

Meta, Nvidia Appeals Could Have Broad Impact on Securities Cases

Documents

 [Nvidia Docket](#)

 [Meta Docket](#)

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- *Alston & Bird attorneys discuss SCOTUS securities fraud cases*
 - *Pleading requirements in the spotlight during arguments*

Bloomberg Law News 2024-11-21T09:50:24396950421-05:00

Meta, Nvidia Appeals Could Have Broad Impact on Securities Cases

By Susan Hurd and Carissa Lavin 2024-11-21T04:30:02000-05:00

- *Alston & Bird attorneys discuss SCOTUS securities fraud cases*
- *Pleading requirements in the spotlight during arguments*

The US Supreme Court's recent oral arguments in two securities litigation appeals, *Facebook, Inc. v. Amalgamated Bank* and *Nvidia Corp. v. E. Ohman J:Or Fonder AB*, could have major implications for what plaintiffs must do to satisfy the heightened pleading requirements for securities fraud class actions.

In both cases, Meta, previously called Facebook, and Nvidia want the high court to overturn the US Court of Appeals for the Ninth Circuit's denials of their motions to dismiss federal securities fraud claims.

The plaintiffs in *Facebook* claim that a particular risk disclosure in the company's Form 10-K annual report was misleading, because it presented the risk of third parties misappropriating Facebook's user data as "hypothetical," when Facebook knew there had been misappropriation at least once in the past.

Facebook argues that the past event was already a matter of public knowledge when the 10-K was filed and that Facebook believed the past event wouldn't cause any continuing or future harm.

The justices spent much time during oral argument Nov. 6 in a battle of the hypotheticals—offering and then tweaking various scenarios to assess whether it would ever be appropriate to require an issuer to disclose past events in a forward-looking risk disclosure section of SEC filings.

Many of these arguments turned on whether there was some sort of implied representation of past or present circumstances baked into a risk factor statement. Some justices voiced concern over assuming investors read anything into such statements and, if so, noting potential variability regarding what investors were likely to infer.

The justices also explored whether other existing regulations already require companies to disclose past adverse events, or whether the SEC could better answer the question of what further disclosure, if any, should occur in the risk factors section.

These questions suggest the Supreme Court is disinclined to impose a bright-line rule compelling disclosure of past occurrences in the risk factor section of public filings. The Supreme Court could, therefore, choose to issue a more narrow ruling that focuses on the unique facts of this case.

Many of the justices seemed to struggle with where to draw the line on disclosure in other cases, which also would seem to weigh in favor of a narrower ruling that wouldn't alter current disclosure practices.

The Supreme Court's Nov. 13 oral arguments in *Nvidia* sought to answer two questions:

- Whether plaintiffs attempting to plead fraudulent intent or "scienter" based on allegations that the company tracked issues of importance via internal reports must plead "the contents" of those reports with particularity
- Whether plaintiffs can rely on outside expert opinions to infer what these internal reports "must have shown," even though the expert had never worked for the company at issue nor had access to its internal reports and data

The plaintiffs in *Nvidia* relied on unnamed former employees who claimed the company generated internal reports tracking crypto-related sales. Nvidia argued these allegations failed to satisfy the heightened pleading standards for securities fraud claims, because the former employees didn't purport to know the specific contents of any specific report and didn't claim personal knowledge of the CEO's review of any one report prior to making statements challenged by the plaintiffs.

Some of the justices raised concerns about whether a requirement to plead "the contents" of internal reports was too burdensome a standard to impose because the plaintiffs won't likely have access to such documents until later in the case.

Nvidia's counsel explained they weren't asking the court to impose a standard requiring the plaintiffs to quote specific language from or to cite to the exact metrics included in internal reports. Instead, they argued, the plaintiffs should be required to allege particularized facts to both support the claim that the report said something contrary to the company's public statements and show the executive charged with securities fraud saw that report before making the challenged statements.

This reasoning is sound because something more should be required than simply a generalized description of the practice of generating reports. The statutory pleading standard expressly requires “particularized facts” that give rise to a “strong inference” of fraudulent intent.

There was some commentary about whether the court was being asked to weigh into the facts of the case as opposed to clarifying the applicable legal standard. Regardless, it seems highly unlikely the court would issue an opinion that watered down what are supposed to be the more challenging requirements for pleading securities fraud.

Even though time was spent discussing the plaintiffs’ reliance on an outside expert’s report, the lack of vigor in the questioning on this issue was surprising. From a practitioner’s perspective, it would be highly problematic to allow bought-and-paid for expert opinions to be considered at the motion to dismiss stage. Their consideration invites the type of peripheral disputes about the expert’s embedded—and perhaps flawed—methodologies and assumptions that arose here.

If there are public facts that an expert could marshal, then simply put those facts in the complaint. The addition of expert opinions at this early stage of a case presents a host of avoidable problems.

Both appeals present important issues for the court’s consideration. The allegations challenged in these cases are present in virtually every securities case that is filed. The court’s ruling on these appeals, thus, has the potential to strengthen the ability of defendants to secure early dismissal of securities fraud claims.

The cases are Facebook v. Amalgamated Bank , U.S., No. 23-980, argued 11/6/24 and NVIDIA v. E. Ohman J;Or Fonder AB , U.S., No. 23-970, argued 11/13/24 .

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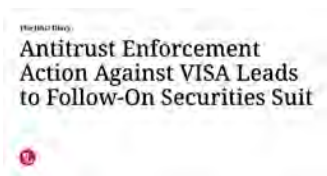
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Antitrust Enforcement Action Against VISA Leads to Follow-On Securities Suit

K [dandodiary.com/2024/11/articles/securities-litigation/antitrust-enforcement-action-against-visa-leads-to-follow-on-securities-suit](https://www.dandodiary.com/2024/11/articles/securities-litigation/antitrust-enforcement-action-against-visa-leads-to-follow-on-securities-suit)

November 21, 2024



By Kevin LaCroix on November 21, 2024

Posted in Securities Litigation

VISA

As I have previously noted on this site (for example, [here](#)), a long-standing and frequently recurring litigation pattern has been the filing of a corporate or securities lawsuit in the wake of an antitrust enforcement action. In the latest example of this pattern, the card payment processing company Visa has been hit with a securities class action lawsuit after the DOJ launched an antitrust enforcement action against the company in September. There are several interesting features to this new lawsuit, as discussed below. The November 20, 2024, complaint against Visa can be found [here](#).

Background

Visa is, according to the securities class action complaint, one of the largest digital payment platforms in the world. Nearly 60% of all debit transactions are processed by Visa. The company has been enormously profitable and enjoys very substantial profit margins. As the complaint also alleges, citing the DOJ's prior action halting Visa's planned merger with the digital payments provider Plaid, that "Visa's market dominance has previously landed it in the crosshairs of federal antitrust regulators."

On September 24, 2024, the U.S. Department of Justice sued Visa for monopolizing debit payment market. The DOJ's press release about the action can be found [here](#). In its civil lawsuit, the complaint for which can be found [here](#), the agency alleges four separate violations of the Sherman Antitrust Act. The complaint alleges that the company dominance of the debit payment processing market is the result of allegedly anticompetitive actions designed to prevent smaller competitors from gaining market share and competing with Visa. Visa, the complaint alleges, uses its existing monopoly position to freeze out competition and to coerce merchants to exclusively use its payment processing platform, thereby allegedly causing harm to consumers. The suit characterizes Visa's actions as "willful" and "unlawful."

The suit seeks a variety of remedies including permanent injunctions against the anticompetitive actions, such as coercive contract structures, that enable Visa to collect such high profits.

The Securities Lawsuit

On November 20, 2024, a plaintiff shareholder filed a securities class action lawsuit in the Northern District of California against Visa and certain of its executives. The complaint purports to be filed on behalf of a class of investors who purchased Visa's securities between November 16, 2023, and September 23, 2024.

The complaint alleges that while the company's SEC filings warned about the risks the company faces from litigation and regulatory action, the company's disclosure documents "fail to disclose that the Company was in violation of federal antitrust law, and therefore subject to lawsuits and penalties from by federal agencies."

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 class.

Discussion

Follow-on securities litigation in the wake of an antitrust enforcement action is an established phenomenon. In numerous prior posts, I have discussed specific situations in which companies caught up in antitrust enforcement actions can become the target of follow-on securities litigation.

For example, as discussed here, numerous companies in the poultry production industry were hit with follow-on securities lawsuits, after a number of companies in the industry were targeted with private antitrust litigation alleging that companies in the industry had engaged in price-fixing.

Similarly, as discussed here, a number of generic drug companies were hit with securities suits after news that the federal antitrust authorities were pursuing criminal antitrust charges against certain companies in the industry on price-fixing charges.

In addition, plaintiffs' lawyers initiated a number of securities suits against auto parts companies (refer, for example, here) following news that the DOJ and the EU were investigating companies in the auto parts industry for possible collusion and price-fixing.

While plaintiffs' securities lawyers have shown an interest in pursuing these kinds of follow-on claims, that does not mean that the cases have been particularly successful; indeed, many of them have in fact been dismissed outright, and, as I have previously noted, the dismissals arguably represent a strong signal that merely because a company is caught up

in antitrust proceedings does not mean that the company has committed or is liable for securities fraud. Indeed, some courts have evinced a skepticism of the plaintiff's efforts to try to "piggyback" a securities fraud claim onto allegations of antitrust misconduct.

The attempt to translate antitrust enforcement actions into potential liabilities under the securities laws has significant implications from a D&O insurance perspective. Under most public company D&O insurance policies, the policies' entity coverage extends only to securities claims. Many antitrust enforcement actions target the entity; but antitrust enforcement actions against the corporate entity would not trigger the D&O insurance policies' entity coverage. A securities claim against a publicly traded company typically would trigger the company's D&O insurance policy's entity coverage. In other words, the follow-on suit transforms a matter that would not trigger the policy into something that does trigger the policy. The follow-on suits accordingly are a phenomenon that should be of concern to D&O insurers.

With respect to this particular lawsuit, it has only just been filed and it remains to be seen how it will fare. However, it does seem worth noting that the disclosure documents the complaint quotes do seem to undercut many of the plaintiff's allegations; at a minimum, the disclosure seems inconsistent with the plaintiff's liability theory. For example, the complaint quotes the company's 2003 Annual Report as saying, in a section headed "We may be adversely affected by the outcome of litigation or investigations," that "in the event we are found liable or reach a settlement in any action, particularly in a large class action lawsuit, such as one involving an antitrust claim entitling the plaintiff to treble damages in the U.S., or we incur liability arising from a government investigation, we may be required to pay significant awards, settlements, or fines." In other words, the disclosure document specifically raised potential threat to the company of an antitrust lawsuit.

The other thing about the complaint is that it quotes extensively from the government's antitrust complaint's allegations about the company's market share and how the company was able to use its market position to produce huge profits. Presumably, the company's market clout and profitability were an important reason an investor would consider investing in the company. The fact that the company was an effective competitor presumably was one of the reasons it was an attractive investment. It seems ironic for the class action complaint to now cite the company's profitability and competitive success as evidence of securities fraud, especially since the company did expressly raise the possibility that it might face antitrust claims.

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Visa Hit With Investor Class Action Following DOJ Antitrust Suit

By Mallory Culhane 2024-11-21T12:01:58000-05:00

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 3:24-cv-08220](#) (Bloomberg Law subscription)

Visa Inc. and its top executives misled investors about its compliance with federal antitrust laws and the risks of “damaging antitrust investigations being conducted by federal regulators,” a [proposed class action](#) alleges.

The suit, filed in the US District Court for the Northern District of California, asserts the company and three of its top officers—the CEO, CFO, and CAO—violated the Exchange Act by failing to disclose in federal securities filings that Visa “was in violation of federal antitrust law,” which came to light in September in the [US Department of Justice’s suit](#) against the company.

Beibei Cai filed the suit on behalf of a proposed class of all individuals and entities who acquired Visa stock between Nov. 16, 2023, and Sept. 23, 2024.

Visa stated in its 2023 annual report filed with the US Securities and Exchange Commission that its compliance protocols are “designed to support our compliance with a wide array of regulations and laws,” including competition rules, according to the complaint.

But Cai says that statement and others in the annual and subsequent quarterly reports were materially false or misleading “because the company was not in compliance with federal antitrust laws and did not have effective internal programs and policies” to ensure compliance.

The proposed class action alleges the company and its executives “employed devices, schemes and artifices to defraud” and “made untrue statements of material facts or omitted to state material facts.”

The suit also alleges the individual executives “had actual knowledge of the material omissions and/or the falsity of the material statements,” intentionally deceived investors, and further “acted as controlling persons of the Company” and had the power to direct and cause Visa to “engage in the

unlawful acts.”

The day after the DOJ’s allegations came to light, Visa’s stock price declined roughly 5%, according to the complaint.

The [DOJ suit](#) alleged the company holds a monopoly on the debit card payment processing market and violated the Sherman Antitrust Act. The agency asserted Visa’s “exclusionary and anticompetitive schemes” deprive consumers of a competitive market for debit card transaction processing.

Visa didn’t immediately respond to a request for comment.

The Rosen Law Firm PA represents Cai.

The case is [Cai v. Visa](#) , N.D. Cal., No. 3:24-cv-08220, complaint filed 11/20/24 .

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Block Shakes Off Securities Suit Over Cash App Claims, Summers

By Ufonobong Umanah 2024-11-21T10:32:34000-05:00

- Investor said statements painted false picture of adequacy
- Complaint failed to meet 'basic pleading requirements'

Jack Dorsey's Block Inc. convinced a federal court to dismiss claims from an investor who said that the company failed to reveal the true reason former Treasury Secretary Larry Summers resigned from its board.

The investor failed to provide any particular reason that the digital payments company's statements over Cash App's internal controls were false, or particular facts that show its comments about Summers' departure were misleading, Judge Linda Lopez said Wednesday for the US District Court for the Southern District of California.

Block argued that the investor's complaint failed "to meet even the most basic pleading requirements of the Federal Rules of Civil Procedure, let alone the heightened demands of the Private Securities Litigation Reform Act of 1995."

Watt's allegations stem from claims that Cash App lacked adequate internal controls to prevent illegal activity, like money laundering. A 2024 proxy statement touted Cash App's success in a way that Watt found misleading given those claims, and she found issue with Block recommending that she and other investors re-elect the Board. She sought injunctive relief to invalidate the results of a 2024 annual meeting.

But alleging her voting rights were interfered with, thereby devaluing her stake in Block, was insufficient for a loss causation claim, the court said.

And it was also insufficient to assert "vague and conclusory allegations" that the proxy statement painted an misleading picture of adequate internal controls, it said.

"Even if Plaintiff had adequately identified what information was allegedly omitted from the Proxy

Statement,” Lopez said Watt hadn’t “adequately explained why it creates an impression of a state of affairs that differs materially from the one that actually exists.”

Watt was granted leave to amend.

Bottini & Bottini Inc. represented Watt. Morrison & Foerster LLP represented Block.

The case is [Watt v. Block, Inc.](#) , S.D. Cal., No. 3:24-cv-00867, 11/20/24 .

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Delaware Corporate Law Still Gold Standard Amid ESG Blowback

- *University of Delaware's Lawrence Cunningham defends Del. courts*
- *Courts are pragmatic, flexible, and can withstand political winds*

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Delaware Corporate Law Still Gold Standard Amid ESG Blowback

By Lawrence Cunningham2024-11-21T04:30:04000-05:00

- *University of Delaware's Lawrence Cunningham defends Del. courts*
- *Courts are pragmatic, flexible, and can withstand political winds*

What do Elon Musk and Democratic Massachusetts Senator Elizabeth Warren have in common? They are both wrong to support enacting federal law to replace Delaware's role as our corporate law capital.

Delaware maintains its stature because it favors no one. Critics from the right declare it has adopted an anti-shareholder and approach sympathetic to the environmental, social, and governance movement, while critics from the left blame Delaware for stalling ESG. Logic suggests that one of these sides must be wrong. The reality is, they both are.

As someone who works closely with corporate governance at the University of Delaware's Weinberg Center, I have had the privilege of studying firsthand how Delaware's approach to corporate law has provided stability and flexibility for businesses. Delaware's commitment to a balanced, sensible approach to corporate governance has allowed it to remain a leading force in the field, despite pressure from both sides of the ideological spectrum.

Former Attorney General William Barr and Washington lawyer Jonathan Berry wrote a column last year lamenting that Delaware's preeminence in corporate law is under threat. They credit Delaware's leadership to its sensible pro-stockholder jurisprudence, but caution that Delaware is risking that leadership by "falling in line with ESG to reject shareholder value as corporate law's lodestar."

A distinguished panel at Baruch College's Zicklin School of Business last week expressed the view that Delaware remains stringently shareholder-oriented, which constrains boards in promoting values viewed as socially good, especially those associated with ESG. The panelists posited that Delaware law would restrict ESG activities not designed to maximize shareholder value and opined that it is "at least partly responsible for the resistance the ESG movement has encountered in the United States."

I respectfully acknowledge the theoretical risk of such lopsided jurisprudence. But Delaware has neither abandoned shareholders nor outlawed ESG. Delaware remains committed, as it has been for at least a century, to the idea that boards owe their duties to the corporation and its shareholders. That requires all board actions to bear a rational relationship to shareholder value. That's neither Milton Friedman nor Ralph Nader, but the sensible and practical center.

While critics on both sides argue that Delaware's adherence to what they criticize will lead to a loss of its leadership position, other states, such as Texas and Nevada, are consciously competing to challenge Delaware.

Meanwhile, progressive legislators such as Warren and disgruntled executives such as Musk, the CEO of several companies including Tesla and SpaceX, call to preempt the states altogether with a national corporation law.

While such competition is real, it has always helped Delaware maintain its leadership and double down on the reasons for the state's success. Federal intervention risks replacing a rationally flexible system with a one-size-fits-all approach that would ignore the diverse needs of businesses across states.

Delaware's system, built on moderation and business sense, provides the adaptability companies need while maintaining a robust legal framework. It's this balance that has allowed Delaware to maintain its position as the gold standard for corporate law.

Delaware's preeminence is partly due to its deliberate pursuit of moderation. The state's approach is built to withstand prevailing political trends, ensuring stable corporate principles despite shifting ideological winds.

In the legislative realm, Delaware's corporate statute is crafted by corporate lawyers from the state bar association, not politicians. This entrusts the creation of corporate law not to elected officials but to a body of professionals who dedicate their careers to applying, discussing, and advising on those laws. Delaware's corporate code isn't a political tool—it's the product of decades of experience.

In the judiciary, Delaware's state constitution requires major courts to maintain a partisan balance. This ensures a nonpartisan bench that focuses on business law rather than political ideology, fostering stability and predictability in corporate decision-making.

This feature allows Delaware courts to remain insulated from the political turmoil that can skew legal outcomes in other states.

In the executive branch, even as political leadership changes, participants value the state's reputation for efficient handling of corporate affairs. The infrastructure that supports Delaware's corporate law is a permanent asset, not a partisan one.

This unique blend of stability and expertise percolates throughout Delaware's legal profession, acting as a buffer against the impacts of political and societal turbulence that afflict other institutions.

History shows that Delaware has consistently struck a reasonable balance between the competing interests of stockholders and other constituencies. By maintaining this pragmatic approach, Delaware has weathered past corporate storms and adapted without losing its commitment to shareholder value.

Today, the state stands at the center of ongoing national corporate debates, showing its capacity to adapt and lead with moderation. A federal corporate law would be a disaster; state competition is ingenious.

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FOR THE REST OF MY LIFE

news.bloomberglaw.com/daily-labor-...

The wider dispute is the latest in a series of legal showdowns over plans by influential insiders to flee for Nevada or Texas. Nevada is wielding a "no liability" reputation to market itself as the anti-Delaware, while Texas just set up its own business tribunal to vie with Delaware's Chancery Court. The most recent complaint quotes a prominent law professor who remarked online that "Nevada is where you incorporate if you want to do frauds."

"The company is offering zero consideration to its public, minority stockholders in exchange for a self-interested transaction that only benefits Trade Desk fiduciaries, and those stockholders do not have a meaningful opportunity to protect themselves at the ballot box," the lawsuit says.

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Peter Orlowicz @peterorlowicz.bsky.social · 2h

Nah, they can just reuse "what happens in Vegas stays in Vegas."



3



Lloyd's Beats Florida Insurer in Appeal Over Investor Litigation

By Olivia Alafriz

- Investor claim first made before policy began, 11th Cir. says
- Lower court had cited problems with insurance application

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Lloyd's Beats Florida Insurer in Appeal Over Investor Litigation

By Olivia Alafriz 2024-11-20T16:40:14000-05:00

- Investor claim first made before policy began, 11th Cir. says
- Lower court had cited problems with insurance application

Lloyd's of London beat out a Florida-based insurer for the second time in a dispute over defense costs for an investor lawsuit, but a federal appeals court took a different approach than a district judge in siding with Lloyd's.

"The claims at issue were first made before the policy's inception and, as a result, are excluded under the policy's terms," the US Court of Appeals for the Eleventh Circuit said in an unpublished opinion Wednesday.

The underlying investor dispute stemmed from the late 2017 sale of shares in single-purpose entities created to buy Anchor Insurance Holdings Inc. stock. Shortly after the sale, the group of investors uncovered information that led them to believe they overpaid for the shares, and demanded the purchase be rescinded. A lawsuit in Florida state court followed in June 2018, but Anchor wasn't added as a defendant until December 2018.

Lloyd's sued Anchor in 2021, seeking to rescind the directors and officers liability policy it issued to the insurer and recover payments for defense costs in the underlying suit. The London carrier argued it owed no coverage for the litigation because Anchor had failed to disclose the potential claims on its insurance application in October 2018, rendering the policy void at its inception. The US District Court for the Middle District of Florida sided with Lloyd's in a 2022 ruling, and Anchor appealed.

The Eleventh Circuit also ruled in favor of Lloyd's but took a different approach, holding that the underlying litigation wasn't covered because the investors' demands were made before the policy took effect.

"While we agree with the district court's ultimate decision in favor of Lloyd Underwriters, its current judgment rests on a theory of rescission, as opposed to exclusion," the appeals court wrote in its opinion, sending the case back to the lower court.

Judges Charles R. Wilson, Robin S. Rosenbaum, and Nancy G. Abudu sat on the panel.

Clyde & Co LLP represents Lloyd's. Bickford & Chidnese LLP and Parrish Law Offices represent Anchor.

The case is *Certain Underwriters at Lloyds, London v. Anchor Ins. Holdings Inc.*, 11th Cir., No. 23-10364, unpublished 11/20/24 .

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Lawyers in \$2.7 bln NCAA settlement warn against outside groups courting students

 [reuters.com/legal/litigation/lawyers-27-bln-ncaa-settlement-warn-against-outside-groups-courting-students-2024-11-20](https://www.reuters.com/legal/litigation/lawyers-27-bln-ncaa-settlement-warn-against-outside-groups-courting-students-2024-11-20)

Mike Scarcella

By Mike Scarcella

November 20, 2024 11:16 AM PST Updated 20 hours ago

May 26, 2021; College Station, Texas, USA; Detailed view of the NCAA championships logo during the NCAA West Preliminary at EB Cushing Stadium. Mandatory Credit: Kirby Lee-USA TODAY Sports/File Photo Purchase Licensing Rights , opens new tab

Nov 20 (Reuters) - Student athletes are being misled to believe they must hire outside services to secure their fair share of a multibillion-dollar settlement with the National Collegiate Athletic Association, lawyers for the plaintiffs told a judge this week.

The students' lead attorneys in a court filing , opens new tab late on Tuesday asked U.S. District Judge Claudia Wilken in Oakland to order companies advertising to prospective class members to make clear that such services aren't required to share in the \$2.7 billion settlement.

The deal resolves three lawsuits that claimed NCAA rules barring payments to athletes violated U.S. antitrust law. The settlement includes past monetary damages, and would allow schools for the first time to directly pay student athletes. The NCAA has denied any wrongdoing.

Hundreds of thousands of athletes stand to benefit from the accord, which Wilken preliminarily approved last month. The deadline to submit claims is Jan. 31, and a final approval hearing is set for April.

It is common and legal for third-party companies to pitch services to help class members get paid from litigation settlements.

In recent years, however, plaintiffs attorneys have raised alarms about fraudulent activity connected to some major settlements. Courts have been forced to grapple with imposter websites and fake claims for compensation.

The athletes' attorneys, including Steve Berman of Hagens Berman Sobol Shapiro and Jeffrey Kessler of Winston & Strawn, told Wilken that some vendors "have made various misleading statements to solicit class members," suggesting that hiring them was necessary to receive or maximize a settlement payout.

Berman in a statement on Wednesday said their warning to the court was meant "to make sure athletes aren't taken advantage of." He said there was "no need for athletes to need help making claims or to get charged for it."

The NCAA did not immediately respond to a request for comment.

Wilken in an order on Wednesday said she wanted to hear any opposition to the plaintiffs' requests by next Monday.

The case is In re College Athlete NIL Litigation, U.S. District Court, Northern District of California, No. 4:20-cv-03919-CW.

For plaintiffs: Steve Berman of Hagens Berman Sobol Shapiro; and Jeffrey Kessler of Winston & Strawn

For NCAA: Beth Wilkinson and Rakesh Kilaru of Wilkinson Stekloff; and Jacob Danziger of ArentFox Schiff

Read more:

Law firm Milberg skirts sanctions over fake claims in credit card fees case
US court finds 'robust' anti-fraud safeguards in Novartis settlement
US judge orders probe of phony Visa, Mastercard settlement website

Reporting by Mike Scarcella

In Talc Bankruptcy, Andy Birchfield Skipped His Deposition. Could He Face Sanctions?

 [law.com/texaslawyer/2024/11/21/in-talc-bankruptcy-andy-birchfield-skipped-his-deposition-could-he-face-sanctions](https://www.law.com/texaslawyer/2024/11/21/in-talc-bankruptcy-andy-birchfield-skipped-his-deposition-could-he-face-sanctions)

Amanda Bronstad

What You Need to Know

- A federal judge has scheduled a hearing next week to decide whether to grant a Johnson & Johnson subsidiary's request to sanction Beasley Allen's Andy Birchfield.
- U.S. Bankruptcy Judge Christopher Lopez, in Texas, has planned a trial in late January and early February on whether voting irregularities impacted Johnson & Johnson's nearly \$10 billion prepackaged bankruptcy plan.
- A coalition supporting Birchfield called sanctions 'unwarranted' and the result of an 'unfortunate breakdown in cooperating among the parties.'

A federal judge in Texas has scheduled a hearing next week to decide whether to grant a Johnson & Johnson subsidiary's request to sanction Beasley Allen's Andy Birchfield for skipping out on his deposition on Monday.

The sanctions motion comes as both sides are in the thick of discovery after U.S. Bankruptcy Judge Christopher Lopez, of the Southern District of Texas, scheduled a trial in late January and early February on whether voting irregularities impacted J&J's claim that it got 83% of the talc claimants to support its nearly \$10 billion prepackaged bankruptcy plan.

So far, only a handful of depositions have taken place, and none involved members of the Coalition of Counsel for Justice for Talc Claimants, including Birchfield, who is leading the opposition to the plan. J&J subsidiary Red River Talc filed the sanctions motion on Monday after Birchfield failed to appear. The motion seeks legal fees for all the attorneys who appeared at his deposition.

The coalition, in a Wednesday response, insisted that Birchfield's nonappearance came as no surprise given that he had moved to quash his deposition notice three days earlier. The sanctions motion, coalition lawyer Adam Silverstein, of Otterbourg in New York, wrote, was "overreaching and unwarranted."

"The motion reflects an unfortunate breakdown in cooperating among the parties, and the resulting use of deposition notices as weapons rather than as good faith attempts to obtain disclosure relevant to the panoply of substantive issues the court has scheduled to be heard

beginning in late January,” Silverstein wrote. “The coalition has listened carefully to the court’s guidance that the parties eliminate scorched earth litigation tactics, personal attacks, and rhetoric, and instead focus on the issues ultimately to be determined.”

His filing includes strings of emails showing that Red River’s lawyers already knew Birchfield, who is in Montgomery, Alabama, never planned to show up for Monday’s deposition.

“J&J noticed the date of the deposition without the professional courtesy of working out a mutually agreeable time,” Birchfield said in a statement to Law.com. “We provided written notice multiple times that I would be available in New York on Wednesday and not Monday even as we had motions before the court as to scheduling depositions.”

U.S. Bankruptcy Judge Christopher
Lopez for the Southern District of
Texas. Courtesy photo

At issue is the coalition’s requirement that Birchfield’s deposition be on the same day as R. Allen Smith, of the Smith Law Firm, “so that no strategic advantage may be gained by either witness.” Both attorneys share 11,000 talc clients, who Birchfield recommended oppose the plan while Smith, whose negotiations just before the Chapter 11 filing on Sept. 20 bolstered J&J’s deal by another \$1 billion, encouraged them to vote in support.

On Wednesday, Red River blamed the coalition for the breakdown. Even after its attorney, Kristen Fournier, a New York partner at King & Spalding, in a Wednesday email, agreed to have both attorneys deposed this Friday in New York, the coalition hadn’t responded, according to Red River’s reply.

“The reason cooperating on discovery has broken down in this bankruptcy case is because the coalition has refused to meaningfully participate in discovery,” John F. Higgins, of Porter Hedges in Houston, wrote for Red River.

In a quickly fired declaration, Silverstein wrote, “That is false. The coalition did respond.” He and Smith’s lawyer, Natan Hamerman, of Kramer Levin Naftalis & Frankel in New York, had discussed via email the possibility of having both of their clients be deposed on Thursday.

“I apologize to the court with burdening it with matters that professionals should be able to resolve amongst themselves,” he wrote.

Lopez has scheduled a Nov. 26 hearing on the sanctions motion.

'No Time for This Type of Game Playing'

The Birchfield deposition is one of numerous fights brewing in the talc bankruptcy, the third Chapter 11 case to resolve thousands of lawsuits alleging J&J's baby powder causes cancer. Two prior bankruptcies, filed by another J&J subsidiary, LTL Management, in the District of New Jersey, were dismissed.

On Nov. 15, the coalition also moved to quash notices to depose four of its other members: Beasley Allen's Leigh O'Dell; Mike Papantonio and Christopher Tisi, both of Levin Papantonio Proctor Buchanan O'Brien Barr Mougey; and Richard Golomb, of Golomb Legal. Such depositions, according to the quash motion, filed by Silverstein, were "duplicative and unwarranted" and aimed at obtaining "an unfair tactical advantage."

Mike Papantonio of Levin Papantonio
Proctor Buchanan O'Brien Barr
Mougey. Courtesy photo

Both Red River, which has accused Beasley Allen of mischaracterizing some of the talc claims of its clients, and an Ad Hoc Committee of Supporting Counsel, opposed the quash motion.

"Given the incredibly compressed schedule, there is no time for this type of game playing the coalition appears to be doing," Higgins wrote. "The coalition has thus far failed to produce a witness for a single deposition noticed by the debtor."

On Monday, the coalition sought discovery from Smith and other lawyers who voted in support of the plan: Anne Andrews, of Andrews & Thornton; Mikal Watts, of Watts Law Firm; Adam Pulaski, of Pulaski Kherkher; Jim Onder, of Onder Law; and Majed Nachawati of Nachawati Law Group.

Both sides also insist the other isn't providing enough discovery.

In addition, both the coalition and the U.S. Trustee's Office have moved to dismiss the Chapter 11 case, but, in contrast to the two prior talc bankruptcies, some of J&J's insurance providers, which have insisted they were shut out of the negotiations with talc claimants, have joined those motions.

In motions filed this month, the coalition and the U.S. Trustee's Office also are seeking to boot Red River Talc defense firm Jones Day from the case, citing conflict-of-interest reasons. Jones Day, which represented LTL Management in the two prior talc bankruptcies, "appears to be the chief architect of the transactions that ultimately were designed to resolve J&J's talc-related liabilities and were the first dominos to fall in a series of events leading to debtor ultimately being saddled with such liabilities and filing this bankruptcy case," according to the U.S. Trustee's motion.

The attorneys said in the motion, "This puts Jones Day on both sides of the same deal."

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Latest

Trending

New Suit - Trademark

Alpha Phi Alpha, the oldest intercollegiate historically Black fraternity, sued Quality Laser Design on Nov. 21 in Texas Northern District Court over trademark infringement claims. The court action, filed by Polsinelli, accuses the defendant of marketing and selling merchandise bearing 'substantially similar' designs to the 'Alpha Phi Alpha' marks. The case is 3:24-cv-02923, Alpha Phi Alpha Fraternity Inc.

[Read More](#)

New Suit - Copyright

Fokus Industries was hit with a copyright infringement lawsuit on Nov. 21 in Washington Western District Court centered on the song 'Space Jam' from the hit 1996 film of the same name featuring Lemonhead and 69 Boyz. The court case was brought by Sanders Law Group on behalf of Quadrasound Music, which contends that the defendant posted a 'discernable portion' of the song on social media without consent. Counsel have not yet appeared for the defendant. The case is 2:24-cv-01924, Watson Music Group, LLC. v. Fokus Industries, LLC .

[Read More](#)

Judge grants final OK to \$115M Oracle data privacy class action deal; Lawyers get \$28.75M

 norcalrecord.com/stories/666056211-judge-grants-final-ok-to-115m-oracle-data-privacy-class-action-deal-lawyers-get-28-75m

November 20, 2024

Lawsuits



Attorney Michael Sobol | Lieff Cabraser

A federal judge has granted final approval to a \$115 million to settle a class action lawsuit against Oracle for allegedly violating California privacy laws by allegedly using tracking technology to gather and sell information from hundreds of millions of people who used their software.

Under the deal, more than 3 million class members are scheduled to receive about \$25 each, court documents said.

Attorneys who led the legal action have been cleared to receive \$28.75 million from the settlement, or 25% of the settlement fund, according to court documents.



U.S. District Judge Richard Seeborg granted final approval to the settlement and granted the lawyers' \$28.75 million fee request in orders entered Nov. 15 in San Francisco federal court.

Richard Seeborg | cand.uscourts.gov

Seeborg serves as chief judge for the U.S. District Court for the Northern District of California, which is based in San Francisco.

The settlement would end a sprawling class action lawsuit lodged in 2022 by attorneys from the class action law firm of Lieff Cabraser Heimann & Bernstein. The lawsuit was filed on behalf of named plaintiffs Michael Katz-Lacabe, Jennifer Golbeck and Johnny Ryan.

The lawsuit asserted Oracle America of allegedly conducting surveillance on its users and then acting as a data broker, selling the information they gathered to other companies to use to target advertising.

Oracle ranks as the third largest software company in the world. They make and sell database software and cloud computing. Oracle products are used in a multitude of capacities, including to more easily manage massive amounts of data and support customer interactions, among many others.

The lawsuit specifically accuses Oracle of violating customer rights under the California state constitution, California state law and other state and federal privacy laws.

After Oracle failed to dismiss the lawsuit, the two sides entered mediation, which resulted in the \$115 million settlement in mid-July.

Under the deal, Oracle also agreed to alter its business to come into line with the privacy laws plaintiffs claim they violated and end their alleged illegal data brokering practices.

Judge Seeborg granted preliminary approval of the settlement in August.

Several potential class members lodged objections to the deal, mostly asserting plaintiffs settled for too little in a bid to bring the lawsuit to a conclusion, rather than contest rulings from Judge Seeborg that blocked claims brought under the federal Electronic Communication Privacy Act (ECPA.)

In a motion filed in support of the settlement, plaintiffs' attorneys acknowledged the laws under which they had brought the action could entitle them to perhaps many millions or even billions of dollars more. But they said they believed they faced a difficult road in securing such a larger payday through trial or settlement.

After Seeborg granted preliminary approval, the plaintiffs' lawyers said they sent claims information to more than 214 million potential class members.

However, as of late October, they said they had received only about 3.2 million valid claims.

This valid claims rate lined up with plaintiffs' lawyers initial estimates that about 1.5% to 2.5% of potential class members would ultimately submit valid claims.

Claimants had until Oct. 17 to submit eligible claims for a cut of the settlement funds.

"The objections share Plaintiffs' deep concern for the practices giving rise to this lawsuit, and thus primarily assert a wish for greater monetary compensation," plaintiffs' attorneys wrote in a motion seeking final approval of the deal.

"Respectfully, however, the objections fail to account for the risks, as noted by the Court at Preliminary Approval, inherent in the further litigation of these untested, novel claims. Based on the current estimate of valid claims, Class Members will recover approximately \$25 each. This is meaningful compensation for non-out-of-pocket losses, especially in light of the legal and factual risks associated with litigating this case."

In his final approval order, Judge Seeborg agreed the risks of continued litigation in court weighed in favor of granting approval, rather than attempting to wait until the ECPA claims are decided and try for a greater return.

"Most objections ... express that the \$115 million monetary relief is too low," Seeborg wrote. "These objections do not adequately account for the risks and delays involved in further litigation, making 'no effort to tie [their comments] to the disputes that would actually go to trial.'"

"Moreover, these objections make no effort to assess the risks of class certification, summary judgment, or trial for CIPA claims that this Court found 'barely' survived dismissal."

The plaintiffs have been represented by attorneys Michael W. Sobol, David T. Rudolph, Jallé H. Dafa, John D. Maher, Amelia A. Haselkorn and Nabila Abdallah, of the Lieff Cabraser firm, of San Francisco.

ORGANIZATIONS IN THIS STORY

U.S. District Court for the Northern District of California

Bloomberg Law News 2024-11-21T12:47:07115835497-05:00

Lawmakers Probe DOL Enforcement Data Pact With Plaintiffs' Firm

By Austin R. Ramsey 2024-11-21T09:00:01000-05:00

- Benefits regulator gave plaintiffs' law firm relevant information
- Lawmakers call on Labor Department watchdog to investigate

A newly unearthed information sharing agreement the US Labor Department maintained with a plaintiffs' law firm is under fire by GOP lawmakers, after a federal magistrate judge undercut the pact she said would allow regulators to "litigate in the shadows."

Republicans on the House Committee on Education & the Workforce called on the DOL's inspector general Thursday to investigate the department's Employee Benefits Security Administration after it shared confidential investigative material with a firm suing one of the companies that had been the target of an agency audit.

The DOL's "common interest agreement" with Cohen Milstein Sellers & Toll PLLC suggests a new link between federal benefits enforcement action and private-sector litigation brought by plaintiffs' firms.

Hundreds of workplace retirement plans have been the target of private-sector [fiduciary breach litigation](#) recently, costing companies millions of dollars in legal fees and settlements. Republican lawmakers and defense attorneys now want to know to what extent the government has been involved in gathering evidence for potential claims.

"That kind of practice erodes trust with the regulated community," said [Lars Golumbic](#), a Groom Law Group Chartered principal and litigation co-chair. "A fiduciary expects that a regulator will be fair and neutral, so to hear that the department has a practice of back channeling that information to law firms that sue employee benefit plans is troubling."

The DOL's [involvement](#) in private-sector litigation was uncovered by Golumbic and his team earlier this year as part of the discovery phase in a [fiduciary breach lawsuit](#) Cohen Milstein filed against an Envision Management Holding Inc. employee stock ownership plan.

When the parties reached an impasse over whether Envision's trustee should be compelled to hand over an audit letter it had received from the DOL, the plaintiffs in the case came to court with the document. They had received it not from the trustee but directly from the DOL itself.

"That's not something that we've ever seen before," Golumbic said. "Law firms have long suspected in these private plaintiff suits that the department would talk with class-action lawyers about the department's investigations, but now we understand that this practice had grown to a point that they are entering into formal information sharing agreements."

'Dangerous Precedent'

Court filings in the US District Court for the District of Colorado reveal both the defense attorneys and Magistrate Judge Maritza Dominguez Braswell were taken aback by the level of cooperation that appeared to exist between the government and the private-sector firm.

Common interest agreements are usually maintained by two parties in active litigation, but the DOL was not party to the lawsuit, nor had it filed a lawsuit against Envision Management Holding or the trustee Argent Trust Co. itself.

In September, Braswell [invalidated](#) the common interest agreement dated April 2023, saying such a deal "could set a dangerous precedent."

"It would allow a government agency to weaponize private litigation against some target *before* confirming the target should be a target," she wrote. "Moreover, the government could litigate in the shadows, without giving the opposing party an opportunity to adequately probe and defend itself."

Information the DOL shared with Cohen Milstein included the identity of five other retirement plans to which Argent Trust served as trustee, at least one of which the firm is actively suing, said Golumbic.

Neither Cohen Milstein nor the DOL immediately responded to a request for comment Wednesday.

Lawmakers want the DOL inspector general to uncover how many common interest agreements EBSA has with plaintiffs' firms. It's also unclear whether the DOL has the authority to share confidential data with law firms when that information isn't covered by work product privilege.

Other branches of the Labor Department besides EBSA have occasionally been known to use [these confidential pacts](#). The DOL's federal contractor watchdog office in 2019 was [required to turn over](#) some documentation related to agreements it had with attorneys suing Oracle for pay discrimination.

In that dispute, the agency defended the use of the agreements as "routine."

"A 'common interest agreement' pursuant to which DOL, in the midst of an open and ongoing investigation, secretly shares confidential information with a class action law firm is contrary to the public policy of encouraging plan fiduciaries to cooperate with EBSA investigations and to sponsor employee benefit plans voluntarily, eroding the public's trust in DOL as a regulator," House Committee on Education & the Workforce Chairwoman Rep. Virginia Foxx told the DOL watchdog office Thursday.

The DOL has broad subpoena power to force companies to hand over data that could be used against them in court, said Kent A. Mason, outside counsel for the American Benefits Council, an employer advocacy group.

"Plan sponsors are voluntarily providing benefits; it is wholly inappropriate for the government to secretly help plaintiffs lawyers sue them," he wrote in an unpublished alert to ABC members provided to Bloomberg Law.

"Congress and the Administration need to know the extent to which DOL is helping accelerate this dangerous trend," he added.

Diego Areas Munhoz in Washington, D.C. also contributed to this story.

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Plaintiffs Rush to Sue Over Mike Tyson, Jake Paul Fight

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Lisa Willis

Billy Howard of The Consumer Protection Firm. Courtesy photo.

A proposed class action lawsuit filed in Hillsborough Circuit Court, Florida, accuses Netflix and Meta Platforms, formerly Facebook, of breaching consumer trust after widespread complaints of buffering and glitches during the Mike Tyson and Jake Paul boxing match.

The lawsuit, brought by plaintiff Ronald "Blue" Denton, alleges the companies entered into an unlawful agreement that limited competition and compromised user experience.

"Sixty million Americans were hyped to see 'Iron Mike' Tyson, 'The Baddest Man on the Planet,' versus YouTuber-turned prizefighter Jake Paul. What they saw was the 'Baddest Streaming on the Planet,'" the complaint began. "Netflix delivered the first punch of the night."

Read the Complaint Here

In *Denton vs. Netflix*, Tampa attorney Billy Howard leads the charge for the proposed class.

"I have, at this point, over 100 people that have already reached out to me on this case to be part of this lawsuit," Howard said.

The complaint claims Meta agreed to restrict its video-streaming services to avoid competing with Netflix, while Netflix purportedly shared user data with Meta to enhance Facebook's advertising algorithms.

The lawsuit also claims the alleged arrangement harmed consumers by reducing competition in the streaming market and infringing on user privacy.

Both companies have faced scrutiny for data-sharing practices amid antitrust allegations.

Daniel Lawrence Wallach of Wallach
Legal, LLC in Hallandale Beach.
Courtesy photo

"This case may soon be removed to federal court in the Middle District of Florida pursuant to the Class Action Fairness Act," said South Florida sports and gaming attorney Daniel Wallach, who is not associated with the lawsuit "The claims of all class members likely exceed \$5 million in the aggregate, thereby making removal appropriate under CAFA."

But Wallach thinks arbitration might come first.

"Netflix will likely seek to have all claims arbitrated pursuant to the Terms and Conditions, which provide for mandatory arbitration in most cases—except for small claims under \$15,000—as well as a waiver of the right to a trial by jury and a waiver of the right to participate in a class action lawsuit," Wallach said. "Both the United States Supreme Court and the Florida state appellate courts have held that class action waivers are enforceable in consumer cases."

Fight Night Glitches

The issue arose during Netflix's live stream.

Viewers widely reported problems, including freezing and buffering, which marred the show. According to Down Detector, an online platform tracking service outages, nearly 85,000 of the 60 million viewers experienced disruptions.

Social media platforms were inundated with complaints on the night of the fight.

"We filed this class action because people were not given what they were promised," attorney Howard said.

Netflix has acknowledged the technical challenges.

"This unprecedented scale created many technical challenges, which the launch team tackled brilliantly by prioritizing the stability of the stream for the majority of viewers," In an internal memo reported by Bloomberg, Netflix CTO Elizabeth Stone wrote.

But while acknowledging the shortcomings, Stone referred to the event as a "huge success."

Meanwhile, though, attorney Howard, a partner at The Consumer Protection Firm, argued Netflix's attempt to frame the issues as minor ignores the frustration felt by of tens of thousands of customers.

"Netflix admitted they had technical problems and claimed to have tackled them 'brilliantly,' but their analogy is wrong. They didn't provide the product they promised," he said.

Howard felt Netflix's admissions and the documented scale of the issues strengthened the suit.

"We know this impacts 60 million people because Netflix has said so. We know there were problems because they've admitted it," Howard said. "We think a court will agree that this was a breach of consumer trust."

Other Litigation

A similar lawsuit has been filed in the U.S. District Court for the Central District of California, amplifying the legal challenges facing Netflix and Meta.

Both cases are in their early stages, and it remains to be seen whether the courts will grant class-action certification.

Court documents filed in Florida detail Denton's claim that he and thousands of others faced severe disruptions while trying to watch the fight.

Netflix, meanwhile, said it plans to continue investing in live-streaming events, with more planned for 2025. However, the lawsuits could cast a shadow over its ambitions in this area.

As the cases unfold, Howard thinks the litigation could set a precedent for how streaming platforms handle live events and consumer expectations in the future.

"I think to jump to baseball terms ... we're already on second base on this case. We already know it's 60 million people because they've said it. We know that they had problems because they've admitted it. We know that they think they tackled it 'brilliantly,' and we think that a court is not going to agree with that," plaintiff counsel said. "We've got admissions, we've got evidence, and we believe this will be a case we can get certified."

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Oceanside Unified School District sues pharma giants over insulin prices

 [kpbs.org/news/health/2024/11/20/oceanside-unified-school-district-sues-pharma-giants-over-insulin-prices](https://www.kpbs.org/news/health/2024/11/20/oceanside-unified-school-district-sues-pharma-giants-over-insulin-prices)

November 21, 2024

Health

Tania Thorne

/

KPBS

Exterior photo of the Oceanside Unified School District's administration office. November 1, 2021.

The Oceanside Unified School District is suing a group of pharmaceutical companies and pharmacy benefit managers for allegedly inflating the price of insulin, causing the district to overpay for its employees' health benefits.

The 200-plus page lawsuit filed in U.S. District Court in New Jersey is one of several filed in recent years alleging pharmaceutical giants Eli Lilly, Novo Nordisk and Sanofi conspired with the country's largest pharmacy benefit managers — Express Scripts, CVS Caremark and Optum RX — to artificially drive up insulin costs.

Oceanside's case joins scores of others, including those brought by several states that say ballooning insulin prices have caused them to overpay by hundreds of millions of dollars.

Become a KPBS sponsor

Frantz Law Group, which represents Oceanside Unified, allege in its complaint that drug manufacturers and pharmacy benefit managers — or PBMs — have routinely engaged in a scheme to inflate costs to the detriment of consumers.

The alleged scheme involves PBMs placing certain drugs on its list of covered medications — what's known as a formulary. In exchange, drug manufacturers allegedly provide PBMs with massive rebates and inflate drug prices in order to pay those rebates.

Frantz Law Group CEO James Frantz said an examination of school district financial records was underway to determine what losses the district incurred through the alleged overpricing. He also said his firm is speaking with several other school districts in San Diego County to see if they might join the litigation.

"Many people within the Oceanside Unified School District and across America rely on affordable insulin for their survival, and it's unacceptable for pharmaceutical companies and pharmacy benefit managers to manipulate insulin prices for the sake of excessive corporate profits," Frantz said in a statement.

Don't Blame Inflation for Big Law's Record High Billing Rates

By Roy Strom

Column

Bloomberg Law News 2024-11-21T09:49:33586551227-05:00

Don't Blame Inflation for Big Law's Record High Billing Rates

By Roy Strom 2024-11-21T05:00:02000-05:00

Welcome back to the Big Law Business column . I'm Roy Strom, and today we debunk the idea that law firm billing rate increases are correlated with inflation.

Big Law is poised to turn in a financial year that rivals the explosive growth of 2021, and the success is driven by a now-familiar strategy: raise billing rates at historical levels.

Billing rates rose 10% through three quarters at the 50 largest firms by revenue, according to Wells Fargo's law firm banking unit. That's the biggest driver behind a 14.6% revenue increase for those firms. Demand for lawyers' time, the other factor influencing revenue growth, rose 4.4% at the largest firms.

"We're at record high rates and it looks like that will continue in the near term," said Owen Burman, managing director at Wells Fargo's law firm banking unit. "Indications are rate increases requested for next year will be as high as they were in 2024."

We have a saying around here: Never underestimate Big Law's ability to raise rates.

You should never be surprised when billing rates rise. The presumption is that they will. Still, it's worthwhile to ask why they are rising at any given moment.

That's been an interesting question over the past couple of years, thanks to a new entrant in the equation: Inflation.

Start with 2022, a period when demand for Big Law's time was declining. If the law of supply and demand applied to high-end law firms (it does not seem to, at least through the mechanism of rates), that would be a recipe for *declines* in billing rates.

And yet, Big Law was raising prices.

One explanation offered then was that law firms were responding to inflationary pressures gripping the broader economy. Inflation in the US, by one measure, hit 8% in 2022, a level not seen since the 1980s.

For law firms, a narrative that inflation was driving up bills may have provided a release valve from pressure against the increases. "The cost of everything is going up; lawyers are no different!"

But that was always hard to believe.

For one thing, rates started increasing well before inflation began to run hot. From 2018 to 2020, when inflation was at or below 2%, worked rate growth (a rate clients agree to pay) at the AmLaw 100 expanded from nearly 4% to more than 6%, according to data from Thomson Reuters. That figure rose only slightly, to just above 7%, during the two years when inflation rose most.

And it's now even clearer that narrative was wrong.

Inflation has cooled rapidly since 2022, and it is now trending toward the US Federal Reserve's long-term 2% target. That's why benchmark interest rates are, if slowly, starting to decline.

If Big Law rates had any correlation to broader inflation, the rate increases would have slowed throughout the year. They've done the opposite. Standard rate growth through six months at all firms was 8.8%, and it ticked up to 9% through three quarters, Wells Fargo data shows.

Time to answer the question posed earlier: Why are rates rising so quickly now? Well, we start with the assumption they'll almost always rise by edict at the start of a new year. Then we find the marginal difference. This year, it seems law firms are focusing on a high-priced sector.

The incremental growth this year has been driven by an increase in transactional work, which typically charges higher rates for clients who are less sensitive to price, Burman said, adding that transactional practices are generally less prone to discounts.

There is little indication clients are pushing back on rate increases, he said. Realization rates, or the portion of a bill that the law firm collects, have remained stable. And law firms are collecting on their bills faster than they had been recently, he said.

"Buyers are very particular about what they're sending to Big Law firms, so they're getting very sensitive work sent there," Burman said. "In a normal environment, you'd see supply increase to absorb that, but it's a pretty restricted business. So, it's a big focus on high-rate, quality work. And it's being aggregated into the top firms."

In other words, Big Law firms have pricing power and they typically wield it.

Now, we don't know what will happen with inflation next year.

But we do know at least two things. Never underestimate Big Law's ability to raise rates. And inflation has little to do with it.

Worth Your Time

On Associate Bonuses: The market for year-end bonuses appears to be set, as Cravath Swaine & Moore said it will give associates up to \$140,000 in extra cash, Meghan Tribe reports. The amount matches a pair of bonuses previously announced by Milbank, a first-mover in the associate salary wars.

On Paul Weiss: The acquisitive law firm brought on two prominent litigators from Weil Gotshal, Meghan Tribe reports. The firm added Elizabeth Stotland Weiswasser, who will be one of five co-chairs of the firm's litigation department, and Anish Desai.

On Mass Torts: Delayed payouts, upcoming debt payments, and a dearth of new cases on the horizon are raising fears that law firms in the mass tort business are overleveraged, Emily Siegel reports.

That's it for this week! Thanks for reading and please send me your thoughts, critiques, and tips.

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Adani Group

\$20bn wiped off Adani corporate empire after bribery charges

US corruption charges against one of India's richest men sent shares in his businesses reeling



People in New Delhi, India, protest against Indian billionaire Gautam Adani on Thursday after he was indicted in New York over his role in an alleged multibillion-dollar bribery and fraud scheme © Reuters

Joseph Cotterill and **Leslie Hook** in London and **Andres Schipani** in Nairobi 2 HOURS AGO



More than \$20bn in market value has been wiped off Gautam Adani's corporate empire after US corruption charges against one of India's richest men sent shares in his businesses from ports to power plants reeling.

Adani Enterprises, the flagship of a sprawling group controlled by the businessman, closed down by more than a fifth on Thursday, shedding nearly \$9bn a day after US prosecutors alleged that he hid a \$265mn bribery scheme from investors and banks.

Other entities in the conglomerate shed more than \$11bn in market capitalisation.

A group that has been seen as synonymous with India's national infrastructure drive under Narendra Modi was plunged further into crisis on Thursday as Kenya tore up \$2.6bn in deals due to the US indictment.

Kenyan President William Ruto said in a national address he had directed officials to “immediately cancel” a proposed \$1.85bn deal for the Adani group to expand Nairobi’s international airport, and a \$736mn investment in power lines.

The Kenya deals had already thrust Adani into the spotlight this year as the east African nation reeled from violent mass protests over tax rises and perceptions of opaque dealmaking by Ruto’s government.

Ruto said the cancellation was “based on new information provided by our investigative agencies and partner nations”, underlining the immediate impact of US claims that Adani personally oversaw kickbacks to Indian officials to win renewables business.

The Adani group said on Thursday that the civil and criminal cases brought by the Securities and Exchange Commission and Department of Justice were “baseless” and that it was looking at legal recourse.

The share price plunge and sharp falls in Adani company bonds on Thursday threaten to wreck the group’s planned relaunch in international markets after it appeared to overcome separate fraud allegations by Hindenburg Research, the short seller, last year.

Adani Ports and Special Economic Zone, another big listed stalwart of the group, fell more than 13 per cent on Thursday, losing \$4.5bn. Listed power transmission and renewables businesses also fell by a fifth.

Trafigura, the trading house, also said on Thursday that one of its employees would step back after he was accused of facilitating the alleged bribes when he was a managing director of a Canadian pension fund investor in the Adani group.

The Securities and Exchange Commission charged Cyril Cabanes, a French citizen residing in Singapore, with participating in the bribery scheme and violating the Foreign Corrupt Practices Act.

Cabanes joined Trafigura earlier this year as chief executive of MorGen Energy, a hydrogen developer that is majority-owned by the trader.

Trafigura said that Cabanes would “step back from his day-to-day responsibilities” while it reviewed the matter. “Neither MorGen Energy nor any Trafigura Group company is a party to these proceedings,” it added.

Cabanes was a managing director at Canada's CDPQ, an Adani shareholder, from 2016 to 2023. CDPQ has said it is co-operating with US authorities and sacked the employees named in the indictment last year.

Cabanes did not immediately respond to a request for comment.

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Matt Levine's Money Stuff: Adani Green Didn't Mention the Bribes

By Matt Levine 2024-11-21T13:01:35629-05:00

Adani

Actually this is a greenwashing case:

US prosecutors charged Gautam Adani with helping drive a \$250 million bribery scheme, in a stunning blow to India's most powerful businessman and close ally of Prime Minister Narendra Modi.

Federal prosecutors alleged on Wednesday that Adani, one of the world's richest people, and other defendants promised to pay more than \$250 million in bribes to Indian government officials to win solar energy contracts, and concealed the plan as they sought to raise money from US investors. US law allows federal prosecutors to pursue foreign corruption allegations if they involve certain links to American investors or markets.

Here are the press releases from the [US Department of Justice](#) and the [Securities and Exchange Commission](#), charging Adani and several alleged co-conspirators with violating the Foreign Corrupt Practices Act (the anti-bribery law) and also committing securities fraud.

It's a little weird, no? Indian executives of an Indian company listed in India who allegedly paid bribes to Indian government officials to win Indian government contracts were charged with crimes in the US . Paying bribes to government officials seems like it must be a crime, but why is it a crime *in the US* to pay those bribes *in India*?

The gist of the allegations (from [the SEC complaint](#)) is that Adani Green Energy Ltd., an Indian public company that is part of the Adani Group, was in the business of developing solar and wind power projects in India. It won — apparently legitimately — a big contract from the Indian federal government to build solar plants and sell power, a contract worth “billions of dollars of revenue and more than a billion dollars in profit.” But actually the award didn't commit the government to buying power from Adani Green. First, the government would need to enter into power purchasing contracts

with Indian *state* government power companies, and the state governments refused to pay the prices that the federal government had agreed to. (“The price for energy capacity that [the federal government agency] had tentatively agreed to pay under the Letters of Award turned out to be too high,” in part “because aspects of the Indian renewable energy market had shifted and caused downward pressure on solar energy prices.”) So, says the SEC:

Executives of both Adani Green and Azure [Global Power Ltd., its partner on the deal, formerly listed in the US], including [Gautam Adani's nephew] Sagar Adani, began to pressure and to propose to pay “incentives” (i.e., bribes) directly to Indian state government officials to persuade them to cause the Indian state governments or the state-owned DISCOMs [energy distribution companies] to agree to Power Supply Agreements with SECI [the federal agency] at prices favorable to Adani and Azure.

I have to say, we talk from time to time around here about good and bad ways to describe bribery, and this is the good way. (I mean, to describe alleged bribery.) If you told me “we won a contract with an intermediary to supply power at a fixed rate, but the ultimate buyers balked because that rate is above-market, so we gave those buyers cash incentives to get them to agree to the contract,” I’d be like “that’s a little weird but I’m sure there’s some reason you want to sell at the contract rate, so paying incentives to make the ultimate buyers economically indifferent is probably fine.” And then if you said “well, technically the state governments are paying the contract rate, while the cash incentives are being paid to the state government *officials* in their personal accounts,” I’d be like “ah you got me you rascal, those are bribes!”

But having a line item in the budget for “incentives” strikes me as much better than having one for “bribes,” or for “nudge nudge,” or maybe even for “consulting fees.” The SEC complaints and the criminal indictment do not present an overwhelming case that the “incentives” were paid to the government officials personally, but:

Gautam Adani, with Sagar Adani’s assistance, ultimately paid or promised bribes to government officials in numerous Indian states worth hundreds of millions of dollars to cause those state governments and their officials to enter into Power Supply Agreements with SECI. Adani Green’s internal records documented these payments or promises.

Again, having your internal records document the incentives is good! Makes them look like incentives, not bags of cash delivered under the table. Or the [criminal indictment](#) lists some allegedly incriminating communications, all of which could plausibly be legitimate:

On or about November 24, 2020, [Azure CEO Ranjit] GUPTA exchanged electronic messages with the defendant SAGAR R. ADANI regarding efforts to convince states to purchase power under the Manufacturing Linked Project, as part of which GUPTA wrote, “the advantage we have is that the discoms are being motivated.”

“The state power companies are being motivated” is good! What you don’t want is “the state power company *executives* are being motivated,” but he didn’t say that! This is obviously not legal advice and didn’t work, but still.

Also from the criminal indictment:

When communicating about the bribery scheme, [various alleged conspirators] often referred to the defendants GAUTAM S. ADANI and [Adani Green Chief Executive Officer] VNEET S. JAAIN by code names. Specifically, among other things, [they] referred to GAUTAM S. ADANI as “SAG,” “Mr[.] A,” “Numero uno” and “the big man,” and referred to JAAIN as “V,” “snake” and “Numero uno minus one.”

Okay those are not code names, those are at most *nicknames*. (“Mr. A,” “SAG” and “V” aren’t even nicknames, they’re just initials, come on.) I promise that, in the last hour, hundreds of employees of dozens of companies have sent entirely legitimate and routine business emails referring to their bosses not by name but as “the big man,” and there have probably been a few perfectly legitimate “snakes” too. “Numero uno minus one” is very funny however.

Anyway! Why is this a US crime? Part of the answer is that Azure was listed in the US until 2023. But another important part of the answer is that Adani Green sold \$750 million of dollar-denominated bonds in 2021, about \$175 million of which went to US investors. And those investors, says the SEC, were misled:

In connection with its offer and sale of the Notes and before it sold any Notes, Adani Green provided the Offering Circulars to potential investors. ...

The Offering Circulars also repeatedly disclosed to investors that an “integral” part of Adani Green’s “philosophy” is its “environmental, social, governance (‘ESG’) policy” and that Adani Green operates pursuant to an “ESG Framework.” ...

The Offering Circulars highlighted to potential investors that, as part of Adani Green’s commitment to

ESG principles, it is a “participant of the United Nations Global Compact, committing [Adani Green] to supporting the ten principles of the United Nations Global Compact in human rights, labor, environment and anti-corruption.” Principle 10 of the United Nations Global Compact, signed by Adani Green and highlighted in connection with the Offering and the Notes, says that “Businesses should work against corruption in all its forms, including extortion and bribery.”

The Offering Circulars then disclosed to potential investors that a “core” part of the success of Adani Group — of which Adani Green is a part — is its philosophy of “Growth with Goodness” and its commitment to ESG principles. ...

The Offering Circulars then conveyed that Adani Green’s efforts related to environmental, social responsibility, and good corporate governance principles — which included Adani Green’s purported efforts with respect to anti-bribery and anti-corruption — should be meaningful to investors’ investment decisions. ...

The Offering Circulars’ many statements representing to potential investors that a core tenet of Adani Green and its Board was preventing bribery and corruption gave any reasonable investor comfort that none of Adani Green’s executives or directors were then involved in a corrupt bribery scheme. This was misleading. In fact, months and weeks earlier, Adani Green’s leadership, Gautam Adani and Sagar Adani, had been personally involved in such a corrupt bribery scheme, a fact that was not disclosed in the Offering Circulars.

Those bonds were [repaid in full earlier](#) this year, so the US investors who bought them didn’t lose any money. Arguably they were still defrauded, because they bought bonds that were *financially riskier* than they expected: The standard argument is “the bribes make Adani’s business riskier, and if the market knew about them, the bonds would have priced at a higher yield.” (And in fact Adani Group bonds sold off when the charges were announced.) But that is a little unsatisfying: Adani Green sold the bonds to investors and then paid them back as promised, so while they were arguably defrauded in expectation, they did not actually lose any money.

But that’s not the SEC’s argument. Rather, the argument is that the investors were defrauded because they *thought the bonds were ESG*, but the bonds were not in fact ESG. Or, rather, the bonds were issued to fund solar projects, yes, but their social and governance credentials were suspect, what with the bribes:

In its annual reports, news releases, and other self-published documents, Adani Green has

positioned itself as a leader in environmentally conscious, socially responsible, and good corporate governance principles, often referred to as environmental, social, and governance or “ESG” principles. In this way, Adani Green has sought to differentiate itself from its peers and other potential investments or issuers in developing countries that might be susceptible to corruption and bribery issues and to specifically appeal to investors who prioritize ESG principles or ESG-related investments.

Back in 2021, this was a real thing. Investors wanted to be ESG: They wanted to put their money into companies that had good environmental, social and governance performance. A large, stable, revenue-generating company that raised a lot of money in international capital markets and built solar power plants in developing countries was *extremely* attractive to a certain class of international ESG-focused investors, but it would be significantly less attractive if it disclosed “also we pay tons of bribes.” Pretending to be very ESG, while in fact (allegedly) being a solar power company that paid bribes, really *was* a way to defraud investors. But the fraud was less “you took their money and didn’t give it back” and more “you took their money and didn’t give them what they really wanted, which was good ESG performance.” That is the crime here.

Not for long, though, maybe. I wrote last week that “Gary Gensler’s SEC has a few months to bring its last greenwashing cases,” but that the Trump administration will presumably be anti-ESG and will sue companies for *doing* ESG stuff, not for *falsely pretending* to do ESG stuff. Also ... I mean ... bribes ... you know ... never mind. “Prosecuting the case would take months, if not years, meaning that it will fall to the incoming Trump administration’s Justice Department to determine how to proceed,” notes Bloomberg News. But for now, it’s illegal in the US for Indian companies to pay bribes in India.

Rated feeders

Banks and insurance companies have risk-based capital requirements. You need to have more capital against risky assets than against safe assets. Schematically, it might go something like:

- 1. You need 2% capital against AAA-rated bonds.
- 2. You need 6% capital against BB-rated bonds.
- 3. You need 8% capital against unrated bonds.
- 4. You need 30% capital against equity exposures.

Something like that, though these are not real numbers. So if you buy \$100 of unrated bonds, you need \$8 of capital, because those bonds are risky.

Are they? An essential insight of finance is that they are *partially* risky. One hundred dollars of unrated bonds might not pay back the full \$100, but they'll probably pay back at least, you know, \$60, even if things go really wrong. So what you do is you put the bonds in a box and slice the cash flows into new bonds:

- 1. The first \$60 of payments go to the Tranche A bonds, which get an AAA rating.
- 2. The next \$30 of payments go to the Tranche B bonds, which get a BB rating.
- 3. The last \$10 of payments go to the equity tranche, which doesn't get a rating.

And then you buy *all* of the tranches. Now you need \$1.20 of capital (2% of \$60) against the Tranche A bonds, \$1.80 of capital (6% of \$30) against the Tranche B bonds, and \$3 of capital (30% of \$10) against the equity tranche. That's a total of \$6 of capital, which is less than the \$8 you'd need against the unsliced bonds. Again, these numbers are not real, they're just to give you a sense of the possibilities.

The point is that there are two things going on here. One is a real thing: If you slice a pot of cash flows into junior and senior claims, the senior claims really *are* safer than the unsliced pot, so they *should* get a better rating, lower capital requirements, etc.

But the other is a pure regulatory arbitrage: If you slice a pot of cash flows into junior and senior claims, *and then buy all of them*, the total of all of the claims can't be safer than the unsliced pot. But the capital requirements are always going to be a bit arbitrary, and maybe you can find a slicing that gets you a better result than leaving the pot alone.

We have talked about this before, but here's a good Bloomberg News story on rated feeders:

The vehicles, known as rated feeders, package stakes in private debt funds into bonds, making it cheaper for insurers to buy them by effectively cutting the amount of capital that they need to hold against those investments. ...

Rated feeders are part of a broader push by private credit firms to convince the US insurance industry, which controls trillions in long-term capital, to pour money into the asset class. In fact, for many of private lending's biggest players, insurers have become so critical to their growth efforts that they've built out or bought large insurance units of their own.

Rated feeders allow those units and other insurers to funnel cash into private credit — which typically finances highly leveraged companies and offers juicier yields relative to conventional bonds and loans — in a capital efficient way, backers argue. ...

A private credit firm looking to raise capital will create a standalone investment vehicle to house a stake in its fund. Insurance investors will often buy a vertical slice of the securitization in the form of high-grade and junk-rated bonds as well as a subordinated equity tranche, in exchange receiving a share of the interest and principal payments from the assets in the fund.

Buying the vehicles lets insurers sharply reduce the money they must set aside to back their exposure to the private credit fund, since US insurance industry rules apply capital charges of 30% or more to holdings of fund shares, compared to low-to-mid single digits for most debt.

“Fund shares” are, categorically, risky, so they get a 30% capital charge. “Investment-grade bonds” are, categorically, safe, so they get a 2% capital charge. *Most* of the fund shares can be repackaged into investment-grade bonds. So they are.

AllHere

If you run a private artificial intelligence startup, how much are you allowed to lie to investors? The answer is not “none,” surely. This is not legal advice. *Legally*, the rules for private startups are roughly the same as the rules for public stock offerings: You're not allowed to lie to investors about material facts to get money out of them. But *practically*, venture capital investors are looking for visionary founders and are willing to accept a *certain* amount of fraud. If you call some of your one-off revenue “annual recurring revenue” to make your numbers look better, your VCs might not catch you, and if they do they might not complain, and if they do complain, they might complain privately to you and not embarrass themselves by going to the police.

I tend to think — and this is very much not legal advice — that to get arrested for startup fraud, you often have to (1) do a certain amount of fudging of the numbers *plus* (2) do some egregious

embarrassing additional stunt. We have talked a few times about Carlos Watson, the founder of Ozy Media, who was criminally charged and convicted for defrauding his startup's investors. Watson's defense was, sure, he made exaggerated claims about the company's business, but every startup founder does that, that's not a crime. That defense is not legally viable, and didn't work with a jury, but you can sort of see why it would be a little sympathetic. The problem is that "Watson coached his co-founder to impersonate a YouTube executive [on a due diligence call] to get Goldman Sachs bankers to back the media startup," and *that* is crazy. If you do *that*, your investors will call the police.

Anyway [this isn't quite that but it's close](#):

The founder of an artificial intelligence start-up focused on education was arrested and charged with defrauding her investors, lying about the company's profits and falsely claiming that some of the largest school districts in the country, including New York City's, were her customers.

The founder, Joanna Smith-Griffin, started the company, AllHere Education, in 2016, with the goal of using artificial intelligence to increase student and parent engagement and curb absenteeism.

In the years that followed, Ms. Smith-Griffin, 33, misrepresented AllHere's revenue and customer base to fraudulently raise almost \$10 million in funds, according to the indictment. Once the company's valuation had climbed, she sold some of her stake in it and spent hundreds of thousands of dollars on a down payment for a new home and on her wedding.

Here are the Justice Department [announcement](#) and [indictment](#), and some of it is garden-variety stuff. (Prosecutors complain that, in her Series A Investor Deck, there was a page about customers that includes the *logos* of several school districts that were not actually AllHere customers, though with no explicit claim that they were.)

But the collapse of the fraud is a bit much: In May 2024, Smith-Griffin was late sending out financial statements to her investors, so a VC investor contacted AllHere's outside accounting firm directly, and the accounting firm "sent Investor-1 AllHere's true Q1 2024 financials," which were a lot worse than the fake ones Smith-Griffin had allegedly been sending. The investor got suspicious, the board of directors started asking questions, and "as part of that reconciliation, on or about June 10, 2024, Consultant-1, an outside financial consultant to AllHere, participated in a video teleconference call with Director-1 and Director-2," two outside directors representing AllHere's VC investors.

During that call, Smith-Griffin allegedly emailed the directors from a fake email account under the

consultant's name. During the call! What do you think happened?

Director-1 told Consultant-1 during their video call that she had received Consultant-1's email. Consultant-1 responded that Consultant-1 did not have an AllHere email account, did not send that email, and had not been in contact with JOANNA SMITH GRIFFIN, the defendant, since approximately in or about April 2024, over a month prior.

The board more or less immediately fired her and, one assumes, went to the police. You can't impersonate people on calls with investors! Why does this keep coming up?

Crypto winter is over

Bitcoin is nearing \$100,000 but this is probably [the most bullish crypto news I've seen in two years](#):

"Comedian," by Italian artist Maurizio Cattelan, sold for \$6.2 million at auction Wednesday night.

The piece consists of an ordinary, yellow banana affixed to a white wall with a diagonal piece of silver duct tape. Since Cattelan debuted the work at Art Basel Miami Beach five years ago, what's become known as the Banana has turned into a viral sensation. It's attracted crowds, copycats, and even its own cryptocurrency. ...

Ultimately it sold to Chinese collector Justin Sun, founder of cryptocurrency platform Tron. He intends to pay for the piece in crypto. After the sale, Sun said he considered the piece to be historic, but he also said he has plans of his own for the Banana: "In the coming days, I will personally eat the banana as part of this unique artistic experience, honoring its place in both art history and popular culture."

A year ago, the guy who bought and ate the banana [would](#) have [been](#) Ken Griffin. Now it's extremely crypto guy Justin Sun. There is an obvious affinity between a crypto boom and contemporary art collecting, in that:

- a crypto boom makes a lot of people fantastically wealthy quickly and without much effort, so they have money to spend; and

- it feels like a joke, so they might be inclined to spend their money on jokes, and the contemporary art market produces a lot of expensive jokes.

And so in the last crypto boom lots of art, particularly *this* sort of art, was bought by crypto entrepreneurs. And now we are back. For the record:

- 1. “Comedian” is obviously good and funny.
- 2. I hate to hand it to Sun, but “I will personally eat the banana” is also obviously good and funny.
- 3. There has been some [crypto drama](#) about a “Comedian”-inspired memecoin, \$BAN, apparently launched by a Sotheby’s employee on “the Pump.Fun platform”; I cannot personally bring myself to care about it but perhaps you disagree.

Pivot to AI

Though, [counterpoint](#):

Barry Silbert, the founder of the beleaguered crypto conglomerate Digital Currency Group, unveiled plans Wednesday to launch a decentralized artificial-intelligence company called Yuma.

The company will provide capital for entrepreneurs to build applications on the Bittensor network, a fledgling blockchain that is still largely unknown outside crypto circles. ...

“There is a lot of hype because there is a lot of potential,” said Noelle Acheson, a crypto macro strategist. “I am skeptical because I just don’t think the AI users are going to care that much” about whether the network is decentralized.

“The question always is: Can you do this without a blockchain?” she said.

Some of the intellectual work of crypto firms and entrepreneurs pivoting to AI involves saying “actually, in a sense, crypto really *is* AI, so really we were right all along.” Thus, AI, but on the blockchain.

Things happen

[Thrive Capital](#): the venture firm staking billions on a few big bets. Elon Musk's [xAI](#) Startup Is Valued at \$50 Billion in New Funding Round. BofA targets regional banks to expand [risk transfer market](#). [Forest-Preservation Credits](#) Win Seal of Approval From Industry Watchdog. UK Households Will Get Paid to Not Use Power at Peak Times. Hedge Fund Two Sigma Cuts 200 Staff After Strategic Review. The US Stablecoin Startup Fueling a \$3 Billion Boom in Africa. Bill Hwang Sentenced to 18 Years in Prison in Archegos Case. The Lender Bailing Out Desperate [Luxury Property Owners](#)—for a Price. 'Wicked' Fans [Singing in Movie Theaters](#) Are Anything but Popular. Crude oil [baths](#).

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- 1. From [the SEC complaint](#): “Adani Group (or the ‘Group’) is a privately held multinational conglomerate headquartered in Ahmedabad, India, with numerous entities throughout India and in, among other places, Australia, Indonesia, Mauritius, Panama, Singapore, and the United Arab Emirates. Gautam Adani formed Adani Group in 1988 as a commodity trading firm and subsequently expanded it to own and operate airports, shipping ports, and railways; to produce and distribute power and energy through mining and thermal and renewable energy production; and to be India’s largest trader of coal. Adani Group’s holdings currently have a market capitalization of more than \$200 billion. Adani Green (or the ‘Issuer’) is a public limited company formed by Gautam Adani and Rajesh Adani in 2015 under the laws of India, with a principal place of business in Ahmedabad, to be the renewable energy arm of Adani Group.”
- 2. When I was an investment banker my desk sometimes referred to a colleague — affectionately! — as “Head of the Snake,” but we were weird.
- 3. The criminal indictment notes that Adani Green issued new bonds in 2024, and charges that those bonds too involved fraud (because of the past bribes).

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'The Corrupt Solar Project': Key US bribery charges against Adani and what's next

 [reuters.com/legal/what-are-us-findings-related-gautam-adanis-bribery-charges-2024-11-21](https://www.reuters.com/legal/what-are-us-findings-related-gautam-adanis-bribery-charges-2024-11-21)

Reuters



Indian billionaire Gautam Adani speaks during an interview with Reuters at his office in the western Indian city of Ahmedabad in this April 2, 2014 file photo. REUTERS/Amit Dave/File Photo Purchase Licensing Rights , opens new tab

NEW DELHI, Nov 21 (Reuters) - Indian billionaire Gautam Adani has been indicted by U.S. prosecutors for conspiring with executives of a formerly New York listed company to devise a \$265 million scheme to bribe Indian officials to boost their solar energy business. Adani Group denied the allegations as "baseless", while Indian government officials haven't commented so far.

Here is an overview of the investigation and allegations revealed in the U.S. indictment:

WHAT ARE THE MAIN ALLEGATIONS?

U.S. prosecutors charged Gautam Adani, his nephew Sagar Adani who is director at Adani Green, and six others with alleged bribery and fraud related to renewable energy projects in India that benefitted the tycoon's company and India's Azure Power, which was listed on the NYSE until late 2023.

In 2020, the unsealed indictment from Wednesday shows, executives of Adani Green and Azure "knowingly and wilfully conspired" and agreed to "corruptly" offer, authorise and pay bribes to government officials in India to "obtain or retain business advantages".

Adani and his executives have also been accused of making false and misleading statements to investors and lenders in the United States regarding the company's anti-bribery commitments and practices while raising money from them.

Between 2021 and 2024, Adani raised more than \$3 billion in loans and bonds, including from investors in the United States.

"Gautam and Sagar Adani were engaged in the bribery scheme during a September 2021 note offering by Adani Green that raised \$750 million, including approximately \$175 million from U.S. investors. The Adani Green offering materials included statements about its anti-corruption and anti-bribery efforts that were materially false or misleading," the U.S. Securities and Exchange Commission said.

The Adanis earlier this year made misleading statements to the public, the Indian stock exchange and investors despite being made aware of the U.S. investigation in 2023, the prosecutors alleged.

The chart shows the fall in share price of various Adani group companies a day after the US indictment. This fall is compared to the share performance after the Hindenburg news report on the Adani group

HOW WERE BRIBES TRACKED, PAID?

Sagar Adani, executive director of Adani Green and nephew of Gautam Adani, used his mobile phone to track details of the bribes offered to Indian officials, U.S. authorities alleged.

In a meeting between some Adani and Azure executives in 2022, Gautam Adani detailed aspects of the bribery scheme including steps he personally took to offer money to government officials, the U.S. authorities said.

Executives from Azure also prepared an analysis using Excel and PowerPoint to summarise the different ways in which it could repay Adani Green for the bribes it had paid to benefit both companies. For one of the projects of 2.3 gigawatts of power, the bribe was calculated at around \$30,000 per megawatt.

One way discussed was to describe the payment internally at Azure as a "development fee", but it instead used another option of getting Azure to transfer one of its projects to Adani in lieu of part of the payment, U.S. authorities alleged.

Azure in a statement said former officers of the company referenced in the U.S. indictment were no longer associated with the company, and the company continued to cooperate with U.S. authorities.

WHAT WERE THE POWER PROJECTS IN QUESTION?

U.S. authorities called the dealings in their indictment "The Corrupt Solar Project".

Between 2019 and 2020, Adani Green and Azure were awarded renewable energy tenders by Solar Energy Corporation of India (SECI), a federal government-owned entity.

The project involved building solar plants in several Indian states.

U.S. authorities alleged Adani and others devised a scheme to bribe Indian state government officials to enter into agreements with SECI, "which would benefit" Adani subsidiaries and Azure.

The bullet bar chart shows the market value of the 10 listed Adani companies on Nov. 19 in grey and that on Nov. 21 in purple.

HOW DID U.S. FEDERAL AGENTS INVESTIGATE, SEIZE EVIDENCE?

In March 2023, FBI special agents approached Sagar Adani with details of the grand jury's ongoing investigation into the group and other entities. They took custody of electronic devices in Sagar's possession and served him with a search warrant and grand jury subpoena.

The search warrant identified offences, individuals and entities under investigation by the U.S. for violations of the Foreign Corrupt Practices Act, securities fraud, and wire fraud.

WHAT'S NEXT FOR THE ADANI GROUP?

Adani Group in a statement said it would seek "all possible legal recourse".

Indian lawyers said there was a possibility the matter could be settled between the Indian tycoon and U.S. authorities, and the billionaire can also seek a dismissal of the indictment.

Debopriyo Moulik, a criminal lawyer in New Delhi, said that since an arrest warrant had been issued by U.S. authorities, they would have to approach the Indian government through the Indian embassy to execute it.

The grand jury in its order said if any of the executives were found guilty of the charges they would have to forfeit any property or proceeds derived directly or indirectly as a result of the offences.

Reporting by Aditi Shah and Aditya Kalra. Editing by Mark Potter

A Closer Look At The DOJ FCPA (And Broader) Enforcement Action Against Various Individuals Associated With Adani Group and Azure Power

 fcpaprofessor.com/a-closer-look-at-the-doj-fcpa-and-broader-enforcement-action-against-various-individuals-associated-with-adani-group-and-azure-power

November 21, 2024

As indicated in this prior post, the SEC's FCPA enforcement action against Cyril Sebastien Dominique Cabanes ("Cabanes" an individual associated with Azure Power – a former U.S. issuer) and the SEC's securities fraud action against two senior executives of Adani Green (Gautam Adani and Sagar Adani) in connection with an alleged Indian bribery scheme were just one prong of a broader enforcement action announced earlier this week.

As highlighted in this post, the DOJ also announced unsealing of a criminal indictment (originally filed on October 24th) against the following individuals in connection with the same alleged Indian bribery scheme.

- Gautam Adani (a citizen of India and founder of the Adani Group which includes numerous portfolio companies including Adani Green Energy – and Indian energy company). Charged with securities fraud conspiracy and wire fraud conspiracy.
- Sagar Adani (a citizen of India and Gautam Adani's nephew and Executive Director of Adani Green's Board of Directors). Charged with securities fraud conspiracy and wire fraud conspiracy.
- Vneet Jaain (a citizen of India who was the CEO of Adani Green and who is currently the Managing Director of Adani Green's Board of Directors). Charged with securities fraud conspiracy and wire fraud conspiracy.
- Ranjit Gupta (a citizen of India who was the CEO of Azure Power Global Limited and CEO and Managing Director of an Azure subsidiary). Charged with conspiracy to violate the FCPA's anti-bribery provisions.
- Cyril Cabanes (a citizen of Australia and France who was previously a member of the board of directors of Azure served as a representative of the company's largest stockholder, Caisse de dépôt et placement du Québec ("CDPQ")). Charged with conspiracy to violate the FCPA's anti-bribery provisions and conspiracy to obstruct justice.
- Saurabh Agarwal (a citizen of India employed by CDPQ who reported to Cabanes). Charged with conspiracy to violate the FCPA's anti-bribery provisions and conspiracy to obstruct justice.
- Deepak Malhotra (a citizen of India employed by CDPA who was a member of the board of directors of Azure). Charged with conspiracy to violate the FCPA's anti-bribery provisions and conspiracy to obstruct justice.

- Rupesh Agarwal (a citizen of India who served as a consultant for Azure and then as Chief Strategy and Commercial Officer for Azure). Charged with conspiracy to violate the FCPA's anti-bribery provisions and conspiracy to obstruct justice.

The bribery scheme is the same as alleged in the SEC matter and the prior post contains the relevant background which is essentially as follows.

Adani Green and Azure Energy were seeking various projects overseen by Solar Energy Corporation of India, Ltd. ("SECI") *[a company of the Ministry of New and Renewable Energy ("MNRE"), Government of India responsible for implementing Indian central government programs related to renewable energy, including funding large solar projects]*.

For various reasons, the projects were delayed and to facilitate the projects going forward Adani Green and Azure (and individuals associated with the companies) allegedly engaged in a scheme pursuant to which Adani Green paid or promised approximately \$250 million in bribes to Indian state officials.

Pursuant to the scheme, Adani Green allegedly made the bribes payments on behalf of both companies and then sought payment from Azure for approximately one-third of the payments. To reimburse Adani Green for the portion of the bribe payments allegedly made on its behalf, Azure and Adani created allegedly schemed up a "a commercially doable deal."

A reason Gautam Adani, Sagar Adani, and Vneet Jaain were not charged with FCPA offenses appears to be jurisdictional whereas the defendants charged with FCPA violations (all associated with Azure – a former U.S. issuer) allegedly engaged in certain discrete acts while in the U.S. such sending e-mails and having phone calls in furtherance of the bribery scheme.

In summary fashion, the DOJ indictment alleges:

“In or about and between 2020 and 2024, senior executives of (i) an Indian renewable-energy company, which was a portfolio company of an Indian conglomerate; (ii) an issuer company that operated in the renewable-energy sector whose securities were traded on a United States exchange; and (iii) that issuer’s largest shareholder, a Canadian institutional investor, participated in a scheme to bribe Indian government officials to ensure the execution of lucrative solar energy supply contracts with Indian government entities. During the same period, senior executives of the Indian renewable-energy company (i) conspired to misrepresent the company’s anti-bribery practices to United States-based investors and international financial institutions and (ii) concealed from those same investors and institutions their bribery of Indian government officials to obtain billions of dollars in financing for green energy projects, including the corrupt solar energy supply contracts. In addition, senior executives of the issuer company and its Canadian institutional investor conspired to obstruct the United States government’s investigations into the bribery scheme.”

Under the heading “The Bribery and Obstruction Schemes” the indictment alleges:

“Beginning in or about 2020, defendant RANJIT GUPTA and Co-Conspirator #2 [a citizen of India who held high-ranking executive positions at Azure] while acting within the scope of their employment as officers, employees and agents of the U.S. Issuer, knowingly and willfully conspired and agreed with each other and others, including but not limited to the defendants GAUTAM ADANI, SAGAR ADANI and VNEET JAAIN, to corruptly offer, authorize, promise to pay and to pay bribes to and for the benefit of government officials in India to cause Indian state electricity distribution companies to enter into contracts with SECI in order for the Indian Energy Company [Adani], the Indian Energy Company’s subsidiaries and the U.S. Issuer [Azure] to obtain and retain business. At various times in or about and between 2021 and 2022, other individuals, including but not limited to the defendants CYRIL CABANES, SAURABH AGARWAL, DEEPAK MALHOTRA, RUPESH AGARWAL and Co-Conspirator #1 [a U.K. citizen who was the Chairman of Azure’s Board of Directors], knowingly and willfully joined the conspiracy.

To accomplish the objectives of the then ongoing illegal bribery scheme, the defendants CYRIL CABANES, SAURABH AGARWAL, DEEPAK MALHOTRA, RUPESH AGARWAL and Co-Conspirator# 1, together with others, also agreed knowingly and corruptly to conceal the scheme from the United States government, including by obstructing an investigation by a grand jury in the Eastern District of New York (the “Grand Jury Investigation”), an investigation by the Federal Bureau of Investigation (the “FBI Investigation”) and an investigation by the SEC (the “SEC Investigation”) (collectively, the “Government Investigations”). As part of that scheme, beginning in approximately 2022, CABANES, SAURABH AGARWAL, MALHOTRA, RUPESH AGARWAL and Co-Conspirator #1 agreed with each other and others to destroy and suppress documents and communications and provide false information to the United States government in connection with the Government Investigations.”

Under the heading “The Securities Fraud and Wire Fraud Schemes,” the indictment alleges:

“In or about and between 2020 and 2024, in order to fund its operations, the Indian Energy Company and certain of its subsidiaries engaged in a series of financial transactions, including: (i) obtaining more than \$2 billion of United States-dollar denominated bank loans from international financial institutions and United States-based asset management companies; and (ii) offering more than \$1 billion in securities underwritten by international financial institutions and marketed and sold to investors in the United States, among other places. In connection with these financial transactions, investors irrevocably committed themselves in the United States to invest millions of dollars in the securities of the Indian Energy Company.

In connection with these transactions, the Indian Energy Company and its directors, management team and employees, including the defendants GAUTAM ADANI, SAGAR ADANI and VNEET JAAIN, made or caused others to make false and misleading statements, and omitted material facts that rendered certain statements misleading, to investors, joint bookrunners and lenders regarding the Indian Energy Company’s anti-bribery commitments and practices and the bribery scheme described herein.

The Indian Energy Company and its directors, management team and employees, including the defendants GAUTAM ADANI, SAGAR ADANI and VNEET JAAIN, relied on the United States financial system to perpetuate this fraudulent scheme by, among other things, seeking and securing investors and potential investors physically located in the United States and causing wires to be sent and received that passed through the United States, including through the Eastern District of New York.”

In the DOJ release, Breon Peace (United States Attorney for the Eastern District of New York) stated:

“As alleged, the defendants orchestrated an elaborate scheme to bribe Indian government officials to secure contracts worth billions of dollars and Gautam S. Adani, Sagar R. Adani and Vneet S. Jaain lied about the bribery scheme as they sought to raise capital from U.S. and international investors. My Office is committed to rooting out corruption in the international marketplace and protecting investors from those who seek to enrich themselves at the expense of the integrity of our financial markets.”

Lisa Miller (Deputy Assistant Attorney General for the Justice Department’s Criminal Division) stated:

“This indictment alleges schemes to pay over \$250 million in bribes to Indian government officials, to lie to investors and banks to raise billions of dollars, and to obstruct justice. These offenses were allegedly committed by senior executives and directors to obtain and finance massive state energy supply contracts through corruption and fraud at the expense of U.S. investors. The Criminal Division will continue to aggressively prosecute corrupt, deceptive, and obstructive conduct that violates U.S. law, no matter where in the world it occurs.”

James Dennehy (Assistant Director in Charge, Federal Bureau of Investigation, New York Field Office) stated:

“Gautam S. Adani and seven other business executives allegedly bribed the Indian government to finance lucrative contracts designed to benefit their businesses. Adani and other defendants also defrauded investors by raising capital on the basis of false statements about bribery and corruption, while still other defendants allegedly attempted to conceal the bribery conspiracy by obstructing the government’s investigation. The FBI maintains its steadfast mission to expose all corrupt agreements, especially with international governments, and protect investors from related harm.”

In response to the DOJ and SEC matters, Adani Group release this statement:

“The allegations made by the US Department of Justice and the US Securities and Exchange Commission against directors of Adani Green are baseless and denied. As stated by the US Department of Justice itself, “the charges in the indictment are allegations and the defendants are presumed innocent unless and until proven guilty.” All possible legal recourse will be sought. The Adani Group has always upheld and is steadfastly committed to maintaining the highest standards of governance, transparency and regulatory compliance across all jurisdictions of its operations. We assure our stakeholders, partners and employees that we are a law-abiding organisation, fully compliant with all laws.”

Adani's Empire Grapples With Indictment of Billionaire Founder

By Kai Schultz, Bhuma Shrivastava and Anto Antony2024-11-21T13:11:25967-05:00

Gautam Adani, one of the world's richest people, was in good spirits Wednesday evening. Earlier in the day, the Indian billionaire's green energy business had raised \$600 million through a bond sale. Before heading to bed in the city of Ahmedabad, he relaxed by playing a card game with his wife, according to a person close to him.

But around 3 a.m., a colleague delivered some shocking news: The US had charged Adani and several associates with fraud in a sprawling criminal investigation.

Within minutes, senior executives from the Adani Group assembled on conference calls and in the conglomerate's headquarters in western India. Federal prosecutors in New York had accused Adani and his colleagues of lying to US investors about their anti-bribery practices while promising more than \$250 million of bribes to Indian officials. To cover their tracks, collaborators used code names for Adani, referring to him as "the big man" and "numero uno," the indictment said.



A digital billboard outside the Bombay Stock Exchange in Mumbai shows a news report about the charges against Gautam Adani, on Nov. 21.

Photographer: Indranil Aditya/Bloomberg

As the rest of India woke up on Thursday, Adani was apparently still unsure whether releasing a statement would even be a good idea. When stock markets opened in Mumbai, Adani Group companies' shares plunged. The conglomerate scrapped the planned \$600 million [bond](#) sale. By midday, the group had denied all accusations of misconduct by its executives and threatened legal action.

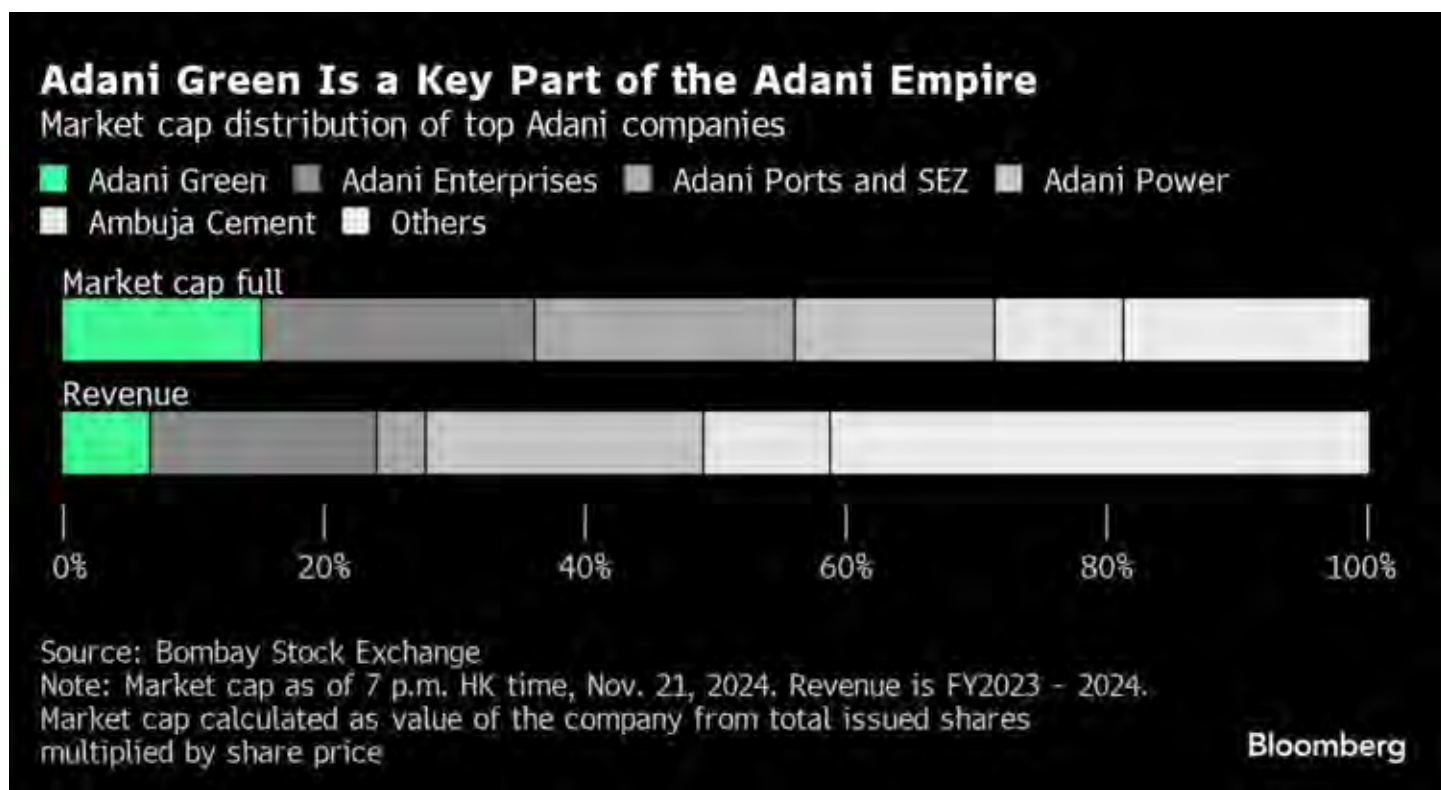
What happens next for Adani, 62, and his empire is unclear.

Political controversy is likely in the months ahead, with a tussle over possible extradition. US President-elect Donald Trump will soon be in a position to cut a deal with India to make the matter go away, if he chooses. Key figures in Trump's orbit see India, and the Adani Group more specifically, as important partners to push against Chinese hegemony. Unrelated to Wednesday's charges, Trump's family members have visited Adani's home in Ahmedabad, according to people with knowledge of the matter who asked not to be named discussing sensitive information.

In any case, prosecution would take months, if not years, meaning that it will fall to Trump's Justice Department to determine how to proceed.

But for now, the implications could reverberate beyond the group and its founder, potentially affecting the global banks that lend to it, threatening its overseas expansion and tarnishing by association the reputation of other Indian companies.

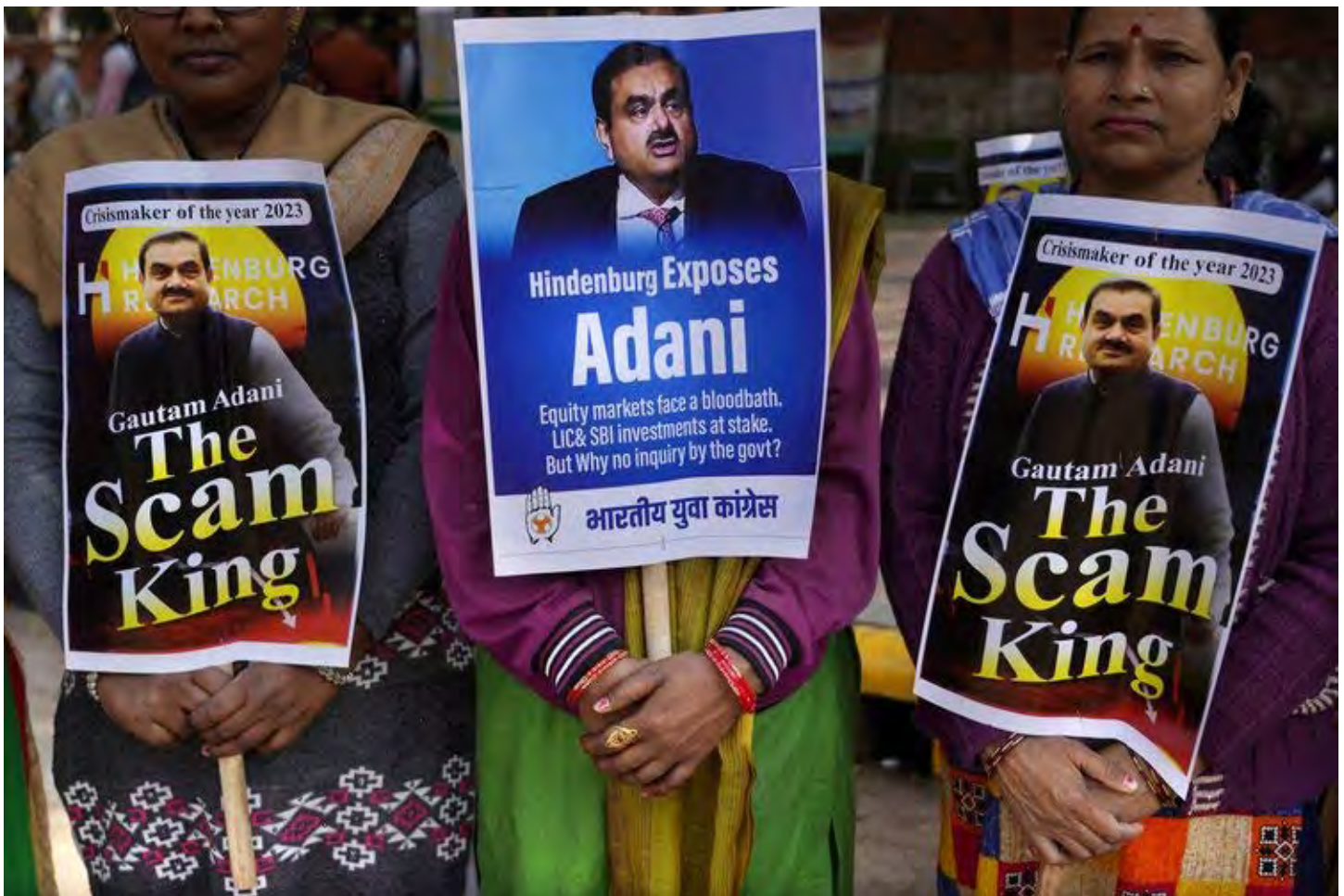
"I suspect this will have a larger impact on Adani's global growth ambitions," said Rick Rossow, chair on India and Emerging Asia Economics at the Center for Strategic and International Studies. In addition, "a case like this could fan lingering concerns in India that the United States and other western nations seek to slow India's rise."



Over the years, global investors and banks parked billions of dollars in the Adani Group, helping transform the commodity trading business into one of India's most diversified conglomerates. Today, the group's business interests span ports, weapons and renewable energy. With projects stretching from Vietnam to Israel, the Adani Group's overseas endeavors have become the closest proxy India has to China's belt-and-road initiative. Even after Thursday's stock slump, Gautam Adani's personal fortune was at \$72 billion, according to the Bloomberg Billionaires Index.

On his swift ascent to the upper ranks of the world's rich list, Adani stressed a [policy](#) of "zero

tolerance” for bribery. But the group’s image was called into question when US-based short seller Hindenburg Research published a damning report in January 2023, causing a plunge in its companies’ shares. The Adani Group denied any wrongdoing.



A protest in New Delhi demanding an investigation into allegations by short seller Hindenburg Research, in February 2023.

Photographer: Manish Swarup/AP Images

Then the stocks recovered, until Wednesday’s five-count indictment from the Eastern District of New York sent them tumbling again. Between 2020 and 2024, Adani and several of his employees allegedly hid their fraud as they collected tens of millions of dollars from US-based investors, according to the [indictment](#). Prosecutors claim that top executives attached to Adani Green Energy Ltd. created PowerPoints detailing how to cover up the alleged bribes, which were promised to government officials in the state of Andhra Pradesh to secure solar energy contracts. Adani, whose personal fortune at one point made him Asia’s richest man, pulled the strings, US law enforcement said.

It’s an enormous setback for Adani, and one that may prove hard to surmount.

It may have an impact on the conglomerate's overseas ambitions, which have already faced headwinds over the past few months. Kenyan President William Ruto on Thursday canceled plans to award Adani Group companies concession deals to construct power lines and to run the nation's main airport, saying the decision was based on "new information provided by our investigative agencies and partner nations."

In Sri Lanka, the new president pledged in October to review the Adani Group's proposed wind project. And in Bangladesh, the conglomerate threatened to cut off power supplies earlier this month after unpaid dues reached more than \$850 million.

The timeline for Gautam Adani's succession plans may also change, depending on the speed and aggression of US prosecutors. The billionaire had planned to step down at age 70 and divide ownership of the Adani Group among four family members, one of whom, Sagar Adani, is now accused of breaking federal laws in the US indictment.

Read More: Adani's \$108 Billion Crisis Shakes Investors' Faith in India

The market volatility has already begun to have ripple effects. Vedanta Resources Ltd., controlled by Indian billionaire Anil Agarwal, who is not part of the US case, is reassessing the timing for a potential sale of dollar bonds, Bloomberg News reported Thursday, citing people familiar with the situation. Vedanta is now considering launching the deal as early as next week if yields stabilize, according to the people.



Installation of solar panels at Adani Green Energy's Khavda Renewable Park in Gujarat in May.
Photographer: Sumit Dayal/Bloomberg

While the indictment doesn't pose an existential threat to the Adani Group, it could choke access to new capital, according to people familiar with the conglomerate's banking relationships, who asked not to be identified discussing sensitive information. The bankers are seeking clarity from the group on the indictment, the people said, adding that there were no worries around existing repayments.

The indictment may also affect the US's already delicate relationship with India, with Prime Minister Narendra Modi's government likely to resist any attempts at extradition. In recent years, Washington has courted India as a key ally in Asia, including by softening its criticism of rising religious nationalism under Modi, a close friend of Adani's. Last year, Ottawa accused New Delhi of greenlighting the assassination of a Sikh separatist leader on Canadian soil. The US government was more cautious in publicizing intelligence of a similar assassination attempt within its borders.

After the US election, Adani congratulated Trump on his win, calling him an "embodiment of unbreakable tenacity" on X. (Other Indian business leaders, including Asia's richest person, Mukesh Ambani, said nothing.)



Trump and Modi attending the “Howdy, Modi!” event at the NRG Stadium in Houston in September 2019.

Photographer: Saul Loeb/AFP/Getty Images

Domestically, India’s political opposition, which performed better than expected in national elections earlier this year, has already seized on the US indictment as fresh evidence of collusion between Adani and Modi. Dozens of lawmakers are demanding a parliamentary probe into the Adani Group. They say India’s reputation is at stake.

“Modi ji, your friend has defamed the country’s name all over the world,” Sanjay Singh, a senior leader in the Aam Aadmi Party, wrote on social media.

For now, the prime minister and his government are staying mum. Since rising to power in 2014, Modi’s development ethos has rested on empowering a narrow list of tycoons including Adani, leading to criticisms of crony capitalism. The two share a decades-long friendship stemming from Modi’s days leading the state of Gujarat, where Adani started his business in the 1980s.

“Modi will likely do what he’s done since the surfacing of the earlier fraud accusations,” said Michael Kugelman, the director of the Wilson Center’s South Asia Institute in Washington, DC. “Stay quiet publicly about Adani and avoid doing anything that brings attention to his relationship with Adani.”



Opposition leader Rahul Gandhi addresses a news conference in New Delhi on Nov. 21.
Photographer: Sajjad Hussain/AFP/Getty Images

Adani’s troubles are unlikely to aid India in its push for investor money and trust. Nor will they help Modi make the country a key destination for global capital. Even so, Adani’s enormous domestic influence is unlikely to wane. To many on the ground, he remains too big to fail.

“Adani’s image on the corporate governance front will definitely take a beating,” said [V.K. Unni](#), a professor at the Indian Institute of Management Calcutta. “However, at this stage, this remains an allegation.”

For more on Adani, and the billionaires and power players behind India's rise, follow Bloomberg India on WhatsApp [here](#), and [sign up](#) for Menaka Doshi's India Edition newsletter.

--With assistance from Abhishek Vishnoi, Akriti Sharma, Ambereen Choudhury, Chiranjivi Chakraborty, Emily Cadman, Nasreen Seria, Preeti Soni, Richard Frost, Saikat Das, Sanjai P R, Shadab Nazmi, Shruti Mahajan and Suvashree Ghosh.

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Adani Charged by US in \$250 Million Bribery Case, Shaking India

By Patricia Hurtado and David Voreacos

- Authorities allege scheme to bribe officials in India
- Adani Group denies allegations; market value drops \$30 billion

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Adani Charged by US in \$250 Million Bribery Case, Shaking India

By Patricia Hurtado and David Voreacos2024-11-21T05:34:08741-05:00

- Authorities allege scheme to bribe officials in India
- Adani Group denies allegations; market value drops \$30 billion

US prosecutors charged **Gautam Adani** with helping drive a \$250 million bribery scheme, in a stunning blow to India's most powerful businessman and close ally of Prime Minister **Narendra Modi**.

Federal prosecutors alleged on Wednesday that Adani, one of the world's richest people, and other defendants promised to pay more than \$250 million in bribes to Indian government officials to win solar energy contracts, and concealed the plan as they sought to raise money from US investors. US law allows federal prosecutors to pursue foreign corruption allegations if they involve certain links to American investors or markets.

The five-count indictment also accuses Gautam's nephew **Sagar R. Adani** and Vneet S. Jaain, both executives at Adani Green Energy Ltd., of breaking federal laws.

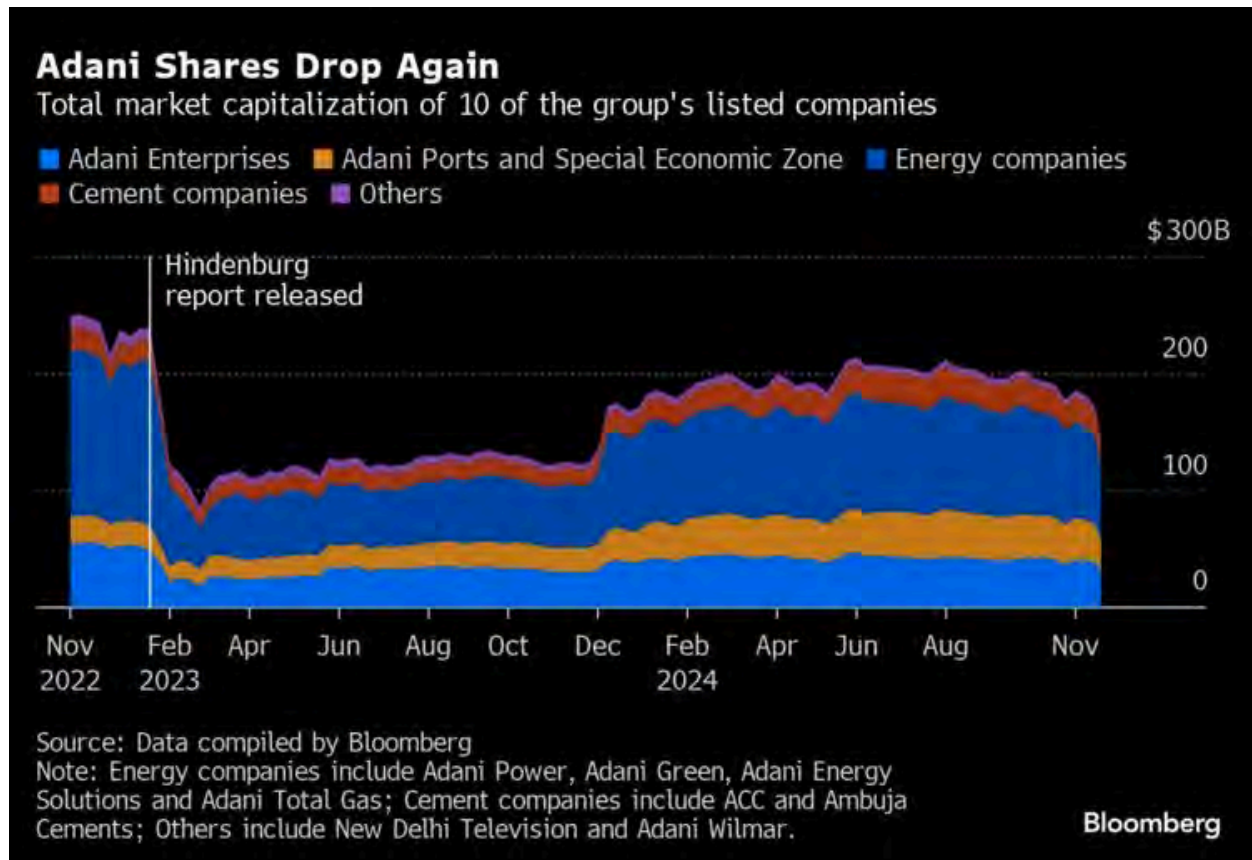


Gautam Adani

Source: Sumit Dayal

The Adani Group's stocks and bonds plunged, wiping nearly \$30 billion off the conglomerate's market value, while the broader Indian market fell into correction territory and the leading opposition party demanded the tycoon's arrest. The company denied the US allegations and said it would seek legal recourse, while abruptly scrapping a \$600 million dollar bond sale.

The indictment's impact on Indian business and politics will be far-reaching. Not only does the Adani Group run everything from airports to power generators in the country, the conglomerate is Modi's key partner in his efforts to build the country's domestic infrastructure as well as widen its geopolitical influence. While the appointment of a new US Attorney in New York after the return of President Donald Trump to office early next year may impact how the case plays out, Adani's ambitions and his relationship with the Indian government will likely be permanently altered.



Read More: [Here Are the US Charges Against Indian Billionaire Gautam Adani](#)

The charges mark an enormous setback for Asia's second richest man just as his businesses were recovering from the blow dealt by short-seller Hindenburg Research's January 2023 report that alleged fraud and corporate governance issues in the group. That episode had also incidentally forced Adani to abandon a domestic share offering by its flagship due to the resulting rout in its stock.

India's markets regulator has also been probing Adani Group on the allegations made by the short seller last year. The investigation is ongoing. The regulator has issued several show-cause notices to the group on disclosure of shareholdings and related party transactions.

Bigger Repercussions

Still, the latest development is much bigger than the Hindenburg report because the US government is involved and it has potential reverberations in Indian politics, said Nirmalya Kumar, a Professor of Marketing at Singapore Management University.

"His international plans are going to take a hit," the academic told Bloomberg TV on Thursday.

Rahul Gandhi, the leader of India's opposition Congress party, demanded a parliamentary probe, alleging Adani had violated both Indian and American laws.

Prosecutors on Wednesday charged four of the eight defendants with conspiring to obstruct justice by deleting electronic evidence and lying to representatives of the Justice Department, Securities and Exchange Commission and FBI.

Indian Billionaire Adani, Seven Others Indicted in the US

Federal prosecutors charged Gautam Adani and others with helping drive a \$250 million bribery scheme

**ALLEGED BRIBERY SCHEME TO WIN INDIA SOLAR PROJECTS
HIDDEN FROM US INVESTORS****Gautam Adani**

Founder and Chairman,
Adani Group

**Sagar R. Adani**

(Gautam Adani's nephew)

Executive director,
Adani Green Energy

**Vneet S. Jaain**

Managing director
and CEO,
Adani Green Energy

**OTHERS ACCUSED OF VIOLATING THE US FOREIGN
CORRUPT PRACTICES ACT****Ranjit Gupta**

Former executive
of a renewable-energy

**Rupesh Agarwal**

Former executive
of a renewable-energy



Read: Adani Indictment Taints India's Green Pitch to the World

Prosecuting the case would take months, if not years, meaning that it will fall to the incoming Trump administration's Justice Department to determine how to proceed. Peace, the Brooklyn US attorney who was appointed during the Biden administration, is expected to step down and be replaced by whomever Trump picks to lead the office, which is known as EDNY.

Neither a White House press official nor a representative for the Trump transition team immediately responded to emailed requests seeking comment. India's government declined to comment when contacted for further information.

Adani celebrated Trump's election win by describing the president-elect as "the embodiment of unbreakable tenacity, unshakable grit, relentless determination and the courage to stay true to his beliefs." Last week he again posted his congratulations on X, committing to invest \$10 billion in the US and create as many as 10,000 jobs.

Read more: Adani Group to Invest \$10 Billion in US Energy, Infrastructure

Extradition Treaty

Although the US and India have an extradition treaty, it's likely that India would fight to protect its citizens from being forced to stand trial in the US. If convicted the defendants could face years behind bars, prosecutors said on Wednesday.

The SEC, which is a civil law enforcement agency, provided detailed allegations against both Adanis and another one of the co-defendants, Cyril Sebastien Dominique Cabanes, in a parallel lawsuit. The regulator identified the firm involved in the alleged bribery scheme, which wasn't named in the indictment, as Adani Green Energy.

According to the regulator, Gautam Adani spearheaded an effort to pay or promise hundreds of millions of dollars in bribes to Indian state government officials to induce them to enter contracts that Adani Green needed to develop India's largest solar power plant project. At the same time, he and his nephew falsely touted the company's compliance with antibribery principles and laws in connection with a \$750 million bond offering, the SEC said.

In its lawsuit, the SEC alleged that another company involved in the power plant project, Azure Power Global Ltd., agreed to pay some of the bribes. It said Cabanes, while serving as a director on the board at Azure Power and as a representative of the company's largest stockholder, pension fund company Caisse de Depot et Placement du Quebec, which is known as CDPQ, "schemed" to make payments to bribe state government officials in India, along with others, the SEC said in its lawsuit.

A lawyer listed by the SEC as representing Cabanes didn't immediately respond to a request for comment. A representative for Azure Power Global didn't immediately respond to a request for comment outside of normal business hours.

"CDPQ is aware of charges filed in the US against certain former employees," a spokesperson for the pension manager said by email. "Those employees were all terminated in 2023 and CDPQ is cooperating with US authorities."

Read More: Adani Backer GQG's \$10 Billion Bet Under Threat From Bribe Probe

US authorities ramped up an existing probe into Adani Group by looking into the conduct of the company's billionaire founder, Bloomberg reported in March. Officials were focused on whether there were improper payments made to officials in India for favorable treatment on an energy project.

'Very Serious'

"The charges against the Adani executives are very serious indeed," said Shriram Subramanian, founder and managing director at corporate governance advisory firm Ingovern Research Services. Indian regulators need to pursue investigations more vigorously and speedily, he said.

The legal action in the US could create bottlenecks to capital flows for the group with global ambitions.

"The indictment of Adani Group's chairman and other senior officials on bribery charges is credit negative for the group's companies," according to Moody's Ratings. "Our main focus when assessing Adani Group is on the ability of the group's companies to access capital to meet their liquidity requirements and on its governance practices."

(Updates with details on US law jurisdiction in the second paragraph.)

--With assistance from **Layan Odeh**, **Mathieu Dion**, **Tom Schoenberg**, **Karen Leigh**, **Ava Benny-Morrison**, **Akriti Sharma**, **Adrian Kennedy**, **Advait Palepu**, **Bhuma Shrivastava**, **Lou Del Bello**, **Clara Ferreira Marques**, **Serena Ng**, **Nicola M. White**, **Erik Larson**, **Caleb Mutua**, **Adrian Leung** and **Shadab Nazmi**.

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Global Body Simplifies Guidance for Adding Context to Financials

By Michael Kapoor

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Global Body Simplifies Guidance for Adding Context to Financials

By Michael Kapoor 2024-11-20T14:37:11000-05:00

Global accounting standard-setters agreed to simplify guidance for companies on what to include in the narrative section of their annual reports that provides context for financial results.

All 14 members of the International Accounting Standards Board voted Wednesday to narrow down the criteria that it advises companies to use when setting disclosure objectives for the report section known as management commentary.

Under the board's proposal, companies would cover six areas in the commentary, including their business model and management strategy. Companies should also say what they are trying to achieve through the commentary, explain the assessments made by the reporting company, and describe investors' detailed information needs.

The assessments won't be mandatory, the board agreed.

- Investors supported the approach that the board had proposed in 2021, which included assessments. But companies preparing accounts were worried that it would be "complex and burdensome," a staff paper for the meeting said.
- More than 140 countries use IASB's accounting standards.
- The board paused its project to update the guidance after the formation of its sister body, the International Sustainability Standards Board, in 2021 because the management commentary is expected to house sustainability disclosures. The IASB decided to resume the project this year despite the ISSB deciding against getting involved.

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Evolv CFO Resigns After Investigation Finds Accounting Issues

By Lara Sanli2024-11-21T08:16:52937-05:00

Evolv Technology appoints AlixPartners' Dave Rawden as interim CFO after an internal investigation found inaccurate accounting for certain transactions and incorrect revenue reported between 2Q 2022 and 2Q 2024.

- CFO Mark Donohue resigned
- AlixPartners' Dave Rawden appointed interim CFO
- Company has engaged AlixPartners to provide interim finance and accounting support
- Received on Nov. 1 a voluntary document request from the US Attorney's Office
- Company says it is continuing to cooperate with investigations
- Investigation found that certain accounting personnel were aware of extra-contractual terms and conditions, and that related allegations were raised internally but not escalated to the audit committee or communicated to PwC prior to the filing
- Expects to report one or more additional material weaknesses in internal control over financial reporting related to this matter
- Intends to take further remedial actions over the coming months to enhance risk management, strengthen internal controls and ensure timely and accurate financial reporting
- NOTE: Oct. 25, Security Tech Firm Evolv Will Redo Two Years of Financials (1)

To view the source of this information click [here](#) and [here](#)

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'A World of Credit': Ex-FTX Executive Gary Wang Sentenced to Time Served Following Cooperation

 [law.com/therecorder/2024/11/20/a-world-of-credit-ex-ftx-executive-gary-wang-sentenced-to-time-served-following-cooperation](https://www.law.com/therecorder/2024/11/20/a-world-of-credit-ex-ftx-executive-gary-wang-sentenced-to-time-served-following-cooperation)

Emily Saul

FTX co-founder Zixiao “Gary” Wang was sentenced to time-served on Wednesday as a federal judge commented on the scale of his cooperation against co-defendant Sam Bankman-Fried and his continued efforts to aid the government and recoup losses for victims of the massive fraud.

“I’ve never seen anything quite like what happened here,” U.S. District Judge Lewis Kaplan of the Southern District of New York told Wang, who he said had “limited culpability” in the massive fraud that led to the collapse of the fund and some \$11 billion in investor and lender losses.

“You’re entitled to a world of credit for fessing up and beginning immediately to try to make amends,” the judge added.

Wang is represented by Alex Miller and Ilan Graff of Fried, Frank, Harris, Shriver & Jacobson.

Wang served as the chief technology officer at FTX and was the first person to cooperate with federal prosecutors in Manhattan during their investigation of the cryptocurrency exchange and Bankman-Fried.

Kaplan praised his swift and immediate cooperation. Prosecutors have said Wang walked into their office and proceeded to openly incriminate himself in the crimes with which he was later charged and to which he pleaded guilty.

Assistant U.S. Attorney Nicolas Roos noted that the defendant could easily have minimized his role in the fraud, given the lack of digital evidence linking him to the case.

“It would have been easy for someone like Mr. Wang to say, ‘I was merely present,’” Roos told the court. “There was never a moment of minimization of inconsistency.”

Both the defense and prosecution also noted that Wang was able to use his technical expertise to decipher an extremely complex case that otherwise would have taken years and therefore allowed the government to move quickly in charging defendants.

During his first meeting with prosecutors Wang “deciphered basically half the case for us,” Roos said.

“Gary meticulously unpacked the FTX code,” Graff told the court.

In addition to deciphering otherwise complex aspects of the exchange, both prosecution and defense have noted that Wang built software for the government that has the potential to protect against fraud in the financial markets.

Roos described Wang’s case as a “bookend” of the FTX-related prosecutions, as he was the first to cooperate and is the last to be sentenced.

Caroline Ellison, Bankman-Fried’s former girlfriend and a top executive at his hedge fund Alameda Research, cooperated and was sentenced to two years in prison. Former FTX chief engineer Nishad Singh cooperated and was sentenced to time served.

Bankman-Fried went to trial and was sentenced by Kaplan to 25 years in prison.

During his brief comments to the court, Wang apologized to customers and investors as he addressed the court.

“I’m deeply sorry to all the people hurt by my actions,” Wang said. “There were so many things I could have done differently.”

In addition to time served, Kaplan imposed three years supervised relief and imposed forfeiture of more than \$11 billion, which is split among the defendants.

He declined to order restitution.

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Bill Hwang Sentenced to 18 Years in Prison in Archegos Case (1)

By Bob Van Voris, Chris Dolmetsch and Ava Benny-Morrison

- US had asked for 21 years for fraud, market manipulation
- Hwang was convicted in July over family office's collapse

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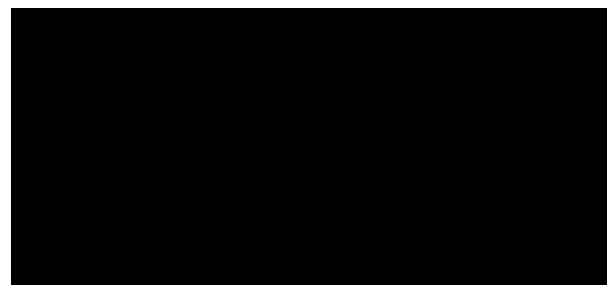
Bill Hwang Sentenced to 18 Years in Prison in Archegos Case (1)

By Bob Van Voris, Chris Dolmetsch and Ava Benny-Morrison2024-11-20T16:46:47547-05:00

- US had asked for 21 years for fraud, market manipulation
- Hwang was convicted in July over family office's collapse

Archegos Capital Management founder **Bill Hwang** was ordered to spend 18 years in prison for fraud and market manipulation tied to the stunning 2021 collapse of his \$36 billion family office, capping a case that riveted Wall Street.

Hwang, 60, was sentenced Wednesday by US District Judge Alvin Hellerstein in New York. The prison term was slightly lower than the 21 years prosecutors had sought. Hwang's lawyers had initially asked that he be given no prison time at all.



"The amount of losses that were caused by your conduct are larger than any amount of losses I've dealt with as a judge," Hellerstein said. Hwang had no visible reaction to the sentence, though he soon after briefly turned and smiled at his wife, Becky, who was sitting in the courtroom gallery.

Hwang was found guilty in July of orchestrating a scheme to mislead his bank counterparties into providing Archegos with billions of dollars in trading capacity that inflated the value of his portfolio until the bubble burst in March 2021. The implosion contributed to the demise of one of the biggest names in finance, Credit Suisse Group AG, and caused significant losses at Morgan Stanley, UBS Group AG, Nomura Holdings and other banks.

Read More: Criminal Conviction of Archegos's Hwang, Explained

Hellerstein signaled throughout Wednesday's hearing that he intended to impose a tough sentence on Hwang. The judge called his request for no jail "utterly ridiculous" in light of the money involved and compared Hwang to FTX founder Sam Bankman-Fried, who received a 25-year sentence for fraud.

"What was worse? Mr. Bankman-Fried's fraud or Mr. Hwang's fraud?" the judge asked.

In the course of the hearing, Hwang's lawyer **Dani James** backed down from asking for no jail and suggested a sentence of between four and five years. She stressed his charitable work and humble lifestyle, noting that he still lives in a modest New Jersey home. But the judge expressed skepticism about Hwang's claim of modesty, noting his "new apartment in Hudson Yards."

Hwang himself spoke only briefly, saying he felt "deep pain" about what happened at Archegos. After thanking his wife and supporters who wrote letters seeking leniency, he asked the judge to impose a sentence that would allow him to continue to serve society.

Prosecutor Andrew Thomas argued for a stiff sentence partly on the grounds that Hwang was a repeat offender, noting his previous hedge fund, Tiger Asia, pleaded guilty to insider trading in 2012. Hellerstein said he would consider that in his sentencing and also rejected Hwang's claims that his actions at Archegos didn't clearly contribute to the banks' losses.

Wall Street Victims

That the victims were mainly Wall Street banks set Archegos apart from most big white collar cases. Hwang's lawyers had planned to argue at trial that the banks were sophisticated players that understood the risks of trading with Archegos but took them in order to earn lucrative fees. Hellerstein largely sided with prosecutors in barring a "blame the victim" defense, which may be a major issue in the planned appeal of his conviction.

The jury found that Hwang directed Archegos staff to tell banks that the firm had large positions in tech giants like Apple Inc. and Microsoft Corp. In reality, its money was heavily concentrated in a small group of fairly illiquid stocks, most notably the company then known as ViacomCBS, that his trading could move. To maximize his trades' impact, Hwang typically bought swaps, knowing that his counterparty banks would hedge by directly buying shares.

Archegos fell into a fatal spiral after a March 2021 selloff in Viacom shares prompted billions of dollars in margin calls.

The Archegos indictment was the first big white-collar case brought by Manhattan US Attorney **Damian Williams** after his 2021 appointment by President Joe Biden. Along with the Bankman-Fried prosecution, it was touted as a sign of a more aggressive approach to policing financial crimes. President-elect Donald Trump has said he intends to nominate former Securities and Exchange Commission Chair Jay Clayton as Williams' successor.

Hellerstein on Wednesday put off dealing with the issue of how much Hwang must pay in restitution to his victims. Prosecutors said banks had submitted claims for more than \$9 billion, though Hellerstein said there were discrepancies with figures that had been put forth earlier that needed to be addressed.

Hwang's lawyers have argued that restitution is unjustified as well as futile, since the former billionaire now only has a net worth of around \$55 million.

'False Picture'

At trial, the defense did manage to occasionally highlight the banks' profit motives in their dealings with Archegos. Goldman Sachs Group Inc. product specialist **Nastassia Locasto** testified at trial that her bank initially had questions about Archegos' holdings but ultimately decided to trade with Hwang's family office because it knew its Wall Street rivals were making millions in fees. "They were paying our peers," she said.

But such testimony was overshadowed by that of two former Archegos executives who previously pleaded guilty and agreed to cooperate with the government. Former head trader **William Tomita** and risk head **Scott Becker** both said they were directed to lie to banks to persuade them to extend more credit to Archegos.

Tomita also vividly described how Hwang manipulated markets by directing his team to try to reach price targets that often changed minute by minute. Archegos used "very aggressive" algorithmic trading techniques to ensure it accounted for a very large percentage of the trading volume for the firm's portfolio stocks, Tomita said.

When Goldman's Locasto questioned him about why the main holders of one of Archegos' portfolio stocks were other banks, Tomita said he lied.

"I painted this picture — this false picture — that other hedge funds were using the capacity and it wasn't us," he said.

Goldman was one of the few Archegos counterparties that emerged relatively unscathed, and it was revealed at trial that the bank benefited from a huge mistake Archegos made in its frantic final days. Tasked with withdrawing \$470 million from its Goldman trading account, an Archegos employee actually wired that amount instead.

On Wednesday, prosecutors noted that Goldman was the sole bank out of a group of nine that wasn't seeking restitution in the case, though it said it suffered some losses in the form of legal fees.

Former Archegos Chief Financial Officer **Patrick Halligan** was convicted alongside Hwang but will be sentenced separately in January.

The case is US v. Hwang, 22-cr-240, US District Court, Southern District of New York (Manhattan).

(Updates with restitution discussion, background.)

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Super Micro Computer Gets Nasdaq Letter Over Timely SEC Filings

By Greg Chang

Bloomberg Law News 2024-11-21T09:52:13559701911-05:00

Super Micro Computer Gets Nasdaq Letter Over Timely SEC Filings

By Greg Chang2024-11-20T16:09:52555-05:00

Super Micro Computer got a letter from Nasdaq stating the company isn't in compliance with rules requiring timely SEC filings.

- Letter has no immediate effect on the listing or trading of Super Micro stock on Nasdaq
- NOTE: Super Micro Soars After Hiring New Auditor in Bid to Stay Listed

To view the source of this information, click [here](#)

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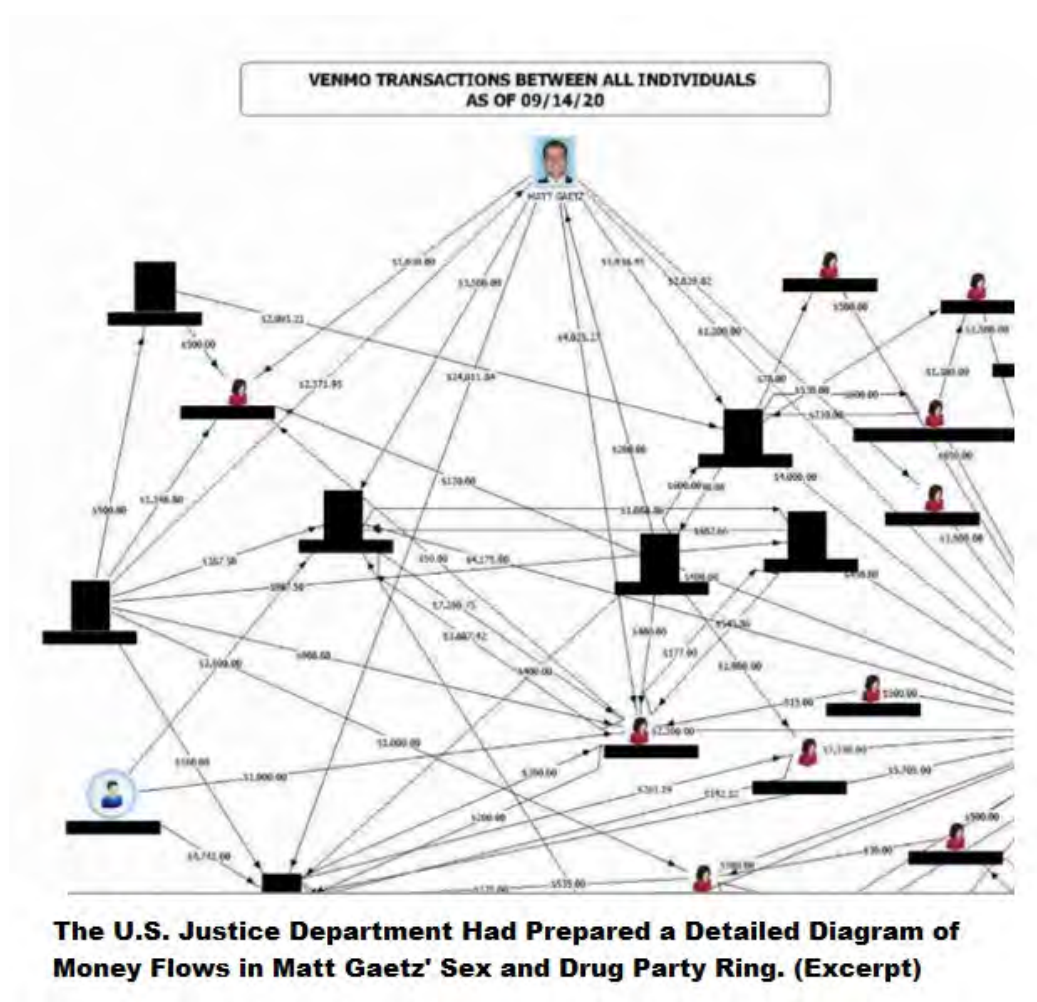
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Matt Gaetz Case Has Echoes of the Justice Department's Failure to Prosecute Jeffrey Epstein's Sex-Trafficking Ring

 wallstreetonparade.com/2024/11/matt-gaetz-case-has-echoes-of-the-justice-departments-failure-to-prosecute-jeffrey-epsteins-sex-trafficking-ring



By Pam Martens and Russ Martens: November 21, 2024 ~

Today's New York Times carries a diagram prepared by the U.S. Department of Justice during its multi-year investigation into then Congressman Matt Gaetz. (We have printed the left-hand section of the diagram above.) The diagram illustrates the following about the DOJ's investigation into the man that President-elect Donald Trump wants to install as the U.S. Attorney General – the top law enforcement officer at the U.S. Department of Justice:

The DOJ had receipts for the money flows between Matt Gaetz and the women he was paying for sex and the other individuals involved in the related sex and drug parties from 2017 to 2020.

The public also learned this past week from the attorney, Joel Leppard, who represented two of the young women who were paid for sex with Gaetz – that the DOJ had interviewed at least a dozen of the women whom Gaetz had paid for sex. These women are indicated on the diagram published by The Times with the dollar amounts paid.

Leppard explained to ABC News what motivated the young women to have sex with Gaetz and others at the parties:

“Leppard said his clients — one of whom was a [high school] student at the time — decided to attend the parties where they had sex with Gaetz and others in order to make enough money to pay rent.

” ‘It was that kind of situation where they’re literally, Hey, I got to make rent this month. Let’s go out and go to some of these events,’ and ‘Here’s how we’re going to pay rent.’ “

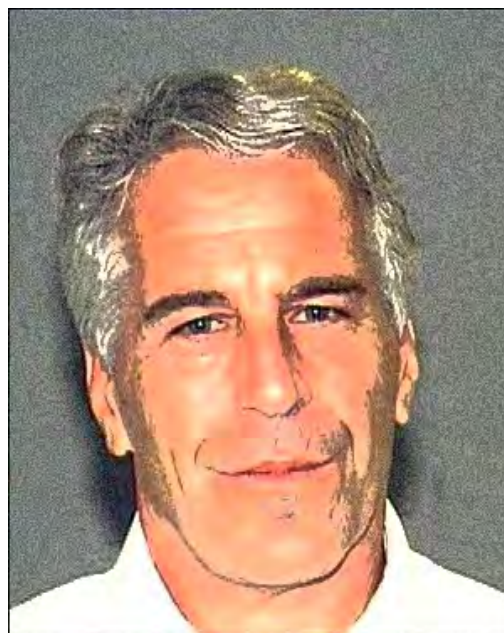
Despite sweeping evidence, payment receipts, depositions from at least a dozen witnesses, and testimony from a cooperating witness in the sex ring, Joel Greenberg, the DOJ failed to bring a single charge against then Congressman Matt Gaetz. That inaction came despite the fact that prostitution is illegal in all U.S. states with the exception of some counties in Nevada.

More importantly, a sitting member of Congress or the Executive Branch is viewed as being vulnerable to blackmail when they are hiding a history of crime.

To understand the DOJ’s timidity to go after Gaetz requires a broader understanding of how the DOJ has become compromised and intimidated by powerful people and their high-priced lawyers.

There are strong echoes in the Gaetz matter to how the Justice Department let Jeffrey Epstein off the hook in 2008 for sex-trafficking of dozens of underage high school girls despite a mountain of evidence and depositions compiled by the Palm Beach County police in Florida.

The U.S. Department of Justice cut a deal that allowed Epstein to serve just 13 months in jail from June 2008 to July 2009 – the majority of the time in a work release program where Epstein was driven to an office each day by his personal chauffeur.



Jeffrey Epstein

Following the work release program, Epstein was required to spend one year under house arrest at his Palm Beach residence. But in a documentary series on Epstein, *Filthy Rich*, based on the nonfiction book by the same name, a Palm Beach police official explained what actually happened:

“He would violate his probation almost on a daily basis. There’s 11 pages here of just different violations. I think, I, myself, documented 66 different days that he violated his probation...He would go to New York, to his island, he would go to the airport, jump in his helicopter. Who knows where he went – without telling anybody. Every time I brought the probation office a case, they kept telling me the same thing. What would you like us to do? He’s a celebrity. I mean, just think about this: You have a pedophile out on probation – to violate probation in the state of Florida is illegal, except for Jeffrey Epstein.”

Despite having videotaped testimony from Epstein’s victims and statements confirming the abuse from a multitude of other witnesses, the U.S. Department of Justice allowed this pedophile to remain free – traveling throughout the United States and around the world on his private jets – sexually abusing girls and young women at his multiple mansions for another decade, until his arrest on July 6, 2019 on federal sex trafficking charges. Epstein died in a Manhattan jail on August 10, 2019 – just a little more than a month after his arrest. The New York City Medical Examiner ruled his death a suicide.

The Department of Justice was likely shamed into *finally* taking serious action against Epstein in 2019 by reporter Julie Brown’s explosive series on Epstein’s sex crimes that appeared in the Miami Herald newspaper in November 2018.

Wall Street On Parade’s detailed coverage of the Epstein case has centered on the fact that the largest federally-insured bank in the United States, JPMorgan Chase, was supplying Epstein with the tens of thousands of dollars in hard cash each month to pay off his victims as well as the young women he hired to recruit more school girls that he could sexually abuse or pimp out to his ultra-wealthy friends.

But notwithstanding the fact that JPMorgan Chase has a rap sheet that rivals that of an organized crime family, including five criminal felony counts, the U.S. Department of Justice has yet to bring a criminal case against the bank for aiding and abetting Epstein in his crimes – despite a mountain of detailed evidence developed by the Attorney General of the U.S. Virgin Islands, where Epstein owned his own so-called “Pedophile Island” and treated himself and his rich pals to sexually abusing young girls within the isolated confines of his tropical paradise.

The federal lawsuit filed by the Attorney General of the U.S. Virgin Islands alleged that JPMorgan Chase had “actively participated” in Epstein’s sex trafficking. A Memorandum of Law arguing for partial summary judgment in the case, that was filed by the Attorney General for the U.S. Virgin Islands, makes the following points:

“Even if participation requires active engagement...there is no genuine dispute that JPMorgan actively participated in Epstein’s sex-trafficking venture from 2006 until 2019. The Court found allegations that the Bank allowed Epstein to use its accounts to send dozens of payments to then-known co-conspirators [redacted] provided excessive and unusual amounts of cash to Epstein; and structured cash withdrawals so that those withdrawals would not appear suspicious ‘went well beyond merely providing their usual [banking] services to Jeffrey Epstein and his affiliated entities’ and were sufficient to allege active engagement.”

The U.S. Virgin Islands had previously advised the court on the unfathomable sums of hard cash that Epstein was able to take from the accounts he maintained at JPMorgan Chase without the bank filing the legally mandated Suspicious Activity Reports (SARs) to law enforcement. In the Memorandum linked above, it tallied up the giant pile of cash, writing as follows:

“Between September 2003 and November 2013, or approximately ten years, JPMorgan handled more than \$5 million in outgoing cash transactions for Epstein — ignoring its own policy discouraging large cash withdrawals....”

The U.S. Virgin Islands’ attorneys cited to internal emails at JPMorgan Chase showing that employees at the bank were aware of Epstein’s “[c]ash withdrawals ... made in amounts for \$40,000 to \$80,000 several times a month” while also being aware that Epstein paid his underage sexual assault victims in cash.

After a scorched earth campaign by JPMorgan Chase’s attorneys to humiliate the U.S. Virgin Islands in the media over its own unseemly political ties to Epstein, the case was settled, with JPMorgan Chase paying the U.S. Virgin Islands \$75 million.

JPMorgan Chase’s involvement in the Epstein sex trafficking ring was also alleged in a class action lawsuit against JPMorgan Chase brought by lawyers David Boies and Bradley Edwards on behalf of Epstein’s victims. At a March 13, 2023 court hearing in the case, Boies argued in open court that JPMorgan Chase had used a private jet owned by the bank’s hedge fund, Highbridge Capital, to transport girls for Epstein’s sex trafficking operation.

With the criminal division of the U.S. Department of Justice still failing to take action against JPMorgan Chase for its alleged money laundering for Epstein, and the Boies/Edwards lawsuit on behalf of victims now settled for \$290 million by JPMorgan Chase – with victims’ lawyers getting \$87 million in legal fees and \$2.5 million in expenses while victims are guaranteed nothing other than a requirement to release their claims – there is little hope that the American people will ever see sunshine in this matter.

According to court filings in the Epstein/JPMorgan Chase cases, Epstein was running a “sex-themed cult.” According to a deposition of a JPMorgan banker, the only money-generating business that Epstein had was tending to his “network.” According to witness testimony,

fulfilling the sexual fantasies of powerful men in Epstein's "network," was how he obtained six opulent homes and hundreds of millions of dollars in wealth.

The information available to the public thus far suggests that Matt Gaetz, nominee to head the most powerful federal law enforcement agency in the U.S., was also running a sex/drug themed party circuit for himself and unnamed men – the black top hats in the diagram above — and the U.S. Department of Justice failed to bring charges against Gaetz.

It's long past the time for an independent investigation into the compromised U.S. Department of Justice.

Related Article:

[The Untouchables: PBS Asks Why U.S. Justice Department Isn't Prosecuting Wall Street](#)



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Xerox Faces Investor Suit Over 'Reinvention' Strategy

By **Sydney Price**

Law360 (November 20, 2024, 8:04 PM EST) -- Business technology company Xerox Inc. has been hit with a proposed shareholder class action in New York federal court alleging the company's stockholders were harmed by a "reinvention" strategy it introduced in 2023 that yielded lower sales and revenue.

In a **complaint** filed Tuesday, investor Jacob Wilson said Xerox introduced a three-pronged reinvention strategy in October 2023 based on geographic optimization, streamlined product offerings, and organizational and structural simplification. However, the suit says, after laying off 15% of its workforce as part of the strategy and failing to meet sales goals, Xerox announced Oct. 29 this year it underperformed its previous expectations.

In addition to Xerox, its CEO Steven J. Bandrowczak and Chief Financial Officer Xavier Heiss are individual defendants.

According to the complaint, on Jan. 3, before the start of the class period, Xerox revealed the company would reduce its workforce by about 15% as part of a consolidation strategy, which Xerox said was key to its overall "operating model evolution." As a result of the layoffs, the company's sales staff was reorganized with new territory assignments and account coverage, and productivity was "disrupted," the shareholders said.

The class period begins Jan. 25, the day Xerox announced its fourth-quarter 2023 financial results. The company said that day the reinvention plan it announced the previous year had "led to 170 basis points of adjusted operating margin expansion," and that any decline in equipment sales was the result of the "prior year effect of backlog reduction."

For the following several months, Xerox represented to investors on multiple instances that its strategy would drive growth, they alleged. For example, in an annual report filed in February, Xerox claimed it "is expected to deliver \$300 million of annual net adjusted operating income improvement above 2023 levels through 2026" and "more than one-third of that improvement in 2024," the complaint said.

The truth began to emerge April 23, when Xerox revealed that revenue fell 12% year-over-year to \$1.5 billion in the second quarter, and equipment sales declined nearly 26% compared to the previous year to \$290 million, according to the suit. The company admitted that its geographic simplification had driven the declines in part, the shareholders said.

On this news, the investors pointed out, the Xerox stock fell \$1.66, or about 10%, in price per share to close at \$14.76 on April 23, the complaint said.

Several months later, on Oct. 29, Xerox announced that revenue for the third quarter was down 7.5%, and that the sales underperformance was the result of "lower-than-expected improvements in sales force productivity" and "delays in the global launch of two new products," the proposed class noted.

Xerox also disclosed that day that due to lower-than-expected revenue in 2024, it no longer expected to grow adjusted operating income \$300 million above 2023 levels by 2026 as it projected, the shareholders said.

Following these revelations, the Xerox share price fell \$1.79, or about 17%, to \$8.49 by closing Oct.

29, according to the complaint.

The suit says Xerox and the individual defendants violated the Securities Exchange Act and are not protected under the safe harbor provisions of securities laws.

Wilson is represented by Rebecca Dawson, Robert V. Prongay and Charles H. Linehan of Glancy Prongay & Murray LLP and Frank R. Cruz of the Law Offices of Frank R. Cruz.

Counsel information for Xerox and the individual defendants was not immediately available Wednesday.

The case is Wilson v. Xerox Holdings Corp. et al., case number 1:24-cv-08809, in the U.S. District Court for the Southern District of New York.

--Editing by Covey Son.

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Bumble Brass Fumbled App Revamps, Investor Suit Says

By **Emilie Ruscoe**

Law360 (November 20, 2024, 8:41 PM EST) -- Current and former brass of dating app Bumble's parent company face shareholder derivative claims that they projected overconfidence about revamping its app, then saw trading prices crater when Bumble lowered its 2024 growth projections amid the tinkering.

In a suit filed Tuesday in Austin, Texas, federal court, Bumble Inc. investor Marvin Mayo claims Bumble's executives and directors shared overly rosy expectations for how certain recent changes to Bumble's app, including the launch of additional paid subscriber tiers, would impact the company's earnings.

As a result, Mayo claims, trading prices for the company's shares were artificially inflated, and when the company cut its guidance in February and August, citing plans to again readjust its app changes, trading prices for the company's shares declined.

For example, Mayo says, when the company announced in November 2023 that it planned to launch a new, elevated Premium Plus subscription tier, its founder and then-CEO Whitney Wolfe Herd told investors the new offering, combined with Bumble's existing premium subscription offering, would be "protective to [Bumble's average revenue per paying user performance metric] while expanding payers."

"We've been really pleased with the very early indicators and the early results we're seeing," Wolfe Herd said of the Premium Plus tier in 2023.

Despite that optimism, Mayo contends, "the individual defendants did not have access to reliable information regarding how new tiered-subscription options and the subsequent Bumble app relaunch would affect revenue and growth forecasts," and those purported benefits failed to materialize.

Mayo also points to a leadership transition at the top of the company, contending that when Bumble founder Wolfe Herd announced her successor Lidiane Jones, the company failed to tell investors that "the leadership change at the company would disrupt the company's reputation and brand."

And the investor pointed to the company's buybacks of its own stock, arguing that, because the stock was artificially inflated, the company overpaid by about \$123 million for the 17 million shares it repurchased.

The company also faces a proposed investor class action making securities fraud claims in connection with the alleged misrepresentations, which would also cost the company "many millions of dollars," Mayo said Tuesday.

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

Mayo is represented by Saadia Hashmi of The Brown Law Firm PC.

Counsel information for the defendants wasn't immediately available Wednesday.

The case is Mayo v. Jones et al., case number 1:24-cv-01424, in the U.S. District Court for the Western District of Texas.



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Lululemon Execs Hit With Derivative Suit Over DEI Program

By **Bonnie Eslinger**

Law360 (November 20, 2024, 10:11 PM EST) -- Lululemon leadership was hit with a shareholder derivative suit Wednesday claiming they made false statements related to the company's new "Inclusion, Diversity, Equity and Action" program that artificially boosted the company's stock price and also concealed problems with the company's inventory allocation.

In a **complaint** filed Wednesday in New York federal court, Shane Kanaly targeted Lululemon CEO Calvin McDonald and Chief Financial Officer Meghan Frank, along with the company's current board and some former board members, alleging violations of state and federal law from October 2020 to July 2024.

In addition to the claims related to Lululemon's diversity efforts, the suit blasts McDonald, Frank and company director Kathryn Henry, alleging that they say "took advantage of the company's artificially inflated stock price by selling voluminous amounts of personally held shares of Lululemon stock, reaping collective gross proceeds in excess of \$19 million."

Lululemon's directors also green-lit a share repurchase program that resulted in the company buying back billions of dollars' worth of its own common stock at the artificially inflated prices, overpaying by over \$700 million, according to the complaint.

Lululemon is a Canadian company that operates over 500 stores globally, including locations in North America, Europe and Asia. In October 2020, the company announced the new IDEA program, saying it would focus on a goal of reflecting "the diversity of the communities the company serves and operates in around the world by 2025."

That same month, the company announced that it had hired former Microsoft Associate General Counsel Stacia Jones to head up the IDEA program.

But IDEA wasn't structured to combat discrimination within Lululemon in any meaningful way, the investor suit claimed, and as a result, employees of color continued to experience harmful bias at work.

In its annual report, signed by the company leadership and filed in March 2021, Lululemon said it was investing \$5 million to fund its global IDEA activities with funds available to support the careers of "our diverse talent and increase access to internal opportunities and professional development." In addition, there would be training offered on such topics as anti-racism and inclusive leadership behaviors, the company said.

Two months later, in an April 2021 proxy statement, the company touted that, as of the start of that year, approximately 55% of Lululemon's board of directors, 65% of the senior executive leadership team and 50% of all vice presidents and above are women, with women making up approximately 75% of the overall workforce. The financial statement is "silent" as to Lululemon's racial diversity, the complaint noted.

Financial statements subsequently filed in 2022 and signed by Lululemon's leadership continued to state that diversity and inclusion are essential to the company's culture. But in April 2022, "the racial diversity on the company's board, as admitted in the 2022 proxy statement, was just 9%," the suit said.

Nonetheless, Lululemon pronounced in 2023 financial statements that it was making "significant strides in our IDEA journey, including increasing diversity within our retail stores" and had also launched an ally initiative called LEAN, standing for "Learning in Equity, Actioning Now."

The racial diversity on the company's board, according to the 2024 proxy statement, was represented by one member of the 11-person board, the suit said.

The company's board "suffered from a startling lack of racial diversity as it never had more than two racially diverse members of the board and, for the majority of the relevant period, had just one racially diverse member of the board," the suit said. The financial statements also concealed the fact that there had been no Native American, Hispanic or Pacific Islander directors on the board, the complaint noted.

In November 2023, the public learned that the IDEA program had been a failure when an online fashion publication posted an article containing interviews with more than a dozen former Lululemon employees who said the company's corporate culture is hostile to Black people, according to the complaint. Company leaders regularly use stereotypes that ostracize minority employees who are also not given the same opportunities to advance their careers. The former staffers said when they tried to call out the discrimination, they were passed over for promotions and some were fired, according to the article.

In addition, Lululemon, through the company leadership, concealed significant problems with the company's inventory allocation methods, the suit said.

In early 2024, the price of Lululemon's common stock fell more than 15%, from a closing price of \$478.84 per share on March 21, 2024, to a closing price of \$403.19 per share the next day.

Lululemon also launched a new "Breezethrough" line that didn't catch on with customers, according to the complaint, and the company's stock price tumbled further in July, hitting a closing price of \$247.32 per share on July 25, 2024, according to the complaint.

"Plaintiff, on behalf of Lululemon, seeks to recover the damages caused to it by the individual defendants' breaches of fiduciary duty and other unlawful conduct," the complaint said.

Two other shareholder lawsuits have been filed in New York federal court over the allegedly concealed inventory challenges, one **in August**, and one **in November**. Neither mentions the IDEA program.

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

Shane Kanaly is represented by Gregory M. Egleston of Gainey McKenna & Egleston.

Counsel information for Lululemon and the individual defendants was not immediately available on Wednesday.

The case is Shane Kanaly v. Calvin McDonald et al., case number 1:24-cv-08839, in the U.S. District Court for the Southern District of New York.

--Editing by Rich Mills.



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Scotts Miracle-Gro Leaders Sued Over Post-Pandemic Glut

By **Emilie Ruscoe**

Law360 (November 20, 2024, 7:12 PM EST) -- Executives, directors and an heir to the CEO of consumer gardening giant The Scotts Miracle-Gro Co. face a shareholder derivative action alleging the company flooded its sales channels with post-pandemic excess inventory as it struggled to avoid defaulting on its debt.

In a Tuesday complaint in Ohio federal court, Scotts investor Gary Thomas Carone claims that starting in 2021, after it made significant inventory increases for its U.S. Consumer and Hawthorne cannabis hydroponics supply business segments, the company began "pushing products through its sales channels at a pace that outstripped demand," booking sales to its distributors as revenue to keep its debt-to-earnings ratios down for its lenders.

But in June 2022, Carone says, the company nearly halved its financial guidance for that fiscal year when it announced it had missed its U.S. retailer May replenishment order target by \$300 million, which purportedly caused its trading prices to fall nearly 9% from about \$102 to about \$93.

And in August 2023, Scotts announced a \$20 million write-down of what it described as "pandemic driven excess inventories" and lowered its 2023 guidance by 25%, Carone states, asserting that the news precipitated a 19% decline in Scotts' trading prices from over \$71 to under \$58.

Carone also points out that Scotts faces two proposed investor class actions making securities fraud allegations over the same circumstances, noting that the costs of defending that matter and any potential liability will also hurt the company on top of its lost market capitalization and the damage to the company's reputation.

Carone's suit takes aim at the company's CEO James Hagedorn, his sister Katherine Hagedorn Littlefield, who is one of the company's directors, and Hagedorn's son Christopher J. Hagedorn, who is division president for Scotts' cannabis-focused subsidiary.

The complaint also names the company's current and former chief financial officers and 10 additional Scotts directors.

Ohio-based Scotts markets its own brand of lawn and garden products and has under its corporate umbrella the "plant food" brand Miracle-Gro and herbicide and insecticide maker Ortho. The company is also the distributor for consumer marketed versions of the herbicide Roundup, Carone says, noting that together, Hawthorne and Scotts' U.S. consumer business segment generated over 90% of the company's revenue over the past three years.

The investor states that Scotts saw rising product demand in 2020 and 2021 amid the global coronavirus pandemic, but it wasn't able to meet supply and subsequently "missed out on millions of dollars in sales."

In a Wednesday email to Law360, counsel for Carone said, "we think the complaint lays out the claims clearly and concisely."

Representatives for the company did not immediately respond to requests for comment Wednesday.

Carone is represented by Stuart G. Torch and David N. Truman of Employment Law Partners LLC, and

Gregory M. Nespole, Daniel Tepper, Correy A. Suk and Sidharth Kakkar of Levi & Korsinsky LLP.

Counsel information for the defendants wasn't immediately available Wednesday.

The case is Carone v. The Scotts Miracle-Gro Co. et al., case number 2:24-cv-04180, in the U.S. District Court for the Southern District of Ohio.

--Editing by Kristen Becker.

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Firms For Ohio Funds Aim To Steer ZoomInfo Investor Suit

By **Ryan Harroff**

Law360 (November 20, 2024, 4:05 PM EST) -- Two Ohio retirement funds asked a Washington federal judge to name their attorneys from Labaton Keller Sucharow LLP and Byrnes Keller Cromwell LLP as lead counsel and liaison counsel in investor claims brought against ZoomInfo Technologies Inc. over its allegedly misguided attempts to maintain a pandemic-era customer boom.

The State Teachers Retirement System of Ohio and the Ohio Public Employees Retirement System asked the Western District of Washington on Tuesday to appoint them together, under the name "Ohio funds," as lead plaintiff in the proposed class action **brought in September** by Michigan pension fund the City of Pontiac Police and Fire Retirement System.

According to the Ohio funds' memorandum Tuesday, they have by far the largest financial interest in pursuing the proposed class claims that ZoomInfo Technologies' purportedly poor attempts to retain its customer base caused its stocks to drop 90% during the proposed class period.

"The Ohio funds — sophisticated, multi-billion-dollar institutions that have dutifully served in a fiduciary capacity for millions of beneficiaries over several decades — sustained substantial losses of approximately \$75.9 million on a [last-in, first-out] basis on their class period transactions in ZoomInfo Class A common stock," the memorandum states. "Because this amount is significantly larger than the losses of the other movants, the Ohio funds have easily satisfied the largest financial interest requirement."

In the memorandum, the Ohio funds noted that other potential lead plaintiffs had already withdrawn their bids to lead the suit and that of those other movants, the one with the next highest financial loss had been the Teachers' Retirement System of Louisiana at \$22 million. Between the significantly higher financial stake and the now-unopposed nature of the Ohio funds' bid to lead the case, the court has multiple reasons to grant the appointment request, they said.

The suit alleges ZoomInfo Technologies used ill-conceived customer retention methods such as "manipulative and coercive auto-renew policies and threats of litigation to force customers into remaining with the company" as it fought to keep its numbers as high as they were when the COVID-19 pandemic motivated consumers to have more virtual meetings.

Those methods failed, the suit says, and the company ultimately had to write down \$33 million due to nonpayment of previously recognized revenue from its customers.

Counsel for the Ohio funds did not immediately respond to requests for comment. Counsel for ZoomInfo Technologies declined to comment.

The Ohio funds are represented by Eric J. Belfi, Michael P. Canty and Francis P. McConville of Labaton Keller Sucharow LLP, Bradley S. Keller and Joshua B. Selig of Byrnes Keller Cromwell LLP and Shawn Busken of the Ohio Attorney General's Office.

ZoomInfo Technologies is represented by Paul F. Rugani, James N. Kramer and Molly McCafferty of Orrick Herrington & Sutcliffe LLP.

The case is City of Pontiac Police and Fire Retirement System v. ZoomInfo Technologies Inc. et al., case number 3:24-cv-05739, in the U.S. District Court for the Western District of Washington.



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\$2.6M Deal Proposed To End Chancery Lottery.com Suit

By **Katryna Perera**

Law360 (November 20, 2024, 5:45 PM EST) -- Five executives of the special purpose acquisition company that took Lottery.com public have reached a \$2.6 million settlement with company shareholders to resolve claims that the 2021 take-public deal misled investors about the potential value of the business.

A group known as the Trident defendants in a class action proceeding in the Delaware Court of Chancery have entered into the proposed deal with shareholders, according to a **stipulation and agreement of settlement** filed on Friday.

The group includes the former chairman of Trident Acquisition Corp., Marat Rosenberg, Trident's former CEO Vadim Komissarov and the company's former president, Edward Verona.

The suit, **filed last year**, accused the Trident defendants and others of taking public a business built on "unlawful core operations" that allowed insiders to avoid a wipeout on their Trident Acquisition Corp., or TDAC, founder shares and instead reap, in some cases, a 10,000% gain while public investors lost heavily.

According to Friday's filing, the plaintiffs believe that the \$2.6 million deal is fair, reasonable and adequate for the class, which includes all record and beneficial holders of Trident common stock who held such stock as of the redemption deadline on Oct. 26, 2021, through the closing of the merger with Lottery.com on Oct. 29, 2021.

The lead plaintiffs say they believe their claims against the defendants have merit, but they also believe the settlement "provides substantial and immediate benefits for the class ... and immediate ability to use the pre-mediation discovery and the regulatory documents, which will assist plaintiffs' prosecution of their claims against the remaining defendants, the additional defendants, and any other potential parties not subject to the settlement."

Friday's filing states that the suit's remaining defendants include, among others, Lottery.com's former chairman and CEO, Lawrence Anthony DiMatteo III, the merged company's former president and CEO, Ryan Dickinson, and Chardan Capital Markets LLC — a representative for the underwriters in connection with the IPO and a financial adviser to the TDAC board in connection with the merger.

Friday's filing does not include any other settlement details, such as attorney fees or litigation expenses.

TDAC was formed as a public shell company in order to acquire another business. It originally considered deals with dozens of oil and gas companies both overseas and in North America. Its founders later pivoted to a search for "rare earth" mineral company targets before settling on Lottery.com, closing on the deal just ahead of a regulatory deadline that could have wiped out the founding investors.

The suit accused those involved of pushing through the merger "at lightning-fast speed while entering binding agreements and touting Legacy Lottery before even starting its purported due diligence." Marketing of the deal was allegedly propped up with "false and misleading statements" about the number of states in which Lottery.com operated, as well as its revenues.

A TDAC statement in February 2021 described Lottery.com as having a post-transaction enterprise value of \$526 million. However, when the suit was filed, the company's market capitalization was under \$14 million.

According to the May 2023 suit, TDAC's legal advisers prepared several due diligence questions about Lottery.com, noting that the deal proxy months later "does not state whether Legacy Lottery ever answered these questions. Lottery's books and records production also does not include any indication that Legacy Lottery ever answered."

A month after closing, in November 2021, Lottery "disclosed that it had been on notice that its disclosure controls and procedures were ineffective before the redemption date but failed to disclose this fact (or correct its disclosure controls and procedures)."

The news sent the new company's stock — once trading at \$15.70 per share — down from nearly \$13 per share to about \$7 per share in less than a week.

The plummet continued as new revelations about regulatory violations and disclosure failures rolled in. By mid-July 2022, share prices dropped below \$1, with the company currently priced at roughly 30 cents per share.

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

The investors are represented by Maxwell R. Huffman and Justin O. Reliford of Scott + Scott Attorneys At Law LLP, Donald J. Enright and Noah R. Gemma of Levi & Korsinsky LLP, Christine M. Mackintosh, Kelly L. Tucker and David Wissbroecker of Grant & Eisenhofer PA, Joseph L. Christensen and Michael Klausner of Christensen Law LLC, Peretz Bronstein and Eitan Kimelman of Bronstein Gewirtz & Grossman LLC, and Michael K. Yarnoff of Kehoe Law Firm PC.

The Trident defendants are represented by Ashman W. Berton Jr., Tyler Leavengood and Justin Hymes of Potter Anderson & Corroon LLP.

The case is In Re Lottery.com Inc. Stockholders Litigation, case number 2023-0395, in the Court of Chancery of the State of Delaware.

--Editing by Rich Mills.



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Advance Notice Bylaw Measures Fuel Chancery Battle

By **Jeff Montgomery**

Law360 (November 20, 2024, 7:45 PM EST) -- Arguing that recent corporate advance notice bylaws have resulted in "real, actual harm" to stockholders of Owings Corning and The AES Corp., attorneys for shareholders of both urged a Delaware vice chancellor on Wednesday to reject calls to dismiss challenges to the measures.

Lawsuits filed earlier this year accused the two companies of weaponizing the notice requirements in the wake of U.S. Securities and Exchange Commission universal proxy card rules that went into effect in September 2022.

Stockholder advocates have argued corporate responses to the changes have made it "unreasonably hard" to satisfy notice requirements for board election nominees, with some companies adopting liberally applied restrictions purportedly aimed at checking takeover-motivated "acting in concert," "wolfpack" and "daisy chain" stockholder strategies to avoid current restrictions.

"We are not challenging the facial validity of these bylaws on their face. I am simply not conceding they are valid on their face," Gregory V. Varallo of Bernstein Litowitz Berger & Grossmann, counsel to the stockholders, said, adding separately: "It's the chilling effect that these bylaws bring to stockholders, either now or leading up to the question of whether to wage a proxy contest."

The arguments prompted an extended back-and-forth between Varallo and Vice Chancellor Nathan A. Cook, who expressed skepticism, observing the suits appeared to challenge the bylaws on their face rather than showing individual harm.

"None of the plaintiffs have said they are in any way chilled from communicating," Vice Chancellor Cook said. "I think perhaps the Delaware Supreme Court is telling me it's not too much to ask that at least that person be the plaintiff."

The vice chancellor added separately: "Right now, this is an abstraction. It is one step away from — maybe a half step away from — a law professor debate."

Marjorie P. Duffy of Jones Day told the vice chancellor that Delaware's Supreme Court "took great care" in a state Supreme Court decision in *Kellner v. AIM ImmunoTech Inc.* in July "to remind everyone, not just courts, but litigants as well, that Delaware courts are not in the business" of ruling on "hypothetical disputes."

Duffy argued for both companies, with a brief filed on behalf of Owens Corning observing that "neither plaintiff nor any other stockholder has submitted a nomination that has been excluded for noncompliance with the bylaws, plans to submit a nomination, or is actually deterred from doing so by the bylaws."

"With all due respect, when the corporate law says we're not going to look at any more challenges and give our friends on the defense side the right to continue to innovate without challenge, we're getting into a very bad place," Varallo said.

He likened the current debate to disputes that led to a fast-moving corporate bar campaign in Delaware earlier this year that resulted in the passage of legislation allowing companies to cede some corporate governance rights to chosen stockholders. It also allowed court approval of provisions in less-than-final form and penalties for failures to consummate a merger agreement, among other changes.

Vice Chancellor Cook termed "strange" the fact that after "four decades of merger and acquisition litigation, there is a stockholder challenge to advance notice bylaw outside a proxy contest, where the stockholder can't come forward" and assert an impact. Instead, the harm targeted "is an abstraction."

At issue in part was a footnote in the Kellner decision noting in part that "[f]iduciary review standards are meant to address real-world concerns when they arise in real-world and extant disputes, rather than hypothetical and imagined future ones."

Varallo told the vice chancellor that "even in the absence of a facial challenge, bylaws are still subject to judicial review."

Vice Chancellor Cook, who said he would take the arguments under advisement, said: "I don't go about deciding these matters absent some sort of real-world context in which apply them. Maybe that is the view of how the common law best develops, in the real-world application, where somebody has an actual, cognizable harm."

Martin Siegel is represented by Gregory V. Varallo, Andrew E. Blumberg, Daniel E. Meyer, Jeroen van Kwawagen, Christopher J. Orrico, Shiva Mohan and James Janison of Bernstein Litowitz Berger & Grossman LLP, Christine M. Mackintosh, Rebecca A. Musarra, Vivek Upadhya and William G. Passannante II of Grant & Eisenhofer PA, Lori Marks-Esterman and Jacqueline Y Ma of Olshan Frome & Wolosky, Michele S. Casarino of Greenwich Legal Associates LLC, and Richard Maniskas of RM Law PC.

Owens Corning, The AES Corp. and their directors are represented by Blake Rohrbacher, Matthew W. Murphy, John M. O'Toole and Spencer V. Crawford of Richards Layton & Finger PA and Marjorie P. Duiffy, Elizabeth A. Benshoff and Daniel C. Loesing of Jones day.

The cases are George Assad v. Brian D. Chambers et al., and Martin Siegel v. Jay Morse et al., case numbers 2024-0628 and 2024-0688, respectively, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.



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Attys Slam Deceptive NIL Settlement Services In NCAA Case

By **Elaine Briseño**

Law360 (November 20, 2024, 8:19 PM EST) -- Class counsel in the massive NCAA name, image and likeness lawsuit have asked a California federal court to intervene with third-party servicing companies that are using misleading information while offering claims-filing services to class members in order to profit from the proposed \$2.78 billion settlement.

The Tuesday motion asks the court to set certain requirements for third-party servicing companies when they communicate with **class members**.

"While some of these companies may be engaged in proper business activities, class counsel have discovered that some entities have made various misleading statements to solicit class members," the motion said.

One company allegedly used its website and other publications to target class members, telling them they need a professional legal and claims team to access the settlement and that they can negotiate their settlement, according to the filing. Neither of these assertions are true, the plaintiffs' counsel said.

They have sent a cease and desist letter to the company and the company made changes to the misleading statements and would like to send a corrective notice to all affected class members that the class counsel would draft if the court approves the action. The court regulates class communication.

There are several other third parties offering claims-filing services to class members, the filing said, and the plaintiffs offered a solution that would ensure that the information class members receive is truthful and accurate. They want the court to require that any third party that wants to represent class members in connection with the settlement abide by certain guidelines.

They would have to make it clear that class members do not need to use a third-party service to receive their monetary portion of the settlement, that the amount of their settlement cannot be increased and that there is a no-cost alternative available from the lawsuit's claims administrator and class counsel, according to the motion.

Class attorney Steve Berman of Hagens Berman Sobol Shapiro LLP told Law360 Tuesday that class counsel wants to make sure no one takes advantage of the athletes filing claims.

"They shouldn't need a third party to help — it's all on a website and easy to interact with," Berman said. "And we don't want to see them charged for such services by parties seeking to take advantage."

Class counsel is proposing that the restrictions apply to all forms of communication, including email, marketing materials, mail and telephone conversations.

"Solicitations that do not contain the required information (as set forth above) may be deemed misleading and following notice and an opportunity to cure, those entities may be enjoined permanently from taking any role in the settlement," the filing said.

U.S. District Judge Claudia Wilken gave preliminary approval for the \$2.78 billion settlement on Oct.

7 and set a deadline of Jan. 31 for objections. The final approval hearing is set for April 7.

Former swimmer Grant House filed the initial antitrust lawsuit against the NCAA and then-Power 5 conferences the Big Ten, Southeastern Conference, Big 12 Conference, Atlantic Coast Conference and Pac-12 Conference. It was later consolidated with two similar lawsuits filed by former football players Chuba Hubbard and DeWayne Carter.

For years, the NCAA prohibited its athletes from being compensated for NIL use to protect the amateur nature of college sports. However, the U.S. Supreme Court paved the way for disruption of the status quo in 2021 with its decision in [NCAA v. Alston](#) , which upheld a lower court ruling that the NCAA's practice of limiting education-related compensation violated antitrust laws.

"It is critically important that each and every class member receive truthful, accurate and objective information about the terms of the settlement and be afforded a meaningful choice about whether or not to participate," Tuesday's filing said.

The athletes are represented by Steve W. Berman, Emilee N. Sisco, Stephanie Verdoia, Meredith Simons and Benjamin J. Siegel of Hagens Berman Sobol Shapiro LLP, Jeffrey L. Kessler, David G. Feher, David L. Greenspan, Adam I. Dale, Neha Vyas and Jeanifer E. Parsigian of Winston & Strawn LLP, and Jeffrey L. Kodroff and Eugene A. Spector of Spector Roseman & Kodroff PC.

The NCAA is represented by Rakesh N. Kilaru, Beth A. Wilkinson, Kieran Gostin, Calanthe Arat, Tamarra Matthews Johnson and Matthew R. Skanchy of Wilkinson Stekloff LLP and Jacob K. Danziger of ArentFox Schiff LLP.

The case is In re: College Athlete NIL Litigation, case number 4:20-cv-03919, in the U.S. District Court for the Northern District of California.

--Additional reporting by David Steele. Editing by Linda Voorhis.

Correction: A previous version of this article had an incorrect figure for the proposed settlement. The error has been corrected.



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Beasley Allen And J&J Tussle Over Atty Sanctions Bid

By **Madison Arnold**

Law360 (November 20, 2024, 4:27 PM EST) -- Beasley Allen Law Firm accused a Johnson & Johnson talc unit of using "deposition notices as weapons" in its quest to sanction a firm lawyer, while the company said the firm "refused to meaningfully subject itself or its members to any discovery" in its bankruptcy case.

The two sides submitted competing briefs in a Texas bankruptcy court Wednesday related to J&J's motion for sanctions.

Beasley Allen said in its **filing** that the motion shows an "unfortunate breakdown in cooperation among the parties." The law firm, which represents the so-called Coalition of Counsel for Justice for Talc Claimants, added that Andy Birchfield, head of mass torts at Beasley Allen, never tried to avoid his deposition.

"The debtor's motion for sanctions is overreaching and unwarranted," Beasley Allen said, adding, "He simply has asked that the deposition proceed on the same day as [former co-counsel in the case Allen Smith's] deposition, so that neither witness — to be examined on the same subjects — gains a strategic edge from knowing the other witness's sworn testimony in advance. Indeed, the debtor's motion brings into broad daylight the tactical advantage it seeks."

In a separate matter, Beasley Allen sued Smith in September, accusing him and his firm of undermining Beasley Allen's work against J&J.

In a statement to Law360 Pulse Wednesday, Birchfield said his firm always strives to maintain the "highest level of professionalism."

"We cannot, for our clients' sake, passively allow J&J tactics to go unchecked. The court has asked all parties to limit the rancor and work together where we can. It's unfortunate that J&J seeks to mislead the court and the public with its histrionic petitions that seem motivated more to generate headlines," he said.

In J&J's response, the company said that the breakdown in cooperation is "solely the responsibility of one party — the coalition."

"Most notably, Mr. Birchfield skipped out on his deposition on Monday, November 18 in New York as lawyers representing multiple different constituencies, along with court reporters and videographers waited," J&J said.

Johnson & Johnson's talc unit **filed a motion for sanctions** Monday after it said Birchfield "unilaterally" decided not to attend a scheduled deposition in the company's bankruptcy case. Birchfield was scheduled two weeks in advance for a deposition, according to J&J's brief.

"Mr. Birchfield's blatant violation of the discovery rules should not be countenanced," J&J told the court earlier this week.

The coalition said it initially sought guidance from the court as to the scheduling issue in an emergency motion on Nov. 8. When the court did not have the opportunity to address the matter, the coalition filed a motion to quash, according to Wednesday's response.

"Since then, in a continued effort to unburden the court with having to decide discovery disputes that

should be resolved, Mr. Birchfield again offered to sit for his deposition, but the debtor refused," the response said.

J&J had asked the court to order Birchfield to appear for his deposition at the time and place of its choosing and to postpone Smith's deposition until after Birchfield's, according to the coalition's filing.

"Rather than agree on a mutually acceptable solution, or simply await the rulings of the court on the coalition's multiple pending motions, concerning Mr. Birchfield's deposition, the debtor — despite being repeatedly advised that Mr. Birchfield would not appear for his deposition while the coalition's motions were pending — took the deposition of an empty chair and now has moved to sanction Mr. Birchfield," Beasley Allen said Wednesday.

J&J said in its response Wednesday that the company reached out to the coalition since it filed its emergency motion to get the deposition schedule back on track.

"[The] debtor even agreed to Mr. Birchfield's supposed (and legally unwarranted) reason for ducking his November 18 deposition — that his deposition occur at the same time as his former co-counsel Mr. Smith's. Nevertheless, despite having acceded to the coalition's demand, as of the filing of this reply, the debtor has received no response," J&J said.

Beasley Allen said the coalition has attempted to follow court guidance that asked the parties to remain focused on the substantive issues and "reduce acrimony," but those attempts haven't been mirrored by J&J.

"The coalition has listened carefully to the court's guidance that the parties eliminate scorched earth litigation tactics, personal attacks, and rhetoric, and instead focus on the issues ultimately to be determined. And the coalition has tried to abide by that guidance, attempting to propose reasonable solutions to discovery disputes and, if unable to reach a resolution, to seek rulings from the court without advancing personal attacks or seeking draconian remedies," Beasley Allen said.

J&J filed for a Chapter 11 bankruptcy in Texas in September that would create an \$8 billion fund to settle all current and future claims against the company after 83% of talc claimants voted in favor of the plan.

Monday's motion was the latest of several ethics attacks J&J has mounted against Birchfield and Beasley Allen, which represents plaintiffs alleging that talc-based baby powder contained asbestos and caused ovarian and other gynecological cancers, and which has been accused by J&J of seeking to scuttle the bankruptcy plan.

In September, J&J accused Beasley Allen of submitting about two dozen fraudulent ballots opposing the bankruptcy on behalf of clients of a different law firm. Before that, J&J accused Beasley Allen of refusing to disclose a "clever" litigation financing scheme that was obscuring that a third-party litigation funder was paying for the firm's work in massive multidistrict litigation against the company.

J&J also sought to have Beasley Allen disqualified from the MDL over the firm's alleged cooperation with a former outside counsel, a move Beasley Allen slammed as a "locker-room brawl"-style tactic.

Last month, J&J defeated a bid by the coalition and the U.S. Trustee's Office to have the bankruptcy case moved to New Jersey, where previously attempted bankruptcies were filed.

Most recently, the coalition filed a motion on Monday asking the court to compel certain plaintiff-side law firms, including Smith's, to turn over documents showing that they had the proper legal authority to cast votes on behalf of their clients in favor of the bankruptcy plan.

The coalition said that despite "numerous" meetings since it filed the requests for production in October, members of the ad hoc committee of supporting counsel have not produced the requested documents, and that the firms "submitted master ballots on behalf of thousands of purported clients, in many cases pursuant to purported powers of attorney that, based on the limited depositions conducted thus far, clearly do not authorize the lawyers to have voted on behalf of their purported clients."

Red River Talc, J&J's talc spinoff, is represented by John F. Higgins, M. Shane Johnson, Megan Young-John and James A. Keefe of Porter Hedges LLP and Gregory M. Gordon, Dan B. Prieto, Amanda Rush and Brad B. Erens of Jones Day.

The Coalition of Counsel for Justice for Talc Claimants is represented by Nicholas R. Lawson and Avi Moshenberg of Lawson & Moshenberg PLLC and Melanie L. Cyganowski, Adam C. Silverstein, Sunni P. Beville and Jennifer S. Feeney of Otterbourg PC.

The case is In re: Red River Talc LLC, case number 4:24-bk-90505, in the U.S. Bankruptcy Court for the Southern District of Texas.

--Additional reporting by Jake Maher and Alex Wittenberg. Editing by Dave Trumbore.

Update: This story has been updated to include details of J&J's response.

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CVS Can't Dodge Proposed Action Over 'Non-Drowsy' Claims

By **Rae Ann Varona**

Law360 (November 20, 2024, 11:24 PM EST) -- CVS Pharmacy must continue facing a proposed class action alleging it "dangerously" markets over-the-counter medicine as "non-drowsy" despite containing a substance known to cause drowsiness after a Missouri federal judge on Wednesday refused to toss claims lodged under Missouri and other states' consumer protection laws.

U.S. District Judge Henry Edward Autrey denied CVS' motion to dismiss a fourth count in Missouri resident Amy Newport's putative class action accusing the company of "deceptively, misleadingly, and dangerously" marketing CVS-brand cold and flu medicine as nondrowsy despite containing dextromethorphan hydrobromide, in violation of the Missouri Merchandising Practices Act and similar consumer protection laws of eight other states and the District of Columbia.

Judge Autrey ruled that contrary to CVS' contention, Newport's state law claims were not preempted by federal law.

"The court finds that plaintiff is not seeking to impose a requirement that is different from the federal requirements, but rather, her claim is parallel to federal law because she is seeking to hold CVS accountable for labeling that she alleges is false, deceptive, and misleading," Judge Autrey wrote.

Newport seeks to represent a class of individuals who purchased the CVS-brand medicine within the five years before her suit while in Illinois, Maryland, Hawaii, New York, Rhode Island, Vermont, Washington, Connecticut, and the District of Columbia. The St. Louis County resident also seeks to represent a Missouri subclass.

Newport originally filed suit in Missouri state court before CVS removed the case to federal court in February.

In an amended complaint filed in April, Newport asserted that dextromethorphan hydrobromide has been "scientifically proven to cause drowsiness," including by the U.S. National Institute of Health, scientific journals, and various other medical sources.

Popular medical site WebMD, for example, had listed "slight drowsiness" as something that may occur from using DXM and acknowledged that some people may experience "severe" drowsiness or dizziness with "normal" doses, according to Newport's complaint.

She said taking any of CVS' products containing the substance could "be potentially disastrous for consumers in certain situations, such as those driving, operating heavy machinery, or supervising children and/or important/dangerous operations."

Yet CVS, knowing that a nondrowsy label is a "hot selling point" for customers wanting to avoid medicine that could impair their ability to drive, falsely labeled products as nondrowsy, Newport alleged.

In moving to dismiss Newport's amended complaint, CVS said in a motion also filed in April that Newport's claims were expressly preempted by federal law. It said that the U.S. Food and Drug Administration "specifically considered concerns about drowsiness," but found "no data" backing Newport's claims about DXM.

In its motion, CVS had asserted that the FDA's regulatory history helped its case. But Judge Autrey wrote on Wednesday that the history CVS highlighted didn't support its argument.

He said that the FDA didn't determine, as CVS suggests, that antitussive drugs can be divided into a drowsy or nighttime category and a nondrowsy, or daytime, category. The FDA rather considered whether products containing DXM required a drowsiness warning and concluded that more data was needed before requiring such a warning, he said.

"A lack of data does not place the drug in a non-drowsy category," Judge Autrey wrote. "In fact, there is no evidence before the court that the FDA even considered a non-drowsy category."

Judge Autrey also on Wednesday disagreed with the company's arguments against Newport's MMPA allegations, including its contention that Newport failed to adequately explain how she suffered an ascertainable loss.

The judge noted that Newport had alleged not receiving the value of what she bargained for and that she was damaged in the amount of the difference between what she paid for and the actual value of the product. Newport also alleged that the caught suppressant she purchased essentially had no value since it caused drowsiness, something she was specifically trying to avoid.

Judge Autrey wrote that CVS could test Newport's contention in discovery "because the court finds the complaint sufficiently alleges an ascertainable loss under the benefit of the bargain rule."

Newport had also initially accused CVS of breach of warranty, breach of implied warranty, and unjust enrichment under Missouri law but voluntarily withdrew those allegations in an opposition filing to CVS' dismissal bid.

She had also lodged claims against 10 individuals "currently unknown" to her.

Judge Autrey dismissed the claims against the individuals, without prejudice, noting in a footnote that there weren't any factual allegations against any of the individuals in Newport's complaint.

Counsel for Newport did not immediately respond to a request for comment late Wednesday, nor did CVS.

Newport is represented by Daniel F. Harvath of Harvath Law Group LLC.

CVS Pharmacy is represented by M. Kevin Underhill and Michael F. Healy of Shook Hardy & Bacon LLP and Emily Weissenberger of Faegre Drinker Biddle & Reath LLP.

The case is Amy Newport v. CVS Pharmacy Inc. et al., case number 4:24-cv-00252, in the U.S. District Court for the Eastern District of Missouri.

--Editing by Jay Jackson Jr.



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Adani Group Chairman Charged In Sprawling Bribery Case

By **Dorothy Atkins**

Law360 (November 20, 2024, 9:45 PM EST) -- Prosecutors unsealed a sprawling criminal indictment in New York federal court Wednesday, accusing Adani Group Chairman Gautam S. Adani and seven others of orchestrating a \$250 million bribery scheme to secure lucrative Indian government renewable energy contracts, while misleading investors about the Adani Group subsidiary's dealings.

In the Oct. 24 indictment, prosecutors accuse the 62-year-old Adani and two Adani Green Energy Ltd. executives — Adani's nephew Sagar R. Adani and CEO Vneet S. Jaain — of conspiring to defraud investors while other defendants bribed Indian government officials to secure government contracts for one of the world's largest solar energy projects.

The trio are accused of orchestrating the scheme with help of the five other defendants, who face Foreign Corrupt Practices Act and obstruction of justice charges.

The indictment alleges that since 2020, the defendants have agreed to pay more than \$250 million in bribes to Indian government officials in exchange for obtaining lucrative solar energy supply government contracts, which were projected to generate more than \$2 billion in profits after tax over 20 years.

It says Gautam Adani personally met with an Indian government official several times, and the defendants met in person to discuss the alleged scheme with each other multiple times. The scheme was extensively documented by the defendants, according to prosecutors.

As an example, the government says Sagar Adani used his cellphone to track details of the bribes offered and promised to government officials, and Jaain used his phone to photograph a document summarizing various bribe amounts owed.

Defendant Rupesh Agarwal also prepared analyses of the bribery scheme using PowerPoint and Excel that summarized various options for paying and concealing bribe payments, and he shared those analyses with other defendants, the government alleges.

The Adanis and Jaain also conspired to hide the company's scheme from investors in order to obtain additional financing for the government contracts by making a series of misrepresentations in corporate financial statements, the indictment alleges.

The trio are also accused of making two misleading syndicate loans totaling more than \$2 billion from lender groups, and two bond offerings for more than \$1 billion underwritten by international financial institutions, that were marketed and sold to investors around the world.

The indictment charges Gautam and Sagar Adani and Jaain with multiple counts of conspiracy and securities fraud, and it charges Ranjit Gupta and Agarwal, who are former executives of another publicly traded renewable energy company, with FCPA violations. The government also accuses Agarwal and three former employees of a Canadian institutional investor — Cyril Cabanes, Saurabh Agarwal and Deepak Malhotra — with obstruction of justice and FCPA violations.

According to the indictment, Cabanes, Malhotra, and Saurabh and Rupesh Agarwal conspired to obstruct the investigations by the grand jury, the FBI and the U.S. Securities and Exchange Commission by deleting emails, electronic messages and other relevant material. They also falsely

denied participating in the bribery scheme during meetings with the FBI, DOJ and SEC, prosecutors allege.

U.S. Attorney Breon Peace said in a statement Wednesday that the defendants ran an "elaborate scheme" to bribe Indian government officials to secure contracts worth billions of dollars and lied as they sought to raise capital from investors.

"My office is committed to rooting out corruption in the international marketplace and protecting investors from those who seek to enrich themselves at the expense of the integrity of our financial markets," Peace said.

On Wednesday, the SEC also filed two parallel civil lawsuits — one case against the Adanis, the other case against Cabanes — accusing them of various securities fraud violations for raising hundreds of millions of dollars from investors for projects tied to the bribery scheme.

SEC Division of Enforcement acting Director Sanjay Wadhwa said in a statement Wednesday that the Adanis induced American investors to buy Adani Green bonds through an offering process that falsely represented that Adani Green had a robust anti-bribery compliance program, and falsely claiming that the company's senior management would not pay bribes.

"We will continue to vigorously pursue and hold individuals, including senior corporate officers and directors, accountable when they violate our securities laws," Wadhwa said.

Cabanes' counsel declined to comment Wednesday, and contact information for the other defendants and their counsel wasn't immediately available.

The flurry of criminal and civil charges against the executives comes in the wake of U.S. short-seller Hindenburg Research's **market-rattling January 2023 report** that accused another Adani Group subsidiary, Adani Enterprises Ltd., of stock manipulation and accounting fraud.

Following the short-seller's report, Adani Enterprises' market capitalization **plunged \$26 billion**, and losses from Adani Group's companies reached \$99 billion, according to data on the National Stock Exchange of India's website. However, this year, the conglomerate's market capitalization had rebounded.

Adani Enterprises representatives didn't immediately respond to a request for comment Wednesday.

Earlier this year, Gautam Adani, who has consistently been called one of the world's richest men, reportedly planned to hand over the leadership of his company to his sons and nephews once he turned 70.

The government is represented by Jessica Weigel, Matthew R. Galeotti and Sarah Evans of the U.S. Attorney's Office for the Eastern District of New York and Andrew Tyler and Shy Jackson of the U.S. Department of Justice's Criminal Division.

Counsel information for the defendants wasn't immediately available Wednesday.

Cabanes is represented in the SEC case by Stephen Best of Brown Rudnick.

The criminal case is U.S. v. Gautam S. Adani et al., case number 1:24-cr-00433, in the U.S. District Court for the Eastern District of New York. The SEC cases are Securities and Exchange Commission v. Gautam S. Adani et al., case number 1:24-cv-08080, and Securities and Exchange Commission v. Cyril Sebastien Dominique Cabanes, case number 1:24-cv-08081, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Kevin Pinner. Editing by Brian Baresch.



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Wells Fargo Must Turn Over E-Docs In TelexFree Litigation

By **Julie Manganis**

Law360 (November 20, 2024, 6:12 PM EST) -- A Massachusetts magistrate judge on Wednesday ordered Wells Fargo Advisors LLC to hand over electronic files maintained by a compliance manager who investigated potential misconduct by an employee handling accounts of TelexFree associates under investigation in a \$3 billion Ponzi scheme.

Magistrate Judge Katherine A. Robertson also rejected a bid by victims of the scheme to reopen a February deposition of the manager that was conducted by plaintiffs' counsel.

Ruth Vitale had been asked in 2014 by Wells Fargo to look into whether financial adviser Marucio Cardenas had engaged in any policy violations, legal misconduct or a breach of trust when he opened and continued to service brokerage accounts for several known TelexFree associates, even after the bank had been made aware that the Brazilian government had shut down the scheme and that a U.S. Securities and Exchange Commission investigation had been launched, according to the decision.

Cardenas, like Wells Fargo, is currently a defendant in the multidistrict litigation over TelexFree, accused of tortious aiding and abetting in the scheme.

TelexFree, which was headquartered in Marlborough, Massachusetts, convinced victims, who had to pay a monthly fee to participate, that they would earn commissions for marketing what amounted to a voice-over internet service, according to prosecutors. The scheme allegedly cost approximately 2 million individuals — many of them recent immigrants — nearly \$3 billion.

The plaintiffs have sued a number of financial services providers, including Wells Fargo, contending that they are liable for continuing to allow millions of dollars in ill-gotten gains to be transferred out of bank accounts in the United States as regulators closed in. Wells Fargo, according to the plaintiffs, had warnings as early as 2012 that the business was not legitimate, based on the number of transactions and charge-backs sought by victims.

The plaintiffs contend that Vitale's deposition revealed the existence of electronic files containing emails that had not been turned over during discovery.

Wells Fargo said in its opposition that those messages were turned over in document form. The request, according to the bank, came years after it turned over an investigative summary and the printed emails, and long after the deadline for discovery had passed.

Judge Robertson found that, based on the difference in formats between electronic emails saved as chains and printed-out versions that could not be considered "exact duplicates," Wells Fargo must turn over the electronic files.

"[Wells Fargo Advisors] admits that not all of the TelexFree-related emails in Ms. Vitale's electronic file are in the same form as are emails with the same content that were produced in the matter summary's supporting documentation," Judge Robertson wrote.

In denying the plaintiffs' request to reopen Vitale's deposition, the judge found that the compliance manager had been as forthcoming as possible given the passage of time since she conducted the investigation, and that fading memories are a risk that comes with a stay, which the court had granted while criminal prosecutions against the alleged organizers of the scheme were taking place.

That stay was lifted in 2019.

Judge Robertson also denied the plaintiffs' request that notes from Vitale's interviews with witnesses during the investigation be turned over, finding that such materials are subject to attorney-client privilege and work-product doctrine, both of which the plaintiffs had not shown a compelling interest in overriding.

The investigation summary shows that the probe's purpose was to determine Wells Fargo's potential liability based on Caradenas' alleged conduct in maintaining accounts for the three individuals who were being investigated by the SEC at the time, the judge noted.

Wells Fargo's attorney took part in the investigative interviews, and notes kept by Vitale "are likely to disclose an attorney's mental impressions and legal theories" by virtue of the sorts of questions asked, the judge found.

While the plaintiffs acknowledged that the notes were in anticipation of litigation, their "argument appears to be that [Wells Fargo Advisors] involved its legal department in Ms. Vitale's investigation so that it could withhold facts by invoking the attorney-client privilege and the work-product doctrine," the judge wrote.

Messages seeking comment from counsel for the plaintiffs and for Wells Fargo did not immediately receive responses on Wednesday.

Wells Fargo Bank NA and Wells Fargo Advisors are represented by John O. Mirick of Mirick O'Connell, Kenneth C. Pickering of Pickering Legal LLC, and Robert W. Fuller, Adam Doerr, Fitz E. Barringer, Demi Lorant Bostian, Patrick H. Hill, Emma T. Kutteh and Garrett Steadman of Robinson Bradshaw & Hinson PA.

The plaintiffs are represented by Robert J. Bonsignore and Melanie Porter of Bonsignore Trial Lawyers PLLC, J. Gerard Stranch IV and Kyle C. Mallinak of Stranch Jennings & Garvey PLLC, Steven Rhodes of Steven Rhodes Consulting LLC, James Wagstaffe of Adamski Moroski Madden Cumberland & Green LLP, E. Powell Miller and Ann L. Miller of The Miller Law Firm PC, and R. Alexander Saveri and Geoffrey C. Rushing of Saveri & Saveri Inc.

The case is In Re: Telexfree Securities Litigation, case number 4:14-md-2566, in the U.S. District Court for the District of Massachusetts.

--Editing by Melissa Treolo.