

Self-Driving Truck Maker \$189 Million Fraud Settlement Is Final

By Gillian R. Brassil

- TuSimple and insurers already put \$189 million in escrow account
- Lead counsel for investors awarded 25% in attorneys' fees

Former self-driving truck maker TuSimple Holdings Inc. and its then insurance carriers will pay \$189 million to settle a securities fraud class action over its safety culture after getting a federal judge's final sign off.

Investors suing the company, executives, and TuSimple's bank underwriters—including Morgan Stanley & Co., Citigroup Global Markets Inc., J.P. Morgan Securities LLC, BofA Securities Inc., and Credit Suisse Securities (USA) LLC—said that \$189 million would be “the largest securities class action recovery ever” in the US District Court for the Southern District of California. Bloomberg Law reached out to the court's media liaison seeking confirmation.

The company and insurers already loaded the cash into an escrow account, Judge Roger T. Benitez said in a Wednesday order. Lead counsel Robbins Geller Rudman & Dowd LLP will get 25%—more than \$47 million—as attorneys' fees, according to a separate order.

The investors' suit alleged TuSimple suppressed worries about the safety risks of its autonomous trucks ahead of its billion-dollar April 2021 initial public offering. In August 2022, the Wall Street Journal reported on a car crash involving one of its trucks and highlighted safety concerns, leading to a 10% single-day stock drop, according to the lawsuit. Share prices had declined more than 82% from its \$40 IPO by the time the lawsuit was filed later that month, Bloomberg Law reported.

TuSimple announced a total rebrand Thursday, shifting its focus to AI-driven gaming technology under the name CreateAI.

Settlement negotiations began after the company said it was shuttering its US operations and moving to China in December 2023, investors told the court in August.

The class includes people who acquired the company's stock from April 15, 2021, through Dec. 20, 2022. In agreeing to settle, the company, executives, and TuSimple's underwriters denied wrongdoing.

The insurers contributed about \$15 million to the settlement fund, according to the stipulation.

Wilmer Cutler Pickering Hale and Dorr LLP and Procopio, Cory, Hargreaves & Savitch LLP represented TuSimple. Latham & Watkins LLP represented the underwriters. None of these firms responded to emails seeking comment.

Counsel for the individual defendants include Goodwin Procter LLP and Morrison & Foerster LLP.

The case is Dicker v. TuSimple Holdings, Inc. et al , S.D. Cal., No. 3:22-cv-01300, 12/18/24 .

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Looking back: The most popular stories from 2024

EP [europeanpensions.net/ep/Looking-back-The-most-popular-stories-from-2024.php](https://www.europeanpensions.net/ep/Looking-back-The-most-popular-stories-from-2024.php)

By Natalie Tuck

23/12/24

As 2024 draws to a close, *European Pensions* takes a look back at some of the most-read stories from the year

Five largest Dutch pension funds call for creation of national investment institution

The noise surrounding public-private partnerships (PPPs) has seen an increase in 2024 and proved to be a popular read. Indeed, our most-read story of 2024 covered the news that the five largest Dutch pension funds have called for the creation of a national investment institution to facilitate PPPs in a letter sent to the Dutch government.

ABP, PMT, bpfBouw, PME, and PFZW emphasised that by collaborating with the government they can “achieve long-term stable returns and make an important contribution to the necessary energy transition”.

“Increasingly, pension funds are engaging with various government departments on how our sector can contribute. We appreciate the government's active involvement to really get PPPs off the ground, but it is often still fragmented and has little central coordination and scale,” the letter said.

[Click here to read the full story.](#)

Belgian govt approves pension reform measures

Our second most-read story of the year was on Belgian pension reforms, which saw the Belgian government approve pension reforms on 4 April. This included several measures, such as introducing a new pension bonus for those who work past their earliest retirement age.

Summarising the changes, the Service Federal des Pensions (Federal Pension Service) said the pension bonus applies to employees, the self-employed and civil servants who continue working beyond retirement age. The new bonus will come into effect from 1 July 2024, and a pension can start on 1 January 2025, at the earliest, to be entitled to the bonus. Anyone already retired is not entitled to the new bonus, but those who receive the old bonus will continue to receive it.

[Click here to read the full story.](#)

Ireland's AE Bill passed by Dáil with Tata Consultancy Services selected as administrator

An ongoing story all year is that of Ireland's automatic enrolment (AE) plans. The story that really caught the attention of readers was news of the AE Bill's passing by the Dáil with Tata Consultancy Services (TCS) simultaneously selected as administrator to the scheme.

Since this announcement, the launch date for AE in Ireland has been pushed back further to 30 September 2025. However, TCS has since signed a 15-year contract with the Department of Social Protection, solidifying its tender.

The long-awaited bill paves the way for the creation of an automatic enrolment pension system in Ireland, with 800,000 workers set to be enrolled into the scheme. It aims to increase pension coverage and overall pension adequacy in Ireland. Ireland is the only OECD country that does not yet operate an auto-enrolment or similar system as a means of promoting pension savings.

[Click here to read the full story.](#)

Norfolk Pension Fund secures £380m in class action against Apple

News of the UK's Norfolk Pension Fund securing a £380m (USD 490m) recovery in a class action case against technology giant Apple was another popular read.

Following a five-year battle, investors led by Norfolk County Council as administering authority of the Norfolk Pension Fund, won the case that alleged Apple CEO, Tim Cook, made false and misleading statements to investors.

During the five-year case, Apple contested the accusations at every stage and executives admitted no wrongdoing as part of the settlement. The win has been described as "a historic result for a UK fund leading shareholder litigation in the United States", by Robbins Geller Rudman & Dowd LLP partner, Mark Solomon, who leads the firm's international practice.

[Click here to read the full story.](#)

EIOPA proposes PEPP reforms; calls for auto-enrolment

Finally, a Europe-wide story on the pan-European personal pension (PEPP) product was a hit with readers. In September, the European Insurance and Occupational Pensions Authority (EIOPA) published a paper on the future of the PEPP, outlining the reasons behind its limited uptake and proposed reforms.

Its staff paper set out the authority's suggested improvements to the PEPP's design, with the aim of overcoming supply-side, demand-side and structural barriers hindering its broader adoption.

As part of its demand-side fixes, EIOPA proposed the introduction of auto-enrolment for a personal pension scheme, like the PEPP, at the EU level.

"Automatically opening a scheme for every EU citizen reaching the age of 18 or entering the workforce would be an innovative step," EIOPA stated.

"Such schemes should allow both regular and intermittent contributions to reflect diverse career paths."

[Click here to read the full story.](#)

Class Action

December 24, 2024, 2:00 AM PST

AI, Crypto Cases Capture Attention in Bottom-Up Securities Year

By [Martina Barash](#)

- Supreme Court securities docket didn't live up to hype, hope
- Private crypto litigation could increase if SEC steps back

New securities class actions over artificial intelligence claims and digital assets, one US Supreme Court ruling, and two high court non-rulings helped define the 2024 battlefield between investors and companies.

The high court's sole private securities law opinion, *Macquarie Infrastructure Corp. v. Moab Partners, LP*, held that a "pure omission" in a Securities and Exchange Commission filing can't give rise to a securities class action without some statement shareholders can point to that's misleading.

The narrowly drawn April ruling sided with the conglomerate on its potential liability for not disclosing a trend affecting its business in the required filing, and touched off a debate over whether its attempt to distinguish omissions from "half truths" will have much effect.

"We'll have to wait and see how this gets applied in the future," said attorney Jonathan Youngwood of Simpson Thacher & Bartlett LLP. "The plaintiffs' bar is of the view that this doesn't change things that much," he said. "From the defense perspective, *Macquarie* was a narrowing of the complaints you can bring."

The high court's recent decision to discard two securities cases from its docket represented "a missed opportunity" to address issues that frequently arise when a defendant has asked for dismissal, Susan Hurd of Alston & Bird LLP said. The justices dismissed *Facebook, Inc. v. Amalgamated Bank*, a suit over risk disclosures alleged to be misleading because they were cast as hypothetical, and *NVIDIA Corp. v. E. Ohman J.:or Fonder AB*, which focused on whether investors had satisfied pleading standards, after hearing argument in each. Review was improvidently granted, the justices said.

"It's just a shame that we didn't get ruling on the merits on either one of them, given the fact that they both implicated things that defendants deal with on a daily basis at the motion to dismiss stage," Hurd said.

"A lot of us were looking forward" to the court's possible clarification of the pleading standards for misrepresentations and intent in securities fraud cases, Youngwood said.

Class Constriction

An opinion identified by Youngwood and institutional investors' lawyer Richard Bodnar as having a more sustained effect in 2024 was the US Court of Appeals for the Second Circuit's decertification last year of a class of investors in a suit against Goldman Sachs Group Inc. in the wake of a 2021 Supreme Court decision in that case.

"From observing it in my own practice, how you're going to approach class certification seems to come up more and more in the post-*Goldman* years," Youngwood said. The defense bar always looks for post-pleadings phase opportunities to "get good information in front of a court for a ruling that either defeats the class or narrows the class," he said.

"One takeaway from 2024 is that securities class actions are taking longer to resolve," perhaps due in part to the high court's *Goldman* decision, said Bodnar, of Rolnick Kramer Sadighi LLP. Other factors may include court congestion "or issuers and insurers just being more reluctant to settle cases in a higher interest rate environment," he said.

The longer timelines "have given investors who were damaged by corporate misconduct more time to consider their options, whether via opt outs, derivative actions, or other legal action," Bodnar said via email.

Fibbing About AI

As machine learning becomes more commonplace, companies sometimes falsely tout their use of it, drawing SEC attention.

"The SEC has been cracking down on a number of companies, largely financial advisors and hedge funds, that the SEC thinks are misleadingly highlighting their AI capabilities," said Tansy Woan of Skadden, Arps, Slate, Meagher & Flom LLP, who has a corporate defense practice. "Maybe it's not as effective as you claim that it is, it won't have the same success that you claim that it will, or that really behind all this is manual labor that's not actually AI."

"We're seeing the same thing in civil litigation," she said, pointing to data published by Stanford Law School in collaboration with Cornerstone Research. Investors have filed 13 securities class actions this year alleging "AI-washing," according to the study.

And in a suit against Upstart Holdings, the US District Court for the Southern District of Ohio in September allowed some claims against the loan-matching company over its AI underwriting touts.

The surviving claims focused on statements that were specific and verifiable, Woan said. "We're going to see a lot of cases filed taking a deep dive into how companies are disclosing their use of AI," she said.

Companies need to take care with their disclosures, class action defense litigator Hurd said. Generative AI represents a "sea change in the technology," she said. "People don't understand that we've really had AI for years, and the new piece of it is the generative piece."

"Companies will need to be thoughtful about their generative AI disclosures, because you can't assume a fluidity with those concepts" on the part of consumers and investors, Hurd said.

Crypto Novelty

Alexander Drylewski of Skadden, a digital asset litigator, said that area remains very active.

Cases brought by investors and the SEC “have raised interesting and novel issues,” including who can be a statutory “seller” of the supposed securities and “whether and in what circumstances digital assets may be offered and sold as securities,” he said. “We see plaintiffs pushing new and expanded theories of liability to rope in new defendants” for allegedly dealing in unregistered securities.

Whether offering rules and infractions are delineated by the courts, or by formal rule-making, became a recurrent issue in 2024. With the incoming Trump administration avowedly pro-crypto, the former appears more likely.

If SEC enforcement activity against the cryptocurrency industry decreases under the new administration, private securities litigation may increase, Drylewski said. That’s especially likely if it remains unclear, from a regulatory standpoint, when digital assets may be offered and sold without registration—and if digital asset price volatility persists, he said.

Still, for many, 2024 was a Supreme Court year that wasn’t.

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Class Action

December 26, 2024, 7:39 AM PST

Caribou Overhyped Gene-Therapy Testing, Investor Class Suit Says

By Gillian R. Brassil

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 4:24-cv-09413](#) (Bloomberg Law subscription)

Caribou Biosciences, Inc. oversold its lead therapy's efficacy while hiding a poor financial outlook, causing a 26% share price dip when analysts noted concerns in 2024, a proposed class action says.

The pharmaceutical company and two then-executives concealed that Caribou, which develops genome-edited cell therapies to treat cancers, faced a significant risk of running out of cash to operate, says the investor lawsuit filed in the US District Court for the Northern District of California on Dec. 24.

Caribou's leading product is CB-010, which is being tested in a phase 1 clinical trial for large B cell non-Hodgkin's lymphoma, plaintiff Jacob Saylor says. In June 2024, Caribou said updated data from its phase 1 trial suggested one dose of CB-010 had "the potential to rival the safety, efficacy, and durability" of similar approved therapies, he says.

But the next day, Evercore ISI analysts downgraded the company's stock and dropped its price target from \$13 to \$3, saying they weren't yet convinced the treatment would be competitive and noting concerns over CB-010's safety and competition, the complaint says. Caribou's stock price fell almost 26%—by \$0.74 per share—to close at \$2.15 on June 3.

Share prices fell another 3%, by 9 cents, on July 16 after the company said in a Securities and Exchange Commission filing it had stopped preclinical research activities of a different treatment, CB-020, and cut about 12% of its workforce to "extend its cash runway," per the complaint.

The company and executives had been withholding that pause and a fiscal struggle knowingly or with reckless disregard by not touting that in public statements or filings since 2023, Saylor says. In a July 2023 filing about a common-stock public offering, Caribou had noted it intended to use forthcoming proceeds to fund preclinical development of CB-020. The filing included a generic warning that the company might use the money differently, which Saylor says didn't fit with an actual known risk that Caribou was low on capital to stay afloat.

Saylor seeks damages under federal securities law and estimates the class to have anywhere between hundreds and thousands of members. The proposed class covers investors between July 14, 2023 through July 16, 2024.

In October 2024, a Northern District of California judge granted preliminary approval of a class action settlement between Caribou and other investors. That suit, filed in 2023, had claimed the company overhyped CB-010 surrounding its 2021 IPO, spurring a 2022 stock decline.

Pomerantz LLP represents Saylor. Attorneys didn't respond to an email seeking comment.

Caribou declined to comment in an email.

The case is Saylor v. Caribou Biosciences, Inc. et al , N.D. Cal., No. 4:24-cv-09413, complaint filed 12/24/24 .

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Geopolitical Risk, Trade Sanctions, and D&O Risk Exposure

[dandodiary.com/2024/12/articles/uncategorized/geopolitical-risk-trade-sanctions-and-do-risk-exposure](https://www.dandodiary.com/2024/12/articles/uncategorized/geopolitical-risk-trade-sanctions-and-do-risk-exposure)

December 22, 2024



By Kevin LaCroix on December 22, 2024

Posted in Uncategorized



We live in a time of significant geopolitical risk, from the highly volatile conditions in the Middle East, to the ongoing war in Ukraine, to continuing tensions in the South China Sea, among many other concerns. These risks of course have important ramifications, including among many other things as a source of potential D&O liability exposure. In prior posts

(most recently here), I have highlighted ways that geopolitical issues, such as, for example, trade sanctions, can translate into corporate and securities litigation. In the latest example of this phenomenon, on December 19, 2024, a plaintiff securityholder filed a securities class action lawsuit against Joint Stock Company Kaspi.kz, a Kazakh company whose American Depositary Shares (ADS) trade on Nasdaq. Among other things, the plaintiff alleges that the company misrepresented the extent to which its bank subsidiary was being used for unlawful purposes, including assisting Russians with evading sanctions in the wake of the 2022 Russian invasion of Ukraine. A copy of the December 19, 2024 complaint in the case can be found [here](#).

Background

Kaspi.kz is a Kazakh corporation with its headquarters located in Almaty, Kazakhstan. Kaspi Bank is one of its subsidiaries, which the company itself describes as “one of the largest and systemically important financial institutions in Kazakhstan.” The company also runs an online marketplace where customers can purchase products from various merchants.

The securities class action lawsuit complaint alleges that in its SEC filings during the class period, the company made a number of statements, such as, for example, “our platforms may be used for fraudulent, illegal or improper purposes” noting that the company has measures in place for purposes of “preventing our business from being used as a vehicle for money laundering, fraud or other illegal activities.” The complaint alleges that these statements were false and misleading when made because at the time the company’s platforms were “already being used for unlawful purposes, including assisting Russians with evading sanctions in the wake of the 2022 Russian invasion of Ukraine.”

The complaint also quotes statements from the company’s SEC filings that “Our business does not have any exposure to Russia or Russian businesses.” The complaint alleges these statements were false when made because the company “had exposure to Russia and Russian businesses by virtue of allowing Russians to use its financial services products, allowing Russian merchants to sell goods on its marketplace, and ordering goods ... that were made by a Russian company.”

The complaint also cites statements in the company’s SEC filings regarding its relation to various third-party entities and individuals, as well as its acquisition of certain other entities. The complaint alleges that these statements contained material misrepresentations and omissions and alleged further that individuals affiliated with the acquired entities had “links to a known from for [sic] Russian organized crime figures and sanctioned oligarchs, including an oligarch wanted by the FBI.” The complaint alleges further that the company “understated the extent of money laundering happening on the Company’s platform.”

On September 19, 2024, Culper Research (a short-seller) published a report entitled “Kaspi.kz (KSPI): The NASDAQ-listed Fintech Moving Money for Criminals and Kleptocrats” (here). Among other things, the report, which the complaint quotes at exhaustive length, asserts that Kaspi “systematically misled U.S. investors and regulators in its repeated claims – especially ahead of the Company’s January 2024 NASDAQ listing – that the Company had zero exposure to Russia,” adding that the research firm believes that “Kaspi’s relationship with Russian partners permeate every segment of its business, but that in the wake of Russia’s February 2022 invasion of Ukraine and into 202 [sic], Russia has contributed materially to Kaspi’s reported growth.”

The Lawsuit

On December 19, 2024, a plaintiff securityholder filed a securities class action lawsuit in the Northern District of California against the company and certain of its directors and officers. The complaint purports to be filed on behalf of investors who purchased the company’s securities between January 19, 2024, and September 19, 2024.

The complaint alleges that during the class period the defendants made false or misleading statements or failed to disclose that: “(1) Joint Stock Company Kaspi.kz continued doing business with Russian entities, and also providing services to Russian citizens, after Russia’s 2022 invasion of Ukraine, thereby exposing the Company to the undisclosed risk of sanctions; (2) the Company engaged in undisclosed related party transactions; (3) certain of the Company’s executives have links to reputed criminals; and (4) as a result, Defendants’ statements about Joint Stock Company Kaspi.kz business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.”

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

Discussion

As part of my job here at *The D&O Diary*, I read pretty much every securities class action complaint as it comes in. As many complaints as I have read over the years, this complaint really stands out. For starters, it is the first complaint that I can recall ever having seen that involves a company from Kazakhstan. I believe this may be the first time I have had occasion in the nearly 20 years that I have been maintaining this site that I have had occasion to refer to Almaty, the Kazakh capital.

But beyond the sheer exoticism of the geographic locale involved, there are also the interesting underlying factual allegations. My brief summary above really doesn’t do justice to the allegations. The short seller report contains extensive details allegedly explaining how Russians, in order to avoid sanctions-related constraints on their ability to move money, acquire and use debit cards, allegedly from Kaspi Bank, as a way to access and move money. The short seller report, quoted extensively in the complaint, also details the ways that Russians allegedly have been able to send rubles to Kaspi through use of Kaspi’s correspondent accounts at other banks in Moscow. There is a lot more. I recommend reading the whole complaint.

As provocative as the complaint’s allegations are, it is probably worth noting that the complaint only alleges that the supposed actions allegedly exposed Kaspi to sanctions; it is not alleged that sanctions have been imposed on Kaspi or that Kaspi has been penalized for violating sanctions.

Moreover, the allegations in the complaint consist almost exclusively of the assertions raised in the short seller’s report. For many years, I have been raising concerns about securities lawsuit complaints filed in reliance on short sellers. A recent guest post on this site ([here](#)) detailed the problems and concerns that abound when securities complaints are filed based on allegations in short seller reports; among other things, the short sellers have obvious

conflicts of interest in making damaging reports concerning companies. These kinds of concerns give considerable reasons to be cautious about the allegations on which this complaint is based. Time will tell whether these allegations withstand judicial scrutiny.

All of that said, it should not be overlooked that at the heart of this complaint are the allegations that the company's conduct violated trade sanctions (or facilitated the violation of trade sanctions) imposed in the wake of Russia's 2022 invasion of Russia.

As I discussed in a post I published late last year, in which I also addressed my concerns about litigation risk arising from geopolitical issues, I discussed the securities class action lawsuit filed against memory storage device company Seagate Technology Company, after the company agreed to a \$300 million Department of Commerce penalty for violation of export control violations pertaining to the Chinese company, Huawei. I also discussed in the prior post other examples where trade control-related allegations featured in securities class action lawsuit complaints.

The litigation risk arising from geopolitical concerns is not limited just to issues involving trade sanctions and export controls. International trade regulatory regimes have become increasingly important for companies and their executives. These regulatory regimes include U.S. sanctions, anti-money laundering (AML), and anti-bribery and corruption laws. Recent developments, such as the War in Ukraine, trade tensions with China, and issues involving digital assets have heightened these concerns. Violations of these legal regimes can result in regulatory enforcement actions as well as in related civil litigation. The cases discussed above and in my prior posts on this topic show how these concerns can translate into securities litigation.

As I have previously pointed out, the prospect for securities litigation arising out of trade sanctions and export control-related issues is not necessarily new; there have been examples of corporate and securities lawsuits arising out of trade sanction and export control issues over the last several years. However, in the current tense geopolitical environment, all of these concerns seem to loom larger. The increasing tensions with China and the ongoing "hot" wars in Ukraine and in Gaza heighten the concerns surrounding geopolitical risk.

Not only that, but the topic of geopolitical risk is one that is about to get a lot more complicated, if, for example, incoming President Trump follows through on his threats to impose tariffs on many if not most of the U.S.'s trading partners. Any move along those lines could trigger a global trade war, and an already complex geopolitical risk environment could become even more dangerous – which among many other things could contribute significantly not only to operating risks but also to corporate and securities litigation risk for many companies.

In short, while I have long thought that geopolitical risks represent an important area of corporate and securities litigation risk, that risk could become significantly greater as we head into 2025 and beyond.

Warner Brothers Hit With Another Suit Over Losing NBA Rights (1)

By Bernie Pazanowski

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [No. 1:24-cv-09856](#) (Bloomberg Law subscription)

Warner Bros. Discovery Inc. officials allegedly mislead investors in statements they made about its negotiations with the National Basketball Association to broadcast its games and about their impact on the company's goodwill, a lawsuit filed in federal court says.

This is the second time since November that Warner's been hit with a suit over losing NBA TV rights. Plaintiff Anand Roy here says Warner was "substantially damaged" as a result of the individual defendants' "knowing or highly reckless breaches of fiduciary duty and other misconduct," according to her derivative complaint filed Dec. 20 in the US District Court for the Southern District of New York. The board's "collective engagement of fraud" and longstanding business and personal relationships, it says, made it unlikely the company will act to remedy the situation.

The defendants willfully made false statements that failed to disclose that the negotiations were likely to cause Warner to substantially reevaluate its business and goodwill, the complaint says.

The company's goodwill in its networks segment had substantially lessened and Warner's likelihood of incurring billions of dollars in goodwill impairment charges significantly increased as a result of the defendants' actions, the complaint says.

From Feb. 23, 2024 through Aug. 7, 2024, the Warner executives made comments to investors and the Securities and Exchange Commission concerning how well the company was doing. The company also touted its 40-year relationship with the NBA and said the negotiations were progressing, the complaint says.

The complaint further says that Warner failed to reach a new deal with the NBA and that NBC offered to pay an average \$2.5 billion to broadcast games annually, and that Amazon offered an average annual fee of \$1.8 billion. Under the previous contract the NBA and Warner had, the average annual fee was \$1.2 billion, it says.

In an after-hours press release on Aug. 7, the company reported disappointing revenue for the second quarter of 2024, and an approximately \$9.1 billion non-cash goodwill impairment. On this news, the company's stock price dropped 8.95% to \$7.02 per share, the complaint says.

The complaint alleges that the officers knowingly made fraudulent statements, breached their fiduciary duty, and violated the Securities Exchange Act.

The complaint seeks derivative status and damages. It also seeks an order directing the defendants to take the actions necessary to improve the company's governance and internal procedures to comply with applicable laws and protect investors from similar damaging events in the future.

A securities fraud class action was filed against Warner officers in November, alleging that they failed to disclose that the company's negotiations with the NBA would require it to seriously reevaluate its business and goodwill. The defendants overstated the company's business and financial prospects, the November complaint said.

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

The Brown Law Firm PC represents Roy.

The case is Roy v. Zaslav , S.D.N.Y., No. 1:24-cv-09856, complaint filed 12/20/24 .

(Updated to include additional reporting added to the second, third, and fourth paragraphs.)

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Snap Investors' Suit Over Ad Revenue Revived on Exec's Intent

By Martina Barash

- Privacy changes on Apple devices posed advertising challenge
- Holistic view, official's role point to intent, 9th Cir. says

Snap Inc. investors adequately alleged an executive's knowledge about advertiser difficulties with a new tracking system, a federal appeals court said Friday in reviving securities claims against the company.

Each of two routes led to an inference of fraudulent intent, or scienter, on the part of Chief Business Officer Jeremi Gorman, the US Court of Appeals for the Ninth Circuit said in an unsigned, unpublished opinion. The opinion came close on the heels of the Dec. 5 oral argument.

The investors alleged Snap, which draws on user data for advertising purposes, downplayed how privacy changes the iPhone maker announced in June 2020 would challenge its advertising business. The company's share price fell 26% after it disclosed the privacy changes had made it harder to measure the effectiveness of advertisements on its Snapchat app, according to the complaint.

One specific focus on appeal was Gorman's statement to investors just as Apple was about to switch on its transparency initiative and force advertisers to use the new activity-tracking tool, known as SKAdNetwork or SKAN. Gorman allegedly said advertisers "that represent a majority of our direct response advertising revenue"—an important revenue source from in-app ads—"have successfully implemented" SKAN for their marketing with Snap, according to the investors.

The Ninth Circuit said that Gorman's intent was adequately alleged under a holistic inquiry looking at whether the plaintiffs advanced an inference of scienter as compelling as any opposing inference. Snap's theory "that Gorman made an optimistic prediction that did not pan out" is contradicted by the language she used—that some advertisers "have successfully implemented" Apple's replacement user tracking tool, the court said.

The panel said it would also find scienter under the "core operations" test, looking at Gorman's role in the company.

Judges Daniel A. Bress and Danielle J. Forrest of the Ninth Circuit were joined by Judge Jinsook Ohta, sitting by designation from the US District Court for the Southern District of California, on the panel.

Saxena White PA, Joseph Hage Aaronson LLC, and Bienert Katzman Littrell Williams LLP represented the investors. Paul, Weiss, Rifkind, Wharton & Garrison LLP and Bird, Marella, Rhow, Lincenberg, Dooks, & Nessim LLP represented Snap, Gorman, and another company official.

The case is Okla. Firefighters Pension and Ret. Sys. v. Snap Inc. , 9th Cir., No. 23-3932, unpublished 12/20/24 .

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AstraZeneca China Probe Draws Stockholder Suit After Selloff (1)

By Mike Vilensky

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** No. [2:24-cv-11021](#) (Bloomberg Law subscription)

AstraZeneca Plc is facing a proposed class action lawsuit saying the drugmaker artificially inflated its US stock price by downplaying the risk of a Chinese probe that's reached the company's top brass.

The lawsuit follows reports of detentions by Chinese authorities of current and former AstraZeneca employees, including former China president Leon Wang, as part of a probe into sales practices. It points to the stock's biggest selloff since February, which followed the disclosure of Wang's investigation.

AstraZeneca shareholder Jeries Saleh filed the complaint Monday in the US District Court for the District of California. The proposed class includes everyone who acquired the company's securities on NASDAQ between February 23, 2022 and December 17, 2024.

AstraZeneca executives during that period wrote in Securities and Exchange Commission filings that the company may be subject to "various legal proceedings and governmental investigations," according to the complaint.

Those statements were false and misleading because they "understated the risk of an adverse outcome of a government investigation, given that the Company was committing unlawful activities such as insurance fraud in China," the complaint says.

On October 30, AstraZeneca said on its website that Wang was under investigation by Chinese authorities, the complaint says. American Depositary Shares then fell 5.4% over the next two sessions, the stock's worst two-day selloff in more than eight months, according to data compiled by Bloomberg.

Wang was replaced earlier this month.

The complaint brings two claims under the Securities Exchange Act. Saleh is seeking class certification, damages, attorneys' fees and costs.

An AstraZeneca spokesperson declined to comment.

The Rosen Law Firm represents Saleh and the proposed class.

The case is Saleh v. AstraZeneca PLC , C.D. Cal., No. 2:24-cv-11021, 12/23/24

(Updates with AstraZeneca declining comment in ninth paragraph.)

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[Securities Law News](#)

December 23, 2024, 7:24 AM PST; Updated: December 23, 2024, 9:19 AM PST

Cerence Leaders Must Face Shareholder Suit Outside Delaware (1)

By Gillian R. Brassil

- Comes 2 days after \$30 million investor settlement approved
- Judge says Cerence can face securities suits outside Delaware

Cerence Inc. executives must still defend against a shareholder derivative in Massachusetts, a federal judge said, denying their motion to dismiss on the grounds that these lawsuits can only be fought in Delaware under its company charter.

Judge Allison D. Burroughs said that by adopting amended bylaws years after the stock selloffs at issue, the company consented to facing lawsuits in other federal courts.

The US District Court for the District of Massachusetts judge approved a \$30 million settlement two days earlier in a class action lawsuit containing similar allegations against Cerence.

When Cerence, which makes AI-automobile assistants, was spun-off from Nuance Communications Inc. in 2019, its charter said that unless it consents in writing to another venue, the Court of Chancery of the State of Delaware would be the exclusive forum for derivative actions—or “if the Court of Chancery or the State of Delaware does not have jurisdiction, any other state or federal court located within the State of Delaware.”

But Cerence’s 2023 amended bylaws said that “the federal district courts of the United States of America shall be the sole and exclusive forum for resolving any complaint” related to US securities laws unless the corporation agrees in writing to another court.

In adopting these written bylaws, the company consented to facing derivative actions like this one in federal courts outside Delaware, Burroughs said. “Read this way, the Charter and the Bylaws do not conflict, and Defendants provide no argument or authority (nor is the Court aware of any) as to why the Board’s adoption of the Bylaws would not constitute the precise written consent contemplated in Article X,” the judge said.

Investors said Cerence leaders touted “strong demand” for its software licenses through 2024, only to lower its 2022 revenue guidance and withdraw its 2024 guidance, leading to a series of stock declines between 2021 and 2022.

Plaintiffs William Shafer and Peter Morse filed shareholder derivative complaints in 2022 alleging executives breached their fiduciary duty, earned unjust enrichment, and participated in insider trading. Their actions—seeking damages for the company, bolstered corporate governance, and renumeration of funds paid by Cerence during allegedly illicit actions—were consolidated. In March 2024, the court granted and denied in part Cerence executives’ motion to dismiss. Company executives are also facing a similar derivative action in the Delaware Court of Chancery.

Johnson Fistel LLP, Glancy Prongay & Murray LLP, and Diserio Martin O’Connor & Castiglioni LLP represent the plaintiffs. Johnson Fistel and Glancy attorneys, the co-lead counsels, declined to comment.

Goodwin Procter LLP represents Cerence as the nominal defendant and its executives. Attorneys and the company did not respond to emails seeking comment.

The case is In re Cerence S’holder Derivative Action , D. Mass., No. 1:22-cv-10723, 12/20/24 .

(Updates to include co-lead counsel declined to comment.)

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As Musk Calls for Exodus, Value of Delaware Law Proves Elusive

By Mike Leonard

Deep Dive

- Investors have sued TripAdvisor, Trade Desk for relocating
- Damages may be difficult or impossible to determine in court

Shareholders challenging corporate shifts from Delaware to laissez-faire Nevada are struggling to prove the maneuvers steer value to insiders.

Driven by laxer accountability rules and goaded by Elon Musk, several high-profile companies have relocated to the Silver State, which is trying to lure corporate bigwigs repelled by Delaware's crackdown on self-dealing. Two of them, TripAdvisor Inc. and Trade Desk Inc., were hit with novel court challenges.

The dynamic has fueled a divisive discourse on whether the moves represent a self-contained problem or the start of an exodus. But Delaware's judges have a more immediate concern: Even when it's clear a reincorporation is about escaping legal scrutiny, there may be no way to tally the cost for shareholders.

"Delaware is the gold standard," said George Washington University law professor Omari Scott Simmons. "But trying to put a price on it—that's another thing."

With a TripAdvisor ruling from Delaware's top appeals court expected any day, the pension fund leading the case argued Friday that the proceedings became moot when the company announced a restructuring Thursday that would allegedly leave it with no controlling stockholder—unusual moves by both sides after nearly two years of litigation.

But regardless of whether the "DExit" trickle widens into a torrent, the state's courts are being forced to grope for answers to issues that are already out there. Their response could smooth the way for business leaders drawn to Nevada's "no liability" reputation or throw up roadblocks that make them think twice.

Delaware Premium

The judge in the TripAdvisor case allowed the company to move in February—assuaging concerns about Delaware as a “Hotel California”—but held open the possibility of money damages. The state supreme court sounded more doubtful at an October hearing.

Their reluctance reflects a decades-old debate about the hard-to-quantify value of Delaware corporate law. More recently, the idea that the state’s robust body of precedent and roster of specialist judges create value has gained the upper hand, according to Simmons.

He pointed to Delaware’s broad bundle of shareholder rights, its elite business court, and the judicial doctrines that have evolved over a century of corporate dominance, such as heightened scrutiny of conflicted transactions.

But there’s also an emerging consensus that the seminal studies behind the “Delaware premium” theory made too much of ambiguous results, according to Berkeley Law professor Adam Badawi. One of the shareholder attorneys cited those studies at the TripAdvisor appeal hearing.

“It’s pretty easy to understand what the Delaware premium might be: The controller isn’t going to be able to take everything,” Badawi said. “The problem is how to measure it.”

In other words, it might just be a widely shared hunch.

“There’s not enough evidence one way or the other,” said University of Pennsylvania law professor Jill Fisch.

Variables

The chairmen of TripAdvisor and Trade Desk—media executive Greg Maffei and tech billionaire Jeff Green, respectively—are both regulars in Delaware’s Chancery Court, where they’ve confronted a stream of shareholder suits. The relocation lawsuits against them both quoted a quip from Tulane University law professor Ann Lipton, who said in 2022 that “Nevada is where you incorporate if you want to do frauds.”

It’s a logical leap to automatically conflate fewer court cases with reduced value, according to Fisch.

“Nevada law will result in less shareholder litigation, but experts disagree on whether there’s too much now,” she said. “Reducing the amount might harm shareholders, but it might help.”

Vice Chancellor J. Travis Laster said in his TripAdvisor ruling that he’ll start with any stock movement around the relocation. But the skepticism from Delaware’s justices is more than justified, according to Badawi, who said there are too many factors to reach reliable conclusions about cause and effect.

“Interest rates go up and down, or someone says something about the travel business,” he said. “A lot of times these sorts of changes are announced on an earnings call, so the market could be digesting earnings.”

There's also no reason to think traders have a sophisticated enough understanding of the often-fine differences between Delaware and Nevada law for the movement to be a meaningful gauge.

"We don't have very good tools for measuring the relationship between an event and a movement in stock price, and we're not sure movement in stock price is a very accurate tool for measuring corporate value," Fisch said.

Chicken or Egg

Even if it were possible to say Delaware corporations are more valuable, that would only get the courts halfway home. It's plausible Delaware law adds value, but it's just as likely "better companies are attracted to Delaware," according to Badawi.

"It's kind of the chicken or the egg," he said. "A bunch of people have tried to solve it, and no one really believes the answer."

The problem is of the court's own making, according to Fisch, who cited a ruling in April that upheld heightened scrutiny of more types of deals.

"Unless you say reincorporating in Nevada constitutes self-dealing by a controlling shareholder, courts don't even have to get into the task of determining what's fair in unfamiliar areas," she said.

The pension fund argued in the TripAdvisor case that reincorporation damages resemble other corporate features—like voting and dividend rights—that judges routinely grapple with. The court can't just throw up its hands, according to Simmons.

"Corporate law deals with a lot of intangibles," he said.

Any attempt to account for all the variables might look like the approach judges take to appraisal litigation, a notoriously technical type of case—second-guessing a transaction price—that they've "been explicit about not liking," according to Badawi.

"There's a path, but I think they would keep this theory quite narrow," he said. "Something like, 'If it's Nevada, and if it's a controlling stockholder, and if they've tried to engage in self-dealing transactions and gotten those blocked in Delaware.' Which will then flood the courts with follow-up cases."

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Honeywell Beats Would-be Class Action Over 401(k) Forfeitures

By Jacklyn Wille

- Judge criticizes legal theory as too broad to be plausible
- Decisions in 401(k) forfeiture cases have been mixed

Honeywell International Inc. defeated a lawsuit by employees challenging how the aerospace technology and manufacturing company handles forfeited money in its 401(k) plan, but the workers can try again with a more detailed complaint.

The workers' legal theory—that Honeywell wrongly opted to use 401(k) forfeitures to reduce its plan contributions—is too broad to be plausible, Judge Evelyn Padin of the US District Court for the District of New Jersey said. According to Padin, the theory is flawed because it's "not limited to any particular circumstances that may be present in this case" and would "require any fiduciary to use forfeited amounts to pay administrative costs regardless of any such context or circumstances."

Padin, who cited a recent ruling dismissing similar claims against HP Inc. as "persuasive," dismissed all the workers' Employee Retirement Income Security Act claims, including claims for prohibited transactions and violations of a statutory rule preventing plan assets from benefiting the sponsoring employer. Her unpublished opinion, issued Thursday, gives the workers 30 days to try again in an amended complaint.

The lawsuit by Luciano Barragan, which seeks to represent a class of more than 60,000 people, says Honeywell mismanaged its employees' retirement plan by putting 401(k) money forfeited by departing employees toward the contributions it would otherwise have to make to the plan, instead of using it to reduce the administrative expenses borne by workers.

The lawsuit is part of a recent series of cases centering on the portion of an employee's 401(k) account that comes from contributions made by their employer. Unlike contributions from an employee's salary, which are immediately fully vested, employer contributions can remain unvested for a period of time and can be forfeited in whole or in part when a worker leaves the company after a few months or years.

The lawsuits say employers violate ERISA when they opt to use forfeitures to reduce the amounts they'd otherwise have to contribute to their plans instead of reducing workers' expenses. Cases against Qualcomm Inc. and Intuit Inc. have advanced, while claims against HP, BAE Systems Inc., Thermo Fisher Scientific Inc., and Clorox Co. were rejected.

Though Padin ruled for Honeywell on all claims, she agreed with the workers that the company was acting in its capacity as an ERISA fiduciary when it decided how to allocate forfeitures.

Hayes Pawlenko LLP and Lawrence Hersh of Rutherford, N.J., represent Barragan. Morgan, Lewis & Bockius LLP represents Honeywell.

The case is Barragan v. Honeywell Int'l Inc. , 2024 BL 464724, D.N.J., No. 2:24-cv-04529, unpublished 12/19/24 .

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Prudential Beats 401(k) Fund Class Action With Robust Processes

By Jacklyn Wille

- Company hired outside investment consultant, met regularly
- Affiliated investment options in 401(k) plan at issue

Prudential Insurance Co. of America used an appropriate process to review and monitor its 401(k) plan's investment lineup, a federal judge said in an opinion tossing out a 45,000-person class action against the insurance company.

Judge Jamel K. Semper awarded Prudential summary judgment in the Employee Retirement Income Security Act case, saying the workers failed to raise a factual dispute as to whether Prudential's process for making 401(k) investment decisions was sufficient.

Prudential's investment committee met quarterly to review the plan's funds, hired an "extremely thorough" outside consultant, reviewed briefing books on plan investments before meetings, and provided fiduciary training to new committee members, Semper said in an unpublished opinion issued Thursday in the US District Court for the District of New Jersey.

Semper added that Prudential's practices were comparable to the fiduciary processes found sufficient in cases against Evonik Corp., B. Braun Medical Inc., Quest Diagnostics Inc., and Goldman Sachs Group Inc.

The lawsuit accused Prudential of "overpopulating" its retirement plan with proprietary mutual funds offered by Prudential and its affiliates, failing to monitor the funds' performance, and failing to disclose the amount of administrative fees it earned from the plan. This allowed Prudential to reap "grossly excessive fees" at the expense of its workers' retirement savings and in violation of ERISA, plaintiff Young Cho alleged.

Dozens of lawsuits have targeted financial companies that put their own funds in their workers' 401(k) plans. These cases have garnered hundreds of millions of dollars in settlements, with settling employers including Reliance Trust Co. (\$39.8 million), McKinsey & Co. (\$39.5 million), Wells Fargo & Co. (\$32.5 million), and Deutsche Bank (\$21.9 million).

Miller Shah LLP and Carella, Byrne, Cecchi, Brody & Agnello PC represent Cho. Walsh Pizzi O'Reilly Falanga LLP and Willkie Farr & Gallagher LLP represent Prudential.

The case is Cho v. Prudential Ins. Co. of Am. , 2024 BL 464562, D.N.J., No. 2:19-cv-19886, unpublished 12/19/24 .

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December 24, 2024, 7:49 AM PST

Symbria Employee Stock Plan, Argent Trust Ink \$5.9 Million Deal

By Ufonobong Umanah

Participants in Symbria Inc.'s employee stock ownership plan and Argent Trust Co. reached a \$5,900,000 class settlement to resolve claims that the employees overpaid for company stock in 2015.

The settlement would provide a remedy of nearly \$5,900 per plan participant, which is a good result for the class, Carolyn Placht told the US District Court for the Northern District of Illinois on Monday. The plan had 986 participants as of 2022, according to court documents.

- The lawsuit challenged a transaction in which the plan took on debt to purchase all the company's outstanding stock for \$66.5 million. Placht said the inflated price was based on unrealistic growth projections, unreliable financial data, and inappropriate comparisons to public companies
- Earlier this year, the court ruled that the class proved their underlying claims for prohibited transactions under the Employee Retirement Income Security Act, but that a trial was needed to determine whether Argent Trust could escape liability under one of the statute's exemptions
- Placht's counsel, Bailey & Glasser LLP, said it would ask for no more than a third of the settlement fund in attorneys' fees

Judge Sunil R. Harjani is assigned the case.

O'Melveny & Myers LLP, Foley & Lardner LLP, and Tomlinson & Shapiro PC represented Argent Trust.

The case is Placht v. Argent Tr. Co. , N.D. Ill., No. 1:21-cv-05783, motion for preliminary approval 12/23/24 .

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Litigation

December 24, 2024, 8:59 AM PST

Express Scripts Gets Partial Win in West Virginia Opioid Suit

By [Nyah Phengsithy](#)

- Judge finds claims by cities, counties aren't time-barred
- Court dismisses RICO, gross negligence claims against PBMs

Express Scripts Inc. and OptumRx Inc. notched a partial victory over cities and counties in West Virginia in a case alleging they played a central role in the opioid epidemic, according to a federal court ruling.

Pharmacy benefit managers Express Scripts and OptumRx were able to get Judge John Preston Bailey of the US District Court for the Northern District of West Virginia to dismiss a claim that they violated the Racketeer Influenced and Corrupt Organizations Act by carrying out a fraudulent scheme of dispensing opioids to maximize profits for themselves and drug manufacturers.

At issue before the court was whether the PBMs, for at least the last two decades, played a central role in causing the oversupply of opioids in cities, towns, and counties in West Virginia.

The PBMs argued that the plaintiffs failed to satisfy the RICO statute's requirements and they haven't plausibly alleged an injury to a business or property and proximate cause.

"As pointed out by the plaintiffs and clearly established by the Fourth Circuit, 'RICO does not authorize private plaintiffs to sue for injunctive relief,'" Bailey wrote Monday, granting Express Scripts' motion to dismiss the claim. "Private plaintiffs may sue only for treble damages and costs."

However, the court denied the PBMs' motion to dismiss the claim that the plaintiffs' allegations aren't time-barred.

Express Scripts argued the plaintiffs knew, or should have known, of their claims by September 2019 at the latest.

"Upon construing all factual allegations in favor of plaintiffs, this Court cannot conclude that their claims are time-barred as a matter of law," Bailey wrote. "The question of whether the statute of limitations bars the plaintiffs' claims is more appropriately addressed in a motion for summary judgment or at trial."

West Virginia's second amended complaint also alleged facts that may warrant application of the continuing tort separate accrual rule and the discovery rule, Bailey wrote.

The plaintiffs are not required "to rebut the affirmative defense of the statute of limitations" in their second amended complaint, he added.

Additionally, the court rejected Express Scripts' claim that Medicare Part D and the Employee Retirement Income Security Act of 1974 preempt the state's claims. He also denied that the City of Huntington and Cabell County are "improperly forum-shopping."

Bailey, however, granted the PBMs' motion to dismiss the claim for gross negligence.

The case is Ohio County Commission v. Express Scripts , N.D. W.Va., No. 5:24-cv-00142, order 12/23/24 .

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Social Media, Plastics & Baby Formula: Mass Torts To Expect in 2025

 [law.com/nationallawjournal/2024/12/23/social-media-plastics--baby-formula-mass-torts-to-expect-in-2025](https://www.law.com/nationallawjournal/2024/12/23/social-media-plastics--baby-formula-mass-torts-to-expect-in-2025)

Amanda Bronstad

In 2024, juries awarded substantial verdicts against Abbott and Mead Johnson over infant formula. Several of the first Zantac trials failed to reach verdicts, or juries sided with defendants Boehringer Ingelheim and GlaxoSmithKline. Juries also sided with Bayer's Monsanto in several Roundup trials, and judges struck plaintiffs' experts over decongestants and the herbicide paraquat.

Multimillion-dollar settlements came down involving Philips CPAP devices, 23andMe's data breach, Zantac cases against GlaxoSmithKline and Norfolk Southern's 2023 train derailment.

For 2025, plastics, PFAS, Ozempic and social media could be among the biggest mass torts. Here's a look at what lawyers on both sides are watching:

Plastics: Plaintiffs' firms are preparing to get retained as outside counsel to governments in lawsuits over plastic pollution, alleging both misrepresentations about recycling and public nuisance claims. In 2024, Motley Rice, for instance, brought a case on behalf of Los Angeles County against Coca-Cola and PepsiCo. And Cotchett, Pitre & McCarthy, alongside California Attorney General Rob Bonta's action, brought a lawsuit on behalf of four environmental groups against Exxon Mobil Corp. over its use of non-recyclable plastics. But a judge also threw out New York Attorney General Letitia James' public nuisance case against PepsiCo involving plastic pollution of the Buffalo River.

PFAS: DuPont, 3M, Tyco and BASF, the biggest defendants in the multidistrict litigation in U.S. District Court for the District of South Carolina over perfluoralkyl and polyfluoralkyl substances, or PFAS, a "forever chemical," have reached more than \$14 billion in settlements with cities, counties and others alleging firefighting foams have contaminated the public's drinking water. Lawsuits are expected to continue over PFAS and related chemicals in everyday items, with new cases filed over bubble gum, baby wipes and Prime hydration drinks. Questions remain whether President Donald Trump will reverse the Biden Administration's sweeping regulatory efforts on PFAS.

Social media. Social media sites like Facebook and YouTube failed to knock out various claims that their sites addict America's youth, causing depression and other mental illnesses. More substantive decisions could be down the line in 2025, including a potential first trial in California later in the year. "I think it's still out as to whether or not they'll be able to get those over the goal line," said Matt Webb, senior vice president of legal reform policy at the U.S.

Chamber of Commerce Institute for Legal Reform. But plaintiffs' attorneys are already looking closely at another target in 2025, said Jennifer Hoekstra, of Aylstock, Witkin, Kreis & Overholtz in Pensacola, Florida. "We're keeping an eye on video game addiction a lot right now," she told Law.com. A motion to coordinate those cases in multidistrict litigation, which failed this year, could crop back up in 2025, she said.

Matt Webb, Senior Vice President of
Legal Reform Policy with the U.S.
Chamber Institute for Legal Reform.

Infant formula. After juries awarded verdicts of \$60 million and \$495 million this year, a third trial in Missouri alleging cow's milk-based infant formula provided to premature babies in hospitals caused a gastrointestinal illness called necrotizing enterocolitis, or NEC, ended in a defense win for both Abbott and Mead Johnson. But the judge sanctioned Abbott's lead counsel, Kirkland & Ellis partner Jim Hurst, barring him from giving the closing argument, after alleged violations of his court orders. Webb said broadcast TV advertising over infant formula by plaintiffs' firms has jumped from \$950,000 in 2023 to \$3.9 million this year through Dec. 1. "We're seeing a big plus up in the amount of advertising seeking plaintiffs in that space," he said.

Diet Drugs. After the death of U.S. District Judge Gene Pratter, in the Eastern District of Pennsylvania, the multidistrict litigation over Ozempic and related drugs has moved ahead against Novo Nordisk and Eli Lilly. On Dec. 12, the U.S. Judicial Panel on Multidistrict Litigation allowed the cases to add another drug, Saxenda, but some new cases are focused on a different injury. While the multidistrict litigation alleges the drugs cause stomach paralysis, new lawsuits focus on optic nerve injuries. "There's another round of cases out there that litigators are looking at," Hoekstra said.

Jennifer Hoekstra of Aylstock, Witkin,
Kreis & Overholtz. Courtesy photo

Depo-Provera. The injectable birth control is the focus of dozens of lawsuits against Pfizer alleging a link to a brain tumor called intracranial meningioma. A motion to coordinate the cases into multidistrict litigation is scheduled for the U.S. Judicial Panel on Multidistrict Litigation's Jan. 30 hearing. "It's going to be a large women's health issue litigation," Hoekstra said.

Litigation financing. A federal rulemaking committee on Oct. 10 agreed to consider possible action on the disclosure of litigation financing, which also is the subject of bills expected to be reintroduced in 2025 in Congress. "There's an expectation there's going to be quite a bit of activity on the litigation funding at the federal level," Webb said about 2025.

Hoekstra cast more doubt on developments on the legislative front, but she agreed the rules committee could take some actions in the next year. "Quite frankly, it will be a hot-button topic," she said.

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Latest

Trending

New Suit - Copyright

VSJ Consulting was hit with a copyright infringement lawsuit on Dec. 26 in New York Eastern District Court. The court case, brought by Sanders Law Group on behalf of Ramales Photography, accuses the defendant of posting the plaintiff's copyrighted photograph to the company social media account without authorization. Counsel have not yet appeared for the defendant. The case is 1:24-cv-08800, Ramales Photography LLC v. Vsj Consulting Inc. .

[Read More](#)

New Suit - Trademark

Shenzhen Dekelan Technology Co. was slapped with a trademark infringement lawsuit on Dec. 26 in Illinois Northern District Court. The lawsuit, brought by Glacier Law on behalf of Shenzhen Xing Ying Da Industry Co., arises from the alleged sale of counterfeit Neewer-brand goods. Counsel have not yet appeared for the defendant. The case is 1:24-cv-13219, Shenzhen Xing Ying Da Industry Co., Ltd v. Shenzhen Dekelan Technology Co., Ltd.

[Read More](#)

Class Action

December 23, 2024, 10:25 AM PST

Lawyers in UFC Case Seek Nearly \$125 Million in Awards, Expenses

By Katie Arcieri

- Attorneys say they spent \$9.5 million in out-of-pocket costs
- Judge gave preliminary approval of a \$375 million deal

Lawyers representing plaintiffs in a decade-long wage and antitrust dispute against Ultimate Fighting Championship asked a federal judge to award them nearly \$125 million in attorneys' fees and reimbursed expenses.

Berger Montague PC, Cohen Milstein Sellers & Toll PLLC, and Joseph Saveri Law Firm LLP filed a request Dec. 20 in the US District Court for the District of Nevada seeking an award of \$115.2 million, which is 30.72 percent of the \$375 million settlement that a judge preliminarily approved in October.

The attorneys also requested reimbursement of about \$9.5 million in litigation expenses and asked for \$250,000 each for the five lead plaintiffs who were "class representatives."

The deal is designed to resolve claims by ex-fighters that UFC, whose parent company is TKO Group Holdings Inc., abused its power over their labor and depressed their wages. It is among a string of antitrust suits brought against NCAA, Bellator Sport Worldwide LLC, and other sports organizations.

A hearing on final approval of the settlement will be held Feb. 6.

Eric Cramer, chairman of Berger Montague, said in a statement to Bloomberg Law that the class counsel is proud of what it achieved on behalf of a class of more than 1,100 mixed-martial arts fighters.

"We were inspired in our work by the fearless named plaintiffs who stepped forward to do battle with the UFC," Cramer said. "Because of this decade-long battle, we were able to win an unprecedented \$375 million recovery for the fighters."

A separate but related case against UFC led by plaintiff Kajan Johnson that covers fighters who fought for UFC since 2017 is being litigated separately.

UFC is represented by law firms including Paul Weiss, Rifkind, Wharton & Garrison LLP.

The case is *Le v. Zuffa*, D. Nev., No. 2:15-cv-01045, 12/20/24.

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What We Heard From Litigation Leaders in 2024

[law.com/litigationdaily/2024/12/26/what-we-heard-from-litigation-leaders-in-2024](https://www.law.com/litigationdaily/2024/12/26/what-we-heard-from-litigation-leaders-in-2024)

Ross Todd

Building a litigation practice of your own takes brains, moxie, determination and a bit of salesmanship.

Helping lead a Big Law litigation department or boutique full of litigators—that takes cat-herding skills.

Every three weeks or so, as part of our Litigation Leaders series, we connect with folks who lead elite litigation teams. We quiz them about their personal professional journeys and what sets their shops apart.

As the end of 2024 rapidly approaches, here are the 18 Litigation Leaders Q&As we conducted this past year and what stood out in each instance to us.

Lynn Neuner of Simpson Thacher & Bartlett. Courtesy photo

Lynn Neuner of Simpson Thacher & Bartlett

Alongside her longtime colleague **Jon Youngwood**, Neuner co-chairs the global litigation department at the elite Wall Street firm, which has more than 250 people in it. In an age of increased specialization, Neuner, who is based in New York, calls herself a “committed generalist.” Her practice touches on securities, insurance coverage, commercial disputes and false advertising. “I’ve always loved being a student, so I enjoy the chance to educate myself about new fields,” she said. “The clients appreciate that I bring a broad spectrum of skills to the table.” As an example, she said her knowledge of insurance makes her a better securities litigator since she can help guide clients through any relevant director and officer insurance issues.

Terri Mascherin of Jenner & Block. Courtesy photo

Terri Mascherin of Jenner & Block

Mascherin co-chairs the 400-lawyer litigation department at Jenner & Block alongside partners **Michael Doornweerd**, **Lee Wolosky** and **Reid Schar**. Its lawyers are spread across all seven of the firm’s offices, with the majority based in Jenner’s first and largest office in Chicago, where Mascherin sits. The firm is a rarity among the Am Law 100 since litigation makes up over 80% of Jenner’s headcount and revenues. “A challenge of our structure is that, given its size, our litigation department must first and foremost be its own

profit center, bringing in clients for litigation matters,” Mascherin said. “We don’t have the luxury of relying upon serving mostly clients of other practices of the firm—though that does represent a significant part of our litigation work.”

Brendan V. Johnson of Robins Kaplan.

Brendan Johnson of Robins Kaplan

Johnson, who served as the U.S. Attorney for the District of South Dakota prior to joining the firm in 2015, chairs Robins Kaplan’s national business litigation group. The group has over 100 lawyers covering everything from antitrust and trade regulation to American Indian law and policy. Johnson, who has offices in Sioux Falls and Minneapolis, said the market for lawyers who have had success at trial is very strong. “Of course, not every case we handle goes to trial, but every action we take from the moment we prepare the initial complaint or an answer is focused on our trial strategy,” he said. “Attorneys who have experience and confidence in their ability to try cases are more comfortable being creative and know better what issues will actually matter to a jury.”

Michael Shuster of Holwell Shuster & Goldberg. Credit: Andrew Walker/Getty Images. (HANDOUT).

Michael Shuster of Holwell Shuster & Goldberg

Shuster helped found the New York-based litigation firm Holwell Shuster & Goldberg in 2012 after heading global commercial litigation at **White & Case**. HSG now has about 75 lawyers, which Shuster says aligns with the vision the firm’s four founders set out with a dozen years ago. “Our lawyers tend to be ‘lawyers’ lawyers’—an old expression that refers to lawyers who are learned in the law—and also, for lack of a better phrase, street fighters,” he said. “To borrow from the lexicon of athletics, they ‘get after it.’ Every day. All the time. Without letup. At the same time, we stress professionalism, civility, and common sense. There’s no need to be obnoxious. Just try to be more effective than your adversary—ideally, a lot more effective.”

Jaime Drozd, managing partner of Davis Wright Tremaine. Courtesy photo

Jaime Drozd of Davis Wright Tremaine

Drozd, who is based in Seattle, was one of the co-chairs of the litigation practice group, which has more than 100 lawyers, back when we connected in March. She has since become the firm’s managing partner. She said DWT litigators see themselves as extensions of their clients’ business. “By combining industry focus with technical excellence and a trial-ready mindset, our litigators are able to stay several steps ahead of the opposition,” she said. “Core to this mindset is understanding how a given piece of litigation fits within our clients’ objectives and molding our litigation strategy accordingly.”

Debbie Ellingboe of Faegre Drinker Biddle & Reath. Courtesy photo

Debbie Ellingboe of Faegre Drinker Biddle & Reath

Ellingboe, who is based in Minneapolis, leads the 200-lawyer business litigation practice group at Faegre Drinker. Prior to its 2020 merger with **Drinker Biddle & Reath**, Ellingboe was the leader of the business litigation group at **Faegre Baker Daniels**, and helped to integrate two departments during a merger that took hold during the remote work environment driven by the COVID-19 pandemic. “The silver lining of the pandemic is that the virtual environment provided an opportunity for attorneys to meet and connect with even more people than otherwise would have been possible by traveling in person,” she said. “It also led to far more cross-office work than would have happened absent the remote work environment, because our lawyers became comfortable working with people by video, phone and email, rather than in person, as there simply was no ‘in person’ for quite some time.”

Scott Kane of Squire Patton Boggs. Courtesy photo

Scott Kane of Squire Patton Boggs

Kane, a U.S. Army vet, was managing partner of the firm's Cincinnati office before April, when he became co-chair of the firm's global litigation practice, which has more than 340 commercial litigators worldwide. He said that his military service helped teach him to be direct, to take action and to commit to the mission in front of him. “I was working in a bar before law school and one of the other bartenders was a Marine. (I liked him anyway),” Kane said. “One day, the manager asked us to move a table; we picked it up, and asked, ‘Where do you want us to put it?’ The manager started laughing and we asked him what was so funny. He said ‘I tell you guys to move a table, you immediately do it, and ask me ‘where?’ If I told someone else, I’d still be having a discussion about ‘why does the table need to be moved?’” I try to remember that story in my professional life.”

Angela Zambrano of Sidley Austin. Courtesy photo

Angela Zambrano of Sidley Austin

Zambrano, who is based in Dallas, this year became co-chair of the firm’s 750-lawyer litigation global practice group alongside partner **Bruce Braun**. Even with that management responsibility, she had five potential trials on her calendar when we connected in May. “Sidley differs from many law firms in that partners who take on leadership roles are given the resources to maintain and grow their practices—in other words, to have their cake and eat it too. Sometimes that is a lot of cake,” she said. “But Sidley expects its leaders to lead by example and continue to be ‘working lawyers’ while playing leadership roles in the firm. Nothing makes me happier than trying cases with my Sidley colleagues, so I am committed to maintaining an active trial practice while I serve in this role.”

Benjamin Brown, managing partner of Cohen Milstein Sellers & Toll. Courtesy photo

Ben Brown of Cohen Milstein Sellers & Toll

Brown, who is based in Washington, D.C., took on the role of managing partner this year at the plaintiffs firm with more than 100 attorneys working across eight offices. Brown said the firm embraces the role of the private attorney general seeking to hold corporations accountable for misdeeds and overreach. That “mission-driven” approach is attractive to the top law students in this generation, he observed. “Then, because our firm is highly specialized, those exceedingly well-credentialed attorneys gain deep experience in complex plaintiff-side litigation within their substantive area. That experience then informs our careful case selection,” he said. “Thus, our firm is really a defendant's worst nightmare—a deep bench of mission-driven superachievers who believe in their case and have become highly specialized to litigate precisely the type of case being litigated.”

Donald R. McMinn of Hollingsworth. Courtesy photo

Don McMinn of Hollingsworth

McMinn was tapped as the managing partner of Hollingsworth, a 61-lawyer litigation firm based in Washington, D.C., at the turn of the year, after longtime managing partner **Donald Fowler** retired. “Don recognized that his successor should not try to manage precisely as he did, but he did offer me important, overarching advice—let litigators litigate and build a team around them to support those efforts both substantively and by removing non-litigation roadblocks so our team members can put their attention toward advancing the litigation interests of our clients,” McMinn said. “Our client focus and our team members' expertise in litigation are the basis for our reputation as the firm to hire when a client faces complex litigation. My job as managing partner is to ensure that every one of my colleagues at the firm has what each needs to be the best team member possible.”

John Hall, partner with Covington & Burling. Photo: Diego M. Radzinski/ALM

John Hall of Covington & Burling

Hall, who is based in D.C., chairs the global litigation practice at Covington, which has more than 800 litigators and white collar lawyers—a couple hundred more than the firm had the last time Lit Daily caught up with him in 2019. On top of general business litigation, the firm has developed specialties in patent/IP, mass torts, antitrust, international arbitration, insurance recovery, class action and white-collar work. “[I]f your litigation practice is mostly in support of a larger corporate transactional practice, perhaps a generalist model works. But at Covington, our litigation practice is a huge driver of new client work and relationships,” he said. “So, for us, having market-leading practices in a number of specialty areas—areas of recurring high-value litigation for today's global businesses—is absolutely the right approach.”

Adam Siegel of Freshfields Bruckhaus Deringer. Courtesy photo

Adam Siegel of Freshfields

Siegel, who is based in New York, joined Freshfields more than 15 years ago to help start its white-collar practice in the U.S., and now serves as the U.S. co-head of litigation. The firm has 115 partners and 650 associates globally and U.S. litigators contribute almost 200 lawyers to that total. He talked about the “four Cs” of the firm’s litigation practice, the last of which is “cross-border.” “[O]ne of our key differentiating factors is our ability to work with colleagues and clients around the world in a seamless transnational way,” he said. “Given the interconnectedness of the economy, notwithstanding recent challenges to globalization, most large problems and opportunities faced by our clients cross borders and implicate multiple countries.”

Casey Laffey of Reed Smith. Courtesy photo

Casey Laffey of Reed Smith

Laffey is co-chair of the global commercial disputes group at Reed Smith, the largest litigation practice group at the firm, which has about 235 timekeepers globally, 175 of which are in the US. “Within the GCD, we have subgroups including international arbitration, managed care, appellate and class actions,” Laffey said. “In addition to GCD, Reed Smith has litigators in each of our five core industry groups: life sciences & healthcare, financial industry, energy and natural resources, transportation, entertainment and media. We also have litigation practice groups focused on special areas, including labor and employment, regulatory enforcement, product liability, state tax, insurance recovery and IP.”

Michael Carlinsky of Quinn Emanuel. Courtesy photo

Michael Carlinsky of Quinn Emanuel Urquhart & Sullivan

Carlinsky, who is based in New York, took on the role of co-managing partner of the world’s largest disputes firm in 2022 alongside **William “Bill” Burck**, splitting the management duties with firm co-founder and longtime managing partner **John Quinn**, who is now the firm’s chairman. “As a litigation-only firm, we have eschewed lots of bureaucracy and politics, so it makes my job a lot easier,” Carlinsky said. “In a typical week, my management responsibilities include decisions about hiring, compensation, partner promotions, associate elevations, office productivity, resolving conflicts, evaluating new offices, approving write-offs—you name it. Some are mundane. But many are exciting and exhilarating. One of my favorite activities is speaking with partners or associates about their cases and their clients—and their wins. I try to stay in touch with as many lawyers as possible—and strongly believe in an open-door policy, where I am accessible to everyone.”

Laura Hoey of Ropes & Gray. Courtesy photo

Laura Hoey of Ropes & Gray

Hoey, who is based in Chicago, serves as co-leader of the global litigation and enforcement practice group at Ropes & Gray, alongside partners **John Bueker** and **Gregg Weiner**. The practice has about 350 litigators and 60 partners working in 14 offices worldwide. “Our deep industry expertise across private equity, healthcare and life sciences and asset management is what sets us apart as a firm and provides us with the expertise to counsel clients on a diverse range of litigation and enforcement matters,” she said. “By having both strategists and trial teams that operate at the highest level, we can handle the most important matters for our clients in these industries.”

Mark Jones of Nelson Mullins. Courtesy photo

Mark Jones of Nelson Mullins

Jones, who is based in Columbia, South Carolina, has been with Nelson Mullins for three-and-a-half decades and serves as leader of the firm’s litigation group, which has about 530 litigators spread across 34 offices. “We are often selected as members of virtual trial teams with other national firms not only for our substantive experience and talent but also because of our ability to work collaboratively with other firms, which is always in the clients’ interest,” he said. “We committed ourselves years ago to having a deep and diverse bench of trial attorneys who can help clients assemble ‘dream teams’ with substantive knowledge and experience as well as racial, gender and age diversity.”

Eric Belfi of Labaton Keller Sucharow. Photo: Michael N Meyer

Eric Belfi of Labaton Keller Sucharow

Belfi, a member of the executive committee at Labaton Keller Sucharow and the head of client development at the plaintiffs firm that has about 80 lawyers, discussed the firm’s process for assessing claims on behalf of institutional investors. “Our dedicated case evaluation team conducts a thorough review of all public information, collaborating with experts to assess financial and operational aspects,” he said. “The team works closely with our in-house data and investigative units to build a comprehensive case analysis. Once our findings are complete, we counsel our clients on the potential risks and benefits, ensuring they have the insights needed to make informed decisions about pursuing litigation.”

Beth-Ann Krinsky, partner at Greenspoon Marder in Fort Lauderdale. Courtesy photo

Beth-Ann Krinsky of Greenspoon Marder

Krinsky, who is based in Fort Lauderdale, Florida, heads the national litigation department at Greenspoon Marder, a firm in the Second Hundred of the Am Law 200 with more than 100 litigators across the country. “Most of our litigators in Florida have been practicing law

together for many years, and thus, we have a deep bench of seasoned practitioners who have been in our community and who have relied on each other,” she said. “This provides a great deal of credibility with our judges, who know most of our practitioners and know they can rely on the skill of the Greenspoon Marder lawyers. Our other offices have now grown to have the same level of seasoned litigators with years of experience who have served us so well by being the example of its Greenspoon Marder lawyers, including showing that they are prepared, compassionate and wicked smart.”

Paul Weiss' Shanmugam Joins 11th Circuit Fight Over False Claims Act's Constitutionality

 [law.com/nationallawjournal/2024/12/20/paul-weiss-shanmugam-joins-11th-circuit-fight-over-false-claims-acts-constitutionality](https://www.law.com/nationallawjournal/2024/12/20/paul-weiss-shanmugam-joins-11th-circuit-fight-over-false-claims-acts-constitutionality)

Avalon Zoppo

Veteran appellate lawyer Kannon Shanmugam has joined the fight unfolding in the U.S. Court of Appeals for the Eleventh Circuit over the constitutionality of the federal False Claims Act's whistleblower provision.

In a decision last September, U.S. District Judge Kathryn Mizelle ruled that the FCA's qui tam provision—which allows citizens, referred to as “relators,” to file suits on the United States' behalf against those who have allegedly defrauded the government—violates Article II of the U.S. Constitution.

The ruling could have major implications for future qui tam litigation where the government declines to intervene, and comes as conservative justices on the U.S. Supreme Court express constitutional concerns with the FCA.

Shanmugam, chair of Paul, Weiss, Rifkind, Wharton & Garrison's Supreme Court and appellate litigation practice, filed a notice of appearance as lead counsel Friday for defendant Florida Medical Associates, which successfully moved to dismiss a whistleblower suit brought by family physician Clarissa Zafirov.

Zafirov, a former Florida Medical Associates employee, alleged the company misrepresented patients' conditions to Medicare. Zafirov claimed these activities violated the FCA.

The government chose not to intervene and allowed Zafirov to drive the litigation, but did contest Family Medical Associates' constitutional challenge to the FCA that was argued in the company's motion for judgment on the pleadings.

Mizelle, of the Middle District of Florida, ruled that relators like Zafirov are exercising executive power when they bring qui tam suits on behalf of the United States but are not appointed by the president, in violation of the Constitution's Appointments Clause.

“That arrangement directly defies the Appointments Clause by permitting unaccountable, unsworn, private actors to exercise core executive power with substantial consequences to members of the public,” Mizelle stated in her decision dismissing the suit.

Justice Clarence Thomas, in a dissent last year, raised concerns that the qui tam provisions run afoul of Article II. Justices Brett Kavanaugh and Amy Coney Barrett supported Thomas' view in a separate concurrence.

Florida Medical Associates is also represented by Foley & Lardner and other firms.

Zafirov is also represented by several firms, including Morgan Verkamp and Nolan Auerbach & White, which focus on whistleblower protection.

The case is docketed at the Eleventh Circuit as *Clarissa Zafirov v. Florida Medical Associates LLC*, No. 24-13581.

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CFPB Takes on BoA, Wells Fargo and JPMorgan Chase Over Zelle Fraud

 [law.com/nationallawjournal/2024/12/20/cfpb-takes-on-bo-a-wells-fargo-and-jpmorgan-chase-over-zelle-fraud](https://www.law.com/nationallawjournal/2024/12/20/cfpb-takes-on-bo-a-wells-fargo-and-jpmorgan-chase-over-zelle-fraud)

Alyssa Aquino

The U.S. Consumer Financial Protection Bureau sued three of the nation's largest banks over fraud on Zelle, saying they exploited users' expectations of security to get them to sign up for the payment platform, without enacting appropriate safeguards.

In a Friday news conference, CFPB Director Rohit Chopra alleged that Bank of America Corp., JPMorgan Chase & Co. and Wells Fargo, as well as Zelle operator Early Warning Services LLC, allowed fraud to flourish on Zelle and "played dumb" when customers reported fraudulent activity on their accounts.

"In case after case, banks routinely denied requests for help, turning a blind eye, even when customers provided clear evidence that criminals had taken over their accounts and the transactions were unauthorized, even police reports documenting the crimes," Chopra said.

A Zelle spokesperson, Jane Khodos, criticized the lawsuit in a Friday statement, saying that despite a 27% increase in transaction volume in 2023, reports of scam and fraud decreased by nearly 50%. There are no fraud or scam reports for 99.5% of payments on Zelle, Khodos said.

"The CFPB's attacks on Zelle are legally and factually flawed, and the timing of this lawsuit appears to be driven by political factors unrelated to Zelle. Zelle leads the fight against scams and fraud and has industry-leading reimbursement policies that go above and beyond the law," Khodos said.

Zelle was created by BoA, JPMorgan Chase and Wells Fargo, as well as four other financial institutions in 2017, after Venmo and CashApp had launched. The CFPB alleged that in the rush to compete with those digital platforms, the banks conducted minimal fraud prevention analyses, testing and diligence, and instead focused on marketing and growing their customer base. In the first half of 2024, Zelle accounted for 1.7 billion transactions covering \$481 billion, according to the CFPB. As Zelle was directly associated with the banks, consumers "naturally" trusted Zelle, Chopra said.

But in a complaint filed in the federal court in Arizona, where Early Warning Services is headquartered, the CFPB alleged several flaws in the Zelle system, including limited identity verification and information sharing measures that allow for fraudsters to create and hop between multiple accounts across the Zelle network.

“What they built became a gold mine for criminals, a system that made it easy for fraudsters to move money quickly, while making it nearly impossible for victims to get their money back,” Chopra said.

The federal agency accused all four plaintiffs of violating the Consumer Financial Protection Act, and lobbed separate claims of violating the Electronic Funds Transfer Act against just the banks.

Although Zelle is owned by seven banks, agency officials explained they were focusing on just BoA, JPMorgan Chase and Wells Fargo, as they account for the majority of the activity on the platform. In 2023, the three banks accounted for 73% of activity on Zelle, according to the complaint.

Customers of the three banks, according to the complaint, have lost more than \$870 million over the past seven years.

In separate statements, representatives from BoA and JPMorgan Chase denied the lawsuit’s claims and characterized the effort as a government overreach.

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Trending

New Suit - Trademark

Shenzhen Dekelan Technology Co. was slapped with a trademark infringement lawsuit on Dec. 26 in Illinois Northern District Court. The lawsuit, brought by Glacier Law on behalf of Shenzhen Xing Ying Da Industry Co., arises from the alleged sale of counterfeit Neewer-brand goods. Counsel have not yet appeared for the defendant. The case is 1:24-cv-13219, Shenzhen Xing Ying Da Industry Co., Ltd v. Shenzhen Dekelan Technology Co., Ltd.

AAR, Former Executive Settle SEC Bribery Charges for \$30 Million

By Bernie Pazanowski

- SEC accused AAR of bribing Nepalese, South African officials
- Company and executive must also pay criminal penalties

AAR Corp. and one of its former executives agreed to settle Securities and Exchange Commission bribery charges against them stemming from their dealings with Nepalese and South African officials.

Between the disgorgement in this case and criminal penalties associated with the same conduct, AAR owes the government roughly \$55 million.

AAR and its subsidiaries provide aviation products and services worldwide, the cease and desist order filed Thursday by the SEC said. They have 5,700 employees and hold approximately \$2.8 billion in assets, it said.

The SEC investigated two schemes perpetrated by Deepak Sharma, who worked for an AAR subsidiary on the company's international supply chain from 2015 to 2019. The first scheme involved the purchase of two Airbus A330 aircraft by the Nepal Airlines Corp. and the second was in connection with the sale of aftermarket aviation services to South African Airways Technical, the order said. It added that both airlines are government-owned.

The bribes "were in the form of sham commissions and fees payable to government officials through the use of a third-party agent and joint venture partner," the order said. AAR and Sharma were charged with violating the Foreign Corrupt Practices Act's anti-bribery, recordkeeping, and internal accounting controls provisions, it said.

As part of the settlement, Sharma was required to disgorge \$130,835 and pay \$53,762 in prejudgment interest, but the \$130,835 was deemed paid on the basis of a forfeiture order for that amount in the criminal case against him, the order said.

AAR agreed to disgorge \$23.5 million and pay \$5.8 million in prejudgment interest, the order said. The company previously agreed to a \$26.4 million criminal penalty to avoid prosecution, the SEC's press release about the settlement said.

The cases are *In re Sharma* , SEC No. 3-22370, settlement order issued 12/19/24; and *In re AAR Corp.* , SEC No. 3-22369, settlement order issued 12/19/24.

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Investors Shrug at House GOP's 'Climate Cartel' Antitrust Claims

By David Hood

- Shareholders aren't going to stop their activism activities
- GOP called effort to install new Exxon board members collusion

Shareholder groups say they are unfazed by claims from a House Republican report that alleges they illegally conspired to install two members to an energy company's board nearly four years ago.

The groups refuted the claims in an interim report issued by the House Judiciary Committee last week and said they will continue to engage in the types of activities the lawmakers called illegal. The report alleged investor activists and big asset managers violated antitrust laws when they coordinated a campaign to elect two people to the board of oil and gas behemoth Exxon Mobil in 2021.

"I've never seen an analysis by anybody that actually goes through the elements of an antitrust violation and says that we meet them, or our members meet them," said Michael Boudett, general counsel for Ceres, an investor group targeted by the committee. "We don't have a lot of concern about actual liability; if anybody claims we're violating the laws, we'd be very happy to defend ourselves and explain why we're not."

So far, Republican members of the Judiciary Committee have not said what they plan to do with the information in the report, which includes almost 300,000 non-public documents amassed from subpoenas and hours of depositions from at least "five key players within the cartel's ranks" over the past two years. A spokesperson for the committee did not respond to a request for comment.

The organizations could face legislation or referrals to the Department of Justice for further investigation in a new presidential administration, but Boudett said they will continue engaging with companies and filing shareholder proposals to influence corporate environmental, social, and governance activities.

Further, the House GOP report alleged some of the biggest asset managers in the US including BlackRock, State Street and Vanguard, coordinated with Ceres and others to pressure companies like Exxon. But a study issued by investment research firm Morningstar last year found the big three asset managers differed greatly on how they voted their shares on 100 ESG shareholder proposals in the 2021 and 2022 proxy seasons.

“The pressure campaign against ExxonMobil is not an isolated incident,” the committee said in the report. “Through coordinated shareholder pressure campaigns at U.S. companies, the climate cartel seeks to use the trillions of dollars it manages to impose its agenda on the U.S. economy and drain it of affordable energy.”

When investors purchase shares in a company, however, they are afforded “specific inalienable rights,” including the ability to vote for or against directors, said Andy Behar, CEO of As You Sow, who was questioned by the committee for about eight hours in the lead-up to the interim report. The GOP allegations amount to an attack on American property owners, he added in a lengthy statement refuting the claims in the interim version.

“Rather than protect our rights and lower the cost of energy at a time of growing resentment with corporate power, the Judiciary Committee is fighting to fill the coffers of a few deep-pocketed corporate donors and an international oil cartel hellbent on making us pay more for energy,” he said.

The committee, according to Ceres CEO Mindy Lubber, is attempting to do more than simply slow the pace of investor activism. The House Republicans are trying to curtail the groups’ ability—and right—to vote.

“It is an effort to suggest that investors ought not be considering the financial risks of climate change, and investors see that as part of their fiduciary duty,” she said. “That’s kind of their job.”

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Insurers for Executives Brace for Steep Claims Under Trump's SEC

By Olivia Alafriz

Deep Dive

- SEC enforcement, private litigation will drive D&O claims
- High cost of litigation a cause for alarm for insurers

President-elect Donald Trump's pick to police Wall Street and corporate America is poised to focus on enforcement actions against individual executives and to roll back Biden-era regulations, sparking more private litigation against companies and their leadership—and, often, leaving insurers on the hook.

"It's potentially just open season on government regulation," said Bradley Dlatt, a Perkins Coie attorney who represents corporate policyholders. He pointed to Trump's promised deregulatory agenda under SEC pick Paul Atkins, as well as the US Supreme Court's June decision in *Loper Bright Enterprises v. Raimondo* limiting the power of federal agencies to defend some rules in court.

"The result is someone's going to have to step in to fill that void," Dlatt said. "My expectation is that's going to be plaintiffs' lawyers, which means more litigation, more claims, more cost."

At the same time, Atkins is likely to press ahead with traditional anti-fraud enforcement actions and to emphasize cases brought against individuals over sweeping penalties against companies.

The anticipated regulatory and enforcement trends in Trump's second term could mean expensive claims across the board for directors and officers insurance, which Dlatt described as insurance for executives' business judgment.

Top D&O carriers in the US include units of AXA SA, Chubb Ltd., and Berkshire Hathaway Inc.

SEC Shifts

The Securities and Exchange Commission under Atkins is expected to step back from the regulatory agenda championed by current Chair Gary Gensler that included climate change and cybersecurity disclosure requirements.

"But it's not like they're going to go away as a market policeman," said Kevin LaCroix, executive vice president at insurance intermediary RT ProExec and author of The D&O Diary blog. "There still will be enforcement actions against fraudulent misconduct, but it will just be a change in emphasis."

The new administration will likely dial up SEC investigations into more traditional forms of securities fraud, said Angelo Savino, Cozen O'Connor's professional liability group chair. And the private securities bar may take a page out of the agency's book, as it has in the past, by bringing follow-on suits, he added.

Those situations—where an SEC enforcement action is accompanied by a securities class action, leading to insurance claims in both categories—are "the most dangerous claims and where the biggest dollar loss costs come from," according to LaCroix.

If claims ramp up, which Savino said is more likely than not, insurers may boost the premiums they collect to cover the rising costs associated with defending and indemnifying policyholders.

A potential uptick in SEC probes means corporate policyholders should ensure they have explicit coverage for government investigations, according to Dlatt. Vague language on whether a government subpoena is covered, for example, has led to coverage litigation in the past, Dlatt said.

Another key change with insurance implications is that Atkins is expected to place additional emphasis on sanctioning individuals instead of, or in addition to, merely fining companies.

Although individual employees are covered under D&O policies, that "generally means that there will be more costs of defense for the individuals, and therefore erosion of insurance coverage," according to Savino.

Companies may also decide shore up their Side A coverage, a part of D&O policies that directly covers claims against directors and officers, Dlatt said.

Filling the Void

In general, attorneys predict Trump's promise to roll back regulatory oversight will lead to a climate that encourages more risk-taking behavior by businesses.

As a result, the burden of corporate accountability may shift from regulators to private shareholders.

Corporate policyholder claims filed with D&O insurers resulting from government probes under Biden-era policies will likely drop off in Trump's second term.

But those tied to private litigation are set to grow, Dlatt said, "particularly if we're going to live in a world where civil litigation is going to be what's necessary to keep companies in line."

For example, there may be a rise in mergers and acquisitions as Trump's antitrust enforcers back off from aggressively suing to block deals.

That will in turn lead to more of the private litigation—and resulting insurance claims—that typically comes with merger activity, Savino said.

Emerging Litigation Risks

Other risks will continue to drive securities litigation as well as D&O and other insurance claims, industry attorneys say.

Savino predicted there will be more private suits challenging environmental, social, and governance and diversity, equity, and inclusion programs at corporations “because they may feel that the climate within the government is more accepting of such challenges.”

Cyber risk also isn’t going away, warned Jonathan Meer, a partner at Wilson Elser who represents insurers.

“When there’s a breach, the trickle effect of business interruption claims from your vendors, third-party actions, state notification requirements, derivative claims” can have a huge impact on corporate policyholders, he said.

Any efforts under Trump to roll back cybersecurity rules will bring instability that may invite more litigation from shareholders seeking clarity, said Andres Avila, a Kennedys Law LLP attorney who represents insurers. Carriers will notice the cost across lines—not just D&O, but also cyber, commercial general liability, and property.

Securities litigation over artificial intelligence, including AI-washing suits targeting companies that oversell the impact of AI or downplay its risks, is also here to stay, according to LaCroix.

Any additional litigation should worry insurance companies that are already concerned about “social inflation,” Meer said, referring to insurers’ claims costs outpacing economic inflation. For policyholders, more litigation and claims will result in burning through coverage and hitting limits faster than before.

“Things are costing more in terms of judgments, sustainable verdicts, as well as settlements in connection with claims that are submitted,” Meer said. “That is going to remain without tort reform on the horizon on the federal or state level.”

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Entergy to Pay \$12M to Settle Accounting Controls Charges

By Guillermo Molero

Entergy agrees to pay \$12 million in penalties to settle SEC charges that it failed to maintain internal accounting controls to ensure its surplus materials and supplies were accurately recorded in its books and financial statements.

- Entergy did not admit or deny allegations in SEC complaint
- Entergy to adopt independent consultant's recommended improvements to internal accounting controls

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

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MoviePass Parent Ex-CEO Sued by SEC Over Secret Vinco Control

By Ben Miller

- Farnsworth hid his role at Vinco, raising over \$120 million
- He also controlled media outfit Zash before misleading merger

The former CEO of MoviePass parent company Helios and Matheson Analytics concealed his controlling stake in Vinco Ventures Inc., misrepresenting the growth potential of a merger with another one of his companies, according to a Securities and Exchange Commission suit.

Theodore Farnsworth, who controlled both Vinco and Zash Media & Entertainment Corp., had touted an “ecosystem” of live-streaming content, video-sharing, distribution, and production that would result from the merger, raising more than \$120 million from investors, according to the complaint filed Monday.

The pillars of that purported post-merger ecosystem were nonexistent because Vinco didn't have a proprietary platform and Zash lacked the analytics and distribution mentioned in the 2021 press release announcing the merger.

From January 2021 to April 2023, Farnsworth made similar misrepresentations about the post-merger outlook, exaggerating the capabilities of affiliated companies Lomotif Private Ltd. and AdRizer LLC while overstating revenue expectations, according to the suit filed in the US District Court for the Southern District of New York.

Vinco's stock price peaked at \$12.49 per share in September 2021, but has since dwindled to less than one cent, according to the complaint.

Farnsworth secretly assumed control of Vinco in 2021 by selecting its executive chairman with whom he had close personal and financial ties, but without taking a public-facing role himself to avoid government scrutiny, according to the SEC's complaint. Though he allegedly received \$340,000 annually as the company's chief strategy officer, Vinco's SEC filings didn't disclose that he held that role or the value of the payments made to him.

The agency seeks disgorgement and a civil penalty from Farnsworth, as well as an order permanently prohibiting him from serving as an officer or director of any public company.

Farnsworth is also a defendant in a separate SEC action alleging that he disseminated false or misleading information publicly while leading the MoviePass parent company.

Zash and Vinco didn't immediately respond to requests for comment.

The case is SEC v. Farnsworth , S.D.N.Y., No. 1:24-cv-09911, complaint filed 12/23/24 .

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Securities Law

December 26, 2024, 1:45 AM PST

Bank Deals, IPOs Set to Ramp Up With Investors Bullish on Trump

By [Evan Weinberger](#)

Deep Dive

- Inflation, regulation contributed to slowdown in bank deals
- Regulators' openness to tech, crypto likely to spark new banks

US bank mergers and initial public offerings took a dive during the Biden administration thanks to economic and regulatory pressures, but prospects are growing for a dealmaking resurgence next year.

The incoming Trump administration is widely expected to ease bank merger review guidelines that Biden's federal regulators put in place, and Trump's appointees are likely to take a lighter approach in evaluating those reviews.

Meanwhile, there's widespread optimism among dealmakers and investors that bank stocks will rise amid a broader upswing in the markets, making bank mergers and IPOs more attractive.

"There's a good amount of pent-up demand to uncoil," said Anthony Di Tomasso, an associate director in Fitch Ratings' financial institutions unit.

That optimism is tempered by worries that President-elect Donald Trump's plans for tariffs and mass deportations could boost inflation and slow the pace of Federal Reserve interest rate cuts. The late December battle over government funding, with conservative Republicans and Elon Musk throwing wrenches into the works, also highlight the potential for a chaotic Washington that may impact the economy.

'Barren' Landscape

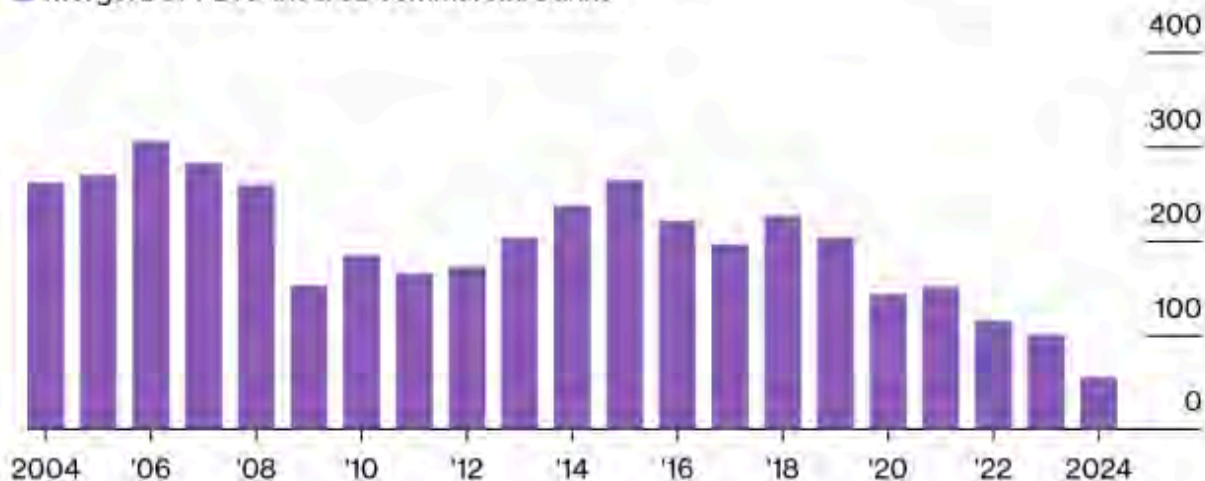
The high point for bank mergers during the Biden administration was the proposed \$35 billion tie-up between Capital One Financial Corp. and Discover Financial Services. The deal, announced in February, won approval from Delaware regulators Dec. 18 but still awaits a decision from the Office of the Comptroller of the Currency and the Federal Reserve.

Outside of Capital One-Discover, dealmaking has largely dried up during Biden's term.

From 2011 to 2019, banks agreeing to be acquired or closing averaged around 4% of total banks a year, Di Tomasso said. Since 2020, the rate's been much lower.

Bank Mergers Tailed Off During Biden Administration

■ Mergers of FDIC-insured commercial banks



Source: FDIC

Note: 2024 data as of Sept. 30

Bloomberg Law

The chill on bank mergers, or at least those involving larger financial institutions, stemmed in part from the increased focus on antitrust enforcement at the Biden-era Justice Department and at the federal banking regulatory agencies.

The economic environment wasn't conducive to dealmaking, either.

Potential deals were put on hold beginning in 2020 amid the Covid-19 pandemic. The ensuing global inflation spike resulted in high interest rates that further slowed dealmaking.

"It would be hard to describe the most recent landscape as anything other than barren," said Ben Saul, a partner in Steptoe LLP's financial innovation and regulation group.

Merger Optimism

The regulatory environment for banks is expected to ease with new agency heads appointed by Trump, making mergers more attractive.

"We'll see more of a return to a market-based approach," said Gregory Lyons, the co-chair of Debevoise & Plimpton's financial institutions group. "Trump has big goals for the growth of the economy. Banks are a big part of the growth of the economy, so they'll want to let banks grow."

Investors expecting growth are already pumping money into bank stocks.

The KBW Bank Index, which tracks the stocks of 24 of the largest US banks, soared by more than 10% after Election Day and has been steadily on the rise all year.

"People are optimistic about a more business-friendly administration coming in," said Charlotte May, a Covington & Burling LLP partner who handles mergers and capital markets transactions. "And you can see that already in bank stocks now."

That optimism—coupled with a belief among regional and community banks that they need to grow to compete with larger rivals and boost technology spending—is likely to lead to more deals, May said.

There's also a fear of missing out on the dealmaking environment anticipated under Trump.

"If you don't do it in the Trump administration, it might be more difficult to do it under a different administration," Lyons said.

Bank IPOs Return

McLean, Va.-based Chain Bridge Bancorp Inc., a bank with \$1.6 billion in assets that primarily serves Republican campaigns and political action committees, started trading on the New York Stock Exchange on Oct. 4.

The bank's \$22-per-share trading debut marked the first bank IPO in around two years, Chain Bridge said.

Former Sen. Peter Fitzgerald (R-Ill.), the bank's founder and board chairman, said the pause in IPOs was largely a function of bank stocks being seen as less attractive than other growth stocks.

"Tech stocks and biotechs have outshined banks the last few years," he said at a Dec. 6 roundtable with reporters.

But with bank stock prices growing, more privately held banks are going to consider going the IPO route, said Fitzgerald, who saw Barack Obama take his Senate seat after he chose not to run in 2004.

Bank stocks aren't for investors looking for skyrocketing value, said Chris Whalen, the chairman of Whalen Global Advisors LLC.

"They grow slowly," he said. "The well-managed ones will add to book value every year."

If the stock market grows the way investors hope in 2025, more IPOs are likely, Whalen said.

"There are a few in process now," he said.

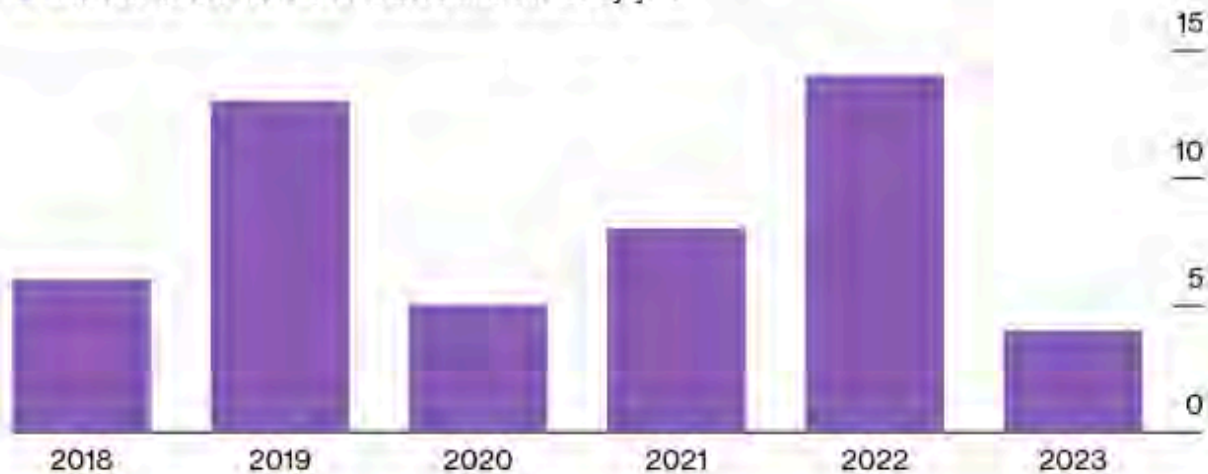
New Banks

Bankers and regulators have long lamented the lack of new entrants into the banking marketplace.

Only 50 "de novo" banks opened their doors from 2018 through 2023, with last year's total marking a recent low, according to S&P Global.

New Bank Formations Hit Recent Low in 2023

■ Number of US "de novo" banks and thrifts by year



Source: S&P Global

Note: Data as of Feb. 15, 2024. Excludes shelf charter banks, nondepository trusts, companies with foreign bank charters, and some holding company-sponsored applications.

Bloomberg Law

Many would-be de novo banks find it challenging to meet capital and other requirements for starting a new depository institution, Saul said.

With economic conditions in the banking sector improving and a potential openness to novel charters aimed at serving fintechs and cryptocurrency companies, there's hope more new banks will enter the market.

"What will vary is a friendliness toward business plans that are more innovative and less fitting into a box that previously came before," Saul said.

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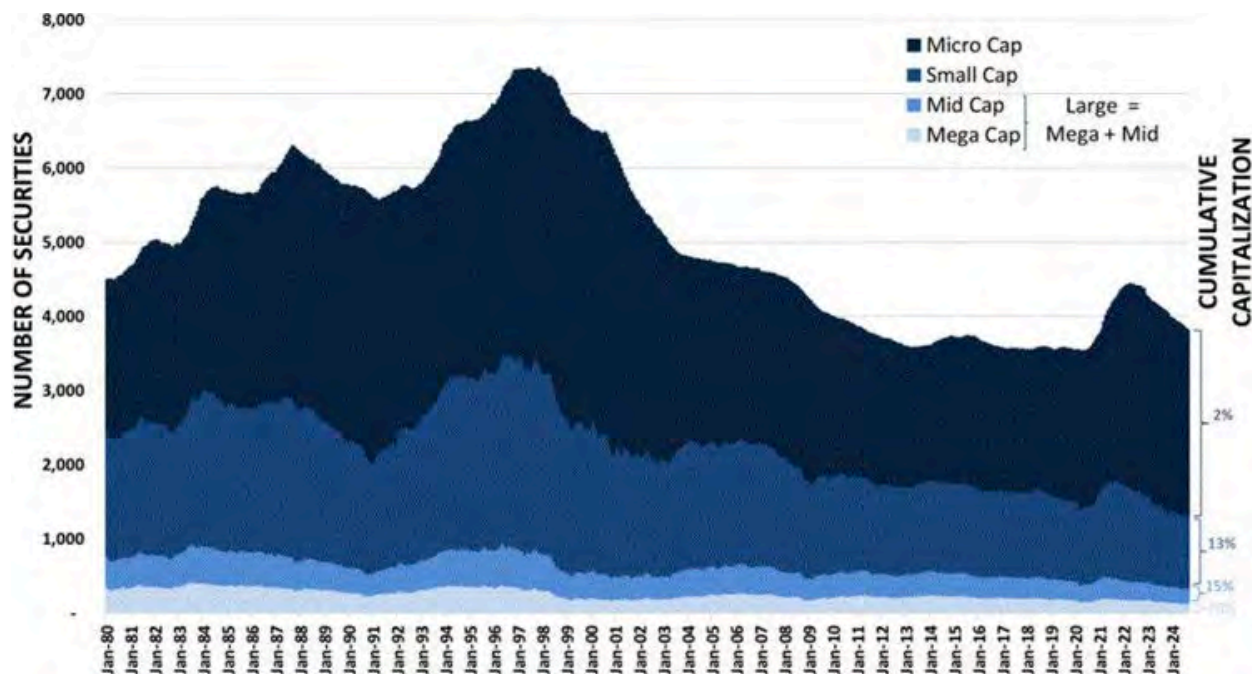
Why Companies Like OpenAI Are Staying Private Longer: QuickTake

By Bailey Lipschultz

Private companies — especially those in tech — are raising billions of dollars to delay, and sometimes even shun, a path to public markets. These efforts are creating vast wealth for employees and early-stage stakeholders, while shutting out most people who can't invest in them through things such as 401(k) retirement accounts provided by some US companies. The numbers show a dramatic shift from just a few decades ago, and the trend has become even more stark as initial public offerings (IPOs) have receded since a pandemic-era frenzy. As a result, a relatively small group of people have access to the upside while the vast majority of potential investors can only watch from the sidelines.

Has the number of public companies declined?

Yes. Over the past two decades, the number of publicly listed companies around the globe has been shrinking. In the US alone, the number of publicly traded companies has dropped by nearly half, from roughly 7,500 in 1997 to fewer than 4,000 today, according to the Center for Research in Security Prices.



Source: CRSP US Stock Databases, Center for Research in Security Prices, LLC

Source: CRSP US Stock Databases, Center for Research in Security Prices, LLC

Why are companies staying private?

Professional investors, especially institutions, have been increasingly turning to private companies; while they carry more risk, they're drawing an ever-larger share of the capital available. This shift in attention — and investment — to the private markets has resulted in companies such as OpenAI and SpaceX having an almost insatiable amount of demand from would-be buyers. The checks being cut just keep getting bigger and bigger.

Elon Musk's SpaceX just hit a valuation of \$350 billion, a number that would place it among the 25 largest companies in the S&P 500. **Sam Altman's** OpenAI raised \$6.6 billion in new funding, bringing its valuation to \$157 billion. Fintech giant Stripe Inc. bought back shares at a roughly \$70 billion valuation. And software company Databricks Inc. just raised \$10 billion in new funding, taking its valuation to \$62 billion.

As long as early-stage investors and employees are happy, the companies benefit from a more lax regulatory environment and don't have to deal with activist investors pushing for change, or disclosing trade secrets and other matters that the firms would rather keep private.

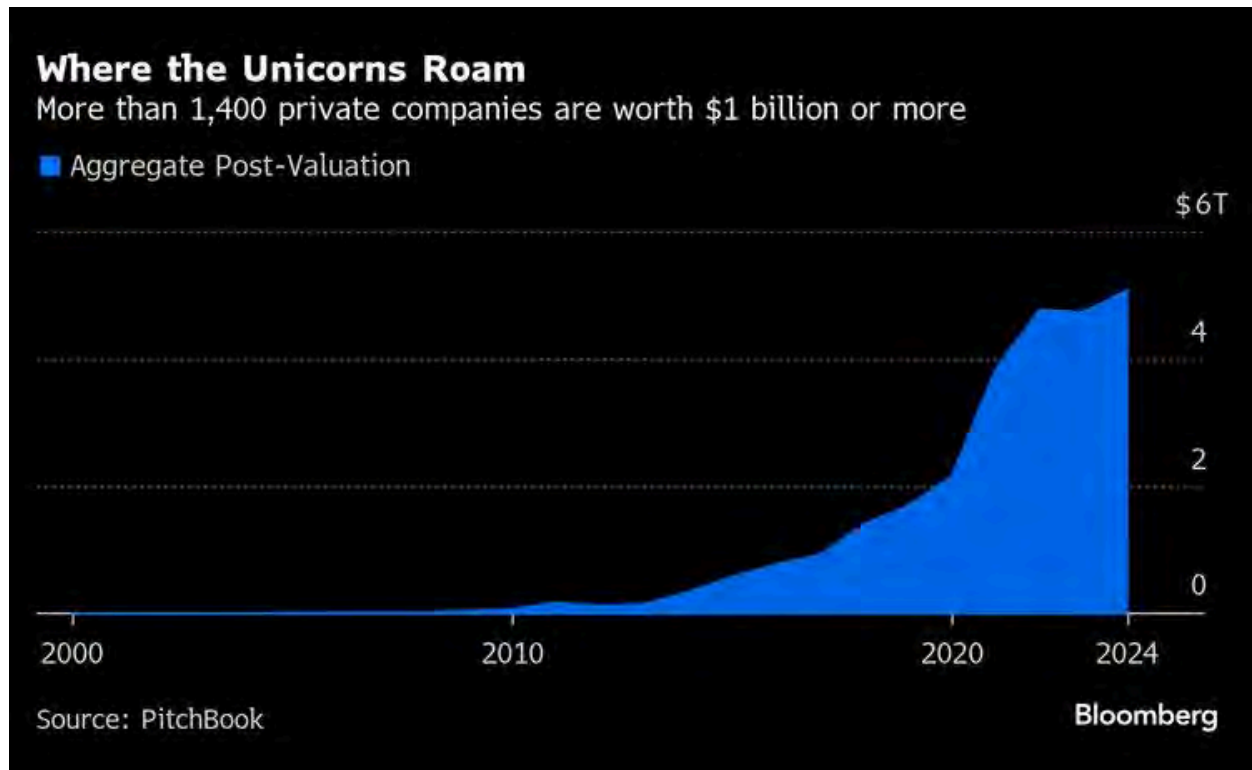


SpaceX recently cemented its status as the world's most valuable private startup, with a share sale that valued it at about \$350 billion. Meanwhile, OpenAI's last fundraising round valued it at \$157 billion. Despite huge interest from investors, these names are among many fast-growing companies which are opting not to list their shares on public markets. Bloomberg's Bailey Lipschultz, who covers how companies go public, joins host Stephen Carroll to discuss.

How much money is tied up in these companies?

It's something to the tune of about \$3 trillion for private equity-owned companies alone, as of October, according to a report from Bain & Co. Private equity firms, which raise funds to take or keep companies private, are dealing with a logjam of companies that they need to either take public or sell.

That number is likely similar for the traditional venture capital community, depending on the data. There are currently more than 1,400 venture-backed unicorns — companies valued at more than \$1 billion — worth roughly \$5 trillion in total, data from PitchBook show.



The data show there are more than 57,000 private US companies with roughly a third of those fitting the mold of late-stage and venture growth startups — a group that's typically prime for public listings.

"It's interesting to see companies like Databricks and Stripe continue to raise from unlimited capital to stay private, though they are using that money to reduce the pressure staying private causes," said PitchBook analyst Kyle Stanford. "Most companies can't pull that lever, and private capital is limited for the vast majority of companies."

How are private companies valued?

The same as public companies — they're valued based on what investors are willing to pay for a stake in them. The difference is that whereas the going price for a public company is updated and displayed in real time on stock exchanges during trading hours, the price paid to buy shares in a private company is in many cases a closely guarded secret, with the valuation occasionally disclosed in a press release after a rare funding round.

What types of oversight exist for private companies?

One important thing about being private: the company technically doesn't have to share any details of their business with the public. Yet many of the largest companies still do share details about how the business is operating, even without it being obligatory.

Can you invest in a private company?

It's difficult for retail investors to buy shares of a private company, unless they're accredited investors — people who make a certain amount of money or have certain licenses. Those rules exist in order to protect retail investors. If a person becomes an accredited investor, they can use platforms such as those offered by Forge Global Holdings Inc. and Rainmaker Securities to buy into private companies. However, those markets are opaque, have their own requirements and can be expensive.

For those who are not accredited investors, and not willing to pay money managers to buy shares in private companies, the most viable way to get a stake would be through Destiny Tech100 Inc. (ticker DXYZ). It's a closed-end fund that counts stakes in private-market unicorns such as SpaceX and OpenAI among its holdings. But buyer beware: Even though the fund most recently reported a net asset value of \$5.32 per share, its shares trade above \$60 apiece. That means people buying shares at current prices are paying a dramatic premium to what the fund itself says its assets are worth.

What do companies gain by going public?

The chance to raise cash from a huge pool of investors, including the 401(k)-style masses. Not every company can obtain the money they need in the private markets, so an IPO is often the goal. Companies typically sell shares to public investors to raise funds for operations or to handle some of their debt. It also creates a public currency for any future takeovers.

Going public also opens the door for employees and long-term investors to more easily and frequently gauge the valuation of their stake in the company.

And for many firms, being publicly listed lends credibility — to potential employees, customers and suppliers. It also serves as a branding event and often helps to validate the company because its operations, expectations and finances are disclosed on a regular basis to the public.

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Short Seller Gotham Asks Judge to Toss Grifols Defamation Suit

By Clara Hernanz Lizarraga and Chris Dolmetsch

- Accusations of misleading accounting plunged Grifols stock
- Gotham says report is opinion protected by First Amendment

US short seller Gotham City Research asked a judge in New York to dismiss a lawsuit accusing it of conspiring to drive down shares in Grifols SA.

The drug maker's market capitalization has fallen by more than €3 billion (\$3.15 billion) since Gotham published a report accusing the company of overstating its profits and understating its debt. Grifols, which has denied any wrongdoing, sued the short seller for defamation in January in Manhattan federal court.

Gotham, run by **Daniel Yu** and **Cyrus de Weck**, said in a Friday court filing that its report was based on their opinion and that they enjoy the same First Amendment freedom of speech rights as journalists.

The report "is simply a part of the ever-contentious debate between those who are long versus short on a company's prospects," Gotham said, adding that this "social context" makes it obvious that the short seller was merely expressing an opinion.

Grifols said in its own Friday filing that Gotham's report showed malicious intent and sought only to protect its short position. The company urged the judge not to dismiss the case.

"The day that defendants published the Gotham Report, a panic sell-off ensued that erased almost half of Grifols' market value, the company said. Though its share price had partially recovered, "there is still lasting damage to Grifols' reputation from defendants' short-and-distort scheme," Grifols said.

The company claims Gotham made a false statement when it said Grifols had failed to disclose a \$95 million loan in its accounts, a line it corrected in a later version of the report without notifying readers of the update.

Gotham's attempt to dismiss the case comes at the end of a horrible year for Grifols. The stock is still trading nearly a third lower than it was before the short seller report despite management changes and other measures that sought to regain investor confidence.

The firm raised €1.3 billion in a private debt placement earlier this month, in an attempt to reassure investors that it can control its leverage ratios.

The firm's woes were compounded by Brookfield Asset Management's decision last month to walk away from a potential takeover, citing differences with the board around valuation.

Grifols is the most shorted stock in the 55-member Stoxx 600 Health Care Index, according to latest data from S&P Global Market Intelligence.

Market regulators in the US and Spain launched investigations into Gotham following the January report. The US dropped its probe earlier this month, saying it did not "intend to recommend an enforcement action" against the short seller.

Meanwhile Spain's regulator opened disciplinary proceedings against Gotham and said it would fine Grifols for publishing "untrue and misleading information" in several annual accounts.

Gotham will be probed by Spain's National Court for allegedly releasing "biased and deceptive" information.

The case is Grifols SA v. Yu, 24-cv-576, US District Court, Southern District of New York.

--With assistance from **Lisa Pham**.

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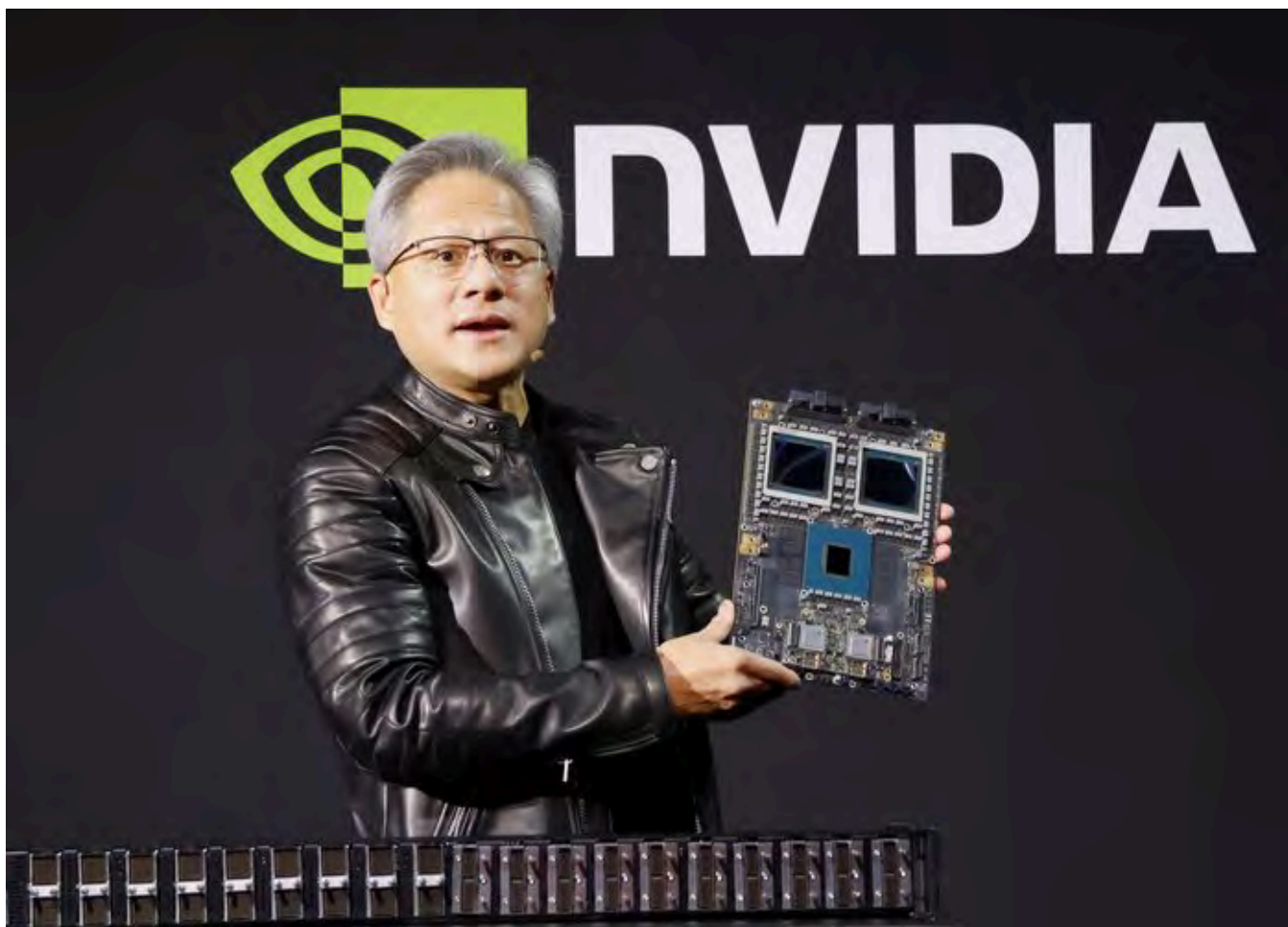
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A Look Back At 2024's Major Securities Litigation Moments

By **Katryna Perera**

Law360 (December 20, 2024, 9:41 PM EST) -- The private securities litigation bar experienced a busy 2024, with meaningful and significant rulings in almost all of the nation's leading courts, and corporations, investors, government agencies and executives fighting over pay packages, disclosures, class certifications and mergers.



The U.S. Supreme Court tossed, without ruling, a dispute stemming from investors' claims that Nvidia and CEO Jensen Huang hid the company's \$1 billion exposure to the volatile cryptocurrency mining market, seemingly second-guessing taking up the case to begin with. (Alamy Live News/Newscom)

The rulings, from the Delaware Chancery Court to federal appeals courts, brought wins for both the plaintiff's and defendants' sides, with dismissals, reversals and attorney fee awards in cases concerning Elon Musk, Dell and 1-800-Flowers, among others.

And in a major end-of-year surprise, the U.S. Supreme Court threw out two closely watched shareholder class actions it had previously agreed to take on.

Here, Law360 looks back on some of the biggest moments in the private securities litigation space of the past year.

Justices to Nvidia, Meta: Never Mind

In the span of one month, the U.S. Supreme Court agreed to toss, without a ruling, two securities cases involving Meta Platforms Inc. and Nvidia Corp.

In both decisions, the justices said in one-sentence rulings the court should not have taken up the cases in the first place and gave no further explanation.

The Meta suit **had sought** to narrow the types of risk disclosures corporations need to make to investors. The Nvidia case **had promised** to answer two questions about the pleading standards of the Private Securities Litigation Reform Act: whether suing shareholders needed access to internal company documents when claiming the company misled them, and to what extent an expert report could be relied upon to get around the lack of those documents.

Both cases seemed to challenge the justices during oral arguments. In the Meta case, the justices seemed to struggle to pin down scenarios in which they felt a disclosure would be necessary, spending two hours questioning the parties on a range of hypothetical scenarios under which disclosing a past event would or would not be appropriate.

And in Nvidia, the justices **seemed to second-guess** their decision to hear the dispute, wondering whether they were just being asked to correct a single ruling rather than to clarify the PSLRA more broadly.

The Meta lawsuit alleged the social media conglomerate had failed to disclose the risks associated with the 2015 Cambridge Analytics data harvesting scandal, which revealed the British consulting firm had collected the data of millions of Facebook users to target them with conservative political ads.

After the Ninth Circuit **revived the case** last year, Meta **petitioned the high court** to take it up, urging the justices to rule public companies don't need to disclose past events with no known risks of future harm.

Nvidia investors sued in 2019, alleging the company and its CEO Jensen Huang hid the company's \$1 billion exposure to the volatile cryptocurrency mining market due to the industry's position as a major purchaser of Nvidia's graphics processing units.

The investors said the truth came to light in late 2018, when the company announced a 7% year-over-year quarterly revenue decline as cryptocurrency markets struggled. Suing investors said the announcement caused stock prices to drop by 28.5% over the next two trading days.

High Court Rules on Corporate Disclosures

A few months prior to their decision to set aside the Meta case, the Supreme Court justices ruled a corporation's failure to disclose certain information about future business risks, absent any affirmative statement that would make such silence misleading, **cannot itself be the basis** of a private securities fraud claim.

Moab Partners LP, a shareholder of Macquarie Infrastructure Corp., had accused the company of misleading investors by remaining silent about the impact a soon-to-be-implemented global ban on high-sulfur fuels would have on its oil storage business. Moab said Macquarie had committed fraud by failing to disclose the future risk.

The Second Circuit **had ruled in favor** of Moab, saying companies must disclose all material information, but in a unanimous decision, the high court vacated and remanded the decision in April, saying pure omissions are not actionable under U.S. Securities and Exchange Commission Rule 10b-5(b).

Musk's \$55.6B Pay Plan Stays Axed

At the start of December, Delaware's Court of the Chancery **declined to reinstate** Tesla CEO Elon Musk's 10-year, \$55.6 billion compensation plan, even after a stockholder vote to ratify the pay package passed in June following the company's decision to move its corporate charter to Texas.

The decadelong compensation plan for Musk was originally approved by Tesla's board in 2018, but a

derivative lawsuit filed by shareholder Richard Tornetta shortly after challenged the package, alleging the company's directors breached their fiduciary duty to shareholders by approving it.

The suit went to a weeklong trial in November 2022, and Delaware Chancellor Kathaleen St. J. McCormick ultimately struck the pay package down, finding disclosure failures, murky terms, conflicted director architects and the effect of Musk's influence warranted voiding the package.

In addition to axing the pay package, the chancellor also approved a \$345 million attorney fee award for Tornetta's counsel, although the fee was significantly lower than the plaintiff's original bid freely tradeable Tesla shares.

The chancellor wrote in her opinion: "The plaintiff's attorneys asked for \$5.6 billion in freely tradeable Tesla shares. In a case about excessive compensation, that was a bold ask."

Exxon Fights Climate Proposal in Court

In an unprecedented move, Exxon Mobil Corp. **sued two activist investors**, Arjuna Capital LLC and Follow This, seeking to force them to withdraw a greenhouse-gas-related shareholder proposal they had sought to include in the natural gas giant's 2024 proxy statement.

The risk paid off when Arjuna **withdrew the proposal**, and U.S. District Judge Mark T. Pittman of the Northern District of Texas **dismissed the suit as moot** in a quick six-page order in June, finding Arjuna had made an "'unconditional and irrevocable' pledge" that it would not resubmit the shareholder proposal or repeat any of its alleged wrongful behavior.

Even after Arjuna withdrew the proposal, Exxon doubled down, **refusing to drop the lawsuit**, arguing Arjuna's decision to withdraw the proposal would not prevent similar ones from being presented in the future.

But in a dismissal hearing, Judge Pittman jokingly asked Exxon's counsel: "What else do you need?" and ultimately rejected Exxon's concerns about "abstract future potentialities."

Rocket Cos. Get Class Cert. Bid Grounded

Relying on the 2021 U.S. Supreme Court ruling in **Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System** , a Michigan federal judge in September **declined to grant class status** to a proposed class of Rocket Cos. investors who sued over the company's post-pandemic loan portfolio.

U.S. District Judge Thomas L. Ludington said the lead plaintiffs failed to meet a standard for certification laid out in the **Goldman ruling**, which dealt with a similar issue: Goldman was accused of making positive statements about its conflict mitigation practices that later turned out to be false.

In its 2021 ruling, the Supreme Court instructed lower courts to consider whether statements the investor described as misstatements by Goldman executives were too generic to have artificially inflated a company's stock price.

In the Rocket case, the company's CEO allegedly hid the truth about Rocket's prospects from the public, but Judge Ludington noted the challenged disclosures in the suit gave specific details about Rocket's first quarter results, and the optimistic statements made by the CEO were too generic to be relied upon, just like in Goldman.

Additionally, the company produced expert testimony establishing that the alleged misrepresentations made by the CEO were not referenced by any analyst during the class period.

Second Circuit Revives Short-Swing Profits Suit

A derivative suit against hedge fund Raging Capital Management LLC accusing it of taking advantage of its position as a leading shareholder of 1-800-Flowers' stock to make nearly \$5 million in short-swing profits **was revived** by a Second Circuit panel in June after it rejected arguments that a recent Supreme Court ruling overturned circuit precedent about short-swing trading.

The U.S. Supreme Court's 2021 ruling in **TransUnion LLC v. Ramirez**  said shareholders cannot sue beneficial owners who partake in short-swing trading.

U.S. Magistrate Judge James M. Wicks threw out the suit against Raging Capital on the conclusion that the Second Circuit's 2012 decision of **Donoghue v. Bulldog Investors General Partnership** , which would have permitted the suit to move forward, was overruled by the Supreme Court's TransUnion ruling.

However, the Second Circuit disagreed, saying TransUnion "did not abrogate" Donoghue.

The U.S. Supreme Court also declined to take up the suit in November after Raging Capital petitioned for a review of whether its status as a large investor in 1-800-Flowers should leave it vulnerable to a derivative suit.

Delaware Justices Reverse in Match.com Suit

The Delaware Chancery Court tossed a challenge to Match.com's 2019 reverse-spinoff from Barry Diller-controlled IAC Interactive, but the dismissal **was reversed** by the Delaware Supreme Court in April, with the state high court rejecting the lower court's finding that Match had justified the use of a less onerous fairness test.

Although the state justices agreed with Vice Chancellor Morgan T. Zurn's reasons for tossing other claims in the case, they found one of Match's separation committee members lacked independence from IAC, running afoul of an independence requirement for all members.

The case was closely watched, and the vice chancellor's decision prompted warnings from some plaintiffs' counsel that it would weaken a longstanding requirement that corporations must prove a transaction is fair in both price and process in conflicted mergers.

The suit against Match alleged the process and price of the merger with Barry-Diller's IAC were unfair, leaving Old Match's minority shareholders with a "slightly larger piece of a much less substantial pie."

In their ruling, the Delaware justices said the entire fairness test applies when a controlling stockholder conditions a transaction from the start on the approval of both an independent, fully empowered special committee and a majority of the minority stockholders. In addition, committees must meet their duty of care, and minority votes must be fully informed and given without coercion, they said.

Delaware Justices Affirm Atty Fee in \$1B Dell Suit

The Delaware Supreme Court issued another significant ruling in August, **affirming** an almost record-breaking \$266.7 million attorney fee award in the class action against Dell Technologies that settled in 2022 for \$1 billion.

In their opinion, the Delaware justices said the Chancery Court "did not exceed its discretion in setting the fee percentage" at just under 26.7% of the "extraordinary" settlement.

The fee will be awarded to attorneys from Labaton Keller Sucharow LLP, Quinn Emanuel Urquhart & Sullivan LLP, Andrews & Springer LLC, Robbins Geller Rudman & Dowd LLP and Friedman Oster & Tejtelt PLLC.

The firms had initially sought \$285 million, or 28.5% of the deal, in fees and expenses, which would have been the second-largest fee ever awarded by the Chancery Court, but it was trimmed after nine investment funds objected.

In its affirmative ruling, the justices said Vice Chancellor J. Travis Laster correctly followed the landmark Delaware Supreme Court 2012 decision in **Americas Mining v. Theriault** , in which the state high court upheld a \$304 million attorney fee and expense award in a case where the Chancery Court awarded \$2 billion in damages.

Pointing to Americas Mining, Vice Chancellor Laster had determined a downward adjustment to the percentage is not made based on the size of the settlement fund. Instead, the high court said, the multifactor test developed in the Delaware Supreme Court case **Sugarland Industries v. Thomas**  should be used.

Those factors include the results achieved, counsel's time and effort, the complexities of the litigation, any contingency factors and counsel's "standing and ability," it said.

The justices agreed with the Chancery Court's decision to follow Americas Mining in refusing to "adopt rigid rules in fee award cases," saying the Sugarland factors control a megafund fee award.

Vice Chancellor Laster had acknowledged that, under Americas Mining, he had the discretion to reduce the fee percentage, but he also said none of the reasons for a megafund reduction apply in this case. He said the risk of no recovery was "significant" and only intensified as trial approached.

And the high court agreed with the vice chancellor's observations that it was a "highly contentious" suit that spanned more than two years and involved nearly 100 lawyers for the defense.

\$7.3B Inovalon Deal Challenge's Revival

In a third major ruling this year, the Delaware Supreme Court **reversed** a Court of Chancery dismissal of stockholder challenges to the \$7.3 billion go-private sale of Inovalon Holdings Inc. to private equity outfit Nordic Capital, saying the lower court wrongly concluded that minority investors were adequately informed about the deal and special committee conflicts of interest.

Shareholders **had sued** the healthcare data venture over the merger, which **was announced** in August 2021, alleging the advisers, including JPMorgan Securities and Evercore Group LLC, had conflicts of interest, among other things.

Chancellor Kathaleen St. J. McCormick **dismissed all five counts** of the shareholders' complaint in 2023, but in May, the Delaware justices agreed with the shareholders that the vote on the multibillion-dollar go-private deal was not informed because the proxy disclosure omitted material information about the nature and extent of the special committee's advisers' conflicts and Evercore's role in the market outreach to potential bidders.

--Editing by Lakshna Mehta.

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The Justices' Securities Rulings, Dismissals That Defined '24

By **Susan Saltzstein, Mark Foster and Tansy Woan** (December 20, 2024, 3:55 PM EST)

In 2024, securities litigation remained active with filing trends in line with historic averages. What made this year somewhat different was the U.S. Supreme Court had four securities cases on its docket. What was even more unusual is that the Supreme Court then dropped two of those cases from its docket after oral argument.

The Supreme Court's rulings in securities litigation can have a significant impact on developments and trends as illustrated by the increasing success that defendants had in 2024 with price impact arguments based on recent Supreme Court precedent. The justices' decision not to weigh in on recurring and important issues relating to the pleading requirements of the Private Securities Litigation Reform Act may be just as impactful, if not more so, as discussed below.

Securities litigation in 2024 was on pace with historic averages.

Since the PSLRA was enacted nearly 30 years ago, just over 200 securities class actions have been filed each year on average.[1] Based on midyear estimates from Cornerstone Research, filings in 2024 were trending close to that historical average.[2]

Of the suits filed to date, so-called core filings — those defined as not involving allegations challenging merger transactions — were up slightly year-over-year. The likelihood of a company traded on a U.S. exchange being sued this year is approximately 3.9%, slightly above the historic average.[3]

Securities class actions predicated on issues relating to COVID-19 increased significantly, with seven filed in the first half of 2024.[4] The number of suits against companies involving artificial intelligence also increased this year,[5] which likely tracks with an increase in the number of public companies involved in the AI space.

Securities class actions involving special-purpose acquisition companies continued a downward trend, as with actions challenging merger transactions.[6] These declines may be attributable to a decline in SPAC and de-SPAC transactions, as well as general malaise in the capital markets during 2024.

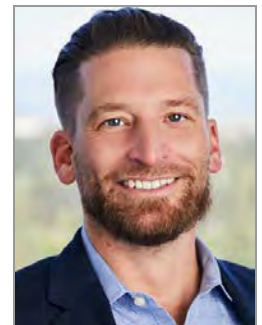
The Supreme Court considered four securities cases in 2024.

In calendar year 2024, the Supreme Court had four securities cases on its docket, an unusually high number when compared to prior years. That activity underscores that what happens at the Supreme Court inevitably affects filing activity and how lower courts adjudicate securities class actions.

What the Supreme Court refrains from doing may be equally impactful. After oral arguments, the Supreme Court issued orders dismissing two of those cases from its docket, letting purported circuit splits persist. A brief description of each case follows.



Susan Saltzstein



Mark Foster



Tansy Woan

Half-Truths And Known Trends

On April 12, the Supreme Court **unanimously reversed and vacated** the U.S. Court of Appeals for the Second Circuit's **decision** in *Macquarie Infrastructure Corp. v. Moab Partners LP*.^[7]

In *Macquarie*, the Supreme Court was asked to determine whether an alleged failure to make a disclosure pursuant to Item 303 of U.S. Securities and Exchange Commission Regulation S-K can serve as the basis for a securities fraud claim under Section 10(b) of the Exchange Act, even in the absence of an otherwise misleading statement.

Item 303 requires an issuer to disclose "any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact" on the issuer's "financial condition or results of operation[s]."^[8] The plaintiffs alleged that *Macquarie* had made material misstatements and omissions concerning the potential impact of new international fuel regulations on the company's fuel storage business.

The Supreme Court held that "[p]ure omissions are not actionable under Rule 10b-5(b)." The court explained that its decision "confirms that the failure to disclose information required by Item 303 can support a Rule 10b-5(b) claim only if the omission renders affirmative statements made misleading."^[9]

Pure omissions, including omissions of information required to be disclosed by Item 303, are not actionable. Rather, Rule 10b-5(b) only "requires disclosure of information necessary to ensure that statements already made are clear and complete." This rule, therefore, proscribes so-called half-truths.^[10]

The Supreme Court's decision in *Macquarie* resolved a circuit split in favor of the rule that had been followed by the U.S. Courts of Appeals for the Third, Ninth and Eleventh Circuits, which had held that Item 303 does not create an independent duty to disclose under Section 10(b). The Second Circuit rule that was reversed had allowed lawsuits premised on mere alleged violations of Item 303.

Pursuing Civil Claims in Federal Courts Rather Than SEC's Administrative Courts

On June 27, the Supreme Court **issued** a landmark ruling in *SEC v. Jarkesy*, holding that the commission can no longer seek civil penalties in the SEC's administrative courts: "[T]he Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties against him for securities fraud."^[11]

The *Jarkesy* decision does not bear directly on the scope of private securities litigation, but is nevertheless relevant to the subject given the Supreme Court's long-standing view that private litigation is a necessary supplement to action by the SEC.^[12]

In a 6-3 opinion, the justices explained that the Seventh Amendment guarantees "the right of trial by jury" in suits for common law. As applied to statutory claims like those asserted by the SEC, a right to a jury trial exists so long as the claim is not based in "equity or admiralty jurisdiction."

The determination of whether a claim is legal or equitable requires looking at the type of remedy sought. The opinion reasoned that money damages are a legal remedy implicating the Seventh Amendment jury right whenever they are meant to punish or deter a defendant, as contrasted from money damages that only seek to "restore the status quo," an equitable remedy.

Jarkesy stripped the SEC of one of its most powerful and frequently used tools to enforce federal securities laws. Going forward, the SEC will no longer be able to use its own in-house courts to pursue civil penalties for securities fraud violations.

Instead, the SEC will need to bring cases in federal courts. Alternatively, the SEC may need to be more selective regarding what claims to pursue in federal court, while continuing to prosecute claims seeking equitable remedies — such as injunctive relief — in its administrative courts.

Expert Opinions and Internal Reports

In *Nvidia Corp. v. E. Ohman J:or Fonder AB*, the Supreme Court was asked to resolve two related questions: (1) whether plaintiffs seeking to allege scienter under the PSLRA based on allegations about internal company documents must plead with particularity the contents of those documents; and (2) whether plaintiffs can satisfy the PSLRA's falsity requirement by relying on an expert opinion to substitute for particularized allegations of fact.

In the case under review, a divided U.S. Court of Appeals for the Ninth Circuit panel **ruled** that plaintiffs can satisfy the PSLRA's heightened pleading standard by relying on an expert report and without having to plead the details of internal reports cited in a complaint.[13] The expert report at issue in the Nvidia case relied on generic market data and made a series of estimates that the Ninth Circuit credited for the purposes of finding falsity and scienter sufficiently pled.[14]

Nvidia and a host of amici urged the Supreme Court to reverse, arguing that the Ninth Circuit's approach provides the plaintiffs bar a road map to circumvent the PSLRA's demanding standards for pleading falsity and scienter.

The Ninth Circuit's endorsement of expert reports at the pleading stage conflicts with the approach taken by the U.S. Courts of Appeal for the Second and Fifth Circuits. Expert opinions "cannot substitute for facts under the PSLRA" unless the opinion "was based on particularized facts sufficient to state a claim for fraud," according to the Second Circuit's 2022 decision in *Arkansas Public Employees Retirement System v. Bristol-Myers Squibb Co.*[15]

During oral argument, the justices expressed reservations about adopting any bright-line rules, and even voiced doubts about their decision to review the case. Several justices noted that it appeared that Nvidia was seeking some form of "error correction," an apparent retreat from arguments in its briefing advocating for a categorical rule that prohibits the use of experts where they offer opinions rather than the type of particularized facts of fraud required by the PSLRA.

Not surprisingly, then, the Supreme Court **issued** an order on Dec. 11 dismissing the appeal as improvidently granted.

The Supreme Court's decision not to decide Nvidia on the merits will leave a purported circuit split in place. It is likely that plaintiffs will feel emboldened to rely on more expert reports, and that there will be increased litigation over whether, when and how expert reports can be used to satisfy the PSLRA's pleading standards.

The Recurring Risk Of Risk Factor Disclosures

Just as in *NVIDIA*, the Supreme Court **issued** an order following oral argument in *Facebook Inc. v. Amalgamated Bank* determining that the court had improvidently agreed to review a decision from the Ninth Circuit.

In *Facebook*, the Supreme Court was asked to decide whether risk disclosures are false or misleading when they do not disclose that a risk has materialized in the past, even if that past event presents no currently known risk of ongoing or future business harm.

The Ninth Circuit **held** in October 2023 that liability can arise where a company describes a risk in "purely hypothetical" language "when that exact risk had already transpired." [16]

The Ninth Circuit's rule conflicts with the rule in the U.S. Courts of Appeals for the First, Second and Tenth Circuits, which have adopted the so-called virtual certainty test. Under that test, risk disclosures only implicitly certify that the company is unaware of any previous occurrence of a triggering event if it is almost certain to cause the warned-of harm to the company's business.[17]

In light of the Supreme Court's decision not to rule in the Facebook case, this purported circuit split will persist, leaving companies with heightened risk relating to potential claims in the risk disclosure sections of their annual reports and other periodic filings.

Supreme Court precedent has an increasing impact at class certification.

The justices' decision not to decide Nvidia and Facebook on the merits means that litigants and courts

will not have the type of clarity that helps resolve securities cases, as illustrated by the impact of Supreme Court precedent on other securities issues. During 2024, for example, there was a marked uptick in class certification denials based on the application of the Supreme Court's 2021 **decision** in Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System,[18] and the decisions issued on remand in its wake.

Goldman gives defendants an opportunity to defeat class certification by showing that an alleged misrepresentation had no price impact — that is, an impact on an issuer's stock price. That can be done by showing there is a mismatch between the challenged statement and a purported corrective disclosure. A successful price impact challenge rebuts the presumption of classwide investor reliance that is a prerequisite to class certification.

Decisions issued this year showed the importance of Supreme Court rulings in securities cases, and that defendants' opportunities to defeat class certification are increasing.

In *Shupe v. Rocket Cos. Inc.* in the U.S. District Court for the Eastern District of Michigan,[19] U.S. District Judge Judge Thomas L. Ludington on Oct. 1 **denied** class certification holding that the defendants' showing of a lack of price impact rebutted the presumption of reliance. He reasoned that "a considerable mismatch exists between the generic nature of the alleged misrepresentations and the specific revelation" of the alleged fraud at the end of the proposed class period.[20]

Similarly, U.S. District Judge J. Paul Oetken ruled against class certification in *In re: Kirkland Lake Gold Ltd. Securities Litigation*.[21] In a case challenging statements about merger activity in the U.S. District Court for the Southern District of New York, he concluded on March 29 that, "a truthful, but equally generic, substitute for the M&A Statements would not have impacted Kirkland's share price." [22] The court was persuaded that another public statement about merger and acquisition activity was even more specific than the challenged statement, and that it was undisputed that it "did not cause a statistically significant decline in Kirkland's share price." [23]

In the U.S. District Court for the Northern District of California, U.S. District Judge Edward Chen on March 11 denied class certification in part with respect to the last four months of a proposed 30-month class period in *In re: FibroGen Securities Litigation*.[24] He ruled that certification for the last part of the class period was not proper "due to a lack of predominance because Plaintiffs in this period would need to individually allege reliance and not Fraud on the Market." [25]

The Ninth Circuit recently granted an interlocutory appeal in *Jaeger v. Zillow Group Inc.* to decide how district courts within the circuit should apply the Goldman case.[26] The forthcoming opinion in the Ninth Circuit in a matter of first impression should provide meaningful guidance for courts and litigants on class certification challenges in securities litigation.

Conclusion

The PSLRA was enacted to create uniform, heightened pleading standards. The Supreme Court's decision not to decide Nvidia and Facebook on the merits followed several justices expressing hesitation during oral argument about the Supreme Court involving itself in determining what type of pleading allegations pass muster under the PSLRA. The justices eschewed the adoption of any bright-line rules.

In light of the Supreme Court's decision not to rule in Nvidia and Facebook, it is likely that defendants will seek future opportunities to raise the undecided questions in cases that are better vehicles for the justices to articulate clear, uniform rules. Until then, purported circuit splits may persist, leading to potential forum shopping and vigorous litigation about when risk factor disclosures give rise to liability, and whether and when expert reports can be used to satisfy the PSLRA's pleading standards.

Susan L. Saltzstein is a partner, co-head of the complex litigation and trials group in New York, and co-deputy of the securities litigation group at Skadden Arps Slate Meagher & Flom LLP.

Mark R.S. Foster is a partner at the firm.

Tansy Woan is a partner at the firm.

Disclosure: Skadden is counsel to Zillow in Jaeger v. Zillow Group Inc.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] See Cornerstone Research Cornerstone Research, Securities Class Action Filings 2024 Mid-Year Assessment (July 31, 2024) at 7, available at <https://www.cornerstone.com/wp-content/uploads/2024/07/Securities-Class-Action-Filings-2024-Midyear-Assessment.pdf> ("Cornerstone Mid-Year Assessment").

[2] Cornerstone Mid-Year Assessment.

[3] *Id.* at 5.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] 601 U.S. 257 (2024).

[8] *Id.* at 260.

[9] *Id.* at 265.

[10] *Id.*

[11] 144 S. Ct. 2117, 2127 (2024).

[12] *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 324 (2007).

[13] 81 F.4th 918 (9th Cir. 2023).

[14] *Id.* at 940.

[15] *Arkansas Pub. Emps. Ret. Sys. v. Bristol-Myers Squib Co.*, 28 F. 4th 343, 354 (2d Cir. 2022); accord *Fin. Acquisition Partners LP v. Blackwell*, 440 F.3d 278, 285-86 (5th Cir. 2006).

[16] 84 F.4th 844, 859-60.

[17] See, e.g., *Indiana Pub. Ret. Sys. v. Pluralsight, Inc.*, 45 F.4th 1236 (10th Cir. 2022); *Karth v. Keryx Biopharmaceuticals, Inc.*, 6 F.4th 123, 137 (1st Cir. 2021); *Wilson v. Merrill Lynch & Co.*, 671 F.3d 120, 133-34 (2d Cir. 2011).

[18] 594 U.S. 113 (2021).

[19] 2024 WL 4349172, at *24 (E.D. Mich. Sept. 30, 2024).

[20] *Id.* at *26.

[21] 2024 WL 1342800, at *9 (S.D.N.Y. Mar. 29, 2024).

[22] *Id.*

[23] *Id.*

[24] 2024 WL 1064665, at *15 (N.D. Cal. Mar. 11, 2024).

[25] Id.

[26] See *Jaeger v. Zillow Grp., Inc.*, 2024 WL 3924557 (W.D. Wash. Aug. 23, 2024), petition for interlocutory appeal granted, Case No. 24-6605 (9th Cir. 2024).

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Binance Investors Seek To Update Suit After Federal Charges

By **Sydney Price**

Law360 (December 20, 2024, 9:55 PM EST) -- A proposed class of Binance investors has asked a Florida federal judge to allow them to file a new complaint that drops some defendants and hones in on the crypto exchange and its former CEO in the wake of their historic settlement with U.S. authorities over alleged compliance failures.

The investors said in their motion filed on Thursday that an amended complaint addressing regulatory and criminal proceedings against the defendants would be the most efficient way to streamline the parties and issues pending in the litigation. Since the plaintiffs filed their initial complaint in April 2023, Binance and its CEO Changpeng Zhao have paid billions in fines to the U.S. government, and Zhao has served prison time.

The investors alleged in their original complaint that Binance knowingly and willfully ignored U.S. regulatory requirements by failing to implement an effective anti-money laundering program, which is required of financial institutions, and by offering and selling unregistered securities.

While Binance is now complying with anti-money laundering and sanctions compliance laws, it has not been "required or incentivized to enact any safeguards" to protect consumers, the investors' motion argued. The proposed amended complaint includes claims "tailored to defendants' extensive misconduct," the investors said.

"Defendant Zhao and Binance's utter disregard for U.S. money laundering laws was indeed punished, but no relief has been given to the consumers who used or continue to use Binance's platform to purchase unregistered securities," the motion said. "Defendants settled many of the enforcement actions but have continued to fight against the [the U.S. Securities and Exchange Commission], thereby preventing consumer protection."

In November 2023, Zhao and Binance pled guilty to charges brought by the U.S. Department of Justice, resulting in a \$4.3 billion fine. Zhao was separately sentenced in April to four months in prison and has served his sentence. Zhao and Binance also made \$150 million and \$2.7 billion **settlements with the Commodity Futures Trading Commission**, respectively, the motion noted.

Settlements with two of the suit's defendants — Miami Heat player Jimmy Butler and crypto influencer Ben Armstrong — are **currently pending**, the motion also said.

The investors also said their proposed amended complaint will remove a claim alleging that the BUSD stablecoin was an unregistered security. In June, the U.S. District Court for the District of Columbia found that the SEC's complaint did not plausibly allege that Binance offered BUSD as an investment contract in the **agency's ongoing suit** against the company.

Moskowitz Law Firm PLLC attorney Adam Moskowitz, counsel for the investors, told Law360 in an email that his team is grateful for Binance's cooperation in the litigation so far.

"We look forward to structuring a resolution that helps all injured Binance class members going forward in this new crypto environment," Moskowitz said.

The investors are represented by Adam M. Moskowitz and Joseph M. Kaye of the Moskowitz Law Firm PLLC and David Boies of Boies Schiller Flexner LLP.

Zhao is represented by Melanie M. Blunschi and Abid R. Qureshi of Latham & Watkins LLP and Martin B. Goldberg of Lash & Goldberg.

Binance is represented by Aaron S. Weiss and Benjamin M. Stoll of Carlton Fields and Christopher N. LaVigne and Joseph Gallo of Withers.

The case is Sizemore et al. v. Zhao et al., case number 1:23-cv-21261, in the U.S. District Court for the Southern District of Florida.

--Editing by Rich Mills.

Update: This article has been updated with comment from the investors' counsel.

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Argentina Asks Justices To Review Bondholders' \$310M Win

By **Lauren Berg**

Law360 (December 20, 2024, 10:37 PM EST) -- Argentina wants the U.S. Supreme Court to resolve a circuit split over what law applies when determining whether a country's assets are shielded from creditors under the Foreign Sovereign Immunities Act, saying its reversionary interests worth \$310 million in collateral backing recently matured 1990s Brady bonds are immune.

In its **petition** for a writ of certiorari docketed Thursday, the Republic of Argentina told the justices that the Second Circuit **in August** wrongly applied New York law in determining that the South American country's assets were located in the United States — where they could be taken by Argentina's onetime bondholders — instead of applying the Fifth Circuit's federal test to determine the assets' situs, or the property's legal location.

"Had the Second Circuit properly applied the Fifth Circuit's holistic federal test to determine the situs of the reversionary interest, and therefore considered all characteristics of the assets and transactions at issue, the tenuous connection between the United States and any reversionary interest in the [Deutsche Mark-denominated] Brady collateral would have been insufficient to defeat execution immunity under the FSIA," Argentina said.

The petition is the latest development in the high-stakes consolidated appeal in litigation first launched against Argentina a decade ago by investment funds that purchased the bonds issued in 1994, on which the country later defaulted.

After Argentina defaulted on bond payments, the investment funds became creditors and sought to attach the reversionary interests from the country's other so-called Brady Plan bonds to satisfy judgments stemming from Argentina's default.

Those earlier bonds were created in the early 1990s under the Brady Plan, a debt-relief program that was instituted by then-U.S. Treasury Secretary Nicholas F. Brady in response to the Latin American debt crises of the 1980s.

The Brady Plan bonds matured in March 2023, and they were collateralized by either special nonmarketable, zero-coupon U.S. Treasury bonds, or similar Deutsche Mark bonds issued by the German bank Kreditanstalt für Wiederaufbau, according to court documents.

The terms of the Brady Plan bonds were also subject to collateral pledge agreements, which included various provisions regarding reversionary interests, and the CPAs required the collateral to be held in either the New York Federal Reserve or certain banks in Europe, with the New York Fed serving as the collateral agent, court documents state.

However, after Argentina defaulted on \$400 million in bond payments in 2001, the investment fund plaintiffs sought to recover Argentina's Brady Plan bond collateral assets in the U.S., including any reversionary interests Argentina held in collateral in the German and Swiss banks.

After years of litigation, U.S. District Court Judge Loretta A. Preska granted that order of attachment on the European bank-held collateral. The judge ordered Argentina to turn over the reversionary interests to the investment funds, but she stayed her ruling pending the outcome of an appeal.

Before the Second Circuit, Argentina challenged numerous aspects of the lower court's findings,

arguing, among other defenses, that, under the terms of the CPAs, the Banco Central de la República Argentina owns the reversionary interests in the collateral, not the Argentine government.

Argentina also argued that, even if the government did own the interests, the collateral is immune from attachment under the FSIA for a variety of reasons, including because some of the collateral is located in Europe, and not the U.S.

However, the Second Circuit rejected Argentina's arguments across the board, noting that the appellate court has already concluded on two other appeals that the reversionary interests belong to Argentina.

In its petition to the Supreme Court that was filed Dec. 11 and put on the public docket Thursday, Argentina told the justices that the Second Circuit erred in concluding that the collateral was used for a commercial purpose in the U.S.

"The Republic has never used any interest it holds in the ... collateral in commercial activity in the United States, since that collateral relates only to bonds never offered by Republic in the United States," Argentina said in the petition.

"That the [Deutsche Mark] bonds were part of a broader global exchange that included U.S. dollar bonds and the [U.S. dollar] Brady collateral does not somehow mean the [Deutsche Mark] Brady collateral or any interest in it was used in the United States," Argentina added.

The country asked the justices to "clarify the law and promote uniformity among the circuits on this important federal issue of when courts in the United States may use their power to order a friendly foreign sovereign to turn over assets to satisfy a judgment."

Counsel for the parties didn't immediately respond to requests for comment Friday.

The investment fund plaintiffs are represented by John Bash, Dennis H. Hranitzky, Alex H. Loomis and Kevin S. Reed of Quinn Emanuel Urquhart & Sullivan LLP.

Argentina is represented by Carmine D. Boccuzzi Jr. of Cleary Gottlieb Steen & Hamilton LLP.

The case is The Republic of Argentina v. Attestor Master Value Fund LP et al., case number 24-668, in the Supreme Court of the United States.

--Additional reporting by Dorothy Atkins. Editing by Melissa Treolo.



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Beasley Allen Fights Bid To Recuse Judge In Talc Fee Suit

By **Emily Sawicki**

Law360 (December 20, 2024, 2:49 PM EST) -- Beasley Allen Law Firm on Friday fired back at The Smith Law Firm PLLC's motion to recuse an Alabama federal judge from Beasley Allen's breach of contract suit because the jurist previously represented the firm, arguing that the request is incompatible with Seventh Circuit precedent.

In a one-page statement filed less than 48 hours after The Smith Law Firm brought its recusal bid, Beasley Allen wrote that, while the firm "feels the court should do whatever it believes appropriate with respect to the motion to recuse," the request to recuse U.S. District Judge R. Austin Huffaker Jr. is beyond the bounds of the law.

"Plaintiff notes that the Smith defendants seek recusal on the grounds that Judge Huffaker represented Beasley Allen in various matters — all more than five years ago," Beasley Allen stated. "Such an argument suggests that a federal judge can never preside over a case involving a former client, a position which is inconsistent with applicable law."

Beasley Allen provided an excerpt from the Seventh Circuit's 2002 ruling in [Sphere Drake Ins. Ltd. v. All American Life Ins. Co.](#) that states: "Nothing in the Code of Conduct for federal judges makes prior representation of a litigant a disqualifying event. The norm among new appointees to the bench is that once two years pass, perhaps even earlier, a judge is free to sit in controversies involving former clients."

On Wednesday, The Smith Law Firm filed a **motion to recuse** Judge Huffaker — days after the judge disclosed that he previously represented Beasley Allen during his time in private practice with Rushton Stakely Johnston & Garrett PA.

In the motion, The Smith Law Firm noted the judge's prior advocacy on behalf of Beasley Allen, acknowledging it was "not aware of the nature and subject matter of each engagement."

The recusal bid comes as **Beasley Allen pursues** breach of contract claims against The Smith Law Firm, its former partner in representing thousands of plaintiffs in talcum powder litigation against Johnson & Johnson.

Beasley Allen brought the suit in Montgomery federal court in September, claiming The Smith Law Firm is partially responsible for more than \$1 million in outstanding litigation expenses, and accusing The Smith Law Firm of "actively undercutting" Beasley Allen while negotiating with Johnson & Johnson out of its own financial motivations, potentially harming client interests.

Also named as defendants in the suit are Porter Malouf PA, another firm that worked with Beasley Allen on the talc litigation, and Robert Allen Smith Jr. of The Smith Law Firm.

Attorneys for the various parties did not immediately respond to requests for comment Friday.

Beasley Allen is represented by Robert D. Segall and J. David Martin of Copeland Franco Screws & Gill PA.

The Smith Law Firm is represented by Joel D. Connally of Strength & Connally LLC, and Thomas G. Bufkin of Carroll Bufkin PLLC.

Porter Malouf is represented by Bruce F. Rogers and Elizabeth N. Terenzi of Bainbridge Mims Rogers & Smith LLP.

The case is Beasley Allen Crow Methvin Portis & Miles PC v. The Smith Law Firm PLLC et al., case number 2:24-cv-00582 in the U.S. District Court for the Middle District of Alabama.

--Additional reporting by James Boyle. Editing by Amy French.

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Camp Lejeune Toxic Water Litigants Cite EPA's Chemical Ban

By Jonathan Capriel

Law360 (December 20, 2024, 6:42 PM EST) -- Veterans and family members who claim they were injured due to contaminated water at Camp Lejeune will use the Biden administration's final rule banning certain chemicals to prosecute their case over toxic water at the Marine base, according to a notice they filed in North Carolina federal court.

Looking to head off any allegations of "prejudice or lack-of-notice" the federal government might lean on, the Camp Lejeune litigants informed the district court on Thursday that they want to use the "late-breaking" statements and other data released by the U.S. Environmental Protection Agency in its rule banning trichloroethylene and perchloroethylene, or TCE and PCE, from products such as cleaning solvents and brake cleaners.

Most notably, the EPA's press release, issued Dec. 9, "identifies the water contamination at Camp Lejeune as evidence of the harm caused by these chemicals," the plaintiffs said in their court filing.

"The EPA's decision is 'grounded in the best-available science that demonstrates the harmful impacts of PCE and TCE,'" the plaintiffs said. "The finalized restrictions on TCE and PCE reflect a growing scientific consensus that these chemicals, even at low levels, present an unreasonable risk to human health."

The plaintiffs told the court that the EPA's announcement came on the same day they were supposed to submit expert reports on general causation.

The plaintiffs are servicemembers and their families who stayed at the Marine base in 1953 and 1987. There are about 2,000 suits pending in the Eastern District of North Carolina that seek damages from the government over water contamination at the base, when the water system was replaced.

Many of the plaintiffs accused the federal government of intentionally delaying publishing test results that showed the water was tainted, stalling for nearly a decade so that the statute of limitations would expire.

Congress signed into law the Camp Lejeune Justice Act in 2022, which lifted time barriers for veterans and their families to pursue claims against the government. Under the law, plaintiffs must file administrative claims before suing. In August, the plaintiffs leadership group told the federal court that there were nearly **550,000 of these claims** filed with the U.S. Navy.

The EPA prohibited the manufacture and processing of TCE for most commercial and all consumer products within one year, according to the agency's **risk management rule**. The phaseout of PCE manufacturing, processing and distribution for all consumer use and many industrial uses will largely take place in less than three years, the EPA statement said. However, there will be a 10-year phaseout for the use of PCE in dry cleaning, under which the use of the chemical in newly acquired dry-cleaning machines will be banned after six months, according to the agency announcement.

The veterans and families are represented by J. Edward Bell III of the Bell Legal Group PLLC, Zina Bash of Keller Postman LLC, Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein LLP, W. Michael Dowling of the Dowling Firm PLLC, Robin L. Greenwald of Weitz & Luxenberg PC, James A. Roberts III of Lewis & Roberts PLLC and Mona Lisa Wallace of Wallace & Graham PA, among others.

The government is represented by Adam Bain and Haroon Anwar of the U.S. Department of Justice's Civil Division.

The case is Camp Lejeune Water Litigation v. U.S., case number 7:23-cv-00897, in the U.S. District Court for the Eastern District of North Carolina.

–Additional reporting by Madeline Lyskawa and Emily Field. Editing by Michael Watanabe.

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Atkins-Tied Crypto Group Lays Out Its Priorities For New SEC

By **Aislinn Keely**

Law360 (December 19, 2024, 10:35 PM EST) -- Crypto industry group The Digital Chamber, which counts U.S. Securities and Exchange Commission chair nominee Paul Atkins as an advisory board member, has urged the Wall Street regulator to "reset its historically troubled relationship" with the crypto industry by rolling back certain rule proposals and resolving non-fraud suits against crypto firms soon after President-elect Donald Trump takes office next year.

The crypto group delivered a 90-day plan for the new administration to staff members of Republican SEC members Hester Peirce and Mark Uyeda, the group said Wednesday. The group is hoping that Peirce, Uyeda and Atkins, as the **nominated chair**, will deliver "clear commission statements, no-action letters, and bespoke rulemaking for the digital asset industry."

"It is not just time to end the 'policy' of regulation by enforcement, but also to clear the decks of outdated and confusing former director and staff level speeches, letters and other informal and non-binding 'guidance' that make it nearly impossible for current market participants to understand how to comply with the SEC's rules and regulations," said the group.

The plan proposes specific actions each division within the agency should undertake within the first 90 days of the Trump administration, targeting for rollback the proposed rules and guidance that the industry has called unworkable and also kickstarting proposals for disclosure standards and safe harbors for crypto projects.

The proposal encourages the agency's Division of Enforcement to review active crypto litigation, notices of potential enforcement and investigations, and to publicly declare a "provisional enforcement approach" to crypto. It also asks the division to close enforcement actions that don't allege fraud with voluntary dismissals or favorable settlements that don't include an admission of wrongdoing. The group also suggests the size and mission of the enforcement division's Crypto Assets and Cyber Unit should be retooled.

The Digital Chamber's proposal also asks that other SEC divisions withdraw and reconsider the proposed expansion of the definition of exchange to encompass decentralized finance entities; the **custody rule**; and the **controversial** Staff Accounting Bulletin 121, which directs banks to track digital assets held in custody on their balance sheets.

The Division of Corporation Finance should issue no-action letters and exemptive relief by stating that investment contracts are not equity securities and to provide staff analysis around when a digital asset implicates securities laws, as well as a provisional definition or test that should be "more precise than **Howey** 🟡," referring to the 1946 U.S. Supreme Court standard that defines investment contracts.

The agency should create paths to registration for crypto businesses that implicate securities laws, create specific disclosure regimes and propose digital asset market infrastructure for broker-dealers, according to the plan.

Crypto advocates have hoped that Atkins, if he's confirmed to be SEC chair, will take a new approach to the industry given his consultancy work in the space. Trump highlighted Atkins' digital asset interests when nominating him earlier this month, and The Digital Chamber congratulated Atkins on the nomination in a social media post.

The chamber did not immediately respond to questions of whether Atkins, a former SEC member, had seen the priorities or had any role in shaping them as an advisory board member of the group.

The chamber said in their Wednesday announcement of the proposal that they "were very pleased by the openness of the dialogue" and the "willingness for ongoing input" during their meeting with Peirce's and Uyeda's staff. Uyeda, Peirce and Atkins "are ideally positioned to assess the agency's actions" across its divisions and offices, the group said.

--Additional reporting by Jessica Corso. Editing by Michael Watanabe.

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