

# Major Law Firms to Receive Millions from \$2.13 Billion Opioid Settlement Fund (No Ratings Yet)

 [jdjournal.com/2024/06/10/major-law-firms-to-receive-millions-from-2-13-billion-opioid-settlement-fund](https://www.jdjournal.com/2024/06/10/major-law-firms-to-receive-millions-from-2-13-billion-opioid-settlement-fund/)

June 10, 2024



A court-appointed panel recommended the distribution of \$2.13 billion in legal fees from national opioid settlements. Major law firms will receive substantial sums, with Motley Rice getting the largest share at \$396 million. The funds, derived from settlements totaling over \$46 billion, are intended to compensate legal efforts benefiting all plaintiffs in the litigation. U.S. District Judge Dan Polster ruled that firms have until June 21 to appeal the recommendations.

## Allocation of Legal Fees

A court-appointed panel has recommended how to allocate a \$2.13 billion pool of legal fees derived from nationwide opioid settlements. This pool is intended to compensate law firms for their work benefiting all plaintiffs involved in the opioid crisis litigation.

## Major Beneficiaries

The panel's recommendations include significant payouts to major law firms:

- **Motley Rice:** This national firm is set to receive the largest share of the funds, amounting to 18.6% or approximately \$396 million.
- **Simmons Hanly Conroy:** Based in New York, this firm will receive 11.4% of the pool, equating to around \$244 million.
- **Robbins Geller Rudman & Dowd:** This California-based firm is allocated 8.2% of the funds, or \$174 million.
- **Lieff Cabraser Heimann & Bernstein:** Another California firm, it will receive 5.65% of the total, roughly \$120 million.

## Source of the Funds

The \$2.13 billion in legal fees comes from settlements totaling more than \$46 billion. These settlements were reached by drugmakers, distributors, and pharmacies to resolve lawsuits filed by local governments and Native American tribes. The lawsuits accused these entities of contributing to the opioid addiction epidemic through negligence and misinformation.

## Common Benefit Fund

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The legal fees were set aside in a “common benefit fund,” designed to compensate law firms for their efforts in litigation that benefited all plaintiffs involved in the opioid crisis lawsuits.

## Judge’s Ruling and Appeal Process

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U.S. District Judge Dan Polster, overseeing the opioid litigation since 2017, ruled that the firms have until June 21 to appeal the panel’s recommendations before they become final.

## Companies Involved in Settlements

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The fees stem from settlements with several major companies, including:

- **Drugmakers:** Johnson & Johnson, AbbVie, and Teva Pharmaceutical Industries.
- **Distributors:** Cencora, McKesson, and Cardinal Health.
- **Pharmacies:** CVS, Walgreens Boots Alliance, and Walmart.

## Exclusions and Ongoing Legal Issues

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The settlements do not include a separate \$6 billion agreement with Purdue Pharma, the maker of OxyContin, funded by the Sackler family. The legality of this settlement is currently under review by the U.S. Supreme Court.

## Total Opioid Settlements

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In total, opioid settlements, including both nationwide deals and individual state agreements, now exceed \$50 billion. Despite the substantial settlements, many state and local governments have yet to finalize detailed plans for utilizing the funds to address the opioid crisis.

## Impact of the Opioid Crisis

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From 1999 to 2023, opioid overdoses resulted in over 800,000 deaths in the United States, according to the U.S. Centers for Disease Control and Prevention. Plaintiffs in the lawsuits argue that drugmakers downplayed the risks associated with opioids, while distributors and pharmacies failed to prevent their diversion into illegal channels.

# Roblox Misled Investors in Guidance About Growth, Suit Says

By Martina Barash

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 3:24-cv-03484](#)

Bloomberg Law News 2024-06-12T10:29:44335986297-04:00

Roblox Misled Investors in Guidance About Growth, Suit Says

By Martina Barash 2024-06-11T16:52:47000-04:00

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 3:24-cv-03484](#)

Roblox Corp. cited new platforms and digital technology in optimistic growth projections before blaming the same factors when revising its guidance six months later, an investor said in a new suit.

The May 8 downward revision of fiscal year 2024 “bookings,” or in-game purchases, and total revenue caused a 22% stock drop the following day, shareholder Eugene Li says. He filed the proposed class action Monday in the US District Court for the Northern District of California.

It’s at least the second time game maker Roblox has been sued over growth tied to bookings. The company touted growth after it went public in March 2021, when content restrictions for young users were allegedly weak, but executives didn’t account for enhanced parental controls that followed, an institutional investor said in a proposed class action filed in November 2023. That case is in the same district as Li’s after being transferred from the Southern District of New York. Roblox is headquartered in San Mateo, Calif.

In addition to new tech offerings like avatars, company officials in November 2023 highlighted platform expansions, including into PlayStation, and revenue sharing with content developers, Li says. They also looked to advertising growth, he says.

"In truth, Roblox knew each of those bookings and revenue sources" was "tenuous at best," Li says. The company had difficulty converting daily average user metrics into bookings "and eventually blamed the very technology and platform growth it lauded as revolutionary and revenue-generating for this bookings problem," he said.



There are hundreds or thousands of members of the proposed class of those who acquired Roblox securities between Nov. 15, 2023, and May 8, 2024, inclusive, according to the complaint.

Li seeks damages on his securities fraud claims.

Roblox didn't immediately respond to an emailed request for comment.

Levi & Korsinsky LLP represents the investors.

The case is Li v. Roblox Corp. , N.D. Cal., No. 3:24-cv-03484, complaint 6/10/24 .

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# Billionaire investor Ryan Cohen beats Bed Bath & Beyond shareholder lawsuit

 [reuters.com/legal/billionaire-investor-ryan-cohen-beats-bed-bath-beyond-shareholder-lawsuit-2024-06-11](https://www.reuters.com/legal/billionaire-investor-ryan-cohen-beats-bed-bath-beyond-shareholder-lawsuit-2024-06-11)

Jonathan Stempel

A person exits a Bed Bath & Beyond store in Manhattan, New York City, U.S., June 29, 2022. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, June 11 (Reuters) - The billionaire activist investor Ryan Cohen won the dismissal on Tuesday of a shareholder lawsuit accusing him of profitably cashing out of Bed Bath & Beyond shares too quickly as the home goods retailer was hurtling toward bankruptcy.

U.S. District Judge Dale Ho in Manhattan said two former Bed Bath & Beyond shareholders could not force Cohen to return profits from selling his estimated 11% stake because the retailer's subsequent bankruptcy mooted their claims.

The shareholders sued Cohen under a federal law requiring corporate insiders including large shareholders to give up "short-swing" profits from buying and selling a company's stock in a six-month period, with sums being returned to the company.

Cohen founded online pet supplies retailer Chewy (CHWY.N) , opens new tab and is now chief executive of video game retailer GameStop (GME.N) , opens new tab.

He became known as "meme king" to ordinary investors who drove the early 2021 meme stock craze, typically in online forums. Forbes magazine estimates his fortune at \$4.2 billion.

Lee Squitieri, a lawyer for the shareholders, declined immediate comment, saying he was reviewing the decision. Cohen, through his lawyer Dave Wollmuth, declined to comment.

Cohen revealed a 9.8% stake in Bed Bath & Beyond in March 2022 and pushed for changes that would include new directors and exploring a sale of the Buy Buy Baby brand.

He angered other shareholders by abruptly selling his stake, whose percentage had grown because of stock buybacks, five months later for an estimated \$60 million profit.

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

Bed Bath filed for bankruptcy in April 2023, and its common shares were canceled when its Chapter 11 plan became effective in September.

Ho said the plaintiff shareholders, Todd Augenbaum and Judith Cohen, had standing to sue when the lawsuit began in October 2022, but that was no longer true.

He rejected arguments that they still had a financial stake because they had bought stock in a Bed Bath & Beyond creditor, could have collected incentive awards or attorney's fees, and deserved reimbursement for their canceled stock.

The case is In re Bed Bath & Beyond Inc Section 16(b) Litigation, U.S. District Court, Southern District of New York, No. 22-09327.

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Reporting by Jonathan Stempel in New York; Editing by Lisa Shumaker

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# Okta Settles Securities Suit Over Merger Fallout for \$60 Million

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- Investors sued over 34% stock drop after sales turmoil
- Deal represents 5.8% to 10% of estimated top damages

Okta Inc. has agreed to a \$60 million settlement of class claims that the software company misrepresented how well it was absorbing an acquired company, investors told a federal court.

The deal should be given preliminary approval, the class representatives said Tuesday in a filing in the US District Court for the Northern District of California.

The case is an unusual one in that Okta agreed to class status for the investors. That choice has become more common in litigation over employee 401(k) plans but is rare in securities litigation. Judge Susan Illston granted the class certification request in February.

The investors alleged that after the user-authentication software company acquired Auth0 Inc. in March 2021 for \$6.5 billion, Okta and three executives reassured investors that the companies were integrating seamlessly. But numerous Auth0 employees left, and the company had difficulty unifying the sales teams, the shareholders said. The company allegedly shut down a year-long sales integration plan abruptly, leaving the remaining employees only two weeks to adapt.

The company's share price dropped 34% on Sept. 1, 2022. The revelations caused the drop, according to the complaint.

Analysts cited the sales integration issue and also Okta's long-term growth prospects in looking at the slide that day, Bloomberg News reported.

Illston trimmed some claims from the suit in April 2023.

The investors' damages expert estimated the maximum potential recovery at \$1.04 billion, while Okta's expert pegged it at \$600 million, according to the new filing. The settlement would therefore recover between 5.8% and 10% of the maximum estimated damages, a very good result for the class in light of the risks of litigation, the investors said in their request for approval.

Labaton Keller Sucharow LLP is lead counsel for the investors. Gibson, Dunn & Crutcher LLP represents Okta and the individual defendants.

The case is *In re Okta, Inc. Sec. Litig.*, N.D. Cal., No. 3:22-cv-02990, motion 6/11/24.

# RC Ventures Can Keep Short Swing Profits From Bed Bath & Beyond

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- BBY bankruptcy plan canceled all outstanding stock shares
- Plaintiffs lost financial interest in company, suit is moot

Investment firm RC Ventures LLC and its manager Ryan Cohen don't have to disgorge the substantial short swing profits they made selling Bed Bath & Beyond Inc. stock before the company filed for bankruptcy protection, a federal court said.

Stockholders Todd Augenbaum and Judith Cohen's suit under Section 16(b) of the Securities Exchange Act was dismissed as moot by Judge Dale E. Ho of the US District Court for the Southern District of New York. The plaintiffs alleged that during the six-month period recognized by Section 16(b), the defendants owned 10% of BBY common stock and/or were BBY directors and earned windfall short-swing profits when other investors "suffered a dramatic loss."

The plaintiffs had standing when they initially filed their suit in 2022, but BBY's bankruptcy plan that was approved in September 2023 stated that all of the company's shares were "canceled, released, and extinguished, and will be of no further force or effect and no Holder of Interests in BBY shall be entitled to any recovery or distribution under the Plan on Account of such Interest," Ho said Tuesday.

Because their shares were extinguished in BBY's bankruptcy, the plaintiffs no longer had a financial interest in the litigation and their claims were moot, Ho said.

The plaintiffs effort to maintain interest in the suit by buying shares in the company that acquired BBY's debt as a creditor didn't revive their Section 16(b) claim because that interest didn't flow from their former interest as BBY shareholders, Ho said. The plaintiffs' potential incentive reward for service as class representatives and Judith Cohen's statutory right to attorneys' fees also didn't save the suit from being moot, the judge said.

Augenbaum said that the plaintiffs' loss of the value of the BBY common stock should be a reimbursable expense from any judgment or settlement, which gave them a continuing interest in the suit. Augenbaum didn't cite any support for his argument and it wasn't clear "how such an attenuated relationship to the action would confer a continued financial stake in this litigation's outcome," Ho said.

Abraham, Fruchter & Twersky LLP and Squitieri & Fearon LLP represented the plaintiffs. Wollmuth Maher & Deutsch LLP represented the defendants.

The case is In re Bed Bath & Beyond Inc. Section 16(b) Litig. , S.D.N.Y., No. 1:22-cv-09327-DEH, 6/11/24 .

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# Tesla shareholder sues Musk to return billions in alleged unlawful profits

 [reuters.com/legal/tesla-shareholder-sues-musk-return-billions-alleged-unlawful-profits-2024-06-11](https://www.reuters.com/legal/tesla-shareholder-sues-musk-return-billions-alleged-unlawful-profits-2024-06-11)

Reuters

Elon Musk, CEO of SpaceX and Tesla and owner of X, formerly known as Twitter, gestures as he attends the Viva Technology conference on innovation and startups at the Porte de Versailles exhibition centre in Paris, France, June 16, 2023. REUTERS/Gonzalo Fuentes/File Photo Purchase Licensing Rights , opens new tab

WILMINGTON, Delaware, June 11 (Reuters) - Elon Musk made billions of dollars by selling Tesla (TSLA.O) , opens new tab stock using insider information, an institutional shareholder accused in a lawsuit filed on Tuesday, asking the court to direct the Tesla CEO to return "unlawful profits."

The lawsuit comes two days before a critical vote by Tesla shareholders on whether to reinstate Musk's \$56 billion pay package, after a Delaware judge voided it in January because she found that Musk had improperly controlled the process.

Musk and his brother, Kimbal Musk, a Tesla director, sold a combined \$30 billion in the electric vehicle maker's stock between late 2021 and the end of 2022, cashing in before news that would cause the stock to fall became public, according to the lawsuit, which was filed by the Employees' Retirement System of Rhode Island (ERSRI).

Musk sold the shares at artificially inflated prices by concealing his plan to use the proceeds to buy social media platform Twitter, which he later renamed X, according to the lawsuit, filed at the Delaware Chancery Court. Musk also sold Tesla stock when he knew that deliveries of Tesla cars had fallen far below public projections, the lawsuit said.

Musk and Tesla did not respond to messages seeking a comment.

The Employees' Retirement System of Rhode Island holds about 140,000 shares of Tesla. Tesla's stock closed at \$170.66 on Tuesday, valuing the stake at about \$24 million.

A similar suit filed at the same court late last month by Michael Perry, another Tesla shareholder, accused Musk of insider trading when he sold over \$7.5 billion of shares in Tesla in late 2022.

Musk is in the middle of a regulatory probe to determine whether he broke federal securities laws in 2022 when he bought Twitter stock.

Tuesday's lawsuit by ERSRI also said that Musk had been disloyal toward Tesla in several instances, including diverting Tesla employees to work at X and causing Tesla to start paying for advertising on Twitter after he bought the platform.

ERSRI was concerned that Tesla's board of directors was not doing enough to oversee Musk's conflicts of interest, the fund's general treasurer said in a statement.

Musk also helped xAI, where he is CEO, to hire Tesla employees and divert artificial intelligence (AI) semiconductors bound for Tesla to the X messaging platform and to xAI, the lawsuit alleged.

News last week of the AI chip shipments raised worries that Musk was giving precedence to AI-related development outside Tesla. In a post on X, Musk said Tesla had no place to store and turn on the Nvidia (NVDA.O) [link](#), opens new tab AI processors.

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Reporting by Tom Hals in Wilmington, Delaware, and Abhirup Roy in San Francisco; Editing by Leslie Adler

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# Elon Musk Pursued Women Working at SpaceX for Sex, WSJ Says

**Published: Wed Jun 12 12:00:46 EDT 2024**

By Catherine Larkin

(Bloomberg) --

SpaceX Chief Executive Officer Elon Musk pursued women working at the company for sex, including a former intern, the Wall Street Journal reported, citing affidavits signed by one of the women and other interviews.

Former SpaceX executives told the Journal that company policies aren't enforced with Musk, and that contributes to a culture of sexism and harassment. President Gwynne Shotwell disagreed with that assessment, telling the newspaper that SpaceX fully investigates all complaints of harassment and takes appropriate actions in response.

Musk and SpaceX didn't reply to requests for comment from Bloomberg. Allegations of sexual harassment and retaliation at SpaceX have been raised in previous legal filings, including California civil rights complaints earlier this year.

In 2013, one of the women who reported directly to Musk left the company and alleged that the CEO had asked her to have his babies, the Journal reported, citing people familiar with the allegations. Their relationship deteriorated after she declined his offer, the Journal said.

In another case in 2014, a woman who had a sexual relationship with Musk while she directly reported to him faced recriminations when the relationship ended badly, the Journal reported. She left the company and signed an agreement prohibiting her from discussing her work for Musk, the newspaper said.

(Updates with additional details from story in fourth and fifth paragraphs)

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<https://www.wsj.com/business/elon-musk-spacex-employee-relationships-8bca2806>

# Elon Musk's Boundary-Blurring Relationships With Women at SpaceX

The billionaire founder had sex with an employee and a former intern, and asked a woman at his company to have his babies

By *Joe Palazzolo* [Follow](#) and *Khadeeja Safdar* [Follow](#)

June 11, 2024 10:46 pm ET

When Elon Musk personally contacted a former SpaceX engineering intern to discuss a role on his executive staff in 2017, the woman spoke with excitement to her friends about a high-profile problem-solving role at the rocket company, a dream for someone a few years out of college.

She and Musk had met years earlier during her internship, when she was still in college. She'd approached him with ideas for improving SpaceX. Her outreach had led to a date, which led to a kiss, and eventually sex, she told friends. The year after her internship, the billionaire had the fresh college graduate flown out to a resort in Sicily, before they ended things, according to documents reviewed by The Wall Street Journal.

Musk, who is more than 20 years her senior, attempted to restart their relationship but she rejected his advance. They remained close as she tried to establish herself in the new job.

He texted her often and invited her to come over to his Los Angeles mansion at night on multiple occasions. Sometimes she accepted his invitations, but friends said she told them at the time that his behavior made her job harder.

She eventually moved off Musk's executive team, according to friends she told and to people familiar with her time at SpaceX. The woman left the company in 2019.

Her lawyers, who also represent Musk, provided the Journal with two affidavits signed by the woman. The affidavits disputed some aspects of the Journal's reporting but confirmed many

others, including that she had a romantic relationship with Musk in the past. She said she invited him to dinner near the end of her summer internship and broke things off the following year.

She said at no point during employment at SpaceX from 2017 to 2019 was there any “romantic relationship” with Musk.

“Nothing that Elon Musk did towards me during either of my periods of employment at SpaceX was predatory or wrongful in any way,” the woman said.



Elon Musk speaking at the unveiling of SpaceX's Dragon V2 spacecraft in 2014. PHOTO: MARIO ANZUONI/REUTERS

She is one of several female employees at SpaceX who have told friends, family, or the company itself, that Musk showed them an unusual amount of attention or pursued them.

One woman, a SpaceX flight attendant, alleged that in 2016 Musk exposed himself to her and offered to buy her a horse in exchange for sex acts.

Another woman who left the company in 2013 alleged in exit negotiations with SpaceX human resources and legal executives that Musk had asked her to have his babies.

A fourth woman had a month-long sexual relationship with Musk in 2014 while she directly reported to him. The relationship ended badly, leading to recriminations over text and email

as she left the company and signed an agreement prohibiting her from discussing her work for Musk.

Former SpaceX executives, as well as fired SpaceX employees who complained to the National Labor Relations Board in 2022, say a high-level group around Musk fails to apply his company's own rules to the CEO, contributing to a culture of sexism and harassment.

They say there's an understanding that Musk, a charismatic leader with many fans who call him a genius, can act with impunity. "Elon is SpaceX, and SpaceX is Elon," one former engineer recalled an executive saying during a June 2022 meeting after the firings of some of the SpaceX employees, who had criticized Musk and demanded greater accountability at the company.

Musk, who is one of the richest men in the world, leads companies including the publicly traded electric-vehicle maker Tesla, rocket-maker SpaceX and social-media platform X.

SpaceX has won billions in federal contracts, and is key to NASA and Pentagon space programs. Tesla, meanwhile, is holding a shareholder vote that closes on June 13 over Musk's \$46 billion pay package, which was struck down by a Delaware court in January because of concerns about the approval process.

Musk didn't reply to requests for comment.

Gwynne Shotwell, SpaceX's president and chief operating officer, said the Journal's reporting doesn't reflect SpaceX's culture.

"The untruths, mischaracterizations, and revisionist history in your email paint a completely misleading narrative," she said. "I continue to be amazed by what this extraordinary group of people are achieving every day even amidst all the forces acting against us. And Elon is one of the best humans I know."

She said SpaceX fully investigates all complaints of harassment and takes appropriate actions.

Other behavior by Musk, including his use of illegal drugs, has raised concerns among some executives and board members of SpaceX and Tesla, according to previous Journal reporting. Musk has used drugs including LSD, cocaine, ecstasy, mushrooms and ketamine, at times with some board members, the Journal has reported.

An attorney for Musk, Alex Spiro, said at the time that Musk is “regularly and randomly drug tested at SpaceX and has never failed a test.” He said “there are other false facts” in the reporting about Musk’s drug use but didn’t detail them.



SpaceX headquarters in Hawthorne, Calif. PHOTO: MARIO ANZUONI/REUTERS

## Encounters with Musk

This article is based on conversations with more than four dozen people, including former employees, people familiar with Musk’s interactions with female subordinates and friends and family of the women. The Journal also reviewed emails, text messages and other documents.

Since 2017, the era of MeToo has resulted in a pronounced cultural shift that has put more scrutiny on the conduct of executives in the workplace. Good-governance norms in the corporate world have shifted toward hard bans on supervisor-employee sexual relationships, out of concern for their potential to create power imbalances and conflicts of interest in the workplace.

Federal and state laws bar supervisors from sexually harassing employees. Some courts have recognized “sexual favoritism” as a form of harassment, blessing claims of a hostile work environment by employees who alleged that their bosses gave preferential treatment to colleagues with whom they were having consensual affairs.

A SpaceX policy discourages employees from directly overseeing romantic partners.

The women who described the encounters with Musk had jobs that meant they worked closely with him.

The college student studying engineering met Musk in the early 2010s during her summer internship at SpaceX. Musk and the woman went out for a meal after she sent him ideas about how to improve the company, she told friends. They bonded over “Star Wars” and kissed.

A year later, the chief executive arranged for the woman to meet him at a resort in Sicily, where he was attending an exclusive conference sponsored by Google, according to documents reviewed by the Journal.

The woman's passport was in another city at the time so Musk had arrangements made for a friend of hers to bring it to the woman on an early morning domestic flight, documents show. The woman was then scheduled on a first-class flight to London and a private jet to Italy, the documents show.

The former intern told friends not to speak with Journal reporters and later said that she didn't want to be part of an article, following outreach from the Journal.

Clare Locke, a Virginia-based law firm that also represents Musk and Tesla, sent the Journal legal letters on behalf of the woman that demanded her removal from the article. The affidavits signed by the woman were attached to the letters.

The woman said in one of the affidavits that after she broke off the relationship with Musk they remained friends.

### **‘Nothing out of the ordinary’**

In 2017, Musk personally contacted the former intern about a fulltime job at SpaceX, which would be to find problems at the company and fix them. She moved from New York to the Los Angeles area to become a member of Musk's executive staff. Former employees said that while she was a talented engineer, they found it odd that someone so junior was given such a high-profile role so close to the boss.

She said in one of the affidavits that she believes she was one of many candidates for the role.

After she arrived in California, Musk invited her for drinks and came on to her, touching her breast, friends said she told them at the time. One of them said the woman recalled Musk

saying, “Oh, I’m so bad. I shouldn’t be doing this.”

In one of her affidavits, she said, without providing details, “Elon tried to rekindle our relationship prior to my employment, and I rejected the advance. While there was some initial awkwardness, it was nothing out of the ordinary after a rejection.”

She told friends that she was unhappy at SpaceX, had no authority and had trouble getting executives to take her ideas seriously. She told one friend that she sometimes hid in the bathroom at SpaceX.



Musk speaks at a SpaceX event in 2018. PHOTO: PATRICK T. FALLON/BLOOMBERG NEWS

She said in one of the affidavits that her feelings about her job at SpaceX “were completely unrelated to any romantic or personal interactions with Elon Musk.”

“I came into a very difficult role as a newcomer into an established company,” she said in the affidavit.

She visited Musk at his home multiple times, as she struggled at work to establish herself, according to people familiar with the matter and friends she confided in.

“He would text her, like a lot,” said one of the friends. When she didn’t respond to a nighttime invitation to come over to his house, Musk texted her name repeatedly, the friend recalled.

About half a year into her job, the woman received another invitation from Musk to come to his house, according to a text exchange reviewed by the Journal.

“Come by!” he wrote. When she didn’t respond, he peppered her with more texts:

“Look, it’s either me or 6am [exercise] :)”

“Just finished the Model 3 production call. It’s def going to be hell for several more months.”

“Are you coming over? If not, I will probably tranq out. Too stressed to sleep naturally.”

When she still hadn't responded, he wrote, "Probably best if we don't see each other."

The woman texted him in the morning. “Oh man. I’m sorry, I’d already fallen asleep. I’ve been a late night person most of my life but have been trying to switch over because it seems responsible. Tbh. Sorry I crashed last night,” she wrote.

Later that day, she shared the text exchange with a friend.

“Dude not gonna lie the fact that I have mild society[sic] anxiety resulting from imposter syndrome definitely makes this job harder,” the woman wrote in a text. “And that’s definitely exacerbated by Elon’s behavior.”

"I was wondering about that," her friend responded.

“So badly,” she said.

“I mean if hanging out with him stresses you out about work maybe you might want to let things chill? I dunno.”

“Well I mean I think he broke up with me this morning. If I interpreted that last text 😏,” she wrote.

She then sent her friend a copy of Musk's string of messages asking her to come over.

"Why are so many of the men in my life so weiiiiirrrddddd," she wrote.

The woman said in an email provided by her lawyers that her comment about Musk breaking up with her was a joke. His text message to her, she said, “was not referring to a romantic relationship.”

She said Musk's lack of interest in roles such as hers is what made her job more difficult, and that her background expertise "made an already difficult role even more difficult."

She said in one of the affidavits that she and Musk texted frequently as she supported him through difficulties, including issues at Tesla and his divorce from actress Talulah Riley. He was married to Riley when the woman and Musk were in a romantic relationship years earlier. They divorced in 2016.



Musk with then-wife Talulah Riley in February 2014 at a state dinner hosted by President Barack Obama in honor of French President François Hollande. PHOTO: ANDREW HARRER/POOL/GETTY IMAGES

On the few occasions that she went to Musk's house, the woman said in one of the affidavits, they watched TV and talked. In the email, she said they watched anime and talked about the Tesla Model 3 production ramp up and the "technical future of humanity."

Friends said she told them at the time that the job wasn't going well because it had gotten awkward with Musk. Eventually she moved off the executive staff to a role reporting to another engineer.

The woman said in one of the affidavits that she requested the move and "worked out an arrangement that would give me better support for my daily responsibilities at the company."

She exited SpaceX in 2019 after an executive she reported to was included in a mass layoff, she said in one of the affidavits.

## Defended by leadership

One incident of alleged sexual harassment of workers by Musk has surfaced publicly, in a 2022 report by Business Insider about the flight attendant who told SpaceX that Musk exposed himself to her and asked her for sex.

The woman, who worked on contract for SpaceX, alleged in a 2018 mediation with the company that Musk showed her his erect penis and offered her a horse in return for sex acts as she gave him a massage during a flight, according to people familiar with the allegations. SpaceX cut her shifts back after she rejected his advances, she alleged. The company agreed to pay her \$250,000.

Musk called the flight attendant's allegations "utterly untrue." In social-media posts, he joked that the scandal should be called "Elongate" and denied that he used a flight attendant on his plane.

But he had used flight attendants in the past, including in 2016, when the woman alleged Musk's proposition had taken place, according to former SpaceX employees as well as LinkedIn profiles of former SpaceX flight attendants.

Shotwell, Musk's No. 2 at SpaceX, defended him against the flight attendant's allegations in a companywide email after the news report. "Personally, I believe the allegations to be false; not because I work for Elon, but because I have worked closely with him for 20 years and never seen nor heard anything resembling these allegations," she wrote.



Musk boarding a SpaceX jet in Beijing last year. PHOTO: JADE GAO/AFP/GETTY IMAGES

Musk's denials and Shotwell's email prompted SpaceX employees to post an internal letter protesting what they viewed as the company's failure to take harassment allegations seriously.

Eight of them who were fired after the letter subsequently filed complaints with the NLRB, alleging they were terminated for speaking up. SpaceX denies the allegations in that ongoing case and is seeking a court ruling that the agency's process is unconstitutional.

### **'Civilization is going to crumble'**

In the summer of 2013, a woman who reported directly to Musk left the company and later returned with a lawyer. She alleged that Musk had asked her on multiple occasions to have his babies, according to people familiar with the allegations.

Musk, who has at least 10 children, has said that the world faces an underpopulation crisis and that people with high IQs should procreate. He has encouraged some of his employees to have children. He has spoken of the need to colonize Mars to protect the human species in the event of a cataclysm on Earth. Sending people to the red planet is a long-held ambition that animates his work at SpaceX.

“If people don’t have more children, civilization is going to crumble. Mark my words,” Musk said in a 2021 interview with the Journal.

Musk had children with an employee in 2021. He and Shivon Zilis, an executive at Musk’s Neuralink brain-implant company, share twins. Zilis has said Musk encouraged her to have children and later offered to be the sperm donor. “I can’t possibly think of genes I would prefer for my children,” Zilis is quoted as saying in “Elon Musk,” a biography by author Walter Isaacson.

But the woman at SpaceX declined Musk’s offer. She had continued working for Musk after he asked her to have his children, but their relationship deteriorated. Besides the baby allegations, Musk had denied the woman a raise and complained about her performance, according to people familiar with the matter.

The woman received an exit package of cash and stock valued at more than \$1 million, according to a person familiar with the agreement.

## **Planning a party**

The same year that woman left SpaceX, 2013, Shotwell made allegations of her own: The executive accused one of her employees of having an affair with her husband, and then allegedly retaliated against the woman, according to the employee’s account to friends and family and emails she showed them at the time.

On her own time, the woman had helped Shotwell’s husband, Robert, plan a surprise Western-themed 50th birthday party for Shotwell, her boss. Robert sent boxes containing bull horns and other Western decor to the employee’s house for the party. Before leaving town to visit her family for Thanksgiving, the woman called Robert to arrange for him to pick up the boxes while she was away.

“So, your call last night was not good,” Robert wrote to the woman in a November 2013 email, with the subject line “Trouble.” “She accused us of having an affair...Be prepared when she gets in.”

The employee was on a plane with her brother when she got the email, which she later shared with her family. The accusation shocked and mortified her, her brother said.



Gwynne Shotwell, SpaceX president and chief operating officer, at an event at NASA's Johnson Space Center in Houston in 2015. PHOTO: BRETT COOMER/HOUSTON CHRONICLE/GETTY IMAGES

"I hope you realize that this puts me in a very awkward position with my boss and makes me super uncomfortable," she replied to Robert.

He emailed her after the party to thank her for her help and to tell her that "everything is cleared up now."

When the woman told a human resources executive about the affair accusation, it got back to Shotwell, the woman told a friend.

The woman said in a text message that she understood the conversation to have been confidential. "He told Gwynne everything. She told me," the woman texted the friend, referring to the human resources executive to whom she'd reported Shotwell. "I should be able to go to HR for such things. She f— thought I was having an affair with her husband for God's sake."

Gwynne and Robert Shotwell didn't respond to requests for comment on the matter.

Musk's lawyers sent a sworn declaration from Brian Bjelde, SpaceX's current vice president of human resources, that said he could not locate any records of an HR complaint from the woman.

By the time of Shotwell's party, the woman was working for both Shotwell and Musk. Shotwell told the HR department at SpaceX that she wanted the woman removed from the office of the chief executive.

While Shotwell was trying to push her out, Musk was pulling her in, she told people close to her.

## **17-hour days**

In the fall of 2014, Musk initiated a sexual relationship with the woman, who by that time was working directly for him alone, she told the people. Musk was still married to but separated from Riley.

A couple of months earlier, Musk and a human resources officer had met with the employee and said that a coming restructuring in Musk's office meant that the woman would have to move to another part of the company, into a less visible role, if she wanted to stay, she later told friends.

She had declined but agreed to stay on as long as needed to get Musk's new chief of staff, Sam Teller, up to speed.

"[Shotwell] has 100% sabotaged my future at a company I love, and I am not safe in any position," she wrote in an email to another friend in September 2014. "This position is killing me and it has [affected] my mental and now physical health."

But she was still at SpaceX in the late fall of 2014, at Musk's request, when he approached the woman at her desk and asked her if she wanted to have a drink and talk at his Bel-Air mansion, his primary Los Angeles residence at the time, situated on a knoll overlooking a country club.



A satellite image of the mansion Musk owned in Bel-Air, which was later sold. PHOTO: EAGLEVIEW

Leading up to the invitation, Musk and the woman had become close professionally. They sat within view of each other in the office and were in frequent contact on work matters. She often put in 17-hour days to keep pace with Musk, helping out with matters at Tesla and in Musk's personal life, in addition to her primary duties at SpaceX.

Her friends and family noticed she'd lost an unhealthy amount of weight, and her hair was falling out as she worked long hours and friction with Shotwell continued.

Musk's invitation came as such a surprise to the woman that she told Teller about it at the office, according to people familiar with the matter.

When she arrived at Musk's house that night, with her computer and work bag, they went into his living room.

She gave this account to friends in the following days: She and Musk drank and chatted. Musk told the woman she had both beauty and brains and continued to compliment her. They had sex and spent much of the rest of the night talking.

They saw each other again at his house in mid-December 2014, after Musk's children were put to bed, according to text messages the woman shared with a friend at the time.

"I'll see you at 11 or so," the woman wrote in a text to Musk.

“Ok :) If you get tired or don’t feel like it for any reason, no problem to cancel,” he replied.

She said she didn’t want to cancel. “I might send a note to your house security only, to let them know I’m coming to drop something off....or something. So they’re prepared?”

In bed the next morning, Musk promised the woman Tesla stock for unpaid work she’d done for him at the carmaker and in his personal life, she told a person close to her.

Musk told the woman that if the relationship ever became public, they’d have to say it started after she left the company, the woman later told that person and another friend.

Later that December, the woman asked Musk if she could enlist SpaceX information-security employees to check her email account, after they discussed the possibility of her email getting hacked. Musk granted her request but urged her in an email to delete “anything you don’t want them to see ahead of time, incl from sent folders and trash.”

## **Missed ‘bootie call’**

The woman initially confided in people close to her that she believed she and Musk were starting a serious relationship and that they had a connection.

By late December, she was telling her friends that she felt used. Early on, she had wanted to keep their relationship private, but as it progressed, she sought more than drinks at his house and sex.

When she suggested dinner out, Musk said he couldn’t be seen with her in public, citing ongoing negotiations over a possible divorce from Riley.



Sam Teller, Musk's former chief of staff, in San Francisco last year. PHOTO: DAVID PAUL MORRIS/BLOOMBERG NEWS

As tensions mounted, Musk assigned Teller, his chief of staff, to handle the woman's exit, according to people familiar with the matter and emails the woman shared with others. Musk had shared some of the woman's texts with Teller, according to the people.

Musk declined to pay the woman directly in Tesla stock. In a Dec. 29, 2014, email, Teller offered her \$35,400 in cash for her unpaid work, saying she could use it to buy the stock instead. She negotiated the offer up to \$85,000, citing taxes and her broad brief for the billionaire.

To get the money, she had to sign an agreement that required her to release Musk from potential legal claims "known and unknown," and to keep information about him "in strictest confidence," including the document itself, which Teller had received from Tesla's then-general counsel Todd Maron, who had also been a divorce lawyer for Musk. She shared the agreement with people close to her before signing.

Both Teller and Maron left their roles in 2019.

On Jan. 10, 2015, two days before she left the company, she received a late-night text from Musk: "Drinks?"

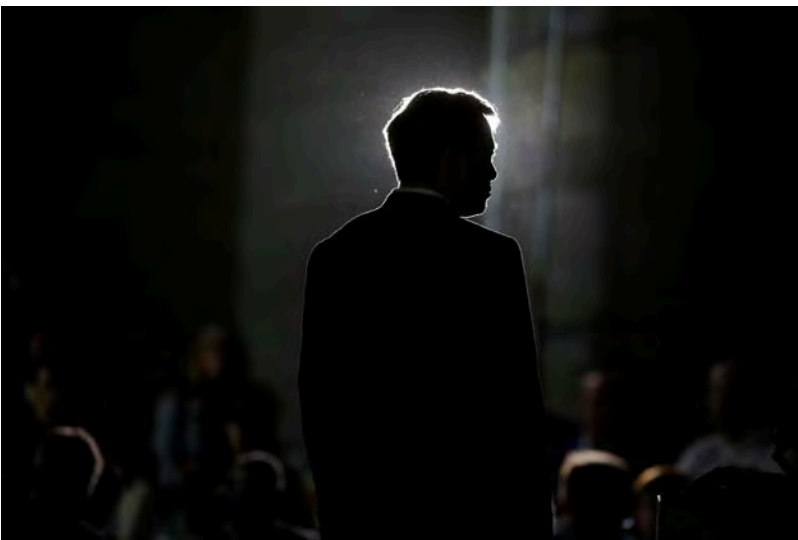
The woman didn't see the invitation until the following morning.

"11:25 pm bootie call. Glad I was sleeping," she wrote in a text to a friend.

After the woman left SpaceX, Musk told her in texts and emails that she shared with others that she had thrown herself at him while he was in a fragile state over his separation from his then-wife, and they had been intimate only after she had resigned.

"You insisted on coming to my house to sleep with me when I was just sad and tired and wanted to be alone," he said in a text, the day after her exit from the company.

She and Musk never saw each other again.



Musk at an event in Chicago in 2018. PHOTO: JOSHUA LOTT/GETTY IMAGES

—*Emily Glazer and Micah Maidenberg contributed to this article.*

Write to Joe Palazzolo at [Joe.Palazzolo@wsj.com](mailto:Joe.Palazzolo@wsj.com) and Khadeeja Safdar at [khadeeja.safdar@wsj.com](mailto:khadeeja.safdar@wsj.com)

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# Elon Musk withdraws lawsuit against OpenAI

 [reuters.com/legal/elon-musk-withdraws-lawsuit-against-openai-2024-06-11](https://www.reuters.com/legal/elon-musk-withdraws-lawsuit-against-openai-2024-06-11)

Mike Scarcella

June 11 (Reuters) - Billionaire entrepreneur Elon Musk on Tuesday moved to dismiss his lawsuit accusing ChatGPT maker OpenAI and its CEO Sam Altman of abandoning the startup's original mission of developing artificial intelligence for the benefit of humanity and not for profit.

Attorneys for Musk asked the California state court to dismiss the lawsuit, originally filed in February, without giving a reason for the move, according to a filing in San Francisco Superior Court.

A Superior Court judge there was prepared to hear OpenAI's bid to dismiss the lawsuit at a hearing scheduled for Wednesday.

OpenAI and an attorney for Musk did not immediately respond to requests for comment.

Musk dismissed his case without prejudice, which means he could refile it at another time.

The lawsuit marked a culmination of Musk's long-simmering opposition to OpenAI, a startup he co-founded and that has since become the face of generative AI through billions of dollars in funding from Microsoft (MSFT.O) [opens new tab](#).

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

Musk last July founded his own artificial intelligence startup, xAI, which raised \$6 billion in series B funding in May to reach a post-money valuation of \$24 billion.

The lawsuit said Altman and OpenAI co-founder Greg Brockman approached Musk to make an open source, non-profit company, but the startup established in 2015 is now focused on making money.

OpenAI "set the founding agreement aflame" last year when it released its most powerful language model GPT-4, the lawsuit said.

Musk in the lawsuit asked a judge to force OpenAI to make its research and technology available to the public and to prevent the startup from using its assets, including GPT-4, for the financial benefit of Microsoft and others.

OpenAI had argued in a court filing that the lawsuit was based on incoherent claims, describing it as a contrived attempt by Musk to advance his own AI interests.

"Seeing the remarkable technological advances OpenAI has achieved, Musk now wants that success for himself," OpenAI's attorneys said.

Musk in a filing in April said OpenAI was trying to "advance arguments that are based on disputed facts" that are beyond the scope of the lawsuit.

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Reporting by Mike Scarcella; editing by Jonathan Oatis and Stephen Coates

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

# Florida pension board backs \$56 billion pay package of Tesla CEO Musk

 [reuters.com/business/autos-transportation/florida-pension-board-backs-56-billion-pay-package-tesla-ceo-musk-2024-06-12](https://www.reuters.com/business/autos-transportation/florida-pension-board-backs-56-billion-pay-package-tesla-ceo-musk-2024-06-12)

Reuters

Item 1 of 2 Elon Musk, Chief Executive Officer of SpaceX and Tesla and owner of X looks on during the Milken Conference 2024 Global Conference Sessions at The Beverly Hilton in Beverly Hills, California, U.S., May 6, 2024. REUTERS/David Swanson/File Photo

June 12 (Reuters) - Florida's pension board voted in support of the \$56 billion pay package of Tesla (TSLA.O) , opens new tab CEO Elon Musk for the company's upcoming annual meeting, saying the plan "exhibits very high levels of pay-for-performance."

In a post on its website on Wednesday the Florida State Board of Administration also said it voted against Tesla director Kimbal Musk, citing independence concerns, and against Tesla's proposed re-domestication to Texas.

With 2.89 million Tesla shares the agency is Tesla's 80th largest investor.

Reporting by Ross Kerber; Editing by Chizu Nomiya

# Musk's X Corp faces bid to disqualify law firm in data-scraping case

 [reuters.com/legal/transactional/musks-x-corp-faces-bid-disqualify-law-firm-data-scraping-case-2024-06-11](https://www.reuters.com/legal/transactional/musks-x-corp-faces-bid-disqualify-law-firm-data-scraping-case-2024-06-11)

David Thomas

X' logo is seen on the top of the headquarters of the messaging platform X, formerly known as Twitter, in downtown San Francisco, California, U.S., July 30, 2023. REUTERS/Carlos Barria//File Photo Purchase Licensing Rights , opens new tab

June 11 (Reuters) - An Israeli data-scraping company sued by Elon Musk's X Corp is taking aim at the social media company's legal team, telling a judge in San Francisco that X's law firm Quinn Emanuel Urquhart & Sullivan switched allegiances and must be thrown off the case.

Lawyers at Quinn Emanuel entered the case last week, seeking to file an amended lawsuit accusing Bright Data Ltd of illegally copying data from X, formerly known as Twitter. X's initial complaint, filed by another firm, was dismissed in May.

Bright Data on Monday asked U.S. District Judge William Alsup to disqualify Quinn Emanuel , opens new tab, accusing it of brazenly switching sides and ignoring ethical conflicts. Spokespeople for Quinn Emanuel and X did not immediately respond to requests for comment. Quinn Emanuel, a 1,000-lawyer litigation-focused firm, has represented Musk and his companies in court cases involving the U.S. Securities and Exchange Commission and other matters.

Bright Data Ltd said it had hired lawyers from Quinn Emanuel in 2023 to evaluate its litigation strategy in a related matter involving Facebook parent Meta Platforms Inc (META.O) , opens new tab, paying the firm nearly \$40,000.

Meta and X separately sued Bright Data last year for allegedly copying and selling their content illegally, and selling tools that let others copy and sell content. Bright Data denied the claims. Meta dropped its case against Bright Data in February after losing a key ruling.

Although the individual Quinn Emanuel lawyers hired earlier by Bright Data do not appear on X's recent filing, the entire firm owes a duty of loyalty and confidentiality to Bright Data, the company argued in Monday's filing.

"Lawyers may switch firms, but firms may not switch sides. Quinn must be disqualified," Bright Data said.

Bright Data's lawyers at Proskauer Rose and Rogers Joseph O'Donnell did not immediately respond to a request for comment.

Lawyers at Haynes and Boone who filed X's initial complaint against Bright Data did not immediately respond to a similar request.

Alsup on Tuesday ordered Bright Data [↗](#), opens new tab to re-file its disqualification motion after the data scraper apparently misidentified key dates in the filing.

"If these dates are inaccurate, it undermines the integrity of the entire motion," Alsup wrote.

The case is X Corp v. Bright Data Ltd, U.S. District Court for the Northern District of California, 3:23-cv-03698

For X: Andrea Levenson, David Harper, Jason Bloom, Reid Pillifant and Jason Lao, of Haynes and Boone; and Andy Schapiro, David Eiseman and Stefan Berthelsen, of Quinn Emanuel Urquhart & Sullivan

For Bright Data: Colin Kass, David Munkittrick and Sehreen Ladak, of Proskauer Rose; and Robert Goodman and Lauren Sujeeth, of Rogers Joseph O'Donnell

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Reporting by David Thomas

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David Thomas  
Thomson Reuters

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<https://www.law.com/2024/06/12/critical-mass-with-law-coms-amanda-bronstad-new-ozempic-judge-loses-no-time-new-mdls-include-att-breach-gm-privacy/>



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# Critical Mass with Law.com's Amanda Bronstad: New Ozempic Judge Loses No Time; New MDLs Include AT&T Breach, GM Privacy

June 12, 2024 at 09:18 AM

Critical Mass



Amanda Bronstad  
staff reporter



Welcome to Law.com Class Actions: Critical Mass, a weekly briefing for class action and mass tort attorneys.

**This week:** The new Pennsylvania judge assigned to the multidistrict litigation over **Ozempic** and related drugs, **U.S. District Judge Karen Marston**, held her first hearing on Monday. The **U.S. Judicial Panel on Multidistrict Litigation** sent new MDLs to Georgia, Minnesota, New Jersey, Ohio and Texas. Find out who got appointed to the **23andMe** data breach multidistrict litigation.

I'm **Amanda Bronstad**. Feel free to reach out to me with your input. My email is [abronstad@alm.com](mailto:abronstad@alm.com). Follow me on [LinkedIn](#) or X: [@abronstadlaw](#).

## New Ozempic Judge 'Wanting to Get Things Moving'

The multidistrict litigation over **Ozempic** and related diet drugs has a new judge: **U.S. District Judge Karen Marston**.

The **U.S. Judicial Panel on Multidistrict Litigation** on Thursday assigned Marston to the docket after **U.S. District Judge Gene Pratter**, 75, died on May 17. Both are in the **Eastern District of Pennsylvania**.

Marston, a 2019 appointee of former **President Donald Trump**, was a federal prosecutor for most of her early career, helping ink \$422.5 million in settlements with **Novartis Pharmaceuticals Corp.** over off-label marketing of the anti-epileptic drug **Trileptal** and, in 2018 and 2019, becoming chief of the narcotics and organized crime section of the **U.S. Attorney's Office** in the **Eastern District of Pennsylvania**.

Pratter, assigned to the **Ozempic** multidistrict litigation on Feb. 2, had appointed a leadership team last month after some contentiousness among the plaintiffs' lawyers.

Marston scheduled a Monday hearing, attended by about 50 people. The **Legal Intelligencer's** **Aleeza Furman**, who was there, told me:

*“There were a lot of various procedural odds and ends discussed, but it seemed like a common theme was wanting to get things moving. Marston said she wanted to follow Pratter’s lead in terms of expecting civility and noted that the lawyers seemed to have hit ‘a few bumps in the road’ in that regard.”*

## Antitrust Actions Coordinated Over Sugar, Tires & Apple Products

The U.S. Judicial Panel on Multidistrict Litigation came out with a string of orders creating new dockets across the country involving lawsuits over a data breach, privacy violations and antitrust allegations. Here’s where the cases are:

- On June 5, the panel [ordered the transfer](#) of more than 50 class actions brought over **AT&T Inc.**’s data breach to the **Northern District of Texas** before **U.S. District Judge Ada Brown**. Brown, an African American and Native American 2019 nominee of former **President Donald Trump**, is handling her first MDL.
- About two dozen class actions will be transferred to the **Northern District of Georgia** alleging **General Motors** and its subsidiary, **OnStar**, as well as data broker **LexisNexis Risk Solutions**, collected driver data to send to insurance firms. In [a June 7 order](#), the panel assigned **U.S. District Judge Thomas Thrash** to [the litigation](#), which excludes similar cases against other automakers.
- The panel sent 41 cases alleging **Apple** has monopolized the smartphone market to the **District of New Jersey**, where **U.S. District Judge Julien Neals**, a 2021 African American appointee of **President Joe Biden**, is overseeing a related case brought by the **U.S. Department of Justice** and 15 states and Washington D.C. The panel’s June 7 order involves cases brought over **iPhone** apps but included an antitrust case involving the **Apple Watch**.
- Another June 7 order coordinated 45 antitrust lawsuits against sugar producers. The panel transferred the cases to **U.S. District Judge Jerry Blackwell** in the **District of Minnesota**. Blackwell, a 2022 African American appointee of Biden, was previously a prosecutor in the **George Floyd** murder trial.
- In another antitrust matter, 35 cases against **Goodyear**, **Michelin** and other manufacturers over the costs of replacement tires on passenger vehicles were coordinated in the **Northern District of Ohio**. The panel’s June 7 order assigned the docket to **U.S. Chief District Judge Judge Sara Lioi**, who has yet to oversee an MDL.

## Who Got the Work?

A federal judge in California appointed three lawyers to lead the data breach class actions against **23andMe**. **U.S. District Judge Edward Chen**, in San Francisco, appointed co-lead counsel [Gayle Blatt](#) (**Casey Gerry**), [Cari Laufenberg](#) (**Keller Rohrback**) and [Norman Siegel](#) (**Stueve Siegel**)

Here’s what else is happening:

**Social Shutdown:** A judge dismissed claims by school districts that social media sites caused addiction in their students, necessitating additional expenditures for mental health issues. The June 7 ruling by **Los Angeles Superior Court Judge Carolyn Kuhl** comes in lawsuits brought by four school districts in different states, including **Florida** and **California**, but lawyers predict its holding to apply to hundreds of other cases brought by school districts in the coordinated California state court lawsuits against **Meta Platforms**, which owns **Facebook** and **Instagram**; **Snap Inc.**, which owns **Snapchat**; **YouTube**, owned by **Google**; and **ByteDance’s TikTok**.

**Talc Settlements:** **Johnson & Johnson** reached a \$700 million settlement with 42 states, led by **Texas**, **Florida** and **North Carolina**, over the marketing of its baby powder. Under the deal announced Tuesday, **Johnson & Johnson** agreed to stop selling and manufacturing baby powder containing talcum powder. Separately, **Johnson & Johnson** settled a talcum powder case that was in the [midst of trial](#) in **Dallas County District Court**. Dallas-based **Dean Omar**, who won two prior talc verdicts of \$260 million and \$45 million, represented **Jerry Newton**, diagnosed with mesothelioma in 2019.

**Opioid Deal:** The city of **Baltimore, Maryland**, reached a \$45 million settlement on Monday with **Allergan Finance** to resolve claims over the opioid epidemic. The city, represented by **Susman Godfrey** partners [Bill Carmody](#), [Seth Ard](#) and [Sy Polky](#), opted out of a global settlement that would have provided \$7 million over seven years. Under the new deal, Allergan will pay the entire fund within 30 days. The city has pending claims against other defendants, including **Johnson & Johnson** and **Walgreens**, and a Sept. 16 trial on the calendar.

*Thanks for reading Critical Mass! I'll be back next week.*

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# Four more states join US monopoly lawsuit against Apple

 [reuters.com/technology/four-more-us-states-join-justice-departments-smartphone-markets-monopoly-lawsuit-2024-06-11](https://www.reuters.com/technology/four-more-us-states-join-justice-departments-smartphone-markets-monopoly-lawsuit-2024-06-11)

Reuters

The Apple logo is shown atop an Apple store at a shopping mall in La Jolla, California, U.S., December 17, 2019. REUTERS/Mike Blake/File Photo Purchase Licensing Rights , opens new tab

WASHINGTON, June 11 (Reuters) - Four more U.S. states on Tuesday joined the Justice Department's lawsuit against Apple Inc (AAPL.O) , opens new tab alleging the iPhone maker is monopolizing smartphone markets, the department said in a statement. The four states are Indiana, Massachusetts, Nevada and Washington, the Justice Department said. The original lawsuit was filed in March, and 15 states and the District of Columbia joined the lawsuit at the time.

The lawsuit alleges that Apple uses its market power to get more money from consumers, developers, content creators, artists, publishers, small businesses and merchants. The civil lawsuit accuses Apple of an illegal monopoly on smartphones, maintained by imposing contractual restrictions on, and withholding critical access from, developers.

The Justice Department has previously said Apple charges as much as \$1,599 for an iPhone and makes a larger profit than any rival. Officials also said Apple imposes hidden charges on various business partners - from software developers to credit card companies and even rivals such as Alphabet's (GOOGL.O) , opens new tab, Google, in ways that ultimately raise prices for consumers.

Apple has said it plans to ask a federal judge in New Jersey to throw the case out, arguing that it "faces fierce competition from well-established rivals."

A spokesperson for Apple did not immediately reply to a request for comment.

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Reporting by Kanishka Singh in Washington and Jody Godoy in New York; editing by Jonathan Oatis and Leslie Adler

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## 43 States Reach \$700 Million Settlement With J&J in Talc Product Lawsuits

A \$700 million settlement reached by Johnson & Johnson with attorneys general from 43 states prohibits the pharmaceutical company from manufacturing, selling or distributing its talcum-based body powder products, which are known to increase the risk for cancer, in the United States.

June 11, 2024 at 06:29 PM

Pharmaceuticals



Kat Black



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

### What You Need to Know

- Johnson & Johnson, advised by O'Melveny & Myers, reached a \$700 million settlement with 43 states concerning harmful chemicals in its talc products.
- A bipartisan coalition of attorneys general accused the pharmaceutical company of intentionally misleading consumers about the safety of its talc products, which can contain cancer-causing asbestos.
- As part of the proposed settlement, Johnson & Johnson is permanently barred from producing, selling, marketing or distributing talc products in the United States.

Attorneys general from 43 states and the District of Columbia on Tuesday announced a landmark \$700 million settlement with Johnson & Johnson in multistate litigation targeting the harmful chemicals in its talcum-based body powder products.

The states alleged in [lawsuits](#) filed Tuesday that the pharmaceutical manufacturer intentionally deceived users about the safety of these products, including Baby Powder and Shower to Shower, since learning of talcum’s potentially carcinogenic properties as early as the 1950s. Talcum powder can contain asbestos, which has been linked to conditions such as mesothelioma, cancer, fibrosis and lung disease. J&J has sold more than 600 million talc products globally since 1992.

The states claimed that the New Jersey-based company targeted women and teenage girls, particularly in Black and Hispanic populations, by marketing its body powder as a “feminine hygiene product,” despite a number of medical studies proving that the use of talc compounds the risk for ovarian cancer.

“Since the 1980s, J&J knew of studies and other support information demonstrating that Talc Powder Products were sometimes tainted with carcinogenic asbestos and that women who used talc-based powders in the genital area had an increased risk of ovarian cancer compared to those women who do not. ... Despite this knowledge, J&J continued marketing of Talc Powder Products as safe, pure, and gentle, and as suitable for use in and on female genitals,” the complaint filed by Texas Attorney General Ken Paxton states.

J&J halted sales of Baby Powder in 2020, months after it was forced to issue a recall following the Food and Drug Administration’s discovery of asbestos in one of its bottles. A 2020 [news release](#) from the company attributed discontinuing the product to “a portfolio assessment related to COVID-19,” not asbestos. In 2023, J&J globally replaced talc with cornstarch, which does not contain asbestos, in its product formula.

The proposed [settlement](#), which is subject to court approval, will be paid out to states in four installments. The consent judgment permanently bans J&J from manufacturing, marketing, promoting, selling or distributing talc products in the United States.

“Johnson & Johnson knew that it could not ensure the safety of its products for women and children and chose to prioritize profit over honesty. It’s unacceptable, and for the people who were harmed, it’s devastating,” said California Attorney General Rob Bonta in a [news release](#). “Today and every day, I take pride in serving the people of California and holding those who compromise consumer safety accountable.”

J&J was advised on the settlement by a team from O'Melveny & Myers led by partner Daniel Suvor, co-chair of the firm’s State Attorneys General Investigations and Litigation Group. The firm declined to provide a comment.

“Consistent with the plan we outlined last year, the Company continues to pursue several paths to achieve a comprehensive and final resolution of the talc litigation,” said Erik Haas, J&J’s worldwide vice president of litigation. “That progress includes the finalization of a previously announced agreement that the Company reached with a consortium of 43 State Attorneys Generals to resolve their talc claims. We will continue to address the claims of those who do not want to participate in our contemplated consensual bankruptcy resolution through litigation or settlement.”

States named in the settlement, which was helmed by Florida, North Carolina and Texas, include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin.

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### [J&J Pulls Talc-Based Baby Powder, but Court Fight Will Continue](#)

## J&J finalizes \$700M talc litigation settlement

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**DJ** [dailyjournal.com/articles/379130-j-j-finalizes-700m-talc-litigation-settlement](https://www.dailyjournal.com/articles/379130-j-j-finalizes-700m-talc-litigation-settlement)

Johnson & Johnson will pay \$700 million over three years to settle claims by 43 state attorneys general, including California, that the pharmaceutical giant's baby powder and other talc-based products are carcinogenic.

"Johnson & Johnson knew that it could not ensure the safety of its products for women and children and chose to prioritize profit over honesty. It's unacceptable, and for the people who were harmed, it's devastating," Attorney General Rob Bonta said in a news release. "Today and every day, I take pride in serving the people of California and holding those who compromise consumer safety accountable," he added.

Defended by O'Melveny & Myers LLP and Miles & Stockbridge PC, J&J said in a statement that the company continued to "pursue several paths" to resolve the talc litigation. "That progress includes finalizing a previously announced agreement that the company reached with a consortium of 43 state attorneys generals to resolve their talc claims. We will continue to address the claims of those who do not want to participate in our contemplated consensual bankruptcy resolution through litigation or settlement," the statement continued.

The \$700 million settlement, made public on Monday, was announced in principle in January and still needs court approval. While it has admitted no wrongdoing, J&J agreed to stop manufacturing and pull talc products from its shelves. The substance has been linked to ovarian and skin cancer, and a study published last month by the Journal of Clinical Oncology corroborated the link. The pharmaceutical company has yet to resolve thousands of similar lawsuits brought by private plaintiffs and was ordered by an Oregon jury earlier this month to pay \$260 million to a 49-year-old lifelong user of J&J cosmetic products.

According to the states' lawsuit, Johnson & Johnson deliberately misled consumers into believing its baby powder and talc products were safe for use. A 2018 Reuters investigation indicated that the New Jersey corporation knew about the dangers of the substance for many decades. The study said the earliest mentions of talc in J&J products dated from the late 1950s and that executives were concerned about the public reaction.

In May, J&J offered to pay almost \$6.5 billion to resolve tens of thousands of ovarian cancer related lawsuits through a subsidiary, a legal maneuver known as the Texas two-step. The company said the bankruptcy filing and subsequent restructuring would settle 99.75% of pending U.S. talc lawsuits.

"The plan is the culmination of our consensual resolution strategy that we announced last October," said Erik Haas, the worldwide vice president of litigation for J&J. "Since then, the company has worked with counsel representing the overwhelming majority of talc claimants to bring this litigation to a close, which we expect to do through this plan."

The new settlement proposal came after a bankruptcy judge in New Jersey twice rebuffed Johnson & Johnson's Chapter 11 filings for its subsidiary, saying he was not convinced that the company was in financial turmoil. If 75% of plaintiffs vote to accept the settlement terms within the next 3 months, J&J can move forward to the next steps.

#379130

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## Sunidhi Sridhar

Daily Journal Staff Writer  
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# Johnson & Johnson reaches \$700 million talc settlement with US states

 [reuters.com/legal/new-york-sues-johnson-johnson-2024-06-11](https://www.reuters.com/legal/new-york-sues-johnson-johnson-2024-06-11)

Jonathan Stempel

NEW YORK, June 11 (Reuters) - Johnson & Johnson (JNJ.N)[↗](#), opens new tab has agreed to pay \$700 million to settle an investigation by 42 U.S. states and Washington, D.C. into its marketing of baby powder and other talc-based products blamed for allegedly causing cancer.

The settlement resolves charges that Johnson & Johnson misled consumers into believing its talc products, which it sold for more than a century before stopping, were safe.

J&J did not admit wrongdoing in settling with the states, which were led by Florida, North Carolina and Texas, and has said its talc products are safe and do not cause cancer. The company announced a settlement in principle in January.

"This is a major advancement for consumer product safety," Florida Attorney General Ashley Moody said in a statement.

J&J still faces tens of thousands of talc lawsuits, and a class action accusing the New Brunswick, New Jersey-based company of fraudulently hiding their dangers from shareholders.

A Johnson & Johnson banner is displayed on the front of the New York Stock Exchange (NYSE) in New York City, in New York City, U.S., December 5, 2023. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights [↗](#), opens new tab

As of March 31, about 61,490 people [↗](#), opens new tab were still suing J&J over talc. Most were women with ovarian cancer, while a smaller number had mesothelioma, a type of cancer linked to asbestos.

J&J stopped selling talc-based baby powder globally last year, switching to corn starch as the main ingredient. It has maintained that its products do not contain asbestos.

The company has twice tried to resolve the litigation by placing into bankruptcy a subsidiary it created to contain its talc liabilities, but courts rebuffed both attempts.

On May 1, J&J proposed a \$6.48 billion settlement to resolve most of the litigation through a third bankruptcy filing. It has set aside an \$11 billion reserve to cover all talc liabilities.

"The company continues to pursue several paths to achieve a comprehensive and final resolution of the talc litigation," Erik Haas, J&J worldwide vice president of litigation, said in a statement on Tuesday.

"We will continue to address the claims of those who do not want to participate in our contemplated consensual bankruptcy resolution through litigation or settlement," he added.

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Reporting by Jonathan Stempel in New York; editing by Jonathan Oatis and Bill Berkrot

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

US lawmaker report finds Wall Street 'colluded' to curb emissions(0:00) -

# Mrs. Paul's, Van de Kamp's fish sticks aren't '100% fish', lawsuit claims

 [reuters.com/legal/mrs-pauls-van-de-kamps-fish-sticks-arent-100-fish-lawsuit-claims-2024-06-12](https://www.reuters.com/legal/mrs-pauls-van-de-kamps-fish-sticks-arent-100-fish-lawsuit-claims-2024-06-12)

Jonathan Stempel

The company logo for Conagra Brands Inc. is displayed on a screen on the floor of the New York Stock Exchange (NYSE) in New York City, U.S., April 10, 2023. REUTERS/Brendan McDermid/File Photo Purchase Licensing Rights , opens new tab

June 12 (Reuters) - A new lawsuit accuses Conagra Brands (CAG.N) , opens new tab of deceiving consumers by "short weighting" its Mrs. Paul's and Van de Kamp's frozen fish products and falsely claiming they are "100% whole fish."

In a proposed class action filed on Tuesday in Chicago federal court, three consumers said Conagra artificially boosts the weight of 10 fish stick and fish fillet products by adding water and sodium tripolyphosphate, "which may then ooze out as a white goo" when cooked.

The consumers said sodium tripolyphosphate, a compound with commercial uses including in detergents, increases weight by an average 13%, causing them and others to overpay.

"A reasonable consumer has no reason to check what a product is composed of when the product labeling is replete with representations that it is '100% Whole Fish,' healthy, and caught in the wild," the complaint said

The U.S. Food and Drug Administration considers sodium tripolyphosphate safe. Tuesday's complaint calls it a suspected neurotoxin, registered pesticide and known air contaminant in large quantities, without providing the basis for those claims.

Conagra, based in Chicago, declined to comment on the lawsuit on Wednesday, saying it does not discuss pending litigation. Lawyers for the plaintiffs did not immediately respond to requests for comment.

The plaintiffs are William Martin of California, Catherine Foster of Massachusetts and Cindy Pappert of New York.

They are seeking unspecified damages for purchasers nationwide of the 10 Mrs. Paul's and Van de Kamp's fish products over the last four years, citing violations of California, Massachusetts and New York consumer production laws.

Conagra faces other litigation over its fish.

In March, a federal judge in Chicago refused to dismiss a lawsuit claiming it misled consumers into believing that nine Mrs. Paul's and Van de Kamp's products were sustainably sourced, including by calling them "Good for the Environment."

The case is Pappert et al v Conagra Brands Inc, U.S. District Court, Northern District of Illinois, No. 24-04835.

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Reporting by Jonathan Stempel in New York Editing by Bill Berkrot

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# Packaged food distributor faces consumer class action over industrial additive in seafood products

 [courthousenews.com/packaged-food-distributor-faces-consumer-class-action-over-industrial-additive-in-seafood-products](https://www.courthousenews.com/packaged-food-distributor-faces-consumer-class-action-over-industrial-additive-in-seafood-products)

Dave Byrnes

The consumers say a preservative in some Conagra frozen fish products may increase the products' weight by 13% or more and affect the quality of the fish.

CHICAGO (CN) — Three seafood consumers filed a federal class action against Conagra Brands in Chicago on Tuesday, accusing the Fortune 500 company of "short weighting" its frozen fish products.

The three plaintiffs from California, New York and Massachusetts claim that despite the Chicago-based company marketing its Van de Kamp's and Mrs. Paul's fish products as healthy, environmentally conscious and "100% whole fish," those products are actually stuffed to the gills with excess water and a chemical known as sodium tripolyphosphate.

"Defendant claims that its popular Van de Kamp and Ms. Paul's brand frozen fish products are '100% Whole Fish.' That statement is false," the plaintiffs wrote in their 25-page complaint. "The truth is, defendant pumps up those fish with an industrial filler called sodium tripolyphosphate and extra water to artificially add weight, which may then ooze out as a white goo when the fish is cooked."

Sodium tripolyphosphate is a commercial compound with a variety of uses. It can be found in detergents and water softeners, and is listed as a pesticide by the University of California's Division of Agriculture and Natural Resources.

It is also commonly used as a preservative for fish and meat, helping the flesh retain moisture and firmness. It is generally considered safe for human consumption in small amounts by the FDA and European Food Safety Authority, though a 2019 study by the authority found that in high quantities chemicals of its type may have adverse effects on kidney health.

The plaintiffs who filed the class action Tuesday also claim that sodium tripolyphosphate is a suspected neurotoxin. Courthouse News saw the same claim repeated on several healthy eating and consumer advisory websites, but could not find any scientific source corroborating it.

Health effects aside, the plaintiffs claim that Conagra is filling its frozen fish with an exorbitant amount of the chemical — enough that sodium tripolyphosphate solutions may add 13% or more weight to the products. When cooked, the plaintiffs claim, the solution can

ruin the fish's quality.

"Not only do consumers end up paying more money for STPP- treated seafood because of the added water weight, but the seafood decreases in size and changes in texture when the water is cooked out. Excessive STPP treatment destroys the quality of the protein during the cooking process and can create a 'soapy' flavor and mushy texture."

The frozen products oversaturated with industrial additive, the plaintiffs claim, include fish sticks, breaded haddock fillets and beer battered fillets. These products' packaging acknowledge that sodium tripolyphosphate is added to the fish to retain moisture, but only in the fine print.

The company's claim of using "100% whole fish," meanwhile, is prominently displayed on the front of the box and accompanied by equally-large proclamations that the fish is "good for you," "good for the environment" and "wild caught."

This disparity, the plaintiffs claimed, is intentionally misleading.

"A reasonable consumer has no reason to check what a product is 'composed' of when the product labeling is replete with representations that it is '100% Whole Fish,' healthy, and caught in the wild. Any consumer would reasonably assume without having to check parentheticals in the ingredient list that the products contain 100% Whole Fish, and not some fish and STPP and water pumped into the products in a processing plant," the three plaintiffs argued.

The trio now seeks injunctive relief against the company, as well as over \$5 million in damages for their proposed class. Their complaint outlines nine counts for fraud, unjust enrichment, breach of warranty and several violations of California, New York and Massachusetts state law.

Conagra did not immediately respond to a request for comment on the litigation.

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Categories / Consumers, Courts, Health

# Madonna, ticketholders clash over 'settlement' in late concert case

 [reuters.com/legal/government/madonna-ticketholders-clash-over-settlement-late-concert-case-2024-06-11](https://www.reuters.com/legal/government/madonna-ticketholders-clash-over-settlement-late-concert-case-2024-06-11)

Mike Scarcella

Singer Madonna performs during her concert at the AccorHotels Arena in Paris, France, December 9, 2015, on her Rebel Heart Tour. REUTERS/Benoit Tessier Purchase Licensing Rights , opens new tab

June 11 (Reuters) - Madonna and ticketing giant Live Nation (LYV.N) , opens new tab told a U.S. judge on Monday that they were nowhere near settling a proposed class action from fans who sued over a late concert start, accusing a lawyer for the plaintiffs of misleading the court.

The pop icon's lawyer, Jeff Warshafsky, who also represents Live Nation, said in a court filing , opens new tab that the ticketholders' attorney made a "false" statement to U.S. District Judge Hector Gonzalez in Brooklyn last Friday that there was a settlement in the case. Warshafsky said there had been talks, but nothing was final.

Two concert goers sued , opens new tab Madonna, Live Nation and Brooklyn's Barclay's Center in January, accusing them of "a wanton exercise in false advertising" over a nighttime show at the arena that began two hours after its billed start time. The plaintiffs said they would not have purchased tickets if they knew the concert would start that late.

Plaintiffs lawyer Marcus Corwin, who submitted the settlement notice , opens new tab, defended the filing at a hearing on Monday. "I would never file something that is not factually correct," he said. He said he believed based on prior communications that there was a settlement.

Warshafsky said at the hearing that Corwin was waging a "harassment campaign" aimed at "extorting a lucrative settlement by forcing defendants to incur unnecessary legal fees."

The judge struck the settlement notice and urged the lawyers to work towards a resolution. "There's far from a settlement," Gonzalez said.

"I do find this type of dealing, of getting the court involved, is not something that I appreciate," the judge said.

Corwin and Warshafsky did not immediately respond to requests for comment.

At the hearing, Corwin said that settlement discussions had focused on resolving not just the lawsuit in New York but "98 other cases" and a class action in Washington, D.C. federal court.

“Madonna has a long history of arriving and starting her concerts late, sometimes several hours late,” according to the lawsuit in Brooklyn.

Corwin told the judge that Madonna and the other defendants as part of the settlement talks were trying to bar his firm from filing more claims against them. “That is something that I can't agree to and my clients can't agree to,” Corwin said.

The case is *Fellows et al v. Madonna Louise Ciccone et al*, U.S. District Court, Eastern District of New York, 1:24-cv-00357-HG.

For plaintiffs: Marcus Corwin of Marcus W. Corwin, P.A.

For defendants: Jeff Warshafsky of Proskauer Rose

Read more:

Live Nation ticket buyers sue in wake of US Justice Department case  
US legal team in Live Nation lawsuit includes veteran plaintiffs' attorney  
Live Nation 'suffocates its competition,' US says in monopoly lawsuit

Reporting by Mike Scarcella

# Lawyers fight over \$78 mln fee bid in T-Mobile data breach settlement

 [reuters.com/legal/legalindustry/lawyers-fight-over-78-mln-fee-bid-t-mobile-data-breach-settlement-2024-06-11](https://www.reuters.com/legal/legalindustry/lawyers-fight-over-78-mln-fee-bid-t-mobile-data-breach-settlement-2024-06-11)

Mike Scarcella

A T-Mobile store is pictured in the Manhattan borough of New York, New York, U.S., May 20, 2019. REUTERS/Carlo Allegri Purchase Licensing Rights , opens new tab

June 11 (Reuters) - Attorneys challenging \$78 million in legal fees stemming from a data breach class action settlement with T-Mobile urged a U.S. appeals court on Tuesday to throw out the "windfall" award, arguing it made up an oversized share of the \$350 million settlement fund.

"This is exactly the kind of case that causes the public to scoff at class actions," attorney Robert Clore told the St. Louis-based 8th U.S. Circuit Court of Appeals. "My client gets 25 bucks and these attorneys are walking away with \$7,000 to \$10,000 per hour."

The 2022 T-Mobile settlement resolved privacy claims involving an estimated 76 million T-Mobile customers whose personal information was compromised in data breach the year before.

A judge in Kansas City, Missouri, approved the accord and granted fees worth 22.5% of the \$350 million fund for the class lawyers, denying the challengers' objections at the lower court.

The three-judge appeals panel probed both sides during Tuesday's hearing, trying to assess whether the objections were in "bad faith" or based on legitimate concerns that the fee award was excessive.

One of the class attorneys, Bradley Wilders, told the panel that the challengers were "serial" class action objectors who were motivated by financial self-interest.

Wilders in an earlier filing , opens new tab said class counsel so far had invested more than 9,100 hours in the litigation. "Of the more than 76 million Class members, only two appealed," he wrote.

Clore, Wilders and T-Mobile did not immediately respond to requests for comment.

Another lawyer who challenged the fee amount, John Pentz, in an email on Tuesday said the trial court was "hostile to objectors rather than welcoming them."

The cases are Daruwalla v. Hampe, 8th U.S. Circuit Court of Appeals, No. 23-2744; and Daruwalla v. Pentz, same court, No. 23-2798.

For objectors: Robert Clore of Bandas Law Firm; and John Pentz

For class: Norman Siegel and Bradley Wilders of Stueve Siegel Hanson; James Pizzirusso of Hausfeld; and Cari Campen Laufenberg of Keller Rohrback

Read more:

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Judge reinstates Wawa class action fee award shot down by appeals court

Lawyers in US college aid case ask for \$94 million in legal fees

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# Law firm Kirkland sued in class action over MOVEit data breach

 [reuters.com/legal/litigation/law-firm-kirkland-sued-class-action-over-moveit-data-breach-2024-06-10](https://www.reuters.com/legal/litigation/law-firm-kirkland-sued-class-action-over-moveit-data-breach-2024-06-10)

Sara Merken

Signage is seen outside of the law firm Kirkland & Ellis LLP in Washington, D.C., U.S., August 30, 2020. REUTERS/Andrew Kelly Purchase Licensing Rights , opens new tab

June 10 (Reuters) - U.S. law firm Kirkland & Ellis, the world's largest law firm by revenue, has been pulled into U.S. litigation over a wide-ranging data breach linked to a file transfer tool that compromised data at hundreds of organizations.

A proposed class action , opens new tab filed on Friday accused Kirkland and several other companies, including health insurer Humana, of not doing enough to safeguard personal information that was affected by a May 2023 hack of Massachusetts-based Progress Software's MOVEit Transfer file management software.

Hundreds of lawsuits over the data breach that affected millions of people have been filed against Progress and a growing number of defendants since last year, and have been centralized in Massachusetts federal court. U.S. District Judge Allison Burroughs is overseeing the multidistrict litigation.

Kirkland represented home healthcare agency Trilogy Home Healthcare in its acquisition last year by Humana subsidiary CenterWell Home Health, the lawsuit said. Trilogy allegedly transferred legal files that contained a "wide array" of private information to Kirkland using MOVEit.

The lawsuit named Progress, CenterWell and Trilogy as defendants in addition to Kirkland and Humana. It was filed on behalf of a proposed class of at least 4,700 people.

Spokespersons for Kirkland and Progress declined to comment. A Humana spokesperson did not immediately respond to requests for comment.

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

The hackers behind the massive breach, the ransomware gang known as cl0p, claimed credit for stealing data from law firms including Kirkland and K&L Gates, in the weeks afterward. Other victims included the University of California, Los Angeles, Siemens Energy, Abbvie and Schneider Electric.

Kirkland did not inform Trilogy that the software breach affected its files until October, and Trilogy did not notify affected customers until March 2024, according to the complaint.

The plaintiff, Judith Wilson, alleged that she received a letter from Trilogy dated March 4 that said the breach impacted her personal information.

Law firms are increasingly common defendants in data breach cases.

A Chicago federal judge ruled last week that law firm Bryan Cave Leighton Paisner and snack food giant Mondelez must face at least part of a proposed class action over a data breach at the law firm that compromised personal information belonging to thousands of Mondelez employees.

Law firm Orrick, Herrington & Sutcliffe recently agreed to an \$8 million settlement in a data breach case.

The case is Wilson v. Progress Software Co, U.S. District Court for the District of Massachusetts, No. 1:24-cv-11492

For the plaintiff: Karen Hanson Riebel of Lockridge Grindal Nauen

For the defendants: Not immediately known

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Sara Merken  
Thomson Reuters

Sara Merken reports on the business of law, including legal innovation and law firms in New York and nationally.

# DLA Piper Sees \$180 Million Malpractice Suit Resuscitated (1)

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[news.bloomberglaw.com/product/blaw/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMTkwLTA3MmUtZGExOC1hYjllLWJmYWU0ZDM5MDAwMSIsImN0eHQiOiJTTE5XliwidXVpZCI6Ilk1K2hQRDB0clA2MjdObnIncHMxNkE9PTBoUVZyTmJjb2xZQUUNuZDJ0UTVkcUmc9PSIsInRpbWUiOiIxNzE4MTkwODQ5NTY5Iiwic2lnIjojInks3QUgvcXQ5bDdoRCs1RE96TzhrSXNsbkNBPSIsInYiOiIxLn0=](https://news.bloomberglaw.com/product/blaw/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMTkwLTA3MmUtZGExOC1hYjllLWJmYWU0ZDM5MDAwMSIsImN0eHQiOiJTTE5XliwidXVpZCI6Ilk1K2hQRDB0clA2MjdObnIncHMxNkE9PTBoUVZyTmJjb2xZQUUNuZDJ0UTVkcUmc9PSIsInRpbWUiOiIxNzE4MTkwODQ5NTY5Iiwic2lnIjojInks3QUgvcXQ5bDdoRCs1RE96TzhrSXNsbkNBPSIsInYiOiIxLn0=)

- Suit was removed to federal court, dismissed as untimely
- Second Circuit said district court didn't have jurisdiction

DLA Piper LLP had a victory in a \$180 million malpractice suit against it snatched away when the Second Circuit ruled that the federal district court didn't have jurisdiction over the case.

The district court said that it had jurisdiction over the case because it fell within the narrow category of state law claims presenting substantial federal issues and then dismissed it as time barred. But what mattered to jurisdiction was the importance of the federal issue to the federal system as a whole, Judge Reena Raggi said Monday for the US Court of Appeals for the Second Circuit.

The federal law standing issue "however important to DLA Piper in this particular action, lacks the sort of significance to the federal system as a whole warranting the exercise of federal jurisdiction," she said.

DLA Piper represented Link Motion Inc. in connection with a stock offering in July 2018. In December 2018, Wayne Baglia, who held LKM's American Depositary Receipts, filed a derivative shareholder complaint in federal court against the company. When DLA Piper learned about Baglia's suit, it contacted LKM for instructions, but LKM didn't respond. A temporary restraining order was issued preventing LKM from transferring any assets.

The law firm sent multiple requests to LKM for instructions and eventually sent LKM an email stating that if it didn't hear from LKM it would assume it had permission not to oppose a preliminary injunction motion. There was no response, DLA Piper didn't oppose the motion, and the court issued a preliminary injunction and appointed a receiver. DLA Piper then withdrew from the case.

The district court eventually ruled against Baglia and LKM filed a legal malpractice claim against DLA Piper in New York court. DLA Piper removed the case to federal court. It said that the court had jurisdiction over the malpractice claim because it required evaluation of the merits of the federal defenses that LKM claimed DLA Piper should have raised in the Baliga action.

DLA Piper's asserted application of the federal law issue in LKM's state malpractice claims is "backward-looking and hypothetical," Raggi said. It therefore isn't substantial in the relevant sense, she said.

Legal malpractice claims are also generally heard in state court, Raggi said.

Judges Pierre N. Leval and Joseph F. Bianco joined the opinion.

Felicello Law PC represented LKM. Gibson, Dunn & Crutcher LLP represented DLA Piper.

The case is Link Motion Inc. v. DLA Piper LLP , 2024 BL 197601, 2d Cir., No. 23-944, 6/10/24 .

(Story updated to add that LKMI is seeking \$180 million in the suit.)

To contact the reporter on this story: Bernie Pazanowski in Washington at [bpazanowski@bloombergindustry.com](mailto:bpazanowski@bloombergindustry.com)

To contact the editor responsible for this story: Drew Singer at [dsinger@bloombergindustry.com](mailto:dsinger@bloombergindustry.com)

# Allergan Court Adopts 'Middle of the Road' Position on Kickbacks

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## Class Action

- Parties denied summary judgment in 'Lap-Band' fraud suit
- More plaintiff-friendly standard from 3d. Cir. adopted by judge

A False Claims Act suit accusing Allergan Inc. of engaging in a kickback scheme to increase 'Lap-Band' obesity device purchases moved one step closer to trial.

Judge Stephanie A. Gallagher needs more information about whether Allergan caused false claims to be submitted to the government, she said for the US District Court for the District of Maryland on June 3. Gallagher released the opinion following a Tuesday order.

Gallagher adopted the US Court of Appeals for the Third Circuit's "middle of the road" approach for an Anti-Kickback Statute-based FCA claim, and not the more defendant-friendly "but-for" causation standard used by the Sixth and Eighth circuits. The Fourth Circuit has yet to weigh in on this issue, the judge said.

Under this now-adopted approach, a kickback doesn't turn into a false claim unless a particular patient is exposed to an illegal remuneration or referral, and a provider submits a claim to the government for reimbursement, the court said. A link is required, but a plaintiff doesn't need to show that a bribe succeeded in producing a prescription, the court said.

Whistleblower Matthew Fitzer sued in 2013 alleging that Allergan engaged in a kickback scheme to provide surgeons with free advertising in exchange for purchases of Lap-Band devices.

Neither Fitzer nor Allergan has summarized the causation standard in alignment with the court's view, Gallagher said.

But because the court clarified causation requirements for the first time at an April 5 hearing, the parties will supplement summary judgment materials as to causation regarding claims Fitzer hopes to pursue at trial, the court said.

Gibson Dunn & Crutcher LLP represents Allergan. Price Benowitz LLP, Nichols Kaster PLLP, and Lerch Early & Brewer LLC represent Fitzer.

The case is United States ex rel. Fitzer v. Allergan Inc. , D. Md., No. 17-cv-668, opinion released 6/11/24 .

# Exclusive: US House panel finds Wall St 'colluded' to curb emissions

 [reuters.com/sustainability/us-house-committee-report-finds-wall-street-colluded-curb-emissions-2024-06-11](https://www.reuters.com/sustainability/us-house-committee-report-finds-wall-street-colluded-curb-emissions-2024-06-11)

Isla Binnie

June 11 (Reuters) - The Republican majority in a U.S. congressional committee published a report on Tuesday accusing Wall Street firms of colluding with advocacy groups to force companies to shrink their greenhouse gas emissions.

The committee's report, which was reported earlier by Reuters, is the first since it launched an investigation in 2022 into whether corporate efforts to tackle climate change violate antitrust laws.

Several Republican-controlled states have been targeting Wall Street firms for entering into climate coalitions and marketing environmental, social and corporate governance (ESG)-focused investment products, fretting that these initiatives will harm jobs in the fossil fuel industry.

This is despite the world failing to live up to an intergovernmental agreement reached in Paris in 2015 to keep global warming to 1.5 degrees Celsius (2.7 degrees Fahrenheit) so it can avoid the most catastrophic effects of climate change.

In the report, Republican lawmakers accuse President Joe Biden's administration of failing to "meaningfully investigate the climate cartel's collusion, let alone bring enforcement actions against its apparent violations of longstanding U.S. antitrust law."

A White House spokesperson did not immediately respond to a request for comment. Congressman Jerrold Nadler, a Democrat who sits on the judiciary committee of the House of Representatives that produced the report, dismissed its findings in a document seen by Reuters.

"There is no theory of antitrust law that prevents private investors from working together to capture the risks associated with climate change," Nadler wrote in the preface to a document prepared by Democrats in response.

While anti-ESG legislation is unlikely as long as Democrats control the White House and the Senate, any recommendation the committee comes up with may shed light on what a new administration led by Republican Donald Trump could try to implement if he prevails in November's U.S. election.

"The goal of any investigation is to inform legislative reforms," a spokesperson for Judiciary Committee chair Jim Jordan said.

No antitrust lawsuit has been brought against any climate coalition of companies. The spokesperson for Jordan declined to comment on any interactions with U.S. antitrust regulators regarding the report. The U.S. Department of Justice and the Federal Trade Commission, which oversee antitrust reviews, did not immediately respond to requests for comment.

The committee's report said it provided interim findings and that the investigation is continuing. The Democrats argued in their rebuttal that co-ordination on climate efforts advances competition by creating a common emissions disclosure framework for asset managers to operate with fewer compliance costs, and for their clients to better compare their performance.

The committee has issued subpoenas for documents and interviewed former regulators. The Republicans focused much of the committee's report on Climate Action 100+, a grouping of more than 700 investors focused on getting companies to curb emissions. They credited their investigation for several asset managers ending their membership this year for fear of an antitrust crackdown.

Rep. Jim Jordan, R-Ohio, speaks during a U.S. House Judiciary Committee about political influence on law enforcement activity, including one who worked on Special Counsel Robert Mueller's Russia probe, in Washington, U.S., June 24, 2020. Susan Walsh/Pool via REUTERS/File Photo Purchase Licensing Rights [🔗](#), opens new tab

The committee's report said Climate Action 100+ "bullies asset managers to join" and presses them to use their shareholder votes in support of climate proposals, seeking to reduce fossil fuel extraction and raising energy prices for U.S. consumers.

A spokesperson for Climate Action 100+ said its aims to undertake investor stewardship on climate change were misunderstood in the political discourse, and that its investors were "independent fiduciaries, responsible for their individual investment and voting decisions."

"As the world's largest investor-led engagement initiative, Climate Action 100+ will be scrutinized ... But any scrutiny must be fair, accurate, and based on facts," the spokesperson said.

## CALPERS, CERES

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Also in the Republicans' cross-hairs were Climate Action 100+ co-founders, the California Public Employees Retirement System (CalPERS) and climate-focused investor group Ceres for their key support of Climate Action 100+. It says activist investor Arjuna Capital, a member, "seeks to destroy fossil fuel companies."

The committee has called witnesses including Ceres president Mindy Lubber to appear at a public hearing on June 12.

Ceres said in a statement that the hearing is part of a larger political campaign to ban investors from considering climate-related financial risk.

A CalPERS spokesperson said it was proud to participate in initiatives like Climate Action 100+. "This is not collusion; it is collaboration," the spokesperson said.

Arjuna did not immediately respond to a request for comment.

The committee's report cited work plans, meeting minutes and other documents the committee obtained, including an internal email referring to a Climate Action 100+ plan to replace board members at oil and gas firm Exxon Mobil (XOM.N) [opens new tab](#), which said this effort would "show (Climate Action 100+) has teeth."

The Republicans described the world's three biggest asset managers, BlackRock (BLK.N) [opens new tab](#), Vanguard and State Street (STT.N) [opens new tab](#), as members of a climate cartel.

Representatives for BlackRock and State Street did not immediately provide comment. A Vanguard spokesperson said the firm's "mission is to help individual investors achieve their financial goals" and it remained committed to cooperating with the committee's requests.

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Reporting by Isla Binnie in New York; Editing by William Maclean and Stephen Coates

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Isla Binnie

Thomson Reuters

Isla Binnie is Reuters's New York-based Sustainable Finance Correspondent, reporting on how the worlds of business and finance are affected by and respond to environmental, social and governance issues. Isla previously covered a broad range of business, politics and general news in Spain and Italy, where she also moderated events. She trained with Reuters in London and covered emerging markets debt for the International Financing Review (IFR).

Bloomberg Law News 2024-06-12T12:08:00876262315-04:00

## Activist Hedge Fund Fined for Secret Payments to Researcher (2)

By Tom Schoenberg and Austin Weinstein2024-06-12T10:25:14181-04:00

- Anson entities pay \$2.25 million to resolve SEC investigation
- Sanctions follow broader US probe of short sellers' practices

A sweeping US probe of activist short sellers has yielded its first notable punishment, while offering a rare glimpse into controversial collaborations between bearish researchers and hedge funds that place big bets against companies.

The Securities and Exchange Commission fined affiliated money managers Anson Funds Management and Anson Advisors Inc. a total of \$2.25 million on Tuesday, accusing them of hiding payments to an unidentified publisher of bearish research. A hedge fund they oversaw generated more than \$4 million in gains in late 2018 by collaborating with the outsider on the negative reports and social media posts, the SEC said.

Anson secretly paid the researcher \$1.1 million after their publication in September and October of that year, according to the SEC. The regulator says the payment was made through a third party.

The SEC didn't identify the researcher, who the agency said publicly criticized Namaste Technologies and India Globalization Capital in September and October of that year. The months and targeted companies line up with bearish postings at the time by famed short-seller **Andrew Left's** Citron Research.

Left, who wasn't accused of wrongdoing by the regulator, declined to comment. Anson didn't admit or deny the SEC's allegations in settling.

A wide-ranging US effort to examine relationships between hedge funds and skeptical researchers began rattling the industry three years ago as investigators set out to gather information on dozens of money managers and activists, as well as transactions involving more than 50 stocks. At the time, people with knowledge of the inquiries said authorities were looking for evidence that short sellers were working together to improperly drive down stocks.

Anson was among the lesser-known names said to be facing scrutiny at the time.

Read more: Hedge Fund With 45% Returns Drawn Into DOJ Probe of Short Sales

The bearish takes on both companies were ultimately borne out, Anson said in a statement shared by Moez Kassam, the firm's founder and principal. Shares of the companies, which later changed their names, now trade below their prices at the time. Spokespeople for the companies didn't respond to messages seeking comment after normal business hours.

"Anson's involvement not only benefited our own investors but also the broader market," the firm said in the statement. "The SEC made no allegations that Anson ever disseminated any false or misleading information into the market, engaged in inappropriate trading or in any way breached its fiduciary duty to its investors."

That echoes other defenders of short-seller practices who say they should be celebrated for helping to police markets, rather than vilified for knocking down overpriced stocks.

Still, the SEC faulted Anson for omitting key details in its communications with prospective investors. The agency said the firm should have disclosed that it worked with activist researchers and paid them a share of its profits.

"Anson Funds inaccurately recorded these payments as payments to the third-party intermediary for such research services and in doing so violated the Advisers Act books and records provisions," the SEC said in an order. "Further, by failing to implement its written policies regarding the accuracy of records, Anson Funds violated the Advisers Act compliance rule."

(Updates with addition details on payment in third paragraph.)

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# U.S. attorney needs to extend deferred prosecution agreement with FirstEnergy to ensure cooperation: editorial

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## NewsRoom

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June 12, 2024

U.S. attorney needs to extend deferred prosecution agreement with FirstEnergy to ensure cooperation: editorial

Editorial Board; cleveland.com

Unless U.S. Attorney Kenneth L. Parker of the Southern District of Ohio acts by July 20 to exercise his option to extend the federal 2021 deferred prosecution agreement (DPA) with Akron's FirstEnergy Corp. by one more year, the agreement will lapse — and with it a primary source of leverage to ensure that FirstEnergy cooperates with related probes and prosecutions.

Parker, who took over the U.S. Attorney's office and its FirstEnergy/House Bill 6 investigation about four months after the office's filing of the July 21, 2021, DPA, has sadly shown little energy in pressing the federal case beyond the ground already plowed by his predecessor, David DeVillers.

That doesn't give Parker a bye now, when FirstEnergy is refusing to share its internal investigative reports with the Ohio Office of Consumers' Counsel, which is investigating harm to consumers from the FirstEnergy/HB 6 bribes.

Those internal documents presumably include one the DPA itself references as part of the evidence of FirstEnergy's cooperation as "a thorough internal investigation; proactively identifying issues and facts that would likely be of interest to the government."

The very failure now by FirstEnergy to share that probe, impeding state-level justice in the matter, arguably gives the feds the authority to find FirstEnergy in violation of its obligations under the DPA, allowing Parker to invoke the one-year extension.

To fail to act on this matter would add to the black eye Parker earned in repeatedly delaying state-level probes by requesting that, while federal probes continued, the Public Utilities Commission of Ohio hold off on its own investigations of the bribes and related corruption that impacted its internal decisions and credibility, along with, presumably, ratepayer justice.

Parker put his thumb on those state probes even as he took his time finalizing further charges in the case, before finally charging ex-PUCO Chair Sam Randazzo in December with crimes related to bribery and embezzlement. That was more than three years after FBI agents raided Randazzo's home and Randazzo resigned from the PUCO; Randazzo took his own life in April, ending that federal case.

A key piece of evidence against Randazzo was in the DPA — an admission by FirstEnergy that a \$4.3 million payment to Randazzo shortly before he took over the PUCO was "in return for Public Official B [Randazzo] performing official action in his capacity as PUCO Chairman to further FirstEnergy Corp.'s interests relating to passage of nuclear legislation and other specific FirstEnergy Corp. legislative and regulatory priorities, as requested and as opportunities arose."

In other words, a bribe.

Meanwhile, Parker has left it to the state of Ohio to indict the two key former FirstEnergy officials identified in the DPA as the primary FirstEnergy officials handling the dark-money payoffs to Randazzo as well as to now-convicted former Ohio Speaker Larry Householder and others. Ohio indicted former FirstEnergy CEO Chuck Jones and ex-Senior Vice President Michael Dowling earlier this year.

Allowing the DPA to lapse also weakens a source of pressure on the Akron utility to cooperate with that prosecution.

Additionally, two officials who pleaded guilty in the federal case have yet to be sentenced — Jeff Longstreth, a Householder aide, and Juan Cespedes, a lobbyist for the FirstEnergy subsidiary that ran the utility's nuclear plants. Extending the DPA until the federal criminal case wraps up is another strong argument for that extension.

The FirstEnergy/House Bill 6 scandal revealed an unprecedented level of corruption in the many-layered perversion of the public weal and of the Ohio institutions intended to guard the public interest.

For the sake of justice on behalf of all Ohioans and others impacted by the case, U.S. Attorney Kenneth L. Parker needs to do the right thing and extend the deferred prosecution agreement against FirstEnergy to ensure the utility cooperates fully and transparently until all related investigations are wrapped up.

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---- Index References ----

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**NewsRoom**

# Bathroom Off Limits at Archegos When Key Stocks Were On Move (1)

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- Hwang's top trader says he yelled at team for taking breaks
- William Tomita depicted Archegos founder as a micromanager

In the months before Archegos Capital Management imploded in March 2021, trading was almost nonstop. One of **Bill Hwang's** traders made the mistake of stepping away to use the bathroom when a stock he was watching began to move.

"Bill yelled at us," former Archegos head trader **William Tomita** recalled on the witness stand Tuesday at Hwang's fraud trial. "He raised his voice, and he yelled at us that we can't just go to the bathroom."

In his second day of testimony as a star prosecution witness against Hwang, Tomita depicted his former boss as not just a market manipulator but a micromanager who oversaw every detail of trading at his family office and frequently berated his team.

Bill Hwang exits federal court in New York on June 10.

Photographer: Jeenah Moon/Bloomberg

Tomita was closer to Hwang than anybody who has taken the stand, including the other cooperating witness, former risk chief **Scott Becker**. His testimony, which is expected to continue for several days, is key to connecting the Archegos founder to the government's charges of fraud, racketeering conspiracy and market manipulation.

Prosecutor Matthew Podolsky on Tuesday walked Tomita through several allegedly manipulative trades. Tomita also offered testimony of how Hwang ran his traders. At the time, most of them were working from home due to the pandemic. But they spent their days in an ongoing Zoom call with Hwang, who dictated their buying and selling from a corporate apartment on Central Park South.

It was via this Zoom that Hwang noticed that trader **Peter DeSanto** wasn't at his desk when a stock he was shorting, Rocket Cos., started to move in the wrong direction. DeSanto was in the bathroom.

William Tomita exits federal court in New York on June 10.

Photographer: Jeenah Moon/Bloomberg

Inopportune breaks weren't the only reason Hwang yelled at his team, Tomita said. He also frequently criticized them when they failed to get the prices of targeted stocks to his limit price.

"I remember with the stock Viacom, getting yelled at because I wasn't aggressive enough," Tomita said. "I wasn't buying it in a manner that was moving the stock price as high as he wanted."

Traders could often tell when Hwang was about to berate them, he said. "Sometimes he didn't even need to vocalize because on the Zoom he would just glare, and that glance alone meant we were about to get yelled at or he was annoyed," Tomita testified.

On the Zoom, traders could also see Hwang, who was often studying a constantly updated spreadsheet showing Archegos' profit and loss. "We saw him essentially looking or staring at the spreadsheet throughout the day," Tomita said.

Hwang could also hand out praise. Tomita spent much of Tuesday morning testifying about what his boss called a "Herculean defense" of one of the biggest stocks in Archegos' portfolio, the Chinese online educational company then called GSX Techedu Inc. in October 2020. At the time, GSX was being targeted by short-sellers like Muddy Waters Research.

Archegos burned through cash and liquidated its holdings of companies like Amazon.com Inc. and Microsoft Corp. to raise money to prop up GSX. Tomita said he traded GSX at a very high percentage of the volume, tweaking algorithms to keep the stock from falling lower.

GSX became something of a model for Archegos, and Tomita said he began trading in a way designed to manipulate stocks "on a daily basis." To facilitate more trading, Tomita said he and Hwang talked about different ways to increase their capacity at counterparty banks.

## 70% of Volume

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This matches with earlier testimony by Becker that Archegos' nearly nonstop trading was growing constrained. By February 2021, the family office had reached its trading capacity for GSX at Credit Suisse Group AG, Nomura Holdings and Barclays Plc. This created an incentive to lie to the banks, Becker said, to get them to raise Archegos' credit limits.

Tomita walked jurors through several text messages in which Hwang issued instructions to traders. A "firm trade" meant "trade the stock at that price and don't let it trade below that," Tomita testified. "Let's step it up, please" meant to buy shares at that price.

In trading of online retailer Farfetch Ltd., Hwang guided one of his traders through the afternoon, asking him to raise the limit price 59 seconds before the close. The trader succeeded in getting the stock to Hwang's \$62 target, Tomita said. At that time, Archegos accounted for 70% of the volume with a total order size of \$175 million.

"That was about \$46 million that we generated in the last minute of trading," Tomita said.

## 'Because of Us'

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Viacom also rose on Archegos trading, and Tomita said he and Hwang chatted about it after the media company's March 8, 2021, first-quarter earnings call. Executives on the call had crowed about the stock rise, but Tomita said Hwang knew who was really responsible.

"He told me that was because of us," Tomita testified.

Tomita said he joked with Hwang about **Meghan Markle** thinking her blockbuster March 7 interview with **Oprah Winfrey** drove up Viacom stock, when it was actually Archegos.

Two weeks later, a poorly received secondary offering by Viacom would send the shares down. As with GSX, Archegos would try to defend the stock, but this time it would fail, with the resulting rout dooming Archegos and costing its counterparty banks some \$10 billion.

Tomita is set to return to the stand Friday for further questioning by the prosecution, with court on break for the next two days. The defense is likely to begin cross-examining him next week.

(Updates with further testimony in ninth paragraph.)

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# Dallas Firm Must Give Ocwen Documents From Settled Fraud Cases

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- Public policy doesn't bar subpoena for FCA suit documents
- Some requests too broad; firm can submit privilege log

Dallas-based Samuel L. Boyd and Boyd & Associates must provide False Claims Act defendant Ocwen Loan Servicing LLC with several categories of documents related to two prior cases involving Ocwen, a Texas federal district court said.

Boyd didn't show that Ocwen's subpoena to access copies of pleadings and trial exhibits among other documents in the prior FCA suits should be fully quashed on public policy grounds, Judge Amos L. Mazzant, of the US District Court for the Eastern District of Texas, said in a Monday order.

Two whistleblowers in the underlying FCA suit against Ocwen, Jean-Marc Eichner and Brandon Loyd, are represented by Boyd. The whistleblowers allege that Ocwen made false certifications under the Department of the Treasury's Home Affordable Modification Program during the 2008 housing crisis.

Ocwen in 2023 issued a non-party subpoena to Boyd to produce documents from the two prior cases, *United States ex rel. Fisher v. Homeward Residential Inc.* ; and *United States ex rel. Fisher v. Ocwen Loan Servicing LLC* , which ended in a \$30 million settlement.

Boyd moved to quash, but failed to demonstrate that public policy should bar overreaching non-party subpoenas because they hinder effective representation of whistleblowers, and impose a form of sanctions, Mazzant said.

Boyd offered no authority showing that a party's attorney is intrinsically immune from a subpoena, or that it is precluded from producing sealed pleadings in the two cases, the court said.

The court said Boyd implied that Ocwen previously had access to the sealed documents, which undercuts the position that Boyd is prohibited from producing them now.

Mazzant said that Boyd must produce a privilege log to the extent Boyd believes documents Ocwen seeks are protected by various forms of privilege.

The court also sided with Boyd to the extent that several categories of document requests were “overbroad,” such as the request for copies of each document produced in the two cases. This request isn’t “particularized” to the underlying FCA case, Mazzant said.

Locke Lord LLP represents Ocwen. LeBoeuf Law PLLC represents Boyd.

The case is United States ex rel. Eichner v. Ocwen Loan Servicing LLC , 2024 BL 198175, E.D. Tex., No. 4:23-mc-172, 6/10/24 .

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# Trump Media in spiral as it plunges to lowest level in months: report

 [rawstory.com/msn-uk/trump-media](https://rawstory.com/msn-uk/trump-media)

Matthew Chapman

June 12, 2024

Truth Social App (AFP)

Trump's media company is losing stock value yet again.

According to Newsweek, Google Finance data reveals that "as of June 11, the price of a share, traded under the ticket 'DJT' has plunged to \$39.31 per share. This is the first time the stock has dipped under \$40 a share since April 25 when it was \$38.49. However, the price of a share is still higher than on April 17 when it dipped to \$22.84, the lowest the share price had been since January 16, when it was at \$22.35."

Trump Media and Technology Group, formed by a merger with the "blank check" firm Digital World Acquisition Corp., manages Trump's Truth Social platform, a barebones social media site mainly used by Trump himself to make stream-of-consciousness posts known as "Truths."

In recent weeks, the stock price of Trump Media, had been rallying somewhat, but still never approaching its early maximum value of around \$80 a share. Experts have widely said that the stock price makes no sense; at times, its market cap has approached \$9 billion, even though the company only generated \$4 million in revenues last year and actually lost \$330 million in the first three months of this year.

It is widely speculated that investors are inflating the value either for personal gain or to express political support for the former president, who on paper gained billions of dollars in wealth when Trump Media went public, but is in practice unable to easily use this wealth to pay for pressing matters like his legal expenses.

Moreover, noted the report, "After Trump was found guilty of falsifying business records in his hush-money trial last month, Truth Social stock also plunged and experts told *Newsweek* the former president's conviction may have impacted the stock's performance."

All this is occurring as the company and those around it face legal drama, including a number of lawsuits by founders against each other and the company that audited it being charged with fraud by the Securities and Exchange Commission.

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# Elizabeth Holmes Seeks New Trial by Challenging Key Testimony

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Attorneys for convicted Theranos Inc. founder Elizabeth Holmes asked a federal appeals court for a new trial in the yearslong Silicon Valley fraud saga, calling into question the prosecution's key witness testimony from a former lab director.

Amy Saharia of Williams & Connolly LLP told the three-judge panel for the US Court of Appeals for the Ninth Circuit at a Tuesday hearing that trial testimony from Theranos' last lab director Kingshuk Das was "infected with error."

"The government cannot show the errors were harmless," Saharia said. "The case was close. This was the most powerful evidence on the central issue in the case."

She argued that Das, who testified during the four month trial that Theranos' blood testing device Edison had major problems, was providing opinions as an expert witness, but was never properly vetted by the judge before trial.

Holmes, who is serving an 11-year sentence in a minimum security prison in Texas, was indicted in 2018 for defrauding investors and patients by intentionally lying about the viability of Theranos' blood testing business. The project took Silicon Valley by storm with a multibillion dollar valuation and prolific media attention.

She was convicted in the US District Court for the Northern District of California on four counts of wire fraud in January 2022, but was found not guilty on counts relating to patient fraud.

## Possibly Swayed

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At the Tuesday hearing, Judge Ryan D. Nelson at first appeared skeptical of Saharia's claim that the case was close. "I didn't come away reading all of this with the same impression," he told Saharia. "There was it seemed to me pretty overwhelming evidence" outside of the potentially problems with Das' testimony.

But he later seemed more amenable to the argument that prosecutors improperly used Das for expert testimony about the scientific viability of the Edison machine even though he was a lay witness.

The prosecution originally sought to use blood testing expert Stephen Master during trial as an expert witness, and he would have been vetted by the judge in a pretrial processes called a *Daubert* hearing. But Masters ultimately didn't testify, and prosecutors used Das' testimony even though he never went through the *Daubert* process, Holmes' attorneys argue.

"I got to say, I have some problems with how this happened," Nelson told Justice Department attorney Kelly Volkar. "You put in an expert, then you didn't use that expert, and then you used a lay witness to get in some of that same testimony. There's a pretty good story here for Ms. Holmes."

## Evidence Not Challenged

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Volkar responded that Das wasn't being used to testify about the same scientific issues as Masters, but rather about "what he observed in real time in 2016" at Theranos, "and most importantly what he told Holmes."

Volkar also argued that even if the Holmes wins her arguments about the Das' testimony or other issues relating to the accuracy or reliability of the Edison test, that evidence was mainly used for prosecuting the patient fraud counts on which she was acquitted.

Holmes hasn't challenged the key evidence in her investor fraud conviction, including her misrepresentations about Theranos' financial health, work with the military, and relationship to pharmacy Walgreens Co.

At the same Tuesday hearing, the judges also heard a conviction appeal from Holmes' ex-partner and former Theranos President Ramesh "Sunny" Balwani, who was convicted separately and is serving a 13-year sentence.

His attorney Jeffrey Coopersmith of Corr Cronin LLP argued that prosecutors improperly amended their indictment by introducing evidence about the accuracy of Theranos' conventional testing technology even though the indictment only involved Theranos' proprietary technology.

Judges Jacqueline Nguyen and Mary M. Schroeder also served on the panel.

The cases are USA v. Holmes, 9th Cir., No. 22-10312, 6/11/24 .

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# Paramount's Shari Redstone shelves potential merger deal with Skydance

 [reuters.com/business/media-telecom/paramounts-shari-redstone-shelves-potential-merger-deal-with-skydance-2024-06-12](https://www.reuters.com/business/media-telecom/paramounts-shari-redstone-shelves-potential-merger-deal-with-skydance-2024-06-12)

Reuters

## Media & Telecom

Toy figures of people are seen in front of the displayed Paramount + logo, in this illustration taken January 20, 2022. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

June 12 (Reuters) - Paramount Global's (PARA.O) , opens new tab majority shareholder Shari Redstone has abruptly ended talks for a potential merger with David Ellison's production company Skydance Media, effectively killing the deal that was in the works for several months.

Redstone, the daughter of late media tycoon Sumner Redstone, was widely expected to sell her family's stake to Ellison as part of a \$2.25 billion deal for the family's holding company, National Amusements. It was one element of a complex \$8 billion transaction that would have resulted in the merger of Paramount and Skydance.

Here are some of the main events leading up to the deal talks falling through:

| Year           | Events                                                                                                                                                                                                                                                                         |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| December 2019  | CBS Corp and Viacom merge to form ViacomCBS, combining media mogul Sumner Redstone's media units 13 years after a split. ViacomCBS would be later renamed as Paramount Global<br>ViacomCBS acquires a 49% stake in film studio Miramax from BeIN Media Group for \$375 million |
| September 2020 | ViacomCBS rebrands a CBS streaming service as Paramount+ and launches it in international markets<br>Sells CNET Media Group to Red Ventures for \$500 million                                                                                                                  |
| November 2021  | ViacomCBS agrees to sell CBS Studio Center for \$1.85 billion to private firms                                                                                                                                                                                                 |

|               |                                                                                                                                                                                                                     |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| February 2022 | ViacomCBS changes its name to Paramount Global                                                                                                                                                                      |
| December 2023 | Chief executives of Warner Bros Discovery and Paramount reportedly in talks over a potential deal between the two companies                                                                                         |
| January 2024  | Skydance CEO David Ellison reportedly explores an all-cash bid to acquire Paramount parent National Amusements                                                                                                      |
| January 2024  | Media entrepreneur Byron Allen submits a \$30 billion offer for Paramount, including debt and equity                                                                                                                |
| March 2024    | India's Reliance Industries agrees to buy Paramount's entire 13.01% stake in local entertainment network Viacom18 Media for about \$517 million                                                                     |
| March 2024    | Apollo Global Management reportedly offers to buy Paramount Pictures film studio for \$11 billion                                                                                                                   |
| April 2024    | Paramount's board reportedly agrees to enter into exclusive merger talks with Skydance                                                                                                                              |
| April 2024    | Paramount replaces CEO Bob Bakish with an office of CEO comprising CBS President and CEO George Cheeks, Paramount Pictures studio chief Brian Robbins, and Chris McCarthy, head of Showtime, MTV and other networks |
| June 2024     | Edgar Bronfman Jr, former chairman of Warner Music, reportedly expresses interest in buying Paramount's controlling shareholder National Amusements                                                                 |
| June 2024     | Shari Redstone abruptly ends talks with Skydance                                                                                                                                                                    |

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Reporting by Priyanka.G and Yuvraj Malik in Bengaluru; Editing by Shailesh Kuber

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# JPML Consolidates GM, LexisNexis Driving Data Suits In Ga.

By **Hope Patti**

Law360 (June 11, 2024, 3:46 PM EDT) -- Drivers claiming that their auto insurance rates increased after General Motors and its OnStar unit collected driving data without consent and shared the information with LexisNexis Risk Solutions will have their suits consolidated in Georgia federal court, the Judicial Panel on Multidistrict Litigation ruled.

In a four-page **transfer order** Friday, the panel ordered seven cases from California, Florida, Michigan, New York and Pennsylvania, and any potential tag-along actions, to be centralized in the Northern District of Georgia before U.S. District Judge Thomas W. Thrash Jr.

The panel conditionally transferred 13 more cases from Alabama, California, Michigan, Minnesota and New York in **an order Monday**, court records show.

Despite disagreement over the transferee district, the panel said in its ruling Friday that the Northern District of Georgia is appropriate because that is where LexisNexis is headquartered.

"Relevant documents and witnesses, therefore, will be found there. This district is in an easily accessible, metropolitan area, and it is supported by both some defendants and some plaintiffs," according to the order.

The panel added that it is confident that Judge Thrash, who is presiding over five potentially related actions, will steer the litigation on a prudent course as he "has a wealth of MDL experience."

A number of proposed class actions have been filed against GM, OnStar, LexisNexis and Verisk Analytics Inc. in recent months, following a September investigation by the Mozilla Foundation. That prompted a congressional inquiry, which led to Sen. Edward Markey, D-Mass., calling for the Federal Trade Commission to investigate automakers' data privacy practices. The New York Times in March reported on this exact issue of drivers whose insurance rates have increased due to GM and OnStar sharing data with LexisNexis.

In one such suit, filed by Florida driver Romeo Chicco **in March** and included in the panel's order Friday, Chicco said his insurance rate doubled because GM and OnStar collected driving data through his Cadillac and shared the information with LexisNexis without his consent.

"These putative class actions share complex factual questions arising from allegations that General Motors equipped its vehicles with sensors and computer modules to collect information about personal driving behavior, and that it sold that information to data analytics companies like LexisNexis and Verisk, which then created reports of individuals' driving history and sold them to automobile insurance providers," the order stated.

The panel added that common factual questions will include how GM and OnStar use the technology in GM vehicles to gather personal driving data; their policies and procedures concerning the collection and sharing of that data; their relationship with LexisNexis and Verisk; and whether the companies disclosed or obtained informed consent from drivers before collecting and disseminating the data.

The panel on Friday also declined to conditionally transfer two actions naming non-GM auto manufacturers, including a suit in the Eastern District of Pennsylvania naming Kia America Inc. and a suit in the Central District of California naming Hyundai Motor America.

"Proponents of an industry-wide MDL generally have a heavy burden to show that the actions will share sufficient overlap that including them will promote the just and efficient conduct of the litigation," the order stated.

The suits, which were not included in the motion for centralization, also "appear to involve unique factual issues concerning each automaker's design and implementation of technology for gathering driver data, its interactions and relationship with LexisNexis and/or Verisk, and its disclosures to drivers about data gathering and dissemination," the panel added.

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

The drivers are represented by attorneys from Kazerouni Law Group APC, Schlesinger Law Offices PA, Honik LLC, The Miller Law Firm PC, Robbins Geller Rudman & Dowd LLP, Wites & Rogers PA, Tycko & Zavareei LLP, Kopelowitz Ostrow PA, Milberg Coleman Bryson Phillips Grossman PLLC, Hedin LLP, Ahdoot & Wolfson PC and Schmidt National Law Group.

General Motors and OnStar are represented by attorneys from King & Spalding LLP, Bush Seyferth PLLC and Eckert Seamans Cherin & Mellott LLC.

LexisNexis is represented by attorneys from Troutman Pepper Hamilton Sanders LLP and Jones Foster PA.

The case is In Re: Consumer Vehicle Driving Data Tracking Litigation, MDL number 3115, in the U.S. District Court for the Northern District of Georgia.

--Editing by Amy Rowe.

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# Roblox Based Forecast On 'Tenuous' Factors, Investor Says

By **Rae Ann Varona**

Law360 (June 11, 2024, 7:52 PM EDT) -- A Roblox Corp. shareholder accused the online gaming platform in California federal court Monday of misleading investors with projected online sales revenue that came in at least \$100 million short, boasting of its technology developments and advertising efforts despite knowing those revenue opportunities were "tenuous at best."

Eugene Li claims in a proposed securities class action that the Silicon Valley-based company gave investors a false impression — including during a February earnings call — that platform compatibility expansions, digital technology changes, economic incentives for content creators, and other efforts were good reason to expect a positive revenue outlook between \$3.45 billion and \$3.525 billion and so-called bookings growth amounting between \$4.14 billion and \$4.28 billion in revenue.

Bookings refer to online sales activities generated by users and consumers and primarily come from purchases of the company's online currency, according to the new complaint.

Li alleges the company, which reduced its revenue guidance to \$3.3 billion to \$3.4 billion and its bookings guidance to \$4 billion in May, knew that the purported revenue and bookings sources were "tenuous at best."

"In fact, the company faced difficulty turning [daily average users] into bookings and eventually blamed the very technology and platform growth it lauded as revolutionary and revenue-generating for this bookings problem," Li said in the complaint. "Defendants misled investors by providing the public with a materially flawed outlook for the relationship between [daily average users], bookings, and technology it lauded during its investor day and earnings call."

Roblox's allegedly misleading statements go back to a presentation the company held in mid-November, during which the top brass got investors excited about the company's growth based on technology developments and advertising, according to Li.

Roblox Chief Financial Officer Michael Guthrie during the presentation had told someone from Morgan Stanley that the company was expecting to see 25% to 27% annual growth, Li alleges.

Li adds that Manuel Bronstein, Roblox's chief product officer, described technical features and investments supporting the company's growth, including platform expansions with PlayStation and Meta Quest, and revenue share with content developers.

Christina Wootton, Roblox's chief partnerships officer, also highlighted advertising growth and premium items created by brands like Nike and Korean pop group, BlackPink, according to Li.

Li says that Roblox, which went public in 2021, stood by its projections during a February earnings call "while also reiterating its strength in its new technology and digital economy."

But on May 8, Roblox announced in another earnings call that it was reducing its previous bookings guidance down to \$4 billion for fiscal year 2024, according to Li.

He says that Roblox President and CEO David Baszucki "blamed the technology growth and platforms he lauded as revolutionary just the quarter prior."

Li says that while shares closed at \$39.03 on May 8, shares lost over 22% of their value the next day.

Baszucki, Guthrie, Bronstein and Wootton are also named as defendants in the suit.

Li says the company's announcement came as a surprise not only to investors but to analysts from Wedbush, Oppenheimer, BTIG and Wolfe.

"The fact that these analysts, and others, discussed Roblox's bookings and revenue shortfall and missed projection shows that the investing public placed great weight upon Roblox's prior revenue and sales estimates," Li said. "The frequent, in-depth discussion of Roblox's guidance confirms that defendants' statements during the class period were material."

Li states causes of action for violation of Section 10(b) and Section 20(a) of the Securities and Exchange Act.

Roblox did not immediately respond to a request for comment on Tuesday, nor did counsel for Li.

The company **was hit** with a proposed securities class action in late November for allegedly making misleading misrepresentations about the adequacy of its user protection controls.

Institutional investor DeKalb County Pension Fund sued the company in New York federal court.

It claimed that while the company reported strong bookings and revenue growth and attributed the growth to factors like the COVID-19 stay-at-home orders and technology investments, the company allegedly left out that a good part of its growth was due to "inadequate controls" that "enabled younger Roblox users to play games with inappropriate content and make unauthorized Robux purchases which translated into unsustainable levels of bookings and revenue."

About half of Roblox's users are under 13 years old, the pension fund said.

The case was transferred to the Northern District of California in December.

Li is represented by Adam M. Apton of Levi & Korsinsky LLP.

Counsel information for the company was not immediately available Tuesday.

The case is Li v. Roblox Corp. et al., case number 3:24-cv-03484, in the U.S. District Court in the Northern District of California.

--Additional reporting by Emilie Ruscoe. Editing by Orlando Lorenzo.



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# Amplitude Execs Face Suit Over Post-IPO Share Inflation

By **Sydney Price**

Law360 (June 11, 2024, 10:43 PM EDT) -- Current and former insiders of business software maker Amplitude were hit with a shareholder derivative suit claiming they profited from misrepresentations they made about the likelihood of the company sustaining its revenue growth following its initial public offering.

According to the complaint filed by shareholder Brian Hawkins on Monday in California federal court, Amplitude develops digital analytics products for businesses. The company went public in September 2021 after it primed investors with false and misleading statements about its growth prospects, the suit alleges. However, in early 2022, the company revealed that its growth strategy would "take a few years" before it led to accelerated growth and revenue results, leading to a share price drop of 58%, according to the suit.

During the relevant period, Amplitude employed what it called its "land-and-expand strategy," which the complaint said is a method for revenue growth focused on marketing new products while emphasizing the benefits of increased usage to existing customers. The suit alleges that the COVID-19 pandemic contributed to Amplitude's short-term success, but the growth it experienced during the pandemic had already slowed before the company went public.

In addition to nominal defendant Amplitude, the suit's individual defendants include CEO Spenser Skates, former Chief Financial Officer Hoang Vuong and nine directors. The complaint accuses several of the defendants of together selling over two million of their personal shares and profiting over \$116 million. Skates alone sold more than \$30 million worth of shares, and Vuong received more than \$17 million for his insider sales, the suit claims.

The suit's relevant period begins Sept. 21, 2021, the day Amplitude filed a registration statement with the U.S. Securities and Exchange Commission in connection with its IPO. Shares of Amplitude began trading on the Nasdaq Stock Market a week later, opening at \$50 per share, according to the suit.

After the IPO, Amplitude's share price rose steadily and reached \$90 by the end of 2021, according to the suit. But this was artificial inflation, resulting from the defendants' attempts to mislead investors, the complaint claims. For example, on Nov. 9, 2021, Vuong told investors during an earnings call that the company "continues to execute well" on its land-and-expand strategy, but he would tell investors a different story just a few months later, the suit states.

The truth began to emerge, Hawkins claims, on Feb. 16, 2022, the day Amplitude announced its fourth-quarter 2021 financial results. Vuong said the previous revenue acceleration rate was a short-term effect of the pandemic, and that the company expects growth to "slow down or decline." On the same call, Skates told investors that "it can take many years" to see the effects of Amplitude's expansion efforts.

On the news, Amplitude's shares declined \$24.51, or about 58%, to close at \$17.10 on Feb. 17, 2022.

The derivative suit accuses the defendants of violating the Exchange Act, breaching their fiduciary duties, wasting corporate assets, gross mismanagement, abuse of control and being unjustly enriched.

Counsel for Hawkins declined to comment on the suit. A representative of Amplitude did not immediately respond to requests for comment on Tuesday.

Hawkins is represented by Timothy Brown and Robert C. Moest of The Brown Law Firm PC.

Counsel information for Amplitude and the individual defendants was not immediately available on Tuesday.

The case is Hawkins v. Skates et al., case number 4:24-cv-03460, in the U.S. District Court for the Northern District of California.

--Editing by Vaqas Asghar.

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# Elon Musk Sued Anew In Del. Over \$16B Tesla Stock Sale

By **Elliot Weld**

Law360 (June 11, 2024, 1:56 PM EDT) -- A Tesla shareholder has hit Elon Musk with a lawsuit over his 2021 sale of \$16 billion worth of stock just before his purchase of Twitter, claiming the billionaire profited by concealing his intent to buy the social media platform and made the purchase in part to reinstate former President Donald Trump's account.

In a 250-page suit filed with the Delaware Chancery Court on Monday, the Employees' Retirement System of Rhode Island accused Musk and his brother Kimbal, who is also a director at Tesla, of breaching their fiduciary duties to shareholders and said Tesla's board lacks independence.

The state retirement system claimed Musk misled the market by tweeting in November 2021 he would sell 10% of his Tesla stock if Twitter users voted in favor of it in a poll, but evidence shows he intended to sell the shares anyway to cover \$11 billion in taxes on options of Tesla stock he was exercising, and to make large purchases of Twitter shares on the open market. The poll ultimately voted in favor of Musk selling the stock.

"Musk's misleading statements to the contrary about his reasons for selling Tesla stock violated his duty of loyalty, which required all Tesla directors to speak honestly and in good faith when making material public statements about Tesla's business, including statements about their own disposition of Tesla stock," the suit reads.

Concealing his true intent to sell \$16 billion worth of Tesla stock allowed Musk to sell at inflated prices, along with Kimbal, who sold 15% of his shares just before his brother created the Twitter poll, the suit reads. Tesla's stock price dropped after the public learned of Musk's plan to buy Twitter, and the brothers would have made \$2 billion less on their stock sales had they sold after that realization, the suit reads.

The suit argued it is "not plausible" that Musk would suddenly choose to sell billions of dollars' worth of stock in Tesla, a company he helped to build, based on a Twitter poll. Musk had only sold Tesla stock three times in the 10 years preceding the poll, and his November 2021 sale netted more than three times the proceeds of the three previous sales combined, attorneys for the retirement system argued.

According to the suit, Musk bought Twitter partly to reverse mitigation measures meant to combat misinformation about the COVID-19 pandemic. Less than a month after his takeover, Twitter stopped enforcing these policies, and Musk began making tweets critical of Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases.

Musk was public with his views that Trump should not have been banned from Twitter following the Jan. 6, 2021, riot at the U.S. Capitol, and less than a month after acquiring the platform, he reversed the ban, according to the suit. The Tesla shareholder alleged Musk was also motivated to take over Twitter due to what he perceived as "wokeness" within its ranks.

The U.S. Securities and Exchange Commission subpoenaed Musk and Tesla seeking information about the poll in November 2021, and Tesla revised its code of business ethics the next month to ban Musk from making certain investments, accepting certain new employment, or creating perceived conflicts of interest, according to the suit. Yet between January and April 2022, Musk breached the code by spending \$2.6 billion to buy 9% of Twitter's stock, the suit alleges.

Musk then sent a letter on April 13, 2022, offering to buy all of Twitter's outstanding stock for \$54.20 per share but did not obtain a waiver from Tesla's board before doing so, violating Tesla's code of ethics, according to the suit.

Musk profited more after selling \$6.89 billion worth of Tesla shares between Aug. 5 and 9, 2022, a few months prior to him agreeing to go forward with the purchase on which he had previously done an about-face, the suit said. After Musk agreed to the Twitter purchase, Tesla's stock price declined by 16%, according to the complaint.

The Rhode Island retirement system claimed Musk has continuously breached Tesla's code of ethics by serving as Twitter's principal executive, which "prevents him from excelling as Tesla's CEO." Musk spent most of his time working for Twitter in November and December 2022 and claims to have slept in the company's San Francisco office, all while overseeing massive layoffs staff, the suit reads.

Musk has repeatedly moved Tesla employees to perform work for Twitter and, despite telling the Chancery Court in November 2022 that the practice was temporary, the suit argued it continued for well over a year.

Tesla's board members have failed to ensure Musk complied with a consent decree from the SEC and "did not implement good faith controls and reporting for Musk's compliance with the mandatory preapproval process," the suit reads. Musk's influence over the Tesla board "far exceeds that of a typical CEO or director," and the board lacks independence from him, the shareholder claimed.

The suit asks the Chancery Court to declare Elon and Kimbal Musk to have breached their fiduciary duties to Tesla stockholders and to order them to disgorge proceeds obtained "through disloyal sales of Tesla stock."

Elon Musk was sued in the Chancery Court by a different Tesla investor in May over his sale of about \$7.5 million in shares in late 2022, with that investor claiming Musk had used insider information and flouted the SEC consent decree.

Counsel for the state retirement system did not immediately respond to requests for comment, nor did a representative for Tesla. Musk could not immediately be reached for comment.

The Employees' Retirement System of Rhode Island is represented by Marcus Montejo, Bruce Jameson, Kevin Davenport, John Day and Seth Ford of Prickett Jones & Elliott PA and Daniel Chiplock, John Nicolaou, Sean Petterson, Richard Heimann, Katherine Benson and Bruce Leppla of Lief Cabraser Heimann & Bernstein LLP.

Attorney information was not immediately available for Musk and Tesla.

The case is Employees' Retirement System of Rhode Island v. Elon Musk et al., case number 2024-0631, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.



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# HashiCorp Hit With Investor Suit Over \$6.4B Sale To IBM

By **Emilie Ruscoe**

Law360 (June 11, 2024, 8:50 PM EDT) -- Software company HashiCorp Inc. and its board members face an investor suit seeking to halt an upcoming shareholder vote on a proposed \$6.4 billion acquisition of HashiCorp by tech giant IBM, alleging the deal would unfairly benefit company insiders and hasn't been properly detailed in required filings.

In a complaint filed Monday in Oakland, California, federal court, HashiCorp investor Michelle Graff said that HashiCorp shareholders didn't have the information they needed to properly appraise the all-cash acquisition proposal, which would see shareholders receive \$35 per HashiCorp share.

"Plaintiff will be deprived of her entitlement to decide whether to vote her shares in favor of the proposed transaction on the basis of complete information if such misrepresentations and omissions are not corrected prior to the stockholder vote regarding the proposed transaction," Graff said Monday.

IBM and HashiCorp announced their acquisition plan in April, describing the business combination as one that would allow the businesses to offer enterprise clients "comprehensive end-to-end hybrid cloud platform built for AI-driven complexity."

The parties also touted HashiCorp's extensive client roster, comprising over 4,400 companies including financial intelligence company Bloomberg, telecommunications company Comcast, Frankfurt, Germany-headquartered Deutsche Bank and developer platform GitHub.

In acquisition negotiations, IBM was represented by Paul Weiss Rifkind Wharton & Garrison LLP and HashiCorp was represented by Wilson Sonsini Goodrich & Rosati PC, the parties said at the time, and the deal is expected to close before the end of 2024.

The companies also noted in April that HashiCorp's largest shareholders, who together held over 43% of the voting power for the company's outstanding shares, had agreed to vote in favor of the acquisition deal.

On Monday, Graff noted that in March, the company had announced strong financial results for its final quarter of 2023 and its most recent fiscal year as a whole, describing the company's performance as a trend and suggesting that "based upon these positive results and outlook, the company is likely to have future success."

Graff said the defendants reached the acquisition plan despite the company's success out of "the self-interest of the [named HashiCorp board members]," alleging that the deal "was designed with only one concern in mind – to effectuate a sale of the company."

Graff pointed out that the company's board members stood to benefit handsomely from the terms of the deal, noting that the money they'd receive individually for their HashiCorp shares alone ranged from over \$1.3 million for defendant Glenn Solomon to nearly \$267 million for defendant David McJannet.

Separately, associated severance packages would see the company insiders paid out at rates ranging from over \$10 million to over \$33 million, Graff said.

She also argued that a number of significant details undergirding the company's financial analyses were not available to shareholders in its required disclosures.

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

Graff is represented by Evan J. Smith and Ryan P. Cardona of Brodsky & Smith LLC.

Counsel information for the defendants wasn't immediately available Tuesday.

The case is Graff v. HashiCorp Inc et al., case number 4:24-cv-03468, in the U.S. District Court for the Northern District of California.

--Additional reporting by Al Barbarino. Editing by Patrick Reagan.

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## 2nd Circ. Cites Macquarie In Booting Suit Over Go-Private Deal

By **Sydney Price**

Law360 (June 11, 2024, 10:25 PM EDT) -- The Second Circuit refused to revive a proposed class action accusing a real estate services provider of artificially depressing share prices, applying apparently for the first time the U.S. Supreme Court's Macquarie decision on alleged failures to disclose certain information.

The summary order issued Monday by the New York federal appeals court affirmed the 2021 lower court decision to dismiss a suit from investors of the formerly U.S.-listed Chinese real estate company E-House China Holdings Ltd. The suit claimed the company made false or misleading statements and omissions to artificially lower E-House's stock price before a go-private transaction in 2016 in which its American Depositary Shares were repurchased for \$6.85 each for a total transaction value of \$1.1 billion.

The E-House investors claimed the company had a duty to disclose a certain set of financial projections that valued the company higher than the projections released by management.

The Second Circuit reasoned, however, that "even a duty to disclose ... does not automatically render silence misleading." That same language was used by the U.S. Supreme Court in its April decision in [Macquarie Infrastructure Corp. v. Moab Partners](#).

The Supreme Court's ruling said the U.S. Securities and Exchange Commission's Rule 10b-5 — the same rule at issue in the E-House suit — "covers half-truths" by "requir[ing] disclosure of information necessary to ensure that statements already made are clear and complete." The high court, however, **held** that a corporation's failure to disclose certain information about its future business risks, absent any affirmative statement that would make such silence misleading, cannot itself be the basis of a private securities fraud claim.

In its ruling, the Second Circuit also said the investors failed to adequately plead that the defendants did not believe the management projections were accurate at the time they were published, or that they believed they were misleading. The bespeaks caution doctrine protects the defendants' forward-looking statements, the court said.

E-House was relisted on the Hong Kong Stock Exchange in 2018 even though management previously denied that it would be, the investors claimed.

However, the Second Circuit said that virtually all the evidence the investors presented "relates to post-merger pitches to private investors and thus cannot demonstrate that the defendants had a 'concrete plan' to relist or materially alter the company at the time the proxy materials were shared with investors."

"The final proxy explicitly disclosed that the buyer group 'may propose or develop plans and proposals' in the future, 'including the possibility of relisting the company or a substantial part of its business on another stock exchange,'" the court added.

Counsel for the parties did not immediately respond to requests for comment on Tuesday.

U.S. Circuit Judges Denny Chin, Richard J. Sullivan and Myrna Perez sat on the panel for the Second Circuit.

The investors are represented by Carol C. Villegas, and Jake Bissell-Linsk of Labaton Keller Sucharow LLP, and Jeremy A. Lieberman and Michael Grunfeld of Pomerantz LLP.

E-House is represented by Bradley A. Klein, Scott D. Musoff, Robert A. Fumerton, Michael C. Griffin, Hannah Henderson and Christopher R. Guerriero of Skadden Arps Slate Meagher & Flom LLP.

The case is Maso Capital Investments Ltd. et al. v. E-House (China) Holdings et al., case number 22-355, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Jessica Corso. Editing by Kristen Becker.

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# Bed Bath & Beyond Investor Defeats 'Short-Swing' Profits Suit

By **Hailey Konnath**

Law360 (June 11, 2024, 11:26 PM EDT) -- A New York federal judge on Tuesday threw out Bed Bath & Beyond investors' suit accusing activist investor Ryan Cohen of buying and selling his stock too quickly, finding the claims moot in light of the retailer's Chapter 11 bankruptcy plan.

U.S. District Judge Dale E. Ho granted Cohen's motion to dismiss, noting that although the investors had standing as shareholders when they first filed suit in 2022, they no longer have that standing because all shares in Bed Bath & Beyond Inc. were "canceled, released and extinguished" as part of the **bankruptcy plan**.

Additionally, the plan states that holders of claims, interests and causes of action against Bed Bath & Beyond are blocked from litigating claims stemming from released liabilities, Judge Ho said.

"Accordingly, the court concludes that intervening circumstances — BBY's bankruptcy and the effectuation of the plan — have rendered plaintiffs' claims moot," the judge said.

Todd Augenbaum and Judith Cohen, who said they were Bed Bath & Beyond investors who "suffered a dramatic loss" while Ryan Cohen earned windfall short-swing profits, filed suit in October 2022, pointing to Section 16(b) of the Securities Exchange Act. That provision requires owners of more than 10% of a company's stock "to disgorge what are colloquially known as short-swing profits, i.e., any profits made from buying and selling or selling and buying within a six-month period a security based on that company's stock."

Judge Ho said Tuesday that the plaintiff investors don't dispute that their stock has been canceled. Still, they've offered several arguments why they still have a financial interest in the suit, each of which fails, he added.

For one, the judge said, it doesn't matter that they purchased stock in Sixth Street, a Bed Bath & Beyond creditor, because they haven't shown that their new purchase of stock "flow[ed] from" their former interests as shareholders of Bed Bath & Beyond.

"Here, by contrast, plaintiffs have an interest in BBY's creditor (rather than in its acquirer), which they obtained via an unrelated transaction (rather than through an exchange of stock)," Judge Ho said. "The court is aware of no case that stands for the proposition that a plaintiff may overcome mootness by independently buying stock in a creditor of an entity after the plaintiff's equity in the entity was extinguished."

He also rejected their contentions that their statutory interest in a potential incentive reward for service as a class representative and attorney fees constitute continuing financial interests.

Judge Ho also refused to allow Bed Bath & Beyond to substitute in as the plaintiff in the case. The company had argued that its substitution would be "merely formal" because it plans to pursue similar claims against Ryan Cohen, he said.

"BBY cannot have it both ways: it cannot claim that its substitution as plaintiff 'is a merely formal change in the alignment of the parties' while representing that it seeks to amend its pleadings in a manner it declines to specify," Judge Ho said.

However, he said the retailer could file its own suit.

Counsel for the parties didn't immediately respond to requests for comment late Tuesday.

Augenbaum is represented by Jeffrey S. Abraham and Michael J. Klein of Abraham Fruchter & Twersky LLP.

Judith Cohen is represented by Lee Squitieri of Squitieri & Fearon LLP and James S. Notis of Gardy & Notis LLP.

Ryan Cohen is represented by David H. Wollmuth, Joshua M. Slocum, Maxwell G. Dillan and Yating Wang of Wollmuth Maher & Deutsch LLP.

Bed Bath & Beyond is represented by Joseph S. Allerhand of Allerhand & Odoner LLP and James A. Hunter.

The case is In re: Bed Bath & Beyond Inc. Section 16(b) Litigation, case number 1:22-cv-09327, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.

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## Attys For Restaurant Software Investors Ring Up \$2.25M Fee

By **Emilie Ruscoe**

Law360 (June 11, 2024, 10:32 PM EDT) -- Attorneys representing investors in a suit against restaurant software company Olo Inc. will receive \$2.25 million for brokering settlement of class action claims alleging the company touted an ill-fated partnership with sandwich chain Subway as an example of its success.

In a Tuesday filing in Manhattan federal court, U.S. District Judge Jed S. Rakoff granted final approval to the \$9 million deal and awarded the investor class' counsel, Scott + Scott Attorneys at Law LLP, their requested fee and more than \$731,000 for litigation expenses.

"The court finds these sums to be fair and reasonable," Judge Rakoff said, adopting the language proposed by the investors' legal team.

Scott + Scott requested the fee in May, telling Judge Rakoff their request for 25% of the settlement fund is "reasonable because it strikes a balance; it rewards class counsel, which have invested its time and firm resources to represent the settlement class in a complex, fast-paced and high-risk litigation, but does not confer a windfall upon class counsel."

The plaintiff's counsel said it devoted over 7,200 attorney and staff hours to the case and split the workload among over 16 attorneys, some of whom worked "virtually full-time" on the case.

The settlement, which received an initial green light from Judge Rakoff in February, ends allegations that Olo misled investors about how many restaurants actively used its services.

The case is Pompano Beach Police and Firefighters Retirement System v. Olo Inc. et al., case number 1:22-cv-08228, in the U.S. District Court for the Southern District of New York.

--Editing by Drashti Mehta.

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## DC Circ. Affirms Petrobras' Immunity Denial In Fraud Case

By Ali Sullivan

Law360 (June 11, 2024, 9:46 PM EDT) -- The D.C. Circuit on Tuesday affirmed the denial of Petrobras' immunity defense against an investor fraud lawsuit filed after the petroleum company was implicated in a sprawling bribery scheme, ruling that the alleged fraud caused a direct impact on the United States sufficient to pull Petrobras into the court's jurisdiction.

In a unanimous decision, the appeals court agreed that the Brazilian state oil company lacks sovereign immunity from the fraud suit based on the so-called direct-effect exception to the Foreign Sovereign Immunities Act.

Petroleo Brasileiro SA, or Petrobras, caused a "wholly foreseeable" direct effect on the United States when it endeavored to convince EIG Global Energy Partners to invest in the newly formed Sete Brasil Participacoes, U.S. Circuit Judge Karen LeCraft Henderson said in the opinion.

"Petrobras tries to paint itself as the passive recipient of EIG's unwanted attention but investors do not force themselves to make a \$221 million investment," the judge said in the 17-page opinion. "Petrobras' actions 'facilitated and promoted' EIG's investment, directly leading to both the investment and EIG's ultimate injury when the investment was lost."

Petrobras formed Sete in December 2010 as a way to raise money and contract with Brazilian shipyards in the company's efforts to exploit recently discovered oil reserves off Brazil's coast, according to the opinion. It was later revealed that executives for Petrobras and Sete were involved in "rampant corruption that ultimately led to Sete's collapse," rendering EIG's investments worthless, the opinion said.

Investment funds managed by EIG sued Petrobras in 2016 after the bribery and corruption scheme was uncovered through the Brazilian criminal investigation coined "Operation Car Wash."

The EIG funds **scored a summary judgment ruling** in their favor in August 2022 after the D.C. Circuit in July 2018 **upheld the lower court's refusal** to toss the suit. In ruling for EIG, U.S. District Judge Amit P. Mehta found Petrobras liable for defrauding the EIG investment funds and for aiding and abetting fraud committed by Sete.

Petrobras **contended on appeal** that the summary judgment ruling was premature — as Judge Mehta should have waited until the D.C. court's jurisdiction was certain before tackling the merits of the case. But the appellate panel said it did not need to "decide whether the district court erred or what the proper remedy might be if it did."

"As Petrobras recognizes, the district court's merits ruling does not qualify as a collateral order as to which we have appellate jurisdiction," the opinion said. "Even assuming we could nonetheless review it via pendent jurisdiction as Petrobras urges, doing so is discretionary and we decline to do so here."

Kramer Levin Naftalis & Frankel LLP, which represents EIG, called the ruling "another major win" for EIG in a posting to the firm's website on Tuesday, saying the decision paves a path forward for EIG to recoup more than \$221 million in compensatory damages — along with interest and punitive damages — at trial.

Petrobras' counsel did not immediately return a request for comment on Tuesday.

U.S. Circuit Judges Karen LeCraft Henderson, Robert L. Wilkins and Gregory G. Katsas sat on the panel for the D.C. Circuit.

Petrobras is represented by Sean Marotta, N. Thomas Connally and Christopher T. Pickens of Hogan Lovells.

EIG is represented by Daniel B. Goldman, Kerri Ann Law, Claudia Pak, Juliana Oliveira Maggio and Matthew M. Madden of Kramer Levin Naftalis & Frankel LLP.

The case is EIG Energy Fund XIV LP et al. v. Petroleo Brasileiro SA et al., case number 22-7118, in the U.S. Court of Appeals for the District of Columbia Circuit.

--Additional reporting by Tom Lotshaw. Editing by Kristen Becker.

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## JPML Consolidates AT&T Data Breach Suits In Texas

By **Jared Foretek**

Law360 (June 11, 2024, 5:13 PM EDT) -- Thirty lawsuits brought against AT&T over a data breach that left 70 million customers' information on the dark web are being consolidated in the Northern District of Texas, with the Judicial Panel on Multidistrict Litigation ruling that proximity to AT&T headquarters will bring added efficiency to the proceedings.

In a transfer order released last week, the JPML said the cases all involve common factual questions over the telecommunications giant's security practices and handling of the massive March breach, handing pretrial proceedings over to U.S. District Judge Ada E. Brown.

Proposed class actions have been **pouring in** since the end of March, when AT&T — which is headquartered in Dallas — announced that customer information like Social Security numbers had been shared on the dark web after a cyberattack that targeted 2019 data from both current and previous customers. In a March 30 release, the company said it did not know whether the data originated from AT&T or a vendor.

In a statement to Law360, Patrick Yarborough, an attorney for one of the plaintiffs, said Dallas is the only sensible venue for the case.

"Judge Brown is an excellent choice to handle this blockbuster case," he said. "Though I welcome this development, we could have a ways to go before this case takes off. That depends on how well the plaintiffs' lawyers cooperate."

Yarborough said he could not comment on MDL leadership negotiations.

The lawsuits accuse the company of failing to adequately secure the sensitive information with standard industry practices laid out in federal guidelines. "[They] are incurring and will continue to incur such damages in addition to any fraudulent use of their [personally identifiable information]."

Eleven of the suits being consolidated started in the Northern District of Texas, with 19 others coming in from federal courts in California, Georgia, Illinois, Missouri and the Western District of Texas. All the plaintiffs, as well as AT&T itself, supported consolidation, with disagreements only over where exactly the litigation should be centralized. Various plaintiffs had requested that the MDL be consolidated in the Northern District of Georgia, the Northern District of Illinois, the Western District of Oklahoma and the Eastern District of Texas.

But the JPML wrote in its order last Wednesday that the Northern District of Texas would best "serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation."

"Defendant AT&T Inc. has its headquarters in Dallas, Texas, where common witnesses and other evidence likely will be found," the panel said. "Most of the related actions are pending there, and defendants and many plaintiffs support this district as their first or second choice for the transferee venue."

Among other claims, AT&T is facing allegations of breach of contract, negligence, breach of fiduciary duty and unjust enrichment.

Many of the complaints argue that AT&T had a duty to use standard clearinghouse practices to remove personally identifiable information, or PII, that was not needed. According to the company's

March 30 press release, the data at issue came from 7.6 million current AT&T account holders, and about 65.4 million former account holders.

"Defendant knew or should have known of the inherent risks in collecting and storing the PII of Plaintiff and the Class, the critical importance of providing adequate security of that PII, and the necessity for encrypting PII stored on Defendant's systems," plaintiff Andrew March said in his March 31 complaint filed in the Northern District of Texas.

It will be Judge Brown's first multidistrict litigation. Before being appointed to the bench by former Pres. Donald Trump in 2019, she worked as a felony prosecutor in Dallas, a trial judge in Dallas and as a judge on Texas' Fifth Court of Appeals.

In their order, the multidistrict panel called Judge Brown a "skilled jurist with the willingness and ability to manage this litigation."

"We are confident that she will steer this matter on a prudent course," the panel wrote.

In an April filing, AT&T backed consolidation, saying that the Northern District of Texas was the proper venue.

"Separately litigating each of the dozens of related actions, plus additional tag-along actions, offers no benefit, and will inevitably heighten the duplication, complexity, and burdens of these matters for all stakeholders," the company wrote.

In announcing the data breach, AT&T said it had no evidence "of unauthorized access to its systems resulting in exfiltration of the data set" and that it would offer credit monitoring to affected individuals at the company's expense.

AT&T did not immediately respond to Law360's request for comment Tuesday.

The plaintiffs are represented by counsel from Steckler Wayne & Love PLLC, Kopelowitz Ostrow PA, Milberg Coleman Bryson Phillips Grossman PLLC, Stranch Jennings & Garvey PLLC, Kendall Law Group PLLC, Markovits Stock & Demarco LLC, Turke & Strauss LLP, Steckler Wayne & Love PLLC, Chestnut Cambronne PA, George Feldman McDonald PLLC, Foster Yarborough PLLC, Siri & Glimstad LLP, The Lyon Firm, Federman & Sherwood, Morgan & Morgan Complex Litigation Group, The Armstrong Firm PLLC, Cole & Van Note, Sterlington PLLC, Evangelista Worley LLC, Berman Tabacco, Ahdoot Wolfson PC, Cotchett Pitre & McCarthy LLP, Bradley/Grombacher LLP, Barnes Law Group LLC, Stueve Siegel Hanson LLP, Dicello Levitt LLP, Cohen Milstein Sellers & Toll PLLC, Gibbs Law Group LLP, Gibson Consumer Law Group LLC, Lynch Carpenter LLP, McNeill Stokes, Berger Montague PC, Fegan Scott LLC, Lockridge Grindal Nauen PLLP, Vlahakis Law Group LLC, McShane & Brady LLC, Seeger Weiss LLP, Carella Byrne Cecchi Brody & Agnello PC and Laminack Pirtle & Martines LLP.

AT&T is represented by Gilbert S. Keteltas of Baker Hostetler LLP.

The MDL is IN RE: AT&T Inc. Customer Data Security Breach Litigation, MDL No. 3114, in the U.S. District Court for the Northern District of Texas.

The consolidated cases are Petroski v. AT&T Inc., case number 3:24-cv-00757, in the U.S. District Court for the Northern District of Texas, March v. AT&T Inc., case number 3:24-cv-00758, in the U.S. District Court for the Northern District of Texas, Nelli v. AT&T Inc., case number 3:24-cv-00759, in the U.S. District Court for the Northern District of Texas, Montoya v. AT&T Inc., case number 3:24-cv-00760, in the U.S. District Court for the Northern District of Texas, Jaramillo v. AT&T Inc., case number 3:24-cv-00761, in the U.S. District Court for the Northern District of Texas, Barkley v. AT&T Inc., case number 3:24-cv-00769, in the U.S. District Court for the Northern District of Texas, Bagley v. AT&T Inc., case number 3:24-00770, in the U.S. District Court for the Northern District of Texas, Cumo et al. v. AT&T Inc., case number 3:24-cv-00772, in the U.S. District Court for the Northern District of Texas, Slovenkay et al., v. AT&T Inc., case number 3:24-cv-00774, in the U.S. District Court for the Northern District of Texas, Dean v. AT&T Inc., case number 3:24-cv-00776, in the U.S. District Court for the Northern District of Texas, Collier v. AT&T Inc., case number 3:24-cv-00782, in the U.S. District Court for the Northern District of Texas, Knight et al. v. AT&T Inc., case number 5:24-cv-00324, in the U.S. District Court for the Western District of Oklahoma, Walker v. AT&T Inc.,

case number 24-cv-00438, in the U.S. District Court for the Eastern District of California, Kinchen et al. v. AT&T Mobility LLC et al., case number 24-cv-02451, in the U.S. District Court for the Northern District of California, Penning v. AT&T Inc., case number 24-cv-02657, in the U.S. District Court for the Northern District of California, Vita et al. v. AT&T Inc., case number 24-cv-02356, in the U.S. District Court for the Northern District of California, Telford v. AT&T Inc., case number 24-cv-00798, in the U.S. District Court for the Southern District of California, Unruh et al. v. AT&T Mobility LLC et al., case number 24-cv-01414, in the U.S. District Court for the Northern District of Georgia, Hodge v. AT&T Mobility LLC et al., case number 24-cv-01475, in the U.S. District Court for the Northern District of Georgia, Hasson et al. v. AT&T Mobility LLC et al., case number 24-cv-01580, in the U.S. District Court for the Northern District of Georgia, Oliver v. AT&T Mobility, LLC et al., case number 24-cv-01690, in the U.S. District Court for the Northern District of Georgia, Schaefer v. AT&T Inc. et al., case number 24-cv-01752, in the U.S. District Court for the Northern District of Georgia, Boykin v. AT&T Inc., case number 24-cv-02973, in the U.S. District Court for the Northern District of Illinois, Chernik v. AT&T Inc. et al., case number 24-cv-03054, in the U.S. District Court for the Northern District of Illinois, McGreevy et al. v. AT&T Inc., case number 24-cv-04097, in the U.S. District Court for the Northern District of Illinois, Berendt et al. v. AT&T Inc., case number 24-cv-04310, in the U.S. District Court for the Northern District of Illinois, Doss et al. v. AT&T Inc., case number 24-cv-00234, in the U.S. District Court for the Western District of Missouri, Sanford v. AT&T, case number 24-cv-00261, in the U.S. District Court for the Eastern District of Texas, Stephens et al. v. AT&T et al., case number 24-cv-00373, in the U.S. District Court for the Eastern District of Texas, Carrasco v. AT&T Inc., case number 24-cv-00305, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Peter McGuire. Editing by Vaqas Asghar.

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## 10 Firms Seek \$13M Fee For Effexor Antitrust Deal

By **George Woolston**

Law360 (June 11, 2024, 4:01 PM EDT) -- Ten law firms asked a New Jersey federal judge on Monday to award \$13 million in counsel fees and an additional \$2.1 million in costs for representing direct buyers in a \$39 million settlement with Pfizer Inc. unit Wyeth over an alleged scheme to delay generic competition for the antidepressant drug Effexor XR.

Hagens Berman Sobol Shapiro LLP, Berger Montague PC, Faruqi & Faruqi LLP, Taus Cebulash & Landau LLP, NastLaw, Barrett Law Group PA, Kirby McInerney LLP, Roberts Law Firm, Radice Law Firm PC and Cohn Lifland Pearlman Herrmann & Knopf LLP, who served as class counsel for the direct buyer settlement class, said the \$13 million fee request is one-third of the total **proposed settlement** amount.

The fee request comes after more than 12 years and 43,800 hours of uncompensated professional time, the firms said.

"Investigating, bringing, litigating, and mediating this lengthy and highly complex case involving the intersection of patent and antitrust law required Class Counsel to work and persevere for more than twelve years, knowing that they were litigating the case on a wholly contingent basis without any guarantee of success against formidable adversaries," the firms said in the brief.

Rochester Drug Co-Operative Inc., Stephen L. LaFrance Holdings Inc., Uniondale Chemists along with other drug buyers sued Wyeth in 2011, accusing it of engaging in a scheme with Teva Pharmaceuticals to keep generic forms of Effexor XR off the market through fraudulently obtaining patents for the extended-release formula and pursuing a series of sham suits.

The plaintiffs asked U.S. District Court Judge Peter G. Sheridan to approve the \$39 million deal in April. The settlement would end the antitrust and patent fraud litigation against Wyeth, but not Teva, according to court filings.

The firms said the fee request is strongly supported by the size of the settlement and the number of those who will benefit from it; they have, so far, received no objections to the requested fee; the class counsel are all highly skilled antitrust lawyers; the complexity and length of the case; the risk of nonpayment; and the fee is in line with awards in similar cases.

The requested fee is also significantly less than class counsel's total lodestar would be whether calculated with historical or current billing rates, the firms said.

According to the declaration of Cohn Lifland Pearlman Herrmann & Knopf LLP attorney Peter S. Pearlman, Hagens Berman Sobol Shapiro LLP worked a total of 10,388 hours on the case; Berger Montague PC worked 8,868 hours; Faruqi & Faruqi LLP worked 6,319 hours; Taus Cebulash & Landau LLP worked 4,485 hours; NastLaw worked 2,276 hours; Barrett Law Group PA worked 808 hours; Kirby McInerney LLP worked 4,604 hours; Roberts Law Firm worked 2,405 hours; Radice Law Firm PC worked 2,732 hours and Cohn Lifland Pearlman Herrmann & Knopf LLP worked 929 hours.

The \$2.1 million in unreimbursed expenses were "necessary to the prosecution of the litigation" and include mediation fees, legal research, the creation and maintenance of an electronic document database, travel expenses, court reporting services and expert costs.

A \$100,000 service award for each of the named plaintiffs was also requested by the firms, according to the brief.

Representatives for both parties did not immediately respond to requests for comment on Tuesday.

The plaintiffs are represented by Peter S. Pearlman and Matthew F. Gately of Cohn Lifland Pearlman Herrmann & Knopf LLP, David F. Sorensen and Caitlin G. Coslett of Berger Montague, Thomas M. Sobol and Gregory T. Arnold of Hagens Berman Sobol Shapiro LLP, Peter Kohn and Neill W. Clark of Faruqi & Faruqi LLP, Barry S. Taus and Kevin S. Landau of Taus Cebulash & Landau LLP, Dianne M. Nast of NastLaw LLC, Don Barrett of Barrett Law Group PA, Kirby McInerney LLP, Roberts Law Firm and Radice Law Firm PC.

Wyeth is represented by Raj Gandesha of White & Case LLP and Liza M. Walsh of Walsh Pizzi O'Reilly Falanga LLP.

Teva is represented by William H. Trousdale of Tompkins McGuire Wachenfeld & Barry LLP and Jay P. Lefkowitz, Devora W. Allon, Karen N. Walker and Alexandra I. Russell of Kirkland & Ellis LLP.

The case is In re: Effexor XR Antitrust Litigation, case number 3:11-cv-05479, in the U.S. District Court for the District of New Jersey.

--Editing by Patrick Reagan.

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# Capital One Will Face Savings-Rate MDL In Its Home District

By **Emilie Ruscoe**

Law360 (June 11, 2024, 8:07 PM EDT) -- Virginia-headquartered Capital One will face suits over allegedly misleading marketing for its high-yield savings accounts in federal court in the Eastern District of Virginia, the Judicial Panel on Multidistrict Litigation has determined.

In a Friday transfer order, the seven-member panel granted the financial services company's request to fight the actions in its home district in a move that the panel said would "serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation."

The panel noted that two of the suits, including the action filed first, are already in the relevant district, and that both of the plaintiffs in those matters have told the court they didn't oppose the movement. None of the other plaintiffs responded to the transfer motion, the panel said.

The litigation comprises five suits making similar claims and a single related suit the panel described as a potential tagalong action. The suits involve allegations that Capital One misled customers about the interest rates they could expect to receive on their high-yield savings accounts.

High-yield savings accounts offer consumers annual percentage yield interest rates much higher than the interest rates offered by traditional savings accounts. For example, in June 2024, some high-yield savings accounts advertised interest rates as high as about 5% while the Federal Deposit Insurance Corporation said that conventional savings account rates were about 0.45%.

The Capital One consumers who brought the suits claim their accounts — titled 360 Savings Accounts — were at one point advertised by the company as high-yield accounts, but then the company dropped all mention of their accounts as it started advertising newer, similarly named accounts as high-yield.

The Capital One customers allege that while they continued to believe that their 360 Savings Accounts were high-yield financial products, Capital One moved the goalposts by creating the 360 Performance Savings account, which paid an interest rate higher than the old accounts' interest rate.

In one of the suits, Capital One customer Scott Savett claimed that the company called the 360 Savings Account a "high-interest" account with a "great rate" until about September 2019, when Capital One "abruptly" dropped references to that account from its website and started marketing the 360 Performance Savings account instead. The older accounts offered a 1% APY, and the new accounts offered a 1.9% APY, but the accounts were otherwise the same product, Savett said.

Savett claimed that "Capital One left its 360 Savings account holders in lower-yield accounts and hoped that they would not notice." He added that amid the 2020 response to the COVID-19 pandemic and accompanying economic turbulence, as interest rates fluctuated dramatically, the interest rates for both accounts fell, but only the new account rates later went significantly up.

In the latest version of his suit, filed in October 2023, Savett said the new account had an interest rate of 4.3% and the old account's interest rates was only 0.3%.

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

Capital One is represented by David L. Balser, John C. Toro, Robert D. Griest, Jeffrey D. Miles and

Mandi Youngblood of King & Spalding LLP.

The plaintiffs are represented by Chet B. Waldman, Philip M. Black and Timothy D. Brennan of Wolf Popper LLP.

The case is In Re: Capital One 360 Savings Account Interest Fee Litigation, MDL Number 3111, before the United States Judicial Panel on Multidistrict Litigation.

--Editing by Amy French.

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# Tyco's \$750M PFAS Deal In Foam Co. MDL Gets Initial OK

By **Lauren Berg**

Law360 (June 11, 2024, 10:27 PM EDT) -- A South Carolina federal judge gave his blessing Tuesday to the \$750 million settlement Johnson Controls International PLC subsidiary Tyco Fire Products LP entered to resolve public water systems' federal claims that some forever chemicals they detected in their supplies came from firefighting foam it made.

U.S. District Judge Richard M. Gergel's **order** granted preliminary approval of the **April deal** that resolves claims against Tyco and Chemguard Inc., also a Johnson Controls unit, related to contamination from their aqueous film-forming foam, or AFFF, products that contain per- and polyfluoroalkyl substances, or PFAS, also known as forever chemicals because of their longevity in the human body and the environment.

"The proposed settlement agreement is the product of intensive, arm's-length, non-collusive negotiations ... has no obvious deficiencies, does not improperly grant preferential treatment to the class representatives and is fair, reasonable and adequate," the judge said, noting that he will likely be able to approve the deal.

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

Two other big settlements have already been reached in the multidistrict litigation, with 3M Co. settling for **\$12.5 billion** and DuPont, Chemours and Corteva settling for **\$1.2 billion**. And on May 21, BASF Corp. agreed to pay **\$316.5 million** resolve the drinking water claims.

The class of public water systems in the settlement broadly includes those that have detected PFAS in their drinking water sources as of May 15, with a variety of exclusions.

The deal does not affect the other categories of cases that remain at issue in the AFFF litigation, such as personal injury, property damage, other types of class actions, claims brought by state or territory attorneys general or other types of damages alleged to be related to the historic use of AFFF manufactured and sold by Tyco and Chemguard, according to an 8-K filing released by Johnson Controls in April.

The company said in its filing that it has "a significant amount" of insurance through a number of insurers, and that "a substantial portion" of the settlement payment would be covered by those policies, although it said it wasn't sure exactly how much.

The MDL has more than 10,000 cases concerning damages due to PFAS.

There are five categories of claims: public water providers seeking drinking water testing and remediation costs, individuals harmed by PFAS exposure, individuals seeking medical monitoring, property owners seeking remediation and cleanup costs for contamination, and states for harm to natural resources.

The U.S. Environmental Protection Agency in April **announced the final version** of its first-ever regulatory limits on forever chemicals in drinking water, a move the EPA said will be accompanied by nearly \$1 billion in new funding for implementation.

The lead class counsel for the MDL are Michael A. London of Douglas & London PC, Scott Summy of

Baron & Budd PC, Paul J. Napoli of Napoli Shkolnik PLLC and Joe Rice of Motley Rice LLC.

Tyco and Chemguard are represented by David E. Dukes and Amanda S. Kitts of Nelson Mullins Riley & Scarborough LLP and Joseph G. Petrosinelli, Liam J. Montgomery, Jessica L. Pahl and Jean Ralph Fleurmont of Williams & Connolly LLP.

The case is In re: Aqueous Film-Forming Foams Products Liability Litigation, case number 2:18-mn-02873, in the U.S. District Court for the District of South Carolina.

--Additional reporting by Juan-Carlos Rodriguez and Mike Curley. Editing by Dave Trumbore.

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# Granulated Sugar Price-Fixing Cases Centralized In Minn.

By **Jared Foretek**

Law360 (June 11, 2024, 8:51 PM EDT) -- A collection of price-fixing suits against some of the country's biggest refined sugar manufacturers is being consolidated in Minnesota federal court, with the Judicial Panel on Multidistrict Litigation choosing the venue over federal courts in New York.

Friday's order from the JPML centralizes five cases — three from the Southern District of New York and two already in Minnesota — in the District of Minnesota. But the panel said the bulk of the other cases involved helped make Minnesota the best venue. According to the order, the parties have noted 40 related cases pending from eight districts, with nearly 30 of the 45 total actions being brought in Minnesota, where the case against United Sugar is to start.

"The District of Minnesota also has the resources to efficiently manage this litigation," the panel wrote.

The proposed class actions allege a yearslong price-fixing scheme to inflate the cost of refined sugar by American Sugar Refining, owners of Domino Sugar; Michigan Sugar; and United Sugar Producers & Refiners, whose member-owners include United States Sugar, American Crystal Sugar, Minn-Dak Farmers Cooperative and Wyoming Sugar Co. Cargill is also named as a defendant in one of the complaints.

According to the plaintiffs, the sugar producers have been sharing nonpublic information regarding demand, pricing and production capacity with one another through a third-party industry analyst, Richard Wistisen, and his Utah-based consulting company, Commodity Information.

"Because of the defendants' anticompetitive conduct: (1) competition in the granulated sugar market has been reduced or eliminated, (2) prices for granulated sugar have been maintained at supracompetitive levels, and (3) United States purchasers of granulated sugar have been deprived of the benefit of price competition," New York-based KPH Healthcare Services, one of the plaintiffs, wrote in its March **complaint**.

Much of the litigation borrows from the U.S. Department of Justice's failed attempt to block United's \$315 million acquisition of Imperial Sugar. In 2022, a Delaware federal judge **declined** to block the merger, a decision that was later **upheld** by the Third Circuit.

The DOJ lawsuit focused heavily on Wistisen, his company and the sugar industry's use of him. In a proposed finding of fact from 2022, the Justice Department said the companies had monitored one another for years through current pricing, future pricing projections and sold positions in ways "not acceptable under existing antitrust laws." And according to the DOJ, Wistisen served as the go-between for much of that information.

Plaintiffs include bakeries, supermarket chain Redner's, retail sugar consumers, Connecticut restaurant Wood-n-Tap, and KPH, a healthcare company.

According to the JPML, the five suits were brought on behalf of overlapping putative nationwide and multistate classes, both for direct and indirect sugar buyers.

Pretrial proceedings will be overseen by U.S. District Judge Jerry W. Blackwell.

Representatives for the sugar manufacturers did not immediately respond to Law360's requests for comment Tuesday.

The plaintiffs are represented by counsel from Aeton Law Partners LLP, Robins Kaplan LLP, Lockridge Grindal Nauen PLLP, Freed Kanner London & Millen LLC, Israel David LLC, Sawicki & Phelps PA, DiCello Levitt LLP, Edelson Lechtzin LLP, Kohn Swift & Graf PC, Grabar Law Office, Hausfeld LLP and Roberts Law Firm PC.

American Sugar Refining is represented by Michael Mitchell, Todd M. Stenerson, Djordje Petkoski and Amelia Rasmussen of A&O Shearman.

Michigan Sugar Co. is represented by Nathan P. Eimer, Vanessa G. Jacobsen and Benjamin E. Waldin of Eimer Stahl LLP.

United Sugar Producers & Refiners Cooperative is represented by Lawrence E. Buterman of Latham & Watkins LLP.

The MDL is In re Granulated Sugar Antitrust Litigation, MDL No. 3110, in the U.S. District Court for the District of Minnesota.

The consolidated cases are WNT LLC et al. v. United Sugar Producers & Refiners Cooperative et al., case number 0:24-cv-00959, in the U.S. District Court for the District of Minnesota; Morelos Bakery LLC v. United Sugar Producers & Refiners Cooperative et al., case number 0:24-cv-00966, in the U.S. District Court for the District of Minnesota; KPH Healthcare Services Inc. v. ASR Group International Inc. et al., case number 1:24-01941, in the U.S. District Court for the Southern District of New York; Redner's Market Inc. v. ASR Group International Inc. et al., case number 1:24-cv-01968, in the U.S. District Court for the Southern District of New York; and Fowler et al. v. ASR Group International Inc. et al., case number 1:24-cv-01972, in the U.S. District Court for the Southern District of New York.

--Editing by Rich Mills.



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# NFL Sunday Ticket Monopoly Cost Fans \$7B, Expert Testifies

By **Craig Clough**

Law360 (June 11, 2024, 10:33 PM EDT) -- An economist testifying as an expert for the plaintiffs in a California federal trial over multibillion-dollar antitrust claims brought against the NFL by DirecTV Sunday Ticket subscribers said Tuesday that subscribers suffered over \$7 billion in damages from DirecTV's alleged monopoly on the television package.

Daniel A. Rascher, who is director of academic programs and a professor for the sport management master's program at the University of San Francisco, said on the fifth day of **the trial** that he compared the NFL's monopoly model with college football's competitive model and concluded that the two classes of plaintiffs suffered billions in damages.

Under the NFL's approach during the class period of 2011 through 2023, many out-of-market Sunday afternoon games could only be seen on the subscription-based Sunday Ticket because the NFL sells all the games as a complete package, whereas in college football individual teams or conferences compete with each other in selling their games to different media outlets.

The result is that dozens of college football games can be seen on various television channels on Saturday afternoons for free, while only four NFL games are shown for free on Sundays, Rascher said. If the NFL allowed competition among teams to sell their out-of-market games, the Sunday Ticket would have been irrelevant, Rascher testified.

The outcome is that the damages in the case should include every subscription dollar that class members paid DirecTV Holdings LLC for the Sunday Ticket package, Rascher said — more than \$7 billion all told.

"These NFL teams, they're playing football," Rascher said. "They should be competing with each other to try to get you guys, fans, anyone to be able to see those games."

Rascher said he reached his damages estimate not just by comparing the NFL with college football but also by examining the 1950s when NFL teams did compete with each other for broadcasting contracts.

He also said he examined preseason games, where NFL teams can sell their games individually, and the radio market, where teams each sign their own deals, as well as Canada, where DirecTV does not have a monopoly on the Sunday Ticket and, as a result, it is available much less than the hundreds of dollars the Sunday Ticket subscribers pay each year.

The NFL also has studied the issue, Rascher said, and he told the jury about an internal 2017 league study titled New Frontier that concluded NFL games on average are only available in 39% of U.S. households, while the major college football conferences reach a much higher audience; the Southeastern Conference is available in 65% of U.S. households.

The New Frontier study concluded that creating a market where many NFL games would be available on various cable stations such as ESPN as well as broadcast networks like Fox and CBS could double the availability of NFL games, Rascher said.

College football has allowed individual conferences and teams to sell their games in a competitive market since 1984, and the popularity of the sport has only increased since then and it is "as popular

as it's ever been," Rascher said.

Rascher also told the jury a detailed history of the NFL's television broadcasting journey, which included Congress passing the Sports Broadcasting Act of 1961, which allowed some professional sports leagues like the NFL to pool the television rights of their teams for sale for free over-the-air broadcasts.

Since Sunday Ticket began in 1994, it has shown all NFL games, while Fox and CBS aired games over the air. However, only Fox or CBS had the right to air a home team's game in a local market, such as a Dallas Cowboys game in the Dallas area. The Dallas game at the time could not be viewed under Sunday Ticket in the Dallas area.

DirecTV and the NFL have been fighting the antitrust allegations for the better part of a decade. In late 2015, more than 20 lawsuits from bars, restaurants and fans were centralized into the current multidistrict litigation. The \$7 billion in damages sought by the subscribers could ultimately be trebled under antitrust law.

In their suit, the subscribers claim that DirecTV can charge more because it doesn't have competition for football broadcasts. They have also argued that without the deal with the NFL to sell rights collectively, each football team would be motivated to distribute its out-of-market games nationally via cable, satellite or online channels at competitive prices.

A class of NFL fans and another class of businesses such as bars and restaurants are challenging the Sunday Ticket exclusivity agreement. They won class certification in early 2023.

Brian L. Stekloff of Wilkinson Stekloff LLP, who represents the NFL and its teams, cross-examined Rascher in the afternoon, and spent the entire time criticizing his use of college football as a competitive model the NFL could follow.

Stekloff pointed out that college football does not have the same competitive parity on the field as the NFL, with a few top teams and conferences tending to dominate, and that college teams are often leaving their conferences and creating a chaotic situation, such as the recent dissolution of the Pac-12 when UCLA and USC decided to leave for the Big 10.

In response, Rascher acknowledged there are unknowns about how a competitive market would play out in the NFL, but that due to its popularity as not only the most popular sport in America but also the most popular television product by far, the various situations "always end up in the same place," which is many more NFL games on the air.

Stekloff pointed out that the NFL teams share all of their television revenues and have a salary cap, which creates parity on the field and feeds greatly into the sport's popularity, but Rascher countered that college football is the second most popular sport in America and despite teams moving conferences, the end result is that more games still end up on television.

Stekloff asked Rascher what would happen if NFL teams tried to switch conferences, and Rascher said that would violate the NFL's constitution. Stekloff also pointed out that Rascher's model would create a scenario where Fox is paying to produce a game shown in a local market while, say, NBC airs it out-of-market. Rascher responded that similar situations already happen where Major League Baseball games have different sets of announcers for the home and away teams, and different broadcasts for home and away teams in different markets and on different channels.

Overall, Rascher argued that Stekloff was throwing out too many situations and possibilities beyond what the case is about, which is if a competitive market should have existed for Sunday NFL football games during the class period, making Stekloff's questions a "thoughtless exercise." Despite college football's competitive market, the "demand is going up" and "revenue is going up," Rascher said.

Rascher is expected to return to the witness stand on Wednesday.

The subscribers are represented by Marc M. Seltzer, Kalpana Srinivasan, Amanda Bonn, William C. Carmody, Seth Ard, Tyler Finn and Ian M. Gore of Susman Godfrey LLP, Scott Martin, Sathya S. Gosselin, Christopher L. Lebsack, Samuel Maida and Farhad Mirzadeh of Hausfeld LLP and Howard

Langer, Edward Diver, Peter Leckman and Kevin Trainer of Langer Grogan & Diver PC.

The NFL and individual NFL clubs are represented by Rakesh N. Kilaru, Beth A. Wilkinson, Brian L. Stekloff, Max J. Warren, Anastasia M. Pastan and Jeremy S. Barber of Wilkinson Stekloff LLP and Neema T. Sahni, Gregg H. Levy, Derek Ludwin and John S. Playforth of Covington & Burling LLP.

The case is In re: National Football League's Sunday Ticket Antitrust Litigation, case number 2:15-mj-02668, in the U.S. District Court for the Central District of California.

--Editing by Brian Baresch.

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# Pa. Health System Shakes Meta Data Sharing Row For Now

By **Allison Grande**

Law360 (June 11, 2024, 11:05 PM EDT) -- A Pennsylvania federal judge has tossed a putative class action accusing a nonprofit health system of unlawfully sharing information about website visitors' activities with Meta Platforms Inc., finding that the plaintiff had failed to adequately detail what protected health data had been disclosed.

In an order issued Monday, U.S. District Judge Kai N. Scott dismissed without prejudice David Smart's amended complaint alleging Main Line Health violated the Electronic Communications Privacy Act and engaged in negligence and intrusion upon seclusion by installing the Meta Pixel tracking software on its public facing website.

Smart claimed that the health system illegally deployed the tracking code to collect information about the "characteristics" and "contents" of online visitors' interaction with its website, including who they were and what they clicked, and sent that individually identifiable health information to Facebook's parent company Meta, which used the data for "commercial purposes," such as building out profiles and selling targeted advertisements.

But in axing the dispute, Judge Scott found that the plaintiff had fallen short of showing Main Line Health had run afoul of ECPA by intentionally intercepting the contents of an electronic communication that it wasn't part of in order to commit a "criminal or tortious act."

Judge Scott noted that Smart had "conceded" that the health system "was a party to the website communications, meaning that the one-party consent defense provisionally applies." The judge also rejected Smart's assertion that the crime-tort exception to ECPA should be triggered because Main Line Health had violated the federal Health Insurance Portability and Accountability Act by sharing individually identifiable patient health information with Meta without website visitors' notice or consent.

Because Smart's amended complaint only "generally avers" that he has used Main Line Health's website since 2018 to "engage in communications that included individually-identifiable patient information about his past, present or future health information," the plaintiff has failed to adequately support his assertion that Main Line Health unlawfully disclosed its patients' protected health data, Judge Scott ruled.

"Although the amended complaint provides an example of a search by a hypothetical visitor to the Main Line Health webpage, plaintiff fails to state what specific HIPAA- protected information plaintiff himself provided to defendant via his browsing activity that was subsequently disclosed to Meta," the judge found. "Without such factual allegations, the amended complaint consists of nothing more than bare-bone conclusions which are insufficient to withstand dismissal."

Judge Scott noted that his holding was "consistent" with a pair of recent rulings out of the Eastern District of Pennsylvania that dismissed "nearly identical" wiretap allegations against Tower Health and Thomas Jefferson University Hospitals Inc. "because of the lack of specific facts describing plaintiffs' HIPAA-protected information which was allegedly transferred to Meta."

These pleadings' deficiencies also doomed Smart's claim for negligence, with Judge Scott finding that Smart's inability to "identify the specific individually-identifiable health information searched for on defendant's website and the consequences of those searches" meant that his assertion lacked the

causation necessary to support the claim.

"Without any specific averment about 'the identity of any intended recipient or the content, timing or number of alleged communications,' the [negligence] allegations ... are no more than 'naked assertion[s] devoid of further enhancement,'" Judge Scott ruled.

He also declined to allow the plaintiff's claim for intrusion upon seclusion to move forward "for the same reasons his prior two claims failed — i.e., because of the lack of specific factual allegations and the reliance on conclusory statements."

In order to sustain such a claim under Pennsylvania law, a plaintiff must allege that there was "an intentional intrusion on the seclusion of their private concerns which was substantial and highly offensive to a reasonable person," Judge Scott noted.

Smart claimed that Main Line Health's intrusion was "highly offensive" because the provider intercepted and disclosed website visitors' protected health information to Meta without their permission and despite representations it wouldn't do so. But Judge Scott concluded that Smart's failure to "identify the nature of the patient health information at issue or offer any specifics regarding the purportedly objectionable content" doomed these claims.

While Judge Scott dismissed the case in its entirety, he noted in a separate order issued Monday that Smart can file a second amended complaint within 30 days to address these deficiencies.

Smart originally filed his complaint against Main Line Health and Meta in December 2022. The claims against Meta were severed from the dispute in February 2023 and transferred to the **ongoing litigation** in the Northern District of California accusing the tech giant of illegally collecting patients' health information using the Meta Pixel browser tracking tool.

Counsel for the parties couldn't be reached for comment Tuesday.

Smart is represented by David J. Cohen, Ryan F. Stephan, James B. Zouras and Teresa M. Becvar of Stephan Zouras LLC.

Main Line Health is represented by Edward J. McAndrew, Paul G. Karlsgodt and Elizabeth A. Scully of BakerHostetler.

The case is Smart v. Main Line Health, case number 2:22-cv-05239, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Kristen Becker.



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# SIFMA, Missouri Seek Early End To Anti-ESG Rules Suit

By **Sarah Jarvis**

Law360 (June 11, 2024, 10:21 PM EDT) -- The Securities Industry and Financial Markets Association and Missouri state officials have filed dueling summary judgment bids in SIFMA's suit over the state's anti-ESG rules for brokers and advisers, with SIFMA claiming the rules violate the First Amendment, and both sides painting the issue as a matter of states' rights versus federal preemption.

SIFMA argued in a **Monday filing** supporting its motion that rules issued last year by the Missouri Securities Division intrude into areas governed by federal regulation and "abridge the freedom of speech by compelling speakers to make controversial, confusing, and misleading statements they do not wish to make."

"Now that discovery is complete, SIFMA is entitled to judgment as a matter of law," the trade organization argued. "SIFMA has standing to litigate these claims on behalf of its members. Each of SIFMA's claims succeeds on the merits. And the appropriate remedy is a declaration that the Rules are unlawful combined with a permanent injunction against their enforcement."

In **their own filing**, Missouri Secretary of State John R. Ashcroft and Douglas M. Jacoby, the state securities division commissioner, argued Monday that if the court blocks the rules and finds the rules are preempted by federal regulation, that decision would "breathe new life into SIFMA's effort to dismantle the regime of reinforcing state and federal regulation."

"Federal law expressly reserves to the states to define what is ethical and unethical, honest and dishonest. And the First Amendment allows reasonable, factual securities disclosures," the state officials argued. "That is precisely what these rules do for Missouri consumers and investors."

The rules at issue require investment advisers and broker-dealers to inform Missouri customers if they incorporate "a social objective or other nonfinancial objective" into their investment decisions by having the customers sign a consent form using language specified by the state. The state's rules are part of **wider efforts** opposing environmental, social and governance practices in **Republican-led states**.

SIFMA sued Missouri state officials shortly after the rules went into effect in July 2023, arguing that ESG objectives are not predictors of profitability but can serve as a "tiebreaker" when considering two otherwise equivalent securities. SIFMA also challenged the rules on the grounds of federal preemption, arguing federal law does not require anything like the signed consents being required in Missouri.

Missouri argued the state rules are necessary to protect investors from financial advice that does not prioritize maximizing financial returns.

The state moved to dismiss the case in November, but U.S. District Judge Stephen R. Bough **denied that motion** in January, finding that SIFMA had sufficiently claimed violations of the First Amendment, federal preemption and unconstitutional vagueness.

SIFMA argued Monday that it should prevail on each of its claims, saying Missouri's rules are preempted by the National Securities Markets Improvement Act, the Employee Retirement Income Security Act, and the First Amendment, and that the state rules should also be void for being too vague.

But Missouri argued the rules aren't preempted by the National Securities Markets Improvement Act because the rules "are tethered to consumer protection." They also aren't preempted by ERISA because they don't relate to ERISA plans and because of that law's saving clause, which "makes clear that ERISA and state securities regulations must be construed as complementary, rather than contradictory," the state argued Monday.

Among other things, the state also argued that the rules don't violate the First Amendment, saying "SIFMA's contrived reading of the consent requirement as requiring a declaration that incorporating nonfinancial objectives will not maximize financial return is unsupported by the plain text of the rules: there is therefore no genuine dispute based on the rules' actual language."

The state said that in the event the court finds that any part of the rules is invalid, it should only block the enforcement of the problematic portions while leaving the rest of the rules intact.

Counsel for the parties didn't respond to requests for comment Tuesday.

Missouri is represented by Edward Greim, James M. Humphrey IV, Matthew Mueller and Jackson Tyler of Graves Garrett LLC.

SIFMA is represented by Angela Kennedy and William Ray Price Jr. of Armstrong Teasdale LLP, and Jason S. Pinney, David C. Boch, Jeff Goldman, Matthew O'Keefe, Michael E. Kenneally and Vanessa M. Brown of Morgan Lewis & Bockius LLP.

The case is Securities Industry and Financial Markets Association v. John R. Ashcroft et al., number 2:23-cv-04154, in the U.S. District Court for the Western District of Missouri.

--Additional reporting by Hannah Albarazi. Editing by Lakshna Mehta.

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# Ontrak CEO Told Broker To Sell Shares Quickly, Jury Hears

By **Gina Kim**

Law360 (June 11, 2024, 10:25 PM EDT) -- A stockbroker testifying Tuesday in the California federal insider trading trial for Ontrak's founder said the executive didn't accept his advice to delay selling shares of the healthcare company to avoid the appearance of trading on insider information, but instead insisted on selling the shares immediately.

Jurors deciding the fate of Ontrak Inc.'s founder and former CEO Terren Peizer, who's charged with three counts of insider trading, heard from Emanuele Pirrello, a broker, financial adviser and vice president of Jefferies Wealth Management. Pirrello told the jury he was directed by the defendant to sell Ontrak shares and exercise stock warrants in May and August 2021 using Rule 10b5-1 trading plans.

Under Rule 10b5-1 of the Exchange Act, a corporate insider can establish a trading plan for selling their own stocks, but must do so without possessing material nonpublic information about the company when they enter into the plan.

Peizer is alleged to have used the stock selling plans to trade using **material nonpublic information** that Ontrak was in jeopardy of losing its \$90 million behavioral health services contract with Cigna. Prosecutors say Peizer knew what was going on with Ontrak's diminishing relationship with Cigna in the spring of 2021, not long after Aetna bowed out of its own agreement with Ontrak that March and Ontrak's stock price plunged more than 40%.

On Tuesday, Pirrello testified that he cautioned Peizer to implement a 30-day "cooling-off period" in accordance with industry practice, and not including one in the plan could create the impression that the trader had material nonpublic information when the plan was executed. However, Peizer said he wasn't going to accept a cooling-off period and wanted to start trading immediately, Pirrello said.

On May 10, 2021, Peizer entered into his Rule 10b5-1 trading plan in the name of Acuitas Group Holdings, an investment entity he owned, according to Pirrello. Under the plan, he certified he was executing it in good faith without any nonpublic information, Pirrello said, and was set to sell nearly 600,000 shares starting the next day, and the plan was supposed to expire Aug. 5, 2021.

Peizer sold approximately 11,000 shares per day, and on the first day of sales he made \$335,500, Pirrello testified. Peizer stopped selling on July 20, 2021, as he hit the maximum amount of shares to sell. The net proceeds from the trading plan generated more than \$19 million, Pirrello said.

U.S. Department of Justice trial attorney Della Sentilles asked Pirrello if he ever spoke to Peizer about whether he possessed material nonpublic information, or whether Peizer discussed that topic with his attorneys. Pirrello said he did not.

"It's made clear from the beginning you cannot have [material nonpublic information], and it wasn't our role to investigate that," he explained. "We're just not privilege to [material nonpublic information]. We have to rely on their representations."

Tuesday marked the second week of Peizer's **insider trading trial**. He "fixated on Cigna" and executed his first trading plan about a week before Ontrak was set to have a meeting with Cigna on May 18, 2021, the day Cigna said it intended to end its contract by the end of the year, prosecutors say.

Equipped with nonpublic information, Peizer set up his trading plan again in August 2021 to start selling shares, days before Cigna's termination of the contract became official and was made public on Aug. 19, the government says. He ended up selling \$20 million in company shares, prosecutors say.

Peizer maintains he simply sought to sell warrants for more than 1 million shares set to expire later that year that he'd otherwise lose, and did so gradually. He also says he made his trading plans in good faith, and had expressed intentions to do so in January 2021, long before Cigna aired any problems with Ontrak.

On Tuesday, Pirrello testified he started working on another trading plan for Peizer on Aug. 10, 2021, and Peizer sought to exercise his stock warrants set to expire between Dec. 15, 2021, and April 2022. Pirrello added that he became aware Peizer wanted to increase his daily volume from 11,000 shares per day to 15,000.

Peizer wanted to start selling right away and wasn't willing to include a cooling-off period, despite Pirrello's recommendations, he continued. After certifying in his sales plan signed on Aug. 13, 2021, that he possessed no material nonpublic information, Peizer started trading three days later. Under the plan, he was allowed to sell 463,000 shares, Pirrello said.

The first sale under the August 2021 trading plan netted Peizer about \$347,000, Pirrello testified. Eventually, news broke that Ontrak lost its biggest client, Cigna, which caused stock prices to drop significantly, he said.

On cross-examination, Peizer's attorney David Willingham of King & Spalding asked Pirrello if using a cooling-off period was a legal requirement; Pirrello said it was not.

Pirrello also conceded it was typical for company executives to exercise stock warrants and sell them into the marketplace, and acknowledged that Peizer possessed millions of Ontrak common stock shares, which are different from stock warrants. Pirrello also testified he wasn't aware whether Peizer was selling shares of Ontrak common stock in 2021, and he told the jury that Peizer indeed never did sell them.

Nor did he ever quickly dump his Ontrak shares in either of his trading plans all at once, Willingham pointed out. Pirrello said that was correct, and he acknowledged Peizer sold a few shares per day.

Willingham asked if it made sense for an executive to sell shares in small increments to avoid problems with volume and pricing in the marketplace, and if it's often done for the benefit of the company and its shareholders.

"Yes," Pirrello replied.

Willingham pointed out that if Peizer was concerned that bad news might drop on Aug. 18, 2021, he could've instructed him to put up way more shares for sale quickly between Aug. 16 and Aug. 18, but Peizer never did.

Pirrello said that was correct, and he acknowledged it is well within the legal guardrails to not include a cooling-off period in any of Peizer's trading plans, nor did the SEC require such periods to be included for either plans.

Jurors then saw an email dated Aug. 13, 2021, between Peizer, Pirrello and Maricela Mejia, who also works at Jefferies. In that email, Peizer questioned why stock prices dipped 10% and if the Jefferies team leaked news of his trading plans. Mejia responded in the email that she didn't know the reasons for the price dip, but it'd be fine if he wanted to wait on selling.

Peizer reiterated in a response email that he didn't know why stock prices were down but that he would proceed, "as this too shall pass," jurors saw. Pirrello noted that Peizer didn't appear too concerned about the stock price drops.

Peizer continued selling shares under the August 2021 trading plan through Sept. 29, 2021,

Willingham pointed out, and didn't stop selling even the day news broke about Cigna ending its contract with Ontrak. In fact, the overwhelming majority of sales occurred from Aug. 19 and onward, he remarked.

If Peizer was concerned about bad news breaking on Aug. 18, he could've sold a lot more shares before that day and include that in his trading plan, Willingham added.

"He could have," Pirrello replied.

Testimony resumes Wednesday.

The government is represented by Matthew Reilly and Della G. Sentilles of the U.S. Department of Justice's Criminal Division, 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. Peizer, case number 2:23-cr-00089, in the U.S. District Court for the Central District of California.

--Editing by Adam LoBelia.

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# SEC Probing Autodesk After Accounting Practices Report

By **Elliot Weld**

Law360 (June 11, 2024, 6:52 PM EDT) -- Autodesk Inc. said the U.S. Securities and Exchange Commission is investigating the software corporation after it voluntarily contacted the regulatory body to inform it of the company's own internal investigation into its free cash flow and non-generally accepted accounting principles operating margin practices.

In a public annual financial statement filed Monday, Autodesk said it "intends to cooperate with the SEC's investigation" and that the internal probe's completion would not "automatically resolve the SEC investigation." The U.S. Attorney's Office for the Northern District of California contacted Autodesk about the internal investigation, as well, the statement reads.

The company said an internal investigation by its board of directors' audit committee had determined that no restatement or adjustment of previous financial statements would be made, but the committee had proposed some remedial measures such as reviewing certain processes around financial communications and "adopting and enhancing policies, processes and controls related to the matters investigated."

"We have incurred significant expenses, including audit, legal, consulting and other professional fees, in connection with the investigation, and we could be forced to incur additional time and expense as a result of the investigation," Autodesk's statement said.

The software corporation noted that the internal probe has resulted in a class action lawsuit. In April, a **shareholder** named Michael Barkasi sued in California federal court alleging that Autodesk's stock price had dropped after investors learned it lacked proper internal controls.

If the SEC or U.S. Attorney's Office decided to pursue legal proceedings, the company would likely incur significant costs in raising its defense, Autodesk said.

"Further, our insurance may not cover all claims that have been or may be brought against us, and insurance coverage may not continue to be available to us at a reasonable cost," the statement said. "As a result, we may be exposed to substantial uninsured liabilities, including pursuant to our indemnification obligations, which could adversely affect our business, prospects, results of operations and financial condition."

The company said it had appointed Betsy Rafael as interim chief financial officer, adding that she had stepped down from the audit committee.

Summarizing the findings of the internal report, Autodesk said it had historically used multiyear contracts, billed up front, with enterprise and subscription customers to help meet free cash flow targets. Prior to fiscal year 2024, the software company hadn't quantified how much free cash flow was attributable to such contracts but noted that up-front collections contributed to fluctuations in reported long-term deferred revenue, the statement said.

Up-front billings to enterprise customers in fiscal year 2023 "substantially exceeded historical levels" and helped Autodesk meet lowered annual free cash flow targets, the company said, and during the relevant period of fiscal years 2022, 2023 and 2024, certain decisions on discretionary spending, collections and accounts payable were informed by the anticipated impact on free cash flow and non-GAAP operating margin targets.

"The resulting actions generally served to reduce reported free cash flow and/or lower reported margin in the current period," the financial statement reads. "Though free cash flow was one factor in the company's executive compensation program, these decisions were not calculated to influence compensation outcomes."

A representative for Autodesk did not immediately respond to requests for comment Tuesday, nor did the SEC or the U.S. Attorney's Office for the Northern District of California.

--Editing by Melissa Treolo.

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