Securities Law News

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FirstEnergy Reaches $100 Million Deal as SEC Also Sues Ex-CEO

By Eric Heisig

- Ohio utility's total penalty payments reach $350 million
- Lawsuit against former executive follows criminal charges

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FirstEnergy Reaches $100 Million Deal as SEC Also Sues Ex-CEO

By Eric Heisig 2024-09-12T19:22:18000-04:00

- Ohio utility's total penalty payments reach $350 million
- Lawsuit against former executive follows criminal charges

FirstEnergy Corp. on Thursday reached a $100 million settlement with the Securities and Exchange Commission to resolve claims that it misled investors about bribes it paid to the then-speaker of the Ohio House of Representatives.

The settlement, which was foreshadowed in a SEC filing in July, was made public the same day the agency sued the ex-CEO of the Akron, Ohio-based utility for his alleged role in the bribery scheme, which resulted in criminal charges against eight people in state and federal court.

A cease-and-desist order detailed what the SEC said were violations, and FirstEnergy's promise to comply with the law going forward.

"We are pleased to have reached a resolution with the SEC as we continue to turn a new chapter," utility President and CEO Brian X. Tierney said in a news release. "Our focus today is investing in our regulated electric companies to improve the customer experience and support the energy transition."

The order notes that FirstEnergy cooperated with the SEC's investigation. It brings the total the utility has agreed to pay in penalties to state and federal officials to $350 million, following settlements with the US Attorney's Office for the Southern District of Ohio and the state of Ohio.

The order's summary mirrors what's already been detailed in multiple court cases. FirstEnergy and related companies paid $60 million to a so-called dark money group controlled by then-Ohio House Speaker Larry Householder for, among other actions, ramming through a $1.3 billion legislative package.

In July 2020, after Householder and four others were arrested, the SEC said FirstEnergy, and specifically former CEO Charles Jones, violated federal law by misrepresenting the utility's role in what was then a burgeoning public corruption scandal in an earnings call and a filing.

It also didn't disclose information about the payments the utility made to a dark-money group paid for and partly controlled by some former executives, and didn't keep accurate records for internal accounting purposes, according to the order.

In addition to the allegations involving Householder, the company previously admitted to bribing former top utilities regulator Samuel Randazzo with $4.3 million.

Householder's serving 20 years in federal prison for participating in a racketeering conspiracy. Jones and fellow ex-executive Michael Dowling also face state charges filed by Yost's office; they've both pleaded not guilty. Randazzo, the former Public Utilities Commission of Ohio chairman, was also charged in state and federal court; he died by suicide in April.

The SEC's lawsuit against Jones, filed in the US District Court for the Northern District of Ohio, is in line with what the agency put in the FirstEnergy order, alleging that he publicly said in July 2020 that the utility "acted ethically in this matter" and "transparently."

Jones also misled FirstEnergy's auditor by not disclosing the payments to Householder, worked to ensure the company didn't devise proper internal accounting controls, and was instrumental in ensuring certain information was omitted from an SEC filing while misrepresentations were put in the document.

The lawsuit seeks any ill-gotten gains, a civil penalty, and a ban on acting as an officer "of any issuer that either has a class of securities registered under the Exchange Act, or that is required to file reports pursuant to the Exchange Act."

A message left for an attorney representing Jones in other cases wasn't immediately returned.

The SEC case involving FirstEnergy is In the Matter of FirstEnergy Corp. , S.E.C., No. 3-22111, 9/12/24 . The case against Jones is US Securities and Exchange Commission v. Jones , N.D. Ohio, No. 5:24-cv-01560, 9/12/24 .

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First Energy Resolves Books And Records And Internal Controls Matter Related To U.S. “Political Corruption Scheme”

fcpaprofessor.com/first-energy-resolves-books-records-internal-controls-matter-related-u-s-political-corruption-scheme

September 13, 2024

The Foreign Corrupt Practices Act has always been a law much broader than its name suggests.

Sure, the FCPA contains anti-bribery provisions which concern foreign bribery.

Sure, the FCPA’s books and records and internal controls provisions can be implicated in foreign bribery schemes.

However, the fact remains that most FCPA enforcement actions (that is enforcement actions that charge or find violations of the FCPA’s books and records and internal controls provisions) have *nothing to do with foreign bribery.* For lack of a better term, these enforcement actions have longed been called non-FCPA, FCPA enforcement actions by this site.

The latest example concerns FirstEnergy, an Ohio public utility holding company. The matter actually involved a “political corruption scheme” but it was domestic (U.S.) not foreign in nature.

In summary fashion, this administrative order finds:

> "These proceedings arise out of FirstEnergy's participation in a multi-year political corruption scheme. Between 2017 and 2020, FirstEnergy and FirstEnergy Solutions ("FES"), through FirstEnergy Service Company, made payments totaling approximately $60 million to Generation Now ("GenNow") in exchange for specific official action for the benefit of FirstEnergy and FES. GenNow, an Internal Revenue Code Section 501(c)(4) entity, was controlled by Larry Householder ("Householder"), a member of the Ohio House of Representatives who was elected as its speaker in January 2019. FirstEnergy made payments to a 501(c)(4) entity *[Partners For Progress – PFP]* to help conceal the source of the payments. On July 23 and 24, 2020, FirstEnergy violated the antifraud provisions of the Securities Act and the Exchange Act by making misrepresentations about its role in the political corruption scheme to investors in an earnings call and in a filing with the Commission. Additionally, FirstEnergy failed to disclose material related party transactions with respect to payments FirstEnergy made to a 501(c)(4) organization funded and controlled in part by certain former FirstEnergy executives. FirstEnergy also failed to keep accurate books and records and to devise and maintain an adequate system of internal accounting controls with respect to payments to organizations organized under Section 501(c)(4) of the Internal Revenue Code and the identification and disclosure of material related party transactions."

Under the heading "FirstEnergy Failed to Devise and Maintain a Sufficient System of Internal Accounting Controls," the order finds:

> "FirstEnergy lacked sufficient controls to provide reasonable assurances that payments made to 501(c)(4) organizations were executed in accordance with management's authorization. FirstEnergy also lacked internal accounting controls and disclosure controls and procedures designed to ensure that entities incorporated and controlled by FirstEnergy executives and lobbyists were reviewed for potential disclosure as material related party transactions, as required by ASC 850 *[Accounting Standards Codification ("ASC") 850, Related Party Disclosures]."*

Under the heading "FirstEnergy Failed to Make and Keep Books and Records That Accurately Accounted for Payments Made to 501(c)(4) Organizations and Related Parties," the order finds:

> "FirstEnergy failed to make and keep books and records that accurately reflected payments made to GenNow. The descriptions of the payments to GenNow within FirstEnergy's accounting system were inconsistent with the illegal nature of the payments.
>
> FirstEnergy also failed to make and keep books and records that accurately reflected related party transactions. FirstEnergy processed two $10 million payments to PFP, a related party, in October 2019. These payments were ultimately approved, processed, and recorded within FirstEnergy's accounting system with no indication that the payments were made to a related party under ASC 850."

Based on the above, the SEC found that FirstEnergy violated, among other things, the FCPA's books and records and internal controls provisions. FirstEnergy agreed to cease and desist from, among other things, committing future violations and also agreed to pay a $100 million civil penalty.

The SEC also civilly charged Charles Jones (the former Chief Executive Officer and President of FirstEnergy) with, among other things, aiding and abetting FirstEnergy's violations of the internal controls provisions. (See here for the complaint).

The SEC alleges:

> "Jones provided substantial assistance to FirstEnergy by failing to devise and maintain sufficient internal accounting controls. As CEO, Jones had responsibility for establishing and maintaining FirstEnergy's system of internal accounting controls. He participated in the scheme to make secret payments to Householder through a related entity, in violation of FirstEnergy policies and procedures, and failed to devise and maintain controls that would have prevented such payments. He was directly involved in payments made to a 501(c)(4) organization for Householder's benefit, which FirstEnergy made in exchange for official action. Jones directed and approved payments to be made to Partners for Progress that he knew would be paid to Generation Now, which in turn would benefit Householder. Thus, Jones is liable for aiding and abetting the [internal controls] violations committed by FirstEnergy."

As noted in the SEC's order, in connection with the same core matter, in 2021 FirstEnergy entered into a DOJ deferred prosecution agreement pursuant to which it paid a $230 million criminal penalty.

https://www.wsj.com/articles/firstenergy-to-pay-100-million-penalty-to-settle-sec-charges-in-ohio-bribery-scheme-466c8221

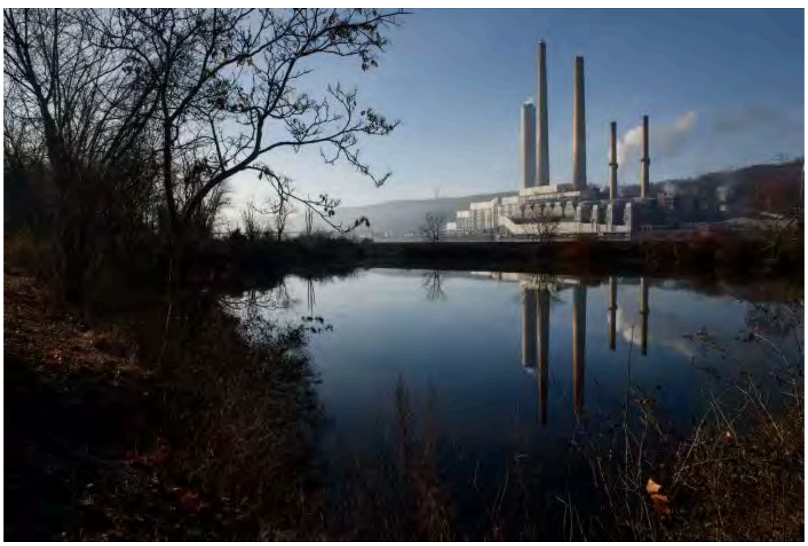
RISK & COMPLIANCE JOURNAL

FirstEnergy to Pay $100 Million Penalty to Settle SEC Charges in Ohio Bribery Scheme

The electric utility company previously disclosed that it took a $100 million second-quarter reserve in anticipation of the agreement

By Josh Beckerman

Sept. 12, 2024 6:49 pm ET



A FirstEnergy power plant in Stratton, Ohio. PHOTO: JUSTIN MERRIMAN/BLOOMBERG NEWS

FirstEnergy settled a Securities and Exchange Commission investigation and will pay a $100 million civil penalty.

The agency said the electric utility company participated in a "multi-year political corruption scheme," made misrepresentations to investors and failed to disclose material related-party transactions.

FirstEnergy said, "We are pleased to have reached a resolution with the SEC as we continue to turn a new chapter."

"Our focus today is investing in our regulated electric companies to improve the customer experience and support the energy transition," the Akron, Ohio, company added.

It previously disclosed that it took a $100 million second-quarter reserve in anticipation of the agreement.

In 2021, FirstEnergy agreed to pay $230 million to resolve charges that it was involved in a bribery scheme to pass a state bailout of nuclear power plants in Ohio. In August, it reached an agreement to resolve proceedings with the Office of the Ohio Attorney General and the Office of the Summit County Prosecutor.

Write to Josh Beckerman at Josh.Beckerman@wsj.com

$100M FirstEnergy settlement with SEC is latest payment in HB6 scandal

cincinnati.com/story/news/2024/09/13/firstenergy-settlement-with-sec-100-million-house-bill-6-hb6-scandal-updates/75202431007

Patrick Williams

NEWS

FirstEnergy reaches $100M settlement agreement with SEC to resolve HB 6 investigation

Patrick Williams

Cincinnati Enquirer

FirstEnergy has reached a $100 million settlement agreement with the U.S. Securities and Exchange Commission to resolve the commission's investigation into the House Bill 6 scandal.

In July, FirstEnergy President and CEO Brian X. Tierney told investors that the utility had set aside nearly $120 million in the second quarter of this year to put the scandal behind it.

Then, in August, FirstEnergy agreed to pay $20 million as part of an agreement with Ohio prosecutors, the USA TODAY Network State Bureau reported. That agreement included a payment of $19.5 million to the Ohio Attorney General's office and a set-aside of $500,000 for an independent consultant to review the utility's ethics policies.

FirstEnergy previously admitted to bribing former Ohio House Speaker Larry Householder and Sam Randazzo, former chairman of the Public Utilities Commission of Ohio, in a pay-to-play scandal. Householder and Randazzo helped the utility secure a $1 billion bailout for two nuclear plants and other favorable treatment. As part of a 2021 settlement with federal prosecutors, FirstEnergy paid a $230 million fine.

Ohio Attorney General Dave Yost charged former FirstEnergy CEO Chuck Jones, former Senior Vice President of External Affairs Michael Dowling and Randazzo with state charges related to the scandal. Jones and Dowling have pleaded not guilty.

Randazzo, who had pleaded not guilty, died by suicide in April.

"We are pleased to have reached a resolution with the SEC as we continue to turn a new chapter," Tierney said in a prepared statement. "Our focus today is investing in our regulated electric companies to improve the customer experience and support the energy transition."

Patrick Williams covers growth and development for the Akron Beacon Journal. He can be reached by email at pwilliams@gannett.com or on X, formerly known as Twitter, @pwilliamsOH.

FirstEnergy to pay $100 million to settle SEC charges in bribery scandal

NewsRoom

9/12/24 Cleveland Bus. J. (No Page)

2024 WLNR 16431284

Cleveland Business Journal

September 12, 2024

FirstEnergy to pay $100 million to settle SEC charges in bribery scandal

Mary Vanac

FirstEnergy Corp. on Thursday agreed to pay $100 million to settle a U.S. Securities and Exchange Commission investigation of the Akron utility's role in the bribery scandal related to Ohio's failed nuclear plant bailout bill.

FirstEnergy (NYSE: FE) also agreed to a cease-and-desist order by the securities regulator for allegedly lying to shareholders about its political contributions to help pass House Bill 6.

"We are pleased to have reached a resolution with the SEC as we continue to turn a new chapter," Brian Tierney, FirstEnergy's president and CEO, said in a late Thursday afternoon statement . "Our focus today is investing in our regulated electric companies to improve the customer experience and support the energy transition."

Also on Thursday, the SEC sued former FirstEnergy CEO Chuck Jones, accusing him of committing securities fraud in connection with the House Bill 6 bribery scandal that landed Ohio's former House speaker, Larry Householder, in prison for two decades, according to Cleveland.com .

The lawsuit, filed in federal court in Akron, seeks a judge's order to force Jones to pay back any money he earned from the scheme along with imposing unspecified civil penalties, Cleveland.com reported. The lawsuit accuses Jones of lying to investors and the public regarding the bribe payments to Householder, which records show were made through dark-money channels that were shielded from the public for years.

The SEC's settlement with FirstEnergy arises from the utility's "participation in a multi-year political corruption scheme," the securities regulator said in its order , dated Sept. 12. FirstEnergy is accused of paying more than $60 million in dark money to Householder and others to ensure the passage of House Bill 6.

"On July 23 and 24, 2020, FirstEnergy violated the antifraud provisions of the Securities Act and the Exchange Act by making misrepresentations about its role in the political corruption scheme to investors in an earnings call and in a filing with the commission," the SEC wrote in its order.

During a July 31 conference call with securities analysts, CEO Tierney said FirstEnergy had reached an agreement in principle with the SEC to settle claims. Thursday's announcement was about the formalization of that agreement.

The utility already has paid millions of dollars to settle its involvement in the bribery scandal.

Among its legal settlements, FirstEnergy agreed last month to pay $20 million to resolve an investigation by the Ohio Organized Crime Investigations Commission into the utility's role in the scandal.

And in July 2021, FirstEnergy agreed with the U.S. Department of Justice to accept a single charge of conspiracy to commit honest services wire fraud and to pay $230 million and accomplish several reforms within three years to avoid being criminally prosecuted on a federal conspiracy charge.

---- Index References ----

Company: U.S. SECURITIES AND EXCHANGE COMMISSION; FIRSTENERGY CORP.

News Subject: (Crime (1CR87); Criminal Law (1CR79); Financial Fraud (1FI18); Fraud (1FR30); Government Litigation (1GO18); Legal (1LE33); Social Issues (1SO05))

Industry: (Electric Utilities (1EL82); Energy & Fuel (1EN13); Utilities (1UT12))

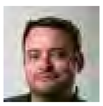
Region: (Americas (1AM92); North America (1NO39); Ohio (1OH35); U.S. Midwest Region (1MI19); USA (1US73))

SEC sues ex-FirstEnergy CEO, alleging misrepresentations, omissions

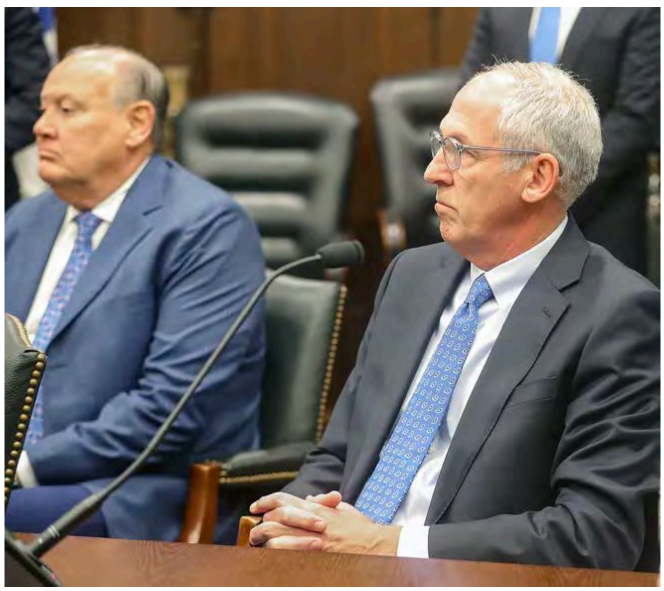
beaconjournal.com/story/business/2024/09/13/securities-exchange-commission-sec-sues-firstenergy-ceo-chuck-jones-criminal-charges-hb6/75203805007

BUSINESS

SEC sues former FirstEnergy CEO Chuck Jones as the ex-exec faces multiple criminal charges



Patrick Williams
Akron Beacon Journal



The U.S. Securities and Exchange Commission (SEC) filed a lawsuit against former FirstEnergy CEO Chuck Jones on Thursday, alleging Jones misled investors about the utility's payments to former Ohio House Speaker Larry Householder in a pay-to-play scheme.

In 2023, Householder was sentenced to 20 years in prison for leading a $60 million bribery scandal to bail out two nuclear power plants in House Bill 6 and providing other favorable treatment to FirstEnergy. House Bill 6 was introduced and signed into law in 2019.

An SEC complaint filed in a federal district court on Thursday alleges that when Householder was indicted in 2020, Jones said "FirstEnergy acted ethically in this matter" and "transparently." But in 2021, FirstEnergy admitted to bribing Householder and Sam Randazzo, former chair of the Public Utilities Commission of Ohio.

The complaint further alleges that Jones approved FirstEnergy's creation of a 501(c)(4) dark money group to allow money to travel undetected from the utility to Householder. The SEC also accuses Jones of misleading FirstEnergy's auditor by not disclosing those payments.

Meanwhile, Jones is facing criminal charges of bribery, telecommunications fraud, money laundering and theft.

The complaint states that FirstEnergy awarded Jones "cash and share-based compensation based on a performance-related incentive compensation program, including a cash bonus of about $1.6 million, which FirstEnergy paid him in 2019 for achieving certain near-term objectives. FirstEnergy also gave Jones performance-adjusted restricted stock units, valued at approximately $18.1 million, for a three-year period ending in 2019."

Attorneys for the SEC requested in the complaint that the court order Jones to pay civil penalties, as well as to order him "to disgorge the ill-gotten gains he received because of the violations here, including prejudgment interest."

Also on Thursday, FirstEnergy announced that it had reached a $100 million settlement agreement with the SEC to resolve the commission's investigation into the House Bill 6 scandal.

This is a developing story.

Patrick Williams covers growth and development for the Akron Beacon Journal. He can be reached by email at pwilliams@gannett.com or on X, formerly known as Twitter, @pwilliamsOH.

SEC sues former FirstEnergy CEO Chuck Jones

9/13/24 Plain Dealer (Clev.) 3

2024 WLNR 16462664

Cleveland Plain Dealer

September 13, 2024

Section: A

SEC sues former FirstEnergy CEO Chuck Jones

Adam Ferrise - aferrise@cleveland.com

The U.S. Securities and Exchange Commission on Thursday sued former FirstEnergy Corp. CEO Chuck Jones and accused him of committing securities fraud in connection with the House Bill 6 bribery scandal that landed Ohio's former House speaker in prison for two decades.

The lawsuit, filed in federal court in Akron, seeks a judge's order to force Jones to pay back any money he earned from the scheme, along with imposing unspecified civil penalties.

SEC attorneys wrote in the lawsuit that Jones received a $1.6 million bonus in 2019 and stock valued at $18.1 million around the time he and FirstEnergy bribed former Ohio House Speaker Larry Householder with $60 million. The money went to pass legislation worth

$1.3 billion to bail out two nuclear plants that were owned at the time by a FirstEnergy subsidiary.

Messages were left for one of Jones' attorneys, Carole Rendon. A FirstEnergy spokeswoman did not immediately respond to messages seeking comment.

The lawsuit accuses Jones of lying to investors and the public regarding the bribe payments to Householder, which records show were made through dark-money channels that were shielded from the public for years.

Jones also misled FirstEnergy's internal auditor when he failed to disclose the payments, according to the lawsuit. The SEC claims that Jones later told the auditor that he was unaware of FirstEnergy's lawbreaking and failed to come up with internal controls to prevent misconduct.

Jones, 68, was FirstEnergy's CEO from 2015 until he was fired in 2020, just months after FBI agents arrested Householder and four others in connection with the scheme. Householder was sentenced to 20 years in prison and former FirstEnergy lobbyist Matt Borges was sentenced to five years in prison.

Three other were charged in the case. Two pleaded guilty and one, lobbyist Neil Clark, died by suicide.

Federal prosecutors also charged former Public Utilities Commission Chairman Sam Randazzo and secured a $230 million fine against FirstEnergy in a non-prosecution agreement. As part of that agreement, the Akron-based utility agreed to cooperate with investigators. Randazzo also died by suicide in April.

No federal charges have been filed against Jones, but Ohio Attorney General Dave Yost's office has charged Jones and former FirstEnergy Vice President Michael Dowling with racketeering, conspiracy and bribery in connection with a

$4.3 million payment made to Randazzo.

Jones has pleaded not guilty in the case in Summit County Common Pleas Court. That case is on-going.

FirstEnergy also agreed to pay $20 million in a non-prosecution agreement with Yost's office.

The federal investigation into House Bill 6 spawned several lawsuits. The company said during a shareholders meeting in July it expected to pay about $100 million to settle claims in the SEC case.
---- Index References ----

Company: Public Utilities Commission; U.S. SECURITIES AND EXCHANGE COMMISSION; FIRSTENERGY CORP.; Federal Bureau of Investigation

News Subject: (Corruption, Bribery & Embezzlement (1EM51); Crime (1CR87); Financial Fraud (1FI18); Fraud (1FR30); Social Issues (1SO05))

FirstEnergy Announces Settlement Agreement with U.S. Securities and Exchange Commission

NEWS PROVIDED BY
FirstEnergy Corp. →
Sep 12, 2024, 17:13 ET

AKRON, Ohio, Sept. 12, 2024 /PRNewswire/ -- FirstEnergy Corp. (NYSE: **FE**) today announced that it has reached a settlement agreement with the U.S. Securities and Exchange Commission (SEC) to resolve its previously disclosed investigation.

"We are pleased to have reached a resolution with the SEC as we continue to turn a new chapter," said Brian X. Tierney, President and Chief Executive Officer of FirstEnergy. "Our focus today is investing in our regulated electric companies to improve the customer experience and support the energy transition."

FirstEnergy's settlement requires a civil penalty of $100 million. The company's previously disclosed second quarter earnings materials indicated that it had taken a reserve of $100 million in the second quarter of 2024 in anticipation of the agreement with the SEC. A copy of the settlement order can be found in FirstEnergy's Current Report on Form 8-K, which will be filed shortly and will be available on the **Investors section** of its corporate website.

FirstEnergy is dedicated to integrity, safety, reliability and operational excellence. Its electric distribution companies form one of the nation's largest investor-owned electric systems, serving customers in Ohio, Pennsylvania, New Jersey, West Virginia, Maryland and New York. The company's transmission subsidiaries operate approximately 24,000 miles of transmission lines that connect the Midwest and Mid-Atlantic regions. Follow FirstEnergy online at **www.firstenergycorp.com** and on X **@FirstEnergyCorp**.

Forward-Looking Statements: This release includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 based on information currently available to management. Such statements are subject to certain risks and uncertainties and readers are cautioned not to place undue reliance on these forward-looking statements. These statements include declarations regarding management's intents, beliefs and current expectations. These statements typically contain, but are not limited to, the terms "anticipate," "potential," "expect," "forecast," "target," "will," "intend," "believe," "project," "estimate," "plan" and similar words. Forward-looking statements involve estimates, assumptions, known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements, which may include the following: the potential liabilities, increased costs and unanticipated developments resulting from government investigations and agreements, including those associated with compliance with or failure to comply with the Deferred Prosecution Agreement entered into July 21, 2021 with the U.S. Attorney's Office for the Southern District of Ohio; the risks and uncertainties associated with government investigations and audits regarding Ohio House Bill 6 as passed by Ohio's 133rd General Assembly ("HB 6") and related matters, including potential adverse impacts on federal or state regulatory matters, including, but not limited to, matters relating to rates; the risks and uncertainties associated with litigation, arbitration, mediation and similar proceedings, particularly regarding HB 6 related matters, including risks associated with obtaining dismissal of the derivative shareholder lawsuits; changes in national and regional economic conditions, including recession, volatile interest rates, inflationary pressure, supply chain disruptions, higher fuel costs, and workforce impacts, affecting us and/or our customers and those vendors with which we do business; variations in weather, such as mild seasonal weather variations and severe weather conditions (including events caused, or exacerbated, by climate change, such as wildfires, hurricanes, flooding, droughts, high wind events and extreme heat events) and other natural disasters affecting future operating results and associated regulatory actions or outcomes in response to such conditions; legislative and regulatory developments, including, but not limited to, matters related to rates, energy regulatory policies, compliance and enforcement activity, cyber security, and climate change; the risks associated with physical attacks, such as acts of war, terrorism, sabotage or other acts of violence, and cyber-attacks and other disruptions to our, or our vendors', information technology system, which may compromise our operations, and data security breaches of sensitive data, intellectual property and proprietary or personally identifiable information; the ability to meet our goals relating to employee, environmental, social and corporate governance opportunities, improvements, and efficiencies, including our greenhouse gas ("GHG") reduction goals; the ability to accomplish or realize anticipated benefits through establishing a culture of continuous improvement and our other strategic and financial goals, including, but not limited to, overcoming current uncertainties and challenges associated with the ongoing government investigations, executing Energize365, our transmission and distribution investment plan, executing on our rate filing strategy, controlling costs, improving credit metrics, maintaining investment grade ratings, and growing earnings; changing market conditions affecting the measurement of certain liabilities and the value of assets held in our pension trusts may negatively impact our forecasted growth rate, results of operations, and may also cause us to make contributions to our pension sooner or in amounts that are larger than currently anticipated; mitigating exposure for remedial activities associated with retired and formerly owned electric generation assets, including those sites impacted by the recently promulgated legacy coal combustion residual rules; changes to environmental laws and regulations, including, but not limited to, rules recently finalized by the Environmental Protection Agency and the SEC related to climate change; changes in customers' demand for power, including, but not limited to, economic conditions, the impact of climate change, emerging technology, particularly with respect to electrification, energy storage and distributed sources of generation; the ability to access the public securities and other capital and credit markets in accordance with our financial plans, the cost of such capital and overall condition of the capital and credit markets affecting us, including the increasing number of financial institutions evaluating the impact of climate change on their investment decisions; future actions taken by credit rating agencies that could negatively affect either our access to or terms of financing or our financial condition and liquidity; changes in assumptions regarding factors such as economic conditions within our territories, the reliability of our transmission and distribution system, generation resource planning, or the availability of capital or other resources supporting identified transmission and distribution investment opportunities; the potential of non-compliance with debt covenants in our credit facilities; the ability to comply with applicable reliability standards and energy efficiency and peak demand reduction mandates; human capital management challenges, including among other things, attracting and retaining appropriately trained and qualified employees and labor disruptions by our unionized workforce; changes to significant accounting policies; any changes in tax laws or regulations, including, but not limited to, the Inflation Reduction Act of 2022, or adverse tax audit results or rulings; and the risks and other factors discussed from time to time in our SEC filings. Dividends declared from time to time on FirstEnergy Corp.'s common stock during any period may in the aggregate vary from prior periods due to circumstances considered by FirstEnergy Corp.'s Board of Directors at the time of the actual declarations. A security rating is not a recommendation to buy or hold securities and is subject to revision or withdrawal at any time by the assigning rating agency. Each rating should be evaluated independently of any other rating. These forward-looking statements are also qualified by, and should be read together with, the risk factors included in FirstEnergy Corp.'s Annual Report on Form 10-K for the year ended December 31, 2023, Quarterly Report on Form 10-Q for the quarter ended March 31, 2024, Quarterly Report on Form 10-Q for the quarter and other filings with the SEC. The foregoing review of factors also should not be construed as exhaustive. New factors emerge from time to time, and it is not possible for management to predict all such factors, nor assess the impact of any such factor on FirstEnergy Corp.'s business or the extent to which any factor, or combination of factors, may cause results to differ materially from those contained in any forward-looking statements. FirstEnergy Corp. expressly disclaims any obligation to update or revise, except as required by law, any forward-looking statements contained herein or in the information incorporated by reference as a result of new information, future events or otherwise.

SOURCE FirstEnergy Corp.

Bloomberg Law News 2024-09-13T12:31:20324214293-04:00

Emergent Reaches $40 Million Deal Over Covid Vaccine Blunders

By Ufonobong Umanah 2024-09-13T12:08:58000-04:00

- Investors alleged Emergent misled about production capabilities
- Issues with Covid vaccine production caused stock price to fall

Emergent BioSolutions Inc. reached a $40 million class action settlement to settle allegations that it misled investors about its ability to manufacture Covid-19 vaccines.

The lawsuit, filed in the US District Court for the District of Maryland, claimed that Emergent wasn't earnest about the capabilities of its Bayview facility in Baltimore when it reached $1.5 billion worth of deals with the federal government, Johnson & Johnson, and AstraZeneca Plc to manufacture Covid-19 vaccines. The company's stock initially soared after those deals, but tanked after repeated contamination incidents and the loss of its federal contract.

The settlement "is nearly three times the median recovery in securities class actions in 2023," according to a stipulation for preliminary approval filed Thursday.

Investors claimed that Emergent's stock price was inflated by "false and misleading" statements by company leaders about the Bayview plant's ability to meet the demands of Operation Warp Speed. Millions of doses of the Covid-19 vaccines manufactured at Bayview were contaminated, including a widely publicized incident where staff mixed up the ingredients of the J&J and AstraZeneca vaccines.

That manufacturing error, which caused 15 million doses to be disposed of, strained Emergent's relationship with the US government and prompted a regulatory investigation. When the US announced the termination of its contract with Emergent on Nov. 5, 2021, its stock price had fallen to $33.11, down from $55.95 at the start of the pandemic.

According to Thursday's filing, the settlement represents "an average recovery of $1.95 per share of Emergent common stock" for the over 20 million allegedly damaged shares. The class includes anyone who bought or acquired common stock in Emergent between Mar. 10, 2020, and Nov. 4, 2021.

Lead counsel for the plaintiffs said it intends to seek no more than 30% of the settlement amount in attorneys' fees, and no more than $500,000 for expenses. Lead plaintiffs said they intend to seek no more than $80,000 as an award.

Judge Deborah L. Boardman is assigned the case.

Pomerantz LLP is lead counsel for the class. Wilmer Cutler Pickering Hale and Dorr LLP, Miles & Stockbridge PC, Miller & Chevalier Chartered, and Arnold & Porter Kaye Scholer LLP represented the defendants.

The case is In Re Emergent Biosolutions Inc. Securities Litigation , D. Md., No. 8:21-cv-00955, stipulation for preliminary approval 9/12/24 .

To contact the reporter on this story: Ufonobong Umanah in Washington at uumanah@bloombergindustry.com

To contact the editor responsible for this story: Patrick Ambrosio at PAmbrosio@bloombergindustry.com

The Law Firm Disrupted: Litigation Finance Goes Mainstream. That's No Accident

Funders like Burford Capital need to partner with lawyers to realize returns on their capital. That puts a premium on efforts to demystify their work.

September 12, 2024 at 06:08 PM

The Law Firm Disrupted

Dan Packel

Welcome to the Law Firm Disrupted, a briefing from Law.com editor Dan Packel that surveys new competitive pressures on law firms and how their managers are coping, plus insights on the tactics and tech employed by would-be disruptors. Have an opinion? Email me here. Want to be alerted to this dispatch in your inbox every Thursday? Sign up here.

A decade and a half is more than enough time for something that began on the fringes to go mainstream.

When litigation funder Burford Capital launched 15 years ago, co-founder and CEO Chris Bogart was essentially knocking on lawyers' doors to persuade them to let the company invest in promising cases, in an environment where most were in the dark about the concept of litigation finance generally and the Burford brand in particular.

Now, Burford is traded publicly on the NYSE and the LSE. And brand-name multi-strategy investment firms like Fortress Investment Group, D.E. Shaw and Elliott Investment Management have made litigation assets a key part of their portfolios, alongside distressed debt, private equity, commodities and more.

“The fact that litigation is just one of those options today is one of the very significant indicators of how far this concept has come,” Bogart told me this week.

This mainstreaming didn't happen by accident. Part of the story, for Burford in particular, was working hard to make connections, more to individual litigators more receptive to entrepreneurial approaches, rather than to law firms as a whole.

One key moment, according to Bogart, was when the company linked up with Barry Ostrager, at the time the chair of the litigation department at Simpson Thacher & Bartlett. Ostrager had a client in financial distress thanks to the global financial crisis, who'd stopped paying fees. The claim was promising, but the firm didn't want to take the risk of absorbing them internally in pursuit of an uncertain reward. That allowed Burford to step in.

“Barry won a big jury verdict, and he was public about using our capital to take the case to the end,” Bogart said. “Lawyers are very curious about what others are doing. Every other big firm was saying, ‘What's this all about?’ That was good luck for us—a pretty significant moment in terms of spreading the gospel.”

But I'll also credit a more proactive media strategy that pretty much outpaces all of Burford's litigation finance peers. Having a growing pot of investor capital is meaningless in the absence of strong cases upon which to deploy it. For a number of years now, the company has been commissioning research pointing to growing uptake of litigation finance, with findings intriguing enough that publications like ours regularly dig into the news, with more reporting making the process less alien. I've got other sources in the litigation finance world for sure, but Burford seems to put a premium on cultivating the press.

Bogart acknowledged this effort when I asked him about it.

"A lot of lawyers, especially litigation lawyers, don't particularly want to be doing complex financial deals. It's important to demystify what this is all about," he said. "It's not a scary financing thing, it's something that fits alongside a traditional litigation practice."

Another indicator of this mainstreaming is a growing supply of litigators looking for work in litigation finance. Bogart noted that the menu of options for lawyers who've recognized they're not going to spend their entire career at law firms is now broader.

"Here, you get to do the fun things connected to litigation and avoid the un-fun things, most notably discovery. And you do that in a team atmosphere, as opposed to being on the outside trying to police your colleagues," he said, drawing the comparison to serving in a corporation's law department. "As a more established industry, the demand for people to join us is greater."

So here I am, without illusion about the role I'm helping to play in this push. But as Big Law increasingly engages in contingency work, recognizing benefits for client relationships as well as the bottom line, outside finance is a key part of the story. But it's true, certain parties make it easier to follow.

In the News

>> PwC is laying off 1,800 employees in its first round of formal layoffs since 2009, per the WSJ, and the legal industry should be watching carefully. On the one hand, the Big Four are often "ahead" of Big Law, and these cuts could be an unfortunate harbinger. On the other hand, tax services are one area where law firms and accounting shops are competing most directly, and this move could yield opportunities in that practice.

>> Meanwhile our Andrew Maloney aims to make sense of a big week in mergers, citing client pressure to show practice depth and specialization and the need for have critical mass in desirable markets as drivers for the Second 50 firms that are looking to scale up.

>> Dan Roe did the math on the relationship between associate compensation, billable hours and rates, finding that associates who make less than top-of-market compensation tend to take home a greater percentage of the revenue they generate than peers earning market compensation.

NEWS

Corporate Money Blurs Line Between Experts, Advocates in the Antitrust Space, Kanter Says

"I fear that as the line blurs between expertise and advocacy, we risk losing expertise altogether," said Jonathan Kanter, the U.S. Department of Justice's antitrust chief.

September 12, 2024 at 04:05 PM

Antitrust

Maydeen Merino

The U.S. Department of Justice's antitrust chief warned Thursday of a growing crisis as the line separating expertise and advocacy has blurred due to corporate money funding expert testimony in antitrust cases.

"All over the world, money earmarked specifically to discourage antitrust and competition law enforcement is finding its way into the expert community upon which we all depend," Assistant U.S. Attorney General Jonathan Kanter said in a speech at Fordham University School of Law's annual international antitrust law and policy conference.

"This will not end well," Kanter added. "Unless we find a new way forward, we may see the critical role of expertise in competition policy dwindle away, and no one should welcome that outcome."

Kanter, who heads the DOJ's Antitrust Division, and the Federal Trade Commission have taken an aggressive approach on antitrust enforcement, particularly against Big Tech companies and corporations such as Google and Amazon. In the past two years, the division has taken more than 170 significant actions and 20 mergers have been abandoned in response to division concerns, Kanter said.

Recent victories against Google, Penguin Random House and JetBlue Airways "demonstrate that the Sherman and Clayton acts are not just alive and well, but they are thriving," Kanter said, referring to the two major federal antitrust laws.

He added that the division relies heavily on expert analysis, but these experts in turn rely on academic communities where a scholarly paper or report could have flaws and biases due to the influence of corporate funding.

"We believe in an independent academic dialogue as a critical element [for] seeking and finding truth, and as markets evolve, we need that in order to get competition policy right," Kanter said. But "checks are being cut" to university centers, institutes and conferences, influencing experts to become advocates, he added.

Kanter likened the funding and influence of corporate money in the antitrust community to how the tobacco industry paid health experts to shield the fact that smoking causes lung cancer.

"I fear that as the line blurs between expertise and advocacy, we risk losing expertise altogether," Kanter said. "But that is precisely the direction we are heading as a community, and that is precisely why I think it is important that we begin an open, honest and respectful discussion."

Kanter said the international antitrust community could help address this issue by ensuring experts comply with disclosure rules and combat conflicts of interest.

"We can find ways to create a model for the world to follow," he added. "This is delicate. We cannot and should not chill free speech, but I am confident there are meaningful steps that we can take as a community to better distinguish and disclose the lines between advocacy and expertise so that our community can benefit from both."

Bloomberg Law News 2024-09-13T12:33:41794327999-04:00

Nevada Casino Targeted in Class Lawsuit Over July Data Breach

By Bloomberg Law Automation 2024-09-12T12:50:17000-04:00

Riverside Resort & Casino is facing a new class suit alleging that it failed to adequately protect the personal information, including names and Social Security numbers, of 55,155 individuals from a data breach discovered around July 25.

Jeremiah Archambault filed the lawsuit Sept. 11 in the US District Court for the District of Nevada. He alleges that Riverside Resort & Casino Inc. and Riverside Resort & Casino LLC owed a duty to use reasonable care to safeguard personal information and breached that duty by failing to implement adequate data security measures. The lawsuit cites the Federal Trade Commission Act and Nevada state law.

The complaint asserts claims of negligence, breach of implied contract, and unjust enrichment.

The putative class seeks actual damages, restitution, injunctive relief, and attorneys' fees and costs.

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

Stranch, Jennings & Garvey PLLC and Murphy Law Firm represent Archambault.

The case is Archambault v. Riverside Resort & Casino, Inc. , D. Nev., No. 24-1691, 9/11/24 .

This story was produced by Bloomberg Law Automation.

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Securities Law News

Sept. 13, 2024, 1:30 AM PDT

ESG Analogies in Accounting Classes Make Issues More Accessible

- *Yale professor says students want to understand climate risks*
- *Courses teach how financial, ESG accounting are related*

Bloomberg Law News 2024-09-13T09:55:0017047638-04:00

ESG Analogies in Accounting Classes Make Issues More Accessible

By Aneesh Raghunandan2024-09-13T04:30:01000-04:00

- *Yale professor says students want to understand climate risks*
- *Courses teach how financial, ESG accounting are related*

Despite the overall decline in accounting enrollments seen across US business schools, there's one bright spot: increasing demand for environmental, social, and governance-related courses.

Students who take these courses seem particularly interested in the measurement of a firm's carbon emissions footprint. A desire to understand potential new regulation—such as the Securities and Exchange Commission's recent climate disclosure laws—helps drive this interest, as does understanding firms' climate risks more generally.

We teach our students that a key role of accounting information is comparability—that accounting information enables us to compare firms' performance—and the same concept carries over to non-financial settings.

We also teach that strategic reporting choices undertaken because of short-term incentives can distort comparability, and in turn, that it's important to understand the rules to understand how firms might use their discretion. These ideas aren't unique to financial accounting, but introducing them through that lens helps students understand how and why financial and ESG accounting are related.

We've had a straightforward way to characterize a firm's emissions profile, at least conceptually, into three scopes since the Kyoto Protocol. It's easy enough to provide students with a high-level overview of each scope's emissions and what they capture, but it gets trickier to explain the difficulties that still arise with respect to measurement within this framework.

Why do we still need to know what assumptions a firm is making in its calculation of the scopes? Why do we need to be careful even when comparing numbers that seem to be like-for-like (one firm's Scope 1 emissions versus a direct competitor's Scope 1 emissions)?

The underlying issues relate to the discretion afforded to firms on emissions measurement. For example, when measuring Scope 2 emissions—indirect emissions arising from the generation of electricity that companies consume—firms can use either a market-based or location-based approach.

Firms may also choose one or the other for strategic reasons, such as whether they pay their suppliers for "green" energy. This might make it difficult to compare two firms' Scope 2 emissions.

Using financial accounting analogies can help make these types of issues accessible to students with a traditional accounting background. We teach students from their very first financial accounting courses that accounting rules are flexible enough to enable firms to communicate specific items in a way that they deem most appropriate for their underlying operations.

The potential downside is that such flexibility can facilitate strategic reporting. For example, when a firm sells a product or service as part of a multi-year contract, how much revenue will it allocate to this year versus future years? How much is that driven by a strategic desire to hit a certain earnings or revenue target in the current year?

The analogy to emissions measurement is then straightforward. The market-based approach isn't always feasible, but firms are given flexibility so that when it is possible, they're able to provide a more accurate picture of the carbon emissions associated with the energy they've consumed.

The strategic reporting element is present here as well. Why would a firm be more likely to disclose its use of the market-based approach to measuring Scope 2 emissions if it had spent money on "green" energy—and how should we account for this in comparing the reported figures for two firms using the two different approaches?

Firms may be more motivated to use the market-based approach if they've invested in using green energy sources. Not appropriately accounting for these strategic reporting incentives can lead us to understate the difference between two firms' Scope 2 emissions. The location-based approach represents an average across all forms of energy generation and can understate a firm's true Scope 2 emissions when it doesn't pay for "green" energy but many of its peers do.

For Scope 1 emissions, or a company's direct emissions, it's usually impractical to have carbon sensors at every single output source. The typical firm uses activity-level emissions estimates—published by the Environmental Protection Agency and by other national regulators such as the UK's Environment Agency—to come up with a weighted average emissions figure based on the activities it undertakes.

Why would these estimates potentially punish firms that make more proactive investment into green technology, while potentially allowing a relatively brown firm within an industry to hide its status as such? The reliance on activity-level averages in lieu of precise measurement can make it hard for firms to highlight the investments they've made into generating lower-than-average emissions for an activity.

Ultimately, there's a bigger conceptual point. Firms have to disclose information on a number of different items, both financial and nonfinancial, for use by a wide set of stakeholders. There's discretion in how many of these items are calculated, but ultimately the incentives underlying reporting choices are broadly similar.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

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Write for Us: Author Guidelines

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Securities Law News
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Auditor-Hopping Is Rare, but 13 Small Companies Defy the Trend

By Nicola M. White

- Handful have changed auditors more than seven times apiece
- Half of S&P 500 companies kept same firm more than 25 years

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Auditor-Hopping Is Rare, but 13 Small Companies Defy the Trend

By Nicola M. White 2024-09-12T13:18:35000-04:00

- Handful have changed auditors more than seven times apiece
- Half of S&P 500 companies kept same firm more than 25 years

Companies switch business strategy, headquarters, or even corporate names. What they don't often change is the outside firm that vets their books.

Thirteen public companies prove the exception to this rule. These businesses hired and fired auditors more than seven times apiece in the past decade, according to an analysis of data from Ideagen Audit Analytics. They share similar characteristics: their shares all trade below $1 each and some of them are in emerging industries like cannabis. All but one trades over the counter, meaning they don't meet the minimum financial thresholds to be listed on major exchanges like Nasdaq or the New York Stock Exchange.

Investors and analysts pay attention when a company changes its auditor. US securities laws require companies to alert the market via a special financial filing that they've hired or fired a firm or if their auditor resigns. These updates can offer potential warning signs of internal turmoil or issues with a company's financials, though that's not always the case.

Two of the companies with frequent auditor turnover—solar energy installation company ABCO Inc. and acquisition company Phoenix Rising Cos.—don't appear to be in business anymore. Phone calls and emails to corporate headquarters went unanswered and neither has filed regulatory reports since 2023. The last-known auditor for both of them was the now-shuttered BF Borgers CPA PC, a firm the Securities and Exchange Commission dubbed a "sham audit mill" in May. The agency levied a total of $14 million in fines on BF Borgers and its founder.

The largest company, Nasdaq-listed financial services business Future FinTech Group Inc., has changed auditors nine times in the past 10 years. The company didn't return requests seeking comment. It too briefly counted BF Borgers as its auditor for about a year in 2020. In July 2023, Future FinTech Group agreed to pay $1.65 million to settle SEC charges that it filed inaccurate annual reports and failed to maintain adequate books and records.

Small Business Growth

Auditor switching, especially among small businesses, isn't automatically a sign of trouble. These companies tend to pick small, sometimes local audit firms. Some of those firms get bought out by larger firms or they decide to quit auditing public companies altogether. Other times, businesses grow and find they need a bigger audit firm with experience handling more complex business transactions.

"A different auditor may just be a better fit," said Brian Bratten, an accounting professor at the University of Kentucky's Gatton College of Business.

For Mitesco Inc., a healthcare technology company, changing auditors seven times in the past 10 years was part of being a small, growing business, said Richard Smyth, an adviser to the company.

Sometimes Mitesco needed to save money. Other times, a larger auditor put the company low on its list of priorities and missed deadlines. Mitesco's latest switch was due to a technicality; its previous auditor merged with another firm, Smyth said.

"There has never been a change as a result of a dispute or other item, generally just to save money," he said, calling it "small biz 101" type issues.

Auditor Turnover

Thirteen publicly traded companies have changed auditors seven or more times in the past decade

*Company withdrew its SEC registration in October 2023.
Source: Ideagen Audit Analytics, Bloomberg data, SEC filings
Graphic: Jonathan

Bloomberg Law

Auditor Turnover

Corporate Strategy Shift

SUIC Worldwide Holdings Inc., a New York-based startup that focuses on information technology products and services, has switched auditors seven times in the past 10 years. It's also changed names and business strategies. The company was previously known as Sino United, which produced electronic products, and AJ Greentech Holdings, when it marketed and manufactured alcohol-based vehicle fuel products in China.

The turnover stopped in 2019. SUIC Worldwide Holdings has had a steady relationship with its current auditor for five years, company CEO Hank Wang said in an email.

US audit regulators in 2017 and 2018 sanctioned two of its prior auditors, specifically calling out faulty audits related to the company's previous corporate operations. Canuswa Accounting & Tax Services Inc. in 2012 and 2013 failed to take action after becoming aware of "possible illegal acts" by AJ Greentech. Zhang Hongling CPA PC didn't ask enough questions about related party transactions for Sino United and then back dated debt cancellation agreements when prodded by inspectors, the Public Accounting Oversight Board said.

SUIC Worldwide Holdings' predecessor businesses never got sanctioned, said Wang, who became CEO of the company in 2023.

"I can assure you that our financial and accounting practices are fully compliant," Wang said.

Few Auditor Changes

Auditor turnover is rare among large, established companies. Consider the companies in the S&P 500, the much-watched index encompassing the largest US-listed businesses. More than half of S&P 500 companies have had the same auditor for more than a quarter century, Bloomberg data shows.

US audit regulators have raised concerns that relationships between large companies and their longtime auditors may become too cozy. The Public Company Accounting Oversight Board in 2011 floated the idea of mandatory auditor rotation, such as making companies find new auditors after 10 years, but the idea was so unpopular it never made it to a formal proposal. Auditor rotation is mandatory in Europe. The UK requires companies to change accounting firms every 20 years.

Even if frequent auditor changes are communicated as a money-saving move, they're often due to auditors and company managers disagreeing on an issue or a change in the company's risk level, academic research shows.

"There's less commonly a benign explanation when it's frequent," said Bratten, who co-authored a recent paper on auditor changes.

Investors and analysts find auditor change details so valuable that Hudson Labs, an investment research software company, recently added a turnover feature to its research product. It lets customers dig in to see which companies have relatively high auditor turnover and if their securities filings reveal details on why their auditors got hired or fired.

Potential Red Flags

Sometimes high auditor turnover correlates with other financial reporting red flags, Hudson Labs CEO Kris Bennatti said.

Take electric vehicle company Ideanomics Inc., which was previously an artificial intelligence startup, a fintech, and a video-on-demand outfit. The company churned through five auditors—including BF Borgers—since 2014, but analysts had long noted cash flow problems, Bennatti said.

The company in August paid $1.4 million to settle SEC charges over an alleged scheme to mislead the public about its financial performance. “Ideanomics and its management team fully cooperated with the SEC,” a company representative told Bloomberg Law at the time. “Resolving these legacy matters was important to Ideanomics and settling the matter on a no admit, no deny, basis draws a line under almost six years of interaction with the SEC.”

Hiring new auditors is an expensive, time-consuming undertaking for businesses because new auditors essentially start vetting company financials from scratch. Most companies take great pains to avoid turnover, so investors should pay attention when businesses switch, said Bennatti, who is a former auditor.

“If an auditor specifically says, ‘hey, we’re quitting’ or ‘there’s a disagreement,’ that’s obviously a big deal,” Bennatti said. Or if a company changes its auditor after the firm questions their financials, “it’s definitely a bad sign,” she said.

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'Surreal' venue fight erupts in constitutional challenge to accounting oversight board

reuters.com/legal/government/surreal-venue-fight-erupts-constitutional-challenge-accounting-oversight-board-2024-09-12

Alison Frankel

REUTERS/Chip East Purchase Licensing Rights, opens new tab

Sept 12 (Reuters) - For the third time in the last several months, a conservative U.S. appeals court is being asked to reclaim its authority over a lawsuit against a federal regulator after the case was transferred to Washington, D.C.

On Thursday, an anonymous Texas accounting firm filed a petition, opens new tab at the 5th U.S. Circuit Court of Appeals, arguing that a Houston federal judge wrongly transferred its lawsuit alleging that the Public Company Accounting Oversight Board wields unconstitutional power.

The plaintiff, identified in the litigation only as John Doe Corporation, contends that when U.S. District Judge Lee Rosenthal of Houston transferred its case to Washington, D.C., she disregarded a standing order in her district that requires judges to give plaintiffs 21 days to appeal before shifting their cases to courts outside of the 5th Circuit.

The Doe Corporation's lawyers from Dickinson Wright and the New Civil Liberties Alliance also told the appeals court that Rosenthal's decision to move the case was wrong on the merits because Texas courts should decide its case.

You may think all of this jurisdictional wrangling is a sideshow, but the Doe Corporation and the accounting board, known as the PCAOB, are actually offering two very different visions of how the court system should handle lawsuits challenging government actions – an increasingly consequential category of cases.

The accounting board and other government entities contend that these cases are best left to federal trial and appellate judges in Washington who have deep expertise in administrative law. The most efficient and consistent way to resolve cases posing hugely important questions about government agencies and their actions, in this vision, is to litigate in Washington, where the agencies are based and the judges are primed to move quickly.

Plaintiffs like the Doe Corporation, on the other hand, are of the view that unless Congress has specifically decided to funnel cases to a particular court – like, for instance, patent appeals at the Federal U.S. Circuit Court of Appeals – the system works best when courts from different jurisdictions can opine on important issues.

Doe's petition asks the 5th Circuit to order the Houston judge to ask U.S. District Judge James "Jeb" Boasberg of Washington to transfer Doe's case back to Texas.

As the anonymous accounting firm pointed out, the 5th Circuit has already granted similar petitions earlier this year in two cases against different government regulators.

In March, the appeals court ruled, opens new tab that U.S. District Judge David Ezra of Austin wrongly transferred a lawsuit challenging the U.S. Commodity Futures Trading Commission's change of heart about the PredictIt platform, which allows betters to wager on the outcome of political events. Then in June, the 5th Circuit held, opens new tab that U.S. District Judge Mark Pittman of Fort Worth abused his discretion when he transferred the U.S. Chamber of Commerce's lawsuit to block the U.S. Consumer Financial Protection Bureau from imposing a cap on late fees charged by credit card companies.

Doe Corporation arguably has more compelling facts supporting Texas jurisdiction than the plaintiffs in those cases. The accounting firm's initial complaint offered few identifying details, but after the accounting board's lawyers from Munger, Tolles & Olson and MoloLamken moved for the case to be transferred or dismissed on jurisdictional grounds, Doe filed an amended complaint fleshing out its venue arguments for Texas. Among them: The firm and all its partners are based in Texas, so all of the records sought by the PCAOB in the course of its years-long investigation of the firm's crypto-related audits are in Texas. (Both the original and amended complaints, along with the accounting board's dismissal motion, are attached to Doe's mandamus petition.)

The accounting firm told the 5th Circuit that it was "surreal" for Rosenthal nevertheless to transfer the case to Washington a week after its lawyers filed the amended complaint. Its mandamus petition speculated that the judge did not review the amended complaint and based her transfer decision on the original pleading.

The PCAOB did not respond to my query. It has argued that Washington is the proper venue for the case because, among other things, the accounting board is based there and because a Washington trial judge is already hearing a similar challenge to the accounting board after a different Texas federal judge transferred, opens new tab the case to him last March. (Doe Corporation insists the two cases are not that similar because it is challenging an investigative demand and the other plaintiff is already facing a disciplinary action.)

Doe's mandamus petition argues that it's good public policy when "issues can properly percolate among diverse courts with diverse perspectives, thereby maximizing the likelihood of getting the right answers, or a circuit split that ultimately invites uniformity from the U.S. Supreme Court."

That argument seems likely to resonate at the 5th Circuit, which has become a hub for lawsuits challenging actions by the Biden administration. Plaintiffs bringing such challenges, as you know, have developed a strategy of filing lawsuits in Texas courthouses where all or most judges are Republican appointees.

In the meantime, Washington trial judge Boasberg intends to move forward with Doe’s case, which asserts that Congress unconstitutionally delegated authority to the quasi-private accounting board in the Sarbanes-Oxley Act. The Justice Department has already intervened in the case to join the accounting board in defending, opens new tab the constitutionality of Sarbanes-Oxley. Last week, Boasberg denied, opens new tab Doe’s motion to stay the case, ruling that Rosenthal had a solid legal basis to transfer the case to him.
Not according to Doe counsel Jacob Frenkel of Dickinson. “Under their theory, any constitutional challenge can only be heard by the D.C. Circuit,” he said. But in Doe’s case, Frenkel said, “all of the facts support jurisdiction and venue only being appropriate in the Southern District of Texas.”

Read more:

Anonymous Audit Firm Sues PCAOB to Block ‘Excessively Intrusive and Burdensome’ Investigative Demand, opens new tab
Lawsuit over US credit card late fees rule must stay in Texas, court rules
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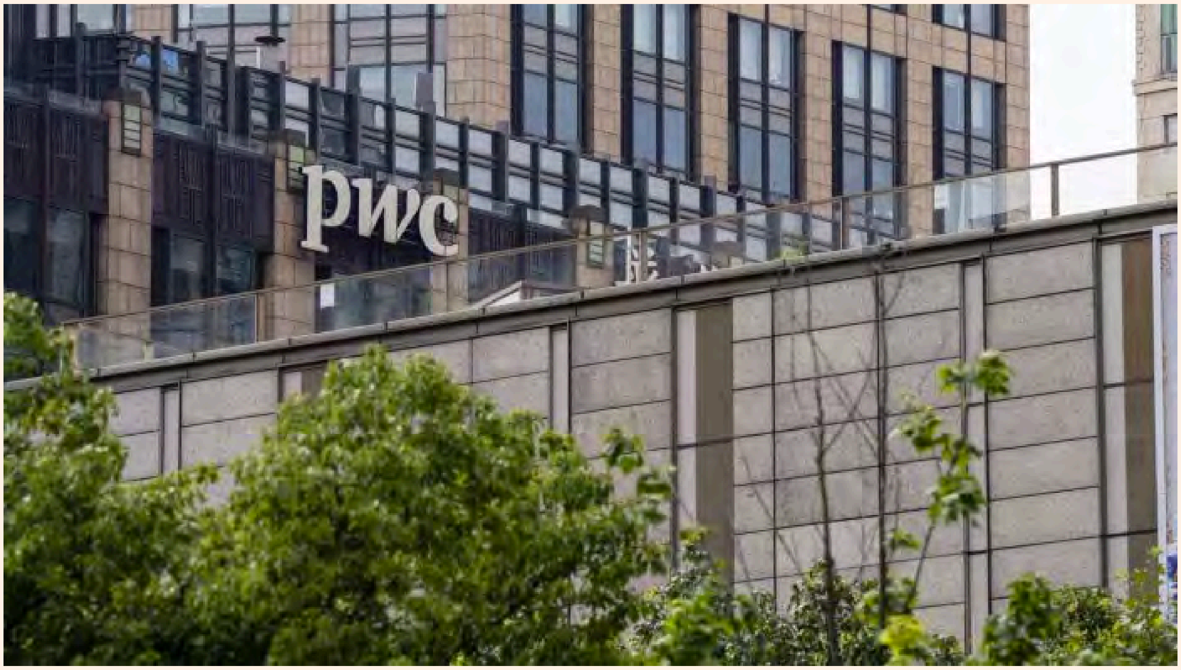
Alison Frankel
Thomson Reuters

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

PwC

PwC banned for 6 months in China for ‘concealing fraud’ at Evergrande

Big Four firm pays $62mn fine and fires 11 staff over audit of collapsed developer



Chinese regulators said PwC China had approved Evergrande’s accounts even though the developer had inflated its revenues © Raul Ariano/Bloomberg

Cheng Leng and **Chan Ho-him** in Hong Kong, **Stephen Foley** in New York and **Simon Foy** in London 8 HOURS AGO

Chinese authorities have banned PwC China for six months and fined it Rmb441mn ($62mn) after saying staff had “concealed or even condoned” fraud in audit failures related to the collapsed property developer Evergrande.

The move, Beijing’s toughest action yet against a Big Four firm, follows a March announcement by China’s securities regulator that PwC China had approved Evergrande’s accounts even though the developer had inflated mainland revenues by nearly $80bn in the two years before its default in 2021.

China’s finance ministry said on Friday that PwC Zhong Tian, commonly known as PwC China, and its Guangzhou branch were aware of “major mistakes” in the audit of Evergrande from 2018 to 2020 but failed to point them out. The Guangzhou branch of PwC China has been ordered to shut down, according to the ministry.

PwC China had “severe flaws” in its auditing process of Hengda Real Estate, the name of Evergrande’s mainland unit, which led to “many false conclusions”, said the ministry. The firm “lost its independence” and “inflated its profits” through the audit, added the authorities.

“PwC’s behaviour goes beyond mere auditing failure, they concealed or even condoned the financial fraud and fraudulent issuance of corporate bonds of Hengda Real Estate,” said China’s securities regulator in a separate statement.

The securities regulator found that 88 per cent of PwC’s records on Hengda real estate projects did not reflect “actual conditions” on the ground. It said PwC’s sample selection process was “out of control”, with property marked as “off limits” by the developer excluded from PwC site visits.

The PwC China penalties include Rmb116mn levied by the finance ministry and Rmb325mn from the China Securities Regulatory Commission.

In a statement, PwC said: “We are disappointed by PwC Zhong Tian’s (or ‘PwC ZT’) audit work of Hengda, which fell unacceptably below the standards we expect of member firms of the PwC network.”

It said it had terminated the employment of six partners and “exited” five staff directly involved in the audit.

Daniel Li, who only took over as senior partner of PwC China in July and was expected to serve a four-year term, has agreed to step down from the role “given his former responsibilities” as the firm’s head of assurance, PwC said. He will remain at the business as chief accountant.

Hemione Hudson, a senior UK partner, would be parachuted in to take charge of the China business on an interim basis, said PwC.

The move underlines the level of concern within the Big Four group about the China crisis. Unlike other multinationals, PwC typically operates as a network of independent, locally owned partnerships, so the appointment of an outsider represents a highly unusual step.

Mohamed Kande, PwC global chair, said: “The work performed by PwC Zhong Tian’s Hengda audit team fell well below our high expectations and was completely unacceptable. It is not representative of what we stand for as a network and there is no room for this at PwC.”

The penalty surpasses the $31mn fine and three-month partial business ban imposed on Deloitte last year for "serious audit deficiencies" related to its work with China Huarong Asset Management, one of China's largest bad-debt managers.

The finance ministry also said it would investigate "relevant violations" of PwC's Hong Kong unit, which audited the accounts of the Evergrande parent group.

The ministry revoked the accounting licences of four PwC staff who signed off on Hengda's financial statements from 2018 to 2020. It fined seven other individuals who were involved in preparing Hengda's accounting materials.

PwC has already lost about two-thirds of its accounting revenues from mainland-listed clients, mostly China state-owned enterprises, which switched auditors from PwC this year as the controversy surrounding Evergrande grew. The Bank of China, one of its biggest clients, changed to rival EY in August.

PwC has been working to keep its clients by assuring them in recent weeks it can complete 2024 audits even with the ban. Its biggest internationally listed clients include Chinese internet giants Alibaba and Tencent, as well as insurer AIA, who are still working with PwC.

Chinese state-owned enterprises cannot use a sanctions-hit auditor along with many mainland clients, according to the law in China.

Steward Health Care CEO faces contempt vote after Senate no-show

reuters.com/legal/government/steward-health-care-ceo-faces-contempt-vote-after-senate-no-show-2024-09-12

Dietrich Knauth

Ranking member U.S. Sen. Bill Cassidy (R-LA) speaks during a Senate Health, Education, Labor and Pensions Committee hearing on Julie Su's nomination to be Labor Secretary, on Capitol Hill in Washington, U.S., April 20, 2023. REUTERS/Amanda Andrade-Rhoades Purchase Licensing Rights, opens new tab

NEW YORK, Sept 12 (Reuters) - A U.S. Senate committee said Thursday that it would vote to hold Steward Health Care CEO Ralph de la Torre in contempt after he refused to testify about cost-cutting decisions that harmed patients at the bankrupt company's hospitals.

The Senate Committee on Health, Education, Labor and Pensions probed Steward's financial decline at a hearing without de la Torre, hearing from witnesses who said that Steward prioritized corporate profits over patient care.

The committee's leaders, Senator Bernie Sanders of Vermont, an independent who caucuses with Democrats, and Republican Senator Bill Cassidy of Louisiana, said the committee would vote next week to bring criminal contempt charges and a civil enforcement action against de la Torre for ignoring their subpoena.

"We need to keep this from happening again, and that means we need answers," Cassidy said Thursday.

Steward, the largest privately owned hospital network in the U.S., filed for bankruptcy in May, seeking to sell all of its 31 hospitals and address its $9 billion in debt. The company has sold several hospitals since filing for bankruptcy.
De la Torre said in a Thursday statement that it would be inappropriate for him to testify about Steward's finances while the company is negotiating court-supervised bankruptcy settlements. De la Torre also said that lawmakers had "pre-determined his guilt."
Steward Health Care declined to comment.

In de la Torre’s absence, the committee heard from two Massachusetts nurses, a Louisiana mayor and a Louisiana state representative about Steward's poor management of hospitals in two states.

Ellen MacInnis, a nurse at St. Elizabeth’s Medical Center in Boston, said that patients died because of reduced spending on emergency room staffing and life-saving medical equipment.

Steward was unwilling even to pay for "bereavement boxes" that the hospital had previously used to transport infants that had died, forcing nurses "to put babies' remains in cardboard shipping boxes," MacInnis said.

Read more:

Steward Health gets approval for landlord settlement, Florida hospital sales
Bankrupt Steward Health approved to sell six Massachusetts hospitals at a loss
Bankrupt Steward Health puts its hospitals up for sale, discloses $9 bln in debt

https://www.wsj.com/business/boars-head-virginia-factory-closure-listeria-outbreak-fb5bfc70

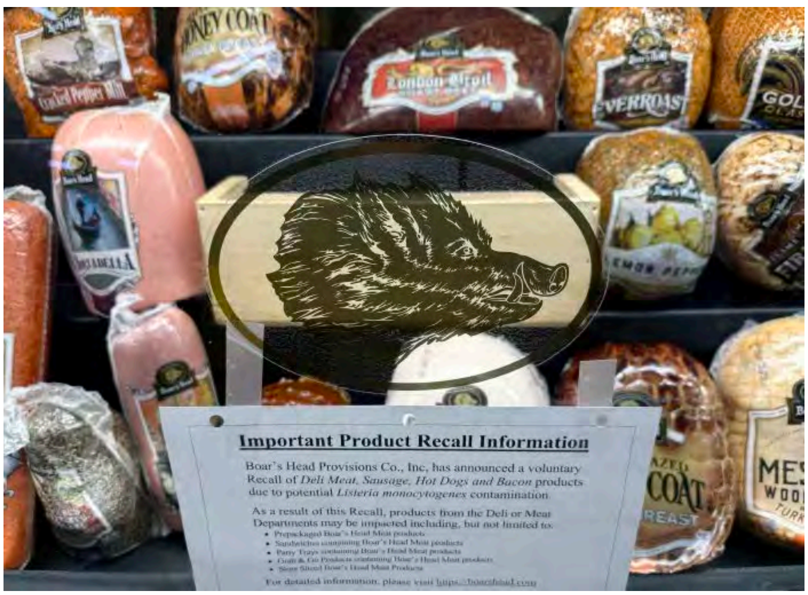
BUSINESS

Boar’s Head Closing Virginia Factory Tied to Deadly Listeria Outbreak

Company said factory would close indefinitely after nine deaths linked to outbreak

By *Joseph Pisani* Follow

Updated Sept. 13, 2024 2:19 pm ET



Boar’s Head issued a deli meat recall in July following a listeria outbreak. PHOTO: JUSTIN SULLIVAN/GETTY IMAGES

Boar’s Head said it would indefinitely close a deli meat factory in Virginia that has been tied to a deadly listeria outbreak.

The company also said Friday that the cause of the contamination was a specific production process used only for liverwurst at its Jarratt, Va., facility. The company said it would permanently stop selling liverwurst, a type of sausage.

The Jarratt plant hasn’t been in operation since the end of July, when the company began recalling its products. Boar’s Head recalled every item made at the same facility as its liverwurst, including hams, frankfurters and bacon, totaling seven million pounds.

Boar’s Head said hundreds of people work at the facility, but didn’t provide an exact figure. The United Food and Commercial Workers Local 400 says it represents about 500 workers at the plant, but that doesn’t include managers and other nonunion workers who could be affected.

The union said it has reached an agreement with Boar’s Head to provide employees with severance or possible transfer to another facility.

Boar’s Head didn’t respond to a request for comment Friday.

An aerial view of the Jarratt, Va., plant. PHOTO: STEVE HELBER/ASSOCIATED PRESS

“We do not take lightly our responsibility as one of the area’s largest employers. But, under these circumstances, we feel that a plant closure is the most prudent course,” Boar’s Head said in a statement on its website.

The town of Jarratt, about 60 miles south of Richmond, has about 650 people, according to 2020 U.S. Census Bureau data.

The Centers for Disease Control and Prevention says 57 people have been hospitalized and nine people in several states have died in connection with the outbreak.

Listeria can linger on deli slicers and other equipment, making it easy to spread, the CDC said.

Listeria is a bacteria that can contaminate food and can cause serious illness primarily in immunocompromised people, older people and newborns, according to the CDC. Symptoms, which include fever, diarrhea, muscle aches and convulsions, usually start up to four weeks after consuming the bacteria. About 1,600 people every year are sickened by listeria in the U.S., the agency said.

Write to Joseph Pisani at joseph.pisani@wsj.com

Videos

Worldline CEO exits, shares plunge as payments firm issues another profit warning

reuters.com/business/finance/french-payment-group-worldline-replace-ceo-cuts-annual-outlook-2024-09-13

Alban Kacher

The logo of payments company Worldline is seen at the company headquarters in the financial and business district of La Defense, near Paris, France, October 26, 2023. REUTERS/Gonzalo Fuentes/File Photo Purchase Licensing Rights, opens new tab

- Long-time CEO Gilles Grapinet to leave
- Cuts organic growth, earnings guidance
- Shares hit record low, down 92% from 2021 peak
- European payments firms suffer turn in fortunes

Sept 13 (Reuters) - French payments group Worldline (WLN.PA), opens new tab said on Friday that long-time CEO Gilles Grapinet would leave the company as it issued its third profit warning within a year, sending its shares to a record low.
Investors had piled into Worldline and other European payments firms like Italy's Nexi (NEXII.MI), opens new tab during the pandemic, attracted by their rapid growth as customers ditched cash and by hopes for more industry consolidation.

But Worldline has disappointed investors since with cuts to its financial targets, including one last October that rocked the whole sector when it cited an economic slowdown, and another just six weeks ago when it blamed a sharp decline in domestic consumption trends.
Deputy CEO Marc-Henri Desportes will replace Grapinet, who has been CEO for more than 11 years, as of Sept. 30 and for an interim period, the company said.

A Worldline spokesperson said the decision was aimed at preparing "a new strategic step for the company".

"The CEO change was motivated by the third profit warning within a year with many investors calling for management change," Jefferies analyst Hannes Leitner said, adding that investors expected the new CEO to "ignite organic growth".

Worldline shares were down 18.5% at 1225 GMT. They have now lost about 92% from a high in July 2021 when investor enthusiasm for payments companies peaked.

SIX Group, the largest shareholder in Worldline with a 10.5% stake, said it had no plans to sell. A spokesperson told Reuters that Worldline was of "strategic importance" and that SIX backed Desportes as interim CEO.

Worldline's plunging share price has previously fanned rumours of a potential hostile takeover bid.
Last December, activist investor Bluebell urged the company to shake up its board to "restore trust". Reuters reported in January that Worldline had appointed advisers for a defence strategy to ward off any possible takeover.

French bank Credit Agricole revealed in January it had bought 7% of Worldline in a bid to bolster the payments company.
Bluebell partner Giuseppe Bivona said on Friday it was pleased Worldline had made changes including removing the CEO, but that it wished they had been made earlier to have avoided the latest "operational results and valuation."

MORE COST SAVINGS

Worldline said it now expected organic revenue growth of about 1% for 2024, against a previous forecast of 2-3%. It sees adjusted earnings before interest, tax and depreciation (EBITDA) around 1.1 billion euros ($1.2 billion), down from 1.13 billion-1.17 billion euros previously.

The group, which earns a fee for processing digital payments for clients, postponed its capital markets day planned for Nov. 26 and said it would launch further cost saving measures.

Worldline said it saw weaker summer trading and "specific performance issues" in its Pacific business and other markets. It declined to give details when asked by Reuters.

Hedge funds are likely to have profited as Worldline shares plunged.

Funds and asset managers from Greenvale Capital, Blackrock and Systematica all held short positions in the shares as of Aug. 30, based on data platform Breakout Point.

Greenvale Capital had recently reduced the size of its short bet, according to Breakout Point. Greenvale Capital declined to comment. The other funds did not respond to requests for comment.

($1 = 0.9024 euros)

Reporting by Alban Kacher Additional reporting by Tommy Reggiori Wilkes and Nell Mackenzie Editing by Sherry Jacob-Phillips, Mark Potter, Susan Fenton and Jane Merriman

Securities Law News

Sept. 13, 2024, 2:00 AM PDT

Meet the ‘Dirtbag of the Internet’ Behind Trump’s Crypto Project

By Zeke Faux and Muyao Shen

Bloomberg Law News 2024-09-13T09:55:33413877081-04:00

Meet the ‘Dirtbag of the Internet’ Behind Trump’s Crypto Project

By Zeke Faux and Muyao Shen2024-09-13T05:00:31841-04:00

Chase Herro has sold a lot of things in his career. Weed. Weight-loss “colon cleanses.” A $149-a-month get-rich-quick class. Now he’s adding another line to his resume: the Trump family’s crypto guru.

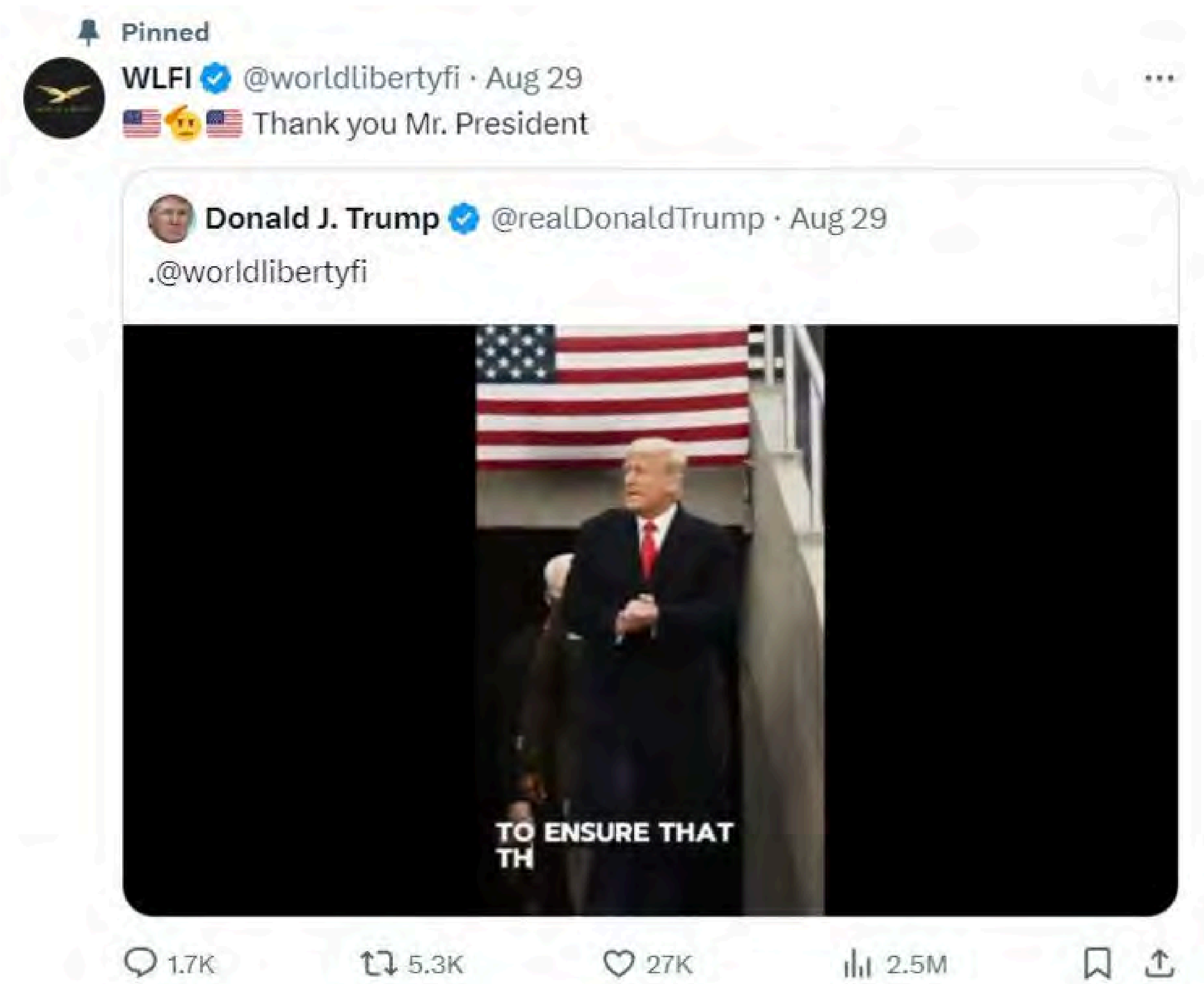
Herro is the dealmaker behind World Liberty Financial, the crypto project that Donald Trump and his two older sons have been promoting on social media in recent weeks, according to two people involved with the project. Herro’s long-time business partner Zachary Folkman is also playing a key role. While few details about World Liberty have been released, Eric Trump said that the startup will promote “financial independence” and Donald Trump Jr. said it will “make finance great again.” Former President Trump himself posted a video saying he’d announce the details on Sept. 16. “We’re embracing the future with crypto and leaving the slow and outdated big banks behind,” Trump said.

Chase Herro
Photographer: Rochelle Brodin/Getty Images

Yet Herro, a fast-talking 39-year-old who shows off his fancy cars and private-jet rides on social media, is an unknown in the crypto world. More than a dozen prominent digital-asset investors said in interviews they had never heard of him. The only crypto project with which he was publicly affiliated attracted only a few million dollars and suffered a devastating hack. A token he promoted on influencer Logan Paul’s podcast dropped 96% afterward. In one speech in 2018, he called himself “the dirtbag of the internet” and said that regulators should “kick s---heads like me out.”

“You can literally sell s--- in a can, wrapped in piss, covered in human skin, for a billion dollars if the story’s right, because people will buy it,” Herro said about crypto in a 2018 YouTube video recorded as he drove in a Rolls-Royce. “I’m not going to question the right and wrong of all that.”

Bloomberg News sent detailed questions to a World Liberty email address. “We all see the picture you’re trying to paint here and consider it at best grossly inaccurate,” a man named Jim Redner replied. “We’re confident that our results will speak for themselves.” Redner said he was not a spokesperson for the company and was “just answering emails.” Herro, Folkman and the Trump presidential campaign didn’t respond to messages seeking comment.



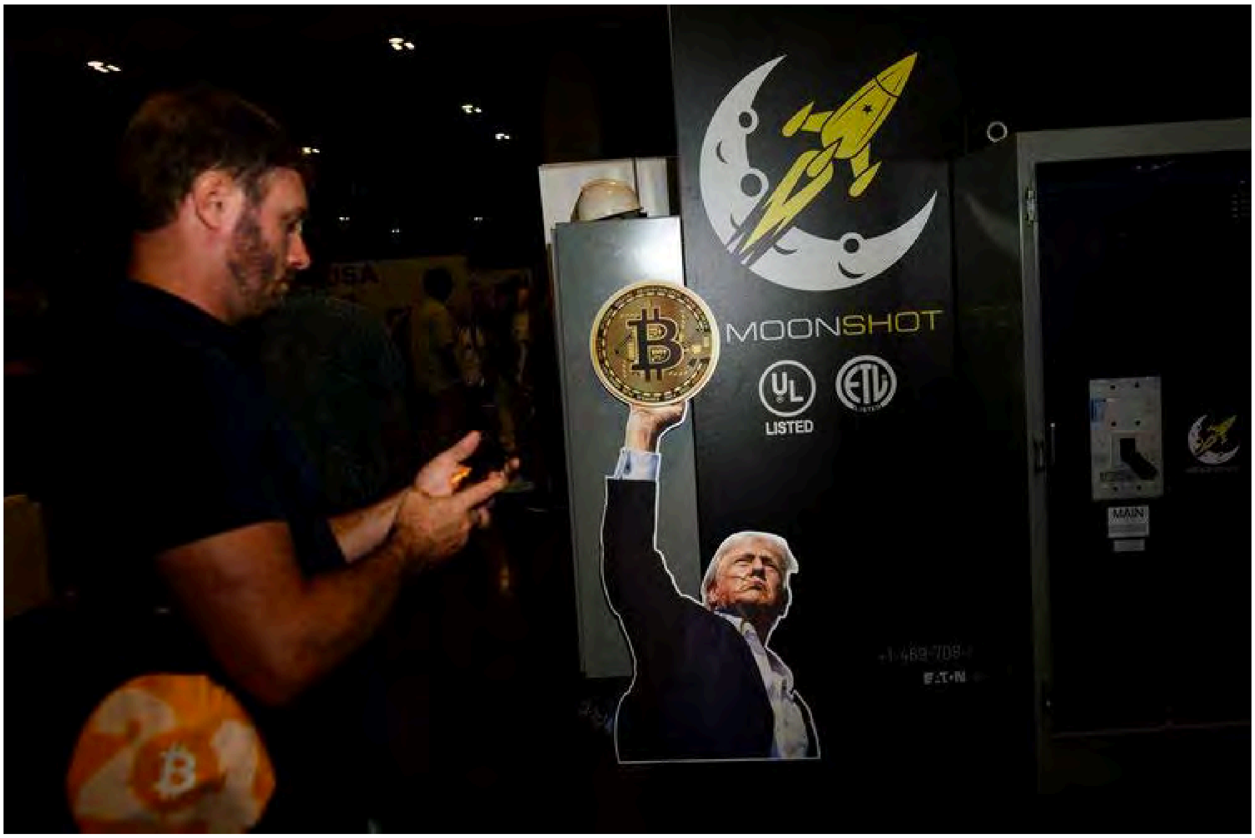
Source: @worldlibertyfi

Herro was introduced to the Trumps by Steve Witkoff, a real-estate developer and longtime supporter of the former president, after first meeting one of Witkoff’s sons, according to one of the people involved with the project.

When they met, Trump was reconsidering his stance on crypto. He’d once called Bitcoin a “scam against the dollar,” but in late 2022 he licensed his image for a series of nonfungible tokens – essentially, digital trading cards – featuring cartoon images of a muscular Trump. Then in July, after Bitcoin advocates raised what they said was $25 million for his campaign, Trump flew to Nashville to speak at a Bitcoin conference, where he promised to loosen regulations on the industry and create a strategic national stockpile of the cryptocurrency.

“The United States will be the crypto capital of the planet,” Trump said in the speech.

At the same time, Trump’s sons were getting curious about the industry. At the Nashville conference, Donald Trump Jr. appeared at an event sponsored by a little-known token called “Make America Great Again, Again,” though he said he had no affiliation with the project. And in June, Martin Shkreli, the former hedge-fund manager who served years in prison for securities fraud, said that he’d been talking with Barron Trump about starting another Trump cryptocurrency. Shkreli declined to comment.



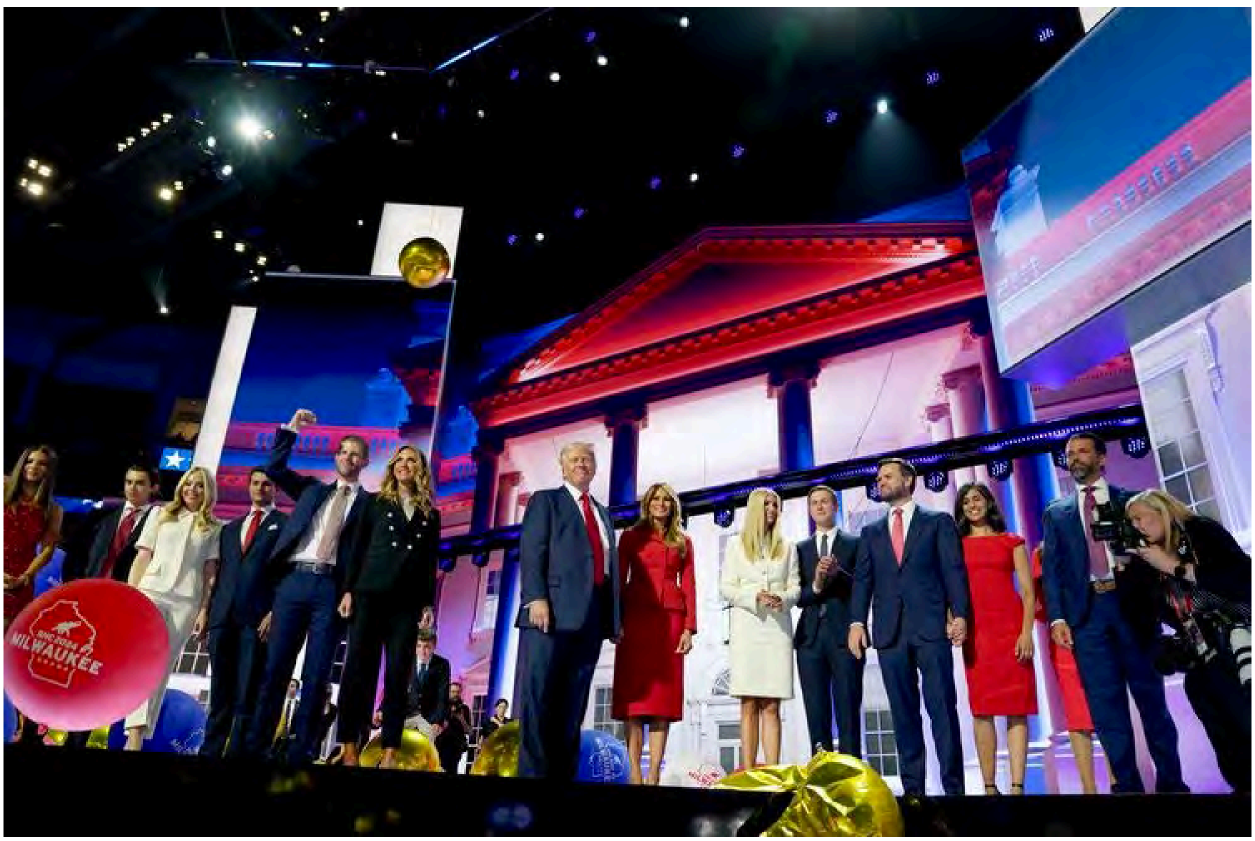
A sign featuring former President Donald Trump on a Moonshot booth during the Bitcoin 2024 conference in Nashville on July 26.
Photographer: Liam Kennedy/Bloomberg

Herro, who usually spells his name as “Chase Hero” with one “r” online, seemed like a better partner. He was affiliated with Dough Finance, a so-called decentralized-finance protocol which promised to allow users to borrow and lend crypto without intermediaries.

The two people involved with World Liberty insisted that Herro is a billionaire with a track record of crypto success. But Dough Finance only attracted $3.2 million in total activity, a tiny amount for the crypto industry, according to data provider DefiLlama. In July, it was hacked for about $2 million and it appears to be inactive now. An email to Dough Finance seeking comment was not returned.

Like Dough, World Liberty is being pitched as a platform for borrowing and lending crypto. It will have its own token, called WLFI, which it says will allow users to vote on how the project is run, according to a white paper reviewed by Bloomberg News. About 70% of those tokens will be reserved for insiders, with the rest sold to the public to raise cash. That amount of tokens going to insiders is “quite high” for a project that in theory is supposed to be decentralized, said Leo Mizuhara, founder of crypto asset manager Hashnote. Usually no entity or group of investors owns more than 20% of a project’s total token supply, he added.

While the World Liberty plan might sound innovative to someone unfamiliar with crypto, startups like this are common, and few succeed. Many of them are only created in order to sell tokens and make money, said Tarun Chitra, general partner at Robot Ventures, which in August raised a $75 million fund to invest in new crypto projects.



Donald Trump and his family stand on stage during the Republican National Convention in Milwaukee on July 18.
Photographer: Al Drago/Bloomberg

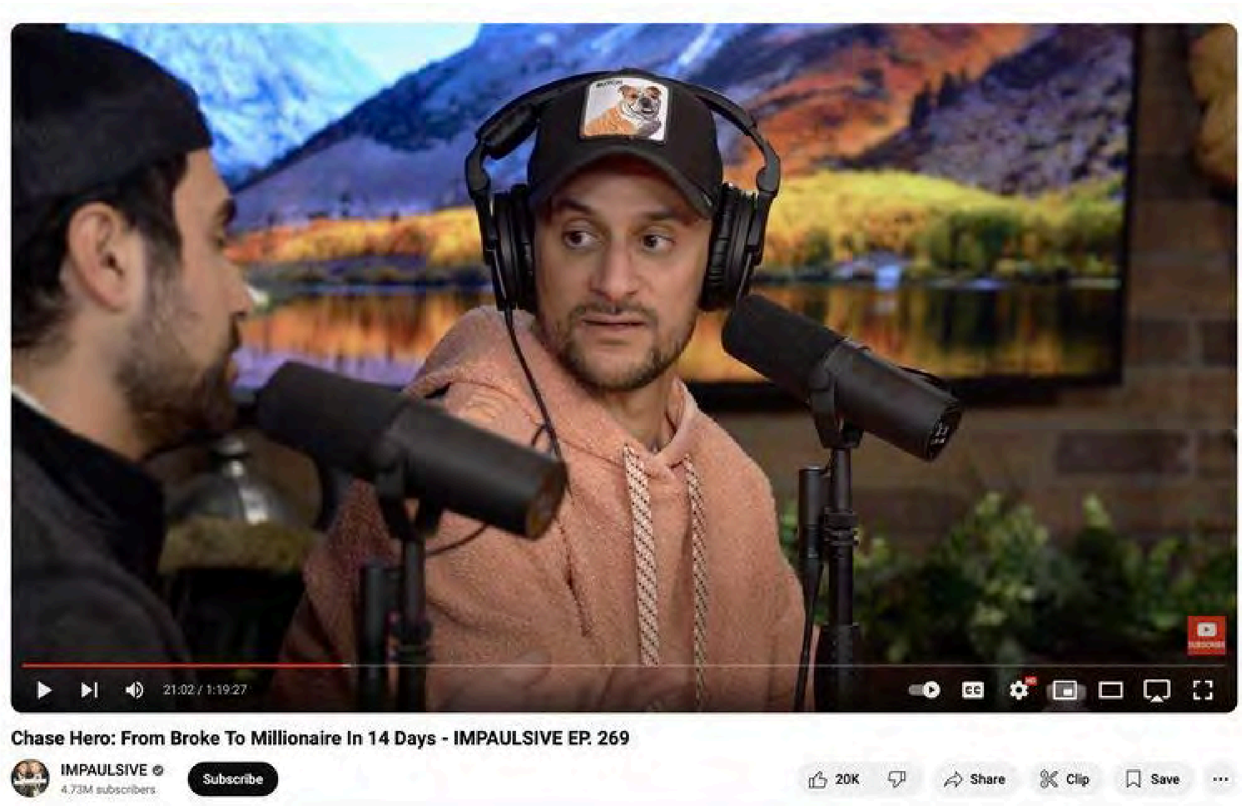
“This just feels like a fly-by-night, trying to make a quick buck, kind of thing,” Chitra said of World Liberty. “It really doesn’t seem earnest to me.”

Herro's involvement isn't the only red flag when it comes to World Liberty. The white paper lists 18-year-old Barron Trump – a college freshman with no known crypto expertise — as "chief DeFi visionary." A JPMorgan Chase banker listed as an adviser to the project, Brian Baker, refused to say whether that description was accurate.

Herro is described in the white paper as the person responsible for "data & strategies." His friend Folkman is listed as "operations lead." Folkman used to run a service called Date Hotter Girls where he taught seminars about how to pick up women. "OK, how many guys came here to learn how to take girls home and bang them?" Folkman said in a speech in 2014. The trademark for World Liberty is registered to a company using the same address in Puerto Rico as another company run by Herro and Folkman.

Herro likes to tell the story of how he spent time in prison for dealing marijuana when he was a young man before getting rich through internet marketing in the early days of social media. He was involved in what's known as " affiliate marketing," in which middlemen buy ad space on social networks and use it to sell products for other companies, which pay a bounty.

"You could just make millions," Herro said in a video. "It was the easiest thing in the world."



Chase Herro appears on Logan Paul's Impaulsive podcast in 2021.
Source: Impaulsive/YouTube

Herro’s marketing business left only a few traces online. But in a lawsuit he filed in 2014, he said that he marketed a “colon cleanser” called Regula RX on Facebook and wasn’t paid for the sales he generated. Carl Ruderman, owner of Regula RX, didn’t immediately respond to a letter sent to him at a federal prison in Miami, where he’s serving a five-year sentence for an unrelated Ponzi scheme.

Herro said in another video that he had at times employed a tactic called “cloaking,” which means hiding ads’ contents to evade social networks’ rules. In another lawsuit he filed in 2014, he sought a refund from a middleman who had sold him 20 Facebook accounts from Singapore for $100,000. Both tactics were the types of strategies used by advertisers who tried to place deceptive ads against social-media networks’ rules, according to Rob Leathern, a former Facebook executive who had responsibility for enforcing rules around advertising. “There’s no legitimate use case for cloaking,” said Leathern. (Leathern said he’d never heard of Herro.)

Herro said in his videos that the online advertising business became more challenging once competition emerged. In recent years, he and Folkman have pivoted to crypto, running a membership group called the Watchers that claimed to teach people the secrets of crypto trading and making money online. The group had more than 250 members who paid at least $149 a month, according to two people formerly involved with the group. Some paid tens of thousands of dollars for personalized coaching. Herro also appeared at other paid seminars with Jordan Belfort, whose penny-stock scams inspired the movie *The Wolf of Wall Street*.

“If you do this right, who f---ing cares if it goes to zero?” Herro said in a YouTube video promoting the Watchers. “You’ll make so much money trading these f---ing coins in and out.”

In 2021, Herro appeared on influencer Logan Paul’s podcast, *Impaulsive* . (Trump went on the same podcast in June.) During the podcast, Paul acted like he was surprised when Herro said he liked a cryptocurrency called OMI, which Paul said he liked too. A co-host asked if the two had planned the promotion before the show, and Herro denied it, swearing “on my kids.” The price of OMI has since declined 96%. And a leaked video released by the scam-busting YouTuber Coffeezilla shows Herro and Paul talking with someone about getting more OMI tokens ahead of the show. A lawyer for Paul didn’t respond to a message seeking comment.

The white paper for World Liberty lists Donald Trump as “chief crypto advocate” and his sons Eric and Donald Jr. each as “Web3 Ambassador.” A disclaimer says that World Liberty is “not owned, managed, operated or sold” by the Trumps. It does note, however, that they may receive compensation. CoinDesk first reported on the white paper last week.

Donald Trump Jr.
@DonaldJTrumpJr

Like any great battle, the fight to save our currency defines our future. Stablecoin buyers are at the forefront, as the largest purchasers of treasury notes, bolstering the US dollar and our economy. We're here to win, and we won't back down. Stay tuned—major announcements coming next week! @worldlibertyfi

8:33 PM · Sep 6, 2024 · **210.4K** Views

Source:@DonaldJTrumpJr

Promoting a private business like this while running for president is not illegal, though it’s a clear conflict of interest that may lead Trump to push crypto policies that favor his company, according to Danielle Brian, president of the Project On Government Oversight.

“The biggest harm is public policy is skewed away from what benefits the country to what benefits the individual and their family,” Brian said.

Whether or not the World Liberty project achieves its goals, its token might still be valuable. Trump’s fans have shown they’ll make investments in his companies even if they aren’t successful. In 2021, two former cast members from his reality show *The Apprentice* pitched Trump on starting his own social network, according to Reuters. The company that grew from that pitch, Trump Media & Technology Group Corp., which operates Truth Social, is worth about $3 billion, despite quarterly revenue of less than $1 million. Trump owns the majority of its stock.

When Trump considers an endorsement deal, his main consideration is not whether the product is useful, but whether he’ll receive cash up front, according to Michael Cohen, who served as the former president’s personal lawyer for years before testifying against him at his fraud trial.

“Is there upfront money attached?” Cohen said in an interview. “If the economics of the deal are to his benefit, with zero risk, he’s all in.”

--With assistance from Max Abelson.

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Securities Law News

Sept. 12, 2024, 9:34 PM PDT

Trump Allies Seek End to US Control of Freddie, Fannie, WSJ Says

By John Harney

Bloomberg Law News 2024-09-13T09:56:05240884401-04:00

Trump Allies Seek End to US Control of Freddie, Fannie, WSJ Says

By John Harney2024-09-13T00:34:31086-04:00

Allies of former President Donald Trump want to make another run at ending US control of mortgage giants Freddie Mac and Fannie Mae if he's elected in November, the Wall Street Journal reported on Thursday night.

The newspaper, citing sources it didn't identify, said former officials of the Trump administration as well as bankers have been discussing plans regarding the mortgage companies since the spring. According to the Journal, the former officials include Larry Kudlow, Trump's National Economic Council director, and John McEntee, who led the White House presidential personnel office.

Representatives of the Trump campaign didn't immediately respond to a request for comment late Thursday night. The Journal cited a campaign official saying Trump hasn't discussed the issue.

Fannie and Freddie have been under federal control since the 2008 financial crisis, when the companies piled up steep losses amid the housing crash and received a taxpayer rescue.

The Journal, citing bankers' estimates, said the government's share of the companies could amount to hundreds of billions of dollars.

Earlier Trump Plan

In 2019, the Trump administration proposed releasing the government's grip on the two entities. The plan included dozens of reforms to protect Fannie and Freddie from another housing crash, shrinking their dominant market shares and creating new competitors to the companies that backstop about trillions of dollars in home loans.

Democrats, including Senator Elizabeth Warren of Massachusetts, opposed the proposal, which would require the approval of Congress. The effort, a goal of then-Treasury Secretary Steven Mnuchin, failed.

Freddie and Fannie don't make loans. Instead, they purchase mortgages from banks and other lenders and package them into securities. Those securities have guarantees that protect investors from the risk of homeowners defaulting. The process is central to the mortgage market.

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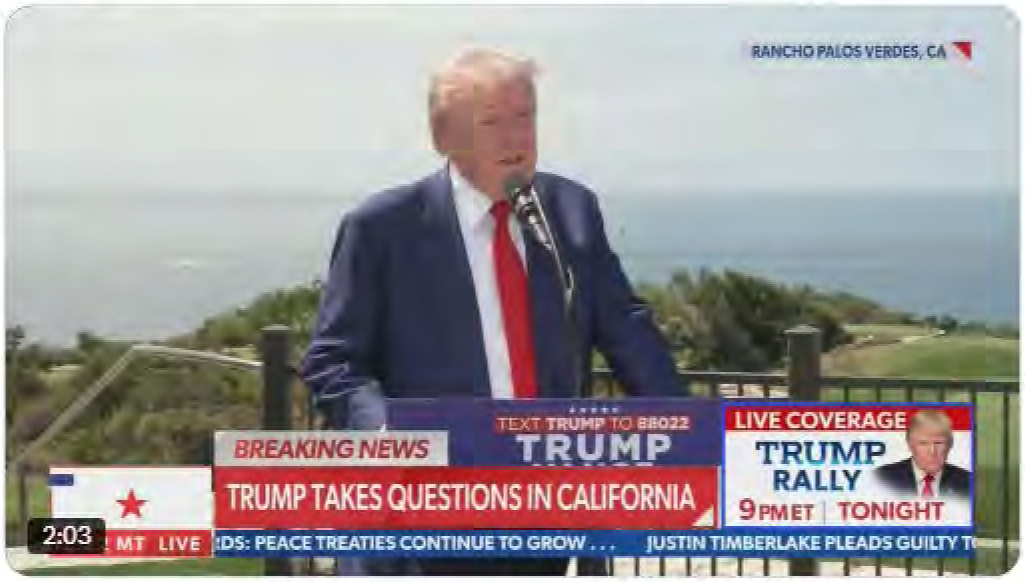
Bill Faries

https://x.com/Acyn/status/1834660806094705095

Acyn
@Acyn

Reporter: Trump Media shares are down about 75% from their peak in March. Your lockdown provision ends soon. Will you sell your shares?

Trump: No, I'm not selling... I don't want to sell my shares. I don't need money.. I absolutely have no intention of selling



11:29 AM · Sep 13, 2024 · **106.2K** Views

249 151 436 86

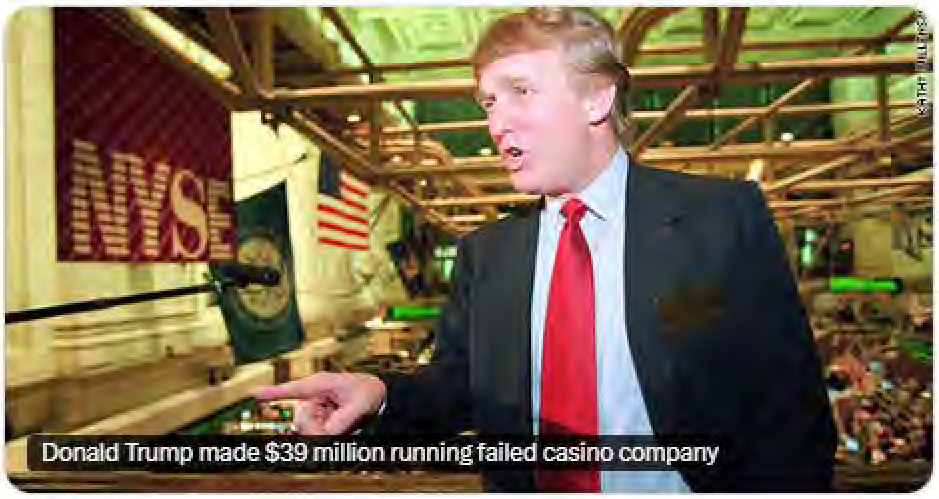
Denison Barb @DenisonBarbs · 42m

If Trump doesn't need Money how come he couldn't afford to pay the cash bond in his Trump Org case, while it's pending appeal? Trump had to hire a bond service to pay it.

3 · 11 · 122 · 2.5K

Jonathan Greenberg @JournalistJG · 29m

Realize that Trump may be lying (again) because the price is tanking & he knows its real value is under 50 cents, not $16. Trump Casinos dropped to 17 cents; investors were fleeced, but he made $39M!



Donald Trump made $39 million running failed casino company

From money.cnn.com

1 · 13 · 38 · 1K

Colin Robinson @fermiparasocks · 44m

Confirmed dump. Great big massive dump of shares

1 · 4 · 91 · 2.1K

Wiseguy 🇺🇸 🍸 @xwiseguyx · 40m

On a totally unrelated note, Can someone provide step by step instructions on how to short a stock? Asking for a friend.

2 · 1 · 19 · 913

Christine King @ckwest542 · 36m

I'm bookmarking this so I can post it after he sells his shares on September 26, 2024.

3 · 5 · 57 · 1.1K

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Beasley Sues Fellow Talc Firms Over Joint Venture Gone Awry

By **Law360 Staff**

Law360 (September 12, 2024, 2:17 PM EDT) -- Beasley Allen is going after its law firm partner in a joint venture that has represented thousands in talcum powder litigation against Johnson & Johnson, claiming in a new federal lawsuit that the firm is partially responsible for more than $1 million in owed expenses and, driven by its own financial woes, has unilaterally been negotiating with the pharmaceutical giant to the detriment of clients.

The lawsuit filed by Beasley Allen Crow Methvin Portis & Miles PC in the U.S. District Court for the Middle District of Alabama shines a light on its alleged troubles with The Smith Law Firm PLLC, which entered into the joint venture with Beasley Allen and another firm, Porter Malouf PA in 2014. The joint venture has handled more than 11,000 clients over claims that Johnson & Johnson's talc-based baby powder products caused ovarian cancer, according to the complaint.

But Beasley Allen said The Smith Law Firm and principal member Allen Smith failed to reveal that it bought out Porter & Malouf's interest in the joint venture agreement, which Beasley Allen discovered last year during talks with lenders that The Smith Law Firm had turned to because of its financial troubles. Porter & Malouf is also a defendant in the case.

Those alleged financial troubles are typified by The Smith Law Firm's failure to hold up its end of the joint venture deal on expenses, according to Beasley Allen. The partners in the joint venture were supposed to share expenses based on their proportion of fees from the talc cases, with Beasley Allen shouldering 50 percent of those costs and The Smith Law Firm and Porter Malouf PA splitting the other half, according to Tuesday's complaint.

Beasley Allen said it has mostly fronted those expenses while the other firms reimbursed it on a quarterly basis. While those payments have totaled more than $15 million since 2014, The Smith Law Firm has since fallen behind, according to the complaint. The firm and Porter Malouf owe Beasley Allen $1.2 million, even as The Smith Law Firm has failed to handle its share of the work on the joint venture's cases, the complaint said.

Meanwhile, The Smith Law Firm has kept a "substantial" number of talc clients secret from Beasley Allen and persisted in "actively undercutting" the firm in settlement talks with Johnson & Johnson, according to the complaint.

The Smith Law Firm, Beasley Allen claims, wants a settlement that "would alleviate their financial problems, but which would not in Beasley Allen's opinion be in the best interest of the joint venture clients."

In turn, Johnson & Johnson's attempts to settle the talc claims as part of a prepackaged bankruptcy plan — which would require the approval of 75% of talc powder claimants for the company to file it — have left the two firms at odds, according to the complaint.

"Defendants Smith and Smith Law had fallen into such significant debt in connection with the Talcum Powder Litigation that their independent judgment about the Talcum Powder Litigation and the potential settlement of that litigation was objectively subject to question," the complaint said.

The Smith Law Firm has continued unilateral talks with Johnson & Johnson even though Beasley Allen is responsible for settlement negotiations with the company on behalf of the joint venture's clients, according to the complaint.

In the wake of Johnson & Johnson's third bankruptcy plan, the company reached out to The Smith Law Firm with changes to the proposal that represented an improvement but still didn't provide clients with adequate compensation, Beasley Allen claims.

However, The Smith Law Firm has demanded that Beasley Allen provide it with contact information for all the joint venture's clients so they can lobby anyone who voted against the original third plan to instead support the updated version, according to the complaint. Under the joint venture agreement, Beasley Allen is responsible for all client contact, the firm said.

Based on those allegations, Beasley Allen is bringing claims against The Smith Law Firm, Allen Smith and Porter & Malouf for breach of contract and fraudulent suppression.

Smith blasted the lawsuit in statement to Law360 on Thursday.

"It is very sad when my co-counsel of 10 years files a baseless lawsuit against me," Smith said. "Attorneys can disagree on a matter without resorting to such petty tactics."

Smith said he fought with success to make sure no other women suffered ovarian cancer from J&J talc products and, with the company's revised settlement plan, secure appropriate compensation for victims.

"Beasley Allen does not agree and recently expressed their commitment to 'all claimants' and 'other firms,'" Smith said. "I, on the other hand, pledge no loyalty to other law firms or their clients. Given that, I do support the revised plan and believe other firms should also support it. I will not be threatened or intimidated from achieving the best result for my clients. I look forward to responding to the lawsuit and presenting the rest of the story."

Tim Porter, a founding partner of Porter & Malouf, said the suit "appears to be a fight between Beasley Allen and Smith Law Firm."

"It is unfortunate that our firm and our names are being disparaged because of their differences," Porter told Law360 over email.

Some of the alleged drama detailed in the complaint has spilled out into the mass tort cases against J&J.

The company has warred with Beasley Allen to access litigation funding information and settlement communications, saying the material is relevant and necessary to resolving the long-running MDL.

A special master threw out subpoenas from J&J in July, determining that the information sought was not relevant to the MDL and saying, "Parties may not roam at leisure through their adversary's files regarding all matters that are of interest to them." J&J moved to have the subpoenas brought back later that month.

Litigation funding has injected billions of dollars into federal MDLs, and Fortress Investment Group has provided millions of dollars in such funding to The Smith Law Firm to fund talc-ovarian cancer claims, J&J said in support of that effort in August.

"Why, then, have less than one-tenth of 1% of plaintiffs in the MDL disclosed litigation funding? The responses are telling," J&J said. "Beasley Allen focuses on the purported fact that it has not directly received litigation funding. That still means that the plaintiffs they represent could have received litigation funding, for example by funding routed to co-counsel."

Beasley Allen is represented by Robert D. Segall and J. David Martin of Copeland Franco Screws & Gill PA.

Counsel information for the defendants was not immediately available.

The instant case is Beasley Allen Crow Methvin Portis & Miles PC v. The Smith Law Firm PLLC et al, case number 2:24-cv-00582 in the U.S. District Court, Middle District of Alabama.

Correction: A previous of this story misstated certain allegations in the complaint concerning the firms' recent work on the talc cases. The error has been corrected.

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Del. Justices Uphold Chancery Toss Of $1.2B NCino Deal Suit

By **Law360 Staff**

Law360 (September 12, 2024, 6:44 PM EDT) -- The Delaware Supreme Court on Thursday upheld the Chancery's court's decision to throw out nCino investor claims against company directors and investment firm Insight Venture Partners challenging the financial technology company's $1.2 billion acquisition of mortgage loan platform SimpleNexus.

The dismissal came in a short order from the justices that simply affirms the ruling from Vice Chancellor Morgan T. Zurn, who in December decided that the investors' derivative complaint failed to show nCino's board acting in bad faith of lacked independence from venture capital firm Insight when nCino acquired SimpleNexus in 2022.

Vice Chancellor Zurn found that the shareholders had failed to plead "demand futility," a derivative suit requirement to show that a majority of directors were too compromised by financial, or other, interests to make an impartial decision to initiate their own claims.

"It is unreasonable to infer the directors on the [nCino] board had their heads in the sand," the vice chancellor wrote in her December opinion. "Plaintiff has failed to plead demand futility based on a substantial likelihood of liability."

The issue stems from a derivative lawsuit filed by nCino investors, the pension fund The City of Hialeah Employees' Retirement System, in September 2022, that alleged Insight was essentially de facto controller of the nCino board and that it used nonpublic information about discussions between nCino and SimpleNexus to substantially increase its investment and ownership interests in SimpleNexus before the transaction took place.

Insight Venture Partners, a significant investor in both nCino and SimpleNexus at the time, "reaped a more than seven-fold windfall" at nCino's expense in the SimpleNexus transaction, which the shareholders say was pushed through by a conflicted board without any price negotiations, according to the complaint.

Insight had owned the majority of nCino's stock before an initial public offering in 2020, and the lawsuit framed nCino's directors as "supine fiduciaries" to Insight's influence, according to Vice Chancellor Zurn's opinion.

The suing shareholders appealed, arguing that the vice chancellor took a "formulstic" approach when she dismissed the complaint, focusing on individual facts instead of the totality of the claims.

When arguing before the justices on Sept. 4, shareholder attorney Gregory V. Varallo of Bernstein Litowitz Berger & Grossmann LLP said that Vice Chancellor Zurn "missed the mosaic for the tiles" and analyzed each issue "as though it was an island."

At that hearing, nCino side attorney Steven M. Farina of Williams & Connolly LLP countered that the vice chancellor's 33-page opinion was not a "check-the-box" exercise,

Vice Chancellor Zurn had considered that the board met five times to discuss the transaction, hired several outside firms as advisers, got a fairness opinion from Bank of America and "walled off" Insight Venture managing director Jeffrey L. Horing, who was also an nCino director, from the process, Farina argued.

Attorneys for both sides declined to comment when contacted Thursday.

City of Hialeah Employees' Retirement System is represented by Gregory V. Varallo of Bernstein Litowitz Berger & Grossmann LLP, Thomas Curry of Saxena White PA, and Peter B. Andrews, Craig J. Springer, David M. Sborz, Andrew J. Peach, Jackson E. Warren and Jacob J. Jeifa of Andrews & Springer LLC.

nCino Inc. and certain directors and officers are represented by Steven M. Farina, George A. Borden and Brian T. Gilmore of Williams & Connolly LLP and Garrett B. Mortiz and S. Reiko Rogozen of Ross Aronstam & Mortiz LLP.

Insight Venture Partners LLC and its managing director Jeffrey L. Horing are represented by Tariq Mundiya, Jeffrey B. Korn, Richard Li and Ciara A. Sisco of Willkie Farr & Gallagher LLP and William M. Lafferty, Ryan D. Stottmann and Rachel R. Tunney of Morris Nichols Arsht & Tunnell LLP.

The appellate case is City of Hialeah Employees' Retirement System v. Insight Venture Partners LLC et al., case number 30, 2024, in the Supreme Court of the State of Delaware.

The case below is City of Hialeah Employees' Retirement System et al. v. Insight Venture Partners LLC et al., case number 2022-0846, in the Court of Chancery of the State of Delaware.

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Quinn Emanuel, Cohen Milstein Get $102M In Stock Loan Case

By **Law360 Staff**

Law360 (September 12, 2024, 5:10 PM EDT) -- A judge awarded $102 million in attorney fees to Quinn Emanuel Urquhart & Sullivan LLP and Cohen Milstein Sellers & Toll PLLC for settling claims from investors that major banks colluded to avoid modernizing the stock loan market.

In a Wednesday order, Judge Katherine Polk Failla of the Southern District of New York approved the request **made by the firms in May**. In that bid, the attorneys said the class reached more than $580 million in cash settlements, along with industry reforms valued at $319 million — a result that would not have been possible without co-lead counsel's "diligent" prosecution of the case.

The first settlement in the case was established in February 2022, when Credit Suisse agreed to pay investors $81 million to exit the suit. In August 2023, **the plaintiffs settled** with Goldman Sachs, Morgan Stanley, JPMorgan, UBS and EquiLend for nearly $500 million.

The case dates to 2017 and was filed on behalf of a proposed class of investors in the stock loan market. According to the suit, large middlemen banks in this market worked to prevent the emergence of more competitive electronic exchanges that could have offered the investors better pricing.

The case is Iowa Public Employees' Retirement System et al. v. Bank of America Corp. et al., case number 1:17-cv-06221, in the U.S. District Court for the Southern District of New York.

--Editing by Law360 staff.

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Crypto Wallet Co. Beats Colo. Class Action Over $100M Hack

By **Law360 Staff**

Law360 (September 12, 2024, 7:02 PM EDT) -- The developers and owners of cryptocurrency application Atomic Wallet have beaten a proposed class action over a hack last year that stole roughly $100 million in customers' assets, with a Colorado federal judge saying the suit doesn't have a strong enough connection to the Centennial State to proceed there.

The suit, which was filed in June 2023, alleges that the owners and developers of Atomic Wallet were well aware of security vulnerabilities in their crypto wallet application but did not take steps that would have prevented North Korean hackers from infiltrating the platform and making off with the assets of some 5,500 wallet users.

A total of 21 individuals joined the litigation as named plaintiffs, seeking damages from Estonia-based Atomic Protocol Systems OÜ, which does business as Atomic Wallet, software developer Evercode Labs and three individual defendants including Atomic Wallet's CEO and majority owner Konstantin Gladyshev.

But U.S. District Judge Philip A. Brimmer on Tuesday agreed with the defendants that having one plaintiff from Colorado, Graham Dickinson, is not enough to give the court jurisdiction over the matter.

Among other things, there's no evidence present that the defendants had such minimum contacts with the state that their actions met the purposeful availment standard and that they "'should reasonably anticipate being haled into court'" there, he said.

Among other things, Judge Brimmer said Dickinson's claims that he downloaded the Atomic Wallet app after seeing an advertisement for it on Twitter while in Colorado isn't enough to show that the company targeted users in the state. Nor is the fact that the company made its apps available to Coloradans and sent them cashback tokens enough, he said.

"The fact that, sometime after he downloaded the Atomic Wallet application, Mr. Dickinson communicated with Atomic Wallet customer representatives who knew he was a Colorado citizen is not evidence that Atomic Wallet intentionally directed its operations at Colorado rather than just having its applications accessible there," Judge Brimmer also wrote.

He reached similar conclusions when it came to the plaintiffs' claims against Evercode Labs. "First, as discussed above, making Atomic Wallet software, mnemonic keys, and security updates available to download and use in Colorado by Colorado residents does not, by itself, constitute deliberate exploitation of the Colorado market," Judge Brimmer wrote in his 22-page order.

"Second, plaintiffs do not allege that Evercode caused Atomic Wallet to make its software, mnemonic keys, and security updates available to Colorado residents, thereby deliberately exploiting the Colorado market."

Judge Brimmer dismissed claims against Gladyshev and another individual defendant, Atomic Wallet shareholder Pavel Sokolov, on the same grounds, while ordering the plaintiffs to show cause why a third individual defendant, Ilia Brusov, shouldn't be dismissed from the case on the grounds that plaintiffs have not filed proof that she was served with the complaint.

Representatives of the defendants did not return requests for comment on the decision.

In an email, a lawyer for the plaintiffs, Daniel J. Thornburgh of Aylstock Witkin Kreis & Overholtz PLLC, told Law360: "We are very disappointed in the ruling. Many victims have been devastated by the gross security failures of these Defendants... This is a very serious matter and we won't give up on trying to help our clients recover their losses. We are exploring all available options."

The users are represented by Douglass A. Kreis, Daniel J. Thornburgh and D. Nicole Guntner of Aylstock Witkin Kreis & Overholtz PLLC.

Atomic Wallet, Gladyshev and Sokolov are represented by Stephen D. Palley, Kyle Dorso and Jonathan White of Brown Rudnick LLP.

Evercode Infinite is represented by Jessica J. Smith, Nicholas W. Katz and Daniel H. Athenour of Holland & Hart LLP.

The case is Meany et al. v. Atomic Protocol Systems OU et al., case number 1:23-cv-01582, in the U.S. District Court for the District of Colorado.

Update: This story has been updated with comment from plaintiffs counsel.

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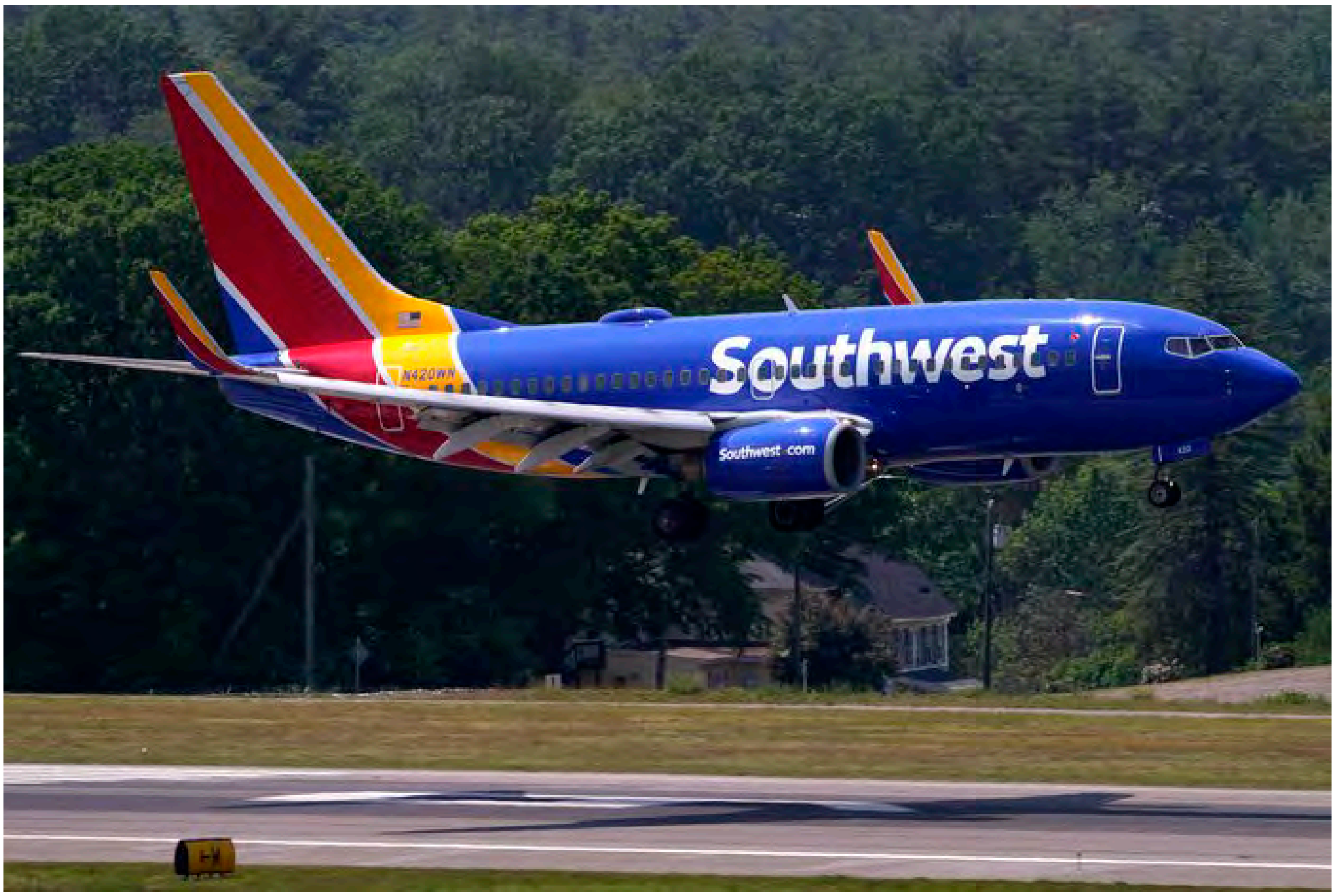
Southwest Leave Penalty Suit Cleared For Class Treatment

By **Law360 Staff**

Law360 (September 12, 2024, 9:42 PM EDT) -- A California judge gave her blessing Thursday to a class action accusing Southwest Airlines Co. of penalizing flight attendants who take family or medical leave, letting the suit move ahead on behalf of thousands of workers.



A federal class action granted certification on Thursday accuses Southwest Airlines of violating the Family and Medical Leave Act by penalizing flight attendants who take such leave. (AP Photo/Charles Krupa)

U.S. District Judge Jacqueline Scott Corley certified two nationwide classes stretching back to March 2019 that comprise flight attendants who took Family and Medical Leave Act time and lost the chance to have the disciplinary "points" Southwest gave them reduced.

A nationwide injunctive class includes anyone who lost a chance to have their disciplinary points reduced due to taking family and medical leave, while a nationwide damages class includes flight attendants who not only lost access to disciplinary points reductions but ended up being terminated.

In addition to the national classes, the plaintiffs pitched injunctive and damages subclasses covering California-based flight attendants, with only the injunctive class winning approval. The plaintiffs estimate the nationwide injunctive class covers over 9,000 people, Judge Corley's order said.

The plaintiffs also point to 74 flight attendants who were approved for FMLA leave and then lost their jobs for having too many points, but only five of those flight attendants were based in California, according to the order.

Southwest unsuccessfully argues in its July opposition to class certification that the plaintiffs' claims were preempted by the Railway Labor Act because interpreting a collective bargaining pact between Southwest and the flight attendants would be necessary to resolve the dispute.

Judge Corley, however, wasn't persuaded, saying Southwest was rehashing an argument the court had already ruled on.

Southwest also challenges the typicality of the injunctive classes because the points adjustment would have to be done "manually" for every flight attendant.

But Thursday's order said, "just because points adjustment must be done manually for each flight attendant does not mean the remedy is unique or otherwise incapable of 'classwide' application."

In addition to certifying classes on the plaintiffs' FMLA interference, wrongful termination and unfair competition, Thursday's order appointed Andrus Anderson LLP and Erlich Law Firm PC as class counsel.

Current Southwest flight attendant Selina Cashin and Roreste Refuerzo, who was fired for having too many points, asked the court to certify the classes in April. They argue that Southwest ensured that any flight attendants who used intermittent or continuous FMLA leave would no longer qualify for the airline's record improvement plan — a system where Southwest will reduce disciplinary and attendance-related points on a worker's record in exchange for good behavior, such as perfect attendance.

This system, the workers claim, infringed on flight attendants' rights under FMLA because they lost the benefit of point reductions they would otherwise be entitled to. Southwest doesn't argue that the policy was applied differently among its flight attendants; therefore, the issues at hand can be resolved through classwide proof, the workers contend.

"Reaching class certification would require a manual review of every Flight Attendant's attendance record to determine harm. That is not capable of class-wide resolution," a representative for Southwest said in an emailed statement. "We are exploring options for an immediate appeal."

"Southwest's policy attaches a negative consequence to employees' FMLA use, and courts have routinely held that policies like Southwest's are illegal. We look forward to continuing to pursue this case up to and through trial," said Jason Erlich, an attorney for the plaintiffs.

The flight attendants are represented by Jason M. Erlich of Erlich Law Firm and Jennie Lee Anderson of Andrus Anderson LLP.

Southwest is represented by Annie Lau and Megan F. Clark of Fisher Phillips, and Kevin L. Quan of Kilpatrick Townsend & Stockton LLP.

The case is Refuerzo v. Southwest Airlines Co., case number 3:22-cv-00868, in the U.S. District Court for the Northern District of California.
