Bloomberg Law

Request a Demo Login

Securities Law News
Sept. 10, 2024, 1:49 PM PDT

Tivity Health Denied Immediate Appeal Over Investor Class Status

By Martina Barash

Bloomberg Law News 2024-09-11T09:58:32932525798-04:00

Tivity Health Denied Immediate Appeal Over Investor Class Status

By Martina Barash 2024-09-10T16:49:39000-04:00

Tivity Health Inc. failed to justify an immediate appeal of class status granted to investors allegedly harmed by the company's statements about its acquisition of Nutrisystem Inc., the Sixth Circuit said Tuesday.

The wellness-program operator will need to defend itself in the securities fraud class suit in the US District Court for the Middle District of Tennessee, after which an appeal will be available to the losing party. But many securities class actions settle first because of the financial pressure associated with a trial.

- Investors allege Tivity misled them after the merger about its newly acquired nutrition segment's performance
- The lower court certified a class in 2022 and then re-certified it in 2023 after the US Court of Appeals for the Sixth Circuit asked for more analysis
- Tivity didn't point to novel legal questions or other issues, Judges Eugene E. Siler Jr., Joan L. Larsen, and Rachel S. Bloomekatz of the Sixth Circuit said in a brief order Tuesday

Robbins Geller Rudman & Dowd LLP, Bramlett Law Offices, and Schall Law Firm represented the investors. King & Spalding LLP represented Tivity.

The case is In re Tivity Health, Inc. , 6th Cir., No. 23-00504, 9/10/24 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Brian Flood at bflood@bloombergindustry.com

Baltimore settles with Teva, Walgreens ahead of scheduled opioid trial

reuters.com/legal/baltimore-settles-with-teva-walgreens-ahead-scheduled-opioid-trial-2024-09-10

Brendan Pierson

People walk by a Walgreens, owned by the Walgreens Boots Alliance, Inc., in Manhattan, New York City, U.S., November 26, 2021. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights, opens new tab

Sept 10 (Reuters) - Baltimore said on Tuesday that it has settled with Walgreens (WBA.O), opens new tab over claims that the pharmacy operator fueled opioid addiction in the Maryland city, the latest in a series of settlements totaling $402.5 million ahead of a trial scheduled to begin next week.

The announcement came a day after the city reached an $80 million settlement over opioids with drugmaker Teva Pharmaceutical (TEVA.TA), opens new tab. Baltimore did not disclose the terms of its settlement with Walgreens, but the cumulative settlement amount implies that it was also $80 million.

"We are proud of our efforts to bring these companies to justice over the past several years," Baltimore Mayor Brandon Scott said in a statement.

Walgreens said in a statement: "Although Walgreens strongly disputes any liability, this settlement is in the best interests of all of our stakeholders."

The remaining defendants scheduled to face trial next week are drugmaker Johnson & Johnson (JNJ.N), opens new tab, and distributors McKesson (MCK.N), opens new tab and Cencora (COR.N), opens new tab.

"We will challenge the city's claims - which have no basis in the facts or the law," J&J said in a statement, adding that it "did everything a responsible manufacturer of these important prescription pain medicines should do."

Teva, McKesson and Cencora did not immediately respond to requests for comment.

Baltimore earlier this year announced settlements with drugmaker AbbVie's (ABBV.N), opens new tab Allergan unit, pharmacy operator CVS (CVS.N), opens new tab and drug distributor Cardinal Health (CAH.N), opens new tab.

Like more than 3,000 other local governments that have filed lawsuits over opioids, the city accused drugmakers of downplaying opioids' addiction risks, and distributors and pharmacies of ignoring red flags that pills were being diverted into illegal channels.

The vast majority of those cases have been settled through nationwide agreements, which now total about $46 billion.
Baltimore opted against joining those global settlements in the hopes of recovering more than it would have received through those deals. The city said that under a multi-state settlement with Teva, for example, it would have received only $11 million over 13 years.

More than 800,000 people in the United States died of opioid overdoses from 1999 through 2023, according to data from the U.S. Centers for Disease Control and Prevention.
Reporting By Brendan Pierson in New York, Editing by Alexia Garamfalvi, Jonathan Oatis and Rosalba O'Brien

Securities Law News

Sept. 10, 2024, 12:57 PM PDT

$3.5 Million Settlement Wins Certification in Securities Case

By Sam Skolnik

- Class reactions to payouts in Tarena case "well-received"
- Class representatives determined to be "adequate," judge said

Bloomberg Law News 2024-09-11T09:56:10140978137-04:00

$3.5 Million Settlement Wins Certification in Securities Case

By Sam Skolnik 2024-09-10T15:57:07000-04:00

- Class reactions to payouts in Tarena case "well-received"
- Class representatives determined to be "adequate," judge said

Plaintiffs in a securities fraud class action have finalized a $3.5 million settlement in a case involving a Chinese-headquartered educational services company.

A federal judge approved the final settlement agreement and certified the settlement class in the case against Tarena International Inc., finding the unopposed plaintiffs' motion for the settlement to be "fair, adequate, and reasonable."

Each qualified class member is set to receive about $5,040, not including accrued interest on the litigation expenses, said Judge Pamela K. Chen with the US District Court for the Eastern District of New York. There were 435 valid claims not including the lead plaintiff Walter De Schutter and two named plaintiffs, Steven Clauter and Cynthia Lewis, who received an additional $10,000 and $2,500 respectively.

Those 435 valid claims suffered recognized losses of over $5.3 million, said Chen. The reaction of the class —"the most significant factor to be weighed"—was sufficiently adequate for her to approve the settlement, she said.

"The Claims Administrator has not received any objections to this date," Chen wrote. "Further, the Claims Administrator received no valid exclusion requests from the Settlement Class. Thus, the Court finds that the Stipulation, overall, has been well-received."

Plaintiffs brought the class action on behalf of everyone who bought or sold Tarena's American depository shares between Aug. 16, 2016, and Nov. 1, 2019.

The case originated when two of Tarena's employees spread public disclosure documents that falsely inflated the company's revenues, said Chen. Tarena issued a series of corrected public disclosures which caused the American depository share price to drop from $5.02 per unit in May 2019 to $0.76 in November of 2019.

Chen also found that the proposed settlement passed several other tests to allow it to be granted final certification.

Class representatives were determined to be "adequate," including because each had "an interest in vigorously pursuing the claims of the class," she said.

Likewise, she said the requirement of "predominance," meaning class cohesiveness, was met. "In this case, the crucial question is whether Defendants' issuance of false and misleading statements violated federal securities laws," Chen wrote. "That question is 'essential to the claims of all putative class members,' and the 'same evidence will suffice for each [class] member [to answer it],'" she said.

Chen also approved and awarded attorneys' fees in the amount of $1,166,666.67; reimbursement of about $26,000 in litigation expenses, plus accrued interest; and "incentive awards" to plaintiffs totaling $15,000, which included $10,000 to the lead plaintiff and $2,500 to each named plaintiff.

Pomerantz LLP and The Rosen Law Firm represent the investors. Skadden, Arps, Slate, Meagher & Flom LLP represents Tarena.

The case is Schutter v. Tarena Int'l Inc. , E.D.N.Y., No. 21-3502, Opinion 9/9/24

To contact the reporter on this story: Sam Skolnik in Washington at sskolnik@bloomberglaw.com

To contact the editor responsible for this story: Adam Ramirez at aramirez@bloombergindustry.com

42 state AGs endorse federal plan to add warning labels on social media

abajournal.com/syndicated/article/42-state-ags-endorse-federal-plan-to-add-warning-labels-on-social-media

Health Law

By Cristiano Lima-Strong, the Washington Post

September 10, 2024, 1:50 pm CDT

New York Attorney General Letitia James and dozens of other state enforcers are backing a plan to place warning labels on social media platforms. (Jabon Botsford/The Washington Post)

A coalition of over 40 state attorneys general urged Congress on Tuesday to place labels on social media platforms warning of their potential risks to children, rallying substantial bipartisan support behind a proposal championed by U.S. Surgeon General Vivek H. Murthy.

In a June op-ed, Murthy called on federal lawmakers to pass legislation authorizing the placement of tobacco-style surgeon general's labels "stating that social media is associated with significant mental health harms for adolescents." Murthy said the move would help tackle concerns that social media is fueling real-world harms among kids and teens.

Now 42 state attorneys general are endorsing the plan, writing in a letter to congressional leaders that it would mark "one consequential step toward mitigating the risk of harm to youth."

"By mandating a surgeon general's warning on algorithm-driven social media platforms, Congress can help abate this growing crisis and protect future generations of Americans," wrote the group, co-led by attorneys general from New York, California, Colorado, Kentucky, Mississippi, New Jersey, Oregon and Tennessee and signed by nearly three dozen others.

In his op-ed in the New York Times, Murthy cited evidence that adolescents who spend substantial time on social media are at greater risk of facing anxiety and depression and that many teens say the sites have worsened their body images. Research studies finding direct causal links between children's social media use and mental health harms remain sparse, and Murthy, lawmakers and academics have called for additional research into the matter.

Still, state and federal officials have increasingly spoken out against the dangers that social media platforms such as Instagram and TikTok can pose to children’s mental health, including by exposing them to bullying, harassment, illicit drugs and sexually abusive material.

Government leaders have also dialed up scrutiny of the ways digital platforms are designed to keep young users engaged through what some contend are addictive features.

At the federal level, the Senate in July overwhelmingly passed legislation that would force tech companies to take “reasonable” steps to prevent harms to children such as bullying, drug addiction and sexual exploitation, as well as expand existing protections for children’s online data.

At the state level, many of the same attorneys general last year filed a lawsuit accusing Meta of building addictive design features into its platforms, Instagram and Facebook, the result of a flurry of investigations into industry giants.

State legislators have separately passed a raft of bills to either limit children’s access to social media sites or to force companies to prevent or mitigate potential risks to younger users.

Those efforts face ongoing challenges from tech industry groups and free-speech advocates who argue they infringe on users’ constitutional rights. The groups and advocates also say government officials are acting too hastily to restrict social media use and disregarding its potential benefits for youth. Some of those groups have also spoken out against the warning label plan, calling it premature or unwarranted.

In their letter to Congress, the state attorneys general said a social media warning label “would not only highlight the inherent risks that social media platforms presently pose for young people, but also complement other efforts to spur attention, research, and investment into the oversight of social media platforms.”

“Young people across our country are struggling, and these addictive social media algorithms are only making this mental health crisis worse,” New York Attorney General Letitia James (D) said in a statement.

Related topics:

First Amendment | Constitutional Law | Internet Law | Government | Health Law | Technology | Federal Government | Public Interest | State Government | Public Health | Mental Health

Utah law restricting youth social media use blocked by judge

reuters.com/world/us/utah-law-restricting-youth-social-media-use-blocked-by-judge-2024-09-11

Nate Raymond

Facebook, TikTok, Twitter, YouTube and Instagram apps are seen on a smartphone in this illustration taken, July 13, 2021. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights, opens new tab

Sept 11 (Reuters) - A federal judge has blocked Utah from enforcing a new law aimed at protecting the mental health of young people by requiring social media platforms to verify users' ages and impose restrictions on minors' accounts.

Chief U.S. District Judge Robert Shelby on Tuesday issued a preliminary injunction, opens new tab after concluding that tech industry trade group NetChoice was likely to succeed in establishing that the law violated the U.S. Constitution's First Amendment by unduly abridging the social media companies' free speech rights.

The decision marked the latest in a string of court rulings blocking laws deigned to protect young people online that states enacted to address rising concerns about the dangers posed by social media to the mental health of children.
"The court recognizes the state's earnest desire to protect young people from the novel challenges associated with social media use," Shelby wrote.

But he said, "even well-intentioned legislation that regulates speech based on content must satisfy a tremendously high level of constitutional scrutiny," and that Utah's law did not.

Utah's attorney general did not respond to a request for comment.

Republican Governor Spencer Cox signed the Utah Minor Protection in Social Media Act into law in March. The measure partially replaced an earlier social media regulation law the state repealed after NetChoice sued to block it as well.

The new law was set to take effect on Oct. 1 and required social media companies to adopt age verification systems to determine if a user was a minor and required the companies to impose special privacy settings for accounts used by children.

NetChoice, whose members include Meta Platforms' (META.O), opens new tab Facebook and Instagram, Alphabet's (GOOGL.O), opens new tab YouTube, Snap Inc's (SNAP.N), opens new tab Snapchat and Elon Musk's X, argued that the law imposed unjustified, content-based restrictions on the companies' speech.

Shelby said the group's argument was "persuasive," saying the law drew distinctions between types of websites yet only imposed content-based restrictions on how social media companies can construct and operate their platforms and not others.

Chris Marchese, director of NetChoice's litigation center, in a statement said the ruling "highlights just how flawed this law is at its core," and that his group was looking forward to having it and similar laws nationally permanently struck down.

NetChoice has won court rulings blocking similar laws in full or part in Arkansas, California, Mississippi, Ohio and Texas.

Reporting by Nate Raymond in Boston; Editing by Mark Porter

Nate Raymond
Thomson Reuters

Nate Raymond reports on the federal judiciary and litigation. He can be reached at nate.raymond@thomsonreuters.com.

Securities Law News
Sept. 10, 2024, 9:16 AM PDT

Investors Face Heat on Citigroup’s Knowledge of Mexican Fraud

By Evan Weinberger

Documents

Docket

- Investors claim more than $1 billion in fraud losses
- Arguments focused on Citigroup’s knowledge of scheme

Bloomberg Law News 2024-09-11T09:55:3883374761-04:00

Investors Face Heat on Citigroup’s Knowledge of Mexican Fraud

By Evan Weinberger 2024-09-10T12:16:41000-04:00

- Investors claim more than $1 billion in fraud losses
- Arguments focused on Citigroup’s knowledge of scheme

Investors who lost more than $1 billion in a fraud involving a Mexican oil services firm faced questions from a federal appeals court about just how much Citigroup Inc. knew regarding the scheme.

Judges Jill Pryor, Elizabeth Branch, and Britt Grant of the US Court of Appeals for the Eleventh Circuit on Tuesday drilled down on whether the more than 30 investors who sued Citigroup in 2016 sufficiently showed they relied on statements from the bank’s employees in New York and Miami to pump money into a scheme perpetrated through the bank’s former Mexican subsidiary, Banamex.

David Cooper, a Quinn Emanuel Urquhart & Sullivan LLP attorney representing the investors, argued Citigroup’s employees should’ve known about the scheme at Banamex and that the New York-based bank should be held responsible.

“The allegations far exceed plausibility,” he said.

But the investors’ attorney faced a series of questions about how Citigroup employees in New York or Miami, among thousands of people who work for the bank, would know about a scheme in Mexico that came to light only after the investors made their decisions.

Cooper pointed to a 2014 statement from then-Citigroup CEO Michael Corbat that the bank fired an employee involved in the scheme in Mexico, although the statement didn’t specify whether the employee worked at Banamex or Citigroup.

“At the very least there is a plausible knowledge of the fraud when their CEO said they terminated an employee because of their participation in the fraud,” Cooper said. He argued that the bank, including its employees, is responsible for knowing about the fraud broadly under US securities laws.

But Adam Hakki, the A&O Shearman partner representing Citigroup, countered that Cooper and his clients hadn’t made specific enough allegations against the bank for the Eleventh Circuit to overturn a lower court decision dismissing the case.

“In all cases, they don’t allege that the person they were dealing with knew anything about the alleged fraud,” he said.

Hakki also argued that the case isn’t a class action and is instead more than 30 different complaints with each plaintiff making different factual allegations. The appellants have failed to make specific allegations with respect to each investor’s experiences with Citigroup, he said.

“This they have not done,” he said.

Second Crack

The arguments Tuesday marked the second time the Eleventh Circuit has dealt with the case. The appellate panel in July 2020 overturned a January 2018 lower court ruling dismissing the case, finding that the claims against Citigroup belonged in a US court despite the investments, including through scandal-plagued former Citigroup unit Banamex, occurring in Mexico.

Citigroup processed transactions through its New York and Miami offices, making the US an appropriate venue, the appeals court said in its previous ruling.

Judge Darrin P. Gayles in the US District Court for the Southern District of Florida dismissed the case against Citigroup again in August 2023, determining the investors failed to prove Citigroup conspired with defunct Mexican oil services provider Oceanografia SA to commit fraud.

Investors in their 2016 suit claimed Citigroup employees improperly advanced funds to the now defunct Mexican oil services provider in an attempt to make it look financially healthier than the company actually was.

Citigroup settled claims related to the conduct with the Justice Department in 2017 and with the SEC in 2018 and fired around a dozen employees over the scandal. The bank also wound down Banamex and replaced it with a new Mexican subsidiary.

Quinn Emanuel Urquhart & Sullivan LLP and Homer Bonner Jacobs Ortiz PA represents the appellants.

A&O Shearman and Day Pitney LLP represent Citigroup.

The case is Otto Candies LLC v. Citigroup Inc. , 11th Cir., No. 23-13152, Oral Arguments 9/10/24 .

To contact the reporter on this story: Evan Weinberger in New York at eweinberger@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

ALM | LAW.COM

Critical Mass With Law.com's Amanda Bronstad: Johnson & Johnson's Proposed Talc Bankruptcy Plan Now Totals $9.1B, Could A $2.75B NCAA Class Settlement Collapse?

September 11, 2024 at 01:02 PM

Critical Mass

Amanda Bronstad
staff reporter

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

This week: Plaintiffs' firm **Allen Smith** is recommending his 12,000 talc clients accept **Johnson & Johnson**'s bankruptcy plan after he negotiated for $1 billion more. A federal judge had concerns about a $2.75 billion antitrust settlement with **NCAA** involving compensation to college athletes. Find out who got appointed to lead lawsuits alleging **GM**'s OnStar tracks driver data.

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

Another Talc Trial Teed Up For This Week in Connecticut

Johnson & Johnson overcame one of the biggest hurdles in attempting to resolve litigation alleging its baby powder caused ovarian cancer: Convincing plaintiffs' attorney Allen Smith (**Smith Law Firm**) to recommend its proposed bankruptcy plan to his 12,000 talcum powder clients. The move comes about a week after Johnson & Johnson paused its timeline for certification of the vote on its proposed bankruptcy plan, which needs the support of 75% of talc claimants.

Smith, however, told **Law.com** that he negotiated for another $1.1 billion, bringing the $8 billion bankruptcy plan's total value to $9.1 billion. Here's my story on Smith, which joined 18 other plaintiffs' firms that support Johnson & Johnson's proposed plan — potentially its third Chapter 11 filing in less than five years.

Here's the glitch: Smith has partnered with **Beasley Allen** in all its talc cases. And Andy Birchfield (**Beasley Allen**), said he still opposes Johnson & Johnson's bankruptcy plan.

Meanwhile, on the trial front: Less than one month after **Dean Omar** won its third talc verdict against Johnson & Johnson on behalf of a victim of mesothelioma, the plaintiffs' firm is back in court in Connecticut this week. So far this year, Dean Omar has won verdicts of $45 million in Illinois, $260 million in Oregon and $63.4 million in South Carolina.

This time, in **Bridgeport Judicial District**, Dean Omar attorneys Ethan Horn, who is national trial counsel, and partner Ben Braly, face off on Sept. 11 against a defense team led by Robert Simpson (**Shook, Hardy & Bacon**), Meghan Kelly (**Orrick**), Bill Oxley (**Orrick**) and James Craven (**Wiggin & Dana**).

Judge: 'I Think We Have Got Problems'

A federal judge in California gave lawyers three weeks to redraft portions of a landmark **$2.75 billion class action settlement** that would compensate current and former college athletes who were denied the right to earn money off their name, image and likeness since 2016. The antitrust settlement, reached in May with the **NCAA** and five conferences, would allow each school to direct about $21 million to athletes, starting as soon as next season.

But at a Sept. 5 preliminary approval hearing, **U.S. District Judge Claudia Wilken** raised concerns about the impact the settlement would have on third-party collectives, or boosters, which provide compensation to student athletes to use their name, image and likeness in exchange for things like social media advertising and autograph signing.

Plaintiffs' lawyer Jeffrey Kessler (**Winston & Strawn**) assured the judge the settlement would protect those payments, but NCAA attorney Rakesh Kilaru (**Wilkinson Stekloff)** emphasized that pay-for-play is forbidden under the current rules. "I think we have got problems with this and I don't have an idea of how to fix them," Wilken told the lawyers at the hearing.

ALM reporter **Colleen Murphy**, who wrote about the hearing, said the judge "was asking for more stringent language to make sure that pay-for-play was not part of it."

Colleen told me:

"*It came down to particular definitions — and the part where the NCAA pushed back is that he said you can't have improper inducements for pay-for-play, and they have a procedure to deal with if that is alleged against a booster or student. Under the new system, schools will have the discretion to pay student-athletes as they see fit. The judge was concerned that money from collectives, or boosters, might be illegitimately justified as NIL [name, image and likeness] under the proposed settlement."*

Who Got the Work?

A federal judge in Georgia's Northern District appointed Norman Siegel (**Stueve Siegel Hanson**) and John Bevis (**Barnes Law Group**) as co-lead counsel in lawsuits alleging **General Motors** gathered data about drivers without their consent and then sent it to insurance companies. The lawsuits name GM, its subsidiary OnStar, and data brokers **LexisNexis Risk Solutions Inc.** and **Verisk,** In an Aug. 19 order, **U.S. District Judge Thomas Thrash** appointed two more lawyers to be in charge of cases against OnStar: Amy Keller (**DiCello Levitt**) and Bryan Clobes (**Cafferty Clobes**). Two others will lead cases that named LexisNexis and Verisk: Joseph Guglielmo (**Scott + Scott**) and Sabita Soneji (**Tycko & Zavareei**). He also appointed 12 lawyers on two separate plaintiffs' steering committees, and liaison counsel M. Brandon Smith (**Childers, Schlueter & Smith**).

Here's what else is happening:

Trailer Verdict: A St. Louis jury awarded **$462 million** to the families of two men killed in 2019 when their **Volkswagen** went underneath the rear of a trailer. The Sept. 5 verdict against the trailer manufacturer, **Wabash National Corp.,** included $12 million in compensatory damages and $450 million in punitive damages, which plaintiffs' firm **Simon Law Firm** suggested to jurors by totaling the $15 million per year he said the defendant should have spent three decades ago to install safer RIGS . John Simon (**Simon Law Firm**) and Johnny Simon (**Simon Law Firm**) tried the case with Brian

Winebright (**Cantor Injury Law**) and Lisa Tsacoumangos (**Brown & Crouppen**). Wabash, in a statement, said the jury was prevented from hearing evidence that the driver's blood alcohol level was above the legal limit and neither man was wearing a seatbelt.

Girardi's Lenders: Lenders and lawyers who sued **Tom Girardi** in the years preceding the 2020 collapse of his firm, **Girardi Keese**, said he would brag about himself and bully them. "That's how this guy operated," Leslie Corwin (**Duane Morris**), who sued Girardi in 2019 on behalf of a litigation funder, told **Law.com** after the verdict. His suit uncovered a $21 million payment to Girardi's wife, "Real Housewives" star **Erika Jayne,** which he turned over to the **U.S. Department of Justice**. Girardi, 85, was convicted last month on wire fraud charges. Testimony at last month's trial revealed Girardi wined and dined judges and regularly hosted lavish parties. Kate Benveniste (**Greenberg Traurig**), who sued Girardi in 2019 on behalf of another lender, told Law.com that "he was certainly able to trade on that reputation for a while."

Anapol Acquisition: **Anapol Weiss** acquired **Walsh Law**, adding the Washington D.C.-based plaintiffs' firm's Alexandra Walsh and four other partners. Walsh will become a shareholder, while two other women will become partners, making the firm's total attorney makeup more than 50% female. The acquisition also will expand Anapol Weiss' footprint to include Minneapolis, Los Angeles, Dallas and Washington D.C. Walsh launched her firm in 2021 after switching to the plaintiffs' side from defense work, which she handled while at her prior firm, then called Wilkinson Walsh + Eskovitz.

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

NEWS

A Sliver of Forever Chemical Allegations Allowed to Proceed Against Prime Hydration Beverage, Judge Rules

"Castillo alleges that the dangerous chemicals present in the Grape Sports Drink compromised its safety and fitness for consumption The FAC states that PFAS found in Defendant's product are 'poisonous or deleterious' and 'indisputably linked to negative health consequences.' Further, the PFOA and PFOS found in the product exceed the EPA's recommended limit for drinking water. These allegations are sufficient at this stage," wrote U.S. District Judge Araceli Martínez-Olguí.

September 10, 2024 at 04:42 PM

Civil Procedure

Riley Brennan

A federal judge in California is allowing a consumer's claim that Prime Hydration's grape-flavored sports drink is "poisonous" to move forward, finding independent testing showing unsafe levels of cancer-causing toxins in the various bottles was enough to proceed.

In a Sept. 9 opinion, U.S. District Judge Araceli Martínez-Olguí for the Northern District of California concluded the plaintiff, Elizabeth Castillo, had standing and could proceed on one claim of breach of implied warranty of merchantability. However, the judge said Castillo failed to plead factual allegations that Prime had knowledge about the presence of per- and polyfluoralkyl substances, also known as forever chemicals, among several other claims, and granted many of Prime's dismissal requests.

As to the surviving allegations, Prime argued that Castillo only speculated a risk of harm from PFAS. Martínez-Olguí concluded Castillo had established standing by alleging she purchased the product during the class period and that independent testing showed unsafe levels of chemicals.

"Castillo alleges that the dangerous chemicals present in the grape sports drink compromised its safety and fitness for consumption The FAC [first amended complaint] states that PFAS found in defendant's product are 'poisonous or deleterious' and 'indisputably linked to negative health consequences,'" Martínez-Olguí said. "Further, the PFOA and PFOS found in the product exceed the EPA's recommended limit for drinking water. These allegations are sufficient at this stage."

Prime argued Castillo needed to connect the testing to the specific products she had purchased, citing the U.S. District Court for the Northern District of California's 2023 holding in *Bowen v. Energizer Holdings*, which found that plaintiff's alleged injury of purchasing and testing a sunscreen bottle that contained 0.29 parts per million of benzene was too speculative. The *Bowen* court had noted the FDA guidance permits up to 2 parts per million of benzene in sunscreen, and that there were no allegations that the level present in the plaintiff's bottle was likely to cause physical harm, the opinion said.

In the present suit, Martínez-Olguí did not find this argument persuasive, as Castillo's "independent testing revealed PFAS in the sports drink—at a level higher than the recommended Environmental Protection Agency's 2022 lifetime advisory for drinking water."

Castillo sought independent testing of the product, which revealed the levels of PFAS and the amount of Perfluorooctanesufonic acid exceeded the EPA's lifetime health advisory for drinking water by nearly one and a half and three times, respectively. The EPA has issued drinking water regulations which offer the "proposed goal for maximum contaminant levels for PFOA and PFAS is zero and the proposed maximum contaminant levels is 4.0 ppt (whereas Castillo only detected 0.06 ppt)," the opinion said.

"However, as Castillo explained at the hearing, the EPA's proposed maximum contamination level for public water is a different standard from the interim lifetime health advisory that Castillo cites, and the former did not supersede the latter. Thus, Castillo has plausibly alleged that the level of PFAS in grape sports drink is unsafe," Martínez-Olguí wrote.

The judge also concluded that Castillo can proceed with a breach of implied warranty of merchantability allegations based on the independent testing results. Castillo claims that Prime breach both its implied warranty and merchantability because the labels implied that the drink was "unadulterated and safe," the opinion said.

The remaining claims, including California false advertising, consumer protection, and unfair competition allegations, as well as a Magnuson-Moss Warranty Act claim, were dismissed.

Neither Castillo's attorney, Kristen Cardoso of Kopelowitz Ostrow, in Fort Lauderdale, Florida, nor Prime Hydration's attorney, Cindy Hamilton of Greenberg Traurig, in Palo Alto, California immediately responded to requests for comment.

NEWS

Athena Bitcoin, Genesis Coin Face Potential Class Action Over 'Epidemic' Elder Fraud

"We're taking a new legal problem and we're trying to find solutions for our client," said Marc E. Dann, an ex-state attorney general.

September 10, 2024 at 03:16 PM

Cryptocurrency

Michael A. Mora

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

What You Need to Know

- An elderly woman withdrew nearly $50,000 and deposited it into a Bitcoin ATM.
- The woman alleged that Athena Bitcoin Inc. and Genesis Coin Inc. were aware of the fraudulent activity facilitated by their machines and assumed a duty to prevent it.
- The lead attorney behind the lawsuit said he is unaware of any other class action lawsuit over the operation of a cryptocurrency ATM.

An ex-state attorney general sued Athena Bitcoin Inc. and Genesis Coin Inc. in what he said was an unprecedented class action. The lawsuit was filed in a state court in Ohio after his elderly client was scammed into depositing tens of thousands of dollars into one of the defendant's ATMs, which convert physical currency into cryptocurrency.

Marc E. Dann, the managing partner of DannLaw, represents the plaintiff, S.M., who was scammed into depositing money into the ATM of the Ohio-based defendant, Athena, which it purchased from a second Florida-based defendant, Genesis.

"This fraud is an epidemic of senior citizens being solicited by fraudsters and ripped off by fraudsters, and everybody along the way is making money," Dann said. "It's almost, in my mind, like receiving stolen property in the criminal sense. It's not criminal yet because our laws have not caught up to what has been going on."

Athena and Genesis did not respond to a request for comment.

Athena, a Delaware corporation, was founded in September 2015 and currently operates nearly 3,000 bitcoin ATMs in the U.S., El Salvador, Colombia, Argentina and Mexico. Its free-standing kiosks allow customers to exchange their physical currency for crypto assets. Athena purchased its ATM kiosks from Genesis, whose software operates the machine and monitors transactions.

To use one of Athena's ATMs, a user would approach it and select one of two preset ranges of bitcoin to purchase. Then, a user would verify their identity via a one-time PIN code sent to their cellphone. From there, the customer would enter their cash into the Athena ATM and identify the address of their bitcoin wallet where they want their bitcoin deposited.

In the lawsuit, the plaintiff cited a blog post on Athena's website titled "Avoid These Bitcoin Scams" as an example of how the company recognized the prevalence and severity of financial scams involving crypto and its ATMs and has assumed a duty to ensure that its efforts to prevent, intercept and mitigate financial abuse through its ATMs were reasonable.

Still, S.M. alleged in the 26-page complaint that the defendants are "expressly aware that it does nothing to ensure safe and secure banking, and that its ATMs continue to be used in cryptocurrency scams, money laundering, and transactions involving illegal goods and services."

S.M. received a friend request on Facebook from someone who was already a friend on Facebook, who then provided a number to call to resolve the duplicate request error, according to the lawsuit. When S.M. called the number, the recipient informed her that pornography had been purchased using her account, which is a federal offense that could result in jailtime.

S.M. was later told that an unknown scammer was attempting to withdraw all of her money and to protect her money, she had to withdraw it from her bank and deposit it into an Athena Bitcoin ATM, per the lawsuit. In total, S.M. withdrew and deposited nearly $50,000 into an Athena Bitcoin ATM before suspecting fraud and alerting the authorities.

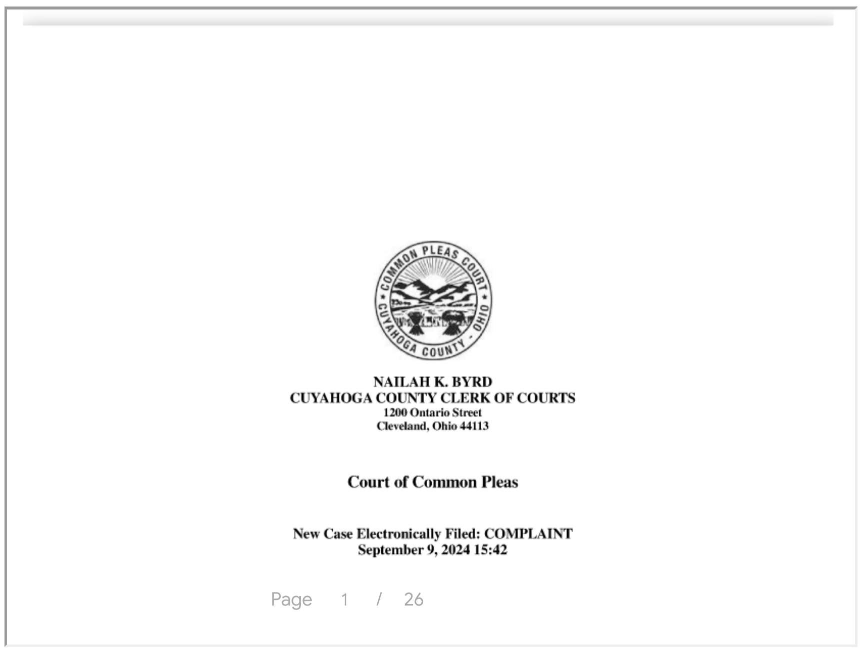
While the market value of one bitcoin was then less than $58,000, Athena sold the subject bitcoin at a 33% markup of nearly $77,000, per the lawsuit. S.M. alleged that the defendants charge these usurious rates because a portion of their market base uses the ATMs in scams and to launder and convert illicit funds and that a segment includes unsophisticated investors.

S.M. sued the defendants Monday on multiple allegations, including negligence and violations of the Ohio Products Liability Act and the Ohio Consumer Sales Act, in a case pending before Judge Jeffrey Saffold of the Cuyahoga County Court of Common Pleas in Ohio.

Notably, elder fraud complaints to the FBI's Internet Crime Complaint Center have increased by nearly 15% in the last year and have cost these individuals aged 60 and older over $1.1 billion of losses in connection with cryptocurrency, the latest figures show.

"We're taking a new legal problem and we're trying to find solutions for our client," Dann said. "We would consider amending the complaint once we do some discovery if it indicates that this is a national issue."

Read the Lawsuit:



THE NATIONAL LAW JOURNAL

Breaking news and trends for law firm and legal departments about the evolving federal regulations in a volatile political climate.

FEDERAL LEGAL NEWS

- Courts & Litigation
- Expert Columns
- Latest Stories
- Events

SPECIAL COVERAGE

- Special Reports
- Special Supplements

SURVEYS & RANKINGS

- The NLJ 500

NATIONAL LAW JOURNAL

- Current Issue
- Contact
- Sitemap

After $63M loss, Johnson & Johnson preps for another trial in unfriendly South Carolina

legalnewsline.com/stories/664240052-after-63m-loss-johnson-johnson-preps-for-another-trial-in-unfriendly-south-carolina

September 11, 2024

Toal | Wikipedia

COLUMBIA, S.C. (Legal Newsline) - Johnson & Johnson is scheduled to begin trial next month in a South Carolina court where it lost a $63 million verdict last month and the presiding judge has a reputation for pro-plaintiff rulings and stiff sanctions against companies that dare to oppose her.

The South Carolina asbestos docket is overseen by Judge Jean H. Toal, celebrated as the state's "Ruth Bader Ginsberg" for serving as the first female chief justice of the South Carolina Supreme Court. After she retired, Judge Toal was appointed to run all of the state's asbestos cases, which she has done with a penchant for finding money in decades-old insurance policies and corporate subsidiaries to produce a steady stream of plaintiff awards.

She also doesn't mind inflating jury verdicts she feels are too low, and the state Supreme Court has given its stamp of approval to her actions. Since Judge Toal took over in 2017, asbestos claims in South Carolina have surged, driven significantly by the Dallas law firm of Dean Omar Branham Shirley.

Plaintiff lawyers are now filing talc lawsuits in Judge Toal's court, claiming the ubiquitous product sold by Johnson & Johnson, Avon and many other companies was contaminated with asbestos. And Johnson & Johnson is one of their biggest targets, especially after a jury last month ordered the company to pay $63 million to a man who blamed baby powder for his fatal cancer even though he worked in a building that was condemned for asbestos.

In the latest skirmish, lawyers at Dean Omar are seeking sanctions against J&J for failing to provide executives who can testify about how the company set up special subsidiaries with names like LTL and LLT to hold asbestos-related liabilities. The plan was to place those companies in bankruptcy so a judge could oversee an orderly process for paying claims.

To explain the corporate maneuvers, J&J provided John Kim, chief legal officer of LTL and LLT, to testify in several pending cases. But plaintiff lawyers said he wasn't prepared to answer questions and Judge Toal agreed, sanctioning J&J in August in the case that ended with a $63 million jury award against the company.

"Court action and sanctions are needed," plaintiff lawyers argue in their latest motion for sanctions.

Judge Toal has a pattern of using sanctions orders – including rich fees for the lawyers who seek them – to discipline companies she believes have been defying her. She has even ordered companies not named in lawsuits, primarily insurers, to pay the lawyers pursuing them, including $1.6 million in fees she said Travelers insurance should pay for fighting earlier discovery orders.

The judge also approved a $5 million settlement of a legal malpractice claim brought by a receiver she had appointed to control a defunct company. That receiver filed suit against that company's own lawyers.

Lawyers have found great success in Judge Toal's courtroom arguing companies that went bankrupt or otherwise out of business were fraudulently stripped of assets and need a court-appointed receiver to recover money for asbestos plaintiffs. Usually those recoveries are in the form of old insurance contracts, although the judge has also approved legal action against solvent corporate subsidiaries.

Plaintiff lawyers say they also may want to question J&J executives about "Project Plato," which was reportedly the code name for the legal strategy of placing asbestos liabilities in bankrupt subsidiaries.

In the case set for trial, Angela M. Hood seeks money for the death of Mary McBrayer, who she claims contracted mesothelioma from a variety of products including Johnson's Baby Powder. As in other cases, J&J denies there ever was asbestos in its cosmetic talc, so it can't be held liable for causing someone's cancer. The trial is scheduled to begin Oct. 21.

From Legal Newsline: Reach reporter Daniel Fisher at dan.fisher@therecordinc.com.

ORGANIZATIONS IN THIS STORY

South Carolina Supreme Court

https://www.wsj.com/business/kevin-plank-broke-under-armour-can-he-fix-it-8520cf38

Kevin Plank Broke Under Armour. Can He Fix It?

By Inti Pacheco Follow

Sept. 11, 2024 5:30 am ET

When Kevin Plank took back the CEO job this year at Under Armour UAA **-1.84%** ▼ , he said the sportswear brand he founded had suffered from executive turnover and strategy shifts.

"My top priority is to bring clarity and stability to our business," he told investors in May, when Plank also warned them that the company's sales would drop at least 10% this year.

The 52-year-old billionaire had never left the company he started nearly 30 years ago. After stepping aside as chief executive in late 2019, he stayed on as executive chairman and brand chief. And he remained the controlling shareholder, thanks to supervoting shares.

More than half a dozen former executives said Plank was responsible for much of the turmoil and complexity that he is now promising to clean up. In recent years, they say he foiled marketing plans put in place by others, he pushed product ideas that flopped and blurred the lines between his brand role and that of the CEOs who succeeded him.

Much like Bob Iger at Disney and Howard Schultz at Starbucks who were reinstated as CEO, Plank and the Under Armour board have decided that the business he long ran needs a rescue and he is the best person to pull it off.

"Under Armour continues to address what has distracted us from our core mission," a company spokesman said. "Under Kevin's leadership, we are determined to change the trajectory of this business."

Under Armour said Plank and the board supported the CEOs who were selected to succeed him and they had the opportunity to do so how they saw fit. Plank "continued to have a founder's opinion on the business he built, particularly in the areas of brand marketing, product, and innovation," the spokesman said.

The discounting problem

Plank is betting that the company can become a premium sports brand by cutting the number of products it sells by 25%, reducing the discounts it offers and delivering more impactful merchandise. His plan is to reconstitute a brand that has lost its grip on shoppers after its explosive sales growth hit a wall in 2017.

Under Armour founder Kevin Plank, in 2022, plans to cut the number of products it sells and reduce discounts. PHOTO: JOHN MCDONNELL/THE WASHINGTON POST VIA GETTY IMAGES

Some investors and former executives doubt whether Plank's strategy to turn the company around will make a difference for a brand that watered down its value they said by selling much of its inventory at a discount to hit revenue targets. Under Armour risks following the path of BlackBerry, a cautionary tale Plank used in meetings about an industry leader that became irrelevant, former executives said.

Shares of Under Armour have fallen 23% over the past year and are down 87% from their 2015 high, erasing $18 billion of market value. The slide began during Plank's first CEO tenure, when sales started declining in its core North American market and the company underwent three rounds of restructurings, resulting in about $1 billion in charges.

This week, the company warned of a deeper-than-expected annual loss amid higher restructuring charges, including for closing a California distribution facility that Plank opened during his first CEO stint.

The Baltimore-based company is no longer the threat it was a decade ago to giants such as Nike and Adidas. Plank has recently called it a "podium brand," meaning one of three or four global athletic brands recognized worldwide. But in an increasingly fragmented market, brands such as Skechers, New Balance, Puma and Lululemon all netted higher sales last year.

Under Armour has since 2020 consistently been the No. 1 brand that upper-income male teens say they no longer wear in a semiannual survey conducted by investment bank Piper Sandler. "We continue to believe that Under Armour has lost relevancy with its target demographic," the analysts who conducted the survey said in their report this year.

Plank's involvement after stepping down

Plank shifted from CEO to brand chief, a newly created role, in late 2019 in what he said was a plan to elevate his top deputy, Patrik Frisk, as his successor. The change came in the midst of a restructuring effort to cut costs and revive sales.

The Journal reported that employees had also made complaints about Under Armour's workplace culture and that the board had questioned Plank about his ties to TV journalist Stephanie Ruhle. Plank replaced some senior executives, said Ruhle was a friend and vowed to improve Under Armour's culture.

Patrik Frisk took the CEO job in 2020 and departed in 2022. PHOTO: OLIVIER DOULIERY/AFP VIA GETTY IMAGES

After the handoff, former employees and executives said Plank showed up to product and marketing meetings, and questioned the directions they were taking despite not holding the CEO title. The billionaire's management style is throwing two pitbulls in a room and seeing which one makes it out alive, several of them said.

Frisk, who had joined Under Armour in 2017 as president, took the CEO job after Plank agreed to attend regular sessions with an executive coach, the corporate equivalent of a couples counselor, some former executives said. Frisk hoped the therapy would keep the founder on the sidelines, they said.

Frisk created a Special Teams unit, a group that worked directly with Plank on his ideas to try to keep the founder out of day-to-day operations, executives said. Soon, Plank's creations such as a Sportsmask during Covid and the SlipSpeed sneaker—a shoe with a collapsible heel—were prioritized over Frisk's plans, including a focus on sustainability projects.

Some, including Plank, felt Frisk's consultant-led style was killing the brand's cool. Others thought Frisk brought much-needed discipline to a company that was constantly changing direction. Tensions between the two led to Frisk's departure in mid-2022, former executives said.

Plank came up with the idea for the SlipSpeed, which can be worn for running or as a slip-on, after watching how his daughter stepped on the heel of her shoes. He called it Under Armour's "Croc-killer"—after seeing the success the foam clog brand had with young shoppers during the early years of the pandemic.

In late 2021, product teams fast tracked Plank's sneaker idea to deliver the product in half the usual two-year development process, sidestepping regular testing, redesigns and consumer insights. The marketing budget for the SlipSpeed dwarfed that of other launches at the company and included a pop-up store in New York City in early 2023.

"This $150 game-changing innovation with a design that is on point and is being authentically adopted by athletes everywhere," Plank said during a call with analysts in mid 2023. "UA SlipSpeed is working."

Plank told staff that he expected the SlipSpeed would be Under Armour's most successful product yet and said it would rival Nike's Pegasus running shoe, former executives said. The company made a big push for the shoe, but it hasn't caught on. Prices for some of the sneaker's newest iteration, SlipSpeed Mega, have been halved by the company's biggest retail partners.

Stephanie Linnartz joined as CEO in 2023 and left about a year later. PHOTO: PATRICK T. FALLON/AFP VIA GETTY IMAGES

Lifestyle or performance products

By early 2023, Under Armour had found its next leader. Plank introduced former Marriott President Stephanie Linnartz as the new CEO at the cafeteria inside its Baltimore headquarters.

Plank still ran the show even when he no longer held the CEO title, former executives said. In fact, he kept the same office he had as CEO—the biggest in the building.

In May 2023, in a call with analysts, Linnartz presented her three-year strategy to reignite growth for Under Armour. Her plan was to lean on its lifestyle products to generate more brand awareness, especially in the U.S.

“We are bringing in sneaker and branding experts who will add industry-proven design horsepower to the team, especially as we expand our Sportstyle offerings,” Linnartz said during the call.

Some people at Under Armour said they realized Linnartz wasn’t the right fit. She wanted to change the way the industry was run and imposed some discipline on operations. Her moves rankled some workers who thought of her as a drill sergeant, former executives said.

Linnartz told staffers that there was a missed opportunity in making better products for women, who she said would be buying the products for themselves and their families. In meetings with designers, Linnartz said she didn’t like the company’s women’s merchandise, former employees said.

Annual sales declined 3.4% in its most recent fiscal year, and the company projected lower demand from retailers. About a year after Linnartz joined, she was out.

Now as CEO again, Plank is undoing some of his predecessors’ moves. He has vowed to cut out consultants that were prominent during Frisk’s tenure and has said the company will focus on performance products.

Some of his fix-it strategy echoes what other leaders attempted. Frisk had already worked on pulling back on discounts. Linnartz had also talked about trying to become a premium brand, trying out new store formats and having better storytelling for the products.

Write to Inti Pacheco at inti.pacheco@wsj.com

Securities Law News

Sept. 10, 2024, 10:15 AM PDT; Updated: Sept. 10, 2024, 12:21 PM PDT

Keurig Settles SEC Charges Over K-Cup Recycling Claims (1)

By David Hood

- SEC said Keurig misrepresented feasibility of curbside recycling
- Keurig neither admitted nor denied the agency's findings

Bloomberg Law News 2024-09-11T09:52:28070375262-04:00

Keurig Settles SEC Charges Over K-Cup Recycling Claims (1)

By David Hood 2024-09-10T13:15:37000-04:00

- SEC said Keurig misrepresented feasibility of curbside recycling
- Keurig neither admitted nor denied the agency's findings

Keurig Dr. Pepper Inc. agreed to pay $1.5 million to settle SEC charges that the beverage company made misleading claims about the recyclability of its single-use K-Cups, the agency announced Tuesday.

The company's testing with recycling facilities "validated" that the pods for single cups of coffee and other drinks could be recycled, Keurig said in annual reports for fiscal years 2019 and 2020. The company omitted, however, that two of the largest recycling companies in the US expressed doubt that the K-Cups could be be processed, according to the agency.

The Securities and Exchange Commission charged Keurig Dr. Pepper with making false or inaccurate statements, misleading consumers that the pods could work with curbside recycling. The enforcement action shows how the agency scrutinizes environmental, social, and governance statements by companies.

"When a company speaks to an issue in its annual report, they are required to provide information necessary for investors to get the full picture on that issue so that investors can make educated investment decisions," John Dugan, associate director of the SEC's Boston regional office, said in a press release.

Keurig agreed to a cease-and-desist order and the civil penalty, without admitting or denying the findings of the investigation.

“We are pleased to have reached an agreement that fully resolves this matter,” a Keurig spokesperson said in an email.

The company said it makes its pods from polypropylene plastic, also known as No. 5 plastic, which can be accepted in curbside recycling systems across North America.

“We remain committed to a better, more standardized U.S. recycling system for all packaging materials through KDP actions, collaboration and smart policy solutions,” the spokesperson said.

(Updates the last three paragraphs to include a statement from Keurig)

To contact the reporter on this story: David Hood in Washington at dhood@bloombergindustry.com

To contact the editors responsible for this story: Jeff Harrington at jharrington@bloombergindustry.com; Amelia Gruber Cohn at agrubercohn@bloombergindustry.com

Securities Law News
Sept. 10, 2024, 10:51 AM PDT; Updated: Sept. 10, 2024, 3:14 PM PDT

Nikola Beats Ex-CEO Milton's Bid to Nix Arbitration Award (1)

By Matthew Bultman

Documents

- Order
- Docket

- Arbitration panel awarded Nikola almost $168 million
- Judge enforces award, says panel acted within its authority

Bloomberg Law News 2024-09-11T09:54:19265020379-04:00

Nikola Beats Ex-CEO Milton's Bid to Nix Arbitration Award (1)

By Matthew Bultman 2024-09-10T13:51:33000-04:00

- Arbitration panel awarded Nikola almost $168 million
- Judge enforces award, says panel acted within its authority

Nikola Corp. founder Trevor Milton must pay the electric truck maker almost $168 million after a federal judge confirmed an arbitration panel's award against the ex-CEO for making misleading statements about the company.

The panel acted within its authority when applying the terms of Milton's separation agreement and finding he was liable for 97% of a $125 million fine Nikola paid to settle Securities and Exchange Commission fraud charges, the judge said.

The panel's decision to award Nikola about $46.5 million for legal fees and other expenses will also be enforced, Judge Diane Humetewa in the US District Court for the District of Arizona said in a Monday order.

"Like his arguments regarding the SEC Fine, Milton merely disagrees with the outcome of the Majority's comparative fault analysis," said Humetewa, adding that such "conclusory arguments are insufficient to justify vacatur."

Nikola brought a case against Milton in December to enforce the arbitration award. Milton the same month was sentenced to four years in prison after being convicted of fraud for lying to shareholders about the company's progress.

Milton argued the award should be vacated, noting a "virtually unprecedented" 194-page dissent from one of the panel's three members. The majority decision regarding Milton's liability for the SEC fine didn't fairly reflect the role played by other Nikola directors and officers, he said.

But Humetewa said the majority's fault analysis represented a plausible interpretation of the contract. The analysis focused on Milton's statements because they were central to the SEC's case, the judge said.

"There is no evidence that the Majority's comparative fault analysis of the SEC Fine directly contradicted the Contribution Provision based on its discussion of the SEC Settlement," Humetewa said.

Hughes Hubbard & Reed LLP and Wallin Hester PLC represent Milton. Kasowitz Benson Torres LLP and Hoffman Legal represent Nikola.

The case is Nikola Corp. v. Trevor Milton , D. Ariz., No. 23-cv-02635, 9/9/24 .

(Updates with additional law firm representing Nikola.)

To contact the reporter on this story: Matthew Bultman in New York at mbultman@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

Bloomberg Law

Request a Demo Login

Securities Law News

Sept. 10, 2024, 12:44 PM PDT

US Audit Board to Issue Guidance on New Quality Control Rules

By Amanda Iacone

Bloomberg Law News 2024-09-11T10:00:57218131816-04:00

US Audit Board to Issue Guidance on New Quality Control Rules

By Amanda Iacone 2024-09-10T15:44:10000-04:00

US auditors will receive a range of guidance from their regulator as they plan for foundational rule changes in how they manage their public company practices.

The Public Company Accounting Oversight Board aims to provide practice aids such as webinars or interactive tutorials in the coming months to assist auditors as they unpack the regulator's new quality control standard, Barb Vanich, the board's chief auditor, said on Tuesday.

- Vanich urged auditors to let board staff know of any specific questions they have, she said while addressing the American Institute of CPAs' annual banking conference. "Please let us know where you're struggling."
- Under the new rules, audit leaders will have to certify that internal safeguards effectively mitigate risks common in their audit practice, among other requirements. The standard replaces 1990s-era requirements that address ethics and independence, training for staff, and how auditors vet their clients.
- The Securities and Exchange Commission on Monday approved the new quality controls standard, which takes effect in December 2025.

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

To contact the editors responsible for this story: Jeff Harrington at jharrington@bloombergindustry.com; Kim Dixon at kdixon@bloombergindustry.com

Convicted Nikola founder Milton owes electric truck maker $168 million, judge rules

reuters.com/legal/convicted-nikola-founder-milton-owes-electric-truck-maker-168-million-judge-2024-09-10

Jonathan Stempel

Trevor Milton, founder and former-CEO of Nikola Corp., departs the Thurgood Marshall United States Courthouse in New York, U.S., September 12, 2022. REUTERS/Amr Alfiky/File Photo Purchase Licensing Rights, opens new tab

Sept 10 (Reuters) - A U.S. judge said Trevor Milton, the Nikola (NKLA.O), opens new tab founder who was sentenced to four years in prison after being convicted of fraud, must pay the electric truck maker $167.7 million for making false and misleading statements about the company to the public.
In a decision on Monday, U.S. District Judge Diane Humetewa in Phoenix upheld a divided arbitration panel's November 2023 award in Nikola's favor.

Humetewa said the panel acted within its authority in interpreting a separation agreement that Milton entered when he resigned as Nikola chief executive in September 2020.

The panel found Milton liable to pay $121.25 million, or 97%, of Nikola's $125 million fine from settling a U.S. Securities and Exchange Commission civil fraud case, and to cover nearly $46.5 million in legal fees and expenses.
Milton, 42, argued the award was excessive and amounted to "rough justice" because the panel ignored the "relative fault" of other Nikola executives, directors and employees.

But the judge said the panel's analysis was plausible, including its assigning 3% fault to the Phoenix-based company for failing to stop Milton from misleading investors.

Lawyers for Milton did not immediately respond to requests for comment on Tuesday.

Marc Kasowitz, a lawyer for Nikola, said the company was "gratified but not surprised" at the decision, in light of Milton's "pattern of false and misleading public statements. We look forward to collecting the award."

Jurors in Manhattan convicted Milton in October 2022 on two counts of wire fraud and one count of securities fraud, after prosecutors said he lied to investors about Nikola's technology.
Prosecutors said Milton's improper statements included that Nikola built a pickup from the "ground up," developed batteries he knew it was buying elsewhere, and had made progress in creating a "Nikola One" semi-truck he knew did not work.

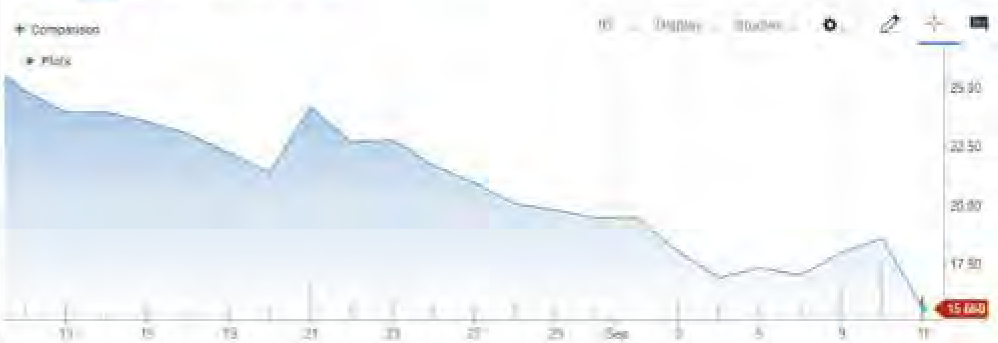
Milton is free on bail while he appeals his conviction and December 2023 sentence.

The case is Nikola Corp v Milton, U.S. District Court, District of Arizona, No. 23-02635.

Reporting by Jonathan Stempel in New York Editing by Matthew Lewis and Lincoln Feast.

scary lawyerguy
@scarylawyerguy

His lock out period ends next week so he'll either cash out and tank the stock further or roll the dice and see what happens in November. That said, he's still going to get one final fat payday from the dupes who invested in this POS

> **Rick Wilson** @TheRickWilson · 20m
> At least @realdonaldtrump still has his highly successful media company and the love of Melania.
>
> **Trump Media & Technology Group Corp**
> DJT:NASDAQ
>
> EXPORT | WATCHLIST + | • LIVESTREAM Squawk on the Street
>
> Last | 9:45 AM EDT
>
> **15.66** ▼ -2.97 (-15.95%)
>
> | Volume | 52 week range |
> |---|---|
> | 3,374,035 | 14.32 - 79.38 |
>
> 

6:50 AM · Sep 11, 2024 · **605** Views

3 8 9

John Oleske @JohnOleske · 11m
Except he can't take out any money now in his own name bc he needs to keep evading his judgment creditor, E. Jean Carroll - that's why his merch deals (NFTs, bibles, suit bits etc) are all ostensibly just opaque licensing deals w anon LLCs as to which he disclaims all ownership.

7

Bud Anschlitz @Anschlitz · 16m

that investment was more like a personal donation.

6

New Yorker in DC threads.net/@nykrindc @NYkrinDC · 16m

How much foreign money was laundered through this Trump Media scam? He will still get over $1 billion from it too.

6

John Oleske

@JohnOleske

Well at least his NASDAQ ponzi scheme isn't totally collaps....

Trump Media & Technology Group Corp

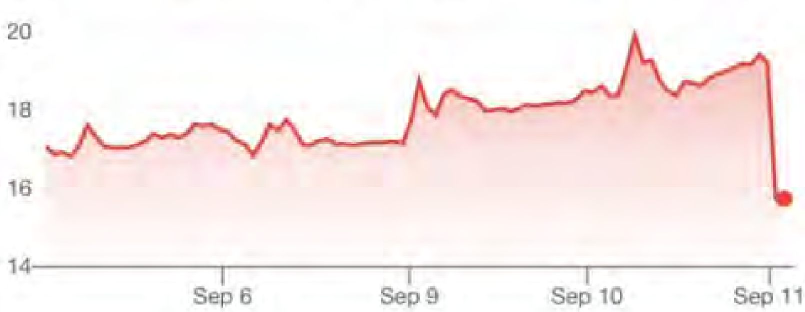
NASDAQ: DJT

Overview   Financials   Compare

15.78 USD -1.29 (-7.58%) ↓ past 5 days

Sep 11, 9:59 AM EDT • Disclaimer

1D   5D   1M   6M   YTD   More



Open	15.77	Mkt cap	3.15B
High	16.14	P/E ratio	-
Low	15.30	Div yield	-

7:01 AM · Sep 11, 2024 · **340** Views

Jay Black @jayblackisfunny

And we know there won't be a "dead cat bounce" because Trump's imaginary immigrants are gonna eat it.

> **Machine Pun Kelly** @KellyScaletta · 20m
>
> I guess we know how Trump Media stock owners felt about the debate.

6:50 AM · Sep 11, 2024 · **685** Views

2 2 27

Most relevant

Alito Reports Concert Tickets From German Socialite in New Disclosure Form

Friday's 2023 disclosure came after the justice sought and received a three-month filing extension from the judiciary, the only member of the U.S. Supreme Court to need extra time to prepare their form.

September 06, 2024 at 03:48 PM

United States Supreme Court

Jimmy Hoover

U.S. Supreme Court Justice Samuel Alito Jr. released his annual financial disclosure form Friday, correcting past omissions of a $250,000 loan, while revealing gift concert tickets from a German Catholic socialite.

There were zero trips, hotel stays or other travel perks included on Alito's form, made available through the judiciary's online database. The Republican-appointed justice had come under scrutiny in the past for omitting a luxury fishing vacation paid for by billionaire hedge funder Paul Singer.

Friday's 2023 disclosure came after Alito sought and received a three-month filing extension from the judiciary, the only member of the high court to need extra time to prepare their form.

Alito said a loan from investment firm Edward Jones had been "inadvertently omitted" from certain past annual reports. Alito had originally reported the loan in 2015, but left it off the "liabilities" section of reports for subsequent years despite still owing a substantial balance to the creditor.

The report did not include details about the purpose of the loan, although Alito appears to have paid off a substantial amount of that principal, reporting the value of the loan at between $15,00 and $50,000 during last year's filing period.

Like Justice Ketanji Brown Jackson, Alito received free concert tickets in 2023. Unlike Jackson's, they did not come from pop superstar Beyonce at a face value of nearly $4,000. Instead, Alito's $900 gift came from German socialite and Catholic activist Gloria von Thurn und Taxis, who has been photographed with Alito and Justice Brett Kavanaugh at the Supreme Court.

Alito did not report teaching any classes in 2023, in contrast to the previous year, when he earned just shy of $30,000 in outside income from Duke Law School and Regent University School of Law.

Despite receiving no (noninvestment) outside income last year, Alito continued to hold advisory positions at different institutions. One of those is as honorary advisory board member at Duke Law's Bolch Institute, which is dedicated, at least in part, to "leading a national effort to mobilize the legal profession to defend judges and the judiciary from a growing wave of unjust and unsubstantiated attacks." (Alito has previously complained that attorneys have failed to stick up for the Supreme Court, and sometimes even participated in the attacks on the institution.)

The institute was founded in 2018 with a $10 million gift from the family of gas station mogul Carl Bolch Jr.

Alito also reported his continuing service on the board of Catholic University law school's recently founded Center for the Constitution and the Catholic Intellectual Tradition, which "explores the relationship between the Catholic intellectual tradition and American constitutionalism." The center was established through a $4.25 million gift from an anonymous donor and directed to the school through the influential conservative activist Leonard Leo.

Alito, who is Catholic, was also an advisory board member for the Franciscan Monastery for the Holy Land, located in Washington, D.C.

The George W. Bush appointee continued to report substantial investment assets in his 2023 disclosure form, including the stocks of individual companies such as Boeing, ConocoPhillips, Corteva and DuPont. Alito's ownership of shares in large corporations has occasionally triggered his recusal from participating in cases that come before the court.

The court has indicated that Alito will not be voting on a pending major energy petition that could shape the course of future climate change litigation around the country, most likely because ConocoPhillips is one of the petitioners.

Alito made a number of financial transactions last year, including selling off up to $15,000 in shares in beer giant Anheuser-Busch InBev, while purchasing up to that amount in competitor Molson Coors Beverage Co. He also sold between $15,000 and $50,000 in Johnson & Johnson shares.

The judiciary's annual release of financial disclosures for the nine Supreme Court justices has received more attention over the last year in light of a series of investigative news reports describing how justices routinely failed to account for luxury trips provided by wealthy benefactors.

In 2023, ProPublica reported that Justice Clarence Thomas had been treated to more than a decade of secret perks from GOP billionaire Harlan Crow that were consistently omitted from Thomas' yearly disclosure forms. Thomas has begun to amend past disclosures to include some of those trips, such as a 2019 trip to Bali, Indonesia, and Monte Rio, California, paid for by Crow.

In his 2023 disclosure, Thomas also revealed for the first time a 2014 real estate transaction in which Crow purchased Thomas' mother's home in Savannah, Georgia, and other properties.

Where Alito's noninvestment income was reportedly limited to his $285,400 salary last year, other members of the court reported lucrative payments from books, teaching and more.

Jackson, for instance, led her colleagues in book money in 2023 with an $893,750 advance from Penguin Random House for her recently released memoir "Lovely One," which she has been promoting this month on various media platforms. In addition to four Beyoncé tickets, Jackson also received $12,500 worth of artwork.

Editor's Note: An earlier version of this story inaccurately stated that the loan was "previously undisclosed."

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Court Denial Of $335M UFC Deal Sets Bold Antitrust Precedent

By **Mohit Pasricha** (September 10, 2024, 2:58 PM EDT)

Mohit Pasricha

By refusing to accept a $335 million settlement agreed between Ultimate Fighting Championship and a group of former fighters, the U.S. District Court for the District of Nevada has delivered an unexpected knock-down requiring all parties to get back into the legal ring early next year.

In late July, U.S. District Judge Richard Boulware **rejected** the settlement reached in two class actions, Le v. Zuffa LLC, and Johnson v. Zuffa[1] in a dispute over a number of UFC fighters' ability to negotiate other promotional opportunities. The judge had stated during a previous hearing that he was seeking a "life changing" settlement for fighters who had fought through 10 years of litigation. The ruling stated that the settlement amount that had been agreed between the parties was too low and, as a result, the settlement lodged with the court was rejected.

Prior to this decision, it had been hoped that the offer by UFC's parent company, the TKO Group, would have resolved the long-standing dispute once and for all. Instead, a trial date **has been set** for February 2025.[2]

This is a seminal ruling that may have huge ramifications for UFC, a global business that merged with World Wrestling Entertainment in 2023 to form the TKO Group. It also sets a bold precedent within antitrust case law that will undoubtedly affect the sporting world more widely; there is not only the prospect of new claims arising, but also the risk of the floodgates opening on a long line of established antitrust case law.

In March, UFC had agreed to the $335 million sum in response to two class actions that represented about 1,200 former UFC athletes. These fighters had principally claimed, among other matters, that their UFC contracts suppressed their chances of taking advantage of other potentially lucrative options acquired through their sporting fame.

By way of background, there are currently two separate lawsuits, one filed by fighters Cung Le and Nate Quarry in 2014 representing fighters from 2010 to 2017, and a second filed by fighters including Kajan Johnson that represents fighters from 2017 to the present.

Zuffa, the predecessor entity that owned and operated UFC, was also the defendant in five related class actions filed between December 2014 and March 2015, which were consolidated into a single action in June 2015 — Le v. Zuffa.

The lawsuits alleged Zuffa violated antitrust laws by paying UFC fighters far less than they were entitled to receive and thereby eliminating or hurting other mixed martial arts promoters. UFC fighters Le, Quarry and Jon Fitch filed their initial complaint against Zuffa in federal court in the U.S. District Court for the Northern District of California in December 2014; that was subsequently joined by fighters Brandon Vera, Luis Javier Vazquez and Kyle Kingsbury.

On June 23, 2021, Johnson and C.B. Dollaway filed another antitrust class action with similar allegations that UFC engaged in illegal anticompetitive action.

Of the proposed $335 million settlement, 90% was to have been paid to the plaintiffs represented in

Le v. Zuffa. Under the proposed settlement, fighters in this case were to receive on average $200,000, with a median recovery of $73,000 and a minimum of $13,000 — with 36 class members to have been paid more than $1 million.

UFC said at the time that they had reached a joint settlement that encompassed both cases. In such circumstances, UFC would have certainly hoped and very much anticipated that this was the end of the matter; unfortunately, none of the parties expected the District of Nevada's decision, which, as rare as it was, remained fully within judicial discretion.

Following this ruling, which refused the negotiated settlement, UFC publicly announced that it disagreed with the decision. Nonetheless, it was evident from UFC's public statement that the parties could reach a new settlement agreement — as a result, we would fully expect UFC to engage in new settlement discussions with regard to both class actions.

Plaintiffs in both cases also stated that they too are open to reengaging with UFC over a new settlement or moving forward with the trial. Eric Cramer, an attorney for the plaintiffs, said in a statement that the fighters in the case "respect the court's ruling" but "are keeping an open mind with respect to a potential new resolution."

As with any matter that proceeds to trial, there is always litigation risk to be considered and a settlement for both parties would be the most favorable way to resolve the disputes in question.

There is therefore a clear desire for both parties to get back up from the proverbial canvas and continue to build upon the momentum of the settlement position that had already been reached to find a new resolution — one that should avoid the need for a further costly and lengthy trial.

Beyond the high-octane world of professional fighting in the U.S., this case is one that may have far-reaching implications for entities involved in such lawsuits across the sporting world. In addition, this case also serves as an important and emphatic reminder that, regardless of the specific case background, the filing of a settlement does not automatically mean it will be approved or accepted, and it is likely that those involved in future sporting class actions will tread with caution as a result.

Going forward, and with the alarm bells sounded by this recent ruling, it is highly likely that UFC will not want to be exposed to any future litigation risk. The likelihood, therefore, is that a new settlement will be negotiated, as both sides seem extremely keen to avoid being counted out and suffer a defeat at the mercy of a trial. On this basis, both parties are undoubtedly going to remain keen to reach acceptable settlement well in advance of any trial.

In such circumstances, and given the time pressures involved, we may very well see a settlement sum agreed in excess of $1 billion to remove any possibility of a final knockout blow ahead of the next year's trial.

Mohit Pasricha is the director and head of sports and entertainment practice group at Lawrence Stephens

[1] Le et al. v. Zuffa LLC, case number 2:15-cv-01045, and Johnson et al. v. Zuffa LLC et al., case number 2:21-cv-01189, in the U.S. District Court for the District of Nevada.

[2] https://www.law360.com/classaction/articles/1871695/ufc-fighters-wage-suit-headed-to-trial-in-february.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Truth Social Founder Ordered To Disclose Investor Details

By **Law360 Staff**

Law360 (September 10, 2024, 6:06 PM EDT) -- A Florida state court judge on Tuesday ordered the founder of former President Donald Trump's Truth Social to turn over investor material in a suit accusing the founder of interfering with the process of taking the company public, holding it's "likely to lead to discovery of relevant and discoverable information."

Twelfth Judicial Circuit Judge Hunter Carroll ruled from the bench during a Zoom hearing, overruling objections from Patrick Orlando and his company ARC Global Investments II LLC, and finding that Trump Media & Technology Group Corp. demonstrated a need for the information before a share lockup restriction ends on Sept. 19.

"In this particular case, the court is very satisfied that because the financial information of third parties is limited to the information relating to the items that go to the ownership of plaintiff's own shares at the end of the day, that the plaintiffs have more than squarely and adequately and forcefully shown a need for this information," Judge Carroll said.

While the judge ruled that the information must be turned over to the plaintiff, he said that it's still subject to a confidentiality agreement and that the defendants are authorized to designate the information as confidential under an active protective order in the case.

The lawsuit stems from the initial public offering of Trump Media, which went public in March after merging with special purpose acquisition company Digital World Acquisition Corp. In the suit, Trump Media claims Patrick Orlando — Digital World's former chair and CEO — and his company ARC Global threatened to block the merger as a way to enrich themselves at the 11th hour, resulting in unwarranted lengthy delays and massive costs.

Trump Media brought a separate but related lawsuit against investors Wesley Moss and Andrew Litinsky — who own shares through United Atlantic Ventures LLC — alleging they breached their fiduciary duty leading up to the merger and seeking to claw back the value of the shares. That case is on pause from an order issued by Twelfth Judicial Circuit Judge Stephen Walker.

Both of the lawsuits were filed after United Atlantic Ventures sued Trump Media in February, alleging the venture was scheming to dilute its 8.6% stake to less than 1%. The suit alleged Trump Media, which was 90% owned by Trump, was on the verge of issuing millions of new shares to Trump and his family before the merger that would take Truth Social public.

In the first lawsuit, Trump Media brought an **expedited motion** Sept. 4 to compel the production of a complete and accurate capitalization table and supporting documents identifying ARC Global members and investors, and how many TMTG shares they're entitled to. The capitalization table allegedly includes about 90 ARC Global members from "all walks of life."

Trump Media stated in its motion that Orlando was recently sued by the U.S. Securities and Exchange Commission for alleged fraudulent conduct and that the defendants' distribution plan exposes the company to significant litigation unless the court intervenes.

The defendants cited several reasons in their **opposition**, filed Monday — asserting that the request is overbroad, the information is confidential, and what the plaintiff seeks are trade secrets. Judge Carroll wanted to know how the information is a trade secret.

Adam Schwartz of Vedder Price LLP, representing Orlando, told the judge Tuesday that the investor list is a "competitive advantage" for ARC Global and that the operating agreement states that it shall remain confidential under Delaware law. Schwartz added that ARC Global is a "single purpose entity."

"This is a list of potential investors who invest in SPAC opportunities," Schwartz said, adding that "people want to keep quiet and confidential the amount they've invested."

"If this information is disclosed to membership and other parties, it can then be used as a competitive advantage to pitch additional investment opportunities and other information," Schwartz said. "These are people that Mr. Orlando brought to the table and his innovation."

Judge Carroll rejected the defendants' claims that the request is overbroad and noted the case's existing confidentiality agreement, which was made so that parties could easily share discovery information and protect various rights.

The judge also considered the defendants' argument to not disclose financial information, but said "we're not asking for people's bank accounts," adding that the information is only related to the plaintiff and ARC Global.

"I don't think ARC has a trade secret claim here at all," Judge Carroll said. "It's a single-purpose entity, and clearly after everything gets distributed and all the lawsuits are over, its existence probably is going to come to an end. There is no basis that ARC would have to suggest that this is a trade secret."

Trump Media & Technology Group Corp. is represented by Tyler B. Stall, Steven D. Hutton and Przemyslaw L. Dominko of Hutton Dominko Swaim & Stall PLLC, Samuel J. Salario Jr., Jason B. Gonzalez and Raymond F. Treadwell of Lawson Huck Gonzalez PLLC, and Christopher G. Oprison and Tal Abruos of DLA Piper.

Digital World Acquisition Corp. is represented by Bradley J. Bondi of Paul Hastings LLP.

Orlando is represented by Adam L. Schwartz and Andrew T. Figueroa of Vedder Price PC.

ARC Global is represented by Kevin P. Jacobs and Andrew Vitali III of Homer Bonner Jacobs Ortiz PA.

United Atlantic Ventures, Moss and Litinsky are represented by Christopher J. Clark and Benjamin Dozier of Clark Smith Villazor LLP, and Thomas F. Icard Jr. and Tyler J. Brown of Icard Merrill Cullis Timm Furen & Ginsburg PA.

The cases are Trump Media & Technology Group Corp. v. United Atlantic Ventures LLC et al., case number 2024 CA 001545, and Digital World Acquisition Corp. et al. v. ARC Global Investments II LLC et al., case number 2024 CA 001061, both in the Twelfth Judicial Circuit Court of the State of Florida.

--Editing by Amy French.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

GM Can't Arbitrate Claims Engines Were 'Engineered To Fail'

By **Law360 Staff**

Law360 (September 10, 2024, 12:01 PM EDT) -- General Motors LLC cannot arbitrate class claims that certain engines were "engineered to fail," an Ohio federal judge has ruled, citing recent Sixth Circuit guidance on when a party waives the right to resolve disputes out of court.

U.S. District Judge Charles E. Fleming's Monday order invoked the federal appeals court's March 27 **decision** rejecting a mortgage broker's bid to arbitrate a deaf former software developer's disability bias suit. The Sixth Circuit held that United Wholesale Mortgage's extensive discovery practice suggested an intent not to try to arbitrate the case by Jason Schwebke.

"Like Schwebke, these actions and their associated timeline are inconsistent with reliance on any potential arbitration right defendant may have," Judge Fleming's order in the GM case said, noting that the auto giant waited 20 months after receiving the arbitration agreement from named plaintiff Lisa Mae Jennings in March 2022 to file its motion to compel.

Meanwhile, GM engaged in motion practice by opposing the plaintiffs' class certification bid and seeking to scrap their experts' testimony and opinions, the order said. Further, GM never explained the delay in attempting to compel arbitration and therefore waived any right to that remedy.

In their **complaint** filed in 2020 in the Northern District of Ohio, drivers accused GM of knowingly selling vehicles with engines "engineered to fail" due to a defective oil system.

The drivers said their 2013 Chevrolet Silverados consumed excessive oil, leading to damage to several engine components. They seek to represent a class of drivers of Chevrolet models Avalanche, Silverado, Suburban or Tahoe or a GMC model Sierra, Yukon or Yukon XL, model years 2011-14. The class vehicles need to have been purchased in Ohio for personal use and have a Generation IV 5.3-liter V8 Vortec 5300 LC9 engine that wasn't properly repaired to address the alleged defects.

GM **contends** there's no proof the engine guzzles oil. The arbitration agreement it cited is folded into the purchase agreement between Jennings and the GM-authorized dealership in Marysville, Ohio, where Jennings bought her vehicle, according to GM's November 30 motion to compel.

GM said it had asked her to provide all documentation pertaining to the sales contract, but she did not produce that agreement until 2022, after the court had dismissed some of the claims and Jennings had been deposed and moved for class certification.

In a January 12 opposition brief, Jennings said that only she or the dealership could invoke the arbitration clause, and also argued that GM waived its right to arbitrate because it "participated fully in discovery" and delayed the motion to compel.

Claims over alleged defects with that engine model fetched a $102.6 million **verdict** against GM in 2022.

Representatives for the parties didn't immediately respond to a request for comment Tuesday.

Jennings is represented by Mark A. DiCello, Justin J. Hawal, Adam J. Levitt, John E. Tangren, Daniel R. Ferri and Blake Stubbs of DiCello Levitt LLP and W. Daniel "Dee" Miles III, H. Clay Barnett III and J. Mitch Williams of Beasley Allen Crow Methvin Portis & Miles PC.

GM is represented by Rachel P. Raphael of Morgan Lewis & Bockius LLP and Denise A. Dickerson of Sutter O'Connell.

The case is Airko Inc. et al. v. General Motors LLC, case number 1:20-cv-02638, in the U.S. District Court for the Northern District of Ohio.

–Additional reporting by Ryan Harroff and Mike Curley.
