

Governor Newsom announces judicial appointments 10.9.24

[gov.ca.gov/2024/10/09/governor-newsom-announces-judicial-appointments-10-9-24](https://www.gov.ca.gov/2024/10/09/governor-newsom-announces-judicial-appointments-10-9-24)

October 9, 2024

News

Oct 9, 2024

SACRAMENTO – Governor Gavin Newsom today announced his appointment of 18 Superior Court Judges, which include one in Colusa County; one in Contra Costa County; five in Los Angeles County; two in Orange County; three in Sacramento County; one in San Bernardino County; four in San Diego County; and one in Sutter County.

Colusa County Superior Court



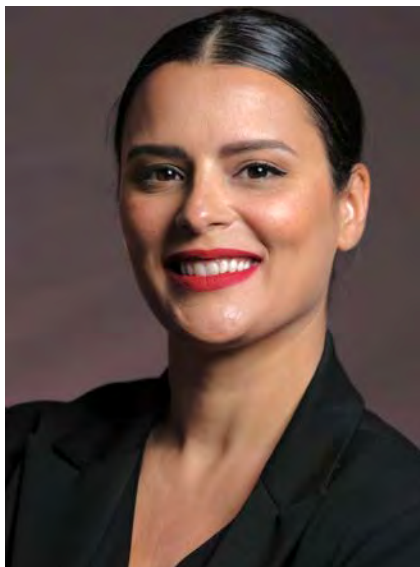
Brendan M. Farrell, of Colusa County, has been appointed to serve as a Judge in the Colusa County Superior Court. Farrell has served as District Attorney of Colusa County since 2023. He was a Chief Deputy District Attorney at the Colusa County District Attorney's Office from 2016 to 2022 and a Deputy District Attorney there from 2010 to 2016. Farrell served as a Volunteer Attorney at the Los Angeles City Attorney's Office in 2010. He earned a Juris Doctor degree from the University of Notre Dame Law School. He fills the vacancy created by the retirement of Judge Jeffrey A. Thompson. Farrell is registered without party preference.

Contra Costa County Superior Court



Robert S. Leach, of Contra Costa County, has been appointed to serve as a Judge in the Contra Costa County Superior Court. Leach has served as Chief of the Special Prosecutions Section at the U.S. Attorney's Office, Northern District of California since 2023 and has served in several positions there since 2012, including Deputy Chief of the Corporate and Securities Fraud Section and Assistant U.S. Attorney. He served in several roles at the U.S. Securities and Exchange Commission from 2003 to 2012, including Assistant Regional Director, Branch Chief and Staff Attorney. Leach was an Associate at Latham & Watkins LLP from 1998 to 2003 and served as a Law Clerk for the Honorable John G. Davies at the U.S. District Court for the Central District of California from 1997 to 1998. Leach earned a Juris Doctor degree from the University of California, Los Angeles School of Law. He fills the vacancy created by the retirement of Judge Susanne Fenstermacher. Leach is registered without party preference.

Los Angeles County Superior Court



Leslie B. Gutierrez, of San Bernardino County, has been appointed to serve in an interim appointment as a Judge in the Los Angeles County Superior Court. Gutierrez has served as a Deputy District Attorney at the Los Angeles County District Attorney's Office since 2012. She was a Sole Practitioner from 2011 to 2012. Gutierrez earned a Juris Doctor degree from Southwestern Law School. She fills the vacancy created by the retirement of Judge Brian C. Yep. The Governor's appointment allows her to immediately assume the position she was otherwise elected to begin in January 2025. Gutierrez is a Democrat.



Heather M. Hocker, of Los Angeles County, has been appointed to serve as a Judge in the Los Angeles County Superior Court. Hocker has served as a Deputy Alternate Public Defender at the Los Angeles County Alternate Public Defender's Office since 2017. She served as a Deputy Public Defender at the Los Angeles County Public Defender's Office from 2006 to 2017. Hocker earned a Juris Doctor degree from Southwestern Law School. She fills the vacancy created by the retirement of Judge Amy Pellman. Hocker is a Democrat.



Karen C. Joynt, of Los Angeles County, has been appointed to serve as a Judge in the Los Angeles County Superior Court. Joynt has served as a Commissioner at the Los Angeles County Superior Court since 2022. She was Owner and Lead Attorney at Joynt Law from 2019 to 2022. Joynt served in several positions at the Office of the Los Angeles County Counsel from 2010 to 2019, including Assistant County Counsel, Senior Deputy County Counsel and Deputy County Counsel. She served as a Deputy Alternate Public Defender in the Office of the Los Angeles County Alternate Public Defender from 2006 to 2010. Joynt served as a Deputy Public Defender in the Office of the Los Angeles County Public Defender from 2003 to 2006. She earned a Juris Doctor degree from Southwestern Law School. She fills the vacancy created by the retirement of Judge Richard J. Burdge. Joynt is a Democrat.



Esther K. Ro, of Los Angeles County, has been appointed to serve as a Judge in the Los Angeles County Superior Court. Ro has served as a Senior Appellate Attorney at the Second District Court of Appeal since 2019. She was a Partner at Morgan, Lewis & Bockius LLP from 2017 to 2019 and an Associate there from 2011 to 2017. Ro was an Equal Justice Works AmeriCorps Recovery Fellow at the Asian Pacific American Legal Center from 2009 to 2010.

and an Associate at Squire, Sanders & Dempsey LLP from 2007 to 2009. She earned a Juris Doctor degree from the University of California, Los Angeles School of Law. She fills the vacancy created by the retirement of Judge Paul A. Bacigalupo. Ro is a Democrat.



Karla Sarabia, of Los Angeles County, has been appointed to serve as a Judge in the Los Angeles County Superior Court. Sarabia has been a Deputy Public Defender at the Los Angeles County Public Defender's Office since 2008. She served as a Deputy Public Defender at the Fresno County Public Defender's Office from 2006 to 2008. Sarabia served as a Law Clerk in the Contra Costa County Public Defender's Office from 2005 to 2006. Sarabia earned a Juris Doctor degree from the University of San Francisco School of Law. She fills the vacancy created by the retirement of Judge Steven D. Blades. Sarabia is a Democrat.

Orange County Superior Court



Julianne Sartain Bancroft, of Orange County, has been appointed to serve as a Judge in the Orange County Superior Court. Bancroft has been Senior Appellate Research Attorney at the Fourth District Court of Appeal, Division Three since 2002. She was a Partner at Snell & Wilmer from 1997 to 2002 and an Associate there from 1994 to 1997. Bancroft was an Associate at Wilson, Sonsini, Goodrich & Rosati from 1991 to 1994 and served as a Law Clerk for the Honorable Melvin T. Brunetti at the U.S. Court of Appeals for the Ninth Circuit

from 1990 to 1991. She earned a Juris Doctor degree from the University of California, Los Angeles School of Law. She fills the vacancy created by the retirement of Judge James E. Rogan. Bancroft is a Democrat.



Randy K. Ladisky, of Orange County, has been appointed to serve as a Judge in the Orange County Superior Court. Ladisky has served as a Senior Deputy Alternate Public Defender in the Office of the Orange County Alternate Public Defender since 2014 and has been an Alternate Public Defender there since 2001. He was an Associate at the Law Office of Joel M. Garson from 2000 to 2001 and at the Law Office of Ronald Talmo from 1999 to 2000. Ladisky earned a Juris Doctor degree from the Western State College of Law. He fills the vacancy created by the appointment of Judge Martha K. Gooding to the Court of Appeal. Ladisky is a Democrat.

Sacramento County Superior Court



Lee S. Bickley, of Sacramento County, has been appointed to serve as a Judge in the Sacramento County Superior Court. Bickley has served as a Senior Attorney at the California Public Employees' Retirement System since 2024. She served as an Assistant U.S. Attorney at the U.S. Attorney's Office, Eastern District of California from 2010 to 2024. Bickley was a Branch Chief for the U.S. Securities and Exchange Commission from 2005 to 2010 and a Senior Litigation Associate at Cravath, Swaine & Moore LLP from 1998 to 2005. Bickley earned a Juris Doctor degree from Yale Law School. She fills the vacancy created by the retirement of Judge Gerrit W. Wood. Bickley is a Democrat.



Joseph M. Cress, of Sacramento County, has been appointed to serve as a Judge in the Sacramento County Superior Court. Cress has been a Chief Assistant Public Defender at the Sacramento County Public Defender's Office since 2022 and has served in several roles there since 1995, including Supervising Assistant Public Defender and Assistant Public Defender. He was an Adjunct Professor at the University of the Pacific, McGeorge School of Law from 2012 to 2015. Cress earned a Juris Doctor degree from the University of California College of the Law, San Francisco. He fills the vacancy created by the retirement of Judge

James M. Mize. Cress is a Democrat.



Brenda R. Dabney, of Sacramento County, has been appointed to serve as a Judge in the Sacramento County Superior Court. Dabney has been Northern California Regional Director at the Children's Law Center of California since 2017. She has held several roles at the Children's Law Center of California since 2001, including Firm Director from 2011 to 2017, Supervising Attorney from 2005 to 2011 and Staff Attorney from 2001 to 2005. Dabney earned a Juris Doctor degree from Loyola Law School, Los Angeles. She fills the vacancy created by the retirement of Judge Paul L. Seave. Dabney is a Democrat.

San Bernardino County Superior Court



James M. Taylor, of Riverside County, has been appointed to serve as a Judge in the San Bernardino County Superior Court. Taylor has been a Sole Practitioner since 2000. He was an Attorney for the San Bernardino County Indigent Defense Program from 2001 to 2020 and for Conflict Defense Lawyers from 2005 to 2014. Taylor earned a Juris Doctor degree from the Western State College of Law. He fills the vacancy created by the retirement of Judge Ingrid A. Uhler. Taylor is registered without party preference.

San Diego County Superior Court



Jami L. Ferrara, of San Diego County, has been appointed to serve as a Judge in the San Diego County Superior Court. Ferrara has been a Sole Practitioner since 2001. She was a Trial Attorney at Federal Defenders of San Diego Inc. from 1997 to 2000. Ferrara earned a Juris Doctor degree from George Mason University Law School. She fills the vacancy created by the retirement of Judge John S. Meyer. Ferrara is a Democrat.



Rachel L. Jensen, of San Diego County, has been appointed to serve as a Judge in the San Diego County Superior Court. Jensen has been a Partner at Robbins Geller Rudman & Dowd LLP since 2008 and an Associate from 2004 to 2007. She served as a Law Clerk for the Office of the Prosecutor at the United Nations International Criminal Tribunal for the Former Yugoslavia in 2003 and the United Nations International Criminal Tribunal for Rwanda in 2002. Jensen served as a Law Clerk for the Honorable Warren J. Ferguson at the U.S. Court of Appeals for the Ninth Circuit from 2001 to 2002. She was an Associate at

Morrison & Foerster LLP from 2000 to 2001. Jensen earned a Juris Doctor degree from the Georgetown University Law Center in 2000. She fills the vacancy created by the appointment of Judge David Rubin to the Court of Appeal. Jensen is a Democrat.



Devon L. Lomayesva, of San Diego County, has been appointed to serve as a Judge in the San Diego County Superior Court. Lomayesva has been Chief Judge at the Intertribal Court of Southern California since 2016. She has been a Sole Practitioner since 2014. Lomayesva was a Pro Tem Judge at the Intertribal Court of Southern California from 2015 to 2016 and Tribal Attorney for the Soboba Band of Luiseño Indians from 2013 to 2014. She was Executive Director at California Indian Legal Services from 2007 to 2012 and In-House Counsel for the Lipay Nation of Santa Ysabel from 2004 to 2007. She was Directing Attorney at California Indian Legal Services from 2003 to 2004 and a Staff Attorney there from 1999 to 2002. Lomayesva was a Staff Attorney at the California Indian Lands Office from 2002 to 2003. She earned a Juris Doctor degree from the California Western School of Law. She fills the vacancy created by the retirement of Judge Harry Powazek. Lomayesva is a Democrat.



Catherine A. Richardson, of San Diego County, has been appointed to serve as a Judge in the San Diego County Superior Court. Richardson has served as a Commissioner at the San Diego County Superior Court since 2024. She served as a Senior Chief Deputy City Attorney at the San Diego City Attorney's Office from 2014 to 2024 and was Senior Counsel at Klinedinst PC from 2011 to 2014. Richardson served as a Deputy City Attorney at the San Diego City Attorney's Office from 2009 to 2011 and from 1990 to 1997. She was a Sole Practitioner from 2005 to 2009. She was a Partner at Thorsnes Bartolotta McGuire from 1997 to 2005 and an Associate there from 1988 to 1990. Richardson earned a Juris Doctor degree from the University of San Diego School of Law. She fills the vacancy created by the retirement of Judge Carlos O. Armour. Richardson is a Democrat.

Sutter County Superior Court



Fritzgerald A. Javellana, of Sutter County, has been appointed to serve as a Judge in the Sutter County Superior Court. Javellana has served as a Deputy County Counsel in the Office of the Sutter County Counsel since 2022. He was a Contract Juvenile Dependency Attorney for the Office of the Butte County Counsel from 2016 to 2022. Javellana was a Partner at Williams & Javellana LLP from 2014 to 2022 and an Associate at Rooney Law Firm from 2010 to 2014. Javellana earned a Juris Doctor degree from Southwestern Law School. He fills the vacancy created by the retirement of Judge Perry M. Parker. Javellana is registered without party preference.

The compensation for each of these positions is \$243,940.

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Governor Newsom appoints 18 new superior court judges across California

DJ [dailyjournal.com/articles/381352-governor-newsom-appoints-18-new-superior-court-judges-across-california](https://www.dailyjournal.com/articles/381352-governor-newsom-appoints-18-new-superior-court-judges-across-california)

A wave of retirements may give Gov. Gavin Newsom a unique legacy: The opportunity to shape the California judiciary more profoundly than any governor in history.

On Wednesday, Newsom took another step toward this milestone, appointing 18 new judges to superior courts across the state. This diverse group brings experience spanning public defense, prosecution, appellate law and private practice, reflecting the state's varied legal landscape.

Notably, two-thirds of the appointments were concentrated in three major counties with high judicial vacancy rates: Los Angeles, Sacramento and San Diego.

Among the new judges is Brendan M. Farrell, who will join the Superior Court in Colusa County, where he has been the district attorney since last year.

Robert S. Leach was appointed to the Contra Costa County Superior Court. He is chief of the Special Prosecutions Section at the U.S. Attorney's Office for the Northern District of California.

Leslie B. Gutierrez, Heather M. Hocter, Karen C. Joynt, Esther K. Ro and Karla Sarabia were appointed to the Los Angeles County Superior Court. Gutierrez is a deputy district attorney and Hocter is a deputy alternate public defender. Joynt is a court commissioner. Ro is a senior appellate attorney and Sarabia is a deputy public defender.

Julianne Sartain Bancroft and Randy K. Ladisky are set to serve in Orange County. Bancroft is an appellate research attorney. Ladisky is a deputy alternate public defender.

In Sacramento, Lee S. Bickley, Joseph M. Cress and Brenda R. Dabney received appointments. Bickley works for the California Public Employees' Retirement System and is a former assistant U.S. attorney. Cress is a deputy public defender. Dabney is the Northern California regional director at the Children's Law Center.

James M. Taylor was appointed the San Bernardino County court. He is a sole practitioner specializing in criminal defense.

In San Diego County, Jami L. Ferrara, Rachel L. Jensen, Devon L. Lomayesva and Catherine A. Richardson were appointed to the court. Ferrara is a sole practitioner. Jensen is a partner at Robbins Geller Rudman & Dowd LLP. Lomayesva is the chief judge of the Intertribal Court of Southern California. Richardson is a court commissioner.

Fritzgerald A. Javellana will join the Sutter County Superior Court. Javellana is a deputy county counsel.

Sixteen of the new judges fill jobs that opened through retirement -- most of them in the past two years -- while two took the jobs of judges elevated to appellate courts. Some of the retired judges are now on the panels of large alternative dispute resolution providers. This includes two Los Angeles County judges who retired this year. Paul A. Bacigalupo joined ADR Services Inc. Amy M. Pellman is with Signature Resolution.

With the latest round of appointments, Newsom has named 553 judges to the state's superior and appellate courts, including 108 so far this year. In his most recent eight years in office, Gov. Jerry Brown appointed 644. At his current rate of over 100 judges a year, Newsom could pass Brown by late next summer -- with well over a year left in office.

He's also appointed three current members of the California Supreme Court, including Chief Justice Patricia Guerrero. Two current justices, Carol A. Corrigan and Martin J. Jenkins, are over 70 and long vested in the Judges Retirement System.

It is also common in the months before an election for a governor to appoint judges to the seats they already won outright in the spring primary election. This allows them to take the seat before the official start of their term. But only one of the judges appointed on Wednesday, Leslie B. Gutierrez in Los Angeles, had already won her seat.

Newsom still has plenty of seats to fill. According to the monthly vacancy report from the Judicial Council, there were 108 total judicial vacancies in California on Oct. 1, including 29 in Los Angeles County alone. This is up from 90 on Jan. 1, despite Newsom's rapid rate of appointments. Brown had just 66 open seats at the same point in his second term.

#381352

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Northern District Prosecutor Among 18 State Judicial Appointees

[law.com/therecorder/2024/10/10/northern-district-prosecutor-among-18-state-judicial-appointees](https://www.law.com/therecorder/2024/10/10/northern-district-prosecutor-among-18-state-judicial-appointees)

Cheryl Miller



A longtime federal prosecutor who played key roles in pursuing charges against Silicon Valley headliners in recent years was appointed to a Contra Costa County judgeship on Wednesday.

Gov. Gavin Newsom named **Robert Leach**, chief of the special prosecutions section in California's Northern District, to the Contra Costa trial court. He will fill the vacancy created by the retirement of Superior Court Judge Susanne Fenstermacher.

Leach has worked in the U.S. Attorney's Office since 2012 and was part of teams that prosecuted Theranos founder Elizabeth Holmes and Chief Operating Officer Ramesh "Sunny" Balwani, and Autonomy Corp. executives Michael Lynch and Sushovan Hussain.

The former Latham & Watkins associate worked at the U.S. Securities and Exchange Commission from 2003 to 2012, holding several roles, including assistant regional director and branch chief.

Leach was one of 18 judges appointed to eight trial courts around the state on Wednesday.

Colusa County District Attorney **Brendan Farrell** was named a judge of the Superior Court after serving as a prosecutor since 2010. He earned his law degree from the University of Notre Dame Law School and, after a brief stint as a volunteer attorney in the Los Angeles City Attorney's Office, has spent his entire prosecutorial career in Colusa County.

Newsom named five to the Los Angeles County bench, including Deputy District Attorney **Leslie Gutierrez**. Gutierrez, a Los Angeles County prosecutor since 2012, was elected to a judgeship in March. Newsom's interim appointment allows her to take the bench immediately instead of waiting for her term to begin in January.

Also appointed a judge of the Los Angeles County Superior Court was **Heather Hocter**, a deputy alternate public defender since 2017. She was previously a deputy public defender in Los Angeles County from 2006 to 2017.

Newsom also elevated **Karen Joynt** from Los Angeles County court commissioner to judge. A former deputy alternate public defender, Joynt held several positions in the Los Angeles County Counsel's Office between 2010 and 2019. She later owned her own firm, Joynt Law, from 2019 until joining the court as a commissioner in 2022.

Esther Ro will be moving from her position as a senior appellate attorney at the Second District Court of Appeal to a judge of the Los Angeles trial court. She worked as an associate and partner at Morgan, Lewis & Bockius from 2011 to 2019.

Karla Sarabia, a longtime public defender, was also named a judge of the Los Angeles County Superior Court. Before joining the L.A. Public Defender's Office in 2008, Sarabia was a public defender in Contra Costa and Fresno counties.

In Orange County, Fourth District Court of Appeal senior research attorney **Julianne Sartain Bancroft** was appointed a Superior Court judge. Before going to work at the appellate court, Bancroft was a partner at Snell & Wilmer from 1997 to 2002 and an associate there from 1994 to 1997.

Joining Bancroft on the Orange County bench will be Senior Deputy Alternate Public Defender **Randy Ladisky**. Ladisky has worked in the alternate public defender's office since 2001.

Newsom named three new Sacramento County Superior Court judges. **Lee Bickley** was an assistant U.S. attorney in the Eastern District from 2010 to this year, when she became a senior attorney at the California Public Employees' Retirement System. **Joseph Cress** has worked at the Sacramento County Public Defender's Office since 1995, most recently holding the title of chief assistant. **Brenda Dabney** is Northern California regional director of the Children's Law Center, where she has worked since 2001.

In San Bernardino County, veteran solo practitioner **James Taylor** was named a judge of the local superior court. Taylor was an attorney for the San Bernardino County Indigent Defense Program from 2001 to 2020 and for Conflict Defense Lawyers from 2005 to 2014.

Another solo practitioner, **Jami Ferrara**, was appointed to the San Diego County Superior Court. Before launching her own practice in 2001, Ferrara was a trial attorney at Federal Defenders of San Diego Inc. from 1997 to 2000.

Also joining the San Diego bench is longtime Robbins Geller Rudman & Dowd attorney **Rachel Jensen**. Before joining the plaintiffs firm in 2004, Jensen was a law clerk for the Office of the Prosecutor at the U.N. International Criminal Tribunal for the former Yugoslavia in 2003 and the U.N. International Criminal Tribunal for Rwanda in 2002.

Newsom's third San Diego court appointment is **Devon Lomayesva**, a chief judge at the Intertribal Court of Southern California since 2016. She has been a solo practitioner since 2014 and was a pro tem judge at the Intertribal Court of Southern California from 2015 to 2016.

San Diego County Superior Court Commissioner **Catherine Richardson** was elevated to a judgeship on the court. She served as a senior chief deputy city attorney in San Diego from 2014 to 2024, and she was senior counsel at Klinedinst from 2011 to 2014.

In Sutter County, **Fritzgerald Javellana** was named a judge of the Superior Court. Javellana has been a deputy county counsel in Sutter County since 2022. Previously he was a contract juvenile dependency attorney in Butte County from 2016 to 2022 and a partner at Williams & Javellana from 2014 to 2022.

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Federal Judges Push Back On Self-Importance Of CEOs

A abovethelaw.com/2024/10/federal-judges-push-back-on-self-importance-of-ceos

Kathryn Rubino

October 9, 2024

Courts

No. You aren't too good to sit for a deposition.

By Kathryn Rubino

on October 9, 2024 at 4:45 PM



It may have taken 40 years, but federal courts are finally pushing back on the legal theory that the CEOs of major corporations are simply too important to testify. Back in 1985, the apex doctrine was codified. In a personal injury lawsuit against Chrysler, top exec Lee Iacocca was shielded from having to sit for a deposition because he was a “singularly unique and important” individual.

Since then, C-suite individuals like Elon Musk and Mark Zuckerberg have invoked the doctrine to avoid testifying in various litigation. However, the tides are changing. As federal Judge Iain D. Johnston told Bloomberg Law, “Single moms, single dads, who’ve got part time jobs, are taking classes, are taking kids to daycare—is their time less valuable than the CEO of a major corporation sitting in a meeting? There should be a healthy skepticism of people’s self-importance.”

Biglaw partners are seeing that shift happening in real time.

From Thomson Reuters

David Fertig, a partner at BakerHostetler who's litigated both sides of the apex doctrine, said the question in litigation is shifting to whether the apex witness has unique information relevant to a case, rather than if the CEO is too busy or otherwise important to be deposed. In some instances, legal fights ensue over limiting the scope and length of the deposition, rather than whether the deposition can happen, Fertig said.

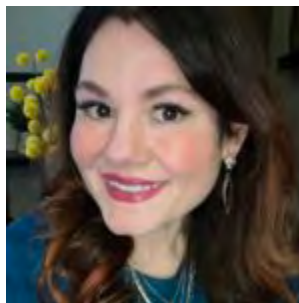
"There's increasing concern and public outcry for people of significant wealth and power to answer for corporate conduct," Fertig said. "Courts have therefore shown some reluctance to the idea that merely by virtue of their status as senior executives, apex witnesses are immune from deposition."

And Duane Morris partner Gerald Maatman Jr. said, "There's no free pass anymore. There's no presumption that just because you're the CEO, you get to avoid depositions."

When trying again to invoke the doctrine earlier this year, Zuckerberg wasn't as successful as he was in the past. And he's not the only CEO ordered to be deposed this year.

The tech titan's change in fortune reflects a backlash against the apex doctrine by judges swayed by populist arguments that it unfairly favors the powerful. McDonald's Corp. CEO Christopher Kempczinski, Microsoft Corp. CEO Satya Nadella, activist investor Carson Block, Madison Square Garden chief James Dolan, and now Zuckerberg all lost bids in the past year to duck depositions under the apex doctrine in federal courts.

It may not be as radical as plaintiffs attorneys might like — Robbins Geller attorney Jason Forge said "the entire concept is a disgrace" — but there's still been significant progress pushing against the notion that corporate executives are (sigh) above the law.



Kathryn Rubino is a Senior Editor at Above the Law, host of The Jabot podcast, and co-host of Thinking Like A Lawyer. AtL tipsters are the best, so please connect with her. Feel free to email her with any tips, questions, or comments and follow her on Twitter @Kathryn1 or Mastodon @Kathryn1@mastodon.social.

FTX investors drop lawsuit against law firm Sullivan & Cromwell

 [reuters.com/legal/legalindustry/ftx-investors-drop-lawsuit-against-law-firm-sullivan-cromwell-2024-10-09](https://www.reuters.com/legal/legalindustry/ftx-investors-drop-lawsuit-against-law-firm-sullivan-cromwell-2024-10-09)

David Thomas

By David Thomas

October 9, 2024 1:17 PM PDT Updated 17 hours ago

Sullivan Cromwell law firm in New York City, U.S., July 27, 2022. REUTERS/David Dee Delgado Purchase Licensing Rights , opens new tab

Oct 9 (Reuters) - A group of FTX investors told a Miami federal court Wednesday that they are voluntarily dismissing , opens new tab their proposed class action against prominent U.S. law firm Sullivan & Cromwell.

The investors had accused Sullivan & Cromwell of participating in the defunct cryptocurrency exchange's multibillion-dollar fraud and then enriching itself as FTX's lead bankruptcy counsel. The firm had represented FTX on about 20 matters before it collapsed.

But lead plaintiffs' counsel Adam Moskowitz told Reuters on Wednesday that there was "no claim at this stage" against the New York-founded law firm.

Moskowitz cited the work done by FTX bankruptcy examiner Robert Cleary of Patterson Belknap Webb & Tyler, who found in reports issued in May and September , opens new tab that Sullivan & Cromwell was not complicit in the fraud that caused the crypto company's collapse and had not ignored red flags during its representation of former FTX CEO and founder Sam Bankman-Fried.

"Bob Cleary's second report gave us enough evidence that there was no claim there," Moskowitz said.

A Sullivan & Cromwell spokesperson said in a statement that the firm is "pleased that the plaintiffs have withdrawn their meritless claims unconditionally, and our focus remains on returning billions of dollars in recovered assets to FTX's creditors."

The lawsuit alleged Sullivan & Cromwell had unique insight into the exchange's "convoluted organizational structure, abject lack of internal controls, and dubious business practices." It also accused the firm's lawyers of being "eager to craft not only creative, but misleading strategies that furthered FTX's misconduct."

Sullivan & Cromwell countered in a May filing , opens new tab that the allegations had "numerous legal defects" and relied on "threadbare allegations, unwarranted assumptions, and legal conclusions that the court need not accept as true even at the pleading stage."

FTX filed for bankruptcy in November 2022 in the wake of claims that the company misused and lost billions of dollars worth of customers' crypto deposits. Bankman-Fried was found guilty a year later of charges that he defrauded FTX customers by using their funds to prop up his own risky investments.

Plaintiffs' lawyers last week reached a deal with the FTX bankruptcy estate over who owns the rights to sue on behalf of customers of the crypto exchange.

Moskowitz said the deal was reached independently of the investors' decision to drop the lawsuit against Sullivan & Cromwell.

FTX received court approval for its bankruptcy plan on Monday, which will allow it to fully repay customers using up to \$16.5 billion in assets recovered since the once-leading crypto exchange collapsed.

The case is In Re: FTX Cryptocurrency Exchange Collapse Litigation, U.S. District Court for the Southern District of Florida, 1:23-md-03076

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Reporting by David Thomas

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David Thomas
Thomson Reuters

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Oct. 9, 2024, 3:08 PM PDT

Sullivan & Cromwell Dropped From FTX Investors' Fraud Lawsuit

By Quinn Wilson

Documents

 [Notice](#) [Docket](#)

Bloomberg Law News 2024-10-10T11:09:55387277624-04:00

Sullivan & Cromwell Dropped From FTX Investors' Fraud Lawsuit

By Quinn Wilson 2024-10-09T18:08:09000-04:00

FTX law firm Sullivan & Cromwell LLP was dismissed from a lawsuit filed by some of the failed crypto exchange's investors on Wednesday, according to a district court filing.

The investors said that the law firm was voluntarily dismissed from the suit with prejudice in a notice filed with the US District Court for the Southern District of Florida. A proposed class alleged Sullivan & Cromwell attorneys "actively participated" in FTX's fraud through their legal work for the exchange.

- Sullivan & Cromwell called the allegations "dubious" and said the investors hadn't alleged any knowledge of fraud while performing certain legal services
- The law firm worked for FTX leading up to its November 2022 crash and racked up more than \$180 million in billing hours for its work guiding the exchange through Chapter 11 restructuring proceedings in Delaware
- Dozens of third-party advisers and celebrity endorsers, including former NFL star Tom Brady, still face investor claims of enabling FTX's fraud throughout the multidistrict litigation

The case is In Re: FTX Cryptocurrency Exchange Collapse Litigation , S.D. Fla., No. 1:23-md-03076, 10/9/24 .

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The Fight to Hold Executives and Boards Accountable Continues in Barclays and Bayer Appeals

 [nakedcapitalism.com/2024/10/the-fight-to-hold-executives-and-boards-accountable-continues-in-barclays-and-bayer-appeals.html](https://www.nakedcapitalism.com/2024/10/the-fight-to-hold-executives-and-boards-accountable-continues-in-barclays-and-bayer-appeals.html)

By Yves Smith

October 10, 2024

Below we've embedded New York appeals in court filings in two cases, Ezrasons v. Rudd ("Barclays") and Haussmann v. Baumann ("Bayer"). Even though the particulars of executive and board misconduct, as well as the home jurisdiction differ, both suits have similar high level strategies (along with some others filed by Bottini & Bottini, with Michelle Lerach and her husband Bill Lerach, as advisor, playing major roles, see for instance [here](#), [here](#), and [here](#)).

Lawsuits on behalf of shareholders to bring epically incompetent (and in the case of Bayer, corrupt) managements and boards might seem to those not in the investor classes be of little consequence to them. But high level corporate misdeeds can and do have broader consequences. Having executives and boards be afraid of their shareholders would almost certainly reduce the level of self-serving conduct. More frequent shareholder suits that actually made a difference would also lower the bar for criminal prosecution of executives, as in it would not seem like such an unusual or risky event for a prosecutor to haul them into court.

These cases serve to illustrate how perversely hard it is for shareholders to discipline or turf out value-destroying executives and boards. This is a point we've made regularly, following the observations of Amar Bhidé in his landmark 1994 Harvard Business Review article, *Efficient Markets, Deficient Governance*: US securities laws have focused on creating a clean and fair environment for investors in the buying and selling of securities, at the expense of these investors having incentives (and as we'll see, the means) to oversee and discipline incompetent and grifting executives and boards. For instance: how could companies once as well-positioned as Intel and Boeing have gotten into such horrible shape? The simple reason is in a world of low transaction costs and well functioning markets, it's easier and much cheaper to sell your interest if you don't like how a company is being run than do anything about it (Bhidé cites additional important factors, but this is the most obvious).

To put this post in a much bigger context: we've mentioned in passing that even though the Global South is succeeding in chipping away at the use of the dollar in international trade, those transactions are only 3% to 5% of total foreign exchange transactions. The rest is investment related. Even though the Global South now exceeds the so-called Collective West in GDP, this does not translate into investment clout. First, much of the capital in advanced economies reflects past profit-making and other ~~rentierism~~ commercial

exploitation. Second, income levels per capita in the Global South on average are still much lower than in advanced economies, meaning that even though the surplus accumulation gap has been falling, it still remains. The result is that advanced economies still considerably dominate in terms of investment funds.

However, the weight of money in advanced economies is not the only reason that the dollar is likely to persist (even if somewhat diminished) as a reserve currency past what ought to be its sell-by date, given wild US over-use of economic sanctions. US markets are deep and liquid, which means low transaction costs. The US also has strong investor protections, such as extensive disclosure, and prohibitions against insider trading and market manipulation like front running. You may pooh pooh these ideas in light of Nancy Pelosi's remarkable stock-picking record, but on this front, the US is still the cleanest shirt in the dirty laundry. They also feature many key and very professional service providers, such as custodians and specialized brokers to accounting firms, to make investors' lives simpler.

Access to a perceived-to-be-evenhanded legal system is also important in defending the position of financial centers and their currencies. Investors want to have their disputes heard in US or UK courts. We'll have more on this in later posts, but a short illustration. Cyprus, which has English-law courts, was the route for corporate investment into Russia back in the days when that happened. Not only would multinationals paper up their Russian deals in Cyprus, but even wealthy Russians would round trip their investments into Russian companies through Cyprus to get the benefit of its courts. We have also pointed out that the unduly harsh treatment of Cyprus in its banking crisis (due to no small measure to financial turis in Greece) in 2013 looks, with the benefit of hindsight, to be a first salvo in the neocon escalation against Russia.

And even when US sanctions have deterred foreign companies from raising funds here, the home countries have too often fail to take advantage of the opportunity the US created. For instance, from a late June 2024 New York Times story:

As the geopolitical relationship between China and the United States has deteriorated, it has become increasingly difficult for Chinese companies to find a foreign market where a listing might not be jeopardized by political scrutiny.

Things are hardly looking better in China. As part of a push by Beijing to assert greater control over the Chinese market, regulators have made it harder to go public, drastically slowing the pace of domestic listings. Around 40 Chinese companies have gone public at home this year. They have raised less than \$3 billion, a fraction of the value typically raised by this point in the year, according to data from Dealogic.

If the current pace continues, this year will bring the fewest Chinese initial public offerings worldwide in more than a decade.

Hopefully this is not too long-winded an intro. Now to the cases and their state of play

One way to think of them is as legal arbitrage. Many countries in Europe formally provide for vastly stronger shareholder protections than in the US, both by statute and via shareholder agreements. But then they vitiate these rights by making them hard to enforce in their courts.

European companies who sell shares in the US confer the same rights as at home (forgive me for skipping over the reasons for this practice). But New York law in the 1960s codified the then-established standard that companies who elect to do business in New York have agreed to the jurisdiction of New York courts. That includes beneficial owners of share (shares held in street name) who have what is formally called derivative rights. All the companies at issue in these suits did a lot more than just sell shares in New York. They also have very substantial operations there, including have top level executives as New York state or area residents.

We'll use our earlier write-up of Bayer to give more detail. From a 2021 post:

Even though Covid has produced clogged courts, cases are still moving forward, including a series of cases using similar, novel legal arguments to storm the barricades of incestuously and poorly managed major European companies. We've written the most about Bayer, which is in the dock for its disastrous, executive and banker serving acquisition of Monsanto. Credit Suisse, Deutsche Bank, UBS, Barclays and Volkswagen are also in the crosshairs in parallel cases detailing their corporate dereliction of duty.

Even though the misconduct and the destruction of value has been glaring, European shareholders have an uphill road in trying to gain restitution. However, as we'll explain below, by virtue of having ADRs and significant US shareholdings and operation, the managements, boards, and advisers to these companies can be hauled into court in the US. And that's where the fun begins.

We've posted the latest round of filings, all rejoinders to arguments made by the defendants in the Bayer case. But the Bayer case, like its siblings, are derivative lawsuits, which make for complicated lawyering. So we'll review the foundations before continuing to the latest round of jousting.

We'll start by quoting an August 2020 post:

Each suit targets an epic level of value destruction, but they are not shareholder suits. They are derivative lawsuits, in which a shareholder steps in to act on behalf of a company that has been done wrong, typically by key members of its management and board. Important advisers may also be targets.

The Novel Legal Angle: Using New York Courts for Derivative Cases Against Major European Companies

The novel feature in these cases is suing in New York state court but using the parent company's governing law, which for Bayer is the German Stock Corporation Act as the basis for asserting causes of action.¹ The abstract from a 2015 article by Gerhard Wagner, *Officers' and Directors' Liability Under German Law: A Potemkin Village*:

The liability regime for officers and directors of German companies combines strict and lenient elements. Officers and directors are liable for simple negligence, they bear the burden of proof for establishing diligent conduct, and they are liable for unlimited damages. These elements are worrisome for the reason that managers are confronted with the full downside risk of the enterprise even though they do not internalize the benefits of the corporate venture. This overly strict regime is balanced by other features of the regime, namely comprehensive insurance and systematic under-enforcement. Even though the authority to enforce claims against the management is divided between three different actors – the supervisory board, the shareholders assembly, and individual shareholders – enforcement has remained the exception. Furthermore, under the current system of Directors' and Officers' (D&O) liability insurance, board members do not feel the bite of liability as they are protected by an insurance cover that is contracted and paid for by the corporation. Thus, the current German system may combine the worst of two worlds, i.e., the threat of personal liability for excessively high amounts of damages in exceptional cases, and the practical irrelevance of the liability regime in run-of-the-mill cases.

Notice here the low bar for misconduct: simple negligence, plus the managers and board members bear the burden of proof that they behaved well! So the linchpin of these cases is getting a non-captured court to measure corporate conduct against these standards.

Also observe another key feature: extremely generous D&O policies. That is serving as one of the deep pockets for this litigation....

The other deep pockets are the investment banks, Bank of America and Credit Suisse. As the suit explains, they too have duties defined under German law, yet they failed abjectly in acting as independent advisers because they were hopelessly conflicted. In addition to acting as merger advisers, they were also providing financing, since Bayer, to avoid needing to get shareholder approval, did an “all cash” deal. That in turn led to Bayer engaging in over a dozen financings, including pricey bridge loans. That meant the banks had huge incentives to see the deal close, which resulted in them not looking at the Monsanto garbage barge very hard.

Alert readers will note that these battles started in 2020 and the appeals below are dated 2024. In both cases, the lower courts rejected the original filings. This is not as surprising as it might seem; New York trial courts (perversely called the Supreme Court) are allergic to derivative suits. If you skim the filings, it might seem almost unfathomable that the cases are having to be appealed. New York statutes, and the legislative discussion at the time, make it clear that “foreign” as in not-New York, corporations are subject to New York gatekeeping rule. A problem is that (aside from judges not liking derivative cases; they have little appetite for being made to feel stupid; this was huge obstacle to legally sound “chain of title” arguments back in the foreclosure crisis days) many judges are deferential to the so-called internal affairs doctrine. Per Wikipedia:

The internal affairs doctrine is a choice of law rule in corporations law. Simply stated, it provides that the “internal affairs” of a corporation (e.g. conflicts between shareholders and management figures such as the board of directors and corporate officers) will be governed by the corporate statutes and case law of the state in which the corporation is incorporated.

But New York statutes, and related case law, is (with a few outlier decisions) are clear that if a company does business in New York, it has made itself subject to New York jurisdiction. And there’s no carveout for internal affairs. In fact, a provision of the 1960s statutes explicitly protected the aforementioned beneficial shareholders, contemplating that New York laws would conflict with established “internal affairs” notions and New York law and courts should have primacy. So another way to think about these case is that the power, jurisdiction and outreach of the New York courts over large corporations incorporated in other countries who do a great deal of business in New York is at stake.

The “Argument” section in the Table of Contents of each filing gives a good summary of what follows. In Bayer, the big bone of contention is over a “forum non conveniens” ruling (as in the case should be in Germany because too hard for defendant to argue in New York) when the New York statutes limit its use and Bayer’s behavior makes it subject to them. With

Barclays, it is the internal affairs doctrine plus rejecting (despite statutory provisions otherwise) that beneficial owners have standing to pursue derivative actions against foreign corporations operating in New York.

The appeals court is expected to hear the oral arguments in January.

To Be Argued By:
Francis A. Bottini, Jr.
Time Requested: 30 Minutes

APL-2024-00017

New York County Clerk's Index No. 651500/2020
Appellate Division, First Department Case Nos. 2022-02491 and 2022-04806

Court of Appeals

STATE OF NEW YORK

REBECCA R. HAUSSMANN, TRUSTEE OF KONSTANTIN S. HAUSSMANN TRUST,
and JACK E. CATTAN, Derivatively on behalf of BAYER AG,

against

Plaintiffs-Appellants,

WERNER BAUMANN, WERNER WENNING, LIAM CONDON, PAUL ACHLEITNER,
OLIVER ZÜHLKE, SIMONE BAGEL-TRAH, NORBERT W. BISCHÖFBERGER, ANDRE
VAN BROICIL, ERTIHARIN COUSIN, THOMAS ELSNER, JOHANNA HANNEKE FABER,
COLLEEN A. GOGGINS, HEIKE HAUSFELD, REINER HOFFMANN, FRANK LÖLLGEN,
WOLFGANG PLISCHKE, PETRA REINBOLD-KNAPE, DETLEF RENNINGS,

(Caption Continued on the Reverse)

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Dexcom Leaders Sold Stock on Inside Sales Knowledge, Suit Says

By Martina Barash

- **COURT:** S.D. Cal.
- **TRACK DOCKET:** [No. 3:24-cv-01799](#)

Bloomberg Law News 2024-10-10T11:02:49350781142-04:00

Dexcom Leaders Sold Stock on Inside Sales Knowledge, Suit Says

By Martina Barash 2024-10-09T12:51:52000-04:00

- **COURT:** S.D. Cal.
- **TRACK DOCKET:** [No. 3:24-cv-01799](#)

Dexcom Inc.'s board and two executives overstated the glucose monitor maker's growth potential—and five of them sold shares for a total of \$26 million in profits—before a 41% stock drop on disappointing sales, an investor alleges.

The directors and officers' misconduct harmed Dexcom in several ways, Jerome Malone says in a shareholder derivative suit docketed Tuesday in the US District Court for the Southern District of California. For example, the company paid the leaders "lavish compensation," incurred costs for an internal investigation and professional fees, and faces a proposed class action over the July 26 stock drop, Malone says.

The class action plaintiffs allege in their suit, filed Aug. 21 in the same district, that Dexcom failed to tell them that its sales force was poorly equipped to execute its ambitious growth plans. The stock price decline was the largest in the company's history, according to data compiled by Bloomberg.



Malone, suing on behalf of the company, says CEO Kevin Sayer, chief financial officer Jereme Sylvain, and board members “repeatedly overrepresented the Company’s growth capabilities to attain more patients, surpass the previous fiscal year’s gross margins, and scale patient conversion” to Dexcom’s newest glucose monitor model. They also allegedly touted Dexcom’s growth plan without disclosing that the sales team wasn’t prepared for the job and “downplayed the impact seasonality would have on the business.”

Sayer, Sylvain, and three others sold stock before the disclosures, Malone says.

Malone brings claims for misleading proxy statements, breach of fiduciary duties, unjust enrichment, abuse of control, gross mismanagement, waste of corporate assets, and contribution to potential class action liability. He seeks damages, restitution, and internal governance reforms.

Dexcom didn’t immediately respond to a request for comment on behalf of itself or the individual defendants.

The Brown Law Firm PC represents Malone.

The case is Malone v. Sayer , S.D. Cal., No. 3:24-cv-01799, complaint entered 10/8/24 .

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Boeing Turns Over 737 Max Safety Records to End Investor Probe

By Mike Leonard 2024-10-10T13:16:31000-04:00

- Lawsuit sought corporate files after \$244 million DOJ deal
- Funds drop case, say disclosures ‘substantially completed’

Boeing Co. has turned over a tranche of corporate records to end preliminary legal action by pension funds eyeing shareholder litigation over its 737 Max jetliner’s safety woes.

Two Ohio public employee retirement systems [dropped their Delaware lawsuit](#) demanding internal documents from the aerospace giant, saying the company had “substantially completed” the disclosures they sought. The suit invoked a law that gives investors broad access to corporate files if they have credible but preliminary suspicions of wrongdoing by board members or executives. The move averted a Nov. 26 trial.

Records cases typically reflect an attempt to drum up fiduciary breach claims for future litigation. But the pension funds so far haven’t initiated an investor class action against Boeing or a derivative lawsuit against its leaders, the two main types of shareholder suit. Class actions generally seek damages directly on behalf of stockholders, while derivative cases involve claims brought on behalf of the company against its top brass.

The lawsuit, [filed in July](#), came days after Boeing pleaded guilty and agreed to pay a fine of at least \$243.6 million to resolve criminal charges stemming from 737 Max 8 crashes in 2018 and 2019 that killed 346 people. The plea deal followed the Justice Department’s decision to revive the case when it concluded the company breached a 2021 deferred prosecution agreement.

The records suit requested internal documents including board minutes and whistleblower complaints dating back to early 2022. The July 26 complaint concerned, among other things, a January blowout in a Boeing 737 Max 9 door component that forced an Alaska Airlines Inc. flight to make an emergency landing. The incident directly preceded the Justice Department’s move to resurrect the criminal charges.

The Max 8 crashes have already been the subject of shareholder litigation in Delaware's Chancery Court that Boeing's board [settled for \\$237](#) million in 2022. A magistrate judge, Selena E. Molina, [blocked the pension funds](#) last month from taking depositions in the records case.

The pension funds are represented by Bleichmar Fonti & Auld LLP. Boeing is represented by Richards, Layton & Finger PA.

The case is [Ohio Pub. Emp. Ret. Sys. v. Boeing Co.](#) , Del. Ch., No. 2024-0795, stipulation filed 10/10/24 .

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[Boeing Directors Win Approval of \\$237 Million 737 Max Settlement](#)

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Business Law Prof Blog

 lawprofessors.typepad.com/business_law/2024/10/thats-one-way-to-satisfy-howey.html

Thursday, October 10, 2024

That's one way to satisfy Howey

By Ann Lipton

Yesterday, the Department of Justice unsealed indictments of several cryptocurrency exchange operators for various forms of market manipulation, in coordination with SEC complaints targeting the same conduct. It turns out there was an elaborate FBI sting operation involved, whereby the FBI actually created a token for the targeted individuals to manipulate. The FBI set up a website and everything – the website is actually hilarious, because it describes the token with every bit of crypto-futurish-gibberish you can imagine. To wit:

Where Innovation Meets Investment, Shaping Tomorrow Together

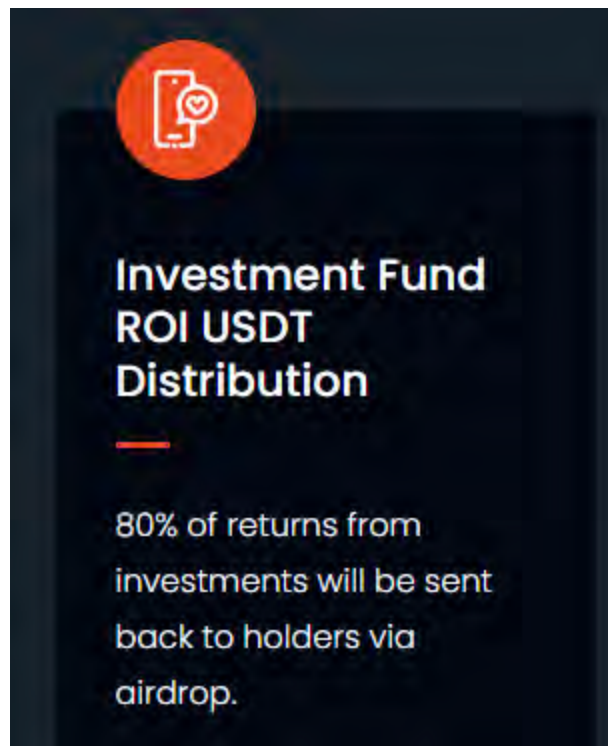
NexFundAI is at the forefront of redefining the intersection between finance and artificial intelligence. Our purpose is clear: to create a cryptocurrency token that not only serves as a secure store of value but also acts as a catalyst for positive change in the world of AI. In collaboration with NextFundAI, we direct fees from our token towards early-stage AI projects, fostering innovation and generating returns. Our commitment extends beyond mere financial gains; we believe in providing tangible utility to our community. At NexFundAI, transparency is paramount, and innovation is our driving force. We strive to empower our community members by offering not just returns but also the opportunity to actively participate in AI applications developed by NextFundAI partners. We are proud to announce our commitment to the community, with 80% of profits from investment projects distributed to token holders in USDT. Join us on this journey where trust, innovation, and community collaboration converge, shaping a future where finance and AI work hand in hand for the benefit of all. Welcome to NexFundAI, where your investment powers innovation, and your future unfolds with purpose.

It almost reads like it was written by AI as a parody, but I hope a real human person got to draft this. They must be so proud.

Anyhoo, that's not the only interesting thing. Here's what's also interesting.

Often, when DOJ comes for crypto, it just charges wire fraud. That way – unlike the SEC – it can avoid getting into a fight about whether a particular token was or was not a security. But market manipulation, specifically, is a security-related offense. And the DOJ wanted to get at market manipulation. By creating its own token, DOJ could be *sure* that the token satisfied the definition of a “security.” It designed it to be a security!

For example, one argument often made in these cases is that it can't be a security unless there's some kind of contractual or quasi-contractual claim that investors can make on the corporate assets. And that's just what NexFundAI promises:



So, this Law360 article has all the indictments/complaints and you can see – the SEC goes into detail about why their creation, the NexFundAI token (of course it's AI) was a security.

To be sure, both agencies bring securities manipulation claims against a few of the defendants who apparently were not involved with NexFundAI – so they will have to prove the security-status of some additional tokens. But NexFundAI is sure going to make everything easier across the board.

And another thing... New *Shareholder Primacy* podcast up. This time, I talk about one-person special committees and Mike Levin talks about how activist investors do their thing. Available at Apple, Spotify, and Youtube.

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Oct. 9, 2024, 12:21 PM PDT

Voyager Execs, Account Holders' \$6.5 Million Deal Gets Final Nod

By Martina Barash

Bloomberg Law News 2024-10-10T11:09:20457710287-04:00

Voyager Execs, Account Holders' \$6.5 Million Deal Gets Final Nod

By Martina Barash 2024-10-09T15:21:45000-04:00

Two Voyager Digital Holdings Inc. executives' \$6.5 million settlement with account and digital token holders over the cryptocurrency company's implosion merits final approval, a federal court ruled.

Judge P. Kevin Castel's order, docketed Wednesday in the US District Court for the Southern District of New York, was followed by his assent to \$1.3 million in attorneys' fees, or 20% of the total, in the class suit. But Castel declined to grant service awards to the named plaintiffs because they hadn't shown that they incurred costs.

- The account and VGX token holders sued a number of Voyager's officers and directors after the company filed for bankruptcy, saying CEO Stephen Ehrlich and other leaders marketed the accounts "as a low risk way to 'grow your crypto portfolio'"
- Ehrlich and chief financial officer Evan Psaropoulos are the remaining defendants in the case; their accord with the account holders is part of a larger master settlement agreement with insurers involving other cases as well
- In June, the Southern District of Florida preliminarily approved a \$2.4 million settlement with VGX holders, funded primarily by retired NFL star Rob Gronkowski, in a class action claiming that he and other athletes helped promote Voyager

Scott & Scott Attorneys at Law LLP and Taylor-Copeland Law are lead counsel for the account and token holders. Attorneys for the defendants include Day Pitney LLP for Ehrlich and Calfee Halter & Griswold LLP for Psaropoulos.

The case is Roberts v. Ehrlich , S.D.N.Y., No. 1:22-cv-09590, entered 10/9/24 .

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GlaxoSmithKline Settles Most Zantac Lawsuits for \$2.2B

 [law.com/2024/10/09/glaxosmithkline-settles-most-zantac-lawsuits-for-2-2b](https://www.law.com/2024/10/09/glaxosmithkline-settles-most-zantac-lawsuits-for-2-2b)

Amanda Bronstad



What You Need to Know

- GlaxoSmithKline agreed on Sept. 17 to settle out of the first Zantac trial in California, which began this month in Oakland.
- GSK won two defense verdicts in Illinois earlier this year but faced 75,000 cases in Delaware state courts.
- The settlement is with 10 plaintiffs firms, including Watts Law Firm and Wisner Baum.

GlaxoSmithKline has agreed to pay \$2.2 billion to settle 80,000 Zantac lawsuits.

Wednesday's announcement resolves 93% of all Zantac cases in state courts against GSK. And the deal comes after biopharma company agreed on Sept. 17 to settle out of the first Zantac trial in California, which began this month in Alameda County Superior Court in Oakland.

GSK won two defense verdicts in Illinois earlier this year but faced 75,000 cases in Delaware state courts, where a judge on May 31 refused to dismiss plaintiffs' experts linking Zantac to 10 types of cancer. The Delaware Supreme Court agreed to take up an interlocutory appeal, which GSK and other Zantac manufacturers filed on Oct. 1.

Wednesday's settlement also includes \$70 million to resolve a qui tam complaint filed against GSK by Valisure, the independent laboratory whose 2019 report first flagged certain heartburn medications, such as Zantac, as containing a carcinogen. That portion of GSK's settlement requires final approval from the U.S. Department of Justice.

"While the scientific consensus remains that there is no consistent or reliable evidence that ranitidine increases the risk of any cancer, GSK strongly believes that these settlements are in the best long-term interests of the company and its shareholders as they remove

significant financial uncertainty, risk and distraction associated with protracted litigation," GSK said in a statement on Wednesday.

GSK did not admit any liability as part of the settlement, which is expected to be implemented by early 2025.

'GSK Had a Lot More Liability Exposure'

The settlement is with 10 plaintiffs firms, but GSK did not specify which ones. Ashley Keller, whose Chicago-based firm Keller Postman is leading the Zantac trials in Illinois, declined to comment.

Brent Wisner, of Los Angeles-based Wisner Baum, and Jennifer Moore, of the Moore Law Group in Louisville, Kentucky, are co-lead attorneys for about 85,000 cases in Delaware and California and are handling the ongoing trial in Oakland.

"We are thrilled on behalf of our clients to announce a settlement with GSK, the developer of the drug Zantac after five hard-fought years," Wisner and Moore said in a joint statement.

"We continue to pursue claims against Boehringer Ingelheim for its wrongdoing in exposing millions of people to a known carcinogen for over a decade. Our fight against Boehringer Ingelheim continues today in a trial in Oakland, California."



Mikal Watts of Watts Law Firm in Austin, Texas. (Photo: ©Mark Sobhani Photography)

Mikal Watts, of Watts Law Firm in Austin, Texas, said his firm's clients make up 10% of the cases settled with GSK.

"It's clear, as the inventor of the drug, GSK had a lot more liability exposure," he said. "We're in discussion with the remaining defendants, and this doesn't hurt the process. Hopefully, we can get all four defendants to participate and wrap this up."

Earlier this year, Pfizer Inc. agreed to settle 10,000 cases, and Sanofi resolved 4,000 lawsuits outside of Delaware.

Both companies, Watts said, are continuing settlement talks.

"Productive discussions are underway," he said. "Boehringer Ingelheim is lagging among the four, but we're in early discussions with them, as well."

Boehringer Ingelheim won a defense verdict along with GSK in the first Zantac trial but had two subsequent mistrials in Illinois.

In 2020, the U.S. Food and Drug Administration announced an involuntary recall of Zantac and other heartburn medications containing ranitidine, after discovering the presence of a possible carcinogen.

Most of the Zantac litigation is in state courts across the country after a 2022 ruling by U.S. District Judge Robin Rosenberg, of the Northern District of Florida, which struck the plaintiffs' experts from the multidistrict litigation. Plaintiffs have appealed that decision to the U.S. Court of Appeals for the Eleventh Circuit.

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GSK Rises After Settling Zantac Cases for Up to \$2.2 Billion

By Ashleigh Furlong and Jef Feeley2024-10-10T03:07:48533-04:00

- Vast majority of cases will be settled under the agreement
- GSK has not admitted liability in relation to the settlements

GSK Plc shares surged after the UK pharma company agreed to pay as much as \$2.2 billion to resolve about 80,000 US court cases alleging that its old reflux medication Zantac was contaminated with a suspected carcinogen.

The cases represent about 93% of those against the company involving Zantac, GSK said Wednesday in a statement. Settling them is not an admission of liability, the company said.

Plaintiffs had argued that the company knew that Zantac's active ingredient, ranitidine, turned into the potential carcinogen NDMA under certain conditions. The US Food and Drug Administration asked companies producing Zantac to remove all ranitidine-based drugs from the US market in 2020.

The stock rose 6% in early London trading, reversing what had been a drop of 4.2% in the last 12 months.

The news "lifts a major investor concern and allows the shares to trade on fundamentals, suggesting upside given GSK's current significant discount to peers across a range of earnings multiples," Bloomberg Intelligence's **John Murphy** said in a note.

GSK is among a number of companies that made and sold versions of Zantac, and investor concern about the potential settlement value has weighed heavily on the drugmaker's share price. GSK said it "strongly believes that these settlements are in the best long-term interests of the company and its shareholders as they remove significant financial uncertainty, risk and distraction associated with protracted litigation."

The settlement value is at the lower end of Jefferies' estimates, with analyst **Peter Welford** describing it as nearing the "best case scenario." The market had been pricing in up to around \$30 billion into GSK's share price over the Zantac litigation, according to Shore Capital's **Sean Conroy**.

Plaintiffs decided to settle the case after Delaware's Supreme Court signaled it might walk back an earlier ruling that went in their favor, according to people familiar with the matter, who asked not to be identified discussing the deliberations.

Other Settlements

Sanofi agreed in April to pay more than \$100 million to settle about 4,000 Zantac-related lawsuits. Pfizer Inc. agreed to settle more than 10,000 related cases, Bloomberg reported in May.

In a September interview with Bloomberg News, Chief Executive Officer **Emma Walmsley** emphasized that GSK's "priority is start with the science, defend our position and always, always act in the interests of shareholders."

The UK drugmaker also said it had reached an agreement to pay an additional \$70 million to settle a complaint filed by Valisure, a pharmacy that tests drugs for contaminants. Valisure had alleged that GSK knew and hid the risks of Zantac from the US government. GSK said that settlement was not an admission of liability.

GSK expects to take an incremental charge in its upcoming results of £1.8 billion (\$2.4 billion) in relation to the settlements as well as the remaining 7% of pending state court product liability cases.

GSK's move doesn't end litigation around Zantac as other drugmakers are still facing trials, including Boehringer Ingelheim GmbH, which is facing a jury trial in Oakland.

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Deirdre Hipwell, Jerrold Colten

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Huge payday for lab behind Zantac cancer lawsuits

 [legalnewsline.com/stories/665026864-huge-payday-for-lab-behind-zantac-cancer-lawsuits](https://www.legalnewsline.com/stories/665026864-huge-payday-for-lab-behind-zantac-cancer-lawsuits)

October 10, 2024

Federal Court

Light | <https://www.valisure.com/team/david-light>

PHILADELPHIA (Legal Newsline) - The laboratory that claimed the heartburn drug Zantac can cause cancer could earn more than \$20 million under a \$2.2 billion settlement with drugmaker GSK ending 80,000 lawsuits in state courts around the country.

Valisure, a New Haven, Conn., lab with close ties to plaintiff lawyers, settled a qui tam “whistleblower” lawsuit along with the other cases for \$70 million, according to GSK. Valisure filed the lawsuit in the name of the federal government, claiming GSK defrauded state and federal health plans by failing to disclose the cancer risk. The government declined to join the suit, meaning Valisure stands to reap a higher bounty of 25-30% under federal law. GSK denies all the claims against it.

Valisure, which says it is an independent testing lab, was represented in the qui tam lawsuit by Wisner Baum, the same lawyers leading the broader Zantac litigation. Legal ethics rules prohibit lawyers from paying expert witnesses a contingency fee based on the success of cases they testify in, although in this case Valisure will win millions by settling a separate lawsuit based on identical claims.

The payoff comes despite the fact a federal judge and the Food and Drug Administration both found fault with Valisure's testing, which included heating an artificial stomach to a level about 70 degrees lower than the average temperature of the planet Mercury to record dangerous levels of the carcinogen NDMA.

“When Valisure tested ranitidine with salt concentrations more closely approximating what a human could safely ingest, Valisure detected no NDMA,” U.S. District Judge Robin Rosenberg said in a December 2022 dismissing thousands of federal Zantac lawsuits for lack of scientific evidence.

Valisure's qui tam lawsuit was unsealed earlier this year after the federal government and numerous states declined to join it, in a possible indication they lacked faith in the underlying allegations. The Federal False Claims Act allows self-described whistleblowers to proceed anyway, with higher bounties if they succeed.

Zantac litigation got a boost last June when a Delaware judge allowed plaintiff scientific evidence in to state cases, despite the contrary ruling by a federal judge. That ruling involved Emery Pharma, an Alameda, Calif., contract research lab run by Ph.D chemist Ron Najafi that used the same heating techniques as Valisure to claim Zantac could degrade into NDMA.

David Light, Valisure's CEO, ran afoul of the law while at Yale University when police discovered an illegal arsenal of weapons and explosives that led to a one-year prison sentence. The lab has said it scored a drug-testing contract with the Department of Defense, though Legal Newsline has failed to find any evidence of it despite repeated Freedom of Information Act requests to government agencies. Valisure has also declined to provide the contract.

Valisure's testing on acne medication has spawned more than a dozen class actions this year, though it heated products to 170 degrees Fahrenheit to find high levels of benzene in 18 days.

Valisure said the temperature was a reasonable estimation of what might occur in a shipping container or hot car.

ORGANIZATIONS IN THIS STORY

Valisure LLC

Californians Denied Class Status in Suit Against Auto Insurers

B [bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X7M22E3S000000](https://www.bloomberglaw.com/product/blaw/bloomberglawnews/class-action/X7M22E3S000000)

Three California residents claiming several companies unlawfully overcharged them for auto insurance were denied class certification after a federal judge said they lacked standing for injunctive relief.

The Californians failed to show that a group of insurance companies—including National General Insurance Co. and Integon Preferred Insurance Co.—were liable for each other's alleged failure to offer good drivers discounted rates. The plaintiffs also failed to show a threat of imminent harm to establish injunctive relief in support of class certification, the US District Court for the Northern District of California said in a Tuesday opinion. The court also granted summary judgment for defendant Sequoia Insurance Co.

The plaintiffs “have not shown a sufficient likelihood that they may be harmed by Defendants again for failing to cross-offer the lowest rate GDD policies,” Chief Magistrate Judge Donna M. Ryu wrote. Pointing to case law cited by the Kings, Ryu also held that “insurers in a control group are not automatically liable for each other's violations” amid a lack of evidence of collusion or agreement to harm plaintiffs.

The trio's proposed class action claimed the companies overcharged them for insurance in violation of California law. State law requires companies to offer discounted rates to good drivers at a rate of at least 20% less than what they would pay for the same coverage. They argued that the group of insurance companies are a “control group” under California law, which is defined as insurers who share “common ownership, management, or control.” The companies allegedly failed to collectively offer the same rates for the same coverage, according to the opinion.

Because Lee obtained an Integon Preferred insurance policy through Omni Safe Insurance Agency, she had to demonstrate that she purchased the policy through an agent or representative rather than a broker.

But Ryu said the plaintiffs didn't provide adequate evidence that Omni Safe was a direct agent of Integon at the time Lee bought her policy. Ryu concluded that Lee lacks standing, leaving the Kings as the only remaining plaintiffs.

Ryu also said that the Kings provided adequate evidence to show the companies were in the same control group when they purchased a PEIC policy in June 2013. The judge also found that the definition of “that coverage” under the California statute applies to “where the basic policies (i.e. liability, physical damage, or collision coverage) are the same, regardless of

different ancillary coverage benefits such as rental reimbursement.” Therefore, NGIC should have but failed to cross-offer the Kings the same low rate for the same coverage in June 2013.

Ryu also said the Kings failed to provide sufficient evidence to show they were eligible for an MIC affinity group policy, and therefore lacked standing for their claim pertaining to their June 2012 policy.

Bashein and Bashein, Robins Kaplan LLP, Morgan & Morgan, and others represent the plaintiffs. Michelman and Robinson LLP, Smith, Gambrell & Russell LLP, Nicolaides Fink Thorpe Michaelides Sullivan, and others represent the companies.

The case is Edd King et al v. National General Insurance Company et al , N.D. Cal., No. 4:15-cv-00313, 10/8/24 .

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Judges Support Proposed Rule Requiring Court's Approval to File Amicus Briefs

 [law.com/nationallawjournal/2024/10/09/judges-support-proposed-rule-requiring-courts-approval-to-file-amicus-briefs](https://www.law.com/nationallawjournal/2024/10/09/judges-support-proposed-rule-requiring-courts-approval-to-file-amicus-briefs)

Avalon Zoppo

Two federal appeals court judges expressed support Wednesday for a rule change that would eliminate the right to file amicus briefs with the consent of both parties and instead require court approval for friend-of-the-court briefs at the panel stage.

During an Advisory Committee on Appellate Rules meeting, Judge Sidney Thomas of the U.S. Court of Appeals for the Ninth Circuit said allowing an amicus brief to be filed based only on consent of the parties leads to recusal problems if the brief presents an ethical conflict for a judge.

And Thomas said the ability of courts to strike a brief if it causes recusal is not necessarily a fix. Judges may never get the option in the Ninth Circuit if a brief is filed before a computer system randomly determines who will sit on a panel, Thomas added.

"So effectively, you are striking judges at the onset of a case in our circuit by consent of the parties," Thomas said.

The committee is considering changes to the Rule 29, which already disallows consent filing at the en banc stage. A proposal submitted for public comment by February would require the court's permission to file any nongovernmental amicus briefs at the panel stage, too.

Last week, the Ninth Circuit also asked for public comment on a proposed local rule that would eliminate consent filing for briefs at the panel and en banc stages. The Ninth Circuit currently allows consent filings for any case, Thomas said.

Attorneys have supported the proposal because it would eliminate the time-consuming task of consulting clients about giving consent to an amicus brief, the judge said. A few years ago, 10 judges on the San Francisco-based court recused themselves in an en banc case mainly due to amicus briefs that got consent from the parties, Thomas added.

"When you have as many as 10 members of our court, active judges, who are forced to recuse, then something is amiss with the rule," Thomas said.

Second Circuit Judge Richard Wesley said he also agrees with mandating a motion for leave to file in all cases.

"We do have recusal issues at times with regard to consent briefs, where individuals end up being taken off of a case because of the addition of amici," he said.

Tenth Circuit clerk Chris Wolpert said his office is responsible for making sure judges have the information needed to make recusal decisions. A mandatory motion for amicus briefs would improve the system, he said.

"A one-size-fits-all motion requirement gives us pretty much a single track to put all of these amicus briefs on that will bring it to one of the lawyers in my office, who will then bring it to the affected judge or judges," Wolpert said. "It will create additional work for the lawyers in my office, but it will make our recusal processes more robust and reliable, and I think that's a good trade-off."

The rules committee was initially considering allowing amicus briefs to be filed without consent from parties or a green light from the court, as the U.S. Supreme Court did last year. But that idea was abandoned after members learned it may cause recusal problems.

The public comment period for the proposed changes to Rule 29 ends on Feb. 17.

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Louisiana hurricane victims try to revive claims against litigation funders

 [reuters.com/legal/litigation/column-louisiana-hurricane-victims-try-revive-claims-against-litigation-funders-2024-10-09](https://www.reuters.com/legal/litigation/column-louisiana-hurricane-victims-try-revive-claims-against-litigation-funders-2024-10-09)

Alison Frankel

Houses and businesses are seen damaged after the town and barrier island of Grand Isle was left devastated by Hurricane Ida in this aerial image over Louisiana, U.S., September 2, 2021. Picture taken with a drone. REUTERS/Adrees Latif/File Photo Purchase Licensing Rights , opens new tab

Oct 9 (Reuters) - What did the litigation funders know and when did they know it?

A federal judge in Houston will have to answer that question in a proposed class action accusing a now-bankrupt Texas law firm of improperly soliciting Louisiana property owners hit by a string of hurricanes in 2021 and 2022 to file lawsuits against insurance companies.

The class contends , opens new tab that a pair of Florida hedge funds were part of the alleged improper solicitation scheme. The funds, Equal Access Justice Fund and EAJF ESQ Fund, do not dispute that they loaned millions of dollars to the Texas mass torts law firm, McClenny Moseley & Associates, as they have acknowledged , opens new tab in related litigation in Louisiana and elsewhere. Plaintiffs in the improper solicitation class action assert that the funds' outlay was more than \$20 million – and there's no way, they insist, that the funds would have put up that kind of money without knowing how McClenny Moseley planned to sign up thousands of clients.

Class lawyers from Couhig Partners, Ron Austin Law and The Kassab Law Firm failed to convince U.S. Magistrate Judge Yvonne Ho of that theory. In a Sept. 19 opinion , opens new tab, the magistrate judge recommended that U.S. District Judge Alfred Bennett grant the funds' motion to dismiss , opens new tab plaintiffs' claims, concluding that plaintiffs hadn't offered plausible allegations that the funds knew McClenny Moseley would resort to allegedly improper tactics to solicit clients.

Even if the law firm shared information about its projected case docket with the litigation financiers, the magistrate said, "it requires a quantum leap to assume that MMA would have further disclosed its intent to employ unlawful barratry as part of its plan."

But plaintiffs' lawyers are now urging , opens new tab the trial judge, Bennett, to reject the magistrate's recommendation. Their pitch: The magnitude of the funders' loans to McClenny Moseley makes it "reasonable to infer" that the litigation financiers knew about the law firm's allegedly illegal marketing plans.

Litigation funders, they said, conduct due diligence before they make investments and structure their loans to assure repayment. Here, plaintiffs' lawyers argued, the Equal Access funders didn't simply hand out \$20 million to McClenny Moseley and its marketing partner.

The funders "would have required a significant amount of projected financials, as well as business plans, to evaluate [their] prospects for getting their loans paid back," plaintiffs' lawyers told Bennett.

The funds, I should note here, have portrayed themselves in the class action and other litigation involving McClenny Moseley as passive investors wronged by the law firm and its marketing partner. In an email statement about the class action, the funds' lawyers at Spencer Fane said they were pleased that the magistrate judge agreed with the merits of their arguments and recommended dismissal of the claims against them.

"We understand that this recommendation is not final, as it now goes to the presiding judge for review and potential adoption," the statement said. "We disagree with the objections filed by the plaintiffs and will respond within the court proceeding." The funds said they are "confident" that Bennett will ultimately side with them.

Plaintiffs' lawyers representing the prospective class did not respond to an email query.

The facts of the McClenny Moseley case, as I'll explain, are definitely not typical. But what's not unusual is the contention that litigation financiers are wielding more control over funded cases than they're letting on.

That concern, stoked by defense-friendly advocacy groups, underlies the years-long push for nationwide rules requiring plaintiffs to disclose details about their funding agreements. Just yesterday, California Republican Darrell Issa introduced a litigation funding disclosure bill in the U.S. House of Representatives.

So, in a way, the hurricane victims' request that Bennett allow them to move forward with claims against McClenny Moseley's funders is a test of the power of such suspicions. Based on the amended complaint and the magistrate's recommendation, the class does not yet have tangible evidence that the funders were aware of the law firm's allegedly improper marketing scheme. They're asking the judge to conclude that they've plausibly alleged the funders' knowledge because, in their view, a \$20 million investment cannot be disinterested.

Fallout from the hurricane litigation, meanwhile, has been a disaster for McClenny Moseley.

A federal judge in Monroe, Louisiana, concluded [here](#), opens new tab in 2023 that the firm engaged in wide-ranging "illegal and unethical conduct," including lawsuits filed against insurers that had had no policy with the purported plaintiffs or had already settled plaintiffs' claims.

The trial judge ruled that because of its misconduct, McClenny Moseley was not entitled to collect any fees from its hurricane cases but the 5th U.S. Circuit Court of Appeals reversed that decision, holding [link](#), opens new tab last June that the judge did not give the firm an adequate chance to argue otherwise. (The 5th Circuit also reversed the Monroe judge's ruling [link](#), opens new tab that the Equal Access litigation funders were not permitted to intervene in the disciplinary case against McClenny Moseley.)

Louisiana's insurance commissioner fined [link](#), opens new tab the law firm and its lead partners \$2 million in 2023 for "engaging in unfair trade practices and insurance fraud involving at least 850 Louisiana homeowners and policyholders."

McClenny Moseley is also under criminal investigation, as Reuters has reported, by both state and federal authorities.

Last April, the firm entered Chapter 11 bankruptcy [link](#), opens new tab. The automatic bankruptcy stay halted the class action improper solicitation claims against the firm, but not against individual partners.

I tried to reach name partners Zach Moseley and James McClenny through the contact information in their Texas bar records. Moseley did not respond to an email. McClenny's new law firm phone number is no longer in service. McClenny's lawyer at Reynolds Frizzell did not respond to an email.

Read more:

FBI probing law firm McClenny Moseley for alleged hurricane litigation fraud

Texas law firm faces criminal investigation over handling of hurricane cases

Litigation funders can't join ethics case against law firm barred from collecting fees

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Reporting By Alison Frankel

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Alison Frankel

Thomson Reuters

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

Quinn Emanuel concedes expert's errors, says punishment unwarranted

DJ [dailyjournal.com/articles/381360-quinn-emanuel-concedes-expert-s-errors-says-punishment-unwarranted](https://www.dailyjournal.com/articles/381360-quinn-emanuel-concedes-expert-s-errors-says-punishment-unwarranted)

Oct. 10, 2024

The rival companies both make oncology tests. Guardant sued first, also accusing Texas-based Natera of unlawful trade practices and unfair competition for what it claims are false claims about its test. Natera struck back with its own counterclaims.

Gearing up for a showdown over discovery sanctions sought by a Palo Alto biotechnology company in a false advertising lawsuit against a cancer testing rival, Natera Inc. conceded errors by its expert witness in failing to locate emails about a key study promptly but said they do not warrant punishment.

"Counsel sincerely apologizes to the Court for relying on Dr. [Howard] Hochster's own explanation as to his search rather than getting to the bottom of the issue sooner," wrote Quinn Emanuel Urquhart & Sullivan LLP partner Daniel J. Bramhall, an attorney for Natera.

"But neither Dr. Hochster nor Natera ever sought to deceive anyone or hide the truth about these emails that are of, at best, marginal relevance," he added, also accusing Guardant Health Inc.'s lawyers of making "reckless and baseless accusations in open court" against Hochster.

In a reply brief filed Tuesday, Keller/Anderle LLP partner Chase A. Scolnick, who represents Guardant, said Hochster and Natera knowingly made false statements about whether the doctor had early access to the study and demanded that both the study and Hochster be excluded from next month's trial.

In addition, he asked that Natera's counterclaims against Guardant be dismissed. Scolnick wrote that Natera's opposition brief was "filled with obfuscation, misdirection, and new lies."

"Natera has shown no remorse," he wrote. "And Natera's conduct shows it will continue its dishonesty whenever it might serve its purposes." *Guardant Health Inc. v. Natera Inc.*, 21-CV-04062 (N.D. Cal., filed May 27, 2021).

The rival companies both make oncology tests. Guardant sued first, also accusing Texas-based Natera of unlawful trade practices and unfair competition for what it claims are false claims about its test. Natera struck back with its own counterclaims.

Discovery has gotten heated in large part over the testimony of Hochster, an expert witness for Natera, and what he knew about a study, known as COBRA, focusing on the ctDNA tests for cancer.

The doctor got data about the study from a draft abstract which he had received from his Rutgers University colleague, a COBRA investigator, Bramhall wrote. But Natera did not realize that at the time, he added.

Senior U.S. District Judge Edward M. Chen of San Francisco, who will consider the sanctions motion next Tuesday, has been harshly critical of Quinn Emanuel lawyers, calling one of them a "fool" for believing Hochster's testimony about not remembering the emails about the COBRA study.

But during a hearing in July, he also expressed reluctance to exclude the results "unless the study itself and the results that were obtained were somehow tainted as a result."

Bramhall cited those comments to argue that sanctions blocking Natera's counterclaims, the COBRA study or Hochster's testimony are not justified.

He added that the 9th Circuit precedent that Guardant cites shouldn't apply because in that case, a judge dismissed claims "because the party concealed critical documents for years, lied about their existence, and produced them eight months after a jury verdict. None of that has occurred here."

Scolnick, however, wrote: "It has never been credible that Dr. Hochster forgot about his extensive emails relating to COBRA, or that Natera could believe Dr. Hochster had no COBRA-related emails," adding that the emails undermine Natera's "central argument."

He added that monetary sanctions would be insufficient. "This Court should not permit an expert to testify at trial who shirked his discovery obligations and then concealed relevant documents through false statements to the Court," Scolnick wrote. "Courts have excluded experts for far less egregious misconduct."

Jury selection for the trial is scheduled to start Nov. 5.

#381360

Bloomberg Law News 2024-10-10T14:12:31179915114-04:00

Matt Levine's Money Stuff: Crypto Market Makers Made Markets

By Matt Levine 2024-10-10T12:22:27179-04:00

Crypto wash trading

In financial markets, there are people called “market makers.” A market maker, as the name implies, makes things called markets. But the market that a market maker makes is not, like, “the stock market.” “Market,” here, has a somewhat technical meaning. “Making a market,” in this context, means typing into a Bloomberg message, or saying over the telephone, two numbers: the price at which the market maker is willing to buy some security, and the (somewhat higher) price at which she is willing to sell it. So a customer will say “make me a market in XYZ bonds” and the market maker will type “100 / 100.5,” or say “par at a half,” and that — “100 / 100.5” — is her “market.” And the customer might say “sold to you at 100,” and she will buy the bonds at 100 cents on the dollar, or the customer might say “I buy at 100.5,” and she will sell him the bonds at 100.5 cents on the dollar. And the market maker makes her living by selling at her offer (100.5) and buying at her bid (100).

You could, with some justification, imagine a broader and more intuitive meaning of “market maker.” The market maker’s job is to stand ready to buy or sell XYZ bonds, whichever customers want, all the time. If customers want to sell, the market maker will buy; if customers want to buy, she will sell. By providing this service, she facilitates trading in the bonds. If the market makers all went away, there might not be much trading in the bonds: Customers who wanted to buy would have no one to buy from, and customers who wanted to sell would have no one to sell to. Perhaps that is a solvable problem: The customers who want to buy can buy from the customers who want to sell. Perhaps there can be brokers to introduce them to each other. Lots of markets operate with a broker structure, without market makers. But it is probably helpful if market makers exist. We talked yesterday about how Apollo is setting up a structured credit trading desk, i.e., a market making desk, because it can’t syndicate structured bonds to investors if the bonds don’t trade. In theory, the bonds could trade among the investors, without Apollo making a market in them. In practice, Apollo is setting up the desk.

So you could loosely say something like “the existence of market makers for XYZ creates a *market* for XYZ,” where “market” is used not in the narrow technical sense but in the normal sense of, like,

people are able to trade XYZ easily, and therefore they happily buy it, and therefore demand for XYZ develops and it becomes a popular and widely traded financial product. XYZ is *worth more* because it is liquid, and it is liquid because market makers make a market in it. And I suppose that is in some sense the job of a market maker: The more trades she does, the more popular the product she trades is, the more money she'll probably make.

Still it is not quite like people get hired as market makers in structured credit with the mandate of “you have to go create a market for structured credit.” In particular, the market maker can't create trading *out of nothing*. She's ready to buy XYZ if you want to sell it, or sell it if you want to buy it, but if she has no one to trade with she's not going to do any trades.

Crypto, I often write, is in the business of quickly re-learning all the lessons of traditional finance. If you are learning a large complicated field of study very quickly, you will probably make some mistakes. I sometimes wonder if one of them is: Do crypto people think that the job of a “market maker” is to create trading activity in some crypto token, so it looks like there's a market for it? Bloomberg's Zeke Faux reports:

Three market making firms allegedly promised to gin up an avalanche of fake trades to boost the value of NexFundAI's cryptocurrency token. What they didn't know was that NexFundAI wasn't a real company. It was part of an elaborate sting operation by federal prosecutors.

Representatives of ZM Quant, CLS Global and MyTrade were among 15 crypto promoters and traders charged with market manipulation and fraud in a wide-ranging probe prompted by a tip from the US Securities and Exchange Commission, authorities in Boston said in a statement Wednesday.

The scheme involved wash trades — using accounts you control to trade assets back and forth to create the false impression of volume, the government said. According to court documents, one market maker told potential clients on a March 18 video call, “If you guys have requirements on the price, for example, like, pump the price from one dollar to two dollars, we will give you a plan.” ...

The investigation started with an SEC tip about a crypto company called Saitama, which was based near Boston, Jodi Cohen, head of the FBI's Boston office, said at a press conference. Prosecutors allege Saitama used market makers to manipulate the price of its token. Six people associated with Saitama were among those charged, according to the press release.

Investigating Saitama led authorities to cooperating witnesses who helped them set up the fake

crypto firm, NexFundAI. In video calls and in Telegram chats, market makers offered to manipulate the price of NexFundAI's token.

What percentage of crypto fraud is done by the FBI? Not zero! Here is the Justice Department [press release](#), saying that crypto companies “hired financial services firms (‘market makers’) to wash trade their tokens in exchange for payment.” A traditional market maker is in the business of quoting prices to customers at which she will buy or sell an asset. A ... certain sort of crypto market maker ... is in the business of trading a crypto token back and forth with herself, in separate wallets, so that it will look like there is a lot of trading activity in the token, so that other people will want to buy the token, so that she (and her clients, the issuer of the token) can dump the tokens on rubes at inflated prices. “Ah we are in the business of creating markets for these tokens,” I guess they think? “We are market makers”? Okay.

Here is the [US Securities and Exchange Commission case](#), which calls them “so-called market makers”:

“Today’s enforcement actions demonstrate, once more, that retail investors are being victimized by fraudulent activity by institutional actors in the markets for crypto assets,” said Sanjay Wadhwa, Deputy Director of the SEC’s Division of Enforcement. “With purported promoters and self-anointed market makers teaming up to target the investing public with false promises of profits in the crypto markets, investors should be mindful that the deck may be stacked against them.”

One of the charged market makers is called Gotbit. (It’s the one that *didn’t* do wash trades for the FBI-backed crypto token.) From [the SEC’s Gotbit complaint](#):

Gotbit claims on its website and LinkedIn profile that it provides its clients, typically the offerors of crypto assets, with “coordinated market-making across an infinite number of exchanges” using “trading algorithms”; “a large team of traders”; and “personalized trading strategies.”

What Gotbit actually provides is on-demand market manipulation. For a monthly fee, Gotbit engages in manipulative trading of its clients’ crypto assets to artificially inflate their price and trading volume. Gotbit does this for the express purpose of misleading investors to believe that there is a robust market for these crypto assets, when there is often little or no genuine interest in them. That fake trading volume is reported on websites that the investing public consults when deciding which crypto assets to buy and sell, and which trading platforms to buy and sell them on.

Gotbit generates fake, daily trading volume often in the millions of dollars by essentially trading crypto assets with itself. The company's self-trading constituted most of the market activity for many of its clients' crypto assets, sometimes exceeding 90 percent of the assets' total trading volume at particular points in time. Gotbit's self-trading—often called “wash trading”—is designed to create the false impression of market interest in the crypto asset, to trigger real interest from the investing public. ... Once the public starts trading its clients' tokens, Gotbit offers to assist its clients in liquidating their token holdings, in exchange for a percentage of the proceeds.

“Unlike in the traditional, regulatorily compliant markets, in the crypto asset markets it is often the token offeror who pays these market makers a monthly fee,” the SEC says: These market makers aren't in the business of serving investors by standing ready to trade crypto tokens, but in the related but different business of serving *issuers* by trading their tokens. They allegedly get paid, not to do trades that customers want, but to do lots of trades.

The SEC has an account of how Gotbit worked for one crypto issuer called Robo Inu, promoted by a woman named Vy Pham, who also helped launch Saitama. “Inspired by NASA's ambitious plan to launch Robo-dogs to Mars,” [says its website](#), “ROBO INU FINANCE aims to build an efficient circular ecosystem that brings together the best fintech resources. Join us and be a part of something revolutionary.” Sure. The SEC says:

Beginning in or around February 2022, Pham and the other leaders of the Robo Inu project initiated a private Telegram group chat with several Gotbit employees, including [Fedor] Kedrov, “Vladislav Trader,” “Vladimir,” and “Kavi JLL,” among others, to solicit their market manipulation services.

Robo Inu is a pretty good crypto name but Vladislav Trader is even better. (NexFundAI, uh, sounds like it was created by the FBI.) In a market [crowded with crypto tokens riffing on Shiba Inus](#), Robo Inu's pitch about launching dogs to Mars was not enough to stand out, so it allegedly tried pumping volume instead:

Pham stated in the group chat that, despite having spent \$250,000 on “marketing,” the response from investors had not been “satisfactor[y],” so she and her team were “thinking about increasing the volume via MM” (i.e., a “market maker”).

Pham said in the group chat that the purpose of hiring Gotbit to increase and maintain trading volume was “to attract people to the [Robo Inu] token.” Gotbit personnel confirmed they understood that this was the purpose. Throughout the parties' relationship, various individuals representing Gotbit

communicated with Pham and other leaders of the Robo Inu project about ways to create investor “FOMO” through artificial trading volume. For example, one of Gotbit’s employees on the Telegram group chat, “Vladislav Trader,” stated that he was “trying to trigger organics”—i.e., individuals or entities other than Gotbit—“to buy” Robo Inu.

Between approximately February 2022 and June 2023, Pham and others working with her paid Gotbit approximately \$3,000 to \$6,000 per month to, among other things, manipulate the trading volume of Robo Inu through automated wash trading on Bitmart and through automated buying and selling on Uniswap. Gotbit told leaders of the Robo Inu project that it would be using a trading “bot,” an automated crypto asset trading program, to execute this manipulative trading. ...

In February 2022, Kedrov told Pham and other Robo Inu project leaders in their private Telegram group chat that Gotbit could achieve “[a]ny volume you want.” Kedrov recommended that Robo Inu start with \$200,000 in artificial daily volume. ...

In late March 2023, “Vladislav Trader” posted to the group chat that “organic” volume accounted for less than 10 percent of Robo Inu’s total trading volume. The rest was Gotbit trading with itself through automated wash trading.

There is such a purity to crypto. Crypto tokens benefit so much from network effects and/or memes; the reason to buy pretty much any token with a Shiba Inu in its name is not “these people have a revolutionary business idea that will generate a lot of cash flows for token holders” but rather “other people are going to buy this token so it will go up.” So if you want to *sell* a token with a Shiba Inu in its name, patter about “an efficient circular ecosystem” only goes so far. Saying stuff — true or not — about your business or plan or technology just isn’t that useful. What you really want is *volume*, and *rising prices*; you want everyone to be able to see that a lot of people are buying your token, because *that’s the thing that makes it valuable*. And that turns out to be pretty easy to fake.

Arbitrage

I wrote yesterday about an apparent arbitrage in US presidential election prediction markets: Donald Trump contracts on Polymarket trade at about a 53% chance of him winning the election, while they trade on other prediction markets at more like a 49% chance. If you can buy Trump at 49 elsewhere and sell him at 53 on Polymarket, you can make a quick 4-point profit.

I did not take this too seriously, and you shouldn't either. I assumed that it probably wasn't a feasible arbitrage: "I am sure there are some fees that I am not accounting for," I wrote, "and I don't know how good liquidity is on any of these places." Also Polymarket is in theory off-limits to US investors. Those sorts of things — trading costs, liquidity, capital constraints, etc. — are the normal explanations for differences in prices in different locations, "limits to arbitrage" that prevent people from selling the expensive contract on Polymarket and buying the cheap one on Kalshi or wherever.

But the other natural reaction you might have to seeing the same contract trade at different prices in different locations would be: Well, *are* they the same contract? What if "Donald Trump will win the election" is *worth more* — that is, has a *higher probability* — on Polymarket than it does elsewhere?

That seems implausible: There is only one presidential election, and Trump will either win it or he won't. But that might not be exactly right. There is some history of epistemic uncertainty when Donald Trump loses elections. Different prediction markets might resolve that uncertainty in different ways.

Here is Kalshi's [2024 Donald Trump election contract](#), whose rules specify that "If Donald Trump or another representative of the Republican party is inaugurated as President for the term beginning January 20, 2025, then the market resolves to Yes." Here is Polymarket's equivalent (but higher-priced) [contract](#), which sounds fairly similar:

The resolution source for this market is the Associated Press, Fox News, and NBC. This market will resolve once all three sources call the race for the same candidate. If all three sources haven't called the race for the same candidate by the inauguration date (January 20, 2025) this market will resolve based on who is inaugurated.

But then Polymarket has a link to a [resolution contract](#), and a button labeled "propose resolution." Because Polymarket, [unlike Kalshi](#), is not exactly a corporation with a representative who will consult some authoritative source and declare the winner — for contract purposes — of the election. Polymarket is a decentralized platform, and its method for resolving contracts is crypto-y.

Here's a sample from [Polymarket's documentation](#) on how contracts are resolved:

All market resolution is completely decentralized. A majority of markets on Polymarket are resolved via UMA's optimistic oracle, the rest (some price markets) are resolved via Pyth.

Polymarket leverages UMA's Optimistic Oracle (OO) to resolve arbitrary questions, permissionlessly. From UMA's docs:

"UMA's Optimistic Oracle allows contracts to quickly request and receive data information. The Optimistic Oracle acts as a generalized escalation game between contracts that initiate a price request and UMA's dispute resolution system known as the Data Verification Mechanism (DVM). Prices proposed by the Optimistic Oracle will not be sent to the DVM unless it is disputed. If a dispute is raised, a request is sent to the DVM. All contracts built on UMA use the DVM as a backstop to resolve disputes. Disputes sent to the DVM will be resolved within a few days - after UMA tokenholders vote on what the correct outcome should have been."

So there's a "generalized escalation game" and a possible tokenholder vote. A couple of readers emailed me along the lines of "I thought about doing this arbitrage, then I read that documentation and got confused and decided not to."

I wrote once about Polymarket's contracts:

Because it is crypto, in fact "[all market resolution is completely decentralized](#)" and there is a complex system of bonds and rewards to resolve questions, but it is a convenient shorthand to say "the result of the 49ers/Jets contract is determined by the official final score of the 49ers/Jets game in real life."

That is approximately correct, in the way that it is approximately correct to say "credit default swaps pay out when a company defaults, and make bondholders whole for their losses on their bonds." That is: Most of the time, you can just think of the thing as reflecting the underlying economic intuition ("CDS is insurance for bonds," "this contract pays out if Trump wins"). But some unknowable percentage of the time, weird stuff might happen with the payout mechanism. So you can play the game at the basic level, buying the contract to bet on Trump winning (or the bonds defaulting), and that will mostly work most of the time. But there's always a chance that somebody else is playing the game at a different level, buying the contract to bet on the resolution mechanics.

One reader emailed:

I'm pretty confident that if Trump "wins" (in the way the mainstream media and most normal people would use the term) Kalshi will resolve the contracts so that my Trump Yes's pay out, and Polymarket so the Trump No's do not. ... If, however, Trump "loses," then I am again pretty confident in what Kalshi will do, but I have no idea how to estimate the risk that some major stakeholders or Trumpy-

crypto-types could affect the resolution of the Polymarket contracts, which is where all of my money would be coming from. So the persistence of the arb could just be the market pricing in a roughly 3% risk of an outcome dispute that breaks the Polymarket/Kalshi symmetry on these events, which in the current climate feels not crazy?

I truly have no idea if that is right. Presumably the crypto consensus mechanism was built by smart people who want it to reliably get to the right answer. But if you think it has, like, a 5% chance of getting the weird answer, you'd pay more for the Trump contract on Polymarket than elsewhere, because that contract is worth more.

Treasury Direct

In principle, it makes a lot of sense for the government to be in the retail financial services business. The US government is the source of two important financial assets: The long-term safe assets, Treasury bonds, are liabilities of the Treasury, while the short-term risk-free information-insensitive assets, dollars, are liabilities of the Federal Reserve. And because the Fed issues the dollars, a lot of the US dollar payments infrastructure ultimately runs through the Fed.

But you probably hold your dollars in an account with a bank, and you probably hold your Treasury bonds at a broker or custodian, and you probably make payments with a bank's credit card. And every so often people suggest that the government should provide these services more directly, sometimes for risk reasons (your bank is more likely to fail than the Fed), but often for fairness reasons. Maybe if the government provided your bank account and let you send payments and invested your money for you, more people would have access to banking and payments and savings at lower and fairer prices than you get with a financial system driven by commercial concerns. There are fans of "postal banking," in which the Post Office gives you a bank account, and I sometimes read proposals for "[central bank digital currencies](#)" in which the Fed would give you a bank account.

The Wall Street Journal has a [pretty convincing rebuttal however](#):

People who want to move investments from their accounts on the Treasury Department's website to their brokerage accounts may have to wait as long as a year.

The website, TreasuryDirect, is dealing with a deluge of customer-service requests. The number of funded accounts on TreasuryDirect grew to more than four million last year, from 656,000 in 2019.

Americans rushed to the website in recent years to buy inflation-adjusted savings bonds at yields nearing 10%.

The resulting customer-service backlog is straining the Treasury Department's antiquated system, which can require verified signatures and paper forms sent through the mail. People transferring securities from TreasuryDirect to third-party brokerages experience especially long waits because those requests are processed manually, according to people familiar with the matter.

The government does actually provide some retail financial services directly: A lot of people hold Treasury bonds in a brokerage account, but you *can* go to the [TreasuryDirect website](#), buy bonds directly from Treasury, and hold them in the Treasury's own ledger. I actually do this, and if you don't, I encourage you to check it out. For people my age, TreasuryDirect is a soothing relic of a simpler time on the internet. It is not, you know, a *good* website, but it is very much a *website*; everything about it screams "website." There is no mobile app. For a long time you had to type in your password using a mouse and a "[virtual keyboard](#)," an actually famous bit of bad user interface design that they eventually got rid of.

Probably Treasury does a fine job of keeping the ledger of who owns bonds? Like I check my TreasuryDirect account periodically and it remembers me and has my bonds. But if you buy Treasury bonds on TreasuryDirect and then want to *move* them to your brokerage account, you have to, like, write a certified letter to your congressperson. It takes *a year* to move the electronic entry from Treasury's ledger to your broker's! Using paper forms!

Meanwhile in the regular financial system, driven by commercial concerns, businesses are deploying AI chatbots to instantly answer your investment questions and doing instant settlement on the blockchain, because people want those things and commercial concerns drive companies to build them.

NDA's

One little hiccup in securities regulation that I write about from time to time is that nondisclosure agreements are illegal. I mean, not really (and not legal advice), but the US Securities and Exchange Commission has a "whistleblower protection" rule that makes it illegal to punish or threaten anyone to stop them from reporting a potential securities law violation, and it interprets that rule to mean that an NDA *itself* could be a threat to whistleblowers unless it has a paragraph explicitly saying "oh but feel

free to tell the SEC about any potential securities law violations.” And so companies sometimes get in trouble for sloppily written NDAs, even if those NDAs do not actually deter any whistleblowers, even if the SEC itself found out about the NDAs *from whistleblowers*. And in fact it seems like whistleblowing sloppy NDAs is itself a potentially lucrative business.

If you are a company and you have sloppy legacy NDAs, what can you do about it? What if you don't even *know*? If you have a lot of employees and have been around for a long time, what are the chances that somewhere, sometime, some former employee signed, or even saw, a policy saying “keep our information confidential” that did not immediately go on to say “except from the SEC, if it's fraud”? Do you just have to wait for the SEC to fine you?

A reader who used to work at an accounting firm sent me a mailing that he received from his old firm, saying “we would like to make sure that you are aware that nothing in any agreement, plan or policy of [the firm]” prevents him from whistleblowing to the SEC, or otherwise going to law enforcement. Just sort of a one-paragraph unilateral update to any NDA, employment agreement, severance agreement, etc., that he might or might not have, that might or might not have said “keep our information confidential.” I assume that everyone who has ever worked in or near the financial services industry in the US has gotten a mailing like that, or will soon. If you don't, probably call the SEC!

Banking hours

There are a lot of explanations for why junior investment bankers work long hours. Many are essentially *rational* explanations: There is a lot of work to do, you learn faster if you work a lot, clients have high expectations for service (so they need to call at all hours) and continuity (so the same person has to answer the phone), etc. Explanations of the form “bankers work long hours because it makes sense for them to work long hours.”

Another popular explanation, though, involves irrational cultural replication: Junior investment bankers work long hours because senior investment bankers expect them to, and senior investment bankers expect that because *they* worked long hours as junior bankers, think it is normal and want their analysts to suffer the way they did.

Here's a good [Financial Times article](#) about investment banking hours that features this bit of Stockholm syndrome:

"There's a profound difference between 80, 100 and 120 hours," said one former junior investment banker. "No one has a problem working 80 hours a week, 90 even. [But] 100, you're tired, 120 is something you want to have to do [no more than] once a month or two."

There are four weeks in most months! You don't *want* to work 120 hours in more than two of those weeks? And 80 hours is fine, "no one has a problem" with that. Also here's a business school professor who tells his students whether or not they are cut out to be bankers:

"I've been trying to disabuse about a third of my students from going into it because they don't have the drive," said David Stowell, who worked in investment banking for about two decades and now teaches at the Kellogg School of Management at Northwestern University.

"It's not for everybody. But for the right kind of people, it's a remarkable 30-year career or at least a remarkable foundation."

I would like to know more about how a business school professor knows which of his students have the drive to be investment bankers. Are they the ones who do homework in business school?

Things happen

OpenAI pursues public benefit structure to [fend off hostile takeovers](#). [TD Bank](#) Faces \$3 Billion in Penalties and Growth Restrictions in U.S. Settlement. BlackRock Is Among Suitors Exploring Purchase of Credit Firm HPS. Wall Street Pros Avoid Election Bets With Race Too Close to Call. Former [Pfizer executives](#) pull out of activist investor Starboard's campaign. Lina Khan Is Just Getting Started (She Hopes). Catastrophe Bonds Dodge Worst-Case Scenario After Milton Hits. [HSBC](#) targets senior bankers in cost-cutting plan. California's [AI Safety Bill](#) Is Dead, but the Regulation Debate Lives On. London-Listed Companies Given More Freedom to Boost [Top Executives' Wages](#). Companies Are Scrapping or Rolling Back [DEI Grants](#). CFA Level II Pass Rate Slumps to 47% From May's 26-Year High. [Portugal](#) seeks to become low-tax haven for young people. Mets Postseason Run Pushes Steve Cohen Toward Baseball Glory. Bankrupt Fisker says it can't migrate its EVs to a new owner's [server](#).

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- 1. Of course in much of finance they are actually electronic trading firms.
- 2. These are the numbers I gave yesterday. At around noon today the prices are more like 54% and 50%, respectively, so a small move but a similar spread.
- 3. A direct relationship with the Fed is not a necessary feature of the CBDC idea, and the Fed's own [discussion paper](#) about CBDCs insists that any US CBDC would have to be intermediated: "The Federal Reserve Act does not authorize direct Federal Reserve accounts for individuals, and such accounts would represent a significant expansion of the Federal Reserve's role in the financial system and the economy. Under an intermediated model, the private sector would offer accounts or digital wallets to facilitate the management of CBDC holdings and payments. Potential intermediaries could include commercial banks and regulated nonbank financial service providers, and would operate in an open market for CBDC services. Although commercial banks and nonbanks would offer services to individuals to manage their CBDC holdings and payments, the CBDC itself would be a liability of the Federal Reserve."
- 4. This is obviously not investment advice; it is, like, moderately sarcastic internet aesthetics advice.
- 5. A casual app store search turned up an unofficial app that advertises: "We access TreasuryDirect.gov and load the information for you. No more virtual keyboard nonsense or website trouble!"
- 6. This is also moderately sarcastic.

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Opinion

Here is a post on X about a whale on Polymarket who has been betting a lot of money on Trump, and who might be driving the price moves. The post mentions some speculation that the whale — who goes by “Fred9999” — is actually Musk, though I would not take that too seriously. Musk is into crypto and Trump, but any time there’s a crypto whale doing something Musk-adjacent people speculate that it’s his account. My assumption is that he has better things to do with his time, though that assumption is weakly held and he does a lot of dumb stuff with his time.

Still one can speculate about some different facts:

- None of this is what happened, but none of it feels all that far-fetched, either. And ... then what? What if the CFTC was pretty sure about all of this? Would it bring a commodities fraud case? Against the big Trump buyer? For trying to improve his implied election odds? What if the Trump buyer said “well, you can’t prove that I did any *commodities manipulation*, because it’s not like I *sold* the contracts at a profit, or even really had a *plan* to sell them at a profit; I just thought it was a good bet. Or maybe I was willing to spend money to help Trump win, but you can’t prove which it is, and neither case involves a financial payoff for me.”

I don't know; in some ways that feels like a standard "open market manipulation" case (like the Bill Hwang case), where the hard thing is proving intent. In other ways it feels like a horrible mess? The CFTC getting into elections? When we talked about regulated election contracts in May, I quoted CFTC Chair Rostin Behnam saying that "such contracts would put the CFTC in the role of an election cop." We're getting closer to that happening.

KKR HSR

In the olden days, when a company sold itself, there were two sorts of acquirers, *financial* and *strategic*. A strategic acquirer was another company: If you were selling a widget company, and another widget company wanted to buy it, that was a strategic deal. A financial buyer was a private equity firm: If you were selling a widget company, and a group of ex-bankers financed by investors and junk bonds wanted to buy it, that was a financial deal. In a strategic deal, the buyer would integrate the seller's operations with its own, and get synergies by combining departments and cross-selling products. In a financial deal, the buyer would hope to make money from cost cuts and leverage and giving management a lot of equity to align incentives.

One typical problem with a strategic deal was antitrust: Antitrust regulators are in the business of blocking anti-competitive mergers, and when two widget companies merge there is always a risk of a monopoly. So when you did a strategic merger, you had to file forms with the antitrust regulators — the main form is usually called "HSR," a premerger notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 — and wait for regulatory approval, and sometimes the regulators would push back and ask for more information and maybe even try to block the deal.

Financial deals had less of that problem. Private equity firms were in the business of leveraged buyouts, not the business of making widgets. If they bought a widget company it was because they did *not* already own a widget company, so there was no real antitrust issue. Because of the way the rules work, the private equity firms still had to fill out the forms, but they easily sailed through because there were no actual concerns.

In 2024, the biggest private equity firms are gigantic world-spanning conglomerates with many portfolio companies in each sector, often doing rollups of industries that raise serious competition and consumer-welfare concerns. Two things that this means are:

1. It is more complicated for private equity buyers to fill out the forms. It's not just "we're six ex-bankers in an office who borrowed some money to buy a widget company"; now they have to go out and survey their entire gigantic conglomerate to see what other interests they might have in the widget industry.
- 2. The forms *matter* more: Unlike in the olden days, the regulators are more likely to want to block a private equity acquisition on antitrust grounds.

I grew up in the olden days, though, and I still have an instinctive bias like “ehh a financial deal won’t raise as many antitrust issues as a strategic one.” It is just possible that some private equity firms, which also grew up in the olden days, have the same bias? Here’s a fun story about HSR filings from Bloomberg’s Leah Nylen, Ryan Gould and Allison McNeely:

KKR & Co. and the Justice Department are sparring over a push to hold the firm’s top executives more accountable for disclosures related to takeovers, as US authorities deepen their scrutiny of the private equity industry.

The high-stakes fight stems from a federal investigation into whether KKR withheld information in its filings to government agencies about the competitive impact of mergers and acquisitions. To settle the probe, antitrust enforcers want the famed buyout firm to agree that their co-chief executive officers could be held personally liable for future lapses, according to people familiar with the matter. ...

The Justice Department has two parallel investigations into KKR’s disclosures, one civil and one criminal, which the firm has previously disclosed. The company has said it received a grand jury subpoena over the accuracy of its filings. The criminal inquiry focuses on whether individuals who signed the forms were aware of any omissions. ...

The Justice Department rejected an earlier KKR offer to pay around \$100 million, the people said. Perhaps more contentious than any settlement price, however, is the requirement floated by antitrust enforcers that Co-Chief Executive Officers Scott Nuttall and Joe Bae be held personally liable if more lapses occur within the next five years.

I have to say, I sympathize with both sides here. The basic ask appears to be “if KKR’s deal teams and lawyers fill out some forms wrong, then we can *charge its CEOs with a crime*.” Like:

If I were KKR’s co-CEOs, I would never agree to that! It’s not like *they* are filling out the forms; why should they be liable if some of their underlings fill out the forms wrong?

- I get why the Justice Department wants it? The point of the settlement is to *make KKR fill out the forms right*, and threatening the CEOs with personal liability is a way to get KKR to take the forms seriously.

Apollo structured credit

A story that I like to tell about private credit goes like this. Once upon a time, banks made loans and held them on their balance sheets: Companies would come to a bank and ask to borrow money, and the bank, which had money, would lend it to them. For a variety of reasons, over the years, banks got more and more into “the moving business, not the storage business”: They would increasingly syndicate their loans or package them into securities, selling the loan to some other ultimate investor.

This has some advantages: It moves risk off the banks' balance sheet, making the banking system safer; it also might get companies cheaper loans because there is a bigger pool of ultimate lenders. It also has some disadvantages: The companies get less speed and certainty, because instead of just giving them the money the banks have to go out and find investors, plus if anything goes wrong for a company it's dealing with a faceless blob of adversarial creditors rather than a single bank it knows well.

And so private credit came along, in which big asset managers, funded with long-term money, would make loans directly to companies (or to private equity buyers) using their investors' money. Private credit could offer speed and certainty and a real relationship, though sometimes at the cost of higher prices.

And this has been a lucrative and fast-growing business for the asset managers, so much so that their big problem is how to expand it. This means simultaneously:

1. Finding new *investors* for private credit assets: Private credit managers would traditionally raise funds from insurance companies, pensions, rich people, etc., the usual investors in alternative assets, but they are increasingly looking to raise money from public markets to fund their growth. But it can also make sense for them to get into the syndication business, just like banks did: You can arrange more and bigger loans, with less risk, if you are selling the loans to someone else rather than holding them all yourself.
- 2. Finding new *assets* to put into the funds: There are only so many private equity sponsors doing only so many leveraged buyouts, so if you want to build an enormous private credit business you need to find other borrowers. Lend to investment-grade companies, make mortgage and credit-card and car loans, etc.; the world is full of people who want money. Here much of the game is about hiring people to originate loans: Every big private credit firm employs people who talk to every big private equity sponsor — many of the private credit firms are also private equity firms — and will get called to do buyout loans, but if you want to make asset-backed loans against aircraft, you will want to hire some former bankers who know the chief financial officers of airlines. Finding new borrowers is not so much an intellectual exercise as it is a *sales* exercise, so you need salespeople.

Last year Apollo acquired a securitized products group, called Atlas SP Partners, from Credit Suisse Group AG, which addresses both of those issues: Atlas is in the business of originating types of loans ("asset-backed warehouse financing, forward flow and asset purchases," among others, in "a wide range of asset classes within residential and commercial real estate, and corporate and consumer debt") that Apollo previously didn't do much of. Today Bloomberg's Allison McNeely reports on how that's going:

Atlas SP Partners — the structured finance business that's key to Apollo Chief Executive Officer Marc Rowan's plan to become a lending machine — has struggled under its new owner since last year's acquisition, according to interviews with almost a dozen people with knowledge of the unit. Cultures have clashed, business has slowed and a raft of senior departures culminated in the abrupt exit of Atlas SP's longtime head, Jay Kim, in August.

One problem is that it is not trivial to get into the moving business instead of the storage business. Traditionally the private credit business is about making loans and then holding onto them until maturity. But Atlas is in the business of securitizing stuff into bonds to sell to investors, and if you do that, it is helpful to have a trading desk that will make a market for the bonds. (Investors are more likely to buy the bonds if they know that they can sell them.) Credit Suisse had a trading desk; Apollo, less so:

Atlas no longer had a major trading desk making markets in the securities it structured, and it didn't benefit from banks' low funding costs to compete in the most vanilla assets. ...

Atlas was operating without a broker-dealer license for well over a year. Without it, Atlas has struggled to generate business because — unlike competitors such as big banks — it couldn't easily syndicate deals for clients. Its residential mortgage business was hit hardest by difficulty originating new deals, largely because of the firm's lack of trading capabilities, some of the people said.

But “the firm finally secured a broker-dealer license and has begun plans to build a trading operation, with the hope that more deals will come its way if it can show there’s a market for investors to sell the assets if needed.”

Another problem is ... well, I mean, private credit has gone from roughly nothing to a huge, fast-growing, incredibly lucrative area of finance, taking away market share and revenue and talent and glamour from the big banks. How did private credit firms do that? You can point to various structural factors, but a dumb simple answer would be “they are better at their jobs than the banks are.” Why are they better at their jobs? Again, there are various possible answers, but a dumb simple one would be “they work harder.” This can make it hard to integrate people from a big bank:

The melding of teams caused friction, particularly in the early days of the deal. When Apollo executives tried to dig into the granular details of the portfolio they'd bought as the deal was closing, they struggled to get timely information out of Credit Suisse, some of the people said. Meanwhile, Apollo's hard-driving culture — with its late-night phone calls — spurred disagreements with the ex-Credit Suisse staff over expectations that some people perceived as unreasonable.

Here's a Wall Street Journal article from last year about how Apollo and other private credit firms are "the new kings of Wall Street." Here's a Financial Times profile of Rowan from last week, arguing that he is working "to re-engineer finance according to his own designs." Credit Suisse disappeared a month after Apollo bought Atlas. I also do not like late-night phone calls, and have arranged my life to avoid them. But it's possible that Apollo's culture is not the unreasonable one.

Texas Stock Exchange

I guess if I started a new stock exchange, and on my first day I had zero companies listed on my exchange, I'd go around being like "you know all those companies that are listed on the New York Stock Exchange and Nasdaq? They're just not good enough to list on my exchange." And so:

Jim Lee, chief executive of the TXSE, told the Financial Times the new exchange's standards, including earnings tests, minimum prices and other unspecified measures, would be stringent enough to in effect exclude more than a third of the companies listed on Nasdaq and the New York Stock Exchange.

"Ours are going to be the tightest [quantitative standards] inside of the strike zone," he said in an interview. "Our qualitative standards will be tighter, not on every element, but in total, such that about 1,500 Nasdaq companies [would] fall out and about 200 NYSE companies [would] fall out — that would not qualify for continued listing on our exchange."

My impression was always that TXSE's standards were going to be roughly "the same as NYSE and Nasdaq, except we don't care about board diversity," which is an *obviously good pitch*? The goal is *not* to send a signal of high or low quality, but to send a signal of "anti-woke," so that companies that want to send their own anti-woke signal will know where to go. It would be a real error for TXSE's quantitative standards to be so tough that Elon Musk can't list his companies there.

Daniela Amodei, co-founder and president of model developer Anthropic, said the startup's developers have been using its Claude chatbot to help them code. It can't fully replace engineers and needs "some coaching," but many Anthropic developers have dramatically increased their productivity with Claude, Amodei said at The Information's Women in Tech, Media and Finance conference on Tuesday.

7/9

I feel like the most obvious and hackneyed possible dystopian sci-fi plot at this point is “an artificial intelligence company realized that it could ask its current AI model to code its next-generation AI model, so it fired all its engineers and just let the AI program itself, yadda yadda yadda Skynet.” Also I love that the motivation here appears to be cost savings: Human engineers are expensive, but you can improve your margins by getting rid of them and letting the AI program itself.

Non-self-replicating CPAs

Meanwhile *my* dystopian sci-fi novel is going to be about the disappearance of accountants:

The head of KPMG US has said the industry urgently needs to make it easier and cheaper to become an accountant, to head off a “brewing crisis” in the profession.

Paul Knopp became the first head of a Big Four firm to publicly back scrapping the requirement for a fifth year of higher education on top of the typical four-year undergraduate degree, as the numbers of US students taking accounting courses have fallen sharply.

Knopp backed an “apprenticeship” model that could replace the fifth year of education.

“We have a brewing crisis right now, with the number of students going to college and the number going into accounting, and we need to absolutely address it in the very near term,” he said in an interview with the Financial Times.

"I can't over-emphasise, it's not just the Big Four. We need more accountants in corporations and outside of the Big Four. The industry that we are in is systemically important to the functioning of the capital markets."

He's right, right? Financial statements are the raw material of finance. There are lots of people who want to be somewhere in the lucrative superstructure built on top of accounting, who want to be hedge fund analysts or private equity dealmakers or ESG Consultants But Evil. But nobody wants to be an accountant. You could imagine a story in which accountants get both scarcer and less qualified, so public companies' financial statements become less reliable, so markets become less efficient at allocating capital, so there are higher returns to hedge-fund analysts who can sniff out accounting problems, except those analysts are rarer too because the way they used to be trained was mostly by qualifying as accountants.

I have written and thought a lot about meme stocks over the last few years, and it has made me a bit nihilistic. Sometimes I suggest that perhaps fundamental analysis — the idea that the prices of financial assets reflect the present value of their future cash flows — is a temporary phenomenon; people were trading stocks based on vibes and gamesmanship long before anyone built discounted cash flow models, and perhaps they'll keep doing so long after. I mostly think of that as a social phenomenon: The available information about companies keeps getting better, but there is no law of nature that forces people to pay attention to that information. You can just buy GameStop because your friends are buying GameStop. But what if the information also gets worse?

The obvious solution is to have the AI models do the accounting, but that's what makes my novel fun.

Things happen

Wall Street Salaries Decline Further From Pandemic Heights. US Weighs Google Breakup in Historic Big Tech Antitrust Case. Treasury market volatility surges as investors rethink interest rate bets. AI's Thirst for Power Turns Utility Stocks Into Big Tech Proxies. Samsung Apologizes for Falling Behind in AI Chips Race. X Can Resume Operations in Brazil After Paying Millions in Fines. KKR-Owned BMC to Separate Into Two Private Software Companies. Billionaire Backs Space-Laser Solar Startup After Robinhood Exit. Bitcoin creator is Peter Todd, HBO film says. Cameroon takes unusual step of insisting its president has not died.

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- 1. Here's a very funny paragraph from a Bloomberg article in August: "Earlier this year, Polymarket plastered champion boxing-themed posters around Manhattan touting the Trump v. Biden elections odds, and recently tapped political polling analyst Nate Silver as an adviser. At the time of the announcement, Polymarket's vice president, David Rosenberg, told Axios that 'all of the trading is happening outside the US.'" See, see, all of the **trading** is happening outside the US, even if some of the **advertising** is in New York. The article goes on: "Trading on Polymarket can be done only with USDC, a widely used digital currency. The company instructs traders to fund their Polymarket accounts from external digital wallet providers including Coinbase, PayPal, MetaMask and Robinhood Crypto. Crypto transfers from some of those apps, including PayPal and Robinhood, are available only to US users."

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Shares of Trump media company hit highest in six weeks

 [reuters.com/markets/us/shares-trump-media-company-hit-highest-six-weeks-2024-10-10](https://www.reuters.com/markets/us/shares-trump-media-company-hit-highest-six-weeks-2024-10-10)

Reuters

By Reuters

October 10, 2024 10:55 AM PDT Updated an hour ago

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

NEW YORK, Oct 10 (Reuters) - Shares of former U.S. President Donald Trump's media company (DJT.O) , opens new tab hit their highest level in six weeks on Thursday and were last up about 16% as the stock extended recent gains.

Trump Media & Technology Group, which is 57% owned by the Republican presidential nominee running against Vice President Kamala Harris, is up roughly 45% for the week so far. The stock was last at \$23.85.

Trump's odds of winning the Nov. 5 U.S presidential election have edged higher on PredictIt in recent days, climbing to 52 cents from 49 cents a week ago.

Harris' odds are the same at 52 cents, but they are down from 55 cents a week ago, according to PredictIt.

Trump on Saturday held a large rally at rural Pennsylvania site where he was nearly assassinated on July 13.

Get a look at the day ahead in U.S. and global markets with the Morning Bid U.S. newsletter. Sign up [here](#).

Reporting by Caroline Valetkevitch; Additional reporting by Saqib Iqbal Ahmed and Lance Tupper; Editing by Daniel Wallis

Wall Street's SPAC Machine Picks Up Despite 'Odd' Lack of IPOs

By Bailey Lipschultz

- Harry Sloan, Betsy Cohen and Oaktree line up new blank checks
- Jamie Dimon blames costs and red tape for lack of regular IPOs

Bloomberg Law News 2024-10-10T11:01:54737431624-04:00

Wall Street's SPAC Machine Picks Up Despite 'Odd' Lack of IPOs

By Bailey Lipschultz2024-10-09T12:16:44007-04:00

- Harry Sloan, Betsy Cohen and Oaktree line up new blank checks
- Jamie Dimon blames costs and red tape for lack of regular IPOs

Even with markets rallying for months, the pace of traditional initial public offerings is behind what bankers expected. JPMorgan Chase & Co. Chief Executive Officer Jamie Dimon called the lack of deals "odd" before blaming costs and red tape.

With the likes of former Hollywood executive Harry Sloan, veteran dealmaker **Betsy Cohen** and now Oaktree Capital Management, the nearly \$200 billion investment firm run by **Howard Marks**, getting back in the SPAC game, could the answer to Dimon's dilemma be the humble blank-check company?

Blank-check firms are gaining steam again — much as they did at the start of the pandemic, when record low interest rates and extreme market volatility prompted the owners of companies weighing IPOs to choose mergers with already-listed special purpose acquisition companies.

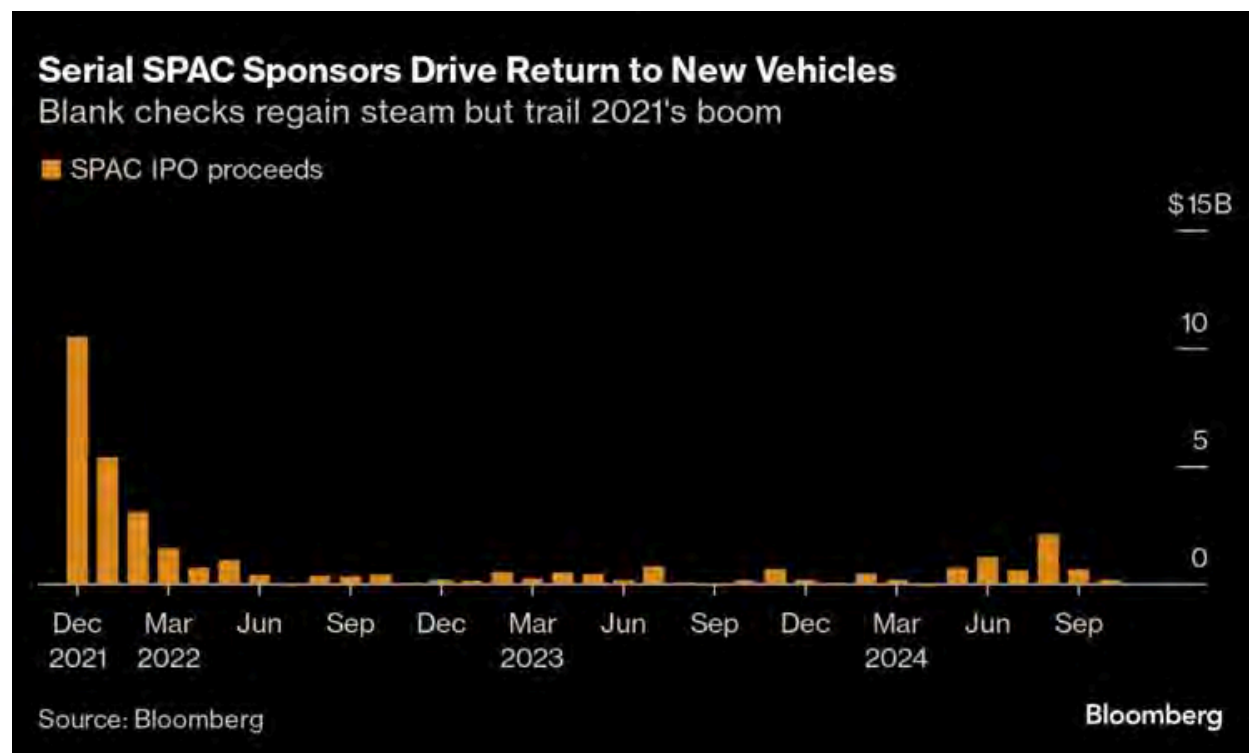
Even after the US Securities and Exchange Commission tightened the rules, and many SPAC deals left investors with losses, blank check heavyweights are lining up to keep the beaten-down industry going.

Oaktree, which has completed two SPAC deals including one that took Hims & Hers Health Inc. public at a \$1.6 billion valuation in 2021, filed last week for a new blank-check listing that's looking to raise \$175 million.

Raising money and hunting for targets now makes sense ahead of 2025, when some are predicting the pipeline of companies waiting to go public could really start flowing.

"It's a quiet market now, but you want to be prepared for an opportunity," said **Brian Hirshberg**, a partner at law firm Mayer Brown. "For a serial SPAC issuer it makes sense to just have one out there because if the market turns a corner then you'll have one that's ready to go and make a deal. You can't wait until there's a perfect market, you kind of already have to have it out there."

Sloan and his SPAC partner Eli Baker filed last month to raise a \$250 million blank check the same day that Cohen's firm put together paperwork for a \$200 million vehicle. They join a warming market that has seen some \$5.4 billion raised by SPACs since April after US regulators tightened rules around financial projections that helped fuel the go-go days of 2020 and 2021.



Avi Katz's GigCapital Global, Howard Lutnick, Cantor Fitzgerald's Chief Executive Officer, and Asia casino magnate **Lawrence Ho's** family office are among the sponsors to price new deals this summer, with 26 SPACs raising \$4.7 billion since the start of June, SPAC Research data show. The vehicles are replenishing a pipeline of deal-needy SPACs that has tapered to about 200 from a peak of more than 600 pre-deal vehicles a few years ago.

One way for a SPAC sponsor to help backstop the deals is to use a so-called private investment in public equity. That is a commitment by a group of investors to buy shares at \$10, swelling the amount beyond just what cash the SPAC itself holds, and supporting the deal and its valuation. But drawing investors to PIPEs has become tough.

"The successful SPACs from 2020 and 2021 had sizable PIPEs and I think that market is not what it was because a lot of those investors did not do well," Hirshberg said.

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Securities Law News

Oct. 9, 2024, 2:29 PM PDT

Ex-Crypto Tech Firm Banq's Bankruptcy Tossed as Bad-Faith Filing

By James Nani

- Banq seeks edge in fight with former NFT company, judge says
- Company was building crypto payment platform before bankruptcy

Bloomberg Law News 2024-10-10T11:18:11744099072-04:00

Ex-Crypto Tech Firm Banq's Bankruptcy Tossed as Bad-Faith Filing

By James Nani 2024-10-09T17:29:43000-04:00

- Banq seeks edge in fight with former NFT company, judge says
- Company was building crypto payment platform before bankruptcy

Banq Inc. had its bankruptcy tossed after a Nevada federal judge found that the one-time cryptocurrency technology company filed only to gain an advantage in pending litigation.

Banq's small business bankruptcy reorganization plan was rejected and its case dismissed as a bad-faith filing, because it's really a two-party dispute, according to an order filed Tuesday by Judge Natalie M. Cox of the US Bankruptcy Court for the District of Nevada.

"It is apparent from the totality of the circumstances that Debtor's actual purpose in filing this case is not to successfully reorganize," Cox said.

Las Vegas-based Banq was formed in 2019 and filed for bankruptcy in June 2023. The company was created to build a payment application platform with cryptocurrency capabilities for consumers, according to court records.

Cox ruled that Banq's bankruptcy was filed to insulate itself, cryptocurrency custodian Prime Trust LLC, and Banq board member Jon P. Jiles from liability from a suit brought in Florida court by N9 Advisors LLC.

Jiles, a former board director of Prime Trust, funded Banq's bankruptcy case through his company NVF LLC, according to the opinion. Prime Trust LLC filed for bankruptcy in August 2023 amid allegations it used customer funds to buy cryptocurrencies after losing access to digital wallets.

Ties to NFT Companies

In the Florida case, N9 accused Banq of breaching a convertible promissory note, Prime Trust of “tortious interference,” and Jiles of breach of fiduciary duty. That suit was “dismissed without prejudice and subject to an appeal,” Cox noted.

N9 in 2021 had promised Banq a \$3 million unsecured loan, according to court records.

While trying to defend itself from N9, Banq was also trying to gain an advantage in litigation pending in Nevada against Fortress NFT Group Inc., Planet NFT Inc., and three people formerly tied to Banq—former CEO and board member Scott Purcell, and former executives George Georgiades and Kevin Lehtiniitty.

Fortress NFT is now called Fortress Blockchain Technologies Inc., and Planet NFT has changed its name to FortressNFT Inc., according to court records.

While Purcell was CEO in 2021, he had Banq stop work on its cryptocurrency venture and pivot to developing nonfungible token technologies and an NFT wallet application, Banq said. Purcell wound down the company at the end of 2021 after Apple's app store changed its terms and conditions for NFTs, Banq said.

Banq said Purcell and the other executives in September 2021 formed Fortress NFT and secretly transferred much of Banq's resources there.

The “sole focus” of Banq's bankruptcy was pursuing litigation claims against Purcell, Fortress, and others, Cox said. That makes the claim the only major asset in the case, the judge said.

Banq also stopped operating before it filed for bankruptcy, didn't present a future business model or operations, and has little cash flow, Cox said. It's also unlikely that NVF will continue to fund the case against its own principal, Jiles, and would more likely litigate against Purcell and others instead, Cox said.

The dismissal is an “excellent result” for N9, its attorney Athanasios E. Agelakopoulos of Schwartz Law PLLC told Bloomberg Law via email Wednesday.

“We hope this is the beginning of the end of the litigation,” he said.

Attorneys for Banq and the Purcell parties didn't immediately respond to requests for comment Wednesday.

Banq is represented by Shea Larsen PC. The Purcell parties are represented by Keker, Van Nest & Peters LLP and McDonald Carano LLP.

The case is BANQ INC. , Bankr. D. Nev., No. 23-12378, conclusions 10/8/24 .

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<https://www.wsj.com/finance/regulation/td-bank-faces-3-billion-in-penalties-and-growth-restrictions-in-u-s-settlement-3e09a705>

MARKETS & FINANCE | REGULATION

TD Bank Agrees to \$3 Billion in Penalties and Growth Restrictions in U.S. Settlement

Canadian bank's U.S. unit pleaded guilty to charges that it failed to build proper anti-money-laundering systems

By [Justin Baer](#) [Follow](#), [Dylan Tokar](#) [Follow](#) and [Vipal Monga](#) [Follow](#)

Updated Oct. 10, 2024 1:51 pm ET



TD has since has said it is working to address problems highlighted by its regulators. PHOTO: CHLOE ELLINGSON/BLOOMBERG NEWS

TD Bank **TD -4.83%** ▼ agreed to pay more than \$3 billion in penalties and accepted limits on its growth in the U.S. as part of a settlement Thursday with regulators and prosecutors over charges it failed to properly monitor money laundering by drug cartels and other criminal groups.

As part of the agreement, the bank's primary U.S. regulator, the Office of the Comptroller of the Currency, imposed an asset cap barring the bank's retail business from growing above its current level of assets in the U.S.

TD's U.S. entity also pleaded guilty to criminal charges to resolve a Justice Department investigation.

Both the Justice Department and the Treasury's Financial Crimes Enforcement Network have ordered independent monitors in place to watch the bank closely and ensure compliance with the pacts. The FinCEN monitor will be in place for four years.

The settlement, announced Thursday and confirming an earlier report in The Wall Street Journal, included the Justice Department, FinCEN, the OCC and the Federal Reserve. The Justice Department will receive the biggest slice of the penalties, some \$1.8 billion, with FinCEN getting \$1.3 billion and the OCC taking \$450 million.

FinCEN's \$1.3 billion settlement is the largest civil penalty against a bank in Treasury's history.

TD Bank has said it is working to address the issues with its anti-money-laundering programs. "We recognize the seriousness of our U.S. AML program deficiencies and the work required to meet our obligations and responsibilities is of paramount importance to me, our senior leaders, and our boards," Chief Executive Bharat Masrani said in an August statement. He later announced he would step down.

The sweeping rebuke shows regulators and prosecutors found the problems at TD to be severe.

The OCC said TD had "significant, longstanding, systemic breakdowns in its transaction monitoring program."

TD processed hundreds of millions of dollars worth of transactions that clearly indicated highly suspicious activity, which created "a potential for significant money laundering, terrorist financing or other illicit financial transactions," the regulator said. For instance, TD allowed three money-laundering networks to transfer more than \$670 million through TD Bank accounts between 2019 and 2023, the regulator said.

"TD Bank's AML failures made it 'convenient' for criminals, in the words of its employees," the OCC said.

Wells Fargo has been operating under a similar order restricting its size since 2018, after its bankers were found to have been opening fake accounts for clients. That has forced Wells into years of cutting costs and businesses while also spending heavily to build systems to keep the bank safe.

For TD, an agreement would follow an ugly chapter that has weighed on the stock price and stemmed the U.S. ambitions of Canada's second-biggest bank.

Federal authorities opened an investigation into TD's internal controls after agents discovered a Chinese criminal operation had laundered millions of dollars in fentanyl sales through TD branches in New York and New Jersey and bribed bank employees, the Journal reported. The group ultimately moved more than \$470 million through the bank, prosecutors revealed Thursday.

In May 2023, U.S. regulators' concerns over the probe and TD's ability to detect and prevent money laundering scuttled the bank's planned \$13.4 billion acquisition of Tennessee's First Horizon, the Journal reported.

The bank's lax anti-money-laundering controls also exposed it to other criminal groups, according to prosecutors. In one case, a jewelry business moved nearly \$120 million through shell accounts before TD reported the suspicious activity to regulators.

A third scheme involved cash deposits by money launderers that were then withdrawn through ATMs in Colombia. Five TD Bank employees were involved in the Colombia scheme, according to the Justice Department.

TD has since said it is working to address the problems highlighted by its regulators and in recent months had made a series of key hires to shore up its anti-money-laundering and investigations groups.

Those changes culminated last month with Masrani's decision to step down as CEO later this year after leading efforts to address the bank's weaknesses.

In August, TD said it had set aside another \$2.6 billion during its third quarter to account for the costs associated with potential settlements with U.S. authorities.

TD shares were down more than 5% on Thursday and are now down about 7% this year, while the broader market and bank stocks largely are up significantly.

Among the penalties, the biggest blow might be the restriction on its U.S. retail growth.

The Canadian bank amassed one of the 10 biggest U.S. retail banks through a series of deals. It bought a stake in Portland, Maine-based Banknorth in 2004, and then rolled up Commerce Bank and several other banks along the East Coast.

The unit provided about a third of the bank's total earnings, said Gabriel Dechaine, an analyst with National Bank Financial.

With growth in the U.S. effectively stalled, TD now faces a long period of earnings underperformance, he said.

"It's very bad," Dechaine said.

Write to Justin Baer at justin.baer@wsj.com, Dylan Tokar at dylan.tokar@wsj.com and Vipal Monga at vipal.monga@wsj.com

Appeared in the October 10, 2024, print edition as 'TD Faces \$3 Billion Penalty, Curbs on Growth'.

Videos

TD Fined \$3.1 Billion, Hit With Asset Cap Over Money Laundering

B [bloomberglaw.com/bloombergtterminalnews/bloomberg-terminal-news/SL5GP0T1UM0W](https://www.bloomberglaw.com/bloombergtterminalnews/bloomberg-terminal-news/SL5GP0T1UM0W)

Oct. 10, 2024, 11:15 AM PDT

Christine Dobby

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David Voreacos

Bloomberg Editorial

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TD CN Equity

- Canadian lender had 'long-term, pervasive' deficiencies: DOJ
- Asset cap on two US entities may hamper US growth strategy

By Christine Dobby and David Voreacos

(Bloomberg) --

Toronto-Dominion Bank will pay almost \$3.1 billion in fines and other penalties and face a cap on its US retail banking assets, after pleading guilty to failing to prevent money laundering by drug cartels and other criminals.

Two of the bank's US units entered the pleas to a range of charges Thursday before a federal judge in Newark, New Jersey. The US Justice Department, Federal Reserve and Office of the Comptroller of the Currency later released statements on a "coordinated resolution" reached with the bank in exchange for its guilty pleas.

"TD Bank had long-term, pervasive, and systemic deficiencies" in its US anti-money-laundering policies and procedures "but failed to take appropriate remedial action," the Justice Department said in a statement, referencing court filings that documented problems over the course of almost a decade.

The settlement caps a months-long saga and multiple probes into the lender's failure to catch money laundering and other financial crimes at bank branches in multiple states including New York, New Jersey and Florida. The combined \$3.1 billion of penalties include

\$1.89 billion to the Justice Department, which is the largest such sanction ever imposed under the Bank Secrecy Act, Deputy Attorney General Lisa Monaco said at a briefing on Thursday.

And while the bank had set aside more than \$3 billion in recent months to prepare for the settlement — including selling off some of its stake in Charles Schwab Corp. — the asset cap may hamper the bank's growth-by-acquisition strategy that it has pursued in US retail banking for much of the past two decades.

The growth restriction applies to its TD Bank NA and TD Bank USA entities, according to the OCC. The bank was also ordered to set up a new US office dedicated to rectifying the deficiencies identified in the order.

The investigations have already hit Toronto-Dominion hard, leaving a black mark on the end of Chief Executive Officer Bharat Masrani's decade-long tenure and forcing the lender to scrap a \$13.4 billion deal to acquire US regional bank First Horizon Corp. last year.

The bank's money laundering failures "enabled three money laundering networks to collectively transfer more than \$670 million through TD Bank accounts between 2019 and 2023," the Justice Department statement said on Thursday.

Toronto-Dominion has more than 10 million US customers and almost 1,200 branches concentrated along the East Coast, and its American retail operations account for about a quarter of its revenue.

Analysts and investors have feared that TD's growth in the US could be constrained by a cap similar to the one imposed on Wells Fargo & Co. in 2017, which limited that bank's assets to about \$1.95 trillion. Almost seven years later, Wells is still not out from under that sanction, which has been a major drag on its share price.

(Updates with statements from agencies, background from first paragraph)

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Peter Jeffrey

US financial regulation**Elizabeth Warren blasts accounting watchdog over BDO audit failures**

Senator says US regulator needs to take tougher line against 'repeat offenders'



Elizabeth Warren calls into question whether the Public Company Accounting Oversight Board is properly holding the industry to account © AP

Stephen Foley in New York 3 HOURS AGO



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Members of the US Senate finance committee are demanding tougher enforcement action against accounting firms after a sustained increase in the number of flaws found in their audit work.

Democratic senators Elizabeth Warren and Sheldon Whitehouse said deficiency rates that have exceeded 40 per cent for the past two years call into question whether the Public Company Accounting Oversight Board is properly holding the industry to account.

In a letter to the PCAOB seen by the Financial Times, the senators zeroed in on BDO, the sixth-largest accounting firm in the US, where [almost all](#) audits examined by inspectors last year were found to have flaws. They asked whether “repeat offenders” are deterred by potential fines that they said are typically “a drop in the bucket” compared with firm revenues.

“The PCAOB must do better,” Warren and Whitehouse wrote. Either the audit standards written by the board were inadequate, they wrote, “or the PCAOB is failing to establish accountability for firms that do not meet them.”

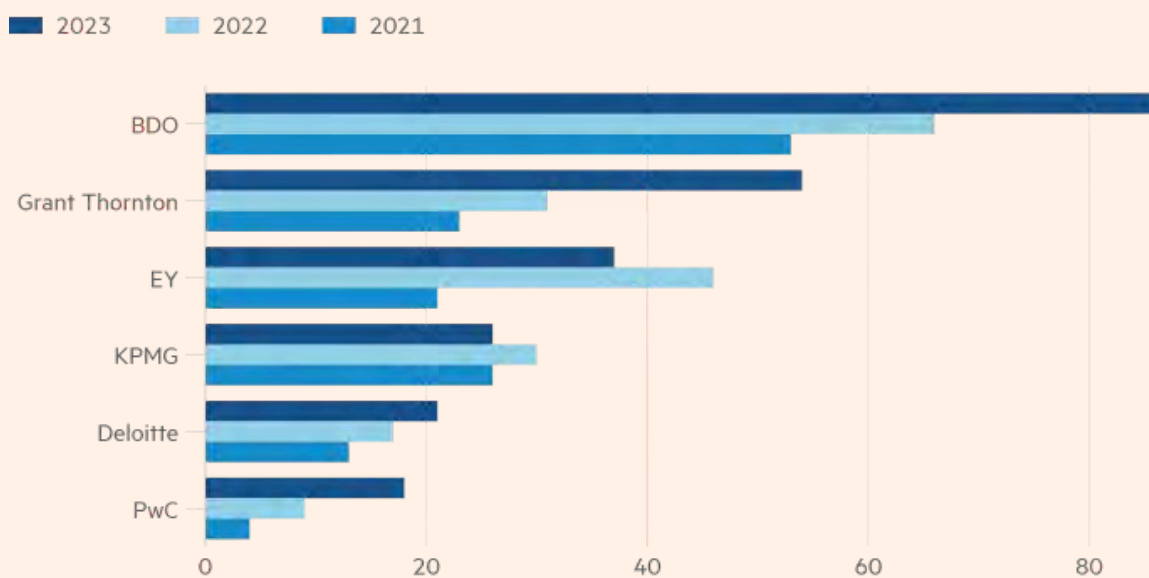
The letter highlights the increasing pressure on the PCAOB at a time when accounting firm executives are privately bemoaning the politicised nature of audit regulation and enforcement.

From the other side of the political spectrum, a conservative legal group called the New Civil Liberties Alliance has challenged the PCAOB’s regulatory powers, claiming in a lawsuit that they are unconstitutional.

The regulator has also been dealing with an unusual split in its own ranks. Board member Christina Ho, a former auditor, last month criticised enforcement activity as “overzealous” and said audit quality was better measured by public company financial restatements than by the PCAOB’s inspection findings.

PCAOB inspectors consistently find more flaws in audits by BDO than by other large accounting firms

Deficiency rate (%)



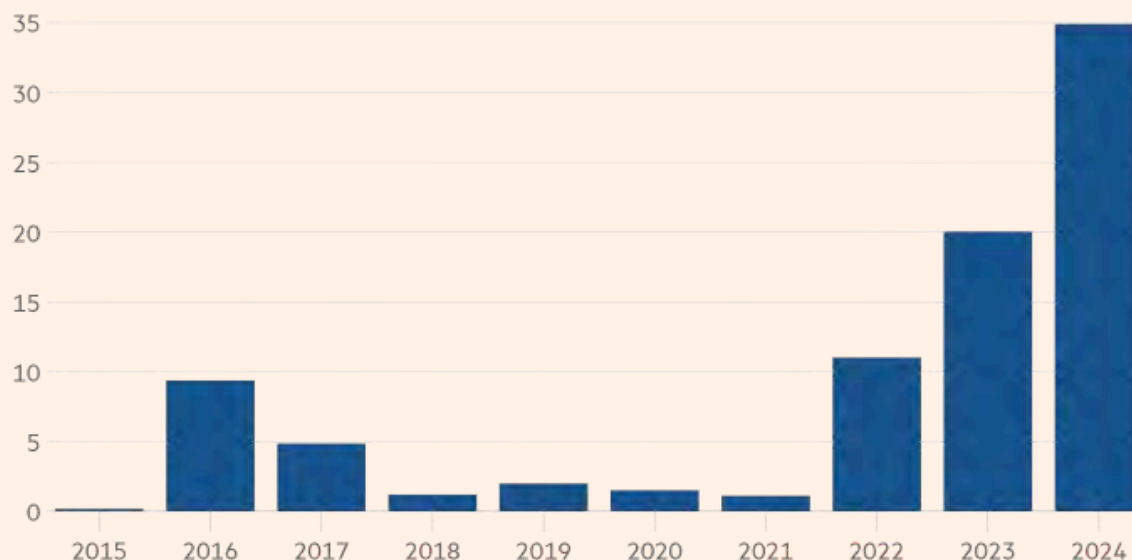
Source: Public Company Accounting Oversight Board

The PCAOB was set up in the wake of the Enron scandal two decades ago to write and police audit standards, and to inspect audit firms that sign off on financial statements of US-listed companies. It inspected audits by more than 200 accounting firms last year, finding deficiencies in 46 per cent of audits, up from 40 per cent in 2022, but chair Erica Williams said there were “small signs of improvement”.

Senators Warren and Whitehouse called that “the wrong conclusion to draw from an embarrassing and intolerable set of findings”. They said the inspections in fact indicated that “investors and the public essentially face a coin flip when it comes to whether they should believe and trust the results of public companies’ audits”.

PCAOB has imposed record penalties on audit firms in recent years

Enforcement action settlements (\$mn)



2024 figure is year to date

Source: Public Company Accounting Oversight Board

The PCAOB said it would respond to the senators directly, but added: “We share the same commitment to quality audits, and we will continue to work with them on our shared goal of protecting investors.”

Williams has in the past promised to use “every tool in the toolbox” provided by Congress to hold audit firms to account, and under her tenure the PCAOB has levied record fines in each of the past three years.

BDO said it is investing in improving its audit quality scores and has beefed up external oversight of its processes.

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AI Needs Regulatory Guardrails in the US to Ensure Safe Use

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Oct. 10, 2024, 1:30 AM PDT



Lena Kempe

LK Law Firm

- *LK Law Firm attorney calls for broader safety legislation*
- *With California veto, stronger guardrails needed around AI*

Imagine a world where artificial intelligence systems, once designed to serve humanity, become uncontrollable forces, seeking power, resisting shutdown, or deviating from their intended purposes. This dystopian scenario is a real possibility if the US fails to regulate AI safety.

California Gov. Gavin Newsom's recent veto of an AI safety bill has stirred debate in the tech industry. Large AI firms, many of which lobbied against the bill, argue such regulation could stifle innovation, leaving the US at a crossroads on how to regulate AI to balance the need for safety without hindering advancement.

The rapid advancement of AI technologies has raised several critical safety concerns that demand urgent attention. According to the Center for AI Safety, AI poses catastrophic risks such as malicious use, where bad actors intentionally exploit AI for harmful purposes, such as by creating pandemics or spreading propaganda.

Additionally, the pressure to stay competitive could lead militaries to develop autonomous weapons and use AI for cyberwarfare. This could create a new kind of warfare where mistakes can quickly escalate without human control.

Then there are organizational risks for companies that rush to develop AI with a focus on profits over safety, which leads to accidental AI leaks, theft by malicious individuals, and insufficient investment in safety research.

Rogue AIs are also a threat as advanced AI systems operate without guardrails, pursuing flawed goals, deviating from their original objectives, seeking power, resisting shutdown, and engaging in deceptive behavior, such as manipulating financial markets.

To mitigate these risks, the Center for AI Safety recommends several measures, including establishing safety regulations to hold AI developers accountable, ensuring transparency, and maintaining human oversight.

US Landscape

There is no federal law addressing AI safety issues. President Joe Biden's executive order on AI safety serves as a policy directive, guiding federal agencies to develop AI safety standards and conduct testing. However, the order isn't a law and doesn't have direct legal binding force.

Several states, including California, Colorado, Connecticut, and Illinois, have enacted AI regulations that focus on immediate concerns such as data privacy, algorithmic discrimination, and transparency. However, none of these state laws comprehensively cover long-term AI safety issues, especially now that Newsom has vetoed California's AI safety bill.

EU Landscape

The EU Artificial Intelligence Act is a comprehensive law that addresses several important aspects of AI safety concerns. It prohibits AI systems that constitute a clear threat to people's safety, livelihoods, and rights, which could cover some forms of malicious use. It imposes transparency obligations on AI-generated content, which could help mitigate risks of propaganda. However, the law may not be sufficient to cover all potential malicious uses.

To address risks associated with rapidly advancing AI capabilities, the EU imposes specific requirements on high-risk systems and general-purpose AI models, particularly those classified as having systemic risk. However, it doesn't specifically address other issues arising out of the AI race, such as mass unemployment or over-dependence on AI systems.

The EU requires providers of high-risk AI systems to implement a risk management system throughout the AI system's lifecycle. It mandates data governance and management practices, which could help mitigate risks of accidental AI leaks or theft. The law also requires providers of high-risk AI systems to conduct a conformity assessment, which can help identify and address potential risks before the system is deployed.

While the EU law doesn't explicitly address the concept of rogue AIs, its requirements for human oversight and risk management can help mitigate risks associated with AI systems deviating from their intended purposes. However, the EU doesn't provide specific guidance on how to identify or prevent rogue AI behavior.

Overall, the EU AI Act is a significant step forward in regulating AI safety. However, there are concerns about its potential impact on the competitive landscape. Critics argue that the detailed requirements, especially for high-risk AI systems and GPAI models with systemic

risk, could be burdensome and costly for companies, particularly startups and SMEs. They also warn that stringent regulations might slow down AI innovation or development in the short term, as companies adjust to the new requirements.

Path for the US

As a global leader in AI, the US can't afford to neglect the need for regulation to address AI safety concerns. However, given objections from large AI companies to California's AI Safety Bill, which they argue could stifle innovation, adopting the EU AI's prescriptive approach could face strong resistance. The US will need a more balanced approach that promotes innovation while safeguarding against AI risks.

A balanced approach in the US might include adopting a tiered, risk-based approach similar to the EU AI Act, but with greater flexibility to quickly adapt to evolving AI technologies. This would focus on principles and testing outcomes rather than rigid, prescriptive requirements, with regular reviews and updates to regulatory guidelines.

The US could also expand Congress' proposal to establish regulatory sandboxes for AI projects beyond the financial industry to all industries. Setting federal minimum standards that align with global AI regulations would make compliance easier for companies.

Compliance Strategies

Faced with regulatory uncertainty, AI developers should consider taking the following key strategies to protect public safety. They should establish AI development policies and procedures across the lifecycle, including comprehensive safety testing frameworks and continuous post-deployment monitoring to detect potential risks.

In addition, they could promptly design and implement emergency shutdown procedures for handling critical AI malfunctions.

Also key is to document internal processes in a transparent and explainable manner to prepare for potential third-party audits, and develop flexible compliance strategies that are capable of responding to evolving regulations.

While this isn't an exhaustive list, these steps will help prepare AI developers for future AI regulation. The potential for AI to either enhance our lives or pose significant risks depends on how we regulate it. With the right regulations in place, we can ensure that innovation doesn't come at the cost of safety.

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

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Lena Kempe is principal attorney at LK Law Firm. With over 20 years of legal experience in law firms and companies, including general counsel roles, Lena provides strategic guidance on AI, IT, IP, and data privacy.

Write for Us: Author Guidelines

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Tesla gambles on 'black box' AI tech for robotaxis

 [reuters.com/technology/tesla-gambles-black-box-ai-tech-robotaxis-2024-10-10](https://www.reuters.com/technology/tesla-gambles-black-box-ai-tech-robotaxis-2024-10-10)

Norihiko Shirouzu, Chris Kirkham

Item 1 of 4 A row of Tesla superchargers is shown at a supercharging location in Los Angeles, California, U.S., June 5, 2024. REUTERS/Mike Blake

[1/4]A row of Tesla superchargers is shown at a supercharging location in Los Angeles, California, U.S., June 5, 2024. REUTERS/Mike Blake [Purchase Licensing Rights](#)  , opens new tab

Oct 10 (Reuters) - Tesla aims to stun investors Thursday night with its long-awaited "robotaxi unveil," a potential milestone after a decade of Elon Musk's unfulfilled promises to deliver self-driving vehicles.

The automaker is widely expected to showcase a prototype called the "Cybercab" rather than a road-ready driverless taxi.

Convincing regulators and passengers of the vehicle's safety could prove much harder and take much longer — while its main competitors, such as Alphabet's Waymo, expand robotaxi fleets they're already operating in select cities today.

Tesla has to date pursued a different technological path than all of its major self-driving rivals - one with potentially higher rewards but also higher risks to both its business and its passengers, according to Reuters interviews with more than a dozen executives, consultants and academics specializing in self-driving technology and three former Tesla autonomous-vehicle engineers.

Tesla's strategy relies solely on a combination of "computer vision," which aims to use cameras the way humans use eyes, with an artificial-intelligence technology called end-to-end machine learning that instantly translates the images into driving decisions.

That technology already underpins its "Full Self-Driving" driver-assistance feature that, despite its name, can't be operated safely without a human driver. Musk has said Tesla is using the same approach to develop fully autonomous robotaxis.

Tesla's competitors - including Waymo, Amazon's Zoox, General Motors' Cruise and a host of Chinese firms - use the same technology but typically layer on redundant systems and sensors such as radar, lidar and sophisticated mapping to ensure safety and win regulatory approval for their driverless vehicles.

Tesla's strategy is simpler, and much cheaper, but has two critical weaknesses, industry executives, autonomous-vehicle experts and one of the Tesla engineers told Reuters. Without the layered technologies used by its peers, Tesla's system struggles more with so-

called "edge cases" — rare driving scenarios that self-driving systems and their human engineers struggle to anticipate.

The other major challenge: The end-to-end AI technology is a "black box," the Tesla engineer said, making it "nearly impossible" to "see what went wrong when it misbehaves and causes an accident." The inability to precisely identify such failures, he said, makes it difficult to safeguard against them.

Tesla did not respond to a request for comment on its technology.

Nvidia founder and CEO Jensen Huang used the same "black box" description in an interview to describe the weaknesses of end-to-end technology, without specifically addressing Tesla's system. End-to-end artificial intelligence involves training a computer to make decisions directly from raw data, with no intermediate steps requiring additional engineering or programming.

Nvidia, the world's leading producer of AI-computing chips, also uses end-to-end technology in autonomous-driving systems it's developing and plans to sell to automakers. But Nvidia, Huang told Reuters, combines that approach with more conventional computing systems and additional sensors such as radar and lidar.

The end-to-end technology usually — but not always — makes the best driving decisions, said Huang, which is why Nvidia takes a more conservative approach. "We have to build the future step-by-step," he said. "We cannot go directly to the future. It's too unsafe."

ROBOTAXI PIVOT

Tesla's ability to deliver robotaxis has taken on heightened importance this year as its sales and profits have declined amid softening electric-vehicle demand globally and fierce competition from rising Chinese EV makers.

If Tesla can overcome the technical challenges of its autonomous strategy, the payoff could be enormous. While competitors like Waymo already have robotaxis on the road, they're operating far more expensive vehicles in relatively small, comprehensively mapped zones.

Tesla aims to sell affordable robotaxis that can drive themselves anywhere.

Musk has a long history of bold promises about self-driving cars. In 2016, he predicted drivers would be able to summon their vehicles from across the country within two years. In 2019, Musk predicted Tesla would produce operational robotaxis by 2020.

The announcement of this week's robotaxi reveal came on April 5, the day Reuters exclusively reported that Tesla had abandoned plans to build a \$25,000 electric vehicle for the masses known informally as the Model 2, initially sending Tesla shares down. Musk

responded by posting , opens new tab later that day on his X social-media platform: "Robotaxi unveil on 8/8," sparking intense investor speculation. Tesla later delayed the event until this week.

That April day marked a fundamental shift in Musk's stated priorities. He had previously promised to make Tesla a Toyota-sized EV giant, an expectation that underpinned Tesla's soaring stock price, making it the world's most valuable automaker. Now he vowed to dominate self-driving tech.

Abrupt cost-cutting measures followed, including mass layoffs, as Musk diverted investment away from EV-manufacturing priorities such as battery development, gigacasting, and expansion of the automaker's Supercharger network.

The retreat from mass-market EVs only intensified investor pressure on Tesla's autonomous-vehicle development. Musk leaned into the scrutiny, saying in April that anyone doubting Tesla will "solve autonomy" shouldn't invest in the company.

Nicholas Mersch, portfolio manager at Purpose Investments, a Tesla investor, said Musk "has a lot of convincing to do."

Still, Mersch called Musk's autonomy strategy a "really bold bet" with a potentially immense payoff, even if it takes Tesla substantially more time to crack the code. "You have to keep the big picture in mind, in terms of how much iterative innovation is happening" at Tesla, he said. "I wouldn't discount them."

DATA DRIVEN

For now, unlike its robotaxi competitors, Tesla only offers semi-autonomous solutions in its "Autopilot" and "Full Self-Driving" features. The naming and marketing of those systems have sparked investigations and lawsuits over whether Tesla has put drivers at risk by overstating its vehicles' self-driving capabilities.

A U.S. National Highway Traffic Safety Administration (NHTSA) investigation published in April found that 542 crashes, including 14 with fatalities, had occurred in Tesla vehicles with Autopilot or FSD engaged between January 2018 and August 2023.

Putting Autopilot and FSD into high-volume models, however, does give Tesla a distinct competitive advantage: A massive trove of data, collected by cameras on millions of vehicles, that it can analyze and use to develop self-driving tech.

Two of the former Tesla engineers said the relatively low cost of its technology enables the massive scale of its data collection, compared with relatively tiny fleets of competitors like Waymo. One of the engineers said Tesla's high-resolution cameras cost far less than lidar and could eventually allow the automaker to produce fully autonomous vehicles customers can afford.

Lidar uses lasers to produce three-dimensional images of a vehicle's surroundings as it navigates around obstacles.

Speaking to analysts and investors this summer, Musk boasted of “exponential” improvement and predicted Tesla might achieve unsupervised driving “by the end of this year,” adding that he would be “shocked if we cannot do it next year.”

Sasha Ostojic - a former driverless car engineer and software-development executive at Nvidia, Cruise and Zoox - said he believes it will take Tesla at least “three-plus years” just to match the level of autonomous driving Waymo achieves today. Ostojic now advises a Palo Alto venture capital firm, Playground Global, on technology investments.

“I don’t see Tesla converging toward truly ‘eyes off, brain off’” autonomous driving, he said, “on the timelines Elon Musk has been promising.”

ERROR RATES AND EDGE CASES

Tesla once dabbled in multiple autonomous-driving technologies, too, but it started removing radar from its vehicles in 2021 and 2022 and by last year removed ultrasonic sensors designed to detect objects with sound waves.

The company’s sole reliance on AI-enabled computer vision leaves it with the challenge of eliminating a small but unacceptable error rate that could result in injuries and deaths if left unchecked, with no human driver, said specialists in autonomous-driving technology.

Missy Cummings, a robotics and AI professor at George Mason University and a former advisor to NHTSA, cited several studies that have shown computer vision is highly accurate but still fails to recognize objects about 3% of the time.

“What happens if it doesn’t see a pedestrian crossing the road or on the sidewalk?” she asked.

John Krafcik, Waymo's former CEO, told Reuters the company’s use of additional sensors including radar and lidar make it “orders of magnitude more capable than Tesla” in perceiving objects. It’s technology is also more transparent when something goes wrong: The inability of end-to-end machine learning systems to pinpoint dangerous glitches “may be an intractable one for a company serious about safety,” Krafcik said.

“If one of your cars has a significant at-fault crash,” he said, “one should be able to explain why it happened.”

Waymo did not comment.

The former Tesla engineer who called its technology a “black box” said it’s never clear how the automaker’s system arrives at driving decisions. And that makes it hard to tell whether Tesla is close — and, if so, how close — to producing safe and fully autonomous vehicles. The engineer called it “impossible” for AI systems or their human engineers to anticipate every “edge case,” no matter how much data it analyzes.

“You could argue there are an infinite number of crazy things happening on the road,” the engineer said.

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Reporting by Norihiko Shirouzu in Austin, Texas and Chris Kirkham in Los Angeles; editing by Anna Driver and Brian Thevenot

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Chris Kirkham
Thomson Reuters

Chris Kirkham is a business reporter in Los Angeles who has covered topics including tobacco, worker safety, internet privacy and corporate sustainability efforts. Chris previously worked at The Wall Street Journal and the Los Angeles Times.

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Tesla Will Need Riders for Its Robotaxis

WSJ [wsj.com/podcasts/tech-news-briefing/tesla-will-need-riders-for-its-robotaxis/8452ac57-3e0f-440a-9469-799e501c1cc2](https://www.wsj.com/podcasts/tech-news-briefing/tesla-will-need-riders-for-its-robotaxis/8452ac57-3e0f-440a-9469-799e501c1cc2)

October 10, 2024

Tesla is expected to announce plans for a new robotaxi on Thursday. Networks of expensive self-driving cabs need lots of paying riders. Could a partnership with a ride-hailing company help? WSJ Heard on the Street columnist Dan Gallagher talks to host Zoe Thomas about Tesla's anticipated plans and what investors are making of them. Plus, striking dockworkers are back on the job, but contract negotiations still have to work out a thorny issue: automation.

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Full Transcript

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Zoe Thomas: Welcome to Tech News Briefing. It's Thursday, October 10th. I'm Zoe Thomas for the Wall Street Journal. Tesla is expected to announce its entry into the robotaxi market at an event later today. And while these cars may not need drivers, to make the economics work, they will need a lot of passengers. We'll explain how investors seem to be approaching Tesla's entrance into this space and how that's impacting shares of another company. Plus, striking dockworkers are back on the job on east coast ports, but the latest agreement only gives the union and employers until January to work out one of the thorniest issues in contract negotiations, what to do about automation at U.S. ports? Our reporter Paul Berger will tell us about both sides arguments. But first, later today, Elon Musk is expected to announce Tesla's self-driving taxi plans. In the past, he's called the company's plan a combination of Airbnb and Uber, investors seem to be betting that Tesla's entry into the robotaxi space could come at the expense of Uber. Our Heard on the Street columnist Dan Gallagher is here to tell us more. So Dan, tell us a little bit about what we expect to learn from Tesla.

Dan Gallagher: Well, one, we'll see what this robotaxi actually looks like. Elon Musk has said publicly in various formats that it's going to be like a full-on built-for-purpose driverless cars, so no pedals, no steering wheel. We've not really seen a lot of stuff out there like that before. There's been some other robotaxi startups that are testing those types of vehicles, but the

most common ones we see from Waymo and Cruise are essentially actual cars that have been repurposed for driverless. So they have a wheel and everything, but now they drive around without anybody at the wheel.

Zoe Thomas: You mentioned Waymo and Cruise. There are some other companies in this driverless vehicle space. Uber once wanted to have its own self-driving taxi service. What changed for Uber?

Dan Gallagher: They realized it's a hard technology to do and they were racing against, at the time Apple was trying to do it, Google was trying to do it with Waymo, and these really much bigger companies that had even deeper pockets and more resources. And they had mishaps on their own. There was this fatal accident in 2018 in Arizona. They realized that their strength was really having a platform of riders that they could bring to a robotaxi service rather than building this thing up from scratch on their own.

Zoe Thomas: Okay, so then why do investors seem to be betting that Tesla's stock will go up at the expense of Uber's stock?

Dan Gallagher: Well, it already went up a lot. You can look at them in isolation and think, okay, is this going to really change the game for Tesla? It might or might not, but to sell off Uber's stock, and Uber's stock, in fact, went down a quarter of its value over the next few months after Tesla first announced they were going to have this event, so based on no knowledge, people thought, oh, that's just bad for Uber. Tesla may not choose to do business with them. In fact, Elon Musk has hinted that they're going to have their own platform. We'll see if that actually works for them or not. But ever since then, Uber has made all these deals with these robotaxi companies, including Waymo, that's proved the point of the value they have in this.

Zoe Thomas: So Waymo, Alphabet's self-driving company, has a deal with Uber in a few cities. What does that mean for passengers?

Dan Gallagher: For passengers, the idea is it's really simple. So let's say you're in one of these cities is going to be Atlanta when Waymo launches there next year. So there'll be basically a choice on the Uber app as opposed to right now here in San Francisco, if you want to take a Waymo ride, you have to have the Waymo app.

Zoe Thomas: Has either Waymo or Uber said what they expect this partnership will mean for their growth?

Dan Gallagher: They're both optimistic about it. They haven't put out specific financial projections. They both see it as a win-win for them. Obviously, with Uber, it counters this idea that robotaxis are really bad for their business. For Waymo, it's a way to get into new markets without having to build a base from scratch of potential riders.

Zoe Thomas: Dan, just to take us back to Tesla for a second, what challenges is it going to face in setting up a robotaxi company?

Dan Gallagher: Well, I mean, obviously, they'll have to get the necessary approvals, and right now, based on what analysts have looked at, they don't have yet the permits to run that kind of service, at least here in California. It could be a multi-year process, in fact, before Tesla actually has a actual robotaxi fleet out that people can hail and use, and in that time they have to have a base of users that are willing to do that. Now, there's been speculation that what they're going to do is combine it into a broader, almost car sharing type thing where, if you own a Tesla, you might make it available on this app or you rent out your car to use for somebody.

Zoe Thomas: That was our Heard on the Street columnist Dan Gallagher. Coming up, dock workers at East Coast ports are back on the job after a three-day strike, but the battle over automation at U.S. ports continues. We'll tell you about it after the break. Tens of thousands of dock workers returned to their jobs on East Coast ports last week after a three-day strike. Port employers agreed to a 62% pay increase for workers, but this new agreement only extends to mid-January, and there is another thorny issue for the union and companies to work out, automation. Here to tell us more is our reporter Paul Berger. So Paul, how much dock work is handled by automation now?

Paul Berger: Not very much. Dock work is still a pretty manual process in terms of you still by and large have humans in cranes lifting containers off ships. You still have humans on the docks driving trucks that pull the containers across the yard, and you still have lots of clerical workers checking off boxes, making sure the right boxes are going into the right places, and keeping control of the stacks of containers on the ports.

Zoe Thomas: And for those of us who don't work on docks or aren't familiar with how ports operate, what kinds of jobs is automation capable of handling?

Paul Berger: At a number of the country's most important ports, you do have cranes that can operate semi-autonomously, so largely without the help of human beings. You have autonomous vehicles on the docks that carry containers from the side of the ship over to other container stacks. Some of those are even, they're electric vehicles that will actually drive to another part of the docks when the battery's low and a robot will remove the battery, place a new battery in it, and then it will go back to work. Then you get onto the areas of automation that many people don't think of as automation, but the dock workers think of as automation. So they don't like cameras in vehicles that are facing the drivers so that when a truck comes into a port, in some cases you will have cameras and computers that read the kind of truck and trailer that's coming in, the boxes, and where they're going and keeping track of them. And a lot of those jobs at other ports are currently done by human beings, but could in the future be done more automatically.

Zoe Thomas: Tell us more about the arguments for using or not using automation at ports.

Paul Berger: It's a really interesting debate, really, because you will actually find a number of operators of the cargo handling facilities at ports who say they don't want automation. Even the people who like automation will fully admit that human beings can move containers more quickly than a machine can. But the problem with some U.S. ports is they are constrained by the towns and cities around them. They have no room to grow and they're basically filling up and automation allows some of those ports to actually move more containers through their facility. It's a process that they call densification. The idea is you can squeeze more boxes into a finite space by using artificial intelligence and other technologies to manage the containers.

Zoe Thomas: What are some of the drawbacks to adding automation at ports?

Paul Berger: There are a number of significant challenges for automation in the United States. Number one is it's very expensive. We're talking hundreds of millions or billions of dollars for an automation project. So for many companies, that's just not possible for them. On top of that, if you think of a port not as a single entity, but almost like an airport with a number of different terminals, it's each of terminal operators that have to decide if they can or want to implement automation. And what a lot of the terminal operators will tell you is that either the size of the land or the shape of the land that they operate on just isn't a good fit for automation and that only a small number of ports and only a small number of terminals within those ports are the best fit for automation. But also, those are the ones that really, really need it, because if they can only process two million containers a year right now, but the U.S. is importing four, five, 6% more containers every year, those are the ones that need to be able to basically double their capacity.

Zoe Thomas: I want to talk about the human impact. You often hear that automation will cut jobs in the short term, but add new ones in the long run. Now, how does this argument about adding new jobs shake out when we're talking about dock worker jobs?

Paul Berger: The unions are pretty much opposed to automation. The employers say that there are a number of benefits to automation, one of them is safety. Then on top of that, of course, it creates whole new swaths of jobs on the docks. So if you have more robots and autonomous vehicles and autonomous cranes, you need people who can service and maintain and upgrade that equipment. According to the executives I've spoken to, they say that those jobs can be even better paying than the ones the dock workers currently have.

Zoe Thomas: What does the ILA, the union that represents dock workers on the East Coast, say about that, the prospect that new jobs will be created with automation?

Paul Berger: By and large, most of the automation that we've seen in the United States so far has been implemented on the West Coast. So they look at the West Coast, they see what's happening there, and they don't like the look of it. So they're basically drawing a line in the sand here and they're saying, "We're not going to allow any of it." It's going to be interesting over the next few months to see how that plays out because the dock workers just won a tentative deal for a very, very large pay increase of almost 62%. My understanding from talking to people familiar with the negotiations is that wage offer has been made on condition that the dock workers allow some productivity and efficiency gains, which basically is code for automation.

Zoe Thomas: All right, that was our reporter Paul Berger. And that's it for Tech News Briefing. Today's show was produced by Julie Chang with supervising producer Katherine Milsop and Deputy Editor Scott Saloway. I'm Zoe Thomas for the Wall Street Journal. We'll be back this afternoon with TNB Tech Minute. Thanks for listening.

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Securities Law News

Oct. 9, 2024, 12:33 PM PDT

Citadel Securities CEO Says Regulation Is Deterring IPOs (1)

By Katherine Doherty

- Cites regulation as reason market maker isn't considering IPO
- Clients also find it easier to raise capital privately: Zhao

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Citadel Securities CEO Says Regulation Is Deterring IPOs (1)

By Katherine Doherty2024-10-09T15:33:20478-04:00

- Cites regulation as reason market maker isn't considering IPO
- Clients also find it easier to raise capital privately: Zhao

Citadel Securities LLC Chief Executive Officer **Peng Zhao** said the prospect of too much regulation in corporate America is deterring firms from going public — which he also cited as a reason why the market-maker isn't considering the move right now.

"We've seen way fewer IPOs than we used to," Zhao said at Citadel Securities Global Macro Conference in New York on Wednesday. He cited the "negative side effects" of regulation that comes from being a public company as well as the ease with which firms can raise capital privately instead.

"It's giving people longer and longer pause," he said in an interview with Bloomberg TV. "When you ask me whether we're going to IPO or not, the answer will continue to be no. So from that perspective, we remain concerned about the over regulation and these negative attitudes towards corporate America."

Zhao's comments echo those by JPMorgan Chase & Co. Chief Executive Officer Jamie Dimon, who this week said the US and the UK should make it easier for companies to go public. Some \$36.3 billion has been raised via first-time share sales on US exchanges this year, and while that's a 64% jump from the stretch seen in 2023 through Oct. 9, it's still well below the average in the decade before the pandemic, data compiled by Bloomberg show.

Read More: Citadel Securities Crafts Plan to Shake Up Banks' Trading Desks

Citadel Securities has quickly become a major force in financial markets after leveraging its early edge in algorithmic trading to encroach on turf traditionally dominated by the biggest banks. First-half net trading revenue rose 81% to \$4.9 billion from the same period a year earlier, putting it well ahead of the pace needed for an all-time high, Bloomberg reported last month.

Founded by billionaire Ken Griffin, Citadel Securities matches buyers and sellers in the equity and fixed-income markets. The trading firm generates billions using algorithms to capture and profit from tiny differences in prices. Its clients include asset managers, banks, broker-dealers, hedge funds, government agencies and public pension programs.

Citadel Securities is also a designated market maker, helping to list companies on the New York Stock Exchange.

The firm gained more prominence in the era of meme stocks, and has since ramped up its presence across fixed income beyond interest-rate swaps and Treasuries to serve institutional investors in corporate debt trading, starting with investment-grade bonds.

In the US, the firm now commands roughly 35% of listed retail stock trades and almost a quarter of all equity trades. Its also added senior talent from the largest institutional banks, including former Goldman Sachs alumni **Jim Esposito** who joined recently as president, underscoring its push to go head-to-head with Wall Street heavyweights. Esposito said in a separate interview that despite leaving Goldman for a rival firm, he's now finding "much better opportunities" to partner with the largest banks.

"They are looking to reduce some of their complex risks. We're in the risk management business," he said. "Partnering on risk transfer with the largest banks is very much on our firm's strategic agenda."

He also said the firm sees an "enormous opportunity" to partner with the mid-tier banks, where it can provide them with liquidity and "access to tight pricing."

(Updates with comments from executive in final paragraph.)

--With assistance from **Sonali Basak** and **David Morris**.

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Robbins Geller Atty, Fed. Prosecutors Tapped For Calif. Bench

By **Hailey Konnath**

Law360 (October 9, 2024, 11:10 PM EDT) -- A Robbins Geller Rudman & Dowd LLP partner, former Morgan Lewis & Bockius LLP partner, former Cravath Swaine & Moore LLP associate and federal prosecutors were among California Gov. Gavin Newsom's latest picks for judgeships, according to an announcement made Wednesday.

Newsom appointed 18 new superior court judges around the Golden State, including Robbins Geller partner Rachel L. Jensen, who handles securities and consumer fraud as well as antitrust. Jensen was selected for a judgeship in San Diego County Superior Court, the governor's office said. She's been with Robbins Geller since 2004. Before that she worked as an associate at Morrison Foerster LLP. She earned her law degree from Georgetown University Law Center.

Jensen will fill the vacancy left by Judge David Rubin, who's been appointed to the state's appellate court, according to the governor's office.

Also for San Diego County Superior Court, Newsom appointed Jami L. Ferrara, a longtime sole practitioner and former trial attorney at Federal Defenders of San Diego. She will fill a vacancy left by Judge John S. Meyer, who retired. Ferrara earned her law degree from George Mason University Law School, Newsom's office said.

Devon L. Lomayesva, another sole practitioner and chief judge at the Intertribal Court of Southern California, has also been tapped for San Diego County Superior Court. Lomayesva's career has focused on working with California tribes, according to the governor's office. She's worked as a tribal attorney for the Soboba Band of Luiseño Indians, executive director at California Indian Legal Services, staff attorney at the California Indian Lands Office and in-house counsel at Iipay Nation of Santa Ysabel.

Lomayesva, who earned her law degree at the California Western School of Law, will assume the post of another retiree, Judge Harry Powazek.

Newsom selected Catherine A. Richardson for the last San Diego County Superior Court slot Wednesday. Richardson, a commissioner at the court, previously worked in various roles in the San Diego city attorney's office, according to Wednesday's statement. Richardson earned her law degree from the University of San Diego School of Law, and she fills the vacancy left by Judge Carlos O. Armour, who retired.

For Los Angeles County Superior Court, Newsom appointed former Morgan Lewis partner Esther K. Ro, per the announcement. Ro was with Morgan Lewis from 2011 until 2019. Most recently, she's worked as a senior appellate attorney at the Second District Court of Appeal, Newsom's office said. She holds a juris doctor from the University of California, Los Angeles School of Law.

Ro will take the place of Judge Paul A. Bacigalupo, who retired.

Newsom also appointed a Los Angeles County deputy district attorney, Leslie B. Gutierrez. Gutierrez, a graduate of Southwestern Law School, will fill the vacancy created by the retirement of Judge Brian C. Yep.

"The governor's appointment allows her to immediately assume the position she was otherwise

elected to begin in January 2025," Newsom's office said.

Additionally, public defender Heather M. Hocter, who works for the Los Angeles County Alternate Public Defender's Office, has also been tapped for the Los Angeles County Superior Court. Hocter earned her law degree from Southwestern Law School. She fills a spot previously occupied by Judge Amy Pellman, who retired, the governor's office said.

Newsom also selected Karen C. Joynt, a commissioner at the Los Angeles County Superior Court. Joynt has held multiple positions in the Office of the Los Angeles County Counsel and Deputy County Counsel and also served as a public defender. Her law degree is also from Southwestern Law School, and she takes the place of Judge Richard J. Burdige, who retired.

Rounding out the governor's picks for Los Angeles County is Karla Sarabia, a longtime public defender for the county. Sarabia earned her law degree from the University of San Francisco School of Law. She's filling a vacancy left by the retirement of Judge Steven D. Blades, according to the governor's office.

For Sacramento County Superior Court, Newsom appointed Lee S. Bickley, a former litigation associate at Cravath Swaine & Moore LLP who works as a senior attorney at the California Public Employees' Retirement System. Bickley also worked in the U.S. Attorney's Office for the Eastern District of California and as a branch chief for the U.S. Securities and Exchange Commission, the governor's office said.

Bickley earned her law degree from Yale Law School, and she's set to fill a vacancy left by Judge Gerrit W. Wood, another retiree.

Public defender Joseph M. Cress has also been selected for Sacramento County Superior Court, the governor's office said. Cress is chief assistant public defender at the Sacramento County Public Defender's Office, where he's worked since 1995. He holds a law degree from University of California College of the Law, San Francisco.

And Newsom appointed Brenda R. Dabney, a regional director at the Children's Law Center of California, to another Sacramento County Superior Court spot. Dabney has held various roles at the Children's Law Center for nearly 25 years, the governor's office said. She earned her law degree at Loyola Law School in Los Angeles and will take the place of retired Judge Paul L. Seave.

And in Contra Costa County, Newsom tapped Robert S. Leach, who's chief of the special prosecutions section at the U.S. Attorney's Office for the Northern District of California. Leach has spent more than a decade in the Northern District of California, and before that, he worked for the U.S. Securities and Exchange Commission, according to Wednesday's announcement. Leach also had a stint as an associate at Latham & Watkins LLP.

Leach's law degree is from the UCLA School of Law. He's filling a position previously occupied by Judge Susanne Fenstermacher, who retired.

In San Bernardino County, Newsom selected James M. Taylor, a sole practitioner since 2000. Taylor also spent nearly 20 years as an attorney for the San Bernardino County Indigent Defense Program and nearly 10 working for Conflict Defense Lawyers, per the announcement. Taylor is a Western State College of Law graduate and will fill a vacancy created by the retirement of Judge Ingrid A. Uhler, the governor's office said.

For Colusa County Superior Court, the governor appointed Brendan M. Farrell, the district attorney for his county. He's worked at the Colusa County District Attorney's Office since 2010, and also served a stint in the Los Angeles City Attorney's Office. His law degree is from University of Notre Dame, the Law School, Newsom's office said. He's taking a spot formerly occupied by Judge Jeffrey A. Thompson, who retired.

In Orange County, Newsom selected Julianne Sartain Bancroft and Randy K. Ladisky to the superior court bench. Sartain Bancroft is a longtime senior appellate research attorney at the Fourth District Court of Appeal and former associate at Wilson Sonsini Goodrich & Rosati PC. She earned her law degree from the UCLA School of Law, and she's assuming a spot previously filled by Judge James E.

Rogan, who's retired, Newsom's office said.

Ladisky is a longtime public defender in the Orange County Office of the Public Defender. His law degree is from the Western State College of Law, and he's taking over for Judge Martha K. Gooding, who was appointed to the Court of Appeal, the governor's office said.

Finally, the governor appointed Fritzgerald A. Javellana, who works in the Office of the Sutter County Counsel, for Sutter County Superior Court. Javellana has also worked as a contract juvenile dependency attorney for Butte County as well as a partner at Williams & Javellana LLP, according to Newsom's office.

He earned his law degree at Southwestern Law School and takes the place of Judge Perry M. Parker, who's retired.

Most of the jurists named Wednesday are Democrats. Farrell, Leach, Taylor and Javellana are registered without party preference, the governor's office said.

The compensation for each of the trial court positions is \$243,940, according to Newsom's office.

--Editing by Emily Kokoll.

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Sullivan & Cromwell Dropped From FTX Investor Suit

By Aislinn Keely

Law360 (October 9, 2024, 4:18 PM EDT) -- FTX customers dismissed Sullivan & Cromwell LLP from ongoing multidistrict litigation over the crypto exchange's collapse on Wednesday, after an investigation by the customers' counsel into the firm and dialogue with the FTX bankruptcy estate and appointed examiner resolved concerns about the law firm's conduct.



The dismissed claims, which were part of the wider multidistrict litigation over FTX's collapse, originate from a February proposed class action that accused Sullivan & Cromwell of knowing about and facilitating the fraud that brought down the crypto exchange. (Sipa via AP Images)

Lead counsel for the customers, Adam Moskowitz of the Moskowitz Law Firm, said in an interview with Law360 that the dismissal will also enable more collaboration between the multidistrict litigation team and Sullivan & Cromwell, which serves as counsel for the debtor in the FTX Chapter 11 case, to target recoveries from third parties related to the FTX collapse, including celebrity promoters.

"We don't think, based on the evidence, that we've seen that there's enough here to state a cause of action, so we dismissed it," Moskowitz said. "So now, as a consequence, we can sit down and work together and try to get the most recovery for the victims against the other third parties."

There is no settlement affiliated with the dismissal, since the FTX customers decided to voluntarily withdraw their claims.

"We are pleased that the plaintiffs have withdrawn their meritless claims unconditionally, and our focus

remains on returning billions of dollars in recovered assets to FTX's creditors," said a spokesperson for Sullivan & Cromwell.

The dismissal drops claims originating in a February **proposed class action** that accused Sullivan & Cromwell of knowing about and facilitating the fraud that brought down the crypto exchange.

The suit claimed the law firm provided services to FTX businesses prior to its collapse that "went well beyond" the norm and helped FTX craft misleading strategies to further the conduct that ultimately led to its collapse, including through work on FTX's acquisition of LedgerX LLC and now-convicted FTX CEO Sam Bankman-Fried's purchase of Robinhood Inc. shares.

The claims were part of the wider multidistrict litigation over FTX's collapse. Prior to Wednesday's voluntary dismissal, the parties were vying over Sullivan & Cromwell's **bid to toss the case**.

Sullivan & Cromwell faced scrutiny over its previous work for FTX as the estate's appointed bankruptcy counsel. An independent examiner ultimately cleared the firm of any conflicts over two in-depth investigations and subsequent reports.

Moskowitz told Law360 that the second examiner report was "probably the final straw" in convincing him to drop the claims against the law firm.

Over the past six months, MDL counsel and the FTX estate engaged in extensive mediation to resolve disputes surrounding whether the MDL or the bankruptcy was the best venue to return certain funds to customers, culminating in a September settlement that saw the MDL plaintiffs support FTX's now-confirmed Chapter 11 reorganization plan. Moskowitz said those discussions marked the start of a more collaborative approach between the MDL counsel and Sullivan & Cromwell.

"We're talking about sitting down together and coordinating activities together while at the same time we have a complaint against them," he said. "But we filed it — we weren't shy, we weren't going to not look down a certain road because it may have been difficult."

Over the course of collaborating with the bankruptcy counsel, the MDL counsel had access to additional information about the law firm's dealings, including working with FTX's independent examiner, Robert J. Cleary of Patterson Belknap Webb & Tyler LLP. Cleary and his team were "really getting to the bottom" of many of the claims customers had initially brought to the MDL counsel, Moskowitz said. In addition to the plaintiffs' own investigation, "we started to get a different picture of Sullivan & Cromwell," Moskowitz said.

Cleary's **second report**, issued last month, found that Sullivan & Cromwell didn't ignore any "red flags" from FTX related to the LedgerX or Robinhood transactions, and said there was no evidence that the law firm knew about any misconduct at the crypto exchange.

"Finally, after they completed their second report, I felt comfortable enough to say that I don't think that we should proceed with the lawsuit against Sullivan & Cromwell, and I didn't want to keep that secret. ... I wanted to come out publicly and say, based upon our investigation, we don't think we have a claim at this stage against Sullivan & Cromwell, so we're dismissing it," Moskowitz said.

Now, he's turning his focus to the 43 third parties the MDL is targeting for recoveries. Moskowitz commended Sullivan & Cromwell and John Ray III, the attorney brought in to serve as FTX's CEO through the bankruptcy, and noted that they've done extensive research over the past two years that could significantly benefit the MDL's cases against other third parties.

"They really have done an incredible job over the past two years, and we look forward to working alongside them, so that we could try to make every FTX victim whole," Moskowitz said.

The putative classes are represented by Adam M. Moskowitz and Joseph M. Kaye of the Moskowitz Law Firm PLLC, James R. Swanson, Kerry J. Miller, Molly L. Wells and C. Hogan Paschal of Fishman Haygood LLP, José M. Ferrer and Desiree Fernandez of Mark Migdal & Hayden, and Joseph R. Saveri, Christopher K.L. Young and Itak K. Moradi of Joseph Saveri Law Firm LLP.

Sullivan & Cromwell is represented by Samuel A. Danon, María Castellanos Alvarado and Johnathon E. Schronce of Hunton Andrews Kurth LLP.

The multidistrict litigation is In re: FTX Cryptocurrency Exchange Collapse Litigation, case number 1:23-

md-03076, in the U.S. District Court for the Southern District of Florida.

The originating case is Edwin Garrison et al. v. Sullivan & Cromwell LLP, case number 1:24-cv-20630, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Lauren Berg and Ryan Boysen. Editing by Robert Rudinger.

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Electronics Co. Hid Auto Segment Slump, Investor Claims

By **Sydney Price**

Law360 (October 9, 2024, 4:54 PM EDT) -- Electronic equipment manufacturing company Methode Electronics has been hit with a proposed class action alleging it concealed the full extent of sagging sales in its automotive division, in which General Motors was a top client.

According to the suit filed by City of Cape Coral Municipal General Employees' Retirement Plan, Methode is a Chicago-based producer of custom-engineered solutions for four business segments: automotive, industrial, interface and medical. Despite repeatedly assuring investors that its automotive segment was growing and acquiring new business, it was struggling with inefficient operations, planning and shipping, the suit alleges.

In addition to Methode, the suit's individual defendants include its former CEO Donald W. Duda, former Chief Financial Officer Ronald L.G. Tsoumas and former Chief Operating Officer Joseph Khoury.

The suit claims that in 2020, Methode shifted its automotive business away from manufacturing traditional center console stack units to focus on higher-margin products, including electric vehicles. Back in 2010, Methode's automotive segment was awarded the center console program for General Motors Company, which was projected to add approximately \$100 million to Methode's revenue each year after 2013, according to the suit.

On Dec. 2, 2021, when the relevant period began, Methode told investors that it "expect[s] that ... as that [center console program] rolls off and other programs roll on, that our margins would improve," the suit states.

For several months, Methode continued to highlight the company's automotive growth, but investors began to learn the truth on March 9, 2023, the complaint alleges. On that day, the company announced that Methode overall quarterly net sales decreased nearly 4% year-over-year in the previous quarter, which was largely driven by a nearly 10% decline in quarterly automotive net sales, the suit states. Methode also cut its fiscal-year 2023 net sales and diluted earnings per share guidance, according to the suit.

Following the announcements, Methode's shares declined by \$6.25 over multiple days, or 13%, to close at \$41.36 per share on March 13, 2023, the complaint claims.

In December, Methode further reported a year-over-year decrease in net sales and a quarterly loss from operations as a result of operational inefficiencies in its automotive segment. Methode also revealed that it terminated Khoury's employment with the company, leading to a 9% share decline that day, the suit alleges.

Investors did not learn the full extent of Methode's operational challenges, the suit alleges, until the next year, when Methode announced that its automotive segment was not growing in the EV space to sufficiently replace the revenue that Methode was losing from the end of its center console program. On March 9, 2024, the defendants revealed a \$21 million year-over-year decrease in Methode's quarterly net sales due to "continued operational inefficiencies" within the automotive segment, the suit states.

On this news, Methode's shares declined by \$6.55 each, or about 31%, to close at \$14.49 per share on March 7, according to the suit.

The suit claims Methode and the individual defendants acted with scienter, or actual knowledge of wrongdoing or reckless disregard, and violated the Exchange Act. It alleges the defendants' statements aren't covered by the safe harbor provisions of securities laws and seeks damages with prejudgment and post-judgment interest.

City of Cape Coral Municipal General Employees' Retirement Plan is represented by Avi Josefson of Bernstein Litowitz Berger & Grossmann LLP and Naumon A. Amjed, Darren J. Check and Ryan T. Degnan of Kessler Topaz Meltzer & Check LLP.

Counsel for the defendants was not immediately available on Tuesday.

The case is City of Cape Coral Municipal General Employees Retirement Plan v. Methode Electronics, Inc. et al., case number 1:24-cv-09654, in the U.S. District Court for the Northern District of Illinois.

--Editing by Emily Kokoll.

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Team Of 3 Firms Seeks To Lead UBS Cash Sweep Case

By **Sydney Price**

Law360 (October 9, 2024, 10:07 PM EDT) -- Two UBS customers suing the investment bank on allegations of shortchanging them with low-yielding cash sweep accounts moved Tuesday to consolidate their proposed class actions in New York federal court and install three firms at the helm.

The two suits filed by Kelly Goldsmith and Andrew Davitt in August and September, respectively, both allege UBS automatically "sweeps" uninvested cash balances in customer accounts into deposit accounts at one of UBS' subsidiary or third-party banks. UBS was using the program to obtain benefits for itself and its affiliates at the expense of the plaintiffs and the proposed classes, the suits allege.

In the **motion filed Tuesday**, the customers said that their proposed interim counsel — Bernstein Litowitz Berger & Grossmann LLP, Berger Montague and Williams Dirks Dameron LLC — has worked closely with field experts, including former U.S. Securities and Exchange Commission Commissioner Robert J. Jackson Jr., who helped develop the governing SEC rule concerning broker-dealers' obligations to act in the best interests of their retail customers.

"Together with these experts, the firms have demonstrated their commitment to aggressively prosecute this action by acquiring and analyzing an extensive dataset of historic interest rates, which demonstrates that UBS underpaid customers the rates they were owed— a key factual underpinning of these claims that other courts have highlighted as critical to their success," the motion states.

Both suits allege that under the cash sweep program, UBS has the discretion to select the banks to participate, the types of accounts to which the program applies, the types of accounts into which customers' funds are swept, the interest rates paid to customers and the compensation paid to UBS and its affiliates in connection with the program.

Davitt said that, while claiming to act as an agent for customers, UBS used the program to its own benefit by taking for itself and for affiliates a vast majority of the compensation earned from customers' cash and by concealing or misrepresenting the benefits it was receiving.

"UBS's disclosures contained a multitude of material misrepresentations and omissions that inaccurately presented the terms and operation of the program to plaintiff and members of the proposed class, and thus prevented them from giving informed consent as to the program and UBS's conflicts of interests," **Davitt's complaint** stated.

Counsel for the plaintiffs and a representative of UBS did not immediately respond to requests for comment.

Goldsmith and Davitt are represented by Salvatore J. Graziano, John Rizio-Hamilton and Avi Josefson of Bernstein Litowitz Berger & Grossmann LLP, Radha Nagamani Raghavan, Michael Dell'Angelo and Alex B. Heller of Berger Montague and Matthew L. Dameron and Clinton J. Mann of Williams Dirks Dameron LLC.

UBS is represented by David L. Goldberg, Peter Ginewicz Wilson and Zoe Lo of Katten Muchin Rosenman LLP.

The cases are Goldsmith v. UBS Financial Services Inc., case number 1:24-cv-06354, and Davitt v.

UBS Financial Services Inc., case number 1:24-cv-06692, both in the U.S. District Court for the Southern District of New York.

--Additional reporting by Katryna Perera. Editing by Michael Watanabe.

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Bitcoin Miner Misled Investors About Biz Prospects, Suit Says

By **Katryna Perera**

Law360 (October 9, 2024, 4:38 PM EDT) -- Bitcoin mining operation Iris Energy Ltd. and three of its executives were hit with a shareholder suit in New York federal court alleging they misled investors about the company's high-performance computing and data center business prospects, particularly at a site in Texas that allegedly lacks infrastructure to support the business.

Plaintiff Paul Williams-Israel filed a **complaint** Monday against Iris Energy's co-founders and co-CEOs, Daniel Roberts and William Roberts, and its chief financial officer, Belinda Nucifora. The suit is on behalf of all individuals and entities who purchased or acquired Iris Energy securities between June 20, 2023, and July 11, 2024.

Iris Energy is incorporated in Australia and has described itself as a bitcoin miner that owns and operates a "highly efficient" bitcoin mining data center. The company has also stated that it is a "leading next-generation data center business powering the future of bitcoin, [artificial intelligence] and beyond," according to the complaint.

Iris Energy claims to have high-performance computing capabilities, "a technology that uses clusters of powerful processors that work in parallel to process massive, multidimensional data sets and solve complex problems at extremely high speeds."

"HPC solves some of today's most complex computing problems in real-time. HPC systems typically run at speeds more than one million times faster than the fastest commodity desktop, laptop or server systems," the complaint states.

The complaint alleges that Iris Energy and its executives made several misleading claims about the company's prospects with its data centers and HPC capabilities and the methods it used to prevent its data centers from overheating.

Williams-Israel says there were material deficiencies at an Iris Energy site in Texas that rendered the statements false and misleading. Eventually, the truth emerged in a report from short-seller Culper Research, published on July 11.

In the report, Culper announced that it was shorting Iris Energy stock because it believed the company "dramatically" misrepresented "the strength and potential of its assets for HPC/AI applications."

The report also pointed to alleged shares sold by Iris Energy executives and the company's purported lack of financial commitment to its HPC plans, claiming that Iris Energy shares had become overvalued as a result of the misrepresentations.

"The report further stated that '[Iris Energy] not only misrepresents its existing operations and its expansion at [the Texas site], but the value of its undeveloped land and power,'" the complaint states.

The report also provided background information claiming that Iris Energy's bitcoin mining business had become unsuccessful due to bitcoin "halving" — "a process by which the reward for mining bitcoin is cut in half every four years, which increases the overall scarcity of bitcoin," the complaint states.

Furthermore, the report stated that defendant Daniel Roberts' claims about Iris Energy's facilities having been built for HPC were "total nonsense," and that despite the company's claims that its long-term infrastructure is "well equipped for HPC and AI applications," what it was actually building lacked many key features possessed by its competitors, according to the complaint.

Upon all this news, Iris Energy's stock fell by \$2.03 per share, or 15.3%, to close at \$11.20 per share on July 11, 2024, the complaint states.

The suit seeks damages, attorney fees and a jury trial.

Iris Energy declined to comment on Wednesday, but a spokesperson for the company said it has retained legal counsel and intends to defend itself vigorously.

Counsel for Williams-Israel did not immediately respond to requests for comment.

Williams-Israel is represented by Laurence Rosen and Phillip Kim of The Rosen Law Firm PA.

Counsel information for Iris Energy and the individual defendants was not immediately available.

The case is Williams-Israel v. Iris Energy Ltd. et al., case number 1:24-cv-07046, in the U.S. District Court for the Eastern District of New York.

--Editing by Jay Jackson Jr.

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Genting Unit Used Bahamas Resort To Hide Fraud, Suit Says

By **Rae Ann Varona**

Law360 (October 8, 2024, 11:51 PM EDT) -- A Bahamanian real estate development company on Monday sued a U.S. company organized under destination resorts and casino giant Genting Group, saying in a Florida federal complaint that the Genting company used a resorts in the Bahamas as a "financial wasteland" that obscured fraudulent activities.

RAV Bahamas said in Monday's complaint that it had co-founded Bahamanian company BB Entertainment Ltd. with Malaysia's Genting Group in 2012, transferring over 20 acres to the company for what would eventually be Resorts World Bimini.

But Genting Americas Inc., a company under Genting Group that RAV alleged controlled BBE's finances, used BBE as its "financial wasteland" whose audited financial reports reflected "total liabilities of nearly a billion dollars," RAV said.

"Only a massive and coordinated fraud could dump nearly a billion dollars of debt on a small island resort, where RAV had already developed most of the significant infrastructure," RAV asserted in its **complaint**, alleging an amount of over \$800 million.

It said that while it tried to make sense of the financials, Genting Americas, "at every turn, has deliberately kneecapped RAV's efforts to obtain clarity into the financials," including by denying full access to BBE's financial records and requests for an independent audit.

RAV, which has an office in Miami, is suing Genting on allegations of fraud, constructive fraud, conspiracy to defraud, tortious interference with an advantageous business relationship, and negligence.

According to the Bahamanian corporation's 40-page complaint, RAV had begun developing a relationship with Genting Group — the self-proclaimed world's largest destination resort operator — in the late 1990s when Genting Group chairman Tan Sri Lim Kok Thay, referred to as KT, and another individual named Au Fook Yew, referred to as Colin Au, met with Gerardo "Gerry" Capo, a Cuban immigrant and real-estate developer whose family eventually founded RAV.

The company said that Capo and KT stayed in contact over the next several years and that in or around 2002, RAV began developing the northernmost part of North Bimini island. RAV said that by 2011, it constructed villas, marinas, recreational areas, retail, and other amenities in the area that was then known as Bimini Bay Resort.

It said that shortly thereafter, KT, Au and RAV officers began discussing a potential partnership after KT invited Capo to a party Genting Group threw in Miami to celebrate the firm buying the Miami Herald Building and surrounding Hilton and Omni Hotels in the downtown area.

Negotiations ensued before RAV was ultimately "seduced" by representations made by KT and Au, who was Genting Americas' president, and agreed to form BBE and transfer over 20 acres of valuable property in Bimini to BBE, according to RAV's complaint.

RAV said that the Capo family believed in 2012 that they found a partner in Genting Group that could help realize their vision of building a vacation destination for Miamians "all amid Bimini's white-sand-emerald beaches."

But in reality, Genting Americas used Genting Group subsidiaries to "conceal its control" over BBE's finances, according to RAV.

And audited financial reports for BBE later revealed nearly a billion dollars in liabilities and other irregularities RAV asserted "can only arise from a systematic fraud, or financial incompetence of the highest degree."

"Only an outright fraud can explain how a small island-resort that averaged \$22 million in revenue per year for ten years, can accumulate almost a billion dollars of debt in that same span (i.e., an average of \$89,907,146.00 in debt per year)," RAV alleged in its suit.

RAV said that Genting Americas had for years limited its access to BBE's finances to conceal the alleged fraud, including by only providing BBE's board "summaries" of its financials.

It said that Genting Americas also for years pretended that nothing was wrong.

RAV alleged that in March 2020, Genting Americas' president at the time admitted to dumping hundreds of millions of dollars of fraudulent expenses and debt onto BBE's accounting records and promised many times to fix it.

It said that the president specifically admitted that there was about \$150 million in expenses Genting Americas purportedly "could not figure out what to do with," and that "ended up in BBE's books."

The president also allegedly assured Genting Americas would "review and account for it," RAV alleged.

But RAV said that it continued trying to obtain documents necessary from 2020 through 2023, including by visiting Genting Americas' office in Miami to carry out its inspection and audit rights. RAV said that the inspection "proved futile."

The company said that it made its final demands for Genting Americas to correct its allegedly fraudulent accounting at the end of a March 2024 shareholders meeting, during which it learned that Genting Americas had approached real estate agents in a bid to sell Resorts World Bimini despite not yet addressing or rectifying the alleged misallocations of debt and expenses reflected in the financial records.

"But, to date, Genting Americas has failed to do so," RAV asserted.

Genting Americas could not immediately be reached for comment.

RAV is represented by Alexander Esteban, Armando Rosquete and Javier Angel Reyes of Bell Rosquete Reyes Esteban PLLC.

Counsel information for Genting Americas was not available Tuesday night.

The case is Rav Bahamas Ltd. v. Genting Americas Inc., case number 1:24-cv-23874, in the U.S. District Court for the Southern District of Florida.

--Editing by Michael Watanabe.



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Feds Target Crypto Manipulation, Wash Trades In Novel Action

By **Aislinn Keely**

Law360 (October 9, 2024, 9:08 PM EDT) -- Massachusetts federal prosecutors announced charges against 18 individuals and cryptocurrency firms on Wednesday in a first-of-its-kind set of actions targeting alleged manipulation of digital asset markets through wash trading and other tactics.

The government said in a public statement that more than \$25 million in cryptocurrencies have been seized in connection with the actions, and law enforcement oversaw the deactivation of multiple trading bots that engaged in self-trading.

The FBI even created its own crypto token and firm, NexFundAI, to catch some of the fraudsters. Dubbed "Operation Token Mirrors," the effort targeted certain digital asset developers, promoters and market makers, said FBI Special Agent in Charge Jodi Cohen in a public statement.

"What we uncovered has resulted in charges against the leadership of four cryptocurrency companies, and four crypto 'market makers' and their employees who are accused of spearheading a sophisticated trading scheme that allegedly bilked honest investors out of millions of dollars," Cohen said.

Market makers Gotbit, ZM Quant, CLS Global, MyTrade and their respective founders and certain employees are charged with wire fraud and conspiracy to commit market manipulation and wire fraud over their alleged services increasing trading volumes in certain tokens through wash trades, or repeated buying and selling of the same assets in fictitious transactions. ZM Quant, CLS Global and MyTrade also allegedly provided market manipulation services to the law enforcement-created NextFundAI.

Prosecutors also targeted Saitama LLC, a crypto company that allegedly made false statements around certain products it issued for use with its token. The government claims multiple Saitama executives, also named as defendants, manipulated the market for the firm's token and sold their stakes for tens of millions of dollars while publicly stating the contrary and touting the token's purported resistance to manipulation.

Saitama employees Max Hernandez and Russell Armand pled guilty to market manipulation and conspiracy to commit wire fraud and to operate an unlicensed money transmitting business, according to the announcement. Liu Zhou, founder of MyTrade, also pled guilty to conspiracy to commit market manipulation and wire fraud.

Prosecutors brought conspiracy to commit market manipulation, to commit wire fraud and to operate an unlicensed money transmitting business charges against former Saitama employee Vy Pham over her subsequent crypto company Robu Inu Finance, which the government claims engaged in a similar scheme as Saitama. Robu Inu Finance allegedly paid market maker Gotbit to artificially inflate trading of its token. Pham has agreed to plead guilty and has admitted to additional activity related to her time with Saitama, according to prosecutors.

Michael Thompson pled guilty to conspiracy to commit market manipulation in connection with VZZN, the crypto company and token Armand founded after leaving Saitama. Thompson and Armand allegedly made misleading statements about the token and artificially inflated its volume with wash trades.

Prosecutors also brought charges against Bradley Beatty, who allegedly defrauded buyers of the crypto token and company he founded, Lillian Finance. The government claims Beatty touted false credentials to lure buyers and misappropriated profits that he claimed would be used for charity.

In a public statement, acting U.S. Attorney Joshua Levy said that "wash trading has long been outlawed in the financial markets, and cryptocurrency is no exception."

"These are cases where an innovative technology — cryptocurrency — met a century old scheme — the pump and dump," Levy said. "The message today is, if you make false statements to trick investors, that's fraud. Period."

The U.S. Securities and Exchange Commission brought parallel actions against three of the market makers and nine of the individuals named in the slew of criminal cases. The five SEC complaints bring fraud and market manipulation allegations and seek permanent injunctions, disgorgement and civil penalties.

It alleged Pham, Hernandez, Armand, as well as Manpreet Singh Kohli and Nam Tran, who are also named in the criminal actions, acted as promoters that hired market makers ZM Quant and Gotbit to inflate volumes of certain crypto assets. The SEC claims they also offered and sold the assets in unregistered securities transactions.

It also brought suits against ZM Quant and its employees Baijun Ou and Ruiqi Liu, who is also referred to in government documents as Ruiqi Lau; Gotbit and its employee Fedor Kedrov, and CLS Global and its employee Andrey Zhorzhes for facilitating alleged market manipulation through wash trades. Each defendant is also named in the criminal actions.

Armand, Hernandez and Pham have all agreed to settlements that would permanently enjoin them from further violations, in addition to conduct-based injunctions and officer director bars. Disgorgement and penalties have yet to be determined, the SEC said in its announcement.

SEC Deputy Enforcement Director Sanjay Wadhwa said in a public statement that the actions demonstrate the ongoing fraud perpetrated by institutional actors against retail investors in crypto markets.

"With purported promoters and self-anointed market makers teaming up to target the investing public with false promises of profits in the crypto markets, investors should be mindful that the deck may be stacked against them," Wadhwa said.

Counsel for Pham, Hernandez and Armand did not immediately respond to a request for comment on Wednesday. Counsel for the remaining defendants could not be reached on Wednesday.

The government is represented by Christopher J. Markham and David M. Holcomb of the Securities, Financial & Cyber Fraud Unit of the U.S. Attorneys Office for the District of Massachusetts.

The SEC is represented by its own David D'Addio and Amy Harman Burkart.

Armand is represented by Scott Lauer of the Federal Defender Office in the SEC action.

Hernandez is represented by Daniel Hutchinson of Hutchinson Law Office PLLC and Daniel P. Tarlow of Copani Tarlow & Cranney in the SEC action.

Pham is represented by David J. Grimaldi of David J. Grimaldi PC in the SEC action.

Counsel information for the remaining defendants was not immediately available.

The criminal cases are United States of America v. Andriunin, case number 1:24-mj-06849, United States of America v. Gotbit Consulting LLC et al, case number 1:24-cr-10190, United States of America v. ZM Quant Investment Ltd et al, case number 1:24-cr-10187, United States of America v. CLS Global FZC LLC et al, case number 1:24-cr-10293, United States of America v. Liu Zhou, case number 1:24-cr-10312, United States of America v. Manpreet Kohli et al, case number 1:24-cr-10189, United States of America v. Maxwell Hernandez, case number 1:23-cr-10135, United States

of America v. Russel Armand, case number 1:24-cr-10014, United States of America v. Vy Pham, case number 1:24-cr-10137, United States of America v. Michael Thompson, case number 1:23-cr-10325, and United States of America v. Bradley Beatty, case number 1:24-cr-10188, all in the U.S. District Court for the District of Massachusetts.

The SEC cases are Securities and Exchange Commission v. CLS Global FZC LLC et al, case number 1:24-cv-12590, Securities and Exchange Commission v. Gotbit Consulting LLC et al, case number 1:24-cv-12589, Securities and Exchange Commission v. Vy Pham, case number 1:24-cv-12588, Securities and Exchange Commission v. Russell Armand et al, case number 1:24-cv-12586, Securities and Exchange Commission v. ZM Quant Investment Ltd. et al, case number 1:24-cv-12587, all in the U.S. District Court for the District of Massachusetts.

--Editing by Alex Hubbard.

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9th Circ. Doubts 'Weak' Jeep Transmission Defect Suit

By **Rachel Scharf**

Law360, Pasadena, Calif. (October 9, 2024, 6:33 PM EDT) -- A Ninth Circuit panel appeared skeptical Wednesday about reviving a putative class action over alleged defects in the automatic transmission systems of some Jeep and Dodge car models, with one appellate judge saying the plaintiff has "a weak case."

Jeep driver Steve Zuehlsdorf is seeking to reinstate his class claims against FCA US LLC, the North American unit of Stellantis NV. A California federal judge **entered summary judgment** dismissing the suit last year, finding no evidence that overly high fluid levels led Zuehlsdorf's transmission to overheat.

The appeals court seemed to agree with the lower court during oral arguments Wednesday, with U.S. Circuit Judge Jacqueline H. Nguyen saying, "If this goes to the jury, it's a weak case."

U.S. Circuit Judge Andrew D. Hurwitz similarly expressed concerns with Zuehlsdorf's theory of causation, pointing out that the plaintiff's own expert never said the problems with his Jeep were caused by overfilled fluid.

"I can't find any point in the report where your expert says it's more probable than not that the problems with Mr. Zuehlsdorf's car were caused by the alleged defect," Judge Hurwitz said. "There could be a whole series of reasons why the car exhibits these symptoms."

Zuehlsdorf's attorney, Tyler Anderson of Capstone Law APC, disagreed with that reading of the expert report. He also pointed out that regardless, mechanics who worked on Zuehlsdorf's car specifically testified that his fluid levels were the culprit.

"I do have a bucket of evidence outside of the expert report," Anderson argued.

FCA's counsel, Thomas Azar of Klein Thomas Lee & Fresard, told the Ninth Circuit panel during his own argument time that Zuehlsdorf's theory of the case has "mutated" over time. But according to Azar, the plaintiff still cannot tie his own experience to any inherent defects with the car.

To illustrate that point, Azar posed a hypothetical about a product liability suit alleging Grape-Nuts cereal causes obesity.

"There's still a crucial piece missing: Did I ever eat Grape-Nuts?" Azar asked. "Mr. Zuehlsdorf didn't eat the Grape-Nuts."

The appeals court said a ruling will be forthcoming. Zuehlsdorf's counsel declined to comment following arguments, and FCA's legal team did not respond to a request for comment.

This is the second trip to the Ninth Circuit for Zuehlsdorf, whose class claims have been pending since 2018. U.S. District Judge Jesus G. Bernal **initially granted summary judgment** to FCA in 2022 after finding Zuehlsdorf's damages theory inadequate.

The Ninth Circuit **partly revived** the case in January 2023, holding that Zuehlsdorf could claim damages based on the cost to repair his Jeep's alleged defect. Judge Bernal entered summary judgment again the following October following another briefing cycle.

U.S. Circuit Judges Jacqueline H. Nguyen and Andrew D. Hurwitz and U.S. District Judge David A.

Ezra, sitting by designation, sat on the panel for the Ninth Circuit.

Zuehlisdorf is represented by Ryan H. Wu, Tarek H. Zohdy and Tyler Anderson of Capstone Law APC.

FCA is represented by Stephen A. D'Aunoy and Thomas L. Azar Jr. of Klein Thomas Lee & Fresard.

The case is Zuehlisdorf v. FCA US LLC, case number 23-3372, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Gina Kim and Mike Curley. Editing by Janice Carter Brown.

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Companies' Kratom Supplements Are Addictive, Class Says

By **Mike Curley**

Law360 (October 9, 2024, 4:37 PM EDT) -- A proposed class of buyers is suing Thang Botanicals Inc. and FTLS Holdings in California federal court, alleging that they failed to disclose that their kratom-derived 7OHMZ products are as addictive as opioids, if not more.

In a **complaint** filed Monday, the proposed class, led by named plaintiffs identified as M.A., A.S., N.A. and J.R., said the companies sell 7OHMZ-branded products that include 7-Hydroxymitragynine, or 7-OH, an alkaloid derived from the kratom plant.

While the product is sold and advertised as a safe alternative to painkillers, 7-OH activates the same opioid receptors in the brain as drugs like morphine, heroin and other opiates, and as a result it carries the same risks of addiction and withdrawal as those drugs, with some studies showing that 7-OH is 10 times more potent than morphine in activating those brain receptors.

And while regular kratom powder contains less than .05% of 7-OH, the defendants' products are 14 mg of pure 7-OH, making them substantially more addictive than other products, with even worse withdrawal symptoms, according to the complaint.

The proposed class added that kratom is relatively new in the U.S., and 7-OH even more so, only coming to the market in 2022, and neither kratom nor 7-OH are regulated as drugs yet.

"The general public is largely unaware of kratom and its addictive potential. So, when it comes to '7-Hydroxymitragynine,' a derivative of kratom with a tortuously complex name, the public is even less aware of it and its negative effects," the class wrote.

According to the complaint, because the defendants manufacture the tablets in specialized labs, using highly technical knowledge of kratom and its derivatives, they know or should have known about 7-OH's addictive qualities, but the products contain no warnings.

The proposed class further alleges that "just like a street-level drug dealer," the defendants encourage stores to give out tablets as free samples, with the samples and product labels containing only standard disclaimers about consulting with a healthcare professional before use and saying the company is not liable for "misuse," without disclosing the addictive potential.

"Indeed, the packaging looks more like allergy medication than a dangerously strong opioid, and defendants' glossy website and design language obfuscate the very real truth that it is selling a strong narcotic to consumers who likely do not fully comprehend the risks associated with consuming the products," the proposed class wrote.

The named plaintiffs seek to represent a nationwide class of all buyers of the 7OHMZ product, as well as classes for buyers in California, Oregon and Nevada, where the plaintiffs reside.

The complaint includes claims for violations of California's Unfair Competition Law, False Advertising Law and Consumer Legal Remedies Act, Oregon's Unlawful Trade Practices Act and the Nevada Deceptive Trade Practices Act, as well as claims for breach of implied warranty, unjust enrichment and fraud by omission.

Representatives for the parties could not immediately be reached for comment Wednesday.

The proposed class is represented by Neal J. Deckant and Luke Sironski-White of Bursor & Fisher PA and Todd D. Carpenter and Scott G. Braden of Lynch Carpenter LLP.

Counsel information for the defendants was not available Wednesday.

The case is M.A. et al. v. Thang Botanicals Inc. et al., case number 3:24-cv-07029, in the U.S. District Court for the Northern District of California.

--Editing by Rich Mills.

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Judge OKs \$9M Data Hack Deal, Asks How Public Views Fees

By **Greg Lamm**

Law360, Seattle (October 9, 2024, 6:57 PM EDT) -- A Washington federal judge on Wednesday approved an \$8.8 million settlement that ended a consolidated data breach class action against a Hearst Health unit, but not before pondering how the public might perceive the deal, in which one-third of the money is going toward legal costs.

U.S. District Judge Ricardo S. Martinez of the Western District of Washington said he was satisfied with the settlement amount reached in the litigation against health technology company MCG Health LLC after hackers potentially obtained Social Security numbers and other sensitive data from about 1.1 million hospital patients and health plan members.

At a settlement hearing in Seattle, Judge Martinez also signed off on \$2.9 million in fees and costs for the plaintiffs' attorneys. Judge Martinez said the **legal fees request** was appropriate and added that he wanted the public to understand the amount of work attorneys put in representing class members in data breach cases.

Judge Martinez said one of the concerns he sees from the public in settlements is how much the class counsel gets compared with how much the members of the class receive.

"When you say attorneys are getting one-third, I guess to a lot of people it sounds like a significant amount of the settlement fund," Judge Martinez said.

An attorney representing the plaintiffs, Jason T. Dennett of Tousley Brain Stephens PLLC, told Judge Martinez that it all came down to the amount of risk the class counsel took on. Dennett said attorneys worked for two years on the case without being paid, and the case involved unsettled issues of law.

"We are taking on more risk and looking for more reward," Dennett said.

Dennett said the claims administrator had received 12,500 claims and no class member had objected to the settlement. The vast majority of the claimants opted for a cash payment that will be about \$340.

Some class members also opted to receive ordinary or extraordinary losses capped at \$1,500 or \$10,000, according to the plaintiffs' **motion for final settlement approval**. Some also opted for credit monitoring,

The consolidated case involved nine related proposed class action lawsuits filed in Washington federal court arising out of a data breach in March 2022 involving MCG Health.

In one of the cases, **filed in June 2022**, Louisiana resident Cynthia Strecker said MCG investigated the breach and discovered that hackers might have compromised information from about 1.1 million people.

Strecker accused MCG Health of failing to take safeguards to protect sensitive personal information stored on the company's systems, including Social Security numbers, names, dates of birth, genders, medical codes, telephone numbers, and home and email addresses.

MCG is part of the Hearst Health network and provides software and technology used by hospitals, health plans and workers' compensation groups across the U.S.

In a public statement, MCG said it had hired a leading forensic investigation firm after discovering the breach and was working with law enforcement authorities.

An attorney for MCG Health, Jaime Drozd of Davis Wright Tremaine LLP, did not make any statements in court during Wednesday's settlement hearing. Drozd declined to talk with Law360 after the hearing.

The plaintiffs and settlement class are represented by Adam E. Polk and Simon Grille of Girard Sharp LLP, by Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, and by Jason T. Dennett and Rebecca L. Solomon of Tousley Brain Stephens PLLC.

MCG Health is represented by Jaime Drozd of Davis Wright Tremaine LLP and by Stephen L. Saxl, Christopher S. Dodrill and Jena Valdetero of Greenberg Traurig LLP.

The consolidated case is In re: MCG Health Data Security Issue Litigation, case number 2:22-cv-00849, in the U.S. District Court for the Western District of Washington.

--Editing by Karin Roberts.

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NY Mets Parent Co. Accused Of Selling Biometric Data For Profit

By **Sydney Price**

Law360 (October 9, 2024, 6:02 PM EDT) -- Sterling Mets LP — the owner of the New York Mets baseball franchise — has been hit with a proposed class action alleging that it illegally shares biometric identifier information from Citi Field's visitors for a profit.

In his complaint originally filed in September and removed to New York federal court Tuesday, Chris Dowling said Sterling Mets collects facial templates of event attendees at the Mets' home stadium Citi Field, which it shares with a third party and uses to cut back on security costs. The unlawful use of biometric identifier data for profit violates New York City's biometrics law, the suit said.

Dowling claims his biometric information was collected during the four events he attended at Citi Field within the past year. According to the suit, Citi Field uses cameras to collect facial identifiers from event-goers as they enter the premises. Sterling Mets then sold this information and shared images with another company — possibly its software supplier Genetec Inc — to process the data.

According to the suit, New York City's biometrics law forbids sharing of biometric information for anything of value. Pollock Cohen LLP attorney Adam Pollock, counsel for the plaintiff, told Law360 in an email on Wednesday that New York City is a leader in protecting individuals' biometric data, but the defendants are "improperly" collecting biometrics from event goers.

"[H]ere, the 'thing of value' is the contract between defendants and non-party Genetec, and the profit made when defendants save money on security and make further profit from a premium ticket price," the suit said.

The complaint also includes stories purportedly from Reddit users who said their facial information was collected at Citi Field. Dowling said Sterling Mets increased its profit margin by opting to use facial recognition over manual labor "to adequately protect its 400,000 square foot premises."

Had he known that the ticket price reflected the cost of the biometrics collection technology, he and other class members would have never bought a ticket to Citi Field at all, he said.

"Defendants did this for profit: to save on security costs and to be able to charge a premium baked into event ticket prices with respect to security," the suit said.

In addition to Sterling Mets, the suit's other defendants include 10 "Does" that may be involved in the alleged biometric data collection and retention.

Dowling seeks to represent a class of consumers who have visited Citi Field for a sporting event or concert since July 9, 2021, and had their biometric identifiers collected.

A representative for Sterling Mets did not immediately respond to a request for comment Wednesday.

Dowling is represented by Jennifer Czeisler, Edward Ciolko and Blake Hunter Yagman of Sterlington PLLC and Adam Pollock and Anna Menkova of Pollock Cohen LLP.

Counsel information for Sterling Mets was not immediately available Tuesday.

The case is Dowling v. Sterling Mets LP et al., case number 1:24-cv-07092, in the U.S. District Court

for the Eastern District of New York.

--Editing by Stephen Berg.

Update: This article has been updated with comment from the plaintiff's counsel.

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Thomson Reuters Gets Initial OK On \$27.5M Privacy Suit Deal

By **Bonnie Eslinger**

Law360 (October 9, 2024, 6:02 PM EDT) -- A San Francisco federal judge Wednesday preliminarily approved Thomson Reuters' \$27.5 million deal to settle a certified class action alleging that the information conglomerate violated the privacy rights of 40 million Californians by secretly collecting their data to sell "cradle-to-grave dossiers."

U.S. District Judge Edward M. Chen told the parties during a hearing held in San Francisco that he considered the settlement to be fair and the fees "at first look" to be "within a reasonable range."

The case brought by two San Francisco Bay Area residents focused on a data collecting software product called Clear that Thomson Reuters sells to law enforcement and businesses.

"At no time has Thomson Reuters sought consent from class members before appropriating and selling their personal data through its Clear products, nor does it have a process for doing so," the suit said. "The class members received no compensation for Thomson Reuters' use of their identities."

As part of the deal, Thomson Reuters agreed to establish a nonreversionary \$27.5 million fund from which payments will be made to Californians who submit a claim. The fund also covers the cost of the plaintiffs' court-approved expenses and attorney fees.

Thomson Reuters will take several steps under the settlement that will give California residents more control over the information available about them through Clear, and those changes will be required for four years, according to the motion for preliminary approval. First the company will create and maintain a website for California residents to learn about Clear, including "the types of customers who use it, and the types of data available through it."

Thomson Reuters will also no longer require California residents to provide a driver's license to remove certain data from Clear. The company will also forward direct data removal requests from California to its "network of data suppliers so that they too can remove information from the sources that supply Clear," the motion said.

Under the settlement, Thomson Reuters pledged to also make Clear's default settings more "privacy protective," including changing a default setting that provided information available about "relatives, associates, licensed drivers, property owners, and neighbors of the report subject."

These changes will take place within six months of final approval of the settlement and be in place for four years, according to the preliminary approval motion, filed with the court on Aug. 29.

During Wednesday's court hearing, Judge Chen asked the parties about their plan for notifying California residents about the settlement and about their expected claims rate of 1% to 2.5%. He expressed frustration over the news that Thomson Reuters does not have email addresses for the Golden State residents in its databases.

"Seems kind of ironic when the accused defendant gathers complete dossiers, but can't generate emails," the judge said.

The judge also expressed concern, though with some resignation, about the plaintiffs' assertion that

they'll get the word out about the settlement through a "digital notice program" due to the expense of sending out word by mail. He asked the parties to make sure that any posted notices include information with the dollar amount of the settlement.

In September, Judge Chen sent out a list of questions for the parties to answer before Wednesday's preliminary approval hearing. In that order, the judge noted that the settlement agreement "provides that attorney fees of \$9.075 million (33% of the gross settlement fund) and expenses up to \$700,000 may be requested." The judge asked for more information, including details about the attorneys' hourly rates and hours spent on the case. He also underscored that while it is not uncommon for a percentage of 33% to be awarded where the gross settlement fund is tens of millions of dollars, the cases cited by the plaintiffs have fee requests of 25%, the Ninth Circuit's standard benchmark.

The plaintiffs told the court in their original motion for preliminary approval that an attorney-fee request "that does not exceed 33% would be reasonable and justified based on the exceptional results obtained for the class and the complexity and risk attendant to this hard-fought litigation." In their Sept. 16 written response to Judge Chen's questions, the plaintiffs said they will seek only a quarter of the gross settlement fund for attorney fees.

Judge Chen thanked the plaintiffs during Wednesday's hearing.

"I appreciate the re-look at the fees to put it in line with the benchmark," the judge said, adding that while he wasn't issuing a final order on the fee request at this stage, "at first look [it] appears within a reasonable range."

The lawsuit, first filed by plaintiffs Cat Brooks and Rasheed Shabazz in early 2021 and amended in 2022, claims that the Clear platform amasses both public and non-public information about hundreds of millions of people, offering "cradle-to-grave dossiers" on each person, including "names, photographs, criminal history, relatives, associates, financial information, and employment information."

Notably, the company touts its services as providing users with "deep web data" to pull information about people not found in public records or through traditional web searches, including information from social networks, blogs and chat rooms, the advocates said. The Clear database also includes information from third-party data brokers and law enforcement agencies including location data from license plate detections, booking information, arrest records and intake photos, according to the complaint.

Both plaintiffs are activists, according to the complaint, and Brooks, who fights police violence, has been targeted by white supremacist groups because of that work.

The class, which was certified by the court in August 2023, includes all residents who resided in California at some point from Dec. 3, 2016.

A lawyer for the plaintiffs, Andre Mura of Gibbs Law Group LLP, told Law360 in an email after Wednesday's hearing that "we look forward to delivering the robust settlement benefits to Californians."

Thomson Reuters, in a written statement to Law360, said it was pleased with the resolution of the case. Data provided through Clear has played a role in investigations related to narcotics smuggling, organized crime, transnational gang activity, child exploitation, human trafficking and fraud, Thomas Reuters said.

Plaintiffs and the class are represented by Andre M. Mura and Ezekiel S. Wald of Gibbs Law Group LLP and Geoffrey A. Graber and Karina G. Puttieva of Cohen Milstein Sellers & Toll PLLC.

Thomson Reuters Corp. is represented by Susan D. Fahringer, Nicola C. Menaldo, Anna M. Thompson, Gabriella Gallego and Hayden M. Schottlaender of Perkins Coie LLP.

The case is Brooks et al. v. Thomson Reuters Corp., case number 3:21-cv-01418, in the U.S. District Court for the Northern District of California.



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Texas Looks To Sink Suit Challenging Anti-ESG Law

By **Sarah Jarvis**

Law360 (October 8, 2024, 11:35 PM EDT) -- Texas officials have asked a federal court to toss claims brought against them over a law restricting state investments with financial firms and businesses that want to reduce their reliance on fossil fuels, arguing they have sovereign immunity and the law doesn't violate the First Amendment.

Attorney General Ken Paxton and Glenn Hegar, the Texas comptroller of public accounts, argued in a Monday **motion to dismiss** that Texas Senate Bill 13 was carefully crafted to ensure the state's tax dollars "are not conscripted into the service of boycotting the economic lifeblood of the state while respecting private parties' rights to hold and espouse opinions as they may deem appropriate."

The officials argued that the plaintiff, the American Sustainable Business Council, relied in its **August complaint** on an exception to sovereign immunity that requires a sufficient connection to the enforcement of the law. But the state comptroller is not an enforcement officer of S.B. 13, and the state attorney general hasn't demonstrated a willingness to enforce either the procurement or divestment provisions of S.B. 13, according to the motion.

Further, the ASBC lacks standing to sue because it hasn't identified members of its organization that would have standing to challenge S.B. 13 on their own, and the group has only alleged a speculative injury, rather than an actual or imminent one, the officials argued.

Boycotting the oil and gas industry is not protected by the First Amendment, the officials also argued. The law's procurement provision does not compel anyone to say anything, and the divestment provision doesn't implicate the First Amendment because the state "is simply acting as a market participant in buying and selling financial securities."

"The First Amendment does not give any company a right to have the government buy or sell its stock," the officials said.

But even if the court finds that the statute regulates speech or expression, it is still constitutional because it is a neutral regulation that promotes substantial government interests, the officials said. They further noted that the bill is tailored such that it doesn't apply to anyone acting in their individual capacities, and that it only applies to government contractors with more than 10 employees and contracts worth over \$100,000.

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

The ASBC said in its complaint that S.B. 13 bars state public entities — such as counties, cities, public retirement funds and schools — from investing and contracting with companies based on those companies' "actual or perceived political views regarding fossil fuels."

The group argued among other things that the bill is unconstitutional and violates the First Amendment because it "impermissibly infringes rights of free speech and association under a scheme of politicized viewpoint discrimination, based on no legitimate state interest."

For instance, they note that Paxton released an advisory holding that "governmental entities are not free to do business with 'energy company boycotters'" and that they must take notice if a company is a signatory of any entity that "espouses a commitment to the furtherance of so-called environmental, social and governance policies."

"It is unconstitutional for a state to condition a benefit, such as a contract or investment, on the recipient's agreement to restrict their constitutionally protected association with others," the group said in its complaint.

The group further claimed the bill is "unconstitutionally vague" under the 14th Amendment because it "encourages arbitrary enforcement and fails to give regulated entities fair notice of prohibited conduct."

But the state officials argued Monday that the law "only prohibits economic discrimination to an essential state industry."

"The [Texas] Legislature's precision in specifying 'refusing to deal' and 'terminating business relations' belies the plaintiff's expansive interpretation," the officials said.

The ASBC is represented by Mary M. Whittle, Mark Guerrero and Ketan U. Kharod of Guerrero & Whittle PLLC, Rachel L. Fried, Ananda V. Burra, Kristen Miller, Victoria Nugent and Skye Perryman of Democracy Forward Foundation and Matthew D. Brinckerhoff, Vasudha Talla and Sana Mayat of Emery Celli Brinckerhoff Abady Ward & Maazel LLP.

The defendants are represented by Ken Paxton, Brent Webster, Ralph Molina, James Lloyd, Kimberly Gdula and William H. Farrell of the Office of the Attorney General.

The case is American Sustainable Business Council v. Hegar et al., case number 1:24-cv-01010, in the U.S. District Court for the Western District of Texas.

--Additional reporting by Katryna Perera. Editing by Jay Jackson Jr.