

Owlet Unable to Shake Investor Suit Over Baby Sock FDA Approval

By Matthew Bultman 2024-08-06T11:33:39000-04:00

- Device monitors baby's heart rate and oxygen levels
- Owlet pulled product in 2021 after FDA device warning

Owlet Inc. lost its bid to escape a lawsuit accusing the health-care technology company of misleading investors about whether it obtained necessary approval for its Smart Sock baby monitor.

The Food and Drug Administration repeatedly warned Owlet that the system, which monitors an infant's heart rate and oxygen levels, was a medical device requiring regulatory approval, investors allege.

Owlet pulled its Smart Sock in 2021 after a warning letter from the FDA.

The complaint's allegations give rise to the inference that Owlet knew the socks would likely qualify as a medical device but tried to market them as a wellness device to avoid costs associated with obtaining FDA approval, Judge Fernando Aenlle-Rocha said.

The complaint "pleads adequately that Owlet was sufficiently on notice that the FDA expected Owlet to obtain agency approval prior to the sale and distribution of the Smart Sock," Aenlle-Rocha, in the US District Court for the Central District of California, said in a Monday [order](#) denying Owlet's motion to dismiss.

Owlet went public in 2021 by merging with Sandbridge, a special purpose acquisition vehicle. Sandbridge was also named as a defendant, but Aenlle-Rocha dismissed it from the case Monday.

The Smart Sock launched several years earlier with an alarm system that notified parents of drops in a baby's heart rate or oxygen levels. The company's stock price fell 23% after news of the FDA's warning letter, according to investors.

Owlet released its Dream Sock and BabySat monitoring systems with FDA approval in 2023.

Kessler Topaz Meltzer & Check LLP, Robbins Geller Rudman & Dowd LLP, and Schall Law Firm represent the investors. Latham & Watkins LLP represents Owlet.

The case is [Butala v. Owlet, Inc.](#) , C.D. Cal., No. 21-cv-09016, 8/5/24 .

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Bloomberg Law News 2024-08-06T16:11:13070318831-04:00

KKR's \$500 Million Payout to Founders Targeted by Pension Fund

By Mike Leonard 2024-08-06T14:35:05000-04:00

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2024-0808](#)

KKR & Co.'s founders pushed the asset manager into a greater than \$500 million buyout of tax assets they likely planned to hold for life and pass down on a tax-free basis, according to a lawsuit unsealed Tuesday.

A pension fund sued [Henry Kravis](#), [George Roberts](#), and other KKR leaders, saying they engineered the transaction—tied to KKR's restructuring from an Up-C into an ordinary corporation—after similar payouts at Apollo Global Management Inc. and Carlyle Group Inc. But ongoing challenges to the [Apollo](#) and [Carlyle](#) transactions should have given them pause, the lawsuit alleges.

Like the parallel conversions by Apollo and Carlyle, KKR's restructuring created no tax assets, meaning the private equity giant effectively used shareholder money to pay its founders for nothing, according to the complaint, filed in Delaware's Chancery Court.

"There was no financial logic" in paying for the "supposed lost opportunity to engage in hypothetical future taxable exchanges," the suit says. "If the founders wanted liquidity, the founders could use the 'buy, borrow, die' strategy of borrowing against their KKR equity, which would allow them to hold their low-basis KKR units until their deaths."

KKR defended the payout through a spokesperson Tuesday.

"The restructuring transaction delivered substantial benefits to stockholders," the investment firm said in a statement. "The company expects to move to dismiss the recent shareholder complaint, which mischaracterizes the transaction and is legally defective."

Up-C Cases

The legal dispute is part of a wave of shareholder cases taking aim at transactions by businesses with Up-C structures. In addition to Apollo and Carlyle, some of the others involve [BGC Partners Inc.](#), Premier Inc., Virtu Financial Inc., [Funko Inc.](#), GoDaddy Inc., and [Atlas Energy Solutions Inc.](#)

Up-C corporations have multiple classes of stock: common shares in a publicly traded parent, equity units in an operating subsidiary dating to before the public listing, and class B shares with voting rights pegged to the economic value of those units. Most of the court cases involve claims that companies overpaid, in connection with their restructurings, to buy out the pass-through benefits surrendered by insiders.

The suit against Kravis and Roberts echoes those allegations. Because the restructuring let them exchange their pre-IPO units for publicly traded shares on a tax-free basis, it created no tax assets for KKR, according to the complaint originally filed under seal July 30 by the Steamfitters Local 449 Pension Fund.

The lawsuit also targets [Evercore Group LLC](#), saying the financial adviser “chose to hide its conflicts”—including its role in the payout at Carlyle—and then cooked up an “artificial and contrived” alternative justification for the transaction.

Evercore didn't immediately respond to a request for comment Tuesday.

The case is assigned to assigned to Vice Chancellor [J. Travis Laster](#), who [let similar claims move forward](#) in 2023 against a GoDaddy board that allegedly agreed to overpay by 400% to terminate tax agreements with early investors including KKR, [Silver Lake](#), and [Technology Crossover Ventures](#).

The Steamfitters fund is represented by Friedlander & Gorris PA, [Robbins Geller Rudman & Dowd LLP](#), and Shobe & Shobe LLP. KKR, its board, and Evercore haven't yet made court appearances.

The case is [Steamfitters Local 449 Pension Fund v. Kravis](#), Del. Ch., No. 2024-0808, complaint unsealed 8/6/24.

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MARKETS & FINANCE

KKR Founders Sued for Allegedly Getting Giant Payday for No Work

Lawsuit adds to legal scrutiny of arcane tax deals benefiting private-equity heavyweights

By [Ben Foldy](#) [Follow](#)

Aug. 6, 2024 10:42 am ET



The suit names Henry Kravis, left, and George Roberts as defendants, along with current KKR co-CEOs, other board members, and the company itself. PHOTO: BLOOMBERG NEWS (2)

When Henry Kravis and George Roberts handed off the day-to-day management of private-equity firm KKR **KKR 5.02% ▲** to their successors in 2021, the two billionaires netted shares now worth more than \$650 million.

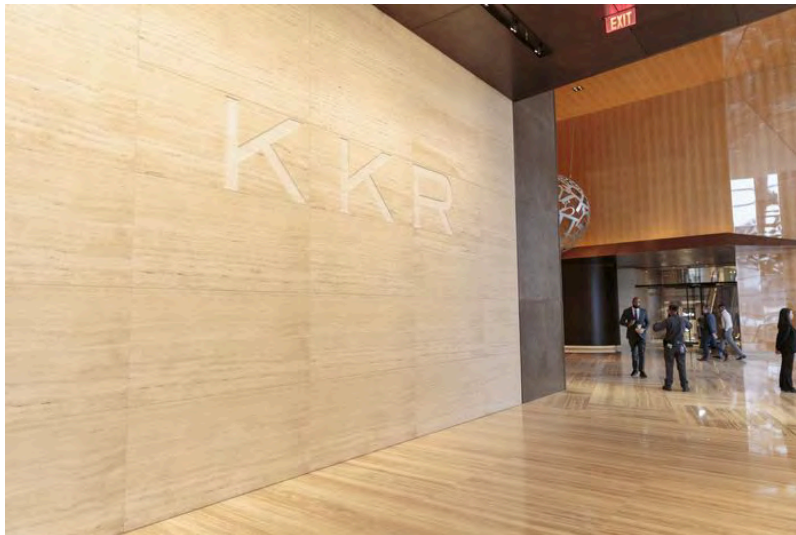
A new lawsuit is accusing the company of paying Kravis and Roberts but getting nothing in return. Their windfalls came from a complicated financial structure that has netted billions of dollars for other company founders and dealmakers in similar transactions.

A spokeswoman for KKR said the deal offered substantial benefits to shareholders. The firm said the lawsuit is legally deficient and mischaracterizes the transaction. KKR expects to move to dismiss the suit, she said.

The shareholder suit filed by a Steamfitters union local pension fund is one of a string of legal actions that are steadily gaining momentum in Delaware courts that could force many private-equity executives to hand back the payouts. Already, a healthcare company has agreed to pay \$71 million to settle a similar lawsuit and judges have issued decisions in other cases that have largely been favorable to plaintiffs.

The KKR suit takes aim at a payment allegedly tied to a tax receivable agreement, or TRA. TRAs are typically combined with specific corporate structures to create and share potentially valuable tax assets between the company and their early investors.

While TRAs are increasingly common, they have also become controversial and prompted a raft of lawsuits against private-equity firms and some of their portfolio companies. Instead of the deals resulting in the tax benefits for the public companies, plaintiffs allege, boards have sometimes used the agreements to largely benefit the early investors, regardless of whether they create anything of value.



Private-equity firm KKR expects to move to dismiss the suit, a spokeswoman said. PHOTO: SARAH BLESENER FOR WSJ

“This case is about two Wall Street titans who wanted to enrich themselves and their fellow private unitholders because their peers had done so,” the complaint,

filed in the Delaware Court of Chancery and made public Tuesday, alleges.

The union pension fund's suit names Kravis and Roberts as defendants alongside current KKR co-Chief Executives Scott Nuttall and Joseph Bae, other board members and the company itself. The suit is similar to other litigation undertaken against rivals Apollo Global Management and Carlyle Group, as well as website host GoDaddy.

The cases are at various stages progressing through the Chancery courts, though judges have issued several decisions favoring plaintiffs in other cases.

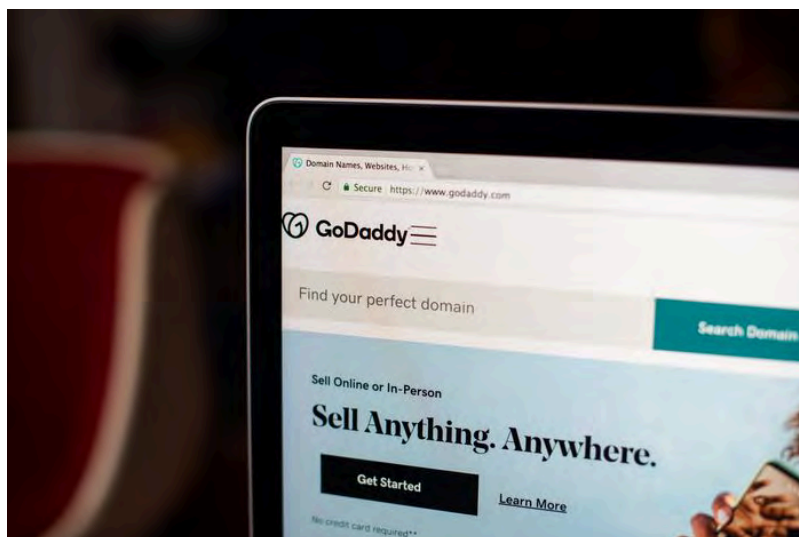
Healthcare company Premier agreed to settle a TRA-related suit brought by the same group of plaintiffs' lawyers for \$71 million earlier this year. A judge ruled another case involving a \$344 million payment made to Carlyle founders and employees could proceed earlier this year. A case challenging a decision by GoDaddy's board to pay \$850 million to early investors, including KKR, for obligations the company valued on its own books at \$175 million, was allowed to proceed last year.

Spokeswomen for Carlyle and GoDaddy declined to comment on ongoing litigation.

The cases do have distinctions between them, however, prompting pushback from some of the firms.

Apollo, for example, said in a filing that payments to its founders reflected that the firm had made significant TRA payments to rights holders in prior years and that some rights holders were relinquishing their control of the firm. Apollo's lawyers also said the transaction had been negotiated at length by a conflicts committee of independent directors that concluded the payments were appropriate, and negotiated down from what the co-founders had initially requested.

TRAs are deals between companies and early investors that help companies save on their corporate income taxes. The savings are generated when early, pre-IPO investors sell their stakes on the public markets.



A case challenging the decision by GoDaddy's board to pay \$850 million to early investors was allowed to proceed last year. PHOTO: TIFFANY HAGLER-GEARD/BLOOMBERG NEWS

Most of the recent controversies around TRAs involve instances where company boards decided to pay early investors large amounts of money even in cases where the investors didn't make the sales that create the tax assets, or didn't make an amount commensurate with the payments from the companies. In many of these cases, several board members themselves stood to benefit from the payments the board authorized.

The suit against KKR alleges that Kravis and Roberts initially sought 8.5 million new shares worth over \$500 million at the time as payment for themselves and other TRA rights holders as part of a 2021 corporate reorganization of the firm. They got the shares despite the fact that neither man had ever sold a share that would generate a tax asset for the company.

Instead, KKR's advisers determined the payment could be treated as compensation for Kravis and Roberts potentially giving up special shares controlling the company in future years.

The lawsuit alleges that the shift was little more than a "rebranding" of the TRA payout. References to "TRA termination payments" were struck through at several points in board materials, though the payment itself was unchanged, the lawsuit alleges.

The pivot during the reorganization also opened up another avenue for Kravis, Roberts, Bae and Nuttall to receive more stock at the expense of other shareholders, the plaintiffs allege.

During the reorganization, the four men received an additional 3.3 million shares in unowned stock that had been forfeited by employees who left the firm before their benefits vested. The shares were worth more than \$200 million at the time.

Write to Ben Foldy at ben.foldy@wsj.com

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Big Law Backs FirstEnergy in Internal Probe Disclosure Dispute

By Eric Heisig 2024-08-06T12:15:31000-04:00

- Judge used wrong standard in discovery spat, 39 firms say
- Securities litigation stems from federal bribery probe

A judge was “deeply mistaken” when he allowed the release of documents related to two internal investigations FirstEnergy Corp. commissioned after a massive bribery scandal went public, dozens of Big Law firms told the Sixth Circuit.

US District Judge Algenon L. Marbley’s May [ruling](#) rejected the Akron, Ohio-based energy giant’s objections to the release during discovery in securities litigation of the documents and information related to the probes. The ruling contained legal principles that, if adopted, “would threaten the success of countless internal investigations necessary to the good governance of companies in the United States,” the firms wrote in [a friend-of-the-court brief](#) Monday.

The 39 firms—which include Kirkland & Ellis LLP, Greenberg Traurig LLP, White & Case LLP, and DLA Piper LLP—urged the US Court of Appeals for the Sixth Circuit to direct Marbley to withdraw his ruling. The documents, related to the investigations conducted by Squire Patton Boggs and Jones Day, weren’t covered by attorney-client or work-product protections and must be disclosed to the fired former executives who requested them, the judge said.

But Marbley, who upheld a special master’s decision, was mistaken when he said attorney-client privilege applies only when there’s a “legal” reason for an investigation to be conducted, according to the firms.

The chief US District Court for the Southern District of Ohio judge “simply got the standard wrong,” the firms said. “And, in an area where lawyers and clients need predictability and consistency, its contradiction of this Court’s case law cannot stand.”

They added that work-product protections apply even if documents created for litigation also serve a business purpose, and that the judge failed to recognize this.

The underlying matter, [filed in 2020](#), stems from conduct FirstEnergy undertook to affect actions in Ohio that ultimately helped its bottom line. This included a \$60 million bribery scheme involving former state House Speaker Larry Householder (R) to ram through a \$1.3 billion bill that bailed out two nuclear power plants the utility owned at the time. The company also admitted that executives paid the state's top utility regulator a \$4.3 million bribe.

FirstEnergy admitted to federal violations, [agreeing](#) to pay \$230 million and cooperate. The company, executives, and others have faced a slew of lawsuits since an FBI probe became public four years ago. Eight people have been criminally charged in the probe in state and federal courts.

The company, which last week [filed its petition](#) asking the Sixth Circuit to step in, has denied that its actions constituted securities fraud. It's also awaiting a decision from the Cincinnati-based appeals court on whether judges there will overturn a class certification that [it said](#) Marbley approved in error.

The class is represented by Robbins Geller Rudman & Dowd LLP. FirstEnergy is represented by Sullivan & Cromwell LLP.

The case is [In re: FirstEnergy Corp.](#) , 6th Cir., No. 24-3654, brief filed 8/5/24 .

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Arbor Realty Trust Sued by Investor Alleging Securities Fraud

 therealdeal.com/national/2024/08/06/arbor-realty-trust-sued-by-investor-alleging-securities-fraud

August 6, 2024

Investor suit alleges Arbor hid “toxic” portfolio, financials “cannot be trusted”

Multifamily lender denies crucial repo lines in jeopardy



Arbor Realty Trust's Ivan Kaufman (Getty, YouTube/Ivan Kaufman)

Aug 6, 2024, 7:00 AM

By

Suzannah Cavanaugh

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Arbor Realty Trust, already entangled in a federal investigation of alleged fraud in its books, now faces an investor lawsuit claiming the multifamily lender concealed a “toxic” portfolio to juice its stock price.

Investor Lois Martin filed the lawsuit Thursday seeking class-action status. If approved, the suit could garner thousands of plaintiffs, according to the complaint.

The lawsuit cites a March 2023 report by short-seller Ningi Research, which alleged Arbor hid the “toxic” mobile home portfolio through a web of holding companies, some of them fake, for over a decade.

The scheme, Martin alleges, amounts to securities fraud.

A spokesperson for Arbor said in a statement that the “claims are without merit and we look forward to prevailing early in the litigation process.”

“Arbor does not own, nor has it ever owned, any interest in a mobile home portfolio,” the spokesperson said.

Short-sellers such as Ningi stand to profit if a company’s stock price slips. In the two days after Ningi released its report, Arbor’s shares fell by 11 percent, according to the lawsuit.

Arbor released a day-of response to the Ningi report, dismissing the claims as false and inflammatory. The REIT argued the report was a play by Ningi to profit from its short position.

The investor who sued, citing the report, goes on to claim that Arbor failed to disclose the performance of the mobile home portfolio to “avoid insolvency,” about \$600 million in Arbor’s escrows “evaporated overnight” and its financial statements “cannot be trusted.”

The report adds that the lender’s repo lines — a vital artery to lending— are “drying up” and \$2.5 billion in credit lines could be subject to margin calls.

The Arbor spokesperson denied the allegation, saying “there is no validity to the claim that Arbor’s repo lines are in jeopardy.”

If those allegations are true, they could be disastrous for Arbor’s performance. Repo lines allow lenders to borrow money from a bank to make loans to its clients — in Arbor’s case commercial real estate borrowers, many of them buying multifamily.

Those loans collateralize the repo lines, and banks can decide that the value of the assets that back the loans has dipped, meaning the loan value has fallen, too.

Banks could then make a margin call, forcing Arbor, in this case, to put up the money to cover the repo lines. The question would then become: Does Arbor have the cash on hand to meet the call?

The suit also cites a December report by short-seller Viceroy alleging Arbor's entire loan book is distressed.

Though short-seller reports should be reviewed with skepticism and investor suits are commonplace when share prices fall, the investigation of Arbor opened by the Department of Justice and the Federal Bureau of Investigation in New York signals pressure is mounting for the multifamily lender.

Arbor reported \$1 billion in multifamily delinquencies in a second-quarter earnings report Friday, a sign the firm is struggling to handle the volume of troubled loans on its balance sheets.

DXC Technology Sued Over 'Transformation Journey,' Stock Drops

By Martina Barash

- **COURT:** E.D. Va.
- **TRACK DOCKET:** [No. 1:24-cv-01351](#)

Bloomberg Law News 2024-08-06T09:59:53307932363-04:00

DXC Technology Sued Over 'Transformation Journey,' Stock Drops

By Martina Barash 2024-08-05T14:11:23000-04:00

- **COURT:** E.D. Va.
- **TRACK DOCKET:** [No. 1:24-cv-01351](#)

DXC Technology Co. touted a "transformation journey" to reduce costs associated with its acquisition of other companies, but that effort undermined its goals for integrating the businesses and led to stock-price declines, an investor alleges.

The sudden departure of the technology services company's CEO and board chair, Michael Salvino, in December 2023 also prompted a selloff, the Roofers' Pension Fund says in a proposed class action. It filed its suit Aug. 2 in the US District Court for the Eastern District of Virginia.

DXC fought off previous securities suits over the 2017 merger that created the company—a union between a Hewlett Packard Enterprise Co. division and Computer Sciences Corp.—and over statements about its financial health. But it settled Securities and Exchange Commission claims that it misrepresented income by incorrectly classifying transaction, separation, and integration-related costs. In the March 2023 deal, DXC agreed to pay the SEC \$8 million and neither admitted nor denied the allegations.

TSI and restructuring costs are at issue here.

In a May 2021 earnings call, Salvino allegedly spoke of "the progress we are making on our transformation journey," particularly by reducing restructuring and TSI costs. The company continued to misrepresent its ability to integrate the companies and business systems it had acquired, the pension fund says.

The company's stock price dropped 17%, to \$26.15 on Aug. 4, 2022, following disappointing financial results blamed on slow "cost optimization efforts," the fund says. It dropped 12% to \$21.99 Dec. 20, 2023, on news of Salvino's departure. And it dropped 17%, to \$16.52 on May 17 of this year after its "new CEO admitted that 'the previous restructurings did not set a real, clean, solid, fully integrated baseline for profitable growth' because the systems that were acquired over time were 'never integrated, never deduped,'" according to the complaint.



The proposed class of those who acquired DXC stock between May 26, 2021, and May 16, 2024, inclusive, consists of hundreds or thousands of members, the complaint estimates.

The pension fund seeks damages and injunctive relief on its securities fraud claims.

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

Hirschler Fleischer PC and Bernstein Litowitz Berger & Grossmann LLP represent the Roofers' Pension Fund.

The case is Roofers' Pension Fund v. DXC Tech. Co., E.D. Va., No. 1:24-cv-01351, complaint 8/2/24.

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French Fry Maker Lamb Weston's Steepest Selloff Prompts New Suit

By Martina Barash

- **COURT:** D. Idaho
- **TRACK DOCKET:** [No. 1:24-cv-00350](#)

Bloomberg Law News 2024-08-06T10:02:45128567496-04:00

French Fry Maker Lamb Weston's Steepest Selloff Prompts New Suit

By Martina Barash 2024-08-05T11:38:36000-04:00

- **COURT:** D. Idaho
- **TRACK DOCKET:** [No. 1:24-cv-00350](#)

Lamb Weston Holdings Inc. misleadingly reassured investors about its transition to a new software system meant to streamline inventory, orders, and other aspects of the potato processor's operations, according to a suit over the stock's biggest selloff.

The challenges from the software change led to poor sales results, which in turn caused stock drops of 19% on April 4 and 28% on July 24, a West Palm Beach, Fla., pension fund says in a proposed class action. The fund filed its complaint Aug. 2 in the US District Court for the District of Idaho.

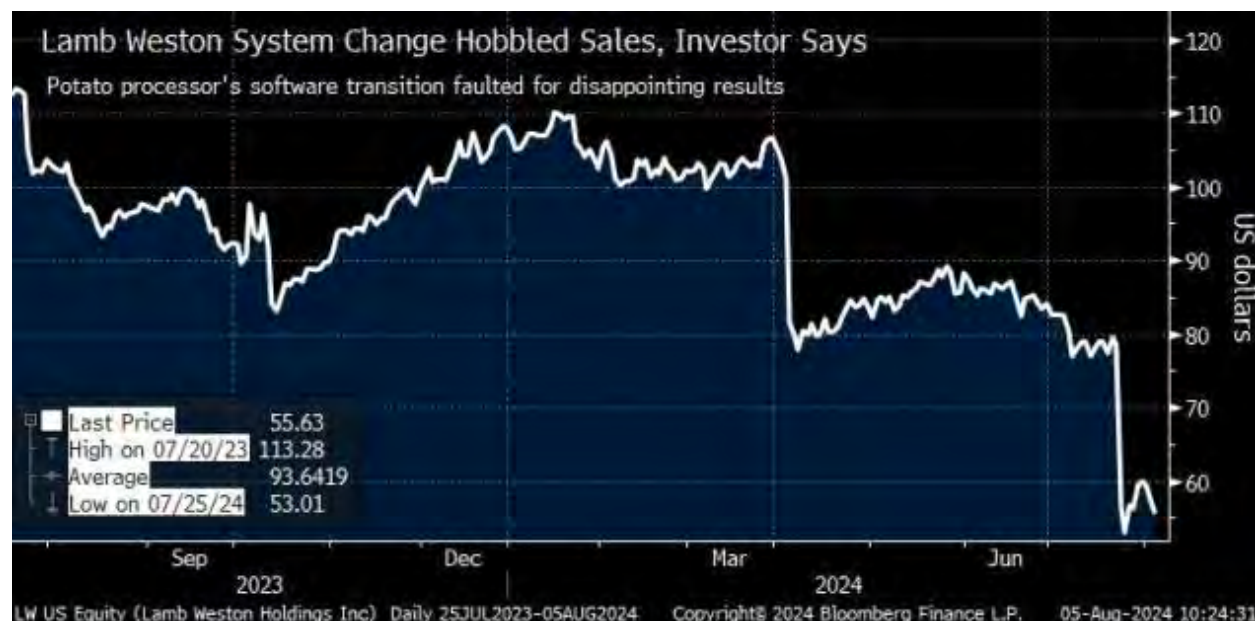
The suit adds to allegations in a similar complaint filed before the July 24 tumble.

Lamb Weston, which supplies McDonald's Corp. and other restaurant, wholesale, and retail customers, designed the new operations and financial software to increase automation and improve efficiency, the fund says. But the company and its top executives "knew of, or recklessly disregarded, significant, ongoing problems" associated with the so-called enterprise resource planning system "that would hinder its successful implementation," the fund says.

The company's announcement of financial results April 4 showed that the "disastrous roll-out of the ERP system caused the Company to lose \$135 million in net sales during the quarter and required a \$330 million reduction to its sales guidance for the full fiscal year of 2024," the fund says. Lamb Weston's stock dropped from a closing price of \$101.12 per share on April 3 to a closing price of \$81.53 on April 4.

Below-expectation results for the full fiscal year ending May 26 were announced July 24, the fund says. Shares went from \$78.62 per share on July 23 to close at \$56.42 per share on July 24.

The July 24 stock-price decline was the steepest ever for Lamb Weston shares, according to data compiled by Bloomberg.



The proposed class of those who acquired Lamb Weston stock between July 25, 2023 and July 23, 2024, inclusive, consists of at least hundreds or thousands of members, according to the complaint.

The suit also names the company's CEO and chief financial officer as defendants.

The West Palm Beach Firefighters' Pension Fund seeks damages on its securities fraud claims.

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

Mooney Wieland Warren PLLC; Saxena White PA; and Klausner, Kaufman, Jensen & Levinson represent the fund.

The case is W. Palm Beach Firefighters' Pension Fund v. Lamb Weston Holdings, Inc. , D. Idaho, No. 1:24-cv-00350, complaint 8/2/24 .

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Judge advances Twitter investor suit against Elon Musk to discovery

 [courthousenews.com/judge-advances-twitter-investor-suit-against-elon-musk-to-discovery](https://www.courthousenews.com/judge-advances-twitter-investor-suit-against-elon-musk-to-discovery)

Michael Gennaro

SAN FRANCISCO(CN) — A federal judge ruled to advance a class action by Twitter investors who claim Elon Musk manipulated Twitter stock leading up to his \$44 billion purchase of the social media platform in 2022.

This past December, U.S. Senior District Judge Charles Breyer allowed the investor's claims to advance. Breyer ruled then that Musk had made a series of statements that were false or misleading in the days following the announcement of his Twitter purchase.

The statements at issue include a tweet from May 13, 2022, where Musk said the Twitter deal was on hold, "pending details supporting calculation that spam/fake accounts do indeed represent less than 5% of users." Twitter stock declined over 9% on the day of the tweet; investors said they interpreted the tweet to mean that Twitter was hiding information.

Musk followed this up with a comment at a conference three days later that fake and spam accounts made up at least 20% of Twitter users at the time. When then-CEO Parag Agrawal commented that there was no way for external parties to calculate this information, Musk tweeted a poop emoji at Agrawal. Musk tweeted the next day that the deal would not be moving forward until Agrawal provided evidence of bot numbers under 5%.

In his December ruling, Breyer, a Bill Clinton appointee, found the tweets were misleading because Twitter did not have an obligation to provide Musk the details of bot accounts to close the sale of the platform, and that the statements made a material difference to Twitter's investors since they relied on information about Twitter's data in their investment decision-making.

After the ruling, Musk moved for a judgment on the pleadings, claiming his statements were not materially misleading to a reasonable investor in light of countervailing, contemporaneous statements — specifically, provisions in the Twitter merger agreement. Musk also argued that the plaintiffs have not sufficiently pleaded loss causation for any of the statements at issue.

Breyer, in a 6-page order Monday afternoon, found Musk had made the "exact same arguments that he made at the motion to dismiss stage and which this court explicitly considered and rejected. Just as Musk was allegedly bound by his waiver of due diligence after entering into the merger agreement, Musk is bound by this court's decision that plaintiffs' case can move past the pleadings stage," Breyer wrote.

Breyer's ruling means the case can proceed to discovery.

Investors, including the lead plaintiffs Steve Garrett, Nancy Price, John Garrett and Brian Belgrave, first filed suit in October 2022. They claim they suffered major losses when Musk deliberately made misleading statements about the presence of spam bot accounts on Twitter to drive down the company's stock, in hopes of backing out of the acquisition deal or renegotiating a more favorable deal.

Additionally, the investors claim Musk attempted to artificially lower Twitter's stock price after he and Twitter entered into an agreement to acquire the platform, while also failing to disclose when his Twitter stake exceeded 5% or that he had initially been invited to join Twitter's board.

Lawyers for Musk and the plaintiffs did not respond to requests for comment before deadline.

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Musk Unable to Shake Twitter Investor Suit Over Buyout Bot Claim

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Litigation

Elon Musk, chief executive officer of Tesla Inc., departs court during the SolarCity trial in Wilmington, Del. on July 13, 2021.

Photographer: Al Drago/Bloomberg

Aug. 6, 2024, 6:50 AM PDT

Bernie Pazanowski

Reporter

- Musk said tweets weren't misleading based on contract terms
- Argument previously rejected, law of case doctrine applied

A federal court rejected Elon Musk's argument that tweets he made about fake Twitter accounts after he agreed to purchase the company weren't materially misleading.

Musk made the same argument when he filed his motion to dismiss in 2023, Judge Charles R. Breyer said Monday for the US District Court for the Northern District of California. The law of the case doctrine therefore bars him from making the same argument now, Breyer said.

Musk's tweets were made in an effort to renegotiate his deal to buy Twitter by driving down the price of its stock, the investors said. They also said that Musk's statements cost them \$560,000 and sued him for fraud under the 1934 Securities Exchange Act.

The three tweets at issue indicated that Musk was going to put the purchase on hold until he was assured that "spam/fake accounts do indeed represent less than 5% of users," as he said in one of the posts. Another tweet said that the number of fake accounts may have been over 20%.

The investors said that they sold their Twitter stock at artificially depressed prices between May 13 and Oct. 4, 2022. But Musk retorted that the investors were aware that his flip-flopping position was an empty threat because they knew he was legally bound by the merger agreement to conclude the buyout.

Musk said that he was making a new argument in this motion for judgment on the pleadings, but Breyer pointed to an excerpt from the transcript for the motion to dismiss hearing, in which Musk's attorney made the argument to him. The judge then cited the paragraph in his motion to dismiss order that specifically rejected the argument.

Musk also admitted during the current proceedings that the same argument was made at the motion to dismiss hearing, Breyer said.

Breyer further ruled that discovery may proceed in the case.

Bottini & Bottini, Inc., and Cotchett, Pitre & McCarthy LLP represent the investors. Quinn Emanuel Urquhart and Sullivan LLP represents Musk.

The case is *Pampena v. Musk*, 2024 BL 268740, N.D. Cal., No. 22-cv-05937-CRB, 8/5/24 .

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<https://x.com/AnnMLipton/status/1820748749230014813>



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@AnnMLipton

...

Very neat paper on how insiders strategically miscode their purchases on sales on disclosure forms, and thereby avoid scrutiny for insider trading. They choose "Other" rather than admit a simple purchase or sale, and that's enough:

papers.ssrn.com/sol3/papers.cf...

INSIDER TRADING BY OTHER MEANS

Harvard Business Law Review

66 Pages • Posted: 24 Jul 2024

[Sureyya Burcu Avcı](#)

Sabancı University - School of Management

[Cindy A. Schipani](#)

University of Michigan, Stephen M. Ross School of Business

[H. Nejat Seyun](#)

University of Michigan at Ann Arbor

[Andrew Verstein](#)

University of California, Los Angeles (UCLA) - School of Law

Date Written: July 19, 2024

Abstract

For more than thirty years, one of the most prevalent strategies for insider trading has gone undetected and unaddressed. This Article uncovers the techniques by which executives and directors sell overvalued stock worth more than \$100 billion per year, shifting losses to ordinary investors. The basic idea is that insiders conceal their suspicious trades by publicly reporting them (as they are required to do) in ways that confuse or discourage investigators. We develop a taxonomy of concealment strategies, complete with suggestive examples. We then empirically test our taxonomy using a database of essentially all stock trades since 1992. We find that insiders who trade using the subterfuges we describe outperform the market by up to 20% on average. Worse yet, we find evidence that this simple subterfuge works. Essentially no one has ever been prosecuted for undertaking one of these suspicious trades. Nor do journalists or scholars seem to appreciate them. Accordingly, we call for scholars and prosecutors to cast a wider net in their studies and market surveillance, then discuss implications for the design of insider-trading reporting requirements and related legal rules.

2:08 AM • Aug 6, 2024 • 1,221 Views



1



4



14



8





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...

Reminds me of this paper, suggesting managers might intentionally misfile disclosure documents to obscure negative information:

papers.ssrn.com/sol3/papers.cf...

Strategic Disclosure Misclassification

56 Pages · Posted: 12 May 2016 · Last revised: 19 Jan 2018

[Andrew Bird](#)

Chapman University · The George L. Argyros College of Business and Economics

[Stephen A. Karolyi](#)

Office of the Comptroller of the Currency

[Paul Ma](#)

University of Minnesota

Date Written: January 19th, 2018

Abstract

We apply modern machine learning techniques to characterize disclosure misclassification by public companies. We find that 12-26% of disclosures are misclassified; those concerning material definitive agreements, executive or director turnover, and delistings are most commonly misclassified. Using EDGAR search traffic data, we provide evidence that misclassification is associated with less investor attention. Through this attention channel, misclassification leads to a significant and persistent impact on absolute market returns. For misclassified filings, search traffic is 4-12% lower and absolute market reactions are 46-79 bps smaller. Consistent with strategic motives, misclassification is more likely for negative news and when market attention is high.



2



423



Securities Law Prof Blog

 lawprofessors.typepad.com/securities/2024/08/new-securities-law-articles-in-print.html

Tuesday, August 6, 2024

New Securities Law Articles in Print

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

Andrew N. Vollmer, *Liu and the New SEC Disgorgement Statute*, 15 Wm. & Mary Bus. L. Rev. 307 (2024).

Moin A. Yahya & Nicole Pecharsky, *Crypto-Litigation: An Empirical Overview for 2020–Present*, 25 SMU Sci. & Tech. L. Rev. 195 (2022).

Lawyers line up for CrowdStrike, Delta as litigation looms over outages

 [reuters.com/legal/litigation/lawyers-line-up-crowdstrike-delta-litigation-looms-over-outages-2024-08-05](https://www.reuters.com/legal/litigation/lawyers-line-up-crowdstrike-delta-litigation-looms-over-outages-2024-08-05)

Mike Scarcella

Passengers wait in line at Delta, KLM, and Air France ticket counters after airlines grounded flights due to a worldwide tech outage caused by an update to CrowdStrike's "Falcon Sensor" software which crashed Microsoft Windows systems, at Tampa International Airport in Tampa, Florida, U.S., July 19, 2024. REUTERS/Octavio Jones Purchase Licensing Rights  , opens new tab

Aug 5 (Reuters) - Cybersecurity firm CrowdStrike has turned to law firm Quinn Emanuel Urquhart & Sullivan to defend it amid fallout from last month's global tech outage that crashed millions of computers and disrupted flights, financial services and hospitals.

In a letter to an outside lawyer for Delta Air Lines on Sunday, Quinn Emanuel's Michael Carlinsky fired back at the U.S. air transport giant's claim that CrowdStrike should be blamed for the July 19 tech meltdown.

Delta has hired prominent litigator David Boies of Boies Schiller Flexner, known for high-stakes business cases. Delta said last month it planned to take legal action against CrowdStrike after the outage cost the airline \$500 million.

Quinn Emanuel, with about 900 lawyers, is among the country's top litigation-focused firms. It counts billionaire entrepreneur Elon Musk as a client, and it has long defended Alphabet's Google in court on some matters.

Quinn Emanuel and Delta had no immediate comment, and Boies did not immediately respond to a request for comment.

CrowdStrike's letter to Delta said it was "disappointed" that the airline had suggested CrowdStrike acted inappropriately, and it denied that the company was grossly negligent or committed misconduct.

Carlinsky, based in New York, leads Quinn Emanuel's complex litigation team. He has represented billionaire investor Leon Black, medical device maker Masimo and bond insurer Ambac Financial Group.

The litigation team for CrowdStrike also includes Quinn appellate partner Ellyde Thompson and intellectual property partner Deepa Acharya, according to a person familiar with the firm's team.

CrowdStrike was hit last week with its first shareholder lawsuit tied to last month's outages. The lawsuit filed in Austin, Texas federal court by the plaintiffs' firm Labaton Keller Sucharow claimed CrowdStrike's assurances about its technology were materially false and misleading.

Austin-based CrowdStrike has said the case has no merit and the company will "vigorously" defend itself. Defense lawyers have not made a court appearance for CrowdStrike in that case.

Read more:

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

Lawyers for Musk's X Corp kicked off data-scraping case

Google slams opposing lawyers' \$217 million fee bid in privacy case

Elon Musk lawyer Spiro avoids sanctions as defamation lawsuit proceeds

Reporting by Mike Scarcella

CrowdStrike Hit With Consumer Class Action Over Software Outage

B [bloomberglaw.com/product/blaw/bloomberglawnews/class-action/XEGLJ9ES000000](https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/XEGLJ9ES000000)

CrowdStrike Inc. is facing a proposed consumer class action in federal court brought by flight travelers affected by the company's software outage, which spurred hundreds of flight delays and 8.5 million computers to crash.

CrowdStrike failed to "properly develop, test, and deploy" its Falcon cybersecurity software platform update to ensure it didn't contain serious bugs or invalid data, according to the Aug. 5 proposed class action complaint filed with the US District Court for the Western District of Texas.

Lead plaintiffs Julio Del Rio, Jack Murphy, and Steven Bixby, who claim they faced interrupted travel and inconveniences due to the outage, are bringing the complaint on behalf of themselves and other travelers who suffered alleged injuries and damages, including lost time incurred by delayed and canceled flights, lost time and money spent mitigating effects of the outage, and other claims.

Had CrowdStrike maintained "reasonable" software development, testing, and validation procedures, it would have been able to prevent the July 19 outage from occurring, the suit says.

The Austin-based cybersecurity company failed by not employing "industry-standard practice" to roll out cybersecurity updates gradually before the flawed update hit their user base, the complaint says. "This process would have prevented the global effects of the CrowdStrike Outage."

This complaint comes on the heels of the first investor suit filed against CrowdStrike July 31, alleging that the company had told investors that its platform had been sufficiently validated, despite not having sufficient procedures in place to test and update the system.

The outage also had repercussions on Olympic travelers when Delta Air Lines Inc., the official airline of Team USA, was devastated by the outage as it attempted to transport almost 2,000 athletes, staff, and equipment to Paris.

Overall, as many as 46,000 flights were delayed and 5,171 flights were canceled on the first day of the outage alone, according to the complaint.

The consumer class action seeks class certification of all US citizens who had a flight delayed or canceled due to the outage, as well as certification of California, Ohio, and Pennsylvania subclasses.

The class action alleges negligence, a statutory claim of unfair competition under California law, and that the company acted as a public nuisance on behalf of the Ohio and Pennsylvania subclasses.

The complaint seeks damages, pre- and post-judgment interest, attorneys' fees and costs, and declaratory and injunctive relief "designed to prevent Defendant from causing another technology outage by adopting and implementing best software development and testing practices."

Company founder and CEO George Kurtz apologized to its customers July 19, stating, "you have my commitment to provide full transparency on how this occurred."

A CrowdStrike spokesperson said in response to the suit, "We believe this case lacks merit and we will vigorously defend the company."

Cory Fein Law Firm and Barnow & Associates PC represent the plaintiffs.

The case is Del Rio v. CrowdStrike Inc., W.D. Tex., No. 24-00881, Complaint 8/5/24

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To contact the editor responsible for this story: Blair Chavis at bchavis@bloombergindustry.com

CrowdStrike is sued by fliers after massive outage disrupts air travel

 [reuters.com/legal/crowdstrike-is-sued-by-fliers-after-massive-outage-disrupts-air-travel-2024-08-05](https://www.reuters.com/legal/crowdstrike-is-sued-by-fliers-after-massive-outage-disrupts-air-travel-2024-08-05)

Jonathan Stempel

By Jonathan Stempel

August 5, 2024 2:33 PM PDT Updated 17 hours ago

Item 1 of 2 A view of a flight information display board where passengers are able to know the status of their flights after airlines were grounded worldwide caused by a tech outage from an update to CrowdStrike's 'Falcon Sensor' software, crashing Microsoft Windows systems in Tampa, Florida, U.S., July 19, 2024. REUTERS/Octavio Jones/File Photo

[1/2] A view of a flight information display board where passengers are able to know the status of their flights after airlines were grounded worldwide caused by a tech outage from an update to CrowdStrike's 'Falcon Sensor' software, crashing Microsoft Windows systems in Tampa, Florida, U.S., July 19, ... Purchase Licensing Rights , opens new tab Read more

Aug 5 (Reuters) - CrowdStrike's (CRWD.O) , opens new tab legal troubles from last month's massive global computer outage deepened on Monday, as the cybersecurity company was sued by air travelers whose flights were delayed or canceled.

In a proposed class action filed in the Austin, Texas, federal court, three fliers blamed CrowdStrike's negligence in testing and deploying its software for the outage, which also disrupted banks, hospitals and emergency lines around the world.

The plaintiffs said that as fliers scrambled to get to their destinations, many spent hundreds of dollars on lodging, meals and alternative travel, while others missed work or suffered health problems from having to sleep on the airport floor.

They said CrowdStrike should pay compensatory and punitive damages to anyone whose flight was disrupted, after technology-related flight groundings for Southwest Airlines (LUV.N) , opens new tab and other carriers in 2023 made the outage "entirely foreseeable." CrowdStrike said in a statement: "We believe this case lacks merit and we will vigorously defend the company."

It provided an identical statement in response to a shareholder lawsuit filed on July 31, after the company's stock price had fallen by about one-third.

The outage stemmed from a flawed software update that crashed more than 8 million computers.

Delta Air Lines (DAL.N) , opens new tab has said it may take legal action against Austin-based CrowdStrike after canceling more than 6,000 flights, at a cost of about \$500 million.

On Sunday, CrowdStrike said it was neither grossly negligent nor at fault for Delta's problems, and that the Atlanta-based carrier did not accept its offer for help. Delta faces a U.S. Department of Transportation probe into why it needed more time than rivals to recover from the outage.

Monday's case is *del Rio et al v CrowdStrike Inc*, U.S. District Court, Western District of Texas, No. 24-00881.

Reporting by Jonathan Stempel in New York Editing by Marguerita Choy



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NEWS

Dallas Law Firm That Won 2 Talc Verdicts This Year Opens Another J&J Trial

Dean Omar Branham Shirley, which won jury awards of \$45 million and \$260 million in Illinois and Oregon, gave opening statements to a South Carolina jury on behalf of Michael Perry, who, at 53 years old, was diagnosed with mesothelioma in 2023.

August 05, 2024 at 07:01 PM

Mass Torts



Amanda Bronstad
staff reporter



What You Need to Know

- Dean Omar attorney Rachel Gross said her client's biggest exposure was to Johnson & Johnson's baby powder.
- Johnson & Johnson's attorney, Butler Snow's Kim Bueno, showed jurors a colander, which acts like the human body when exposed to trace amounts of asbestos
- The trials are moving ahead as Johnson & Johnson is gathering support for a \$6.48 billion proposed bankruptcy plan.

The Dallas plaintiffs’ firm that won two talcum powder verdicts against Johnson & Johnson this year opened another trial Monday in South Carolina.

Dean Omar Branham Shirley, which won jury awards of \$45 million and \$260 million in Illinois and Oregon, represents Michael Perry, who, at 53 years old, was diagnosed with mesothelioma in 2023 after using Johnson & Johnson’s baby powder every day.

“By far and away, Michael’s biggest exposure to asbestos was Johnson & Johnson’s baby powder,” Dean Omar attorney Rachel Gross told a jury in the Richland County Court of Common Pleas in Columbia, South Carolina, according to Courtroom View Network’s live stream of the trial. “He used it every day, multiple times a day, for about five decades, because he was allergic to deodorant.”

Kim Bueno, representing Johnson & Johnson, told jurors that her client’s talcum powder did not contain asbestos and, furthermore, exposure to it wasn’t cumulative. To demonstrate, Bueno, a Butler Snow partner in Austin, Texas, showed jurors a silver mixing bowl, then compared it to a colander, which acts more like the human body when exposed to trace amounts of asbestos.

“That’s why it doesn’t get in our body and doesn’t stay there,” she said.

Perry, she said, also worked on cars as a teenager in his father’s garage for three years, during which he was exposed to brake pads containing 40% asbestos in them—enough to cause mesothelioma.

“In this case, in order to prove it, in order to prevail, Mr. Perry is going to have to prove not that there was some fiber of asbestos in some bottle of Johnson’s baby powder somewhere, but that it was in the bottle he used,” she told the jury. “Mr. Perry will not be able to prove that case. The science doesn’t support it. The facts do not support it.”

Dean Omar’s Prior Verdicts: \$45M and \$260M

The trials are moving ahead against Johnson & Johnson after two prior Chapter 11 cases filed by subsidiary LTL Management were dismissed. Talc claimants had until July 26 to vote on a potential third talc bankruptcy, which would provide \$6.48 billion in compensation to victims of ovarian and other gynecological cancers, but not mesothelioma.

On April 19, Dean Omar won a \$45 million jury award in Cook County Circuit Court, in Chicago, in the first post-bankruptcy mesothelioma trial against Johnson & Johnson. That case involved the family of Theresa Garcia, a mother of six kids who died in 2020 after lifelong use of Johnson & Johnson’s baby powder and other products.

Bueno represented Johnson & Johnson in that trial alongside Shaila Diwan at King & Spalding in New York.

On June 3, Dean Omar won a \$260 million verdict in Portland’s Multnomah County Circuit Court. Plaintiff Kyung Lee was diagnosed with mesothelioma after decades of being exposed to Johnson & Johnson’s baby powder.

Dean Omar opened another talc trial in June against Johnson & Johnson in Dallas County District Court, but that case settled for a confidential amount.

In the only post-bankruptcy trials involving ovarian cancer, jurors in Florida’s Miami-Dade Circuit Court ended on March 5 in a mistrial, while a Sarasota County Circuit Court jury handed Johnson & Johnson a defense win on April 18.

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GSK wins latest trial over Zantac cancer claims

 [reuters.com/business/healthcare-pharmaceuticals/gsk-wins-latest-trial-over-zantac-cancer-claims-2024-08-05](https://www.reuters.com/business/healthcare-pharmaceuticals/gsk-wins-latest-trial-over-zantac-cancer-claims-2024-08-05)

Brendan Pierson

Item 1 of 2 Zantac heartburn pills are seen in this picture illustration taken October 1, 2019.
REUTERS/Brendan McDermid/Illustration

[1/2]Zantac heartburn pills are seen in this picture illustration taken October 1, 2019.
REUTERS/Brendan McDermid/Illustration [Purchase Licensing Rights](#) , opens new tab

Aug 5 (Reuters) - GSK (GSK.L) , opens new tab won the latest trial over claims that discontinued heartburn drug Zantac caused cancer, as a jury on Monday found that the drug was not responsible for an Illinois woman's illness, a company spokesperson said. Carrie Joiner had alleged in her lawsuit in state court in Chicago that she developed colorectal cancer from a carcinogenic contaminant called NDMA found in the once-blockbuster drug.

A lawyer for Joiner did not immediately respond to a request for comment.

Zantac was sold at different times by GSK, Pfizer (PFE.N) , opens new tab, Sanofi (SASY.PA) , opens new tab and Boehringer Ingelheim. First approved by U.S. regulators in 1983, it became the world's best-selling medicine in 1988 and one of the first to top \$1 billion in annual sales.

The companies collectively are facing thousands of lawsuits against them in courts across the United States.

The majority of those are in Delaware state court, where a judge in June allowed more than 70,000 cases to go forward after rejecting the defendants' bid to keep key plaintiffs' expert witnesses out of court on the grounds that their scientific methods were not reliable. The companies are appealing that ruling.

The lawsuits began piling up after the U.S. Food and Drug Administration in 2020 asked manufacturers to pull the drug off the market over concerns that ranitidine, the active ingredient in Zantac and generic versions of the drug, could degrade into NDMA over time or when exposed to heat.

Several cases have settled before trial for undisclosed amounts. The only previous case to go to trial ended with a verdict in favor of GSK and Boehringer Ingelheim in May. The drugmakers have said the cases are meritless. They won a significant victory in 2022, when a Florida federal judge ruled against about 50,000 cases, finding that the alleged cancer link was not supported by sound science. Some of those cases are being appealed.

Reporting By Brendan Pierson in New York, Editing by Alexia Garamfalvi and Bill Berkrot

Patreon to Pay \$7.25 Million in Deal Over Info-Sharing With Meta

B [bloomberglaw.com/product/blaw/bloomberglawnews/class-action/XASBPFB0000000](https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/XASBPFB0000000)

Class Action

The Patreon Inc. logo on a laptop computer arranged on April 13, 2021.

Photographer: Tiffany Hagler-Geard/Bloomberg

- Class members entitled to pro-rata share of settlement fund
- Suit targeted use of Meta pixel to track users' video habits

Patreon Inc. would pay \$7.25 million to settle allegations it shared its subscribers' viewing choices and personal information with Meta Platforms Inc. without obtaining their consent as required under the Video Privacy Protection Act, under a proposed deal filed in federal court.

Brayden Stark, Judd Oosteyn, and four others alleged in the lawsuit that the web-content platform installed the Meta "pixel" and other online surveillance tools on its website, allowing Meta and other third parties to collect consumers' video-usage information, including the titles of the videos they watched and their Facebook IDs.

The VPPA prohibits providers of video content from disclosing information to third parties linking consumers to the videos they have watched or requested. The plaintiffs also asserted claims of unjust enrichment and violations of the California Unfair Competition Law.

Meta isn't named as a defendant.

The filing comes 18 months after Magistrate Judge Joseph C. Spero denied Patreon's motion to dismiss the proposed class action, and four months after a hearing before Spero on Patreon's motion for summary judgment on the grounds that the VPPA violated the First Amendment. Spero hasn't yet ruled on that motion.

Class members who submit a valid claim would be eligible to receive a pro-rata share of the amount remaining in the settlement fund after the deduction of attorneys' fees and costs and the costs of administering the deal, according to the plaintiffs' motion for preliminary approval of the settlement, filed Aug. 2 in the US District Court for the Northern District of California.

Class counsel indicated they will seek up to 30% of the settlement fund in attorneys' fees, up to \$485,000 in reimbursement of expenses, and a service award of up to \$7,500 for each of the six class representatives, the motion said.

Patreon also agreed to disable the Meta pixel on any of its web pages that include video content, and not to operate the pixel on its webpages without obtaining proper consent or ensuring it is otherwise compliant with the VPPA, it said.

The claims administrator anticipates notice and administration expenses of between \$300,000 and \$350,000, the motion said.

Girard Sharp LLP represents Stark and the proposed class. Norton Law Firm PC represents Patreon.

The case is Stark v. Patreon , N.D. Cal., No. 3:22-cv-03131, motion filed 8/2/24

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NEWS

Snowflake Breach Litigation Snowballs, Names Ticketmaster, AT&T

More than 50 class actions have been filed over an April data breach now connected to cloud storage software firm Snowflake Inc.

August 05, 2024 at 02:50 PM



Amanda Bronstad
staff reporter



What You Need to Know

- In addition to Snowflake, lawsuits name Ticketmaster and its parent company, Live Nation Entertainment, as well as AT&T, Advance Auto Parts and Cricket Wireless.
- The defendants have turned to firms such as Baker & Hostetler, Quinn Emanuel and Paul Hastings.
- A July 29 motion asks the U.S. Judicial Panel on Multidistrict Litigation to send the cases to Montana, where Snowflake is based.

More than 50 class actions have been filed over an April data breach now connected to cloud storage software firm Snowflake Inc., with big companies such as Ticketmaster and AT&T named as additional defendants.

On July 29, plaintiffs lawyer Jeff Ostrow, of Kopelowitz Ostrow Ferguson Weiselberg Gilbert, in Fort Lauderdale, Florida, moved to coordinate the cases into multidistrict litigation.

The first case against Snowflake was filed on June 13, but his motion before the U.S. Judicial Panel on Multidistrict Litigation included many earlier cases that referenced a “third-party cloud database environment containing company data” that was hacked, prompting vendor companies to notify their own customers.

Many of those cases, which are being [tracked by Law.com Radar](#) as a litigation surge, name Ticketmaster and its parent company, Live Nation Entertainment, as well as AT&T, Advance Auto Parts and Cricket Wireless. But Ostrow’s motion says at least 165 entities had their data impacted, and Snowflake is a vendor to nearly 10,000 companies, including Adobe, Kraft Heinz and MasterCard.

“When those cases initially were filed, the plaintiffs weren’t aware of Snowflake’s role, but now that they’re aware, my expectation would be that either additional class actions will be filed in those cases naming Snowflake, or the complaints would be amended to include Snowflake,” said John Heenan, of Montana’s Heenan & Cook. He has filed at

least eight cases.

The defendants have turned to firms such as Baker & Hostetler, Quinn Emanuel Urquhart & Sullivan and Paul Hastings.

In blog posts, Chief Information Security Officer Brad Jones said Snowflake became aware of the breach on May 23.

“Snowflake recently observed and is investigating an increase in cyber threat activity targeting some of our customers’ accounts,” he wrote on May 30. “We believe this is the result of ongoing industry-wide, identity-based attacks with the intent to obtain customer data.

“Research indicates that these types of attacks are performed with our customers’ user credentials that were exposed through unrelated cyber threat activity,” Jones added. “To date, we do not believe this activity is caused by any vulnerability, misconfiguration, or malicious activity within the Snowflake product.”

On June 2, he said: “We continue to work closely with our customers as they harden their security measures to reduce cyber threats to their business. We are also developing a plan to require our customers to implement advanced security controls, like multi-factor authentication (MFA) or network policies, especially for privileged Snowflake customer accounts.”

Snowflake attorney Stephen Broome, of Quinn Emanuel in Los Angeles, did not respond to a request for comment.

Live Nation attorney Beau Stockstill, of Paul Hastings, in Costa Mesa, California, declined to comment.

A spokesperson for AT&T, represented by Gilbert Keteltas, of Baker & Hostetler in Washington, D.C., declined to comment.

“In April, AT&T learned that customer data was illegally downloaded from our workspace on a third-party cloud platform,” AT&T said in a July 12 statement, which prompted [a wave of class actions](#). “We launched an investigation and engaged leading cybersecurity experts to understand the nature and scope of the criminal activity. We have taken steps to close off the illegal access point. We are working with law enforcement in its efforts to arrest those involved in the incident. We understand that at least one person has been apprehended.”

Lawyers who’ve appeared for Advance Auto Parts—Kelly Dagger and Thomas Segars, both partners at Ellis Winters in Raleigh, North Carolina—did not respond to a request for comment. Lawsuits say the breach impacted mostly Advance Auto Parts employees.

A representative of Cricket Wireless did not respond to a request for comment.

‘Ultimately, Those Will Get Linked Back to Snowflake’

The Snowflake breach impacted hundreds of millions of people.

On July 16, U.S. Sens. Richard Blumenthal, a Democrat from Connecticut, and Josh Hawley, a Republican from Missouri, wrote letters to AT&T and Snowflake demanding more information about the breach.

Ostrow, in the motion before the U.S. Judicial Panel on Multidistrict Litigation, has argued the cases should go before U.S. District Chief Judge Brian Morris of the District of Montana, since Snowflake is based in Bozeman, Montana.

The motion cites the MOVEit data breach, which had a similar “hub-and-spoke” pattern involving [more than 90 companies](#). On Oct. 6, the U.S. Judicial Panel on Multidistrict Litigation [sent more than 100 class actions](#) brought over the MOVEit breach to U.S. District Judge Allison Burroughs of the District of Massachusetts, where MOVEit software maker Progress Software is headquartered in Burlington.

“It’s the same thing here, where there may be other companies that have their own customer-wide breaches, and ultimately, those will get linked back to Snowflake,” Heenan said.

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Seattle settles pollution fight with Monsanto for \$160 million

 [courthousenews.com/seattle-settles-pollution-fight-with-monsanto-for-160-million](https://www.courthousenews.com/seattle-settles-pollution-fight-with-monsanto-for-160-million)

Monique Merrill

(CN) — Seattle's eight-year legal battle against Monsanto over contamination of the Lower Duwamish River ended Monday with a dismissal following a \$160 million settlement with the chemical giant.

Seattle first sued the agrochemical giant in 2016 over its role in contaminating the river and area drainage systems with harmful toxins. The city accused Monsanto, now owned by Bayer AG, of using polychlorinated biphenyls (PCBs) for decades despite knowing the danger they present to humans and wildlife.

On July 25, Seattle City Attorney Ann Davison announced the city and the company settled for \$160 million, just two months before a jury trial was set to begin. The case was dismissed with prejudice Monday.

"We all play a role in protecting our environment and I am glad that Monsanto will contribute to this important environmental cleanup," Davison said in a statement.

The money from the settlement will be put toward the city's mitigation efforts to find and remove PCBs from the Lower Duwamish River, Davison said. Seattle originally sought over \$700 million in damages, according to Monsanto's motion for summary judgment from August 2022. Federal officials estimated the full cleanup of the site would cost \$342 million in 2014.

Under the terms of the settlement, Monsanto did not admit to any wrongdoing or liability.

Of the \$160 million, \$35 million will be used for PCB remediation and the rest will reimburse the city for its contribution to the cleanup of the river, Monsanto said in an email.

"Monsanto remains committed to defending cases at trial and will only consider settlements when it is in the company's interest to do so," the company said in an email.

A lawsuit remains pending against six former PCB customers who agreed to fully defend and indemnify Monsanto as a condition of continuing to provide them with bulk PCBs.

The company stopped manufacturing PCBs in 1977, two years before the chemicals were banned in the United States. The chemicals were used in a variety of products due to their non-flammability and chemical stability. Despite ceasing production, PCBs still existed in sealants, caulking and exterior paints, and continued to contaminate water runoff.

The U.S. Environmental Protection Agency declared the Lower Duwamish River — which runs through the heart of the city and empties into Puget Sound — a Superfund Site in 2001. In 2014, the EPA required the city to construct a stormwater treatment plant to remove PCBs.

“These funds will allow Seattle Public Utilities to take further steps to protect the Duwamish,” Davison said. Those steps may include expanding the utilities’ source control program to find and address pollution sources, including buildings with lingering PCBs, before the contaminants end up in the water stream.

Davison said the settlement was reached through meditation sessions held in June and described the payout as unprecedented.

Categories / Courts, Environment, Regional

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Battle with insurers follows \$4.03B Maui fire settlement

DJ [dailyjournal.com/articles/380055-battle-with-insurers-follows-4-03b-maui-fire-settlement](https://www.dailyjournal.com/articles/380055-battle-with-insurers-follows-4-03b-maui-fire-settlement)

Aug. 6, 2024

Insurance companies want to be repaid what they paid to their customers from the settlement fund defendants agreed to set up for victims. The issue is whether there is enough to make all the plaintiffs completely whole.

Michael Purpura of Hueston Hennigan.

The nearly global settlement of \$4.03 billion for some 600 individual and class victims of fires in Maui last year was the result of hard work by lawyers and mediators but there is still a big battle ahead, said a major plaintiffs' lawyer who helped reach the deal.

"It's not time to pat anybody on the back till we can start getting people paid," said Frank Pitre of Cotchett, Pitre & McCarthy in San Francisco. "There is still a big battle because the insurers are too greedy for their own good. There's going to be an all-out assault as to what their entitlement is if any, if we don't have enough to make everybody whole for their loss."

"The goal was a global solution. At this point all the parties except for the insurers have settled," said Michael Purpura, of Hueston Hennigan LLP, whose team advised Hawaii Gov. Josh Green and the state's attorney general. "The federal cases are part of the settlement. All the individual parties and the class actions and defendants are part of the settlement. It's pretty remarkable."

"This settlement occurred because of the leadership of Governor Green. His direct involvement in the process throughout with the parties, the mediators, the other defendants, caused the mediation to be successful and the settlement to occur," Purpura said.

Pitre also praised the "months of hard work by the mediators" in dealing with multiple proposals by different parties. The next task is to set up a process for determining how to pay the plaintiffs, notify them and assess how much of the settlement funds they receive.

"But we have to litigate with the insurance companies to establish what if any entitlement they have of the \$4 billion established as a fund to compensate the victims," Pitre said.

"Not everybody was insured. The battle is the battle of those people who were insured by insurance companies that paid them benefits," he explained. "What lien rights does an insurance company have if the amount of money collected is not enough to make the individual insured whole for loss, economic and noneconomic? What if they were made whole for the loss of their house, but not their loved one?"

The proposed settlement was announced Friday night. A Hawaii state judge must approve the deal. There are pending motions in the Maui courts regarding the rights of the insurers.

The lawyers leading the plaintiffs' cases were Pitre and Cynthia Wong of Cotchett, Pitre & McCarthy; and Brian Panish and Jesse Creed of Panish, Shea & Ravipudi in Los Angeles.

"Certainly, mainland lawyers were involved on both sides, and there were quite a number of Hawaii lawyers on both sides," said Purpura, who is licensed in both states and has practiced in Hawaii for 10 years. "We were able to be successful because everyone was bringing their strengths. It required a Hawaii solution. The governor recognized that and to their credit all the parties recognized that."

"Over the last year Gov. Green has had a singular focus on moving the state of Hawaii forward past the wildfire," Purpura said. "Several months ago, as step one he implemented the One Ohana Fund; \$175 million was set aside by various defendants to help those most impacted, those with serious injuries and deaths."

Aside from the state, the defendants included Hawaii Electric, which agreed to pay \$1.99 billion, plus Maui County and two telecommunications companies accused of improper emergency preparation and response, and large landholders accused of not managing overgrown vegetation.

The exact cause of the fire has not yet been confirmed by federal investigators.

Andy Winer, a litigator in Hawaii for 24 years, was called in to advise the governor shortly after the fire. "Governor Green and I knew that we would need a team of lawyers and consultants who could help us navigate the complex legal, financial, and political issues arising out of the fires. With respect to the political issues, we knew that we would be dealing with issues at a federal, state, and local level. Consequently, we were looking for skilled legal representation that also had the ability to help us navigate political issues and complement our team."

In addition to Purpura's experience as counsel to Republican presidents and participation in major congressional investigations, "the Hueston Hennigan firm had significant experience handling wildfire cases in California, so Mike was able to tap several highly skilled attorneys to assist with various parts of our work," Winer said.

"Almost immediately, Mike's involvement paid dividends as he successfully assisted the state in preparing for a congressional hearing called by House Republicans in DC. His political instincts were also invaluable in helping to shape and execute the creation of the One Ohana Fund."

By creating a bipartisan legal team "with legal and political background in Hawaii and the mainland, Governor Green was able to guide strategy that is now poised to achieve an unprecedented \$4 billion settlement in a complex and emotionally charged case," Winer said. "Bringing different skills and contacts to the table made a huge difference."

The Maui fire, occurring on Aug. 8, 2023, was one of the deadliest wildfires recorded in the United States, burning more than 2,500 acres and claiming the lives of at least 102 people. Over 3,000 homes, apartments, and other structures were destroyed, displacing 12,000 people and leveling the historic town of Lahaina, according to a press statement from the legal teams.

#380055

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Third-Party Funding for Litigation Faces States' Scrutiny (1)

B [bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X2S29K0G000000](https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X2S29K0G000000)

Some states are moving to increase transparency over who is financially backing lawsuits as legislators weigh the growth of third-party litigation funding.

The funding mechanism, in which outside parties invest in a lawsuit for a stake in the settlement or judgment, is “reshaping every aspect of litigation,” Phil Goldberg, managing partner at Shook, Hardy & Bacon LLP, told attendees Monday at the National Conference of State Legislatures legislative summit in Louisville, Ky. Johnson & Johnson sponsored the lunch served before the session.

Litigation funders are increasingly pouring money into mass tort cases against J&J and other large companies. Groups like the US Chamber of Commerce have responded by pushing for regulation at the federal and state levels.

Some states have taken early steps to regulate outside funding for lawsuits, with Indiana, West Virginia, and Louisiana enacting some disclosure and other requirements this year. Proponents say the funding model gives people access to bring cases when they otherwise wouldn't have the resources, while others argue that it can give funders outsized power in the legal system.

Third-party litigation funding has grown in the US in recent years and created an estimated \$15.2 billion industry, according to the US Chamber of Commerce Institute for Legal Reform. The institute opposes the practice.

“This is becoming a much more present and important issue in a lot of states,” said Goldberg, who argued for more guardrails on the practice.

Disclosure Debated

Goldberg raised concerns of investors and lawyers recruiting plaintiffs and bringing a flood of cases. He also said attorneys can become beholden to funders over their clients.

“The goal of these investors is to make the litigation too big to fail,” Goldberg said.

Disclosure is the first level of state response, Goldberg said. States are also addressing the potential impact of foreign entities on litigation funding. The Louisiana law, for example, requires the disclosure of funding from “countries of concern” to the state attorney general. A federal bill introduced in 2023 would ban funding from foreign governments.

Bills to make litigation funding information more available in Florida and Kansas didn't advance this year.

One analyst argued against that trend. States should consider legislation boosting financial privacy for litigants, Keith Sharfman, professor of law at St. John's University, said during the panel. Litigation finance protects a person's right to bring a suit, even without "deep pockets," he said.

The professional conduct rules that attorneys follow already address concerns such as whether lawyers will act in the best interest of their clients under such an agreement, Sharfman said.

Required funding disclosures means wealthy clients know what resources the other side has, he said. They would also know whether they have no backing at all—which could lead to less favorable settlements for plaintiffs, he said.

(Updates with background on cases in third paragraph.)

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Citigroup whistleblower denied share of \$400 million penalty

 [reuters.com/legal/citigroup-whistleblower-denied-share-400-million-penalty-2024-08-06](https://www.reuters.com/legal/citigroup-whistleblower-denied-share-400-million-penalty-2024-08-06)

Jonathan Stempel

A view of the exterior of the Citibank corporate headquarters in New York, New York, U.S. May 20, 2015. REUTERS/Mike Segar/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, Aug 6 (Reuters) - A federal appeals court on Tuesday said a Citigroup (C.N) , opens new tab vice president was not entitled to a share of a \$400 million civil fine that the bank agreed to pay in October 2020 over its risk management failures.

The 2nd U.S. Circuit Court of Appeals in Manhattan said Tamika Miller did not show that her whistleblowing over Citigroup's alleged altering of audit reports obligated the bank to pay a penalty, leading to its settlement with the Federal Reserve and the Office of the Comptroller of the Currency (OCC).

Miller said Citigroup's conduct violated its \$700 million settlement in 2015 with the Consumer Financial Protection Bureau over its credit card business , opens new tab, and its \$35 million settlement the same day with the OCC over its marketing practices , opens new tab.

However, Circuit Judge Denny Chin, writing for a three-judge panel, said that federal law gave the OCC discretion, but not an obligation, to fine Citigroup over the audit reports. He said that doomed Miller's accusation that the third-largest U.S. bank hid its compliance failures to avoid a fine that the government was entitled to collect.

Chin also said that the lawsuit by Miller, a Citigroup risk management employee since 2014, was "bereft of the details needed to provide Citibank with 'fair notice' of her claim, and instead resembles an attempt to use the litigation process to discover hypothetical wrongdoing."

Lawyers for Miller did not immediately respond to requests for comment. Citigroup did not immediately respond to similar requests.

Miller sued under the federal False Claims Act, which lets whistleblowers sue on behalf of the government and share in recoveries, typically 15% to 30%.

Such cases typically argue that companies received money they weren't entitled to. Miller's case was a "reverse false claim" contending that Citigroup kept money it should have paid.

Jane Fraser, Citigroup's chief executive, has made cleaning up the New York-based bank's regulatory failings a top priority since taking over in March 2021.

The case is U.S. ex rel Miller v Citibank NA, 2nd U.S. Circuit Court of Appeals, No. 22-1615.

Reporting by Jonathan Stempel in New York; Editing by Leslie Adler

Glencore Corruption Probes Draw to a Close With Swiss Fine (2)

By Hugo Miller, Sabrina Willmer and Thomas Biesheuvel

Bloomberg Law News 2024-08-06T10:05:23756727532-04:00

Glencore Corruption Probes Draw to a Close With Swiss Fine (2)

By Hugo Miller, Sabrina Willmer and Thomas Biesheuvel2024-08-05T11:51:49639-04:00

Glencore Plc will pay \$152 million after Swiss authorities wrapped up an investigation into the commodities trader and miner, marking the end of more than six years of legal probes across Europe and the Americas.

Swiss prosecutors found that Glencore failed to take reasonable measures to prevent the bribery of a Congolese public official by a business partner in 2011, the office of the attorney general said in a statement on Monday.

Glencore said it does not admit the findings, but has agreed not to appeal the summary penalty order in the interests of resolving the matter. A parallel investigation by the Dutch Prosecution Service has also been concluded and dismissed.

"The OAG stated in the summary penalty order that it did not identify that any Glencore employees had any knowledge of the bribery by the business partner, nor did Glencore benefit financially from the conduct of the business partner," Glencore said in its statement.

With the latest penalties, Glencore will have paid at least \$1.7 billion to resolve various investigations into bribery and corruption around the world. The company in 2022 pleaded guilty to corruption and market manipulation cases in the US and UK, admitting that it had paid bribes to win business in eight countries from Brazil to South Sudan.

Under the leadership of former Chief Executive Officer Ivan Glasenberg, Glencore built its business over the previous two decades into one of the world's biggest commodity traders and miners, in part by being willing to operating in countries where few others would dare to venture. It invested in mines in the Democratic Republic of Congo, dug for oil in Chad and cut deals across Russia and Kazakhstan.

Read More: Glencore Pleads Guilty to Decade of Bribery and Manipulation

The probes into Glencore have formed part of a wider web of investigations into wrongdoing by the world's biggest commodity traders. Rivals including Trafigura Group and Gunvor Group Ltd. have also admitted to paying bribes to resolve investigations.

"Glencore is pleased to have resolved these investigations relating to past matters that occurred over 13 years ago," Chairman Kalidas Madhavpeddi said in a statement. "This resolves the last of the previously disclosed government investigations into historical misconduct."

Glencore's "failure to take all necessary and reasonable organizational measures" warranted a 2 million Swiss franc (\$2.4 million) fine and the further \$150 million in compensation, the Swiss Attorney-General's Office said in a statement on Monday.

Although Switzerland is not known for issuing heavy penalties against its banks or commodity traders compared to US regulators, the Swiss AG suggested the penalty could've been stiffer and said the sanctions took Glencore's cooperation into account. While Glencore did not admit the findings, the Swiss authorities said the company was found criminally liable.

(Updates with additional background details.)

--With assistance from **Jack Farchy**.

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Biotech firm drops defamation suit against short-sellers after researcher charged

 [reuters.com/business/healthcare-pharmaceuticals/biotech-firm-drops-defamation-suit-against-short-sellers-after-researcher-2024-08-05](https://www.reuters.com/business/healthcare-pharmaceuticals/biotech-firm-drops-defamation-suit-against-short-sellers-after-researcher-2024-08-05)

Luc Cohen

The federal court building at 500 Centre Street is pictured in the Manhattan borough of New York August 26, 2014. REUTERS/Carlo Allegri/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, Aug 5 (Reuters) - Cassava Sciences (SAVA.O) , opens new tab ended its defamation lawsuit against four short sellers who expressed doubts about its experimental Alzheimer's drug after a medical professor whose research underpinned the treatment was charged with fraud.

The biotechnology company sued in 2022 after the short sellers, who were also scientists who investigated Cassava's statements about its simufilam drug, claimed on social media and the website "cassavafraud.com" that Hoau-Yan Wang's research for simufilam was fabricated.

Cassava dropped the lawsuit in a Friday evening filing in federal court in Manhattan.

U.S. District Judge Gregory Woods had dismissed much of the case against Adrian Heilbut, Jesse Brodtkin, Enea Milioris and Patrick Markey in March, but Cassava sued them again in April.

Short sellers borrow stock and sell it, hoping the price will fall so they can buy it back and replenish their lenders.

Wang, a professor at the City University of New York's School of Medicine, was charged with fraud on June 28 for submitting false data to the National Institutes of Health to earn millions of dollars in grants. He has pleaded not guilty.

Cassava announced on July 17 that Chief Executive Remi Barbier and neuroscience chief Lindsay Burns would resign.

In a statement on Sunday, a Cassava spokesperson said: "New management determined that pursuing this defamation lawsuit is an unnecessary distraction from our mission of developing a treatment for Alzheimer's disease."

Cassava shares rose more than 20-fold between January 2021 and July 2021 on investor hopes of a breakthrough in treating Alzheimer's.

The stock gave up many gains after physicians David Bredt and Geoffrey Pitt urged the U.S. Food and Drug Administration to halt clinical trials of simufilam, citing alleged data misrepresentation and manipulated images of experiments.

Bredt and Pitt later disclosed they had also shorted Cassava's stock. The Austin, Texas-based company also sued them for defamation, but Woods dismissed those claims in March.

Reporting by Luc Cohen in New York; editing by Jonathan Oatis

The Big Read Corporate governance

The battle over who makes the rules for US companies

Lawyers, judges and legislators are locked in a war of words in Delaware, the legal home of more corporations than any other state

Subject Indap in New York AUGUST 4 2024



In October 2022, Tesla founder Elon Musk grudgingly completed the \$44bn acquisition of Twitter, a transaction he had spent the summer trying to wriggle out of.

Chancellor Kathaleen McCormick, the Delaware judge who adjudicated in the dispute between Musk and Twitter's shareholders, was lauded for her finesse in guiding the litigants to settle a resolution between themselves, without recourse to an expensive trial.

The efficiency of the Delaware Court of Chancery, where the Twitter merger contract stipulated any disagreement between the parties must be heard, meant that within just a few months Musk got his day in court and then Twitter shareholders got their money, as per the original terms of the buyout.

The Twitter-Musk saga may yet represent the high-water mark for a judiciary that has arbitrated in the affairs of corporate America for more than a century and helped make the state of Delaware the legal home to two-thirds of S&P 500 companies.

Yet, less than two years after holding Musk to account, the legal establishment in Delaware is reeling. And it is in part because of another high-profile case involving the world's richest person and McCormick.

The judge in January invalidated a \$56bn pay award granted to Musk six years previously by the Tesla board. She determined that the grant was approved by directors beholden to Musk and that the pile of equity options was, in her judgment, wildly excessive.

Musk’s response was terse but furious. “Never incorporate in Delaware,” he wrote in one post on X, the new name for Twitter that he chose.

Delaware is the domicile of choice for most S&P 500 companies

Count of S&P 500 companies by location of incorporation

Delaware		
Maryland		
New York		
Ohio		

That public fight was only the prologue to a messier struggle playing out in Delaware that many fear could undermine its position as the preferred state of incorporation for US companies and damage an economy that is in part reliant on that business. Other states, notably Texas, are already stepping up efforts to lure companies away.

Over the past autumn and winter, the Chancery trial court ruled on three highly esoteric matters of corporate law, making certain long-accepted dealmaking practices impermissible.

But, this summer, the state’s legislature and governor were quickly persuaded by the influential law firms that represent big companies to enact changes to the Delaware General Corporation Law that nullified the rulings. The convention of waiting for the Delaware Supreme Court, often a tempering mechanism, to hear any appeals was ignored.

Lawyers representing pension funds, asset managers and individual shareholders fret that the changes will unduly limit their ability to bring lawsuits against misbehaving corporate boards and overmighty founders.

And many law professors worry that the foundations of Delaware corporate law have been carelessly erased without an understanding of the broader consequences.

“

I’ve never seen it this bad. I’m shocked at how far it has gotten away from how it used to be done

The hard feelings that developed during the legislative debate bubbled to the surface in an otherwise tight-knit legal community. In June, a distinguished former chancellor turned corporate lawyer, William Chandler, publicly criticised McCormick and another chancery judge over both their jurisprudence and their criticism of the legislation.

“The corporate market . . . [i]t’s not feeling good about Delaware because of the uncertainty and unpredictability of a few decisions by just two judges,” he said in public testimony before the Delaware House of Representatives. “As chancellor, I will tell you, I was taught judges need to stay in their own lane.”

A more fundamental divide has also been exposed. One view holds that Delaware’s prestige and dominance is the result of its bench, technocratic judges applying even-handedness in deciding matters between companies and shareholders.

Another is a more transactional approach: so-called Delaware Inc. A large chunk of the state’s operating budget is funded by revenues from corporation fees and taxes, enough that Delaware does not need a sales tax. And in return companies expect a certain amount of accommodation from the law in order to keep their business from migrating.

Delawareans themselves worry about the fraying of the state’s fabric. “The Delaware Way”, the traditional decorum between legal adversaries, has for now broken down.

“I’ve never seen it this bad,” says one prominent lawyer about the poisoned atmosphere. “I’m shocked at how far it has gotten away from how it used to be done.”

The so-called internal affairs doctrine that applies in America dictates that state rather than federal law governs relationships between companies and their directors and stockholders.

New Jersey dominated incorporations at the beginning of the 20th century. But starting in 1913 its progressive-era governor, Woodrow Wilson, began to tighten up lax rules on how corporations could operate.

Neighbouring Delaware, which modified its own constitution to facilitate its emerging incorporation business, was an immediate beneficiary. Its chancery court dates back to the 18th century and is a court of equity, a concept inherited from English law that empowers judges to resolve cases based on principles of equity rather than simply the letter of the law, allowing for creative solutions.

As the US economy expanded and more companies went public, the second-smallest state in the union by land area developed a rich body of case law and each year attracted thousands of corporate registrations.

Incorporation activity funds a large share of Delaware's state budget, while its equity courts handle over 1,000 cases a year



FINANCIAL TIMES

Sources: Government of Delaware; Delaware Judiciary annual report

The 1980s takeover wave, featuring corporate raiders using junk bond finance, forced Delaware law to adapt to a more adversarial environment, where fights for control of corporate boardrooms would become commonplace.

It also survived the dotcom bust and the 2008 financial crisis, debacles that its vaunted corporation law did little to anticipate or prevent.

The Delaware Supreme Court, arbiter of final resort in corporate disputes, became at least partially a political body, sensing when to soften chancery court rulings that might unnecessarily harm the state's commercial interests.

A decade ago it gave companies more avenues to earn the benefit “business judgment rule”, a doctrine that assumes directors act in good faith and cannot be second-guessed unless there is evidence of conflicts of interest. It also largely outlawed junk lawsuits against the directors of companies that are acquisition targets, a then-frequent feature of takeovers.

In exchange, it instructed lawyers for shareholders to spend their time prosecuting matters involving genuine corporate governance failings. As an incentive, the courts would grant big legal fee awards in successful cases. For example, the lawyers who successfully argued to cancel Musk’s \$56bn bonus are requesting the court award them \$5bn in fees.

“

If you went back to the ‘80s, [the Bar] was really old white guys who went to the Wilmington Club. The practice has opened up

These changes came just as companies backed by private equity and venture capital firms were going public in large numbers, often with complex structures including dual share classes.

Judges were then left to make rulings about which entanglements among Wall Street and Silicon Valley luminaries represented genuine conflicts of interests with ordinary shareholders.

The landscape of law firms in Delaware itself was also changing. While big New York corporate firms have always practised in Delaware, they typically shared courtroom responsibilities with one of the prominent local law firms.

“If you went back to the ‘80s, [the Bar] was really old white guys who went to the Wilmington Club,” says one Delaware insider. “The practice has opened up. That is fantastic. It is a more diverse Bar with a different perspective. But it’s brought a lot of competition and put stress on lawyers.”

Several national corporate law firms have opened Delaware branches, notably Quinn Emanuel and Silicon Valley’s Wilson Sonsini, the latter going as far as hiring two former chancery judges.

That prompted Michael Hanrahan, a veteran Delaware lawyer, to dryly observe that “chancery judges are only experts when their opinions comply with the alleged practices of transactional lawyers at national or international firms, most of whom are not members of the Delaware Bar”.

Several national law firms representing shareholders have also planted flags in the state, increasing competition to be lead counsel and eligible for the biggest slice of the fees.

This changing industrial organisation has helped put company and shareholder lawyers on a collision course.

Travis Laster has become perhaps the most polarising jurist in Delaware, willing to, when necessary, write detailed opinions that excoriate the conduct of what he regards as conflicted board members or wayward investment bankers and lawyers.

Of the three controversial chancery rulings in the past year, Laster authored the one that has most roiled the Delaware establishment.

In February, he ruled that the listed financial services firm, Moelis & Co, had in 2014 wrongly ceded too much power to its founder, chief executive and largest voting shareholder, Ken Moelis, allowing him to veto its board on important company decisions.

Such stockholder agreements are commonplace among companies led by founders or by investment funds, leading to concerns that the Laster decision immediately nullified perhaps thousands of existing governance agreements at public and private companies.



Ken Moelis, founder of the financial services firm Moelis & Co, smiles on the floor of the New York Stock Exchange after his company went public in 2014. Delaware jurist Travis Laster ruled this year that the firm had granted Moelis too much power © Lucas Jackson/Reuters

Few believed his reasoning — that boards of directors cannot give up certain powers through contract — was technically incorrect. But to his critics, it was the latest evidence that he did not understand how companies actually conduct their day-to-day affairs.

As the legislature sought to overturn his ruling Laster set up a LinkedIn account where, under the curious disclaimer that he is “not posting as a vice-chancellor at Court of Chancery of the State of Delaware”, he repeatedly set out his concerns about the law changes that were being contemplated.

“I hate the platform [LinkedIn] but I have to now check it,” says one top lawyer, referring to Laster’s influence in shaping the public discourse. Even his critics — one top adviser tells the Financial Times she hopes he retires soon — acknowledge that he is brilliant.

Laster declined to comment to the FT but a person familiar with his thinking says he felt the issues were sufficiently important to publicly air concerns he had already registered privately; and to ensure that his views were not misrepresented by others.

“

The fact that ‘everyone is doing it’ is not a reason to do something

The other two controversial opinions — one involving the allocation of damages from failed mergers, the other on the procedures boards use to approve merger terms — were authored by McCormick. As with the Laster ruling, transactional lawyers felt long-

standing protocols had been disregarded even though few thought she was incorrect on points of law.

In April, McCormick privately shared her thoughts on the legislative process under way to negate the rulings, writing a letter to the Delaware State Bar Association criticising the manner and haste in which legislation was being introduced, saying it “was not the product of a cautious and deliberative process”.

She also delicately questioned lawyers blindly observing dealmaking conventions which may have been flawed from the outset.

“The fact that ‘everyone is doing it’ is not a reason to do something,” she wrote. “The question is whether everyone is doing the right thing.”

The interventions of two sitting judges and dozens of law professors who wrote letters and testified before the Delaware legislature were not enough to prevent the changes to corporate governance laws passing easily. They became effective on August 1.

“The vote was just another reminder that most Delaware legislators don’t take the time to understand the gravity of these types of bills and the corporation law council [of the Delaware state Bar] continues to wield too much power in our state,” says state representative Madinah Wilson-Anton, one of the few of Delaware’s majority Democratic legislators who opposed the changes.

“I should have expected private equity and its cronies would be so creative.”

The fallout from the changes continues. Lauren Pringle, a former corporate lawyer who runs an influential trade publication, The Chancery Daily, has sharply criticised the law changes, describing them as more the product of a “smoke-filled backroom discussion than a transparent, free and open debate process”.

She says two prominent law firms who had been longtime subscribers recently cancelled subscriptions to the website, a move she believes is retaliation for her recent criticism.

One well-known plaintiff lawyer says his colleagues may now seek to freeze out two former judges who work at Wilson Sonsini from lucrative work as mediators and arbitrators, a reprisal for the judges' efforts to enact the law changes.

Corporate lawyers, including those critical of McCormick and Laster, conceded fears that Musk's decision to redomicile Tesla in Texas could prompt a rush of relocations have proved overblown.

They note that Texas corporate law already relies on Delaware's rich body of precedent decisions, and that the Lone Star State tries by jury rather than only a specialist judge, introducing an element of unpredictability that many companies are unwilling to risk.

Shareholders in Fidelity National Financial, a specialist insurer, narrowly rejected reincorporation in Nevada, a jurisdiction famous for protecting directors from liability charges.



Tesla and its founder Elon Musk have asked for his \$56bn pay package to be reinstated in an unprecedented legal gambit © Leon Neal/Pool/Reuters

Fidelity lamented in securities filings that it feared “an increased risk of opportunistic litigation for Delaware public companies” and noted its annual director and officers insurance policy premium had recently jumped from \$3.7mn to \$4.9mn.

But the peril has not abated completely. “Livelihoods depend on the Delaware corporate law machine,” says one lawyer.

Its legitimacy waning could eventually lead to what all sides agree is the nightmare scenario: a federal statute on incorporation that would take corporate internal affairs jurisprudence out of the hands of individual states. Washington has in the past stepped in with federal-level corporate governance reforms, notably the Sarbanes-Oxley and Dodd-Frank acts.

More immediately, Tesla and Musk are not done with chancellor McCormick. They have asked the judge to allow his \$56bn pay package to be reinstated after the shareholders voted in favour of it in June, an unprecedented legal gambit that experts say leaves McCormick with no easy escapes.

“Three words: sad, tired, frustrated,” says a friend of McCormick when asked to describe her state of mind amidst the furor and heavy administrative workload as lead Chancery judge.

A prominent Delaware plaintiff lawyer recently wrote on LinkedIn that he hoped for a reconciliation process that could revive “the Delaware Way”.

McCormick offered her own comment under the post: “Fortunately, in our Bar, personal attacks are infrequent and say more about the speaker than the subject.

“I am grateful for that, and our collective commitment to a respectful exchange of ideas.”

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Matt Levine's Money Stuff: The Good Trades Have Gone Bad

By Matt Levine

Opinion

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Matt Levine's Money Stuff: The Good Trades Have Gone Bad

By Matt Levine 2024-08-05T14:38:20434-04:00

Market went down

Market crashes usually have the same mechanism. People like a thing, so they buy it, so it goes up. More people like it, so they buy more of it, so it goes up more. It goes up steadily enough that people think “ehh I should *borrow* some money to buy even more of this thing,” so they do. Eventually a lot of very leveraged investors own a lot of the thing. Then something goes wrong with the thing, its price goes down, the leveraged investors get margin calls, and they have to sell the thing to pay back their loans. Their losses are big enough that they have to sell *other* things, things that were fine, to pay back their loans on the thing that went wrong. The big leveraged investors who owned a lot of the thing that went wrong *also* all own the same *other* things, also with leverage, so there is a generalized crash in the prices of the things that big leveraged investors own.

In the special case in which the big leveraged investors are *banks*, this sometimes leads to a contraction in credit and serious economic consequences. In the general case in which the big leveraged investors are *hedge funds*, it's mostly fine.

Anyway here's a Bloomberg News article about carry trades unwinding:

An unwinding of global carry trades is helping to jolt markets around the world.

The yen and yuan pushed higher Monday, while the Mexican peso extended its decline as traders continued to roll back the popular trading strategy. The peso pared some losses to trade 2.3% weaker to the greenback, the worst performance among currencies tracked by Bloomberg, while the Australian dollar was down 0.7%.

The moves came as a selloff in risk assets intensified with markets including stocks and cryptocurrencies pummeled as concerns grew that the Federal Reserve is behind the curve with policy support for a slowing US economy. Investors sought the safety of bonds.

The sudden appreciation in funding currencies has damaged the strategy that typically involves traders borrowing at lower rates to invest in higher-yielding assets, often in the emerging world but also in developed markets like Australia.

"This is a carry trade liquidation still in the FX space and a race to cash across asset classes," said Brad Bechtel, global head of FX at Jefferies LLC. "One heck of a deleveraging is taking place now and with the market so unhinged it's hard to call a bottom just yet."

And here's one on volatility trades:

The Monday meltdown across assets is hammering a slew of derivatives trades betting on enduring calm in the stock market — threatening to set off a chain reaction that could intensify the global turbulence.

Wall Street has for months been minting money with various strategies tied to stock tranquility, often via products that sell protective options in order to juice returns. But the scale of the boom in these so-called short volatility bets had stirred worries of what would happen when turbulence hit.

That test has now arrived. As stocks slid on Monday, the Cboe Volatility Index — Wall Street's famous "fear gauge" that tracks options on the S&P 500 Index — surged as much as 42 points in the biggest one-day spike in data going back to 1990. It was up 10 points at 12:14 p.m. in New York at the highest on a closing basis since 2021. ...

With swings now taking hold, there are several channels through which those strategies might exacerbate declines. ...

Another channel is via a popular subset of short-vol called the dispersion trade, which buys an array of single-stock options and sells similar contracts on the equity index. It is effectively a bet on different shares dancing to their own beat – or correlation staying low – which keeps a lid on the benchmark's overall volatility as they cancel each other out.

And in stocks:

A rout in the riskier corners of the global market deepened, with stocks plunging and traders rushing to the safety of bonds as concerns about a slowdown in the world's largest economy intensified.

From New York to London and Tokyo, equities got pummeled. About 95% of the shares in the S&P 500 got hit, with the index on track for its biggest slide in almost two years. Losses were more pronounced in the big tech space, with the Nasdaq 100 heading to its worst start to a month since 2008. A gauge of the "Magnificent Seven" megacaps like Nvidia Corp. and Apple Inc. plunged almost 10% at one point.

Just as stock markets were starting to celebrate signals from the Federal Reserve about a first rate cut, they were hit by a perfect storm: surprisingly weak economic data that's brought back recession fears, underwhelming corporate earnings and poor seasonal trends.

And the Wall Street Journal adds:

Analysts also said that hedge funds that went all-in on some of this year's most popular trades—such as buying big tech stocks or betting on declines in the Japanese yen—are now exacerbating market moves.

When a hedge fund has a highly concentrated position that starts to fall, it often needs to start selling assets and cutting risk elsewhere in the portfolio to satisfy its risk models. When a lot of funds have been buying the same things, that process can pressure a variety of investments, including some seemingly remote from the original bet. ...

"The pricing and the acuteness of the market action I think is really indicative of the fact that hedge funds have been caught offside," said Bob Elliott, CEO of asset manager Unlimited. ...

Underscoring just how concentrated some of the most popular trades had become, Deutsche Bank analysts wrote last week that hedge funds and other "smart-money" investors' positioning in tech stocks and shares of other fast-growing companies was at the 97th percentile of historical norm.

One thing that I sometimes think about is that the big multistrategy hedge funds look to some extent like the big investment banks of 20 years ago. They are in the business of trading, for their own accounts, to meet some *demand* from some other, more fundamental investors. So we have talked about the basis trade, in which big hedge funds intermediate between the US Treasury (which wants to issue Treasury bonds) and big asset managers (who want to own Treasury futures). In some sense, the hedge funds are just "making a bet" on the gap between Treasury bond and Treasury futures prices. But the reason that is a sustainable business — the reason there's a persistent gap that they can bet on — is that there is fundamental demand for the futures, and the hedge funds are getting paid to manufacture them. The index rebalancing trade is a similar story. Or the dispersion trade, in which hedge funds sell index volatility to hedgers and buy single-stock volatility from covered-call writers.

In the olden days, an investment bank's trading desk would do a lot of that work, but investment banks have retreated from a lot of these proprietary trading businesses and left them to hedge funds.

One thing that this model suggests is that a multistrategy hedge fund is not *just* a collection of uncorrelated trading strategies for generating alpha. A multistrategy hedge fund is a business, much like an investment bank, and its business units all have to fill some economic niche. "We'll buy Treasuries and sell futures because there's demand for that product" makes sense, so many big hedge funds have pods that do that. "We have found a strategy that makes money using astrology" does not, probably, so there are not so many astrology pods.

And so you get crowding: The big hedge funds do pretty overlapping trades, because those are the trades for which there is demand; those are the business units that have some economic niche. "Australia wants to borrow money, Japan wants to lend money, so we will borrow yen and lend Aussie" is a very straightforward economic story, a real business function that hedge funds do via the carry trade. ("Let's all buy Nvidia" is a slightly different story, but there again there is probably some *reason* for crowding.) So they do a lot of it (and not so much the reverse), and so all the big trades tend to unwind at once.

Meanwhile in retail

I have said before that one of the best services a retail broker can provide is not answering the phones during a crash. The theory here is that self-directed retail investors are bad at timing the market: When the market crashes, they rush to sell, and they tend to sell at the bottom. A broker who simply doesn't answer the phone does the important service of *preventing her customers from selling*. They can wait until tomorrow, by which point maybe the market will have recovered and they'll get higher prices, or maybe they will have calmed down and decided not to sell. The broker who unplugs the phone during a crash saves her customers a lot of money.

This is the stereotype, and there is some evidence that it is true in aggregate, but when I have said it before I get emails objecting: Well, *I* was calling my broker during a crash because I wanted to *buy*. There are stocks on sale all around, and *some* retail traders want to get a bargain, and it's a bummer for them — and costs them money — when their broker doesn't answer the phone. Really the ideal performance is something like what Robinhood and other brokers did in January 2021, when GameStop Corp.'s stock hit its dizzying peak and Robinhood allowed its customers to *sell* GameStop but not *buy* it. Nobody liked that and everybody got very mad, but in some sense "this stock is at such a crazy high price that we'll let you sell it but not buy anymore" was pretty good advice, though it was not technically advice.

Similarly you could imagine a retail broker allowing customers to *buy* during a crash, but not sell, but you can only imagine it, because that seems like a pretty perilous thing for a broker to do.

Anyway these days it's not phones but:

Charles Schwab Corp. and other retail brokerage users reported outages as a global stocks selloff surged when trading in the US market opened on Monday.

More than 14,000 users reported an outage at Schwab at 9:50 a.m. in New York, according to the website Downdetector. The firm didn't immediately respond to a request for comment, but a company account posted on the social media platform X said that some clients "may have difficulty logging in to Schwab platforms."

"Please accept our apologies as our teams work to resolve the issue as quickly as possible," the firm said, without confirming the size or scope of the outage.

Apparently a lot of retail brokerages had outages today, but some didn't, and I hope that an ambitious finance professor will figure out a way to study this? Like if Charles Schwab customers perform better (worse) this month than Robinhood customers, that will tell you something about the value of shutting off the website for the morning of a crash. I don't know what you do with that information? What if it worked really well and Schwab customers saved billions? Do you intentionally shut off the website next time? Do you advertise it? Do regulators mandate it? People sometimes ask me what regulatory changes I would make if I ran the US Securities and Exchange Commission, and "I would pull the plug on retail brokerages during big down days" is a *possibly* interesting platform, though you'd want to study it first.

Crypto

Crypto is also down:

Cryptocurrencies reeled from a bout of risk aversion in global markets on Monday, at one point sending Bitcoin down more than 16% and saddling second-ranked Ether with the steepest fall since 2021.

Top token Bitcoin traded 8% lower at \$54,653 as of 11:36 a.m. in New York, adding to a 13.1% drop last week that was the worst since the period when the FTX exchange imploded. Ether shed over a fifth of its value before paring some of the slide to change hands at \$2,440. Most major coins nursed losses.

There was a time when people thought that crypto might be a new asset class that was uncorrelated to other assets, but that seems like mostly a mistake. Crypto is a volatile infinite-duration asset; it goes up when risk appetite goes up or when interest rates go down, and down when risk appetite goes down or rates go up.

In that vein, here is a new paper by Austin Adams, Markus Ibert and Gordon Liao, titled "What Drives Crypto Asset Prices?" Their answer is, roughly, a combination of (1) risk appetite, (2) interest rates and (3) idiosyncratic demand for crypto :

We investigate the factors influencing cryptocurrency returns using a structural vector auto-regressive model. The model uses asset price co-movements to identify the impact of monetary policy and risk sentiment in conventional markets on crypto asset prices, with minimal reverse spillover. Specifically, we decompose daily Bitcoin returns into components reflecting conventional risk premia, monetary policy, and crypto-specific shocks. We further decompose the crypto-specific shocks into changes in crypto risk premia and levels of crypto adoption by exploiting the co-movement of Bitcoin with stablecoin market capitalization. Our analysis shows that crypto asset prices are significantly impacted by conventional risk and monetary policy factors. Notably, contractionary monetary policy accounted for over two-thirds of Bitcoin's sharp decline in 2022. In contrast, since 2023 the compression of crypto risk premia has been the predominant driver of crypto returns, independent of the buoyant equity market backdrop. Our findings highlight the importance of identifying drivers of crypto returns and understanding crypto's evolving relationship with traditional financial markets.

Part of the crypto story is “there was a long benign market in which interest rates were low and risk appetite was growing, so people kept buying crypto and it kept going up.” That is a very *correlated* story, one in which crypto is a risk asset like any other tech stock. But part of the crypto story is “that long benign market *brought people into crypto*, and they stayed”: What happened was not just that Bitcoin went up along with tech stocks, but also that people who used to invest in tech stocks discovered crypto, so that crypto became an asset class. *That* is not entirely reversed by a risk-off day in the markets, though crypto still does go down when risk appetites decline.

AI M&A

One of the great mergers-and-acquisitions deals that never happened was when Microsoft Corp. almost acquired OpenAI last year. In a series of transactions, Microsoft

1. agreed to invest \$13 billion in OpenAI,
- 2. got much of that money back, in the form of OpenAI paying Microsoft for computing power,
- 3. licensed OpenAI's artificial intelligence technology, and
- 4. also briefly looked like it was going to hire Sam Altman, OpenAI's founder and chief executive officer, along with most of its employees, to build AI products at Microsoft.

The first three parts actually happened; the fourth was announced, but then everyone cooled down and the employees went back to working at OpenAI. Still, for a few hours, it looked like a great deal for Microsoft. OpenAI, a week before that almost-deal, had a valuation of about \$86 billion, and Microsoft was getting ... it? most of it? its essence? ... for free. (Not counting its previous \$13 billion investment.)

There was another great part of the deal, for Microsoft. If you are a giant tech company and you sign a deal to acquire another giant tech company, you will get a lot of antitrust scrutiny, particularly in this era of a more activist Federal Trade Commission. If, on the other hand, you are a giant tech company and you just *hire some people*, you will get less antitrust scrutiny. Mergers and acquisitions are strictly reviewed for antitrust consequences; hiring is not so much. “You can make the case that Microsoft just acquired OpenAI for \$0 and zero risk of an antitrust lawsuit,” wrote Ben Thompson when it looked like it was happening.

Anyway that deal never actually happened, and it was only really considered because of some very unusual governance and infighting at OpenAI. And Microsoft *is* getting a lot of antitrust scrutiny for its OpenAI investment anyway.

Still, it is striking that so much M&A activity in the artificial intelligence business looks a lot like that Microsoft/OpenAI almost-deal? For instance, Bloomberg's Rachel Metz and Julia Love reported on Friday:

Character.AI's co-founders are joining Google in a larger deal that will allow the search giant to license the artificial intelligence startup's technology.

Character.AI, a startup known for chatbots that can mimic anyone or anything, announced the news in a blog post on Friday. Founders Noam Shazeer and Daniel De Freitas, along with some members of its research team, will join Alphabet Inc.'s Google, the company said. The startup's new interim chief executive officer will be Dominic Perella, who had been Character.AI's general counsel. ...

The Menlo Park, California-based startup will enter into a non-exclusive licensing deal with Google for its large language model technology, it said. And Character.AI will continue to exist. "Most of Character.AI's talented team will remain and will continue to build the Character.AI product and serve our growing base of users," the startup wrote in the blog post.

Character.AI is not the only buzzy AI startup to see its founders go to a large tech company as the race for AI talent and technology accelerates. Microsoft Corp. hired two co-founders of AI startup Inflection AI along with much of its staff in March. And in June Amazon brought on top executives and other employees from startup Adept AI Labs Inc. for its AGI autonomy team.

For Character.AI's founders, the deal represents a homecoming of sorts. Shazeer and De Freitas both previously worked at Google. During his first stint at the tech giant, Shazeer co-authored "Attention Is All You Need," a seminal paper on generative AI. But as of July 2023, all eight authors of the paper had left Google, many launching high-profile AI startups of their own.

These deals are *sort of* acquisitions, in that the startups' investors get paid, but they are disappointing relative to those investors' ambitions. The Information reports:

Character's leaders told staff on Friday that investors would be bought out at a valuation of about \$88 per share. That's about 2.5 times the value of shares in Character's 2023 Series A, which valued the company at \$1 billion, they said. ...

The deal follows a string of similar arrangements by other well-funded artificial intelligence startups. AI developers Adept and Inflection have both effectively sold themselves to Amazon and Microsoft, respectively, in the last five months despite raising considerable capital.

Such deals can return investors' money, as in Inflection's case, but they're far from the big payouts that venture investors seek when they fund a company.

As the Information reported about the Inflection deal:

These deals, whose terms are often closely guarded, have given big tech companies access to highly coveted AI technology and researchers. They have also allowed those big companies to sidestep the type of antitrust scrutiny that waylaid potential tech acquisitions such as Adobe's \$20 billion attempted purchase of design software company Figma. The Federal Trade Commission, however, has recently said it is looking into some of the cloud providers' startup investments.

"This is the new way the Magnificent Seven [tech stocks] are going to do acquisitions, you get the [intellectual property] and team without FTC scrutiny or approval," said Venky Ganesan, a managing director at Menlo Ventures, which recently led an investment in Anthropic, a rival to Inflection that has received funding from Google and Amazon.

I suppose one way to think about it is that the current AI boom creates huge demand for *talent*, for *ideas* and for *computing power*, but has not generated a ton of, like, standalone consumer-facing *products*. I enjoy ChatGPT, but "your developer tools write code for you" or "your spreadsheet builds models for you" or "your search engine just tells you the answer" are all arguably better experiences than "you open up a website to ask it how to write code." For a giant tech company, licensing the underlying technology and putting it into your own widely adopted products might make more sense than acquiring an AI startup's product. Plus the startup is probably paying you for computing power anyway.

What should you make of this if you are an investor in AI startups? (What should you make of it if you are the FTC?) Is the takeaway something like "we are pumping money into companies so that they can spend it on Alphabet's or Microsoft's or Amazon's computing power, build some cool AI technology, and then get hired back at Alphabet or Microsoft or Amazon at higher salaries"? Are venture investors subsidizing Google's research budget, and getting Google researchers nice raises?

DJT

There are basically two kinds of public companies in the US, which you can distinguish from each other by looking at their lists of top shareholders. Big institutional investors, and some individuals, have to report their stock holdings, and those reports get aggregated, by Bloomberg among others. So when I look at Bloomberg's ownership page for JPMorgan Chase & Co., for instance, I see shareholders that include BlackRock and Vanguard and State Street, the "Big Three" index investors, but also big actively managed institutions like Capital Group and Fidelity and T. Rowe Price. Also, though, when I look at the top of the page, I see that about 77% of the shares are accounted for: Institutions and individuals who report their share ownership own 77% of JPMorgan.

And then when I look at AMC Entertainment Holdings Inc., a big meme stock, I see that only about 27% of the shares are accounted for: A large majority of AMC's holders are retail investors who do not have to disclose their ownership, so public ownership data is much sparser. At AMC too, the top holders include the Big Three index investors. But the rest of the top institutions are mostly not long-term asset managers like Fidelity or T. Rowe, but fast-money hedge funds like Renaissance Technologies and DE Shaw & Co., or proprietary trading firms like Jane Street Group and Susquehanna International Group. Most of those firms don't own that stock as a long-term investment: They own that stock because they are essentially taking the other side of very active retail traders, in the stock or in options. (Quite possibly they own the stock to hedge options they have sold to retail traders.). Also they don't own that *much* of it; that's a market-making position, not an investment.

Last week, New York magazine had a very fun profile of Trump Media & Technology Group, Donald Trump's small business that is also a large meme stock. ("It's a company that essentially has the revenue of not even a medium-size McDonald's franchise," says John Rekenthaler, a researcher at Morningstar," but its market capitalization today is more than \$5 billion.) There is a lot about its fairly hapless founding by former *Apprentice* contestants, its struggles to go public by merging with a special purpose acquisition company, etc.:

The upshot was that even with the SPAC maneuver and its \$300 million in limbo, there would be enough capital to build a social network. And the executives had decided on a name. At a meeting at Trump's golf club in Bedminster, New Jersey, Moss and Litinsky pitched him on Virt, short for virtuous. Trump suggested Truth instead. They looked up the domain TruthSocial.com, saw that it was available for a little more than \$2,000, and bought it. When they ran the name by Melania, she burst out laughing. "Truth?!" she said, pointing at her husband. "This guy?"

And the story makes the reasonable point that, if Donald Trump becomes president again and you want to bribe him, Trump Media gives you some good ways to do so: A really ambitious bidder could try to acquire the company and cash out Trump's multi-billion dollar stake, but even short of that you could buy stock to show your support, buy advertising on Truth Social, etc. If you're an institution, your stock ownership would be public, so Trump could see it and be grateful.

This, though, is probably not that:

In March, Trump announced a surprising policy reversal. As president, he'd tried to ban TikTok, which is owned by a Chinese company; now, abruptly, he was for the social network's continued operation. The about-face followed a meeting Trump took with Jeff Yass, a major Republican donor who owns a significant stake in TikTok's parent. When reporters dug up the fact that his trading firm, Susquehanna International Group, had until recently been the single-largest institutional shareholder in Digital World, there was outrage: Here was a seemingly perfect example of a billionaire using Trump's company to influence him. Susquehanna has since insisted that its 2 percent stake was offset by equivalent short positions and that it had "zero economic interest in Trump Media." Even if that were true, taking multibillion-dollar investment firms at their word is hardly a model for good government.

I have no inside information here, but I will take Susquehanna at their word? Susquehanna is fundamentally a market maker: If it's long 2% of Trump Media, that's almost certainly because it's also short 2% of Trump Media (or has sold options, etc.). Susquehanna being a big holder of Trump Media doesn't actually mean that Susquehanna is a big investor in Trump Media. It means that Trump Media is a meme stock, and it doesn't really have many big investors.

Things happen

The battle over who makes the rules for US companies. Forty-Eight Hours at the MAGA-fied Crypto Lovefest. Fannie, Freddie Are Poised to Tighten Real-Estate Lending Rules. Bill Ackman's Pershing Lost 4.7% in July, Erasing Most of 2024 Gains. CrowdStrike to Delta: Stop Pointing the Finger at Us. Adani Unveils \$213 Billion Succession Plan as Scrutiny Persists. Elon Musk's Neuralink Device Is Implanted in a Second Patient. Private equity group Carlyle doubles fundraising to more than \$12bn. What Do Graduates of Yale Law School Know About Economics? Ken Griffin Gives Millions to Stop Recreational Weed in Florida. PowerPoint parties. Robert F. Kennedy Jr. Admits He Left a Dead Bear in Central Park.

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- 1. This is one of those where, if (1) you run an astrology pod or (2) you have some fundamental story for why an astrology pod makes sense, you can go ahead and email me; I want those emails.
- 2. From the paper: "Specifically, we impose that positive conventional risk premium shocks (i.e., risk-off shocks) lead to lower Bitcoin prices, lower Treasury yields, and lower equity prices. Conversely, we impose that positive (contractionary) monetary policy shocks lead to lower Bitcoin prices, higher Treasury yields, and lower equity prices through a classic discount-rate channel. Finally, we impose that crypto-specific demand shocks raise Bitcoin prices, but leave their impact on conventional assets undetermined (while managing the impact of crypto shocks on conventional assets through magnitude restrictions)." And the extended model disaggregates crypto demand into "crypto risk premia" and "crypto adoption": "Our central assumption in this extended model is that a positive crypto adoption shock raises both stablecoin market cap and bitcoin prices, while a positive crypto risk premium shock (crypto risk-off) decreases Bitcoin prices, but raises stablecoin market cap. Using this extended model, we show that crypto risk premia have compressed substantially from 2023 onwards and explain a predominant portion of the positive Bitcoin returns particularly around the introduction of the Blackrock Bitcoin ETF."

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Matt Levine's Money Stuff: BitClout Wasn't So Decentralized

By Matt Levine 2024-08-06T14:41:27768-04:00

BitClout

I don't know, this is just a good economic model:

In 2019, Al-Naji began designing BitClout, a web and application-based social media platform with an interface that promised to be a “new type of social network that mixes speculation and social media.”

...

BitClout's “White Paper” (marketing materials that described the BitClout project) touted BitClout as “like Bitcoin” because it was “a fully open-source project” with “no company behind it – it's just coins and code.”

The White Paper further explained that BTCLT would be the native token of the BitClout project.

According to documents prepared by Al-Naji in conjunction with the BitClout project, the price of BTCLT would automatically double for every million BTCLT sold directly from the BitClout platform, with Al-Naji reserving two million BTCLT for himself as the project's founder.

Al-Naji explained that purchasing BTCLT through the BitClout platform involved a “totally decentralized” so-called “atomic swap” whereby investors would deposit the crypto asset bitcoin into BitClout's treasury wallet and receive BTCLT in exchange.

This exchange, however, only operated in one direction, meaning that BTCLT investors could not exchange their tokens back into bitcoin or fiat currency (e.g., U.S. dollars) via the BitClout platform. This fact was not explained in the BitClout White Paper.

Al-Naji privately explained to an early investor that he viewed this technical limitation as a positive feature of the platform because restricting the ability to sell BTCLT had the effect of driving up its

price.

Right? Here's a thing. It costs \$1. If you buy one, the next one will cost \$2. If someone buys it, the next one will cost \$4. Et cetera. The price of the thing always goes up, leaving every buyer (except the most recent one) with a large guaranteed profit. Of course they can't *sell* the thing to realize the profit, but that too is a benefit: If they can't sell, the price can't go down.

Man, 2019 was just amazing. That was an economic model that you could *advertise*. "See, if we keep doubling the price of the thing, and don't let anyone sell it, we'll all get rich." Obviously that block quote is from the [complaint](#) in an [enforcement action](#) that the US Securities and Exchange Commission filed last week against Nader Al-Naji, the founder of BitClout, a crypto thing that raised \$257 million from investors to do, eh, crypto social media or something? (Here's a [2021 article](#) saying that "in taking blockchain social media to the next level, Al-Naji said he had raised \$200 million with a view to building out the DeSo ecosystem." DeSo is "decentralized social.") He was also [charged with criminal fraud](#) by federal prosecutors.

The alleged fraud is pretty straightforward. As prosecutors put it: "As part of negotiations with [an investor], AL-NAJI claimed, in substance, that the role played by his entity was merely to purchase BitClout tokens from the protocol, and that he did not have any control over the funds after the purchase was complete." That is, Al-Naji told people that BitClout was a decentralized protocol not controlled by any one person. But, say the prosecutors and SEC, actually it was controlled by him, and he used the money he raised for personal expenses. From the SEC complaint:

In total, the BitClout treasury wallet amassed more than 4,984 bitcoin (valued at over \$257 million) from investors, of which Al-Naji has withdrawn 2,458 bitcoin (valued at over \$78 million), including by sending some of it back to the same crypto asset and bank accounts in the name of IHL, and subsequently on to a brokerage account in his own name.

Al-Naji used significant sums from investors to enrich himself and his family members and to compensate those affiliated with the BitClout project.

Prosecutors track one 2021 investment in BitClout that allegedly ended up in Al-Naji's personal brokerage account. A Federal Bureau of Investigation agent writes in the complaint:

Based on my review of an audio recording of a telephone call that took place on or about March 1, 2021 between NADER AL-NAJI, the defendant, and representatives of the Brokerage Firm, I have

learned that AL-NAJI stated, in substance and in part, that the over \$13 million received in the Personal Brokerage Account was a “gift from some family overseas” who “came into some money” and “essentially gave me ... some of that.”

The last few years in crypto really do feel like a weird dream now. Al-Naji was allegedly raising money from venture capitalists for his crypto project. The investors would ask questions like “okay so you’ll use this money to build your crypto project, right?” And Al-Naji would reply that he *couldn’t promise that*, because crypto. From the criminal complaint:

On or about February 2, 2021, AL-NAJI sent an email replying to Investor-1’s proposed modifications to the purchase agreement and attaching a further revised draft. AL-NAJI stated, in substance and in part, “Regarding the paragraph on using the proceeds to support the development of BitClout, that is not something Intangible Holdings LLC [his company] can legally guarantee. [Intangible Holdings] is merely purchasing BitClout tokens from the protocol, and it does not have any control over the funds after this purchase is complete (it only has BitClout at this point). Imagine you paid a trader to acquire Bitcoin for you — that is basically what [Intangible Holdings] is in this scenario. In the same way that the trader would not be able to make you any guarantees about the Bitcoin network, so too [Intangible Holdings] cannot make any guarantees about the BitClout network.”

Two points here. One: *This worked*. Al-Naji solicited an investor for his BitClout network, and the investor was like “okay here’s millions of dollars to build that network, just promise you’ll use it to build that network,” and Al-Naji was like “oh no I can’t promise you that,” and the investor was like “okay fine here’s the money anyway.” What do you *expect* him to do with the money? (The answer was allegedly “partly build the network, partly spend it on himself,” which is honestly *better* than I’d expect.) It’s barely even fraud!

Two: There was a reason for all of this, which is that, for a while, people thought that if you said the word “decentralized” with a straight face, that would avoid *securities regulation*. So raising money from investors for your *company* to build a social media application is obviously a securities transaction: You’re selling stock in the company. But raising money from investors for a *decentralized protocol* that would lead to social media apps — “if you buy enough BitClout tokens, developers will flock to build BitClout apps, and then your tokens will be valuable,” etc. — was, in theory, not. That was just a decentralized token, a whole new way of organizing economic activity, not subject to the musty old securities laws.

The SEC quotes something Al-Naji allegedly said “to one crypto asset industry participant and

prospective investor”:

My impression is that even being ‘fake’ decentralized generally confuses regulators and deters them from going after you. In the case of the SEC it gives you a strong argument [with respect to] Howey, but more broadly when you break the mold of ‘a company with money in a bank,’ the case becomes riskier in terms of litigation, which makes it less likely some career public servant will make it their mission to take you down.

And so, if you were raising money for a crypto project in 2021, you could tell investors “I don’t control this project, it’s totally decentralized, none of the money will be spent on developing the project, wink wink.” And investors would say “of course, wink wink, that’s how you avoid registration as a security.” And then you could just take the money! And be like “what, I told you I wouldn’t spend it on developing the protocol, and I didn’t.”

Google is a monopoly

It is weird to think that Google is a natural monopoly. That was not an obvious result, back when I started using the web and alternated between, like, AltaVista and Excite. You could have a bunch of search engines bookmarked and go to different ones for different queries or different moods. Now, though:

Perhaps the best example of Google’s brand is that the public uses the term “Google” interchangeably with internet search. “[T]o search is to Google. Google is a verb.” ...

Measured by query volume, Google enjoys an 89.2% share of the market for general search services, which increases to 94.9% on mobile devices. ... Google has enjoyed an over-80% share since at least 2009.

Second place is Microsoft’s Bing search engine, with about 5.5% of all queries. But “a search for ‘google.com’ is one of the most frequently entered search queries on Bing.”

Those quotes are from a [judge’s ruling yesterday](#) in the US Department of Justice’s antitrust case against Google, Alphabet Inc.’s search engine, accusing it of operating an illegal monopoly. The judge found that Google has a monopoly in internet search, and that it abuses that monopoly power

with distribution agreements: Google pays other companies (particularly, Apple Inc.) to be the default search engine in their browsers and smartphones. If it didn't pay for that placement, in theory, some other search engine would have a better shot at competing with Google.

In practice ... I mean, even where Bing is the default, people are Binging “how do I get back to Google”? Search is, to a somewhat surprising extent, a network-effects business: The more users you have, the better informed you are about what users want, and so the better your search product will be. “Google has used its scale advantage to improve the quality of its search product,” writes the judge: “At every stage of the search process, user data is a critical input that directly improves quality.” By being the default search engine — not just on a bunch of browsers and devices, but in popular perception — you get a lot of user data, which makes you the best search engine.

Also, the more users you have, the more *money* you have. The opinion has a discussion of negotiations between Apple and Microsoft about Bing possibly replacing Google as the default search engine on Apple's Safari browser :

Microsoft understood that it “would have to pay and even subsidize the transfer” for the period of transition and was willing to do so for the long term. ... Microsoft offered Apple a revenue share rate of 90%, or a little under \$20 billion over five years. ... It did so recognizing that “there was going to be a period of turbulence of shift,” both as a result of the change and assuming that Google would respond by encouraging users to abandon Safari for its browser, Chrome. When that offer was not accepted, Microsoft proposed sharing 100% of its Bing revenue with Apple to secure the default or even selling Bing to Apple.

Microsoft's offer to pay Apple 100% of its search revenue was not very enticing, though, because Google's search revenue was so much bigger:

Microsoft “thought they had great [search] quality and they said that with [Apple's] search volume, they could be even better,” but Apple disagreed. Moreover, Apple was concerned that despite the high revenue share percentage, Bing would not be able to bring in sufficient revenues because it was “horrible at monetizing advertising.”

Apple evaluated the potential financial impact of replacing Google with Bing. The analysis assumed that Microsoft would initially pay Apple 100% of Bing's revenue share, while Google would continue paying Apple [redacted]% revenue share if retained as the default. The analysis showed that if Apple extended the ISA, it would gain about \$40 billion from Google in the next five years, and then \$70

billion in the following five years. This was double the \$20 billion Microsoft offered Apple for the first five years. ...

Google has also analyzed what Microsoft would need to offer Apple in order to win the Safari default. It called this study "Alice in Wonderland," with Alice referring to Microsoft. The analysis concluded that in order for Microsoft to match Google's financial contribution, it would have to pay Apple 122% of Bing's revenue share just to equal Google's then-33.75% revenue share. Google thus determined that "it will not be possible for Alice to match our payments profitably[.]"

Google was apparently about four times as good as Bing at generating revenue from its Apple deal, so of course it could pay more.

"Google's distribution agreements foreclose a substantial portion of the general search services market and impair rivals' opportunities to compete," the judge found, and now there will be a second trial on possible remedies. Bloomberg's Leah Nylen reports on the possibilities:

Mehta scheduled a hearing for next month to discuss the timing for a separate trial on the remedy.

The Justice Department hasn't yet said what changes it will seek, though it presented evidence that efforts by European regulators to require Google to offer users a choice of search engines led few to switch. The agency could demand the separation of Alphabet's search business from other products, like Android or Chrome, which — if ordered by the judge — would mark the biggest forced breakup of a US company since AT&T was dismantled in 1984.

The judge could also stop short of ordering a full breakup and chose to unwind the exclusive search deals. Another option could be to require Google to license its search index, which is the data that it uses to build its search results.

The problem is that if Google is a natural monopoly, it's not clear what remedies could foster competition: If Google stops paying to be the default search engine, it will probably remain the default search engine.

Attorney/Client Privileged

A minor point from the Google case. If you work at certain sorts of companies — including Google and many financial services firms — you will subtly or unsubtly be taught a lesson about emailing. The lesson is that, if you are up to no good, you should (1) cc a lawyer on all your emails and (2) write “PRIVILEGED AND CONFIDENTIAL” at the top of them.

The theory is that this is a magic incantation: If one day your company gets sued or investigated for whatever bad stuff you are up to, the plaintiffs or investigators will ask for your emails, and you will have to hand them over, *except* the ones that are protected by attorney-client privilege. If you are asking your lawyer for advice, that is privileged and does not have to be handed over. Whereas if you are just emailing your boss to say “should we do these crimes,” that is *not* privileged, and the investigators get to read that.

The above two paragraphs — and the rest of this section, for that matter — are very much not legal advice, and this theory is not really right. Copying lawyers and writing “PRIV & CONF” at the top of emails is more a matter of superstition than it is a correct legal analysis, it probably won't help you much, and it might annoy a judge. As it annoyed the judge here, who wrote (citations omitted):

Google trained its employees to add its in-house lawyers on “any written communication regarding Rev Share [RSA] and MADA.” It also instructed that, when “dealing with a sensitive issue” via email, to “ensure the email communication is privileged” employees could add a “lawyer in [the] ‘to’ field,” “mark ‘Attorney/Client Privileged,’” and “ask the lawyer a question.”

Google employees assiduously followed that advice. As a result, Google's outside counsel in this case initially withheld tens of thousands records on the grounds of privilege, which ultimately were re-reviewed, deemed not privileged, and produced to Plaintiffs. This creation of faux privileged materials, Plaintiffs contend, “demonstrates that Google intended to harm competition through its contracting practices and its supposed procompetitive justifications were simply pretext.”

Google did not exactly get in trouble for this, but the judge did write that he was “taken aback by the lengths to which Google goes to avoid creating a paper trail for regulators and litigants,” so it's not a great look.

Market went up

I wrote yesterday about a standard mechanism of market crashes, in which levered investors

(generally hedge funds) run into trouble on some trade, get margin calls, and react by selling a bunch of *other* stuff to meet the margin calls, creating contagion and bringing down the prices of lots of other assets. There are basically two ways for that to go:

- 1. It is localized and contained, lots of *other* big investors have lots of buying power, they see assets on sale and step in to buy them, and the market recovers.
- 2. Declining asset prices bring down more levered investors, which leads to more forced sales, which lead to more price declines, which bring down more investors, etc., until there is a crisis.

Obviously the first outcome is way more common than the second. Bloomberg's Natalia Kniazhevich reports today:

As volatility gripped global markets to start the week, hedge funds stepped in to buy the big dip in technology shares, according to Goldman Sachs Group Inc.'s prime brokerage data.

The S&P 500 Index suffered its worst rout in almost two years on Monday, although it rebounded from its weakest levels in part as stronger-than-expected economic figures boosted investor confidence. Over the course of the day, net purchasing of US single stocks was the biggest in about five months, the data shows.

Tech shares were among the main losers on Monday, and hedge funds took advantage, adding the most information-technology stocks since June, according to Goldman. The burst of bullishness marks a reversal as these investors had been unwinding high-flying megacap tech in recent months.

"Many hedge funds see a selloff as a buying opportunity," said Jonathan Caplis, chief executive officer at PivotalPath, a hedge fund research firm. "The majority of the managers we speak to are framing the current problems as short-term and sentiment-driven, versus a long-term issue with the fundamentals of listed businesses or even the wider US economy."

If the story in tech stocks is not so much "big hedge funds were crowded into tech stocks and had to dump them," and more "big hedge funds were kind of avoiding tech stocks, but yesterday was a buying opportunity," then that suggests not much in the way of contagion. Meanwhile in currency markets, Bloomberg's Matthew Burgess reports:

The recent unwinding in carry trades has more room to run as the yen remains one of the most undervalued currencies, according to JPMorgan Chase & Co.

“We are not done by any stretch,” Arindam Sandilya, co-head of global FX strategy, said on Bloomberg TV. “The carry trade unwind, at least within the speculative investing community, is somewhere between 50%-60% complete.”

Some unwinds are more complete than others.

I also mentioned yesterday that it is good customer service for a retail broker not to answer the phone during a market crash, *if* the customers were calling in a panic to sell. But of course it is bad customer service if the customers were calling to buy. (Unless the market keeps going down, in which case it's the opposite.) Yesterday a bunch of retail brokerages had outages, and the Wall Street Journal [found a guy who wanted to buy](#):

Dr. William Auch couldn't access his brokerage account as the stock market tumbled on Monday morning.

Shortly after the U.S. market opened, the retired cardiologist tried to log into his Charles Schwab account. He saw stocks were selling off and thought it could be a good opportunity to buy shares at a lower price. Instead, he was locked out of his account for a few hours, unable to sign in online or through the mobile app, nor reach a customer-service representative over the phone.

“You have one of the biggest trading days of the year, and you can't get in,” said Auch, a 65-year-old in Sacramento who has been a Schwab customer for more than two decades. “It's completely ridiculous.”

Right, if you wanted to get *in*, that was bad.

Things happen

Citigroup's Trading Division Hit With Fresh Toxic-Culture Claim. Asset managers fret over lost gains as investor [cash piles up](#) on sidelines. A 'Textbook Turnaround Tuesday' Doesn't Mean Meltdown Is Over. Are Banks Sweeping [Dud Property Loans](#) Under the Rug? Uber Posts Earnings Beat as

Rideshare Demand Remains Strong. Saudi Aramco to [pay out \\$124bn](#) as it says oil demand underestimated. Saudi PIF Has Poured \$750 Million Into Depleted AR Firm Magic Leap. KKR nears \$800mn deal to acquire [corporate PR firm](#) from WPP. "If Zuckerberg just did sales at a tech company instead of run one, this might seem like a standard midlife crisis."

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

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- 1. It would be funny if Bing returned the wrong results for that search. Maybe it does, I don't know, I've never used Bing.
- 2. The discussion starts on page 111. Citations omitted in quotes here.

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In landmark Google ruling, a warning to companies about preserving evidence

 [reuters.com/technology/landmark-google-ruling-warning-companies-about-preserving-evidence-2024-08-06](https://www.reuters.com/technology/landmark-google-ruling-warning-companies-about-preserving-evidence-2024-08-06)

Mike Scarcella

People walk next to a Google logo during a trade fair in Hannover Messe, in Hanover, Germany, April 22, 2024. REUTERS/Annegret Hilse/File Photo Purchase Licensing Rights  , opens new tab

- US judge criticized Google for failing to preserve internal chats
- Google's 'communicate with care' initiative scrutinized for misuse of attorney-client privilege
- Google's evidence handling practices under review in multiple ongoing cases

Aug 6 (Reuters) - A landmark ruling on Monday that Alphabet's (GOOGL.O)  , opens new tab Google illegally monopolizes Web search also came with a rebuke for the tech giant for obscuring potential evidence in the case, and a warning to other companies about safeguarding data.

U.S. District Judge Amit Mehta in Washington, D.C., lambasted Google for allegedly failing to preserve internal chats and abusing protections for legal communications, but he declined to formally sanction the company.

The U.S. Justice Department had asked Mehta to punish Google for what the government called its “systematic destruction” of employee messages and “flagrant misuse” of the attorney-client privilege that shields communications with lawyers.

Mehta said it was not necessary to rule on Google's evidence handling to decide whether the company violated antitrust law.

“Still, the court is taken aback by the lengths to which Google goes to avoid creating a paper trail for regulators and litigants,” Mehta wrote. Google “trained its employees, rather effectively, not to create ‘bad’ evidence,” he said.

Google and the Justice Department declined to comment on Mehta’s decision not to sanction Google over its evidence safeguards. Google has denied violating antitrust law and said on Monday it will appeal the court's ruling. It has also denied mishandling evidence. Google had a longstanding practice of automatically deleting employees' chat messages after 24 hours unless the person clicked a “history on” button to preserve them. It changed the policy last year to better safeguard chats.

Mehta also criticized the company about its “communicate with care” initiative, which involved Google employees adding lawyers to messages and marking them “attorney/client privileged.”

The fight over Google’s chat records has extended into other cases challenging the tech company’s business practices.

A federal judge in California last year ruled that Google “willfully” failed to keep relevant chat evidence in a lawsuit filed by “Fortnite” maker Epic Games.

Epic prevailed at that trial, which accused Google of overly controlling the Android app market.

Later this month, a federal judge in Virginia will hear arguments about evidence destruction in the Justice Department’s lawsuit against Google over its digital advertising practices. A non-jury trial is scheduled for next month.

Mehta said his decision to not sanction Google was not an exoneration.

“Any company that puts the onus on its employees to identify and preserve relevant evidence does so at its own peril,” Mehta wrote. “Google avoided sanctions in this case. It may not be so lucky in the next one.”

Reporting by Mike Scarcella in Washington Editing by David Barrio and Matthew Lewis

US judge describes how Google built and defended illegal search monopoly

 [reuters.com/legal/us-judge-describes-how-google-built-defended-illegal-search-monopoly-2024-08-05](https://www.reuters.com/legal/us-judge-describes-how-google-built-defended-illegal-search-monopoly-2024-08-05)

Reuters

Figurines with computers and smartphones are seen in front of Google logo in this illustration taken, February 19, 2024. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

Aug 5 (Reuters) - U.S. District Judge Amit Mehta on Monday ruled that Google had violated antitrust law by spending billions of dollars to secure exclusive agreements with developers, carriers and equipment makers to be the default search engine.

Here are some key statements the judge made in his 277-page ruling , opens new tab:
"Google is a monopolist, and it has acted as one to maintain its monopoly."

"Sure, users can access Google's rivals by switching the default search access point or by downloading a rival search app or browser. But the market reality is that users rarely do so."

"The default is extremely valuable real estate. Because many users simply stick to searching with the default, Google receives billions of queries every day through those access points."

"Google, of course, recognizes that losing defaults would dramatically impact its bottom line. For instance, Google has projected that losing the Safari default would result in a significant drop in queries and billions of dollars in lost revenues."

"The distribution agreements have caused a third key anticompetitive effect: They have reduced the incentive to invest and innovate in search."

"There is no genuine 'competition for the contract.' Google has no true competitor."

"Google has not achieved market dominance by happenstance. It has hired thousands of highly skilled engineers, innovated consistently, and made shrewd business decisions. The result is the industry's highest quality search engine, which has earned Google the trust of hundreds of millions of daily users."

Reporting by Mike Scarcella in Washington Editing by Matthew Lewis

Elon Musk's X sues advertisers over alleged 'massive advertiser boycott' after Twitter takeover

AP apnews.com/article/x-sues-advertisers-unilever-cvs-mars-orsted-673d1ae88e9fb0ca5b170d238739453e

August 6, 2024



WICHITA FALLS, Tex. (AP) — Elon Musk's social media platform X has sued a group of advertisers, alleging that a "massive advertiser boycott" deprived the company of billions of dollars in revenue and violated antitrust laws.

The company formerly known as Twitter filed the lawsuit Tuesday in a federal court in Texas against the World Federation of Advertisers and member companies Unilever, Mars, CVS Health and Orsted.

It accused the advertising group's initiative, called the Global Alliance for Responsible Media, of helping to coordinate a pause in advertising after Musk bought Twitter for \$44 billion in late 2022 and overhauled its staff and policies.

Musk posted about the lawsuit on X on Tuesday, saying "now it is war" after two years of being nice and "getting nothing but empty words."

X CEO Linda Yaccarino said in a video announcement that the lawsuit stemmed in part from evidence uncovered by the U.S. House Judiciary Committee which she said showed a "group of companies organized a systematic illegal boycott" against X.

The Republican-led committee had a hearing last month looking at whether current laws are "sufficient to deter anticompetitive collusion in online advertising."

Election 2024: Elon Musk shares a deepfake video that mimics Kamala Harris
Secretaries of state urge Elon Musk to fix AI chatbot spreading election misinformation on X
Judge who nixed Elon Musk's pay package hears arguments on fee request
The lawsuit's allegations center on the early days of Musk's Twitter takeover and not a more recent dispute with advertisers that came a year later.

In November 2023, about a year after Musk bought the company, a number of advertisers began fleeing X over concerns about their ads showing up next to pro-Nazi content and hate speech on the site in general, with Musk inflaming tensions with his own posts endorsing an

antisemitic conspiracy theory.

Musk later said those fleeing advertisers were engaging in “blackmail” and, using a profanity, essentially told them to go away.

Crypto ETF Complex Hit by Selling Spree in First Big Stress Test

By Isabelle Lee and Emily Graffeo

- Outflows in spot-Bitcoin ETFs are the worst since May
- Investors also pull cash from Ether ETFs amid global selloff

Bloomberg Law News 2024-08-06T09:59:20371173738-04:00

Crypto ETF Complex Hit by Selling Spree in First Big Stress Test

By Isabelle Lee and Emily Graffeo2024-08-05T15:46:16973-04:00

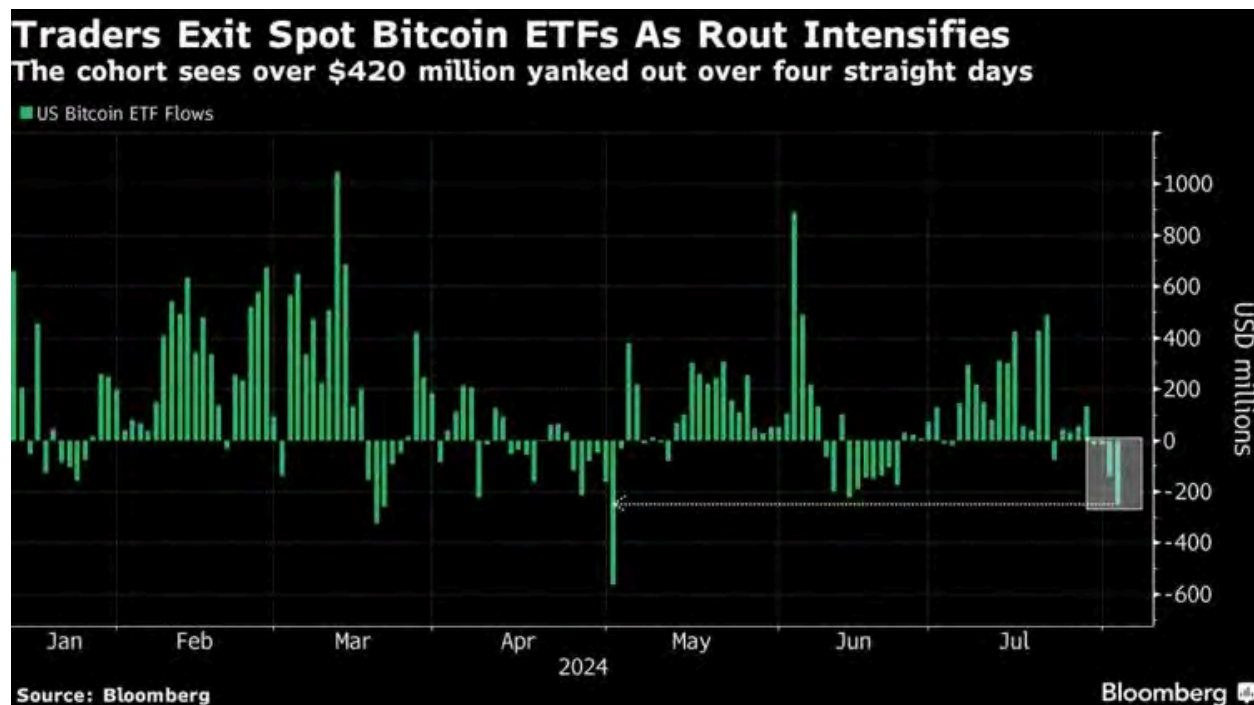
- Outflows in spot-Bitcoin ETFs are the worst since May
- Investors also pull cash from Ether ETFs amid global selloff

Investors yanked nearly half a billion dollars from cryptocurrency-linked funds as a global market meltdown sparked the first major selloff for the speculative asset class since it went mainstream via ETFs earlier this year.

Exchange-traded funds that invest directly in Bitcoin have had four straight days of outflows, totaling roughly \$423 million, according to data compiled by Bloomberg. The outflows contributed to the worst weekly exodus since early May for the batch of nearly a dozen spot ETFs that launched in January.

Risk assets have slid worldwide after soft US jobs data on Friday stoked recession fears, adding to a troublesome mix that includes underwhelming corporate earnings and poor seasonal trends. Crypto wasn't spared: Bitcoin has plunged more than 16% — wiping out more than \$150 billion in market value in the last 36 hours and damping the appeal of the ETFs. Ether, the second-largest digital asset, faces the steepest fall since 2021.

The rout marks the first major stress test for digital assets in the era of US cryptocurrency products, which have given everyday investors an easy way to trade in and out of Bitcoin ever since they were grudgingly approved by the Securities and Exchange Commission.



Spot Ether ETFs, which debuted in July after an SEC greenlight, are also seeing outflows. The group's total net outflows since their debut have now breached the \$500 million threshold, data compiled by Bloomberg show.

"They remain speculative assets," **Barry Knapp**, managing partner at Ironsides Macro, said by phone. "To think it wouldn't be volatile in a situation like this — I think it's to be expected."

Read more: Bitcoin and Ether ETFs Battered Amid Global Selloff in Equities

Despite the cascade of selling, dislocations — for now — haven't been material. A measure of liquidity known as the bid-ask spread has remained in a narrow range of just one basis point for BlackRock Inc.'s iShares Bitcoin Trust (ticker IBIT), for example, even as its shares plunged 11.5%.

Elsewhere in the market, traders who have poured billions into other crypto-linked products are also feeling the pain. The 2x Bitcoin Strategy ETF (BITX), which had inflows of \$1.8 billion this year, is down 20% in the past two weeks. The \$340 million ProShares Ultra Bitcoin ETF (BITU), which took in around \$400 million this year, plunged by 30% on Monday alone.

For some, the slump in crypto is perplexing, given that Bitcoin arose in the wake of the global financial crisis as an alternative to a global financial system that its followers see as deeply flawed.

"The undisciplined approach to monetary and fiscal policy is one of the reasons investors hold Bitcoin in the first place, so there is no reason to reconsider the longer-term bullish outlook for the asset class," said **Zach Pandl**, head of research at Grayscale.

To **Stephane Ouellette**, chief executive officer of FRNT Financial, Bitcoin's 24/7 trading is going to leave the asset more vulnerable to adverse global events in the short term, heightening its volatility. He cited recent geopolitical crises that have sparked intense selloffs this year as well as the pandemic crash in 2020.

"For traders looking for fast cash last night, BTC would have been a highly attractive option," he wrote in a Monday note. But "the current environment feeds into the asset's core thesis. For those that believe monetary policy has been mismanaged since the financial crisis, this is the type of scenario they were envisioning when investing in BTC."

--With assistance from **Vildana Hajric**.

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Companies Urged by UK Accounting Watchdog to View Risks Broadly

By Michael Kapoor

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Companies Urged by UK Accounting Watchdog to View Risks Broadly

By Michael Kapoor 2024-08-05T13:10:44000-04:00

The UK's accounting watchdog asked for public comments Monday on planned changes to its 'going concern' guidance, emphasizing that companies must take a longer-term view of the risks of going bust.

Companies or their auditors are supposed to issue going concern warnings if they are at risk of going out of business. The Financial Reporting Council said its updated guidance draft would encourage company bosses to think more broadly. The revisions also reflect changes to relevant rules such as the corporate governance code.

The FRC said it had become an important issue given recent events, including the pandemic and wars in countries like Ukraine, that could impact the business landscape.

- The revised guidance "encourages directors to take a broader view, over a longer term, of the risks and uncertainties that goes beyond the specific requirements in accounting standards," the FRC said in the draft proposals.
- Going concern testing has been a focus for UK regulators since the collapse of high-profile companies such as construction and facilities management giant Carillion Plc in 2018, without warning from their accounts or their auditors. In 2019, the FRC strengthened audit requirements for going concern reporting, saying auditors must "robustly challenge management's assessment of going concern."
- The consultation over the latest changes is open until Oct. 28, with final guidance expected in early 2025. The guidance is aimed at firms following the UK corporate governance code, which companies in the FTSE 350 index must use or explain why they don't.

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Do You Really Want Your Pension Fund Invested In Crypto?

 crooksandliars.com/2024/08/do-you-really-want-your-pension-fund

Susie Madrak



By Susie Madrak — August 5, 2024

U.S. pension funds are beginning to explore investments around bitcoin and other cryptocurrencies, a move that could expose millions of former teachers, police officers, firefighters and other retirees to the wild ups and downs of a largely unregulated financial product. Are these people crazy? Via the Washington Post:

In at least five states, industry lobbyists have aggressively hawked the idea, aiming to woo local lawmakers with the promise that digital assets can deliver sky-high profits — often without fully acknowledging the possible risks.

The emerging sales campaign contrasts with the broad warnings in Washington that investing in cryptocurrency could leave retirees' life savings vulnerable to "fraud, theft and loss." Federal officials first sounded those alarms even before the disastrous collapse of crypto giant FTX in 2022, which troubled a handful of pensions globally that had indirect exposure to a company that once seemed like a profitable tech juggernaut.

In response, the crypto industry has launched a sprawling national campaign that aims to ward off regulation and elect candidates — including former president Donald Trump — **who have promised to lessen federal oversight around digital assets.**

Personally, this reminds me of what happened in California's Orange County 30 years ago, when their treasurer invested heavily in derivatives and other volatile instruments. It led to the largest municipal bankruptcy ever. Oh well!

P.S. Cryptocurrency went down by 11% in today's market event, despite its claim that it's insulated from actual currency.

Who is pushing state pension funds to invest in crypto? Well <https://t.co/348zUq1t6x>
pic.twitter.com/etOF4nh8E2

— John Carl Baker (@johncarlbaker) August 5, 2024

 STATE PENSIONS EMBRACE BITCOIN: A BIG LEAP FOR CRYPTO

Alright, folks, here's the scoop: Wisconsin and Michigan are diving into the crypto game, putting serious cash—\$160M and \$6.5M respectively—into Bitcoin ETFs.

This isn't just a fluke; the Satoshi Action Fund is rallying...
pic.twitter.com/mYWDgib1Ds

— IBC Group Official (@ibcgroupio) August 4, 2024

I told you about how retirement funds were moving into crypto.

New Jersey Pension Invested \$7M in Bitcoin Mining Stocks Last Quarter
<https://t.co/mNbk4HXHDs> via @coindesk

— Emin Gün Sirer  (@el33th4xor) July 24, 2021

Can you help us out?

For nearly 20 years we have been exposing Washington lies and untangling media deceit, but now Facebook is drowning us in an ocean of right wing lies. Please give a one-time or recurring donation, or buy a year's subscription for an ad-free experience. Thank you.

Bloomberg Law News 2024-08-06T14:04:20052526975-04:00

Dispatch From Trump Bitcoin 2024 Conference in Nashville

By Zeke Faux2024-08-05T06:00:15369-04:00

On July 17, about a week before Donald Trump took the stage in front of 8,000 or so Bitcoin fans in Nashville, David Bailey, the chief executive officer of *Bitcoin Magazine*, giddily explained how he and his friends had gotten the candidate to come. Bailey, a baby-faced 33-year-old with a bushy beard, was appearing on a podcast called *Galaxy Brains*, and he was telling the host, a crypto researcher, that it was so crazy he'd started writing a diary of sorts to keep track of everything that was happening. "You could never publish this, because literally no one would ever believe that this was a real thing," Bailey said.

It was easy to see why he was fired up. The conference at which Trump would be speaking, put on by Bailey's company, is for Bitcoin's true believers—maximalists who believe it's the one true crypto coin and the future world currency. Just a few years ago, the conference was as fringy as a furry convention or the Gathering of the Juggalos, and Trump was publicly calling Bitcoin a "scam against the dollar." Now he would be jetting in to get onstage and endorse their digital money. It was as if he was slathering his face with black-and-white clown makeup, Juggalo-style, and getting onstage to rap with Insane Clown Posse.

Bailey said he'd been working almost full-time for four months to get Trump to come. Although the former president had been a crypto critic, he'd worked with the co-author of his 2007 book, *Think Big and Kick Ass*, to create a series of nonfungible tokens (NFTs) called "Trump Digital Trading Cards"—essentially \$99 cartoons of Trump as a muscular superhero, hunter, soldier and the like—and in May hosted an event at his Mar-a-Lago Club for buyers of the cards. There, he sounded more open-minded about crypto. Bailey sprang into action, setting up meetings between industry players and the campaign.

"The campaign, they're used to bullshit artists all the time trying to sell them shit," he said. "If you want it to progress, you've gotta show 'em the money."



Bailey told the podcast host that he meant it figuratively and that he was referring to the process of building enthusiasm. But he'd demonstrated it literally, helping plan a fundraiser where the top tickets required a donation of \$844,600 to Trump and various campaign committees, the maximum allowed under campaign finance laws. Only 10 people donating that much—"a lot of money," Bailey said, "but kind of nothing, also"—could sway a political party's views. "I have been shocked to discover over time the impact that a very, very small number of people can have." (In a later interview, Bailey downplayed his role in bringing Trump around, saying that many people in his orbit were already interested in Bitcoin and that the candidate's support wasn't because of the industry's donations. "The financial support for the campaign follows the policy decisions that the campaign makes," Bailey said. "It doesn't lead it.")

On the podcast, Bailey described Trump's appearance as one step in a larger plan. If Trump was reelected, Bailey speculated, he might announce plans to establish a strategic reserve of Bitcoin, just like the US holds gold in Fort Knox. That investment would of course push up the cryptocurrency's price, and other countries might also start buying, wanting to get in before the US did. And if Trump told China that Bitcoin was crucial to the US, China might reverse its cryptocurrency ban and buy it up, too. "If we want to get China to YOLO into Bitcoin, all we have to do is get a certain person to say we're stopping them from YOLO-ing into Bitcoin," Bailey said. The price of a single Bitcoin could reach \$1 million, he added—a vast jump from its \$64,000 value that day.

"As our religion spreads, our financial resources expand equally," Bailey later said. "How do you beat that?"

It might seem contradictory to someone familiar with Bitcoin's subversive origins as anonymous, untraceable digital cash to see its proponents lobbying for a past and potentially future US president to embrace it. But in the 15 years since Satoshi Nakamoto, an unknown person or group, unveiled it, Bitcoin has failed to achieve widespread acceptance as a currency.

Bitcoiners now call it a "store of value." They refer to it as "digital gold" and talk about how only 21 million Bitcoin will ever be created, unlike government-issued currencies, which central banks print at will. To a skeptic, it seems as if the main thing they care about is Bitcoin's price going up. Sometimes it sounds more like they're describing a pyramid scheme. In this view, Trump represents the ultimate mark, someone who could bring the US government into the base of the pyramid, spur a worldwide competition to snap up Bitcoin and make those at the top unbelievably rich and powerful.

I'd been hearing some version of this plan since 2021, at an earlier iteration of Bailey's conference,

where I saw crypto bros sob as the president of El Salvador announced he'd make Bitcoin legal tender in his country. I'd laughed at their "first El Salvador, next the world" logic then, and I'd gone to El Salvador and found that the plan was a bust. I'd [written a book](#) investigating the whole scene (*Number Go Up*) and found it to be intellectually bankrupt and full of frauds. Bitcoiners selling their holdings to the Federal Reserve seemed about as likely as me pulling my kids' art projects off the fridge and selling them to the National Gallery.

And yet, here we were. Crypto prices were back up, and Bitcoin's most laser-eyed zealots had the ear of someone who could very well become the next president. I had to see for myself whether he'd go full crypto.

"Donald Trump is a vessel for us to let the game theory of Bitcoin play out," Bailey said. "It is going to generate dividends that are hard to even comprehend or calculate over the next four years."

When I walked into the Bitcoin conference at the cavernous Music City Center in Nashville on Friday morning, it looked pretty much like every other one I'd been to, with the exception of all the red caps printed with "Make America Great Again" or "Make Bitcoin Great Again." More typical were the orange B symbols everywhere. Earnest hobbyists peddled Bitcoin children's books and Bitcoin quilts and cringey Bitcoin art featuring more orange Bs and burned, pulped or shredded government-issued currency. (Never one to miss an opportunity for a branded product, Trump would later get in on the merch game by pushing orange Bitcoin sneakers on Truth Social.) A model in a bikini sprayed herself with water heated by Bitcoin mining computers. I spotted Hailey Welch, of "hawk tuah" viral fame, stopping by a booth that offered orange underwear.



Attendees in MAGA gear at the conference.

Photographer: Joseph Ross for Bloomberg Businessweek

The vibe was less tech hackathon and more multilevel marketing convention, designed to fire up the salesforce before they returned home to pitch friends and family. The idea was to “orange-pill” them, as Bitcoiners call it when someone’s mind is freed and they embrace the currency, just as Keanu Reeves’ Neo embraced reality in *The Matrix*. “We orange-pilled our entire office,” said a woman from Jersey City who was dressed in orange scrubs embroidered with “Bitcoin Orthodontist” on them.

Onstage, discussion of non-Bitcoin cryptocurrencies was discouraged, and among attendees I didn’t hear any talk about the many crypto scams, such as Sam Bankman-Fried’s FTX. For this crowd, the only Ponzi scheme was the Federal Reserve, which they alleged was printing an unsustainable amount of currency and would cause the collapse of the US dollar. Many of the people I spoke with hosted Bitcoin meetups in their hometowns or had Bitcoin podcasts or Bitcoin-related small businesses. I was handed a card advertising a Bitcoin-related science fiction book by a woman who told me she was “one of the author’s wives,” and I ended up in an hourlong discussion with an appliance store owner about whether Bitcoin adoption would lead companies to make longer-lasting fridges and dishwashers.

Many pundits were attributing Trump's flip-flop on Bitcoin to his pursuit of a supposedly large subset of "crypto voters." They often cited a survey published by Coinbase Global Inc. last year that found [20% of adults in the US own crypto](#). "There are tens of millions of voters in America that are invested in this industry," one of Tennessee's Republican senators, Bill Hagerty, told me at the conference.

Even if that's true—a Fed survey in May found only [7% of adults had crypto](#)—it seemed unlikely to me that financial deregulation was the top political issue for a large proportion of people. And what about the not insignificant number of people who got scammed? Comedian Nikki Glaser probably captured mainstream opinion at a [Netflix roast](#) for Tom Brady when she teased the former NFL quarterback for losing money on crypto with a reference to his famously oafish teammate Rob Gronkowski. "Even Gronk was like, 'Me know that not real money,'" she said.

At the conference, crypto swing voters proved elusive. Most attendees told me they already supported Trump or were for the independent candidate Robert F. Kennedy Jr., who'd been even more vocal in his support of Bitcoin. "I'm still tossed up," said a trucker from Cincinnati who told me to call him Colonel Kernel Stacker. (Kennedy, bumped from top billing at the conference by Trump, insisted he wasn't angry about it. "Nothing could make me more joyful," he growled in a speech on Friday.)



Clothing and scarves sold at a discount if bought with Bitcoin.

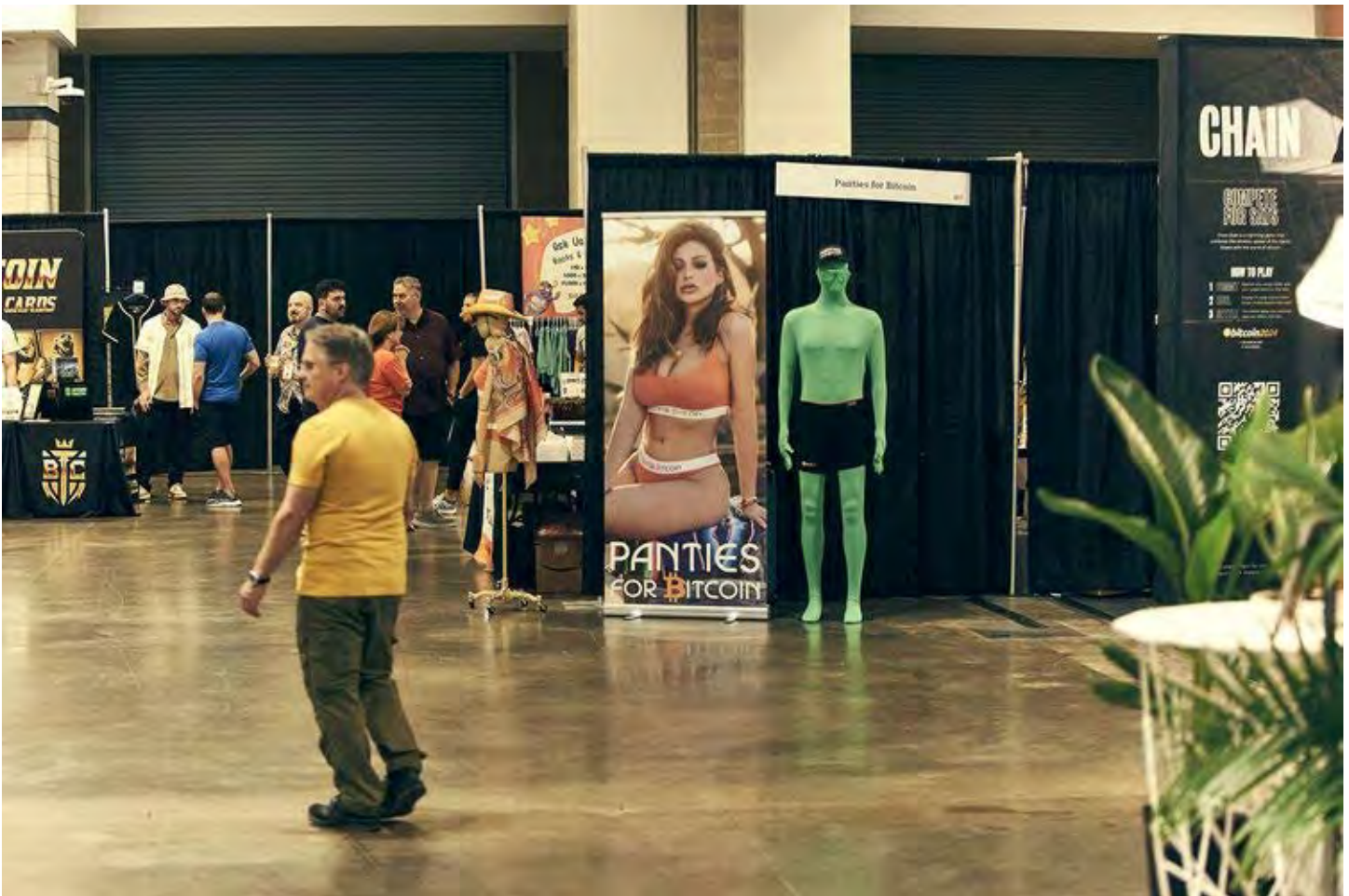
Photographer: Joseph Ross for Bloomberg Businessweek

Crypto swing voters can be found at the top of the crypto industry, which had leaned Democratic when FTX's Bankman-Fried was its most prominent political player. Fairshake, a political action committee backed by crypto companies, has raised more than \$200 million, more than any other super PAC this election, saying it would support friendly politicians of both parties. The bulk of its support, though, comes from companies that have been sued by the US Securities and Exchange Commission or from venture capitalists who've invested in firms that were targeted. That makes them natural opponents of the Biden administration (whose SEC chair, Gary Gensler, has taken an aggressive stance against crypto) and simpatico with Trump, who for years has complained that the fraud lawsuits against his businesses are illegitimate. On a podcast last month, Ben Horowitz, co-founder of the venture capital firm Andreessen Horowitz, which donated \$44 million to Fairshake, argued that the Biden administration has "basically subverted the rule of law to attack the crypto industry." Horowitz said he'd be voting for Trump and reportedly plans to make a large donation to the campaign. (Bloomberg LP, which owns *Bloomberg Businessweek*, is an investor in Andreessen Horowitz.)

On Friday afternoon, one of the most influential Bitcoin advocates took the stage: Michael Saylor, the 59-year-old chairman of software company MicroStrategy Inc. He's plowed billions of dollars of MicroStrategy's money into Bitcoin since 2020, earning giant returns. (Saylor and MicroStrategy also agreed to pay \$40 million in June to settle a tax fraud lawsuit, without admitting to wrongdoing.) Several attendees told me they'd been introduced to Bitcoin by Saylor's speeches, which have garnered millions of views online.

Some in the crowd had waited in line [for a long time](#) to hear Saylor speak, and he didn't disappoint. Wearing a dark suit and a red tie of near-Trumpian length, he presented a slideshow explaining why countries should buy Bitcoin. It was a no-brainer, really, given his prediction that the price of a single coin would climb 190-fold, to \$13 million, by 2045.

"You just get insanely rich," he said.



Booths at the conference.

Photographer: Joseph Ross for Bloomberg Businessweek

On Friday night, a few hours after Saylor's speech, I went to a hotel around the corner from the convention center, where Donald Trump Jr. and former Fox News host Tucker Carlson were scheduled to speak at a side event sponsored by a cryptocurrency called \$MAGAA, for Make America Great Again, Again—one of many “meme coins” hoping to glom onto the movement.

The two men climbed out of a large black SUV along with Trump Jr.'s fiancée, another former Fox News host, Kimberly Guilfoyle. Carlson, who in 2021 had Saylor on his *Fox Nation* show to talk Bitcoin, almost squealed with laughter when I asked him if he'd orange-pilled Donald Trump. “I wish I could take credit for that,” he said. When I asked Trump Jr. if he was endorsing the meme coin, he told me he was just there to see friends.

Bailey arrived shortly after. He told me he deserved “no credit whatsoever” for Trump's change of heart and headed up to the event. I'd asked for a press accreditation beforehand, but one of the organizers had turned me down, citing this quote from my book: “From the beginning, I thought that crypto was pretty dumb. And it turned out to be even dumber than I imagined.” Luckily, there was a livestream. As Trump Jr. and Carlson spoke, the members of a Telegram chat dedicated to the token insulted each other and shared memes from the satirical 2004 film *Team America: World Police*. “I love this community,” Trump Jr. said. “You are all pioneers.”



A Taproot Wizards balloon.

Photographer: Joseph Ross for Bloomberg Businessweek

I drifted to another rooftop party, this one hosted by the collective behind Taproot Wizards, a series of scribbled-looking wizard NFTs. There, amid circles of men in wizard hats chatting about Bitcoin, I spotted someone surprising: Heather Morgan, better known as Razzlekhan, the terrible rapper who called herself the “Crocodile of Wall Street” and helped her husband launder the proceeds of a \$4.5 billion Bitcoin hack, the largest heist of all time. I’d written about the theft not long after her arrest, and my brain was permanently engraved with painful rhymes like “Razzlekhan’s the name / That hot grandma you really wanna bang.”

Morgan had since pleaded guilty, and her bail conditions apparently allowed for Bitcoin parties. Clad for the occasion in a black dress with a leather belt collar and fishnet stockings, she was chatting with Lil Pump, a well-known rapper who’d launched his own token in June. One of the wizard-hat guys was trying to goad them into rap battling.

Ironically enough, if Trump were to establish a Bitcoin reserve as Bailey had suggested, Morgan would be as responsible as anyone: Most of the Bitcoin in the US government’s possession was

confiscated from her and her husband. When I introduced myself, Morgan pulled down her black hat and walked away quickly.

Another would-be wizard pulled me into a conversation instead. “David Bailey has been doing Satoshi’s work for all of us,” he said.



A Pizza Ninjas display at the conference.

Photographer: Joseph Ross for Bloomberg Businessweek

The next day, I arrived three hours before Trump was scheduled to speak. There were few seats left in an auditorium the organizers said held 8,000 people, but I managed to snag a spot toward the back.

“The big man just touched down,” said the emcee, T.J. Miller, the curly haired comedian who’d been written off the show *Silicon Valley* after allegations of erratic behavior, which he denied.

The fundraiser was going on elsewhere in the building. One of my seatmates, who was with a

company that had developed a rival MAGA-themed coin, said that her colleagues had paid \$100,000 to pose for a picture with Trump.

Guards escorted a man wearing a gold full-face mask past me. Someone said he was a billionaire investor in a coin called Shiba Inu, which is a knockoff version of Dogecoin, the token based on a dog meme.

As we waited, Ron Paul, the goldbug and retired US representative, appeared via video feed from another room in the convention center. “The bubble always ends,” he said. It was hard to hear over the crowd’s chatter, but I was pretty sure he was talking about the US dollar.

The time for Trump’s speech came and went without him appearing. Rumors spread that he was waiting for Elon Musk to arrive. To keep the audience entertained, the organizers showed ads for a new documentary called *God Bless Bitcoin*. It’s available for free [on YouTube](#), and its title seems to be meant literally.

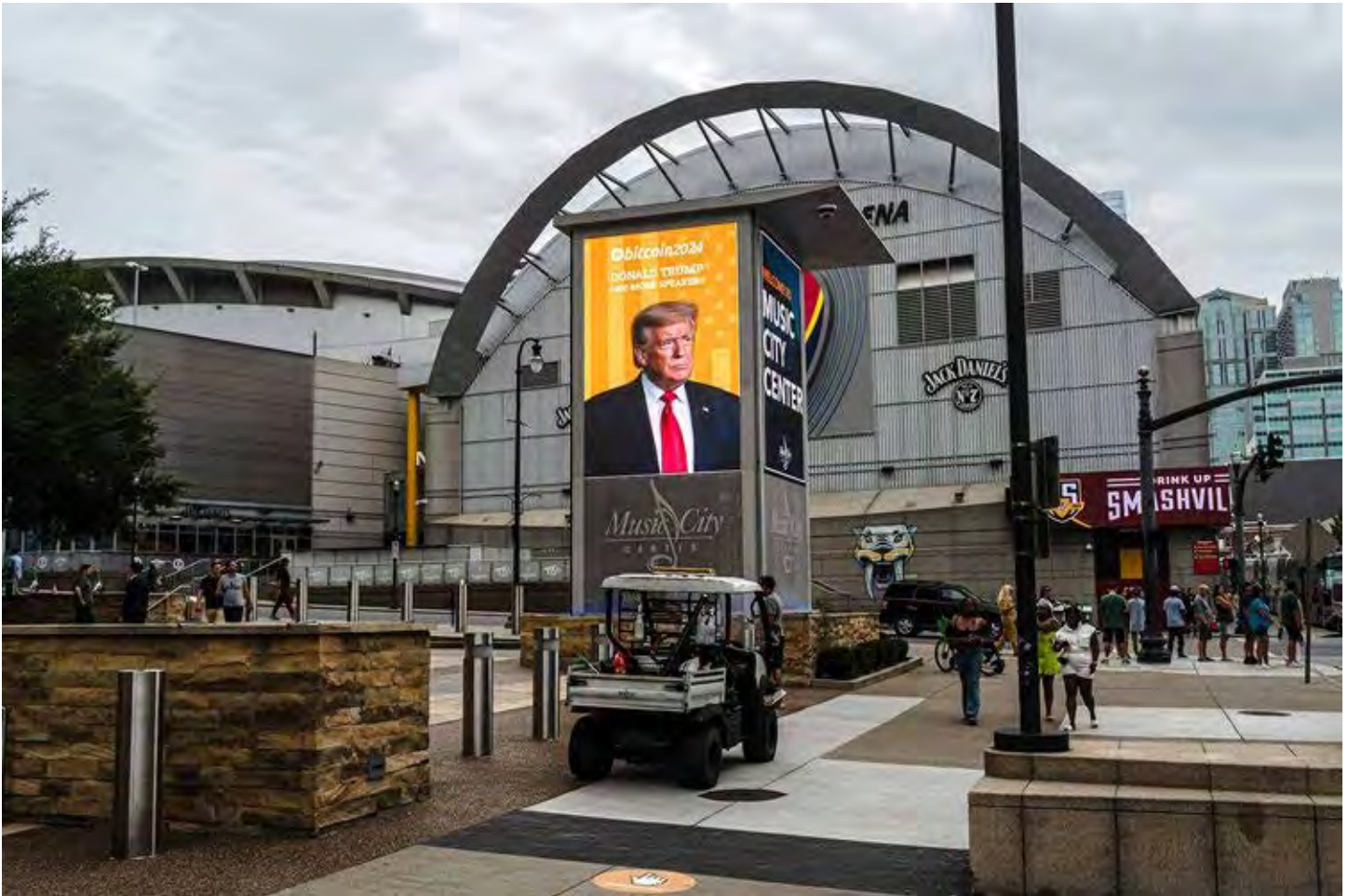
Trump emerged from backstage about an hour late, with Elon Musk still nowhere in sight, to the weepy country ballad that’s become his anthem, *God Bless the U.S.A.* After mentioning a recent Hezbollah attack on Israel, he started talking about how Bailey had brought him to the conference. Trump clearly respected his salesmanship.

“I took a picture, it got published, Trump and David Bailey, all of a sudden your industry went through the roof,” Trump said, tossing a hand above his shoulder. “So David, congratulations, whatever the hell you do, you did a hell of a job.”

Then he thanked many of the powerful and famous people in attendance. There were shoutouts for MicroStrategy’s Saylor, fund manager and Bitcoin promoter Cathie Wood and Cantor Fitzgerald’s Howard Lutnick, who earlier in the day had given an angry speech defending Tether Holdings Ltd., issuer of the controversial Tether stablecoin and a customer of his bank. Trump praised Jake Paul, the YouTuber-turned-boxer, who I later discovered had paid about \$100,000 last year to the SEC to settle claims he’d touted a crypto token without disclosing he was getting paid. (He neither admitted to nor denied the allegations.)

Trump also complimented Cameron and Tyler Winklevoss, the twins whose crypto exchange agreed in June to return \$50 million to [settle a fraud lawsuit](#) filed by New York’s attorney general. (The crypto exchange also neither admitted to nor denied the allegations.) “They’re male models with a big,

beautiful brain,” he said. And Trump praised everyone in attendance, calling them “high-IQ individuals” and saying they had “the kind of spirit that built America.”



Outside Music City Center before Trump’s keynote speech.

Source: Getty Images

I figured that was about as much as the Bitcoiners would get—that Trump would otherwise simply run through his greatest hits. And while he did talk about “Crooked Hillary” and “Pocahontas” and went on an extended tangent about his uncle who taught at Massachusetts Institute of Technology and “graduated tremendously,” Trump also recited some of the same talking points I’d been hearing from Bitcoiners and crypto lobbyists. Going beyond the claims of the Coinbase survey, he said he’d heard from his adviser Vivek Ramaswamy—the one-time presidential candidate who was also in attendance—that 175 million people were involved in crypto, making it potentially a large voting bloc.

“If Bitcoin is going to the moon, as we say, ‘it’s going to the moon,’ I want America to be the nation that leads the way,” Trump said.

He then started talking about how he didn't want China to beat the US in crypto, seemingly ignorant of the fact that China has tried to ban cryptocurrencies. I was amazed. It was just how Bailey had laid it out on the *Galaxy Brains* podcast a week earlier. "We cannot let China dominate," Trump said.

When Trump proclaimed that he would fire Gensler, the applause was so loud that he paused and said the line again. He said he would create rules allowing for the expansion of stablecoins, which he said "extend the dominance of the US dollar to new frontiers around the world," echoing a talking point of Cantor Fitzgerald's Lutnick.

Trump said banks are unfairly refusing to work with crypto companies, calling it "Operation Chokepoint 2.0." The obscure phrase had been coined by a crypto venture capitalist, who later tweeted, "If you post stuff on the internet hard enough, sometimes the past and future president ends up repeating it."

At the end, Trump really did call for the government to invest in Bitcoin. "For too long our government has violated the cardinal rule that every Bitcoiner knows by heart: Never sell your Bitcoin," he said. He added that the US already holds 210,000 Bitcoin confiscated by law enforcement—about 1% of the total supply—and that he would order the government to hold on to them instead of auctioning them for cash. "This will serve in effect as the core of the strategic national Bitcoin stockpile."

He concluded with an obvious ad-lib: "Have a good time with your Bitcoin and your crypto and everything else that you're playing with."

As we filed out of the auditorium, the crowd seemed let down, somehow, even though Trump had recited practically every verse in the Bitcoin psalter. RFK Jr. had proposed a much larger US Bitcoin reserve in his speech, and he seemed to have set expectations unreasonably high. One crypto developer told me he'd been hoping Trump would announce a plan to buy \$800 billion worth of Bitcoin. A crypto podcaster being interviewed in the hall by another crypto podcaster said he still preferred RFK.

But Trump's fundraiser had met its goal. Bailey wrote on X that it raised \$25 million. And a few days later, there was Trump on [Fox Business](#), talking about how he might use Bitcoin to pay off the national debt. "Who knows, maybe we'll pay off our \$35 trillion, hand 'em a little crypto check, right?" he said, smiling. "We'll hand 'em a little Bitcoin and wipe out our \$35 trillion."

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Bloomberg Law News 2024-08-06T14:06:48Z72781523-04:00

Crypto Industry Political Donations Are Going to Democrats Too

By Benjamin Taubman2024-08-06T10:54:19Z463-04:00

- Protect Progress has spent \$13 million on Democratic races
- Democratic lawmakers were a focus of FTX's Bankman-Fried

The crypto industry, whose hostility to the Biden Administration have led some major participants to publicly endorse Donald Trump, is spending millions through a pair of super PACs to shape the Democratic Party by intervening in congressional primaries.

The pro-crypto political action committee putting the most money behind Democrats is Protect Progress, which has spent over \$13 million on US congressional campaigns.

Protect Progress, along with affiliated pro-crypto super PACs Fairshake and Defend American Jobs, have raised \$170 million in total to spend on the 2024 campaign cycle, according to Federal Election Commission filings. Top donors include crypto industry titans Andreessen Horowitz, Coinbase Global Inc. and the Winklevoss brothers that run the Gemini exchange.

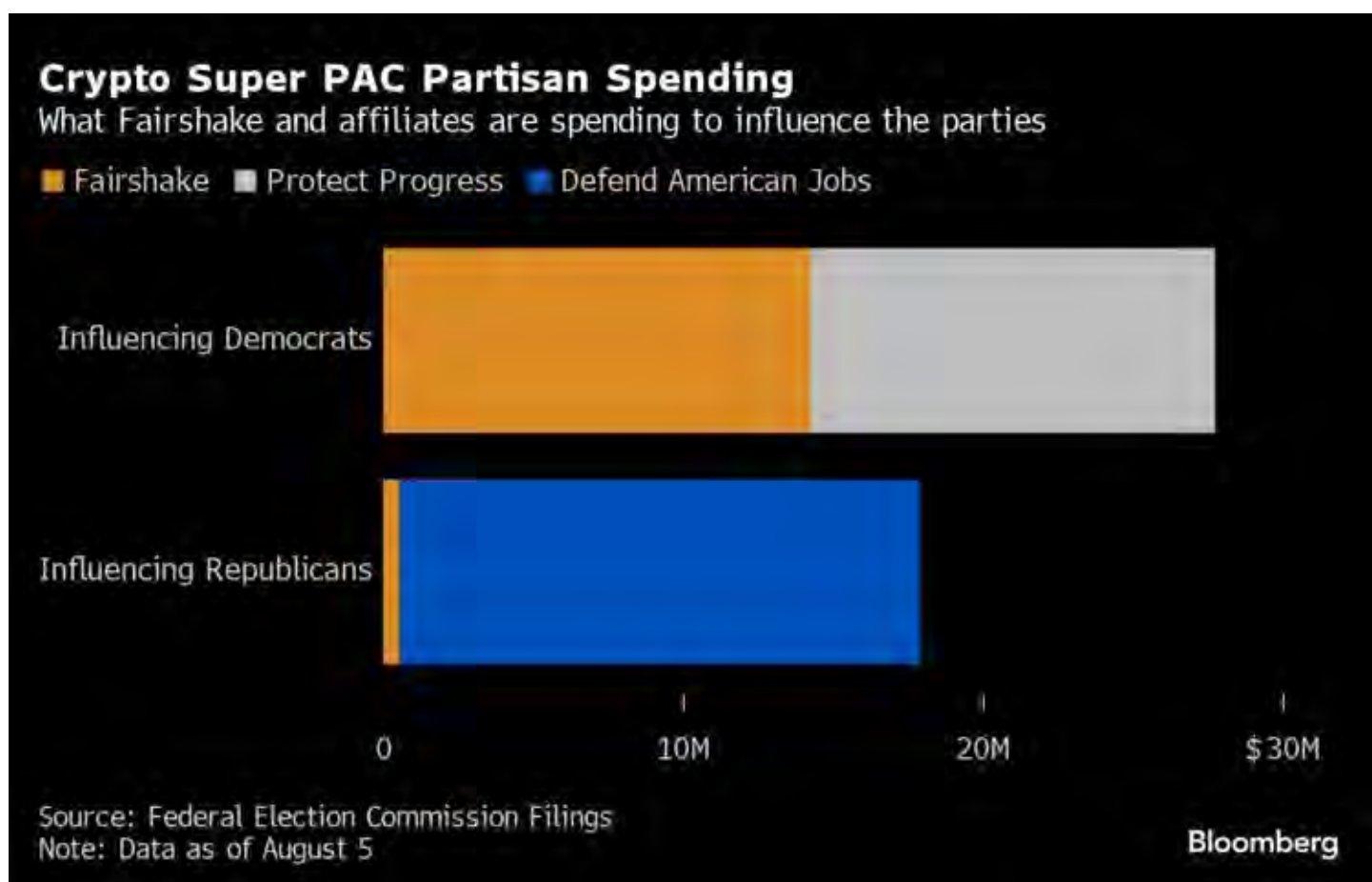
Read more: Crypto Political Donations Dwarf Bankman-Fried's Heyday

The overarching goal of the super PACs is to push for what industry participants have called greater regulatory clarity. Critics of the Biden administration have accused the US Securities and Exchange Commission of acting in bad faith by regulating through enforcement.

Unlike regular political action committees, groups such as Protect Progress can spend and receive an unlimited amount of contributions from corporations, individuals and other super PACs, even if they're not affiliated with each other. The main limitation is that super PACs are not allowed to directly donate to or coordinate with candidates or their campaigns.

Whereas the group's two siblings have spent \$16 million supporting crypto-friendly Republican candidates and about \$14 million sinking the campaigns of anti-crypto Democrats Katie Porter and Jamaal Bowman, Protect Progress has spent more than \$13 million to support pro-crypto Democrats,

according to FEC data. FairShake has also spent about \$600,000 supporting Democrats.



Federal Election Commission

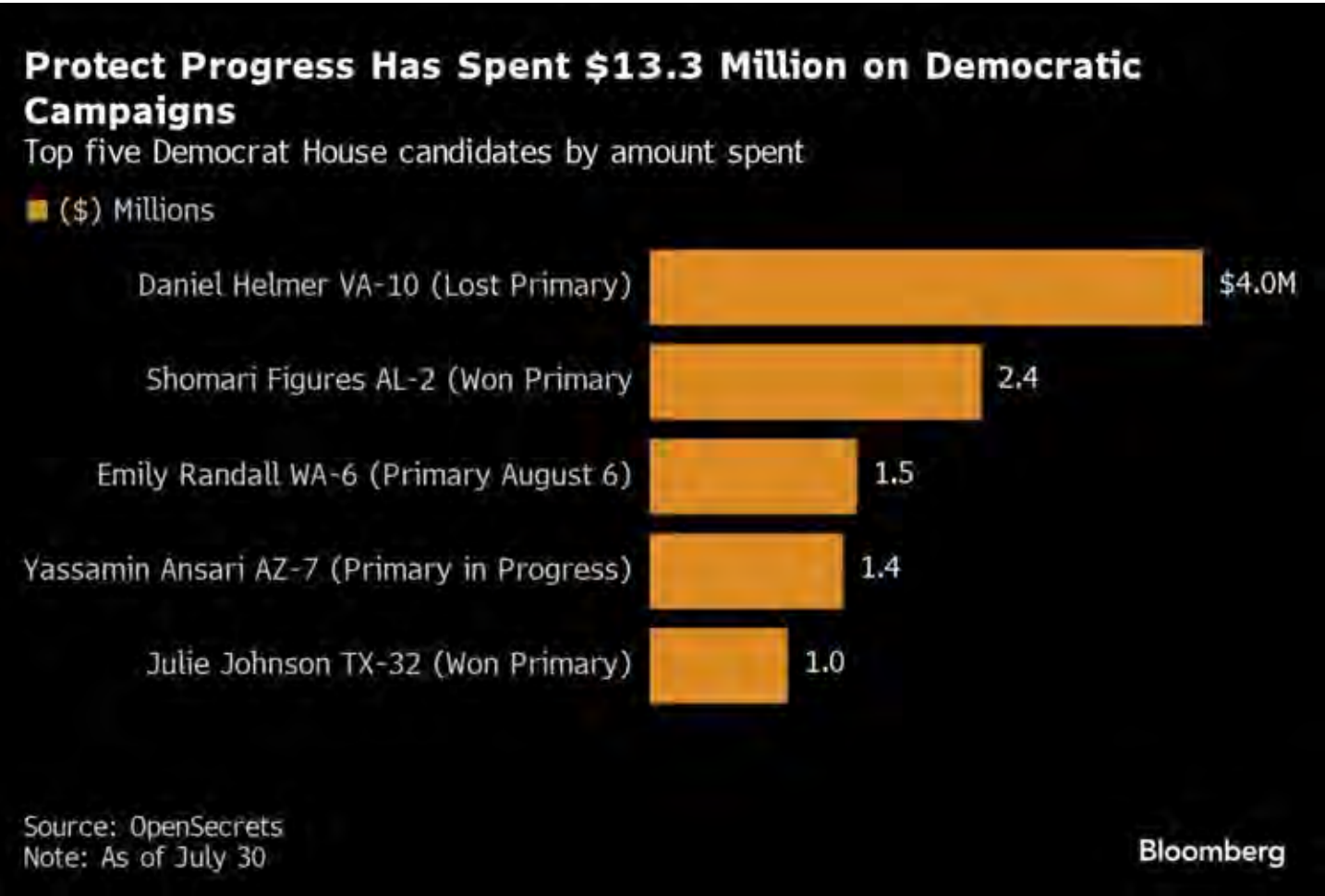
Fairshake and its two affiliates are run by political strategist Michael Carcaise. In 2021, he set up a super PAC called GMI PAC that raised \$12.5 million, including \$2 million from Sam Bankman-Fried, the disgraced co-founder of FTX, and \$1.5 million from former FTX executive Ryan Salame. Carcaise is listed as executive director of Political Campaign & PAC Management and Strategy in a [LinkedIn](#) profile.

Josh Vlasto, a spokesman for the three super PACs, didn't respond to several requests for comment.

GMI itself [never directly spent](#) any money on campaigns. It instead sent almost all of its donations to [affiliates](#) including Web3 Forward, a former Democrat-focused pro-crypto super PAC. Carcaise was listed as the treasurer of Web3 Forward on the PAC's [FEC filing](#).

Eight of the 13 candidates that Protect Progress has backed so far have ran or are running in non-incumbent races in districts that have a strong Democrat presence, the data show. That aligns with

the strategy once used by Web3 Forward.



OpenSecrets

Nine candidates endorsed by Protect Progress have won their primaries and now move on to general elections on Nov. 5. The spending has raised tension in some primaries.

Ballots are currently being counted for Arizona’s House District 3 election, where the super PAC spent part of \$1.4 million to support candidate Yassamin Ansari with a video campaign advertisement about two weeks before the election. The [30-second long video](#) in Spanish has no mention of crypto.

Ansari’s opponent, Raquel Terán, denounced the spending, saying the super PAC is controlled by Republican donors.

“I’ve never heard anybody at the door bring up crypto,” Terán said in an interview. “That’s all I have to say.”

Clarence Thomas Has Forgotten More Vacations Than You'll Ever Know

A abovethelaw.com/2024/08/clarence-thomas-more-undisclosed-vacations

Joe Patrice

August 5, 2024

Courts

It's a day that ends in 'y' so there's more news about Clarence Thomas taking luxury gifts and covering it up.

By Joe Patrice

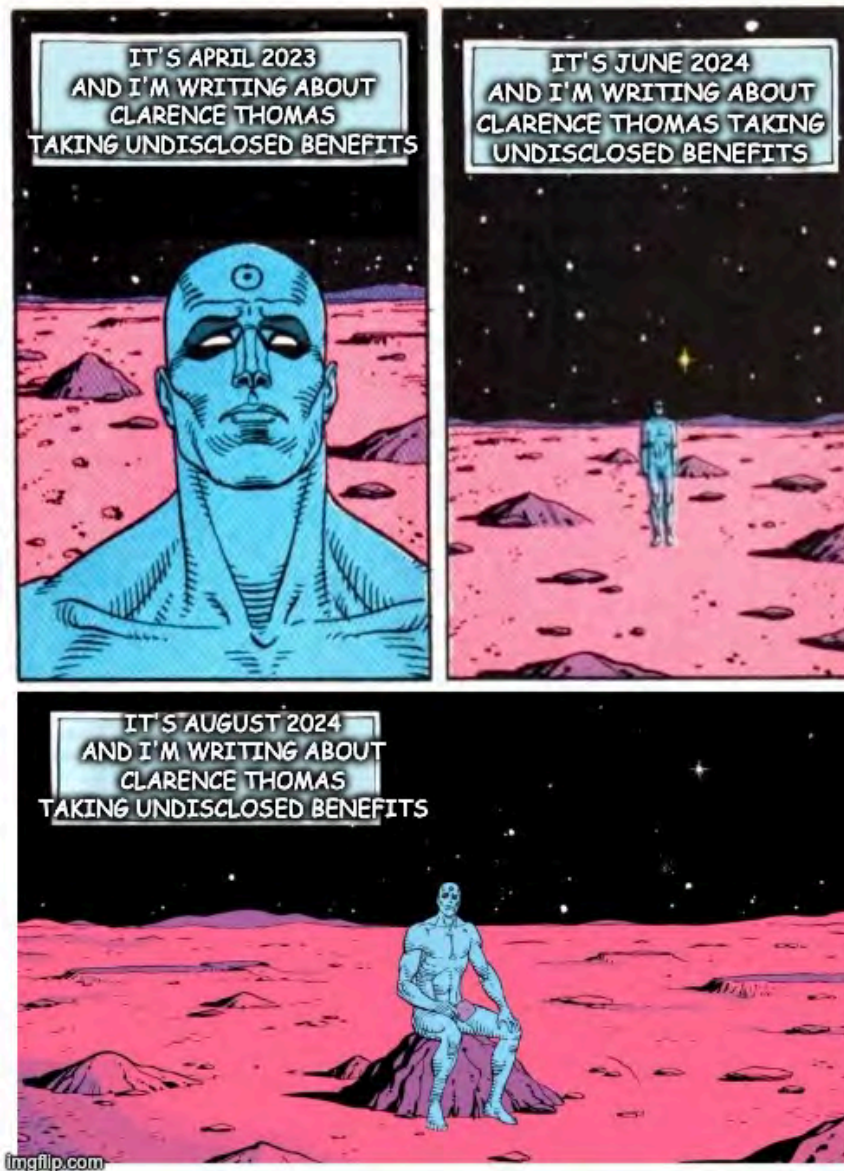
on August 5, 2024 at 5:28 PM

Evidence reveals previously undisclosed luxury travel and gifts that Justice Clarence Thomas took from billionaire BFF Harlan Crow. You'll be forgiven if that lede sounds familiar, but this is actually breaking news and not a rehash of the last time we learned that Clarence Thomas gobbling up free gifts without including them on legally mandated disclosure forms. Or the time before that. Or the time before that. It can get confusing.



(Photo by Drew Angerer/Getty Images)

Indeed, it's worth noting that we wrote a story entitled "How Have We Not Yet Hit The Bottom Of The Clarence Thomas Scandal?" OVER A YEAR AGO.



A new Thomas scandal is up there with death, taxes, and RFK Jr. admitting to something batshit insane.

All told, Clarence Thomas has taken somewhere around \$6 million in undisclosed gifts as identified by Fix the Court ever since he started not-so-subtly threatening to abandon his post as the Court's conservative vanguard unless someone figured out how to get him better paid as ProPublica uncovered. Since then he's gotten trips, a rent-free home for his mom, the private school tuition for his "like-a-son" that he no longer talks to, and an RV through a loan that he apparently never paid back. That doesn't include the Federalist Society's chief paying Ginni Thomas under the table.

A letter to lawyers for Thomas's billionaire mancrush Harlan Crow from Senate Finance Committee Chair Ron Wyden flags previously undisclosed flights and reasserts a demand for more information on Crow's tax treatment for his superyacht. Because Crow has taken

millions in losses on his taxes ostensibly based on his boat, though the Thomas probe has raised questions as to whether or not the yacht has ever been a for-profit venture as opposed to a mechanism solely to take from Crow-entity Peter to pay Crow-entity Paul and write it all off.

Furthermore, it was revealed just a few weeks ago that Justice Thomas enjoyed complimentary use of private jets paid for by Mr. Crow on 17 different occasions since 2016, with 9 of those flights coming in the last three years. While Justice Thomas has only recently updated his financial disclosures to include an eight-day voyage aboard the Michaela Rose in Indonesia in 2019, Justice Thomas still has not disclosed other trips on the Michaela Rose. Public reports show evidence that Justice Thomas was a passenger aboard the Michaela Rose in Greece, New Zealand and elsewhere.

Earlier this year, the Supreme Court blessed a public corruption scheme where companies hand over gratuities to a state or local public official to “thank” them for delivering the results the company wants. Since the gift isn’t explicitly dangled beforehand, the Supreme Court — with a supporting vote from Thomas, of course — declared that this is an innocent payout. If the gift happens to engender further beneficial acts from the official now accustomed to getting paid off on the backend, well, the Supreme Court sees nothing wrong with that (at least under federal law).

This case doesn’t address whether or not a federal official can be charged for accepting tips, but the rhetoric employed in the opinion doesn’t suggest that the majority has much appetite for punishing anything without an explicit, pre-action, quid pro quo. The sort of arrangement easily circumvented by a patronage relationship between a government official and a “friend” who just happens to have billions of dollars and an agenda.

But you know what’s most galling about the vacation amnesia that Clarence Thomas and his benefactor seem to have developed?

The average American worker gets 11 vacation days a year and around 55 percent of Americans don’t even use them all. Most of us toil to keep the bills paid, giving our bosses back the paid vacation in the form of gratuitous labor. We take a trip to Disneyworld once or twice with the kids and then head back to the grind to pay it off.

Meanwhile, Clarence Thomas seems to have simply forgotten the various times he lounged on a superyacht as it wended its way through the Greek isles. Who amongst us hasn’t taken a private jet that someone else paid for to New Zealand and just totally blanked on it? With a roughly \$240K paycheck, all that private luxury travel becomes so impossible to keep straight!

Or maybe he actually does remember those trips and just decided to thumb his nose at federal anti-corruption measures because he has unchecked contempt for the American people.

Hard to say which honestly.

Earlier: Senators Beg Merrick Garland To Do His Job And Investigate Clarence Thomas If You've Appreciated The Service You've Received, Consider Tipping Your Supreme Court Justices!

Clarence Thomas Took EVEN MORE Free Trips On Private Planes That He's Still Not Disclosed!



Joe Patrice is a senior editor at Above the Law and co-host of Thinking Like A Lawyer. Feel free to email any tips, questions, or comments. Follow him on Twitter if you're interested in law, politics, and a healthy dose of college sports news. Joe also serves as a Managing Director at RPN Executive Search.

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Aug. 5, 2024, 12:19 PM PDT; Updated: Aug. 5, 2024, 2:21 PM PDT

Thomas Took More Undisclosed Flights, Senate Panel Says (1)

By Lydia Wheeler

- Committee is investigating GOP donor for tax evasion
- Records show more travel with justice went undisclosed

Bloomberg Law News 2024-08-06T10:03:35795442286-04:00

Thomas Took More Undisclosed Flights, Senate Panel Says (1)

By Lydia Wheeler 2024-08-05T15:19:14000-04:00

- Committee is investigating GOP donor for tax evasion
- Records show more travel with justice went undisclosed

Justice Clarence Thomas appears to have taken additional trips on billionaire Republican donor Harlan Crow's private jet that he never disclosed, according to new information obtained by the Senate Finance Committee.

Committee Chair Sen. Ron Wyden (D-Ore.) said he received records from the US Customs and Border Protection that show Thomas and his wife, Ginni, flew from Hawaii to New Zealand and back on Crow's private jet in November 2010. Wyden listed the unreported trip in a letter Monday to Crow's attorney Michael Bopp asking for more information about travel with the justice.

"The committee seeks to understand the means and scale of Mr. Crow's undisclosed largesse to Justice Thomas to inform several pieces of legislation" that it's drafting, Wyden wrote in the letter, which was first reported by The New York Times.

Wyden said those proposals include changing the federal financial disclosure law, adding filing requirements in the tax code for gift tax returns, and creating audit requirements for Supreme Court justices.

Democrats have called for overhauling how the Supreme Court operates since former President Donald Trump's three appointments solidified a conservative majority.

President Joe Biden has endorsed 18-year term limits for the justices and an enforceable ethics code. He also advocated for a constitutional amendment to allow former presidents to be tried for crimes committed while in office. Biden said in a July 29 op-ed the court's decisions and ethics issues have prompted public questions about its fairness, and change is needed to restore confidence.

The Supreme Court adopted a formal code of conduct in November in response to growing demands for greater transparency and accountability, but it's been criticized for its lack of an enforcement mechanism. Calls for an enforceable code came after *ProPublica* reporting revealed Thomas had accepted lavish vacations, private jet travel, and other gifts from Crow that he never disclosed.

Thomas updated his financial disclosures in June but only to report an eight-day trip to Indonesia that year on Crow's private yacht, called the Michaela Rose. Fix the Court, a nonprofit advocating for changes to the court, estimated in a recent analysis that Thomas has received more than \$4 million in gifts since his 1991 confirmation.

Wyden said the committee has asked for financial records pertaining to Crow's yacht and private jet as part of its investigation into whether Crow is evading or avoiding taxes by claiming business deductions on personal trips like those taken with Thomas.

"I am deeply concerned that Mr. Crow may have been showering a public official with extravagant gifts, then writing off those gifts to lower his tax bill," Wyden said in the letter to Bopp. "This concern is only heightened by the Committee's recent discovery of additional undisclosed international travel on Mr. Crow's private jet by Justice Thomas."

In a statement, Crow spokesperson Michael Zona dismissed Wyden's request.

"Attorneys for Mr. Crow have already addressed Senator Wyden's inquiries, which have no legal basis and are only intended to harass a private citizen," the statement said. "Congress has no role in tax enforcement."

The statement said that Crow provided responsive information as part of an agreement with the Senate Judiciary Committee to end its inquiry.

"We consider this matter settled and refer Senator Wyden to our previous correspondence," the statement said.

The Senate Finance Committee has the authority to obtain Crow's taxpayer records, Ryan Carey, a spokesperson for the Finance Committee said in an email.

But, "Chairman Wyden's preference would be for Mr. Crow to comply with the investigation voluntarily, and if Mr. Crow's treatment of his yacht is compliant with tax law, it should be easy for him to demonstrate that to the committee," Carey said.

The Supreme Court's press office didn't immediately respond to requests for comment.

Wirecard AG

Two more former Wirecard executives charged in sprawling criminal investigation

Ex-finance chief and former chief product officer accused of having failed to fulfil legal obligations to now-collapsed group



Wirecard's former chief financial officer Alexander von Knoop, left, and ex-chief product officer Susanne Steidl face jail terms of up to 15 years if they are found guilty on all counts © Reuters/dpa/picture alliance

Olaf Storbeck in Frankfurt 6 HOURS AGO



Wirecard's former chief financial officer Alexander von Knoop and former chief product officer Susanne Steidl have been charged with breach of trust four years after the payments group crashed into insolvency.

Prosecutors accuse von Knoop and Steidl of having failed to fulfil their legal obligations to Wirecard when they approved more than €100mn of potentially fraudulent loans to sham companies controlled by a business partner of Wirecard's [fugitive chief operating officer Jan Marsalek](#).

Some of the funds were channelled to Marsalek who used them to repay a private loan from former chief executive Markus Braun.

[Wirecard](#) collapsed in June 2020 after disclosing that half its revenue and €1.9bn in corporate cash did not exist. It was one of Europe's largest accounting scandals: at its peak just two years earlier, the company had a market capitalisation of €24bn.

The charges against von Knoop and Steidl are narrower than those against Braun and two other executives — former head of accounting Stephan von Erffa and Oliver Bellenhaus, the head of Wirecard in Dubai — who have been charged with fraud, market manipulation and accounting manipulation.

However, von Knoop and Steidl could still face prison terms of up to 15 years if they are found guilty on all counts.

At the time of its collapse, Wirecard had more than €3bn of debt.

In addition to other unsecured loans that were made without full risk assessments and business checks, Wirecard gave a €100mn loan to a Singapore-based company controlled by Marsalek's business partner [James Henry O'Sullivan](#) shortly before the payments company collapsed into insolvency.

This loan consumed a large part of Wirecard's remaining liquidity. O'Sullivan has been charged in Singapore in relation to the Wirecard accounting fraud. Prosecutors allege that the €100mn loan, which was approved by the executive board, was "unjustifiable".

By agreeing this and other loans, von Knoop and Steidl "obviously and grossly violated their duties to Wirecard", the Munich prosecutors said in a statement on Tuesday, adding that the financial damage to the company added up to "several hundred million of euros".

Braun and von Erffa deny all allegations against them. Bellenhaus has admitted the charges and become a chief witness for the prosecution.

The ongoing trial of the first three Wirecard managers is expected to run until mid-2025 at least.

Late last year, von Knoop's predecessor as chief financial officer, Burkhard Ley, was charged with fraud, breach of trust, accounting and market manipulation. Munich courts are expected to take months to review the charges and open trials.

Von Knoop's lawyers said their client did not have any knowledge of "potential activities to the detriment of Wirecard and its shareholders" and that they were "confident that the criminal trial will conclude with a good result for him".

A spokesperson for Steidl declined to comment.

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PwC

China Evergrande liquidators launch legal action against PwC

Filings to Hong Kong court accuse Big Four auditor of 'negligence' in its work for collapsed Chinese property group



China Evergrande's default in 2021 triggered a property sector slump that sent shockwaves through the Chinese financial system © Bloomberg

Chan Ho-him and **Kaye Wiggins** in Hong Kong 4 HOURS AGO



China Evergrande's liquidators have launched court proceedings against PwC, accusing the Big Four auditing firm of "negligence" and "misrepresentation" in its work for the collapsed property group.

Lawyers for the liquidators started the legal process against PwC Hong Kong and PwC Zhong Tian, the firm's mainland China arm, in March, court documents obtained by the Financial Times on Tuesday showed. The documents — which do not say how much money the liquidators might sue for — had not previously been made public.

The March filing with Hong Kong's High Court, known as a writ of summons, lays the ground for a legal case that would add to PwC's woes just as it [braces for penalties](#) from Chinese authorities over its work for Evergrande. PwC, which resigned as the property group's auditor last year, had given it a clean bill of health for more than a decade before it collapsed.

The liquidators have also started court proceedings against international commercial real estate services company CBRE and advisory group Avista Valuation Advisory over valuation reports they produced for Evergrande and its subsidiaries in 2018, a separate court document seen by the FT showed.

China Evergrande was the world's most indebted property developer when it defaulted on its international debts in 2021 with more than \$300bn in liabilities. That precipitated a broader property sector cash crunch that sent shockwaves through China's financial system.

The court filings on behalf of Evergrande's liquidators, the Alvarez & Marsal restructuring specialists Eddie Middleton and Tiffany Wong, are a sign of how the developer's collapse could have big consequences for the global professional services firms that helped enable its rapid rise.

In the filing against the [PwC](#) entities, lawyers representing the liquidators said the claims were for "losses and damages" in relation to "breach of contract, breach of duty . . . misrepresentation, negligence by, and/or unjust enrichment".

The claim relates to a March 2018 PwC auditor's report on Evergrande covering the year to December 2017, among other work for the developer and its subsidiaries, according to the filing. Such claims are typically time-barred if not started within six years of the events in question, said two lawyers with knowledge of the Hong Kong process.

Separately, PwC is facing a possible fine from Chinese authorities over its audit of Evergrande's mainland businesses. China's securities regulator said in March that its mainland property unit inflated revenues by \$78bn in 2019 and 2020. Partners at PwC fear they could face some of the biggest penalties ever imposed on a Big Four firm in China.

The FT [reported in February](#) that Middleton and Wong were preparing to bring a claim against PwC over potential negligence.

A Hong Kong judge in January appointed the pair as Hong Kong-listed Evergrande's liquidators after its plans for offshore restructuring failed. But restructuring specialists have said it is unclear how much the liquidators will be able to recover as most of Evergrande's assets are in mainland China, which operates under a different legal system.

On Monday, Evergrande's liquidators said in a filing to Hong Kong's stock exchange that they had commenced court proceedings to [“recover” funds including “dividends and remuneration” worth a total of about \\$6bn](#) from its founder Hui Ka Yan and other top company executives.

Another court document obtained on Tuesday gave details of Hui's global assets, whose worth it put at up to \$7.7bn. Hui's assets included two Rolls-Royce Phantom cars, three jets and two yachts as well as properties in London and Los Angeles, it said.

Hong Kong's High Court last week lifted a confidentiality order it had imposed on court proceedings by Evergrande's liquidators in the territory, the liquidators said in a stock exchange filing on Monday.

PwC and CBRE declined to comment. Avista did not immediately respond to a request for comment.

Additional reporting by Thomas Hale in Shanghai

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Offsets Market Faces Upheaval as Third of All Credits Fail Test

By Natasha White and Akshat Rathi

- Renewable energy credits not eligible to carry 'CCP' label
- The decision by the ICVCM is set to impact 32% of the market

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Offsets Market Faces Upheaval as Third of All Credits Fail Test

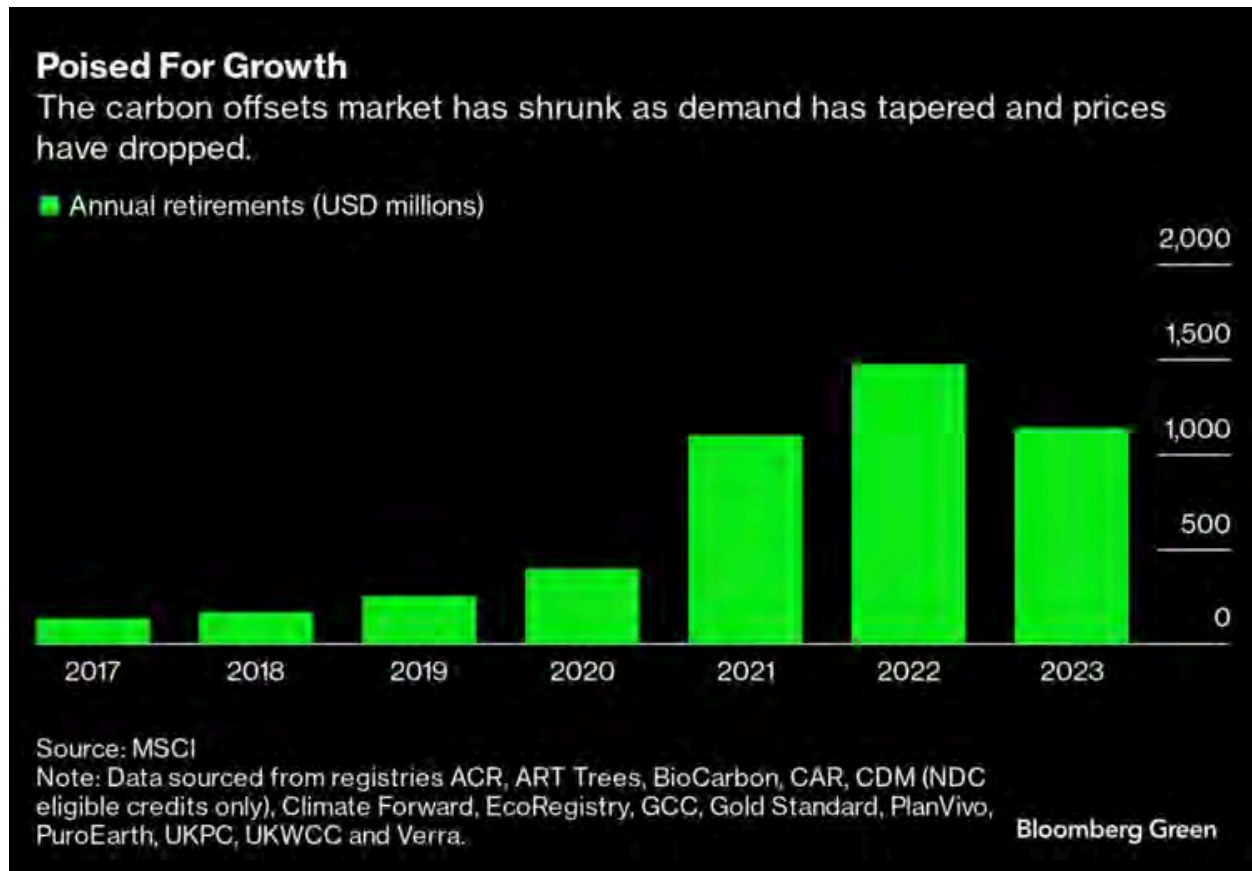
By Natasha White and Akshat Rathi2024-08-06T06:10:13350-04:00

- Renewable energy credits not eligible to carry 'CCP' label
- The decision by the ICVCM is set to impact 32% of the market

The market for carbon offsets faces renewed upheaval after a major category of credits failed to win approval from a key oversight body.

The Integrity Council for the Voluntary Carbon Market has decided that its Core Carbon Principles label can't be used on carbon credits issued under existing renewable energy methodologies. The move affects about 236 million credits, or 32% of the market, the ICVCM said in a statement on Tuesday.

The development has the potential to deliver a serious blow to a market that's already contracted by almost a quarter from a 2022 peak. But it's also the latest sign that efforts are underway to clean up carbon offsetting, a practice that's drawn regular criticism for allegedly enabling greenwashing.



Source: Source: MSCI

According to the ICVCM, existing methodologies used for the offsetting structures in question are “insufficiently rigorous in assessing whether the projects would have gone ahead without the incentive of carbon credit revenues.”

The assessment is welcome and “sends a signal to clean up the market from the many low quality credits that are still available,” said Gilles Dufrasne, policy lead at Carbon Market Watch, a nonprofit.

For years, climate experts have warned that renewable energy credits are largely worthless. That’s because in most countries, renewables already represent a competitive alternative to fossil fuels, meaning any additional revenue from carbon credits is unlikely to steer decisions on whether to build or expand green energy capacity. Instead, extra income has tended to go to developers.

Listen on Zero: How Carbon Offsets Went Wrong



Already booming, the \$2 billion carbon offset industry is poised to keep growing. The US is even incorporating offsets into efforts to fulfill international climate pledges. There's just one problem: In the 30 years since carbon offsets were created, they haven't been proven to work. In this episode of Zero, Bloomberg Green reporter Akshat Rathi talks to Mark Trexler of The Climatographers, who helped build the first carbon offset program in 1988, about what went wrong with offsets and if there's any way to fix them.

Renewable energy credits have proved popular among corporates. In 2022, they made up about half of all offset purchases, rising from 38% a year earlier, according to a study by Bloomberg. Companies that have focused their offsets procurement on such credits include Volkswagen AG, Etsy Inc. and TotalEnergies SE, Bloomberg has previously reported.

The credibility of the voluntary carbon market via which such credits are traded has faced scrutiny following a series of investigations showing that a variety of offsets weren't meeting their stated emissions-reduction claims. The ICVCM, an industry-led governance group, has been trying to address such concerns by limiting its stamp of approval — the CCP label — to credits that pass its quality threshold.

To carry the CCP label, a credit must be issued by one of the five offsets programs that ICVCM has vetted and be generated using an approved methodology. In June, the ICVCM announced the first two categories to be green-lit: projects that capture and destroy methane from landfills, and those that remove ozone-depleting gases from discarded equipment such as air conditioners. These also drew criticism, however, with CarbonPlan, a research nonprofit that specializes in offsets, alleging they offer no additional emissions reductions beyond those that would have occurred without credits.

On Tuesday, the ICVCM announced two further methodologies that merit a CCP label: one for projects that detect and repair methane leaks in the gas industry, and another for those that capture methane from landfill sites. The group rejected a methodology for projects in the magnesium industry that reduce the release of sulfur hexafluoride, a gas that traps 22,000 times as much heat ton-for-ton as carbon dioxide.

The guidance body is in the process of assessing further categories of carbon credits, including the popular but controversial REDD+ forestry methods. A decision on those is expected in the coming months. For now, roughly 27 million credits are eligible to carry the CCP label, which is about 3.6% of the market, the ICVCM said.

The group has left the door open to new “more rigorous” renewable energy credit methodologies once these are developed, on the basis that they help spur clean energy build-out in places where it's not yet established.

“We are taking the tough decisions necessary to build a high-integrity voluntary carbon market that can be scaled to meaningfully fund climate solutions,” Annette Nazareth, chair of the ICVCM, said in a statement.

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Catching Up With Delaware's Chancery Court

By **Leslie A. Pappas**

Law360 (August 5, 2024, 4:37 PM EDT) -- Sunken treasure, rock band discord, a wrestling competition, and more news about Elon Musk — all in all, a colorful week in Delaware's Court of Chancery. The First State's famous court of equity also pushed forward on disputes involving a famous social media app, Delaware's largest hospital system, an artificial intelligence company and a budding commodity futures exchange.

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

In the Courtroom

At a hearing in Wilmington, Chancellor Kathaleen St. J. McCormick **questioned** whether Tesla Inc. stockholders could vote to resurrect Elon Musk's \$56 billion stock-based compensation plan, saying there were "zero cases under Delaware law" where stockholders were allowed to ratify a corporate act that had been found to be a breach of fiduciary duty.

Vice Chancellor Lori W. Will **declined to dismiss** a dispute between Digital World Acquisition Corp. — the special purpose acquisition company that took former President Donald Trump's social media site Truth Social public — and its founding investor ARC Global Investments II LLC, concluding that the case needed more discovery.

In a teleconference following a **one-day trial** in Wilmington, the vice chancellor said multiple conflicting operating agreements made the issues surrounding the March 22 ouster of Digital World's former CEO Patrick Orlando too "muddled" to decide without additional "sorting out."

Decisions

At a bench ruling in Wilmington after oral arguments, Vice Chancellor Morgan T. Zurn **rejected a settlement** between Forte Biosciences Inc. and Camac Partners LLC that would have ended the activist investor's class action over Forte's alleged board entrenchment, finding that the proposed deal gave Camac "unique and personal benefits" that weren't shared with the rest of the class.

Also at a bench ruling, Vice Chancellor Will **denied motions to dismiss** a stockholder complaint over the \$1.5 billion deal that took sports data company Genius Sports Ltd. public.

In a post-trial opinion, Vice Chancellor J. Travis Laster **concluded** that a venture capital firm that sued for an appraisal of its investment in FairXchange Inc. is entitled to \$10.42 per share, the same as the \$330 million deal price that Coinbase Global Inc. offered when it bought the securities exchange startup in 2022.

In a 51-page written ruling, Vice Chancellor Nathan A. Cook **rejected a bid** by the former CEO of InterMune Inc., W. Scott Harkonen, to escape demands to repay nearly \$6 million in legal fees covered by the biotech venture and insurers during his unsuccessful defense against a 2009 wire fraud conviction, denying all claims for legal fee indemnification.

Delaware Superior Court Judge Meghan A. Adams, **sitting as vice chancellor** by designation, **trimmed a suit** that stockholders' representative Fortis Advisors LLC filed against Medtronic Minimed Inc. after its 2020 acquisition of insulin pen manufacturer Companion Medical Inc., tossing claims related to a missed milestone but keeping one about a withheld escrow payment.

And Magistrate Selena E. Molina **ruled** that a pension fund shareholder that sued Paramount Global for more information on its pending merger with Skydance Media could not gain access to the entertainment company's corporate documents, saying the pension fund hadn't shown a "credible basis" to suspect wrongdoing.

Delaware's Supreme Court **affirmed a ruling** from Vice Chancellor J. Travis Laster that preserved a manager's legal fee advancement claim against CSC Upshot Ventures I LP, agreeing with the Chancery Court that the tech investment company waited too long to try to arbitrate the dispute.

Delaware's Supreme Court also **upheld a December decision** from Superior Court Judge Meghan A. Adams, sitting by designation as a vice chancellor, that dismissed a suit about "earnout" payments following the merger of Edwards Lifesciences and Valtech Cardio Ltd.

And the state's high court also **affirmed** both the Chancery and Superior Courts' dismissal of a suit from two religious leaders who sued over state-imposed COVID-19 restrictions, finding they had no standing to proceed with their claims because they waited too long to file the suit.

New Cases

Regional hospital system and healthcare provider Christiana Care Health System Inc. **sued** Delaware's governor and other state officials to void newly enacted legislation that empowers a government-appointed board to review hospital costs, arguing that the new law is unconstitutional and should be struck down.

Jonathan Cain, keyboardist of the rock band Journey, **petitioned the court** to appoint a "third, deadlock-breaking director" for the band's operating entity Freedom 2020 Inc., arguing that Cain and guitarist Neal Schon, who each hold 50% of the company's voting stock, "fundamentally disagree on significant aspects of the management and operation of the company."

A former shareholder of Gores Sponsor V LLC, the blank check company that took Ardagh Metal Packaging Group SA public, **sought damages** for the company's stock plunge following the \$8.5 billion cash-and-share deal.

In a complaint made public last week, the former chief financial officer of the private equity firm 777 Partners LLC **sought advancement of his legal fees** in connection with a fraud investigation and at least 20 civil lawsuits related to the company's business.

Bruce Taylor, a stockholder of Via Renewables Inc., **accused** the Houston energy company's board of breaches of fiduciary duty in connection with its recent acquisition by controlling stockholder W. Keith Maxwell III, echoing allegations made in an **earlier complaint**.

Settlements

Parties in a stockholder suit that challenged the \$1.35 billion merger that took Florida-based digital health manager UpHealth Inc. public have reached a **\$7.25 million settlement** of all claims, pending court approval, according to an agreement filed last week.

GigCapital Global agreed to **pay \$2.5 million to settle** a shareholder class action that sought damages for alleged breaches of fiduciary duty and unjust enrichment in connection with the 2021 go-public merger with artificial intelligence company BigBear.ai.

Get It Together

Two legal tag teams **pitched competing bids** to lead a consolidated stockholder suit aimed at World Wrestling Entertainment Inc. and its \$21.4 million merger with Ultimate Fighting Championship, with one stressing the depth of its complaint and the other its depth of experience pressing sexual misconduct claims.

Fees, Fees, Fees

Duane Morris LLP attorneys **asked for a \$3.25 million fee award** for a five-year effort to unwind

an unfair merger and recoup a minority investor's stake in a sunken pirate ship salvage operation — one that could potentially be worth as much as \$1 billion.

McCarter & English LLP told the court that it is **asserting a \$492,000 lien** over any monies awarded to tool manufacturer Red Mud Enterprises LLC, saying its former client has yet to pay the firm for representing the company in litigation in which it won legal fees.

Quotable

"The question is not whether the court is taking anything away from stockholders. The question isn't whether stockholders have that power ... The real question is whether stockholders can ratify an adjudicated breach of fiduciary duty." – Chancellor Kathaleen St. J. McCormick, **in response to arguments** from Tesla Inc. that she should accept a June stockholder vote approving Elon Musk's \$56 billion stock-based compensation plan, months after the chancellor voided it.

--Additional reporting by Rose Krebs and Jeff Montgomery. Editing by Kelly Duncan.

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Indivior Accused Of Overstating Prospects Of 3 Opioid Drugs

By **Katryna Perera**

Law360 (August 5, 2024, 8:29 PM EDT) -- Drugmaker Indivior PLC has been hit with a proposed investor class action in Virginia federal court over claims it overstated the financial prospects of its drugs used to treat opioid use disorders and the company's ability to forecast such financial projections.

Herbst Capital Management LLC **filed a complaint** on Friday against Indivior, its CEO Mark Crossley and its Chief Financial Officer Ryan Preblich. The hedge fund's suit is on behalf of a proposed class of individuals and entities who purchased or acquired Indivior securities between Feb. 22, 2024, and July 8, 2024.

According to the complaint, Indivior develops, manufactures and markets several drugs to treat opioid use disorders and serious mental illnesses. Its flagship product Sublocade is a monthly injection used to treat moderate to severe opioid use disorder, Herbst said.

Indivior also sells Perseris, an injection used to treat schizophrenia in adults, and in October 2023, Indivior launched Opvee, a nasal spray used to reverse opioid overdoses on an emergency basis.

The hedge fund alleged that throughout the class period, Indivior and the executives made false and misleading statements about the company's ability to forecast the negative impacts of certain legislation on the financial prospects of the drugmaker's products and, as a result, overstated the financial prospects of Sublocade, Perseris and Opvee.

The suit specifically references the Consolidated Appropriations Act, signed into law in December 2022, which "de-linked" the continuous enrollment provision for Medicaid programs from the COVID-19 public health emergency, "thus ending continuous enrollment on March 31, 2023, which led states to begin disenrolling people from Medicaid."

Herbst said the defendants knew the negative impact of the withdrawal from Medicaid on Sublocade sales was "incredibly difficult" to forecast, but they still stated Indivior was expecting "another year of strong net revenue growth led by Sublocade" and only a "modest impact from Medicaid disenrollment."

The complaint also claims Indivior and the executives knew or recklessly disregarded that due to the negative impact of certain legislation on the drugmaker's financial prospects, it was unlikely to meet its previously stated financial goals and that Indivior was at risk of ceasing all sales and marketing activities specifically related to Perseris.

The truth came to light on July 9 when Indivior issued a press release announcing a business update on its financial performance for the second quarter and fiscal year 2024. According to the complaint, the update reduced the drugmaker's fiscal year 2024 total net revenue guidance to \$1.15 billion to \$1.215 billion from a previous range of \$1.24 billion to \$1.33 billion.

The update also reduced Sublocade's net revenue guidance to \$765 million to \$805 million from the previous range of \$820 million to \$880 million and Opvee's net revenue guidance to \$9 million to \$14 million from the previous range of \$15 million to \$25 million.

"The July 9 update also shockingly advised that the company would immediately cease all sales and

marketing activities related to Perseris ... [and] explained that the reduction in guidance of Sublocade net revenue for FY 2024 resulted in major part from accelerated Medicaid disenrollments at the end of Q2 2024," Herbst said.

It continued: "The July 9 update further explained that the cessation of the marketing and sale of Perseris was due to the highly competitive market 'and impending changes that are expected to intensify payor management in the treatment category in which Perseris participates,' which led the company to conclude that 'there is no longer a path forward for Perseris that is financially viable.'"

Additionally, Indivior stated that Opvee had "lagged expectations." On this news, Indivior's stock price fell \$5.15 per share, or 33.57%, to close at \$10.19 per share on July 9, 2024, according to the complaint.

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

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

Herbst Capital Management is represented by Steven J. Toll, Daniel S. Sommers and S. Douglas Bunch of Cohen Milstein Sellers & Toll PLLC, Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP, and Joshua E. Fruchter of Wohl & Fruchter LLP.

Counsel information for the defendants was not available Monday.

The case is Herbst Capital Management LLC v. Indivior PLC et al., case number 3:24-cv-00554, in the U.S. District Court for the Eastern District of Virginia.

--Editing by Lakshna Mehta.

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DXC Investor's Suit Says Execs Overhyped Integration Efforts

By **Gina Kim**

Law360 (August 5, 2024, 8:04 PM EDT) -- A DXC Technology investor filed a proposed class action in Virginia federal court Friday alleging the information technology giant over-touted its "transformation journey" and efforts to reduce restructuring and integration costs after acquiring several companies that caused investors to buy DXC common stock at artificially inflated prices.

In a 19-page complaint filed Aug. 2, investor Roofers' Pension Fund sued DXC Technology and several of its current and former executives for allegedly violating securities laws in connection with several statements made during the class period from May 26, 2021, to May 16, 2024, with regard to the company's "transformation journey" after acquiring multiple companies and their infrastructure in the last several years.

Roofers' Pension Fund alleged that the company made misleading statements regarding DXC's ability to integrate business systems of the companies it bought, along with its touting DXC's efforts to cut back on costs for restructuring, separation and integration to increase free cash flow.

"In truth, defendants knew or recklessly disregarded that the company was only able to reduce its restructuring and [transaction, separation, and integration] costs by limiting its integration efforts," the suit said. "As a result of defendants' misrepresentations, shares of DXC common stock traded at artificially inflated prices throughout the class period."

On Aug. 3, 2022, the company announced disappointing first quarter results and blamed the bad performance on the fact that cost optimization efforts weren't moving as fast as expected, the plaintiff alleged, causing common stock prices for DXC to dip from \$31.52 to \$26.15 per share.

"Despite these disclosures, defendants continued to misrepresent DXC's transportation and successful reduction in restructuring and [transaction, separation, and integration] costs in order to 'transition DXC from stability to higher performance,' the complaint said.

A year ago, DXC held a conference call in which former chair and CEO Michael Salvino said the company was able to manage in areas that it could properly control, like restructuring and integration and free cash flow. In another conference call in November 2023, DXC said it was focusing on pivoting from stability to higher performance and that the company's execution of those efforts met expectations, or, in some instances, were "even better," the complaint said.

However, the defendants knew or disregarded the fact that DXC had cut back on restructuring and integration costs during the class period by curtailing the companywide "transformation," and simply delayed costs that DXC would eventually have to spend to install the restructuring efforts it purported to successfully execute during the class period, the plaintiff alleged.

Then on Dec. 20, 2023, DXC announced that Salvino was exiting the company, effective two days prior, causing stock prices to plunge 12%, from \$25.03 to \$21.99 per share, the suit said. DXC continued touting its transformation and efforts to reduce integration and restructuring costs, the suit said.

"Months later, DXC's new CEO admitted that 'the previous restructurings did not set a real, clean, solid, fully integrated baseline for profitable growth' because the systems that were acquired over time were 'never integrated, never deduped,' and admitted that the company was 'not [a] fully

functional organization," the suit said. "DXC also announced it would need to spend an additional \$250 million to achieve the restructuring and integration process it falsely claimed to have been successfully implementing during the class period."

DXC stock prices plunged from \$19.88 to \$16.52 per share as the news broke, the suit said.

The complaint asserts violations of Section 10(b) of the Exchange Act and Rule 10b-5 along with a violation of Section 20(a) of the Exchange Act. Roofers' Pension Fund now asks the court to certify the class and order the defendants to pay compensatory damages, attorney fees and costs, and hold a jury trial.

Representatives for the plaintiff and defendants did not immediately return inquiries seeking comment Monday.

Roofers' Pension Fund is represented by Emily M. Scott of Hirschler Fleischer PC and Avi Josefson and Scott R. Foglietta of Bernstein Litowitz Berger & Grossmann LLP.

Counsel information for the defendants was not immediately available.

The case is Roofers' Pension Fund v. DXC Technology Co. et al., case number 1:24-cv-01351, in the U.S. District Court for the Eastern District of Virginia.

--Editing by Jay Jackson Jr.

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Elon Musk Can't Beat Twitter Investors' Suit Over Bot Claim

By **Rae Ann Varona**

Law360 (August 5, 2024, 11:30 PM EDT) -- A California federal judge on Monday denied Elon Musk's bid to escape a shareholder suit alleging he misled Twitter investors by claiming the company had to provide information on an alleged bot problem before he could move forward with his \$44 billion acquisition, saying Musk leaned on already-rejected arguments.

U.S. District Judge Charles R. Breyer wrote in a **six-page order** that he had already ruled when refusing to toss the proposed class action in December that Twitter investors plausibly alleged a securities violation as to three statements Musk made after entering into a deal to acquire the social media company.

Judge Breyer said that Musk, in now moving for judgment on the pleadings, was "largely making the exact same arguments" that the court had "explicitly considered and rejected."

"Just as Musk was allegedly bound by his waiver of due diligence after entering into the merger agreement, Musk is bound by this court's decision that plaintiffs' case can move past the pleadings stage," Judge Breyer wrote.

The investors, who **hailed** Musk into California federal court in October 2022, alleged in an amended complaint in June 2023 that Twitter entered into a deal to be acquired by a Musk-owned entity in April 2022. They said that Musk pledged billions of dollars of his Tesla stock to raise cash but that Tesla's stock tanked by about \$1,000 in the days after the Twitter deal was announced.

The investors — who have since sought **class** certification — said that Musk then took to Twitter on May 13 of that year, tweeting that the deal was "temporarily on hold pending details" concerning spam accounts on the social media platform.

Three days later, Musk stated during a tech conference in Miami on May 16, 2022, that fake and spam accounts made up at least 20% of Twitter's users, the investors said, adding that Musk tweeted that the information about the number of bot accounts was "fundamental" to the company's financial health.

Musk tweeted the next day that the actual number of bot accounts on Twitter could be "much" higher and said the deal "cannot move forward" until Twitter showed proof that the number was less than 5%.

The investors asserted that Musk made those statements to drive Twitter's stock price down. And that it did, the investors said.

Musk moved to dismiss the investors' entire suit in July 2023. But Judge Breyer in **December** refused to do so, ruling that the investors plausibly alleged their claims as to the May 13, 16, and 17, 2022 statements.

Musk then moved for judgment on the pleadings in March.

During a hearing in June, Judge Breyer **noted** that he already refused to toss investors' claims based on the 2022 statements.

In his Monday order, Judge Breyer explained that the so-called "law of the case" doctrine generally bars a court from reconsidering issues that were already decided by the same, or higher court, in the identical case. The judge then pointed to an exchange from a previously held motion-to-dismiss hearing that he said was "identical" to what Musk was currently arguing — "that is, investors knew he was not entitled to the bot data because the merger agreement was publicly available, and so his statements were not materially misleading."

Judge Breyer wrote that while a court does have to discretion to reconsider an issue in certain circumstances, including when a first decision is clearly erroneous or when a law changes, "Musk does not contend that these circumstances exist."

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

The shareholders are represented by Aaron Paul Arnzen, Francis A. Bottini Jr. and Albert Y. Chang of Bottini & Bottini Inc., by Mark Cotton Molumphy, Joseph W. Cotchett and Tyson Carl Redenbarger of Cotchett Pitre & McCarthy LLP, and by Julia Q. Peng of Reed Smith LLP.

Musk is represented by Alexander Benjamin Spiro, Jesse A. Bernstein, Jonathan E. Feder, Michael T. Lifrak, Joseph C. Sarles, Matthew Alex Bergjans and Nathan Archibald of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Giuseppe Pampena et al. v. Elon Musk, case number 3:22-cv-05937, in the U.S. District Court for the Northern District of California.

--Additional reporting by Hailey Konnath, Dorothy Atkins and Bonnie Eslinger. Editing by Michael Watanabe.



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GM Slams Investors' Suit Alleging AV Tech Lapses

By **Sydney Price**

Law360 (August 5, 2024, 6:23 PM EDT) -- General Motors has asked a Michigan federal court to dismiss a proposed securities fraud class action alleging it downplayed safety concerns about its autonomous vehicle technology, arguing the investors have contorted definitions of safety terms to bolster the suit.

The amended complaint claims that the truth regarding General Motors Co.'s precautions for driverless vehicles and airbags began to emerge in October 2023 when a news report revealed a pedestrian suffered major injuries after she was struck by a driverless Cruise vehicle.

GM says in its Friday motion to dismiss the suit that the plaintiffs plead no facts showing GM or its executives ignored "multiple, obvious red flags" suggesting that Cruise vehicles were less advanced than public statements conveyed. The suit accuses GM and its executives of repeatedly saying that GM's Cruise technology had reached "level 4" autonomy, referring to a technical benchmark set by the Society for Automotive Engineers, according to the motion.

But GM says the plaintiffs "invent their own definition" of level 4 autonomy that is inconsistent with the industry definition. According to the automaker, level 4 autonomous vehicles may still require human input, and GM and Cruise "conveyed the limited, but enduring, role" of humans in assisting Cruise's autonomous vehicle fleet.

According to the suit, an NBC Bay Area news report revealed on Oct. 2, 2023, that earlier in the day, a pedestrian suffered major injuries after she was run over by and pinned under a driverless Cruise vehicle. The article also noted that the California Department of Motor Vehicles had launched a safety probe into Cruise vehicles a couple of months prior.

GM contends that the report of the accident is not enough to show that the defendants made any claims they knew were false regarding the vehicles' safety.

"A single incident, while tragic, is insufficient to show that 'Cruise did not have a Level 4 system,' or that its AVs could not 'drive safely, reliably, and legally without input from humans,' as plaintiffs allege — particularly given the millions of miles that Cruise AVs had driven without any similar incident," the motion states.

GM also asserts that since the 2023 accident did not expose any fraud at the company, investors could not have been damaged financially.

"Plaintiffs must plead a 'causal link' between released information that 'must in a practical sense be new,'" the automaker says.

According to the suit, on Oct. 24, 2023, GM's driverless technology again made headlines when the California DMV called for the immediate suspension of Cruise's deployment and driverless testing permits. The department said Cruise had misrepresented information related to vehicle safety, the complaint states. That same day, Cruise made a blog post addressing the accident that had occurred earlier in the month, according to the suit.

But GM argues that this alleged corrective disclosure was "old news" since the crash had been reported weeks before.

GM also states that investors were not damaged by another disclosure made two days later when

Cruise announced it would pause all of its autonomous vehicle operations across the country "to examine our processes, systems, and tools and reflect on how we can better operate in a way that will earn public trust."

"[There is] no loss causation where disclosure 'contained information that was already in the public domain,'" GM adds.

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

The investors are represented by Carol C. Villegas, Jake Bissell-Linsk, Guillaume Buell and Matthew J. Grier of Labaton Keller Sucharow LLP, Matthew Henzi and Cynthia Billings-Dunn of Asher Kelly PLLC, and Robert D. Klausner and Stuart Kaufman of Klausner Kaufman Jensen & Levinson PA.

GM is represented by Daniel J. Kramer, Andrew J. Ehrlich, Richard C. Tarlowe and Kristina A. Bunting of Paul Weiss Rifkind Wharton & Garrison LLP and Stephanie A. Douglas and Roger P. Meyers of Bush Seyferth PLLC.

The case is Shamoon v. General Motors Co. et al., case number 2:23-cv-13132, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Kristen Becker.

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Pluralsight's \$20M Settlement With Investors Gets Initial OK

By **Hailey Konnath**

Law360 (August 5, 2024, 10:41 PM EDT) -- A Utah federal judge has given his preliminary blessing to Pluralsight Inc.'s proposed \$20 million settlement with a certified class of investors accusing the cloud-based and video training courses provider of securities fraud, according to an order issued Friday.

U.S. District Judge David Barlow granted preliminary approval of the deal, which would put to rest investors' claim that Pluralsight and its top brass misled them about the company's sales force productivity and future billings growth. In the short order, the judge found the deal fair, reasonable and adequate to the class and stayed the litigation pending a January settlement hearing.

Judge Barlow also signed off on the investors' plan for notifying class members.

Under the deal, Pluralsight will pay \$20 million in cash to potentially thousands of investors who purchased stock between Jan. 16, 2019, and July 31, 2019.

In their 2019 suit, lead plaintiffs Indiana Public Retirement System and Public School Teachers' Pension and Retirement Fund of Chicago alleged that Pluralsight made misleading statements and omissions to investors that purportedly caused the price of Pluralsight stock to be artificially inflated and harmed investors.

Claims were initially lodged in New York federal court, but the case was quickly transferred to Utah.

After a motion to dismiss was partially granted, the claims were narrowed to a single alleged misstatement regarding that productivity and the billings, according to the investors' motion for preliminary approval.

In their motion, the investors noted that they "faced challenges in establishing that Pluralsight's statement was false or misleading and that the individual defendants knew that the statement was false or were reckless in making it."

Pluralsight and its leaders have argued that their statement was actually supported by facts. They also contended that the investors couldn't establish a causal connection between the alleged misrepresentation and the losses they claim to have suffered, per the motion.

"Considering these and numerous other risks, as well as the costs and delays of further litigation, lead plaintiffs and lead counsel believe the \$20 million recovery is an extremely favorable result for the class," the motion states.

The investors argued that the settlement will provide "very significant benefit" to the class, particularly because of the risk that they could recover less or nothing if the litigation endures.

"The subject matter of this case was technical and complex, creating potential hurdles to proving the elements of falsity and scienter required to prove a securities fraud claim," they said.

Carol V. Gilden, a Cohen Milstein Sellers & Toll PLLC partner representing the investors, said in a statement Friday, "We are very pleased that the court granted preliminary approval of this settlement."

"We look forward to bringing this hard-fought, certified class action to a close," Gilden said.

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

The investors are represented by Carol V. Gilden, Steven J. Toll and Jan E. Messerschmidt of Cohen Milstein Sellers & Toll PLLC and Keith M. Woodwell of Clyde Snow & Sessions PC.

Pluralsight is represented by Gregory L. Watts, Caitlin E. McKelvie, Tamara Lemmon, Ignacio E. Salceda, Stephanie L. Jensen, Tyre L. Tindall and McKinney Wheeler of Wilson Sonsini Goodrich & Rosati PC.

The case is Indiana Public Retirement System et al. v. Pluralsight Inc. et al., case number 1:19-cv-00128, in the U.S. District Court for the District of Utah.

--Editing by Jay Jackson Jr.

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Centessa Beats Shareholder Suit Over Kidney Drug

By **Katryna Perera**

Law360 (August 5, 2024, 4:48 PM EDT) -- A New York federal judge has tossed a shareholder lawsuit alleging that Centessa Pharmaceuticals PLC overstated the prospects of its kidney disease treatment ahead of the drugmaker's initial public offering, saying the plaintiffs have failed to allege any actionable misleading statements or omissions.

U.S. District Judge Gregory H. Woods issued an **opinion and order** on Friday saying the suing shareholders did not read Centessa's IPO registration statement "in context," which shows that the drugmaker and the other defendants did not "overplay their hand."

In fact, the defendants' actions were "far from it," the judge said, since nearly every one of the suit's challenged statements is a forward-looking opinion boasting Centessa's "beliefs" and hypotheses about the drug lixivaptan.

Judge Woods said that when the registration statement is read as a whole, it clearly "bespeaks caution" to the risk that any study underlying Centessa's beliefs about lixivaptan's prospects was "theoretically imperfect," and that the drug itself might fail to secure a safety profile that outperforms tolvaptan, another drug that was already approved by the U.S. Food and Drug Administration and on the market.

"Centessa dedicated about 80 pages of its registration statement to articulating all the things that may have gone wrong, including what actually did," the order states.

Judge Woods added that when read in context, the suit's challenged statements are not likely to have misled a reasonable investor, especially since it contained so many risk disclosures about everything from the company's "emerging growth" to study enrollment challenges.

Additionally, the judge noted that the registration statement "expressly warned" about the risk that allegedly caused the shareholders' losses — that Centessa would terminate its lixivaptan development program if it started to show the same negative side effects that plagued tolvaptan.

"Investors were specifically forewarned that, as a result of the exact problem the registration statement warned of — namely, the drug having adverse effects in clinical studies — they 'could lose all or part of [their] investment,'" the order states.

According to the order, Centessa, a pharmaceutical research and development company, developed lixivaptan to treat autosomal dominant polycystic kidney disease, which is a leading cause of kidney failure in the United States.

At the time, tolvaptan was the only other FDA-approved drug on the market to treat autosomal dominant polycystic kidney disease, but it had severe issues, including that some patients who took the drug began experiencing liver toxicity after three months.

The order states that lixivaptan "seemed promising at first," with early studies suggesting that the drug did not have some of the adverse side effects of tolvaptan. But those early results "turned out too good to be true," as one of the patients taking lixivaptan in a clinical study began experiencing the same liver toxicity issues associated with tolvaptan.

"As a result, Centessa discontinued clinical development of the drug for ADPKD patients. The same day that Centessa announced the discontinuation due to the adverse effects suffered by one of the

patients in its study, the price of Centessa's stock fell nearly 28%," the order states.

Centessa shareholders who held the company's stock at its IPO and following the announcement of lixivaptan's discontinuation brought the current action alleging that the company failed to disclose that "some of the studies and models Centessa had relied on in hypothesizing the potentially relatively favorable safety profile of lixivaptan (in comparison to tolvaptan) were, in plaintiffs' view, 'too short' in duration, utilized the 'wrong' population, or failed to account for an allegedly key variable," the order states.

Counsel for Centessa declined to comment on Monday, and counsel for the shareholders and Centessa's IPO underwriters did not immediately respond to requests for comment.

The shareholders are represented by Jeremy A. Lieberman, Murielle J. Steven Walsh and Emily C. Finestone of Pomerantz LLP and Shannon L. Hopkins, Gregory M. Potrepka and Rachel A. Berger of Levi & Korsinsky LLP.

Centessa is represented by Boris Feldman, Meredith Kotler and Adam Rosenfeld of Freshfields Bruckhaus Deringer US LLP.

Centessa's IPO underwriters are represented by Adam S. Hakki, Jeffrey D. Hoschander and Elizabeth J. Stewart of Shearman & Sterling LLP.

The case is *Jamia Fernandes v. Centessa Pharmaceuticals PLC et al.*, case number 1:22-cv-08805, in the U.S. District Court for the Southern District of New York.

--Editing by Patrick Reagan.

Correction: This story previously listed incorrect counsel information for Centessa.



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Spectrum, Assertio Hit With Double-Derivative Suit In Del.

By **Jeff Montgomery**

Law360 (August 5, 2024, 5:52 PM EDT) -- Former Spectrum Pharmaceuticals Inc. shareholders sued the company and its acquirer Assertio Inc. in Delaware's Court of Chancery on Monday, asserting double-derivative claims in connection with Spectrum's alleged misleading of investors regarding its development of the lung-cancer drug poziotinib.

The suit's derivative claims on behalf of the company extended both to Spectrum and to Assertio Inc., which acquired Spectrum in a \$248 million all-stock deal that closed in July 2023 while Spectrum's drug development work on "pozi" was under U.S. Food and Drug Administration scrutiny.

According to the complaint, key individuals of both Spectrum and Assertio owe damages to the companies for breaches of fiduciary duty, unjust enrichment, waste, gross mismanagement and abuse of control.

"Spectrum knew for almost a year that the FDA expressed major concerns regarding Spectrum's study 'yet chose not to inform its own investors,' the complaint said, adding that, 'even worse,' an FDA official had informed Spectrum in 2017 that its study plans were not adequate to support a registration plan.

Late Monday, attorneys for the stockholders filed a new version of the complaint adding more than 70 pages and additional defendants.

"The market was taken aback by these developments because, months before, several analysts publicly stated that Spectrum had already begun enlisting patients" for a key study of poziotinib. Spectrum's stock, which had been trading as high as \$7.65 per share in May 2023, fell to \$1.05 per share on Monday.

Spectrum also faces a consolidated proposed securities class action in New York federal court accusing the company of misleading investors about the same drug. Those named in that case, according to the complaint, rushed the drug's study and misrepresented its progress to prop up the company's share value and allow executives to sell shares at inflated prices.

Named in the Delaware suit were both companies and 11 individuals previously on Spectrum's board or on Assertio's, along with Spectrum's former chief medical officer and executive vice president and its former board chairman.

"Unbeknownst to investors and the public, until September 2022, the individual defendants continued to conceal the truth about Spectrum's communications with the FDA, audaciously representing that Spectrum was aligned with the FDA on the proper dosing regimen for pozi," the complaint said.

"In truth, Spectrum had delayed" a key study and consequently had not enrolled a single patient to take part in it, the complaint said. "The market was taken aback by these developments because, months before, several analysts publicly stated that Spectrum had already begun enlisting patients in the study, which never began."

At the time of the suit's filing, the complaint said, Assertio's directors have neither commenced any action against those named nor agreed to a tolling agreement that would protect the company against the running of the statute of limitations.

"Nor has the company announced formation of a special litigation committee to investigate the defendants' alleged wrongful conduct," the complaint said. "Rather, the board has refused to take action to preserve or pursue the underlying claims."

In the New York securities action, which asserted claims that run from March 9, 2023, to Nov. 8, 2023, Assertio CEO Dan Peisert was accused of touting the success of the Spectrum acquisition and downplaying the FDA's decision to allow another company to manufacture the generic version of its suppositories.

During a second-quarter 2023 earnings call in August, Peisert told investors it was "preparing for" the generic-drug approval and that "generic entry risk was always in the background."

Assertio did not immediately respond to a request for comment.

Changhyug Jung and the derivative claimants are represented by Brian E. Farnan and Michael J. Farnan of Farnan LLP and Timothy Brown of the Brown Law Firm PC.

Counsel information for the Spectrum and Assertio parties named in the suit was not immediately available.

The case is Changyung Jung, derivatively, v. Francois Lebel et al., case number 2024-0821, in the Court of Chancery of the State of Delaware.

--Additional reporting by Sydney Price. Editing by Philip Shea.

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Pomerantz To Lead Suit Over Ad Tech Co.'s Microsoft Ties

By **Katryna Perera**

Law360 (August 5, 2024, 7:30 PM EDT) -- Pomerantz LLP beat out several other firms on Monday to lead a proposed shareholder class action alleging that shares of ad tech company Perion Network declined nearly 40% after its strategic partner Microsoft Bing "unilaterally" changed its search advertising pricing.

U.S. District Judge Valerie Caproni issued an **order** naming the firm as lead counsel and its clients, collectively known as the Menora Group, as lead plaintiffs. In June, the group — comprised of several insurance companies and pension funds — said it incurred **total losses** of nearly \$74 million in connection with the federal securities suit filed by plaintiff Craig Beisner in April in Manhattan federal court.

Competing movants' alleged losses ranged from approximately \$31,147 to \$856,946. According to Monday's order, all the competing movants withdrew their bids to serve as lead counsel over the last few weeks.

The suit claims that Perion violated federal securities laws by misleading investors about the relative stability of, and risks in, its relationship with Microsoft, which the investor described as Perion's "most significant search partner and largest source of revenue."

In his suit, Beisner cited market records showing trading prices for Perion shares fell about 40% from over \$21 to about \$12.50 after the company said in early April that it expected to make around \$600 million in 2024, down from the \$870 million revenue estimate it offered in February.

The case is Beisner v. Perion Network Ltd et al., case number 1:24-cv-02860, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Sydney Price. Editing by Jay Jackson Jr.

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Chamber, Others Back 9th Circ. Ax Of Shopify Privacy Row

By **Allison Grande**

Law360 (August 5, 2024, 10:33 PM EDT) -- The U.S. Chamber of Commerce and several tech trade groups are among those pushing the full Ninth Circuit to affirm the toss of a proposed class action accusing Shopify of unlawfully collecting shoppers' sensitive information, arguing that overriding the decision would unfairly allow plaintiffs to sue online businesses in any court across the country.

Across seven amicus briefs filed Friday, the Chamber, the Computer & Communications Industry Association, NetChoice and others contended that a Ninth Circuit panel got it right when it ruled **in November** that the court lacked jurisdiction over plaintiff Brandon Briskin's invasion of privacy and unauthorized data access claims against Shopify because, as a backend software provider to a website that provided services to the plaintiff, the company did not expressly aim its conduct toward California.

Overturning this ruling "would potentially subject entities doing business online to personal jurisdiction in nearly every State, a result at odds with both the personal jurisdiction framework that the Supreme Court has announced, and the federalism and fairness principles animating that framework," the U.S. Chamber argued in its friend-of-the-court brief.

"Such a rule would be particularly harmful to back-end services providers, like the defendants here, whose software is deployed by others across the world," the Chamber added. "The Chamber is thus concerned that this Court's decision could make such providers de facto subject to specific personal jurisdiction in all fora."

In a press release announcing the filing of its amicus brief, the Computer & Communications Industry Association reiterated its support for "Shopify's position that the plaintiff's argument is both legally incorrect and foolhardy."

"Companies that support online commerce would face crippling litigation exposure, and could be forced to cease providing their valuable, innovative services to the companies on which users rely for efficient, cost-saving purchases," CCIA Senior Vice President and Chief of Staff Stephanie Joyce said Friday. "Internet commerce would come to a screeching halt."

Briskin has argued that California has jurisdiction over his claims because Shopify generates significant revenue by collecting and selling Golden State consumers' shopping data.

His position has won support from several consumer advocates and law enforcers that lodged their own amicus briefs urging the full Ninth Circuit to reverse the panel's ruling **last month**. These backers include attorneys general from 30 states and the District of Columbia, as well as a trio of California city attorneys, who have argued that the dispute threatens to deprive them of their ability to enforce their states' consumer protection laws by granting website operators "special treatment" when it comes to determining jurisdiction.

But the group of supporters that chimed in Friday contested this stance.

"The Ninth Circuit panel got it right: companies must affirmatively direct their services to a state before they can be hauled into court there," CCIA's Joyce said. "The plaintiff is asking the court to ignore 30 years of precedent established by the court, as well as the Due Process Clause of the U.S. Constitution."

NetChoice, a tech trade association that counts Meta Platforms Inc. and TikTok among its members, and tech industry coalition Chamber of Progress echoed these sentiments, arguing in a joint amicus brief that while online businesses "pose unique personal jurisdiction challenges," courts can address these issues as long as they "recognize and take account of the fundamental differences" between brick-and-mortar businesses that put down physical roots in a state and online businesses that are "simply available on the Internet for use unconnected to any specific forum."

"These fundamental differences mean, as this Court has previously and correctly held, that exercising personal jurisdiction over an online business requires 'something more' than the back-and-forth interaction of a website," the groups argued in their brief. "There must be some action purposefully taken by the online business (and giving rise to the litigation) demonstrating that the business was directing its activities to the forum seeking to exercise personal jurisdiction."

Allowing plaintiffs to establish jurisdiction based on "baseline" activities such as collecting user data or targeting ads "would improperly premise jurisdiction on 'the unilateral activity' of the plaintiff who chose to connect to the website, rather than the required connection between the defendant and the forum," the groups added.

A coalition of software and digital economy associations, including BSA | The Software Alliance and ACT | The App Association, also chimed in, characterizing the dispute as "a simple case in a complicated area of law."

"Shopify is a third-party payment service provider that, like many other third-party service providers, has established a relationship with the vendors who use its services," noted the coalition, which also included Financial Technology Association and Interactive Advertising Bureau.

"The activities Shopify directs toward those vendors, who are Shopify's only customers in this situation, do not open the door for courts with personal jurisdiction over those vendors to also exercise personal jurisdiction over Shopify," the groups asserted. "Any connection between Shopify and the vendors' customers is not the result of Shopify's purposeful direction with respect to those end customers, but rather depends on the independent decisions of the third-party vendors regarding their own operation."

Reversing the panel's decision would not only impact service providers like Shopify, but could also "open the door to similarly expansive exercises of jurisdiction over a wide variety of other third-party service providers, such as software providers, cybersecurity firms, content delivery networks, cloud storage and processing services, communications platforms, and a host of other companies that power their customers' operations," the groups added, in urging the en banc Ninth Circuit to "confine itself" to the situation before it and refrain from "sweep[ing] broadly or craft[ing] general rules for the internet as a whole in order to resolve such a straightforward case."

Israeli data collection service Bright Data Ltd., which **was sued by** both Meta Platforms Inc. and X Corp. over its allegedly unlawful data scrapping, added its voice to the Shopify dispute as well.

Bright Data noted that it had relied on the panel's "proper" test for determining jurisdiction in challenging the disputes against it, and that "bad things" would happen to the company if this holding is reversed.

"Bright Data's global communications network allows customers all over the world to communicate with websites whose operators are domiciled in every jurisdiction," the company said. "So, if Bright Data can be sued in California based on its users' alleged misdeeds, it can be sued everywhere."

"The in terrorem effect of allowing anyone, anywhere, to sue Bright Data for communications that occur in cyberspace is chilling," the company added.

The Shopify dispute dates back to August 2021, when Briskin filed a complaint alleging that, through its business of enabling merchants to sell products online and integrate payment forms into their websites, Shopify unlawfully intercepts payment information and collects shoppers' sensitive details, including their name, address and credit card information, which it then sells to third parties.

U.S. District Judge Phyllis J. Hamilton **tossed the suit** in May 2022, saying Briskin didn't sufficiently show that Shopify is subject to general jurisdiction in California. Briskin filed his appeal shortly after.

In affirming the decision last November, the panel noted it was the first time a circuit court had addressed the issue of personal jurisdiction involving an online payment platform.

The panel found that Shopify didn't explicitly aim its activities toward California because the company's platform is accessible nationwide and is "indifferent to the location of either the merchant or the end consumer," according to the opinion. However, Shopify is still subject to personal jurisdiction in places where they are incorporated or based, the opinion stated.

Briskin petitioned the full court for en banc review, a request the Ninth Circuit granted in May.

The Chamber is represented by Adam G. Unikowsky and Jonathan J. Marshall of Jenner & Block LLP and Jennifer B. Dickey, Jonathan D. Urlick and Kevin R. Palmer of U.S. Chamber Litigation Center.

NetChoice and the Chamber of Progress are represented by Steven P. Lehotsky, Scott A. Keller, Jeremy Evan Maltz and Andrew B. Davis of Lehotsky Keller Cohn LLP, Carl M. Szabo, Christopher J. Marchese and Paul D. Taske of NetChoice Litigation Center and Vidushi Dyall of Chamber of Progress.

The CCIA is represented in-house by Stephanie A. Joyce.

The software and digital economy associations are represented by Thomas G. Saunders of WilmerHale.

Bright Data is represented by Colin Kass and David A Munkittrick of Proskauer Rose LLP.

Briskin is represented by Nicolas A. Sansone, Allison M. Zieve and Scott L. Nelson of Public Citizen Litigation Group, and Seth A. Safier and Matthew T. McCrary of Gutride Safier LLP.

Shopify is represented by Moez Kaba, Allison Libeu, Sourabh Mishra and Adam Minchew of Hueston Hennigan LLP.

The case is Brandon Briskin v. Shopify Inc. et al., case number 22-15815, in the U.S. Court of Appeals for the Ninth Circuit.

--Editing by Emily Kokoll.



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Epstein's Advisers Must Face Victims' Proposed Class Action

By **Hailey Konnath**

Law360 (August 6, 2024, 12:11 AM EDT) -- A New York federal judge on Monday refused to throw out a putative class action against associates of Jeffrey Epstein, yet also held that one of the victims couldn't pursue her claims in a 2021 liability release that is "about as broad and categorical as it gets."

U.S. District Judge Arun Subramanian granted in part and denied in part the dismissal motion from Darren K. Indyke and Richard D. Kahn, Epstein's lawyer and accountant, respectively, and the co-executors of his estate. Judge Subramanian held that the majority of claims brought by an anonymous plaintiff suing as "Jane Doe 3" could proceed, finding that the complaint plausibly alleges Indyke and Kahn's knowledge and substantial assistance to Epstein's sex trafficking scheme, at least at this stage in the litigation.

"According to the complaint, defendants got the cash and paid the victims, kept the books, managed the companies, hired immigration lawyers for sham marriages, were in direct contact with Epstein, were aware of his criminal and civil cases, dealt with the settlements, and were at the houses and on the plane," the judge said.

Judge Subramanian also rejected their arguments that there was no way the case could meet the requirements for a certified class action because of releases the victims signed.

"The court disagrees," Judge Subramanian said.

The judge did agree that plaintiff Danielle Bensky's claims "are squarely covered by" a release she signed in 2021: the Epstein Victims' Compensation Program. Under the program, created after Epstein was found dead in his jail cell in August 2019, victims were able to recover funds.

"To put it bluntly, the release is about as broad and categorical as it gets," Judge Subramanian said.

However, the defendants haven't explained how the releases of nonparty class members — i.e., those of individuals other than Jane Doe 3 and Bensky — should be addressed, he said.

"And even if those who executed releases were excluded, defendants haven't shown that it would be 'impossible' to certify the class," Judge Subramanian said.

The suit alleges that the class includes dozens of women, and there's no definitive proof that they've all entered into binding releases, he said.

"Here, the court is not going to deviate from the normal course of permitting Jane Doe 3 to file an appropriate motion for class certification at the right time and with the right record," the judge said.

Bensky and Jane Doe 3 claim that Indyke and Kahn **helped to facilitate** Epstein's vast sex trafficking enterprise. In their February suit, they alleged that Indyke and Kahn helped structure Epstein's bank accounts to give the billionaire financier and his associates access to huge amounts of cash to lure in young women and girls or pay off people who might report the crimes.

They're looking to represent all women who were sexually abused or trafficked by Epstein between January 1995 and Aug. 10, 2019.

In Monday's order, Judge Subramanian called the victims' stories "horrific." However, he said that Bensky and her counsel indeed agreed to a release in January 2021, releasing "the co-executors of the estate of Jeffrey E. Epstein ... and any entities or individuals who are or have ever been engaged by (whether as independent contractors or otherwise), employed by, worked in any capacity for, or provided any services to Mr. Epstein ... or the Epstein estate" from "any and all claims."

The release included future claims including "without limitation any and all claims or causes of action that arise or may arise from or which otherwise concern acts of sexual abuse by Mr. Epstein," according to the order.

"Bensky's release clearly covers this case, and there is no plausible basis to hold that the release [is] unenforceable here," Judge Subramanian said.

At the same time, the judge refused to toss Jane Doe 3's aiding, abetting or facilitating battery claim, intentional infliction of emotional distress claim and Trafficking Victims Protection Act claim.

Still, Judge Subramanian found that Jane Doe 3 cannot recover punitive damages from Epstein's estate, citing several other decisions in the Southern District of New York on Epstein-related claims. Those rulings determined that "such damages aren't recoverable from the estate," the judge said.

And Judge Subramanian tossed Jane Doe 3's claim under the Victim Protection Law, holding that the law can't be applied retroactively to her claims.

Earlier this year, lawyers for the parties sparred in respective sanctions bids, both of which **were denied** by Judge Subramanian. Notably, Indyke and Kahn had argued that Boies Schiller Flexner LLP attorneys filed the proposed class action despite their clients previously signing releases of liability.

The duo said that the lawyers **ignored the release of liability** that Epstein survivors agreed to when they signed an agreement to receive funds from the Epstein Victims' Compensation Program. The plaintiffs' attorneys subsequently lodged their own sanctions bid against defense counsel, calling Indyke and Kahn's sanctions motion an attempt at "threatening, harassing and intimidating" the attorneys and their clients.

Tara Norris, counsel for Kahn, said Monday that both her client and Indyke "are gratified that the U.S. district court upheld the validity of the release signed by Ms. Bensky and co-signed by her counsel — the same law firm that now represents her."

According to Norris, that release was signed by 134 other women, who collectively received over \$121 million in compensation from Epstein's estate. More than 50 other women resolved claims outside of that release but via "virtually identical releases," Norris said.

"The evidence in the case will show that the sole remaining plaintiff, known as Jane Doe 3, never met, spoke with or communicated in any fashion with either of the co-executors, and that the allegations that they knowingly assisted Mr. Epstein in his sexual abuse of her or any other women are categorically false," Norris said.

Counsel for Bensky and Doe didn't immediately respond to requests for comment late Monday.

Bensky and Doe are represented by David Boies, Sigrid McCawley, Andrew Villacastin, Alexander Law and Daniel J. Crispino of Boies Schiller Flexner LLP.

Indyke is represented by Daniel H. Weiner, Marc A. Weinstein and Karen M. Chau of Hughes Hubbard & Reed LLP.

Kahn is represented by Daniel S. Ruzumna and Tara J. Norris of Patterson Belknap Webb & Tyler LLP.

The case is Danielle Bensky et al. v. Darren Indyke et al., case number 1:24-cv-01204, in the U.S. District Court for the Southern District of New York.