

TuSimple Settles Fraud Lawsuit for \$189M Over Misleading Investors

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Rihem Akkouche

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By

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Self-driving trucking company TuSimple Holdings Inc. has agreed to pay \$189 million to settle a class action lawsuit accusing it of misleading investors about its safety record and its relationship with a Chinese rival, which triggered U.S. government investigations. The settlement was disclosed in a filing Monday in a California federal court.

TuSimple Settles Fraud Lawsuit for \$189M : Significant Recovery for Investors

The lawsuit, led by the Indiana Public Retirement System, was filed in August 2022 and claims that TuSimple's stock value plunged by 98% following its \$1.4 billion IPO in April 2021. The stock nosedive came after negative media reports surfaced about federal probes

into the company's business practices and a crash involving a TuSimple semi-truck. The settlement, pending court approval, would distribute the \$189 million to investors who held shares between the IPO and December 2022.

Investor firms Robbins Geller Rudman & Dowd LLP and Kahn Swick & Foti LLC intend to seek attorney fees totaling no more than 25% of the settlement. The lawsuit's lead plaintiff described the settlement as "one of the most significant securities class action recoveries ever obtained" in the Southern District of California.

TuSimple Settles Fraud Lawsuit for \$189M : Safety Concerns and Alleged Fraud

The lawsuit primarily revolved around the Arizona crash of a TuSimple self-driving truck, which was allegedly captured by a whistleblower and posted online in July 2022. The crash was used to support claims that TuSimple had exaggerated the safety of its autonomous vehicles, undermining investor confidence.

'Windfall' fees now less likely for lawyers who sued to cut Musk's Tesla pay

 [reuters.com/business/autos-transportation/windfall-fees-now-less-likely-lawyers-who-sued-cut-musks-tesla-pay-2024-08-29](https://www.reuters.com/business/autos-transportation/windfall-fees-now-less-likely-lawyers-who-sued-cut-musks-tesla-pay-2024-08-29)

Tom Hals



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

- Fee, in Tesla stock, would amount to over \$280,000/hour
- Instead of stock, lawyers would accept \$1 billion cash
- Judge might still decide to restore Musk's pay package

WILMINGTON, Delaware, Aug 29 (Reuters) - The lawyers who sued successfully to void Tesla CEO Elon Musk's \$56 billion pay package are seeking a record \$6 billion in fees, and the judge who will decide the amount got some unsolicited guidance this month from the state's top court: Do not give windfalls.

Chancellor Kathaleen McCormick of Delaware's Court of Chancery is weighing two decisions that will have a multibillion-dollar impact on Tesla and its investors. One issue is the request for the huge fee for voiding Musk's pay. The other is whether a June vote by Tesla shareholders actually restored the pay package, in which case a large fee may not be appropriate.

McCormick got a reminder on Aug. 14 from her bosses on the state's high court in an unrelated case that big legal fees help motivate shareholder attorneys to get great results. In affirming a \$267 million fee, one of the largest ever in shareholder litigation, the justices also cautioned that at some point those type of paydays can "turn into a windfall." Legal experts said the justices likely had the Musk case in mind.

"They are making it clear, to McCormick and anyone else, that certainly an extremely high fee, an eye-popping fee, a 'wow' fee, is appropriate, but there is a line where it's simply past what is necessary to incentivize high-risk cases," said Ann Lipton, a professor at Tulane Law School.

The case over Musk's compensation began in 2018 when shareholder Richard Tornetta sued Tesla's directors for approving Musk's pay package, which granted the billionaire CEO stock options as the electric carmaker hit various goals. Musk did not get a guaranteed salary and the options soared in value as the stock rose 10 fold.

In January, McCormick sided with Tornetta, finding Musk controlled the pay negotiations. She called the \$56 billion compensation "unfathomable" and decided it should be rescinded. The shareholder lawyers at Bernstein Litowitz Berger & Grossmann and Friedman Oster & Tejtzel, both of New York, and Andrews & Springer of Wilmington, Delaware, have worked without pay since they filed the case, with the understanding they would get part of the recovery. The case was brought to benefit Tesla, so the company is going to pay the fee.

The firms asked McCormick in March to approve a "conservative" fee of 11% of the stock that Musk would have gotten if he had won the case. The request works out to 29 million shares, worth almost \$6 billion at Wednesday's closing price of \$205.75. Alternatively, they said they would take a cash fee of \$1 billion.

If the amount of the fee request was unprecedented, Tornetta's attorneys said, it was because they won arguably the largest judgment in U.S. history. They noted that Delaware courts reward higher percentages of a judgment or settlement when attorneys battled deep into a case. They said precedent supported a fee request of as much as 33%.

Delaware judges also look at the time and effort of the lawyers as a way to spot a potential windfall. By this measure, the size of the fee request by Tornetta's lawyers is stunning.

Their fee equals more than \$280,000 an hour for each of the 19,500 hours worked on the case by every attorney, associate and paralegal.

The highest-paid attorneys on the case normally bill \$1,150 an hour while on the low end some contract attorneys and paralegals charge \$250 an hour, according to court filings.

The Delaware Supreme Court has approved huge hourly rates before.

In 2012, the court affirmed the largest fee in its history, around \$304 million to attorneys who obtained a \$2 billion judgment for Southern Copper Corp (SCCO.N) [opens new tab](#). The fee worked out to about \$35,000 an hour.

By comparison, the highest-paid corporate attorneys, who bill by the hour and get paid regardless of outcome, can make around \$2,500 an hour.

The Delaware Supreme Court did not specify when fees become windfalls, but did say \$5,000 an hour was "at the high end."

That would suggest Tesla is on the hook for a fee of around \$100 million, just 10% of the requested cash fee. Lipton noted there are several factors that suggest the Toretta attorneys should expect more.

For example, they worked unpaid for six years, overcame challenging legal hurdles, risked taking the case to trial and won a complete victory.

However, if McCormick decides that Musk's pay package was restored by the shareholder vote, Tesla should not be on the hook for a large legal fee, John Reed, an attorney for the company, told McCormick at a July hearing.

"You asked if Elon Musk was overpaid," Reed said, referring to McCormick's question at the start of her January ruling. "We want to ask if the plaintiff's lawyers are being overpaid."

Reporting by Tom Hals in Wilmington, Delaware; Editing by David Gregorio

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

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Judges Should Scrutinize Trading Plans' Use as Fraud Defense

By James Harrod and Timothy Fleming2024-08-29T04:30:01000-04:00

- *BLB&G attorneys examine common insider trading defense*
- *Rule 10b5-1 trading plans' existence doesn't preclude motive*

When company executives sell their own shares at prices inflated by misrepresentations, it rightfully triggers an inference that those sales reflect a motive to commit fraud. Defendants in securities fraud cases frequently rely on “trading plans” entered into under Rule [10b5-1](#) of the Securities Exchange Act, which create preset transaction schedules, to rebut a finding of motive.

Legitimate concerns about the validity of this defense were borne out in a June jury [verdict](#) against the former CEO of Ontrak Inc. and reflected in the Securities and Exchange Commission's expanded regulations for more detailed disclosures on trading plans. Courts in civil cases should follow these concerns and severely constrain the application of trading plans as a defense in securities fraud cases.

Rule 10b5-1 trading plans “allow corporate insiders to set a [schedule](#) by which to sell shares over time.” Trading plans frequently feature in private securities litigation, where plaintiffs allege that insiders were motivated to make “a [misrepresentation](#) in order to sell their own shares for a profit” while the share price was inflated due to their fraud. By claiming that any sales alleged by the plaintiffs were conducted pursuant to these trading plans and not at the defendants' discretion, the defendants attempt to “raise an inference that the sales were prescheduled and not suspicious.”

As some courts have observed, this defense shouldn't be absolute, given that the trading plans might be “entered into or strategically amended to take advantage of an inflated stock price or insider information,” according to a 2021 [ruling](#) in the Southern District of New York. The conviction of former Ontrak CEO Terren Peizer for insider trading offers a prime example of how unscrupulous insiders might use their trading plans.

As a [press release](#) on the verdict explained, Peizer “set up Rule 10b5-1 trading plans to sell shares before [negative] news became public and to conceal that he was trading on insider information.” The conviction underscores that 10b5-1 plans can be used to implement fraud and shouldn't broadly

create a defense as to motive.

Adding to the problem was the reality that Rule 10b5-1 plans were often not disclosed or only vaguely described. Aware of the potential for their abuse, the SEC in late 2022 adopted [rule changes](#) designed to increase Rule 10b5-1 plans' transparency.

Before the changes, corporate insiders didn't need to publicly file any basic details of the plans, including when they entered into them. But under the revisions, companies must disclose any trading plans entered into by insiders during the prior quarter and the material terms of those plans. Insiders disclosing stock transactions also must indicate if the transaction was pursuant to a trading plan and, if so, the date of the plan.

These revisions are a step in the right direction, and securities fraud plaintiffs should use this increased transparency to probe whether the mere existence of a trading plan indicates insiders lacked motive to commit fraud.

Unfortunately, many judicial decisions pre-dating the 2023 disclosure changes relied on opaque information about trading plans to conclude that the existence of a trading plan negated an inference of motive. Those cases are often cited as orthodoxy and present a challenge to plaintiffs even in cases where details of the plans should mitigate or eliminate the application of a trading plan as a defense.

Using the enhanced disclosures now required, plaintiffs' counsel should review quarterly filings during the time period at issue to determine whether any defendants entered into trading plans after they made misrepresentations. The plans, especially if developed close in time to alleged misrepresentations, might show that insiders used a 10b5-1 plan to offload shares while the price was inflated. Such facts would support a fraudulent motive rather than rebut it.

However, even where the trading plans predate any misrepresentations, neither plaintiffs nor courts should assume that the plans' mere existence forecloses motive. The US Court of Appeals for the Tenth Circuit [explained](#) in a 2022 case that "a defendant who knows the schedule of their 10b5-1 plan could be motivated to make material misrepresentations affecting the stock price to their benefit before a scheduled sale or to trigger a sale at a particular price."

This is an obvious observation, but a critical one—executives know the pattern of their trading plans and can still exploit the schedule to profit from non-public information. Plaintiffs can further challenge

existing case law that credits trading plans as a defense by connecting the timing of misrepresentations to any scheduled sales.

Courts, for their part, should credit such motive allegations and, given the plans' potential for abuse, carefully scrutinize the provisions of any Rule 10b5-1 trading plan put forth by defendants before finding that it negates an inference of motive.

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Verve Therapeutics Investor Sues Over Halted Clinical Trial (1)

By Matthew Bultman

- **COURT:** D. Mass.
- **TRACK DOCKET:** [1:24-cv-12218](#)

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Verve Therapeutics Investor Sues Over Halted Clinical Trial (1)

By Matthew Bultman 2024-08-28T14:35:40000-04:00

- **COURT:** D. Mass.
- **TRACK DOCKET:** [1:24-cv-12218](#)

Verve Therapeutics Inc. was sued by a shareholder who accuses the biotech company of misleading investors about a clinical trial for its cholesterol medicine.

The proposed class action, filed Tuesday in the US District Court for the District of Massachusetts, said Boston-based Verve overstated the potential of a drug delivery system and emphasized successful interim data without warning its clinical trial could be stopped if there were an adverse event.

Verve in April paused enrollment in a clinical trial after a participant experienced an adverse reaction, including a low blood platelet count.

"Defendants' statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times," the complaint said.

A Verve spokesperson said the company is aware of the case and "intends to fully pursue its defense."

The drug, Verve-101, is a gene editing medicine designed to treat high cholesterol.

Verve's stock dropped almost 35% on the news that it was stopping enrollment in the clinical trial. The participant's issues, which were resolved within a few days, were attributed to the delivery system.

While Verve in securities filings warned of risks associated with the medicine, the complaint said Verve didn't fully disclose the circumstances under which the clinical trial would be halted.

Verve has said it will prioritize Verve-102, a medicine that is similar but that uses a different delivery system.

The Rosen Law Firm PA and The Schall Law Firm represent the shareholder.

The case is Oldroyd v. Verve Therapeutics, Inc. , D. Mass., No. 24-cv-12218, 8/27/24 .

(Updates with comment from Verve in fifth paragraph.)

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Walgreens Faces Derivative Suit Over Recent Stock-Price Plunge

By Bernie Pazanowski

- **COURT:** N.D. Ill.
- **TRACK DOCKET:** [No. 1:24-cv-07755](#)

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Walgreens Faces Derivative Suit Over Recent Stock-Price Plunge

By Bernie Pazanowski 2024-08-28T15:43:42000-04:00

- **COURT:** N.D. Ill.
- **TRACK DOCKET:** [No. 1:24-cv-07755](#)

Fraud and breach of fiduciary duty were among the claims made in a shareholders' derivative suit filed in federal court against Walgreens Boots Alliance Inc. and its officers.

The suit filed Tuesday in the US District Court for the Northern District of Illinois seeks a remedy for alleged wrongdoings that occurred between Oct. 12, 2023, and June 24, 2024.

According to the complaint filed by shareholder Mark Tobias, the individual officers and Walgreens overstated the pharmacy giant's expected 2024 revenue by falsely and materially claiming "confidence in the brand inflation, volume growth, cost execution, discipline, and overall contributions of WBA's pharmacy division."

In particular, the complaint notes statements made in a company press release on Oct. 12, and statements made the same day by Walgreens' chief financial officer, Manmohan Mahajan, on an earnings conference call, concerning the company's expected growth.

Through the statements, the defendants "veiled the reality: that WBA's pharmacy division was not actually equipped to adapt to ongoing hurdles within the industry and the Company would instead require significant restructuring in order to create a sustainable model," the complaint says. Because of the materially false misstatements, the company's stock was overvalued, it says.

But on June 27, a new press release exposed the fact that the adjusted earnings per share were down 36.6% from a year ago, the complaint says. The third-quarter press release also lowered fourth-quarter projections, it says. In an earnings call the same day, Chief Executive Officer Timothy C. Wentworth said that promotions to attract customers and develop loyalty wouldn't be immediately profitable. He also said that "the current pharmacy model is not sustainable," the complaint says.

As a result of the June 27 revelations, Walgreens' stock prices fell 22.2%, the complaint says.

The individual defendants also breached their fiduciary duty by causing Walgreens to repurchase its own stock at artificially inflated prices, the complaint says. The company overpaid \$31.5 million for the stock, it says.

The individual defendants also willfully or recklessly made and/or caused the company to make false or misleading statements, the complaint says. Those statements included that Walgreens had effective risk management or compliance controls, and that it was confident that the pharmacy division was able to carry the company, it says.

The complaint seeks declarations that Tobias may maintain the derivative suit, and that each individual defendant breached their fiduciary duty to Walgreens. It also asks for damages plus pre- and post-judgment interest, and an order directing the defendants to establish and implement corporate governance and internal procedures to comply with "applicable laws and to protect WBA and its shareholders from a repeat of the damaging events described herein."

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

The Brown Law Firm PC represents Tobias.

The case is Tobias v. Wentworth , N.D. Ill., No. 1:24-cv-07755, complaint filed 8/27/24 .

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GSK Gets to Appeal Zantac Expert Testimony Ruling in Delaware

By Jennifer Kay 2024-08-27T16:13:45000-04:00

- Lawsuit concerns claims that Zantac caused cancer
- Delaware's top court rarely takes mid-case appeals

GSK Plc got approval from Delaware's top court Tuesday to quickly appeal a ruling allowing expert testimony at trial over whether the discontinued heartburn medication Zantac causes cancer.

The "unique circumstances presented by this mass tort litigation" raise the case to the Delaware Supreme Court's strict standards for interlocutory review, Justice N. Christopher Griffiths wrote in an [order](#). The court rarely accepts mid-case appeals.

The Zantac litigation in the Delaware Superior Court is proceeding on two tracks: one to address whether ingesting the drug marketed as Zantac is capable of causing cancer, and the other to identify representative cases for discovery and trials.

The plaintiffs retained 10 experts to offer opinions on the causes of 10 specific types of cancers. The Superior Court on May 31 denied GSK's motion to exclude the experts' testimony under the federal *Daubert* standard for determining admissibility of expert witness testimony.

"A ruling on the issues regarding the plaintiffs' general causation experts could be dispositive for some or all of the" nearly 75,000 claims filed in the state, Griffiths said.

The federal standard requires courts to consider whether an expert witness's testimony on a scientific principle is generally accepted in the scientific community; whether the expert's opinion can be or has been tested or peer reviewed; whether the expert adequately accounts for alternative explanations; and whether there are standards or controls that apply to a theory.

The Superior Court's decision also "raises substantial issues regarding the *Daubert* standard generally and mass tort litigation specifically," he said. Those issues include whether the experts may base their opinions on studies of the cancer-causing agents or must focus on the product itself, and

whether Delaware law requires experts to identify a threshold dose for establishing causation.

The second track of the litigation regarding discovery may continue while the appeal is pending, the high court said.

GSK said it welcomed the Delaware Supreme Court's review in a statement that asserted there was "no consistent or reliable evidence that ranitidine," the drug marketed as Zantac, "increases the risk of any cancer."

Chief Justice Collins J. Seitz Jr. and Justice Abigail M. LeGrow joined Griffiths in the order. A panel of three justices typically hears oral arguments, except in death penalty appeals or other cases where it determines en banc consideration is warranted.

The case is [In re: Zantac \(Ranitidine\) Litig.](#) , Del., No. 255,2024, order 8/27/24 .

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Ozempic judge's order raises early hurdles for plaintiffs suing over side effects

 [reuters.com/legal/litigation/column-ozempic-judges-order-raises-early-hurdles-plaintiffs-suing-over-side-2024-08-28](https://www.reuters.com/legal/litigation/column-ozempic-judges-order-raises-early-hurdles-plaintiffs-suing-over-side-2024-08-28)

Alison Frankel

A box of Ozempic made by Novo Nordisk is seen at a pharmacy in London, Britain March 8, 2024. REUTERS/Hollie Adams Purchase Licensing Rights , opens new tab

Aug 28 (Reuters) - Every judge presiding over consolidated mass torts cases in federal court faces the same dilemma: What is the best way to proceed efficiently in these sprawling cases while simultaneously preserving the rights of individual plaintiffs?

Consolidated mass torts litigation, as you know, typically consist of hundreds or thousands of personal injury claims by people who all have their own stories to tell.

But litigating their cases one-by-one would strain court resources. So our federal judicial system has created a consolidation process for pre-trial discovery and motions, allowing a single judge to rule on issues that affect most or all of the cases that have been swept together. The goal is to promote consistency and efficiency without forgetting that each case must ultimately stand or fall on its own.

That tension was at the heart of an early dispute in closely watched multidistrict litigation over the alleged side effects from diabetes and weight-loss drugs — including Ozempic, Wegovy and Mounjaro — sold by Novo Nordisk (NOVOB.CO) , opens new tab and Eli Lilly (LLY.N) , opens new tab.

The defendants asked , opens new tab U.S. District Judge Karen Marston of Philadelphia to make threshold rulings on three pivotal questions that, in their view, cut across all of the cases that have been or are expected to be filed in the consolidated litigation. The plaintiffs' firms leading the case opposed , opens new tab the request, insisting that the defendants' proposal disregarded the facts and circumstances of individual plaintiffs' cases.

Marston mostly sided with Lilly and Novo Nordisk in an Aug. 23 order , opens new tab that could potentially squelch the litigation before it really gets going.

You need some background to understand why. The vast majority of plaintiffs who have already filed suits or are expected to bring claims allege that after they began taking Ozempic or similar medications, they developed a condition called gastroparesis, in which their stomachs stopped (or slowed) the passage of food to their small intestines. The plaintiffs assert that labels on the drugs failed to provide adequate warning that the medication could cause gastroparesis or related symptoms.

The drugs' labels unquestionably disclose the risk of gastrointestinal side effects such as nausea and vomiting. So if plaintiffs cannot prove they suffered from gastroparesis, as opposed to other gastrointestinal side effects, Novo Nordisk and Eli Lilly will have stronger arguments that plaintiffs' claims are pre-empted by warnings on the drugs' labels.

The defendants told Marston last month that there is only one surefire way to diagnose gastroparesis objectively, through a specific clinical test. But most of the plaintiffs in the MDL, they said at a July 10 hearing, did not have that test and are instead alleging gastroparesis based on symptoms and other factors.

Novo Nordisk counsel from DLA Piper and Lilly lawyers from Kirkland & Ellis asked the judge to decide, as a threshold matter based only on expert witnesses, what evidence plaintiffs must provide in order to support their gastroparesis claims.

The defendants also asked Marston to decide, as a matter of law, whether their drugs' labels pre-empt some or all of the plaintiffs' claims. Lilly, in particular, cited the rigorous U.S. Food and Drug Administration approval process for its medications, which, it argued, have from the beginning included "strong and repeated severe gastrointestinal warnings."

In addition, the defendants called on the judge to find, as a matter of law, that no reliable scientific evidence supports plaintiffs' claims that their drugs cause ailments other than those disclosed in warning labels.

Deciding these critical, across-the-board legal issues at the beginning of the case, defendants said, would drastically streamline the litigation — especially if the companies prevail.

But lead plaintiffs' lawyers from Motley Rice, Seeger Weiss, Morgan & Morgan and Wagstaff & Cartmell told Marston it would be premature to consider the issues without developing a full factual record in bellwether cases.

Judges overseeing MDLs, they said, routinely rule on pre-emption and causation defenses — but they almost always wait for evidence to emerge in trials involving representative plaintiffs instead of ruling in a vacuum, based only on expert testimony.

That's especially important, the lawyers said, in the context of diagnosing gastroparesis. Marston should hear from treating physicians, they argued, before setting an across-the-board standard based on a diagnostic test that many plaintiffs had no access to.

"This is a very unique thing that the defendants are asking the court to do," argued Jonathan Orent of Motley Rice at the July 10 hearing. "We deserve the opportunity to put faces and facts and individual circumstances before the court."

Marston was unpersuaded. She said plaintiffs can offer evidence from treating physicians and can argue after her cross-cutting decisions that her rulings should not apply to particular plaintiffs. The judge also put off a ruling on defendants' request for an early decision on general causation.

But she agreed with Lilly and Novo Nordisk that it made sense to rule now, when the litigation is in its early stages, on how gastroparesis must be diagnosed and whether the defendants' labels provided adequate warnings. She did not need to hear from individual plaintiffs, the judge said, to answer purely legal questions that cut across the entire litigation.

Plaintiffs' lawyers declined to provide a statement on Marston's ruling. Novo Nordisk did not respond to a query.

An Eli Lilly spokesman said Marston's ruling "will accelerate resolution" of lawsuits that the company considers meritless.

"Lilly believes it is critical that only sound science makes its way into the courtroom," the company said via email.

Plaintiffs' lawyers said at the July 10 hearing that no MDL judge has ever front-loaded so many pivotal questions. Defendants argued that at least four other MDL courts have opted to rule on general causation before wading into bellwether trials. Either way, mass torts lawyers on both sides of the bar will be watching to see how Marston's process plays out.

And if Lilly and Novo Nordisk manage to kill or even substantially trim the litigation, you can be sure future defendants will try similar gambits.

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WORLD | ASIA

Children Argued Their Country's Climate Efforts Were Shoddy. A Top Court Agreed.

Ruling in South Korea says lack of specific emissions targets in coming decades is unconstitutional for placing excessive burden on future generations

By [Jiyoung Sohn](#) [Follow](#) and [Timothy W. Martin](#) [Follow](#)

Aug. 29, 2024 9:35 am ET



Climate activists gathered in Seoul on the day of the ruling. PHOTO: KIM HONG-JI/REUTERS

SEOUL—Dozens of South Korean children sued their government over inadequate policies targeting climate change, arguing their rights to live in a clean environment had been violated. On Thursday, they earned a major legal victory.

South Korea, home to major semiconductor, battery and electric-vehicle makers, has pledged by the end of this decade to reduce carbon emissions by 40% from a 2018 benchmark. Beyond that, the government specified no other targets before reaching net-zero emissions by midcentury.

The country's Constitutional Court ruled that the lack of quantitative checkpoints in the subsequent decades had placed an "excessive burden" on future generations and failed to "effectively guarantee gradual and continuous reductions" through 2050.

The decision recognizes that the right to live in a healthy climate is a fundamental constitutional right—which obligates the South Korean government to protect it.

As a result, South Korea must revise the relevant climate policies no later than March 2026. After the ruling, the country's Ministry of Environment said it respected the court's ruling and would faithfully implement follow-up measures.

Han Je-ah, 12 years old, was one of the child plaintiffs from four consolidated cases that young climate activists brought before the Constitutional Court. One, referred to as "Baby Climate Litigation," featured dozens of plaintiffs who were under the age of 5 when the case was filed about two years ago. For another, a group of youths held a press conference about their lawsuit dressed in their school uniforms. Han had testified in front of the judges as the trial hit its final stretch in May.

After the Thursday ruling came out, Han wept together with other youths. She said she hopes that the South Korean government, after updating its carbon-emissions target, keeps its promises. "I hope that they will take responsibility for everything," Han said.



Plaintiff Han Je-ah, 12, left with her mother after the Constitutional Court announced its decision.

PHOTO: KIM HONG-JI/REUTERS

Youth advocacy around climate change has supercharged in recent years after Sweden's Greta Thunberg became a global face for the issue. The United Nations in 2021 said it couldn't rule on a complaint filed by young activists, including Thunberg, recommending the claims should be filed via national courts first. In the U.S., climate action represents a key issue for Gen Z voters in November's presidential election.

The South Korean ruling is the first of its kind in Asia mandating stronger climate actions to protect future generations' rights. A similar decision was delivered in Germany in 2021, while Europe's top human-rights court ruled earlier this year that the region's governments have an obligation to protect their citizens against the effects of climate change.

Other challenges are in motion. Montana's top court in July heard appeal arguments for a case won by young people who argued the state wasn't doing enough to combat climate change. In Asia, Japan earlier this month saw its first youth-led climate lawsuit filed against 10 thermal-power companies.

More than 120 countries, including South Korea, the U.S. and the U.K., have set goals to hit net-zero by 2050, according to a recent tally from Decarbonization Channel, which tracks climate-policy data. Not all of those countries' pledges are legally binding.

All governments that are members of the Paris accord must submit their 2035 emission-reduction targets to the U.N. by next year. That means the South Korean government and its National Assembly may have to offer more prescriptive plans to reduce greenhouse-gas emissions earlier than the court's deadline, local climate activists say.

The Constitutional Court didn't articulate what the new emissions targets should be. But South Korean officials now have a legal obligation to rectify the issue, said Youn Se-jong, an attorney and director at Plan 1.5, a nonprofit climate-policy organization based in Seoul. "The new targets will have to be stronger than the previous ones," Youn said.

The court dismissed some other claims from the plaintiffs, including the argument that the government's 40% carbon-emission reduction target by 2030 was unconstitutional.

South Korea is one of the world's largest energy consumers, with major manufacturers such as Samsung, Hyundai and LG. The country earns a "highly insufficient" overall rating—the second lowest of five levels—from Climate Action Tracker, a scientific consortium that evaluates governments' emissions plans.

The consortium cited 2022 research that put South Korea's share of renewables in its power mix as the lowest among members of the Organization for Economic Cooperation and Development, a grouping of mostly wealthy nations.

Write to Jiyoung Sohn at jiyoung.sohn@wsj.com and Timothy W. Martin at Timothy.Martin@wsj.com

Videos

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<https://www.law.com/2024/08/28/lifeline-for-fraud-chinese-lender-accused-in-lawsuit-by-quinn-emanuel-lawyers-of-facilitating-fintech-scheme/>



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NEWS

'Lifeline' for Fraud?: Chinese Lender Accused in Lawsuit by Quinn Emanuel Lawyers of Facilitating Fintech Scheme

The \$140 million lawsuit accuses Chinese Construction Bank Corp. and related entities of issuing the "lion's share" of phony letters of credit that facilitated Vesttoo's alleged multibillion-dollar fraud.

August 28, 2024 at 03:13 PM

Commercial Litigation



Emily Saul



The original version of this story was published on [New York Law Journal](#)

A new \$140 million lawsuit filed by Quinn Emanuel Urquhart & Sullivan lawyers accuses one of China’s largest commercial lenders of acting as the “lifeline” behind Israeli fintech startup Vesttoo’s alleged multibillion-dollar fraud that scandalized the global insurance community with fake letters of credit.

The “lion’s share” of those phony letters were provided by China Construction Bank Corp. and related entities, plaintiff White Rock Insurance alleges in a complaint filed Tuesday in Manhattan Supreme Court.

And defendant CCB is now refusing to honor some \$2.8 billion collateralized in the letters of credit, or LOCs, the lawsuit states.

“It was not that Vesttoo simply used CCB’s logo on a forged document and White Rock took its word for it,” the complaint states. “Rather, an inside man at CCB—an actual CCB banker acting for CCB as a relationship manager—represented to White Rock, its auditors, and other market participants that the LOCs were authentic.”

White Rock, a segregated accounts company in Bermuda, is represented by a team at Quinn Emanuel.

Vesttoo, now in bankruptcy, was an Israeli fintech company launched in 2018 claiming to connect insurance companies seeking to obtain reinsurance coverage (cedents) with capital market investors.

Vesttoo’s business was premised on the belief that the reinsurance transactions were fully collateralized by letters of credit issued to Vesttoo by leading international banks.

White Rock held assets for cedents, and never would have done business with Vesttoo if they knew the LOCs were fake, according to the complaint.

A former CCB employee, Chin-Yun Lam, transmitted and verified the LOCs “entirely under the auspices of CCB,” the lawsuit says, making CCB liable for his conduct.

“CCB harbored a fraudster, gave him access to a CCB email address, office, and telephone number, and then failed to deter, prevent, and detect a massive fraud committed through those channels,” the complaint reads.

Lam, who is not named as a defendant in the lawsuit, could not be reached for comment.

“But for CCB and Mr. Lam, White Rock would have never continued to do business with Vesttoo, and would have recognized Vesttoo as a sham,” the suit alleges. “CCB sustained the Vesttoo fraud from inception and is liable for Mr. Lam’s inside job, which it negligently failed to prevent and detect.”

White Rock is a wholly owned subsidiary of global broking giant Aon, which was [sued last year](#) over its role in the alleged Vesttoo fraud. That litigation is ongoing.

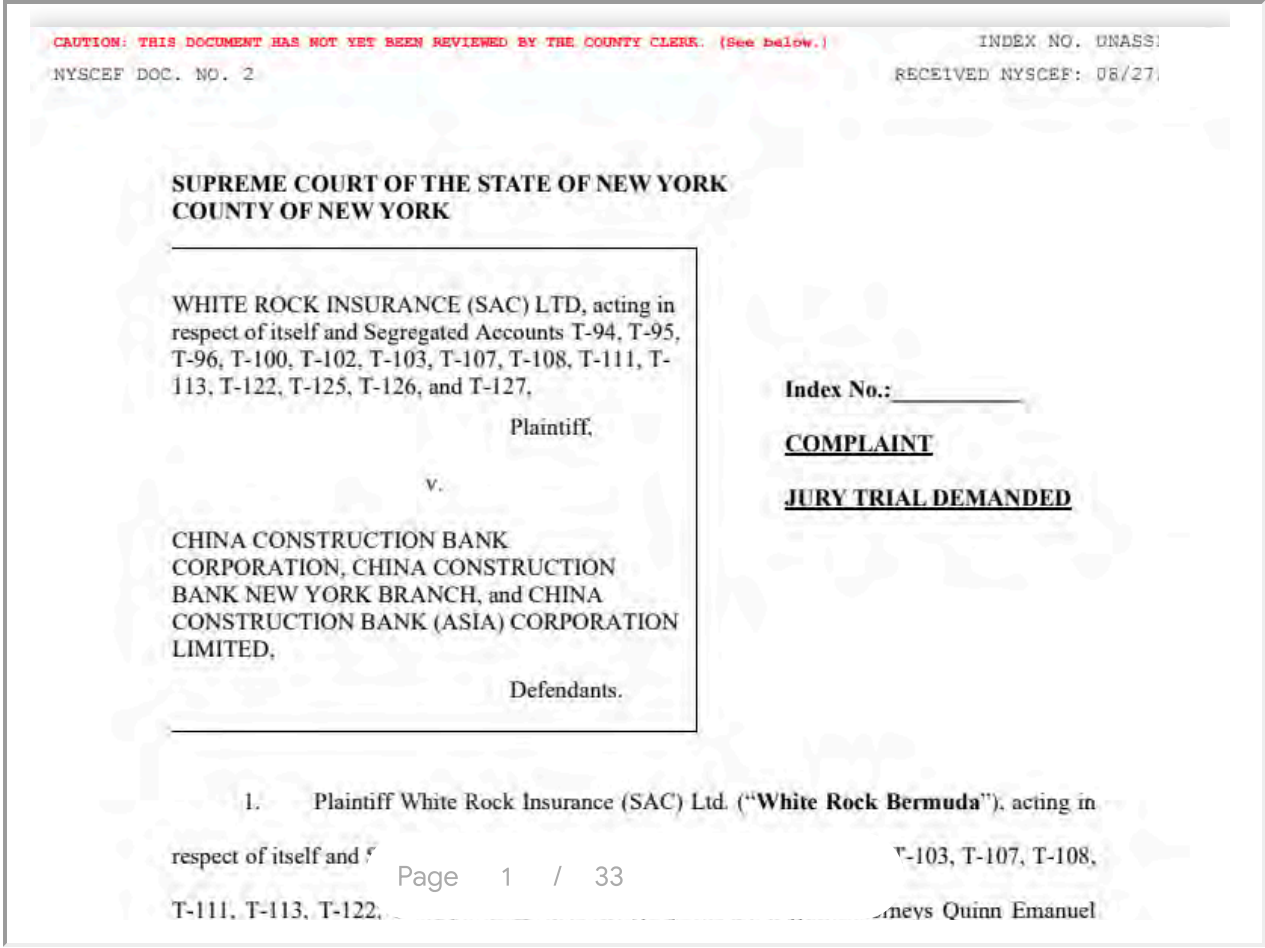
The complaint alleges fraud, fraudulent misrepresentation, fraudulent concealment, negligent misrepresentation, and negligence. It seeks at least \$140 million in damages, plus costs, attorney fees, and other expenses.

The Quinn Emanuel team includes Michael Carlinsky, Katherine Lemire, Renita Sharma, Yehuda Goor and Jacqueline Stykes.

Counsel has not yet appeared for the defendant entities.

The New York branch of CCB did not immediately return a request for comment, and counsel engaged for CCB in other related matters did not respond to messages.

Read the complaint:



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Latest GPT 'Fake Case' Kerfuffle Brings New, More Exciting Ways For AI To Mess Up

abovethelaw.com/2024/08/latest-gpt-fake-case-kerfuffle-brings-new-more-exciting-ways-for-ai-to-mess-up

Joe Patrice

August 28, 2024

 Robot wearing dunce hat stands with arms out

Remember when those lawyers filed a brief riddled with fake cases generated by ChatGPT? The mainstream media had an old-fashioned freakout about the dangers of artificial intelligence without ever once considering that not reading the cases you're citing in a brief is a very, very human lawyer problem more than a technological one. But "AI is ruining the law" is a better headline and so here we are.

Fast forward to today, where lawyers are now appropriately forewarned against blindly trusting generative AI legal research and trusted legal research providers have developed AI tools tailored to — hopefully — protect lawyers from the fever dream hallucinations of the algorithm.

Unfortunately, hallucinations aren't the only flies AI can introduce to the ointment:

A lawyer has asked a Virginia federal judge not to impose sanctions after he used incorrect case citations and quotes in a court filing, arguing the errors were unintentional and stemmed from "good-faith reliance" on artificial intelligence tools.

Note the problem — despite the judge's initial concerns in the case — is not "fake" cases but incorrectly cited and quoted ones. It's a step removed from the wild days of 2023 where algorithms might just magic up a bogus case to give the user what they wanted to hear, but it's still a problem for lawyers.

In the attorney's show cause response, Thad Guyer explained that the cases cited were both very real and very substantively relevant, but...

The two cases cited by Defendant and the Court as apparently non-existent, *United Therapeutics Corp. v. Watson Laboratories, Inc.* and *United States v. Mosby*, do exist but were miscited (Guyer Decl. ¶ 11). *United Therapeutics*, though incorrectly cited as “No. 3:17-cv00081, 2017 WL 2483620, at 1 (E.D. Va. June 7, 2017),” is a real case reported at 200 F. Supp. 3d 272 (D. Mass. 2016) (Guyer Decl. ¶ 11(1)). Moreover, the proposition for which this case is cited in Plaintiff’s Objections is accurate and applicable, notwithstanding the misquotations. (Guyer Decl. ¶ 14). Similarly, *United States v. Mosby*, though miscited as “2021 WL 2827893, at 4 (D. Md. July 7, 2021),” is a real case reported at 2022 WL 1120073 (D. Md. Apr. 14, 2022). (Guyer Decl. ¶ 11(2)). The proposition for which this case was cited finds analogous support in a Fourth Circuit case cited within *Mosby*. (Guyer Decl. ¶ 15).

We have achieved AI that sucks at Bluebooking! COMPUTERS — THEY’RE JUST LIKE US!

Unlike the earlier hallucination cases, this error threatens to become a stumbling block for a lot of attorneys because the platform is actually giving the user the correct case to read so the lawyer is faithfully checking the case to guarantee it isn’t misleading the court — but if they aren’t vigilant, they can parrot the bad cite and generate a lot of unnecessary confusion.

Alas the citations weren’t the only problem:

The attributed quotations that do not appear verbatim in the cited cases, *Graves v. Lioi* and *Bostock v. Clayton County*, nonetheless accurately reflect principles discussed in those cases (Guyer Decl. ¶ 12). The “decided by necessary implication” language in *Graves v. Lioi*, while not a direct quote, correctly states the law of the case doctrine as applied by the Fourth Circuit (Guyer Decl. ¶ 17). Similarly, the “make a mockery of the law” phrase in *Bostock v. Clayton County*, though misquoted, aligns with the Supreme Court’s emphasis on avoiding statutory constructions that would lead to absurd consequences (Guyer Decl. ¶ 18).

Christine Lemmer-Webber is credited with dubbing generative AI “mansplaining as a service.” By design it’s trying to give the user what they want, and it’s willing to loudly and confidently talk out of its digital ass to do it. That’s how hallucinations happened and now it’s how it willingly massages the language it pulls to give the lawyer fake quotes. As Guyer explains, the quotes aren’t actually *wrong* about the cases. In fact...

I now understand that when the GPTs “see” a case, they see the extended document, including internal citations to authority. The GPTs saw the Wilson reference to the Touhy statute as incorporated into *Mosby*. I should have included the citation to *United States v. Wilson*.

For example, Guyer explains in his declaration that he found that the “make a mockery of the law” quote should have been “absurdity” because that’s the language in the *Bostock* opinion, but the AI had grabbed “mockery” from quotes in the *Bostock* string cite without realizing that those were different — if still helpful — cases entirely.

These are all much more nuanced problems with AI research than we saw last year but they’re nonetheless problems. Indeed they might be *worse* problems because unlike entirely fake cases, errors like these could get overlooked by everyone involved and then end up in an opinion that becomes “garbage in” for future researchers.

But is it sanction-worthy? Meh. He cited real cases with real relevance and quotes that might have been wrong but weren’t misleading about the holdings. Guyer makes a pretty good case that the media spotlight on AI and the slings and arrows of grandstanding judges have fostered unduly itchy sanction trigger fingers.

And until the advent of the GPT’s and a spate of sensationalized 2024 cases, lawyer miscitation and misquotation seldom drew the mention of Rule 11, and almost never resulted in a sanction, and at least once drew “Levity”. But in the dizzying pace of courtroom technology of ChatGPT and the “Zoom cat lawyer”, our profession is sensitive to technological practice error.

A corollary of not rushing to blame technology for human screw ups is not acting like the sky is falling whenever tech makes a mistake that could’ve just as easily come from a human. Had some lowly associate cut and pasted the wrong WL citation or jumbled up “absurdity” and “mockery” and these mistakes made it to the final draft, we wouldn’t be talking about sanctions. The court would just move on with its day and the associate would live with debilitating guilt. It’s a proven model!

1 2Next »

Topics

AI Legal Beat, Artificial Intelligence, Legal Ethics, Technology



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EVENT

Litigation Department of the Year (General) Finalist: Boies Schiller Flexner

"It's always rewarding to see these large cases where we have made a financial investment pay off, and quite often those cases are about holding big entities accountable to victims who would not otherwise be able to seek justice."

August 29, 2024 at 10:14 AM

Event
By NYLJ Staff | August 29, 2024 at 10:14 AM



Matthew L. Schwartz, Partner and Chair-elect at the firm, answered the questions.

What are some of the department's most satisfying successes of the past year and why?

The most visible successes of the past year came as a number of our contingency-related cases reached final or near-final conclusions. It's always rewarding to see these large cases where we have made a financial investment pay off, and quite often those cases are about holding big entities accountable to victims who would not otherwise be able to seek justice. We've achieved that in our Epstein cases, student loan litigation, and Google cases, among others. We've also continued to secure big wins for brand name clients in cases that aren't contingency.

For me personally, the last year included an arbitration trial, testimony by a longtime client before Congress and with federal prosecutors, additional work on behalf of BTA Bank—securing another win from the judge in case that went to trial in 2022 and prepping for our upcoming trial—and a number of non-public matters.

A prospective client in crisis calls and asks why your team should be retained. What is your answer?

As the matters highlighted in this submission demonstrate, BSF is able to deliver for clients when the stakes are high—on trial and appeal, in the headlines or behind closed doors. We are cognizant not only to the legal issues, but to the business and reputational realities of our clients beyond the courtroom. And as I noted above, we frequently help clients through crisis situations without the public ever becoming aware of the legal issue, something most clients appreciate when they find themselves in challenging situations.

What traits do you respect most in opposing firms and lawyers?

As trial lawyers, nearly everything we do is adversarial in nature. The firms and lawyers I respect most are the ones who bring a high level of quality to their work without feeling the need to create hostilities among adversaries. At the end of the day, whether you're colleagues or opponents, we're all doing the same thing. The ability to deliver for your clients in court while maintaining professional relationships is a quality we all admire at BSF.

What is the firm doing to ensure that future generations of litigators are ready to take the helm?

More than any other law firm, we give associates meaningful responsibility on cases as soon as they can handle it. That benefits clients by keeping our teams lean and efficient, and it benefits the firm by allowing us to develop deeply skilled associates who will hopefully move up to the partnership ranks.

Beyond the substantive practice of law, we also regularly engage associates on key aspects of their careers, such as business development. We don't want associates to arrive at the doorstep of partnership without having cultivated the full range of tools they will need to be successful at that stage, so we dedicate time and resources to helping develop complete lawyers regardless of the stage of their careers.

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Litigation Department of the Year Finalist, Class Action: Bernstein Litowitz Berger & Grossmann

"Our attorneys are experienced trial lawyers who are prepared to take every case through to trial."

August 29, 2024 at 11:02 AM

Event

By NYLJ Staff | August 29, 2024 at 11:02 AM



Partner Hannah Ross answered the questions.

What are some of the department’s most satisfying successes of the past year and why?

It is always gratifying to achieve a successful outcome for a client after years of hard-fought litigation, negotiations, and trials. Notably, the historic \$812 million recovery we secured for Fannie Mae and Freddie Mac shareholders followed a decade of intense legal battles, including successfully overcoming the government’s repeated attempts to dismiss the lawsuit entirely. Similarly, the \$1 billion recovery achieved in a securities class action against Wells Fargo culminated after three years of rigorous litigation. Our accomplishments in Columbia Pipeline and Mindbody cases further demonstrate our ability to persist through trial and optimize outcomes for our clients.

Additionally, we are proud to have set new benchmarks in the class action field. Our landmark \$1 billion recovery in the Wells Fargo class action is among the top U.S. securities class action recoveries of all time. In Columbia Pipeline, we secured one of the largest shareholder trial verdicts in Delaware’s history, and in Viacom-CBS, we achieved the second-highest direct recovery ever recorded in Delaware’s Court of Chancery. We are very proud to have partnered with our clients to achieve these successes and benchmarks together.

A prospective client in crisis calls and asks why your team should be retained. What is your answer?

You should choose BLB&G for three main reasons. First, our leadership in the field offers the best chance for a successful outcome. Our average recoveries are multiples greater than those of our competitors, and our cases are far more likely to overcome a motion to dismiss. We are consistently recognized as the top plaintiff-side securities class action firm by major industry publications and research organizations.

Second, our attorneys are experienced trial lawyers who are prepared to take every case through to trial. Each case is meticulously prepared as if it will go to trial, backed by a team of attorneys that includes former prosecutors with proven success in court. Our trial preparation and litigation strategy are focused on maximizing the recovery for our clients and injured shareholders.

Third, we pride ourselves on our client-centric focus. We dedicate the time and attention to understanding the culture, priorities, and strategic considerations of each client and are committed to delivering tailored service and advice.

What traits do you respect most in opposing firms and lawyers?

We highly value integrity and directness in opposing firms and lawyers—traits that define our own firm. We abide by the principle of “fight to win, but fight fair,” and we respect opposing counsel who adhere to this credo. Although negotiations and court battles can be challenging, they are significantly more productive and enjoyable when opposing counsel are committed to honesty, avoid shortcuts, and are transparent in their dealings.

What is the firm doing to ensure that future generations of litigators are ready to take the helm?

Unlike many Big Law firms and competitors, BLB&G offers attorneys invaluable hands-on training from the outset. We provide young lawyers with opportunities to develop courtroom and negotiation skills, lead meetings, present to clients, and manage briefs. Our case teams involve attorneys at all levels, allowing junior associates to lead depositions and argue motions in court.

We strongly believe in effective, practical mentorship. Our junior attorneys work closely with our partners, receiving consistent feedback and opportunities to learn and excel. Additionally, the firm offers formal training to ensure junior associates possess the foundational skills necessary to become the next generation of leading litigators.

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Litigation Department of the Year Finalist, Class Action: Labaton Keller Sucharow

"We are upstanding, cohesive, and aligned in the ways we treat clients, opposing counsel, and each other. We respect such integrity in our opposing counsel."

August 29, 2024 at 12:03 PM

Event

By NYLJ Staff | August 29, 2024 at 12:03 PM



What are some of the department’s most satisfying successes of the past year and why?

In the past year, the Firm upheld its commitment to fairness and achieved favorable results for its clients in numerous cases, most notably in actions against Alexion Pharmaceuticals (\$125M settlement), a drug company that used illegal tactics to “pull in” sales of one of the world’s most expensive drugs; Allstate (\$90M settlement) over allegations it implemented an aggressive growth strategy and lowered its underwriting standards to grow its business; and Guess? (\$30M plus governance reforms to prevent future abuses) in a case standing up for women by holding perpetrators of sexual misconduct accountable. At the appellate level the Firm achieved an important victory in a long-running securities fraud class action against several former officers and directors of California utility company PG&E arising from its involvement in the devastating Northern California wildfires; the appellate court vacated an order that had stayed proceedings in the action for over a year. Having once again broken records for lead counsel appointments, the Firm is most proud of its recent appointment to lead a securities class action against commercial airplane-maker Boeing, which seeks to hold the company accountable for prioritizing profits over safety, ultimately jeopardizing the welfare of travelers across the country.

A prospective client in crisis calls and asks why your team should be retained. What is your answer?

Clients choose Labaton because of our commitment to protecting injured investors and consumers. We truly believe in our mission of advancing market fairness and transparency. When we partner with clients, we take the time to understand what they are trying to accomplish. Our commitment goes beyond being “client centered.” We are “client led,” actively investing in connections, serving as trusted partners, and ensuring our clients have a significant voice in every collaboration. We empower our clients with objective, unbiased analysis and recommendations to determine a course of action that aligns with their objectives.

What traits do you respect most in opposing firms and lawyers?

At Labaton, we value integrity and hold ourselves to a high standard. We are upstanding, cohesive, and aligned in the ways we treat clients, opposing counsel, and each other. We respect such integrity in our opposing counsel.

What is the firm doing to ensure that future generations of litigators are ready to take the helm?

Attorney development at Labaton is a career-long goal. We invest in our lawyers, supporting their development of every attorney through a variety of programs and initiatives led by attorneys and professional staff, and we expect them to grow. Our Summer Associate Program serves as the inaugural step in associate development, laying the foundation for a prosperous and fulfilling career at our Firm. Numerous Summer Associates are now full-time attorneys at the Firm. Our Associate Development Committee creates opportunities for our young lawyers to expand their networks and spheres of influence, develop their skills, and find the sponsorship and mentorship necessary to rise. We also have the Firm’s Women’s Initiative, which develops and trains diverse female talent. We actively recruit, mentor, and promote diverse and female lawyers, and have specifically committed to recruiting and developing these individuals to lead our practice areas and join the partnership. We have also designed programs especially for Partners that take into account the set of skills that partners need at their sophisticated levels of practice.

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Litigation Department of the Year Finalist, Class Action: Lief Cabraser Heimann & Bernstein

"Lief Cabraser is a firm that wins victories for its clients while also creating meaningful institutional/corporate change."

August 29, 2024 at 10:01 AM

Event

By NYLJ Staff | August 29, 2024 at 10:01 AM



What are some of the department’s most satisfying successes of the past year and why?

The following are some of our most satisfying successes over the past year, satisfying because they reflect our creative, tenacious, and successful litigation of class and complex actions across a variety of subject-matter contexts. And, while we are pleased by the superlative financial recoveries we achieved for our clients, we are also very proud of the corporate governance improvements and conduct and practices modification our cases achieved.

- Juul Marketing, Sales, & Product Liability Litigation, bellwether trial, and settlements (comprehensive confidential settlements with Juul, then \$235 million settlement in May 2023 with Altria, providing compensation across 8,500-plus injury cases, 1,400-plus government entity cases, and 32 tribal cases;
- Goldman Sachs gender discrimination, \$215 million settlement May 2023 ending 14-plus year litigation with largest gender bias settlement made in advance of employees winning their case at trial, reflecting 78% of potential damages and 50% of all potential class damages;
- Kona Coffee False Advertising case, winning \$41 million in settlements for Kona growers, including major labeling and business practice changes projected to generate over \$81 million in economic value for the growers over the next five years;
- Arizona Theranos Fraud Litigation, winning settlements totaling \$45.33 million in 2023 with Walgreens and one individual defendant, final approval expected mid-2024;
- Huntington Beach Oil Spill, winning final approval in April 2023 for \$50 million settlement including \$34 million for fish industry plaintiffs, \$9 million for property owner class, and \$7 million for waterfront tourism class as well as injunctive relief to prevent future spills;
- Hino Motors Truck Emissions Fraud, winning a settlement of \$237.5 million in case and extended warranties valued at \$208 million, with final approval expected in the first half of 2024.

A prospective client in crisis calls and asks why your team should be retained. What is your answer?

We would describe our comprehensive litigation experience and successes, our lawyers’ commitment to our clients, and the skill, integrity and tenacity of every member of our staff. We’d note that Lief Cabraser is a firm that wins victories for its clients while also creating meaningful institutional/corporate change. And further, that we have the ability to identify issues and problems to formulate sound and effective legal strategies designed to efficiently and successfully resolve litigation either through trial or negotiated settlement.

What traits do you respect most in opposing firms and lawyers?

Honesty. Consistency. Good faith. Talent.

What is the firm doing to ensure that future generations of litigators are ready to take the helm?

I’m proud to say have transitioned our firm to its third generation of leaders. 2023-24 has seen the ascent of at least six new practice group chairs, more of whom are women than men. We remain focused on DEI hiring and encouraging our younger partners to seek leadership roles not just in individual cases, but in legal and bar organizations, to get the experience in steering big ships that is essential to keeping Lieff Cabraser at the forefront of plaintiffs firms nationwide.

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EVENT

Litigation Department of the Year Finalist, Class Action: Pomerantz

"We have a deep bench of experienced lawyers able to take on the most complex litigation, but we are not so large that we can't act quickly and nimbly."

August 29, 2024 at 10:50 AM

Event
By NYLJ Staff | August 29, 2024 at 10:50 AM



Jeremy A. Lieberman, Managing Partner, Pomerantz, answered the questions.

What are some of the department's most satisfying successes of the past year and why?

Over the past year the securities litigation department has achieved some major victories. In April we moved to settle our securities fraud class action against the pharmaceutical company Perrigo for \$97 million. Beyond the significant monetary recovery, we secured an important ruling when the court certified parallel classes of investors who had purchased Perrigo stock on the New York Stock Exchange and the Tel Aviv Stock Exchange. This marked the first time a class of non-U.S. securities purchasers was certified as a class in a U.S. court since the Supreme Court's ruling in Morrison v. National Australia Bank Ltd. The result opens a new avenue for investors in dual-listed shares to pursue recovery in U.S. courts.

We have also had success in some of our cases involving back-door listings in China. In July 2023 we obtained a \$21 million settlement in a case against J.A. Solar, and in March 2024 we secured preliminary approval of a \$29.75 million settlement with Qihoo 360. In both cases, we alleged that company management took the companies private without disclosing to investors their plans to later relist the companies in China at a much higher valuation. Where most of our cases seek to protect investors from buying shares of a company at an artificially inflated price, these cases reflect our belief that investors should also be protected from being misled into selling shares for less than they are actually worth.

A final case to mention is our litigation against Bed Bath and Beyond. In July 2023 we overcame the defendants' motion to dismiss, a ruling that marked only the second time a federal court has held that an emoji could be considered an actionable misrepresentation. We alleged that defendant Ryan Cohen's tweet featuring a "smiling moon" emoji functioned as part of a "pump-and-dump" scheme. Cohen, adopting the air of flippancy common in the meme-stock subculture in which he is a major figure, claimed there is no way to determine the meaning of a "tiny lunar cartoon." In siding with Pomerantz, the judge supported the idea that emoji are an important and viable form of contemporary communication and that "a fraudster may not escape liability simply because he used an emoji."

A prospective client in crisis calls and asks why your team should be retained. What is your answer?

One of the great advantages of Pomerantz is our ideal size. We have a deep bench of experienced lawyers able to take on the most complex litigation, but we are not so large that we can't act quickly and nimbly. We also pride ourselves on our cutting-edge work. Even in cases where it may seem like there is no path for recovery, we are willing to be creative

and think outside the box to formulate new theories to advocate for our clients. Our pioneering work convincing courts to exercise supplemental jurisdiction over Israeli law claims in our cases against Teva and Perrigo is a good example of the way we take on new issues and find viable ways forward in challenging circumstances.

What traits do you respect most in opposing firms and lawyers?

The trait I most respect in opposing firms and attorneys is professionalism and a sense of collegiality. It is always nice to work with attorneys that respect the process and will work to help it along, even though we are on opposite sides of the table.

What is the firm doing to ensure that future generations of litigators are ready to take the helm?

At Pomerantz we are committed to training the next generation of securities class action litigators to take the lead. We hold formal case discussions every six weeks so that attorneys can come together and share their perspectives on the issues they are facing in their cases. This prevents our litigation teams from being siloed, opens a space for collaboration and creative problem solving, and exposes our junior attorneys to a broad range of legal issues. We also believe that practical experience is crucial for professional development, and so we make sure that in each case we provide junior attorneys with opportunities to depose witnesses and participate in oral arguments. This allows junior attorneys to progress more quickly to a point where they’re able to assume leadership positions in our cases.

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Hindenburg Target Tingo Fails to Respond to SEC Fraud Lawsuit

By Chris Dolmetsch

- Tingo Group found liable by judge in SEC fraud lawsuit
- Company CEO faces criminal charges over financial statements

Bloomberg Law News 2024-08-29T09:55:05876624682-04:00

Hindenburg Target Tingo Fails to Respond to SEC Fraud Lawsuit

By Chris Dolmetsch2024-08-28T13:42:46269-04:00

- Tingo Group found liable by judge in SEC fraud lawsuit
- Company CEO faces criminal charges over financial statements

Tingo Group Inc., a financial technology company that was the subject of a short-seller report, and its chief executive officer were found liable for fraud by a federal judge after they failed to respond to a US Securities and Exchange Commission lawsuit accusing them of overstating financial results.

The SEC sued Tingo and two related companies in December, alleging they booked billions of dollars in fraudulent transactions through two Nigerian subsidiaries and reported hundreds of millions of dollars in fake revenue and assets. The regulator accused Tingo's chief executive officer, Mmobuosi Odogwu Banye, of orchestrating the scheme.

On Wednesday, US District Judge Jesse Furman granted the SEC's request for a default judgment in the case, saying that the fraud is "brazen." The SEC was seeking to force the corporate defendants to pay a penalty of more than \$1.15 million each and Mmobuosi almost \$32 million — reflecting the \$25 million he misappropriated and three times the more than \$2.1 million he made from insider trading.

"The magnitude of the fraud is quite something," Furman said at a hearing.

In June 2023, short seller Hindenburg Research cited fraudulent activity by Tingo in a report, causing the company's share price to fall by 48%. The SEC claims Nasdaq-listed Tingo doubled down on its alleged falsehoods and has continued to fabricate its results in public filings.

Read more: Tingo Shareholder Lost 94% of Value Before Hindenburg Report

Mmobuosi, a Nigerian who was once identified as a possible buyer of the English football club Sheffield United, was charged criminally in January by federal prosecutors in Manhattan, who accused him of falsifying financial statements to make Tingo and its subsidiaries appear to be flush with cash. He has not appeared to answer the charges.

While lawyers for the corporate defendants initially appeared in the case, they didn't respond to subsequent orders from Furman. Robert Horowitz, an attorney for Tingo Group, told the SEC in a letter in March that he was awaiting the completion of a probe by police in Nigeria that could exonerate the companies. A judge in Delaware found Tingo Group in contempt Tuesday for failing to produce internal files.

The case is Securities and Exchange Commission v. Mmobuosi Odogwu Banye, 23-cv-10928, US District Court, Southern District of New York (Manhattan).

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Super Micro Accounting Delay Caps CEO's \$6 Billion Wealth Drop

By Diana Li2024-08-28T16:34:31484-04:00

- Company said it will delay 10-K following Hindenburg report
- Charles Liang's net worth has fallen by two-thirds from high

Super Micro Computer Inc.'s 10-K delay erased more than \$800 million from Chairman **Charles Liang**'s net worth Wednesday, capping a wild ride that's seen his fortune slump by nearly two-thirds from its March high.

The San Jose, California based-company's shares plunged 19% after it said it will delay filing its annual financial disclosures and will need additional time to assess its internal controls. That came a day after short-seller Hindenburg Research released a [report](#) alleging "glaring accounting red flags, evidence of undisclosed related party transactions, sanctions and export control failures, and customer issues."



Charles Liang

Photographer: Annabelle Chih/Bloomberg

Read More: Super Micro Slides on 10-K Delay Following Hindenburg Report

It marks a drastic shift for Super Micro and Liang, whose fortune is almost entirely derived from his stake in the company. His wealth briefly topped \$9 billion in March, according to the Bloomberg Billionaires Index, when strong demand for its servers to run artificial-intelligence applications sent shares to an all-time high. Liang's net worth fell to \$3.5 billion on Wednesday, which is down 62% from its high but still up by \$1.5 billion for the year.



Liang, 66, was born in Taiwan. He completed an electrical engineering degree at the National Taiwan University of Science & Technology before coming to the US to study at the University of Texas at Arlington.

He started Super Micro with his wife Sara Liu in 1993, initially producing server boards. Strong growth followed the decision to shift focus to high-efficiency power systems and components. Revenue rose from \$1.2 billion in 2013 to \$7.1 billion for the 2023 fiscal year.

(Updates with closing numbers, adds chart of Liang's wealth)

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Aug. 28, 2024, 1:06 PM PDT

Shipbuilder Austal Backs SEC Giving Penalty to Its Shareholders

By Tony Capaccio

Bloomberg Law News 2024-08-29T09:58:3101182031-04:00

Shipbuilder Austal Backs SEC Giving Penalty to Its Shareholders

By Tony Capaccio2024-08-28T16:06:15217-04:00

Austal Ltd. said it supports a plan by the Securities and Exchange Commission to distribute a \$24 million penalty it's been hit with to shareholders "who could show they suffered" a loss as a result of an accounting scheme designed to inflate earnings from its shipbuilding for the US Navy.

SEC investigations "focused on conduct that occurred over eight years ago, and with a large order book of work ahead of us, we need to concentrate on the future — not the past," Austal non-executive director John Rothwell said in a statement Wednesday. Three former executives of the Australian company's US subsidiary, Alabama-based Austal USA LLC, were charged with fraud in 2023 and are awaiting trial.

Austal USA, which builds vessels for the US Navy and Coast Guard, overstated the profitability of its operations to prop up the share price of its publicly traded Australian parent company, the US Justice Department said in a statement Tuesday.

[Read More: US Navy Contractor to Pay \\$24 Million to Settle Fraud Probe](#)

According to the Securities and Exchange Commission, which filed a parallel lawsuit, Austal and its parent company artificially reduced the estimated costs of finishing projects for the Navy by tens of millions of dollars, despite knowing costs were increasing. When the higher costs were eventually disclosed, the company was forced to write down more than \$100 million.

The company said it's also "in advanced discussions with the US Navy" on an agreement setting out "the remedial measures taken by the company to date" and "ongoing commitments to compliance," including an independent monitor.

--With assistance from **Ava Benny-Morrison** and **Elizabeth Wasserman**.

'Rats jumping off a sinking ship': Insiders dumping Truth Social stock as price tanks

 rawstory.com/truth-social-sell-off-rats

Tom Boggioni

August 29, 2024

Tom Boggioni

August 29, 2024 6:49AM ET



(Shutterstock.com)

According to a new report, if Donald Trump wants to tap into a cash windfall that awaits him from his stake in Trump Media & Technology Group, the parent company of Truth Social, his time is coming soon but there are also indications some of the company's insiders are seeing the writing on the wall and it is not good.

Stock in the long-troubled social media platform has plummeted 40 percent in the past month, which puts the former president under the gun due to restraints placed upon him that keep him from doing a sell-off or borrowing against his shares until September 25.

That restraint has not held back some of the tech company's executives who have already started cashing in their stock as the value plummets.

According to a report from CNN, "Some Trump insiders are already selling, perhaps contributing to the recent selloff in the share price. For instance, Phillip Juhan, Trump Media's chief financial officer and treasurer, recently disclosed selling \$1.9 million worth of stock. Trump Media's general counsel Scott Glabe, chief operating officer Andrew Northwall and chief technology officer Vladimir Novachki made smaller sales last week too. Even Devin Nunes, the former Republican congressman who now serves as Trump Media's CEO and president, dumped \$632,000 worth of stock last week."

According to Charles Whitehead, professor of business law at Cornell Law School, there is the danger of a massive sell-off, explaining, "You don't see sizable shareholders like President Trump selling a lot of stock because it drives the price down. From the market's perspective, it may look like rats jumping off a sinking ship."

Jay Ritter, of the University of Florida's Warrington College of Business, added there is additional political peril if the former president does a massive stock dump.

"If Trump were to sell a large number of shares and the stock price tanks, to some degree he would be burning his own supporters who bought the stock," Ritter suggested. "Politically, that may not play out real well for him."

You can read more right here.

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Trump can soon tap his \$2 billion Truth Social fortune. But it won't be easy

 [cnn.com/2024/08/29/business/trump-truth-social-stock/index.html](https://www.cnn.com/2024/08/29/business/trump-truth-social-stock/index.html)

By Matt Egan, CNN

August 29, 2024

Trump may soon be able to access \$2B Truth Social stake. This is what could stop him

02:22 - Source: CNN

New York CNN —

For months, former President Donald Trump has been sitting on a social media fortune that he couldn't touch. That will change very soon.

The lock-up period prohibiting Trump from selling or even borrowing against his \$2.3 billion stake in Truth Social owner Trump Media & Technology Group (DJT) is scheduled to expire by September 25, according to filings.

In theory, this will give Trump access to a pot of money that he could use to pay sky-high legal fees or even fund his presidential campaign. In reality, Trump faces huge obstacles that would make it very challenging to sell a large chunk of Trump Media – unless he doesn't mind crashing the stock.

"It would be all but impossible for Trump to liquidate his whole stake or even a third of it without completely tanking the stock price," Michael Ohlrogge, an associate professor of law at the New York University School of Law who has specialized in corporate governance and financial regulation, told CNN in a phone interview.

And the share price is already tanking.

Trump Media sinks to post-merger low

Trump Media tumbled another 4% on Wednesday, trading during the session below \$20 for the first time since the merger that formed the company this spring.

Trump Media has lost a staggering 70% of its value since late March, a selloff that has accelerated as Vice President Kamala Harris, the Democratic nominee, has gained in the polls against Trump.

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That selloff has put a serious dent in Trump's net worth.

As recently as May 9, Trump's dominant stake of 114.75 million shares of Trump Media was valued at \$6.2 billion.

But Trump couldn't touch that fortune because, as is typical in deals like this, certain shareholders are subject to a lock-up period that prevents insiders from immediately selling.

According to filings, that lock-up period is scheduled to expire for Trump on September 25, but it could come even earlier.

The lock-up would lift if Trump Media's share price equals or exceeds \$12 for any 20 trading days within a 30-trading day period starting on August 22. As long as the stock doesn't keep plunging, this would translate to the restrictions lifting as soon as September 20.

'Rats jumping off a sinking ship'

The central problem Trump would face in selling most of his stake in Trump Media is that he is the dominant figure for this company.

Not only does Trump own a majority of the shares, he is the most popular user on the company's central product, Truth Social. The company's ticker symbol is even "DJT."

Racing for the exits could easily trigger a loss of confidence in Trump Media

"You don't see sizable shareholders like President Trump selling a lot of stock because it drives the price down," said Charles Whitehead, a professor of business law at Cornell Law School. "From the market's perspective, it may look like rats jumping off a sinking ship."

Investors would similarly be spooked if Elon Musk suddenly dumped most of his shares in Tesla or Mark Zuckerberg sold a massive amount of Facebook owner Meta.

Trump Media insiders are selling

Some Trump insiders are already selling, perhaps contributing to the recent selloff in the share price.

For instance, Phillip Juhan, Trump Media's chief financial officer and treasurer, recently disclosed selling \$1.9 million worth of stock. Trump Media's general counsel Scott Glabe, chief operating officer Andrew Northwall and chief technology officer Vladimir Novachki made smaller sales last week too.

Even Devin Nunes, the former Republican congressman who now serves as Trump Media's CEO and president, dumped \$632,000 worth of stock last week.

In Trump's case, there could be political considerations, too.

"If Trump were to sell a large number of shares and the stock price tanks, to some degree he would be burning his own supporters who bought the stock," said Jay Ritter, a finance professor at the University of Florida's Warrington College of Business. "Politically, that may not play out real well for him."

'Grossly overvalued'

Another problem is that experts say Trump Media's price tag defies logic.

Despite the recent selloff, Trump Media is still valued at nearly \$4 billion. And that's hard to square with the fact that the company made just \$837,000 in revenue last quarter.

"It's grossly overvalued," Ritter said. "It's hard to come up with a value of the company that is much more than the cash on the balance sheet."

Trump Media is sitting on \$344 million of cash and equivalents, funds the company has said it could use to build out its streaming business.

Ohlrogge, the NYU professor, said the fundamentals "look even weaker" than before Trump Media went public because supporters can't argue the company is cash-constrained.

"The current price is way higher than can possibly be justified based on fundamentals," Ohlrogge said.

While Trump may be unable to sell many shares at this point, there is another way he could tap his Truth Social fortune. Once the lock-up period expires, Trump will no longer be prohibited from borrowing against his stake in Trump Media.

That means Trump could pledge some or all of those shares as collateral in a loan.

Of course, as Ohlrogge noted, "a lot of banks are reluctant to do business with Trump due to their past interactions with him."

But even if banks won't lend to Trump, rich supporters could.

"It could be a wealthy individual who either thinks it's good business or they see it as an opportunity to get on the good side of someone who might be the next president," Ohlrogge said.

Experts say that if Trump does borrow against his Truth Social stake, he may not be required to disclose it.

28 comments

Evercore**Evercore ordered to disclose secrets of iced tea can supplier auction**

Arizona Beverages says adviser wrongly shared a contract critical to its ability to sell 99 cent drinks



Arizona Beverages initiated legal proceedings against Evercore this spring © Colleen Michaels/Dreamstime

Maria Heeter and **Sujeet Indap** in New York YESTERDAY



A New York court has ordered Evercore to reveal who had access to a confidential document the investment bank posted in an electronic data room, the secrecy of which Arizona Beverages said was essential to maintaining the 99 cent pricing of its “Big Can” iced tea.

Arizona initiated legal proceedings against [Evercore](#) this spring, accusing the boutique firm of wrongfully uploading a secret supply agreement between the upstate New York-based tea maker and its can supplier, Vobev, which Evercore had been hired to sell.

Arizona, known for its 24-oz cans of iced tea emblazoned with a 99 cent label, has maintained the pricing for about 30 years. “AriZona’s 99¢ ‘Big Can’ is synonymous with the company, becoming the defining, if not legendary, part of Americana itself,” Arizona’s lawyers said in New York state court filings.

“The supply of 24 oz. cans at competitive pricing is the life blood of AriZona’s Big Can business and its ability to maintain the 99 cent price which consumers associate with the product in this time of rampant inflation,” Arizona’s lawyers added.

Evercore on Tuesday was ordered to turn over records to Arizona revealing which parties had access to the agreement via the data room, according to a court order. The decision marks a rare case where an investment bank has been asked to disclose the identities of potential bidders. Sellers and bidders are typically bound by confidentiality agreements to not use information gathered for any purpose other than bidding.

Court documents show Evercore was retained to sell Salt Lake City, Utah-based Vobev in a process that has not been previously reported. One of Vobev’s customers is privately held Arizona, founded by Don Vultaggio in Brooklyn in 1992, who is now a billionaire.

A supply agreement between Vobev and its customer was subject to a confidentiality provision and could only be shared with outside parties if both Vobev and Arizona agreed, according to Arizona. Still, Evercore said that after instruction by Vobev, in January it uploaded the document into a data room where an unnamed third party that signed a non-disclosure agreement had access.

That upload would eventually spark a flurry of emails from Vultaggio to Evercore’s chair and chief executive John Weinberg and the bank’s general counsel, accusing Evercore of allowing the supply agreement to make its way to \$19bn can supplier Ball Corp, Arizona’s other major supplier and a previous client of Evercore. Arizona has hinted in court filings that its relationships with its can suppliers have recently deteriorated. The [beverage](#) company also recently won a \$14mn arbitration with Ball over a can supply dispute.

“If AriZona is unable to obtain Big Cans for distribution on the West Coast at the contracted price under its Can Supply Agreement with Vobev, AriZona will suffer millions in damages and Ball will gain enormous leverage over the supply of Big Cans to AriZona, especially if Vobev is sold to Ball,” Arizona later wrote in a court action seeking to uncover the parties that had seen the confidential document.

Evercore denied it had shown the agreement to Ball and said its own confidentiality obligations rendered it unable to reveal the unnamed third party “A” that had entered the data room.

“Whatever the court finds regarding the disclosure of Party A’s identity, the deep sea fishing expedition that AriZona proposes should be rejected,” lawyers for Evercore said in filings.

The argument failed to sway a New York state judge. In a decision filed on Tuesday, Judge Bruce Cozzens directed Evercore to disclose to Arizona all individuals who accessed the data room or received a copy of the Vobev/Arizona supply contract.

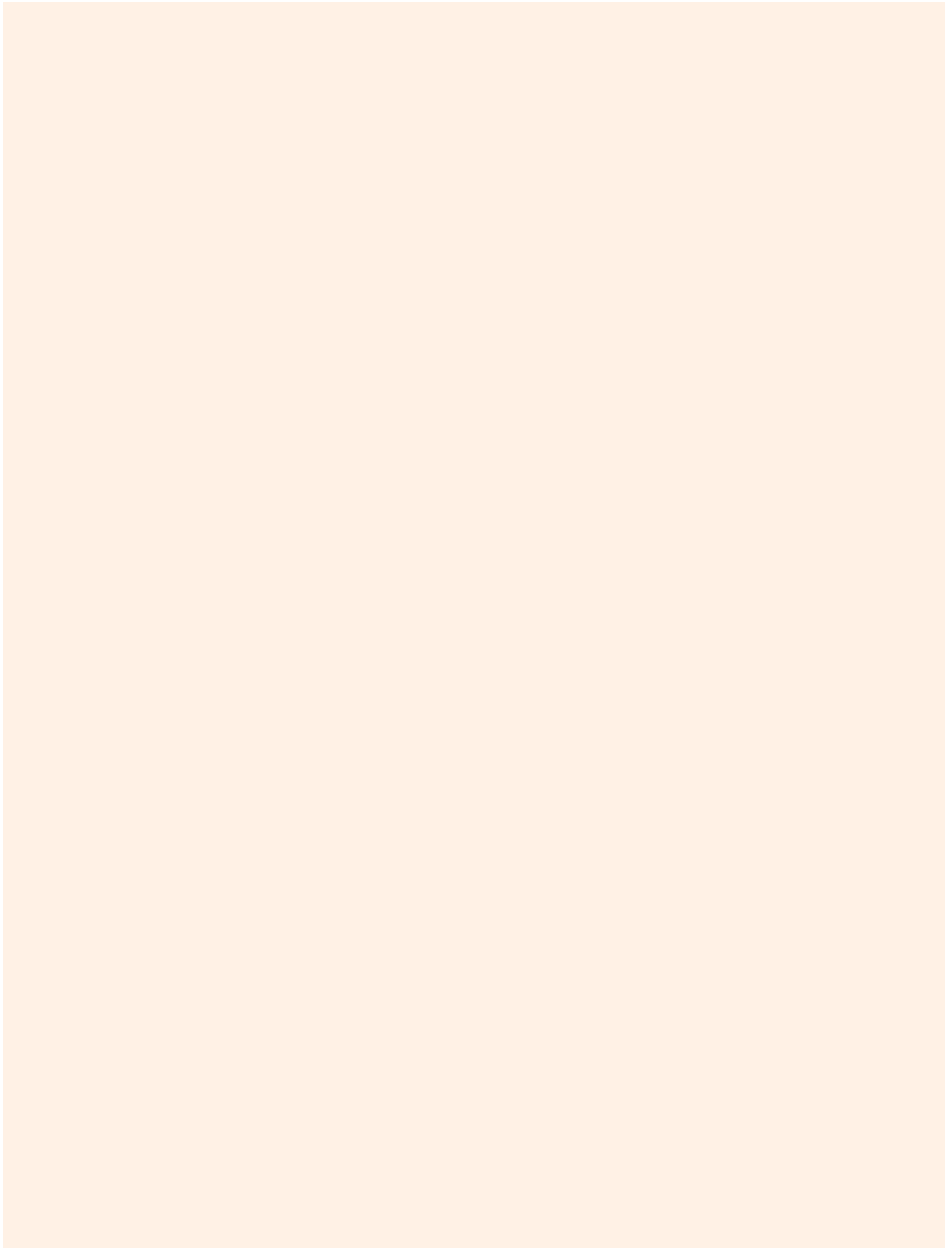
“The court finds that Petitioner has brought forth sufficient information to confirm that the Can Supply Agreement is crucial to the Petitioner’s business,” Cozzens wrote. The judge then decided that the confidentiality breach required Evercore to reveal who had access to the data room.

An Evercore investment banker was also ordered to appear for a deposition over the Vobev data room procedures within 10 days, the filings show.

The episode shows the tightrope bankers and lawyers for companies up for sale must walk between sharing details that will give bidders confidence and giving away otherwise secret business practices.

A spokesperson for Evercore declined to comment. A representative for Arizona did not respond to a request for comment. A spokesperson for Ball said they could not comment on pending litigation, adding: “We look at everything that comes to market, and we are happy with our current footprint.”

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NFT Marketplace OpenSea Receives SEC Warning of Enforcement (1)

By Emily Nicolle

- Agency alleges NFTs on platform are unregistered securities
- Notice is the latest in a string of enforcement actions

Bloomberg Law News 2024-08-29T09:54:09533638047-04:00

NFT Marketplace OpenSea Receives SEC Warning of Enforcement (1)

By Emily Nicolle2024-08-28T12:09:26497-04:00

- Agency alleges NFTs on platform are unregistered securities
- Notice is the latest in a string of enforcement actions

Nonfungible token marketplace OpenSea said it has received a Wells Notice from the US Securities and Exchange Commission, indicating the regulator's intention to sue the company.

The agency alleged the tokens on its platform are unregistered securities, OpenSea Chief Executive Officer **Devin Finzer** said in a blog post Wednesday. The SEC does not comment on the existence or nonexistence of a possible investigation, an agency spokesperson said.

The notice would represent the latest in a string of enforcement actions brought by the SEC against the crypto industry in recent years. Companies including Kraken, Coinbase, Consensus and Uniswap have all been targets of such notices or lawsuits in the past, with some still engaged in legal proceedings.

The SEC earlier charged Impact Theory LLC, a media and entertainment company headquartered in Los Angeles, with offering unregistered securities in the form of NFTs in August last year. It also settled with Stoner Cats 2 LLC — the creators of the online animated cartoon funded through sale of NFTs — with offering unregistered securities; the company agreed to pay a \$1 million fine and to a cease-and-desist order.

In the blog post, OpenSea mentioned the Stoner Cats case as an example of the agency going after artists, and said it is pledging \$5 million to cover legal fees of NFT artists and developers who receive a Wells notice.

“We hope that the SEC will reconsider its stance and approach this issue with the open-mindedness it deserves,” the New York-based company’s blog said. “Until then, OpenSea remains committed to standing up for our vision of a better internet—one that empowers individuals and fosters creativity, rather than stifling it with unnecessary regulatory burdens.”

A year ago, OpenSea’s former head of product was convicted of insider trading, and the company drew heavy criticism for eliminating mandatory royalties for NFT creators on its platform. The startup laid off 50% of its staff in November.

During the last bull market, OpenSea was the biggest NFT marketplace. It has since lost market share to rivals such as Blur and Magic Eden. Still in the last 30 days, OpenSea posted higher sales volume than rivals, according to tracker DappRadar.

While NFT sales inched up earlier this year, they’ve slackened since June. Former President Donald Trump issued his new, fourth NFT collection on Tuesday.

(Updates with company comments beginning in the fourth paragraph.)

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Aug. 28, 2024, 4:00 PM PDT

Ken Leech's Free Rein at Wamco Backfired for Franklin Resources

By Silla Brush, Loukia Gyftopoulou and Michael Mackenzie

Deep Dive

Bloomberg Law News 2024-08-29T09:56:12777504935-04:00

Ken Leech's Free Rein at Wamco Backfired for Franklin Resources

By Silla Brush, Loukia Gyftopoulou and Michael Mackenzie2024-08-28T19:00:01586-04:00

No one was more acutely aware of the perils of celebrity fund managers than Jenny Johnson, the chief executive officer of Franklin Resources Inc.

"Clients get nervous about star fund managers," she said in 2020, shortly after the acquisition of Legg Mason Inc. pushed Franklin's assets to \$1.4 trillion, making it one of the world's biggest fund companies. The deal brought a slew of new managers under Franklin's umbrella, the largest among them Western Asset Management and veteran Chief Investment Officer Ken Leech — a star in his own right.

Four years later, Franklin is grappling with the abrupt dethroning of Wamco's celebrated bond trader, following revelations that the Securities and Exchange Commission is investigating Leech's trades over a three-year period. Federal prosecutors are probing whether profitable trades were given to some clients over others. Leech may be subject to enforcement and is on a leave of absence, the firm said last week, triggering a 13% decline in Franklin shares.

Wamco has hired a third party to perform an independent investigation, Franklin spokesperson Jeanene Terrio said in a statement. "To date, that independent investigation has not identified any motive for unusual trade allocations."



Ken Leech

Photographer: Patrick T. Fallon/Bloomberg

The Pasadena, California-based Wamco has been scrambling to reassure clients. But some are joining the investors that have already exited, frustrated by poor performance and turnover. The Chicago Teachers' Pension Fund moved Tuesday to end its \$550 million allocation to Wamco; it already had the firm under review after John Bellows' abrupt departure earlier this year. In the past week, small investors have pulled about \$1.5 billion from two of the firm's flagship funds, according to data from the influential fund ratings firm Morningstar, which has put Western Assets funds "under review."

At Franklin, the events call into question Johnson's strategy of growth-by-acquisition, hoovering up other asset managers, then granting them broad independence. Johnson has yet to publicly address investors' concerns about the future of a business that accounts for almost a quarter of Franklin's assets and an estimated 10% of its revenue.

"While most of our traditional asset managers have been operationally integrated, pursuant to a five-year agreement at the time of the acquisition Western is an autonomous investment management company, including all functions, technology, operations, legal and compliance," Terrio said. "We are confident in our policies and procedures. Western and Franklin Resources are in the process of reviewing them and will implement changes as needed."

The episode is the latest blow to an industry already struggling to compete with low-cost, passive index funds and a stark example of the inherent tension for a fund conglomerate like Franklin: In exchange for the assets and outperformance that talented stock and bond managers can generate, they demand wide freedom, and when they leave — or run afoul of authorities — it can damage the whole firm.



Acquiring Wamco — the biggest element in the broader, \$4.5 billion deal for Legg Mason — was supposed to help insulate Franklin from the worsening conditions for active asset managers. The firm's assets under management ballooned, with Wamco in particular bringing fixed-income expertise and institutional clients into the fold.

It also added a compelling talent in Leech, known for bold calls on interest rates and credit risk that sometimes paid off spectacularly. For its part, Franklin allowed Wamco to retain a significant portion of its revenue and agreed to hold off on broader integration beyond basic marketing and distribution for five years.

"We understand that we are buying an investment team and investment process, we've left those as independent," Johnson said on Bloomberg Television, just after the Legg Mason deal closed.

Wamco had more freedom than most. Interviews with about a dozen people with knowledge of the firm's operations reveal the almost complete autonomy Leech and Wamco enjoyed, 370 miles away from Franklin headquarters.



Jenny Johnson

Photographer: Lam Yik/Bloomberg

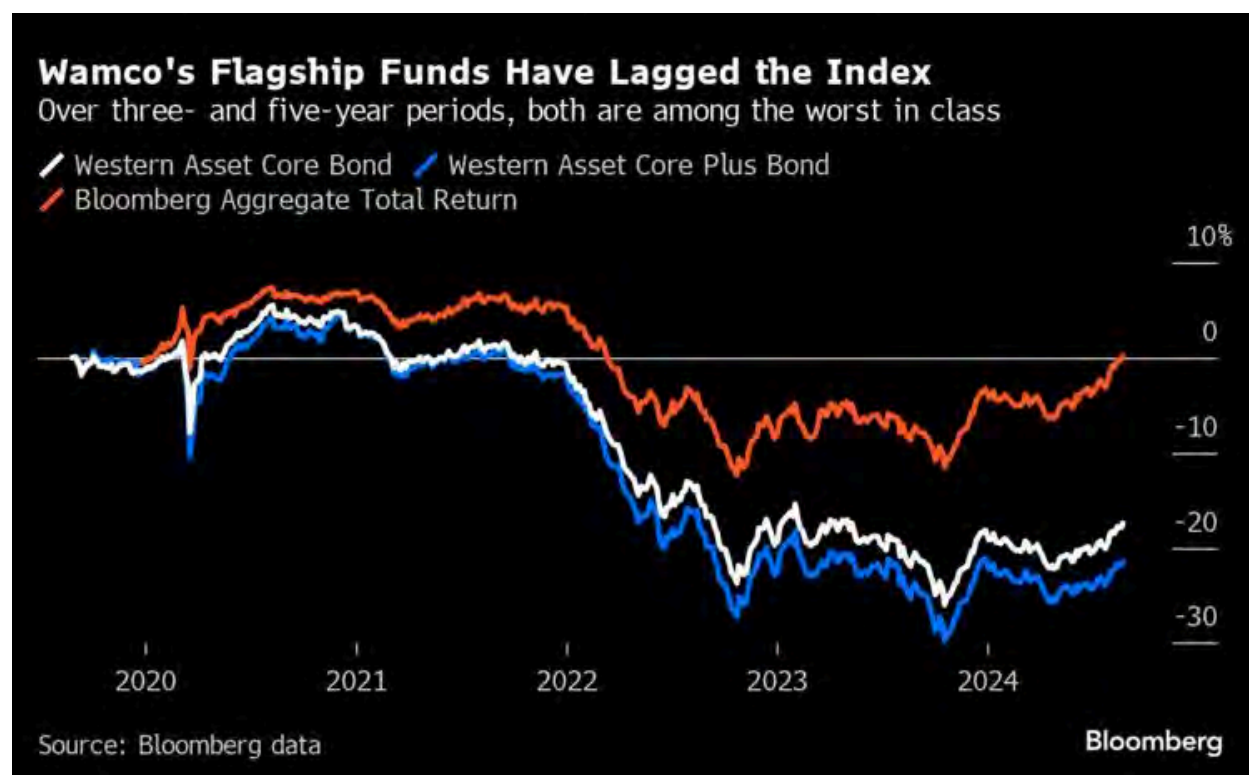
Founded in 1971, Wamco was part of the California bond boom that spawned Pacific Investment Management Co. and TCW Group. It was a place to build a long career, with a culture of early-risers who woke before dawn to compete with East Coast firms, fueled by the onsite cafeteria referred to as "the bond market." Clients could expect breakfast burritos at morning meetings and an invitation to the annual New Year's Day Rose Parade party to cheer for Wamco's latest float.

When Leech joined in 1990, the firm managed around \$5 billion, and his star rose steadily. He first became CIO in 1998; Morningstar named him Fixed-Income Fund Manager of the Year in 2004; two years later, Wamco's assets passed \$520 billion, making it bigger than Pimco.

Leech returned to the CIO role in 2014. That year, Wamco paid a \$21 million fine to resolve SEC charges that the firm had defrauded clients and concealed some investor losses, and that it engaged in cross-trading of mortgage securities to favor some clients at the expense of others.

Despite periodic struggles including periods of underperformance, Wamco ferociously defended its independence, taking umbrage at Legg's efforts to save money by centralizing global business operations. When Franklin negotiated the acquisition of Legg, Wamco's top executives met with Franklin to discuss the terms, and the deal made clear that independence was essential.

Shortly after, the performance of Western's marquee funds began to flag, dragged down by Leech's bets on interest rates and a generous allocation to Russian debt.



In 2023, the firm cut 5% of its global workforce.

Last autumn a Wamco employee raised questions about trading abnormalities within the firm. Soon after, the SEC and federal authorities began their investigation. Franklin first mentioned the matter publicly about nine months later, in a quarterly earnings statement filed at the end of July. Less than a month later, it announced that Leech was on leave to focus on the SEC investigation.

A representative for Leech had no comment.



Wamco's 'Together In Harmony' float during the 135th Rose Parade in Pasadena, on Jan. 1.

Photographer: Drew Bly Clutch Pockets Wambli/Shutterstock

"Ultimately, it's up to Franklin to decide how much control they're going to exert," said Morningstar analyst Bridget Hughes. "There's a balance between how long do you let that leash out so that your talented investors are happy and want to stay."

"At the same time, it's your company," she added. "These are your clients."

Investors are left with serious questions about the future of the firm — and their assets. Wamco CEO James Hirschmann apprised clients of the changes last week in an email with the subject line "Organizational Update." The firm would be reaching out to provide additional information and answer questions, he wrote, adding "Thank you for your continued support of Western Asset. Sincerely, Jim."

Oregon State Treasury, which has about \$4 billion in Wamco portfolios, said it's been told its accounts aren't within the scope of the SEC's investigation. "We are carefully monitoring this situation to ensure prudent and responsible fund management continues," it said.

Less than a year ago, Wamco issued its annual invitation to join the firm to watch the Rose Parade from the office balcony. Its 2024 float theme, "Together in Harmony," was a reminder, it said, "that when people embrace the variety of talents among us and complement each other's contributions, the possibilities are endless."

Like the rest of Wamco's future, its plans for the next parade remain unclear.

--With assistance from Miles Weiss.

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TikTok Moderation Co. Can't Beat Investor Suit Over Exposés

By **Katryna Perera**

Law360 (August 28, 2024, 9:47 PM EDT) -- A Florida federal judge ruled Wednesday that TikTok content moderation company Teleperformance must face a pension fund's proposed class action alleging that investors were harmed after investigative reports were published claiming that the company was working its staff into the ground and forcing them to watch harmful content with no support.

U.S. District Judge Cecilia M. Altonaga issued an **order** stating that plaintiffs, the City of Warren General Employees' Retirement System and City of Westland Police and Fire Retirement System, have pled actionable misstatements and omissions, shown scienter and sufficiently alleged loss causation.

According to the order, Teleperformance moved to dismiss the suit's second amended complaint, arguing that several of the identified challenged statements are not false and contain inactionable puffery.

Judge Altonaga said Wednesday that neither argument is persuasive because, to start, the plaintiffs target statements made by the defendants that use "concrete language," "represent[ing] tangible, verifiable actions" that don't qualify the statements as puffery.

Second, the pension funds have specifically pointed to sources for the alleged misstatements, identified when the statements were made or published and explained why they were false, according to the order. Therefore, the plaintiffs have sufficiently pled the falsity of the statements.

Judge Altonaga further stated that the plaintiffs' allegations "permit the inference of scienter" because of the suit's claims that content moderation was a "critical driver" of Teleperformance's growth; the alleged misstatements were repeated several times, which supports a finding of scienter; the defendants were "evasive" in their responses to questions about the allegations; and due to the Colombian government's investigation into Teleperformance after the truth was revealed.

Finally, Judge Altonaga said the suit's identified corrective disclosures support loss causation except for a Time magazine article published in November 2022 that revealed the Colombian government's investigation.

The judge said the investigation and the article cannot serve as corrective disclosures because the pension funds do not allege a "later finding of wrongdoing."

"The announcement of an investigation reveals just that — an investigation — and nothing more," the order said.

The second amended complaint, filed in June, alleges that two investigative articles published by U.S. news publications during the proposed class period revealed that Teleperformance "subjected its content moderation employees to extremely inappropriate — and potentially criminal — working conditions."

This was in direct contradiction to statements Teleperformance's top brass had made, the pension funds said, and it caused share price declines.

The plaintiffs cited two drops in the price of Teleperformance's American depository receipts, Judge

Altonaga noted. The first of these occurred in early August 2022, when the share price dropped from \$168.69 a share to just under \$160.94 after the publication of a Forbes article about the company's alleged content moderation practices.

The second drop occurred the following November, when Time published an exposé and the share price fell from \$132.32 to \$107.77, the order said.

Teleperformance provides content moderation and other services for social media companies including TikTok.

"Content moderation can involve the removal of material that, while impermissible, is not necessarily offensive to the platform's users — for example, the illegal streaming of copyrighted material," the order said. "It can also involve the removal of offensive or disturbing material — typically referred to as 'egregious' content — 'such as visual depictions of cannibalism or child sexual abuse material ('CSAM').'"

According to the order, the first article, published by Forbes in August 2022, revealed that Teleperformance's content moderators "were shown sexually exploitative images of children as part of their training, and their training materials included a 'widely accessible' document containing hundreds of images of naked or abused children."

Teleperformance responded to the article and said an internal audit had found no evidence of the use of or access to such images in training, but the pension funds claim the information in the Forbes article was corroborated by a confidential witness who worked as a content moderator for the company.

The second article, published by Time in October 2022, revealed that Teleperformance's content moderators were "exposed to egregious content that had an adverse effect on their well-being."

"It also discussed the inadequacy of Teleperformance's mental health support, employee monitoring, and alleged union-busting tactics," the order states. Teleperformance again denied the claims.

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

The pension funds are represented by Stephen R. Astley, Sabrina E. Tirabassi, Luke Goveas and Alex Kaplan of Robbins Geller Rudman & Dowd LLP, Jason R.N. Monteleone and Jacob D. Bottari of Monteleone Law Offices PLLC, and Michael J. Vanoverbeke and Thomas C. Michaud of Vanoverbeke Michaud & Timmony PC.

Teleperformance and the other defendants are represented by Martin B. Goldberg and Benjamin R. Shiekman of Lash Goldberg Fineberg LLP and Michele D. Johnson, Colleen C. Smith, Christopher S. Turner and Donald Lee Thompson of Latham & Watkins LLP.

The case is City of Warren General Employees' System v. Teleperformance SE et al., case number 1:23-cv-24580, in the U.S. District Court for the Southern District of Florida.

--Editing by Rich Mills.



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Walgreens Brass Hid Pharmacy Division Woes, Suit Says

By **Lauraann Wood**

Law360 (August 28, 2024, 8:21 PM EDT) -- Walgreens' directors and officers have been hit with a derivative suit by a shareholder who says the company and its executives inflated stock value by publicly expressing confidence in the pharmacy division's growth while hiding its struggles adapting to industry hurdles.

The overemphasized optimism from Walgreens' executives and board members caused the pharmacy retailer's stock value to artificially inflate until a June revelation that its model was unsustainable, causing prices to drop nearly \$3.50 in one day, shareholder Mark Tobias claimed in his Tuesday complaint.

The stock drop also shows that Walgreens paid inflated prices when it repurchased 3.1 million shares of common stock in October, Tobias alleged. Walgreens paid \$69.3 million for its stock about two weeks after an earnings call in which executive vice president and global financial chief Manmohan Mahajan reported and projected growth for the pharmacy division, a \$31.5 million overpayment going by the more truthful stock value, he alleged.

The executives' conduct has opened Walgreens up to risk and forces it to lose millions of dollars to legal fees involved with litigating a related securities suit, fees and costs involved with fulfilling judgments in that or any other suit, any related internal investigations, and several other expenditures that otherwise wouldn't exist, Tobias claimed.

The company is also suffering from a loss of reputation and goodwill, as well as "a 'liar's discount' that will plague the company's stock in the future" due to the directors and officers' fiduciary duty breaches and unjust enrichment, the shareholder said.

The securities suit, filed in July, lodges proposed class claims against Walgreens, CEO Timothy Wentworth, Mahajan and Chief Pharmacy Officer Rick Gates over their allegedly misleading pharmacy growth projections. Tobias' suit names Wentworth, Mahajan, Gates, board of directors chair Stefano Pessina and directors Janice Babiak, Inderpal Bhandari, Ginger Graham, Bryan Hanson, Robert Huffines, Valerie Jarrett, John Lederer, Thomas Polen and Nancy M. Schlichting.

Like **the shareholder suit**, Tobias targets the company's Oct. 12 news release and earnings call as the first act of artificial inflation. That day, Walgreens issued an outlook for fiscal year 2024 expecting adjusted earnings per share of \$3.20 to \$3.50, telling investors that it was adopting a "prudent approach" to the pharmacy unit and executing actions to lower its cost base, according to Tobias' complaint.

Over the next several months, Walgreens brass continued to tout the company's "strong execution" of its pharmacy services, and even sometimes projected better-than-expected financial results, Tobias claims.

But the truth emerged in a June 27 news release and earnings call revealing "challenging pharmacy industry trends and a worse-than-expected U.S. consumer environment" have made Walgreens's pharmacy model unsustainable, he alleged.

Mahajan also pointed to "challenging retail and pharmacy industry needs" in reporting a nearly 50% decrease in adjusted operating income during the earnings call, and Wentworth responded to an

analyst's question about the pharmacy unit's future by saying it would take both front and back end changes to stores to "meet the consumer where they are today and where they need us to be," according to the suit.

News of the pharmacy division's struggles caused Walgreens stock prices to fall to \$12.19, a \$3.47 or 22.16% decline from its \$15.66 closing price the day before, according to Tobias' suit. The revelation also caused analysts to react negatively when advising investors about Walgreens stock, with a Deutsche Bank report even stating that the company is "in a bit of a downward spiral" with no apparent strategy around growth, he alleged.

Tobias is asking the court to award Walgreens the damages it sustained by its executives and directors' alleged conduct, as well as an order directing those individual defendants to improve corporate governance and internal procedures to prevent similar future occurrences. He's also asking the court to grant Walgreens restitution and award him costs and expenses related to pursuing the suit, alongside any other relief deemed necessary.

Counsel for Tobias declined to comment Wednesday.

Wentworth, Mahajan, Bhandari and Pessina, counsel for Tobias and representatives for Walgreens didn't immediately respond Wednesday to a request for comment.

Contact information for the other defendants couldn't be determined Wednesday.

Tobias is represented by Timothy Brown of The Brown Law Firm PC.

Counsel information for the defendants couldn't immediately be determined Wednesday.

That case is Tobias v. Wentworth et al., case number 1:24-cv-07755, in the U.S. District Court for the Northern District of Illinois.

--Editing by Kelly Duncan.



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Biotech Biz Hid Risks Of Gene-Editing Trial, Investor Claims

By **Elliot Weld**

Law360 (August 28, 2024, 2:22 PM EDT) -- Biotechnology firm Verve Therapeutics was hit with a proposed class suit alleging it misled investors about the risks associated with a clinical trial of an experimental gene-editing drug that was halted and caused the company's stock to tumble.

Thomas Oldroyd filed the **suit** Tuesday in Massachusetts federal court, seeking to form a class of similarly situated investors who traded in Verve securities between August 2022 and April 2024.

Oldroyd said the Boston-based company is developing Verve-101, a potential gene-editing medicine for patients with heterozygous familial hypercholesterolemia, a potentially life-threatening cardiovascular disease.

The company filed a public report with the U.S. Securities and Exchange Commission on Aug. 9, 2022, saying that it recently initiated a clinical trial called "Heart-1" for the gene-editing medicine, according to the suit. The statement said that if "any of the product candidates we may develop, or the delivery modes we rely on to administer them, cause serious adverse events, undesirable side effects or unexpected characteristics," it could delay or prevent regulatory approval of those candidates or limit commercial potential, the complaint alleges.

Oldroyd claims Verve's report was "materially false and misleading because it omitted that a single adverse event in the Heart-1 trial, even an asymptomatic one where abnormalities were resolved within a few days, could cause the company to halt enrollment in the Heart-1 trial."

According to the suit, similarly misleading claims were made in subsequent financial disclosures.

Last November, the company put out a press release saying the "safety profile observed in the Heart-1 trial supports continued development of Verve-101, and the adverse events have been consistent" with the severity of patients' disease, according to the suit. The press release said one patient had experienced a heart attack the day after receiving the treatment that was considered potentially related, but a data and safety monitoring board recommended the trial continue.

The suit claims this press release was also misleading because it omitted that if any patient experienced an adverse event found to be caused by Verve-101, enrollment in the trial could be halted. Oldroyd said future public statements made by the company in 2023 were similarly misleading.

The truth emerged before the market opened on April 2, 2024, when Verve issued a press release saying the Heart-1 trial would be halted due to an adverse event that was blamed on the medicine's delivery system, according to the suit. The price of Verve's stock dropped by 34.9% that day, the suit reads.

Oldroyd claims violations of the Exchange Act against Verve and its executives and is seeking damages.

Counsel for Oldroyd did not immediately respond to requests for comment, nor did a spokesperson for Verve.

Oldroyd is represented by Joshua Baker of The Rosen Law Firm PA.

Counsel information was not immediately available for Verve.

The case is Oldroyd v. Verve Therapeutics Inc. et al., case number 1:24-cv-12218, in the U.S. District Court for the District of Massachusetts.

--Editing by Daniel King.

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Del. Justices OK Mid-Case Appeal In Zantac Class Suit

By **Bonnie Eslinger**

Law360 (August 28, 2024, 6:39 PM EDT) -- The Delaware Supreme Court on Tuesday said it would hear a mid-case appeal in mass tort litigation over claims that the heartburn drug ranitidine, widely sold under the name Zantac, caused cancer.

The defendants in the case, comprising the companies that have sold Zantac over the years, had moved to exclude the plaintiffs' expert opinions, a request that the lower court denied in May. On Tuesday, Delaware justices **granted the companies' bid** for interlocutory appeal.

"A ruling on the issues regarding the plaintiffs' general causation experts could be dispositive for some or all of the almost 75,000 claims filed in Delaware," the Tuesday decision states.

The defendant companies include GlaxoSmithKline LLC, Pfizer, Sanofi and Boehringer Ingelheim.

The lower court's decision "raises substantial issues regarding the mass tort litigation and the Daubert standard" for admissibility of expert witness testimony, the state supreme court said in its decision.

In addition, the companies agreed to allow discovery and other components of the litigation, including identifying representative cases for bellwether discovery and trials, to proceed during the appeal, the state supreme court noted.

The claims cover numerous types of cancers — bladder, esophageal, gastric, liver, pancreatic, breast, colorectal, kidney, lung and prostate — and the plaintiffs retained experts to offer opinions on general causation for each of the named cancers. A known carcinogen known as N-nitrosodimethylamine, or NDMA, is found within ranitidine, according to the plaintiffs' complaint.

The lower court had concluded that the experts' general causation opinions could be based on studies relating to the ingestion of NDMA, rather than ranitidine itself, the judgment points out. The Superior Court also found that Delaware law does not "recognize a 'threshold dose' requirement as part of the general causation analysis."

In its Tuesday decision granting appeal, the state supreme court said among the issues it must determine was whether experts may base their causation opinions on studies regarding the cancer-causing agent or must focus on the product at issue in the litigation.

The companies had asked the lower court judge to certify an interlocutory appeal but in July that request was denied.

"The Superior Court found that the order did not decide a substantial issue of material importance meriting appellate review before a final judgment because the court applied settled law to reach a 'routine evidentiary determination,'" the Delaware Supreme Court decision notes.

The lower court judge also disagreed with the companies that a decision in their favor in the interlocutory review would likely terminate the litigation. The court also concluded that the costs of interlocutory review outweighed any possible benefits.

In January, attorneys for the plaintiffs urged the lower court to reject the calls from the drug company defendants to exclude the plaintiffs' expert reports and testimony, saying jurors should weigh the findings.

The U.S. Food and Drug Administration requested the withdrawal of all prescription and over-the-counter Zantac products in April 2020, citing findings that the carcinogen NDMA was associated with ranitidine medications. The FDA has set an allowable daily limit of 96 nanograms of NDMA, but researchers have found more than 3 million nanograms in a dose of Zantac, according to the plaintiffs.

During the **January hearing**, a lawyer for the plaintiffs told the Superior Court judge that the drug went on the market for long-term use despite being aware of carcinogenic concerns.

Jennifer Moore of Moore Law Group PLLC described GlaxoSmithKline LLC — then a small company in England — as betting the company on ranitidine in the 1980s, even though researchers knew at that time of carcinogenic risks to the chemical under extreme conditions.

In April, Sanofi told the court that it reached an agreement in principle **to settle** about 4,000 personal injury claims linking the discontinued heartburn drug Zantac to cancer.

A nationwide Zantac MDL in Florida federal court **was thrown out** in December 2022 with U.S. District Judge Robin L. Rosenberg finding that "no scientist" outside the litigation had concluded that the drug's active ingredient causes cancer.

GSK issued a statement Tuesday saying it welcomed the decision by the Delaware Supreme Court to take on its appeal.

"Interlocutory reviews are granted in exceptional circumstances, and GSK is pleased that the Supreme Court is of the view that such circumstances are present here," the company said. "The scientific consensus remains that there is no consistent or reliable evidence that ranitidine increases the risk of any cancer."

Pfizer also issued a statement saying it was pleased that the companies could immediately appeal the trial court's ruling.

The defendants "look forward to presenting our argument that the opinions of all of plaintiffs' causation experts must be excluded as they do not meet the standards required for expert testimony under Delaware law," Pfizer said.

Zantac, which was reviewed and approved by the FDA, does not cause cancer when used as directed, the pharmaceutical giant said.

"While we have great sympathy for plaintiffs in these cases, Pfizer believes the lawsuits are without merit," the company said, adding that it hasn't sold a Zantac product in more than 15 years and did so only for a limited period of time.

"As previously disclosed, the company has settled a substantial majority of the cases filed in state court and will continue to vigorously defend itself in the remaining cases," Pfizer said.

Moore provided Law360 with a statement on Wednesday saying she and her co-lead counsel, R. Brent Wisner of Wisner Baum, are confident the appellate court would rule in their clients' favor.

"We all know that NDMA causes cancer — it's why the FDA recalled Zantac from the market over four years ago," she said. "We are confident that the court will reach the same conclusion that the trial court did."

Supreme Court Judges Collins J. Seitz, Christopher Griffiths and Abigail M. LeGrow sat on the panel for the Delaware Supreme Court.

Lead counsel for the plaintiffs in Delaware are Raeann Warner of Collins Price & Warner, Stephen T. Morrow and Joseph J. Rhoades of Rhoades & Morrow LLC and Bernard G. Conaway of Conaway-Legal LLC.

Lead counsel for the plaintiffs nationally are Jennifer A. Moore of Moore Law Group PLLC, and R.

Brent Wisner of Wisner Baum.

Lead counsel for the companies in Delaware are Colleen Shields of Eckert Seamans Cherin & Mellott LLC, Joseph S. Naylor of Swartz Campbell LLC, Nancy Shane Rappaport of DLA Piper and Daniel J. Brown of McCarter & English LLP.

Lead counsel for the companies nationally are Mark S. Cheffo of Dechert LLP, Andrew T. Bayman of King & Spalding LLP, Loren H. Brown of DLA Piper and Joseph G. Petrosinelli of Williams & Connolly LLP.

The case is In Re Zantac (Ranitidine) Litigation, case number 255, 2024, in the Supreme Court of the State of Delaware.

–Additional reporting by Hailey Konnath and Jeff Montgomery. Editing by Michael Watanabe.

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Attys Duel Over Fees After \$12.8M Deal In Chiquita MDL

By **Jack Karp**

Law360 (August 28, 2024, 4:15 PM EDT) -- Attorneys for different sets of plaintiffs in long-running multidistrict litigation over Chiquita Brands International Inc.'s funding of Colombian paramilitary groups are facing off over attorney fees after a settlement in the case.

Conrad & Scherer LLP, which currently represents plaintiffs who were not a party to the \$12.8 million settlement agreement, asked a Florida federal judge Tuesday to adjudicate and enforce a charging lien for \$246,611 in fees and costs for work the firm says it did for the settling plaintiffs.

The settling plaintiffs, represented by attorney Paul Wolf, pushed back against that motion on Wednesday, however, insisting that Conrad & Scherer didn't do any work for the plaintiffs who reached **the settlement with Chiquita** in June.

The fee dispute stems from attorney Terrence Collingsworth's representation of a group of plaintiffs in the MDL between Chiquita and family members of those killed by paramilitary group Autodefensas Unidas de Colombia, which the banana company has admitted to funding.

Collingsworth joined Conrad & Scherer shortly after filing an action against Chiquita on behalf of 144 plaintiffs along with Wolf, according to Conrad & Scherer's Tuesday **motion**.

Several of the firm's lawyers subsequently appeared as counsel for those plaintiffs. But after Collingsworth left Conrad & Scherer, Wolf **moved to disqualify** the firm from representing those plaintiffs. That request was granted, and the court instructed the firm to file a notice of charging lien to preserve its claim to fees, according to Conrad & Scherer.

Now that those plaintiffs have settled, the firm wants to enforce the lien.

"Does 1-144 entered into express contracts for legal representation with Mr. Collingsworth. When Mr. Collingsworth joined C&S, these contracts inured to the benefit of C&S. Indeed, the record is clear that the court, Mr. Wolf, and Does 1-144 all recognized that C&S represented Does 1-144," the firm said.

There are also implied contracts between the plaintiffs and the firm, according to the firm's motion.

Wolf, meanwhile, waived any objections to Conrad & Scherer's entitlement to fees by failing to comply with Local Rule 7.3's requirements to confer with the firm over the fees or object to them in writing, according to the firm.

"C&S was ready and willing to confer with Mr. Wolf. But Mr. Wolf refused, perhaps because he felt that a meet and confer would not have been fruitful. However, that is not his decision to make," the firm said Tuesday.

But there were no express or implied contracts because Collingsworth didn't work for the firm at the time the contracts were signed, according to the Wolf plaintiffs.

So the firm isn't entitled to fees from the settlement. And there was no judgment or recovery in either of the two bellwether cases that Conrad & Scherer did work on, so there is nothing to recover against, the plaintiffs added.

"Does 1-144 would have never agreed to the outrageous hourly rates that Conrad & Scherer demand. Or most of the work they claim to have done, which was never authorized and never benefited any of them," the Wolf plaintiffs said in their **opposition** to the firm's filing on Wednesday.

"Conrad & Scherer were invited to participate in the settlement, and declined," the plaintiffs added.

The one thing both sides seem to agree on is that there's no need for the court to set an evidentiary hearing to determine the amount of the firm's charging lien.

That's because Does 1-144 waived all objections to the firm's entitlement to fees and costs, and to the amount requested, according to the firm.

But, the Wolf plaintiffs say, it's because the firm's motion can be decided in Wolf's favor as a matter of law.

Conrad & Scherer and Wolf did not respond to requests for comment Wednesday. Attorneys for Chiquita declined to comment on pending litigation.

Families of the paramilitary group's victims sued Chiquita, claiming the banana company is liable for the deaths. They say Chiquita paid the group nearly \$2 million to protect its interests in the banana-producing regions of Santa Marta and Urabá in northern Colombia.

The plaintiffs in the MDL have been operating separately as "non-Wolf plaintiffs" and "Wolf plaintiffs" for about a decade, since Wolf in 2013 allegedly copied Chiquita's lead counsel on a message discussing case strategy. The non-Wolf attorney group also says he **voluntarily produced confidential work product** communications in response to discovery requests from Chiquita.

The settling plaintiffs are represented by Paul Wolf.

The non-Wolf plaintiffs are represented by John Scarola, Victoria Mesa-Estrada and Mariano Garcia of Searcy Denney Scarola Barnhart & Shipley PA, James K. Green of James K. Green PA, Rick Herz, Maryum Jordan, Marissa Vahlsing and Marco Simons of EarthRights International, William J. Wichmann of the Law Offices of William J. Wichmann PA, William R. Scherer of Conrad & Scherer LLP, Agnieszka Fryszman and Leslie M. Kroeger of Cohen Milstein Sellers & Toll PLLC, Jonathan C. Reiter of the Jonathan C. Reiter Law Firm PLLC, Terry Collingsworth of International Rights Advocates and Gabriela Paola Valentin Diaz.

Chiquita is represented by Michael L. Cioffi, Frank A. Dante, Melissa F. Murphy, Michael A. Stoolman and Serena S. Gopal of Blank Rome LLP.

The case is In re: Chiquita Brands International Inc., Alien Tort Statute and Shareholders Derivative Litigation, case number 0:08-md-01916, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Carolina Bolado and Kevin Penton. Editing by Linda Voorhis.



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6th Circ. Frees Mich. City, Mayor From Lead Pollution Suit

By Carolyn Muyskens

Law360 (August 28, 2024, 9:04 PM EDT) -- The Sixth Circuit on Wednesday tossed all but one remaining defendant from a proposed class action filed by residents of Benton Harbor, Michigan, over elevated lead levels found in the city's tap water, finding allegations that the mayor misled the public to be vague and conclusory.

Residents of Benton Harbor claimed the city's Mayor Marcus Muhammad lied to the public when he said that the water was safe to consume, but the three-judge appellate panel found that the plaintiffs never identified specific false statements the mayor personally made, ruling that the residents failed to satisfy their pleading burden.

"Although we recognize that the response to Benton Harbor's water crisis was far from perfect, the complaint does not provide any statement or action by Muhammad that would indicate that he had acted with deliberate indifference in causing or dealing with the crisis. The plaintiffs' burden is not a particularly heavy one at this stage of the litigation, but they still must assert more than mere conclusory statements against Muhammad for their 14th Amendment substantive due-process claim against him to move forward," **wrote** U.S. Circuit Judge Karen Nelson Moore for the panel.

The panel ordered that the claims against the mayor be dismissed because he was entitled to qualified immunity, reversing a district judge's earlier ruling. A Monell claim against the city must also be tossed because it was based on the constitutional allegations against the mayor, the panel said.

Acknowledging that the city's communications with the public about the lead in the water supply may have fallen short in some ways — such as in important information potentially being omitted or not being properly distributed to all affected residents — the panel said a "far from ideal" response from Benton Harbor doesn't necessarily rise to a constitutional violation, which requires an egregiously reckless disregard for residents' safety.

The plaintiffs claimed the mayor made "statements ... that the water was safe to drink, that corrosion control measures, flushing and filtering worked" despite knowing that Benton Harbor's water was unsafe to use or drink. But Judge Moore said the residents never backed up their claims by identifying those statements. As a result, the panel found the allegations were too conclusory.

"Although the plaintiffs allege generally that Muhammad made a number of knowing and false statements regarding the safety of the water and measures to address lead in the water, they do not point to any specific statements that Muhammad himself made," Judge Moore wrote in the decision.

The panel was divided, however, over whether to keep alive the claims against Benton Harbor's former municipal water plant Superintendent Michael O'Malley.

Judge Moore and Judge Rachel S. Bloomekatz said the plaintiffs identified a specific misleading statement O'Malley made to a resident about the water being safe to drink, and that comment could support an allegation of deliberate indifference.

As a result, the majority opinion said O'Malley would have to face the constitutional claims.

A lawyer for the plaintiffs, Mark P. Chalos of Lieff Cabraser Heimann & Bernstein LLP, told Law360 in a statement Wednesday that the plaintiffs "are pleased that the court recognized that the citizens of

Benton Harbor have a constitutional right not to be lied to by the government about the contamination of their drinking water."

"The Benton Harbor community will continue fighting for clean, safe water," Chalos said.

U.S. Circuit Judge John B. Nalbandian, dissenting from the majority's opinion with respect to O'Malley, said that, although the complaint contained multiple conclusory allegations about the former superintendent participating in a cover-up and falsely assuring the public of the water's safety, the majority ultimately identified only the one specific statement attributed to O'Malley. The judge said he would have found that a single "isolated" comment to another individual was not enough to meet the pleading standards to state a constitutional violation.

The city, Muhammad and O'Malley had been the only defendants remaining in a putative class action claiming the official response to the discovery of elevated levels of lead in Benton Harbor's water supply in 2018 was a failure.

The lawsuit claimed officials violated residents' constitutional rights to bodily integrity by allowing them to drink contaminated water and failing to appropriately address the lead levels. The plaintiffs further alleged that it took Benton Harbor years to implement effective corrosion control measures and replace its water pipes.

The defendants appealed to the Sixth Circuit after U.S. District Judge Hala Y. Jarbou **dismissed** all claims made against state officials in the case last fall but ordered Benton Harbor, Muhammad and O'Malley to remain in the suit after denying them qualified immunity.

Representatives for the city did not immediately respond to requests for comment Wednesday.

Judges Karen Nelson Moore, John B. Nalbandian and Rachel S. Bloomekatz sat on the panel for the Sixth Circuit.

The residents are represented by Mark P. Chalos, Annika K. Martin, Amelia A. Haselkorn and Wilson M. Dunlavey of Lieff Cabraser Heimann & Bernstein LLP, Alice B. Jennings and Carl R. Edwards of Edwards & Jennings PC, and Stuart C. Talley of Kershaw Talley & Barlow PC.

The city officials are represented by Thomas J. Rheume Jr. and Alexandra C. Markel of Bodman PLC.

The case is Braziel et al. v. Whitmer et al., case number 23-1954, in the U.S. Court of Appeals for the Sixth Circuit.

--Editing by Melissa Treolo.



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Ford Buyers Fight Arbitration Bid In Faulty Transmission Case

By **Elliot Weld**

Law360 (August 28, 2024, 7:09 PM EDT) -- A class of car buyers who claim Ford Motor Co. sold vehicles with bad transmission systems asked a Massachusetts federal judge to deny the carmaker's bid to arbitrate some of the claims, arguing Ford is trying to "dramatically expand the scope" of arbitration agreements with dealerships.

The 19 car buyers out of 38 consolidated plaintiffs said in a Tuesday response that Ford is not able to enforce the arbitration agreements under their plain language and that the company can't be allowed to "hide behind" the clauses.

"The arbitration clause is narrowly defined to apply only to disputes between the signatories — plaintiffs and their respective dealerships — not to a non-party like Ford Motor Company," the motion says.

The car buyers allege Ford's 10R80 10-speed transmission shifts harshly and erratically in a way that makes vehicles jerk and hesitate between gears. In one instance, a vehicle shut down entirely while accelerating on the highway, the buyers said.

In June, U.S. District Judge F. Dennis Saylor IV **granted** dismissal to Ford on a large portion of the car buyers' claims, leaving only the claims for breach of implied warranty, fraudulent concealment and some state law claims in place.

Ford moved to compel arbitration with 19 of the buyers on Aug. 20, claiming the "dealership financing agreements" the buyers signed contained mandatory arbitration clauses that cover their claims against Ford.

But the buyers argued Tuesday that their claims relate to Ford's common law obligations, not financing agreements.

In its motion to compel arbitration, Ford "conveniently" referred to itself as an "affiliate" of the Ford Motor Credit Co., the buyers said, contrary to the position it's taken in other lawsuits.

"The obvious change in Ford's stance results from the fact that Ford Motor Credit Company is an entity entitled to seek arbitration under the agreements, and Ford is not," the response says.

The buyers disputed Ford's contention that the arbitrability of the case must be decided by an arbitrator, saying that the court must decide that issue. Ford is arguing, incorrectly, that all of the claims in the suit were intertwined with the financing agreements, the response says.

Ford has also forfeited its right to compel arbitration, according to the buyers. The company waited 15 months to move to compel arbitration from the time the first of the buyers' complaints was filed, according to the response. The buyers said Ford's argument that it did not become aware of the arbitration agreements until July 2024 "strains credulity," as the company knows such agreements are commonplace.

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

The plaintiffs are represented by Leland Belew, Ryan P. McMillan, Alex R. Straus, Gregory F. Coleman,

Mitchell Breit and Tyler Litke of Milberg Coleman Bryson Phillips Grossman PLLC, John R. Fabry of The Carlson Law Firm PC, Sidney F. Robert of Brent Coon & Associates and Mark R. Miller of Wallace Miller LLP.

Ford is represented by Hector Torres, Cindy Kelly and Stephen Thomasch of Kasowitz Benson Torres LLP and Jacob J. Lantry and Michelle I. Schaffer of Campbell Conroy & O'Neil PC.

The case is McCabe et al. v. Ford Motor Co., case number 1:23-cv-10829, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Mike Curley. Editing by Marygrace Anderson.

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Jazz, Hikma Must Face Bulk Of Xyrem Antitrust Suit

By **Bryan Koenig**

Law360 (August 28, 2024, 7:33 PM EDT) -- Jazz Pharmaceuticals and Hikma Pharmaceuticals appear bound for trial against most solo insurer and class action antitrust claims over alleged efforts to block generic competitors to Jazz's Xyrem narcolepsy drug, under a newly unsealed California federal court order largely rejecting competing motions for summary judgment.

U.S. District Judge Richard Seeborg found too many factual disputes to grant **summary judgment** nixing key independent claims from health insurers like Humana and United Healthcare Services, as well as class action allegations from employee benefit funds and consumers **granted class certification last year**.

In a decision unsealed Monday that also largely refused to grant the plaintiffs summary judgment, Judge Seeborg mostly preserved their allegations that Jazz illegally paid off would-be generics rivals not to enter the market, used U.S. Food and Drug Administration safeguards for abuse-prone drugs to deny generics companies the key samples they'd need to produce their own versions of Xyrem, and carved up the Xyrem market.

The FDA safeguards take the form of risk evaluation and mitigation strategy, under which Jazz allegedly pushed the agency into using a single central pharmacy distribution model, via Express Scripts, even though it wasn't needed. Judge Seeborg's ruling, first issued under seal Aug. 16, concluded that the companies can't rely on earlier FDA approval of the single pharmacy distribution. Instead, he said there's "a factual dispute" requiring jury adjudication on whether Jazz had a reasonable expectation of the FDA siding with the petition.

"The FDA's conclusion in 2002 regarding a single central pharmacy does not mean the same requirement would remain reasonable years later. Indeed, Jazz acknowledges how, years later, it proposed a multiple pharmacy distribution framework for a drug, Rekinla, that would be prescribed far more widely than Xyrem," Judge Seeborg said. "A reasonable factfinder could decide no reasonable litigant could expect success on the merits of a petition seeking a single pharmacy requirement where, along with other facts, that litigant had previously taken the opposite stance for that same drug and another one more widely-prescribed."

Judge Seeborg similarly refused the defense bid for summary judgment nixing allegations that Jazz engaged in anticompetitive conduct during shared REMS negotiations with generics companies, and that the REMS conduct caused any injury.

The defendants can't duck allegations of payoffs delaying generic entry, according to the 47-page ruling, in part because it's enough that plaintiffs allege an "implicit" promise by Jazz not to market its own "authorized generic" version of Xyrem that would eat into the exclusivity otherwise enjoyed by Hikma for its first six months on pharmacy shelves.

"An implicit no-[authorized generic] agreement potentially provides value to Hikma by ensuring it would retain a certain share of supracompetitive profits. Once Hikma was going to enter the Xyrem market, it would have been in both Jazz's and Hikma's interests to prevent price competition," the judge said. "There is no rule that any implicit no-AG agreement must have hurt Jazz to have constituted a reverse payment to Hikma."

The ruling preserved such reverse payment claims based on their citation to allegedly below-market royalty rates that Jazz charged Hikma after resolving patent infringement litigation launched when the latter moved to produce a generic of Xyrem. It similarly refused to nix claims based on an

"acceleration clause in the Jazz-Hikma settlement" that would allow Hikma to come to market sooner if another generic hit pharmacy shelves earlier.

In preserving allegations of a conspiracy to carve up the market, Judge Seeborg rejected defense assertions centered on Hikma's 180 days of exclusivity.

"This exclusivity does not prevent a brand from launching AGs through either itself or third parties," the judge said. "Jazz and Hikma prohibited third-party AGs in their settlement agreement during Hikma's exclusivity period. Further, there is sufficient evidence to survive summary judgment that Jazz and Hikma entered into an implicit no-AG agreement."

Nor can the defendants argue other independent issues blocked generic competition, according to the ruling.

The judge did, however, let Jazz and Hikma — other generics defendants have settled out of the case while Par Pharmaceutical Inc.'s bankruptcy **proceedings** have given the company a reprieve — nix some claims, including a bid for injunctive relief. Namely, he granted Jazz summary judgment against allegations it forced patients onto a newer drug, Xywav, because he found "an insufficient causal link between the anticompetitive conduct Jazz is accused of engaging in relating to Xyrem and opt-out plaintiffs' reimbursements for Xywav."

Judge Seeborg also nixed unilateral monopolization claims, over the REMS petitioning, under the laws of California, Kansas, New York and Tennessee, because he said those laws do not support such claims. And he allowed Jazz to nix claims that it paid too much to cover the litigation fees borne by Par, Lupin Pharmaceuticals Inc. and Amneal Pharmaceuticals LLC in its patent infringement litigation against those companies, coverage that allegedly masked an illegal payoff. The judge found "insufficient evidence to generate a genuine dispute of material fact that these cash payments were reverse payments."

Counsel for Humana declined comment. Counsel for the remaining parties did not immediately respond to requests for comment Wednesday.

In addressing the plaintiffs' competing bid for summary judgment on key issues, Judge Seeborg refused to declare that the Jazz-Hikma settlement was an agreement in restraint of trade that harmed competition and that Jazz had market or monopoly power. Judge Seeborg refused to block the companies from pointing to their settlement talks and found "no basis to conclude, at summary judgment, that plaintiffs have met their initial burden under the rule of reason by showing the agreements had the potential to cause anticompetitive effects."

Judge Seeborg similarly found too many factual disputes to declare now that Jazz has market power or that it wouldn't have been able to show a REMS-related patent was infringed.

The judge did, however, allow the plaintiffs to nix affirmative defenses that the suit was filed too late or that they waited too long to bring suit.

The class is represented by Dena C. Sharp, Scott Grzenczyk, Tom Watts and Jordan Isern of Girard Sharp LLP and Michael M. Buchman of Motley Rice LLC.

Humana Inc., Health Care Service Corp., Molina Healthcare Inc., Blue Cross Blue Shield of Florida Inc. and Health Options Inc. are represented by Matthew S. Weiler, Todd M. Schneider, Jason H. Kim, Matthew S. Weiler of Schneider Wallace Cottrell Konecky LLP and Peter D. St. Phillip, Noelle Ruggiero and Uriel Rabinovitz of Lowey Dannenberg PC.

United Healthcare Services Inc. is represented by Hamish P.M. Hume and Beko O. Reblitz-Richardson of Boies Schiller Flexner LLP and Judith A. Zahid, Eric W. Beutzow, Heather T. Rankie, James R. Martin and Jennifer Duncan Hackett of Zelle LP.

Jazz is represented by Jeffrey Faucette of Skaggs Faucette LLP and Heidi K. Hubbard, Stanley E. Fisher, Benjamin M. Greenblum, Alexander S. Zolan, Teagan J. Gregory and Lauren H. Uhlig of Williams & Connolly LLP.

Hikma Pharmaceuticals is represented by Jack E. Pace III, Heather M. Burke and Kathryn J. Mims of White & Case LLP.

The case is In re: Xyrem (sodium oxybate) antitrust litigation, case number 3:20-md-02966, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bonnie Eslinger, Adam Lidgett and Dani Kass. Editing by Jay Jackson Jr.

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Orrick, Okla. Atty Deny Violating MOVEit MDL Judge's Orders

By **Lauren Berg**

Law360 (August 28, 2024, 10:15 PM EDT) -- Orrick Herrington & Sutcliffe LLP and an Oklahoma attorney have denied violating court orders in multidistrict litigation over a 2022 data breach involving Progress Software's MOVEit file transfer tool, telling a Massachusetts federal court they were allowed to settle similar state litigation against a payroll software provider outside the federal action.

Christopher Kearns, one of the plaintiffs in the data breach MDL, argued in his **show cause motion** that Orrick and William B. Federman of Federman & Sherwood should have sought input from the MDL plaintiffs' lead counsel when negotiating Paycom Payroll LLC's \$900,000 settlement in a similar case in Oklahoma state court. But Federman hit back in a **response** Tuesday, arguing that the MDL class counsel lacks the "authority to interfere with the settlement."

Federman, who represented the plaintiffs in the Oklahoma case, noted in his response that the settlement negotiations began before U.S. District Judge Allison D. Burroughs entered MDL Order No. 10 designating the responsibilities of the plaintiffs' lead counsel, which include settling or compromising claims asserted in the case.

The negotiations also began before class counsel put together the Kearns action naming Paycom as a defendant, which was filed eight months after the Oklahoma case, referred to in court documents as the "Johnson action," according to the response.

"By the time the Kearns action was filed, the Johnson settlement was nearly consummated," Federman said.

What's more, Kearns is not even a member of the Paycom class and does not have standing to bring his suit, according to the response. According to Paycom's information, Kearns was not affected by the data breach because his data was not accessed or acquired in the Paycom incident.

Federman alleges the MDL class counsel refuse to dismiss the Kearns case to try to give themselves the ability to interfere with the Johnson settlement.

Without the Kearns action, Paycom wouldn't even be a defendant in the MDL and the Oklahoma plaintiffs could not be accused of "settling or compromising claims asserted in the MDL" because their settlement doesn't release claims against Progress Software, according to the response.

"There is nothing collusive happening between Paycom, Orrick and Mr. Federman (or Federman & Sherwood)," the response states. "The Johnson settlement provides a comprehensive benefits package to the settlement class."

According to court documents, Paycom was a victim of a cyberattack beginning in late May 2023 that was tracked back to a vulnerability in Progress Software's MOVEit product, which led to the unauthorized access of personal information.

Plaintiffs Sara Loveless and Carmen Johnson then filed separate proposed class actions against Paycom in Oklahoma state court in August 2023, with both estimating a putative class of just under 7,500 people, court records state. In January, court records show that Loveless dropped her case to join Johnson's case.

A month later, the parties began discussing a settlement and, at that time, there was no proceeding in the MDL involving Paycom, according to court records.

Orrick filed a separate **response** to Kearns' motion Friday, arguing that its client wanted to resolve the litigation and "put money in the pockets of the individuals whose data was impacted," but that the only available avenue for that was in state court. There was no federal complaint at the time, the response states.

Orrick said it never withheld knowledge of the settlement and that the MDL class counsel has acknowledged they were aware of the Johnson litigation in Oklahoma state court by April.

"That same month, Paycom and the Johnson plaintiffs disclosed on the public docket that settlement negotiations had commenced," the law firm said. "Still, there was no federal complaint."

It wasn't until May, when the Johnson parties were finalizing their settlement, that the MDL class counsel filed the Kearns complaint, according to the response.

While the MDL class counsel believes the Kearns complaint enabled them to immediately halt all state court settlement discussions, Orrick said the Massachusetts federal court cannot approve a class settlement because Kearns is not a member of the class.

"There is no way around that issue and no basis then for ceasing a state court process that stands to deliver money to class members in the near term," the law firm said. "While plaintiffs' leadership waited weeks to bring this issue to the court's attention, the Oklahoma state court preliminarily approved the Johnson settlement, and the wheels are in motion to send notice to the settlement class."

"That plaintiffs' leadership is attempting to halt that process, which would compensate thousands of class members, through the use of an illegitimate named plaintiff, raises serious ethical issues," it added.

Had there been a plaintiff in the MDL who was a member of the class with which Paycom is settling, the company and its counsel "would have been amenable to shifting the settlement proceedings" to the federal court, according to the response.

Representatives for the MDL class counsel, Paycom, Orrick and Federman did not immediately respond to requests for comment Wednesday.

The Oklahoma plaintiffs are represented by William B. Federman of Federman & Sherwood.

Orrick is represented in-house by Michelle Visser.

The MDL plaintiffs are represented by Kristen A. Johnson of Hagens Berman Sobol Shapiro LLP, E. Michelle Drake of Berger Montague PC, Gary F. Lynch of Lynch Carpenter LLP, Douglas J. McNamara of Cohen Milstein Sellers & Toll PLLC, Karen H. Riebel of Lockridge Grindal Nauen PLLP and Charles E. Schaffer of Levin Sedran & Berman LLP.

The MDL defendants are represented by Aravind Swaminathan of Orrick Herrington & Sutcliffe LLP, Allison M. Holt Ryan of Hogan Lovells LLP, Jack W. Pirozzolo of Sidley Austin LLP, Nathaniel R. Mendell of Morrison & Foerster LLP, Paulyne Gardner of Mullen Coughlin LLC, Gilbert S. Keteltas of BakerHostetler, Jeff Tsai of DLA Piper LLP, Kristine McAlister Brown of Alston & Bird LLP, Edward P. Boyle of Venable LLP, Kari M. Rollins of Sheppard Mullin Richter & Hampton LLP and Felicia H. Ellsworth of WilmerHale.

The individual case is Christopher Kearns v. Progress Software Corp. et al., case number 1:24-cv-11368, and the MDL is In Re: MOVEit Customer Data Security Breach Litigation, case number 1:23-md-03083, in the U.S. District Court for the District of Massachusetts.

--Editing by Jay Jackson Jr.