Filed Securities Cases Against Super Micro Computer Receive Torrid Response at Lead Plaintiff Appointment Stage as S&P 500 Component Company Announces Resignation of Its Auditor

insights.issgovernance.com/posts/filed-securities-cases-against-super-micro-computer-receive-torrid-response-at-lead-plaintiff-appointment-stage-as-sp-500-component-company-announces-resignation-of-its-auditor

November 12, 2024

Between August 30, 2024 and October 18, 2024, a series of five initial complaints were filed in the United States District Court for the Northern District of California by different plaintiffs ("Plaintiffs") and counsel, alleging securities fraud claims against Super Micro Computer, Inc. ("Super Micro" or the "Company") and certain of the Company's executives (together with Super Micro the "Defendants"), with February 2, 2021 and September 25, 2024, inclusive as the longest asserted class period among these complaints.[1] The complaints make substantially similar allegations, mainly that Defendants misrepresented that the Company's: financials complied with Generally Accepted Accounting Principles ("GAAP"), internal controls were effective, gross margins were sustainable, and exports complied with trade control regulations. Similarly, the complaints assert that investors were harmed, with billions of dollars in market capitalization losses, when the truth was revealed over a number of disclosures (though the complaints vary somewhat in the number of alleged disclosures). The lead plaintiff deadline was October 29, 2024, and ten parties—with losses totaling approximately $100 million cumulatively—each moved for lead. Mere hours after the close of the lead plaintiff deadline, the Company announced that its auditor had resigned because it had been, "unwilling to be associated with the financial statements prepared by management."

Super Micro manufactures servers and storage solutions and sells its hardware to technology companies, including, but not limited to, those working with artificial intelligence ("AI"). Super Micro was one of the hottest stocks of early 2024. After falling to around $71 in January 2023, the Company's share price closed at the end of 2023 at approximately $284—quadrupling its 2023 low—and again more than quadrupled to over $1,188 by March 13, 2024 (the 2024 increase alone representing a change in market capitalization of over $50 billion), during the period in which AI related businesses saw rapidly increasing valuations.[2] Moreover, Super Micro's valuation had increased enough that it was added to the S&P 500 in March.

The latest-filed complaint alleged that, on August 6, 2024, the Company announced its 4Q and full year 2024 financial results and conducted an investor earnings call, where the Company disclosed a significantly lower gross margin, which an August 7, 2024 *Wall Street Journal* article described as "an all-time low" for the Company. This complaint asserts that Super Micro's stock price declined on August 7, 2024 from $616.94 to $492.70 per share, or over 20% on this news.

The complaints all cite a report published on August 27, 2024 by short seller Hindenburg Research ("Hindenburg"), titled, "Super Micro: Fresh Evidence of Accounting Manipulation, Sibling Self-Dealing and Sanctions Evasion at this AI High Flyer." As cited in the complaints, in this report Hindenburg asserted, among other things, that: 1) the Company engaged in a fraudulent revenue recognition scheme by misallocating revenue to hardware sales instead of services to inflate margins, recording revenue when equipment could not be delivered or installed, and booking revenues for faulty or incomplete products; 2) a number of customers had received faulty equipment from Super Micro; 3) due to increased pricing pressures from large competitors and lower cost manufacturers, Super Micro's gross margins had started to collapse; and 4) Super Micro violated export controls by shipping products to Russia. The complaints claim that Super Micro's August 26, 2024 stock market decline from $562.51 to $547.64, or approximately 3%, was in response to the publication of the report.

On August 28, 2024, Super Micro disclosed that it would "not timely file its Annual Report on Form 10-K for the fiscal year ended June 30, 2024" because additional "time is needed" for its "management to complete its assessment of the design and operating effectiveness of its internal controls over financial reporting[.]" The complaints allege that this announcement caused Super Micro's share price to drop more than 19% from $547.64 to $443.49 on August 28, 2024.

The two latest filed complaints assert that the *Wall Street Journal* reported, on September 26, 2024, that the U.S. Department of Justice was investigating Super Micro. These complaints assert that as a result, the Company's share price declined more than 12% that same day, from $458.15 per share to $402.40. This was barely a third of the March 13, 2024 closing price. Taking the four alleged corrective disclosures from the last complaint filed, Super Micro's stock price dropped nearly $300, or more than $15 billion.

On October 30, 2024, the day after the lead plaintiff deadline in the case, Super Micro issued a Form 8-K, which stated that on "October 24, 2024, Ernst & Young LLP ('EY') sent the members of the Audit Committee a letter of resignation as the Company's registered public accounting firm[.]" The Company stated that, in the letter, EY wrote, "we are resigning due to information that has recently come to our attention which has led us to no longer be able to rely on management's and the Audit Committee's representations and to be unwilling to be associated with the financial statements prepared by management, and after concluding we can no longer provide the Audit Services in accordance with applicable law or professional obligations." Super Micro's stock price closed on October 30, 2024 at over $330, down from over $491 or approximately 33% down. An amended complaint in this case will likely allege this drop as a corrective disclosure, which would drive up the total market losses and therefore potentially damages.

The complaints allege a variety of Defendants statements as false and misleading, such as various quarterly financial results and certifications about financial controls. The complaints also assert that investors were harmed when the truth was revealed.

The lead plaintiff filing deadline for this case was October 29, 2024. There was significant interest in taking leadership of the case, with ten separate motions for lead plaintiff—six of which involved institutional investors—and fourteen different law firms seeking appointment as counsel. The total claimed losses across these various movants amounted to approximately $100 million. This level of interest from institutions and many accomplished plaintiffs' firms suggests widespread belief among the plaintiffs' bar that the claims against Defendants are meritorious and may result in a significant settlement.

Additionally, an earlier securities fraud class action against Super Micro and certain of its executives settled in 2023 for $18.25 million. The complaint in that action alleged that the Company engaged in an improper revenue recognition scheme and that investors were harmed when the truth was revealed.[3] The complaint further alleged that the Company had announced in August 2017 that it would be unable to file its fiscal year 2017 10-K, was unable to make its required filings with the SEC for the next 20 months, and was delisted from the NASDAQ. The complaint asserted, "on May 17, 2019, the Company issued a Restatement for a five-year period [] admitting that Super Micro and its officers and managers were aware of, engaged in, and concealed sales and accounting misconduct[.]"

The court will have to decide who should serve as lead plaintiff in the pending cases, and thereafter that lead plaintiff will start drafting an amended complaint to be filed perhaps 30-60 days after appointment. In the interim, the facts seem to be developing in this case.

Investor Class Action Details

ISS SCAS

Venue	Northern District of California (N.D. Cal.)
Case Number	5:24-cv-06147
Dates of Complaints Filed	August 30, 2024 August 30, 2024 August 30, 2024 October 4, 2024 October 18, 2024
Lead of Plaintiff Deadline	October 29, 2024
Case Status	Active

www.issgovernance.com/scas

[1] The five complaints are all related actions with their own dockets. The plaintiff who filed one of the complaints subsequently voluntarily dismissed the action. The remaining four actions will almost certainly be consolidated once a lead plaintiff is appointed.

[2] Super Micro effectuated a 10:1 share split on October 1, 2024. This insight uses or adjusts to pre-split prices to match the complaints.

[3] See, Hessefort v. Super Micro Computer, Inc., No. 4:18-cv-00838-JST (N.D. Cal.), at ECF No. 110.

"No portion of this insight constitutes legal advice, and no attorney-client relationship is intended or is established."

By: Hernando Cortina, CFA, Managing Director, ISS ESG

Bloomberg Law News 2024-11-12T12:39:23963778999-05:00

Chipotle Hit by Securities Suit for Irregular Portion Sizes (1)

By Ufonobong Umanah 2024-11-12T09:48:28000-05:00

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** No. 8:24-cv-02459

Chipotle Mexican Grill Inc. allegedly misled investors over the restaurant chain's financial health as customers earlier this year began to air their grievances about portion sizes on social media.

Chipotle's public assurances that its portion sizes weren't getting smaller were allegedly misleading, and revealed that it underestimated its ability to retain customer loyalty in Security and Exchange Commission-required reports, investor Michael Stradford said in his lawsuit filed Monday in the US District Court for the Central District of California.

Chipotle elected to ensure consistent servings across its restaurants, and to increase portions, but that ingredient-heavy solution hurt its profitability, Stradford alleged.

Third quarter sales for Chipotle fell short of Wall Street expectations, Bloomberg reported in October. While its metrics compared well to other restaurants, food and packaging costs as a percent of total quarterly revenue rose, it reported.

The harm to Chipotle's stock price requires compensable damages for a proposed class of those who acquired publicly traded Chipotle common stock, or Chipotle call options between Feb. 8 and Oct. 29, or who during the same period sold put options.

The lawsuit asserts two counts against Chipotle defendants under Sections 10b and 20a of the Exchange Act. It seeks class certification, damages, and attorneys' fees.

"We don't comment on litigation and will vigorously defend our industry leading real food," said Chipotle's Chief Corporate Affairs Officer Laurie Schalow via email on Tuesday.

The Rosen Law Firm represents Stradford.

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The case is Stradford v. Chipotle Mexican Grill , C.D. Cal., No. 8:24-cv-02459, complaint 11/11/24 .

(Updates story to add Chipotle's comment in seventh paragraph.)

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Chipotle shareholders sue over fallout from skimping on portion sizes

reuters.com/business/retail-consumer/chipotle-shareholders-sue-over-fallout-skimping-portion-sizes-2024-11-11

Jonathan Stempel

A meal is seen in a Chipotle outlet in this photo illustration in Manhattan, New York City, U.S., February 7, 2022. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights, opens new tab

Nov 11 (Reuters) - Chipotle Mexican Grill (CMG.N), opens new tab was sued on Monday by shareholders for concealing how many of its restaurants were skimping on portions, forcing the chain to spend more on ingredients and hurting its stock price.
In a proposed class action filed in Santa Ana, California federal court, shareholders said Chipotle failed to disclose growing unhappiness among customers with inconsistent portion sizes for its burritos and rice bowls.

They said the truth came out as customers voiced dismay on TikTok and other social media, prompting Chipotle to reemphasize what CEO Scott Boatwright and his predecessor Brian Niccol called "generous portions" at its more than 3,600 restaurants.

Costs to repair the damage hurt margins, causing Chipotle's stock price to fall after the company reported second- and third-quarter results, according to the complaint. The decline on Oct. 30 wiped out about $6.5 billion of market value.

The lawsuit seeks unspecified damages for purchasers of Chipotle stock and options from Feb. 8 to Oct. 29, 2024.

Chipotle did not immediately respond to requests for comment.

The lawsuit was filed a few hours after the Newport Beach, California-based company removed the "interim" tag from Boatwright's job title.
Niccol stepped down as chief executive in August to take the same job at Starbucks (SBUX.O), opens new tab.

Chipotle's share price rose more than eightfold in Niccol's nearly 6-1/2 years at the helm.

Niccol and former Chief Financial Officer Jack Hartung are also defendants in Monday's lawsuit. Hartung became Chipotle's president and chief strategy officer on Oct. 1.

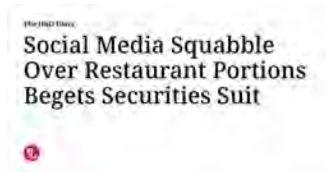
The case is Stradford v. Chipotle Mexican Grill Inc et al, U.S. District Court, Central District of California, No. 24-02459.

Reporting by Jonathan Stempel in New York Editing by Marguerita Choy

Social Media Squabble Over Restaurant Portions Begets Securities Suit

dandodiary.com/2024/11/articles/securities-litigation/social-media-squabble-over-restaurant-portions-begets-securities-suit

November 12, 2024



By Kevin LaCroix on November 12, 2024
Posted in Securities Litigation

It is now well-recognized, as *Bloomberg* columnist Matt Levine has famously said, that "Everything Everywhere is securities fraud." Just the same, it does come as a surprise sometimes to see the things that make their way into securities class action lawsuit complaints. In the latest example of this phenomenon at work, a plaintiff shareholder has filed a securities class action lawsuit against the restaurant company Chipotle Mexican Grill, as a result of a social media campaign raising questions about the chain's meal portions. To combat the social media chatter, the company concentrated on providing generous portions, which cut into the company's margins – and drew a securities lawsuit. A copy of the November 11, 2024, complaint in the suit can be found here.

Background

Chipotle Mexican Grill owns and operates fast-food restaurants serving Mexican food. On May 29, 2024, the *Washington Post* published an article reporting on online complaints about the perceived stinginess of the burrito chain's portions. The *Post* article referred to a May 3, 2024, social media influencer's TikTok review complaining about the portions the reviewer received, which in turn led to a "virtual pile-on." The Post article quoted a Chipotle spokesperson as saying that "there have been no changes in our portion sizes."

On July 4, 2024, *Fox Business News* published an article quoting a Wells Fargo analyst, who had ordered 75 "like-for-like" burrito bowls at Chipotle restaurants in New York, finding that the bowls varied in weight from 13.8 ounces to 26.8 ounces. The article quoted a Chipotle spokesperson who cited the variability inherent in the company's completely customizable meals, and as saying that there have been no changes in the portion size.

On July 24, 2024, in its 2Q earnings call, the company's CEO directly addressed portion concerns that had been brought up on social media. He reported that the company was going to focus on making sure that every customer got a generous portion, which, he said, would result in a higher cost of sales in the third quarter. The company's share price declined 1.85%.

On October 29, 2024, in its 3Q earnings call, the company did indeed report on an increased cost of sales, due in part to a focus on ensuring consistent and generous portions; however, the company also reported that the increased cost of sales was also due to increases costs for avocado and dairy, and the mixed impact of a new product. The increased costs contributed to a decline in profitability. The company's share price declined almost 8% on this news.

The Lawsuit

On November 11, 2024, a plaintiff shareholder filed a securities class action lawsuit in the Central District of California against Chipotle and certain of its executives. The complaint purports to be filed on behalf of investors who purchased the company's common stock between February 8, 2024, and October 29, 2024, as well as those who purchased Chipotle call options and sold put options during the class period.

The complaint alleges that during the class period the defendants made false or misleading statements or failed to disclose that: "(1) Chipotle's portions sizes were inconsistent and left many customers dissatisfied with the Company's offerings; (2) in order to address the issue and retain customer loyalty, the Company would have to ensure more generous portion sizes, which would increase costs of sales; and (3) as a result, the Defendants' statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times."

The complaint alleges that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks to recover damages on behalf of the plaintiff class.

Discussion

This entire situation looks like very much of a tempest in a social media tea pot. An online influencer raised concerns about the influencer's own experience, which, in the way that social media messages can become magnified and amplified, spread to mainstream media and became a PR nightmare for the company. The company, blindsided by the bad publicity, deliberately launched an effort to ensure that every customer was getting generous portions, and expressly told the marketplace that the generous portions effort was going to cut into the company's margins, which it did.

In America, of course, anything can result in a lawsuit. However, this isn't a lawsuit filed on behalf of the consumers who supposedly received meagre portions. This is a lawsuit on behalf of investors who are now claiming they were somehow misled about – about what? About the size of the portions in the company's restaurants?

This lawsuit has only just been filed and it remains to be seen how it will fare. When the time comes for the court to assess the adequacy of the plaintiff's allegations, the court will look long and hard to find anything that even arguably satisfies the scienter pleading requirements, much less the requirements to plead falsity.

I am sure the plaintiff in this case feels aggrieved by the fact that the price of his Chipotle shares declined. To that extent at least, this is a serious lawsuit, I suppose. However, looked at from the perspective of what the securities laws are for and what they are intended to protect investors against, there is a good case that could be made that this lawsuit trivializes the entire system. Can there really be a valid claim for securities fraud (not consumer fraud, but *securities* fraud) based on the plaintiff's allegations that "Chipotle's portion sizes were inconsistent and left many customers dissatisfied with the Company's offerings"?

It has been my privilege over the last few years to be able to travel to other countries to talk about securities laws in both the U.S. and in other countries. The U.S. system has a uniform reputation abroad as being overly litigious, involving unproductive litigation that imposes unnecessary costs on the markets and the markets' participants. When the commentators in other countries are talking about these kinds of problems in the U.S. system, they are thinking about lawsuits like this one.

This Week: For the next few days, I will be in Chicago for the PLUS Conference. I am looking forward to seeing many old friends and making new friends as well. If you see my in the hallway or at Conference events, please take a moment to say hello, especially if we have not met before. I am looking forward to seeing everyone in Chicago.

Portal Crypto Exchange Faces Delaware Investor Class Action

law.com/nationallawjournal/2024/11/11/portal-crypto-exchange-faces-delaware-investor-class-action

Michael A. Mora

What You Need to Know

- Portal, a crypto startup, issued $31 million in convertible promissory notes in 2021.
- Unable to repay, Portal allegedly pressured investors to convert their notes into equity.
- The attorneys pointed to the larger aspects of this action.

Investors filed a class action lawsuit in a state court in Delaware over allegedly fraudulent practices by a cryptocurrency exchange that left them with worthless equity, rather than the $31 million repayment promised under their notes.

Eric Rosen and Constantine P. Economides, partners at Dynamis in its Miami and New York offices, and Christine M. Mackintosh, a partner at Grant & Eisenhofer in Wilmington, Delaware, said aspects of the case in which they represent Jonathan Chitty and Conor Stapleton, against Tides.Network Inc., operating as Portal, are similar to macroeconomic components across the crypto industry.

“There is this emerging, valuable technology ecosystem and developing Web3 industry that developed outside of any clear regulatory structure, and that leaves ambiguity in the protections that exist for other financial products, like currencies, investments, whatever you want to term it,” Economides said. “That is one relevant component here and that is industry-wide.”

Portal did not respond to a request for comment.

Now, the case is pending before Delaware Chancery Judge Nathan A. Cook in which the prospective class alleged eight claims, including seeking a declaratory judgment that the series notes have not been converted, breach of contract, and fraud in the inducement.

Founded in 2018 and headquartered in San Francisco, Portal is a financial services company that provides its users a platform to trade Bitcoin and other crypto assets anywhere in the world.

In 2021, Portal raised $31 million through convertible promissory notes, promising repayment or conversion into equity if the company achieved a specified financing level by 2022, per the complaint. However, when crypto markets crashed and Portal's financial health deteriorated, it allegedly failed to conduct the qualifying $10 million financing needed to convert the notes to equity.

Judge Nathan Cook.
Courtesy photo

Instead, the plaintiffs alleged in the complaint that Portal attempted to pressure noteholders into accepting "worthless" shares, citing a purported conversion based on limited investor consent. The plaintiffs argued that Portal misled investors about their rights, repeatedly insisting via email that noteholders had no repayment right despite clear contractual terms guaranteeing it.

When investors questioned the process, Portal declined to provide proof of majority approval for the conversion and, instead, threatened legal action against those who asked questions, according to the complaint. Plaintiffs also alleged that Portal's financial statements, shared in mid-2022, failed to account for the $31 million raised, casting doubt on where the funds went.

Meanwhile, Portal reportedly completed a $34 million fundraising round in 2024, raising concerns that investors' initial contributions may have been redirected.

"The allegations in the complaint are about investors being bullied into signing these conversions and being lied to about the use of this money," Rosen said. "That has been a theme for a long time in the crypto industry where companies are fast and loose with facts in their offering memorandum and a lot of them don't have the best interests of their investors at heart."

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Securities Law News

Nov. 11, 2024, 7:26 AM PST; Updated: Nov. 11, 2024, 9:40 AM PST

Miner TMC Hit With Suit Over Stock Drop From SEC Filings (1)

By Mike Vilensky

Documents

- Complaint
- Docket
- Company Info: TMC The Metals Co.

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** No. 2:24-cv-09684 (Bloomberg Law subscription)

Bloomberg Law News 2024-11-12T10:11:38870917126-05:00

Miner TMC Hit With Suit Over Stock Drop From SEC Filings (1)

By Mike Vilensky 2024-11-11T10:26:51000-05:00

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** No. 2:24-cv-09684 (Bloomberg Law subscription)

Deep-sea miner TMC the Metals Co. is facing a proposed class action for allegedly misleading investors over its debt levels in filings with the SEC that the company later revised.

The complaint, filed Nov. 8 in the US District Court for the Central District of California, seeks to represent a class of people who acquired TMC securites between May 12, 2023, and March 25, 2024. It was filed against the company and its top executives.

According to the complaint, TMC disclosed in a March 25 filing with the Securities and Exchange Commission that the company's financial statements for the first three quarters of 2023 "should be restated and, accordingly, should no longer be relied upon."

TMC's March 25 filing cited the "reevaluation" of whether the proceeds from its 2023 partnership with Low Carbon Royalties Inc. should be classified as debt or deferred income, according to the complaint.

On the news of the company's revised SEC filing, TMC's stock price fell 13.23% March 26, according to the complaint.

"Defendants had both the motive and opportunity to commit fraud," lead plaintiff Thomas Lin said in the lawsuit. "They also had actual knowledge of the misleading nature of the statements they made, or acted in reckless disregard of the true information known to them at the time."

The complaint brings two claims of Exchange Act violations, seeking class certification and damages.

A TMC spokesperson denied the claims Monday. "We will vigorously defend against these unfounded allegations," the spokesperson said.

Pomerantz LLP represents Lin and the proposed class.

The case is Lin v. TMC the Metals Co. Inc. , C.D. Cal., No. 2:24-cv-09684, complaint filed 11/8/24 .

(Updated with TMC response in eight paragraph.)

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Securities Law News
Nov. 12, 2024, 2:00 AM PST

This Week in Chancery Court: Truth Social SPAC, Hertz, Paramount

By Jennifer Kay

Bloomberg Law News 2024-11-12T10:06:18328215056-05:00

This Week in Chancery Court: Truth Social SPAC, Hertz, Paramount

By Jennifer Kay 2024-11-12T05:00:05000-05:00

The Delaware Chancery Court will focus on social media networks this week, with bot allegations at the failed startup IRL and additional claims surrounding the special purpose acquisition company created to take the Truth Social platform public.

Here's a look at more from the court's calendar:

Tuesday: Discovery Glob. Opportunity Master Fund LTD v. Hertz Glob. Holdings Inc., Del. Ch., No. 2024-0655, phone hearing 11/12/24.

At issue: A group of Hertz Global Holdings Inc. warrant holders sued the car rental company in June seeking at least $187.5 million under so-called change-of-control provisions triggered by debt issuance and share buybacks. Hertz seeks the lawsuit's dismissal, arguing in a brief that the allegations are "premised on a misreading of the Warrant Agreement and contradict the purpose of the contractual provisions on which they are based." The warrant holders, in an answering brief, say it's Hertz's interpretation of the agreement that disregards its "plain and unambiguous" language.

Court action: Delaware Superior Court Judge Eric M. Davis will hear oral arguments on the motion to dismiss via teleconference. Superior Court judges are assigned some breach of contract litigation to help alleviate the Chancery Court's busy caseload.

Hertz Warrant Holders Take Legal Action for $188 Million Payment

Tuesday: ACRA Assets SA v. ARC Global Inv. II LLC, Del. Ch., No. 2024-1141, phone hearing 11/12/24.

At issue: The former CEO of the blank-check company that combined with Donald Trump's social media platform faces allegations that he stole millions of shares by funneling them to offshore shell entities. Three dozen of the early backers of the Truth Social platform seek to expedite their litigation against the SPAC's former head, Patrick Orlando. Trump isn't accused of any wrongdoing in connection with the claims against Orlando, who's been involved in multiple court fights this year over Truth Social and the SPAC created to take it public.

Court action: Oral arguments on the motion to expedite will be heard via teleconference.

Truth Social SPAC Ex-CEO Sued by Investors on Stock Theft Claims

Tuesday: Fortis Adv. LLC v. Medtronic Minimed Inc., Del. Ch., No. 2023-1055, oral argument 11/12/24.

At issue: The court previously ruled that a Medtronic Plc unit had to face litigation challenging its acquisition of Companion Medical Inc., which developed reusable insulin pens and a companion mobile app. The medical device giant may have breached the sale agreement by belatedly asserting indemnity claims blocking the release of $17.5 million from an escrow account to former Companion shareholders, the court said in a July opinion. The ex-shareholders who brought the lawsuit now have a motion for judgment on the pleadings. Medtronic argues in a brief that the court is obligated to allow the parties to develop a factual record in the matter.

Court action: Delaware Superior Court Judge Meghan A. Adams will hear oral arguments in Wilmington, Del. Superior Court judges are assigned some breach of contract litigation to help alleviate the Chancery Court's busy caseload.

Medtronic Must Defend Withholding Escrow After Insulin Pen Deal

Thursday: State of Rhode Island Off. of the Treasurer v. Paramount Glob., Del Ch., No. 2024-0457, oral arguments 11/14/24.

At issue: In a hearing rescheduled from last week, Vice Chancellor J. Travis Laster will hear objections to a preliminary ruling finding that a pension fund didn't show a legitimate purpose for inspecting Paramount Global's internal records about its $2.4 billion acquisition by Skydance Media. In the merger, producer David Ellison, the son of Oracle Corp. Chairman Larry Ellison, and his family's RedBird Capital Partners will buy out the Redstone family's majority stake in Paramount. The Employees' Retirement System of Rhode Island said in a brief that Magistrate in Chancery Selena E. Molina erred in excluding from her consideration almost four dozen news articles about Shari Redstone. Paramount said in a brief that Laster should finalize Molina's ruling.

Court action: Oral arguments will be held in Wilmington, Del.

Paramount Gains Edge in Fight Over Skydance Buyout Files (2)

Friday: Weird Sci. LLC v. Enochian Biosciences Inc., Del. Ch., No. 2023-0599, oral arguments 11/15/24.

At issue: Enochian Biosciences Inc.—now known as Renovaro Biosciences—faces litigation over claims that the company breached an agreement allowing its former majority owner, Weird Science LLC, to participate in certain sales of registered securities to the public. Enochian seeks to dismiss the litigation, arguing in a brief that Weird Science had “ample opportunity” to sell their shares “and they certainly are not the victims of fraud.” Other defendants in the case also have filed separate motions to dismiss. Weird Science, arguing for the case to proceed, has also alleged Renovaro’s longtime legal counsel, K&L Gates LLP and firm attorney Clayton E. Parker, participated in the scheme.

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

Enochian Accused of Trampling on Ex-Owner’s Stock Resale Rights

Friday: Shafi v. Chien, Del. Ch., No. 2023-1157, oral arguments 11/15/24.

At issue: The directors and investing units of the shuttered social-media startup IRL, or In Real Life, seek to dismiss a lawsuit claiming they wrongfully rushed to shut down to protect their reputations. IRL co-founder and former CEO Abraham Shafi filed the lawsuit a year ago, alleging the board that removed him lied about its reasons for closing the site. The board argues in a brief that Shafi and his subordinates deployed computer bots to “deceive investors into believing that IRL was the next promising social media platform.” Shafi said in an answering brief that the board is trying to scapegoat him for the startup’s collapse.

Court action: Oral arguments on the motion to dismiss will be held in Wilmington, Del.

Busted Social-Media Darling IRL’s Founder Sues Softbank Unit (2)

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Securities Law News
Nov. 8, 2024, 12:46 PM PST

Paragon Technologies Board Sued Over 'Coup' by Ousted Chairman

By Mike Leonard

- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2024-1134

Bloomberg Law News 2024-11-12T10:12:10489333255-05:00

Paragon Technologies Board Sued Over 'Coup' by Ousted Chairman

By Mike Leonard 2024-11-08T15:46:52000-05:00

- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2024-1134

Two Paragon Technologies Inc. directors staged a board "coup," forced out its chairman, and adopted illegal bylaws insulating them from the ordinary levers of corporate governance, according to a lawsuit unsealed Friday.

Hesham Gad is suing Samuel Weiser and Jack Jacobs over his ouster and the bylaws, which place a series of restrictions on the ability of investors to remove them from the board through ordinary channels. The "obvious invalidity" of the bylaws "is breathtaking," the suit says.

The allegations represent a reversal of roles for the investment holding company, which earlier in the year led litigation challenging Ocean Power Technologies Inc. bylaws that allegedly targeted Paragon's shareholder activism campaign.

Paragon didn't immediately respond to a request for comment Friday.

Gad's lawsuit in Delaware's Chancery Court says Weiser and Jacobs sought to marginalize him by replacing him as chair, even though they lacked the shareholder support to remove him from the board altogether. Gad—who joined Paragon in 2010 after a proxy fight—reacted by rallying other investors to replace Weiser and Jacobs, an effort that yielded stockholder consents reflecting more than 50% of the company's ownership, according to the complaint.

But they allegedly responded by rejecting the written consents on the “technicality” that some of them had been signed by beneficial stockholders rather than record holders. They then hastily convened a 12-minute board meeting, on a Sunday, at which they adopted the new bylaws, the suit says.

Among other things, the bylaws impose a 75% supermajority requirement for shareholders to call a special meeting or act by written consent, according to Gad’s complaint. They also allegedly prohibit investors from removing board members without cause and bar the company from reimbursing stockholders for expenses related to proxy fights.

All of those provisions violate Delaware corporate law and Paragon’s charter, the lawsuit says. It was originally filed under seal Nov. 1.

Gad is represented by Meluney Alleman & Spence LLC.

The case is Gad v. Weiser , Del. Ch., No. 2024-1134, complaint unsealed 11/8/24 .

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Elanco Animal Health to pay $15 mln to settle SEC fraud case

reuters.com/business/healthcare-pharmaceuticals/elanco-animal-health-pay-15-mln-settle-sec-fraud-case-2024-11-12

Reuters

The seal of the U.S. Securities and Exchange Commission (SEC) is seen at their headquarters in Washington, D.C., U.S., May 12, 2021. Picture taken May 12, 2021. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights, opens new tab

Nov 12 (Reuters) - Elanco Animal Health (ELAN.N), opens new tab agreed to pay a $15 million civil fine to settle U.S. Securities and Exchange Commission anti-fraud charges for misleading investors about its revenue growth and end-user demand, the regulator said on Tuesday.
The SEC said Elanco should have disclosed that between the first quarter of 2019 and the first quarter of 2020, it used sales incentives to achieve its revenue growth and caused distributors to buy goods in excess of then-existing demand.

When Elanco decided to stop offering the incentives, causing a $160 million revenue decline, it cited the uncertainty of the COVID-19 pandemic though the Greenfield, Indiana-based company had decided earlier to end the incentives, the SEC said.

Elanco did not admit or deny wrongdoing in agreeing to settle. It was spun off by Eli Lilly (LLY.N), opens new tab in 2018.
Keep up with the latest medical breakthroughs and healthcare trends with the Reuters Health Rounds newsletter. Sign up here.

Reporting by Jonathan Stempel in New York

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Securities Law News

Nov. 11, 2024, 9:17 AM PST

Eos Energy Beats Suit Over Misrepresenting Backlog to Investors

By Jacqueline Thomsen

- Putative class action pointed to major client's financial woes
- Federal judge said Eos not required to disclose issues

Bloomberg Law News 2024-11-12T10:12:36203012243-05:00

Eos Energy Beats Suit Over Misrepresenting Backlog to Investors

By Jacqueline Thomsen 2024-11-11T12:17:34000-05:00

- Putative class action pointed to major client's financial woes
- Federal judge said Eos not required to disclose issues

Eos Energy Enterprises Inc. is off the hook for a class action alleging the company misled investors about the risks of a major client's ability to pay for about half of its energy storage system orders backlog after a federal judge dismissed the lawsuit.

Judge Jamel K. Semper of the US District Court for the District of New Jersey said that Eos wasn't obligated to disclose financial issues its client Bridgelink Commodities LLC was facing between May 2022 and July 2023, according to a Nov. 8 opinion.

The lawsuit, filed in August 2023, alleged that Eos in May 2022 had promoted a record-breaking deal with Bridgelink, with a total order of up to $150 million in energy storage products. In July of the same year, Eos said that the order increased to $181 million worth of products, with the order backlog value rising to $460 million.

The company in May 2023 touted its first quarter financial results as including an increased backlog of $535.1 million in orders, statements that the putative class action lawsuit alleged were materially false and misleading.

The lawsuit alleged that Eos should have disclosed that a Bridgelink subsidiary's assets had been foreclosed on and sold at auction. Eos stock price dropped by nearly 24% after Iceberg Research published a July 2023 report on those issues.

Semper said in his ruling that when “an outcome or risk is merely speculative, no duty to disclose arises.”

The judge said that the plaintiff “failed to establish that this alleged threat to Bridgelink Commodities’ ability to purchase Eos products materialized at the time the backlog-related statements were made on May 9, 2023 and May 10, 2023 such that the statements were misleading.”

Semper also dismissed claims against Eos’s CEO and CFO because they were underlying violations tied to the allegedly misleading statements.

Glancy Prongay & Murray LLP, Law Offices of Howard G. Smith and Carella, Byrne, Cecchi, Brody & Agnello PC represent plaintiff William Houck and the proposed class.

Wilmer Cutler Pickering Hale & Dorr represent Eos.

The case is Houck v. Eos Energy Enterprises, Inc. et al , D.N.J., No. 2:23-cv-04113, 11/8/24 .

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Supreme Court Declines 1-800-Flowers Case Over Investor Standing

By Martina Barash 2024-11-12T11:03:32000-05:00

- Derivative suit revived by 2d Cir. alleged short-swing trades
- Insider shareholders invited court to revisit standing

Shareholders with significant holdings in 1-800-Flowers won't have a chance to persuade the US Supreme Court to review what injury is necessary to support an investor's ability to sue over allegations that the major holders conducted short-swing trades.

Investor Brad Packer, suing on behalf of the company, alleged 1-800-Flowers.com shareholders Raging Capital Management LLC, Raging Capital Master Fund, Ltd., and their owner William C. Martin engaged in short-swing trading—or buying and selling the stock within six months. The US Court of Appeals for the Second Circuit revived Packer's suit in June, saying he had standing to sue.

The Second Circuit said short-swing trading by a major shareholder is a concrete injury under a high court standard because it's equivalent to a fiduciary breach, which has historically conferred standing.

The Raging Capital shareholders, who owned at least 10% of shares, asked the justices to take the case, arguing that Packer lacks standing under *TransUnion LLC v. Ramirez* . That opinion held that Congress "may not simply enact an injury into existence," they said.

Packer, who brought the derivative suit, didn't oppose the request for review.

Olshan Frome Wolosky LLP represented the Raging Capital shareholders. Paul D. Wexler, who practices in New York, represented Packer.

The case is Raging Cap. Mgmt., LLC v. Packer , U.S., No. 24-408, 11/12/24 .

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

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Securities Law News
Nov. 12, 2024, 2:00 AM PST

Investor Scrutiny Lawsuits Snarl Business Court's Breakneck Norm

By Mike Leonard

Deep Dive

- Delaware deluge being driven by preliminary shareholder suits
- 'Mess' called rational response to complex litigation incentives

Bloomberg Law News 2024-11-12T09:49:09231691689-05:00

Investor Scrutiny Lawsuits Snarl Business Court's Breakneck Norm

By Mike Leonard 2024-11-12T05:00:02000-05:00

- Delaware deluge being driven by preliminary shareholder suits
- 'Mess' called rational response to complex litigation incentives

A spike in lawsuits from investors demanding internal corporate documents has Delaware's Chancery Court in triage mode.

The disputes have left the leading US forum for corporate cases deluged and distracted from more urgent matters, like litigation over deals set to close or imminent company meetings.

Records suits, which require only preliminary suspicions, are designed to resolve narrow disagreements over how to enforce a core shareholder right. But Delaware's judges are spending significant chunks of time policing the process, as in recent fights over Amazon.com Inc's antitrust woes, Boeing Co.'s safety scandals, and the $8 billion Paramount Global-Skydance Media merger.

"Nobody's happy with the state of affairs," said Widener University law professor Lawrence Hamermesh. "It's a mess."

Everyone involved would rather be doing something more substantive, but they're responding rationally to structural incentives, Chancellor Kathaleen St. J. McCormick, the court's chief judge, said at George Washington University. Although getting inside information offers clear advantages, "complaints just get longer and longer," she said Oct. 25. "I'm not sure I need all that at the pleading stage, but it's not hard to see why they're doing it, and I can't advise against it."

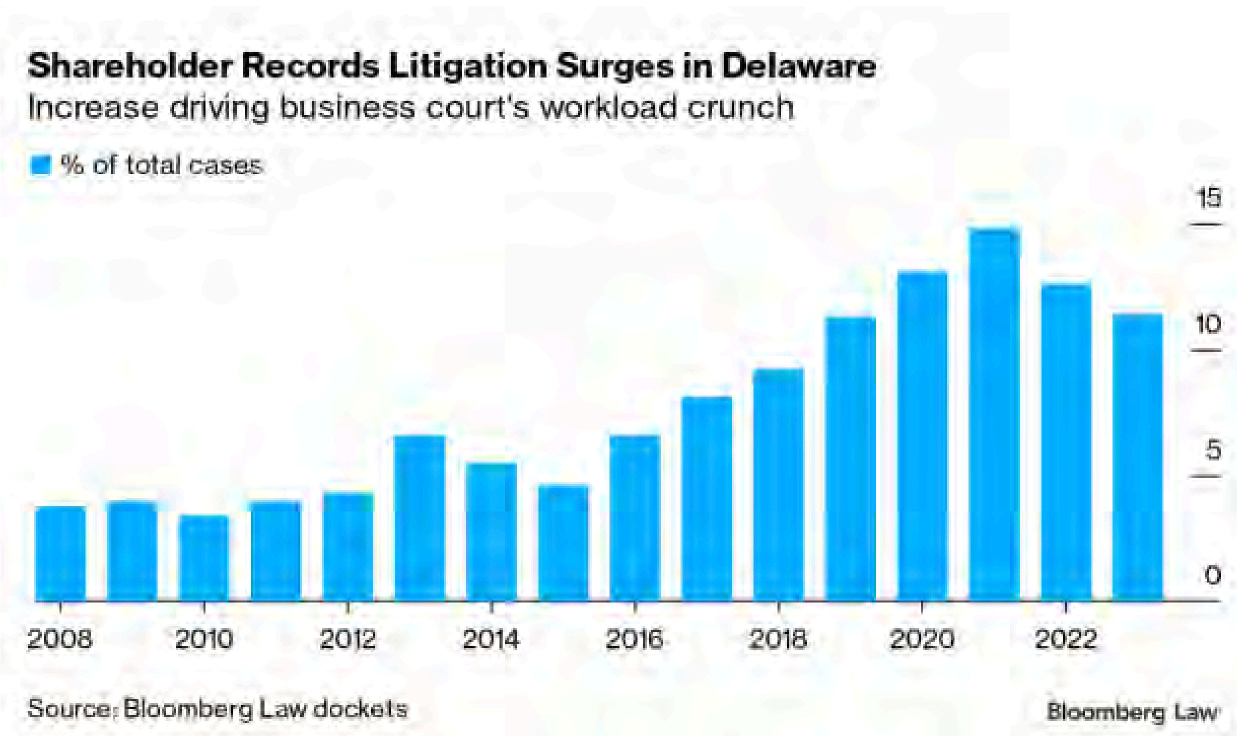
Shareholder attorneys blame the logjam on board stonewalling, while companies say the ballooning cost is affecting settlement leverage. “Shareholders aren’t in the engine room every day, so there was wisdom in making sure they get this information,” said GWU law professor Omari Scott Simmons. “But there were unintended consequences.”

‘Tools at Hand’

The workload crunch took time to reach a crisis point after records litigation began to climb a few years ago. Annual cases nearly doubled to 168 between 2018 and 2021, representing a surge to 15% of the court’s total workload from 9%, court documents show.

Cases are now assigned to magistrates, oral rulings are replacing opinions, and judges are being conscripted from other courts to handle the overflow. Records disputes look like potential low-hanging fruit.

The lawsuits, often reflecting an attempt to drum up fiduciary breach claims, invoke Section 220 of the Delaware General Corporation Law, which gives investors broad access if they have credible but tentative concerns—a deliberately low burden of proof.



Several dynamics are colliding to drive the increase. For one thing, Delaware’s courts directly pressed shareholder attorneys—notably in cases involving Walt Disney Co. and Martha Stewart—to do more diligence using “the tools at hand.” The plaintiffs’ bar took the hint.

Judges, meanwhile, began cracking down on frivolous litigation. One result was rulings that tightened the standards for merger challenges, making injunctions far rarer and channeling dealmakers toward transactions engineered to sail through court.

The decisions also fortified a rule requiring shareholders to demand internal investigations before bringing many non-merger cases. To skip that step, an investor must show the board faces significant legal exposure or other conflicts. That used to be a “formulaic” enterprise, but a records case “can really help you make that argument,” said Oderah Nwaeze, a partner at Faegre Drinker Biddle & Reath LLP.

He pointed to other recent rulings expanding the universe of records subject to disclosure. If a company “follows typical corporate governance,” a judge will likely stick to formal materials, but if it “plays fast and loose,” that puts emails and text messages on the table, according to Nwaeze. Those private communications have raised the stakes, making the court fights fiercer.

Smoking Guns

At around the same time, liability shields for simple mismanagement claims began to proliferate. For decades those “exculpation clauses” covered only boards, but after lawmakers extended them to executive officers in 2022, the only remaining target for shareholders was the duty of corporate loyalty, a category of serious breaches involving “bad faith"—legal violations, lack of oversight, self-dealing, or fraud.

Showing bad faith requires evidence of conscious wrongdoing. “Just saying simply ‘This happened on their watch’ is going to be insufficient,” especially in the context of the oversight-based *Caremark* claims that have become an innovative way around liability shields, according to Simmons.

Despite that “heightened pleading burden for the types of cases that matter to stockholders,” more attorneys are now seeking information about corporate “red flags” after decisions across 2023 created “the perception that *Caremark* is more muscular,” McCormick said at GWU.

As the path to liability grows slimmer, the emphasis on records is a logical counterweight, according to Columbia University law professor Dorothy Lund. “We’ve moved toward screening stuff that looks frivolous while giving plaintiffs additional tools to find actual smoking guns,” she said.

The court also rethought how it confers the lucrative lead counsel designation when multiple shareholders go after a single deal. Appointing lawyers who won the race to the courthouse led to “a lot of noisy litigation that was untethered from actual misconduct,” Lund said. Judges now favor the most detailed complaint, a policy that points toward more cases seeking earlier access to records.

Elusive Fix

Even when a case is bound for trial, lawyers gunning for the lead role often feel compelled to sue for records that will likely come out later.

The Paramount-Skydance merger is illustrative. A brewing lead counsel battle centers on whether records are necessary, given the public information about the transaction. The first-filing investor says they would drag out the process, while two groups of pension funds say his lawyers are taking a shortcut.

McCormick said at GWU that she’s now routinely assigning records disputes to magistrates, and the court is adding more. Beyond that increase in capacity, a fix appears elusive, according to Hamermesh. “How do you pick lead counsel if not on the merits?” he said.

But a solution may develop in the ordinary course as new rulings lay out clearer standards that streamline litigation by getting everyone “reading from the same script,” according to Nwaeze.

Lund made a similar point. “You see these cycles in litigation, with bad incentives being created and weird things happening,” she said. “And then Delaware responds.”

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Securities Law News

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Crypto Miner IPO Backers Reach Settlement on False Info Suit

By Ufonobong Umanah

- Crypto miner allegedly overpromised on mining ability
- Settlement includes 25 bitcoin paid over 24 months

Bloomberg Law News 2024-11-12T10:07:52946852875-05:00

Crypto Miner IPO Backers Reach Settlement on False Info Suit

By Ufonobong Umanah 2024-11-11T12:14:57000-05:00

- Crypto miner allegedly overpromised on mining ability
- Settlement includes 25 bitcoin paid over 24 months

Stronghold Digital Mining Inc. agreed to pay $4.75 million in US currency, and a monthly bitcoin stipend, to settle allegations it overhyped its crypto mining capabilities.

Stronghold's share price fell32% on Mar. 30, 2022, when it announced that a crypto mining capacity shortfall prevented it from reaching its revenue goals. Shareholders alleged that the failure rendered some statements in its offering materials false and misleading, according to court documents from the US District Court for the Southern District of New York.

According to the proposed settlement, Stronghold would pay the US dollar value of 25 bitcoins over 24 months—this way paying one bitcoin almost every month. SincePresident-elect Donald J. Trump won his re-election bid, bitcoin surpassed $80,000 for the first time, in an industry Joe Biden's SEC chair said was misconduct-ridden after several collapses—like of FTX.

The settlement for those who purchased common A stock before December 2021 after consulting the offering materials is expected to recover $0.85 per share for initial public offering backers, depending on a recent estimated total bitcoin value of $1,784,300, according to the proposed settlement.

Counsel for the plaintiffs, which include a retirement system for Allegheny County employees, said they would request no more than a third of the settlement fund in attorneys' fees.

“Had the case proceeded to litigation, Stronghold planned to, among other things, argue that fluctuations in its stock price disproved the plaintiffs’ causation theory, a motion for preliminary approval filed Nov. 8 said. “Protracted litigation posed several risks for Stronghold investors,” the motion said.

Judge Ronnie Abrams is assigned the case.

Rosen Law Firm represents the lead plaintiff—Allegheny. Tannenbaum Helpern Syracuse & Hirschtritt LLP represents Stronghold.

The case is Winter v. Stronghold Digital Mining, Inc. , S.D.N.Y., No. 1:22-cv-03088, proposed settlement 11/8/24 .

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Securities Law News
Nov. 11, 2024, 8:33 AM PST

Freddie Mac Gets Partial Win on Subprime Loan Fallout Coverage

By Olivia Alafriz

- Court sides with Freddie Mac on excess insurers' rights
- Coverage for SEC subpoenas depends on discovery results

Bloomberg Law News 2024-11-12T10:11:0795208889-05:00

Freddie Mac Gets Partial Win on Subprime Loan Fallout Coverage

By Olivia Alafriz 2024-11-11T11:33:51000-05:00

- Court sides with Freddie Mac on excess insurers' rights
- Coverage for SEC subpoenas depends on discovery results

Excess insurers can't challenge lower-layer insurers' decisions on coverage for Freddie Mac's legal costs related to fallout from the subprime mortgage crisis, a federal court ruled.

As a rule, excess insurers can't challenge underlying carriers' coverage determinations and payments, and the policies issued to Freddie Mac are no exception, Judge Christopher R. Cooper of the US District Court for the District of Columbia said in a Nov. 8 order.

The court granted partial judgment on the pleadings to the mortgage company but denied its motion on the issue of whether an SEC subpoena of an employee automatically triggers coverage.

The lawsuit relates to coverage under excess directors and officers liability insurance policies for lawsuits, shareholder demand letters, and an SEC investigation and lawsuit stemming from Freddie Mac's exposure to subprime loans around the time of the 2008 financial crisis.

Freddie Mac sued its insurers—which included units of Hartford Financial Services Group Inc. and Axis Capital Holdings Ltd.—in 2023, seeking a ruling that the carriers must reimburse its legal costs, which according to the ruling, ran to $33.6 million as of October 2023.

Several of the excess insurers argued that the third-layer excess policy hadn't been properly exhausted, so coverage under their policies wasn't triggered.

But the court disagreed and sided with Freddie Mac, ruling that the excess carriers couldn’t contest the lower-layer insurer’s payment by arguing that it was allocated to losses not covered by the policies.

However, the court agreed with insurers that an SEC subpoena of a Freddie Mac employee was not sufficient to trigger coverage. The court said in its order that discovery would determine whether the employees were being investigated for wrongful acts, as required for insurance coverage.

Covington & Burling LLP represents Freddie Mac. Wiley Rein LLP represents Axis Reinsurance Co.

The case is Fed. Home Loan Mortg. Corp. v. Twin City Fire Ins. Co. , D.D.C., No. 1:23-cv-01758, 11/8/24 .

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3rd Circuit Revives Class Action Against Bayer Over Benzene-Contaminated Products

law.com/njlawjournal/2024/11/11/3rd-circuit-revives-class-action-against-bayer-over-benzene-contaminated-products

Colleen Murphy

The U.S. Court of Appeals for the Third Circuit partially reversed a U.S. District Court of New Jersey dismissal of a class action claim filed against Bayer by customers who purchased pharmaceuticals found to be contaminated with benzene.

In 2021, Bayer was hit with a class action lawsuit, *Huertas v. Bayer*. The Third Circuit considered an appeal filed by nine consumers who asserted claims over their purchase of Lotrimin and Tinactin products to treat athlete's foot and ringworm. U.S. District Judge Susan D. Wigenton of the District of New Jersey dismissed the consumers' claims for lack of standing.

Third Circuit Judge Cindy K. Chung found that the district court was incorrect in applying a heightened legal standard for standing and reversed the lower court's order that dismissed the complaint. Chung held that the plaintiffs plausibly alleged their claims that the products in question were worth less than they would have been if they were not contaminated.

"The logic requires little elaboration: if a product contains a manufacturing flaw so severe that it cannot be used, it is not worth the full price purchasers paid with the understanding they would be able to use all of the product," Chung said.

In October 2021, Bayer recalled millions of dollars worth of products when the company discovered they had been contaminated with benzene, a known carcinogen. According to the opinion, the plaintiffs did not allege that they were injured, but instead contended that the products were worth less than they bargained for.

"Since the contaminated products contained a defect that rendered them unusable, the products were worth less than their full purchase price," Chung said. "To hold otherwise would be to conclude that an unusable product is worth the same as a usable one—a conclusion that resists logic."

Bayer attempted to rely on the Third Circuit's 2018 decision in *In re Johnson & Johnson Talcum Powder*. In that case, the appeals court rejected the plaintiff's theory because she alleged that she suffered economic injury through an increased risk of ovarian cancer by using the product. The Third Circuit held that the plaintiff's benefit-of-the-bargain theory was no more than an allegation.

“Instead, we explained that a plaintiff must ‘allege facts that would permit a factfinder to determine that the economic benefit she received in purchasing the powder was worth less than the economic benefit for which she bargained,’” Chung said. “More simply, she was required to ‘allege that she purchased Baby Powder that was worth less than what she paid for.’”

Chung also cited the U.S. Court of Appeals for the Seventh and Eleventh circuits in support of her conclusion. The Seventh Circuit held in 2011, in *In re Aqua Dots*, that the plaintiffs had standing to sue the toy manufacturer, even though their children were not harmed by its defect, under the benefit-of-the-bargain theory. The Eleventh Circuit made a similar finding in *Debernardis v. IQ Formulations* in 2019.

“In sum, plaintiffs alleged that they purchased recalled Lotrimin and Tinactin products based on the understanding that those products would be fit for topical use in treating fungal infections,” Chung concluded. “Instead, they received products that they were instructed to ‘stop using’ and to ‘discard … appropriately.’ Given that contaminated products are unfit for their intended use, they are inherently worth less than the uncontaminated products plaintiffs thought they were purchasing.”

However, Chung addressed the fact that not every plaintiff provided the lot numbers specified in Bayer's recall, which covered September 2018 through September 2021. The judge only reinstated the claim for four of the nine plaintiffs who provided those numbers.

“We are pleased with the court’s decision to affirm the dismissal of five of the nine plaintiffs in this case," a spokesperson for Bayer wrote to the Law Journal. "As to the remaining plaintiffs, if they choose to proceed with their claims by filing an amended complaint, we look forward to explaining to the district court why their claims lack merit. Bayer already provided consumers, including plaintiffs, with the opportunity to seek the same relief they are seeking through this case through a product recall, and it is disappointing that they have chosen to pursue litigation."

The spokesperson added that Bayer is pursuing litigation against its supplier, seeking to recover the damages incurred due to the recall.

Counsel for the plaintiffs, Max S. Roberts of Bursor & Fisher, and counsel to Bayer, David M. Zionts of Covington & Burling, did not immediately respond to requests for comment.

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US Supreme Court turns away bid to revive youth climate change lawsuit

reuters.com/legal/government/us-supreme-court-turns-away-bid-revive-youth-climate-change-lawsuit-2024-11-12

Nate Raymond

People take part in a climate change rally in Denver, Colorado, U.S. October 11, 2019. REUTERS/Rick Wilking/File Photo Purchase Licensing Rights, opens new tab

Nov 12 (Reuters) - The U.S. Supreme Court on Tuesday declined to revive a novel lawsuit by 21 young people claiming the U.S. government's energy policies violate their rights to be protected from climate change.

The justices denied, opens new tab a so-called petition for a writ of mandamus, opens new tab the youth activists filed in September that argued that the San Francisco-based 9th U.S. Circuit Court of Appeals had overstepped its authority by taking the "extraordinary" step of ordering a federal judge in Oregon to dismiss the case.

The 9th Circuit did so at the urging of the U.S. Department of Justice after the Oregon judge allowed the young people's lawyers to amend their 2015 complaint to address problems the appeals court raised in an earlier 2020 ruling in the case.

Tuesday's action by the justices is likely not the last time the Supreme Court will encounter the case, as the youth activists have until Dec. 9 to file a certiorari petition that they say will raise broader arguments over why the case should be revived and why they have standing to sue.

"The standing of children to be heard in their right to life case is a pressing issue of national importance," Julia Olson, a lawyer for the young people at the non-profit Our Children's Trust, said in a statement.

A spokesperson for the Justice Department declined to comment.

The lawsuit is one of several climate change cases youth activists have filed nationwide. The cases broadly accuse state and federal governments of exacerbating climate change by adopting policies that encourage or allow the extraction and burning of fossil fuels in violation of their rights.

While some of the cases have faltered, a Montana judge last year held that the state was violating the rights of young people by barring regulators from considering how new fossil fuel projects could affect climate change.
Hawaii in June agreed to a first-in-the-nation settlement with young people to take action to decarbonize its transportation system by 2045.
In Tuesday's case, the youth plaintiffs had alleged the U.S. government has permitted, authorized and subsidized fossil fuel extraction and consumption despite knowing those actions cause catastrophic global warming.

By contributing to climate change, the plaintiffs said U.S. energy policies violate their rights to due process and equal protection under the U.S. Constitution.

But in a 2020 ruling, the 9th Circuit held it was beyond the power of the courts to order and supervise remedies designed to address climate change and that such complex policy decisions were better left to Congress and the executive branch.

The court sent the case back to the Oregon judge with instructions to dismiss the lawsuit. But U.S. District Judge Ann Aiken instead allowed the plaintiffs to try to amend their complaint to keep it going, citing a change in the law.

A three-judge 9th Circuit panel in May said the 2020 ruling left no room to amend the complaint and directed Aiken to dismiss the case.

In re: Kelsey Cascadia Rose Juliana, et al, U.S. Supreme Court, No. Unknown.

For the plaintiffs: Julia Olson of Our Children's Trust

Reporting by Nate Raymond in Boston

Nate Raymond
Thomson Reuters

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

Issues To Consider From The Telefónica Venezolana Enforcement Action

fcpaprofessor.com/issues-to-consider-from-the-telefonica-venezolana-enforcement-action

November 12, 2024

This prior post went in-depth into the recent FCPA enforcement action against Telefónica Venezolana (a subsidiary of Telefonica S.A.) concerning a bribery scheme in Venezuela.

This post highlights additional issues to consider.

Timeline

Beginning in early 2020, the annual report of Telefónica S.A. (a Spanish company with shares traded in the U.S.) contained the following disclosure.

> "Although the Group has internal policies and procedures designed to ensure compliance with the abovementioned applicable anti-corruption laws and sanctions regulations, there can be no assurance that such policies and procedures will be sufficient or that the Group's employees, directors, officers, partners, agents and service providers will not take actions in violation of the Group's policies and procedures (or, otherwise in violation of the relevant anti-corruption laws and sanctions regulations) for which the Group, its subsidiaries or they may be ultimately held responsible. In this regard, the Group is currently cooperating with governmental authorities (and, where appropriate, conducting the relevant internal investigations) regarding requests for information potentially related, directly or indirectly to possible violations of applicable anti-corruption laws. Telefónica believes that, considering the size of the Group, any potential penalty as a result of matters relating to those specific information requests would not materially affect the Group's financial condition."

The same generic disclosure was included in subsequent annual reports including Telefónica's most recent annual report.

From start to finish, the FCPA scrutiny of Telefónica thus appears to have lasted approximately 4.5 years.

I've said it many times, and will continue saying it until the cows come home: if the DOJ/SEC want their FCPA enforcement programs to be viewed as more credible and more effective, the enforcement agencies must resolve instances of FCPA scrutiny much quicker.

This includes the Telefónica matter in which the DOJ stated that the company's cooperation included (among other things):

> "(i) making regular factual presentations to the [DOJ] based on the information learned in the course of the Company's internal investigation; (ii) voluntarily making employees based outside the United States available for interviews in the U.S.; (iii) producing a significant number of documents … while navigating foreign data privacy and related laws; (iv) collecting, analyzing, and organizing voluminous evidence and information for [the DOJ] accompanied by translations of documents."

Lack of SEC Enforcement Action

An odd aspect of the Telefónica Venezolana enforcement action is that – at least at present – it was DOJ only and lacked an SEC component. Nearly all DOJ FCPA enforcement actions against an issuer or a subsidiary of an issuer (as was the case with Telefónica Venezolana) also involve a parallel SEC enforcement action.

However, there has been nothing from the SEC regarding an enforcement action against Telefónica and there is no mention of a potential SEC enforcement action in the DOJ resolution documents.

Again, this is odd.

For instance, in 2019 the SEC brought an FCPA enforcement action against Telefonica Brasil (also a subsidiary of Telefonica) in connection with an alleged bribery scheme in bribery. There was no parallel DOJ enforcement action – a dynamic which is fairly common.

However, the dynamic in the Telefónica Venezolana is the opposite. A criminal DOJ enforcement action, but not a civil SEC enforcement action. The only other instance of this dynamic I aware of involved Legg Mason in which there was an approximate two month delay between the DOJ and SEC enforcement action concerning the same core conduct. (See here).

Things of Value

In addition to actual money being paid to Venezuelan officials, the DOJ also alleged that the culpable intermediaries also "paid for the lavish expenses" of the officials including "more than $500,000" for a "lavish vacation in Saint Barthélemy" and "$605,000 on luxury watches and jewelry in Saint Barthélemy."

Obtain Or Retain Business?

Telefónica Venezolana was charged conspiracy to violate the FCPA's anti-bribery provisions.

The allegations in connection with the FCPA's required "obtain or retain business" element were unique.

The FCPA generally states that the money or thing of value provided directly or indirectly to a foreign official be for purposes of:

> (A) (i) influencing any act or decision of such foreign official in his official capacity, (ii) inducing such
> foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or
>
> (B) inducing such foreign official to use his influence with a foreign government or instrumentality
> thereof to affect or influence any act or decision of such government or instrumentality,
>
> in order to assist such issuer in obtaining or retaining business for or with, or directing business to,
> any person.

The alleged bribery of Venezuelan officials was in connection with a government sponsored currency auction which helped Telefónica Venezolana to exchange local currency for U.S. dollars which then allowed Telefónica Venezolana to purchase equipment from two suppliers.

Statute of Limitations

The statute of limitations for an FCPA anti-bribery violation is five years.

The conduct alleged in the Telefónica Venezolana enforcement action occurred between 2014 and 2015. In other words, 9-10 years prior to the enforcement action.

However, statute of limitations (like other legal issues) often matter very little in FCPA matters given that companies "cooperate" in the DOJ's investigation. Part of cooperation is often waiving statute of limitation defenses or agreeing to toll the statute of limitations.

Tom Girardi prosecutor joins Chicago law firm that spurred Girardi's downfall

reuters.com/legal/legalindustry/tom-girardi-prosecutor-joins-chicago-law-firm-that-spurred-girardis-downfall-2024-11-12

David Thomas

Thomas Girardi at a civil trial in Los Angeles, June 26, 2014. REUTERS/Irfan Khan/Pool/File photo Purchase Licensing Rights , opens new tab

Nov 12 (Reuters) - Four years after Chicago-based law firm Edelson PC first accused prominent plaintiffs' lawyer Tom Girardi of stealing settlement funds belonging to his clients, the firm has hired a California federal prosecutor who helped secure Girardi's conviction on related criminal charges in August.
Ali Moghaddas has joined Edelson as a partner after a five-year stint in the U.S. Attorney's Office in the Central District of California, the firm said on Tuesday. Moghaddas will work out of the firm's Los Angeles office.

Edelson sued Girardi, his law firm and others in Chicago federal court in 2020, accusing of them of stealing more than $2 million in settlement funds that were meant for the firms' clients in litigation over the 2018 Boeing 737 MAX Lion Air Flight 610 crash in Indonesia.

The allegations triggered the collapse of Girardi's law firm, Girardi Keese, and Girardi and the firm were forced into bankruptcy. Girardi, once acclaimed for his national plaintiff-side practice, was disbarred by the California Supreme Court in June 2022.

Federal prosecutors in Chicago and Los Angeles charged Girardi and others with taking more than $18 million in funds belonging to his firm's clients. Girardi pleaded not guilty to both sets of criminal charges.
Moghaddas was one of the lead prosecutors in the California case. A Los Angeles jury in August found Girardi guilty of four counts of wire fraud. His sentencing is set for Dec. 6.
Moghaddas is the "seasoned trial lawyer" Edelson needs as the firm prepares for 14 trials through the end of 2025, said J. Eli Wade-Scott, who leads the firm's class action practice.

The decision to leave the U.S. Attorney's Office was unrelated to the outcome of last week's presidential election, Moghaddas said. He did not want to go a defense-side law firm, and did not want to join a plaintiffs' firm where people "are secretly stuffing money into their pockets," he said.

Moghaddas said he got to know Edelson as the government pressed its case against Girardi. He said he did not interview with the firm until after the jury verdict.

The U.S. Attorney's Office said in a statement that Moghaddas "has been a tremendous asset."

Many Lawyers Are Reeling From Election Results, but Leaders Are Staying Mum

law.com/therecorder/2024/11/11/many-lawyers-are-reeling-from-election-results-but-leaders-are-staying-mum

Amanda O'Brien

Reactions to last week's presidential election results are ranging from excitement to devastation, if a quick look on social media is any indicator. But law firm leaders aren't exactly being candid about how, if at all, they're handling attorneys' reactions to the hotly contested race or how they're supporting employees disappointed with the election's outcome.

Law.com analyses of Federal Election Commission financial data across a variety of legal markets, including those based in swing states, found that attorneys in Big Law overwhelmingly gave their financial support to Vice President Kamala Harris, the Democratic nominee for president. The day after the election, those attorneys were given a shock to the system when confronted with an impending second term for former President Donald Trump.

However, when leaders were asked how they were helping their attorneys cope with election results, many deflected by pointing to the overall resilience of attorneys, as well as their firms' innately and collegially bipartisan cultures; one leader, a litigator, compared this moment to losing a case in court but having to get over it and go on to the next case, while another said he hadn't noticed much of an impact on office morale after the election.

A Peek Inside

One firm that did offer an inside look at how it's accommodating attorneys post-election is California-based Am Law 200 firm Hanson Bridgett.

"I approached leadership first by acknowledging that there are a wide range of reactions here at Hanson Bridgett and at our clients. The election is a time of heightened uncertainty," said managing partner Kristina Lawson. "I focused on creating a supportive environment where I had an opportunity to listen to concerns from all points of view and make sure they're heard, they're validated and they're addressed."

Lawson didn't limit her efforts to the day after Election Day, but instead aimed at being solicitous in the period immediately before the election as well as a longer period of time after results were announced.

“Our focus has been on leading with empathy, and listening is a big part of it,” Lawson said. “Another piece of our approach is to give ourselves some purpose during a time of politically charged change, in addition to all of those other things like making sure there’s open communications throughout the firm, walking the halls and making sure we provide our mental health resources to those who feel impacted in a particular way.”

The firm also found ways to promote community in the wake of the election, even as attorneys discussed a new legal landscape under the Trump administration, Lawson said.

“We put our worry about uncertainty into action by focusing on the changes a new administration would bring and how that would impact our clients’ businesses,” Lawson said. “There were a lot of team meetings and people getting together to talk about how we could respond. It gave people the community around the certainty and helped us focus on what we’re all about, which is providing legal services.”

A Wall of Silence

While Lawson was candid about her firm’s actions post-election, other firms have been less transparent. Both mental health and marketing consultants suggested that firm leaders were hesitant to send out messaging related to the election or its aftermath for fear of falling out of step with clients and accidentally signaling support for one political faction or the other.

“Firm leaders just aren’t talking about it,” said Katherine Wilson, co-founder of Fractional CMO. “In the quest for unity, they tend to say, 'Well, it’s just better to not say anything, because I don’t want to offend anyone.'"

But Lawson at Hanson Bridgett contended that it's possible to speak out in a way that's not going to alientate stakeholders, while also acknowledging the reluctance to offer public statements in the wake of the election.

“We, like many firms, didn’t offer any public statement. … That’s the approach most firm leaders are taking,” she said. “We’re taking that internal approach to make sure we recognize the stress and uncertainty that can accompany election results. … Law firms, professional services firms, corporations, aren’t issuing public statements as they did previously.”

Patrick Krill, a mental health consultant who founded Krill Strategies, suggested that from the perspective of a law firm managing partner, leaders can find themselves “in a somewhat conflicted position” given that the election results are expected to improve law firm business even if some employees are less than pleased with the outcome.

“There isn’t a playbook for navigating that,” Krill said.

Navigating the Tension

Yet, as Wilson said, there are ways to navigate uncomfortable communications without alienating people with different opinions. Wilson, Krill, and business lawyer turned executive coach and psychotherapist Gail Cummings all said that firms should at least acknowledge the storm of emotions overtaking their employees in the wake of the election.

"When there's a national event like this that impacts everybody, it's important [leadership] acknowledges what's going on," Cummings said. "They need to acknowledge that there's a lot of feelings and anxiety post-election, and this may be very distracting and hard for people to process. That acknowledgement is at least 50% of what they need to do."

Wilson and Cummings also emphasized the importance of community in terms of support.

“It’s important to communicate unity and acknowledge there is an impact here, that people may be feeling alienated or feeling scared,” Wilson said. “You have to acknowledge it for people to move on. … You can focus on the firm’s culture bringing people together and remind [employees] to come together with [the firm’s values] with the recognition that this might be a very difficult time for people in the organization and we need to support each other.”

Krill, meanwhile, focused on the importance of acknowledging the current environment and proposed that firms use this as an opportunity to remind employees of pre-existing mental health benefits.

“Generally speaking, it would be appropriate for any firm to acknowledge this was an enormously stressful period of time, and this is irrespective of who people supported in the lead up to the election. Just recognizing and acknowledging that would be warranted, as would be using that as an opportunity to remind law firm personnel that we take mental health and well being seriously, and we have resources,” he said.

Wilson encouraged firms to take this opportunity to “think of how they can use this to promote some more systemative resources and keep the train going.”

“This isn’t just one day. This is a shift for all of 2025 and beyond,” she said. “It’s not just something that’s a one and done message.”

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Securities Law News

Nov. 11, 2024, 12:44 PM PST

Comerica Bank Sues CFPB, Claiming 'Questionable' Investigation

By Olivia Alafriz

- **COURT:** N.D. Tex.
- **TRACK DOCKET:** 3:24-cv-02828

Bloomberg Law News 2024-11-12T09:50:33615716742-05:00

Comerica Bank Sues CFPB, Claiming 'Questionable' Investigation

By Olivia Alafriz 2024-11-11T15:44:31000-05:00

- **COURT:** N.D. Tex.
- **TRACK DOCKET:** 3:24-cv-02828

The Consumer Financial Protection Bureau's investigation into Comerica Bank's administration of the Direct Express program went beyond the scope of its authority, the bank said in a lawsuit.

Comerica Bank was "faced with no other alternative to halt the Bureau's unremitting regulatory overreach" but to sue, it said in a complaint filed Nov. 8 in the US District Court for the Northern District of Texas.

The bank has serviced the Direct Express program, created by the US Department of the Treasury's Bureau of the Fiscal Service to provide federal benefits recipients with debit card accounts, since 2008.

According to the complaint, the CFPB began investigating Comerica in 2021 pursuant to its authority to enforce the Consumer Financial Protection Act and Electronic Fund Transfer Act.

"The Bureau's improper attempt to expand the scope of these statutes in an attempt to bolster its own powers has resulted in a constitutional violation because the CFPB failed to give Comerica fair notice that the Bank's alleged conduct fell under those respective statutes," Comerica said in the lawsuit.

The bank has spent millions of dollars in order to cooperate with the CFPB's "legally questionable" investigation and continues to suffer substantial harm, it said.

Comerica asked the court to rule that the investigation was unlawful and that the CFPB's funding structure violated the constitution and the Dodd-Frank Act. The Supreme Court shot down similar arguments about the CFPB's funding mechanism in May, upholding its current funding system. Attacks on the agency have continued, but the CFPB has prevailed so far.

The CFPB didn't immediately respond to a request for comment.

Paul Hastings LLP represents Comerica.

The case is Comerica Bank v. CFPB , N.D. Tex., No. 3:24-cv-02828, 11/8/24 .

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High Court Won't Review Allstate Whistleblowers' Fraud Claims

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Litigation
Allstate Corp. signage stands on display outside the company's headquarters in Northbrook, Ill.

Photographer: Christopher Dilts/Bloomberg

- Whistleblowers challenged reverse false claims ruling
- “Sophisticated fraudsters” will be shielded, they argued

The US Supreme Court Tuesday said it won’t review whistleblowers’ claims that Allstate Insurance Co. and others violated the False Claims Act by hiding from Medicare its obligation to pay medical bills.

The US Court of Appeals for the Sixth Circuit affirmed rejection of a suit filed by Michael Angelo and MSP WB LLC, finding that they didn’t sufficiently allege a reverse false claim.

A reverse false claim occurs where a party engaged in a false or fraudulent effort to avoid making a payment owed to the government by that party, the appeals court said. The whistleblowers’ complaint—which says Allstate didn’t completely inform Medicare as required when it discovered it was a primary payer of a beneficiary’s health expenses—lacked sufficient detail regarding Allstate’s obligation to the government, the appeals court said.

The whistleblowers’ petition for writ of certiorari said the appeals court should have found that the whistleblowers adequately raised an indirect false claim by arguing that Allstate’s fraudulent conduct impeded the obligations of government contractors—Medicare Advantage organizations—to the government.

The Sixth Circuit’s decision improperly “serves to insulate sophisticated fraudsters by allowing them to avoid accountability by hiding behind unsuspecting intermediaries,” the petition said.

Allstate waived the right to respond to the petition Oct. 18. Defendant Insurance Services Office Inc. waived the right to respond to the petition Oct. 14.

MSP Recovery Law Firm, Armas Bertran Zincone, and Akeel & Valentine PLC represented Angelo. Barnes & Thornburg LLP represented Insurance Services Office. Winston & Strawn LLP represented Allstate.

The case is United States ex rel. Angelo v. Allstate Ins. Co. , U.S., No. 24-352, 11/12/24 .

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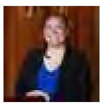
Ex-Ohio Speaker Larry Householder seeks pardon from Trump

cincinnati.com/story/news/politics/2024/11/12/lawyer-ex-ohio-speaker-larry-householder-seeks-pardon-from-trump/76217946007

POLITICS

Lawyer: Ex-Ohio House Speaker Larry Householder seeks pardon from President-elect Trump



Jessie Balmert

Cincinnati Enquirer

0:15

Former Ohio House Speaker Larry Householder will ask President-elect Donald Trump to release him from a 20-year prison sentence, his attorney said.

Householder was convicted of participating in a $60 million pay-to-play scandal involving Akron-based FirstEnergy. The utility helped him return to power and in exchange, Householder gave FirstEnergy a $1 billion bailout for two nuclear plants.

Householder was sentenced to 20 years in prison − the maximum penalty for his crimes. Householder's attorneys are appealing the conviction. But a new, Republican president might offer another alternative: a pardon.

"It is early in the process, but we are pursuing all measures to bring Speaker Householder home," Householder attorney Scott Pullins said in a message. The Rooster, a Capital Square blog, and Cleveland.com first reported the news.

The U.S. Constitution gives presidents the power to grant pardons, commutations and reprieves and eliminate fines and other penalties. Trump granted clemency to more than 200 people during his first term, including his former national security adviser Michael Flynn.

On the campaign trail, Trump promised to pardon those who rioted at the U.S. Capitol on Jan. 6, 2021. "My first acts as your next President will be to Close the Border, DRILL, BABY, DRILL, and Free the January 6 Hostages being wrongfully imprisoned!" Trump said on his Truth Social website.

But will Trump pardon Householder? It's too soon to tell.

Householder was an early Trump supporter in the Buckeye State and spoke at Trump's Republican National Convention in Cleveland in 2016. Householder flew on FirstEnergy's jet to Trump's inauguration. And FirstEnergy encouraged Householder to speak with Trump about the importance of nuclear energy.

FirstEnergy sought either a state or a federal solution for its financially struggling nuclear plants, which were later owned by a subsidiary. The company donated to pro-Trump groups and worked with well-connected operatives, including then-Ohio Republican Party Chairman Bob Paduchik and ex-Trump campaign manager Corey Lewandowski.

Ultimately, FirstEnergy did not convince the Department of Energy to give it a bailout, but the Ohio Legislature did.

Pullins did not give a timeline for Householder's clemency request. Householder's federal criminal attorney did not respond to a request for comment.

In addition to the federal charges, Householder faces state charges brought by Ohio Attorney General Dave Yost, also a Republican. If convicted, Householder would not be allowed to run for office again.

The former House speaker is accused of stealing about $1.2 million from his campaign account to pay for his criminal defense in the federal case. He has pleaded not guilty.

Jessie Balmert covers state government and politics for the USA TODAY Network Ohio Bureau, which serves the Columbus Dispatch, Cincinnati Enquirer, Akron Beacon Journal and 18 other affiliated news organizations across Ohio.

Fir Tree Alleges SBB Changed Statements to Hide Debt Breach (1)

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news.bloomberglaw.com/product/blaw/bloomberglawnews/exp/eyJpZCI6IjAwMDAwMTkzLTBjZDYtZGExMS1hM2ZiLTFlZDdlYzQ2MDAwMCIsImN0eHQiOiJTTE5XIiwidXVpZCI6ImF6NUFqdUs3c3hYR1c0ZUkwNFRheVE9PVEwczVZOWN3R25PejIwRnJlSmJ1enc9PSIsInRpbWUiOiIxNzMxNDEzNDg1MDQyIiwic2lnIjoid0JDektBYlpwMXMxV3JZQVB0WWJ2TUJycEx3PSIsInYiOiIxIn0=

Securities Law News
Nov. 8, 2024, 9:26 AM PST

Lucca de Paoli

Reporter

- Hedge fund made claim at London court hearing on Friday
- Fir Tree lost bid to have redactions removed from disclosure

Fir Tree Partners alleged that Swedish property company SBB intentionally altered the way it presented its results in order to conceal the fact that it had defaulted on its debt.

The New-York based hedge fund said that SBB "changed the presentation of its financial statements intentionally and for a non-neutral purpose," in court filings prepared for a London hearing on Friday.

The change revolves around SBB's so-called consolidated coverage ratio, a metric designed to assess a company's ability to repay its debts. Lawyers for SBB denied the claims made by Fir Tree in their written arguments.

"SBB continues to firmly reject the allegation that it is in breach and considers the acceleration notice received from the bondholder ineffective," the company said in an emailed statement.

The court case is part of an ongoing dispute, in which the hedge fund is trying to force SBB to buy back bonds it issued. Fir Tree holds almost €46 million ($49.5 million) worth of the company's bonds and says that there was a default on this debt in the first quarter of 2023.

If a default occurred SBB may have been forced to redeem the notes which were trading at around half their face value in March 2023, handing investors like Fir Tree a big win.

Stockholm-based SBB, became emblematic of Europe's real estate woes as higher interest rates depress valuations globally. The firm borrowed heavily in the era of cheap money, and found the pile of debt it had amassed unsustainable as borrowing costs soared. The value of the company's shares have fallen by more than 90% since their 2021 peak.

READ MORE: A Default Warning From Creditors Preceded SBB CEO's Exit

The allegations were laid out at a hearing in which lawyers for Fir Tree asked a London judge to force SBB to remove redactions from documents the company had disclosed as part of an ongoing dispute. The hedge fund lost its application and the judge said the attempt smacked "of something of a fishing exercise."

SBB didn't immediately respond to a request for further comment.

(Updates with company statement in fourth paragraph.)

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Jeremy Hodges

-

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Nov. 8, 2024, 2:10 PM PST

Farley, Champ Among Candidates to Succeed Gensler as SEC Chair

By Lydia Beyoud, Gillian Tan and Todd Gillespie

- Dan Gallagher, Mark Uyeda, Heath Tarbert also among contenders
- Trump advisers began talks with candidates after election win

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Farley, Champ Among Candidates to Succeed Gensler as SEC Chair

By Lydia Beyoud, Gillian Tan and Todd Gillespie2024-11-08T17:10:23163-05:00

- Dan Gallagher, Mark Uyeda, Heath Tarbert also among contenders
- Trump advisers began talks with candidates after election win

Richard Farley, a partner at Kramer Levin Naftalis & Frankel, and Kirkland & Ellis partner **Norm Champ**are among contenders to replace Gary Gensler as chair of the US Securities and Exchange Commission, according to people with knowledge of the matter.

Robinhood Markets Inc. legal chief Dan Gallagher, current SEC Commissioner **Mark Uyeda** and **Heath Tarbert**, a former chairman of the Commodity Futures Trading Commission, are also among those being considered for the job, said other people with knowledge of the matter, who asked not to be identified because the information isn't public.

Also in contention are former SEC Commissioner **Paul Atkins** and Robert Stebbins, a partner at Willkie Farr & Gallagher, some of the people said.

Members of President-elect Donald Trump's transition team and other advisers began talks with potential candidates following Tuesday's election, some of the people said. Discussions are ongoing, and a candidate may not be chosen for weeks. No matter Trump's choice, the next SEC chief is likely to scrutinize the major Gensler-era rules still pending or not yet in effect and seek less regulation for the digital-asset industry to comply with securities laws.

Farley, Champ and Uyeda declined to comment. Atkins, Stebbins, Tarbert and Gallagher didn't immediately reply to messages seeking comment.

Gensler was nominated by President Joe Biden in February 2021 and was sworn in two months later. His term ends in 2026, and he hasn't said whether he'll step down when Trump takes office.

Reuters reported earlier that Gallagher, Atkins and Stebbins are being considered for the job. The New York Post reported earlier on Farley.

--With assistance from **David Voreacos**, **Ava Benny-Morrison** and **Stephanie Lai**.

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