Legal Fee Tracker: Quinn Emanuel fights to keep $185 million award in Obamacare case

reuters.com/legal/legalindustry/legal-fee-tracker-quinn-emanuel-fights-keep-185-million-award-obamacare-case-2024-07-25

Mike Scarcella, David Thomas

A sign on an insurance store advertises Obamacare in San Ysidro, San Diego, California, U.S., October 26, 2017. REUTERS/Mike Blake/File photo Purchase Licensing Rights, opens new tab

July 25 (Reuters) - The fate of a $185 million payday for Quinn Emanuel Urquhart & Sullivan was in a judge's hands on Thursday, after the law firm squared off in a Washington, D.C. courtroom with a group of health insurers who claim it received an undeserved windfall.

The same judge — Kathryn Davis of U.S. Federal Claims Court — awarded the fees after Quinn Emanuel secured a $3.7 billion judgment in 2020 for a class of insurers that said the Obama administration failed to meet its obligations under an Obamacare provision aimed at encouraging medical coverage to uninsured Americans.

The U.S. Court of Appeals for the Federal Circuit struck down the fee award last year, calling the amount "extraordinarily high" and directing Davis to reassess it.
Quinn Emanuel's Adam Wolfson told the judge at Thursday's hearing that the firm's $185 million fee, which amounted to 5% of the $3.7 billion judgment, represented the "rock bottom" compared with what courts have awarded in other cases.

The insurers that challenged the award, including UnitedHealthcare (UNH.N), opens new tab and Kaiser, have called the size of the fee "astronomical." A lawyer for the insurers, Moe Keshavarzi of Sheppard Mullin Richter & Hampton, urged Davis on Thursday to approve an award no larger than about $11 million to $23 million.

UnitedHealthcare and Kaiser said in court papers that the $185 million fee translates to more than $18,000 an hour for Quinn Emanuel. Top partners at the 900-lawyer firm often bill between $1,500 and $2,000 an hour, court records show.

Spokespeople for Quinn Emanuel, UnitedHealthcare and Kaiser did not immediately respond to requests for comment.

Quinn Emanuel has defended the award as appropriate for the "substantial risk" it took on and 10,000 hours it expended on the case.

The insurers have countered that Quinn Emanuel used “inflated and unproven hours” to justify its initial fee request.

“10,000 hours is a staggeringly high number of hours under the circumstances, and the objectors reasonably wonder — as should the court — how class counsel could have possibly spent so many hours on this case,” the insurers told Davis in a filing.

Quinn Emanuel faces other challenges beyond overcoming the insurers' arguments.

It has already distributed the $185 million within the firm, it said in court papers, citing the lack of an order forbidding it to do so. The firm also told the court it obtained insurance on the award that includes an obligation to defend its rights to the full amount.

- In other legal fee news, plaintiffs attorneys at Robbins Geller Rudman & Dowd who reached a $350 million securities class action settlement with Google parent Alphabet (GOOGL.O), opens new tab over its defunct social media website asked on Friday, opens new tab to be awarded $66.5 million.
The settlement in San Francisco federal court earlier this year resolved claims that, by March 2018, Google had learned about a software glitch that exposed Google+ users' personal data, yet concealed the problem for months while publicly stressing its commitment to data security.

Alphabet shares plummeted when the software glitch was revealed, wiping out tens of billions of dollars in market value, according to the lawsuit.

Google denied wrongdoing in agreeing to settle and said it found no evidence that data were misused.

- A federal judge in Chicago on Friday signed off on a $94 million fee award for three law firms pressing an antitrust lawsuit against 17 leading U.S. universities.
The firms -- Freedman Normand Friedland, Gilbert Litigators and Counselors, and Berger Montague -- accused the schools of favoring wealthy applicants for admission, short-changing students who sought financial aid.
Ten schools, including Brown, Yale and Columbia universities, have settled so far for a cumulative $284 million. The settling schools and remaining defendants have denied any liability.

(Legal Fee Tracker is a weekly feature exploring attorney compensation awards and disputes in class actions, bankruptcies and other matters. Please send tips or suggestions to D.Thomas@thomsonreuters.com, opens new tab.)
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Reporting by Mike Scarcella

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Securities Law News

July 25, 2024, 5:08 AM PDT; Updated: July 25, 2024, 10:56 AM PDT

Lyft Agrees to Reforms to Settle Investor Suit Over Assaults (1)

By Martina Barash

- Terms include executive clawbacks, publicizing safety aids
- Uber recently reached $200 million investor class deal

Bloomberg Law News 2024-07-26T09:52:07290566674-04:00

Lyft Agrees to Reforms to Settle Investor Suit Over Assaults (1)

By Martina Barash 2024-07-25T08:08:42000-04:00

- Terms include executive clawbacks, publicizing safety aids
- Uber recently reached $200 million investor class deal

Lyft Inc. would undertake several internal reforms to address and prevent physical and sexual assaults by drivers, and driver safety problems, under the terms of a proposed derivative suit settlement.

The ride-sharing company would maintain the reforms for at least three years as set out in the agreement, which was presented to the US District Court for the Northern District of California July 23 for preliminary approval. The issues relate to statements Lyft made, and alleged nondisclosures, before its 2019 initial public offering.

The deal would settle the investors’ suit against Lyft’s leadership on behalf of the company. The parties have negotiated $700,000 in fees for the investors’ attorneys.

Within the past week another ride-sharing company—Uber Technologies Inc.—reached a $200 million class settlement over allegedly misleading statements about passenger safety and regulatory issues related to its own 2019 IPO.

Lyft finalized a $25 million class settlement in August 2023 over largely the same issues as in the shareholder derivative suit.

The investors alleged that eleven of Lyft's directors and executives breached their fiduciary duties by failing to prevent sexual and physical assaults by drivers against passengers; failing to provide mechanisms for reporting assaults and for training, oversight and discipline on the issue; and failing to implement a system to effectively screen prospective drivers. Lyft's top brass also allegedly failed to disclose the assault issue and its accompanying reputational and legal risks.

Other allegations related to Lyft's electronic bicycles. A braking system defect in the e-bikes led to numerous rider injuries, some reported before the IPO but not publicly disclosed, the investors said.

The proposed internal reforms, detailed in a document submitted with the request for approval, include several components. The company would further publicize some passenger safety changes it has already made, including one app feature to alert 911 silently and another to call a representative. It would amend its business conduct code for employees and add a member to a compliance committee to add another "voice for driver and user safety." And it would adopt policies affecting officers and directors, including subjecting executives' incentive compensation to clawbacks "in the event of material negative restatements" and limiting directors to service on only one other company board without the Lyft board's approval.

The reforms "confer substantial benefits on Lyft, thus meriting preliminary approval of the Settlement," the investors said in their request for approval. The period for maintaining the reforms constitutes "sufficient time to ensure that they become embedded in the Company's practices and corporate culture, with continuing benefits even after the expiration of the three-year commitment term," they said.

The Brown Law Firm PC and Levi & Korsinsky LLP are lead counsel for the investors. Latham & Watkins LLP and Richards, Layton & Finger PA represent the individual defendants and nominal defendant Lyft.

The case is In re Lyft Inc. Derivative Litig. , N.D. Cal., No. 4:20-cv-09257, motion 7/23/24 .

(Updated with more information and analysis from investors' filing throughout.)

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Securities Law News
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Nike Sued Again by Investors Over Digital Platform, Strategy

By Bernie Pazanowski

- COURT: D. Or.
- TRACK DOCKET: No. 3:24-cv-01195

Bloomberg Law News 2024-07-26T09:36:2728041748-04:00

Nike Sued Again by Investors Over Digital Platform, Strategy

By Bernie Pazanowski 2024-07-25T16:23:29000-04:00

- COURT: D. Or.
- TRACK DOCKET: No. 3:24-cv-01195

A Nike Inc. stockholder filed a derivative suit in federal court against the company, accusing its officers of making false and misleading comments about the strength of its digital platforms and its direct-to-consumer strategy.

This is the second suit filed against Nike in the US District Court for the District of Oregon stemming from the company's digital platforms and direct-to-consumer strategy. Shareholders filed a proposed class action complaint on July 15, alleging that the company artificially inflated its stock price by deceiving investors about the strength of the two programs.

Shareholder Danny Leung alleges that Nike was using its digital direct platforms and stores and wholesale partners to distribute its products, according to his complaint filed Wednesday. But in 2017, the company implemented a strategy to market directly to consumers, it says.

As Nike implemented the direct-to-consumer strategy, it began dropping its sales partners, Leung said, and by late 2020, it had dropped about a third of them. It had done so, Leung said, "while also materially decreasing sales to other major retail clients to further move Nike's operations to direct-to-consumer sales."

When Nike reported the financial results for the third quarter of 2021, its Chief Executive Officer and President, John J. Donahoe II, and its Chief Financial Officer and Executive Vice President, Matthew Friend, made statements touting the direct-to-consumer strategy, saying it was successful, the complaint says. They also said that its business model, including its digital platform, positioned it well for growth in the marketplace.

Nike's growth started to recede in 2022, but Donahoe and Friend continued to make statements that the company's strategy was working, the complaint says.

By March 2024, it was apparent that Nike's revenue from its direct sales only grew by 0.4% year-over-year, and stock that was once trading at over $110 per share was trading at $75.37 per share on June 28, 2024, it says.

The complaint accuses Donahoe, Friend, and other officers of fraud in violation of the Securities Exchange Act of 1934 and federal rules promulgated there under, breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and insider trading.

Leung seeks to hold Donahoe and Friend liable, he seeks damages, pre- and post-judgment interest, and an order directing the officers to improve corporate governance.

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

Black Helterline LLP and The Brown Law Firm PLLC represent the plaintiffs.

The case is Leung v. Donahoe , D. Or., No. 3:24-cv-01195, 7/24/24 .

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Paramount, Skydance merger faces court challenge by shareholder

reuters.com/business/media-telecom/paramount-skydance-merger-faces-court-challenge-by-shareholder-2024-07-25

Reuters

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

July 25 (Reuters) - A Paramount Global (PARA.O), opens new tab investor has sued to block its merger with Skydance Media, saying the deal would cost its shareholders $1.65 billion, according to a lawsuit filed in Delaware's Chancery Court on Wednesday.
David Ellison's Skydance Media bagged a deal to acquire Paramount early in July, ending months of discussion and speculation about the future of one of Hollywood's oldest studios.
The lawsuit, filed by Scott Baker, claims the merger's primary purpose is to cash out media mogul Shari Redstone's investment in Paramount at a substantial premium, while other stockholders will receive a significantly lower payout.

"That payout is only worth $12.23 per Paramount Class B share. Thus, when the merger closes, the non-NAI Class B shareholders will suffer $1.65 billion in damages," the lawsuit said.

The plaintiff alleged the merger was unfair and disadvantageous to Paramount's Class B stockholders, who will not receive a fair share of the benefits compared to Redstone and National Amusements Inc (NAI), which owns a controlling stake in Paramount.

NAI and Paramount Global did not immediately respond to requests for comment.

The lawsuit said the deal was "history repeating itself", pointing to the CBS-Viacom merger in 2019 that created Paramount Global. That deal had attracted lawsuits from investors who alleged that Redstone pressured CBS into an unfair merger.

The lawsuit filed on Wednesday could lead to more court challenges by investors against the merger, which was marked by executive shake-ups and rival bids.

Earlier this month, Reuters reported billionaire investor Mario Gabelli's investment firm was seeking more details about the valuation of National Amusements assets, signaling the firm may challenge the deal.

Guest Post: “Class Actions” in Germany – KapMuG 2.0

dandodiary.com/2024/07/articles/class-action-litigation-2/guest-post-class-actions-in-germany-kapmug-2-0

July 25, 2024

By Kevin LaCroix on July 25, 2024
Posted in Class Action Litigation

Lorena Kern

Katja Bullemer-Wülfert

The German Bundestag, or Federal Parliament, passed a reform of the Capital Markets Model Case Act (KapMuG) on June 13, 2024, and Germany’s Federal Council (Bundesrat) passed it on July 5, 2024. The reform is expected to take effect before the previous version expires on August 31, 2024. In the following guest post, Lorena Kern and Katja S. Bullemer-Wülfert of the DRRT law firm take a look at the reformed KapMuG and consider the possible implication of the reformed Act’s new provisions. A version of this article previously was published as a DRRT law firm client alert. I would like to thank Lorena and Katja for allowing me to publish their article on this site. I welcome guest post submissions from responsible authors on topics of interest to this site’s readers. Please contact me directly if you would like to submit a guest post. Here is Lorena and Katja’s article.

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After a heated debate, the new reform of the Capital Markets Model Case Act (*Kapitalanleger- Musterverfahrensgesetz*, KapMuG) has finally been passed by parliament and will soon come into force. In the reformed version of the law, which is now no longer time-limited, significant adjustments in the areas of suspension of proceedings and access to evidence point the way towards increased efficiency and the strengthening of the balance between the opportunities afforded to the parties involved in the proceedings (i.e., equality of arms).

1. Brief History of the KapMuG

The KapMuG was introduced in 2005 to relieve the burden on the courts by bundling individual lawsuits related to the IPO of Deutsche Telekom AG in 2000 and the truckloads of documents associated with it. Prior to the KapMuG, there was no comparable instrument of collective legal protection in German civil proceedings; “class actions” in the sense of U.S. “class actions” were always frowned upon.

However, procedural obstacles and complications for claimants and their legal representatives are increasingly the order of the day. In addition, considerable cost risks make it very difficult to finance proceedings that are otherwise too expensive, even for institutional investors.

Will this change with the new KapMuG 2.0?

2. Reform Before the End of Its Term

The KapMuG was set to expire at the end of August 2024. The German Bundestag passed the latest reform of the KapMuG on June 13, 2024, with the reformed KapMuG set to come into force this summer with no fixed term ending. At the last minute, the legal specialists and practitioners consulted were able to introduce positive, investor-friendly amendments. It may still be a long way from perfection, but it is certainly a big step towards protecting investors who have suffered losses.

What happens next?

3. Significant Changes Compared to the Status Quo

Expansion of the scope of application: In an effort to keep up with the market, the new KapMuG now also covers claims against custodians of crypto assets, rating agencies, and auditors.

Acceleration of proceedings: The primary aim of the reform is to speed up model case proceedings. The Telekom and Hypo Real Estate proceedings lasted 20 and 13 years, respectively, before reaching a settlement.

How is this supposed to work?

The higher regional courts will be given more powers in the future: Model proceedings brought before them are only to be opened if they deem this appropriate. In addition, the higher regional courts will formulate the objectives of the model case themselves in an opening order, instead of relying on orders of reference from the regional courts and expanding these with laborious supplementary applications. According to the legislator’s intention, the higher regional courts can also fall short of the parties’ requests and reduce the subject matter of the model case proceedings to ensure efficient implementation.

It is also no longer necessary to stay all court proceedings whose outcome depends on a model case, but only those in which an application for the conduct of KapMuG proceedings has been filed, or the plaintiff has expressly requested a stay after the commencement of model case proceedings.

As a fundamental change, sections 3, 6 and 10 KapMuG now explicitly set out an abstract dependency standard for the first time. With the announcement of the model case application, the respective initial proceedings are interrupted insofar as the decision in the legal dispute is likely to depend on the asserted declaratory objectives. By introducing the term “presumably”, the flexibility originally intended by the legislator is anchored in the legal text, clearly rejecting the concrete dependency standard “interpreted” into the old KapMuG by the Federal Court of Justice (Bundesgerichtshof, BGH), which unduly strained the preliminary review by the regional courts and thus the duration of all proceedings before suspension. This amendment significantly lowers the hurdles for a stay and thus makes it considerably easier for plaintiffs in initial proceedings to access model proceedings in the future. It no longer depends on every detail, and time-consuming taking of evidence at the level of the regional court can and should therefore be avoided.

Concerning the collection of evidence, the legislature also reformed the KapMuG in a positive way for plaintiffs. The previous version of the KapMuG was particularly unsatisfactory in this regard, especially in proceedings against large corporations where the parties involved are simultaneously engaged in various civil and criminal proceedings, as relevant evidence produced in those proceedings was often unobtainable by investors. The reform seeks to rectify this by mitigating information disparities between parties and enhancing the appeal of KapMuG proceedings from the plaintiff’s standpoint.

At the request of the model claimant or the model defendant, the Higher Regional Court must order the other party or a third party in possession of the evidence to submit it if the relevant requirements are met. The change is expected not only to increase efficiency and speed but also increase the pressure on the parties involved to reach an agreement more quickly.

Accompanying changes will also affect the measures to be taken in the event of an impending statute of limitations and the German Civil Code (Bürgerliches Gesetzbuch, BGB). According to the new version of the KapMuG, the suspension of the statute of limitations begins with the public announcement of the order of reference (section 7 (4) sentence 1 KapMuG) if a claimant files a claim in the model case based on the same facts as the declaratory objectives. Consequently, it will no longer be necessary to wait for the later date of the model claimant’s announcement. The aim of this change in timing is to strengthen the application as a comparatively cheaper and lower-threshold form of initial legal action in the interests of the bundling effect of the model case. In the future, claims can therefore be filed by exhausting the time limit under section 13 (1) sentence 1 KapMuG, if they were not yet time-barred at the time of the public announcement of the order of reference. This means that, depending on the current limitation periods, it is likely that more notifying parties will be able to benefit from this over time and at a lower cost risk.

4. Effects on Pending Proceedings

The new regulation will only apply to newly initiated proceedings from the time it comes into force, and therefore has no retroactive effect.

However, the amendments made express the legislative will so clearly, particularly regarding aspects such as the abstract dependency standard and the obligation to produce documents, that the changes can also simplify the interpretation of the existing provisions and should therefore also have a meaningful impact on the legal interpretation of the old KapMuG in proceedings that are already pending.

For now, the courts' approach of imposing excessive formal requirements, especially in the initial stages of proceedings, often block efficiency. However, it remains to be seen whether the lower courts will follow this logic and the now expressly announced will of the legislator.

5. Outlook

The new regulation represents an important milestone, and it will be interesting to see what influence the new law will have on the application and interpretation of already pending capital investor test cases, especially in view of the unfortunate BGH decision in the XI ZB 13/18 case and its interpretation and application in the lower courts. This will be particularly relevant in more recent proceedings, such as the claims against Bayer AG (arising from the Monsanto takeover and the Roundup risk) and against EY (arising from the Wirecard scandal).

As some of the amendments can clearly be categorized as "that's what was always meant", from a lawyer's point of view, the approach that complications and delays, as well as practically and tactically absurd and unnecessary hurdles such as splitting up proceedings, must become obsolete in ongoing proceedings must be clearly advocated. The will of the parliamentary legislators has been clearly set out in black and white since the amendment to the KapMuG was passed. The pending amendments represent a clear removal of unnecessary obstacles. Allowing the ideas of the reformed wording to take effect now, as far as possible, is not an option, but a necessity in terms of legal protection.

Does motive matter in mass action venue fights?

reuters.com/legal/litigation/column-does-motive-matter-mass-action-venue-fights-2024-07-25

Alison Frankel

Zantac heartburn pills are seen in this picture illustration taken October 1, 2019. REUTERS/Brendan McDermid/Illustration/File Photo Purchase Licensing Rights, opens new tab

July 25 (Reuters) - There is no doubt that plaintiffs' firms representing nearly 900 clients who claim to have developed cancer after taking the heartburn medication Zantac wanted to litigate their clients' cases in state court.

The firms went to great lengths to avoid triggering removal of their cases to federal court under the Class Action Fairness Act. That statute, as you know, permits defendants to remove state-court class actions to federal court if plaintiffs' claims exceed $5 million. But it also grants federal-court jurisdiction for "mass actions" originally filed in state court.

The statute defines mass actions as cases "in which monetary relief claims of 100 or more persons are proposed to be tried jointly." So instead of filing a single lawsuit grouping together all of their nearly 900 Zantac clients, plaintiffs' lawyers filed nine separate complaints, each on behalf of fewer than 100 plaintiffs.

They asserted only Connecticut state-law claims against the pharmaceutical defendants, including Pfizer, GSK and Sanofi. (The defendants all deny that Zantac causes cancer.) Plaintiffs' lawyers also named three Connecticut defendants and at least one Connecticut-based plaintiff in each of the nine lawsuits.

But then plaintiffs' lawyers gave defendants an opening. They moved to transfer the nine lawsuits to Connecticut's special court for complex litigation and to consolidate the cases under a state-court rule that gives judges the power to order suits to "be consolidated for trial."

Plaintiffs' lawyers later said they moved for consolidation to avoid paying thousands of dollars in fees to transfer each of the cases to the special court and to resolve pre-trial issues consistently.

The drug companies, however, seized on the text of the Connecticut rule, arguing that plaintiffs were proposing to try all of their cases jointly. The consolidation motion, defendants said, turned plaintiffs' lawsuits into a mass action under the Class Action Fairness Act, triggering federal-court jurisdiction.

Plaintiffs' lawyers from Parafinczuk Wolf and Izard, Kindall & Raabe, as you would expect, moved for the cases to be remanded to Connecticut state court. U.S. District Judge Jeffrey

Meyer of New Haven, Connecticut, granted , opens new tab the remand motion in January 2023, holding that the plaintiffs' consolidation motion could have been clearer but that the rest of the record "does not show that plaintiffs wanted or intended to bring about a joint trial of all their claims when they filed their motion to consolidate."

Does it matter what plaintiffs intended?

The defendants told , opens new tab the 2nd U.S. Circuit Court of Appeals that it does not. Basing remand on plaintiffs' intent, they argued, is "untenable" because it requires courts to reach inferences after engaging in unwieldy inquiries. That approach permits plaintiffs and their lawyers to evade the consequences of their own decision with after-the-fact disclaimers about their true motives.

The 2nd U.S. Circuit Court of Appeals disagreed, in a decision , opens new tab this week affirming the remand to state court. The Class Action Fairness Act, wrote Judge Guido Calabresi, defines mass actions as cases in which more than 100 plaintiffs "propose" to try their claims jointly. That word, the judge said, implicates plaintiffs' intent.
"Our common understanding," Calabresi said, "is that for one to 'propose,' that person must intend to make an offer or request."

The legislative history of the statute supports that interpretation, the judge wrote, since the Senate report on the bill described a mass action as one in which 100 or more plaintiffs "seek to try their claims for monetary relief together." The Senate's phraseology, Calabresi said, suggests that Congress meant to confer federal-court jurisdiction only when courts determine "that plaintiffs acted with the intention of seeking a joint trial."

Judge Alison Nathan joined Calabresi's opinion. Judge Amalya Kearse dissented but did not specifically address the issue of whether courts can consider intent.

The 2nd Circuit's decision deepened a split among the federal circuits on the role of plaintiffs' intent in CAFA venue disputes. The 11th Circuit ruled , opens new tab in the first decision to confront the question that to ignore plaintiffs' intent "would reduce the meaning of the word 'proposed' to nothing more than 'contemplated the possibility of' or even 'consciously attempted to avoid.'" Both the 3rd and 10th Circuits have subsequently adopted the 11th Circuit's reasoning.
But last year the 6th Circuit held , opens new tab otherwise, reversing a trial court remand of 400 product liability cases against 3M. Plaintiffs' lawyers argued that they meant for each case to be tried individually. The 6th Circuit said their intention was not a consideration. "Jurisdictional rules should be simple," the appeals court said. "Requiring district courts to divine counsels' unexpressed intentions and compare different cases' trial management plans would be anything but."

Daniel Pariser of Arnold & Porter Kaye Scholer, who argued at the 2nd Circuit for the pharma companies, did not respond to my request for comment.

I should note that in addition to disputing the proper forum for the litigation, the drug companies pointed out in a briefing to the 2nd Circuit that the Connecticut lawsuits were all filed after the Florida judge overseeing consolidated federal-court litigation over Zantac rejected testimony from plaintiffs' scientific experts and tossed thousands of cases. Plaintiffs' lawyer John Bruegger of Parafinczuk Wolf said in an email statement that the 2nd Circuit ruling is “well reasoned” and that his clients look forward to proceeding with their cases.

Read more:

Drugmakers' huge win in consolidated Zantac case shows process can work for defendants
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Reporting By Alison Frankel

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Alison Frankel
Thomson Reuters

Alison Frankel has covered high-stakes commercial litigation as a columnist for Reuters since 2011. A Dartmouth college graduate, she has worked as a journalist in New York covering the legal industry and the law for more than three decades. Before joining Reuters, she was a writer and editor at The American Lawyer. Frankel is the author of Double Eagle: The Epic Story of the World’s Most Valuable Coin.

US judge should reject Boeing plea deal, crash victim families say

reuters.com/world/us/us-judge-should-reject-boeing-plea-deal-crash-victim-families-say-2024-07-25

David Shepardson

Victims of the Ethiopian Airlines Flight 302 Boeing 737 Max 8 crash are seen as Federal Aviation Administration (FAA) Administrator Stephen Dickson waits to speak during a hearing of the Senate Commerce, Science, and Transportation Committee on Capitol Hill in Washington, U.S., June 17, 2020. Brendan Smialowski/Pool via... Purchase Licensing Rights, opens new tab Read more

July 25 (Reuters) - U.S. District Judge Reed O'Connor should reject a "sweetheart" plea deal the Justice Department struck with Boeing (BA.N), opens new tab, relatives of 15 of the 346 people killed in two fatal 737 MAX crashes said on Thursday.
Late Wednesday, the planemaker finalized an agreement to plead guilty to a criminal fraud conspiracy charge and pay at least $243.6 million after breaching a 2021 deferred prosecution agreement.
Family members said in a court filing in Texas that they will submit a comprehensive objection to the plea deal by next week, arguing that there are a number of issues, including its "outdated and misleading statement of facts," use of "inaccurate sentencing guidelines" and "ambiguous restitution commitment" by Boeing.

The families cited O'Connor's statement in a February 2023 ruling: "Boeing's crime may properly be considered the deadliest corporate crime in U.S. history."

Spokespeople for Boeing and the Justice Department declined to comment on the families' filing.

The DOJ told Boeing earlier this month it could accept a settlement that branded the planemaker a felon or fight the charge in court. The Justice Department said in May that Boeing had breached its obligations in the agreement that shielded the planemaker from criminal prosecution stemming from misrepresentations about a key software feature tied to fatal 737 MAX crashes in 2018 and 2019 in Indonesia and Ethiopia.

The planemaker allowed potentially risky work at its factories and did not ensure key airplane record-keeping was accurate or complete, the Justice Department said as it outlined why it believed Boeing had violated the 2021 deferred prosecution agreement.

Boeing on July 7 agreed in principle to plead guilty to conspiring to defraud the Federal Aviation Administration after the government said the planemaker knowingly made false representations about key software for the 737 MAX.

The Justice Department has a separate criminal probe ongoing into the Alaska Airlines jet that was missing four key bolts.

The plea agreement raises serious concerns for the victims' families, lawyers said in Thursday's filing, questioning the "unexplained calculation" of the fine and the lack of acknowledgement by the company that its crime killed 346 people.

As part of the guilty plea deal, Boeing agreed to pay the maximum fine of $487.2 million and the DOJ recommended the court credit its previous 2021 payment of $243.6 million against that, which was required by 2021 deal.

The deal agreed this month also imposes an independent monitor, who will have to publicly file annual progress reports, to oversee the firm's compliance.

The families argued that O'Connor rather than the Justice Department should select the independent monitor. DOJ broke with precedent in the deal in specifying the department, rather than Boeing, would select the firm.

Reporting by David Shepardson and Chris Prentice; Editing by Mark Porter, Nick Zieminski and Aurora Ellis

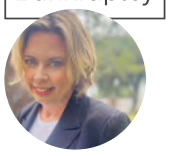
NEWS

'It Was a Very Long Battle': Why Talc Victims Could Vote for J&J's Third Bankruptcy

Beasley Allen's Andy Birchfield, whose firm has led opposition to another talc bankruptcy, acknowledged to Law.com: "I would be really surprised if J&J were to lose this vote."

July 25, 2024 at 03:56 PM

Bankruptcy



Amanda Bronstad
staff reporter

The original version of this story was published on Law.com

What You Need to Know

- Friday is the deadline to vote on J&J's prepackaged $6.48 billion bankruptcy plan.
- Anne Andrews, whose $417 million talc verdict got reversed, is recommending that her clients vote for the plan, noting 'the record of losses has been rather stunning.'
- The U.S. Supreme Court's June 27 decision blocking Purdue Pharma's $6 billion bankruptcy plan could still spell trouble for J&J.

Rhonda McKey plans to vote for Johnson & Johnson's prepackaged bankruptcy plan on Friday because, having endured three surgeries and two rounds of chemotherapy since being diagnosed with ovarian cancer in 2021, she wants her life back.

"It was a very long battle. It was a very hard battle," McKey, 54, told Law.com. "I'm still alive. I want to live. I want to have something that gives me something besides feeling like I'm surviving every day. A little piece of mind."

Her attorney, Anne Andrews, is among dozens now supporting J&J's plan, which would provide $6.48 billion upfront and, over time, boost to $8 billion for future talc victims. Andrews, of Andrews & Thornton in Newport Beach, California, was involved in a $417 million talc verdict in 2017 in Los Angeles Superior Court. But that verdict, along with many other jury awards for talc victims, was later reversed.

For 10 years, she said, she's fought her own battle.

"I have watched the litigation and been involved in it, and watched the lawyers opposed to this do their best in the court system we have," she said. "And I would say that the record of losses has been rather stunning."

Dozens more firms, led by Beasley Allen in Montgomery, Alabama, continue to oppose the plan, which would be the third Chapter 11 filing by a J&J subsidiary designed to resolve talc litigation. J&J needs 75% of talc claimants to vote for its plan this Friday.

And it's likely to succeed, Andy Birchfield, a principal at Beasley Allen, told Law.com, given the wide net of potential voters that J&J has cast.

"I do think there are a lot more firms that are recommending that their clients vote against the J&J bankruptcy than J&J is letting on," he said. “But, with that said, I would be really surprised if J&J were to lose this vote.”

‘What Do These 40,000 Unfiled Cases Look Like?’

The plan, should it move forward, would be the third talc bankruptcy for J&J since 2021. The U.S. Court of Appeals for the Third Circuit dismissed the first Chapter 11 case last year after finding that the debtor, J&J subsidiary LTL Management, wasn’t in financial distress. U.S. Bankruptcy Chief Judge Michael Kaplan, of the District of New Jersey, dismissed the second LTL bankruptcy months later, citing the Third Circuit’s ruling.

But this time, J&J has named plaintiffs firms that support its plan, including Aylstock, Witkin, Kreis & Overholtz, in Pensacola, Florida, Chicago’s Keller Postman and The Miller Firm in Orange, Virginia. At a July 17 earnings call, J&J CFO Joe Wolf said: “Our confidence that we will reach the requisite 75% vote is bolstered by the continued support of counsel, representing the vast majority of claimants with whom the plan was developed, as well as the announcement of support by additional prominent plaintiff law firms recently.”

Beasley Allen has its own list: more than 60 firms that oppose a third talc bankruptcy, including Motley Rice and Levin Papantonio Proctor Buchanan O’Brien Barr Mougey.

Many of them have attempted to thwart the plan, filing a class action last month against J&J alleging fraudulent transfers, such as the “Texas two-step.” They sought a temporary restraining order and preliminary injunction that would halt J&J’s bankruptcy filing, but U.S. District Judge Michael Shipp, of the District of New Jersey, rejected that motion on June 28.

J&J, in a dismissal motion, called the case a “misguided effort by a small group of plaintiff law firms to thwart the ongoing solicitation of a prepackaged Chapter 11 plan.” Talc plaintiffs opposed that motion on Tuesday.

In the talc multidistrict litigation before Shipp, Beasley Allen, whose principal Leigh O’Dell is co-lead counsel, moved for a census of all talc claims, including medical records. They have insisted that many of the 71,000 talc claimants who J&J says support its plan have illnesses other than ovarian cancer and, as such, are “beyond the scope” of the multidistrict litigation. On July 19, J&J opposed the motion as “nothing more than a dressed-up media statement” designed to “blow up defendants’ ongoing efforts to negotiate a global resolution.” A hearing is set for Aug. 5.

“J&J says there’s 100,000 current cases,” Birchfield told Law.com. “Well, there’s only 60,000 that are filed. What do these 40,000 unfiled cases look like? Are they ovarian cancer? Cervical cancer? Something else? We need to know.”

J&J also has attempted to derail Beasley Allen’s efforts to stymie its bankruptcy filing, filing a motion to subpoena the firm for its litigation funders. On July 9, retired U.S. Magistrate Judge Joel Schneider in New Jersey denied that request. J&J has filed an objection to Schneider’s decision.

Then there’s J&J’s motion to disqualify Beasley Allen from leadership of the talc litigation. Atlantic County Superior Court Judge John Porto, who heard three days of an evidentiary hearing in New Jersey, ruled on July 19 that Beasley Allen should not be disqualified. He concluded that J&J hadn’t provided evidence that its former attorney shared confidential information with Birchfield. U.S. Magistrate Judge Rukhsanah Singh, who is involved in the talc multidistrict litigation in the District of New Jersey and who heard arguments alongside Porto, gave both sides until July 29 to file supplement briefs on whether to adopt the ruling.

‘This May Be Their Last Chance’

One wrinkle is whether the U.S. Supreme Court’s June 27 decision blocking a $6 billion bankruptcy plan for OxyContin manufacturer Purdue Pharma could impact J&J’s proposal. The Supreme Court found in *Harrington v. Purdue Pharma* that the plan’s liability releases for Purdue’s owners, the Sackler family, were illegal.

Birchfield said that ruling could sink another talc bankruptcy, which, as before, would be filed by a J&J subsidiary.

“They’re after a discharge for liability for Johnson & Johnson, the parent company,” Birchfield said. “And the *Purdue* decision says you’re not entitled to that. Between the Sackler/Purdue decision and the Third Circuit decision, the bankruptcy path is closed for J&J.”

J&J’s worldwide vice president of litigation, Erik Haas, had a different take on the Supreme Court’s ruling.

"Contrary to the positions of the small and dwindling number of opposing plaintiffs' law firms to our plan, the Supreme Court rejected as irrelevant the rhetoric that bankruptcy should not be available for corporations facing mass tort liability, and nowhere in the extensive opinion did the Supreme Court suggest that a debtor facing asbestos mass tort liabilities demonstrate that it is in immediate 'financial distress,'" he said in a statement. "The *Purdue* decision, therefore, only serves to reinforce our confidence the talc claimants will approve, and the bankruptcy court will confirm, the proposed plan."

Under the plan, Andrews predicted that her client, McKey, would receive between $150,000 and $175,000, depending on a claims process that would determine exact payouts.

But her main focus, in deciding to support the plan, was on J&J's decision to offer compensation to talc victims, many of whom have waited for years.

"The fact that Johnson & Johnson is coming to the table and wants to resolve it says a lot," she said. "This may be their last chance to receive money. That's the reality nobody wants to discuss."

Securities Law News

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Matt Levine's Money Stuff: Bill Ackman Wants Less Money

By Matt Levine

Opinion

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Matt Levine's Money Stuff: Bill Ackman Wants Less Money

By Matt Levine 2024-07-25T14:55:38364-04:00

PSUS oops

Every initial public offering is marketed in two ways:

1. "This company is good": This is the story that the IPO prospectus will tell, and that the company will tell in roadshow meetings with potential investors. The company has a good business, a good product, smart managers, strong financial results, so if you are a long-term fundamental investor you should buy some stock.
- 2. "This stock will trade up": This is the story that the marginal investor in the IPO wants to hear. The company is selling X million shares in the IPO, there are orders for 10X million shares, there are a lot of retail investors who would love to buy it but can't get into the IPO, and so, when the stock opens for trading on the day after the IPO, lots of people — the retail investors, the people who put in the 9X million orders that weren't filled — will buy it in the aftermarket. There is a lot of demand, not enough supply, so the stock will go up.

That second story is, to some degree, self-fulfilling. The company's banks will call an investor to ask "how much do you want to buy in this IPO?" The investor will say "well how is it going?" The correct answer is not "we've got orders for 80% of the shares, so it would really help if you'd put in a big order for the other 20%." The answer the investor wants is more like "we've got orders for 1,000% of the shares, but if you put in a big order we'll see what we can do for you." The more demand the investors think there is, the more demand there will actually be: Investors want to buy into IPOs that *don't* need their money, because those are the ones that will trade up.

We have talked a few times about Bill Ackman's plans for a US publicly listed closed-end fund, Pershing Square USA Ltd., or PSUS. He has talked about raising $25 billion in its IPO. He's marketing that IPO now, and the roadshow is nearing its end, with the deal set to price on Monday. So far, uh, it doesn't look like $25 billion. The revised target is more like $2.5 billion to $4 billion, with room to grow from there but a hard cap of $10 billion.

I suppose you could tell a version of Story 2 here that would go something like this: "If the market gets the idea that PSUS will be a $25 billion IPO, people will anchor on that size and think that it might be reasonable. If you then cut it back to $2.5 billion, people will get a sense of scarcity: 'PSUS thought there was $25 billion of demand but it's only selling $2.5 billion of stock.' That sense of scarcity will make people want to buy stock in the IPO, because they think it will trade up on aftermarket demand: All the retail investors, etc., who expected $25 billion worth of stock, will only be able to buy $2.5 billion after the IPO, and they'll bid up the price. So investors will put in a lot of orders in the IPO, hoping to get an allocation in a relatively small hot IPO. And this will snowball: There will be so much demand for the IPO that PSUS will be able to price a $4 billion or $5 billion or $10 billion IPO that will still trade well."

That's one possible story. That's what Pershing Square might be trying to do, and the advice that its bankers might have given it about how to build momentum and get a lot of demand and make sure the stock trades well after the IPO.

It is not a story that the company would generally *say explicitly in a prospectus*, for at least two reasons:

1. Regulators don't like you going around *telling* investors that the stock will trade up. Prospectuses tend to be more about financial information and risk warnings than they are about "hey if everyone buys this stock it'll go up."
- 2. It … I mean … the point of this story is about investor psychology and anchoring and herd mentality, and it doesn't work as well if you make it explicit. "If we first tell you $25 billion, you'll anchor on a big deal, and if we then tell you $2.5 billion you'll get a sense of scarcity, and then everyone will put in orders because everyone else is putting in orders, so we'll end up with a lot of momentum for a $10 billion deal": Isn't the natural response to that to say "ah, got it, I will discount the $25 billion thing and the $2.5 billion thing and not get too enthusiastic when other people put in orders"?

Here, though, is a letter that Ackman sent yesterday and that PSUS filed today:

The $25 billion number in the media initially anchored investors in thinking the deal would be too large. Ultimately, I expect this 'anchoring' to be helpful to the final outcome. …

The nature of IPO processes is such that they are highly momentum driven and back end loaded. ...

The banks also play a very important role. … It is therefore very important that the banks get a sense that a deal's momentum is building as they convey that feeling of momentum to the capital markets desks of every institutional investor, and the financial advisor community also wants to hear that the institutions are interested and motivated.

We have told the market that the transaction will have a hard cap at $10 billion. The typical approach is to show a small deal size to make market participants concerned that they will miss the deal if they don't put their order in quickly. ...

I expect that we will file a prospectus tomorrow with a $2.5—$4 billion cover. The ultimate deal size will depend on how demand builds Thursday, Friday and Monday. We will price Monday night unless we have to refile due to a material increase in the size of the deal above tomorrow's filing range.

None of these ideas are exactly surprising, but it's surprising to read them in a securities filing for an IPO. It was an accident, though: That letter was sent to "a limited number of strategic institutional and high net worth investors in Pershing Square Holdco, L.P.," the management company that Ackman controls and that will run PSUS. It was not meant for *every* IPO investor, just for a few investors who are close to Ackman; it was private commentary on the IPO tactics, not an official marketing document. PSUS's public filing has an awkward preface saying: "Mr. Ackman sent Appendix A [the letter] as an internal communication to the investors in Pershing Square Holdco, L.P. and therefore did not believe that it would require public disclosure." But apparently his lawyers disagreed, and now everyone can read it.

Does it … does it help? Does it "convey that feeling of momentum"? The letter goes on to ask the strategic investors to put their orders in for the IPO:

In light of all of the above, participation by this illustrious group is important and extremely helpful to the IPO. Three members of this group have already put in orders with the banks for $25m, $50m and $100m. … While we did not make it a requirement for strategic investors to invest in PSUS, our hope was that our strategic investors would find the offering highly attractive and would participate in the IPO.

In short, this is a moment when you can be very helpful to Pershing Square by participating in the PSUS offering and giving your order to the banks, the sooner the better. An order today will enable us to improve the strength of tomorrow's initial message to the market on deal size. Orders that come later are of course still very helpful as the book will build and we create momentum over the weekend into Monday.

I feel like explicitly asking your best investors to be "very helpful" by putting in a big order to "improve the strength of [the] message to the market on deal size" and "create momentum" might have the opposite effect, *if everyone can read the request?* (Particularly if the formerly maybe $25 billion IPO is now maybe a $2.5 billion IPO?) The IPOs you really want to invest in are the ones where nobody has to ask for your order.

But Ackman is not just looking for momentum; he also makes the case that the stock will trade up. Pershing Square's existing European closed-end fund trades at a discount to net asset value, and many US closed-end funds do too, making it a bit of a tough sell. (If you buy the stock at its $50 offering price, and it trades down to a 10% discount to NAV, you're out $5 immediately.) But Ackman argues that PSUS is different from other closed-end funds and should trade at a premium to NAV, and that there are "other powerful technicals in our favor" that will cause the stock to trade up after the IPO:

We have a powerful case to make for aftermarket demand. We have explained to every investor that this will not be our last public offering and that the success of this offering is critical to the long-term ability of Pershing Square Inc. to have successful future IPOs. We have committed to limit supply versus potential demand so that the stock trades well in the aftermarket including announcing a hard cap on size at $10 billion. Going against this perception is the fact that in all previous closed end fund IPOs the issuers have met 100% of the demand stock. As a result, the post-IPO trading dynamics of closed end funds are not a good reference point for what we are committing to achieve. ...

Importantly, because of PSUS's corporate structure, we are not permitted to offer the transaction to investors in the European Union, as well as institutions in Norway, Korea, Kuwait, Malaysia, markets where Pershing Square is well known and where we have many current and former investors. In addition, non-U.S. retail is not permitted to buy stock in the IPO. As a result, all of these ineligible IPO investors have to buy stock in the aftermarket when the stock begins to trade. In addition, we believe that U.S. retail will be huge source of aftermarket demand.

The last sentence might be the most important: Ackman has a big following among US retail investors, and probably many of them will not get shares in the IPO, so they will buy in the aftermarket and support the price. And the smaller size will help with this: If PSUS raises $2.5 billion rather than $25 billion, there will be fewer shares for retail investors to buy in the aftermarket, so they will trade better.

But if you are doing an IPO, you are not *really* supposed to go around *saying publicly* "this stock will trade up after the IPO." Obviously that's what investors want, but you can't just, like, put in the prospectus "we promise you the stock will trade up." But Ackman says in his letter that "it requires a significant leap of faith and ultimately careful analysis and judgment for investors to recognize that this closed end company will trade at a premium after the IPO when very few in history have done so," which I think *is* a promise that the stock will trade up? Not what regulators like to see.

Because, again, he wasn't expecting the letter to be public. But it is. So PSUS's awkward preface to the letter goes on:

You should not consider the statements in the communication attached as Appendix A in making your investment decision with respect to the Offering, including, in particular:

The statements regarding the absence of key man risk. ...

The statements regarding the post-Offering trading dynamics, including with respect to market demand, trading discounts or premiums or trading volume. Shares of closed-end investment companies frequently trade at a discount from their net asset value.

The statements regarding indications of interest from investors and any investor's rationale for participation or non-participation in the Offering. ...

The Company specifically disclaims the statements made by Mr. Ackman.

The letter contains arguments that the stock will trade well, but it's not supposed to, and PSUS "specifically disclaims" them. Officially, PSUS wants you to know that "shares of closed-end investment companies frequently trade at a discount," and you should ignore PSUS's chief executive officer when he says that this one won't. I have never read an IPO prospectus that *winked* before, but I think this one might.

Citi oops

If you are a very large bank and you make thousands of commercial loans to businesses, you should try to write down how much money you loaned to each business and when they promised to pay you back. Those are good things to keep track of. Write them down in a computer somewhere. But, again, you have thousands of these loans, you make more every day, and each loan is made by some particular loan officer in some branch office somewhere, and you are relying on each of those loan officers to write down how much money they loaned their clients and when it has to be repaid. In a large enough sample, will *100%* of those loan officers write down the correct amounts and maturity dates? At Citgroup Inc., apparently the answer is no:

Citigroup inaccurately reported to regulators the details of tens of billions of dollars of loans, errors that could complicate its ability to fund dividends and buybacks.

The flawed loan files were a primary reason regulators slapped the Wall Street bank with a $136mn fine this month, said five people with direct knowledge of the matter. The previously unreported mistakes had also led to discord in the close relationship between Citi and McKinsey, the consulting firm the bank retained to help remedy shortcomings identified in a 2020 Federal Reserve consent order, three people said.

The Fed's bank examiners uncovered the flaws in Citi's annual stress test submission and gave it 30 days to submit a plan to fix the loan errors and other data issues. If regulators do not approve the plan, the group will face new limits on its ability to distribute profits to shareholders. …

Inside Citi former employees said it was well known that its commercial loan files regularly contained errors, such as incorrect maturity dates, collateral information or even the size of loans, issues that had direct bearing on examiners' ability to evaluate the bank's soundness.

But last year as Citi approached a new deadline to show regulators it had fixed its data issues, employees say they were told to either ignore the remaining gaps in its data controls or hide them from regulators.

It does feel like "keep track of how much money you loaned to clients and when they have to pay you back" would be near the top of the list of priorities for a bank, and for that bank's regulator. (Particularly for Citi, which rather famously ran into trouble when it paid back a client's loan for it early.) But I guess it is hard?

Everything is securities fraud

“Every bad thing that a public company does is also securities fraud,” I like to say around here, and CrowdStrike Holdings Inc. shipped a really bad software bug last week:

CrowdStrike Holdings Inc., the cybersecurity company at the center of massive global IT outages, said that a bug in a quality-assurance tool the company uses to check updates for mistakes allowed flawed data to go out to customers, causing last week’s meltdown.

On Friday, the company pushed through an update for Windows machines via a rapid-response mechanism, meant to respond quickly to changing threats. That update contained a critical flaw. CrowdStrike’s “content validator,” which is supposed to test updates for errors before they go out, malfunctioned and let the bug pass through, the company said in an incident report published on Wednesday.

That undetected error crashed Windows systems and kicked off one of the most spectacular rolling IT failures in history. The US company is trying to piece together the series of events that led to crashed Microsoft Windows computer systems around the world, taking down airline, banking and stock exchange operations from Australia and Japan to the UK.

From Thursday’s close (before the bug) to Monday’s, CrowdStrike’s stock fell about 23%. That’s as classic a case of “everything is securities fraud” as you are going to get: CrowdStrike messed something up, its stock fell, there will be lawsuits. So far I have not seen any lawsuits, but here are five press releases from law firms looking for CrowdStrike shareholders to sue, so give it a few days.

Elsewhere, Jonathan Weil argues that “CrowdStrike’s disastrous software update ought to put its financial reporting, not just its product issues, under an unwelcome spotlight,” since its reporting emphasizes annual recurring revenue, and that ARR calculation — which assumes that expired contracts will be renewed — “may be a stretch, considering that CrowdStrike’s botched software update just caused a global computer outage, likely prompting many to rethink their existing contracts.” I suppose that’s a good hook — “your annual recurring revenue is not as recurring as you said it was” — for the everything-is-securities-fraud lawsuits.

I also often add that every bad thing that *happens to* a public company can be securities fraud, and CrowdStrike’s botched software update definitely happened to a lot of public companies. I have not yet seen any lawyers trawling for clients to sue Delta Air Lines Inc., but it “is expected to take a sizable financial hit this quarter from the system breakdown that led to thousands of canceled flights and prompted a federal investigation of the carrier’s response,” so look out for that one too.

Cell phones

Sorry but this is just cool and funny:

Coinbase Inc. asked once again Tuesday to access the private communications of U.S. Securities and Exchange Commission Chair Gary Gensler as it fights allegations that it permitted the illegal trading of unregistered securities on its crypto platform. …

The company … has narrowed its document request based on U.S. District Judge Katherine Polk Failla's feedback. Now, it is only asking that the SEC be made to search Gensler's personal devices for any statements he's made on the cryptocurrency industry since being appointed leader of the agency, according to a Tuesday motion to compel.

Paul Grewal, Coinbase's chief legal officer, told Law360 in a phone conversation Monday that … Gensler's behind-the-scenes communications with market participants could call into question his public position that the majority of digital tokens trading today are securities to be regulated by the agency.

"We're entitled to know all the cards the other side has," Grewal said. "We're not trying to play Texas Hold 'Em with all the cards face down."

If Gary Gensler's SEC is known for two enforcement initiatives, they are probably:

1. Trying to ban crypto, for instance by suing Coinbase, and
2. Fining every financial firm because their employees sometimes discussed work on their personal cell phones.

"Judging by SEC enforcement priorities," I once wrote, "perhaps the single worst financial crime … is talking about business on personal cell phones." But of course that was sarcastic. The SEC has *extracted a ton of money* from the financial industry for the cell-phone stuff, and has *talked* a lot about how bad it is — "Finance, ultimately, depends on trust," Gensler has said, and "by failing to honor their recordkeeping and books-and-records obligations, the market participants we have charged … have failed to maintain that trust" — but nobody *actually* believes that it's all that bad. We talked a few months ago about how the SEC finally got around to blocking third-party messaging apps from its own employees' phones, because of course *they* probably discussed business on unofficial channels too.

Did Gensler? I have no idea, but Coinbase wants to search his personal devices to find out. The SEC is fighting back:

In its motion last month to quash Coinbase's subpoena for the Chair's private communications, the agency contends the company's actions threaten to create a "chilling effect" that drives individuals away from public service.

Yes, imagine searching someone's personal devices to see if they said anything work-related on them! Very rude.

Things happen

Rupert Murdoch Plan to Give Control to Son Lachlan Triggers Family Legal Battle. Funding surge for blank cheque companies points to Spac bounceback. Inside JD Vance's Short-Lived Career as a Venture Capitalist. Meme-Stock Investors Lose Millions on a US Energy Company Takeover. Coinbase fined £3.5mn by UK regulator over 'high-risk' customers. NYCB's Flagstar to Sell Mortgage-Servicing Unit for $1.4 Billion. Will US companies keep faith in the 'Texas miracle'? Southwest Air Moves to Assigned Seats in Major Policy Shift. Revolut secures UK banking licence after 3-year battle. Florida sheriff's office warns against taking selfies with 'depressed' bear. Gorilla screen time. Cocaine sharks.

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- 1. Also, if the IPO is 10 times covered — there are orders for 1,000% of the shares — investors will inflate their orders to get an allocation. "If it's 10x oversubscribed, everyone will get allocated about 10% of the shares they want, so if I want a million shares I should put in an order for 10 million," is the rough thought process.
- 2. A digression. I wrote last week that that $25 billion target was extremely ambitious, that it would be impossible to achieve with just retail demand, and that it relied on Ackman being able to convince institutional equity managers that it was okay for them to invest their clients money in PSUS, which is, after all, another equity manager's fund. As I said: "There is a pitch to institutional stock investors, to asset managers, which is in part, sure, 'this might trade at a premium because retail investors love me,' but which is also in part 'this is not a stock fund.' If you are an institutional stock investor, buying a stock that is just another stock investor's fund is a weird move: You're paying extra fees, and you're outsourcing the work of stock-picking to him. But buying a stock that is a company — that happens to be a company that invests mostly in stocks — is fine. Investing in Berkshire Hathaway is more socially acceptable than investing in ARKK." This was a tough pitch, and apparently it got some pushback. Ackman wrote yesterday: "For certain mutual funds, some hedge funds and certain other asset managers, an important concern is whether PSUS fits their mandate as some perceive PSUS as investing another manager's investment vehicle. We have addressed this issue by analogy by comparing PSUS to Berkshire Hathaway. We make the case that if you can own Berkshire, an investment holding company that owns both controlling stakes in companies as well as public securities, then why should you not be able to invest in an investment holding company that buys minority stakes in public companies at a discount with a path to control, in a company and with a tax-exempt corporate tax structure. The above argument wins the day for many investors, but not all. Some of the largest mutual fund complexes have passed for this reason (e.g., the Capital Group Companies)."
- 3. Ackman recently sold 10% of the management company to investors at a $10 billion valuation, which, I wrote, seems pretty rich for an asset manager that (at the time) ran $18 billion of outside money. "The investors in Pershing Square aren't paying $1 billion for 10% of a firm that manages $18 billion," I wrote. "They're paying $1 billion for 10% of a firm that they expect to manage more than twice that in the near future, and to grow from

there." They really want PSUS to work out, because "Pershing Square will manage a lot more money" seems like a pretty important part of their thesis.

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Most Brokerage Audits Flagged for Violating Basic Standards

By Amanda Iacone

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Most Brokerage Audits Flagged for Violating Basic Standards

By Amanda Iacone 2024-07-25T17:40:01000-04:00

Faulty audits of brokerage firms climbed for the second year in a row as US accounting firms struggled to meet basic standards when vetting revenue and net capital, according to annual inspection results released on Thursday.

Inspectors found flaws in 70% of audits examined in 2023 for broker-dealer clients—firms that act as go-betweens for buyers and sellers of securities—according to a Public Company Accounting Oversight Board report summarizing the regulator's findings. Violations among audits of listed companies also have risen in recent years.

In comparison, the board identified deficiencies in 58% of broker-dealer audits examined in 2022. Nearly half had violations in 2021.

Violations among the largest auditors nearly doubled, contributing to the jump in inspection findings, according to the report.

The PCAOB also expanded the pool of auditors undergoing inspection scrutiny for the first time, twice the number of first-timers from the year before. Such firms typically have a high deficiency rate, the report said.

Of the 60 firms whose audits were inspected, 88% had flawed work—a dip from the 90% of firms with performance problems in 2022.

To combat higher violation numbers, the board outlined steps firms could take to prevent mistakes, such as evaluating possible fraud risks related to certain journal entries.

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

MARKETS & FINANCE | STOCKS

U.S. Accuses Prominent Short Seller Andrew Left of Fraud

Citron founder manipulated stocks by issuing misleading research reports that led to quick trading profits, prosecutors allege

By *Dave Michaels* Follow and *Justin Baer* Follow

Updated July 26, 2024 9:17 am ET

Andrew Left, founder of Citron Research PHOTO: PATRICK T. FALLON/BLOOMBERG NEWS

Federal prosecutors on Friday charged famed short seller Andrew Left with fraud, accusing him of routinely making exaggerated or misleading statements about stocks to quickly profit on price moves caused by his reports.

The charges mark a major turn of fortune for the bombastic investor, who called his firm Citron Research because it analyzes the "lemons" of the stock market. He scored a major hit a decade ago with well-timed bets against onetime highflier Valeant Pharmaceuticals International but hadn't matched that success more recently.

An indictment returned by a Los Angeles grand jury accused Left of essentially trading on his name and reputation, announcing his bets and naming price targets far from where a stock was trading. Left quickly closed his positions after his statements caused prices to move in the direction he wanted, the indictment says.

Left, reached Friday morning, had no immediate comment. An attorney for Left didn't immediately return messages seeking comment.

His appearances on cable news networks and statements on social media magnified the impact of his reports and caused others to follow his bets, according to prosecutors.

Left "used his platform as a securities commentator to manipulate the markets and enrich himself in the process," said Los Angeles U.S. Attorney Martin Estrada, whose office brought the case.

The Securities and Exchange Commission also sued Left and Citron in Los Angeles federal court, accusing him of civil securities fraud.

Left, who operated out of Los Angeles for most of his career, faces criminal charges of securities fraud and lying to federal investigators. The indictment says he manipulated the prices of at least 15 stocks over a five-year period, earning illegal profits of $16 million. He sometimes suggested stock prices would fall by 50% or more but closed his positions after share prices had moved only a couple of percent, according to the indictment.

In an interview with The Wall Street Journal in 2015, Left said he tried to make Citron's research more appealing than the typical Wall Street fare. "Sometimes you have a great story and the biggest challenge is, 'How do I get people to read it?' " Left said at the time. "Wall Street research is painfully boring. I enjoy being entertaining."

Many stocks that Left alleged to be powered by fraud later became targets of regulators. More than 50 companies covered by Citron Research were the subject of regulatory investigations, lawsuits or exchange delisting since 2001, his website says. He was sometimes right when he accused companies of questionable or fraudulent practices.

Left scored with well-timed bets against Valeant Pharmaceuticals International. PHOTO: DOMINICK REUTER FOR THE WALL STREET JOURNAL

His work on drug giant Valeant, which questioned how it used a network of pharmacies it controlled, was largely on the mark. An executive at Valeant was later convicted of involvement in a kickback scheme that funneled business to the pharmacies.

Left's indictment caps a three-year effort by the Los Angeles U.S. Attorney's Office and fraud-section prosecutors in Washington, D.C., to examine the tactics short sellers use to instigate and then profit from a stock's decline. Short sellers borrow shares from other investors and then sell them, in hopes that they can buy them back cheaper later and pocket the difference.

The Justice Department seized hardware, trading records and private communications as prosecutors looked for wide-ranging conspiracies and evidence of market manipulation, The Wall Street Journal reported two years ago.

Prosecutors also accused Left of hiding ties to hedge funds that got early notice of his research and, in some cases, passing off their trading ideas as his own. The hedge funds traded in advance of his reports becoming public and shared a portion of profits with him, the indictment says. When asked by federal investigators in January 2021 about one of those episodes, Left lied and said he "never, never, never" gave prior notice of a report to a hedge fund in exchange for compensation, according to the indictment.

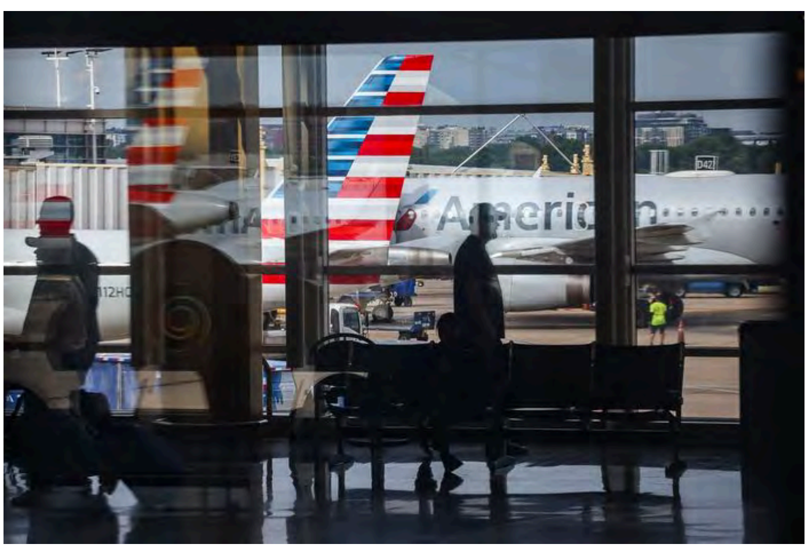
Left also misled the market by disseminating reports that suggested he managed money for other investors, when he only invested his own funds, according to the indictment.

Short sellers have long served an important role in the markets. Betting stocks will fall in price can help investors hedge against risks, identify overpriced shares and even root out fraud. Shorts warned investors about the 2008 credit crisis and helped reveal scandals at Enron and Wirecard.

Short sellers say their research enjoys free-speech protections. But corporate executives often complain that they exaggerate a company's problems or mislead by publishing more than they really know.

Left has long described himself as a publisher, and his website describes the limits of what he reveals. The site says "Citron Research will not report when a position is initiated or covered," the tactic that prosecutors now say was deceptive.

In one instance cited by prosecutors, Left shorted American Airlines stock in June 2020, a few months after the pandemic caused airline stocks to decline. In a message he wrote on Citron's account on Twitter, now known as X, Left predicted that American would fall another 50% to $10.



Left shorted American Airlines stock in June 2020, a few months after the pandemic caused airline stocks to decline. PHOTO: VALERIE PLESCH/BLOOMBERG NEWS

But Left bought options that only required a small decline in price to pay off. Within 10 minutes of posting the tweet, Left closed out most of his bet on

American shares. He dumped the rest within half an hour.

In some cases cited in the indictment, Left bet that stocks would rise, rather than fall, in price. But he didn't hold the conviction for long. In 2018, Left wrote on Twitter that he was bullish on Tesla. Within one minute of writing that on Twitter, Left sold more than half his stake and pocketed $1 million, according to the indictment.

Prosecutors accused Left of manipulating the price of other stocks, including Facebook, now known as Meta, and Nvidia. He also "initiated a media campaign to discredit another activist short seller's short report" on General Electric. In ridiculing Harry Markopolos's report asserting that GE had aggressive accounting, Left published his own research indicating he owned the stock. In truth, the prosecutors wrote, he had already placed an order selling his GE shares when his report was published.

The case against Left says he knew that his recommendations would move stock prices, which "empowered him to manipulate the price of a targeted security."

If convicted, Left faces a maximum sentence of 20 years in prison on each of 17 securities-fraud counts, 25 years on a separate securities-fraud charge and five years for one count of lying to investigators.

Hong Kong regulators accused Left of misconduct in 2016 and banned him from the city's securities market for five years. The city's securities regulator alleged that Left misled investors when four years earlier he accused property developer China Evergrande Group of covering up its insolvency.

Left appealed the suspension and was later proven right, at least directionally, about Evergrande. The company collapsed earlier this year and Chinese regulators said its most important subsidiary had fraudulently boosted sales and profit.

But Left took a big loss when betting against GameStop three years ago. Some individual investors responded by sharing his personal information, hacking into his social-media accounts and texting Left and his two children with threatening, profane and personal language, the Journal reported in 2021.

Left mused on a video at the time: “When we started Citron, it was to be against the establishment. We’ve actually become the establishment.”

Write to Dave Michaels at dave.michaels@wsj.com and Justin Baer at justin.baer@wsj.com

Videos

Bloomberg Law News 2024-07-26T10:42:02758753654-04:00

US Accuses Short-Seller Andrew Left of Securities Fraud (3)

By Tom Schoenberg2024-07-26T10:24:03899-04:00

US authorities accused famed short-seller **Andrew Left** of committing fraud through stock trades, social media posts and research reports — their biggest move yet in a yearslong crackdown against traders who tout their bearish bets.

The Securities and Exchange Commission alleged Friday that Left used his firm, Citron,to generate about $20 million in profits from illegal trading involving almost two dozen companies. The Justice Department also announced a criminal case against Left, accusing him of securities fraud and allegedly lying to investigators about compensation from hedge funds.

Left had no immediate comment.

The cases against Left stem from a wide-ranging US effort to examine relationships between hedge funds and skeptical researchers. The probes have rattled the industry for three years as investigators have sought information on dozens of money managers and activists, as well as transactions involving more than 50 stocks.

Read more: Why Activist Short Sellers Stir Up Controversy: QuickTake

Andrew Left, founder of Citron Research
Photographer: James Jackman/Bloomberg

According to the SEC, Left would use social media or television appearances to make recommendations about a stock, on which he had short or long positions, sometimes giving a target price at which he thought the stock would trade. The Justice Department said Left would create a false perception that his public comments on a stock were in line with his trading activity.

“Left knowingly exploited his ability to move stock prices by targeting stocks popular with retail investors and posting recommendations on social media to manipulate the market and make fast, easy money,” the Justice Department said in its statement.

Stock Trades

Left, according to prosecutors, would also quickly close positions after releasing a research report or making comments. That would let him take advantage of short-term price movements.

According to the SEC, Left's misconduct touched stocks including Tesla Inc., Roku Inc., American Airlines Group Inc. and Nvidia Corp.

"This fraudulent practice deceived investors and allowed Left to use his Citron Research reports and tweets as catalysts from which he could derive short-term profits," the SEC alleged in the complaint.

The mere appearance of research from a prominent bear can send a stock into a tailspin before the market has time to debate its merit — which can be especially hard on small investors who can't react quickly. Companies and shareholders have increasingly cried foul, prompting US congressional hearings.

Left profited from his advance knowledge that he was about to trigger movements in the market, according to the Justice Department indictment. For the scheme to work, Left knew that investors needed to believe that the recommendations and positions he set forth were sincerely maintained, and not just vehicles for him to personally profit, prosecutors said.

'Candy From a Baby'

The SEC alleges Left bragged to colleagues that some of his statements caused retail investors to trade the way he wanted them to and that it was like taking "candy from a baby."

The SEC's lawsuit documents dozens of social media posts, reports and comments from Left from March 2018 through December 2020.

Left was charged in an indictment in federal court in California with one count of engaging in a securities fraud scheme, 17 counts of securities fraud and making false statements to federal investigators. If convicted, he could face more than 25 years in prison.

Prosecutors claim that Left lied to law enforcement by stating that his firm never exchanged compensation with a hedge fund. US authorities allege Left received more than $1 million from two hedge funds.

(Updates with details of cases throughout.)

--With assistance from **Katherine Burton**.

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Financial & markets regulation

US charges short seller Andrew Left with fraud

Department of Justice alleges Citron Research founder netted at least $16mn from 'long-running market manipulation scheme'

The grand jury indictment claims that Andrew Left prepared to quickly close positions after publishing his comments, taking profits on price moves he had caused © Bloomberg

Jennifer Hughes 20 MINUTES AGO

A federal grand jury in Los Angeles has charged prominent short seller Andrew Left with more than a dozen counts of fraud, alleging that he made profits of at least $16mn from "a long-running market manipulation scheme", according to a statement from the Department of Justice.

The DoJ added: "Left knowingly exploited his ability to move stock prices by targeting stocks popular with retail investors and posting recommendations on social media to manipulate the market and make fast, easy money."

The grand jury indictment charged him with 17 counts of securities fraud, one count of engaging in a securities fraud scheme and one count of making false statements to federal investigators.

The indictment alleged that Left, who has a high profile on social media, publicly claimed that companies' share prices were too high or low, often with a recommended target price and "an explicit or implicit representation about Citron's trading position". This, the DoJ said, "created the false pretence that Left's economic incentives aligned with his public recommendation".

Left prepared to quickly close positions after publishing his comments, taking profits on price moves he had caused, according to the indictment.

It also accused Left of presenting himself as independent and concealing Citron's links with a hedge fund by fabricating invoices and wiring payments through a third party.

If convicted, Left could face decades in prison. Each securities fraud count carries a maximum penalty of 20 years in prison, while the securities fraud scheme and false statements counts each carry a maximum prison term of 25 years and five years, respectively.

The US Securities and Exchange Commission has also filed a separate civil fraud case against Left and his firm Citron Research, claiming the founder made $20mn from a "multi-year scheme to defraud followers." Left declined to comment on the DoJ and SEC charges.

"Andrew Left took advantage of his readers. He built their trust and induced them to trade on false pretences so that he could quickly reverse direction and profit from the price moves following his reports," said Kate Zoladz, regional director of the SEC's Los Angeles office. "We uncovered these alleged bait-and-switch tactics, which netted Left and his firm $20mn in ill-gotten profits, and we intend to hold Left and his firm accountable for their actions."

The practice of betting that a company's share price will go down has long been controversial — opponents say it gives traders incentives to spread misinformation, while supporters argue that it improves price discovery and holds management accountable. Last year the SEC adopted new rules that require investors to disclose short positions more quickly and fully.

Left has been most vocal recently in his scepticism over GameStop, the ailing video games retailer. In May it raised $3bn selling new shares following a surge in its price driven by the reappearance of Roaring Kitty — whose real name is Keith Gill — who was instrumental in the 2021 meme stock mania that had sent its value rocketing.

Left told followers in mid-June that Citron had closed its short position on the stock not because he had changed his views but because of GameStop's newly-strengthened balance sheet.

In 2016, Left received a five-year "cold shoulder" ban from regulators in Hong Kong — a landmark ruling for the city — temporarily barring him from its markets after he was found culpable of misconduct related to a research report he published on Chinese property developer China Evergrande.

Additional reporting by Stefania Palma in Washington and Brooke Masters in New York

US criminally charges Citron Capital's Andrew Left for alleged market manipulation

reuters.com/legal/us-sec-sues-citron-capital-founder-andrew-left-alleged-fraud-2024-07-26

Reuters

The seal of the U.S. Securities and Exchange Commission is seen at its headquarters in Washington, D.C., U.S., May 12, 2021. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights, opens new tab

July 26 (Reuters) - U.S. authorities filed criminal and civil charges against prominent activist short seller Andrew Left on multiple counts of securities fraud for an alleged long-running market manipulation scheme, they said on Friday.

The criminal indictment, filed on Thursday, said Left "commented on publicly traded companies, asserting that the market incorrectly valued a company's stock and advocating that the current price was too high or too low," the Justice Department said in a statement.

The SEC filed separate civil charges against Left and Citron Capital LLC over what it described as a $20 million scheme to defraud followers.

Left, 54, of Boca Raton, Florida, used his Citron Research website and social media platforms to recommend long or short positions in 23 companies, telling followers they were consistent with his own positions, authorities said.

But then Left and Citron Capital quickly reversed those positions to capitalize on stock price movements, they said.

"The commentary routinely included sensationalized headlines and exaggerated language to maximize the reaction it would get from the stock market," the Justice Department said.

A lawyer for Left did not respond immediately to a request for comment. He is expected to be arraigned in the coming weeks in United States District Court in downtown Los Angeles.

Reporting by Niket Nishant in Bengaluru, Doina Chiacu in Washington and Chris Prentice in New York; Editing by Shinjini Ganguli and Chizu Nomiyama

Securities Law News
July 25, 2024, 7:49 AM PDT

Steward Faces Investigation, CEO Subpoena by Senate Committee

By Thomas Gleason

- Steward CEO to be subpoenaed before HELP committee
- Vote comes after mounting pressure from lawmakers

Bloomberg Law News 2024-07-26T09:34:30943359478-04:00

Steward Faces Investigation, CEO Subpoena by Senate Committee

By Thomas Gleason 2024-07-25T10:49:16000-04:00

- Steward CEO to be subpoenaed before HELP committee
- Vote comes after mounting pressure from lawmakers

Steward Health Care Systems will face a bipartisan Senate investigation and its chief executive officer will be served a subpoena, after a Senate committee vote Thursday.

The Senate Committee on Health, Education, Labor, and Pensions, chaired by Sen. Bernie Sanders (I-Vt.), voted 20-1 to authorize an investigation into the bankruptcy of the largest for-profit hospital system in the country. It also authorized a subpoena of Steward's Chairman and CEO Ralph de la Torre for testimony relating to the investigation.

"I say this directly to Dr. de la Torre: You cannot treat communities as expendable," Sen. Edward Markey (D-Mass.) said at the hearing."You are accountable. Your day of reckoning is going to arrive."

Before the hearing, Markey introduced a bill to prohibit private equity firms from stripping assets from health-care entities and close tax loopholes for rental income from health-care properties for real estate trusts, according to a release. The bill would also require bankruptcy courts to give "substantial weight" to how the bankruptcy plan allows for the maintenance of health care access and quality.

Steward's complicated bankruptcy has repeatedly drawn the attention of lawmakers.

In June, Sen. Elizabeth Warren (D-Mass.) urged the Justice Department's bankruptcy watchdog to appoint a trustee to take over the bankruptcy, and she named Steward while proposing a bill that would crack down on private equity in health care. Markey and Sanders penned a letter to the Department of Labor last month calling on it to monitor that Steward is paying employee benefits during the bankruptcy.

Lawmakers in Massachusetts, in which Steward owns eight hospitals, passed a bill that would ban acute-care hospitals from leasing their main campuses from health-care real estate investment trusts. The bill is being finalized in a conference committee of members from both chambers.

Concerns over the sale of Steward's hospitals mounted in June with a judge in the US Bankruptcy Court for the Southern District of Texas approving mediation between Steward, lenders, and Medical Property Trust, which owns the land beneath 30 of its 31 US hospitals. Steward and MPT couldn't agree on the value of the land and the allocation of proceeds from hospital sales.

While Steward delayed the sale of its hospitals in Arizona for the second time last week, it found buyers for a hospital it owns in Arkansas and another in Louisiana. They sold for $200,000 and $500,000 respectively.

The case is Steward Health Care Sys. LLC , Bankr. S.D. Tex., Docket No. 24-90213, 7/25/24 .

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Binance, Ex-CEO Say FTX Users Can't Blame Them For Fallout

By **Aislinn Keely**

Law360 (July 25, 2024, 5:58 PM EDT) -- Crypto exchange Binance, its former CEO and its U.S. arm told a Florida federal judge that a lawsuit from spurned users of now-defunct competitor FTX wrongly tries to blame two social media posts from Binance founder Changpeng Zhao for FTX's stunning collapse rather than the fraudulent conduct of FTX executives.

Binance Holdings Ltd. and its former CEO Changpeng Zhao filed a Wednesday motion to dismiss the suit from FTX user Nir Lahav, which has been consolidated into the wider multidistrict litigation over the collapse of FTX. According to Binance and Zhao, they're beyond the reach of the Florida federal court, and Lahav's suit can't show that Zhao's statements were responsible for the fall of FTX, let alone inaccurate in any way.

"This case is one of many filed in the aftermath of FTX's collapse," said Binance. "Despite acknowledging the true cause, plaintiff asks the court to ignore it and accept an implausible premise: that two tweets by BHL's then-CEO, Mr. Zhao, published after FTX's collapse had begun, were responsible for FTX's failure."

For its part, Binance's U.S. entities BAM Trading Services Inc. and BAM Management US Holdings Inc., which operated the U.S. platform Binance.US, said in a separate motion to dismiss that Lahav's suit doesn't allege "any conduct whatsoever" by the stateside businesses.

Lahav claimed in his **Oct. 2023 initial suit** that Binance and Zhao sought to "hurt" FTX with a post to the social platform X that detailed Binance's decision to sell its holdings of FTX's proprietary token, FTT, and another that it was in talks to acquire the platform during the liquidity crunch that led FTX to halt withdrawals. Lahav claims the posts misled investors in an attempt to take out a competitor, and users of FTX, like Lahav, felt the fallout when Binance walked away from the acquisition and FTX users were unable to access their funds as a result of the platform's demise.

But Binance and Zhao said Lahav's suit overlooks that FTX was ultimately brought down by the misappropriation of customer funds by its **executives**, including FTX CEO Sam Bankman-Fried, who was **sentenced** to 25 years over his role in the collapse. Rather than seeking to recoup his assets through FTX's **bankruptcy** proceedings, his proposed class action wrongly seeks to recover the current value of the tokens from "FTX's alleged former competitor," Binance said.

"Here, plaintiff cannot plead any causal relationship between the two tweets and his purported loss, because it was intervening events — FTX CEO SBF's fraud and misuse of customer assets and the resulting bankruptcy of the FTX Group — that caused any such loss," said Binance and Zhao.

Zhao's posts were "truthful" and were made after FTX had begun to unravel, Binance argued. While Lahav claimed Zhao and Binance never intended to acquire FTX, the allegation "ignores the tweet's unambiguous cautionary language that BHL's potential acquisition was far from guaranteed," and fails to allege any facts that demonstrate Binance and Zhao lacked good-faith intent to consider the acquisition.

Moreover, neither Zhao nor Binance have ties to the U.S. for the court to have jurisdiction, they said.

Lahav himself also hasn't claimed to hold FTT or shown that he attempted to transact in any digital asset security, so he can't bring any securities claims, contended Binance.

"Plaintiff's damage allegations in fact rest on the premise that the putative class did not buy or sell anything, but simply maintained their assets on FTX's platforms notwithstanding defendants' statements (or any other FTX-related news) and then lost access to those assets when FTX collapsed," said Binance.

Binance.US said in its own motion that Lahav's assertion the posts caused the demise of FTX is "completely untethered to reality," but more importantly, doesn't make any claims that the BAM entities had a role in making or disseminating the posts.

"Plaintiff fails to explain how BAM is in any way implicated in or by Zhao's tweets, which form the basis of plaintiff's claims," said the U.S. entities.

Counsel for Lahav did not immediately respond to a request for comment.

Lahav's case is part of wider multidistrict litigation over FTX's collapse, which includes claims against **executives**, **promoters** and **other firms** that did business with FTX for their alleged roles in enabling the crypto exchange to misappropriate more than $11 billion from customers.

Zhao is currently **serving** a four-month sentence for failing to implement an effective anti-money laundering program at Binance. Zhao's guilty plea and resignation as CEO came alongside **a wider $4.3 billion deal** between Binance and the U.S. Department of Justice, the U.S. Commodity Futures Trading Commission and the U.S. Department of the Treasury to resolve alleged compliance failures.

Lahav is represented by Deepali A. Brahmbhatt and Timothy Devlin of Devlin Law Firm LLC.

Zhao and Binance Holdings Ltd. are represented by Samson A. Enzer, Herbert S. Washer, Tammy L. Roy and Miles C. Wiley of Cahill Gordon & Reindel LLP

Binance is additionally represented by Aaron S. Weiss, Benjamin M. Stoll and John L. Gibbons of Carlton Fields PA.

BAM Trading Services Inc. and BAM Management US Holdings Inc. are represented by Daniel T. Stabile, Gabriela A. Plasencia, Jeffrey L. Steinfeld and Thania Charmani of Winston & Strawn LLP.

The MDL case is In re: FTX Cryptocurrency Exchange Collapse Litigation, case number 1:23-md-03076, in the U.S. District Court for the Southern District of Florida. The class action is Nir Lahav v. Binance Holdings Ltd. et al., case number 4:23-cv-05038, in the U.S. District Court for the Northern District of California.

--Editing by Jay Jackson Jr.

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Chancery Urged To Sanction Musk, X, Attys After Doc Delete

By **Jeff Montgomery**

Law360 (July 25, 2024, 8:50 PM EDT) -- The founder of a legal research site that makes government documents public has petitioned Delaware's Court of Chancery to sanction Elon Musk, his X entities and his counsel after a court clerk allegedly removed, at the request of attorneys for the billionaire, a document filed in Twitter Inc.'s battle over Musk's $44 billion takeover.

Aaron Greenspan of PlainSite.org, a non-lawyer intervenor in the Twitter-Musk case, asked the court Wednesday for at least $15,000 to cover court costs, fees and time in connection with the deletion, discovered by Greenspan while uploading Chancery documents to his website.

The incident was detailed in Greenspan's Wednesday motion opposing Musk and X Corp.'s July 17 motion for continued confidential treatment of documents in the previously closed case, including Greenspan's opposition to an X Corp. confidentiality motion. Most arguments against confidentiality "were not addressed" in the documents, Greenspan's filing said.

"Then, the next day, behind petitioner's back, opposing counsel engaged in ex parte communication, verbally instructing the register in Chancery to silently erase one of the supposed 'public versions' they had just filed," by rejecting "the already-approved filing, without ever informing petitioner," Greenspan wrote.

"Not only did they engage in prohibited ex parte communication" with court staff despite a recent written caution, Greenspan said, "but that ex parte communication had a material effect: erasing a key document that had properly been posted the day prior."

Comment from the Court of Chancery was not immediately available Thursday, and Greenspan declined to comment on the matter, instead referring to his motion. Counsel for Musk and X did not immediately respond to a request for comment.

In a motion filed on Monday, counsel for Musk and the X entities said the original, redacted public version of document search "hit" reports filed on July 17 "inadvertently leaves certain non-party names and email addresses unredacted," as well as Musk's Tesla and SpaceX email addresses.

"The public disclosure of this information does not inform the substance of the parties' dispute and should remain confidential to avoid exposing them to public harassment or attacks by bad actors," X Corp. said in a court filing on July 22.

"Additionally, X Corp. has learned that Greenspan has posted on his website copies of the versions of public filings which X Corp. has removed and/or seeks to remove from the docket," the filing added.

In his sanctions motion, Greenspan argued that main emails for Musk, Tesla and SpaceX are, and long have been, public information, and questioned efforts by "experienced counsel working for one of the wealthiest men on earth" to protect two email addresses "that they had just disclosed themselves again."

The email issue "would be a useful pretext to attempt to erase evidence of defendant Musk's sanctionable association with and abuse" of a different internet domain name, "which counsel cannot and does not deny," the Greenspan motion said.

The domain in question was listed as "parked free" on Thursday, which can mean that, although it has no content, it can be used to redirect traffic.

Twitter Inc. sued Musk in Delaware's Court of Chancery in July 2022 after he offered to buy the social media platform for $44 billion and then tried to back out of the deal. Musk ultimately completed the $54.20 per-share acquisition in October of that year after a six-month court battle, not long before a trial was about to begin.

The Chancery Court action was voluntarily dismissed on Nov. 15, 2022. But it was stirred up again in June when Greenspan filed a notice objecting to the continued confidential treatment of 12 groups of documents that were filed in the case and urging the court to publish them without redactions.

Chancellor Kathaleen St. J. McCormick ruled on July 9 that Greenspan had met court requirements for challenging the confidentiality of specific documents and gave Twitter until July 17 to prepare redactions and determine if any of the documents should remain confidential.

In the Monday motion, counsel for Twitter Inc. successor X Corp, X Holdings II Inc. and X Holdings Corp. said that attorneys for Morgan Stanley & Co., a lender in the Twitter deal, and other Morgan Stanley entities had requested removal of a document from the docket because they had not had an opportunity to review it and they believed it contained the names of nonpublic Morgan Stanley employees.

X Corp. also sought continued confidential treatment for its employees and for Musk.

Aaron Greenspan represents himself.

X Corp., successor in interest to Twitter Inc., is represented by Catherine A. Gaul and Randall J. Teti of Ashby & Geddes PA.

The case is Twitter Inc. v. Elon R. Musk et al., case number 2022-0613, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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Nike Brass Overhyped Sales Strategy, Shareholder Alleges

By **Sarah Jarvis**

Law360 (July 25, 2024, 10:32 PM EDT) -- More than a dozen members of Nike Inc.'s top brass have been sued by a shareholder alleging they misled the public about the financial prospects of the athletic shoe and apparel company's consumer direct strategy, leading to several stock drops in recent years and a class action lawsuit.

Shareholder Danny Leung alleges in a **complaint** filed Wednesday in an Oregon federal court that Nike CEO John J. Donahoe II and 12 other executives and directors made false and misleading statements about the company's business and prospects from March 2021 to last month. The company overhyped the revenue prospects of its consumer direct strategy and its advantages over competitors, and it failed to maintain proper internal controls, Leung alleges.

"The company has been substantially damaged as a result of the individual defendants' knowing or highly reckless breaches of fiduciary duty and other misconduct," Leung said.

Leung further alleges that from April 2021 to February 2024, the company spent more than $8.7 billion on the repurchase of its artificially inflated stocks — an overpayment of more than $3.5 billion.

The shareholder also accuses Nike Chief Financial Officer Matthew Friend, Director Peter B. Henry and Executive Board Chairman Mark G. Parker of insider trading, alleging the trio reaped profits of more than $211 million while Nike's class B common stock was trading at artificially inflated prices.

According to the complaint, the executives' misconduct will also cost the company millions of dollars to fight a **securities class action** filed against Nike, Donahoe and Friend last month, which stems from similar allegations.

The misconduct "has further subjected the company to the need to undertake internal investigations, the need to implement adequate internal controls, losses from the waste of corporate assets, and losses due to the unjust enrichment of the individual defendants who were improperly overcompensated by the company and/or who benefited from the wrongdoing alleged herein," Leung said.

The direct-to-consumer strategy at issue in the suit was implemented in 2017 and allegedly emphasized using Nike's digital platforms and presence to directly connect with consumers. While implementing this strategy, Nike dropped one-third of its sale partners and decreased its sales to major retail clients, the complaint says.

Leung alleges company executives indicated the strategy was successful and positioned Nike for long-term growth, but disappointing financial results that the company released in 2022, 2023 and 2024 led to various declines in Nike stock prices.

The shareholder says that in March 2024, Donahoe said on an earnings conference call that the company would scale back its reliance on the direct-to-consumer strategy. And in late June, the company released financial results for the full 2024 fiscal year showing declines of 8% year-over-year in Nike Direct quarterly revenues and 10% year-over-year in Nike Digital quarterly revenues.

At that time, Friend indicated the company's 2025 revenue is expected to be "down mid-single digits with the first half down high single digits," which Leung alleged was "materially worse than what was previously disclosed." Nike's class B common stock subsequently fell about 20%, from a closing price of $94.19 per share on June 27 to $75.37 per share the following day — the company's largest decline since 2001, according to the complaint.

Counsel for the plaintiff declined to comment Thursday beyond the complaint.

A Nike representative didn't immediately respond to a request for comment Thursday.

Leung is represented by Timothy Brown of the Brown Law Firm PC and Michael B. Merchant of Black Helterline LLP.

Counsel information for the defendants wasn't available Thursday.

The case is Danny Leung v. John J. Donahoe II et al., case number 3:24-cv-01195, in the U.S. District Court for the District of Oregon.

--Editing by Janice Carter Brown.

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Paramount-Skydance Deal Is Redstone Windfall, Investor Says

By **Katryna Perera**

Law360 (July 25, 2024, 4:39 PM EDT) -- A shareholder of Paramount Global Class B common stock on Wednesday sued chairwoman Shari Redstone and several members of its board over the allegedly "unfair" merger with Skydance Media LLC, claiming the deal is being orchestrated to cash out Redstone's investments in Paramount at a substantial premium compared to other stockholders.

Plaintiff Scott Baker **filed a complaint** against Redstone, several members of Paramount's board of directors, Skydance and its CEO David Ellison and National Amusements Inc., a movie theater operator owned by Redstone and her family.

According to the complaint, National Amusements, or NAI, owns roughly 77% of Paramount's Class A common stock and 5% of its Class B common stock, constituting approximately 9.5% of Paramount's overall equity. Thus, Redstone and NAI are Paramount's controlling shareholders.

Baker said Paramount's **planned merger** with Skydance, which is set to close in 2025, was orchestrated by Redstone, "who was intent on selling her interest in Paramount … regardless of its impact on other Paramount shareholders," and to pay down NAI's "fast-maturing debt."

According to the complaint, Redstone began engaging in discussions with Ellison in 2023 to sell her interest in NAI. Soon after, reports surfaced that Skydance was planning to acquire NAI for $2 billion in cash, after which Paramount would merge with Skydance in an all-stock transaction.

"The result of this potential transaction would be that Redstone would be compensated handsomely for the sale of NAI while investors with non-voting shares would get stock in the combined company and wind up with diluted shares," the complaint stated.

Several Paramount stockholders wrote to the board expressing concern and objections to the proposed deal, according to the complaint. Fuel was added to the fire in April when four Paramount directors announced they were stepping down from the board.

"While this is unusual under any circumstances, it was particularly unusual in the midst of highly controversial merger negotiations that were being debated by the board and the special committee," the complaint stated. "These sudden departures, in the midst of the potential Paramount-Skydance deal negotiations, also raised further concerns surrounding the deal including the independence of the remaining board."

The merger agreement was announced on July 7, stating that it had been approved by Paramount's board of directors and Redstone's NAI, the majority owner of Paramount's Class A stock. Baker said no other stockholders had a say in the transaction.

The complaint stated that Redstone and NAI's conduct, in conjunction with the director defendants, has harmed and will harm Paramount's Class B shareholders as they will not receive a "fair share of benefits" in the merger.

"While defendants present that the merger will pay Class B shareholders $15 per share, there is not enough cash in the deal to buy out all of the non-NAI Class B shares," the complaint stated. "Instead, these shareholders will get a mix of cash and Class B stock in the merged entity, 'New Paramount.' That payout is only worth $12.23 per Paramount Class B share. Thus, when the merger closes, the non-NAI Class B shareholders will suffer $1.645 billion in damages."

Baker also points to the market's reaction to the merger as a sign of the deal's "financial unfairness" to Paramount's Class B stockholders. According to the complaint, in late 2023, Paramount's Class B common shares were trading above $15 per share. However, as news about the Skydance merger emerged, the share price began falling continuously.

"Between April 3, 2024 (the day Paramount announced that an exclusivity deal was signed with Skydance) and April 10, 2024 (the day on which four key directors of the Paramount board decided to leave the board), Paramount's Class B stock dropped approximately 22% from a high of $13.80 per share on April 3, 2024 to a high of $10.98 per share on April 10, 2024," the complaint stated.

On Thursday, Paramount's Class B shares were trading around $11.65.

According to the complaint, the Skydance agreement includes a 45-day "go-shop" period during which the special committee may solicit and evaluate alternative acquisition proposals. However, if Paramount accepts a different or better deal during the go-shop period, it will owe Skydance a $400 million termination fee, the complaint stated.

Baker's suit seeks damages, attorney fees and a court order rescinding the merger agreement, among other things.

Representatives for Paramount declined to comment on Thursday and representatives for the parties did not immediately respond to requests for comment.

Baker is represented by Russell D. Paul, Michael Dell'Angelo, Lawrence Deutsch, Jacob M. Polakoff, John R. Timmer and Radha Nagamani Raghavan of Berger Montague.

Counsel information for the defendants was not immediately available.

The case is Scott Baker v. Shari Redstone et al., case number 2024-0790, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.

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Via Renewables Investor Sues In Chancery Over Buyout Deal

By **Leslie A. Pappas**

Law360 (July 25, 2024, 3:02 PM EDT) -- A former common stockholder of Via Renewables Inc. has sued the Houston energy company's board members and controlling stockholders in Delaware's Court of Chancery, alleging they breached their fiduciary duties in connection with a June 13 buyout that took the company private.

Joshua Amburgey alleges Via's founder, chairman and chief executive officer William K. Maxwell III — who purportedly controlled 65.7% of Via's voting power — was able to buy the company for an "unfair" price of $11 per share by stacking a committee that negotiated the deal with his personal cohorts.

Shareholders approved the buyout by a "razor-thin margin," with just under 51% of unaffiliated minority stockholders voting in favor, the complaint says.

The proposed class action, which Amburgey filed under seal on July 19 on behalf of all former common stockholders of Via, asks the court to rescind the buyout, order defendants to disgorge their "wrongfully obtained profits and gains," and award damages and attorney fees. A public redacted version of the complaint was docketed on Wednesday.

Headquartered in Houston, Via Renewables is a retail energy services company that currently operates in 105 utility service territories across 20 states and the District of Columbia, according to its website. Founded by Maxwell in 1999, the company was originally incorporated as Spark Energy Inc. and renamed Via Renewables in August 2021, the complaint says.

Maxwell, a long-time entrepreneur, has founded an extensive array of oil and gas sector companies in addition to Via, including Wickford Energy Marketing Inc., Azure Midstream Partners LP and National Gas & Electric LLC, the complaint says.

Defendants in the complaint include Maxwell and several Via shareholders he directly or indirectly owns and controls: Retailco LLC, TxEx Energy Investments LLC, Electric HoldCo LLC, NuDevco Retail Holdings LLC and NeDevco Retail LLC. Maxwell's 65.7% voting control is achieved in combination with Via shares that these entities hold, the complaint says.

Also named as defendants in the complaint are the three Via directors who were members of the special committee that negotiated the buyout: Amanda "Mandy" E. Bush, Stephen Kennedy and Kenneth Hartwick.

The complaint alleges members of the special committee were not independent because of their long-time relationships with Maxwell. Bush has been an employee, officer and director of various Maxwell entities since 2007, nearly her entire career, and Kennedy is a family friend who plays tennis and golf with Maxwell twice a month, the complaint says.

Maxwell first proposed a buyout in September 2023, when he offered to buy all Class A shares that he didn't own for $10.50 each, the complaint says.

The board established the three-member special committee and hired B. Riley Securities Inc. as its financial adviser and Jones Walker LLP as legal representative.

Maxwell dropped his offer to $9 per share after Jones Walker asked about conditioning the buyout on a majority-of-the-minority vote, according to the complaint.

Based on a discounted cash-flow analysis, B. Riley suggested a fair price for the company would be from $14.41 to $21.96 per share, but the committee countered with $12.65, far below the range, the complaint says.

B. Riley then reworked its calculations using different inputs and suggested the value per share was closer to a range of $9.28 to $17.90, the complaint alleges.

After several more rounds of discussion, Maxwell offered $11 per share, and the committee accepted.

Meeting minutes indicate the special committee "accepted the reduced valuation analyses without question," the complaint says, and didn't ask why the B.Riley analysis had changed.

Via Renewables Inc. did not immediately respond to Law360's request for comment on Thursday. Counsel for Amburgey declined to comment.

Joshua Amburgey is represented by Juan E. Monteverde, Miles D. Schreiner and Jonathan T. Lerner of Monteverde & Associates PC and Blake A. Bennett of Cooch and Taylor PA.

Counsel information for the defendants was not immediately available.

The case is Joshua Amburgey v. Via Renewables Inc. et al., case number 2024-0762, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.

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Solar Tech Co. Investor Drops Securities Action

By **Tom Lotshaw**

Law360 (July 25, 2024, 7:05 PM EDT) -- An Enphase Energy Inc. shareholder told a California federal judge he's voluntarily dismissing a proposed class action alleging the energy technology company and its executives had failed to disclose slow growth trends.

Mark Bialic filed a one-page **notice of voluntary dismissal** on Wednesday, noting that the Fremont, California, company, which creates and sells solar micro-inverters, battery energy storage and charging products, had not yet responded to his claims.

Bialic **sued** Enphase and two of its directors in May over alleged violations of the Securities Exchange Act of 1934.

The proposed shareholder class action complaint claimed the company had provided positive updates to investors about expected revenue for fiscal year 2023, but concealed information about demand and manufacturing slowdowns.

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

Counsel information for Enphase was not available Thursday.

The case is Mark Bialic v. Enphase Energy Inc. et al., case number 5:24-cv-03216, in the U.S. District Court for the Northern District of California.

--Editing by Lakshna Mehta.

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Vanguard Opposes Investors' Cert. Bid In Tax Liability Suit

By **Anna Scott Farrell**

Law360 (July 25, 2024, 2:16 PM EDT) -- A group of investors accusing Vanguard of violating its fiduciary duties by triggering a sell-off of assets that left smaller investors with massive tax bills shouldn't be granted class certification, the asset manager told a Pennsylvania federal court.

Some of the investors in the proposed class action may not have suffered any injuries from the asset sell-off and could even be better off financially after taking the 2021 capital gains distribution at issue in the case, Vanguard said in **a brief** Wednesday.

Figuring out the economic losses of the investors in the proposed class requires individual investigations, Vanguard said in the filing, "and cannot be decided on a classwide basis using common proof."

The investors, who have accused the company and its leaders of failing to protect investors in retail funds, told the court last month that they are shareholders whose relatively small individual damages **wouldn't justify** the expense of hiring their own attorneys.

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

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

Vanguard said Wednesday that as the suit has developed, the investors have stopped claiming that the payment of 2021 capital gains taxes by itself comprises injury for purposes of the suit. Specifically, the group has now admitted that whether one of them was injured depends on when they would have otherwise sold their retirement fund shares and what taxes they would have paid on that date, Vanguard said.

"Crucially — plaintiffs now expressly admit that — depending on those future events — a particular individual might have suffered no harm and actually be better off economically having received the capital gains distribution in 2021," Vanguard said in the brief.

What the proposed class is suggesting is a decades-long claim process of waiting to see when each member sells their fund holdings and what taxes are owed at that time, Vanguard said.

"Such a process would obviously present insurmountable practical problems, costs, and burdens on the parties and the court," Vanguard said.

Additionally, the investors' proposed measure of economic loss fails to measure the loss caused by the distribution at issue, Vanguard said. Each investor's future tax rate depends on their own decisions in future years, including income level, marital status and residency changes outside

Vanguard's control, the company said.

Vanguard said its opposition to the class certification doesn't "preclude the possibility that certain members of the putative class might be able to offer sufficient evidence, in an individual action or arbitration, of their individual facts and circumstances to establish an injury."

A Vanguard representative did not respond to requests for comment.

Representatives of the investors did not respond to a request for comment.

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

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

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

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

--Editing by Roy LeBlanc.
