Securities Law News

December 30, 2024, 7:40 AM PST; Updated: December 30, 2024, 12:56 PM PST

Solar Tracking Firm Sued by Investor Over Delays, Stock Drop (1)

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.

“We believe the lawsuit has no merit, and we will vigorously defend against it,” a Nextracker spokesperson said in an email. “Beyond that, we do not comment on pending litigation.”

Robbins Geller Rudman & Dowd LLP and Johnson Fistel, LLP represent Weber. They didn't respond to emails seeking comment.

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

(Updated to add a statement from Nextracker in the second-to-last paragraph.)

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

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Second Circuit – Securities Exchange Act: New England Carpenters Guaranteed Annuity and Pension Funds v. AmTrust

nydailyrecord.com/2024/12/31/second-circuit-securities-exchange-act-new-england-carpenters-guaranteed-annuity-and-pension-funds-v-amtrust

December 31, 2024

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United States Court of Appeals for the Second Circuit

Securities Exchange Act — Misstatements — Statements of opinion

New England Carpenters Guaranteed Annuity and Pension Funds v. AmTrust

20-1407-cv

Judges Lohier, Nardini, and Kovner

Background: The plaintiffs, who are investors in the defendant, appealed from the dismissal of their Securities Exchange Act claims. The district court held that certain public misstatements relating to the defendant's recognition of revenue generated by its extended warranty contracts and expenses associated with its payment of discretionary employee bonuses were non-actionable statements.

Ruling: The Second Circuit affirmed in part and vacated in part. The court held that most statements were not actionable, but found the claims against the defendant, its officers and directors, and the underwriter defendants related to the defendant's reported income in its historical consolidated financial statements were actionable based on the erroneous accounting treatment related to bonus payments.

Andrew S. Love, of Robbins Geller Rudman & Dowd, for the plaintiffs-appellants; Steven M Farina, of Williams & Connolly, Timothy E. Hoefner, of McDermott Will & Emery, and Gregg L. Weiner, of Ropes & Gray for the defendants-appellees.

Court of Appeals – Consecutive sentences: People v. McGovern

Second Circuit – Sixth Amendment: Farhane v. United States

Court of Appeals – Exclusionary rule: People v. Hayward

Second Circuit – International Child Abduction Act: Swett Urquieta v. Bowe

Court of Appeals – Circumstantial evidence: People v. Baque

Second Circuit – Suppression of evidence: United States v. Maher

Litigation
December 31, 2024, 7:49 AM PST

Apellis Pharmaceuticals Execs Sued Over Drug Risk Stock Collapse

By Gillian R. Brassil

- **COURT**: D. Mass.
- **TRACK DOCKET**: No. 1:24-cv-13209 (Bloomberg Law subscription)

Apellis Pharmaceuticals Inc. leadership didn't disclose risks connected to its premier blindness-prevention treatment, causing the company stock's worst month since joining the market and exposing it to a proposed class action lawsuit, a shareholder derivative action says.

Executives and board members allegedly hid that Apellis' injections targeting age-related geographic atrophy, a top cause of vision loss in older people, caused some instances of an eye inflammation that can increase someone's risk of blindness, says the complaint filed by Kenneth Olson in the US District Court for the District of Massachusetts on Monday.

It's the second shareholder derivative lawsuit filed in this court this month against Apellis' directors.

After six instances of the inflammation issue, retinal vasculitis, came to light in July 2023, Apellis stock plummeted 38% across one trading day, the complaint says. Share prices closed at $84.50 on July 14 then $52.46 on July 17—a record single-day decline amid the stock's worst trading month since opening in 2017, according to data compiled by Bloomberg.

But for about two years preceding this, Apellis executives said there weren't cases of vasculitis in its clinical trials when in reality they didn't test for the problem until the studies' end or after a participant dropped out, says Olson's complaint. This meant the studies, which the complaint says had high dropout rates, might have missed when someone left due to inflammation or didn't measure the problem until it was too late.

The derivative complaint alleges Apellis leadership willfully ignored, or recklessly failed to tell themselves about, issues with the company's internal controls, and conspired to hide legal violations, including breaches of fiduciary duty and unjust enrichment. This exposed the company to financial harm, the complaint says in seeking money damages against the defendants.

Apellis and chief executive officer Cedric Francois are facing litigation in a proposed class action being considered by the same federal judge assigned to Olson's case—Judge Julia E. Kobick. Investors sued in 2023 alleging similar issues around disclosing risks of the treatment, which gained US Food and Drug Administration approval in Feb. 2023.

Matorin Law Office LLC and Rigrodsky Law PA represent Olson. They didn't respond to an email seeking comment.

Apellis didn't respond to an email seeking comment on behalf of the company and executives. Neither did the law firm representing Apellis and Francois in the investor suit, Wilmer Cutler Pickering Hale & Dorr LLP.

The case is Olson v. Francois , D. Mass., No. 1:24-cv-13209, complaint filed 12/30/24 .

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To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

Attorney fees for total victory: Is Musk's Tesla pay case a blueprint?

DJ dailyjournal.com/articles/382657-attorney-fees-for-total-victory-is-musk-s-tesla-pay-case-a-blueprint

In her final order in the landmark case challenging "the largest executive compensation award in the history of public markets" -- Tesla's $55.8 billion stock grant to Elon Musk -- Chancellor Kathaleen McCormick declared: "Plaintiff achieved total victory." Tornetta v. Musk, 2024 WL 4930635, at *4 (Del. Ch. Dec. 2, 2024) ("Tornetta").

The court previously ordered rescission of the grant as a remedy for breaches of the duty of loyalty by the board for capitulating to Mr. Musk, who is Tesla's CEO and controlling shareholder, and then failing to prove that the grant was entirely fair to Tesla.

In response, Mr. Musk held a stockholder vote to reincorporate Tesla under Texas law and to ratify his grant, which the stockholders did. He then asked the court to revise its order in his favor based on the ratification, which the court declined to do for multiple reasons, including that the proxy statement had "mangle[d] the truth." Id. at *18.

With the motion to revise denied, the last remaining issue for the court to decide was plaintiff's petition for attorney's fees. Under the "common benefit" doctrine, courts award attorney's fees where a litigation confers a substantial benefit upon a class or, in a derivative action, the corporation, typically based on a percentage of the benefit achieved. See, e.g., Laffitte v. Robert Half Internat. Inc., 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that . . . the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.").

In Americas Mining Corp. v. Theriault, the Delaware Supreme Court adopted a stage-of-litigation approach, instructing that fees should be calculated as a percentage of the benefit achieved, with percentages ranging from 10% to 33% depending on the stage at which the case is resolved. 51 A.3d 1213 (Del. 2012).

Other factors, such as the time and effort of counsel, the relative complexities of the litigation, any contingent factor, and the standing and ability of counsel may cause the court to adjust the fee up or down. "The overarching goal is to right-size fee awards to the benefit achieved." Tornetta, 2024 WL 4930635, at *21.

What to do in this case? The plaintiff had achieved "total victory," successfully securing the rescission of the largest compensation package ever granted, after more than six years of litigation, culminating in a trial on the merits, in a complex case, facing substantial risks in litigating against the richest person in the world who had tweeted his "commitment" to "never surrender/settle" a case that he believed was unjust. Delaware law theoretically supported a fee award of 33% of the $56.8 billion grant. The plaintiff's attorneys requested 11%--about $5.6 billion in Tesla shares--to which the court responded: "In a case about excessive compensation, that was a bold ask." Id. at *1.

Concerned about the prospect of a windfall award, the Chancellor considered various approaches, including the sliding scale deployed by some courts where recoveries approach $500 million; but found that "Plaintiff's 11% ask is already at the lowest end of the range applied under that method." Id. at *34.

Ultimately, the court landed on a unique solution. Because the value of the 2018 grant had ballooned over the course of the litigation due to stock splits and increasing share price, the court valued the benefit achieved based on the $2.3 billion fair value of the grant on the date it was made and applied "a conservative 15% to that figure result[ing] in a fee award of $345 million--an appropriate sum to reward a total victory." Id. at *1.

Did the court strike the right balance? Plaintiff's fee request took a substantial "haircut" both in terms of valuation of the benefit achieved and the percentage applied. At the same time, $345 million is the largest fee award in the history of Delaware litigation (see, e.g., Americas Mining, 51 A.3d at 1252 (affirming $304 million fee award based on $2.03 billion judgment), and $345 million represents a 25.3 multiplier above the $13.6 million in lodestar hours billed by plaintiff's counsel on the case.

To support this award, the court looked to precedents and weighed the policies underpinning the common benefit doctrine. "As lawyers and judges, we understand that representative litigation performs a valuable service to stockholders who individually might not have the resources or the will to pursue fiduciaries for breach of their duties. The potential for large fees incentivizes counsel to accept challenging cases. They assume the risk of recovering nothing in the end." Tornetta, 2024 WL 4930635, at *22.

As in most class action and shareholder derivative cases, "Plaintiff's counsel litigated this action on a fully contingent basis. If they lost, they would get nothing. They were responsible for funding their out-of-pocket expenses, which were significant." Id. "Accepting contingency risk is what enables counsel to receive an award based on the results generated by the litigation that exceeds their lodestar." Id. "And contingent-fee attorneys are presently the only persons incentivized to bring these claims." Id. at *29.

Fiduciary breaches through board domination by CEOs and controlling shareholders with outsized influence are not uncommon. Given the substantial financial risk involved in these cases, eliminating the prospect of a substantial recovery "would eliminate fiduciary challenges and their attendant deterrent effect in a large category of executive compensation transactions. That would be bad." Id. These policies are recognized in jurisdictions throughout the United States. Without the common benefit doctrine to incentivize representative actions, consumer and shareholder rights will go unprotected, and the cause of justice will suffer.

The policies are sound. But the case is an outlier, and the method applied to calculate fees is one-of-a-kind, designed to address a unique "windfall risk" which "flow[ed] not from the selected percentage [but] from the sheer magnitude of the compensation plan that plaintiff successfully challenged" (id. at *34); that is, the failed attempt by Mr. Musk, the richest person in the world, to increase his controlling interest in Tesla and to further enrich himself. For some people, no matter how much they have, it will never be enough. But for plaintiff's counsel in Tornetta, $345 million was a reasonable fee award for their total victory.

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Key Securities Issues Need a Look From SCOTUS, Lawyers Say

law.com/nationallawjournal/2024/12/30/key-securities-issues-need-a-look-from-scotus-lawyers-say

Alyssa Aquino

The securities litigation landscape was defined in 2024 by the U.S. Supreme Court's decision to take up a pair of securities cases, only to later abandon the reviews.

Both *Facebook v. Amalgamated Bank* or *Nvidia v. E. Ohman J:or Fonder AB* were widely cited among securities attorneys as cases to watch for the year. A ruling in either could ripple through the lower courts for years, dramatically altering the litigation landscape, as has happened in the wake of the high court's 2021 decision, *Goldman Sachs Group v. Arkansas Teacher Retirement System.*

But after hearing oral arguments, the justices dropped both cases, explaining that they had "improvidently granted" the petitions for certiorari.

The Supreme Court securities rulings that weren't in 2024:

'Facebook' and Risk Disclosures

Facebook was part of the fallout after news broke in 2018 that British consulting firm, Cambridge Analytica, had harvested data from millions of unwitting Facebook users for years. Facebook's stock price dropped in the wake of the scandal, wiping out $200 billion in market capitalization.

Shortly after, investors sued Facebook for securities fraud, alleging that the company had misrepresented the data security issue in a series of public statements, including its 2016 Form 10-K filing with the U.S. Securities and Exchange Commission. The company had identified data misuse as a potential risk in the form, but investors argued the statement was misleading, as Facebook was allegedly aware that user data had already been misused.

U.S. District Judge Edward Davila of the Northern District of California dismissed the claims arising from the Form 10-K, only to be overturned by the Ninth Circuit.

The fact that the appellate decision remains intact drew frustration from Mark Foster, a Skadden Arps Slate Meagher & Flom partner who frequently defends corporate clients against investor complaints. For Foster, allowing courts to treat risk disclosures that omit already-realized risks as securities fraud opens the door for plaintiffs "to challenge anything."

"The whole purpose of these risk factor disclosures is just to kind of give investors a sense of the risks, not necessarily treat these things as disclosures about what's presently happening in the company," he said.

Under the Ninth Circuit decision, there's now "a lot of room" for plaintiffs to bring cases based on risk disclosures, potentially making companies think twice about whether they should even disclose issues that aren't required to be disclosed, according to Foster.

But Salvatore Graziano, a partner at Bernstein Litowitz Berger & Grossman, and one of the attorneys representing Facebook shareholders, said that companies should be held accountable for misleading risk disclosures.

"You can't be misleading and suggest something is a risk when it already happened," he said simply.

Expert Reports, Company Records and 'Nvidia'

Also originating in the California federal court,*Nvidia* involves allegations that the company, one of the world's largest producers of graphics processing units, or GPUs, misled the public on its reliance on crypto-sales. In suing, the investors relied in part on an expert report estimating that Nvidia made $1.1 billion more in sales to crypto-miners than what was disclosed.

The Ninth Circuit allowed the suit to continue, only for Nvidia's Hogan Lovells legal team to seek high court intervention, arguing that investors need to allege the contents of internal reports to meet the Private Securities Litigation Reform Act's pleading standards, and can't use expert reports as a substitute.

Graziano said the use of the expert report was no different from how reports are typically used in litigation, saying that expert analyses are commonly used and necessary for courts to make sense of complicated data.

"Whether or not a stock dropped in a statistically significant amount… is an expert analysis," Graziano said. "How can a court not consider expert evidence, either directly or indirectly? What are they going to do? Is this trial judge going to run a computerized statistical analysis?"

Accepting Nvidia's arguments could raise pleading standards "to basically an absurd level, where you would need to have copies of the internal documents of a wealth-protected high-tech company that has confidentiality agreements with even their janitors," he added.

But corporate defense attorney, Foster, raised numerous concerns with how the expert report was used in *Nvidia*, and how such reports could be used in the future. Are these reports credible? Are the assumptions stated? Are the experts qualified? he asked, envisioning a world where plaintiffs commission an expert to get a complaint past a motion to dismiss.

“That kind of gets around what has been the case since the [Private Securities Litigation Reform Act] was enacted, where plaintiffs actually have to plead facts, facts from inside witnesses, confidential witnesses, whistleblowers,” Foster said. “Real facts that actually show people knew things that were contradictory to their public statements.”

Stanford Law School professor Joseph Grundfest predicted that the issue would go right back up to the justices—“after litigants have spent tens or hundreds of millions of dollars litigating the question.”

Is the Supreme Court Done With Securities Fraud Cases?

Facebook and *Nvidia* were two of the four securities cases before the justices in 2024, which was split between the 2023-2024 term and the still-unfolding 2024-2025 term. Although they dropped *Facebook* and *Nvidia* appeals, the justices did rule in *Macquarie Infrastructure v. Moab Partners*, the only other case before them to concern private securities litigation. The fourth case, *Securities and Exchange Commission v. Jarkesy,* concerned the constitutionality of SEC fines.

That *Macquarie* ruling shows that the justices will wade into the minutia of securities law. There, the justices unanimously held that investors couldn’t sue a company for keeping silent on certain risk factors required by SEC regulation when the company hadn’t issued a statement that would be misleading without the disclosure. The case originated in New York.

But Joseph Fonti, who leads Bleichmar Fonti & Auld’s securities litigation practice, pointed out that the Macquarie decision was narrow and dealt with a “very specific rifle shot on a specific provision.” Pleading standards are a different beast, he said.

“It’s pretty decisive that at this point, the pleading standard is settled,” Fonti said. “District courts and the courts of appeals have done a very nice job of implementing the Supreme Court’s rulings and prior cases to specific facts and circumstances.”

Bernstein Litowitz’s John Rizio-Hamilton, who co-leads the firm’s securities litigation practice, found that the dropped dismissals had less to do with the high court’s securities appetite, and more to do with what he views as a trend within the corporate defense space. Attorneys will say “whatever they nee[d] to say” to get a case to the high court.

“What we saw this term was a backlash against that and a real fatigue that the court is experiencing in the face of those strategies,” Rizio-Hamilton said. “The Supreme Court has no appetite whatsoever for cert petitions that make more of an issue than really exists.”

Securities Law Prof Blog

Monday, December 30, 2024

New Securities Law Articles in Print

The following law review articles relating to securities regulation are now available in paper format:

Carliss Chatman & Carla L. Reyes, *Uncovering Elon's Data Empire*, 53 Stetson L. Rev. 405 (2024).

Thomas Marts, *SEC Proposed Climate Disclosures: Preparing for a New Era of Climate Litigation in Idaho and Beyond*, 60 Idaho L. Rev. 91 (2024).

Lawrence J. Trautman & Larry D. Foster II, *The FTX Crypto Debacle: Largest Fraud since Madoff?*, 54 U. Mem. L. Rev. 289 (2023).

'Largest Retail Data Breach in History'? Hot Topic and Affiliated Brands Sued for Alleged Failure to Prevent Data Breach Linked to Snowflake Software

law.com/therecorder/2024/12/27/largest-retail-data-breach-in-history-hot-topic-and-affiliated-brands-sued-for-alleged-failure-to-prevent-data-breach-linked-to-snowflake-software

Kat Black

What You Need to Know

- Clothing brands Hot Topic, BoxLunch and Torrid were hit with a class action for allegedly failing to prevent an October data breach.
- A suit against the retailers was originally filed in November as part of the ongoing Snowflake multidistrict litigation.
- A cybersecurity firm called the breach the "largest retail data breach in history."

Alternative fashion chain Hot Topic, its pop culture apparel branch BoxLunch and former plus-size clothing subsidiary Torrid were hit with a data breach class action on Thursday for allegedly failing to protect their customers' personal information from a cyberattack that occurred in October.

The data breach is linked to vulnerabilities in the retailers' cloud computing data warehousing software Snowflake, which is currently the target of ongoing multidistrict security breach litigation consolidated in the U.S. District Court for the District of Montana.

This complaint was surfaced by Law.com Radar.

Milberg Coleman Bryson Phillips Grossman and Levi & Korsinsky filed the putative lawsuit in the U.S. District Court for the Central District of California against the defendants, which are based in California's City of Industry, on Dec. 26. The self-proclaimed "loudest store in the mall," which primarily sells music band merchandise and accessories, was founded in 1988 and operates more than 600 stores in the U.S.

The plaintiff class, which is estimated to include at least 100 members, is seeking more than $5 million in damages and alleges violation of California's Unfair Competition Law, unjust enrichment, breach of implied contract, negligence and negligence per se.

John J. Nelson, the lead attorney at Milberg Coleman representing the plaintiffs, declined to comment on the pending litigation. Levi & Korsinsky could not immediately be reached for comment. Counsel has yet to appear for the defendants.

On Oct. 23, cybersecurity firm Hudson Rock revealed on its website that a hacker using the moniker "Satanic" claimed it had accessed the personally identifiable information of 350 million Hot Topic, BoxLunch and Torrid customers on Oct. 21, dubbing the incident "the largest retail data breach in history." "Satanic," it said, demanded $20,000 for the data or a ransom of $100,000 from Hot Topic to delete it. The stolen database allegedly contained names, physical and email addresses, birth dates and payment details, which consumers provided when they signed up for loyalty accounts on the retailers' websites.

According to data privacy service Atlas Privacy, which published a breakdown of the impacted data, the breach affected 54.5 million email addresses, 25 million credit card details and 24.8 million consumer names. Data breach notification platform Have I Been Pwned estimated on its website that that the email addresses of 57 million Hot Topic customers had been compromised in November. Neither Hot Topic nor Torrid appears to have notified customers nor alerted state attorneys general about the breach.

An investigation by Hudson Rock connected the breach to an "infostealing" infection on a computer belonging to an employee at retail analytics firm Robling. "Infostealers" are malware designed to infiltrate computer systems for sensitive personal data. After searching the retailers' names in the infected computer, Hudson Rock "identified dozens of credentials associated with corporate URLs related to Hot Topic and Torrid's environment on Snowflake and Looker (Google Cloud)," it said.

"Satanic" claimed in details provided to Hudson Rock that the breach "originated from a lack of (multi-factor authentication) on a Snowflake account."

According to District of Montana court documents, a complaint against Hot Topic, BoxLunch and Torrid was originally filed by a different plaintiff as part of the Snowflake multidistrict litigation on Nov. 15, but was voluntarily dismissed on Dec. 20. The MDL against Snowflake was initiated on Oct. 4 following a series of data breaches at Snowflake's corporate clients, including AT&T, Advance Auto Parts, Cricket Wireless, Ticketmaster and Live Nation, The Neiman Marcus Group and Lending Tree, that allegedly took place between April and June, exposed the data of more than 500 million consumers and spawned about 80 related data breach cases.

The complaint argues that the retailers were directly responsible for the breach, which it claims may potentially result in identity theft and nonconsensual targeted marketing, by failing to comply with the appropriate industry standards encoded in documents such as the cybersecurity guidelines published by the Federal Trade Commission, the National Institute of Standards and Technology Cybersecurity Framework Version 2.0, and the Center for Internet Security’s Critical Security Controls.

Hot Topic, BoxLunch and Torrid did not immediately respond to requests for comment.

This action was surfaced by Law.com Radar, which delivers artificial intelligence-enhanced case summaries and daily case reports from more than 2,200 state and federal courts. Click here to get started and be among the first to act on opportunities in your region, practice area or client sector.

Editor's Note: The article has been updated to reflect that Have I Been Pwned did not notify 57 million customers of the data breach, but simply noted on its website that the data of about 57 million customers had been affected.

Securities Law News

December 31, 2024, 2:30 AM PST

New Big Law Leaders Take Control at Crucial Juncture for Firms

By Meghan Tribe

- Some prominent law firms are seeing longtime chiefs step down
- Firms face several strategic issues in potential Big Law boom year

Six prominent law firms will welcome new leaders in 2025 as optimism runs high across the legal industry.

The new bosses are tasked with steering their firms in an increasingly competitive market that has pushed legal leaders to rethink longstanding strategies. They have big shoes to fill, with some replacing longtime leaders and one following in the footsteps of a well-known trial lawyer at the firm he founded.

The stakes are high: An uptick in demand this year and the possible return of big ticket M&A and transactions work has firms angling for a boom in 2025.

Boies Schiller Flexner: Matthew Schwartz

Star litigator David Boies is set to hand over the reins at the law firm he founded. Matthew Schwartz takes over Jan. 1 after a series of false starts in the leadership transition and questions about the litigation firm's path forward.

Matthew Schwartz
Photo: Boies Schiller

Schwartz, 47, is a former Manhattan federal prosecutor who has served as co-managing partner of the firm since 2020. He was tapped to succeed the 84-year-old Boies, who signaled he wouldn't seek reelection.

The transition marks the end of questions surrounding Boies Schiller's succession plans, which twice previously unraveled with supposed heirs apparent heading for the door. The firm appears to have stabilized after seeing headcount and revenue decline.

Boies, who keeps an active caseload, will remain at the firm as a member of its executive committee. He's representing Delta Airlines in its suit against Crowdstrike and Microsoft for damages related to a mass outage this past summer. He also recently advised David Jones, the former bankruptcy judge in Texas accused of improperly concealing a romantic relationship with a local attorney.

DLA Piper: Charles Severs

Charles Severs is set to step into the role of managing partner and global co-CEO at DLA Piper on Jan. 1. The London-based lawyer will serve alongside Frank Ryan, the New York partner who was elected to a second co-CEO role in early 2023.

Severs, an M&A lawyer, topped a field of competitors for the job that included Paris partner Stéphane Lemarchand. He has held several leadership roles at the firm since 2003, when he joined from Herbert Smith Freehills.

DLA Piper is the third-largest US law firm by gross revenue, bringing in more than $3.8 billion in revenue in 2023, according to data from The American Lawyer. The firm is structured as a Swiss verein, which generally is a loose affiliation of global offices that often do not pool profits.

Severs succeeds Simon Levine, who has led the firm for 10 years and will stay on in a new strategic innovation role.

Akin Gump Strauss Hauer & Feld: Abid Qureshi and Daniel Walsh

Longtime Akin Gump leader Kim Koopersmith plans to step down from her role in April, to be replaced by a pair of partners.

Abid Qureshi and Daniel Walsh will serve as co-chairs. Qureshi, a longtime Akin partner and financial restructuring litigator, is a member of the firm's management committee and leads its New York office. Walsh is a London-based deals lawyer who served as a member of Akin's management, compensation, and partnership admissions committees.

Akin's center of power has gradually shifted from Texas to Washington and New York, its largest office and Koopersmith's base of operations. The ascension of Qureshi and Walsh comes as several US firms are turning their attention to the UK.

Zuckerman Spaeder: Caroline Judge Mehta

Zuckerman Spaeder, a Washington-based litigation boutique, will have its first female chair in its 50-year history when partner Caroline Judge Mehta takes the role on Jan. 1.

Caroline Judge Mehta
Photo: Zuckerman Spaeder

Mehta is a white collar defense and investigations partner who first joined the firm as an associate in 2000. She returned to the firm in 2022 after a two-year stint at software company Afiniti, where she was general counsel and chief legal officer.

For the past year she served as co-chair alongside Dwight Bostwick, who led the firm from 2016 to 2023. Bostwick will remain at the firm as partner and member of its management committee.

"In the years ahead, we'll build on the firm's strong foundation and endeavor to uphold the legacy of excellence and commitment to our clients and to each other, modeled by the firm's founders," Mehta said in a statement announcing her new role.

Pryor Cashman: David Rose

New York-based litigation partner David Rose will become Pryor Cashman's new managing partner on Feb. 1. He succeeds Ronald Shechtman, who has led the firm since 2007.

The roughly 200-lawyer firm brought in $187 million in gross revenue and offers $1.4 million in partner profits in 2023. Rose is a partner in the firm's litigation, media and entertainment, and sports groups and co-chair of its alternative dispute practice.

Rose will become the third managing partner in the firm's history. Shechtman will transition to co-chairman and co-general counsel, while continuing to serve on the firm's executive committee.

Eversheds Sutherland: Lino Mendiola and Keith Froud

The transatlantic law firm is poised to get two new leaders in the coming months.

Texas-based partner Lino Mendiola in April will start his four-year term as CEO of Eversheds Sutherland (US). London's Keith Froud will become CEO of Eversheds Sutherland (International) in May.

The firm, which has more than 3,000 lawyers, brought in $1.19 billion in total revenue in 2023, according to figures reported by the American Lawyer.

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Litigation

December 31, 2024, 6:56 AM PST

Vermont Is First State Sued Over Its 'Climate Superfund' Law

By Drew Hutchinson

- Law preempted by Clean Air Act, plaintiffs argue
- Complaint marks first lawsuit in expected wave

The US Chamber of Commerce and American Petroleum Institute have launched a federal lawsuit against Vermont, arguing that the state's decision to charge polluters for climate change damage is unconstitutional and preempted by federal law.

The lawsuit, filed Monday in the US District Court for the District of Vermont, marks the first of an expected wave of litigation against states, including New York, with climate Superfund laws.

Plaintiffs argue that the Vermont statute is preempted by the Clean Air Act because "state regulation of greenhouse gases is only permissible as authorized" by the federal law.

Vermont's law—which directs entities that emitted more than 1 billion metric tons of greenhouse gas over the last three decades to pay into a state-managed fund—also violates the Constitution by discriminating against the economic interest of other states by "targeting large energy companies located outside of Vermont," according to the complaint.

Gravel & Shea PC, Lehotsky Keller Cohn LLP, and internal counsel are representing the Chamber and trade group.

The case is USCC v. Moore , D. Vt., No. 2:24-cv-01513, filed 12/30/24 .

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News from Bloomberg Terminal
December 30, 2024, 10:15 AM PST

ADM Shareholder Calls for CEO to Leave as Probe Drags On

- Ex-Toepfer board chairman says CEO Juan Luciano 'has to go'
- Probe has wiped out $12 billion of the crop trader's value

By Isis Almeida and Gerson Freitas Jr.

(Bloomberg) --

It's been almost a year since Archer-Daniels-Midland Co. disclosed a probe into its accounting practices that wiped out $12 billion from one of the world's largest agricultural commodities traders.

Now, a shareholder and former executive at a company owned by ADM is calling on Chief Executive Officer Juan Luciano to step down, citing the lack of transparency about exactly what happened and how it will be fixed.

In a social media post, Hartwig Fuchs said ADM didn't do enough to reverse the share loss and that the Chicago-based company "doesn't communicate any valuable statements." Fuchs was board chairman at Toepfer International when ADM owned about 80% of the German trader (it now owns all of it). He was also CEO of Nordzucker AG, one of Europe's largest sugar producers.

"If a highly paid CEO of such an important company cannot manage to provide clarity within a few months – i.e., fully clear up the scandal, communicate with full transparency about what went wrong and what will be done in the future, regain investors trust and, above all, protect the company from long-term damage – then he has to go," Fuchs said.

Juan Luciano

Photographer: Diego Levy/Bloomberg

A spokeswoman for ADM declined to comment.

ADM in January disclosed an investigation into accounting practices at its nutrition unit, a business that makes ingredients for humans and animals that Luciano was betting on as the future of ADM. Chief Financial Officer Vikram Luthar took the brunt of the blame, agreeing to resign.

Read More: ADM Has Yet to Get a Handle on Accounting Months After Scandal

But less than 10 months after the scandal that sent shares plunging by a record 24%, the commodity-trading giant was still struggling to sort out its accounting. ADM in early November disclosed it found more errors in the way it reported transactions between its business units and that it would need to restate some of its results.

It canceled its quarterly earnings call with analysts only 14 hours before it was due to start, a move that sent shares plunging another 12%. The stock is down about 30% this year, heading for the biggest decline since the 2008 financial crisis.

Read More: ADM Sees ‘Challenging Cycle’ for Farm Commodities Through 2025

“The market is reacting increasingly negatively to ADM,” Fuchs, who criticized himself for buying more of the company’s stock, said on LinkedIn on Sunday. “From a chart perspective, the share price has suffered significantly and there is obviously no effort on ADM’s part to stop or even reverse this trend.”

ADM has replaced its CFO, appointed AT&T Inc.’s top lawyer to its board and implemented new controls as part of efforts to restore credibility. It has corrected sales between units that either were previously recorded at prices that didn’t approximate the market, or included transactions that were improperly classified. So-called intersegment sales for 2023 had been previously overestimated by $1.28 billion.

This isn’t the first scandal involving ADM. Back in the 1990s, it was implicated in a price-fixing conspiracy that later became the basis of the 2009 film “The Informant!” starring Matt Damon. ADM pleaded guilty to the price-fixing charges in 1996. The company has also responded to a lawsuit over allegations of price manipulation involving its trading of ethanol.

ADM has spent billions on its nutrition bet since 2014, when it made its biggest-ever acquisition — the $3 billion buyout of European natural ingredient maker Wild Flavors GmbH. It also spent about $1.8 billion to buy animal feed maker Neovia from France’s InVivo Group in 2019. But profits have failed to live up to initial expectations due to weakening demand, including for plant-based food.

“The ADM company, the people who work at ADM — and they are good people — they must be protected and these negative reports must be stopped,” said Fuchs. “The share price must rise again to levels that properly reflect the company’s true earning power (which, admittingly, would make me smile again).”

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ADM shareholder presses CEO to resign as criminal probe continues

reuters.com/markets/commodities/adm-shareholder-presses-ceo-resign-criminal-probe-continues-2024-12-30

P.J. Huffstutter

Juan Luciano, Chairman, President and CEO of Archer Daniels Midland Company listens to testimony to the House Ways and Means Committee on tax reform on Capitol Hill in Washington, U.S., May 23, 2017. REUTERS/Joshua Roberts/File Photo Purchase Licensing Rights, opens new tab

CHICAGO, Dec 30 (Reuters) - A shareholder of agribusiness Archer-Daniels-Midland (ADM.N), opens new tab is pressing the company's CEO to resign for failing to clearly tell investors about problems with its internal accounting practices that have sparked a criminal investigation first reported by Reuters.
In a LinkedIn post entitled "Investor-misery has a name: ADM," Hartwig Fuchs said ADM was the worst stock in his portfolio this year and blamed ADM CEO Juan Luciano.

Fuchs was the board chairman of German trading firm Alfred C. Toepfer International when ADM owned a majority stake in the firm. Fuchs left Toepfer in 2009 and Chicago-based ADM acquired it in 2014.

"A German proverb says: The fish always stinks from the head," Fuchs wrote in his post, dated Sunday.

ADM declined to comment on Fuchs' post on Monday. It was not immediately clear how many ADM shares Fuchs owns.

ADM was forced to amend years of financial reporting in March and November after discovering sales between its nutrition business and other core units were not recorded properly. The company cut its 2024 profit outlook last month, citing policy uncertainty, slow demand and "internal operational challenges."

Federal prosecutors in recent months have expanded their inquiries into whether ADM or its employees committed crimes including securities fraud and conspiracy, according to subpoenas reviewed by Reuters and people familiar with the probe.

Government investigations are not evidence of wrongdoing and do not necessarily result in charges. A spokesperson for the U.S. Attorney's Office in Manhattan on Monday declined to comment on the investigation.

ADM's stock price is down nearly 30% from a year ago, and ADM's shareholders, including Fuchs, are asking questions and pointing fingers as to who is to blame.

"If a highly paid CEO of such an important company cannot manage to provide clarity within a few months - i.e. fully clear up the scandal, comunicate (sic) with full Transparency about what went wrong and what will be done in the future, regain investors trust and, above all, protect the company from long-term damage - then he has to go," Fuchs wrote in his post.

ADM is facing other headwinds including low crop prices, uncertainty around biofuels regulations and a possible tariff battle between the United States and China that could upend global trade flows as soon as January, after President-elect Donald Trump takes office.

Reporting By P.J. Huffstutter in Chicago; Additional reporting by Chris Prentice in New York and Karl Plume in Chicago; Editing by Chris Reese and Rod Nickel

P.J. Huffstutter
Thomson Reuters

P.J. is a Midwest-based reporter covering U.S. agriculture, the farm economy, commodity markets, farmland use, food production and global supply chains. Huffstutter graduated from the University of California, San Diego, and previously worked as a national correspondent and Midwest bureau chief for the Los Angeles Times. She was a 2020 fellow of the Watchdog Writers Group, a nonprofit investigative journalism program at the Donald W. Reynolds National Center for Business Journalism at the University of Missouri.

https://www.wsj.com/health/healthcare/how-unitedhealth-became-an-american-goliath-a039a36d

HEALTH | HEALTHCARE

How UnitedHealth Became an American Goliath

From a humble base, it gobbled up big chunks of the U.S. health system, including doctor practices, pharmacy-benefits managers and medical billing services

By Mark Maremont Follow *, Danny Dougherty* Follow *and Anna Wilde Mathews* Follow

Dec. 31, 2024 8:00 am ET

An outpouring of public rage against health insurers in the wake of the killing of a top UnitedHealth Group executive has drawn scrutiny to the country's largest healthcare company.

UnitedHealth recorded $372 billion in revenue last year—making it about the same size as Apple. It owns the biggest U.S. health insurer, and has expanded into almost every corner of the medical field.

The company was founded in Minnesota in the 1970s. Its growth came in part through scores of acquisitions, some with price tags that were never made public. The company has confronted and mostly overcome antitrust challenges to its influence over healthcare markets.

UnitedHealth said the company accounts for less than 10% of a "highly fragmented and competitive healthcare market," and that "fragmentation is a core problem for patients and providers, diminishing outcomes, quality and affordability, and our approach is intended to make healthcare work better for all."

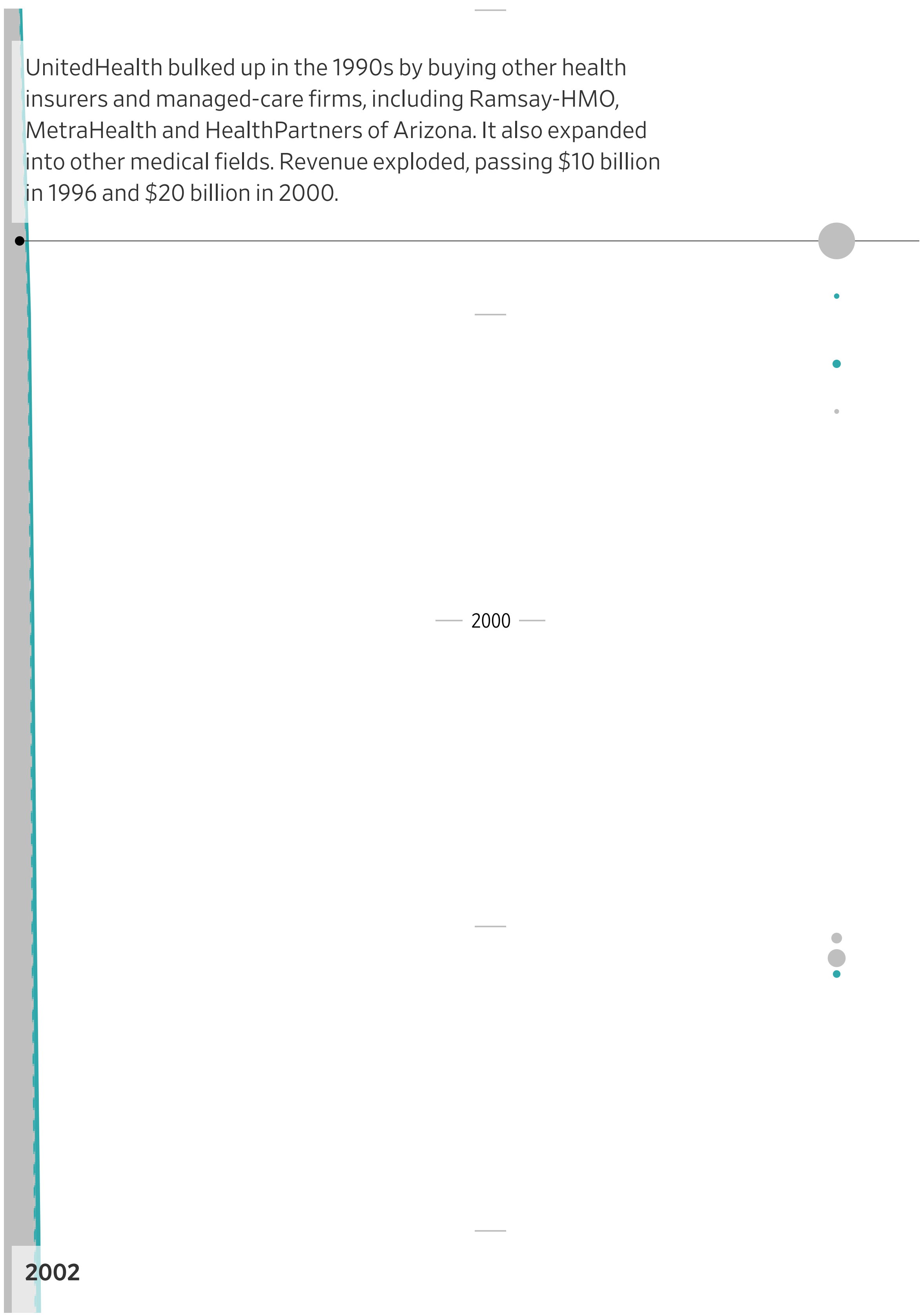
Here's how UnitedHealth grew:

Annual revenue

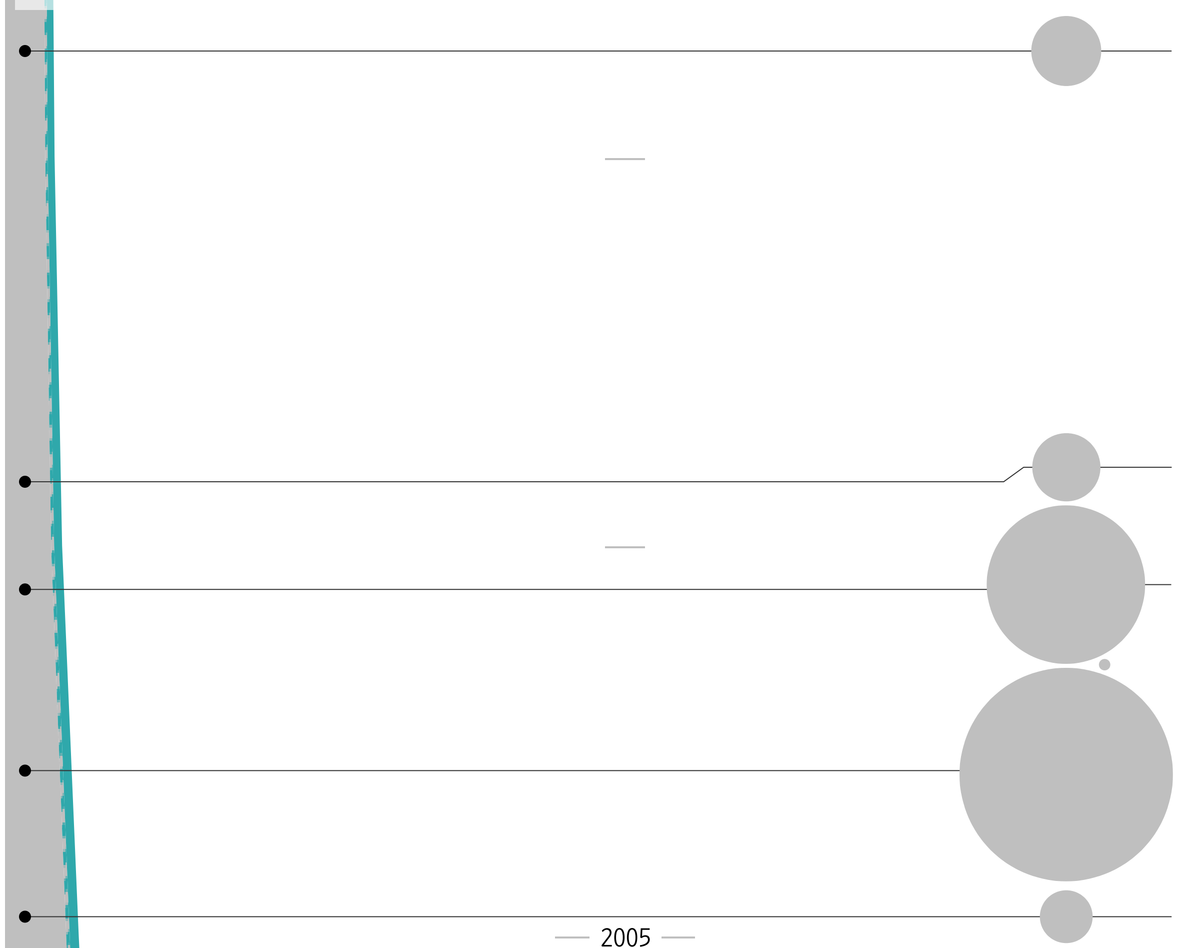
Select deals

Health insurance
Payments within the company
Healthcare services

UnitedHealth bulked up in the 1990s by buying other health insurers and managed-care firms, including Ramsay-HMO, MetraHealth and HealthPartners of Arizona. It also expanded into other medical fields. Revenue exploded, passing $10 billion in 1996 and $20 billion in 2000.

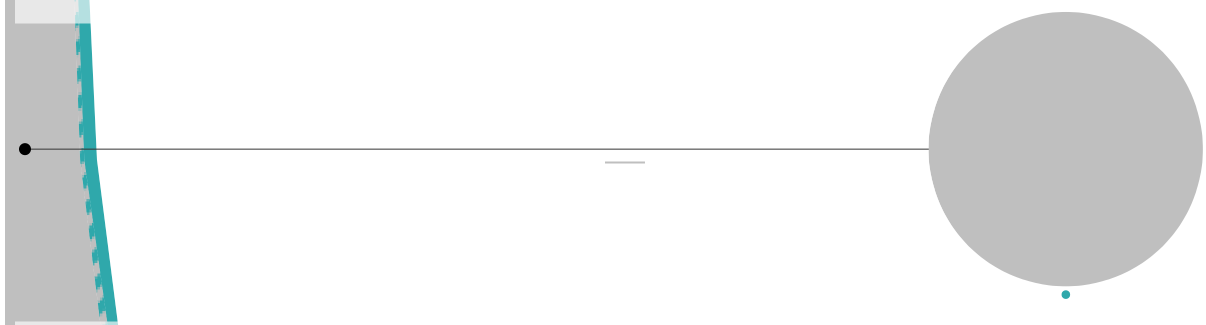


The company expanded further into Medicaid, the government-funded health program for those with limited resources, with the acquisition of AmeriChoice.



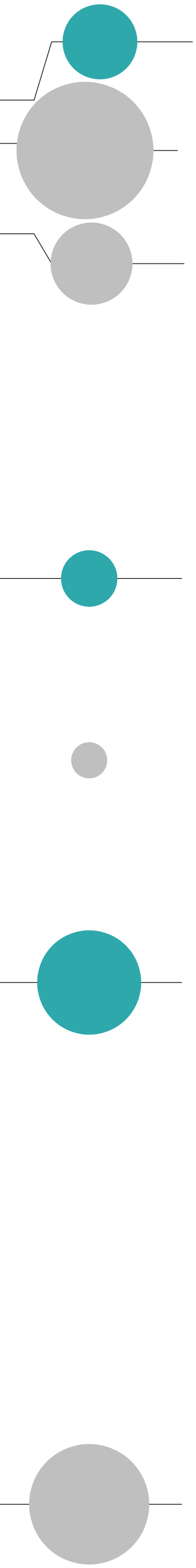
2005

The company made a major push into Medicare through the acquisition of West Coast insurer PacifiCare in 2005, soon after buying two large East Coast insurers, Oxford Health Plans and Mid Atlantic Medical.



2006

UnitedHealth was one of the largest firms ensnared in a national options-backdating scandal, in which companies manipulated the dates of stock options to enrich executives. Its CEO resigned and agreed to give back hundreds of millions of dollars in pay and option grants.



2008

The company bought Sierra Health Services, a Nevada health plan that included a doctor group. It was an early step into a business that would later expand exponentially, despite rules in many states that generally ban corporations from controlling physician practices.

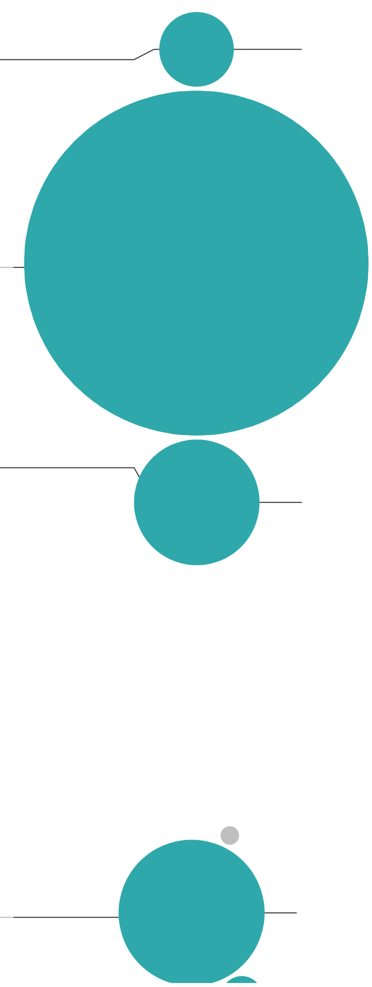
2010

2011

UnitedHealth grouped its non-insurance operations under the Optum name. A growing share of revenue involved its subsidiaries doing business with each other, a strategy that can work around regulations that limit insurers' profit margins.

2012

The company pushed further into Medicare plans by buying XLHealth. That deal brought a home-visit service that grew into HouseCalls, which now sends nurses to the homes of millions of patients each year.

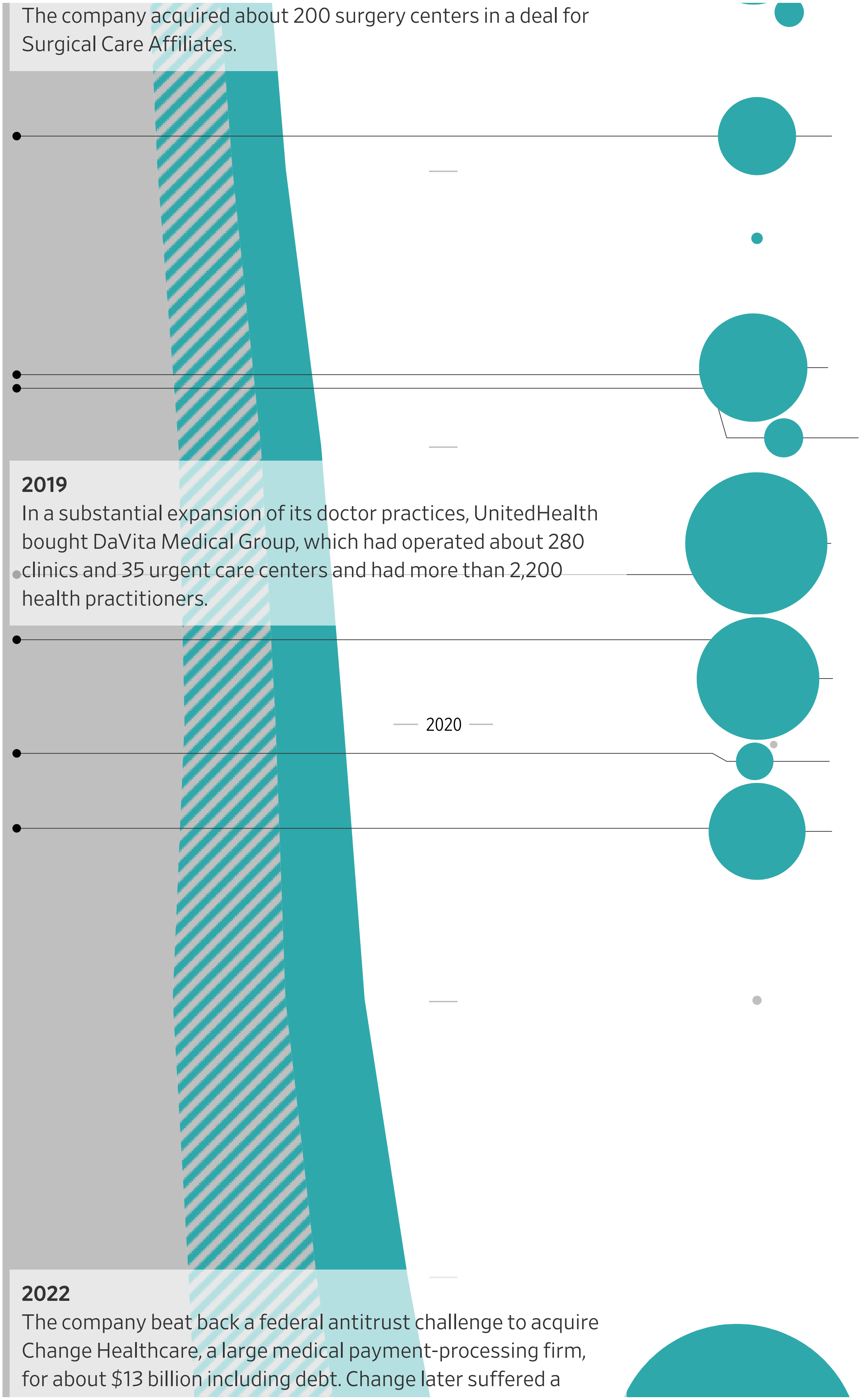


2015

Already a large player in pharmacy benefits, UnitedHealth beefed up by spending almost $13 billion to buy Catamaran, a large rival in that business.

2017

The company acquired about 200 surgery centers in a deal for Surgical Care Affiliates.

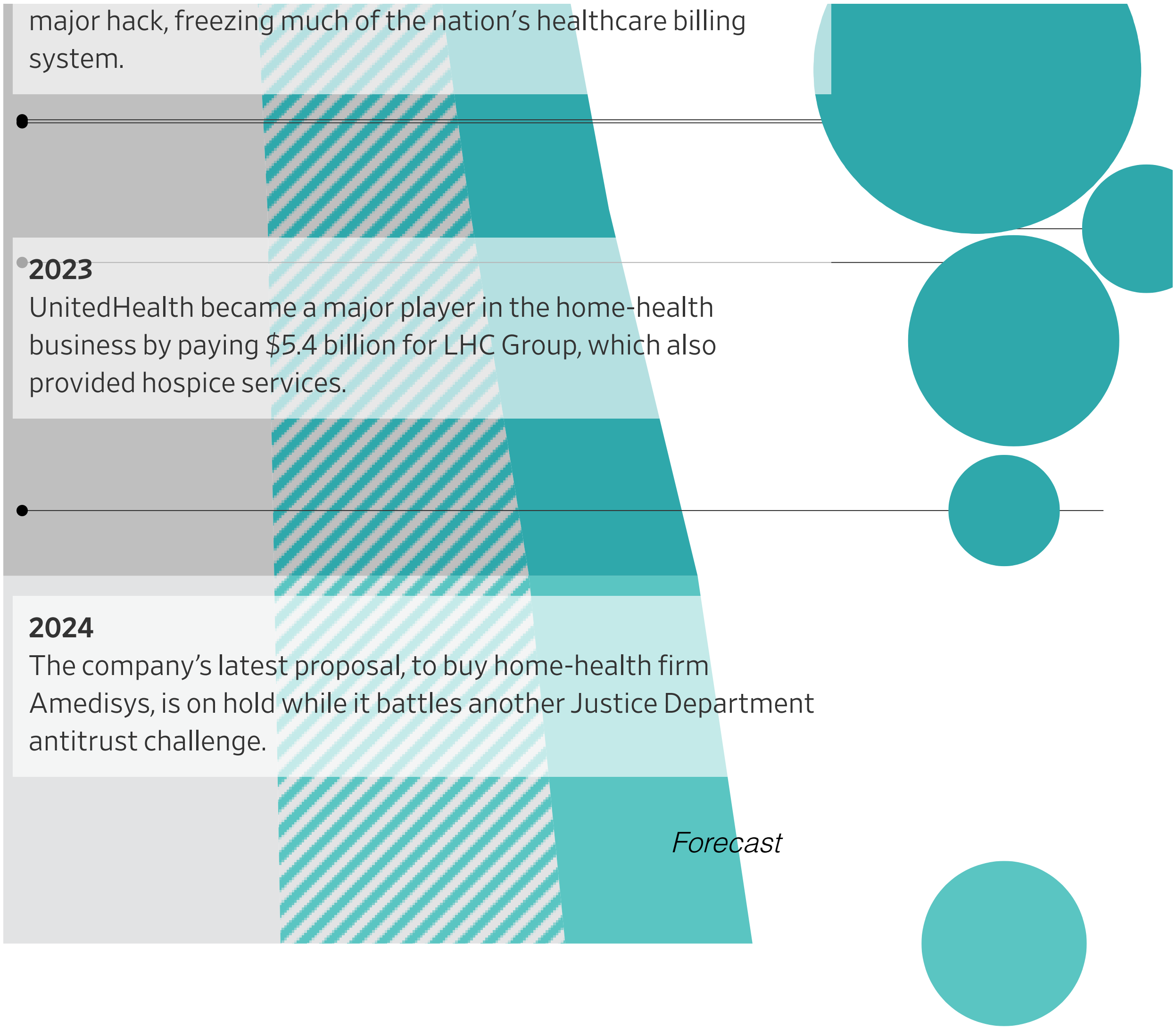


2019

In a substantial expansion of its doctor practices, UnitedHealth bought DaVita Medical Group, which had operated about 280 clinics and 35 urgent care centers and had more than 2,200 health practitioners.

2022

The company beat back a federal antitrust challenge to acquire Change Healthcare, a large medical payment-processing firm, for about $13 billion including debt. Change later suffered a


major hack, freezing much of the nation's healthcare billing system.
2023
UnitedHealth became a major player in the home-health business by paying $5.4 billion for LHC Group, which also provided hospice services.
2024
The company's latest proposal, to buy home-health firm Amedisys, is on hold while it battles another Justice Department antitrust challenge.
Forecast

Sources: FactSet Mergers, WSJ reporting, UnitedHealth Group SEC filings

Notes: Revenue since 2009 shows UnitedHealthcare as health insurance and Optum as healthcare services. Revenue from 1998 to 2008 is divided into health insurance, which the company at that time called health benefits or healthcare services, and other. Eliminations are shown as payments within the company. 2024 revenue is estimated and uses the reported nine-month segment breakdown. Revenue data for some years includes company restatements; segment-level data for 2002-2004 is un-restated. Some acquisition prices are estimates or include both debt and equity.