Bloomberg Law News 2024-09-20T18:05:18453681124-04:00

Fate Therapeutics Gets Investor Suit Over J&J Partnership Tossed

By Martina Barash 2024-09-20T16:41:22000-04:00

- Alleged cause of stock drop is ‘atypical,’ court says
- Investors will have chance to replead securities claims

Fate Therapeutics Inc. investors can’t proceed with a would-be class action alleging the drug developer misrepresented the sustainability of its collaboration agreement with Johnson & Johnson unit Janssen Biotech Inc., a federal court ruled.

Although the investors adequately alleged intentional misrepresentations in a small sliver of company statements they challenged, they nevertheless failed to show how those statements caused their losses, Judge Ruth Bermudez Montenegro said Thursday for the US District Court for the Southern District of California.

The investors will have another chance to plead their claims, she said.

The investors alleged that Fate made overly optimistic statements about the arrangement, a global collaboration and option agreement for cell-based cancer immunotherapies, over the course of nearly three years. The biopharmeceutical company failed to disclose that some of its “clinical programs, milestone payments, and royalty payments associated with the Janssen Collaboration Agreement could not be relied upon as future revenue sources,” effectively overstating its long-term profitability, they said.

Fate announced Jan. 5, 2023, that the partnership had been terminated, and its stock price dropped 61% the following day, the shareholders said.

Four statements identified by the investors are misleading and potentially actionable, Montenegro said. And allegations of fraudulent intent are sufficient for statements made after Janssen decided against proceeding with a particular product candidate, FT562, she said.

But the suit founders on loss causation, she said. “The present case is atypical in that the announcement of the termination of the Collaboration Agreement, rather than the revelation of the allegedly material omissions or some other corrective disclosure, caused Fate's stock price to drop and Plaintiffs to lose money," she said.

The investors failed to show that the allegedly material omissions resulted in Janssen's termination of the agreement, she said. "Without allegations linking the allegedly material omissions to the termination of the Collaboration Agreement, there is a hole in the causal chain that is fatal to Plaintiffs' theory of the case," the judge said.

Robbins Geller Rudman & Dowd LLP is lead counsel for the investors. Goodwin Procter LLP represents Fate.

The case is Hadian v. Fate Therapeutics, Inc. , 2024 BL 330153, S.D. Cal., No. 3:23-cv-00111, 9/19/24 .

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Viatris Gets Shareholders' Biosimilars Class Action Thrown Out

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Investors in Viatris Inc. can no longer proceed with a proposed class action alleging that the global health-care company made misstatements or omissions about its biosimilar drugs and finances, in part because the challenged statements were accompanied by words of caution, a federal district court said.

Lead plaintiff Jason Taylor alleged May 12 that Viatris and two of its officers and directors violated the Securities Exchange Act. But the plaintiffs failed to plead that alleged misstatements were actionable under the Private Securities Litigation Reform Act's Safe Harbor provision, Judge Marilyn J. Horan of the US District Court for the Western District of Pennsylvania said Sept. 20.

The company allegedly represented that 2021 was a low point and that $6.2 billion was its "floor" earnings figure. Viatris then unexpectedly announced it was selling its biosimilars business to Biocon Biologics Ltd. on Feb. 28, 2022, which hurt Viatris' stock, Taylor said.

Taylor sued on on behalf of a proposed class of those who acquired Viatris common stock between March 1, 2021, and Feb. 25, 2022. The court dismissed the suit with prejudice, saying any amendment would be futile.

The safe harbor provision precludes liability when a person makes a forward-looking statement, and provides a meaningful cautionary statement.

Viatris showed that dozens of statements about the company in Taylor's complaint were forward-looking revenue projections that cautioned there was potential for major changes to the company's business plans, the court said.

The company's statements about its biosimilar drugs are also protected by the safe harbor provision, the court said.

Taylor's complaint didn't connect a non-speculative, plausible theory that the Biocon transaction was definitively in the defendants' minds during the relevant period, the court said.

These statements "were coupled with 'meaningful cautionary statements' through clear disclosures of a strategic review that included potential material divestitures of products and business on an ongoing basis and that such divestitures could reduce the size or scope of Viatris' businesses," the court said.

The court also said that some challenged statements about Viatris' corporate optimism constituted "puffery," and included "non-actionable words" like "robust" and "durable."

Courts have routinely viewed such statements as failing to support a securities fraud claim because they contain immaterial information that would be unimportant to an investor, Horan said.

Cohen Milstein Sellers & Toll PLLC and Pribanic & Pribanic represented Taylor. Wilson Sonsini Goodrich & Rosati, Strassburger McKenna Gutnick & Gefsky, and Pietragallo Gordon Alfano Bosick & Raspanti LLP represented Viatris.

The case is In re Viatris Inc. Sec. Litig. , W.D. Pa., No. 23-cv-812, 9/20/24 .

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Securities Law News
Sept. 20, 2024, 1:05 PM PDT

Harbor Diversified Officers Face Derivative Suit Over SEC Filing

By Bernie Pazanowski

- **COURT:** E.D. Wis.
- **TRACK DOCKET:** No. 2:24-cv-01198

Bloomberg Law News 2024-09-23T10:11:06877321634-04:00

Harbor Diversified Officers Face Derivative Suit Over SEC Filing

By Bernie Pazanowski 2024-09-20T16:05:58000-04:00

- **COURT:** E.D. Wis.
- **TRACK DOCKET:** No. 2:24-cv-01198

Shareholders of Harbor Diversified Inc., which is the holding company for Air Wisconsin Airlines LLC, sued its officers for improperly reporting income from an agreement with United Airlines, Inc., to the Securities and Exchange Commission.

Starting in 2017, Air Wisconsin had a capacity purchase agreement with United, under which United agreed to purchase the capacity of regional jets and Air Wisconsin would operate them as United Express flights, the complaint filed Thursday in the US District Court for the District of Wisconsin says.

Under SEC regulations, a company can't recognize revenue unless there's a substantial possibility it will be collected, the complaint says. In May 2022, Harbor reported as revenue payments from United that were in dispute, saying that it had a "strong position" for its claim.

There was no reasonable basis for Harbor's claim and on March 29, 2024, it was disclosed that Harbor lost its arbitration with United, which was worth $52.3 million in revenue, the complaint says. Harbor also reported that it had a material weakness in financial reporting and would have to reissue some of its financial statements, it says.

Harbor's stock lost 14.25% on the basis of the disclosures and fell from $2.02 to $1.73 a share, the complaint says.

From March 30, 2022 to March 29,, 2024, the plaintiffs breached their fiduciary duty to Harbor by making "to the investing public a series of materially false and misleading statements regarding the Company's business, operations, and prospects," the complaint says. Under the officer's guidance, Harbor also failed to maintain adequate internal controls, it says.

The complaint notes that during the relevant period, Harbor repurchased 3.9 million shares of stock at the inflated market price and overspent by $1.9 million.

The plaintiffs claim that during the relevant period the officers made false statements and schemed to defraud investors, breached their fiduciary duties, and were unjustly enriched. They also accuse the officers of abuse of control, gross mismanagement, and waste of corporate assets.

The complaint requests a determination of damages, a declaration holding the officers jointly and serverally liable for them, and pre- and post-judgment interest. It further requests that the officers be ordered to adopt procedures to prevent the facts of the case from happening again.

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

Timothy Brown of New York represents the plaintiffs.

The case is Namesnik v. Deister , E.D. Wis., No. 2:24-cv-01198, complaint filed 9/19/24 .

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UBS Must Defend Credit Suisse Investor Suit, While PwC Exits

By Martina Barash 2024-09-23T12:51:58000-04:00

- Suit stems from implosion of scandal-ridden Swiss bank
- Half-truths by Credit Suisse adequately alleged, court says

Credit Suisse Group AG investors may proceed with securities fraud claims against the bank over statements before its merger into UBS Group AG, but failed to state claims against its auditor PricewaterhouseCoopers AG, a federal court ruled.

The investors can sue over a narrower range of statements than they targeted in their complaint, Judge Colleen McMahon said in an opinion docketed Sept. 20 in the US District Court for the Southern District of New York. The surviving allegations center on Credit Suisse filings and statements made “during the last six months before the Bank imploded,” McMahon said.

Three former Credit Suisse executives and directors remain in the suit, while three others are dismissed, she said.

Lead investor Ali Diabat’s proposed class action arises from Credit Suisse’s deteriorating financial condition in the wake of several scandals, including its alleged exposure to losses associated with the collapse of hedge fund Archegos Capital Management. The 166-year-old Swiss banking institution folded into UBS in March 2023.

Other litigation stemming from those events included a Credit Suisse investor suit for alleged racketeering against the company and its previous auditor, KPMG LLP. The investors in that case are appealing the dismissal.

Here, Diabat alleged that Credit Suisse and its leaders made 81 false or misleading statements about its risk management, internal controls over financial reporting, the significance of asset outflows, and that they filed financial statements that didn’t comply with accounting standards.

Credit Suisse’s independent auditor PwC—which was allegedly paid $231 million for its work on the bank’s 2020, 2021, and 2022 audits—was sued over the financial statements and accompanying letters.

Most of the Credit Suisse statements can be eliminated from the suit “because they are true (or not alleged to be false), or because what was allegedly not disclosed was already in the total mix of publicly available information, or because the statements qualify as puffery, or because they are forward looking statements that fall within the ‘safe harbor’ of the Private Securities Litigation Reform Act,” or for other reasons, McMahon said.

But some statements from October 2022 forward are actionable, she said. With respect to statements about the company’s internal controls over its financial reporting, for example, “there came a point where Credit Suisse was no longer privileged to say nothing about the strength of the Company’s ICFR—meaning that its silence on the subject no longer qualified as a pure omission, but instead resulted in half-truths,” the judge said.

PwC, for its part, challenged the investors’ allegations of its fraudulent intent. McMahon agreed with the accounting firm that Diabat offered “no specific facts warranting a departure from the entirely plausible inference that PwC AG was acting in its own economic self-interest” and didn’t “plausibly allege any other motive on the part of PwC AG to commit or to participate in the alleged fraud.”

Kahn Swick & Foti LLC is lead counsel for the investors. McCarter & English LLP and Cahill Gordon & Reindel LLP represented Credit Suisse and the individual defendants. Wilmer Cutler Pickering Hale & Dorr LLP represented PwC.

The case is Diabat v. Credit Suisse Grp. AG , 2024 BL 332327, S.D.N.Y., No. 1:23-cv-05874, 9/19/24 .

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Securities Law News
Sept. 20, 2024, 1:42 PM PDT

This Week in Chancery Court: Bezos and Amazon's Satellite Delays

By Jennifer Kay

Bloomberg Law News 2024-09-23T10:09:5998265903-04:00

This Week in Chancery Court: Bezos and Amazon's Satellite Delays

By Jennifer Kay 2024-09-20T16:42:01000-04:00

Amazon.com Inc. founder Jeff Bezos will ask the Delaware Chancery Court to dismiss claims that his rivalry with Elon Musk is causing delays in his own space satellite project, highlighting the court's agenda for the week of Sept. 23.

A few more items of interest on the Chancery Court and Delaware Supreme Court calendars:

Monday: Kaur v. Scooby Aggregator LP, Del. Ch., No. 2024-0129, hearing 9/23/24.

At issue: Petco Health & Wellness Co. is a nominal defendant in an investor lawsuit challenging a provision of a stockholder's agreement between the company and its controlling stockholder, Scooby Aggregator LP. The investor seeks to invalidate a provision that gives Scooby veto rights over the board's ability to hire or fire Petco's CEO and any other officer at the company. Both the investor and Scooby and Petco have filed motions for summary judgment in the case. Each side's arguments invoke a Chancery Court decision earlier this year that invalidated extensive veto rights in a pact between Moelis & Co. and its founder, prompting changes to Delaware's corporate law amendments.

Court action: Oral arguments on the motions will be heard in Wilmington, Del.

Novel Corporate Rulings Fuel Charged Debate on Delaware's Role

Tuesday: Cleveland Bakers & Teamsters Pension Fund v. Bezos, Del. Ch., No. 2023-0868, oral arguments 9/24/24.

At issue: An amended shareholder derivative complaint focuses on Amazon's "Project Kuiper" and challenges its reliance on Blue Origin, the rocket company founded by Bezos, rather than Musk's SpaceX. Bezos and Amazon argue in a brief that the directors "undertook a diligent and informed review" of the project's contracts, "in which Bezos did not participate." The pension fund that brought the lawsuit argues in an answering brief that, "given Bezos's outsized control and influence at Amazon, it is certainly reasonably conceivable that Defendants succumbed to a controlled mindset, operating in a 'distortion field' that interfered with their oversight."

Court action: Vice Chancellor Nathan A. Cook will hear oral arguments in Wilmington, Del.

Bezos Blasts Suit Blaming Musk Rivalry for Space Project Delays

Wednesday: Restanca LLC v. House of Lithium Ltd., Del., No. 49,2024, oral arguments 9/25/24.

At issue: Reby Inc. seeks to reverse a Chancery Court ruling that found House of Lithium Ltd. could back out of a $100 million deal for the Barcelona-based "micromobility" startup that runs an app-based platform for urban scooter and bicycle rentals. House of Lithium is a fund SOL Global Investments Corp. launched in 2021 to hold the Canadian private equity firm's investments in electric vehicle makers and other green or clean technologies. Reby's appeal is "a transparent attempt to entice the court into believing that this case presents an opportunity to resolve an open area of Delaware law," according to an answering brief from House of Lithium.

Court action: The Delaware Supreme Court hears oral arguments in Dover, Del.

SOL Global Fund Can Break Bike-Share Startup Deal, Judge Says

Wednesday: Ohio Pub. Emp. Ret. Sys. v. Boeing Co., Del. Ch., No. 2024-0795, telephonic hearing 9/25/24.

At issue: Magistrate Selena E. Molina rescheduled a teleconference to hear Boeing Co.'s arguments for blocking depositions by the pension fund seeking information on the aerospace giant's safety-related policies and practices. Demanding depositions in the current books-and-records lawsuit unnecessarily burdens the company, Boeing argues in a brief. The pension fund wants to see Boeing's internal documents, including board minutes and whistleblower complaints, dating back to early 2022. The lawsuit was filed in July just after Boeing pleaded guilty and agreed to pay a fine of at least $243.6 million to resolve criminal conspiracy charges stemming from 737 Max 8 crashes in 2018 and 2019. "The court should not permit Boeing to hide behind naked complaints about burden, while simultaneously avoiding solutions that would minimize any such burden," the pension fund said in an answering brief.

Court action: Oral arguments will be heard via teleconferencing.

Boeing Sued by Pension Fund Seeking 737 Max Safety Records (1)

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NEWS

OpenSea Faces Class Action Lawsuit in Miami Over NFT Sales

"We're not just suing OpenSea in a class action like other lawsuits that will follow ours; we want to use this litigation to help create the framework of NFTs moving forward," said Adam Moskowitz, the managing partner at the Moskowitz Law Firm.

September 20, 2024 at 12:08 PM

Cryptocurrency

Michael A. Mora

The original version of this story was published on Daily Business Review

What You Need to Know

- The U.S. Securities and Exchange Commission issued a Wells Notice to Ozone Networks Inc. or OpenSea.
- The plaintiffs alleged that OpenSea misled investors that the NFTs sold on its website did not constitute the sale of securities.
- The attorney behind the class action said he has reached out to OpenSea to create a framework for NFT regulation and encouraged others to contribute.

The non-fungible token marketplace OpenSea has been hit with a securities class action in a federal district court in Miami over its alleged scheme to mislead investors that the NFTs sold on its website did not constitute the sale of securities, despite a clear indication from the U.S. Securities and Exchange Commission that they did.

Adam Moskowitz, the managing partner at the Moskowitz Law Firm in Coconut Grove, Florida, is among the attorneys who represent the plaintiffs, Anthony Shnayderman and Itai Bronshtein, on behalf of themselves and all others similarly situated against the defendant, Ozone Networks Inc. or OpenSea.

"We're not just suing OpenSea in a class action like other lawsuits that will follow ours; we want to use this litigation to help create the framework of NFTs moving forward," Moskowitz said. "Let's now sit down and try to work on constructive NFT regulation so that people that were injured not only have a path to damages, but we can make sure this doesn't happen again."

OpenSea did not respond to a request for comment.

Now, the case against OpenSea is pending before the U.S. District Judge Cecilia M. Altonaga of the Southern District of Florida, in which the plaintiffs alleged violations of New York General Business Law Section 349, breach of warranty, unjust enrichment, and violations of the Florida Securities and Investor Protection Act and the Florida Deceptive and Unfair Trading Practices Act.

In addition, the plaintiffs seek to represent a global class, a nationwide class, a New York subclass and a Florida subclass.

OpenSea was founded in 2017 by Devin Finzer and Alex Atallah and soon became the largest peer-to-peer digital marketplace by volume, sales and traders for crypto collectibles and NFTs. NFTs are tokenized versions of digital or real-world assets that function as proof of authenticity and ownership. They rely on scarcity to drive up value.

OpenSea is best described as a platform or exchange that supports trading through a variety of blockchains, including Ethereum, Polygon, Solana, Arbitrum, Optimism, Klaytn, Avalanche, Zora, Base, Blast and Sei.4. In 2021, OpenSea's revenue increased from $9 million in the second quarter to $186 million in the fourth quarter.

However, after a series of poor, unethical business decisions, OpenSea's turbulence began—it reported a "net loss of $170.7 million in the second quarter of 2022," according to the lawsuit. "In September 2021, OpenSea's head of product was pushed out due to insider trading. Unbeknownst to OpenSea's customers, their trust in the company to make intelligent investment decisions was unfounded," it said.

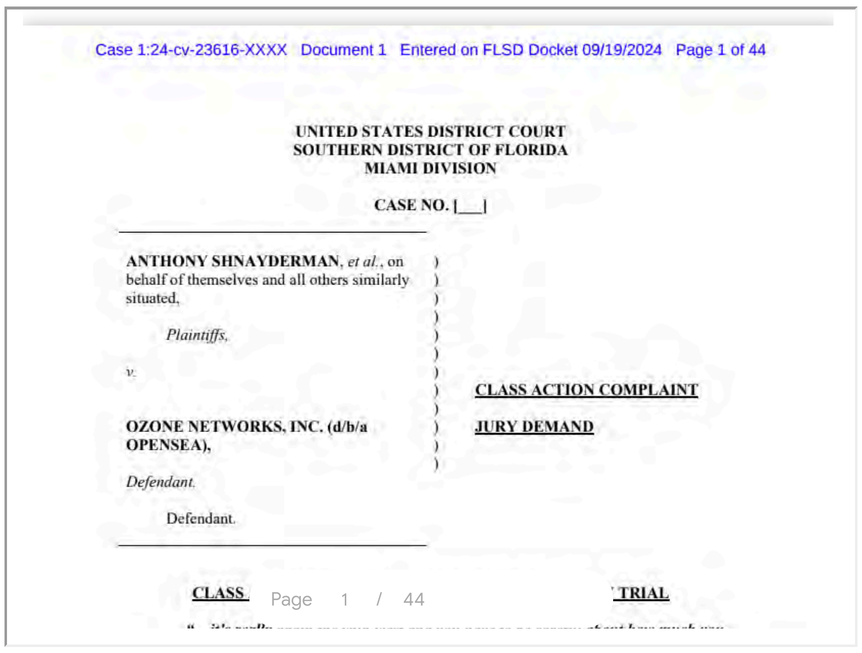
"Amidst OpenSea's net loss of $170.7 million in the second quarter of 2022, one of OpenSea's former employees even pondered, 'What the f***, you're not somebody's personal investor. Why are you gambling on this when we have so much more upside?'"

As a result, OpenSea's internal officials warned of its potential legal liability for these products, most prominently through its sale of NFTs.

Meanwhile, the plaintiffs said in the lawsuit that the SEC's apparently consistent stance since as early as 2017 that crypto, digital trading platforms, initial coin offerings and other digital asset products constitute securities under relevant securities law. That stance should have alerted OpenSea that its sales of NFTs constituted unregistered securities.

"While Finzer continues to double down on OpenSea's deceptive operations by remaining confident that OpenSea is not violating any securities laws, the Wells Notice [issued by the SEC] suggests that OpenSea is in the hot seat and may be found liable for facilitating the exchange of unregistered securities," according to the complaint.

Read the Complaint:



Case 1:24-cv-23616-XXXX Document 1 Entered on FLSD Docket 09/19/2024 Page 1 of 44

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. [___]

ANTHONY SHNAYDERMAN, *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

OZONE NETWORKS, INC. (d/b/a OPENSEA),

Defendant.

Defendant.

CLASS ACTION COMPLAINT

JURY DEMAND

CLASS ... TRIAL

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RELATED STORIES

[‘Any NFT Is a Security’: What an SEC Wells Notice Sent to OpenSea Could Mean for Attorneys]

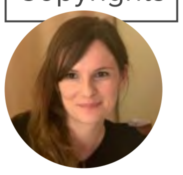
NEWS

Judge Blasts Authors' Lawyers in Key AI Suit, Says Case Doomed Without Upgraded Team

U.S. District Judge Vincent Chhabria upbraided star litigator Joseph Saveri, who responded that he took the criticisms seriously. Saveri said that he intends to stick out the case but “not necessarily with this team. I’ve heard you loud and clear.”

September 23, 2024 at 07:24 AM

Copyrights



Maria Dinzeo

The San Francisco federal judge overseeing prominent authors’ artificial intelligence copyright lawsuit against Meta said he’s completely lost confidence in the plaintiffs’ legal team and that he won’t grant class certification unless plaintiffs hire a new one.

The team, led by San Francisco antitrust and class action lawyer Joseph Saveri of the Joseph Saveri Law Firm and Los Angeles lawyer Matthew Butterick, has “failed to adequately and diligently litigate” the case, U.S. District Judge Vincent Chhabria said during an hourlong video hearing Friday. He expressed frustration that the case had not advanced further 11 months after its filing.

In response, Saveri said he took the judge’s concerns seriously. While he didn’t specify what he would do to address them, he suggested he would press on, ultimately demonstrating the effectiveness of his counsel, while bringing in additional legal firepower.

One of the top litigators in the country, Saveri made his name battling tech, auto and pharmaceutical behemoths in complex litigation alleging monopolistic practices, price-fixing and pay-for-delay agreements, drawing settlements and resolutions topping $4.7 billion. His latest battleground is generative AI, where he’s brought cases against some of the biggest names in the business, including OpenAI, Midjourney, Stability AI and Meta.

Chhabria made his harsh remarks during a case management conference in which the two sides squabbled over the production of evidence. During the discussion, Saveri charged that he has been unfairly delayed by an uncooperative Meta and its lawyers at Cooley.

In a filing submitted ahead of the hearing, Saveri and his team alleged that Meta produced thousands of documents at the 11th hour, “with many documents being produced with various technical issues, which will necessitate re-imaging, production of native texts, and correction of illegible or corrupted files.” At least 1,000 of the documents are in French, and translation will add even more time to the discovery process, the filing said.

Saveri said that he made document requests last December but didn't get any documents from Meta until August. Cooley partner Kathleen Hartnett disputed this, saying that Meta produced a substantial trove of documents in July, well ahead of the discovery cutoff date of Sept. 30.

In a filing in advance of the hearing, Meta accused Saveri and his co-counsel of making "numerous inaccurate and misleading statements," falsely accusing Meta of "classic discovery gamesmanship," "last-minute discovery failings," and "creating chaos and imposing unnecessary burdens," all to distract from plaintiffs' own lack of diligence.

Chhabria, who was prepared to discuss the critical question of whether Meta's training of its large language model on copyrighted works without permission constitutes fair use, told Saveri that he wasn't doing enough to move the case forward. Chhabria also said it looked as though Saveri, knowing that the judge had sanctioned Meta a year ago for stonewalling plaintiffs in the Cambridge Analytica litigation, was accusing Meta of similar behavior.

"It's very clear to me … that you have brought this case, and you have not done your job to advance it. Now you're in court making false representations about when you first received documents in the case. I don't know if maybe you're doing this because I previously sanctioned Meta and its lawyers for discovery abuses. Maybe you're thinking that you could take advantage of that," Chhabria said.

Chhabria warned that at this point he would deny class certification on the basis that representation was inadequate. "You and your team appear to have taken on a case that you are either unwilling or unable to litigate properly. If this case gets to the class certification stage, I will not certify a class represented by this legal team based on the way you've litigated the case so far," he said.

He suggested that Saveri bring in a firm such as Susman Godfrey, "who actually has the ability to take on a complex matter like this and litigate it properly."

"I think you need to reconstitute your legal team," Chhabria urged. "Based on what I've seen so far, there is no way that I would grant class certification. There is no way that I would find adequacy of representation based on the representation that I've seen take place thus far."

At the heart of the case is whether Meta copied the plaintiffs' copyrighted works by training its LLM on a dataset that contained those works. A slew of literary figures and other celebrities, including Junot Diaz, Ta-Nehisi Coates and comedian Sarah Silverman, allege that Meta enhanced its system of LLMs, called Llama, with their writings without compensating them or obtaining their consent.

Chhabria decided to extend the discovery cutoff for two weeks to give Meta a chance to take depositions, including of Silverman, who became ill before she could be deposed last week. He told Saveri that he would consider granting a renewed request for an extension of time. "But it has to make it very clear what's missing that is important to the resolution of the fair-use issue at summary judgment," he said. "I have no confidence in the team that exists right now to justify pushing this back and doing a ton more discovery. If you want to file a renewed motion, it has to be with a newly constituted legal team."

Saveri said, "I do take your criticism seriously, and I'm confident that we'll be able to address it. But the proof of the pudding's in the eating, so I hear you, your honor."

Chhabria asked Saveri what he meant. "If what you're saying is that I'm confident we'll be able to convince you of the adequacy of representation with this team," Chhabria said.

"Not necessarily with this team. I've heard you loud and clear," Saveri said. "The criticism of the work we've done I take very seriously. And the only way I'm going to be able to prove that is to demonstrate it to you. And I'm not going to try to tell you that. I aim to prove that to you."

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ExxonMobil

California accuses Exxon of misleading public on plastic recycling

Allegations arrive as plastics play a growing role in supporting oil demand

Exxon produced 11.2mn metric tonnes of polyethylene last year and operates a chemical recycling plant for plastic in Baytown, Texas © Sergio Flores/AFP/Getty Images

Amanda Chu in New York 3 HOURS AGO

California has filed a lawsuit against ExxonMobil alleging it falsely promoted the recyclability of plastic, becoming the first US state seeking to hold an oil major accountable for plastic pollution.

The lawsuit alleges Exxon, one of the world's largest producers of plastic, deceived the public for half a century about the sustainability of its plastic products, which include the polymers found in plastic packaging, utensils and beverage bottles. The lawsuit seeks damages from the oil group for harms inflicted from plastic production.

"For decades, ExxonMobil has been deceiving the public to convince us that plastic recycling could solve the plastic waste and pollution crisis when they clearly knew this wasn't possible," said California attorney-general Rob Bonta in a statement. "ExxonMobil lied to further its record-breaking profits at the expense of our planet and possibly jeopardising our health."

The complaint cites evidence dating back to the 1970s from the company and its industry representatives acknowledging recycling was not a solution to handle all plastic waste despite continuing to fund ad campaigns promoting the recyclability of its products.

Exxon did not immediately respond to a request for comment.

The allegations arrive as plastics play a growing role in supporting oil demand and as the UN prepares to broker in late November the world's first binding agreement to cut plastics pollution in South Korea, a deal that has been likened to the 2015 Paris climate agreement.

Global consumption of plastic, a primary driver of petrochemicals demand, is expected to triple by 2060, according to the OECD, reaching 1.3bn tonnes. China was the largest producer of plastics last year, surpassing North America by a slim margin, according to S&P Global Commodity Insights.

The International Energy Agency cites the petrochemicals sector as the "single largest contributor" to oil demand growth for the next four years as the electrification of power and transport sectors curb the global thirst for crude. The plastics industry is expected to make up 10 per cent of global emissions by mid-century, up from 5 per cent in 2019, according to a report from the Lawrence Berkeley National Laboratory.

California's lawsuit against Exxon follows the investigation it launched into the fossil fuel and petrochemicals sectors and their role in plastic pollution in 2022. A group of non-profit organisations including Sierra Club and Surfrider Foundation filed a similar lawsuit on Monday targeting Exxon for misleading claims about its plastics business.

State and local governments are increasing efforts to hold companies accountable for plastic waste. Earlier this year, New York attorney-general Letitia James sued PepsiCo, demanding the food and drinks company reduce its plastic pollution and pay for damages.

Developing countries, environmentalists and businesses have called for a limit on plastic production to be included in the final UN plastics treaty expected by the end of the year, arguing that relying on waste management solutions such as recycling were inadequate.

Karen McKee, head of Exxon's product solutions business, told the Financial Times earlier this year that a limit on production would not solve the pollution problem and that UN negotiators needed to be "open-minded" about solutions.

Exxon produced 11.2mn metric tonnes of polyethylene last year and operates a chemical recycling plant for plastic in Baytown, Texas.

About 10 per cent of all plastic is recycled, according to the OECD, which estimates investment in recycling must reach $1tn by 2040, up from less than $20bn today.

California sues Exxon over global plastic pollution

reuters.com/business/environment/california-sues-exxon-over-global-plastic-pollution-2024-09-23

Valerie Volcovici

Item 1 of 5 California Attorney General Rob Bonta announces a lawsuit against oil giant Exxon Mobil over its alleged role in global plastic waste pollution, during a press conference event at Climate Week in New York City, U.S., September 23, 2024. REUTERS/Shannon Stapleton

[1/5]California Attorney General Rob Bonta announces a lawsuit against oil giant Exxon Mobil over its alleged role in global plastic waste pollution, during a press conference event at Climate Week in New York City, U.S., September 23, 2024. REUTERS/Shannon Stapleton

- California AG Rob Bonta accuses Exxon of misleading public on recycling
- Exxon defends advanced recycling, criticizes lawsuit
- Environmental groups support lawsuit, highlight recycling shortcomings

NEW YORK, Sept 23 (Reuters) - California has filed a lawsuit against oil giant Exxon Mobil (XOM.N), opens new tab over its alleged role in global plastic waste pollution, its attorney general announced on Monday.
Speaking at an event during Climate Week in New York City, California Attorney General Rob Bonta said the state sued Exxon after concluding a nearly two-year investigation that he said showed Exxon was deliberately misleading the public about the limitations of recycling.

The investigation mirrors California's previous probes into the oil industry's alleged efforts to mislead the public about climate change.

Bonta said his office specifically wants information on Exxon's promotion of its "advanced recycling" technology, which uses a process called pyrolysis to turn hard-to-recycle plastic into fuel. He had said the technology's slow progress was a sign of Exxon's ongoing deception.

"Today's lawsuit shows the fullest picture to date of ExxonMobil's decades-long deception, and we are asking the court to hold ExxonMobil fully accountable for its role in actively creating and exacerbating the plastics pollution crisis through its campaign of deception," Bonta said in a statement.

He said he wants to end the company's "deceptive practices" and seeks to secure an abatement fund and civil penalties for the harm inflicted by plastics pollution on California.

Exxon pushed back at the attorney general, arguing that solutions like advanced recycling work.

"Suing people makes headlines but doesn't solve the plastic waste problem. Advanced recycling is a real solution," said a spokesperson for ExxonMobil, adding that California has done "nothing to 'advance' recycling."

Exxon is the world's largest producer of resins used for single-use plastics, according to a report published last year by the Minderoo Foundation, with consultancies Wood Mackenzie and the Carbon Trust.

California's lawsuit comes ahead of a final round of global plastic treaty negotiations set to take place in Busan, South Korea, at the end of the year.

In those talks, countries are split over whether the treaty should call for caps on plastic production, a position opposed by Exxon and the global petrochemical industry.

The United States last month said it supports a treaty designed around global plastic production cuts.
Environmental groups praised the lawsuit and said it draws attention to the shortcomings of mechanical and advanced recycling.

Christy Leavitt, Oceana's plastics campaign director, said the lawsuit will "hold industry accountable and debunk the plastics recycling narrative that holds us back from real solutions."

Reporting by Valerie Volcovici

Valerie Volcovici

Thomson Reuters
Valerie Volcovici covers U.S. climate and energy policy from Washington, DC. She is focused on climate and environmental regulations at federal agencies and in Congress and how the energy transition is transforming the United States. Other areas of coverage include her award-winning reporting plastic pollution and the ins and outs of global climate diplomacy and United Nations climate negotiations.

https://www.wsj.com/us-news/law/california-sues-exxon-alleges-plastics-deception-5ca5c938

U.S. | LAW

California Sues Exxon, Alleges Plastics Deception

State alleges oil company misled public about recyclability of plastics

By Collin Eaton Follow

Updated Sept. 23, 2024 12:57 pm ET

California Attorney General Rob Bonta PHOTO: BLOOMBERG NEWS

California's attorney general filed a lawsuit Monday against Exxon Mobil, accusing the oil giant of misleading consumers about the recyclability of plastic products and polluting the state.

Attorney General Rob Bonta alleged Exxon violated California's nuisance laws, as well as laws prohibiting state water pollution, false advertising and unfair competition. He began a probe two years ago into petrochemical companies' role in plastics pollution, subpoenaing Exxon. The state is seeking civil penalties.

Bonta alleged Exxon continues to deceive the public in advertising campaigns that claim recycling can fix what he calls the plastics pollution crisis. He said Exxon for decades "falsely promoted" all plastic is recyclable, and that 92% of plastic waste Exxon processes through its advanced recycling technology doesn't become recycled plastic.

The continuing probe is looking into the actions of other fossil-fuel companies, which haven't been named. Bonta's office said the sum it is seeking could reach into the billions of dollars. Exxon didn't immediately respond to requests for comment.

Exxon and other oil companies face dozens of lawsuits across the U.S. seeking billions for environmental damages and for allegedly deceiving the public about the impact of climate change. The Rockefeller Family Fund, a charity run by the great-great-granddaughter of Standard Oil founder John D. Rockefeller Sr., is funding or providing other support for over 30 of those cases.

In 2019, Exxon prevailed in one. A state judge found New York's attorney general didn't prove the oil company deceived investors about how climate change would affect its bottom line.

But in a setback for the industry last year, the Supreme Court allowed cases against oil companies to proceed in state courts, a venue seen as less favorable to the companies than federal court. One case against Exxon moving through state court now—and that may be among the first to see a courtroom—was filed by Massachusetts in 2019, after a probe that began three years earlier.

Exxon produced an estimated 11.5 million metric tons of single-use plastic in 2021, the most of any company in the world, according to the Minderoo Foundation, an Australian philanthropic group.

In the lawsuit, California says Exxon knew as it boosted output that single-use plastic waste would keep proliferating—as it has in California's waterways and communities—even as the company encouraged recycling as a solution. It said up to 3.3 million metric tons of waste has turned up across the state from 1990 to 2022.

"For decades, ExxonMobil has been deceiving the public to convince us that plastic recycling could solve the plastic waste and pollution crisis when they clearly knew this wasn't possible," Bonta said.

Fossil-fuel companies and other manufacturers are making sizable investments in advanced recycling, a technology that failed to launch for decades because of poor economics. Exxon plans to fire up a second advanced recycling unit next year at its Baytown, Texas, refining and petrochemical complex. Environmental advocates say it's a public-relations gimmick that isn't likely to succeed. Exxon says it is working to build out enough processing capacity for 1 billion pounds of plastic waste by 2027.

California said while Exxon "repeatedly suggests" most plastic waste processed by its advanced recycling technology is turned into new plastic, only 8% actually is. Most of the rest is turned into fuel. It pointed to Exxon's statements that 90% of the plastic waste is converted into "raw materials," which can then "be used to make new plastic products."

Five or six decades after recycling emerged in earnest from the environmental movement, plastic waste has proven a stubborn adversary. The Energy Department said in a 2022 report only 5% of U.S. plastic waste gets recycled, in part because of lackluster demand for recycled plastic.

Plastic itself, meanwhile, has expanded rapidly into new industries and new countries. It's used in cars, smartphones, medical devices and water bottles, which take nearly as long to decompose as ancient Rome's half-millennium stint as a republic. Waste has also spread—onto hiking trails, into landfills and the ocean, where a drifting pile of plastic rubbish, known as the Great Pacific Garbage Patch, stretches over 600,000 square miles.

Exxon executives have long defended the company's climate record, and say it plans to invest more than $20 billion on lower-carbon technologies through 2027, including on carbon capture and hydrogen projects and lithium production, a key material for batteries. It paid $5 billion last year for a pipeline operator that moves carbon dioxide across the Gulf Coast.

Last year, The Wall Street Journal reported on documents that showed former Exxon Chief Executive Rex Tillerson, along with some of the company's board directors and other executives, sought to cast doubt on the severity of the impacts of climate change.

Write to Collin Eaton at collin.eaton@wsj.com

With his lying attacks on the people of Springfield, JD Vance has brought shame to all of Ohio: Today in Ohio

cleveland.com/news/2024/09/with-his-lying-attacks-on-the-people-of-springfield-jd-vance-has-brought-shame-to-all-of-ohio-today-in-ohio.html

September 23, 2024

1. News

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- |Published: Sep. 23, 2024, 10:41 a.m.

Today in Ohio, the daily news podcast of cleveland.com and The Plain Dealer.

By
Laura Johnston, cleveland.com

CLEVELAND, Ohio -- One of the biggest stories in the year in Ohio is the firestorm of political rhetoric over rumors of Haitian immigrants eating cats and dogs.

We're back! And we're trying to figure out how JD Vance could continue to double down on lies on Today in Ohio.

Listen online here.

Editor Chris Quinn hosts our daily half-hour news podcast, with editorial board member Lisa Garvin, impact editor Leila Atassi and content director Laura Johnston.

You've been sending Chris lots of thoughts and suggestions on our from-the-newsroom text account, in which he shares what we're thinking about at cleveland.com. You can sign up here: https://joinsubtext.com/chrisquinn.

You can now join the conversation. Call 833-648-6329 (833-OHTODAY) if you'd like to leave a message we can play on the podcast.

Here's what else we're asking about today:

Let's start with the biggest Ohio story of the year, and one of the oddest ever in that is based on fiction. Why has Donald Trump, and more important, JD Vance, tried to bring shame to Ohio with false reports about terrible behavior or Haitian refugees in Springfield? What has been the result?

A bit of a bombshell that got lost in all the Springfield news was about Chuck Jones, the former FirstEnergy CEO who has inexplicably avoided federal criminal charges involving Ohio's big bribery scheme in the statehouse. This does not involve a prison threat but for

Jones, it has something almost as important: Money. Who is going after his?

With control of the Ohio Supreme Court on the ballot, the big question was whether the Republicans who control it now would make a partisan decision on the ballot wording for a gerrymandering amendment, or a legally sound decision. So, will the big lie that Frank LaRose wants on the ballot appear there?

We finally have Mayor Justin Bibb's verdict on Burke Lakefront Airport, which wastes fully half of the downtown lakefront. What did Bibb's studies find?

In the aftermath of the study, we saw a couple of interesting developments. What did the leader of the region's chamber of commerce say? And what would a Burke closure mean for the Cleveland air show?

We have a constitutional amendment on the Ohio ballot to end gerrymandering and restore sanity to the Statehouse. We are six years behind a similar effort in Michigan. What did reporter Jeremy Pelzer tell us we can learn from the Michigan experience?

How is the Portage County sheriff, someone who is supposed to protect and serve, making a striking move at intimidation of Kamala Harris supporters, one that pretty clearly violates their First Amendment rights?

Reporter Courtney Astolfi took a look at an assortment of studies examining whether sports stadiums in America have ever met the rosy financial projections team owners offered when they jack the public for public funding. What did she find?

We have an Apple podcasts channel exclusively for this podcast. Subscribe here.

Read the automated transcript below. Because it's a computer-generated transcript, it contains many errors and misspellings.

Chris (00:01.199)

I apologize for our unexpected absence over the last week and a half. I had an unexpected trip to the hospital for most of the last week after I got hit by an autoimmune storm that included pneumonia. The good folks at University Hospital got me back up on my feet and we're ready to go. The panel of women here is bursting with thoughts about the big news of the week. That's what we do on Today in Ohio, the news podcast discussion.

from cleveland .com and the Plain Dealer. We chew on the news. I am a somewhat diminished Chris Quinn here with Lisa Garvin, Laura Johnston and Leila Tassi. Let's start with the biggest Ohio story of the year and one of the oddest ever in that it is based on fiction. Why has Donald Trump and more important, JD Vance, tried to bring such shame to Ohio with false reports about terrible behavior of

Lisa (00:37.766)

And here we have Lisa Garvin, Laura Jennings, and Maylina Kass. Let's start with the big news.

Chris (01:00.486)

refugees in Springfield. What's been the result? Laura, let's start. How can they promote this lie knowing full well it was a lie?

Laura (01:10.434)

I don't know. mean, I think that that is a question that all of us grapple with. How could you keep propagating this? What is your end goal? I think the end goal is just to get elected. And I think if they make enough people afraid of Haitian immigrants, then they will win their votes. It's that whole idea of othering other people. Because if you other other people, then you are on this team and you're on the Trump advance team. And this is, to go back a little bit,

the product of some off -the -wall social media posts where somebody said third hand, they knew of someone's cat that went missing. And it turns out that the original cat that started this whose name is Miss Sassy ended up being found in her owner's basement, which is just bananas. And then they were using another social media post from Canton trying to say that this proves something. Well, Canton and Springfield are in very different parts of the state and there is no truth to this whatsoever. But JD Vance dumped on it.

Let's not forget Dave Yost and John Husted jumped on it and then Trump blew it sky high in the debate. And then even though moderators tried to fact check it, even though the Springfield city administrators have said there's zero truth, even though Mike DeWine has said there is no truth to this, they keep repeating it over and over and over again, talking about it, going on the news shows, doing social media. Vance has even said, well,

You know, I know what I hear from people and that's why I'm doing this. It's like, if people had stories to tell, then, you know, there would be reports about it in Springfield. Absolutely no basis to this. yet the Ohioans, the exception of Mike DeWine and Trump and Vance, they just keep pounding this gavel thinking it's going to get them somewhere with voters.

Lisa (02:34.658)

when I

Chris (02:58.525)

Well, the saddest part about this is that JD Vance ultimately acknowledged that the 20 ,000 refugees in Springfield from Haiti are there legally. That this is what we do in America. When people are threatened, we bring them here and adapt them into our economy. This is the way the system works. This is not a border crisis thing. He admits that, but he said, I'm going to call them illegal anyway.

Lisa (03:10.086)

there.

Laura (03:11.085)

Mm -hmm.

Laura (03:24.085)

Right. Yes.

Right.

Chris (03:28.263)

blaggles my mind about that. These are his constituents. They live in Ohio. He is supposed to represent them. Instead, he's vilifying them as some kind of vermin. It is frightening. I don't think you can find another darker moment for somebody in Congress from Ohio until you go all the way back to Abe Lincoln's day when some of the Ohio congressmen were trying to preserve slavery.

Laura (03:31.491)

Yes.

Lisa (03:31.602)

Mm -hmm.

Chris (03:57.775)

And if JD Vance were around back then, that's probably how he would have voted. This is as despicable an act as it gets. I know that word gets thrown around a lot, but he's vilifying people who are here legally, lying about it, openly lying about it, just to curry favor with his base. And it's frightening that part of that's working. Part of it's the Fox News machinery that lies to America.

Laura (04:06.04)

Mm -hmm.

Laura (04:20.056)

Yes. It's like if you just keep saying it enough, somebody is going to believe it. Like that's why they just keep doubling down. I agree. When this first blew up, I thought, this is like, not that I believe anything is a death knell for a Trump candidacy, but this is going to make anyone who's questioning Trump realize how, you know, how off the wall he is. And because you're right, but it's not, they wouldn't be doing it if they didn't think it was working.

Lisa (04:21.82)

Well...

Laura (04:47.566)

He said, J .D. Vance has said, if I have to create stories that the American media actually pays attention to the suffering of American people, then that's what I'm going to do. Yet he is creating the suffering. And you're right, he grew up in Middletown, which is what, maybe 45 minutes from Springfield? Not very far. He knows this part of the country and he is stomping it to ground and injuring the people there on purpose.

Lisa (05:10.362)

I think they're trying to incite people to violence. There's a lot of people, like I said in my roundtable over the week, and there are a lot of people out there, Trump supporters with guns who are just itching to use them. And I think this is incitement to violence.

Laura (05:14.808)

Mm -hmm.

Chris (05:22.397)

Well, let me ask you, Lisa, once this started and the blowback came back where everybody came back said this is absolutely not true, the town said it, the state said it, everybody pointed out this is 100 % fiction, you would have thought people would have stood down. Instead, the Trumpsters and the JD Vance followers went on the attack and now have done more vicious criticisms of

Springfield that just might do what you said. How is this, what is this response done to Springfield? How are people having to cower in their homes because of what JD Vance and Trump have sparked?

Lisa (06:03.986)

Yeah, this is, it’s miserable. mean, they’ve had over 30 bomb threats in Springfield since this all came out. They’ve had to close or evacuate five elementary schools. They had to close Wittenberg University and Clark State College. They had to halt classes there. They also had to close hospitals and government offices. And apparently a lot of these bomb threats are from, you know, foreign interlopers who are trying to just stir the pot. But there’s, this has kind of been brewing for a while. Apparently the neo -Nazi

group Blood Tribe, they took credit for these pet eating rumors after the presidential debate and apparently they’ve been stoking a weeks long rumor mill about this until it broke, you know, when Trump said it in the debate. The Proud Boys marched in Springfield on the 14th of September. The KKK Trinity White Knights of Kentucky posted flyers in Springfield calling for mass deportation of immigrants and called Haitians beasts of the fields. And I’m sure there’s more that’s happened since then.

Chris (07:02.853)

So think about it. One, they make this up about something that didn’t happen, that Haitians were eating pets, even though they’re JD Vance constituents and he’s supposed to champion them, not vilify them. Then when the town fights back and says, no, no, no, no, no, that’s not us, they get attacked for it, for having the audacity to go against the Trump narrative.

Lisa (07:27.566)

It’s infuriating and I feel bad for the mayor of Springfield. mean, they’ve been thrust into the national spotlight. This taint could stick with them for years afterwards. I mean, that’s how bad it is.

Chris (07:40.453)

Okay, the one bright light in this, we often talk about Mike DeWine and we wish he would do more to stand up against these sinister forces around Trump. He did, Laila. He did do something in a national platform to say stop already.

Leila (07:57.552)

Yeah, you know, he really is the only voice of reason among the GOP in this entire scenario. He’s not having any of this. He made it clear in a New York Times op -ed that the claims here are totally unfounded. He said he’s saddened that Trump and Vance are continuing to push these baseless stories. And he points out that this kind of rhetoric doesn’t just hurt the people of Springfield, it also unfairly targets legal migrants who’ve come to the town and have become part of the community there.

I mean, of course, DeWine hasn't pulled his support for Trump and Vance, but he's been firm in saying that Springfield has real issues related to the migrant population, but there are things like strained healthcare. He's also criticized the Biden administration's handling of the southern border, but what he won't stand for are the unfounded attacks on the Haitian community who are, again, legally in the U .S. under temporary protected status. Interestingly, DeWine has been

He has pretty deep personal ties to both Springfield and Haiti. He was born in Springfield, went to high school there, and he still lives nearby. He's also traveled to Haiti almost a couple dozen times supporting a Catholic school there. So this issue hits close to home for him on multiple levels. But basically, DeWine's op -ed makes clear that the Springfield he knows is full of good, hardworking people, both longtime residents and the new Haitian migrants, and he believes America should be proud of this community.

Chris (09:25.475)

He's the perfect spokesman. grew up there. His wife grew up there. And like you said, he has a deep knowledge of Haiti. You're right, though. I'm surprised he's not saying enough already. Don't vote for these bums. Nobody who has any pride in Ohio should be casting a vote for the Trump man's ticket. Vance is attacking Ohio. And there's no way if you have pride in this state and care about the future of this state, you want to have him in any position of authority.

I would think that this would turn votes, except Fox News is out there telling the Trump faithful that this is all true and what you're hearing about Springfield not being a bad place is wrong. And Fox News continues to be the worst cancer on the America landscape.

Lisa (10:00.28)

Hmm.

Leila (10:12.4)

And then there was that poll in the New York Times poll in the last couple of days showing Trump pulling ahead in several key states. And I'm just pounding my head on the table about that. How do things like this not register with voters?

Lisa (10:13.67)

I -

Lisa (10:22.994)

Hmm.

Lisa (10:27.996)

But I will say this about Springfield, the residents, the non -Haitian residents at Springfield really came through. They went to Haitian restaurants, they visibly supported their Haitian neighbors, which really gave me encouragement.

Chris (10:43.047)

But that's Ohio, right? That's who we are in Ohio. We do help each other. We do care about each other, despite what JD Vance wants to portray us as. And you're right, that was heartening. The whole response by the state to this has been wonderful. The only way to cap it would to be vote against these guys because they should not be in positions of authority.

Laura (11:06.926)

I agree. Devine's been there. He's done a bunch of news press conferences. He's had the troopers do the sweeps of the schools and try to make people feel safe in Springfield. But then you have people like Dave Yost, who's doing interviews saying just because he doesn't see proof doesn't mean it's not happening. then calling, like he talked about the faithfulness of his wife in this weird interview that he did with us. was bizarro. John Husted made some jokes about geese on social media.

Leila (11:29.712)

So weird, right?

Laura (11:36.91)

So while you have Mike DeWine standing up at a national platform and saying enough already, this is not the Springfield I know, the rest of the Ohio GOP, we also had that sheriff out in Portage County, everybody else is glomming onto this and it is so disappointing. I'm with you, Leila. I don't understand how people don't look at this and say, this is not who I want leading my country. It is absurd and disappointing and I don't know where the bottom is.

Leila (12:05.914)

The Yoast part of this story is really troubling to me because he is sometimes the guy who is the voice of reason, right? People look up to him in this state and he's criticizing the media for writing off these rumors when we know that these are false and he's comparing it, like you said, to matters of faith, saying he believes in things he can't see and maybe this is one of those things.

Lisa (12:09.582)

Very.

Laura (12:12.14)

Yes!

Lisa (12:12.763)

Mm -hmm.

Laura (12:15.018)

Mm -hmm. He’s the Attorney General.

Laura (12:26.53)

Yeah, use Jesus in this. Yeah. Yeah.

Lisa (12:27.566)

Right. But didn’t he walk himself back a little bit though? Didn’t you just walk it back some?

Leila (12:32.56)

couldn’t tell. It was the most confusing interview I ever... Jake Zuckerman’s head was spinning when he interviewed this guy, I’m sure.

Laura (12:33.344)

It was a very circular...

Chris (12:36.497)

Well, I remember too. This is the same guy that jumped to the conclusion about the fictional kid seeking an abortion in Indiana. I mean, he really has shown some incredible lack of good judgment, and he did so again here.

Laura (12:42.932)

Mm -hmm. Ten -year -old. The abortion.

Lisa (12:43.602)

the 10 year old.

Laura (12:51.608)

But you know, Chris, you pointed this out. This just, it's the national landscape looking at Ohio. And we already have this Gen Z word Ohio that means weird or cringey. And look at what we're being to this whole national landscape of politics. It does make you, you're like, is this really what you want to be known for? And it's not us that's doing it. It's JD Vance.

Lisa (13:00.07)

Mm.

Chris (13:14.293)

I told you at the top of the podcast that the panel was bursting with thoughts. You just got a good taste of them. You're listening to Today in Ohio. A bit of a bombshell that got lost in all the Springfield news was about Chuck Jones, the former first energy CEO who has inexplicably avoided federal criminal charges involving Ohio's big bribery scheme. This does not involve a prison threat for Jones, but it has something almost as important, money.

Laura, who's going after his?

Laura (13:46.158)

The SEC, and you're right, Chris, because all of this revolves around money. That's the entire HB6 scandal. So the SEC is suing. They accused Chuck Jones of committing securities fraud in connection with the House Bill 6 bribery scandal. And they're seeking a judge's order to force Jones to pay back any money he earned from this scheme, along with an unspecified civil penalty. And we know he made a lot of money.

So the SEC says Jones received a $1 .6 million bonus in 2019, as well as stock valued at $18 million around the same time that he and First Energy bribed former Ohio House Speaker Larry Householder with that $60 million. And we all know the Householder is in prison, convicted, and First Energy has, the company has admitted to this, but that Chuck Jones has not been charged in federal court.

But this lawsuit accuses Jones of lying to the investigators and the public, sorry, lying to investors and the public regarding this bribe payment to Householder. And that he was apparently on these calls and lying to investors saying that he had nothing to do with the payments to Householder.

Chris (15:00.005)

Yeah, this could cost him a huge amount of money, which he should be in prison. We all know that for some reason, the Justice Department is just too lame to go do its job. But taking away a huge chunk of his money, and this would be a huge chunk of his money, will severely hurt him where it matters to him because he's all about wealth, obviously.

Laura (15:21.696)

Yes. And we know, obviously, he has a case in Summit County Court that is separate and more involved with Sam Randazzo and a payment there. And we've already talked about, know, I think he wanted to come back for Easter from his second home down in South Carolina or something like that. So, yes, he's probably living a pretty good lifestyle and he keeps it up right now. But this would hurt him in his pocketbook. The SEC also settled this investigation into First Energy. The company agreed to pay a hundred million dollar penalty.

and that settlement would have been higher if they hadn't cooperated in the investigation and related enforcement action, which is good. I'm glad they cooperate with the SEC. I still don't feel like they're being very transparent when it comes to the public. And when you look at the PUCO, all of that information, we still don't know a lot. you're right. I wish that there were federal charges so that we'd get this all out in the open.

Chris (16:16.263)

You're listening to Today in Ohio. With control of the Ohio Supreme Court on the ballot, the big question was whether the Republicans who control it now would make a partisan decision on the ballot wording for a gerrymandering amendment or one based on sound legal principles. So, Lisa, will the big lie that Frank Larose wants on the ballot appear there?

Lisa (16:41.072)

Yes, it will, along with the word gerrymandering. So in a four to three party line ruling by the Ohio Supreme Court last Monday, they upheld most of the Ohio ballot board's language on the citizens, not politicians amendment on the ballot. So the biggest thing is that the proposed amendment has no title, but they gave that a ballot summary title that says to create a redistricting commission, not elected or subject to removal by voters.

And, you know, there was a legal challenge to that, but the Supreme Court says it's not factually inaccurate since voters don't have a say on how the commission is chosen. So, and that's their favorite term for this whole ruling was it was not factually inaccurate. Another big one was section two that says where the redistricting commission is made up of 15 people from Democrats, Republicans, independents to draw

Securities Law News

Sept. 20, 2024, 11:42 AM PDT

FTX Settles With Five State Agencies Over $1.8 Billion in Claims

By James Nani

- FTX says deal maximizes value for non-government creditors
- Deal settles claims FTX sold securities as unregistered agent

Bloomberg Law News 2024-09-23T10:07:52727579487-04:00

FTX Settles With Five State Agencies Over $1.8 Billion in Claims

By James Nani 2024-09-20T14:42:12000-04:00

- FTX says deal maximizes value for non-government creditors
- Deal settles claims FTX sold securities as unregistered agent

Five states have struck a deal with FTX Trading Ltd. to forgo their pursuit of nearly $1.8 billion in claims, allowing those funds to go to other unsecured creditors.

The agreement with state agencies in Texas, New Jersey, Tennessee, Mississippi, and Wisconsin would settle a variety of claims, including allegations that FTX sold unregistered securities, the bankrupt cryptocurrency exchange said in motion Thursday filed in the US Bankruptcy Court for the District of Delaware.

“This will maximize the distributable value available to non-governmental creditors,” FTX said.

The agreement allows FTX to avoid the costs and time of litigation as it moves forward with its proposed bankruptcy plan, the company said. The deal means FTX won’t have to reserve $1.8 billion for government claims.

FTX and its affiliates filed for Chapter 11 in November 2022 after the exchange collapsed, in what US prosecutors called one of the biggest financial frauds in American history.

The settlement requires bankruptcy court approval. The agreement doesn’t settle state tax claims, according to the motion.

State agencies for consumers, investors, or banks in the five states argued in their claims that FTX's practices may have negatively affected an estimated 34,000 residents in those states, according to court papers.

One of the biggest claims is from the Texas State Securities Board, which in May said FTX could owe at least $840 million for offering and selling securities to an estimated 21,000 investors in the state without first registering as a dealer or agent.

The New Jersey Bureau of Securities filed a claim worth $126.6 million for its 6,330 residents, and the securities division of the Mississippi Secretary of State's Office filed a $64.6 million claim for penalties related to about 1,292 residents, according to its claim.

FTX has struck other deals recently to try to move toward bankruptcy plan confirmation, includingagreeing to pay $14 million to the bankrupt estate of an offshore entity once controlled by co-founder Sam Bankman-Fried.

FTX is represented by Sullivan & Cromwell LLP.

The case is FTX Trading Ltd. , Bankr. D. Del., No. 22-11068, motion 9/19/24 .

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Securities Law News
Sept. 20, 2024, 1:20 PM PDT

Banker Who Revived EF Hutton Is Embroiled in Federal Fraud Probe

By Chris Dolmetsch and Patricia Hurtado

- Joseph Rallo was served a search warrant by federal agents
- EF Hutton also alleges in lawsuit Rallo stole millions as CEO

Bloomberg Law News 2024-09-23T10:08:56562358159-04:00

Banker Who Revived EF Hutton Is Embroiled in Federal Fraud Probe

By Chris Dolmetsch and Patricia Hurtado2024-09-20T16:20:29690-04:00

- Joseph Rallo was served a search warrant by federal agents
- EF Hutton also alleges in lawsuit Rallo stole millions as CEO

The man who led the revival of old-school Wall Street name EF Hutton as a leading SPAC investment bank is embroiled in a federal securities fraud probe, according to people familiar with the matter.

Joseph Rallo was served a search warrant by federal agents in May as part of a securities and wire fraud investigation led by the US attorney's office in Brooklyn, New York, the people said. The probe was also cited by EF Hutton itself in a lawsuit the firm filed Wednesday accusing Rallo of stealing millions as chief executive officer by falsifying his expense reports.

It's unclear if the federal probe is related to EF Hutton's allegations. Representatives for Rallo had no comment on prosecutors' investigation or the EF Hutton lawsuit against him. The US attorney's office declined to comment, as did EF Hutton.

In its suit, EF Hutton said that, despite being paid tens of millions of dollars, Rallo falsified his expenses to get the firm to pay for private jet travel, Knicks play-off tickets, his kid's private school tuition and intravenous treatments for hangover recovery, among other things. The firm is seeking at least $3 million in damages as well as a declaratory judgment that Rallo was properly terminated as CEO.

'People Listen'

It's all a far cry from the buttoned-down firm that was once one of the largest US retail brokerages and famously proclaimed in 1970s and 80s commercials: "When EF Hutton talks, people listen."

That EF Hutton merged with Shearson Lehman/American Express Inc. in 1988. According to the suit, the EF Hutton trademark was acquired in 2021 and adopted as a rebrand of Kingswood Capital Markets, the investment banking arm of Benchmark Investments LLC. Rallo, who joined Benchmark in 2020 from Aegis Capital Corp., became EF Hutton's CEO and holds a large stake in the firm.

In 2021 and 2022, EF Hutton became a top underwriter of special purpose acquisition company listings, including for the SPAC that later acquired Trump Media & Technology Group. According to the suit, EF Hutton had banking and underwriting revenue of almost $150 million in 2021.

EF Hutton claims Rallo received more than $44 million of compensation in 2021 and 2022 but says he likely squandered much of it on poor investments, several luxury cars, a $5 million East Hampton house and a $25 million Upper East Side apartment. The firm also says it believes Rallo incurred large gambling losses making six- and seven-figure wagers, claiming that he often boasted of his betting to other employees.

The lawsuit notes that the changing fortunes of the market impacted Rallo. In 2022, EF Hutton's banking and underwriting revenue was down to $88 million. The following year, it fell to $58 million. The firm said that Rallo had also been paid around $4 million so far in 2024, even while EF Hutton was operating at a loss.

Extravagant Lifestyle

According to the suit, Rallo's unwillingness to curb his extravagant lifestyle led him to seek reimbursement from the firm for a wide variety of personal expenses. These included meals, both a donation and tuition at Manhattan's St. David's School, wine purchases, hotel stays and private jet travel.

On the morning of May 6, agents from the Department of Homeland Security and the US Postal Inspection Service arrived at Rallo's home and served him with a warrant, according to the suit. EF Hutton said it subsequently learned Rallo was a subject of a federal probe and determined that he couldn't continue in his role as CEO while it was ongoing.

Both federal agencies declined to comment.

In a May 21 call with EF Hutton's general counsel, Rallo allegedly threatened to "burn" down the firm. After weeks of talks, he agreed to be placed on voluntary administrative leave pending the investigation and an internal probe, according to the suit.

It was after Rallo went on leave that the firm says it discovered his allegedly falsified expense claims. According to the suit, Rallo's lawyer has refused several requests to meet with the law firm conducting EF Hutton's internal probe.

The case is EF Hutton Partners LLC v. Rallo, 654880/2024, New York State Supreme Court (Manhattan).

Trump Media shares tumble to new lows after insider selling restrictions expire

reuters.com/technology/trump-media-shares-tumble-new-lows-after-insider-selling-curbs-expire-2024-09-23

Reuters

The Nasdaq Market site is seen on the day that shares of Truth Social and Trump Media & Technology Group start trading under the ticker "DJT", in New York City, U.S., March 26, 2024. REUTERS/Shannon Stapleton/File Photo Purchase Licensing Rights, opens new tab

Sept 23 - Shares of former U.S. President Donald Trump's media company tumbled over 5% to a new low on Monday, extending recent losses after restrictions on insider selling expired.

Six straight sessions of declines in Trump Media & Technology Group <DJT.O, opens new tab>, which is 57% owned by the Republican presidential candidate, have left its market capitalization at $2.5 billion.
Shares of the company, which operates the Truth Social app, were last at $12.76 after falling to as low as $12.56, the lowest since its stock-market debut in March.

The stock has now declined about 13% since restrictions on insider selling lifted on Thursday.

Trump Media saw its value balloon to nearly $10 billion following its Wall Street debut, lifted by Trump supporters and retail traders who saw it as a speculative bet on his chances of securing a second four-year term as president.

Since then, Trump Media shares have steadily lost ground, with share declines accelerating after President Joe Biden his failing reelection bid on July 21.

Rebased prices show Trump Media shares have recently fallen far more than PredictIt bets that Trump will return to the White House

Losses in the stock in recent months have far outpaced a reduction in betting-market odds that Trump would win the election.

Trump leads among likely voters in the battleground states of Arizona, Georgia and North Carolina, outpacing U.S. Vice President Kamala Harris, a New York Times/Siena College poll showed on Monday, echoing other recent polls showing a tight matchup ahead of the Nov. 5 presidential election.

In an interview on Sunday, Trump said he would not make a fourth consecutive run for the U.S. presidency if he loses the Nov. 5 election.

As of Monday, PredictIt contracts for a Trump election victory were trading at 46 cents, with a potential payout of $1. Trump contracts peaked at 69 cents in mid-July. Contracts for a Harris victory were at 57 cents, little changed over the past two weeks.

Trump, whose stake in Trump Media is now worth roughly $1.4 billion, said on Sept. 13 he did not plan to sell his shares, turning the focus to other major stakeholders who could cash out.

United Atlantic Ventures and Patrick Orlando, whose fund ARC Global Investments II sponsored the blank-check company that merged with Trump Media in March, together own about 11% of Trump Media shares, according to a company filing.

Reporting by Noel Randewich Editing by Tomasz Janowski

Securities Law News

Sept. 20, 2024, 2:35 PM PDT

SEC Blasts Musk for Picking Rocket Launch Over Twitter Testimony

By Malathi Nayak

Bloomberg Law News 2024-09-23T10:08:20184573064-04:00

SEC Blasts Musk for Picking Rocket Launch Over Twitter Testimony

By Malathi Nayak2024-09-20T17:35:33130-04:00

The US Securities and Exchange Commission called out Elon Musk over his latest "excuse" to skip questioning in a probe of his 2022 acquisition of Twitter: He was attending a SpaceX rocket launch.

The SEC said that on the morning of Sept. 10 when Musk was finally scheduled to complete a deposition in Los Angeles after avoiding previous demands and being ordered by a judge to cooperate, a lawyer for the billionaire informed the agency that he was in Florida.

"His obligations as Chief Technology Officer of SpaceX required he urgently travel to the East Coast yesterday for the high-risk Polaris Dawn launch," his lawyer told the SEC, according to a filing Friday in San Francisco federal court.

The SEC said Musk stood up three of its attorneys who had flown to LA for the meeting and told US District Judge Jacqueline Corley it intends to seek sanctions against him for his "gamesmanship."

Musk's lawyer, **Alex Spiro**, explained to the judge in the filing that "the timing of the launch was unpredictable due to the weather" and that it was important for the co-founder of the rocket company to be at the Cape Canaveral launch site to make the final call about proceeding with the mission, which led to a successful first commercial spacewalk.

The regulator is seeking information about Musk's purchases of Twitter stock and statements about his investments before he spent $44 billion to buy the social-media platform, which he later rebranded as X.

Read More: Elon Musk Agrees to Testify in SEC's Twitter-Buyout Probe

Corley in May had ordered Musk to appear again for investigative testimony by the SEC and cautioned that he shouldn't try to delay or reschedule the deposition absent an emergency that he "did not create and could not avoid."

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

The case is Securities and Exchange Commission v. Musk, 23-mc-80253, US District Court, Northern District of California (San Francisco).

--With assistance from Chris Dolmetsch.

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Securities Law News

Sept. 23, 2024, 2:00 AM PDT

Rule of Law Isn't a Recommendation, for Elon Musk or Anyone Else

By Mike Leonard

Elevated Take

Bloomberg Law News 2024-09-23T10:09:29884980979-04:00

Rule of Law Isn't a Recommendation, for Elon Musk or Anyone Else

By Mike Leonard 2024-09-23T05:00:00000-04:00

Before Elon Musk spent September fighting Brazil's online disinformation rules, he devoted his energy to pulling down a pillar of US corporate law.

When a Delaware judge voided his record $56 billion pay package, Musk slammed the state, moved Tesla to Texas, urged shareholders to re-approve the comp deal, and told the judge to restore it. In essence, he's looking to override a landmark court ruling by sheer force of will.

Musk has reportedly blinked first after a protracted feud with a Brazilian judge over anti-government posts on his social network, X. But both that confrontation and the Delaware gambit seem to reflect something in his DNA that tells him to go whenever the conventional wisdom says stop. Musk famously told the biographer Walter Isaacson that "the only rules are the ones dictated by the laws of physics. Everything else is a recommendation."

He may not quite have broken the laws of physics, but he's bent them. Tesla brought electric cars to the masses. Starlink connects the world. SpaceX lands rockets upright on offshore platforms. PayPal has become a verb.

The catch is the way he's bent the rules of law, too.

In disputes involving the roadways, the stock market, the workplace, and the internet, Musk's MO has been not just to defend himself, but to go after the legitimacy of courts and agencies. And "it seems like every single time he eventually just gets away with it," says Southern Methodist University law professor Carliss Chatman.

His brinkmanship raises urgent questions about how the laws apply (or don't) to the world's richest man. In case after case, Musk pushes and pushes, exploiting the blind spots in norms we mistook for rules. He may have met his match in Brazil's Alexandre de Moraes—for now—but we don't have that type of legal Lone Ranger in the US.

He defied local Covid-19 lockdown orders to reopen a Tesla plant. He's trying to dismantle the National Labor Relations Board by challenging its constitutionality. He has European digital enforcers at a loss as he swallows their fines without making any effort to curb disinformation on X.

And that's a partial list.

Is Musk's defiance a legitimate use of his resources? Is his superpower unimaginable wealth, or just unprecedented hubris? Would it take unconstitutional tactics to stop him? Is it worth the collateral damage?

Tesla CEO Elon Musk speaks during the official opening of the electric car manufacturer's Gigafactory in Germany.
Photo by Christian Marquardt - Pool/Getty Images

Musk built most of his fortune and influence in emerging sectors that are coming of age when regulators are growing weaker and Congress rarely passes major new legislation. "What Elon highlights for me is the failure of all the things that are supposed to happen before you ever get to court," Chatman says. "We haven't ever had anyone who was capable of testing the system this way."

Billionaires who bristle against the regulatory reins have always been major drivers of legal change, as the US Supreme Court's ruling in June in *Loper Bright Enterprises v. Raimondo* illustrates. The decision—curtailing judicial deference toward federal agencies—may have been the crowning victory of the long-term campaign to defang the administrative state.

Still, there seems to be something different about the manifold Musk. With each bid to reshape the law, he's tailoring it "to fit the Elon Musks of the world," says Columbia University law professor Eric Talley. "The problem is that there's only one of them."

Lesser tycoons might be disciplined by the capital markets or public opinion. Not Musk. When his strident stance against content moderation sent advertisers fleeing X, he responded with an antitrust lawsuit alleging an illegal boycott.

Nor has he lost support among retail investors—"deacons in the church of Musk," in Talley's words—even as Tesla's shares stagnated. The worshipful fanbase is something he can "weaponize in circumstances that most other billionaires can't," Talley says. When Delaware Chancellor Kathaleen St. J. McCormick struck down his pay package, Musk's diatribes effectively unleashed thousands of his defenders on her.

Delaware's Chancery Court, where McCormick is chief judge, is a court of equity with the discretion to look beyond the thick red lines of the law. That means it already offers flexibility for a special case like Musk. Even applying that framework, McCormick found his pay package went too far.

His effort to overturn that ruling at the shareholder ballot "seems to be saying, 'I don't think those rules should apply to me, either," Talley says.

Meanwhile, in Brazil, Musk collided with a crusader who seemed to make up the rules as he went along. Cracking down on even loathsome political speech wouldn't fly in the US. Neither would banning X. If we're choosing a side to err on, "states are scarier than people," as Chatman put it.

But the law can only bend so far before it breaks.

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Securities Law News
Sept. 21, 2024, 10:36 AM PDT

Elon Musk Capitulates, Complies With Legal Orders in Brazil (1)

By Daniel Carvalho

- Move doesn't guarantee social-media platform can return
- Judge banned X in Brazil over refusal to block some accounts

Bloomberg Law News 2024-09-23T10:11:52371101976-04:00

Elon Musk Capitulates, Complies With Legal Orders in Brazil (1)

By Daniel Carvalho2024-09-21T13:36:29775-04:00

- Move doesn't guarantee social-media platform can return
- Judge banned X in Brazil over refusal to block some accounts

Elon Musk backed down and decided to comply with court orders in Brazil, an attempt to end a monthslong clash that culminated in million-dollar fines and the banning of his social network X in Latin America's largest economy.

X appointed a legal representative in the country on Friday, seeking to obey a deadline imposed by the Supreme Court and end the ban on the social-media platform in the country that began Aug. 30, according to a judicial filing.

The company formerly known as Twitter also informed the court that it followed previous orders and blocked accounts allegedly responsible for disseminating hate speech and fake news, two people familiar with the matter who can't publicly discuss a case under seal said Saturday. The company had until now resisted abiding by orders from the court.

Justice **Alexandre de Moraes** gave X five days to provide further information on its legal representation, according to a new order filed on Saturday. It also granted the court's secretary 48 hours to verify if earlier orders were respected. The court will then be able to make a decision on whether to reinstate X in Brazil after a review.

"Clarifications and information in response to Moraes' order" were presented to the court, the law firm hired by X said in a statement late Friday in Brazil. X is now represented by Rachel de Oliveira Villa Nova Conceição in Brazil, according to a court document first reported by CNN Brasil.

Read More: Musk Dares the World to Take On X as He Scoffs at Brazil's Ban

Although X informed the Supreme Court on Wednesday that it had appointed two attorneys in the country, Moraes gave the company 24 hours to prove lawyers were hired on its behalf. The deadline ended at 9:29 p.m. local time Friday, according to the court.

In April, Musk pledged to defy orders from Moraes, who is spearheading a judicial campaign against hate speech and fake news, to suspend certain accounts in the country. The world's richest man accused the judge of censorship, while Moraes opened a criminal inquiry into Musk and accused him of spreading disinformation.

This week the platform abruptly became accessible to Brazilian users after an automatic update switched the way it directs traffic, the country's association of internet providers said.

Moraes ordered X to restore a block on its site Sept. 19 or face fines of 5 million reais ($907,000) a day, accusing it of attempting to "disobey" the court. A spokesperson for X said late Sept. 18 that a change to its network provider following the ban had caused an "inadvertent and temporary service restoration to Brazilian users."

Brazil's telecommunications watchdog said in a statement Sept. 19 that the conduct of X demonstrates "deliberate intention to disregard the order of the Supreme Court" and that "any new attempts to circumvent the block will merit appropriate measures" from the regulatory agency.

On Saturday, Moraes gave a 48-hour deadline to the Federal Police and the Brazilian telecommunications agency to send reports on the possibility of access to X so a fine can be calculated.

Brazil last week withdrew 18.35 million reais from local bank accounts of X and the satellite internet provider Starlink to pay for fines imposed by the Supreme Court. Moraes had blocked Starlink's accounts in a bid to force the US technology company to pay the penalties imposed for ignoring a previous order.

(Updated with information from a court order throughout the text.)

--With assistance from **Jose Orozco**.

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Elon Musk’s Pro-Trump PAC Is Hiring Door-Knockers in Key States

B **bloomberglaw.com**/product/blaw/bloombergterminalnews/bloomberg-terminal-news/SK9U6NT0AFB4

- Group is hiring canvassers in California, New York, Michigan
- Super PAC Musk founded has spent $63 million to elect Trump

By Dana Hull

(Bloomberg) --
Want to work for Elon Musk? There are dozens of openings across the US with a single job description: knock on doors to convince voters to support Donald Trump and Republicans running for Congress.

The jobs, funded by America PAC, the super political action committee Musk created, is advertising jobs for people to turn out voters in cities and towns in the heart of presidential battlegrounds and in districts with competitive congressional races, including Grand Rapids, Michigan and Poughkeepsie, New York.

The door-to-door canvassers will “promote our mission of supporting candidates who uphold free speech, free markets, and meritocracy,” according to the PAC’s website. “With backing from figures like Elon Musk, who supports our commitment to merit and freedom, you’ll be part of a team that’s not just playing the game but changing it.”

The plan to hire door-knockers across 16 states is part of what has so far been a $63 million effort by Musk’s PAC to elect Trump, which has included digital advertising and on-the-ground turnout efforts. The door-to-door canvassers will assist in registering new voters, data collection, community outreach and event support, according to the job descriptions.

Read More: Musk Pours Money Into New York Races Critical to House GOP Win

Musk, the chief executive officer of Tesla Inc. and SpaceX, founded America PAC in May, after years of only making modest donations to federal candidates. His late-in-the-cycle spending to convince voters to support Trump could end up playing a critical role in an election that is likely to be decided by a few thousand voters in a handful of swing states.

Vice President Kamala Harris’ political operation has amassed a large fundraising lead over Trump in recent weeks, putting him at a financial disadvantage in the most expensive stretch of the election.

Musk, the world's richest person, endorsed Trump's reelection bid in July after the first assassination attempt on the former president's life. Trump has suggested that Musk could lead a commission to review federal expenditures, an idea the entrepreneur pitched to the Republican nominee earlier this year.

Read More: Harris Outspends Trump by $5 Million a Day After Donor Surge

Musk's businesses could also benefit from a Trump presidency. Trump on Saturday vowed to reach Mars before the end of his term if reelected. Musk founded SpaceX in 2002 with the goal of making life interplanetary.

"The bureaucracy currently choking America to death is guaranteed to grow under a Democratic Party administration. This would destroy the Mars program and doom humanity," Musk posted Sunday on X, the platform that he owns.
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Laura Davison, Meghashyam Mali

Palantir’s Alex Karp Worth Over $4 Billion as PLTR Stock Keeps Rising

B bloomberglaw.com/bloombergterminalnews/bloomberg-terminal-news/SK9FSTDWLU68

By Lizette Chapman

(Bloomberg Businessweek) --

Karp at the Allen & Co. conference in Sun Valley, Idaho, in July.
Photographer: David Paul Morris/Bloomberg

Alex Karp, co-founder and chief executive officer of Palantir Technologies Inc., has a love-hate relationship with Wall Street.

First, the hate: Karp once said that being the leader of a public company made him feel like a “caged animal.” He’s said that analysts don’t understand the company and that he prefers Palantir’s loyal army of retail investors, more than 60,000 of whom have congregated on the subreddit r/PLTR and nicknamed him “Daddy Karp.”

Karp particularly dislikes short sellers, recently suggesting on TV that they’re addicted to drugs. “Almost nothing makes a human happier than taking the lines of cocaine away from these short sellers,” he said. It was a tamer appearance than a few years earlier, when he used the word “f---ing” twice on an analyst call.

Nevertheless, Karp has long sought one of Wall Street's most coveted prizes—a spot on the S&P 500, a milestone the data analysis giant officially achieves on Monday. The inclusion in the S&P means the company will be added to index-tracking funds held by major investors, officially establishing it in the corporate American firmament. Despite its more than $80 billion market cap, Palantir for years hadn't met the criteria for inclusion because of its tight founder control and unprofitability. Now, the S&P has relaxed requirements on multiple-class shares that can give founders supervoting rights, and the company marked its first profitable year in 2023.

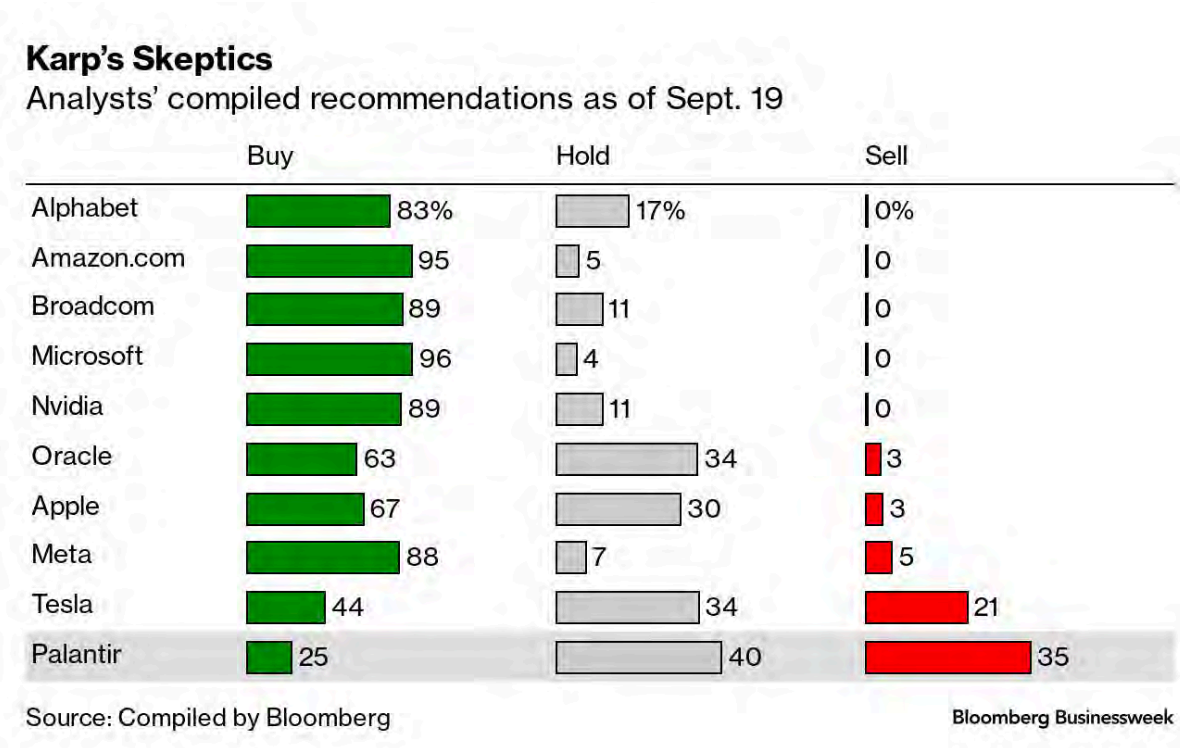
The addition to the S&P is the culmination of a winning streak for Palantir. One of the marquee companies of the artificial intelligence craze, Palantir has seen its stock almost quintuple since 2022. Karp is now worth more than $4 billion, according to the Bloomberg Billionaires Index.

Source: Compiled by Bloomberg

But that doesn't mean Karp is suddenly going to start getting along with stockpickers, many of whom dislike him almost as much as he dislikes them. Palantir declined to comment for this story or to make Karp available for an interview.

Of the 20 analysts covering Palantir, only five give the company a buy rating, and about one-third rate it as a sell, according to Bloomberg data—an unusually high number for an ascendant tech company. (Only 3% of Apple Inc. analysts give it a sell rating and 0% of

Nvidia Corp.'s.) One reason for the reticence is a fear that Palantir's AI product could be overhyped. Some people think it won't be able to roll out its tools to corporate customers fast enough. And some don't like the company's leaders.



Source: Compiled by Bloomberg

Palantir's pavilion at the World Economic Forum in Davos, Switzerland, in January.
Photographer: Stefan Wermuth/Bloomberg

Rishi Jaluria, RBC Capital Markets director, finds Karp's freewheeling and occasionally profane language on earnings calls grating. He also chafes at the use of the word "doctor" in Karp's title and at the fact that Palantir tends not to accept questions from him and other bearish analysts on earnings calls. (Karp has a doctorate in neoclassical social theory, not medicine.) "The CEO of Akamai is a Ph.D. No one calls him Dr. Leighton," Rishi tells *Bloomberg Businessweek*. "I mean, c'mon!"

Karp, 56, has made little effort to act like a conventional businessman. He sometimes speaks at public events in a white T-shirt and is known for wearing boiled wool slippers in the office. He doesn't drive or own a car. His shock of curly salt-and-pepper hair suggests a recent encounter with an electrical outlet. And he does enough tai chi to be comfortable leading staff sessions in the ancient martial art.

Karp has also been outspoken—and sometimes provocative—on political issues. He told the *New York Times* he's supporting Kamala Harris' presidential bid, but he's called wokeness a "central risk" to America that amounts to a "thin pagan religion." Karp has visited military leaders in Ukraine and Israel and has become a familiar face in Washington and at the Pentagon. He is publishing a book, *The Technological Republic*, set to be released in February 2025 by Penguin Random House, which describes it on its website as "a sweeping indictment of the West's culture of complacency."

Palantir markets its software to private and government clients working in areas like defense and immigration control, making it a political lightning rod. The company has won a range of recent government contracts, including for building out an AI platform for the military. At a recent confab for technologists and policymakers in DC, Karp urged historically war-wary Silicon Valley leaders to make tech tools with an eye toward national security, calling it a moral imperative as well as a financial opportunity. "This country is focused on using AI to have a structural advantage in how we deploy and understand the battlefield," he said. "And Palantir plays a crucial role in that arena."

The company's latest big release, which it calls the Artificial Intelligence Platform, uses AI to augment all of its functions, the company says. That promise has sent Palantir's stock skyward, up 111% this year—compared with S&P growth of just 18% over the same period.

Karp at Palantir's FoundryCon event in 2024.
Photographer: David Paul Morris/Bloomberg

Yet detractors remain, particularly as the sheen has come off some AI investments. Malik Ahmed Khan, an equity analyst at Morningstar Inc., says he believes in Palantir long term but has "lost some confidence in the management," especially for embarking on ill-fated investments in special purpose acquisition companies.

The SPAC effort involved a quid-pro-quo strategy, where Palantir spent $450 million to purchase shares in about two dozen startups that had gone public. As part of the deal, those companies became Palantir customers. Many of the startups fizzled along with the SPAC craze, costing Palantir both revenue and investment value. In a 2022 earnings call, the company said that sales from those deals had "peaked" in the first quarter and that it "wound down" the program. But it didn't meaningfully address the issue again on an earnings call, frustrating some investors. "If you show an error in judgment, it's required that you more than compensate for it," says Khan of the blow-up. "I don't think they even said it was unwise. They just brushed it under the rug."

But Karp's tight grip on Palantir gives him little incentive to engage with critics. Along with co-founder Peter Thiel and President Stephen Cohen, he structured the company at the time of its public debut to ensure that, together, they have voting rights as long as they're still living.

One investor class that Karp does seem to love: Palantir's enthusiastic online retail traders, whose support he says he relishes. Small armies of them have returned the favor, bestowing Palantir with near-Gamestop levels of reverence in the r/PLTR subreddit, named after the company's ticker. "PLTR to the f---ing moon! 🚀🌙" read one recent representative post. The main theme on the page lately is vindication, as the company's stock has continued to climb.

In a video recorded shortly after Palantir learned it would begin trading on the S&P, Karp is featured running through the woods wearing spandex shorts. He pauses and speaks directly to the camera. "We've gone from what adults, professional managers and some analysts thought was a Frankenstein monster powered by a freak-show leader—me—to a dynamic, clearly profitable company worthy of and clearly admitted to the S&P 500," he says, gloved hands gripping hot pink trekking poles. "And we did it our way."

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Domino's Execs Concealed Store Closure Woes, Investor Says

By **Gina Kim**

Law360 (September 20, 2024, 10:09 PM EDT) -- Domino's is facing a proposed class action filed Friday in Michigan federal court by an investor who says the pizza chain overhyped plans to launch more than 1,100 stores across the globe over a four-year period while concealing that a major franchisee faced significant hurdles with store openings and closures.

In a 28-page **complaint**, investor Scott Bender accused Domino's Pizza, CFO Sandeep Reddy and CEO Russell Weiner of making materially misleading statements about the pizza company's business operations and financial prospects this past year.

Last December, Domino's touted its long-term guidance and objective to open more than 1,100 locations across the country and internationally from 2024 to 2028. Domino's also said it expected at least a 7% growth in global retail sales annually, and an 8% growth in annual income, Bender alleges.

However, Bender claims the defendants failed to tell investors about troubles with Domino's Pizza Enterprises, its largest so-called master franchisee — a franchisee that establishes a geographical area that can profit by sub-franchising and selling supplies and food to those sub-franchisees. Unbeknownst to investors, DPE was facing substantial obstacles over new store launches and the shuttering of existing locations, according to the suit.

The truth was revealed on July 18, when Domino's unveiled its second quarter results for 2024, the complaint says. This time, Domino's said it anticipated dropping 175 to 275 stores below its goal of 925 net stores internationally, as a result of DPE's challenges.

"On this news, Domino's stock price fell $64.23 per share, or 13.57%, to close at $409.04 per share on July 18, 2024," the complaint alleged. "As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the company's securities, plaintiff and other class members have suffered significant losses and damages."

The company also put a pause on its expansion plans, according to the plaintiff.

Bender's complaint alleges violations of Section 10(b), Section 20(a) and Rule 10b-5 of the Exchange Act.

The class period begins Dec. 7, when Domino's had its Investor Day presentation and touted its expansion plans for 2024 to 2028. That same day, Domino's submitted its 10-K form with the U.S. Securities and Exchange Commission, saying its franchise system was bringing consistent earnings, according to the complaint.

In February, Domino's unveiled its fourth-quarter financial results for 2023, claiming robust financial performance and noting its expansion plans were bringing positive results. Domino's held an earnings call that same day, with Reddy telling investors that Domino's expected to open more than 1,100 stores globally, with 175 in the U.S. and 925 stores internationally, Bender says.

Reddy also said there was a spike in net store growth in the U.S. during the last quarter of 2023, slightly above company's expectations, while Weiner said he felt "really strongly" about the pizza chain's long-term expansion plans, the suit says.

On April 29, defendants again touted the company's expansion strategy, noting that plans for net store and retail sales growth hadn't changed, the complaint alleges. Reddy said the company still expected opening more than 1,100 stores,

But those statements were misleading, since investors weren't informed that DPE was facing significant challenges with both store openings and closures, which meant the company couldn't meet its growth plans, Bender alleges.

"In addition, defendants violated Item 303 of SEC Regulation S-k, which required Domino's to '[d]escribe any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations,'" the suit said.

The complaint continued: "Defendants' failure to disclose that DPE was experiencing significant challenges with respect to both new store openings and closures of existing stores violated Item 303 because this issue represented a known trend or uncertainty that was likely to have a material unfavorable impact on the company's business and financial results."

Representatives for the parties did not immediately return inquiries seeking comment Friday.

Bender is represented by Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

Counsel information for the defendants was not immediately available.

The case is Scott Bender v. Domino's Pizza Inc. et al., case number 2:24-cv-12477, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Linda Voorhis.

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EV Battery Co. Hit With $207M Default Loss For Lack Of Attys

By **Katryna Perera**

Law360 (September 20, 2024, 9:40 PM EDT) -- Shareholders of electrical vehicle battery maker Romeo Power Inc. have secured a $206.8 million default win against the company after it failed to retain new counsel in a proposed class action alleging it concealed its acute shortage of high-quality battery cells before going public via a merger with a blank check company.

U.S. District Judge Lorna G. Schofield issued an **order** on Thursday stating that Romeo Power filed a motion to withdraw counsel last year, which was granted by the court. Romeo Power was then required to retain new counsel by June 30, 2023, but no counsel has appeared on behalf of the company since then.

In granting the default judgment against Romeo Power for failure to retain new counsel, Judge Schofield also granted the shareholder plaintiffs' request for $206.8 million in damages against the battery maker.

Counsel for the shareholders did not immediately respond to requests for comment on Friday and Romeo Power could not immediately be reached.

The shareholders filed an amended complaint against Romeo Power in January 2023, claiming that throughout the proposed class period, the company and its executives misrepresented its revenue and made false assurances about the company's supply of high-quality battery cells, among other things.

According to the complaint, from 2020 to 2021, the defendants repeatedly represented that Romeo Power had "secured $300 million in revenue" based on existing customer contracts and expected another $59 million in backlog revenue along with $2.4 billion in revenue to come in from contracts that were in "advanced" negotiations.

Based on those figures, estimations were made on revenue for 2020 and 2021. These included "massive" increases for the company, which signaled to the market that Romeo Power was ramping up production to begin delivering on a significant portion of its secured revenues in 2021.

However, before it could fulfill any orders, Romeo Power needed to secure a sufficient supply of the key components of its products — high-quality battery cells.

"To engender market confidence in Romeo's ability to convert its backlog orders into actual revenue, defendants claimed that Romeo obtained its battery cells from four major suppliers," the complaint states. "Furthermore, defendants represented that Romeo was not beholden 'to any level of the value chain', that Romeo's supply chain was 'hedged' against potential supply disruptions, and that the company did not 'see any big challenges as [Romeo's] order book continue[d] to grow.'"

Unbeknownst to investors, though, Romeo Power had been experiencing a material shortage of high-quality battery cells since the beginning of the proposed class period, the company was only relying on two battery cell suppliers, it did not have enough inventory to accommodate end-user demand and ramp up production, its supply chain was not "hedged" against potential supply disruptions and the company's supply constraints were a "material hindrance" to business operations and financial performance, according to the complaint.

The truth slowly unraveled as Romeo Power began reporting major shortfalls in expected revenue, and the company disclosed supply chain issues and inventory shortfalls, leading to several stock drops that allegedly hurt investors.

The shareholders are represented by Kara M. Wolke, Melissa C. Wright and Gregory B. Linkh of Glancy Prongay & Murray LLP, Howard G. Smith of The Law Offices of Howard G. Smith and Frank R. Cruz of The Law Offices of Frank R. Cruz.

Counsel information for Romeo Power was not available.

The case is In re Romeo Power Inc. Securities Litigation, case number 1:21-cv-03362, in the U.S. District Court for the Southern District of New York.

--Editing by Vaqas Asghar.

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NFT Buyers Bring Securities Suit Against Crypto Co. OpenSea

By **Aislinn Keely**

Law360 (September 20, 2024, 8:10 PM EDT) -- Two Florida users of OpenSea hit the nonfungible token marketplace with a proposed securities class action claiming the assets the users bought on the platform are unregistered investment contracts in light of recent court decisions and regulatory scrutiny from the U.S. Securities and Exchange Commission.

Anthony Shnayderman and Itai Bronshtein told a Florida federal court Thursday the NFTs they bought through OpenSea are now worthless given their alleged status as unregistered securities. Ozone Networks Inc., which does business as OpenSea, led the duo to believe it didn't support securities, but a series of court decisions allowing securities claims against NFT projects to move forward, and SEC actions in the NFT space, say otherwise, according to the buyers.

"Defendant's statements that it moderates the NFTs on [its] exchange, including 'real-world financial instruments … securities' and the listing of NFT projects on its website were deceptive and misled the plaintiffs into purchasing worthless and unlawful unregistered securities," Shnayderman and Bronshtein said.

According to Shnayderman and Bronshtein, many of the tokens OpenSea supports meet the prongs of the U.S. Supreme Court precedent called the Howey test, which establishes the characteristics of an investment contract. Howey holds that there must be an investment of money in a common enterprise, leading buyers to reasonably expect profits based on another's efforts.

"The fortunes of the OpenSea NFT investors, and the value of the OpenSea NFTs, are linked almost entirely to the success of the creator's promotional efforts and development of the NFT project," Shnayderman and Bronshtein said.

While OpenSea has long claimed its platform hosts the buying and selling of collectibles, more akin to baseball cards or art, the duo said recent actions from the SEC indicate otherwise. CEO Devin Finzer **disclosed** in late August that OpenSea received a notice of potential enforcement claiming the tokens on its platform are unregistered securities. While no action has yet materialized, Shnayderman and Bronshtein argued allegedly illegal assets are effectively worthless.

"While Finzer continues to double down on OpenSea's deceptive operations by remaining confident that OpenSea is not violating any securities laws, the Wells notice suggests that OpenSea is in the hot seat and may be found liable for facilitating the exchange of unregistered securities," the two users said.

They claim the platform violated New York and Florida laws by charging fees, and breached a warranty with users by leading them to believe there were no securities on the marketplace.

"OpenSea had essential tasks or responsibilities, centralized into their company, where they were expected to engage in the moderation of the digital assets on its exchange, including moderation real-world financial instruments such as securities," Shnayderman and Bronshtein said.

In a statement to Law360, a spokesperson for OpenSea said it intends to fight the "baseless" suit.

"Conjuring from thin air a purported class action lawsuit based on our disclosure of an SEC Wells notice won't make the allegations in the complaint true," said OpenSea. "We refute these allegations and look forward to defending against this baseless lawsuit."

Shnayderman and Bronshtein pointed to **recent** SEC **actions** in the NFT space, including settlements with NFT projects Impact Theory LLC and StonerCats 2 LLC. The projects settled allegations they offered unregistered securities without admitting or denying violations, so a judge or jury never weighed in on the matter.

Shnayderman and Bronshtein's complaint also cites **recent denials** of **motions to dismiss** in both Dufoe v. DraftKings Inc . and Harper v. O'Neal , in which a Massachusetts federal judge and a Florida federal judge each discerned that buyers of certain NFT projects had plausibly pled the tokens met the characteristics of investment contracts. Both cases are still ongoing, and neither court has made a finding of whether the tokens at issue were unregistered securities.

Counsel for Shnayderman and Bronshtein, The Moskowitz Law Firm, also is representing the proposed class in the Harper case. The law firm has also been at the forefront of the FTX multidistrict litigation. The Thursday complaint notes this experience has shown proposed class actions to be "an efficient way to expeditiously and materially advance litigation" of questions including whether NFTs overlap with securities laws.

"We have learned a great deal in our extensive crypto litigation, and with today's ever-changing regulation, there should be a process to sell NFTs in a well-regulated environment," Adam Moskowitz said in a statement to Law360. "We look forward to working with OpenSea, to structure the best avenue and future process, for both consumers and the crypto industry."

OpenSea did not respond to a request for comment on Friday.

The users are represented by Adam M. Moskowitz, Joseph M. Kaye and Howard M. Bushman of The Moskowitz Law Firm PLLC.

Counsel information for OpenSea was not available Friday.

The case is Shnayderman et al. v. Ozone Networks Inc., case number 1:24-cv-23616, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Sydney Price and Lauren Berg. Editing by Lakshna Mehta.

Update: This story has been updated to include a comment from OpenSea.

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3rd Circ. Rejects 'Close' Case For Preemption In Fosamax MDL

By **Carla Baranauckas**

Law360 (September 20, 2024, 8:42 PM EDT) -- A U.S. Food and Drug Administration letter denying changes to the label of Merck's osteoporosis drug Fosamax does not count as a final agency action triggering federal preemption of state law "failure to warn" claims, the Third Circuit ruled Friday in a precedential decision.

Noting that drug manufacturers have the primary responsibility to ensure that their labels comply with federal and state law, a three-judge panel said a New Jersey federal judge was wrong to reject the plaintiffs' state law claims because she didn't give enough consideration to the plaintiffs' arguments against preemption.

"With real respect for the thorough and thoughtful work the district court did in this complex case, we nonetheless conclude that it erred in its preemption analysis by giving too little weight to the required presumption against preemption," Judge Kent A. Jordan wrote in the panel's **opinion**. "Applying that presumption, and considering the record here, we conclude that plaintiffs' state law claims are not preempted."

Citing the 2019 U.S. Supreme Court case Merck Sharp & Dohme v. Albrecht, the panel said its analysis found that the lower court placed too much emphasis on informal communications from the FDA and its amicus brief to decide that the FDA's "complete response letter," which indicates a drugmaker's application cannot be approved in its current form, preempted the state law claims.

"We acknowledge that this is a close case, but, in a close case, the strong presumption that the Supreme Court has established will likely be determinative," the opinion said.

Using informal communications to determine the preemption question would undermine the intent of federal lawmakers to preserve state law claims regarding drug labeling, the panel said.

"We are not unsympathetic to the pressures Merck faced from the competing demands of a possible state law requirement and FDA action, but there is no escaping the consequences of Albrecht," it said.

But Merck has the burden to show that federal law prohibits it from adding warnings to the drug label that would satisfy state law, the panel said in remanding the case.

The case centers on the FDA's **complete response letter**, or CRL, rejecting Merck's proposed warning about stress fractures. The plaintiffs in the 500-person MDL who claim Merck failed to warn about atypical femoral fractures argued that the CRL left room for another version of the warning label because it was not a final action backed by force of law.

The appeal stemmed from U.S. District Judge Freda L. Wolfson's ruling that the claims were preempted because the FDA would not have approved a "differently worded warning" because it previously said there was a lack of evidence linking Fosamax to atypical femoral fractures.

Patients' counsel David C. Frederick argued before the panel in March that the drugmaker is **responsible** for the information on its label, and that Merck could have gone back to the FDA with revised language for its proposed warning.

The long-running Fosamax MDL made it all the way to the U.S. Supreme Court on the issue of preemption. There, the justices held in 2019 that a judge, not a jury, should decide whether the matter was preempted, which Judge Wolfson determined to be the case.

Friday's ruling contrasts with a Third Circuit decision in August, finding that a Pennsylvania state law failure-to-warn claim in a suit alleging the weedkiller Roundup caused a man's cancer is preempted by federal law. In that case, the court held that the Federal Insecticide, Fungicide, and Rodenticide Act expressly preempts any state law requirements for labeling that adds to or differs from its requirements, reversing a district court's judgment in favor of a pair of plaintiffs.

U.S. Circuit Judges Kent A. Jordan, Peter J. Phipps and Arianna J. Freeman sat on the panel for the Third Circuit.

The patients are represented by David C. Frederick, Ariela M. Migdal and Jimmy A. Ruck of Kellogg Hansen Todd Figel & Frederick PLLC.

Merck is represented by Yaakov M. Roth, John R. Boulé III and Jeffrey R. Johnson of Jones Day.

The case is In re: Fosamax (Alendronate Sodium) Products Liability Litigation, case number 22-3412, in the U.S. Court of Appeals for the Third Circuit.

--Additional reporting by P.J. D'Annunzio, George Woolston and Emily Field. Editing by Adam LoBelia.

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Calif. Panel Backs VW Drivers' $3.5M Data Breach Deal

By **Gina Kim**

Law360 (September 20, 2024, 7:47 PM EDT) -- California appellate justices have upheld Volkswagen and Audi drivers' $3.5 million data breach settlement and rejected an objector's request to intervene and vacate judgment, finding that her disagreement with their litigation strategy doesn't mean her interests weren't adequately represented.

In a 27-page unpublished ruling Wednesday, the state's First District Court of Appeal struck down plaintiff objector Amy Wynne's consolidated appeals challenging a Contra Costa County judge's order rejecting her motion to intervene in the case and to veto the resulting $3.5 million settlement approval and judgment.

Wynne had argued the trial court lacked sufficient data to make an informed decision regarding the settlement's fairness and that she should have been allowed to intervene. The trial court refused after concluding Wynne's interests wouldn't be adversely impacted by the settlement.

On Thursday, the appellate justices agreed, noting that Wynne and at least one other name plaintiff, Ricardo Villalobos, had the same interests since they pursued damages on behalf of the same group of drivers under the California Consumer Privacy Act. Wynne didn't show that her interests wouldn't be adequately represented, the panel concluded.

"Nor did she show that she would offer necessary elements to the proceedings that Villalobos would otherwise neglect," the opinion said. "She notes some things she would have done differently in litigating the case, but her disagreement with plaintiffs' legal tactics or litigation strategy does not establish inadequate representation."

Thursday's opinion stems from a trio of class actions filed in 2021 in California and New Jersey against Volkswagen and Audi over alleged cybersecurity breaches that affected more than 3 million drivers.

Villalobos, who lives in California, **filed his suit in New Jersey in late June 2021**, accusing the companies of violating the CCPA. He also accused the companies of failing to take steps to protect personal sensitive information entrusted to them by customers. Another driver, John Hajny, filed his suit in New Jersey as well while Wynne filed hers in California state court, and it was later moved to federal court.

Villalobos and Hajny's cases were consolidated and later joined Wynne in California, and together, the drivers filed a consolidated case asserting 11 claims, including negligence and CCPA violations.

The parties went to mediation in May 2022 but before the end of the session, Wynne's attorneys walked out, and they weren't involved in subsequent settlement talks, according to Thursday's ruling. A few days later, the parties reached a deal and agreed to go to state court to seek approval.

The plaintiffs filed a complaint in Contra Costa County, California, naming Volkswagen Group of America Inc., Audi of America LLC and Shift Digital as defendants. The plaintiffs then sought class certification and preliminary approval of the deal.

In October 2022, Wynne sought to intervene and lodged a proposed complaint, arguing the disposition could affect her interests and that the California subclass wasn't sufficiently represented by the named plaintiffs. The trial court rejected her motion, finding that she had the right to opt out or object, prompting Wynne to appeal.

Wynne didn't opt out of the deal and simply objected to it, Thursday's order said. She argued the court lacked sufficient information to independently decide the potential value of the drivers' non-CCPA claims.

The trial court gave final approval to the settlement, which Wynne unsuccessfully sought to vacate, prompting her to go to the appellate court again.

On Thursday, the appellate court ruled that the trial court didn't abuse its discretion in finding that the deal was fair and reasonable.

"Courts are not required to ensure that a settlement maximizes the value of released claims with mathematical precision," the panel said. "'[T]he test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all the circumstances."

Furthermore, the plaintiffs faced significant risk and delays had they continued with litigation, the opinion said. Data breach litigation is also a relatively new and ever-changing area of the law, and no data breach class action ever went to verdict, nor have the methodologies in calculating damages ever been tested or presented to a jury, the panel added.

The deal eliminates those risks and secures and outcome for the class who'd otherwise receive nothing, the opinion noted. The record backs the conclusion that payments for some of the tiers were a negotiated benefit to provide some form of payment to customers who didn't suffer significant losses either, the justices said.

"In sum, the 'factual record before the [trial] court' was 'sufficiently developed to allow the court to independently satisfy itself 'that the consideration being received for the release of the class members' claims [was] reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation,'" the panel concluded.

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

Justices Monique S. Langhorne Wilson, Kathleen M. Banke, and Peter J. Siggins sat on the panel for the Court of Appeal.

The class members are represented by Rachele R. Byrd of Wolf Haldenstein Adler Freeman & Herz LLP, Gayle M. Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield LLP, M. Anderson Berry and Gregory Haroutunian and Clayeo C. Arnold of Arnold Law Firm.

Volkswagen Group of America is represented by Colin Jennings and Marisol C. Mork of Squire Patton Boggs LLP.

Sanctus LLC is represented by Sandra A. Edwards, Dana Cook-Milligan, Sean G. Wieber, James Randall and Kevin P. Simpson of Winston & Strawn LLP.

Wynne is represented by Matthew Righetti of Righetti Glugoski PC and Charles A. Jones of Jones Law Firm LLC.

The case is John Hajny et al. v. Volkswagen Group of America Inc. et al., case numbers A166931 and A168736, in the Court of Appeal for the State of California, First Appellate District.

--Additional reporting by Allison Grande. Editing by Kristen Becker.

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Del. Justices Uphold Toss Of AmerisourceBergen Syringe Suit

By **Jeff Montgomery**

Law360 (September 20, 2024, 7:44 PM EDT) -- Delaware's Supreme Court upheld with little comment Friday a lower court dismissal of a nearly 5-year-old shareholder derivative suit accusing AmerisourceBergen Corp. directors of failing to investigate and stop illegal repackaging of cancer drugs.

All five justices concurred, in **two paragraphs**, with Vice Chancellor Sam Glasscock III's 101-page Court of Chancery finding that a single independent director's investigation into the suit's claims against the company — renamed Cencora Corp. on Aug. 30, 2023 — was "adequate," and a resulting call for dismissal was reasonable.

The decision closed out a suit launched by stockholders on Oct. 11, 2019, alleging breaches of fiduciary duty and unjust enrichment and seeking recovery from seven directors and two officers of nearly $900 million paid out by the company for federal criminal penalties and other sanctions.

A consultant advised board members of the problem in 2008, with other red flags raised repeatedly before and after about the Alabama-based operation, according to the complaint and court documents.

"After a thorough review," Vice Chancellor Glasscock wrote in dismissing the suit on Nov. 17, 2023, a single-member AmerisourceBergen special committee "concluded that there had been no breach of duty on the part of the majority of the board, that the litigation was inimical to the corporate weal, and recommended that the matter be dismissed."

Left behind with the Supreme Court's concurrence were claims tied to whistleblower-spurred reports that led to a guilty plea by company subsidiary AmerisourceBergen Specialty Group in September 2017 to illegally distributing misbranded drugs. The company agreed to pay $260 million in fines to settle allegations that it distributed cancer drugs from an affiliate without an FDA license.

Two months later, the company settled for $625 million a False Claims Act investigation, dating to 2010, alleging it repackaged dregs of drugs from their original vials into syringes at an unlicensed "pre-filled syringe" production facility without regard for safety and purity.

Five worker benefit plans filed the derivative damage recovery suit in October 2019, arguing that AmerisourceBergen directors never took action to fix the problems and were too conflicted and potentially at too great a risk to consider taking action themselves against board members and officers.

The suit also argued that, despite violations dating to 2001, company officials kept the scheme so under wraps that the statute of limitations should not bar the claims.

"I acknowledge that the company has paid hundreds of millions of dollars to settle the [U.S. Department of Justice's] civil and criminal investigations," the vice chancellor wrote. "Nonetheless, for this litigation to come to a conclusion in favor of [AmerisourceBergen], the court would have to conclude that the defendant directors' oversight was so inexplicably lax that it amounted to bad faith" and knowing abdication of duty.

"The evidence before me, including the facts found by the SLC [special litigation committee], does not support such a conclusion, nor does it indicate that material facts in this regard are in dispute," the vice chancellor wrote.

Central to the suit were claims that those named acted in bad faith, in allegations guided by the In re: Caremark International Derivative Litigation case in 1996. That case requires a successful argument that the actions in dispute were so costly or one-sided that no reasonable, loyal director would have approved them.

In a brief filed before Supreme Court arguments on Sept. 11, attorneys for the stockholders who sued argued on appeal that "In light of the available documentary evidence, the SLC did not have reasonable bases to conclude that the officer and director defendants held an honest belief that the PFS [pre-filled syringe] program was operating legally."

Attorneys for the special litigation committee told the justices in a brief that the stockholders had asked the appellate court to second-guess the committee and Vice Chancellor Glasscock's decision. They also asserted that the justices were limited to assessing the independence and good faith of the SLC and "the bases supporting its conclusions."

Cencora and counsel for the stockholders did not immediately respond to requests for comment.

The shareholders are represented by Ned Weinberger, Mark D. Richardson and Joshua M. Glasser of Labaton Keller Sucharow LLP, Christine M. Mackintosh, Rebecca A. Musarra and William G. Passannante II of Grant & Eisenhofer PA, Gregory V. Varallo and Glenn R. McGillivray of Bernstein Litowitz Berger & Grossmann LLP, Frank Schirripa of Hach Rose Schirripa & Cheverie LLP and Nathaniel L. Orenstein and Steven L. Groopman of Berman Tabacco.

The special litigation committee is represented by William M. Lafferty, D. McKinley Measley and Thomas P. Will of Morris Nichols Arsht & Tunnell LLP and F. Joseph Warin, Jonathan M. Phillips and Courtney M. Brown of Gibson Dunn & Crutcher LLP.

The appeal is Teamsters Local 443 Health Services & Insurance Plan et al. v. Cencora INC. (f/k/a AmerisourceBergen Corporation), case number 5, 2024, in the Supreme Court of the State of Delaware.

The case under appeal is Teamsters Local 443 Health Services & Insurance Plan et al. v. Chou et al., case number 2019-0816, in the Court of Chancery of the State of Delaware.

--Additional reporting by Leslie Pappas. Editing by Michael Watanabe.

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Fla. Judge Trims Health Co. Data Breach MDL

By **David Minsky**

Law360 (September 20, 2024, 10:15 PM EDT) -- The Florida federal judge overseeing the multidistrict litigation of a health benefits administration company impacted by a data breach dismissed several state consumer law claims but said those who brought lawsuits can sue, saying they've plausibly alleged injuries after their personal information was allegedly stolen by a cybercriminal group.

U.S. District Judge Rodolfo Ruiz II **issued his order** Wednesday in Miami federal court, dismissing multiple state law claims against NationsBenefits Holdings LLC and other companies with prejudice, but added that the affected individuals can puruse lifetime credit monitoring and identity theft insurance from the company since they've "sufficiently stated a risk of future harm" from the breach.

"The complaint advances many of the factors that courts have found to confer standing for plaintiffs alleging an increased risk of identity theft," Judge Ruiz said in his order. "Notably, defendants concede that 'certain plaintiffs do purport to allege actual misuse of their private information.'"

Judge Ruiz further stated in his order that "although defendants are correct that a number of plaintiffs do not allege actual misuse of their data, evidence of misuse of certain individuals' data is helpful in establishing a 'substantial risk' of future harm for plaintiffs who remain unaffected."

Individuals across multiple states alleged they were alerted by NationsBenefits in April 2023 that their personally identifying information was compromised, although they also learned that the breach occurred months earlier and that company stalled on notifying them, according to a consolidated class action complaint filed in March.

In their lawsuit, the plaintiffs said NationsBenefits disclosed that more than 3 million individuals' personal information was stolen in the breach perpetrated by the Russian-speaking "Clop ransomware gang" and sold on the dark web.

The breach occurred in January 2023, when Clop accessed NationsBenefits servers via the console of the GoAnywhere managed file transfer system, which is software the company purchased from Fortra LLC to secure information transfers and store data, according to the suit.

Plaintiffs alleged the breach occurred because the configuration of the GoAnywhere MFT was left in its default settings.

Fortra allegedly notified NationsBenefits of the breach in early February 2023, yet the plaintiffs said in their suit that NationsBenefits made the situation worse when it "inexplicably waited" several more days to implement mitigation measures and then another 65 days to notify them of the breach.

The defendants brought their motion to dismiss the lawsuit in April, saying the complaint "is premised upon nothing more than plaintiffs' receipt of a notification letter, not any cognizable damages suffered."

But Judge Ruiz noted in his order that the plaintiffs have demonstrated that their identity theft risk is a "concrete harm." In one instance, Pennsylvania resident and plaintiff Leroy Fuss alleged that banks contacted him about accounts that he didn't open and fraudulent charges that had appeared on his debit card.

Judge Ruiz added that the plaintiffs sufficiently alleged other concrete harms, such as loss of privacy, time and costs spent trying to mitigate their injuries, and continuing emotional distress.

Many of the plaintiffs' claims were allowed to stand, including negligence and negligence per se. The judge allowed some state court claims to proceed, including the North Carolina Identity Theft Protection Act and the North Carolina Unfair and Deceptive Trade Practices Act.

Other state law claims were maintained, including claims under the Pennsylvania Unfair Trade Practices and Consumer Protection Law and the California Customer Records Act.

While some state law claims were allowed, Judge Ruiz dismissed others. State law claims that were dismissed with prejudice include those under the California Consumer Privacy Act, California Unfair Competition Law, Florida Deceptive and Unfair Trade Practices Act, Missouri Merchandising Practices Act, New Jersey Consumer Fraud Act and the Ohio Deceptive Trade Practices Act.

Additionally, Judge Ruiz dismissed the plaintiffs' breach of implied contract claim, saying that the court has previously tossed such claims when the plaintiffs failed to state a claim because they "alleged no invitation or solicitation by defendants indicating that defendants implicitly assented to secure their [protected health information] and [personally identifiable information] in exchange for remuneration."

A handful of other counts were dismissed, although Judge Ruiz gave the plaintiffs permission to amend them, including breach of third-party beneficiary contract and claims under the Illinois Personal Information Protection Act and the Ohio Sales Practices Act.
Counsel for the plaintiffs declined to comment, citing active litigation, and representatives for the defendants did not immediately respond to requests for comment Friday.

The plaintiffs are represented by Jeff Ostrow of Kopelowitz Ostrow PA, John A. Yanchunis of Morgan & Morgan PA, James E. Cecchi of Carella Byrne Cecchi Brody & Agnello PC, Sabita J. Soneji of Tycko & Zavareei LLP and Ben Barnow of Barnow and Associates PC.

The defendants are represented by Joseph Salvo, Joseph A. Sacher, Brian Middlebrook, John T. Mills and Thomas R. Fanizzi of Gordon Rees Scully Mansukhani LLP.

The case is In re: Fortra File Transfer Software Data Security Breach Litigation, case number 1:24-md-03090, in the U.S. District Court for the Southern District of Florida.

--Editing by Michael Watanabe.

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Litigation Funding Firm Likely Out Of Hurricane Ad Class Action

By **Spencer Brewer**

Law360 (September 20, 2024, 10:44 PM EDT) -- A Texas federal judge said Thursday that a funding company that lent $20 million to a law firm accused in a proposed class action of conspiring to deceptively solicit hurricane victims should be dropped as a defendant.

U.S. Magistrate Judge Yvonne Y. Ho in her opinion that Equal Access Justice Fund LP didn't directly solicit or pay anyone to solicit in violation of Texas law. Plaintiff Katherine Monson accuses Houston-based MMA Law Firm, formerly McClenny Moseley & Associates PLLC, along with attorneys James McClenny and John Zachary Moseley and advertising company Tort Network LLC, which does business as Velawcity, of conspiring to **bombard Louisiana hurricane victims** with deceptive legal advertising.

Monson had amended her complaint to **tack EAJF on as a defendant**, claiming the lender knew its loan was going towards the questionable advertising campaign, but Judge Ho recommended the fund be allowed to exit the suit.

"Without plausible allegations that EAJF knew or believed its loans would fund unlawful barratry, Monson has not stated a viable claim," Judge Ho said.

EAJF trusted that MMA could repay its loans, but that in and of itself doesn't support the idea that it knew MMA would launch a dubious advertising scheme, Judge Ho said. She said Monson "overstates her position" by arguing EAJF should've known about the scheme because MMA provided business plans, financial projection and a description of how MMA planned to obtain clients to repay its loans.

"Even if MMA logically would have provided some projections and plans to EAJF, it requires a quantum leap to assume that MMA would have further disclosed its intent to employ unlawful barratry as part of its plan," Judge Ho said.

Monson didn't supply any facts that could help show that those financial reports did, indeed, show that EAJF knew of a barratry scheme, Judge Ho said. She recommended that Monson's claims against EAJF and related entities be dismissed with prejudice.

Monson's case is related to hurricanes that struck Louisiana in 2020 and 2021. Monson alleges that MMA Law paid Velawcity in 2022 to recruit thousands of Louisiana hurricane victims as clients.

To do this, the law firm sent out text messages that didn't mention the firm at all, Monson alleges. "You qualify for Hurricane Ida owed claim $$$!" one said. Monson never signed up.

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

Monson is represented by Jonathan P. Lemann and Robert E. Couhig Jr. of Couhig Partners LLC.

Court records show that counsel previously representing MMA Law Firm and Moseley has withdrawn, but new counsel information was not immediately available.

McClenny is represented by Jean Frizzell and Harris Wells of Reynolds Frizzell LLP.

Velawcity is represented by David J. Schenck, Clay A. Cossé and Alexandra M. Twiss of Dykema

Gossett PLLC.

Equal Access Justice Fund LP and EAJF ESQ Fund LP are represented by Brian Weil Zimmerman, Frederick T. Johnson and Brian Poldrack of Spencer Fane LLP.

The case is Monson v. McClenny Moseley & Associates PLLC et al., case no. 4:23-cv-00928, in the U.S. District Court for the Southern District of Texas.

--Additional reporting by Rose Krebs and by Lynn LaRowe. Editing by Brian Baresch.

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Delaware Powerhouse: Bernstein Litowitz

By **Rose Krebs**

Law360 (September 19, 2024, 3:54 PM EDT) --

Bernstein Litowitz Berger & Grossmann LLP has continued to build a reputation for success in the Delaware Chancery Court, with bona fides that include serving as lead trial counsel in a shareholder action that led to Elon Musk's massive compensation plan at Tesla being rescinded, landing the firm on Law360's 2024 list of **Delaware Powerhouses**.

The New York-based firm's five-attorney roster in Delaware may be small, but the reach of Bernstein Litowitz's 17-member corporate governance department — which includes attorneys in New York and California — has made it one of the most powerful players in the state's esteemed Chancery Court.

"No one can match the depth of our bench or the strength of our practice," partner Jeroen van Kwawegen, who leads the firm's corporate governance department, told Law360 in an interview. "We really have an ownership culture. Everybody takes ownership over their jobs and their careers."

Although he is based in New York, van Kwawegen frequently litigates in the nationally important Chancery Court. Judges on the nonjury court decide many high-stakes corporate disputes.

Bernstein Litowitz's collaborative culture, emphasis on quality and significant trial experience have helped it establish a strong place in Delaware's competitive legal market, van Kwawegen said.

"Other firms like to work with us," he told Law360. "Firms like the leadership we provide on our cases."

Gregory V. Varallo, who has led Bernstein Litowitz's Delaware office since **its opening** in 2019, told Law360 the firm's attorneys who litigate in Delaware have expertise that makes them adept at winning trials and netting significant recoveries for clients via settlements.

The firm focuses on representing investors and institutional plaintiffs in securities litigation and corporate governance cases, and in Delaware, the majority of Bernstein Litowitz's casework is prosecuting shareholder claims that deal with fiduciary duty and corporate governance in the Chancery Court, Varallo said.

"We have deep subject-matter expertise," Varallo told Law360 in an interview. "We're probably best known for our trial work. We know how to try cases, and we're really good at it. Our record demonstrates that."

Varallo said the firm has had "a terrific first five years" in Delaware and has "succeeded in getting a number of enormous decisions."

Several of those decisions have come during the past year, including a win as lead trial counsel for the Tesla stockholder who led a derivative suit challenging Musk's compensation package, once estimated at a value as high as $56 billion.

In January, Chancellor Kathaleen St. J. McCormick **struck down** the package in a decision that led Musk to lash out on social media and move to pull Tesla's incorporation out of Delaware.

Tesla shareholders **voted in June** to approve Musk's compensation plan and move the company's incorporation from Delaware to Texas. But in a letter to the court later that month, Varallo **disagreed** with Tesla's counsel that the plan ratification vote "significantly impacts the claims and issues in this action."

During oral argument in August, Varallo **asserted** that Tesla's stockholders "are no more empowered to reverse a posttrial remedy for a breach than they are to reverse the findings" of the court.

Varallo told Law360 recently that the case is "extraordinary," in part, because of its David versus Goliath aspect — involving a minor shareholder taking on one of the world's richest men. "It's an amazing story about equal justice under the law," Varallo said.

Allowing a system by which shareholders can overturn a court's ruling would "make a mess of our law," Varallo asserted.

In another significant posttrial win, in June 2023, Bernstein & Litowitz was on a counsel team that **secured $400 million** in damages for former Columbia Pipeline Group Inc. shareholders who sued Canadian energy company TC Energy Corp. in Chancery Court over a $13 billion merger with TransCanada Corp., TC Energy's predecessor.

Bernstein & Litowitz was also on a team that won a **$1-per-share damages** decision in March 2023 on behalf of Mindbody Inc. shareholders who had challenged the company's $36.50-per-share acquisition in 2019 by Vista Equity Partners Management LLC.

All three of those cases are evidence of the firm's ability to work alongside different counsel and secure significant results for clients, van Kwawegen told Law360.

Among the more recent settlements Bernstein Litowitz has helped secure are an **$85 million deal** to end one of two Chancery Court shareholder suits over Madison Square Garden Entertainment's 2021 merger with MSG Networks, and a **$122.5 million settlement** with Paramount Global to end a challenge to the fairness of CBS' $30 billion merger with Viacom in 2019.

Plaintiff clients and co-counsel alike value Bernstein Litowitz's prowess for getting favorable results at trials or otherwise, Varallo told Law360.

"In short," Varallo told Law360, "our Delaware office was built from the ground up to actually try cases and our team has unmatched experience and expertise in that regard."

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SEC To Seek Sanctions For Musk Deposition 'Gamesmanship'

By **Gina Kim**

Law360 (September 20, 2024, 9:33 PM EDT) -- The U.S. Securities and Exchange Commission plans to seek sanctions against Elon Musk for not showing up to a scheduled deposition over his $44 billion acquisition of Twitter and instead flying to Florida to oversee a SpaceX launch, telling a California federal judge Friday that his excuse "smacks of gamesmanship."

In a joint statement laying out both parties' positions, the SEC asked U.S. District Judge Jacqueline Scott Corley to "consider meaningful conditional relief" to ensure Musk will abide by her May 31 order forcing him to testify again in the commission's case over his takeover of Twitter Inc., now named X Corp.

"Musk has now failed to appear before the SEC twice: first in September 2023, in defiance of a lawful administrative subpoena, and last week, in defiance of a clear court order," the SEC argued. "The court must make clear that Musk's gamesmanship and delay tactics must cease."

Musk, meanwhile, contended that he sought to reschedule the deposition for the key Polaris Dawn spacecraft launch, and further argued this latest round of testimony with the SEC wasn't urgent, nor has the commission said it was.

The SEC said parties had agreed to set Musk's deposition for Sept. 19 but later rescheduled it for Sept. 10 at 9 a.m., because of a scheduling conflict for one of his attorneys. Three SEC attorneys flew to Los Angeles for the planned deposition on Sept. 9, the commission said.

Just before 6 a.m. on Sept. 10, Musk's team informed the commission that he couldn't attend, as he had to make emergency travel to Florida for the complex, high-risk launch of Polaris Dawn, and asked to reschedule on or before Oct. 11, the SEC said.

However, Musk changed course this past Monday and proposed dates in late October and only at the SEC's Los Angeles office and only if the agency withdrew its request for the court to hold a discovery conference on the issue, the joint statement said. It wasn't until Wednesday that Musk offered a deposition date in early October, after the courtroom deputy said the judge planned to set a discovery hearing.

"Musk violated the May 31, 2024 order," the SEC argued. "That order required that Musk seek 'written consent of the SEC or order of the court' to modify the date of his testimony. Musk's excise itself smacks of gamesmanship. SpaceX had already announced that it was targeting a Tuesday morning launch two days earlier, at 6:52 p.m. on Sunday, September 8. As the company's chief technical officer, Musk surely was already aware by then that SpaceX was targeting the morning of his SEC testimony for the launch."

Essentially, the SEC said, Musk waited to tell the commission about his plans to fly to Florida for the launch three hours before his testimony was set to commence, after the agency already spent thousands of dollars on its attorneys' travel to Los Angeles.

Friday's statement is the latest development in the SEC's civil action filed last October demanding that Musk answer queries regarding his acquisition of Twitter stock in 2022 — the year he bought 9% of the company, and then closed a $44 billion buyout — arguing that Musk refused to cooperate with the probe.

The SEC alleged Musk bailed on a promised September date with the agency two days before he was scheduled to testify in San Francisco about his stock purchases.

In Friday's statement, Musk contended that he had to travel to Florida and be present for the high-risk Polaris Dawn launch in person. The timing of the launch depends on good weather, and whenever there are issues with launches, it is Musk who makes the call on whether to proceed, he said.

Forcing Musk to manage his team remotely would've risked the lives of those aboard the Dragon capsule spacecraft, the statement said.

"As such, weather conditions had to be appropriate on two different dates, making it impossible to predict more than a few hours in advance when the launch could take place," Musk said. "Since the Dragon capsule only provides life support for up to six days, there was no room for error."

Furthermore, it wasn't until the evening of Sept. 9 that SpaceX confirmed conditions would hold up for the launch the following date, but the launch, which was set to take off at 3:38 a.m., was pushed back about three hours to wait for better weather, the statement said.

That made it impossible for Musk to fly from Florida to California in time for the 9 a.m. deposition, he argued.

"This court's intervention is not necessary, as the parties have already agreed to a new testimony date," Musk said. "There is no reason to expend judicial resources to provide the SEC comfort. In any event, Mr. Musk is already under an order from this court to appear 'absent an emergency that [Mr. Musk] did not create and could not avoid.' Mr. Musk had to reschedule the September 10 testimony only as the result of such an emergency, as described above, and there is no reason to believe such an emergency will reoccur."

Counsel for Musk, Alex Spiro of Quinn Emanuel Urquhart & Sullivan LLP, told Law360 in a Friday email that the scheduling was no big deal. "The non urgent half day testimony was rescheduled for the critical rocket launch," Spiro said. "The last time the SEC went hysterically running into court they were told to 'put their big boy pants on.'"

Representatives for the SEC did not respond to a request for comment Friday.

The SEC is represented by Monique C. Winkler, Bernard B. Smyth and Robin Andrews.

Musk is represented by Alex Spiro and Rachel G. Frank of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Securities and Exchange Commission v. Elon Musk, case number 3:23-mc-80253, in the U.S. District Court for the Northern District of California.

--Additional reporting by Jessica Corso and Lauren Berg. Editing by Brian Baresch.
