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The National Law Journal Announces 2024 Elite Trial Lawyers Awards Finalists

ALM is pleased to announce the finalists and honorees for the 2024 Elite Trial Lawyers awards. The winners will be named at an award ceremony to be held in New York City on July 11.

May 09, 2024 at 02:00 PM

Awards



Pearl Wu

The original version of this story was published on [National Law Journal](#)

The National Law Journal and Law.com is pleased to announce the finalists for the 2024 Elite Trial Lawyers Awards. Out of hundreds of entries, plaintiffs law firms across the United States have made it to the competition's final round with the winners in 23 award categories being announced at the [ETL award ceremony](#) at Lotte New York Palace in New York City on July 11. We will also recognize individual honorees for Elite Women of the Plaintiffs Bar, Rising Stars of the Plaintiffs Bar, and the Lifetime Achievement Award.

To book a [sponsorship online](#), [click here](#). For information about tickets and sponsorship, please contact Andre Sutton at asutton@alm.com or 757-721-9020.

The awards recognize law firms' outstanding plaintiffs work in a high-stakes bench or jury trial or in a major settlement. The winners must have scored a significant win during the contest period and must also be able to show an impressive track record of wins over the last three to five years. Firms must have devoted at least 50% of their litigation resources to plaintiffs work and shown innovative approaches to case resolution.

Here are the Elite Trial Lawyers for 2024:

Antitrust Finalists

- Cohen Milstein Sellers & Toll
- Hagens Berman Sobol Shapiro
- Hausfeld
- Joseph Saveri Law Firm
- Susman Godfrey

Business Torts Finalists

- BraunHagey & Borden
- Clare Locke
- Hall Law Firm
- Kellogg, Hansen, Todd, Figel & Frederick

- Reid Collins & Tsai

Catastrophic Injury Finalists

- Morgan & Morgan
- Motley Rice
- Panish | Shea | Ravipudi
- Zehl & Associates

Civil Rights Finalists

- Bailey & Glasser
- Bloch & White
- DiCello Levitt
- Sauder Schelkopf

Class Action Finalists

- Boies Schiller Flexner
- Cohen Milstein Sellers & Toll
- Hausfeld
- Kessler Topaz Meltzer & Check
- Lieff Cabraser Heimann & Bernstein

Consumer Protection Finalists

- Baron & Budd
- Lieff Cabraser Heimann & Bernstein
- Motley Rice
- Robbins Geller Rudman & Dowd
- Sauder Schelkopf
- Tycko & Zavareei

Discrimination Finalists

- Lieff Cabraser Heimann & Bernstein
- Sanford Heisler Sharp

Diversity Initiative Award Finalists

- Hausfeld
- Labaton Keller Sucharow
- Sauder Schelkopf
- Tycko & Zavareei

Elite Women of the Plaintiffs Bar Winners

- Parvin K. Aminolroaya, Seeger Weiss
- Zina Bash, Keller Postman
- Molly J. Bowen, Cohen Milstein Sellers & Toll
- Davida Brook, Susman Godfrey
- Courtney Caprio, Kelley | Uustal Trial Attorneys
- Jeanne Christensen, Wigdor
- Kelly M. Dermody, Lieff Cabraser Heimann & Bernstein
- Christine Dunn, Sanford Heisler Sharp

- Christine Fox, Labaton Keller Sucharow
- Sigrid McCawley, Boies Schiller Flexner
- Michelle Simpson Tuegel, Simpson Tuegel Law Firm
- Jennifer Truelove, McKool Smith
- Kimberly L. Wald, The Haggard Law Firm
- Lexie White, Susman Godfrey
- Ellen Zucker, Burns & Levinson

Employment Rights Finalists

- Benton Employment Law
- The deRubertis Law Firm
- Lieff Cabraser Heimann & Bernstein
- McNicholas & McNicholas

Environmental Protection Finalists

- Baron & Budd
- Edelson
- Lieff Cabraser Heimann & Bernstein
- Morgan & Morgan
- Seeger Weiss

Governmental Representation Finalists

- Baird Mandalas Brockstedt & Federico
- Motley Rice
- Seeger Weiss

Insurance Finalists

- Cohen Ziffer Frenchman & McKenna
- Daly & Black
- Anderson Kill P.C.

Lifetime Achievement Award Winners

- Robert Bennett, Robins Kaplan
- Russell Budd, Baron & Budd
- Robert A. Clifford, Clifford Law Offices
- Parker Folse, Susman Godfrey
- Agnieszka M. Fryszman, Cohen Milstein Sellers & Toll
- Keith R. Mitnik, Morgan & Morgan

Mass Torts Finalists

- Cohen Milstein Sellers & Toll
- Edelson
- Motley Rice
- Napoli Shkolnik
- Seeger Weiss

Medical Malpractice Winner

The winner will be announced at the ceremony.

Pharmaceutical Litigation Finalists

- Baron & Budd
- Motley Rice
- Seeger Weiss
- Wisner Baum

Plaintiff Firm of the Year Finalists

- Cohen Milstein Sellers & Toll
- Keller Postman
- McKool Smith
- Pomerantz
- Robbins Geller Rudman & Dowd
- Robins Kaplan
- Seeger Weiss
- Susman Godfrey

Plaintiff Attorney of the Year Finalists

- Ashley Keller, Keller Postman
- Joe Grinstein, Susman Godfrey
- Jeremy A. Lieberman, Pomerantz
- Randy Rosenblum, Dolan Dobrinsky Rosenblum Bluestein
- Joseph Saveri, Joseph Saveri Law Firm
- Christopher Seeger, Seeger Weiss
- Steven J. Toll, Cohen Milstein Sellers & Toll
- Carol C. Villegas, Labaton Keller Sucharow
- John Yanchunis, Morgan & Morgan

Privacy/Data Breach Finalists

- Edelson
- Hausfeld
- Labaton Keller Sucharow
- Morgan & Morgan

Products Liability Finalists

- Dean Omar Branham Shirley
- Dolan Dobrinsky Rosenblum Bluestein
- Lieff Cabraser Heimann & Bernstein
- Motley Rice
- Sauder Schelkopf
- Seeger Weiss

Rising Stars of the Plaintiffs Bar Winners

- Asher S. Alavi, Kessler Topaz Meltzer & Check
- Ricky Armand, Kelley | Uustal Trial Attorneys
- Brian Baran, Reichman Jorgensen Lehman & Feldberg
- Bryce Barcelo, Susman Godfrey

- Chambord Benton-Hayes, Benton Employment Law
- Jake Bissell-Linsk, Labaton Keller Sucharow
- Lauren Blazing, Edelson
- Robert A. Braun, Cohen Milstein Sellers & Toll
- Nick Brechbill, Clare Locke
- John Crain, Wigdor
- Megan Delurey, Edelson
- Jillian Dent, Stueve Siegel Hanson
- Meredith A. Firetog, Wigdor
- Beatrice Franklin, Susman Godfrey
- Eric A. Kafka, Cohen Milstein Sellers & Toll
- Andrew R. Kaufman, Lieff Cabraser Heimann & Bernstein
- Anthony Maneiro, Kirby McInerney
- Michael McCann, Shepard O’Donnell Law
- Ryan McGee, Morgan & Morgan
- Caleb Miller, Aldous\Walker
- Ervin Nevitt, Coplan + Crane
- Katy Peaslee, Susman Godfrey
- Noah Rich, Baron & Budd
- Charles Scott, Kelley | Uustal Trial Attorneys
- Elizabeth Smiley, Baron & Budd
- David Tracey, Sanford Heisler Sharp
- Schuyler Ufkes, Edelson
- Jonathan Waisnor, Labaton Keller Sucharow
- Renner K. Walker, Hausfeld
- Michael J. Willemin, Wigdor

Securities Litigation/Shareholder Rights Finalists

- Bleichmar Fonti & Auld
- Cohen Milstein Sellers & Toll
- Labaton Keller Sucharow
- Motley Rice
- Pomerantz
- Robbins Geller Rudman & Dowd

Technology Finalists

- Motley Rice
- Susman Godfrey

Transportation (including Aviation) Finalists

The winner will be announced at the ceremony.

Trial Strategy Innovation Finalists

- Cohen Milstein Sellers & Toll
- Edelson
- Hueston Hennigan
- Keller Postman
- Labaton Keller Sucharow

Class Action Lawsuit Offers Boon to Local Business Owners and Highlights Growing Concerns about “Bank Taxes”

 vashonloop.com/wordpress/index.php/2024/05/09/class-action-lawsuit-offers-boon-to-local-business-owners-and-highlights-growing-concerns-about-bank-taxes

By March Twisdale

If you're a consumer, this article will offer new information regarding the growing push back against “Bank Taxes” designed to skim the cream off the top of local economies everywhere. If you're a business owner, this article will point you in the right direction, should you wish to submit a claim.

This topic is too complicated to be covered in one article, so I won't try. What I want Islanders to know is that valid claims to get money from this settlement **must be filed by May 31st, 2024**.

Who qualifies? “All persons, businesses, and other entities that have accepted any Visa-branded cards and/or Mastercard-branded cards in the United States at any time from January 1, 2004 to January 25, 2019.”

“This is an historic antitrust class-action settlement that provides some relief for U.S. merchants after years of paying allegedly inflated Visa and Mastercard interchange fees,” said K. Craig Wildfang, of Robins Kaplan LLP, co-counsel on the litigation alongside Robbins Geller Rudman & Dowd LLP and Berger Montague PC. (Source: PR Newswire)

“‘The case has been winding its way through the court system for nearly 20 years. Now we look forward to helping class members with the claims process and getting the benefits of the settlement into their hands,’ said Alexandra Bernay, partner at Robbins Geller Rudman & Dowd LLP.”

I stumbled upon the above while researching the topic of “surcharges.” Across the country (and the world), businesses are seeking to escape “transaction fees” by encouraging cash and/or passing fees back to plastic-using consumers.

According to a excellent and detailed article written by “Clearly Payments” for business owners, titled Charging Customers for Credit Card Fees (aka Surcharging), approximately 20% of businesses have already implemented a system that passes “credit card processing fees/transaction fees” directly back to plastic-using customers. Yes, twenty percent!

Remember that next time you're in Seattle and have the misfortune to run into a “no cash accepted” business. It may feel like we're inevitably sliding in that direction, but the reality is far different. Cash is becoming more and more appreciated and sought after by businesses and consumers alike.

A CNN Business article explains one of the effects of this groundbreaking lawsuit: “The settlement gives merchants the ability to impose surcharges on customers, depending on what kind of Visa or Mastercard card they use. Those surcharges would likely hit cardholders who get rewards such as cash back and airline miles, since those can carry higher swipe fees.”

This highlights the blunt fact that every person using a “rewards card” is reaping those rewards not from the bank issuing the card, but from the profit margin of businesses and the increased cost of goods and services paid by fellow shoppers.

The “Clearly Payments” article also answers a plethora of questions business owners may have regarding various ways and means, methods, and options. Their “pros” list includes: cost recovery, transparency, cash payment encouragement, flexibility, improved profitability, and adaptation to market changes.

Recently, David Hinchman of Vashon Print & Design reminded me of another important illustrative story regarding the “staying power of cash” versus the “diminishing effect of paying with plastic.”

If I were to spend a \$50 bill at his store, and he were to spend that \$50 bill at a local restaurant, and so it went for 100 island business transactions in a row, at the end, there'd still be a \$50 bill circulating in our community. On the other hand, if we were to make those same purchases with plastic, after just 21 transactions, that \$50 would have been whittled down to \$25.

This is how 10,800 islanders have been losing *millions of dollars a year*. But, now we're wising up, and we're not the only ones. Big businesses and government have also been passing transaction fees back to plastic-paying customers for years. I've personally experienced this with Turbo Tax, Ticketmaster, and our own Washington State Department of Licensing. But the list is much longer!

Shouldn't small, locally owned businesses be as protective of their profit margin and expenses as big businesses? And, shouldn't we be encouraging them every day? Yes, and we do.

Vashon Islanders love their local business owners, because they are our neighbors and friends. We are tremendously lucky they choose to do business here, so we don't have to take a ferry for all the goods and services that make our awesome Island lifestyle possible

and enjoyable.

It's important to remember, when Islanders pay with plastic, business owners don't mind. We all know there are times when that is the only or best option. In those cases, as an aware consumer, we can let our local business owners know we're happy to cover the transaction fee ourselves. By working together, we will keep Vashon Island's economy strong and resilient.

To ensure Island businesses are aware of this Class Action Lawsuit and its rapidly approaching deadline, please share this article far and wide.

Quickest and Best Start for Business Owners: Go to this website and click the button to submit your claim: <https://www.paymentcardsettlement.com/en>

Still have questions? Contact the Class Administrator at 1-800-625-6440 / www.PaymentCardSettlement.com, write to Payment Card Interchange Fee Settlement, P.O. Box 2530, Portland, OR 97208, or send an email to: info@PaymentCardSettlement.com.

Editorial Note: Settlement details quoted or summarized from the Official Court-Authorized Settlement Website and the Settlement Long Form Notice. Visit our website to follow the various links.

Business Law Prof Blog

lawprofessors.typepad.com/business_law/2024/05/what-is-the-value-of-the-corporate-charter.html

Friday, May 10, 2024

What is the Value of the Corporate Charter?

By Ann Lipton

A few weeks ago, I blogged about the proposed amendments to the DGCL, and the questions they raised. Well, I wasn't the only one who had concerns, and so, now, there are new amendments to the amendments (which The Chancery Daily has posted here). And once again, I just got these last night and I read quickly (in the middle of end-of-semester grading) so I reserve the right to be completely wrong, but, here is my quick reaction.

As I explained in my prior post, many of the original amendments were intended as a response to VC Laster's decision in *West Palm Beach Firefighters' Pension Fund v. Moelis & Co.* *Moelis* struck down a shareholder agreement that functionally conveyed management power on a particular stockholder, by giving him veto power over most board decisions. VC Laster held that a board's authority can only be cabined to such a degree in the charter, including through a preferred share issuance – and he also suggested that there may be some outer limits on how far even a charter provision could go in restricting board authority.

The original proposed DGCL amendments would have overruled *Moelis* in both respects. They would have authorized stockholder agreements that usurped board authority and would not have placed any limits on the degree of authority that could be usurped. The latter point struck me as particularly important, because traditionally, the corporate form is defined by its board-centric model. If that can be contractually avoided, does the corporate form have any value at all?

The new amendments are a little different, in that they do not permit contracts that would confer governance powers *beyond* what could be included in the charter, or would be contrary to Delaware law. In other words, if there are certain core powers that must remain with the board and can't be visited in someone else via the charter, then, these amendments to the amendments would not allow those powers to be transferred via stockholder contracts. The new language provides:

no provision of such contract shall be enforceable against the corporation to the extent such contract provision is contrary to the certificate of incorporation or would be contrary to the laws of this State ... if included in the certificate of incorporation.

But also, in determining what these “core” board powers are, courts can’t rely on the fact that the power is one that is statutorily conferred on the board. As the amendments put it, “a restriction, prohibition or covenant in any such contract that relates to any specified action shall not be deemed contrary to the laws of this State or the certificate of incorporation by reason of a provision of this title or the certificate of incorporation that authorizes or empowers the board of directors (or any one or more directors) to take such action.”

Now, the first thing that leaps out at me is how these new amendments interact with VC Laster’s decision in *McRitchie v. Zuckerberg*. There, Laster held that the directors of a Delaware corporation have a duty to maximize the value of the equity, and do not have a duty to maximize the value of a diversified portfolio. (I blogged about the case when the complaint was first filed). But Laster went on to hold that corporations *could* adopt charter provisions that would change directors’ fiduciary duties, so that they *are* obligated to consider diversified shareholders. That’s contestable; Steve Bainbridge, for example, has suggested that Delaware corporations *cannot* by private ordering depart from shareholder wealth maximization and I personally would ask what’s the difference between Laster’s proposal and a charter provision that waives the duty of loyalty – which has long been assumed to be *unwaivable*, except as otherwise statutorily provided (like, opportunity waivers).

But *if* Laster is right, then, of course, that represents a very broad view of how far charters can go to alter the board’s authority, which would also mean that stockholder agreements, under the amended proposed amendments, could go very far in altering board authority.

Which then raises the question: Is there value to requiring that restrictions on board authority be placed in the charter rather than a separate shareholder agreement?

One obvious value is transparency; at least if the company is not subject to SEC reporting, shareholder agreements may not be available to the public or even to other shareholders. Another value may concern the ease with which an agreement versus a charter could be amended, though I still think that if you conferred special rights to preferred shareholders, you could also confer the right to vote on amendments to those rights to the same preferred shareholders, which would make ease of amendment roughly equivalent.

Another value, though, concerns choice of law. As I previously blogged, shareholder agreements are subject to ordinary choice of law principles; charter provisions and preferred share terms are subject to the internal affairs doctrine. (Read my paper addressing this!)

The comments to the amendments to the amendments now discuss choice of law, but I don’t think they change the landscape. The comments say:

Notwithstanding any choice of law provision in the contract, the reference in the last sentence of § 122(18) to the law “governing” the contract shall be deemed to refer to the laws of this State if and to the extent choice of law principles (such as the internal affairs doctrine) so require.

In other words, it'll be another state's law if choice of law principles so require, which, for stockholder agreements, they often do.

But further muddying the waters is this: The new amendments say that stockholder contracts can't go beyond what a charter amendment would permit *except* with respect to DGCL §115, which *can* be waived in a stockholder contract.

DGCL §115 requires that a Delaware forum be available for claims that “(i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which this title confers jurisdiction upon the Court of Chancery.”

So, as I understand it, let's say a stockholder agreement conferred extraordinary governance powers on a single stockholder. Let's say those powers arguably made the stockholder a “controller” subject to fiduciary obligations. The contract could also provide that claims against the stockholder for breach of fiduciary duty must be brought in an arbitral or non-Delaware forum. Presumably, this would include derivative claims – a shareholder would sue derivatively claiming self-dealing by a controller, the corporation would be bound by the forum selection clause, and so, the claim would be heard outside of Delaware.

I also assume that disputes regarding compliance with, or even the interpretation of, a stockholder agreement could be heard in a non-Delaware forum. So, if someone wanted to claim that a particular stockholder agreement was unenforceable because it conferred power on a stockholder that went beyond what Delaware law permits, and it turned out that the agreement selected another state's courts as the forum for disputes, that argument – that Delaware law does not permit delegation of such-and-such power – would not be heard in a Delaware court.

As far as I can tell, this provides an incentive for stockholders to enter into these agreements – even if they have hard control over the board and don't really need them – because it allows them to opt out of DGCL 115, and possibly even the statutory limits on the agreements themselves, which will no longer be policed in Delaware.

Well, I have no idea how this ends but, I gotta tell you, all this drama fascinated my corpgov seminar students, so I suppose I will have much to discuss with my classes next year.

Covia Investors' \$6 Million Deal Over Fracking Sand Complete

By Martina Barash

Documents

 [Docket](#)

 [Opinion](#)

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- Company settled with SEC over alleged specialty sand fraud
 - Court approves attorney fees, denies plaintiff service awards

Bloomberg Law News 2024-05-10T13:49:28191243583-04:00

Covia Investors' \$6 Million Deal Over Fracking Sand Complete

By Martina Barash 2024-05-09T17:38:30000-04:00

- Company settled with SEC over alleged specialty sand fraud
- Court approves attorney fees, denies plaintiff service awards

Covia Holdings Corp. investors' agreement to settle their claims against the bankrupt fracking sand producer's former CEO for \$6 million received final approval from a federal court Thursday.

None of the roughly 56,000 potential class members who received notice of the settlement objected to it or opted out, Judge J. Philip Calabrese said for the US District Court for the Northern District of Ohio. "This result, uncommon in the Court's experience, lends strong support to approval of the class as fair, adequate, and reasonable," he said.

The case arose from a scandal on the downslope of the fracking boom in which whistleblowers accused the company of misrepresenting the performance of its specialty sand, used in underground blasting in the hydraulic fracturing industry.

The SEC investigated public statements made by Covia predecessor Fairmount Santrol Holdings Inc. between October 2014 and May 2018 about its sand's performance and reached a structured \$17 million settlement with the companies in December 2020. Fairmount and Covia neither admitted nor denied the allegations.

Investor William Plagens sued Covia ex-CEO Jennifer Deckard and other members of company leadership the same month. The court ultimately dismissed all but Deckard as defendants. Extensive settlement negotiations led to an agreement in October 2023, which Calabrese preliminarily approved the following month.

Final approval is appropriate, Calabrese said Thursday. He also approved attorneys' fees of \$2 million—one-third of the settlement amount—for class counsel.

But the three named plaintiffs didn't justify service awards by showing lost wages, out-of-pocket expenses, or other costs compensable under the Private Securities Litigation Reform Act, he said, denying those requests.

Rosen Law Firm PA was class counsel. Kirkland & Ellis LLP represented Deckard.

The case is Plagens v. Deckard , N.D. Ohio, No. 1:20-cv-02744, 5/9/24 .

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Icahn Settles Xerox-HP Merger Suit Including Novel Trading Claim

By Alex Ebert

Documents

 [Order to show cause](#)

 [Judge Nancy M. Bannon](#)

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- Firefighters wanted profits Icahn could have had from HP stock
 - Theory ran up against Icahn's loss on shares—a key defense

Bloomberg Law News 2024-05-10T13:48:55722129453-04:00

Icahn Settles Xerox-HP Merger Suit Including Novel Trading Claim

By Alex Ebert 2024-05-09T11:30:24000-04:00

- Firefighters wanted profits Icahn could have had from HP stock
- Theory ran up against Icahn's loss on shares—a key defense

A Florida firefighters pension fund has agreed to set aside its novel securities claim against Carl Icahn in exchange for a \$2.2 million settlement, ending a five-year derivative suit in which the fund hoped to collect Icahn's "paper profits" connected to an attempted Xerox Corp. takeover of HP Inc.

If finalized, the deal extinguishes what the plaintiffs described as a potential "eight-figure" case against Icahn for allegedly using insider information to purchase shares in HP ahead of Xerox announcing its failed takeover bid of the computer company.

The pension fund presented a novel theory for New York arguing that Icahn should have had to disgorge the potential profits he could have reaped had he sold his HP shares when Xerox announced it was seeking to acquire HP. The unsuccessful takeover was abandoned in 2020.

The New York Supreme Court for New York County issued an order Wednesday urging detractors of the derivative-suit settlement to come forward on June 12 if they disagree with the terms. The settlement terms include limits on large Xerox stockholders trading on potential acquisition targets, as well as a mandate to hire two additional directors.

The fund acknowledged that the \$2.2 million recovery was far less than it could have hoped for if a court accepted its novel theory. The plaintiffs said the theory has thus far been applied only to government claims.

"Candidly, that presents an issue of first impression for which plaintiffs would never be able to achieve complete confidence, because the authorities relied upon arose in a different context and it is unclear whether New York would apply the same principles on the facts adduced at trial," the Miami Firefighters' Relief & Pension Fund and plaintiff Steven J. Reynolds said in their brief urging the court to approve the settlement.

One of Icahn's main defenses to the suit was that he lost money on his HP shares purchase—so there were no profits to return to the Xerox shareholders.

"Ultimately, damages could range from a few million dollars to somewhere in the high eight-figures," the plaintiffs said. "While the settlement payment is not reflective of the high end of recoverable damages, it is reasonable."

The case is before Judge Nancy M. Bannon.

The plaintiffs are represented by Abraham, Fruchter & Twersky, Laurence D. Paskowitz of New York City, and Monteverde & Associates.

Herbert Beigel of Tuscon, Ariz. and Robert R. Viducich of New York City represent the defendants, Icahn, High River Limited Partnership, and Icahn Capital LP according to the settlement agreement. Willkie Farr & Gallagher LLP represents Xerox Holding Corporation according to the settlement.

The case is Miami Firefighters' Relief & Pension Fund v. Icahn, N.Y. Sup. Ct., No. 657447/2019, order to show cause entered 5/8/24 .

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Guess? Potential Buyout Hit With Preemptive Legal Challenge

By Mike Leonard

Documents

-  [Complaint](#)
-  [Docket](#)
-  [Company: Guess Inc.](#)

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- **COURT:** Del. Ch.
 - **TRACK DOCKET:** [No. 2024-0489](#)

Bloomberg Law News 2024-05-10T14:02:12014803862-04:00

Guess? Potential Buyout Hit With Preemptive Legal Challenge

By Mike Leonard 2024-05-09T15:15:19000-04:00

- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2024-0489

A pension fund sued Guess? Inc. co-founders Paul and Maurice Marciano on Thursday, challenging proposed changes to the apparel company's charter that would allegedly let them take it private on unfair terms.

The Marcianos and the board are misleading shareholders about the proposal to rewrite provisions in the corporate certificate that prohibit the brothers from standing on both sides of any buyout, according to the proposed class action. The move comes amid takeover rumors and "extreme criticism" from the Guess? investor base, including an activism campaign by hedge fund Legion Partners Asset Management LLC and earlier litigation over sexual assault allegations against Paul Marciano, the new lawsuit says.

The company's regulatory filings say "the charter amendment is merely intended to clarify ambiguity," but "the proposed amendment is not intended to (and does not) clarify ambiguity," according to the complaint filed in Delaware's Chancery Court. "It strips public stockholders of valuable protections."

Guess? didn't immediately respond to a request for comment Thursday. The Marcianos, who own 46% of the company, have stacked its leadership with loyalists, the lawsuit says.

It was filed by the Employees' Retirement System of Rhode Island, which also brought the earlier shareholder case in 2022. That suit, saying company leaders shielded Paul Marciano from consequences while he treated Guess? models as a "personal harem," settled for up to \$30 million. Maurice Marciano stepped down from the board in connection with the accord and health issues stemming from a cycling accident.

Those problems, combined with the activism campaign and earlier litigation, "collectively provide the Marcianos with a significant motive to take Guess? private," the new lawsuit says. Guess? bought Rag & Bone in April, seeming to confirm reports that the brothers were raising funds for a buyout they hoped to tie to an acquisition of the fashion brand, according to the complaint.

"If the Marcianos pursue a sale of Guess, they will likely seek to roll over at least a portion of their equity and stay involved in what they have for decades treated as a family business," the suit says. But first they'd have to repeal the charter provision providing them with "identical rights and privileges" as any other stockholders, according to the complaint.

The pension fund is represented by Labaton Keller Sucharow LLP and Friedman Oster & Tejtell PLLC. The Marcianos and other board members named as defendants haven't yet made court appearances.

The case is Emp. Ret. Sys. of R.I. v. Marciano , Del. Ch., No. 2024-0489, complaint 5/9/24 .

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Cognizant Workers Must Explain Standing in 401(k) Fees Challenge

B [bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X6EEI2K4000000](https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X6EEI2K4000000)

- Complaint doesn't say what funds workers held in 401(k)s
- But there's 'no doubt' they have standing on some issues

A federal judge weighing Cognizant Technology Solutions US Corp.'s 401(k) plan investment fees ordered the former employees who filed suit to better explain how they have standing to press certain of their claims.

There's "no doubt" the workers have standing with respect to their allegations that touch on the entire plan, Judge Michael E. Farbiarz said in an order issued Thursday. But the judge identified "potential standing issues" for other aspects of the case and ordered the workers to either explain these issues in a letter or file an amended complaint.

The workers' lawsuit says some of the Cognizant plan's actively managed funds carried high fees, but their complaint doesn't say whether any of the five named plaintiffs invested in these challenged funds, Farbiarz said. They also don't make clear what funds they held and instead offered only a "general statement" that each of them participated in the plan and invested in some of its options, according to the judge.

The proposed class action, filed in 2020 in the US District Court for the District Court of New Jersey, says the Cognizant plan fiduciaries allowed substantial plan assets to remain in pricey "branded" MassMutual funds. They should have swapped these funds for cheaper, "unbranded" funds with identical investments, managers, and risk profiles, according to the lawsuit.

The workers also take aim at the Cognizant plan's administrative fees and the company's decision to remain with the same retirement recordkeeper for many years, which they say suggests a failure to prudently manage the plan.

Cognizant moved to dismiss the case, saying the workers didn't allege any facts suggesting a deficient plan management process, and noting that the complaint's own allegations show a decrease in the plan's fee levels over the past few years.

Hundreds of employers have faced proposed class actions challenging their retirement plan fees over the past few years. Recently targeted employers include Tyson Foods Inc., Whole Foods Market Inc., AmerisourceBergen Corp., Cedars-Sinai Medical Center Inc., Pfizer Inc., Jack Henry & Associates Inc., and Telephone & Data Systems Inc.

Capozzi Adler PC represents the workers. Morgan, Lewis & Bockius LLP represents Cognizant.

The case is Milano v. Cognizant Tech. Sols. US Corp. , D.N.J., No. 2:20-cv-17793, 5/9/24 .

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Steel Processing Stock Plan Purchase Lawsuit Gets Green Light

By Jacklyn Wille

Documents

 [Docket](#)

 [Opinion](#)

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- Most claims advance against trustees, selling shareholders
 - Suit says \$60 million stock purchase price was inflated

Bloomberg Law News 2024-05-10T14:02:4234367317-04:00

Steel Processing Stock Plan Purchase Lawsuit Gets Green Light

By Jacklyn Wille 2024-05-09T09:33:55000-04:00

- Most claims advance against trustees, selling shareholders
- Suit says \$60 million stock purchase price was inflated

A former steel processing company employee advanced most of his proposed class action challenging a \$60 million stock purchase by the company's employee stock ownership plan.

Judge George Caram Steeh on Wednesday allowed the worker to pursue claims against the stock plan's trustees, Capital Trustees LLC and its founder, and two SAC Ventures Inc. executives who sold their shares in the company to the plan. The worker adequately alleged that the trustees breached their duties and allowed the plan to engage in transactions prohibited by the Employee Retirement Income Security Act, and that the selling shareholders could be liable under the statute for their participation in the deal, Steeh said.

The proposed class action, filed in the US District Court for the Eastern District of Michigan by plaintiff Richard Bonds, centers on the Flat Rock Metal & Bar Processing Stock Ownership Plan.

In 2020, the plan paid \$60 million to purchase 100% of the outstanding shares of SAC, a steel processing holding company with subsidiaries including Flat Rock. Bonds said the stock may have been worth as little as \$3.6 million, and he accuses the defendants of allowing the deal to go through based on a flawed valuation that relied on unrealistic growth projections, comparisons to dissimilar companies, and misconceptions about the company's structure.

Steeh declined to dismiss Bonds' ERISA claims against the selling shareholders, saying he adequately alleged that they were fiduciaries under the statute who knowingly participated in an improper transaction.

Steeh also greenlighted fiduciary breach claims against the trustees, which alleged that they had a financial incentive to approve the transaction and failed to properly investigate the deal's terms. But Steeh dismissed one of Bonds' claims under ERISA's prohibited transaction rules based on the lack of any indication that the trustees acted with a subjective intent to benefit an interested party.

Bailey & Glasser LLP and Varnum LLP represent Bonds. Holland & Knight LLP and Gordon Rees Scully Mansukhani LLP represent the selling shareholders. Keating Muething & Klekamp PLL represents the trustees.

The case is *Bonds v. Heeter*, 2024 BL 158521, E.D. Mich., No. 2:23-cv-12045, 5/8/24.

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Ozempic lead counsel selection process is model for judges in big cases

 [reuters.com/legal/litigation/column-ozempic-lead-counsel-selection-process-is-model-judges-big-cases-2024-05-09](https://www.reuters.com/legal/litigation/column-ozempic-lead-counsel-selection-process-is-model-judges-big-cases-2024-05-09)

Alison Frankel

A box of Ozempic made by Novo Nordisk is seen at a pharmacy in London, Britain March 8, 2024. REUTERS/Hollie Adams Purchase Licensing Rights , opens new tab

May 9 (Reuters) - Back in March, at the first hearing , opens new tab in consolidated litigation over allegedly undisclosed side effects from Ozempic and other diet drugs, plaintiffs lawyers told a Philadelphia federal judge that they'd already agreed on a slate of four lawyers to lead the mass tort case.

On Wednesday, U.S. District Judge Gene Pratter of Philadelphia appointed , opens new tab those same four lawyers -- Paul Pennock of Morgan & Morgan; Parvin Aminolroaya of Seeger Weiss; Sarah Ruane of Wagstaff and Cartmell; and Jonathan Orent of Motley Rice -- as lead counsel in the multidistrict litigation against diet drugmakers Novo Nordisk (NOVOB.CO) , opens new tab and Eli Lilly (LLY.N) , opens new tab.

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But Pratter was no mere rubber stamp.

In the two months between the initial hearing in March and her leadership order on Wednesday, the judge took great care to assure that lawyers who were not part of the self-selected slate had a chance not just to apply for a leadership post but also to comment on the selection process.

The judge also tested whether there was true consensus backing for the self-selected slate by appointing a group , opens new tab of eight lawyers last month to serve as the core of a steering committee. Only one of the proposed co-leads was part of that group, which ended up acting as a selection committee to refine the original leadership proposal while confirming that the four initially-proposed co-leads had broad backing from other lawyers in the case.

Pratter's process featured some drama, with one plaintiffs firm, in particular, objecting to the entire concept of self-selection by so-called "repeat players" in MDL cases.

Ultimately, though, Pratter's methodology -- entertaining leadership applications from all comers, promoting efficiency by limiting the size of the leadership group and, most importantly, testing the level of support for a purportedly consensus slate of co-lead counsel -- makes a lot of sense.

There are few formal rules to guide judges in the selection of lead counsel in these huge multidistrict cases, even though leadership appointments have vast consequences affecting thousands of plaintiffs. Lead counsel determine how MDLs will be litigated and resolved.

Leadership appointments can also be enormously lucrative, since lawyers receive a small percentage of every settlement to reward them for work that benefits all plaintiffs in the litigation.

Pratter's approach in the Ozempic case acknowledges those high stakes. She paid appropriate deference to the plaintiffs lawyers who worked among themselves to pick their own leaders before she was even appointed to oversee the Ozempic litigation. But she also broadened the process to make sure that the self-selected slate would do the best job of running the case. That's a good model for other MDL judges to follow.

I'll pause to note that Ozempic and Wegovy maker Novo Nordisk said in an email statement that allegations in the MDL are "without merit" and that it will defend the cases vigorously. Novo is represented by DLA Piper. Neither Eli Lilly, which makes Mounjaro, nor its counsel at Kirkland & Ellis responded to my query. Both Lilly and Novo have said their medications are safe and that side effects are fully disclosed in labeling materials.

I already told you last month about the early leadership skirmishing in the Ozempic case, so I want to focus now on Pratter's appointment in late April of eight plaintiffs lawyers – including one, Marcus Susen of Susen Law Group, who did not initially support the consensus leadership slate -- to a steering committee.

The judge's order, as my Reuters colleague Brendan Pierson reported at the time, was unusually ambiguous. Pratter did not name lead counsel. She left it up to the eight appointed lawyers to propose additional committee members and to suggest a detailed leadership structure that reflected the judge's concerns about efficiency.

Two lawyers appointed to the steering committee, Pennock of Morgan & Morgan and Alex Walsh of Walsh Law, told me that their group did not consider its members to have been appointed lead counsel. Instead, they said, the group regarded itself as a selection committee tasked with deciding which plaintiffs lawyers were best suited for particular leadership assignments.

It was important, said committee members Walsh and Susen, that the eight-lawyer group reflected a diverse range of viewpoints from people who were not part of the originally-proposed slate of co-lead counsel.

Pennock was the only selection committee member who was part of the initially-proposed co-lead slate. He said Pratter's appointment of a cross-section of lawyers to vet the self-selected co-leads was "savvy."

"The court wanted to be sure," said Pennock, "that the previously proposed slate was what everyone wanted."

The group met virtually several times to hammer out a proposal that limited the leadership roster to 25 lawyers, as Pratter ordered, with specified roles for each lawyer. That proposal was submitted to Pratter on May 3. (The proposal is not docketed and co-lead counsel did not respond to my request to see it, so it's not clear if Pratter adopted it in full.)

"What the judge did was great," said Walsh. She said plaintiffs lawyers generally should get to decide how to lead their cases – just as defendants pick their own counsel – but agreed that self-selection can raise concerns about fairness and exclusivity. Pratter's creation of a selection committee, she said, alleviated those concerns.

"It's how it should be done," Susen said.

Leadership candidate Sarah Foster of the Schlesinger Law Offices, who objected to the originally proposed slate, did not respond to my email query. She did not receive a formal leadership post, but Pratter appointed liaison counsel from Fine Kaplan and Black to act as her mentor.

Pennock told me he and the other co-leads are gratified to have been recommended by other plaintiffs lawyers and approved by the judge after all of the checks and balances Pratter devised.

"Now we can get back to action in the case," he said.

Read more:

Plaintiffs' lawyers chosen to lead Ozempic litigation

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

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Reporting By Alison Frankel

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Alison Frankel
Thomson Reuters

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

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NEWS

After Jury Returns \$45M Verdict Against Johnson & Johnson, Dean Omar Opens New Talc Trial in Oregon

Dean Omar, the Dallas-based plaintiffs firm that won a \$45 million talcum powder verdict last month against Johnson & Johnson, opened on Thursday with another trial. Orrick's Will Stute represented Johnson & Johnson.

May 09, 2024 at 07:07 PM

Litigation



Amanda Bronstad
staff reporter



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

What You Need to Know

- The trial is the second involving a mesothelioma victim against Johnson & Johnson since its failed talcum powder bankruptcies last year.
- The plaintiff, Kyung Lee, was diagnosed with mesothelioma at age 48 after decades of being exposed to Johnson & Johnson's baby powder.
- Johnson & Johnson's attorney, Stute, said Lee had multiple other exposures to asbestos, primarily growing up five kilometers from a textile factory in Busan, South Korea.

The plaintiffs firm that won a \$45 million talcum powder verdict last month against Johnson & Johnson opened on Thursday with another trial.

Benjamin Adams, of Dallas-based Dean Omar Branham Shirley, told jurors in Oregon that his client, Kyung Lee, was diagnosed with mesothelioma at age 48 after decades of being exposed to Johnson & Johnson's baby powder, starting from the time she was born in 1974, according to Courtroom View Network's live streaming of the trial.

"From the day Kyung Lee was born, she was breathing Johnson & Johnson's baby powder," Adams said in his opening statement. "And for almost 36 years she breathed Johnson's baby powder."

But it wasn't until 2019 that Johnson & Johnson [voluntarily recalled](#) a sample lot of 33,000 bottles of its talc-based baby powder after the Food and Drug Administration's testing found asbestos in them, he said.

"They found asbestos over and over and over again," Adams told jurors. "And the FDA said this is poison."

Johnson & Johnson attorney Will Stute, a Washington, D.C., partner at Orrick, Herrington & Sutcliffe, told jurors that no government agency has ever determined that talc causes cancer, according to Courtroom View Network's live streaming of the trial.

"Counsel told you for the last 50 years or more Johnson & Johnson intentionally did things that it knew would give babies cancer," Stute said. "And that claim is false. Demonstrably false."

Stute also told jurors they wouldn't see a single bottle of Johnson & Johnson's baby powder, or a receipt, showing that Lee used their product. And no medical records would tie Lee's mesothelioma to Johnson & Johnson's baby powder.

Stute also countered that Lee had multiple other exposures to asbestos, primarily growing up five kilometers from a textile factory in Busan, South Korea.

"Johnson & Johnson's talcum powder products did not cause Ms. Lee's mesothelioma," Stute claimed. "The likely cause of Ms. Lee's cancer was environmental exposure growing up in Busan, South Korea. It had nothing to do with Johnson's baby powder."

Adams, anticipating the defense's argument, acknowledged Lee might have used other cosmetic talc brands and that her husband had a construction job. But neither explained her amount of asbestos exposure, he said. As to the nearby factory, he cited "wind data" that showed she wasn't in the path of the asbestos fibers.

"Ms. Lee very well may have been exposed to some neighborhood exposure in Busan," he said. "We just couldn't prove it."

Johnson & Johnson Lost \$45M Verdict Last Month

The trial is the second involving a mesothelioma victim against Johnson & Johnson since its failed talcum powder bankruptcies last year.

Jessica Dean, of Dean Omar, won a \$45 million verdict last month, the [first post-bankruptcy verdict](#) for a mesothelioma victim. The jury, in Chicago's Cook County Circuit Court, awarded all compensatory damages to the family of Theresa Garcia, a mother of six kids who died in 2020 after lifelong use of Johnson & Johnson's baby powder and other products.

That decision, which Johnson & Johnson has vowed to appeal, came down the same day that a jury in Florida's Sarasota County Circuit Court rendered a defense win in the [first post-bankruptcy verdict](#) in a case brought by a plaintiff with ovarian cancer.

On March 5, the first post-bankruptcy trial involving an ovarian cancer victim [ended in a mistrial](#) in Florida's Miami-Dade Circuit Court.

5/10/24, 11:05 AM

After \$45M Verdict Against J&J, Dean Omar Opens With New Talc Trial in Oregon | The Recorder

Thursday’s trial involves Lee, who now lives in Oregon. The case seeks \$190 million in compensatory damages and \$300 million in punitive damages against Johnson & Johnson, according to court papers.

The trial, before Multnomah County Circuit Judge Katharine von Ter Stegge, comes after Johnson & Johnson, on May 1, [announced plans](#) for a subsidiary to file a third bankruptcy to resolve thousands of talcum powder lawsuits as part of a “prepackaged” reorganization plan that would provide nearly \$6.48 billion to ovarian cancer victims. The proposal excludes mesothelioma cases.

The bankruptcy announcement comes after U.S. District Judge Michael Shipp of the District of New Jersey refused to reconsider his March 27 order allowing [a “full refiling”](#) of scientific expert testimony in the talc multidistrict litigation. Shipp also scheduled the first bellwether trial in the talc multidistrict litigation for Dec. 3.

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

But one mesothelioma case was allowed to proceed to trial last year during the second bankruptcy in California’s Alameda County Superior Court. Joseph Satterley, of Oakland’s Kazan, McClain, Satterley & Greenwood, obtained an [\\$18.8 million verdict](#) for his client.

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Las Vegas hotels defeat price-fixing class action over room rates

 [reuters.com/legal/government/las-vegas-hotels-defeat-price-fixing-class-action-over-room-rates-2024-05-09](https://www.reuters.com/legal/government/las-vegas-hotels-defeat-price-fixing-class-action-over-room-rates-2024-05-09)

Mike Scarcella

An exterior view Wynn hotel-casino in Las Vegas, Nevada, U.S., February 7, 2018.
REUTERS/Steve Marcus Purchase Licensing Rights , opens new tab

May 9 (Reuters) - A U.S. judge has thrown out a proposed consumer class-action lawsuit accusing a group of major Las Vegas hotels of sharing price information through a third-party platform in order to charge artificially higher room rental rates.

Chief U.S. District Judge Miranda Du in Las Vegas in a ruling , opens new tab on Wednesday said the plaintiffs had not shown that the hotels had made any agreement with each other to fix prices.

Du had dismissed an earlier version of the lawsuit but let the consumers amend their case. Her new order dismissed the lawsuit outright.

The consumer plaintiffs last year sued Wynn Resorts, Caesars, Treasure Island and others, alleging they used a revenue platform by tech company Cendyn to unlawfully coordinate on room prices, in violation of U.S. antitrust law. The amended complaint added private equity giant Blackstone (BX.N) , opens new tab as a defendant.

Wynn, Blackstone and several other defendants either declined to comment or did not immediately respond to a request for comment on Thursday. They all had denied any wrongdoing.

Cendyn in a statement said it welcomed Du's ruling to dismiss the lawsuit with prejudice.

Steve Berman, a lawyer for the plaintiffs, said they were weighing options, including whether to appeal.

The lawsuit accused the hotels of sharing competitive, sensitive information that they otherwise would not disclose. Du in her ruling said the hotels “are not required to and often do not accept the pricing recommendations” made by Cendyn’s algorithm.

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

She said the hotels “have not agreed to restrain their ability to price their hotel rooms in any way.”

The plaintiffs had argued that adherence to a price schedule, even if the guidelines were non-binding, still amounted to a violation of federal antitrust law.

The U.S. Justice Department in a series of policy statements made to U.S. courts in recent months has backed the plaintiffs' argument.

The Las Vegas lawsuit is among a growing number of cases focused on claims that companies are using data-sharing platforms as a modern form of price-fixing.

"This case remains a relatively novel antitrust theory premised on algorithmic pricing going in search of factual allegations that could support it," Du wrote.

The case is Gibson v. Cendyn Group, U.S. District Court, District of Nevada, No. 2:23-cv-00140-MMD-DJA.

Read more:

CoStar, luxury hotels hit with US consumer price-fixing lawsuit

First settlements reached in RealPage rental price-fixing lawsuits

Mobile home park owners blast 'implausible' rent price-fixing class action

Renters suing RealPage get US backing in pricing lawsuits

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Reporting by Mike Scarcella

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16K potential class members claimed missing from Robert Half lawsuit

DJ [dailyjournal.com/articles/378722-16k-potential-class-members-claimed-missing-from-robert-half-lawsuit](https://www.dailyjournal.com/articles/378722-16k-potential-class-members-claimed-missing-from-robert-half-lawsuit)

May 10, 2024

The lawsuit, originally filed in 2015, accuses the staffing agency of systemically failing to pay more than 212,000 employees for time spent attending fruitless interviews.

One of the lead attorneys for a certified class of plaintiffs told a San Francisco judge Thursday that 16,000 potential class members were left off the current class list in a Private Attorneys General Act lawsuit against multinational staffing agency Robert Half.

The lawsuit, originally filed in 2015, accuses the staffing agency of systemically failing to pay more than 212,000 employees wages they claim to have earned for their preparation and interview time for staffing openings Robert Half required them to attend but did not get placed at. *Gentry v. Robert Half International, Inc. et al.*, CGC15544878 (S.F. Super. Ct. filed March 23, 2015).

The case has bounced back and forth between state and appellate court for almost a decade in the company's attempt to thwart the litigation but Superior Court Judge Andrew Y.S. Cheng, on March 8, certified the class action and two subclasses of Robert Half employees that claim to have been deprived of wages earned in preparing and attending fruitless interviews for company clients. The company, which claims to be the largest of its type in the world, has denied liability throughout.

During Thursday's case management conference Alisa A. Martin of AMartin Law PC, asked Cheng to enforce a deadline to meet and confer regarding her claim that 16,000 names she claims were included in the Belaire-West notice list of the class action from 2020 but are now absent on the current class list that.

"So, I got someone to compare both of the lists and make an Excel spreadsheet with the names of all the people that were not included on the class list. I did provide that to opposing counsel, but I have been trying to meet and confer with them and get a clear understanding about the protocol that was used to determine who the class members were," Martin told the judge. "I brought up this issue several weeks ago now and I also propounded discovery on

the issue. The discovery I propounded was merely a backstop, because I feel this is not a discovery issue. It's really to make sure the parties properly can comply with the court's order."

One of Robert Half's attorneys, Roland M. Juarez of Hunton Andrews Kurth LLP, told Cheng that he and his co-counsel had already found 2,260 names from the Belaire-West list that appear in the current class and added that he believes the current class size is "over inclusive."

"So Ms. Martin's statement that there were 16,000 names excluded is, we do not believe is accurate; the reason there are different methodologies used is because the client believed that the Belaire-West list was over inclusive because they basically started with California branch offices and candidates associated with those offices and that led to a lot of erroneous people being on that Belaire-West list," Juarez said. "I can report to the court today that we know there are 2228 people exactly that were on her list that are actually included in the class list. We believe there are approximately 15 184 of those on the list who had California addresses, we've already looked at some of those and there are 'perm' . . . and 'perm' [employees] are not part of the class by the parties' agreement. So, what we're really talking about your honor is a fraction of 1%."

Cheng told the parties to continue to meet and confer on the issue but addressed Martin's concerns saying, "I'm inclined to give you more time to finish the meet and confer process but it's not going to be unlimited."

Juarez's co-counsel in the case are Michael B. Burns of Hunton Andrews Kurth LLP and Adam P. KohSweeney of O'Melveny & Myers LLP. Mart's co-counsel in the case is James R. Patterson of Patterson Law Group APC.

Trial is currently set for Nov. 3, 2025.

#378722

Wisdom Howell

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GM Gets Class Decertified in Suit Over Gen IV Engine Oil Defect

B [bloomberglaw.com/product/blaw/bloomberglawnews/class-action/XD4PLMMC000000](https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/XD4PLMMC000000)

Class Action

The General Motors logo is shown.

Photographer: Bill Pugliano/Getty Images

- October 2012 was earliest GM could know about alleged defect
- Plaintiff bought car in September 2012, can't represent class

General Motors LLC convinced a federal judge to decertify a consumer class alleging their 2011-2014 vehicles contained an engine defect, because the lead plaintiff failed to show the company knew when he bought his car that certain earlier fixes wouldn't be effective.

Lead Plaintiff Robert Riddell bought his car in September 2012. But GM engineers' emails from October 2012 were the earliest evidence in the record indicating GM knew the engines were still facing excessive oil consumption issues after the automaker tried to institute fixes, the US District Court for the Eastern District of Missouri said Thursday.

Riddell sued in 2020 and alleged GM knew vehicles equipped with Gen IV engines had defective piston rings that led to excessive oil consumption that could cause engine damage.

The lawsuit was previously dismissed because Riddell failed to give GM pre-suit notice. But the US Court of Appeals for the Eighth Circuit revived the suit in January 2023.

Because October 2012 marked when GM would've needed to disclose the alleged defect to purchasers, Riddell is no longer a suitable lead plaintiff, Judge Stephen N. Limbaugh Jr. said. He granted GM summary judgment on claims related to vehicles purchased before October 2012 and directed Riddell's attorneys to file additional briefing about the future viability of the case by June 10.

Riddell is represented by Dicello Levitt LLP and Beasley Allen Law Firm.

GM is represented by Crowell & Moring LLP; UB Greensfelder LLP; and Morgan, Lewis & Bockius LLP.

The case is Riddell v. Gen. Motors LLC , E.D. Mo., No. 1:20-cv-00254, 5/9/24 .

To contact the reporter on this story: Shweta Watwe in Washington at swatwe@bloombergindustry.com

US court approves first wave of settlements over real estate commissions

 [reuters.com/legal/litigation/us-court-approves-first-wave-settlements-over-real-estate-commissions-2024-05-10](https://www.reuters.com/legal/litigation/us-court-approves-first-wave-settlements-over-real-estate-commissions-2024-05-10)

Mike Scarcella

[REUTERS/Larry Downing Purchase Licensing Rights](#) , opens new tab

May 10 (Reuters) - A U.S. judge in Missouri has approved \$208 million in consumer antitrust settlements with Re/Max and two other leading real estate brokerages, casting aside objections that the deals could bar others from pursuing their own claims that the defendants inflated home sales commissions.

U.S. District Judge Stephen Bough in Kansas City on Thursday said the “miniscule” number of objections were not enough to derail the settlements with Anywhere Real Estate (HOUS.N) , opens new tab, Keller Williams and Re/Max (RMAX.N) , opens new tab.

The three brokerages earlier this year became the first to settle claims by home sellers that they conspired to inflate the commission that sellers pay to buyers’ agents as part of a home sale.

Longstanding industry rules required home sellers to pay a commission to buyers’ agents in to list their homes on a “multiple listing service,” the regional databases that brokers use to sell most homes in the United States.

Anywhere, Re/Max and Keller Williams in statements said they welcomed the court’s order , opens new tab, which they said will allow them to focus on their businesses. The companies have denied any wrongdoing.

Bough said nearly 200,000 claims were submitted by May 2 seeking compensation from the settlement. So far, he said, 61 class members have opted out and could pursue individual claims.

The judge disputed one objection that the settlements did not go far enough, and he defended the scope of the deals, saying that the nationwide settlements will minimize “protracted and costly piecemeal litigation.”

The settling brokerages would not have resolved claims “on anything less than a nationwide basis, because doing so would have left them exposed to potentially crippling liability,” the court wrote.

Attorneys for home buyers in related antitrust litigation in Chicago who had objected to the deals declined to comment. They had argued that the settlements could unfairly sideline some of their claims.

A jury in Bough's court last fall found another group of brokers liable for conspiring with the National Association of Realtors to inflate broker commissions.

The panel awarded nearly \$1.8 billion, but all of the defendants, including the realtors group and Berkshire Hathaway (BRKa.N) [↗](#), opens new tab unit HomeServices, subsequently reached deals for far lesser amounts.

The court has not yet given final approval to those settlements.

The case is Rhonda Burnett et al v. The National Association of Realtors, U.S. District Court, Western District of Missouri, No. No. 4:19-CV-00332-SRB.

Read more:

[Redfin to pay \\$9 million in real estate antitrust settlement](#)

[Berkshire brokerage HomeServices hit with new lawsuit over commissions](#)

[US realtor group's \\$418 million antitrust settlement wins tentative approval](#)

[Real estate commission antitrust settlements face legal objections](#)

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Reporting by Mike Scarcella

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NEWS

Susman Godfrey, McGuireWoods Lawyers Clash Over IDEA System in Virginia Before 4th Circuit

"It's only after a year and a half of investigation, more than \$1 million in attorney time, it took to develop and find the information that's pled in our complaint, and to bring this case before this court," Susman Godfrey partner William Merrill told the U.S. Court of Appeals for the Fourth Circuit.

May 10, 2024 at 12:56 PM

Education Law



Allison Dunn



A Big Law and an elite litigation firm went head-to-head before the U.S. Court of Appeals for the Fourth Circuit Thursday in a case over whether the Virginia Department of Education has been violating the rights of disabled students and their families for decades. But there was strong pushback from the institutions.

Although the state, being represented by McGuireWoods, is contending that the suit needs to be tossed because the families failed to exhaust their administrative remedies, Susman Godfrey partner William Merrill, who is representing the families, argued that the administrative process was flawed to the point it fit the futility exception in the law.

“The critical point of the IDEA, one of the critical points, is that you get a fair and impartial hearing by individuals who have no personal or professional interest in the case. We have demonstrated very clearly in our complaint that VDOE and Fairfax County and other school districts have put their hand on the scale,” Merrill said.

Susman Godfrey, a top-tier litigation firm, is working with mega firm, Mayer Brown, Richmond-based small firm MerrittHill, and the Georgetown Law Civil Rights Law Clinic, [in representing](#) two students and Hear Our Voices, a private, non-profit member organization established for special needs children. The [initial complaint](#) filed in the U.S. District Court for the Eastern District of Virginia alleged that Fairfax County schools and the Virginia Department of Education violated the Individuals with Disabilities Education Act (IDEA) by withholding mandated resources from students with disabilities.

Last summer, U.S. District Judge Nachmanoff sided with Fairfax County and the Virginia Department of Education’s motion to dismiss, concluding the families had not exhausted Virginia’s administrative procedures, among other findings.

On Thursday, Merrill argued before the Fourth Circuit panel, including Judges Robert Bruce King, Roger Gregory, and Allison Jones Rushing, that the plaintiffs attempted to go through the administrative process under the IDEA, but the system is flawed. For example, the family of Trevor and Vivian Chaplick, whose child, D.C., is a plaintiff, got the same hearing officer on their second attempt and asked her to recuse herself, but she declined.

Merrill argued that it would have been futile because Virginia’s hearing officers lack authority to resolve the alleged systemic violations.

He encouraged the court to read over the plethora of examples in their complaint, including instances of inflated or exaggerated grades to reflect better student progress, rejected medical diagnoses, and inserting state facilitators into the Individualized Education Program process to “pressure parents” to accept the school districts’ proposed plan. If every parent were required to go through the process in which a hearing officer “cannot fix the system, you’re essentially creating an impossible,” scenario, Merrill said.

Rushing disagreed.

“I don’t see how that’s true, exhausting remedies doesn’t mean you don’t get any remedies—you exhaust them,” she said. “And if the administrative agency denies your remedy, then the statute says you can sue. So all of these systemic remedies that you seek would be available, as long as they follow the steps required by the statute.”

“But if you make the requirement that you proceed through the administrative remedies, even when it’s futile to do so, you write the fruitily exemption out of the law, and it’s well established in the law, both generally and under the IDEA,” Merrill responded.

Merrill said much of the information, like how in northern Virginia more than 80% of hearing officers never issued a favorable ruling for a disabled child, wasn’t discovered until the Chaplick family requested public records to put some of the pieces together.

“How could you possibly address that by trying to challenge bias in an individual case? It’s only after a year and a half of investigation, more than \$1 million in attorney time it took to develop and find the information that’s pled in our complaint and to bring this case before this court,” Merrill said. “That’s not something that anyone, any individual, any parent has the ability to do. This is the only way to challenge the bias system. You can’t do that through an individual claim.”

Brian D. Schmalzbach, a Richmond partner at Big Law firm McGuireWoods, who represents the Virginia Department of Education, said this case is about the “rules of the road for designing an individualized free appropriate public education” (FAPE), rather than “encouraging knee jerk litigation in federal court.” He said the plaintiff had other means before the executive secretary of the Virginia Supreme Court, including filing an affidavit regarding their bias claims or requesting that the officer in question be removed from the rotation.

The school district’s attorney, Julia B. Judkins, agreed.

“You have to follow the statute, you have to follow the rules. They had plenty of opportunities to raise the issues that are primary here, bias in hearing officers, and [they] did not. And, case over is our position,” Judkins said, asking the panel to affirm the district court’s dismissal.

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Youth Climate Class Action Dismissed but Given Another Chance

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Bloomberg Law ⓘ 000888

Class Action

May 9, 2024, 4:08 PM PDT

Quinn Wilson

- Declaratory judgments “unlikely” to redress alleged injuries
- Eighteen youth plaintiffs granted leave to amend complaint

A California federal court dismissed a youth climate lawsuit, ruling that the children who sought to hold the government accountable for contributing to climate change failed to state a redressable claim.

Judge Michael W. Fitzgerald of the US District Court for the Central District of California granted the US Environmental Protection Agency’s motion to dismiss on Wednesday. The EPA asked the court to dismiss the 18 California youth plaintiffs’ lawsuit for lacking subject matter jurisdiction and failing to state a claim.

Fitzgerald did, however, grant the plaintiffs’ motion for leave to amend their complaint because the EPA did not oppose the request, he wrote. But Fitzgerald said he is “skeptical” they would be able to amend their allegations to demonstrate redressability.

“The court will therefore grant plaintiffs one more chance to amend their complaint to address the standing issues discussed in this order and any other potential deficiencies as raised in the motion,” Fitzgerald wrote.

Mat dos Santos, co-executive director of Our Children’s Trust, which represents the plaintiffs, says the plaintiffs intend to file an amended complaint.

The plaintiffs alleged that the EPA has been violating their Fifth Amendment right by letting the US disproportionately contribute to climate-warming emissions and “discounting” the value of American children’s future. They seek a variety of declaratory judgments in their favor as well as court costs and attorneys’ fees.

- show that their alleged injury is concrete, particularized and actual or imminent;
- traceable to the defendant’s complained-of activity; and
- likely to be redressed by a decision favorable to plaintiffs

But Fitzgerald said the declaratory judgments the plaintiffs seek are “unlikely” to redress their alleged injuries. The judge pointed to similar cases, including *Juliana v. United States*, in which the US Circuit Court of Appeals for the Ninth Circuit ruled that declaratory relief is “not substantially likely” to mitigate alleged injuries “absent further court action,” Fitzgerald said. After signaling his inclination to dismiss the case, Fitzgerald reconsidered the plaintiffs’ argument that their lawsuit was different from other similarly dismissed suits against the EPA at an April hearing. In the end, the judge ruled against the plaintiffs.

“The court must follow the Ninth Circuit’s binding decisions where applicable,” Fitzgerald wrote.

The plaintiffs are represented by Our Children’s Trust, Gregory Law Group, University of California at Irvine School of Law’s Civil Rights Litigation Clinic, and Schonbrun Seplow Harris Hoffman & Zeldes LLP.

The case is *G.B. v. EPA*, C.D. Cal., 2:23-cv-10345, 5/8/24 .

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ExxonMobil

US pension giant weighs vote against Exxon CEO over climate lawsuit

Calpers concerned oil supermajor is seeking to muzzle activist shareholders



Darren Woods, chief executive and chair of ExxonMobil, is up for re-election to the company's board © Allison Dinner/EPA-EFE/Shutterstock

Attracta Mooney and **Josephine Cumbo** in London and **Myles McCormick** in Houston YESTERDAY



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Calpers, the US's biggest public pension plan, is weighing a vote against ExxonMobil chief executive Darren Woods' re-election to the company board as shareholder discontent brews over a lawsuit it filed against two climate-focused investors.

Exxon sued Dutch shareholder group Follow This and US investment adviser Arjuna Capital to block a resolution they introduced demanding it do more to cut its greenhouse gas emissions. The oil supermajor has persisted with the [lawsuit](#) in US federal court even after the duo withdrew their proposal.

Michael Cohen, chief operating investment officer at Calpers, said in an interview that the \$463bn pension fund was "deeply concerned" about the case, warning that it appeared to be an effort to silence critical shareholders.

“Exxon has gone well beyond any other company that we’re aware of in terms of suing shareholders for trying to bring forward a proposal. And even when they drop the proposal, [Exxon is] continuing the lawsuit,” he told the Financial Times.

“There doesn’t seem to be anything other than an agenda of sending a message of shutting down shareholders’ ability to speak their mind.”

Asked if Calpers was considering voting against Woods’ re-election as board chair at the company’s annual meeting on May 29, Cohen said “correct”. He added: “There are conversations happening right now” on how the pension fund votes.

Following the Financial Times story about Calpers and Exxon, the pension fund came under pressure from the California state treasurer, who is also a board member of the fund, to vote against Woods’ re-election.

“Exxon’s actions are a serious threat to shareholder rights and require a strong response,” California treasurer Fiona Ma said. “As the largest public pension fund in the country, we have a responsibility to lead on issues that threaten to undermine shareowners.”

Calpers had a 0.2 per cent equity stake in Exxon worth about \$1bn as of March 31, according to a securities filing. But it has been influential, in 2021 joining other institutional investors to [back a dissident slate](#) of board candidates proposed by activist hedge fund Engine No. 1. Three were elected and they remain on the board.

Exxon’s lawsuit followed a proliferation of shareholder resolutions on an array of environmental, social and governance matters after the US Securities and Exchange Commission in 2021 allowed more ESG petitions to be voted on.

The company has argued that activist shareholders have filed resolutions on similar issues year after year even after they repeatedly failed to receive a majority of votes.

Asked to respond to Calpers, [Exxon](#) said: “We strongly support the right of investors to submit proposals within the SEC rules that are intended to grow value. The goal of our lawsuit is simple — we seek clarity on the SEC rules to stop the continued abuse of the proposal process.”

But Exxon’s court fight has led some investors to accuse it of attempting a clampdown.

“I think this is a critical point in time where we have shareholder democracy coming up against a company that is really trying to silence debate,” said Mary Minette, senior director of shareholder advocacy at Mercy Investment Services, the investment programme of the Sisters of Mercy of the Americas.

The group of social activist investors, which manages the finances of an order of Catholic nuns and has a small shareholding in Exxon, has alongside Wespath Benefits and Investments urged fellow investors to vote against the re-election of Woods and Jay Hooley, the company’s lead independent director.

Calpers was due to meet Exxon later this month, Cohen said, and the pension fund would not be “shy about voicing our opinion”.

He argued that Exxon should have taken its concerns to the SEC, rather than sue its shareholders. But he said Exxon could “resolve the issue” by dropping the lawsuit.

“That would be the preferred way to say ‘OK, we were overzealous in trying to silence shareholders’. That would be the easiest,” Cohen said.

A coalition of labour unions representing a majority of workers invested in Calpers, alongside environmental groups in California, this week [called on the pension fund](#) as well as Calstrs, the state teachers’ retirement plan, to vote against the re-election of Woods and Hooley.

Marcie Frost, Calpers’ chief executive, also criticised Exxon’s lawsuit at the fund’s April board meeting. “The long-term repercussions of silencing shareholders really should concern everyone,” she argued.

Mark van Baal, who heads up Follow This, said in an interview that Exxon wanted to circumvent the SEC to get a court ruling to prevent any shareholder from filing a resolution asking for cuts to greenhouse gas emissions in future.

“[The lawsuit] is just setting an example: if you’re too critical, if you ask things we don’t like as a board, we sue you. So it has a chilling effect on all shareholders.”

He said that because a climate resolution was not on the ballot, investors could vote against directors to “signal that [shareholders] want Exxon to cut emissions”.

Trump and Big Oil Are Match Made in Climate Hell: Mark Gongloff

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Litigation

May 10, 2024, 3:30 AM PDT

Opinion

Mark Gongloff

Bloomberg Editorial

If you are still uncertain about Donald Trump's stance on climate change, then the fact that fossil-fuel companies are helping to pay his legal bills should clear it up.

To be fair, the amount of oil money going to keep the once and possibly future president out of jail is kind of a pittance — somewhat less than \$128,000 so far this year, or 2% of the \$6.4 million Big Oil has given to Trump's fundraising committee, according to the news organization Heatmap's analysis of data provided by the communications group Climate Power. That's barely enough for one porn-star hush-money trial.

But the sector is gearing up to give a lot more, the Washington Post reports, especially after Trump has promised to cater to its every desire in a second term. Environmental rules and tailpipe emission standards? Gone. Carte blanche to drill, baby, drill from Alaska to the Gulf of Mexico? You got it.

"They got a great return on their investment during Trump's first term, and Trump is making it crystal clear that they're in for an even bigger payout if he's reelected," Climate Power senior adviser Alex Witt told the Post.

"Big Oil Gives Money to Republican" is about as dog-bites-man as news headlines can get. But it's notable in this case for a couple of reasons.

First, despite President Joe Biden having done more to fight climate change than any other US president, and despite Trump having done possibly the least since we first realized "climate change" was a thing, Americans still

there's a drastic difference between the two on the issue. It is true that Biden's climate action hasn't kept the US from producing more oil and gas than ever before or prevented fossil-fuel companies from turning record profits. But voters need to understand just how stark the choice in November truly is, and following the money can help.

Second, the oil industry's embrace of Trump comes when its brand is comparably toxic to his. As the warming caused by burning fossil fuels leads to more devastation and suffering, we will keep pushing for alternatives. Renewable sources such as solar and wind generated 30% of the world's electricity for the first time last year, according to the energy think tank Ember. It predicted fossil-fuel power generation and emissions will fall this year, even as energy demand grows.

The oil-and-gas sector naturally wants to protect its assets in the ground and keep those record profits coming for as long as possible. But perhaps it could avoid a future of even harsher environmental regulation and political backlash around the world by trying to work with this transition rather than fighting a rear-guard action against it, particularly under the banner of a man out of touch with not only climate science but popular opinion.

Meanwhile, America's laboratories of democracy are cooking up some powerful weapons against the industry. Vermont is on the verge of passing a law that would force oil and gas companies to help cover the damage caused by global warming, creating a kind of superfund for recovery and adaptation. It would use the rapidly advancing science of weather-event attribution to come up with precise dollar amounts for companies to pay for every new event like last summer's deadly floods. It remains to be seen whether America's conservative courts let such laws stand, but other states with bigger populations and greater climate-change risks are watching closely, as are governments around the world.

The industry also faces a mountain of litigation from states and other local governments, including one from California that has aims similar to Vermont's superfund law. Some of those cases will go to trial soon in state courts after years of delay, which could inspire still more lawsuits and lead eventually to a huge tobacco-style settlement. Big Oil may sympathize with Trump's many legal headaches, but joining forces with him isn't the answer.

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Ohio AG investigating alleged 'hostile takeover' inside teachers' pension fund

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Morgan Trau

May 10, 2024

COLUMBUS, Ohio — Ohio Attorney General Dave Yost has launched an investigation into the teachers' pension fund after allegations that a "hostile takeover" is putting educator money in jeopardy.

The State Teachers Retirement System of Ohio (STRS) is a \$90 billion pension fund — and has been involved in controversy for years.

The Reformers

Educators have had it hard the past few years.

"I'm burnt out," Parma schools teacher Terry Caskey said.

But the hardest thing about Caskey's job doesn't actually take place at work.

"I'm about five to six years away from retirement," she said. "I'm worried about STRS."

STRS lost \$5.3 billion in 2022 alone. In 2023, it lost \$27 million invested in the failed Silicon Valley Bank. In addition to those — the cost of living adjustments, or COLAs, were suspended for more than 150,000 retired Ohio teachers for five years starting in 2017. In 2012, the qualifying retirement number was moved from 30 years to 35 years. Last year, this was changed to 34.

Currently, STRS Executive Director Bill Neville is on leave while Yost investigates allegations of violent outbursts and sexually explicit language.

This has led to a group of pensioners, who have named themselves the "reformers," to fight for change. Caskey is one of them.

"If teachers aren't happy, if teachers are struggling, then that should be a call to STRS," she said. "But it's crickets. They are not acting in the best interest of teachers."

She was even more exasperated when the board approved \$10 million in bonuses for their staff.

"There are many teachers in Ohio that are in poverty, yet we have investors and staff members that are getting big salaries and \$10 million in bonuses," she said.

Lately, the reformers are growing in size through the election process and getting more access to the board, she said.

The board is made up of 11 members. There are five elected contributing teachers and two elected retired teachers. The governor gets to appoint one investment expert. The speaker of the House and the Senate president get to jointly appoint an expert. The treasurer and director of the Department of Education and Workforce both get to designate an expert.

While there is fighting between teachers and the board — STRS' consulting firm Aon just cut ties with them.

"Often when there is smoke, there is a fire behind it," Case Western Reserve business law professor Eric Chaffee said.

Reformers have been asking for an investigation into STRS — and they are finally getting it. But not in the way they want.

Allegations

The concerns came from anonymously sent documents sent to Gov. Mike DeWine's office. The governor's spokesperson, Dan Tierney, told me that he believes they were prepared by multiple STRS staff members. Through public records requests, I obtained dozens of papers.

The documents allege that several STRS board members have been doing the bidding of private investment group QED Systematic Solutions.

"Pension board members are required by law to act in the best interest of the teachers whose money they invest," Yost said Thursday. "I will take whatever action is necessary to protect teachers against private interests attempting to hijack their retirement accounts."

This separation by Aon worried DeWine, he said in a statement late Wednesday.

"This is a huge red flag, calling into question how STRS is operating and providing oversight. The unstated implication is that the governance issues at STRS are so concerning that Aon could not continue its contract in good faith. STRS may now be out of compliance with portions of audit recommendations due to Aon ending the contract."

Tierney elaborated, explaining that the "implication" was that STRS was so chaotic or the governance of the board was in such bad shape that they couldn't continue.

Aon declined to comment.

QED

QED was started by former Deputy Treasurer Seth Metcalf and Jonathan (JD) Tremmel. Metcalf worked under Josh Mandel in multiple capacities, including as general counsel. In 2020, they set their eyes on STRS, according to the main 14-page memo.

The documents claim that they — despite having no clients and no track record — tried to convince STRS members to give them \$65 billion so that they could allegedly restore the annual COLA and reduce how much pensioners have to pay into the system.

They couldn't impress the board members, mainly because of their lack of experience and also the fact that QED was not registered as a broker-dealer or investment adviser. The men also didn't own the technology to "facilitate the strategy," the documents say.

Then, an evaluation of QED was done by the board's outside consultant, Cliffwater. The company highly advised not to follow their project or use them.

The document highlights then-board members Bob Stein and Yael Mayerfeld and current members Wade Steen and, later, Rudy Fichtenbaum. Each of them was supportive of QED.

The document accuses the members of directly collaborating with QED and using their documents for QED pitching. Other members raised concerns privately.

"You ought to be concerned about engaging in those types of interaction with any type of business that you have a relationship with," Chaffee said. "Is it permissible in certain instances? Probably — if everything is entirely fair. But at the same time, it raises tremendously large red flags about what's going on."

Once facing major roadblocks, QED allegedly changed strategies. The documents state that it would "replace board members and staff with those who would support their proposal."

"QED pitched (and apparently sold) their proposal to Fichtenbaum while he was a board candidate," the document said.

The company teamed up with the Ohio Retirement for Teachers Association (ORTA) to help elect candidates who wanted to reform STRS.

They accuse STRS of being corrupt, not an uncommon assertion made against the pension fund. Caskey states there needs to be a change because the current board keeps hurting the pensioners. Board members in favor of QED agree.

"While Steen and Fichtenbaum are quick to accuse staff of being too conflicted to evaluate QED (arguing that their investment solution will eliminate jobs for investment staff), they appear not to recognize, or simply don't care, that QED's interest in securing business with STRS also creates a conflict," the document states.

After this year's election, it is possible that the reformers have a super-majority, meaning they could choose to invest with QED.

Alleged corruption

Caskey doesn't trust DeWine at all and believes the whole investigation into STRS board members and their relationship with QED is a "ruse."

"I also think that the governor is going to pull out every stop to make sure that he has control of the STRS fund because I think that's a cash cow," she said.

Originally appointed by John Kasich, Wade Steen is an outspoken reformer. He was reappointed by DeWine, but the governor asked him to resign last year. Steen refused, so DeWine removed him. DeWine cited Steen's alleged poor attendance at board meetings as reasoning.

Steen filed a motion in Ohio's 10th District Court of Appeals demanding to be reinstated — and he was. He returned to his job in April.

He agreed to an interview with me in the near future.

"We were concerned that Mr. Steen was seen as advocating for a very particular investment firm in a way that a fiduciary board member — it just didn't seem right," Tierney said. "It almost seemed like Mr. Steen was trying to tip the scales in favor of this particular company that didn't agree with the administration."

Caskey believes that this was the governor's way of silencing Steen from achieving reform, which she believes would have provided more transparency — and also a way to prevent administrative kickbacks. There is no evidence that we have found of any administrative kickbacks.

"This thing has got so many tentacles and it just leads back to money, corruption and not being transparent with the members," she said.

She cites the House Bill 6 scandal for her reasoning.

RELATED: Gov. DeWine, Lt. Gov. Husted won't comment on Randazzo's death amid largest corruption trial in Ohio history

In March 2023, a jury found that former House Speaker Larry Householder and former GOP leader Matt Borges, beyond a reasonable doubt, participated in the racketeering scheme that left four men guilty and another dead by suicide. Two other men are going through the court process currently — and the third died in April, with his death also being a suspected suicide.

In February, DeWine defended his top adviser after a criminal indictment alleged she knew about millions going to the now-deceased former PUCO chair Sam Randazzo prior to his appointment to power by the governor.

Former Chief of Staff Laurel Dawson helped vet Randazzo after her family had already received a \$10,000 loan from him. The governor's team insists she didn't know the millions was a bribe payment.

RELATED: Gov. DeWine defends top advisor after indictment questions how much she knew about H.B. 6 scandal

The assertion that DeWine is involved in either of these issues is "absolutely ludicrous," Tierney said.

"There's no truth to that whatsoever," he added. "The governor's concern here is solely to make sure that these pension funds that are held in trust for retirees are managed properly."

Tierney said that the biggest issue for retired teachers is that they deserve a cost of living adjustment — and DeWine agrees with that.

"That allegation is complete and utter hogwash and should not be entertained," he said.

On the other side, some lawmakers have raised concerns about the similarity between QED and FirstEnergy — helping elect individuals to get their goal.

When Metcalf left the treasurer's office and started QED, he reached out to Neville, the executive director.

"Neville had interacted with Metcalf briefly when Metcalf was at the Treasurer's office and Neville was STRS's Chief Legal Officer," the document states. "Neville responded that QED would have to follow STRS's standard process for vetting investment proposals."

I reached out to the treasurer's office and requested his personnel file.

I asked if the office had been aware, or had a record of, Metcalf working with STRS or other pension boards during his tenure at the treasurer's office. He had previously been a trustee for the Ohio Public Employees Retirement System and the Ohio Deferred Compensation Plan, according to his biography.

I also asked if it was possible there would be a crossover in the roles of deputy treasurer or counsel with STRS.

Sam Rossi, communications director, directed us to ask questions to Metcalf about his "activities and interactions" while in the office since they were separate administrations.

I called and texted Metcalf's professional phone and did not hear back. I did the same to his personal cell phone but did not receive a response.

However, Treasurer Sprague is concerned about the STRS allegations.

Sprague provided the following statement:

"Transparency and sound stewardship are the hallmarks of safeguarding our public dollars. However, tales of growing turmoil and recent allegations detailing a behind-the-scenes effort to overtake the STRS board not only run contrary to those principles – but are also deeply disturbing. At the end of the day, our pension board members must have their attention fully focused on protecting and preserving the funds for our retirees. I share much of the concerns expressed by Governor DeWine over these matters, and I support a closer look into the recent allegations."

Moving forward

For pensioners that just want their money, this whole situation is exhausting.

It is possible, Caskey said, that both QED and STRS are corrupt.

"This stuff blows my mind — trying to figure out who's holding the football," she added.

STRS Board Chair Dale Price provided the following statement:

"Recent audits demonstrate that STRS Ohio is well-run and that the pension fund is in sound financial position. Questions raised involve board governance. Teachers in the classroom and retired educators should know their pension is safe and secure. STRS Ohio will continue to protect the stability and integrity of the organization and will fully cooperate with all offices in their review of the pension system."

C-Bond Systems Resolves Books And Records And Internal Controls Matter

 fcpaprofessor.com/c-bond-systems-resolves-books-records-internal-controls-matter

May 10, 2024

The Foreign Corrupt Practices Act has always been a law much broader than its name suggests.

Sure, the FCPA contains anti-bribery provisions which concern foreign bribery.

Sure, the FCPA's books and records and internal controls provisions can be implicated in foreign bribery schemes.

However, the fact remains that most FCPA enforcement actions (that is enforcement actions that charge or find violations of the FCPA's books and records and internal controls provisions) have *nothing to do with foreign bribery*. For lack of a better term, these enforcement actions have longed been called non-FCPA, FCPA enforcement actions by this site.

The latest example concerns C-Bond Systems, Inc., a Texas-based company that sells window strengthening products.

In summary fashion, this administrative order finds:

“On December 29, 2020, C-Bond Systems, Inc. improperly recognized approximately \$102,000 in revenue for an order from a new customer. The order was shipped from C-Bond’s warehouse on December 29, 2020 with instructions for the shipping company to store the product in its own warehouse until further notice. Three months later, in March 2021, at C-Bond’s request, the shipping company returned the order to C-Bond. The products never left the control of C-Bond. Additionally, the customer never paid C-Bond for the order.

Subsequently, in April 2021, Scott Silverman, CEO and CFO of C-Bond at the time, signed an annual report on Form 10-K that reported the revenue from this proposed sale, which overstated total revenue for 2020 by more than 15%. In addition, in December 2021, Silverman approved and signed a registration statement on Form S-1 that contained the same materially overstated revenue.

By the time Silverman signed the annual report and registration statement, Silverman had received emails notifying him that the products were not delivered to the customer and had been returned to C-Bond. Accordingly, Silverman should have known that the revenue should not be recognized or reported in accordance with Generally Accepted Accounting Principles (“GAAP”), which requires that the customer obtain control of the goods in order to recognize revenue. 4. In April 2022, C-Bond filed an amended annual report signed by Silverman that reversed all revenue from this transaction because it “did not meet the Company’s revenue recognition policy pursuant to ASC 606 and should not have been reflected as a sale.”

Based on the above, the SEC found that C-Bond and Silverman violated or caused violations of, among other things, the FCPA’s books and records and internal controls provisions.

Without admitting or denying the SEC’s findings, C-Bond and Silverman consented to a cease-and-desist order and agreed to pay penalties of \$175,000 and \$50,000, respectively. (See here for the SEC release).

Judge skeptical of Elon Musk's attempt to avoid third SEC deposition

DJ [dailyjournal.com/articles/378720-judge-skeptical-of-elon-musk-s-attempt-to-avoid-third-sec-deposition](https://www.dailyjournal.com/articles/378720-judge-skeptical-of-elon-musk-s-attempt-to-avoid-third-sec-deposition)

New York Times News Service

A federal judge in San Francisco appeared skeptical of Elon Musk's bid to dodge a third deposition by the U.S. Securities and Exchange Commission, telling the billionaire investor's counsel on Thursday that they had not shown how the agency's request was unduly burdensome.

Musk, whose 2022 purchase of Twitter is being investigated by the SEC for potential securities law violations, "says a lot and is involved with a lot of different companies," U.S. District Judge Jacqueline Scott Corley told Quinn Emanuel Urquhart & Sullivan LLP associate Rachel G. Frank. Musk is also represented by firm partners Alex B. Spiro and Christopher G. Michel.

After Musk failed to appear for a deposition in September, the SEC petitioned the court to compel the defendant to appear, but the Tesla founder's attorneys argued that the two previous depositions were sufficient, and that the agency did not have a justifiable reason for the third session. During the hearing, Scott Corley noted that as Musk only sat for two half-day sessions, she would count them as one full deposition. *Securities and Exchange Commission v. Musk*, 3:23-mc-80253-JSC (N.D. Cal., filed Oct. 5, 2023).

"Do you have any case that suggests that when it's an investigation [rather than a prosecution], it's unreasonable for the SEC to proceed as it has done here?" the judge asked Frank.

"The SEC hasn't been able to point to a single case..." the attorney began to respond before Scott Corley interrupted.

"I asked you if you have a case. It's your burden and Mr. Musk's burden to show that it's unreasonable," said the judge.

Musk is a busy man who had to rearrange important commitments to sit for the SEC's previous depositions and forcing him to answer government questions against his will was "a real imposition on someone's civil liberty," said Frank.

SEC attorney Robin Andrews told Scott Corley that taking depositions earlier in the process was not uncommon and helped investigators streamline the issues. "We offered to go to other SEC offices than the San Francisco office. We know that Mr. Musk spends time in other major cities ... he turned us down," said Andrews.

"It is still a burden to compel someone to set aside everything he has going on and his obligations to shareholders," Frank contended.

Scott Corley wondered if Frank believed that Musk's hectic schedule and his decision to "use his money to get involved with many different public companies" exempted him from securities laws and government investigations.

"Absolutely not ... Our position is not that Mr. Musk is above the law or insulated from SEC investigations," the attorney replied, explaining that her client was unfairly pulled away from his responsibilities and that the SEC was exceeding the scope of its authority. "We're not here to play games," said Frank.

Picking up on that point, Scott Corley asked Frank why her team waited to tell the SEC that Musk would not sit for the deposition until two days before the session.

Frank said she did not see how the matter was relevant as Musk was not legally obligated to provide notice by a certain time.

"I'm just saying, you made the argument about gamesmanship. At the very least, I think there was some gamesmanship there and I don't think that's good faith," the judge said.

#378720

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Elon Musk may be compelled to testify again in SEC's Twitter takeover probe

 [reuters.com/legal/elon-musk-may-be-compelled-testify-again-secs-twitter-takeover-probe-2024-05-09](https://www.reuters.com/legal/elon-musk-may-be-compelled-testify-again-secs-twitter-takeover-probe-2024-05-09)

Reuters

Tesla CEO Elon Musk and his security detail depart the company's local office in Washington, U.S. January 27, 2023. REUTERS/Jonathan Ernst/File Photo Purchase Licensing Rights , opens new tab

SAN FRANCISCO, May 9 (Reuters) - A federal judge on Thursday indicated a willingness to compel Elon Musk to testify again in the U.S. Securities and Exchange Commission's investigation into his \$44 billion takeover of Twitter.

Lawyers for the billionaire appeared in a San Francisco courtroom on Thursday to urge U.S. District Judge Jacqueline Scott Corley to decide against the SEC, which is seeking to force Musk to testify as part of its probe into his 2022 purchase of social media giant Twitter. Another judge previously ruled in favor of the agency.

The SEC sued Musk in October to compel the Tesla (TSLA.O) , opens new tab and SpaceX CEO to testify after he refused to attend a September interview for the investigation, saying the SEC was trying to "harass" him with a number of subpoenas. The judge did not issue a decision on Thursday.

"I don't think that the deposition subpoena is unreasonable. What I don't know is why does the deposition have to be at an SEC office?" Corley said at a hearing at the United States District Court for the Northern District of California.

The investigation concerns whether Musk broke federal securities laws in 2022 when he bought stock in Twitter, which he later renamed X. It is also reviewing statements and SEC filings he made in relation to the deal, the agency has previously said.

In 2022, Musk supplied the SEC with documents for its probe and also testified via videoconference for two half-day sessions in July of that year, the SEC has said in court documents. Agency lawyers have said they have more questions for Musk after receiving new documents, and had sought additional testimony.

Musk's lawyer, Rachel Frank, an associate with Quinn Emanuel Urquhart & Sullivan, on Thursday told the judge the additional testimony would be a "burden" for Musk and take him away from obligations to shareholders.

The judge asked whether Musk should be exempt from securities laws and further investigations just because he is a "very busy person" who is running multiple companies.

Musk did not immediately respond to a request for comment.

Thursday's face-off is the latest dispute in a years-long feud between Musk and the top U.S. markets regulator, dating back to 2018 when he tweeted that he had "funding secured" to take the electric carmaker private.

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Reporting by Hyunjoo Jin in San Francisco and Chris Prentice in New York Editing by Matthew Lewis

Musk Judge Rejects Idea Billionaire Is Too Busy for SEC Probe

By Rachel Graf

Bloomberg Law News 2024-05-10T13:00:36493367176-04:00

Musk Judge Rejects Idea Billionaire Is Too Busy for SEC Probe

By Rachel Graf2024-05-09T15:22:11507-04:00

Elon Musk appears unlikely to avoid another round of questioning in the US Securities and Exchange Commission's investigation of his 2022 Twitter Inc. acquisition despite the billionaire's complaint that the agency was harassing him.

A federal judge in San Francisco seemed unpersuaded by arguments that Musk shouldn't have to devote more of his time meeting with the SEC because he already spent two partial days in earlier rounds of questioning.

"Are you saying then that Mr. Musk, because he's a very important, busy person, that the SEC can't investigate him?" US District Judge Jacqueline Scott Corley said during a hearing Thursday.

Musk, the world's third-richest person, has frequently accused the SEC of overzealous enforcement, ever since he agreed with the agency in 2018 to have an in-house lawyer pre-approve his social media posts about his electric-vehicle maker, Tesla Inc. In April, the US Supreme Court refused to take up Musk's challenge to the "Twitter sitter" agreement.

The SEC is seeking information about Musk's purchases of Twitter stock and statements he made about his investments ahead of his \$44 billion purchase of the social media platform, which he has rebranded as X.

Musk previously sat for two partial days of testimony in July 2022, which Corley said she views as just one deposition split over two days.

Defending Musk's position that he's given the agency enough of his time, his attorney, **Rachel Frank**, pointed to the "long and fraught history with Musk and the SEC."

It's common in investigations to take testimony early on and then again after the agency has received all the documents it plans to ask about, the judge said.

"What you are suggesting is that the SEC cannot take any depositions until they've gathered all the documents," Corley said.

The judge also faulted Musk for "gamesmanship" for giving the SEC just two days notice that he wouldn't testify for a third day in September after suggesting for four months that he would in fact cooperate.

A magistrate judge concluded in February that Musk shouldn't be excused from complying with the SEC's subpoena, but Corley isn't bound by that finding.

The case is Securities and Exchange Commission v. Musk, 23-mc-80253, US District Court, Northern District of California (San Francisco).

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Technology

After layoffs, Musk says Tesla to spend \$500 mln on charging network

By Reuters

May 10, 2024 10:10 AM PDT · Updated 2 hours ago



Aa



Feedback

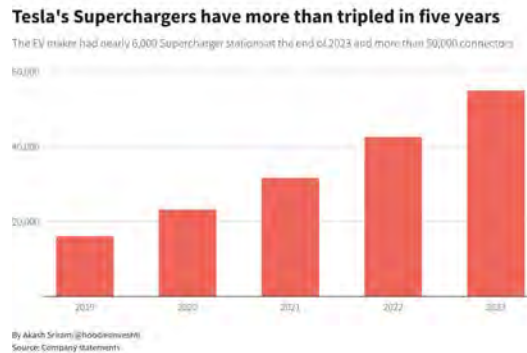
A Tesla car is being charged at a Tesla electric vehicle charging station on a car park of the A10 shopping center in Wildau near Berlin, Germany, March 20, 2024. REUTERS/Annegret Hilse/File... [Purchase Licensing Rights](#) [Read more](#)

May 10 (Reuters) - Tesla ([TSLA.O](#)) will spend more than \$500 million this year to expand its fast-charging network, CEO Elon Musk said on Friday, days after abruptly laying off employees who were running the business.

"Just to reiterate: Tesla will spend well over \$500M expanding our Supercharger network to create thousands of NEW chargers this year," Musk said in a [post](#) on his social media platform X.

"That's just on new sites and expansions, not counting operations costs, which are much higher," he said.

After the layoffs last week, Musk said Tesla planned to expand the Supercharger network but at a slower pace for new locations.



Reuters Graphics

EV makers have been adopting Tesla's North American Charging Standard, making the company's superchargers closer to becoming the industry standard at the expense of the rival Combined Charging System.

However, Musk's decision to gut the electric-vehicle charging team is scrambling plans for rolling out new fast-charging stations and may delay President Joe Biden's efforts to [electrify U.S. highways](#).

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The Biden administration has doled out \$5 billion to states over five years to build 500,000 EV chargers as part of the National Electric Vehicle Infrastructure program, and Tesla has been among the biggest winners of those federal funds so far.



Reuters Graphics

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Tesla interfered with union organizing at New York plant, US agency claims

 [reuters.com/business/autos-transportation/tesla-interfered-with-union-organizing-new-york-plant-us-agency-claims-2024-05-09](https://www.reuters.com/business/autos-transportation/tesla-interfered-with-union-organizing-new-york-plant-us-agency-claims-2024-05-09)

Daniel Wiessner

World at Work

A Tesla sign is pictured outside the Tesla Gigafactory 2 in Buffalo, New York, U.S., February 13, 2022. REUTERS/Carlo Allegri/File Photo Purchase Licensing Rights , opens new tab

May 9 (Reuters) - Tesla (TSLA.O) , opens new tab has been accused by a U.S. labor agency of discouraging workers at a Buffalo, New York, assembly plant from union organizing by barring them from using phones and other devices, an agency spokeswoman said on Thursday.

A National Labor Relations Board (NLRB) official issued a complaint late Wednesday claiming Tesla's workplace rule banning personal technology use, recording, and storing or sharing content violates U.S. labor law, according to the spokeswoman, Kayla Blado.

The new claims add to a pile of legal disputes between Tesla, its workers, and government agencies over the electric carmaker's employment practices, including other cases alleging unlawful anti-union conduct and a series of race discrimination lawsuits.

Reuters could not immediately obtain a copy of the complaint.

Tesla, which said last month that it was laying off 14% of workers at the Buffalo plant, did not immediately respond to a request for comment.

The case will be heard by an administrative judge whose decision can be appealed to the five-member labor board and then to a federal appeals court. An initial hearing is scheduled for July, Blado said.

The United Auto Workers union has tried for years to organize Tesla factory workers, and in November announced a renewed push to organize non-union plants across the country. The NLRB has ruled that Tesla broke the law by barring factory workers in California from wearing union T-shirts and when CEO Elon Musk tweeted that employees would lose their stock options in the company if they unionized.

A U.S. appeals court last year said Tesla had a right to mandate uniforms for factory workers, reversing the board. The same court is weighing Tesla's appeal of the ruling on Musk's tweet.

Musk's rocket and satellite company, SpaceX, meanwhile is facing NLRB complaints alleging that it forced workers to sign illegal severance agreements and fired engineers who accused

Musk of sexism.

SpaceX has denied wrongdoing and moved to block the NLRB cases in lawsuits claiming that the agency's in-house enforcement proceedings violate the U.S. Constitution.

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Reporting by Daniel Wiessner in Albany, New York; Editing by David Gregorio, Alexia Garamfalvi and Aurora Ellis

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Bloomberg Law News 2024-05-10T14:45:14785528786-04:00

Matt Levine's Money Stuff: Bed Bath Strikes From the Beyond

By Matt Levine 2024-05-09T14:59:48132-04:00

Bloodbath from the beyond

In the first few months of 2023, on its way into bankruptcy, Bed Bath & Beyond Inc. sold a ton of stock. In January 2023, it had about 117.3 million shares outstanding, worth about \$3.35 each; by April, it had 739.1 million, worth about \$0.30 each. Then it went bankrupt and now [the shares are worth zero](#), though you can find contrarian views.

These stock sales always struck me as extraordinarily cynical: Bed Bath pretty much knew that it would be filing for bankruptcy with no recovery for shareholders, but it went out and raised a few hundred million dollars from meme-stock retail investors to hand directly to creditors. I wrote:

Bed Bath was kind of like “hey everyone, we went bust, sorry, but our lenders are such nice people and they could really use a break, we’re gonna pass the hat and it would be great if you could throw in a few hundred million dollars to make them feel better.” And the retail shareholders did! With more or less complete disclosure, they bought 622 million shares of a stock that (1) was pretty clearly going to be worthless and (2) now is worthless, so that Bed Bath could have more money to give to its lenders when it inevitably liquidated.

Wild times. But the way that Bed Bath did a lot (not all) of this stock selling was also interesting. Eventually Bed Bath did a normal stock offering, but before that, it did an odd structured deal with Hudson Bay Capital Management LP.

We talked about the deal at the time. Basically Hudson Bay paid Bed Bath \$225 million up front, and Bed Bath agreed to deliver Hudson Bay some stock, over time, whenever Hudson Bay asked for it. At each delivery, Hudson Bay would get the stock at a discount to the current trading price. So intuitively it would get a little stock, it would sell it, it would come back for a little more stock, etc. Each time, it would sell the stock for more than the (discounted) price it paid for it, so it would make money. The stock would go down over time, but that wasn’t Hudson Bay’s problem: It kept getting new batches of stock at a discount to whatever the price happened to be.

Also, Hudson Bay could re-up the trade eight more times, at \$100 million each time, if the stock stayed above an agreed price. Ultimately Bed Bath raised about \$360 million from Hudson Bay, and sold it about 311 million shares of stock. Based on the average prices over the period, I guessed that Hudson Bay made about \$84 million from the deal, which is a pretty chunky commission on a \$360 million capital raise.

Here's how I originally characterized the trade:

What Bed Bath has done here, I think, is that it has *sold the right to do meme-stock offerings* to some institutional investors. The investors get the ability to pick their spots to sell stock, and can get the stock at a discount from Bed Bath.

One oddity here is that, when Bed Bath agreed to this trade, it had about 117 million shares outstanding, and it ultimately sold 311 million new shares to Hudson Bay. If it had done that all at once, Hudson Bay would have owned about 73% of the stock. But it didn't, and that would have been crazy. Hudson Bay was not a long-term fundamental investor in Bed Bath; it didn't want to own a majority of the stock. It wanted to get a little stock, sell it for a profit, get a little more stock, sell it for a profit, and repeat as long as that kept working. I wrote at the time:

Hudson Bay has bought roughly 73% of Bed Bath's stock, 311 million out of its 428 million shares outstanding. US securities law requires investors to disclose their share ownership — on Schedule 13D or 13G — within 10 days after they get above 5% of a company's stock. Hudson Bay has never filed a 13D for Bed Bath; it doesn't even show up on Bloomberg's holders list. Hudson Bay may have bought almost 311 million Bed Bath shares, but it didn't keep them for long; it was selling them as fast as it could get them.

The disclosure isn't the main point, though. US securities laws have what are called "short-swing profit rules": If you own more than 10% of a company's stock, you sort of aren't allowed to *trade* it. The rule is found in [Section 16\(b\) of the Exchange Act](#), and it is nominally a rule against insider trading — the theory is that if you're a big shareholder you might have inside information — but it doesn't actually require any proof of using inside information. Instead, the basic mechanism is that if you're a 10% holder, and you buy more stock, and then you *sell* the stock within six months of buying it for more than you paid for it, you're not allowed to keep the profits. The company can sue you to get the profits back, or, if the company doesn't want to sue you (because you're a big insider shareholder), [a shareholder can bring the case](#). In practice there are entrepreneurial lawyers who bring these cases and get the attorneys' fees from settlements.

You can see how those lawyers would be intrigued here. The simple form of this story is something like “Hudson Bay became a 73% shareholder of Bed Bath & Beyond, and then for months it would buy a little bit of Bed Bath stock and turn around and sell it at a profit, to the tune of \$360 million of stock and probably at least tens of millions of dollars of profits.” That story is a gold mine for lawyers.

Now, that simple story is not quite right. Everyone knows about these rules, and there are standard solutions. Hudson Bay did not just *get* 73% of Bed Bath's stock. Instead what happened is:

- It bought some *convertible preferred stock*, plus warrants to buy more convertible preferred.
- The convertible preferred stock contained the terms of the deal: Hudson Bay could convert its preferred shares, a little bit at a time, into common shares at a discount to the trading price.
- But there was a limit on Hudson Bay's right to convert: It was only allowed to convert any of its preferred stock if, after the conversion, it would own 9.99% or less of Bed Bath's common stock. This limit is commonly called a “Section 16 blocker.”
- This was fine because, again, it was converting and selling a little bit at a time; it didn't *want* to get a huge block of stock at once. The Section 16 blocker was there for Hudson Bay's convenience: It allowed Hudson Bay to say “we're not a 10% holder, so we're not subject to the Section 16 rules.”

Technically Section 16 covers not just ownership of common stock but also ownership of options or securities that can be converted into common stock. So owning preferred stock that could be converted into 73% of the common stock would count as being a 73% owner. But Hudson Bay *didn't* own preferred stock that could be converted into 73% of the common stock: It could only ever be converted into 9.99% of the stock *at a time*. The Section 16 blocker, in theory, is supposed to protect it from becoming a 10% holder.

Does it work? Man, I don't know; what I'll tell you is:

- This has always seemed kind of like arcane metaphysics to me.
- I used to be an equity derivatives structurer and we all sure believed that Section 16 blockers

worked. Certainly a lot of deals work this way.

Anyway Bloomberg's Miles Weiss and Eliza Ronalds-Hannon report today:

The former Bed Bath & Beyond Inc., seeking to generate cash for its creditors, sued to recover more than \$300 million in trading profits from Hudson Bay Capital Management, the hedge fund at the center of a last-ditch financing plan that failed to prevent the retailer's collapse.

The former retailer filed a lawsuit last week claiming that, behind the scenes, Hudson Bay orchestrated the terms for a February 2023 offering so it could acquire a huge, cut-rate stake in Bed Bath without having to disclose the ownership under a little-known rule for corporate insiders.

Here is [the complaint](#), and I guess the main point here is that if you are a bankrupt company and you've got a shot at clawing back \$300 million to hand over to your creditors, you have to give it a try. The theory of the complaint is that Hudson Bay was a 10% shareholder, the Section 16 blocker didn't work, and so it should have to give back all of its profits on the trade:

This beneficial ownership "blocker" was illusory. It was drafted by the Hudson Bay Defendants and solely for their benefit. BBY had no way to enforce the blockers in the derivative securities, and it had an incentive not to enforce them. Policing the blockers meant self-policing by the Hudson Bay Defendants, who routinely undercounted their beneficial ownership of BBY's common stock in contravention of SEC rules.

The blockers' deficiencies were laid bare in the first days of the financing, when the Hudson Bay Defendants, relying on flawed and self-serving beneficial ownership calculations, repeatedly tore through the 9.99% cap.

It is true that Bed Bath had no particular reason to enforce the blocker. The point of the blocker is just to be able to say "we don't have the right to get 10% of the stock, so we're not a 10% holder." Though I can see how, if you end up buying 73% of the stock and dumping it, you might *look like* the sort of 10% holder that the rules were meant to capture? Hudson Bay disagrees:

Hudson Bay, which managed about \$20 billion at year-end, said in a statement that Bed Bath creditors were behind the lawsuit, and that the hedge fund never owned more than 10% of the retailer's shares.

“It is sad that creditors seeking to distract from their significant financial losses have resorted to filing factually flawed and baseless claims in a desperate attempt to extract an undue payment,” a Hudson Bay spokesperson said in the statement.

The complaint also gives a timeline of Hudson Bay's conversions and sales. On March 20, 2023, for instance, Hudson Bay converted \$23.6 million of its preferred stock into 30.3 million shares of common stock at a conversion price of \$0.7777 per share. The stock closed that day at \$0.8125; the volume-weighted average price was \$0.8414, and about 86.4 million shares traded that day. If Hudson Bay got \$0.84 per share for its sales, then it made about \$1.9 million on the day. In all, “in the 52 trading days between February 7 and the April 23 bankruptcy petition date, the Hudson Bay Defendants submitted a total of 90 conversion or exercise requests to BBBY.”

The complaint calculates that Hudson Bay made \$310 million of profits, though the details are redacted, and “profits” under Section 16 is [a weird calculation](#) that does not reflect economic reality; I suspect my \$84 million guess is closer to the real number.

Still, what an amazing trade. There Bed Bath was, more or less bankrupt, trying to round up money for creditors. Hudson Bay came to it with a deal that, ultimately, did raise \$360 million from retail investors to hand to creditors, and Bed Bath paid Hudson Bay probably tens of millions of dollars for its help. And now it might be able to extract \$300 million more from Hudson Bay to hand over to creditors!

The general rule of stocks is that, if you are a shareholder in a public company, you can lose all your money, but you can't lose *more* than that. If you buy stock and the company goes bankrupt and there's not enough money to pay the creditors, you get \$0 back, but you don't have to chip in *more* money to pay the creditors. With its Hudson Bay trade, Bed Bath found a way to get around that rule. Twice! First, in the lead-up to bankruptcy, it raised money from shareholders to hand directly to creditors, and now, in bankruptcy, it is going back to Hudson Bay for more.

Private markets are the new public markets

You could just imagine letting companies precisely customize how their stock trades:

- 1. Your stock can trade 24 hours a day, or just regular trading hours, or one auction a day, or one

big liquidity event per quarter, or only on specific dates that you choose at your discretion.

- 2. The trading price of your stock could be publicly reported in real time, or with a delay, or not at all.
- 3. You can disclose news and audited GAAP financial statements publicly to everyone, or only to your current investors, or you can keep everything secret.
- 4. You can let anyone buy your stock, or only “[accredited investors](#)” (roughly people making over \$200,000 a year), or only institutional investors, or only US investors, or only non-US investors.
- 5. Or you can blacklist particular investors, or categories of investors: no activist funds, maybe, or no high-frequency traders, or no environmental, social and governance funds, or nobody who owns shares in your competitors.
- 6. You can give yourself various rights to step into trades: You can have a right of first refusal over any sales of stock, or you get to approve each trade, or you can allow them only at particular prices, etc.
- 7. You can allow short selling, or not.
- 8. You can give your outside shareholders equal voting rights, or keep super-voting shares for your founder and insiders, or not give the public shareholders any votes at all.

Etc. In current US public markets, most of these choices are made for you (respectively: regular-ish hours, public prices, disclose financials to everyone, anyone can buy, no blacklists, no messing with trades, yes shorting), though voting rights are pretty customizable. But in private markets, the field is wide open: There are some restrictions on letting non-accredited investors buy your stock, and you'll probably feel better if you provide financial information to potential investors. But [at this point](#) accredited investors (and institutions) are a large chunk of the investor class, so it's not like that is cutting you off from a ton of money.

The nice thing about public markets is that everyone is there; they are a powerful coordination mechanism. Every US public stock trades on pretty much all the stock exchanges, the exchanges are all interlinked nicely, and in practice there just is “the public stock market” where all the investors and all the public companies go. So if your stock trades on the public market, everyone will be able to buy it. Whereas if I came to you pitching Matt's Private Market, where auctions happen once a week and

you get to blacklist shareholders, you will naturally ask me questions like “what institutional investors trade on your market,” while those investors will ask me questions like “what companies have listed on your market,” and if the answer to both questions is “nobody yet” then it will stay that way. If there are too many options, then none of them will concentrate liquidity and create a deep two-sided market.

Still a fun dream would be to create a General Private Market that gives companies a big menu of all of these choices. Sign up all the institutional investors, saying, “look, whatever market structure any particular company wants, we will give it to them, and you’ll be able to access all of them from the same website.” (At this point the institutional investors all seem to be resigned to signing up for a new trading platform every few months anyway, so it can’t be that hard to onboard them for one more.) And then that market offers continuous 24-hour trading in some stocks and weekly auctions in others, and every mutual fund can trade all of the stocks in whatever format the company wants, except of course the stocks where they’re blacklisted.

I’m going to get like six emails from people saying “you are not familiar with my company, but actually we have built that market.”

In this extremely general world, would companies go public? On the one hand, the public markets would still probably be a better coordination mechanism than the private ones: Everyone, including non-accredited investors, can go there, and the uniform rules that all default to *more trading* — continuous trading, short selling, no blacklists, etc. — would still make them much more liquid and attractive to traders than the customizable rules of the private market.

But chief executive officers grouse *constantly* about various features of public markets they don’t like — the costs of disclosure, the class-action lawsuits, the activists, the short sellers, the high-frequency traders for some reason — and a market that was like “you can have most of the features of public markets that you like, but you can choose which ones to turn off” would have some appeal. And if most of the investor class would sign up for it — and they would, if you got a couple of hot startups to list — then maybe the prices and liquidity would be good *enough*.

I don’t know, every story about private markets is some variant on either “private-company investors are desperate to find ways to sell, but won’t go public because the prices for initial public offerings are too low,” which is weird (why would the private market prices be *higher*?), or else “everyone wants to buy shares of this hot hot startup, but it won’t let them.” There is not a single solution to those problems, but there is a high-level solution of the form “maximize the liquidity of your stock, subject to

your preferences about when to minimize its liquidity.”

Anyway Bloomberg's Bailey Lipschultz, Swetha Gopinath and Vinicy Chan report:

As the market for initial public offerings bounces back after two lifeless years, investors who've been impatiently waiting for their payoff are finally getting some returns.

But the revival hasn't come fast enough: Behind the scenes, the private equity shops saddled with bulging portfolios — and the banks and exchanges that make millions helping companies go public — are still scrambling to come up with alternative exit strategies.

Some are turning to private sales of shares, while others are establishing new semi-public exchanges to tempt companies to market. ...

The reasons: A return to true health in the IPO pipeline could take until next year, and a record \$3.2 trillion was tied up in aging, closely held companies at the end of 2023, Preqin data found. That's a problem for private equity, which relies on the cycle of raising money to make acquisitions, exiting via a sale or IPO and then returning money to investors — before ultimately asking for more funds to do it all again.

At the same time, startups are staying private for longer, stranding everyone from employees holding small stakes to investment firms with billions of dollars tied up.

All of them are trying to answer the same question: is there really an alternative to the time-worn path of taking a company public?

Just feels like eventually someone has to figure out a good one.

Bridgewater

If you start a hedge fund and it goes well and you have good performance and gather a lot of assets, you will become a big-time hedge fund manager, and then I suppose you face a choice. Do you institutionalize the fund, so that you can eventually step back and transition to new leadership without a hiccup, or do you build a cult of personality around yourself as a singular genius who controls every

aspect of the firm's operations, so that you feel important but can never leave? I feel like Ray Dalio at Bridgewater Associates is unusual in that he somehow did the maximum amount of *both*. Bridgewater is a huge automated institution that has operated without Dalio for a while now, but also few companies have ever been built more in the image of one person. Anyway the Financial Times [checks in with the new guy](#):

Bridgewater Associates' new chief executive Nir Bar Dea said he had overhauled the hedge fund after just a year in charge, in a bid to restore the firm's investment performance and mark a break from founder Ray Dalio.

"Everything has to get rewired," Bar Dea told the Financial Times. "It's like taking a brain and a heart out of a human and then planting a new brain and a new heart." ...

"We're proud of Ray being a part of our history," he said. "But it's also true that Ray is . . . his own person and has his own set of goals. He does a lot of things outside of Bridgewater and that's great. We want that for him. And then we need our independence."

Okay. The management committee at D.E. Shaw never went around being like "we had to murder David Shaw and remove his heart," but Bridgewater is an unusual place. Even now:

Bar Dea accepts that Bridgewater's pursuit of what he calls "absolute truth" is not for everyone.

"People almost self-select themselves to be in a place that puts truth above everything else," he said. Bar Dea has previously said that the firm's success is based on the "core idea of a group of people that want to be excellent so much that they're going to be living in a state of uncomfortableness".

Still, the 42-year-old maintains that there are key ways in which Bridgewater's culture has changed under his leadership.

Feedback is predominantly given by junior employees to more senior ones, which is a "day and night change" from when he joined — back then "the flow of that feedback [was] almost entirely going from the top down", he said.

Right right see at a lot of hedge funds the way it works is that the junior analyst says "we should buy this stock" and the experienced portfolio manager is like "no we shouldn't, here's why," and the junior

analyst learns over time what stocks to buy. Whereas at Bridgewater “feedback is predominantly given by junior employees to more senior ones,” because it is pursuing some higher goal than teaching the employees how to make money in financial markets.

Effective altruism

I have always kind of thought that a clever form of effective altruism would be “we build a giant casino for crypto gambling, we skim a percentage of the handle, and we use it to buy mosquito nets to save poor people from malaria.” I [once suggested](#) to Sam Bankman-Fried that this might be what he was up to at FTX, his crypto exchange. Just moving money from low-valued uses to high-valued ones, very neat and utilitarian.

A less clever — but faster? — form of effective altruism would be “we build a giant casino for crypto gambling, then we steal all the money and use it to buy mosquito nets.” Arguably that is closer to what Bankman-Fried was actually up to, though that’s not quite right either. FTX actually recovered most of the client money, but also it does not seem to have notably devoted a ton of customer money to effective charitable works on behalf of the world’s poorest.

“We build a giant casino for crypto gambling, steal the money and use it to buy a castle for effective altruist philosophers” is even weirder? Like that’s a good assignment for a philosophy class? “Explain, using utilitarianism, how this is Good, Actually”:

Effective Ventures Foundation bought Wytham Abbey in April 2022 for £14.9 million (\$18.6 million) with grants from Open Philanthropy, whose funders include billionaire Facebook co-founder Dustin Moskovitz. The purchase initially stirred controversy that a charity dedicated to the most efficient use of money for the maximum good was buying one of the finest manor homes in England—and later for Effective Ventures’ connections to crypto swindler Sam Bankman-Fried.

While grants from Open Philanthropy were used to fund the purchase and maintenance of Wytham Abbey, Effective Ventures also received money from FTX Foundation—the charity associated with Bankman-Fried, who was convicted of fraud and sentenced to 25 years in prison. Effective Ventures has since come to a settlement with the FTX estate and paid back the \$26.8 million given to it by FTX Foundation.

It’s amid such turmoil that Wytham Abbey is being listed on the open market for £15 million with

Charles Elsmore-Wickens at Savills, who spoke exclusively with Bloomberg ahead of the historic listing. For that price, a buyer would get a 27,000-square-foot stately home with 27 bedrooms and 18 bathrooms on 23 acres just 3 miles west of Oxford.

Fine right FTX didn't actually buy them the castle, but now they have to sell the castle after paying back the money that FTX did give them. Probably *that* was for mosquito nets.

Gentlemen

I wrote yesterday about a guy who bought a spot as a substitute on a second-division Portuguese soccer team, because being a professional athlete is cool, so why shouldn't sports teams sell a few spots? I said:

A lot of people want to go watch the Yankees, but probably a lot of people would also like to be able to say that they *played* for the Yankees. Maybe auction off a few roster spots? There is a balance to be struck here: I suspect you could find a few hedge fund managers who would pay a lot of money to be Lionel Messi's teammate for a game, but if Inter Miami fielded a team made up of the 11 highest bidders then most of the glamour would be lost. (I would still watch this?)

Naturally readers emailed me the sports in which this system actually exists. The main ones are bridge and car racing. In car racing, Braden Williams pointed out:

In high-level Endurance racing, there are [series](#) that *require* an amateur driver, these drivers are colloquially known as gentlemen drivers, and typically fund the teams they drive for. There's a good documentary, [The Gentleman Driver](#), that follow three of these drivers.

And several readers pointed out that, while Formula 1 does not *explicitly* sell driving spots to the highest bidder, [there are some parallels](#). Car racing is very expensive, and it turns out that if you show up with a very expensive car they might let you race!

Meanwhile bridge is not especially expensive, but neither is it all that popular a spectator sport, so rich people who enjoy bridge [will fund their teams](#):

Almost all top players play with sponsors. As a result, top teams at American tournaments, which

consist of three pairs, or six players per team, follow a peculiar configuration: one wealthy sponsor and five pros in the sponsor's employ. Top sponsors pay \$1 million or more to field their dream teams.

"Imagine if you could pay LeBron James, Kobe Bryant, Michael Jordan and Shaquille O'Neal and you could be the fifth guy," Aviv Shahaf, director of the Honors, said. "And you were at a level that was decent but not NBA level. That's basically what this is."

That's basically what this is, except it's bridge.

Things happen

Binance Pledged to [Thwart Suspicious Trading](#)—Until It Involved a Lamborghini-Loving High Roller. Companies Can't Issue Debt Fast Enough With 88 Deals in 72 Hours. [Buybacks Are Back](#): Corporate America Is on a Spending Spree. Sony and Apollo's [Plan for Paramount](#): Break It Up. South Africa ponders 'corporate sunset' for [Anglo American](#). Premier League Club Saga Takes a New Twist With 777 Lawsuit. Why Wall Street is transfixed by a [BoFA banker's untimely death](#). UBS Wins Further Delay in Filing Response to AT1 Wipeout Case. Ex-Goldman Banker Fights Extradition Over Ghana Bribery Case. 'Seriously Underwater' Home Mortgages Tick Up Across the US. Palm Beach Old Guard Revolts Over First New Luxury Condos in Decades. Hospitals Are Refusing to Do Surgeries Unless You [Pay in Full First](#). Apple Draws Growing Backlash Against Ad Depicting [Crushed Creative Tools](#). Hedge fund boss Paul Marshall loses case over [silver salvaged](#) from shipwreck. Baidu executive tells staff: 'I'm not your mum.'

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- 1. The headline discount was 8% — Hudson Bay got the stock at 92% of the lowest volume-weighted average price of the stock over the 10 trading days leading up to (and including) the

conversion date — but that lookback option (using the lowest daily price over the 10 previous days) is valuable, and there were other little bonuses involved.

- 2. The [Section 16 rules](#) refer to [the Section 13 beneficial ownership rules](#), which say that “a person shall be deemed to be the beneficial owner of a security ... if that person has the right to acquire beneficial ownership of such security ... within sixty days, including but not limited to any right to acquire: (A) Through the exercise of any option, warrant or right; (B) through the conversion of a security,” etc.
- 3. I keep saying 73% for convenience, but that’s arbitrary; that’s the number of shares that ultimately passed through Hudson Bay’s hands, divided by the number of shares outstanding when it was done. In fact the convertible preferred was convertible into a floating number of shares, and there were warrants to buy even more. In any case, Hudson Bay had claims on way more than 10% of the stock, though the actual amount was undetermined.
- 4. Disclosure, the lawyer who filed it, James Hunter, is a law school classmate of mine.
- 5. The daily average price was generally higher than the closing price during this period because, man, that stock was going straight down.
- 6. Though some companies [try to prevent it](#).
- 7. Is that a menu feature that you can turn off in private markets? I think the answer, in US law, is “probably not,” but I bet someone’s working on it.

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Arbor Realty Shares Drop After Short Seller Alleges Fraud

B [bloomberglaw.com/product/blaw/bloombergterminalnews/bloomberg-terminal-news/SD8EK4DWRGG0](https://www.bloomberglaw.com/product/blaw/bloombergterminalnews/bloomberg-terminal-news/SD8EK4DWRGG0)

May 9, 2024, 12:07 PM PDT

Katrina Compoli

Bloomberg Editorial

Dan Wilchins

Bloomberg Editorial

- Viceroy Research says the lender overstates value of assets
- Arbor stands by its financials, won't respond to short sellers

By Katrina Compoli and Dan Wilchins

(Bloomberg) --

Shares of Arbor Realty Trust Inc., a lender to apartment buildings, dropped as much as 6% after Viceroy Research accused the firm of fraud in its latest report.

An off-balance-sheet entity funded by Arbor Realty has bought properties that Arbor had foreclosed on, according to Viceroy. Such purchases allowed the lender to avoid writing down loans, Viceroy said.

"Arbor has fraudulently overstated the value of its loan book through undisclosed, off-balance sheet, related party transactions," the report said.

Arbor Realty defended itself in a statement to Bloomberg News, saying it stands by its financial statements, public comments and disclosures, and will not respond to short sellers.

The company plans to disclose details about a specific transaction that occurred in the second quarter "with all the correct facts and details" when it reports results, Arbor said. Viceroy highlighted a property called Westchase Houston as part of its accusations.

Viceroy Research first disclosed that it was betting against Arbor Realty's shares in November, and has published a series of additional reports about the company since then.

Arbor Realty had released an earlier statement after the market closed on Wednesday and prior to Viceroy's latest report, saying that it anticipated more accusations from short sellers.

"In an effort to minimize any confusion in the marketplace or with our investors, and instead of responding to each article that cites these 'reports,' we want to reiterate that we stand by Arbor's detailed filings, audited financial statements and the comments made on our earnings call," the company said in its statement.

Arbor posted results on May 3. The company sells collateralized loan obligations to help fund the loans it makes.

(Adds details on Westchase Houston transaction in fifth paragraph.)

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SEC Probing Boeing's Safety Claims After Panel Blew Off Plane

By Allyson Versprille and Austin Weinstein

- Investigation adds to US legal threats for plane maker
- Regulator is examining if firm, executives misled on safety

Bloomberg Law News 2024-05-10T13:02:13100799018-04:00

SEC Probing Boeing's Safety Claims After Panel Blew Off Plane

By Allyson Versprille and Austin Weinstein2024-05-09T15:44:00687-04:00

- Investigation adds to US legal threats for plane maker
- Regulator is examining if firm, executives misled on safety

The US Securities and Exchange Commission is scrutinizing statements that Boeing Co. made about its safety practices following a near-tragic January accident aboard one of its 737 Max 9 planes.

The SEC investigation is focused on whether comments by the company or its executives misled investors in violation of the Wall Street regulator's rules, according to three people with knowledge of the probe. The probe is examining statements before and after a panel blew off during an Alaska Airlines flight shortly after takeoff on Jan. 5., leaving a gaping hole in the side of the plane, said the people, who asked not to be identified discussing the confidential investigation.

SEC reviews don't always lead to enforcement actions by the regulator, but they can lead to fines for companies or corporate officials if the agency finds they made false or misleading statements. The regulator hasn't accused the company or its officials of wrongdoing.

The SEC and Boeing declined to comment.

The probe adds to legal headaches for Boeing, whose stock has lost about one third of its value in 2024. US prosecutors in Seattle have already sent subpoenas seeking documents and communications from Boeing and Spirit AeroSystems Holdings Inc., which made the door plug. The supplier said earlier this week it had received information requests from the SEC.

Read More: Boeing Criminal Probe Widens With Seattle Grand Jury Subpoena

The January flight, which was carrying 171 passengers and six crew members, was forced to return to Portland, Oregon, after the door plug suddenly blew out. Although no one was seriously injured, it left the plane significantly damaged.

The accident has added to broader concerns about Boeing's manufacturing process and about its safety culture.

The National Transportation Safety Board has said the panel was missing four bolts to hold it in place when it left Boeing's factory. That's sparked an Federal Aviation Administration investigation of quality controls in Boeing's factories and suppliers like Spirit AeroSystems.

In September 2022, Boeing agreed to pay \$200 million to settle SEC allegations that the company and its former Chief Executive Officer Dennis Muilenburg failed to disclose safety issues with its 737 Max jetliner, which was involved in fatal crashes in 2018 and 2019. Following the January accident, the Justice Department is weighing whether to rip up a deal it made with Boeing to settle over those two tragedies.

--With assistance from **Sabrina Willmer**.

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US Bank Sees Unauthorized Account Suit Tossed For Good

By **Katryna Perera**

Law360 (May 9, 2024, 9:41 PM EDT) -- A New York federal judge has permanently thrown out a proposed class action against U.S. Bancorp alleging shareholders were harmed after the bank paid a \$37.5 million fine to the Consumer Financial Protection Bureau in connection with allegations its bankers secretly opened accounts in customers' names.

U.S. District Judge John P. Cronan issued an **order** Wednesday saying the Buhrke Family Revocable Trust, which launched the suit in 2022, had failed to file a second amended complaint after the suit was previously tossed in March.

"Plaintiffs have neither filed a second amended complaint nor requested an extension from this court to do so. Accordingly, plaintiffs' claims are dismissed with prejudice," the order states.

In dismissing the suit in March with leave to amend, Judge Cronan found the trust had failed to plead any actionable misleading or false statements or that the individual defendants acted with knowledge of wrongdoing.

All four categories of challenged statements in the complaint related to the alleged opening of unauthorized accounts, the CFPB investigation and the ineffectiveness of U.S. Bank's risk management program were either corporate puffery or opinions, the judge said.

Additionally, the trust failed to allege any facts suggesting that the individual defendants knew or should have known about the unauthorized accounts or that the bank would be the subject of an enforcement action from the CFPB, according to the **opinion**.

The trust had **accused** the bank's publicly traded parent company and its CEO Andrew Cecere, Chief Financial Officer Terry Dolan and Chief Risk Officer Jodi Richard of violating federal securities laws by concealing the alleged misconduct and leaving the bank vulnerable to regulatory scrutiny and investigations.

The trust claimed that when the CFPB fined the company and made its allegations in a consent order, trading prices for the U.S. Bank's shares fell by \$2, or about 4%, the same day.

Despite knowing since 2015 about the allegedly violative business practices, the trust said, "U.S. Bancorp failed to properly monitor its employees from engaging in such unlawful conduct, detect and stop the misconduct, and identify and remediate harmed consumers," adding that the bank's revenue during that time was "in part the product of unlawful conduct and thus unsustainable."

The CFPB fined U.S. Bank in July 2022, saying in its consent order that the bank's employees were under sales pressure that led them to open accounts and credit lines without the knowledge or consent of the customers whose names were on the accounts.

The practices included, in some cases, accessing consumers' credit reports without their permission and failing to make disclosures about the accounts as required by law, according to the CFPB.

The Minneapolis-headquartered bank neither admitted nor denied the agency's findings.

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

The investors are represented by Samuel H. Rudman, Vincent M. Serra, Avital O. Maline and Jonah H. Goldstein of Robbins Geller Rudman & Dowd LLP.

U.S. Bancorp and the individual defendants are represented by Nidhi Yadava, Rajeev Muttreja, Sarah D. Efronson and Jack L. Millman of Jones Day.

The case is The Buhrke Family Revocable Trust v. U.S. Bancorp et al., case number 1:22-cv-09174, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Emilie Ruscoe. Editing by Jay Jackson Jr.

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Chancery Tosses Qualcomm Investor's Diversity Suit

By **Leslie A. Pappas**

Law360, Wilmington, Del. (May 9, 2024, 3:53 PM EDT) -- A shareholder who sued Qualcomm Inc. for allegedly misleading the public and investors about its efforts to diversify its board has failed to show that the company didn't consider diverse candidates, Delaware's Court of Chancery said Thursday, dismissing the shareholder's case.

The facts alleged in the complaint from shareholder Becky Kiger "do not support a reasonable inference that the board made false or misleading statements about its efforts to promote diversity," Vice Chancellor J. Travis Laster said in a bench ruling that followed arguments Thursday in Wilmington.

Kiger **sued** Qualcomm and its board of directors in Delaware's Court of Chancery April 2023, accusing the company of lying in proxy statements about its efforts to bring more diverse candidates onto its board.

Kiger asserted that since July 2016, when Qualcomm **agreed to pay \$19.5 million** to fend off a proposed class action about gender discrimination, the company hadn't done enough to follow through on diversity efforts.

Her complaint, which sought both declaratory and injunctive relief, came about a year after she raised similar allegations in a Chancery **suit for books and records**, and more than two years after she filed **similar allegations** in a California federal court.

U.S. District Judge Richard G. Andrews **tossed the federal lawsuit** in November 2021, saying the complaint lacked particularized allegations to back up claims that Qualcomm was trying to circumvent federal and state laws prohibiting racial discrimination.

In her Chancery Court complaint, Kiger asserted that the board didn't follow up on disclosures it made in proxies in 2020, 2021 and 2022 that touted the company's commitment to diversity.

"Plaintiff seeks declaratory relief that these statements are false ... and directors don't actually seek diverse candidates," Vice Chancellor Laster said in his bench ruling Thursday, which he issued after a 10-minute recess at the end of the hearing.

But to survive a motion to dismiss, Kiger's complaint would need to show that the board made a "material misrepresentation or omission" in the disclosures, the vice chancellor said.

A review of the search reports from an outreach for new directors in 2020 provides a good record of what the board actually did and what type of candidates it pursued, the vice chancellor said.

The records show that the board instructed the search firm to prioritize diversity in its search, and the firm offered up a large pool of diverse candidates, the vice chancellor said.

Importantly, the company was not looking for diversity only but also sought specific types of business experience and expertise from each director. For example, the board was looking for one director who had experience as a chief financial officer, another who had experience as a chief executive officer in Europe, and another with experience in Asia.

New directors ultimately included PayPal Holdings Inc. CFO Jamie S. Miller, a woman; former Girl Scouts CEO Sylvia Acevedo, a woman of Hispanic origin; Jean-Pascal Tricoire, the chairman and

former CEO of French multinational Schneider Electric SE, who had experience in both Europe and Asia; and former McAfee Corp. President and CEO Greg Johnson, who is Black.

"Look at the directors who actually joined the board — they are in fact a diverse group of candidates from a racial, gender and ethnic perspective," the vice chancellor said. "They bring many, many more attributes to the board than their gender and ethnic affiliations."

Those facts do not support an inference that the board failed to search for diverse candidates, the vice chancellor said. "So for all those reasons, it is not reasonably conceivable that disclosures were false."

Counsel for the parties at the hearing declined to comment after the court's ruling.

Kiger is represented by Blake A. Bennett of Cooch & Taylor PA and Francis A. Bottini Jr., Albert Y. Chang and Anne Beste of Bottini & Bottini Inc.

Qualcomm Inc. and the director defendants are represented by Koji Fukumura, Peter Adams, Linh Nguyen, Brian M. French and Anne E. Bigler of Cooley LLP and Peter J. Walsh Jr of Potter Anderson & Corroon LLP.

The suit is Becky Kiger v. Steve Mollenkopf et al., case number 2023-0444, in the Court of Chancery of the State of Delaware.

--Additional reporting by Kat Greene, Hannah Albarazi, and Lauren Berg. Editing by Linda Voorhis.



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Attys Want \$102M In Fees In Stock Loan Antitrust Deal

By **Sydney Price**

Law360 (May 9, 2024, 9:59 PM EDT) -- Quinn Emanuel Urquhart & Sullivan LLP and Cohen Milstein Sellers & Toll PLLC attorneys asked for \$102 million in fees for settling claims from investors that major banks colluded to avoid modernizing the stock loan market, saying the long and complex nature of the case warrants the payout.

The motion filed by the attorneys Wednesday says that the class reached more than \$580 million in cash settlements along with industry reforms valued at \$319 million — a result that would not have been possible without co-lead counsel's "diligent" prosecution of the case.

Class counsel called their \$102 million attorney fee request "very low" compared to similar-sized settlements.

The first settlement in the case was established in Feb. 2022, when Credit Suisse agreed to pay investors \$81 million to exit the suit. In June 2023, the plaintiffs settled with Goldman Sachs, Morgan Stanley, JPMorgan, UBS and Equilend for nearly \$500 million.

"The history of this case confirms the reasonableness of our request," Wednesday's motion states. "This case has its roots in Co-Lead Counsel's investigative efforts into alleged collusion in the stock lending market, a crucial but obscure corner of the nation's financial markets."

The attorneys also requested \$18.8 million in litigation expenses, and the five class representatives requested service awards of \$100,000 each.

The case dates back to 2017 and was filed on behalf of a proposed class of investors in the stock loan market. According to the suit, large middlemen banks in this market worked to prevent the emergence of more competitive electronic exchanges that could have offered these investors better pricing.

The settlement class includes those who, directly or through an agent, entered into U.S. stock loan transactions as a borrower from the prime brokerage businesses of the U.S.-based defendants from Jan. 7, 2009, through the execution date.

In **September**, U.S. District Judge Katherine Polk Failla certified a class of investors for the purposes of the settlement, as recommended by U.S. Magistrate Judge Sarah L. Cave in July 2022.

According to Wednesday's motion, co-lead counsel worked with economists from MIT Sloan School of Business to support the motion for class certification.

"In class certification briefing, both Plaintiffs and Defendants put forward widely disparate views on damages from their respective experts," the motion states. "Plaintiffs do not expect this to change at the merits stage."

Attorneys for the plaintiffs declined to comment on Thursday.

The investor plaintiffs are represented by Quinn Emanuel Urquhart & Sullivan LLP and Cohen Milstein Sellers & Toll PLLC.

Goldman Sachs is represented by Paul Weiss Rifkind Wharton & Garrison LLP and The Law Offices of John F. Baughman PLLC.

Morgan Stanley is represented by Cravath Swaine & Moore LLP.

JPMorgan is represented by Covington & Burling LLP.

UBS is represented by Katten Muchin Rosenman LLP.

EquiLend is represented by Cleary Gottlieb Steen & Hamilton LLP.

The case is Iowa Public Employees' Retirement System et al. v. Bank of America Corp. et al., case number 1:17-cv-06221, in the U.S. District Court for the Southern District of New York.

--Editing by Vaqas Asghar.

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Keeping Up With Class Actions: A New Era Of Higher Stakes

By **Gerald Maatman** (May 9, 2024, 4:38 PM EDT)

This article is part of a regular column that examines new, noteworthy class action decisions. In this installment, I focus on how recent settlements signal heightened risks and higher stakes in the valuation of class actions, and highlight three settlements from the first quarter that are especially notable.

Corporate defendants saw unprecedented settlement numbers across all areas of class action litigation in 2022 and 2023, and so far, 2024 is on pace with the last two years.

The cumulative value of the top 10 settlements across all substantive areas of class action litigation hit near record highs in 2023, second only to the settlement numbers observed in 2022.^[1]



Gerald Maatman

When the numbers for 2022 and 2023 are combined, the totals signal that corporate defendants have entered a new era of heightened risks and higher stakes in the valuation of class actions. On an aggregate basis, across all areas of litigation, class actions and government enforcement lawsuits garnered more than \$51.4 billion in settlements in 2023, almost as high as the record-setting \$66 billion in 2022. Combined, the two-year settlement total eclipses any other two-year period in the history of American jurisprudence.

Let's look at how the numbers compare so far this year.

As of the end of the first quarter, the aggregate settlement total across all areas of class action litigation and government enforcement lawsuits is \$19.8 billion. It is anticipated that these numbers will increase across the board by the end of the year.

So far this year, there are three settlements over the billion-dollar mark. Last year, parties resolved 14 class actions for \$1 billion or more in settlement, making 24 billion-dollar settlements in the last two years. Reminiscent of the Big Tobacco settlements nearly two decades ago, 2022 and 2023 marked the most extensive set of billion-dollar class action settlements and transfer of wealth in the history of the American court system.

The plaintiffs class action bar has scored rich settlements thus far in 2024 in virtually every area of class action litigation. The following list shows the totals of the top five settlements in 2024 so far in key areas:

- \$14.24 billion — products liability/mass tort class actions
- \$1.65 billion — antitrust class actions
- \$1.21 billion — securities fraud class actions
- \$558 million — consumer fraud class actions
- \$388.95 million — data breach class actions

Here, we take a closer look at three of the top settlements in the first quarter of 2024 that are especially notable, two for their high dollar amounts, and one for the novel and relevant subject matter.

\$10.5 Billion Settlement in Aqueous Film-Forming Foams Products Liability Litigation

In one of the largest multidistrict litigations over the last several years — In re: Aqueous Film-Forming Foams Products Liability Litigation — with over 7,000 actions included in the MDL, defendant 3M Co. will pay at least \$10.5 billion and up to \$12.5 billion in a settlement that was **approved** in late March by the U.S. District Court for the District of South Carolina.[2]

The settlement will resolve claims by utilities that 3M was liable for the damage they have and will incur due to the per- and polyfluoroalkyl substances that were used for decades in specialized fire suppressants, called aqueous film-forming foams, and sprayed directly into the environment, reaching drinking water.

3M's settlement will resolve claims from approximately 12,000 public water systems in the U.S. affected by PFAS contamination. Only a small portion of water systems opted out of the settlement, and all objections were dismissed by the court in granting final settlement approval.

While this settlement addresses some claims, 3M still faces personal injury lawsuits and state claims related to PFAS. 3M had ceased production of perfluorooctane sulfonate, known as PFOS, in 2000 and announced plans to discontinue all PFAS production by 2025.

Additional settlements in this litigation have been reached between the public water systems and other defendants, including DuPont De Nemours Inc. and Tyco Fire Products LP, which are not included in this settlement figure.

The aqueous film-forming foams deals will be similar in size and scope to the Big Tobacco and opioid settlements that we have seen previously. It reflects a larger trend involving a notable increase in class actions asserting environmental allegations, reflecting a heightened social and environmental consciousness.

The plaintiffs bar has developed a growing emphasis on environmental, social and governance initiatives, seeking to hold organizations accountable for their environmental impact. This increased emphasis has resulted in new causes of action.

Defendants can expect this shift to responsibility for environmental impact, with its huge settlement dollars, to continue in 2024 and beyond.

\$350 Million Settlement in Alphabet Inc. Securities Litigation

In what has been deemed one of the largest privacy class action settlements to date and the fourth-largest securities settlement in California, the parent company of Google, Alphabet Inc., agreed to settle claims stemming from a 2018 Wall Street Journal report revealing a software flaw that exposed Google Plus user data.[3]

In In re: Alphabet Inc. Securities Litigation, shareholders alleged that Google failed to disclose the incident, citing insufficient breach reporting triggers, despite internal warnings of regulatory interest and reputational harm. When the data exposure became public, Google's stock price dropped by 5.9%.

The settlement amount **received** preliminary settlement approval in April in the U.S. District Court for the Northern District of California, and manifests the growing significance of privacy-related issues in corporate liability.

This settlement highlights the risks that companies face in the privacy and cybersecurity domains. At the same time, it stresses the importance of transparency in disclosing security vulnerabilities. While this litigation did not garner the largest of securities fraud settlements, it is inevitable that the privacy class action space will continue to grow through 2024.

Privacy class actions cover a wide range of possible liability theories, and the plaintiffs bar is using these different ways to bring claims and secure high-dollar settlements. The potential use of data breach allegations in connection with securities fraud liability — especially for inadequate disclosures

of security breaches — is something defendants should be mindful of in the aftermath of any breach.

\$1.25 Million Settlement in National Coalition on Black Civic Participation v. Wohl

Although not the most staggering in terms of dollars recovered, the settlement in National Coalition on Black Civic Participation v. Wohl is noteworthy nonetheless.[4]

In this class action before the U.S. District Court for the Southern District of New York, two conservative conspiracy theorists in April **agreed** to settle claims related to a robocall campaign that allegedly spread false information about mail-in voting to Black voters before the 2020 election. The settlement will split the funds between affected voters and the New York Attorney General's Office, with the latter distributing funds to affected New Yorkers.

The campaign aimed to dissuade Black voters from using mail-in ballots by making robocalls that falsely told them their personal information would be added to a public database and used by police departments to track outstanding warrants or for mandatory COVID-19 vaccinations. The call then warned that voters should not be "finessed into giving your private information to the man" and should "beware of vote by mail."

The conspiracy theorists previously pled guilty to fraud in connection with the scheme.

There have been several lawsuits filed against companies and individuals that were unlawfully seeking to invalidate the 2020 election results, but the National Coalition On Black Civic Participation settlement is novel in resolving claims of spreading false information to protected categories of voters.

Protect Democracy Project and the Electronic Privacy Information Center filed amicus briefs in support of the plaintiffs, and the U.S. Department of Labor filed a statement of interest in support of finding that Section 11(b) of the Voting Rights Act prohibits threats and attempted threats of nonphysical harm without any necessary showing of racial targeting.

As it becomes easier to reach mass quantities of voters using technology, defendants must be cognizant in crafting messages to avoid any targeted approach that could be seen as influencing voters by intimidation.

Conclusion

The high-dollar settlements of the past two years suggested that the plaintiffs bar would continue to be as aggressive, if not more, with their case filings and settlement positions.

Since class certification rates remained high in 2023, with over 74% of class certification motions being granted by courts, the plaintiffs bar has had advantageous positions from which to negotiate. These aggressive positions will continue as long as courts continue to grant certification in high numbers. From the data on settlements so far this year, it certainly looks to be the case.

Gerald L. Maatman Jr. is a partner and chair of the workplace class action group at Duane Morris LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Duane Morris Class Action Review – 2024, at 2-3(Duane Morris Class Action Review – 2024 - <https://online.flippingbook.com/view/954167557/10/>).

[2] **In re: Aqueous Film-Forming Foams Products Liability Litigation** , MDL 2873 (D.S.C. Mar. 29, 2024).

[3] In re: Alphabet Inc. Securities Litigation, Case No. 18-CV-6245 (N.D. Cal Apr. 9, 2024).

[4] **National Coalition on Black Civic Participation v. Wohl** , Case No. 20 Civ. 8668 (S.D.N.Y. Apr. 8, 2024).

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Titan Of The Plaintiffs Bar: Keller Rohrbach's Derek Loeser

By **Joyce Hanson**

Law360 (May 9, 2024, 3:06 PM EDT) -- Derek Loeser's path to becoming one of the country's sharpest litigators, winning major cases against large corporations including Facebook and Wells Fargo, may very well have started at his family's dinner table when he was young.





Derek Loeser

Keller Rohrback

How He Challenged Facebook:

"Every time we learned of information that Facebook did not want to provide, we ran through this gantlet of motions and motions to reconsider and appeals."

Now a senior partner in Seattle-based Keller Rohrback LLP's complex litigation group, Loeser recalls how he enjoyed engaging in spirited debate with family members around the table when he was a student. The concept of fighting injustice was ingrained in the Loeser family and everybody liked to argue — to the point where friends he invited to dinner would sometimes wonder if everybody disliked each other.

"I was always amazed by that," Loeser said. "I would say, 'No, we're just arguing a point. In our household, you have to be able to argue a point and persuade others of it if you want to get through dinner.' It was pretty fun since we all like to argue."

Loeser has since refined his arguing skills as a nationally recognized plaintiffs attorney before federal judges in the U.S. courts.

In one extraordinary case, he serves as co-lead counsel in multidistrict litigation stemming from the Cambridge Analytica data privacy scandal, prompted by news that former President Donald Trump's 2016 campaign paid the political consulting firm to harvest information from up to 87 million Facebook users.

Loeser's team in December 2022 called on U.S. District Judge Vince Chhabria in San Francisco to grant preliminary approval of a **record \$725 million settlement** after Facebook parent Meta Platforms Inc. agreed to resolve the case accusing it of failing to prevent Cambridge Analytica from accessing users' private data without their consent.

He also manages a team litigating government cases against opioid manufacturers and distributors, and serves as class counsel for the consolidated plaintiffs in a **series of consumer class actions against** Wells Fargo that allege it put residential mortgage holders into forbearance without their knowledge during the COVID-19 pandemic, landing Loeser on the list of **Law360's 2024 Titans of the Plaintiffs Bar**.

The Facebook deal is the largest privacy class action settlement to date in the United States, and the

most the social media giant has ever paid to resolve a class action, according to Loeser.

Judge Chhabria, as he considered final approval of the deal, said to Loeser at a September hearing that he was "**blown away**" that more than 17.7 million valid claims had already been submitted.

In an April 22 interview with Law360, Loeser said the Facebook plaintiffs were keen on actively participating in the case, where he was appointed co-lead counsel along with Lesley E. Weaver of Bleichmar Fonti & Auld LLP.

"They really got raked over the coals," he said. "They had their depositions taken and had to produce personal information. I've always been amazed when people are willing to be plaintiffs in class action lawsuits even though it's a lot of work and can be intrusive. It's like jury duty. Lawyers can have all the ideas in the world, but if there aren't plaintiffs to do that job, the case doesn't get pursued."

Loeser noted that Keller Rohrbach and Bleichmar Fonti had to work hard to match the firepower of Facebook and its counsel, Big Law giant Gibson Dunn & Crutcher LLP, in the case that got larger and more complicated as it developed.

"It was a tremendous battle from the start," Loeser said. "With a lot of Big Tech, they're used to doing what they want whenever they want. In litigation, there are rules, and sometimes it takes people a while to follow them. It was a huge amount of work."

For its work scoring big wins including the Facebook MDL settlement, which now faces appeals from professional objectors, Keller Rohrbach in February **earned recognition** as one of **Law360's 2023 Class Action Groups of the Year**.

When people talk about what it takes to work in complex litigation, they discuss perseverance because big cases from start to finish require years of dedication, according to Loeser. He said the secret to the Facebook settlement was ultimately "doggedness" and a refusal to back down.

"The case started with a federal judge, then there was a magistrate added, then a discovery mediator was added, then another discovery mediator, then a special master," Loeser said. "Through all of that, every time we learned of information that Facebook did not want to provide, we ran through this gantlet of motions and motions to reconsider and appeals, and Facebook fought tooth and nail to keep the documents it didn't want to produce, and we fought tooth and nail to get those documents produced."

His mentor, Keller Rohrbach managing partner Lynn Sarko, **who won** a Titans Of The Plaintiffs Bar award last year, said Loeser's award this year is well deserved. Sarko commented that the Facebook litigation "should be a master class in lawyering," and that he "watched in awe" as he witnessed his colleague's efforts in the case.

"Judge Chhabria is one of the finest legal minds that I have seen on the bench," Sarko told Law360 on April 25. "Derek is a master of legal principles and has the ability to think on his feet. He is one of the most beautiful writers I've encountered, and his oral advocacy is the same. He's well prepared, doesn't read from notes, listens to the questions, and actually responds. I must say my eyes glaze over in legal proceedings as do judges' when people come in to a courtroom and just read a script. Derek is a true lawyer's lawyer."

When asked about Loeser's "doggedness," Sarko confirmed that he's dogged yet respectful when arguing.

"Many people who are dogged do not have emotional intelligence. Derek knows when an argument is lost. I taught him early on that there's an old saying, 'He or she who runs away lives to fight another day,'" Sarko said, noting that he has been managing partner of the firm since 1991, and Loeser sits on the executive committee.

"He is a star," Sarko said. "Derek is somebody I would hire if I needed a lawyer, which says a lot. Derek is the total package."

In addition to learning from his family how to argue, Loeser said, he gained an appreciation when

young for treating people fairly thanks to seeing his father's work as a doctor and his grandmother's civil rights activism.

After receiving his law degree from the University of Washington School of Law, his first job out of law school was "a dream job" working at the U.S. Justice Department in the Civil Rights Division in Washington, D.C. He prosecuted civil rights cases out of D.C., and that set him on the path "of fighting for what's right" — and working at a place that had the means to have that fight.

He left the Justice Department to clerk for U.S. District Judge Michael Hogan, who at the time was the chief judge in the District of Oregon.

Once that move brought him back to the West, Loeser wanted to stay and eventually migrated back to his home turf of Seattle.

But his initial job there was in commercial litigation, which he found uninspiring, so he jumped at an opportunity to work on a case at Sarko's firm in 2002. It was a large and high-profile MDL involving Enron Corp. securities and claims alleged under the Employee Retirement Income Security Act.

"I happened to hear that there was a firm in town, Keller Rohrbach, that was just appointed lead counsel in the Enron case, which was a huge securities and ERISA litigation," Loeser said. "I was able to join that team, and litigate that case, which launched me into the class action world. Like a lot of my experiences in law, it was a great start that was really inspiring."

Now, two decades later, Loeser continues to pursue complex litigation against big corporations, which he says in this country have inordinate power, opportunity and advantages.

"It's hard for an individual to do anything when they are victimized by a large corporation," Loeser said. "A class action has the ability to aggregate people's claims and have experienced plaintiffs counsel get involved. In my view, it's one of the features of the American justice system that individuals can take on corporations, and there's a system set up to enable that fight to be a fair one."

--Editing by Kelly Duncan.



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Musk Fights Latest Subpoena Over \$44B Twitter Purchase

By **Bonnie Eslinger**

Law360 (May 9, 2024, 7:44 PM EDT) -- Elon Musk's counsel urged a California federal judge on Thursday to undo a magistrate judge's decision requiring the businessman to testify again before the U.S. Securities and Exchange Commission about his \$44 billion purchase of the social media platform formerly known as Twitter, calling the subpoena overbroad and unconstitutional.

U.S. District Judge Jacqueline Scott Corley did not issue a ruling at the end of Thursday's hearing in San Francisco, taking the matter under submission, but she did push back against most of the assertions made by Musk's attorney.

In February, U.S. Magistrate Judge Laurel Beeler ruled the SEC could **enforce a subpoena**, calling on Musk to answer its questions, waving off the billionaire's assertions that the agency was harassing him via a series of seemingly endless investigations.

In response, Musk asked Judge Corley to re-review the SEC's subpoena request. At the start of Thursday's hearing, she said it was Musk's burden to show it was unreasonable or unconstitutional. But first, the judge took aim at Musk's assertion that he was being asked to undergo a third round of questioning, saying it appeared there were two half-day sessions, two weeks apart, in July 2022.

"Normally, when you see depositions that are half-day, normally we think of that as one deposition that was split into two," the judge said.

Musk's lawyer, Rachel Frank of Quinn Emanuel Urquhart & Sullivan LLP, said the first session had to be cut short after the SEC staff "began to ask questions that we felt exceeded the scope of their authorization under the formal order."

She added it is unheard of for a court to compel a second testimony in an administrative investigation, let alone a third testimony.

Frank said that reasonableness in this situation needs to be assessed in light of the information and documents the agency already has, along with "demands on Mr. Musk's time that exists and the time the agency has already taken from Mr. Musk."

Now, the SEC wants to ask Musk questions about communications he discusses in his 2023 biography, she said. Musk shouldn't have to take time and travel to an SEC office to answer questions that could be provided another way, Frank added.

"The SEC regularly uses attorney proffers. It's accepted an affidavit from another witness in this investigation in lieu of testimony, and the SEC hasn't explained why those options won't satisfy," she said.

A lawyer for the SEC, Robin Andrews, said the main reason the agency wants to talk to Musk is because there's new information based on new documents from him and his wealth adviser and documents and testimony from others.

The judge asked why the deposition had to be in-person instead of remote, as it was before. Andrews said there were technical difficulties with the remote video, and that also creates the risk of an unclear record.

"And in addition to that, we are entitled to assess the witness' credibility and demeanor, and that's easier in person," he said.

The SEC told Musk he could go to an agency office other than San Francisco, including Los Angeles, Washington, D.C., New York, and Fort Worth, Texas — an hour away by plane from his home in Austin. Musk rejected the offer, according to Andrews.

"It is still a burden to compel someone to travel, to set aside everything that was going on, his obligations to shareholders," Frank began telling the court before Judge Corley cut her off.

"You're not suggesting that because he's busy, and he's decided to use his money to get involved with lots of different public companies, that somehow he's exempt from securities laws?" the judge asked.

Frank said that's not what she's arguing. "It isn't that Mr. Musk is above the law or insulated from it," she said. "We're saying is there's pattern of investigation here, and the way that this particular investigation has become roving with subpoena after subpoena."

The judge said she didn't think the deposition subpoena is unreasonable but asked Andrews why Musk's testimony had to take place in an SEC office and how much more time the agency needed. Andrews said it helped to ensure the deposition's security and confidentiality and said he expected it to take less than a full day.

"Of course, it depends greatly on Mr. Musk's answers," he said.

Frank also argued the SEC's subpoena is unconstitutional because it's an exercise of significant governmental authority that can be performed only by "officers of the United States."

While the SEC maintains its enforcement staff do not exercise significant authority, she pointed the court to the wording on the subpoena.

"It has the SEC's seal on it," Frank said. "And it says in bold, all capital letters, 'Federal law requires you to comply with the subpoena; failure to comply subjects you to fines and/or imprisonment.'"

Judge Corley noted Andrews didn't have the direct authority to enforce the subpoena.

The judge asked if there is a U.S. Supreme Court case that says having the authority to issue a subpoena compelling someone to sit for an investigatory deposition makes them an officer under the appointments clause of the Constitution.

Frank said there aren't any cases that specifically address the powers the SEC staff exercise, but that doesn't mean they don't have officer status.

The dispute started in October, when the SEC sued to **enforce a subpoena** after Musk allegedly reneged on a promise to appear at the agency's San Francisco office to testify in the ongoing investigation into potential violations of federal securities laws. In addition to information about his take-private purchase of the social media platform, the SEC said it is seeking information about Twitter stock that he bought before the proposed takeover was announced.

The SEC is represented in-house by Melissa Armstrong, Monique Winkler, Bernard B. Smyth and Robin Andrews.

Musk is represented by Alex Spiro, Christopher Michel and Rachel G. Frank of Quinn Emanuel Urquhart & Sullivan LLP.

The case is U.S. Securities and Exchange Commission v. Musk, case number 3:23-mc-80253, in the U.S. District Court for the Northern District of California.

--Additional reporting by Jessica Corso. Editing by Adam LoBelia.



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Trump SPAC Investor Convicted Of Insider Trading

By **Cara Salvatore**

Law360, New York (May 9, 2024, 1:46 PM EDT) -- A Manhattan federal jury on Thursday convicted a Florida investment pro of securities fraud and conspiracy for allegedly exploiting confidential plans to take Donald Trump's media company Truth Social public in a \$23 million insider trading case.

Bruce Garelick was found guilty on all five counts after less than a full day of deliberations that began Wednesday. The Fort Lauderdale resident was accused of profiting from secret information about a planned merger involving then-Truth Social parent Trump Media & Technology Group in the fall of 2021.

After hearing the verdict, Garelick sat down heavily, put his face in his hands and began to sob.

U.S. District Judge Lewis Liman set Garelick's sentencing for Sept. 12.

During the **two-week trial**, Garelick was accused by the Manhattan U.S. attorney's office of illegally profiting from his stake in special-purpose acquisition company Digital World Acquisition Corp. in October 2021 while working as chief investment officer for a venture company called Rocket One Capital LLC — and while sitting on DWAC's board, to which he had been appointed at Rocket One's behest.

Garelick allegedly sold his DWAC shares for an illegal \$49,000 profit after news of the tie-up became public.

Garelick additionally was accused of tipping his boss at Rocket One, Michael Shvartsman, and others about the pending deal. That allegedly let Shvartsman — who along with his brother Gerald Shvartsman **pled guilty** — earn over \$23 million. Garelick's tips also allowed at least one business associate of Michael Shvartsman's to trade, the feds charged.

Garelick had denied wrongdoing.

"As a unanimous jury has just found, Garelick blatantly violated the law by using the information that he obtained as an insider at DWAC to trade and tip others," Manhattan U.S. Attorney Damian Williams said in a statement. "Garelick's federal conviction is yet another stark reminder that insider trading is always a losing bet."

Jurors declined to speak on the way out of court Thursday.

While the former president's name came up frequently at trial, Trump is not involved in the case. As the verdict was handed down, Trump was in the state criminal courthouse a block away as he faces trial over an alleged hush money scheme.

The government is represented by Elizabeth Hanft, Daniel Nessim and Matthew Shahabian of the U.S. Attorney's Office for the Southern District of New York.

Garelick is represented by Alexandra Shapiro, Jonathan Bach, Julian Brod and Jason Driscoll of Shapiro Arato Bach LLP.

The case is U.S. v. Shvartsman et al., case number 1:23-cr-00307, in the U.S. District Court for the Southern District of New York.