

BioVie Leaders Sued for Stock Slips on Clinical Trial Misconduct

By Gillian R. Brassil

- **COURT:** D. Nev.
- **TRACK DOCKET:** [No. 3:24-cv-00602](#) (Bloomberg Law subscription)

BioVie Inc. executives should have disclosed protocol compliance problems affecting its clinical trial for its Alzheimer's drug, instead they exposed the pharmaceutical company to financial harm and a proposed class action lawsuit, a shareholder derivation action says.

Executives concealed data integrity issues happening amid pandemic-impaired oversight of trial locations run by contractors during a Phase 3 study, says the complaint filed by shareholder Andrew Hulm in the US District Court for the District of Nevada on Monday. And two of its directors at the time allegedly engaged in insider trading before problems were exposed, gaining a total of almost \$225,000, the complaint says.

The company had already identified probable misconduct, Hulm says, when BioVie said in October 2023 that blinded data indicated its Alzheimer's drug had a positive effect. At the end of November 2023, following the public disclosures of patient fraud issues, executives said excluding compromised data caused the study to lack statistical significance.

The stock price slid 29% after a public filing identified potential data integrity problems in mid-November. Share prices collapsed 61%, to \$1.96, on Nov. 29 as BioVie disclosed "significant deviations of protocol" at 15 sites—the stock's deepest decline since 2016, according to the complaint and data compiled by Bloomberg.

About 80% of its patients shouldn't have been enrolled, the complaint says. Independent auditors had told the company that data from one of its sites included patients who shouldn't have been enrolled, but executives continued making positive statements about its clinical trial from late 2022 through 2023, Hulm says. He alleges executives willfully or recklessly made misleading statements, and/or caused the company to do so.

Hulm says officers allegedly conspired to hide legal violations, including breaches of fiduciary duty, unjust enrichment, waste of corporate assets, gross mismanagement, and abuse of control. He seeks damages awarded to BioVie and reformed corporate governance.

Investors sued BioVie and key executives in the same court earlier this year alleging similar issues. Litigation in this consolidated proposed class action is ongoing.

And in an unrelated action before the Southern District of New York, the Securities and Exchange Commission has alleged a market analyst and his firm engaged in a fraudulent scheme to manipulate BioVie stock in 2020 and 2021, encouraging subscribers to buy and hold BioVie shares while planning to sell his own and pocketing \$1.37 million.

Leverty & Associates Chtd. and the Brown Law Firm PC represent Hulm. The latter declined to comment for this story.

A BioVie media representative didn't respond to an email seeking comment. Neither did firms representing the company and two executives in the proposed class action, Baker & Hostetler LLP and Snell & Wilmer LLP.

The case is Hulm v. Palumbo , D. Nev., No. 3:24-cv-00602, complaint filed 12/30/24 .

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Litigation

Jan. 2, 2025, 10:29 AM PST

Investor Sues Edwards Execs for Inflating Heart Valve Demand

By Gillian R. Brassil

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** [No. 8:24-cv-02822](#) (Bloomberg Law subscription)

Edwards Lifesciences Corp. executives misrepresented projected strong sales growth for its main heart valve product, artificially inflated stock prices, and engaged in insider trading, a shareholder derivative suit says.

Five executives netted about \$12.3 million from insider trading amid artificially inflated stock prices between February and July, investor Manh Ho says in the derivative complaint filed in the US District Court for the Central District of California on Dec. 31.

And the medical device corporation spent \$178 million between April and July, buying back almost 2.2 million of its own inflated shares, Ho says. Because share prices were inflated on purportedly rosy financial expectations, Edwards overpaid for the repurchases by about \$48.2 million, he alleges.

"The Company has been substantially damaged as a result of the Individual Defendants' knowing or highly reckless breaches of fiduciary duty and other misconduct," Ho says, citing another proposed class action lawsuit filed against Edwards and its executives in the same court in October with similar allegations brought by an investor.

Executives in February cited growing sales opportunities for its transcatheter aortic valve replacement, projecting gains in fiscal year 2024 projections. But in July, the company slashed its full-year revenue guidance for the core product while releasing second-quarter results: The next day, Edwards' stock price fell more than 31% from a closing price of \$86.95 per share to close at \$59.70 per share, the complaint says—it's largest single-day tumble since 2000, according to data compiled by Bloomberg.

Ho alleges executives breached their fiduciary duties by letting the company release misleading statements about the risks of newer therapies dipping into its heart valve replacement's sales growth. Their judgment purportedly was clouded by wanting shareholder approval of an amended stock plan in May, which made shares available to Edwards employees and directors, Ho says.

Ho seeks declaratory relief; damages and restitution awarded to Edwards, along with pre- and post-judgment interest; amended board bylaws; and attorneys' fees and costs.

The complaint alleges securities laws violations among other claims.

The Brown Law Firm PC represents Ho.

Edwards didn't respond to an email seeking comment.

The case is Ho v. Zovighian , C.D. Cal., No. 8:24-cv-02822, complaint filed 12/31/24 .

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Class Action

Jan. 2, 2025, 7:15 AM PST; Updated: Jan. 2, 2025, 9:49 AM PST

Elon Musk Pay Deal Decision Appealed to Delaware High Court (1)

By [Gillian R. Brassil](#)

- Delaware chancellor blocked \$56 billion pay deal last January
- Florida shareholders appealed decision voiding record pay

A group of Tesla Inc. shareholders are appealing a month-old decision to void chief executive officer Elon Musk's blockbuster \$56 billion pay package.

Florida shareholders ARK Investment Management LLC, David Israel, and Kurt Panouses filed the notice of appeal in the Supreme Court of Delaware docketed on Dec. 31 over the ruling to block what would be the largest CEO compensation deal in US history. The notice also targets Chancellor Kathaleen St. J. McCormick's \$345 million award in attorneys fees.

McCormick ruled early last year and again in December that the CEO and board breached fiduciary duty to Tesla investors in approving the record-breaking compensation plan, siding with stockholders who brought the derivative lawsuit, including Richard J. Tornetta, in 2018. Tesla shareholders had voted to reapprove the pay package after the chief judge of the Delaware's Chancery Court dashed it.

"We want on this appeal to re-enfranchise Tesla shareholders and make their votes count," said attorney Tom Grady of GradyLaw, one of the firms representing the Florida investors. He said in a phone call that twice—in 2018 and 2024—over 70% of shareholders voted to approve the pay package. "It's 'unfathomable' that we could get a greater percentage of shareholders to approve that," Grady said, applying the term McCormick used in describing the compensation deal.

Klehr Harrison Harvey Branzburg LLP also represents the Florida shareholders. Bernstein Litowitz Berger & Grossmann LLP and Andrews & Springer LLC are named in the notice as representing Tornetta. Musk and the board were represented by Ross Aronstam & Moritz LLP and others in Delaware Chancery. None of these firms immediately responded to a request for comment.

The case is *Tornetta v. Musk*, Del., No. 534,2024, notice of appeal 12/31/24 .

(Updates to add attorney comment in the fourth paragraph.)

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Class Action

Jan. 2, 2025, 7:34AM PST

Apple Would Pay \$95 Million in Proposed Siri Privacy Settlement

By [Cassandra Coyer](#)

- Pact would end five-year privacy class-action litigation
- Attorneys to seek \$29.6 million in fees and expenses

Plaintiffs in a proposed class action against Apple Inc. alleging privacy violations by its Siri virtual assistant asked a California federal court to approve a \$95 million settlement after five years of litigation.

The agreement would resolve allegations that Apple's voice-assistant Siri was unintentionally activated and obtained their confidential communications and shared them with third parties without consent.

The proposed settlement is the result of "arms-length negotiation" between the parties, who are both "well informed of the strengths and weaknesses" of their positions, the plaintiffs said in a Dec. 31 unopposed motion seeking preliminary approval of the pact in the US District Court for the Northern District of California.

The plaintiffs' attorneys will ask for fees totaling as much as 30% of the settlement amount, \$28.5 million, plus \$1.1 million in litigation expenses, according to the motion.

A 2019 complaint alleged that Apple violated wiretap laws by recording and misusing users' private conversations.

The proposed class encompasses all current or former owners or purchasers of a Siri device in the US whose communications were obtained by Apple as a result of an unintended Siri activation between September 2014 and the settlement date. The motion estimates that the class includes at least tens of millions of individuals.

The settlement amount would be distributed on a pro rate basis according to the number of Siri devices that experienced an unintended Siri activation during the ten-year period.

In addition to monetary relief, the settlement would require Apple to delete Siri audio recordings collected by Apple prior to October 2019 and to publish a webpage instructing users on how to opt into an "Improve Siri" option and detailing the data Apple would store about them if they choose to do so.

Lowey Dannenberg PC, Scott+Scott Attorneys at Law LLP, Lexington Law Group, and Wood Law Firm represent the plaintiffs. DLA Piper LLP and Morrison & Foerster LLP represent Apple.

This case is *Lopez v. Apple Inc.*, N.D. Cal., No. 4:19-cv-04577, motion filed 12/31/24.

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<https://www.wsj.com/tech/apple-agrees-to-pay-95-million-to-settle-class-action-lawsuit-over-recordings-tied-to-siri-1d9ae5c3>

TECHNOLOGY

Apple Agrees to Pay \$95 Million to Settle Lawsuit Over Recordings Tied to Siri

Plaintiffs in lawsuit alleged Siri was activated unintentionally and shared confidential or private discussions with Apple

By [Denny Jacob](#) [Follow](#)

Jan. 2, 2025 12:10 pm ET

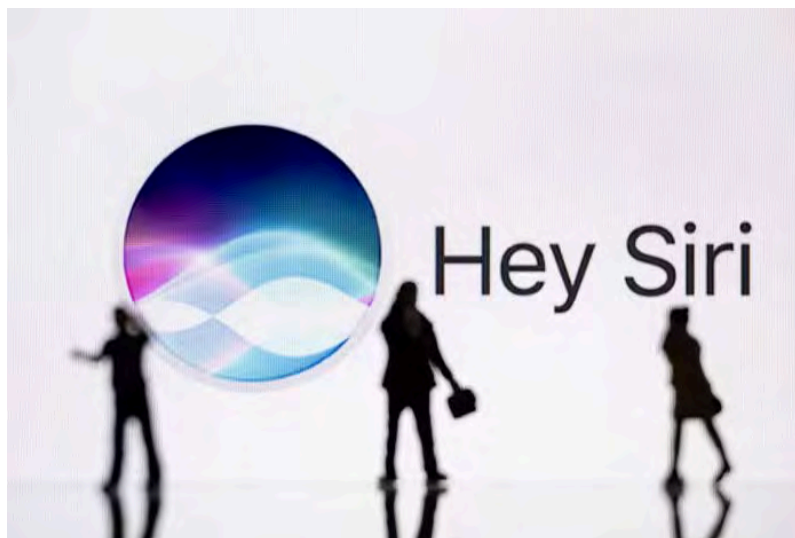


PHOTO: SEBASTIEN BOZON/AGENCE FRANCE-PRESSE/GETTY IMAGES

Apple [AAPL -3.29% ▼](#) agreed to pay \$95 million in cash to resolve a class-action lawsuit that alleged the company obtained private communications and shared them with third parties without consent through Siri.

The plaintiffs in the lawsuit alleged that Siri was activated unintentionally and went on to share confidential or private discussions overheard by the voice-driven virtual assistant with Apple.

The proposed settlement requires Apple to address the alleged privacy violations by requiring the company to confirm it has permanently deleted

individual Siri audio recordings obtained prior to October 2019 six months after it goes into effect. It also will require the iPhone maker to publish details explaining to users how they may opt in to a choice to improve Siri.

Apple, which denied wrongdoing, didn't immediately respond to a request for comment on Thursday.

The case was overseen by Judge Jeffrey White of the U.S. District Court for the Northern District of California. The case still requires final approval from the court.

Apple has had dust-ups involving Siri in the past. The company in 2019 temporarily suspended the practice of using contractors to listen to and grade Siri voice recordings after British newspaper the Guardian found that Apple contractors regularly listened to customers' confidential information such as medical information. Apple at the time said it would resume the practice in the fall after updating software and making a series of changes, including no longer retaining audio recordings by default.

Siri was introduced on a prior generation iPhone in 2011. Years later, Apple made it possible to activate the technology by simply saying "Hey Siri" to a range of devices.

Write to Denny Jacob at denny.jacob@wsj.com

Videos

Apple to pay \$95 million to settle Siri privacy lawsuit

 [reuters.com/legal/apple-pay-95-million-settle-siri-privacy-lawsuit-2025-01-02](https://www.reuters.com/legal/apple-pay-95-million-settle-siri-privacy-lawsuit-2025-01-02)

Jonathan Stempel

An attendee holds two iPhones 16 as Apple holds an event at the Steve Jobs Theater on its campus in Cupertino, California, U.S. September 9, 2024. REUTERS/Manuel Orbegozo/File Photo Purchase Licensing Rights , opens new tab

Jan 2 (Reuters) - Apple (AAPL.O) , opens new tab agreed to pay \$95 million in cash to settle a proposed class action lawsuit claiming that its voice-activated Siri assistant violated users' privacy.

A preliminary settlement was filed on Tuesday night in the Oakland, California federal court, and requires approval by U.S. District Judge Jeffrey White.

Mobile device owners complained that Apple routinely recorded their private conversations after they activated Siri unintentionally, and disclosed these conversations to third parties such as advertisers.

Voice assistants typically react when people use "hot words" such as "Hey, Siri."

Two plaintiffs said their mentions of Air Jordan sneakers and Olive Garden restaurants triggered ads for those products. Another said he got ads for a brand name surgical treatment after discussing it, he thought privately, with his doctor.

The class period runs from Sept. 17, 2014 to Dec. 31, 2024. It began when Siri incorporated the "Hey, Siri" feature that allegedly led to the unauthorized recordings.

Class members, estimated in the tens of millions, may receive up to \$20 per Siri-enabled device, such as iPhones and Apple Watches.

Apple denied wrongdoing in agreeing to settle.

The Cupertino, California-based company and its lawyers did not immediately respond to requests for comment on Thursday.

Lawyers for the plaintiffs did not immediately respond to similar requests. They may seek up to \$28.5 million in fees, plus \$1.1 million for expenses, from the settlement fund.

The \$95 million is about nine hours of profit for Apple, whose net income , opens new tab was \$93.74 billion in its latest fiscal year.

A similar lawsuit on behalf of users of Google's (GOOGL.O) , opens new tab Voice Assistant is pending in the San Jose, California federal court, in the same district as the Oakland court. The plaintiffs are represented by the same law firms as in the Apple case.

The case is Lopez et al v. Apple Inc., U.S. District Court, Northern District of California, No. 19-04577.

Reporting by Jonathan Stempel in New York; Additional reporting by Mike Scarcella; Editing by Susan Fenton

Ohio committee marks five years fighting opioid crisis with scientific approach

 legalnewsline.com/stories/667311743-ohio-committee-marks-five-years-fighting-opioid-crisis-with-scientific-approach

December 31, 2024

State AG

Attorney General Dave Yost | Twitter

A committee established by Ohio Attorney General Dave Yost is celebrating five years of work in the fight against opioid use disorder. The Scientific Committee on Opioid Prevention and Education (SCOPE), formed in 2019, has been central to Ohio's efforts to prevent opioid addiction through research and education.

"This is a fight Ohio can't afford to lose," Yost stated. "The breakthroughs emerging from SCOPE's work are paving the way for a future in which fewer families suffer the heart-wrenching loss of a loved one to an opioid overdose."

SCOPE unites experts from various fields, including medicine, pharmacy, behavioral science, and data analysis, to develop strategies aimed at preventing addiction before it begins. One of its key achievements is identifying genetic factors that may influence susceptibility to opioid use disorder and potential overdose. This research holds promise for transforming prevention, education, and treatment efforts across Ohio and beyond.

Other areas of focus during SCOPE's first five years include educating health professionals about opioids and promoting safe storage and disposal of unused medications.

To commemorate this milestone, Yost's office has released a report and video highlighting SCOPE's impact and future vision.

Class Action

December 31, 2024, 9:26 AM PST

Blackbaud Again Defeats Class Certification in Data Breach Suit

By [Tonya Riley](#)

A federal judge denied plaintiffs' request for leave to file a second attempt for class certification in a consolidated lawsuit against cloud-services provider Blackbaud Inc.

"Ultimately, the Court finds that allowing successive argument on class certification based on an unchanged record this late in the litigation would be prejudicial to Blackbaud and against the interests of judicial economy," Judge Joseph F. Anderson Jr. wrote in an opinion issued Monday in the US District Court for the District of South Carolina.

The lawsuit, which involved 34 named plaintiffs from 20 states asserting nearly 100 federal and state law claims, alleged Blackbaud failed to protect the personal information of more than 1.5 billion people exposed in a 2020 data breach and ransomware attack.

Anderson denied plaintiffs' original motion for class certification in May, finding they had failed to show it was administratively feasible to identify class members. Plaintiffs petitioned the US Court of Appeals for the Fourth Circuit for permission to appeal the court order, but the court denied the request in July, according to the opinion.

Lead counsel for the plaintiffs are DiCello Levitt LLC, Milberg Coleman Bryson Phillips Grossman PLLC, Motley Rice LLC, and Susman Godfrey LLP.

Blackbaud is represented by Troutman Pepper Hamilton Sanders LLP, Duffy & Young LLC, and Burr & Forman LLP.

The case is *In re Blackbaud, Inc. Customer Data Breach Litigation*, D.S.C., No. 3:20-mn-02972-JFA, 2024 BL 475051, decided 12/30/24.

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Class Action

December 31, 2024, 12:36 PM PST

Meta Will Face Wiretapping Claims It Tracked Users Across Sites

By [Cassandra Coyer](#)

- Meta failed to show it obtained user consent before tracking
- Meta knew its tech would be used for wiretapping, judge said

A federal judge allowed claims to proceed in a dispute accusing Meta Platforms Inc. of deploying tracking technology to collect users' personal data without consent across third-party websites.

Plaintiffs sufficiently alleged that Meta intended its surveillance technology to be used for wiretapping and didn't obtain valid consent from its users before tracking them online, said US Magistrate Judge Nathanael M. Cousins in an order filed Monday in the US District Court for the Northern District of California.

Plaintiff Mary Yoon accused Meta of deploying a tracking pixel, a piece of code that intercepts users' activity on a webpage, across sites including HGTV.com, Bloomberg.com, 247Sports.com, and PBS.com. The sites weren't named as defendants in this case.

The tracking tool shared users' viewing history and personal information, including names, emails, and genders, without their consent, the complaint said. The information was then matched to users' Facebook accounts for marketing purposes and to train its algorithms, it said.

Meta argued that users consented to their data collection when they agreed to its terms of use policies. But Cousins wasn't convinced and said there was no evidence to show that users were required to "affirmatively acknowledge the policies before signing up for Facebook."

"It is not sufficient to simply allege that the policies exist and Plaintiffs created and used a Facebook account to prove consent," Cousins said.

Most of the plaintiffs' claims that Meta violated the California Invasion of Privacy Act will move forward. The judge found plaintiffs sufficiently alleged that some of the communications Meta collected with its tracking pixel qualify as substantive "contents" under the statute.

URL requests, video titles, and button clicks that show video titles provide enough "significant information" about a user's browsing history to meet the statute's applicability, Cousins said.

Meta also failed to convince the judge that web-browsing data isn't confidential. Plaintiffs' reasonable expectation of privacy under CIPA was "strengthened" by the allegation that there was no express consent for the disclosure of video viewing history, and that Meta made false representations about its data collection, Cousins said.

Cousins also found it “plausible” that Meta knew or intended its surveillance technology to be primarily used for wiretapping, as the social media giant’s own policies limiting the use of the pixel showed that it knew it could be used for wiretapping, he said.

Plaintiffs’ claims that Meta violated CIPA by collecting data typed into online forms and submitted by users were dismissed, as this type of information doesn’t constitute “contents” but rather generic customer record information, he said.

The judge granted plaintiffs’ leave to file a second amended complaint by January 21. It also approved Meta’s requests of judicial notice for 16 exhibits, which include Meta’s terms of service, its privacy policy, and its cookies policy.

Smith Krivoshey PC represents the plaintiffs. Gibson, Dunn & Crutcher LLP represents Meta.

This case is Yoon et al v. Meta Platforms, Inc. , N.D. Cal., No. 5:24-cv-02612, order filed 12/30/24 .

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Mass tort litigation to watch in 2025

 [reuters.com/legal/government/mass-tort-litigation-watch-2025-2024-12-23](https://www.reuters.com/legal/government/mass-tort-litigation-watch-2025-2024-12-23)

Brendan Pierson

The numerals '2025' arrive for the Times Square New Year's Eve 2025 celebrations in New York City, New York, U.S., December 18, 2024. REUTERS/Kent J. Edwards Purchase Licensing Rights , opens new tab

Dec 23 (Reuters) - The coming year will see a continuation of some long-running mass tort litigation based on traditional product liability theories of toxic exposure, and potentially the rise of novel legal theories applied to less traditional products. Here are some of the top cases to watch in 2025.

'FOREVER CHEMICALS'

Per- and polyfluoroalkyl substances, or PFAS, have been used for decades in a wide range of consumer products and industrial applications. Dubbed "forever chemicals" because they persist in the environment and the body, they have drawn greater attention in recent years as evidence has emerged about their health risks.

Already, major chemical companies have reached settlements totaling more than \$11 billion with U.S. water systems for their alleged role in contaminating water supplies. But the chemicals are so pervasive that the sprawling litigation is certain to continue and grow. Thousands of personal injury claims remain pending by people who say they developed cancer from exposure to PFAS, mostly from people exposed to firefighting foam that contains the chemicals and is widely used in training exercises, either while working as firefighters or at airports where firefighters train. Most of the claims are centralized in federal court in South Carolina, where the first bellwether trials are scheduled to begin next year.

The coming year could also see new categories of PFAS claims — for example, from people alleging exposure through consumer product packaging. In August, a proposed class action was filed targeting major chemical companies over PFAS in carpet, highlighting how pervasive the issue could become. The full scale of liability remains unclear.

SOCIAL MEDIA

Litigation accusing social media giants, including Meta, TikTok owner ByteDance, Google and others of fueling teen addiction and mental health issues picked up steam in 2024, with many claims clearing the early hurdle of surviving motions to dismiss. Lawsuits have been brought by families and school districts that say they have been forced to sink resources into fighting the harms of social media.

Another major step in the litigation could come next year, as the California federal judge overseeing a multidistrict litigation where many of the lawsuits are centralized has scheduled the first bellwether trials to begin in October. A trial would test the strength of the novel claims, which aim to apply legal theories more typically used to sue over toxic substances to social media algorithms, and could set the stage for an eventual settlement.

The companies have denied the claims and say they have taken steps to protect users.

BAYER'S ROUNDUP

Bayer tried to put litigation over the weedkiller Roundup behind it with a \$10.9 billion settlement in 2020. But the company still faces more than 50,000 claims that glyphosate, which was the active ingredient in Roundup sold to U.S. consumers until recently, causes cancer.

Bayer, which acquired Roundup through its \$63 billion purchase of agrochemical company Monsanto in 2018, has denied that glyphosate causes cancer.

While the company has won a majority of the recent trials in Roundup cases, it has also been hit by massive verdicts totaling more than \$1 billion even after reductions on appeal, with no clear endgame for the long-running litigation. It has said that it hopes to get the U.S. Supreme Court to rule that the plaintiffs' claims are largely preempted by federal law. Thanks to a circuit split earlier this year, Bayer may have a chance to make that case — though so far there has been no petition to the high court.

Roundup trials are expected to continue in 2025. Their outcomes could help decide whether the company continues to hold out for a knockout victory or finally reaches another settlement.

PRETERM INFANT FORMULA

Litigation claiming that baby formula for premature infants made by Abbott and Reckitt Benckiser's Mead Johnson caused necrotizing enterocolitis, a deadly bowel disease, drew attention in the past year after a \$60 million verdict against Mead and a blockbuster \$495 million verdict against Abbott. While the companies won the third and most recent trial, close to 1,000 cases remain pending.

The cases have alarmed not only investors but many doctors, who say they are based on flawed science and threaten the availability of products that are vital for treating babies in neonatal intensive care units. The companies say that, while doctors have long known that breast milk protects against necrotizing enterocolitis, formula does not cause it.

The litigation will remain closely watched, as it could have implications not only for the companies' bottom lines but for medical practice.

'ULTRA-PROCESSED' FOOD?

A single lawsuit filed near the end of 2024 could be a dead end — or could mark the beginning of a major new chapter in U.S. mass tort litigation.

An 18-year-old Pennsylvania man sued a dozen leading food companies, accusing them of engineering and marketing their "ultra-processed" foods to be addictive, leading to chronic disease. The plaintiff alleges that he was diagnosed with non-alcoholic fatty liver disease and type 2 diabetes as a result of consuming the companies' products.

The lawsuit, and any similar cases, will face challenges. "Ultra-processed food" does not have a universally agreed-upon definition, and the complaint does not identify any specific substance in the products responsible for the harm. But the possible harms of processed foods have recently drawn attention from current, and possible future, U.S. health officials. In the coming year, it will likely become clearer whether processed food litigation will fizzle, or explode.

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Reporting By Brendan Pierson in New York

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Advertising Tech Likely to Draw More Scrutiny in 2025 Over Consumers' Data, Lawyers Say

 [law.com/nationallawjournal/2024/12/31/advertising-tech-likely-to-draw-more-scrutiny-in-2025-over-consumers-data-lawyers-say](https://www.law.com/nationallawjournal/2024/12/31/advertising-tech-likely-to-draw-more-scrutiny-in-2025-over-consumers-data-lawyers-say)

Chris O'Malley

Companies had better keep a lid on the customer data cookie jar in the year ahead if 2024 was any indication, according to adtech attorneys.

December 31, 2024 at 04:57 PM

By Chris O'Malley

The original version of this story was published on Corporate Counsel

Outside vendors such as social media platforms and data brokers have voraciously gobbled up many a company's customer data for digital advertising purposes in recent years.

But companies had better keep a lid on the customer data cookie jar in the year ahead if 2024 was any indication, according to lawyers practicing in the adtech space.

In addition to potential exposure from plaintiffs litigation, companies face regulators who have brought many cases that have cost the businesses millions of dollars.

Consider software provider Avast, which the Federal Trade Commission ruled in February must pay a \$16.5 million penalty and cease selling its users' browsing data to third parties.

The FTC alleged Avast users were told the software would block third-party tracking, but failed to adequately inform them it could sell their reidentifiable browsing data.

"The FTC, in the Avast case, has made some interesting comments about browsing history and browsing event data potentially being considered sensitive data," Aaron Goodman, of counsel at the Chicago office of Baker & Hostetler, said during a recent webinar on legal risks in adtech.

"People don't generally think of that right now as being sensitive on its own. So I think one thing to watch is how that evolves and what these [enforcement] categories come to look like" in 2025, he added.

The FTC also has broadened its focus beyond the use of data for advertising purposes, per se.

In December, the agency ordered data broker Mobilewalla to stop collecting and selling sensitive location data without verifying consumers' consent. FTC Chair Lina Khan said the company exploited vulnerabilities in digital ad markets to harvest such data "at a stunning scale."

The data, sold to third parties, including data brokers and analytic firms, included details on consumer visits to health clinics and places of worship.

"That one is interesting, at least to me, because that case relates to the use of data from the advertising ecosystem, from the digital media adtech ecosystem, for things that are not related to advertising," Goodman said.

Often the FTC brings such cases under the guise of unfair or deceptive acts practices. But starting in 2023, the commission brought two cases under the Health Breach Notification Rule, which is aimed at entities not covered by the Health Insurance Portability and Accountability Act, or HIPAA.

The first involved a \$1.5 million civil penalty against GoodRx, a digital health platform offering prescription drug pricing information and discounts.

The FTC said the company permitted tracking pixels and software allowing Facebook, Google and other platforms to scoop up customer data for advertising purposes.

The second case brought under the health breach notification rule was against fertility app Premom, which allegedly shared users' sensitive personal information with other companies, including two in China, and failed to notify its users of the disclosures, the FTC said.

The health breach rule was amended this year. Goodman noted that the FTC's two Republican commissioners dissented, in part because they stated the definition of health care provider was too broad and effectively pertains to any company furnishing a health-related app.

One of those commissioners, Andrew Ferguson, will replace Khan, a Democrat, as FTC chair after President-elect Donald Trump is inaugurated in January.

"So I think we still don't know how that amendment is going to impact what actions the FTC takes around this," Goodman said. "That's something to keep an eye on."

Given recent enforcement cases involving ad tech, the Baker & Hostetler attorney advised companies to take a number of precautionary actions.

"You definitely want to know what trackers you're including on your properties, what data is being collected, who is it being shared with and what's it being used for," he said.

Another step is being aware of what stakeholders within the company have access to and can make changes to in sites and applications. These people could include the software development or marketing team, for example, and third-party contractors, Goodman said.

It's also smart to stay abreast of what is considered "sensitive data" in 2025, he added.

Health, financial and location data generally fall in that bucket already. But Goodman noted that definition is evolving and a number of states have their own consumer privacy laws loaded with potential data traps.

Goodman added that trackers in marketing emails and in the mobile space are also becoming more common.

"One of the areas that has been pretty prevalent this year and an area that we think will see more of in 2025 are issues related to tracking technology and use of sensitive data within the advertising media/ad tech ecosystem," he said.

Goodman underscored the need to have solid agreements in place with all parties with which a company shares or receives data. The agreements should have specific language around any required opt-out options or consents, he said.

"Most importantly, those have to align with the disclosures you're providing to users," Goodman added. "One thing that we've seen is where those two don't match up. And that can be really problematic."

Lastly, Goodman said the FTC has made it clear it wants to see a robust compliance program in place. That includes conducting audits on vendors and having internal training and policies in place.

"That's an area that I think is one of the bigger changes over the last year because of all the litigation risk and potential exposure," Craig Carpenter, a partner at Baker & Hostetler's Dallas office, said during the presentation.

That may require bumping up such audits to a monthly or quarterly basis, he added.

"Gone are the days where it's just like, 'Oh, maybe once a year we'll kind of audit that stuff,'" Carpenter said. "I think it's got to be seen as a more living process given all the potential exposure."

NOT FOR REPRINT

Artificial intelligence litigation in the crystal ball for 2025

 [reuters.com/legal/litigation/column-artificial-intelligence-litigation-crystal-ball-2025-2025-01-02](https://www.reuters.com/legal/litigation/column-artificial-intelligence-litigation-crystal-ball-2025-2025-01-02)

Jenna Greene

Words reading "Artificial intelligence AI," miniature of robot and toy hand are picture in this illustration taken December 14, 2023. REUTERS/Dado Ruvic/File Photo Purchase Licensing Rights , opens new tab

Jan 2 (Reuters) - Here's a not-so-secret newsroom truth: Most journalists don't love writing New Year's pieces on what to expect in the upcoming year, preferring to report the news as it happens.

But for me, previewing the big-ticket commercial litigation landscape in 2025 is a welcome exercise – a sort of hand-drawn map of what I'll be writing about in the months ahead.

I'm honored to be taking over the "On the Case" column from Alison Frankel, who after nearly 37 years as a legal journalist, has retired.

She's a tough act to follow – though it's not the first time I've tried. Before Alison joined Reuters in 2011, she was editor of the AmLaw Litigation Daily. And before I joined Reuters in 2020 to write a column on legal business and culture, I was also editor of the Lit Daily, where I spent five years covering high-stakes business litigation.

I'm delighted to be returning to such a fascinating beat. My first move: reaching out to a dozen prominent litigators, both old sources and new, to learn what's on their radar for 2025.

Across the board, they pointed to artificial intelligence, anticipating that tools, training practices and products stemming from the technology will spark major disputes in the new year.

In addition to at least two dozen pending cases , opens new tab by copyright owners who allege their works were used without permission to train large language models, lawyers flagged potential litigation targeting everything from AI bias in screening job applicants to AI-trained pricing tools that could run afoul of the Sherman Act, and much more.

One potential harbinger came in August, when the U.S. Justice Department and eight state attorneys general sued U.S. property management software firm RealPage, alleging its AI-trained pricing algorithms illegally allowed landlords to collude, driving up rents for apartments. The DOJ closed its criminal investigation in December, but the civil case remains pending. RealPage denies the allegations.

As more companies use pricing and information exchange software tools, other cases are likely to follow, Latham & Watkins partner Chris Harris, global vice chair of the firm's litigation and trial department, predicted. "New questions will be raised, and new law will continue to be shaped" at the intersection of AI and antitrust, he said via email.

AI-related claims are increasingly likely to appear in securities litigation cases as well, said Skadden, Arps, Slate, Meagher & Flom partners Noelle Reed and Patrick Rideout, with allegations including failure to disclose material facts regarding use of the technology.

To date, at least six AI-related securities class actions have been filed, according to Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse, which first began tracking such filings in its July mid-year report [\[link\]](#), opens new tab. New tort-based claims and even class actions by people who allege AI tools have caused injury are also likely to arise, Cooley litigation chair Michael Attanasio told me. Among his hypothetical scenarios: what if an AI system responsible for reviewing a massive database doesn't perform as intended? Or what if an AI tool responsible for an airplane's navigation makes a mistake?

"The contours of what is warranted about the product (if anything), standing, reasonable reliance and alleged negligence" are likely areas of litigation, Attanasio said.

Already, a handful of AI-related product liability claims are moving through the courts.

A Florida mother, for example, sued chatbot startup Character.AI in October, accusing it of causing her 14-year-old son's suicide last year. A company spokesperson declined to comment on pending litigation but said in an email that new safety features for underage users were recently introduced.

AI-generated deepfake pornography is also coming under fire. San Francisco City Attorney David Chiu in August filed what his office described as a first-of-its-kind lawsuit against the owners of 16 websites that allegedly create and distribute nonconsensual nude images of real, identifiable women and girls. Lawyers tell me they expect a range of additional AI privacy, fraud and consumer protection-related suits in 2025.

One wild card is how the federal government under the incoming Trump administration will approach regulation (or lack thereof) of AI and other hot-button areas, such as healthcare, food, drugs, fintech and cryptocurrency.

Federal regulators will likely take "a giant step back in enforcement" compared with the Biden administration, said Dechert partner Brenda Sharton, who chairs the firm's cyber, privacy and AI practice.

Which is not to say litigators who focus on administrative law outside the AI realm will be idle.

In a pair of decisions this summer, the U.S. Supreme Court opened the door to what Justice Ketanji Brown Jackson in a dissent called a potential “tsunami of lawsuits” challenging agency regulations.

In *Loper Bright Enterprises v. Raimondo* [opens new tab](#), the high court in June overruled the longstanding “Chevron doctrine” that gave deference to agency interpretations of ambiguous statutes.

Three days later, the justices “blew up the statute of limitations for challenging some kinds of (agency) rules,” said Covington & Burling appellate partner Sarah Harrington, in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System* [opens new tab](#). Together, the decisions are “a sea change in administrative law,” she said.

Jackson’s predicted wave of litigation has yet to appear. Still, Adam Levin, head of the Americas litigation practice at Hogan Lovells, isn’t ruling it out, pointing to a “friendly political and judicial environment” that some companies may seize on to challenge regulations they’ve long viewed as unwarranted.

Get a quick look at the days breaking legal news and analysis from The Afternoon Docket newsletter. Sign up [here](#).

Reporting by Jenna Greene

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Jenna Greene
Thomson Reuters

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Class Action

December 31, 2024, 7:34AM PST

Ancestry.com Sued Over Use of Student, Teacher Likenesses in Ads

By [Sam Skolnik](#)

- **COURT:** C.D. Cal.
- **TRACK DOCKET:** [No. 8:24-cv-02810](#) (Bloomberg Law subscription)

Ancestry.com is illegally using the names and personas of California students and teachers to promote paid subscriptions to its website without their consent, according to a new proposed class action.

The lawsuit, filed Monday in the US District Court for the Central District of California, alleges that the genealogy company has used the names and likenesses of “private individuals who have no relationship with Ancestry” to promote the company through at least three different advertising techniques.

The company misappropriated names and likenesses, violated California’s Unfair Competition Law and its right of publicity statute, and violated the plaintiffs’ intellectual property and privacy rights, the complaint alleges.

Named plaintiff Susan Gehringer, a former faculty member at an Anaheim, Calif., high school, alleged she was “seriously distressed” to discover that Ancestry is using the names and photographs of California students and teachers—including student yearbook photos—without their consent to advertise paid subscriptions.

Though Gehringer “has never visited, used, or subscribed to Ancestry.com,” the company uses at least 17 records representing her name, photo, image, and persona to advertise subscriptions to Ancestry.com, and uses her records in at least three types of ads, she says.

“By using Plaintiff’s and Class members’ names, photographs, and identities in its advertising, Ancestry misleads the consuming public into believing Plaintiff and Class members are Ancestry.com users, willingly uploaded their personal information to Ancestry.com, and endorse Ancestry’s subscription product,” the complaint says.

Ancestry displays the proposed class members’ photographs in low-resolution or time-limited formats to potential customers, promising them that purchasing a paid subscription “will reveal the full versions of Plaintiff’s and Class member’s photographs and personal information,” the complaint says.

Ancestry obtained the names and yearbook photographs by paying licensing fees to third parties to make commercial use of them, without obtaining any class members’ prior consent, it says.

Gehringer is seeking to represent a class of California residents who aren’t Ancestry.com subscribers and whose names and yearbook photographs the company uses to promote website subscriptions.

The lawsuit is seeking a declaration that Ancestry's acts and omissions constitute "a knowing and willful misappropriation" of names, photographs, personal information, and personas, and infringe on protected IP and dignitary rights. It's also seeking statutory damages of \$750 for each class member, or an alternative amount to be determined.

The complaint also seeks nominal damages, an order blocking Ancestry from continuing to operate its website without appropriate safeguards to ensure class members' names and personas aren't used to advertise without their consent, and restitution.

It's also asking for damages for "actual harm," Ancestry's profits, and "reasonable" royalties owned to Gehringer and the class, as well as attorneys' fees and costs.

Representatives for Ancestry didn't immediately respond to a request for comment Tuesday.

Strauss Borrelli PLLC represents Gehringer and the proposed class.

The case is Gehringer v. Ancestry.com Operations Inc. , C.D. Cal., No. 8:24-cv-02810, complaint filed 12/30/24

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LSAT Administrator Sues to Block AI Tutor From Using 'Famous, Distinctive' Test Prep Materials

 [law.com/therecorder/2024/12/31/lSAT-administrator-sues-to-block-ai-tutor-from-using-famous-distinctive-test-prep-materials](https://www.law.com/therecorder/2024/12/31/lSAT-administrator-sues-to-block-ai-tutor-from-using-famous-distinctive-test-prep-materials)

Colleen Murphy

A copyright and trademark infringement lawsuit claims that a company purporting to be an “AI Tutor for LSAT” used proprietary content that belongs to the Law School Admission Council.

The suit, *Law School Admission Council v. Chatty Courses*, was filed by attorneys from Alston & Bird on Dec. 31 in U.S. District Court for the Eastern District of Pennsylvania, which alleges breach of contract and intellectual property infringement against Chatty Courses, a company called Mun Dot So, and the California man who owns those companies. The complaint alleges that the defendants purchased a subscription to LawHub Advantage, a test preparation program, copied its content, and used Law School Admission Council trademarks, copyrighted works, and proprietary content without permission.

The LSAC provides products and services to law schools, students, applicants, and legal professionals, and administers the Law School Admission Test.

“Through years of LSAC investing substantial costs in their advertising and use, the marks have become famous, distinctive, and valuable,” the complaint says. “Accordingly, LSAC takes significant measures to protect its marks.”

In October, counsel for the LSAC sent a cease-and-desist letter to Ozgur Dogan Ugurlu, the owner of Chatty Courses. The complaint says that Ugurlu responded to that letter in an email. He did not dispute the allegations but did not agree to comply with the demands, according to the complaint. The plaintiff’s counsel sent two more letters to no avail.

“LSAC owns unexpired copyrights covering materials it has created, including copyrights covering the thousands of LSAT questions it has created,” the complaint says. “The copyrighted works cover not only the exam questions, but also the instructions, answers, answer keys, and other related materials.”

The eight-count complaint claims breach of contract, multiple claims for copyright infringement, and trademark infringement, among other allegations. The LSAC seeks a permanent injunction against Chatty Courses and the other defendants from further unauthorized reproduction of their materials as well as compensatory and actual damages. The plaintiffs also seek to recoup any profits made by the defendants by infringing on their marks as well as treble compensatory damages.

The LSAC was represented by Tiffany Powers, Paul Tanck and Wade Perrin of Alston & Bird, who did not immediately respond to requests for comment. Counsel has yet to enter an appearance for the defense. A request for comment sent to Chatty Courses was not immediately returned.

This complaint was first surfaced by [Law.com Radar](#), ALM's source for immediate alerting on just-filed cases in state and federal courts. [Law.com Radar](#) now offers state court coverage nationwide. [Sign up today](#) and be among the first to know about new suits in your region, practice area or client sector.

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Class Action

Jan. 2, 2025, 9:58 AM PST

Samsung Misled Consumers with PFAS in Smartwatches, Suit Alleges

By Clara Hudson

- **COURT:** C. D. Cal.
- **TRACK DOCKET:** No. 2:24-cv-11234

Samsung faces allegations that it misled consumers over the health and environmental benefits of watches intended to promote fitness.

A proposed class action, brought by consumer Anthony Ray Gonzalez, says products including Samsung's Galaxy Watch Fluoroelastomer Band actually contain "excessive levels" of per-and polyfluoroalkyl substances, known as PFAS or "forever chemicals." This is a violation of fraud, false advertising, and consumer protection laws, the suit filed in a California federal court Tuesday states.

The allegations are the latest in a string of PFAS lawsuits targeting a range of businesses including the cosmetics and chemical manufacturer industries, claiming that they misled shoppers over the health risks of their products.

The suit was filed against Samsung Electronics America, a subsidiary of the South Korean electronics giant. Samsung did not immediately respond to a request for comment.

"A leading reason consumers purchase smartwatches is to monitor and improve their health on a daily basis," said the complaint in the US District Court for the Central District of California. "These health-conscious consumers reasonably seek smartwatches that are safe for everyday use and to further their health overall."

The lawsuit also pointed to environmental marketing for the watch bands, including that the D-Buckle Hybrid Eco-Leather Band "is partially derived from plant-based sources, making it both durable and environmentally conscious." Marketing of products as "plant-based" has also prompted a flurry of consumer lawsuits in the past several months.

The Samsung lawsuit follows research from the University of Notre Dame alleging that watch bands from various brands contain PFAS because of the synthetic rubber designed to protect against skin oils and sweat.

Gonzalez is seeking an undetermined amount of compensation for the possible class.

"PFAS is one of the most important public health issues of this quarter century and will be for the next," said Gonzalez's lawyer, Ryan Clarkson at Clarkson Law Firm, in a statement.

The case is Gonzalez v. Samsung Electronics America, Inc. , C.D. Cal., No. 2:24-cv-11234, 12/31/24 .

Novartis sued in LA over drug's link to autism

DJ [dailyjournal.com/articles/382680-novartis-sued-in-la-over-drug-s-link-to-autism](https://www.dailyjournal.com/articles/382680-novartis-sued-in-la-over-drug-s-link-to-autism)

Health Care & Hospital Law

Jan. 2, 2025

Novartis is sued for promoting terbutaline for preterm labor, despite known brain development risks. Singleton Schreiber filed the lawsuit for Tara Tindle, claiming her child has autism, linked to terbutaline use.



Novartis Pharmaceutical Corp. is accused in a lawsuit of promoting an asthma drug to treat preterm labor in pregnant women despite knowing that it posed significant risks to the development of their babies' brains.

Christopher R. Rodriguez of Singleton Schreiber LLP filed the lawsuit Monday in Los Angeles County Superior Court, claiming the plaintiff, Tara Tindle, was prescribed terbutaline for approximately 16-20 weeks while she was pregnant. Her child was born in 2003 and suffers from autism, the lawsuit says.

In a post on its web site, Singleton Schreiber points at a 2017 ruling against Novartis by the California Supreme Court. The ruling said a brand-name drug manufacturer has the duty under California law to warn of risks it knew about or reasonably should have known, regardless of whether the consumer is prescribed the brand-name drug or its generic version. In that case, fraternal twins were both diagnosed with autism after their mother had taken the Novartis drug terbutaline, which the court found was statistically suspicious.

Novartis representatives could not be reached Tuesday for comment on the new case. But the company asserted in its defense before the state Supreme Court that it was not liable for harm caused by Brethine, the generic version of its drug, terbutaline, after it sold the rights. The company's attorneys argued that such liability findings would stifle the development of pharmaceuticals. *T.H. v. Novartis Pharm. Corp.* (Cal. 2017).

Novartis received FDA approval in 1976 to market terbutaline in the U.S. as an asthma treatment which relaxes muscles in the airway. Obstetricians began experimenting with terbutaline to treat preterm labor, theorizing it relaxed the uterus' smooth muscles, according to the new lawsuit. In 1978, researchers from the Johns Hopkins School of Public Health noted there wasn't enough information about the effects of terbutaline on the mother and child, but "data from other sources" indicated that labor inhibitors could be dangerous, and terbutaline may negatively impact both.

"In 1983, a Novartis executive sent an internal memo to company officers and directors, warning that terbutaline was frequently used for preterm labor, but that Novartis never conducted the studies needed to obtain an indication for preterm labor, and therefore that there could be serious consequences for children's health," the complaint stated.

It went on to say that the memo suggested that Novartis conduct robust clinical trials to ensure the drug was safe and effective for preterm labor, or revise its warning label discouraging its use in preterm labor.

Novartis did neither, the complaint stated. "In 1984, Novartis hired Dr. Russell K. Laros - acting in his capacity as a prominent professor at UCSF's Department of Obstetrics, Gynecology, and Reproductive Sciences - to travel to and distribute brochures at obstetrics conferences throughout the United States, touting terbutaline's 'effectiveness' at 'arresting preterm labor,'" Rodriguez wrote in the complaint.

The plaintiffs - mother and child - claim general negligence, negligent misrepresentation, fraudulent misrepresentation and concealment. *Tara Tindle and Jayden Tindle v. Novartis Pharmaceuticals Corporation*, 24STCV34506 (L.A. Super. Ct., filed Dec. 30, 2024).

Laros' estate was not named in the Los Angeles action. It was a defendant in a similar lawsuit filed by Singleton Schreiber in April 2024 in Alameda County Superior Court. *Michelle Del Valle, et al., v. Novartis Pharmaceuticals Corp., et al.*, 24-CV-073639 (Alameda Super. Ct., filed April 19, 2024).

That case was removed to the U.S. Northern District Court in June. Claims were dismissed without prejudice in August due to the plaintiffs' lack of California residency. *Del Valle et al v. Novartis Pharmaceuticals Corp., et al.*, 3:24-cv-03331-MMC (N.D. Cal., filed June 3, 2024).

#382680

Class Action

December 31, 2024, 10:52 AM PST

Poland Spring Water Consumers Advance Fraud, Deception Claims

By [Shweta Watwe](#)

- Consumers don't need to know technical criteria to be misled
- Nestlé's argument means regulation absolve deception claims

Consumers alleging Nestlé Waters North America Inc., now known as Blue Triton Brands Inc., deceptively advertised Poland Spring bottled water as "spring water" can advance fraud and deception claims to a jury, a federal judge ruled.

The US District Court for the District of Connecticut on Monday denied Nestle's motion for summary judgment on the consumers' common law fraud and unfair trade practices claims. The court granted the motion under for claims under a handful of state laws, as well as the consumers' claims for injunctive relief.

The consumers said Nestlé deceptively advertised the bottled water as "100% Natural Spring Water" though the water didn't come from natural springs.

Judge Jeffrey Alker Meyer rejected Nestlé's argument that the consumers couldn't show the reliance element of their fraud claims. The company said the consumers weren't aware of the specific technical "spring water" requirements, and thus can't claim to have relied on an alleged misrepresentation.

"The problem with Nestlé's argument is that it misunderstands the nature of the reliance requirement for a common law fraud claims," Meyer said.

Reliance is satisfied if a plaintiff relied on "the truth of the misrepresentation itself" and doesn't require the plaintiff to know the particulars of why the alleged misrepresentation was false, he said.

"If Nestlé's theory were correct, then product merchants would be at liberty to make false claims about any product that they sell provided that the characteristics of the product happen to be defined or described by regulation in a technical or complex manner," Meyer said. "Reasonable consumers do not peruse the pages of the Federal Register to acquaint themselves with the technical characteristics of every product they buy."

Meyer said the consumers presented an issue of fact about whether the phrase "spring water" was deceptive through an expert survey that showed reasonable consumers view the "spring water" ingredient as coming from a spring, rather than some other kind of water.

Meyer rejected the consumers' claims for injunctive relief because they aren't in danger of being misled now that they know the alleged truth about the bottled water and can buy a different drink.

Though the consumers said they sometimes have no other choice than to buy Poland Spring Water, "this is undoubtedly true in a limited sense," Meyer said. "Being thirsty is not usually an emergency, and it would be uncommon for a vendor to only have water, and only one variety thereof, available as a beverage."

The consumers are represented by Susman Godfrey LLP, Izard Kindall & Raabe LLP, and Joseph Saveri Law Firm LLP.

Nestlé is represented by Orloff Lowenbach Stifelman & Siegel PA, Farella Braun & Martel LLP, and Day Pitney LLP.

The case is Patane v. Nestlé Waters N. Am. Inc. , D. Conn., No. 3:17-cv-01381, 12/30/24 .

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Court halts 'headless' PAGA lawsuits, mandates arbitration for single claim

DJ [dailyjournal.com/articles/382674-court-halts-headless-paga-lawsuits-mandates-arbitration-for-single-claim](https://www.dailyjournal.com/articles/382674-court-halts-headless-paga-lawsuits-mandates-arbitration-for-single-claim)

Jan. 2, 2025

A 2nd District Court of Appeal panel ruled Christina Leeper's PAGA lawsuit must go to arbitration, ending the 'headless' case strategy. This decision conflicts with prior rulings, causing uncertainty in PAGA litigation.



Plaintiffs' attorneys have been trying, with some success, to avoid arbitration in Private Attorneys General Act cases by filing what are known as "headless" lawsuits in which no individual claim is sought.

But a 2nd District Court of Appeal panel has put a halt to the practice, at least for now, ruling Monday that Christina Leeper's PAGA lawsuit against a Target Corp. subsidiary included an individual claim -- even though she said it didn't -- and ordering it to arbitration while staying her lawsuit on behalf of co-workers.

"*Leeper* is undoubtedly a victory for the defense bar," said Lauren K. Teukolsky of plaintiffs' firm Teukolsky Law.

Teukolsky said in a phone interview Tuesday that the decision creates a split with a different 2nd District panel decision in April that has prompted many similar PAGA lawsuits by plaintiffs who disclaimed individual damages for themselves to avoid arbitration.

"I think there's going to be a huge wave of defendants filing motions for reconsideration of lower court decisions that have allowed such lawsuits to proceed," Teukolsky said, adding that superior court judges have been split on whether to allow them without individual claims going to arbitration.

The plaintiffs' bar has been filing such claims since an appellate panel in April reversed a Santa Barbara County Superior Court judge's decision that Lizbeth Balderas lacked standing to bring a PAGA action because she did not include an individual claim, allowing her case on behalf of co-workers to proceed. *Balderas v. Fresh Start Harvesting Inc.*, B326759 (2nd District Court of Appeal, filed Feb. 22, 2023).

But in Monday's decision, 2nd District, Division 1 Presiding Justice Frances Rothschild wrote that *Balderas* did not apply to Leeper's lawsuit against a Target Corp. subsidiary which includes an individual PAGA claim that must be sent to arbitration even though she said it should not.

Leeper's lawsuit claims wage-and-hour violations and that she and other workers were misclassified as independent contractors.

"*Balderas* did not have occasion to discuss, did not discuss, and its holding does not address, whether a plaintiff may carve out an individual PAGA claim from a PAGA action," Rothschild wrote.

"In arguing to the contrary, Leeper relies entirely on dicta in *Balderas* that may suggest the Court of Appeal accepted the plaintiff's and trial court's characterization of PAGA claims as capable of being asserted on behalf of aggrieved employees other than the named plaintiff," she added.

The panel reversed Los Angeles County Superior Court Judge Daniel S. Murphy and directed him to compel the parties to arbitrate Leeper's individual claim and stay the lawsuit on behalf of her co-workers. *Leeper v. Shipt Inc.*, 2024 DJDAR 11978 (2nd District Court of Appeal, filed July 10, 2024).

Attorneys with Lieff Cabraser Heimann & Bernstein LLP, who represent Leeper, could not be reached for comment about whether they plan to appeal the decision to the state Supreme Court.

If Leeper stands, "it is the end of the headless PAGA case," said Teukolsky, who added that she expects the state high court to "weigh in during the next year or so. ... There's just a lot of uncertainty."

Aside from the question of whether individual plaintiffs can avoid arbitration while pursuing PAGA claims on behalf of the state and their co-workers, Leeper also raises another concern among the plaintiffs' bar: stays.

Litigation stays can last a year or two and are a disadvantage for plaintiffs' attorneys because discovery is delayed, Teukolsky said.

Attorneys with Seyfarth Shaw LLP represent Target and declined comment.

Christopher A. Crosman, a Seyfarth partner, argued in court papers that Leeper "contorted" the meaning of the 2004 law.

"She styled this individual claim as being for standing purposes only, so that she could pursue a representative action," he wrote. "That is, she alleged an individual PAGA claim while at the same time asserting that it was not really an individual claim. PAGA, however, neither contemplates nor recognizes this kind of phantom claim."

#382674

Craig Anderson

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Citi, BofA Say They're Leaving Global Climate-Banking Alliance

By Saijel Kishan

- Banks say they remain committed to reaching net zero targets
- Goldman Sachs and Wells Fargo have already exited NZBA

Citigroup Inc. and Bank of America Corp. said they're leaving a global climate-banking group, becoming the latest Wall Street lenders to exit the coalition in the past month.

In a statement, Citigroup said while it remains committed to achieving net zero emissions, it's exiting the Net-Zero Banking Alliance. Bank of America said separately on Tuesday that it's also leaving NZBA, adding that it will continue to work with clients on reducing greenhouse gas emissions.

The banks' departure from NZBA follows Goldman Sachs Group Inc. and Wells Fargo & Co. The largest US financial institutions are under increasing pressure from Republican lawmakers to distance themselves from industry groups that support reducing carbon emissions.

NZBA is part of the Glasgow Financial Alliance for Net Zero, a UN-backed umbrella group of climate alliances. Citigroup and Bank of America are founding members of GFANZ. Earlier Tuesday, GFANZ said it's making changes that will "redouble its efforts to mobilize private capital" to support the energy transition.

Read more: [Top Climate Group for Banks, Asset Managers Is Making Changes](#)

Bank of America Chief Executive Officer **Brian Moynihan** and Citigroup CEO **Jane Fraser** are part of GFANZ's Principals' group, which sets priorities for GFANZ, according to the alliance's website.

Citigroup said in its statement that the bank plans to support GFANZ during its new phase. The company added that it will "continue to work with our clients on their transitions to a low-carbon economy while helping ensure energy security, given the range of transition pathways that are being pursued across our global network."

Citigroup is the world's No. 4 underwriter of green bonds since the start of the decade, trailing BNP Paribas SA, JPMorgan Chase & Co. and Credit Agricole SA, according to data compiled by Bloomberg. Bank of America ranks eighth.

(GFANZ is co-chaired by Mark Carney, who is chair of Bloomberg Inc. and a former Bank of England governor, and Michael R. Bloomberg, the founder of Bloomberg News parent Bloomberg LP.)

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Top Climate Group for Banks, Asset Managers Is Making Changes

By Alastair Marsh

- Decision follows some high-profile exits from banking alliance
- GFANZ plans to redouble 'efforts to mobilize private capital'

The world's biggest climate coalition for financial firms is making adjustments after several high-profile banks, insurers and asset managers opted out.

The Glasgow Financial Alliance for Net Zero, which was established in 2021 and operates as an umbrella group for numerous industry-specific climate alliances, will change its relationship with those sub groups, according to a person familiar with the decision who declined to be identified. In practice, it means companies will be able to draw on GFANZ for guidance and assistance, but won't need to align their operations with the goals of the Paris climate agreement, the person said.

The move comes after net zero alliances lost a number of key members against a backdrop of political backlash and regulatory overlap. Goldman Sachs Group Inc. and Wells Fargo & Co. both quit the Net-Zero Banking Alliance this month. Last year, a sub group for insurers was hit by a mass exodus amid litigation threats. And in 2022, an equivalent group for asset managers parted ways with Vanguard Group Inc., the world's second-largest money manager.

Read more: Insurers Group Targeted by Anti-ESG Campaign Is Being Replaced

GFANZ was formed more than 3 1/2 years ago in the run-up to the COP26 United Nations climate conference in Scotland. Back then, it had two aims: to raise the number of financial institutions committing to net zero, and to facilitate industry discussion on the challenges of the low-carbon transition.

Going forward, GFANZ will allow "any financial institution working to mobilize capital and lower the barriers to financing energy transition to participate," according to a statement from the group.

"Without private finance, there can be no global energy transition," GFANZ said. "For that reason, in 2025 and beyond, GFANZ will redouble its efforts to mobilize private capital."

Under GFANZ's new structure, companies that aren't members of a net zero group will be free to work with the alliance, the person familiar said. The change also may make it easier for companies based in emerging economies that haven't set 2050 net zero goals to seek some form of GFANZ affiliation.

While GFANZ has grown in prominence — it now has more than 700 members — it also has become a target of US Republicans who accuse such alliances of functioning as anti fossil-fuel cartels. Such accusations have coincided with an increase in investigations and lawsuits targeting firms perceived to be embracing a pro-climate agenda.

With President-elect Donald Trump due to return to the White House in January, the pressure on climate groups is expected to intensify.

In addition to bringing together eight sector-specific alliances spanning asset owners to venture capital, GFANZ has been a key actor in efforts to finance the early retirement of coal assets in Asia. What's more, it's provided guidance and insights on topics such as transition planning and portfolio alignment.

(GFANZ is co-chaired by Mark Carney, who is chair of Bloomberg Inc. and a former Bank of England governor, and Michael R. Bloomberg, the founder of Bloomberg News parent Bloomberg LP.)

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Litigation

Jan. 2, 2025, 9:52 AM PST

Judge Says Attorneys Fee Request Unreasonable in TaxAct Suit

By [Cassandra Coyer](#)

- Attorneys request for 25% of settlement fund denied
- Multiple factors weighed “against a higher fee award”

A federal judge trimmed attorneys’ cut from a settlement in a case against online tax preparation company TaxAct Inc. after finding their request unreasonable.

TaxAct had settled claims in February it violated privacy and tax laws by distributing confidential financial data to Meta Platforms Inc., Alphabet Inc.’s Google, and other third parties without taxpayers’ consent. But counsel’s request for 25% of the \$17,450,000 settlement fund was “not reasonable” and Judge Vince Chhabria of the US District Court for the Northern District of California instead granted them \$3,873,000—about 22% of the settlement fund and \$500,000 less than they’d asked for—in an order on Dec. 30.

- The injunction against TaxAct was obtained by Missouri’s attorney general, not class counsel’s negotiated settlement, the judge said.
- The settlement also wasn’t the result of litigation. “No motions to dismiss or motions for summary judgment were filed,” Chhabria said.
- Attorneys will also receive 10% of the value of in-kind relief from the provision of TaxAct Xpert Assist for class members who submit a valid claim form. The judge also awarded \$5,000 service awards to each class representative.

HammondLaw PC represents the class. Sidley Austin LLP represents TaxAct.

This case is *Smith-Washington v. Taxact, Inc.*, N.D. Cal., No. 3:23-cv-00830, order filed 12/30/24 .

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Boies Schiller's New Chair Says Chaotic Transition Helped Firm

By Roy Strom

Big Law Spotlight

- Matthew Schwartz replaces legal titan David Boies as chairman
- Firm has recently notched major wins in contingency fee cases

Matthew Schwartz has assumed the top role at Boies Schiller Flexner, capping a years-long leadership transition mired by false starts, mass departures, and competing visions for the firm.

"We are ultimately aligned about the type of firm we want to be with the people who are here," Schwartz, who officially became chairman on Wednesday, said in an interview. "Although the process took longer than some would have liked, it's been incredibly healthy and helpful for the firm and we've emerged strong and very well-positioned for the future."

The firm has nearly halved by headcount since 2018 with an exodus of lawyers once considered heir apparent to the outgoing chairman, 84-year-old legal titan David Boies. Schwartz says the firm's partners are now unified on sticking to the strategy that built the elite litigation shop, focusing on plaintiff and defense work in high-stakes disputes.

"The identity and brand that we worked very hard over the last 27 years to carve out is as the premier trial firm," Schwartz said. "So we have to work very hard, every day, to maintain the standards of excellence we've set for ourselves."



Matthew Schwartz

Photo: Boies Schiller

Boies founded the firm in 1997 after departing Cravath, Swaine & Moore over a conflict with his representation of New York Yankees owner George Steinbrenner. He envisioned a nimble litigation-only firm that didn't get tangled up in corporate conflicts.

The firm has paid a price for the chaos as other elite trial firms have sped past Boies Schiller on key metrics. Quinn Emanuel brought in more than eight times Boies Schiller's nearly \$250 million in revenue last year. Partners at Susman Godfrey earned more than 2.5 times the \$2.5 million in profits per equity partner at Boies Schiller, according to data from The American Lawyer.

There are signs the firm's time in the crucible has ended, however. It has notched major wins in contingency fee cases, including a massive antitrust suit against health insurer Blue Cross Blue Shield that came with a portion of \$667 million in attorneys' fees. It's also hiring again, including luring back at least five partners who earlier left for competitors.

Young Blood

Schwartz, 47, is a former Manhattan federal prosecutor who worked on the Bernie Madoff case and joined Boies Schiller in 2015. His own practice is a mix of high-profile individual representations and plaintiff-side work.

He represented Devon Archer, a former associate of Boies Schiller alum Hunter Biden, in Congressional proceedings and an unsuccessful attempt to get Archer's securities fraud conviction overturned.

Schwartz led a team winning two jury trials recovering combined more than \$300 million for Kazakhstan's BTA Bank, which accuses its former chair of embezzlement.

He was tapped by the firm's partners a year ago after Boies indicated he wouldn't seek reelection. He previously was co-managing partner, alongside Sigrid McCawley and Alan Vickery.

False Starts

The firm's first formal effort at establishing a new leadership structure came in 2018, when it tapped four partners to run a new management committee. Three of those lawyers—Karen Dunn, Nick Gravante, and Damien Marshall—departed the firm in short order.

Another partner once seen as a likely successor to Boies, Natasha Harrison, left the firm in 2021, taking much of its London office with her to launch a litigation boutique.

Some of those leaders pursued different views for the firm's future. Gravante pushed for a merger with Cadwalader Wickersham & Taft, the firm he later joined. Another group, according to Schwartz, wanted the firm to focus on plaintiff-side work that's considered more profitable and comes with fewer conflicts limits on who lawyers can represent. Some lawyers leaving the firm have formed plaintiff-focused spin-offs in recent years.

The partners who remain are in lockstep on strategy, according to Schwartz. That is to be "the best disputes-only law firm," representing plaintiffs and defendants, corporations and individuals, with a mixture of one-time engagements and repeat clients.

"It is actually not that different than the founding vision," Schwartz said.

Growth in Headcount, Fees

The firm's headcount has hovered around 150 lawyers in recent years after ballooning to 320 in 2018, according to The American Lawyer. Schwartz expects it to stay in that range with "modest organic growth" through larger associate classes and targeted partner additions.

Boies Schiller hired 10 partners last year, with another three departing, data from Leopard Solutions show. Partners who have returned to the firm include Peter Skinner, Evan Ezray, Joshua Stein, Michael Jacobs and Dan Boyle.

The firm also has won a series of contingency fee matters in recent months.

In June, its portion of the \$667 million Blue Cross Blue Shield fee was finalized. The US Supreme Court declined to hear an appeal of a \$2.7 billion settlement Boies Schiller forged with the company in a decade-old antitrust case.

The firm in late 2023 won a share of a \$23 million fee in a \$290 million settlement between JP Morgan Chase & Co. and victims of Jeffrey Epstein.

Boies Schiller and other firms are waiting on a judge's ruling on a request for \$217 million in fees for a class action settlement with Alphabet's Google LLC over privacy issues related to its web browser's "incognito" mode.

David Boies played a prominent role in each of those cases, alongside larger teams from the firm.

"The people who work on those cases, both partners and associates, when they achieve premium recoveries, the lawyers involved share in those premiums," Schwartz said.

Boies Schiller this year gave 95% of its associates bonuses that surpassed the Big Law scale, with multiple junior lawyers landing more than \$1 million in extra pay.

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Workplace diversity & equality

Pensions: the industry where women are in charge

The sector has a growing share of female leaders, who say they value purpose and work-life balance

Mary McDougall YESTERDAY



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In a world of finance dominated by men, there is one corner where women are in charge.

The UK's largest pension fund, one of its biggest managers of local government pension assets, its pensions lifeboat and the investment strategy of its largest defined contribution "master trust" are all run by women.

In the US, the top job in three of the country's biggest pension funds — California State Teachers Retirement System (Calstrs), The California Public Employees' Retirement System and New York State Common retirement fund are, similarly, held by women.

"Of all the parts of financial services, pensions to me feels like the one where you feel like you have the most direct long-term connection with the person at the end of the purpose . . . I just wonder if that does attract women more because on average they are more relational," said Carol Young, chief executive at the Universities Superannuation Scheme, the UK's largest pension fund which manages £78bn of assets.

A report by the Official Monetary and Financial Institutions Forum last year found that the rise of women in [pensions](#) is having a snowball effect. Of the largest 50 pension funds globally, 28 per cent are now run by women — up from 24 per cent in 2023. This puts pensions way ahead of the wider financial sector in gender parity: across 335 financial institutions in the index, which also includes central and commercial banks and sovereign funds, only 16 per cent of leaders were women in 2024.

What's more, the [share of women](#) in C-suite positions in pension funds grew three times faster in funds led by women compared with those led by men over the past two years.

"The real difference is it's a much less aggressive environment," said Liz Fernando, chief investment officer at National Employment Savings Trust (Nest), which manages some £47bn of assets. "You are taking longer term decisions and the financial rewards are lower and less incentive-based by and large."

Fernando added that it was "probably an environment in which raw talent and skill can get you noticed . . . In an environment that is more dog eat dog you need to be more political".

In a recent report, survey organisation Gallup noted that while salary was important to both genders, women were more likely than men to be motivated by factors other than pay. Work-life balance and personal wellbeing was the top reason they gave when considering their next job, with 69 per cent saying it was very important compared with 58 per cent of men. Women also said they valued being able to do what they felt they did best, seeking work that fit their talents.

Women who have reached the top in pensions have come from a range of different backgrounds, from consulting and investment banking to asset management and human resources.

But all of those who spoke to the FT said they enjoyed the sense of purpose the role can bring, and the potentially flexible nature of the industry.

"Pensions is a slightly more family friendly version of a city job," said Emma Douglas, chair of the Pensions and Lifetime Savings Association Board. "I don't want to imply that we're all a bunch of slackers and it's not hard work, I just think that even pre-Covid there was a bit more flexibility about how you can use your time."

Douglas, who is also wealth policy director at Aviva, goes out of her way to set an example and create an inclusive work environment.

"As a leader in the industry — I take my holidays, I don't work weekends, I go home at a decent hour and I expect that to be the same for everyone that works for me," she said. "Once you start to have a position where you are managing people you can role model some of the behaviours that you would like to see and that you as a manager benefit from as well."

For Michelle Ostermann, who was appointed chief executive of the Pension Protection Fund, the UK's pensions lifeboat, last April, the sense of purpose was the clincher, and the prospect of giving back as part of an industry with "significant social benefits" in the latter stage of her career.

"It's very rewarding to me being able to apply my craft with such tangible benefits," she said. In keeping with norms across the sector, Ostermann does not use gender diversity quotas across senior employees, but does set targets for gender balance which the team has made "exceptional progress" on.

In the US, Cassandra Lichnock, the first female chief executive of Calstrs, which has \$353bn of assets, said the public sector setting of many pension schemes also provided an opportunity for growth in a way that might not exist in private firms.

"From my experience working in the public sector there is a lot of opportunity for growth and working your way up through the ranks," Lichnock said, adding that having senior women emboldening other female staff can "challenge [them] to achieve greater things".

Calstrs serves more than 1 million teachers working and retired in California, 72 per cent of which are women. Around 60 per cent of Calstrs' 1,390 staff members are women, with five teachers sitting on the pension fund's board.

"We have an academic feel, which I think is somewhat unique to Calstrs . . . the people that we are hiring thrive in a collaborative environment and that might tend to have more female connectivity," said Lichnock, who was paid over \$1mn in the 2023/24 financial year.

Paul Todd, chief operating officer of Nest Invest, says having women in leadership positions is also "incredibly beneficial" for the industry, especially given the diversity of people depending on it.

"Diversity of thought and experience leads to more creative solutions and in my experience better decisions," he said. "Nest has over 6mn women saving for a pension with us — having a leadership that reflects its member or customer base leads to a higher likelihood of delivering products and pathways that meet these different needs." Nest's investment committee is chaired by Sarah Laessig and three of the four other members are women, he added.

Despite the benefits, however, the growing presence of women in pensions is not reflected in other parts of financial services. The latest global statistics found the proportion of female portfolio managers has hovered around 12 per cent over the past four years, according to industry publication [Citywire](#).

“Becoming a pensions actuary was just a brilliant combination for a mathematician who enjoys people,” said Rachel Elwell, chief executive of Border to Coast, the pool set up to manage assets of local government pensions funds.

She said a key attraction to her current role was that it was based in Yorkshire, where she is from, and she had two “youngish” children so it meant she could be based at home with them and have a really meaningful job which contributed to the local community.

“If you look at the financial services industry — pensions isn’t all focused in London and Edinburgh and if you look globally you’ll see pension companies can be less geographically concentrated and that’s really helpful if you want to have a slightly different lifestyle”.

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[Securities Law](#)

Jan. 2, 2025, 12:33AM PST

Abu Dhabi's Mubadala Tops Saudi PIF With \$29 Billion Deals (1)

By Matthew Martin

Abu Dhabi's Mubadala Investment Co. was the world's most active sovereign wealth fund last year as it ramped up deal-making across everything from private credit to artificial intelligence.

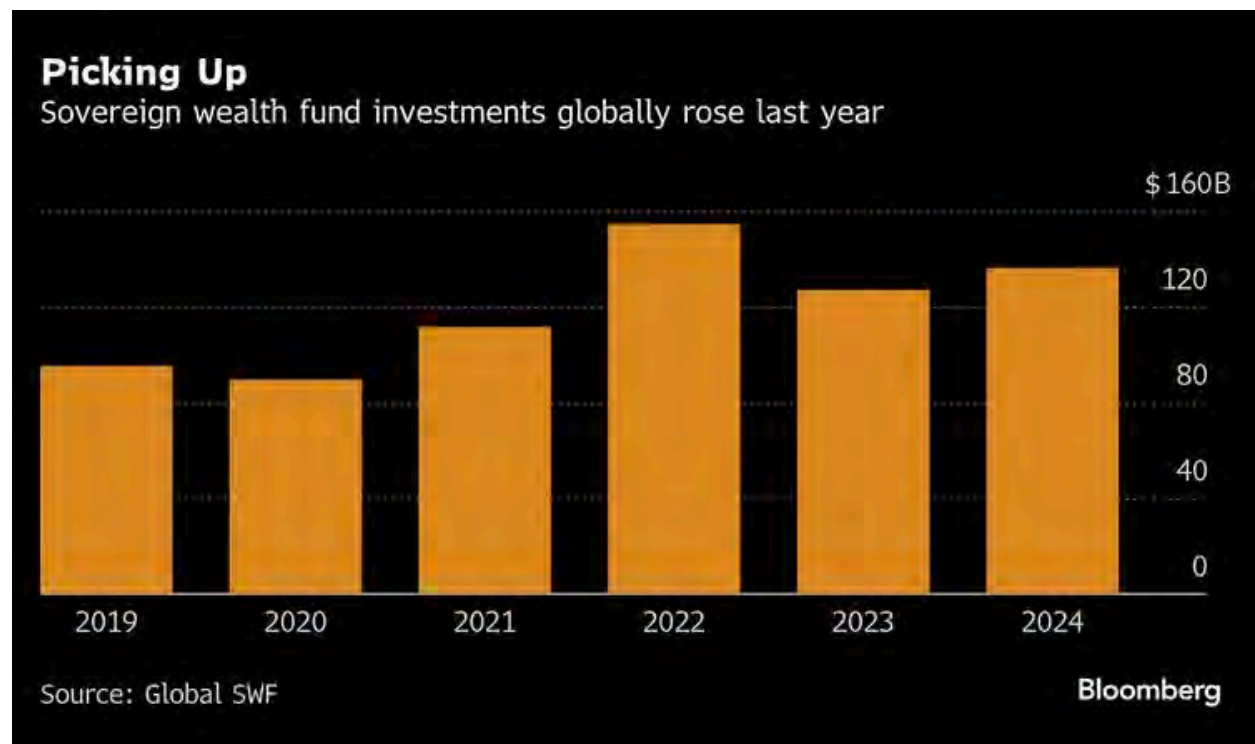
That came as Saudi Arabia's Public Investment Fund , which was the most active in 2023, slowed down spending and refocused on investing at home.

Mubadala deployed \$29.2 billion in 2024, according to research consultancy Global SWF. That was 67% more than a year earlier and far out-paced the 7% wider growth in investments by sovereign funds globally.

Middle East sovereign wealth funds made up five of the top 10 most active global dealmakers for the second year in a row, according to the report. Two other Abu Dhabi-based funds, Abu Dhabi Investment Authority and ADQ , were also on the list, alongside the PIF and Qatar Investment Authority . Those five funds invested \$82 billion last year.

Read More: [The Insider in Charge of Abu Dhabi's \\$330 Billion Deal Machine](#)

Yet it is Abu Dhabi's sovereign funds that made up the vast bulk of the global index, illustrating the oil rich emirate's more aggressive approach to using its financial firepower to become a global force across industries including [finance](#) , [technology](#) and [life sciences](#) . Sovereign funds controlled by the emirate invested over \$57.6 billion last year, according to Global SWF.



Also Read: [Abu Dhabi's \\$1 Trillion Fund Rejigs Strategy to Speed Up Deals](#)

The Saudi wealth fund deployed \$31.6 billion in 2023 either directly or through subsidiaries. That dropped to around \$20 billion last year.

PIF Governor **Yasir Al Rumayyan** said in October that the fund's focus was [shifting to the domestic economy](#) as it looked to develop new industries and promote economic diversification.

Also Read: [Saudi Fund's Shifting Focus Hits Budgets on Some Projects](#)

The Middle East is home to a raft of sovereign funds, which have become an increasingly prominent source of cash for international deals after a surge in energy prices in 2022 left most Gulf government budgets in surplus.

They have been increasingly looking to leverage that growing importance to get concessions from Wall Street firms including access to bigger and more lucrative opportunities. That's reflected in average investment size for sovereign wealth fund deals in 2024 hitting \$370 million, the highest in six years, according to Global SWF.

Read More: [Middle East Trillions Force New Concessions From Wall Street](#)

Singapore's GIC Pte and Temasek Holdings Pte were also "significantly more active than in 2023," when both funds had cut deployment by around 50% as they adopted a more cautious investment approach.

That helped drive up overall investment by sovereign funds to \$136.1 billion, from \$127 billion in 2023. Total assets controlled by sovereign wealth funds reached \$13 trillion by the end of 2024, with much of that wealth concentrated in the oil rich countries of the Middle East.



Also Read: [The \\$4 Trillion Gulf Funds and the Power Brokers Who Run Them](#)

Developed markets remained the main focus for most global sovereign wealth funds, with Mubadala putting 85% of its deployed capital into them.

Sovereign funds also put less money into real estate and health care deals last year, while increasing allocations to infrastructure and technology.

Get the
Mideast Money newsletter
 , a weekly look at the intersection of wealth and power in the region.

(Adds details from ninth paragraph)

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Chief Justice John Roberts Thinks You're Stupid And He's Probably Right

A abovethelaw.com/2025/01/john-roberts-annual-report-2024

Joe Patrice

January 2, 2025

As Chief Justice of the United States, John Roberts prepares a year-end report, ostensibly to communicate with the American people — or Congress — about the state of the federal judiciary and his vision for the branch's future. His approach this year is to condescend to the public while ignoring every useful area of inquiry about the court system.

Because he thinks everyone is too stupid to care.



(Photo by Alex Wong/Getty Images)

In the past, he's contemptuously told his audience that he's aware of widespread corruption in the judiciary but that his plan to fix it was "f**k you, that's what." When that didn't go over, he pivoted the next year — the year when we already knew that one of the justices had accepted at least half a million in luxury gifts under the table and another took a private plane to vacation with a party with interests before the Court — with a lengthy discourse on the history of typewriters.

Roberts certainly holds the public in low esteem, but it's still amazing that he can't even muster the energy to pretend to respect them for a pamphlet he writes once a year. This year, Roberts abandons last year's trolling effort and saves us from a detailed lesson on the history of the Bates Stamp. Instead, he returns to flimsy claims, contradictions, and gaslighting.

He compares having a cross burned on a judge's lawn to mean people posting on Twitter!

Of course, attempts to intimidate need not physically harm judges to threaten judicial independence. In earlier times, these provocations usually were directed at judges' homes. Perhaps the most egregious example involved U.S. District Judge Julius Waties Waring. As a judge in South Carolina from 1942 to 1952, Judge Waring issued numerous rulings opening voting and educational opportunities for Black Americans. Local residents outraged by these decisions burned a cross in the judge's lawn, fired gunshots at his home, and hurled a large lump of concrete through his front window....

Today, in the computer era, intimidation can take different forms. Disappointed litigants rage at judicial decisions on the Internet, urging readers to send a message to the judge.

Methinks this analogy got away from him. But it's clear what he's *trying* to do. He wants people to stop pointing out that Thomas got an RV paid for by a health care executive or that Alito is coup curious. So he wraps himself in the heroic robes of Judge Waring — a trick he often employs in these reports — to suggest Reddit posts are the new cross burnings.

He assumes everyone is dumb enough to buy that.

His issue with intimidation is one of four areas of concern he highlights this year after a preamble where he claims the best thing about America is the fact that judges can be criticized. Now the "I'm not thin-skinned, but..." part of the report:

Unfortunately, not all actors engage in "informed criticism" or anything remotely resembling it. I feel compelled to address four areas of illegitimate activity that, in my view, do threaten the independence of judges on which the rule of law depends: (1) violence, (2) intimidation, (3) disinformation, and (4) threats to defy lawfully entered judgments.

Violence is obviously bad. Though it only makes its way into this report to poison the well by falsely equating routine criticism with violence. Indeed, he directly tries to blur the lines here and suggest that disgruntled Substack critic from above could promote violence.

Public officials, too, regrettably have engaged in recent attempts to intimidate judges—for example, suggesting political bias in the judge's adverse rulings without a credible basis for such allegations. Within the past year we also have seen the need for state and federal bar associations to come to the defense of a federal district judge whose decisions in a high-profile case prompted an elected official to call for her impeachment. Attempts to intimidate judges for their rulings in cases are inappropriate and should be vigorously opposed. Public officials certainly have a right to criticize the work of the judiciary, but they should be mindful that intemperance in their statements when it comes to judges may prompt dangerous reactions by others.

Except... impeachment is the constitutionally blessed mechanism for public officials to address judicial misbehavior. Roberts doesn't name the judge here — in a social media conversation with Reuters' Nate Raymond, we questioned whether this refers to Judge Chutkan or Judge Cannon. The description Roberts concocts doesn't precisely fit either judge. Which might be why he leaves it vague as an empty signifier to either side of the Trump criminal case question.

"Suggesting political bias in the judge's adverse rulings without a credible basis for such allegations," is the height of bad faith. The Court is junking decades of precedent every term while enjoying vacations with right-wing activists. Will Roberts at least engage this issue?

No. Because pre-empting the best opposing arguments is good legal writing and the Roberts report is... not that.

Disinformation, even if disconnected from any direct attempt to intimidate, also threatens judicial independence. This can take several forms. At its most basic level, distortion of the factual or legal basis for a ruling can undermine confidence in the court system. Our branch is peculiarly ill-suited to combat this problem, because judges typically speak only through their decisions. We do not call press conferences or generally issue rebuttals.

"Typically speak only through their decisions" says the guy running a Court that routinely changes the law without issuing written opinions. Perhaps, if he's so concerned about disinformation, he could address the problems with the shadow docket and his plans to address those.

But he won't, because this is not a serious report.

I've seen some online chatter that this might be aimed at Trump misleading his throng about court decisions. And while that might have been a concern, that evaporated with his reelection and the fully compliant judicial system he now enjoys.

More likely, this is a bid to undermine the public's faith in legal analysis. The public doesn't necessarily appreciate how much obfuscation exists in rulings *by design* let alone when a judge affirmatively tries to muddy the waters. When a court tries to say "oh, we didn't *really* do what the analysts are saying, we decided it on standing!" the public relies on legal analysts to cut through this nonsense and explain what they've *actually* done.

The final threat to judicial independence is defiance of judgments lawfully entered by courts of competent jurisdiction.

This is pure gaslighting. While this could refer to a lot of stuff, it seems most closely related to the judge shopping controversy that's given rise to conservative activists nullifying national laws by filing in jurisdictions like Amarillo where a former right-wing interest group lawyer sits on the bench and is the only possible judge to hear the case.

There's not, in fact, a lot of conversation about wholesale ignoring court rulings. There is talk of not letting the FDA operate at the whims of a Texas judge elevated for his partisan leanings. In practice, the reform would take the shape of some kind of jurisdiction stripping effort to limit nationwide injunctions or force these cases about federal agencies into the D.C. courts. Which is a long way from "defiance of judgments lawfully entered by courts of competent jurisdiction." This seems an opportunity for Roberts to deal with this nuance.

He won't.

This is, theoretically, the judicial equivalent of the State of the Union address. Not that every State of the Union provides a wealth of details, but presidents do feel shamed into at least spinning the issues plaguing their administrations. Roberts goes the other way, with eight-and-a-half pages ignoring the collapse in public confidence in the courts and the ethical cesspool he's running and insinuating that everything is the fault of those pesky critics.

America should demand more from a Chief Justice. But it won't.

(Full report on the next page...)

This is neither here nor there, but in light of the term limits conversation, it's notable that Roberts opened the report reinforcing one of the great textual lies out there:

In December 1761, a little more than one year into what would be a fifty-nine year reign, King George III decreed that from that date forward, colonial judges were to serve "at the pleasure of the Crown." This royal edict departed from the long-standing practice in England, enshrined by Parliament in the 1701 Act of Settlement, of allowing judges to retain their offices "during good behavior."

This is your periodic reminder that the Constitution does *not* actually say judges enjoy life tenure. The idea that judges are destined to hold office for life is just the court's interpretation of the phrase "during good behavior." There's some historical support for this interpretation — Hamilton suggests the language means "permanent" (query whether he would understand that term as life-long as opposed to shielded from at will firing) but there's also support for the alternative reading that "during good behavior" is just an impeachment standard, to contrast it with the much higher threshold of proving "high crimes and misdemeanors." Essentially, it just means they can be impeached for just being a drunk. Or maybe... grossly mismanaging the judiciary that is the Chief's job? Food for thought.

“Good behavior” bars firing judges for no reason. Would it bar a neutral limitation of their term? Given that the structure of the judiciary is created by statute, is there any reason why active panels can’t be limited to the most recently appointed group of judges (as long as those moved off the panel don’t have their pay diminished)? These are good questions!

He will not engage them.

Earlier: John Roberts Once Again Uses Judiciary’s Annual Report To Express His Utmost Contempt For The Public

Chief Justice Wants You To Know He Has The Utmost Contempt For You

Chief Justice’s Annual Report Recounts 65-Year-Old Tale Of Judicial Heroism To Remind You There Isn’t Any Today



Joe Patrice is a senior editor at Above the Law and co-host of Thinking Like A Lawyer. Feel free to email any tips, questions, or comments. Follow him on Twitter or Bluesky if you’re interested in law, politics, and a healthy dose of college sports news. Joe also serves as a Managing Director at RPN Executive Search.

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Topics

Courts, John Roberts, Supreme Court

Class Action

December 31, 2024, 9:01AM PST

Chubb, AIG Units Lose in Bankruptcy Dispute with NJ Diocese

By [Olivia Alafriz](#)

- Judge dismisses insurers' breach-of-contract claim
- Diocese had fiduciary duty to other creditors, judge says

Carriers that insured the Diocese of Camden, N.J., can't sue the diocese for breaching a settlement agreement, a federal bankruptcy judge ruled.

The diocese's actions after it entered into the settlement were appropriate given its fiduciary duty to other creditors, Judge Jerrold N. Poslusny of the US Bankruptcy Court for the District of New Jersey said in a Monday ruling. Poslusny dismissed the first two counts in the insurers' complaint against the diocese.

The Diocese of Camden is one of nearly two dozen Catholic dioceses that have filed for bankruptcy in recent years, citing the mounting costs of litigation and settlements paid to survivors of alleged clergy sexual abuse.

The insurers, including units of Chubb Ltd. and American International Group Inc., sued in May 2022 after the court denied approval of the insurance settlement.

They alleged the diocese had breached the settlement by failing to pursue approval of a plan in line with the provisions of the settlement, even actively opposing approval.

But the judge disagreed and granted the diocese's request to dismiss the breach-of-contract claim.

The circumstances changed because another settlement offer preferable to the diocese was made before the insurance settlement's approval, Poslusny said.

Additionally, "requiring the Debtor to support a plan incorporating the Insurance Settlement which the Debtor did not believe was in the best interest of the estate directly conflicted with the Debtor's fiduciary duty to other creditors," and as such, the diocese's failure to support the settlement wasn't a breach of contract for which the insurers can recover damages, he said.

Squire Patton Boggs LLP, O'Melveny & Myers LLP, and Clyde & Co. US LLP are among the firms representing the insurers. Trenk Isabel Siddiqi & Shahdanian PC represent the diocese.

The case is *Century Indemnity Co. v. Diocese of Camden, N.J.*, Bankr. D.N.J., No. 1:22-ap-01123, 12/30/24 .

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Securities Law

Jan. 2, 2025, 10:12AM PST

Hindenburg Shorts Carvana, Accusing Firm of 'Grift for the Ages'

By David Welch

- Firm takes short position, claims financial manipulation
- Report says firm owned by CEO's father helped boost results

Carvana Co. was accused by prominent short-seller Hindenburg Research of impropriety in a report alleging that the auto retailer's subprime loan portfolio carries substantial risk and its growth is unsustainable.

Hindenburg took a short position on Carvana's stock after conducting research that included interviewing former employees. The report, titled: "Carvana: A Father-Son Accounting Grift for the Ages," makes several claims, including that Carvana has lax underwriting standards and uses a company owned by the father of Chief Executive Officer **Ernest Garcia III** to boost results.

Carvana shares dropped sharply after the report, but bounced back and were down about 3% at 1:06 p.m. The stock surged 284% last year as improving results increased optimism that the company was on the right track after worries about its debt load and losses.

A Carvana spokesperson declined to comment on the report.

The report's overarching claim is that Carvana is using dubious tactics to help results, while hiding from investors the risk of its loan portfolio. This, according to the report, is being done to lift shares and allow Garcia and his father, **Ernie Garcia II**, to profit.

Insider trades have been closely watched at Carvana. The father-and-son duo sold \$3.6 billion in stock between August 2020 and August 2021, the report said. And when shares surged last year, the elder Garcia [sold](#) another \$1.4 billion.

Loan Approvals

In the report, Hindenburg said a former Carvana director claimed that the company approved 100% of its loan applicants. The research firm also said that selling off these loans – a key source of revenue for the company – will become increasingly difficult.

Hindenburg, which has a history of going public with deep research to [back short positions](#), also claimed Carvana manipulated its results by selling cars to DriveTime, a car dealer owned by Ernie Garcia II. That allows Carvana to avoid markdowns by selling to DriveTime at a premium, the firm said.

The retailer also had the highest increase in borrower extensions of any subprime issuer, according to the report. This is enabled by an affiliate of DriveTime, which is the servicer of some Carvana loans, the report claims. By extending terms, Carvana is able to avoid reporting higher delinquencies, Hindenburg said.

The short seller also said that Carvana gets generous reimbursements from DriveTime on its extended warranty plans and that it absorbs a lot of the costs. That helps Carvana report better financial results, according to the report.

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Opinion **Lex**

Carvana has roared away leaving Hertz eating dust

The big winners during the pandemic car shortage have driven off in different directions



Carvana's shares have jumped from \$4 to over \$200 © David Paul Morris/Bloomberg

4 HOURS AGO



Is selling cars better than offering them to rent? Hertz and Carvana were big winners during the pandemic car shortage and the immediate aftermath. But in the past two years, they have driven off in different directions.

After flirting with bankruptcy, Carvana, the online seller of used cars, has seen its shares rocket from \$4 to more than \$200, or a market capitalisation of more than \$40bn. Meanwhile, Hertz soared in 2021 after it was bought out of bankruptcy by a private equity group which believed the company's rental car fleet should go green. It spent billions buying Tesla electric vehicles only to find that consumer demand was weak, and repair costs proved too high and resale values too low. Hertz's market cap has now dropped to just over \$1.1bn while it shoulders more than \$4bn debt.

A second bankruptcy might be a possibility in 2025. Consumer auto companies often have complicated, long-dated supply chains that rely on calm in the debt markets. Push the right buttons and cash flow mushrooms. Make a mistake and the hole is almost impossible to dig out of.

In the case of Carvana, through the 2010s it needed to build a national infrastructure that could quickly deliver vehicles across the country. The bigger its network and inventory, the more consumers would consider buying a used car online. It spent heavily on building that network as well as marketing its brand. Wall Street did not care about the losses and was happy to fund rapid sales growth.

But in 2022, as interest rates jumped and consumer demand for cars collapsed amid high prices, Carvana was forced into a pivot. It has since cut marketing and overhead costs by a third. And in 2024, past investments in its network paid off: its lean cost structure did not get in the way of a return to unit sales growth. Expect it to keep growing its share — from the current 1 per cent — of the 40mn annual market for used cars in the US.

Its business model remains reliant on making and selling auto loans - a practice that has come under scrutiny, including from short seller Hindenburg Research which on Thursday leveled questions about its accounting and lending practices. The market has, so far, brushed off such concerns.

The respective fortunes of Carvana and Hertz have diverged in the past two years

Share prices rebased

— Carvana Co — Hertz Global



Source: LSEG via markets.ft.com

As for Hertz, its business is fundamentally driven by its skill in timing the buying and selling of cars (ironically, it has a partnership with Carvana). Hertz has missed so badly in that task so far in 2024 that it has swung from being cash flow neutral in 2023 to a whopping \$1.5bn deficit through three quarters of 2024. Its debt-laden balance sheet may not survive another year of mis-steps.

The lesson from the two companies is that success is fragile. But, by picking the right lane, it is possible to go places fast.

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News from Bloomberg Terminal

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How Four Missing Bolts Ruined Boeing's 2024 Flight Plan

The aerospace and commercial aviation pioneer has grappled with a near disaster, investigations, stuck astronauts and a strike.

By Rachel Lerman and Lori Aratani

(Washington Post) -- Boeing was supposed to soar again in 2024.

Airplane deliveries were up, sales revenue was rising, and the storied aerospace company's top executive declared it was "making progress in our recovery" after severe economic headwinds and investigations of two 737 Max air disasters five years earlier.

Just five days into the new year, though, Boeing's progress toward better days blew away in an instant.

A door panel in the fuselage of an Alaska Airlines 737 Max broke off and flew into the sky 16,000 feet over Oregon, leaving the company struggling to explain how the plane had gone into service missing crucial bolts.

No one was killed in the Jan. 5 episode, but it foreshadowed a horrible year for Boeing, one marked by federal investigations, whistleblower complaints, accusations of shoddy workmanship, safety reviews, congressional probes, executive shake-ups, a nearly two-month strike that shut down production, humiliations in spaceflight and crushing financial losses.

As a new year begins, Boeing's new CEO, Kelly Ortberg, will push forward with his plan for a leaner company more focused on its core mission: building quality airplanes. As part of that, he'll need to ramp up production, which resumed last month following the nearly two-month-long machinists' strike and rebuild relations with employees. Now that planes are being assembled again, Ortberg also must persuade regulators to remove production caps.

"There is work underway across Boeing to improve our culture, restore trust and deliver for our customers," the company said in a statement. "While there is work to do to return Boeing to its former legacy, these actions and the right culture will set the foundation for the future of our company."

Here's how a narrowly averted catastrophe presaged Boeing's year of struggles.

Safety concerns mount

Boeing has been grappling for years with the fallout from two crashes of its 737 Max, the first in 2018 in Indonesia and the second in 2019 in Ethiopia, which combined killed 346 people. Investigators said the crashes were caused by a flawed software upgrade that caused the planes to plunge wildly under certain flight conditions.

A deferred prosecution agreement with the Justice Department was due to expire in January, which would have helped Boeing move beyond the threat of criminal liability in the tragedies.

But then the door panel blew out on the Alaska Airlines flight on Jan. 5, 2024, two days before the agreement was set to expire. A preliminary federal report found that the door plug appeared to have been removed and then reinstalled at a Boeing factory without four bolts needed to keep it attached.

That and other revelations led to heightened scrutiny of the company's procedures and unearthed a string of quality issues, culminating this summer in a two-day hearing held by the National Transportation Safety Board. The hours of testimony and documents released by the agency revealed that the company's manufacturing problems persisted for years.

Other incidents raised concerns about how Boeing dealt with employees who expressed worries about safety. In March, a whistleblower involved in a long-running lawsuit that alleged Boeing retaliated against him died by suicide. In April, another whistleblower told a Senate committee that the company sidelined him after he flagged safety issues.

Boeing has said retaliation is prohibited and has reiterated its commitment to safety. In a statement, the company said it evaluated whistleblower claims and in some cases made improvements to its factory processes. Boeing said its investigations into whistleblower claims determined "none of their claims about airplane safety were ... valid."

Compounding Boeing's problems, the company's Starliner spacecraft returned to Earth in September without its two astronauts on board. Issues with failing thrusters and helium leaks forced NASA to decide to leave the two astronauts on the International Space Station for months longer than planned. They are scheduled to return home in March aboard a SpaceX aircraft.

On Sunday, a crash in South Korea of a Boeing 737-800 operated by Jeju Air killed 179 people. Officials have not determined a cause but reported warnings of a bird strike in the moments before the disaster.

Government investigations pile up

Jennifer Homendy, chair of the National Transportation Safety Board, told reporters in August that documents and interviews with workers show that Boeing has known for years about problems in its manufacturing program.

"Why does it take a serious tragedy, which could have been so much more serious, for change to occur?" she said.

The Justice Department opened a criminal probe into the mid-flight blowout early last year, revealed just weeks after the Federal Aviation Administration told Boeing in February that it had 90 days to come up with a comprehensive plan to improve quality control. Boeing submitted a safety plan in May.

At a hearing in June, senators pressed then-CEO Dave Calhoun about safety lapses hours after releasing a committee report that said Boeing eliminated quality inspectors and put manufacturing workers in charge of signing off on their own work. Calhoun apologized at the hearing to the families that lost loved ones in the 2018 and 2019 crashes.

In June, federal prosecutors recommended to senior Justice Department officials that Boeing face criminal charges for failing to meet the terms of the deferred prosecution agreement. Prosecutors declined to say whether the Jan. 5 midair blowout factored into their decision that Boeing had breached the terms of the deal. Families of passengers who died in those crashes urged prosecutors to take the case to trial, but officials declined, saying a plea agreement was the best way to hold Boeing accountable.

However, in December, a judge rejected a plea deal between Boeing and the Justice Department in which Boeing would have agreed to plead guilty to one count of fraud and pay \$243.6 million in penalties, as well as invest \$455 million in its safety, quality and compliance program and submit to oversight by an independent monitor for three years. The judge's decision left the legal battle over the crashes unresolved.

Executives step down

Calhoun said in March that he would step down as chief executive at the end of the year, retiring after serving in the role for more than four years. Board chair Larry Kellner said at the same time that he would not run for reelection, and commercial airlines CEO Stan Deal retired in March.

Ortberg, the former CEO of Rockwell Collins, was named Boeing's new leader in July, the same day the company announced a second-quarter net loss of \$1.4 billion, more than triple that of a year earlier.

Ortberg's appointment was met with optimism from many Boeing employees, who were pleased with his engineering background and decision to be based in Seattle, where most of the company's workforce is located, rather than in its corporate headquarters in Arlington, Virginia.

"There is much work to be done, and I'm looking forward to getting started," Ortberg said before officially taking over.

His most immediate challenge was attempting to head off a strike by members of Boeing's largest employee union. However, the company took a tough negotiating stance against the union's demands. Workers were not pleased.

Boeing workers walk out

In an overwhelming vote, 33,000 members of the International Association of Machinists and Aerospace Workers District 751 and W24 walked off their jobs on Sept. 13, saying an offer that included a 25 percent raise and a commitment to build the company's next new airplane in Seattle couldn't make up for years of stagnant wages and hardball tactics that forced concessions, including the loss of the traditional pension program.

Production of some of Boeing's best-selling jets ground to a halt. Apart from pay, some machinists said the company's culture had become more focused on profits in recent years than on safety and engineering.

"These jobs have fed families in this community for generations and generations and generations, and most people now don't want to recommend their kids to go and work there," one worker told The Washington Post.

After nearly two months of failed negotiations, Boeing machinists voted to end the strike. The four-year deal included a 38 percent raise over four years and a \$12,000 ratification bonus for agreeing to the contract.

Production numbers lag

After the Alaska Airlines door-plug incident, the FAA imposed a limit on the number of 737 Max jets that Boeing may produce each month, pending a determination that the company is following its own quality-control procedures.

This delay, combined with earlier challenges, has affected airlines worldwide. In April, United encouraged pilots to take unpaid time off despite high demand for air travel from passengers. And Southwest Airlines, which flies only Boeing planes, said it would temporarily halt hiring while it assessed its capacity.

Boeing said in October that it would delay the launch of its 777X plane, which it will market as the largest twin-engine jet in the world, from this year to 2026. It also announced it would cut about 17,000 jobs - 10 percent of its workforce - as its financial woes deepened.

In December, the company said it would expand its operations in South Carolina to help with increased 787 production.

Finances take a tumble

The company has posted annual losses every year since 2019. It reported a more than \$6 billion loss for the quarter ending in September, its largest since airline travel slowed to a crawl in 2020 early in the pandemic.

Its stock price has also taken a hit as it weathered crises, plummeting about 30 percent in 2024.

When announcing the most recent financial results in October, Ortberg said the company is at a "crossroads." His mission, he said, is to turn "this big ship in the right direction."

Ian Duncan and Aaron Gregg contributed to this report.

About this story

Illustrations by Kyle Ellingson for The Washington Post. Editing by Christopher Rowland. Copy editing by Laura Michalski. Design by Talia Trackim. Design editing by Betty Chavarria. Graphics editing by Kate Rabinowitz. Door-plug graphic by Samuel Granados.

[Click Here](#) to see the story as it appeared on the Washington Post website.

As Musk gains influence, questions hover over US probes into his empire

 [reuters.com/world/us/musk-gains-influence-questions-hover-over-us-probes-into-his-empire-2025-01-02](https://www.reuters.com/world/us/musk-gains-influence-questions-hover-over-us-probes-into-his-empire-2025-01-02)

Mike Spector, Rachael Levy, Marisa Taylor, Chris Prentice

Item 1 of 3 Elon Musk speaks with U.S. President-elect Donald Trump at a viewing of the launch of the sixth test flight of the SpaceX Starship rocket in Brownsville, Texas, U.S., November 19, 2024 Brandon Bell/Pool via REUTERS/File Photo

[1/3]Elon Musk speaks with U.S. President-elect Donald Trump at a viewing of the launch of the sixth test flight of the SpaceX Starship rocket in Brownsville, Texas, U.S., November 19, 2024 Brandon Bell/Pool via REUTERS/File Photo Purchase Licensing Rights , opens new tab

- Some probes face legal hurdles
- Tesla, SpaceX and Neuralink face array of investigations
- Experts debate political interference risk in Musk-related probes

NEW YORK/WASHINGTON Jan 2 (Reuters) - Last month, in the waning days of the Biden administration, the SEC set a tight deadline of several days for demanding that Elon Musk pay a settlement or face civil charges relating to alleged securities violations during his \$44 billion takeover of Twitter in 2022.

Musk broke the news himself in a social-media post: “Oh Gary, how could you do this to me?” he wrote, referring to SEC Chair Gary Gensler.

He added a smiley-face emoji but attached a legal letter condemning the “improperly motivated” ultimatum: “We demand to know who directed these actions—whether it was you or the White House.”

An SEC spokesperson declined to comment on the incident. The White House did not respond to a request for comment.

The SEC is not the only investigative agency Musk has defied and accused of political harassment. The billionaire has long railed against government oversight, portraying himself as a victim of bureaucratic zealots stifling his companies’ potentially life-saving innovations.

The White House will soon be occupied by Donald Trump — whom Musk spent more than a quarter-billion dollars to help elect — rather than Joe Biden, who appointed Gensler. Trump has already named a new SEC chair to replace Gensler, who plans to resign when Trump is inaugurated.

Musk's potential to have extraordinary clout with the new administration raises questions about the fate of federal investigations and regulatory actions affecting his business empire, of which at least 20 are ongoing, according to three sources familiar with SpaceX and Tesla operations and the companies' interaction with the U.S. government, as well as five current and former officials who have direct knowledge of individual probes into Musk's companies.

The inquiries include examinations of the alleged securities violations; questions over the safety of Tesla's Autopilot and Full Self-Driving (FSD) systems; potential animal-welfare violations in Neuralink's brain-chip experiments; and alleged pollution, hiring-discrimination and licensing problems at SpaceX.

Musk, Tesla, SpaceX and Neuralink did not respond to comment requests. Before the election, Musk posted: "I have never asked [Trump] for any favors, nor has he offered me any."

A Trump-transition spokesperson called Musk a "brilliant" entrepreneur and said Trump's administration would ensure law and order, "treating all Americans equally."

The Musk-related cases could languish or be dropped by Trump-appointed agency and department heads, the current and former U.S. officials said.

Trump's DOJ picks, for example, include lawyers who defended him in criminal and impeachment trials and a nominee for FBI chief whom Musk vocally supported and who has repeatedly vowed to pursue Trump's enemies, one current and three former DOJ officials said.

Lower-level DOJ officials could also exercise prosecutorial discretion to avoid aggressively pursuing Musk companies in light of his relationship with Trump, said Barbara McQuade, a former U.S. attorney in Detroit during the Obama administration who also worked as a federal prosecutor during the George W. Bush and Clinton administrations. "To the extent they want to please the boss, I think they know how to do that."

Some legal experts downplayed the risk of political interference from Musk, noting that an investigation's lack of progress could signal insufficient evidence.

It's also possible that prosecutors who believe they have strong cases will push forward regardless of Musk's role, legal experts said.

"I don't think there's as much risk of Musk infiltrating to influence cases," said Robert Frenchman, a white-collar defense lawyer at Dynamis in New York. "Most prosecutors bring cases they think they can win."

Representatives of the DOJ and all departments and agencies with pending inquiries into Musk or his companies did not comment on the probes or their ability to enforce regulations against Trump allies during his second term. The EPA and National Highway Traffic Safety Administration (NHTSA) said they would continue fulfilling their legal and regulatory responsibilities.

‘FIRST BUDDY’

Since the election, Musk has called himself Trump's "first buddy," frequented Trump's Florida Mar-a-Lago club, shared Thanksgiving with the president-elect's family and weighed in publicly on his cabinet appointments.

Trump appointed Musk to co-lead a new "Department of Government Efficiency," a private entity advising on slashing budgets and regulations. It remains unclear what authority the role will carry.

Musk has touted his newfound influence and given specific examples of how he might use it. Before the election, Musk said he would seek to use his efficiency-czar post to advance national driverless-vehicle regulations that would almost certainly benefit Tesla and eliminate "irrational" rules such as one resulting in a pollution fine against SpaceX.

NHTSA officials have repeatedly scrutinized Tesla for nearly a decade, at times enraging Musk. During one 2016 call, he screamed profanities at regulators launching the first of several investigations into Tesla's Autopilot driver-assistance system after a fatal crash, according to two people familiar with the matter. There are currently five ongoing and open NHTSA probes covering driver-assistance technology and other operations in Tesla vehicles.

Tesla has blamed Tesla drivers in defending itself against lawsuits and investigations over accidents involving FSD and Autopilot, saying it had warned drivers to pay attention.

A DOJ probe into whether Tesla and Musk exaggerated its vehicles' self-driving capabilities is among those where investigators have faced challenges. Prosecutors have grappled with demonstrating that Musk and Tesla crossed a line from legal salesmanship into knowingly making false claims that misled investors and harmed consumers. The probe had stalled before the election in part due to the legal hurdles, a person familiar with the investigation said.

Another probe, by the U.S. attorney's office in Manhattan, involves the driving range of Tesla vehicles and followed a Reuters investigation that found the automaker had rigged its in-dash displays to give drivers "rosy" projections about how many miles they could drive on battery power. It was unclear how far the probe has progressed.

"To our knowledge no government agency in any ongoing investigation has concluded that any wrongdoing occurred," Tesla said in quarterly SEC filings.

Reuters was the first to report some Trump auto-policy advisors have recommended killing a requirement that automakers report data on crashes involving automated-driving systems, a measure that could cripple NHTSA's ability to investigate and regulate the emerging technology's safety.

ROCKETS AND NASA

SpaceX already faces little regulatory scrutiny because the government has outsourced much of its space missions to Musk's rocket-and-satellite firm, according to two former SpaceX officials and a current government official familiar with the company's interactions with NASA, the EPA and the Federal Aviation Administration (FAA).

During a September summit, Musk labeled "insane" an EPA inquiry that resulted in SpaceX agreeing to a proposed \$148,378 fine for dumping pollutants, which Musk said were actually "drinking water."

The FAA separately in September proposed fining SpaceX \$633,000 for allegedly failing to follow license requirements and not getting approval for changes during two launches in 2023.

Musk called for FAA chief Mike Whitaker to resign in September, shortly after the FAA fined SpaceX and delayed one of its launches. Whitaker said last month he would step down before Trump's term.

The Wall Street Journal reported in October [WSJ](#), opens new tab that Musk has been in regular contact with Russian President Vladimir Putin. Three sources familiar with SpaceX's government interactions said any scrutiny into Musk's contacts with a U.S. adversary would be unlikely under Trump, who has picked tech billionaire Jared Isaacman to run NASA. Isaacman has financed and joined two private space missions involving SpaceX. NASA declined to comment and Isaacman and a media representative for Isaacman's company did not respond to a request for comment.

Musk did not respond to requests for comment regarding his reported contacts with Putin. In one instance, he responded with two laughing and crying emojis to a social-media post on X suggesting that Musk critics were attempting to portray him as a Russian agent.

Reporting by Mike Spector and Chris Prentice in New York and Rachael Levy and Marisa Taylor in Washington. Additional reporting by Chris Kirkham in Los Angeles and David Shepardson in Washington; editing by Anna Driver and Brian Thevenot

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Tesla Annual Sales Slip for First Time as Competition Grows

The electric-car company led by Elon Musk no longer has the market to itself. Investors are focusing on autonomous driving and other new technologies.



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By Jack Ewing

Jan. 2, 2025 Updated 1:10 p.m. ET

Tesla sales fell slightly in 2024, the first annual decline in the company's history, as rivals in China, Europe and the United States introduced dozens of competing electric models, giving buyers more choice.

The company said on Thursday that it delivered 1,789,226 vehicles worldwide during the year, a slight decline from 1,808,581 in 2023. During the last three months of 2024, Tesla delivered 495,570 vehicles, up from 484,507 in the last quarter of 2023.

The fourth quarter deliveries were the best ever for Tesla, according to the company, but were not enough to make up for sluggish sales earlier in the year.

Tesla shares, which have been buoyant in recent months, were down 7 percent in afternoon trading on Thursday.

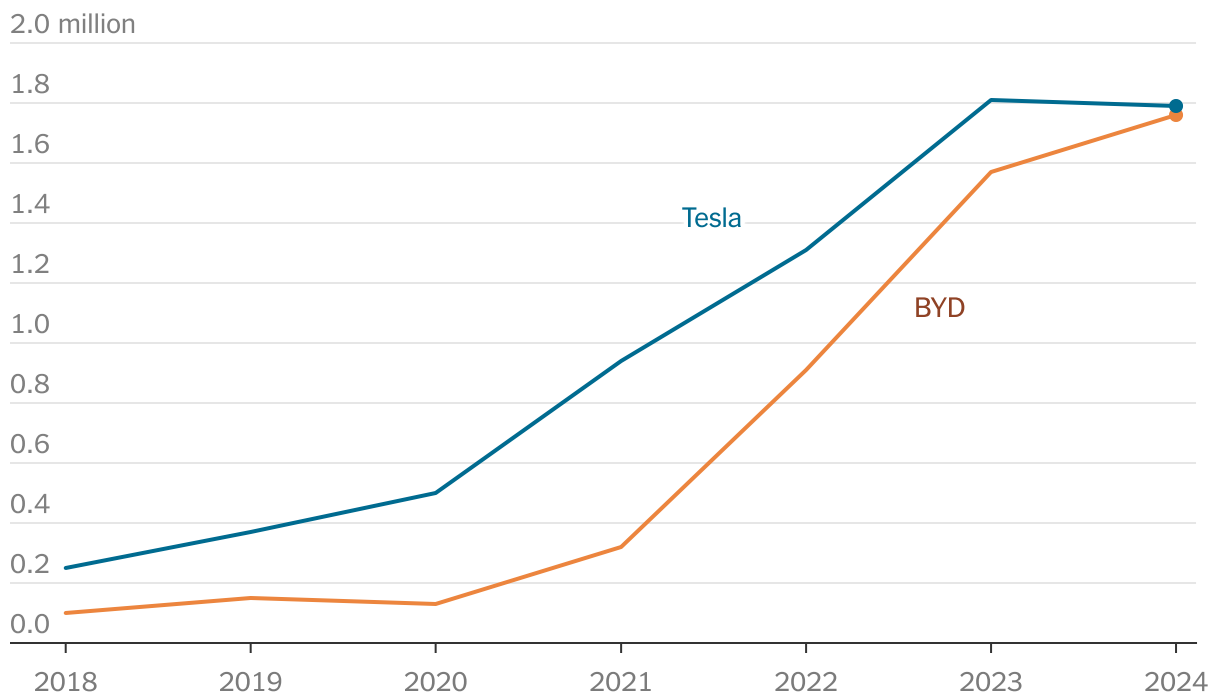
Tesla and its chief executive, Elon Musk, largely created the market for electric vehicles when it began selling the Model 3 sedan in 2017, arguably the first battery-powered car with the price, performance and range to attract large numbers of

mainstream buyers. Tesla still accounts for nearly half of all electric cars sold in the United States.

But carmakers like BYD in China, General Motors, Kia-Hyundai, Volkswagen and BMW have challenged Tesla's dominance, often with models that have newer designs and lower prices.

BYD, which has nearly caught up to Tesla as the world leader in sales of purely battery-powered cars, sold 1.76 million electric vehicles in 2024, the company said on Wednesday, an increase from 1.6 million the year before. Unlike Tesla, BYD also sells plug-in hybrids that use gasoline and electricity, which have become popular in China. Last year, the company sold 2.49 million hybrids, a huge jump from 1.44 million in 2023.

Annual electric vehicle sales



Source: The companies • By The New York Times

Wall Street analysts had expected Tesla to report a slight increase, at best, in car sales for the year. During the first nine months of the year, Tesla sales fell in the United States, Europe and China, according to industry data and analyst estimates. Tesla sales declined even as overall sales of electric vehicles in the first 11 months of the year rose 25 percent globally, according to Rho Motion, a research firm.

But investors have been largely indifferent to the sales figures, focusing instead on Tesla's efforts to develop cars that can drive themselves without human intervention, and on other products like humanoid robots that are not likely to generate revenue for many years.

Tesla also sells batteries used to store renewable energy at homes and businesses. Sales of those products soared 60 percent from the third quarter, Tesla said, enough to store 11 gigawatt hours of energy. Tesla began reporting sales of battery storage products this year.

Tesla shares have risen steeply since early November as investors bet that President-elect Donald J. Trump will remove regulatory obstacles to self-driving cars, which Mr. Musk has described as central to Tesla's future. Mr. Musk spent more than \$250 million to help elect Mr. Trump and has become one of his most important advisers.

Tesla is "not making nearly enough money to justify the share price," said Leonard Kostovetsky, an associate professor at the Zicklin School of Business at Baruch College. "People are justifying it based on things that will happen in the future."

Investors also do not seem to be concerned that Mr. Musk's vocal support of Mr. Trump and right-wing leaders in other countries has alienated potential Tesla buyers, who tend to be people who lean left politically.

Mr. Trump has promised to dismantle federal programs that benefit Tesla, including subsidies for battery manufacturing in the United States and a \$7,500 tax credit for electric-car buyers. Mr. Musk has said that removal of the incentives will hurt competitors more than it does Tesla.

Analysts expect sales of Teslas and other electric models to spike in the coming months as buyers in the United States rush to take advantage of the incentives before they disappear.

Tesla has promised to begin selling a car in 2025 for as little as \$25,000, expanding the number of people who could afford an electric vehicle. But the company has not displayed a prototype, and Mr. Musk has provided few details about the product.

Tesla Sales Drop Shows Limits of Musk's Political Power

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By Liam Denning

(Bloomberg Opinion) --



Weak finish.

Photographer: Justin Sullivan/Getty Images

The strange thing about Tesla Inc.'s latest results, released Thursday morning, is that a company touting leadership in artificial intelligence and self-driving cars struggles to predict where its own sales will be in a couple of months.

In late October, Tesla surprised markets by announcing it expected a "slight increase" in annual vehicle sales in 2024, implying the company would move around 515,000 in the fourth quarter. Wall Street analysts, who had been slashing their forecasts for fourth-quarter sales for the best part of a year, duly reversed course and the consensus estimate jumped to almost that number. As it turns out, sales came in at about 496,000. Companies do miss guidance, of course. But in this case, Tesla had pointedly challenged the prevailing view on the street about one of the easiest figures for any enterprise to predict, let alone one that has rebranded itself as an AI giant.

Tesla's resetting of expectations in October, with Chief Executive Elon Musk doubling down by also teasing 20%-30% growth in vehicle sales in 2025, came at a helpful time.

Tesla's robotaxi unveiling earlier that month was a flop, continuing a long-running tradition of overpromising and under-delivering when it comes to autonomous driving. The suddenly buoyant outlook for EVs reanimated animal spirits: Tesla's stock jumped by 22% the next day, more than erasing the losses after the robotaxi disappointment. Given the company's unanticipated optimism didn't pan out, I guess Tesla's computing chops, formidable as they doubtlessly are, still need some honing.

Tesla's stock has, of course, soared to even greater heights since then, hitting an all-time peak valuation of \$1.54 trillion last month. That owes more to the election of Musk's newest pal, President-elect Donald Trump, and a sense that proximity to power will somehow boost Tesla's fortunes. The likelihood that Trump's antipathy to electric vehicles would suppress Tesla's sales in its home market didn't register with investors, who also seemed to disregard that Musk's increasingly strident support for Trump and various right-wing causes might also present a headwind for sales of vehicles that are geared toward addressing climate change and have, hitherto, hewed toward blue states. A visceral reminder of that strange juxtaposition was delivered on New Year's Day with the explosion of a Tesla Cybertruck outside a Trump-branded hotel in Las Vegas, even if the underlying details of what occurred are yet to be uncovered.

The latest sales figures are less open to interpretation. Tesla, a company whose profits are overwhelmingly tied to sales of EVs and is priced for incredible growth, recorded a drop in annual vehicle sales for the first time in more than a decade.

Beneath the headline numbers, Tesla sold about 36,000 more vehicles than it produced in the fourth quarter. On one hand, that is helpful in clearing some of the big build-up of unsold vehicles that has marked the past two years, and should offer a cash-flow tailwind from working capital when full results are released later this month. On the other hand, slower production raises unit costs and clearing inventory means discounting, squeezing margins. When Tesla sold a similar number of vehicles over and above production in the second quarter, underlying gross margin dropped 13% compared with the prior quarter to less than \$6,000 per vehicle, the lowest in at least six years. There was also a notable jump in the proportion of deliveries made under leases.

Returning to the Cybertruck, it is also remarkable that sales of Tesla's premium-priced models increased by only 3% in the fourth quarter, year over year. In other words, despite Tesla's premium lineup having expanded from two models — the Models S and X — to three at the end of 2023, overall sales in that segment are essentially flat. The Cybertruck has cannibalized rather than added to sales of Tesla's higher-priced EVs.

Tesla's stock duly fell a little on Thursday morning and it is now down by almost a fifth from its post-election peak. It still sports a forward earnings multiple that is, at about 120 times, more than three times that of Nvidia Corp., to pick a useful benchmark. Tesla may have trouble seeing the future, even just months out, but remains priced to own it nonetheless.

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- Musk's Political Rise Frays Space Rivals' Nerves: Lionel Laurent

Tesla Inc

Tesla's annual deliveries drop for first time since 2011

US electric vehicle pioneer led by Elon Musk has been hit by slowing demand



Tesla says it delivered 495,570 vehicles in the fourth quarter of 2024 © Reuters

Oliver Ralph and **Kana Inagaki** in London and **Peter Wells** in New York 3 HOURS
AGO



Tesla's annual vehicle deliveries declined for the first time in more than a decade as the world's largest electric vehicle maker came under pressure from Chinese competition.

Shares fell more than 6 per cent on Thursday as the figures raised questions about a sharp rebound in sales that its chief executive Elon Musk had forecast.

For the whole year, [Tesla](#) delivered 1.79mn vehicles, just below the 1.81mn delivered in 2023 and the first annual drop since 2011, according to Bloomberg data.

On a quarterly basis, the company said on Thursday that it delivered 495,570 vehicles, up 2.3 per cent from the same quarter a year earlier but falling below market expectations for more than 500,000.

Despite the annual decline, Tesla still retained its position as the world's biggest EV maker while facing fierce competition from Chinese rival BYD, which reported earlier on Thursday that it [sold 1.76mn pure EVs](#) in 2024. BYD said it sold a record 4.3mn EVs and hybrids overall, a company record, despite intensifying pressure from rivals in its home market.

Tesla's annual vehicle deliveries fell in 2024

Deliveries, Mn

2 —————

1.5 —————

FINANCIAL TIMES

Source: Backlinko.com, Tesla

Investors had expected a strong fourth quarter for Tesla on the back of cost cuts and discounts on existing vehicles to spur consumer demand.

In October, Tesla reported a higher-than-expected quarterly profit and forecast “[slight growth](#)” in deliveries for 2024, while Musk forecast that the group's vehicle sales could increase between 20 and 30 per cent in 2025.

Competition with the cheaper offerings from Chinese rivals and concerns about slowing growth in EV sales, however, have weighed down on the market over the past year.

Tesla has also been caught up in the political activism of its chief executive. Musk [spent more than \\$250mn](#) to back Donald Trump's successful election campaign and has become one of the president-elect's closest advisers. Trump tasked Musk with co-leading a new Department of Government Efficiency aimed at finding ways to slash US federal spending.

Tesla shares have rocketed higher since the November election as investors saw the benefits of Musk's close relationship with Trump. But the company also faces political uncertainty with California's Democratic governor, Gavin Newsom, indicating that Tesla could miss out on lucrative tax rebates that the state is considering for EVs.

With its complex supply chain and close business ties in China, Tesla is also unlikely to avoid the effects of wide-ranging tariffs that Trump has threatened against goods imported to the US.

While increasing his political clout, Musk has also made a strategic pivot towards autonomous driving, artificial intelligence and robotics, forecasting that these technologies would soon be Tesla's main revenue sources and drive up its valuation.

The company aims to start producing its self-driving Cybercab before the start of 2027. The model would cost roughly \$25,000, when government electric vehicle incentives are deducted.

In October, Musk confirmed that Tesla was not developing a much-anticipated affordable \$25,000 Model 2. The company told investors in December that it would launch a new model in the first half that would be priced below \$30,000 including subsidies or \$37,499 without them.

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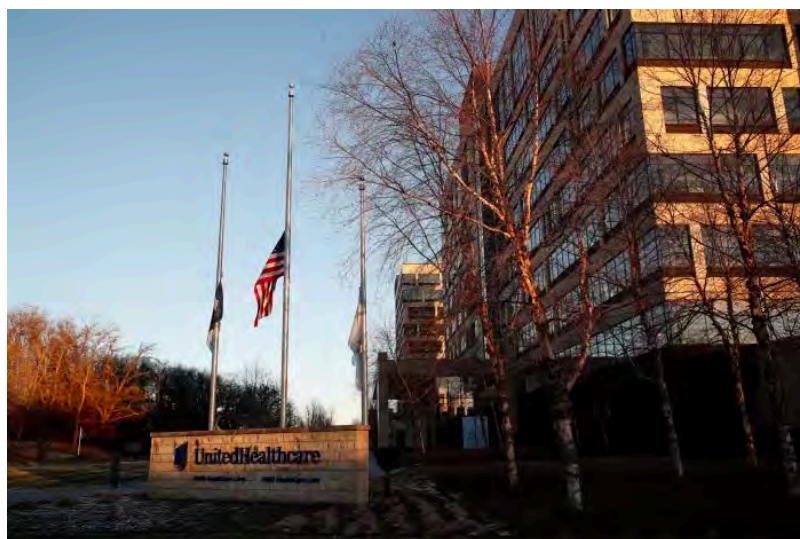
HEALTH | HEALTHCARE

How Health Insurers Racked Up Billions in Extra Payments From Medicare Advantage

The Wall Street Journal's yearlong investigation into Medicare's private insurers relied on exclusive access to billions of records of Medicare services

By [Christopher Weaver](#) [Follow](#)

Jan. 2, 2025 5:30 am ET



The killing of a UnitedHealth executive in December sparked an outpouring of public rage against the industry. PHOTO: ERIC MILLER/REUTERS

Throughout the past year, The Wall Street Journal investigated how UnitedHealth Group and other giant insurers extracted billions in extra payments from the \$450-billion-a-year Medicare Advantage system, the federal government program that outsources health benefits to private companies.

The investigation, which was under way before the killing of a UnitedHealth executive in December sparked an outpouring of public rage against the industry, relied on exclusive access to billions of records of Medicare services

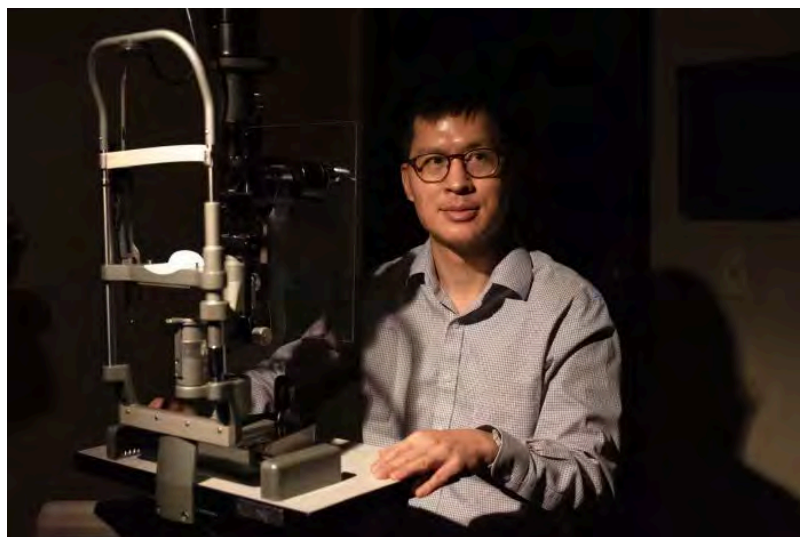
obtained through a data-use agreement with the federal government. The Journal's analysis of those records showed how private insurers took extra payments after diagnosing patients with conditions that no doctor ever treated, recruited patients who use few services and, at times, obstructed access to care for the sickest patients.

Here are some key findings:

1. Insurers packed on diagnoses that made them more money.

Medicare Advantage insurers diagnosed patients with conditions that triggered extra payments of \$50 billion from 2019 to 2021, even though no doctor ever treated the diseases.

Under Medicare rules, the government pays insurers extra money to cover the costs of caring for patients who are diagnosed with certain conditions. Patients are typically diagnosed by the doctors and hospitals that treat them. But Medicare allows insurers to tack on additional diagnoses after reviewing medical charts and sending their own nurses to visit patients at home.



Insurers added diabetic cataract diagnoses to patients treated by Dr. Howard Chen, an ophthalmologist in Goodyear, Ariz. PHOTO: REBECCA NOBLE FOR THE WALL STREET JOURNAL

The Journal's analysis of government Medicare data found that insurers often inaccurately added conditions that trigger high payments. For instance, more than 66,000 Medicare Advantage patients were diagnosed by their insurers with diabetic cataracts even though they had already had surgeries that cured the condition, making it anatomically impossible for them to have it. In other cases,

the Journal found patients who were reported by their insurers to have HIV, the virus that causes AIDS, but didn't receive any of the lifesaving treatments that doctors recommend for all patients with the condition.

Leading Medicare Advantage insurer UnitedHealth called the Journal's analysis "inaccurate and biased," and said Medicare Advantage "provides better health outcomes and more affordable healthcare for millions of seniors" than traditional Medicare.

2. Insurers sent nurses to find diagnoses that doctors hadn't.

Insurers dispatched their own nurses to visit patients at home and diagnose them with conditions that their doctors hadn't, triggering an average of \$1,818 in extra annual payments during each visit from 2019 to 2021—\$15 billion in total.

UnitedHealth generated far higher payments per visit, averaging \$2,735—about three times the level of all other Medicare Advantage insurers. UnitedHealth covers about one-third of Medicare Advantage members.

Shelley Manke, a nurse practitioner, once worked for the HouseCalls unit of UnitedHealth Group.

PHOTO: TAYLOR GLASCOCK FOR WSJ

To find extra diagnoses, nurses used tests that produced questionable results, including one for peripheral artery disease that the U.S. Food and Drug Administration hasn't approved for use as a stand-alone diagnostic device. Nurses sent by insurance companies added about 700,000 cases of the

condition, which involves narrowing blood vessels, triggering \$1.8 billion in payments during the period the Journal studied.

Insurers said the visits helped patients by detecting diseases early and making sure people are taking their medicine properly, among other benefits. After the Journal's report, the inspector general of the Department of Health and Human Services recommended ending payments for diagnoses stemming only from home visits.

3. Insurers got paid to cover patients who were already getting their healthcare elsewhere.

Medicare Advantage insurers collected billions of dollars a year in premiums to provide medical coverage to patients who used the Department of Veterans Affairs health system—and not Medicare—for some or all of their healthcare needs.

The insurers sought to recruit veterans with cash-like rebate payments that encourage them to sign up, the Journal found. Nearly 90% of plans focused on veterans offered the rebates.

Navy veteran John Burks signed up for a Humana Honor plan years ago, but preferred to get his healthcare from the nearby VA. PHOTO: DOUG BARRETT FOR WSJ

Many veterans rely on the VA for some or all of their care, and they used Medicare services at far lower rates than typical members, the Journal analysis found. Under a decades-old law, the VA can't bill Medicare insurers.

About one in five members of Medicare Advantage plans that enroll lots of veterans didn't use a single Medicare service in 2021, the Journal found. That compares with 3.4% of members of other Medicare Advantage plans. Insurers can profit when members have low costs.

Medicare Advantage insurer Humana, the market leader in enrolling veterans, said veterans "have earned the right to choose their healthcare coverage" and that they benefit from the additional options.

4. Doctors who work for UnitedHealth generated billions of dollars in extra payments for their employer by adding more diagnoses.

UnitedHealth provided doctors with checklists of possible diagnoses for their patients and paid bonuses for completing them.

When patients moved from traditional Medicare, where doctors aren't encouraged to find additional diagnoses, to UnitedHealth Medicare Advantage plans and received care from the company's doctors, they appeared to acquire previously undiagnosed maladies, according to the Journal's analysis of Medicare data between 2019 and 2022.

Under the system Medicare uses to calculate payments, those patients got 55% sicker, on paper, in their first year in UnitedHealth plans, an increase equivalent to every patient getting newly diagnosed with HIV and breast cancer, the analysis showed.

Dr. Coleen Madigan said she felt 'an insidious pressure' to document diagnoses. PHOTO: KAYLEE GREENLEE FOR WSJ

A spokesman for UnitedHealth said in a written statement that the company's practices lead to "more accurate diagnoses, greater availability of care and better health outcomes and prevention, including less hospitalization, more cancer screenings and better chronic disease management." After the article was published, UnitedHealth released another statement calling the Journal's reporting flawed, without specifying any inaccuracies.

5. Sicker patients who needed expensive treatments like nursing-home care left Medicare Advantage at high rates—suggesting that insurers may have been denying them costly coverage.

Medicare Advantage insurers netted \$3.5 billion in savings from their sickest patients dropping out to return to traditional Medicare in the last year of life from 2016 to 2022, the Journal found.

The figure is a sign, experts said, that patients may not be getting the care they need through the private insurers. When patients leave Medicare Advantage, taxpayers pick up the full bill for their treatments.

After Janet Burch, left, had a stroke, her Medicare Advantage insurer refused to pay for her nursing-home stay. Her sister Susan Orr, right, helped care for her. PHOTO: DESIREE RIOS FOR WSJ

The Journal's analysis showed end-of-life patients fleeing Medicare Advantage plans were seeking one of the most commonly denied services—nursing-home care—at a rate five times higher than peers who were continuously enrolled in traditional Medicare.

Insurers said most members are happy with their Medicare Advantage plans and may switch to traditional Medicare for other reasons. After the Journal's report, an independent research group published its own analysis showing patients with a range of serious illnesses left Medicare Advantage more often than healthy patients.

We Want to Hear From You

Have you had a Medicare Advantage plan? Share your experience with us.

Name*

Email*

City, State*

SUBMIT

By submitting your response to this questionnaire, you consent to Dow Jones processing your special categories of personal information and are indicating that your answers may be investigated and published by The Wall Street Journal and you are willing to be contacted by a Journal reporter to discuss your answers further. In an article on this subject, the Journal will not attribute your answers to you by name unless a reporter contacts you and you provide that consent.

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The Securities Litigation Trends That Will Matter Most In 2025

By **Todd Cosenza, Charles Cording and Amanda Payne** (January 1, 2025, 8:01 AM EST)

In 2024, we saw a number of high-profile and important securities rulings. It was a year of twists and turns, marked by decisions the U.S. Supreme Court issued and, just as importantly, did not issue.

In April, the Supreme Court **issued** its highly anticipated decision in *Macquarie Infrastructure Corp. v. Moab Partners LP*, holding that pure omissions cannot support private claims under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, even where such an omission is an alleged violation of Item 303 of Regulation S-K.

2024 ended with an unusual, if not unprecedented, sequence of events. In November and December, the Supreme Court dismissed writs of certiorari that it had granted in **two high-profile** securities fraud class actions only months before — *Facebook v. Amalgamated Bank* and *Nvidia Corp. v. E. Ohman J:Or Fonder AB* — thereby forgoing the opportunity to clarify pleading standards for claims challenging corporate disclosure statements. Why the Supreme Court did so and what that portends for future securities cases at the Supreme Court remain intensely debated topics within the securities bar.

2025 promises many more significant developments in the law as courts continue to grapple with new cases and legal theories.

We can expect to see a decision from the U.S. Court of Appeals for the Sixth Circuit in *In re: FirstEnergy Corp. Securities Litigation*, which **should address** the interplay between the Supreme Court's decision in *Macquarie* and *Affiliated Ute's* presumption of reliance in omissions cases.

We also should see courts grapple with the Supreme Court's **ruling** in *U.S. Securities and Exchange Commission v. Jarkesy*, which held that when the SEC seeks civil penalties against a defendant for securities fraud, the Seventh Amendment entitles the defendant to a jury trial.

Additionally, there will likely be a continuation of cases — **like** *Sjunde AP-Fonden v. The Goldman Sachs Group Inc.* — applying the mismatch framework set forth by the Supreme Court in its 2021 **decision** in *Arkansas Teacher Retirement System v. Goldman Sachs Group Inc.*

In light of these cases and trends, 2025 is shaping up to be a significant year for securities litigation, as plaintiffs and defendants alike navigate shifting standards for omission theories of liability, class certification, risk disclosure claims and more. This article highlights the hot cases and trends in securities litigation that will matter most in 2025.

The End of Liability for Pure Omissions

As we predicted **last year**, cases alleging omissions, as opposed to misrepresentations, were front and center in 2024.



Todd Cosenza



Charles Cording



Amanda Payne

The most notable of which was the Supreme Court's April 12 decision in *Macquarie v. Moab*.^[1] In a unanimous decision, the court vacated a U.S. Court of Appeals for the Second Circuit **decision** and ruled in favor of Macquarie Infrastructure Corp., holding that pure omissions — that is, silence in the face of an alleged duty to speak — cannot support private claims under Section 10(b) and Rule 10b-5 thereunder, even where such an omission could give rise to a violation of Item 303 of SEC Regulation S-K.^[2]

The decision reverses a significant trend in securities class action practice where class action plaintiffs premised Rule 10b-5 claims on alleged violations of Items 303 and Item 105.

That undoubtedly was a victory for the securities defense bar. However, it is one that may ultimately prove narrow in scope.

Indeed, the Supreme Court was clear that the ruling does not apply to claims brought under Section 11 of the Securities Act. And just as importantly, as for Rule 10b-5 claims, we expect securities plaintiffs to restyle pure omission claims as ones for half-truths, which remain viable, citing language in public company disclosures, including generic and nonspecific statements.

One case to keep a close eye on with respect to its application of *Macquarie* is *In re: FirstEnergy Corp. Securities Litigation*, which is currently pending before the Sixth Circuit on a Rule 23(f) petition following the U.S. District Court for the Southern District of Ohio's 2023 **order** certifying the class.

In *FirstEnergy*, the plaintiffs filed a class action against FirstEnergy, an Ohio-based electrical utility company, alleging that FirstEnergy violated Section 10(b) by making statements that were false or misleading because they failed to disclose its executives' alleged bribery of Ohio public officials in connection with H.B. 6, which passed both the Ohio Senate and House in 2019.

In March 2023, the district court certified the class. In doing so, the district court treated half-truths — that is, incomplete affirmative statements that are alleged to have been misleading by virtue of the information omitted by then-Ohio House Speaker Larry Householder — as pure omissions for purposes of certifying an investor class. The court then applied the easier-to-establish, yet harder-to-rebut, presumption of reliance set forth by the U.S. Supreme Court in 1972 in the *Affiliated Ute v. U.S.* decision, which ordinarily governs cases based on pure omissions, to those half-truths.

After the Sixth Circuit granted FirstEnergy's Rule 23(f) petition, the Supreme Court decided *Macquarie*. Accordingly, the parties filed letters addressing *Macquarie*'s application to the case.

The defendants argued that *Macquarie* clearly distinguished half-truths from pure omissions, thereby confirming that half-truths are not omissions for purposes of the *Affiliated Ute* presumption. Conversely, the plaintiffs argued that *Affiliated Ute* could still apply to half-truths because *Macquarie* did not expressly preclude it.

The Sixth Circuit's decision will likely be the first decision to apply *Macquarie* in the context of the *Affiliated Ute* presumption. If the Sixth Circuit affirms the district court's ruling, it could have significant consequences on future securities fraud class actions, including by giving plaintiffs a clear and simple path to class certification, so long as they are able to plead that the defendants told half-truths.

Administrative Proceedings Post-Jarkesy

On June 27, the U.S. Supreme Court issued its highly anticipated decision in *SEC v. Jarkesy*.^[3] The issue before the court was whether the Seventh Amendment, which guarantees the right to a jury trial, permits the SEC to compel defendants to defend themselves before the agency rather than before a jury in federal court.

The case landed in federal court following an appeal from an SEC order, which affirmed an administrative law judge's imposition of civil penalties against a hedge fund manager and his firm after finding that they had committed securities fraud by, among other things, lying to investors about the valuation of the funds' assets and the identity of the funds' broker and auditor.

During the SEC's in-house proceedings, the defendants made various constitutional arguments,

including that being subjected to the SEC's in-house proceedings violated their Seventh Amendment right to trial, all of which the commission rejected. On appeal, the U.S. Court of Appeals for the Fifth Circuit **agreed** with the defendants in 2022, holding, among other things, that the SEC's in-house adjudication of the defendants' case violated their Seventh Amendment right to a jury trial.[4]

The U.S. Supreme Court granted the SEC's petition for a writ of certiorari in June 2023. In a 6-3 decision, the court affirmed the Fifth Circuit's ruling on Seventh Amendment grounds, holding that the defendants were entitled to a jury trial in an Article III court whenever the SEC seeks civil penalties in an enforcement action.

In so holding, the court effectively limited the type of proceedings the SEC can bring in-house, thereby significantly constraining the SEC's powers. The decision has also left many to wonder whether other federal regulatory agencies that pursue civil penalties through in-house proceedings can continue to do so.

Pleading Standards Relating to Corporate Disclosure Statements

The Supreme Court closed out 2024 by dismissing two cases that would have clarified how the heightened pleading standards under Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act apply in two recurring circumstances.

As a result, two class actions are allowed to proceed against Facebook and Nvidia, leaving unresolved circuit splits on risk disclosure obligations and pleading scienter under the PSLRA through allegations sourced to putative experts.

Facebook v. Amalgamated Bank

In November, the Supreme Court passed up the opportunity to clarify whether falsity allegations are sufficient to survive a motion to dismiss where they are based on forward-looking risk disclosures of risks that had already materialized in the past — even where that past event presents no known risk of ongoing or future business harm.

In October 2023, the Ninth Circuit **issued** a split opinion holding that shareholders adequately pled that risk statements relating to the risk of improper access to Facebook users' data were materially false and misleading because of the high-profile Cambridge Analytica scandal.[5]

The decision reversed the U.S. District Court for the Northern District of California, which held that Facebook's risk disclosure statements relating to the Cambridge Analytica data breach were inactionable because the risk disclosures warned of the potential for reputational and business harm based on unauthorized data access, and the plaintiffs failed to plead that Facebook had actually suffered such harm at the time the risk disclosure was issued.[6]

The Ninth Circuit criticized the district court's approach for "overlook[ing] the reality of what Facebook knew," ruling instead that "a company may make a materially misleading statement when it 'speaks entirely of as-yet-unrealized risks' when the risks have 'already come to fruition,'" even when the "magnitude of the ensuing harm [is] unknown." [7]

Nvidia v. E. Ohman J:Or Fonder

In December, the U.S. Supreme Court similarly dismissed Nvidia's case regarding (1) the standard to plead scienter for PSLRA claims when relying on internal company documents, and (2) whether an expert opinion may serve as a proxy for facts under the PSLRA.

In March 2021, the Northern District of California **dismissed** a complaint alleging that Nvidia and its officers misled investors by failing to disclose the extent to which revenues in its gaming segment were derived from sales to crypto miners rather than to gamers.

The plaintiffs attributed several allegations to statements by anonymous former employees, internal company documents (but not facts about their contents), and expert analysis.[8] The district court held that the plaintiffs failed to "adequately tie the specific contents of any of these data sources to particular statements." [9]

In August 2023, the Ninth Circuit **reversed in part**, ruling that former employee statements and internal company documents were sufficient to plead scienter. The Ninth Circuit similarly ruled that the expert analysis met the PSLRA's standard for pleading falsity with particularity because it was reliable, particularized and corroborated by other evidence, i.e., former employee statements and market events.[10]

Class Certification Issues

Class certification will likely remain an important battleground for defendants facing securities class actions in 2025, particularly with respect to damages models and price impact defenses.

In August, the Ninth Circuit clarified when an expert's damages model may be used to demonstrate predominance for purposes of class certification.

In *Lytle v. Nutramax Labs Inc.*, the Ninth Circuit amended an **April ruling** that an unexecuted damages model — even if unpersuasive, unlikely to succeed or not presented in an admissible form — could suffice to show that damages are susceptible to common proof where that "model will be able to reliably calculate damages in a manner common to the class at trial." [11] The court further clarified that the reliability of a model at the class certification stage does not turn on whether that model will actually reveal damages, but rather on whether the output of that model would theoretically be common to the class.[12]

The Ninth Circuit's decision in *Lytle* lowers the threshold for sufficiently showing that damages are susceptible to common proof for purposes of class certification. As such, we will likely see defendants struggle to defeat class certification based on attacks against damages models, even ones that appear inchoate or underdeveloped, so long as the model could conceivably determine damages on a classwide basis. We also anticipate that other federal circuits may take a more restrictive approach than the Ninth Circuit adopted in *Lytle*.

We can also expect to see lower courts continue to grapple with the Supreme Court's mismatch framework announced in its 2021 decision in *Arkansas Teacher Retirement System v. Goldman Sachs Group*, which held that the generic nature of a misrepresentation often will be important evidence of a lack of price impact.[13]

Although that decision granted defendants additional arguments to rebut price impact at the class certification stage, subsequent experience demonstrates that success is not guaranteed. In fact, Goldman Sachs recently lost a battle over the application of the mismatch framework in *Sjunde AP-Fonden v. Goldman Sachs Group*, a securities fraud class action that is currently pending before the U.S. District Court for the Southern District of New York.[14]

The case arose out of the highly publicized 1Malaysia Development Berhad, or 1MDB, scandal. Investors alleged that Goldman Sachs, which provided investment banking services to 1MDB, violated Section 10(b) of the Exchange Act and Rule 10b-5 by making false and misleading statements about the nature of Goldman Sachs' involvement with 1MDB and its executives' foreknowledge of any corruption associated with it.

The plaintiff moved to certify the class, invoking the Basic presumption — derived from the Supreme Court's 1988 decision in *Basic Inc. v. Levinson* — and the inflation maintenance theory.[15] In assessing Goldman Sachs' rebuttal evidence showing a lack of price impact, the magistrate judge performed a "match" analysis and determined that at least two statements matched a corrective disclosure. Accordingly, the magistrate judge recommended that a class be certified.

As of the time of this writing, the district court has not yet adopted the magistrate judge's recommendation. However, if the district court does, the Second Circuit will likely have an opportunity to weigh in on the application of the mismatch framework this year.

Conclusion

In light of these notable cases and trends, 2025 promises to be a significant year for securities litigation. Securities law practitioners and public companies should continue to closely monitor cases

currently pending in the federal courts.

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Willkie associate Veronica Bognot contributed to this article.

Disclosure: Willkie represents a group of former SEC officials and law professors who filed an amicus brief in support of Goldman Sachs' petition for a writ of certiorari and petition to appeal in Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System. Willkie also represents a group of former SEC officials and law professors who filed an amicus brief in support of FirstEnergy's petition for a Rule 23(f) appeal.

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[1] No. 22-1165.

[2] Item 303 requires a company's management to disclose "any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations." 17 CFR § 229.303.

[3] [Sec. & Exch. Comm'n v. Jarkesy](#) , 144 S. Ct. 2117 (2024).

[4] [Jarkesy v. Sec. & Exch. Comm'n](#), 34 F.4th 446, 450-51 (5th Cir. 2022).

[5] [In re Facebook, Inc. Securities Litig.](#) , 87 F.4th 934 (9th Cir. 2023), cert. granted in part sub nom. [Facebook, Inc. v. Amalgamated Bank](#) , 144 S. Ct. 2629 (2024), and cert. dismissed as improvidently granted sub nom. [Facebook, Inc. v. Amalgamated Bank](#), 604 U.S. 4 (2024).

[6] [In re Facebook, Inc. Securities Litig.](#) , 87 F.4th at 948.

[7] [In re Facebook, Inc. Securities Litig.](#), 87 F.4th at 949-950.

[8] [Iron Workers Loc. 580 Jt. Funds v. NVIDIA Corp.](#) , 522 F. Supp. 3d 660 (N.D. Cal. 2021), aff'd in part, rev'd in part and remanded sub nom. [E. Ohman J:or Fonder AB v. NVIDIA Corp.](#) , 81 F.4th 918 (9th Cir. 2023).; [E. Ohman J:or Fonder AB v. NVIDIA Corp.](#), 81 F.4th 918 (9th Cir. 2023), cert. granted sub nom. [NVIDIA Corp. v. Ohman J](#) , 144 S. Ct. 2655 (2024), and cert. dismissed as improvidently granted, No. 23-970, 2024 WL 5058572 (U.S. Dec. 11, 2024).

[9] [Iron Workers Loc. 580 Jt. Funds v. NVIDIA Corp.](#) , 522 F. Supp. 3d at 674.

[10] [E. Ohman J:or Fonder AB v. NVIDIA Corp.](#), 81 F.4th at 929-33 (2023).

[11] [Lytle v. Nutramax Laboratories, Inc.](#) , 114 F.4th 1011, 1019, 1024 (9th Cir. 2024).

[12] [Lytle v. Nutramax Laboratories, Inc.](#), 114 F.4th at 1026-27.

[13] [Goldman Sachs Grp., Inc. v. Arkansas Tchr. Ret. Sys.](#) , 594 U.S. 113 (2021).

[14] [Sjunde AP-Fonden v. Goldman Sachs Grp., Inc.](#) , No. 18-CV-12084, 2024 WL 1497110 (S.D.N.Y. Apr. 5, 2024).

[15] Under the inflation maintenance theory, certain statements are actionable merely because they maintained an already inflated stock price. 594 U.S. at 119-20.

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3M, Meta MDLs Top General Liability Cases To Watch In 2025

By Hope Patti

Law360 (January 1, 2025, 8:01 AM EST) -- Courts across the country are expected to weigh in on a number of important issues this year in general liability insurance cases, led by a multidistrict litigation coverage suit in Delaware against Facebook that raises similar issues seen in opioid coverage battles.

Insurance experts are also keeping an eye on cases concerning coverage for human trafficking claims, a company's ability to satisfy its self-insured retention and an insurer's power to pursue equitable subrogation against another carrier.

Here, Law360 looks at the general liability cases to watch this year.

Pa. High Court to Weigh Duty to Defend With Public Policy

The Pennsylvania Supreme Court will consider whether public policy nullifies an insurer's duty to defend and indemnify when a policyholder is accused of enabling or profiting from sex trafficking.

The Third Circuit **referred the case** to the top court in August, saying the full scope of the public policy exception to an insurer's duty to defend and indemnify was not clear in this case, where a Philadelphia hotel and its owner were accused of participating in sex trafficking.

This case is of particular concern for policyholders because the argument being made by the insurers is that there is no duty to defend based upon allegations, Benjamin W. Massarsky, a policyholder attorney at Miller Friel PLLC, said.

"The duty to defend is sacrosanct and very broad. It's premised on the notion that if there's any potential for coverage, you've got to defend," he said. "It is very scary that just by invoking human trafficking as an allegation, you can vitiate coverage or vitiate the defense obligation."

The coverage dispute stems from separate state court suits filed against the now-bankrupt Roosevelt Inn by four women, who alleged that they were victims of sex trafficking at the hotel, and that despite clear signs of trafficking taking place, the Roosevelt Inn failed to prevent or stop the scheme.

In March 2023, U.S. District Judge Chad F. Kenney **awarded judgment** to Samsung Fire & Marine Insurance Co. Ltd. and Nationwide Mutual Insurance Co., and granted Ace Property & Casualty Insurance Co.'s motion to dismiss on the grounds that Pennsylvania public policy prohibits insuring criminal acts. The judge reasoned that the underlying allegations against the hotel and its owner, UFVS Management Co. LLC, indicated that the hotel engaged in criminal conduct in violation of Pennsylvania's Human Trafficking Law.

Policyholder attorney Tae Andrews, of Calfee Halter & Griswold LLP, said he views the district court's ruling as a moral decision rather than a legal one.

"The judge is essentially deciding to punish the policyholders for the allegations against them by ruling that they cannot access insurance coverage to pay for their losses," Andrews said, adding that the judge failed to address the legal issue of whether the policy provides defense or indemnity for the underlying suits.

This case could have astronomical consequences for policyholders if the Pennsylvania high court finds that mere allegations of trafficking are uninsurable under public policy, Andrews added.

"I think this is too broad and is judicial overreach," he said.

The case is Samsung Fire & Marine Insurance Co. Ltd. et al. v. RI Settlement Trust et al., case number 49 EM 2024, in the Supreme Court of Pennsylvania.

Meta's Insurers Dispute Coverage for Social Media MDL

Hartford insurers **are seeking** a ruling that they have no duty to defend Meta Platforms Inc. against a number of suits accusing the social media giant of deliberately designing its platforms to be addictive to children and adolescents, and concealing its harmful effects on them.

In a suit filed in Delaware state court in November, Hartford Casualty Insurance Co. and Sentinel Insurance Co. Ltd. said actions brought against the parent company of Facebook and Instagram by governments and school districts don't allege damages "because of" bodily injury or personal and advertising injury as required by the policies.

Instead, the suits seek to recover economic losses, the insurers contended, echoing similar arguments that insurers have successfully made when seeking to avoid coverage for underlying opioid litigation.

Michael Young, a partner at Reichardt Noce & Young LLC, who represents insurers, said the instant action involves similar public nuisance claims that arise in litigation involving opioids or ghost guns. While the latter have typically turned on whether the allegations pleaded against the insured meet the policy's occurrence requirements, he said this case may instead turn on the policy requirement that the damage alleged is because of bodily injury or personal advertising injury.

"The trend in these public nuisance type of lawsuits has been towards no coverage, so it will be interesting to see if that trend continues on the second argument," Young said.

The filing of the suit in Delaware was also of particular interest to both policyholder and insurer attorneys, especially given the state high court's January 2022 ruling in **Ace American Insurance Co. et al. v. Rite Aid Corp. et al.** In that case, the **justices held** that Chubb insurers had no duty to defend the pharmacy giant against suits brought by Ohio counties over the cost of responding to the opioid epidemic because the underlying actions only sought recovery of economic losses.

"I'd have to imagine that was a consideration for where the case was venued, and I have to imagine that is going to be an issue that will be litigated at the outset because the Rite Aid decision is going to be very significant for purposes of determining whether or not there is coverage for Meta," Schwartz said.

Andrews added that Meta and its affiliated companies should try to get the case out of Delaware because of the Rite Aid decision, but even if they don't, there are enough wrinkles to result in a different outcome than the Rite Aid case, especially at the duty to defend stage.

For example, the Rite Aid decision found that an organization seeking to recover costs incurred in caring for bodily injury must show that it treated an individual with an injury, how much that treatment cost and that the injury was caused by the insured. However, Andrews said, those requirements are not rooted in the policy language.

"So perhaps you could have a different composition of a court that could reach a different result," he said.

The case is Hartford Casualty Insurance Co. et al. v. Instagram LLC et al., case number N24C-11-010, in Delaware Superior Court.

Del. Justices to Review 3M Earplug MDL Coverage Dispute

A group of insurers will have their July victory **put to the test**, when the Delaware Supreme Court

reviews a lower court's finding that defense costs paid by 3M in underlying multidistrict litigation over the company's combat earplugs could not satisfy the self-insured retention of its subsidiary's insurance policies.

"Interlocutory appeals are seldom attempted and rarely granted, so the fact that the Delaware Supreme Court wants to take a look at this, I think, is a good sign," Miller Friel's Massarsky said.

"This case strikes at the heart of how corporate structure interacts with insurance," he added, saying the lower court's interpretation of the self-insured retention language could create massive ripples across the corporate world.

While interlocutory appeals are rare, Jonathan Schwartz, a Freeman Mathis & Gary LLP partner who represents insurers, said the high court's review makes sense given the amount of money at issue and the fact that the case involves coverage for an MDL.

A three-justice panel concluded in December that Delaware Superior Court Judge Sheldon K. Rennie's **decision denying** 3M and Aearo Technologies' bid for partial summary judgment "addressed substantial issues of material importance to the merits of this insurance-coverage dispute."

The justices further found that interlocutory review will "serve considerations of justice and promote efficiency" as there is a separate appeal from the December ruling currently proceeding before the top court, which will likely involve consideration of whether 3M's \$372 million defense cost payment counts toward Aearo's self-insured retention.

In July, Judge Rennie held that policies issued to Aearo by Twin City Fire Insurance Co., Ace American Insurance Co., Royal Surplus Lines Insurance Co. and Liberty Surplus Insurance Corp. require the "insured" to pay the retention, which 3M was not. As for Aearo's policy with General Star Indemnity Co., the judge found a genuine issue of material fact as to whether the defense costs were jointly incurred by 3M and its subsidiary.

Not allowing a parent company to pay for the defense costs of its wholly-owned subsidiary is "madness" and creates a "perverse disincentive to operate efficiently," Massarsky said.

Conversely, Schwartz said the lower court raised an interesting point that the insured needs to bear the cost of the risk that is being insured.

"I think there is a very strong argument that this requirement that the insured pay the SIRs should be enforced according to the particular policy language that the parties bargained for," he said.

The case is Aearo Technologies LLC et al. v. ACE American Insurance Co. et al., case number 423,2024, in the Supreme Court of Delaware.

Nevada Supreme Court to Hear Insurer Subrogation Battle

Taking up an insurer-versus-insurer battle, Nevada's top court will decide whether an excess carrier can pursue equitable subrogation against a primary carrier if an underlying covered settlement doesn't exceed their combined policy limits.

According to Young, this is an important case to keep an eye on for its potential wide-ranging negative impact on insurance companies.

"We may have a very strong rule in this jurisdiction that you don't have to have an excess judgment order to maintain a bad faith case, which increases every liability carrier's bad faith exposure across the board," he said.

"The excess carrier may win the battle, but they're going to lose the war," Young added.

Excess insurer North River Insurance Co., which is seeking to recoup \$4 million it paid toward a \$5 million wrongful death settlement against policyholder Alhambra Place Partnership LP, accused primary insurer James River Insurance Co. of breaching its duty to settle the underlying suit in good faith. Though James River initially rejected lower settlement demands, it eventually paid its \$1 million

policy limits.

U.S. District Judge Philip S. Gutierrez subsequently dismissed the case, finding that Nevada law applies to the subrogation dispute rather than California law. Relying on a pair of unpublished Nevada Supreme Court decisions, the judge held that the underlying settlement within Alhambra's \$11 million combined policy limits meant the policyholder did not suffer damages, and therefore North River could not state an equitable subrogation claim.

The Ninth Circuit sent a certified question to the state top court in August, noting that the cases relied upon by Judge Gutierrez were not binding precedent and were not decided by the full Nevada Supreme Court. With no clearly controlling precedent, the appeals **court said** the justices should be the first to determine whether equitable subrogation is permitted between two insurers in this context.

The case is North River Insurance Co. v. James River Insurance Co., case number 89228, in the Supreme Court of Nevada.

--Additional reporting by Jennifer Mandato and Ganesh Setty. Editing by Leah Bennett.

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Delaware Courts Face Complex, 'Exciting' Litigation In 2025

By **Jeff Montgomery**

Law360 (January 1, 2025, 8:01 AM EST) -- Delaware's corporate and commercial law courts are heading into 2025 with a heavier caseload than ever, while facing unprecedented criticism from the corporate bar, state lawmakers and unhappy litigants in a changing social and political landscape.

Law professor and retired corporate law practitioner Mark Lebovitch summed it up in a sentence in a recent rundown on outlooks for the Court of Chancery and Supreme Court, together one of the nations top venues for commercial law in 2025.

"It's kind of an exciting time," said Lebovitch, a University of Pennsylvania Carey Law School adjunct professor teaching advanced corporate law and related topics and lecturer in law at Columbia Law School.

"The richest man in the world," — Tesla CEO Elon Musk — "has gone all TransPerfect on the court," Lebovitch added, "and the corporate bar is really focused on these plaintiffs' bar governance lawsuits — the bar is really hung up on the burden."

The TransPerfect reference hearkened back to a decade-old, still burning feud between one founder of a then strife-ridden international business translation company and Delaware's Court of Chancery over a ruling that put the company under a custodian's control. It gave rise to a court-ordered sale of the still prospering Transperfect International to save it from what the court considered a destructive leadership feud.

Today's TransPerfect, still controlled by one of the combatants in the original suit, subsequently moved its charter to Nevada, while battling fee motions and lobbying in public criticisms of Delaware's courts to this day.

Fast forward to 2025 and Musk and Tesla are expected to open the year in a state Supreme Court battle over Chancellor Kathaleen St. J. McCormick's award of a \$345 million fee to stockholders in *Tornetta et al. v. Musk*. In *Tornetta*, the chancellor in January 2024 shot down Musk's nearly \$56 billion, 10-year Tesla board-approved compensation plan, then positioned the decision and attorney fee award for appeal in December.

The legal landscape in Delaware also will continue to be affected by nationwide debates and federal court decisions.

"Over the past year, companies have been subject to increased scrutiny from investors, consumers, organizations and regulators over environmental, social and governance [ESG] issues, including as to their policies on diversity, equity and inclusion [DEI]," said Kirkland & Ellis partner Alexander Rodney.

Rodney pointed to two recent decisions from the Fifth Circuit Court of Appeals that treat both broad policy categories "with skepticism."

Judging Control

Court watchers pointed to a string of looming decisions in 2025 that could flesh out Delaware's Chancery and Supreme Court views on controlling stockholders and the scope of their freedom.

Already teed up is another controller-focused case, *In re Oracle Corp.*, now awaiting a Delaware Supreme Court decision on Chancery Court's toss of a suit accusing company founder Larry Ellison of steering the company he founded into a \$9.3 billion acquisition of NetSuite Corp. in 2016.

"The Oracle appeal was argued in October; it might come out this year, but it's also possible it will come out in January, and that case presents among other things an opportunity for the Delaware Supreme Court to offer more guidance as to who counts as a controlling shareholder," said Ann M. Lipton, the Michael M. Fleishman Associate Professor in Business Law and Entrepreneurship at Tulane University Law School and associate dean for faculty research.

Also pending, Lipton said, is a Supreme Court decision in a midcase appeal from a Court of Chancery ruling in February keeping alive minority stockholder damage claims that TripAdvisor Inc. moved its charter to Nevada after an unfair vote tainted by controller clout.

"TripAdvisor, obviously, is not only important with respect to the issue of reincorporating out of Delaware as a specific problem, but it also gives the Delaware Supreme Court the opportunity to define what kinds of transactions count as "conflicted," such that cleansing is required in the first place," Lipton said.

Lingering Fallout

Others pointed to the possibility that Delaware lawmakers soon will be asked to tweak or add to some parts of last-year's tensely debated, multifaceted amendment to Delaware's General Corporation Law, largely prompted by Vice Chancellor J. Travis Laster's ruling against Moelis & Co. and its controller in a case focused on stockholder amendments that bound the company.

The first round of changes to the law were driven by corporate-side alarm and anger over the vice chancellor's ruling that found "facially invalid" most of a Moelis & Co. agreement that gave founder Kenneth Moelis board-trumping power over the global investment bank's business. Delaware's Supreme Court has yet to hear arguments on an appeal of the decision.

The corporation counsel camp and Delaware State Bar Association rushed legislation through the state's General Assembly in the spring with energetic support from the corporate bar, law professors and some litigants. Counsel supporting the DSBA's position argued that the vice chancellor's position undercut existing corporate internal governance alternatives and past court decisions.

During debate and quick passage by lawmakers, some Chancery Court jurists came under pointed criticism from the corporate counsel side during House testimony.

Rankle over Moelis, Tesla and other court actions spilled into other public forums, reaching a point where the Delaware State Bar Association recently issued a statement that it "condemns these attacks and stands in support of the Delaware judiciary."

Charles M. Elson, founding director of the University of Delaware's Weinberg Center for Corporate Governance, said the legislation "moved very quickly" with some members of the public feeling their views were overlooked.

"We don't need to have bloodletting in amending the corporate code," Elson said. "It needs to be a reasoned, dispassionate discussion."

"It felt like a cramdown," Elson added. "Any time you cram something down, you may win in the short run but the bad feelings you created, particularly in the outside world," linger.

A group of law professors writing in support of the Moelis appeal argued in a friend of the court brief that the lower court decision itself was premature, or unripe, because the targeted provisions themselves had been in place for nearly a decade and were challenged only on the face of the measures.

"Plaintiff alleged nothing suggesting there was any present dispute over that agreement. Plaintiff's claim was entirely academic, and therefore not justiciable," the brief said.

There was a noticeable circling of the wagons around Chancellor McCormick and the court itself by year's end, however, with nearly 100 legal professionals, mainly plaintiffs bar attorneys and law professors, calling on the Delaware State Bar Association to defend the state's chancellor against public attacks that Musk launched against the court.

Musk's public swipes included allegations of "absolute corruption" and characterization of the Chancellor as "totally crazy" and a "radical far left activist cosplaying as a judge."

More Power Rebalancing

Lebovitch said those who follow the courts should "think about legislative changes that are likely to be coming up" in 2025, "because that has certainly become more visible after last year, and I don't think it will go away."

While cases and pending decisions are piling up, however, the Court of Chancery is about to increase the number of magistrates in chancery to seven, one for each vice chancellor or the chancellor. As appointments moved forward, the court also elevated one veteran magistrate,, Bonnie W. David, to vice chancellor as replacement for retiring Vice Chancellor Sam Glasscock III.

Gabriel Rauterberg, a law professor at the University of Michigan's Law School, said 2025 could see continued developments on "the broader theme of whether antagonism between legal actors inside Delaware last year was a blip or augurs something more worrying, like continued boundary-pushing by the Corporation Law Council that puts the judiciary in a difficult place."

Possible post-Moelis reverberations could include reported interest in amending provisions regarding board special committee ability to dismiss stockholder derivative lawsuits.

Special committee authority drew attention earlier this year with a tentative \$123 million settlement of a stockholder derivative lawsuit challenging the scope and adequacy of a \$3.1 billion nationwide, federal court deal to substantially end all current or potential damage suits against Walmart Corp. filed by state, local and tribal governments affected by the opioid epidemic.

The \$123 million derivative Delaware Walmart settlement and proposed \$24.5 million attorney fee asserted that Walmart's officers put the company at risk by failing to ensure Walmart's pharmacies complied with laws intended to flag, reject and report suspicious opioid prescriptions.

Ripple Effects

Lipton said she is very interested in TransCanada Corp.'s appeal from a Chancery Court decision making it liable for \$199 million in damages for aiding seller fiduciary breaches in its \$13 billion acquisition of Columbia Pipeline Corp.

In the losing side's ongoing appeal of the decision, the U.S. Chamber of Commerce warned of "detrimental and expensive consequences" from the ruling against TC Energy, formerly TransCanada, arguing that it "foists a lose-lose choice upon third-party buyers" and "goes beyond existing precedent by imposing significant monetary liability on a third-party buyer for aiding and abetting fiduciary breaches" about which it was unaware.

The earlier decision awarded \$1 per share to TransCanada stockholders for the company's fiduciary breaches during the sale

"It's not only a generally unsettled question but — even though this was not the case in Columbia Pipeline — a lot of buyers are private equity firms, and they might seek to woo the CEO with post-sale benefits," Lipton said in an email. "So the question whether these efforts can tip over into aiding and abetting a fiduciary breach is an important one."

Elson said that response to the Tornetta-Musk decision has to be viewed as significant "not just for the ruling but for the blowback and the tremendous amount of pressure that the Chancellor has taken as a result, and the resilience and integrity in upholding the rule of law."

Rauterberg said recent events in some cases raise "new and difficult questions for corporate law"

regarding the growing footprint of private equity and venture capital funds in public and private markets.

"Private equity funds are obviously aggressive and sophisticated shareholders who want assurances of control," Rauterberg said. "Founders of tech startups and PE funds are behind what I take to be a lot of the boundary pushing in the last 20 years of corporate law."

Super-Sized Litigation

Chancery Court is expected to see both new and old big name, high stakes cases come into public view with the new year.

An eight-day trial is currently scheduled to begin on April 8 in a shareholder lawsuit filed in 2018. The suit accused top brass of the former Facebook social media platform, now Meta, of violating their fiduciary duties by not establishing a comprehensive privacy program as required under a 2012 consent decree from the Federal Trade Commission.

Instead of complying with the order, stockholders claimed that Meta continued to collect granular data of its users and their friends, sharing that information with other companies in exchange for advertising dollars.

This month, two pension fund stockholders notified Vice Chancellor Laster that they plan to file a derivative lawsuit on behalf of Boeing Co. asserting "Caremark" breach of the fiduciary duty of oversight claims against Boeing's board and leadership. They seek massive damages from current and former directors and officers tied to plane crashes and alleged safety breaches and oversight failures.

The claims were recently severed from a suit filed in the U.S. District Court for the Eastern District of Virginia, focused on aircraft design and upkeep faults and safety breaches involving commercial passenger jets, including an in-flight Alaska Airlines door-plug blowout on a 737 Max last January.

--Editing by Alex Hubbard.



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Trials To Watch In 2025

By **Cara Salvatore**

Law360 (January 1, 2025, 8:01 AM EST) -- The coming year will bring the first bellwether trials in the closely watched federal baby formula mass litigation, the first courtroom battle over a COVID-19 vaccine patent and six major retailers' case against Visa and Mastercard over card swipe fees.

Here are some trials to watch for in 2025:

Denmark's First Court Date in \$2B Tax MDL

January will see the first trial in the Danish government's \$2 billion tax fraud multidistrict litigation against U.S. high-net-worth individuals alleged to have created pension plan entities and used U.K. and Cayman Islands intermediaries to obtain fraudulent refunds of Danish tax withholdings.

Expected to start Jan. 7 and run for five weeks, the trial will see Denmark's Customs and Tax Administration, also known as Skat, go up against Richard and Jocelyn Markowitz, John and Elizabeth van Merkensteijn, and Robert Klugman over nearly \$477 million in tax refunds.

Klugman and Richard Markowitz, two of four partners in a company called Argre Management LLC, allegedly created "circular transactions" on paper via multiple companies and countries to obtain the refunds by falsely claiming the pension plan entities paid Denmark's 27% dividend tax on shares the plans owned in Danish companies. Many of the implicated pension entities were created for this alleged fraud, Skat claims.

An alleged sixth member of the group of defendants, Michael Ben-Jacob, settled out of the case at the end of October and is listed on the plaintiffs' witness list, along with five of the remaining defendants.

The defendants insist they placed real orders to buy shares, received word from their U.K.-based stock custodian that tax withholdings were credited to their accounts and "relied on that documentation in good faith and caused requests for refunds of withheld dividend tax to be filed with Skat which they believed were truthful in all respects."

The defendants will also tell the jury that Danish law firm Hannes Snellman advised them in 2012 to take a now-disputed investment trading strategy. A judge has previously excluded similar evidence concerning Kaye Scholer LLP, which has since merged into Arnold & Porter Kaye Scholer LLP.

The case is *In re Customs and Tax Administration of the Kingdom of Denmark (Skatteforvaltningen) Tax Refund Litigation*, case number 1:18-md-02865, in the U.S. District Court for the Southern District of New York.

Toll Road, Trucking Companies Face Texas Case Over 133-Car Pileup

Trial starts Jan. 13 over a fatal 133-car pileup outside Fort Worth, Texas, during a historic ice storm. The disaster left six people dead and many wounded, and became national news.

The victim in this trial, Tiffany Gerred, died after being hit by a FedEx truck. The so-called Gerred plaintiffs have called the crash a "foreseeable tragedy" after road operators NTE Mobility Partners LLC, NTE3 and Cintra — responsible for I-35's toll lanes — kept the blacktop open even as the ice storm grew, plaintiffs say.

FedEx, Energy Trucking, Nolan Transportation, Simon Express, Envirotech Services and Ferrovia Holding US Corp. are also named defendants.

The case is In re February 11, 2021 Incident on IH 35W, in the 153rd Judicial District Court of Tarrant County, Texas.

Rudy Giuliani Makes Case to Keep Florida Condo

Disbarred former Donald Trump lawyer Rudy Giuliani is set for trial on Jan. 16 over whether he must turn over his Florida condo and World Series rings to fund a \$148 million defamation judgment in favor of two Georgia poll workers.

The trial **will determine** if Giuliani's Palm Beach condo goes to Ruby Freeman and daughter Wandrea "Shaye" Moss, who were falsely accused by Giuliani of ballot fraud during the 2020 election. A D.C. jury awarded the \$148 million to Freeman and Moss in December 2023.

Legally speaking, the trial should be a straightforward proceeding about whether the condo is Giuliani's primary residence and thus protected by Florida homestead law. However, the central figure in the trial makes it one to watch, according to Mark Sedlander of Mancini Shenk.

"He takes the approach to litigation that we've seen in other people in the Trump orbit, in that he regularly ignores court orders, insults the presiding judge and speaks out on his own behalf, oftentimes counterproductively, during court proceedings," Sedlander said.

"This is a basic judgment enforcement action, [but] because of the litigant's tactics and who he is, there will likely be fireworks," Sedlander said.

The cases are Freeman et al. v. Giuliani, case numbers 1:24-cv-06563 and 1:24-mc-00353, in the U.S. District Court for the Southern District of New York.

Google Faces Latest Ad Tech Antitrust Trial

A Texas-led coalition of conservative state attorneys general will go to trial against Google at the end of March over accusations that it held a monopoly on online advertising, using its powerful position to block competitors in the online ad matching space.

The Texas-led suit is one of several suits by other states and the U.S. Department of Justice, advertisers and publishers. Google said in December that the case has "shape-shifted" over the course of four years and is now really one over state deceptive trade practices claims more than antitrust law.

Google and the DOJ await a ruling in a similar case from a Virginia federal judge who **heard closing arguments** at the end of November.

A major side fight in these two cases and a third in D.C., has been the plaintiffs' attempt to sanction Google over policies that, until February 2023, automatically deleted most internal company chats after 24 hours and guided employees not to discuss certain topics via email and to copy lawyers on emails in a bid to apply privilege.

Google has so far escaped sanctions, but this and other elements of the previous trials could seep into the upcoming one, said Peter Jackson of Greenberg Glusker Fields Claman & Machtinger LLP.

For the upcoming state plaintiffs, "maybe some of the remedies they will seek will have already been rejected or put in place," and the states will tune their case "informed by decisions that these other courts make," Jackson said.

The case is State of Texas et al. v. Google LLC, case number 4:20-cv-00957, in the U.S. District Court for the Eastern District of Texas.

First COVID-19 Vaccine Patent Trial on the Rocket Docket

A jury in the Eastern District of Virginia is set to start hearing claims in the first-ever COVID-19 patent trial on March 23.

Pfizer and BioNTech filed suit in July 2022 against German biotech company CureVac seeking a declaration of noninfringement of three CureVac patents. But CureVac has since filed counterclaims that add seven more of its patents to the case and has **recently argued** it should actually be deemed the plaintiff.

BioNTech and Pfizer claim CureVac failed to develop its own COVID-19 vaccine and tried to profit off the success of their vaccine through litigation.

The case is BioNTech SE et al. v. CureVac SE, case number 2:23-cv-00222, in the U.S. District Court for the Eastern District of Virginia.

Harvey Weinstein Headed for Trial on Two Coasts

Harvey Weinstein is set for a civil trial on March 24 in Los Angeles and a criminal retrial as early as March in New York over claims of sexual assault.

The civil lawsuit is brought by Jane Doe 1, an anonymous Italian model whose rape allegations were the basis for Weinstein's **California criminal conviction** in December 2022.

Doe testified in Weinstein's Los Angeles criminal trial that he raped her in a Beverly Hills hotel room in 2013. Weinstein continues to deny assaulting Doe and is appealing his California conviction and resulting 16-year prison sentence.

Meanwhile, after New York's highest court wiped Weinstein's separate Empire State rape conviction and 23-year prison term, a judge **consolidated that retrial with new charges** that Weinstein forced oral sex on an unnamed woman in 2006.

Any additional accuser "is persuasive to jurors," former prosecutor Julia Jayne of Jayne Law Group PC told Law360. "The more people saying it, the more it seems credible."

Weinstein uses a wheelchair and has various health conditions, including leukemia and heart failure, according to his lawyers. He has sued the city of New York for medical neglect at Rikers Island.

The cases are Jane Doe 1 v. Harvey Weinstein, case number 23SMCV00591, in the Superior Court of the State of California, County of Los Angeles, and New York v. Weinstein, case numbers 74118/2024 and 02335/2018, in the Supreme Court of the State of New York, County of New York.

Baby Formula Makers Face First Federal Bellwethers

The first three bellwether trials are set for May 5, Aug. 11 and Nov. 3 in a federal multidistrict litigation over claims that premature babies developed necrotizing enterocolitis, or NEC, because they were fed cow's-milk-based formula in the hospital. A fourth trial is set for February 2026.

The trials have been previewed to some extent by closely watched bellwethers in state court. The first state juries to hear the claims against the two major formula makers, Abbott and Mead Johnson, hit the companies **with large verdicts**. More recently, the first joint trial against both companies resulted in a **defense verdict**. The companies have argued that while human milk may be better for babies, it does not mean there's anything harmful in cow's-milk formula.

The case is Hall v. Abbott Laboratories, case number 1:22-cv-00071, in the U.S. District Court for the Northern District of Illinois.

New Jersey Seeks to Put DuPont on the Hook for \$1B PFAS Plant Cleanup

Trial is set for June 2 in the state of New Jersey's case seeking \$943 million from DuPont for remediation stemming from the massive Chamber Works plant and three other plants in consolidated litigation over alleged discharges of per- and polyfluoroalkyl substances and perfluorooctanoic acid, also known as PFAS and PFOA or "forever chemicals."

The state Department of Environmental Protection says E.I. du Pont de Nemours and Co. has attempted to limit its environmental liabilities through the 2015 spinoff of Chemours Co., which itself has allegedly provided "woefully inadequate" estimates for a cleanup that the state expects will take decades. Chemours has told Law360 the state's cleanup estimate is excessive.

The companies haven't fully delineated the extent of the contamination, the DEP said, but the chemicals have been found in drinking water miles away.

Pete Nyquist, Greenberg Glusker's environmental practice chair, said PFAS damages have already hit \$20 billion nationwide and are projected to go as high as \$100 billion. He said this case will be an important test of the legal theory behind New Jersey's suit.

"The state of New Jersey is effectively trying to attach liabilities not only against Chemours but against DuPont itself, and that would be a really significant development if they're successful in pursuing that strategy," Nyquist said.

The cases are New Jersey Department of Environmental Protection et al. v. E.I. du Pont de Nemours and Co. et al., case numbers 2:19-cv-14758, 1:19-cv-14765, 1:19-cv-14766 and 3:19-cv-14767, in the U.S. District Court for the District of New Jersey.

Tesla Factory Faces Bias Claims from 6,000 Black Employees

A certified class action by Black workers alleging Tesla allowed racial discrimination to run rampant at a Fremont, California, factory is set for a three-to-five-week trial in September.

Lead plaintiff Marcus Vaughn says he and nearly 6,000 current or former Tesla workers who self-identified as Black or African American — a class the judge certified earlier this year — experienced a "hotbed for racist behavior" at their workplace, including frequent use of racial epithets and management ignoring racially offensive graffiti.

Tesla is also facing a 2022 lawsuit in state court by the California Civil Rights Department and a U.S. Equal Employment Opportunity Commission lawsuit filed in September 2023 in federal court.

The class action is set to resolve some classwide fact issues and injunctive relief. However, workers seeking monetary damages will have to sue separately, and some may be bound by arbitration agreements, the presiding judge has said.

The case is Marcus Vaughn v. Tesla Inc., case number RG17882082, in the Superior Court of the State of California, County of Alameda.

Visa and Mastercard Head to Court Over Target, Macy's Swipe Fees

Visa and Mastercard are set for a six-week trial on Oct. 20 on claims they overcharged Target, Macy's, T.J. Maxx and three other retailers as part of a long-running multibillion-dollar antitrust battle between the card companies and some 60 chain store plaintiffs.

The six plaintiffs in the October trial, which include Marathon Petroleum, Circle K and the Gap, additionally accuse Citigroup, Bank of America, JPMorgan Chase, Wells Fargo and other banks of antitrust violations.

The nearly 20-year-old case involves claims that the card companies conspired to maintain a set of rules that allowed them to overcharge merchants via interchange and "network" fees whenever customers swiped. The cases are widely seen as posing potential liability in the range of tens of billions of dollars.

The defendants have said the case isn't legitimate because the store plaintiffs "do not pay such fees directly, and instead pay them to intermediaries in the payments chain." That would make them indirect purchasers who have no standing, the defendants have argued.

The cases are 7-Eleven et al. v. Visa et al., case number 1:13-cv-04442, and Target et al. v. Visa et

al., case number 1:13-cv-03477, in the U.S. District Court for the Southern District of New York.

--Editing by Drashti Mehta.

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