No trial dates. Endless disputes. Here's why the FirstEnergy bribery cases are mired in delay

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Former FirstEnergy CEO Chuck Jones and top lobbyist Mike Dowling, as well as the state's former ranking utilities regulator Sam Randazzo, all appeared in court on Tuesday, February 13, 2024, for their arraignment in Summit County Common Pleas Court. Jones, along with his attorney Carole Rendon, leads the group along with their attorneys as they head to the courtroom. David Petkiewicz, cleveland.comDavid Petkiewicz, cleveland.com

By

Jake Zuckerman, jzuckerman@cleveland.com

COLUMBUS, Ohio – Those waiting for a resolution on the bribery cases against FirstEnergy Corp.'s CEO and senior vice president are going to have to wait a little longer. Maybe a lot longer.

A review of the remaining action – the criminal cases against the executives accused of orchestrating the public corruption scheme, the securities lawsuit against the company brought by its investors, and the regulatory investigations from the Public Utilities Commission of Ohio and the U.S. Securities and Exchange Commission – suggest three of the four remain mired in early stage legal squabbles unlikely to resolve quickly or easily. And the cases are increasingly intersecting, with one hampering or slowing down the other.

Consider a simple timeline of events. In January 2019, prosecutors say, CEO Chuck Jones and senior vice president of external affairs Mike Dowling arranged for a $4.3 million transfer from FirstEnergy to businesses controlled by a lawyer named Sam Randazzo, who had received millions more from the company over the prior decade.

In February 2019, Gov. Mike DeWine selected Randazzo from a shortlist to serve as PUCO chairman, a powerful role regulating power companies like FirstEnergy, that he held until November 2020.

As chairman, Randazzo led the five-member commission on several rulings to FirstEnergy's benefit. State and federal prosecutors in December 2023 and February 2024, respectively, indicted him on a slate of bribery charges, calling the payment a quid pro quo bribe. State prosecutors charged Jones and Dowling with paying the bribe to Randazzo. They have pleaded not guilty.

Almost six years after that transfer, the question of whether the $4.3 million was an illegal bribe of a public official, as prosecutors contend, is nowhere near coming before a jury. Thus, no one has either been held accountable or acquitted of the charges against them.

It's a different story in the political arena. Ex-Ohio House Speaker Larry Householder is in prison for 20 years for accepting bribes from Jones and Dowling; lobbyist Matt Borges is in prison for five years for paying a $15,000 bribe to a campaign operative to benefit his client, FirstEnergy Solutions; operatives Jeff Longstreth and Juan Cespedes pleaded guilty to racketeering, became federal witnesses, and haven't yet been sentenced; Neil Clark, another lobbyist, died by suicide in 2021 before his case went to trial.

Perhaps more bedeviling is that FirstEnergy, in a filing signed by now ex-CEO Steven Strah, admitted in 2021 to bribing both Householder and Randazzo. The company agreed to pay a $230 million penalty and cooperate with prosecutors, who in return will drop a charge of honest services wire fraud.

Criminal delays

Randazzo died by suicide in April 2024, ending the criminal case against him. His company, inherited by his wife, pleaded guilty to racketeering, telecommunications fraud, money laundering and aggravated theft Dec. 3, warranting more than $2 million in penalties pending the sale of Columbus properties the companies owned.

But Jones and Dowling, defended by a small private army of former prosecutors and other elite defense counsel, have succeeded in pumping the brakes in their criminal case. In a case that began in February, Summit County Common Pleas Judge Susan Baker Ross hasn't yet scheduled a trial date.

Lawyers for the two defendants say that prosecutors, after securing the initial 27-count indictment, empaneled a second grand jury that in a "supplemental indictment" added an additional criminal count of conspiracy and amended predicate offenses within two others. In September, they asked Ross to review the grand jury transcripts, which are kept secret, for possible inconsistencies.

In an order last month, Ross noted that prosecutors changed their indictment shortly before a hearing on defense motions to dismiss charges. Citing "substantial changes," Ross said she would privately review the transcripts and release them to the defense, if necessary.

"It is imperative that the public be assured that due process is afforded to defendants," she wrote.

State attorneys have suggested they would appeal an order to turn over the transcripts, which could add months of delay.

And as recently as Nov. 27, state attorneys provided the defendants more evidence in the discovery process, suggesting factfinding efforts are ongoing.

Meanwhile, Ross granted a separate motion from Jones and Dowling to delay production of written reports from expert witnesses in the case. Deputy Attorney General Matthew Meyer, in court filings, said Ross granted the motion before he even had a chance to respond. He also objected to the notion that no parties would be harmed by delay – the people, he said, are harmed.

"Ohioans have endured years without a public reckoning for Jones' and Dowling's greed-based campaign to corrupt Ohio's legislative and regulatory framework for purchasing electricity," Meyer wrote.

"For those who continue to believe that the laws of Ohio can and should be enforced even against the rich and powerful, justice delayed is justice denied. Jones and Dowling's motion is yet another attempt to delay a public trial where the Ohioans can finally consider the evidence arrayed against the two men."

Securities case

Alongside the criminal cases, investors in FirstEnergy filed a lawsuit against the company in July 2020.

The plaintiffs, led by the Los Angeles County Employees Retirement Association, tried to claim a formal victim designation under Marsy's Law and access the state's evidence in the criminal case. Marsy's Law gives victims a constitutional right to seek compensation for economic loss from those who committed crimes against them.

State prosecutors have joined Jones and Dowling in opposing the motion because under a series of unusual legal circumstances, all the typically private evidence exchanged in the civil lawsuit has become public records distributed to state media. Allowing the evidence to become public, they argue, could interfere with due process rights of the accused.

Meanwhile, Jones and Dowling have moved to depose witnesses in the civil case who are also criminal witnesses. The company investors argue Jones and Dowling are leveraging the civil depositions to glean an advantage in their criminal case. And several parties in the civil case are fighting over the "pipeline" created in the intersecting cases that has forced some of the pre-trial evidence into the public record.

The investors have also aggressively sought to obtain reports of two internal investigations that FirstEnergy commissioned as the scandal unfurled. FirstEnergy refused to hand them over, arguing they're protected under attorney-client privilege, a position since supported by a spread of big business associations and corporate law firms. The plaintiffs say the reports were drawn up for human resources and business purposes, not corporate legal defense.

A federal district judge sided with the plaintiffs, and the 6th U.S. Circuit Court of Appeals is now considering the matter. The federal appellate court is also reviewing the lower court's certification of the investors, part of the process in a class action lawsuit.

And the regulators?

Following the Householder arrests in July 2020, the PUCO (still led at the time by Randazzo) opened four intersecting investigations into FirstEnergy's lobbying, charges to customers and possible corporate separation violations.

However, the investigations have been hampered by resistance from FirstEnergy, an 18-month stay requested by U.S. Attorney for the Southern District of Ohio Ken Parker to protect his criminal case, stonewalling from former FirstEnergy lobbyists in sworn depositions and more than a million documents exchanged in the discovery process.

The Ohio Consumers’ Counsel, a state agency that represents residential ratepayers’ interests at PUCO cases, has fought for years to release records and force refunds for consumers on the matter. But after more than four years, the PUCO cases still fester.

In September 2024, the SEC settled its investigation into FirstEnergy, forcing a $100 million penalty. Simultaneously, the agency sued Jones, claiming he received a $1.6 million bonus in 2018 and $18 million in company stock in 2019 – the year House Bill 6 passed.

Plus, the SEC claims that Jones misled FirstEnergy’s internal auditor and lied in SEC filings and on a shareholder call with investors about the scheme. The SEC’s lawsuit is pending.

Stories by Jake Zuckerman

Jake Zuckerman covers state politics and policy for Cleveland.com and The Plain Dealer.

Bloomberg Law
December 30, 2024, 7:40 AM PST

Solar Company Sued by Investor Over Project Delays, Stock Drop

By Gillian R. Brassil

- **COURT**: N.D. Cal.
- **TRACK DOCKET**: No. 3:24-cv-09467 (Bloomberg Law subscription)

Solar panel software developer Nextracker Inc. downplayed financial worries over stalled projects, leading to a stock decline when executives revealed delays would be a prolonged issue, a proposed class action says.

Nextracker spun off from another company and had its initial public offering in 2023. Ahead of its IPO, Nextracker saw significant growth in part due to the 2022 Inflation Reduction Act, which offers a tax credit to US clean energy manufacturers, said the lawsuit filed by Mariel Weber in the US District Court for the Northern District of California on Dec. 27.

For its fiscal year ending in March 2022, Nextracker reported a 62% growth in annual revenue.

At the end of March 2023, Nextstar's backlog—an indicator of future revenue as it includes orders with deposits and bills for specific projects—had grown to $2.6 billion, a 90% increase year-over-year. When its third fiscal quarter ended that December, it exceeded $3 billion. Its revenue and adjusted earnings rose with it to "$710 million (up 38% year-over-year) and $168 million (up 168% year-over-year) during the quarter, respectively," Weber says.

When delays in solar project orders occurred in line with ones competitors faced, Nextracker downplayed their impact, Weber says. Executives attributed slowdowns to isolated projects, said issues were offset by expanding opportunities and demand, and touted better time management than competitors, the complaint says.

That wasn't the case, Weber says. Executives' positive statements were misleading and artificially inflated the stock price, the complaint says.

Shortly after making these statements, Nextracker announced its revenue and gross profit had declined since the last quarter when sharing Q1 2025 results on Aug. 1. For the first time since becoming public, Nextracker didn't raise guidance, the complaint says. In an earnings call, executives said the company wasn't effectively offsetting delay problems and only 80% of the backlog was expected to be realized over the next two years.

In the following two trading days, the stock fell 15%, closing at $39.81 a share on Aug. 5.

Weber noted an overall stock decline this year. The stock closed at $37.23 on Dec. 27, according to Bloomberg data. It traded as high as $62.31 and low as $30.93 during the class period, per the data.

The proposed class includes Nextracker investors from Feb. 1 through Aug. 1. Weber, who expects at least hundreds to thousands of members, seeks damages under the Securities Exchange Act of 1934. Certain executives are named with the company as defendants.

Robbins Geller Rudman & Dowd LLP and Johnson Fistel, LLP represent Weber. They didn't respond to emails seeking comment. Neither did Nextracker.

The case is Weber v. Nextracker Inc. , N.D. Cal., No. 3:24-cv-09467, complaint filed 12/27/24 .

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Bloomberg Law
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Expert Properly Excluded in Mazda Water Pump Suit, 9th Cir. Says

By Shweta Watwe

Mazda Motor of America Inc. consumers lost their bid to toss a district court ruling that excluded their expert's report because it failed to show what caused alleged water pump failure in certain Mazda vehicles.

The consumers argued the lower court shouldn't have excluded the expert because of his education and credentials. But, "regardless of one's qualifications, an expert must still base his opinions on sufficient facts and data and a reliable methodology," the US Court of Appeals for the Ninth Circuit said in an unpublished opinion Monday.

- The consumers alleged Mazda's 2008–2015 CX-9 and 2009–2013 6 s cars contained a defect that caused premature water pump failure
- The district court ruled the plaintiffs' engineering expert Christopher White failed to show how the alleged defect caused pump failure and didn't rule out alternate causes; after excluding the report, the court granted the car maker summary judgment
- Judges Kim McLane Wardlaw, Gabriel P. Sanchez, and Barbara M. G. Lynn, sitting by designation from the Northern District of Texas, comprised the panel

The consumers were represented by Kessler Topaz Metlzer & Check LLP, Kiesel Law LLP, **Robbins Geller** Rudman & Dowd LLP, the Miller Law Firm PC, Keil & Goodson PA, and the Edwards Firm PLLC. Mazda was represented by Shook Hardy & Bacon LLP.

The case is Sonneveldt v. Mazda Motor of Am. Inc. , 9th Cir., No. 23-55325, unpublished 12/30/24 .

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Securities Law News
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Transocean Accused of Overstating Value of Idle Rigs Before Sale

By Gillian R. Brassil

- **COURT**: S.D.N.Y.
- **TRACK DOCKET**: No. 1:24-cv-09964 (Bloomberg Law subscription)

Oil-and-gas rig provider Transocean Ltd. faces a proposed class action alleging the company concealed the true value of its assets, artificially raising share prices before the stock dropped on the news that it would incur a charge of hundreds of millions for selling two of its idle drillships.

The lawsuit, filed Thursday by investor Matay Gabor, concerns the sale of Transocean's Discoverer Inspiration and Development Driller III and associated items for a total of $342 million. The Sept. 3 public filing announcing it also disclosed that Transocean would face a non-cash charge of up to $645 million if the sale went through in the third quarter of fiscal 2024—meaning the amount of money it would collect would be about half of the impairment it would have to take in.

Transocean's stock fell almost 9% after that announcement, closing at $4.32 per share, according to the lawsuit filed in the US District Court for the Southern District of New York.

Gabor claims Transocean and key executives from 2023 to 2024 knowingly misled investors about the company's financial well-being by issuing positive statements about its prospects and demand outlook—despite disclosing adjusted net losses—and omitting key information.

For example, Gabor cites an August earnings call during which chief executive officer Jeremy Thigpen allegedly suggested that the two rigs were strategic assets and the company was "merely keeping them idle in anticipation of a longer-duration contract opportunity." Yet a month later Transocean described the sale as "part of our ongoing efforts to dispose of non-strategic assets."

The proposed class covers investors from Oct. 31, 2023 through Sept. 2, 2024. Gabor estimates the proposed class has at least hundreds to thousands of members and seeks damages.

Gabor is represented by Glancy Prongay & Murray LLP and Bronstein, Gewirtz & Grossman, LLC. Attorneys didn't respond to an email seeking comment.

Transocean didn’t respond to an email seeking comment.

The case is Gabor v. Transocean Ltd. , S.D.N.Y., No. 1:24-cv-09964, complaint filed 12/26/24 .

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Investors claim Berkeley gene editing company lied about cash flow

DJ dailyjournal.com/articles/382654

Jennifer Pafiti

A group of investors accused Caribou Biosciences Inc., a Berkeley gene editing biotechnology company, of causing its stock price to drop 25% in a single day in June by lying to the public about its cash flow and the efficacy of its disease treatments.

The putative class action complaint, filed on Dec. 24 by Jennifer Pafiti of Pomerantz LLP, claims that Caribou issued "generic catch-all" risk warnings to investors that misled the public about the company's financial health. The complaint also said misleading statements were made about the efficacy and one of its gene editing products, CB-010, that is designed to treat lupus and non-Hodgkin lymphoma.

Caribou's media relations office could not be reached for comment Friday. Caribou is currently valued at $150 million, and CB-010 is in the clinical stage for its use as a treatment for the two diseases, according to a Nov. 6 news release. *Saylor v. Caribou Biosciences*, Inc., 3:24-cv-09413 (N.D. Cal. filed Dec. 24, 2024).

Pafiti could not be reached for comment on Friday. In the complaint, Pafiti stated there was a critical moment in the timeline of Caribou's stock price.

In a June 2 news release from its media relations office, Caribou shared an update from its Phase 1 trial for CB-010 where the results "indicated a single dose of CB-010 . . . has the potential to rival the safety, efficacy, and durability of approved autologous CAR-T cell therapies."

The next day, according to the complaint Pafiti filed, Evercore ISI, a global independent investment banking firm, downgraded Caribou's stock price target from $13 to $3, Pafiti quoted the independent firm as stating "they were 'not yet convinced' that Caribou's therapy" would be competitive in the marketplace.

Pafiti claimed that this news caused the stock price to drop on June 3.

Two months later, in its second quarter business update news release on Aug. 6, Caribou announced it had $311.8 million in cash, cash equivalents, and marketable securities as of June 30, 2024, down from $372.4 million on Dec. 31, 2023. "Caribou expects these cash, cash equivalents, and marketable securities will be sufficient to fund its current operating plan into H2 2026," the news release stated.

Earlier this year, Caribou agreed to a $3.9 million settlement in a separate putative class action by a group of investors who accused the company of negligently preparing its filings with the Securities Exchange Commission regarding its initial public offering in June 2021.

Caribou denied wrongdoing in the agreement and U.S. District Judge Rita F. Lin in Oakland approved the settlement on Oct. 15. *Bergman v. Caribou Biosciences, Inc.*, 3:23-cv-01742 (N.D. Cal. filed April 11, 2023).

#382654

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Class Action
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Fox Corp., Murdoch Must Face Election Defamation Payout Suit (1)

By Jennifer Kay and Sam Skolnik

- Fox reached record settlement with Dominion on eve of trial
- Smartmatic seeks $2 billion in separate defamation lawsuit

Rupert Murdoch and other Fox Corp. senior leaders must face investor claims that they're personally responsible for the economic fallout of false conspiracy theories Fox News aired about the 2020 election.

Fox lost its motion to dismiss the case, according to an opinion from Vice Chancellor J. Travis Laster, of Delaware's Chancery Court, finding that the investors sufficiently pleaded that Fox Chairman Rupert Murdoch faces a "substantial likelihood" of liability for consciously causing or willfully allowing Fox News to broadcast defamatory content.

"That does not mean that the plaintiffs will prevail at trial. It rather recognizes that a plaintiff need only 'make a threshold showing, through the allegation of particularized facts, that their claims have some merit,'" said Laster in his Dec. 27 opinion, denying Fox's motion.

The billionaire news tycoon, his son Lachlan, and other Fox executives sought the dismissal of litigation brought by a group of pension funds over the network's role in spreading lies about the 2020 presidential election being rigged by voting machine makers. The board members named as defendants include former US House Speaker Paul Ryan.

On the eve of a 2023 trial in Delaware, Fox agreed to pay $787.5 million to Dominion Voting Systems Inc.—the largest settlement ever in a defamation case. In a separate, ongoing defamation case, Smartmatic USA Inc. seeks over $2 billion from the conservative media giant. Statements that surfaced during the Dominion case also led to the ouster of high-profile Fox News host Tucker Carlson.

Fox's stockholders seek to shift the company's losses onto senior officers—including Rupert and Lachlan Murdoch and Fox's board of directors—who they say caused it to violate the law and suffer harm by having Fox News defame Dominion and Smartmatic.

The plaintiffs allege the defendants knew Fox News was breaking the law by defaming Dominion and Smartmatic, "but consciously prioritized profits over legal compliance," Laster said.

Fox's leadership argued there was no evidence its directors and executives actually saw the 13 segments on which Dominion and Smartmatic based their defamation cases. They also said the board didn't ignore red flags such as an earlier defamation lawsuit over Fox's false stories about Seth Rich, a Democratic National Committee staffer slain in 2016.

In their motion to dismiss, the defendants said that even if the plaintiffs identified valid corporate claims, they do not have standing to bring them.

Yet Laster found that none of the arguments the defendants put forth to undermine the inference that Rupert Murdoch acted in bad faith was persuasive. They included assertions that none of the directors watched the Dominion- and Smartmatic-related Fox broadcasts at any point before the companies sued; that knowledge the voting fraud allegations were false would not “translate to notice of defamation liability;" or that “a pseudo-reliance-on-counsel defense” existed.

The plaintiffs’ allegations that Lachlan Murdoch cannot make an “independent and disinterested” decision about whether to assert the claims in the complaint are “right,” Laster said. He’s not independent because he’s Rupert Murdoch’s son—and he’s not disinterested because he also faces “substantial likelihood of liability” for the same reasons as his father, the judge said.

“If anything, the claim against Lachlan is stronger,” Laster said, because he engaged in more frequent communication with Fox News CEO Suzanne Scott, his direct report, about Fox News and its content, and attended twice-daily editorial leadership team meetings.

Fox and its leadership are represented by Richards, Layton & Finger PA and Wachtell, Lipton, Rosen & Katz. Friedlander & Gorris PA, Cohen Milstein Sellers & Toll PLLC, and Lieff Cabraser Heimann & Bernstein LLP are lead counsel for the pension funds.

The case is In re Fox Corp. Derivative Litig. , Del. Ch., No. 2023-0418, opinion 12/27/24 .

(The story has been updated with additional details from Laster’s opinion.)

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https://www.wsj.com/articles/nuclear-verdicts-driving-up-costs-of-doing-business-says-risk-management-societys-head-b8a401bd

RISK & COMPLIANCE JOURNAL

'Nuclear Verdicts' Driving Up Costs of Doing Business, Says Risk Management Society's Head

David Arick hopes Republican leadership in Congress and White House will unveil financiers backing big lawsuits

By Richard Vanderford Follow

Dec. 30, 2024 9:00 am ET

David Arick, president of the risk management society RIMS. PHOTO: RIMS

Corporate risk managers in recent years have increasingly complained about the apocalyptically named "nuclear verdict," a term referring to jury verdicts topping $10 million. The cases are growing in number, and the verdicts are getting bigger, insurer Allianz said in a recent analysis. A Philadelphia jury this year, for example, ordered Exxon Mobil to pay $725 million to a service station mechanic who developed leukemia. In another case, a California jury said an entertainment billionaire should pay $900 million to a former employee who brought sexual battery claims.

For victims' advocates, the large verdicts hold corporations accountable, but businesses have argued they lead to increased insurance costs that are ultimately passed on to consumers. The Wall Street Journal spoke with David Arick, the president of the risk management society RIMS, for his views on the trend, and whether 2025 and Republican control of the White House and Congress could bring changes.

WSJ: Could you talk about the trend toward ever-larger jury verdicts against businesses?

Arick: The plaintiffs' bar has done a really good job of making it seem like a victimless crime when they get a business to pay for an event that occurred, whether they were legally responsible or if the amount that's paid equals the amount of damages or an appropriate amount of compensation for that injured party.

It's a big concern for insurers, and [especially] insurers that cover certain industries like trucking [and] retail. Insurers are paying for these [verdicts], which drives up the cost of insurance, which drives up the cost of goods and services. It's effectively becoming a tax. It's a winning lottery ticket for that plaintiff to make them feel compensated for something bad that happened.

WSJ: When you have a large verdict, are others benefiting apart from the alleged victim?

Arick: That winner of that lottery ticket, many times, is a firm that's financing that litigation as an investment, and they're looking for the potential for some kind of windfall investment return. That's not really what most people would consider to be justice.

I think it's reasonable to ask for litigation funding to be disclosed in litigation, so that the actual parties to a given court case are known to everyone involved, including a potential jury that's being asked to make a vote as to who should pay for what.

WSJ: Is industry hopeful that there is going to be any kind of movement? What could change in the coming year?

Arick: I've seen a couple different proposals at the U.S. legislative level, in the U.S. House [of Representatives]. Darrell Issa, [R., Calif.] had proposed a model bill that would require disclosure and it was supported by a fair number of people. But whether it gets traction or not in Congress remains to be seen. There were some big companies that all signed a letter that was directed to the U.S. Judicial Conference. They've got an advisory committee that's doing a study that's looking at to what extent [disclosing] litigation funding should be required, at least in federal court cases.

A few states have done their own version of requirements for either disclosure or certain controls on when and how litigation funding can be used. But certainly the best solution would be a federal solution that makes it uniform across states, especially when so many large corporates and large businesses operate across multiple states.

WSJ: The election means in 2025, the House of Representatives, the U.S. Senate and the presidency will be controlled by Republicans. Do you think that could produce some reforms?

Arick: Historically speaking, the Republicans have tended to be more pro-business, less [in favor] of regulation over aspects of the economy. Certainly you would hope that that is a possibility for next year or in year two of the administration, but it's obviously still early days. Generally speaking, I think that there should be reason for optimism.

The only real beneficiaries of all this expense that's coming out of the economy are the firms that are funding and financing litigation...We think disclosure is at least a great first step. But if we could get to a place of having some kind of tort reform, that would be fantastic.

WSJ: One criticism of the points you're making is that juries know what they're doing, and if they decide a big company should pay all this money, we aren't entitled to second guess them.

Arick: You have to give the plaintiffs' bar credit for having very adept marketing and for having their sound bites and positions very well formulated. The bottom line is, a lot of times juries are formed of people that couldn't get out of jury duty. We all complain about doing jury duty. So, it's not like every case is heard in front of the Supreme Court, where everyone would have a vast amount of legal experience. People are increasingly fed by reality TV and things that play to emotions, and the plaintiffs' bar plays to emotion.

Where it gets to be unfair is when you feel like you have to add zeros to it just to punish somebody, when there is no apparent intent to do something wrong. Accidents happen.

WSJ: You mentioned trucking earlier. What's happening to that industry and other sectors?

Arick: You see trucking firms struggling to have insurance that allows them to go on the roads because of the cost of that insurance being driven up by the way the legal system reacts to even minor accidents.

In general, I would say any business that's public facing and has employees has the exposure. Sexual harassment and those kinds of things can happen in almost any context, even in higher education. A lot of industries face the public.

WSJ: What is the worst case scenario in your view if no reform happens?

Arick: There's a possibility that insurance becomes unavailable in some areas, or if it is available, it's at a very high cost. And then it's a matter of, 'Can that business afford it?'

I'm not speaking for the insurance industry. I'm speaking as an executive that's representing risk managers. We're seeing our budgets go up, and our businesses are already under pressure in other areas that are squeezing margins. This is another negative headwind that we have to deal with. We sometimes don't agree with our insurance companies as well, but we have to buy the insurance because we have so much exposure out there.

Write to Richard Vanderford at Richard.Vanderford@wsj.com

Litigation
December 30, 2024, 9:20 AM PST

Oregon Foreclosure Surplus Class Actions Mostly Filed Too Late

By John Woolley

- Supreme Court ruling shows claims for recovery were viable
- Eight plaintiffs filed on time, other claims are time-barred

Several Oregon counties escaped takings and excessive fines claims from residents who say their governments improperly retained surplus funds from foreclosure sales of their homes, because their claims were filed late, a federal court said.

Former property owners and heirs to property-tax–delinquent estates alleged "viable" claims that their counties wrongfully withheld amounts above the tax debt owed, Judge Karin J. Immergut of the US District Court for the District of Oregon said in a Dec. 27 opinion. Marion County and Columbia County must face timely claims from eight former owners of foreclosed properties, but the remaining claims are barred by a two-year federal statute of limitations, Immergut said.

The property owners brought proposed class actions against their county governments following the US Supreme Court's 2023 decision in *Tyler v. Hennepin County* , which held that a county's retention of surplus proceeds following a foreclosure sale was in violation of the Fifth Amendment's takings clause. *Tyler* is controlling because Oregon's foreclosure scheme, during the period at issue, lacked a process for former property owners to seek return of a foreclosure surplus, Immergut said.

Despite *Tyler*, however, none of the plaintiffs in two class actions— *Lynch v. Multnomah County* and *Sawyer v. Marion County* —brought their federal claims within the limitations period, the district court said. Only some claims from the third action, *Gabbert v. Josephine County* , were filed on time, the opinion said.

Multnomah County, Lane County, Yamhill County, Marion County, Clackamas County, Josephine County, Jackson County, Columbia County, and Klamath County had faced claims in the three suits.

Sugerman Dahab; Kohn, Swift & Graf PC; Preti Flaherty Beliveau & Pachios LLP; Fink Bressack PLLC; Qiu-qiu Law; Akeeb Dami Animashaun of Los Angeles; and Shakeer Rahman of Los Angeles represent the plaintiffs.

Multnomah County Attorney's Office, Lane County Office of County Counsel, Sussman Shank LLP, Yamhill County Office of County Counsel, Foreman Sturm & Thede LLP, Clackamas County Counsel, and Schwabe Williamson & Wyatt represent the counties.

The cases are Lynch v. Multnomah Cnty. , D. Or., No. 3:23-cv-01502, 12/27/24 , Sawyer v. Marion Cnty. , D. Or., No. 3:23-cv-01971, 12/27/24 , and Gabbert v. Josephine Cnty. , D. Or., No. 1:23-cv-01434, 12/27/24 .

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Zuckerman Spaeder Gets Ready to Move Offices in DC, Deploy AI Tools in 2025

law.com/nationallawjournal/2024/12/27/zuckerman-spaeder-gets-ready-to-move-offices-in-dc-deploy-ai-tools-in-2025

Abigail Adcox

What You Need to Know

- Zuckerman Spaeder will be moving into a new office in D.C. next year after two decades.
- Getting attorneys back into the office and engaged is a priority, chair Caroline Judge Mehta said in a recent interview.
- Deploying AI tools is another priority for the firm in the new year.

Starting at the beginning of the new year, Caroline Judge Mehta will become the sole chair of Washington, D.C.-founded Zuckerman Spaeder's executive committee and partnership board and managing partner of the firm.

Moving into a new office space in D.C. after two decades and deploying artificial intelligence tools will be two of Mehta's priorities next year, she said in a recent interview with the National Law Journal.

Mehta, who will be the first female chair in the firm's history, succeeds Dwight Bostwick, who served as chair from 2016 to 2023. For the past year, Mehta and Bostwick have served as co-chairs of the firm.

Mehta started at the firm as an associate more than 20 years ago. She left the firm in 2020 to serve as general counsel and chief legal officer at software company Afiniti before rejoining the firm in 2022.

Mehta spoke with Law.com about becoming sole chair of Zuckerman Spaeder and her priorities for the firm next year.

The following interview has been edited for clarity and length.

What are some of your priorities as sole chair?

Next year we have some important things to focus on, [including] the D.C. office. It's our largest office. We're moving after 20 years. We're moving to 2100 L St., and several of us have been hard at work designing the space and really trying to be thoughtful about creating an office environment that will encourage interaction and engagement and really get us further along in terms of getting folks back to the office. Our policy is three days a week, and

that's something that we are committed to and want to be even more serious about. But we really want to create an office where people might be enthused to come in even more than that.…
We're starting to deploy some of the better AI tools that are being marketed to firms. I put together an AI working group this past year. We have great IT staff, but there are so many [tools] out there that it's hard to kind of separate the wheat from the chaff, and you want to make the right investments. We're sort of where we should be in terms of leaning into it for our clients. But that'll all start to get deployed in early 2025.

We remain committed as ever to diversity. I'm really proud of the work our DEI committee did this year. We did some really important, meaningful trainings.

And going into a new administration, the lawyers at Zuckerman Spaeder are committed to trying to defend the rule of law in this country. So that's going to be front and center in 2025 and beyond.

Where do you see Zuckerman Spaeder's role in defending the role of law?

So I think what's become clear is that certain public servants, public officials, are going to be targeted. We don't know exactly how, or exactly how effective those will be, but I can tell you that lawyers across the city are already committing to helping as many folks as we can to make sure that justice is not weaponized against people who have been serving the republic. So that is already happening.

What kind of AI investments is the firm making and where?

I think clients already do and should expect that every firm is going to deploy AI, first of all, responsibly, but second of all, to drive efficiencies and save clients money. So where we started is what is our typical research platforms, how is AI improving search? From there I think it's inevitable the next step will be how is AI bringing more efficiencies to e-discovery? Certainly, lots of our vendors already use it, but we want to be as educated as possible and what are the best tools out there? And it's been interesting because some of these tools are at a much further stage of maturity, so you want to make the right investments and not sort of buy up what's out there.

Last year, you spoke about the firm looking to expand its corporate work. Has there been progress on that front and is that still a priority for the firm?

We have grown some of the corporate representations that we have, which is great. We've sort of developed those relationships and have started to get new and larger matters from some of our institutional clients that we have, and we've also planted seeds, certainly done plenty of pitches, and really made a real effort to get in front of [general counsel], get in front of corporations, because we know we are, frankly, a better option than a lot of what they rely on for outside counsel.

How has business been for the firm this past year and what is the outlook for 2025?

Business has been fantastic. We've had our best year ever. A big credit for that is a huge contingency recovery in the Blue Cross Blue Shield antitrust case that the firm has litigated for over a decade, along with many, many other firms. So beyond the contingency practice, we've just had a really diverse set of very, very busy engagements. We just had a terrific year. Going into next year, some of those continue, some of them expand. I can't really speak to what that means, but we're really confident that, as we do our planning for next year, it’s going to be another terrific year for the firm.

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Auditors Urge SEC to Halt Flawed Finance, Governance Disclosures

By Amanda Iacone

- SEC faces shrinking window to vet transparency measure
- Reporting rule to shine light on firm financials, cyber risks

Auditors are urging the SEC to reject a plan from the industry's regulator that would force them to disclose new details about their finances, cybersecurity risks, and network affiliations.

Firms and other audit industry stakeholders said the expanded reporting would stretch the bounds of the Public Company Accounting Oversight Board's authority and duplicate information auditors already disclose to the board and public, according to comment letters submitted to the Securities and Exchange Commission since mid-December. They argue the board didn't do enough to address concerns the industry raised with an earlier draft and shortchanged the feedback process.

The PCAOB adopted the measure to update its reporting requirements for registered firms, along with a related performance disclosure rule, in November. Both projects await final approval from the SEC, which oversees the board's work.

The commission, however, faces a shrinking window to vet and vote on the rules before a new Trump administration, averse to adding regulations, will take the reins in Washington on Jan. 20. The disclosure mandates stem from a burst of standard-setting under board Chair Erica Williams, who has prioritized rewriting an outdated auditor rulebook.

"We believe the PCAOB's resources and the resources of the firms they oversee should be focused on improving audit quality through improvements to performance requirements as opposed to data aggregation," auditor CohnReznick LLP said in a letter to the SEC.

The transparency rules are meant to support investors in publicly traded companies and corporate audit committees as they evaluate auditor performance. The disclosures also would give PCAOB staff a window into how firms manage their resources and risks that could undermine the audit business.

Pushing for Auditor Transparency

Investors have lobbied over more than a decade for greater insights into the work that goes into vetting corporate accounting, pushing for a suite of auditor transparency recommendations that date to 2008.

The board's proposal would update its requirements for annual and special reports for registered firms. Under the planned changes, firms would have to report material shifts in their operations or liquidity if they could impact their audit practices, as well as significant cybersecurity breaches. The largest firms also would have to provide financial statements to the regulator.

The PCAOB first published its draft firm reporting rule in April, giving auditors and other stakeholders the opportunity to provide feedback, shaping the requirements.

Nonetheless, some auditors and other stakeholders representing the industry say the rule was rushed, driven more by the pending political transition in Washington than sound standard-setting. Critics—like the Center for Audit Quality, which called the rule "extreme"—want the board to address flaws before re-issuing the measure for another round of comments.

Moving forward without issuing a fresh proposal "upends traditional PCAOB practices and sound due process," the US Chamber of Commerce told the SEC. "There should be no sense of urgency—particularly for rulemaking that represents a significant and costly expansion in audit firm reporting," the business group said.

Firms also questioned whether investors and audit committees would find the information useful. Ernst & Young LLP suggested that the board should do more research and ask audit committee members and investors what additional information could "meaningfully improve their assessment of firms' audit quality."

PwC LLP told the commission that it could support formalizing what information firms share with the board through its routine inspections, which would also extend confidentiality protections to those details. "The proposal raises fundamental questions of whether the PCAOB can or should require certain reporting outside of its inspection authority," the Big Four firm's letter said.

Investors and their advocates, however, countered that the rule would shine a light on financial statement audits, a process largely hidden from the view of shareholders.

The new insights would help investors decide whether to back a company's audit firm selection and board audit committee nominations in proxy votes, the Council for Institutional Investors said. Similarly, AARP told the commission that the rule would strengthen the PCAOB's oversight, allowing the board to respond to risks that could threaten a firm's audit services.

"These amendments represent a significant step toward a more transparent, accountable, and investor-centric audit process," the Consumer Federation of America told the SEC. "By equipping stakeholders with the tools to evaluate audit quality, these amendments would help to promote investor protection and the integrity of our capital markets."

Comments are due Jan. 2 to the commission on a related proposal that would require auditors to report a series of eight metrics spanning firm-level performance as well as individual audit engagements.

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