Judge clears way for Musk appeal to try to restore $56 billion Tesla pay

reuters.com/legal/judge-clears-way-musk-appeal-try-restore-56-billion-tesla-pay-2024-12-13

Reuters

By Reuters

December 13, 20242:30 PM PSTUpdated 3 days ago

Tesla CEO and X owner Elon Musk listens as US President-elect Donald Trump speaks during a meeting with House Republicans at the Hyatt Regency hotel in Washington, DC, U.S. on November 13, 2024. ALLISON ROBBERT/Pool via REUTERS/File Photo Purchase Licensing Rights, opens new tab

WILMINGTON, Delaware, Dec 13 (Reuters) - A Delaware judge cleared the way on Friday for Elon Musk and Tesla to begin legal appeals to try to reinstate the chief executive's record-breaking $56 billion pay package from the electric carmaker.

The order by Chancellor Kathaleen McCormick of the Court of Chancery opens the 30-day window for an appeal to the Delaware Supreme Court.

Musk and the board that approved the 2018 pay package can appeal McCormick's ruling in January that they had breached their fiduciary duty to investors by approving a compensation plan she described as "unfathomable" in its size.

On Dec. 2, she declined to reconsider that ruling despite a June vote by Tesla shareholders in favor of the package.

Tesla will also be able to appeal McCormick's order directing the company to pay $345 million to the attorneys who represented Richard Tornetta, the shareholder who sued in 2018 to rescind the pay package.

The Delaware Supreme Court can take around a year to issue a ruling.

Reporting by Tom Hals in Wilmington, Editing by Rosalba O'Brien

Securities Law News
December 13, 2024, 8:52 AM PST

Luminar Gains New Reprieve from Suit Alleging Fraudulent Image

By Gillian R. Brassil

- Investors didn't allege the necessary level of intent
- But judge is letting plaintiffs file a third and final complaint

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Luminar Gains New Reprieve from Suit Alleging Fraudulent Image

By Gillian R. Brassil 2024-12-13T11:52:58000-05:00

- Investors didn't allege the necessary level of intent
- But judge is letting plaintiffs file a third and final complaint

Luminar Technologies, Inc. and its executives are, at least temporarily, free of a proposed class action lawsuit claiming they tried to use an image of a competitor's technology as their own, misleading investors about the company's abilities, a judge said Thursday.

Judge Julie S. Sneed left the door open for the investors to amend their complaint one last time, granting and denying in part a defense motion to dismiss.

Shareholders said that without a disclaimer the image wasn't its product in a February 2023 presentation, Luminar and its executives deceived investors.

But Sneed said allegations that Luminar was passing off the competitor's "degree of sophistication" as its own weren't strong enough, even though the image itself was misleading. And even if they had alleged this, investors failed to say Luminar executives did so intentionally, the US District Court for the Middle District of Florida judge said.

Again, lead plaintiff John Alms and others didn't properly allege the necessary level of intent for securities fraud, Sneed said. She previously dismissed the proposed class action in May.

Luminar develops sensor technologies for autonomous vehicles. This lidar technology bounces lasers off of objects to guide cars. An important component of that is photonic integrated circuit chips, investors said.

On Feb. 28, 2023, Luminar hosted an investor presentation including a slide shown by co-defendant Mike McAuliffe, CEO of Luminar's semiconductor subsidiary, with an image of the competitor's chip.

The company's stock price rose by approximately 18% in the days following the presentation. Then on March 17, Forbes published an article saying the image was taken from a start-up competitor, Lidwave, that was taking legal action against Luminar, sending shares down by about 9% over the next few days.

Responding to the drop, Luminar replaced the image with one of its own chip—one that shareholders alleged was "crude looking" and did not match Lidwave's level of sophistication—and published a letter to investors saying someone who composed the presentation inserted a generic image.

"In the absence of allegations as to who is responsible for assembling the presentation, it is more likely that a lower-level employee included the image of Lidwave's PIC chip on his or her own initiative rather than at the direction of McAuliffe, in an effort to artificially inflate the stock price—as the court has already found," Sneed wrote.

Another shareholder sued Luminar in May 2023. Alms later became lead plaintiff and filed an amended complaint.

Faruqi & Faruqi, LLP is lead counsel for the investors. Luminar and its executives are represented by Orrick, Herrington & Sutcliffe LLP and GrayRobinson, PA.

Neither side responded to emails seeking comment.

The case is Alms v. Luminar Techs., Inc. , M.D. Fla., No. 6:23-cv-982-JSS-LHP, 12/12/24 .

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Securities Law News

December 13, 2024, 2:21 PM PST

Investors Sue Real Estate Trust Over Securities Fraud Claims

By Sam Skolnik

- **COURT:** E.D. Mich.
- **TRACK DOCKET:** No. 2:24-cv-13314 (Bloomberg Law subscription)

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Investors Sue Real Estate Trust Over Securities Fraud Claims

By Sam Skolnik 2024-12-13T17:21:40000-05:00

- **COURT:** E.D. Mich.
- **TRACK DOCKET:** No. 2:24-cv-13314 (Bloomberg Law subscription)

Investors claim Sun Communities Inc., a Michigan-based real estate investment company provided "overwhelmingly positive" statements to investors while hiding insider trading by board members, undisclosed loans, and a $4 million mortgage taken out by the CEO .

Named plaintiff Michelle Nelson alleges that she and other shareholders purchased Sun Communities' securities at artificially inflated prices, according to her complaint filed Thursday on behalf of herself and a proposed class against the company, CEO Gary Shiffman, and three other top executives. Sun Communities and its executives provided investors with false financial statements, Nelson says in her complaint filed with US District Court for the Eastern District of Michigan.

"This scheme compromised the independence of [Sun Communities'] Board, the Compensation Committee, and the Audit Committee, while calling into question the integrity of the Company's governance, controls, and financial disclosures," Nelson says.

The suit estimates the proposed class member count could be in the hundreds or thousands, describing class members as those "who purchased or otherwise acquired [Sun Communities] securities" during a five-year period ending in September of 2024.

Nelson claims that the company and its leaders provided investors with “material information” concerning its accounting practices and internal control over financial reporting. Defendants’ statements included “confidence” in Sun Communities’ brand, “calling the Company ‘industry leading’ and repeatedly touting strong performance years.”

Sun Communities’ stock price fell in response to a “corrective event” on Sept. 24, 2024, when information emerged related to the company’s and executives’ statements and alleged material ommissions, the complaint says. The company’s common stock declined from a closing market price of $139.10 per share on Sept. 24 to $137.48 per share on Sept. 25.

The company and its leaders allegedly violated the Exchange Act by employing “devices, schemes and artifices to defraud in connection with the purchase and sale of securities,” the lawsuit asserts, and by artificially inflating and maintaining the market price of Sun Communities’ common stock, so that proposed class members would purchase or otherwise acquire the company’s securities at artificially inflated prices.

Nelson claims the four individual defendants violated the Exchange Act by controlling the contents of reports, press releases, and public filings disseminated into the marketplace concerning the misrepresentations during the class period between Feb. 28, 2019, and Sept. 24, 2024.

Nelson seeks class certification; damages “by reason of the acts and transactions alleged herein"; pre-judgment and post-judgment interest; and “reasonable” attorneys’ and experts’ fees. She also demands a trial by jury.

Neither Shiffman nor Sun Communities immediately responded to requests for comment. The other defendants could not be reached.

Shea Law PLLC represents Nelson and the proposed class.

The case is Nelson v. Sun Communities Inc. , E.D. Mich., No. 2:24-cv-13314, complaint 12/12/24

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Ginkgo to Pay $17.8 Million in Class Deal Over SPAC Merger, IPO

By Gillian R. Brassil 2024-12-16T11:14:02000-05:00

- Biotech company merged with "blank check" company for IPO
- Attorneys will get a $4.4 million fee award from settlement fund

Ginkgo Bioworks Holdings, Inc. will pay almost $17.8 million to settle a class action alleging the biotechnology company misled investors in a proxy registration statement to secure its merger with a special purpose acquisition company and have its initial public offering.

Magistrate Judge Kandis A. Westmore gave her final approval of the settlement on Dec. 13, noting the strength of the plaintiff's case, fairness of the terms, and risks and burden of further litigation in the US District Court for the Northern District of California.

The lead plaintiff, Sharon Bernstein, and her counsel Pomerantz LLP didn't formally seek class status before settling. Settlements occurring before a formal certification "require a higher standard of fairness," said Westmore who had provisionally certified the class for settlement purposes when she preliminarily approved the deal in July.

There was no evidence of collusion between the parties, Westmore said. The judge also said fairness exuded from both sides meeting with a mediator to agree on a settlement in early 2024.

The case would likely have required much more litigation, given the lack of class certification and disputes that still exist, Westmore said.

The lawsuit alleged Ginkgo and certain executives violated securities laws through misleading omissions and misrepresentations in a proxy/registration statement and other public documents to secure a merger with the SPAC named Soaring Eagle Acquisition Corp. and spur its 2021 IPO. Class members will release all claims that were or could have been part of the lawsuit that began in 2021 or "relate to the sale or purchase of Ginkgo or its predecessor during the time period at issue" under the terms of the settlement.

The class includes people who invested in the biotechnology company from May 11, 2021 and Oct. 5, 2021, traceable to those issues.

“We are very pleased with this settlement, which represents a favorable recovery for the Class and involved novel legal issues related to SPACs,” Brian P. O’Connell, a Pomerantz attorney who represents Bernstein, said in an email Monday. “We look forward to completing the claims process and distributing the settlement to the Class.”

Bernstein became lead plaintiff in 2022, filing a third amended complaint in March 2023. That led to strong information released in discovery which Westmore said helped inform both sides for this settlement.

Pomerantz will get over $4.4 million in attorney’s fees awarded from the settlement fund. The lead plaintiff will get about $209,000 plus interest to cover costs and a $5,000 incentive award.

Wachtell, Lipton, Rosen & Katz and Morrison & Foerster LLP represent Ginkgo and the executives. They didn’t respond to an email seeking comment.

The case is Bernstein v. Ginkgo Bioworks Holdings, Inc. , N.D. Cal., No. 4:21-cv-08943, 12/13/24 .

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Hemisphere Media’s $15 Million Settlement Over Buyout Approved

By Jennifer Kay 2024-12-13T13:18:24000-05:00

- Lawsuit said self-dealing tainted take-private transaction
- Judge overruled two objections to $15 million settlement

A Delaware court on Friday approved Hemisphere Media Group Inc.'s offer to pay $15 million to end a class action over its take-private buyout by Searchlight Capital Partners LP and a related side deal with TelevisaUnivision Inc.

The settlement resolves shareholder claims in Delaware Chancery Court challenging two 2022 transactions: a private equity acquisition that valued the company at $285 million, and the sale of a Spanish-language streaming service for $125 million. The investors alleged Hemisphere’s board allowed Searchlight—which held a 70% stake in Hemisphere—to set the buyout’s terms, then manipulated a shareholder vote. Hemisphere and TelevisaUnivision weren’t named as defendants in the lawsuit filed in May 2023.

“Thank you, everyone, for reaching a good settlement and putting this one to bed,” Vice Chancellor J. Travis Laster told the parties’ attorneys in a hearing held via videoconference.

Laster also approved a $2.94 million fee award for the attorneys representing the investors leading the litigation. “There isn’t a windfall here,” he said.

He overruled two objections to the settlement, one from two hedge funds pursuing separate litigation against Hemisphere, and one from an individual objector that he said provided “constructive input” about settlement disclosures and distributions for the court to consider for potential rule changes.

The investors leading the litigation are represented by Labaton Keller Sucharow, Block & Leviton, Grant & Eisenhofer, Gardy & Notis, and Squitieri & Fearon. Searchlight and certain ex-directors are represented by Richards, Layton & Finger and Latham & Watkins. One former board member is represented by Potter Anderson & Corroon and Covington & Burling.

The case is In re Hemisphere Media Grp. Inc. S'holders Litig., Del. Ch., No. 2023-0555, settlement hearing 12/13/24 .

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This Week in Chancery Court: Senate Hearing, Santander Deal

By Jennifer Kay 2024-12-16T05:00:01000-05:00

The Delaware Senate convenes a special session Monday to consider judicial nominations, including Gov. John Carney's pick for filling an upcoming vacancy on the Chancery Court's main bench. Carney (D) nominated Bonnie W. David, currently serving as a Magistrate in Chancery, to replace retiring Vice Chancellor Sam Glasscock III.

Here's a look at what's happening in the Chancery Court itself this week:

Monday: Leo Inv. Hong Kong Ltd. v. Tomales Bay Cap Andurill III LP, Del. Ch., No. 2022-0175, trial 12/16/24.

At issue: A lawsuit over a failed SpaceX investment venture goes to trial, about a year and a half after the court held that breach of contract allegations against the party that ended the partnership were reasonable. The case involves a joint venture formed by Leo Investments Hong Kong Ltd. and Tomales Bay Capital LLC to buy a piece of Elon Musk's private space flight company, which isn't named as a party in the litigation. Leo alleges that Tomales terminated the deal less than a week after signing it. Vice Chancellor J. Travis Laster narrowed the claims in a Nov. 4 order granting partial summary judgment.

Court action: Laster will preside over a three-day trial in Wilmington, Del.

Failed SpaceX Investment Deal Lawsuit Gets Go-Ahead in Delaware

Tuesday: Option3 Cyber Inv. LLC v. Rogers, Del. Ch., No. 2023-0031, oral arguments 12/17/24.

At issue: A January 2023 lawsuit claimed the founder of cybersecurity company Centripetal Networks Inc. restructured the company through a "sham merger" with another affiliate while keeping a major investor in the dark about important details in the deal. Centripetal founder Steven Rogers and his son Jonathan, who allegedly formed part of the same control bloc, have filed a partial motion to dismiss the amended complaint.

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

Centripetal Networks Restructuring Draws Private Equity Lawsuit

Tuesday: In re Santander Consumer USA Holdings Inc. S'holders Litig., Del. Ch., No. 2022-0689, settlement hearing 12/17/24.

At issue: Vice Chancellor Lori W. Will must approve Banco Santander SA's plans to pay $162.5 million to settle litigation led by Elliott Investment Management LP challenging the Spanish bank's $12.7 billion buyout of its US auto loan division. The class-action filed in August 2022 alleged the buyout was rigged to keep pandemic-related profits in the bank's hands. Shortly before trial was scheduled to begin Sept. 16, Elliott said it had discovered the destruction of evidence in Signal messages sent around the time of the deal. Santander said its executives used Signal, which includes auto-deletion features, on the advice of its cybersecurity team instead of less secure text messaging platforms. Elliott's attorneys seek a $26.6 million fee award, including reimbursement of $3.8 million in expenses "that Elliott outlaid directly" and a $1.625 million incentive award for the hedge fund.

Court action: A settlement hearing will be held in Wilmington, Del.

Santander Pays $163 Million to End Elliott-Led Buyout Challenge

Thursday: S'holder Rep. Servs. LLC v. Signify Health Inc., Del. Ch., No. 2023-0076, bench ruling 12/19/24.

At issue: Signify Health Inc. faces claims it rushed to integrate a $250 million purchase, Caravan Health Inc., to avoid making $50 million in additional post-deal payments. Vice Chancellor Nathan A. Cook is scheduled to deliver a bench ruling on Signify's motion to dismiss the lawsuit, which it said in a brief portrayed a "distorted" interpretation of the merger agreement. Cook heard oral arguments on the motion in July. Ex-Caravan investors have argued that Signify agreed to wait to consolidate Caravan's workforce and divert employees, among other actions that "Caravan knew would negatively impact its ability to achieve the earn-out payment," according a brief.

Court action: Cook will deliver his bench ruling by phone.

Signify Health Faces $50 Million Suit Over $250 Million Deal (1)

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Wells Fargo Cites 2nd Circuit 401k Ruling in Health Cost Dispute

By Lauren Clason 2024-12-16T12:44:04000-05:00

- Case challenges drug costs compared to other employers
- 401k lawsuit lacked specificity on total costs and services

A lawsuit from former employees over the costs of Wells Fargo's health plan should be dismissed because the case does not meet standards outlined by a similar Second Circuit decision on 401k fees, the banking giant said in a filing in Minnesota federal court.

The workers sued in July over administrative fees and prescription drug costs, arguing the company violated fiduciary duties under the Employee Retirement Income Security Act by pocketing rebates from its pharmacy benefit manager. Wells Fargo & Co. argued the complaint does not allege total direct and indirect costs exceeded those of other large health plans, according to a Dec. 13 filing with the US District Court for the District of Minnesota.

The US Court of Appeals for the Second Circuit on Dec. 10 ruled in *Singh v. Deloitte LLP* that workers can't cherry-pick expenses in challenging costs and fees of an employer's benefit plan. Comparisons to other benefit plans must be made on a comprehensive level, the court said.

The move further illustrates how the years-long fight over 401k fees is seeping into the health arena, as employees push back on persistent cost increases that typically outpace wages. Employers are facing more challenges from workers and suing their own benefit administrators over data and costs in the wake of strengthened transparency and fiduciary rules.

Wells Fargo said the Second Circuit's decision shows that it's "improper to compare the fees for component parts" of its health plan without accounting for other costs and the type and quality of services.

The case is set for oral argument on Tuesday.

Wells Fargo is represented by Proskauer Rose LLP and Faegre Drinker Biddle & Reath LLP.

The plaintiffs are represented by Cohen Milstein Sellers & Toll PLLC and Fairmark Partners, LLP.

The case is Navarro v. Wells Fargo & Co. , D. Minn., No. 0:24-cv-03043, notice of supplemental authority filed 12/13/24 .

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Securities Law News

December 13, 2024, 2:14 PM PST

Canadian Gold Company Gets $139 Investor Fraud Suit Tossed

By Gillian R. Brassil

- Judge said investor contradicted himself on M&A claims
- Said insufficient link between $139 loss and alleged fraud

Bloomberg Law News 2024-12-16T10:02:1006547998-05:00

Canadian Gold Company Gets $139 Investor Fraud Suit Tossed

By Gillian R. Brassil 2024-12-13T17:14:22000-05:00

- Judge said investor contradicted himself on M&A claims
- Said insufficient link between $139 loss and alleged fraud

A former Canadian gold company and its then-CEO won't face a suit from an investor who said he lost $139 because they allegedly misled shareholders about its acquisition of another corporation, a judge ruled on Friday.

Investor Stephen Brahms said that Kirkland Lake Gold Ltd. and former CEO Anthony Makuch tricked investors into thinking the company was focused on growing its own operations and would not acquire others unless they were of high quality, even though it later would buy Detour Gold Corporation.

Judge J. Paul Oetken, in granting Kirkland's motion for summary judgment and directing the court to shutter the case, said that the investor negated himself. The judge, sits in the US District Court for the Southern District of New York, in March rejected Brahms' bid for class certification.

"Makuch's statements about 'organic' and 'internal' growth were not misleading both because they did not exclude the possibility that Kirkland would engage in M&A if the right opportunity arose, and because it is beyond genuine dispute that Kirkland was not actively considering the acquisition of Detour when Makuch made the statements," Oetken said.

"In short, Kirkland was 'tell[ing] the whole truth' about its stance on M&A and its plans to acquire Detour," the judge said.

“Further, Brahms’s own arguments in this case tend to undermine his claim that Kirkland committed itself to pursuing only organic growth,” Oetken said. “It turns reason on its head to argue simultaneously that Kirkland promised investors that (1) it would not acquire new mines and (2) it would only acquire mines with minimum production standards.”

Kirkland, now part of Agnico Eagle Mines Ltd., and its former CEO had asked the judge to toss the case, saying there was neither evidence of any material misrepresentation nor the requisite scienter. Also, they said, there was an insufficient link between the alleged fraud and the $139 Brahms lost.

The judge agreed. He also denied the plaintiff’s motion to exclude the testimony and report of a defense expert, finding it moot.

Many allegations had already been dismissed since Brahms originally sued in a proposed class action in 2020.

Oetken’s denial of class certification led Brahms to pursue an interlocutory appeal at the US Court of Appeals for the Second Circuit. That effort was put on hold pending Oetken’s decision on summary judgment.

In 2018, Kirkland considered acquiring Detour. But changes there led Kirkland to put thinking about that on hold until late in 2019. After Kirkland announced that it would be acquiring Detour, shares declined almost 19%, Brahms said. In January 2020, Kirkland conducted a shareholder vote on the acquisition, with nearly 99% of them voting at the meeting in approval, Oetken said.

Lowey Dannenberg, P.C. represents Brahms. Paul, Weiss, Rifkind, Wharton & Garrison LLP represents Kirkland and Makuch.

Neither side’s attorneys responded to emails seeking comment.

The case is In re: Kirkland Lake Gold Ltd. Securities Litigation , S.D.N.Y., No. 20-CV-4953, 12/13/24 .

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Securities Law News
December 13, 2024, 12:51 PM PST

Bitcoin Investors Say Rhodium Failed to Disclose Texas Sale

By Ryan Autullo

- **COURT:** Tarrant County district court
- **TRACK DOCKET:** No. 342-360258-24

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Bitcoin Investors Say Rhodium Failed to Disclose Texas Sale

By Ryan Autullo 2024-12-13T15:51:31000-05:00

- **COURT:** Tarrant County district court
- **TRACK DOCKET:** No. 342-360258-24

A group of investors say a bitcoin mining company accepted their $33 million assistance without revealing that its Texas facilities were on the verge of getting sold to a much larger competitor.

Rhodium Encore had a duty to disclose the sale, the investors said in the lawsuit, advancing two counts of fraud.

“Frankly, it is hard to imagine a more material disclosure event, and had defendants disclosed this critical information, as they were required by law, plaintiffs would not have invested in the first place,” the investors’ lawsuit filed Thursday in Tarrant County district court said.

Rhodium also inflated future growth projections by vowing to expand operations, the investors allege.

The lawsuit says Rhodium knew before the investment that the company owning its facilities in Rockdale, Texas, was being sold to a larger competitor, Riot Blockchain Inc. The acquisition meant Riot would expand its operations, taking advantage of cheap power contracts and choking off Rhodium, the investors say.

Rhodium ended up declaring bankruptcy after the property switched hands, which the investors attribute in part to “the wildly dysfunctional and adversarial relationship between Rhodium and Riot,” which they say included shutdowns led by Riot’s armed security.

The investors says they're seeking monetary relief that far exceeds $1 million.

About one-third of the $33 million investment came from Valley High LP, which contributed $11.5 million, the complaint says. Another investor allegedly gave $2.1 million, and two others each gave more than $1 million.

Iacuone McAllister Potter represents the investors.

The case is 345 Partners SPV2 LLC v. Imperium Invs. Holdings, LLC , Tex. Dist. Ct., No. 342-360258-24, 12/12/24 .

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Coinbase Hit With Antitrust Suit That Seeks to Change How Crypto Exchanges Operate

law.com/nationallawjournal/2024/12/13/coinbase-hit-with-antitrust-suit-that-seeks-to-change-how-crypto-exchanges-operate

Michael A. Mora

What You Need to Know

- BiT Global filed an antitrust suit seeking to change how crypto exchanges operate against Coinbase.
- The complaint targeted Coinbase's plans to delist the largest wrapped bitcoin token, wBTC.
- In the lawsuit, BiT Global alleged that Coinbase launched a competing product, cbBTC, in September and, shortly thereafter, announced the delisting of wBTC from its platform, thereby eliminating a major competitor.

BiT Global Digital Ltd. filed an antitrust and unfair competition lawsuit in the U.S. District Court for the Northern District of California on Friday against Coinbase Global Inc., which seeks to change the standards for how cryptocurrency exchanges operate.

Kevin Kneupper and A. Cyclone Covey, partners at Kneupper & Covey in Huntington Beach, California, represent the plaintiff, BiT Global, in its complaint against the defendant, Coinbase, over plans to delist the largest wrapped Bitcoin token, wBTC, in a "predatory and unfair" move that "violates both federal and state law."

“When you litigate in the crypto space, there is always a new twist to how these laws written a long time ago apply to this new currency,” Kneupper said in an interview. “This delisting question is interesting legally because you had these stock exchanges, but they don’t run a separate business. With Coinbase, it is not just an exchange, but they have their own currency. It’s like Nasdaq running its own business and that did not happen in the old world.”

Coinbase, through a spokesperson, confirmed that the company will suspend trading for wBTC on Dec. 19, on or around noon EST, and that the wBTC funds will remain accessible to users, who will have the continued ability to withdraw those funds at any time. Paul Grewal, chief legal officer at Coinbase, added on social media that when an asset no longer meets the company's listing standards, "we will drop it."

"When another asset can meet or exceed market requirements without sacrificing those standards, we will list it," Grewal said on X. "Thank you @BitGo for the chance to show this to a US federal court and on the entire global crypto stage."

'Corporate Giant'

Coinbase has allowed the trading of wBTC on its exchange since at least October 2020, according to the complaint. wBTC, pegged to bitcoin's value, allows users to engage with decentralized finance applications on blockchain networks such as Ethereum. BiT Global and its affiliates operate wBTC, which has grown to represent more than $13 billion in bitcoin value.
In the lawsuit, BiT Global alleged that Coinbase launched a competing product, cbBTC, in September and, shortly thereafter, announced the delisting of wBTC from its platform, thereby eliminating a major competitor. And BiT Global claimed that Coinbase's actions constitute an “attempted monopolization” under the Sherman Act.

BiT Global argued in the complaint that Coinbase, which controls more than 60% of the U.S. centralized crypto exchange market, engaged in predatory practices to promote cbBTC, including the spreading of false and defamatory statements about wBTC's compliance with listing standards. And by targeting wBTC for removal while continuing to list less substantial tokens, such as “memecoins,” the plaintiff alleged in the complaint that Coinbase employed a strategy of “fear, uncertainty, and doubt” to dissuade users from holding or trading wBTC.

BiT Global further alleged that Coinbase's actions undermine competition in the broader wrapped bitcoin market and discourage third-party developers from innovating with competing blockchain solutions.

"This lawsuit seeks to right this wrong and give the choice back to consumers," BiT Global asserted in the complaint. "It seeks to prevent another corporate giant from knocking off cryptocurrency applications developed by others one-by-one only to absorb them into itself. And it seeks to put limits on that centralization of power and restore the vision of wrapped Bitcoin to the decentralized innovation it was supposed to be."

Read the Complaint:

Latest

Securities Law News

December 13, 2024, 12:29 PM PST

Coinbase Sued by Crypto Rival Over 'Wrapped' Bitcoin Delisting

By Katie Arcieri

- **COURT:** N.D. Cal
- **TRACK DOCKET:** 5:24-cv-09019

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Coinbase Sued by Crypto Rival Over 'Wrapped' Bitcoin Delisting

By Katie Arcieri 2024-12-13T15:29:30000-05:00

- **COURT:** N.D. Cal
- **TRACK DOCKET:** 5:24-cv-09019

Cryptocurrency exchange Coinbase Global Inc. is facing a lawsuit alleging that the company kicked a rival's wrapped token product off its platform in violation of federal and state laws.

Plaintiff BiT Global Digital Ltd. claims Coinbase delisted wBTC on its cryptocurrency platform shortly after launching a similar competing product called cbBTC, according to a complaint filed Friday in the US District Court for the Northern District of California.

At issue are "wrapped" tokens, digital assets pegged to the price of the Bitcoin cryptocurrency form of payment.

Users "wrap" their Bitcoin by depositing it into the digital wallet of a third party known as a custodian. That custodian then issues a token or digital coin on another blockchain network, such as Ethereum. The new digital coin acts as a proxy for the Bitcoin asset and can be used to interact with other networks.

Coinbase "saw a competitor, wBTC, that had something it wanted: an innovative product that released value inherent in Bitcoin and let users utilize that value in bold new ways," BiT Global said in the complaint. "And following the playbook of its predecessors, Coinbase decided it would take what it wanted."

BiT Global says it will lose more than $1 billion in its market valuation if Coinbase's conduct continues.

A Coinbase spokesperson said in a statement it is “committed to maintaining the high integrity of our listing standards, and we regularly evaluate assets listed on our platform. Should an asset fail to meet those standards, it is delisted.”

The case adds to a barrage of litigation against Coinbase, including a suit brought by the Securities and Exchange Commission alleging the cryptocurrency company illegally operates as an exchange, broker, and clearing agency. The rapid growth of Bitcoin and other cryptocurrencies has raised increasing legal questions of how they should be regulated under federal and state money transmitter laws.

Wrapped Tokens

A partner of BiT Global announced its version of wrapped Bitcoin, wBTC, in October 2018, and began issuing wrapped Bitcoins on the Ethereum network in January 2019, according to the complaint. It quickly became the most popular wrapped Bitcoin product, with its outstanding tokens representing more than $13 billion worth of all Bitcoin using current exchange rates, the complaint states.

In September 2024, Coinbase announced its plans to issue its own wrapped Bitcoin, cbBTC, and urged users to switch.

On Nov. 19, 2024, Coinbase announced to the public that it planned to delist wBTC, which the complaint says was done under a listing standard that doesn’t exist and isn’t applied to other cryptocurrencies.

“Coinbase sabotaged wBTC as part of its effort to replace it,” the complaint says. “And it communicated this falsehood and spread it widely in the cryptocurrency community.”

BiT Global is seeking relief under Section 2 of the Sherman Act, which prohibits attempts to monopolization, as well as the Lanham Act, California Unfair Competition Law, and various common law causes of action.

BiT Global is represented by Kneupper & Covey PC.

The case is BiT Glob. Digital Ltd. v. Coinbase Glob. Inc. , N.D. Cal., No. 5:24-cv-09019, 12/13/24 .

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Bloomberg Law News 2024-12-16T13:11:32917994642-05:00

Deloitte Sued Over Breach of Government Benefits Recipient Data

By Cassandre Coyer 2024-12-16T11:05:17000-05:00

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** No. 1:24-cv-09575 (Bloomberg Law subscription)

Deloitte Consulting LLP failed to protect the sensitive information of Rhode Island individuals applying for or receiving government benefits, leading to a December cyberattack that exposed the personal data of thousands, a proposed class action said.

Deloitte didn't take reasonable measures to protect its systems, monitor its computer network, or provide individuals with prompt notice after the breach, according to a complaint filed Sunday in the US District Court for the Southern District of New York.

Deloitte, which maintains the systems of Rhode Island's social services platform RIBridges, first became aware of a cyberattack to its servers on Dec. 5, according to the complaint.

It notified Rhode Island government officials on Dec. 13 of a "major security threat," the complaint said, and the RIBridges benefits portal was taken offline to address the attack.

Cybercriminals were able to infiltrate Deloitte's systems, and stole unencrypted documents about individuals who applied for or enrolled in state administered benefits by RIBridges, it said.

In its notice to Rhode Island officials, Deloitte said any individual who has received or applied for health coverage or benefits "could be impacted" by the breach. Some of the programs affected include Medicaid, Supplemental Nutrition Assistance Program (SNAP), and Child Care Assistance Program (CCAP).

Some of the information disclosed included names, addresses, dates of birth, Social Security numbers, and banking information, according to the complaint. Deloitte hadn't sent notices of the breach to affected individuals before the filing of the suit, it said.

During a Dec. 14 press conference, Rhode Island Governor Dan McKee said the data stolen could "be exposed" in the "coming week," based on information acquired by government officials.

"We know that this situation is alarming, and it's stressful," McKee said, adding that state officials are continuing to monitor the situation. The governor said he believes the personal data of hundreds of thousands could have been misappropriated.

Named plaintiff Patricia Mahoney, a Rhode Island resident and a recipient of benefits through RIBridges, accuses Deloitte of negligence, breach of implied contract, and unjust enrichment.

She seeks compensatory damages, reimbursement of litigation costs, and injunctive relief, including asking the court to require Deloitte to improve its security systems, perform annual audits, and pay for lifetime credit monitoring services.

Deloitte didn't immediately respond to a request for comment.

Mason LLP, Law Offices of Peter N. Wasylyk, Goldenberg Schneider LPA, and Levin Sedran & Berman LLP represent the plaintiff and proposed class.

This case is Mahoney v. Deloitte Consulting LLP , S.D.N.Y., No. 1:24-cv-09575, complaint filed 12/15/24 .

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US states balk at unusual Clearview AI privacy settlement

reuters.com/legal/legalindustry/us-states-balk-unusual-clearview-ai-privacy-settlement-2024-12-13

Mike Scarcella

Figurines with computers and smartphones are seen in front of the words "Artificial Intelligence AI" in this illustration taken, February 19, 2024. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights , opens new tab

Dec 13 (Reuters) - Twenty-two U.S. states and the District of Columbia told a judge they are opposed to a settlement that would resolve privacy claims against facial recognition company Clearview AI without a concrete plan to award class action damages.

In a court filing , opens new tab on Thursday, the states — a bipartisan group that includes New York, California, Arizona and Tennessee — urged U.S. District Judge Sharon Johnson Coleman in Chicago to reject the unusual accord.

The states are not a party in the case, which was brought on behalf of millions of Americans who said Clearview violated their privacy, but they said class members “should be guaranteed fair and meaningful compensation.”

Attorneys for Clearview and the class did not immediately respond to requests for comment, and neither did a lead attorney for the states.

Clearview was accused of scraping billions of facial images from the web and selling information without consent, in violation of an Illinois privacy law that protects biometric data such as faces and fingerprints. It has denied any wrongdoing.

The proposed settlement, made public in June, would base a damages payment to class members on Clearview's value if the company goes public through an IPO or is liquidated through a merger or sale. The plaintiffs’ lawyers have estimated that such a fund could be more than $51 million.
The states said the settlement gives class members “an unknown financial stake in the very company that harmed them.” The states also criticized the class lawyers’ request for a 39% cut of the settlement in legal fees, which could amount to tens of millions of dollars. The states called the percentage “exorbitant.”

Clearview and the class attorneys told Coleman that the states lodged their arguments too late and she should not consider them.

The states countered that they are not class members and so did not need to file their objection within the timeline set by the court.

The judge said she would hold a hearing on Monday.

In 2022, Clearview reached a separate accord with the American Civil Liberties Union in which the company said it would stop granting paid or free access to its database of facial images to most private businesses and individuals, and would stop providing its database to government agencies in Illinois for five years.

The case is Clearview AI, Inc., Consumer Privacy Litigation, U.S. District Court for the Northern District of Illinois, Case no. 1:21-cv-00135

For the plaintiffs: Jon Loevy, Michael Kanovitz and Thomas Hanson of Loevy & Loevy

For Clearview: James Thompson and Daniel Lynch of Lynch Thompson

Read more:

Legal Fee Tracker: Clearview AI's choose-your-own-adventure privacy settlement
Clearview AI strikes 'unique' deal to end privacy class action
U.S. judge warns law firms in Clearview AI lawsuit over 'disarray'
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Reporting by Mike Scarcella

Our Standards: The Thomson Reuters Trust Principles., opens new tab

Securities Law News

December 13, 2024, 12:30 PM PST

Death of Nasdaq Diversity Rule Signals More Trouble for DEI

By Simone Foxman, Jeff Green and Katherine Doherty

- Exchange won't appeal decision from conservative Fifth Circuit
- Goldman Sachs is keeping its board diversity policy in place

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Death of Nasdaq Diversity Rule Signals More Trouble for DEI

By Simone Foxman, Jeff Green and Katherine Doherty2024-12-13T15:30:58119-05:00

- Exchange won't appeal decision from conservative Fifth Circuit
- Goldman Sachs is keeping its board diversity policy in place

The message from Nasdaq as the Black Lives Matter movement exploded across the US: push for diversity – or prepare to explain.

Four years later, a federal appeals court has struck down an attempt by Nasdaq's US exchange – home of Apple Inc, Nvidia Corp, Microsoft Corp and Tesla Inc, among others – to compel companies to include more women, people of color and LGBTQ+ directors on their boards.

The ruling this week only confirms what many executives have quietly come to accept: the diversity efforts they adopted and celebrated aren't simply under attack – they're getting rolled back. The new Donald Trump administration is bound to dial up the pressure.

Nasdaq Inc, responding to the decision in the conservative Fifth Circuit, conceded the loss and said it was moving on.

"We respect the Court's decision and do not intend to seek further review," a spokeswoman said in a statement.

Pedestrians pass the Nasdaq MarketSite in New York.
Photographer: Michael Nagle/Bloomberg

DEI Battle

The ruling from the conservative Fifth Circuit in New Orleans represents the latest salvo in a war between right-wing activists and corporate America. Cast as a discrimination suit, like many similar culture-war suits, it was fought over something else: the power of the Securities and Exchange Commission. But after myriad legal challenges to internship programs, startup grants and even ATM fee waivers, many of even the most committed companies have begun to bend — at least, in public.

And this ruling has triggered concerns that other SEC disclosure rules, around climate-related risks and greenhouse gas emissions, could also be relaxed, leaving investors in the dark about important information. Even disclosure around diversity is likely to become inconsistent from company to company, creating a headache for shareholders trying to compare businesses.

The decision leaves Goldman Sachs Group Inc. with one of the more prominent diversity requirements for public company listings. The bank said in 2020 that it would no longer underwrite initial public offerings of companies in the US or Europe without at least one diverse member on their boards — either women, people of color or people who identified as LGBTQ — and required two diverse members starting in 2021. That policy remains in place, the firm confirmed Thursday.

Even in the climate it was proposed four years ago, Nasdaq's rule was always controversial. It said companies must have a woman, "underrepresented minority" or LGBTQ+ board member — or report in their proxy statements or on their websites why they weren't able to comply — by December 31 of last year. Nasdaq had planned to ramp up the requirement to a minimum of two diverse directors at the end of next year, one of which must be female.

"The theory was that while the rule may not push leading companies to do better, it *would* force laggards — companies with zero or one woman — to do better," said **Rob Du Boff**, a senior ESG analyst for Bloomberg Intelligence. With an estimated 25% of board seats in the Nasdaq already held by women, its bar was very low, he added.

Challenged

From the beginning, critics attacked Nasdaq's rule as a quota system. Even though director appointments aren't subject to traditional employment laws on anti-discrimination, quotas remain legally dubious. The Alliance for Fair Board Recruitment, an organization led by Edward Blum, the activist who succeeded in fighting affirmative action in college admissions, quickly challenged the SEC's approval of the rule, which it claimed enabled "invidious discrimination." State attorneys general joined in with a similar message.

The court's decision side-stepped discrimination entirely, saying only that a rule about diversity isn't within the SEC's regulatory purview.

“The Fifth Circuit, especially taken as a whole, is intent on striking down agency rules, no matter how important to investors, markets, and the public interest,” said Stephen Hall, legal director at financial markets-focused nonprofit Better Markets. He added said that he believes it’s interpretation of the law is wrong. “This decision represents a terrible setback for transparency, which is the lifeblood of our securities markets.”

Lawyers don’t expect the SEC, the main party to the suit, to challenge the result, especially since the agency will soon be run by a Trump appointee.

Prominent companies had been on Nasdaq’s side: Airbnb Inc, Microsoft and Micron Technology Inc, all listed on the exchange, joined in a legal brief describing the rule as “a commonsense measure.” Investment giants like Lord Abbett & Co. and Northern Trust Investments Inc were too. Reliable information on board diversity, they complained, “is difficult to obtain, sometimes inaccurate” and often inconsistent.

Supporters of affirmative action protest near the US Supreme Court in Washington, DC, in Sept. 2023. Photographer: Anna Moneymaker/Getty Images

Investor Demands

Former activist investor and Syracuse University adjunct professor Jared Landaw said smart companies send a signal when they release information about board diversity. In more than 16 years at Barington Capital Group, including as chief operating officer, he found “many under-performing companies tend to have some form of homogeneousness in the board room that’s either contributed to the problem or prevents the board from self-correcting.” Bringing in directors of different demographic and life backgrounds helped address the problem.

“A majority of S&P 500 companies disclose their diversity statistics, regardless of whether they are traded on Nasdaq,” Landaw said. “I think that’s a reflection of what investors want and have come to expect.”

Heather Spilsbury, who leads board diversity advocacy organization 50/50 Women on Boards, points to her experience in California, which instituted a law requiring most public companies in the state to have at least three women directors by 2021. Begun in 2019, it was struck down in 2022. But while it was in place, the percentage of women on boards grew to 34.2% from 20.6% in California-based companies; it’s remained at about 34% since.

“We saw the ripple effect” of its impact even beyond California, she added.

Others aren’t so sure. Without the rule, companies will “enjoy more flexibility about the nature and extent of board diversity information to include in its SEC filings, on its website or in other public disclosures,” Davis Polk lawyers wrote in a client update on Thursday.

The Davis Polk lawyers say that the court is likely to apply similar reasoning to the SEC's disclosure rules around climate-related risks and greenhouse gas emissions, and could affect corporate governance rules adopted by the Federal Deposit Insurance Corporation.

And it's a playbook that may be used again and again — regardless of what investors want.

--With assistance from Andrew Ramonas and **Sridhar Natarajan**.

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The Buzbee Law Firm Accused of Client Abuse in Two Louisiana Lawsuits

law.com/texaslawyer/2024/12/16/the-buzbee-law-firm-accused-of-client-abuse-in-two-louisiana-lawsuits

Adolfo Pesquera

What You Need to Know

- Two Mississippi-based law firms have brought suits against Tony Buzbee and The Buzbee Law Firm in Houston, alleging accounting improprieties in the cases of two former clients.
- Mr. Buzbee said the lawsuits are "ginned-up" cases intended to disparage him and his law firm because of his firm's involvement representing alleged sex assault victims in the Sean 'Diddy' Combs civil litigation taking place in New York.
- Both cases were filed in the U.S. District Court for the Eastern District of Louisiana.

Two Mississippi-based law firms have brought suits against Tony Buzbee and The Buzbee Law Firm in Houston, alleging accounting improprieties in the cases of two former clients.

In one case, Adam Guidry, an injured U.S. Coast Guard-licensed ship captain, alleges Buzbee unjustly enriched himself by using unethical accounting practices to keep 74% of an overall settlement of $350,000.

In the other case, Matthew Ray Thompson Jr., an injured ship deckhand, alleges he was entitled, as a "Jones Act Seaman," to interest-free monthly maintenance-and-cure payments while his lawsuit was pending. But the law firm instead deposited Thompson's checks in its operating account and Thompson never received the funds.

"Rather than giving Mr. Thompson these funds, Defendants used Venmo to parse these funds out to Mr. Thompson and his wife in small amounts as high interest loans," the Thompson Jr. complaint states.

Mr. Buzbee, responding to allegations described in the lawsuits filed last week in the U.S. District Court for the Eastern District of Louisiana, said the lawsuits are "ginned-up" cases intended to disparage him and his law firm because of his firm's involvement representing alleged sex assault victims in the Sean 'Diddy' Combs civil litigation taking place in New York.

Buzbee referred to unnamed "investigators from New York" who paid former clients to sue him. Buzbee provided by email portions of a transcript wherein an investigator states, "Anyone Googling Buzbee and his company, his practice, are going into litigation. Okay?"

"What we're tryng to do is, we are trying to put this thing together for the company that we're working for ... we gave this kid 1,000 bucks to start yesterday just to get him on the right path," the investigator is recorded stating, according to Buzbee.

Buzbee did not specify which case, if any, the transcript is attached to. However, he emphasized, "These guys are on tape offering to pay clients to sue our law firm. That's a crime."

Buzbee said his firm expected to get the cases dismissed and will seek sanctions, "as well as report this to the state bar." The Buzbee Law Firm has not yet formerly responded in Louisiana to either complaint.

The plaintiffs are represented by Kelley Berry of Berry & Munn and by Tim Porter of Porter & Malouf.

The Guidry Case

Guidry alleges the Buzbee defendants never explained to him his options, never disclosed the mounting expenses or the "meager" amount he would receive at distribution and insisted he had no choice but to settle.

"Guidry was vulnerable. He had lost his job as a result of his injury, he was financially destitute, his marriage had failed, and he was struggling with addiction," the complaint states.

The complaint alleges Buzbee defendants deducted $53,000 in fees and another $266,876 in "expenses" and charged Guidry $23,571 interest on $85,450 in "loans." Guidry was originally told his case was worth $1 million, but the firm settled for $350,000 and Guidry received only $5,123, the complaint states.

Causes of action include breach of fiduciary duties, unjust enrichment and negligence.

The Thompson Jr. Case

In addition to the aforementioned allegations, Thompson Jr. alleges the law firm's use of high-interest loans in lieu of his Jones Seaman Act maintenance-and-cure payments was not a one-time event, but part of a pattern the law firm employed against other seamen.

"The Buzbee Law Firm often lends money to its clients, apparently repackaging the client’s own maintenance-and-cure funds into a loan that must be repaid with interest," the complaint asserts.

Counsel for Thompson Jr. cited other cases where they allege this practice was used—*Garza v. Callan Marine Ltd.*, 2020ccv-61002-3 in Nueces County, and *Tyner v. Callan Marine Ltd.*, 2020ccv-61393-2, also in Nueces County.

Practice Tips From—and About—the New Judges on the Northern District of California Bench

Ross Todd

(Clockwise, from top left) Northern District of California nominees Rita Lin, Trina Thompson, Araceli Martínez-Olguín, Casey Pitts, and Eumi Lee. Photos: Diego M. Radzinschi/ALM

Analysis
U.S. District Judges Trina Thompson, Araceli Martínez-Olguín, Casey Pitts, Rita Lin and Eumi Lee, all appointees of President Joe Biden, spoke about what they expect from lawyers who come before them at an event in San Francisco last week.

December 16, 2024 at 02:45 PM

10 minute read

By Ross Todd
Editor/columnist

Last month we passed along a bunch of practice tips from U.S. District Senior Judges **Maxine Chesney** and **William Alsup**, a pair of jurists in the Northern District of California who have more than 60 years on the bench between them.

But there are many more judges on the Northern District bench with much less experience. And given the chance that you'll end up before one of the district's new judges in the coming years, they're probably just as useful for you to hear from, if not more so.

U.S. District Judges **Trina Thompson**, **Araceli Martínez-Olguín**, **Rita Lin**, **Casey Pitts** and **Eumi Lee**—all appointed to the Northern District bench by President Joe Biden—spoke at an event last week sponsored by the Northern California Chapter of the **Association of Business Trial Lawyers**. (The district's sixth Biden appointee, Judge **Noël Wise**, won Senate approval last week, and was not part of last week's ABTL panel.)

Given the hive of docket activity the Northern District saw challenging the first Trump administration, you're likely to see at least some of these judges' names in the news over the next four years.

Just because the new judges have less experience than Chesney and Alsup doesn't mean they're complete newbies. Thompson received her commission to the federal bench in August 2022 after two decades on the state bench. She became the first Black woman elected to the Alameda County Superior Court in 2002 after previously working as a criminal defense attorney. While on the bench she has also taught classes on juvenile justice and race and the law at the University of California, Berkeley. "My journey is one of serendipity and courage," she said.

At the end of her tenure on the state court bench, Thompson was presiding over a complex criminal docket. She said the most difficult part of her transition to the federal bench was learning that "civil lawyers aren't as civil as my criminal lawyers."

"That was a surprise. But then I learned how to manage their expectations and once I was able to do that I saw that we were able to come to consensus," she said.

Martínez-Olguín, who taught kindergarten as a bilingual instructor in Oakland through Teach for America prior to practicing law, received her commission in March 2023. Prior to that, she had worked as an executive at the National Immigration Law Center since 2018. "The thrust of my career has been entirely in public interest, of public service" work, with a focus on immigrant rights, she said.

Martínez-Olguín said that the learning curve upon taking the bench "is actually sort of vertical." She said that, in some ways, the job has been like repeatedly sitting for the bar exam, becoming an expert on some specific part of the law and then moving on to something completely different. "Being a lawyer is a lot about being a constant learner anyway, so that part feels consistent," she said.

Pitts, who received his commission in July 2023, clerked for Ninth Circuit Judge **Stephen Reinhardt** before spending the balance of his pre-judicial career in private practice at plaintiffs firm **Altshuler Berzon** for about 15 years. "What I loved about the practice was how diverse it was, how many different issues I had," he said. "I'm lucky to have found another place with even more diversity of issues."

Pitts said the most challenging part of the transition from being a litigator has been the move from having external deadlines being the driver to being the person setting the deadlines. "Ultimately … it's on us to decide when things have to happen, what's going to happen when," he said. He said he's trying to balance the need to be thorough with the parties' desire to get a decision quickly to move their dispute to a resolution.

Lin received her commission in October 2023 after previously serving about five years on the state bench in San Francisco. She practiced for about a decade at **Morrison & Foerster** before spending a few years as an assistant U.S. attorney in the Northern District. “I always kind of felt that siren call of public service,” she said. She said her experience working pro bono on a same sex-marriage case was “incredibly meaningful” to her. “When that litigation completed, I decided I just wanted to do a career in public service,” she said.

Lin said that one of the biggest changes in moving from the state court bench is “the luxury of time and resources” she has for any given case. Where in state court she could be considering 60 cases per day, in federal court she has more ability to plan out her law and motion calendar. She said she tries to put questions out to the lawyers a week ahead of hearings. “The lawyers look at the questions and have well-prepared, thoughtful answers,” she said. “It’s just such a productive exchange and I’m grateful for it every day.”

She said the challenge of her new job is that there is a mountain of work and she could work late into the night trying to find the best answer. “In order to show up for you all, I need to be my best self. And I can’t do that unless I modulate the pace at which I work,” Lin said. She said over the past year she’s worked harder than she has since she was at Morrison & Foerster.

Lee, who just received her commission in July, had been on the Alameda County Superior bench since 2018 prior to her appointment. Early in her career, she clerked for Judge **Jerome Turner** in the Western District of Tennessee, her home state.

As a child of immigrants, her FBI background check involved gathering papers from her parents and her brother, who was born outside the U.S. A judge in Tennessee signed off on those papers decades ago. She said she reflected on her family during a naturalization ceremony she presided over during her first six months on the federal bench.

“Never could they have imagined that X number of years later that I would be there, that I would be the judge signing the paper,” she said. “It was just such a privilege.”

Practice Tips

Collectively last week, the five new judges stressed the importance of reading their standing orders, working collaboratively with opposing counsel and truly engaging with their questions during oral arguments.

Thompson said that she prefers it when lawyers come up with their own schedules. “Those who appeared before me know that if you give me the deadlines you've agreed on, you pretty much get what you want the first time around,” she said.

She also said that lawyers should know that she loves trying cases. She said she's already started looking at jury instructions by the time the first case management conference rolls around.

"If you're fighting about the discovery or quarreling about something that I know jurors will never see or have to decide, you might get this curious look from me," Thompson said. "I'm probably not going to entertain … what I call the 'sideshow' becoming the show."

Thompson also encouraged the audience to contact her courtroom deputy if a young lawyer will be handling arguments. If that's the case, she will try to get questions out to them before the hearing so "they won't have a whole lot of trepidation when they come in front of me." She said it's "exciting" to hear from the person who actually wrote the brief and "has thought about all the creative nuances of the case."

Martínez-Olguín said that she also likes seeing young lawyers argue too. She will offer them the opportunity to split time with a more senior attorney if that makes the client more comfortable with putting a new lawyer up front on a case.

She added that it probably goes without saying, but lawyers should read the local rules and judge's standing orders. "I think as someone who in my practice has been walking the district courts all over the country, I am shocked at the number of people who are practicing who seem to be oblivious about the local rules or my standing orders and just try to do things in ways that are not in keeping with the rules," she said. "Sounds like one I shouldn't have to give, and yet I've learned over time to give it."

Pitts said that at the suggestion of one of his clerks, he's experimenting with a standing order that is all bullet points and only three pages long, in hopes lawyers will actually read them.

On the case management front, he echoed what Thompson said about the parties knowing how best to get a case moving toward resolution. He said he took pride in forging good working relationships with opposing counsel when he was in private practice. "We ultimately probably knew better than anyone how the case should be litigated," he said. "I am not going to know as well as you and your opposing counsel … about what is really going to be in the way of getting the merits of a case decided—and that is what the goal is," he said.

"I will defer to the counsels' judgment to a fair amount," he said. "It's not my role to tell the two parties that they don't know how they should be litigating a case."

Pitts also said that it's important in oral argument to really engage with him and not just fall back on talking points. He said that when he was an advocate he always wanted to know why the judge might not rule in his favor and to have an opportunity to respond to that. "I certainly carry that down with my role as a judge: whenever oral advocates are really engaging with me, listening to my questions, answering them, that's the best argument for me," he said.

Lin also expressed a willingness to be flexible and listen to the parties on how to best structure a case. For instance, she suggested she might consider cross-motions for summary judgment prior to class certification to get the parties an answer sooner on some critical issue. "We don't have to do every case by the standard playbook," she said.

Although she hasn't had a trial on the federal bench yet, she said that she has a strong preference to deal with potential evidentiary issues at the end of the trial day. "I don't want to get a 10-page brief. Just tell it to me. I can rule the spot," she said. "You can have that certainty to prepare for your witness the next day. I think that's better for all of us, and it gets you to answer a lot faster." She said her real goal is to make sure that jurors sit and wait through morning evidentiary arguments or sidebars.

Lee said that her case management conferences are remote by default. Part of the reason for that is that if she finds that the parties haven't met and conferred, she can send them to a breakout room and ensure they will engage.

She also told lawyers that it's not in the best interest to pivot off difficult questions too quickly. "The importance of really answering before you get to the 'but …' and really engaging in the process is we want to know and it helps inform our decision-making," she said.

Radioactive spill reported in Northeast Ohio nuclear power plant

cleveland.com/news/2024/12/radioactive-spill-reported-in-northeast-ohio-nuclear-power-plant.html

December 16, 2024

- Updated: Dec. 16, 2024, 1:14 p.m.
- |Published: Dec. 16, 2024, 1:09 p.m.

Ohio's Perry Nuclear Power Plant in Lake County.Google Earth

By

Zachary Smith, cleveland.com

PERRY, Ohio -- At least 78 gallons of water containing radioactive chemicals were spilled at the Perry Nuclear Power Plant in Lake County in 2024, according to a voluntary report from its parent corporation, Texas-based Vistra Corp.

In its report to the U.S. Nuclear Regulatory Commission, Vistra says that “manipulation of a lid upon a container holding radiological waste” in an outdoor area spilled “contaminated water from the container” onto the ground of the Lake County facility.

When plant personnel conducted subsequent research into the event, they found that a total of “78.5 gallons of contaminated water had spilled to the ground” since January 2024, according to the report. Vistra described that figure as a “conservative” estimate.

Two chemicals contaminated the water, according to the report. The first was cobalt-60, which can cause cancer if someone is exposed to it over a long period, according to the U.S. Environmental Protection Agency. The second was the less-toxic manganese-54.

Energy Harbor, a former FirstEnergy subsidiary that became its own company in 2019, owns and operates the plant.

Vistra writes in the report that the spill has not caused the public to receive a dose above the allowable limits of the chemicals.

“There was no impact on the health and safety of the public or plant personnel,” the report said.

At the time, Vistra said it took precautionary actions by removing the storage container from the area and covering a storm drain to prevent further migration into the stormwater system. A third-party company has also instituted a sampling plan to monitor an adjacent stream that was impacted by the spill, the report said.

A cleveland.com reporter has reached out to the Perry Nuclear Power Plan for comment on this story.

The spill happened on Oct. 14, according to the report. It was reported to authorities on Oct. 29, along with another incident in which a generator was determined to be inoperable during a “monthly surveillance run,” according to a second report filed with the U.S. Nuclear Regulatory Commission.

In May, the Perry Nuclear Power Plant closed so inspectors could find and repair a coolant leak.

Perry Nuclear Power Plant was expected to close in 2021 because it was no longer profitable compared to natural gas plants. However, this was avoided when Ohio House Bill 6 was signed into law in July 2019. HB-6 added a fee to residents' utility bills that funded subsidies of $150 million per year to keep Perry and the Davis–Besse nuclear plant operational.

H.B. 6 was part of the Former Ohio House Speaker Larry Householder’s $60 million bribery scheme to benefit FirstEnergy Corp, a subsidiary of Energy Harbor at the time.

Vistra purchased Energy Harbor for more than $3.4 billion in 2023. Vistra also operates seven natural gas, oil and coal power plants throughout the state.

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Matt Levine’s Money Stuff: Elon Musk Heard From the SEC

By Matt Levine 2024-12-16T14:11:00347-05:00

Oh Gary

I think a useful rough model is something like:

- 1. You and I and most people are approximately 100% subject to the law. If we do crimes we’ll get arrested; if we commit securities violations we’ll get fined; if we drive too fast we’ll get pulled over.
- 2. Elon Musk is, like, 60% subject to the law?
- 3. In roughly a month, he will be, like, 20% subject to the law?

Musk is extremely rich, he’s litigious and willing to fight even without great legal arguments, he’s popular online and has a large army of fans who get mad at his critics, and he is essential to various essential companies. You can’t seriously expect *all* of the laws to apply to him. We talked once about his alleged drug use and the possibility it might complicate SpaceX’s military contracting, and I wrote:

I feel like Elon Musk’s recent career is a long experiment to prove that, if you are successful enough, the regular laws do not apply to you. I assume that if Musk walked into the office of the secretary of defense and snorted a bag of coke in front of him, no government contracts would be canceled. “Do you want to send up your satellites on my good rockets, or do you want to enforce your rules about drug use by government contractors,” Musk is implicitly asking, and there is an obviously correct answer. Musk is too big to fail a drug test.

And that was, you know, before! Now Musk has helped get Donald Trump elected president, and Trump is not particularly big on insisting that his supporters follow the law in every detail. In a month, if any federal regulators or law enforcement officers object to anything that Musk does, can Musk just … fire them?

In that vein, here’s a Wall Street Journal article about, loosely speaking, the drug use:

As SpaceX deepened its ties with the national-security agencies in recent years, the company's lawyers advised senior executives not to seek a higher security clearance for Musk that would give him access to details about sensitive programs SpaceX is involved in, according to people familiar with the matter.

The reason, these people said, was that Musk would have had to answer questions from the government about his contacts with foreign nationals and drug use previously reported by The Wall Street Journal. ...

The SpaceX lawyers began analyzing the risks of seeking a higher security clearance for Musk after the Journal reported in June of last year about Musk's use of ketamine, according to one person familiar with the review. The lawyers and executives concluded that if SpaceX sought a higher security clearance, it would risk Musk being turned down, or worse, losing the top-secret clearance he already has.

But:

Those concerns could soon become irrelevant. President-elect Donald Trump appointed Musk, who spent about $200 million in support of his presidential run, to lead a new Department of Government Efficiency, which will advise the incoming administration on cutting spending and regulations. As president, Trump will have the power to give Musk and others working for DOGE broad access to classified information as they search for cuts.

Right yes, right now using ketamine and chatting with Vladimir Putin would prevent most people from getting top US security clearances, and they are modest impediments even for Musk. In a few weeks, perhaps not.

Meanwhile in securities law, I have wondered for quite a long time now about Musk's acquisition of Twitter Inc. shares in 2022. Before he bought all of Twitter, Musk bought about 9% of the stock in the open market over the course of several weeks. When he acquired more than 5% of the shares, the law required him to disclose his ownership within 10 days. He waited 21 days, buying more in the meantime, and when he did disclose his ownership he did so misleadingly, on a form suggesting that he was a passive investor with no plans to influence the company. (In fact he had already begun discussions with Twitter about buying the whole company.) This is not *that* serious a securities violation — people do not go to jail for this — but it is a very *obvious* violation, and it seems to have saved Musk about $143 million: By not alerting Twitter shareholders that he was buying the company, he was able to pay less for their shares than he would have if he had followed the law.

You might have expected that the US Securities and Exchange Commission, seeing this absolutely open-and-shut violation of the law, would have sued Musk within a few weeks. Instead the SEC has spent the last two years making vague burblings about investigating Musk and repeatedly questioning him about what seems, from the outside, like an extremely simple legal violation.

Which, again, is weird, and not how other people get treated. (Here is a September SEC announcement of "settled charges against 23 entities and individuals" — including Goldman Sachs and Alphabet Inc. — "for failures to timely report information about their holdings and transactions in public company stock.") But the point is that, if Musk has been 60% subject to securities law for the last two years, that number is going to drop precipitously in about a month. Anything that the SEC wants to do about this, it has to do pretty quick. And so:

The U.S. Securities and Exchange Commission has issued a "settlement demand" to Elon Musk, the tech billionaire disclosed in a social media post on Thursday.

The post included a copy of a letter sent by Musk's attorney, Quinn Emanuel Partner Alex Spiro, to SEC Chair Gary Gensler.

The letter said the federal agency had pressured Musk to agree to a settlement including a fine within 48 hours, or "face charges on numerous counts" regarding "Certain Purchases, Sales and Disclosures of Twitter Shares."

The SEC has been investigating whether Musk, or anyone else working with him, committed securities fraud in 2022 as the Tesla CEO sold shares in his car company Tesla and shored up a stake in Twitter ahead of his leveraged buyout of the social network that is now known as X.

"Oh Gary, how could you do this to me?" Musk said in the post he shared on X late Thursday, along with an emoji showing a face holding back tears and a copy of Spiro's letter.

I think at this point it is way too late, but the the SEC might as well ask.

Finally in Musk:

Tesla has vowed to press on with its fight to restore Elon Musk's historic pay package, and failure could have a high cost: the potential for more than $100bn in tax and accounting charges for the company and its chief executive.

Delaware judge Kathaleen McCormick recently denied the electric vehicle maker's second attempt to give Musk the largest package of stock options in history — worth $56bn at the time of the original ruling and more than $129bn at the current share price. She found that shareholders' overwhelming vote to reapprove the grant did not override her previous rejection of the 2018 deal as unfair and awarded by a board in thrall to its CEO.

Her stance has left the board with a dilemma: pursue a lengthy and uncertain appeal with Delaware's Supreme Court or award its chief executive with a new options package.

If issued with similar terms, a new package could trigger a $50bn-plus corporate accounting charge and separately impose a punitive tax rate of up to 57 per cent on Musk's shares, triggering a massive tax bill.

I sympathize with Tesla and Musk here; it *is* weird that Tesla was not allowed to pay Musk what it wanted to, even with overwhelming shareholder support. Tesla has fixed the problem going forward by *opting out of Delaware law* (by moving to Texas), but that doesn't fix the problem retrospectively: Musk's old pay package is (for now) gone, and giving him a *new* $100 billion pay package would, roughly speaking, have the consequences of (1) costing Tesla $100 billion, as an accounting matter, and (2) giving Musk $100 billion of income, as a tax matter.

On the other hand, both federal income tax enforcement and US public-company accounting enforcement are more or less under the control of the US executive branch, so, you know!

MicroStrategy

Two big themes of this column are:

- 1. If people really want to buy a company's stock at irrational prices, it should sell it to them; and
- 2. If people really want to buy a company's stock at irrational prices, someone *else* should sell it

to them.

On Theme 1, I have been amused and impressed by meme-stock companies — some of them in bankruptcy or close to it — that have addressed their financial problems by pounding out stock to retail investors. On Theme 2, we talked last week about the high demand for shares in hot private startups like SpaceX, and I suggested that the obvious move was for *short sellers* to satisfy that demand by promising shares of SpaceX for future delivery. In one sense, only SpaceX can create SpaceX shares, but in another sense *anyone* can create SpaceX shares, as long as they are willing to bear the financial risk that SpaceX will go up and they'll have to pay a lot to buy the stock in the future.

It is approximately correct to say that MicroStrategy Inc. is a $47 billion pot of Bitcoins that the market values at $119 billion. So MicroStrategy's stock trades at roughly a 150% premium to the value of its underlying assets (Bitcoin). This is quite a weird situation, as we have repeatedly discussed. If you take it literally, it means that MicroStrategy can sell $1 of stock, use the proceeds to buy $1 of Bitcoin, and increase its market capitalization by $2.5. Or sell $42 billion of stock, buy $42 billion of Bitcoin, and increase its market capitalization by $105 billion. Or any larger number you like. It looks like a financial perpetual motion machine.

Given this, the most obvious trade in the world is for MicroStrategy to sell as much stock as possible (and use the proceeds to buy Bitcoin), and in fact that is what MicroStrategy is doing, with an announced $21 billion at-the-market stock offering that it has been executing rapidly. Obviously! You keep selling stock and buying Bitcoin until the price of the stock converges on the price of Bitcoin. There is an obvious arbitrage — a pot of Bitcoin is trading for much more than the value of the Bitcoin in the pot — and MicroStrategy is in the best position to close it.

But all of MicroStrategy's selling does not seem to work to compress the premium. I wrote last month:

My usual assumption with stuff like this is "arbitrages close." Like, if MicroStrategy is a pot of Bitcoin trading at a premium to the value of its Bitcoin, then the natural arbitrage is to (1) sell MicroStrategy stock and (2) buy Bitcoin. This is a bet that eventually the gap will close, and also it should help *cause* the gap to close, because selling MicroStrategy tends to push down its price and buying Bitcoin tends to push up *its* price. I am not recommending that *you* do that — that's super risky! nothing here is investment advice! — I am just saying that *MicroStrategy* can do that, and should, and does. Except that it doesn't reduce the premium! What if, the more stock MicroStrategy sells to buy Bitcoin, the more the premium goes up? A real perpetual motion machine.

Since then, MicroStrategy has kept selling stock, and its stock and Bitcoin are both up about 15%, so I suppose the premium has closed a little bit, but not much.

So the weird result is that, selling as fast as it possibly can, MicroStrategy *still* can’t sell enough stock to close the premium. Could short sellers? I mean, sure, whatever; people do short MicroStrategy, but it is notoriously risky and so far doesn’t really work. Is there a better, safer trade?

Yes! The key point to realize is that the phenomenon is not necessarily “people want to buy MicroStrategy for more than its net asset value” but rather “people want to buy *a pot of Bitcoins in the form of a publicly traded corporation* for more than its net asset value.” So the trade is:

- 1. You run *another* public company, ideally one that is fairly small and whose business you are not all that jazzed about.
- 2. You buy Bitcoin.
- 3. You sell more stock to buy more Bitcoin.
- 4. You see if people are willing to pay $2.50 for $1 worth of Bitcoin in your public-company pot, the way they are with MicroStrategy.
- 5. “If you like buying MicroStrategy at a premium to its pot of Bitcoin, you’ll love buying our company, which also has a pot of Bitcoin,” you tell them.

Worth a shot! Here’s this (via Byrne Hobart):

Semler Scientific, Inc. (Nasdaq: SMLR), a pioneer in developing and marketing technology products and services to healthcare providers to combat chronic diseases, today announced updates regarding its bitcoin (BTC) activity and holdings, capital markets activity, and BTC Yield, a key performance indicator.

Between December 5, 2024 and December 15, 2024, Semler Scientific acquired 211 bitcoins for $21.5 million with proceeds generated from its at-the-market (ATM) offering and operating cash flow at an average price of $101,890 per bitcoin, inclusive of fees and expenses. As of December 15, 2024, Semler Scientific held 2,084 bitcoins, which were acquired for an aggregate $168.6 million at an average purchase price of $80,916 per bitcoin, inclusive of fees and expenses.

Semler’s market capitalization as of noon today is about $650 million, versus about $220 million for its stash of Bitcoin, or almost a 200% premium, though again I suppose there is that medical technology company to consider too. It's a popular trade:

MicroStrategy's bet on bitcoin has fueled a wild rally in the shares of the business software company — and it's driving more companies to copy the strategy.

MicroStrategy's crypto playbook has catapulted its stock up 501% this year. Though its core business is software, piling up an enormous trove of bitcoin has become its guiding star.

Now, other firms are stocking up. Mimicking MicroStrategy's approach, companies are issuing debt to buy bitcoin. Early adopters of the strategy include Marathon Holdings and Core Scientific—both crypto firms—and Japan's Metaplanet.

Yes right if you can buy stuff for $1 and immediately turn it into $2.50 of market capitalization, then that's pretty much a good trade for anyone. There are probably a lot of companies that have good long-term investing opportunities and would prefer to turn $1 of cash into some uncertain but possibly larger amount of long-term value. But there are other companies that would take the quick buck.

Buffer ETFs

I guess if you squint a buffer exchange-traded fund is kind of a cheap substitute for a hedge fund? Loosely speaking, the stereotype of "hedge funds" might look like this:

- 1. They tend to go up when the stock market is up.
- 2. But in very good years for the stock market, hedge funds tend to underperform the market (because they are hedged).
- 3. On the other hand, when the stock market is down, hedge funds tend to be insulated from at least some losses (because they are hedged).

This is not a very good model or anything. Many hedge funds aren't correlated to the stock market at all — many don't own any stocks — and some, despite the name, take large unhedged swings and outperform the market. But even a long-biased equity long-short manager would be annoyed by this description. "Our job," modern sophisticated hedge fund managers would say, "is not just to own the stock market and buy some puts; our job is to generate alpha, to pick the right stocks and short the wrong ones, to find sources of return that are not correlated to market or sector or style factor returns but that genuinely reflect our skill." But, you know. *Some* hedge funds could probably be replicated, or improved, by "buy the index, buy some puts for downside protection and sell some calls to fund them."

And that's pretty cheap. Bloomberg's Emily Graffeo reports:

The University of Connecticut's endowment is turning away from hedge funds and embracing a cheaper way to mitigate risk in its $634 million investment portfolio.

The UConn Foundation sold almost all of its hedge fund exposure during the most recent fiscal year and bought so-called buffer ETFs, said David Ford, chairman of the investment committee. The increasingly popular exchange-traded funds, which use options to protect against losses while capping upside gains, have amassed more than $58 billion in assets, almost all within the past three years. …

Ford says buffer ETFs are a cheaper and easier way to lessen portfolio volatility relative to using a hedge fund or structuring a bespoke trade, and come with the benefit of improved liquidity.

"This takes the complexity out of hedging, or most of the complexity," Ford said. "Instead of having to go to an institutional desk and say, we want to design the following options trade, it's already prepackaged and trading."

As, like, an aesthetic and scientific matter and an expression of human excellence, it is nice to think of hedge funds as offering uncorrelated alpha. As a practical matter for an allocator, sometimes you just want a thing that goes up when the stock market is up but doesn't go down much when the stock market is down.

A few weeks ago, I wrote that "the way I think about the ETF industry is that it is the modern source of pizzazz in retail investing." Institutional investors can get all sorts of investment exposures by negotiating over-the-counter derivatives directly with banks; retail investors can't, but ETF providers will package the most popular derivatives trades into ETFs and sell them to retail customers. But you don't *have* to be a retail customer to like that: The ETF package is probably more transparent, and quite possibly cheaper, than you'd get by doing the trade with the bank. And some endowments are noticing.

Masa

It would have been funny if Masayoshi Son stood on a stage with Donald Trump and said “I plan to invest somewhere between $18.3 billion and $27.6 billion in artificial intelligence companies in the US in the next three to four years, depending on my ability to raise funds and our record of finding good opportunities.” Imagine! My impression of Masayoshi Son is that he used to know a lot of numbers, but after years of success and eccentricity he has forgotten most of them, and now the only number he knows is $100 billion. If you get a meeting with him and you want him to invest in your dog-walking startup, ask for $100 billion! That’s your best chance of getting funded; if you ask for like $75 million he’ll definitely say no. Anyway here’s this:

Donald Trump and SoftBank Group CEO Masayoshi Son are set to jointly announce on Monday that the company is planning to invest $100 billion in U.S. projects over the next four years, according to a person involved in the event, as the president-elect seeks to project enthusiasm over his return to power.

The Japanese internet and telecommunications giant estimates that its U.S.-based investments will create 100,000 jobs focused on artificial intelligence and emerging technologies, and it plans to complete the work before Trump leaves office in 2029, the person said. Trump and Son are scheduled to appear together at Mar-a-Lago, Trump’s private Florida club. A SoftBank spokesman declined to comment.

It is unclear how SoftBank intends to fund the commitment. The global tech investor has roughly $30 billion of cash on hand.

I do not see how SoftBank’s cash on hand, or its methods of funding the commitment, could have anything to do with this announcement. I like to imagine that Son’s investing team comes to him and is like “on reasonable assumptions we have $29.7 billion to invest” and he does a Nigel Tufnel voice and says “this commitment is $100 billion.”

Adderall

I would not necessarily want to assert that, when I was an investment banker, my colleagues smoked cigarettes and did cocaine. Nor would I ever say that cigarettes and cocaine are *cooler* than Zyn and

Vyvanse. I am just saying that if you select self-consciously intense young people and pay them a lot of money to work long hours while demanding that they remain upbeat and pay close attention to detail, some of them will, regrettably, take a lot of uppers. But which uppers? The Wall Street Journal checks in:

Images of Wall Street’s rank-and-file blowing cash on illegal drugs and nightlife are well known, with cocaine a favored drug through the 1980s, as portrayed in “The Wolf of Wall Street.”

These days, drugs are more a tool to optimize performance on the job. Especially for entry-level bankers at the analyst and associate level—who work long, tedious hours and fiercely compete for higher-level jobs with big pay days—prescriptions for stimulants such as Adderall and other ADHD drugs have become commonplace.

Jonah Frey, who worked as an investment banker in healthcare for Wells Fargo in San Francisco, said one colleague would sometimes snort lines of crushed up Adderall pills from his desk in the bullpen—the common area where junior bankers sit and work together. “Nobody blinked an eye,” he said.

Others use nicotine pouches such as Zyn to excess, or consume energy drinks. One banker who worked in Houston between 2017 and 2019 described his colleagues drinking “Monsterbombs”—an extra-strength 5-hour Energy shot dropped into a glass filled with Monster Energy, chugged in one go. The caffeine payload was the equivalent of nearly five cups of coffee at once.

Sounds gross.

Things happen

Sam Altman reckons with a growing threat to OpenAI: Elon Musk. Meta asks the government to block OpenAI’s switch to a for-profit. Bosses struggle to police workers’ use of AI. London Stock Exchange suffers biggest exodus since financial crisis. Party City Nears Bankruptcy Filing That Would Shut Down Stores. Wamco Clients, Staff Head for Exits as Ken Leech Heads to Court. Apollo CEO’s Flirtation With Politics Brings New Urgency to Succession Planning. Assad dispatched $250mn of Syria’s cash to Moscow. Forbes to open first private members’ club in Madrid. Why our martinis keep getting dirtier. “Just under a third of companies are inviting plus-ones to their holiday parties this season.” “One day the app might even tell fans when to go to the bathroom.” “This February marks 30 years since my rogue trading rocked the financial system." "We never thought we'd have to say this, but don't lick ice sculptures in public."

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- 1.
- 2.
- 3. This is approximate in two respects. First, the numbers: MicroStrategy's latest report this morning shows that it has 439,000 Bitcoins and 279.55 million "assumed diluted shares outstanding," including shares outstanding, shares underlying convertible bonds (all quite in-the-money) and employee compensation shares. At a stock price of $427 and a Bitcoin price of $106,000, both approximately plausible this morning, you get a market cap of $119.5 billion and a Bitcoin stash worth $46.5 billion. Second, the description: MicroStrategy is not literally *just* a pot of Bitcoins, but also has a software business attached to it.
- 4. By the way: "[MicroStrategy's] regular purchases are becoming expected, according to Benchmark analyst Mark Palmer, who has a 'buy' rating on the stock. 'As long as MicroStrategy shares trade at a premium to the company's net asset value, then the company's practice of issuing stock and using the proceeds to buy Bitcoin continues to be accretive,' Palmer said. 'As long as that approach remains accretive, we expect it to continue.'" So, one, yes, absolutely, as long as it's accretive it will continue. Two, sure, it is clearly accretive to net asset value per share. Three … I feel like the most basic proposition of finance is that it should be *dilutive* to the *premium* per share. If you sold infinite MicroStrategy shares to buy Bitcoin, surely eventually that would push down the price of MicroStrategy and push up the price of Bitcoin until the premium was zero? Or not!?
- 5. It is also selling billions of dollars of convertible bonds, which are arguably a form of leverage and arguably a way to monetize MicroStrategy's volatility, but which are *mostly*, if you believe the perpetual-motion-machine argument, another form of selling stock.
- 6. The natural trade is "long Bitcoin, short MicroStrategy, bet on convergence," but again the results have not been great.
- 7. I think "publicly traded corporation" here means "but not an exchange-traded fund": You might need the trappings of an operating corporation to get, for instance, index inclusion, institutional

investors, retirement-fund access, etc.

- 8. Actually when I was a banker it was not unheard-of for my colleagues to dip at their desks, but that was pre-Zyn.

Musk has until Monday to respond to SEC Twitter settlement, source says

reuters.com/legal/us-sec-has-extended-timeline-musk-respond-settlement-offer-twitter-probe-source-2024-12-13

Chris Prentice

Tesla CEO and X owner Elon Musk sits as U.S. President-elect Donald Trump meets with House Republicans on Capitol Hill in Washington, U.S., November 13, 2024. REUTERS/Brian Snyder/File Photo Purchase Licensing Rights, opens new tab

- SEC gave Musk days to respond to proposed settlement deal
- Agency may proceed with "Wells" notice if Musk doesn't respond
- Musk lawyer intimates development is politically motivated

NEW YORK, Dec 13 (Reuters) - The U.S. Securities and Exchange Commission has given Elon Musk until Monday to respond to an offer to resolve a probe into the billionaire's $44-billion takeover of Twitter in 2022, a source familiar with the matter told Reuters.

The development, which signals the investigation may be nearing a conclusion, is the latest salvo in a year-long public feud between the top U.S. markets regulator and the world's richest man.

Musk on Thursday posted on X a copy of a letter sent by his lawyer to SEC Chair Gary Gensler saying the agency had given Musk 48 hours to agree to pay a penalty to settle the probe or face civil charges, and demanding to know whether Gensler was personally behind the development.

The SEC has been investigating whether Musk broke securities laws in 2022 when he bought stock in Twitter, which Musk subsequently renamed X, as well as statements and filings he made in relation to the deal, previous disclosures show.

According to the source, the agency has been probing Musk's SEC filing disclosing his Twitter share purchases, which was at least 10 days late, and whether he intended to benefit from that delay, which some academics have estimated saved Musk over $140 million.
As part of the probe, the agency had asked a federal court to compel Musk to testify after the billionaire failed to show up to agreed depositions.

On Tuesday, the SEC sent Musk a settlement offer seeking a response in 48 hours, but extended the deadline to Monday after a request for more time, the source said, speaking on the condition of anonymity to discuss confidential enforcement matters.

A spokesperson with the SEC's public affairs office declined to comment. Musk's lawyer did not respond immediately to calls for comment.

TIGHT DEADLINE

The SEC commonly tries to resolve probes through settlements rather than suing a defendant, but the initial 48-hour deadline was unusually tight, legal experts told Reuters. If Musk fails to respond, the SEC will likely proceed through a "Wells" notification process, a formal step in which the SEC outlines potential charges and allows Musk to respond, the source said.

The Thursday letter Musk shared on X, which was signed by his attorney Alex Spiro, said the SEC has also reopened an investigation into Musk's brain-chip startup Neuralink.

Neuralink did not respond to requests for comment. The nature of that inquiry is not clear, but U.S. lawmakers and animal-rights advocates have pressed the SEC to scrutinize comments Musk has made about the safety of Neuralink's implants.
The SEC first sued Musk in 2018 during President-elect Donald Trump's first term, accusing him of breaking the law when he posted on social media that he had "funding secured" to take his electric carmaker Tesla (TSLA.O) , opens new tab private when the SEC found he had not.
Despite ultimately settling and agreeing to an unusual arrangement requiring some of his posts to be vetted by an attorney, Musk subsequently disputed the SEC's findings in that case and has over the years accused the agency of harassment - claims Spiro reiterated in his Thursday letter.
A major backer of Trump, Musk in the new administration will co-lead the new Department of Government Efficiency tasked with cutting government costs, potentially giving him some power over the SEC's workings. In his letter, Spiro intimated the SEC's bid to advance the probe may have been politically motivated.

"We demand to know who directed these actions - whether it was you or the White House," Spiro wrote in the letter.

But the source argued that failing to pursue what the SEC believes is a securities violation by Musk would in fact be the political move.

Reporting by Chris Prentice; Editing by Michelle Price, Megan Davies, Rod Nickel and Nick Zieminski

Chris Prentice
Thomson Reuters

SEC Issues $6.75M Fine Against Financial Firm Led by Trump's Choice to Lead Commerce Dept.

law.com/nationallawjournal/2024/12/13/sec-issues-675m-fine-against-financial-firm-led-by-trumps-choice-to-lead-commerce-dept

Alyssa Aquino

The U.S. Securities and Exchange Commission levied a $6.75 million fine against Cantor Fitzgerald, the global financial services firm helmed by President-elect Donald Trump's pick to lead the U.S. Department of Commerce.

The SEC said in its Thursday enforcement order thatthe New York-headquartered Cantor caused two special purpose acquisition companies, widely referred to as blank check companies, to mislead investors on pending acquisitions in the lead-up to going public.

Although Cantor employees already entered into "substantive discussions" for the SPACs—CF Finance Acquisition Corp. II and CF Acquisition Corp. V—to acquire View Inc. and Satellogic Inc., the SPACs denied the talks in their filings to the SEC, the agency alleged.

The agency claimed the disclosure issues violated antifraud and proxy provisions of federal securities law.

"Cantor Fitzgerald misled investors about a critical investment consideration," Sanjay Wadhwa, the acting director of the SEC's enforcement division, said in a Thursday statement. "This enforcement action reflects the straightforward proposition that any disclosures about substantive discussions with potential targets must be materially accurate."

CF Finance Acquisition Corp. II and CF Acquisition Corp. V collectively raised $750 million from their public offerings, and both wound up acquiring the companies with which they had already engaged in pre-initial public offering discussions. View, which produces a smart glass that changes opacity in response to changes in the light, later filed for Ch. 11 bankruptcy.

In agreeing to pay the fine, Cantor neither admitted to nor denied the allegations, according to the agency's enforcement order.

"No investor was ever harmed by the alleged issues described in the order," a Cantor spokesperson said in a Friday statement. "We are pleased to have concluded this matter by mutual agreement with the SEC."

Commissioner Mark Uyeda, however, disagreed with the commission's decision to press charges against Cantor, saying the disclosure issues were immaterial.

In his published dissent, Uyeda stressed the differences between SPACs, which are created specifically to acquire an operating company, and operating companies, for which "any merger activity … is rare and an extraordinary corporate event."

"In bringing these charges, the Orders appear to treat the disclosure of potential merger discussions and history of merger negotiations by the SPAC respondents in the same context as if the disclosure had been made by an operating company," Uyeda said.

The charges come one month after Trump announced plans to nominate Cantor CEO Howard Lutnick to lead Commerce, the federal department tasked with implementing the country's trade and tariff policies. Lutnick currently co-chairs the president-elect's transition team.

A representative from Trump's transition team didn't respond to a Friday request for comment.

$663 Billion in Cash Assets Have Gone Poof at the Largest U.S. Banks

wallstreetonparade.com/2024/12/663-billion-in-cash-assets-have-gone-poof-at-the-largest-u-s-banks

By Pam Martens and Russ Martens: December 16, 2024 ~

According to the December 6 release of Federal Reserve H.8 data, cash assets at the 25 largest U.S. banks have dropped by a stunning $663 billion from their peak levels on December 15, 2021. (See chart above, taken from the St. Louis Fed's FRED graph, which is updated on an ongoing basis. Put your cursor on the FRED chart line here to get the weekly dollar figures.)

Notice also on the chart that cash levels at the largest U.S. banks were a sea of calm for more than two decades prior to the financial crash of 2008, but since that time cash assets have displayed wild gyrations, rising sharply then precipitously plunging.

It should provide no comfort to Americans that the wild gyrations on the chart above are a product of the central bank of the United States (the "Fed") inserting itself, time and again since December 2007, into bailing out the trading houses on Wall Street – which since the repeal of the Glass-Steagall Act in 1999 are in drag as federally-insured banks.

The Fed's first giant money funnel began secretly in December 2007 and lasted through at least July 2010. The Fed battled in court for more than two years to keep the names of the banks and the $16 trillion they borrowed a secret from the American people. (See chart below from the GAO audit.) If you add in the dollar swap lines that the Fed made available to foreign central banks during the financial crisis, the Fed's money funnel comes to an even more staggering $29 trillion.

On July 21, 2011 the investigative arm of Congress, the Government Accountability Office (GAO), released the first-ever government audit of the Federal Reserve. The audit came about as a result of the determined efforts of Senator Bernie Sanders, who was successful in adding an amendment to the Dodd-Frank financial reform legislation of 2010 that mandated a top-to-bottom audit of how much the Fed had spent on bailing out the megabanks on Wall Street.

Sanders issued a statement saying this on the day the findings were released:

"The first top-to-bottom audit of the Federal Reserve uncovered eye-popping new details about how the U.S. provided a whopping $16 trillion in secret loans to bail out American and foreign banks and businesses during the worst economic crisis since the Great Depression…The Fed outsourced virtually all of the operations of their emergency lending programs to private contractors like JP Morgan Chase, Morgan Stanley, and Wells Fargo. The same firms also received trillions of dollars in Fed loans at near-zero interest rates. Altogether, some two-thirds of the contracts that the Fed awarded to manage its emergency lending programs were no-bid contracts. Morgan Stanley was given the largest no-bid contract worth $108.4 million to help manage the Fed bailout of AIG."

The Fed's bailout of the giant insurance company, AIG, was, in effect, a thinly disguised bailout of the Wall Street megabanks, which received 100 cents on the dollar from AIG for the derivative trades (credit default swaps) that AIG owed the banks and would not otherwise have been able to pay.

The reality is that the Federal Reserve's 2007-2010 bailout was conceived by Wall Street, run by Wall Street for its own benefit, and controlled behind a dark curtain at the Federal Reserve Bank of New York – which is, *literally*, owned by the megabanks on Wall Street. (See These Are the Banks that Own the New York Fed and Its Money Button.)

A very similar scenario played out during the repo crisis in the last quarter of 2019 when the Fed pumped more trillions of dollars into Wall Street megabanks. That crisis transitioned into the COVID-19 pandemic crisis of 2020 and beyond, which resurrected the emergency loan programs of 2008 by the Fed plus a bunch of new ones. Then there was the Fed's emergency response to the 2023 spring banking panic that saw the second, third and fourth largest bank failures in U.S. history plus a run on uninsured deposits across the banking landscape. (See Former New York Fed Pres Bill Dudley Calls This the First Banking Crisis Since 2008; Charts Show It's the Third.)

The Fed defines cash assets as "vault cash, cash items in process of collection, balances due from depository institutions, and balances due from Federal Reserve Banks." As the chart above shows, cash assets at the 25 largest banks have plummeted from $2.163 trillion on December 15, 2021 to $1.5 trillion on December 4 of this year – a plunge of $663 billion.

Where is all of this cash going? Since a major part of what these federally-insured megabanks do today is trading, we suspect – but can't say for sure – that the cash is being used in part to post cash collateral on the tens of trillions of dollars in derivative trades held by a handful of these megabanks.

Let's look at another strange era of cash assets going poof at the megabanks. On April 8, 2015, cash assets stood at $1.398 trillion at the 25 largest U.S. banks according to Fed data at that time. By September 18, 2019, cash assets had plunged to $759 billion – a decline of 45.7 percent.

This next chart shows how the Fed responded to this cash crisis in the fall of 2019, making trillions of dollars in emergency revolving repo loans to U.S. and foreign banks.

When the names of the banks that received these trillions of dollars in cheap loans from the Fed were finally revealed by the Fed two years later, there was a complete mainstream media news blackout. (Read our report: There's a News Blackout on the Fed's Naming of the Banks that Got Its Emergency Repo Loans; Some Journalists Appear to Be Under Gag Orders.)

The 2008 financial collapse was the worst economic crisis in the U.S. since the Great Depression of the 1930s. It took six years for jobs to recover; more than 10 million Americans fell into poverty; and more than 6 million families lost their homes to foreclosure. And yet, Congress has failed to reform the Fed under both Democrat and Republican leadership in the White House.

GAO Data on Fed's Emergency Lending Programs During 2007-2010 Financial Crisis

As AI-Generated Fraud Rises, Financial Companies Face a Long Cybersecurity Battle

law.com/therecorder/2024/12/12/as-ai-generated-fraud-rises-financial-companies-face-a-long-cybersecurity-battle

James Palmer

The use of generative artificial intelligence to create highly realistic synthetic video, audio, photos or text to circumvent security measures installed by financial services is on the rise and threatens to cost companies billions of dollars, according to an alert recently issued by the U.S. Department of the Treasury's Financial Crimes Enforcement Network.

So-called deepfakes employ generative AI tools to manipulate an image of a person or a recording of his or her voice to misrepresent the person to do or say something that was not actually said or done.

In one notable instance, fraudsters used deepfake technology to dupe an employee at a global financial firm in Hong Kong to dole out $25 million after appearing in a conference call as the company’s chief executive officer.

Deepfake scams highlight one of the potential risks of generative AI, marking the start of a long battle for financial companies as they embark on a perilous journey seeking to strengthen their cybersecurity systems to combat rapidly evolving sophisticated methods of fraud.

According to the Deloitte Center for Financial Services, generative AI email fraud losses alone could total as much as $11.5 billion by 2027.

However, experts warn that time frame is a conservative estimate.

“The fraudsters will hit that target on time or even faster,” said Satish Lalchand, a forensic analytics leader at Deloitte who co-authored the report. “This is moving at fast speeds because gen AI increases the volume and velocity of fraud."

Larger financial services companies are tackling the problem by developing their own AI programs to reinforce security on their computer systems.

Mastercard said it has spent $8 billion to bolster its cybersecurity over the last six years and estimates its safety net stopped $20 billion in fraud in 2023.

In February, the global payments company announced that its latest generative AI technology would scan 1 trillion data points in real time to determine if a transaction is legitimate.

“With generative AI we are transforming the speed and accuracy of our anti-fraud solutions, deflecting the efforts of criminals, and protecting banks and their customers,” Mastercard President of Cyber and Intelligence Ajay Bhalla said in a statement. “Supercharging our algorithm will improve our ability to anticipate the next potential fraudulent event, instilling trust into every interaction.”

In addition, in September, Mastercard purchased the threat intelligence company Recorded Future from Insight Partners for $2.65 billion to further strengthen its shield against fraud.

But many financial firms are neither equipped nor have the resources to defend against advanced technological threats, according to a Treasury Department report, which said, “Existing risk management frameworks may not be adequate to cover emerging AI technologies.”

The report added that this may force many financial institutions to rely on the assistance of a third-party vendor, potentially compromising their data, as well as hindering their ability to ensure transparency and oversight.

However, Lalchand, the Deloitte analyst who specializes in AI strategy, development and ethics, said that smaller and midsize financial companies could mitigate these risks by seeking reputable companies when shopping for cybersecurity software, testing the product to see if it meets their needs and ensure the programs remain updated after installing them.

Still, companies without the means to budget for AI programs to defend against fraud might be forced to consolidate with larger companies in order to protect their assets, according to the Treasury Department.

The American Bankers Association aims to close that gap by increasing the sharing of fraud information among financial firms. The organization began testing an information-sharing exchange network to help financial institutions share their fraud data earlier this year.

In the meantime, smaller and midsized firms can use their employees as a first line of defense to guard against AI-assisted fraud.

A report by attorneys at the New York-based firm Davis Wright Tremaine advises financial firms and their employees to pay close attention to signs indicating the illicit use of AI tools, including “inconsistencies in identity documents, customers declining multi-factor authentication or using a third-party webcam plugin during a live verification check, and reverse image searches matching the customer's photo to a gallery of AI-generated faces.”

Max Bonici, who co-authored the report, says the majority of financial services workers today are accustomed to using digital technology and capable of detecting anomalies.

“Most people are digitally savvy—the technology is readily available to them,” says Bonici, who counsels financial services institutions. “They’re likely to pick up on weird things that don’t look right, like the pupil of an eye being jagged rather than round.”

Lalchand said financial services employees can also take measures to reinforce their firm’s cybersecurity by increasing what he refers to as friction during transactions by reaching out to multiple sources to confirm a payment request is genuine before signing off on it.

“The most important thing to remember is do not get into a comfort zone,” Lalchand said. “Everyone has a target on their back.”

Securities Law News

December 13, 2024, 7:17 AM PST

Trump’s Crypto Project Is Buying Niche Tokens Worth Millions

By Muyao Shen

- World Liberty Financial bought Ether, Aave and Chainlink
- The tokens are valued at around $14 million, Nansen estimates

Bloomberg Law News 2024-12-16T10:03:28787340882-05:00

Trump’s Crypto Project Is Buying Niche Tokens Worth Millions

By Muyao Shen2024-12-13T10:17:27073-05:00

- World Liberty Financial bought Ether, Aave and Chainlink
- The tokens are valued at around $14 million, Nansen estimates

Donald Trump’s crypto project, World Liberty Financial, appears to be buying specialized digital tokens worth millions of dollars as speculation increases that the decentralized finance lending platform is moving closer to becoming operational.

Digital wallet belonging to the project have bought 2,731 Ether, 4,043 AAVE and 78,387 LINK tokens since Dec. 11, according to data compiled by blockchain data firm Nansen. A representative of World Liberty Financial did not immediately respond to a request for comment.

World Liberty Financial was unveiled in September as a DeFi project, a type of crypto projects that mimic financial activities like lending and trading without any intermediaries. The Trump family, including President-elect Donald Trump and his sons Donald Jr. and Eric Trump, have been actively promoting the project through social media and public appearances. The project’s initial token sale struggled to meet its goals until controversial crypto entrepreneur Justin Sun invested $30 million. World Liberty Financial’s founders, Chase Herro and Zachary Folkman, were not well-known in the crypto industry.

“To me, it is a way to gain additional trust or a way to boost the project by shedding lights on these assets as the project will likely do well if these assets do,” said Nicolai Søndergaard, research analyst at Nansen. The firm appears to have bought around $10.4 million in Ether, $1.4 million of AAVE and $2.2 million in LINK, Nansen said.

LINK has jumped around 28% to $28, while AAVE increased about 17% to $52 since Tuesday, according to data compiled by Bloomberg. Ether, the second-largest token by market value after Bitcoin, is up about 8% to $3,932 during the same period.

AaveDAO, the decentralized autonomous organization that governs the Aave project, on Thursday passed a proposal made by World Liberty Financial to allow the project to launch a version of Aave's protocols. According to World Liberty Financial's proposal, the project will initially support the lending and borrowing of Ether, wrapped Bitcoin; and USDC and USDT stablecoins. In return, AaveDAO will receive 20% of the fees generated by World Liberty Financial using Aave, as well as 7% of the total supply of World Liberty's WLFI tokens. World Liberty Financial also announced in November that it will use Chainlink for blockchain-based data.

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Dave Liedtka

US case against Gautam Adani appears strong but extradition unlikely, experts say

reuters.com/legal/us-case-against-indias-gautam-adani-appears-strong-extradition-unlikely-experts-2024-12-16

Luc Cohen

Item 1 of 4 Indian billionaire Gautam Adani attends the 51st Gems and Jewellery Awards in Jaipur, India, November 30, 2024. REUTERS/Stringer/File Photo

[1/4]Indian billionaire Gautam Adani attends the 51st Gems and Jewellery Awards in Jaipur, India, November 30, 2024. REUTERS/Stringer/File Photo Purchase Licensing Rights, opens new tab

- Billionaire Gautam Adani accused of misleading U.S. investors
- India says no extradition request has been made
- US prosecutor says case is important for market integrity

NEW YORK, Dec 16 (Reuters) - The U.S. fraud case against Indian billionaire Gautam Adani appears to be backed by documents that will help prosecutors make a strong case, legal experts said, but the tycoon is unlikely to be extradited to stand trial anytime soon.
Federal prosecutors in Brooklyn last month unsealed an indictment accusing Adani of bribing Indian officials to convince them to buy electricity produced by Adani Green Energy (ADNA.NS), opens new tab, a subsidiary of his Adani Group conglomerate, and then misleading U.S. investors by providing reassuring information about the company's anti-corruption practices.

Adani, his nephew Sagar Adani, and another Adani Group executive were charged with securities fraud and conspiracy. Five people affiliated with Azure Power Global (AZREF.PK), opens new tab, a formerly-U.S.-listed company also allegedly involved, were charged with conspiracy to violate the Foreign Corrupt Practices Act (FCPA).
Azure has said it had cooperated with the investigation and that those charged were no longer with the company. Adani Group has called the allegations "baseless" and vowed to seek "all possible legal recourse."

Gautam Adani is not in custody. He has made at least two public appearances in India since the indictment, including at a Dec. 9 event also attended by Prime Minister Narendra Modi.
According to the indictment, prosecutors found ledgers of the alleged payments on Sagar Adani's cellular phone, which they called "bribe notes." Prosecutors also said Gautam Adani emailed himself a copy of a search warrant and grand jury subpoena the FBI had served on his nephew on March 17, 2023.

Those electronic records could be important pieces of evidence for prosecutors to try to prove that Sagar Adani and Gautam Adani knew they misled investors by failing to disclose the investigation and insisting they had strong anti-corruption practices when in fact they had paid bribes, experts said.

"The allegations include references to corroborating material, and that always provides for a stronger case," said Stephen Reynolds, a former federal prosecutor and current partner at law firm Day Pitney.

To be sure, prosecutors may face challenges. Gautam Adani could argue that he was not personally involved in crafting the statements the company made to investors about its anti-bribery practices, said Paul Tuchmann, a former federal prosecutor in Brooklyn and now a partner at law firm Wiggin & Dana.

Prosecutors may also struggle to secure live testimony from witnesses in India because the process could require assistance from New Delhi, and the government may be reluctant to facilitate testimony that could paint Indian officials in an unfavorable light, said Mark Cohen, a former federal prosecutor in Brooklyn and current partner at law firm Cohen & Gresser.

India's foreign ministry on Friday referred to a Nov. 29 statement in which it said it had not received any request on the case from Washington, and called the case a matter between private firms and the U.S. Justice Department.
The U.S. Justice Department declined to comment on whether the United States had asked India to extradite Gautam Adani.

'PLAY BY THE RULES'

Both Adani Group and Adani himself have recently made public statements emphasizing that the conglomerate's executives had not been charged with violating the FCPA.
Conspiracy to violate the FCPA is punishable by up to five years behind bars. The fraud charges Gautam Adani and the other Adani Group defendants face are each punishable by up to 20 years in prison.

Drew Rolle, the deputy chief of the business and securities fraud section at the Brooklyn U.S. Attorney's office, said his office had a responsibility to protect the integrity of U.S. capital markets.

The office has secured a number of convictions in foreign bribery cases with U.S. connections. In August, jurors found Mozambique's former finance minister guilty on fraud and money laundering conspiracy charges for embezzling loan proceeds he had told banks were destined for economic development projects.
Rolle said honest companies are harmed when firms like Adani's allegedly mislead investors.

"It's not only a bribery case, it's an important securities enforcement case," he said at a Dec. 6 conference in New York hosted by the Practicing Law Institute. "If you're going to access our capital markets, you're going to play by the rules."

Reporting by Luc Cohen in New York Additional reporting by Aditya Kalra and Shivam Patel in New Delhi Editing by Nick Zieminski

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Del. Chancellor Positions Musk Pay Fight For Likely Appeal

By **Jeff Montgomery**

Law360 (December 13, 2024, 8:34 PM EST) -- Delaware's chancellor positioned for likely appeals late Friday final pieces of a landmark six-year battle over Tesla Inc.'s attempt to award CEO Elon Musk a more than $55 billion, 10-year pay package, in a trio of orders that also directed the company to pay in cash or post sufficient bond for a $345 million stockholder attorney fee.

Chancellor Kathaleen St. J. McCormick additionally rejected a late entry into the Court of Chancery derivative suit fray by a special committee of the electric car company board, and explicitly shunned company claims that stockholders ratified the pay package in June after the company moved to Texas and, for future actions, beyond the reach of Delaware's General Corporation Law.

"The Tesla Inc. special committee has no right to intervene" under court rules, the chancellor wrote, "because the existing parties adequately represent any interest the special committee might have in this action."

In addition, the chancellor denied most bids to intervene in the case by an individual Tesla stockholder and a group of Florida Tesla investors, while permitting their request to go forward for the limited purposes of an expected appeal to Delaware's Supreme Court disputing the adequacy of the stockholder whose suit in 2018 touched off the long fight.

"The stockholders' motions to intervene are granted for the limited purpose of allowing them to appeal my Dec. 2 letter opinion denying them standing" and rejecting challenges to stockholder Richard Tornetta's adequacy to represent the company in a derivative suit, Chancellor McCormick said.

Members of the Florida stockholder group never formally moved to intervene, the chancellor noted. An individual stockholder intervenor, Amy Steffens, made a first submission in June and formally sought intervention on Tuesday.

"The stockholders should have known about the litigation long before their initial filings. This well-publicized case had been pending for six years. Tesla had disclosed the existence of the lawsuit in each annual proxy statement during that period," the chancellor wrote. "And the court had issued its posttrial decision six months before. The delay was not excusable."

Packaged up by the decisions was the chancellor's 200-page ruling in June that struck down Musk's proposed nearly $56 billion compensation package. The court found that the pay plan was undone by disclosure failures, murky terms, conflicted director architects and Musk's own hand in pushing the decision through, justifying an order to rescind it.

The plan went to a weeklong trial in November 2022. It included 12 tranches, or performance milestones, that Musk had to meet before qualifying for portions of the total.

Soon after Tesla's plan was put on blocks, the company launched a successful call for a stockholder vote on the Texas move, followed by a new stockholder approval that the Delaware court nevertheless refused to accept as cause for reversal.

Tornetta, the original derivative plaintiff, "would be prejudiced were the court to allow the stockholders to intervene for broader purposes," the chancellor wrote Friday in rejecting proposed new parties. "Allowing the stockholders to intervene to relitigate this action would thwart the goal of finality, which serves the administration of justice, to the plaintiff's detriment."

Class derivative counsel Bernstein Litowitz Berger & Grossmann LLP, Andrews & Springer LLC and Friedman Oster & Tejtel PLLC were awarded what the court described as "fair and reasonable" fees and expenses, in cash.

Tesla will be obliged to post a bond or bonds otherwise, the ruling said, covering the total, plus post-judgment interest at the state's official rate of about 5% compounded quarterly, for one year. Additional bond coverage must be posted if continued litigation exceeds the initial amount.

Counsel for Tornetta and representatives of Tesla and its directors could not immediately be reached for comment Friday.

Tornetta is represented by Jeroen van Kwawegen, Gregory V. Varallo, Glenn R. McGillivray and Margaret Sanborn-Lowing of Bernstein Litowitz Berger & Grossmann LLP, Jeremy S. Friedman, Spencer M. Oster and David F.E. Tejtel of Friedman Oster & Tejtel PLLC and Peter B. Andrews, Craig J. Springer, David M. Sborz and Jackson E. Warren of Andrews & Springer LLC.

Tesla directors Musk, Robyn M. Denholm, Antonio J. Gracias, James Murdoch, Linda Johnson Rice, Brad W. Buss and Ira Ehrenpreis are represented by David E. Ross, Garrett B. Moritz and Thomas C. Mandracchia of Ross Aronstam & Moritz LLP, and Evan R. Chesler, Daniel Slifkin, Vanessa A. Lavely and Justin C. Clarke of Cravath Swaine & Moore LLP.

Nominal defendant Tesla Inc. is represented by John L. Reed, Ronald N. Brown, III, Caleb G. Johnson, Daniel P. Klusman of DLA Piper, William M. Lafferty, Susan W. Waesco, Ryan D. Stottmann, Miranda N. Gilbert and Jacob M. Perrone of Morris Nichols Arsht & Tunnell LLP, Rudolf Koch, John D. Hendershot, Kevin M. Gallagher and Andrew L. Milam of Richards Layton & Finger PA, Catherine A. Gaul and Randall J. Teti of Ashby & Geddes PA, and Brian T. Frawley and Matthew A. Schwartz of Sullivan & Cromwell LLP.

The case is Tornetta et al. v. Musk et al., case number 2018-0408, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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Medical Device Co. Brass Hid SPAC's True Value, Suit Says

By **Sydney Price**

Law360 (December 13, 2024, 9:32 PM EST) -- The executives and directors of a healthcare holding company have been hit with a shareholder derivative suit in Colorado federal court alleging the company hid the financial and regulatory risks it faced to inflate its value after merging with a blank check company.

According to Jose Lazo's complaint, filed Thursday, medical technology company SeaStar Medical Inc., which develops hyperinflammation treatments, announced in April 2022 that it would merge with special purpose acquisition company LMF Acquisition Opportunities Inc.

Before shareholders approved the deal last October, the companies told investors the combined company, which would be known as SeaStar Medical Holding Corp., would have an enterprise value of $86 million postmerger and that SeaStar intended to submit an application for its hyperinflammation treatment device for approval with the U.S. Food and Drug Administration under the Humanitarian Device Exemption, which allows medical devices to be marketed without requiring evidence of effectiveness, according to the complaint.

However, the suit alleges SeaStar overstated its postmerger business prospects because its insiders failed to correct its failing financial controls.

In addition to nominal defendant SeaStar, the suit's individual defendants include SeaStar CEO Eric Schlorff, former Vice President of Finance Caryl Baron and several company directors.

The suit's relevant period begins Oct. 31, 2022, the day SeaStar announced the newly combined company was trading on the Nasdaq stock exchange. Shareholders had approved the merger about 13 days prior, according to the suit.

For the next several months, SeaStar's executives and directors downplayed the severity and scope of the deficiencies in its financial controls, the suit claims.

According to the suit, the truth began to emerge on May 9, 2023, the day SeaStar told investors the FDA had not approved its HDE application and that SeaStar had been in correspondence with the FDA regarding the application for at least 10 months.

On this news, SeaStar's shares fell 77 cents each, or nearly 40%, to close at $1.17 per share on May 10, 2023, according to the suit.

The suit accuses the defendants of breaching their fiduciary duties, wasting corporate assets, being unjustly enriched, abuse of control, gross mismanagement and violating the Exchange Act.

The complaint also notes that SeaStar is facing a **securities class action** in Colorado federal court over the company's alleged misstatements and omissions regarding the application.

Counsel for Lazo and a representative of SeaStar did not immediately respond to requests for comment.

Lazo is represented by Timothy Brown of The Brown Law Firm PC.

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

The case is Lazo v. Schlorff et al., case number 1:24-cv-03444, U.S. District Court for the District of Colorado.

--Editing by Drashti Mehta.

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Pharma Co. Brass Face Investor Suit Over Drug Trial Probe

By **Emilie Ruscoe**

Law360 (December 13, 2024, 7:53 PM EST) -- Officers and directors of cancer treatment developer MacroGenics Inc. have been hit with a shareholder derivative action alleging they breached their fiduciary duties after the company announced three study participant deaths were being probed for a potential connection to the company's therapies.

In a **complaint filed Wednesday** in Maryland federal court, MacroGenics investor Chad Cottle claimed that between March 7 and May 9 this year, investors were in the dark about critical details of the safety profile for one of the company's leading treatment candidates.

Cottle described MacroGenics as focused on creating antibody-based cancer treatments, with products in development that either target tumor-associated antigens or so-called immune checkpoint molecules, two of which have received approval from the U.S. Food and Drug Administration.

Its lead development program is for a drug colloquially dubbed "vobra duo" that targets an immune regulator protein expressed by several tumor types, and in late 2023, the company started a study of the drug's use to treat patients with an advanced form of prostate cancer, Cottle said.

In May, according to Cottle, the company disclosed it had observed an adverse event at or near rates of 100% for two different dosages of the drug, and it was seeing severe or medically significant grade 3 adverse events at rates of over 50% for both of those dosages.

MacroGenics also told investors in May that five fatalities had occurred among study participants, three of which were being investigated for possible links to the study.

That announcement precipitated a sharp decline in trading prices for MacroGenics shares, with the closing price falling from nearly $15 on the day of the news to $3.31 the next day, May 10, a drop of 77.4%.

Cottle claimed MacroGenics' brass failed to disclose the drug candidate's full safety profile and failed to put adequate internal controls in place.

Without access to the information necessary to assess the company's safety profile, Cottle alleged, investors were materially misled about its business prospects during the relevant period, and MacroGenics' stock price was artificially inflated.

The alleged misrepresentations also opened the company to liability in a proposed investor class action in the same federal district court, the shareholder said, asserting that in connection with the claimed breaches of fiduciary duty, MacroGenics will have to spend "many millions of dollars" on damage control in the form of internal investigations and internal control reforms, among other things.

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

Cottle is represented by Timothy Brown of the Brown Law Firm PC.

Counsel information for the defendants wasn't available Friday.

The case is Cottle v. MacroGenics Inc et al., case number 8:24-cv-03578, in the U.S. District Court for the District of Maryland.

--Editing by Lakshna Mehta.

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Insurer Argo Beats Investor Suit Over Reserve Estimate Risks

By **Katryna Perera**

Law360 (December 13, 2024, 7:53 PM EST) -- A New York federal judge has dismissed a proposed investor class action against Argo Group International Holdings Ltd. and its executives, finding that the insurance firm adequately disclosed the risks and uncertainties in its reserve estimations and that a 2017 review of underwriting guidelines did not contradict its reserve management statements.

U.S. District Judge Lewis A. Kaplan issued an **opinion** on Thursday granting Argo's dismissal motion, saying the amended complaint failed to state a claim.

According to the opinion, the amended complaint challenged 18 statements Argo and its executives made during the proposed class period as false or misleading. The statements relate to Argo's reserves for its construction defect claims, the company's financial performance and statements of corporate optimism, the opinion said.

Judge Kaplan noted on Thursday that out of the 18 statements challenged in the complaint, there are actually only two statements that refer to Argo's reserves, and at the outset, the judge said statements by a corporation about its reserves are generally considered opinions.

The crux of the suit's allegations relates to the creation of a task force in 2017 intended to examine Argo's construction underwriting guidelines, the opinion said. Lead plaintiffs the Police & Fire Retirement System City of Detroit and Oklahoma Law Enforcement Retirement System alleged that the mere existence of the task force was an admission that there were "long-known" issues with Argo's construction unit.

"From this premise, lead plaintiffs contend in essence that defendants did not hold the beliefs about Argo's reserves that they professed and that they failed to disclose known problems about the company's construction segment, thus making their statements concerning Argo's reserves misleading," the opinion said.

However, Judge Kaplan said Thursday, "it is a far stretch" to characterize the creation of the task force as an admission by the defendants that they knew there were problems with Argo's construction defect reserves since the task force was not formed to analyze the sufficiency of the company's existing construction defect reserves but to strengthen Argo's construction underwriting guidelines and restrictions.

"Lead plaintiffs' argument rests on a logical fallacy: The fact that defendants acted to tighten underwriting guidelines and exposures going forward does not show that their reserves for past underwritten policies were inadequate, let alone that they knew or believed they were," the opinion said.

"Indeed, the [amended complaint] alleges no facts showing or even suggesting that Argo's 2017 task force concluded that construction defect reserves for its 2011 to 2017 policies should have been increased at that time or even that it reviewed such an issue," the opinion further stated.

The judge also said the complaint's confidential witness allegations do nothing to save it.

"The majority of the confidential witnesses — and many of the grievances they raise — have nothing to do with the adequacy of Argo's construction defect reserves from 2011 to 2017," the opinion said.

Taking all this into account, Judge Kaplan said the lead plaintiff's argument amounts to nothing more than allegations about what the defendants should have known, which is inactionable.

Judge Kaplan also found that the amended complaint fails to adequately plead that identified statements about Argo's financial growth and performance were false and that it challenges several statements of general corporate optimism.

Additionally, the judge found that the plaintiffs failed to adequately plead scienter for any of the individual defendants since the amended complaint does not establish a motive or opportunity to commit fraud.

The Police & Fire Retirement System City of Detroit launched the action in 2022, **claiming** that over a six-month period that year, trading prices for Argo shares declined by more than 60% as the company acknowledged a negative impact on its reserves.

Members of the proposed class would have included those who purchased Argo shares between Feb. 13, 2018, when the company touted its "prudent reserving philosophy," and Aug. 9, 2022, the day after the company announced it had entered a loss portfolio transfer agreement with another company.

According to the Detroit fund, during the class period, the company's representatives claimed it was carefully considering its reserves strategy when, in fact, "Argo's reserves were wholly inadequate and its underwriting standards were not prudent as was represented."

The investor also claimed that the company had "dramatically" changed some of its underwriting policies dating back to as early as 2018 and that certain underwriting policies were "far riskier than investors understood."

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

The funds are represented by Karin Elizabeth Fisch, Daniel Lawrence Berger and Mica A. Cocco of Grant & Eisenhofer PA.

Argo and its executives are represented by Jay B. Kasner, Alexander C. Drylewski, Tansy Woan and Sarah E. Danehy of Skadden Arps Slate Meagher & Flom LLP.

The case is The Police & Fire Retirement System City of Detroit v. Argo Group International Holdings Ltd et al., case number 1:22-cv-08971, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Emilie Ruscoe. Editing by Rich Mills.

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$15M Deal To End Hemisphere Media Merger Suit OK'd In Del.

By **Jeff Montgomery**

Law360 (December 13, 2024, 7:32 PM EST) -- Former public stockholders of Hemisphere Media Group Inc. secured a $15 million Delaware Court of Chancery settlement Friday for claims that former controlling investor Searchlight Capital Partners LP took the media business private in a two-step deal that undervalued the company's remaining shares.

Vice Chancellor J. Travis Laster cleared both the settlement and a $2.94 million share for attorney fees and expenses, about 19 months after the start of the case, which never reached trial.

According to the complaint, Searchlight acquired Hemisphere at a $7-per-share price that was 12.5% lower than its initial offer and nearly 50% below its 52-week high stock price despite assignment of a purportedly independent board special committee to the negotiations.

The stockholders also accused Searchlight of lining up a concurrent, undervalued sale of Hemisphere affiliate Pantaya LLC — a Spanish-language streaming platform — to TelevisaUnivision Inc., in which Searchlight also had a significant investment and therefore an alleged incentive to see Pantaya sold for less than its fair value. Weeks before the announcement of the $7 per share Hemisphere deal and $115 million Pantaya transaction, the complaint said, Viacom offered $200 million for the same assets.

Named in the suit, in addition to Searchlight and its acquisition entity, were seven former Hemisphere directors, three of whom were affiliated with Searchlight and included with Searchlight as "controller defendants." Four of the individuals named were dismissed before the settlement.

During a bench ruling on a motion to dismiss the case in January, Vice Chancellor Laster pointed to "a grab bag of issues" before the court.

"The first is whether this is a controller transaction at all. The defendants say the transaction should be dismissed because it's not reasonably inferable that Searchlight was a controller for purposes of the transaction," the vice chancellor said. "I'm rejecting that argument."

Financial adviser Moelis & Co., the complaint said, was "deeply conflicted" at the time of its retention, having been involved in relationships with "numerous" Searchlight affiliated entities.

During dismissal arguments in January, attorneys for Searchlight and others named in the suit said efforts were made initially to sell the entire company, without attracting a bidder.

Hobbling the sale effort, the complaint said, was the pairing of a cable network broadcasting business described as stable and mature, without a growing cash flow, and a streaming business that was losing cash.

Although Viacom reportedly indicated an interest in a $200 million deal for Pantaya, ultimately, TelevisaUnivision paid $115 million plus $10 million for radio assets.

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

The stockholders are represented by Michael J. Barry, Christine M. Mackintosh and Edward M. Lilly of Grant & Eisenhofer PA, Kimberly A. Evans, Robert Erikson, Joel Fleming and Amanda Crawford of

Block & Leviton LLP, James S. Notis and Meagan A. Farmer of Gardy & Notis LLP, and Lee Squitieri of Squitieri & Fearon LLP.

Searchlight Capital Partners LP and related parties are represented by John D. Hendershot, Matthew D. Perri, Andrew Milam and Kevin M. Kidwell of Richards Layton & Finger PA and Blair Connelly, Zachary L. Rowen, Colleen C. Smith and Ryan A. Walsh of Latham & Watkins LLP.

Gato Investments LP, Gemini Latin Holdings LLC, Peter M. Kern and Leo Hindery Jr. are represented by T. Brad Davey and Abraham C. Schneider of Potter Anderson & Corroon LLP and Mark P. Gimbel and Benjamin T. Klein of Covington & Burling LLP.

Hemisphere Media Group Inc., Searchlight Capital Partners LP, Eric Zinterhofer, Adam Reiss, Alan J. Sokol and James M. McNamara are represented by John D. Hendershot, Matthew D. Perry, Andrew L. Milam and Kevin M. Kidwell of Richards Layton & Finger PA and Blair Connelly, Zachery L. Rowen, Coleen C. Smith and Ryan A. Walsh of Latham & Watkins LLP.

The case is Robert Garfield et al. v. Searchlight Capital Partners LP et al., case number 2023-0555, in the Court of Chancery of the State of Delaware.

--Editing by Alex Hubbard.

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Labaton Keller To Lead ZoomInfo Investor Class Action

By **Emilie Ruscoe**

Law360 (December 13, 2024, 8:47 PM EST) -- Labaton Keller Sucharow LLP and Byrnes Keller Cromwell LLP will represent a proposed class of investors in litigation alleging software and data company ZoomInfo hurt investors after making missteps in an effort to retain new pandemic-era customers and ultimately writing down $33 million because of improperly recognized revenue.

In a **Thursday order** in the Tacoma, Washington, federal court, appointing Labaton Keller lead counsel and Byrnes Keller liaison counsel, U.S. District Judge Tiffany M. Cartwright also appointed as lead plaintiffs Labaton Keller's clients the Plaintiffs State Teachers Retirement System of Ohio and Ohio Public Employees Retirement System.

The judge found the pension funds' alleged losses of nearly $76 million trumped the losses claimed by three other institutional investor plaintiffs.

"Because courts treat estimated loss as the most important factor, the court concludes that the Ohio funds have the largest financial interest in this action" and otherwise meet the requirements for lead plaintiffs laid out in the Private Securities Litigation Reform Act, Judge Cartwright said.

In November, the Ohio pension funds told Judge Cartwright they "easily satisfied" the critical largest financial interest requirement to lead the case, pointing out that the movant with the next largest alleged losses was the Teachers' Retirement System of Louisiana, which claimed it lost $22 million in connection with the alleged fraud.

"Since there are no challenges, the court finds that the Ohio funds should be appointed lead plaintiff," Judge Cartwright said.

The City of Pontiac Police and Fire Retirement System **filed the suit** in September, alleging ZoomInfo Technologies Inc., which provides customer analytics and intelligence to sales and marketing teams, decimated its own market capitalization with misguided retention measures.

According to the City of Pontiac Police and Fire Retirement System, ZoomInfo hurt shareholders when trading prices for its shares tumbled after the company revealed performance metrics following "manipulative and coercive auto-renew policies and threats of litigation to force customers into remaining with the company."

During the proposed class period of Nov. 10, 2020, to Aug. 5, 2024, the suit alleged, trading prices for ZoomInfo shares were artificially inflated on the strength of the company's claims that it expected to see "continued growth and profitability" after an initial boom in new customers at the start of the COVID-19 pandemic.

But as market conditions changed, customers sought to reduce their contract lengths or leave the platform entirely, according to the September complaint.

According to the Pontiac pension fund, ""ZoomInfo utilized manipulative and coercive auto-renewal policies that required clients to notify the company of non-renewal at least 60 days before the end of the contract term — far beyond the industry norm."

The company acknowledged the shortcomings of its approach in November 2022, when it announced declining retention rates, and in August 2023, when it announced a $33 million write-down related to customer nonpayment of previously recognized revenue, the suit says. ZoomInfo stock price dropped from over $79 per share during the class period to $8 per share at the end of it, according to the complaint.

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

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

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

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

--Additional reporting by Ryan Harroff. Editing by Lakshna Mehta.

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Canadian Gold Mining Co. Beats Investor Suit Over M&A Plans

By **Rae Ann Varona**

Law360 (December 13, 2024, 9:28 PM EST) -- A New York federal judge on Friday granted a Canadian gold mining company a summary judgment win in a securities lawsuit accusing it of misleading investors about its corporate acquisition strategy, saying statements a California investor challenged didn't exclude the possibility of acquiring another company if the right opportunity arose.

U.S. District Judge J. Paul Oetken wrote in an **opinion and order** that it was beyond genuine dispute that Toronto-based Kirkland Lake Gold Ltd. wasn't actively considering the acquisition of another Canadian mine operator when Kirkland's then-CEO made certain statements, including that organic growth through using a diamond drill bit was a "number one" priority.

"Though his comments imply that organic growth would be Kirkland's primary focus during this time, he at no point absolutely ruled out the possibility of [mergers and acquisitions] activity to further grow the company's assets," Judge Oetken wrote.

According to the company's LinkedIn, Kirkland merged with Agnico Eagle Mines Ltd. in February 2022.

Plaintiff Stephen Brahms, a resident of Redwood City, California, sued Kirkland in June 2020 and filed an amended proposed class action complaint in November 2020, accusing Kirkland of misleading investors about its corporate acquisition plans by promoting a plan focused on organic growth.

Brahms asserted that while Kirkland touted minimum operations standards, the company shocked investors by announcing it purchased Ontario gold mine operator Detour Gold Corp. in a multibillion-dollar, all-stock deal. Detour, Brahms alleged, was an "underperforming gold miner" that had undergone a "humiliating" proxy battle and failed to meet Kirkland's stated minimum requirements.

According to court filings, Kirkland's shares declined by 18.85% after the announcement of the acquisition.

Filings also show that Kirkland conducted a shareholder vote on the acquisition in January 2020, at which nearly 99% of shares voting at the meeting voted to approve the acquisition.

In September 2021, Judge Oetken trimmed Brahms' lawsuit, leaving only claims based on three specific statements that Kirkland's then-CEO Anthony P. Makuch made in early 2019.

According to Brahms' amended complaint, during an annual Canadian Imperial Bank of Commerce Whistler Institutional Conference in January 2019, an analyst had, for instance, asked Makuch a question regarding potential mergers and acquisitions activity for the year.

In response, Makuch declined any potential acquisitions and stated, "We don't need to do that to grow," Brahms asserted.

Brahms said Makuch also denied any appetite for acquisitions during an earnings call in February 2019, in which Makuch said Kirkland wanted to grow organically "instead of going out and trying to buy that kind of company."

Kirkland moved for summary judgment in December 2023, arguing that an assessment of the evidence "unequivocally disproves" Brahms' fraud theory. Kirkland asserted that it was not actively negotiating an acquisition of Detour in January and February 2019 when the alleged false statements were made.

Turning to Makuch's allegedly materially misleading statements, Kirkland said that discovery confirmed that Kirkland "was not contemporaneously engaged in active merger discussions with Detour."

All three of the challenged Makuch statements were "entirely accurate," Kirkland argued, adding that it had also repeatedly communicated interest in M&A, even announcing that it was soliciting M&A opportunities in June 2019.

Judge Oetken, however, put a pause on the case in July pending an interlocutory appeal Brahms filed at the Second Circuit to challenge the district court's denial of class certification in late March.

Judge Oetken lifted the stay in October after the Second Circuit — expressing concern about a "judicial standoff, or gastonette" — ordered Brahms' petition be held in abeyance pending the lower court's resolution of Kirkland's summary judgment bid, which the appeals court said made "more sense" to be resolved first.

According to Judge Oetken's Friday order, the alleged loss to Brahms between January 8, 2019, and November 25, 2019, is $139.

In granting Kirkland's motion for summary judgment, Judge Oetken said that Brahms' own arguments — particularly that Kirkland promised investors that it would only acquire mines with minimum production standards — seemed to undermine his claim that Kirkland committed to pursuing organic growth only.

Judge Oetken ruled that Makuch also didn't mislead investors by omitting a reference to a possible acquisition of Detour in the January and February 2019 comments.

He wrote that, with the help of discovery, the court now finds that no rational trier of fact could find that Makuch's comments about Kirkland's M&A strategy were misleading.

"Makuch's comments did not preclude the possibility of M&A as a secondary approach after internal growth," Judge Oetken wrote. "And Kirkland was not actively nor seriously considering a Detour acquisition bid when Makuch made these comments, so there was no omission that would trigger fault under the [Securities] Exchange Act [of 1934]."

In February, Brahms moved to exclude expert testimony of Dr. George Ireland, a former mining executive whom Kirkland retained to provide an expert opinion on issues of loss causation and damages. Brahms argued in a motion that Ireland had improperly opined on the state of mind of "literally millions of people without any reliable basis for his conclusions."

Judge Oetken also, in his opinion and order on Friday, denied Brahms' motion to exclude Ireland's expert testimony as moot.

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

Brahms is represented by Andrea Farah of Lowey Dannenberg PC.

The Kirkland parties are represented by Audra J. Soloway and Joshua Hill of Paul Weiss Rifkind Wharton & Garrison LLP.

The case is In re: Kirkland Lake Gold Ltd. Securities Litigation, case number 1:20-cv-04953, in the U.S. District Court for the Southern District of New York.

--Editing by Dave Trumbore.

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Coinbase Faces $1B Antitrust Suit Over Crypto Rival's Delisting

By **Bonnie Eslinger**

Law360 (December 13, 2024, 9:35 PM EST) -- Coinbase was hit with an antitrust in California federal court on Friday by BiT Global, a company that "wraps" bitcoin so the cryptocurrency can be traded on decentralized exchanges, claiming Coinbase delisted its product after creating a competing knockoff.

The complaint filed by BiT Global Digital Ltd. seeks over $1 billion in damages for the claimed loss of the value of its wrapped bitcoin product, called wBTC.

"Having decided to copycat wBTC with its own product, Coinbase resorted to unfair and deceptive tactics that [have] long been used by tech giants to crush their competition," the suit said.

BiT Global is affiliated with Justin Sun, the founder of China-based blockchain software developer Tron Foundation. The cryptocurrency entrepreneur recently made headlines after buying a piece of art consisting of a banana taped to a wall for $6.2 million — and eating the fruit at a Hong Kong press conference.

BiT Global manages the minting and redemption of wBTC, which is pegged 1:1 to bitcoin, according to the **complaint**.

"This allows bitcoin holders to interact with decentralized finance applications and decentralized exchanges on other blockchain networks without having to sell their bitcoin," BiT Global said.

BiT Global partner BitGo began issuing its wrapped bitcoins in January 2019. Coinbase — the largest U.S.-based cryptocurrency exchange — has allowed the trading of wBTC on the Coinbase exchange since at least October 2020, according to the complaint. In September 2024, Coinbase announced that it was releasing its own wrapped product, Coinbase Wrapped BTC, or cbBTC.

Months later, in November, Coinbase delisted wBTC so that it could no longer be traded on the Coinbase platform, BiT Global said.

Coinbase "saw a competitor, wBTC, that had something it wanted: an innovative product that released value inherent in bitcoin and let users utilize that value in bold new ways," the suit said. "Coinbase decided it would take what it wanted."

When Coinbase announced on social media platform X that it would delist the wBTC cryptocurrency, there was no "written decision or reasoning … published or given to wBTC, and there is no process for wBTC to appeal against any decision," the complaint said.

In its Nov. 19 statement, Coinbase merely said that it monitors the assets on its exchange "to ensure they meet our listing standards. Based on our most recent review, Coinbase will suspend trading for wBTC on December 19, 2024."

Coinbase had not raised any issues with wBTC prior to the announcement, according to BiT Global.

Coinbase forcing its cryptocurrency users who want wrapped Bitcoin into using cbBTC is predatory and unfair competition that violates both federal and state law, BiT Global claimed.

While wBTC is not the only wrapped bitcoin product, it has become the most popular, BiT Global said.

"Since its inception, wBTC has grown such that its outstanding tokens represent more than $13 billion worth of all bitcoin using current exchange rates," the complaint said.

BiT Global earns a processing fee whenever a user mints or redeems wBTC, according to the suit.

Coinbase is trying to drive wBTC out of business, the complaint said, noting that the company's white paper for cbBTC notes that there are no fees associated with wrapping or unwrapping cbBTC "today."

"On information and belief, Coinbase used this language — that it would not charge wrapping/unwrapping fees "today" — because it plans to do so once it has unfairly eliminated the competition," BiT Global stated.

On Nov. 19, the day of Coinbase's announcement, there were approximately 146,172 wBTC in circulation representing more than $13.1 billion in value based on Bitcoin's price on that day. Four days after Coinbase's announcement that it would delist wBTC, on Nov. 23, the total wBTC in circulation dropped to approximately 140,830, according to the complaint.

"The total wBTC in circulation dropped again to approximately 138,124 by November 30," the suit said. "Together these drops represent a reduction of more than 5% of total wBTC supply in less than two weeks."

The suit alleged causes of action for violations of the Sherman Act for monopolization and "attempted monopolization" of the wrapped bitcoin market in the U.S., violation of the Lanham Act, violation of California's unfair competition law, intentional interference with prospective economic advantage, negligent interference with prospective economic advantage and trade libel.

Bitcoin, the most famous cryptocurrency, uses a digital ledger, called a blockchain, to track transactions on its network. There are other blockchain networks, such as Ethereum, which allow users to store cryptocurrency but also make transactions.

When a user "wraps" their bitcoin, they deposit their cryptocurrency into the digital wallet of a third party that then issues a token on a blockchain network of the owner's choice.

"The new digital coin acts as a proxy for the bitcoin asset. Meanwhile, the custodian holds the bitcoin in trust for the user," the complaint said, comparing the operation to the certificates issued for gold held in a vault.

The process of a user submitting their bitcoin in exchange for a wrapped token is called "minting."

A lawyer for BiT Global, Kevin Kneupper of Kneupper & Covey PC, told Law360 on Friday that the company also filed a motion for a temporary restraining order.

A spokesperson for Coinbase provided a statement in response to the lawsuit: "Coinbase is committed to maintaining the high integrity of our listing standards, and we regularly evaluate assets listed on our platform. Should an asset fail to meet those standards, it is delisted."

No explanation was given for how BiT Global ran afoul of Coinbase's standards.

BiT Global Digital Ltd. is represented by Kevin Kneupper and A. Cyclone Covey of Kneupper & Covey PC.

The case is BiT Global Digital Ltd. v Coinbase Global Inc, case number 5:24-cv-09019, in the U.S. District Court for the Northern District of California.

--Editing by Rich Mills.

Correction: An earlier version of the story misstated Justin Tron's name. The error has been corrected.

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Duke Energy Accused Of Negligence Ahead Of Data Breach

By **Brian Steele**

Law360 (December 13, 2024, 7:20 PM EST) -- Duke Energy Carolinas LLC failed to protect sensitive personal information ahead of a data breach in May, and now its current and former customers are at risk of identity theft and tax fraud, according to a proposed federal class action.

The **five-count lawsuit** filed Thursday in the U.S. District Court for the Western District of North Carolina seeks certification of a nationwide class and a Florida subclass of those whose personally identifiable information was accessed by cybercriminals in the breach that Duke started reporting to customers this month.

"The data breach was a direct result of defendant's failure to implement adequate and reasonable cyber-security procedures and protocols necessary to protect consumers' [personally identifiable information] from a foreseeable and preventable cyber-attack," the complaint said. "Moreover ... defendant was targeted for a cyber-attack due to its status as a utility company that collects and maintains highly valuable [personally identifiable information] on its systems."

Named plaintiff Matthew Saunders, a St. Petersburg, Florida, resident, brought claims for negligence, breach of implied contract, unjust enrichment and violation of the Florida Deceptive and Unfair Trade Practices Act. He alleged that the breach exposed class members' full names, account numbers, addresses, email addresses, phone numbers, dates of birth, tax ID numbers and Social Security numbers.

Duke Energy, a Fortune 150 company based in Charlotte, describes itself as one of the country's largest energy holding companies. According to its website, the company's electric utilities serve 8.4 million customers in North Carolina, South Carolina, Florida, Indiana, Ohio and Kentucky, and its natural gas utilities serve 1.7 million customers in North Carolina, South Carolina, Tennessee, Ohio and Kentucky.

A notice on the company's website said that in May, "a third party may have obtained certain customer information" through duke-energy.com.

"We launched an investigation with the support of cybersecurity specialists to understand the nature and scope of the issue and consulted with law enforcement on the matter," the notice said. "We also took actions to assist with mitigating the issue and implemented measures to help protect our customer accounts and our systems."

The complaint asks for an order that Duke Energy destroy the class members' personally identifiable information and encrypt all data that it gathers in the course of its business; pay lifelong out-of-pocket expenses for identity theft prevention, detection and recovery; conduct periodic data security audits and tests; and take other measures including "meaningfully" educating all class members about the steps they should take to protect themselves.

Saunders is also seeking actual, nominal, consequential and punitive damages, as well as prejudgment interest.

"Plaintiff and class members now face years of constant surveillance of their financial and personal records, monitoring, and loss of rights," the complaint said. "The class is incurring and will continue to incur such damages in addition to any fraudulent use of their [personally identifiable information]."

Counsel for Saunders and the potential class and a representative for Duke Energy did not immediately respond to requests for comment Friday.

Saunders and the potential class are represented by Scott C. Harris of Milberg Coleman Bryson Phillips Grossman PLLC.

Counsel information for Duke Energy was not immediately available Friday.

The case is Saunders v. Duke Energy Carolinas LLC, case number 3:24-cv-01074, in the U.S. District Court for the Western District of North Carolina.

--Editing by Stephen Berg.
