NESPF helps secure $434m for investors in Under Armour class action suit

EP europeanpensions.net/ep/NESPF-helps-secure-434m-for-investors-in-Under-Armour-class-action-suit.php

By Natalie Tuck

09/07/24

A $434m (€401.1m) recovery has been secured in a securities fraud class action suit against American sportswear brand, Under Armour, in which the North East Scotland Pension Fund (NESPF) acted as lead plaintiff.

The proposed settlement was agreed just weeks before a federal jury trial was scheduled to take place on 15 July, with the pension fund and other investors in the class represented by Robbins Geller Rudman & Dows LLP. The settlement is now subject to court approval.

The case alleged that Under Armour, Inc. and CEO, Kevin Plank, violated US securities law by making materially false and misleading statements and failing to disclose adverse information about Under Armour's business and operations to investors.

The allegations focus on Under Armour's alleged 'pull-forward; revenue recognition scheme that masked declining demand for its products. According to the allegations in the suit, investors had been repeatedly assured that Under Armour's 26-consecutive quarter 20 per cent year-over-year revenue growth streak was 'safely intact,' when demand for the company's products was in decline.

The suit claimed that the company's financial results were manipulated to mask this decline by pulling sales forward from future quarters and other suspect sales practices.

In 2017, Under Armour revealed its lower-than-anticipated fourth-quarter revenues and a drop in quarterly revenue growth of over 20 per cent for the first time in 26 quarters. The company also announced the unexpected resignation of its CFO after only 13 months on the job. After this news was made public, the price of Under Armour shares fell over 25 per cent.

Commenting on the outcome, a NESPF spokesperson said: "We are pleased to have helped secure this exceptional outcome. We decided that stepping forward to lead the litigation and hold defendants accountable was an appropriate exercise of our stewardship role, and we welcomed the opportunity to do so."

Furthermore, Robbins Geller partner and counsel to the lead plaintiff, Mark Solomon, said the win sends a "strong message to the directors and officers of public companies".

“Prior government enforcement efforts yielded a modest $9m penalty. Obtaining a recovery almost 50 times greater underscores the critical role pension funds can play in holding companies accountable,” he added.

If approved by the court, the settlement will be the second-largest-ever securities class action recovery in the United States Court of Appeals for the Fourth Circuit and one of the top 50 largest such recoveries in US history.

Purdue creditors seek approval to sue Sackler family members

reuters.com/legal/purdue-creditors-seek-approval-sue-sackler-family-members-2024-07-08

Dietrich Knauth

A pharmacist holds a bottle OxyContin made by Purdue Pharma at a pharmacy in Provo, Utah, U.S., May 9, 2019. REUTERS/George Frey/File Photo Purchase Licensing Rights, opens new tab

NEW YORK, July 8 (Reuters) - Purdue Pharma's creditors sought permission from a U.S. bankruptcy court on Monday to sue the company's wealthy owners, arguing that the litigation can serve as both a negotiating tool and a fallback option as the OxyContin maker re-starts talks on a bankruptcy settlement.

Purdue is going back to the drawing board to negotiate a comprehensive settlement of lawsuits against it and its Sackler family owners alleging that the company's deceptive marketing of OxyContin spurred an opioid addiction crisis in the U.S. A U.S. Supreme Court decision last month upended a previous bankruptcy deal.

The Supreme Court ruled that Purdue Pharma's bankruptcy settlement can not shield the Sackler family members, who have not filed for bankruptcy themselves, from lawsuits over their role in the opioid epidemic. The decision imperiled billions of dollars in funding that Purdue and the Sacklers had promised to pay toward addressing the harms of the deadly crisis.
A court-appointed committee of Purdue creditors, which includes individuals harmed by the opioid crisis as well as insurers and companies with opioid claims, said in a Monday court filing in White Plains, New York that they need the ability to sue to ensure that the Sacklers are not "allowed 'off the hook' for their grotesque misconduct in creating and fueling the opioid crisis."

The committee said it intends to engage in mediation and settlement talks with Purdue and the Sacklers before pursuing litigation.

A spokesperson for the Sackler family members said the committee's court filing was "riddled with factual errors" and "contrary to the goal of working together towards a resolution that provides billions of dollars for communities and people in need." The family members have denied wrongdoing but previously expressed regret that OxyContin "unexpectedly became part of an opioid crisis."

The committee said it supported Purdue's previous bankruptcy settlement as the most efficient way to get money to the victims of the opioid crisis, but it believes that the legal claims against the Sacklers are worth more than the $6 billion that the family members agreed to pay.
The committee asked U.S. Bankruptcy Judge Sean Lane for "derivative" standing to pursue Purdue's own legal claims against the Sacklers.

Purdue likely has the largest claims against the Sacklers, including claims that they drained over $11 billion from the company and that their conduct made Purdue liable for other lawsuits, according to the committee.

The Sackler family members disputed the $11 billion figure on Monday, saying that half of the money they took from the company was used for tax payments.

Purdue, which pleaded guilty to misbranding and fraud charges related to its marketing of OxyContin in 2007 and 2020, supported the committee's request, saying in a Monday court filing that the company is "not the most appropriate entity to pursue litigation" against the Sacklers.

In exchange, Purdue insisted that the creditors' committee give mediation a chance before taking further action, and said it remains "hopeful" that a new deal can be reached without further litigation.

The company has spent nearly five years in bankruptcy, attempting to reach a comprehensive settlement of legal claims by state and local governments, family members of opioid overdose victims, and others who have sued or may sue in the future.

Purdue is scheduled to appear in court on Tuesday for the first time since the Supreme Court's June 27 ruling.

Reporting by Dietrich Knauth; Editing by Alexia Garamfalvi and Bill Berkrot

Medical Device Company Hit with SPAC-Related Securities Lawsuit

dandodiary.com/2024/07/articles/securities-litigation/medical-device-company-hit-with-spac-related-securities-lawsuit

July 9, 2024

By Kevin LaCroix on July 9, 2024
Posted in Securities Litigation

In my recent review of the 1H24 securities class action litigation filings (here), I noted that SPAC-related securities suits were less of a factor in the overall number of suit filings during the year's first six months than they had been in recent years. However, even though the peak of the SPAC frenzy was several years ago now, SPAC-related securities suits are continuing to be filed. The latest example is the SPAC-related securities suit filed late last week against SeaStar Medical Holding Corporation, which is the product of a 2022 SPAC merger. The new lawsuit has several interesting features, as discussed below. A copy of the July 5, 2024, complaint in the lawsuit can be found here.

Background

LMF Acquisition Opportunities, Inc., a special purpose acquisition company (SPAC), completed an IPO on January 25, 2021. On April 22, 2022, the SPAC announced its plan to merge with SeaStar Medical, Inc. (Legacy SeaStar). The merger was completed on October 28, 2022, and on October 31, 2022, the merged companies began trading on Nasdaq under the name SeaStar Medical Holding Corporation.

In connection with the planned merger, the parties highlighted the regulatory and commercial prospects for Legacy SeaStar's Selective Cytopheric Device (SCD) for the treatment of hyperinflammation. The companies also announced that Legacy SeaStar planned to apply for approval with the FDA under the Humanitarian Device Exemption (HDE) to commence commercialization of the SCD for the treatment of pediatric acute kidney injury (AKI). On July 20, 2022 (that is, before the completion of the merger), the SPAC and Legacy SeaStar announced that Legacy SeaStar had submitted the HDE application.

On October 17, 2022 (that is, just before the merger was completed), the company announced that it had entered into an equity prepaid forward transaction (Prepaid Forward Agreement), that would permit a third-party investor to purchase shares of the company on certain terms.

On May 9, 2023 (that is, several months after the merger was completed), SeaStar announced that it had received a letter from the FDA rejecting the HDE application for the SCD. On this news the company's share price decline nearly 40%.

On March 27, 2024, SeaStar announced that it would restate its financials for 2022 as well as for the first, second, and third quarters of 2023. The company disclosed that the restatement would impact the accounting treatment and classification of certain outstanding warrants and the Prepaid Forward Agreement. The company's CEO said that the restatement "is related to the reporting of non-cash accounting items," observing that "we pursued a [SPAC} as our route to becoming a public company in late 2022 due to the challenging market conditions at that time," but that "many SPACs, including ours, relied on a host of complex financial instruments" and "unfortunately we determined that certain complex financial instruments required accounting treatment that differed from our previous judgment, which led to the need for a restatement." According to the subsequently filed complaint, the company's share price fell approximately five percent on this news.

The Complaint

On July 5, 2024, a plaintiff shareholder filed a securities class action complaint in the District of Colorado against SeaStar and certain of its directors and officers. The complaint purports to be filed on behalf of a class of persons who purchased the company's securities between October 31, 2022 (the date the shares of the merged company began trading on Nasdaq) and March 26, 2024.

The complaint alleges that during the class period, the defendants failed to disclose that: "(i) SeaStar and or/Legacy SeaStar had deficient compliance controls and procedures related to the HDE Application: (ii) accordingly, there were deficiencies with the HDE Application, the FDA was unlikely to approve the HDE Application in its present form, and the SCD's regulatory prospects were overstated; (iii) the Company downplayed the true scope and severity of deficiencies in its financial controls and procedures, while overstating Defendants' efforts to remediate the same; (iv) accordingly, SeaStar had failed to properly account for the classification of certain outstanding warrants and the Prepaid Forward Agreement; (v) as a result, SeaStar was likely to restate one or more of its previously issued financial statements; (vi) accordingly, SeaStar's post-merger business and financial prospects were overstated; and (vii) as a result, the Company's public statements were materially false and misleading at all relevant times."

The complaint alleges that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks to recover damages on behalf of the plaintiff class.

Discussion

This lawsuit is not "SPAC-related" merely because it involves a publicly traded company that is the result of a SPAC merger. It is also "SPAC-related" because it involves, at least in part, allegations that pertain to the SPAC-related corporate structures and transactions. To be sure, the complaint's allegations also relate to the disappointing results of the company's application to the FDA for a Humanitarian Device Exemption (HDE) for its SCD device. But the complaint also involves allegations relating to the company's need to restate its financials with reference to the company's accounting treatment of warrants and the Prepaid Forward Agreement. This isn't just a lawsuit about a company that happened to have been involved in a SPAC transaction. This is a lawsuit with allegations directly pertaining to aspects and attributes of the SPAC transaction itself, and in particular to the accounting for those aspects and attributes.

It is noteworthy, to me at least, that this lawsuit pertains to a company that merged with a SPAC from the SPAC IPO class of 2021. 2021 was of course the peak of the SPAC frenzy. It is telling that here we are three years from the peak SPAC IPO activity and lawsuits are still being filed against companies involved in a transaction with a SPAC from the SPAC IPO class of 2021.

The fact that this company found itself required to restate its financials for the financial reporting periods that followed after the completion of the SPAC merger suggests that, like so many of the post-SPAC merger companies, this company may not have been fully prepared for the requirements, burdens, and scrutiny that go with being a public company.

The kinds of problems this company encountered are worth considering at a time when there are signs that, despite everything, there may be renewed interest in SPACs and SPAC transactions (as discussed, for example, here). This company's accounting restatement issues are a reminder that though a SPAC merger is not the same as a full-blown IPO transaction, the burdens and scrutiny the post-merger company will face as a newly public company are significant, nonetheless.

In any event, according to my tally, there has now been a total of five SPAC-related securities class action lawsuits filed so far in 2024 (compared to 12 for the full year 2023). Since January 1, 2021, there has been a total of 71 SPAC-related securities class action lawsuit filed.

Public policy favors $7 billion fee award in Musk pay case, Tesla shareholder's lawyer says

reuters.com/technology/tesla-investors-urge-judge-reject-record-7-bln-legal-fee-musk-pay-case-2024-07-08

Tom Hals

Tesla Inc CEO Elon Musk walks next to a screen showing an image of Tesla Model 3 car during an opening ceremony for Tesla China-made Model Y program in Shanghai, China January 7, 2020. REUTERS/Aly Song//File Photo Purchase Licensing Rights, opens new tab

WILMINGTON, Delaware, July 8 (Reuters) - A record $7 billion in attorneys' fees for three firms that successfully challenged Elon Musk's $56 billion Tesla pay package provides an incentive for lawyers to hold corporate boards accountable, an attorney for a company shareholder told a Delaware judge on Monday.

For more than six hours, legal teams for the company and a shareholder sparred over how much to award to three law firms which represented Richard Tornetta, who owned nine shares of Tesla when he sued over Musk's pay package in 2018.

The fee Tornetta has asked for on behalf of the firms equals around $7.3 billion at Tesla's Monday stock price and amounts to a rate of roughly $370,000 for every hour worked by the 37 lawyers, associates and paralegals, court documents submitted by Tornetta's lawyers showed.

John Reed, Tesla's lawyer, said on Monday that the fee petition never should have been filed.

"It looks like a real-life lawyer joke," he told Chancellor Kathaleen McCormick of the Court of Chancery.

The legal fee represents a cut of the value that the plaintiff's lawyers say was created for Tesla (TSLA.O), opens new tab by a Delaware judge's January ruling that rescinded Musk's $56-billion pay package.
The firms that represented Tornetta include Bernstein Litowitz Berger & Grossmann.

Tornetta's attorney Greg Varallo said the shareholder's legal team was seeking far less than the law allows, which is up to 33% of the benefit to Tesla from the lawsuit.

He said the January ruling was the largest judgment ever by an American court, excluding punitive damages, and argued that Tornetta's lawyers should receive 11% of that judgment paid in the form of 29 million Tesla shares.

Varallo argued that a large fee award would encourage shareholder attorneys to try to protect small investors.

"If Delaware continues to perceive value in policing bad behavior, then narrowing incentives would be a very bad idea," Varallo said.

Reed countered that the January ruling destroyed value by sending Tesla's stock down as it created uncertainty about Musk's future at the company.

He asked McCormick to award as little as $13.6 million as a fee.

More than 8,000 Tesla stockholders have flooded the court with some 1,500 letters and objections over the fee, according to court documents.

The request vastly outstrips the current record fee in shareholder litigation of $688 million in an Enron class action, according to Stanford Law School.

The Musk case took a dramatic turn when Tesla shareholders in June voted to ratify Musk's pay, which Tesla has argued corrected the flaws in the 2018 process that McCormick identified in her ruling.

The company argues that Musk's pay package has been restored and that Tornetta's legal victory has been transformed into a loss.

McCormick will hear arguments about the legal impact of the ratification vote in the coming weeks.

McCormick may take weeks or months to rule on the legal fee. The Delaware Supreme Court is considering a $267 million fee request in a shareholder class action involving Dell Technologies and that decision could provide fee guidance.

Reporting by Tom Hals in Wilmington, Delaware; Editing by Aurora Ellis, Rod Nickel and Richard Chang

Tom Hals
Thomson Reuters

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

Tesla Inc

Tesla and Musk antagonists face off over multibillion-dollar lawyer fee

Counsel for EV company and shareholder who sued its board swap 'real-life lawyer joke' and 'clown show' barbs

© AP

Sujeet Indap in Wilmington, Delaware YESTERDAY

Tesla on Monday urged a judge not to award billions of dollars in shares to the lawyers who successfully challenged Elon Musk's record pay package, painting them as freeriding opportunists attempting to cash in on the chief executive's hard-fought successes.

"It's a real-life lawyer joke," John Reed, a partner at DLA Piper, who represents Tesla, told Chancellor Kathaleen McCormick during the day-long hearing in the Delaware Court of Chancery. An expert witness for Tesla described the fee request as an "unjustifiable windfall".

The hearing was the first in-court gathering of the parties since a June vote in which 72 per cent of Tesla's shareholders, excluding Elon Musk and his brother Kimbal, overwhelmingly approved the same pay package terms that McCormick rejected in January. Tesla has said that vote is grounds for McCormick to reverse her previous decision.

The court is set to hear arguments later this summer on how the June “ratification” vote affects the January ruling. Observers expect that McCormick will decide on the fee and ratification consequences in a single ruling later this year.

When it was cancelled by the court in January, Musk’s pay package was worth about $56bn, but since then Tesla shares have risen, giving it a value of more than $75bn. The 29mn shares requested by plaintiffs’ lawyers have similarly risen in value, from more than $5bn originally to more than $7bn now.

Greg Varallo, the lead plaintiff’s lawyer from the Bernstein Litowitz firm, described Musk’s efforts since the January ruling to reinstate the pay plan as a “clown show”. Varallo claimed that his client, Richard Tornetta, a shareholder holding fewer than 200 shares, has faced death threats from Tesla partisans.

The Wilmington courtroom was packed with dozens of lawyers on Monday. Tesla and its directors have collectively hired around 10 top law firms, both from Delaware and New York, to plead their case. Lawyers representing some Tesla shareholders, including Calpers and Cathie Wood’s Ark Invest, also registered appearances with the court.

McCormick occasionally asked questions but mostly listened intently as the sides conceded their arguments were diametrically opposed.

In 2018, Tesla’s board granted Musk that chance to earn shares equal to more than a tenth of the company’s equity if Tesla was able to hit a series of aggressive stock price and operational milestones. Tesla’s market value went from less than $100bn when the package was granted to top $1tn just a few years later. By 2021, with each of the targets met, Musk was awarded 304mn shares.

Tornetta, the Tesla shareholder who sued, argued that the award was excessive, resulting from a Tesla board too intertwined with Musk to represent ordinary shareholders. McCormick agreed, and the plaintiff’s lawyers, led by Varallo, subsequently requested a fee equivalent to roughly 29mn Tesla shares, as remuneration for saving shareholders the 300mn shares of dilution from the rejected Musk pay package.

Tesla and its board argued to the court that the benefit to the electric-vehicle maker stemming from McCormick’s cancellation of the share grant was “unquantifiable” and that, rather receiving several billion dollars of shares, the winning lawyers were entitled to less than $15mn.

"Plaintiff's counsel [say] that they are entitled to part of the economic miracle even though they didn't have any role in it," testified Daniel Fischel, a University of Chicago professor who was an expert witness for Tesla. "The rescission of the grant didn't save Tesla $1."

Varallo conceded that the fee would be record-shattering in absolute terms, but told the court that precedent cases allowed him to ask for one-third of the benefit to shareholders. He characterised his request of roughly 10 per cent as deliberately conservative.

Varallo said in court papers that he would also agree to a cash fee of $1.4bn, a figure he based on the implied hourly rate from another case similar to the Tesla lawsuit.

"We are just receiving a slice of the value pie," he told McCormick, deflecting Tesla's claims of a windfall.

Robert Jackson, a NYU law professor and former commissioner at the Securities and Exchange Commission who testified on behalf of Tornetta, challenged Tesla's contention that avoiding share dilution did not benefit a company: "We don't distinguish between shares and cash, none of this [distinction] makes economics or governance sense."

As it fights for its fee, Bernstein Litowitz is also seeking to keep the original ruling from being set aside after the Tesla shareholder vote.

Tesla, which had formed an independent committee to approve the latest pay package, wrote in court papers that the vote "may have been one of the most well-informed stockholder votes in Delaware history". With shareholders' stamp of approval, "Delaware law should respect that vote because it reflects the will and sound 'business judgment' of Tesla's stockholder-owners", it argued.

Varallo has maintained that there was no basis in Delaware case law for a shareholder vote to retroactively upend a court ruling.

"To put it bluntly, litigating against Tesla is never easy," he said to the court during Monday's hearing.

Investor Lawsuit Filed against Globe Life Inc. amid Report of Insurance Fraud and Sexual Harassment

insights.issgovernance.com/posts/investor-lawsuit-filed-against-globe-life-inc-amid-report-of-insurance-fraud-and-sexual-harassment

July 9, 2024

In April 2024, Globe Life Inc.'s stock price fell by over 50% after short seller Fuzzy Panda issued a report describing allegations of widespread insurance fraud and a hostile workplace where sexual harassment and drug use went "unchecked."

A securities class action lawsuit based on these allegations was filed shortly thereafter. The lawsuit asserted the insurance company made misleading statements about its revenue growth and code of business conduct and ethics. According to the complaint, Globe Life Inc. concealed that its subsidiaries were underwriting life insurance policies for dead and fictitious people, as well as adding policies to existing customers' accounts without their consent. The lawsuit also specifically alleges the life insurer, formerly known as Torchmark, falsely assured investors of an "inclusive and welcoming environment" where violence, threatening behavior, and drug use would not be tolerated.

In the Fuzzy Panda report, which relied on interviews with former executives and agents, Globe Life Inc. was accused of the following:

- Writing insurance policies for deceased and fictitious people
- Forging signatures on policy documents

- Withdrawing funds from consumers’ bank accounts without proper authorization
- Using fictitious bank accounts to create fake insurance policies so that agents “hit” their bonuses
- Orchestrating a $65 million bribery and kickback scheme to make money from the company’s own recruits

The insurer has also now disclosed a federal investigation by the Department of Justice, including subpoenas received in late 2023 that raised questions about sales tactics used by agents. Another short-seller Viceroy Research has also commenced an investigative report targeting Globe Life.

The lawsuit — which was recently filed — has a long way to go before any potential settlement is reached. The initial complaint was filed on April 30, 2024, by Bernstein Litowitz Berger & Grossmann on behalf of the City of Miami General Employees’ & Sanitation Employees’ Retirement Trust. However, investors have until July 1, 2024, to seek appointment as lead plaintiff.

Investor Class Action Details ISS SCAS

Investor Class Action Details	
Court Venue	U.S.D.C. – Eastern District of Texas
Case Number	4:24-cv-00376
Initial Complaint	Filed on April 30, 2024
Case Status	Active

www.issgovernance.com/scas

Securities lawsuits alleging misstatements or omissions of sexual misconduct have had mixed success in federal courts. While Signet settled for $240 million and CBS for $14.75 million, other cases, against Activision Blizzard, Papa Johns, and Teladoc, have been dismissed. Whether the claims by Fuzzy Panda are substantiated and the securities lawsuit against Globe Life survives a motion to dismiss remains to be seen.

However, some ESG insights from Globe Life Inc. are worth considering. According to ISS ESG Gateway, Globe Life Inc. exhibits an ESG Corporate Rating of D+ (Figure 1), indicating a ‘poor’ score as per ISS ESG Corporate Rating Methodology. ISS ESG assesses ESG corporate performances on an absolute twelve-point letter and underlying numerical scale, from A+/4.00 (excellent performance) to D-/1.00 (poor performance).

Figure 1: ESG Corporate Ratings – Global Life Inc.

Source: *ISS ESG Gateway*

ISS SCAS
SECURITIES CLASS ACTION SERVICES

ISS Securities Class Action Services (SCAS) monitors claims through the entire securities class action lifecycle, from filing to settlement and disbursement for our institutional and investor clients with the goal of maximizing their recoveries.

ISS ESG

This high-profile action illustrates how a comprehensive ESG framework can support investors in identifying and preventing risks.

By: Ivar Eilertsen, Global Head ISS SCAS

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NEWS

Who Got the Work: Fenwick and West to Steer Defense in Securities Class Action Against Vaccine Maker Gritstone

A complaint filed on June 17 by Pomerantz in the California Northern District Court alleged that Gritstone bio Inc., which develops vaccines and immunotherapies for cancer and infectious diseases, misled investors about the timeline of a proposed COVID-19 vaccine study in earnings calls, news releases and U.S. Securities and Exchange Commission filings.

July 09, 2024 at 10:35 AM

Litigation

Kat Black

What You Need to Know

- Catherine Kevane, a securities litigation attorney at Fenwick & West, entered an appearance for Gritstone bio Inc. in a pending securities class action.
- The original complaint, filed by Pomerantz on June 17 in the California Northern District Court, alleges that Gritstone defrauded investors about the timeline of a proposed study for its COVID-19 vaccine candidate.
- Gritstone failed to launch the study by its proposed deadline and, as a result, was forced to slash its workforce and experienced a decline in its stock price.

Catherine Kevane, a partner at Fenwick & West, on July 2 entered an appearance for Gritstone bio Inc. in a pending securities class action.

A complaint filed on June 17 by Pomerantz in the California Northern District Court alleged that Gritstone bio, which develops vaccines and immunotherapies for cancer and infectious diseases, misled investors about the timeline of a proposed COVID-19 vaccine study in earnings calls, news releases and U.S. Securities and Exchange Commission filings. The case was assigned to Judge Charles Breyer.

This complaint was surfaced by Law.com Radar.

Andrew Allen, Gritstone's CEO, and Vassiliki Economides, Gritstone's CFO and executive vice president, are named as co-defendants. Pomerantz's Jennifer Pafiti is representing members of the class, which consists of all people who purchased Gritstone securities between March 9, 2023, when Gritstone filed an annual report on form 10-K with the SEC, and Feb. 29, 2024. She did not immediately respond to requests for comment.

The Emeryville, California, company announced last September that it was awarded a $433 million contract with the Biomedical Advanced Research and Development Authority to conduct the comparative “Phase 2b CORAL Study,” which planned to test the efficacy of its self-amplifying mRNA (samRNA) COVID-19 vaccine candidate among 10,000 participants.

In a statement, Allen said that Gritstone would launch the fully funded study in the first quarter of 2024 and praised Gritstone’s “novel” and “innovative” vaccine product, claiming that it was designed to “address the limitations” of first-generation COVID-19 vaccines. The study, Gritstone said, was part of an initiative by the U.S. Department of Health and Human Services to “advance a pipeline of new, innovative vaccines and therapeutics providing broader and more durable protection for COVID-19.”

According to the complaint, Gritstone made “false and misleading statements” about the study’s expected time frame, which affected its bottom line and hampered its ability to secure necessary funding. In February, Gritstone revealed in a statement that it would postpone the study’s launch until this fall. “This is to allow use of fully GMP-grade raw materials in the vaccine, which is expected to increase the regulatory utility of the trial,” it said.

Just two weeks later, Gritstone announced a 40% workforce reduction that it attributed to losing the subsidies associated with launching the study. “The lack of near-term funding necessitated this difficult step to fortify our balance sheet and cash position, which unfortunately means an impact to our workforce,” said Allen in a statement. According to the complaint, this announcement caused Gritstone’s stock price to plummet by 27.86% on March 1.

The proposed class action contends that during the class period, Gritstone repeatedly “made false and/or misleading statements and/or failed to disclose that: (i) the Company would be unable to launch the Phase 2b CORAL Study in the timeframe it had represented to investors; (ii) the foregoing would impair Gritstone’s ability to obtain external funding in connection with the Study, thereby negatively affecting Gritstone’s ability to maintain its balance sheet and cash position; (iii) accordingly, Gritstone overstated its ability to successfully develop and commercialize its products; (iv) as a result, the Company’s public statements were materially false and misleading at all relevant times.”

Attorneys for the plaintiffs alleged that Gritstone violated Sections 10(b) and 20(a) of the Exchange Act and acted with scienter in defrauding investors, entitling plaintiffs to damages.

Kevane, who did not respond to requests for comment, was named as Gritstone’s lead attorney on July 2. Gritstone did not immediately respond to requests for comment.

This action was surfaced by Law.com Radar, which delivers artificial intelligence-enhanced case summaries and daily case reports from more than 2,200 state and federal courts. Click here to get started and be among the first to act on opportunities in your region, practice area or client sector.

Securities Law Prof Blog

lawprofessors.typepad.com/securities/2024/07/new-securities-law-articles-in-print-1.html

Monday, July 8, 2024

New Securities Law Articles in Print

The following law review article relating to securities regulation is now available in paper format:

B. Salman Banaei, *Response to Blockchain Transaction Ordering as Market Manipulation*, 20 Ohio St. Tech. L. J. 89 (2023).

Mikolaj Barczentewicz, Alex Sarch & Natasha Vasan, *Blockchain Transaction Ordering as Market Manipulation*, 20 Ohio St. Tech. L. J. 1 (2023).

Christopher A. Brown, Note, *Why Whistleblowing Walter May Be Helping the SEC Violate the Fourth Amendment*, 49 J. Corp. L. 167 (2023).

Patrick M. Corrigan, *Shining a Light on Shadow Banks*, 49 J. Corp. L. 1 (2023).

Anna D'Eramo, Comment, *Where You Lead, I Will Follow: Professional Athletes' Ability to Influence Loyal Fans' Cryptocurrency Investments and the Broader Need for Cryptocurrency Regulation*, 31 Jeffrey S. Moorad Sports L. J. 143 (2024).

Aneil Kovvali & Yair Listokin, *Valuing ESG*, 49 BYU L. Rev. 705 (2024).

Susan Navarro Smelcer, Anne Tucker & Yusen Xia, *Aggregated Risks in Mutual Fund Disclosures*, 49 J. Corp. L. 49 (2023).

Real estate partners accused of fraud in proposed investor class action

DJ dailyjournal.com/articles/379619

Real Estate,

Civil Litigation

Jul. 9, 2024

Sonoma County real estate partners and longtime friends-turned-rivals Ken Mattson and Tim LeFever have been hit with a proposed investor class action in federal court, accusing them of defrauding hundreds of people through their company.

A month after filing dueling lawsuits against each other, Sonoma County real estate partners and longtime friends-turned-rivals Ken Mattson and Tim LeFever were hit with a proposed investor class action in federal court on Monday, accusing them of defrauding hundreds of people through their company.

Attorneys at Cotchett Pitre & McCarthy LLP, Lieff Cabraser Heimann & Bernstein LLP, and Casey Gerry Schenk Francavilla Blatt & Penfield LLP filed the suit in San Francisco on behalf of seven clients of LeFever Mattson Property Management. While Mattson and LeFever told investors that their money would go toward acquiring specific real estate properties owned by their partnership and that investor payments would come from funds held in separate bank accounts, the defendants commingled the funds and kept little documentation about their sales, read the 148-page complaint.

Mattson and LeFever, who have known each other since childhood, have been business partners since the 1990s and their company manages a real estate portfolio valued at around $400 million. According to the complaint, Sonoma County residents have voiced their objection to the defendants buying up property in the area without notable development.

The plaintiffs' attorneys -- Cotchett associate Blair V. Kittle, Lieff Cabraser partner Elizabeth J. Cabraser, and CaseyGerry partner Gayle M. Blatt -- said a shareholder message from LeFever last month announcing that the company was starting to sell properties and return investor proceeds "implicitly acknowledged" the illegal scheme. *Claridge et al. v. LeFever et al.,* 3:24-cv-04093-SK (N.D. Cal., filed Jul. 8, 2024).

Mattson and LeFever "used a complex web of corporate entities to acquire real estate in California, making it difficult to track exactly which limited partnership funds are used to purchase property," the plaintiffs' attorneys wrote in the complaint. They added that Mattson and LeFever's plan was to neglect properties, "allowing them to fall into disrepair and depreciating the value of the investments. Many of the properties owned by LeFever Mattson are underutilized, in disrepair, or completely vacant."

Mattson announced earlier this year that he would step down as CEO of LeFever Mattson. Soon after, LeFever told investors that he reported Mattson to the authorities, including the U.S. Securities and Exchange Commission, for allegedly making improper transactions. The Press Democrat in Santa Rosa, which has extensively investigated and covered LeFever Mattson's property dealings and the subsequent fallout, reported that their companies faced more than $1.2 million in liens and back taxes.

Denying any wrongdoing, Mattson accused LeFever of unfair competition in state court, claiming that his business partner set out to destroy his reputation and withheld access to important business documents. *Mattson v. LeFever,* 24CV011305 (Sac. Super. Ct., filed Jun. 6, 2024).

LeFever's attorneys then fired back with a breach of contract lawsuit accusing Mattson of misappropriating millions of dollars from company accounts. *LeFever v. Mattson,* 24CV03485 (Sonoma Super. Ct., filed Jun. 6, 2024).

The FBI raided Mattson's home in Sonoma in May. The plaintiffs' attorneys said in Monday's complaint that Mattson is believed to be under investigation by the U.S. Department of Justice and the U.S. Attorney's Office for the Northern District of California. According to exhibits attached to Monday's complaint, Oakland criminal defense attorney Randy Sue Pollock has been engaged to represent Mattson in possible criminal proceedings.

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Visa, Mastercard Swipe Fee Cases Set for Trial in NY, Judge Says

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Class Action
A boarded up Target Corp. store in Washington on June 5, 2020.

Photographer: Andrew Harrer/Bloomberg

Swipe fee cases brought against Visa Inc. and Mastercard Inc. by two groups of retailers are ready for trial and should go back to where they were originally filed, a federal judge said.

Judge Margo Brodie of the US District Court for the Eastern District of New York issued an order Monday suggesting the Judicial Panel on Multidistrict Litigation remand the cases, led by Target and 7-Eleven, to the Southern District of New York, where a trial should take place. “Plaintiffs elected to file suit in the Southern District of New York, and they will not be prejudiced by trying their case before a judge in that district,” Brodie said.

- Brodie’s order comes after she formally rejected a $30 billion settlement between Visa, Mastercard, and retailers to cap credit-card swipe fees, after suggesting that a setback in the two-decade-long litigation could be expected
- The Target and 7-Eleven groups of plaintiffs had opted out of the settlement’s damages class and filed their own complaints in other districts, all of which were consolidated in the Eastern District
- Defendants Mastercard and Visa argued that transferring the cases to the Eastern District wouldn’t have promoted the convenience of the parties or witnesses, and that the Southern District was equally convenient

Visa is represented by firms including Arnold & Porter Kaye Scholer LLP. Mastercard is represented by firms including Paul, Weiss, Rifkind, Wharton & Garison, LLP. The retailer plaintiffs are represented by firms including Vorys, Sater, Seymour & Pease LLP and Gibbs & Bruns LLP.
The case is In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig. , E.D.N.Y., No. 13-CV-5745, 7/8/24 .

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Amazon defeats US consumer lawsuit over 'buy box' product listings

reuters.com/legal/transactional/amazon-defeats-us-consumer-lawsuit-over-buy-box-product-listings-2024-07-08

Mike Scarcella

The logo of Amazon is seen at the company logistics center in Lauwin-Planque, northern France. REUTERS/Pascal Rossignol/File Photo Purchase Licensing Rights, opens new tab

July 8 (Reuters) - A U.S. judge on Monday dismissed a proposed class action that accused Amazon.com (AMZN.O), opens new tab of obscuring product listings for lower-priced items with better delivery times, duping millions of consumers and causing them to pay more for purchases.
U.S. District Judge Marsha Pechman in Seattle federal court said in her ruling, opens new tab that the two named buyers who sued Amazon last year had not shown how they were allegedly harmed.

"Plaintiffs do not identify any specific purchase they would have made if not for Amazon's alleged deceptive practices, nor do they identify any lower-priced items that they could have bought from other sellers," Pechman wrote.

The judge gave the consumers 30 days to file an amended lawsuit. She said the claims in the case were not barred by a four-year statute of limitations, rejecting one of Amazon's arguments.

Amazon and an attorney for the plaintiffs did not immediately respond to requests for comment on Monday.

Two California residents filed the lawsuit in February, seeking damages under a Washington state consumer-protection measure that outlaws deceptive trade practices.

The lawsuit focused on Amazon's "buy box," which is the version of a product featured in a "buy now" or "add to cart" box on product pages. Other offers are listed further below from "other sellers on Amazon."

The consumer plaintiffs contend Amazon "uses a biased algorithm to determine which offers shoppers will see, and therefore which sellers they will buy from."

The lawsuit said Amazon steers shoppers to Amazon's own retail offers or to sellers that use the company's "Fulfillment by Amazon" program and pay high fees for services including inventory storage and packing and shipping.

Amazon countered that "there is nothing unfair or deceptive about a retailer deciding which product offerings it believes will be most appealing to its customers, and then letting customers accept or decline those offers based on their own evaluation."

The company faces a number of other lawsuits from consumers and government agencies.

In another pending case in Seattle, the U.S. Federal Trade Commission last year accused Amazon of using deceptive user-interface designs to trick shoppers into automatically renewing paid subscriptions for its Prime service. Amazon has denied the allegations.
The case is Taylor v Amazon.com Inc, U.S. District Court, Western District of Washington, No. 2:24-cv-00169-MJP.

For plaintiff: Steve Berman and Barbara Mahoney of Hagens Berman Sobol Shapiro

For Amazon: John Goldmark of Davis Wright Tremaine and John Schmidtlein of Williams & Connolly

Read more:

Amazon accused of audiobook monopoly in author class action
Amazon fends off US class action over 'guaranteed' delivery window
Amazon denies duping consumers with ‘buy box’ product feature
Amazon defeats consumer antitrust lawsuit over fulfillment centers
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Reporting by Mike Scarcella

BASF's settlement to resolve PFAS liabilities approved

legalnewsline.com/stories/661667897-basf-s-settlement-to-resolve-pfas-liabilities-approved

July 9, 2024

Richard Gergel | wikipedia.org

CHARLESTON, S.C. (Legal Newsline) - BASF Corporation's proposed $316.5 million settlement with public water systems over chemicals known as PFAS has gained preliminary approval.

South Carolina federal judge Richard Gergel gave the agreement thumbs up on July 3. Class counsel are lawyers from firms Douglas & London, Baron & Budd, Napoli Shkolnik and Motley Rice.

They have asked for fees representing 8% from bigger settlements with DuPont and 3M. Their motion for approval of the BASF settlement started with a quote from Desmond Tutu: "Freedom translates into having a supply of clean water."

PFAS are a group dubbed "forever chemicals" because they persist in groundwater and human tissue for years. They are found in firefighting foam and consumer products.

The federal government has set a maximum contaminant level for PFAS, even as groups call the move premature. Much of the research regarding their effect on the human body is disputed.

Gergel is presiding over a multidistrict litigation proceeding designed for claims from water districts and personal injury plaintiffs. Consumer class actions have also sprouted up around the country, with varying levels of success so far.

One case originally sought to represent basically every American, then was pared to every Ohioan. An appeals court tossed that case recently.

Plaintiff lawyers in the MDL claim to have spent more than 430,000 hours pursuing the cases. BASF said considering 3M manufactured 90% of the PFOA in the world, it would be nearly impossible to tell whether its PFOA products were contaminating water districts.

Water sampling was conducted ahead of bellwether trial dates, with plaintiff lawyers claiming "it became readily apparent to BASF that it faced significant risk should either of the cases proceed to trial."

Bigelow Faces Trial Over Claims Its Tea Is Made in the U.S.A.

B **bloomberglaw.com**/product/blaw/bloomberglawnews/litigation/X4DED0C8000000

Litigation
Bill Hall, a co-owner of the Charleston Tea Plantation, displays ground tea leaves for a photograph at the company's processing facility in Wadmalaw Island, South Carolina, on Aug. 10, 2017.

Luke Sharrett/Bloomberg via Getty Images

July 9, 2024, 9:24 AM PDT

Caitlin McLean

Reporter

Tea purveyor RC Bigelow Inc. faces a potential class action trial over claims its products are "manufactured in the USA" after a federal judge found that assertion "is literally false."

Judge Dean Pregerson of the US District Court for the Central District of California on Monday ruled that because it's undisputed that the company's tea is grown and processed abroad, Bigelow can't argue that it is "manufactured" in the U.S., granting partial summary judgment for the plaintiffs on the elements of deception and falsity.

The court denied summary judgment for Bigelow. The Fairfield, Connecticut-based company had contended that the tea leaves were a raw product and that the manufacturing in the U.S. referred to the creation of tea bags in America.

Lead plaintiffs Kimberly Banks and Carol Cantwell alleged they relied on Bigelow's "Manufactured in the USA 100% American Family Owned" and "America's Classic" packaging when buying tea varieties such as Vanilla Chai and Earl Grey. They claim in their July 2020 complaint that because Bigelow uses plants gown on tea plantations and processed in facilities located in China, Sri Lanka, and India, these packaging labels are "literally false."

Pregerson said that while a tea bag is distinct from loose leaf tea, tea leaves "are the key component of the tea bags" and that since the tea is processed abroad it is no longer a raw product prior to import. He pointed to a Bigelow promotional video referring to actions taken over seas as "the steps of tea-making."

The judge also cited a Californian law that makes it illegal to sell merchandise labeled as U.S.-made if parts of the product have been substantially or partially manufactured outside the U.S.

The tea leaves located in the tea bags are “the very essence of the tea bag,” and why consumers purchase teas bags in the first place, Pregerson said. The tea leaves are “conveniently packaged in a bag for steeping,” he added.

According to the suit, the 127 acre area Charleston Tea Plantation in South Carolina is the only American site at which tea is grown. Bigelow owns the plantation, but does not make products with the tea grown there, the suit says.

Aubry Wand of Culver City, Calif., and Schneider Wallace Cottrell Konecky LLP represented the plaintiffs. Gordon Rees Scully Mansukhani LLP represented Bigelow.

The case is Banks v. R.C. Bigelow Inc. , C.D. Cal., 2:20-cv-6208, 7/8/24

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Lawsuit accuses Hyundai of faking US sales data for electric cars

reuters.com/legal/litigation/lawsuit-accuses-hyundai-faking-us-sales-data-electric-cars-2024-07-08

Mike Scarcella

The case was filed in a Chicago federal court late last week by Napleton Aurora Imports and affiliated franchises.

Hyundai accused of faking EV sales numbers in US

July 8 (Reuters) - A group of Hyundai Motor dealers has sued the South Korean automobile giant in Chicago federal court for allegedly inflating sales numbers for electric vehicles while punishing franchises that would not participate in the ruse.

The lawsuit, opens new tab, filed on Friday by Napleton Aurora Imports in Illinois and affiliated franchises, said Hyundai Motor America Corp (HMA) pressured dealers to misuse inventory codes meant for "loaner" vehicles to exaggerate their sales figures.

Dealers that agreed to improperly code the vehicles were rewarded by Hyundai with wholesale and retail price discounts and other incentives, according to the lawsuit.

Hyundai said in a statement on Monday that it does not condone falsifying sales data and had opened an investigation after it was alerted to the allegations.

The company also said it has been pursuing litigation in South Florida to terminate two Napleton-affiliated franchises there tied to a criminal sexual battery allegation.

An attorney for the Napleton plaintiffs declined to comment on Monday.

The complaint in Chicago accused Hyundai of fraud and violating the Robinson-Patman Act, a federal antitrust law that bars sellers from discriminating on the basis of price.

Dealers that “played ball,” according to the lawsuit, would receive extra inventory of faster selling Hyundai models. The lawsuit said the scheme put desirable inventory in the hands of fewer dealers, depriving customers of choice, while helping Hyundai tout rosy sales figures to the public and investors.

It said Hyundai has emphasized its sales-volume growth for electric vehicles, leading the public to believe demand was market driven.

“Instead of organic growth fueled by desirable vehicles and consumer demand, HMA created a multitiered scheme to cause its dealers to report false sales,” the complaint said.

Item 1 of 2 An employee works at a subsidiary of Astana Motors company - Hyundai Trans Kazakhstan plant producing Hyundai passenger cars in Almaty, Kazakhstan June 24, 2024. REUTERS/Pavel Mikheyev/File Photo

[1/2]An employee works at a subsidiary of Astana Motors company - Hyundai Trans Kazakhstan plant producing Hyundai passenger cars in Almaty, Kazakhstan June 24, 2024. REUTERS/Pavel Mikheyev/File Photo Purchase Licensing Rights, opens new tab
The lawsuit cited statements on a phone call from a Hyundai district sales manager who said "we gotta hit a number for the press and for the Koreans."

The dealers said they have been denied benefits from Hyundai and asked the court to award an unspecified amount of damages to cover lost sales, revenue and profit.

Napleton reached a settlement with Chrysler in 2019 after it sued the automaker in 2016 for allegedly scheming to inflate sales figures. Chrysler denied the claims, and the settlement terms were confidential.

Chrysler in a related action agreed in 2019 to pay $40 million to the U.S. Securities and Exchange Commission to resolve claims it misled investors over allegedly inflated monthly sales figures.

The case is Napleton Aurora Imports Inc et al v. Hyundai Motor America Corp, U.S. District Court for the Northern District of Illinois, No. 1:24-cv-05668.

For Napleton: Russell McRory and Mir Ali of ArentFox Schiff

For Hyundai: No appearance yet

Read more:

Rough road ahead for US EV makers despite upbeat quarterly sales
US new-vehicle sales growth slows after CDK cyberattack
Hyundai Motor shares hit record high as investors bet on India IPO
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Reporting by Mike Scarcella

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Another US law firm touts fully remote option, bucking post-pandemic trend

reuters.com/legal/legalindustry/another-us-law-firm-touts-fully-remote-option-bucking-post-pandemic-trend-2024-07-09

Sara Merken

Empty cubicles are seen as the first phase of FMC Corporation employees return to work in the office in Philadelphia, Pennsylvania, U.S., June 14, 2021. REUTERS/Hannah Beier Purchase Licensing Rights, opens new tab

July 9 (Reuters) - Not all large U.S. law firms have said good riddance to remote lawyering since the pandemic.

Phoenix-founded Fennemore Craig said on Tuesday that is launching a new formal program to hire lawyers in locations where it does not have offices, joining a small number of traditionally brick-and-mortar firms that now allow full-time alternatives to in-person work.

The initiative will give the 19-office, 285-lawyer firm an edge in recruiting and retaining talent by offering flexibility, its leaders said.

"We think other firms are making a huge mistake by requiring everyone, regardless of their circumstances, to come in the office," said Fennemore CEO and president James Goodnow. "Frankly, we want to take advantage of that."

Many law firms retained some work-from-home flexibility since the pandemic, when the industry briefly abandoned offices en masse. Most have moved away from allowing fully remote work, arguing that it can erode attorney mentoring and client service.

Fifty six percent of respondents to a recent survey said their firm requires lawyers to come in at least three days per week, according to an April report by the Thomson Reuters Institute, which shares the same parent company as Reuters. The data included 350 responses from 105 U.S. law firms.

Fennemore is not the only large, traditional law firm to offer a fully remote option, however. Midwest-founded national firm Husch Blackwell launched a virtual "office" in July 2020 that lets participants "work from the location that makes the most sense for the individual," according to the 1,000-lawyer firm's website.

The program has grown from around 50 lawyers and staff when it launched to more than 700 people in total now, including nearly 230 lawyers, a Husch Blackwell spokesperson said.

Quinn Emanuel Urquhart & Sullivan, a 1,000-lawyer litigation firm, adopted a policy in December 2021 that allows its U.S. lawyers to "work from anywhere," with access to an "office base," indefinitely.

Andrew Rossman, co-managing partner of the firm's New York office, said in a statement the Quinn Emanuel program has been successful and currently has "well in excess" of 50 lawyers.

Fennemore's new program, dubbed Fennemore Forward, already has 53 remote employees, including 18 lawyers and 35 legal professionals, including people who worked at the firm but have moved to cities without physical offices, Goodnow said.

Goodnow said there will be no difference in compensation based solely on lawyers' remote or in-person status.

The program's director, Chris Wilson, said it will primarily recruit senior attorneys at the partner level who have books of business "sufficient to sort of support themselves". He anticipates between 50 and 100 lawyers working remotely as part of the program after a few years.

Wilson said the initiative stands out by providing a strong support system for people who need or want to work remotely. Goodnow said Fennemore's infrastructure and in-person network also differentiates its program from fully virtual, or so-called "distributed" firms. Remote lawyers have access to Fennemore's physical offices and events, he said.

Early pandemic-era remote work was a boon to virtual firms, where all or nearly all lawyers primarily practice remotely. Wilson, a corporate and finance attorney, joined Fennemore a year ago to spearhead its remote program after roles at two virtual or hybrid firms, Taylor English Duma and FisherBroyles.

Reporting by Sara Merken

Bloomberg Law News 2024-07-09T14:22:57966755893-04:00

Matt Levine’s Money Stuff: Celsius Wants Some Money Back

By Matt Levine 2024-07-09T14:07:53521-04:00

Celsius

The way a Ponzi scheme works, for a while, is that (1) you take people’s money, (2) you tell them that they are earning a nice return on their money and (3) if they want to *withdraw* their money, with those nice returns, you just give them someone else’s money. With enough investors, you can keep this going for a while: There’s plenty of money from new investors to pay off anyone who wants to withdraw, and because everyone who wants to withdraw gets their money back, *no one suspects anything*, so not too many people withdraw and the system works. Eventually it doesn’t.

One result of this is that some victims of Ponzi schemes do quite well for themselves: They invest in the Ponzi, they earn a nice return, and they withdraw their money before it all collapses. Most of the time, these people are not, like, in on the Ponzi; they just had lucky timing.

The problem comes later. The Ponzi collapses, and some administrator or bankruptcy court is in charge of dividing up the money and paying everyone fairly. Lots of people kept their money in the Ponzi until the end, and will get back only pennies on the dollar. Meanwhile some people withdrew their money a week before the collapse and got back 100 cents on the dollar, or more, what with the nice Ponzi returns. Seems unfair.

And in fact US bankruptcy law has mechanisms for dealing with this: Section 547(b) of the bankruptcy code allows a bankruptcy estate to claw back some payments to creditors made within 90 days before bankruptcy, if the company was insolvent and those payments gave the creditors more than they would get in the bankruptcy. So if you withdrew 110 cents on the dollar a day before bankruptcy, and everyone else got back 70 cents after bankruptcy, you have to cough up 40 cents to share with everyone else. And this is true of Ponzi schemes too. Lots of Bernie Madoff’s investors did great, and then had to pay back their winnings to the other, less fortunate investors.

And so in crypto:

The administration overseeing now-defunct Celsius's bankruptcy filed legal action on July 1 against users who withdrew their funds in the 90 days prior to the firm's demise.

According to Business Wire, the Celsius Litigation Administrator filed complaints in the Southern District of New York against holders with more than $100,000 of withdrawal preference exposure (WPE). These are investors who managed to withdraw funds in the 90 days prior to when the firm began its bankruptcy proceedings–which took place between April 14, 2022 and July 13, 2022.

Over 1,500 account holders now face the potential of returning up to $100 million.

"Account holders who withdrew funds in the days leading up to Celsius' bankruptcy have unfairly benefitted at the expense of other account holders since fulfillment of their withdrawal requests resulted in Celsius being unable to equitably fulfill other withdrawals," said Mohsin Meghji, The Celsius Litigation Administrator.

Here is the press release, here is a legal filing against one customer seeking a return of money, and here is an X post from a customer complaining about this treatment. That post includes this fascinating detail: "They have more than doubled the amount of money they are suing for because they changed the ask to current pricing of btc/eth vs originally asking for 2022 pricing."

A lot of crypto firms went bankrupt in the crypto winter of 2022, when crypto prices were low. Now crypto prices are higher. The standard approach in US crypto bankruptcies has been that crypto claims — what the bankrupt firm *owes* — are converted into dollars at the time of bankruptcy. If you had one Bitcoin on a crypto platform that blew up in November 2022, your claim in bankruptcy is for about $20,000 (the value of a Bitcoin at the time), and if you get back 20 or 70 or 110 cents on the dollar, that means $4,000 or $14,000 or $22,000. But now a Bitcoin is worth something like $55,000, so even getting back 110 cents on the dollar on your claim ($22,000) isn't very good. Notably, the FTX bankruptcy will pay something like 118 cents on the dollar on all claims, which sounds good until you remember that crypto prices have tripled since FTX went bankrupt.

But it might not be so clear how avoidance claims — what the bankrupt firm *is owed* by customers who got out early — are valued. Maybe, if you withdrew a Bitcoin from Celsius just before it went bankrupt, you owe it back one Bitcoin? Or $55,000? This could create a particularly weird result in which the customers who left their Bitcoins at failing crypto platforms get back $20,000 per Bitcoin, and customers who took them out have to pay back $55,000 per Bitcoin. You can't win either way!

Bobby Jain launch

A stylized model of hedge fund management is that in the olden days, hedge funds started out as basically one clever investor pursuing one strategy. If it worked out, and if the manager had big aspirations, she might then hire someone else to run a different strategy within the same firm. If it worked out repeatedly over time, eventually the manager would supervise 100 other managers running 100 strategies, and her job would be not "clever investor" but rather "builder of institutions, developer of talent and allocator of capital among strategies."

And then the life cycle would repeat: One of the 100 managers working at the big multi-manager multi-strategy "platform" would be so successful running his strategy that he'd leave to start his own hedge fund, one investor pursuing one strategy. And if it worked, etc.

But this platform model has been so successful — as a way to offer uncorrelated alpha to clients, and also as a way to extract large fees from them — and has such economies of scale that it arguably doesn't make sense for the life cycle to repeat anymore. That is, it's not obvious that being a clever investor is the best preparation for starting a new hedge fund, or that a new single-manager hedge fund is the best way to start. Maybe what you want is:

- 1. Be a builder of institutions and allocator of capital at a big platform firm.
- 2. Leave to start your own platform firm, all at once, starting out with scale and lots of different managers.

It does seem harder to start this way — you have to hire a lot of people before getting investors, and get investors before hiring a lot of people, and build infrastructure before making any money — but maybe it's a requirement. Bloomberg's Hema Parmar reports on Bobby Jain's hedge fund launch:

His vision ... was ambitious, even unprecedented. He would hatch a giant, fully formed hedge fund that would trade a half-dozen strategies and employ hundreds of people globally from day one. It required quickly finding gifted traders amid an expensive talent war, building complex infrastructure over months and raising enough investor money to pay for it.

Failing to achieve even one of those lofty targets could tank the whole thing before it ever got started.

Even Jain has likened the maneuver to landing three airplanes at once.

Many investors sat on the sidelines, skeptical of the deviation from the typical hedge fund playbook of starting small and building from there. While Jain initially set out to hit a record of as much as $10 billion, he later halved that goal.

But Jain, a onetime acolyte of Millennium Management founder Izzy Englander, won votes of confidence from key investors including the Middle Eastern sovereign wealth fund, which ultimately handed him about $1 billion. He raised $5.3 billion in total, the biggest launch since ExodusPoint Capital Management's record $8 billion debut in 2018. …

Clients who did back the firm say their investment is ultimately a bet on Jain, who helped Millennium push into new strategies and develop its central risk book. Now, he must prove he can deliver Millennium-like results without the resources of one of the world's largest hedge funds. …

Jain Global is offering a hedge-fund smorgasbord with more than 40 portfolio managers: It will delve into macroeconomic themes and arbitrage strategies and trade not only stocks and credit instruments, but also physical commodities. It will also explore private credit, such as synthetic risk transfers that take exposure off banks' balance sheets.

The thesis is that the old model — start with one clever investor doing one thing and then build from there — doesn't work anymore:

Jain — who, along with other employees, is kicking in $200 million — has told his investors that starting off big is the most efficient route to building a multistrat.

If a hedge fund bolts on strategies over time, it can duplicate systems, manpower and expenses, his thinking goes. Jain has concluded that his firm can avoid those inefficiencies by setting up a central operating system that's already prepared for all of its strategies. He's hoping his fully built-out firm will be able to add assets and talent in the future without incurring substantial operating costs, those familiar with Jain's thinking said.

"We are building a single, cross-asset, modern operating platform — a rare feat in the industry," Jain wrote in an investor document seen by Bloomberg. "While this is more intensive at launch, it avoids the inherent challenges, complexity and cost apparent in a sequential build."

Also I suppose that what you are pitching to potential clients is not so much "I am a clever investor" but rather "I am a successful builder of hedge fund institutions"; the pitch is not so much about the investing process as it is about the infrastructure plans.

Bill Ackman launch

It is striking that, at $5.3 billion, Jain's is the biggest hedge-fund launch since ExodusPoint in 2018, and both Jain and ExodusPoint launched as self-consciously large multi-manager platform funds. Meanwhile Bill Ackman runs the most self-consciously opposite sort of hedge fund — one manager, small investment team, mostly fundamental equities plus some macro hedging, low turnover — and is out launching possibly a $25 billion fund?

Pershing Square has started a roadshow for the initial public offering of a US closed-end vehicle, which could be the largest fund of its kind in the US. ...

Pershing Square USA has been planning to raise about $25 billion from the offering, Bloomberg News has reported. It will likely raise money mostly from institutional investors with some retail interest as well, a person with knowledge of the matter said last week.

It has set the IPO price at $50 per share, will apply to list on the New York Stock Exchange and intends to trade under the symbol PSUS, the Tuesday filing confirmed.

Here is the prospectus for PSUS, which "seeks to achieve its investment objective by acquiring and holding large minority (and occasionally controlling) positions in 12 to 15 large-capitalization, investment grade, free-cash-flow-generative, North American, durable growth companies that it seeks to acquire at discounts to its estimate of their intrinsic value, and by hedging macroeconomic and other risks."

One possible explanation here is:

- There is only so much pure market-neutral alpha — pure investing skill — in the world, and the big multi-strategy funds are fighting for share of a finite pie. (See my Bloomberg Opinion colleague Nir Kaissar's column last week.)

- There are absolutely tons of large-cap US equities: The market capitalization of the S&P 500 is more than $46 trillion.
- A fund that is "large-cap equities with a sprinkle of skill" can be much bigger than a fund that is "only skill, we have hedged out everything else."

We have talked about PSUS a couple of times before. If you invest in this, what are you buying? Some possible ways of thinking about it are:

- 1. A successful hedge fund manager with a long track record, now at a discounted price of (1) no performance fee, (2) no management fee for the first year and (3) a 2% management fee after that.
- 2. A low-turnover portfolio of like a dozen stocks.
- 3. A low-turnover portfolio of like a dozen stocks, but you're betting it will trade at a premium.

If your view is "I put some money in hedge funds, Bill Ackman is a good hedge fund manager, and this is pretty cheap" then I suppose this makes sense. If you look at Ackman's portfolio and think "well I could do this at home without any fees at all," then you might just do that. Or you could buy shares in Pershing Square Holdings, Ackman's European listed closed-end fund, which will presumably hold a similar portfolio and which trades at about a 21% discount to net asset value: Assuming that PSH and PSUS are roughly the same fund, you can get PSH at 79 cents on the dollar, so why pay 100 cents for PSUS? (Part of the answer is that PSH is not available to all US brokerage customers, and gets worse US tax treatment; also the fees are higher.)

But another possibility is that you might buy PSUS at 100 cents on the dollar because you think it might trade to 110:

Investors know Ackman as a manager with a proven track record, and the fund would give retail investors access, said David Cohne, a Bloomberg Intelligence analyst.

"There's potential for him to either trade at net asset value, or possibly even trade at a premium, which in Europe, obviously that wasn't happening," Cohne said.

Ackman is a celebrity hedge fund manager who tweets a lot, and now US retail investors will be able to invest with him. PSUS is in part a bet that the demand for that will outstrip the supply, *even if the supply is $25 billion*. In particular, if you're an institutional investor, the bet is that an investment in PSUS is (1) a bet on a successful investor (2) with low fees and (3) with some upside from retail demand.

HBS Ponzi

Man, the Greenlight Capital alumni events must be a lot of fun. You’ve got the Head of Macro guy picketing outside or whatever, and then there’s this guy:

The idea sounded solid on the surface. Vlad Artamonov told prospective investors, many of them his former classmates from Harvard Business School, that he’d discovered a hidden way to learn which stocks Warren Buffett was buying early, an edge that would make him a lot of money. It involved, he said, combing through esoteric state financial disclosures and then trading on the information — essentially, a way to obtain insider tips legally. “Have an insane idea,” he told one investor in the fall of 2022. But it seemed plausible coming from Artamonov, who, in addition to his Ivy League credentials, had spent more than five years at Greenlight Capital, the highly regarded activist hedge fund run by David Einhorn, a self-described admirer of Buffett. He told investors he aimed for returns of as much as 1,000 percent and wanted to make “hundreds of millions of dollars” on the play. “It is really a ridiculous information arbitrage,” he told another investor that fall. “Basically getting tomorrow’s newspaper today. Literally having a private time machine.”

We’ve talked about Artamonov before. He did not have a time machine; he had a Harvard MBA and a Ponzi scheme. The trick is that he pitched the Ponzi scheme to other Harvard MBAs, who thought “well that guy can’t be running a Ponzi scheme, he’s got a Harvard MBA.” In some ways, a genius move, though arguably *most* Harvard MBAs find career paths that are both more lucrative and more legal.

That paragraph I quoted is from Jen Wieczner’s New York Magazine story about Artamonov, which adds the crucial information that he didn’t *just* have a Harvard MBA; he also worked at Greenlight, so it was extra-weird that he’d get into the Ponzi business:

As the months passed, the friend reached out to someone he knew who had also invested with Artamonov and voiced what seemed like a crazy, irrational fear. “There’s no way Vlad would be running a Ponzi scheme, right?” he asked. The two dismissed it from their minds. “Why would he risk his reputation? It’s a small amount of money, it’s not rational — why would he put his career on the line?” they reasoned. “I think you give a friend the benefit of the doubt.”

I am not sure that there’s a satisfying answer to that question, but the article does hint that Artamonov was successful early — HBS, Greenlight, expensive Hamptons summers — but it didn’t last: He left Greenlight to start his own fund, it “was not a huge success,” and he was downwardly mobile and nostalgic for his time at Greenlight. If you have expensive tastes, no money, and a nostalgia for the time when you were young and promising and just starting out in a fancy profession, I suppose that is how you end up starting a Harvard Business School Ponzi scheme.

Cryonics law

See, if you go to a *regular* trusts and estates lawyer, she will ask you questions like “if your spouse and children die before you, whom do you want to inherit your estate,” but if you go to a *science fiction* trusts and estates lawyer, she will ask you questions like “if your frozen head cannot be attached to a fresh body and reanimated in 200 years, but your consciousness can be cloned in a computer simulation, would you like your estate to go to the cloned consciousness or stay with the frozen head?” Meanwhile I suppose if you go to a regular financial planner, he will ask you questions like “how much equity risk are you comfortable taking between now and retirement,” while if you go to a science fiction financial planner, he will ask you questions like “where are you most comfortable investing for the next 200 years, given that you will not be able to change your asset allocation decisions during that time, because you’ll be dead?”

When you are a kid, science fiction is fun because it imagines amazing futuristic technologies. And then you grow up and you realize that what’s *really* fun are the legal and financial technologies that are called into being by those physical technologies: Sure sure sure reviving a frozen head is great, but how does the frozen head get a credit card? Bloomberg’s Erin Schilling reports:

Estate attorneys are creating trusts aimed at extending wealth until people who get cryonically preserved can be revived, even if it’s hundreds of years later. These revival trusts are an emerging area of law built on a tower of assumptions. Still, they’re being taken seriously enough to attract true believers and merit discussion at industry conferences.

“The idea of cryopreservation has gone from crackpot to merely eccentric,” said Mark House, an estate lawyer who works with Scottsdale, Ariz.-based Alcor Life Extension Foundation, the world’s largest cryonics facility with 1,400 members and about 230 people already frozen. “Now that it’s eccentric, it’s kind of in vogue to be interested in it.”

He and others are trying to answer questions that at times seem more like prompts in a philosophy class.

Can money live indefinitely?

Are you dead if your body is cryonically preserved?

Are you considered revived if you have only your brain?

And if you’re revived, are you the same person?

So many good legal questions — “House considers the revived person to be different in the eyes of the law, in part because a person can’t be the beneficiary of their own trusts” — but also great financial ones.

Here’s one: Should you buy Bitcoin for your long sleep? The argument for Bitcoin is that you can *hold* it, indefinitely, without relying on anyone else: If you put 10 Bitcoin in a wallet and only you know the private key, and then you die and get frozen and come back in 200 years, no one will have taken your Bitcoin, legal rules about inheritance and perpetual trusts don’t matter, and you don’t need some succession plan for the trustees and financial advisers who will take care of your assets. You just have to make sure you remember your private key as you’re dying. Legal rules can change, human institutions can change, but your Bitcoin is immutable.

The argument against Bitcoin is, of course, what if people stop valuing Bitcoin? Putting your money in Bitcoin is a hedge against change in *other* human institutions, but it puts a lot of eggs in the basket of *one* human institution, “treating Bitcoin as money.” It’s a bit weird to bet that that’s more permanent than anything else.

More generally, what is money anyway? “It may be difficult to know what role money will play in a post-[artificial general intelligence] world,” says OpenAI to its investors, and what if OpenAI gets to artificial general intelligence before anyone gets around to unfreezing the heads? You might be leaving your future self all the wrong stuff.

Things happen

Family Offices of the Ultra-Rich Shed Privacy With Activist Bets. New Hollywood Mogul David Ellison Tackles Daunting To-Do List After Paramount Deal. Mutual Funds See Win in Fight to Blunt SEC ' Swing Pricing' Plan. Property Fraud Allegations Snowball as Commercial Real-Estate Values Fall. At SpaceX, Elon Musk's Own Brand of Cancel Culture Is Thriving. Tesla and Musk antagonists face off over multibillion-dollar lawyer fee. Growth stalls at Elon Musk's X. Idaho man throws chopsticks at balloons for his 180th world record.

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To contact the editor responsible for this story:
Wendy Pollack at wpollack@bloomberg.net

- 1. The legal complaint seems to support this, saying in a footnote: "To provide a sense of the dollar value for the preference actions and potential new value calculations (with the exception of CEL token, where the Plan (defined below) value was used to calculate value), the Litigation Administrator has provided the market value of the various assets as of June 14, 2024, in USD. In doing so, Plaintiff does not waive, and expressly reserves, any and all arguments with respect to the proper valuation date of the Avoidable Transfers and/or the form of recovery on any judgments."
- 2. FTX did not actually pursue many customers for avoidable transfers, presumably because it found a satisfactory amount of money without doing so.
- 3. You do, of course, need some succession plan for the trustees who will keep your head frozen.
- 4. Also, like, what if in those 200 years developments of quantum computing actually make it easy for someone else to take your Bitcoins?

https://www.wsj.com/real-estate/property-fraud-allegations-snowball-as-commercial-real-estate-values-fall-492d964c

Property Fraud Allegations Snowball as Commercial Real-Estate Values Fall

By Konrad Putzier Follow

Updated July 8, 2024 3:24 pm ET

U.S. prosecutors are cracking down on commercial mortgage fraud, a growing push that is sending shudders through the $4.7 trillion industry by raising questions about the numbers underpinning major property loans.

Regulators and federal prosecutors say that property loans based on doctored building financials and valuations have been rising. This type of fraud became more widespread between the mid-2010s and 2021, federal investigators and real-estate brokers say, when commercial property prices surged to new highs and landlords had much to gain from such maneuvers.

Now, the drop in property values caused by higher interest rates and a rise in defaults are exposing more of these schemes, dealing another blow to a commercial real-estate market suffering through its worst stretch since the 2008-09 financial crisis.

"It's a general trend throughout history that fraud occurs during boom times and is revealed during bust times," said John Griffin, a professor of finance at the University of Texas' McCombs School of Business.

In most cases, real-estate fraud is made possible because lenders take a hands-off approach to assessing a building's value. As long as the numbers look in line with those of similar properties, lenders usually trust that they are accurate, brokers say. Auditing books is expensive and time consuming, and lenders competing for deals may be reluctant to antagonize landlords with onerous due diligence.

Federal prosecutors are ramping up their efforts to root out fraud, often working together with investigators at the Federal Housing Finance Agency's Office of Inspector General, according to court records and people familiar with the matter.

While data on the number of open investigations on real-estate fraud aren't publicly available, a number of plea deals have been reached in recent months.

Since last fall, at least five different landlords of properties, mostly apartment buildings, in cities including Cincinnati, Hartford, Conn., and Little Rock, Ark., have pleaded guilty to federal fraud charges. Some allegedly doctored building income statements, others allegedly faked property sales at inflated prices, all to get bigger loans.

Fannie and Freddie taking action

Meanwhile, government-backed mortgage enterprises Fannie Mae and Freddie Mac are cracking down on questionable practices in their rental-apartment lending business.

Fannie Mae and Freddie Mac effectively blacklisted mortgage brokerage Meridian Capital Group amid allegations that one of its brokers doctored financial statements to land bigger loans, and have since effectively blacklisted brokers at other firms.

JP Morgan Chase headquarters in Manhattan. The bank financed a real-estate deal with inflated numbers. PHOTO: JANICE CHUNG FOR WSJ

Freddie Mac this year changed its underwriting policies to combat fraud. The agency now requires borrowers to submit rent receipts. It also told lenders to inspect more apartments to ensure they are actually occupied. Fannie Mae has been going through loans to weed out those based on sketchy numbers, according to people familiar with the matter.

In a May earnings call, Ivan Kaufman, CEO of commercial mortgage lender Arbor Realty Trust, listed fraud as one of the unanticipated issues that have "created additional stress" in the market.

“I think there was a lot of elevated fraud in the industry through the brokerage industry,” he said.

At the heart of the problem is the way lenders underwrite commercial mortgages. Borrowers typically submit financial statements called T-12 that show building income and expenses for the past year. Lenders use these documents to estimate the building’s value and calculate how much they are willing to lend. But in most cases they don’t audit these statements to verify that the sums listed in the spreadsheets actually flowed in and out of the landlord’s accounts.

A Michigan landlord pleads guilty

A rental apartment complex in Tallahassee, Fla., financed by JP Morgan Chase, made around $296,000 in profit before mortgage payments in 2018, according to Michigan-based landlord ROCO Real Estate’s internal numbers, federal prosecutors said.

But those weren’t the numbers lenders saw. ROCO told Chetrit Group, the New York firm that was in talks to buy the property, that profit was much higher—$644,000.

ROCO arrived at the higher numbers in part by including rent that wasn’t actually collected and by leaving out concessions such as free-rent periods, an FHFA special agent testified in court.

Chetrit bought the building along with dozens of other properties across the U.S. from ROCO in 2019. JP Morgan Chase funded the deal with a $481 million loan, which it repackaged into bonds and sold to investors. An appraiser hired by the bank used ROCO’s inflated numbers to value the Tallahassee property at $5.78 million. JP Morgan Chase declined to comment.

The mortgage on the Tallahassee property went into default in late 2022, according to data from the company managing the loan.

ROCO’s Tyler Ross last year pleaded guilty to falsifying financial statements at a number of properties. His lawyer told the Journal that while the T-12 statements Ross shared with Chetrit were inaccurate, he supplied the buyer with additional data that showed the building’s true financial state.

In a similar case, a judge in January sentenced New York property manager Jacob Deutsch to more than five years in prison for defrauding lenders in connection with 24 multifamily mortgages in Hartford, Conn. Deutsch and his co-conspirator Aron Deutsch (who was sentenced to probation) overstated the number of renters in their buildings and inflated rental income, the Justice Department said.

Cases of landlords or brokers outright lying to lenders are still rare, brokers say. It's more common for landlords to make changes to T-12 statements, for example, by leaving out one-time expenses such as renovations, and disclose them as footnotes. These changes are often legitimate and lenders tend to accept them, brokers say.

But Griffin, the finance professor, worries that these alterations have got out of hand and that many loans are based on inflated numbers.

In a 2023 paper published in the Journal of Finance, Griffin and co-author Alex Priest studied more than 39,000 commercial mortgages repackaged into bonds. They found that in nearly one-third of these loans, underwritten building profits exceeded actual building profits by at least 5%.

Landlords have an incentive to come up with inflated building profits so that they can land bigger loans. But lenders also often have an incentive to accept these inflated numbers, especially if they plan to repackage the loan and sell it off to investors, Griffin said. That is because bigger loans mean bigger fees.

"This space is littered with conflicts of interest," Griffin said.

Write to Konrad Putzier at konrad.putzier@wsj.com

Appeared in the July 9, 2024, print edition as 'Property-Fraud Cases Snowball as Values Fall'.

Boeing in talks with US Defense Department on impact of guilty plea, source says

reuters.com/business/aerospace-defense/boeing-talks-with-us-defense-department-impact-guilty-plea-source-2024-07-08

David Shepardson, Tim Hepher

- Boeing's planned guilty plea could impact its ability to secure government contracts
- Boeing to pay $243.6 million fine, invest $455 million in safety and compliance
- Families of crash victims oppose plea deal, call for public trial

WASHINGTON/PARIS, July 8 (Reuters) - Boeing is in talks with the U.S. Defense Department over how the planemaker's planned guilty plea could affect its extensive government contracts, a person briefed on the matter said.

On Sunday, the Justice Department said in a court filing that Boeing had agreed to plead guilty to a criminal fraud conspiracy charge to resolve an investigation linked to two 737 MAX fatal crashes in 2018 and 2019 that killed 346 people.

A guilty plea potentially threatens the company's ability to secure lucrative government contracts with the likes of the U.S Defense Department and NASA, although government agencies can waive any restrictions. Final details of the deal are expected to be filed by July 19.
Pentagon spokesperson Air Force Major General Patrick Ryder told reporters the agency would make an assessment to decide the impact of the guilty plea on Boeing's contracts. He did not address whether the agency was in talks with the planemaker.

"DOD will assess the company's remediation plans and agreement with the Department of Justice to make a determination as to what steps are necessary and appropriate to protect the federal government," Ryder said, adding any actions would be under U.S. government contracting regulations.

Boeing and the Justice Department had no immediate comment. NASA declined to comment.

Boeing shares pared early gains and closed up 0.6%.

Boeing's Defense and Space unit is vital to its business, with $7 billion in first-quarter sales, up 6% from a year ago.

In its annual report, Boeing said U.S. government contracts represented 37% of last year's revenue including foreign military sales. A government report said Boeing had $14.8 billion in Pentagon contracts in 2022.

The financial costs tied to the plea appear "manageable relative to the company’s scale and overall obligations," said Ben Tsocanos, airlines director at S&P Global Ratings.

"We expect that Boeing will likely continue to be a key supplier of defense and space products following the guilty plea," he added.

The deal is also likely to be scrutinized outside the United States where Boeing is a key player on global markets, defense industry experts said.

The Canadian government said it is "awaiting a decision on these legal proceedings and will assess implications once confirmed" and said the planned acquisition of the Poseidon P-8A is proceeding.

All this comes at a time when geopolitical tensions are rising, pushing up defense spending.

Boeing 737 MAX aircraft are assembled at the company’s plant in Renton, Washington, U.S. June 25, 2024. Jennifer Buchanan/Pool via REUTERS/File Photo Purchase Licensing Rights, opens new tab

On paper, Boeing faces possible restrictions on future exports to a swathe of international markets, though whether it is actually excluded could depend on discretion allowed to local agencies and the realities of the defense market, they added.

FOREIGN SALES

For example, Britain, which operates Boeing's P-8A maritime patrol plane, and the European Union both have rules barring contractors with definitive criminal convictions from bidding for public contracts across many sectors for certain periods.

"That is the letter of the law," said Keith Hayward, a fellow of the UK's Royal Aeronautical Society whose published research include works on localization in the defense industry.

"The worst case analysis is that they would simply be barred from bidding, but this is a highly political as much as a legally defined business," Hayward said.

"It depends how much the customer wants the product and whether Boeing control a particular product line - P-8 is a good example - where there aren't many alternatives."

As part of the plea deal, Boeing will pay a criminal fine of $243.6 million, doubling an earlier agreement.

Boeing has also agreed to invest at least $455 million over three years to strengthen safety and compliance programs and to have the Justice Department appoint an independent monitor to oversee compliance for three years.

On Monday, the Justice Department opposed a bid by the families of those killed to force the government to immediately appoint a monitor that would oversee Boeing for five years.

The DOJ said it generally takes "a number of months" to identify and vet candidates.

Under Sunday's deal, Boeing is set to plead guilty to making knowingly false representations to the FAA about having expanded a key software feature used on the MAX to operate at low speeds that was tied to both fatal crashes.

Family members intend to appear at a future hearing to object to the plea deal. Paul Cassell, an attorney for the families, described the proposed deal as the result of "crafty lawyering between Boeing and DOJ" and called for a public trial.

In 2023, U.S. District Judge Reed O'Connor, who will decide whether to accept the plea, leveled harsh criticism at Boeing, citing what he called "egregious criminal conduct". But he said he was limited in what actions he could take.

U.S. Senator Tammy Duckworth said on Monday that despite the expected guilty plea, Congress "must not let up on its own oversight of both Boeing and the FAA, and that is something I plan to continue to pursue."

Boeing’s bonds were trading higher Monday. Their credit spreads, or premium over risk-free bonds, were trading slightly tighter than their levels last week, according to data from BondCliq which tracks secondary trading of corporate bonds.

Reporting by David Shepardson in Washington; additional reporting by Allison Lampert in Montreal, Idrees Ali in Washington and Shankar Ramakrishnan in New York; Editing by Deepa Babington and Matthew Lewis

Pensions industry

UK pension plans overpay £1.5bn in fees to fund managers

Analysis reveals some schemes pay up to 14 times more for the same product than rivals

The fees paid by pension funds are important as they can affect the eventual payouts to savers in retirement © Chris Ratcliffe/Bloomberg

Josephine Cumbo and **Emma Dunkley** 7 HOURS AGO

UK pension plans are paying £1.5bn a year more in fees to fund managers than they need to, according to new analysis that increases the pressure on trustees and consultants to get better deals for scheme members.

Analysis conducted by data analytics company ClearGlass and shared with the Financial Times reveals an "extreme" range of charges by asset managers to defined benefit pension plans. Some plans are paying up to 14 times more for the same fund product than rivals.

"Some clients are being treated bloody unfairly," said Chris Sier, chief executive of ClearGlass. "Asset managers appear to price in an extreme range, and offer different clients vastly different prices for the exactly the same thing.

"The result is some clients are effectively subsidising the prices offered to others."

ClearGlass examined pooled fund strategies investing in listed assets, which account for around 40 per cent of defined benefit pension funds' allocations. A defined benefit plan promises guaranteed pension payments for life, based on salary and length of service, with the sponsoring employer on the hook for any funding shortfall.

The research looked at the actual prices paid by 688 private and local government pension funds representing £550bn in assets, or around half the market, across 629 managers and 38,000 fund strategies.

The fees paid by pension funds — which are typically brokered by investment consultants — are important as they can affect the eventual payouts to savers in retirement. However, the precise charges paid by thousands of schemes to fund managers are not typically revealed, meaning that plans can unknowingly end up paying much more for a fund product than they need to.

Last year, separate analysis by ClearGlass found that pension funds — including both defined benefit and defined contribution funds — could save around £2bn in fees paid to asset managers across a wide range of listed and private markets.

Among the key findings of the new analysis, one pension fund was found to be paying six times as much for a fund tracking a fixed income government bond index as the cheapest market price for the same product.

Another pension fund was paying seven times as much for a listed passive UK equity fund as the most competitive deal on the market. One asset manager, which was not named, had some pension clients that were paying three times as much for a listed passive UK equity fund as the manager's cheapest deal.

The research also found that one pension fund was paying 14 times more than the lowest price on the market for a fixed income absolute return fund.

Mick McAteer, a former board member of the Financial Conduct Authority and now co-director of think-tank the Financial Inclusion Centre, said the analysis revealed that some pensions funds were being "ripped off" and that some pension fund consultants were "clearly not doing a good job on behalf of clients".

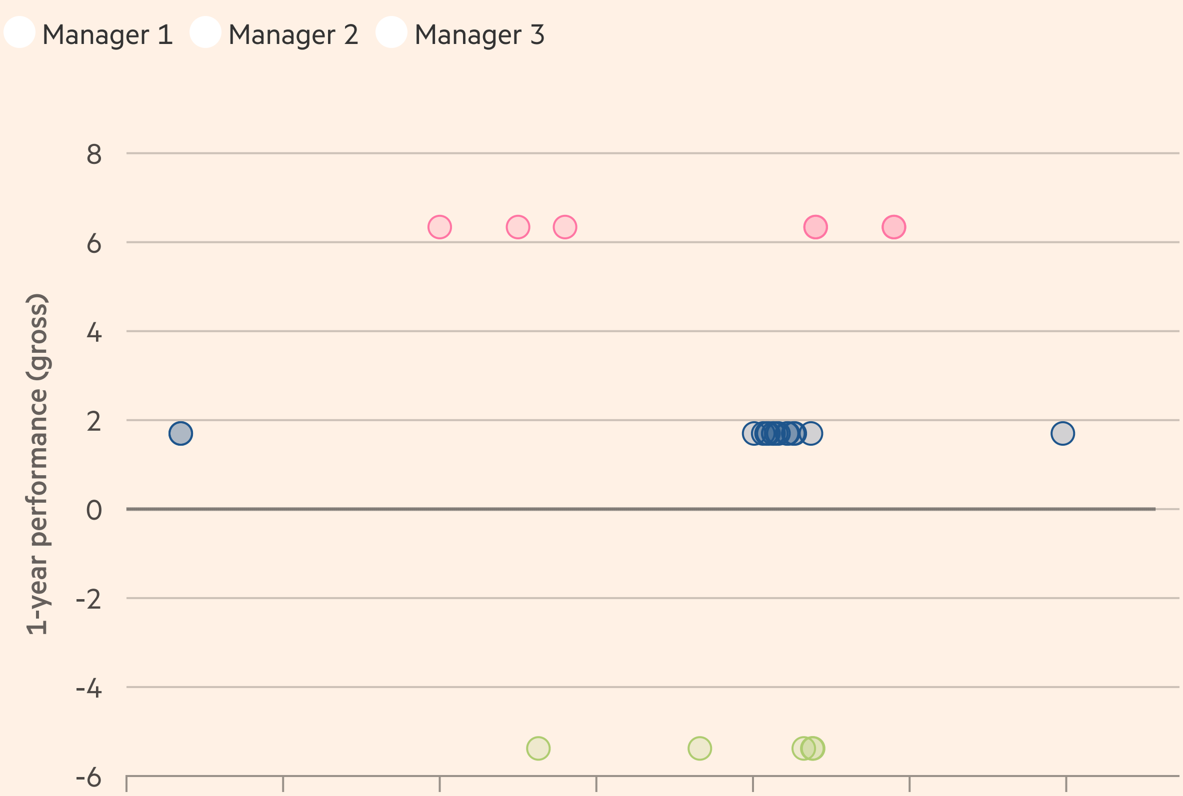
He added: "I would hope [this analysis] would serve as a wake-up call for trustees . . . We know high charges will have a detrimental impact. Secondly, let's hope it helps speed up the much needed regulation of investment consultants."

Sier, who was appointed by the FCA in 2017 to chair a working group on disclosure of costs and charges for institutional investors, estimates schemes could be £700mn a year better off if they all secured the best deals, rising to £1.5bn if the findings were scaled up to the wider DB universe of 5,000 schemes.

"The market does not function well due to lack of transparency," Baroness Ros Altmann, a former pensions minister and now Conservative peer, told the FT. "I would hope that the fact that these figures are being revealed will bring about change."

Some fund managers are offering a wide range of pricing on the same products...

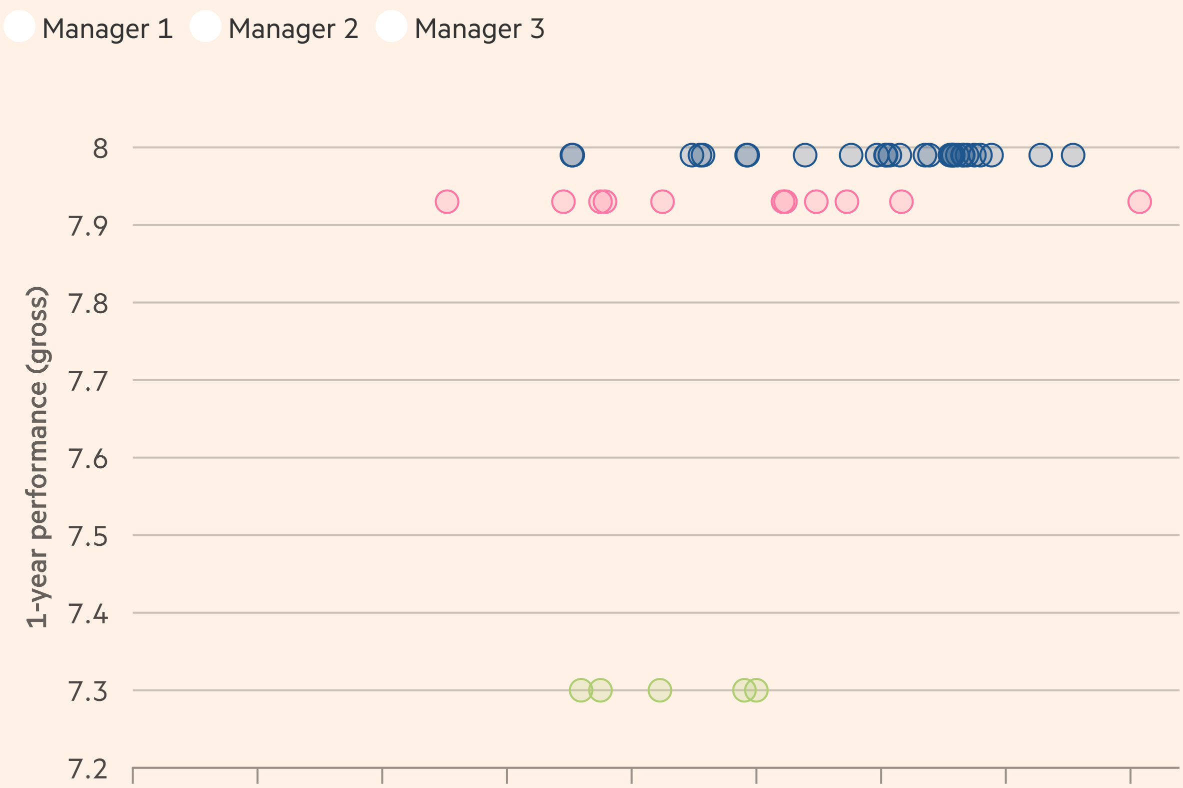
Absolute return bonds, three share classes from three different managers



FINANCIAL TIMES Source: ClearGlass • £0-£30mn invested by pension plans in individual funds

. . . in a range of asset classes

UK passive equities, three share classes from three different managers



FINANCIAL TIMES Source: ClearGlass • £0-£30mn invested by pension plans in individual funds

In response to the findings, the FCA said it had increased price transparency in asset management, “for example through standardised fund costs disclosure to pension trustees, with the aim of boosting competition.

“We’ve previously raised the issue of investment consultants being unregulated and, in 2017, referred competition concerns to the Competition and Markets Authority,” it added.

Industry body the Investment Association, which represents fund managers, said its members operated in a “highly competitive” market where strict regulation ensured transparency of fees and underlying costs.

"The industry has supported a range of initiatives over the last decade to enhance cost disclosure and these have led to the UK being one of the lowest cost countries in the world to invest," said Chris Cummings, CEO of the IA.

He added that pension scheme trustees had a legal obligation to "seek out and follow the advice of these professional advisers who drive hard negotiations with managers on fees on their clients' behalf."

A spokesperson for The Pensions Regulator said: "We expect trustees to engage with their advisers to understand the costs their scheme incurs and how savers' money is being invested. We urge trustees to read our new general code to ensure they are clear about their duties."

Additional reporting Alan Livsey

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Purdue Creditors Look To Sue Sacklers After Justices' Ruling

By **Vince Sullivan**

Law360 (July 8, 2024, 8:00 PM EDT) -- The official committee of unsecured creditors in the Chapter 11 case of drugmaker Purdue Pharma asked a New York bankruptcy judge on Monday for standing to bring actions against members of the Sackler family that own the company after the U.S. Supreme Court torpedoed a precarious settlement among the parties.

In its motion, the committee said it has the support of the debtor and an ad hoc committee of state and local government entities to pursue causes of action that belong to Purdue now that a $6 billion settlement among the debtor, the committee, the Sacklers and the ad hoc committee has been invalidated due to nonpermissible third-party releases.

The Supreme Court decided last month that the Bankruptcy Code does not permit the types of releases that would have allowed the Sacklers to escape liability without filing for bankruptcy by contributing the $6 billion to a settlement trust for claimants.

"With that decision, the complex, interlocking terms of the parties' deal may unravel, potentially consigning the estates to protracted litigation against the Sacklers," the motion said. "Under the circumstances, creditors must be armed with the ability to commence the estate claims."

A 200-page draft complaint accompanying the motion details the claims that could be brought against the Sacklers and described a yearslong effort to drive sales of its powerful OxyContin painkiller and then siphon billions of dollars out of the company and into overseas trusts when the company's owners became aware of their potential liability.

The debtor currently has the sole right to bring these derivative claims, but according to the motion, it supports the committee's request to have the sole standing to sue the Sacklers on behalf of the company.

Since the high court's decision, the committee said a critical building block of the Chapter 11 plan previously confirmed by the bankruptcy court has been eliminated, requiring the parties to go to the negotiating table to try and hammer out a new deal that comports with the Bankruptcy Code.

"Hence, absent a new settlement that will require the parties to agree again, the only path that remains is litigation — and that litigation could be protracted," the motion said. "Justice for Purdue's victims — already far too long delayed — should not be denied for one additional day longer than is necessary. Standing should be granted to the official committee so that the potentially yearslong battle with the Sacklers and other defendants can begin promptly and successfully conclude as soon as possible."

Connecticut-based Purdue filed for bankruptcy in New York in September 2019 after reaching a deal with 24 state governments to resolve claims that its sales of OxyContin played a major role in spurring the U.S. opioid crisis. A Chapter 11 plan was confirmed in September 2021, in which the company's then-owners in the Sackler family agreed to contribute $4.33 billion to a trust fund to pay claims in exchange for releases from all opioid liability.

Eight states, the District of Columbia and the Office of the U.S. Trustee appealed the confirmation order to the Southern District of New York, which ruled in December 2021 that the bankruptcy court lacked statutory authority to grant releases of third-party claims against non-debtors.

Purdue appealed to the Second Circuit, and the states and the District of Columbia subsequently dropped their opposition to the plan after the Sacklers increased their plan contribution to between $5.5 billion and $6 billion.

The Second Circuit then reversed the district court's decision, leading the U.S. Trustee's Office to file its motion for a stay in July with the Supreme Court. The U.S. trustee said the issue was in need of high court review because of the "entrenched" circuit split on involuntary third-party releases.

On June 27, the justices issued a 5-4 ruling that the Bankruptcy Code does not permit the nonconsensual release of third-party claims against non-debtors, and in the wake of that decision, both Purdue and the Sacklers said they are hopeful a renewed deal can be reached.

"Since filing for bankruptcy, we have strived to achieve a resolution that benefits our creditors, including states, local governments and personal injury victims. In the wake of the Supreme Court ruling, we are committed to engaging with our creditors in a productive mediation that we hope will lead to a modified plan that still delivers billions of dollars of value from the Sacklers for opioid abatement and enables the company to emerge from bankruptcy as an engine for good," Purdue said in a statement on Monday.

"If a consensual resolution is not reached through mediation, however, litigation will be necessary, and we believe the creditors' committee is the party best situated to prosecute these claims," it added.

But Monday's standing motion throws a wrench into the plans for continued negotiations, according to the Sacklers.

"Their filing is riddled with factual errors, ignores that about half the money was paid in taxes and is contrary to the goal of working together towards a resolution that provides billions of dollars for communities and people in need," spokespeople for the family members that own Purdue told Law360.

Representatives for the creditors' committee did not immediately respond late Monday to requests for comment.

A status update is scheduled for Tuesday before U.S. Bankruptcy Judge Sean H. Lane, where Purdue will seek an extension of a preliminary injunction that barred suits against the debtor and the Sacklers during the bankruptcy case.

Purdue is represented by Gregory G. Garre, Charles S. Dameron and Eric J. Konopka of Latham & Watkins LLP and Marshall S. Huebner, Benjamin S. Kaminetzky, Marc J. Tobak and Garrett L. Cardillo of Davis Polk & Wardwell LLP.

The official committee of unsecured creditors is represented by Mitchell P. Hurley, Arik Preis, Katherine Porter, Sara L. Brauner, Theodore James Salwen and Erin E. Parlar of Akin Gump Strauss Hauer & Feld LLP and Justin R. Alberto of Cole Schotz PC.

The case is In re: Purdue Pharma LP, case number 7:19-bk-23649, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Philip Shea.

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Medical Device Co. SeaStar Sued Over Regulatory Disclosures

By **Sydney Price**

Law360 (July 8, 2024, 5:49 PM EDT) -- A healthcare holding company has been hit with a potential shareholder class action alleging it misled investors about the potential regulatory risks and compliance deficiencies associated with bringing its kidney disease treatment device to market, leading to share declines as the information emerged.

According to the complaint filed by investor Forrest AK Wells in Colorado federal court on Friday, medical technology company SeaStar Medical Inc., which develops hyperinflammation treatments, announced in April 2022 it would merge with special purpose acquisition company LMF Acquisition Opportunities Inc. The deal was completed about six months later.

Before shareholders approved the deal, the companies told investors that the combined company, which would be known as SeaStar Medical Holding Corp., would have an enterprise value of $86 million post-merger, and that SeaStar intended to submit an application for its hyperinflammation treatment device for approval with the U.S. Food and Drug Administration under the Humanitarian Device Exemption, which allows medical devices to be marketed without requiring evidence of effectiveness, according to the complaint.

The suit claims that SeaStar downplayed the severity of deficiencies in the application even though it had been in discussions about the application's shortcomings with the FDA for months.

In addition to SeaStar, the suit's individual defendants include SeaStar CEO Eric Schlorff and Vice President of Finance Caryl Baron.

The proposed class period begins Oct. 31, 2022, the day SeaStar announced that the newly combined company was trading on the Nasdaq stock exchange. Shareholders had approved the merger about 13 days prior.

The truth began to emerge, according to the suit, on May 9, 2023, the day SeaStar told investors that the FDA had not approved its HDE application, and that SeaStar had been in correspondence with the FDA regarding the application for at least 10 months.

On this news, SeaStar's shares fell 77 cents each, or nearly 40%, to close at $1.17 per share on May 10, 2023, according to the suit.

However, SeaStar's shares continued to trade at inflated prices, and investors did not learn the full truth about the company's lack of internal controls until earlier this year, the suit states. On March 27, 2024, SeaStar told shareholders it would restate financial filings for four quarters in 2022 and 2023. The company had failed to properly account for the classification of certain outstanding warrants and a prepaid forward agreement, the suit claims.

On this news, SeaStar's shares fell 4 cents each, or about 5%, to close at approximately 71 cents per share on March 27, 2024.

When SeaStar filed its restated results in April, the company reported that its total assets were written down from approximately $4.77 million to approximately $3.04 million in the affected periods.

Wells says SeaStar and the individual defendants acted with scienter, or actual knowledge of wrongdoing or reckless disregard, and violated the Exchange Act. He seeks damages on behalf of the proposed class.

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

Wells is represented by Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP.

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

The case is Wells v. SeaStar Medical Holding Corp. et al., case number 1:24-cv-01873, in the U.S. District Court for the District of Colorado.

--Editing by Kristen Becker.

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UnitedHealth Brass Face Investor Suit Over Merger Probe

By **Sydney Price**

Law360 (July 8, 2024, 8:23 PM EDT) -- Executives and directors of UnitedHealth Group were hit on Monday with a shareholder derivative suit alleging they concealed that the U.S. Department of Justice reopened an antitrust investigation into the health insurance giant following its acquisition of a healthcare data company and that its brass knowingly sold more than $100 million of shares before the information was publicly revealed.

According to the suit filed by shareholder Portia McCollum in Minnesota federal court, the Wall Street Journal reported on the DOJ's revived investigation into UnitedHealth's acquisition of Change Healthcare, a payment technology company intended to be integrated into UnitedHealth's existing healthcare claims segment called Optum.

The DOJ initially planned to block the deal on antitrust grounds, alleging in a February 2022 lawsuit that the merger would give UnitedHealth unparalleled access to information about nearly every health insurer, and health data on almost everyone in the U.S.

The merger ultimately proceeded after the DOJ lost a high-profile **bench trial** where a Washington, D.C., federal judge said UnitedHealth had adequately shown that it committed to preventing data sharing across its segments.

In addition to nominal defendant UnitedHealth Group, the suit names 11 individual defendants, including company CEO Andrew Witty, Chair Stephen Hemsley, CEO of the company's UnitedHealthcare segment, Brian Thompson, and several directors.

The suit says that in the four months between learning about the DOJ investigation and the investigation becoming public, insiders sold their UnitedHealth shares, including Hemsley, who sold over $102 million of his shares, and Thompson, who sold over $15 million of his shares.

The suit's relevant period begins March 14, 2022, the day after UnitedHealth filed its response to the DOJ's lawsuit. Although UnitedHealth agreed to make "binding commitments to its customers and the government" to maintain firewall processes that protect customer data, this never occurred, the suit alleges.

"Despite assurances to the contrary, there was never a meaningful technological separation between Optum and UnitedHealthcare that prevented the sharing of [customer sensitive information]," the suit states. "As a result, the individual defendants caused the company's public statements to be materially false and misleading at all relevant times."

McCollum accuses the defendants of violating the Exchange Act, breaching fiduciary duties, insider trading and being unjustly enriched.

McCollum's suit also notes that the company is facing a related **securities class action** in Minnesota federal court.

Counsel for McCollum and a representative of UnitedHealth did not immediately respond to requests for comment Monday.

McCollum is represented by Seth D. Rigrodsky, Gina M. Serra and Herbert W. Mondros of Rigrodsky

Law PA, Joshua H. Grabar of Grabar Law Office and Adam Altman of Altman Law PLLC.

Counsel information for UnitedHealth and the individual defendants was not immediately available.

The case is McCollum v. Witty et al., case number 0:24-cv-02643, in the U.S. District Court for the District of Minnesota.

--Editing by Drashti Mehta.

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Class Attys Seek 24.4M Tesla Shares For Musk Pay Suit Win

By **Jeff Montgomery**

Law360 (July 8, 2024, 8:18 PM EDT) -- A stockholder attorney whose team won an order voiding Tesla CEO Elon Musk's $56 billion, stock-based, 10-year compensation package in January urged Delaware's Court of Chancery on Monday to reject as "inherently wrong" the electric vehicle manufacturer's attacks on winning-side, stock-based attorney fee proposals ranging in value from $1.44 billion to more than $7 billion.

Gregory V. Varallo of Bernstein Litowitz Berger & Grossmann LLP told Chancellor Kathaleen St. J. McCormick during a daylong fee argument that the fee decision should not be swayed by alleged "demotivational" impact on Musk after the court voided his pay.

In the January decision on the derivative suit — brought by stockholder Richard Tornetta on the company's behalf — the chancellor found that Musk dictated the timing of a process marked by multiple disclosure and fairness breaches. Objections included last-minute changes to the timeline and alteration of substantive terms immediately prior to six out of the 10 board or compensation committee meetings during which the plan was discussed.

"If Delaware continues to perceive value in policing bad behavior" by controlling stockholders, "narrowing incentives to do so would be a very bad policy idea," Varallo said Monday.

The attorney added later: "If Musk is unhappy, that's sad, but we don't do law based upon whether a controller is or isn't happy based upon a court's decision striking down compensation. We don't do law by failing to quantify whether a board will simply roll over to a controller and give him 25% of a company."

Tesla, however, pushed back immediately after the court's decision, launching a reincorporation campaign that made Tesla a Texas company on June 13, while also ratifying by a more than 70% stockholder vote the pay plan struck down in Delaware.

Chancellor McCormick is expected to hear arguments on the ratification vote in early August.

John Reed of DLA Piper, counsel for Tesla, argued the company's position that class attorney efforts warranted only payment for up to four times their customary hours, or about $54 million.

Instead, Reed said, counsel for Tornetta are seeking a fee based on a $288,000 per hour rate, some 17 times higher than the current highest fee ever awarded in Delaware.

"You have a heavy burden, and you'd better be able to substantiate it, and we don't think they've even come close," Reed said.

The arguments took place during a watershed year in Delaware's corporation law arena, with Tesla blaming the state's business courts for its flight to Texas, less than three weeks after state lawmakers, under heavy corporate pressure, sent to Gov. John Carney legislation shielding company agreements with big stockholders, among other business-friendly changes.

Chancellor McCormick convened the hearing on Monday after rejecting a Tesla motion to rescind Musk's pay shutdown based on the June 13 stockholder vote ratifying the original compensation plan and the electric car and clean energy company reincorporation in Texas, beyond future reach of

Delaware's corporation laws.

Attorneys for Tesla argued that the chancellor should limit any fee award to a maximum of $54 million, or about four times the class attorneys' reasonable hourly rate and hours spent on the case.

Class attorneys said their proposed award would amount to just over 11% of the nearly 267 million shares canceled by the action — well below the 33% found justifiable in the past for class attorney awards after taking a case all the way through trial and judgment.

Varallo said the chancellor's January decision rescinding Musk's award "had the effect of presenting the company with 304 million shares that it didn't have to use prior to Jan. 30. It can now use them for any corporate purpose."

The chancellor's decision reversed "the largest employment compensation agreement of all time," Varallo said, with new attention now focused on the company's decision-making and control by Musk.

"The spotlight your honor's opinion shone on this board and its processes ought to have real, lasting effects," Varallo said.

Acknowledging controversy over the stock-based fee award, class attorneys proposed an alternative $1.44 billion fee referenced in part on a fee award in the 2012 Delaware Supreme Court ruling in the Grupo Mexico/Southern Copper derivative litigation case.

Reed argued that the Tesla action is not a common fund case and nothing like the 2012 litigation.

Musk's leadership of Tesla during its rapid growth "was accomplished at a time when other electric car companies filed for bankruptcy," Reed said. "There's no doubt that Mr. Musk is entitled to compensation for his last six years of service."

Some stockholders joined Tesla in opposing the fee, including Ark Investment Management LLC, which manages nearly 8 million shares of Tesla stock, and the California Public Employees Retirement System, which holds more than 9 million of the manufacturer's shares.

CalPERS said in a brief that it had no issue with Chancellor McCormick's recission order for Musk's shares, but considers the class attorney fee award unreasonable.

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

--Editing by Melissa Treolo.

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Catching Up With Delaware's Chancery Court

By **Leslie A. Pappas**

Law360 (July 8, 2024, 2:43 PM EDT) -- Prince's heirs were left standing alone in a cold world last week after Delaware's Court of Chancery found their attempts to gain control of the late musician's estate too demanding. Delaware's court of equity also waved a wand for Walt Disney and slashed nearly $10 million from a damages award for Sears stockholders. In case you missed anything, here's a recap of all the latest news from Delaware's Chancery Court.

In the courtroom

An attorney for online used-car sales giant Carvana Inc. **urged** Chancellor Kathaleen St. J. McCormick to throw out what he described as a repackaged case "cut and pasted" from federal securities actions that "have not fared well."

Decisions

Chancellor McCormick **held** that some family members of the late musician Prince ran afoul of an LLC agreement when they tried to oust two managing members of the late musician's estate and give themselves more control.

Vice Chancellor J. Travis Laster gave a GoDaddy Inc. special litigation committee 30 more days to investigate a pension fund's challenge to a $850 million tax-asset buyout before he considers whether to lift a stay of litigation and force the Arizona company to turn over documents that the shareholder has been demanding.

In a **telephonic bench ruling**, Magistrate Selena E. Molina said The Walt Disney Co. does not have to give activist shareholder Blackwells Capital more information about an agreement that Disney made with ValueAct Capital Management LP, finding Blackwells had "failed to meet its burden to prove a credible basis to suspect wrongdoing."

In a **104-page written decision**, Vice Chancellor Paul A. Fioravanti found in favor of AstraZeneca PLC and a U.K. affiliate in a dispute with stockholders that accused the company of orchestrating an underpriced $3 billion sale of clinical-stage biopharmaceutical venture Viela Bio Inc.

And in a **43-page post-trial written decision**, Vice Chancellor Nathan A. Cook found Marc J. Centrella, a former executive **who sued** science equipment provider Avantor Inc. for legal fees after the company **filed a noncompete lawsuit** against him, is entitled to advancement.

New Cases

A pension fund shareholder of Cerevel Therapeutics Holdings Inc. **sued for documents** to investigate potential fiduciary duty breaches and possible insider trading shortly before the biopharmaceutical company announced its pending $8.7 billion merger with AbbVie Inc.

A proposed class action from an Archer Aviation Inc. stockholder **accused the electric air-taxi startup** of adopting an invalid charter provision that shields its officers from most damages claims despite falling 0.63% short of the two-thirds majority it needed for approval.

A stockholder of artificial intelligence-focused C3.ai Inc. **launched a derivative suit** seeking damages for the company after insiders allegedly made hundreds of millions off of an initial public offering propped up by false sales projections and an early share lockup release.

A Blue Cross Blue Shield Association healthcare data licensee **sued for an injunction** that would bar a client from sharing a valuable database of medical and pharmacy claims with Blue Cross direct competitor Cigna Corp.

Two directors of a California-based biotech company once researching a new class of antiviral therapy for COVID-19 **filed dueling lawsuits** alleging fiduciary duty breaches and a board-level stalemate.

A New York investor in a company that was set up to manage multiple car dealerships in Puerto Rico **alleged** his co-investor had been involved in "complex and systematic fraud and embezzlement schemes," and was guilty of "reprehensible" public conduct that put the business in "dire straits."

A shareholder of Owens Corning **sued the building materials company**, alleging it had "weaponized" the company's bylaws to entrench its sitting board of directors and prevent activist stockholders from nominating alternative candidates to the board.

And a shareholder of Atlas Energy Solutions Inc. challenged a purported "conflicted corporate reorganization" that allegedly conferred unfair tax benefits on the company's controlling stockholders while harming the company and its minority stockholders. The case is Patrick Ayers v. Ben M. Brigham et al., case number 2024-0694.

Settlements

Architects of a $16 billion special-purpose acquisition company merger that took United Wholesale Mortgage public **agreed to settle** a stockholder suit accusing private equity billionaire Alec Gores and others of misleading investors.

Former Discovery Inc. stockholders challenging the company's $43 billion merger with AT&T in April 2022 informed the court that a **$125 million settlement is in the works** for the nearly two-year-old, now-consolidated suit.

And the founders of a trampoline park network that accused New York private equity firm Palladium Equity Partners of shirking government help during the pandemic so it could profit at the expense of minority shareholders informed the court that the parties agreed to settle **their Chancery Court suit**.

Fees, Fees, Fees

Vice Chancellor Laster **approved a $952,500 fee** for the team of Monteverde & Associates PC, Kahn Swick & Foti LLC and Cooch & Taylor PA amounting to a 25% share of a relatively early-stage settlement of litigation over an allegedly unfair Harvest Capital Credit Corp. merger deal.

But the vice chancellor **trimmed a class award** for minority stockholders of Sears Hometown and Outlet Stores from $18.3 million to $8.7 million after former Sears CEO Edward S. Lampert and his co-defendants protested that the court had erred in its calculations.

Quotable

"I'm not going to authorize or order the plaintiffs be allowed to participate in interviews … or be another horse in the buggy pulling the SLC." – Vice Chancellor Laster, **during a bench ruling** that put off discovery demands from GoDaddy shareholders and gave a special litigation committee another month to investigate shareholder accusations.

--Additional reporting by Jeff Montgomery and Hailey Konnath. Editing by Philip Shea.

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Blank Check Co. Sagaliam Gets Shareholder Suit Trimmed

By **Katryna Perera**

Law360 (July 8, 2024, 8:31 PM EDT) -- A Delaware federal judge on Monday trimmed a shareholder suit brought against blank check company Sagaliam Acquisition Corp. over its planned tie-up with biotech company Enzolytics Inc., saying the plaintiffs failed to adequately plead a breach of fiduciary duty claim.

U.S. District Judge Richard G. Andrews issued an **order** dismissing the second count from an amended complaint filed by shareholders GLD Partners LP and GLD Sponsor Members LLC.

GLD alleged that Sagaliam breached its fiduciary duty to its shareholders, but Judge Andrews on Monday agreed with the special purpose acquisition company that a corporation does not owe fiduciary duties to stockholders under Delaware law.

The judge said that does not mean that a corporation owes no duty or can never be held liable under Delaware law if it issues false and misleading statements to shareholders — which GLD alleges Sagaliam did. However, to state a claim, the plaintiffs must "predicate their claim about disclosure duties on a theory of legal or equitable fraud."

The judge pointed out that the amended complaint does not include the words "fraud," "legal fraud," or "equitable fraud," and while such a "labeling omission" is not fatal, there is no factual support in the amended complaint for one key element of fraud — justifiable reliance by the plaintiff.

"Plaintiffs have not pleaded action (or inaction) in justifiable reliance on defendant's representation," the order states. "Count II of the amended complaint merely alleges that the purportedly false and misleading statements 'will cause the upcoming vote at the special meeting to be improperly influenced.' That vote has not occurred."

Despite dismissing Count II from the amended complaint, the judge kept the third count alive, alleging that Sagaliam failed to make monthly payments that would have continued to extend the deadline date by which it had to secure a business combination.

GLD also alleged in Count III that Sagaliam tried to hold an unauthorized vote for a further extension of time instead of winding down operations as stated in its certificate of incorporation.

Judge Andrews on Monday disagreed with Sagaliam's claim that the GLD seeks a "wholesale prohibition of [defendant's] shareholders' right to even consider amending [the] certificate of incorporation."

"Plaintiffs allege that defendant violated the terms of the certificate. That is different than alleging shareholders cannot amend a certificate of incorporation at all," the order states.

GLD filed the **amended complaint** in December, alleging that Sagaliam stopped paying the monthly fees to extend the deadline by which it had to secure and complete a merger and then tried to hold a special meeting of shareholders to vote for another extension without alerting GLD.

The complaint further alleges that Sagaliam issued a false and misleading proxy statement to shareholders before the scheduled vote and invalidly issued shares to shareholders of Enzolytics Inc., the entity with which Sagaliam wanted to complete a merger.

"Enzolytics shareholders had no right to receive any shares of Sagaliam unless and until a transaction between Sagaliam and Enzolytics closed," the complaint states. "GLD Sponsor and GLD Partners further learned that Sagaliam's proposed transaction with Enzolytics was a related party transaction, as two of Sagaliam's directors and the co-trustee of the owner of the Sagaliam sponsor each own shares in Enzolytics."

GLD says Sagaliam tried to "rig" an improperly called shareholder meeting to approve the deadline extension by giving a super-majority block of shares to Enzolytics shareholders.

"Sagaliam decided to eviscerate GLD Sponsor's and GLD Partners' ability to vote in concert with other Sagaliam shareholders against any extension of the deadline date by surreptitiously issuing shares to the Enzolytics shareholders in order to change the voting dynamics and to give the Enzolytics shareholders control of any shareholders vote," the complaint states.

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

GLD Partners LP and GLD Sponsor Members LLC are represented by Sean Bellew of Bellew LLC and by H. Peter Haveles Jr. and Donald N. David of Akerman LLP.

Sagaliam is represented by Antranig Garibian of Garibian Law Offices PC.

The case is GLD Partners LP et al. v. Sagaliam Acquisition Corp., case number 1:23-cv-01266, in the U.S. District Court for the District of Delaware.

--Editing by Vaqas Asghar.

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Full 2nd Circ. Urged To 'Correct' Panel's Insider Trading Ruling

By **Jessica Corso**

Law360 (July 8, 2024, 7:54 PM EDT) -- A hedge fund accused of taking advantage of its corporate insider status to profit off swing trading in 1-800-Flowers' stock is urging the full bench of the Second Circuit to reconsider a decision to revive the lawsuit against it, arguing in a Monday petition to the court that the ruling clashes with both U.S. Supreme Court precedent and with controlling Second Circuit precedent on standing.

Raging Capital Management LLC petitioned for en banc review after a three-judge panel of the Second Circuit **ruled in favor** of Brad Packer, allowing him to move forward with a derivative case accusing Raging Capital of taking advantage of its position as a leading shareholder of 1-800-Flowers stock to make nearly $5 million in short-swing profits.

That decision doesn't square with the Supreme Court's 2021 ruling in TransUnion LLC v. Ramirez that plaintiffs be required to demonstrate **concrete harm** in order to avoid the dismissal of their claims, the hedge fund said in Monday's petition.

Packer could not show that 1-800-Flowers was harmed by Raging Capital's actions or even that it had any insider knowledge simply because it held more than 10% of a junior class of securities that gave it little voting power, the fund said.

The Second Circuit panel "allowed Packer to proceed in the absence of any injury beyond the alleged statutory breach of which the panel deemed a breach of fiduciary duty," Raging Capital said. "Compounding the panel's error, defendants' had no actual, or even conceivable, fiduciary role; they bought and sold the issuer's shares based on publicly available information."

At the heart of Packer's lawsuit is Section 16(b) of the Securities Exchange Act of 1934, which labels those holding more than 10% of a company's stock as corporate insiders and prohibits them from buying and selling corporate stock within a six-month period.

If they do so, fellow shareholders can file a derivative suit to recoup the profits from such short-swing trading, according to an explanation of the law on the U.S. Securities and Exchange Commission's website.

The SEC intervened in the 1-800-Flowers dispute in favor of Packer, urging the court to reverse a lower court dismissal of the case out of fear that allowing the decision to stand would "eviscerate" Section 16(b) because it must be enforced by private parties.

The Second Circuit panel agreed with the SEC and Packer that the case should be allowed to move forward, saying that the claims don't violate the high court's TransUnion ruling because Packer had alleged an injury akin to common-law breach of fiduciary duty.

TransUnion required that courts consider whether an alleged injury has a "close historical or common-law analogue for the asserted injury" and breach of fiduciary duty met that standard, the panel said.

In Monday's en banc petition, Raging Capital said that the Second Circuit ruled differently in 2021 **when it dismissed** a proposed class action against the Bank of New York Mellon Trust Co. NA in light of the high court's TransUnion decision.

Raging Capital said that decision, known as Maddox v. Bank of New York Mellon, is now in conflict with last month's 1-800-Flowers decision, creating a potential headache for the lower courts. It urged the full bench to reconsider last month's decision to "correct" what it sees as an intra-circuit split.

"The opinion, left undisturbed, would require courts in this district to choose between conflicting rulings, resulting in litigation over the threshold standing question until it is resolved at the appellate level," the fund said.

Attorneys for Packer didn't immediately respond to a request for comment.

Raging Capital is represented by Thomas Fleming and Daniel Stone of Olshan Frome Wolosky LLP.

Packer is represented by Glenn Ostrager, Joshua Broitman and Roberto Gomez of Ostrager Chong Flaherty & Broitman PC and Paul Wexler.

The case is Brad Packer v. Raging Capital Management LLC, case number 23-367, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Jay Jackson Jr.

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3rd Truth Social Complaint Gets OK, Contempt Hearing Axed

By **Leslie A. Pappas**

Law360 (July 8, 2024, 7:43 PM EDT) -- Two former "Apprentice" contestants who claim to have created Donald Trump's social media app and are now alleging they are being cheated out of their Truth Social equity got Delaware Chancery Court's permission Monday to revise their complaint for a third time against the former president and his media company.

United Atlantic Ventures LLC, a company owned and co-founded by former reality show contestants Andy Litinsky and Wes Moss, may file a third amended complaint against Truth Social's owner TMTG Sub Inc., formerly known as Trump Media & Technology Group Corp., Vice Chancellor Morgan T. Zurn said in an order granted Monday.

The order came a few days after the court canceled a hearing scheduled for July 12 in response to the plaintiffs' shifting motions to hold TMTG in contempt.

"I do not understand how a motion for contempt briefed and opposed based on one course of conduct can be held in abeyance for a different course of conduct," the vice chancellor wrote in a minute order posted Friday, in response to flurry of letters from the parties several days earlier.

UAV brought up the idea of contempt in the spring, shortly before it got the **court's OK** to file a second amended complaint.

UAV **initially sued** TMG in February, before Trump took the social media company public through a reverse merger with special purpose acquisition company Digital World Acquisition Corp.

The original complaint was filed only against TMTG. Revised versions of the complaint have since added Trump as a defendant, along with former White House deputy chief of staff and former Trump social media director Daniel Scavino Jr.; TMTG's CEO and director, former Republican Rep. Devin G. Nunes; TMTG board members Donald J. Trump Jr., former White House security aid Kashyap "Kash" Patel, and Eric Swider; and independent TMTG board directors W. Kyle Green, Linda McMahon and Robert Lighthizer.

In its initial complaint, UAV alleged that its shares of TMTG were being diluted ahead of the merger. At the time, UAV held an 8.6% equity stake in the company and Trump owned 90%.

At a virtual hearing in March, TMTG **assured the court** it had no intention to dilute UAV's stake, but then **sued UAV in Florida** a few days later.

The merger closed, and the social media platform **began trading** on Nasdaq at the end of March.

At a **status conference April 1**, UAV said it intended to file a motion for contempt in response to the Florida lawsuit, saying it was obviously a "retaliatory" attempt to circumvent earlier Chancery Court orders.

UAV filed the motion for contempt on April 2 and renewed it in May.

Then in a letter to the court on July 3, UAV asked the court to hold the motion for contempt "in abeyance" and asked the July 12 hearing to be converted to a "status conference."

TMTG opposed both requests in a letter to the court July 5.

"Plaintiff's prolonging of the baseless contempt motion is both prejudicial and improper," Theodore A. Kittila, an attorney for TMTG Sub, Trump and Scavino, said in the July letter. "Plaintiff cannot hold out hope that defendants will 'take further actions' about which it can complain … in order to keep its baseless motion alive."

Vice Chancellor Zurn cancelled the July 12 hearing in her minute order July 5, saying "the court sees no need for a status conference."

Counsel for the parties did not immediately respond Monday to Law360's requests for comment.

United Atlantic Ventures LLC is represented by Richard I.G. Jones Jr., David B. Anthony and Harry W. Shenton IV of Berger McDermott LLP, and Christopher J. Clark and Benjamin Dozier of Clark Smith Villazor LLP.

TMTG, Donald J. Trump and Daniel Scavino Jr. are represented by Theodore A. Kittila and William E. Green Jr. of Halloran Farkas & Kittila LLP.

Defendants Trump Media & Technology Group Corp., Devin G. Nunes, Donald J. Trump Jr., Kashyap "Kash" Patel, Eric Swider, W. Kyle Green, Linda McMahon and Robert Lighthizer are represented by John L. Reed and Ronald N. Brown III of DLA Piper.

The case is United Atlantic Ventures LLC v. Trump Media & Technology Group Corp. et al., case number No 2024-0184, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery, Tom Zanki and Carolina Bolado. Editing by Lakshna Mehta.

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Jurors Told To Decide Who Is Lying In COVID Test Fraud Case

By **Carla Baranauckas**

Law360, Newark, N.J. (July 8, 2024, 9:13 PM EDT) -- The task for jurors in the retrial of a securities fraud case over a COVID test kit deal that never materialized will be to determine not whether lies were told but who told them, according to closing arguments delivered Monday in New Jersey federal court.

Marc Schessel, the former chief executive of SCWorx Corp., duped investors when he issued press releases and made public statements in April 2020 about a $670 million test kit deal that he allegedly knew had no chance of going through in an effort to make the stock price of his company soar, the government said in its one-hour closing argument.

But Schessel was being truthful in his statements, the defense said in its two-hour closing. One of the prosecution's main witnesses was lying when he was interviewed by the FBI and when he testified in the trial, the defense said.

"They say that a lie can travel halfway around the world before the truth puts its pants on," defense attorney James M. Roberts of Schlam Stone & Dolan LLP told the jurors. "What is the lie in this case? The real lie is contained in the indictment that you'll have to consider during your deliberations."

Roberts directed jurors to Page 6 of the indictment, which said "Individual-1" had informed Schessel that the deal would not go through before Schessel issued his first press release.

"Ladies and gentlemen of the jury, every single part of that allegation in the indictment is a complete and utter lie," Roberts said.

He added that when Peter Gallic, who was Individual-1, testified at the trial he admitted that he had lied to investigators. Gallic, of RethinkMyHealthCare, was the one who approached Schessel about a deal in which SCWorx would buy the test kits from the Australian company Promedical and then resell them to RethinkMyHealthCare, according to statements made in court during the first trial.

Roberts' closing came after George Brandley of the U.S. Attorney's Office for the District of New Jersey told jurors that Schessel had lied to SCWorx investors and the company's board of directors when he said he had a confirmed deal for the test kits.

"This is a case about lies," Brandley said. "Lies that the defendant told. Lies that caused investors to part with hard-earned money. Lies that the defendant told to dig his company out of a financial hole."

He then walked jurors through the two counts Schessel is facing and broke down how each element of the two charges applied.

In his closing, Roberts disputed the contention that Schessel was trying to solve financial problems by increasing the stock price of the company. He noted that Schessel did not sell his stock when the price spiked.

He suggested that someone who was trying to manipulate the stock market would have been prepared to cash in when the stock price rose.

The government's rebuttal is scheduled for Tuesday.

Schessel was charged in May 2022 with two counts of securities fraud in what the government said was a stock manipulation scheme leading to investor losses of at least $116 million.

Schessel is **accused** of falsely declaring in April 2020 that SCWorx, whose shares are traded on the Nasdaq stock exchange, had a multimillion-dollar deal to buy and resell at least 48 million COVID-19 test kits at 2 million per week. According to the Justice Department, Schessel made the announcement even though he knew the deal was in doubt.

The company's stock price soared to $14.88 from $2.25 after the deal was announced. But once word got out that it would not go through, the share price plummeted, leading to investor losses, the government said.

The first trial **ended Dec. 1** in a mistrial. The retrial **began** June 11.

The government is represented by Philip R. Sellinger, George Brandley and Angelica Sinopole of the U.S. Attorney's Office for the District of New Jersey and by Glenn S. Leon, Robert Spencer Ryan and Lucy B. Jennings of the U.S. Department of Justice.

Schessel is represented by James M. Roberts, Douglas E. Grover and Angela Li of Schlam Stone & Dolan LLP.

The case is USA v. Schessel, case number 2:22-cr-00374, in the U.S. District Court for the District of New Jersey.

--Editing by Rich Mills.

Correction: A previous version of this article misidentified the prosecutor who delivered the closing statement. The error has been corrected.

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Navigating The New Rise Of Greenwashing Litigation

By **David Baay, Matthew Rawlinson and Kelsey Machado** (July 8, 2024, 4:02 PM EDT)

It comes as no surprise that class actions targeting greenwashing claims — or green advertising — continue to rise in number and complexity.

David Baay

Although consumer demand and regulatory actions have increasingly motivated businesses to make public statements about their sustainability practices and commitments to climate change, now is the time to take a step back and reevaluate those sustainability claims and marketing. Vague, unverified and unsubstantiated claims can all too easily lead to allegations of greenwashing.

This article discusses the most recent developments in greenwashing litigation, which show a shift in focus to carbon-neutrality claims and related sustainability claims. We also cover the constantly evolving regulatory landscape and practical ways for your business to avoid the risks of greenwashing litigation.

Matthew Rawlinson

Background

The surge in greenwashing litigation has long been attributed to heightened consumer awareness and concern for climate change. As such concerns continue to rise, businesses are forced to allocate more time, attention and resources to promoting environmentally friendly business practices, products or services — all while falling under the scrutiny of greenwashing allegations.

Kelsey Machado

Although plaintiffs historically have targeted businesses that tout their products or services as environmentally friendly — zeroing in on buzzwords like "eco-friendly" or "recyclable" — recent trends show growing scrutiny and an increase in lawsuits challenging broader sustainability representations and long-term sustainability goals.

Common examples of sustainability representations include (1) ambitious climate pledges, including carbon-neutral representations and statements about a business's long-term climate commitments (i.e., net-zero pledges), and (2) the use of selective sustainability initiatives in efforts to distract from overall business practices.

Such representations can manifest into greenwashing allegations quickly, for example, when businesses claim that they are on track to reduce their greenhouse gas emissions when no credible plan is in place, when they are vague about their operations or materials used in their products, or when they simply imply that a minor improvement in their business practices has a major effect on climate change.

Recent Developments and Legal Challenges

The shift in class action claims regarding businesses making broader sustainability representations and long-term sustainability goals can easily be seen within the airline industry.

Since mid-2023, the airline industry has been put under a microscope due to airlines making sustainability claims and statements regarding their long-term sustainability goals. In these suits alleging fraud and false advertising, plaintiffs specifically focus on business practices such as purchasing carbon credits to offset emissions.

For example, in 2023's Berrin v. Delta Air Lines Inc.,[1] in the U.S. District Court for the Central District of California, the plaintiffs asserted claims under California's Unfair Competition Law, False Advertising Law and Consumers Legal Remedies Act based on Delta marketing itself as a "carbon-neutral" airline.

The complaint specifically called out Delta's business practices and representations that relied on purchasing carbon credits to offset its carbon emissions.

Notably, earlier this year, the presiding judge in the case dismissed the plaintiff's Unfair Competition Law and False Advertising Law claims for failure to prove standing for injunctive relief. In doing so, the court noted that although the plaintiff claimed to be a loyal customer of Delta who hoped to continue using their services in the future, there were no specific allegations to support this in the complaint.

Without evidence of an intent to purchase flights from Delta in the future, the court found that the plaintiff lacked standing but allowed the plaintiff to amend the complaint, indicating not only that an amendment could quickly revive the claims but also its interest in carbon neutrality-related greenwashing.

Since Delta, there has been a spike in identical lawsuits — all alleging fraudulent advertising under different state laws related to carbon neutrality, purchasing carbon credits to offset emissions, and selective sustainability initiatives in efforts to distract consumers from overall business practices.

For example, Zajac v. United Airlines Inc. is a 2023 case in the U.S. District for the District of Maryland asserting fraud and false advertising claims under the Maryland Consumer Protection Act based on United's advertisements related to using "sustainable airline fuel" under its "Eco-skies" program and alleged misrepresentations concerning its environmental commitments.[2]

Simijanovic v. Koninklijke Luchtvaart Maatschappij NV is a 2023 case in the U.S. District Court for the Eastern District of Michigan asserting fraud and false advertising claims under the Michigan Consumer Protection Act based on KLM's advertisements related to its climate-related corporate targets, sustainability resolutions, biofuel usage and "fly responsibly" representations.[3]

To add fuel to the fire, recent court rulings show businesses are likely to face challenges defending carbon-neutrality claims — finding the term can be misleading in specific contexts and leaving the question open for juries.

For example, in the case of Dorris v. Danone Waters of America,[4] in the U.S. District Court for the Southern District of New York, the plaintiffs filed a class action alleging that the manufacturer and seller of Evian Spring Water made false and misleading representations about the "carbon neutrality" of its product while largely ignoring the fact that its manufacturing processes caused significant carbon emissions.

The plaintiffs specifically called out the defendant's business practice of purchasing carbon offsets as misleading under the Federal Trade Commission Green Guides. Despite being "carbon neutral" by industry definitions and arguing that no reasonable consumer could be misled, the court in January **denied** the defendant's motion to dismiss, holding that a reasonable consumer could be misled by the business's use of the term "carbon neutral."

Greenwashing Regulatory Landscape

Businesses need to consider the regulatory landscape surrounding greenwashing — which is multifaceted and rapidly evolving — before making sustainability claims. Recent developments at both federal and state levels (e.g., California) are predicted to further add layers of complexity and opportunities for scrutinizing sustainability claims.

The U.S. Securities and Exchange Commission has long been at the forefront of combating greenwashing claims. Since **launching** the Climate and ESG Task Force in late 2021 — with the primary goal of targeting environmental, social and governance-related misconduct, such as identifying material gaps or misstatements in climate risk disclosure — the SEC has brought numerous enforcement actions against large consumer goods companies.

Last year, the SEC **updated** its long-standing Investment Company Act names rule — now requiring registered investment funds that include ESG factors in their names to place 80% of their assets in investments corresponding to those factors.

Most recently, on March 6, the SEC **adopted** "The Enhancement and Standardization of Climate-Related Disclosures for Investors," which will require certain public companies to begin disclosing the climate-related risks that have materially affected, or are reasonably likely to have a material effect on, its business strategy, results of operations or financial condition.

In addition, the FTC has also intensified its efforts to counter greenwashing, starting with revising its Green Guides after a decade-long hiatus in updates.

The updated Green Guides are likely to be slated for publication by the end of this year and are predicted to provide clearer and more comprehensive directives to businesses regarding environmental marketing claims — as compared to the latest Green Guides released in 2012 — ensuring greater transparency and accountability.

Best Defense

Businesses making unsubstantiated or exaggerated environmental claims will continue to face greater risks of litigation and reputational damage. As greenwashing claims continue to gain momentum, businesses must exercise caution and ensure transparency in their environmental marketing practices.

The best defenses against greenwashing risk lie in existing principles of good practice in governance, disclosure and due diligence, in conjunction with a comprehensive understanding of the sustainability profile of the product or services being offered and climate commitments being made.

At the outset, businesses should avoid making generalized statements about their products, committing to ambitious climate pledges, or bolstering their sustainability initiatives without first gathering evidence to substantiate such initiatives.

In addition, businesses can take several proactive steps to protect themselves from greenwashing allegations, such as obtaining third-party verifications from an independent source, accurately monitoring emissions records, publishing sustainability methodologies and auditing supply chains.

Other solutions include legal analysis of any public statements for greenwashing risk before publication, making sure to fact-check statements and identify areas in which companies may need to retract previously stated goals or qualify existing statements, and proactively training communication and marketing teams on the risks associated with making ESG statements, such as related regulations, updated reporting standards and recent case decisions.

Taking a proactive approach at the outset, which includes internal controls, checklists, and training as to those protocols for employees both in marketing and at the executive level, may help to avoid having to police what has already been disseminated to the public.

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Baker McKenzie partners Michael McCutcheon and Mark Taylor, and associates Andrew Yu-Chih and Jay Patel, contributed to this article.

[1] Berrin v. Delta Air Lines, No. 2:23-cv-04150, (C.D. Cal. May 5, 2023).

[2] Zajac v. United Airlines, No. 8:23-cv-03145-PX (D. Md. Nov. 19, 2023).

[3] Simijanovic v. Koninklijke Luchtvaart Maatschappij N.V., No. 2:23-cv-12882 (E.D. Mich. Nov. 13, 2023).

[4] Dorris v. Danone Waters of Am., No. 22 CIV. 8717 (NSR), 2024 WL 112843 (S.D.N.Y. Jan. 10, 2024).
