with a “risk of compromises on product to accelerate launches”.

Tesla deliveries fall more than expected in Q1 2024

Deliveries Shortfall to consensus Annual change (%)



FINANCIAL TIMES

Source: company

The decision to move faster comes as Tesla's [Chinese rivals](#) push further into mass-market vehicles.

Hours after Musk's call with investors, BYD, Tesla's largest rival, announced that it planned to bring its ultra-cheap Seagull EV to Europe and the UK from next year.

The vehicle, which sells for less than \$10,000 in China, has caused near-panic among western carmakers, who argue they simply cannot compete with such prices.

"It will be a European-market Seagull, a new Seagull," BYD senior executive Stella Li told reporters, including the UK's Auto Express, in Shenzhen.

Tesla's investors remain aware that manufacturers in China, rather than established western carmakers, are likely to be the biggest competitors.

“China has built an industry that can produce excellent cars at truly remarkable price points almost all through the range of products,” said James Anderson, a managing partner at Lingotto Investment Management, which holds Tesla shares. “A sub-\$10,000 BYD Seagull domestically is a clarion call.”

He told the FT that Tesla “is acknowledging the reality of the challenge of Chinese pricing”.

The Model 2 — or whatever version of a cheaper car takes its place in the line-up — accounts for about half of analysts’ projections for Tesla’s long-term sales.

If the plans had been shelved or pared back in ambition, Tesla — which once aimed to grow to the size of Toyota and Volkswagen combined by 2030 — would for now remain a more modest manufacturer than expected.

The idea that the company would kill the model “doesn’t make any sense”, said one former executive, noting that Musk used to “school” those around him on the ever-urgent need to reduce costs.

“The whole premise of the gigafactory, the whole point of getting the [battery] pack price down, was to get cheaper cars,” the former executive added. “If he really wants mass adoption, he must know from the turmoil of the last year that affordability is the big issue”.

Tesla has cut prices several times — including this week — to buoy sales, although this has led to a collapse in the re-sale value of its cars.

Tesla's free cash flow has turned negative

Free cash flow by quarter (\$bn)



Source: Company

© FT

“We believe that our awareness activities paired with attractive financing will go a long way in expanding our reach and driving demand for our products,” Tesla finance chief Vaibhav Taneja said on Tuesday.

Tom Narayan, an analyst at RBC Capital Markets, said the decision to release vehicles earlier meant “fears of ‘no growth for years’ have largely been put to bed”, although he said it was still unclear whether there would be a \$20,000 “bill of materials” for the car, something Tesla had targeted for the Model 2.

Lars Moravey, head of engineering at Tesla, said many of the developments for the “next-generation” model were “transferable” to the new models, including the battery system, heating and a reduction in the number of components.

“We’re not trying to just throw it away,” he said. “What we’re doing is trying to get it in . . . products as fast as possible.”

Yet the never-ending quest to drive prices lower is only part of Tesla’s strategy.

Musk remains convinced that the company’s bet on self-driving technology, which has led to several fatalities, will be its key differentiator in the future.

Facing investors this week, he remained typically uncompromising and defiant.

“If you value Tesla just as an auto company, you fundamentally have the wrong framework. If you ask the wrong question, the right answer is impossible,” he said on Tuesday. “If somebody doesn’t believe Tesla is going to solve autonomy, they should not be an investor in the company.”

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Litigation

April 25, 2024, 8:27 AM PDT

Musk to Be Deposed Monday in Twitter Arbitration Case on Layoffs

By Ed Ludlow and Kurt Wagner

- Deposition expected to be in-person, seven-hour affair
- Lawyers for Twitter employees announce deposition in email

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Musk to Be Deposed Monday in Twitter Arbitration Case on Layoffs

By Ed Ludlow and Kurt Wagner2024-04-25T11:27:35283-04:00

- Deposition expected to be in-person, seven-hour affair
- Lawyers for Twitter employees announce deposition in email

Elon Musk is set to be deposed on Monday as the first [arbitration hearings](#) get underway involving thousands of former Twitter employees who say they were cheated out of severance pay when the billionaire bought the social media company in October 2022.

The lawfirm of Lichten & Liss-Riordan sent an email to the former Twitter employees who are participating in a class action lawsuit, asking for ideas for questions to ask Musk in the deposition. The deposition will be in-person and last for seven hours, according to the email, which was reviewed by Bloomberg.

The company formerly known as Twitter, which Musk has since renamed X, has been accused in multiple suits of numerous labor and workplace violations, including failing to pay severance to thousands of workers fired after Musk's \$44 billion acquisition of the social media platform. The law firm is representing almost 2,000 former Twitter employees in individual arbitrations as well as more than a dozen class action lawsuits in court.

A spokesperson for X declined to comment. Shannon Liss-Riordan, a partner at the firm, and Elon Musk did not immediately respond to requests for comment.

A San Francisco federal judge ruled last year that workers who filed one of the earliest challenges to Twitter over severance pay were obligated under their contracts to go through arbitration, in which private judges resolve disputes in closed-door hearings.

To contact the reporters on this story:

Ed Ludlow in San Francisco at eludlow2@bloomberg.net;

Kurt Wagner in San Francisco at kwagner71@bloomberg.net

To contact the editors responsible for this story:

Lynn Doan at ldoan6@bloomberg.net

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NOT FOR REPRINT

SpaceX Wants These Judges Off Its Case

The lawsuit was filed only after the Fifth Circuit surprised SpaceX attorneys by affirming a district court transfer of the dispute to the Central District of California.

April 23, 2024 at 01:39 PM

Administrative Law



Adolfo Pesquera



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

What You Need to Know

- Morgan Lewis & Bockius attorneys for SpaceX are swinging an axe at the throat of the National Labor Relations Board's regulatory authority.
- The challenge relies on SEC v. Jarkesy, wherein the U.S. Fifth Circuit held administrative judges are unconstitutionally insulated.
- The lawsuit was filed after the Fifth Circuit affirmed a district court transfer of the dispute to the Central District of California.

Morgan Lewis & Bockius attorneys for SpaceX are swinging an axe at the throat of the National Labor Relations Board's regulatory authority by relying on the *Securities and Exchange Commission v. Jarkesy* case.

The NLRB is trying to establish that separation and arbitration agreements with SpaceX employees at its McGregor and Bastrop, Texas facilities, as well as SpaceX's other facilities, are unlawful, according to the complaint.

The NLRB further asserts that SpaceX has a nationwide arbitration agreement policy, which the agency claims is an unfair labor practice.

The agency is requesting administrative remedies to reach employees nationwide, including physically posting notices at all SpaceX facilities; holding meetings to ensure the widest possible attendance; and removing and rescinding portions of the arbitration and separation agreements.

The lawsuit, *Space Exploration Technologies Corp. v. National Labor Relations Board*, was spotted on [Law.com Radar](#).

However, SpaceX is asking a U.S. District Court in the Western District of Texas to enjoin the NLRB's administrative actions by declaring its administrative law judges and its board members are unconstitutionally insulated from removal.

The challenge mirrors a similar action taken in *Jarkesy*, wherein the U.S. Court of Appeals for the Fifth Circuit held in a 2022 ruling the SEC administrative law judges that perform substantial executive functions are unconstitutionally insulated from removal by the U.S. president.

The U.S. Supreme Court heard oral argument on *Jarkesy* last November and its decision is pending. The key argument in *Jarkesy* is that Article II of the U.S. Constitution defining executive powers requires a degree of control by the president that is in practice lacking when it comes to oversight of administrative law judges at regulatory agencies, and the SEC specifically.

During oral argument [Justice Sonya Sotomayor said](#) the "dramatic change" requested would force dramatic changes on dozens of regulatory federal agencies by making it much easier for certain defendants to circumvent the agencies' oversight by removing the disputes to federal court.

"The same reasoning applies to the (administrative law judges) of the NLRB, including the (judge) assigned to preside over the pending NLRB proceedings against SpaceX. Like the SEC (administrative law judges) in *Jarkesy*, NLRB (judges) are 'inferior officers' who 'have substantial authority' within agency investigations and enforcement actions," the SpaceX complaint states.

The Fifth Circuit and the U.S. Supreme Court have not decided whether the NLRB board members' layer of removal protection is unconstitutional, the complaint notes.

"But the correct answer, given the relevant Supreme Court precedent, the nature of the NLRB Members' functions, and the NLRB's unique structure and statute, is a resounding yes," the complaint asserts.

The lawsuit was filed only after the Fifth Circuit surprised SpaceX attorneys when a three-judge panel, on a split vote, affirmed a district court transfer of the dispute to the Central District of California.

SpaceX requested a rehearing en banc and that [petition for writ of mandamus](#) was denied April 17 because the 18 judges could not get a majority in favor—when the vote split was eight-to-eight.

This also resulted in a dissent by Edith Hollan Jones and five other circuit judges, stating in part the district court's transfer "erroneously denied SpaceX as plaintiff its choice of forum to litigate about alleged unfair labor practices that, if sanctioned, will govern its relations with hundreds of Texas and thousands of nationwide employees."

The Morgan Lewis attorneys for SpaceX include Catherine L. Eschbach in Houston; Harry I. Johnson III in Los Angeles, California; and Michael E. Kenneally and Amanda L. Salz in Wash., D.C.

4/25/24, 8:05 AM

Jarkesy Defense Raised in SpaceX Challenge of NLRB Authority | The Recorder

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Trump Media Ropes In Congress to Pursue Claims of Illegal Shorts

By Bailey Lipschultz

- Truth Social parent publishes CEO's letter to committee chairs
- Social media firm trades at over 30 times Nvidia's multiple

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Trump Media Ropes In Congress to Pursue Claims of Illegal Shorts

By Bailey Lipschultz2024-04-24T12:13:03206-04:00

- Truth Social parent publishes CEO's letter to committee chairs
- Social media firm trades at over 30 times Nvidia's multiple

Donald Trump's social media startup publicized a letter to the heads of various US House of Representatives committees, doubling down on claims that an illegal form of short selling may be hitting its stock.

Trump Media & Technology Group Corp. Chief Executive Officer Devin Nunes penned a letter asking for an investigation into the trading of the stock and whether laws including those governing racketeering and tax evasion were violated. The parent of Truth Social has flagged concern that so-called "naked" short sales, which involve betting against a stock without first borrowing shares, could potentially be occurring, hurting its loyal retail investors.

The stock has been volatile since going public four weeks ago, trading around \$33 per share Wednesday, after hitting an intraday peak of \$79.38 in its debut on the Nasdaq. Trump Media has captivated individual investors who piled into the stock and touted their investments across the Truth Social platform as a way to support Trump's 2024 re-election campaign.

Trump Media's letter is the latest salvo in a bid to place itself at the center of a battle between its supporters and Wall Street. The missive from Nunes, a former California Representative who left Congress to become CEO of Trump Media, echoed a notepenned to Nasdaq Inc. Chair **Adena Friedman** seeking her help intervening against the potential naked short sales.

The startup's roughly \$4.5 billion valuation has drawn scrutiny, given it took in just \$4.1 million in revenue last year and lost more than \$50 million. By a traditional metric like price-to-sales ratio, the stock is valued at a more than 1,000 multiple. That's more than 30 times the multiple of stock market darling Nvidia Corp., which is roughly 33 times.

Banned Shorts

While naked short selling is mostly banned, regular short selling — where investors borrow shares from current owners for a fee to then sell the stock, and ultimately buy back shares at a profit if the price falls — is permitted. The cost of borrowing Trump Media shares made it among the most expensive US stocks to bet against, with short sellers facing financing fees of some 700% at one point, according to financial analytics firm S3 Partners.

Read More: Trump Media Is Now the Most Expensive US Stock to Bet Against

The SEC publishes a list of stocks with a high number of trades that fail to settle, which recently included Trump Media. Appearing on the list is a possible indicator of naked shorting activity, though it can also occur for "justifiable reasons", including the inability to obtain borrowed shares, the regulator's website shows.

In the letter to each of the Chairmen of the US House of Representatives' Committee on the Judiciary, Committee on Financial Services, Committee on Ways and Means and Committee on Oversight and Reform, Nunes requested an investigation that would include trading data, trust and clearing information and reports that would show the total shares shorted since mid-February.

Trump Media reiterated in the letter its previous assertion that four market participants were responsible for over 60% of the extraordinary volume of the shares traded, including Citadel Securities, Virtu Americas, G1 Execution Services and Jane Street Capital. The data cited by Trump Media don't necessarily reflect any unusual activity or indicate any wrongdoing.

A Citadel Securities representative previously rejected Trump Media's claim and criticized Nunes for trying to "blame 'naked short selling' for his falling stock price." A representative for Virtu declined to comment, and G1 and Jane Street didn't immediately respond to requests for comment.

Despite the calls for investigations into the short activity, **Matthew Tuttle**, chief executive officer at Tuttle Capital Management, said that's not the driver of Trump Media's slide.

"Revenue and profits are their problems," Tuttle said in an interview. "Is it going down because of naked short selling? No."

Retail Campaign

Trump Media has been campaigning against the often-controversial practice of short selling on several fronts, offering advice last week on ways that retail investors could protect their shares from being lent to would-be short sellers.

Preventing further declines in Trump Media shares would also help preserve gains for insiders. Nunes, Trump and others have seen their stakes surge in value, yet they can't sell until September due to a lock-up agreement. Their ability to cash in could be expedited if the company's board, which accounts for a range of ex-members of his administration and his son, waives or pulls forward the expiration of the lock-up, and an April 15 filing is deemed effective by the US Securities and Exchange Commission.

After shares closed at \$32.57 on Tuesday, Trump and other insiders cleared a hurdle that would deliver a 40 million share windfall — with 36 million earmarked for the former president. That would bring his stake in the company, with the earnout nearly 115 million shares, to some \$3.7 billion on paper.

Nunes's note also attached a December 2023 letter to financial regulators signed by 74 members of Congress related to Meta Materials Inc., a company with claims on Texas oil and gas assets. Nunes wrote that the alleged market manipulation and potentially naked short-selling described in the letter to the regulators suggested similarities with Trump Media's experience.

--With assistance from Katherine Doherty.

To contact the reporter on this story:

Bailey Lipschultz in New York at blipschultz@bloomberg.net

To contact the editor responsible for this story:

David Morris at dmorris143@bloomberg.net

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Matt Levine's Money Stuff: The FTC Comes for Noncompetes

By Matt Levine
Opinion

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Matt Levine's Money Stuff: The FTC Comes for Noncompetes

By Matt Levine 2024-04-24T14:35:15932-04:00

Noncompetes

Is there still gardening leave? Yesterday, the US Federal Trade Commission voted to ban employee noncompete agreements in the US. Future noncompetes are banned; existing noncompetes are enforceable only for senior executives. The rule goes into effect in six months, and [there will definitely be lawsuits](#) to block it.

In the final rule document, the FTC notes that “employers subject even middle-income and low-wage workers to noncompetes on a widespread basis,” but of course noncompetes are also common for high-income workers in the financial industry. There, noncompetes are not *entirely* a bad thing for workers. “All I know is power-washing and these business owners all want me to sign a noncompete clause,” says a power-washer cited by the FTC. “It’s one big circle of wealthy business owners keeping the little man down.” But on the r/quant Reddit board feelings are mixed, and you can find posts saying things like “would suck if this means no garden leave is available anymore.” In the financial industry, there is a common norm that, if you leave a job, you are not allowed to work for a competitor for some period of months or years, during which you are still paid by your old employer. This makes it harder for you to get a new job and reduces your negotiating leverage at your current job, and if you *do* leave, the enforced time off devalues your skills and holds back your career. On the other hand: year-long vacation! There are probably some people who structure their financial careers around maximizing gardening leave. Did the FTC end that?

I don’t think so, though it’s a little unclear. There are roughly four ways that financial firms typically deter people from leaving for competitors:

1. Noncompetes: When you start your job, you sign a contract promising not to work for a competitor for, say, six months after you quit.
2. Notice periods: When you start your job, you sign a contract saying that, if you want to quit, you have to give six months’ advance notice. Then, when you give notice, your employer says “don’t even bother coming to the office anymore, and we’re cutting you off email, but you still work for us so you can’t work for a competitor.” And they keep paying you. (Often your base salary but not your bonus.)
3. Deferred comp: Each year, your employer pays you some cash and also some deferred pay, cash or stock or options or carry that they hold onto for you and promise to deliver to you at some later date. The terms of the deferred pay say that you can forfeit

it in certain circumstances. For instance, if you do a crime, or lose a bunch of money for the firm, they can claw back deferred pay that you earned in previous years. Often, if you leave the firm for a competitor, they can also claw it back.

4. Nondisclosure agreements (NDAs): When you start your job, you sign a contract saying that all of the stuff you learn and do at the job is secret and belongs to your employer, and that you are not allowed to disclose it to anyone else. And then when you quit, they say "just so you know, if you go work at a competitor, we'll know that you're using our secrets, and we'll sue you."

The new FTC rule pretty clearly bans No. 1, the explicit noncompete. But No. 2 is a common way to do gardening leave, and I think it still works? The FTC says:

With respect to garden leave agreements, as noted previously, commenters used the term "garden leave" to refer to a wide variety of agreements. ... However, the Commission notes that an agreement whereby the worker is still employed and receiving the same total annual compensation and benefits on a pro rata basis would not be a non-compete clause under the definition, because such an agreement is not a post-employment restriction. Instead, the worker continues to be employed, even though the worker's job duties or access to colleagues or the workplace may be significantly or entirely curtailed. Furthermore, where a worker does not meet a condition to earn a particular aspect of their expected compensation, like a prerequisite for a bonus, the Commission would still consider the arrangement "garden leave" that is not a non-compete clause under this final rule even if the employer did not pay the bonus or other expected compensation.

That leaves some ambiguity about bonuses: Your gardening leave has to provide "the same total annual compensation" as your regular job for it to be allowed, but if you do not meet "a prerequisite for a bonus," they don't have to pay you the bonus. Presumably showing up to the office is a prerequisite for your bonus, so I *think* this says that gardening leave is still allowed as long as you are getting your normal base salary, which can be quite a lot lower than your normal total annual compensation.

The rule also seems to ban No. 3, the clawback of deferred compensation for workers who leave for competitors. The rule defines a "non-compete clause" to include "a term or condition of employment that prohibits a worker from, *penalizes a worker for*, or functions to prevent a worker from ... seeking or accepting work" at a competitor (emphasis added). The FTC says:

Another example of a term that "penalizes" a worker ... is an agreement that extinguishes a person's obligation to provide promised compensation or to pay benefits as a result of a worker seeking or accepting other work or starting a business after they leave their job. One example of such an agreement is a forfeiture-for-competition clause, which, similar to the agreement with liquidated damages described previously, imposes adverse financial consequences on a former employee as a result of the termination of an employment relationship, expressly conditioned on the employee seeking or accepting other work or starting a business after their employment ends.

Here too there is some ambiguity. The way deferred compensation works at some financial firms is that you lose your unvested compensation if you leave for *any* reason, whether or not you are going to a competitor. But the firm will, as a matter of informal policy, let you keep that compensation if you leave for certain *good* reasons: if you've been there a long time and are retiring, say, or you're going into public service or charity work or to work at a big client. (Goldman Sachs Group Inc. had some controversy a while back for [tightening up this policy](#).) Perhaps an employment contract that says "we will take back all your deferred compensation if you leave for any reason," combined with a winking understanding that actually you can keep it as long as you don't leave for a competitor, is a way to implement a noncompete under the FTC's rules.

(Incidentally, I mentioned Goldman, but in fact the rule seems *not* to apply to banks. Sifma, the Securities Industry and Financial Markets Association, in commenting on the proposed rules, "warned that banks and credit unions are exempt from FTC regulation and would be able to keep using noncompetes, giving them an advantage over other financial firms subject to the restriction." So Goldman could bar its bankers from leaving for Evercore, but Evercore – not a bank – could not bar its bankers from leaving for Goldman.)

Finally there's No. 4, NDAs as noncompetes. We have talked a [couple of times](#) recently about a lawsuit that Jane Street Group filed against two former employees who traded options at Jane Street and left to trade options at Millennium Management. Jane Street does *not* generally have noncompete agreements, but it sued the traders for violating their nondisclosure agreements and stealing Jane Street's intellectual property. Jane Street argues that it spent a lot of time and money developing a complex, counterintuitive, lucrative, proprietary options-trading strategy that is so secret that it can't even name the country where it trades options (it's [India](#)). Millennium, and the employees, argue: Look, they are options traders, they've learned how to trade options, those are generally applicable skills that transfer, and if they're using those skills to trade options at Millennium then that's fine. [Millennium's lawyer](#) "compared the two traders to gold miners who 'really know how to use a pickax.'"

That sort of lawsuit is unusual, though not unheard-of. (Most of the cases involve alleged theft of *code*, not copying a discretionary trading strategy.) One reason these lawsuits are unusual is *because of noncompetes* (and gardening leave). If you work at a financial firm doing secret stuff, and you leave for a competitor, and you have to wait a year before starting at the competitor, most of the secret stuff will have lost its value and your old employer probably won't need to sue you. If those Jane Street guys had had to wait a year before starting at Millennium, Jane Street would probably have squeezed most of the juice out of the India options trade, and nobody would mind them trying it at Millennium. This is a crude measure, and some secret stuff that you learn at your financial job will have a longer shelf life than your gardening leave. But gardening leave avoids a lot of subtle disputes about what sorts of information are secret and proprietary.

So getting rid of noncompetes will probably mean that firms have to rely more on NDAs, which will mean more messy disputes. That's the FTC's goal: "The Commission found that employers have several alternatives to noncompetes that still enable firms to protect their investments without having to enforce a noncompete," it says. "Trade secret laws and non-disclosure agreements (NDAs) both provide employers with well-established means to protect proprietary and other sensitive information." But the ban on noncompetes will also ban some NDAs; the final rule says:

A garden-variety NDA in which the worker agrees not to disclose certain confidential information to a competitor would not prevent a worker from seeking work with a competitor or from accepting such work after the worker leaves their job. Put another way, an NDA would not be a non-compete under § 910.1 where the NDA's prohibitions on disclosure do not apply to information that (1) arises from the worker's general training, knowledge, skill or experience, gained on the job or otherwise; or (2) is readily ascertainable to other employers or the general public.

However, NDAs may be non-competes under the "functions to prevent" prong of the definition where they span such a large scope of information that they function to prevent workers from seeking or accepting other work or starting a business after they leave their job. Examples of such an agreement may include an NDA that bars a worker from disclosing, in a future job, any information that is "usable in" or "relates to" the industry in which they work.

"You can't work for a competitor for a year" is a pretty clear rule; "you can't use our secrets at a competitor" will mean more lawsuits.

Reservations

You could tell a very large-scale stylized story of finance that goes like this:

1. The most efficient way to allocate goods is to sell them to the highest bidder.
2. The most efficient way to sell goods to the highest bidder is to have continuous electronic markets in which sophisticated traders deploy automated algorithms to provide liquidity.
3. As technology progresses, it becomes possible to allocate more goods this way.
4. Eventually we will enter a paradise in which every good thing in life is sold to the highest bidder in continuous automated electronic markets.

In Ancient Rome, and also in like the 1950s, basically no goods were allocated through continuous automated electronic markets. But by the end of the 20th century, stocks more or less were, though there's always more work to be done. (The stock market could be 24/7?) Then it turned out advertising could work this way. Bonds are getting there.

Part of the technological progress here is just the improvement of computer and communications technology, which makes it easier and more intuitive to trade more goods electronically (and to build bots to automate the trading). But part of the progress also involves *noticing* that a good can be classified as "a good," and priced, and restructured as an automated electronic market. I [have suggested](#) that Mark Zuckerberg discovered that "connecting with friends" is a good thing in life and that therefore he could build an automated electronic marketplace to charge for it, though that was mostly facetious. (He doesn't actually charge for it.) But getting a prime table at a hot restaurant is definitely desirable, and therefore it now has high-frequency traders. At the New Yorker, Adam Iscoe interviews some of them:

Alex Eisler, a sophomore at Brown University who studies applied math and computer science, regularly uses fake phone numbers and e-mail addresses to make reservations. When he calls Polo Bar, he told me, "Sometimes they recognize my voice, so I have to do different accents. I have to act like a girl sometimes." He switched into a bad falsetto: "I'm, like, 'Hiiii, is it possible to book a reservation?' I have a few Resy accounts that have female names." His recent sales on Appointment Trader, where his screen name is GloriousSeed75, include a lunch table at Maison Close, which he sold for eight hundred and fifty-five dollars, and a reservation at Carbone, the Village red-sauce place frequented by the Rolex-and-Hermès crowd, which fetched a thousand and fifty dollars. Last year, he made seventy thousand dollars reselling reservations. ...

Some resellers use bots – basically, computers that are faster at hitting the refresh button than you are. Several bots might be simultaneously checking the app, ten or even a hundred times per second, twenty-four hours a day, until one finds the eight-o'clock table at Bangkok Supper Club that it's been programmed to grab. Instead of using a keyboard or mouse, the bot programmatically executes the reservation app's underlying code.

He also interviews various restaurant people who don't like that their restaurants are all filled with the highest bidders in a high-speed electronic marketplace, but that's financial capitalism baby!

(Several of the many readers who sent me this article pointed out that it looks a little bit like *options* trading: A restaurant reservation is kind of like an option, in that it creates a right but not an obligation to eat at Carbone at 8 p.m. Though I don't know how you'd dynamically hedge that option.)

And then there's crypto! The word "blockchain" does come up in that New Yorker article, though only briefly. But here's Nick Emmons at CoinDesk last month:

We are moving into an era of hyper-financialization, in which anything that can become financialized will be. And it will culminate at the intersection of AI and crypto.

Through a wider use of markets, we are likely to see more seamless coordination across all aspects of society. The reason we can't use markets in a broad set of society today is because there's so much overhead in interacting with markets, which are valuable coordination mechanisms if the returns from interacting with it outweigh the expense and overhead. ...

Though crypto has introduced more efficient market infrastructure, inefficiencies still persist around human participation. Interacting with markets still requires manual effort, introduces individual biases, and relies on limited mental processing relative to AI capabilities. This friction increases the overhead of interacting with markets and leads to suboptimal coordination.

The final unlock to maximize market efficiency is AI: the most expressive technology we have. AI can act as highly capable, deflationary actors that reduce the inefficiencies of human actors in the market - capabilities like prediction, automation, and personalization at enormous scale and sophistication. This further chips away at the overhead of interacting with markets and slowly expands the scope of what markets can be used for.

The result of the convergence of these two technologies will be an explosion of novel financial markets for a wider range of societal functions, allowing us to use markets, the greatest coordination mechanism we have, for a broader set of society's functions.

We [talked once](#) about Eric Posner and E. Glen Weyl's proposal to improve capitalism with "a tax on property, based on the value self-assessed by its owner at intervals, along with a requirement that the owner sell the property to any third party willing to pay a price equal to the self-assessed value." That way, everything you own would permanently be on sale; you'd have incentives to price it low (to reduce your taxes), and the bots would scour all of everyone's everything to find bargains, and finance would reach its final state.

Toptal

I used to be a convertible-bonds investment banker, and there's a standard story about the payout of convertible debt. If you buy a convertible bond and the company does very well, you will make a lot of money – your bond will convert into common stock and share in the upside – though less than if you had just bought stock. If the company does poorly, you will probably get your money back, or at least be toward the front of the line for getting your money back, which is much better than the common stockholders will do. Convertibles share in the upside of stock, but with less downside.

That's a nice pitch, but I have never seen [this fact pattern](#) before:

[Software startup Toptal LLC] raised early funding from Andreessen Horowitz and individuals like Ryan Rockefeller, and later raised \$1 million more from [investor Denis] Grosz. Grosz's investments came in the form of debt – a convertible note that converts to equity when a startup raises more cash. Grosz's deal included rights to around 10% of the company after its first equity financing. But Grosz didn't get his stake: Toptal never raised more equity, and a conversion never happened. ...

Today, 10% of Toptal likely would be worth a lot more than \$1 million. According to [Toptal founder Taso] Du Val, Toptal had \$270 million in revenue in 2022, the most recent audited numbers available. In his countersuit, Grosz estimated that Toptal could be valued at more than \$1 billion.

Grosz could still see an equity conversion – Toptal raising more money would trigger one – but Du Val said in an interview that it doesn't make sense, in part due to tax reasons, to pursue that now.

That is: Grosz's debt shared in the equity upside, *if the company raised more equity*. The ordinary upside case for a Silicon Valley startup is something like "the company does well, and it is able to raise more money at a higher valuation on its way to an initial public offering." That would be a great story for Grosz's convertible. And that is the story everyone implicitly assumes, which is why the document was written that way.

But another entirely possible upside case is "the company does well, it brings in tons of money, that money funds all of its business needs and also its founder's lifestyle, it never needs to raise equity again, and, given the choice of keeping a \$1 million convertible bond outstanding or converting it into \$100 million of equity, it takes the cheaper choice." Of course the cheaper choice is really to pay the bond back at par. "Toptal tried to pay it back with interest in March 2020, according to his and Toptal's suits, but Grosz rejected the attempt." Reasonable, on both sides!

Should index funds be illegal?

Well, not really, right?

A congressional investigation found that Wall Street used billions of dollars of American retirement savings and other investments to buy shares in index funds that included more than five dozen blacklisted Chinese companies.

The probe, conducted by a bipartisan House committee empowered to devise strategies for the U.S. to counter China, focused on BlackRock, the world's largest asset manager, and MSCI, a compiler of stock indexes. The investigation represented a broad review of how American financial institutions facilitated investment in Chinese companies accused by the U.S. government of bolstering China's military and violating human rights.

BlackRock didn't buy shares in "blacklisted" companies, and MSCI didn't include "blacklisted" companies in its indexes, if by "blacklisted" you mean "sanctioned," or "forbidden":

The committee, which has no legislative power, urged U.S. lawmakers in its report to restrict such capital flows as U.S.-China competition intensifies. "What may surprise many Americans is that this activity is not illegal," the committee said in the report, released Thursday.

BlackRock and MSCI said they violated no laws and maintained they had little discretion to independently exclude Chinese entities from index funds.

Here is the report, which also uses the word "blacklist" a lot, while admitting in footnotes that (1) the government has an actual blacklist of Chinese companies whose securities US investors are not allowed to buy, (2) MSCI excludes those companies from its indexes and (3) BlackRock doesn't actually buy any of them. The gist of the report is that US investors *also* invest in Chinese companies that *aren't* on the blacklist, but that these members of Congress think should be. They should just put them on the list! They are literally in Congress! That is their job! (Fine, the *committee* "has no legislative power," but there they are, in Congress.) It is weird to write an angry report saying "I can't believe these people are investing in companies that we'd like to ban." You haven't banned them! Just do that!

Still, there is a real complaint buried here. The Wall Street Journal goes on:

Even though firms such as BlackRock only bought shares through index funds in the blacklisted Chinese companies and MSCI didn't funnel financing to them, the committee contends the firms helped channel Americans' savings into the companies in question. ...

MSCI said it "does not channel, recommend or endorse investments in China or elsewhere. We simply compute the daily performance of equity markets globally."

We [talked about this](#) when the committee launched its probe last year. MSCI can deny any responsibility for these investments, *because it doesn't make any investments*: It just writes down a list of stocks. And BlackRock can deny any responsibility for these investments, because it just runs passive index funds: It just invests in a list of stocks somebody else (MSCI) wrote down. "One attraction of index investing is that nobody is responsible for any investing decisions," I wrote. The decision to "channel Americans' savings into the companies in question" is an emergent property of the index-fund system; nobody actually made that decision. Congress wants someone to yell at, but there's nobody to yell at.

Pyramid

There is a form of argument, in crypto, that is like: "This token costs \$10. If you buy a token and hold it, it will turn into six tokens. If each of those tokens is still worth \$10, you will have turned \$10 into \$60." This had an [immense vogue](#) for a while, but it was always easy to see the flaw in the argument. The flaw was: Why would multiplying the supply of an arbitrary electronic token by six multiply its total value by six? If everyone had one Meaningless Token, and then by operation of a computer everyone instead has six Meaningless Tokens, how has their *actual wealth* increased?

With apartments in China the situation is a bit more ambiguous. Here's a Wall Street Journal story about how the Chinese real estate industry seems to have operated, for a while, by turning each rural home into six rural homes:

It seemed to be a great deal at the time: Swap an aging townhouse and a small piece of farmland for five apartments and two stores.

Bella Zhao's family grabbed that offer in 2009, when property developers led by Wanda Group moved into their sparse, snow-capped village in China's northeastern Jilin province. Wanda planned to spend \$2.8 billion to turn the area into a high-end resort replete with ski slopes, golf courses, hunting spots and five-star hotels. The developer offered locals a large number of new apartments in town in exchange for their old homes, creating a village of property tycoons almost overnight.

"I was so happy then," said Zhao, who was a teenager at the time and later inherited the properties.

Now, all five of her apartments sit empty. Only one of the stores has a tenant. ...

The market is facing a simple economic problem: too many sellers, and too few buyers. Making matters worse, villagers who traded their homes with developers, often for several new apartments, are adding to the wall of potential supply, said Liu Yuan, head of property research at Centaline.

"It is impossible to sell at a decent price," said a homeowner in Nanjing, who owns eight properties with her husband and parents, five of which were compensation for relocating.

On the one hand, right, if you multiply the supply of apartments by six, and change nothing else (population, tourism, etc.), then the price of those apartments is going to go down. On the other hand, now you have more room? "Perhaps two of the apartments will be occupied by his relatives," says a guy in Henan who traded a house for six apartments, though "the rest will sit empty." Possibly that is an increase in wealth?

Things happen

Two SEC Lawyers Resign After Agency Censured for [Abuse of Power](#) in Crypto Case. [Cocoa Price Swings](#) Are the Craziest Since the 1970s. Apollo sells stake in asset-backed lending unit to insurer MassMutual. U.S. Takes Aim at Chinese Banks Aiding Russia War Effort. Russian court orders seizure of \$440mn from JPMorgan. Biden's [401\(k\) Advice Rule](#) Finalized Over Wall Street Objections. Cathie Wood's Popular ARK Funds Are Sinking Fast. Let's Assume Taxes. Trump Media's auditor is really bad at spelling his own name. Medical workers ask bite victims to stop bringing snakes to hospitals.

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To contact the author of this story:
Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:
Daniel Niemi at dniemi1@bloomberg.net

1. I say "employee noncompete agreements" because there's an exception for noncompetes in connection with the sale of a business.
2. "The final rule defines senior executives as workers earning more than \$151,164 annually and who are in policy-making positions," says the FTC. In many uses, "senior executive" can turn out to mean "everyone employed in a professional role at a financial-services firm," but I don't think it means that here. Here I think it means something close to "no, actually, a senior executive." The final rule document says that noncompetes can't be enforced against "relatively higher paid or highly skilled workers who lack policy-making authority," because they "are unlikely to have engaged in bargaining in connection with non-competes." And: "For a worker to be a senior executive, in addition to meeting the compensation threshold, the worker must be at the level of a president, chief executive officer or the equivalent, officer (defined in § 910.1), or in a position that has similar authority to a president or officer."
3. As a relatively junior investment banker, my experience of this was a few months. In high-end buy-side jobs, one or two-year noncompetes are not uncommon.
4. From Sifma's comment letter: "As a result of the Commission's limited jurisdiction, it will create an uneven playing field between businesses subject to the Commission's limited jurisdiction and their competitors that lie outside of that jurisdiction." A footnote adds: "Specifically, the Commission lacks jurisdiction over banks, savings and loan institutions, federal credit unions, common carriers, air carriers and foreign air carriers, non-profit organizations, persons subject to the Packers and Stockyards Act of 1921, and certain state and local government entities protected by the state action doctrine."
5. Don't take this too literally. Evercore Inc. seems to have a trust bank, and Goldman, a bank holding company, has plenty of non-bank entities. The rough intuition "big universal banks won't be subject to the rule, while boutique banks, hedge funds, proprietary trading firms and asset managers will be" is plausible but not certain, and as Sifma points out, "the Proposed Rule also risks creating confusion due to its potentially inconsistent application within banking organizations as some workers could be

employed by segments outside the Commission's jurisdiction while other workers could be employed by affiliate entities that the FTC believes are subject to the Proposed Rule."

6. Or frequent batch auctions lol.

7. The report begins by listing a bunch of "U.S. Government Blacklists," starting with "The U.S. Department of the Treasury's Non-Specially Designated National Chinese Military-Industrial Complex Companies List (NSCMIC List)," which "bars U.S. persons from purchasing or selling publicly traded securities of designated entities, which support the PRC's "military, intelligence, and other security apparatuses." But later on it points out: "For the NS-CMIC List, its exposure to capital markets is entirely based on the subsidiaries of listed companies because U.S. persons cannot trade securities issued by a designated company. They can, however, trade the securities of a designated company's subsidiaries or affiliates." So the investors buy the shares that they are allowed to buy, not the ones they aren't allowed to buy. A footnote adds: "Similarly, national security concerns do not meaningfully influence MSCI and BlackRock's choices regarding index composition and fund creation. Companies are listed on the NS-CMIC List, which restricts investments in the companies' publicly traded securities for military and human rights abuse ties. When companies were removed from the NS-CMIC List, they became eligible for inclusion in MSCI indexes at the next review, and they were added into the indexes one to three months after they became eligible, despite the risks those companies pose to national security." Right: When they are on the banned list, they are not in the index! When they are *removed from the banned list*, then they get put in the index. If you don't want them in the index, leave them on the banned list!

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April 25, 2024, 10:05 AM PDT

Futures Exchanges Are for Traders

By Matt Levine

(Bloomberg Opinion) --

FMX

The stylized history of financial exchanges is something like:

1. Once, a dozen or so big brokers met under a tree or whatever to trade their stuff.
2. They collectively set some rules for trading the stuff, which evolved into a nonprofit membership organization – an “exchange” – run by the big brokers.
3. The exchange charged fees to trade, it invested in technology, and it eventually made sense for the exchange to restructure and go public as a for-profit company.
4. The dozen or so big brokers, who once owned and ran the exchange, don’t anymore: It’s a public company, they’ve sold whatever shares they had in it, it’s just an arm’s-length counterparty now.
5. They don’t like paying the fees.
6. They get to talking with each other.
7. “At the end of the day,” they say, “this exchange is really just *us*. It’s a venue – now a computer system, not a tree, but still – where the 12 of us get together to trade stuff with each other. Why are we paying these fees to a for-profit exchange? Why don’t we just meet together somewhere *else*, trade with each other, and save on fees?”
8. They can’t literally meet under a different tree, since now everything is computerized, but if they talk about this enough eventually an entrepreneur will go and build it for them.

We talked a few years ago about Members Exchange, MEMX, which is this story for US stocks. (“We think with the right team we could run an exchange at a fraction of the cost of what the incumbents are offering,” said Virtu Chief Executive Officer Douglas Cifu.) And here are Bloomberg’s Katherine Doherty and Sridhar Natarajan on FMX, which is this story for interest-rate derivatives:

Howard Lutnick is lining up some of Wall Street’s biggest power players for a fresh challenge to the behemoth of futures trading and interest-rate derivatives, CME Group Inc.

The chief executive officer of Cantor Fitzgerald got backing from Bank of America Corp., Barclays Plc, Citadel Securities, Citigroup Inc., Goldman Sachs Group Inc., JPMorgan Chase & Co., and Jump Trading as he prepares to launch his new futures exchange. The firms invested \$172 million for a 25.75% stake in FMX, which increases as they use the platform. The business is part of BGC Group Inc., a brokerage spun off from Cantor Fitzgerald in 2004 and led by Lutnick. ...

"When George Clooney bought a tequila company, the tequila was the tequila," Lutnick said in an interview, comparing the consortium of backers with the movie star. "The day after he bought it, it was worth 10X. My exchange is now worth more." ...

Lutnick's FMX Futures exchange is expected to launch in September, with plans to first list futures linked to the Secured Overnight Financing Rate, or SOFR, a benchmark short-term rate, then Treasury yields. Those futures will compete directly with contracts on CME, which has seen record volumes thanks to uncertainty around future Fed interest-rate decisions, inflation and geopolitical tensions.

For the banks and prop traders involved, the appeal is straightforward: (1) lower fees ("The cost of trading on FMX also will be lower than through CME"), (2) as part-owners, the fees partly accrue to them, and (3) bonuses for more trading: "They can keep an additional 10.3% [of FMX ownership] if they help meet certain volume targets." Getting paid to trade with each other is nicer than paying to do so.

Private credit

My basic theory of private credit is that (1) it's kind of a new thing but (2) it will quickly be absorbed into the old things. It used to be that there were two main types of corporate debt. There were *bonds*, which were often fixed-rate and unsecured; they were issued by companies to investors (insurance companies, etc.), with big investment banks acting as intermediaries to find the buyers and place the debt. And there were *bank loans*, which were often floating-rate and secured; they were issued by companies to banks, which made the loans with their own money and held them on their balance sheets.

And then over time those markets converged a bit; in particular, "bank loans," these days, trade in liquid markets and are often owned by non-bank investors. A private equity firm doing a leveraged buyout might borrow from both the bank and bond markets; its investment bank will "underwrite" the bonds (find investors, for a fee) and "syndicate" the loans (find investors, for a fee). The terms are different, for historical reasons, but the processes are similar, and probably a single leveraged finance banker is in charge of both.

Now there is a third type of debt, *private credit*, which is also often secured and floating-rate. What distinguishes it from bank loans is that its investor base (big alternative asset managers) make the loans directly and hold them to maturity: There is no trading market and no bank underwriting. These distinctions have always struck me as a bit unstable, though. If you buy a private loan, what if you want to sell it? I wrote six months ago: "Sometime within the next, like, three years, I am going to be writing about a story like 'Company X is launching a marketplace to allow private credit lenders to trade loans.'"

Also, the basic business of investment banks is introducing companies to people who will provide financing and taking a cut. There are incentives to disintermediate that process, which puts pressure on the investment banks. Private equity firms, for instance, are in the business of finding companies to buy; if you are a company looking to sell, in 2024, you might reasonably call up half a dozen private equity firms and say "can you buy us?" rather than calling an investment bank and saying "can you find us a buyer?" (Or: If you are a company looking to sell, in 2024, a private equity firm might show up with a pitch saying "we'll buy you for \$100 million" before an investment banker shows up with a pitch saying "we think we could achieve a valuation of \$100 million in a sale process.") "Private equity is to some extent a *substitute* for investment banking," I wrote last year, and it does seem like private equity (and private credit) managers are on the rise as banks retreat. But private equity funds do create a lot of business for investment bankers, and investment bankers have had a good long run of not letting themselves be disintermediated.

Last week, Bloomberg's Ellen Schneider and Kat Hidalgo wrote about how the banks are undisintermediating themselves:

Citigroup Inc. and Goldman Sachs Group Inc. are among Wall Street giants that served as matchmakers on recent transactions between smaller companies looking for loans and private lenders eager to provide financing. Their pitch to direct lenders boils down to this: we can use our vast network of corporate clients to help you find issuers that want financing, and take them through all the paperwork involved in getting a private loan, for a fee.

It's the latest step that big banks have taken to reclaim business their leveraged lending desks have lost. Historically the biggest buyouts would be funded with junk bonds as well as leveraged loans that were arranged by big banks then syndicated to a wide array of investors. Leveraged finance and related businesses generated about a third of Wall Street's investment banking fees.

But private lenders have been taking more of that business, forcing banks to consider other ways to get involved. ...

"What we bring is an enormous and deep origination machine, and when the broadly syndicated market doesn't make sense for certain borrowers we can pivot," said John McAuley, the head of debt capital markets at Citigroup.

Right, if you are a company looking to borrow money, the best user experience is something like "one person, whom we trust, shows up at our office, gives us a menu of borrowing options, lists the pros and cons of each one, and then goes and gets us the one we choose." Traditionally that person was an investment banker, and she'd show up with a pitchbook on the pros and cons of bonds and bank loans. The current situation is, I guess, that she shows up, does her pitch, leaves, and then you have appointments with six private lenders who offer alternatives. But that seems unstable. In the long run, the best user experience is probably that the investment banker adds another column, for private credit, to her pitchbook.

And today Hidalgo writes about the growing trading market for private credit:

Blow-out growth in the \$1.7 trillion private credit market has come at a cost, namely investors' inability to exit their holdings in a crunch. Now a market where investors can unload their stakes is taking shape.

As many as \$15 billion of such portfolio sales are set to close this year, according to a new survey from Ely Place Partners Ltd., which advises sellers of the funds. That's triple the reported amount of deals closed in each of the previous two years. ... On average, the portfolios are being sold at discounted prices of around 85 cents on the dollar, according to the survey.

It is still not quite a platform for trading private-credit loans – it's an informal marketplace for trading limited-partner stakes in private-credit *funds* – but it's a move in that direction. "Private credit, but you can trade it at any time" is just a better user experience than "private credit with no liquidity," so the market will provide it.

Trump Media

I have joked that one bull case for Trump Media & Technology Group Corp. is (1) Donald Trump gets elected president again and (2) he requires anyone who wants to win a US government contract to buy advertising on Truth Social. That's a *business* bull case – it would increase Trump Media's revenue – but you could also have a slightly different, purely stock-based bull case. For instance: (1) Donald Trump gets elected president again and (2) he requires anyone who wants to win a US government contract to buy Trump Media stock. Or he could use it as an instrument of foreign policy: Perhaps countries can get better diplomatic treatment if their sovereign wealth funds buy a ton of Trump Media stock, etc. In either case, that would be good for the stock price, even if the *company* never has much in the way of revenue.

I suppose another, worse version would be: Trump makes it illegal to *short* Trump Media's stock? This is less useful because it's already very hard to short Trump Media's stock; it's extremely expensive and risky and there don't seem to be a ton of fundamental shorts. (You can tell, in part, because the stock trades at 1,300 times revenue.) On the other hand, it might be easier to do: People love a conspiracy theory about short sellers, and Trump Media Chief Executive Officer Devin Nunes is pushing one hard. We talked on Monday about Nunes' (unconvincing) public claims that naked short sellers were somehow manipulating Trump Media's stock; he followed up with a letter to four powerful Republican congressmen urging them to launch "a thorough and expeditious investigation" of short selling of the stock, one that would demand records from trading firms and regulators to see if anyone might have shorted Trump Media:

Dear Chairmen Jordan, McHenry, Smith, and Comer:

I write to inform you of an urgent matter concerning the potential manipulation of the stock of Trump Media & Technology Group Corp. ("TMTG"), which trades on the Nasdaq Stock Exchange under the ticker "DJT."

Since April 2, 2024, DJT has appeared every day on Nasdaq's "Reg SHO threshold list," which is indicative of unlawful trading activity. This is particularly troubling given that "naked" short selling often entails sophisticated market participants profiting at the expense of retail investors. Reports indicate that, as of April 3, 2024, DJT was the single most expensive stock to short in U.S. markets by a significant margin, meaning that brokers have a significant financial incentive to lend non-existent shares.

Furthermore, data made available to us indicate that just four market participants have been responsible for over 60% of the extraordinary volume of DJT shares traded: Citadel Securities, VIRTU Americas, G1 Execution Services, and Jane Street Capital.

Overall, we assess there are strong indications of unlawful manipulation of DJT stock. As such, I respectfully request that you open an investigation of anomalous trading of DJT to determine its extent and purpose, and whether any laws including RICO statutes and tax evasion laws were violated, so that the perpetrators of any illegal activity can be held to account.

Will Congress launch an investigation? I mean, on the merits, no; there is not a whisper of evidence that Trump Media's stock has been *manipulated down*, and rather a lot of evidence that, you know, it trades a touch rich to current fundamentals. And yet. Short selling is generally a risky endeavor, short selling a meme stock is even riskier, and short selling a politically powerful and vindictive meme stock is surely not worth it.

Should index funds be illegal?

The basic theory of "should index funds be illegal" is: If big index funds and other diversified investors own much of the stock of all of the public companies, then all of the public companies in some industry will essentially work for the same owners, and they will have lessened incentives to compete with one another. If one airline cuts fares to win market share, that just hurts the other airlines, who have the same owners. Better to keep prices high and act like a monopoly.

This theory is quite controversial and susceptible to lots of empirical tests. Here's a US Federal Reserve Finance and Economics Discussion Series paper titled "Assessing the Common Ownership Hypothesis in the US Banking Industry," by Serafin Grundl and Jacob Gramlich, about whether it's true of banks. It isn't:

The U.S. banking industry is well suited to assess the common ownership hypothesis (COH), because thousands of private banks without common ownership (CO) compete with hundreds of public banks with high and increasing levels of CO. This paper assesses the COH in the banking industry using more comprehensive ownership data than previous studies. In simple comparisons of raw deposit rate averages we document that (i) private banks do offer substantially more attractive deposit rates than public banks, but (ii) the deposit rates of public banks are similar in markets without CO where a single public bank competes only with private rivals, and in markets with CO where multiple public banks compete with each other. Panel regressions of deposit rates on the profit weights implied by the COH are generally consistent with the COH if only quarter FEs (without other controls) are included but not if bank-quarter FEs are included. Estimates with bank-quarter FEs are "precise zeros" with 95% CIs suggesting that the threefold rise in CO among public banks between 2005 and 2022 moved their deposit rates by less than a quarter of a basis point in either direction. To assess the COH along non-price dimensions we also estimate the effect of CO on deposit quantities, and find that the estimates are also not consistent with the COH.

We talked a couple of weeks ago about how US banking regulators are considering restricting index-fund ownership of banks, but as far as I can tell that is motivated more by anti-wokeness/anti-ESG concerns than it is by antitrust concerns, so I'm not sure this research will affect it. In any case, the Federal Deposit Insurance Corp. board of directors met today and failed to pass new restrictions on index-fund bank ownership.

Where are the ... oh, right, there.

Just a good headline from the Financial Times here, "Jefferies boss sells \$65mn in stock to buy a customer's yacht":

Jefferies chief executive Rich Handler has sold \$65mn of his stock in the Wall Street investment bank to buy a luxury yacht from longtime client Tilman Fertitta.

Handler said on Wednesday that he had sold 1.5mn shares, about 7 per cent of his total holdings in Jefferies, at \$43.50 each. This was the first time he has sold shares in the bank other than for charitable or tax purposes.

Jefferies said Handler, 62, was using the cash to buy a boat and pay tax obligations. A person familiar with the matter said the boat was a Westport 164ft yacht being purchased from Fertitta, the hospitality billionaire.

"My sale of shares today was a gift to myself and my family, and I do not intend to sell any further shares," Handler said in a statement.

There is sort of a norm that executive stock sales are bad, because they are signs of bearishness: If you're the CEO and you're selling your company's stock, people assume you think the stock will go down. And so when executives do sell big chunks of stock, they often try to justify the sales as not being about valuation. The classic justifications have the form "I didn't want to sell my stock, but I had to" (divorce, tax obligations¹), or else "I didn't want to sell my stock, but I had a really compelling opportunity to make the world better" (charitable donations, buying Twitter Inc.).

But "I didn't want to sell the stock, but I saw a really cool yacht" is also a pretty good justification? Like I do not think that this reflects much on Handler's view of Jefferies' valuation. He wanted a little treat for himself, and there was that yacht.

Also I suppose it is good customer service for an investment bank's CEO to occasionally buy a customer's yacht from him? You don't want your investment bankers to be *too* ostentatiously well-paid – it suggests that they're overcharging – but if a good customer wants to unload one yacht, you want him to think of you first. "Important people like to deal with important people," Goldman Sachs Group Inc. tells its bankers: "Are you one?" If you're buying his yacht, you probably are.

Things happen

BHP Makes \$39 Billion Anglo Approach to Create Mining Giant. Anglo Considers Sale of Diamond Unit De Beers. Anglo American Share Price Shows Traders Envisage Sweeter Bid. South African mines minister hits out at BHP's £31bn bid for Anglo American. Javier Milei Sparks Wild Rally That Makes Peso No. 1 in World. Main Street Banking Model Is Being Squeezed. Nasdaq's Profit Falls as Shaky Economy Keeps IPO Revival Elusive. How TikTok's Chinese owner tightened its grip on the app. ByteDance Exploring Scenarios for Selling TikTok Without Algorithm. Business Groups Race to Block FTC's Ban on Noncompete Agreements. Thames Water Debt Insurer Taps Advisers as Crisis Deepens. McKinsey Under Criminal Investigation Over Opioid-Related Consulting. Hertz Reports \$392 Million Loss as It Unwinds Tesla Fleet. Europeans 'less hard-working' than Americans, says Norway oil fund boss. The 'Senior' Jobs That Require Little or No Experience. Notion's Productivity Software Gets Used for Relationships, Journaling, Plant-Watering. "'I love dogs,' adds Trasen, whose own mutt, Bear, was trained at a juvenile-detention center. 'I just don't think they belong in courtrooms.'"

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To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:

Wendy Pollack at wpollack@bloomberg.net

. This one is a little weird because just having a ton of appreciating stock doesn't normally incur any tax obligations, but Elon Musk somehow found a way to do it.

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Government's conduct upheld in novel securities fraud case against healthcare CEO

DJ [dailyjournal.com/articles/378204-government-s-conduct-upheld-in-novel-securities-fraud-case-against-healthcare-ceo](https://www.dailyjournal.com/articles/378204-government-s-conduct-upheld-in-novel-securities-fraud-case-against-healthcare-ceo)

Criminal

Share

Apr. 24, 2024

Government attorneys had been accused of prosecutorial misconduct over an interview they conducted in February with Curt Medeiros, a former Ontrak executive, without counsel consent.

A federal judge overseeing a novel securities fraud case against a former Santa Monica healthcare CEO found the government acted in good faith and did not breach its ethical duties when prosecutors contacted a prospective witness involved in parallel civil cases that tie into facts related to the criminal matter.

Last year, Assistant U.S. Attorneys Ali Moghaddas and Matthew S. Reilly successfully sought an indictment against Terren Peizer, founder and CEO of Ontrak Inc., on claims he operated an insider trading scheme to avoid \$12 million in losses. The prosecutors accused Peizer of fraudulently using Rule 10b5-1 trading plans to trade his share of Ontrak's stock prior to its loss of a contract with Cigna in 2021. U.S. v. Peizer, 2:23-cr-00089 (C.D. Cal., filed Feb. 24, 2023).

Last month, Peizer's attorney, David K. Willingham of King & Spalding LLP, accused the prosecutors of prosecutorial misconduct over an interview they conducted in February with Curt Medeiros, a former Ontrak executive, without counsel consent. According to court filings, Medeiros is represented by Sheppard Mullin attorneys in various civil security matters that are factually related to Peizer's criminal case. Willingham argued the government's engagement with Medeiros created an unfair advantage in the case and violated the California State Bar's professional conduct rule that governs communication with a represented person, Rule 4.2.

In opposition filings, the government argued there was no violation of the rule because the witness was not directly involved in Peizer's criminal matter at the time of the interview. They also argued the civil matters did not make the witness a "represented" person in the criminal

case.

U.S. District Judge Dale S. Fischer in Los Angeles denied the defense's sanction motion Tuesday and found the prosecutors acted in good faith and the defense's argument had no standing. "Defendant has not established that defendant's criminal case is within the scope of Medeiros' representation in the civil matters," Fischer wrote. "It was not unreasonable for the government to assume that Sheppard Mullin and Medeiros meant it when they said Sheppard Mullin was not Medeiros' counsel in this case and proceeded accordingly."

Willingham declined to comment on the judge's decision Wednesday.

Fischer added that even if she had found Rule 4.2 violations against the prosecution, she was not the appropriate enforcer of punishment. "The more appropriate remedial measure would be through the State Bar after a complaint by Medeiros, not through a sanction against the government in this criminal case."

According to a news release from the U.S. Securities and Exchange Commission (SEC), Peizer's case is the first time the Department of Justice brought criminal insider trading charges solely based on an executive's use of the 10b5-1 trading plan rule, which is designed to prevent such charges.

The prosecutors accused Peizer of extracting material nonpublic information related to the company's largest customer at the time, Cigna, to sell more than \$20 million of Ontrak's stock, in breach of the rule.

#378204

Devon Belcher

Daily Journal Staff Writer
devon_belcher@dailyjournal.com

McKinsey faces US criminal probe over opioids work, sources say

 [reuters.com/business/healthcare-pharmaceuticals/mckinsey-faces-us-criminal-probe-over-opioids-work-sources-say-2024-04-24](https://www.reuters.com/business/healthcare-pharmaceuticals/mckinsey-faces-us-criminal-probe-over-opioids-work-sources-say-2024-04-24)

Mike Spector, Nate Raymond, Chris Prentice

The McKinsey & Company logo is displayed at the 54th International Paris Airshow at Le Bourget Airport near Paris, France, June 21, 2023. REUTERS/Benoit Tessier/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, April 24 (Reuters) - McKinsey & Co is under criminal investigation in the United States over allegations that the consulting firm played a key role in fueling the opioid epidemic, with federal prosecutors homing in on its work advising OxyContin maker Purdue Pharma and other drugmakers, three people familiar with the matter said.

The consulting firm and the U.S. Justice Department declined to comment.

The probe is focused on whether McKinsey engaged in a criminal conspiracy when advising Purdue and other pharmaceutical manufacturers on marketing strategies to boost sales of prescription painkillers that led to widespread addiction and fatal overdoses, two of the people said.

The Justice Department is also investigating whether McKinsey conspired to commit healthcare fraud when its consulting work for companies selling opioids allegedly resulted in fraudulent claims being made to government programs such as Medicare, they said.

Prosecutors are also looking at whether McKinsey obstructed justice, an inquiry related to McKinsey's disclosure that it had fired two partners who communicated about deleting documents related to their opioids work, the people said.

The probe, opened several years ago before the onset of the global pandemic, involves Justice Department officials spanning offices in Washington, Massachusetts and Virginia, they said. Both sides are in discussions to resolve the probe, one of the people said.

Investigations are not evidence of wrongdoing and officials conducting the inquiry could ultimately pursue criminal charges, seek civil sanctions or close the probe without taking any action. The Wall Street Journal previously reported the Justice Department investigation.

The Justice Department probe underscores how McKinsey's past work advising drugmakers on opioids continues to follow the near-century-old consulting firm. It carries higher stakes than other government investigations McKinsey has resolved because of the potential for criminal charges against the company or executives, and steep financial penalties that the Justice Department often demands in exchange for resolving its white-collar probes.

McKinsey earlier reached separate agreements totaling nearly \$1 billion to settle widespread opioid lawsuits and other related legal actions brought by all 50 states, Washington, D.C., U.S. territories, various local governments, school districts, Native American tribes and health insurers.

McKinsey in 2019 said it would no longer advise clients on any opioid-related businesses. None of the settlements have contained admissions of liability or wrongdoing, McKinsey has said.

"We understand and accept the scrutiny around our past client service to opioid manufacturers. This work, while lawful, fell short of the high standards we set for ourselves," McKinsey said in a 2022 statement following the release of a congressional committee report scrutinizing its consulting work.

Purdue did not immediately respond to a request for comment. The drugmaker pleaded guilty in 2020 to criminal charges over its handling of opioid painkillers. Purdue filed for bankruptcy in 2019 and later negotiated a settlement valued at about \$10 billion to settle thousands of lawsuits alleging it contributed to the opioid epidemic.

The Supreme Court halted that settlement and is soon expected to rule on a Biden administration challenge to the deal.

Prosecutors are far from making any charging decisions in their criminal investigation of McKinsey, in part because they are sifting through voluminous documents as part of their inquiry and engaging in discussions with the consulting firm's lawyers, one of the people said.

Keep up with the latest medical breakthroughs and healthcare trends with the Reuters Health Rounds newsletter. Sign up here.

Reporting by Mike Spector and Chris Prentice in New York and Nate Raymond in Boston;
Editing by David Bario and Lisa Shumaker

Mike Spector
Thomson Reuters

Mike Spector is a correspondent at Reuters covering corporate crises that span bankruptcy, mass tort litigation and government investigations. He was the first to expose Johnson and Johnson's plan to offload into bankruptcy lawsuits alleging its iconic Baby Powder caused cancer. He later revealed in an investigative series how J&J and other businesses and nonprofits use the bankruptcy system to escape liability for lawsuits over deadly products and sexual abuse while avoiding filing for Chapter 11 themselves. Mike has also contributed to an award-winning Reuters series on pervasive secrecy in American courts that covers up

evidence of deadly products. Mike previously worked at The Wall Street Journal, where he covered bankruptcy and private equity on the paper's mergers and acquisitions team, and also the automotive industry. He has been part of award-winning teams that covered the government-brokered rescue and bankruptcy of General Motors; insider trading and related bankruptcy debt-trading issues; and emerging concerns with Tesla's self-driving car technology. He has a master's degree from Columbia University's journalism school and an undergraduate degree from Johns Hopkins University.

Nate Raymond
Thomson Reuters

Nate Raymond reports on the federal judiciary and litigation. He can be reached at nate.raymond@thomsonreuters.com.

Chris Prentice
Thomson Reuters

Chris Prentice reports on financial crimes, with a focus on securities enforcement matters. She previously covered commodities markets and trade policy. She has received awards for her work from the Society for Advancing Business Editing and Writing and the Newswomen's Club of New York.

Meta Platforms

Mark Zuckerberg defends Meta's AI spending spree as shares tumble

Parent of Facebook and Instagram reports better than expected quarterly revenue but raises capex guidance



Meta has focused on introducing chatbots to its social media apps to boost engagement as it looks to develop and integrate AI tools into its products © Krisztian Bocsi/Bloomberg

Hannah Murphy in San Francisco 5 HOURS AGO



Mark Zuckerberg rekindled investor fears that he would not control costs at Meta after vowing to increase spending and turn the social media group into “the leading AI company in the world”, sending its shares tumbling nearly 12 per cent in early trading on Thursday.

Meta's earnings release showed revenues at the company — whose platforms include Facebook, Instagram and WhatsApp — had risen 27 per cent to \$36.5bn in the first three months of 2024, just above analysts' expectations of \$36.2bn.

But [Meta](#) also raised the high end of its full-year capital expenditure guidance from \$37bn to \$40bn in order to “continue to accelerate our infrastructure investments to support our artificial intelligence (AI) road map”. Last year capital expenditure spending totalled \$28.1bn.

It added it expected capital expenditures to continue to rise next year, and also raised the lower range of its 2024 full-year expenses guidance, from \$94bn to \$96bn. It has forecast revenues for the current quarter in the range of \$36.5bn-\$39bn, versus consensus estimates of \$38.3bn.

Last year, the chief executive of Meta sought to keep Wall Street happy against a backdrop of tough macroeconomic conditions, slashing jobs, cutting costs and labelling 2023 a “year of efficiency”.

However, Zuckerberg is increasingly under pressure to keep pace in the fast-moving [AI race](#) with Silicon Valley groups such as OpenAI, Microsoft and Alphabet’s Google, which has forced him to boost investment in the costly technology and infrastructure required to support his plans. Microsoft and Alphabet are expected to deliver updates on their own AI efforts in earnings reports on Thursday.

[Zuckerberg](#) said on a call with analysts that he believed Meta “should invest significantly more over the coming years to build even more advanced models and the largest scale AI services in the world”. This spending would have to grow “meaningfully before we make much revenue from some of these new products”, he added.

The fall in Meta’s shares wiped billions of dollars off its market value. It is a sharp reversal for a stock that had risen more than 40 per cent this year, having been in record territory since a [bumper fourth-quarter earnings announcement](#) in February during which it announced its [first dividend](#) and signalled a strong recovery from a recent advertising slump. Thursday’s slide dented the shares’ year-to-date gains to about 25 per cent.

As part of its efforts to develop and integrate AI tools into its products, Meta has focused on introducing chatbots to its social media apps to boost engagement, as well as features for advertisers, and improving the targeting of its feeds. This month it released a new version of the AI model behind its chatbots, Llama 3, which it said had vastly improved capabilities, including the ability to reason. Meta also unveiled a new generation of its AI custom-made chips.

In his opening remarks to investors on Wednesday’s earnings call, during which the shares continued to slide, Zuckerberg attempted to assuage investor fears over the spending by pointing to the company’s “strong track record” of monetisation.

To bring in revenue, Meta could scale business messaging, introduce advertising into user interactions with AI chatbots, and charge groups to use its bigger AI models, he said.

Zuckerberg also said Meta would continue to invest in his longer-term ambitions to build an avatar-filled metaverse, focusing on developing what he dubbed “wearable AI” — smart glasses with an embedded AI assistant.

Reality Labs, Meta’s virtual and augmented reality arm, posted losses of \$3.85bn in the first quarter, about the same as the previous year, with the company adding it continued to expect operating losses to “increase meaningfully” year-over-year.

“Mark Zuckerberg’s ‘heads-up’ was reminiscent of what he once said about the metaverse. That didn’t exactly go so well, but this is different than Meta’s metaverse gamble because AI has real and practical use cases now,” said Forrester Research director Mike Proulx.

“The question remains whether Meta can contend in the AI race while maintaining a strong financial position. To do this, expect to see more ‘metaverse’ resources diverted from Reality Labs to Meta’s AI initiatives,” he added.

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B. Riley's Belated Data Boosts Stock, Fails to Quiet Skeptics

By Todd Gillespie and Rick Green

- Auditor's criticism punctuates investment bank's annual report
- Firm re-asserts no entanglements in key client's legal woes

Bloomberg Law News 2024-04-25T10:54:11617081647-04:00

B. Riley's Belated Data Boosts Stock, Fails to Quiet Skeptics

By Todd Gillespie and Rick Green2024-04-24T12:41:36352-04:00

- Auditor's criticism punctuates investment bank's annual report
- Firm re-asserts no entanglements in key client's legal woes

B. Riley Financial Inc. sent its stock soaring by finally delivering its overdue annual report, which provided fuel both for fans of the boutique investment bank and skeptics who contend its accounting is deeply flawed.

Auditors for Los Angeles-based B. Riley cited various material weaknesses in the company's internal controls, and some of the previously reported data was revised, according to regulatory filings.

Separately, B. Riley said a new probe it commissioned by a second law firm found the company had no involvement in the legal woes of Brian Kahn, a former client who drew scrutiny from US authorities for his role in the 2020 collapse of a hedge fund.

The Wednesday filing eases some pressure on B. Riley, whose stock lost about two-thirds of its value after short sellers aired concerns about its relationship with Kahn. At the same time, the report provided fodder for investors who've criticized the firm's ability to track its own finances and the failure to disclose key details of its transactions.



The jitters were amplified when B. Riley missed the deadline to file its audited results in March, and it needed an extension from its lenders to finish the job. When the report finally emerged, B. Riley's auditors criticized the bank's controls over its financial reporting, and B. Riley said it might need the rest of the year to fix them.

"We acknowledge the complexities of our business are a result of an aggressive acquisition and investment strategy that has meaningfully diversified our platform," Chief Executive Officer **Bryant Riley** said in a statement. "We are continuing to strengthen our processes and procedures to ensure we are best positioned to capitalize on the substantial market opportunities in front of us."

The stock surged 25% to \$27.24 at 11:41 a.m. in New York and traded as high as \$35.

Among the problems cited by auditors at Marcum LLP was B. Riley's ability to gauge investment valuations, one of the key criticisms lodged by short sellers who've been betting against the stock. Marcum said management's review procedures lacked "a level of precision sufficient to prevent or detect a potential material misstatement in the consolidated statements."

Related Parties

Marcum also called out efforts "to properly identify and disclose material related party transactions," a category that can include deals with people who have close ties to the company or its personnel and might pose conflicts of interest. This, too, has drawn scrutiny from short sellers who said such ties can result in sweetheart deals that hurt shareholders.

Elsewhere in the annual report, B. Riley detailed its dealings with Brian Kahn and acknowledged the risk that fallout from their prior relationship may continue to hurt B. Riley's business, results of operations and its stock price. The firm said it redid an internal investigation with the help of a new law firm, Winston & Strawn, which reaffirmed that the bank has no ties to any alleged misconduct of Kahn in the collapse of Prophecy Asset Management. Still, B. Riley said the matter may trigger further "adverse effects on our business."

Read More: SEC Probes B. Riley Deals With Client Tied to Failed Fund

A previous internal probe that reached the same conclusion had been done by Sullivan & Cromwell. Short sellers had called for a new one because that law firm's prior work for B. Riley presented a potential conflict of interest.

Kahn has categorically denied any wrongdoing and said he was among those who lost money when Prophecy collapsed. He hasn't been charged with anything by US authorities.

The new report and statements didn't satisfy some of those who've been betting against the stock.

"Marcum decided to enclose new risk factors and call Kahn a related party, which is everything the skeptics have been saying," short seller **Marc Cohodes** said by email. The firm still has "mismarked assets and related-party dealings that don't pass the sniff test."

Paper Losses

Wednesday's rally dealt roughly \$100 million of paper losses to short sellers when the stock was up by \$10, according to S3 Partners director **Matthew Unterman**. Bearish bettors were already in the red for 2024, largely because of the high costs to borrow shares for shorting. Short interest amounted to more than 60% of the stock's float, according to S3 data.

Read More: Franchise Group Inc. Lenders Tap Gibson Dunn Amid Kahn Dealings

Before Wednesday's filing, shares of B. Riley had plunged amid concern about its deals with Kahn, who has been blamed in court papers by some investors for Prophecy's collapse. The fund's demise has been the subject of a federal investigation, and a key executive there pleaded guilty to fraud charges in November. Kahn has been tagged by authorities as an unindicted co-conspirator, Bloomberg reported.

While Kahn was managing money for Prophecy, he acquired a controlling stake in Franchise Group, a collection of retail chains that he later took private with help from B. Riley. Short sellers contend that the Prophecy fraud case casts doubt on the validity of his ownership in Franchise Group and could impair B. Riley's holdings in that firm.

--With assistance from **Donal Griffin** and **Bre Bradham**.

To contact the reporters on this story:

Todd Gillespie in New York at tgillespie30@bloomberg.net;

Rick Green in New York at rgreen18@bloomberg.net

To contact the editors responsible for this story:

Sally Bakewell at sbakewell1@bloomberg.net

Rick Green, Peter Eichenbaum

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A \$1 Million Bet on a Tech Startup Spawns Investor-Founder Fight

By Sarah McBride

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A \$1 Million Bet on a Tech Startup Spawns Investor-Founder Fight

By Sarah McBride2024-04-24T08:30:15854-04:00

When Denis Grosz invested in software startup Toptal LLC in 2012, he hoped the \$1 million bet could one day make him a fortune.

Instead, it landed him on the receiving end of a lawsuit, leading to more than \$2.6 million in damages against him and his new firm and possibly tens of millions more in legal fees.

At issue is a challenge to a fundamental convention in Silicon Valley: whether the startup has denied early investors a return by refusing to switch their decade-old convertible debt commitments into equity, tying up their holdings even as the company has flourished. Without equity, they can't sell their interest in Toptal, making their outlay worth little more than the day they invested.

While Silicon Valley relationships between investors and the startups they fund are frequently tense, it's rare for them to boil over into lawsuits. Deals are usually hashed out behind closed doors, struck by founders eager to please their backers and investors wanting to seem founder friendly.

Lately, that dynamic has come under strain. As interest rates have climbed and investors have handed out less money, there's more pressure on startups to eke out returns. At the same time, a greater number of startup investors are, essentially, amateurs — wealthy techies looking for somewhere to invest the money they've made over the last decade-plus of good times in the industry.

In Toptal's case, its early investors — including Grosz — said the company's founder, Taso Du Val, told them they'd get equity when Toptal converted from a limited liability company to a corporation, a transition that usually happens in the first year or two of a successful startup's existence. But that still hasn't happened, even though Toptal generates hundreds of millions of dollars in revenue.

Taso Du Val

Photographer: Stephen McCarthy/Sportsfile/Getty Images

In March 2020, Toptal sued Grosz and Mechanism Ventures — a company Grosz set up that had hired several Toptal executives and contractors — for breach of contract, business disparagement and civil conspiracy, among other claims. The suit accused Grosz of using Mechanism to “aggressively poach” employees, said he’d worked with others to damage Toptal and benefit himself, and claimed he’d done it while under contract as an adviser to Toptal.

A jury found Grosz liable for breach of contract and of good faith related to his position as an adviser, but not for business disparagement, intentional interference, defamation or the civil conspiracy claims. Mechanism was found liable for intentional interference, and to have acted with malice.

In affirmative defenses against Toptal, Grosz and Mechanism alleged fraud and breach of contract of his advisory agreement. Toptal was found not liable for either.

Toptal won a little over \$16 million in damages in November, comprising awards of about \$500,000 each against Grosz and Mechanism, and \$15 million in punitive damages against Mechanism. On Monday, a judge lowered the punitive damages to \$1.6 million. Grosz and Mechanism are expected to file appeals on the verdicts themselves, according to a document they filed in February in Nevada Supreme Court.

Toptal shows the investor-founder relationship at its worst, and could signal more disputes to come. While many investments are too small for venture firms to spend time recouping, that’s not always the case for individuals, said Margaret O’Mara, a University of Washington professor and Silicon Valley historian. The number of individuals making investments nearly doubled in the two decades leading up to 2022.

In cases like this, a different startup might attempt to mollify its backers, fulfilling Silicon Valley’s tradition of rewarding investors. Kickstarter, for example, gave investors including Union Square Ventures a dividend when it decided not to go public or sell.

In Toptal’s case, the players are smaller — except for early investor Andreessen Horowitz, a giant that can afford to lose its \$100,000 investment. Grosz’s attempts to engage that firm in a discussion of how to pursue a return on Toptal were unsuccessful, emails that became part of the legal discovery show.

In a battle of small investor versus small company, “they’re not counterbalancing each other in terms of what they bring to the table,” said O’Mara. “They are not seasoned operators, deeply connected people with the deep Valley experience.”

Early Funding

Du Val started Toptal in 2010 as a 25-year-old high school dropout in Silicon Valley who’d already worked at Slide, a startup that was sold to Google. He developed what seemed at the time a novel idea: connecting companies with software engineers all over the world who could take on projects.

He raised early funding from Andreessen Horowitz and individuals like Ryan Rockefeller, and later raised \$1 million more from Grosz. Grosz's investments came in the form of debt — a convertible note that converts to equity when a startup raises more cash. Grosz's deal included rights to around 10% of the company after its first equity financing. But Grosz didn't get his stake: Toptal never raised more equity, and a conversion never happened.

At the time, convertible notes were a widely used way for early startups to raise cash. Now, founders generally use a similar instrument known as a SAFE, or simple agreement for future equity.

Today, 10% of Toptal likely would be worth a lot more than \$1 million. According to Du Val, Toptal had \$270 million in revenue in 2022, the most recent audited numbers available. In his countersuit, Grosz estimated that Toptal could be valued at more than \$1 billion.

Grosz could still see an equity conversion — Toptal raising more money would trigger one — but Du Val said in an interview that it doesn't make sense, in part due to tax reasons, to pursue that now. Grosz has never asked for his money back, according to his countersuit. Toptal tried to pay it back with interest in March 2020, according to his and Toptal's suits, but Grosz rejected the attempt.

Grosz declined to comment. Rockefeller and Andreessen Horowitz didn't respond to multiple requests for comment.

'Portfolio Defense'

When it became clear that Toptal's high-profile investor, Andreessen, wasn't going to help pursue a return, individual backers started looking for other options, according to emails shown in court.

In May 2019, Grosz presented a "portfolio defense" to an investment club he belonged to, according to an email shown in court, floating possibilities like starting a competing company, initiating a lawsuit or working with a journalist on an expose.

First, though, he considered finding a professional investor to fight for liquidity in exchange for a cut of early investors' stakes. In an email presented in court, Grosz said that an associate had described the approach as "outsourcing the assholery." After cooling on that idea, he and Rockefeller discussed what the latter dubbed in another court-documented email as the "cancer patient" strategy: weakening Toptal to the point where it would make sense for Du Val to sell it, forcing his hand in converting to a corporation. In court testimony, Grosz denied implementing a strategy by that name, and the jury found him not liable for civil conspiracy with Rockefeller and others.

Grosz also pitched "The Information" on an article about how Toptal had grown without handing out stock to employees, the court filings show. He hoped that bad press would help drive away customers or shame Du Val into action, according to an email shown in court. The Information declined to comment via a representative.

When the article ran in August 2019, it captured the attention of Silicon Valley. A #boycottToptal movement emerged, and jobseekers posted on Reddit saying they wouldn't work there. In March 2020, Toptal sued Grosz in Nevada, where he lived at the time. Grosz countersued that June.

Du Val said in an interview that he's still dealing with the fallout from the boycott, defusing an exchange on the sidelines of the World Economic Forum at Davos this January. He said that a man he was introduced to immediately commented "Oh, you're the guy known for ripping off noteholders."

Before the liabilities and damages awarded in November, the judge made an additional ruling in October on a pre-trial motion filed by Toptal: Grosz's ability to demand any equity stake had expired when his convertible notes hit their maturity date in 2014. That ruling is under appeal by Grosz.

Not on trial was the issue of how to reward a startup's modest growth. Toptal is doing fine as a successful-but-not-huge company; it may never go public, but it doesn't really need to. That's a pretty good outcome — just not for investors.

To contact the author of this story:

Sarah McBride in San Francisco at smcbride24@bloomberg.net

To contact the editor responsible for this story:

Anne VanderMey at avandermey@bloomberg.net

Elizabeth Fournier

Michael Hytha

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[Securities Law News](#)

April 24, 2024, 9:36 AM PDT; Updated: April 24, 2024, 12:05 PM PDT

Precious Metals Retailer Settles With SEC, CFTC Coin Cases (1)

By Martina Barash

Documents

-  [SEC Case Final Judgment](#)
-  [CFTC Case Final Judgment](#)
-  [SEC Case Docket](#)
-  [CFTC Case Docket](#)

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- Red Rock Secured allegedly touted 'premium coin' investments
 - Company, executives agree to pay more than \$70 million

Bloomberg Law News 2024-04-25T10:56:52473148559-04:00**Precious Metals Retailer Settles With SEC, CFTC Coin Cases (1)****By Martina Barash 2024-04-24T12:36:33000-04:00**

- Red Rock Secured allegedly touted 'premium coin' investments
- Company, executives agree to pay more than \$70 million

Red Rock Secured LLC and three of its executives have ended government suits alleging markups of up to 130% for "premium coin" retirement investments, with settlements totaling more than \$70 million.

Judge R. Gary Klausner entered final judgment Tuesday on consent agreements with the US Securities and Exchange Commission, Commodity Futures Trading Commission, and two state enforcement agencies in a pair of suits in the US District Court for the Central District of California.

The SEC's complaint said that Red Rock CEO Sean Kelly and two senior account executives, acting as unregistered investment advisers, persuaded at least 700 clients to sell their existing retirement securities.

They allegedly pitched a switch to gold and silver, and coins in particular, by telling investors that Red Rock's products offered better protection for their assets.

Red Rock pocketed more than \$30 million of investors' funds, according to the suits. The firm and the individual defendants neither admit nor deny the allegations, Klausner said in the consent orders.

In addition to injunctions against further violations and participation in the industry, the SEC and CFTC suit consent decrees call for monetary payments, with payments in one suit to be credited as an offset in the other. Red Rock must pay about \$66.3 million in disgorgement, interest and civil penalties under the consent decree with the SEC, but only about \$49 million under the agreement with the CFTC and the Hawaii and California agencies.

Kelly's obligation is greater in the CFTC consent, about \$4.4 million, compared with the nearly \$3.6 million he agreed to on the SEC's claims. Senior account executive Anthony Spencer's payment of \$3 million is the same under both agreements. And Jeffrey Ward, a senior account executive named as a defendant only in the SEC suit, agreed to pay that agency about \$1.6 million.

The SEC represented itself. The CFTC, the California Department of Financial Protection and Innovation, and the State of Hawaii Department of Commerce and Consumer Affairs represented the agencies in the commodities suit.

CostaLaw represented Red Rock. Cohen Williams LLP represented Kelly. The Torrey Firm represented Spencer and Ward.

The cases are SEC v. Red Rock Secured, LLC , C.D. Cal., No. 2:23-cv-03682, 4/23/24 and CFTC v. Red Rock Secured, LLC , C.D. Cal., No. 2:23-cv-03680, 4/23/24 .

(Updates story with additional detail from complaints and consent agreements throughout.)

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

To contact the editors responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com; Andrew Harris at aharris@bloomberglaw.com

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Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Chancery Lets \$344M Carlyle Tax-Payout Suit Move Ahead

By **Leslie A. Pappas**

Law360 (April 24, 2024, 6:48 PM EDT) -- A vice chancellor of the Delaware Court of Chancery on Wednesday refused to toss most claims in a stockholder suit led by a Pittsburgh pension fund targeting a \$344 million tax-asset buyout at The Carlyle Group Inc., though she did trim the suit by a single count.

In a 91-page memorandum opinion that tied up loose ends from a partial bench ruling in January, Vice Chancellor Morgan T. Zurn dismissed a claim for breach of fiduciary duty against the founders and controllers of Carlyle but preserved many other claims in the complaint from the City of Pittsburgh Comprehensive Municipal Pension Trust Fund.

The suit pertains to Carlyle's conversion from a limited partnership to a corporation in January 2020 and the LP's agreement to pay private stockholders \$344 million for losing rights outlined in certain tax-receivable agreements.

The pension fund **filed the suit in August 2022**, alleging the company vastly overpaid for tax assets that were essentially worthless. The TRA buyout wasn't required or necessary; it allowed insiders to walk away with millions for unused TRAs while the firm and its shareholders got nothing in exchange, the suit alleged.

The TRAs were held largely by Carlyle's founders and certain insiders who had the right to collect payments in the future if Carlyle recognized certain tax savings. In reality, though, the partnership had little taxable income that would generate TRA payouts and had made very few of them.

The partnership made no TRA payments before 2016 and a total of \$6.5 million in TRA payments from 2016 through 2020, the decision says, referencing allegations in the complaint.

At the pleading stage of the litigation, the pension fund sufficiently raised doubts that a board conflicts committee that approved the TRA buyout was fully informed, according to the vice chancellor's opinion on Wednesday.

For example, the committee wasn't given information about the unitholders' exchange history, and it was not told the value of the TRA rights had declined in recent years, the opinion says.

Shareholders have overcome safe harbors at the pleading stage by alleging "Carlyle LP's general partner, acting through various defendants in this action, concealed or obfuscated material information from the conflicts committee to ensure it did not learn the private unitholders lacked the leverage to extract a payment for their TRA rights," she wrote.

"At bottom, plaintiff argues the private unitholders received something for nothing because Carlyle management ensured the conflicts committee did not receive information that would have revealed the private unitholder defendants lacked the leverage to demand a payment for their TRA rights," the vice chancellor wrote.

Defendants named in the suit included The Carlyle Group Inc. and various affiliates; Carlyle co-founders David M. Rubenstein, William E. Conway Jr. and Daniel A. D'Aniello; and several other company directors, senior executives and affiliates.

The suit asserted nine causes of action against various combinations of the defendants, including counts for breach of fiduciary duty, breach of the limited partnership agreement, breach of the master reorganization agreement, breach of Carlyle's certificate of incorporation, tortious interference with contract and unjust enrichment.

The defendants **moved to dismiss**, arguing the \$344 million buyout was actually \$207 million less than what the company would have had to pay under a different corporate structure.

At a **bench ruling in January**, Vice Chancellor Zurn denied the defendant's arguments to dismiss the case under Delaware Chancery Rule 23.1, which relates to conflicts of interest on a company's board. Her written opinion issued on Wednesday finished off the decision, addressing their arguments under Chancery Rule 12(b)(6), which relates to a failure to state a claim.

Vice Chancellor Zurn allowed all claims arising out of alleged breach of the limited partnership agreement against all the defendants to survive.

She also said the plaintiff had adequately pled breach of fiduciary duty claims against Carlyle's directors and officers, concluding the pension fund had adequately pled a claim for violating Carlyle's charter.

But she partially dismissed a count related to breach of the master reorganization agreement insofar as it pertained to the three founders and two senior executives, Glenn Youngkin and Peter Clare. The vice chancellor found that none of the individuals were parties to the MRA, so they couldn't breach it.

And she completely dismissed count two of the complaint, which asserted breach of fiduciary duty against the founders as a control group.

Defendants had argued the founders were not a control group because they weren't connected in a "legally significant way" and because Carlyle Group Management LLC, the Carlyle subsidiary that controlled the limited partnership's daily operations, did not maintain control of The Carlyle Group Inc. after the conversion.

The pension fund did not address the defendants' arguments about the founders' control in its answering brief, its reply or at the hearing, so the argument was waived and the count was dismissed, the opinion said.

None of the parties immediately responded Wednesday to Law360's request for comment.

The City of Pittsburgh Comprehensive Municipal Pension Trust Fund is represented by Joel Friedlander, Jeffrey M. Gorris and Christopher M. Foulds of Friedlander & Gorris PA, Randall J. Baron, Benny C. Goodman III and Andrew W. Hutton of Robbins Geller Rudman & Dowd LLP, and Gladriel D. Shobe and Jarrod Shobe of Shobe & Shobe LLP.

The Carlyle Group Inc. and the individual defendants are represented by Robert A. Van Kirk, John Williams, Tyler K. Infinger, Bryan Czako and William J. Donnelly of Williams & Connolly LLP and Blake Rohrbacher, Matthew D. Perri and Nicole M. Henry of Richards Layton & Finger PA.

The case is City of Pittsburgh Comprehensive Municipal Trust Fund v. William E. Conway Jr. et al., case number 2022-0664, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.



Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Pegasystems Cuts \$35M Deal To End Investor Suit

By **Brian Dowling**

Law360 (April 24, 2024, 5:49 PM EDT) -- Pegasystems Inc. has agreed to pay \$35 million to settle a shareholder suit in Massachusetts federal court alleging the software company failed to properly disclose a rival's trade secret litigation that led to a \$2 billion verdict.

Class counsel at Robbins Geller Rudman & Dowd LLP told the court on Tuesday that the complexities of proving its civil securities fraud case to a jury, including ongoing discovery, depositions, expert reports and a lengthy and expensive trial, weighed on its decision to settle the case.

The lawsuit, filed in 2022, claimed Cambridge, Massachusetts-based Pegasystems and its CEO, Alan Treffer, violated the Securities Exchange Act of 1934 by assuring investors that rival tech company Appian's trade secrets case in Virginia state court was "without merit."

A jury awarded Appian **\$2 billion** after hearing **allegations** that Pegasystems gained access to Appian's software by hiring an employee of a government contractor who was also an Appian developer. The judgment also requires Pegasystems to pay **\$24 million** for Appian's legal bills and post-judgment interest of \$122 million per year.

Pegasystems has denied the trade secrets claims and has appealed the verdict.

The Virginia verdict "looming over Pega presents a significant risk" to the class, investors said in the motion seeking approval of the settlement.

"Should Pega ultimately fail to significantly reduce or nullify the Virginia judgment, Pega's ability to fund a judgment following a trial in this case would be severely jeopardized," the class said. "In short, neither obtaining nor collecting on a large trial judgment was assured."

The parties tried mediating the claims in February and reached the present deal to settle the case in early March.

The deal involves a \$35 million payment from Pegasystems or its insurers, out of which administration costs and attorney fees also would be paid, according to the filing. Robbins Geller said in the filing it intends to seek no more than 33% of the fund, or \$11.6 million, for its fees, plus costs not to exceed \$450,000.

The settlement also allowed Pegasystems to maintain its denials that it committed any act or made any misstatement that could result in liability under federal law.

Pegasystems said in a statement to Law360 on Wednesday that it is "pleased to have reached an agreement to settle this matter and will continue to focus on delivering business transforming solutions for our clients and partners."

Representatives for the lead plaintiffs were not immediately available for comment on Wednesday.

The lead plaintiffs are represented by Debra J. Wyman, Christopher D. Stewart, Megan A. Rossi, Nicole Q. Gilliland, Chad Johnson and Snehee Khandeshi of Robbins Geller Rudman & Dowd LLP, as well as Theodore M. Hess-Mahan of Hutchings Barsamian Mandelcorn LLP.

Pegasystems is represented by Daniel W. Halston, Michael G. Bongiorno, Robert Kingsley Smith and Erika M. Schutzman of WilmerHale.

The case is In re Pegasystems Inc. Securities Litigation, case number 1:22-cv-11220, in the U.S. District Court for the District of Massachusetts.

--Editing by Patrick Reagan.

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Tesla Must Put Musk's Potential Payday In Trust, Investors Say

By **Jeff Montgomery**

Law360 (April 24, 2024, 3:27 PM EDT) -- Class attorneys for Tesla stockholders have asked Delaware's chancellor to seize or shelter in a trust tens of billions in company stock sidelined by a ruling that struck down CEO Elon Musk's 10-year compensation plan in January, pending a fast-track hearing.

The proposal was included in a flurry of motions filed with the court late Tuesday that also sought an injunction barring Tesla from attempting to litigate the issue in other jurisdictions — including in its proposed new home state of Texas — and fast-tracking of an order finalizing the January ruling and multibillion-dollar stockholder attorney fee awards.

Driving the requests, attorneys for the stockholders wrote, is a recent Tesla call to hold a stockholder meeting on June 13 for actions that include a second ratification vote on the pay plan — valued in January at around \$56 billion — as well as a vote to reincorporate the electric-vehicle company in Texas, potentially shedding Delaware court jurisdiction over future issues.

"The risk arising from defendants' efforts to thwart the court's opinion via 'ratification' is compounded by defendants' efforts to remove Tesla from the court's jurisdiction through the Texas re-domestication," the class attorneys wrote.

Gregory V. Varallo of Bernstein Litowitz Berger & Grossmann LLP, counsel to the stockholders, said in a letter to Chancellor Kathaleen St. J. McCormick that, given Tesla's plan to hold a June 13 hearing on reincorporation, "we are seeking a hearing on the motions sufficiently far in advance of the stockholders' meeting to allow the court time to act on the motions" beforehand.

"Defendants should not be permitted to evade this court's post-trial opinion, which applies the law of the [Delaware] jurisdiction in which Tesla has been incorporated for approximately 21 years," the stockholder attorneys said in a separate motion seeking expedited treatment of the requests.

Tesla did not immediately respond to a request for comment on Wednesday.

In a letter to stockholders from Tesla Chair Robyn Denholm included in the company's proxy statement for the June 13 vote, Denholm stressed the Chancery Court voided a pay plan already ratified in 2018 by 73% of votes cast by disinterested stockholders. Musk has yet to receive any compensation under the plan, which has been in dispute since.

Tesla's bylaws include a Delaware exclusive-forum provision, class attorneys wrote in one of the motions on Tuesday, pointing out the class complied with the bylaw by suing over the compensation plan in the Court of Chancery. They added the class "will be irreparably harmed if defendants can divest or undermine this court's jurisdiction over any issue in this action."

Shares entangled in the dispute "should be seized and sequestered or, alternatively, protected via a constructive trust," one of the motions said, including some \$5.6 billion in shares that attorneys argued should be awarded to stockholder attorneys in lieu of a cash fee.

The constructive trust motion argued Tesla's eight-member board, including five conflicted members, has improperly attempted to repudiate the Chancery Court's decision regarding the nearly 308 million shares tangled up in the dispute.

Chancellor McCormick's Jan. 30 ruling found Musk dictated the timing of the compensation review process, "making last-minute changes to the timeline or altering substantive terms immediately prior to six out of the 10 board or compensation committee meetings during which the plan was discussed."

Among other flaws found in the compensation decision-making process, the chancellor wrote, were disclosure failures, murky terms, conflicted director architects and Musk's own conflicted influence in Tesla's creation of an Everest-sized mount of fast-triggering stock options.

Tesla argued Musk was "uniquely motivated by ambitious goals," with Tesla desperately needing him to succeed, the opinion observed. It added that "[t]hese facts do not justify the largest compensation plan in the history of public markets."

The 10-year pay plan went to a weeklong Chancery Court trial in November 2022. It included 12 tranches or performance milestones that Musk had to meet before qualifying for a portion of the total, once estimated at as much as \$56 billion.

Late Tuesday, attorneys for the stockholders argued Tesla's attempts to "restore to Mr. Musk" options rescinded by the court's January decision would materially impact the Delaware proceedings and fee petition.

In a motion to expedite an anti-suit injunction in Delaware, class attorneys observed Tesla had been unable to prove that the stockholder vote in 2018 "was fully informed because the proxy statement inaccurately described key directors as independent and misleadingly omitted details" about the process.

A bare majority of Tesla's board agreed to begin considering a move to Texas five days after Elon Musk declared on Feb. 1 a social media poll had found users "unequivocally" in favor of the move.

The issue of Musk's compensation went to a director who was awarded \$150 million worth of Tesla stock when she was appointed to a special committee of one that considered the question. The review "did not substantively re-evaluate the amount or terms" of the grant and did not "engage a compensation consultant," the motion for an expedited anti-suit injunction said.

In the Chancery Court case, plaintiff Richard J. Tornetta is represented by Jeroen van Kwawegen, Gregory V. Varallo and Glenn R. McGillivray of Bernstein Litowitz Berger & Grossmann LLP, Jeremy S. Friedman, Spencer M. Oster and David F.E. Tejtrel of Friedman Oster & Tejtrel PLLC, and Peter B. Andrews, Craig J. Springer, David M. Sborz, Andrew J. Peach and Jackson E. Warren of Andrews & Springer LLC.

Defendants Elon Musk, Robyn M. Denholm, Antonio J. Gracias, James Murdoch, Linda Johnson Rice, Brad W. Buss and Ira Ehrenpreis are represented by Evan Chesler, Daniel Slifkin and Vanessa A. Lavelly of Cravath Swaine & Moore LLP and David E. Ross and Garrett B. Moritz of Ross Aronstam & Moritz LLP.

The case is Richard J. Tornetta et al. v. Elon Musk et al., case number 2018-0408, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.



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Investors Say Macquarie No Magic Bullet For Citi In Fraud Suit

By **Jessica Corso**

Law360 (April 24, 2024, 5:46 PM EDT) -- Citigroup investors fighting for another chance to sue the bank over allegations that it concealed risk management failures that led to a \$400 million regulatory fine told a New York federal judge Tuesday that the U.S. Supreme Court's recent decision to limit corporate disclosure lawsuits is not terminal to their case.

The high court **handed down a ruling** earlier this month in a case known as *Macquarie v. Moab Partners* that blocks shareholders from filing securities fraud claims against companies that remain silent on issues they are required to disclose.

In an early test of the ruling's reach, Citi investors say they will drop some allegations from a proposed amended complaint due to the Supreme Court ruling but are fighting the bank's claims that the whole suit should be thrown out.

"Defendants report that Macquarie holds that 'pure omissions' of information required by Item 303 without a corresponding misstatement cannot support a private action under Rule 10b-5(b)," lead attorney Javier Bleichmar of Bleichmar Fonti & Auld LLP wrote in a letter to U.S. District Judge Loretta Preska on Tuesday.

"That is correct. Accordingly, Plaintiffs are no longer advancing a 'pure omissions' theory of liability," Bleichmar said.

He argued that the remainder of the case should be allowed to move forward, however, because Citi did more than just omit certain information from financial statements. The suing plaintiffs argue that company management made specific statements that render the omissions false — the "half-truth" theory of liability that the Supreme Court **left intact**.

The case accuses Citi of concealing problems with its risk management practices that led to a \$400 million fine from the U.S. Office of the Comptroller of the Currency in 2020.

It was **dismissed last year** after Judge Preska found that a majority of the alleged misstatements in the original complaint were either nonactionable, immaterial, not false when issued or were only rendered false later on.

At the time of the dismissal, the judge expressed skepticism about the plaintiffs' ability to rewrite the complaint in a way that would survive another dismissal bid but allowed them to make a case for why they should be allowed another shot at the lawsuit.

The investors have **taken her up** on that challenge, filing a memo two months after dismissal arguing that their proposed amendments allege "new, extensive and detailed contemporaneous facts" based partially on information provided by 12 high-level former employees who worked at Citi during the proposed class period.

But Citi's attorneys filed a letter in Judge Preska's court just days after the high court's Macquarie decision came down, arguing that the ruling defeated at least some of the claims in the proposed amended complaint. The bank also argued that the move to reopen the lawsuit should be denied for other reasons, including a failure to plead "conscious misconduct or recklessness" and an undue delay in moving to amend the complaint.

Bleichmar's Tuesday letter said the bank was also "mistaken" on those grounds and urged the court to approve the shareholder request to amend the complaint.

The shareholders are represented by Javier Bleichmar, Joseph Fonti, Erin Woods and Benjamin Burry of Bleichmar Fonti & Auld LLP.

Citigroup is represented by Sharon Nelles, David M.J. Rein and Leonid Traps of Sullivan & Cromwell LLP.

The case is In re: Citigroup Securities Litigation, case number 1:20-cv-09132, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Katryna Perera. Editing by Vaqas Asghar.

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Nuclear Fuel Co. Investor Sues Over Hair-Trigger 'Poison Pill'

By **Lauren Berg**

Law360 (April 24, 2024, 8:46 PM EDT) -- A Centrus Energy Corp. stockholder on Wednesday hit the company, as well as current and former directors, with a proposed class action in Delaware Chancery Court, challenging allegedly hair-trigger shareholder rights "poison pill" restrictions that activate anti-takeover measures based on a relatively low share ownership percentage.

Centrus, a supplier of low-grade uranium used in nuclear power plants, and its board have implemented what is supposed to be a "rare and special-purpose" poison pill meant to protect net operating loss, or NOL, assets but which is actually being used as a board entrenchment device, according to the complaint filed by shareholder George P. Assad Jr.

A stockholder rights plan, more commonly known as a poison pill, is a defense strategy used by the directors of a public company to prevent activist investors, rivals or others from taking control of the company through the amount of shares they own.

In this case, the 4.99% ownership trigger at issue is only supposed to be used for the narrow purpose of protecting NOL assets, which the lawsuit says can be used to offset future tax liability and, without a pill, are subject to limitation and eventual loss under the Internal Revenue Code.

"The arcane tax provisions are implicated by the trading in company shares of 5% or greater holders and determine when (and how much of) the NOL asset disappears in certain circumstances," the suit states. "Thus, the typical NOL pill is triggered at an ownership level in excess of 4.99%."

"Some boards elect to adopt stockholder rights plans to dissuade stockholders from purchasing stock sufficient to trigger an ownership change that might threaten a company's ability to use its NOLs," it states, noting that a 4.99% trigger is "extremely rare outside of the NOL context and presumptively unreasonable."

Such a trigger is reserved only for pills "carefully tailored" to protect NOL assets, but Centrus and its board have breached their fiduciary duties in using a 4.99% trigger that is just a board entrenchment device in disguise, Assad alleges.

What's more, Centrus' NOL pill included a "daisy chain" feature that "aggregated shares owned by stockholders who are unaware of each other's existence, creating a minefield deterring Centrus stockholders from entering into [agreements] with any other company stockholders, lest they unwittingly trigger the pill," the complaint states.

The NOL pill was set to expire on June 30, 2023, but on April 10 of that year, Centrus' board amended the pill to extend its expiration date through June 30, 2026, according to the suit.

When soliciting stockholder approval of the amended pill, the company's board claimed the "expansive terms" were needed to preserve Centrus' tax attributes, but Assad said the features go far beyond what is necessary to protect the company's NOL assets.

The suit claims breach of fiduciary duty and seeks injunctive relief, litigation costs and attorney fees.

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

In 2014, Centrus was **born from the bankruptcy** of its corporate predecessor, USEC Inc., which ran into financial difficulties following the 2011 Fukushima Daiichi Nuclear Power Plant disaster. Japan, along with other operators of dozens of nuclear power plants across the world, took their plants offline, which led to the price of low-enrichment uranium plummeting, according to Assad's suit.

USEC had issued \$530 million worth of notes in 2007 that were due to be paid in October 2014, but the company ended 2013 with just \$314 million in cash, the suit states. So the company filed for **Chapter 11 protection** in March 2014.

Assad is represented by Gregory V. Varallo, Daniel E. Meyer, Jeroen van Kwawegen and Edward Timlin of Bernstein Litowitz Berger & Grossmann LLP; William J. Fields, Christopher J. Kupka and Samir Shukurov of Fields Kupka & Shukurov LLP; and Richard A. Maniskas of RM Law PC.

Counsel information for the defendants was not immediately available.

The case is Assad v. Williams et al., case number 2024-0426, in the Court of Chancery of the State of Delaware.

--Editing by Andrew Cohen.

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Investors Can't Hit Reset In 737 Max Fraud Suit, Boeing Says

By **Lauraann Wood**

Law360 (April 24, 2024, 5:56 PM EDT) -- Investors claiming Boeing wiped out billions in stock value by misrepresenting the 737 Max's safety shouldn't be allowed to "effectively hit the reset button" and pursue an amended complaint that relies on statements already deemed inactionable, the aerospace giant argued Wednesday.

The investors' latest securities fraud complaint shouldn't move past the dismissal stage because they're simply looking to add 22 alleged misstatements and six alleged corrective measures back into the case for reconsideration of a previous judge's dismissal ruling, Boeing attorney Richard Pepperman II of Sullivan & Cromwell LLP argued to U.S. District Judge Nancy Maldonado, who mostly sat quiet through the parties' argument.

"Such a wholesale revisiting" of U.S. District Judge John Tharp Jr.'s 2022 ruling is unwarranted because the extra context and additional claims in the investors' amended complaint aren't enough to call those statements and disclosures back into question, Pepperman argued. And perhaps just as critically, the investors' suit should also be tossed because they've failed to overcome the loss causation problems that alternatively doomed a chunk of their initial claims, he told Judge Maldonado.

An attorney representing the investors, however, argued that Judge Maldonado should reject Boeing's arguments because the plaintiffs have brought "a very powerful amendment" to the court, and the aerospace giant isn't grappling with the new information in their complaint that Judge Tharp never considered.

All the investors want is "a level playing field" as though they were still before Judge Tharp, Salvatore Graziano of Bernstein Litowitz Berger & Grossmann LLP told Judge Maldonado. The notion that his previous ruling should be set in stone is unfair, especially since his dismissal came without prejudice and the investors have added new facts to their case, Graziano argued.

"I don't want to get too negative here, but I find it to be unbelievably bad conduct in this case," he said.

For instance, the investors now know through discovery that Boeing pilots received a bulletin between two tragic plane crashes instructing them to employ certain already-existing procedures if they experience a malfunctioning Maneuvering Characteristics Augmentation System, which affected the plane's flight control system, but that the bulletin didn't state they had only 10 seconds to perform those procedures to prevent their aircraft from nose-diving, Graziano said.

The investors also know now that Boeing knew its faulty MCAS needed a software upgrade and initially drafted a public release disclosing as much, but that former Boeing CEO David Muilenburg personally deleted that line so it wouldn't appear in the final draft, Graziano told Judge Maldonado.

Discovery has also shown that Boeing launched an internal investigation within days of the first catastrophic crash of Lion Air Flight 618 in October 2018, and that its safety review board labeled the 737 Max jet's MCAS problem a significant safety issue, Graziano said. That and more was happening on the inside at Boeing while executives repeatedly and falsely assured the jet's safety in public, including Muilenburg's late November 2018 statement that the 737 Max was "as safe as any airplane that has ever flown the skies," he told the judge.

"With the benefit of discovery ... we now think we have crossed the concerns that were respectfully raised by Judge Tharp, and we believe that if he had our facts ... he too would have found these allegations to be reasonably material to a reasonable investor," argued.

The 737 Max was **grounded globally** for 20 months after being involved in the Lion Air crash in the Java Sea, which killed 189 people, and the March 2019 crash of Ethiopian Airlines Flight 302 that killed 157 people. After Boeing developed a software fix and enhanced pilot training, the Federal Aviation Administration **lifted the U.S. grounding order** for the 737 Max in November 2020. The European Union Aviation Safety Agency lifted its 737 Max grounding order in January 2021.

The investor plaintiffs spearheading the **five-year-old suit** called Boeing's 737 Max debacle "an appalling example of cynical decision-making that valued short-term monetary gain over long-term corporate success and even over human lives." And by repeatedly doubling down on their false assurances about the 737 Max's safety, Boeing erased tens of billions in shareholder value during a class period that spanned from Nov. 7, 2018, to Dec. 16, 2019, the investor plaintiffs have alleged. Judge Tharp presided over the investors' suit until the court's executive committee reassigned it to Judge Maldonado's docket as part of her initial caseload upon her confirmation as a district judge.

Judge Tharp held **in August 2022** that the plaintiffs didn't sufficiently allege that Boeing and Muilenburg intended to deceive investors with their statements responding to the initial October 2018 Lion Air crash and signaled that those claims needed to be retooled if they were to survive. But Judge Tharp also found that they sufficiently alleged that Boeing and Muilenburg made several materially misleading statements following the March 2019 Ethiopian Airlines crash, allowing the investors' claims based on those statements to proceed.

The investor plaintiffs are represented by Salvatore J. Graziano, Katherine M. Sinderson, Abe Alexander, John Esmay, Veronica V. Montenegro, Michael Mathai, Timothy Fleming, Jonathan D'Errico, Mathews de Carvalho and Avi Josefson of Bernstein Litowitz Berger & Grossmann LLP; John L. Davidson of Davidson Bowie PLLC; and Andrew L. Zivitz, Joshua A. Materese and Alex B. Heller of Kessler Topaz Meltzer & Check LLP.

Boeing is represented by Richard Pepperman II and Tasha Thompson of Sullivan & Cromwell and John F. Hartmann, Michael B. Slade, Craig S. Primis and Katherine R. Katz of Kirkland & Ellis LLP.

The case is *Seeks v. The Boeing Co.*, case number 1:19-cv-02394, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Linda Cheim. Editing by Kelly Duncan.



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Boston Pension Doubles Down On Bid To Lead NYCB Suit

By **Katryna Perera**

Law360 (April 24, 2024, 4:31 PM EDT) -- Boston's municipal pension plan and its attorneys from Labaton Keller Sucharow LLP stood firm on their bid to lead a proposed securities class action against New York Community Bancorp, saying their chief rival for lead status bought their shares too late and is too sketchy to be a potential plaintiff.

The Boston Retirement System **filed a memo** Monday in support of its motion for consolidation and appointment as lead plaintiff. The pension plan says it is the only movant in the case that both had the largest financial interest — roughly \$889,000 — and satisfies the adequacy and typicality requirements of the Private Securities Litigation Reform Act of 1995.

According to the memo, another movant named Sand Hollow Management LLC is challenging the pension plan's bid for lead plaintiff, claiming a larger financial loss. But Boston Retirement said Sand Hollow's lead plaintiff application is "plagued by fatal, unique defenses that undermine its typicality and adequacy," and there are "serious questions" about the timing of its trading pattern.

These questions and alleged issues "will undoubtedly expose the class to 'unique defenses which threaten to become the focus of the litigation,'" the pension plan said.

The memo stated that Sand Hollow's financial interest in the case rests on a "fatal trading quirk." According to the pension plan, Sand Hollow purchased all of its NYCB securities after the bank's fraud was disclosed.

"Therefore, Sand Hollow's 'post-disclosure purchases suggest that [it] invested in [company] securities notwithstanding notice of defendants' misstatements and omissions' and '[t]hese unusual trading patterns may well undermine the ability of [Sand Hollow] to assert the fraud-on-the-market presumption of reliance, thereby rendering [it] inadequate,'" the memo stated.

The pension plan noted in the memo that it "does not take the position that any purchases after a partial disclosure are disqualifying", but said Sand Hollow's specific trading makes it an atypical plaintiff because it purchased its "entire position after the most impactful corrective disclosure."

According to the memo, several other courts have disqualified similar movants with less "extreme" trading patterns than Sand Hollow.

Boston Retirement also argued that Sand Hollow has failed to show that it is a sophisticated investor with adequate experience to oversee the litigation. According to the memo, Sand Hollow is entirely owned by Jason Stubbs, who has no relevant litigation experience, and has a "troubling criminal history."

"Mr. Stubbs was placed on felony probation for child abuse in 2005," the memo stated. "Courts have found similar criminal histories and other forms of prior misconduct immediately disqualifying during the PSLRA lead plaintiff analysis ... moreover, Mr. Stubbs' affirmative failure to disclose this history further weighs against a finding of adequacy."

Boston Retirement says that, in contrast to Sand Hollow, it has experience in overseeing litigation, has already negotiated a "conservative" fee agreement with Labaton Keller and "is the only movant to satisfy the statutory test."

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

The suit alleged NYCB executives weren't forthcoming about the effects of the bank's acquisition of Flagstar Bank in 2022, along with its March 2023 purchase of Signature Bank's \$34 billion worth of deposits, which included \$13 billion in commercial real estate.

Those acquisitions pushed NYCB's assets from \$63 billion to \$123.8 billion, triggering a new layer of regulatory scrutiny as a bank with more than \$100 billion in loans. The additional requirements forced the bank to take loan write-offs and start building higher levels of reserves, according to investors.

NYCB's stock price fell 39% overnight after its year-end results were announced on Jan. 31, and by Feb. 5, the stock price had reached \$4.20 per share, an all-time low for the 164-year-old bank, the investors claimed.

The bank partly attributed its results to losses from office and rent-controlled multifamily properties in New York City after reporting \$552 million in unrecoverable debt, an increase from \$62 million in the third quarter.

The bank's results come as federal authorities — including U.S. Treasury Secretary Janet Yellen and the U.S. Securities and Exchange Commission — have expressed recent concern about the ability of regional banks such as NYCB to shoulder their portfolios of commercial property loans.

The Boston Retirement System is represented by Francis P. McConville and Eric J. Belfi of Labaton Keller Sucharow LLP.

Sand Hollow is represented by James M. Wilson Jr. and Robert W. Killorin of Faruqi & Faruqi LLP.

NYCB is represented by Jay B. Kasner, Susan L. Saltzstein and Shaud G. Tavakoli of Skadden Arps Slate Meagher & Flom LLP.

The case is Dale Miskey v. New York Community Bancorp Inc. et al., case number 2:24-cv-01118, in the U.S. District Court for the Eastern District of New York.

--Editing by Dave Trumbore.



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Hedge Fund Says Credit Suisse Misled On Bonds' Health

By **Carla Baranauckas**

Law360 (April 24, 2024, 9:22 PM EDT) -- U.S.-based hedge fund Appaloosa LP is accusing the former Credit Suisse in New Jersey federal court of misleading investors about its financial health before \$17 billion of its bonds were wiped out in a merger with its Swiss competitor UBS.

Appaloosa said that two investors it advised — Palomino Master Ltd. and Azteca Partners LLC — suffered significant losses after purchasing Additional Tier 1 bonds that were written down just a week and a half after the purchases, according to a **complaint** filed Tuesday.

The suit contends that Credit Suisse's former chairman Axel P. Lehmann and former chief executive Ulrich Körner made false statements denying that the institution was experiencing liquidity problems when it was actually scrambling to stave off a run on the bank.

"This is an action to recover significant investment losses suffered by investors who were misled by defendants' misrepresentations concerning the financial health of a major international bank — Credit Suisse — during a fateful week in March 2023 when that bank faced serious liquidity issues," the complaint said.

"Defendants falsely represented that Credit Suisse was experiencing material inflows of liquidity when the opposite was true. They materially misrepresented Credit Suisse's liquidity position as very strong and 'getting stronger' at a time when there was a run on the bank and Credit Suisse was losing billions of dollars in withdrawals on a daily basis," it said.

On March 14, 2023, Körner appeared on Bloomberg Television and falsely stated that deposits exceeded withdrawals on the previous day, the suit said. On March 13, withdrawals actually exceeded deposits by a significant amount.

The next day, in a Bloomberg interview, Lehmann dismissed the notion that Credit Suisse would need government assistance, the complaint said.

Then on March 19, 2023, the Swiss Financial Market Supervisory Authority announced that UBS and Credit Suisse would **merge**, with the government backing UBS, the complaint said. As part of the merger, the Additional Tier 1 Bonds were written down to zero.

The lawsuit seeks unspecified damages under U.S. securities laws and New Jersey racketeering laws.

UBS declined to comment Wednesday. Representatives for the plaintiffs did not immediately respond to a request for comment.

Palomino, Azteca Partners and Appaloosa are represented by Michael James Hampson, Richard A. Bodnar and Lawrence M. Rolnick of Rolnick Kramer Sadighi LLP.

Counsel information for Credit Suisse, Lehmann and Körner was not immediately available Wednesday.

The case is Palomino Master Ltd. et al. v. Credit Suisse Group AG et al., case number 2:24-cv-05539, in U.S. District Court for the District of New Jersey.



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3M And Ga. Utility Say \$850M PFAS Cleanup Plan A No-Go

By **Kelcey Caulder**

Law360 (April 24, 2024, 9:32 PM EDT) -- 3M, a Georgia utilities provider and carpet and chemical manufacturers told a Georgia federal judge Wednesday they shouldn't have to face an \$850 million remediation plan to clean up alleged waterway contamination from forever chemicals.

The plan in question calls for the "full remediation and elimination" of the 9,600-acre land application used by Dalton, Georgia's utility provider to treat wastewater containing toxic per- and polyfluoroalkyl substances, also known as PFAS. That plan, the companies and the utility told U.S. District Judge Amy Totenberg, was put forth by an individual — Jarrod Johnson, who has filed numerous suits over PFAS contamination in the region — and he hasn't met the standard for someone who can seek an injunction of that kind, they said.

Johnson, who sued 59 carpet manufacturers, chemical companies, solid waste handlers and others in 2019, has alleged that industrial wastewater from Dalton containing PFAS flowed downstream into drinking water used by 100,000 ratepayers in Rome, Georgia, and surrounding areas. This led to increased water bills for Rome residents, according to Johnson, who argued that money should be returned to the pockets of ratepayers.

The land application system must also be fixed, Johnson argued in his suit, as it does not fully remove PFAS and instead allows them to trickle into the Conasauga River and flow downstream into the Oostanaula River, which acts as Rome's main water source.

But in court Wednesday, attorney Robert Remar of Smith Gambrell & Russell LLP, who represents Dalton Utilities, 3M Co. and several other defendants in the suit, said private parties like Johnson can only assert public nuisance claims allowing for the type of injunction he seeks if they can show they have suffered a "special injury, different from the kind suffered by the general public."

Johnson has not met that bar, Remar argued, because his allegations that the contamination of local rivers impacts residents' use and enjoyment of those waters and the provision of safe drinking water fall into the category of "general public harm."

Johnson hasn't offered any evidence that he himself has suffered any physical harm or increased health risks as a result of PFAS in Rome's tap water, Remar said, and his other alleged injuries arise out of the imposition of increased water rates. Those rates would not be impacted by the remediation plan in any way, Remar contended.

Remar also noted that a **settlement** reached in June with the city of Rome in a similar lawsuit included enough funds to cover the cost of building a water treatment facility capable of filtering PFAS out of the city's drinking water. The construction of that facility is on-track to be finished within four years, long before the 30-year remediation project Johnson has requested would be completed, "rendering it unnecessary."

Moreover, Remar said the settlement amount ensured Rome would not have to charge water customers higher rates in the future to garner the funds necessary for constructing the facility.

Jerome Tapley of Cory Watson Attorneys, who represents Johnson, pushed back against those arguments, telling Judge Totenberg that the remediation plan was necessary to ensure safe drinking water for not only Rome residents but "millions of people, homes and families."

The river system that starts in Dalton runs all the way down to the Gulf of Mexico, Tapley said, subjecting "community after community" to adverse health effects associated with PFAS. Those effects, according to the U.S. Environmental Protection Agency, include things like decreased fertility, increased high blood pressure in pregnant women, developmental delays in children, increased risk of cancer and reduced vaccine response, among others.

"No level of PFAS exposure has no health impact," Tapley said. "Every Rome resident has drunk this water and could suffer as a result."

That aside, Tapley said Johnson does have the kind of special injury needed to justify his injunction request — the financial loss he and his family suffered when they paid increased water rates imposed by the city when it was attempting to tackle the issue of PFAS contamination.

Tapley also said that while the June settlement may have provided enough money to cover the estimated cost of constructing a facility capable of filtering PFAS out of Rome's water, that cost could increase, and rate increases could return.

Judge Totenberg did not make any decision on the matter Wednesday, saying at the end of the hearing that she hoped to have an answer for the parties "sooner, rather than later."

3M Co. is represented by Andrew J. Calica, Jordan Sagalowsky, Priya A. Desai, Richard F. Bulger, Elspeth V. Hansen and Craig A. Woods of Mayer Brown LLP, Brian P. O'Donoghue, Laura Sexton and Kenneth Baum of Goldman Ismail Tomaselli Brennan & Baum LLP, Monica P. Witte, Robert B. Remar, Emma H. Cramer, Sterling Gardner Culpepper III and W. Cole McFerren of Smith Gambrell & Russell LLP and Richard Rosario, W. Larkin Radney IV, Jackson R. Sharman III, Harlan Irby Prater IV, M. Christian King and Benjamin P. Harmon of Lightfoot Franklin & White LLC.

Daikin America Inc. is represented by Allen McLean Estes, Elizabeth Jones Flachsbarth, Andrea Lostocco Swartzberg, James L. Hollis and Christopher Yeilding of Balch & Bingham LLP, Robert B. Remar of Smith Gambrell & Russell LLP and David E. Nahmias, Jeffrey A. Kaplan Jr., Theodore M. Grossman, Louis A. Chaïten, Steven N. Geise, Mark R. Seiden, Richard H. Deane Jr., Kevin Patrick Holewinski, Simon Peter Hansen and James R. Saywell of Jones Day.

E.I. du Pont de Nemours and Co. is represented by John M. Johnson, Adam K. Peck, Lana A. Olson, Brian P. Kappel, Suzanne A. Fleming and Amaobi J. Enyinnia of Lightfoot Franklin & White LLC, Joshua Barrett Belinfante of Robbins Alloy Belinfante Littlefield LLC, Robert B. Remar of Smith Gambrell & Russell LLP and Blair J. Cash and Donavan K. Eason of Moseley Marcinak Law Group LLP.

Dalton Utilities is represented by Lindsey B. Mann of Troutman Pepper Hamilton Sanders LLP and Robert B. Remar of Smith Gambrell & Russell LLP.

Jarrold Johnson is represented by Gary A. Davis and Keith Johnston of Davis Environmental Attorneys, Ryals D. Stone and William S. Stone of Stone Law Group Trial Lawyers LLC and Brett C. Thompson, Hirlye R. "Ryan" Lutz III, F. Jerome Tapley and R. Akira Watson of Cory Watson Attorneys.

The case is Jarrod Johnson v. 3M Co. et al., case number 4:20-cv-00008, in the U.S. District Court for the Northern District of Georgia.

--Editing by Dave Trumbore.



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Class Attys Seek \$218M Fee Award In Google 'Incognito' Deal

By **Henrik Nilsson**

Law360 (April 24, 2024, 11:10 PM EDT) -- Attorneys from three firms urged a California federal judge to award them \$217.6 million in fees after reaching a settlement with Google in which the search giant agreed to delete billions of data records related to users' private browsing activities, with a Google representative blasting the fee bid as an attempt to "line their own pockets."

Boies Schiller Flexner LLP, Susman Godfrey LLP and Morgan & Morgan PA also seek approximately \$7.7 million in costs and \$30,000 for each of the five plaintiffs, saying Tuesday that the settlement it **reached** with Google LLC on April 1 came after nearly four years and 78,880 hours of hard work.

"Class counsel squared off against a large team from Quinn Emanuel, one of the largest and most expensive law firms in the world, where associates routinely bill over \$1,000 per hour," the motion said. "Google was also supported by a small army of in-house lawyers, numerous on-call engineers and 300 contract attorneys, whom Google hired to complete 'Herculean' discovery efforts with years of 'scorched-earth' litigation."

The attorneys said the data deletion portion of the settlement alone is worth between \$3 billion and \$6 billion, and the search giant's commitment to blocking third-party cookies by default in incognito mode makes the deal even more valuable.

José Castañeda, a Google spokesperson, told Law360 in a statement Wednesday that "Boies Schiller originally wanted \$5 billion for its lawsuit, and today's filing is just another attempt to generate news and line their own pockets in a case they settled for \$0."

Under the settlement, Google will rewrite its disclosures to inform users it collects private browsing data, delete billions of private browsing data records and limit the data it collects for the next five years.

Additionally, Google will delete so-called incognito-detection bits, which are various terms used to produce Google traffic logs and previously **led to sanctions** against the tech giant, meaning the tech giant will no longer be able to track people's choice to browse privately, according to Google users' April 1 settlement motion.

However, users will not give up their right to sue Google individually for monetary damages, with several class members having already filed individual complaints in California state court, Tuesday's motion said.

"Based on plaintiffs' damages expert's valuation methods, the value of the relief obtained through this litigation and settlement is over \$5 billion," the settlement motion said.

A jury trial was set to begin in February, but the parties announced on Dec. 28 that they **cut a deal**.

The suit, filed by Google users in **June 2020** and **amended** in July 2020, alleged the Silicon Valley giant allayed privacy concerns by telling users they could control what data they share by entering incognito mode when, in reality, Google tracked their browsing data, including their IP addresses, location and browsing history, in real-time, creating an "unaccountable trove of information so detailed and expansive that George Orwell could never have dreamed it."

The lawsuit accused Google of invasion of privacy, intrusion upon seclusion, breach of contract and violations of the Federal Wiretap Act, the California Invasion of Privacy Act, the Comprehensive Computer Data Access and Fraud Act and California's Unfair Competition Law.

In December 2022, U.S. District Judge Yvonne Gonzalez Rogers certified a nationwide class of tens of millions of members who sought injunctive relief but refused to certify a damages class.

Class counsel noted Tuesday that all seven claims "survived two motions to dismiss, a contested class certification motion and summary judgment."

"These important rulings laid the foundation for the valuable relief secured with this settlement," the attorneys said.

Counsel and representatives for the parties did not respond to requests for comment Wednesday.

The users are represented by David Boies, Mark C. Mao, Beko Reblitz-Richardson, James W. Lee, Alison L. Anderson, M. Logan Wright and Rossana Baeza of Boies Schiller Flexner LLP, Amanda Bonn, Bill Carmody, Shawn J. Rabin, Steven Shepard and Alexander P. Frawley of Susman Godfrey LLP and John A. Yanchunis, Ryan J. McGee and Michael F. Ram of Morgan & Morgan PA.

Google is represented by Andrew H. Schapiro, Teuta Fani, Joseph H. Margolies, Diane M. Doolittle, Sara Jenkins, Stephen A. Broome, Viola Trebicka, Crystal Nix-Hines, Alyssa G. Olson, Jomaire Crawford, D. Seth Fortenbery, Carl Spilly and Jonathan Tse of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Brown et al. v. Google LLC, case number 4:20-cv-03664, in the U.S. District Court for the Northern District of California.

--Additional reporting by Lauren Berg, Dorothy Atkins, Craig Clough and Kelly Lienhard. Editing by Drashti Mehta.

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Motley Rice, Morgan & Morgan Among Ozempic MDL Leaders

By **Hailey Konnath**

Law360 (April 24, 2024, 10:49 PM EDT) -- The Pennsylvania federal judge overseeing multidistrict litigation over alleged risks associated with Ozempic and similar drugs has appointed lawyers from Motley Rice LLC, Morgan & Morgan PA and six other firms to leadership roles, according to an order issued Tuesday.

U.S. District Judge Gene E.K. Pratter appointed eight attorneys to the plaintiffs' committee and also appointed two more attorneys with Fine Kaplan & Black RPC and Dilworth Paxson LLP as liaison counsel. Notably, he didn't specifically appoint lead counsel.

The other firms appointed to the committee are Susen Law Group, DiCello Levitt, Alex Walsh Law, Johnson Becker PLLC, Pogust Goodhead and Levin Papantonio Rafferty Proctor Buchanan O'Brien Barr & Mougey PA, according to the order.

Judge Pratter said the committee members could select additional counsel to join them; however, the primary committee can't exceed 25 members.

In the MDL, patients have alleged Novo Nordisk A/S and Eli Lilly & Co. failed to warn patients about the risks associated with the class of drugs that are glucagon-like peptide-1 receptor agonists, or GLP-1 RAs, which cause gastroparesis and other gastrointestinal maladies.

The MDL focuses on Novo Nordisk's drugs Ozempic, Wegovy and Rybelsus as well as Eli Lilly's Mounjaro and Trulicity. Specifically, patients have said] this class of drugs causes gastroparesis, ileus, intestinal obstruction or pseudo-obstruction, and other gastric injuries.

In early February, the Judicial Panel on Multidistrict Litigation **centralized the litigation** in the Eastern District of Pennsylvania, putting the cases under the control of Judge Pratter.

Cases against the companies were filed in 11 federal judicial districts across the country, followed by so-called tagalong cases in 15 more districts.

The companies had pushed for the MDL to be centralized in North Carolina or southern California, while some of the plaintiffs asked for the litigation to be housed in New York or Louisiana. However, centralizing in the Eastern District of Pennsylvania was most logical because 13 of the 55 cases are already pending there — more than any district — and it is geographically the most convenient for the parties involved, according to Judge Pratter.

Counsel for the plaintiffs didn't immediately respond to requests for comment late Wednesday.

The plaintiffs are represented by Paul J. Pennock of Morgan & Morgan PA, Marcus J. Susen of Susen Law Group, Sara O. Couch of Motley Rice LLC, W. Cameron Stephenson of Levin Papantonio Rafferty Proctor Buchanan O'Brien Barr & Mougey PA, Mike Daly of Pogust Goodhead, Stacy K. Hauer of Johnson Becker PLLC, Alex Walsh of Alex Walsh Law, Diandra Debrosse Zimmermann of DiCello Levitt, Roberta D. Liebenberg of Fine Kaplan & Black RPC, and Nina C. Spizer of Dilworth Paxson LLP.

Novo Nordisk is represented by Adams and Reese LLP and DLA Piper.

Eli Lilly is represented by Plauche Smith & Nieset LLC and Kirkland & Ellis LLP.

The case is In re: Glucagon-Like Peptide-1 Receptor Agonists (GLP-1 RAS) Products Liability Litigation, case number MDL-3094, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by P.J. D'Annunzio. Editing by Lakshna Mehta.

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Considering CGL Defense For Social Media Addiction Claims

By **Craig Hirsch and Tae Andrews** (April 24, 2024, 4:39 PM EDT)

A new lawsuit filed against social media companies seeks damages for the costs of treating children allegedly suffering from mental health issues due to addiction to social media platforms.

This action may represent a potential new wave of claims against technology companies seeking damages and injunctive relief tied to the physical and mental impacts of addiction.

For example, the U.S. experienced an influx of claims over the past two decades asserted against pharmaceutical companies, suppliers, and distributors arising out of the opioid epidemic and addiction.

Fortunately for policyholders in the technology sector, the prospects of defense coverage for addiction-related claims under commercial general liability insurance policies look promising.

CGL Coverage

Commercial general liability policies require the insurer to cover sums that the insured becomes legally obligated to pay as damages because of bodily injury to which the insurance applies.[1]

"Bodily injury" is often defined as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." [2] Covered damages can also include costs for care, loss of services or death resulting at any time from bodily injury.[3] CGL policies require the insurer to defend the insured against any suit seeking these damages.[4]

Lawsuit Against Social Media Tech Companies

In *The City of New York v. Meta Platforms Inc.*, several plaintiffs **filed** suit against multiple social media companies in California state court in February, including Meta, Facebook, Instagram, Snap Inc., TikTok, ByteDance Inc., Google LLC and YouTube.[5] The other plaintiffs include the New York City school district and New York City Health and Hospitals Corp.[6]

The plaintiffs allege that the social media companies design and market their platforms toward children, including students in New York City public schools, which has led to an epidemic of social media addiction.[7]

According to the plaintiffs, "[c]ompulsive social media use and addiction are negatively affecting student focus and behavior in school districts across the country," resulting in "reduced attention spans, reduced or delayed cognitive development, learning impacts, bad behavior, negative impacts on mental and physical health, depression, and loss of life." [8]

Specifically, the plaintiffs argue social media platforms "generate never-ending and heightened social comparison," which "results in lower self-esteem and reduced overall mental health" in children.[9] Social comparison induced by social media allegedly results in a discrepancy between a child's



Craig Hirsch



Tae Andrews

idealized self and real self, "evoking a sense of depression, deprivation, and distress." [10]

The plaintiffs' complaint addresses physical-augmentation technology, which allows users to "utilize photo and video filters to remove blemishes, make their faces appear thinner, and lighten skin, all to make themselves appear more 'attractive.'" [11]

As children compare their actual appearances to edited appearances of themselves and others online, the plaintiffs contend their perception of their own physical features allegedly grows increasingly negative. [12]

Social media companies' platforms and such design features purportedly addict young users by "preying on their already heightened need for social comparison and interpersonal feedback-seeking," as "adolescents are primed to focus on social status, social comparisons, and a desire for social validation" — and social media platforms allegedly amplify those insecurities. [13]

So what is the end result of social media addiction? The plaintiffs believe that children's use of social media platforms "can cause addiction, compulsive use, anxiety, depression, eating disorders, body dysmorphia, self-harm, sexual exploitation, suicidal ideations, radicalization, other serious diseases and injuries, and suicide itself." [14]

As some of the largest providers of youth counseling in the country, the plaintiffs state they "have been forced to devote ever-increasing resources to mental health and learning support" to combat this social media epidemic. [15]

Coverage Analysis

The lawsuit presents several potential coverage issues under CGL policies, including whether the complaint alleges bodily injury, whether the complaint alleges damages because of bodily injury, and whether the complaint alleges bodily injury caused by an occurrence.

Definition of "Bodily Injury"

As noted above, CGL policies commonly define "bodily injury" to mean "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." [16]

An insurer could argue that the complaint does not allege bodily injury because the children suffered from a mental health crisis and did not sustain physical bodily injuries.

As an initial matter, some CGL policies expressly define "bodily injury" to include "mental injury, mental anguish, humiliation, or shock sustained by a person, if directly resulting from physical injury, sickness, or disease sustained by that person." [17]

Even without a broadened definition of "bodily injury," several courts have held that the terms "sickness" and "disease" can "include mental as well as physical sickness and disease." [18]

In addition to a mental health crisis, the complaint also alleges that the social media platforms are causing children to suffer from eating disorders, self-harming behaviors such as cutting and burning themselves, suicide, "negative impacts on mental and physical health," and "other serious diseases and injuries." [19]

Taken together, the allegations in the complaint and the applicable case law provide a strong coverage argument that the social media lawsuit alleges bodily injury.

Damages Because of Bodily Injury

Another potential issue is whether the complaint seeks damages "because of" bodily injury or property damage.

The social media lawsuit plaintiffs are New York City and its departments, and therefore do not seek damages because of their own bodily injuries — instead, they seek damages incurred in treating mental health and other issues due to social media addiction. A CGL insurer could determine those

damages from third-party injuries are not covered.

Courts have challenged this coverage defense. In *ACE American Insurance Co. v. Rite Aid Corp.*, the Delaware Supreme Court **ruled** in 2022 that complaints brought by counties did not seek damages because of bodily injury, but noted that if the counties had run public hospitals and sued to recover their costs of treating bodily injuries caused by opioid overprescription, the CGL policies at issue "would most likely be triggered."^[20]

Rite Aid confirmed that general liability policies cover organizations that care for or treat injured persons.^[21]

Here, the complaint alleges that the plaintiffs directly provide mental health counseling and treatment to children suffering from social media addiction, in addition to other services. This makes a compelling case that the lawsuit seeks damages because of bodily injury.^[22]

Occurrence Requirement

Another potential issue is whether the complaint alleges bodily injury harm caused by an "occurrence," typically defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."^[23]

An insurer could argue that the complaint does not allege an accident because it includes claims of intentional conduct. The plaintiffs accused the social media companies of "intentionally design[ing] [their] platforms to addict children and adolescents."^[24]

However, the complaint also includes allegations that "Each Defendant knew or should have known that its platforms were causing serious harm and impacts on public schools and local communities, like NYC Plaintiffs' schools, city, and public hospitals."^[25]

The complaint leaves open the possibility of accidental or negligent conduct, especially in light of the broad duty-to-defend standard, under which even "remote facts buried within causes of action" can be sufficient to trigger an insurer's duty to defend.^[26]

Future Developments

New York v. Meta points to a new frontier: claims brought against social media companies alleging their platforms and technologies cause mental health issues from addiction.

This could be just the beginning, as other plaintiffs have begun to file similar claims. To fight these claims, policyholders can look to their CGL insurers for defense coverage.

Liability policies insuring professional liability and corporate management risks might also respond to social media addiction claims. Those policies also require insurers to defend or pay defense costs when triggered by potentially covered damages allegations.

In this new risk landscape, one thing has become clear: Having adequate insurance in place to protect against emerging claims has become more important than ever.

Craig M. Hirsch is a partner and Tae Andrews is counsel at Pasich LLP.

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[1] See, e.g., Ins. Servs. Office, Inc. ("ISO") Com. Gen. Liab. Coverage Form CG 00 01 04 13.

[2] See id. at § V. 3.

[3] See id. at § I. A. 1. e.

[4] See id. at § I. A. 1. a.

[5] See Compl. for Damages & Demand for Jury Trial, *City of New York v. Meta Platforms, Inc.*, No. 24STCV03643, ¶¶ 47-60 (Cal. Super. Ct. originally filed Feb. 14, 2024).

[6] See id. ¶¶ 42-46.

[7] See, e.g., ¶¶ 113, 279, 289.

[8] See id. ¶ 26.

[9] See id. ¶¶ 87-88.

[10] See id. ¶ 89.

[11] See id.

[12] See id. ¶ 90.

[13] See id. ¶ 126.

[14] See id. ¶¶ 22, 26.

[15] See, e.g., ¶¶ 27, 30.

[16] See supra Note 2.

[17] See, e.g., ISO Gen. Liab. Broadening Endorsement Form No. RPCG 74 12 08 05.

[18] See, e.g., *Lavanant v. Gen. Accident Ins. Co. of Am.*, 79 N.Y.2d 623, 630 (N.Y. 1992) ("The categories 'sickness' and 'disease' in the insurer's definition not only enlarge the term 'bodily injury' but also, to the average reader, may include mental as well as physical sickness and disease.").

[19] See, e.g., Compl. ¶¶ 13, 22, 26, 141, 159, 162, 855.

[20] See 270 A.3d 239, 253-54 (Del. 2022).

[21] See id. at 241.

[22] See, e.g. Compl. ¶¶ 29-30. Choice of law may also play a significant role, as the complaint alleges that several of the defendants were incorporated in Delaware, but have their principal places of business in California. See id. ¶¶ 47-60.

[23] See, e.g., Ins. Servs. Office, Inc. ("ISO") Com. Gen. Liab. Coverage Form CG 00 01 04 13.

[24] See, e.g., Compl. ¶¶ 289-90.

[25] Id. ¶¶ 191-97.

[26] See, e.g., *W. World Ins. Co. v. Nonprofits Ins. All. of Cal.*, 295 F. Supp. 3d 1071, 1078-79 (N.D. Cal. 2018) (finding a duty to defend because the allegations of both intentional and accident conduct raised the potential for coverage under a policy covering damages for "bodily injury" covered by an "occurrence").



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Ex-Autonomy GC Tells Jurors He Wanted To Be 'Helpful' To HP

By **Bonnie Eslinger**

Law360 (April 24, 2024, 11:06 PM EDT) -- Autonomy's former U.S. general counsel conceded Wednesday in the criminal trial of former CEO Michael Lynch that he told an HP lawyer he wanted to be as "helpful" as possible to the company as it was investigating Autonomy-related issues that popped up after the Silicon Valley giant purchased the British company, and that he was told he could face liability for his work at Autonomy.

Former CEO Michael Lynch and Autonomy's former vice president of finance, Stephen Chamberlain, are facing conspiracy and fraud charges over HP Inc.'s \$11.7 billion October 2011 acquisition of the U.K.-based technology company. Lynch, who reaped about \$804 million from the sale of Autonomy to HP, is also charged with securities fraud. The trial **began on March 18** and is expected to run through June.

Joel Scott, who served as general counsel for Autonomy in the U.S. from 2009 to 2012, returned to the witness stand Tuesday for a second day of testimony. Under his direct examination, which began **on April 18**, Scott confirmed he is testifying with immunity as a witness for the government.

Scott told jurors that he began working for HP in 2012 — after it acquired Autonomy — and the questions from HP's lawyers about Autonomy began shortly after. HP then put him on administrative leave for about four years, starting in 2013, he said. HP paid him over \$300,000 a year at the time, Scott confirmed under questioning by Lynch lawyer Jonathan Baum of Steptoe LLP.

"So over that period, we're talking probably based on your calculations, more than a million dollars," Baum said. "Did you have to do any work for HP during that time?"

Scott said no.

Baum asked Scott about a January 2013 conversation he had with one of HP's lawyers, Leslie Caldwell, who was with Morgan Lewis & Bockius LLP at the time.

"She had been a federal prosecutor, previous pretty famous one, she had done the Enron cases," Baum said.

During that conversation, Caldwell said Scott was complicit in Autonomy's dealings, Lynch's lawyer said.

"She told you in that meeting that she thought you were in the middle of many bad deals. Remember that?" Baum said.

Scott said not specifically.

Lynch's lawyer showed Scott notes from the meeting to refresh his recollection.

"Yeah, I generally remember this," Scott said after looking over the notes.

Caldwell had told Scott that the U.S. Securities and Exchange Commission and the Department of Justice hold lawyers to higher standards. Scott then asked what crimes he might face, and she said mail and wire fraud, he confirmed.

"Were you aware that the punishment for wire fraud was up to 20 years in prison and that your assets could be seized?" Baum asked. Scott said no, but confirmed he understood his law license would be in jeopardy.

"You said you wanted to be as helpful as possible to HP is that right?" Baum pressed.

Scott said that sounded correct.

Baum also noted that Scott was a Canadian citizen at the time, despite having spent his entire legal career in the United States.

"Your wife and your and your children were American citizens," Lynch's lawyer said. "Were you worried at that point that you could be deported as a consequence of what she was talking about?"

Scott said he recalled having that thought in mind.

Baum reminded Scott that during his direct examination, he had told jurors that while working at Autonomy, he had concerns about a variety of company practices. They included hardware sold at a loss, posting revenue from reseller deals before an end-user was secured, customers getting "quid pro quo" contracts from Autonomy, and converting subscription contracts to generate new revenue.

"Did you ever raise any of the concerns that you've talked about today and last week to Dr. Lynch?" Baum said. "I'm talking about the reseller deals and the various other things you were talking about."

Scott said he did not remember talking to Lynch about any transactions, but he raised questions about multiple transactions to his boss and the company's chief financial officer.

Baum later pointed out to Scott that Autonomy's auditors at Deloitte had signed off on the accounting related to some of the practices he had questioned.

With regard to Scott's assertion that he believed that reseller revenue could only be recognized when an end user had been identified, Baum showed jurors a 2010 presentation Scott had made to sales staff stating that "sell through" evidence was not required.

Baum also suggested there was nothing wrong with the back-and-forth transactions Autonomy had with some of its customers.

"Linked transactions, quid pro quo, reciprocal, round trip," Lynch's lawyer said. "To be fair, there's nothing inherently wrong with linked transactions. Is that right?"

Scott said he did not know.

Baum later underscored that the hardware sales Autonomy made — which prosecutors say were only done to boost company revenue — actually ended up helping Autonomy win software business. For example, Autonomy lost \$1.3 million between 2009 and 2011 by selling hardware to JPMorgan, but made \$16 million in software sales during that time period, Baum noted.

Baum wrapped his cross-examination on Wednesday by focusing on Scott's July 2010 decision to fire Autonomy's U.S. finance chief, Brent Hogenson, after two investigations, beginning with a probe into allegations of fraud involving several Autonomy payroll employees.

Baum showed Scott an email Hogenson received saying the investigation was showing "more payroll stuff coming out of the woodwork," including checks issued to employees that were never entered into the payroll system.

"Were you aware that Mr. Hogenson sent his first whistleblower letter to Mike Lynch four hours after he received this email?" Baum said.

Scott said no.

The trial continues on Monday.

During his direct examination on April 18, Scott had told jurors that Lynch said Hogenson was "trying to destroy the company" and wanted him fired. Earlier this month, **Hogenson denied** he brought his whistleblower claims to protect himself after the payroll scandal emerged in his department.

The government's case is that Lynch and Chamberlain artificially inflated Autonomy's revenues leading up to the HP acquisition through a series of questionable revenue boosters that made it appear the company had sustainable financial growth potential.

The executives' trial follows ex-Autonomy Chief Financial Officer Sushovan Hussain's April 2018 **conviction** on related charges. He was subsequently sentenced **to five years** in prison and ordered to pay \$4 million in fines.

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

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

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

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

--Additional reporting by Dorothy Atkins, Richard Crump and Christopher Crosby. Editing by Vaqas Asghar.

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Trump Media Exec Urges GOP To Probe Stock 'Manipulation'

By **Tom Zanki**

Law360 (April 24, 2024, 6:56 PM EDT) -- Devin Nunes, CEO of Trump Media Technology & Group Corp., is urging key House Republicans to investigate "anomalous trading" involving shares of the company that owns former President Donald Trump's social media platform, marking Nunes' latest effort to call attention to alleged signs of manipulation, according to a regulatory filing Wednesday.

In a letter, Nunes calls on four committee chairs of the Republican-led U.S. House of Representatives to examine the "potential manipulation of the stock of Trump Media," the owner of the Truth Social platform upon which the former president frequently posts. Shares of Trump Media, which have fluctuated wildly over the past month since the business **went public by merging** with a special-purpose acquisition company, trade on the Nasdaq under the symbol "DJT."

"Overall, we assess there are strong indications of unlawful manipulation of DJT stock," Nunes wrote in a letter dated Tuesday and released in Wednesday's securities filing.

"As such, I respectfully request that you open an investigation of anomalous trading of DJT to determine its extent and purpose, and whether any laws including RICO [Racketeer Influenced and Corrupt Organizations Act] statutes and tax evasion laws were violated, so that the perpetrators of any illegal activity can be held to account," Nunes wrote.

Nunes' letter is addressed to judiciary committee Chairman Jim Jordan, R-Ohio, financial services committee Chairman Patrick McHenry, R-N.C., ways and means committee Chairman Jason Smith, R-Mo., and oversight and reform committee Chairman James Comer, R-Ky. Nunes, a former Republican congressman and an ally of Trump, is a former chairman of the House intelligence committee.

To support an investigation, Nunes urged lawmakers to obtain data from the U.S. Securities and Exchange Commission's Consolidated Audit Trail, which tracks trading records, quotes and market maker records; brokers' short interest data from the Financial Industry Regulatory Authority; and daily position reports from the Depository Trust and Clearing Corporation, among other information from the various agencies.

"Such an inquiry is needed to protect shareholders, including TMTG's retail investors," Nunes wrote.

The correspondence **follows a letter** Nunes penned last week to Nasdaq chief executive Adena Friedman, seeking the stock exchange's help in determining whether a largely illegal practice of "naked short selling" was harming the price of Trump Media shares.

The practice involves short-selling shares that have not been determined to exist or that a trader has not yet secured, which is barred under the SEC's Regulation SHO. Nasdaq monitors signs of unusual trading through its Reg SHO Threshold List, though enforcement of rules against naked short selling is handled by the SEC and FINRA.

The SEC did not immediately respond to a request for comment Wednesday.

FINRA declined to comment Wednesday.

A Trump Media representative did not immediately respond to a request for comment on whether the company has requested that the SEC or FINRA investigate the matter.

Nunes' Tuesday letter, as well as his prior letter to Nasdaq, stressed that four intermediaries were responsible for more than 60% of the "extraordinary volume" of DJT shares traded, naming Citadel Securities, VIRTU Americas, G1 Execution Services and Jane Street Capital, though he did not accuse them of manipulation. The four companies act as market makers and typically handle a large chunk of trading orders every day, especially those made through retail brokers.

The four companies did not immediately respond to requests for comment Wednesday, though Citadel Securities blasted Nunes' query last week, calling Nunes a "proverbial loser," while stressing the firm's commitment to integrity.

Nunes' latest letter said a congressional query could "shed light on the need for policy changes such as closing the Reg SHO loophole for market makers, requiring brokers to better document their efforts to locate and borrow stock, and stiffening penalties for illegal naked short sellers."

University of Florida finance professor Jay Ritter, who studies initial public offerings and newly traded public companies, said Trump Media shares are likely overvalued and concluded that recent trading activity around the stock does not suggest manipulation.

"There is no evidence that any appreciable manipulation is going on," Ritter told Law360.

"Manipulation can occur if a thinly traded stock is subject to heavy selling to drive down the price temporarily, but DJT is not thinly traded, with average daily trading volume of about 6 million shares."

Ritter also argued that Nunes' concerns about the four market-making firms' large market share is not relevant, noting that such firms "have a high percentage of trading volume in almost every stock that is traded in the U.S."

"They provide liquidity, making stock prices less volatile than they otherwise would be," Ritter said.

Shares of Trump Media rose \$3.10, or 9.5%, to close at \$35.67 on Wednesday, continuing a roller coaster for the stock since it began trading. Trump Media shares soared shortly after the company's **merger** with Digital World Acquisition Corp., the SPAC that acquired Trump Media and took it public, closing at \$68.50 on March 27.

Trump is the majority shareholder in his namesake company, owning some 114.75 million shares that are worth about \$4.1 billion on paper based on Wednesday's trading. Trump is barred from selling shares until September under a lockup provision, absent a waiver from the board of directors.

Sarasota, Florida-based Trump Media is unprofitable and has warned in previous filings that it may never generate sufficient revenue to turn consistent profits. Truth Social is the lone product of Trump Media, which touts itself as on "a mission to create a free-speech beachhead against Big Tech censorship."

--Editing by Janice Carter Brown.