

Bloomberg Law News 2024-06-07T15:13:33878285819-04:00

Brokerage Firm Must Defend Suit Over Terra Collapse in Illinois

By Ufonobong Umanah 2024-06-07T14:38:14000-04:00

- Jump faces a securities class in California federal court
- Private, public factors lean against transfer, judge says

Brokerage company [Jump Trading LLC](#) lost its bid to have an investor lawsuit over its alleged role in the 2022 Terra cryptocurrency collapse transferred to a federal court in California.

The balance of private and public factors lean against transferring the lawsuit that seeks to hold Jump Trading and an executive liable for alleged violations of the Commodity Exchange Act, Judge [Nancy L. Maldonado](#) of the US District Court for the Northern District of Illinois ruled Thursday.

Jump and the president of its cryptocurrency arm Kanav Kariya sought to transfer the case to the Northern District of California, where the trading firm is facing a proposed securities class action by those who purchased Terraform cryptocurrency assets.

The case arises from the collapse of the cryptocurrency system of digital assets sold by Do Kwon and his company Terraform Labs Pte. Ltd. Jump Trading was an early partner and financial backer of Kwon's Terraform and it entered into agreements to provide "market-making services" for transactions in LUNA, UST, and aUST assets, the opinion said.

Proceeding in Illinois will "likely be quicker," in part because in California Jump Trading appealed that court's denial of a motion to compel arbitration, Maldonado said. The appeal will be fully briefed by July 2024, and the US Court of Appeals for the Ninth Circuit takes an average of 13 months to resolve a case from its initial appeal notice to a final order, Maldonado said.

Though the events of the alleged scheme are national and international in nature, Maldonado said "this District Court plainly has an interest in resolving a controversy involving two of its residents," Jump Trading and Kariya.

Jump Trading's and Kariya's location leaned against transfer. California might be more convenient for

some witnesses, but there's "no guarantee that this case would be ultimately consolidated" with the California case, and it has become "exceedingly common practice" to perform remote depositions and electronic discovery, Maldonado said.

Selendy Gay PLLC and Robbins Geller Rudman & Dowd LLP represented Kim. Zuckerman Spaeder LLP and Croke Fairchild Duarte & Beres represented Kariya. Kobre & Kim LLP and O. Long Law LLC represented Jump Trading.

The case is [Kim v. Jump Trading LLC](#) , N.D. Ill., No. 1:23-cv-02921, 6/6/24 .

To contact the reporter on this story: Ufonobong Umanah in Washington at uumanah@bloombergindustry.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

Law firm defends work in \$5.6 billion card fee case after disclosing fake claims | Business Information & News | FE

 today.westlaw.com/Document/I96a51be0250211ef875a86dffc1e1d20/View/FullText.html

Law firm defends work in \$5.6 billion card fee case after disclosing fake claims

6/7/24 REUTERS LEGAL 19:04:44

•

Copyright (c) 2024 Thomson Reuters

•

Mike Scarcella

REUTERS LEGAL

•

June 7, 2024

(Reuters) - A law firm that earlier said it unknowingly submitted fake claims as part of a \$5.6 billion settlement with Visa and MasterCard told a U.S. judge on Thursday that other parties had also submitted fraudulent material in the case.

Responding to a request for more information from the Brooklyn judge overseeing the antitrust case, New York-founded Milberg Coleman Bryson Phillips Grossman said it had terminated its relationship with nearly 2,000 merchant plaintiffs since disclosing the false claims last month.

The firm said it was being singled out unfairly and that other companies "and/or" law firms had also submitted fraudulent claims in the case.

"It is a very unfortunate part of the settlement process, particularly in a settlement as large as this one," Milberg's filing said, without naming any company or firm.

Visa and Mastercard agreed to the \$5.6 billion settlement in 2018 to resolve claims from millions of merchants who said they had overpaid credit and debit card fees. Milberg did not help craft the settlement but had sought part of the fund for its clients.

Representatives from Milberg and attorneys for the retailer class did not immediately respond to requests for comment. Visa and Mastercard denied any wrongdoing in agreeing to settle.

Last month, attorneys for the class of 12 million retailers said they learned about fraudulent claims submitted by Milberg and raised their concerns to the court.

"If Milberg knows of fraud, it should alert class counsel or the court," the class attorneys wrote in Thursday's filing, jointly submitted with Milberg.

Milberg in its May response said it had withdrawn dozens of "proofs of authorization" that are part of the claims process for clients. The firm blamed a third-party "referral" source, and the firm said it was no longer pursuing any new clients in the Visa and Mastercard case.

The class attorneys at plaintiffs' firms **Robbins Geller Rudman & Dowd** and Robins Kaplan said the court should consider punishing Milberg, or referring it to the U.S. Justice Department.

Milberg said it was making an effort to be "fully transparent" with the class attorneys. It said the idea of punishing the firm or referring it to law enforcement was "absurd."

The case is Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, U.S. District Court, Eastern District of New York, 1:05-md-01720-MKB-VMS.

End of
Document

© 2024 Thomson Reuters. No claim to original U.S. Government
Works.

Page Printed From:

<https://www.law.com/2024/06/07/ftx-investors-object-to-disclosure-statements-alleged-undervaluing-of-crypto-omitting-investigation-into-am-law-100-firm/>



NOT FOR REPRINT

FTX Investors Object to Disclosure Statement's Alleged Undervaluing of Crypto, Omitting Investigation Into Am Law 100 Firm

"It is extraordinary that in this case, there were so many important details that were not included in the disclosure statement that are key to the ultimate decision of whether you approve the plan or not," said Adam Moskowitz, managing partner at the Moskowitz Law Firm.

June 07, 2024 at 11:42 AM

Cryptocurrency



Michael A. Mora



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

Plaintiffs in the FTX Trading Ltd. multidistrict litigation raised several objections to the disclosure statement in Delaware bankruptcy court, including that the reorganization plan allegedly severely undervalues customer recoveries and that it omits that an independent investigation was recommended into an Am Law 100 firm.

Adam Moskowitz, managing partner at the [Moskowitz Law Firm](#) in Coconut Grove, Florida, and David Boies, chairman of [Boies Schiller Flexner](#) in New York, represent the MDL plaintiffs, thousands of creditor victims of FTX against the defendant and debtor, FTX and its affiliates.

"The issue of a disclosure statement is extremely routine because even the debtor wants to provide all of the information to the relevant parties," Moskowitz said. "It is extraordinary that in this case, there were so many important details that were not included in the disclosure statement that are key to the ultimate decision of whether you approve the plan or not."

Anthony Alden, a partner at [Quinn Emanuel](#) in its Los Angeles office and one of the attorneys for the FTX in the U.S. Bankruptcy Court for the District of Delaware, did not respond to a request for comment.

Among the qualms advanced by the MDL plaintiffs in the disclosure statement objection is the debtor's claims of a full recovery with interest for customer creditors, while the debtors allegedly ignored that offering 129% recovery of the value of their cryptocurrency accounts as of the petition date is not the same as a full economic recovery.

The reason for that is that cryptocurrencies have significantly risen in value since the petition date, the plaintiffs argue. For example, Bitcoin's market price at the petition date was approximately \$17,000, but it has risen by over 300% to a market value of over \$71,000 as of the filing of this article.

The MDL plaintiffs argue in the filing that no matter how much customers might recover under the plan in these Chapter 11 cases, "the recovery will never be enough to give customers the true economic value of what they lost at the hands of the debtors' criminal prepetition management."

“That’s where the MDL comes in,” the MDL plaintiffs wrote. “It’s a process under which criminally victimized customers may assert additional means of recovery and additional bases for damages that promises to bring customers far closer to complete economic recompense than the debtors’ plan ever could.”

The MDL plaintiffs wrote that the disclosure statement should describe and explain the interplay between the preliminary order of forfeiture money judgment entered in the [Sam Bankman-Fried](#) criminal case and the debtors’ own assertions regarding the assets constituting the estates.

They argue that the disclosure statement is difficult to understand for non-lawyer creditors. For example, one sentence is 495 words long and there are a maze of defined terms that prevent “even a vague sense of who and what are being released,” such as in the excluded party and causes of action section, they claim.

“This is especially true here because neither Sullivan & Cromwell nor any other of the Debtors’ professionals are included in the defined term ‘Excluded Party,’ despite that the MDL Plaintiffs have sued 52 different non-debtor defendants including Sullivan & Cromwell and other FTX professionals for prepetition misconduct,” they claim.

For instance, the debtors have not included in the disclosure statement any discussion of the Examiner Report, which identified several potential causes of action, which could provide a recovery to creditors, and noting several open questions compel additional investigation, including into the Am Law 100 firm, they claim.

A spokesperson for Sullivan & Cromwell declined to comment.

Finally, the MDL plaintiffs take issue with the disclosure statement’s alleged silence regarding what happens to the plan if the property of the estate question is resolved adversely to the debtor. That question centers around whether customers owned the cryptocurrency the debtors held on their behalf, as stated in the FTX terms of use, or if the cryptocurrency was the property of FTX, rendering the cryptocurrency property of the bankruptcy estate.

That decision has precedent in the Celsius and Coinbase Global Inc. bankruptcies, in which the courts held that, per each company’s terms of use, the cryptocurrency deposited by the customers of both Celsius and Coinbase constituted property of those debtors’ bankruptcy estates, respectively.

“If the court decides that all of the crypto was not the ownership of the estate, are you going to claw back over \$1 billion from the professionals?” Moskowitz claimed. “What happens in the extraordinary circumstance if the value goes up 300%?”

Ryan Reiner, a partner at [Shutts & Bowen](#) in its Tampa office and an uninvolved expert in bankruptcy litigation, noted that after reviewing the over 200-page disclosure statement and the 21-page objection filing, he has never seen a quintillion dollars worth of claims.

“The MDL plaintiffs have a great argument because you should be holding this specific asset and that specific asset, according to your terms, has increased in value and the limited case law supports that,” Reiner said. “But the practicality is there is not enough money to support that with \$11.2 billion in administration costs and other fees.”

Read the Objection:

Case 22-11068-JTD Doc 16822 Filed 06/05/24 Page 1 of 21

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	Case No. 22-11068 (JTD)
FTX TRADING LTD., <i>et al.</i> ,	Chapter 11
Debtors	(Jointly Administered)
	Related Docket Nos. 4863 and 15521

FTX MDL PLAINTIFFS’ OBJECTION TO
DISCLOSURE STATEMENT

The Moskowitz Law Firm, PLLC and Boies Schiller Flexner LLP, solely in their capacity as co-lead counsel for, and on behalf of, thousands of plaintiffs (the “**MDL Plaintiffs**”) in the multi-district litigation matter captioned *In re FTX Cryptocurrency Exchange Collapse Litigation*, Case No. 23-md-03076, pending in the U.S. District Court for the Southern District of Florida (the “**MDL**”), object to the Debtors’ proposed *Disclosure Statement for Debtors’ Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and its Affiliated Debtors and Debtors-*

NOT FOR REPRINT

Copyright © 2024 ALM Global, LLC. All Rights Reserved.

Law

Serco faces landmark shareholder lawsuit over mischarging scandal

US-style securities trial over stock-price drop set to be first of its kind in England



Lawyers say that if the Serco case proceeds it could help determine the prospects of success for other claims and establish important legal precedent © FT Montage: Mark Richardson/Alamy

Alistair Gray in London 7 HOURS AGO



Leading institutional investors are set to face off against Serco in court next week over an overcharging scandal that caused the UK outsourcing company's share price to plummet, in what would be the first case of its kind in England to go to trial.

Allianz and Russell Investments are among a group of shareholders taking part in the lawsuit against the London-listed company, which stems from investment losses they sustained after Serco was found to have overcharged the UK government for the electronic tagging of offenders.

The case, which barring a last-minute settlement will be heard by the High Court in London on Monday, comes as US-style shareholder lawsuits against other UK companies gather pace. Glencore, Barclays and BT are among those facing such claims over stock-price drops.

“The Serco case represents a potential turning point for securities litigation claims in this jurisdiction,” said Andrew Poulton, a partner at Linklaters in London who is not involved in the case.

Despite a wave of lawsuits, none has yet gone to trial. Several investors groups have reached settlements in such cases, including in a case against Serco’s rival outsourcer G4S that had been scheduled to be heard earlier this year.

If the Serco case proceeds, lawyers said, it could help determine the prospects of success for other claims and establish important legal precedent.

Chris Warren-Smith, partner at Morgan, Lewis & Bockius, the US-headquartered law firm that is representing investors suing Serco, said his clients were “seeking confirmation that the law holds companies accountable to their shareholders for serious misconduct that destroys shareholder value”.

Serco said in a statement: “We don’t consider the claimants’ allegations to have merit. We will therefore be robustly defending their claims against us.”

The UK government accused Serco in 2013 of overcharging it on an electronic tagging contract by tens of millions of pounds, including billing it for offenders who had died or had left the country. Serco agreed to [repay](#) £68.5mn to the government at the end of that year.

The scandal led to an investigation by the Serious Fraud Office, which [fined](#) Serco £19.2mn plus costs in a deferred prosecution agreement in 2019 for three offences of fraud and two of false accounting committed between 2010 and 2013. The SFO’s prosecution of two former Serco executives collapsed during its [2021 jury trial](#), however.

It was one of several scandals that hit the outsourcing group’s reputation, costing it other government contracts and pushing it to the brink of collapse. Serco shares lost about 70 per cent of their value during 2013 and 2014.

Serco's shares collapsed 2014 and have never fully recovered

Share price, pence



Source: LSEG via markets.ft.com

The Serco investors claimed in their lawsuit that they suffered loss and damage as a result of “misleading or untrue statements and omissions” in the company’s annual reports and other documents.

“The fact that a company or companies within Serco Group had been systematically overcharging and defrauding its biggest and most important customer over many years was highly material.”

Serco, represented by Clifford Chance, said in its defence filed with the court that there were “fundamental deficiencies in the claimants’ pleaded case”.

These included that the individuals alleged to have known about the overcharging were not involved in the publication of Serco’s annual reports or other relevant published documents.

There is “no causal link between the allegedly untrue or misleading statements or omissions said to have been relied upon by the Claimants and the loss claimed by them”, Serco’s defence added.

[Copyright](#) The Financial Times Limited 2024. All rights reserved.

Bloomberg Law News 2024-06-07T14:56:30513185542-04:00

Tesla Investor's Suit Targets Vote on Texas Move, Musk Pay (1)

By Jef Feeley2024-06-07T10:59:18494-04:00

- Suit alleges Tesla is misleading shareholders ahead of vote
- Fighting over billionaire's record-setting pay plan continues

A Tesla Inc. shareholder sued to challenge an upcoming proxy vote about whether the electric-car maker should move its corporate home to Texas and re-approve a \$56 billion pay package for co-founder Elon Musk that was thrown out by a Delaware judge.

Donald Ball, who owns more than 28,000 Tesla shares, argues the company is violating its corporate charter by saying it needs only a bare majority of shareholders' votes in the June 13 proxy fight to move its state of incorporation away from Delaware.

Ball also accuses the world's third-richest person of trying to force investors into voting for the Texas move and his resurrected pay package with threats about shifting artificial intelligence assets away from Tesla.

Read More: Elon Musk's Pile of Lawsuits Span Autopilot, Toxic Speech, AI

"Musk has engaged in strong-arm, coercive tactics to obtain stockholder approval" of both proxy questions, Ball said in his 21-page complaint filed Thursday in Delaware Chancery Court. He sued Tesla directors along with Musk.

John Reed, a Wilmington, Delaware-based lawyer representing Tesla, had no immediate comment. An email to Tesla's media relations department wasn't immediately returned.

Record-Setting Pay

The suit is the latest twist in the fallout from Delaware Chancery Judge [Kathaleen St. J. McCormick's](#) decision in January voiding the record-setting executive-compensation plan that Tesla's board

approved for Musk in 2018. McCormick ruled that the board had conflicts of interest and that Tesla failed to properly disclose the plan's details.

McCormick will consider July 8 whether to approve a request for billions of dollars in legal fees from lawyers for the Tesla investor who challenged Musk's pay.

Musk has been threatening to shift Tesla's corporate home from Delaware to Texas in the wake of McCormick's ruling and Tesla called the proxy vote to try to get investors to back the move and the reinstatement of his pay plan. Texas is in the process of setting up a new business-court system that some legal experts believe would be more friendly to corporate titans such as Musk.

Musk already moved other companies he runs out of Delaware for incorporation purposes in the wake of McCormick's ruling. He has encouraged business owners to shift their incorporations out of the state, which is still the corporate home to more than 70% of Fortune 500 companies. The state's chancery court is the premier US venue for corporate litigation and its judges are recognized as business-law experts.

'Entirely Repeal'

Ball argues that because Tesla is seeking to "entirely repeal" the company's current charter with the Texas move, it's misleading for shareholders to be told in proxy disclosures that majority approval is sufficient. He says Tesla needs more than 66% of shareholders to sign off under Delaware law and is asking a judge to void the outcome of the vote if it falls short.

The investor also alleges Tesla directors failed to fully disclose the implications of re-approving Musk's pay, including tax implications for the EV maker. The tax hit could wipe out two years of profits for the EV maker, totaling more than \$27 billion, according to the suit. Among the directors named in the suit are board Chairman **Robyn Denholm** and directors **Kimbal Musk** and **James Murdoch**. Kimbal Musk is Elon Musk's brother while Murdoch is the son of media magnate **Rupert Murdoch**.

Musk also is violating the rules governing proxy votes by threatening to step down as Tesla's [technoking](#) — his preferred title — and take its AI assets with him, according to the suit. Musk has been openly campaigning for a reinstatement of his pay package.

This week, Musk confirmed he diverted artificial intelligence chips away from Tesla to his X Corp. social media platform and xAI Corp. venture. The chips are made by Nvidia Corp. Musk said they were redirected because Tesla had no place to store them.

Ball also seeks a ruling that Tesla directors failed to properly disclose enough details of the incorporation shift and re-ratification of Musk's pay so that investors can "make a fully informed decision" on those issues. The case is likely to be assigned to McCormick, who has presided over several cases over Musk's actions in recent years.

The case is Ball v. Tesla, 2024-0621, Delaware Chancery Court (Wilmington).

(Updates with tax implicates tied to vote in ninth paragraph)

To contact the reporter on this story:

Jef Feeley in Wilmington, Delaware at jfeeley@bloomberg.net

To contact the editors responsible for this story:

Misyrlena Egkolfopoulou at megkolfopoul@bloomberg.net

Peter Blumberg, Anthony Aarons

© 2024 Bloomberg L.P. All rights reserved. Used with permission.

Tesla Inc

Tesla says lawyers who sued over Musk pay package deserve \$13.6mn rather than \$5.2bn

Carmaker argues that victorious plaintiffs' firm deserves far less for its work to throw out chief's \$56bn package



Elon Musk has threatened to devote more time to AI ventures elsewhere if he does not gain greater control of Tesla © Reuters

Stephen Morris in San Francisco and **Sujeet Indap** in Del Rio, Texas 4 HOURS AGO



Tesla has claimed in a court filing that a proposed \$5.2bn award for lawyers who launched a successful challenge to Elon Musk's pay package amounted to "the highest hourly rate in history" and that they deserve only \$13.6mn.

In January, a Delaware court voided a proposed \$56bn pay package for Musk, saying it was improperly approved by the carmaker's board and had short-changed shareholders.

After the judgment, Greg Varallo, lead lawyer for the plaintiffs' law firm Bernstein Litowitz, requested an award of roughly 29mn shares in Tesla stock.

He argued that receiving that portion of the roughly 267mn net shares that Musk would otherwise have received was in line with recent Delaware precedents that guide how much lawyers get to keep of the "conferred benefit" to shareholders.

Tesla said in its filing on Friday that the supposed benefits from the original ruling were “therapeutic or unquantifiable”. It pointed out that the requested award, which was initially valued at \$5.6bn, would be 17 times larger than any fee in Delaware legal history and equal to the state’s entire 2024 budget.

The company also calculated that the sum was equivalent to \$288,000 an hour and would collectively make Bernstein Litowitz and two supporting law firms a top-three Tesla shareholder.

The “justification for this extraordinary request defies established Delaware case law, mangles basic economics, and seeks to evade entirely the fairness checks this court imposes on fees”, the company’s lawyers wrote in a court filing on Friday.

“This case did not require the Herculean efforts that might justify the highest hourly rate in history by many orders of magnitude,” the filing said.

It is the latest salvo in [Tesla’s](#) wider campaign to discredit and overturn the judge’s decision. Next week it is set to hold two votes at its annual meeting. The first seeks shareholders’ backing to restore the \$56bn award and the second would move the company’s domicile from Delaware to Texas.

At the time of [Musk’s](#) pay deal in 2018, Tesla took a \$2.3bn accounting charge on the package. Tesla argued that this could be considered the maximum conferred benefit to shareholders, citing other legal precedents to arrive at the far lower \$13.6mn figure.

Several small shareholders have also submitted “friend of the court” filings lobbying against Varallo’s historic request. Varallo declined to comment.

In Delaware, lawyers typically have to convince a court of how much value they added after a case is concluded to determine their fee.

The outcome of the vote at Tesla’s shareholder meeting next week is far from certain, and Musk’s future there may be at stake. If he loses, his ownership will remain at 13 per cent compared with more than 20 per cent if the award is granted. The billionaire — who also runs SpaceX and social media platform X — said he would prefer to develop future artificial intelligence products outside Tesla if he did not gain greater control.

Tesla's chair Robyn Denholm has said that it needs to climb "[Mount Everest](#)" to win the votes, in particular for the reincorporation to Texas, which has a higher threshold for success.

Making the task more difficult, influential proxy advisers Institutional Shareholder Services and Glass Lewis have both urged investors to vote against the "excessive" and "outsized" pay award. Additionally, many of Tesla's international shareholders have found it [difficult or impossible](#) to vote.

[Copyright](#) The Financial Times Limited 2024. All rights reserved.

Tesla objects to \$5.6 billion payout for lawyers who voided Musk's pay

 [reuters.com/business/autos-transportation/tesla-objects-56-billion-payout-lawyers-who-voided-musks-pay-2024-06-07](https://www.reuters.com/business/autos-transportation/tesla-objects-56-billion-payout-lawyers-who-voided-musks-pay-2024-06-07)

Tom Hals

Elon Musk, Chief Executive Officer of SpaceX and Tesla, walks after attending the opening of the 10th World Water Forum in Nusa Dua, Bali, Indonesia, May 20, 2024.

REUTERS/Johannes P. Christo Purchase Licensing Rights , opens new tab

WILMINGTON, Delaware, June 7 (Reuters) - The legal team that voided Elon Musk's record Tesla pay package deserves a tiny fraction of the \$5.6 billion legal fee they requested because their lawsuit provided almost no benefit for the company, the electric automaker argued in court papers on Friday.

Tesla (TSLA.O) , opens new tab said the legal team for Richard Tornetta, the shareholder whose lawsuit led to a January ruling voiding Musk's \$56 billion pay package, should be paid as little as \$13.6 million for their work, which began with a 2018 complaint.

Musk's remuneration is the most ever granted to a CEO in the U.S. at least.

Tesla also said if shareholders vote to ratify the voided pay package at the company's annual meeting next week, then the lawsuit's main benefit was to have informed investors of the flawed negotiation process for awarding pay so they could then correct it with a new vote.

"Importantly, undisputed market evidence confirms (the) plaintiff achieved little to no discernible value for Tesla or its stockholders," Tesla said in its filing with the Delaware Court of Chancery.

The shareholder's legal team comprised three law firms, Bernstein Litowitz Berger & Grossmann and Friedman Oster & Tejtzel, both based in New York, and Andrews & Springer of Wilmington, Delaware.

The objection to the legal fee comes as the company tries to rally shareholders to back a proposal to restore Musk's pay package.

Tesla is also asking shareholders to approve moving the company's legal home to Texas, where it has its headquarters, from Delaware, which Musk lambasted after the pay ruling.

Chancellor Kathaleen McCormick voided the 2018 pay deal in January because she found after a trial that Musk improperly dominated the Tesla board negotiations to arrange the \$56 billion compensation, which she described as "unfathomable."

The legal team that brought the case asked McCormick to order Tesla to pay them with about 29 million Tesla shares as a portion of the 266 million shares that they said Musk would return to Tesla as a result of his pay being voided.

Tesla argued that the ruling did not result in the return of any stock to the company because Musk never exercised any of the stock options, the form of payment underlying his compensation.

Hundreds of Tesla shareholders have written to the company or to the court to object to the legal fee request.

One shareholder with 19,000 shares, Amy Steffens, filed a formal objection to the fee request and is represented by the Munger Tolles & Olson law firm.

Stay up to date with the latest news, trends and innovations that are driving the global automotive industry with the Reuters Auto File newsletter. [Sign up here](#).

Reporting by Tom Hals in Wilmington, Delaware; editing by Peter Henderson and Rod Nickel

Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

Tom Hals
Thomson Reuters

Tom Hals is an award-winning reporter with 25 years of experience working in Asia, Europe and the United States. Since 2009 he has covered legal issues and high-stakes court battles, ranging from challenges to pandemic policies to Elon Musk's campaign to end his deal for Twitter.

Securities Law News

June 6, 2024, 2:27 PM PDT

Investors Say Marinus Pharmaceuticals Understated Trial Risks

By Quinn Wilson

- **COURT:** E.D. Pa.
- **TRACK DOCKET:** [No. 2:24-cv-02430](#)

Bloomberg Law News 2024-06-07T13:10:5294563001-04:00

Investors Say Marinus Pharmaceuticals Understated Trial Risks

By Quinn Wilson 2024-06-06T17:27:08000-04:00

- **COURT:** E.D. Pa.
- **TRACK DOCKET:** No. 2:24-cv-02430

A proposed class of investors claim Marinus Pharmaceuticals Inc. overstated its likelihood of success and understated the risks associated with its seizure drug's clinical trials, causing them financial losses, a new lawsuit says.

Marinus violated multiple sections of the Securities Exchange Act when its chief officers knowingly made false representations about the clinical trials for its seizure drug Ztalmu, the complaint alleges. Specifically, the defendants omitted the potential risks should the trials not meet “early stopping” criteria and overstated the likelihood it would meet the criteria.

Scott Bishins sued the company, its chief executive officer, and current chief financial officer on Wednesday in the US District Court for the Eastern District of Pennsylvania. He seeks class certification, damages, and attorneys' fees.

“As a result of defendants’ wrongful acts and omissions, and the precipitous decline in the market value of the company’s common shares, plaintiff and the other class members have suffered significant losses and damages,” Bishins said in his complaint.

Marinus allegedly began making materially false and misleading statements in 2021. The statements regarded its randomized drug trials during its quarterly 10-Q reports for the US Securities and Exchange Commission. The company first omitted the risks associated with the trials not meeting the necessary criteria and the reality that trial enrollment would be stopped if the criteria weren't met, Bishins said.

It made similar omissions in its annual 10-K forms, the complaint said. CEO Scott Braunstein also allegedly made false and misleading statements during earnings calls in 2023 about the trial when he expressed confidence about its likelihood of success.

In April, the company announced that it didn't clear the bar for early stopping criteria and that it was still going to move forward with the third phase of its trial, Bishins said.

Marinus then announced it was going to conduct "cost reduction activities." These activities included halting enrollment of the first two phases of its clinical trials, deferring manufacturing investments, and reducing its workforce by roughly 20%, the complaint said. Following this announcement, Marinus' stock price dropped by more than 82%.

The company announced in May that it was stopping the third and final phase of its Ztalmy trial, Bishins said.

The proposed class comprises investors who purchased or acquired publicly traded Marinus securities between March 17, 2021, and May 7, 2024, Bishins said.

Marinus didn't immediately respond to a Thursday request for comment.

The Rosen Law Firm PA and The Schall Law Firm represent Bishins.

The case is Bishins v. Marinus Pharms. Inc. , E.D. Pa., 2:24-cv-02430, 6/5/24 .

To contact the reporter on this story: Quinn Wilson in Washington at qwilson@bloombergindustry.com

To contact the editors responsible for this story: Adam Ramirez at aramirez@bloombergindustry.com; Nicholas Datlowe at ndatlowe@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Coinbase Hit With New Securities Class Action Amid Battle With SEC

A proposed class action, filed by Rosen Law Firm, accuses the crypto exchange company Coinbase of selling unregistered digital asset securities on its platform and failing to register the company as a broker-dealer with the SEC and state regulators.

June 06, 2024 at 06:48 PM

Cryptocurrency



Kat Black



What You Need to Know

- A new proposed class action filed in the Northern District of California accuses crypto exchange platform Coinbase of illegally selling securities.
- The plaintiffs allege that Coinbase specifically violated California and Florida securities law by failing to register sellers of digital asset securities on its platform and failing to register with the SEC and state regulators.
- Coinbase faces an additional lawsuit by the SEC, which charged it in 2023 with unlawfully operating a national securities exchange.

Coinbase has been hit with a fresh nationwide securities class action amid its ongoing litigation with the U.S. Securities and Exchange Commission.

The [proposed class action](#), filed by Rosen Law Firm on Wednesday in the Northern District of California, accuses the cryptocurrency exchange company of violating California and Florida securities law by selling unregistered digital asset securities on its platform and failing to register the company as a broker-dealer with the SEC and state regulators.

“Defendant Coinbase cannot act like a traditional broker/dealer and a traditional prime broker while at the same time pretending to be outside of the coverage of the laws of California and Florida—including the California Securities Act and the Florida Securities and Investor Protection Act (‘FSIPA’),” states the complaint.

The proposed plaintiffs class is composed of users who ”purchased or otherwise acquired the Digital Asset Securities (including, but not limited to, Coinbase Earn, ALGO, MANA, MATIC, NEAR, SOL, UNI, XLM, and XTZ)” between Jan. 1, 2017, and June 4. Coinbase CEO and co-founder Brian Armstrong, a Los Angeles resident, is also named as a defendant. According to the suit, Coinbase has listed 249 digital assets as “tradable” on its platforms as of Monday.

Rosen Law Firm declined to comment on pending litigation.

Coinbase, a Delaware-incorporated company that has no brick-and-mortar headquarters, was founded in 2012 and listed as a publicly traded company on the NASDAQ in 2021. Coinbase revealed after going public that it marketed and sold digital asset securities despite not being registered to do so under federal and state law. Coinbase manages two brokerage platforms, Coinbase and Coinbase Pro.

“Defendant Coinbase has never been registered as a broker/dealer, bank, investment advisor, trust company, or other regulated financial institutions,” wrote attorneys for the plaintiffs. They argued that Coinbase further deceived plaintiffs and class members about the legality of its operations by posting a since-deleted “Securities Law Framework” in 2016 and establishing a “Crypto Rating Council” (CRC) in 2019 that purported to help market participants comply with federal securities laws.

“Defendants’ publication of the Securities Law Framework Post, together with the creation of the CRC and its posting, has continuously and misleadingly suggested to Plaintiffs and Class members that Coinbase would and did not list any digital assets that were securities,” they wrote.

The SEC [charged](#) Coinbase in 2023 with “operating its crypto asset trading platform as an unregistered national securities exchange, broker, and clearing agency” and alleged that “since at least 2019, Coinbase has made billions of dollars unlawfully facilitating the buying and selling of crypto asset securities.” U.S. District Judge Katherine Polk Failla rejected Coinbase’s motion to dismiss the SEC’s suit in March.

Coinbase also faces another proposed [class action](#) that claims it illegally sold securities. The complaint, which was filed in the Southern District of New York in 2021, was dismissed in 2023 but [renewed](#) in April by the U.S. Court of Appeals for the Second Circuit.

“As the most popular and only publicly traded crypto exchange in the US, Coinbase is often the target of litigation,” said a Coinbase spokesperson. “However, Coinbase is confident that the claims being made are entirely baseless.”

NOT FOR REPRINT

Lead counsel named in 23andMe litigation

DJ [dailyjournal.com/articles/379071-lead-counsel-named-in-23andme-litigation](https://www.dailyjournal.com/articles/379071-lead-counsel-named-in-23andme-litigation)

Data Privacy,
Civil Litigation

Share

Jun. 7, 2024

23andMe, which recently announced a new goal of mining genetic data and partnering with pharmaceutical companies for research and development, has faced dozens of lawsuits related to the cyberattack.

The federal judge in San Francisco overseeing consolidated litigation against DNA testing service 23andMe related to a data breach affecting millions of people appointed lead counsel for the plaintiffs, citing several factors including experience with multidistrict proceedings.

Gayle M. Blatt, a partner at Casey Gerry Schenk Francavilla Blatt & Penfield LLP, and Cari C. Laufenberg, a partner at Keller Rohrback LLP, and Norman E. Siegel, a partner at Stueve Siegel Hanson LLP, were named lead plaintiffs' counsel on Wednesday by U.S. District Judge Edward M. Chen. *In re: 23andMe Inc. Customer Data Security Breach Litigation*, 3:24-md-03098-EMC (N.D. Cal., filed Apr. 16, 2024).

In addition to experience with multidistrict litigation, Chen said he considered the firms' resources, the class scope, and the support of other attorneys. "The court deems it appropriate to appoint more than one lead counsel given that the data breach has impacted a large number of individuals, certain minority/ethnic groups have been targeted, and issues may arise related to 23andMe's financial condition which has prompted early settlement negotiations," the judge wrote.

In December, 23andMe revealed that it had suffered a security breach in which around 14,000 people were targeted. Days later, the South San Francisco-based company confirmed to TechCrunch that the personal information of almost 7 million people was accessed. In a statement at the time, 23andMe said protecting its customers' data privacy and security remained a top priority and that it would continue to invest in safeguard measures.

23andMe, defended by Greenberg Traurig LLP, is facing dozens of lawsuits related to the cyberattack. According to a lawsuit filed by Edelson PC, a hacker compiled and released on the dark web lists of data belonging to 1 million Jewish customers and 350,000 Chinese customers. The complaint said these lists generated significant attention worldwide and were reshared numerous times.

In a recent interview with Wired, 23andMe CEO Anne Wojcicki talked about the company's new goal of mining genetic data and partnering with pharmaceutical companies for research and development. 23andMe had an exclusive agreement with GlaxoSmithKline that ended last year.

Asked whether customers knew about their data being used by drug companies, Wojcicki said that "most people want to see improvements in their lives" and that 23andMe needed to "partner with others to really accelerate in a number of different disease areas."

#379071

Sunidhi Sridhar

Daily Journal Staff Writer

sunidhi_sridhar@dailyjournal.com

US judge orders probe of Novartis \$30 mln settlement claims process

 [reuters.com/legal/government/us-judge-orders-probe-novartis-30-mln-settlement-claims-process-2024-06-06](https://www.reuters.com/legal/government/us-judge-orders-probe-novartis-30-mln-settlement-claims-process-2024-06-06)

Brendan Pierson

The company's logo is seen at the new cell and gene therapy factory of Swiss drugmaker Novartis in Stein, Switzerland, November 28, 2019. REUTERS/Arnd Wiegmann/File Photo
[Purchase Licensing Rights](#) , opens new tab

June 6 (Reuters) - A federal judge has ordered a probe of the claims distribution process in a \$30 million settlement by Novartis (NOVN.S) , opens new tab with consumers and health plans in an antitrust class action over its hypertension drug Exforge, citing concerns about its integrity.

U.S. District Judge Alvin Hellerstein in Manhattan in an order on Wednesday , opens new tab said that of more than 132,000 consumer claims submitted to the settlement administrator, just over 22,000 were allowed, which "seems disproportionately low."

Of the checks mailed to consumers whose claims were deemed eligible, nearly 15,000, totaling about \$2.1 million, have become stale for failure to be deposited, Hellerstein said.

That is out of about \$4.8 million of the \$30 million that was set aside for consumers. The rest of the settlement went to third-party payors like health plans and insurance companies and to legal fees and costs.

"An inquiry by the court is required to assure the integrity of the claims distribution process," Hellerstein wrote.

He appointed U.S. Magistrate Judge Stewart Aaron to oversee that inquiry and prepare a report on his findings. Lawyers for plaintiffs and Novartis did not immediately respond to requests for comment.

Hellerstein's order comes amid growing concern that class action settlements can be targeted by scammers. More than 80 million claims submitted to class action settlement funds in 2023 showed "significant" signs of fraud, up more than 19,000% since 2021, according to a report last month from digital payment processor Digital Disbursements.

The consumers and third-party payors had accused Basel, Switzerland-based Novartis of violating federal antitrust law by entering into an illegal "reverse payment" agreement with Endo International's Par Pharmaceutical unit to delay launches of less expensive, generic versions of Exforge, which treats hypertension to lower blood pressure and reduce the risk of strokes.

They said Par agreed not to launch a generic Exforge product for two years after the expiration of one of Novartis's patents, and Novartis agreed not to compete with Par by launching its own Exforge generic during the 180-day exclusivity period Par enjoyed as the first generic on the market.

The \$30 million is part of a broader \$245 million settlement that Novartis reached in 2022, which also includes claims by drug wholesalers and retailers.

Novartis's annual U.S. sales of brand-name Exforge exceeded \$400 million before generic versions were sold.

The case is *In re Novartis and Par Antitrust Litigation*, U.S. District Court, Southern District of New York, No. 18-04361.

For Novartis: Evan Chesler of Cravath, Swaine & Moore

For plaintiffs: Gregory Asciolla of DiCello Levitt and Robert Eisler of Grant & Eisenhofer

Read more:

Novartis to pay \$30 mln to health plans, consumers over Exforge antitrust claims

Novartis to pay \$245 mln to end antitrust cases over Exforge drug generics

Get a quick look at the days breaking legal news and analysis from The Afternoon Docket newsletter. Sign up here.

Reporting By Brendan Pierson in New York; editing by Nate Raymond

Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

Brendan Pierson
Thomson Reuters

Brendan Pierson reports on product liability litigation and on all areas of health care law. He can be reached at brendan.pierson@thomsonreuters.com.

Ozempic litigation's new judge steps into big battle

 [reuters.com/legal/government/column-ozempic-litigation-limbo-after-judges-death-2024-06-06](https://www.reuters.com/legal/government/column-ozempic-litigation-limbo-after-judges-death-2024-06-06)

Jenna Greene

A view shows Ozempic pens, as they are assembled at the Novo Nordisk facility in Bagsvaerd, on the outskirts of Copenhagen, Denmark, March 8, 2024. REUTERS/Tom Little Purchase Licensing Rights , opens new tab

June 6 (Reuters) - As U.S. District Judge Karen Marston in Philadelphia takes the helm of litigation involving Ozempic and similar drugs, she'll step into a lively fight where early battle lines have already been drawn.

A former federal prosecutor who was nominated to the bench in 2019 by Donald Trump, Marston was selected by the Judicial Panel on Multidistrict Litigation on Thursday to take over product liability proceedings that plaintiffs' lawyers expect to include more than 10,000 personal injury lawsuits.

The case had been assigned in February to U.S. District Judge Gene E.K. Pratter. She died suddenly on May 17 from chronic obstructive pulmonary disease, the Philadelphia Inquirer reported , opens new tab.

Her colleagues on the bench in the Eastern District of Pennsylvania said in a statement that her passing was "a tremendous loss."

Over the past three weeks, lawyers told me they continued working without day-to-day judicial supervision to tee up a host of issues including the all-important plaintiff fact sheet — a form where individual litigants detail their alleged injuries and other personal information.

"Both sides are interested in moving the litigation as quickly as we can," plaintiffs' co-lead counsel Jonathan Orent of Motley Rice told me. "A delay of even three or four months can be quite significant for (clients) who are not able to work or take care of themselves."

Marston, who did not immediately respond to a request for comment, has already scheduled a status conference for Monday afternoon.

A spokesperson for Novo, which is represented by outside counsel led by Loren Brown of DLA Piper, said via email that the company maintains the allegations are false and without merit. Brown declined comment on the litigation.

Eli Lilly, repped by a team including James Hurst of Kirkland & Ellis, has denied the allegations as well. Hurst declined comment.

It's certainly not the first time an MDL has been reassigned mid-stream. Last month, for example, product liability litigation involving the blood pressure medication Valsartan was

transferred [\[link\]](#), opens new tab to U.S. District Judge Renee Bumb after her colleague on the New Jersey bench, Judge Robert Kugler, announced his retirement.

What's different here is how sudden the judge's passing was and its abrupt -- albeit short-lived -- interruption of the litigation. (Pratter issued a 23-page opinion [\[link\]](#), opens new tab in another case just three days before her death.)

Marston can expect the multidistrict litigation to receive extensive media attention, given the widespread use of the medications amid the so-called obesity epidemic in the U.S.

About one in eight U.S. adults have taken a drug belonging to the GLP-1 class of medications, my Reuters colleagues reported in May, citing a Kaiser Family Foundation poll. The self-injectable drugs include Novo Nordisk's diabetes drug Ozempic and weight-loss treatment Wegovy, along with Eli Lilly's Mounjaro, Trulicity and Zepbound.

Plaintiffs in court documents [\[link\]](#), opens new tab say the drugmakers failed to adequately warn that their medications can potentially cause "prolonged, life-threatening digestive dysfunction." Alleged side-effects include gastroparesis, which prevents the stomach from emptying properly, as well as severe vomiting, bowel obstruction and gall bladder injuries. The judge taking over the case will face litigation battle lines that have already emerged.

For Marston, one looming issue will be finalizing the plaintiff's fact sheet, which will provide individual data on what defense counsel term "critical dispositive issues" including claimants' alleged injuries, other medical conditions, product identification and symptom onset.

Plaintiffs' lead co-counsel Sarah Ruane of Wagstaff & Cartmell told me all sides are "close to ready to go" on the form, though they don't agree on how the information should then be used to weed out claims.

Defense counsel in court documents [\[link\]](#), opens new tab see the potential to use the fact sheet responses to narrow the litigation, noting that some claims may be time-barred, while others might involve counterfeit or compounded products for which Novo and Eli are not liable.

They also flag claims by plaintiffs who "lack an objective diagnosis" of gastroparesis. Symptoms like nausea, indigestion and bloating are "shared with numerous other conditions," defense lawyers say. Moreover, they argue that gastroparesis is a "known complication" of type 2 diabetes -- exactly what Ozempic and Mounjaro are approved to treat -- so how to prove the drugs are to blame?

Plaintiffs' lawyers oppose any proposal "that would result in the premature dismissal of claims, or in the adoption of a single, restrictive test for proving causation" of gastroparesis.

They reject defense suggestions that their clients should undergo a gastric emptying study to prove their injuries, arguing that such a test "may be inconclusive, unavailable, and, depending on an expert's clinical judgment, unnecessary to prove injury."

More broadly, they argue any attempt to use data points from the fact sheet as the basis for winnowing claims via early summary judgment invite “oversimplification” and run contrary to the Federal Rules of Civil Procedure.

Instead, the plaintiffs team, which also includes co-lead counsel Parvin Aminolroaya of Seeger Weiss and Paul Pennock of Morgan & Morgan, are calling for additional discovery and bellwether trials to test the cases.

Get a quick look at the days breaking legal news and analysis from The Afternoon Docket newsletter. Sign up here.

Reporting by Jenna Greene

Jenna Greene
Thomson Reuters

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

Ozempic litigation in limbo after judge's death

 [reuters.com/legal/government/column-ozempic-litigation-limbo-after-judges-death-2024-06-06](https://www.reuters.com/legal/government/column-ozempic-litigation-limbo-after-judges-death-2024-06-06)

Jenna Greene

A view shows Ozempic pens, as they are assembled at the Novo Nordisk facility in Bagsvaerd, on the outskirts of Copenhagen, Denmark, March 8, 2024. REUTERS/Tom Little Purchase Licensing Rights , opens new tab

June 6 (Reuters) - One of the “wonderful things” about the legal profession, U.S. District Judge Gene E.K. Pratter told about 70 people during the first case management hearing in litigation involving Ozempic and similar drugs, is the chance to continually learn.

The 75-year-old jurist at the March hearing in Philadelphia sounded eager to tackle the product liability multidistrict litigation that plaintiffs lawyers expect to include more than 10,000 personal injury lawsuits, according to a transcript of the proceedings.

Pratter at the hearing scheduled a “science day” for the parties to educate her about the weight loss and diabetes drugs. “More detailed than an overview that you’d give a third grader, okay, but I am also not interested in going to medical school,” she said.

But Pratter suddenly died on May 17 from chronic obstructive pulmonary disease, the Philadelphia Inquirer reported , opens new tab.

Her colleagues on the bench in the Eastern District of Pennsylvania said in a statement that her passing was “a tremendous loss.”

It also leaves the high-profile litigation involving the GLP-1 medications temporarily rudderless pending appointment of a new judge to oversee the case, which a clerk for the Judicial Panel on Multidistrict Litigation told me will remain in the Eastern District of Pennsylvania.

In the interim, lawyers say they’re doing what they can without the day-to-day supervision of a judge, teeing up a host of issues including the all-important plaintiff fact sheet — a form where individual litigants detail their alleged injuries and other personal information.

“Both sides are interested in moving the litigation as quickly as we can,” plaintiffs co-lead counsel Jonathan Orent of Motley Rice told me. “A delay of even three or four months can be quite significant for (clients) who are not able to work or take care of themselves.”

A spokesperson for Novo, which is represented by outside counsel led by Loren Brown of DLA Piper, said via email that the company maintains the allegations are false and without merit. Brown declined comment on the litigation but said Pratter was “extremely well-regarded by both sides in the case.”

Eli Lilly, repped by a team including James Hurst of Kirkland & Ellis, has denied the allegations as well. A spokesperson said the company is “deeply saddened by Judge Pratter's passing.” Hurst declined comment.

It's certainly not the first time an MDL has been reassigned mid-stream. Last month, for example, product liability litigation involving the blood pressure medication Valsartan was transferred [\[link\]](#), opens new tab to U.S. District Judge Renee Bumb after her colleague on the New Jersey bench, Judge Robert Kugler, announced his retirement.

What's different here is how sudden the judge's passing was and its abrupt interruption of the litigation. (Pratter issued a 23-page opinion [\[link\]](#), opens new tab in another case just three days before her death.) Her husband Robert Pratter, a lawyer at Cohen, Placitella & Roth, did not respond to a request for comment.

Whoever takes over the Ozempic MDL can expect the proceedings to receive extensive media attention, given the widespread use of the medications amid the so-called obesity epidemic in the U.S.

About one in eight U.S. adults have taken a drug belonging to the GLP-1 class of medications, my Reuters colleagues reported in May, citing a Kaiser Family Foundation poll. The self-injectable drugs include Novo Nordisk's diabetes drug Ozempic and weight-loss treatment Wegovy, along with Eli Lilly's Mounjaro, Trulicity and Zepbound.

Plaintiffs in court documents [\[link\]](#), opens new tab say the drugmakers failed to adequately warn that their medications can potentially cause “prolonged, life-threatening digestive dysfunction.” Alleged side-effects include gastroparesis, which prevents the stomach from emptying properly, as well as severe vomiting, bowel obstruction and gall bladder injuries. The judge taking over the case will face litigation battle lines that have already emerged.

The first issue is likely to be finalizing the plaintiff's fact sheet, which will provide individual data on what defense counsel term “critical dispositive issues” including claimants' alleged injuries, other medical conditions, product identification and symptom onset.

Plaintiffs lead co-counsel Sarah Ruane of Wagstaff & Cartmell told me all sides are “close to ready to go” on the form, though they don't agree on how the information should then be used to weed out claims.

Defense counsel in court documents [\[link\]](#), opens new tab see the potential to use the fact sheet responses to narrow the litigation, noting that some claims may be time-barred, while others might involve counterfeit or compounded products for which Novo and Eli are not liable.

They also flag claims by plaintiffs who “lack an objective diagnosis” of gastroparesis. Symptoms like nausea, indigestion and bloating are “shared with numerous other conditions,” defense lawyers say. Moreover, they argue that gastroparesis is a “known

complication” of type 2 diabetes – exactly what Ozempic and Mounjaro are approved to treat – so how to prove the drugs are to blame?

Plaintiffs lawyers oppose any proposal “that would result in the premature dismissal of claims, or in the adoption of a single, restrictive test for proving causation” of gastroparesis.

They reject defense suggestions that their clients should undergo a gastric emptying study to prove their injuries, arguing that such a test “may be inconclusive, unavailable, and, depending on an expert’s clinical judgment, unnecessary to prove injury.”

More broadly, they argue any attempt to use data points from the fact sheet as the basis for winnowing claims via early summary judgment invite “oversimplification” and run contrary to the Federal Rules of Civil Procedure.

Instead, the plaintiffs team, which also includes co-lead counsel Parvin Aminolroaya of Seeger Weiss and Paul Pennock of Morgan & Morgan, are calling for additional discovery and bellwether trials to test the cases.

For the new judge, it’s likely to be a lively fight.

Get a quick look at the days breaking legal news and analysis from The Afternoon Docket newsletter. Sign up here.

Reporting by Jenna Greene

Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

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

Jenna Greene
Thomson Reuters

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

- 
- 

Sav-Rx Hit With Suits Over Breach Affecting 2.8 Million People

B [bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X7NT33KS000000](https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X7NT33KS000000)

Medication-benefits manager Sav-Rx failed to protect the personal information of more than 2.8 million people that was exposed in an October 2023 data breach, three proposed federal class actions said.

Plaintiffs in the separate lawsuits alleged that Sav-RX, also known as A&A Services LLC, breached its duties at common law and under the Federal Trade Commission Act and HIPAA to implement reasonable data-security measures, comply with industry standards and federal regulations, and provide timely and adequate notice of the incident.

Information exposed in the breach included names, addresses, Social Security numbers, and dates of birth, according to complaints filed Wednesday in the US District Court for the District of Nebraska.

Sav-RX, which provides services to union health plans, didn't respond immediately to a request for comment. The plaintiffs are David Prestby and Derek Summerville, Rodney Hill, and Heather Krueger.

Victims have been harmed in the form of invasion of privacy, theft of their personal information, lost time responding to the incident, out-of-pocket expenses from mitigation measures, reduced value of their personal information, increased spam calls and texts, increased risk of fraud and identity theft, and payment for data security that wasn't provided, the complaints said.

Each plaintiff seeks to represent a nationwide class of people whose information was exposed in the breach.

The complaints bring a variety of claims, including negligence, breach of third-party beneficiary contract, unjust enrichment, breach of implied contract, breach of the implied covenant of good faith and fair dealing, and invasion of confidence.

The plaintiffs are seeking actual, statutory, compensatory, nominal, consequential, and punitive damages; restitution; injunctive relief; attorneys' fees and costs; and pre-judgment interest.

Car & Reinbrecht PC and Levi & Korsinsky LLP represent Prestby and Summerville. Milberg Coleman Bryson Phillips Grossman PLLC represents Hill. Markovits, Stock & DeMarco LLC represents Krueger.

The cases are Prestby v. A&A Servs. LLC , D. Neb., No. 8:24-cv-00204, complaint filed 6/5/24 , Hill v. A&A Servs. LLC , D. Neb., No. 8:24-cv-00205, complaint filed 6/5/24 , and Krueger v. A&A Servs. LLC , D. Neb., No. 8:24-cv-00206, complaint filed 6/5/24 .

To contact the reporter on this story: Christopher Brown in St. Louis at
ChrisBrown@bloombergindustry.com

To contact the editor responsible for this story: Brian Flood at
bflood@bloombergindustry.com

Google defeats class action over AI training data for now

 [reuters.com/legal/transactional/google-defeats-class-action-over-ai-training-data-now-2024-06-06](https://www.reuters.com/legal/transactional/google-defeats-class-action-over-ai-training-data-now-2024-06-06)

Blake Brittain

A view of a sign above the entrance of the Google office, ahead of presentation of the detailed investment plan for Germany, in Berlin, Germany, August 31, 2021.

REUTERS/Annegret Hilse Purchase Licensing Rights , opens new tab

June 6 (Reuters) - Google (GOOGL.O) , opens new tab persuaded a federal judge in San Francisco on Thursday to dismiss a proposed class action over its alleged misuse of personal and copyrighted data to train artificial-intelligence systems including its chatbot Bard.

U.S. District Judge Araceli Martinez-Olguin said in a two-page order , opens new tab that she would dismiss the case in light of concerns raised by another California judge in a related lawsuit against OpenAI and Microsoft (MSFT.O) , opens new tab.

U.S. District Judge Vince Chhabria said last month that the OpenAI complaint contained "swaths of unnecessary and distracting allegations" that made it "nearly impossible to determine the adequacy of the plaintiffs' legal claims," dismissing the case but allowing it to be refiled.

Martinez-Olguin on Thursday said the nine individuals who sued Google could amend their complaint, which she said "should be considerably more streamlined and crystallize the theory of this case."

Ryan Clarkson of the Clarkson Law Firm, who represents the plaintiffs in both cases, and spokespeople for Google did not immediately respond to requests for comment on the decision.

The lawsuit, filed last July, accused Google of misusing content posted to social media and information shared on Google platforms to train AI systems. The case is one of several recent cases challenging tech companies' alleged use of content like books, newspaper articles, visual art and personal data without permission for AI training.

Google responded in October that the use of publicly available data is necessary to train AI systems, and that the lawsuit would "take a sledgehammer" to "the very idea of generative AI."

The case is J.L. v. Alphabet Inc, U.S. District Court for the Northern District of California, No. 3:23-cv-03440.

For the proposed class: Ryan Clarkson of the Clarkson Law Firm

For Google: David Kramer, Maura Rees and Eric Tuttle of Wilson Sonsini Goodrich & Rosati

Read more:

Google hit with class-action lawsuit over AI data scraping

Google says data-scraping lawsuit would take 'sledgehammer' to generative AI

OpenAI, Microsoft defeat US consumer-privacy lawsuit for now

Get a quick look at the days breaking legal news and analysis from The Afternoon Docket newsletter. Sign up here.

Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

Blake Brittain

Thomson Reuters

Blake Brittain reports on intellectual property law, including patents, trademarks, copyrights and trade secrets, for Reuters Legal. He has previously written for Bloomberg Law and Thomson Reuters Practical Law and practiced as an attorney.

Legal AI startup DoNotPay reaches settlement in customer class action

 [reuters.com/legal/legalindustry/legal-ai-startup-donotpay-reaches-settlement-customer-class-action-2024-06-06](https://www.reuters.com/legal/legalindustry/legal-ai-startup-donotpay-reaches-settlement-customer-class-action-2024-06-06)

Sara Merken

Words reading "Artificial intelligence", miniature of robot and toy hand are pictured in this illustration taken December 14, 2023. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights , opens new tab

June 6 (Reuters) - Artificial intelligence company DoNotPay is settling a proposed class action alleging it provided "substandard" services and engaged in the unauthorized practice of law, according to a California federal court filing.

Plaintiff Jonathan Faridian and DoNotPay have "reached a settlement in principle" and are finalizing the agreement, lawyers for both sides said in a joint status update , opens new tab on Wednesday. The filing did not contain additional details on the terms of the settlement.

The lawyers and DoNotPay did not immediately respond to requests for comment on Thursday. The parties requested two weeks to finalize the settlement or submit further updates to the court.

DoNotPay says on its website that it uses AI to help consumers "fight big corporations, protect your privacy, find hidden money, and beat bureaucracy." The company earlier billed itself as the "world's first robot lawyer."

Plaintiffs' law firm Edelson filed the lawsuit in March 2023 on behalf of Faridian, who said he used San Francisco-based DoNotPay to draft demand letters, a small claims court filing and LLC operating agreements and got "substandard and poorly done" results.

The lawsuit, which claimed the company was practicing law without a license, said that Faridian would not have paid for the services "had he known that DoNotPay was not actually a lawyer."

DoNotPay in November defeated a separate lawsuit by a small Illinois law firm that alleged the company engaged in unauthorized practice of law.

The case is Faridian v. DoNotPay Inc, U.S. District Court for the Northern District of California, No. 3:23-cv-01692-RFL.

For Faridian: Rafey Balabanian, Jay Edelson, J. Eli Wade-Scott and Emily Penkowski Perez of Edelson

For DoNotPay: Dale Bish, Allie Fellows and Eli Richlin of Wilson Sonsini Goodrich & Rosati

Quinn Emanuel disqualified from appeal of \$10B dispute

DJ [dailyjournal.com/articles/379073-quinn-emanuel-disqualified-from-appeal-of-10b-dispute](https://www.dailyjournal.com/articles/379073-quinn-emanuel-disqualified-from-appeal-of-10b-dispute)

Judge Susan Bryant-Deason

Quinn Emanuel Urquhart & Sullivan LLP has been disqualified from representing on appeal a defendant who lost a \$10 billion breach of contract dispute because the firm's attorneys consulted with the plaintiff about potentially representing him in the matter more than 20 years ago.

Los Angeles County Superior Court Judge Susan Bryant-Deason issued her order on Thursday following a two-day hearing. Quinn Emanuel's attorneys did not formally appear or file papers in opposition to the plaintiff's motion for their disqualification from representing real estate tycoon Haresh Jogani.

The hearing was punctuated by Quinn Emmanuel senior counsel Kathleen M. Sullivan addressing the judge from the gallery, offering to answer any questions she had.

"I just want to make clear that I'm here and available to the court to assist the court and to perform my duty of candor to the court, which I take very seriously. And to rebut the allegations, [that] there has been any ethical misconduct here, to set the record straight on that, and above all, to try to assist the court in resolving this," Sullivan said.

"We did nothing wrong, your honor. Absolutely nothing. I have 42 years of experience, your honor. You know that when we went into this profession 40 years ago, it was not very receptive to women," Sullivan continued, later.

Plaintiff's attorney Steven R. Friedman pushed back.

"Your honor, so I'm going to object. She doesn't have standing to appear. And she's now appealing to sentiment, and she isn't addressing the obligation that she has to their prior client. That's who was prejudiced here," Friedman said to Bryant-Deason.

"And you haven't appeared, you haven't filed paperwork," he said to Sullivan.

A spokesperson for Quinn Emanuel forwarded a written statement from a partner in response to a request for comment as to why the firm did not appear or contest the motion to disqualify: "Because we had not appeared and had determined not to represent the Haresh defendants, we had no role and the court had no live controversy before it involving Quinn Emanuel," said Harry A. Olivar Jr.

The issue stems from a long-running dispute among the Jogani brothers over ownership of thousands of apartments in Southern California as well as the family's global diamond business. Steven R. and Michael E. Friedman prevailed in February when the jury awarded an estimated \$10 billion to their client, Shashikant "Shashi" Jogani and two of his brothers after five months of trial. *Jogani v. Jogani et al.*, BC290553 (L.A. Super. Ct., filed Feb. 18, 2003).

Information about Quinn Emanuel's involvement surfaced in April during a hearing in which defendant Haresh Jogani's trial attorneys with Larson LLP informed Bryant-Deason that Kathleen M. Sullivan of Quinn Emanuel was going to be the appellant counsel. A private investigator hired by Haresh to interview jurors about any possibility of misconduct filed a declaration stating that Larson attorneys instructed him to share his juror interview notes with "appellate counsel at Quinn Emanuel."

Shashi Jogani's attorneys, the Friedmans, promptly moved to disqualify the firm, arguing that consultations and exchange of information between Shashi and Quinn Emanuel's attorneys before Shashi sued his brother in 2003 created an attorney-client relationship even though Shashi retained another firm.

"The law, and we've cited it throughout, is that there is no ability - Quinn has no ability - to turn around and now represent Haresh against Shashi in the same matter," Michael E. Friedman told Bryant-Deason on Wednesday.

"And in fact, courts of appeal have called this the most egregious of conflicts because it not only undermines the individual client's respect and understanding for the judicial system, but the public at large loses faith in a system in which you can consult an attorney and then have an attorney turn around and say, 'I will represent your enemy against you, having now gotten your privileged and secret information,'" Michael E. Friedman continued.

Haresh Jogani's attorneys with Stris & Maher LLP opposed the motion to disqualify the firm, arguing on Wednesday and Thursday that any information about plaintiff Shashi Jogani in Quinn Emanuel's possession is in the trial record and therefore not confidential. The firm does not represent Quinn Emanuel and could only speculate as to its motives.

"That information, whatever it could be, will now have been public," Stris & Maher partner Victor A. O'Connell said to the judge.

"The information is just not confidential anymore, and it's not material to post appellate representation, even post-trial motions," O'Connell continued.

"I know they didn't ultimately do them. But had they done them it wouldn't have been confidential. And so, Shashi would have received notice that they were participating as soon as they filed the notice of appeal. There was no obligation to send him a letter in advance at

that point, because there's just no chance of anything that he ever did with Quinn Emanuel mattering at this point. That's my that's my understanding," O'Connell said.

Bryant-Deason was not convinced.

"I think that's the place where we disagree," she responded. "Because that's something that's mandatory ... you have to give them notice."

Bryant-Deason cited Shashi Jogani's declaration saying that Quinn Emanuel Senior Partner Christopher Tayback told him that all his interaction and communication with him and the firm was protected by the attorney client privilege and could never be disclosed or used against him, even if the firm does not represent him in the case.

"The representations that were made between them, the confidential information ... including how they plan to win the case, the key evidence which would prove the partnership and the weaknesses of Shashi's case ... Now, I'm sorry, that's it. That's everything. It's not the nutshell. It's like, in a big chest. I just don't know how you get around not giving notice to him," she said.

#379073

Antoine Abou-Diwan

Daily Journal Staff Writer

antoine_abou-diwan@dailyjournal.com

Bedbugs Have Come To Skadden

A abovethelaw.com/2024/06/bedbugs-have-come-to-skadden

Kathryn Rubino

June 7, 2024

Biglaw

The Wilmington office of the Biglaw firm has an infestation.

By Kathryn Rubino

on June 7, 2024 at 12:17 PM



Bedbugs are not a new problem in Biglaw.

But it's still an unsettling one. The mere possibility of catching the modern scourge just by working really adds insult to the injurious hours already required in Biglaw. And it looks like folks in the Wilmington office of Skadden are dealing with this issue.

Last week Skadden-ites were informed the bedbugs had infested the 7th floor of the firm's Delaware office. Gone is the couch in the wellness room as a likely vector, and exterminators are dealing with the bugs. Plus, according to the email circulated (read below), a trained basset hound will be sniffing around to make sure the full scope of the problem is dealt with.

It's worth remembering that, as itchy as the prospect of bedbugs may make us, they are not a sign of cleanliness (or lack thereof). The vermin are attracted to warmth and blood, so wherever people are, so too are the bloodsuckers. Even five-star hotels — and white-shoe

firms like Skadden — can get bedbugs.

Let's all take a second to remember a more innocent time, when this was the strongest association most of us had with bedbugs — and good luck trying to get that catchy song out of your head.



Watch Video At: <https://youtu.be/IBNV1LNK1fg>

All I'm saying is, you don't have these problems when everyone works from home.

Read the full message below.

Earlier: Which Biglaw Firm Is Dealing With Bed Bugs?

A Bed Bug Outbreak In New York Amid A Heat Wave

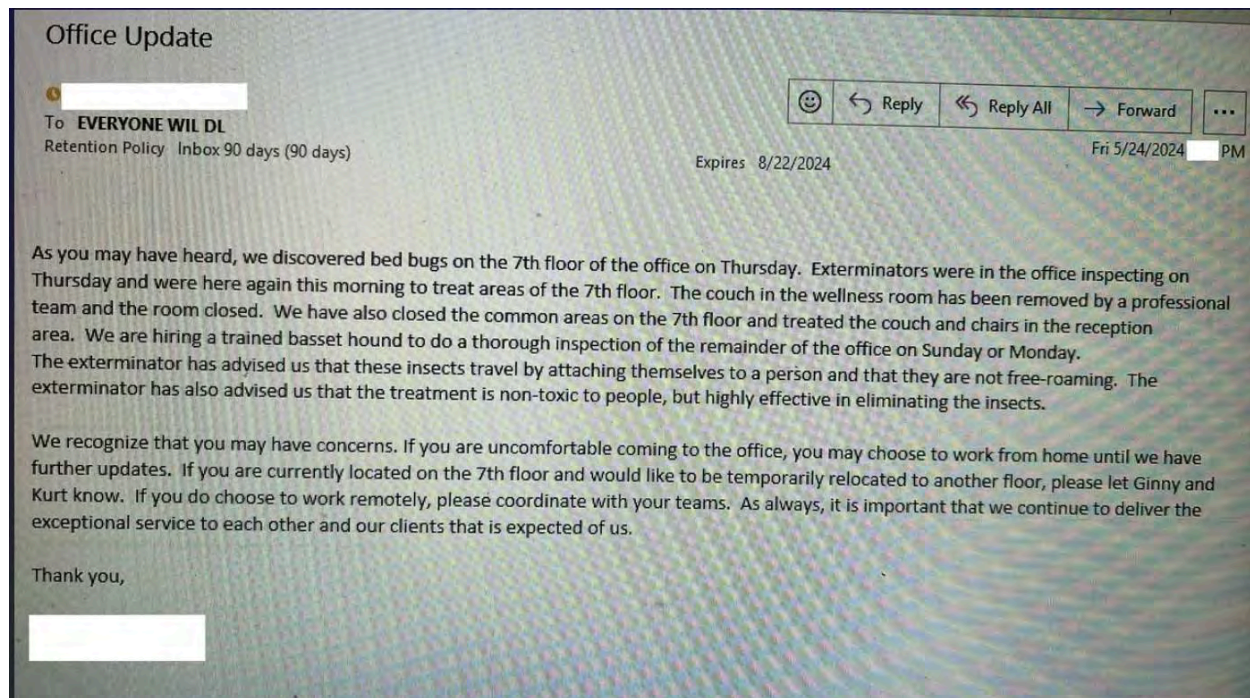
MetLife Building Under Attack From Bedbugs: Four Law Firms Potentially Affected

There's Only One Way to Deal With Bedbugs: Release the Sharks

Bedbugs Back In Brooklyn D.A.'s Office

Quote of the Day: In Other News, Detroit Still Sucks

Everybody Freak Out: Bedbugs In Biglaw



Kathryn Rubino is a Senior Editor at Above the Law, host of The Jabot podcast, and co-host of Thinking Like A Lawyer. AtL tipsters are the best, so please connect with her. Feel free to email her with any tips, questions, or comments and follow her on Twitter @Kathryn1 or Mastodon @Kathryn1@mastodon.social.

Topics

Bed Bugs, Bedbugs, Biglaw, Skadden, Vermin / Rodents / Pests

Law Firm Barred From Communicating With Potential Class Members

B [bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X85JUSIK000000](https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X85JUSIK000000)

An attorney may be barred from communicating with potential class members if he violates ethical rules in making those communications, the Sixth Circuit said.

The appeals court affirmed a protective order barring Visser and Associates PLLC, and Donald and Donovan Visser from communicating with potential class members who received an unsolicited communication from them after the preliminary approval of a proposed settlement and conditional certification of the proposed class.

In a separate order, the court upheld a formal reprimand against Visser.

The rulings stem from a proposed class action in Western Michigan by people who had their property foreclosed and sold for an amount greater than their tax debt to the county.

After learning of a proposed settlement, Visser sought to intervene on behalf of “numerous parties,” arguing that the named plaintiffs couldn’t protect their interests, the US Court of Appeals for the Sixth Circuit said in an opinion by Judge Raymond M. Kethledge. The trial court denied the motion.

Visser then began sending solicitation letters to property owners who it thought might have takings claims against counties in the Western District of Michigan, Kethledge said.

The trial court on March 24, 2023, preliminarily approved and conditionally certified the proposed class under Rule 23(e)(1).

Five days later, the plaintiffs named in the proposed class action moved for a protective order barring Visser from contacting class members, Kethledge said. Visser responded that the firm had “inadvertantly” sent solicitation letters to named plaintiffs, and told the district court it would not do so in the future, he said.

The trial court set a hearing date for Visser to show cause why the solicitations didn’t violate the state’s rules of professional conduct, Kethledge said. Before that date Visser sent follow-up letters to 17 potential class members, he said.

During the show cause hearing, class counsel produced a follow-up letter that Visser had sent to a potential class member three weeks after Visser told the court it had stopped soliciting members of the proposed class, Kethledge said.

The trial court concluded that the rule was violated, and formally reprimanded Visser. The court also issued a protective order, barring Visser from communicating with class members who hadn't retained Visser before March 24, 2023—the day of the conditional certification.

Visser appealed the protective order and reprimand.

The Sixth Circuit affirmed a narrowed version of the order barring Visser “from communicating with potential class members who received an unsolicited communication from Visser after March 24, 2023.”

The trial court was mistaken in finding in the protective order “that potential members of the proposed class were ‘represented by class counsel’ after the court’s ‘preliminary approval of the class,’” under Rule 23(e)(1) Kethledge said.

“The district court’s entry of its Rule 23(e)(1) order therefore was not a valid ground on which to restrict those communications,” the Sixth Circuit said.

But the trial court had additional valid reasons for the restrictions it imposed, Kethledge said.

“The district court also entered the protective order in part because Visser’s actions had ‘directly contradict[ed]’ its earlier assurances to the court,” Kethledge wrote.

“Specifically, the court found that Visser had sent at least one solicitation letter to a potential class member—Christen McKinney—nearly three weeks after Visser told the court it had ‘ceased soliciting’ unnamed members of the putative class,” he said.

The Sixth Circuit also rejected Visser’s argument that the trial court abused its discretion by ruling on the reprimand rather than referring the matter to the chief judge.

Judges Rachel S. Bloomekatz and Chad A. Readler joined the opinion affirming the protective order.

The reprimand opinion was issued by the same panel per curiam.

Sullivan, Ward, Patton, Gleeson & Felty PC represented Visser in the challenge to the reprimand.

The cases are *Wayside Church v. Van Buren County*, 6th Cir., No. 23-1471, 6/6/24 ; *In re Donald R. Visser*, 2024 BL 194226, 6th Cir., No. 24-1072, unpublished 6/6/24 .

To contact the reporter on this story: Peter Hayes in Washington at PHayes@bloombergindustry.com

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

Susman Clash With Client Arigna Yields Exit From BMW Patent Case

B [bloomberglaw.com/product/blaw/bloomberglawnews/litigation/XETCS1G0000000](https://www.bloomberglaw.com/product/blaw/bloomberglawnews/litigation/XETCS1G0000000)

Susman Godfrey LLP can withdraw as Arigna Technology Ltd.'s counsel in a BMW declaratory-judgment lawsuit over its client's patent because there's "*at least* a serious risk" their involvement in a related litigation-funding dispute could raise ethical concerns, a federal judge ruled.

A Delaware federal judge earlier this week paused Arigna's separate case against Longford Capital Fund III LP, a private investment fund managed by Chicago-based Longford Capital, over the distribution of a \$100 million settlement from a patent-enforcement campaign while an arbitrator determines what issues are within its jurisdiction to resolve.

Susman attorneys may be called to testify against Arigna in the arbitration proceeding, and BMW was granted intervenor status in the dispute because of Arigna's litigious history with the automaker.

- There "is at least the specter that Susman will sue Arigna," which disputes the law firm's claims that Arigna is obligated to indemnify it for arbitration-related costs, Judge Rudolph Contreras wrote in an opinion issued Thursday in the US District Court for the District of Columbia.
- Susman "may have to choose between preparing to sue Arigna on the one hand and zealously advocating for Arigna on the other," he wrote, noting "that conflict is not one that Arigna has waived."
- Contreras rejected Arigna's argument that withdrawal is premature because the potential conflict may not arise, concluding that "taking a wait-and-see position risks an even more disruptive withdrawal at a later, more critical juncture of this litigation," which "is in no one's interest."

Finnegan, Henderson, Farabow, Garrett & Dunner LLP represents BMW. Bayard PA and Susman Godfrey LLP represent Arigna.

The case is Bayerische Motoren Werke AG v. Arigna Technology Ltd. , D.D.C., No. 23-cv-1190, opinion issued 6/6/24 .

To contact the reporter on this story: Christopher Yasiejko in Philadelphia at cyasiejko@bloombergindustry.com

To contact the editor responsible for this story: Tonia Moore at tmoore@bloombergindustry.com

Page Printed From:
https://www.law.com/nationallawjournal/2024/06/06/as-us-antitrust-enforcers-target-ai-firms-legal-experts-predict-lawsuits-will-follow/?kw=As%20US%20Antitrust%20Enforcers%20Target%20AI%20Firms%2C%20Legal%20Experts%20Predict%20Lawsuits%20Will%20Follow&utm_position=1&utm_source=email&utm_medium=enl&utm_c



NOT FOR REPRINT
NEWS

As US Antitrust Enforcers Target AI Firms, Legal Experts Predict Lawsuits Will Follow

“They want to maintain their reputations for being very aggressive,” law professor Thom Lambert said of the Federal Trade Commission and Department of Justice agreeing to target top AI firms on antitrust grounds. “My guess is this seals the deal: These companies are going to get sued.”

June 06, 2024 at 05:40 PM

Artificial Intelligence



Sulaiman Abdur-Rahman



What You Need to Know

- The FTC will reportedly probe Microsoft and OpenAI while the DOJ investigates Nvidia.
- DOJ and FTC officials have previously hinted they want to prevent tech companies from monopolizing AI.
- Legal experts predict top AI firms will face antitrust lawsuits down the road.

U.S. antitrust enforcement agencies may file complaints against the biggest companies advancing artificial intelligence, legal experts said Thursday in reaction to news reports of a handshake agreement between the Department of Justice and Federal Trade Commission.

The DOJ has agreed to investigate Nvidia while the FTC probes Microsoft and OpenAI, the New York Times reported Wednesday, citing two unnamed sources with knowledge of the matter.

“When you have two agencies, this is the only way to do it,” William E. Kovacic, a George Washington University Law School professor who specializes in antitrust, said Thursday in an interview with ALM. “It would be absurd to have both agencies looking at the same companies.”

There is no guarantee the FTC will bring an antitrust case against Microsoft and no guarantee the Justice Department will sue Nvidia on antitrust grounds, but “going about it this way creates a great deal of pressure indeed on the agencies to take action later on,” Kovacic said.

“A good case takes a long time to develop,” Kovacic added. “This is not something that generates results in a couple of weeks. This is many months.”

As previously reported by ALM, FTC chair Lina Khan said she believes the commission [missed the boat on reining in Big Tech](#) as web use exploded before the turn of the century.

Assistant U.S. Attorney General Jonathan Kanter at Stanford University’s Promoting Competition in AI event last month hinted the [DOJ does not want to see companies engaging in monopolization of AI](#).

“Effective antitrust enforcement often coincides with major industrial and technological change,” Kanter told attendees at the event. “AI has so much promise, but as with prior technological revolutions, there will be threats to confront.”

“The antitrust laws play an important role in this development of new technologies,” Kanter added. “It exists broadly, the antitrust laws, to preserve healthy and competitive markets.”

John Yun, an associate professor of law at the Antonin Scalia Law School who specializes in antitrust and intellectual property rights, said it is “quite logical” for the DOJ and FTC to work together on addressing AI’s biggest players.

“They are really trying to shape the industry very early,” Yun said of the antitrust enforcement agencies. “In some ways, it is going to lead to something, whether it is a case or a recommendation to Congress, but I think this is an important step.”

Yun said antitrust investigations typically occur when a market is “developed and looks like it is anticompetitive,” but that the DOJ and FTC in this case are “coming in a little early” to “stay ahead of the game.”

If the FTC focuses on Microsoft while the DOJ focuses on Nvidia, that “reduces the red tape” and also “reduces uncertainty for the companies,” Yun said.

The FTC can probe Microsoft with a “fresh look” without the “baggage” stemming from the Justice Department’s 1990s antitrust case against the Windows operating system manufacturer, Yun added.

“There’s a long history of the commission and the department having to cooperate on cases that either of them could bring,” Harry First, a New York University Law School professor who specializes in antitrust, said Thursday in an interview with ALM. “Sometimes they are at loggerheads and they don’t see things eye to eye, but I think with this administration they are on the same page.”

First said the U.S. enforcers “recognize they need to understand more” about artificial intelligence and “probably don’t want to see AI controlled by the few companies that control the Big Tech platforms.”

Thom Lambert, a University of Missouri Law School professor who specializes in antitrust, corporate and regulatory matters, said he expects the DOJ and FTC to file antitrust complaints against the top AI firms.

“They want to maintain their reputations for being very aggressive,” Lambert said of the Federal Trade Commission and the Department of Justice. “My guess is this seals the deal: These companies are going to get sued.”

Any heavy-handed enforcement that hobbles Microsoft’s AI initiatives could have serious ramifications, Lambert warned.

“If the agencies are too aggressive at the outset,” he said, “it may preclude the industry from developing.”

Lambert said it is “ironic” that U.S. antitrust enforcers would target Microsoft and OpenAI while going after Google for alleged monopolization of search and search advertising.

Microsoft Bing is the “big challenger” to Google search, Lambert said, noting the Microsoft browser utilizes OpenAI’s ChatGPT chat bot.

James C. Cooper, a Scalia Law School professor who specializes in competition law, said it is “pretty standard for DOJ and FTC to split up enforcement.”

“DOJ has to go to federal court to enforce the Sherman Act,” Cooper said. “The FTC can go to federal court to enforce the Sherman Act.”

“In addition to the Sherman Act,” Cooper added, “the FTC has Section 5, which prohibits unfair methods of competition—a standard that courts have left relatively undefined, other than it probably covers something more than the Sherman Act. The current Commission has issued a statement that interprets Section 5 expansively.”

Because the FTC has more enforcement options, Cooper said, a company in the FTC’s crosshairs like Microsoft and OpenAI “possibly face more jeopardy.”

RELATED STORIES

Antitrust Regulators Poised to Pounce as AI Firms Jostle for Dominance

AI's Threat to Innovation, Ideas Requires Strong Antitrust Oversight, Says DOJ's Kanter

THE

NATIONAL LAW JOURNAL

Breaking news and trends for law firm and legal departments about the evolving federal regulations in a volatile political climate.

twitter

in

f

rss

FEDERAL LEGAL NEWS

Courts & Litigation

Expert Columns

Latest Stories

Events

SPECIAL COVERAGE

Special Reports

Special Supplements

SURVEYS & RANKINGS

The NLJ 500

NATIONAL LAW JOURNAL

Current Issue

Contact

Sitemap

NOT FOR REPRINT

Copyright © 2024 ALM Global, LLC. All Rights Reserved.

https://www.law.com/nationallawjournal/2024/06/06/as-us-antitrust-enforcers-target-ai-firms-legal-experts-predict-lawsuits-will-follow/?kw=As US Antitrust Enforcers Target AI Firms%2C Legal Experts Predict Lawsuits...

2/2

**Bloomberg
Law**[Request a Demo](#)[Login](#)[Securities Law News](#)

June 6, 2024, 1:59 PM PDT

Auditors Gain Path to Vet Client Crypto Values, Asset Control

By Amanda Iacone

Bloomberg Law News 2024-06-07T13:12:36772953711-04:00

Auditors Gain Path to Vet Client Crypto Values, Asset Control

By Amanda Iacone 2024-06-06T16:59:15000-04:00

Auditors tasked with vetting the value of their clients' crypto holdings now have a roadmap to test pricing methods for the volatile asset class.

The American Institute of CPAs on Thursday published its latest update to non-authoritative guidance intended to help accountants apply existing accounting and audit standards to digital assets like Bitcoin.

The practice aid outlines how auditors should vet controls related to third-party pricing services and valuation considerations for both active and thinly traded markets.

- Additional guidance walks auditors through steps to gain comfort that the assets exist and the client controls them, such as sending confirmations to third-party providers and tracking the movement of the client's digital assets on public blockchains.
- The updates include an expanded section on Securities and Exchange Commission guidance for companies that "safeguard" crypto assets for their customers, known as Staff Accounting Bulletin 121. President Joe Biden last week vetoed legislation that would have revoked the two-year-old accounting guidance.
- Improperly vetting ownership and valuations are common violations found during inspections of public company auditors. The US accounting standard setter published new rules in December requiring companies to report shifts in the value of their holdings.

To contact the reporter on this story: Amanda Iacone in Washington at aiacone@bloombergtax.com

To contact the editors responsible for this story: Jeff Harrington at jharrington@bloombergindustry.com; Amelia Gruber Cohn at agrubercohn@bloombergindustry.com

Page Printed From:

<https://www.law.com/nationallawjournal/2024/06/07/ex-hf-foods-execs-reach-sec-settlement-amid-securities-fraud-allegations/>



NOT FOR REPRINT
NEWS

Ex-HF Foods Execs Reach SEC Settlement Amid Securities Fraud Allegations

Zhou Min Ni, who served as the CEO or Co-CEO of HF Foods from 1997 until February 2021, and Jian Ming “Jonathan” Ni, who served as the chief financial officer from 2015 to 2019, agreed to the settlement without admitting or denying the allegations of the SEC’s securities fraud complaint.

June 07, 2024 at 02:21 PM

Securities Litigation



Sulaiman Abdur-Rahman



What You Need to Know

- A former HF Foods CFO is accused of helping the former CEO misappropriate investor funds.
- Ex-CEO Zhou Min Ni is represented by a MoFo attorney in the SEC securities fraud case.
- Both defendants have reached a settlement with the SEC.

Two former executives at HF Foods Group have agreed to a settlement with the Securities and Exchange Commission amid allegations they misappropriated numerous investor funds and misled the company’s auditors.

Zhou Min Ni, who served as the CEO or Co-CEO of HF Foods from 1997 until February 2021, and Jian Ming “Jonathan” Ni, who served as the chief financial officer from 2015 to 2019, agreed to the settlement without admitting or denying the allegations of the SEC’s securities fraud complaint, the SEC announced this week.

“Zhou Min Ni, with the knowing assistance of Jonathan Ni from 2018 until April 2019, concealed the transfer of company funds to Zhou Min Ni and his family; hid millions of dollars in liabilities using a misleading promissory note to a third-party entity with no legitimate business relationship with HF Foods; and made misleading statements to investors and HF Foods’s auditors regarding the compensation paid to Zhou Min Ni,” the SEC alleges in the complaint it filed Monday in the U.S. District Court for the District of Columbia.

Haima Marlier, co-chair of Morrison Foerster’s Securities Litigation, Enforcement, and White Collar Defense Group, represents Zhou Min Ni. The MoFo attorney declined to comment for this story.

Zhou Min Ni has agreed to pay \$5.1 million in disgorgement and prejudgment interest of nearly \$1.4 million. He also agreed to reimburse more than \$963,000 to HF Foods Group, pay a \$300,000 civil penalty and be “barred permanently from serving as an officer and director of a public company,” according to the SEC.

Morrison Cohen attorneys Jason Gottlieb and Michael Mix represent Jonathan Ni and declined to comment for this story.

Jonathan Ni agreed to pay an \$80,000 civil penalty and to observe a 10-year ban from serving as an officer or director of a public company, according to the SEC.

HF Foods Group did not respond to a request for comment on this story. The company in its 2023 annual report said it has received \$9.25 million in value from Zhou Min Ni and former chief operating officer Chan Sin Wong under a 2023 settlement agreement it reached with those defendants.

Most of the financial concessions in Zhou Min Ni’s settlement with the SEC “will be deemed satisfied by Zhou Min Ni’s prior payment of \$9.25 million in the settlement of a related shareholder derivative lawsuit,” the SEC said Tuesday in a news release. “The proposed settlements with Zhou Min Ni and Jonathan Ni are subject to the court’s approval.”

Zhou Min Ni and his wife founded HF Group in 1997 in North Carolina. The company later went public in 2018 when it merged with Atlantic Acquisition and rebranded as HF Foods Group, according to the SEC’s complaint.

THE
NATIONAL LAW JOURNAL

Breaking news and trends for law firm and legal departments about the evolving federal regulations in a volatile political climate.



FEDERAL LEGAL NEWS

- [Courts & Litigation](#)
- [Expert Columns](#)
- [Latest Stories](#)
- [Events](#)

SPECIAL COVERAGE

- [Special Reports](#)
- [Special Supplements](#)

SURVEYS & RANKINGS

- [The NLJ 500](#)

NATIONAL LAW JOURNAL

- [Current Issue](#)
- [Contact](#)
- [Sitemap](#)

NOT FOR REPRINT

Copyright © 2024 ALM Global, LLC. All Rights Reserved.

Bloomberg Law News 2024-06-07T15:18:34419017508-04:00

Matt Levine's Money Stuff: Bill Ackman Wants a Lot of Your Money

By Matt Levine 2024-06-06T13:41:08716-04:00

Ackman

A dumb simple way to think about the value of an asset-management firm is:

- You manage some assets for clients. Say you have \$1 billion of assets under management.
- You can charge the clients some fees for managing their assets. These fees tend to be roughly proportional to the amount of assets you manage. Say you can charge 1% of assets, so you get \$10 million per year of fees.
- You have some expenses, including office rent and computers and data and travel, but *mostly* employee compensation. A crude rule of thumb in financial services is that 50% of revenue goes to employees, so figure there's \$5 million left over.
- So the firm provides a stream of cash flows of roughly \$5 million per year.
- Slap some multiple on that: Say investors expect to earn 10% a year, so they'd pay \$50 million for that stream of \$5 million cash flows.
- So the firm is worth \$50 million, about 5% of assets under management.
- That is: Managing \$1 billion of money for other people, for a fee, is a franchise that creates about \$50 million of value for you, or for people who invest in your management company. You could sell 10% of the management company to an investor for \$5 million.

This is all crude and oversimplified in a lot of ways. But in this dumb model, the key inputs are (1) your assets under management and (2) the fees you can charge. Some kinds of asset managers run enormous piles of money and charge minimal fees: BlackRock Inc., which runs lots of low-fee index exchange-traded funds, [manages about \\$10.5 trillion for investors](#) and is worth about \$116 billion, or a bit more than 1% of assets. Other kinds of asset managers run smaller piles of money and charge higher fees: KKR & Co., which runs lots of expensive private equity funds, [manages about \\$578 billion](#) for investors — about 5.5% the size of BlackRock — but is worth about \$89 billion, or more than 15% of assets, almost as much as BlackRock. Intuitively — crudely, inaccurately, but intuitively

— you could think “well, BlackRock probably charges about 10 basis points, so at a 10x multiple that’s worth 1%; KKR probably charges about 1.5%, so at a 10x multiple that’s worth 15%.”

That calculation is not right, of course: Those firms will have different expenses (it’s probably more expensive, as a percentage of assets, to pay a private equity dealmaker than someone making sure an ETF tracks its index), and of course investors care about not just current fee income but also expected future growth.

Still, this model suggests a rough *cap* on the value of an asset-management firm. If you charge clients 5% a year and have no expenses, then at a 10x multiple your management company should be worth something like 50% of assets under management.

Here’s this:

Hedge-fund manager Bill Ackman sold a 10% stake in Pershing Square ahead of a planned initial public offering in a deal valuing the company at more than \$10 billion.

Investors include Arch Capital Group Ltd., BTG Pactual, Consulta Ltd., ICONIQ Investment Management, Menora Mivtachim Holdings and an international group of family offices, according to a statement Monday. The purchase price was \$1.05 billion. ...

Ackman is planning a stock-market listing for Pershing Square as soon as late 2025, a person familiar with the matter said last week.

Pershing Square is the management company that runs closed-end funds — Pershing Square Holdings Ltd., which has about \$15 billion in assets, and Pershing Square USA Ltd., which he intends to list on the New York Stock Exchange — as well as unlisted hedge funds.

Pershing Square’s total assets under management — Pershing Square Holdings plus the hedge funds — come to **something like \$18 billion**. A firm that manages \$18 billion for other people is worth \$10 billion for its owners. That’s ... impressive? A crude way to think about it is that the market thinks that, in the long run, Pershing Square will be able to extract about half the value of its clients’ portfolios for itself.

Seems high! But that’s probably not really the right way to think about it. Instead, this is probably

more of a bet that, in the future, Pershing Square's clients' portfolios will be much bigger. There's other Pershing Square news this week:

Bill Ackman's Pershing Square aims to raise \$25 billion for a new closed-end fund expected to draw interest from US retail investors, which would more than double the fee-paying assets the firm manages, according to people with direct knowledge of the plans.

The vehicle, known as Pershing Square USA Ltd., has filed plans to list on the New York Stock Exchange, and will significantly amplify the management company's revenue ahead of a potential initial public offering, said the people, who asked not to be identified because no target has been made public. For the US closed-end fund, Pershing plans to charge a 2% management fee, which would be waived for the first 12 months, and no incentive fee, filings show.

The expected asset growth enabled Pershing Square to nab a valuation of \$10.5 billion in a stake sale announced Monday. The firm already has a European closed-end fund, Pershing Square Holdings Ltd., which has about \$15 billion in assets, among other vehicles.

We talked about Pershing Square USA ("PSUS") a few months ago, and I pointed out [a slide in an investor presentation](#) that suggested PSUS might raise \$10 billion. I put a little "(!)" after that number, because it seemed ambitious, but now the target is \$25 billion. The investors in Pershing Square aren't paying \$1 billion for 10% of a firm that manages \$18 billion. They're paying \$1 billion for 10% of a firm that they expect to manage more than twice that in the near future, and to grow from there.

More generally, I think, they are betting on Bill Ackman as a model for a hedge fund manager and Pershing Square as a model for a hedge fund management firm. The [Wall Street Journal notes](#):

[A Pershing Square] listing, should one happen, would be an anomaly in the world of hedge funds. After a burst of debuts just before the 2008-09 financial crisis, public markets soured on hedge-fund firms. The management and performance fees that make up hedge funds' revenues can be unpredictable, assets can shrink if investors yank their money out, and returns can be volatile.

But Ackman is trying to *so/ve* those problems:

- 1. His fees will not be particularly unpredictable. PSUS will make all its money from management

fees, not incentive fees; it will get 2% a year (after the free first year). Meanwhile, his existing European fund, Pershing Square Holdings (PSH), does charge incentive fees, but it plans to reduce those fees as PSUS grows. Basically investors in Pershing Square, the management company, are buying mostly predictable management fees.

- 2. Those funds aren't hedge funds, and investors *can't* yank their money out. Most of the existing money is in PSH, and all of the new money will be in PSUS, and both of those are public closed-end funds whose investors can't withdraw money.

Charging 2% forever on a pot of tens of billions of dollars of permanent capital is quite possibly a better business than charging 1.5% of assets and 20% of performance on hedge funds whose investors can withdraw money, or on private equity funds with limited lifespans where you need to raise new funds periodically.

My view has long been that the essential skill of a hedge fund manager is not *picking the right stocks*, but rather *continuing to run a hedge fund*: Picking the right stocks is a good way to keep running a hedge fund, but it is not the only one, and locking up capital permanently is in some ways even better. But that is even more true for outside investors: They are looking to own a company for the long term, and they can't be sure that you will always pick the right stocks. But if they're sure that your capital can't leave, that helps.

This predictability — of assets and fees — is not the only thing to Pershing Square's pitch. There's also the cost structure. Lots of multi-strategy multi-manager hedge funds achieve high returns, high fees and growing assets by hiring the best portfolio managers, allocating capital to them rigorously, supervising them closely, firing them if they underperform, and paying them gigantic amounts of money.

Pershing Square ... buys 12 stocks? It periodically discloses its portfolio, which is small and slow to change. "Pershing Square owns basically a long-only portfolio of large-cap US stocks," I wrote in February. "Perhaps no other hedge fund manager has perfected the art of having their money work for them while they sleep — or tweet — like Bill Ackman," wrote Bloomberg's Tom Maloney and Hema Parmar, about Ackman's performance and his portfolio of (at the time) 10 stocks.

That's cheap! It's cheap in the sense that you can run Pershing Square with a relatively small staff; you only need so many analysts to pick 12 stocks. It's also cheap in the sense that you can scale up easily: If PSUS really does raise \$25 billion of new money, it will just put that money into the same 12 stocks. It won't take any more analytical work (they've already picked the stocks), and it probably won't be that expensive (these are liquid large-cap stocks so the trades have more capacity).

Charging 2% management fees on a low-turnover portfolio of large liquid public stocks seems like a better business model than charging 2% and picking new stocks each day.

Now, two points here. One is that Pershing Square is not *just* a portfolio of 12 large-cap stocks. It *is* a hedge fund and it does sometimes make big bets using derivatives that can [make it a lot of money](#). We talked in 2020 about a credit default swap index trade in which Ackman apparently paid \$27 million for a bet that paid off \$2.6 billion in the early days of Covid. Ackman's pitch to investors in PSUS is not just "I'll buy 12 nice stocks for you"; it is also "I will sometimes make derivatives trades that make a lot of money when markets are volatile." It is a hedge-fund-like pitch, not a long-only pitch. And in fact one reason that Pershing Square is doing a US public fund now, as opposed to years ago, is that US securities regulation [has become more tolerant](#) of public mutual funds that use derivatives, so Ackman can do those derivatives trades in PSUS.

The other point is that charging 2% management fees on a low-turnover portfolio of large liquid public stocks is *such* a good business model that it presents a problem: Who would take the other side of that? Who would pay you 2% to own 12 big stocks for them? Why would you expect Ackman to raise \$25 billion in a closed-end fund that would do this? I think this is the answer, [from the Journal](#):

His "brand-name profile and broad retail following, along with a substantial media following, will drive substantial investor interest," the prospectus said. One of the people familiar with the matter said Ackman plans to write about new investments on X once the retail fund gets approved. (He is currently barred from marketing his Europe-listed fund to U.S. investors.)

There is a meme-stock element to all of this. If you're investing in Ackman's *management company*, you are not really betting on Ackman's ability to pick stocks and make smart derivatives trades, because you don't directly benefit from those skills. You are betting on Ackman's ability to *raise money by tweeting and going on television*, to build his public profile by doing controversial stuff on social media and to convert that profile into investor interest.

Equities in Secaucus

I wrote yesterday about TXSE, the proposed Texas Stock Exchange, which "will be entirely electronic," but will have its office in Dallas. I half-jokingly called it "a computer that trades stocks. In Texas." A spokesperson for TXSE said that actually it will have data centers in both Secaucus, New Jersey, and Dallas, Texas.

One point that I made yesterday is that, in the olden days, a person could only trade on one stock exchange, because a stock exchange was a building and you had to stand there to trade. You can only really stand in one place at a time: You could move between stations to trade different stocks, but you were limited to one building. Now a stock exchange is a computer, and you can connect your computer to as many stock-exchange computers as you want, so it's perfectly plausible to trade on a dozen stock exchanges simultaneously. This encourages new entrants: You don't have to be the biggest exchange with the most liquidity to attract traders, because the traders can trade everywhere, and will trade wherever they find the best price on any particular stock.

And yet in another sense, if you are a high-speed electronic stock trader, you really can only be in one place at a time, and [that place is New Jersey](#). If a stock is trading at \$10.00 on the New York Stock Exchange and \$10.01 on Nasdaq, you want to buy on NYSE and sell on Nasdaq instantaneously. Nasdaq's computer is in [Carteret, New Jersey](#); NYSE's is in [Mahwah](#). BATS is in [Secaucus](#). All of these places are fairly close to one another, and if you want to send electronic messages from one to another it doesn't take very long. Sending messages to Dallas would take ages by comparison, and in the modern world of electronic stock trading every microsecond counts. So the Texas Stock Exchange, like all the other stock exchanges, will be in New Jersey. Though also in Texas.

Elsewhere: "Texan stock exchange start-up draws [sceptical industry response](#)."

Asset/liability matching

We talked a few months ago about a proposal for financing Ukraine. The idea is roughly that (1) Ukraine has a large claim against Russia for war damages, (2) G7 governments (the US, UK, Canada, France, Germany, Italy and Japan) have frozen a lot of Russian assets under sanctions programs, (3) the G7 governments can't just *give* that Russian money to Ukraine (because *they* have no legal claim on it) but (4) they can *lend* money to Ukraine, collateralized by Ukraine's claims against Russia. And then if Ukraine ever successfully prosecutes that claim against Russia, it can get the money and repay the G7 lenders. And if — more likely — it can't, then the lenders can foreclose on the claim, at which point they *will* have a legal claim against Russia for Ukraine's war damages, which they can enforce by taking the frozen Russian assets.

It's cute. But one problem with any program of lending money to Ukraine backed by seized Russian assets is that the seized assets appear to have shorter terms than the loans. [The Financial Times](#)

reports:

The US is ready to lead a loan of \$50bn to Ukraine repaid by profits from frozen Russian assets if the EU can indefinitely extend sanctions against Moscow, according to a leaked discussion paper.

Washington needs the EU to prolong the bloc's sanctions on Russian state assets, which expire every six months unless renewed by unanimous consent, until the end of the war to ensure the US is not left on the hook for repayments.

But any such change to the EU regime would require the approval of leaders including Hungary's Viktor Orbán, who has jealously guarded his regular veto rights over sanctions decisions.

A lot of problems in finance involve people who have short-term funding that rolls over constantly, who start to treat that as long-term funding, and who then end up surprised when one day it does not roll over. This is the geopolitical version of that.

Cash fees

If you are a store and you accept credit cards for payment, you pay fees to get your money. If you sell a thing for \$100, and the buyer pays with a credit card, you get something like \$97. The rest goes to the buyer's bank, your bank, the credit card network and other intermediaries. In exchange for those fees, you get convenience, for you and the customer: The customer gets to buy your stuff without carrying cash (so you can sell more stuff), and the money shows up in your bank account relatively quickly.

If you accept cash for payment, you don't pay those fees. If you sell a thing for \$100, and the buyer pays cash, you put \$100 in your cash register. But then what? *You* probably don't pay for stuff in cash: You don't hand your suppliers a bag of cash; you pay them using *bank money*, wire transfers or checks or whatever. You have to *turn* the customer's \$100 into \$100 in the bank. And that is not *free*. You have to pay someone to walk the money over to the bank. You might have to pay for a security guard to escort the person walking the money over to the bank, or to guard the cash register until you walk it over. If you only walk the money over to the bank once a week, you miss out on interest on the money as it sits in the cash register. The bank might charge you a fee for depositing the money.

So if you sell a thing for \$100 in cash, you get \$100 in cash, but — after the costs and delays associated with handling cash and turning it into bank money — that's worth less than \$100 of bank money. I don't know how much less; it will depend on the particulars of your business. But it's *possible* that it will be less than \$97, and it will be cheaper for you to accept credit cards than cash.

Here's a [Wall Street Journal article](#) about businesses that charge fees to accept cash:

Paying with cash used to be a way to get a discount. These days it can often cost an extra \$1 to \$6 — the sort of transaction fees once limited to swiping a credit card or using an out-of-network ATM.

Reverse ATMs like those at Yankee Stadium are now common at cashless venues and restaurants across the country as a way to cater to those who prefer paying in cash. People who want to pay their parking tickets, tolls, taxes or phone bills in cash, meanwhile, often learn that government agencies and businesses have outsourced that option to companies that usually charge a fee.

All that can amount to a penalty on the people who prefer paying cash. Though it is more common to buy things with cards and mobile devices, cash remains the third-most popular way to pay, accounting for 16% of all payments in 2023, according to the Federal Reserve. That's down 2 percentage points from the year before, continuing a steady decline that accelerated during the pandemic.

"It's unbelievable that we actually have to tell retailers, 'This is U.S. currency and it's something that should be accepted,'" said Jonathan Alexander, executive director of the Consumer Choice in Payment Coalition, a group of businesses and nonprofits lobbying for the continued acceptance of cash.

A "reverse ATM" is a machine that accepts \$200 of cash and gives you back a debit card for \$196.50, charging you for the cost of dealing with your cash. Also I like that there's a cash lobby. Why shouldn't there be? If paying cash costs retailers money, that has to mean it's making money for somebody else.

Pickleball

A lot of financial scams have the form of "[affinity fraud](#)," where a fraudster offers fake investments,

pays Ponzi-like returns and “exploits the trust and friendship that exist in groups of people who have something in common.” Often the targets are members of some ethnic or religious group, who are more likely to trust one of their own with their money, but all sorts of common bonds can work. The more intense the sense of intra-group connection and trust, the more effective the scam is. We talked a few months ago about a Harvard Business School alumnus who allegedly targeted fellow Harvard MBAs for a Ponzi scheme. In some sense, running a Ponzi scheme on your classmates is the worst possible use of a Harvard MBA, but also I kind of admire it: That’s an affinity group with a lot of trust and loyalty and also a lot of money!

Anyway here’s a [Wall Street Journal article](#) about what I assume is the first alleged pickleball affinity fraud, but not the last:

Rodney “Rocket” Grubbs ... was well-known and well-liked in Brookville — a town of 2,600 tucked amid rolling hills about 40 miles northwest of Cincinnati — where he coached tennis and opened a pickleball shop. He traveled to dozens of tournaments a year, playing and selling merchandise through a company, Pickleball Rocks, that he touted as “the world’s most recognized pickleball apparel brand.”

But authorities say he was also issuing promissory notes — usually for \$25,000 at 12% interest over 18 months—to people across the country, telling them they were part of a small group of investors and seldom making good. In court filings, Grubbs said he owes a total of \$47.5 million, including interest. The money has largely vanished. ...

Grubbs’s creditors lament that they were vulnerable to manipulation by someone they knew and trusted. The affair has entangled the reigning senior national pickleball champion, droves of retirees and a priest.

He “hasn’t been charged with a crime” and “has said he never issued a loan he didn’t intend to repay,” but one alleged victim started “a Facebook group called ‘From Pickleball Rocks to Prison Rocks.’” Another now plays pickleball “wearing a Pickleball Rocks T-shirt with the word ‘Rocks’ covered up.” “Why would he take advantage of an 87-year-old friend,” she asks, but who else was he going to take advantage of?

Things happen

ECB Delivers Landmark Rate Cut With No Signals on Next Steps. Nvidia's Rise to \$3 Trillion Fuels 'Jensanity' in Tech World. Robinhood to Buy Crypto Exchange Bitstamp in Global Expansion. High Rates Pit Private Equity Firms Against Direct Lenders. Alvarez & Marsal [raids Big Four](#) in push to expand deal advisory work. FTC Opens Antitrust Probe of [Microsoft AI Deal](#). US antitrust enforcer says 'urgent' scrutiny needed over [Big Tech's control of AI](#). FTC prepares to sue largest U.S. [alcohol distributor](#), alleging 'secret kickbacks.' Trafigura's Profit Drops 73% as Trading Boom Cycle Fades. Affirm to Allow Buy Now, Pay Later Purchases in Just Two Chunks. Craft cocktails, mountain bikes and art: [Walmart's hometown](#) is booming, and getting more expensive. You Can Now Buy Gold Bars From Vending Machines in South Korea. How [candles](#) got so expensive.

If you'd like to get Money Stuff in handy email form, right in your inbox, please [subscribe at this link](#). Or you can subscribe to Money Stuff and other great Bloomberg newsletters [here](#). Thanks!

To contact the author of this story:

Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:

Daniel Niemi at dniemi1@bloomberg.net

- 1. And Pershing Square Holdings has generally traded at a discount to its net asset value — as much as about 38%, though now it's more like 23% — which also suggests something about the expected value capture by the management company.
- 2. See slides 15 and 16 of this [February PSH presentation](#): PSH will “receive an additional fee reduction from 20% of management fees earned on any Pershing Square funds that invest in public securities which do not charge performance fees.” So if PSUS does raise \$25 billion and charge 2% fees, then that will reduce PSH's performance fees by \$100 million (0.4% of \$25 billion).
- 3. When I wrote about PSUS in February, I noted that it would not charge performance fees and argued that, once you reach a certain level of fame and wealth, charging management fees is nicer, for you: “When you are a mature famous hedge fund manager, the performance fees are less important. You have billions of dollars of your own money in the fund now, so if your performance is good you will make lots of money just on the appreciation of your own money. But the management fees are more attractive: You are now famous, so you can put out a tweet and expect to raise \$10 billion of new money, which will pay you a \$200 million fee forever. That starts to look nice.” But of course the real analysis is that management fees are nicer for outside investors, because they are more predictable and don't depend on performance.
- 4. Patrick McKenzie, my source on all things related to payments, [writes](#): “If you deal with commercially relevant quantities of cash, in addition to your own labor costs associated with it, your

bank will assess a fee for depositing it. Larger retailers will negotiate their own bespoke rates, but the right ballpark for small businesses above a nominal amount is 3 bps, or \$3 per \$10,000 transacted.”

© 2024 Bloomberg L.P. All rights reserved. Used with permission.

Business Law Prof Blog

 lawprofessors.typepad.com/business_law/2024/06/in-which-elon-musk-again-illustrates-basic-corporate-law-concepts.html

Friday, June 7, 2024

In Which Elon Musk (Again) Illustrates Basic Corporate Law Concepts

By Ann Lipton

I swear I wasn't going to blog about Elon Musk this week; I had several other ideas planned, but then someone went ahead and filed a new complaint in Delaware and I just can't help myself.

In *Ball v. Tesla*, the plaintiff challenges *both* the upcoming pay ratification vote, *and* the Texas redomestication. The arguments against pay ratification are pretty much the ones you've already heard in this space (as well as ones advanced by Prof. Elson in his proposed amicus brief), and we've pretty much exhausted those so I'll skip it.

As for the Texas redomestication vote, the plaintiff claims that the required threshold to leave Delaware is 2/3 rather than a simple majority of outstanding shares due to certain provisions in Tesla's charter.

I've previously blogged about this issue at Tesla; it has a staggered board and keeps trying to reduce the stagger, but it can't get the required 2/3 outstanding vote, because so many shareholders do not cast ballots at all.

When Tesla drafted its charter way back when, it set about minimizing shareholder rights as much as it could under Delaware law. It instituted a staggered board, it prohibited shareholders from acting by written consent – they can only act at a duly called meeting – and prohibited them from calling a meeting themselves. And then, to ensure shareholders couldn't amend the charter and remove the protections, it insulated those provisions with a two-thirds voting requirement to amend them (and a two-thirds vote requirement to amend the voting standard to amend them):

Notwithstanding any other provision of this Certificate of Incorporation ... the affirmative vote of the holders of at least 66 2/3% of the voting power of all then outstanding shares of capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter or repeal, or adopt any provision as part of this Certificate of Incorporation inconsistent with the purpose and intent of, Article V, Article VI, Article VII or this Article IX ...

Now Tesla wants to move to Texas. But Texas guarantees more shareholder rights than Delaware. Specifically, in Texas, corporations cannot eliminate either the right of shareholders to act by written consent, nor the right of shareholders to call special meetings. So when Tesla drafted a new Texas charter, it tried to minimize those rights as much as possible. Specifically, the Texas charter permits action only by *unanimous* written consent, and permits shareholders to call a special meeting only if 50% of shareholders demand it (the highest threshold Texas permits). Additionally, as Tesla notes in its proxy, under Texas law, even if shareholders call a special meeting, the Board may still postpone or reschedule it.

So, in *Ball v. Tesla*, the shareholder claims that these new charter provisions expand the rights granted in the original charter, and therefore, can only be amended – and the redomestication can only be approved – with the approval of two-thirds of the outstanding shares.

What happens next?

Well, I'm assuming *Ball* will be in some way consolidated with *Tornetta*. I also assume the good attorneys at BLBG will be *not at all happy* about the challenge to the pay package, because they want to maintain control over the litigation. If nothing else, their *fee* depends on the “benefit” they provided to Tesla shareholders, and Tesla has already telegraphed that if shareholders vote to ratify, the company plans to argue that the attorneys did not provide any benefit to Tesla shareholders, and therefore the fee should be reduced or eliminated. So the Tornetta team already has a *very strong incentive* to argue that the ratification has no effect, and they will not be pleased that an interloper is trying to seize control of the issue.

With respect to the Texas redomestication, the vote's in a week. Chancellor McCormick cannot risk the company redomesticates and then she somehow has to reel it all back, which means she either has to decide this issue very quickly, or she has to make sure Tesla won't move while there are (plausible) arguments outstanding. That said, the Texas move is not self-executing once the vote occurs; even if shareholders vote in favor, Tesla will still have to file the appropriate forms with the Texas Secretary of State. So, if Chancellor McCormick believes the complaint has merit, she does not have to block the vote (which is not something Ball has asked for anyway); she can enjoin Tesla (or seek a promise, which she seems to prefer), from filing the forms until the matter is sorted out.

Which brings us to – does the complaint have merit?

Imma stop you right there on the written consent thing. The two-thirds requirement only applies to actions that are “inconsistent with the purpose and intent of” the original charter provisions, and there is no possibility of getting unanimous written consent in a public

company (plus, Elon Musk owns shares; if he's consenting, the point is moot anyway since he can call a special meeting). Ball's not going to succeed on that one.

What about the 50% threshold for calling a special meeting?

I'm going to start by saying I have not actually researched any caselaw on this, which might very well exist, and that obviously supersedes anything I'm about to say, but – I'd still rather be Tesla than Ball. Fifty percent is still almost impossible to achieve in a public company outside the context of a shareholder meeting; moreso now that Tesla's shareholder base is in the ballpark of 45% retail, and especially taking into account that Musk himself owns 13% (20% if you count the unexercised options, which number includes the ones in dispute).

So I think the real action here is over the pay ratification.

But I promised a lesson about corporate law, and here it is.

What if this challenge presented more of a threat to redomestication? What if, for example, Texas set the maximum threshold for shareholders to call a special meeting at 25% – which is the MBCA standard – rather than 50%?

In that event, we can imagine a scenario. Suppose Elon Musk called up his good buddy Governor Greg Abbott, and told him, "Greg, Tesla would love to reincorporate to Texas, but your law is blocking us! Can you do something about that?"

How much do you think Texas cares about that maximum vote threshold for shareholders to demand a meeting – especially if, in my hypothetical, Texas just adopted the MBCA as written?

Probably not much.

So we can imagine that, at the next legislative session, a bill sails through the legislature to amend Texas's corporate code to eliminate the right of shareholders to call special meetings, and voila! Tesla freely reincorporates.

All of this is a thought experiment for Tesla but it's a real-world thing that happens with companies all the time. For example, this paper tells the story of the time that Massachusetts actually changed its corporate law *in the middle of an active proxy fight* in order to protect the management of a local firm. And that's not even unusual.

But, corporations and shareholders assume, it doesn't happen in Delaware. Why? Partly because Delaware cares a lot more about its corporate code, but also because Delaware *doesn't have local firms*. I mean, you know, not really. So it's pretty much neutral ground.

At least, that's what everyone's always thought.

But right now, there's a proposal to amend Delaware's corporate code rather dramatically (prior posts [here](#), [here](#), [here](#), [here](#), and [here](#)), and as far as I can tell, that's largely to protect a group of specific companies that got a bit over their skis with aggressive shareholder agreements when they went public, and now some faction of the Delaware bar is seeking to change the law in order to retroactively validate those arrangements.

So, you know. We'll see what happens.

Edit: *In the comments, it's proposed that the complaint fails for a simpler reason regarding the terms of Delaware's redomestication statute, which overrides specific supermajority charter provisions. That may be right. Interestingly, Tesla recommends against shareholder proposals seeking declassification on the ground that they are impossible to implement without a two-thirds majority, but it cagily does not say that it could not implement them in conjunction with redomestication. ISS reports that when it raised the possibility of declassification in conjunction with the Texas move, Tesla simply stated it preferred to keep the new Texas charter as close in form to the old one as possible and committed to revisiting the issue of declassification when it achieved sufficient shareholder participation at a meeting.*

Elon Musk's Pile of Lawsuits Span Autopilot, Toxic Speech, AI

By Rachel Graf2024-06-07T09:55:25361-04:00

Elon Musk and his companies are embroiled in dozens of lawsuits, ranging from fatal crashes blamed on Tesla Inc.'s Autopilot system to civil rights complaints over the treatment of employees.

Tesla's board and Musk were hit Thursday with another suit over his \$55.8 billion pay package that a judge voided in January — ahead of a June 13 shareholder proxy vote on whether the company should resurrect it.

Musk, who has a history of sparring with regulators, also faces government investigations into his companies that could result in more lawsuits or even criminal prosecutions.

Bloomberg News has identified more than half a dozen ongoing legal fights in which Musk is a defendant or a plaintiff, as well as about a dozen others involving his companies. Here's a breakdown of the major legal battles faced by the world's third-richest person and his companies:

TESLA INC.

Autopilot Crashes, California and Florida state and federal courts

The electric-car maker faces at least half a dozen wrongful death claims over fatal crashes blamed on its Autopilot driver-assistance system.

At stake: A finding that Tesla is culpable for deaths would imperil Musk's quest to lead the way for fully self-driving cars to cruise down busy city streets and freeways.

Race Discrimination, California state and federal courts

Tesla faces multiple suits over allegations of racism on its production floor filed by workers, California's civil rights department and the US Equal Employment Opportunity Commission.

At stake: The automaker could have to pay damages and foster a more inclusive environment.

Pay Package, Delaware Chancery Court

Musk is poised to appeal a judge's decision voiding his Tesla pay package as excessive, while Tesla plans to ask shareholders at the company's June 13 annual meeting to ratify the same compensation plan approved six years ago. A new suit alleges Musk is trying to strong-arm shareholders into resurrecting the record-setting pay package through a proxy vote.

At stake: Musk has suggested the largest-ever executive pay package is necessary for him to have "the right amount of voting influence at Tesla," so he can grow it to be a leader in artificial intelligence and robotics.

Anti-Union Tweet, federal appeals court in New Orleans

A 17-judge panel is reviewing a finding by the National Labor Relations Board that Musk illegally threatened workers with the loss of benefits if they unionized.

At stake: A ruling condemning the CEO's commentary on social media would be a comeuppance for Musk and a morale boost for labor activists who are trying to organize Tesla workers.

Drug Use, Delaware Chancery Court

A shareholder suit alleges that Musk's use of illicit recreational drugs threatens Tesla's business, including by apparently influencing his sometimes erratic behavior online.

At stake: The lawsuit seeks closer supervision of Musk's social media posts about Tesla, which are already supposed to be vetted under an agreement he reached in 2018 with the Securities and Exchange Commission and unsuccessfully challenged all the way to the US Supreme Court.

False Advertising, California federal courts

Tesla faces numerous lawsuits claiming misrepresentations to consumers, including that the company inflated how far its electric vehicles drive on a charge and over-hyped their driving-

assistance capabilities.

At stake: The lawsuits take aim at features Tesla promotes to distinguish itself from competitors and are core to the company's market value.

JPMorgan Stock Warrants, New York federal court

JPMorgan sued Tesla seeking a \$162 million payment related to a series of stock warrant transactions dating back to 2014, and Tesla later countersued the bank.

At stake: If the case goes to trial, Musk's infamous 2018 tweet about taking Tesla private that is central to the dispute will once again haunt the company.

'Insider' Sale of \$7.5 Billion in Stock, Delaware Chancery Court

A Tesla shareholder alleges Musk had inside knowledge of a miss on production and delivery numbers that the company was facing when he sold more than \$7.5 billion in stock in 2022 to help pay for his acquisition of Twitter Inc.

At stake: The investor wants Musk to be ordered return the profit from his allegedly improper trading to the company.

X CORP.

Employee Pay, California state and federal courts

X Corp., formerly Twitter, has been accused in multiple suits of labor and workplace violations in the wake of mass layoffs after Musk's 2022 acquisition, including reneging on promises to pay severance to executives and thousands of workers.

At stake: Collectively, the lawsuits seek hundreds of millions of dollars in back pay.

Unpaid Bills, California state courts

X has been accused in multiple suits of failing to pay vendors and landlords after Musk took over the company and set about cutting operating costs.

At stake: Collectively, the complaints cite millions of dollars of unpaid expenses.

Twitter Takeover, California federal court

Musk faces an investor lawsuit claiming he fueled uncertainty about his proposed buyout in an effort to drive down the platform's stock price.

At stake: The investors seek unspecified damages over stock value losses.

Content Moderation, California federal court

X has sued non-profits that have issued reports criticizing toxic posts on the platform and faulting the company for lax content moderation.

At stake: X already lost one suit, but if it can prove its claim in the other case that a series of published articles are false and malicious attacks aimed at driving advertisers away, Musk's company could win monetary damages.

SPACEX CORP.

Retaliatory Firings, California

SpaceX was accused by the NLRB of illegally firing eight employees over an internal letter sharply critical of Musk.

At stake: The company could be forced to reinstate the workers or provide back pay, but the US labor board generally can't hold executives personally liable for alleged wrongdoing or issue any punitive damages.

US Labor Board, California federal court

SpaceX sued the NLRB to have the agency's structure for in-house administrative proceedings declared unconstitutional after the board filed its complaint over fired SpaceX employees.

At stake: A victory for SpaceX could hobble the authority of the federal labor rights watchdog.

Gender Discrimination, California state court

SpaceX faces multiple gender-discrimination suits, including allegations that female employees are underpaid relative to men and subject to sexual harassment.

At stake: A loss for the company would hurt its reputation and might discourage talented female engineers and managers from seeking employment.

Wildlife Area Launchpad , DC federal court

SpaceX's use of a rocket launchpad neighboring a Texas wildlife refuge drew a lawsuit from environmental groups over how the site won approval from the Federal Aviation Administration.

At stake: The environmental scrutiny could delay future licensing for the company.

MISCELLANEOUS

Musk v. OpenAI, California state court

Musk is suing OpenAI and its Chief Executive Officer **Sam Altman** for allegedly putting profit ahead of humanity in violation of the startup's founding mission.

At stake: A win for Musk would have implications for OpenAI, which is in talks to raise funds at a valuation of \$100 billion or more, and for Microsoft Corp., which has invested about \$13 billion in OpenAI.

Fired Disney Actor, California federal court

Musk is funding a lawsuit against Walt Disney Co. by *The Mandalorian* actor Gina Carano over controversial statements she posted on X.

At stake: As a “free-speech absolutist,” Musk has promised to pay legal fees for people fired from jobs for statements they made on the platform.

‘False Flag’ Defamation, Texas state court

Musk faces a defamation suit for allegedly promoting a conspiracy theory that falsely identified a California Jewish man as involved in a scheme to discredit right-wing groups by posing as a neo-Nazi street brawler.

At stake: Ben Brody, who filed the lawsuit, is seeking at least \$1 million in damages.

Dogecoin Cryptocurrency , New York federal court

Musk, SpaceX and Tesla were sued for allegedly participating in a racketeering scheme to inflate the price of the cryptocurrency Dogecoin.

At stake: The lawsuit initially included a claim for \$258 billion in damages, but an amended complaint removed any specific figure.

GOVERNMENT INVESTIGATIONS

Tesla Self-Driving

The Justice Department and Securities and Exchange Commission launched investigations in 2021 and 2022 about whether Tesla made misleading claims about its vehicles’ purported self-driving capabilities.

At stake: The probes could result in a regulatory enforcement action or criminal charges against Tesla.

Glass House

The SEC and Justice Department last year started investigating whether Tesla improperly used company funds to build a glass house in Texas and whether Musk was involved, the Wall Street Journal reported.

At stake: The probes could result in a regulatory enforcement action over securities law violations or criminal charges against Tesla.

Twitter Stock Purchases

The SEC is seeking information about Musk's 2022 purchases of Twitter stock and statements he made about his investments ahead of his \$44 billion purchase of the social media platform.

At stake: The probe could lead to an enforcement action over securities law violations and possible fines for Musk.

X Privacy

The US Federal Trade Commission is monitoring X over its compliance with a May 2022 settlement over data privacy practices reached prior to Musk's takeover.

At stake: Violations of the settlement could lead to millions of dollars in fines or even criminal charges against individuals.

To contact the reporter on this story:

Rachel Graf in San Francisco at rgraf27@bloomberg.net

To contact the editors responsible for this story:

Peter Blumberg at pblumberg1@bloomberg.net

Steve Stroth, Misyrlena Egkolfopoulou

© 2024 Bloomberg L.P. All rights reserved. Used with permission.

Michael Lynch

How Mike Lynch walked free after his decade-long US legal saga

Prosecutors struggled to connect Autonomy founder to alleged fraud while he made his case to the jury

Richard Waters in San Diego and **Tabby Kinder** and **Michael Acton** in San Francisco AN HOUR AGO



The verdict, when it finally came at midday on Thursday on the 17th floor of San Francisco's federal courthouse, was stunning. More than 12 years after being accused of what one US investigator called the biggest fraud ever to hit Silicon Valley, Mike Lynch, once one of the UK's most prominent tech entrepreneurs, was not guilty on all counts.

The co-founder and former boss of the formerly high-flying UK software company Autonomy briefly put his hands over his face and eyes after the words "not guilty" were read out 15 times, according to a reporter from Law360 who was in the room. Moments later, his wife rushed over to embrace him.

After fighting aggressively and tirelessly in the courts and through the press for years, it was a moment of pure [vindication](#). One of the leading figures to emerge from the "Silicon Fen" tech scene around Cambridge in the 1990s, Lynch had been forced to give up his life as an entrepreneur, start-up investor and prominent figure in the UK science establishment to defend himself. He had endured an ignominious year under house arrest in San Francisco, wearing an ankle bracelet and under 24-hour supervision by security guards he was forced to pay for personally.

But in the campaign by US prosecutors against high-profile white-collar crime, the verdict was little short of a disaster. They had already secured a conviction of Autonomy's top finance executive, Sushovan Hussain, on similar charges using much the same evidence. They had also fought a successful campaign to extradite [Lynch](#) from the UK, where he had argued that any claims involving a British-listed company by executives based in the UK should be heard.

The charges sprang from the \$11bn sale of Autonomy to US tech conglomerate Hewlett-Packard in 2011. A year after the deal, Silicon Valley veteran Meg Whitman, then chief executive of HP, accused Lynch and other Autonomy executives of falsely inflating their company's revenues in the years before the deal, causing HP to overpay by \$5bn.

In 2019, in the same courtroom where Lynch was later to stand trial, Hussain was sentenced to five years' imprisonment. That conviction, however, could not be discussed in front of the latest jury in San Francisco, forcing prosecutors to make their case again from scratch — a convoluted financial argument involving a dizzying variety of allegedly fraudulent contracts and accounting tricks.

Lynch appeared to be facing an uphill battle from the start. As well as seeing his former finance chief convicted, a judge in the UK had ruled against him in a civil fraud case brought by HP. The US company is pursuing damages of \$4bn, though the judge has said any award was likely to be much smaller.

Lynch's defence in the criminal case suffered serious setbacks even before the trial began in mid-March. He had argued for years that the fraud claims were a smokescreen used by HP to hide its own mismanagement of Autonomy after the deal. But Judge Charles Breyer — the bow tie-wearing brother of former US Supreme Court Justice Stephen Breyer, who presided over the case — prevented Lynch making that point to the jury, maintaining that events that occurred after the alleged fraud were irrelevant.

His legal team defined it as a battle against the odds from the start. Yet by the end, the prosecution's struggles to hit home with its detailed analysis of Autonomy's finances, and Lynch's calm and confident performance in his own defence on the witness stand, appeared to have turned things in his favour.

Prosecutors sought to depict Lynch as a domineering and controlling boss who had personally masterminded the alleged fraud. By contrast, the Lynch who appeared on the stand was calm and controlled — and sometimes funny — under cross-examination. Facing questions about increasingly erratic emails from his finance chief about end-of-quarter figures that risked putting Autonomy behind Wall Street estimates, he joked that Hussain "lived the quarters like the coach of a football team".

Presented with emails he had sent to his own team containing spelling errors or capital letters, he joked that “it does sound like me”. Once when describing how he was “trapped” in San Francisco for months due to a volcano eruption in Iceland in 2010, he hastened to add to the jury of Californians: “It’s very nice here, though I missed the tea.”

Prosecutors also faced challenges in making a clear case that fraud had occurred. During opening arguments, Breyer prodded the prosecution, wondering why it could not pare down the number of detailed examples and get to the point.

Prosecutors spent hours presenting the jury with spreadsheets displaying Autonomy’s financial performance and internal Autonomy emails — without landing any apparent blows. The first day of cross-examination was so meandering that after the judge excused the jury, he lambasted the prosecution, warning them to come to a point and noting that jurors were clearly not following.

“I think I see some of the points you’re trying to make, but they’re lost in the morass,” Breyer said.

Without direct evidence linking Lynch to the contracts and accounting records they claimed were fraudulent, prosecutors fell back on trying to depict Lynch as a demanding and detail-oriented chief who had kept a close hand on all aspects of his company’s business.

That was in keeping with the Lynch who had fought his own defence through the press for years, laboriously arguing over the disputed accounting treatments that had resulted in criminal charges. This included a detailed defence of why Autonomy’s accounting was fine under the international accounting rules, and that it was only the particularities of US accounting that appeared to show a problem.

Yet Lynch repeatedly downplayed his involvement in Autonomy’s financial accounting during the trial, occasionally claiming to not understand detailed spreadsheets prepared by his finance chief of the company’s quarterly sales presented by prosecutors.

“The CEO doesn’t do those things,” he said, speaking directly to the jury. “You don’t do the accounting, you don’t do the customer support. You have a department that does that and you set a culture for what you want them to do.”

He also distanced himself from the transactions that were said to be at the root of the fraud. Many of the witnesses that testified against him, he told the jury, were “people I’d never met, or if I’d met them it was incidental — a handshake”.

“It appears the government believed that because Mike Lynch was the CEO that he knew everything that was going on at the company,” Stephanie Siegmann, a partner at Hinckley Allen and former prosecutor and national security chief in the US attorney’s office in Massachusetts, told the Financial Times. “The evidence appears clearly not to have met the [evidentiary] burden.”

Lynch’s decision to take the stand at his own trial follows that of other erstwhile tech CEOs such as [Elizabeth Holmes](#) and Sam Bankman-Fried, who were convicted. But in those cases, the victims were individual investors.

HP, on the other hand, was “far less sympathetic” as an alleged victim, Siegmann said. And the government faced a challenge in convincing a jury beyond a reasonable doubt why Lynch, who had been described as “the Bill Gates of the UK,” had a strong enough financial motive to defraud HP, she added.

The high-risk strategy worked and as the verdict was delivered, the long legal nightmare appeared to have ended. But even as Lynch said he looked forward to going home and getting back to his life as an entrepreneur, he still faced a potentially ruinous civil judgment and difficult struggle to regain his position in the UK tech establishment.

[Copyright](#) The Financial Times Limited 2024. All rights reserved.

Bloomberg Law News 2024-06-07T14:58:06892780709-04:00

Lynch Faces \$4 Billion HP Hurdle After Stunning US Acquittal (2)

By Jonathan Browning2024-06-07T11:26:30317-04:00

- Tech tycoon plans UK return to clear his name in civil case
- Hewlett Packard Enterprise wants billions from fraud case win

More than a decade after Hewlett Packard first accused Mike Lynch of tricking the American tech giant into overpaying for his firm, the British software tycoon has finally won redemption from a US jury.

But even as he walks free from US criminal charges after an acquittal that defied all the odds, Lynch, who made at least \$500 million from Autonomy's sale, has to clear his name in a separate London civil case against Hewlett Packard Enterprise Co.



Mike Lynch at federal court in San Francisco, California, on March 18.

Photographer: Loren Elliott/Bloomberg

HPE is seeking as much as \$4 billion from Lynch after a judge found that he and Autonomy fraudulently boosted the value of the company.

The judge came to that conclusion following a nine month, £40 million (\$50.9 million) trial that was among the longest and most expensive in modern British history. In the 2022 ruling, coming in at more than 500,000 words, Judge **Robert Hildyard** said that Autonomy was dressed up to be much larger and more successful than it really was.

“One of the tragedies of the case is clear,” the judge said, “the company will probably always be associated with fraud.”

A Long Legal War Over a \$10 Billion Takeover Heads to a Close

The UK suit sets up a reputational tug-of-war over the British tech star as he prepares to fly back to the UK and return to the sector that once feted him. He’s argued for years that he was scapegoated for the ill-fated acquisition of Autonomy by one of the oldest US tech companies.

“It’s still a very serious position, but today will be regarded as being a good day in the context of a very long-running battle,” said Robin Henry, a disputes lawyer at Collyer Bristow not involved in the case.

After Lynch’s acquittal in California, his spokespeople said the decision allows the businessman to “continue his work without the cloud of these charges hanging over him.”

But he still needs to face HPE in court. The company’s lawyers and executives, including ex-chief executive officer Meg Whitman, have pursued Lynch for more than a decade, consistently attempting to put the blame on Autonomy.

HP bought the software firm for \$11 billion only to write down the valuation by \$8.8 billion within a year. The US firm sought to encourage prosecutors in both the UK and the US to pursue their own investigations, before it filed the successful suit against Lynch in London.

Lynch said previously that he plans to appeal the civil court findings, with his lawyers insisting that the

litigation isn't resolved at all. But first, he needs to wait for a ruling on the size of the damages that he must pay.

HPE said in February the losses that Lynch and his former chief financial officer must pay back total \$4 billion, while the judge had previously cautioned that the final amount was likely to be "substantially less" than HP claimed.

"The fraud was consistent and clear," HPE's lawyers said at the damages hearing in February. Meanwhile, Lynch's attorney argued that even if accurate information had been given, HP would have still purchased Autonomy.

On Friday, a spokesman for HPE declined to comment on the acquittal.

"This verdict closes the book on a relentless 13-year effort to pin HP's well-documented ineptitude on Dr. Lynch," **Christopher Morvillo**, Lynch's lawyer said in a statement.

The civil trial in particular painted an unflattering picture of the American corporation, with the discovery of reams of emails documenting internal infighting between executives.

Lynch, for his part, had always insisted that HP, with its long history in hardware, never understood what it was buying and simply ran his business into the ground.

(Updates with lawyer comment in seventh paragraph)

To contact the reporter on this story:

Jonathan Browning in London at jbrowning9@bloomberg.net

To contact the editor responsible for this story:

Jeremy Hodges at jhodges17@bloomberg.net

© 2024 Bloomberg L.P. All rights reserved. Used with permission.

Page Printed From:
https://www.law.com/therecorder/2024/06/06/autonomy-ceo-acquitted-on-all-counts-in-hp-fraud-trial/?
kw=Autonomy%20CEO%20Acquitted%20on%20All%20Counts%20in%20HP%20Fraud%20Trial&utm_position=3&utm_source=email&utm_medium=enl&utm_campaign=afternoonupdate&utm_content=



NOT FOR REPRINT
NEWS

Autonomy CEO Acquitted on All Counts in HP Fraud Trial

A federal jury on Thursday found the British tech tycoon not guilty of 14 counts of wire fraud and one count of conspiracy.

June 06, 2024 at 03:24 PM

White Collar Crime



Maria Dinzeo



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

Mike Lynch has spent more than a decade defending the sale of his software startup Autonomy to HP. Now he’s been vindicated.

A federal jury on Thursday found the British tech tycoon not guilty of 14 counts of wire fraud and one count of conspiracy for padding the revenues of his software startup Autonomy ahead of its \$11 billion sale to HP more than a decade ago. His co-defendant, former vice president of finance Stephen Chamberlain, was also acquitted on all counts.

In a statement after the verdict, Lynch said he was “elated” and “grateful to the jury for their attention to the facts over the last ten weeks. My deepest thanks go to my legal team for their tireless work on my behalf. I am looking forward to returning to the UK and getting back to what I love most: my family and innovating in my field.”

Lynch’s defense lawyers, Clifford Chance partner Christopher Morvillo and Steptoe partner Brian Heberlig, said in a statement that the jury’s verdict “reflects a resounding rejection of the government’s profound overreach in this case. The evidence presented at trial demonstrated conclusively that Mike Lynch is innocent. This verdict closes the book on a relentless 13-year effort to pin HP’s well-documented ineptitude on Dr. Lynch. Thankfully, the truth has finally prevailed.”

Speaking to Law.com after the verdict, Chamberlain said: “The government stole ten years of my life, now I’ve got it back,” adding, “I’ve said from the beginning I did nothing wrong. I’m not lying.” He said his first priority is to “go home to my children, my mom and dad, and my friends. They’ve been so supportive.”

Gasps and cries of relief resonated throughout the courtroom when the verdict was read, as both Lynch and Chamberlain tearfully hugged their wives and members of their respective defense teams. U.S. District Judge Charles Breyer thanked the 12-member jury. “I’ve not found a more conscientious jury than you have been,” he said.

Meanwhile, Abraham Simmons, a spokesperson for the U.S. Attorney’s Office, said: “We acknowledge and respect the verdict of the jury, and we thank the jury for their attentiveness to the evidence presented by the government.”

Lynch and Chamberlain were accused of masking Autonomy’s true financial condition through a range of dodgy tactics to inflate the company’s revenues, including backdating contracts to get deals on the books early, selling hardware at a loss to create the appearance the company was growing and making sales, discounting future revenues to get an upfront revenue boost, and acquiring companies that owed Autonomy money to avoid disclosing uncollectible debt.

The verdict, delivered after two days of deliberation, caps a twelve-week federal trial in which prosecutors portrayed Lynch as a controlling boss and a ruthless pursuer of revenue at all costs, with Chamberlain as his willing confederate. It also brings to a close a multi-year saga over the 2011 deal described by prosecutors as the biggest corporate fraud in Silicon Valley.

Former HP CEO Leo Apotheker, who championed the deal, testified that he primarily relied on Autonomy’s 2010 annual report when assessing its financial condition, and was enticed by what he saw. The report highlighted revenues of \$870 million, up 18% from a year earlier, and strong growth in its signature software, a search engine and data management platform called IDOL that was capable of extracting meaning from vast amounts of unstructured data.

“They were strong numbers. We were just coming out of the tail end of the big financial crisis. A lot of software companies were struggling. This was an example of a software company that was continuing to grow in double digits,” he said.

But what looked to be a promising deal ended in disaster. Within a year of closing, Hewlett-Packard had written down \$8.8 billion of Autonomy’s purchase price. Apotheker was fired by the board of directors before the purchase even closed, and HP blamed the bulk of the write down on “serious accounting improprieties” and “outright misrepresentations” by Autonomy.

Lynch forcefully pushed back on HP’s claims, saying the tech giant failed to properly integrate Autonomy into its byzantine corporate structure. “What happened after Leo was fired was total chaos and paralysis for weeks,” Lynch testified. “There was no transition plan, no handing over of the Autonomy plan. It was back to square one.”

Lynch’s defense team, which also included Reid Weingarten of Steptoe, [presented Lynch as a “startup guy” and tech visionary](#) with little involvement in Autonomy’s accounting and finances.

Jurors told both sides in post-trial meeting that they had trouble tying both Lynch and Chamberlain to the fraud, especially on the hardware sales and sales of software to verified resellers without any end user. They said they couldn’t conclude that the defendants knew about the deals and had the requisite intent to commit fraud. “There was a lot of conversation about the reseller deals. We had a hard time connecting [Lynch and Chamberlain] to the deals themselves,” a juror said.

They also didn’t view the allegations as a fraud against HP. “We had a little debate about in terms of fraud and do we have show there was fraud on HP. We didn’t end up feeling that way,” another juror said, adding that the jury focused instead on underlying misconduct “where any person who was at the other end of an acquisition, or even a person on the street, could have been defrauded.”

In the end, they said they fully trusted that Autonomy’s auditors had done their jobs. “We put a lot of stock in Deloitte’s review,” a juror said. “None of us are experts in accounting so we have to trust the auditors.” Since neither side was allowed to reference anything that happened post-acquisition, the jurors were in the dark about how the U.K.’s [accounting watchdog fined Deloitte £15 million](#) in 2020 for “serious and serial failures” in its audits of Autonomy.

The jurors asked the lawyers about their defense strategy and why Lynch testified while Chamberlain did not. They seemed impressed with Lynch, or at least, very unimpressed with the prosecution’s cross examination. “We feel like he was barely touched on cross examination,” one juror said.

Chamberlain’s attorney Gary Lincenberg with Bird Marella LLP said he was prepared to call Chamberlain but made the game-time decision to pivot. “Steve is a real proud guy and wanted to tell his story. But being subject to a cross by these guys 15 years ago– there’s a lot of things he doesn’t remember,” Lincenberg said.

The jury also said they found whistleblower Brent Hogenson lacked credibility. The U.S. based CFO was one of the government’s star witnesses, but the jury thought “he didn’t have the full picture of what was going on,” and found him too combative during cross examination.

Also looming over the trial was the specter of Autonomy’s former chief financial officer Sushovan Hussain, who was convicted of the same charges– plus one additional count of securities fraud— in 2018. Hussain was sentenced to five years in prison, and although both sides were not allowed to mention his conviction, his actions have featured heavily in the evidence presented to the jury.

Naturally, the jurors were all curious about why he didn’t testify. When they asked the lawyers, Heberlig responded, “That’s a complicated question. He went to trial in the prior proceeding back in 2018 in this courtroom and he was convicted. Mike and Steve were on either side of him but in different roles. He wanted to be here for Mike, but he went through a major ordeal, served his sentence and just got home three months ago.”

Morvillo added: “It is so hard for you guys not to get the full story. But God bless you for not Googling to answer that question because it wouldn’t have been hard to figure out.”

The case isn’t sewn up yet as the government has until June 21 to decide if it will pursue an additional count against Lynch and Chamberlain for conspiracy over an alleged coverup post-acquisition, a count that was severed before trial. Breyer said he didn’t have the power to throw out the charge without first hearing from the government, though he said Thursday that he “couldn’t conceive” of prosecutors moving ahead with it if both were acquitted.

To read Law.com’s full coverage of Lynch and Chamberlain’s trial, [click here](#).

NOT FOR REPRINT

Tech mogul cleared of fraud charges in acquisition by Hewlett-Packard

DJ [dailyjournal.com/articles/379077-tech-mogul-cleared-of-fraud-charges-in-acquisition-by-hewlett-packard](https://www.dailyjournal.com/articles/379077-tech-mogul-cleared-of-fraud-charges-in-acquisition-by-hewlett-packard)

Following a lengthy extradition battle and 11-week trial in San Francisco, British tech mogul Mike Lynch was cleared on Thursday of all counts of criminal fraud related to Hewlett-Packard's soured \$11 billion acquisition of his company Autonomy.

"I am elated with today's verdict and grateful to the jury for their attention to the facts over the last 11 weeks. My deepest thanks go to my legal team for their tireless work on my behalf. I am looking forward to returning to the U.K. and getting back to what I love most: my family and innovating in my field," Lynch said in a statement. Stephen Chamberlain, Autonomy's former vice president of finance, was also acquitted on Thursday.

After co-founding his company in 1996, Lynch became one of the most prominent tech entrepreneurs in the U.K. Hewlett Packard bought Autonomy in 2011 and wrote off \$8.8 billion of its value within a year, saying Lynch's company made significant financial misrepresentations before the deal closed.

Lynch's attorneys at Clifford Chance US LLP and Steptoe LLP maintained throughout the proceedings that their client had not inflated Autonomy's numbers and that prosecutors were stretching the truth. Assistant U.S. Attorneys Robert S. Leach and Adam A. Reeves led the case against Lynch and Chamberlain. *USA v. Lynch et al.*, 3:18-cr-00577-CRB (N.D. Cal., filed Nov. 29, 2018).

"We are thrilled with the jury's verdict, which reflects a resounding rejection of the government's profound overreach in this case. The evidence presented at trial demonstrated conclusively that Mike Lynch is innocent. This verdict closes the book on a relentless 13-year effort to pin HP's well-documented ineptitude on Dr. Lynch. Thankfully, the truth has finally prevailed. We thank Dr. Lynch for his trust throughout this ordeal and hope he can now return home to England to resume his life and continue innovating," said Clifford Chance partner Christopher J. Morvillo and Steptoe partner Brian M. Heberlig.

Lynch faced more than 20 years in prison if convicted. Taking the stand last week, the former tech executive said the proceedings felt "surreal" and that he had not met or briefly met many witnesses who testified for the U.S. Department of Justice. Noting that his background was in development and marketing rather than sales, Lynch told the jury that Autonomy was not a perfect operation.

"There's a thousand different realities and a lot of what we've been looking at is peering through the door of the kitchen and seeing the sausage-making machine ... And I think one thing to bear in mind is that if you take a microscope into even the most spotless kitchen, you will find a bacteria. That's real, and if it weren't there, there would be something very abnormal. So, I don't think Autonomy was any different," Lynch testified.

Prosecutors insisted that Lynch "spun a fabulous tale of corporate success" but his company was backdating contracts, claiming to have shipped goods it had not, and buying its products from resellers. However, toward the end of the trial, U.S. District Judge Charles R. Breyer threw out one count of securities fraud, the most significant charge against Lynch, for being unsupported by evidence.

In the biggest civil fraud case in U.K. history, the High Court found in 2022 that Autonomy had duped Hewlett-Packard by fraudulently boosting its earnings. Lawyers for Hewlett-Packard are looking to recover \$4 billion in losses. The ruling is under appeal.

#379077

Sunidhi Sridhar

Daily Journal Staff Writer
sunidhi_sridhar@dailyjournal.com

British tech magnate Mike Lynch acquitted of fraud charges in \$11 billion deal with Hewlett Packard

 [courthousenews.com/british-tech-magnate-mike-lynch-acquitted-of-fraud-charges-in-11-billion-deal-with-hewlett-packard](https://www.courthousenews.com/british-tech-magnate-mike-lynch-acquitted-of-fraud-charges-in-11-billion-deal-with-hewlett-packard)

Associated Press

SAN FRANCISCO (AP) — Mike Lynch, once hailed as Britain's king of technology, has been cleared of charges alleging he orchestrated a fraud and conspiracy leading up to an \$11 billion deal that turned into a costly albatross for Silicon Valley pioneer Hewlett Packard.

The not-guilty verdicts reached Thursday by a federal court jury in San Francisco followed an 11-week criminal trial that delved into the history of HP's 2011 acquisition of Autonomy, a business software that Lynch founded and then oversaw as CEO in Britain. HP at first celebrated the purchase as a huge coup that would propel the Palo Alto, California, company down a promising new path, but then quickly came to regret under its then-CEO Meg Whitman.

The jury acquitted Lynch on all 15 felony counts facing him. Toward the end of the trial, U.S. District Judge Charles Breyer threw out a count of securities fraud included in the U.S. Justice Department case against him in an indictment dating back to 2018. It took years to extradite Lynch from the U.K. and then more legal wrangling before the trial finally began in mid-March.

Lynch, 58, had been free on \$100 million bail. Being accused of a massive fraud represented a dramatic turn in fortune for an entrepreneur once described as the Bill Gates of Britain — a title he seemed to live up to when he negotiated the Autonomy sale that generated a more than \$800 million windfall for him.

The acquittal vindicates Lynch, who spent years fiercely denying he did anything wrong, while painting HP as a technological train wreck. It's yet another setback for HP, which had spent years blaming Lynch for duping the company into a deal that deepened its troubles and stained a legacy dating back to the company's 1939 inception in a Silicon Valley garage.

In a statement, Lynch said he was elated with the verdict and thanked the jury for poring over the facts in the complex case.

"I am looking forward to returning to the UK and getting back to what I love most: my family and innovating in my field," Lynch said.

The Justice Department didn't immediately respond to a request for comment.

Another former Autonomy finance executive, Stephen Chamberlain, faced fraud charges alongside Lynch during the complex trial. The same jury acquitted Chamberlain, too.

After prosecutors called more than 30 witnesses to the stand to help make their case, Lynch testified in his own defense over several days last month and occasionally spoke directly to the jurors while explaining various turns of British phrasing.

Like his own lawyers, Lynch contended he did nothing wrong and argued that Whitman unjustly turned him and Autonomy into a scapegoat for HP's own mismanagement and deteriorating financial condition.

Whitman, who became HP's CEO after an unsuccessful campaign to become California's governor in 2010, ended up recognizing \$8.8 billion in losses in the Autonomy deal and eventually fired Lynch in 2012 while accusing him of cooking the books. She also laid off thousands of workers as HP's fortunes sagged and eventually split the company in two to separate its personal computer and printer operations from products and services sold to other businesses.

Although Whitman wasn't called to testify, the trial probed into HP's downfall under her direction. Another former HP CEO, Leo Apotheker, who negotiated the Autonomy deal, was called to the stand by federal prosecutors to outline Lynch's alleged misconduct.

Apotheker initially saw Autonomy as a key piece of his plan to lessen HP's dependence on selling PCs and printers during the advent of the smartphone. Evidence presented at the trial indicated that HP had internally valued Autonomy at as much as \$46 billion, primarily because of its software that helped other businesses quickly find valuable information buried in email and other digital documents.

While federal prosecutors depicted Lynch as an iron-fisted and underhanded boss during his 16-year reign as Autonomy's CEO, his lawyers cast him as the prototypical tech nerd who enjoyed eating cold pizza late at night while brainstorming through ideas that could turn into gold.

By MICHAEL LIEDTKE AP Technology Writer

Categories / Business, Criminal, Technology

British tech pioneer Mike Lynch acquitted at US fraud trial

 [reuters.com/legal/british-tech-pioneer-mike-lynch-acquitted-us-fraud-trial-2024-06-06](https://www.reuters.com/legal/british-tech-pioneer-mike-lynch-acquitted-us-fraud-trial-2024-06-06)

Abhirup Roy, Jody Godoy

British entrepreneur Mike Lynch leaves the High Court in London, Britain March 25, 2019. REUTERS/Henry Nicholls/File Photo Purchase Licensing Rights , opens new tab

- Summary
- Companies
- Lynch and Stephen Chamberlain both cleared of conspiracy and wire fraud
- HP's acquisition of Autonomy led to legal battles, \$8.8-billion write-down

June 6 (Reuters) - Autonomy founder Mike Lynch was acquitted of fraud on Thursday by a jury in San Francisco, a major win for the entrepreneur who has been dogged by legal problems since the disastrous sale of his company to Hewlett-Packard (HP) (HPE.N) , opens new tab for \$11 billion in 2011.

Representatives for Lynch and U.S. prosecutors said Lynch was acquitted on all 15 charges -- one count of conspiracy, and 14 counts of wire fraud, each connected to specific transactions or communications.

Former Autonomy finance executive Stephen Chamberlain, who faced the same charges at trial alongside Lynch, was also acquitted on all counts, the Lynch representative said.

The trial, where prosecutors said Lynch and Chamberlain schemed to inflate Autonomy's revenue, was the latest chapter in a legal saga stemming from the failed deal.

The Autonomy sale was one of the biggest British tech deals at the time but quickly went sour, with HP writing down Autonomy's value by \$8.8 billion within a year.

"I am elated with today's verdict," Lynch, who was once compared with Apple (AAPL.O) , opens new tab cofounder Steve Jobs and Microsoft (MSFT.O) , opens new tab cofounder Bill Gates, said in a statement. "I am looking forward to returning to the UK and getting back to what I love most: my family and innovating in my field."

Abraham Simmons, a spokesperson for the Office of the United States Attorney said: "We acknowledge and respect the verdict."

At the trial, which lasted three months, jurors heard from more than 30 government witnesses including Leo Apotheker, the former HP CEO who was fired weeks after the Autonomy deal was announced.

Lynch also took the stand in his own defense at the trial, denying wrongdoing and telling jurors that HP botched the two companies' integration. Prosecutors said Lynch and Chamberlain padded Autonomy's finances in several ways, including back-dated agreements and "round-trip" deals that fronted cash to customers through fake contracts. Lynch's legal team argued at trial that HP was so eager to acquire Autonomy ahead of potential competitors that it rushed through due diligence before the sale. On the stand, the Cambridge University-educated entrepreneur said he had been focused on tech issues, and entrusted money matters and the accounting decisions at issue to Sushovan Hussain, Autonomy's then-chief financial officer. Hussain was separately convicted in 2018 at a trial in the same court on charges related to the deal with HP. He was released from U.S. prison in January after serving a five-year sentence.

Lynch turned ground-breaking research at Cambridge into the foundation of Autonomy, which became Britain's biggest software company and a member of the blue-chip FTSE 100 index.

He was lauded by academics and scientists and asked to advise the British government on technology and innovation. The Autonomy acquisition was meant to fuel HP's software business. Instead, it spawned a series of bitter and expensive legal battles. HP largely won a civil lawsuit against Lynch and Hussain in London in 2022, though damages have not yet been decided. The company is seeking \$4 billion.

Reporting by Jody Godoy in New York and Abhirup Roy in San Francisco; Editing by Rod Nickel

Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

Jody Godoy
Thomson Reuters

Jody Godoy reports on tech policy and antitrust enforcement, including how regulators are responding to the rise of AI. Reach her at jody.godoy@thomsonreuters.com

Trump Media Stock Sale Restriction Justifies Bond, Judge Says

By Mike Leonard

- Lawsuit seeks to oust deal architect from SPAC sponsor entity
- Volatility makes it impossible to estimate losses, judge says

Bloomberg Law News 2024-06-07T13:10:24634916364-04:00

Trump Media Stock Sale Restriction Justifies Bond, Judge Says

By Mike Leonard 2024-06-06T14:06:44000-04:00

- Lawsuit seeks to oust deal architect from SPAC sponsor entity
- Volatility makes it impossible to estimate losses, judge says

Early backers of the blank-check company that merged with Donald Trump's Truth Social platform must post a likely multimillion-dollar bond pending litigation against its onetime CEO, who's temporarily barred from selling company stock, a Delaware judge ruled.

The bond was justified by an earlier order restricting Patrick Orlando, one of the transaction's architects, from transferring more than 1.5 million shares of Trump Media & Technology Group Corp., Vice Chancellor Lori W. Will said in a ruling made public Thursday. The shares are held by ARC Global Investments II LLC, the entity formed to sponsor the special purpose acquisition company that combined with Trump's business.

Orlando's control over ARC is the focus of the court fight, one of a handful centering on the merger between TMTG and Digital World Acquisition Corp., the publicly traded shell entity backed by ARC. TMTG's shares, driven by its status as a meme stock, have seen significant volatility since the transaction. They closed at \$46.75 on Wednesday after cresting at \$66.22 on March 27, the second trading day after the deal closed.

Will, writing for Delaware's Chancery Court, stopped short of specifying a bond amount, citing that volatility. "It is impossible to estimate ARC's potential losses based on TMTG's stock price in several months' time when this case is resolved," the judge wrote.

She ordered the group of investors suing Orlando to post an amount reflecting 10% of the shares' value based on the closing stock price "the trading day before ARC's registration statement or its audited financials are approved, whichever comes first." The registration delay "may be related to the permanent suspension of TMTG's auditor," Will noted.

The lawsuit, filed March 26, seeks a court order declaring that the group of ARC investors validly removed Orlando from his role as its managing member based on wide-ranging claims of wrongdoing. Orlando also previously served as chairman and chief executive of DWAC before its board ousted him over misconduct that led to an \$18 million Securities and Exchange Commission penalty, according to the court complaint.

Most of the case's allegations concern a standard feature of blank-check mergers, which give private businesses a shortcut around an initial public offering: "founder shares" of DWAC, purchased by ARC for fractions of a penny, that soared in value by a factor of thousands when the transaction closed.

Orlando is exploiting his control over ARC to try to transfer the DWAC shares to shell companies he set up in Florida and Belize, the lawsuit says. He also "attempted to extort DWAC to obtain additional shares for his personal benefit," according to the complaint.

Will in April issued a status quo order barring any non-routine share transfers by ARC while the litigation plays out. If DWAC's share price "declines while the status quo order remains in effect, ARC may suffer losses" that would be unjustified in the event Orlando prevails, the judge said in the ruling released Thursday.

Orlando and ARC are represented by Richards, Layton & Finger PA. The investors are represented by McCollom D'Emilio Smith Uebler LLC.

The case is *Leon v. Orlando*, Del. Ch., No. 2024-0311, 6/6/24.

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

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

© 2024 Bloomberg Industry Group, Inc. All Rights Reserved

Wealthy Families Fuel \$20 Billion Private Equity Buyout Wave (1)

By Ben Stupples and Ben Scent

- Lego billionaires, German boiler tycoons join takeover deals
- Firms from KKR to Silver Lake team up with wealthy families

Bloomberg Law News 2024-06-07T13:11:31017773936-04:00

Wealthy Families Fuel \$20 Billion Private Equity Buyout Wave (1)

By Ben Stupples and Ben Scent2024-06-07T06:04:42016-04:00

- Lego billionaires, German boiler tycoons join takeover deals
- Firms from KKR to Silver Lake team up with wealthy families

Ultra-rich individuals and families worth more than \$150 billion are helping drive a resurgence in private equity buyouts, providing capital for some of the year's biggest acquisitions to overcome a tough dealmaking environment.

Wealthy clans that built their fortunes in industries from children's toys to household boilers have been co-investors on nearly \$20 billion of listed company takeovers this year, according to data compiled by Bloomberg. They've made a mark on Wall Street as go-to sources of capital for investment firms like KKR & Co. and Silver Lake, helping them get acquisitions over the line at a time when borrowed money remains expensive.



Max Viessmann and Martin Viessmann.

Source: Viessmann

Germany's Viessmann family, flush with cash after a major divestment, teamed up with KKR for its \$3 billion acquisition of renewable energy firm Encavis AG announced in March. The century-old dynasty has an estimated net worth of \$13.7 billion after completing the sale of their heating and cooling business to Carrier Global Corp. in January, according to the Bloomberg Billionaires Index.

Meanwhile, **Michael Dell's** family office partnered with Silver Lake on the biggest private equity buyout this year, a \$13 billion deal for talent agency Endeavor Group Holdings Inc.

Goldman Sachs Asset Management closed its purchase of Norwegian e-learning platform Kahoot! ASA in January with funding from Denmark's Kirk Kristiansen dynasty, the owners of Lego Group. In April, Morgan Stanley's infrastructure arm agreed to buy Milan-listed construction firm Salcef Group SpA with the Salciccia family, who have controlled it for decades.

Direct Investments

Many pension funds and endowments have hit the limit for how much they can allocate to private equity, leaving buyout firms to turn to increasingly sophisticated wealthy families or sovereign funds. Roping in a co-investor allows private equity firms to reduce the money they front themselves for a deal, a welcome prospect at a time when high borrowing costs are crimping the amount of leverage they can use.

Kjeld Kirk Kristiansen

Source: Bloomberg

Read More: Private Equity's Horrible, No-Good '23 Set to Continue Into '24

The shift is catching the eye of major investment banks. **Darren Allaway**, a London-based managing director in Goldman Sachs Group Inc.'s family office unit, said he's spent more time engaging with private equity investors within the past year than in his entire finance career of more than two decades.

"We're seeing a lot of families saying, 'We have capital allocated to leading transactions'" or to supporting other investors, Allaway said. "I would expect to see that trend continue."

Buyout firms have announced \$91 billion of listed-company takeovers this year through May, up 16% from the same period in 2023, according to data compiled by Bloomberg. More than a third of family office clients recently surveyed by UBS Group AG plan to increase their allocations to direct private equity opportunities, behind only developed-market equities as the most popular asset class.



Source: Source: Bloomberg

The participation of private wealth underscores the growing sophistication of how the people behind the world's biggest fortunes are managing their money, as well as how many investment firms are increasingly tapping them as sources of capital.

Blackstone Inc., KKR and Carlyle Group Inc. have already started dedicated platforms to serve the well-heeled, and the richest among them are able to become partners for some of those firms' most high-profile — and possibly most lucrative — deals.

"They have the potential to take on long-term opportunities," Christina Wing, founder of advisory firm Wingspan Legacy Partners, said of the ultra-rich. "They are going to come in at the same terms as institutional investors."

Deal Shift

The pace of dealmaking by wealthy families has been steadily increasing in recent years. When Brookfield Asset Management agreed to buy Network International Holdings Plc last year, Saudi Arabia's billionaire Olayan family contributed nearly a tenth of the £2.2 billion (\$2.8 billion) purchase price for the London-listed payments processor.



Lubna Olayan

Photographer: Stefan Wermuth/Bloomberg

In 2022, private equity firm EQT AB teamed up with the pharmaceutical billionaires in Germany's Struengmann family as it pursued a bid for Novartis AG's \$25 billion generic drugs business, Bloomberg News reported at the time. Overall, the family led by identical twins **Thomas** and **Andreas Struengmann** has worked with the Swedish private equity giant on at least six major deals within the past decade, according to data compiled by Bloomberg.

Read more: Twins Worth \$24 Billion Bet on Private Equity With EQT Deals

Past deals show the potentially outsized returns available from buyout deals involving publicly traded companies.

Michael Dell transformed his technology empire after striking a deal with Silver Lake to take his namesake business private in 2013 through a \$25 billion leveraged buyout, allowing him to reposition the Texas-based company outside the glare of public markets. It relisted five years later in stronger financial shape, with Dell's stake in the company he founded in his college bedroom now making up most of his \$107.2 billion fortune, according to Bloomberg's wealth index.

Other members of the world's wealthiest families are following suit. **Reinold Geiger**, the billionaire Austrian owner of L'Occitane International SA, is trying to buy out minority shareholders in the skin-care company with financing from Blackstone and Goldman Sachs.

The billionaire dynasty behind US clothing retailer Nordstrom Inc. has been considering a similar move. And Rothschild & Co.'s founding family bought out other investors in the storied bank last year with capital from several other wealthy clans, including the owners of luxury fashion house Chanel and Dassault Systemes SE.

"It's some of the best capital for our banking colleagues," Goldman's Allaway said, referring to funds from the world's ultra-rich. It will "become more of a permanent capital base for these type of transactions."

(Adds details of EQT deals in 15th paragraph.)

--With assistance from **Dinesh Nair**.



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

Calif. Judge Pauses Wells Fargo Investor Row Over State Case

By **Grace Dixon**

Law360 (June 6, 2024, 9:41 PM EDT) -- A California federal judge has paused a pension system's proposed class action accusing top Wells Fargo & Co. officers of enabling a "culture of lawlessness," making way for a state court suit that alleges similar wrongdoing.

U.S. District Judge Jon Tigar granted litigant Timothy Himstreet and the Montini Family Trust's request to intervene and stay a case in federal court that says company executives' failure to comply with recent orders from oversight bodies harmed the company and investors.

The state court proceeding was filed in May 2022, more than a year before the federal case in May 2023, and the two cover largely similar ground, warranting a stay of the later action, Judge Tigar ruled on Wednesday.

"Because both cases must resolve nearly identical issues, granting a stay would almost certainly prevent duplicative efforts, mitigate the risk of conflicting results, and conserve judicial resources," Judge Tigar said.

The City of Hollywood (Florida) Firefighters' Pension System had argued that its later complaint covered broader grounds than the state court suit. Its claims dated seven months further than those by the state court plaintiffs, and the litigants would be uniquely able to recover damages connected to a \$3.7 billion settlement with the U.S. Consumer Financial Protection Bureau in December 2022 concerning illegal fees and interest charged on auto and mortgage loans.

The court chalked up the distinctions between the state and federal claims largely to "technical differences."

The cases would resolve nearly identical issues, and discovery in both cases would require deposition of the same witnesses and requests for the same documents, amounting to piecemeal litigation, Judge Tigar said.

"While there may be some slight differences between the state and federal actions, an infeasible fact remains: the core issue in each case — namely, state law breach of fiduciary duty — is the same," he ruled.

The pension systems' suit pointed at a series of settlements between Wells Fargo and federal regulators in recent years.

The bank was hit with billions of dollars in fines and settlements in 2016 when it was found to have created millions of deposit accounts for customers without their knowledge. The Federal Reserve implemented a \$2 trillion asset cap in 2018, citing the bank's need to address pervasive internal issues.

The CFPB and the Office of the Comptroller of the Currency imposed consent orders shortly thereafter related to deceptive auto insurance practices and improper "rate lock" extension fees on mortgages. In 2021, the OCC fined the company \$250 million for its lackluster compliance with the consent order.

State court plaintiff Timothy Himstreet had previously filed similar derivative claims in California federal court in May 2018, but voluntarily dismissed those claims in 2019.

Counsel for the pension system, Wells Fargo directors and officers and the intervenors did not return requests for comment on Thursday. Counsel to Wells Fargo declined to comment on Thursday.

The City of Hollywood Firefighters' Pension System is represented by Eric L. Zagar of Kessler Topaz Meltzer & Check LLP.

Thomas E. Martin is represented by Travis E. Downs III, Randall J. Baron, Benny C. Goodman III and Erik W. Luedeke of Robbins Geller Rudman & Dowd LLP.

John D. Baker and other defendants are represented by Alexander L. Cheney, Charles Dean Cording, Todd G. Cosenza and Michelle Anne Polizzano of Willkie Farr & Gallagher LLP.

Charles W. Scharf is represented by Jennifer Kennedy Park, Mark E. McDonald and Victor L. Hou of Cleary Gottlieb Steen & Hamilton LLP.

Wells Fargo and other defendants are represented by Brendan P. Cullen, Sverker Hogberg, Christopher Viapiano and Leonid Traps of Sullivan & Cromwell LLP.

Timothy Himstreet and the Montini Family Trust are represented by Brian Robbins, George Aguilar, Craig Smith, Shane Sanders and Michael Nicoud of Robbins LLP.

The case is City of Hollywood Firefighters' Pension System v. Wells Fargo & Co. et al., case number 4:23-cv-02445, in the U.S. District Court for the Northern District of California.

–Additional reporting by Bonnie Eslinger, Jon Hill, David Holtzman and Hailey Konnath. Editing by Peter Rozovsky.

All Content © 2003-2024, Portfolio Media, Inc.



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

Biote Investors Sue Cooley, SPAC After Huge Merger Loss

By **Katryna Perera**

Law360 (June 6, 2024, 4:36 PM EDT) -- Family trust investors in Biote Corp. have sued Cooley LLP and the "hormone optimization" company's top brass over the \$700 million merger Biote completed with a special purpose acquisition company, saying the deal was a "disastrous transaction to divert approximately \$70 million of merger consideration to themselves and gain control of an enterprise they did not build."

Marci Donovanitz, as trustee for the Donovanitz Family Irrevocable Trust, filed a complaint Wednesday against Biote CEO Teresa Weber, Executive Chairman Marc Beer and general counsel Marybeth Conlon. Cooley is named as a defendant because it was retained by Biote for guidance through the merger, according to the complaint.

The SPAC that Biote merged with, Haymaker Sponsor III LLC, is also named as a defendant in the suit, along with its CEO and chairman, Steven Heyer.

According to the complaint, Biote was known as Biote Holdings prior to the 2022 merger, and Weber, Beer and Conlon all held executive positions with the company or one of its subsidiaries. Weber, Beer and Conlon are identified as the "insider defendants" in the suit.

Donovitz said the insider defendants conspired to close the merger for their own benefit, which resulted in the Donovanitz trust ownership interest in Biote being reduced from 45% to 34%.

The insider defendants claimed that the merger would provide roughly \$737 million in aggregate consideration to Biote Holdings and its shareholders in the form of cash and stock, the complaint said. But during the deal's negotiations, the insider defendants agreed to the SPAC's "demand" to reduce the equity value attributed to Biote Holdings to \$555 million without securing correspondingly significant concessions, Donovanitz said.

"Despite their public proclamations about the expected value of the transaction, all defendants knew for months that astronomical redemptions would eviscerate almost all the cash raised by the SPAC and would cause the transaction to be destructive of value. Nonetheless, defendants proceeded with their scheme to enrich themselves," the complaint said.

In the months leading up to the deal's closure, 98% of the SPAC investors redeemed their shares, and there were no other investments, the complaint said. That caused Biote Holdings to only receive approximately \$12 million, or negative \$10 million after liabilities, of the "anticipated" \$317 million in SPAC funds.

Biote Holdings also assumed a \$50 million senior secured revolving credit facility and a \$125 million senior secured term loan facility, which were only necessary to complete the transaction and pay the defendants, according to the complaint, and the company incurred over \$54 million in transaction costs.

According to Donovanitz, the newly formed Biote was so depleted and had so few public shareholders that the Nasdaq Stock Market temporarily delisted it.

Donovitz further alleged that just days before the deal closed, all the defendants collaborated to "trick" Biote's founder, Donovanitz's ex-husband, into waiving a key protection for Biote shareholders in

the merger, which ensured that the defendants would receive their "ill-gotten gains."

"Defendants conspired to cause him to unwittingly waive a minimum cash closing condition that required the SPAC to have at least \$5 million in net cash to close," the complaint said. "The insider defendants completed the transaction to improperly divert net sale proceeds from the tainted transaction to themselves."

As a result of their alleged misconduct, the defendants collectively received roughly \$135 million of cash and stock from the deal, the complaint said.

"The insider defendants, aided and abetted by the Haymaker defendants and Cooley, were disloyal fiduciaries in pushing through the transaction over all obstacles, causing plaintiff to suffer hundreds of millions of dollars in damages and dilution of its equity and voting power in [Biote]," the complaint said.

The suit seeks damages and attorney fees.

In a statement to Law360 on Thursday, William A. Brewer III of Brewer Attorneys & Counselors, counsel for the Donovitz Trust, said: "The lawsuit reveals the inner workings of a scheme to enrich a few — at the expense of the owner who built the company. Our client believes a handful of insiders conspired to secure lucrative benefits to which they were not entitled."

Representatives for Haymaker and Heyer declined to comment Thursday, and representatives for the other parties did not immediately respond to requests for comment.

The Donovitz Trust and Marci Donovitz are represented by Brian Sullivan and Charles J. Brown III of Werb & Sullivan and William A. Brewer III and Claiborne R. Hane of Brewer Attorneys & Counselors.

Counsel information for the defendants was not immediately available.

The case is The Donovitz Family Irrevocable Trust v. Teresa S. Weber et al., case number 2024-0617, in the Court of Chancery of the State of Delaware.

--Editing by Rich Mills.



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

Tesla Sued Over Vote On Revived \$55B CEO Pay, Texas Move

By **Lauren Berg**

Law360 (June 6, 2024, 11:23 PM EDT) -- Tesla, its board of directors and CEO Elon Musk were hit with a proposed class action in Delaware Chancery Court on Thursday over the company's plan to seek stockholder approval for the same \$55.8 billion Musk compensation plan voided in January, along with reincorporation of Tesla as a Texas company.

In an April filing with the U.S. Securities and Exchange Commission, Tesla's board **asked shareholders to approve** the reincorporation of the company from Delaware to Texas and to "ratify" Musk's compensation package that was **struck down** by the Chancery Court in January at its 2024 annual meeting set for June 13.

But in his complaint Thursday, shareholder Donald Ball claims the upcoming redomestication vote amounts to a breach of Tesla's "Amended and Restated Certificate of Incorporation" from Aug. 4, 2022, which provides for a higher voting standard of a little more than 66%, rather than just a majority of votes.

According to the company's SEC proxy statement, the redomestication would repeal the charter, which, according to the suit, means "the affirmative vote of the holders of at least 66⅔% of the voting power of all then outstanding shares is required" under the charter to approve the redomestication.

Ball also alleges that "Musk has engaged in strong-arm, coercive tactics to obtain stockholder approval for both the redomestication vote" and the vote to ratify the CEO's compensation package. For example, Musk in January threatened to take artificial intelligence and robotics technologies out of Tesla and into a new company unless he has "~25% voting control" at the company, according to the suit.

What's more, Tesla's board hasn't disclosed a complete picture of how ratification of the rescinded compensation package will likely impact the company and its stockholders, according to the complaint.

"Indeed, there could be radical tax implications for Tesla that will potentially wipe out Tesla's pre-tax profits for the last two years of [\$14.9 billion} and [\$12.5 billion], respectively," Ball said.

Ball wants to represent a class of Tesla stockholders "who are or will be threatened with injury arising from defendants' wrongful actions," the suit states.

The suit seeks declaratory judgments that Tesla's proposed redomestication vote violates its charter and that the proposal to ratify Musk's compensation package is null and void and lodges a claim of breach of fiduciary duty. It also seeks damages, litigation costs and attorney fees, among other relief.

Counsel for Ball and a representative for Tesla did not immediately respond to requests for comment late Thursday.

Chancellor Kathaleen St. J. McCormick found in a 200-page ruling in January that "Musk dictated the timing" of the compensation-setting process, "making last-minute changes to the timeline or altering substantive terms immediately prior to six out of the ten board or compensation committee meetings during which the plan was discussed."

The decision followed court findings that Tesla's directors approved the compensation plan by way of a flawed process, with approval coming from a board controlled by Musk, among other flaws.

Although Tesla and its directors argued that Musk was "uniquely motivated by ambitious goals," with Tesla desperately needing him to succeed, the opinion observed that "these facts do not justify the largest compensation plan in the history of public markets."

Hours after the chancellor released the court's decision, **Musk declared** on his X social media site: "Never incorporate your company in the state of Delaware."

Chancellor McCormick **last week nailed** Musk, Tesla and their counsel to assurances that the company won't flee state corporate law jurisdiction and a potentially massive stockholder attorney fee dispute by rushing votes on the struck-down compensation plan and proposed reincorporation in Texas.

Ball is represented by Thomas A. Uebler, Brian V. DeMott, Adam J. Waskie, Terisa A. Shoremount and Allison Neff of McCollom D'Emilio Smith Uebler LLC and D. Seamus Kaskela and Adrienne Bell of Kaskela Law LLC.

Counsel information for the defendants was not immediately available.

The case is Donald Ball v. Tesla Inc. et al., case number 2024-0622, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Michael Watanabe.

Correction: A previous version of this article misspelled the plaintiff's name. The error has been corrected.

All Content © 2003-2024, Portfolio Media, Inc.



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

Pharma Co. Misled Investors On Seizure Drug Trial, Suit Says

By **Sydney Price**

Law360 (June 6, 2024, 8:13 PM EDT) -- Marinus Pharmaceuticals has been hit with a proposed shareholder class action alleging that the company understated the risks of an epilepsy drug trial and did not warn investors that trial enrollment would be suspended when it failed to meet certain criteria.

According to the suit filed Wednesday by investor Scott Bishins in Pennsylvania federal court, Marinus develops ganaxolone, a steroid used to treat seizures. The company tested the drug in a clinical trial called Raise but concealed from investors that the trial would never be fully completed, Bishins said.

In April, Marinus told investors that the trial did not meet "early stopping criteria" and that the data monitoring committee recommended continuing the trial. On the same day, Marinus also announced that it would implement cost-saving measures. In May, Marinus told investors that it was stopping enrollment in the Raise trials.

In addition to Marinus, the suit's individual defendants include its CEO Scott Braunstein and its Chief Operating Officer and Chief Financial Officer Steven Pfanstiel. Bishins said the defendants acted with scienter, or actual knowledge of wrongdoing or reckless disregard.

The class period begins on May 17, 2021, the day Marinus announced its first-quarter financial results. In a filing with the U.S. Securities and Exchange Commission, Marinus stated that certain factors could delay, limit or prevent regulatory approval of the treatment being tested in the Raise trial. These risk disclosures, however, did not state that Marinus would stop trial enrollment if the company did not meet early stopping criteria, the suit claims.

The Wednesday **complaint** alleges that Marinus continued to make insufficient risk disclosures for over two years. For example, on a Nov. 7, 2023 quarterly earnings call, Braunstein discussed the "conservative assumptions" Marinus made going into the trial, but the suit alleges that the rhetoric overstated the likelihood that Marinus would meet the early stopping criteria.

The truth began to emerge, the suit alleges, on April 15, 2024. That day, Marinus announced that it failed to meet the early stopping criteria and was "disappointed" with the result. It also said that cash reduction activities were "under review" and expected to be implemented the same quarter.

On this news, the price of Marinus shares fell \$6.22, or 83%, to close at \$1.30 per share on April 15, according to the suit. The next day, Marinus shares fell an additional 10 cents, or 8%, to close at \$1.20 on April 16, the suit states.

The next month, on May 8, Marinus announced that it had stopped clinical enrollment in the Raise trial. It also said it would reduce its workforce by 20% to cut costs.

That day, the price of Marinus shares fell 14 cents, or 9%, to close at \$1.43 on May 8, according to the suit.

Bishins accuses the defendants of violating the Exchange Act and seeks damages.

Counsel for Bishins and a representative of Marinus did not immediately respond to requests for comment on Thursday.

Bishins is represented by Jacob A. Goldberg and Phillip Kim of The Rosen Law Firm and Brian Schall of The Schall Law Firm.

Counsel information for Marinus was not immediately available on Thursday.

The case is Bishins v. Marinus Pharmaceuticals Inc. et al., case number 2:24-cv-02430, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Rich Mills.

All Content © 2003-2024, Portfolio Media, Inc.



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

Former Allianz Unit Exec Admits Role In \$6B Fund Fraud

By **Pete Brush**

Law360, New York (June 7, 2024, 1:17 PM EDT) -- A former portfolio manager at Allianz SE's U.S. unit told a Manhattan federal judge Friday that he lied to investors about the risks of the German fund giant's now-defunct Structured Alpha Funds, admitting to his role in a \$6 billion fraud.

Gregoire Tournant, 57, entered a guilty plea before U.S. District Judge Laura Taylor Swain, who set an Oct. 16 sentencing date.

Tournant, a former chief investment officer who had been set to go before a jury in September, pled guilty to two counts of investment adviser fraud per the terms of a plea agreement.

"I provided or caused to be provided reports and information to these investors that deceptively failed to disclose that alterations had been made," Tournant told the court. "I knew this conduct was wrongful."

A 2022 indictment accused Tournant, then the Alpha funds co-lead portfolio manager, of defrauding dozens of institutional investors by essentially understating the risk to which investors' assets were exposed starting in 2014.

Those alleged lies resulted in retention of investments that might not otherwise have been made, and accelerated the funds' losses in 2020 to over \$6 billion amid economic shocks from the COVID-19 pandemic, according to prosecutors from the Manhattan U.S. Attorney's office.

The Allianz unit that was responsible, Allianz Global Investors U.S. LLC, previously pled guilty and was ordered by U.S. District Judge Colleen McMahon to pay a fine of more than \$2.3 billion, restitution in the amount of more than \$3.2 billion and forfeiture of \$463 million.

The \$3.2 billion was the amount in fact lost by investors, according to statements in court Friday. Tournant stipulated to that loss amount, but may challenge the contention that his wrongdoing was the cause for that amount of loss.

As part of his plea agreement, Tournant agreed to forfeit over \$17.5 million.

Two other AGI managing directors, Stephen Bond-Nelson and Trevor Taylor, have also pled guilty and are cooperating with the government.

Tournant is represented by Seth Levine and Alison Bonelli of Levine Lee LLP and Daniel Alonso and Olivia Rauh of Orrick Herrington & Sutcliffe LLP.

The government is represented by Nicolas Roos and Sarah Mortazavi of the U.S. Attorney's Office for the Southern District of New York.

The case is USA v. Tournant, case number 1:22-cr-00276, in the U.S. District Court for the Southern District of New York.

--Editing by Alyssa Miller.



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

Health Co. CEO Sold Stock Amid Souring Cigna Deal, Jury Told

By **Gina Kim**

Law360 (June 6, 2024, 10:47 PM EDT) -- A stock analyst told California federal jurors Thursday he noticed in disclosure forms that the founder of healthcare company Ontrak Inc. was starting to sell company shares a few weeks before Cigna announced it was terminating its \$90 million contract with the company.

Opening statements **kicked off Tuesday** in the criminal case against Terren Peizer, the founder, chair and former CEO of Ontrak Inc, who is accused of insider trading. Peizer is on trial for three counts of securities fraud over allegations he **used two Rule 10b5-1 plans** between May and August 2021 to trade using material nonpublic information: that his company was about to lose its then-leading customer, Cigna, shortly after another large client, Aetna ended its deal with Ontrak.

Rule 10b5-1 plans allow executives and other corporate insiders to set a predetermined date for selling or buying shares and require them to certify that they are not aware of any material, nonpublic information that is informing their decision.

Peizer's scheme helped him dodge \$12 million in losses, prosecutors alleged.

Ontrak provided behavioral health services to members of large health insurance plans, which aimed to reduce insurers' costs. Its relationship with Cigna — the two entered into a \$90 million contract in 2020 — made up a large cut of Ontrak's revenue.

Defense counsel maintained during opening statements that Peizer simply sought to sell more than a million in stock warrants set to expire later that year that he'd otherwise lose, and did so gradually, over time. Defense counsel maintained that his desire to exercise the warrants had nothing to do with Cigna; Peizer simply wanted to pay off loans and buy a home in Puerto Rico.

On Thursday, jurors heard from Sean Dodge, a stock analyst at RBC Capital Markets, who covers publicly traded companies like Ontrak. His work includes gathering financial information about them, sharing that information with investor clients and publishing analyst reports. As part of his job, Dodge would rate stocks, recommend when to buy or sell, and would also opine on forecaster stock prices and future profits of a company.

Dodge told jurors he had both public and private conference calls with Ontrak's executive teams, which included Peizer, and that in early 2021, Ontrak's goal was to grow its business and expand its service agreements with existing health insurance customers like Aetna and Cigna, two of Ontrak's biggest clients.

On March 1, 2021, Aetna announced it was ending its deal with Ontrak, "which kind of came out of left field," Dodge testified, noting he was under the impression things were going well at the time with Aetna. Ontrak's stock prices plunged 46% when the news broke, trading from \$70 to \$80 per share down to \$30, Dodge said.

Shortly after, in the spring of 2021, the company adjusted its revenue guidance from \$100 million to \$85 million, jurors heard.

Dodge testified Ontrak's executives told him there were still service expansion opportunities with Cigna, that the issues with Aetna wouldn't affect its other clients and that Ontrak expected to

generate \$100 million in the next few years. Ontrak's deal with Cigna was off to a strong start at the start of 2021, and things were looking good, jurors heard.

However, none of the company's disclosures mentioned it was experiencing any issues with Cigna, which started cutting back patient referrals, wanted to halt expansion plans and was planning to renegotiate its \$90 million deal with Ontrak, jurors heard.

Dodge said none of Ontrak's executives informed him of those issues, nor were they mentioned in Ontrak's August 2021 securities forms. Instead, executives attributed the adjustment of revenue guidance to headwinds, the arrival of a new CEO and COVID-19 affecting member outreach efforts, while noting it reflected current expectations with existing health plan customers, budget considerations and timing of expansions.

In early August 2021, Dodge participated in a private call with then-Chief Financial Officer Brandon and then-CEO Jonathan Mayhew, during which he asked for updates on Cigna, jurors heard.

Dodge testified he also questioned the executives about Peizer's trading activity, remarking that some of his investor clients had noticed Peizer selling Ontrak stocks, which was referenced in the company's disclosures.

"At the time, he owned a lot of stock, over half the shares, and up to that point, as far as we were aware, never sold any and had started selling," Dodge said.

Investors get concerned when company executives start selling, as those executives will know things that investors do not, Dodge said, adding that it's usually not a good sign when executives sell their shares.

Dodge recalled one of the executives on the call explained Peizer was only selling stock warrants Peizer had as part of his initial investment in Ontrak that were expiring, but that he hadn't sold any other shares.

Finally, on Aug. 19, 2021, news broke that Cigna was ending its deal with Ontrak, and stock prices dropped 45%, jurors heard.

Trial counsel Matthew Reilly of the U.S. Department of Justice asked Dodge if he was surprised Cigna terminated its agreement.

"We were, because we were under the impression things with Cigna were going well," Dodge said.

On cross-examination Thursday, defense counsel Jamie Lang of King & Spalding LLP pointed out to Dodge that Ontrak disclosed in its U.S. Securities and Exchange Commission 10-Q form in August 2021 that there was a risk it could lose any one of its biggest customers and that clients may not achieve savings as part of Ontrak's program.

Dodge agreed.

Furthermore, while the disclosures don't mention "Cigna" by name, they use the word "customers," which clearly includes Cigna, Ontrak's biggest client at the time, Lang pointed out.

Lang also noted that Peizer's trades before the Cigna announcement involved stock warrants, which are different from common shares of stock, and can expire. If one fails to exercise the warrants before expiration, they will be worthless, she pointed out. Furthermore, LaVerne told Dodge that Peizer was only selling his warrants and that those trades were not a secret.

Dodge said that was correct.

"You also knew from covering Ontrak and [Peizer] that the warrants were just a fraction of his total ownership of the company, right?" she asked.

Dodge replied that it'd be a small fraction of Peizer's total ownership but wasn't sure how small.

Peizer continued to trade even after Cigna's announcement and the subsequent stock price drops, jurors heard.

"Are you aware of the trades that were happening in August 2021 from Mr. Peizer, that more than 90% were after this Aug. 18 [Cigna termination] and the Aug. 19 announcement?" Lang asked.

Dodge said he wasn't aware.

Testimony resumes Friday.

The government is represented by Matthew Reilly and Della G. Sentilles of the U.S. Department of Justice, and Ali Moghaddas of the U.S. Attorney's Office for the Central District of California.

Peizer is represented by David K. Willingham, Yelena Kotlarsky and Jamie A. Lang of King & Spalding LLP, and Stephen A. Best, Angela M. Papalaskaris and Stephen R. Cook of Brown Rudnick LLP.

The case is U.S. v. Terren Peizer, case number 2:23-cr-00089, in the U.S. District Court for the Central District of California.

--Editing by Lakshna Mehta.

All Content © 2003-2024, Portfolio Media, Inc.



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

\$25 Million Flint Water Class Deal Gets Early OK

By **Danielle Ferguson**

Law360 (June 6, 2024, 7:36 PM EDT) -- A Michigan federal judge on Thursday gave initial approval for a \$25 million settlement between a class of Flint adults and businesses and a water engineering company accused of prolonging the town's water crisis, calling the deal fair and an opportunity to avoid years of "exhausting" litigation.

U.S. District Judge Judith E. Levy said Veolia North America's settlement with a Flint class of about 45,000 Flint, Michigan, property owners, businesses and adult residents was adequate and in the public's interest to bring some closure to residents who have been involved in the litigation for nearly a decade. The judge also certified the settlement class.

The class alleged in 2016 that Veolia failed to identify corroding pipes and warn government officials, exacerbating the water crisis. Had VNA recommended remediation, the class said, the contamination could have ended sooner. The residents have said Veolia had a **duty to warn** users of the water when it voluntarily took on an investigation of Flint's water.

VNA has maintained that state and local government actors are to blame for the crisis, saying it was hired as a consultant months after the city switched to using Flint River water. Veolia said it made recommendations to the city, which were ignored by officials. The firm has also alleged that the city withheld data from it.

Judge Levy noted Thursday that the settlement, **announced less than two weeks before a class issues trial** was set to take place in Ann Arbor in February, helped avoid years of "exhausting" litigation and appeals. Had a jury found VNA to be liable for part of the exposure to lead, additional separate trials may have had to go forward and the parties would have to still determine damages, which could take years before any parties would see a resolution, the judge said.

"The duration of litigation, once all appeals are exhausted, is exhausting to think about, we'll put it that way," Judge Levy said.

Ted Leopold of Cohen Milstein Sellers & Toll PLLC, representing the class, also said the agreement helps residents see relief faster than continuing litigation, which could potentially not reach a resolution until "years down the road." He said the class felt it was important to bring "closure" to the case.

"We felt this was a very strong resolution of the case based on totality of circumstances we'd be up against," Leopold told Judge Levy Thursday.

Judge Levy said both sides have "vigorously" litigated the case for the last eight years, joking that she could identify each of the lawyers' voices in a crowded room because of how often they've had remote status and discovery conferences over the last few years.

Judge Levy said the chance for collusion was close to none, pointing to the fact there have been three mediators involved in the case and her own intimate involvement with the proceedings. She noted she didn't refer many decisions to a magistrate judge because she wanted to know what was going on in the case.

"I'm aware of the intense litigation that went into getting to this point," Judge Levy said.

The \$10,000 service award for lead plaintiffs is appropriate, Judge Levy said, as they have been

heavily involved in the case.

Class members can make claims through the same process as previous settlements, according to **an April memorandum** in support of the class motion for preliminary settlement approval, and those class members who have already completed a registration and claim form will not have to do anything further.

After attorney fees are subtracted — the memorandum does not state how much class counsel intend to request — the remainder will be divided among a subclass of adults who were exposed to the tainted water, a subclass of business owners who claim economic losses as a result of the contamination, and a subclass of property owners who claim damage to their property.

According to the memorandum, 48% of the funds will go to the adult exposure subclass, 50% to the business economic loss subclass, and 2% to the property damage subclass.

According to attorneys for the class, the settlement brings the total amount of settlements reached on behalf of Flint plaintiffs to more than \$655 million, including the **landmark \$625 million settlement** against the state of Michigan in 2021. The class also settled with private engineering firm Lockwood Andrews & Newnam **in October for \$8 million**. Judge Levy gave final approval to that settlement in May.

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

The class is represented by Cohen Milstein Sellers & Toll PLLC, Pitt McGehee Palmer Bonanni & Rivers PC, Weitz & Luxenberg PC, Susman Godfrey LLP, Motley Rice LLC, the Law Offices of Teresa A. Bingman PLLC, Bronstein Gewirtz & Grossman LLC, the Law Offices of Deborah A. LaBelle, the NAACP, Goodman Hurwitz & James PC, Trachelle C. Young & Associates PLLC, Dedendum Group LLC, McKeen & Associates PC, the Law Office of Cirilo Martinez PLLC, Shea Aiello PLLC, Cynthia M. Lindsey & Associates PLLC, McAlpine PC and the Abood Law Firm.

Veolia is represented by Michael A. Olsen of Mayer Brown LLP and James M. Campbell and Alaina Devine of Campbell Conroy & O'Neil PC.

The case is In re: Flint Water Cases, case number 5:16-cv-10444, in the U.S. District Court for the Eastern District of Michigan.

--Additional reporting by Mike Curley. Editing by Patrick Reagan.



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

Roundup MDL Judge Worries Plaintiffs Firms Overstretched

By **Dorothy Atkins**

Law360 (June 6, 2024, 9:49 PM EDT) -- A California federal judge presiding over multidistrict personal injury litigation over Monsanto's Roundup weed killer expressed concerns Thursday that plaintiffs firms may be taking on "a whole bunch of cases" they don't have the ability to prosecute just to settle "on the cheap," calling the prospect "a little bit disturbing."

U.S. District Judge Vince Chhabria's comments came during a virtual hearing on McCune Law Group's motions to withdraw as counsel for two plaintiffs, Walter Holden and Beverly Bray, in the sprawling MDL against the Bayer AG-owned subsidiary over its glyphosate-based Roundup weed killer's alleged links to cancer.

Judge Chhabria began the hearing by telling counsel that he decided to hold a hearing on the motions because he's concerned about the potential for plaintiffs firms to take on too many clients and then settle for "pennies-on-the-dollar" instead of litigating. The judge questioned, however, whether he has the authority to "do anything about it."

"I think this is probably a common issue in these MDLs, and I think it's a little bit disturbing," he said. "I don't know what's going on with these cases ... but I do have concerns ... that this firm has taken on a whole bunch of cases that it doesn't have the ability to prosecute."

Judge Chhabria emphasized that he's not suggesting that foul play has occurred.

"I don't know what happened [in these cases], but I have this concern, it is a concern particularly in these MDLs — these mass tort cases — that clients may get neglected by lawyers who took on too many cases," Judge Chhabria said.

But Kristy Marie Arevalo of McCune Law Group disputed the judge's suggestion that her firm has taken on too many cases.

Arevalo argued that the withdrawal requests were made because communication had broken down with the firm's clients. She noted that her firm hired dozens of experts and that after they reviewed the plaintiffs' risk factors and condition, those experts refused to testify that Roundup likely contributed to the plaintiffs' cancers.

The attorney's comment surprised the judge who replied, "Really? I'm shocked that these plaintiffs' experts weren't willing to [offer their opinions]."

Arevalo said she tried to tell her clients, but Bray wouldn't listen.

"She cursed us out and said we were working for Monsanto," Arevalo told the judge. "The communication completely broke down."

Arevalo added that Holden stopped answering calls and didn't disclose another illness he had, and he and his wife have refused to make themselves available for depositions.

"We have been trying to take their depositions for the better part of a year," she said. "We have not heard back from them."

But Judge Chhabria still questioned whether the law firm had settled other cases against the agrochemical giant, which Germany-based Bayer **acquired in 2019** for roughly \$62 billion, for less than they're worth.

"Given the numerous continuances you were asking for ... should I be concerned that you settled these [other] cases on the cheap against Monsanto rather than litigate?" he asked.

Arevalo replied, "Absolutely not." She added that she has been told that her firm's other clients who have settled have secured the highest average settlement amounts among settling cases in the MDL.

"We definitely didn't do anything on the cheap," she said.

The judge then posed the same question to Aimee H. Wagstaff of Wagstaff Law Firm PC, who is co-lead counsel for the plaintiffs in the MDL. She told the judge that he likely has a lot of options in addressing any plaintiffs firms that are neglecting clients.

Although Wagstaff acknowledged that she doesn't know the dollar amounts McCune Law Group has settled cases for, Wagstaff said she knows there's been a "wide variety of settlement values" in general and said it doesn't appear that McCune Law Group has taken on too many clients.

Even so, Wagstaff asked the judge to revisit special master Ken Feinberg's settlement protocol because plaintiffs law firms have complained to her that Monsanto has been giving lowball offers through the mediator and presenting the offers as "take it or leave it."

Judge Chhabria replied that he's willing to revisit the settlement program but that plaintiffs should know they have options to try their cases against Monsanto without delay if they don't want to settle.

"I have issued orders that make very clear that lawyers and their clients absolutely do have a choice, and participation in the Feinberg settlement program will not delay working up a case for trial," the judge said. "I think I've tried to make that clear at every turn, that you don't have to take it, and it's not going to interfere with your cases going to trial. ... Part of it might be just educating people and making sure they know that stuff."

At the end of the hearing, Judge Chhabria held off on deciding the motions to withdraw after Bray attempted to speak during the hearing but was unable to secure a stable Zoom connection to be heard. Judge Chhabria told the plaintiff to submit a letter to the court by Friday afternoon via email if she objects to her counsel's motion to withdraw and explain why.

Monsanto has been litigating product liability claims over Roundup for years, and it has won some trials, but it has also been hit with multiple 10-figure jury verdicts, fueled in part by eye-popping, multibillion-dollar punitive damages awards.

Those verdicts — including a **\$2.25 billion verdict** awarded to Pennsylvania cancer patient John McKivison — have been slashed by trial judges across the country for being constitutionally excessive, and earlier this week, a judge cut McKivison's verdict to **\$404 million**. However, appellate courts, including the U.S. Supreme Court, have largely refused to overturn liability findings in those cases.

The company has already agreed to pay \$9.6 billion to settle hundreds of thousands of claims in the MDL, but Judge Chhabria **refused** to let the company settle future claims, allowing nonsettling plaintiffs to head to trial in their local districts.

Co-lead plaintiffs' counsel in the MDL were represented at the hearing by Aimee H. Wagstaff of Wagstaff Law Firm PC, Robin Lynn Greenwald of Weitz & Luxenberg PC and David Joseph Dickens of The Miller Firm LLC.

Bray and Holden were represented at the hearing by Kristy Marie Arevalo of McCune Law Group.

Bayer and Monsanto were represented at the hearing by Anthony R. Martinez of Shook Hardy & Bacon LLP.

The MDL is In re Roundup Products Liability Litigation, case number 3:16-md-02741, and the individual cases are Bray v. Monsanto Co., case number 3:19-cv-05060, and Holden v. Monsanto Co., case number 3:19-cv-05085, in the U.S. District Court for the Northern District of California.

--Editing by Rich Mills.

All Content © 2003-2024, Portfolio Media, Inc.



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

Camp Lejeune Deals Worth \$14.4M So Far, Government Says

By **Donald Morrison**

Law360 (June 6, 2024, 7:49 PM EDT) -- There have been 33 settlements worth a total of \$14.4 million so far in a North Carolina federal court alleging injuries caused by decades-long water contamination at Marine Corps Base Camp Lejeune between February 2023 and June 4, according to a joint status report filed by the two sides.

In Wednesday's report, both parties offered an update on consolidated litigation encompassing nearly 1,813 individual lawsuits filed so far under the Camp Lejeune Justice Act alleging exposure to water on the North Carolina military base that contained excessive levels of chlorinated solvents and other contaminants, causing bladder cancer, kidney cancer, lymphoma and other diseases between 1953 and 1987.

The Department of the Navy has received 232,892 administrative claims related to the water contamination, the report said, with 93 claimants having been identified as eligible for settlements. Only 33 offers have been accepted so far, totaling \$14.4 million, according to the report.

"The Navy is currently focused on intake and processing of [Camp Lejeune Justice Act] claims in parallel with final efforts to ingest all remaining existing claims into the portal," the report said. "Once the final tranche of claims is ingested, the Navy will notify law firms so they can access and review those claims in the portal."

Of the 1,813 cases filed, 25 have been dismissed, according to the report.

Judges in the Eastern District of North Carolina on Wednesday **denied plaintiffs' request** to have a looser standard of causation to show that their illnesses were caused by the water, instead saying that the Camp Lejeune Justice Act of 2022 requires them to show that their diseases were caused by exposure to the water.

The act was signed into law by President Joe Biden on Aug. 10, 2022, lifting barriers for veterans and their families to pursue damages from the government and providing a two-year deadline for those looking to file a claim.

However, according to the veterans, the federal government waited 10 years, until the statute of limitations ran out, to publish tests that showed contaminated water.

In May, a four-judge panel **denied service members' attempt** to appeal an order that struck down their bid for jury trials, saying that it was not an issue that warranted appeal. The court added that it was ready to go forward with bench trials and that if either the government or the plaintiffs weren't satisfied with the result, they can then appeal.

Representatives for the government and the veterans didn't immediately respond to requests for comment on Thursday.

The veterans and families are represented by J. Edward Bell III of the Bell Legal Group PLLC, by Zina Bash of Keller Postman LLC, by Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein LLP, by W. Michael Dowling of the Dowling Firm PLLC, by Robin L. Greenwald of Weitz & Luxenberg PC, by James A. Roberts III of Lewis & Roberts PLLC, and by Mona Lisa Wallace of Wallace & Graham PA.

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

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

--Editing by Karin Roberts.

All Content © 2003-2024, Portfolio Media, Inc.



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

Victims Say Chiquita Paramilitary Payments Weren't Extortion

By **Carolina Bolado**

Law360, West Palm Beach (June 6, 2024, 7:15 PM EDT) -- Attorneys for the families of people killed by right-wing paramilitaries in Colombia's banana-producing region asked jurors Thursday for an amount totaling tens of millions of dollars in damages as they closed out their Florida federal case against Chiquita, arguing the company willingly funded paramilitary groups.

In closing remarks to jurors, attorneys for the families asked for awards of about \$200,000 per year for each survivor of the nine victims of the Autodefensas Unidas de Colombia whose deaths are at issue in this first bellwether trial of multidistrict litigation against Chiquita.

Given that the victims were killed on average 25 years ago, that would be roughly \$5 million per survivor of each victim, according to plaintiffs' attorney Mariano Garcia.

"What they experienced can be described in one word: it was a horror, it was an absolute horror," Garcia said. "This is an attempt to balance the scale and restore what these families have lost."

Jack Scarola, who led the plaintiffs' counsel team, told jurors that Chiquita made regular payments for eight years to violent terrorists, all the while knowing that they were indiscriminately killing people in surrounding villages. Scarola brushed off Chiquita's protestations that the AUC was extorting it, saying the U.S. government rejected the extortion defense when it prosecuted the banana company on charges stemming from the payments, to which Chiquita pled guilty in 2007 and agreed to pay a \$25 million fine.

"The defense of duress wears thin," Scarola said.

Jonathan Reiter, another attorney on the plaintiffs' team, urged the jurors to look past the "corporate party line" and look to testimony showing that Chiquita was not only paying off the AUC, but was providing guns and ammunition to the paramilitaries to frighten employees who might try to unionize.

"This wasn't an issue of duress," Reiter said. "It was a partnership. I would call it something more sinister than a partnership."

But Michael Cioffi, who represents Chiquita, told jurors that the company was acting reasonably in a difficult situation in a country experiencing a violent civil war. Chiquita was being extorted and needed to pay off various warring groups in order to maintain safety and stability for its farms and its employees.

The company even consulted outside counsel at Baker McKenzie to go over the legality of the payments, and both external and internal lawyers concluded that they were legal under Colombian law, according to Cioffi. The guilty plea in 2007 came about after the company self-reported the payments to the U.S. Department of Justice and engaged in multiple discussions over the situation, according to Cioffi.

"Chiquita did what any responsible businessperson would do: make the payments to save lives," Cioffi said.

He explained that Colombia was a chaotic country on the verge of collapse between 1990 and 2004

and was in the middle of a war fueled by drugs that killed thousands of civilians. The slain relatives of the plaintiffs in this case lived in what Cioffi called "ground zero" of the conflict.

"It's clear the decedents would've been killed whether Chiquita set a foot in Colombia or not," Cioffi said. "There was nothing that Chiquita did that substantially assisted the AUC."

The AUC at that time was exporting thousands of kilograms of cocaine to the United States each month, bringing in billions of dollars into its coffers to fund its terror operations, he said. The payments Chiquita made were a tiny fraction of 1% of AUC's income, according to Cioffi.

The company could have cut and run, sold its interests in Colombia, and rid itself of the headaches, he said, but that would have meant abandoning its workers to the terror.

"It could've walked away, but it didn't do that," Cioffi said. "It acted not only reasonably, but rightly."

He added that the plaintiffs had not shown by a preponderance of the evidence that their loved ones had even died at the hands of the AUC.

The jury is expected to begin deliberating Friday.

The families are among the many who sued Chiquita in 2008 on allegations the company is liable for their relatives' deaths and whose claims were consolidated in an MDL in the Southern District of Florida. The case is the first bellwether case to go to trial in the MDL.

They allege that Chiquita paid the AUC nearly \$2 million to protect its interests during the armed conflict. They say that Chiquita took advantage of the war to buy cheap farmland beginning in the late 1980s as it switched from a banana-buying-only operation to one that produced the fruit on its own farms.

Chiquita eventually acquired about 35 farms and more than 10,000 acres of land in the Santa Marta and Urabá regions in northern Colombia. The farms were consolidated under its subsidiary Banadex, through which Chiquita made the payments to the AUC.

Chiquita executives testified at trial that the extortions began in 1988, when left-wing guerrilla group Fuerzas Armadas Revolucionarias de Colombia, or FARC, began demanding money from the manager of one of the farms Chiquita had recently purchased. The AUC began making similar demands when it moved into the area in 1997, according to Chiquita.

The plaintiffs are represented by John Scarola, Victoria Mesa-Estrada and Mariano Garcia of Searcy Denney Scarola Barnhart & Shipley PA, James K. Green of James K. Green PA, Rick Herz, Maryum Jordan, Marissa Vahlsing and Marco Simons of EarthRights International, William J. Wichmann of the Law Offices of William J. Wichmann PA, William R. Scherer of Conrad & Scherer LLP, Agnieszka Fryszman and Leslie M. Kroeger of Cohen Milstein Sellers & Toll PLLC, Jonathan C. Reiter of the Jonathan C. Reiter Law Firm PLLC, Terrence Collingsworth of International Rights Advocates and Gabriela Paola Valentin Diaz.

Chiquita is represented by Michael L. Cioffi, Frank A. Dante, Melissa F. Murphy, Michael A. Stoolman and Serena S. Gopal of Blank Rome LLP.

The case is In re: Chiquita Brands International Inc., Alien Tort Statute and Shareholders Derivative Litigation, case number 0:08-md-01916, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by David Minsky. Editing by Michael Watanabe.



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

Trump Media SPAC Sponsor Must Post Bond In Chancery Row

By **Jeff Montgomery**

Law360 (June 6, 2024, 5:17 PM EDT) -- Dissenting members of the LLC sponsor for the blank check company that took Trump Media & Technology Group public in March must post a hefty 10% security for potential losses on more than 1.5 million shares — now trading at \$46 — snarled in a sponsor control dispute.

Vice Chancellor Lori W. Will of Delaware's Chancery Court issued the decision midway through litigation tied to an announced bid by some sponsor members to remove Patrick Orlando as ARC Global Investments II LLC's original managing member and warnings by Orlando that the dispute and potential lockup of ARC's TMTG shares could lead to substantial losses if the stock falls before resolution of the case.

Vice Chancellor Will — noting that ARC has yet to receive any TMTG shares — found that the bond should correspond to 1,541,440 TMTG shares held in ARC's name, not subject to lockup and freely tradable, without court-ordered restrictions. The price, the court ruled, should reflect TMTG's share price the trading day before the first of either approval of ARC's registration statement or Securities and Exchange Commission acceptance of its new audited financials.

The current delay in registration, the vice chancellor said, "may be related to the permanent suspension of TMTG's auditor after the registration statement was filed with the Securities and Exchange Commission."

At Wednesday's \$46.75 closing price for TMTG, the required bond coverage could total \$70 million. The court used a lesser, \$46.2 million bond requirement based on a \$30 per share value to show how a \$1.5 million security could be arrived at, and agreed to permit a 10% security for the total.

Court records show that counsel for Orlando had previously suggested that Vice Chancellor Will set a protective \$69 million bond. In a court document, an attorney for ARC also observed previously that damages could run as high as \$186 million.

"The plaintiffs should immediately begin preparing to post the bond and carefully monitor the stock price," Vice Chancellor Will wrote, while also acknowledging that "TMTG's stock price is volatile." The value could vary depending on use of the date of the case filing, a "hold-the-status-quo" order issued in March or the date of the bond decision, the court noted.

"Worse, it is impossible to estimate ARC's potential losses based on TMTG's stock price in several months' time when this case is resolved," the vice chancellor wrote.

The Chancery Court lawsuit was filed in March, shortly before a Digital World shareholder vote on the merger that would take former president Donald Trump's Truth Social venture public.

About two dozen of the sponsor's members that held Digital World Class B stock sued ARC Global and its acting manager, Patrick Orlando, seeking a court declaration that they had validly removed him as the investment company's managing member, and he could no longer act on ARC Global's behalf.

The Delaware suit came a few days after Digital World sued ARC Global in New York to force a shareholder vote on the transaction, alleging that Orlando had been trying to frustrate the deal.

Digital World shareholders subsequently approved the merger, and Trump Media, the owner of Truth Social, began trading on the Nasdaq in late March.

ARC is in line to receive more than 2.14 million TMTG shares, the vice chancellor said, excluding those issued in connection with DWAC founder shares that are the subject of a separate litigation and are subject to a lockup until September.

Orlando was the first CEO and chairman of Digital World Acquisition Corp., the ARC-backed SPAC that took Truth Social public in March. He was fired from Digital World following disclosures that he had failed to publicly disclose early "de-SPAC" merger talks with Trump Media & Technology Group, failed to make public an agreement to pay TMTG \$1 million if the SPAC deal failed and failed to disclose transfers of ARC shares after his firing.

The U.S. Securities and Exchange Commission imposed an \$18 million sanction in connection with Digital World's conduct.

In the Delaware case, Vice Chancellor Will issued an order on April 11 to maintain the status quo at ARC Global, declaring that Orlando would continue to act as its sole manager or managing member while the dispute was being litigated. The status quo order also laid out rules about the transfer of Trump Media securities issued to ARC.

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

TMTG began public trading March 26 and soon rose to near \$62 per share before falling sharply to a low of \$32.59 on April 12, the Friday before the start of jury selection for a trial in Manhattan in which Trump was found guilty of 34 counts in a hush money scheme to illegally influence 2016 election.

In the ARC Global Investments II LLC case, Aaron Leon and others named in the suit are represented by Thomas Uebler, Brian Demott and Adam J. Waskie of McCollom D'Emilio Smith Uebler LLC.

Patrick Orlando and nominal defendant ARC Global Investments II LLC are represented by Matthew D. Perri, Daniel E. Kaprow, Elizabeth J. Freud and Rae Ra of Richards Layton & Finger PA.

The case is Aaron Leon et al. v. Patrick Orlando et al., case number 2024-0311, in the Court of Chancery of the State of Delaware.

--Additional reporting by Leslie Pappas and Tom Zanki. Editing by Peter Rozovsky.

Ex-Autonomy CEO, VP Both Cleared In HP Criminal Fraud Trial

By **Bonnie Eslinger**

Law360, London (June 6, 2024, 10:23 PM BST) -- A California federal jury on Thursday acquitted former Autonomy CEO Michael Lynch and former finance Vice President Stephen Chamberlain of criminal fraud and conspiracy charges following an 11-week trial over allegations that the two conned HP into overpaying billions for the British tech company.



The verdict closes out a trial alleging that former Autonomy CEO Michael Lynch worked with others at his company to deceive HP about the British software firm's business and financial health leading up to HP's 2011 purchase of the company for \$11.7 billion. (AP Photo/Michael Liedtke, File)

After two days of deliberations, the 12-member jury arrived at a unanimous verdict finding both men not guilty of conspiracy to commit wire fraud and 15 related counts of wire fraud.

The wire fraud charges were tied to specific Autonomy emails, press releases and earning reports, as well as due diligence conference calls Autonomy executives had with HP executives in the months leading up to the acquisition.

The felony fraud and conspiracy counts could have sent the two men to prison for more than 20 years each.

Thursday's verdict wraps an 11-week trial over accusations that Lynch and Chamberlain worked with

others at the British software company to deceive HP, formerly known as Hewlett Packard, about Autonomy's business and financial health in the years leading up to the Silicon Valley giant's 2011 purchase of the British software company for \$11.7 billion.

When the verdict was read, Lynch put his hands over his face and eyes for a moment, and minutes later, his wife rushed over to him with an embrace. Chamberlain's wife began audibly crying. After the jury was dismissed from duty, Lynch slipped out of the courtroom with his wife and declined a request for comment on the decision. Chamberlain went to the courtroom hallway and called his family.

Afterwards, he told Law360, "They stole my life 10 years ago, and I've got it back."

Chamberlain's lawyer, Gary Lincenberg of Bird Marella Rhow Lincenberg Dooks & Nessim LLP, said the decision was gratifying.

"Obviously, we're extremely grateful," Lincenberg said. "My client has been battling this for 10 years."

Later in the afternoon, Lynch's lawyers released a written statement from their client.

"I am elated with today's verdict and grateful to the jury for their attention to the facts over the last ten weeks. My deepest thanks go to my legal team for their tireless work on my behalf."

His lawyers, Christopher Morvillo of Clifford Chance LLP and Brian Heberlig of Steptoe LLP, also issued a statement.

"We are thrilled with the jury's verdict, which reflects a resounding rejection of the government's profound overreach in this case ... This verdict closes the book on a relentless 13-year effort to pin HP's well-documented ineptitude on Dr. Lynch. Thankfully, the truth has finally prevailed."

A press officer for the government, Abraham Simmons, told Law360 that the U.S. Attorney's Office acknowledges and respects the verdict.

"We would like to thank the jury for its attentiveness to the evidence the government presented in this case," Simmons wrote in an email.

Prior to the trial's start, in November 2023, U.S. District Judge Charles R. Breyer had severed one of the counts on the indictment alleging that, after Autonomy's sale, Lynch and Chamberlain plotted to cover up the scheme to defraud HP, including influencing witnesses and obstructing investigations. At a hearing held Thursday afternoon, hours after the verdict was read, the judge asked Assistant U.S. Attorney Robert Leach if the government had decided what to do with the remaining count.

Leach said he didn't have the authority to make that determination and asked the court if the decision could be provided by July 1. The judge gave the government until June 21.

Chamberlain's lawyer pressed the court to make a decision on the remaining count, reminding the judge that, at a November hearing, the judge had said that if the defendants were acquitted on all of the other counts, "I think that it becomes somewhat academic" as to what would happen to the severed count.

Judge Breyer said he still didn't see why the government would go forward with the remaining count.

"But we have separation of powers," the judge said. "I'm always concerned about appeals ... I'm concerned about exceeding my authority."

During his closing argument on Monday, Leach told jurors 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.

A lawyer for Lynch, Brian Heberlig of Steptoe LLP, said the propriety of the deals the government put before jurors was mostly a matter of accounting interpretation and argued that his client had no motive to defraud HP.

"Mike was a wealthy man before HP came along," Lynch's lawyer said. "He didn't need HP, and he didn't need their money."

On Tuesday, Chamberlain's lawyer underscored that witnesses called by the government testified that they felt Autonomy's former finance vice president was hard-working and honest.

Chamberlain performed his job "in good faith," said Gary Lincenberg of Bird Marella Rhow Lincenberg Dooks & Nessim LLP. "And the court instructed you that good faith is a complete defense."

Prior to closing arguments, U.S. District Judge Charles R. Breyer instructed jurors that a person who acts on an honestly held belief is not punishable, even if that belief turns out to be wrong.

Lynch **took the stand** in his own defense, testifying for three days and telling jurors that he didn't defraud HP. Chamberlain **chose not** to testify.

Prosecutors claim that Lynch and Chamberlain conspired with others at Autonomy to deceive HP by making false or misleading statements from 2009 to 2011 about Autonomy's sales, revenue, profits, expenses and organic growth.

The statements at issue came in the form of Autonomy's quarterly releases and annual reports along with written communications and conversations between the parties during the due diligence process leading up to the acquisition. Misrepresentations were also made about the extent of Autonomy's low-margin hardware sales and the company's revenue sources, which included inappropriate transactions that overvalued Autonomy, according to the government.

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 Dooks & Nessim LLP.

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

--Additional reporting by Dorothy Atkins, Richard Crump and Christopher Crosby. Editing by Dave Trumbore.

Update: This article has been updated with comments from Chamberlain and Lynch, their respective counsels and a press officer for the government.