

US Supreme Court tosses case involving securities fraud suit against Facebook

 [reuters.com/legal/us-supreme-court-tosses-case-involving-securities-fraud-suit-against-facebook-2024-11-22](https://www.reuters.com/legal/us-supreme-court-tosses-case-involving-securities-fraud-suit-against-facebook-2024-11-22)

John Kruzel

Item 1 of 2 Facebook, U.S. flag and Judge gavel are seen in this illustration taken, August 6, 2024. REUTERS/Dado Ruvic/Illustration/File Photo

[1/2]Facebook, U.S. flag and Judge gavel are seen in this illustration taken, August 6, 2024. REUTERS/Dado Ruvic/Illustration/File Photo [Purchase Licensing Rights](#), opens new tab

- Class action against Facebook was led by Amalgamated Bank
- Dispute tied to data breach involving Cambridge Analytica
- Justices dismiss Facebook's appeal of lower court's ruling

WASHINGTON, Nov 22 (Reuters) - The U.S. Supreme Court sidestepped on Friday a decision on whether to allow shareholders to proceed with a securities fraud lawsuit accusing Meta's (META.O) [Facebook of misleading investors about the misuse of the social media platform's user data](#).

The justices, who heard arguments in the case on Nov. 6, dismissed Facebook's appeal of a lower court's ruling that allowed a 2018 class action led by Amalgamated Bank (AMAL.O) [to proceed](#). The Supreme Court opted not to resolve the underlying legal dispute, determining that the case should not have been taken up. Its action leaves the lower court's decision in place.

The court's dismissal came in a one-line order that provided no explanation.

The Facebook dispute was one of two cases to come before the Supreme Court this month involving the right of private litigants to hold companies to account for alleged securities fraud. The other one, involving the artificial intelligence chipmaker Nvidia (NVDA.O) [opens new tab](#), was argued on Nov. 13. The Supreme Court has not ruled yet in the Nvidia case.

The plaintiffs in the Facebook case claimed the company unlawfully withheld information from investors about a 2015 data breach involving British political consulting firm Cambridge Analytica that affected more than 30 million Facebook users. They accused Facebook of misleading investors in violation of the Securities Exchange Act, a 1934 federal law that requires publicly traded companies to disclose their business risks.

Facebook's stock fell following 2018 media reports that Cambridge Analytica had used improperly harvested Facebook user data in connection with Donald Trump's successful

U.S. presidential campaign in 2016. The investors have sought unspecified monetary damages in part to recoup the lost value of the Facebook stock they held.

At issue was whether Facebook broke the law when it failed to detail the prior data breach in subsequent business-risk disclosures, and instead portrayed the risk of such incidents as purely hypothetical.

Facebook spokesperson Andy Stone expressed disappointment "in the Supreme Court's decision not to clarify this part of the law."

"The plaintiff's claims are baseless and we will continue to defend ourselves as this case is considered by the district court," Stone said.

Facebook argued that it was not required to reveal that its warned-of risk had already materialized because "a reasonable investor" would understand risk disclosures to be forward-looking statements.

President Joe Biden's administration supported the shareholders in the case.

U.S. District Judge Edward Davila dismissed the lawsuit but the San Francisco-based 9th U.S. Circuit Court of Appeals revived it, prompting Facebook's appeal to the Supreme Court.

George Washington University law professor Alan Morrison said that following the Supreme Court's dismissal of Facebook's appeal, the plaintiffs would be expected to seek discovery, a process that involves the exchange of information among parties in a case. Morrison added that Facebook "might renew their motion to dismiss under a somewhat different standard - partially for purposes of delay."

The Cambridge Analytica data breach prompted U.S. government investigations into Facebook's privacy practices, various lawsuits and a U.S. congressional hearing. The U.S. Securities and Exchange Commission in 2019 brought an enforcement action against Facebook over the matter, which the company settled for \$100 million. Facebook paid a separate \$5 billion penalty to the U.S. Federal Trade Commission over the issue.

The Supreme Court in prior rulings has limited the authority of the Securities and Exchange Commission, the federal agency that polices securities fraud.

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Reporting by John Kruzel; Editing by Will Dunham

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Supreme Court Allows Shareholder Lawsuit Against Facebook to Go Forward

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Secondary Sources

News from Bloomberg Terminal

Nov. 22, 2024, 9:25 AM PST

By Justin Jouvenal

(Washington Post) -- The Supreme Court on Friday dismissed an appeal by Meta's Facebook, allowing to go forward a lawsuit brought by investors who claim they were misled by the social media giant about risks from a massive data breach.

The justices wrote in a unanimous, one-line opinion that the case was "improvidently granted," meaning the court should not have taken it in the first place. The justices did not explain the reasoning for their ruling.

The decision came a little over two weeks after the justices appeared sharply split during oral arguments in the case. The suit was brought by investors, led by Amalgamated Bank, after Facebook's stock price plunged in 2018 following news that the Republican-aligned political consulting firm Cambridge Analytica had improperly obtained the personal information of 30 million Facebook users.

The Securities and Exchange Commission mandates businesses disclose information about investment risks, and separate regulations prohibit companies from making misleading or false statements related to the purchase or sale of a stock. The shareholders claim Facebook misled them and did not reveal crucial information about a known risk that could expose the data of Facebook users. Facebook denies the claims.

The high-profile data breach prompted government investigations of Facebook and its relationship with Cambridge Analytica, which helped boost conservatives during Donald Trump's 2016 presidential campaign. A Federal Trade Commission probe led to a \$5 billion civil penalty against Facebook and a \$725 million class-action settlement with users over the privacy breach.

The U.S. District Court for Northern California initially dismissed the shareholders' suit, before a divided panel of the U.S. Court of Appeals for the 9th Circuit reversed that decision. The case will now go back to the district court for further proceedings.

"The plaintiff's claims are baseless and we will continue to defend ourselves as this case is considered by the district court," Meta said in a statement. "We are disappointed in the Supreme Court's decision not to clarify this part of the law."

An attorney for the shareholders declined to comment.

The Facebook lawsuit was one of two securities cases the Supreme Court is considering this term. In the other, the chipmaker and world's most valuable company, Nvidia, is seeking to nix a lawsuit by shareholders who claim it hid its dependency on sales to the volatile market for cryptocurrency mining before a stock crash.

The justices heard oral arguments in that case this month and are expected to issue a ruling by this summer. The court appeared inclined to let that case move forward as well.

Naomi Nix contributed to this report.

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Supreme Court Drops Facebook's Appeal in Securities Case as 'Improvidently Granted'

LAW [law.com/nationallawjournal/2024/11/22/supreme-court-drops-facebooks-appeal-in-securities-case-as-improvidently-granted](https://www.law.com/nationallawjournal/2024/11/22/supreme-court-drops-facebooks-appeal-in-securities-case-as-improvidently-granted/)

Jimmy Hoover



The U.S. Supreme Court took the unusual step Friday of dismissing an appeal from Facebook in a securities case after having already heard oral arguments, explaining only that the case had been "improvidently granted."

The justices had agreed in June to take up Facebook's appeal to defeat a securities class action brought by investors over two 2018 stock drops that wiped out more than \$200 billion from the company's market capitalization. One of those occurred following media reports about misuse of user Facebook data by the political consulting firm Cambridge Analytica.

Facebook and founder Mark Zuckerberg were appealing a decision by the U.S. Court of Appeals for the Ninth Circuit reviving claims that the company essentially lied by omission when it identified data misuse as a potential future business risk on a securities filing, without disclosing that such misuse had recently occurred. Facebook had argued that such past disclosures are not required by the Securities and Exchange Act, and that holding otherwise would create a burdensome regime of over-disclosure to the U.S. Securities and Exchange Commission.

The Supreme Court heard arguments in the case this month, during which the justices appeared to struggle with the precise circumstances under which a company must disclose on their SEC Form 10-K filing that a future risk has occurred in the past.

On Friday morning, the Supreme Court dismissed Facebook's appeal in a short, unsigned order. The order has the effect of leaving the Ninth Circuit's decision reviving the lawsuit in place.

The high court did not explain the decision, as is typical for so-called "DIGs," or dismissals as improvidently granted. Such orders are fairly rare, usually occurring only once or twice a term.

Lead plaintiff Amalgamated Bank claims Facebook submitted a false Form 10-K to the SEC in 2016 when it cast misuse of user data as a hypothetical risk that could harm the company's bottom line. In reality, the lawsuit alleges, that misuse was already occurring when harvested user data was sold to Cambridge Analytica to influence American elections.

A Ninth Circuit panel held that the plaintiffs' allegations about the Form 10-K were sufficient to meet the heightened pleading standards of the federal Private Securities Litigation Reform Act, enacted in 1995 to deter frivolous securities lawsuits.

The Nov. 6 hearing produced an interesting number of "freakish" scenarios hypothesized by the justices in an effort to drill down on companies' disclosure obligations.

Justice Samuel Alito Jr., for instance, hypothesized a manufacturing plant which warned that a future fire could pose a threat to its business. Would the business have to then disclose that such a fire had already occurred, he asked, even if it was the result of a one-off incident such as getting hit with "a piece of space junk that fell out of the sky?"

"What about the situation where the fire is caused by something that's utterly freakish?" Alito said. "Something fell, a meteor, a meteorite fell out of the sky or some crazy person, who was hearing voices, decided that that person was going to go throw a Molotov cocktail in the window of this plant."

The justices heard roughly two hours of oral arguments in the case, underscoring their difficulty with how to craft an opinion that would serve interests on both sides.

"Assume that I think the Ninth Circuit's rule goes too far and that I think your rule goes too far," Justice Amy Coney Barrett told Facebook's lawyer, Kannon Shanmugam of Paul Weiss Rifkind Wharton & Garrison, searching for a middle ground in the case.

The plaintiffs are represented by Kevin Russell of Goldstein Russell & Woofert.

The justices similarly struggled during a hearing the following week in another securities case involving the tech giant NVIDIA. Some justices even outright stated during the NVIDIA hearing that the case was not a good vehicle for resolving a legal question about the pleading standards of the PSLRA.

The court has yet to announce its ruling in that case.

The case dismissed Friday was *Facebook v. Amalgamated Bank*, No. 23-980.

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November 15, 2024

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By Jimmy Hoover and Cheryl Miller

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Meta Must Face Investor Suit After Supreme Court Drops Case

Published: Fri Nov 22 12:31:32 EST 2024

- Company faces allegations over data-harvesting scandal
- Supreme Court heard arguments on Meta's appeal on Nov. 6

By Greg Stohr

(Bloomberg) --

The US Supreme Court dismissed an appeal by Meta Platforms Inc., leaving it to face a multibillion-dollar lawsuit that accuses the company of misleading shareholders about the data-harvesting scandal involving political consulting firm Cambridge Analytica.

Investors claim the company, then known as Facebook, inflated share prices through misleading disclosures about the risk of the scandal leading to the misuse of user data. The shareholders say revelations about the breach eventually contributed to two 2018 price drops that cost the company more than \$200 billion in market value.

Meta was seeking reversal of a federal appeals court decision that had let the lawsuit go forward. The Supreme Court agreed to consider the appeal in June and heard arguments on Nov. 6.

The court occasionally drops cases after argument. As is its usual practice, the court provided no explanation, saying only that the case was being “dismissed as improvidently granted.”

The dismissal makes it more likely Meta will face a costly settlement — potentially as large as \$2 billion — according to Matthew Schettenhelm, an analyst for Bloomberg Intelligence. A Meta victory at the Supreme Court would have knocked out some though not all of the case against the company.

“The plaintiff’s claims are baseless and we will continue to defend ourselves as this case is considered by the district court,” Meta said in a statement. “We are disappointed in the Supreme Court’s decision not to clarify this part of the law.”

The attorney for the investors, Kevin Russell, declined to comment.

The case more broadly had the potential to reset the legal rules governing corporate disclosure. Business groups led by the Chamber of Commerce had urged the court to side with Meta, saying that risk-disclosure allegations have contributed to a wave of meritless securities-fraud suits.

The Securities and Exchange Commission since 2005 has required companies to disclose material

factors that would make an investment risky.

The Supreme Court is also considering an appeal by AI chipmaker Nvidia Corp., which is being sued for allegedly misleading shareholders about its reliance on crypto-mining revenue in the run-up to a market crash.

Cambridge Analytica

The first hint of the Cambridge Analytica controversy came in December 2015, when The Guardian reported that the British firm was using a database of information gleaned from Facebook users to help the presidential primary campaign of Senator Ted Cruz. At the time, Facebook said it was investigating.

The suing shareholders say Facebook quickly concluded that Cambridge Analytica had obtained the private information of more than 30 million users without their consent.

But the shareholders say the company publicly characterized the risk of a breach as hypothetical and didn't change that stance until March 2018, when it issued a statement to preempt more far-reaching stories in The New York Times and The Guardian. The investors say those revelations caused the share price to plunge.

The shareholders say the company's inadequate disclosures also contributed to a July 2018 stock plunge that at the time was the largest one-day drop in value in US history.

The 9th US Circuit Court of Appeals ruled that the allegations were sufficient to let the lawsuit go forward.

Meta said it had no reason to think the scandal would harm the company because details had already been published without any impact on the stock price. Meta said the 9th Circuit's reasoning would require companies to disclose risks that occurred years earlier even if they don't pose any known current threat of business harm.

The Biden administration backed the shareholders at the Supreme Court.

The case is Facebook v. Amalgamated Bank, 23-980.

(Updates with analyst, Meta reaction starting in fifth paragraph.)

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Visa faces shareholder lawsuit over antitrust compliance

DJ [dailyjournal.com/articles/382150-visa-faces-shareholder-lawsuit-over-antitrust-compliance](https://www.dailyjournal.com/articles/382150-visa-faces-shareholder-lawsuit-over-antitrust-compliance)

Securities

Nov. 22, 2024

Plaintiffs claim the company and executives misled the public over its compliance with antitrust laws. It comes two months after the DOJ accused Visa of monopolizing the debit transaction market.



Visa Inc. and three of its executive officers were accused in a putative federal class action of misrepresenting the company's compliance with antitrust laws, which shareholders claimed harmed the company's financial health.

The complaint, filed in the Northern District of California Wednesday, comes nearly two months after the U.S. Department of Justice filed a civil antitrust lawsuit against Visa in the Southern District of New York accusing the company of illegally creating a monopoly in the debit transaction market. *U.S. v. Visa Inc.*, 24- CV-07214 (S.D. N.Y., led Sept. 24, 2024).

News of the DOJ's lawsuit caused Visa's stock price to drop 5% overnight and caused shareholders to incur "significant" financial loss, spurring them to final the new lawsuit. *Cai v. Visa, Inc. et al.*, 3:24-cv-08220-JSC (N.D. Cal., filed Nov. 20, 2024).

The plaintiffs claim that the company and the three executive-defendants - CEO Ryan McInerney, CFO Chris Suh, and Chief Accounting Officer Pete Andreski - have misled the public since its 2023 annual report about the company's actual compliance with federal law and Visa's ability to weather regulatory intervention.

Visa's media relations office could not be reached for comment Thursday. In its 2023 annual report Visa warned the public about potential legal action from federal regulators and plaintiffs, noting that the company "cannot guarantee" its business practices were compliant.

"Increased scrutiny and regulation of the global payments industry, including with respect to interchange reimbursement fees, merchant discount rates, operating rules, risk management protocols and other related practices, could harm our business," the report stated. "Our

compliance programs and policies are designed to support our compliance with a wide array of regulations and laws ... However, we cannot guarantee that our practices will be deemed compliant by all applicable regulatory authorities."

The DOJ's case is pending. While Visa has not filed a response to the DOJ's case, a recent letter to the judge by Visa's legal team from Wilkinson Stekloff LLP in Washington, D.C. indicated that the company intends to file a motion to dismiss in the near future.

Lead attorney for the shareholders, Laurence Matthew Rosen of The Rosen Law Firm P.A., could not be reached for comment on Thursday but claimed, in the complaint, that these warnings from the company were misleading.

"The statements referenced [in the annual report] were materially false and/or misleading because, while discussing legal risks, they fail to disclose that the Company was in violation of federal antitrust law, and therefore likely to be subject to lawsuits and penalties by federal agencies," Rosen wrote.

Rosen also claimed that Visa's attempted \$5.3 billion acquisition of Plaid Inc. in 2020 was a significant turning point in the DOJ's investigation, "Unsurprisingly, Visa's market dominance has previously landed it in the crosshairs of federal antitrust regulators; for example, in 2020, the DOJ sued to stop Visa from acquiring digital payments provider Plaid, citing antitrust concerns."

The DOJ's lawsuit sparked further litigation against Visa, which handles more than 60 percent or about \$7 billion of debit transactions annually in the U.S.

Among the various complaints, filed mostly in the Southern District of New York, is one brought on Oct. 21 by a Burlingame company and a Sacramento woman, accusing Visa of causing them to incur additional fees due to its stronghold on the debit card market.

While the DOJ's case is seeking a court injunction, the Oct. 21 case seeks "hundreds of millions" in damages for Visa's alleged anticompetitive conduct in the debit card transaction market. *Kevranian et al. v. Visa Inc.*, 24-CV-07997 (S.D. N.Y., filed Oct. 21, 2024).

#382150

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BC Partners Sued Over \$8 Billion PetSmart Spin Deal With Apollo

By Mike Leonard

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2024-1165](#)

Bloomberg Law News 2024-11-22T09:57:3564411468-05:00

BC Partners Sued Over \$8 Billion PetSmart Spin Deal With Apollo

By Mike Leonard 2024-11-21T13:49:13000-05:00

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2024-1165](#)

BC Partners LLP engineered an unfair PetSmart LLC spinoff that saddled Chewy Inc.'s investors with potentially huge liabilities over a side deal with Apollo Global Management Inc., according to an unsealed lawsuit.

A shareholder is suing BC Partners and Chewy board members, saying the complex multiparty restructuring favored private equity insiders at the expense of public investors. The deal to separate the two pet products retailers allegedly valued the standalone PetSmart at \$8.2 billion, handed Apollo a minority stake in it, and left the resulting tax liability with their former corporate parent, a holding company that merged downstream into Chewy.

The Chewy board's negotiating committee knew it had significant leverage because "BC Partners needed Chewy's cooperation" to offload its tax bill, while "Chewy could have continued its business" without any reshuffling, according to the court complaint made public Wednesday. But a committee beholden to deal insiders gave BC Partners everything it wanted and got little in return, the suit says.

London-based BC Partners declined to comment Thursday. Chewy and Apollo, which isn't named as a defendant, didn't respond to requests for comment.

The lawsuit in Delaware's Chancery Court comes a year and a half after BC Partners announced the transaction, saying it would continue to control PetSmart through a holding entity owned with company executives and a Singaporean sovereign fund. The private equity firm—eyeing a global pet-care market expected to balloon in the coming years—acquired PetSmart for \$8.7 billion in 2015, bought Chewy for \$3.35 billion two years later, combined some of their operations, and took Chewy public in 2019.

The restructuring reflected a creative way for BC Partners to monetize its PetSmart holdings—in lieu of IPO and blank-check merger plans it had scrapped—and return profits to fund investors in a difficult interest-rate environment, Bloomberg reported at the time. The Chewy board must have known exiting its stake was a high priority, the suit says.

Although the private equity firm had other options, eliminating the Apollo-related tax liabilities allegedly made the reshuffling by far its best choice. But the Chewy board's special transaction committee failed to press for meaningful concessions—such as a more favorable exchange ratio or even a sufficient indemnity agreement—before “caving” to BC Partners, according to the court complaint.

The lawsuit, originally filed under seal Nov. 14, involves shareholder derivative claims, which are technically brought on a corporation's behalf against its leaders. Damages in derivative cases are typically paid into a company's coffers by its officers, directors, controlling stockholders, or insurers.

The investor leading the litigation, Eric Gilbert, is represented by Labaton Keller Sucharow LLP.

The case is Gilbert v. BC Partners LLP , Del. Ch., No. 2024-1165, complaint unsealed 11/20/24 .

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Children's Place Shareholder Ends 'Aggressive Promotions' Suit

By Ufonobong Umanah 2024-11-22T09:17:39000-05:00

A investor in The Children's Place Inc. voluntarily dismissed his securities suit against the kids apparel retailer and its executives after they allegedly concealed the true value of their inventory through "aggressive promotions"

When the company disclosed a preliminary operating loss for the fourth quarter on Feb. 9, its stock price dropped 37%, according to the complaint filed in the US District Court for the District of New Jersey. [At the time](#), it was the stock's biggest single-day drop since 1997, according to data compiled by Bloomberg.

- The order said that shareholder Randeep Singh Khalsa and the retailer hadn't "exchanged monetary consideration or agreed to any terms" outside the voluntary dismissal
- Judge Evelyn Padin signed the order that was docketed on Thursday

Paul Weiss LLP and Gibbons PC represented Children's Place. Glancy Prongay & Murray LLP and Carella Byrne PC represented Khalsa.

The case is [Khalsa v. The Children's Place Inc.](#) , D.N.J., No. 2:24-cv-01182, docketed 11/21/24 .

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Lululemon Faces Legal Fire Over Its DEI Program After Bias Complaints Surface

 [law.com/newyorklawjournal/2024/11/21/lululemon-faces-legal-fire-over-its-dei-program-after-bias-complaints-surface](https://www.law.com/newyorklawjournal/2024/11/21/lululemon-faces-legal-fire-over-its-dei-program-after-bias-complaints-surface)

Alyssa Aquino

Lululemon Athletica Inc. is facing litigation in the New York federal court over its diversity, equity and inclusion initiative, with two shareholders alleging that executives withheld that the program couldn't combat racial discrimination within the company.

Shane Kanaly and James Wong filed their cases against Lululemon this week, one year after over a dozen current and former employees came forward with claims of a corporate culture that was hostile to Black employees.

The workers told fashion news site, the Business of Fashion, that minority employees faced barriers to career advancement that their white counterparts didn't experience, and were passed over for promotions or were fired after reporting the issues internally.

Shortly after the piece came out, Lululemon's stock price fell 1%, according to Kanaly's and Wong's complaints.

In both complaints, the pair claimed that the reports belied the Inclusion, Diversity, Equity and Action, or IDEA, initiative that Lululemon launched in 2020 with the stated goal of ensuring the company "reflect[s] the diversity of the communities" it serves. The program wasn't structured for the company to meaningfully address racism and various company directors and board members misled investors on the program, the pair said.

The executives also failed to "disclose that the company had taken woefully insufficient steps towards eliminating bias in its hiring and promotion process, especially since, through the relevant period, it had zero Native American, Hispanic, or Pacific Islander directors, and presently has just one director from a minority background. As a result of the foregoing, the Company's public statements regarding diversity and the IDEA program were materially false and misleading," according to the complaint filed by Kanaly, who is represented by Gain McKenna & Egleston. Wong is represented by Rosen Law Firm.

The lawsuit against Lululemon comes as the company is fending off claims from shareholders and an environmental group that it misled the public about its environmental impact through its "Be Planet" marketing campaign, as well as complaints over the botched launch of its Breezethrough leggings, which was ultimately paused amid consumer complaints over the clothing's fit.

Similar to those earlier complaints, Kanaly and Wong accused Lululemon of covering up inventory issues that allegedly undermined the Breezethrough leggings launch.

The pair alleged that while the public was unaware of the inventory and discrimination issues, Lululemon CEO Calvin McDonald and company director Kathryn Henry, sold their shares to reap millions of dollars in profits.

They further took aim at a series of share repurchase programs that were carried out between 2021 and 2022, alleging that the company overpaid for its own stock by over \$700 million.

Lululemon didn't respond to a request for comment.

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Trending

Litigation Surge - Retail & Consumer Goods | Class Actions

Major retailers were hit with a cluster of federal class actions on Thursday. At least five federal class actions were filed against Fortune 500 retail and consumer goods companies. The claims vary: Macy's was sued for allegedly displaying false 'regular' prices in strikethrough font to suggest that products are on sale, and Mielle Organics and Procter & Gamble were sued by consumers who allegedly lost their hair after using the defendants' hair oil. Plus, Tom's of Maine and Colgate-Palmolive are under fire after the U.S. Food and Drug Administration allegedly found bacterial contamination in their toothpastes, and Target is accused of falsely advertising certain iPhones as 'unlocked' when in fact the phones are locked and tied to specific carriers.

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Ann M. Lipton

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Today I attended a corporate law conference, and the discussion turned to whether to teach Tornetta in BizOrgs. We were under Chatham House rules but I think I'm allowed to reveal what I said, which is, Tornetta will be taught in classes on the political history of the U.S. -



Gerald Butts @gmbutts.bsky.social · 51m

Musk wants to shrink government for most people, and keep it very big for himself.

November 21, 2024 at 3:55 PM Everybody can reply

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3



6



Write your reply



Ann M. Lipton @annmlipton.bsky.social · 47m

- and how corporate law rules (among others), coupled with the relationship between Musk and his board, permitted such an aggregation of wealth as to distort and redirect the trajectory of the world's largest economy.



3



Dave Hoffman @hoffprof.bsky.social · 48m

Why wouldn't you teach it in corps?



1



Ann M. Lipton @annmlipton.bsky.social · 46m

It's very very long. We don't know what will happen on appeal. And I personally don't like the controlling shareholder framing bc I think it's unnecessary to the holding. Easier to teach simpler conflicted comp cases and describe Tornetta in class discussion.



1



1





Dave Hoffman @hoffprof.bsky.social · 45m

Thanks for your thoughts!



1



2



Ann M. Lipton @annmlipton.bsky.social · 41m

Others had different views -it was mixed - but the biggest advocates for it use it for things I don't get into in my class, like exec comp and options theory



1



1



Dave Hoffman @hoffprof.bsky.social · 40m

I just liked that the students found it quite relevant and it excavates issues w/r/t the political economy of Delaware.



1



Ann M. Lipton @annmlipton.bsky.social · 38m

oh for sure, that was mentioned as well :-). I try to make things current/discuss political economy in other ways. They loved hearing about the problem of TripAdvisor.



1



Ali @ajtret.bsky.social · 27m

From your description, it sounds like it might belong more in a corporations/corporate governance seminar, where you can get to the nitty gritty of the case rather than a general biz orgs/BE/Corporations class.



1



Ann M. Lipton @annmlipton.bsky.social · 25m

Yeah, people allocate these things differently. I would consider it more seminar material.



1



McKinsey

McKinsey nears \$600mn settlement with US over opioid claims

Payment would significantly raise cost to firm of its past work for opioid makers



A payment of \$600mn would dramatically increase the cost to McKinsey of its historic work for opioid manufacturers including OxyContin maker Purdue Pharma © REUTERS

Stephen Foley in New York and **Stefania Palma** in Washington YESTERDAY



McKinsey is close to paying more than \$600mn to settle a criminal investigation into its work advising US opioid manufacturers on how to boost sales, following claims it fuelled the country's addiction crisis.

The US Department of Justice has been examining whether McKinsey's work amounted to a criminal conspiracy against the healthcare system, and whether it obstructed justice, said people familiar with the probes.

A settlement could come within weeks, one person said, and would include a deferred prosecution agreement in which the DoJ agrees to drop charges against the firm after a period of time if conditions are met, along with a settlement of related civil claims. The details and likely timing of the settlement were first reported on Thursday by Reuters.

[McKinsey](#) and the DoJ declined to comment.

A payment of \$600mn would dramatically increase the cost to McKinsey of its historic work for opioid manufacturers including OxyContin maker [Purdue Pharma](#), for whom its consultants promised to “turbocharge” sales.

The firm has paid close to \$1bn since 2021 in litigation over its opioid work, including a \$640mn settlement with the 50 US states. Other lawsuits remain outstanding.

The escalating costs and the reputational fallout have caused internal turmoil at the firm, compounding a squeeze on partner profits from a slowdown in the consulting market. Former managing partner Kevin Sneader failed to win re-election in 2021 and his successor Bob Sternfels won a second term this year by a narrow margin.

At the time of the settlement with the US states, Sneader apologised for McKinsey’s opioid work, saying it “did not adequately acknowledge the tragic consequences of the [epidemic](#) unfolding in our communities”. The firm insisted its advice was legal, but has revamped how it decides which clients to take on and has not worked for opioid manufacturers since 2019.

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Exclusive: McKinsey nears deferred prosecution pact in US opioid probe, sources say

 [reuters.com/legal/mckinsey-nears-deferred-prosecution-pact-us-opioid-probe-sources-say-2024-11-21](https://www.reuters.com/legal/mckinsey-nears-deferred-prosecution-pact-us-opioid-probe-sources-say-2024-11-21)

Nate Raymond, Mike Spector

Tablets of the opioid-based Hydrocodone at a pharmacy in Portsmouth, Ohio, June 21, 2017. REUTERS/Bryan Woolston/File Photo Purchase Licensing Rights , opens new tab

- McKinsey in talks to pay over \$600 million to resolve DOJ probe
- Settlement involves dismissal of charges if terms are met
- McKinsey previously settled lawsuits without admitting liability

BOSTON, Nov 21 (Reuters) - McKinsey & Co is in the final stages of negotiating a deferred prosecution agreement to resolve a U.S. criminal investigation into the consulting firm's work helping opioid manufacturers boost sales that allegedly contributed to a deadly addiction epidemic, people familiar with the matter said.

McKinsey is in talks to pay more than \$600 million to resolve the longstanding U.S. Department of Justice probe, which also encompasses findings of civil violations, the people said.

The settlement, expected to be unveiled before the end of the year, would result in prosecutors seeking to dismiss criminal charges against McKinsey after a period of time as long as the company abides by the agreement's terms.

The discussions are ongoing and the timetable for disclosing the settlement and the terms of the agreement could change, the sources said.

McKinsey and the Justice Department declined to comment.

As part of their investigation, prosecutors have also been looking at whether McKinsey obstructed justice in connection with its work advising opioid manufacturers, people familiar with the matter said. McKinsey said in 2021 it had fired two partners who had communicated about deleting documents.

McKinsey previously reached agreements totaling nearly \$1 billion to settle widespread lawsuits and other legal actions alleging the company helped fuel the opioid epidemic through its work advising OxyContin maker Purdue Pharma and other drugmakers. The settlements involved all 50 states, Washington, D.C., U.S. territories, various local governments, school districts, Native American tribes, and health insurers.

In 2019, McKinsey announced it would no longer advise clients on opioid-related businesses. The company has maintained that none of its settlements contain admissions of liability or wrongdoing.

Purdue pleaded guilty in 2020 to criminal charges covering widespread misconduct regarding its handling of prescription painkillers, including conspiring to defraud U.S. officials and pay illegal kickbacks to both doctors and an electronic healthcare records vendor.

Purdue is currently involved in court-ordered mediation over a multibillion-dollar settlement reached in bankruptcy proceedings that the U.S. Supreme Court turned aside. Prosecutors in Boston and Roanoke, Virginia, are involved in the McKinsey investigation alongside officials at Justice Department headquarters in Washington.

Reporting by Nate Raymond in Boston and Mike Spector in New York; Additional reporting by Chris Prentice in New York; Editing by Bill Berkrot

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Mike Spector is an Investigative Reporter for Reuters' legal team. He strives to pursue special reports and other enterprising and exclusive stories that expose wrongdoing, highlight threats to consumers and illuminate how ordinary people are affected by the decisions of judges and lawyers across the United States. His stories often involve corporate crises linked to bankruptcy proceedings, mass tort litigation and government investigations. He was the first journalist to expose Johnson and Johnson's plan to offload into bankruptcy lawsuits alleging its iconic Baby Powder and other cosmetic talc products caused cancer. A series he led explaining how companies and nonprofits use the bankruptcy system to evade lawsuits over sexual abuse and deadly products received the Deadline Club's Daniel Pearl Award for Investigative Reporting. He has also investigated pervasive secrecy in American courts that covers up evidence of deadly products and allegations from Black women that chemical hair relaxers sold by large cosmetics companies caused cancer. He previously worked at The Wall Street Journal covering bankruptcy, private equity, mergers and acquisitions and the automotive industry.

Legal Fee Tracker: China's Irico faces fee award plus damages in price-fixing case

 [reuters.com/legal/legalindustry/legal-fee-tracker-chinas-irico-faces-fee-award-plus-damages-price-fixing-case-2024-11-21](https://www.reuters.com/legal/legalindustry/legal-fee-tracker-chinas-irico-faces-fee-award-plus-damages-price-fixing-case-2024-11-21)

Mike Scarcella

U.S. dollar bills are displayed in this posed photo, March 26, 2008. REUTERS/Mark Blinch
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Nov 21 (Reuters) - Facing a potential multibillion-dollar default judgment in an antitrust case, Chinese state-owned manufacturing company Irico Group told a U.S. judge this year that being ordered to pay part of its opponents' legal fees could be an alternative sanction.

Instead, after nearly two decades of litigation, the company is on the hook for both.

U.S. District Judge Jon Tigar in Oakland on Nov. 15 ruled , opens new tab fully for the plaintiffs, who accused Irico and other tech manufacturers of fixing prices for cathode ray tubes used in TVs and other screens.

The plaintiffs, direct and indirect purchasers of the devices, said in a court filing last year that Irico "acted with breathtaking disregard for the law and this court's authority" from the start of the case, delaying its progress and destroying documents such as pricing, production and sales information.

Adopting a court-appointed official's report, Tigar found Irico's actions "deprived plaintiffs and any factfinder of ever knowing the true facts."

The court entered a default judgment against Irico as a terminating sanction and asked both sides to report back to him within a month with proposals about how to determine damages, which the plaintiffs have said could be more than \$2.4 billion.

Irico's lawyers at Norton Rose Fulbright and attorneys for the plaintiffs did not respond to requests for comment on the judge's decision.

Irico denied the antitrust claims and disputed the plaintiffs' misconduct allegations, arguing it employed standard document retention procedures. It had urged the court not to impose sanctions, but said any sanction could be limited to legal fees or advising jurors about missing evidence.

The judge disagreed. Tigar said the plaintiffs deserve damages on top of all legal fees tied to their pursuit of sanctions against Irico for more than a year.

Legal fees alone "would not put the class plaintiffs where they would have been had Irco not spoliated evidence, delayed for almost a decade and repeatedly flouted discovery orders," the judge said.

Tigar said he would determine the size of the fee award after hearing more arguments from both sides.

Irco was the last defendant in the sprawling antitrust litigation, which began in 2007.

The company and other manufacturers were accused of conducting meetings to coordinate on setting prices. The North American market was the largest for cathode ray tubes during the class period, according to the plaintiffs.

Other companies settled with the plaintiffs without admitting to any wrongdoing. In 2015, Samsung agreed to pay \$225 million in a settlement, and Philips paid \$175 million.

— In other legal fee news, law firm Quinn Emanuel Urquhart & Sullivan was back in court this week in Washington, D.C., fighting over the status of a \$185 million fee award in a landmark healthcare case that a judge cut in half earlier this year.

A Federal Claims judge in October slashed the award to \$92 million, and now Quinn is on the hook to pay back the rest of it to class members, including UnitedHealth and Kaiser entities that objected to the original fee amount.

At a Nov. 19 hearing, Quinn and the fee challengers argued over how quickly the firm should be required to return the money, and what amount of interest should be tacked on. The court asked the lawyers to negotiate a resolution to avoid further litigation.

Court filings show Quinn Emanuel purchased judgment preservation insurance for the initial \$185 million award. The firm was responsible for \$9.1 million, and its insurance covered the remaining \$166.85 million.

— American Airlines reached a tentative settlement with flight booking company Sabre in the airline's fight to recover more than \$139 million in legal fees after winning just \$1 in damages at a 2022 trial.

American and Sabre told U.S. District Judge Lorna Schofield in Manhattan on Nov. 16 that the companies agreed in principle to resolve their fight over fees in the 13-year-old case. The terms were not disclosed, and American did not respond to a request for comment. Sabre declined to comment.

Read more:

Legal Fee Tracker: 3M earplug settlement lawyers inch closer to \$540 mln payout

Legal Fee Tracker: California, Sullivan & Cromwell square off in Kidde-Fenwal case

Legal Fee Tracker: Lawsuit reveals fight over awards after \$5.6 bln 'swipe fees' settlement

Where Do Web-Tracking Class Actions Belong? 8th Circuit Weighs the Issue



law.com/nationallawjournal/2024/11/21/where-do-web-tracking-class-actions-belong-8th-circuit-weighs-the-issue

Avalon Zoppo

What You Need to Know

- The Eighth Circuit is the latest U.S. appeals court to hear web-tracking cases.
- The panel weighed personal jurisdiction questions.
- The plaintiffs point to physical store locations in the state.

The U.S. Court of Appeals for the Eighth Circuit on Wednesday weighed whether it has personal jurisdiction over proposed class actions accusing Papa John's and Bloomingdale's of tracking users' interactions on their websites without consent in violation of Missouri's wiretapping law.

At least two other federal appeals courts have rejected similar lawsuits alleging that companies violated state wiretap and privacy laws by implementing so-called session replay code to track visitors' website movements.

At the St. Louis-based Eighth Circuit, a lawyer for two Missourians suing Papa John's argued that a federal district court in Missouri has personal jurisdiction over the complaint, even though the pizza chain is headquartered in Kentucky and incorporated in Delaware.

Kate M. Baxter-Kauf said Papa John's' 49 physical locations in Missouri show it has "extensive contacts" with the state, thus conferring personal jurisdiction.

"[T]he district court failed to recognize the close connection between the company's physical presence in the state and its digital footprint," said Baxter-Kauf, a Lockridge Grindal Nauen partner.

The lawsuits against Papa John's and Bloomingdale's allege that the companies unlawfully implemented session replay code to send data about users' movements on the websites to a third-party server to help target them with advertisements. The information would include the users' mouse movements, clicks, keystrokes, URLs of web page visits and other communications, according to the lawsuits.

Chief U.S. District Judge Stephen Clark of Eastern Missouri dismissed the complaint Missourians brought against Papa John's for lack of personal jurisdiction. U.S. District Judge Sarah Pitlyk of Eastern Missouri dismissed the case against Bloomingdale's, saying the plaintiffs failed to show they were harmed.

Both the First and Third circuits have found, in similar suits over companies' use of session replay code, that there was no personal jurisdiction.

In September, the Third Circuit held that a federal court in Pennsylvania had no personal jurisdiction over a different suit against Papa John's because the company's website is "generally available to everyone, no matter where they are located," and the code isn't explicitly aimed at Pennsylvania. There, the plaintiff was a man who ordered food on Papa John's website while in Pennsylvania, where it has about 85 physical locations.

Covington & Burling partner Mark W. Mosier, arguing for Papa John's and Bloomingdale's, told the Eighth Circuit that the link between Papa John's and Missouri is even weaker because no purchase occurred in this case.

"[T]he claims here are website-based claims," Mosier said. "Here, the alleged harm is a privacy harm from visiting a website. And there [weren't] allegations to connect that to a brick-and-mortar store."

Mosier also argued that the individuals have no reasonable expectation of privacy in how they navigate the sites. Holding otherwise would enable a person to bring claims too easily over session replay code, he added.

"The only allegation we have is that [the plaintiff] visited a website," Mosier said. "If that's enough to get into federal court, anyone in this state with a minute or two on their phone could file this same complaint."

Baxter-Kauf said very few companies actually use session replay codes to track users. She added that her clients had a reasonable expectation that their movements on the sites would be private and not used for ad targeting later.

In the briefing, the plaintiffs argued that the presence of physical locations in Missouri creates jurisdiction, because Papa John's integrates its website, app and brick-and-mortar stores to create "one customer experience with localized offerings."

"There's no question, when you order a pizza from the Papa John's app, they deliver it to you from a local store that's in the area," Baxter-Kauf said. "You can go pick up your purchase at the Macy's when you order it from Bloomingdale's' [website]. And that means there's a connection between the digital and the physical world."

The Eighth Circuit panel was comprised of Judges Bobby E. Shepherd, Morris S. Arnold and Ralph R. Erickson.

The court heard arguments in *Jones v. Bloomingdales.com* and *Jones v. Papa John's International*, Nos. 23-3304 and 23-3606, respectively.

Target Can't Escape Privacy Suit Over Facial Recognition Tools

By Cassandre Coyer 2024-11-22T10:56:45000-05:00

- Plaintiffs' story for now "holds together," judge said
- Complaint accused Target of sharing biometric data with police

Target Corp. must face allegations it collected shoppers' biometric data without their knowledge to thwart shoplifting in violation of a state privacy law, a federal judge said.

[Target customers](#) filed a complaint against the retailer in [May](#), accusing it of deploying facial recognition-enabled video surveillance systems in its stores that captured and stored facial geometry data of customers without their knowledge. Target didn't publish any written policies about how long it could keep the biometric data or whether it would permanently destroy it, the complaint said, violating Illinois' Biometric Information Privacy Act.

Target argued in a motion to dismiss the suit that plaintiffs' claims were based on news articles and not on their personal knowledge of the retailer's use of facial recognition technology. District Judge Jeremy C. Daniel rejected Target's arguments, noting that the claims for now "present a story that holds together," according to an opinion [filed](#) Thursday in the US District Court for the Northern District of Illinois.

The complaint also alleged Target is sharing biometric information with third-parties, including law enforcement.

In its motion to dismiss, the retailer argued the allegations are "not believable," pointing to language in the plaintiffs' first complaint which stated that they had no way to know "if, and to whom" Target was disclosing information. An amended complaint from [August](#) changed the sentence to remove the "if."

Target asked the judge to "take plaintiffs at their prior word," which the court declined to do, noting that amended complaints trump earlier versions.

Target's counsel didn't immediately respond to a request for comment.

Kahn Swick & Foti LLC represents the plaintiff and proposed class. Faegre Drinker Biddle & Reath LLP represents Target.

This case is [Arnold v. Target Corp.](#) , N.D. Ill., No. 1:24-cv-04452, opinion filed 11/21/24 .

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Will Trump Be a Boost to Quinn Emanuel's Fortunes in China?

 [law.com/2024/11/22/will-trump-be-a-boost-to-quinn-emanuels-fortunes-in-china](https://www.law.com/2024/11/22/will-trump-be-a-boost-to-quinn-emanuels-fortunes-in-china)

Jessica Seah

Quinn Emanuel Urquhart & Sullivan. Photo by Diego M. Radzinski/ALM

Analysis

Tit-for-tat regulations between China and the U.S. have helped Quinn Emanuel Urquhart & Sullivan thrive in China. Will Trump's leadership expedite its growth?

November 22, 2024 at 12:38 PM

Law Firm Management



By Jessica Seah

Asia Editor



The continuing conflict between the U.S. and China has played a pivotal role in the decision by U.S. law firms to scale back in Greater China, and relations are expected to further deteriorate during the incoming Trump administration. But not all U.S. legal practices have suffered. Quinn Emanuel Urquhart & Sullivan, best known for its contentious practice, has thrived in the fractious climate, amid a sea of tit-for-tat regulations between the two superpowers.

Last year, Quinn Emanuel launched its second mainland China office in Beijing, almost a decade after it first opened in Shanghai. Earlier this year, it added a new partner, Yixuan Zhu, the firm's third partner in the country since Haiyan Tang joined from Paul Hastings in 2021. With both offices, it now counts 11 lawyers, including the three partners.

While Quinn Emanuel's setup on the ground isn't comparable in size to its international counterparts in China, the firm has made its mark with its stable of high-profile clients and high-stakes credentials.

It is representing China-headquartered DiDi Global Inc. and certain officers and directors in a securities class action in New York. The plaintiffs allege that DiDi proceeded with a public listing of American Depositary shares in July 2021 despite an undisclosed "directive" from

China's Cybersecurity Administration instructing DiDi not to do so. DiDi raised more than \$4 billion when it listed, but was subsequently fined \$1.2 billion by Beijing and delisted from the New York bourse.

The firm also regularly acts for state-owned Bank of China, e-payment giant Ant Group and its affiliate e-commerce conglomerate Alibaba, one of the world's largest retailers, e-commerce and technology companies, where it represents on a wide range of trademark spats and patent infringement claims.

Quinn in China

Quinn Emanuel debuted in China with an office in Shanghai in 2015, at the time primarily representing foreign businesses on their investigations and contentious issues in China. Shanghai has always been considered more welcoming to international entities, whereas Beijing has been more of a place for major Chinese companies and state-owned enterprises.

Once in Shanghai, the firm shifted its focus to acting for Chinese clients. This was always part of the plan, and that trajectory has held steady, the firm's partners told Law.com International.

Today, the majority of Quinn Emanuel's clients in China are Chinese companies.

"I think even [in 2017], it was pretty clear that the future in China was not going to be representing the large multinationals in China, although we still do some of that," said Sam Williamson, a Miami-based partner who joined Quinn Emanuel in 2015 from Kirkland & Ellis to help set up the firm's China practice.

"It was even obvious to me that the future was going to be representing Chinese companies—that we need to become more China-focused, and more Chinese entity-focused," he added.

But that strategy only took hold and gained traction after the firm hired its current Beijing office head, partner Xiao Liu, in 2018, Williamson said.

Pivoting Again

To be sure, several factors have contributed to Quinn Emanuel's growing pipeline of China-related work.

Facing headwinds in their home market, Chinese companies have been forced to look to foreign markets for growth. Yet their investments overseas are facing intense regulatory scrutiny and competitive market challenges.

According to both Liu and Williamson, Chinese companies have also over the years become a lot more confident in asserting themselves and seeking justice in overseas courts, and they are doing so by hiring sophisticated legal counsel to deal with difficult legal proceedings.

But the most notable growth for the firm's China practice has come from demand for a wider offering, Liu says. In addition to traditional investigations advice, Quinn Emanuel has increased the types of work it does, the jurisdictions in which it operates and its specialist sector-related offerings.

"We are definitely working on more diverse areas of practice for these Chinese clients," Liu said, noting that it's no longer only governmental investigations work.

"We've been involved in a large number of commercial litigations and arbitrations, such as trade secret litigations, commercial arbitrations in Hong Kong and Singapore and elsewhere, and other types of general civil litigation," he said, adding that new energy, e-commerce, biochemistry, biotech and pharmaceuticals have dominated much of its pipeline and growth.

In February, Quinn Emanuel represented Ningde Ampere Technology Limited (ATL) and convinced a federal jury in Texas that its client's competitor, Zhuhai CosMX Battery Co. Ltd., willfully infringed three patents directed to key components used in its industry-leading lithium-ion batteries. The jury returned a verdict finding that ATL was entitled to a running royalty of \$3.7 million in compensatory damages for two and half years of past infringement, leaving open the prospect that the court would award ongoing royalties for the remainder of the patent's 20-year lifespan.

While the number of Chinese clients has soared, Quinn Emanuel continues to be a go-to firm for multinationals in China. It has just filed a \$140 million lawsuit accusing China Construction Bank, one of China's largest commercial lenders, of acting as the "lifeline" behind Israeli fintech startup Vesttoo's alleged multibillion-dollar fraud that scandalized the global insurance community with fake letters of credit.

The Lack of a Corporate Offering

In many ways, Quinn Emanuel's resolve to only handle contentious matters has helped it leverage against the headwinds in China. Unlike its foreign counterparts that tout strong investigations, disputes and corporate offerings, Quinn Emanuel has not suffered the consequences of a market downturn. Firms such as Gibson, Dunn & Crutcher, Skadden,

Arps, Slate, Meagher & Flom, Kirkland & Ellis, Sidley Austin and Herbert Smith Freehills, which have focused largely on their corporate offerings in Asia, have all downsized their Asia practices in recent months.

"I still believe that it's predominantly for business reasons that many firms have closed their offices here," Liu said. "They cite geopolitical tensions as an excuse for shutting their offices, but I think the core reason still is in the economics. That's really just the hard truth—it's not due to geopolitical tensions."

Other smaller outfits that focus on investigations and a contentious practice offering such as Quinn Emanuel—firms such as Kobre & Kim and Steptoe—have also followed a different path, avoiding, or even benefiting from, geopolitical headwinds. Steptoe launched a Hong Kong office in 2020, lured precisely by trade sanctions and China trade enforcement-related work.

Firms such as these are few and far between in Greater China, however. With only a small group of lawyers doing this work, they are in high demand, especially with what may come in the next four years, and they can charge uncompromising rates.

To be sure, there will always be lawyers who say they can do the work and charge lower rates, Williamson said. But he is confident that as long as Quinn Emanuel does what it does best, this won't be an issue.

"You have to offer something to clients that is not based on price and instead is based on expertise," he said. "I think that's where we've succeeded."

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November 22, 2024

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By Rob Mattern

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November 22, 2024

Morgan & Morgan Looks to Grow Into Complex Litigation While Still Keeping its Billboards Up

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Alexander Lugo and Lisa Willis

What You Need to Know

- Morgan & Morgan is growing beyond personal injury law.
- The firm has been investing into its class action practice, specifically its data privacy arm.
- While many look down at the firm's marketing tactics, the firm argues that its growth speaks to its success.

This is the second part of a two-part series on the rise in scale and ambition at Morgan & Morgan. For part one, [click here](#).

Already a hefty presence in personal injury litigation throughout the country, Morgan & Morgan is now focused on broadening its capabilities in other areas of the law. And, yes, part of its growth strategy involves flashy billboards.

The personal injury firm has endeavored to grow into more sophisticated work, primarily data privacy class action lawsuits, which now compose a growing share of work in the class action space. But as the firm faces a reputation of being loud billboard attorneys in a world where that might be taboo, it is sticking by its identity.

Miami-based personal injury firm Stewart Tilghman Fox Bianchi & Cain, in business for 40 years, offers a counterpoint to the Morgan & Morgan model.

"We've never advertised, never. We're not on bus benches, we're not in newspapers," said name partner David Bianchi. "We don't have TV ads, we don't take out billboards. In the old days, nobody advertised. It was considered inappropriate and beneath the dignity of a lawyer."

While Bianchi admits that attitude has certainly changed for many people, including Morgan & Morgan, he says he and his colleagues have never thought it was necessary.

"We are very much the polar opposite of all of the high-profile advertisers, whoever they may be, because we just don't do it, and we don't want to do it," Bianchi said. "From time to time, we have had discussions [about possibly advertising] when we've had these amazing

results, ... but we just don't do it."

However, Morgan & Morgan doesn't seem to mind the reputation it's gotten for its marketing strategy. If anything, it plans on continuing to embrace that reputation.

"Everywhere For Everyone"

"My dad's vision was basically, 'What if Google was a law firm?' Mike Morgan, son of founder John Morgan, said. "His thesis on that was that if Google were a law firm, it would be everywhere for everyone to become the place where America can go for redress. And based on that theory, we built software that allowed transparency and gave us the ability to handle tens of thousands of cases across America through different practice areas."

The idea was to hire the best attorneys and staff in different fields—like class action, mass torts, and employment law—then build on these different practice areas, Morgan said.

The goal was "to be everywhere for everyone," Morgan said.

In that quest for growth, the firm's data privacy practice has become a priority, according to leader of the firm's class action department John Yanchunis.

"Data breach issues probably represent a greater majority of the class actions being filed today," he said.

Morgan & Morgan isn't the only firm noticing how fast data privacy issues are growing and providing opportunities for legal work. Firms of all sizes, representing plaintiffs and defendants, are starting to take notice and are looking to expand their efforts in that area, Rob Wilkins, co-chair of boutique firm Jones Foster's complex litigation practice said.

Rob Wilkins, Co-Chair of Jones
Foster's Complex Litigation & Dispute
Resolution Practice Group. Courtesy
photo

Wilkins, who also serves as a co-chair of the ABA section's data security subcommittee, says that as data breaches grow in size and frequency, firms are scrambling to hire in that area. And as AI also becomes more prevalent, the practice will only continue growing.

"Large firms are looking to scoop up data privacy practices and cybersecurity practices, much like what they did with e-discovery. Regional firms are looking to bring in the same thing, but are more likely to just hire individuals that have the expertise," said Wilkins, whose

own work is largely on behalf of defendants. “Companies are doing the same thing. They’re trying to grow in-house practice areas for cybersecurity and data privacy. In my opinion, it’s the fastest growing area, by far, for the legal industry and for businesses in general.”

Although Yanchunis says that the firm is willing to take on any kind of class action case—with the exception of securities litigation, because it’s considered a subspecialty—the class action department is focusing attention on its data breach team.

When Yanchunis first joined Morgan & Morgan in 2011, the class action practice consisted of just two people. Today, it has grown to nearly 100 people, 60 of which are support staff focused on things like document reviews and deposition preparation, Yanchunis said.

John Yanchunis, with Morgan & Morgan. Courtesy photo

In the past year, the class action group has added seven lawyers.

That team has won cases against giant corporations like AT&T, Google and Walmart, which tapped Big Law firms like Mayer Brown, Quinn Emanuel Urquhart & Sullivan and Greenberg Traurig. Yanchunis argues that many of the attacks against the firm’s marketing tactics have emerged from some of the enemies it’s made along the way.

“Certain elements of corporate America have done a very good job of trying to sell the American public that the American plaintiffs’ lawyer is a wolf, that we’re out only out to get money,” he said. “The reason they do that is because they’re trying to push back and protect themselves from repercussions over their defective products, misinformation and fraud.”

He also argues that there’s nothing wrong with advertising. Although some of the advertising, like its famous “size matters,” billboards seem to bother some of its competitors, Yanchunis sees that the ads are working.

“The American public, in large measure, gets their legal services through advertising,” Yanchunis said. “Some of our ads may be a little funny, but quite frankly, we’re providing great service for those who come into our doors as a result of advertising, and it works. To be able to grow to our size means that we’ve had to have success.”

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ESG in the Trump/Vance Era- Part 1

 [businesslawprofessors.com/2024/11/esg-in-the-trump-vance-era-part-1](https://www.businesslawprofessors.com/2024/11/esg-in-the-trump-vance-era-part-1)

November 22, 2024

By Marcia Narine Weldon on November 22, 2024

Two days after the US election, I moderated and participated on a Society of Corporate Compliance and Ethics (SCCE) panel on ESG through the life cycle of a business with Eugenia Maria Di Marco, who focused on startups and international markets, and Ahpaly Coradin, who focused on M&A, private equity, and corporate governance.

I shared these stats with the audience before we delved into the discussion:

- Elon Musk, who may have significant influence in the Trump administration, has stated, “ESG is a scam. It has been weaponized by phony social justice warriors.”
- The SEC’s climate-risk disclosure rule is already facing several legal challenges and may not survive.
- An open letter from the Attorney Generals of 13 states following the Supreme Court’s SFAA decision re race warned Fortune 100 CEOs that companies using DEI to “engage in racial discrimination should and will face serious legal consequences.”
- AGs from 21 other states reassured CEOs that diversity and inclusion programs “comply with the spirit and the letter of state and federal law” and actually “reduce corporate risk for claims of discrimination.”
- As of September 2024, about 20 states have enacted anti-ESG legislation.
- In July 2024, SHRM, the largest professional HR association with nearly 340,000 members in 180 countries, announced it was officially eliminating ‘Equity’ from ‘Inclusion, Equity, and Diversity.’
- The *Loper Bright* decision, which eliminated Chevron deference may:
 - Hinder federal agencies like the EPA, Department of Labor, FTC, and SEC from effectively implementing and enforcing ESG regulations.
 - Increase litigation risks for companies facing challenges to ESG-related rules and disclosures.
 - Create regulatory uncertainty, leading to inconsistent judicial interpretations and complicating compliance efforts.

Many U.S. businesses and lawmakers have raised concerns about the extraterritorial impact of EU due diligence and sustainability reporting regimes.

And what about consumer behavior? McKinsey & Company reported in July 2024 that consumer interest in ESG issues is declining across generations:

- Gen Z consumers in five of six surveyed countries have lost interest in ESG, with a decline of five points since 2023.

- Millennials' consideration of ESG in purchase decisions has also declined.

Yet, there's a silver lining for ESG supporters:

In early November, Thomson Reuters released the State of Corporate ESG report. 71% of survey respondents agree or strongly agree that ESG investment is a source of competitive advantage, up from 60% in 2023. 82% believe that the role of ESG in corporate performance will continue to grow.

Given this complex landscape, how should companies rethink strategies in light of these shifts?

In a future post, I'll share some insights from our conversation.

Adanis knew of US probe when they sold bribe-linked assets to TotalEnergies, prosecutors say

 [reuters.com/business/adanis-knew-us-probe-when-they-sold-bribe-linked-assets-totalenergies-2024-11-22](https://www.reuters.com/business/adanis-knew-us-probe-when-they-sold-bribe-linked-assets-totalenergies-2024-11-22)

America Hernandez

By America Hernandez

November 22, 2024 9:17 AM PST Updated an hour ago

A technician talks on his cell phone at the Photovoltaic Modules assembling plant of Adani Green Energy Ltd (AGEL), in Mundra, India, April 11, 2024. REUTERS/Amit Dave/File Photo
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- FBI search warrants served in March 2023
- TotalEnergies buys solar assets in September 2024
- Adani denies US allegations

PARIS, Nov 22 (Reuters) - Gautam and Sagar Adani knew their renewable energy company was under U.S. investigation for suspected bribery when they sold part of India's largest solar park to France's TotalEnergies, prosecutors allege in legal documents reviewed by Reuters.

TotalEnergies did not immediately respond to a request for comment on Friday on whether it knew the Adanis were being probed by U.S authorities over an alleged bribery and fraud scheme when it bought the Khavda solar stake.

U.S. prosecutors on Thursday charged eight people - including Indian tycoon Gautam Adani, his nephew Sagar Adani and the former CEO of Adani Green Energy Limited — with promising and then making improper payments to Indian officials between July 2021 and 2024 to ensure the solar project's success.

In September 2024, TotalEnergies paid \$444 million into a joint venture with Adani Green Energy for a 50% stake in 1.15 gigawatts of solar installations at the Khavda solar park — the project at the heart of the bribery charges.

The French oil and gas company is not named in the criminal case. The Adani Group has called the allegations baseless. It did not immediately respond to an email seeking comment about this story.

According to the U.S. indictment [↗](#), opens new tab, FBI special agents served Adani Green Energy Executive Director Sagar Adani with a search warrant and grand jury subpoena in March 2023 - more than a year before the sale to TotalEnergies. These documents identified Adani Green Energy, its former CEO Vneet Jaain, and chairman Gautam Adani as under investigation for alleged bribery to obtain business advantages for the firm.

TotalEnergies bought a 20% stake in Adani Green Energy in January 2021 - after the Indian company won what was then the world's largest solar order, and just months before the alleged payments to officials began.

Sangkaran Ratnam, TotalEnergies' country chair for India and the French firm's nominee to the board of directors of Adani Green Energy, did not respond to a request for comment on whether he had been aware of the investigation at the time TotalEnergies bought the stake in the Khavda assets.

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Reporting by America Hernandez in Paris. Editing by Mark Potter

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Adani Group

'Numero uno': US takes aim at Gautam Adani

Criminal and civil charges against Indian tycoon and associates set out alleged \$265mn bribery scheme

Chris Kay in Bengaluru YESTERDAY



Visiting the US in March 2023, Sagar Adani, nephew of Indian billionaire tycoon Gautam Adani, was suddenly approached by FBI agents who seized his electronic devices as part of a sweeping probe into an alleged years-long kickback scheme involving an Adani group's renewables business.

Almost 20 months later, [US authorities have unveiled bribery charges](#) against Sagar, 30, and his uncle, a hugely influential business leader who is Asia's second-richest man and widely seen as having close ties to Indian Prime Minister Narendra Modi.

The criminal and civil cases allege Adani family members and group leaders, along with former executives of Indian renewable company Azure Power and Canadian pension fund CDPQ, schemed to funnel \$265mn in bribes to Indian officials to secure solar contracts. The scheme was allegedly concealed from US banks and investors from which [Adani](#) raised billions of dollars.

[Gautam Adani](#), 62, personally met a senior government official three times in the southern state of Andhra Pradesh in 2021 as part of efforts to "corruptly persuade" authorities to help seal power supply deals with electricity distribution companies, according to the criminal indictment.

At his conglomerate's headquarters in Ahmedabad, western India, the billionaire himself allegedly presented "multiple options" for ways to conceal bribes.

The charges pose an unprecedented threat to the Adani Group, which had relaunched ambitious domestic and overseas expansion efforts following damaging separate [allegations of corporate fraud](#) levelled against it last year by short seller Hindenburg Research.

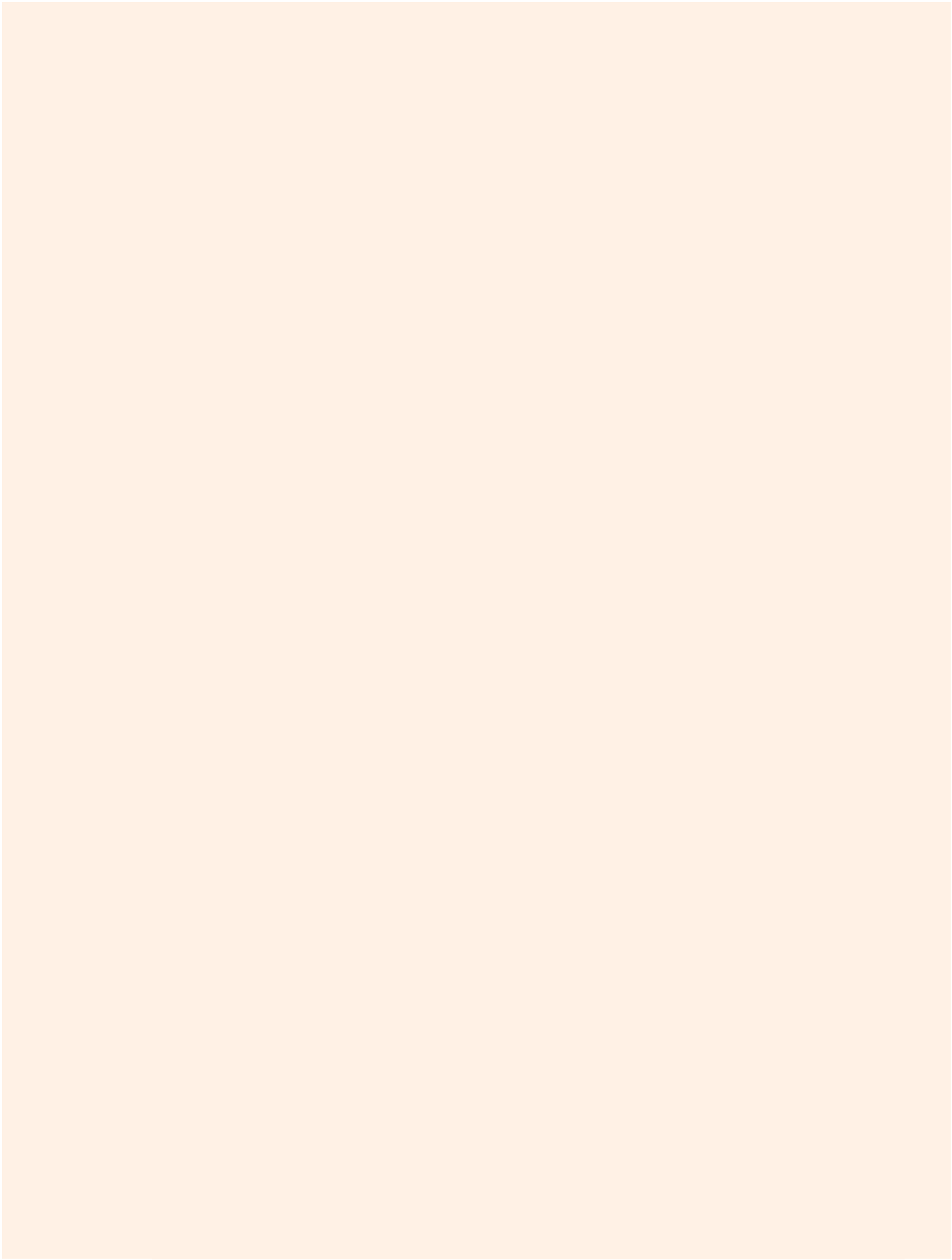
“This is more serious than the Hindenburg report,” said Bhaskar Chakravorti, dean of global business at The Fletcher School at Tufts University. “This will definitely make a dent in Adani’s fundraising from international investors.”



Adani Green is building one of the largest solar plants in the world at Khavda in India's western state of Gujarat © Sumit Dayal/Bloomberg

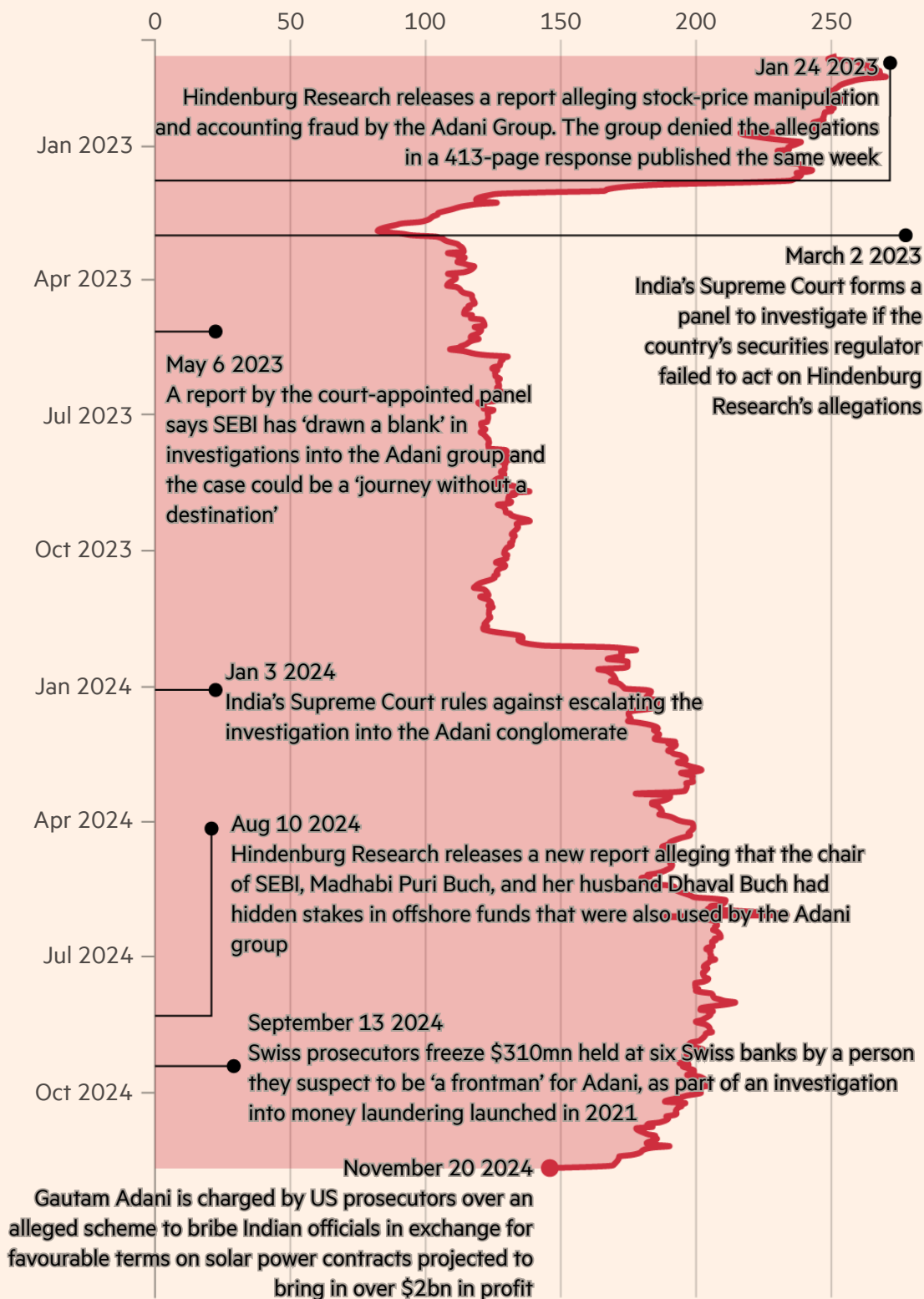
Adani Group called the allegations “baseless” and said it was seeking all “possible legal recourse”. CDPQ, an Adani shareholder, said it was co-operating with US authorities and had sacked the named employees last year. Azure said the former executives referenced in the charges had been “separated” from the company for more than a year and it was co-operating with the US agencies.

Adani’s nation-spanning conglomerate has built one of India’s largest renewable businesses as Modi’s government pushes ambitious plans to meet half its energy needs from green sources by 2030.



Adani stocks lose more than \$20bn after the US alleges Gautam's involvement in bribery scheme

Combined market value of listed Adani Group businesses (\$bn)



Sources: FactSet • *Adani Enterprises, Adani Total Gas, Adani Transmission, Adani Green Energy, Adani Power, Adani Ports & Special Economic Zone, Adani Wilmar, Ambuja Cements, ACC and New Delhi Television

The indictments filed by the US attorney's office in Brooklyn and the Securities and Exchange Commission allege the renewables business Adani Green under its executive director Sagar Adani engaged in a "lucrative" bribery effort to win solar supply contracts with Indian government entities between 2020 and 2024.

These included a deal involving the state-owned Solar Energy Corporation of India (SECI) on the purchase of 7,000 megawatts of power-generating capacity in Andhra Pradesh.

Gautam and Sagar Adani, along with Adani Green managing director Vneet Jaain, as well as former Azure executives, conspired to "corruptly offer" and authorise bribes to officials to gain energy contracts with state electricity companies from Andhra Pradesh to northern Kashmir, according to the criminal indictment.

Adani Group has invested heavily in renewable power as the government pushes for half of India's energy needs to be met from green sources by 2030 © Sumit Dayal/Bloomberg

The SEC alleged that the power purchase agreements were only executed by the state-owned solar company after the Adanis “undertook a massive bribery scheme to incentivise Indian state government officials to enter into contracts with SECI to buy energy at above market rates”.

To keep track of their arrangements, Sagar Adani used his mobile phone to share specific details of bribes offered to government officials, it said. Jaain photographed a document in April 2022 ahead of a meeting in New Delhi with a former Azure executive that summarised bribe amounts Adani would put forward, it said.

A former Azure executive also prepared PowerPoint presentations and Excel spreadsheets to help the CDPQ executives analyse the best “corrupt payment option”, the criminal indictment said.

The Adani Group headquarters in Ahmedabad © T. Narayan/Bloomberg

According to the criminal charges, some of the defendants used code names, calling Gautam Adani “Mr A”, “the big man” and “Numero uno”. They also referred to Jaain as “snake” or “Numero uno minus one”.

Another key charge levelled against the two Adanis and Jaain is that they provided “false and misleading” information about their involvement in instigating bribes as they travelled to the US to seek dollar funding from investors and financial institutions.

Proceeds from a dollar-bond issue in 2021 were directly linked to capital expenditure requirements for various projects, including one “corrupt” scheme, according to the criminal indictment.

The SEC in its separate civil charge said Gautam and Sagar Adani had for years “positioned Adani Green to investors and the public as a leader among its peers and within India in principles of good corporate governance, highlighting Adani Green’s purportedly rigorous anti-bribery and anti-corruption principles and policies”.

They “leveraged that narrative” to sell almost \$1bn of Adani Green bonds and notes to US investors in September 2021, it said.

When the former Azure and CDPQ executives were approached by US authorities, the defendants sought to withhold “key information” about the Indian graft efforts, according to the criminal charges. The charges said the executives made selective disclosures to investigators, revealing Adani’s requests for bribes “but concealing their own participation”.

The Azure and CDPQ executives allegedly deleted electronic messages and PowerPoint presentations, while in meetings during 2023 with the FBI and SEC they denied taking part in the Indian bribery efforts. “This strategy was designed to create the appearance that the co-conspirators were reporting misconduct rather than perpetrating misconduct.”

Soon after Sagar Adani was approached by the FBI last year, Gautam Adani “emailed himself photographs of each page of the search warrant executed and grand jury subpoena served” on his nephew, according to the criminal indictment, which alleges the tycoon concealed that information from investors and banks.

Prosecutors noted that the Adani Group said the conglomerate was “unaware” of any investigation against its chair following media reports this year that US probes against the tycoon were under way.

The group’s head of corporate finance is also alleged to have sent more than a dozen emails in March 2024 to multiple investors and financial institutions stating the news was “baseless” and “malicious”.

Early on Thursday morning India time Adani Green suspended a \$600mn bond issue planned for this week after news of the charges prompted a major sell-off across the conglomerate’s 10 listed stocks.

The drop in Adani Group shares was “similar to the reaction” following Hindenburg’s damaging allegations last year, said Abhay Agarwal, founder and managing director of Mumbai-based fund manager Piper Serica Advisors. “If this impacts the group’s ability to raise new capital to fund its projects it would be a huge negative.”

However, with Adani’s strong backing at home and extensive control over much of India’s critical infrastructure, Chakravorti at Tufts expects the billionaire “to ride it out much as he did when the Hindenburg report hit” even if it limits his travel outside India.

“Will he be extradited? I don’t think it is likely,” said Chakravorti. “At least not with the current administration in power.”

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US Bribery Charges Plunge Adani's Empire Back Into Crisis (2)

By Kai Schultz, Bhuma Shrivastava and Anto Antony

Bloomberg Law News 2024-11-22T10:01:15131789983-05:00

US Bribery Charges Plunge Adani's Empire Back Into Crisis (2)

By Kai Schultz, Bhuma Shrivastava and Anto Antony2024-11-22T07:30:16397-05:00

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.

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.



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

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

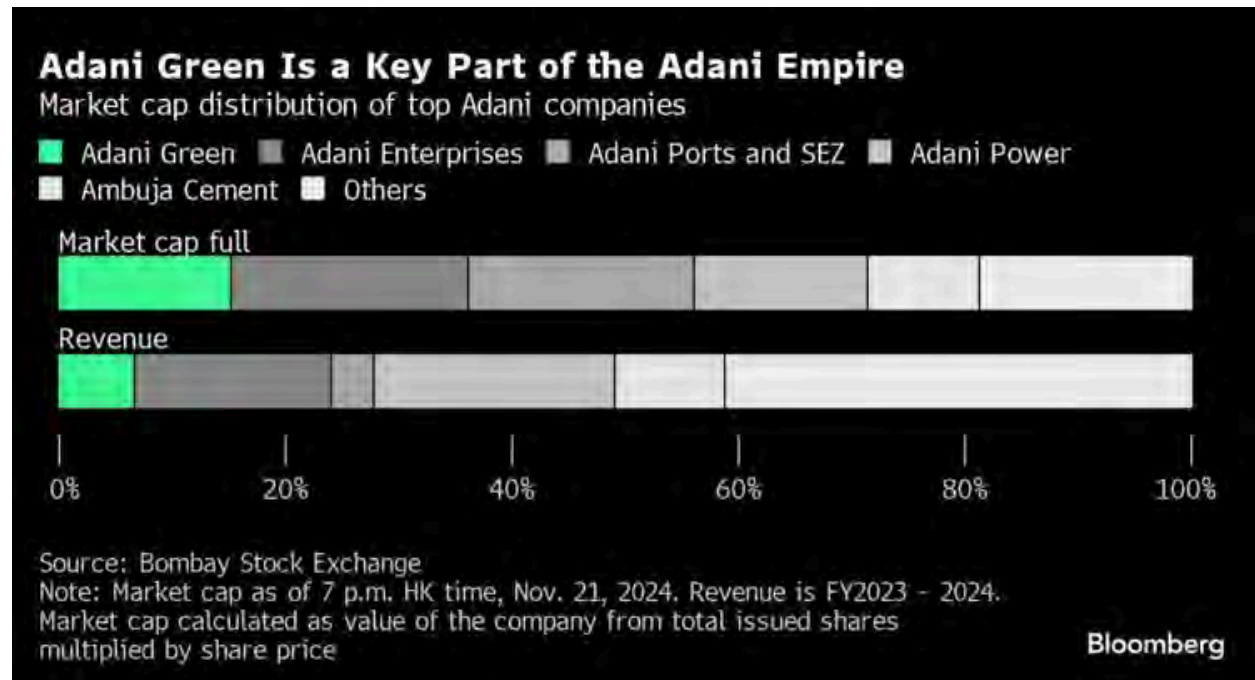
India's capital markets regulator is looking into whether the Adani Group violated rules mandating the disclosure of market-moving information, Bloomberg reported Friday, citing people familiar with the matter. The fact-finding will likely take two weeks, after which the India regulator will assess whether to open a formal probe.

And 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

The news may also lead to "short-term panic" among investors toward India's stock market, but it's unlikely to derail the appeal of the country for foreign institutional investors over a longer time horizon, according to Shivani Nyati, head of wealth at Swastika Investmart Ltd.

"FIIs are likely to return to the Indian equity market after a meaningful price correction, as the broader growth story of India remains intact," Nyati said.

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.

(Updates to add news that India's capital markets watchdog is looking into possible violation of disclosure rules.)

--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, Suvashree Ghosh, Adrian Leung and Christopher Udemans.

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UPS to Pay \$45 Million SEC Penalty Over Improper Valuation (1)

By Cailley LaPara2024-11-22T10:24:22920-05:00

- Agency says UPS misrepresented value of freight business
- Courier recorded charge in 2020 related to investigation

United Parcel Service Inc. will pay \$45 million to settle claims by the US Securities and Exchange Commission that the courier misrepresented its financial results by improperly valuing its freight business.

The company failed to follow generally accepted accounting principles when it evaluated its less-than-truckload operations in 2019 and 2020, the SEC said Friday in a statement. “Had UPS properly valued Freight, its earnings and other reported items would have been materially lower,” the agency said.

UPS, which didn’t admit or deny the findings, agreed to avoid future violations, the SEC said.

The company said in an emailed statement that it recorded a non-cash goodwill impairment charge in 2020 relating to the investigation. “The settlement will not have a material effect on our business, financial condition, results of operation, or liquidity,” UPS said.

Goodwill is a non-cash asset companies record on their balance sheets when they buy another business and have to calculate how they came up with the purchase price. US accounting rules require companies to keep the asset as a line on their balance sheets, only marking it down when there’s a sign it has permanently lost value. Companies must test goodwill at least yearly for signs of it losing value.

The SEC’s [order](#) alleges that UPS used an outside consultant to value the freight business without providing certain information such as the company’s own internal analysis of the operations. UPS didn’t tell the consultant it had concluded that “a prospective buyer would expect Freight to generate significantly less profit after it was sold because it would no longer benefit from synergies and other cost savings it was getting as part of UPS,” according to the order.

UPS sold its freight business to TFI International in 2021 for \$800 million.

Shares of UPS rose 1.9% as of 10:15 a.m. in New York.

(Updates with company comment in fourth paragraph.)

--With assistance from Nicola M. White.

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Audit Firms Pressed to Reveal Details on Staffing, Finance (1)

By Amanda Iacone

- Disclosure package responds to longstanding investor demands
- Largest auditors to share financial statements with board

Bloomberg Law News 2024-11-22T10:03:03966111271-05:00

Audit Firms Pressed to Reveal Details on Staffing, Finance (1)

By Amanda Iacone 2024-11-21T17:44:00000-05:00

- Disclosure package responds to longstanding investor demands
- Largest auditors to share financial statements with board

Investors are poised to get their hands on a suite of new disclosures covering audit firm governance and staffing after more than a decade of lobbying for such transparency about the work that goes into vetting corporate accounting.

The Public Company Accounting Oversight Board on Thursday voted 4-1 to adopt a pair of rule changes that would expand the information auditors must provide to the regulator and the public. The reforms address longstanding investor demands for greater insights into the quality of audits and stem from recommendations that date back to 2008.

"Transparency into the audit process is of paramount importance if the audit is to remain relevant in the long term," said board member George Botic.

The Securities and Exchange Commission must approve the proposal before the rule changes can take effect. The planned departure of SEC Chair Gary Gensler on Jan. 20 threatens to stall the commission's review, which must incorporate another round of public feedback.

Gensler's successor under the incoming Trump administration has no obligation to maintain his rulemaking priorities that have included strengthening standards to bolster audit quality. Under the first Trump administration, updating the US audit rulebook was not a top priority and instead the PCAOB focused on compliance with its existing standards.

The SEC declined to comment about the timing of any regulatory action.

The slate of new disclosures would represent a fundamental shift for audit firms—typically privately held entities owned by their partners but increasingly with stakes from private equity investors. The new reporting is meant to arm investors' audit committee members with information to evaluate auditor performance while providing PCAOB staff a window into how firms manage their resources and risks that could undermine their business.

Suite of Metrics

Firms will report metrics covering eight areas under the rule changes PCAOB approved Thursday, a smaller pool than the 11 topics the board initially proposed in April. Disclosures would include the workload shouldered by audit staff, the industry experience of auditors, and details about staff training. The final plan removed several measures included in the board's draft, such as details about how the firms use specialists and service centers.

Firms that audit at least one large or mid-tier company would have to comply with the new reporting requirements, which would include figures related to individual audits.

The board also voted Thursday to amend its annual and special events reporting requirements.

Under those expanded disclosure provisions, the largest US auditors would submit their own financial statements to the PCAOB—which would keep the information confidential. Firms wouldn't have to comply with US or international accounting standards to tally their financial performance—a change from April's proposal that responded to pushback from auditors.

Instead, the board set out minimum requirements, including that the financial statements cover significant owners such as private equity investors and that they detail unfunded pension liabilities and related party transactions.

Board member Christina Ho, a frequent critic of the board's rulewriting, voted against both disclosure expansions, saying that the board selectively disregarded feedback and rushed through the pair of rule changes.

"The unbridled contempt conveyed in this adopting release and the corresponding abuse of power convinced me that the PCAOB, like most financial regulators, should be subject to congressional oversight," Ho said of reforms to the board's annual reporting process. "Unchecked regulatory power is dangerous and harmful to the capital markets."

A Treasury committee on the audit profession recommended 16 years ago a similar measure so that firms would be held to the same standards as the companies they audit. The committee's report led to a 2015 concept release that floated possible audit quality indicators that firms should report and shaped the current reporting package.

Under other provisions, firms would also provide more details about their membership or affiliation with any audit networks. Material shifts in the busiest firms' operations that significantly impact their audit practice would trigger a special report to the board.

Auditors largely opposed the mandatory reporting, arguing that the plan would be too rigid and duplicate information already shared with the public, audit committees, and the regulator.

Pending SEC approval, firms would begin reporting the set of eight metrics as early as 2028. Effective dates would vary for the expanded annual and special reporting based on the disclosure and size of the firm.

(Updates with statements from PCAOB members George Botic in paragraph three and Christina Ho in paragraph 13.)

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Art Candee 🏠🍷

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Pam Bondi, Trump's new AG pick, denied that a \$25,000 donation from Trump was connected to her office's decision not to pursue action against Trump University in 2013.

Donald gave her the money 6 days after her office said that they were reviewing the allegations of a lawsuit against Trump U.

SMH



November 21, 2024 at 3:48 PM 🗨️ Everybody can reply

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Trump Nominates Corporate Lobbyist and Foreclosure Fraudsters Defender Pam Bondi as Attorney General

 [nakedcapitalism.com/2024/11/trump-nominates-corporate-lobbyist-and-foreclosure-fraudsters-defender-pam-bond-as-attorney-general.html](https://www.nakedcapitalism.com/2024/11/trump-nominates-corporate-lobbyist-and-foreclosure-fraudsters-defender-pam-bond-as-attorney-general.html)

By Yves Smith

November 22, 2024

Trump opponents should be careful about what they wish for. As much as they are no doubt enjoying spectacle of forcing an early Trump climb-down by getting Matt Gaetz to withdraw as attorney general, no one should have any illusions about the new candidate, Pam Bondi. Bondi was the attorney general for Florida for two terms. Her conduct on the foreclosure front alone shows she defends corrupt corporate cronies rather than enforce the law to protect ordinary citizens.

Trump presumably picked Bondi because she was a loyalist. The Financial Times reminds readers that Bondi dropped a 2013 investigation into the failed Trump University mere days after Trump gave \$25,000 to Bondi's re-election campaign. She was a member of his legal defense team in his first impeachment trial and supervised some of the state lawsuits challenging 2020 votes. As chair of the litigation team at America First Policy Institute, oversaw amicus briefs supporting Trump in his legal fights, such as one that contended that the Jack Smith special counsel appointment was unconstitutional.

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The pink paper describes Bondi's recent career as a lobbyist:¹

She then joined Ballard Partners, an influential lobbying firm with close ties to Trump. Susie Wiles, Trump's pick for White House chief of staff, worked at the firm for nearly a decade.

Bondi chairs Ballard's corporate regulatory compliance practice. She has lobbied the federal government on behalf of General Motors, Amazon, Uber, Qatar's government and other clients.

Now let us turn to Bondi's fraudster protection racket as Florida attorney general. Recall that Florida was one of the epicenters of foreclosures in the wake of the crisis. Over 6 million households lost their homes as a result. The foreclosure crisis went well beyond subprime

borrowers; in fact the number of prime mortgage borrowers hit by foreclosures was twice that of subprime.

Many of these foreclosures could have been prevented via a mortgage modification that would have left the investors in the securitization better off than a foreclosure. Too many were even bogus, including foreclosures on homes owned by servicemembers (exempt from foreclosures while on active duty), that had never had a mortgage, or where the house was lost in a fire but the servicer refused to accept a payoff in full.²

A criminogenic environment had developed to support the servicers' desire to process high volumes of foreclosure cheaply. That regularly involved document fabrication (how many readers remember bogus allonges?) and legally invalid procedures, like individuals with no legal authority to do so engaging in so-called robo signing.

We were part of a group of lawyers, activists, and journalists combatting these mass foreclosures. Because the focus was on systemic abuses that we could substantiate and developing legal theories that could give borrowers more leverage, our focus was less on personalities, since for the most part they were not positioned to drive the action in courts.³

Even so, Pam Bondi managed to stand out, and not in a good way. From a 2011 post:

Now contrast Bondi joining in with other pious moralizers about suspected borrower bad behavior with her conduct when presented with actual bad behavior by a foreclosure mill. Via 4closurefraud, hat tip Lisa Epstein:

Today Florida Attorney General Pam Bondi announced a first-of-its-kind settlement against attorney Marshall C. Watson and his law firm, one of the largest foreclosure firms in Florida, for alleged improprieties in the prosecution of foreclosure cases throughout Florida.

This settlement, which calls for a \$2 million payment and imposition of certain requirements to conduct business, is the first stemming from numerous investigations into Florida foreclosure law firms.

\$2 million is at most what Watson makes in two weeks, more likely one week. In Alabama, the pickings for big foreclosure firms are much lower than in Florida. Not only is the default rate worse (Alabama didn't bubble up anywhere close to the degree that Florida did) but Alabama is a non-judicial foreclosure state, while Florida is a judicial foreclosure state, so the fees per foreclose are greater in Florida because more legal work is involved.

One of the big foreclosure mills in Alabama, Sirote & Permutt, makes \$4 million a month on foreclosures. It's pretty unlikely that one of the largest players in Florida would be pulling in less.

So in one corner, a wealthy and likely politically connected law firm gets off easy despite widespread reports of abuses in Florida (see 4closurefraud, Fraud Digest, foreclosurehamlet.org for more sordid details) while little guys are presumed guilty and denied a remedy that lenders actually prefer because they come out ahead too. Even among the capitalist class, the banks and their minions are asserting their right to be first at the food trough.

Bondi later fired two attorneys in her office, who had previously gotten exemplary performance reviews, who were the working oars of an investigation into Lender Processing Services, a Florida-based company that was a major player in facilitating servicer foreclosure abuses. LPS made false statements in SEC filings about pending litigation in SEC filings. The FDIC filed a suit against LPS for \$154 million. This was followed by a suit by a US Bankruptcy Trustee, who joined all 13 US Bankruptcy Trustees, and then a related private class action. The attorney general of Nevada filed a 606 count criminal indictment against two "title officers" who were LPS employees.

But this effort to root out foreclosure abuses by taking apart the operations of a central actor went pear shaped. The linchpin witness in the Nevada criminal case committed suicide, in circumstances that Mark Ames and others found to be questionable. With Obama

successfully undermining the campaign by some state AGs to get a meaningful mortgage settlement, the campaign against LPS fizzled out, resulting in an eventual \$127 million, as in cost of doing business, fine, in a settlement with 46 state attorneys general.

With that as background, Bondi played a key role in the LPS protection racket, as recounted in depth in Florida Protects Banking Giant Lender Processing Services, Ignores Hurting Homeowners in the Miami New Times.

We looked again at Bondi when she was under consideration by the Romney campaign as a possible VP, and found she compared unfavorably to Sarah Palin, including in the intellect category. From a 2012 post:

Business Insider reports that the newest addition to the list of possible VP candidates is...Florida's Pam Bondi. We've refrained from writing about her at NC merely because there seemed to be far more important targets. But contrast her conduct as the AG of one of the ground zeros of the foreclosure crisis, Catherine Cortez Masto of Nevada. Shortly after the robo-signing scandal broke, Masto got legislation passed that made it a crime (a felony) to file improper paperwork with the courts, subject to 10 years in jail and fines of \$10,000 per violation. (Note that this legislation did not change the legal requirement for foreclosure; it simply criminalized failure to comply. What did Bondi do? She fired two staffers in her office who were taking document fraud seriously.

Per Business Insider, this is what recommends her:

- She's a woman. And she's young. While the Romney campaign is said to be looking for experience and gravitas, there are obvious demographic advantages to picking someone who can appeal to women and young people.
- She's from Florida. Bondi could give Romney a much-needed advantage in the crucial swing state.
- She tried to take down Obamacare — and almost won. Bondi was the lead attorney general in the lawsuit to overturn the Affordable Care Act. With her as VP, Romney would have one less problem to deal with.
- She's really pretty.

The Romney campaign is getting her to stump for him in the Northeast on a limited basis.

The article warns that she's probably not high on the prospect list and selecting her would invite a firestorm of Palin comparisons. Contacts in Florida say that Palin is probably smarter than Bondi (one wonders how she graduated from law school if true) and that her prior career as a prosecutor in Hillsboro County was light on actually filing cases and heavy on acting as a spokesperson.

So in the unlikely-but-not-impossible outcome that Bondi gets the nod, one can imagine that the campaign will portray her asleep-at-the-switch on the foreclosure fraud beat as a great plus. MBS Guy notes:

There is something so perfect about Romney picking a VP who would help him win the anti-“deadbeat borrower” vote. It seems fitting that the foreclosure crisis should be part of the election story – but in a totally bizarro way.

With Bondi as his running mate, Romney could paint Obama as the candidate who did too much to help deadbeat borrowers, and worsen the housing crisis, by stretching out foreclosures via the AG foreclosure settlement.

I think that would help ensure that neither candidate would say anything remotely truthful on issues like housing and the economy.

So having knocked out an attorney general candidate with serious sexual self control issues (as Lambert said, finding sizable Gaetz Venmo payments to two women looks to have been a deal killer, in an analogy to Elliot Spitzer being felled by evidence of having frequented high-end prostitutes), we instead get one with a track record of favoring donors and corporate bad actors. In the “pick your poison” category, I’d rather have a personal sleaze who was still firmly dedicated to taking on corporate misconduct than a well-established institutional sleaze, but others clearly believe differently...particularly big business interests in the Senate.

¹ This seems to be an odd career move for a state attorney general, since skilled and connected government attorneys do very well financially when they move to the private sector. Hopefully readers who know this arena better can opine.

Specifically, the Federal level, AGs and even senior DoJ attorneys usually wind up at law firms, either as litigators, or the more senior ones, rainmakers who might also get their hands a bit dirty in cases. A few like Benjamin Lawsky and Neil Barofsky set up their own boutiques (although Barofsky then went to Venable, one of the few major firms that is willing to sue Wall Street). The fact that Bondi did not go the legal route raise questions about her interest in practicing law; an older post we hoisted later in this piece also questioned her competence. Another window into her actual legal chops would be the caliber of state vote-challenging lawsuits Bondi purportedly oversaw. I must confess I have read only a few Trump-related filings and not these in particular. But the ones I have encountered were very poor, with heavy political whinging, paper thin if any legal analysis.

² The very short version of why this came about is that the preventable and invalid foreclosures were almost entirely due to the widespread adoption of mortgage securitization. When banks made and retained the mortgage, they had incentives to restructure a mortgage if a borrower got in trouble. They did not want to deal with foreclosures (including having to ‘splain to regulators) and a half a loaf was better than none. Plus because they were already

in the business of evaluating borrowers to make new mortgage loans, they had the skills to reassess them in the light of changed conditions. So debtors that had a decent level of income would typically get a mortgage modification.

By contrast, servicers were high volume processing operations that took and accounted for borrower payments as well as of course, their own fees. Servicers were paid to foreclose. There was not even a mechanism for them to get paid for modifying mortgages, even before getting to the impediment that they lacked the skills to do what amounted to underwriting a new loan. Servicers were caught out in many abuses to increase the rate of foreclosures, such as deliberately posting payments late, crediting payments to late and other fees before principal and interest that a borrower would continue to have short paid, and engaging in “gutter service” of foreclosure notices. They also abused the investors in the securities. One of many found repeatedly by a team of activists was the servicer claiming it still had a foreclosed home in its “real estate owned” portfolio, meaning it could charge monthly fees to the property. They documented repeated instances of these houses having been sold, yet still being reported as in the trust for many months after a sale.

³ Hence we were all blindsided when Obama managed to flip New York State Attorney General Eric Schneiderman, who was then leading an effort with 13 other state attorneys general, to get a better deal out of an Administration plan to settle the meteor-hitting-the-planet-and-killing-all-the-dinosaurs level liability from many years of mortgage originators and securitizers (as in mainly banks and bank affiliates) violating their own by design rigid contracts for how to convey the mortgages to the securitization trust, which then would distribute the interest and principal payments in pre-stipulated ways to classes of investors, called certificate-holders. Unlike most contracts, these abuses could not be remedied by waivers later, hence the resulting pervasive document fraud to solve for the lack of a time machine. The Schneiderman effort was in the process of outrunning a moribund Federal settlement effort. Obama got Schneiderman to drop that via offering him a seat on a Federal task force (which proved to be an empty role and the Administration even went out of its way to humiliate Schneiderman) and a seat next to Michelle at the State of the Union address.

She 'let Jeffrey Epstein slide': Critics blast Trump's latest 'corrupt' Cabinet pick

 [rawstory.com/pam-bondi-2669969108](https://www.rawstory.com/pam-bondi-2669969108)

Maya Boddie, Alternet

November 22, 2024

Maya Boddie, Alternet

November 21, 2024 10:02PM ET

FILE PHOTO: Former Florida Attorney General Pam Bondi speaks during a press conference by supporters of former U.S. President Donald Trump after they attended his trial for allegedly covering up hush money payments linked to extramarital affair with Stormy Daniels, in Manhattan, New York City, U.S., May 21, 2024. REUTERS/David 'Dee' Delgado/File Photo

Less than 24 hours after former Rep. Matt Gaetz (R-FL) withdrew his name from consideration for Attorney General, President-Elect Donald Trump announced Gaetz's replacement for the nomination.

"I am proud to announce former Attorney General of the Great State of Florida, Pam Bondi, as our next Attorney General of the United States," Trump wrote via Truth Social.

A slew of legal experts and journalists quickly reacted to the news, many criticizing the president-elect's choice.

Rochester Institute of Technology law professor David Cay Johnston commented: "Pam Bondi, Trump's new AG pick, is so corrupt. She took an illegal \$25,000 campaign donation from the Trump Foundation. Bondi kept the money (!!!), given when -- as Florida AG -- she shut down her office's investigation of the utterly fraudulent Trump University."

Orlando Sentinel columnist Scott Maxwell added: "Hi America. If you want to understand why Donald Trump likes Pam Bondi, know this: Complaints were filed about Trump U. in with attorneys general in two states. - NY's AG pursued and got a \$25 million settlement - Trump gave Bondi \$25k, and she did nothing."

Journalist Ken Klippenstein wrote: "Trump's new pick for AG, Pam Bondi, was a registered lobbyist for the government of Qatar"

Human Rights Campaign national press secretary Brandon Wolf replied: Two days after my best friends and 47 others were murdered at Pulse Nightclub, Pam Bondi tried to paint herself as a friend to the community. She hoped we'd forget that, just TWO years earlier,

she said our freedom to marry would cause 'significant public harm.' We didn't."

Democratic strategist Ameshia Cross replied: "The same Pam Bondi who let Jeffrey Epstein slide"

Long Island County, New York's Suffolk Young Democrats Chair Skyler Johnson commented: "Trump makes sure to point out that she was the first female Attorney General of Florida. I'm sorry - I thought acknowledging such things was an unforgivable sin, and proof someone was selected because of DEI? Are the rules different now?"

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Trump picks Pam Bondi for US Attorney General after Gaetz withdraws

 [reuters.com/world/us/trump-picks-pam-bondi-us-attorney-general-after-gaetz-withdraws-2024-11-21](https://www.reuters.com/world/us/trump-picks-pam-bondi-us-attorney-general-after-gaetz-withdraws-2024-11-21)

Sarah N. Lynch, Daniel Trotta

- Bondi's experience contrasts with Gaetz's lack of traditional qualifications
- Trump says aiming to end DOJ politicization and focus on crime
- Trump picks a loyalist after clashing with AGs from his first term

Nov 21 (Reuters) - U.S. President-elect Donald Trump said on Thursday he would nominate former Florida Attorney General and loyalist Pam Bondi to be U.S. Attorney General, moving swiftly to replace his former nominee Matt Gaetz after the embattled former congressman withdrew from consideration.

Gaetz was the subject of a House Ethics Committee probe into allegations of having sex with an underage 17-year-old girl and illicit drug use. He has denied wrongdoing.

Bondi, 59, was the top law enforcement officer of the country's third most populous state from 2011 to 2019, and served on Trump's Opioid and Drug Abuse Commission during his first administration.

She was also part of Trump's defense team during his first impeachment trial, in which he was accused of pressuring Ukraine to conduct a corruption investigation into his rival, now-President Joe Biden, by withholding military aid. Trump was later acquitted by the Senate.

Most recently, Bondi helped lead the legal arm of the America First Policy Institute, a right-leaning think tank whose personnel has worked closely with Trump's campaign to help shape policy for his incoming administration.

Bondi's resume contrasts with that of Gaetz, who has little of the traditional experience expected of an attorney general and who was expected to face opposition from Senate Democrats and some Republicans.

"She is certainly qualified for the position on paper," said David Weinstein, a former federal prosecutor in Florida who now works as a defense attorney with Jones Walker.

"She spent her life prosecuting cases. She has a resume, as compared to the last nominee."

Trump announced his pick of Bondi on social media, praising her for her prosecutorial experience and saying she was tough on crime as Florida's first female attorney general.

Trump, who was elected on Nov. 5 despite being the subject of multiple criminal investigations from U.S. and state prosecutors, said Bondi would end the politicization of federal prosecutions.

"For too long, the partisan Department of Justice has been weaponized against me and other Republicans - Not anymore," Trump said.

PAST CONTROVERSY



Item 1 of 3 Former Florida Attorney General Pam Bondi speaks during a press conference by supporters of former U.S. President Donald Trump after they attended his trial for allegedly covering up hush money payments linked to extramarital affair with Stormy Daniels, in Manhattan, New York City, U.S., May 21, 2024. REUTERS/David 'Dee' Delgado/File Photo

[1/3]Former Florida Attorney General Pam Bondi speaks during a press conference by supporters of former U.S. President Donald Trump after they attended his trial for allegedly covering up hush money payments linked to extramarital affair with Stormy Daniels, in Manhattan, New York City, U.S., May 21,... [Purchase Licensing Rights](#) , opens new tab
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Bondi's links to Trump predate his first election in 2016.

In 2013, the Trump Foundation donated \$25,000 to a political action committee backing Bondi, a potential violation of a federal ban on charities aiding political candidates. At the time, Bondi was considering whether to investigate Trump University, a for-profit venture teaching business.

When the donation made headlines in 2016, Bondi denied the \$25,000 from Trump was connected to her decision not to pursue action against Trump University, saying her office made all the relevant documents public. Trump's campaign attributed the failure to properly disclose the donation to a "series of unfortunate coincidences and errors."

Both Trump University and the Trump Foundation were shuttered following New York state fraud investigations. Trump agreed to pay a \$25 million settlement for deceiving Trump

University students and was ordered to pay \$2 million in damages for misusing charitable funds.

Trump has railed against the current Justice Department leadership and vowed retribution, after Special Counsel Jack Smith secured two indictments against him over his efforts to subvert the 2020 election and his retention of classified documents after leaving the White House.

In her role at the America First Policy Institute, Bondi has remained a staunch defender of Trump.

She was among a group of attorneys to draft an amicus brief in the classified documents case in support of Trump which claimed that Smith had been unlawfully appointed.

That view was shared by U.S. District Judge Aileen Cannon, a Trump appointee who dismissed the case, prompting the Justice Department to appeal.

Smith and top Justice Department officials are now assessing how to wind down both criminal cases against Trump in order to comply with a long-standing Justice Department policy that prohibits the prosecution of a sitting president.

During his first term, Trump was infuriated by what he called an obstructive Justice Department, including attorneys general Jeff Sessions, who allowed a probe into Russian interference in the 2016 election, and Bill Barr, who publicly refuted Trump's false claims that his 2020 election loss was the result of fraud.

The broad contours of Trump's plans for the Justice Department have been communicated through Trump's own public statements, as well as statements by Mark Paoletta, a conservative attorney leading the policy planning for the Justice Department, and in interviews and public forums with former department attorneys.

Federal prosecutors will likely be directed to prioritize illegal immigration cases. Cities that hope to receive a slice of the department's \$291 million justice assistance grant program will likely have to agree to cooperate with federal immigration enforcement.

The Civil Rights Division is expected to shift its focus away from police accountability toward defending religious freedom and filing legal challenges against government and private sector diversity, equity and inclusion programs.

Reporting by Sarah N. Lynch and Daniel Trotta; editing by Rami Ayyub and Lincoln Feast

Sarah N. Lynch
Thomson Reuters

Sarah N. Lynch is the lead reporter for Reuters covering the U.S. Justice Department out of Washington, D.C. During her time on the beat, she has covered everything from the Mueller report and the use of federal agents to quell protesters in the wake of George Floyd's murder, to the rampant spread of COVID-19 in prisons and the department's prosecutions following the Jan. 6 attack on the U.S. Capitol.

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Daniel Trotta
Thomson Reuters

Daniel Trotta is a U.S. National Affairs correspondent, covering race, guns, LGBTQ+ issues, immigration, homelessness and breaking news in the 50 states. Previously based in New York and now in California, Trotta was awarded the NLGJA award for excellence in transgender coverage. He was previously posted in Cuba, Spain, Mexico and Nicaragua, covering top world stories including the normalization of Cuban-U.S. relations and the Madrid train bombing by Islamist radicals.

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Judge Asks Czech Ministry for Access to Ex-SolarWinds Tech (1)

By Cassandra Coyer

- Witness raised “concerns” about network vulnerability
- SolarWinds opposed SEC’s request, calling it ‘red herring’

Bloomberg Law News 2024-11-22T09:58:06464177253-05:00

Judge Asks Czech Ministry for Access to Ex-SolarWinds Tech (1)

By Cassandra Coyer 2024-11-21T14:43:08000-05:00

- Witness raised “concerns” about network vulnerability
- SolarWinds opposed SEC’s request, calling it ‘red herring’

A New York judge is sending a letter on behalf of the the Securities and Exchange Commission to the Czech Republic, seeking help deposing a former SolarWinds Corp.engineer who warned his ex-employer of security vulnerabilities before Russian hackers in 2019 breached the company’s network.

Judge Paul A. Engelmayer approved the agency’s motion on Thursday and issued an accompanying letter of request for international judicial assistance to the Ministry of Justice of the Czech Republic, according to an order filed in the US District Court for the Southern District of New York. The letter asked for the government’s help to obtain oral testimony of Robert Krajčír, a citizen of the Slovak Republic residing in the Czech Republic and former SolarWinds employee.

Krajčír was an engineer at SolarWinds responsible for managing the company’s corporate network infrastructure and is “likely to have knowledge of the state of cybersecurity” at the company, the order said. The SEC seeks to understand Krajčír’s knowledge of SolarWinds’ network, “including concerns he raised regarding a certain network vulnerability” including devices outside the company’s system with access SolarWinds’ virtual private network, the order said.

The testimony is key to the agency’s case alleging SolarWinds mislead investors about its cybersecurity practices and the breadth of a network compromise leading to a sweeping cyberattack in 2020 that affected clients including the US government. The SEC had offered alternative venuesfor the deposition, but Krajčír, who was formerly identified as “Network Engineer D” in filings, had “expressed an unwillingness” through SolarWinds’ lawyers to travel to the US, Germany, or UK.

SolarWinds had pushed back on the request, but said it will “cooperate with the SECs moving deadline” for its investigation. “We are disappointed with the waste of company and taxpayer resources used to obtain information that is irrelevant to the pending claims,” said a SolarWinds spokesperson.

The New York court asked for a response within 60 days to ensure that the testimony is received “in a timely manner” for use at trial which is expected to take place in 2025.

In July, a federal judge gutted much of the agency’s suit against SolarWinds, throwing out SEC’s allegations that statements and filings were misleading and its claims that the company had minimized the scope and severity of the hack disclosed in 2020. Instead, Engelmayer allowed the SEC to move forward with a claim that SolarWinds committed securities fraud in a statement about the Austin-based company’s cyber preparedness.

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

This case is Securities and Exchange Commission v. SolarWinds Corp. et al , S.D.N.Y., No. 1:23-cv-09518, order and letter filed 11/21/24 .

(Updates with comment from SolarWinds)

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JPMorgan's AI Rollout Is Augmenting Jobs, Not Replacing Them

By Hannah Levitt and Paige Smith

Bloomberg Law News 2024-11-22T09:58:45911066174-05:00

JPMorgan's AI Rollout Is Augmenting Jobs, Not Replacing Them

By Hannah Levitt and Paige Smith2024-11-21T11:33:39569-05:00

JPMorgan Chase & Co.'s ongoing adoption of generative artificial intelligence has augmented, not replaced, jobs so far, according to **Teresa Heitsenrether**, who oversees the firm's AI efforts.

"What we're seeing so far is certainly not that there's no need for this particular job," Heitsenrether, JPMorgan's chief data and analytics officer, said Thursday at the Evident AI Symposium. "Where we have live use cases with generative AI, it's in places like our asset- and wealth-management group where we are making our bankers more effective."

Bankers use the technology to summarize research and prepare for meetings, ultimately freeing up more time to spend with clients, Heitsenrether said. She took on her current role last year, and JPMorgan has been pouring money into AI — which longtime Chief Executive Officer Jamie Dimon has said could be as transformational as the steam engine.

Daniel Pinto, the firm's president, said in September that JPMorgan expects to see a \$2 billion benefit tied to AI, much of that linked to fraud prevention. Large language models will have an impact in the "medium to long term," Pinto said.

Investors, meanwhile, have sought to quantify the impact of the technology. Also Thursday, Capital One Financial Corp.'s chief scientist and head of enterprise AI, Prem Natarajan, cautioned against focusing too much on individual use cases: "I really think the hype is a focus the use cases, and not on what's required to enable them to be practiced at scale," he said.

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MicroStrategy's Infinite Money Glitch Won't Last: Lionel Laurent

By Lionel Laurent 2024-11-22T04:39:52073-05:00

“Overheated” is how short-sellers Citron Research described MicroStrategy Inc. on Thursday. That somehow understates the hype surrounding company founder Michael Saylor’s laser-eyed bet on Bitcoin using capital-market funding, which has fueled MicroStrategy’s stock-price rise of over 600% this year. It looks more like a corporate-finance version of an infinite money glitch in video-games — lucrative, addictive and likely unsustainable.

MicroStrategy’s core gameplay loop goes something like this: Tap debt and equity markets to raise cash, spend that cash on Bitcoin, watch its shares ride the Bitcoin price higher, go back to markets to raise more cash, rinse and repeat. This is the fun part of any glitch; the license to print huge sums of money that seem to have no bearing on reality. MicroStrategy’s average purchase price of Bitcoin is just under \$40,000, according to Barclays estimates, and with Bitcoin trading at almost \$100,000 its current hoard is worth approximately \$24 billion. That is orders of magnitude higher than the \$4.3 billion debt on the company’s balance sheet — debt being taken on with a 0% coupon via convertible bonds. The company is gearing up to borrow more.

What makes the glitch likely addictive for Saylor — aside from his unshakable faith in the “goddess of wisdom” and “fire of truth” that Bitcoin represents, of course — is the fact that it seems to be getting easier, not harder, as time goes on. MicroStrategy’s stock is valued at 2,000 times next year’s earnings and is attracting new buyers, including digital-asset ETFs, as Bitcoin’s price soars and analysts unanimously rate the shares a “Buy.” Remarkably, the company’s creditworthiness as rated by agency S&P has actually improved, rising to B- from CCC+. Considering this firm is plowing billions into illiquid assets with no cash flows, the CFA-holding TradFi world seems to have some laser eyes of its own.

Now, as MicroStrategy doubles down with a plan to raise \$42 billion to buy more Bitcoin, the issue of sustainability is hovering into view.

One obvious risk is if the price of Bitcoin stops going to the moon and falls back to Earth; this is an asset that’s no stranger to 50%-plus drawdowns, even when new and dependable whale-sized

buyers appear. A crypto crash could create a vicious cycle of write-downs and asset sales for MicroStrategy, even though its debt currently has low interest payments and no near-term maturities falling due. While a pro-crypto White House is certainly new territory, even that is unlikely to magic away price volatility.

Even without a crypto apocalypse, MicroStrategy's model faces a reckoning. The stock is an increasingly expensive Bitcoin proxy in a crowded market of Bitcoin proxies — its market capitalization is almost four times the value of its Bitcoin stash — and might just be too frothy for its own good. (One toppish indicator: Living meme “Hawk Tuah Girl” this week took to social media to praise Saylor for his Bitcoin-buying advice.)

Hence why Citron is opting to bet on a fall in the price of MicroStrategy relative to Bitcoin, which is probably a wiser move than trying to gauge a shift in sentiment in the wider crypto world. Since Citron's publication of its bet, MicroStrategy is down 16%; Bitcoin is up.

Saylor has raised a cult of his own on financial markets; the question now is how blind his followers are to the risks of what might happen next. With MicroStrategy tying itself to the mast of an eye-wateringly huge borrowing plan, and with so much that has to go right in crypto land, this infinite money glitch won't last forever.

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Super Micro Investors Whiplashed as Tech Firm Fights For Listing

By Carmen Reinicke2024-11-22T10:05:58751-05:00

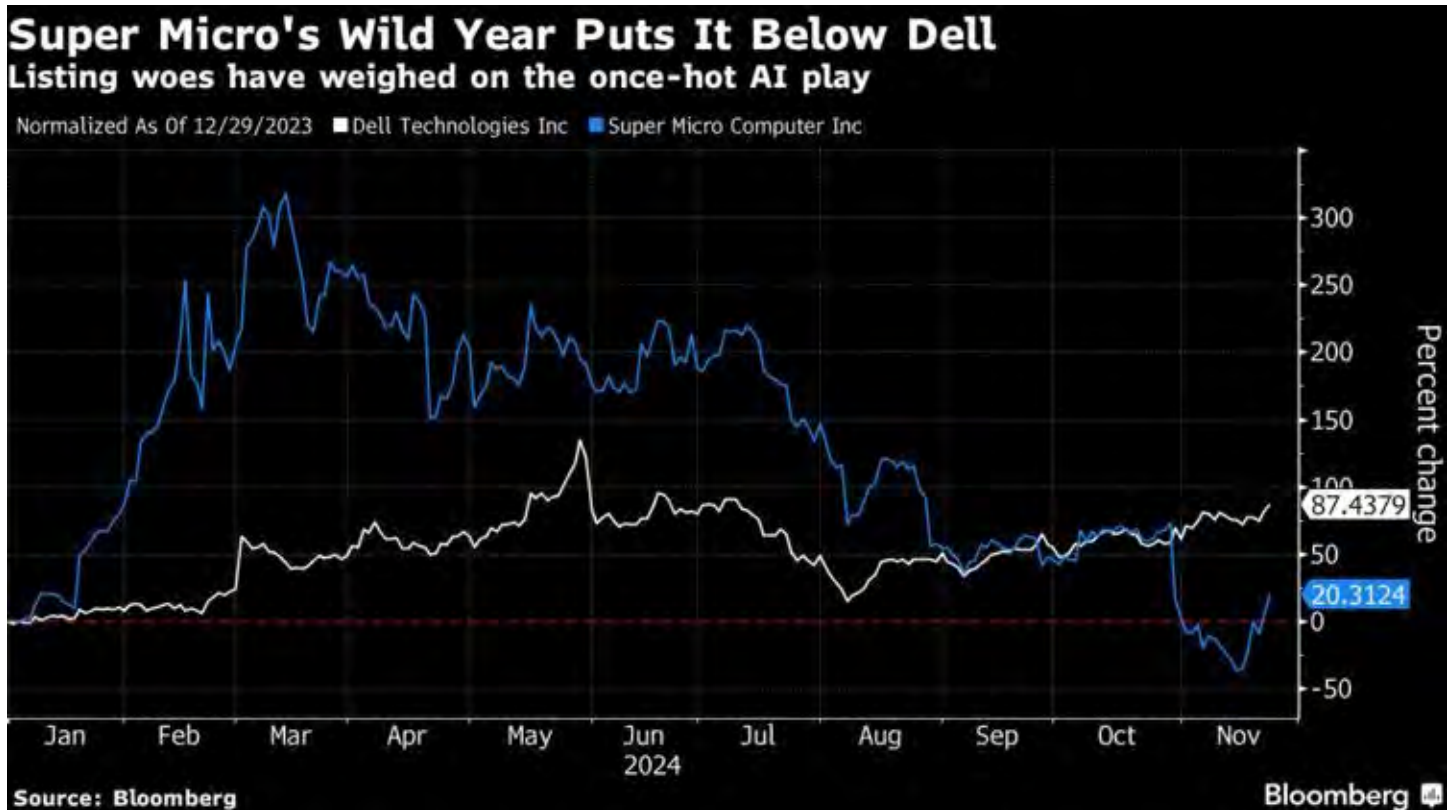
- Bulls expect firm to avoid delisting, but some are still wary
- Nasdaq still has to approve Super Micro's plan to stay listed

A roller-coaster ride for Super Micro Computer Inc. shares is likely to continue for some time, as investors weigh the company's next steps to avoid being delisted by Nasdaq Inc.

Shares of the server maker rose as much as 13% in early trading Friday, extending its weekly gains to about 78%, putting the company on track for its best week on record after it hired BDO USA as its independent auditor and filed a plan to comply with Nasdaq listing requirements. The sharp rebound in shares is the latest twist in a saga that saw the stock hit a record high in March before seeing those gains evaporate amid allegations of accounting and governance issues and filing delays.

The company this week said that it believes it can file its delayed 10-K and 10-Q reports in the period available under Nasdaq rules. If Super Micro's proposal is accepted, it would likely get until mid-February to file. That sets up months of further uncertainty — leaving investors to decide whether to stick with the stock in hope of a recovery, or bail out.

"I really think it's just a complete coin toss right now," said Larry Tentarelli, chief technical strategist at Blue Chip Daily. Tentarelli said he previously held shares of Super Micro but sold near the end of July when the stock was in the \$80 range.



Representatives for Super Micro and Nasdaq declined to comment.

The San Jose, California-based firm delayed filing its annual 10-K, following a damaging report earlier this year from short seller Hindenburg Research, and has said it would be late with quarterly reports.

The firm's previous auditor, Ernst & Young LLP, resigned in October, citing concerns over the company's transparency and governance. Super Micro is also facing a US Department of Justice probe.

Bloomberg Intelligence analyst **Woo Jin Ho** is reserving judgment on whether Super Micro can recover.

"The filing extension gives the company until late February to file the documents, yet the delisting overhang appears likely to persist until it's compliant," he wrote. "Given the challenges that Ernst and Young noted working with Super Micro's board, it's unclear if BDO will face similar issues."

Nasdaq must now review and approve the company's plan, a process that is expected to take about two weeks. If the exchange doesn't accept the proposal, Super Micro can appeal the decision. Shares will remain listed in the meantime.

Read More: Super Micro Soars After Hiring New Auditor in Bid to Stay Listed

Others on Wall Street are more bullish, seeing Super Micro as too important to be delisted and booted from the S&P 500 Index. The company won inclusion in the benchmark gauge in March, further juicing its staggering returns to that point.

With the possibility of a delisting now reduced, “we expect the stock to make a run for our price target in the near-term,” said Lynx Equity Strategies analyst **KC Rajkumar**, who has a target of \$45, implying more than 50% upside from Thursday’s close.

Still, several other analysts aren’t willing to make a call, with at least seven firms suspending coverage on the stock since the end of October, when previous auditor Ernst & Young LLP resigned, according to data compiled by Bloomberg.

While weighing up Super Micro’s prospects, investors also have their eye on competitors. The company’s woes could be a potential boon to rival server makers including Dell Technologies Inc., Lenovo Group Ltd. Wiyynn Corp., Hon Hai Precision Industry Co. and Pegatron Corp., according to Bloomberg Intelligence. Dell shares have risen in November while Super Micro slumped.

On the flip side, with the possibility of a Super Micro delisting now reduced, hardware peers such as Dell may “stand in danger of a stock fade,” Lynx analyst Rajkumar wrote.

Tech Chart of the Day



Bitcoin flirted with a run toward the landmark \$100,000 level, buoyed by expectations of friendly US regulations and expanding investor interest courtesy of President-elect Donald Trump's support for crypto.

Top Tech News

- Apple Inc. is racing to develop a more conversational version of its Siri digital assistant, aiming to catch up with OpenAI's ChatGPT and other voice services, according to people with knowledge of the matter.
- DirecTV has notified EchoStar Corp. of its intention to terminate an acquisition of Dish Network Corp. after they failed to win the consent of bondholders for a key debt exchange, all but killing a deal to create the largest US pay-TV service.
- Alphabet Inc.'s Google would be forced to unwind its partnership with artificial intelligence startup Anthropic if a federal judge accepts the US Justice Department's proposal to resolve a landmark antitrust case over online search.
- Bain Capital-backed Kioxia Holdings Corp. is setting its indicative IPO price at ¥1,390 per share, the latest attempt to capitalize on Japan's stock market renewal.
- Intuit Inc., the maker of the TurboTax tax preparation software, dropped in extended trading after giving a sales and profit outlook for the current quarter that fell short of analysts' estimates, disappointing investors looking for a boost from the company's new AI products.

- The Federal Communications Commission voted unanimously on Thursday to launch a “major, comprehensive review” and update of rules governing submarine cables amid an increase in potential nation-state-sponsored attacks on the critical infrastructure.

Earnings Due Friday

- No major earnings expected

(Updates stock move at market open, adds company response)

--With assistance from **Sunil Jagtiani** and **David Watkins**.

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FirstEnergy Investors Slam Ex-Execs' Info 'Bogeyman' Story

By **Katryna Perera**

Law360 (November 21, 2024, 10:10 PM EST) -- FirstEnergy shareholders have accused two former executives of the energy company of exploiting confidentiality rules by seeking to shield documents relevant to their suit over a stock plummet that followed a massive bribery scheme, telling an Ohio federal judge he should reject the executives' "informational bogeyman" story.

The investors filed a **memo** on Thursday opposing a motion by former FirstEnergy executives Charles Jones and Michael Dowling, both of whom have **been indicted** on related charges, asking the court to amend a previously issued protective order to now include all discovery materials produced or generated in the suit.

According to the defendants' motion, filed earlier this week, the original protective order issued last year "was not drafted to include information that could prejudice [the defendants'] rights to a fair criminal trial or a fair trial in other related proceedings."

"The only way to close the pipeline is to ensure that the definition of documents and information that can be designated as confidential is sufficient to prevent the disclosure of all confidential material, including information, documents, or other material obtained from law enforcement, regulatory agencies, or other entities to non-parties and the public," the motion argues.

Jones and Dowling added that an "iron-clad protective order" is the best solution to allow discovery to proceed while "protecting the fundamental fairness of the state criminal case" against them.

The criminal proceedings against Jones and Dowling relate to a \$4.3 million bribe they allegedly paid to Samuel Randazzo, a former chairman of the Public Utilities Commission of Ohio who **died by apparent suicide** in April, as charges against him and his co-conspirators in the FirstEnergy nuclear energy bailout scandal mounted. Those co-conspirators included Larry Householder, a former speaker of the Ohio House of Representatives who was sentenced to **20 years in prison** in March 2023.

On Wednesday, FirstEnergy investors pushed back, saying that if the court grants the defendants' complete request, Jones and Dowling will "continue to designate as 'confidential' whatever they please without consequence, and the public will be denied access to all such information."

But the investors simultaneously conceded that if the case "must be litigated in the shadows, so be it — that is far better than not being litigated at all."

Although Jones and Dowling should not be entitled to an "unprecedented and unjustified blank check to lock down whatever information they choose based on nothing more concrete than their whim," closing the "loophole" in the protective order would level the playing field and get the case back on track, the investors say.

"At this point, plaintiffs would rather fight adversaries wearing loaded gloves than be denied entry to the ring altogether," the memo states.

But the investors said they agree only to the proposed amendment of a section in the protective order related to the voluntary disclosure of information to other entities. The investors argue that the rest of the defendants' proposed amendments should be denied because they are based on speculation, and that Jones and Dowling want the court to "believe in an informational bogeyman."

"[The defendants] have all the discovery from the Ohio [attorney general] criminal cases, including dozens of witness statements, yet they have failed to offer even a single example of testimony that would be so much more incriminating than what is already publicly available as to prevent 'prospective juror[s] from] be[ing] able to lay aside [their] impressions or opinions and render a verdict based upon the evidence presented in court,'" the memo states.

The investors further argue that the pair's arguments are "even more wildly speculative," given that it is "highly unlikely" that the criminal cases will go to trial before 2026.

But if the court should grant the proposed amendments, they should come with an order for Jones and Dowling to produce all withheld documents and a "self-executing sanction" if the men fail to comply.

"Specifically, unless and until [Jones and Dowling] produce the withheld documents, the court should preclude them (including their counsel) from asking any questions in any depositions of witnesses whose prior statements they are withholding and of any other witnesses who worked directly with such witnesses," the memo states.

The memo also asks the court to deny a motion to stay from the Ohio attorney general and terminate the state's limited **intervention** in the suit.

"Strictly due to the Ohio AG's mishandling of them, the Ohio AG criminal cases have no realistic path to trial in the foreseeable future, if ever, and have become a misguided distraction and impediment here," the memo says. "Because there is not even a remote possibility the Ohio AG can bring its cases to trial by Feb. 1, 2025, plaintiffs respectfully request that no aspect of this case be delayed any further due to the Ohio AG criminal cases."

The class action was **filed** in 2020, after federal officials arrested Householder and accused him of accepting \$60 million in bribes from FirstEnergy to support legislation bailing out a pair of the utility company's power plants.

Investors say news of the arrest sent FirstEnergy's stock plummeting and caused its corporate bonds to suffer "substantial declines," costing shareholders billions of dollars.

FirstEnergy **copped** to its role in the bribery scandal as part of a \$230 million settlement with the Justice Department in 2021.

The investor class was **certified** by U.S. District Judge Algenon L. Marbley last year, though **that decision is on appeal** before the Sixth Circuit. In addition to the class action, the company was hit with derivative lawsuits that **settled** for \$180 million in 2022.

The Ohio Attorney General's Office declined to comment on Thursday, and counsel for the investors and for Jones and Dowling did not immediately respond to requests for comment.

The investors are represented by Joseph F. Murray of Murray Murphy Moul + Basil LLP and Darren J. Robbins and Mark Solomon of Robbins Geller Rudman & Dowd LLP.

Charles Jones is represented by Carole S. Rendon, Douglas L. Shively, Daniel R. Warren, Rachael L. Israel, Jeremy Steven Dunnaback, Albert G. Lin and George A. Stamboulidis of Baker & Hostetler LLP and William S. Scherman of Vinson & Elkins LLP.

Michael Dowling is represented by John F. McCaffrey, John A. Favret and Hannah M. Smith of Tucker Ellis LLP and Dan K. Webb, Steve Grimes and A. Matthew Durkin of Winston & Strawn LLP.

The Ohio Attorney General's Office is represented by its own Carol Hamilton O'Brien and Matthew E. Meyer.

The case is In Re FirstEnergy Corp. Securities Litigation, case number 2:20-cv-03785, in the U.S. District Court for the Southern District of Ohio.



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BREAKING: High Court Quietly Tosses Meta Disclosure Suit

By **Jessica Corso**

Law360 (November 22, 2024, 10:23 AM EST) -- The U.S. Supreme Court on Friday set aside a Meta Platforms Inc. case that sought to narrow the types of risk disclosures corporations need to make to investors, saying that the court shouldn't have taken up the case in the first place.

All nine justices agreed to toss the case without a ruling, saying in a one-sentence order that the "writ of certiorari is dismissed as improvidently granted."

Meta Platforms was urging the high court to throw out a lawsuit brought by a proposed class of investors who argued that the company failed to disclose the risks associated with a data harvesting scandal that hit Facebook nearly a decade ago.

Meta urged the justices to adopt a ruling that public companies don't need to disclose past events with no known risks of future harm but the suing investors said that there was ongoing harm from the scandal even after initial reports began surfacing in 2015.

The justices at oral argument earlier this month **struggled to pin down** scenarios in which they felt a disclosure would be necessary.

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Children's Place Investor Drops Suit After Counsel Rule Qualm

By **Katryna Perera**

Law360 (November 21, 2024, 10:02 PM EST) -- A New Jersey federal judge agreed Thursday to let an investor who protested conditions the court placed on his pick for lead counsel to voluntarily toss his proposed class action against clothing retailer The Children's Place Inc.

Randeep Singh Khalsa **dropped the suit** on the day his consolidated complaint was due, and just over a month after he challenged the court's decision to require his class counsel pick of Glancy Prongay & Murray LLP to reapply for appointment annually.

U.S. District Judge Evelyn Padin appointed Khalsa as lead plaintiff in September and approved his selection of Glancy Prongay as lead counsel and Carella Byrne Cecchi Brody & Agnello PC as liaison counsel. But the judge also required the firms to report accrued fees to the court every three months and reapply for approval annually, Khalsa noted in a **motion** last month.

Khalsa challenged the ruling saying the reapplication requirement departs from the statutory scheme of the Private Securities Litigation Reform Act, which grants lead plaintiffs the power to select and retain counsel.

"While the [court's] order refers to the 'appointment' and 'reappointment' of counsel, counsel is not 'appointed' by the court under the PSLRA. Rather, the court 'approves' lead plaintiff's selection of counsel," Khalsa said in a footnote in his letter.

The court did not respond to Khalsa's letter, according to the docket, and it is unclear if the case was dropped due to the imposed requirement.

Counsel for Khalsa did not immediately respond to requests for comment Thursday.

Khalsa's suit alleged that The Children's Place gave positive financial updates to investors for months while failing to disclose it was aggressively promoting products in an attempt to maximize sales, which resulted in lower merchandise margins.

Jane Elfers, the company's CEO, and Sheamus Toal, its chief financial officer, were also named as defendants in the suit.

On March 16, 2023, The Children's Place released guidance for 2023, stating that input cost reductions toward the end of 2023, combined with a "strong focus on expense and inventory management," should drive double-digit operating margins in the third and fourth quarters of 2023.

Throughout the rest of the proposed class period — March 16, 2023, through Feb. 8, 2024 — the defendants continued to affirm its strong guidance for the end of 2023.

But on Feb. 9, 2024, The Children's Place released preliminary fourth-quarter 2023 financial results that contradicted its previous projections, the suit stated. The company revealed it was now expecting net sales in the range of \$454 million to \$456 million — down from earlier projections of \$460 million to \$465 million. The company also said it heavily pushed promotions to maximize sales, which resulted in an operating loss in the fourth quarter, according to the complaint.

On this news, the company's shares declined \$7.25, or about 37%, to close at \$12.51 on Feb. 9,

Khalsa said.

Counsel for The Children's Place did not immediately respond to requests for comment Thursday.

Khalsa is represented by Robert V. Prongay, Charles H. Linehan and Pavithra Rajesh of Glancy Prongay & Murray LLP; Howard G. Smith of the Law Offices of Howard G. Smith; and Donald A. Ecklund, Kevin G. Cooper and James E. Cecchi of Carella Byrne Cecchi Brody Agnello PC.

The Children's Place is represented by Samuel I. Portnoy of Gibbons PC and Audra J. Soloway, Daniel J. Kramer, Staci Yablon and Jennifer Gilbert of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is Khalsa v. The Children's Place Inc. et al., case number 2:24-cv-01182, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Sydney Price. Editing by Andrew Cohen.

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Chewy Investors Sue BC Partners In Del. Over PetSmart Deal

By **Jeff Montgomery**

Law360 (November 21, 2024, 12:13 PM EST) -- British international investment giant BC Partners exploited its control of online pet product retailer Chewy Inc. when a BCP affiliate merged into Chewy after divesting its interest in PetSmart Inc., saddling Chewy with a potential \$1.9 billion post-deal tax liability, according to a new Delaware Court of Chancery complaint.

The derivative suit, filed Wednesday by stockholder Eric Gilbert on behalf of Chewy, accused 19 individuals and business entities of violating fiduciary duties of due care, loyalty and good faith in lining up the deal, mainly in exchange for governance concessions described as "not particularly meaningful" to Chewy.

While BCP provided Chewy with up to \$1.9 billion in overall indemnification protection as part of the agreement, "the tax liability indemnity was capped at \$196 million and the indemnity for the other contingent liabilities was capped at \$50 million," far below the actual burden.

"Through a process that was procedurally and financially unfair to the company and its public stockholders, the merger provided BC Partners with unique, non-ratable benefits while simultaneously saddling Chewy with a substantial tax burden," the complaint said. "Despite shifting the tax risk to Chewy, BC Partners retained the benefits."

The complaint alleges breaches of fiduciary duty by BC Partners individuals and affiliates as well as directors and officers of Chewy. Sought in the 58-page complaint are damages as well as pre- and post-judgment interests and an order obliging Chewy to adopt corporate governance reforms to increase its independence from BCP.

Although Chewy formed a three-member special committee to protect against "obvious" conflicts of interest created by close ties between members of Chewy's board and management and BCP, "the committee was not independent," the complaint said. It added that other deal advisers were likewise conflicted.

Among other concerns, one special committee member was said to have had a decades-long relationship with Raymond Svider, then chair of BCP and Chewy as well as PetSmart.

The special committee "failed to appropriately leverage the substantial negotiating power it held in light of the significant benefits BC Partners would reap by passing its liabilities onto Chewy," the complaint alleged.

Given that the balance of deal benefits heavily favored BCP, according to the complaint, "Chewy could have sought fair terms that would have adequately compensated it and/or its minority stockholders, but nevertheless failed to do so."

BC Partners led the consortium that acquired PetSmart in 2015 for \$8.7 billion. Two years later, PetSmart acquired Chewy in a deal valued at \$3.35 billion, although Chewy continued to operate as a private company.

"The manner in which the PetSmart sale was structured "suggests that the entire process was driven by an acute need by BC Partners to deliver cash returns to investors in its older funds," including the one that owned PetSmart," the complaint said.

BC Partners now owns about 60% of Chewy's outstanding shares, and controls about 94% of its total voting power.

BC Partners and Chewy did not immediately respond to requests for comment.

Chewy stockholder Eric Gilbert and the proposed class are represented by Ned Weinberger, Brendan W. Sullivan and John Vielandi of Labaton Keller Sucharow LLP, Jeremy Friedman, David Tejtcl and Lindsay La Marca of Friedman Oster & Tejtcl PLLC and D. Seamus Kaskela and Adrienne Bell of Kaskela Law LLC.

Counsel information for those named in the suit was not immediately available.

The case is Eric Gilbert, derivatively, on behalf of Chewy Inc. v. BC Partners LLP et al., case number 2024-1165, in the Court of Chancery of the State of Delaware.

--Editing by Alyssa Miller.

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Dorsey's Fintech Co. Beats Investor's Cash App Suit, For Now

By **Lauren Berg**

Law360 (November 21, 2024, 10:39 PM EST) -- Jack Dorsey's Block Inc. convinced a California federal judge Wednesday to toss a securities lawsuit alleging the company painted a rosier-than-reality picture of its Cash App and failed to explain why former U.S. Secretary of the Treasury Larry Summers resigned from its board, but the investor will get a chance to rework the complaint.

U.S. District Judge Linda Lopez, in a 13-page **order**, granted with leave to amend Block's **motion to dismiss** investor Jody Watt's **complaint**, agreeing with the financial technology company and its directors that the investor has not alleged that the defendants made any false or misleading statements.

While Watt points to various statements made in Block's U.S. Securities and Exchange Commission filings, her complaint doesn't specify why those statements are misleading or false, the order states.

"Rather, plaintiff provides vague and conclusory allegations that these statements 'paint a false and misleading picture of adequate internal controls at Block,'" Judge Lopez said. "This is insufficient."

Watt sued Block, Dorsey and other company directors, including music mogul Shawn "Jay-Z" Carter, in May ahead of a stockholder meeting, alleging that the company "touted the success and importance" of the Cash App, which can be used to send and receive money, while failing to disclose there were deficiencies in the company's internal controls over "risks plaguing Cash App."

According to the complaint, federal financial regulators were looking into whistleblower allegations that Block didn't have adequate internal controls to prevent the Cash App from being used for unlawful purposes, including money laundering.

And when Summers resigned from Block's board of directors, the company failed to explain his abrupt exit, which Watt alleges was because Summers wanted to avoid liability or protect his reputation "before the full extent of the problems became known," the complaint states. Watt also alleges that Summers disagreed with Block's management of the control issues, the suit states.

The complaint alleges that, as a result, Block and its directors misled or deceived its stockholders by making misleading statements regarding the company's recommendation to reelect the current board members who were up for election and approve the proposed executive compensation, among other things.

After the court denied Watt a preliminary injunction, Block held its annual stockholder meeting in June and the stockholders approved all the proposals, according to Thursday's order.

Watt is seeking declaratory and injunctive relief that orders the defendants to issue a corrective proxy statement, invalidates the results of the annual meeting and requires Block to hold another meeting following publication of the corrective proxy.

Block, Dorsey and the director defendants moved to dismiss the suit in July, arguing that the complaint fails to alleged that they made any false or misleading statement and that it fails to plead particularized facts supporting a strong inference of negligence on the part of any defendant.

Watt hit back in an **opposition brief**, asserting that the complaint identifies multiple statements in

the SEC filings at issue that "gave shareholders a false and misleading impression that Block maintained adequate, effective internal controls, and that the sudden resignation of ... Summers from Block's board of directors ... in February 2024 was a non-event."

In her order Thursday, however, Judge Lopez disagreed with Watt's argument, saying the complaint does not adequately allege false or misleading statements.

In particular, the judge rejected Watt's argument that "'given Summers' important role as 'financial expert' on Block's Audit and Risk Committee, his sudden, unexpected resignation from the board calls for additional disclosures by Block regarding any connection between its internal-control deficiencies and Dr. Summers' resignation,'" according to the order.

She also rejected Watt's argument that the SEC filings fail to disclose that "'Block lacks internal controls over Cash App since it has no procedure to establish the identity of its customers, causing Cash App to facilitate transactions with entities under sanction by the Treasury Department's Office of Foreign Assets Control, subjecting Block to regulatory investigation,'" the order states.

For one thing, Judge Lopez said, the Exchange Act doesn't require corporate officials to present every possible argument against their own recommendations.

For another, an omission must be misleading for it to be actionable under securities laws, according to the order.

"It must affirmatively create an impression of a state of affairs that differs in a material way from the one that actually exists," the judge said.

"Here, even if plaintiff had adequately identified what information was allegedly omitted from the proxy statement, plaintiff has not adequately explained why it creates an impression of a state of affairs that differs materially from the one that actually exists," she added.

Judge Lopez gave Watt until Dec. 4 to file an amended complaint that addresses the deficiencies identified in her order.

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

Watt is represented by Francis A. Bottini Jr., Albert Y. Chang and Aaron P. Arnzen of Bottini & Bottini Inc.

Block, Dorsey and the director defendants are represented by Adam Braverman, Christin Hill, Anissa Chitour and Erik J. Olson of Morrison & Foerster LLP.

The case is Watt v. Block Inc. et al., case number 3:24-cv-00867, in the U.S. District Court for the Southern District of California.

--Editing by Andrew Cohen.



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Social Media MDL Judge Rips State Attys Defying Orders

By **Dorothy Atkins**

Law360 (November 21, 2024, 10:24 PM EST) -- A California federal magistrate judge overseeing discovery in multidistrict litigation over social media platforms' allegedly addictive designs on Thursday ordered states to provide the names and state bar numbers of agency counsel who have refused to comply with discovery orders, threatening sanctions and asking, "What happened to the rule of law?"

U.S. Magistrate Judge Peter H. Kang's comments came during an hourslong hearing in San Francisco over the latest discovery disputes in the sprawling, consolidated personal injury litigation **launched in 2022** against social media tech giants, including Snap Inc., Meta Platforms Inc., TikTok Inc. and YouTube LLC.

The MDL involves hundreds of claims by parents of minors, school districts and dozens of state attorneys general who claim that the social media companies' platform — such as Instagram and Facebook, which bring in billions of dollars annually in ad revenues — are designed to be addictive to the detriment of minors' mental health and livelihood.

Judge Kang began the hearing by setting various discovery deadlines while underscoring the need for the parties to negotiate to meet deadlines.

He also asked counsel repeatedly if there have been any state agencies, or state attorneys general, who have outright refused to comply with his order and U.S. District Judge Yvonne Gonzalez Rogers' recent order affirming his decision last month requiring state agencies to respond to Meta's discovery demands for state agency documents.

State attorneys general had raised numerous objections to the requests, arguing before both Judge Kang and Judge Gonzalez Rogers **in a lengthy hearing** that Meta's document demands were overbroad, unreasonable and impractical given the hundreds of state agencies involved. They also argued that AG offices lacked the statutory legal authority in many states to order agencies to hand over the documents.

But Judge Gonzalez Rogers largely rejected the state's arguments, noting that the state AG offices are the plaintiffs and seeking millions of dollars, and the litigation can't be one-sided.

However, on Thursday, Meta's counsel told Judge Kang that there were still multiple state agencies that have refused to provide custodians or search terms, or otherwise comply with the court's discovery orders, including eight California agencies and agencies in South Dakota and South Carolina, as well as possibly agencies in New York and Rhode Island.

Judge Kang repeatedly asked if any attorneys for those agencies were in his courtroom. After no one indicated that they were with the agencies, the judge repeatedly asked why those state agencies think they can "defy" federal court orders, and he said their refusal is "very troubling."

"What does it mean in our system of government if an agency, in the face of a federal judge's order, is saying, 'We are not going to comply?'" the judge wondered aloud. "What happened to the rule of law?"

Judge Kang ordered the states to file with the court by Friday the name of every state agency

attorney, their state bar numbers, their addresses and their contact information. He noted that he's considering sanctions, but Judge Gonzalez Rogers is also considering sanctions, so "it's not just me," he said.

Counsel for some states complained that Meta's document demands have been so broad by including search terms like "iphone," "email" and "device" that they result in millions of agency documents.

Judge Kang replied that document productions that result in "billions of documents" aren't beneficial for either side, and he repeatedly told the parties that they need to meet and confer and reach agreements on issues like search terms and custodians, so they can meet Judge Gonzalez Rogers' deadlines.

"I don't care how you get it done, but you've got to get it done," he said, adding later, "I understand there's frustration. There's frustration on both sides. The obvious thing to do is negotiate."

In recent rulings, Judge Gonzalez Rogers **dismissed claims** against Meta CEO Mark Zuckerberg, and she's issued lengthy orders **trimming some claims** from all the complaints, but she left intact many allegations.

For their part, the state attorneys general separately assert a variety of consumer protection, fraudulent concealment and other claims brought under their state statutes. Last month, Judge Gonzalez Rogers dismissed some allegations but refused to throw out the claims entirely.

The **first bellwether trials** in the MDL are set for October 2025, and the next case management conference in the MDL is scheduled for Friday morning before Judge Gonzalez Rogers.

The personal injury plaintiffs were represented during the hearing by Lexi J. Hazam of Lieff Cabraser Heimann & Bernstein LLP, Christopher A. Seeger of Seeger Weiss LLP, Previn Warren of Motley Rice LLC and Jennie Lee Anderson of Andrus Anderson LLP.

California is represented by Nicklas A. Akers, Bernard Eskandari, Emily Kalanithi, Nayha Arora, Megan O'Neill, Joshua Olszewski-Jubelirer, Marissa Roy and Brendan Ruddy of the California Department of Justice's Office of Attorney General.

The Meta entities are represented by Christopher Yeung, Phyllis A. Jones, Paul W. Schmidt and Ashley M. Simonsen of Covington & Burling LLP.

YouTube is represented by Matthew K. Donohue of Wilson Sonsini Goodrich & Rosati PC.

The case is In re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation, case number 4:22-md-03047, in the U.S. District Court for the Northern District of California.

--Editing by Dave Trumbore.



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Chinese Co. Says It Didn't Agree To Class Arb. In \$100M Claim

By **Caroline Simson**

Law360 (November 21, 2024, 10:14 PM EST) -- An e-commerce company known as the Amazon of China is urging a New York federal court to nix an arbitral award allowing class arbitration of claims that the company grossly shortchanged minority shareholders when it went private in 2016, saying it never agreed to such a proceeding.

E-Commerce China Dangdang Inc. alleged in a **brief** filed Wednesday the arbitrators, ruling 2-1, wrongly concluded that the long-running dispute could be conducted as a class arbitration, even though the arbitration agreement in question makes no mention of class arbitration. The litigation, launched nearly a decade ago by former minority shareholders of the company, contends that the company and others should be on the hook for at least \$100 million.

"The clause construction award does not reflect mere 'mistakes' in applying the law or interpreting the contract," according to the company's filing. "It disregards controlling Supreme Court precedent and effectively flips the default presumption against class arbitration on its head."

"If upheld, the clause construction award would require class arbitration any time an arbitration clause incorporates standard arbitration language and would effectively place the burden on the party or parties opposing class arbitration to disprove consent to class procedures," the company continued.

E-Commerce China Dangdang — referenced as Dangdang in the litigation — pointed to the dissent authored by David F. Levi, a former chief judge of the U.S. District Court for the Eastern District of California and the only former federal judge on the tribunal. Levi wrote in his dissent that the tribunal's majority's decision is "convoluted," "illogical" and "inconsistent with the holding and reasoning of" the U.S. Supreme Court's 2010 decision in *Stolt-Nielsen SA v. AnimalFeeds Int'l Corp.*

In *Stolt-Nielsen*, the justices held that imposing class arbitration on parties that have not agreed to authorize class arbitration is inconsistent with the Federal Arbitration Act.

Counsel for the parties could not immediately be reached for comment Thursday.

Joe Fasano, Altimeo Optimum Fund and Altimeo Asset Management sued Dangdang and its top brass nearly a decade ago after the company went private, saying their misconduct caused the company's shares to be sold at artificially deflated prices. The plaintiffs — an individual and resident of New York, a French investment fund and its French investment manager — are all former minority Dangdang shareholders.

They have accused Dangdang's controlling shareholders of misconduct during the going-private process, which they say enabled Dangdang co-founders Guoqing Li and his wife, Peggy Yu Yu, to buy the company at a "woefully low" \$556 million valuation, only to then turn around and promptly re-sell it to a third party for more than double the price.

In particular, the plaintiffs alleged that Li, Yu Yu and other Dangdang executives misrepresented that a "special committee" had independent control over consideration of the mechanism by which the company was privatized since this committee employed counsel who were controlled by Li and Yu Yu.

They have said that Li and Yu Yu "coercively dominated" the negotiations by rejecting conditions that

a majority of minority stockholders approve the merger and that Dangdang present the final offer to third parties to confirm it was a fair deal price.

The litigation, first filed in 2016, has already had a lengthy procedural history. The case has gone to the Second Circuit twice. In a 2019 opinion, the appeals court concluded that the district court abused its discretion in tossing the case on the grounds that the Cayman Islands were an adequate alternative forum.

Three years later, the appeals court again reversed the district court's jurisdictional findings, concluding that the lower court principally misinterpreted the scope of the forum selection clause, thereby undercounting the number of defendants covered by that clause. The lower court also attributed undue weight to a Cayman Islands interest in deciding plaintiffs' claims, an appellate panel found.

The common law claims in the case — in which the defendants are accused of negligent misrepresentation, breach of fiduciary duty, and aiding and abetting the breach of fiduciary duty in connection with the privatization — were sent to arbitration last year by U.S. District Judge Katherine Polk Failla.

E-Commerce China Dangdang is represented by Scott D. Musoff, Timothy G. Nelson, Bradley A. Klein and Christopher R. Fredmonski of Skadden Arps Slate Meagher & Flom LLP.

Fasano, Altimeo Optimum Fund and Altimeo Asset Management are represented by Samuel J. Lieberman, Ben Hutman and Kathleen D. Reilly of Sadis & Goldberg LLP.

The case is Fasano et al. v. Li et al., case number 1:16-cv-08759, in the U.S. District Court for the Southern District of New York.

--Editing by Covey Son.

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NFL Paid \$1.3B In Concussions Settlement So Far, 4% Atty Fees

By **Jonathan Capriel**

Law360 (November 21, 2024, 8:40 PM EST) -- The National Football League has paid more than \$1.3 billion to settle claims from former professional athletes who suffered neurological damage due to concussions sustained while playing, with 4% of that earmarked for their attorneys, according to a report by the court appointed special master and claim administrator for the multidistrict litigation.

The NFL has paid \$1.312 billion, squaring up with 1,782 claimants, according to reports submitted to Pennsylvania federal court on Wednesday. But, even after nearly 10 years have passed since the parties reached a deal ending the MDL, there remain thousands of class members who still seek to tap into the uncapped settlement, according to a status report issued by BrownGreer PLC, the court appointed claims administrator.

The report also notes that 4% of payouts are held back and paid to the attorneys managing the case. So far, BrownGreer has withheld \$61.9 million for the attorney fees qualified settlement fund, and has paid out \$42.7 million. For players or their family members who are not represented by counsel, this percentage goes directly to them.

Since the claims process opened up in February 2017, more than 19,400 potential class members have registered to participate in the program, and only 47% are represented by attorneys, the report said. BrownGreer has approved 1,825 monetary awards to class members for a total of \$1.383 billion. About 97% of those people are paid, the report said.

The judge overseeing the litigation approved of a settlement in **April 2015**. The suit was led by players and family members of players who suffered brain injuries allegedly due to their participation in the sport.

Among the most notable plaintiffs was the estate of ex-Chicago Bear Dave Duerson, who was diagnosed with Chronic Traumatic Encephalopathy after his 2011 suicide. The disease was diagnosed postmortem. Living players who wish to participate in the settlement must undergo a baseline neuropsychological and neurological assessment. At least 2,000 players who are not represented by counsel have scheduled an appointment to get an assessment, the report said.

The plaintiffs are represented by Seeger Weiss LLP, Anapol Schwartz Weiss Cohan Feldman & Smalley PC and Podhurst Orseck PA, among other firms.

The NFL is represented by Brad S. Karp, Bruce Birenboim, Claudia Hammerman and Lynn Bayard of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is In re: National Football League Players' Concussion Injury Litigation, case number 2:12-md-02323, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Emily Kokoll.

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How D&O Coverage Can Aid Against Increased AI Scrutiny

By **Courtney Horrigan, Stephanie Gee and Victoria Thorp** (November 21, 2024, 6:14 PM EST)

Artificial intelligence has gained significant attention in recent years, with many companies recognizing generative AI as an opportunity to revolutionize their marketing, sales, accounting and finance, human resources, and legal functions.

Employees are becoming more comfortable with the use of AI, especially given that it is now embedded within many software programs that workers use daily. In the same vein, alongside this opportunity to revolutionize comes potentially serious risks. Corporate directors and officers may be particularly vulnerable as companies grapple with developing metrics to measure productivity and efficiency gains stemming from the use and performance of generative AI products.

Directors and officers liability insurance is an important risk management tool that may provide vital protections as these companies integrate AI into their operations. In this article, we will review the recent trend of regulatory AI scrutiny and discuss how to tailor D&O liability insurance to maintain appropriate coverage for AI-related risks.

Directors and officers always face a certain level of exposure to securities class actions, shareholder derivative suits, and even regulatory enforcement actions. However, a closer look at the litigation landscape in 2024 reveals an increase in both regulatory enforcement actions and securities class actions specifically pertaining to the increasing use of generative AI.

On the regulatory front, there has been increased scrutiny by the U.S. Securities and Exchange Commission surrounding companies' uses of and disclosures pertaining to generative AI, which has led to an influx of so-called "AI washing" actions. "AI washing" is the term ascribed to a company's use of allegedly false and misleading statements about artificial intelligence.[1]

SEC Chair Gary Gensler first signaled the commission's focus on AI washing in December 2023, when he likened it to "greenwashing," which is when a company exaggerates their sustainability efforts.[2] Shortly after Gensler's statement, the SEC settled several Rule 10b-5 enforcement actions against companies that purportedly engaged in AI washing.

SEC Rule 10b-5 makes it unlawful for any person to "employ any device, scheme, or artifice to defraud," "make any untrue statement of a material fact or to omit to state a material fact," or "engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security." [3]

Specifically, in March the SEC **fined** two investment advisers, Delphia (USA) Inc. and Global Predictions Inc., \$400,000 in total civil penalties.[4] According to the SEC, both companies were have alleged to have made false and misleading statements about their purported use of AI.[5]

The SEC alleged that Delphia incorrectly stated that it "put[s] collective data to work to make [its]



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artificial intelligence smarter so it can predict which companies and trends are about to make it big and invest in them before everyone else does." [6] The SEC alleged Global Predictions made inaccurate statements on its social media that it was the "first AI financial advisor" and stated that it provided "[e]xpert AI-driven forecasts." [7]

In June, the SEC **filed** an enforcement action against the CEO and founder of AI recruitment startup Joonko Diversity Inc. [8] According to the SEC, the CEO defrauded investors of at least \$21 million by making false and misleading statements about the "quantity and quality of Joonko's customers, the number of candidates on its platform, and the company's revenue". [9]

And the SEC is also not the only government agency now focusing on AI oversight.

In September, the Federal Trade Commission **brought** actions against five companies it claims were deceiving customers about the value of their AI. [10]

In the securities class action context, there has also been an uptick in AI-related claims in 2024. The Stanford Law School Securities Class Action Clearinghouse has reported 11 AI-related class action filings so far in 2024. [11] That represents a vast increase in the number of AI-related filings over the preceding four years, with just five AI-related filings in 2020, eight in 2021, and six AI-related filings in each 2022 and 2023. [12]

One of the more recent example of such a class action came in September when shareholders **filed** suit against GitLab. [13] There, shareholders allege GitLab made misleading statements about the company's AI-related initiatives, which "created the false impression" pertaining to the company's ability to develop and incorporate AI throughout the software development cycle.

The recent increase in AI-related enforcement and securities class actions and regulatory enforcement investigations should cause companies to carefully review their D&O liability insurance policies to ensure that their current coverage is appropriately tailored to AI-related risks.

D&O liability insurance is a type of professional liability insurance that offers key protections to a corporation's directors and officers. [14] As corporations and their directors and officers have become subject to suit more frequently, this coverage has received considerable attention. [15]

There are three common types of coverage in a D&O policy. "Side A" covers insured persons for nonindemnifiable claims made against them. [16] "Side B" offers indemnification to the company for amounts paid by the company on behalf of insured persons for claims made against insured persons. [17] "Side C" covers public companies for claims against the company for violations of securities laws and private companies for nonsecurities claims against the company. [18]

D&O liability insurance is an important risk management tool for a company, and it may prove vital as a company balances the risks of revolutionizing its operations with AI.

For example, companies should negotiate for a broad definition of the term "insured persons." The definition of "insured persons" under a D&O policy typically includes the directors and officers of the company, but a company should guarantee that the definition includes all who might be named in a lawsuit or as a target of an investigation. The company should confirm coverage for employees or managers who are involved in AI development and implementation.

Companies should also closely review policy exclusions that could limit the scope of coverage for AI-related losses and negotiate better wording or carvebacks in AI-related claims.

For example, most D&O policies include conduct-based exclusions that preclude coverage for fraudulent, criminal or willful misconduct. Insureds should confirm that the wording of these exclusions is narrow enough to require a true final adjudication of the prohibited conduct in the underlying action before coverage can be compromised.

Additionally, D&O policies often exclude coverage for defense of intellectual property claims. Generative AI may inadvertently cause a copyright violation, so it is important to determine the scope of the intellectual property exclusion, and to consider whether there can be any carvebacks to the coverage to protect directors in situations where company indemnity may be prohibited by

corporate law.

Risk-based exclusions — where insurance companies hone in on a particular type of risk — are always a concern when there is a proliferation of industry regulatory actions or shareholder suits related to a particular risk. For example, in the early 2000s, mutual funds faced governmental investigations, shareholder suits, and class actions related to market timing and late trading, incurring substantial defense costs.[19]

As a result, the D&O policies of these investment companies were scrutinized to determine whether investigations were covered claims, what fell within the definition of "loss," and whether these claims fell within any existing exclusions, such as conduct-based exclusions, the insured versus insured exclusion, and the known claims or circumstances exclusion.[20]

Similarly to these mutual fund investigations and suits of the 2000s, there is currently a proliferation of AI-related investigations and shareholder suits, as discussed above. Companies should anticipate new AI-related exclusions to counter this increased risk.

Given the emerging trends with respect to regulatory enforcement actions and securities class actions pertaining to AI, companies may also consider whether there will be a corresponding increase in AI-related shareholder derivative lawsuits. To combat that risk, companies might consider purchasing or increasing limits of Side A D&O insurance — the coverage that provides first-dollar coverage to directors and officers for nonindemnifiable costs and liabilities that may arise in the context of derivative suits.

At this point there do not appear to be any AI-related coverage actions filed, but industry watchers are waiting for the market reactions when those cases inevitably appear.

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[1] Hailey Konnath, SEC Chair Warns Businesses Against AI Washing: 'Don't Do It', Law360 (Dec. 5, 2023, 11:35 PM) <https://www.law360.com/securities/articles/1773759/sec-chair-warns-businesses-against-ai-washing-don-t-do-it->.

[2] Id.

[3] 17 C.F.R. 240.10b-5.

[4] SEC Charges Two Investment Advisers with Making False and Misleading Statements About Their Use of Artificial Intelligence, U.S. Securities and Exchange Commission (Mar. 18, 2024) <https://www.sec.gov/newsroom/press-releases/2024-36>.

[5] Id.

[6] Id.

[7] Id.

[8] SEC Charges Founder of AI Hiring Startup Joonko with Fraud, U.S. Securities and Exchange Commission (June 11, 2024) <https://www.sec.gov/newsroom/press-releases/2024-70>.

[9] Id.

[10] FTC Announces Crackdown on Deceptive AI Claims and Schemes, Federal Trade Commission (Sept. 25, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-announces->

crackdown-deceptive-ai-claims-schemes.

[11] Current Trends in Securities Class Action Filings, Stanford Law School Securities Class Action Clearinghouse, <https://securities.stanford.edu/current-trends.html#collapse1> (last visited Nov. 5, 2024).

[12] Securities Class Action Filings 2024 Midyear Assessment, Cornerstone Research (July 26, 2024).

[13] Complaint, *Dolly v. Gitlab, Inc.*, 3:24-cv-06244 (N.D. Cal. Sept. 4, 2024).

[14] Jordan R. Plitt et al., 1 Couch on Insurance § 1:35 (3rd ed. 2024).

[15] Id.

[16] Carolyn Rosenberg & Andy Moss, D&O insurance basics (Part 1), Reed Smith (July 28, 2020) <https://www.policyholderperspective.com/2020/07/articles/do-eo-professional-liability/do-insurance-basics-part-1-of-2/>.

[17] Id.

[18] Directors' and Officers' Liability Insurance, Aon <https://www.aon.com/en/capabilities/risk-transfer/directors-and-officers-liability-insurance> (last visited Nov. 11, 2024).

[19] A. Thomas Morris & Julia Reynolds Johnson, Insurance Coverage Issues Arising from Investigations of the Mutual Fund Industry, 11 Inv. Law. 3 (Apr. 2004).

[20] Id.

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