

Enphase Leadership Sued Over Plan to Counter Europe Competition

By Gillian R. Brassil

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** [No. 4:24-cv-09532](#) (Bloomberg Law subscription)

Enphase Energy Inc. executives didn't properly address competition in the European solar technology market, causing the stock's biggest drop of the year and exposing it to a proposed class action, a shareholder derivative lawsuit says.

As cheaper Chinese products flooded the European market in 2023 and 2024, Enphase leadership downplayed the competition and overstated the strength of its pricing strategies, says shareholder Abdul Hirani in the complaint filed on Dec. 31 in the US District Court for the Northern District of California's Oakland Division.

But on Oct. 27, 2023, Enphase reported softening demand in Europe had caused a 34% quarter-over-quarter decline in continental revenue, leading to a 15% stock slide, Hirani says. And a year later, Enphase reported a 15% quarter-over-quarter decline in European revenue when releasing third quarter 2024 financial results, sending share prices down 15% to close at \$78.47 on Oct. 23, the complaint says. That was the stock's worst selloff of 2024, according to data compiled by Bloomberg.

Executives' allowed the company to issue misleading statements about staying ahead of the competition, exposing it to a proposed class action filed in December, Hirani says. They also violated Enphase's code of conduct, he says.

Hirani alleges the officers violated federal securities law and helped each other breach their fiduciary duties, among other claims, and seeks damages against them.

It's the third shareholder derivative action filed against Enphase directors in the Northern District this year. The two prior have been consolidated and stayed pending litigation in another proposed investor class action in the court's San Francisco division. These cases concern different allegations about slowing battery shipments and other issues that led to an April 2023 stock plummet.

Wolf Haldenstein Adler Freeman & Herz LLP, Rigrodsky Law PA, and Grabar Law Office represent Hirani. They didn't respond to a request for comment.

Enphase didn't respond to an email seeking comment. Neither did the firm representing Enphase in the proposed class action, Latham & Watkins LLP.

The case is *Hirani v. Kothandaraman*, N.D. Cal., No. 4:24-cv-09532, complaint filed 12/31/24 .

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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

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MaxLinear Beats Investor Suit on Failed Merger Claims for Now

By Gillian R. Brassil

- Judge points to Ninth Circuit decision on securities suits
- Plaintiffs suing MaxLinear lack standing, can amend complaint

MaxLinear, Inc. overcame another securities law challenge for now that said its executives artificially inflated the stock price of the company it failed to merge with in 2023, a federal judge ruled.

HBK Master Fund LP. and HBK Merger Strategies Master Fund LP. lacked standing to sue because they weren't holding MaxLinear stock—they were holding American Depositary Shares of the Taiwan-based company that it proposed a merger with, Silicon Motion Technology Corp., Judge Cathy Ann Bencivengo said in granting the chip maker's motion to dismiss on Thursday. She is allowing the funds to amend their complaint in the US District Court for the Southern District of California.

Bencivengo pointed to an August Ninth Circuit decision in a case over a special purpose acquisition company merger that said in order to sue for securities fraud, the plaintiff has to have had the company's stock about which any supposed misrepresentations were made.

The statements in question concerned MaxLinear, she wrote, not Silicon Motion shares, known as SIMO.

"The bottom line is that there is no allegation in the complaint that anyone made any representations about SIMO securities," Bencivengo said in her order. "The Ninth Circuit has set a bright-line rule that the 'security' at issue must be one about which the alleged misrepresentations were made. The Ninth Circuit has imposed this rule despite the result that such a bright-line may 'prevent some deserving plaintiffs from recovering damages.'"

In addition, the funds failed to state a claim regarding specific statements on a federal form because, Bencivengo said, that document "cannot, as a matter of law, mislead anyone."

Originally, the funds wanted to be the lead plaintiff in a parallel proposed class action lawsuit before Bencivengo. After that request was denied, the funds sued separately in June, alleging that MaxLinear and executives wrongly inflated SIMO shares by seemingly intending to go through with a proposed merger while secretly aiming to let the agreement dissolve.

Bencivengo dismissed the other case's consolidated complaint in August following the Ninth Circuit decision. Investors filed an amended complaint against MaxLinear, adding Silicon Motion and executives, in September.

In the funds' case, Morrison & Foerster LLP represents MaxLinear. Duckor Metzger & Wynne and Rolnick Kramer Sadighi LLP represent the funds. Neither side's counsel responded to emails seeking comment.

The case is HBK Master Fund L.P. v. Maxlinear, Inc. , S.D. Cal., No. 3:24-cv-01033, 1/2/25 .

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Musk, Moelis Appeals Loom Over Delaware's Corporate Caseload

By Jennifer Kay and Mike Leonard

- Big ruling for Facebook senior leaders is also expected
- Corporate law changes appear less contentious for 2025

The feud between the world's richest man and an overworked court in one of the country's smallest states can only intensify in 2025.

That's Elon Musk's choice. He lost big—twice—in the Delaware Chancery Court last year over his record-breaking CEO pay package at Tesla Inc. Instead of having Tesla start over on a deal in the electric vehicle maker's new home state of Texas, he'll appeal the decisions voiding his \$56 billion compensation pact in Delaware.

At the same time, he'll have Delaware in his sights as he takes on the role of government efficiency czar for President-elect Donald Trump. He's already floated the idea of federalizing corporate law in thinly veiled threats of "corrective action" against "egregiously wrong legal judgments in a single state."

The appeal may ponder novel legal quandaries such as the extent to which Musk's "superstar CEO" status effectively made him Tesla's controlling stockholder; the adequacy of public disclosures about a process he famously described as "negotiating against myself"; and the unprecedented effort to override a landmark court decision with a shareholder vote. Three Florida shareholders filed a notice of appeal to the Delaware Supreme Court on Dec. 31.

Then there's the matter of pay packages for Tesla board directors. In a separate case, Tesla awaits approval of a settlement that would see Musk and other directors return stock options worth up to \$735 million and forgo three years of pay. Tesla also would have to change the way board-level compensation issues get reviewed.

Several other high-profile rulings are expected in Delaware as the new year begins.

New Year, Same Fears

Attorneys and law professors debated extensively in 2024 whether Delaware's robust body of legal precedent and roster of specialist judges offer a measurable premium to shareholders. The Delaware Supreme Court may stick a price tag on incorporation in the state in an upcoming ruling on TripAdvisor Inc.'s relocation to Nevada.

The travel company appealed a Chancery Court opinion finding that its controlling stockholder, Greg Maffei, would be liable if the move reduced corporate value. The ruling could smooth the way for corporate bigwigs drawn to Nevada's "no liability" reputation—or create roadblocks for corporate leaders thinking about following Musk's companies out of state.

Ahead of a trial scheduled in April, two former Facebook directors face sanctions over the deletion of personal emails about the Cambridge Analytica scandal and the \$5 billion federal fine the platform paid to resolve a privacy probe.

Legislative and Courtroom Changes

Another big name in Chancery Court last year was Moelis, after the court struck down most of a stockholder agreement between investment bank Moelis & Co. and its billionaire founder. Uproar over that decision, viewed as proof that Delaware is increasingly hostile to the flexible arrangements that attract superstar founders and venture-backed startups, culminated in swift statutory changes allowing companies to adopt any form of governance by stockholder pact that's permitted in their charters.

Arguments haven't yet been scheduled in the *Moelis* appeal, but competing camps are already debating in amicus briefs. One side says it's "a case that should not have been decided," while the other warns against creating "a back door to enact a sweeping transformation of the way that Delaware's corporate law gets made."

More proposed corporate law amendments appear less contentious. These aim to override a federal appeals court decision in a case involving Gap Inc. that allowed companies to adopt bylaws pushing federal securities claims into Chancery Court—which lacks jurisdiction to hear them.

Negative headlines concerned lawmakers in a Dec. 16 hearing to confirm the nomination for the court's next vice chancellor. "Consistency is key," Delaware Sen. Brian Pettyjohn (R) said to Bonnie W. David. Knowing that she agreed would "help cement our position despite some of the flak that might be coming from one side or the other," he said.

David said headline-making lawsuits won't sway her judgment. "Our job is to decide as few issues as possible, as narrowly as possible, so that the common law develops slowly, consistently, and predictably," she said.

She had been serving as a Magistrate in Chancery, a position created to alleviate the court's ever-growing caseload of corporate disputes, along-with traditional equity cases such as guardianships and wills. The docket's so packed that corporate lawyers arguing before the judges based in Wilmington, Del., may find themselves in unfamiliar courtrooms re-purposed from other judicial departments to keep the Chancery Court schedule on track. Another new magistrate will replace David, and court officials plan to request funding for two more.

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Apple Agrees to Pay \$95 Million Settlement in Siri Voice Assistant Privacy Class Action



law.com/therecorder/2025/01/03/apple-agrees-to-pay-95-million-settlement-in-siri-voice-assistant-privacy-class-action-

Kat Black

What You Need to Know

- Apple was hit with a proposed privacy class action in 2019.
- The complaint alleged that its voice-activated feature Siri illegally recorded users' private communications without their consent and shared them with third parties.
- Apple agreed to a \$95 million settlement that is still subject to court approval.

Apple has agreed to pay a \$95 million settlement to resolve 5-year-old claims that its voice-controlled digital assistant Siri eavesdropped on Apple product users' conversations without their consent.

According to a class action filed in 2019, Apple has consistently violated California's "wiretapping" statute since the product debuted in October 2011 by "unintentionally" collecting unauthorized recordings from Siri, which misinterpreted various sounds and words for the specific vocal triggers that are designed to activate it.

If approved, the proposed settlement, filed Tuesday in Oakland federal court, will require Apple to confirm that it has scrubbed all Siri audio recordings aggregated before October 2019 within six months of the settlement date.

Class members can expect a pro rata payout of up to \$20 per Siri device, depending on the number of devices claimed, and plaintiffs counsel can petition the court for up to \$29.6 million from the settlement fund to remunerate fees and costs. Apple posted a quarterly revenue of \$94.9 billion in its Q4 2024 earnings report.

The original class action, filed on Aug. 7, 2019, in San Jose federal court, aired concerns about the potential misuse of voice biometric data and alleged that Apple had breached California's Invasion of Privacy Act, California's Unfair Competition Law, the California Consumers Legal Remedies Act and the Declaratory Judgment Act. One of the lead plaintiffs named in the complaint was a minor.

"Plaintiffs and Class members reasonably expected, based on Apple's representations, that Apple was not recording them unless they uttered one of the wake phrases," it stated.

Siri uses voice recognition software and artificial intelligence to answer questions, retrieve information and perform a variety of tasks, such as replying to texts, sending reminders or playing music on iPhones and other Apple devices. In 2014, Apple enabled Siri's activation using the spoken phrase "Hey, Siri"; the feature also responds to the abbreviated "Siri." Users can also manually switch Siri on by pressing and holding down the "home button" on Apple devices.

According to court records, the claim was filed less than a month after the U.K.-based newspaper The Guardian reported, based on an anonymous source, that Apple employees routinely reviewed private user communications such as "confidential medical information, drug deals and recordings of couples having sex" as part of their "quality control" work on the Siri feature (which Apple calls "grading"). Siri recorded these details after unintentionally mistaking other noises (such as the sound of a zipper) for the "Hey, Siri" wake phrase, it said.

In a response to The Guardian, Apple said that "less than 1% of daily Siri activations are used for grading" and "user requests are not associated with the user's Apple ID."

In a statement subsequently published on its website, the company apologized for not "fully living up to our high ideals" and emphasized that it believes "privacy is a fundamental human right," echoing sentiments espoused by CEO Tim Cook during the congressional grilling of Meta CEO Mark Zuckerberg about consumer privacy in the wake of the 2018 Cambridge Analytica scandal. It announced that it would temporarily halt the Siri "grading" process, allow users to opt in or out of providing audio recordings to Siri for training purposes and strive to "delete any recording which is determined to be an inadvertent trigger of Siri."

The plaintiff class, which comprises all U.S. residents whose private communications were recorded or shared with third parties without their permission after they inadvertently triggered the "Hey, Siri" function between Sept. 17, 2014, and Dec. 31, 2024, on their Apple devices, is represented by Lexington Law Group, Lowey Danneberg and Scott + Scott Attorneys at Law. The firms did not immediately respond to phone calls and emails seeking comment on Thursday.

A similar class action against Google and its parent company, Alphabet, concerning the voice-activated Google Assistant feature is pending in the U.S. District Court for the Northern District of California, San Jose Division. Amazon's virtual assistant Alexa has also attracted intense media scrutiny after reports of its employees reviewing up to 1,000 audio clips from Alexa a day surfaced in 2019.

According to court documents, plaintiffs counsel has requested a Feb. 14, 2025, hearing before presiding U.S. District Judge Jeffrey White in the U.S. District Court for the Northern District of California in Oakland.

Apple and its counsel at DLA Piper and Morrison & Foerster did not respond to requests for comment.

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Apple to pay \$95 million in settlement over Siri eavesdropping

[courthousenews.com/apple-to-pay-95-million-in-settlement-over-siri-eavesdropping](https://www.courthousenews.com/apple-to-pay-95-million-in-settlement-over-siri-eavesdropping)

Matt Simons

Apple CEO Tim Cook speaks during an announcement of new products on the Apple campus in Cupertino, Calif., Monday, June 10, 2024. (AP Photo/Jeff Chiu)

OAKLAND, Calif. (CN) — There's no way to start off the New Year like a seven-figure settlement.

Apple agreed to pay \$95 million to settle a class action accusing the tech company of eavesdropping on users who accidentally activated the virtual assistant Siri on their iPhones and other Apple devices. The settlement, which has yet to be approved by a judge, will close the chapter on more than five years of legal battles with the Silicon Valley giant.

Besides the hefty price tag, the agreement also requires Apple to permanently delete any relevant individual audio recordings the company collected before October 2019 within six months of its approval.

Apple didn't acknowledge any wrongdoing in the settlement, filed Tuesday in the Northern District of California.

Attorneys for Apple did not immediately respond to a request for comment.

After just over five years in court, attorneys for both sides sat down for negotiations in October.

As part of the settlement, tens of millions of consumers who owned iPhones, iPads and other Apple devices from Sept. 17, 2014, through the end of 2024 are eligible to file claims.

Each consumer could receive up to \$20 per Siri-enabled device covered by the settlement, although the payment may vary based on the amount of claims submitted. Consumers will be limited to five devices for their claims.

Only 3% to 5% of eligible consumers are expected to file claims, according to court documents.

Of the total \$95 million, the case's attorneys may seek up to \$28.6 million to cover their fees and other costs. The case's lead plaintiffs could also earn up to \$10,000 each as compensation for their time and effort serving as class representatives.

Class members are expected to be contacted about the settlement via email information provided by Apple. A settlement administrator also plans to publicize it via a print and digital media campaign.

The lawsuit, originally filed in 2019, claimed that Apple violated users' privacy by recording their private conversations through Siri without being prompted via its typical voice command of "Hey, Siri!" or through a button press. However, users aren't typically aware that humans and not just computers are reviewing audio.

The plaintiffs further claimed that Apple disclosed these conversations to human third-party contractors to review them to improve Siri or otherwise shared the data with advertisers to improve their ad targeting.

Around the time the lawsuit was filed, The Guardian reported the conversations being reviewed included confidential medical information, drug deals and recordings of couples having sex.

Shortly after, Apple issued an apology, saying it reviewed its practices and would be suspending any further listening by humans.

"As a result of our review, we realize we haven't been fully living up to our high ideals, and for that we apologize," the company said in 2019.

The settlement still must be approved by U.S. District Judge Jeffrey S. White, a Bush appointee, before it can take effect.

A hearing for the settlement is scheduled for early February.

Courthouse News reached out to the plaintiffs' attorneys for comment, but none could be reached by press time.

Experts predict growth in data brokering and breach cases

[dailyjournal.com/articles/382727](https://www.dailyjournal.com/articles/382727)

Data Privacy,
Civil Litigation

Jan. 3, 2025

California courts anticipate more data privacy lawsuits in 2025, focusing on data brokering and breaches, driven by new laws and public awareness. Experts highlight the trend's growth and strategic litigation.



California courts will see an increase in data privacy litigation in 2025, attorneys across the legal landscape predict. These cases would build on last year's trend that saw lawsuits filed against some of the world's largest companies including Google LLC and Meta Platforms.

California, one of nine states with consumer privacy laws on the books, was the venue for some of these major cases.

In Santa Clara County Superior Court, thousands of mass tort lawsuits were filed against Google LLC in 2024. One of them is *Newman et al. v. Google LLC*, 24CV443288 (Santa Clara Super. Ct. filed July 16, 2024).

Meanwhile, Meta is battling a multidistrict litigation before U.S. District Judge William Orrick in San Francisco that consolidates cases accusing the company of selling its pixel advertising technology to others, who use it to collect sensitive private information. *In re Meta Pixel Healthcare Litigation*, 3:22-cv-03480 (N.D. Cal. filed June 17, 2022).

In general, California legal professionals have seen two types of lawsuits increase in 2024 that they believe will continue to grow in 2025: cases challenging companies' use of pixels and cookie technology for advertising purposes, sometimes referred to as "data brokering," and cases seeking to hold companies liable for data breaches.

Rebecca Delfino, a professor at Loyola Law School who studies and monitors trends in data privacy litigation, explained why she believes the trend will continue to go up. "So, it's sort of this perfect storm of new laws, new requirements on business, and then also, you know, lawyers and consumers also reading the laws and saying, 'Hey, what are you collecting about me? What are you doing with it?'" Delfino said.

Thomas E. Loeser, who heads the Data Breach Practice Group for Cotchett Pitre & McCarthy LLP, opined that the data breach lawsuits have been "commoditized" by law firms monitoring breach notices from companies, or state attorneys general.

"There are firms out there that seem to file a case with every single reported data breach, irrespective of the size or the data involved, because companies have insurance coverage and there's a lot of settling going on," said Loeser, who is based in Seattle.

Noting the different motives for cases filed against larger companies, as opposed to smaller companies with data breaches, Loeser explained, "Nobody expects those cases to be rushed into settlement. ... The purpose of these cases is to change the mindset of the corporations so that they do allocate more money to this super valuable asset they get from their customers, which is their information."

Loeser added, "People say, 'Oh, it's just a money grab thing.' No, there is a real, important purpose here and that's to change behavior. Until it costs the corporations money not to change the behavior they won't do it. But they will do it if they start to see that it's really going to be expensive if they don't do enough."

Loeser is currently representing plaintiffs in two multidistrict litigation actions against large corporations involving California consumers related to both data brokering and data breaches.

Loeser and his firm filed a lawsuit against AT&T Inc. last April 19 in the Northern District California three weeks after the telecommunications giant announced that a security breach had compromised the personal data of 7.6 million current and 65.4 million former account holders. *Vita et al. v. AT&T, Inc. et al.*, 5:24-cv-02356 (N.D. Cal. filed April 19, 2024).

That case has been transferred to the Northern District of Texas as part of the multidistrict litigation against AT&T.

Additionally, Loeser is part of the plaintiffs' legal team in a pending MDL action stemming from claims that General Motors LLC intercepted and sold "petabytes" of driving data from 16 million GM customers by "misappropriating" OnStar LLC technology that is pre-installed in GM's vehicles. This information was used by third party purchasers, such as Lexis Nexis Inc. and Verisk Analytics Inc. to compile data reports that were sold to car insurance companies, the lawsuit claims.

Three of the lead plaintiffs in the MDL action are California residents. *In re: Consumer Vehicle Driving Data Tracking Collection*, 1:24-md-03115 (N.D. Georgia, filed June 7, 2024).

Michelle Hon Donovan, a San Diego partner for Duane Morris LLP who defends companies against data privacy suits, said she saw an increase in 2024 of lawsuits claiming companies collected and sold consumer data.

Most of what she has seen is a continuation of the trend that started almost three years ago. "They're brought under basically these ancient wiretapping laws ... passed back in the '60s," Donovan said. "These plaintiffs' attorneys are leveraging this ancient law to basically try to apply it to new technologies."

The law Donovan was referring to is the California Invasion of Privacy Act, or CIPA, which was passed in 1967 and has been used in recent years to challenge companies' use of tools such as tracking pixels and cookies to gather information from website visitors and sell that information to advertisers to create targeted advertisements.

"Now pixels and cookies, what we call website tracking technology, is the new flavor of the day," Donovan said. "The idea is that the use of this tracking technology constitutes a recording and then the cookies and pixels work together to send information to third parties who then use it for analytics purposes for targeted advertising. That's the newest thing that we're seeing."

Lennette Lee, a Los Angeles partner for King & Spalding LLP who often defends companies against consumer class actions, said she "doesn't quibble with" the public's concern about data privacy but said a lot of lawsuits filed under CIPA make unprovable claims.

"I feel like it's a bit of a square peg, round hole situation, because, you know, the complaints are necessarily high level," Lee said. She acknowledged, "It doesn't take a whole lot to get past the motion to dismiss phase. ... "I think there's an advantage in [plaintiffs] pleading, 'Oh, data is being recorded, and it's my data, and I don't want that, and I didn't consent to it, and I didn't know about it.' But then once you get into the nitty gritty details of how it actually works, it's difficult for them to ultimately prove."

Lee's firm, however, recently secured summary judgment on behalf of Converse Inc. against all but one of the claims in a putative class action by consumers who accused the shoemaker of illegally collecting IP addresses and other personal data from users of the chat bot on the company's website.

U.S. District Judge Kenly Kato's order from July 12, 2024, granted Converse's summary judgment motion on the direct California Invasion of Privacy Act claims and the plaintiff's claim for a violation of California's Comprehensive Computer Data Access and Fraud Act. Kato declined to grant summary judgment for the plaintiff's claim that Converse was "aiding

and abetting" Salesforce's violation of CIPA. Salesforce is the company that operated the chatbot on Converse's website. The plaintiffs are appealing Kato's order. *Gutierrez v. Converse*, 24-4797 (9th Cir. Filed Aug. 6, 2024).

#382727

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Big Oil makes last push for SCOTUS intervention in climate change case

 legalnewsline.com/stories/667397856-big-oil-makes-last-push-for-scotus-intervention-in-climate-change-case

January 3, 2025

Climate Change

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WASHINGTON (Legal Newsline) - Oil companies have made their final plea for help from the U.S. Supreme Court as they battle a Hawaii ruling that kept alive a lawsuit that seeks to hold them liable for the effects of climate change.

Defendants like Exxon and Chevron on Christmas Eve replied to a brief filed by the Biden Administration through U.S. Solicitor General Elizabeth Prelogar, who urged SCOTUS to allow local and state governments who have allied with private lawyers working on contingency fees to sue the oil industry.

At issue is whether state court judges should have the power to essentially impact the international energy market. Twenty Republican state attorneys general argue the Hawaii case involves questions of interstate and international law that can only be decided by Congress or in federal courts.

The Supreme Court is expected to soon decide whether it will hear the case.

"The Hawaii Supreme Court's decision flatly contradicts U.S. Supreme Court precedent and other federal circuit court decisions," said Chevron lawyer Theodore Boutrous, Jr., of Gibson, Dunn and Crutcher.

"In dismissing a nearly identical lawsuit, the Second Circuit held, 'such a sprawling case is simply beyond the limits of state law.' The Supreme Court should grant review now to prevent pointless harm to our nation's energy security."

Years ago, two separate federal judges dismissed some of the earliest-filed of these cases, finding it inappropriate to ask courts to decide issues of international energy policy. Those dismissals were undone by the U.S. Supreme Court later when it held the cases belong in state courts around the country.

Lawyers at firms like Sher Edling filed their complaints to plead violations of state consumer protection and public nuisance laws. In Hawaii, the state Supreme Court has allowed their case to move past a motion to dismiss, leading to Big Oil's appeal.

The defendants' argument got some ammo last year when a Baltimore judge tossed the city's case, finding the lawsuit "is entirely about addressing the injuries of global climate change" and not about a "deceptive misinformation campaign."

The defendants point also point out that the solicitor general's brief concedes they may ultimately prevail on the argument that the Constitution precludes the plaintiff's state-law claims seeking damages for interstate and international greenhouse-gas emissions.

"In addition, the Clean Air act preempts claims for transboundary pollution under a traditional preemption analysis," the defendants' brief says.

"The government acknowledges that the Act may 'limit the scope of respondents' claims or the relief that could be granted' but it ultimately takes the position (without elaboration) that the Act does not 'categorically preempt respondents' claims.'

"That position, the government acknowledges, is a reversal from its earlier position that analogous suits were preempted by the Clean Air Act. The government's only explanation for its about-face is the implausible assertion that it did not previously consider that some of the claims were based, in part, on alleged deception."

The claims of consumer deception are ludicrous, legal scholars Richard Epstein and John Yoo argued in an amicus brief to the Supreme Court. Under Honolulu's theory, the oil companies have damaged the city by conducting a "disinformation campaign" that caused consumers worldwide to burn more fossil fuels than they would have, had they known the true risks of global warming.

Honolulu claims the oil companies "are in possession of information on global warming of which the plaintiffs are ignorant," Epstein and Yoo wrote. "But nothing could be further from the truth. Information about climate change is a matter of public knowledge and can be obtained from many different sources, each with its own distinctive perspective."

Baltimore judge Videtta Brown said the litigation goes beyond the limits of Maryland law, or whatever state other cases are filed in. Most municipalities and states that have filed suit are near oceans, though Boulder, Colo., has also sued.

"The explanation by Baltimore that it only seeks to address and hold Defendants accountable for a deceptive misinformation campaign is simply a way to get in the back door what they cannot get in the front door," she wrote.

ORGANIZATIONS IN THIS STORY

Litigation

Jan. 3, 2025, 8:13AM PST; Updated: Jan. 3, 2025, 9:07AM PST

California Kids' Social Media Addiction Law Blocked by Court (1)

By Sam Skolnik

- Only circumstances of 'unusual magnitude' justify injunction
- Speech issues raised by law 'novel, difficult, and important'

A federal judge fully blocked a California law designed to protect the state's children from social media addiction until Feb. 1 while the case is pending in the Ninth Circuit, finding that First Amendment issues raised by the law are novel and difficult.

The court granted NetChoice's motion for an injunction pending appeal of a Dec. 31 ruling that partially blocked the Protecting Our Kids from Social Media Addiction Act, which regulates how minors access addictive, algorithm-operated "personalized feeds" on social media platforms.

Given that the law, officially known as SB 976, "can fundamentally reorient social media companies' relationship with their users, there is great value in testing the law through appellate review," said Judge Edward J. Davila of the US District Court for the Northern District of California in a Thursday order.

Davila enjoined California Attorney General Rob Bonta (D) from enforcing the entirety of SB 976 until Feb 1. If the US Court of Appeals for the Ninth Circuit hasn't extended the injunction pending appeal or issued its own by then, "this injunction shall dissolve" and the more limited injunction he issued in his Dec. 31 preliminary injunction order will take effect, he said.

Davila's Dec. 31 ruling would have allowed the core component of the law to take effect, namely restricting minors from accessing social media platform that use personalized feeds without parental consent.

The circumstances must be of "unusual magnitude" to justify a district court granting an injunction pending appeal after denying a preliminary injunction, Davila said. Only when the legal question raised is "particularly important" should a district court consider such a course of action, he said.

"That is the case here," Davila said. The First Amendment issues raised by SB 976 "are novel, difficult, and important, especially the law's personalized feed provisions," he said.

Davila said he doesn't believe NetChoice, a tech industry trade group, has shown that SB 976 in its "entirety violates" the First Amendment. But if they're in fact correct, "its members and the community will suffer great harm from the law's restriction of speech," he said.

"Likewise, if NetChoice is correct in its argument, the public interest would tip sharply in its favor because there is a strong interest in maintaining a free flow of speech," Davila said.

NetChoice Associate Director of Litigation Paul Taske said the group is glad the court agreed to temporarily stay the ruling. "We look forward to seeing California in the Ninth Circuit to yet again stop the state from creating an online censorship regime," he said.

The California AG's office didn't immediately return a request for comment.

Lehotsky Keller Cohn LLP, Benbrook Law Group PC, Baker Botts LLP, and Latham & Watkins LLP represent NetChoice.

The case is NetChoice v. Bonta , 2025 BL 879, N.D. Cal., No. 5:24-cv-07885, order 1/2/25

(Adds comment from NetChoice in tenth paragrah.)

– With assistance from Isaiah Poritz.

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Judge grants temporary injunction against California's social media notification law

DJ [dailyjournal.com/articles/382730-judge-grants-temporary-injunction-against-california-s-social-media-notification-law](https://www.dailyjournal.com/articles/382730-judge-grants-temporary-injunction-against-california-s-social-media-notification-law)

Constitutional Law,

Civil Litigation

Jan. 3, 2025

The decision comes two days after Senior U.S. District Judge Edward J. Davila allowed part of SB 976 to go into effect after denying a facial challenge to its constitutionality.



A federal judge in San Jose on Thursday afternoon temporarily enjoined enforcement of a state law that would bar social media companies from sending unsolicited notifications to minors without the consent of a parent or guardian to go into effect.

Senior U.S. District Judge Edward J. Davila granted the injunction two days after he allowed part of the state law, SB 976 to go into effect after denying a facial challenge by a technology trade group, NetChoice LLC, to its constitutionality.

"As the Court detailed in its preliminary injunction order, the First Amendment issues raised by SB 976 are novel, difficult, and important, especially the law's personalized feed provisions," he wrote in Thursday's opinion.

"If NetChoice is correct that SB 976 in its entirety violates the First Amendment --although the Court does not believe that NetChoice has made such a showing on the current record -- then its members and the community will suffer great harm from the law's restriction of speech," Davila continued.

"Given that SB 976 can fundamentally reorient social media companies' relationship with their users, there is great value in testing the law through appellate review," he added. *NetChoice LLC v. Bonta*, 24-CV-07885 (N.D. Cal., filed Nov. 12, 2024).

But Davila's reprieve for the trade group, which represents companies such as Meta Platforms Inc., which runs Facebook and Instagram, and Alphabet Inc., which operates YouTube, may be short-lived.

The injunction was granted until Feb. 1 to give the 9th U.S. Circuit Court of Appeals, which is already considering NetChoice's appeal of Davila's Tuesday order, an opportunity to decide whether to extend his injunction of the entire law or to issue one of its own.

If the 9th Circuit does not do so, Davila's Tuesday ruling - which upheld much of the law while enjoining two of its provisions - would go back into effect, the judge ruled.

In his Tuesday order, Davila - an appointee of President Barack Obama - rejected the trade group's facial challenge of the law.

"In short, much of the First Amendment analysis depends on a close inspection of how regulated feeds actually function," Davila wrote in Tuesday's ruling. "Because NetChoice has not made a record that can be used to address these important questions, it has not met its burden to show facial unconstitutionality."

But Davila found that NetChoice is likely to succeed on its First Amendment challenges to SB 976's notification provisions and requirement that companies disclose the number of minor users of their platforms.

On Wednesday, NetChoice filed a motion asking Davila to enjoin enforcement of SB 976, arguing that it is likely to prevail on appeal and that its members would be harmed in the meantime.

"In fact, Defendant has now asserted the sweeping power that California could basically ban all personalized feeds on the world's major social media websites - including those for adults," Steven P. Lehotsky, a partner with Lehotsky Keller Cohn LLP, wrote Thursday.

"Accordingly, the Ninth Circuit should be allowed to weigh in before Defendant can begin immediately enforcing" the law," he added in a reply brief.

Deputy Attorney General Christopher J. Kissel wrote, in a brief filed Wednesday, that NetChoice has not satisfied the requirements for emergency relief.

"Nothing has changed in the day that has elapsed," he wrote. "Plaintiff does not proffer any new argument or additional evidence to demonstrate that it is likely to prevail on the merits of its claims or that it would suffer irreparable harm absent emergency relief."

SB 976, written by state Sen. Nancy Skinner, D-Berkeley and signed into law by Gov. Gavin Newsom in September, is one of several statutes to impose new requirements on social media companies due to concerns that children are being harmed by staying online late at

night and during school hours.

NetChoice sued in November and sought a preliminary injunction. The organization filed its appeal to the 9th Circuit on Thursday. *NetChoice LLC v. Bonta*, 24-7879 (9th Circ., filed Jan. 2, 2025).

Attorney General Rob Bonta, who praised Davila's Tuesday ruling, could not be reached for comment late Thursday.

NetChoice's senior communications manager, Krista Chavez, praised Davila's order in a statement.

""We are glad the court issued this temporary stay, and we look forward to ensuring California's digital censorship and surveillance law is fully halted as our case proceeds," she wrote.

#382730

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Judge blocks parts of California bid to protect kids from social media

[courthousenews.com/judge-blocks-parts-of-california-bid-to-protect-kids-from-social-media](https://www.courthousenews.com/judge-blocks-parts-of-california-bid-to-protect-kids-from-social-media)

Matt Simons

Thumbs up icon on a social media background vector. (Rawpixel.com/Freepik via Courthouse News)

SAN JOSE, Calif. (CN) — A federal judge on Tuesday barred the state of California from enforcing key parts of Senate Bill 976, also known as the Protecting Our Kids from Social Media Addiction Act, finding it may infringe tech companies' First Amendment rights.

The law, passed in September, prevents social media platforms from knowingly providing an addictive feed to minors without parental consent.

In a mixed-bag ruling, U.S. District Judge Edward J. Davila found that "because NetChoice has shown that parts of SB 976 are likely to infringe upon the First Amendment, the court grants in part and denies in part NetChoice's preliminary injunction motion."

The decision wasn't a complete win for NetChoice, the powerful tech lobbying group that sued the Golden State in a bid to thwart the law. Although Davila, a Barack Obama appointee, agreed that limits on notifications and reporting how many minors are on their platforms should be blocked, he rejected NetChoice's request for an injunction of provisions for parental controls and restrictions on personalized feeds.

NetChoice is a trade association and lobbyist that represents some of the largest interests in the tech world — companies it claims facilitate speech protected by the First Amendment. Founded in 2001, the group has steadily climbed in scope and influence over the last decade and currently has six active lawsuits over state-level internet regulations.

The group seeks a declaration that the statute is unlawful and an injunction preventing the law from being enforced for its member companies, which include Amazon, Google, Lyft, Meta, PayPal, Snap, Waymo and X, formerly Twitter.

The parts of the social media law that remain standing take effect Wednesday.

In his 34-page order, Davila found the law's limits on notifications — which prohibit companies from sending push notifications to minors' accounts between 12 a.m. and 6 a.m. and during school hours between 8 a.m. and 3 p.m. — involves expressive content protected by the First Amendment.

Although the judge recognized that the need to protect children from the effects of social media is an extremely important justification for the law and backed up by numerous scientific studies, he found that the law was not properly tailored for these purposes because

it wasn't inclusive enough of different notification types.

"As NetChoice observed at hearing, a sports website such as ESPN can send notifications about, for instance, a minor's favorite team winning a national championship during prohibited hours, but Facebook could not send the same notification," Davila wrote.

He also expressed skepticism the requirement for companies to disclose the number of minor accounts present on their platforms, saying it didn't contribute to the overall goal of protecting minors.

"The court sees no reason why revealing to the public the number of minors using social media platforms would reduce minors' overall use of social media and associated harms," he wrote.

While Davila issued a preliminary injunction barring the state from enforcing these two elements, state Attorney General Rob Bonta's office is free to enforce the remainder of the law. Companies will need to create a private mode for minors that would prevent strangers from viewing or responding to children's posts, and he rejected NetChoice's claims the law is too vague to stand.

Though the act's language applies to companies who offer covered feeds as a "significant part" of their services, these terms are not out of the ordinary in our laws.

"They are an unavoidable part of the law," said the judge.

Davila also noted his order is preliminary and the litigation over the law will proceed.

A press release from the attorney general's office called the ruling an "early win."

"We are pleased the court understands the importance of giving California families this choice," Bonta said.

A spokesperson for NetChoice told Courthouse News that although it was grateful for the judge's decision, it was concerned the court undercut key speech protections for social media.

"We will continue to challenge this additional, unconstitutional censorship law from California and ensure free expression is fully protected on the internet," Paul Taske, NetChoice Associate Director of Litigation, said in a statement.

Litigation

Jan. 3, 2025, 8:11 AM PST

TikTok Knew Live Video Feature 'Groomed' Minors, Utah AG Claims

By Alexandra S. Levine

- Unredacted lawsuit claims TikTok knew about teen safety issues
- Lawsuit also alleges company facilitated money laundering

TikTok has long known that its popular video livestreams encourage sexual content, including streams exploiting and "grooming" minors, according to a lawsuit from the state of Utah that was unredacted on Friday.

TikTok also discovered through an internal investigation that the feature, called TikTok Live, facilitated money laundering and allowed users to sell drugs and fund terrorism, the lawsuit alleges.

Bipartisan attorneys general from more than a dozen states sued TikTok last fall, accusing the app of financially and sexually exploiting minors. Utah also sued TikTok on similar grounds in June. Several of those lawsuits – including those from Utah, Vermont, New Hampshire, Kentucky and the District of Columbia – focused on TikTok Live. The suits cited investigative reporting from Forbes that found adult men regularly use the livestreams to coax teen girls to perform racy, sometimes sexual acts in exchange for digital "gifts" that can be redeemed for money.

The newly unredacted lawsuit also details Project Jupiter, a separate internal investigation into the prevalence of money laundering on the platform. That investigation, which has not been previously reported, found that TikTok Live and its gifting feature were being used to illegally launder money used to sell drugs and commit other crimes. That investigation was launched in 2021. TikTok employees have also discussed ways Live has been used to fund terrorist organizations overseas, including the Islamic State, the lawsuit claims.

Utah and other states built their complaints on a trove of internal TikTok documents obtained via subpoena, but many of the specific allegations were redacted in public filings. Despite TikTok's efforts to keep the records confidential, a Utah district court judge ruled on Dec. 19 to unseal much of the material in the lawsuit.

A TikTok spokesperson did not immediately respond to a request for comment. In a prior statement about the Utah lawsuit, a TikTok spokesperson said the company "has industry-leading policies and measures to help protect the safety and well-being of teens" and that it removes livestreams found in violation of its policies.

The unredacted complaint comes just over two weeks before TikTok could be banned in the US under a new national security law signed in April by President Joe Biden. The measure aims to address longstanding fears that the TikTok app, owned by China-based parent ByteDance Ltd. , could be used to gather sensitive intelligence on Americans, or manipulate the content people see related to key political and social issues. TikTok's popularity with minors, and the well-documented dangers it can pose to them, has only exacerbated those concerns.

Utah's lawsuit quotes chat logs from TikTok employees, slides from internal presentations and other communications showing the company conducted a sweeping internal investigation into TikTok Live following the Forbes reporting. The investigation, codenamed Project Meramec, confirmed the app facilitated potentially illegal financial transactions and problematic livestreams in which underage users would perform sexualized acts in exchange for virtual gifts from viewers.

In many cases, those users were too young to be allowed on the livestreams. At the time, TikTok's policies forbade people under 16 from streaming live, and those under 18 from sending or receiving virtual gifts. Still, the investigation found that 112,000 underage users hosted livestreams in a single month in 2022, the lawsuit alleges.

TikTok also found that its algorithm boosted these types of sexualized videos so that they were more widely distributed. TikTok takes a financial cut when virtual gifts are shared on the app.

Margaret Busse, executive director of Utah's Department of Commerce, who sits on the cabinet of Utah Governor Spencer Cox, said that while the risks social media can pose to minors are well known, the revelations about TikTok Live – and the ways the dangers are multiplied when money is changing hands – add a new layer of complexity to the problem.

"When they understood what was happening, they also understood the amount of money it was making, and they did not want to do anything about it," she said in an interview with Bloomberg. "That's just what is so incredibly damning in my mind."

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[Securities Law](#)

Jan. 3, 2025, 8:20AM PST

A \$24 Billion Fund Puts Its Religious Stamp on Corporate America (4)

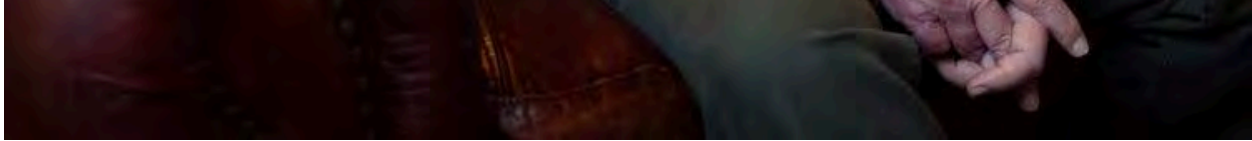
By Jeff Green and Saijel Kishan

Jim Lake, a devout Christian in Washington state, said his religious beliefs have always made him opposed to practices such as abortion, transgender transitions or embryonic stem cell research. But until this past year, it didn't cross the retiree's mind that he could put his money to work with his faith.

A financial adviser switched Lake's portfolio over to a handful of faith-friendly funds, one of which was run by GuideStone Funds, a 106-year-old investment firm in Texas that oversees some \$24 billion in assets. The company caters to Southern Baptist retirees and, increasingly, newly active faith-based investors such as Lake and his wife.

GuideStone is part of a nascent coalition of conservative Christian investors that are starting to flex their muscles and use their shareholder clout to counter [progressive corporate policies](#) such as funding Pride parades or covering employees' travel costs for abortions. They're also zeroing in on banks for allegedly closing customer accounts on political and religious grounds.





Jim Lake

Photographer: Margaret Albaugh/Bloomberg

By some measures, there's now half a trillion dollars in investments spread across conservative faith-based private funds and state pension funds that can be brought to bear to influence company behavior, said Will Lofland, who oversees shareholder advocacy at GuideStone. The loose confederation includes Inspire Investing, the biggest faith-based exchange-traded fund manager; Republican state treasurers and teacher pension funds; and Alliance Defending Freedom, an influential conservative legal group.

As they attract more money, members of the coalition are meeting with corporate executives and filing shareholder proposals. They've had limited success so far, yet aim to build their bloc of supporters and target more companies this year, Lofland said.

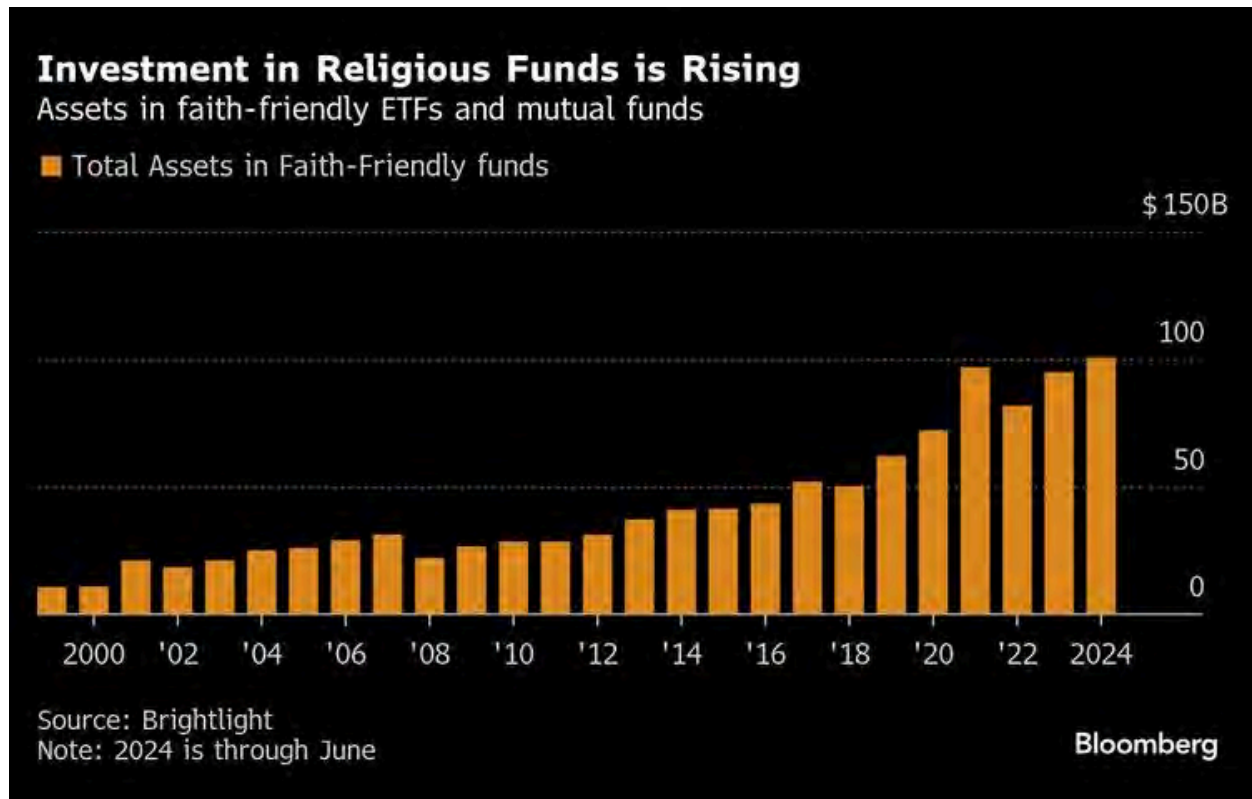
The investors "want to honor the Lord with all of their resources," he said. "They want their dollars being invested in what they believe is the God-honoring way."

Religious investing has been around for decades, often with a focus on more liberal issues such as worker rights and climate change. But funds such as GuideStone have been emboldened by the rightward shift of US politics and the [wave of conservative activists](#) and lawyers who have already [pushed companies](#) to curtail or end programs that support diversity, equity and inclusion efforts. Many point to anti-DEI activist Robby Starbuck, a non-denominational Christian, and his success in getting companies such as Walmart Inc., Toyota Motor Corp. and Harley-Davidson Inc. to backtrack on initiatives – particularly those related to LGBTQ causes.

Read more: [Walmart's DEI Compromise Holds Lessons for Corporate America](#)

Among everyday investors, there is growing interest in religious-based funds, said Tim Macready, head of global multi asset investing at Brightlight, which advises investors on faith-based portfolios.

Assets in [faith-friendly](#) ETFs and mutual funds exceeded \$100 billion for the first time last year, according to annual study conducted by the firm. That's up from \$72 billion in 2020. The analysis, compiled from 27 faith-based asset managers, likely captures only a portion of the activity. The full universe could range from \$200 billion to \$500 billion, Macready said. Net inflows have been 12% over the last three years, he said.



One broker-dealer went from 200 advisers working with GuideStone in 2021 to more than 2,000 now, Lofland said. Inspire said it had net new assets of \$334 million last year. Its biggest ETF, Inspire 100, returned 11.5% last year excluding reinvested dividends, underperforming the S&P 500's 23% gain.

GuideStone's biggest fund, the GuideStone Equity Index Fund, gained 20% last year, slightly underperforming the S&P 500 Index.

Lake, a 64-year-old resident of Nine Mile Falls, Washington, invested with GuideStone after being introduced to an adviser whose sole practice is working with people investing in faith-friendly funds.

"It really opened up my eyes to the ability to remain faith-friendly and at the same time, be competitive," Lake said.

Building a Bloc

GuideStone operates out of a nondescript office building overlooking a freeway in northern Dallas, and maintained such a low profile that Lofland said he didn't know about the funds until he applied to work there. The firm mainly manages pension investments for Baptist churches, yet Lofland saw an opportunity to become more active.

Shareholder proposals from progressive groups, some pushing ideas such as transgender benefits contrary to the church's values, started to proliferate a few years ago and GuideStone wasn't voting its shares to oppose such measures, Lofland said. He decided to take control of how GuideStone voted on the shares it owns in companies rather than relying on outside advisers.

One of the investor's first efforts was in late 2023, when it backed a shareholder proposal from a conservative group asking Microsoft Corp. to report on compensation and benefit gaps across genders as the company addressed reproductive and gender dysphoria care. The resolution won only 1% of votes. (Bloomberg Intelligence says overall support for conservative proposals at US companies is only about 2%.)

Lofland says that's why the religious funds need to build a bigger group of supporters, particularly from pension funds from conservative states. Such investors have already done some agitating of their own: Last year, finance officials from 15 states signed a letter to Fortune 1000 companies in support of ending DEI programs. Collectively, they managed about \$590 billion, according to US Census data.



Will Lofland

Photographer: Desiree Rios/Bloomberg

That type of firepower is needed to counter efforts that have strong progressive backing. In July, New York City Comptroller Brad Lander urged five large retailers, including Walmart and Costco Wholesale Corp., to dispense abortion pills. City funds controlled \$1.3 billion in shares of those companies, he said. A coalition of conservatives and religious investors, including Inspire and GuideStone, responded with their own letter the following month saying offering the pill would add risk, but only represented \$172 million in shares of those retailers.

Lofland said GuideStone's first initiative in 2025 will be to press a financial firm regarding the practice of debanking – the closure of customer accounts that are deemed by lenders to pose legal or reputational risks. He declined to name the bank.

GuideStone had previously supported other group's efforts to pressure JPMorgan Chase & Co. after the lender was accused of improperly closing accounts for the nonprofit National Committee for Religious Freedom. Michael Fusco, a spokesman for the bank, said "we have never and would never close an account for political or religious reasons, period."

Lawsuits, Proxy Votes

Inspire Investing and Knights of Columbus are among other faith-based investors working to influence corporate behavior.

Inspire joined a 2023 lawsuit filed by a group run by Trump advisor Stephen Miller against Target Corp. that accuses the retailer of costing investors billions of dollars after its sale of LGBTQ merchandise led to a consumer boycott. Last month, a federal judge [denied a motion](#) to dismiss the case and change its venue out of Florida. Target, which in response cut LGBTQ-themed products from some its stores, declined to comment.

Inspire, which oversees about \$3.2 billion, last year filed almost two dozen shareholder resolutions over DEI topics. It plans to file more in 2025.

"As stewards of what we believe are God's dollars, it's our job to speak Biblical truth to corporate power," said Robert Netzly, founder of the Meridian, Idaho-based investment firm.

Knights of Columbus is working to develop proxy voting rules that follow guidelines established by the United States Conference of Catholic Bishops, said Anthony Minopoli, president and chief investment officer of Knights of Columbus Asset Advisors, which manages about \$28 billion. The group is partnering with the Busch School of Business at the Catholic University of America on the effort, which aims to get Catholic dioceses to adopt the guidelines to ensure they are voting based on the beliefs of the church.

The group also will likely engage with companies on topics ranging from abortion to the manufacture of land mines and cluster bombs, which violate church values as set forward by USCCB, Minopoli said.

Even if the coalitions of conservative and religious groups don't get strong shareholder support for their proposals, they will likely succeed in swaying corporate executives, according to Amelia Miazad, an acting law professor at University of California, Davis who is researching a project on faith-based investors. She likened the efforts to the [backlash](#) to environmental, social and governance strategies, which has seen asset management giants including BlackRock Inc. [cut the number](#) of new funds with that mandate.

"If success means silencing corporate speech on environmental and social issues, then these investors will be as successful as the anti-ESG movement has been," she said.

(Updates with 2020 figure in ninth paragraph. Earlier versions corrected the headline to reflect the amount of assets GuideStone manages and the chart to show assets are in billions.)

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Vinco Ventures Chief Charged With Securities Fraud Conspiracy

By Holly Barker

- NASDAQ exchange de-listed Vinco Ventures in October 2023
- Co-conspirator Theodore Farnsworth expected to plead guilty

Vinco Ventures Inc. CEO Roderick “Rod” Vanderbilt has been charged with one count of conspiracy to commit securities fraud in connection with representations he made about the media-focused selective acquisition company’s operations and control.

The criminal information, filed in the US District Court for the Southern District of Florida on New Year’s Eve, accuses Vanderbilt of conspiring with former Helios & Matheson Analytics Inc. chairman Theodore Farnsworth to artificially inflate Vinco’s stock price, by—among other things—hiding Farnsworth’s involvement at the company.

Prosecutors allege that Farnsworth selected Vanderbilt and others “with the understanding that those individuals would act at his direction.”

The charges against Vanderbilt were filed just one day after the US Securities and Exchange Commission announced a related consent judgment against Farnsworth.

According to the SEC’s complaint, Farnsworth secretly controlled Vinco between January 2021 and April 2023 but sought to conceal his role at the firm because he knew he was under investigation for securities fraud for his role promoting MoviePass, a one-time subsidiary of HMNY.

Prosecutors say Vanderbilt made materially false and misleading representations about Vinco’s “business strategy, business operations, and Farnsworth’s role in transactions.”

Vinco announced its agreement to merge with Farnsworth’s company, ZASH Global Media and Entertainment Corporation, in January 2021. A related press release described Zash as an “entertainment, content, and distribution company.”

Farnsworth initially pleaded not guilty to a conspiracy charge related to the MoviePass scheme—involving alleged misrepresentations about the viability of the subscription service’s products and ability to harness data—then he notified the court of his intent to change his plea on December 4.

On December 23, prosecutors added a conspiracy charge related to Vinco.

Vanderbilt is scheduled to make his initial appearance on January 7. His case has been assigned to Judge Jose E. Martinez. Vanderbilt’s contact information was not readily available and counsel has yet to enter any appearance on his behalf.

Farnsworth is set to be arraigned on the superseding criminal information before Southern District of Florida Judge David S. Leibowitz on January 3.

Vinco traded on the NASDAQ exchange before it was de-listed in October 2023.

The case is United States v. Vanderbilt , S.D. Fla., No. 1:24-cr-20560, docketed 1/2/25 .

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SEC Expected to Focus on Fraud Enforcement Fundamentals in 2025

By Martina Barash

Analysis

- Initiatives will change under new leadership, lawyers say
- Tilt toward penalties against individuals seen as possible

The SEC this year will turn away from more expansive or novel enforcement tools used in the Biden administration, and double down on bread-and-butter fraud cases, attorneys say.

"Expect less appetite for corporate penalties and lower penalty amounts," said Jessica Magee a former SEC enforcement officer now with Holland & Knight LLP. That anticipated shift raises the question of how the Securities and Exchange Commission will create incentives for self-reporting and cooperation, she told Bloomberg Law.

Gregory Baker of Patterson Belknap Webb & Tyler LLP, who was at the SEC during the transition from the Obama administration to the first Trump administration, agreed. "If the past is any prologue, there's definitely more of a focus on individual accountability rather than corporate accountability," he said. Broadly speaking, the agency won't bring cases in crypto and other "new hot-button areas," he said.

Where the Biden SEC had focused on cyber security and financial firm recordkeeping, the agency under President-elect Donald Trump is likely to revert to the approach it took toward corporate wrongdoing its first term but with an added interest in artificial intelligence-tied wrongdoing that emerged during the intervening four years.

The SEC will likely maintain its interest in misrepresentations about artificial intelligence, charged under standard theories so far, according to several attorneys who practice in the area.

"It certainly got sleepier under Trump," said Howard Fischer of Moses & Singer LLP. He was also at the SEC under President Barack Obama and then Trump. "On the other hand, under Obama, we were attacking all of the post-credit crisis misconduct. So that automatically created some urgency," he said.

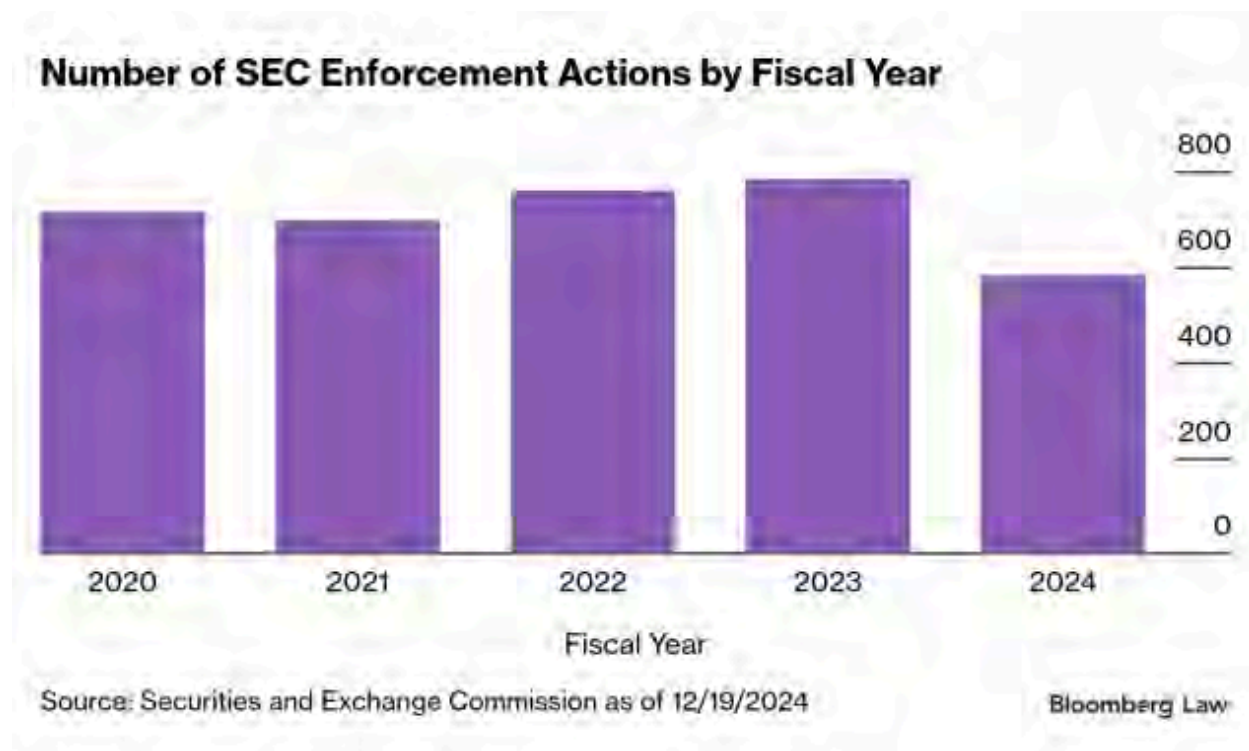
The SEC declined to comment for this story. Sanjay Wadhwa, acting director of its enforcement division, made public comments Nov. 15 defending the commission's relationship with regulated companies and urging that the division continue "to enforce compliance across the industry, addressing investor risk wherever and in whatever context it arises."

"Enforcement doesn't go away," said Anand Sithian of Crowell & Moring LLP. "Fraud is fraud."

"The commission has a mandate to root that out through enforcement actions," said Sithian, a former federal prosecutor with a white collar and regulatory enforcement defense practice. He said he anticipates more of a "retail focus" on investor protection.

Initiatives' Fate

The SEC, in a Nov. 22 report on enforcement results for fiscal year 2024, touted 583 enforcement actions—a 26% decline from 2023—and a financial remedies totaling a record \$8.2 billion. It listed initiatives in a variety of areas, including recordkeeping cases about "off-channel," or personal device, communications—pulling in more than \$600 million in civil penalties during the fiscal year—and emerging technologies, including AI, cybersecurity, and crypto.



The commission's attack on "AI-washing," in which a company or financial firm overstates its deployment of artificial intelligence to optimize its work, includes a suit against adviser QZ Asset Management Ltd. for promising "100%" protection via AI. The initiative will likely persist into the new administration, attorneys said, though others have indicated rulemaking in the area may be blocked.

Regulators and prosecutors will use traditional fraud theories, but apply them to keep up with technology changes, including AI, said Sidhardha Kamaraju of Pryor Cashman LLP.

The SEC's AI cases have used "standard fare disclosure theories," said Magee. Its investor-protection mission in enforcement isn't expected to change, she said.

"It will be interesting to see how much the SEC invests in hiring subject matter experts throughout the agency" to adapt to technological progress and the implementation of AI "in our daily lives," she said.

The initiative needs to continue, said Benjamin Schiffrin, director of securities policy at Better Markets, an investor and social advocacy group. "We'll only see increasing use of artificial intelligence, both by public companies and by registered entities like brokers and investment advisers, and that just leads to lots of different ways that investors, clients, customers can be misled," he said.

People hear a firm tout AI and think it's "going to make my broker-dealer or my investment adviser more intelligent"—and they end up being duped, he said.

Compliance Sensitivity

The SEC may well take a different approach to off-channel communications; crypto companies; and cybersecurity.

Republican SEC Commissioners Hester Peirce and Mark Uyeda "have voiced concerns about the effectiveness of off-channel communications cases where—in their view—firms have no 'achievable path' to comply given the ubiquity of text and other off-company-server communications platforms," Magee said by email.

"It seems unlikely that the SEC will continue to focus on off-channel enforcement under new leadership," she said.

Cryptocurrency enforcement, the subject of so much legal interest because of questions about whether digital assets are securities, is likely to change course, according to Kamaraju. "It's very possible that, as the administration appoints people at the SEC" and the Commodity Futures Trading Commission, "you're going to see a turn from that kind of thing," he said.

Fischer said the SEC will probably stop bringing such suits and might drop the ones already filed, awaiting congressional authorization to draft crypto-specific rules. "This doesn't mean that digital assets will operate in a rule-free environment—just that these rules will be developed through the traditional regulatory process, with significant input from the industry, as opposed to being developed through judicial decisions," he said.

In cybersecurity cases, suits over failures to disclose incidents may give way to a focus "on the more really substantial, misleading disclosures in the cybersecurity space where there is actual investor harm," said Sithian.

"Each chair and each enforcement director has their priorities," said Schiffrin of Better Markets, who worked at the SEC for 18 years. "Undoubtedly, you'll see new areas crop up."

"Ultimately, law enforcement is reactive," said Fischer. "If tomorrow a major bank collapses, or a major crypto exchange, or multiple crypto exchanges have significant problems, that's going to be the priority, regardless of what the political issues are," he said.

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Auditor Suits Threaten to Hobble Regulator's Enforcement Powers

By Amanda Iacone

- Suits aim to extend *Jarkesy* ruling to audit board's powers
- Decision forced SEC to take penalty-seeking cases to court

Three lawsuits working their way through federal courts threaten to disarm the US audit board of its powers to police auditors responsible for vetting the financial accounts of US companies worth trillions in market value.

Two anonymous accountants and an unnamed accounting firm have challenged the Public Company Accounting Oversight Board's enforcement authority. They contend the board's confidential disciplinary proceedings violate plaintiffs' constitutional rights to a jury trial and due process.

The challengers argue in part that the Supreme Court's logic in its *Jarkesy v. SEC* ruling should apply to the PCAOB. The high court's June ruling requires the Securities and Exchange Commission to bring certain cases with financial penalties to federal court rather than before its in-house judges.

Applying a similar requirement to the PCAOB would leave it with few options to hold auditors accountable. Unlike the commission, the board by law cannot turn to the courts to pursue disciplinary cases against auditors who violate ethics rules or fail to complete their work before signing off on a client's financial statements.

This "cripples them in their ability to go after bad actors," said Jack Castonguay, an associate accounting professor at Hofstra University.

The lawsuits add fuel to critics' arguments that the SEC, not the PCAOB, should police auditors. They also challenge the board as it faces an uncertain future under the Republican administration of President-elect Donald Trump, whose SEC chair pick Paul Atkins, a board critic, is expected to rein in the PCAOB's reach.

Advocates of the board argue that the regulator must be able to police its rules to ensure investors can rely on auditors' work—and on the corporate financial statements they review.

Still, board disciplinary actions can rob accountants of their jobs and kill careers.

"Just like the SEC was doing, the board files charges and imposes harsh monetary penalties without providing for a jury trial," said Russ Ryan, senior litigation counsel with the New Civil Liberties Alliance. The legal group frequently targets government agency power and represents the plaintiffs in all three PCAOB cases.

Moving cases to federal court "should bring discipline to the prosecutorial discretion that's largely absent with the PCAOB right now," Ryan said.

The PCAOB declined to answer questions about the potential impact of the court cases. The board said in a statement that the audit regulator is focused on its mission to protect investors.

Enforcement Powers Targeted

Under board Chair Erica Williams, enforcement cases have surged and related financial penalties have more than tripled since 2022. Just in 2024, the board concluded a record-setting 51 enforcement cases, levying \$35.7 million in penalties.



Congress established the PCAOB in 2002 to serve as a watchdog to the audit industry after accounting scandals toppled Enron Corp. and WorldCom Inc. The corporate reform law known as the Sarbanes-Oxley Act gave the board the authority to set rules and standards, to inspect firms against those requirements, and to bring disciplinary actions for violations.

The board could lose credibility if it can't also enforce its rules or bring actions for violations spotted during inspections, said Dan Goelzer, a former member of the PCAOB.

This isn't the first time the audit regulator has faced legal challenges threatening its work. In 2010, the Supreme Court upheld the PCAOB's creation but found that its board members could be removed at will.

These latest suits, however, target the lack of oversight for the board's private enforcement process, said Tiffany Rowe, a partner with Sawyer & Labar LLP.

"There's essentially no way to push back," Rowe said. "The PCAOB almost has free rein to conduct their investigation."

In one of the three cases, an accounting firm that was under investigation by the board argued that the PCAOB's enforcement methods violated the anonymous firm's right to due process. The board's process provides no avenue for accountants or firms to challenge PCAOB orders or to seek review before a federal court, according to the suit originally filed in Texas by John Doe Corp.

A Tennessee accountant filed a similar case in March challenging the board's years-long probe into audit work completed in 2018. The accountant argued that the Supreme Court ruling against the SEC bolsters his case.

An auditor with a Colombian accounting firm first sued the board in a Texas federal court in 2023, bringing a challenge over its funding and "secret" enforcement process. That case has since been moved to D.C., where the board is headquartered.

Post-*Jarkesy* Landscape

The board's authorizing legislation set up roadblocks to keep auditor disciplinary cases out of the public eye until a settlement or final decision had been reached. The confidential hearing process was meant to protect the reputation of auditors from the whiff of wrongdoing should they ultimately be cleared of the charges.

"Their sole enforcement mechanism is administrative," Goelzer said. "So if those cases have to be brought in federal court, then they can't be brought."

The high court's *Jarkesy* ruling applied the right to a jury trial to certain SEC enforcement cases. Extending that reasoning to the PCAOB could limit the regulator to only bringing cases that seek remedies other than financial penalties or professional bars.

"That would, I think, weaken the enforcement arm a fair amount," said Kelly Bossard, who co-leads the accountants liability practice at FTI Consulting.

The PCAOB could still refer cases to the SEC to bring auditor misconduct cases to court, but the SEC would face its own constraints in the number and type of cases it could pursue. The high court's *Jarkesy* ruling is likely to force the Wall Street regulator to bring many of its own professional responsibility cases in federal court and curtail the use of its agency judges.

"How do you have an industry discipline process under a scenario where neither the SEC nor the PCAOB feels that they could bring it?" said David Fredrickson, senior of counsel, with Covington & Burling LLP. "That would be an interesting world."

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So meta. AI-written paper says AI is the future of legal scholarship

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Karen Sloan

By Karen Sloan

January 2, 2025 10:23 AM PST Updated 21 hours ago

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

Jan 2 (Reuters) - A law professor tapped ChatGPT to write his latest article, which argues that generative artificial intelligence programs will "expand the horizons" of legal scholarship.

Suffolk University Law Dean Andrew Perlman, a longtime scholar in the field of law and technology, asked ChatGPT — an AI program trained to understand and produce human-like text — to “develop a novel conception of the future of legal scholarship” that hinges on how legal scholars might use generative AI.

Perlman concluded that the draft produced by ChatGPT “demonstrates the creativity and linguistic sophistication of a competent legal scholar.” His Dec. 26 article, titled “Generative AI and the Future of Legal Scholarship,” , opens new tab is the latest attempt to gauge the capabilities of generative AI in the law school arena. It appears in the Social Science Research Network, an online repository of scholarly articles.

A 2023 study found that GPT-4, an earlier version of ChatGPT, would pass the bar exam with flying colors — though some later questioned the methodology and the conclusion that the AI would score in the 90th percentile in most states. A separate study found that using GPT-4 on final exams improved test scores among lower-performing students but hurt the scores of their high-performing classmates. Yet another study concluded that generative AI helped law students complete writing tasks faster, but the technology did not improve their overall work product.

Perlman's ChatGPT-produced article said AI could

help scholars “uncover trends in judicial reasoning, legislative behavior, or administrative action that might otherwise go unnoticed.”

AI tools could also “produce new lines of argument, brainstorm counterarguments, or test hypothetical scenarios” much faster than human researchers alone. Scholars would then serve as curators, determining which concepts merit further study and which should be discarded.

In addition, the technology could help scholars integrate different methods of analysis, such as empirical legal studies and economic modeling to produce a “richer and more holistic” analysis, the article said.

The technology would not replace law professors, whose judgment and ethical oversight will remain crucial, ChatGPT concluded.

Perlman wrote in the article's epilogue that tomorrow's legal thought leaders will be those "who reimagine what scholarship can achieve when human wisdom guides artificial intelligence.”

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Bar exam score shows AI can keep up with 'human lawyers,' researchers say

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Reporting by Karen Sloan

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Solar Panel Tech Co. Faces Investor Suit Over Project Delays

By **Katryna Perera**

Law360 (January 2, 2025, 4:58 PM EST) -- Solar power software and tracking company Nextracker Inc. has been hit with a proposed shareholder class action in California federal court alleging it misled investors about production delays it faced following a spike in demand caused by tax credits offered through the Inflation Reduction Act.

Mariel Weber filed a **complaint** last week against Nextracker, its CEO Daniel Shugar, Chief Financial Officer Charles Boynton and other executives. The suit is on behalf of a proposed class of purchasers of Nextracker common stock between Feb. 1, 2024, and Aug. 1, 2024.

According to the complaint, Nextracker supplies software solutions and products that enable solar panels to follow the sun's movements across the sky to enhance and optimize utility power plant performance. Most of the company's clients are engineering, procurement and construction firms, as well as solar project developers and owners.

In 2022, the U.S. government passed the Inflation Reduction Act to incentivize the installation of solar facilities across the country. The law entitles manufacturers that support clean energy in the U.S. to a tax credit for each clean energy component they domestically produce and sell, the complaint states.

Weber says that following the passage of the IRA, Nextracker experienced and reported "robust" growth, and by December 2023, the company stated that its backlog had grown to record levels, exceeding \$3 billion, which in turn caused its revenue and adjusted earnings also to rise.

The complaint states that backlog for Nextracker is highly material to investors because it will determine the rate at which the company is expected to recognize revenue from work on contracted projects down the line. Therefore, it provides an "important indication of the company's revenue trajectory and expected growth rate," the complaint states.

However, Weber says that the solar tracking industry is also subject to several risks that may cause projects to be delayed, such as the inability to secure permits on time, the unavailability of project materials, regulatory hurdles, or even inclement weather.

But Nextracker and its executives repeatedly downplayed the impact of project delays on the company's business and financial results during the class period, "representing that any delays were limited to isolated projects, more than offset by expanding business opportunities and client demand," the complaint states.

For example, in July 2023, during an earnings call, the complaint states that Shugar claimed Nextracker could offset any individual project delays by simply prioritizing other projects in the company's pipeline.

However, in reality, Nextracker was experiencing delays in solar panel availability and interconnection, as well as delays caused by customers awaiting clarity on the IRA, according to the complaint, and this was negatively impacting its ability to convert its backlog to revenue.

"Furthermore, the purported increase in client demand and Nextracker's ability to shuffle project timeliness was not effectively offsetting the negative impact of these project delays, leading to

elongated project timelines and rendering the purported competitive advantages highlighted by defendants illusory," the complaint states.

The truth came to light in August, when Nextracker announced its first fiscal quarter results and revealed that its revenue and gross profit had significantly declined. The company also did not raise its guidance for the first time since it became a public company, according to the complaint.

"In a related earnings call ... defendant Shugar conceded that 'it is taking longer for projects to be fulfilled in real life due to' 'construction permits or interconnection delays,'" the complaint states. "Defendant [Howard Wenger] further admitted that only '80% of that backlog is expected to be realized over the next eight quarters.'"

Weber says on this news, Nextracker's stock price dropped by 15% from \$46.83 per share on Aug. 1 to \$39.81 per share on Aug. 5.

Additionally, Weber claims the share price has continued in a downward trajectory and fell to lows of less than \$34 per share by the end of 2024.

The suit seeks damages, attorney fees and a jury trial. A spokesperson for Nextracker told Law360 that the company believes the lawsuit is meritless and plans to vigorously defend it.

Counsel for Weber did not immediately respond to requests for comment Thursday.

Weber is represented by Shawn A. Williams, Brian E. Cochran, Samuel H. Rudman and Vicki Multer Diamond of Robbins Geller Rudman & Dowd LLP and by Frank J. Johnson of Johnson Fistel LLP.

Counsel information for Nextracker and the other defendants was not immediately available.

The case is Weber v. Nextracker Inc. et al., case number 3:24-cv-09467, in the U.S. District Court for the Northern District of California.

--Editing by Daniel King.



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Del. Courts Gavel Out 2024 With Fox, Opioid Case Rulings

By **Jeff Montgomery**

Law360 (January 2, 2025, 4:41 PM EST) -- 2024 went out with a flurry of big decisions in Delaware's corporate and commercial law courts, while the new year saw a Chancery veteran become that court's first senior magistrate.

Among the prominent year-ending moves in the Court of Chancery was Vice Chancellor J. Travis Laster's tightly woven, **53-page refusal** on Dec. 27 to dismiss a stockholder suit seeking billions in damages allegedly arising from Fox Corp.'s trumpeting of claims that Dominion Voting Systems and Smartmatic Corp. corrupted the 2020 presidential election.

Four days before the new year, Vice Chancellor Laster concluded the suit raised enough "particularized facts" to justify moving forward with the now consolidated suit, first filed in April 2023. The decision found the complaint supports a reasonable inference that former Fox CEO and chairman Rupert Murdoch, as well as current or former directors, face "substantial risk of liability for breaching [their] duty of loyalty by deciding in bad faith to have the company violate the law" through its reports, programs and online personality statements.

At least half of Fox's board, the vice chancellor found, face either a "substantial risk of liability on the claims in the complaint or cannot act independently of Murdoch," rendering the group incapable of objectively considering the claims and opening the door to derivative action by stockholders.

Murdoch, the vice chancellor concluded, "inferably" knew about the Dominion and Smartmatic stories and knew they were unfounded — yet permitted them to air.

"Although alleging a motive is not necessary to support an inference of bad faith, the complaint pleads particularized facts that point to an obvious motive for Murdoch's decision," the vice chancellor said. "Murdoch was responding to a backlash among conservative viewers to maintain Fox News' leadership position."

The case is *In re: Fox Corp. Derivative Litigation*, case number 2023-0418, in Delaware's Court of Chancery.

Opioid Litigation Ruling

In the state's Superior Court commercial litigation arena, Judge Meghan A. Adams **ruled against** Amerisource Bergen Corp.'s bid for a decision obliging nine general liability insurers to defend and indemnify it in multibillion-dollar litigation arising from its role in the nation's opioid crisis.

In the decision, Judge Adams pointed in part to the state Supreme Court's decision in *Ace American Insurance Co. v. Rite Aid Corp.*, which found that "claims seeking generalized economic damages to redress the systemic problems of the opioid crisis are not claims seeking damages because of bodily injury."

As a result, the judge found, the claims at issue in Amerisource's case "do not invoke the duty to defend."

The case is *In re: Amerisource Bergen (nka Cencora) Delaware Insurance Litigation*, CA N22C-01-182, in Delaware's Court of Chancery.

Paramount Stockholders Amend Complaint

A five-firm stockholder attorney team that challenged the proposed \$7 billion Paramount Global-Skydance Media LLC merger docketed a final, **amended class complaint** on Dec. 31 that, among other changes, added \$101 million to the originally asserted \$1.65 billion in damages incurred by stockholders.

According to the complaint, those promoting the deal pointed to a potential \$15-per-share value from the merger, while the suit alleges the affected stockholders actually received \$12.06 per share, 19.6% less.

Paramount and Skydance announced their definitive agreement to merge in a two-step transaction on July 7, ending months of negotiations and speculation.

Under the deal, the Skydance Investor Group, a consortium that includes CEO David Ellison's family and RedBird Capital Partners Management LLC, would buy Paramount's parent company, Sheri Redstone's National Amusements Inc., for \$2.4 billion in cash. After that, Skydance will merge with Paramount. The transaction was expected to be completed in the first half of this year.

The case is Scott Baker et al. v. Shari Redstone et al., case number 2024-0790, in Delaware's Court of Chancery.

If Wishes Were Fishes

Vice Chancellor Lori W. Will booted a Comcast Corp. suit accusing Apollo Global Management affiliate CX360 of wrongly terminating interactive caller voice response services to Comcast after Comcast terminated a master services agreement.

CX360 is a subsidiary of West Technology Group LLC, itself controlled by affiliates of funds managed by Apollo.

After the termination, Comcast sued for a Chancery finding that CX360 lacks a termination right, a court reformation of the MSA, or a finding that CX360 breached the implied covenant of good faith and fair dealing. CX360, in turn, has requested the posting of a bond of undisclosed size by Comcast.

Vice Chancellor Will **unambiguously found** the "master services agreement grants each party the right to terminate for convenience."

"The provision was proposed by CX360 and survived multiple rounds of negotiations. The final agreement with the bilateral termination right was approved by several layers of Comcast employees, including in-house counsel and top executives. It was reaffirmed over a decade of renewals," the vice chancellor wrote.

"Neither its belief that the language was a mistake nor the implied covenant give Comcast an out," she added.

The case is Comcast Communications Management LLC v. CX360 Inc., case number 2024-0991, in Delaware's Court of Chancery.

A Step Up for Chancery Veteran

As the new year opened, Delaware's Court of Chancery named its first senior magistrate to help guide the court's management and adjudication of an ever-growing caseload.

Senior Magistrate in Chancery Selena E. Molina, who joined the court in 2019, assumed the title as the court's magistrate ranks are set to grow from one in 2019 to seven in 2025.

The new senior magistrate is a magna cum laude graduate of Widener University Delaware Law School who, among other positions, serves as a commissioner on the American Bar Association's Commission on Law & Aging. She is also a member of the National College of Probate Judges Board.

With the appointment, Senior Magistrate Molina will continue to handle cases and assist Chancellor Kathaleen St. J. McCormick with administrative tasks associated with the magistrate docket.

--Editing by Philip Shea and Dave Trumbore.

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Edwards Brass Face Investor Suit Over Heart Valve Sales

By **Sydney Price**

Law360 (January 2, 2025, 8:51 PM EST) -- The executives and directors of medical device maker Edwards Lifesciences have been hit with a shareholder derivative suit in California federal court alleging the company understated how industry trends and macroeconomic factors would impact the success of its mainstay device.

According to the **complaint filed Tuesday** by shareholder Manh Ho, Edwards specializes in the development of heart disease treatment devices, including its core product known as a transcatheter aortic valve replacement, or TAVR. For several months during 2024, the company and its executives downplayed the effects seasonality and macroeconomic fluctuations would have on the success of the product and overstated hospitals' desires to use TAVR over newer devices on the market.

In addition to nominal defendant Edwards, its CEO Bernard Zovighian, Chief Financial Officer Scott Ullem and several other executives and directors are individual defendants in the suit.

The suit's relevant period begins Feb. 6, 2024, the day Edwards published its full-year 2023 financial results. On that day, Edwards told investors that the future of TAVR remains strong and is "driven by an increased focus on patient activation" and increased global adoption, among other things, the complaint states.

In other statements throughout the class period, Edwards continued to tout "strong" TAVR adaptation, according to the complaint. Edwards' claims were too reliant on its ability to entice new patients who were unlikely to receive treatment and overestimated facilities' willingness to use TAVR over new alternatives, the suit alleges.

For example, at a conference in June 2024, Ullem said international growth prospects for TAVR remained strong, and that the company expected 8% to 10% growth for TAVR for the year, the complaint states.

The truth was revealed, the suit alleges, on a company earnings call on July 24, when Edwards cut its full-year 2024 revenue growth expectations for TAVR. Edwards told investors that developments in new procedures were causing hospitals to underutilize TAVR.

On this news, Edwards shares fell \$27.25 each, or about 31%, to close at \$59.70 per share on July 25, 2024, according to the suit.

The suit accuses the defendants of wasting corporate assets, abuse of control, gross mismanagement and violating the Exchange Act.

In addition to the allegations that Edwards and the individual defendants made false and misleading statements about its prospects during the class period, the suit also alleges the individual defendants breached their fiduciary duties by allowing the company to overpay for repurchases of its own stock by approximately \$48.2 million.

The suit also alleges that the defendants engaged in inside trading, netting approximately \$12.3 million in total proceeds.

Additionally, the complaint notes that Edwards is facing a securities class action in California federal

court alleging the company misstated and omitted information regarding the TAVR.

Counsel for Ho and a representative of Edwards did not immediately respond to requests for comment Thursday.

Ho is represented by Robert C. Moest of The Brown Law Firm PC.

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

The case is Ho v. Zovighian et al., case number 8:24-cv-02822, in the U.S. District Court for the Central District of California.

--Editing by Michael Watanabe.

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Eye Drug Study Blindsided Pharma Co. Investors, Suit Says

By **Emilie Ruscoe**

Law360 (January 2, 2025, 9:26 PM EST) -- The CEO and directors of biopharmaceutical company Apellis Pharmaceuticals Inc. face shareholder derivative claims they failed to monitor clinical study participants for a serious side effect, leading to plummeting trading prices after a medical association sounded an alarm about the company's drug candidate.

In a suit filed Monday in Boston federal court, Apellis investor Kenneth Olson claims trading prices for Apellis shares fell nearly 38% in July 2023 when the American Society of Retina Specialists released a letter expressing concerns about the company's would-be macular degeneration treatment Syfovre. The letter referenced six reported cases of a form of inflammation called retinal vasculitis in patients who had been treated with the drug, Olson says.

He contends that the letter surprised analysts and investors, pointing to instances prior to its release in which representatives for Apellis had assured the markets that there were "no cases of vasculitis or occlusive vasculitis" among participants in its two phase 3 studies of Syfovre.

In the study, Olson says, Syfovre was injected into the vitreous cavity of patients' eyes. The drug aimed to treat a late stage of age-related macular degeneration, which causes vision loss, the investor notes.

"Even with potential [U.S. Food and Drug Administration approval for this application of Syfovre], the patient risk/benefit assessment was especially significant for investors, as [the injected treatment pegcetacoplan] had not shown an ability to improve eyesight" in patients with age-related macular degeneration, Olson states, noting that study results ultimately showed that the treatment reduced disease progression by 16% to 22%, and the company had previously stated that disease progression rates in the 20% to 30% range would have been considered "clinically meaningful."

Olson also claims that the study came as other intravitreal treatments administered via eye injection had recently "lost popularity among doctors and patients due to links" to serious side effects such as retinal vasculitis, which itself can cause vision loss.

"Consequently, investors worried that if SYFOVRE posed serious risks, its target demographic — the elderly— might avoid these injections, opting out of the modest benefit of slowing geographic atrophy progression," the investor notes.

According to Olson, shareholders were put at ease by company statements, made alongside the release of interim and final results for the studies, that it wasn't seeing vasculitis cases.

But Olson calls those claims "unfounded," pointing out that the company hadn't included a clear protocol in its study to instances of vasculitis — and on top of that, patients were leaving the treatment arm of the study at "significantly" higher rates than they were leaving the placebo arm, and the company wasn't monitoring those study dropouts.

After the specialist's association letter was released, Olson asserts, the company's response to those claims confirming vasculitis in three of the six patients pushed trading prices down even further, as did its later announcement that it had confirmed a seventh reported case and was probing a possible eighth.

These circumstances precipitated the filing of a proposed investor class action in the same district, Olson says, noting that potential liability in that matter, among other things, had also hurt the company.

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

Olson is represented by Seth D. Rigrotsky, Timothy J. MacFall and Vincent A. Licata of Rigrotsky Law PA, and Mitchell J. Matorin of Matorin Law Office LLC.

Counsel information for the defendants wasn't immediately available Thursday.

The case is Olson v. Francois et al., case number 1:24-cv-13209, in the U.S. District Court for the District of Massachusetts.

--Editing by Kristen Becker.

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Tesla Investors Appeal Chancery Rulings In Musk Pay Suit

By **Jeff Montgomery**

Law360 (January 2, 2025, 7:43 PM EST) -- Three Florida-based Tesla Inc. stockholders have moved ahead with Delaware Supreme Court appeals aimed at Court of Chancery decisions that short-circuited the electric car company's 10-year, \$56 billion compensation plan for Elon Musk and granted a \$345 million cash award for class attorneys who won the decision.

Chancellor Kathaleen St. J. McCormick docketed all the rulings at issue late last month in anticipation of the appeal, filed on Dec. 30 by ARK Investment Management LLC, David Israel and Kurt Panouses.

The three were described in court documents as long-term shareholders of Tesla who collectively own or manage more than 7.9 million Tesla shares worth about \$3 billion at Monday's stock price and \$3.6 billion a month ago.

Those appealing had yet to file an opening brief laying out their appeal objections, but the chancellor denied most bids to intervene in the lower court case late last year, citing in part the lateness of their actions.

Some of the Florida group's claims were permitted, the chancellor wrote, for the limited purposes of an appeal disputing the court's denial of their standing and rejecting their challenges to the adequacy of the stockholder, Richard J. Tornetta, whose suit in 2018 touched off the long battle over Musk's pay.

The chancellor declined to take arguments on the fee award, with the dispute headed to a state Supreme Court appeal.

Also filed in connection with the appeal was a court denial of intervention on other matters, with the chancellor observing that the stockholders' attorneys "appear to be shadowing" the Tesla camp's efforts to fight the class case.

"The case has been heavily litigated. At the trial-court level, it is done," the chancellor wrote. "Allowing the [Florida] stockholders to intervene to relitigate this action would thwart the goal of finality, which serves the administration of justice to plaintiff's detriment."

Up for appeal as well is a Chancery Court decision rejecting the Florida stockholders' appeal and challenges to Tornetta's adequacy as a class representatives, as well as arguments that Chancery Court should credit a stockholder vote ratifying Musk's pay plan after Tesla reincorporated in Texas.

"The motion to revise is denied. The large and talented group of defense firms got creative with the ratification argument, but their unprecedented theories go against multiple strains of settled law," the chancellor wrote.

A fourth appeal issue — the court's final order and judgment — entered judgment derivatively, on Tesla's behalf, resulting in rescission of the 2018 stock grant award, and rejecting Tesla claims that stockholder approval after its incorporation in Texas scuttled the Delaware liability.

Counsel for the dissenting stockholders and Tornetta did not immediately respond to a request for comment.

The Florida objectors are represented by David S. Eagle and Sally E. Veghte of Klehr Harrison Harvey Branzburg LLP and Thomas R. Grady of GradyLaw.

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

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

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

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

--Editing by Michael Watanabe.

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Samsung Sued Over Alleged PFAS In Galaxy Watch Wristbands

By Jonathan Capriel

Law360 (January 2, 2025, 8:35 PM EST) -- Samsung has been putting "forever chemicals" in the wristbands it sells for its smartwatches and fitness trackers, according to a proposed class action filed in California federal court by a Los Angeles resident who cites a newly published scientific study.

The **complaint**, filed Tuesday, claims that the domestic unit of the Korean electronics giant knew it was putting toxic chemicals into the bands but didn't warn consumers that they were made with dangerous chemicals. This is particularly heinous because buyers of these products tend to be those most interested in tracking their health with them, the suit said.

Samsung Electronics America Inc. "advertises these products as designed to support and further human health and wellness, environmentally sustainable, and suitable for everyday use and wear," the suit said. "However, in truth, they contain excessive levels of per- and polyfluoroalkyl substances ('PFAS'), which are toxic to human health and the environment."

The lawsuit points to a December study in the journal *Environmental Science & Technology Letters*, which tested several watch bands used by major tech companies that make smartwatches, including Google, which owns Fitbit, and Apple. Lead plaintiff Anthony Ray Gonzalez says the study found that six bands Samsung sells — including a few "expensive" ones — contained "elevated levels" of fluorine, which is an indicator of the presence of PFAS.

Gonzalez ended up with one of those bands after spending \$270 on a Galaxy Watch 6, according to the suit. He planned to wear the watch every day to track important health information, he said, but he's now concerned that heat and perspiration will cause PFAS to leak from the band and be absorbed into his body from his wrist, the suit said.

Gonzalez seeks to represent a statewide and nationwide class of consumers harmed by Samsung's alleged omission.

Counsel for Gonzalez, Ryan Clarkson Law PC, said that forever chemicals will almost certainly be the most significant public health issue for the first half of the 21st century.

"Consumers deserve to know when they're exposing themselves and their families to these forever chemicals, and that requires marketplace responsibility and transparency," he said in a statement to Law360 Thursday. "Unfortunately, Samsung took the opposite approach: append toxic bands to its smartwatches while promising health, well-being, and environmental stewardship."

Samsung did not return a request for comment Thursday.

The lawsuit notes that there were other paths Samsung could have taken. For instance, Google has used recycled yarn and silicone for Pixel and FitBit bands rather than "cheap" PFAS compositions.

PFAS are called forever chemicals because it's nearly impossible for them to break down in the environment, and they have been tied to cancer, fertility issues, high blood pressure in pregnant women and other health problems, according to data from the U.S. Environmental Protection Agency. PFAS exposure can be found almost everywhere, and most people have measurable levels in their blood, according to a recent report by the White House's Office of Science and Technology Policy.

Counsel information for Samsung wasn't immediately available.

Gonzalez is represented by Ryan J. Clarkson, Yana Hart, Mark Richards and Tiara Avanness of Clarkson Law Firm PC.

The case is Gonzalez v. Samsung Electronics America Inc., case number 2:24-cv-11234, in the U.S. District Court Central District of California.

--Editing by Adam LoBelia.

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Apple Reaches \$95M Privacy Deal With Millions Of Siri Users

By **Craig Clough**

Law360 (January 2, 2025, 5:24 PM EST) -- A proposed class of tens of millions of Apple customers asked a California federal judge to approve a \$95 million settlement that would end the litigation accusing the tech company of privacy violations over its voice-activated software Siri eavesdropping on conversations.

The proposed settlement filed Tuesday would cover potential claims for tens of millions of Apple Inc. customers who own or owned a device that has Siri from Sept. 17, 2014, through the settlement date, and would include attorney fees up to 30% of the settlement amount.

"This settlement is the product of more than five years of litigation and months of negotiations supervised by Mr. Fouad Kurdi of Resolutions, LLC, a skilled mediator with extensive experience resolving disputes in high stakes, complex litigation," the proposed class said in the **unopposed motion**.

"The highly contentious nature of the litigation, use of a mediator, and substantive terms of the settlement demonstrate that the resolution of the lawsuit is the result of arms-length negotiation between parties who were well informed of the strengths and weaknesses of their respective positions," it continued.

The suit, first filed in August 2019, followed media reports that the tech giant **had recorded users** of devices equipped with Siri without their consent.

U.S. District Judge Jeffrey S. White, who is overseeing the case, subsequently dismissed the proposed class action, saying the plaintiffs' theory of harm was "**overly speculative**" because there are no plausibly alleged facts that their specific communications were intercepted or disclosed.

Months later, Judge White largely kept intact the consumers' amended complaint, finding it **fixed their previous failure** to allege that conversations had been intercepted, but held they had not claimed any economic injury.

In his September 2021 order, Judge White noted the consumers had added allegations regarding their use of Siri-enabled devices, including one plaintiff's claim that after he spoke to his physician in the presence of his device in December 2020, that plaintiff received advertising tailored to his condition. Two other users said they charged their devices in their home and received targeted ads based on private conversations, according to the order.

The Apple customers have alleged violations of the Electronic Communications Privacy Act, among other allegations.

The litigation included the plaintiffs seeking sanctions on several occasions, including in June 2024, when U.S. Magistrate Judge Sallie Kim found Apple **spoiled evidence** by deleting key data. Judge Kim also found a jury should determine whether Apple deprived the users of the data intentionally.

The proposed settlement motion filed Tuesday said it was modifying a previous class definition "to make it consistent with evidence to date. Specifically, the settlement class period begins in 2014, as opposed to 2011, because that is when Siri first incorporated the voice triggered 'Hey, Siri' feature that makes the unauthorized recording alleged in this case possible."

The deal would make Christian Levis of Lowey Dannenberg PC and Erin Green Comite of Scott + Scott Attorneys At Law LLP class counsel; include \$10,000 service awards for the class representatives; and pay up to \$28.5 million in attorney fees, with litigation expenses not exceeding \$1.1 million.

The proposed class meets the requirements of Federal Civil Rules of Procedure 23(a) and (b)(3), including that common questions of law and fact exist for the proposed members "pertaining to Apple's alleged interception and recording of individuals' private communications by Siri devices without their consent as the result of an unintended Siri activation," the proposed class said.

Those common questions include "(a) whether Siri devices intercept or record individuals' conversations absent uttering a 'trigger word'; (b) whether this practice violated state and federal privacy laws; and (c) whether plaintiffs and class members sustained damages as a result of Apple's conduct, and, if so, what is the appropriate measure of damages or restitution," the proposed class noted.

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

The users are represented by Vincent Briganti, Christian Levis, Margaret Ciavarella MacLean and Andrea Farah of Lowey Dannenberg PC, Erin Green Comite and Joseph P. Guglielmo of Scott + Scott Attorneys At Law LLP, Mark N. Todzo and Patrick R. Carey of Lexington Law Group, and E. Kirk Wood of Wood Law Firm LLC.

Apple is represented by Isabelle L. Ord, Raj Shah and Eric Roberts of DLA Piper.

The case is Fumiko Lopez et al. v. Apple Inc., case number 4:19-cv-04577, in the U.S. District Court for the Northern District of California.

--Additional reporting by Lauren Berg. Editing by Lakshna Mehta.

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1st Private Co. Joins Insulin Price-Fixing MDL

By **Carolina Bolado**

Law360 (January 2, 2025, 7:27 PM EST) -- A Florida-based car dealer is the first private company to join a multidistrict litigation accusing Novo Nordisk, Eli Lilly and Sanofi-Aventis of fixing the prices of insulin and other drugs to treat diabetes.

In a **suit filed Tuesday**, Braman Motors Inc., which operates several car dealerships in Florida and Colorado, said the drugmakers conspired to increase the price of insulin and their own profits at the expense of companies like Braman, which maintains a self-insured health plan for its employees and their dependents.

"To the detriment of its beneficiaries and taxpayers, plaintiff has paid millions of dollars more for insulin and insulin analogs than it otherwise would have paid absent defendants' conduct," Braman said. "Braman seeks to recover for the losses it has suffered due to defendants' illegal insulin pricing scheme."

The suit joins more than 100 others filed by state attorneys general, cities, counties, tribes and unions that have been consolidated in New Jersey. Braman filed the suit directly to the MDL but designated the Southern District of Florida as the forum for its claims.

In addition to the drug manufacturers, which control more than 90% of the global market for insulin drugs, Braman's suit names pharmacy benefit managers CVS Caremark, Express Scripts and OptumRx as defendants and claims they work with the drugmakers to dictate the availability and price of the diabetes drugs. The three companies are the largest pharmacy benefit managers in the U.S. and are owned by three of the largest insurance companies in the country.

Braman is also suing group purchasing organizations or rebate aggregators like Zinc Health Services LLC, Ascent Health Services LLC and Emisar Pharma Services LLC. These companies, which are subsidiaries of the pharmacy benefit managers, negotiate rebates and other fees on the managers' behalf and keep part of the rebates and fees collected, according to the suit.

A Sanofi spokesperson declined to comment on the specifics of the allegations, but said the company's pricing practices "have always complied with the law" and that the company is "committed to helping patients access the medicine they need at the lowest possible price."

"Sanofi believes that no one should struggle to pay for their insulin, regardless of their insurance status or income level, which is why we have a suite of innovative and patient-centric savings programs to help people reduce their prescription medicine costs," the spokesperson said Thursday.

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

Braman is represented by Benjamin J. Widlanski, Tal J. Lifshitz, Jorge L. Piedra, Rachel Sullivan, Brandon Sadowsky and Daniel T. DiClemente of Kozyak Tropin & Throckmorton LLP, Matthew D. Schultz, William F. Cash and Brandon L. Bogle of Levin Papantonio Proctor Buchanan O'Brien Barr & Mougey PA, Troy A. Rafferty of Troy Rafferty Law, Christopher A. Seeger, David R. Buchanan and Steven J. Daroci of Seeger Weiss LLP, and Russell W. Budd, Christine C. Mansour, Burton LeBlanc, Roland K. Tellis, Mark P. Pifko and Catherine Hancock Dorsey of Baron & Budd PC.

Counsel information for the defendants in this lawsuit was not available Thursday.

The case is Braman Motors Inc. et al. v. Eli Lilly & Co. et al., case number 2:24-cv-11531, in the U.S.

District Court for the District of New Jersey.

The MDL is In re: Insulin Pricing Litigation, case number 2:23-md-03080, in the U.S. District Court for the District of New Jersey.

--Additional reporting by David Minsky. Editing by Lakshna Mehta.

Update: This story has been updated to include comment from Sanofi.

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Southern Comfort Malt Liquor Buyers Score False Ad Cert.

By **Gina Kim**

Law360 (January 2, 2025, 7:36 PM EST) -- A New York federal judge certified a class of Southern Comfort customers alleging Sazerac Co. deceptively labeled its malt beverage products, but declined to allow one plaintiff to serve as class representative, finding Thursday he lied in interrogatory answers and "appeared not to know the basic premise of the case."

In a 13-page order, U.S. District Judge Arun Subramanian partially granted the plaintiffs' motion for class certification in a suit accusing Sazerac Co. Inc. — the maker behind Southern Comfort alcohol products — of deceiving consumers by selling mini bottles of malt beverages that looked like its marquee whiskey product, but only contained minimal whiskey flavor.

Customers Wilbert Andrews and Steven Khan sought to represent a class of Empire State customers who bought the mini malt beverages at issue from Feb. 8, 2020, to the date of judgment.

The mini bottles of malt liquor at issue come in three sizes: 50 milliliters, 100 milliliters and 355 milliliters. The smallest size comes in a round bottle, whereas the bottles for the larger volumes are flatter in comparison.

Despite the size differences, the plaintiffs argue that all three types feature misleading elements on their labels, and that the colors, themes, fonts and spacing on the malt liquor bottles are the same as the whiskey versions. The commonalities between the Southern Comfort whiskey and malt liquor products created an overall misleading impression that the latter contained distilled spirits, they claim.

The customers moved for class certification in March 2024, which Sazerac opposed two months later, arguing individualized inquiries render class treatment inappropriate, and there is no classwide proof that the labeling was significantly misleading.

Furthermore, one of the plaintiffs, Andrews, lacked standing to be class representative because there's no credible evidence he ever bought the malt liquor at issue, and he testified twice that he bought whiskey instead and didn't know until his deposition that Sazerac sells both a whiskey and a malt product, the company adds.

On Thursday, Judge Subramanian said that while Khan — who didn't buy a 50 milliliter bottle — can serve as a class representative, Andrews cannot. Khan bought a larger bottle, but that is simply a "purchasing variation" which doesn't defeat typicality or adequacy, the judge said.

"The court agrees, however, that Andrews isn't an adequate class representative, given his confusing and contradictory deposition testimony," the order said. "In his deposition, Andrews appeared not to know the basic premise of the case[.]"

Andrews even acknowledged that he lied in his interrogatories that he paid \$1.50 for each of the bottles he bought and simply signed whatever paperwork his counsel placed in front of him without reading it completely, according to his deposition, the judge's opinion said.

"Andrews can't adequately represent a class when he doesn't know the basic premise of the suit, can't give straightforward testimony about whether he bought the product at issue, and admitted to lying in his interrogatory answers," the judge asserted.

But Judge Subramanian rejected Sazerac's contention that individual inquiries are necessary to adjudicate the claims since there's only one malt product at issue in the case, which comes in three different bottle sizes. However, each bottle features the same allegedly misleading elements, the order added.

"Specifically, all three sizes use branding elements identical to Southern Comfort whiskey, including colors, font, iconography, and taglines, and they all contain the same statement of composition," the order said. "If a jury finds that the combination of these elements would mislead a reasonable consumer to think that they were buying Southern Comfort whiskey, instead of its malt beverage, then the issue is resolved for the entire class. There is no 'individual inquiry' necessary."

Thursday's opinion is the latest development in a proposed class action initially filed in **February 2023 by Bronx customer Christina Del Rosario**, alleging that the mini Southern Comfort bottles sold at gas stations, convenience stores and grocery stores give shoppers the impression they're buying distilled spirits when they're actually buying malt liquor, which typically contains less alcohol and is subjected to a different type of fermentation process.

Many states have laws that prevent hard liquor from being sold outside of liquor stores, but Sazerac circumvents that by selling a malt liquor product in gas stations with the same label as its whiskey products, Del Rosario claims.

The mini bottles contained "identical colors, themes, fonts, symbols and spacing, and even the same outer grooves," the complaint states.

Near the bottom, the mini bottles said they contain "malt beverage with natural whiskey flavors, caramel color and oak extract," but those terms are difficult to see and instead, draw attention to the "natural whiskey flavors" portion of the label, the complaint contends. The amount of actual whiskey in the mini bottles at issue is equal to "a thimble per 2,500 gallons."

An amended pleading was filed Feb. 5, 2024, replacing Del Rosario as plaintiff with Andrews and Khan.

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

The class is represented by Charles D. Moore and Michael R. Reese of Reese LLP, Spencer Sheehan of Sheehan & Associates PC, Kevin Laukaitis of Laukaitis Law LLC, and Neal J. Deckant and Jenna L. Gavenman of Bursor & Fisher PA.

Sazerac is represented by Creighton R. Magid and Elizabeth Rozon Baksh of Dorsey & Whitney LLP.

The case is Wilbert Andrews et al. v. Sazerac Co. Inc., case number 1:23-cv-01060, in the US District Court for the Southern District of New York.

--Editing by Kristen Becker.



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Stanley Cup Maker Sued Over Alleged Lid Hazard

By **Rachel Riley**

Law360 (January 2, 2025, 8:20 PM EST) -- The Seattle-based maker of the trending Stanley-brand tumbler has been hit with a proposed class action in Washington federal court by a New York consumer accusing the manufacturer of failing to adequately compensate customers for a lid defect that led to the recall of 2.6 million travel mugs.

New York resident Danielle Scherzi claims she's one of many consumers who were denied refunds for their stainless-steel cups by Pacific Market International LLC — doing business as PMI Worldwide or Stanley 1913 — after complaints surfaced that heat caused the lids to detach during use, exposing users to spill risks and burn hazards, according to the Dec. 27 lawsuit.

The U.S. Consumer Product Safety Commission warned consumers to immediately stop using the recalled travel mugs on Dec. 12, citing 91 reports worldwide of faulty lids and 38 burn injuries, including 11 that required medical attention, according to the lawsuit.

"And yet, Stanley refuses to give customers any money back for these defective products," Scherzi alleged in the complaint. "Instead, Stanley implemented a deficient recall that allows it to say they are doing the right thing, when in fact, the primary objective is to protect their bottom line."

The recall involves nearly a dozen product ID numbers across two models — the Stanley Switchback and the Stanley Trigger Action — with capacities of 12 ounces, 16 ounces and 20 ounces. Scherzi claims that, in 2022, she purchased a 12-ounce Stanley travel mug from a Target store in Rochester, but can no longer use the cup for its intended purpose because the defect twice caused coffee to spill on her.

According to the lawsuit, PMI has refused to refund customers affected and instead offered "clearly inferior" replacement lids to those who haven't yet discarded the cups.

"This remedy is not viable for people like plaintiff who either no longer trust the reliability of Stanley's travel mugs and lids in general, or no longer have the travel mug because they disposed of it due to the defect," the lawsuit said.

The suit also accused the manufacturer of purposefully underpublicizing the recall to minimize its costs.

Scherzi seeks to represent a nationwide class and New York subclass of customers who purchased any of the recalled mugs, plus a multistate consumer protection class made up of residents from Michigan, Minnesota, New Jersey, Missouri, California, Florida, Washington, Massachusetts, Illinois and New York who bought faulty cups within the applicable statute of limitations.

The suit's claims include violation of the Washington Consumer Protection Act and New York General Business Law, as well as unjust enrichment, fraud by omission and negligent misrepresentation.

"Defendant made partial representations to plaintiffs and class members, while suppressing the safety defect," the complaint said. "Specifically, by describing the travel mug's features with language such as leakproof, leak resistant and spill proof, the product packaging and product webpages implied that they were suitable as travel mugs, without disclosing that they had a critical safety-related defect related to the lid."

Representatives of the parties didn't immediately respond to a request for comment on Thursday.

Scherzi is represented by Todd Wyatt of Wyatt Gronski PLLC, and Yeremey O. Krivoshey, Joel D. Smith and Aleksandr "Sasha" Litvinov of Smith Krivoshey PC.

Counsel information for the manufacturer wasn't immediately available on Thursday.

The case is Scherzi v. Pacific Market International LLC, case number 2:24-cv-02151, in the U.S. District Court for the Western District of Washington.

--Editing by Melissa Treolo.

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Beasley Allen Aims To Toss Suit From Ex-Ally Firm

By **Emily Sawicki**

Law360 (January 2, 2025, 3:59 PM EST) -- Beasley Allen has called on a Mississippi federal court to dismiss or transfer a defamation and breach of contract lawsuit from The Smith Law Firm PLLC over their joint venture agreement for talc litigation against Johnson & Johnson, arguing the case should be tossed in favor of its own suit filed earlier in Alabama.

The dismissal bid, filed Tuesday, is the latest move in a fee dispute between the former allies in the fallout from the talcum powder litigation, which began in September when Beasley Allen Crow Methvin Portis & Miles PC **sued Smith Law in Alabama** alleging the firm is partially responsible for more than \$1 million in unpaid expenses.

Days later, Smith Law **filed its own claims** in Mississippi, accusing Beasley Allen of defamation by bringing "patently false and defamatory" accusations in its suit.

Now Beasley Allen wants out of the Mississippi suit, arguing in its motion to dismiss or transfer that the defamation suit contains "compulsory counterclaims to Beasley Allen's claims already asserted against Smith Law" that duplicate the Alabama action. Therefore, Beasley Allen said, the claims must either be tossed or consolidated with the first-filed Alabama suit.

The 2014 joint venture agreement involved Smith Law, Beasley Allen and a third firm, Porter Malouf PA, which together represented more than 11,000 clients bringing claims accusing Johnson & Johnson of producing and marketing carcinogenic talc baby powder, according to court documents.

In its Alabama suit, filed Sept. 10, Beasley Allen accuses Smith Law of "actively undercutting" its former partners and selling out its own clients by supporting a controversial \$9 billion settlement offer by the pharmaceutical giant in an effort to balance its own books.

On Sept. 19, Smith Law brought five claims against Beasley Allen in the Mississippi suit, including breach of contract, defamation and breach of fiduciary duty.

Because Beasley Allen filed first in Alabama federal court, the firm told the court Tuesday, Smith Law's Mississippi claims must necessarily be dismissed or stayed, since the claims "unquestionably" pass the Fifth Circuit's "logical relationship" test.

"The overlap of the facts and issues presented in both the first-filed Alabama action and this later-filed action make plain there is a logical relationship between the two actions," Beasley Allen said, adding that the actions concern the same transactions, contractual obligations and duties.

Beasley Allen said it did not bring its Alabama claims in an effort to deprive Smith Law of its choice of venue.

If the Mississippi court opts not to throw out the suit, Beasley Allen said, it should be transferred to Alabama in accordance with the first-to-file rule.

Doing neither could lead to an "unnecessary duplication of efforts" potentially giving rise to "inconsistent rulings," the firm said.

Meanwhile, the two sides are wrestling over a recusal bid in Alabama federal court. On Dec. 18, Smith Law filed a motion requesting that U.S. District Judge R. Austin Huffaker Jr. **step away from the suit** because he had represented Beasley Allen before joining the bench in 2019. On Dec. 20,

Beasley Allen responded that, although Judge Huffaker should do as he sees fit, the request is outside the bounds of the law.

Counsel for the two parties did not immediately respond to requests for comment Thursday.

Beasley Allen is represented by R. David Kaufman, M. Patrick McDowell and Kaelyn N. Mack of Brunini Grantham Grower & Hewes PLLC.

Smith Law is represented by Thomas G. Bufkin of Carroll Bufkin PLLC.

The case is The Smith Law Firm PLLC v. Beasley Allen et al., case number 3:24-cv-00564, in the U.S. District Court for the Southern District of Mississippi.

--Additional reporting by Ryan Boysen and James Boyle. Editing by Brian Baresch.

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