Attorneys suing executives accuse Wells Fargo of withholding discovery

DJ dailyjournal.com/articles/381228-attorneys-suing-executives-accuse-wells-fargo-of-withholding-discovery

An attorney representing shareholders suing 14 current and former Wells Fargo executives for allegedly causing a $200 billion market cap loss accused the bank of withholding documents to block a "Caremark" claim, a San Francisco judge heard Tuesday.

The lawsuit claims the executive board caused financial losses and $5 billion in fines by mismanaging the bank and ignoring government regulations, harming shareholders.

The 2021 amended complaint references past consent orders against Wells Fargo for regulatory violations, including discriminatory lending, unauthorized insurance enrollments and cross-selling.

Tuesday's hearing on the plaintiffs' motion to compel arose from a dispute over Wells Fargo's documents tied to 2016 and 2022 consent orders.

Wells Fargo's attorneys have provided discovery for 2018-2021 enforcement actions but argue the 2016 and 2022 consent orders are irrelevant to the plaintiffs' claims and too costly to produce. *Himstreet et al. v. Scharf et al.*, CGC-22-599223 (S.F. Super. Ct., filed April 19, 2022)

The 2016 consent orders from the OCC and CFPB fined Wells Fargo $135 million for opening unauthorized customer accounts. The 2022 consent orders accused the bank of failing to meet obligations from previous enforcement agreements.

Robbins LLP partner Michael J. Nicoud called Wells Fargo's opposition to producing the documents "absurd," arguing it hinders his team's ability to pursue a Caremark claim, which holds corporate directors accountable for breaching their oversight duties.

"The complaint talks about the 2016 consent order. It is explicitly part of the complaint. It was explicitly part of the arguments before the court on demur, and it's part of the nebulous facts that goes to show a sustained, systemic series of failures that will suffice to establish a Caremark claim," Nicoud said. "They're going to say throughout this litigation 'this is not even close to a Caremark claim,' the most difficult theory under corporate law to win a judgment under and that's why they want to limit our ability to introduce evidence as to other things occurring in a series of events."

Wells Fargo attorney Oliver W. Engebretson-Schooley of Sullivan & Cromwell LLP argued that complying with the discovery request would "blow open" the scope of discovery.

"I want to emphasize; we're not being picky here. We're not disputing things at the margin or trying to be obstructionist," Engebretson-Schooley said. "We're talking about requests that would blow open scope of discovery, or in a very substantial way, and not because they specifically relate to the actual claims that are being litigated here, but because there's some sort of connection, because they relate to generally the same topic."

Superior Court Judge Andrew Y.S. Cheng took the matter under submission on Tuesday.

The defendants include current CEO Charles W. Scharf and former CEO Timothy J. Sloan, who resigned in March 2019 after nearly three years of attempting to restore the bank's compliance and public image.

Wells Fargo has spent the past decade battling securities and shareholder class actions in California courts. In May 2018, it settled for $480 million over the fake accounts scandal, and in November 2019, agreed to a $432 million settlement related to the auto insurance scandal. *Hefler v. Wells Fargo & Co.*, 16-cv-05479 (N.D. Cal. filed Sep. 26, 2016); *In re Wells Fargo Collateral Protection Insurance Litigation*, MDL No. 2797 (C.D. Cal. filed Oct. 5, 2017).

#381228

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Securities Law News

Oct. 1, 2024, 2:59 PM PDT

Fidelity National Investors Advance Worldpay Integration Suit

By Martina Barash

Bloomberg Law News 2024-10-02T10:16:3093223072-04:00

Fidelity National Investors Advance Worldpay Integration Suit

By Martina Barash 2024-10-01T17:59:58000-04:00

Fidelity National Information Services Inc. lost its bid to dismiss a proposed investor class action over the financial technology company's acquisition of payment processor Worldpay.

The investors adequately pleaded their securities fraud claims, Judge Timothy J. Corrigan said Monday for the US District Court for the Middle District of Florida. Their allegations allow a "reasonable inference that Fidelity's acquisition of Worldpay was unsuccessful and costly," that "Worldpay was losing substantial numbers of customers to competitors and thus losing market share," and that "Fidelity's executives lied to investors about all of this for years, resulting in a significant drop in the value of the investors' shares when the truth came out," he said.

- Fidelity ultimately recorded a $17.6 billion goodwill impairment charge for Worldpay and announced that it would spin the unit off, sending the share price down 12%, the investors allege
- A separate shareholder derivative suit is pending against Fidelity directors and executives in the same district

Labaton Keller Sucharow LLP is lead counsel for the investors. McGuireWoods LLP and Sidley Austin LLP represent Fidelity.

The case is Neb. Inv. Council v. Fid. Nat'l Info. Servs., Inc. , 2024 BL 343688, M.D. Fla., No. 3:23-cv-252, 9/30/24 .

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Securities Law News

Oct. 1, 2024, 11:24 AM PDT; Updated: Oct. 1, 2024, 1:31 PM PDT

Lordstown Leaders Escape Investor Suit Over Foxconn Troubles (1)

By Andrew Ramonas

- Investors did not properly claim they were duped, judge says
- Company filed for bankruptcy after failed Foxconn deal

Bloomberg Law News 2024-10-02T10:15:30592033015-04:00

Lordstown Leaders Escape Investor Suit Over Foxconn Troubles (1)

By Andrew Ramonas 2024-10-01T14:24:17000-04:00

- Investors did not properly claim they were duped, judge says
- Company filed for bankruptcy after failed Foxconn deal

A federal judge in Ohio has tossed a lawsuit from Lordstown Motors Corp. shareholders who said the electric-vehicle manufacturer's leaders deceived them about a failed partnership with Foxconn Technology Group.

The investors led by Andrew and Joshua Strickland failed to present sufficient allegations that Lordstown CEO Edward Hightower, Chief Financial Officer Adam Kroll and Executive Chairman Daniel Ninivaggi made material misstatements or omissions about the collapsed deal between 2022 and 2023, Judge Benita Y. Pearson of the US District Court for the Northern District of Ohio said in an opinion on Monday.

The officials misrepresented or omitted facts about a joint venture agreement with Foxconn to help design and develop vehicles, the shareholders said in an amended class action complaint filed in 2023. The executives suggested the partnership was viable, inflating Lordstown's stock price before the company filed for bankruptcy last year, the investors said. Lordstown emerged from bankruptcy in March as Nu Ride Inc.

The executives had urged Pearson to dismiss the case, telling the judge in February that the investors' lawsuit was "premised on a baseless theory of wrongdoing." Lordstown was "blindsided" by the Foxconn deal's collapse, the officials said.

“Defendants’ statements do not contain the sort of definite, material information needed to trigger a duty to disclose,” Pearson said in her opinion. “Instead, Defendants’ statements contain the kinds of generalities and reflections of ‘corporate optimism’ rejected by courts as actionable misrepresentations.”

A Nu Ride representative declined to comment. Lawyers for the investors didn’t immediately respond to requests for comment.

The lawsuit’s dismissal came after a series of legal setbacks for Lordstown this year.

The company in February reached a $25.5 million settlement with the Securities and Exchange Commission to resolve allegations it misled investors about the sales outlook for its Endurance pickup truck. Founder Stephen Scott Burns then agreed in March to pay the SEC $175,000 to settle claims he inflated demand for the Endurance.

The company in March also reached a $15.5 million settlement to resolve shareholder litigation challenging its special purpose acquisition company merger that was used to take it public in 2020.

The case is Lim v. Hightower , N.D. Ohio, No. 4:23-cv-01454, opinion filed 9/30/24 .

(Updates with Nu Ride representative declining to comment in paragraph six)

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Securities Law News

Oct. 1, 2024, 7:31 AM PDT

TransUnion Escapes Investor Claims of Ongoing Legal Violations

By Jennifer Kay

- Flawed compliance doesn't equal bad faith, judge says
- CFPB, TransUnion dispute is pending in Illinois federal court

Bloomberg Law News 2024-10-02T10:14:37681368901-04:00

TransUnion Escapes Investor Claims of Ongoing Legal Violations

By Jennifer Kay 2024-10-01T10:31:02000-04:00

- Flawed compliance doesn't equal bad faith, judge says
- CFPB, TransUnion dispute is pending in Illinois federal court

TransUnion succeeded Tuesday in exiting investor claims that the credit reporting agency's senior leaders violated consumer protection laws for years, even after public pledges to implement reforms.

The company has disagreed with a federal regulatory about certain details in a required consumer warning, but those were "minor interpretive differences" such as font size, phrasing, and the placement of a check box, Vice Chancellor Lori Will said in a 50-page opinion for the Delaware Chancery Court.

But it has taken steps toward compliance, which defeats claims of liability since the investor hasn't shown "facts showing a disloyal state of mind," she said. "Imperfect compliance is not bad faith."

The derivative lawsuit accused TransUnion's top executives of steering it into legal trouble by breaching the terms of a 2017 consent order with the Consumer Financial Protection Bureau. The complaint arose from a 2022 enforcement lawsuit the CFPB filed against TransUnion and a former top executive in Illinois federal court.

According to the Delaware complaint, the consent order required TransUnion to warn consumers that lenders don't usually rely on its credit scores, to get informed consent for recurring payments, and to make canceling subscriptions easier. The company also paid $14 million in restitution and $3 million in civil penalties.

But its leaders allegedly chose to stop adhering to compliance reforms because of declining revenue. CFPB investigators warned in 2020 that TransUnion was on thin ice, but the violations continued, according to the investor's complaint.

Since the complaint detailed "board-level engagement on legal compliance, which contradicts any inference of knowing failures to monitor reported risks," the investor argued the board's "awareness of flaws in compliance efforts suggests willful lawbreaking," Will said.

Regardless of the outcome of the Illinois lawsuit, the investor falls short of showing bad faith on the part of TransUnion's board, she said.

TransUnion's board is represented by Richards, Layton & Finger and Kirkland & Ellis. The investors are represented by Prickett, Jones & Elliott.

The case is In re TransUnion Derivative Litig. , Del. Ch., No. 2022-1103, 6/7/24 .

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MoneyGram Gets Dismissal of Suit Over Fraud Prevention Measures

B bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X6358528000000

A MoneyGram sign. Smith Collection | Gado | Getty Images

MoneyGram International Inc. investors failed to adequately allege that the payment transfer company misrepresented its compliance with fraud-prevention requirements, a federal court ruled.

The investors' allegations about intent, or scienter, by the company and its leadership "are uniformly cursory, generalized, and speculative," Judge Martha M. Pacold said Monday for the US District Court for the Northern District of Illinois. "They do not give rise even to a rough impression that defendants were acting with ulterior motives—much less a strong inference that any defendant made any particular statement with scienter," she said.

- The investors alleged that MoneyGram's services attract those who engage in fraud and that the company agreed to undertake fraud-prevention efforts under 2009 and 2012 agreements to end Federal Trade Commission and criminal investigations, respectively
- Most of the targeted statements about MoneyGram's compliance with those obligations weren't sufficiently alleged to be false, Pacold said
- The investors will get a chance to re-plead their proposed class action against the company, which was acquired by private equity firm Madison Dearborn Partners LLC in 2023

Pomerantz LLP is lead counsel for the investors. Grotefeld Hoffmann LLP, Norton Rose Fulbright US LLP, and O'Melveny & Myers LLP represent MoneyGram.
The case is Chew v. MoneyGram Int'l, Inc. , 2024 BL 344647, N.D. Ill., No. 18-cv-7537, 9/30/24 .

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Securities Law News

Oct. 1, 2024, 12:21 PM PDT

'Netflix of China' iQIYI Gets Investor Fraud Class Suits Tossed

By Ben Miller

- Judge dismisses two complaints against iQIYI and parent Baidu
- Investors alleged streaming service overstated IPO outlook

Bloomberg Law News 2024-10-02T10:16:05168911035-04:00

‘Netflix of China’ iQIYI Gets Investor Fraud Class Suits Tossed

By Ben Miller 2024-10-01T15:21:56000-04:00

- Judge dismisses two complaints against iQIYI and parent Baidu
- Investors alleged streaming service overstated IPO outlook

Chinese streaming giant iQIYI Inc. beat proposed investor class actions against the company and its parent Baidu Inc. tied to a public offering after a New York federal judge tossed the shareholder suits.

The investors failed to adequately allege fraud or to establish the companies’ motive for overstating revenue projections, Judge Diane Gujarati of the US District Court for the Eastern District of New York said in a Monday order granting the companies’ motion to dismiss the complaints.

The court in February had granted the investors’ bid to amend their complaints in the iQIYI and Baidu actions. But Gujarati dismissed both amended complaints Monday, citing their inadequate ability to show that the statements made by the “Netflix of China,” its ownership, or its underwriters were deliberately false or misleading.

She had requested more information on a stock drop allegedly linked to the claims in both cases, but the additional data was unable to keep the class action claims afloat, according to the order.

The share price of iQIYI fell more than 4% over two trading days following the release of an April 7, 2020, short-seller report from Wolfpack Research, which was cited heavily in the complaints.

The stock's price fell again by more than 11% on Aug. 14, 2020, the day after iQIYI issued a press release disclosing that the Securities and Exchange Commission had launched an inquiry into the company based on the Wolfpack report. That was the stock's biggest single-day decline in almost two years, according to data compiled by Bloomberg.

Investors' claims rely too heavily on allegations regarding iQIYI and Baidu's delay disclosing the SEC investigation, as well as a concurrent Nasdaq investigation, and don't sufficiently allege that defendants had a duty to disclose those investigations, Gujarati said in her ruling tossing the cases without leave to amend.

Labaton Keller Sucharow LLP and the Rosen Law Firm PA represent the plaintiffs and the proposed class.

Skadden, Arps, Slate, Meagher & Flom LLP represents iQIYI, Baidu, and the executive defendants. O'Melveny & Myers LLP represents the underwriter defendants.

The case is In re: iQIYI Inc. Sec. Litig. , E.D.N.Y., No. 20-cv-01830, 9/30/24 .

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Securities Law News
Oct. 1, 2024, 2:16 PM PDT

Macquarie Gets 2nd Cir. to Adjust Opinion on Surviving Claims

By Martina Barash

Bloomberg Law News 2024-10-02T10:17:06254141777-04:00

Macquarie Gets 2nd Cir. to Adjust Opinion on Surviving Claims

By Martina Barash 2024-10-01T17:16:27000-04:00

Macquarie Infrastructure Corp. successfully petitioned the Second Circuit to remove references to so-called scheme liability claims in the court's recent analysis of which shareholder claims against it survived US Supreme Court review.

The appeals court's amended opinion Tuesday responds to what Macquarie called an "inadvertent mistake" by the judges about scheme liability claims. The unsigned, unpublished order restates the panel's Aug. 19 holdings that securities fraud claims about the conglomerate's fuel oil storage business that are based on alleged "half-truths" can still proceed, but that claims for "pure omissions" can't.

- Lead investor Moab Partners LP's complaint didn't contain Rule 10b-5(a) and (c) scheme liability claims, and the Supreme Court said it wasn't addressing pure omissions under those claims because the district court hadn't done so, according to Macquarie's petition
- But the panel of the US Court of Appeals for the Second Circuit "evidently misread" that aspect of the Supreme Court's ruling, the conglomerate said
- Judges Pierre N. Leval, Reena Raggi, and Myrna Pérez issued the original and revised opinions.

Bernstein Litowitz Berger & Grossmann LLP represented Moab and the proposed class. Winston & Strawn LLP and Richard W. Reinthaler, who practices in Pinehurst, N.C., represented Macquarie and individual defendants. Steptoe LLP represented a unit of Macquarie, and Paul, Weiss, Rifkind, Wharton & Garrison LLP represented Barclays.

The case is City of Riviera Beach Gen. Emps. Ret. Sys. v. Macquarie Infrastructure Corp. , 2d Cir., No. 21-02524, unpublished 10/1/24 .

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India Investors Shrug Off Short Seller Hindenburg's Attack on Adani

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By Abhishek Vishnoi, Ashutosh Joshi and Anup Roy

(Bloomberg Businessweek) --

Adani Group headquarters in Ahmedabad, India.
Photographer: Sumit Dayal/Bloomberg

When New York short seller Hindenburg Research LLC accused the Adani Group of stock manipulation and accounting fraud last year, the Indian conglomerate's shares plummeted—raising concerns about whether the country's markets deserved their reputation as the next big thing. This summer, Hindenburg fired off another salvo, alleging that Madhabi Puri Buch, chair of the Indian market regulator, had a conflict of interest and had blocked a thorough probe into Adani.

But after a short period of hand-wringing in the wake of Hindenburg's Jan. 24, 2023, report, India's stock market has added $1.6 trillion in value and is neck and neck with Hong Kong's to be the world No. 4. The benchmark NSE Nifty 50 Index, poised to cap a record ninth year of gains, has generated a total return in excess of 250% in local currency terms since 2015. That's in large part because India is the world's fastest-growing major country, with the International Monetary Fund saying it will edge ahead of Japan and Germany to become the third-largest national economy by 2027.

Following the Hindenburg report, the Adani Group spent much of 2023 in damage control—paying down debt, delaying some capital expenditure and assuaging investor concerns through road shows across the world's financial hubs. Today it's expanding again, raising funds for projects such as a $10 billion chip plant near Mumbai and a seaport in Vietnam, and for the purchase of various other port operations around the globe. Hindenburg's report was "more of a short-term nuisance than a long-term hurdle to India's growth narrative," says Anirudh Garg, a partner at Invasset in Mumbai.

When Hindenburg released its 100-page report on Adani's sprawling empire, investors worldwide took notice. Hindenburg had built its reputation with successful bets against companies ranging from electric-vehicle maker Nikola Corp. to meme stock Mullen Automotive Inc. Adani was its biggest target by far, and the campaign marked a rare foray into India by a US short seller.

Hindenburg accused the conglomerate of "brazen" market manipulation and accounting fraud, calling it "the largest con in corporate history." The report alleged the Adani Group used a web of family-owned shell companies in tax havens to inflate revenue and manipulate stock prices. It claimed those entities facilitated corruption, money laundering and taxpayer theft while siphoning money from the group's publicly traded companies.

Adani Group chairman Gautam Adani (center) at a swearing-in ceremony for Indian prime minister Narendra Modi in June.
Photographer: Prakash Singh/Bloomberg/Getty Images

This summer, the Securities and Exchange Board of India, India's market regulator, wrote a letter to Hindenburg saying the report contained inaccuracies intended to mislead readers. Hindenburg responded with a missive of its own, calling out SEBI for inaction over Adani. Hindenburg declined to comment for this story.

In August, Hindenburg published a second report, saying SEBI chief Buch and her husband had invested in offshore funds linked to Vinod Adani, the group founder's brother. Buch acknowledges the investment, but she's denied any wrongdoing, saying she sold the investment in 2018, four years before her appointment as head of SEBI. The regulator says its rules require members to disclose any conflicts of interest, and Buch says she's always done so. The Adani Group says Vinod Adani has no role in any of its listed companies.

Securities and Exchange Board of India (SEBI) chairperson Madhabi Puri Buch.
Photographer: Ashish Vaishnav/SOPA Images/LightRocket/Getty Images

In early September, Hindenburg published a post on X saying Swiss prosecutors are investigating a person linked to the Adani Group for money laundering. Hindenburg cited court records showing that Switzerland has frozen more than $310 million as part of a yearslong probe. Although the documents were anonymized, the case involves Adani Group, according to a person familiar with the situation who asked not to be named discussing private information. Swiss prosecutors declined to comment.

Adani called the allegations regarding any Swiss probe "baseless," and investors seem to agree. Some Adani Group stocks dipped on the news, but their combined value is now higher than it was before Hindenburg's post. And even though India's economic growth has slowed somewhat and many investors fear India's shares have gotten overpriced, the benchmark stock index has continued to climb, notes Vikas Khemani, founder of Carnelian Asset Management & Advisors Pvt. Ltd. "The market," he says, "is taking their allegations with a pinch of salt."

—With Katherine Burton, Hugo Miller and Chiranjivi Chakraborty

Read next: Stock Market Mania Takes Hold Deep in Hinterlands of India

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THE NATIONAL LAW JOURNAL

U.S. District Court for the District of New Jersey in Newark, New Jersey. (Photo: New Jersey Historical Society)

Bitcoin Mining Company That Enlisted Davis Polk Beats Investor Class Action

"When you boil down allegations that involve matters in the crypto space and cut through the complexity, the basics of the U.S. securities laws still apply," said Edmund Polubinski, a partner at Davis Polk & Wardwell.

October 01, 2024 at 05:04 PM

4 minute read

Cryptocurrency

Michael A. Mora

The original version of this story was published on New Jersey Law Journal

What You Need to Know

- A bitcoin mining company was sued in a federal district court in New Jersey.
- The shareholders challenged the accuracy of the disclosures in the bitcoin mining company's initial public offering and several of its statements following the offering.
- The federal judge, in a 41-page memorandum opinion and order, ruled in favor of the bitcoin mining company.

A federal district court in New Jersey dismissed a putative federal securities class action, for now, against a bitcoin mining operations company and several of its officers and directors over allegations that they misled investors leading up to and following its initial public offering.

Partners Edmund Polubinski and Mari Grace, counsel David B. Toscano and associates Charlotte M. Savino, Paulina Perlin, Elaina Marx, Alyssa Metcalf and Paige Whitaker at the Am Law 20 law firm Davis Polk &

Wardwell represented the defendant, Iris Energy Ltd., along with its in-house counsel in the action brought by the lead plaintiff, Scott Sterling.

Edmund Polubinski, a partner at Davis Polk & Wardwell. (Courtesy photo)

"When you boil down allegations that involve matters in the crypto space and cut through the complexity, the basics of the U.S. securities laws still apply," Polubinski, who is based in New York, said in an interview. "Which is to say that the plaintiffs can't bring claims for violations of the U.S. securities laws unless they can identify an actual false or misleading statement."

Laurence Rosen of the Rosen Law Firm in Newark, New Jersey, did not respond to a request for comment.

Iris is organized under the laws of Australia and primarily uses renewable energy to power its mining operations. However, Iris does not hold bitcoin on its balance sheet. Its operations generate revenue by earning bitcoin through a combination of block rewards and transaction fees from mining and exchanging bitcoin for fiat currencies, such as the U.S. dollar, on a daily basis.

In October 2021, Iris filed a registration statement on Form F-1 with the U.S. Securities and Exchange Commission, which the SEC declared effective in November. The next day, Iris conducted the initial public offering, issuing shares to the public at $28 under the ticker symbol "IREN."

However, the plaintiff shareholders challenged the accuracy of Iris' disclosures in its IPO filings and several of its statements after it went public. The plaintiffs sought to recover their losses during the broad marketwide decline in the value of bitcoin in 2022, court records show.

To state a claim under Section 11 of the Securities Act, the plaintiffs must allege that they purchased securities pursuant to a materially false or misleading registration statement. For Section 12(a)(2) of the Securities Act, plaintiffs must allege that they purchased securities pursuant to a materially false or misleading "prospectus or oral communication."

The plaintiffs also alleged violations of Section 10(b) and Rule 10b-5 of the Exchange Act, which creates liability for false or misleading statements or omissions of material fact impacting trading on the secondary market. These claims require: "(1) a material misrepresentation or omission, (2) scienter, (3) a connection between the misrepresentation or omission and the purchase or sale of a security, (4) reliance, (5) economic loss and (6) loss causation."

Here, the plaintiffs alleged that Iris concealed risks in its IPO filings and other public disclosures, including about loans it obtained to fund data mining equipment. The plaintiffs also argued that Iris overstated its goodwill in its financials. The defendants, however, moved to dismiss the complaint in its entirety, arguing that none of the statements at issue was false or misleading.

Now, U.S. District Judge Jamel K. Semper of the District of New Jersey has granted the motion in a 41-page memorandum opinion and order that dismissed the complaint in its entirety.

In doing so, Semper agreed with the defense counsel that Iris had no duty to disclose every detail regarding its equipment loan financing and that the plaintiffs failed to allege anything misleading about Iris' disclosures.

Semper also held that, as a matter of law, many of the statements challenged by the plaintiffs were nonactionable opinions and forward-looking statements. He did not rule on additional counts largely because of the failure to prove these three cited statutes and rules.

"In this case, the clients at Iris were smart and critical in all of the best ways, and we worked probably more closely than I have ever worked with any other in-house lawyers on any similar motion," Polubinski said. "It wasn't always easy or convenient because they are located in Australia, but it was worth it."

Read the Opinion:

Case 2:22-cv-07273-JKS-MAH Document 72 Filed 09/27/24 Page 1 of 41 PageID: 1814

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SCOTT STERLING, individually and on behalf of all others similarly situated, Plaintiff, v. IRIS ENERGY LIMITED, DANIEL ROBERTS, WILLIAM ROBERTS, DAVID BARTHOLOMEW, CHRISTOPHER GUZOWSKI, MICHAEL ALFRED, J.P. MORGAN SECURITIES LLC, CANACCORD GENUITY LLC, CITIGROUP GLOBAL MARKETS INC., CANTOR FITZGERALD & CO., GALAXY DIGITAL PARTNERS LLC, COMPASS POINT RESEARCH & TRADING, LLC, and MACQUARIE CAPITAL (USA) INC., Defendants.	Civil Action No. 22-07273 **OPINION** September 27, 2024

SEMPER, District Judge.

NOT FOR REPRINT

https://x.com/AnnMLipton/status/1841498315118010693

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New Shareholder Primacy podcast w/ me and @activistinvestr ! This time, we talk 10(b) actions by shareholders of pre-merger SPACs, and the Tesla pay case (not that one - the other one)

Here on Apple:

From podcasts.apple.com

8:19 AM · Oct 2, 2024 · **410** Views

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Section 10(b) claims, TSLA director say-on-pay
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Visa hit with merchant class action after US Justice Dept antitrust lawsuit

reuters.com/legal/litigation/visa-hit-with-merchant-class-action-after-us-justice-dept-antitrust-lawsuit-2024-10-02

Mike Scarcella

By Mike Scarcella

October 2, 20248:48 AM PDTUpdated 2 hours ago

Credit card is seen in front of displayed Visa logo in this illustration taken, July 15, 2021. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights, opens new tab

Oct 2 (Reuters) - Visa (V.N), opens new tab is facing a new lawsuit from U.S. merchants over its payments network, adding legal pressure on the payment card giant after the U.S. Justice Department filed a major antitrust lawsuit against it last week.
Advertising and marketing company All Wrapped Up Signs and Graphix filed the proposed class action, opens new tab on Tuesday in federal court in Manhattan, marking the first private antitrust case piggybacking on the sweeping claims lodged by the Biden administration.

The merchants' lawsuit, like the Justice Department's case, accused San Francisco-based Visa of paying would-be rivals not to develop competing networks, and threatening merchants with higher fees if they try to use other platforms to process transactions.
"While merchants suffer, Visa profits," the new lawsuit said.

Visa did not immediately respond to a request for comment. The company has denied the Justice Department's claims and vowed to fight the government's case.

Dan McCuaig, an attorney for All Wrapped Up at Cohen Milstein Sellers & Toll, in a statement said "we look forward to vigorously representing a class of businesses harmed by Visa's anticompetitive practices."

A wave of private litigation often follows major government cases involving large companies, exposing them to potentially higher damages.

Florida-based All Wrapped Up said Visa's allegedly uncompetitive business practices allowed it to unfairly dominate the debit card market. The company said it seeks to represent a class of potentially hundreds of thousands of small and large businesses.

The lawsuit said Visa charges more than $7 billion in fees annually to merchants to process debit transactions.

The plaintiff's law firm, Cohen Milstein, long has represented gasoline retailers in Brooklyn federal court accusing Visa and Mastercard of imposing artificially high credit card interchange, or "swipe," fees to merchants.

The case is All Wrapped Up Signs and Graphix v. Visa, U.S. District Court, Southern District of New York, No. 1:24-cv-07435.

For plaintiff: Brent Johnson of Cohen Milstein

For defendant: No appearance yet

Read more:

Visa taps hardened D.C. duo to battle US monopoly lawsuit
US accuses Visa of monopolizing debit card swipes
Visa, Mastercard can likely handle settlement much bigger than $30 billion, judge says
Visa settles Discover unit's antitrust lawsuit over debit card network
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Reporting by Mike Scarcella

Lawyers say opponents are lying, judge calls one a fool in DNA test dispute

DJ dailyjournal.com/articles/381227-lawyers-say-opponents-are-lying-judge-calls-one-a-fool-in-dna-test-dispute

Civil Litigation

Oct. 2, 2024

Keller/Anderle asked for sanctions and repeatedly said Quinn Emanuel's representations to the court on behalf of its client were false. Quinn Emanuel partner Andrew J. Bramhall argued that its opponents are trying "to exclude some of the most relevant evidence in this case."

Attorneys for a Palo Alto biotechnology company, Guardant Health Inc., are accusing attorneys of a rival health care company of repeatedly lying to the court and asked a federal judge to dismiss counterclaims as a sanction. At one point, the judge called an attorney a fool for believing his witness.

The case pits Keller/Anderle LLP, representing Guardant, against Quinn Emanuel Urquhart & Sullivan LLP, representing genetic testing company Natera Inc.

In court filings, Keller/Anderle asked for sanctions and repeatedly said Quinn Emanuel's representations to the court on behalf of its client were false.

Quinn Emanuel partner Andrew J. Bramhall declined to comment Tuesday. But in court papers filed in July, he argued that Guardant and its lawyers are trying to "leverage a dispute about document searches ... into a reason to exclude some of the most relevant evidence in this case."

The dispute revolves around a Guardant third-party expert, Dr. Howard Hochman, and what he knew about a study, known as COBRA, focusing on the ctDNA tests for cancer. *Guardant Health Inc. v. Natera Inc.*, 21-CV-04062 (N.D. Cal., filed May 27, 2021).

"Dismissal of Natera's counterclaims is clearly justified given Natera's persistent false statements, concealment of relevant evidence, and failure to correct the record," Keller/Anderle partner Chase A. Scolnick wrote Friday in a supplemental memorandum in a motion for sanctions.

Scolnick, who declined to comment Tuesday, wrote that Natera's revelations prove that his proposed sanctions - which include a key demand of excluding all evidence from the COBRA study as well as monetary sanctions - are justified.

"Natera's representation to the Court on February 22, 2024, that Dr. Hochster had no 'inside information' or 'early access' to those results was knowingly false," he wrote in the motion, which was partially redacted.

"Moreover, the repeated statements in Natera's opposition to Guardant's motion for sanctions that Natera and its counsel 'certainly' did not know Dr. Hochster had obtained early access to the COBRA results in September 2023 were also knowingly false," Scolnick added.

Bramhall of Quinn Emanuel argued in court papers filed in July that Keller/Anderle and its client, Guardant are trying to exclude the failure of Guardant's assay to meet expectations in the national clinical trial. Bramhall called this "some of the most relevant evidence in this case."

"Guardant has tried to bury the significance of the COBRA trial for months," Bramhall added. "Guardant's repeated attempts to hide this extremely relevant evidence has been rejected each time before and must be rejected now."

Quinn Emanuel is due to file an opposition to the sanctions motion on Friday.

Guardant sued Natera in May 2021 for false advertising both under the Lanham Act and state law, as well as unfair business practices and unfair competition. Natera responded by filing a counterclaim against its rival.

Senior U.S. District Judge Edward M. Chen, an appointee of President Barack Obama, may be a tough audience for Natera during the sanctions hearing scheduled for Oct. 15. During a July 26 hearing, he grilled Quinn Emanuel partner Ryan S. Landes about why the company did not disclose about 70 documents between Hochster and COBRA.

"So, the simple explanation, Your Honor, Dr. Hochster testified to this in his deposition, is that he did not remember having these emails," Landes told the judge.

Chen asked if he "honestly believed that."

Landes said yes.

"Well, you're a fool," the judge replied, according to a transcript.

But he also told Scolnick that he was doubtful that the COBRA study should be excluded unless the results "were somehow tainted as a result."

The case is scheduled to go to trial next month.

#381227

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Judge Rejects Revlon's Bid to Dismiss Hair Relaxer Class Action

B bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X65M2EUC000000

A group of consumers who purchased and used allegedly toxic hair relaxer products from Revlon, Inc., L'Oréal USA Inc., and other hair product companies can proceed with their proposed class action, after a federal judge denied Revlon's motion to dismiss the proposed class action.

The US District Court for the Northern District of Illinois "will not determine the scope of who has a viable claim against Revlon as doing so would be to effectively rule on the same issue before another court," Judge Mary M. Rowland wrote in a Sept. 27 order denying Revlon's motions to dismiss the complaint. Rowland also rejected Revlon's argument that a class action would duplicate other litigation, since the "lawsuits are similar but not identical."

The suit claims a group of beauty companies sold hair products that increased the risk of uterine and ovarian cancer, and proposes a nationwide class of consumers who purchased the products, a "medical monitoring class" of "'all females residing in [particular states] who used Toxic Hair Relaxer Product(s) at least four times a year and have not been diagnosed with uterine or ovarian cancer,'" and similar statewide classes, according to the opinion.

The complaint came as Revlon was looking to exit Chapter 11 bankruptcy. The bankruptcy court set a deadline of April 11, 2023, for consumers with certain types of cancer or alleging they face an increased risk of such cancers to file claims against the company, and whoever missed the deadline "'shall be prohibited from participating in any distribution in these chapter 11 cases on account of [a] Hair Straightening Claim.'" Once Revlon's reorganization plan went into effect on May 2, 2023, it released the company from all claims prior to that date, the opinion said.

Revlon requested the court strike the class allegations, arguing the proposed class is overbroad, includes "class members who Revlon contends have not complied with the bankruptcy court's orders and Plan," and would duplicate other pending litigation. The company also sought to dismiss some of the named plaintiffs claims, alleging that "only five" of which filed a timely claim and complaint in compliance with the bankruptcy court's orders, the opinion said.

But Rowland denied Revlon's request to strike the class allegations, writing that although "the Court agrees that only class members with viable claims against Revlon as governed by the bankruptcy court's orders and Plan may assert class claims against Revlon," she would not determine the scope of who has a viable claim amid the pending claims in bankruptcy court.

The judge also denied Revlon's motion to dismiss the class action complaint, which the company argued was warranted given a pending complaint seeking relief for "personal injuries suffered due to Plaintiffs' use of Defendants' hair relaxer products," Rowland said.

"Although Plaintiffs assert some of the same causes of action in both suits, the underlying allegations are not identical," Rowland concluded.

Rowland also wrote that Revlon sought to dismiss some of the named plaintiff's claims "without support."

The plaintiffs' claims against Revlon, including those of the named plaintiffs, "may be deficient" if they did not follow the bankruptcy orders and Plan, "but certain exceptions may apply,"Rowland said.

"Revlon may re-raise this argument with evidentiary support at a later stage," she added.

Cliff Carlson Law, DiCello Levitt Gutzler LLC, Johnson Becker PLLP, and other represent the plaintiffs. Paul, Weiss, Rifkind, Wharton & Garrison LLP and Hawkins Parnell & Young LLP represent Revlon.

The case is In re Hair Relaxer Mktg. Sales Pracs. & Prods. Liab. Litig. , 2024 BL 341866, N.D. Ill., No. 1:23-cv-00818, 9/27/24 .

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False Claims Act's whistleblower provisions are unconstitutional, US judge rules

reuters.com/legal/government/column-false-claims-acts-whistleblower-provisions-are-unconstitutional-us-judge-2024-10-01

Alison Frankel

U.S. flag and Judge gavel are seen in this illustration taken, August 6, 2024. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights, opens new tab

Oct 1 (Reuters) - Over the last 20 years, the U.S. has routinely recovered upward of a billion dollars a year from False Claims Act lawsuits initiated by private whistleblowers who accuse defendants of defrauding the federal government. In 2023 alone, the U.S. took in more than $2.3 billion, opens new tab from hundreds of lawsuits initiated by private whistleblowers. A federal judge in Tampa, Florida, ruled, opens new tab on Monday that these whistleblowers wield unconstitutional power.

U.S. District Judge Kathryn Mizelle concluded that the whistleblower, or qui tam, provisions of the False Claims Act violate the Appointments Clause of Article II of the U.S. Constitution because whistleblowers exercise executive-branch power without accountability to the president.

Mizelle, a former clerk of U.S. Supreme Court Justice Clarence Thomas who was 33 years old when she was appointed by President Donald Trump in 2020, said False Claims Act whistleblowers are effectively acting as officers of the United States when they initiate and prosecute civil fraud lawsuits on behalf of the government.

The Appointments Clause requires such officers to be appointed by and accountable to the president, but False Claims Act whistleblowers meet neither of those criteria, Mizelle said, so they cannot litigate fraud claims on behalf of the government.

The judge was addressing just one case, a False Claims Act suit by a former Florida physician, Clarissa Zafirov, who accused her former employer and several other Florida health care providers of defrauding Medicare by misrepresenting patients' medical conditions. Mizelle granted a joint defense motion, opens new tab to toss the suit because of constitutional infirmities.
If other courts adopt Mizelle's reasoning, the implications could be huge.

Congress amended the False Claims Act in 1986 to give private whistleblowers a share of any recovery obtained in suits they initiate on behalf of the government. The amended law also allowed whistleblowers to continue litigating their lawsuits even if the U.S. Justice Department declined to intervene and take over the case.

Those amendments led to an explosion in the number of False Claims Act suits filed every year. The Justice Department evaluates every suit and typically intervenes in several dozen annually. It may also seek dismissal of burdensome or meritless cases, under a policy adopted in the Trump administration.

The rest of the False Claims Act suits — in which the government has neither taken over the litigation nor called for dismissal — are handled by a robust private bar that specializes in litigating whistleblowers’ lawsuits. Zafirov’s case is an example: The Justice Department declined to intervene in her case several years ago but her lawyers at Morgan Verkamp and other firms forged on.

It’s not clear from Mizelle’s opinion whether her constitutional analysis applies to all False Claims Act suits initiated by whistleblowers or just to suits in which the Justice Department has declined to intervene, leaving whistleblowers and their lawyers to prosecute their cases on behalf of the government. Those suits typically generate a relatively small percentage of the U.S. government’s total annual recovery from False Claims Act litigation.

Questions about the constitutionality of False Claims Act relators have been percolating quietly for decades but became more resonant after a 2023 dissent by Thomas in a Supreme Court case, opens new tab addressing the Justice Department’s authority to dismiss, opens new tab False Claims Act suits it initially declined to pursue.
Thomas criticized the “constitutional twilight zone” of the statute’s qui tam provisions, highlighting “substantial arguments that the qui tam device is inconsistent with Article II and that private relators may not represent the interests of the United States in litigation.”

Justices Brett Kavanaugh and Amy Coney Barrett said in a concurrence that they shared Thomas’ concerns about the constitutionality of the law and that the court should eventually grant review of the Appointments Clause issue.
After Mizelle heard oral arguments in the Zafirov case last April, she ordered additional briefing on the history of qui tam statutes. Both Zafirov, opens new tab and the Justice Department, opens new tab argued that the long and robust history of these statutes — which predate the founding of the U.S. and were among the first laws enacted by Congress — confirms that the False Claims Act’s whistleblower regime comports with the Constitution’s Appointments Clause. (The Justice Department appeared in Zafirov's case to defend that constitutionality of the statute.)
Mizelle ruled, however, that traditions rooted in English law must be carefully scrutinized to be sure they do not violate constitutional separation of powers doctrine.

“Simply put, the Constitution prevails over practice, especially when the text is clear and the practice is neither continuous nor challenged,” the judge wrote. “To accept Zafirov’s alternative Article II proposal — that historical existence equals constitutionality — would eviscerate longstanding Article II jurisprudence.”

Zafirov counsel Jennifer Verkamp declined to comment on Mizelle's ruling or any plans to appeal. The Justice Department did not respond to my query on the decision.

Zafirov received amicus backing , opens new tab from The Anti-Fraud Coalition. In an email statement on Mizelle's opinion, Jacklyn DeMar of TAF said the judge "ignored or mischaracterized precedent, as well as the venerable history of qui tam statutes," to reach an "outlier" conclusion that "breaks with years of precedent, including the decisions of every appellate court that has considered this question."
DeMar said that even after Thomas's 2023 dissent, other trial judges have continued to hold that False Claims Act whistleblowers are private citizens operating outside of the strictures of the Appointments Clause.

The Florida healthcare defendants in the Zafirov case, whose arguments were backed , opens new tab by the U.S. Chamber of Commerce, were represented by Foley & Lardner and O'Melveny & Myers, among other firms. In an email statement, Jason Mehta of Foley said Mizelle's "well-reasoned and considered order" recognized that private qui tam litigation has exploded beyond constitutional constraints.
"Unaccountable whistleblowers are able to bring years-long suits — in the government's name — even when the government does not necessarily agree or support their efforts," Mehta said. "This is not what the constitutional drafters intended when they drafted a constitution that prioritized and championed government accountability."

Read more:

Supreme Court dissent sparks new threat for False Claims Act suits
U.S. Supreme Court allows Justice Department to toss whistleblower cases , opens new tab
AG nominee Barr to back off previous attack on antifraud law: source
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Reporting By Alison Frankel

Alison Frankel
Thomson Reuters

It's Been Six Years Since Leissner Pleaded Guilty, But He Still Has Not Been Sentenced

fcpaprofessor.com/six-years-since-leissner-pleaded-guilty-still-not-sentenced

October 2, 2024

As highlighted in this prior post, in November 2018 the DOJ announced a Foreign Corrupt Practices Act and related enforcement action against Tim Leissner (the former Southeast Asia Chairman at Goldman Sachs) and others associated with Goldman Sachs for paying bribes to various Malaysian and Abu Dhabi officials in connection with 1Malaysia Development Berhad (1MDB), Malaysia's state-owned and state-controlled investment development company. Leissner pleaded guilty and was ordered to forfeit $43.7 million as a result of his crimes.

Nearly six years later, Leissner has not yet been sentenced.

According to the court docket, sentencing was set for the following dates – only to be rescheduled.

- January 17, 2019
- June 28, 2019
- June 11, 2020
- January 22, 2021
- August 18, 2021
- March 2, 2022
- July 6, 2022
- February 15, 2023
- September 6, 2023
- March 19, 2024
- September 11, 2024
- October 8, 2024

According to the court docket, Leissner is currently scheduled to be sentenced on May 29, 2025.

Elon Musk's Role in Reanimating the Far-Right Term 'Remigration'

bloomberglaw.com/bloombergterminalnews/bloomberg-terminal-news/SKP4R9DWRGG0

Oct. 1, 2024, 2:23 PM PDT

Reyhan Harmanci

Bloomberg Editorial

By Reyhan Harmanci

(Bloomberg Businessweek) --

Photo illustration by 731. Photos: NASA (1), Getty Images (3)

Listen and subscribe to Elon, Inc. on Apple, Spotify, iHeart and the Bloomberg Terminal.

Omny Studio: 'Remigration' Takes Flight on X, The ...

As we've previously discussed here on Elon, Inc., the billionaire's posts on X have grown more and more political—and right wing—over time. This week, we have Bloomberg's Jonathan Tirone with us to discuss how Elon Musk, and his platform, have brought the once-obscure, White nationalist term "remigration" back into US politics. Then, tech reporter Kurt Wagner talks to Jack Sweeney, the young man who made a flight tracking service Musk personally de-platformed. Plus: Tesla seems poised to uncork some good news about its sale numbers in front of next week's big Robotaxi event.

- The term "remigration" has become more prominent thanks to a far-right Austrian by the name of Martin Sellner. Though banned from most platforms, Sellner's X account was re-instated by Musk this past year. Remigration is not strictly defined, but according to Austria's Freedom Party, it exists as a policy to deport people who do not fit into the "dominant culture." It aligns in some ways with Donald Trump's often racist statements about mass deportation.
- Of all social media posts mentioning "remigration," data shows that the proportion of US-based posts has grown exponentially—from 4.7% in January to 15.5% in August to a whopping 58% in September. Much of that posting is happening on X.
- Over in the US, Musk has been spreading a bunch of falsehoods about immigration as part of lengthy posts—more than usual.

- But in the world of Tesla, Bloomberg's reporting indicates the latest Tesla delivery figures will show a year-over-year increase, among signs that sales have improved in China. The timing is good for Musk, as the Robotaxi event looms large for investors.
- For Sweeney, the proprietor of ElonJet tracker, life has been filled with… college. He was a teenager when he first made the @elonjet account, which tracked the movement of Musk's private airplane. It was something Musk famously hated, and Sweeney was kicked off of Twitter after Musk bought it.
- Musk wasn't the only celebrity who was irked to see their comings-and-goings shared online through publicly available flight data. Taylor Swift also sent legal letters while Mark Cuban offered basketball tickets and friendship to get Sweeney to stop. Sweeney seems to have taken this blowback in stride, as journalists and other gawkers have found his feeds to be enormously helpful.

About the show: Each week, listen in as host David Papadopoulos (and sometimes Max Chafkin) convenes a panel of Bloomberg journalists tracking Elon Musk's companies and the surprising ways they intersect, breaking down his latest moves and what they could mean for us all.

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Tesla Inc

Tesla's quarterly deliveries miss expectations despite 6% rise

Company retains its position as the top electric vehicle maker but shares weaken

Tesla delivered 462,890 vehicles globally in the three months to September © Cheng Xin/Getty Images

By **Kana Inagaki** in London, **Stephen Morris** in San Francisco and **Gloria Li** in Hong Kong 19 SECONDS AGO

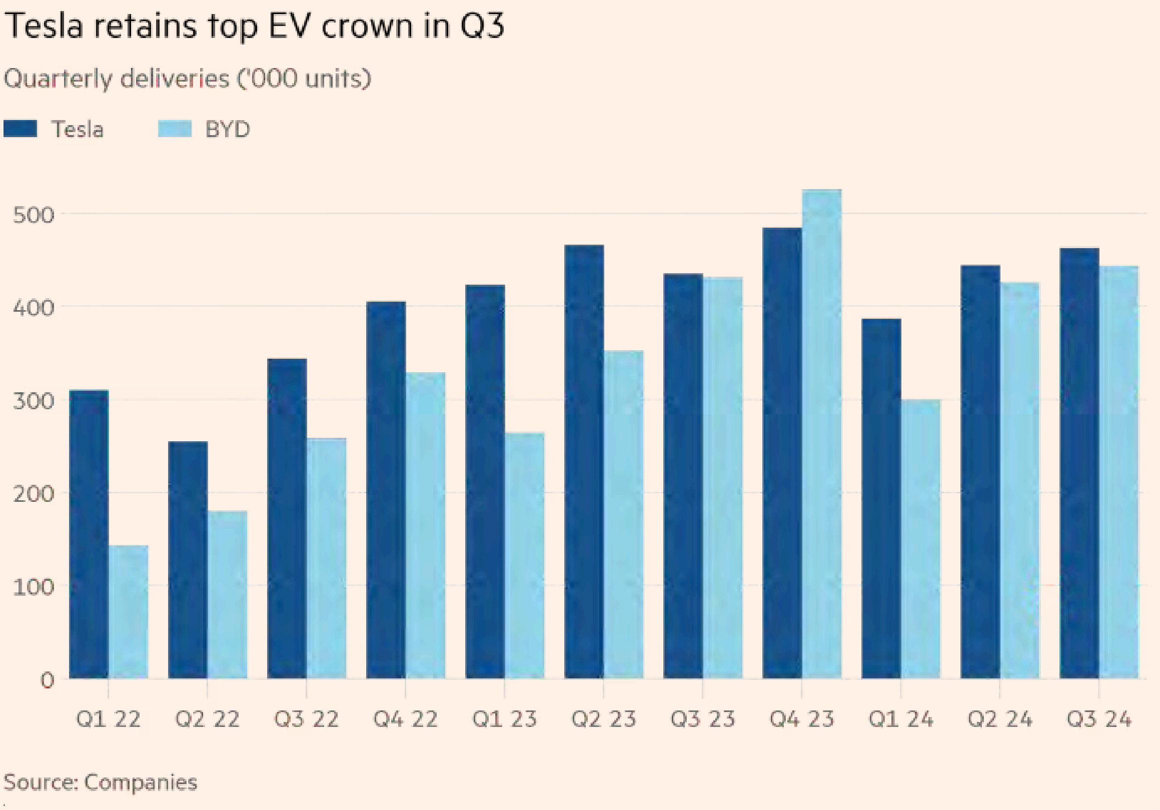
Tesla's quarterly vehicle deliveries fell short of market expectations, damping hopes for a robust rebound on the back of a recovery in Chinese car demand.

The company delivered 462,890 vehicles globally in the three months to September, up 6.4 per cent from a year earlier. The increase was the first this year but missed Wall Street expectations for 463,000 vehicles. That pushed down its shares by more than 6 per cent on Wednesday.

However Tesla retained its position as the top electric vehicle maker. This week, China's BYD reported that third-quarter deliveries of EVs totalled 443,426 — a 2.7 per cent rise from the previous year.

The gain in battery-powered cars was modest for BYD but the group reported a 75.6 per cent increase in the sales of plug-in hybrids after it unveiled its latest hybrid technology in May.

Growth in EV sales has slowed globally but prospects in China, the world's largest car market, have improved after Beijing in July doubled the subsidies offered to consumers who switched from a petrol vehicle to an EV or a plug-in hybrid.



Tesla did not provide a geographical breakdown of its deliveries, but industry data and analyst forecasts show that sales were weak in Europe while deliveries in China were up nearly 25 per cent compared to the previous quarter.

In recent weeks, analysts said there was growing enthusiasm among investors that a boost in Chinese demand would allow the Austin-based company to beat market expectations.

For much of the past two years, Tesla has wrestled with increased competition from the cheaper offerings of EVs as well as plug-in hybrids from Chinese rivals, forcing it to slash prices on some of its models including lease prices.

Mercedes-Benz and Porsche have also recently warned of lower than expected profits as sales of luxury cars in China have been hit by sluggish consumer spending.

Barclays analyst Dan Levy said in a note that the miss in Tesla deliveries appeared to have been led by weakness in its premium Model S and X vehicles. The Cybertruck, an off-roader that was launched last year, and which has suffered from manufacturing issues and faulty part recalls, also affected the numbers.

The rising expectations for higher deliveries had also come as Tesla prepared to unveil its first "robotaxis" — a fleet of self-driving taxis — next week in an event Elon Musk described as "one for the history books".

Musk has made a radical strategic pivot towards autonomous driving, artificial intelligence and robotics, telling investors that these technologies would be Tesla's main revenue sources and drive up its valuation.

But there are concerns over how and when the company will monetise its autonomous taxis with uncertainties around the technology itself, insurance coverage, vehicle cost as well as the regulatory environment.

Tom Narayan, an analyst at RBC Capital Markets, said the focus was now on the new opportunities for Tesla from the "robotaxi" and its self-driving software, known as full-self driving, or FSD.

"I don't see robotaxis being ubiquitous for several years, if not maybe even decades," Narayan said. "But the reason why it's so exciting is . . . when it happens, it has the potential to dramatically increase the size of the auto industry."

https://www.wsj.com/business/autos/tesla-reports-first-rise-in-quarterly-deliveries-this-year-5fe6bcd5

BUSINESS | AUTOS

Tesla Reports First Rise in Quarterly Deliveries This Year

Results put pressure on the electric-car maker to deliver standout fourth quarter to top the 1.8 million vehicles sold in 2023

By Becky Peterson Follow

Updated Oct. 2, 2024 10:36 am ET

Tesla delivered 462,890 vehicles during the July-to-September period. PHOTO: JOHN G MABANGLO/SHUTTERSTOCK

Tesla's TSLA **-3.76%** ▼ global deliveries rebounded in the third quarter, reversing earlier declines this year that had stoked concerns on Wall Street about the company's ability to grow its car business.

The world's most valuable automaker delivered a total of 462,890 vehicles during the July-to-September period, roughly in line with analysts' expectations. The result was a 6.4% increase over the third quarter last year, when its sales were affected by factory upgrades, which paused production.

The company's quarterly sales were in part lifted by strong performance in China and financing deals offered during the period to counter the impact of high interest rates globally.

The total for the first nine months is still trailing last year's performance, putting pressure on Tesla to deliver an even higher number of vehicles in the fourth quarter to beat results in 2023.

Tesla's stock was down 5% in morning trading Wednesday, following the deliveries release. The automaker's shares have bounced back in recent months, after tumbling in the first part of 2024 due to declining sales. The stock was up 3.8% this year, as of Tuesday's close.

The company plans to report third-quarter earnings on Oct. 23.

The electric-car pioneer has struggled with a pullback in demand for its models, some of which haven't been fully redesigned in years. Competition is also stiffening in the EV space, with rival automakers releasing a barrage of new battery-powered offerings, many of which are already selling with steep discounts as unsold inventory has stacked up.

U.S. auto sales overall fell slightly in the third quarter as elevated sticker prices and affordability challenges weighed on consumer demand. On Wednesday, Jeep-maker Stellantis reported a 20% drop in its U.S. sales, a much steeper decline than the broader industry, while Ford Motor posted a 1% rise in quarterly results.

Tesla's year got off to a difficult start. In the first quarter, it posted its first year-over-year decline in deliveries since 2020. Its performance continued to slide in the second quarter, with the automaker reporting a 6.5% drop in global deliveries for the first half of 2024.

As Tesla's sales have faltered, Chief Executive Elon Musk has sought to refocus investor attention on the company's big bets in robotics and artificial intelligence, technologies he has claimed could one day boost the automaker's market value to as high as $30 trillion.

On Oct. 10, Tesla is scheduled to unveil a prototype of a fully autonomous robotaxi—a model that Musk has talked about for years—and provide more details about a forthcoming ride-hailing service.

The company has said it plans to spend $10 billion on artificial-intelligence research this year across projects that include its Dojo supercomputer and development of its Optimus humanoid robot.

Such investments are largely funded by Tesla's car business, which in recent quarters has faced several challenges. More broadly, demand for electric vehicles has slumped in the U.S., after a sharp uptick in sales during the pandemic. Tesla is also facing tougher competition in China, where homegrown rivals, such as BYD, have tightened their grip on the country's electric-vehicle market.

Tesla started delivering its newest model, the Cybertruck, in late 2023. Currently, the company only sells the top-end versions of the electric pickup, which start at about $100,000. That approach has limited their customer base.

Investors hope Musk will reveal plans for a long-anticipated $25,000 model this month. In April, the Tesla CEO told investors that the company would provide more information on a future low-cost car at the robotaxi event.

Tesla started delivering its newest model, the Cybertruck, in late 2023. PHOTO: M. SCOTT BRAUER/BLOOMBERG NEWS

Musk has also said the company aims to increase its global deliveries this year, topping the 1.81 million vehicles it sold in 2023.

For the first three quarters of this year, Tesla has delivered a total of 1,293,656 vehicles.

To put it ahead of last year's delivery results, it would have to sell roughly 515,000 vehicles in the fourth quarter, much higher than the 485,000 deliveries that analysts are forecasting.

While Tesla is still the top EV seller in the U.S., its market share has slipped in recent years.

The company accounted for nearly 44% of all electric vehicles sold in the U.S. in August, compared with around 50% of sales during the same period a year prior, according to Motor Intelligence data.

To win customers over, Tesla has leaned into frequent price cuts and offered aggressive promotions, such as interest rates as low as 0.99% for financed purchases. These deals have cut into the company's operating margins and affected revenue.

Speaking to investors in July, Tesla Chief Financial Officer Vaibhav Taneja said the automaker started to offer "extremely competitive" financing to customers to offset high interest rates and noted that affordability was a chief concern for potential customers.

Write to Becky Peterson at becky.peterson@wsj.com

Videos

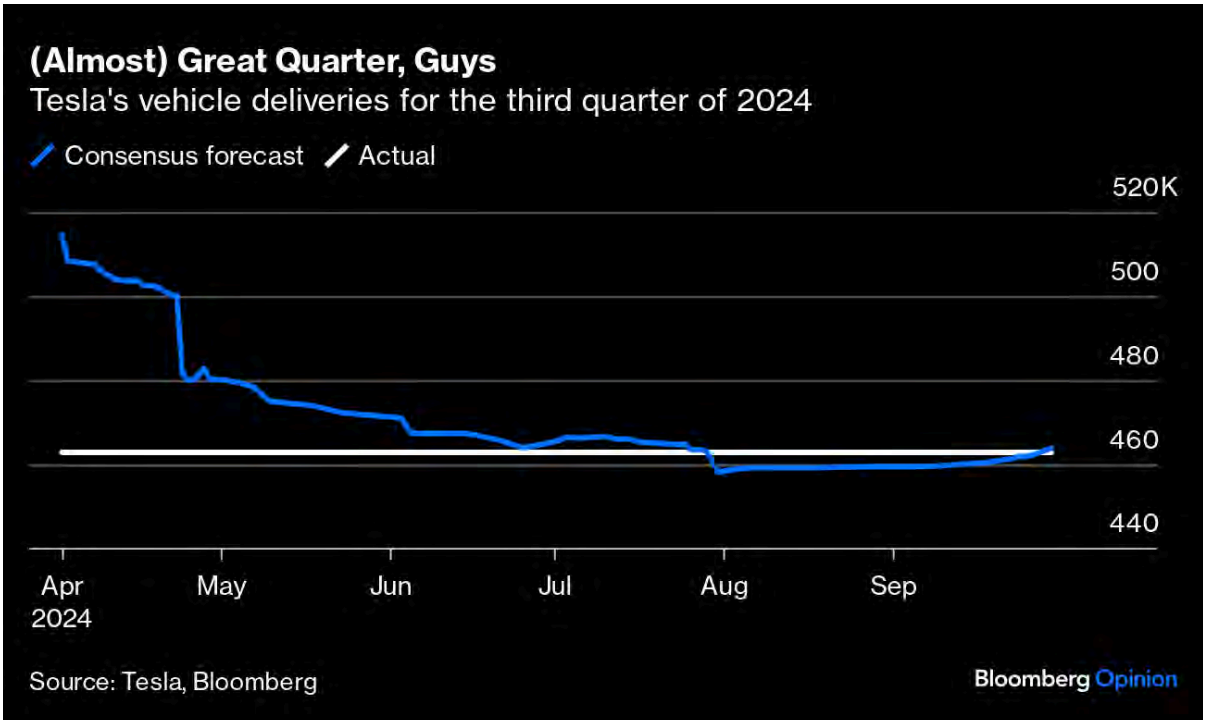
Tesla Really Needs Musk's Robotaxis to Live Up to the Hype

By Liam Denning

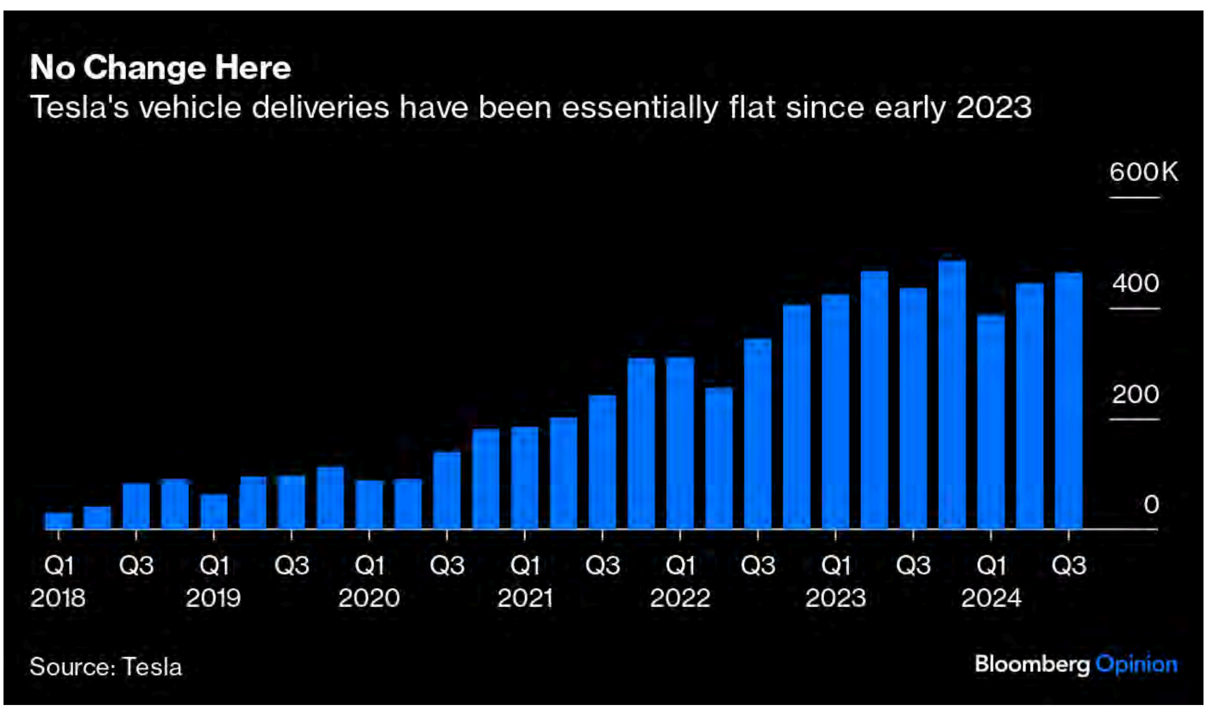
(Bloomberg Opinion) --

Look away.
Photographer: Apu Gomes/Getty Images North America

Guys, you were so close. If it wasn't for that last little bounce of Wall Street optimism on the last day of September, Tesla Inc.'s latest sales figure would have beaten estimates — just.



The more pertinent bit of that chart is actually the yawning gap on the left, tracing the steady drop in expectations for Tesla's core business. For all the talk this past week of Tesla's sales in China maybe pushing the quarter's total to 470,000 — reflected in that uptick in the consensus forecast — the obvious rejoinder is: Who cares? Even if Tesla had reported that number, which would also have been way below what was expected earlier this year, take a look at the chart below and ask yourself if it would have changed the fundamental picture here.



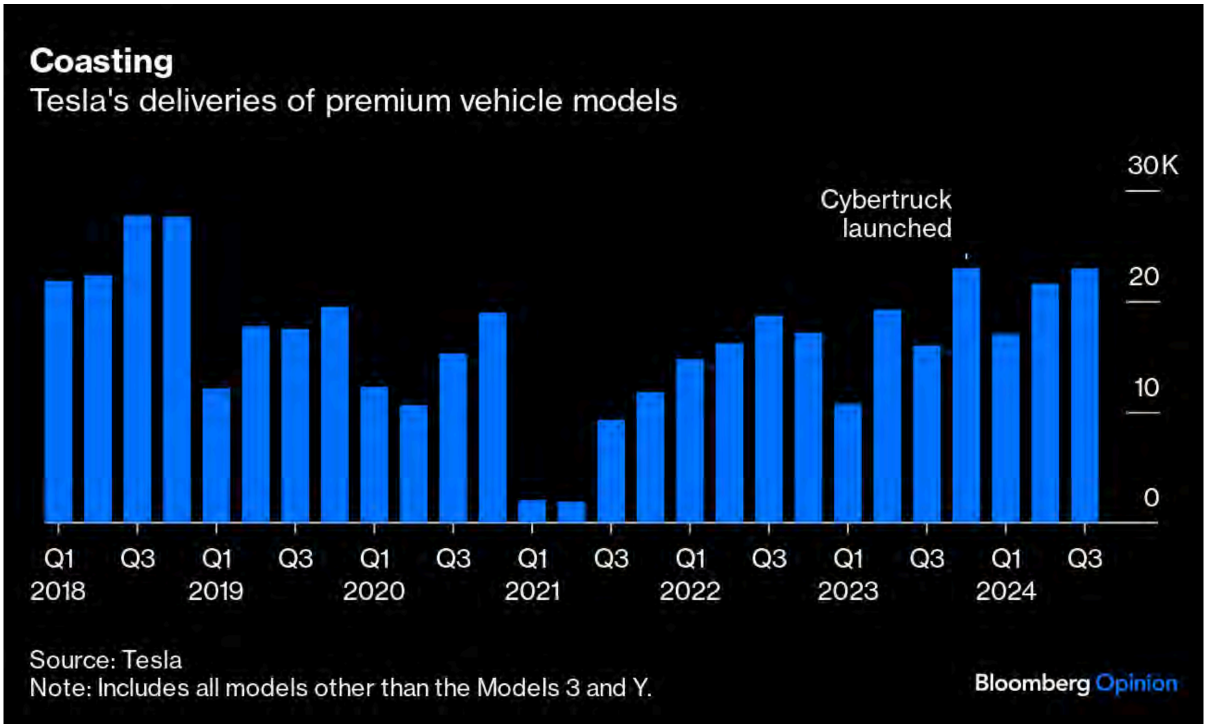
It wouldn’t have, putting all the more focus on the much-hyped Oct. 10 event where Chief Executive Elon Musk is expected to unveil “robotaxi” prototypes.

Bulls will cite the fact that deliveries were up 6%, year over year. Recall, however, that Tesla said it was held back by factory downtime in the third quarter of 2023, flattering any increase. Some other numbers also set that 6% in context. Through the first nine months of the year, sales are down 2%. In order to hit the consensus figure for annual sales, Tesla now needs to deliver just shy of 499,000 vehicles in the final quarter, which would mean reaching a new record — and even then, annual sales would be below the level of 2023.

Assuming Tesla maintained its average selling price — which may be generous given continued discounting — these numbers imply revenue from auto sales of just over $20 billion in the third quarter. That would be up 5%, year over year, but actually lower than in the final quarter of 2022, almost two years ago, when Tesla sold about 60,000 fewer vehicles. [1]

There are two other noteworthy aspects to Wednesday’s figures. First, Tesla produced almost 7,000 vehicles more than it sold, reversing the liquidation of inventory that happened in the second quarter. For the 11 quarters since the start of 2022, Tesla has built more vehicles than it sold in eight of them, adding up to almost 113,000 excess vehicles overall. We can expect this to hit cash flow when Tesla reports full results three weeks from now.

Second, despite launching the Cybertruck in late 2023, sales of premium models haven’t taken off; third-quarter deliveries were actually slightly lower than in the fourth quarter of 2023, when Tesla added the angular beast to its higher-priced lineup. Possibly, in an autos market struggling in general with the rising cost of vehicle ownership, at least some $100,000 Cybertruck sales have cannibalized those of the Model S and X.



At best, Tesla looks set for another quarter of stagnant financials in its EV business. As in the second quarter, we can probably expect the company to have sold a lot of its hoard of greenhouse gas credits to shore up earnings — that is, rely on green subsidies (despite Musk's ever more strident right-wing posturing).

Growth in battery EV sales has slowed in general and competition is rising, epitomized by the recent release of Nio Inc.'s latest Onvo electric SUV in China, priced 17% below a comparable Model Y, and General Motors Co.'s sub-$30,000 (after subsidies) Chevy Equinox EV on Tesla's home turf. Above all, therefore, take it as read that Tesla's robotaxi event next week will see Musk lean even harder into the narrative of self-driving vehicles, artificial intelligence and robots. How else to justify the dissonance of a stock priced at 99 times forward GAAP earnings for a company that has been essentially flatlining for almost two years.

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1. These figures exclude vehicles delivered under leases (3% of the total). That implies about 449,000 vehicles sold outright in the quarter. Assuming an average selling price of $44,775 -- flat with the second quarter -- this implies automotive sales of $22.1 billion. In the fourth quarter of 2022, Tesla delivered 405,278 vehicles, of which 390,094 were sold excluding leases. The company's automotive sales revenue that quarter was $20.7 billion. These figures aren't adjusted for sales of greenhouse gas credits.

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Amgen Must Face Suit It Misled Investors On $10.7B Tax Bill

By **David Hansen**

Law360 (October 1, 2024, 6:44 PM EDT) -- Amgen lost an attempt to escape a potential class action claiming the pharmaceutical giant hid a $10.7 billion tax bill from investors after a New York federal court ruled there was sufficient evidence for the action to proceed.

The company used vague descriptions such as "significant" and "substantial" when referring to the tax liability against it, concealing the true nature of the dispute, Judge John P. Cronan said in his **order** Monday dismissing Amgen's motion to dismiss. He likened the company to a child who told his parents he had dessert when in fact he consumed an entire cake.

Roofers Local No. 149 Pension Fund **filed suit** in 2023 alleging Amgen was legally required to tell investors about its outstanding tax liabilities by the start of the class period. But instead, Amgen failed to reveal how much it potentially owed to the U.S. government in a dispute over transfer pricing, causing its stock to trade at artificially high prices until the truth came to light, the pension fund said.

Judge Cronan determined in 2023 that the Asbestos Workers Philadelphia Pension Fund's alleged losses of $100,000 were the largest in the class and appointed the fund as lead plaintiff.

Amgen sought to **dismiss** the action, arguing it had no duty to disclose the amounts in proposed taxes and fines when it had disclosed the amounts were "substantial." The shareholders argued in their opposition brief that Amgen had a duty to tell the "whole truth" of the tax dispute.

Judge Cronan sided with shareholders, saying in his order that Amgen acted at least recklessly in withholding the true scope of liability.

"Defendants' omission of the $10.7 billion potential liability or other information from which investors could accurately assess the true nature of the IRS dispute concealed the extent of the risk the company was facing, making its use of vague qualifiers like 'significant' and 'substantial' plausibly misleading," he said.

"Given the sheer size of the potential liability, investors were entitled to a greater degree of clarity once defendants chose to speak on the matter," he added.

Representatives of Amgen and the pension funds did not respond to requests for comment.

The Asbestos Workers Philadelphia Pension Fund is represented by David A. Rosenfeld, Mark Millkey and Evan Jay Kaufman of Robbins Geller Rudman & Dowd LLP.

The Roofers Local No. 149 Pension Fund is represented by Brian Cochran and Samuel Howard Rudman of Robbins Geller Rudman & Dowd LLP.

Amgen and the other defendants are represented by Jay B. Kasner, Peter B. Morrison and Tansy Woan of Skadden Arps Slate Meagher & Flom LLP.

The case is Roofers Local No. 149 Pension Fund et al. v. Amgen Inc. et al., case number 1:23-cv-02138, in the U.S. District Court for the Southern District of New York.

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Arkansas AG Says YouTube Addicts And Harms Youth Users

By **Mike Curley**

Law360 (October 1, 2024, 4:50 PM EDT) -- The Arkansas attorney general has sued YouTube LLC, Google LLC and their parent company in state court, alleging that the YouTube platform is deliberately designed to addict youth users and shows them harmful content, leading to a mental health crisis that has cost the state hundreds of millions of dollars.

In a **complaint** filed Monday, Attorney General Tim Griffin also named as defendants Alphabet Inc., parent company to Google and YouTube, and XXVI Holdings Inc., which manages Google as a subsidiary of Alphabet. He alleged that YouTube's business model and algorithms are designed to keep users from leaving the site, while raking in money at their expense through advertising and personal data collection.

The 40-page complaint alleges that features like the recommendations algorithm and autoplay exist to keep users addicted by always giving them something new to watch and stopping only when a user makes the choice to press stop, leading to sleep deprivation, with youths particularly at risk.

In addition, the site uses "intermittent variable rewards," such as likes, notifications and other engagement, to keep youths addicted with positive reinforcement, according to the complaint, which said that minors have not yet developed the kind of self-regulation that would keep them from becoming addicted.

"YouTube has deceived users and parents about the safety of its platforms for youth," Griffin said in a statement Monday. "YouTube has profited substantially off young Arkansans because it deliberately designed its platform to be addictive by using features to keep users engaged for as long as possible."

The complaint further alleges that YouTube's age verification is faulty, requiring only an email address and date of birth that the site does not independently verify, and the algorithms can push youth users toward harmful content, such as content that encourages self-harm, and sexually explicit material, including child sex abuse materials.

"One of the gravest public health threats to children in the United States today is the soaring rate of mental and behavioral health disorders, including depression, self-harm, body dysmorphia, and increased suicidal thoughts and attempts at suicide," Griffin said in the statement. "This increase in mental health problems among children is the result of calculated efforts by social-media companies like YouTube to attract and addict youth to their platforms and to grow revenues without regard for the harmful effects that these companies know exist."

The complaint includes claims for violations of the state's public nuisance law and the Arkansas Deceptive Trade Practices Act, as well as claims of unjust enrichment. It seeks statutory and other damages, and orders blocking the companies and their agents from continuing their allegedly harmful practices.

A Google spokesperson told Law360 on Tuesday: "Providing young people with a safer, healthier experience has always been core to our work. In collaboration with youth, mental health and parenting experts, we built services and policies to provide young people with age-appropriate experiences, and parents with robust controls. The allegations in this complaint are simply not true."

The state is represented by Tim Griffin, Charles J. Harder, Matthew M. Ford and Brittany Edwards of the Arkansas Attorney General's Office, Aelish M. Baig, Taeva C. Shefler, Snehee S. Khandeshi, Stuart A. Davidson, Nicolle B. Brito and Ana S. Avalos Cuellar of Robbins Geller Rudman & Dowd LLP, W. Mark Lanier, Alex J. Brown, Zeke DeRose III and Rebecca L. Phillips of The Lanier Law Firm, and Brian Reddick, Matthew Swindle and Heather Zachary of Reddick Law PLLC.

Counsel information for the defendants was not available Tuesday.

The case is State of Arkansas v. Alphabet Inc. et al., case number 54CV-24-258, in the Circuit Court of Phillips County, Arkansas.

--Editing by Robert Rudinger.

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Boeing Can't Escape Investors' 737 Max Fraud Suit

By **Katryna Perera**

Law360 (October 1, 2024, 6:49 PM EDT) -- An Illinois federal judge trimmed but refused to toss a proposed securities class action against Boeing over claims that it harmed investors by misrepresenting the 737 Max's safety, pushing back against defendants who wanted him to reach the same conclusion as the suit's previously assigned judge.

U.S. District Judge Franklin U. Valderrama issued an **opinion and order** on Monday rejecting Boeing and the individual defendants' argument that he must reach the same findings as U.S. District Judge John Tharp Jr., who dismissed many of the investors' claims in 2022 when he was assigned to the suit.

Judge Valderrama said that while the law of the case doctrine "discourages" new judges from reconsidering rulings made by a case's original judge, it is not a "rigid bar." He added that the doctrine does not apply when the issues presented differ from those decided earlier.

"Plaintiffs filed an amended complaint. An amended pleading supersedes all prior pleadings, and therefore the court must take a fresh, i.e., de novo, look at whether the allegations in the amended complaint state a claim," the opinion states. "Defendants ignore the fact that plaintiffs have included dozens of new allegations in the amended complaint."

The case was reassigned to Judge Valderrama in July, according to the court docket.

In reviewing the amended complaint, Judge Valderrama found Monday that many of the suit's claims of misleading statements, scienter and loss causation were plausibly pleaded. But he tossed some statements, finding that they were inactionable as corporate puffery or too vague. He also dismissed Boeing's former chief financial officer, Gregory Smith, from the suit entirely.

Some of the statements that Judge Valderrama cut from the suit spoke to Boeing's commitment to safety, such as "safety is a core value for us at Boeing" and "we are confident in the safety of the 737 MAX[.]" The judge said these statements were too vague to be considered material to a reasonable investor in the total mix of information at the time.

The only statement in the suit attributed to Smith related to Boeing's return to service projections after the 737 Max was **grounded globally** for 20 months after being involved in the Lion Air crash in the Java Sea, which killed 189 people, and the March 2019 crash of Ethiopian Airlines Flight 302 that killed 157 people.

According to the opinion, Smith stated that Boeing was working with regulators and "ensuring that we're answering all the questions, addressing any concerns that are taking place," and confirmed that "[t]here's a lot of progress that's been made."

"Smith's statement that there was 'a lot of progress' is the kind of vague optimism that cannot be construed as a misrepresentation that would have been material to a reasonable investor," the judge said. "Because this is the only statement plaintiffs allege defendant Smith made, defendant Smith is dismissed from this action."

After Boeing developed a software fix and enhanced pilot training, the Federal Aviation Administration **lifted the U.S. grounding order** for the 737 Max in November 2020. The European Union Aviation Safety Agency lifted its 737 Max grounding order in January 2021.

Judge Tharp **ruled in 2022** that alleged misrepresentations about the 737 Max that followed the Ethiopian Air crash could be kept in the suit, but he tossed all statements that were made prior to the March 2019 crash. On Monday, however, Judge Valderrama revived the investors' claims related to statements made surrounding the October 2018 crash of Lion Air Flight JT 610 as well as between the two crashes, including some that touted the 737 Max's safety.

The judge also found, contrary to Judge Tharp's ruling, that the investors had included new, sufficient allegations in the amended complaint about what the defendants knew when they made the challenged statements.

According to the opinion, the amended complaint raises a strong inference of scienter that Boeing and its former president and CEO, Dennis Muilenburg, knowingly or recklessly issued statements directing flight crews to existing procedures when they did not have a reasonable basis to do so, and had knowledge that the FAA instructed Boeing to make significant changes to the software of the 737 MAX for safety purposes, among other things.

Additionally, the investors have alleged a strong inference of scienter of the other named defendants who were responsible for preparing and approving statements made by Boeing, since they all either attended meetings of Boeing's Safety Review Board or were kept apprised of the board's investigation findings.

The investor plaintiffs spearheading the **five-year-old suit** called Boeing's 737 Max debacle "an appalling example of cynical decision-making that valued short-term monetary gain over long-term corporate success and even over human lives." And by repeatedly doubling down on their false assurances about the 737 Max's safety, Boeing erased tens of billions in shareholder value during a class period that spanned from Nov. 7, 2018, to Dec. 16, 2019, the investor plaintiffs have alleged.

In a phone call with Law360 on Tuesday, Salvatore Graziano of Bernstein Litowitz Berger & Grossmann LLP, counsel for the investors, said Judge Valderrama's ruling "is a very important decision in the most important securities case I've ever worked on. We look forward to resuming discovery and vigorously prosecuting the case."

Counsel for the defendants did not immediately respond to requests for comment on Tuesday.

The investors are represented by Salvatore J. Graziano, Avi Josefson, Katie M. Sinderson and Abe Alexander of Bernstein Litowitz Berger & Grossmann LLP and Andrew L. Zivitz and Joshua A. Materese of Kessler Topaz Meltzer & Check LLP.

Boeing and the individual defendants are represented by John F. Hartmann, Michael B. Slade, Craig S. Primis and Katherine R. Katz of Kirkland & Ellis LLP.

The case is Seeks et al. v. The Boeing Co. et al., case number 1:19-cv-02394, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lauraann Wood. Editing by Patrick Reagan.

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Rocket Cos. Investors Lose Cert Bid In Post-Goldman Ruling

By **Jessica Corso**

Law360 (October 1, 2024, 10:08 PM EDT) -- A Michigan federal judge has declined to grant class status to Rocket Cos. investors suing over the company's post-pandemic loan portfolio**,** saying that optimistic statements about the firm's future were too generic to be relied upon in light of a recent U.S. Supreme Court ruling in Goldman Sachs' favor that dealt with a similar issue.

U.S. District Judge Thomas L. Ludington on Monday denied class status to shareholders of Rocket Cos. Inc. who accused the company of hiding its knowledge of a sharp drop-off in its mortgage business for months until it reported an expected $18.5 billion decrease in actual closed loan volume in May 2021.

Judge Ludington laid out a number of reasons for his decision in an 82-page **opinion**, including what he said was the lead plaintiff's failure to meet a standard for class certification laid out by the Supreme Court **in a 2021 ruling** in Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System .

That decision vacated class certification in a case accusing Goldman of making positive statements about its conflict mitigation practices that later turned out not to be true. The high court instructed lower courts to consider whether statements that the investor described as misstatements by Goldman executives were too generic to have artificially inflated a company's stock price.

The Goldman suit had many similarities to the Rocket Cos. case, Judge Ludlington said, because it also involved claims that optimistic statements by a corporate executive — in this case, former Rocket CEO Jay Farner — about the company's prospects hid the truth from the public about its flagging loan business.

"But here, like in Goldman, a considerable mismatch exists between the generic nature of the alleged misrepresentations and the specific revelation," the judge wrote.

While Farner spoke in early 2021 about strong consumer demand and his belief that Rocket had an opportunity to increase its market share — as others pulled out of the space due to growing interest rates — the May 2021 disclosures gave specific details about the company's first-quarter results, the judge noted.

"And, fatally for plaintiffs here, like in Goldman, defendants have produced expert testimony suggesting that no analyst referenced defendant Farner's alleged misrepresentations in reports issued throughout the class period," he said.

It remains to be seen whether the decision will be appealed.

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

Last year, the Second Circuit **became the first** federal appellate court to issue a ruling using the Supreme Court's Goldman analysis when it decided to decertify the same class of Goldman investors who went before the high court two years earlier.

The Rocket investors are represented by Carol Villegas, Christine Fox and David Saldamando of Labaton Keller Sucharow LLP.

The Rocket defendants are represented by Sharon Nelles, Jeff Scott and Julia Malkina of Sullivan & Cromwell LLP, Nick Gorga, Jeremy Lockhart and Carsten Parmenter of Honigman LLP, Deborah Birnbach, Adam Slutsky and Kate MacLeman of Goodwin Procter LLP, and Jeffrey Morganroth of Morganroth & Morganroth PLLC.

The case is Shupe v. Rocket Cos. Inc. et al., case number 1:21-cv-11528, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Covey Son.

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Starbucks Investor Suit Seems 'Premature,' Court Official Says

By **Rachel Riley**

Law360 (October 1, 2024, 7:21 PM EDT) -- A Washington appellate commissioner gave Starbucks another chance to end a shareholder suit accusing the company's leadership of turning a blind eye to union-busting by managers, saying the lawsuit appears "premature" since it mostly relies on unfair labor practice complaints that are still pending.

Washington Court of Appeals Commissioner Jennifer Koh determined that the appeals court should take up the case, saying the trial court **likely erred** in determining the two investors had a basis to sue the company and its officers and more than a dozen of its directors for breaching their fiduciary duty to shareholders by failing to properly monitor store managers' response to barista organizing activity. Commissioner Koh **expressed doubt** that the shareholders had adequately alleged a so-called Caremark claim, which under Delaware law requires showing an "utter failure" of oversight by at least half a board's members.

"Here, there is no dispute that the complaint relies on unresolved and hotly disputed proceedings before the [National Labor Relations Board] and federal courts," Commissioner Koh wrote in **the ruling**. "As Starbucks points out, it is not yet clear whether Starbucks has sustained corporate trauma from final adjudications, such that shareholders could legitimately assert a Caremark claim."

As a commissioner for the Court of Appeals, Koh's duties include determining whether the state appellate court will hear certain interlocutory appeals.

Under the relevant Delaware case law, Commissioner Koh noted, the proceedings giving rise to the shareholders' claims had wrapped up before the investor suit was filed. In this case, Starbucks shareholders Joe W. Trimm and Andre Rodney have pointed to scores of unfair labor practice complaints filed by NLRB attorneys but have only identified two that resulted in final enforcement orders against the company, Koh noted.

"As Delaware authority does not appear to support litigation of a premature Caremark claim and Washington appellate courts have not yet recognized Caremark claims, I agree that Starbucks has identified error," the commissioner concluded.

The two shareholder plaintiffs claim stock values suffered because of management's unlawful conduct, which they say began as early as 2019, in response to baristas organizing in Philadelphia, and continued until their suit was **first filed** in November 2023. They claim the company's board did not begin discussing labor issues until a 2022 meeting, which was "too little, too late" given the avalanche of unfair labor practice complaints.

A split D.C. Circuit panel agreed in March to enforce an NLRB order finding Starbucks violated federal labor law by barring a worker from passing out union pins, marking **the first time** a federal appeals court weighed in on a board decision against the coffee giant. The next month, the Ninth Circuit **sided with employees** of Starbucks' Seattle Roastery in one unfair labor practice case, overruling the company's concerns about the legitimacy of the workers' April 2022 vote to unionize and affirming an NLRB order compelling the company to bargain with them.

Seeking dismissal of the shareholders' suit in Washington, Starbucks has pointed to three board committees that handled employee relations issues and multiple discussions during full meetings of the board, including during a June 2022 presentation from outside counsel and former NLRB

Chairperson Philip Miscimarra.

In her Monday ruling, Commissioner Koh agreed with Starbucks that the board discussions and committees that touched on organizing campaigns suggest the plaintiffs have failed to meet the standards to assert a Caremark claim for oversight failures.

While the complaint names former CEOs Howard Schultz and Kevin R. Johnson and other board members, Commissioner Koh said the shareholder plaintiffs haven't explained how each individual defendant "engaged in intentional misconduct or knowing violation of the law with regard to labor management."

Commissioner Koh also granted Starbucks' request to stay the trial court proceedings, pending resolution of the appeal or further ruling by the state appellate court.

A spokesperson for Starbucks told Law360 the company is pleased with the commissioner's ruling and remains focused on "training and supporting our managers to ensure respect for our partners' rights to organize."

"We are committed to delivering on our promise to offer a bridge to a better future to all Starbucks partners and progressing negotiations on achieving a foundational framework that is intended to be the basis of each single-store contract," the spokesperson said.

Counsel for the shareholders did not immediately respond to a request for comment Tuesday.

The other defendants in the shareholder suit are Sara Kelly, Dennis Brockman, Mellody Hobson, Richard E. Allison Jr., Andrew Campion, Jørgen Vig Knudstorp, Satya Nadella, Isabel Ge Mahe, Clara Shih, Joshua Cooper Ramo, Javier G. Teruel and Mary N. Dillon.

The shareholders are represented by Justin Reliford and Elizabeth K. Dragovich of Scott + Scott Attorneys at Law LLP, Kim D. Stephens and Rebecca L. Solomon of Tousley Brain Stephens PLLC and Stephen J. Oddo of Robbins LLP.

Starbucks and the individual defendants are represented by Gregory L. Watts of Wilson Sonsini Goodrich & Rosati PC.

The case is Joe W. Trimm v. Howard Schultz et al., case number 86734-2 in the Washington Court of Appeals, Division I, and 23-2-12444-8 in King County Superior Court, Washington.

--Additional reporting by Sydney Price and Emily Brill. Editing by Linda Voorhis.

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Tesla Dodges Investor Suit Over Self-Driving Tech Claims

By **Jessica Corso**

Law360 (October 1, 2024, 8:36 PM EDT) -- A California federal judge has released Tesla Inc. from litigation accusing it of deceiving investors about the capabilities and safety record of its self-driving technology, granting it at least a temporary reprieve from the class action litigation because suing shareholders hadn't shown that CEO Elon Musk knew his statements about the technology were false.

U.S. District Judge Araceli Martínez-Olguín **dismissed** the lawsuit Monday with leave to amend, ruling that shareholders hadn't shown that Musk knew he was making false statements when he touted the safety of self-driving technology or the progress that the company was making toward fully autonomous vehicles.

At one point, Musk tweeted that the driver assistance technology already present in the vehicles was "unequivocally safer" than cars that don't have such technology, but later reports showed this not to be the case, investors said.

The suing shareholders, led by the Oakland County Voluntary Employees' Beneficiary Association and Oakland County Employees' Retirement System, said that testimony from a confidential witness who worked at Tesla said that Musk received regular reports about the progress of the engineering team to show that he must have known his statements were false. But the judge agreed with the defense that the fact that Musk received some reports was not enough to prove he knew his statements were misleading.

"Defendants argue that there is no detail about what the reports reflected, who attended the meetings, when they occurred, or what was said," she said. "The court agrees that without more specificity, it cannot find that Musk's receipt of unspecified reports and updates from the engineering team are indicative of a strong inference of scienter."

She gave the investors until Oct. 30 to address the deficiencies in an amended complaint.

The lawsuit, filed Feb. 27, 2023, accused the company of making a series of misstatements about the development timeline for its autonomous driving program while underplaying safety issues with driver assistance software, known as autopilot, that was present in the vehicles as early as 2019.

They said that Tesla's stock price dipped upon news of a 2021 National Highway Traffic Safety Administration **investigation** into the carmaker after a series of crashes potentially caused by the technology.

The company argued that the majority of the 29 statements that investors said were misleading were the type of forward-looking predictions that were protected under the safe harbor provision of the Private Securities Litigation Reform Act.

Shareholders had argued that Tesla shouldn't be allowed to rely on the safe harbor protections due to a 2018 **settlement** with the U.S. Securities and Exchange Commission that they said barred the company from future violations of the antifraud provisions of the securities laws.

But Judge Martínez-Olguín rejected that argument Monday, ruling that the SEC did not sue Musk and Tesla for fraud in that case, which involved claims that Musk made misleading statements about taking the company private.

The carmaker could, therefore, continue to rely on the safe harbor provision, and many of the challenged statements were protected under the provision because Tesla warned investors at the beginning of earnings calls and in SEC filings that predictions about self-driving technology may not come true, the judge said.

"The cautionary language in the SEC filings mentions potential delays and complications in developing the technology and explains that certain features such as autopilot and [full self-driving] may take longer than expected," she said.

Lawyers for Musk and Tesla said they were pleased with the decision. Attorneys for the suing investors didn't immediately respond to a request for comment.

The class is represented by Jake Bissell-Linsk, Carol C. Villegas, Guillaume Buell and Matthew J. Grier of Labaton Sucharow LLP, Lucas E. Gilmore of Hagens Berman Sobol Shapiro LLP and Aaron L. Castle of VanOverbeke Michaud & Timmony PC.

Musk and Tesla are represented by Alex Spiro, Brenna Nelinson, Jesse Bernstein, Leigha Empson and Michael Liftik of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Thomas Lamontagne v. Tesla Inc. et al., case number 3:23-cv-00869, in the U.S. District Court for the Northern District of California.

--Editing by Bruce Goldman and Dave Trumbore.

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Chancery Tosses Class Suit Over TransUnion CFPB Violations

By **Jeff Montgomery**

Law360 (October 1, 2024, 7:44 PM EDT) -- Observing that "imperfect compliance is not bad faith," a Delaware vice chancellor dismissed on Tuesday a stockholder derivative suit seeking damages on behalf of consumer credit reporting company TransUnion for alleged board and officer failures to comply with a Consumer Financial Protection Bureau order issued in 2017.

Vice Chancellor Lori W. Will, in a 50-page ruling, said the suit offered no facts showing breaches of directorial duties of loyalty or backing up a bid by three stockholders for an injunction in support of mandatory oversight reforms. The suit followed CFPB actions that accused TransUnion of engaging in deceptive marketing that allegedly led consumers into unknowing enrollment in credit scoring and related products.

Separate federal litigation brought by CFPB over largely the same claims as those in the Delaware suit remains pending in the U.S. District Court for the Central District of Illinois. Those named in that suit include TransUnion, two affiliates and former executive John Danaher.

"Regardless of which side prevails in the federal action, the plaintiffs' allegations [in Delaware] fall materially short of suggesting bad faith," Vice Chancellor Will wrote, citing multiple earlier decisions of the court dating to 2009 that found "a vast difference between an inadequate or flawed effort to carry out fiduciary duties and conscious disregard of duties."

The Delaware suit alleged breaches of fiduciary duty by current and former TransUnion board members and sought a mandatory injunction requiring oversight reforms.

Stressed in the vice chancellor's dismissal decision was what the court described as a wide gulf recognized in past rulings "between imperfect compliance and purposeful lawbreaking."

Derivative challenges to corporate action, the decision said, "requires a showing that directors utterly failed to oversee the corporation's compliance with the material laws constraining it. And for each, a sincere effort by directors to fulfill their oversight duties removes the potential for personal liability."

Noted in the opinion was tension between claims that TransUnion's board resisted the federal consent order by delaying remedies based on incorrect advice and allegations of conscious disregard of the company's compliance with the order.

"One must wonder, then, why the plaintiffs make a full-throated pitch for the most extreme iteration of a failed oversight claim — affirmative lawbreaking for profit — over a missing checkbox, the use of 'may not' versus 'not likely,' and the wrong font size," in a disclosure, the vice chancellor wrote, pointing out that the claims are "hardly" comparable to leading case law on intentional prioritizing of profits over legal compliance.

A weak theory of liability, the decision added, cannot "morph" into a claim of purposeful lawbreaking "simply because the directors' good-faith efforts ultimately fell short of positive law."

Regardless of labels, "the claim presented is deficient," the vice chancellor wrote. "The complaint details the board's knowledge of the [federal] consent order and of TransUnion's efforts to comply with it, which erodes any reasonable inference of bad faith."

The decision pointed in part to "second-guessing of the speed and thoroughness of TransUnion's response" as a "backward-looking critique" rejected in past rulings.

While the suit alleged that a demand for director action on the claims would be futile, "no such facts are found in the complaint" supporting a reasonable inference that a majority of the board acted in bad faith, the decision also noted.

In addition, the vice chancellor wrote, a weak claim focused on allegedly ignored red flag warnings under In re Caremark International Inc. derivative litigation "cannot morph" into a claim of "purposeful lawbreaking" under the precedent set by the Chancery Court's 2017 ruling in the In re Massey Energy Co. derivative and class action case.

The complaint, the decision found, failed to plead particular facts supporting a reasonable inference that the board acted in bad faith.

In ruling on the dismissal, the vice chancellor also said she accepted as true that TransUnion should ideally have implemented a compliance plan sooner, and that the company's board knew about CFPB's views on consent order requirements.

"The remaining issues complained of are quibbles about whether TransUnion's compliance efforts went far enough, fast enough," the decision said.

TransUnion and counsel for the stockholders did not immediately respond to a request for comment Tuesday.

TransUnion stockholders Richard Delman, Donna Nicosia and Charles R. Blackburn are represented by Samuel L. Closic, John G. Day and Seth T. Ford of Prickett Jones & Elliott PA, Lawrence Paskowitz of The Paskowitz Law Firm PC, Emily Komlossy of Komlossy Law PA, Frederic S. Fox of Kaplan Fox & Kilsheimer LLP, D. Seamus Kaskela and Adrienne Bell of Kaskela Lae LLC, and Alfred G. Yates of Law Office of Alfred G. Yates Jr.

George M. Awad, the other individuals named in the suit and TransUnion are represented by Kevin M. Gallagher & Spencer V. Crawford of Richards Layton & Finger PA, and Sandra C. Goldstein, Victoria J. Ryan and Mike Rusie of Kirkland & Ellis LLP.

The case is In re: TransUnion Derivative Stockholder Litigation, case number 2022-1103, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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Israeli Analytics Co. Beats 'Social Engineering' Suit, For Now

By **Sydney Price**

Law360 (October 1, 2024, 7:43 PM EDT) -- A New York federal judge has dismissed a proposed investor class action against Israeli security analytics company Cognyte Software Ltd. over claims that its tools were used to surveil and "social-engineer" journalists and politicians, saying many of the alleged misstatements are inactionable as currently presented.

The investors claim Cognyte's shares fell approximately 6% after January 2023 news reports revealed that the company had won a tender to sell intercept spyware to a Myanmar state-backed telecommunications firm in 2020, shortly before Myanmar's military coup in 2021. The complaint, which was most recently amended in November, alleges that the defendants made false and misleading statements that they were complying with all applicable laws when it was actually selling its products to Myanmar in violation of export laws of Israel and the U.S.

U.S. District Judge Lorna G. Schofield said in an opinion on Monday, however, that the investors' allegations are too vague to be actionable. The complaint also does not allege that the sale actually took place, that the Israeli authorities had charged Cognyte with any violation, or whether such a risk would necessarily materialize.

"The Complaint lacks specifics about which particular law or regulation was violated, what the elements of such a violation are and that Cognyte's conduct satisfied those elements," Judge Schofield states.

She gave investors until Oct. 21 to file a proposed second amended complaint.

The investors' suit also alleged Cognyte violated its own ethics guidelines by offering tools that allow customers to manage fake accounts across social media platforms, which was revealed in a report published by Facebook parent company Meta in December 2021. The complaint claims that in the report, Meta publicized that it had removed approximately 100 accounts on Facebook and Instagram linked to Cognyte and its customers that had been used "to social-engineer people and collect data."

But Judge Schofield said the code of conduct is too generic to support a securities fraud claim and is not "materially misleading."

"Moreover, the challenged statements and surrounding text read in context appear to be directives and instructions to employees rather than affirmative declarations about Cognyte's past conduct," Judge Schofield said.

The order also dismissed claims that investors were damaged by Cognyte's "misleading" registration statement, which was declared effective by the U.S. Securities and Exchange Commission before the class period began on Feb. 2, 2021.

"Here, Defendants had no duty to correct any alleged misstatements in the Registration Statement, which described conditions at the time of Cognyte's original public listing," the opinion states. "The Registration Statement does not sufficiently 'imply anything about future circumstances' for a duty to correct to arise."

The suit also fails to plead that Cognyte and the other defendants, including its CEO Elad Sharon, acted with scienter, Judge Schofield determined. The allegations are conclusory and allege only what

Sharon must have known given his role at the company, she said.

"The Complaint does not attempt to plead motive and opportunity, but instead attempts to allege facts supporting a 'strong inference' that Sharon knew that Cognyte's products were 'operating on social media platforms in violation of their terms of service' and 'that Cognyte was violating the export control and other laws of jurisdictions in which the Company did business.'"

Regarding loss causation, Judge Schofield said the complaint also fails to make plausible allegations the price of Cognyte's shares declined due to the alleged disclosure of previously unknown facts, "particularly given that the Class Period occurred entirely within the period of the COVID-19 pandemic,' which was a "marketwide phenomenon."

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

Lead plaintiff The City of Omaha Police and Firefighters Retirement System is represented by Thomas L. Laughlin IV, Donald A. Broggi, Rhiana L. Swartz and Jonathan M. Zimmerman of Scott + Scott Attorneys At Law LLP.

The company and individual defendants are represented by Scott D. Musoff and Ian C. Lerman of Skadden Arps Slate Meagher & Flom LLP.

The case is City of Omaha Police and Firefighters Retirement System v. Cognyte Software Ltd. et al., case number 1:23-cv-01769, in the U.S. District Court for the Southern District of New York.

--Editing by Vaqas Asghar.

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Lordstown Brass Beat Investor Suit Over Failed Foxconn Deal

By **Rae Ann Varona**

Law360 (October 1, 2024, 10:53 PM EDT) -- An Ohio federal judge on Monday freed current and former executives of Lordstown Motors Corp., now Nu Ride, from a proposed securities class action alleging they concealed problems ahead of a failed partnership with Taiwan-based Foxconn, saying delays and "other minor issues" didn't make general, positive statements inaccurate.

Lordstown President and CEO Edward Hightower, Chief Financial Officer Adam Kroll, and former chief executive Daniel Ninivaggi had been accused in the suit of failing to disclose delays and breaches, including by mischaracterizing the state of the partnership with Foxconn after the companies abandoned a joint venture agreement.

But in dismissing the suit U.S. District Benita Y. Pearson said that despite the two companies deserting the agreement and later entering an investment agreement, problems under the previous agreement didn't mean that beliefs about the new agreement or partnership were misleading.

"Plaintiffs cannot rely on the problems and ignore the benefits in the partnership to prove defendants' general, optimistic statements are inconsistent with the actual 'state of affairs' between the companies," Judge Pearson wrote in an order. "Despite any disputes or delays that arose as part of a developing partnership, defendants also experienced success and progress."

She said that the electric vehicle manufacturer's executives didn't claim the partnership was free of flaws, "only that they were hopeful about its success."

According to an amended complaint filed in late December in the July 2023 suit, Lordstown had filed an adversary complaint against Foxconn after the Taiwanese electronics maker repudiated the initial agreement, alleging fraud and breach of contract and accusing it of effectively driving Lordstown into bankruptcy.

Shareholders, led by Andrew and Joshua Strickland, had accused the executives of misleading investors about the state of Lordstown's partnership with Foxconn, asserting that the executives failed to disclose significant problems in the partnership leading up to Foxconn backing from the agreement and Lordstown's bankruptcy.

Lordstown had emerged from bankruptcy in March, donning a new name, Nu Ride.

In granting the executives' motion to dismiss, Judge Pearson wrote that most of the alleged misstatements in the suit relayed the executives' "beliefs, goals, and hopes" for the future of Lordstown's relationship with Foxconn.

But the statements "do not contain the sort of definite, material information needed to trigger a duty to disclose," Judge Pearson wrote.

"Instead, defendants' statements contain the kinds of generalities and reflections of 'corporate optimism' rejected by courts as actionable misrepresentation," she said.

Ninivaggi, for instance, had said in a November 2022 press release upon the investment agreement that the company had an "objective to develop a broad strategic partnership."

The shareholders' complaint had touched on an assertion that Foxconn's CEO "refused" to meet with Hightower and that Foxconn also refused to provide engineering drawings, data, and licensing agreements for an EV project.

Judge Pearson said that even assuming Foxconn's CEO refused to meet with Hightower, "no facts in the defendants' statements mentioning the meeting are rendered untrue."

She said that Hightower had discussed the partnership with other Foxconn executives during a trip to Taiwan.

Turning to an earnings call statement in August 2022, in which Hightower said the company had several meetings on how to best operationalize the joint venture agreement, Judge Pearson wrote that the shareholders failed to allege facts showing that the statement was false.

"After all, defendants have no duty to disclose every detail of the meetings," Judge Pearson wrote.

She said that overall, "the breaches under the abandoned JVA, delays, and other minor issues do not render general, positive statements describing the partnership or agreements inaccurate, especially considering the totality of the state of affairs and public revelation of risks."

According to Judge Pearson's order, the shareholders had also accused the executives of insider trading and suggested that the executives knew about problems in the partnership and had the motive to conceal them to make money before stock prices fell.

Judge Pearson — who also granted the executives' bid for judicial notice of Form 4s Lordstown had filed in 2022 — said that considering the documents, the insider trading allegation "lacks factual support and subsist only on Plaintiffs' conclusory speculation."

She also found it "noteworthy" that Hightower purchased 10,000 shares of Lordstock stock during the class period beginning Aug. 4, 2022, during the company's earnings conference call for the second quarter of 2022.

"Therefore, the court finds no suspicious insider trading activity supporting an inference of scienter," Judge Pearson wrote.

The U.S. Securities and Exchange Commission had in late February announced that Lordstown agreed to a cease-and-desist order and disgorgement of $25.5 million to resolve allegations it misled investors about the sales prospects of its full-size, all-electric pickup truck, the Endurance.

The SEC said Lordstown settled allegations that it exaggerated the demand for the pickup when claiming that it received over 100,000 nonbinding "pre-orders" from commercial fleet customers when most of the preorders came from companies that didn't operate fleets or intend to buy the pickup for their own use.

Lordstown also allegedly misrepresented its timeline for delivering the pickup by failing to account for production delays that were partly due to the company's inability to get critical parts, the SEC had said.

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

The shareholders are represented by John C. Camillus of the Law Offices of John C. Camillus LLC and James M. Wilson Jr. and Robert W. Killorin of Faruqi & Faruqi LLP.

Lordstown is represented by Tom Warren, Bruce G. Vanyo, Jonathan Rotenberg and Sarah Eichenberger of Katten Muchin Rosenman LLP.

The case is Lim v. Hightower et al., case number 4:23-cv-01454, in the U.S. District Court for the Northern District of Ohio.

--Editing by Jay Jackson Jr.

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Peloton Beats Investor Suit Over COVID-19 Sales For Good

By **Katryna Perera**

Law360 (October 1, 2024, 10:17 PM EDT) -- Peloton has won the permanent dismissal of a shareholder suit accusing it of intentionally misleading investors to believe that its COVID-19 spike in demand was sustainable, with a New York federal judge saying the investors have not "articulated sufficient factual allegations to carry their assertions beyond the speculative level."

U.S. District Judge Andrew L. Carter Jr. issued an **opinion and order** on Monday saying that all the suit's challenged statements are either inactionable or corporate puffery and that the plaintiffs have not sufficiently shown facts demonstrating that the challenged statements were false when made.

Judge Carter previously dismissed the suit in March 2023, finding that Peloton's statements during the proposed class period **sufficiently warned the investors** of the uncertainty of future subscriber growth.

On Monday, he said the investors' second amended complaint failed to cure the deficiencies he previously identified and that even the new allegedly misleading statements the investors added to the operative complaint were still forward-looking and accompanied by meaningful cautionary language.

According to the opinion, the investors specifically added two statements to the operative complaint alleging they misrepresented Peloton's sales and risks. But Judge Carter said no reasonable investor could have been misled by these allegedly false statements "because they were in fact, true."

"Peloton warned of the very risks alleged to have later occurred, including 'a change in consumer spending preferences' due to 'the COVID-19 pandemic,' and the 'uncertain[ty of] how the COVID-19 pandemic will impact subscriber renewal rates in the long-term,'" the opinion states.

"Peloton also warned that 'our revenue growth rate is likely to slow down as our business matures,' particularly if 'the market for our products ... does not continue to grow' or 'grows more slowly than we expect,' and cautioned that 'past financial results may not be indicative of our future performance' due to its 'limited operating history,'" the opinion further states.

Because the investors failed to plead any actionable statements or omissions, the judge did not reach the question of whether the second amended complaint adequately pleads scienter, or knowledge of wrongdoing.

He also declined to grant the investors leave to further amend their suit, saying it would not cure the deficiencies of the pleadings "given plaintiffs' failure to show falsity in light of the cautionary language accompanying non-actionable forward-looking statements."

The City of Hialeah Employees Retirement System filed the original complaint against Peloton in November 2021, which has since been amended and consolidated. Robeco Capital Growth Funds was named the lead plaintiff in May 2022.

The latest version of the suit alleged that the increased demand Peloton experienced in 2020 and 2021 had been pandemic-driven. The plaintiffs said that the company surprised investors in November 2021 by announcing it had revised its full-year revenue guidance from $5.4 billion to a range of between $4.4 billion to $4.8 billion "due to declining demand as its customers were increasingly free to exercise outside the home."

On the news, Peloton's shares declined by 35%, falling $30.42 per share in one day, the second amended complaint alleged.

Additional disclosures from Peloton on Jan. 20, 2022, revealed that contrary to previous representations, the company's demand had been declining, and costs were rising. As a result, it lowered guidance, the complaint said.

In response to these disclosures, Peloton's stock price fell 24% in a day to a closing price of $24.22 on Jan. 20, 2022, the investors alleged.

The latest version of the complaint also claimed that some individual defendants, including former Chief Legal Officer Hisao Kushi, former Chief People Officer Mariana Garavaglia and Chief Product Officer Thomas Cortese, profited from the alleged misrepresentations to investors.

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

Robeco is represented by Daniel L. Berger, Karin E. Fisch, Cecilia Stein and Mica Cocco of Grant & Eisenhofer PA.

The City of Hialeah Employees Retirement System is represented by Hannah Ross, Avi Josefson, Jonathan D. Uslaner and Caitlin C. Bozman of Bernstein Litowitz Berger & Grossmann LLP.

Peloton and the individual defendants are represented by Andrew Clubok, Michele D. Johnson, Nicholas J. Siciliano, Susan E. Engel and Whitney B. Weber of Latham & Watkins LLP.

The case is City of Hialeah Employees Retirement System v. Peloton Interactive Inc. et al., case number 1:21-cv-09582, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Sydney Price. Editing by Jay Jackson Jr.

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Meta Must Face Bulk Of Social Media Harms Securities Suit

By **Hailey Konnath**

Law360 (October 1, 2024, 11:46 PM EDT) -- A California federal judge on Monday trimmed but refused to throw out a proposed securities class action claiming Meta Platforms Inc. and its executives misled investors about the harmful effects of social media, finding that the investors pointed to plausibly misleading statements regarding mental health and keeping children safe.

U.S. District Judge Araceli Martínez-Olguín granted in part and denied in part a motion to dismiss the case, which centers on the executives' statements about social media's effects as well as the company's efforts to stop misinformation. Judge Martínez-Olguín agreed to toss claims based on three statements made by CEO Mark Zuckerberg and other executives, holding that those statements were statements of "corporate puffery" and therefore not actionable.

However, the judge left intact investors' claims stemming from a number of other statements, ruling that many of those statements "suggest specific actions that Meta took and rules that it implemented or enforced."

"Thus, those statements can be verified and are not corporate puffery," Judge Martínez-Olguín said.

Notably, Judge Martínez-Olguín threw out claims based on statements about Meta's algorithm and content moderation. The investors haven't adequately alleged that the statements were false or misleading, she said.

"Defendants argue that plaintiffs cherry-pick the documents they rely on and that the [first amended complaint] also cites to positive external research showing the benefits of social media," she said. "However, the external research that the FAC cites refers broadly to social media and does not specifically reference Instagram or Meta's platforms."

Still, the judge said the shareholders have sufficiently alleged falsity as to a number of statements regarding Instagram's impact on young users.

Judge Martínez-Olguín added that "stating that the research showed that teenage girls said Instagram was helping their mental health, Statement 52, was misleading given Meta's extensive internal research contradicting this assertion."

In their suit, investors accuse Meta and its executives of hiding or downplaying what the company knew about the harmful effects its social media products like Facebook and Instagram have on children and teen girls, the measures it takes to stop the spread of misinformation, and its enforcement of its community standards through its purported "cross-check" program.

According to the investors, Meta and its executives promoted the products as being safe for young users while understating the spread of "toxic content" and misinformation on its platforms. Meanwhile, Meta knowingly exploited its most vulnerable users — including children around the world — in order to drive corporate profits, the shareholders claim.

On top of that, the company knowingly allowed high-profile users to skirt its content standards, the investors allege.

In their motion to dismiss, Meta and its executives **argued that** the investors' consolidated amended complaint has a "general and pervasive problem" that it relies on unreliable leaked internal Meta documents and Meta executive statements that "consist almost entirely on mere fragments of sentence fragments."

Meanwhile, the investors' counsel, John Rizio-Hamilton of Bernstein Litowitz Berger & Grossmann, argued that the internal documents are only one aspect of the complaint, and the lawsuit specifically identifies statements executives made, or didn't make, to the public regarding the harms of social media and misinformation.

In Monday's order, Judge Martínez-Olguín said the investors failed to allege that several of the statements underlying the suit were "objectively and subjectively false or misleading."

For instance, in one statement, an executive stated that "more than anyone else in the industry, we invest on the safety and security side to sort of keep bad content off the site." The investors have not alleged any fact showing that is objectively false, or that Meta doesn't do more to prevent misinformation than its competitors in the industry, according to the order.

However, Judge Martínez-Olguín said executives made factual assertions in other statements.

"These statements assert that Facebook does not amplify ideas that users disagree with and that there is no causal link between social media and polarization," the judge said. "As these statements are 'capable of objective verification,' the court cannot dismiss them as nonactionable opinion statements."

Similarly, the plaintiffs have adequately alleged that Meta's statements regarding its commitment to keeping children safe are false or misleading, according to the order.

The defendants "argue that internal research about Instagram does not evidence that these statements were false," Judge Martínez-Olguín said. "However, plaintiffs allege that at the time these statements were made, Meta had already concluded that its proposed measures did not improve well-being but that touting them 'could make them look good.'"

Finally, the judge held that the investors haven't shown that statements regarding Facebook's growth metrics were false or misleading.

Specifically, the investors' complaint points to information leaked in 2021 that includes thousands of internal Meta documents chronicling the dangers of social media use and whistleblower testimony from former company product manager Frances Haugen. That leaked information purportedly caused Facebook's share price to drop by more than 14%, knocking out $150 billion of the social media giant's market capitalization, according to the complaint.

Those leaked internal documents were reported on by The Wall Street Journal, in a series titled "The Facebook Files," that started running in September 2021 and detailed the company's tracking of issues created by its platform and failure to ameliorate them.

Haugen lodged a number of whistleblower complaints to the U.S. Securities and Exchange Commission, and she revealed her identity in a televised interview in October 2021. In that interview, she said the company "has shown it chooses profit over safety." She raised her concerns again before a U.S. Senate subcommittee two days later.

The investors claim Facebook violated securities laws during a class period that began April 27, 2021, and ran through Oct. 21 2021.

Meta didn't immediately respond to a request for comment, and counsel for the plaintiffs declined to comment late Tuesday.

The plaintiffs are represented by John Rizio-Hamilton, Hannah Ross, Jeroen van Kwawegen, Rebecca Boon, John Esmay, Mathews R. de Carvalho and Jonathan D. Uslaner of Bernstein Litowitz Berger & Grossmann LLP.

Meta is represented by Neal A. Potischman, James P. Rouhandeh and Charles S. Duggan of Davis Polk

& Wardwell LLP.

The case is In re Meta Platforms Inc. Securities Litigation, case number 3:21-cv-08812, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins. Editing by Michael Watanabe.

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Biotech Investors Reach $32.5M Deal Over Failed COVID Test

By **Gina Kim**

Law360 (October 1, 2024, 6:03 PM EDT) -- A class of Talis Biomedical Corp. investors accusing the company of inflating their stock price in the run-up to its IPO and then failing to launch a COVID-19 diagnostic test asked a California federal judge on Monday to preliminarily approve their $32.5 million settlement, citing Talis' shrinking cash reserves and imminent plans to file for bankruptcy.

The investors' motion told U.S. District Judge Susan Y. Illston that the $32.5 million settlement is fair, reasonable and adequate, and that the "outstanding result did not come quickly or easily."

The investors said their attorneys vigorously prosecuted their claims at the outset and faced significant risks from further prosecution, as Talis and its officers challenged liability.

"Defendants' statutory negative causation defense also raised a real risk of foreclosing a significant amount of the recoverable damages, if not all damages," the motion said. "Meanwhile, Talis — which never launched a commercial product — was rapidly depleting its remaining cash and insurance and warned that it may pursue bankruptcy. This raised a substantial risk that the class's claims against Talis would never reach summary judgment, let alone trial."

Under the settlement, investors will receive $32.5 million, of which $27.5 million will come from Talis' remaining cash and $5 million from insurance. The current estimate calls for direct mailing of settlement notices to about 20,000 potential class members, and the investors' counsel will ask for fees that won't exceed 28% of the settlement amount.

The investors are also asking for no more than $1.8 million in litigation expenses and an award for the class representative that won't exceed $37,500.

Tuesday's approval motion is the latest development in a case that the investors first filed in 2022, alleging that Talis and some of its officers and board members made misrepresentations about its COVID-19 testing device, Talis One, in the leadup to its $254 million IPO in February 2021.

Talis One was meant to provide point-of-care diagnostic testing, but at the time it was "merely an unreliable prototype that generated unusable results up to 20% of the time — not an accurate, reliable device that could be manufactured and sold," the investors' **class certification motion** said.

The truth was partially revealed in March 2021 when Talis withdrew its initial application to the FDA after the regulator found problems with it. By the time the lawsuit was filed in January 2022, Talis shares, which priced at $16 in the IPO, were trading at just over $3, the investors claimed.

Earlier this year, Judge Illston **certified a class** of investors who acquired Talis shares in a six-month period between February 2021 when the IPO launched and August 2021, and appointed Bleichmar Fonti & Auld LLP and Pomerantz LLP as co-class counsel.

On Tuesday, the investors told Judge Illston that Talis' diminishing financial state and the risks facing the them if they pursue further litigation confirms that the settlement is fair, reasonable and adequate. The company lacks any meaningful source of revenue, and it burned through its cash during the litigation as well, the motion said.

Defense costs Talis incurred in the case have already reduced the insurance available to the company, and a bankruptcy filing would at least prompt an automatic stay of the investors' strict liability claims and block them from ever proceeding to trial, the motion said.

"In short, Talis's financial condition and the real prospect of a near-term bankruptcy materially heightened the complexity and risk of further litigation. Given these risks, the settlement — which provides for Talis's payment of more than half of its remaining cash, and all of the remaining insurance available — is an exceptional result for the class."

Counsel for the investors declined to comment Tuesday. Representatives for the defendants did not immediately respond to requests for comment.

The class is represented by Bleichmar Fonti & Auld LLP, The Schall Law Firm and Pomerantz LLP.

The defendants are represented by Patrick E. Gibbs, Shannon M. Eagan, Jessica Simpson LaGoy and Zachary Sisko of Cooley LLP.

The case is In re: Talis Biomedical Securities Litigation, case number 3:22-cv-00105, in the U.S. District Court for the Northern District of California.

--Additional reporting by Katryna Perera and Mark Payne. Editing by Brian Baresch.
