NEWS

Lawyers Vying for 23andMe Data Breach Leadership Fear Bankruptcy Imminent

U.S. District Judge Edward Chen heard arguments on Monday from more than a dozen lawyers vying for leadership of the 23andMe data breach litigation.

June 03, 2024 at 05:59 PM

Class Actions

Amanda Bronstad
staff reporter

What You Need to Know

- Monday's hearing, in San Francisco, comes after 23andMe's annual report disclosed $216 million in cash.
- Lawyers said 23andMe consumers were likely to get a 'steep discount' in monetary relief, with injunctive relief possible, such as dark web monitoring.
- 23andMe attorney Ian Ballon said his client was looking for a global settlement that would encompass the multidistrict litigation, plus state court cases and thousands of arbitration demands.

A federal judge in California heard arguments from more than a dozen plaintiffs' lawyers on whether the data breach lawsuits against 23andMe Inc. should head straight to settlement given its precarious financial condition.

23andMe, the South San Francisco-based genetic testing company, faces dozens of class actions brought on behalf of nearly seven million consumers whose personal information, including highly sensitive genetic profiles, was hacked last year.

At a Monday hearing in San Francisco, U.S. District Judge Edward Chen said he was inclined to pause on formal discovery after many plaintiffs' lawyers, some of whom already have participated in two mediation sessions, and said 23andMe was headed toward bankruptcy.

“They have $216 million in cash, an annual burn rate of $170 million,” Michael Reese, of New York's Reese LLP, said, citing 23andMe's annual report last month to the U.S. Securities and Exchange Commission. That's significant, he said, because many class members would be allowed statutory damages under the Illinois Genetic Information Privacy Act, which could exceed $3 billion.

“This is not only bet-the-company litigation, but it means that without focusing on immediate relief for the class it's very likely the class will receive no relief,” he said.

The remarks come as plaintiffs' lawyers are vying over who should lead the 23andMe data breach multidistrict litigation. Other lawyers mirrored concerns that 23andMe was in imminent danger of bankruptcy and, because of that, consumers were likely to get a "steep discount" in monetary relief.

But they also insisted that injunctive relief, particularly for those who were targeted because they were of Ashkenazi Jewish or Chinese descent, was the main focus of the litigation. In particular, they suggested dark web monitoring and a fund to compensate class members for psychological or physical harm.

Ross Good, of Chicago's Loftus Eisenberg, suggested third-party monitoring of 23andMe that would allow class members to delete their genetic information, including those who do not know they are affected. He noted that he was an Ashkenazi Jewish member of 23andMe and received an email from defense counsel telling him he wasn't impacted.

"I don't think we know how many putative class members were impacted by this case," he said.

Chen, who was the first Asian American man appointed to the U.S. District Court for the Northern District of California, asked several lawyers about having subclasses of class members who were Ashkenazi Jewish or Chinese.

'Incurring Significant Fees in Arbitration'

But 23andMe attorney Ian Ballon, a shareholder at Am Law 100 firm Greenberg Traurig in East Palo Alto, California, downplayed the unique nature of the case.

"We don't think this is a unique data breach, and we also don't think there's a significant or even a realistic risk of physical or psychological harm," he told Chen. "What we are talking about is the disclosure of certain ancestry, for example that someone is Jewish or Ashkenazi Jew, or of Chinese origin, in conjunction with their display name, not necessarily their real name."

He said his client was looking for a global settlement that would encompass the multidistrict litigation, plus state court cases and thousands of arbitration demands.

"We will start incurring significant fees in arbitration," he said. "That would depreciate what is available in terms of legal fees."

23andMe participated in early mediation on Jan. 31 with most of the lawyers. Six lawyers were involved in a second mediation on March 20.

On Sunday, Chen issued an order asking lawyers to address several issues, such as what makes the case unique from other data breach litigation, the risks of physical or psychological harm to class members, 23andMe's financial situation and the size of the leadership team.

"Today's hearing is a very important one since we need to figure what the leadership structure is going to be in this case and how we're going to move forward," Chen said at the start of the hearing.

Most lawyers argued that the team should be fairly small—two or three law firms.

Many of the lawyers, in court filings, supported the mediator who oversaw the two previous discussions, Randall Wulff, as special settlement master, which Chen plans to appoint. And some encouraged Chen to halt the litigation for 45 days to give time to reach a settlement.

"We have a defendant that I think objectively based on public information is financially distressed," said Norman Siegel, of Stueve Siegel Hanson in Kansas City, Missouri. "We have a very severe data breach involving harms that are unique in the data breach context. And that really, in my view, informs a path that settlement should be fully explored."

But others insisted more discovery needed to happen alongside settlement discussions.

“We don’t stop litigating just because the defendant is having financial trouble,” said Sharon Zinns, of Atlanta’s Zinns Law. “This is not your traditional case, and it’s going to set the stage for other cases like this.”

NEWS

California EV Maker Rivian Accused of Securities Fraud in New Class Action

The complaint, filed on Friday in the Central District of California, claims that Rivian made "materially false and misleading statements."

June 03, 2024 at 08:03 PM

Kat Black

What You Need to Know

- On May 31, 2024, plaintiffs filed a class action lawsuit against EV maker Rivian accusing it of securities fraud over a two-year period.
- The complaint arrives in the wake of recent workforce reductions and reported struggles with production at the company.
- Rivian's financial situation reflects broader negative sentiment about the profitability of the EV sector.

Following a string of workforce cuts, disappointing earnings calls and stock market slumps in the past year, California electric vehicle (EV) manufacturer Rivian faces a new securities class action alleging that it defrauded investors.

The complaint, filed on Friday in the Central District of California, claims that Rivian made “materially false and misleading statements” between the period of August 12, 2022 to February 21, 2024. It said that Rivian periodically cited “strong demand” signaled by its backlog of EV preorders and planned production ramp-ups despite never having turned a profit since its founding in 2009. Rivian CEO and founder Robert J. Scaringe and Chief Financial Officer Claire McDonough are named as defendants.

According to the suit, Rivian not only “overstated demand for its EVs” but it “concealed the negative effect inflation and higher interest rates were having on demand for its EVs” in its quarterly reports and public statements. Moreover, “the number of orders in Rivian’s order bank had decreased due to cancellations and other factors” and the company had failed to “ramp up its production of EVs at the rate it claimed.” Rivian declined to comment for this story.

The plaintiffs, represented by Hagens Berman Sobol Shapiro and Labaton Keller Sucharow, include all those who purchased or acquired Rivian securities during the class period, which could potentially reach into the “hundreds or thousands,” the complaint states. Neither firm immediately responded to requests for comment.

Rivian, which is headquartered in Irvine, California, first went public on the NASDAQ in November 2021. Plaintiffs named two major events that brought the extent of the company's securities fraud to light. In March 2023, the company's share price declined more than 18% after it lowered its EV production target. Almost a year later, Rivian disclosed its plans to produce only 57,000 EVs of the 80,000 expected by analysts and projected an EBITDA (earnings before interest, taxes, depreciation, and amortization) loss of $2.7 billion for 2024. As a result, its stock price skidded more than 25% in February 2024. Rivian slashed 10% of its staff in February and laid off an additional 1% in April.

"Because Rivian is an unprofitable growth company, Rivian's ability to manufacture and sell enough EVs to become profitable in the near future has been of paramount concern for its investors. To do so, Rivian would have to significantly increase its manufacturing capacity to produce more EVs annually. Also, Rivian would need to grow customer demand for its EVs, including maintaining its book of preorders, so that it could sell a larger number of EVs without significant price reductions," wrote attorneys for the plaintiffs.

Investors' frustrations with Rivian reflect a broader pattern of concerns about the long-term profitability of the EV market. The International Energy Agency (IEA) recently wrote in its 2024 Global EV Outlook report that despite hurtling to a $1 trillion market capitalization at the end of 2023, EV makers in 2024 are "starting to struggle to finance both existing and new projects with their own revenues." A Boston Consulting Group study published in March 2024 found that the majority of automakers lose about $6,000 on each EV they sell for $50,000, and in April, Ford announced that its had hemorrhaged $1.3 billion from its EV division.

Plaintiffs accused Rivian of violating Section 10(b) of the Exchange Act and Rule 10b-5 and are seeking damages and a trial by jury.

Securities Law News
June 3, 2024, 12:30 PM PDT

Hertz Investor Brings Class Suit Over Electric Car Statements

By Ufonobong Umanah

- COURT: M.D. Fla.
- TRACK DOCKET: No. 2:24-cv-00513

Bloomberg Law News 2024-06-04T10:28:04721144843-04:00

Hertz Investor Brings Class Suit Over Electric Car Statements

By Ufonobong Umanah 2024-06-03T15:30:27000-04:00

- COURT: M.D. Fla.
- TRACK DOCKET: No. 2:24-cv-00513

A Hertz Global Holdings Inc. shareholder alleges that the vehicle rental company misled investors over the impact its vehicle fleet, specifically electric vehicles, had on the company's bottom line.

Edward Doller said that measuring depreciation, or "the decrease in value of the various vehicles" in Hertz's fleet, is critical to its ability to make a profit. But, according to his complaint filed in the US District Court for the Middle District of Florida, Hertz failed to disclose that it had too many vehicles in its fleet to make a profit after it had significantly expanded its electric vehicle holdings.

Doller said that after Hertz announced in Jan. 2024 it would sell one-third of its global electric vehicle fleet, and reported more negative news relating to vehicle depreciation in April, he and other shareholders "suffered significant losses and damages."

The complaint proposes to represent shareholders "that purchased or otherwise acquired Hertz securities between April 27, 2023 and April 24, 2024."

In 2021, Hertz announced an initial order of 100,000 Tesla vehicles as part of a mission to "'offer the largest EV rental fleet in North America and one of the largest in the world,'" according to the complaint.

At the start of the proposed class period, Hertz assured investors about its investments, "'particularly in the areas of technology and electrification,'" the complaint says, "'with a view toward delivering sustainable returns for our shareholders.'"

But Doller alleges that as Hertz announced partnerships with cities, it "downplayed the financial impact of vehicle depreciation," which the complaint described as "one of Hertz's largest expenses for the vehicle rental business."

He also says that Hertz misled investors about consumer demand for electric vehicles, and as a result of its electric vehicle purchases and depreciation in its internal combustible engine and electric vehicle fleet, "Hertz was likely to incur significant losses" that would have a negative effect on the company's financials.

But when Hertz told an analyst it had to "right-size" the electric vehicle fleet to get a better return on investment given consumer demand on Apr. 25, the complaint says Hertz's stock fell by over 19%, and Bank of America downgraded its financial outlook for Hertz.

Doller alleges Hertz had actual knowledge that statements previously made to investors were misleading.

The complaint alleges a claim for violation of Section 10(b) of the Exchange Act and Rule 10b-5 against against Hertz, its former CEO Stephen M. Scherr, and its current Executive Vice President Alexandra Brooks. The complaint asserts a second claim for violation of Section 20(a) of the Exchange Act against Scherr and Brooks.

Doller seeks damages, attorneys' fees, and costs on behalf of himself and the proposed class.

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

Judge John L. Badalamenti is assigned the case.

Miller Shah LLP and Pomerantz LLP represent Doller.

The case is Doller v. Hertz Glob. Holdings Inc. , M.D. Fla., No. 2:24-cv-00513, complaint 5/31/24 .

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Securities Law News
June 3, 2024, 4:43 PM PDT

Matterport's Planned Sale to CoStar Draws Stock Investor Lawsuit

By Isaiah Poritz

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** No. 5:24-cv-03313

Bloomberg Law News 2024-06-04T10:27:13104471423-04:00

Matterport's Planned Sale to CoStar Draws Stock Investor Lawsuit

By Isaiah Poritz 2024-06-03T19:43:17000-04:00

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** No. 5:24-cv-03313

Spatial mapping company Matterport Inc.'s plans to sell itself to real estate and data firm CoStar Group Inc. unfairly benefits Matterport insiders over common stockholders, an investor lawsuit filed Monday said.

The proposed acquisition announced this spring failed to adequately disclose the employment status of Matterport's board of directors after the transaction, who could potentially receive large multi-million dollar "golden parachutes" if let go, according to the complaint.

If acquired by CoStar, company insiders who own company options would also gain access to exclusive equity awards and "accelerated vesting," the suit said.

"The breakdown of the benefits of the deal indicates that Matterport insiders are the primary beneficiaries of the Proposed Transaction, not the Company's public stockholders," the complaint said, which was filed in the US District Court for the Northern District of California.

CoStar's registration statement filed with the Securities and Exchange Commission detailing the acquisition "is materially deficient, depriving Plaintiff of the information necessary to make an intelligent, informed, and rational decision of whether to vote in favor of the Proposed Transaction."

The suit asks the court to halt the acquisition.

Matterport didn't immediately return a request for comment.

Brodsky Smith represents the plaintiff Andrew Rose.

The case is Rose v. Matterport Inc. , N.D. Cal., No. 5:24-cv-03313, 6/3/24 .

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Securities Law News

June 3, 2024, 1:34 PM PDT

Canoo SPAC Deal Sponsors Defeat Lawsuit Over Blank-Check Merger

By Mike Leonard

- Wave of cases targeted SPAC transactions after frenzy ended
- Not plausible deal backers knew of business shift, judge says

Bloomberg Law News 2024-06-04T10:26:08041435556-04:00

Canoo SPAC Deal Sponsors Defeat Lawsuit Over Blank-Check Merger

By Mike Leonard 2024-06-03T16:34:02000-04:00

- Wave of cases targeted SPAC transactions after frenzy ended
- Not plausible deal backers knew of business shift, judge says

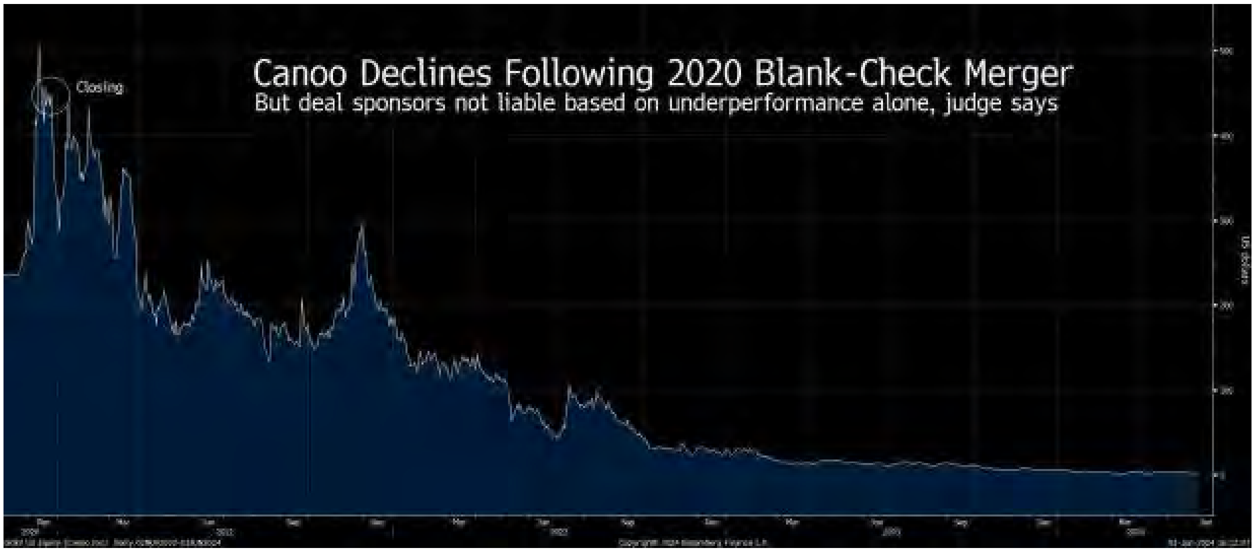
Architects of Canoo Inc.'s blank-check merger defeated shareholder litigation challenging the transaction, which made the electric vehicle startup a publicly traded company.

A Delaware judge threw the case out May 31, rejecting claims that Hennessy Capital LLC and its principals duped investors by keeping a lid on Canoo's plan to overhaul its business model. The legal theory "is belied by the plaintiff's own allegations," Vice Chancellor Lori W. Will said. "To allow this faulty claim to proceed would fuel perverse incentives and invite strike suits."

Read More: Billionaire SPAC Kings Get Taken to Court After Boom Goes Bust

The lawsuit, filed in 2022, is part of a wave of shareholder cases in Delaware's Chancery Court stemming from mergers between private businesses and special purpose acquisition companies, a type of publicly traded shell entity. The blank-check transactions—which have receded from a boom in 2020 and 2021—were designed to let startups, many in the EV sector, bypass traditional initial public offerings. But they have often led to underperformance in the open market.

The suits generally involve claims that a merger's backers were driven by lopsided incentives to trick SPAC investors into participating because they knew they'd get a windfall from even a bad deal. The cases usually take aim at a standard feature of the transactions: "founder shares" costing fractions of a penny that soar in value by a factor of thousands if a merger closes. Those shares, given to insiders, become worthless if no transaction is found, if investors vote one down, or if they exercise their right to cash out.



Will—who penned the first major SPAC ruling in 2022—stressed May 31 that the critical question is whether a transaction's sponsors deceived investors when it came to that final safety valve: the right to redeem their initial ante even after a deal is reached. The investor leading the Canoo case "has lost sight of these fundamentals," she said.

Although Canoo is one of the many participants in the "SPAC mania" that "strained to adapt to the demands of being exchange listed," that alone isn't a basis for liability, Will wrote in a 45-page opinion, calling the case "fatally flawed." She rejected the "misperception" that shareholders have a lower bar to clear to move forward with SPAC-related claims.

"No well-pleaded facts support a reasonable inference that changes to legacy Canoo's business model were known or knowable" to board members at Hennessy Capital Acquisition Corp. IV, the entity that merged with Canoo, the judge said. "The plaintiff relies on post-closing developments, strained inferences, and documents that contradict his theories."

The investor, Paul White Jr., is represented by deLeeuw Law LLC and Schubert Jonckheer & Kolbe LLP. Hennessy is represented by Potter Anderson & Corroon LLP and Sidley Austin LLP.

The case is In re Hennessy Cap. Acquisition Corp. IV S'holder Litig. , Del. Ch., No. 2022-0571, 5/31/24 .

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Renovacare Co-Defendants Get Claims Trimmed in Securities Suit

B bloomberglaw.com/product/blaw/bloomberglawnews/class-action/XA2EI1RG000000

Treadstone Financial Group LLC, Blackbriar Ltd., and Capitol Information Group Inc. won dismissal of claims against them in a proposed securities class action alleging a scheme to inflate the price of RenovaCare Inc. stock.

The claims against Treadstone and Blackbriar fail because the complaint doesn't "allege with particularity" that they violated Section 10(b) of the Exchange Act, Judge Brian R. Martinotti, of the US District Court for the District of New Jersey, said in an unpublished order Monday.

The claims against CIG must also be dismissed because the plaintiffs haven't shown it is liable as a successor to StreetAuthority LLC, Martinotti said.

The court also granted dismissal of derivative claims against three individual defendants for violations of Section 20(b) of the Exchange Act, finding no private right of action under that section.

And the court dismissed a claim against Jatinder Bhogal for alleged violations of Section 10(b) of the Exchange Act, finding the plaintiffs failed to allege he bore responsibility for allegedly untrue statements in a press release. All of the dismissed counts were dismissed with leave to amend.

The court greenlighted the claims against RenovaCare for alleged violations of Section 10(b) of the Exchange Act.

The plaintiffs sufficiently allege that RenovaCare had a duty to speak truthfully in a 2018 press release allowing them to go forward with a claim for material misstatements or omissions, Martinotti said.

The complaint also supports the claim that RenovaCare engaged in a scheme to defraud, the court said. "Plaintiffs have adequately pled claims for scheme liability against the RenovaCare Defendants by alleging a pump-and-dump scheme," Martinotti said.

The plaintiffs allege "a longstanding, concealed, and wide-reaching fraudulent stock promotion scheme to increase the share price and trading volume of RenovaCare's common stock that was never disclosed to investors."

The scheme was intended to permit the companies and individual defendants to sell their RenovaCare shares at an inflated price, the plaintiffs allege.

The plaintiffs allege that “part of the truth was revealed to investors” on May 28, 2021, when the Securities and Exchange Commission “issued a litigation release stating that RenovaCare was being charged with securities fraud because of the undisclosed promotional campaign.”

“On this news, the company’s stock price fell $0.66, or 24.8 percent, over three consecutive trading sessions to close at $2.00 per share on June 2, 2021,” the complaint alleges.

The plaintiffs seek to represent a class of “persons and entities that purchased or acquired RenovaCare securities” between Aug. 14, 2017 and May 28, 2021.

Counsel for the plaintiffs include Lite DePalma Greenberg & Afanador LLC, Hagens Berman Sobol Shapiro LLP, and Pomerantz LLP.

Cozen O’Conner represents RenovaCare. Duane Morris LLP represents CIG. King & Spaulding represents Treadstone and Blackbriar.

The case is In re Renovacare Inc. Sec. Litig. , 2024 BL 189297, D.N.J., No. 21-cv-13766, unpublished 6/3/24 .

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Securities Law News
June 3, 2024, 12:01 PM PDT

Trecora Resources Ex-CEO Sued Over $247 Million Balmoral Buyout

By Jennifer Kay

- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2024-0552

Bloomberg Law News 2024-06-04T10:28:29451190175-04:00

Trecora Resources Ex-CEO Sued Over $247 Million Balmoral Buyout

By Jennifer Kay 2024-06-03T15:01:05000-04:00

- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2024-0552

The former president and CEO of Trecora Resources misled shareholders about conflicts of interest that allegedly plagued the company's $247 million sale to Balmoral Funds LLC in 2022, according to an investor lawsuit unsealed in Delaware Chancery Court.

Patrick Quarles, who led Trecora from December 2018 through the merger's closing in mid-2022, wrote a "misleading" recommendation for Trecora shareholders to approve the merger despite "crippling conflicts" faced by the company's leadership, according to a stockholder class action lawsuit unsealed Thursday.

Texas-based Trecora, which manufactures synthetic wax and other specialty petrochemicals, and Balmoral aren't named as defendants in the lawsuit. The complaint cites records obtained from Trecora in an earlier books-and-records lawsuit that the investor, Jaclyn Rosenbaum, voluntarily withdrew in June 2023.

Neither Trecora nor Quarles, now working for RobinHill Senior Advisory Group, immediately responded to requests for comment Monday.

Quarles led the company into a hasty sale, bowing to public pressure from activist investors Ortelius Advisors LP and Bradley Radoff, according to the heavily-redacted complaint. Neither Ortelius nor Radoff are named as parties to the litigation.

Rosenbaum alleges that Quarles's "drafting and dissemination" of the recommendation to shareholders constitutes a breach of his fiduciary duties "in that he was intricately involved in a process to sell Trecora for a per-share price that he knew did not adequately reflect the company's true, inherent, standalone value," according to the complaint.

He also facilitated the sale "despite the glaring conflicts of interest" that he did nothing to prevent, the lawsuit said.

Rosenbaum is represented by Kahn Swick & Foti.

The case is Rosenbaum v. Quarles , Del. Ch., No. 2024-0552, complaint unsealed 5/30/24 .

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Securities Law News

June 3, 2024, 10:33 AM PDT

Hong Kong FX Brokerage Fails to Shake US Investors' Fraud Claims

By Matthew Bultman

- Investors alleged funds never released after deposit
- Federal judge finds 'strong inference' of intent to defraud

Bloomberg Law News 2024-06-04T10:26:46044682939-04:00

Hong Kong FX Brokerage Fails to Shake US Investors' Fraud Claims

By Matthew Bultman 2024-06-03T13:33:43000-04:00

- Investors alleged funds never released after deposit
- Federal judge finds 'strong inference' of intent to defraud

FxWinning Ltd. must face federal securities fraud allegations in Florida from investors who allege the brokerage firm schemed to cheat them out of $27 million after promising high returns on foreign exchange trading.

Hong Kong-registered FxWinning can be sued in Florida because the alleged fraud was part of a conspiracy with Miami-based CFT Solutions LLC that targeted several people from that state, Judge Robert Scola Jr. in the US District Court for the Southern District of Florida said.

Scola also rejected FxWinning's argument that the case should be dismissed because Hong Kong was an adequate alternative place for litigation. FxWinning said litigating the case in South Florida presented "oppressiveness and vexation" to the firm.

"The inconvenience to the Plaintiffs of re-filing in a jurisdiction where none of them reside and where few (if any) of the events leading to this litigation took place weighs heavily against dismissal," Scola said in a Friday order.

Investors who opened an account on FxWinning were told they could use CFT's high-frequency trading system, the complaint said. The companies were touted as having a 71% success rate on trades, it said.

The lawsuit, filed in August, alleged investors were told in December 2022 and January 2023 their withdrawals would be delayed. FxWinning a few months later announced it was closing. The company never released the investors' funds, which total more than $27 million, the suit said.

CFT is also a defendant in the lawsuit.

Allowing the securities fraud claim against FxWinning and CFT to move forward, Scola said the complaint's allegations establish a "strong inference" that FxWinning and CFT intended to defraud the investors.

Investors have also accused the companies of violating the Commodity Exchange Act and state law. Scola trimmed some claims against the companies, as well as some of their leaders, including one alleging property conversion under state law.

Greenberg Traurig LLP represents the investors. Barakat & Bossa represents FxWinning. Nelson Mullins Riley & Scarborough LLP represents CFT.

The case is Hind v. FxWinning Ltd. , S.D. Fla., No. 23-23139, 5/31/24 .

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Securities Law News

June 3, 2024, 12:21 PM PDT

Fidelity National, Bill Foley Targeted Over F&G Financing Deal

By Mike Leonard

- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2024-0562

Bloomberg Law News 2024-06-04T10:29:03829342229-04:00

Fidelity National, Bill Foley Targeted Over F&G Financing Deal

By Mike Leonard 2024-06-03T15:21:07000-04:00

- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2024-0562

A pension fund sued Fidelity National Financial Inc. and billionaire chairman Bill Foley, saying they pushed partial subsidiary F&G Annuities & Life Inc. into an unnecessary and unfair financing transaction.

The title insurance giant exploited its 85% control over F&G, a 2022 spinoff, to stack the board with loyalists who rubber-stamped a $250 million investment in F&G by Fidelity, which got lucrative terms at the expensive of public shareholders, according to the lawsuit made public May 31.

The financing will allegedly hand Fidelity preferred stock that also pays out dividends before it ultimately converts into common shares. The arrangement offers the best of both worlds to Fidelity and Foley—who's also chairman at F&G—even though pure debt or pure equity alternatives would have been been a better deal for F&G's minority investors, the suit says.

Although F&G's board established a special transaction committee, the "process was largely a sham," according to the court complaint. "FNF had already pre-determined that a transaction would be signed and closed regardless of the views of the special committee. It also undoubtedly influenced the deliberations."

Fidelity didn't immediately respond to a request for comment Monday.

Foley—who chairs a consortium of financial firms—is a prolific dealmaker who co-owns the NHL's Las Vegas Golden Knights and multiple European soccer teams, including AFC Bournemouth of England's Premier League and FC Lorient of France's Ligue 1. He's a frequent target of shareholder litigation in Delaware's Chancery Court, the leading US forum for M&A fights and other business disputes.

He has paid millions in recent years to settle a challenge to his compensation at Cannae Holdings Inc. and self-dealing claims stemming from Fidelity's acquisition of another Foley affiliate. Litigation is also ongoing over an allegedly "horrific" blank-check transaction he sponsored.

The new lawsuit was filed by the Roofers Local 149 Pension Fund, which holds stock in F&G. According to the heavily redacted court filing, the preferred stock will ultimately pay out $51 million in dividends—which F&G has the option to pay in stock—before the preferred shares themselves convert into common stock representing additional equity.

F&G had enough liquidity to pursue significantly more affordable financing options, as shown by its subsequent decision to to undertake a $500 million public offering at a cheaper rate, according to the complaint. But "the special committee did not even attempt to suggest that FNF make the investment in exchange for common stock, which would have avoided the dividend payments, or as pure debt, which would have avoided the share issuance and dilution to public stockholders," the suit says.

It was originally filed under seal May 28.

The pension fund is represented by Labaton Keller Sucharow LLP, Friedman Oster & Tejtel PLLC, and AsherKelly. Fidelity and Foley haven't yet made court appearances.

The case is Roofers Local 149 Pension Fund v. Fidelity Nat'l Fin. Inc. , Del. Ch., No. 2024-0562, complaint unsealed 5/31/24 .

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Capping contingency fees in Nevada could have unintended consequences

legalnewsline.com/stories/660309299-capping-contingency-fees-in-nevada-could-have-unintended-consequences

June 4, 2024

Parikh | https://law.lclark.edu

A 20% cap on lawyer contingency fees in Nevada is supported by Uber but few business organizations, perhaps reflecting concern that such measures can end up doing more harm than good.

Proposition 22 is also supported by groups representing retailers and trucking companies, but the U.S. Chamber of Commerce and its Nevada affiliates have remained silent on the measure. A similar measure proposed by the Civic Justice Association of California, which also would have capped contingency fees at 20%, failed in 2022 amid strong opposition by trial lawyers and consumer advocates.

Uber has poured $4 million into Prop. 22 in Nevada through Nevadans for Fair Recovery, according to state campaign finance records. The measure is opposed by trial lawyers through Uber Sexual Assault Survivors for Legal Accountability, a group they formed for the purpose.

In the middle are Nevada businesses, which may shy away from publicly supporting the measure partly out of concern for angering the powerful trial lawyer lobby and partly because they fear the measure will make the litigation climate worse. One possible effect of capping how much lawyers can charge: A shift toward third-party litigation funding, where hedge funds and other outside financiers pay the bills in exchange for a percentage of legal fees or even money the plaintiff wins.

Reducing the take available for lawyers might make funding litigation less attractive to outside parties, said Samir Parikh, a professor at Lewis & Clark Law School who studies litigation finance. But it might also shift the balance of power toward outside funders when it comes to upstarts Parikh calls “hungry firms” in a recent academic article.

“The well-financed plaintiff firms are well capitalized. They’re not really relying on litigation finance, except to hedge their risk,” Parikh said. That may not be the case with “hungry law firms,” he said, who rely on litigation funders to pay for expensive television marketing campaigns to draw in potential clients for mass tort litigation.

Whether those outside funders would be discouraged by a fee cap is unknown, he added.

The U.S. Chamber Institute for Legal Reform, which owns *Legal Newsline*, last year publicly supported Senate Bill 179, which would have mandated disclosure of third-party litigation funding agreements. But that bill, which also would have held funders jointly and severally liable for any costs imposed on the plaintiff, died in committee.

The U.S. Chamber hasn't weighed in for or against Prop. 22 and the Las Vegas Chamber said it has not taken a position..

An experiment in Florida more than 40 years ago could reveal why some businesses are leery of tinkering with the rules of civil litigation. In 1980, legislators passed a loser-pays rule, similar to the U.K., to control spiraling medical malpractice costs.

Doctors and insurance companies quickly lost enthusiasm for the measure, however, as they found it impossible to collect legal fees from poor, unsuccessful plaintiffs and were shocked by the size of the fees they had to pay winning plaintiff lawyers.

With nearly every interest group lobbying for its repeal, wrote Manhattan Institute researcher Marie Gryphon in a 2010 analysis, lawmakers eliminated loser-pays in 1985.

The backlash may have been premature, Gryphon wrote. A few years later, researchers found more than half of med-mal plaintiffs dropped their cases voluntarily while the law was in effect, compared with 44% before and after.

Loser-pays also discouraged plaintiffs from taking their cases to trial, although average settlements rose and trial verdicts almost tripled.

Most observers drew the conclusion that loser-pays, by making litigation riskier and less lucrative for trial lawyers, both discouraged frivolous suits and drove up the cost of meritorious ones for insurers and defendants. That wasn't a bargain businesses were willing to accept in Florida. The uncertainty of what impact a fee cap will have on litigation costs in Nevada might be giving businesses pause as well.

ORGANIZATIONS IN THIS STORY

Nevada Supreme Court

J&J must pay $260 million in latest talc trial, Oregon jury says

reuters.com/legal/jj-must-pay-260-million-latest-talc-trial-oregon-jury-says-2024-06-04

Brendan Pierson

June 3 (Reuters) - Johnson & Johnson (JNJ.N), opens new tab must pay $260 million to an Oregon woman who said she got mesothelioma, a deadly cancer linked to asbestos exposure, from inhaling the company's talc powder, a jury found on Monday.
The verdict in the 4th Judicial District Circuit Court in Portland comes as the company continues to pursue a proposed $6.48 billion settlement of most talc-related lawsuits against it through a prepackaged bankruptcy. The jury's award includes $60 million in compensatory damages and $200 million in punitive damages, and includes damages for both the plaintiff and her husband.

Erik Haas, J&J's worldwide vice president of litigation, said in a statement that the verdict "is irreconcilable with the decades of independent scientific evaluations confirming talc is safe, does not contain asbestos, and does not cause cancer." He said the company would appeal and was confident it would get the verdict reversed.

The plaintiff in the case, Kyung Lee, was diagnosed last year with mesothelioma at age 48.

Lee alleged that she inhaled asbestos-tainted talc over more than 30 years, beginning when her mother used it on her when she was a baby and later when she used it herself as a deodorant.

J&J maintains that its talc products do not contain asbestos and do not cause cancer, and that decades of scientific studies support their safety.

Bottles of Johnson & Johnson baby powder line a drugstore shelf in New York October 15, 2015. REUTERS/Lucas Jackson/File Photo Purchase Licensing Rights, opens new tab

A lawyer for J&J said at trial that Lee's illness was likely caused by exposure to asbestos used at a factory near where she grew up.

Reuters watched the trial through Courtroom View Network.

J&J faces lawsuits from more than 61,000 plaintiffs over talc. The vast majority are by women with ovarian cancer, with only a small minority involving people with mesothelioma. The company has settled most of the mesothelioma cases.

J&J needs the support of 75% of remaining plaintiffs to get approval for a bankruptcy settlement that would end the litigation, shutting off future cases and preventing people from opting out of the deal.

Courts rejected two previous efforts by the company to resolve the talc cases in bankruptcy. J&J has said it is confident that support from plaintiffs will allow the latest attempt to succeed.

A group of plaintiffs opposed to the deal on May 22 filed a class action lawsuit aiming to stop it, calling it a "fraudulent" abuse of the bankruptcy system.

Trials in the talc cases have had a mixed record, with major plaintiff wins including a $2.1 billion judgment in 2021 awarded to 22 women with ovarian cancer. In April, J&J won an ovarian cancer case and was hit with a $45 million verdict in a mesothelioma case.

Reporting by Brendan Pierson in New York; Editing by Jacqueline Wong and Leslie Adler

Washington state paying law firm Munger to fight Kroger-Albertsons merger

reuters.com/legal/government/washington-state-paying-law-firm-munger-fight-kroger-albertsons-merger-2024-06-03

Mike Scarcella

The Kroger supermarket chain's headquarters is shown in Cincinnati, Ohio, U.S., June 28, 2018. Picture taken June 28, 2018. REUTERS/Lisa Baertlein/File Photo Purchase Licensing Rights, opens new tab

June 3 (Reuters) - Washington state has agreed to pay U.S. law firm Munger, Tolles & Olson up to $2.5 million for legal work on its lawsuit seeking to block Kroger's (KR.N), opens new tab $25 billion purchase of rival grocer Albertsons (ACI.N), opens new tab, contract records show.
The documents, obtained by Reuters through a records request, show two partners at the firm are charging the state more than $1,100 an hour.

Washington state sued Kroger in January, claiming its merger with Albertsons would drive up prices. The U.S. Federal Trade Commission and state of Colorado are also challenging the proposed transaction in other lawsuits.

Kroger and Albertsons have defended the deal and are fighting the cases.

Spokespeople for Munger Tolles and the Washington attorney general's office did not immediately respond to requests for comment.

It is not unusual for states to hire outside law firms for complex cases, though Munger Tolles is better known for its corporate defense work than for representing plaintiffs.

The 200-lawyer, Los Angeles-founded firm was first hired in August for antitrust advice, according to the records. Its name did not appear on the state's initial complaint against Kroger but was listed on more recent filings.

The maximum contract amount was increased from $1 million to $2.5 million since the work began last year, records show.

The Munger Tolles team includes Los Angeles-based antitrust partners Glenn Pomerantz and Kuruvilla Olasa. Both are charging $1,190 an hour.

The contract did not say if Munger Tolles gave the state a discount from its standard fees, but unrelated bankruptcy records show the firm's partners charging higher hourly rates. Firms often reduce their rates for government clients.

Pomerantz, who did not immediately respond to a request for comment, has worked on other government matters while at Munger.

He was lead trial counsel in a lawsuit from California and other states challenging T-Mobile's now-completed acquisition of Sprint. In 2011, he represented the U.S. Justice Department when it stopped AT&T's purchase of T-Mobile.
Pomerantz is defending Google in a lawsuit "Fortnite" maker Epic Games filed in San Francisco challenging the tech giant's rules over its app store Play.

In the Washington case, Kroger is represented by Arnold & Porter Kaye Scholer; Weil, Gotshal & Manges; and K&L Gates. Albertsons is represented by Debevoise & Plimpton; Dechert; and Williams & Connolly.

The case is State of Washington v. The Kroger Co et al, Superior Court of Washington for King County, No. 24-2-00977-9 SEA.

Read more:

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Reporting by Mike Scarcella

Our Standards: The Thomson Reuters Trust Principles. , opens new tab

Securities Law News

June 4, 2024, 2:18 AM PDT

Law Firms Start Training Summer Associates on Using Generative AI

By Justin Wise

- K&L Gates, Orrick, Dechert add artificial intelligence programs
- Training comes as AI predicted to automate some lawyer tasks

Bloomberg Law News 2024-06-04T11:05:08485625202-04:00

Law Firms Start Training Summer Associates on Using Generative AI

By Justin Wise 2024-06-04T05:18:23000-04:00

- K&L Gates, Orrick, Dechert add artificial intelligence programs
- Training comes as AI predicted to automate some lawyer tasks

Some Big Law firms are now making summer associates learn the ins and outs of generative AI as they begin integrating what's considered to be a game-changing technology for the profession.

K&L Gates, Dechert, and Orrick Herrington & Sutcliffe have incorporated training on the technology for this year's class of summer associates, teaching them how to use research and chatbot tools now being used by the firms. The programs offer a window into what some firms believe artificial intelligence will mean for those now entering the profession.

Future junior lawyers won't be replaced by AI, as some fear, but they will need to harness it to be successful, said Brendan McDonnell, a K&L Gates partner and member of the firm's AI solutions group. That includes understanding how to effectively interact with generative AI chatbots to unearth the most useful information for clients, he said.

"That's the whole idea about the training program: You need to teach people how this is going to impact the way they come to work," said McDonnell. While AI will automate many tasks, he said, it's also going to open up new lines of legal practice while freeing up new professionals' time to learn and master the complex work they went to law school for.

Most firms are still in an experimentation phase when it comes to deploying generative AI chatbot and research tools. Firms' use of the tech is also dependent on clients' openness to it. "We're in a transition period," said Alex Su, the chief revenue officer at Latitude Legal, a global flexible legal staffing firm. "It's hard to say there's going to be a huge impact in how law firms staff in the near-term."

Still, legal experts caution that future lawyers need to address the technology.

"It used to be that a lawyer was sufficiently tech savvy if she knew her way around Word and Westlaw," said Nora Freeman Engstrom, the co-director of the Deborah L. Rhode Center on the Legal Profession at Stanford Law School. "Those days are over. In order to offer top-tier legal services in the 21st century, lawyers need facility with a suite of sophisticated tech-based tools."

There's an apparent marketing component as well for the firms. Summer associate programs—roughly the equivalent of a paid summer internship that typically leads to a full-time job offer—have long been part of an effort for law firms to promote their brand to law students while fostering a recruiting pipeline. A generative AI training "sends a great marketing signal" about the firm's commitment to a new technology, said Su.

The "devil's in the details" for this type of training, especially when it involves those entering the profession, said Michele DeStefano, a professor at the University of Miami Law.

"The biggest issue is even if they know how to use AI, if they don't have the substantive law background, you can't discern whether you got a good answer," she said.

Prompt Engineering

K&L Gates and Orrick each partner with tech learning platform AltaClaro for firmwide trainings on subjects such as "prompt engineering," regarded as the science of interacting with generative AI models and how the technology works.

AltaClaro is working with 15 AmLaw200 firms on generative AI trainings, said CEO Abdi Shayesteh, though Orrick is the only one that has incorporated those programs in its summer associate training, beginning last year.

Orrick said the first week of this year's program included a training on prompt engineering, in addition to a day dedicated to seminars and ideas sessions around generative AI.

"It's going to be incredibly important for new lawyers to understand what technologies are available and how to use them," said Kathleen Orr, Orrick's head of practice innovation. She noted AI tools in use by Orrick include DraftWise, a drafting and negotiation assistant, Kira, an AI contract analyzer, and WestLaw's Precision, an AI-assisted research tool.

K&L Gates' summer associate class will go through firm-led generative AI trainings and be introduced to CaseText's Co-Counsel, a legal AI assistant the firm is already using for areas such as case research and summarizing depositions, said McDonnell. The firm will later match each associate with a lawyer identified internally as a generative AI "power user" to use the technology in their day-to-day work.

"We hope that's kind of going to give them a good mix of theory and practice," said Carolyn Austin, K&L Gates' director of practice innovation.

Dechert, for its part, is doing something similar. The firm will focus on one-on-one training between a summer associates and attorneys who are using AI tools in their work, said Thor Alden, Dechert's associate director of innovation.

Alden noted the program highlights how legal training is "fundamentally" changing. But he said the tools aren't replacing the firm's assessment of legal skills.

"When you're thinking of a summer associate, one of your main goals is to assess whether the firm wants to hire you, and that should ultimately be driven by legal capabilities," he said.

Protecting the Brand

For both experienced and young lawyers, the biggest warning sign that comes with the new territory is the documented accuracy problems, or hallucinations, of AI models. An infamous example is two New York lawyers getting fined $5,000 last year after submitting a brief citing six nonexistent cases that one of the lawyers admitted were supplied by OpenAI's ChatGPT.

"A big challenge for all law firms will be trying to make sure that they can continue to think like lawyers," said McDonnell. "I mean, you can ruin the brand of a law firm if we don't actually make sure that the output is vetted."

Notwithstanding those risks, many law firms, traditionally slow movers when it comes to new technology, have embraced generative AI. Dechert launched its own internal chatbot, DechertMind, in April 2023. Wilson Sonsini has also created its own internal AI tool. Firms such as A&O Shearman and Paul Weiss are customers of the generative AI legal startup Harvey, which has received more than $100 million in funding to date.

"For the first time the legal industry is moving at a better pace and looking at how to adopt this technology," said AltoClaro's Shayesteh. "It's because they see the competitive advantage from those who adopt this the right way."

Bloomberg Law sells legal research tools and software, including some that make use of generative AI.

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NEWS

Quinn Emanuel, Paul Weiss Stock Up on Antitrust Talent in DC

Former FTC general counsel Kevin Arquit joined Quinn Emanuel from meat processing giant JBS, while former DOJ trial attorney Chris Wilson came to Paul Weiss from Gibson Dunn.

June 03, 2024 at 02:23 PM

Antitrust

Justin Henry
Reporter

What You Need to Know

- The head of legal at a meat processor joined Quinn Emanuel and a Gibson Dunn antitrust partner has taken a job at Paul Weiss. Both moves were announced Monday.
- Both D.C.-based antitrust moves come amid heightened efforts by law firms to stock up on antitrust capabilities amid a concerted effort by enforcement agencies.

As the corporate community faces an influx of antitrust scrutiny from federal agencies, Am Law 50 firms continue stocking up on competition partners based in the nation's capital.

Quinn Emanuel Urquhart & Sullivan and Paul, Weiss, Rifkind, Wharton & Garrison announced hires of Washington, D.C., antitrust partners Monday, each tasked with reviewing client deals for potential antitrust enforcement by regulators.

The former recruited the legal chief of longtime client and meat processor JBS USA to co-lead the firm's antitrust practice group, and the latter landed a Gibson, Dunn & Crutcher partner with a background at the Department of Justice's antitrust division.

Outgoing JBS chief legal officer Kevin Arquit started at Quinn Emanuel on Monday after establishing the compliance program for his former employer, he said in an interview.

And Chris Wilson, who scrutinized M&A deals from an antitrust perspective as a Department of Justice trial attorney for more than three years before practicing at Gibson Dunn for five, also just started at Paul Weiss.

"Antitrust agencies have moved beyond traditional antitrust theories and taken away some of the predictability for what types of actions they will take on," Arquit said. "Companies are seeing an increased need to be getting strong antitrust advice as they move forward in an uncertain environment."

Arquit's departure for Quinn Emanuel comes after three years at JBS USA in the newly created role of chief legal officer. In addition to setting up a compliance program, Arquit is credited with helping his former employer navigate a putative pork price-fixing class action case and COVID-era government inquiries about workplace safety conditions, according to Quinn Emanuel's announcement. He previously practiced at Kasowitz Benson Torres, Weil, Gotshal & Manges, and Simpson Thacher & Bartlett, after serving as general counsel for the Federal Trade Commission.

"This opportunity came along and it seemed to be the perfect situation because it's a law firm considered best by companies who consider going to trial a real possibility," Arquit said. "I will continue to have a relationship with colleagues at JBS."

In an email, a representative of JBS said Arquit will "continue to support the company in a consulting role moving forward."

Under his purview and the purview of co-chair Mike Bonanno, the antitrust and competition practice group at Quinn Emanuel is positioned to increase its representation of clients in regulatory and enforcement interactions with the federal government, in addition to the firm's long-standing work in private litigation, Arquit said.

Federal agencies' increased activity in competition matters is taking the form of scrutinizing private equity roll-ups, particularly in the health care space, Arquit said.

"This is in several entities that used to be local where private equity is making significant acquisitions that result in a broader ownership," he said. "[Regulators] have identified that as an area they are particularly active in."

He also pointed to the impact of corporate consolidation on labor markets. Historically, reducing labor costs as part of a merger was seen as pro-competitive because of the lower costs of goods and services that came as a result. But nowadays, regulators are increasingly examining the potential disadvantages to labor of a consolidating industry.

Arquit's move was announced on the same day as Paul Weiss' announcement of the hiring of Wilson from Gibson Dunn. A representative for Paul Weiss said Wilson couldn't be reached for comment Monday.

In private practice at Gibson Dunn, Wilson advised on the antitrust aspects of several high-profile tie-ups, including Pioneer Natural Resources' $64.5 billion acquisition by ExxonMobil. During his time at the Department of Justice, Wilson investigated high-profile transactions involving CVS and Aetna, Bayer and Monsanto and Alaska Airlines and Virgin America, Paul Weiss' Monday announcement said.

In a statement released by the firm, Paul Weiss chairman Brad Karp said, "Chris will further deepen our leading global antitrust and merger clearance capabilities, at a time when our clients are navigating an increasingly complex antitrust landscape."

"I am thrilled to be joining Paul Weiss, a firm known for its inclusive and collaborative culture, and look forward to working with the firm's top-notch clients and incredibly talented lawyers," Wilson said in a statement released by the firm.

Representatives for Gibson Dunn didn't return a request for comment Monday.

RELATED STORIES

The Biden Administration Is Taking Antitrust Seriously. These Law Firms Are Defending Its Biggest Targets

Elon Musk sued over claims of Teslas' driving ranges

legalnewsline.com/stories/660330373-elon-musk-sued-over-claims-of-teslas-driving-ranges

June 4, 2024

Tesla CEO Elon Musk | Twitter

BOSTON (Legal Newsline) - Unsatisfied Tesla customers have filed a federal lawsuit against Elon Musk, claiming they were swindled out of their money.

A class action lawsuit was filed May 24 in U.S. District Court for the District of Massachusetts against Elon Musk, his revocable trust, and Excession LLC.

The plaintiffs, including Chris Watkins and several others from various states, allege that Musk engaged in deceptive practices regarding the driving ranges of Tesla vehicles.

The complaint claims that Musk overstated the driving ranges of Tesla cars by an average of 26%, manipulated dashboard range meters to display false information, and diverted consumer complaints to avoid accountability.

These actions allegedly allowed Musk to sell millions of vehicles at inflated prices, resulting in substantial financial gain for himself and his associated entities.

The lawsuit cites violations of multiple unfair trade practice laws and seeks compensation for damages incurred by Tesla owners who were misled about their vehicle's capabilities.

Plaintiffs argue that had they known the true driving ranges and deceptive practices involved, they would not have purchased the vehicles or would have paid significantly less.

Kenneth Quat of Quat Law Offices and Ryan Watstein of Watstein Terepka represent the plaintiffs.

Fox's Tubi sues law firm over 'manufactured' mass arbitration claims

reuters.com/legal/legalindustry/foxs-tubi-sues-law-firm-over-manufactured-mass-arbitration-claims-2024-06-03

David Thomas

REUTERS/Andrew Kelly Purchase Licensing Rights, opens new tab

June 3 (Reuters) - Fox Corp's (FOXA.O), opens new tab streaming TV subsidiary Tubi has sued a plaintiffs' law firm for allegedly manufacturing tens of thousands of meritless discrimination claims against it in the hopes of coercing a settlement.
In a lawsuit filed Friday, opens new tab in Washington, D.C., federal court, Tubi accused the firm Keller Postman of filing nearly 24,000 uninvestigated complaints of discrimination with private arbitration service JAMS, putting the streaming company on the hook for $48 million in upfront arbitration fees unless it settled.

Keller Postman in May demanded a total of $71.2 million to settle the claims, or $3,000 per claimant, Tubi alleged. It accused the firm of "weaponizing the arbitration process," calling it a pioneer of "mass arbitration" that relies on unethical client solicitation and abuse of arbitration fee provisions.

"Keller Postman manufactured claims against Tubi, failed to conduct an investigation to learn specific facts about each of its clients' claims, and filed tens of thousands of cookie-cutter claims to force Tubi into an arbitration that should not be taking place," the lawsuit said.

Keller Postman managing partner Warren Postman said in an email that Tubi "is pursuing a frivolous claim as a desperate tactic to evade liability for its discriminatory advertising practices."

Lawyers for Tubi declined to comment.

Tubi said Keller Postman filed 23,736 arbitration demands alleging discrimination through targeted advertising based on age, gender or sex. The demands did not identify the ads or the claimants' age, gender or sex, the lawsuit said.

JAMS changed its mass arbitration rules on May 1, the lawsuit said, limiting Tubi's filing fees to $7,500. But the streaming service said it is still unfairly shelling out tens of thousands of dollars in arbitration and attorney fees fighting Keller Postman's claims.

Keller Postman, which was founded in Chicago and has 75 lawyers, is not the first plaintiffs' law firm to be hit with lawsuits over its arbitration tactics in recent months.

French skincare company L'Occitane accused Zimmerman Reed of "manufacturing" mass arbitration claims under a California wiretapping law by having people visit the company's

website and claim their privacy was violated by third-party tracking software. The lawsuit and arbitration claims were dismissed by a federal judge in April. Zimmerman Reed denied wrongdoing.
WarnerMedia last month accused Zimmerman Reed lawyers of signing up as claimants in mass arbitration campaigns against the company involving two other plaintiffs' firms, in an attempt to get "improper insight" into how WarnerMedia responded to demands and settlement offers.
Zimmerman Reed managing partner Caleb Marker criticized WarnerMedia's effort to disqualify his law firm in an email to Reuters. The firm has not yet formally replied to WarnerMedia's petition in New York state court.

The case is Tubi Inc v. Keller Postman LLC, U.S. District Court for the District of Columbia, No. 1:24-cv-01616

For Tubi: Brandon Fox, Kelly Morrison and Sati Harutyunyan of Jenner & Block

For Keller Postman: Not yet available

Read more:

WarnerMedia seeks to disqualify mass arbitration firm, alleges ethics breaches
L'Occitane defeats mass arbitration bid in fight with consumer law firm
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Reporting by David Thomas

David Thomas
Thomson Reuters

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US judge won't move emission case out of California

DJ dailyjournal.com/articles/379017-us-judge-won-t-move-emission-case-out-of-california

Judge Jacqueline Scott Corley

A lawsuit against Ram and Jeep vehicle manufacturer FCA US LLC claiming some of its cars used defeat devices to cheat diesel emission standards will remain in California as a federal judge on Monday denied the company's bid to move the case to Michigan.

While there is no dispute that the Eastern District of Michigan, where FCA US is based, could exercise personal jurisdiction over the defendant, all the named plaintiffs reside in California and all of them purchased the at-issue vehicles in California, wrote U.S. District Judge Jacqueline Scott Corley in San Francisco.

"The defendants insist transfer is warranted in the interest of justice because the plaintiffs' venue choice was motivated by forum shopping ... The court is not swayed. This action involves California plaintiffs bringing California claims arising from advertisements they viewed in California about vehicles they purchased in California," the judge continued.

Several firms have brought claims on behalf of the plaintiffs, including Lieff Cabraser Heimann & Bernstein LLP and Baron & Budd PC. FCA US is represented by Klein Thomas Lee & Fresard while Cummins Inc., a major fuel system and engine equipment distributor, is defended by Wilmer Cutler Pickering Hale & Dorr LLP. None of the firms responded to an inquiry for comment.

According to the complaint, FCA US and Cummins together designed and sold 2013 to 2023 models of Ram 2500 and 3500 diesel trucks with unauthorized emission control devices, or defeat devices, that illegally bypass regulatory standards. The lawsuit was filed shortly after U.S. Attorney General Merrick Garland announced that Cummins would pay $1.675 billion to settle similar allegations, the largest civil settlement secured under the Clean Air Act.

"There is an exceptionally good reason that these laws and regulations exist and apply to vehicles with diesel engines: in 2012, the World Health Organization declared diesel vehicle emissions to be carcinogenic and about as dangerous as asbestos," wrote Roland Tellis of Baron & Budd. *Biederman et al. v. FCA US LLC et al.,* 3:23-cv-06640-JSC (N.D. Cal., filed Dec. 27, 2023).

FCA US and Cummins have not yet filed a motion to dismiss the claims. In their transfer motion, the defendants' attorneys unsuccessfully argued that Michigan was a more convenient venue for producing discovery and questioning witnesses.

"This is not a controversy local to the Northern District of California, but rather a putative nationwide class action premised on compliance with federal law and regulations that has local interest to the auto industry hub of Michigan if anywhere," read the motion.

#379017

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Toyota apologizes for cheating on vehicle testing and halts production of three models

courthousenews.com/toyota-apologizes-for-cheating-on-vehicle-testing-and-halts-production-of-three-models

Associated Press

TOKYO (AP) — Toyota Chairman Akio Toyoda apologized Monday for massive cheating on certification tests for seven vehicle models as the automaker suspended production of three of them.

The wide-ranging fraudulent testing at Japan's top automaker involved the use of inadequate or outdated data in collision tests, and incorrect testing of airbag inflation and rear-seat damage in crashes. Engine power tests were also found to have been falsified.

Toyota Motor Corp., based in Toyota city, central Japan, suspended production in the country of the Corolla Fielder, Corolla Axio and Yaris Cross. The deceptive tests were also found on discontinued models.

The company said the wrongdoing does not affect the safety of the vehicles already on roads, which include the Corolla subcompact and Lexus luxury vehicles.

"We sincerely apologize," Toyoda told reporters, bowing deeply and holding the position for several seconds, as is customary in Japan at news conferences where companies apologize for misbehavior.

A Japanese government investigation into Toyota began in January. The issue does not affect Toyota's overseas production.

Also Monday, Toyota's Japanese rival Mazda Motor Corp. reported similar irregular certification testing, and halted production of two models, the Roadster and Mazda 2. It said incorrect engine control software was used in the tests.

Mazda, based in the southwestern city of Hiroshima, also acknowledged violations on crash tests on three discontinued models. None of the violations affect the vehicles' safety.

Tokyo-based Honda Motor Co. also apologized Monday for improper tests, such as those on noise levels and torque, on a range of models. Honda said affected older models — the Accord, Odyssey and Fit — are no longer in production. The safety of the vehicles is not affected, it said.

Certification problems starting surfacing two years ago at Toyota group companies, truck maker Hino Motors and Daihatsu Motor Co. — specializing in small models — and Toyota Industries Corp., which makes machinery and auto parts.

Shinji Miyamoto, a Toyota executive overseeing customer satisfaction, said Toyota began looking into its own tests following the problems at the group companies.

The apparent unraveling of the testing systems at Toyota and its group companies is an embarrassment for an automaker that's prided itself for decades on production finesse and a corporate culture based on empowering workers to make "ever-better cars."

Toyoda, the grandson of the company's founder, suggested some certification rules might be overly stringent, noting such tests differed around the world. But he repeatedly said he wasn't condoning the violations.

"We are not a perfect company. But if we see anything wrong, we will take a step back and keep trying to correct it," said Toyoda.

He said the company may have been too eager to get the tests done and abbreviated them at a time when model varieties were burgeoning.

Toyota sells more than 10 million vehicles around the world.

—

By YURI KAGEYAMA AP Business Writer

Categories / Business, International

Ohioans deserve answers, not stalling from FirstEnergy: Editorial

NewsRoom

6/2/24 cleveland.com (Cleveland, Ohio) (No Page)

2024 WLNR 8268900

cleveland.com (Cleveland, OH)

June 2, 2024

Ohioans deserve answers, not stalling from FirstEnergy: Editorial

Editorial board; cleveland.com

FirstEnergy, the giant Akron power company that for decades was as well known for its Statehouse politicking as for selling electricity, is fighting a bid by Ohio's consumer watchdog for additional information pertaining to the House Bill 6 scandal, cleveland.com's Andrew Tobias recently reported.

At issue is a quest by the Office of Consumers' Counsel, which represents Ohio's residential utility customers at the Statehouse and in front of the Public Utilities Commission of Ohio, for information on FirstEnergy's internal investigation into the House Bill 6 affair, believed to be the biggest Statehouse scandal in Ohio's history.

For its role in that scandal, FirstEnergy agreed in 2021 to pay the $230 million federal penalty. And at the time it promised to turn over a new leaf.

"FirstEnergy's core values and behaviors include integrity, openness, and trust," Steven E. Strah, FirstEnergy's president and chief executive officer at the time, said then. "As an organization, we are redoubling our commitment to live up to these values and the standards that we know our stakeholders expect of us."

It appears, though, that FirstEnergy's real commitment is to keep secret the findings of an internal company investigation into the HB 6 affair. So far, the company has refused to reveal to the Ohio Consumers' Counsel (and the public) just what that investigation found.

The utility's refusal is in defiance of a federal judge's order to do so. So much for integrity, openness and trust.

You'll recall that HB 6 was pushed through the legislature in 2019 by then-House Speaker Larry Householder, a Republican from Perry County's Glenford, and immediately signed by GOP Gov. Mike DeWine. The bill was co-sponsored by Rep. Jamie Callender of Concord, and now-state Sen. Shane Wilkin, of Hillsboro, and won votes from some Democrats in both the Ohio House Representatives and the state Senate.

A provision in HB 6 was a state-imposed bailout by consumers of two money losing FirstEnergy nuclear power plants

FirstEnergy spent more than $60 million to help position Householder for the speakership by electing his allies to the House. Ultimate object: To pass HB 6.

In the aftermath of the scandal, Householder and former Republican State Chair Matthew Borges, of Bexley, landed in prison. FirstEnergy agreed to pay a $230 million penalty to the federal government in exchange for a deferred prosecution agreement.

The General Assembly repealed parts of HB 6 (the nuclear plant bailout), but parts remain in effect, including a provision that forces Ohio electricity customers to subsidize two money-losing coal-fired power plants, one of which is in Indiana.

Estimated ratepayers' tab so far to keep the plants out of the red: More than $248 million,

U.S. District Judge Algenon Marbley ordered in May that FirstEnergy should cough up the documents. But FirstEnergy has refused to release them to the Consumers' Counsel.

At issue, Tobias reported, are summaries by law firms Squire Patton Boggs and Jones Day of an investigation of the HB 6 affair they conducted at FirstEnergy's request.

The utility says it doesn't believe the investigative reports are subject to Marbley's order because they're shielded by an earlier PUCO order. In October 2021 the PUCO held that the documents "protected from disclosure by both attorney-client privilege and the attorney-work-product doctrine."

The Consumers' Counsel, in a filing with the PUCO, countered that a special master appointed by Marbley found that "FirstEnergy's internal investigation is not entitled to attorney-client privilege or work-product protections." And Marbley, in his ruling, also specifically overruled FirstEnergy's arguments that the investigation reports were shielded.

Ohioans deserve answers, Consumers' Counsel Maureen Willis said, and "not just empty words from FirstEnergy ... that it is 'redoubling' its commitment to 'integrity, openness, and trust.' FirstEnergy's secret internal investigation reports would provide some answers. The reports should be released."

Willis is correct. Ohioans - consumers, voters, investors - deserve full disclosure about the HB 6 affair. Not corporate hairsplitting.

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Company: FIRSTENERGY CORP.; PLAIN DEALER PUBLISHING CO.

News Subject: (Consumer Protection (1CO43); Legal (1LE33))

Industry: (Electric Utilities (1EL82); Electric Utilities Generation (1EL37); Electric Utilities Generators (1EL15); Energy & Fuel (1EN13); Nuclear Electric Power (1NU69); Utilities (1UT12))

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

Language: EN

Other Indexing: (Office of Consumers' Counsel; Public Utilities Commission of Ohio; Ohio House Representatives; Ohio Consumers'; General Assembly; FirstEnergy; The Plain Dealer)

Word Count: 734

Citron Research's Left shorts GameStop more than 3 years after getting squeezed

reuters.com/technology/citron-researchs-left-shorts-gamestop-more-than-3-years-after-getting-squeezed-2024-06-04

Pranav Kashyap

Traders work under signage for GameStop Corp. (NYSE: GME) on the trading floor at the New York Stock Exchange (NYSE) in Manhattan, New York City, U.S., August 8, 2022. REUTERS/Andrew Kelly/File Photo Purchase Licensing

June 4 (Reuters) - Andrew Left, the founder of Citron Research, is again betting against retail investors' favorite GameStop (GME.N), opens new tab, which is back in the limelight after super-bull "Roaring Kitty" Keith Gill resurfaced online following a three-year hiatus.
Citron was forced to close its short position in GameStop at a loss in 2021, after retail traders ganged up against heavily shorted stocks on online forums to drive rallies, which cost bearish investors billions of dollars.

"It's fun to go back into the fire. The market dynamics have changed and I'm not as exposed as I was," Left told Reuters on his current position in GameStop.

"The first time, three-and-a-half-years ago, (GameStop) was a cultural phenomenon, and that's played out by now. The company has deteriorating financials and is a good short."

Left did not disclose the size of his GameStop position but said it was "significantly lower" from last time. Bloomberg News on Monday reported, opens new tab Left's latest short position on the videogame retailer.

GameStop did not immediately respond to Reuters' request for a comment.

After getting squeezed by the GameStop surge in 2021, Left — who spent two decades building his brand as one of the world's best-known short sellers — had said he would turn his back on publicly detailing companies' shortcomings.
Since then, Citron has published reports that are critical of companies and those that outline why the stock is worth buying.

"I've still been shorting stocks, I just haven't been as vocal," Left said.

"Short selling is a dying business. Before you could find a piece of information on the internet that maybe nobody else had, but now retail investors have become good gumshoes."

Short sellers borrow stock and sell it in the market hoping that they can buy them back at a lower price and pocket the difference.

GameStop shares dropped 5.9% on Tuesday, a day after a surge as Gill, a key figure in the 2021 meme stocks frenzy, revealed a bet on the company in a Reddit post.

The Technology Roundup newsletter brings the latest news and trends straight to your inbox. Sign up here.

Reporting by Pranav Kashyap and Medha Singh in Bengaluru; Editing by Shilpi Majumdar

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Catching Up With Delaware's Chancery Court

By **Leslie A. Pappas**

Law360 (June 3, 2024, 5:25 PM EDT) -- The judicial officers of Delaware's Court of Chancery pushed out tons of decisions last week, along with a second round of new rules, letters of concern over pending changes to the state's corporate law code, and even a social media post or two. But stockholders and Delaware business owners kept the court's docket as full as ever, filing new cases involving Tesla CEO Elon Musk, FTX cryptocurrency claims, "cannabis regulatory systems," and a business partner fallout.

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

Top News

Debate over proposed amendments to the Delaware General Corporation Law intensified last week as questions from Chancellor Kathaleen St. J. McCormick over the **"rushed nature of the proposal"** went public, a corporate law professor **urged a quick passage** of the bill, and Vice Chancellor J. Travis Laster **ramped up his social media posts** with new articles and surveys about the proposed changes.

Last week also saw a **second round of amendments** to Chancery Court rules, building on a multiyear effort that **began in September** to modernize the rules and bring them closer to the Federal Rules of Civil Procedure.

In the Courtroom

Vice Chancellor Nathan A. Cook **had a lot of questions** for Alabama trucking and transport management company TA Dispatch LLC over its lawsuit against four former executives of now-defunct Celadon Group Inc., pushing the company at a hearing in Wilmington for more specifics about its allegations against the four executives.

Decisions

Vice Chancellor Lori W. Will found that the ex-CEO of 3D building imaging company Matterport Inc. is **entitled to $79 million in damages** for share lockup losses, a little more than half of the $141 million he sought.

Vice Chancellor Sam Glasscock III **thinned out** a tangled technology investor brawl that emerged from Quantum Computing Inc.'s acquisition of QPhoton LLC in May 2022, dismissing individual parties from the case and narrowing claims against the two companies.

Vice Chancellor Glasscock also **dismissed a suit** from a T-Mobile US Inc. shareholder who alleged that the telecom company's directors had allowed it to suffer multiple data breaches because they were beholden to Deutsche Telekom, the company's largest stockholder.

Vice Chancellor Paul A. Fioravanti Jr. **refused to dismiss any counts** of a suit filed by investors in the special-purpose acquisition company that took commercial space venture Momentus Inc. public in August 2021, and determined that the case will be judged on plaintiff-friendly entire fairness standards.

Vice Chancellor J. Travis Laster **found certain provisions** of a stockholder agreement between insurance distributor BRP Group Inc. and its founder Lowry Baldwin "facially invalid" under Delaware law, but dismissed most of a stockholder's challenges, finding that a consent and defense agreement established after stockholder Ruby Wagner sued provided a work-around for most alleged problems.

And in a **142-page opinion**, Vice Chancellor Laster **partially denied and partially granted** motions to dismiss a shareholder's suit alleging that private equity firm Lone Star Funds was overly involved in Foundation Building Materials Inc.'s $1.4 billion merger with private equity firm American Securities LLC.

Vice Chancellor Morgan T. Zurn **dismissed** a suit that an Energy Transfer affiliate filed against four of its former officers over a pipeline deal side agreement, finding it untimely.

And in a virtual bench ruling, Chancellor McCormick found that Microsoft Corp. is **entitled to a quick court declaration** on whether its $68.7 billion acquisition of Activision Blizzard Inc. was valid, adding that a pension fund shareholder that challenged the deal also has a right to be involved in the process.

New Cases

An affiliate of Connecticut hedge fund Silver Point Capital **sued** a cryptocurrency trading firm and a buyer of FTX bankruptcy claims, alleging that they breached a sale agreement for "a highly unique and lucrative customer claim" in the FTX bankruptcy case.

A Tesla stockholder **launched a derivative suit** seeking damages from co-founder Elon Musk and seven company directors over Musk's sales of more than $7.5 million in stock in late 2022, allegedly supported by inside information and neglect of a 6-year-old federal consent agreement.

A Florida-based provider of "cannabis regulatory systems" that bought a barcode labeling software business **sued the tech company's founder** for breach of contract, alleging that he undermined the buyer's business after the deal closed and he was fired. The case is Metrc Inc. et al. v. Marcus Estes, case number 2024-0584.

Samvit Ramadurgam, the co-founder of Forge Global Inc., which **went public in a $2 billion merger** in 2022, **sued for books and records** on a separate company he established with his now estranged former friend and business partner Sohail Prasad, saying he needed the documents to investigate potential wrongdoing and mismanagement. The lawsuit follows a related suit in January over another **soured joint venture**, Destiny XYZ. The newest case is Ramadurgam v. S2 Capital LLC, case number 2024-0570.

Scopia Capital Management LP and affiliates have sued R&Q Insurance Holdings and its parent, challenging terms of a proposed sale of its accredited program management business to an interest of Onex Corp. The case is Scopia Capital Management LP et al. v. Randall & Quilter PS Holdings Inc. et al., case number 2024-0506.

Ongoing Disputes

Delaware's chancellor **sought assurances** from Elon Musk and Tesla Inc. that the company won't flee Delaware jurisdiction — and a potentially massive stockholder attorney fee dispute — by rushing a shareholder vote on a struck-down $56 billion compensation plan for Musk and Tesla's proposed reincorporation in Texas.

Get It Together

Teams led by Block & Leviton, Bernstein Litowitz and Robbins Geller **filed competing pitches** for the lead plaintiff role in a consolidated class suit seeking damages from World Wrestling Entertainment founder Vincent McMahon and others in connection with the company's $21 billion merger with the Endeavor Group.

Fees, Fees, Fees

In a telephonic bench ruling, Chancellor McCormick said that two Lyvly Inc. directors who sued the THC-beverage startup for unpaid legal fees may not get a second chance to argue for more fees-on-fees than what the court already awarded in March, **denying their motion for reconsideration**.

Quotable

"The proposal has moved forward at a pace that forecloses meaningful deliberation and input from diverse viewpoints. It reflects the broadest set of substantive amendments since the 1960s. It is controversial. It preempts the Delaware Supreme Court's opportunity to act as the final arbiter of Delaware law." -- Chancellor McCormick, in a letter to the Delaware State Bar Association's executive committee in April, questioning the "rushed nature" of proposed amendments to Delaware's corporate law statutes.

--Additional reporting by Isaac Monterose, Jeff Montgomery, Emily Lever, Katryna Perera, Rose Krebs and Sydney Price. Editing by Marygrace Anderson.

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Humana Hit With Investor Suit Over Post-COVID Costs

By **Katryna Perera**

Law360 (June 3, 2024, 10:06 PM EDT) -- Health insurer Humana and two executives were hit with an investor class action on Monday, claiming they misled shareholders about the cost of pent-up demand for medical treatments once the COVID-19 pandemic subsided.

The Iron Workers Local 401 Annuity Fund filed a **complaint** against Humana, its CEO Bruce Broussard, and its Chief Financial Officer Susan Diamond on behalf of a proposed class of individuals and entities who purchased or acquired Humana common stock between July 27, 2022, and Jan. 24, 2024.

The start of the class period coincides with Humana's announcement of its financial results for the second quarter of 2022, according to the complaint. The annuity fund says Humana reported "outperforming" adjusted earnings per share and attributed it to "better-than-anticipated medical cost trends in the company's individual Medicare Advantage and Medicaid businesses."

The annuity fund says the defendants continued to assure investors and analysts that "in-patient unit costs and non-in-patient trends [were] coming in lower than [the company] initially estimated" and that "'there really isn't pent-up demand that [the company has] to be concerned about' negatively impacting utilization rates and profitability," throughout the class period.

However, the reality and truth about the pressures on Humana's profitability began to emerge in June 2023 when one of Humana's primary competitors, UnitedHealth Group, revealed it was seeing increased levels of outpatient care activity and suggested that higher utilization rates were due to "pent-up demand or delayed demand being satisfied."

"UnitedHealth further explained that it was 'seeing very strong volumes' in certain areas, including ambulatory surgery, and an overall 'higher number of cases that are being performed,'" the complaint says.

According to the complaint, the similarities between Humana and UnitedHealth's businesses and the likelihood that Humana was also suffering from increased utilization and costs due to pent-up demand caused Humana's stock price to fall $57.63 per share, more than 11%, from $512.63 per share on June 13, 2023, to close at $455 per share on June 14, 2023.

Three days later, Humana suffered another stock price drop when it confirmed seeing similar trends to UnitedHealth.

"Although the company reaffirmed its full year insurance segment benefits expense ratio guidance (a key measure of profitability) of between 86.3% and 87.3%, it warned investors that it 'now expects to be at the top end of this full year range' — i.e., reduced profitability," the complaint says. "Additionally, Humana explained that it now 'assume[d] it will continue to experience moderately higher-than expected trends for the remainder of the year.'"

On this news, Humana's stock price fell by $18.20 per share, or almost 4%, from $463.85 per share on June 15, 2023, to close at $445.65 per share on June 16, 2023, according to the complaint.

Humana then announced additional increases in its expected medical costs, and in August 2023, it revealed the utilization rate increases it disclosed in June had now stabilized at new higher levels, the complaint says.

A third stock drop occurred in January, according to the complaint, when Humana preliminary released its financial results for the fourth quarter and full year of 2023 and "shocked" investors by revealing its benefits expense ratio increased to roughly 91.4% for the fourth quarter of 2023 and approximately 88% for the full year.

"As a result, the company's 2023 adjusted EPS were only $26.09 per share, or more than $2 per share less than what the company had predicted in November 2023," the complaint says. "In response to this announcement, the price of Humana common stock fell $35.78 per share, or approximately 8%, from a close of $447.76 per share on Jan. 17, 2024, to close at $411.98 per share on Jan. 18, 2024."

The annuity fund says a final stock drop occurred in late January when Humana announced a loss for the fourth quarter of 2023 and said it expected the higher level of medical costs to continue throughout 2024.

On this news, Humana common stock declined an additional $47.04 per share, or nearly 12%, from $402.40 per share on Jan. 24, 2024, to close at $355.36 per share on Jan. 25, 2024, according to the complaint.

The suit seeks damages, attorney fees and a jury trial.

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

The Iron Workers Local 401 Annuity Fund is represented by Gregory V. Varallo of Bernstein Litowitz Berger & Grossmann LLP and Naumon A. Amjed, Ryan T. Degnan and Jonathan Z. Naji of Kessler Topaz Meltzer & Check LLP.

Counsel information for the defendants was not immediately available.

The case is Iron Workers Local 401 Annuity Fund v. Humana Inc. et al., case number 1:24-cv-00655, in the U.S. District Court for the District of Delaware.

--Editing by Drashti Mehta.

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Vietnamese EV Co. Hit With Investor Suit Over SPAC Merger

By **Sydney Price**

Law360 (June 3, 2024, 8:51 PM EDT) -- Vietnamese electric car manufacturer VinFast Auto and several executives have been hit with a proposed class action alleging they exaggerated the strength of VinFast's business model and prospects following a merger with a special-purpose acquisition company last year.

According to the suit filed by shareholder Meng Qian on Friday, VinFast completed a **$27 billion merger** with blank-check company Black Spade Acquisition Co. last August. Qian alleges the merger's offering documents, as well as statements VinFast made to investors, were false and misleading because they did not disclose that the company lacked sufficient capital to execute its purported growth strategy and would be unable to meet its 2023 delivery targets.

Qian claims the merger was overvalued due to the alleged misrepresentations. Shares of VinFast declined when news outlets, analysts and the company itself acknowledged VinFast's financial struggles, the suit alleges.

In addition to VinFast, the suit's individual defendants include VinFast's founder and CEO Pham Nhat Vuong, former CEO Le Thi Thu Thuy, former Chief Financial Officer David Mansfield, and four others who signed the registration statement filed in connection with the merger in June 2023.

The class period begins Aug. 15, 2023, the day after the merger was completed. That day, VinFast's ordinary shares began publicly trading on the Nasdaq Stock Market, according to the suit. For several weeks following the company's debut, the defendants made misleading statements about VinFast's business, strengths and long-term growth strategies, the suit claims.

For example, the suit states, the company said on Oct. 5, 2023, when announcing third-quarter financial results that it expected to deliver between 40,000 and 50,000 vehicles in full-year 2023. On the same day, Mansfield told investors that VinFast had a "concrete action plan" to accelerate its global expansion, the complaint states.

Several days later, on Oct. 15, 2023, the market reacted negatively to an article regarding VinFast's growth outlook, the suit claims. Bloomberg reported that VinFast plans to "aggressively move'' into southeast Asian markets and expects to raise "a lot of capital" to fuel its global expansion strategy, the suit states. The company will rely on support from its parent company Vingroup JSC and its founder Vuong for the next 18 months, the article stated, according to the suit.

On this news, VinFast's shares declined $1.45, or 18%, to close at $6.53 per share on Oct.16, 2023, according to the complaint.

The suit alleges that shares declined again in January when VinFast announced it failed to meet guidance expectations it had affirmed in October. VinFast only delivered 34,855 electric vehicles in 2023, falling short of its annual target of 40,000 deliveries. The defendants attributed the sales shortcoming to economic headwinds that led to slow electric vehicle adoption rates in certain regions, the complaint states.

In response, several market analysts commented on VinFast's "disappointing" announcement, the suit claims.

On this news, VinFast's shares declined 13 cents per share, or 2%, to close at $5.64 per share on Jan. 18, according to the complaint.

Following the announcement of lower-than-expected electric vehicle sales, the defendants continued making misleading statements regarding VinFast's growth capacity, the suit alleges. On April 17, VinFast announced it delivered 9,689 electric vehicles for the quarter, about 10% of the 100,000 total electric vehicle deliveries it had targeted for the year.

On this news, VinFast's shares declined 35 cents, or 11%, to close at $2.72 per share on April 17.

"The Q1 2024 press release showed continuing weakness in demand and difficulties in generating additional sales, contrary to prior representations … Less than a year after the SPAC merger, the truth concerning VinFast's poor financial health was fully on display," the suit states.

The suit claims VinFast and the individual defendants acted with scienter, or actual knowledge of wrongdoing or reckless disregard, and violated the Securities Act and the Exchange Act. Qian seeks damages with pre- and post-judgment interest.

Counsel for Qian declined to comment on the suit. A representative of VinFast did not immediately respond to requests for comment on Monday.

Qian is represented by Phillip Kim and Laurence M. Rosen of The Rosen Law Firm PA and Brian Schall of The Schall Law Firm.

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

The case is Qian v. VinFast Auto Ltd. et al., case number 1:24-cv-03956, in the U.S. District Court for the Eastern District of New York.

--Editing by Emily Kokoll

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ChampionX Investor Sues Over $7.8B Deal Proxy

By **Sydney Price**

Law360 (June 3, 2024, 9:58 PM EDT) -- A shareholder of energy technology provider ChampionX Corp. has sued the company and its board of directors in an attempt to enjoin a proposed acquisition by another energy-focused technology company, SLB, alleging that ChampionX filed a deficient proxy statement.

Texas-based ChampionX develops oil and gas technology that it distributes to companies worldwide, according to investor John Thompson's suit, filed in New York state court on Friday. SLB **agreed in April to purchase** ChampionX in an all-stock transaction worth nearly $7.8 billion, according to the suit.

Thompson alleges that ChampionX and its nine board members breached their fiduciary duties by filing an incomplete and misleading proxy statement in connection with the merger on May 15. It failed to disclose certain financial projections and analyses, as well as potential conflicts of interest faced by company insiders, the suit claims.

Thompson said it is imperative investors receive this critical information before June 18, when stockholders will vote on the proposed transaction.

"[T]here exists an imbalance and disparity of knowledge and economic power between [the defendants] and the public stockholders of ChampionX which makes it inherently unfair for them to benefit their own interests to the exclusion of maximizing stockholder value," the suit states.

The suit alleges that the proxy did not disclose line items underlying several metrics ChampionX used for its financial forecasts, such as levered and unlevered free cash flow and adjusted earnings before interest, taxes, depreciation and amortization.

The filing also does not include complete financial analyses that support the fairness opinion provided by ChampionX's financial adviser Centerview Partners, the suit claims, and is missing information regarding the discounted cash flow analysis, analyst price target analysis and precedent premiums paid analysis, among other things.

The suit further claims the proxy omits the details of any employment and retention-related discussions and negotiations that occurred between ChampionX insiders and SLB.

Thompson seeks an order enjoining the defendants from closing the merger and requiring them to disclose to shareholders all material financial information allegedly omitted from the proxy.

"The defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligation toward plaintiff and the other stockholders of ChampionX," the suit states.

Counsel for Thompson and a representative of ChampionX did not immediately respond to requests for comment on Monday.

Thompson is represented by Brian D. Long of Long Law LLC and Richard A. Acocelli of Acocelli Law PLLC.

Counsel information for ChampionX was not immediately available on Monday.

The case is Thompson v. ChampionX Corporation et al., index number 652791/2024, in the Supreme

Court of the State of New York, County of New York.

--Editing by Peter Rozovsky.

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Chancery Suit Over $1.4B Building Co. Merger Survives Trims

By **Jeff Montgomery**

Law360, Wilmington, Del. (June 3, 2024, 5:23 PM EDT) -- The CEO, controlling investor and board members of specialty building product maker Foundation Building Materials Inc. must face Delaware Court of Chancery breach of fiduciary duty claims filed by stockholder after a $1.4 billion company sale, a Delaware vice chancellor has ruled.

Vice Chancellor J. Travis Laster found that claims against CEO Ruben D. Mendoza and directors can move toward trial, along with a claim against four directors for breaches while serving on a purportedly independent special committee. That panel vetted the deal with private equity firm Lone Star Funds under terms that included a $74.8 million accelerated payout to Foundation Building Materials' controlling shareholder, an affiliate of Lone Star Fund IX (US) LP.

According to the vice chancellor's 142-page decision, the fund, CEO and six directors "faced a conflict of interest for purposes of deciding between continuing to operate the company as an independent entity versus selling the company" to an affiliate of American Securities LLC and triggering an early termination payment expense.

"It is reasonably conceivable that those defendants will have to prove that the merger was entirely fair relative to the alternative of having the company remain independent," the opinion says.

All of the directors also must face potential trial for alleged breaches of the duty of disclosure, although a similar claim was dismissed against the fund. Mendoza, meanwhile, was found ineligible for protection, or exculpation, from the claims.

Four members of a purportedly independent special committee that assessed the deal likewise argued without success that they should be shielded by exculpatory protections, although the vice chancellor found that the complaint "barely states a non-exculpated claim" against the group.

"They did astoundingly little, approved an inherently conflicted compensation arrangement for their financial advisor, and acted as if a sale of the company was a fait accompli. The record includes real time indications of excessive deference to the fund," the vice chancellor wrote.

In addition, the court found financial adviser Evercore Group LLC aided and abetted breaches of fiduciary duty by the special committee.

Under the disputed deal, an affiliate of American Securities LLC bought Foundation Building Materials, which makes specialty building products including wallboard and suspended ceiling systems, for $19.25 per share in cash, according to a statement.

The vice chancellor acknowledged it is reasonably conceivable that the special committee members "consciously disregarded their duties and deferred to what the fund wanted."

"Exculpation remains a strong defense," he added, "and the special committee defendants may be entitled to judgment in their favor at a later stage."

Pension fund shareholder Firefighters' Pension System of the City of Kansas City, Missouri Trust filed its lawsuit in Delaware's Court of Chancery in May 2022, alleging that FBM's $19.25-per-share acquisition violated shareholders' appraisal rights by not fully disclosing the termination and release agreement payout.

Vice Chancellor Laster agreed to keep the appraisal claim alive, finding that "based on the company's disclosures, it is reasonably conceivable that the notice was mailed too late — at least for some stockholders."

Rejected was a breach of fiduciary duty claim against the fund, its board members and Mendoza for allegedly using the early termination fee to divert merger consideration from unaffiliated stockholders.

"The fund had a contractual right to receive the payment. The fund was entitled to stand on its contract right," the vice chancellor concluded in a decision that also rejected claims that the group pursued an unreasonable sale process.

Council for the parties did not immediately respond to requests for comment.

Firefighters' Pension System of the City of Kansas City, Missouri Trust is represented by Lee D. Rudy and J. Daniel Albert of Kessler Topaz Meltzer & Check LLP and Michael Hanrahan, Samuel L. Closic, Jason W. Rigby, and Seth T. Ford of Prickett Jones & Elliott PA.

Evercore Group LLC is represented by Andrew G. Gordon, Alexia D. Korberg, Daniel A. Mason, and Elizabeth Wang of Paul Weiss Rifkind Wharton & Garrison LLP.

Foundation Building Materials Inc., American Securities LLC, and ASP Flag Intermediate Holdings Inc. are represented by John A. Neuwirth, Evert J. Christensen Jr., Matthew S. Connors, Tania C. Matsuoka of Weil Gotshal & Manges LLP and Bradley R. Aronstam, S. Michael Sirkin, Elizabeth M. Taylor of Ross Aronstam & Moritz LLP.

RBC Capital Markets LLC is represented by Barry G. Sher of Paul Hastings LLP, Kevin P. Broughel of Katten Muchin Rosenman LLP and Daniel G. Paterno and A. Thompson Bayliss of Abrams & Bayliss LLP.

Lone Star Fund IX (US) LP and defendants Chris Meyer, Rafael Colorado, Chad Lewis, Chase Hagin, Maureen Harrell and LSF9 Cypress Parent 2 LLC are represented by Brian M. Lutz, George B. Adams III, and Colin B. Davis of Gibson Dunn & Crutcher LLP and Elena C. Norman and James M. Yoch Jr. of Young Conaway Stargatt & Taylor LLP.

Ruben D. Mendoza is represented by William B. Chandler III, Brad D. Sorrels, Benjamin M. Potts and Leah E. Leȯn of Wilson Sonsini Goodrich & Rosati PC.

Special committee defendants Matthew J. Espe, Fareed A. Khan and James F. Underhill are represented by Raymond J. DiCamillo, Matthew D. Perri and Kevin M. Kidwell of Richards Layton & Finger PA.

The case is Firefighters' Pension System of the City of Kansas City, Missouri Trust v. Foundation Building Materials Inc. et al., case number 2022-0466, in the Court of Chancery of the State of Delaware.

--Editing by Marygrace Anderson.

Correction: This story has been corrected to reflect that RBC co-counsel Kevin P. Broughel is at Katten Muchin Rosenman LLP.

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Self-Driving Tech Co. Beats Investor Suit Over Chip Pic Gaffe

By **Emilie Ruscoe**

Law360 (June 3, 2024, 10:37 PM EDT) -- Autonomous vehicle technology company Luminar Technologies Inc. no longer faces a proposed investor class action alleging it passed off an image of a competitor's technology as its own after a Florida federal judge found that the allegedly stolen image wouldn't actually be relevant to reasonable investors.

In a Friday **order** in Orlando federal court, U.S. District Judge Julie S. Sneed found that Luminar investor John Alms didn't show in his suit how the tech manufacturer's alleged misuse of a picture of a different company's computer chips in an investor presentation would have misled investors about what Luminar's chips could actually do.

"Plaintiff leaves unexplained how the small, professional-looking graphic on a single slide communicated to investors any impression regarding the quality, capabilities, or 'sophisticat[ion]'" of the pictured chip, Judge Sneed said Friday.

Alms' suit claimed that Luminar's share price fell by about 9% from just about $10 to close below $8 following a February 2023 investor event it held, focused in part on the company's remote sensing light detection and ranging, or lidar, technology.

At the February 2023 event, Alms claimed, the company showed a slide featuring "an impressive color image of a sophisticated PIC chip design purporting to be Luminar's proprietary design used in its new Iris+ sensor."

Alms cited a subsequent media report in which another lidar company, called Lidwave, accused Luminar of lifting its chip imagery for the presentation — a claim that Luminar refuted after removing the image from its investor-day materials online, describing the image it used as "a generic graphic of a photonic integrated circuit."

On Friday, Judge Sneed said that "the misleading graphic is immaterial in this particular context because it does not convey anything about the capabilities of Luminar's product."

The judge pointed out that Alms asserted that Luminar's own chip as appearing "far less sophisticated" in Luminar's actual proprietary chip imagery, noting that reasonable investors likely wouldn't look to such photos to make a judgment call about the "company's trade secret chip architecture."

The company's leadership also faces shareholder derivative claims over the same alleged misrepresentations in Delaware federal court. That matter had been administratively closed pending resolution of Alms' suit.

Luminar went public in December 2020 via merger with a special purpose acquisition company. At the time, the company said it raised $590 million from the merger.

Alongside Luminar, Alms' complaint names its CEO Austin Russell, its Chief Technology Officer Jason Eichenholz and Michael McAuliffe, the CEO of Luminar subsidiary Luminar Semiconductor, which made its photonic integrated circuit chips.

On Monday, a representative for Luminar told Law360 via emailed statement, "We are pleased with the outcome of this case and that the court agreed that we have not materially misled our shareholders."

"To the contrary, we work hard to establish a relationship of trust and transparency with our shareholders while we design and manufacture some of the most advanced semiconductors in the world," the Luminar representative added.

Representatives for Alms did not immediately respond to requests for comment Monday.

Plaintiff John Alms is represented by James M. Wilson Jr. and Robert W. Killorin of Faruqi & Faruqi LLP and Jonathan R. Gdanski and Jeffrey L. Haberman of the Schlesinger Law Offices PA.

Luminar and the individual defendants are represented by James N. Kramer and Alexander K. Talarides of Orrick Herrington & Sutcliffe LLP and John M. Brennan Jr. of GrayRobinson PA.

The case is John Alms v. Luminar Technologies Inc. et al., case number 6:23-cv-00982, in the U.S. District Court for the Middle District of Florida.

--Editing by Dave Trumbore.

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Vanguard Investors Want Class Cert. In Tax Liability Fight

By **Anna Scott Farrell**

Law360 (June 3, 2024, 5:00 PM EDT) -- Investors accusing Vanguard and its top brass of violating its fiduciary duties by triggering a sell-off of assets in target retirement funds in an attempt to lower fees, leaving smaller investors with massive tax bills, asked a Pennsylvania federal court to certify them as a class.

In **a request** Friday, the proposed class of 12 investors said certification was warranted partly because they can't financially justify pursuing individual lawsuits against a behemoth like Vanguard, the world's largest provider of mutual funds, which manages assets of more than $8 trillion. The case, which accuses the company and its leaders of failing to protect investors in retail funds, is made up of shareholders whose relatively small individual damages wouldn't justify the expense of hiring their own attorneys, the group said.

The proposed class is also large, spanning all U.S. investors who held shares of Vanguard's investor target retirement funds in taxable accounts and received capital gains distributions from those funds in 2021, the group said. The mutual funds affected contained "hundreds of billions of dollars of assets."

The handful of investors **who first filed** the putative class action alleged in their March 2022 complaint that investors in "set-it-and-forget-it" funds were forced to sell off as much as 15% of their assets, leaving those with taxable accounts holding the bag. The latest amended complaint, filed in March, included a dozen investors from 11 states, adding a new plaintiff from Massachusetts, which in 2022 reached a $6.25 million settlement with a Vanguard subsidiary after an investigation into the sell-off by state regulators.

In November, a federal judge **allowed the complaint** to move forward against Vanguard's leaders including the company's trustees and its top four leaders named as defendants in the suit, including CEO Mortimer Buckley. But the court ruled that the defendants lacked evidence to carry one of the claims — for breach of fiduciary duty — against Vanguard itself.

While the investors claimed the company's representations to shareholders showed a fiduciary relationship, the court found that the allegations ultimately showed that Vanguard advises the trust and independent trustees in its day-to-day operations.

When Vanguard lowered the minimum investment amount required to access its institutional, lower-fee funds in December 2020, about 8,500 401(k) retirement plans, with 3.2 million participants, left its retail fund to join, according to the November opinion. In order to leave one fund for another, investors first needed to redeem their shares. While target-date funds usually keep enough money on hand to satisfy such redemptions, the retail fund had so many redemption requests it was forced to sell an unprecedented amount of assets, which generated capital gains that by law had to be distributed to the shareholders who didn't leave the retail fund.

The investors have argued that Vanguard needlessly hurt its smaller, taxable investors to favor its larger retirement plans when it lowered the minimum investment amount of an institutional fund from $100 million to $5 million, causing a rush of investors that forced the sell-off.

On Friday, the investors said the funds at issue realized unprecedented capital gains distributions in 2021, exceeding 4,000% of previous levels.

"These outsized distributions were the direct and foreseeable result of defendants' decision to lower the threshold for institutional funds," the proposed class said.

Vanguard could have lowered the fees in the investor funds by restructuring or reclassifying shares, the group said. Vanguard could have also combined the two funds and tiered the fees within those funds, the group said.

"Either option would have avoided triggering a massive sell-off and harming taxable investors," the investors said.

Representatives of the trustees and Vanguard did not respond to requests for comment.

Representatives of the investors declined to comment.

The investors are represented by Gregory Dovel, Julien Adams, Jonas B. Jacobson, Christin Cho, and Simon Carlo Franzini of Dovel & Luner LLP, by Erica L. Stone and Jacob A. Goldberg of The Rosen Law Firm and by Kenneth J. Grunfeld of Kopelowitz Ostrow Ferguson Weiselberg Gilbert.

Vanguard and its officers are represented by Brandon Fetzer, Elliot Greenfield and Maeve O'Connor of Debevoise & Plimpton LLP and Samuel W. Silver of Welsh & Recker PC.

The trustees are represented by Andrew J. Ehrlich, Daniel J. Kramer and Kamil R. Ammari of Paul Weiss Rifkind Wharton & Garrison LLP and by Francis P. Devine III and Michael E. Baughman of Troutman Pepper Hamilton Sanders LLP.

The case is Verduce v. Vanguard Chester Funds, case number 2:22-cv-00955, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by P.J. D'Annunzio. Editing by Roy LeBlanc.

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Del. Court Tosses SPAC Suit Targeting $2.4B EV Co. Deal

By **Katryna Perera**

Law360 (June 3, 2024, 6:52 PM EDT) -- A Delaware vice chancellor has tossed a suit filed by an investor of a blank-check company challenging the $2.4 billion take-public deal it completed with electric-vehicle company Canoo Holdings Ltd., saying the investor's allegations of poor performance are not enough to assert claims for breaches of fiduciary duties.

Vice Chancellor Lori W. Will issued an opinion on Friday saying plaintiff Paul White Jr. has "lost sight" of pleading "fundamentals" and has "failed to plead a reasonably conceivable breach of fiduciary duty claim" against the defendants.

White filed his initial complaint in 2022, claiming that the board of special purpose acquisition company Hennessy Capital Acquisition Corp. IV and its sponsor breached their fiduciary duties to shareholders by failing to disclose that Canoo's business model would change after the merger, which prevented Hennessy's stockholders from making a "fair" share redemption choice.

However, Vice Chancellor Will said Friday that White's claims rest entirely on post-closing developments, and it cannot be reasonably inferred from the suit's allegations that Hennessy's board knew about upcoming changes to Canoo's business model prior to the merger closing.

"It cannot reasonably be inferred that Hennessy's directors were aware that Legacy Canoo's business model would change in the future," the opinion states. "The complaint and documents it incorporates belie any reasonable inference that Legacy Canoo's business plan changed pre-closing."

The Vice Chancellor also rejected White's attempt to bolster his claims with documents from the U.S. Securities and Exchange Commission concerning alleged wrongdoing by Canoo.

"The SEC documents could perhaps support an inference that Legacy Canoo officers misrepresented the strength of the company's projected contract engineering revenue. But the documents make it unreasonable to infer that Hennessy's directors and officers knew or could have known about these issues," the opinion states.

The Vice Chancellor added that she "cannot conclude that the plaintiff has stated a claim for breach of fiduciary duty against Hennessy fiduciaries for failing to disclose information that was kept from them."

Canoo announced it was **going public** via a merger with Hennessy Capital in August 2020, in a $2.4 billion deal, part of a wave of SPAC mergers that took place that year.

Following the deal, in March 2021, Canoo held an earnings call and announced that its board had decided to "deemphasize" the company's subscription model and engineering services business line.

According to Friday's opinion, several analysts "expressed surprise at the shift," and Canoo's executive chairman stated that the company's management before the merger had been "a little more aggressive than [he] would [have] be[en] in their [public] statements" and had lacked an "experienced public company team."

After the earnings call, Canoo's stock price dropped more than 21% to $9.30, according to the opinion. Then, in April 2021, Canoo disclosed that it was the subject of an SEC "fact-finding inquiry" related to the Hennessy merger and Canoo's past operations and revenues.

Last August, it was announced that Canoo and two of its former executives had agreed **to pay more than $1.5 million** to settle SEC charges that they made inaccurate revenue projections and failed to disclose executive compensation totaling almost $1 million.

Another lawsuit by an investor against Canoo in California federal court, **with similar claims** to White's, is ongoing.

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

White is represented by P. Bradford deLeeuw of deLeeuw Law LLC and by Robert C. Schubert and Willem F. Jonckheer of Schubert Jonckheer & Kolbe LLP.

The defendants are represented by Kevin R. Shannon, Christopher N. Kelly and Daniel M. Rusk IV of Potter Anderson & Corroon LLP and by James W. Ducayet, Heather Benzmiller Sultanian and Thomas H. Collier of Sidley Austin LLP.

The case is In Re Hennessy Capital Acquisition Corp. IV Stockholder Litigation, case number 2022-0571-LWW, in the Court of Chancery of the State of Delaware.

–Additional reporting by Renee Hickman. Editing by Emily Kokoll.

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Ex-Autonomy CEO 'Had 500M Reasons' For Fraud, Jury Told

By **Bonnie Eslinger**

Law360 (June 3, 2024, 10:57 PM EDT) -- Autonomy's ex-CEO Michael Lynch "had 500 million reasons to defraud HP," since he reaped $500 million by selling his company to the tech giant at an inflated price, a federal prosecutor argued Monday during closings for the businessman's criminal trial, while Lynch's lawyer told jurors, "HP was not a victim."

The closing arguments, which began Monday and will continue Tuesday, wrap an 11-week trial over accusations that Lynch and former Autonomy finance vice president Stephen Chamberlain worked together with others at the British software company to deceive HP about Autonomy's business and financial health in the years leading up to the Silicon Valley giant's purchase of the British software company for $11.7 billion in 2011.

Lynch and Chamberlain are each facing 15 felony counts of fraud and conspiracy that could send them to prison for more than 20 years.

Assistant U.S. Attorney Robert Leach told jurors at the start of his closing argument that the evidence presented by the government at trial "leaves no reasonable doubt that the defendants' false and misleading statements were material to HP and its decision to buy Autonomy."

There were others involved in the conspiracy, Leach said, including former Autonomy Chief Financial Officer Sushovan Hussain and Autonomy's former U.K.-based **general counsel Andrew Kanter**.

"Dr. Lynch, of course, was at the top. He was in control. He domineered over Autonomy as you heard," Leach said. "And Mr. Hussain was his chief lieutenant."

Chamberlain's job was to lie to the auditors and help Hussain manage Autonomy's earnings and meet revenue goals, the prosecutor said.

"The heart of this case is about false and misleading statements about Autonomy's revenue, about its gross margins … about its organic growth," Leach told jurors.

The scheme also involved misrepresenting and concealing Autonomy's low-margin hardware sales.

The accounting fraud involved "different tricks that Autonomy would use to cook its books," Leach said.

Those included side deals with resellers to generate last-minute sales, backdating deals in order to claim them within a certain financial quarter and "round-trip" transactions in which Autonomy would make a sale to a customer that it also bought from, the prosecutor said.

And while Autonomy has pointed to the work of its Deloitte auditors to suggest that everything was on the up and up, those auditors were lied to and not given complete information, Leach said.

The hardware sales started to ramp up in 2009, the prosecutor said, when Autonomy's core software product for gathering data — IDOL — was seeing its sales weaken, Leach said.

The prosecutor reminded jurors that Autonomy's former U.S. chief financial officer, Brent Hogenson, testified at trial that he was fired after **blowing the whistle** to British regulators about accounting irregularities at the company.

According to the case presented by Lynch and Chamberlain, Hogenson **was fired** for fraudulent activity in the U.S. payroll department and problems unearthed in the finance department — but that was nothing more than the defendants digging up dirt on Hogenson, Leach said.

"This was about finding a pretext in order to fire him for raising the allegations that he was raising," the prosecutor said.

Ultimately, the deceit was motivated by greed, the government lawyer said.

During the trial, jurors were presented with evidence that Lynch took home more than **$500 million** from the sale of his Autonomy Corp. stock when HP acquired the company and Chamberlain reaped about $1.8 million.

"I urge you follow the money," Leach said. "Dr. Lynch had 500 million reasons to defraud HP."

Lynch and Chamberlain are also responsible for the acts of their co-conspirators, the prosecutor said.

"Mr. Chamberlain wants to persuade you that he's just a paper pusher," Leach said. "And that it's all Sushovan Hussain who makes the decisions."

Chamberlain knew what was going on, the prosecutor said.

"If Steve Chamberlain knows it's wrong, and he's helping, he's responsible," Leach said. "The fact that Sushovan Hussain is the ultimate decider is irrelevant."

A lawyer for Lynch, Brian Heberlig of Steptoe LLP, underscored that Lynch **took the stand** in his own defense when he didn't have to and the propriety of the deals the government put before jurors were mostly matters of accounting interpretation.

"Let's start with Mike Lynch. We didn't have to call him," Heberlig said. "He answered every issue the prosecution threw his way, during this 10-week ordeal, he couldn't have been more compelling or believable."

And while the government showed jurors emails from Lynch suggesting he was a demanding boss who got angry and sometimes swore at those who worked for him, those aren't crimes, Heberlig said.

"If that makes the CEO of a large multinational corporation guilty of a crime well, we better open up the doors to the jail and march the CEOs in," Lynch's lawyer said.

Lynch was demanding of others but also himself, Heberlig said.

"Drive, ambition and excellence are a far cry from cheating and fraud," the lawyer said. "Autonomy was about excellence and success. It was never about winning at all costs."

The evidence also showed that the busy CEO wasn't involved in most of the deals discussed at trial, Lynch's lawyer said.

Hogenson was a red herring, Heberlig later told jurors.

"You can reasonably conclude the government bet its case on Brent Hogenson and boy did he fail to deliver," Lynch's lawyer said. "He was dishonest and incompetent."

When the extent of the fraud in the U.S. payroll department became known, Lynch's lawyer said, Hogenson rushed to **cover himself.**

"He whistle-blowed to try to cover his own ineptitude," Heberlig said.

Toward the end of his closing argument, Lynch's lawyer said his client just can't be held responsible for the actions of others at Autonomy, as there has to be criminal intent.

"It's not enough just to be in their vicinity or to be their boss," Heberlig said.

Jurors should also consider if Lynch actually had any motive to defraud HP.

"Mike was a wealthy man before HP came along. His Autonomy stock was worth hundreds of millions of dollars before he even met anyone from HP," Lynch's lawyer said. "He didn't need HP, and he didn't need their money."

Heberlig also reminded jurors that they were told at trial that Lynch had agreed to join HP after the acquisition, which meant he would be there when the new owner started looking at Autonomy's books and records.

"He couldn't hide anything from them," Heberlig said. "The whole thing is preposterous."

That included the fact that Autonomy sold a sliver of low-profit margin software in addition to its software. But HP already knew about that, Lynch's lawyer said.

"They didn't care about the hardware," Heberlig said. "HP is not a victim."

Closing arguments continue on Tuesday.

A year after it purchased Autonomy, HP announced that it had to write down the value of the company by billions as a result of the alleged fraud.

The current trial follows the **2018 conviction** of Hussain on related federal charges. He was sentenced to five years in prison and ordered to pay $4 million in fines.

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

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

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

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

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