News from Bloomberg Terminal
Jan. 7, 2025, 11:56 AM PST

Alta Mesa Reaches $126 Million Settlement to End SPAC Fraud Case

- Investors in defunct energy company propose global deal
- Suit alleged inflated accounting before financial collapse

By Ben Miller

(Bloomberg Law) --

Alta Mesa Resources Inc. and investors proposed a $126.3 million settlement to settle fraud claims related to the now-defunct oil and gas company's blank-check merger and subsequent collapse.

Investors who sued Alta Mesa and other companies involved in taking the energy outfit public were among the many jilted shareholders who brought fraud claims to recover losses after similar SPAC mergers, which peaked in popularity 2020 and 2021 and left a high volume of litigation in their wake.

The class of investors secured more than $11 million in prior settlements last November after reaching agreements with Bayou City Energy Management LLC, HPS Investment Partners LLC, and ARM Energy Holdings LLC, also named defendants in the suit.

The deal proposed by Alta Mesa and the investors on Monday in the US District Court for the Southern District of Texas would settle the remaining claims against the company, including allegations that Alta Mesa never disclosed its drilling practices or the impact they had on financial estimates surrounding the merger. The court would need to sign off on the deal.

Alta Mesa used unconventional drilling methods, according to the class action, inflating financial estimates before and after the 2018 SPAC merger. After an audit showed accounting weaknesses, the company wrote down $3.1 billion of its $3.8 billion overall value.

Alta Mesa's stock plummeted from $8.38 per share to just $0.34, and the company ultimately sold its assets during bankruptcy for $320 million.

The defunct energy outfit and several of its former leaders faced trial on the fraud claims in November and December, during which the parties reached their settlement, according to the case docket. The settlement would be paid out to a class of investors who acquired Alta Mesa stock during a covered period from 2017 to 2019.

Entwistle & Cappucci LLP, Labaton Keller Sucharow LLP, and Robbins Geller Rudman & Dowd LLP represent the investor plaintiffs.

Latham & Watkins LLP represents Alta Mesa and the former executive defendants.

The case is *In re Alta Mesa Res. Inc. Sec. Litig.*, Bankr. S.D. Tex., No. 4:19-cv-00957, motion filed 1/6/25.

To contact the reporter on this story: Ben Miller in New York City at bmiller2@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

Securities Law News

Jan. 6, 2025, 9:31 AM PST

Revance Contract Issue Lowered Stock Buy, Investor Suit Alleges

By Gillian R. Brassil

- **COURT**: M.D. Tenn.
- **TRACK DOCKET**: No. 3:25-cv-00018 (Bloomberg Law subscription)

Biotechnology company Revance Therapeutics, Inc. purportedly concealed it might be breaching a long-term dermal-filler contract, imperiling a merger offer and sending the stock down over 20%, a proposed class action says.

Revance, which develops anti-wrinkle and pain-disorder injections, and two top executives misled investors and caused the stock-buy agreement to shrink to half its price, shareholder Cassandra Matney said in a complaint filed in the US District Court for the Middle District of Tennessee on Jan. 3.

In August 2024, Revance and Crown Laboratories, Inc., announced a agreement under which the privately-held skincare company would pay cash for outstanding Revance stock at $6.66 a share, totaling $924 million, Matney said.

The biotechnology company had been in a distribution agreement since 2020 that gave it the exclusive rights to sell Teoxane SA's line of dermal fillers in the US in exchange for 2.5 million shares of Revance stock, among other points, the complaint said. Either company had the right to end the deal, including if Revance failed to meet minimum purchase requirements or breached "exclusivity obligations."

In September, Revance shared in a federal filing it was notified of purportedly breaching its contract regarding the "maximum levels of buffer stock and required efforts to promote and sell Teoxane products," delaying the Crown merger and sending the stock price down about 7.7% to $5.37 a share, the complaint said. Revance wrote in the filing it denied assertions of material contract breaches.

On Dec. 9, Revance shared Crown would move to buy outstanding Revance shares at $3.10 a piece. Analysts criticized Revance; its share price plummeted almost 20.7% to $3.03 that day, the complaint said.

The proposed class would include investors from Feb. 29, 2024—when the company submitted a filing with an allegedly rosy note about the Teoxane agreement—through Dec. 6, the last trading day before Dec. 9.

Matney seeks damages, alleging securities law violations in which executives knew or recklessly disregarded the veracity of statements about the contract.

Bramlett Law Offices, Pomerantz LLP, and Wohl & Fruchter LLP represent Matney.

Revance didn't immediately respond to an email seeking comment. Neither did Matney's attorneys.

The case is Matney v. Revance Therapeutics, Inc. , M.D. Tenn., No. 3:25-cv-00018, complaint filed 1/3/25 .

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

To contact the editor responsible for this story: Brian Flood at bflood@bloombergindustry.com

Class Action
Jan. 7, 2025, 7:56 AM PST

Nikola Investors Get Class Status in Electric Truck Fraud Suit

By Gillian R. Brassil

- Judge okayed fraud-on-the-market presumption of reliance
- Allowed economist report that Nikola traded in efficient market

Nikola Corp. investors earned class status in their suit alleging that the electric vehicle company misled them about the prowess of its fuel cell technology and truck business prospects as it went public through a blank-check company merger, a federal judge ruled.

Nikola stock was trading in an efficient market at the time and investors were entitled to a fraud-on-the-market presumption of reliance, US District Court for the District of Arizona Judge Steven Paul Logan said, dashing the company's arguments against class certification. And shareholders can use testimony from economist Zachary Nye about market trading that the defendants wanted excluded, said Logan while granting class status on Monday.

"A plaintiff is not required, at class certification stage, to prove that the market in fact responded to alleged misrepresentations; however, to rebut the presumption of reliance, a defendant is required to show that the market did not respond to those misrepresentations," Logan wrote, noting Nikola didn't do so.

The class includes investors in Nikola stock from June 4, 2020 through Feb. 25, 2021. Two investors will serve as class representatives but the estate of a third who died during litigation will not, Logan said.

The energy-product manufacturer was valued at $34 billion when it went public in June 2020 through a special-purpose acquisition company. But that September, short seller Hindenburg Research reported that Nikola and its founder purportedly lied about its hydrogen fuel cell technology and other points, kickstarting further investigations and leading to a series of stock declines, investors alleged in their second consolidated amended complaint.

On June 4, 2020, the day Nikola debuted on the market, the stock price closed at $1,012.51 a share, according to data compiled by Bloomberg. On Monday, Nikola closed at $1.60 a share.

SEC Charges

Investors initially sued in 2020. Claims that survived dismissal target the Phoenix-based company and certain executives, former board member Jeffrey Ubben, and Nikola founder Trevor Milton.

In 2021, Nikola agreed to pay $125 million to settle Securities and Exchange Commission fraud charges. Milton was sentenced to four years in prison, $168 million in restitution, and a $1 million fine in December 2023 after being found guilty of securities and wire fraud.

It’s far from the only securities litigation that Nikola executives have faced in recent years. Last month, investors in an unrelated action agreed to settle with the architects of Nikola’s SPAC merger in a derivative lawsuit before the Delaware Court of Chancery. And Nikola is litigating a different proposed investor class action over safety concerns, with executives sued in a related shareholder derivative.

The class approved Monday is represented by Pomerantz LLP and Block & Levinton LLP. The Nikola defendants are represented by Paul Weiss Rifkind Wharton & Garrison LLP and Wilenchik & Bartness PC. Milton is represented by Wallin Hester PLC and Paul Hastings LLP. Ubben is represented by Akin Gump Strauss Hauer & Feld LLP and Snell & Wilmer LLP.

None of these firms responded to emails seeking comment.

The case is Borteanu v. Nikola Corp. , D. Ariz., No. 2:20-cv-01797, 1/6/25 .

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

To contact the editor responsible for this story: Andrew Harris at aharris@bloomberglaw.com

Experts Weigh In On the 2025 Litigation Outlook

law.com/litigationdaily/2025/01/07/experts-weigh-in-on-the-2025-litigation-outlook

Ross Todd

(Clockwise, from top left) Bob Giuffra of Sullivan & Cromwell, Michele Johnson of Latham & Watkins, Bob Bodian of Mintz, and Lynn Neuner of Simpson Thacher. Courtesy photos

Analysis
Back before the holidays, we checked in with a handful of Big Law litigation leaders to hear what they're looking out for in 2025. Here are the highlights.

January 07, 2025 at 08:30 AM

By Ross Todd
Editor/columnist

It's become an annual tradition for Litigation Daily to query Big Law leaders in the run-up to the holidays about trends they're looking out for in the year ahead. Indeed, you can find our last three look-ahead columns for 2022, 2023 and 2024 here, here and here, respectively.

The exercise always offers a good opportunity to hear what's on litigators' minds and what they see coming around the corner. But **Sullivan & Cromwell** co-chair **Bob Giuffra** put a new—and I think useful—frame on the forecasting effort. Giuffra told me what people think will be the next big thing when it comes to litigation doesn't always pan out. He says the trends that tend to occupy large law firm litigation departments are often generated by "unexpected market events."

Think of Enron and the wave of accounting scandals in 2001 or the mortgage-driven financial crisis of the late 2000s. Starting in the middle of the last decade, vehicle emissions work kept Giuffra and his S&C colleagues extremely busy, even though he'd never touched a Clean Air Act case before representing Volkswagen.

"Where the litigation will come from for big law firms is anyone's guess, because it will be a function of macroeconomic factors that are just beyond all of our controls," Giuffra said.

Giuffra said there's a presumption in the market that the incoming Trump administration will have a lighter hand in regulatory and enforcement matters, meaning a dip in government-generated litigation. However, he said the Trump administration, just like prior Republican administrations, will be impacted by market developments.

"If there's a big scandal out there, in whatever industry it occurs, they will look at it," he said. "They're not just going to sit there if some major company has engaged in fraud, particularly if it's fraud impacting lots of people or huge losses."

That said, Giuffra and his partners aren't taking a wait-and-see approach to planning for future litigation trends. He pointed in particular to the work his partners **Jeff Wall** and **Morgan Ratner** have done to build out the firm's appellate practice, with an eye on handling more work in the U.S. Supreme Court. "There hasn't been a six-three conservative majority on the Supreme Court probably since Taft," Giuffra said. He said he expects more business-friendly rulings from the court in the coming years on everything from class certification to the scope of the securities and antitrust laws.

With that as the backdrop, **Michele Johnson**, global chair of the litigation and trial department at **Latham & Watkins**, said she's expecting more legal challenges to the administrative state. She said she particularly expects more challenges related to agencies' changes in position. She also said to watch out for such challenges in highly regulated industries, especially in cases involving environmental regulations.

"This area has become a flash point in the battle against the administrative state, as over-aggressive regulators have come up against courts that are increasingly skeptical of agency action," she said.

Johnson also said she thinks bet-the-company cases "are largely acyclical," and she sees major trials on the near horizon in bankruptcy, product liability, data privacy and cybersecurity, shareholder and M&A, patent, antitrust and crypto cases. She said she and her colleagues expect a more business-friendly regulatory approach in the U.S. under the new administration, but the intersection of AI and antitrust will be an area to watch as more industries deploy algorithmic pricing and information exchange software tools. Johnson pointed out the firm has been active on that front representing software company Cendyn in the casino hotel pricing cases and real estate investment trust AvalonBay in the RealPage apartment pricing multidistrict litigation.

Johnson and two others—**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo** managing partner **Bob Bodian** and **Goodwin Procter** litigation department chair **Carl Metzger**—mentioned they've seen an uptick in disputes and high-dollar damage awards in cases involving trade secrets. With employees constantly changing companies and a corporate shift from tangible to intangible assets, all three expect trade secrets litigation to be active.

"In IP litigation, we're still seeing a fair amount of patent litigation, but also evolving areas of trade secret litigation," said Goodwin's Metzger. Goodwin, in particular, said companies that are focused on artificial intelligence as their main product are dealing with litigation over IP ownership. But he added that the scrutiny of corporate statements about how AI is being

deployed has generated additional litigation centering on claims of AI-washing. “Everyone is either using AI or claiming they're using AI in ways that are still going to make litigation in that space continue to evolve and be active,” he said.
Metzger said Goodwin has had four straight years of double-digit growth in litigation and, despite an anticipated dip in government-facing antitrust enforcement work, there’s room for still more growth in the practice.

“If we do end up seeing a dip of work on the regulatory investigation side, we're likely to see a pickup of antitrust litigation on the private side,” he said.

Bodian echoed much of what Metzger said. “The government's probably going to ease off in some of these areas, but the plaintiff's bar is not,” he said. Bodian said he anticipates the potential uptick in deal activity in sectors where the firm is strong—private equity, life sciences, health care and technology—will make up for any dropoff in enforcement activity. “A lot more deal activity just spins off more issues,” he said. “Private equity litigation is definitely on the increase, we think.”

Lynn Neuner, global co-chair of the litigation department at **Simpson Thacher & Bartlett**, said that the expected uptick in deal volume will affect all the portions of her group that support the deal team. “Traditional regulatory-initiated investigations may not have the same pace, but in the commercial litigation, we see people ready to rumble,” Neuner said.

She said that litigants seem to be emboldened by the macroeconomic environment. “I think their own projections are looking up, and they don't want to just take the low settlement and call it a day and move on,” Neuner said. She said she sees an increasing appetite to litigate cases to a conclusion—or at least litigate further than usual to try to improve negotiating leverage.

Neuner and her partner **Linton Mann III**, who has helped lead the firm’s efforts on DEI and cybersecurity and privacyissues, also said they have their eyes on the impact that generative AI could have on the types of cases companies face. Mann, in particular, said that he would see the technology making it more efficient, faster and less costly for plaintiffs to bring claims, especially in areas such as securities litigation. “The cost of litigation for bringing one of these cases may have been impacted, and that could play a role in why one might choose to fight today a case that they might have wanted to settle earlier,” he said.

Jennifer Selendy, a founding partner at **Selendy Gay**, said that 2024 was packed from beginning to end at her firm. The year started in January with a trial that resulted in a billion-dollar win against Johnson & Johnson in a Delaware earnout dispute for their clients, former investors in Auris Health Inc., and ended with the firm representing Albertsons in litigation

against Kroger over the grocery chains' failed merger. In between, the firm has also been very active in litigation over "liability management" or "uptier" transactions—a form of out-of-court debt restructuring dubbed by some as "lender-on-lender violence."
Selendy said the deals have provided "a perfect storm of litigation-ready issues."

"It's not against the law to breach a contract," she said. "But at the end of the day, if you breach, you just have to be prepared to pay damages."

"I'm excited about 2025, because I'd like to get one of these cases to trial," said Selendy, noting the consistent losers in these deals have been smaller players in the market. "I'd like to make good law," she said.

Clarification: This story has been updated to indicate that the trial Selendy Gay handled in the earnout dispute with Johnson & Johnson occurred in January. The decision was released in September.

How We Won: Samsung Defeats Data Breach Class Action

law.com/therecorder/2025/01/06/how-we-won-samsung-defeats-data-breach-class-action

Charles Toutant

What You Need to Know

- Federal judge dismisses an MDL brought on behalf of individuals whose personal information was stolen in a Samsung data breach.
- Four of the 41 plaintiffs say their data landed on the dark web, but they did not allege that data stolen in this incident, as opposed to data obtained elsewhere, is on the dark web.
- Information obtained in this incident is not the type of personal identifying information that subjects an individual to a heightened risk of identity theft or fraud.

As lawsuits fly over compromised information, a group of lawyers secured a dismissal for a high-profile client on the hot seat.

They won before a federal judge in Camden, New Jersey, who dismissed a data breach class action against Samsung Electronics America, finding the court has no jurisdiction over the case.

Not all data is created equal, and the information stolen in this case is "too mundane" or readily available online to significantly increase an individual's risk of identity theft, the judge said.

The ruling comes after Samsung's data breach in July 2022, which plaintiffs lawyers claimed resulted in the theft of personal information belonging to thousands of consumers.

Standing

Across the country, lawyers filed 17 suits on behalf of plaintiffs whose data was stolen.

The Judicial Panel for Multidistrict Litigation consolidated the suits before U.S. District Judge Christine O'Hearn in the U.S. District Court for the District of New Jersey in February 2023.

O'Hearn dismissed the case on Friday, finding that plaintiffs' theories of harm do not constitute an injury-in-fact and that plaintiffs' allegations of attempted and actual identity theft cannot be traced to the stolen information.

Four of the 17 cases in the MDL, which were first filed in state courts before being removed to federal court, will be remanded to the state courts where they got their start.

The judge dismissed the other 13 cases without prejudice.

The plaintiffs claimed their data was disclosed because of Samsung's lax security practices and that a cybercrime hacking group was involved. The name of that group was among many words and phrases redacted from O'Hearn's ruling pursuant to a joint motion to seal.

According to O'Hearn, federal courts can entertain actions only if they present live disputes in which both sides have a personal stake.

As the party invoking federal jurisdiction, the plaintiff bears the burden of establishing standing, she wrote. To establish standing, a plaintiff must show that he or she suffered an injury in fact that is concrete, particularized and actual or imminent, that the injury was likely caused by the defendant and that the injury would likely be addressed by judicial relief, she wrote.

Judge Christine O'Hearn of the U.S. District Court for the District of New Jersey. Courtesy photo

Criteria

In the Samsung case, a finding of imminent harm is supported by the plaintiffs' allegation that the attack was carried about by a known cybergang, O'Hearn said.

A finding that the data was misused is not required to allege injury-in-fact but is a consideration, O'Hearn said.

Out of 41 plaintiffs in the case, only four allege that they have been notified that their personal data is on the dark web.

But those four do not specify that specific information obtained in this data breach is on the dark web, as opposed to information obtained elsewhere, like Social Security numbers and credit card information that was not part of the Samsung breach, O'Hearn said.

Even if this factor weighs in favor of imminence for these four plaintiffs, the allegations do not show that the same will happen to plaintiffs who have not alleged that their personal information was accessed and disseminated, she found.

To the extent that five plaintiffs allege that their information is on the dark web suffices to show misuse, it does not for the remaining plaintiffs, O'Hearn found.

However, an examination of the nature of the information accessed is "decisively fatal" for the plaintiffs, O'Hearn wrote.

"Put simply, the information the parties now agree was accessed in the data breach—names, addresses, other contact and demographic information, and device information—is not the type of [personal identifying information] that subjects an individual to a heightened risk of identity theft or fraud in any way despite plaintiffs' repeated attempts to suggest otherwise," the judge wrote. "Courts routinely have dismissed claims for lack of jurisdiction when the information accessed is similar, or in some cases, even more sensitive to that which plaintiffs allege here because the risk of future harm is far too attenuated or speculative."

"In fact, given the current frequency of data breaches, there is a surplus of caselaw involving non-sensitive information, such as here, that have been repeatedly dismissed as a matter of course," O'Hearn found.

Carella Byrne Cecchi Brody & Agnello of Roseland, New Jersey, is interim lead counsel for the plaintiffs. That firm's James Cecchi did not respond to a phone message or an email.

Other attorneys for the plaintiffs in the case and members of the leadership committee include Lynch Carpenter of Pittsburgh, Pennsylvania; Tycko & Zavareei of Oakland, California; Fine, Kaplan & Black of Philadelphia; Clarkson Law Firm of New York; DiCello Levitt of Chicago; Nussbaum Law Group of New York; Hausfeld of New York; Lite DePalma Greenberg & Afanador of Newark, New Jersey; and Seeger Weiss of Ridgefield Park, New Jersey.

Samsung had representation from Arnold & Porter Kaye Scholer; Archer & Greiner of Voorhees, New Jersey and Hunton Andrews Kurth of Washington, D.C. Samsung's lawyers did not respond to requests for comment about the ruling.

Class Action

Jan. 6, 2025, 11:08 AM PST

Hyundai, Kia Get Defective Charging Suit Sent to Arbitration

By Shweta Watwe

- Consumers say electric cars' charging ability doesn't work
- Arbitration agreements weren't unfair or unconscionable

Consumers alleging certain Hyundai Motor Co. and Kia Corp. electric vehicles fail to charge as advertised must arbitrate their claims, a federal judge ruled.

The arbitration provisions in Kia's Connect Terms of Service and Hyundai's BlueLink Services agreement weren't invalid or unconscionable, the US District Court for the Central District of California said Jan 3.

Eight vehicle owners and lessees brought a proposed class action against the car makers and alleged multiple types of electric models are defective because they don't charge as advertised. The vehicles included Hyundai's Ioniq 5 and 6, the Kia EV6, Kia Niro EV, Kia PHEV, and Genesis GV60. The consumers seek to represent a nationwide class of all buyers and lessees of these vehicles as well as state sub-classes.

The car makers moved to compel arbitration and alleged that the consumers are bound by arbitration provisions in the agreements that govern in-vehicle communications and entertainment like Kia Connect and BlueLink. Both services require consumers to create accounts and enroll through online customer portals. Part of the sign-up process includes clicking a box that requires consumers to agree to the terms of service, as "clickwrap agreements."

The consumers argued the arbitration agreements were procedurally unconscionable because they didn't know about the arbitration portion and didn't have an opportunity to opt out.

Even though the contracts are contracts of adhesion, or ones where the parties don't have equal bargaining power, the consumers didn't show the agreements were oppressive or unfair, Judge John W. Holcomb said.

"This very minimal degree of procedural unconscionability does not bar enforcement of the arbitration agreements," Holcomb said.

The agreements aren't substantively unconscionable either, the judge said. The arbitration provisions are limited to disputes related to the agreement and Hyundai connection services or Kia Connect services, which include charging, Holcomb said.

The consumers are represented by Hagens Berman Sobol Shapiro LLP.

Hyundai and Kia are represented by Shook Hardy & Bacon LLP.

The case is Gould v. Hyundai Motor Co. , C.D. Cal., No. 8:23-cv-01344, 1/3/25 .

Exxon sues California AG, environmental groups over attacks on recycling efforts

reuters.com/legal/exxon-mobil-sues-california-attorney-general-environmental-groups-2025-01-06

Sheila Dang, Jonathan Stempel

By Sheila Dang and Jonathan Stempel
January 6, 20256:34 PM PSTUpdated 12 hours ago
An Exxon gas station seen in Washington, U.S., November 26, 2024. REUTERS/Nathan Howard/File Photo Purchase Licensing Rights, opens new tab

- Exxon accuses California AG of defamation over recycling tech
- Exxon claims AG Bonta linked to its rivals, seeks undisclosed damages

Jan 6 (Reuters) - Exxon Mobil (XOM.N), opens new tab filed a lawsuit on Monday against California Attorney General Rob Bonta and several environmental groups, court records show, accusing them of defaming and disparaging the oil giant's advanced plastics recycling initiatives.
The lawsuit is a sign of how Exxon is increasingly fighting back against environmentalists and other critics who have brought lawsuits against the company alleging its involvement in climate change and rising greenhouse gas emissions.

Filed in federal court in Beaumont, Texas, the lawsuit accused Bonta of acting in concert with a law firm called Cotchett, Pitre & McCarthy, LLP that has ties to IEJF, an Australian non-profit controlled by billionaire Fortescue (FMG.AX), opens new tab founder Andrew Forrest's company Minderoo Foundation.
Fortescue competes with Exxon in low-carbon solutions and the energy transition sector, the lawsuit said.

Cotchett had recruited U.S. environmental groups as plaintiffs in a lawsuit against Exxon, and also contributed to Bonta's political campaign, Exxon said.

The company is asking for undisclosed damages and a retraction of what it called defamatory statements.

A spokesperson for the California Department of Justice said: "This is another attempt from ExxonMobil to deflect attention from its own unlawful deception. The Attorney General is proud to advance his lawsuit against ExxonMobil and looks forward to vigorously litigating this case in court."

Bonta sued Exxon last year, saying the company had engaged in decades-long deception about the limitations of recycling and asked a court to "hold ExxonMobil fully accountable for its role in actively creating and exacerbating the plastics pollution crisis."

Exxon's advanced recycling technology uses heat to break down plastics that are difficult to recycle to a molecular level so they can be reused.

Exxon separately sued activist investors last year after they filed a shareholder proposal on climate change. The company continued to pursue the lawsuit even after the activist investors withdrew the proposal, which raised alarm from climate advocates that the legal action would muzzle debate between shareholders and public companies. A U.S. judge threw out Exxon's lawsuit in June.

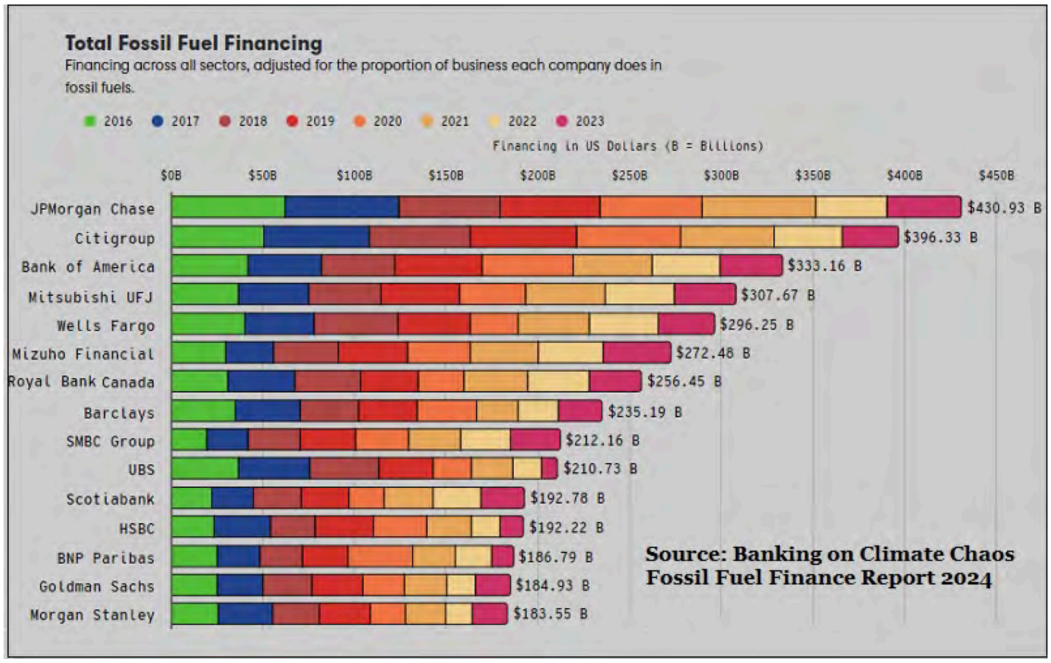
"Instead of coming alongside efforts to support a developing technology ... Defendants are repeatedly and publicly attacking ExxonMobil with false accusations of being a 'liar' and declarations that advanced recycling is a 'myth' and a 'sham,'" Exxon said in the complaint.

In November, Exxon said it was moving forward with a plan to spend $200 million in Texas to expand its advanced recycling capabilities.
Exxon has been selling off its California oil and gas properties and criticizing the state's energy regulations.

Reporting by Jonathan Stempel in New York and Sheila Dang in Houston; Editing by Nia Williams, Chris Reese and Jamie Freed

Wall Street Is Sending the Same Message to Americans on Fossil Fuel Financing that It Sent on Cigarettes: Drop Dead

wallstreetonparade.com/2025/01/wall-street-is-sending-the-same-message-to-americans-on-fossil-fuel-financing-that-it-sent-on-cigarettes-drop-dead



By Pam Martens and Russ Martens: January 7, 2025 ~

On July 31, 2023 the World Health Organization released a report on cigarette smoking. It noted the following:

"The tobacco epidemic is one of the biggest public health threats the world has ever faced, killing over 8 million people a year around the world. More than 7 million of those deaths are the result of direct tobacco use while around 1.3 million are the result of non-smokers being exposed to second-hand smoke.

"All forms of tobacco use are harmful, and there is no safe level of exposure to tobacco….

"Around 80% of the 1.3 billion tobacco users worldwide live in low- and middle-income countries, where the burden of tobacco-related illness and death is heaviest. Tobacco use contributes to poverty by diverting household spending from basic needs such as food and shelter to tobacco. This spending behaviour is difficult to curb because tobacco is so addictive."

Despite awareness for decades by Wall Street banks that cigarettes are deadly, they have continued to finance cigarette manufacturers. According to MarketBeat, as of this October, Citigroup had a buy rating on Philip Morris International and JPMorgan Chase rated it "overweight."

Philip Morris International is publicly traded on the New York Stock Exchange under the ticker symbol PM. Its cigarette brands include Marlboro, Parliament, Virginia S., L&M, Lark, Merit, Muratti, Chesterfield and numerous others.

In a 2004 paper, two researchers, B. C. Alamar and S. A. Glantz, exposed how two Wall Street analysts became shills for the tobacco industry while representing themselves as independent Wall Street analysts. The researchers write:

"In particular, for the two analysts discussed in detail below, their conflicts of interest, in regards to their firms' revenues attributable to investment banking relationships with tobacco companies, and their collaboration with the firms, are never noted in their role as policy advisers. The first analyst, David Adelman, worked for Morgan Stanley which, at the time of the activities described below, owned approximately $1.7 billion of Philip Morris stock and functioned as an underwriter on Philip Morris bond offerings. The second analyst, Martin Feldman, worked for Smith Barney, a subsidiary of Citigroup, which owned approximately $894 million of Philip Morris stock and also functioned as the underwriter on several Philip Morris bond offerings. We document how Philip Morris-USA (PMUSA) used these analysts, who represented themselves as independent, to advance the interest of the tobacco industry in public policy debates." (Refer to the 2004 paper linked above for the specific details.)

Megabanks on Wall Street have taken a similarly reckless and irresponsible attitude toward financing fossil fuel companies that are responsible for deadly climate change. According to the Fossil Fuel Finance Report 2024, the largest bank in the United States, JPMorgan Chase, is the largest lender to fossil fuel projects, with $430.9 billion in financings since 2016. Citigroup is ranked as the number one lender to fossil fuel *expansions* since 2016, according to the same report, with $396.3 billion in financings.

Last month, 14 researchers from around the world published a paper in the *BioScience* journal under the title: "Perilous Times on Planet Earth." They write as follows:

"We are on the brink of an irreversible climate disaster. This is a global emergency beyond any doubt. Much of the very fabric of life on Earth is imperiled. We are stepping into a critical and unpredictable new phase of the climate crisis. For many years, scientists, including a group of more than 15,000, have sounded the alarm about the impending dangers of climate change driven by increasing greenhouse gas emissions and ecosystem change (Ripple et al. 2020). For half a century, global warming has been correctly predicted even before it was observed—and not only by independent academic scientists but also by fossil fuel companies (Supran et al. 2023). Despite these warnings, we are still moving in the wrong direction; fossil fuel emissions have increased to an all-time high, the 3 hottest days ever occurred in July of 2024 (Guterres 2024), and current policies have us on track for approximately 2.7 degrees Celsius (°C) peak warming by 2100 (UNEP 2023). Tragically, we are failing to avoid serious impacts, and we can now only hope to limit the extent of the damage. We are witnessing the grim reality of the forecasts as climate impacts escalate, bringing forth scenes of unprecedented disasters around the world and human and nonhuman suffering. We find ourselves amid an abrupt climate upheaval, a dire situation never before encountered in the annals of human existence. We have now brought the planet into climatic conditions never witnessed by us or our prehistoric relatives within our genus, *Homo…*

"Last year, we witnessed record-breaking sea surface temperatures (Cheng et al. 2024), the hottest Northern Hemisphere extratropical summer in 2000 years (Esper et al. 2024), and the breaking of many other climate records (Ripple et al. 2023a). Moreover, we will see much more extreme weather in the coming years (Masson-Delmotte et al. 2021). Human-caused carbon dioxide emissions and other greenhouse gases are the primary drivers of climate change. As of 2022, global fossil fuel combustion and industrial processes account for approximately 90% of these emissions, whereas land-use change, primarily deforestation, accounts for approximately 10%…."

How is Wall Street responding to these very real threats to humans and the planet? According to a report by Reuters yesterday, the Wall Street megabanks are "rushing in recent weeks to leave one of the world's top banking sector climate coalitions," the Net-Zero Banking Alliance (NZBA).

The article suggests that Republican politicians warned the Wall Street banks that they might face antitrust challenges if they remained in the group.

That is a laughable threat and Wall Street knows it. Wall Street's top lawyers have been meeting secretly for years with no pushback from these Republican lawmakers. The New York Fed has been blurring antitrust lines for decades with sponsored Wall Street megabank groups with no pushback from *either* political party.

Guest Post: Climate Change and D&O Insurance

dandodiary.com/2025/01/articles/esg/guest-post-climate-change-and-do-insurance

January 7, 2025

By Kevin LaCroix on January 7, 2025
Posted in ESG

Angus Duncan

Global climate change has been one of the perennial hot button D&O liability issues for several years. But there is no doubt that more recently emphasis on the topic has diminished and priorities have shifted elsewhere. In the following guest post, Angus Duncan, WTW's Global D&O Coverage Specialist (ex NA), takes a look at the possible reasons for the shift and what the long-term implications may be. A version of this article previously was published on WTW's GB Insights website. I would like to thank Angus for allowing me to publish his article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to this blog's readers. Please contact me directly if you would like to submit a guest post. Here is Angus's article.

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D&O insurers are less focused on climate change – but is that because claims aren't materialising (yet) or is that a factor of the soft market?

Since 2020 (or thereabouts), there has been a lot of talk about potential exposure for directors and officers in connection with climate change. A large part of this has been driven by the increasing formal disclosure requirements that companies are obliged to make regarding a company's CO_2 (or CO_2 equivalent) emissions. Any time a company has to make a statement about anything, that is something a director or officer has to sign off on and climate change is another example. Exposure isn't limited to potential misrepresentation claims, of course. There is also the potential for allegations of breach of fiduciary duty in failing to manage the company's exposure to climate change or for failing to sufficiently aggressively reduce the company's own emissions or otherwise pursue goals of moving away from dealing with high emissions industries.

Regulators have been very active in many jurisdictions in pursuing companies for alleged greenwashing and various Non-Governmental Organisations (NGOs) have brought actions (some successful and some not) against companies in relation to how they are managing these matters.

A shift in risk priorities

For a few years, we saw an increased interest from Directors and Officers Liability (D&O) insurers in relation to the potential exposure for directors and officers to climate-related litigation. However, having surveyed a lot of WTW colleagues around the world who are involved in the placement of D&O insurance policies, it seems like insurers' interest in this area is dropping off.

For people working with Financial Institutions, we saw one insurer, in particular, impose a significant questionnaire a couple of years ago. However, it appears that is rarely seen in recent placements. There are some sectors in some regions where formal questionnaires may still be required, but they appear to be the exception, rather than the rule.

So why do we think the initial focus from insurers on climate change-related exposures has dropped-off?

So why do we think the initial focus from insurers on climate change-related exposures has dropped-off? The burden of regulation relating to climate change in many countries around the world has increased over the last few years, not fallen away, so one might expect the focus from insurers to have heightened rather than lessened.

We can suggest a few possibilities

First, so far there have been few climate change cases publicly targeting directors and officers. While there have been cases against companies (and as mentioned, many regulatory actions), we have seen few actions targeting individuals. Perhaps the most public case targeting directors is a derivative claim brought in the High Court in London and that claim was dismissed.

Climate change did not appear in the top seven risks overall of our Directors' and Officers' Survey 2023/24.

Second, even where people may still consider climate change to be a significant risk for directors and officers, they may be more focussed on other risks. This is suggested by the results of our Directors and Officers Survey which we reported on in March 2024. Climate change did not appear in the top seven risks overall, although it did appear in the top seven risks for the Middle East, Australasia and Asia. In GB, climate change went from being the number one risk in 2023 to falling out of the top seven entirely. However, the proportion of respondents saying that climate change was at least an important risk for directors and officers actually increased – just not by nearly as much as other risks.

Third, the insurance market for D&O insurance is incredibly soft at the moment. Rampant competition means that many insurers are reluctant to ask challenging questions or to take strong positions regarding climate change exposures for fear of losing an account. Some insurers we have spoken to were clear that it isn't that they aren't interested in climate change exposures, it is just that they don't feel able in the current market to change the terms they are offering whether a client is managing their climate change exposure well or not.

Obviously, the situation may vary depending upon each client's particular position, but these are the messages we are getting from insurers at the moment.

Approaching 2030

Some insurers are offering additional capacity for clients who manage their climate change or ESG risks particularly well. However, in the current soft market, finding sufficient capacity at reasonable rates for most of our clients is not generally a challenge, so there is little need to call upon such additional capacity as may be available.

One note of caution is that the closer we get to 2030, the more likely it is that companies may need to revisit their 2030 climate change targets. This may lead to an increase in claims against directors and officers, particularly for directors and officers of public companies.

Nonetheless, for now, the positive news is that we are not seeing climate change exclusions in D&O insurance and many insurers, at least in the London market, are open in stating that they consider that greenwashing claims or breach of fiduciary duty claims relating to climate change exposures are the types of matter they would expect a D&O policy to respond to.

This is clearly an area to keep an eye on as and when claims develop. However, for now, the position is positive for directors and officers and their insurance.

Litigation
Jan. 7, 2025, 10:48 AM PST

Ex-Endo Directors Move to Dismiss Trustee's Opioid Sales Suit

By Alex Wolf

- Claims time-barred, insufficiently alleged, former managers say
- Defendants accused of ignoring growing opioid sale red flags

Former Endo International Plc officers and directors moved to throw out a bankruptcy trustee's lawsuit accusing them of sinking the company's fortunes, calling it "a thinly veiled attempt to extract money from insurance policies."

Legal claims over the pharmaceutical company's history of marketing and selling prescription opioids, particularly Opana ER, aren't viable or soundly alleged, ex-CEO Rajiv De Silva and a group of 14 former Endo board members told the US Bankruptcy Court for the Southern District of New York in a filing Monday.

The complaint filed in July by a trust established for Endo's general unsecured creditors raises breach of fiduciary duty claims based on events that occurred at the company between 2016 and 2018, well beyond the applicable statute of limitations period, De Silva and others said.

The suit also fails to specifically detail what the individual directors did to mismanage or harm the company, the defendants said. Trustee Matthew Dundon's complaint, which "rehashes allegations from other lawsuits against Endo," also makes no specific allegations as to four of the individual defendants, they said.

"The result is a complaint that is 'too little, too late' and seeks to hold these individuals liable simply because they served as directors or officers of a company that derived a small portion of its revenue from opioid products," said the group.

A lawyer for Dundon said his legal team doesn't comment on active litigation.

The suit, which is one of several the trustee is pursuing on behalf of the drugmaker's unsecured creditors, argues that former Endo managers' failure to heed warnings over the risk of selling opioid products caused the company to suffer nearly $2 billion in damages from legal proceedings.

Endo filed for Chapter 11 in August 2022. The bankruptcy court approved its bankruptcy plan in March 2024.

The officers and directors are represented by Latham & Watkins LLP. The trustee is represented by Kramer Levin Naftalis & Frankel LLP.

The case is Matthew Dundon v. De Silva et al. , Bankr. S.D.N.Y., No. 24-07022, motion filed 1/6/25 .

To contact the reporter on this story: Alex Wolf in New York at awolf@bloomberglaw.com

To contact the editor responsible for this story: Maria Chutchian at mchutchian@bloombergindustry.com

Securities Law
Jan. 7, 2025, 11:13 AM PST
Matt Levine's Money Stuff: Private Equity Wants Your 401(k)
By Matt Levine

Private equity in 401(k)s

The first-principles theory of a lot of private investments goes roughly like this:

1. There are a lot of investment opportunities that are, for more or less good reasons, illiquid. If you invest money in an early-stage startup, you are making a long-term bet on its success, and you don't expect to know anytime soon if your bet is right. It would be weird to sell your investment a week after making it, in a way that it would not be weird to buy Nvidia stock today and sell it in a week. If you buy a company in a leveraged buyout, it is in part because you think you can run it better outside of public markets: You can take a longer-term view, or run more leverage, than public investors want; locking up your money for years is a prerequisite to doing the things that you think will add value. If you make a direct loan to a company, with a high interest rate and custom-negotiated structural features, it's because you expect a long-term relationship with the company; you can't just sell the loan the next day.

- 2. The people making these sorts of illiquid investments will tend to be professionally managed investment funds — venture capital, private equity or private credit funds — with long lives and no need for immediate liquidity.
- 3. Those funds, in turn, will lock up their investors' money for a long time, to match their assets (illiquid investments) and their liabilities (long-term locked-up investor money).
- 4. Therefore, their investors should be people with a lot of money that they won't need for a long time. Insurance companies are the most obvious example: If you sell life insurance polices (or annuities), you will invest the premiums you get, and you quite predictably won't have to pay most of it out for a long time. So if an investment manager comes to you and says "if you invest with me I can give you better returns than the public markets, but I have to warn you that you can't get your money back for 10 years," that's perfect: You won't need the money for 10 years, and you like high returns. University endowments and sovereign wealth funds have similar profiles, and like to invest in private assets.
- 5. Also pension funds. If you run a pension for a company, and you put aside $1,000 for a 25-year-old starting out at the company, you won't need that money until she retires in 35 years. So you can get paid for taking some illiquidity. And pension funds are, again, often investors in private assets.
- 6. Most people in the US don't have pensions, though, these days. Mostly they have defined-contribution retirement plans: *They* put aside some money every year, in specially designed accounts, to build their own retirement pension. Hmm.
- 7. Also the investment professionals who manage these private investment funds tend to charge high fees.

Actually I guess only the first five bullet points on that list are part of the first-principles theory of private investments. The seventh is not a *necessary* part of that theory, and you could imagine someone starting a private equity fund and charging very low fees. But it does seem reasonable to expect private investments to have structurally higher fees than public ones. For one thing, "buy all the stocks" is an approach to public investing that (1) compares favorably to many other approaches (like "buy only the good stocks") and (2) can be done very, very cheaply. So if you launch a business like "I will invest in big public stocks and charge 2% of assets," your competitors will charge less for a better product and you will not raise a lot of money. Whereas there is probably no similarly simple low-barriers-to-entry way to do private-market investing, and the actual work of private investing — finding the right opportunities, doing due diligence without public financials, building relationships with companies, getting involved in operations, etc. — just does seem more labor-intensive than picking public stocks. There are a lot of retail hobbyist stock traders; there are fewer retail hobbyist leveraged buyout sponsors.

But the sixth bullet point is the interesting one. If your basic theory is "private investments should be held by people who predictably won't need their money back for years (because they are the sensible bearers of illiquidity risk), and conversely people who predictably won't need their money back for years should buy private investments (because they offer higher returns than liquid public investments)," then it is honestly sort of weird to mess around with relatively niche categories like "university endowments" or "US public pension funds" or "annuity providers." The overwhelmingly gigantic obvious category is retirement savers. If you are yourself a 25-year-old putting aside $1,000 for your retirement, in a tax-advantaged account that more or less doesn't allow you to take the money out for 35 years, then you are a pretty safe source of capital for long-term illiquid investments. And if those investments offer a higher return than public markets — because they pay for that illiquidity — then they are good for you too.

And then if they charge more than all of that extra return in fees, they are bad for you. But good for the people charging the fees.

Anyway it's hard to get a lot of venture capital, private equity or even private credit exposure in your 401(k) plan, but give it a little time:

The private equity industry is preparing to lobby the incoming Donald Trump administration to give it access to broad pools of capital it has not historically been allowed to tap, including retirement savings, in a move that could unlock trillions of dollars for their firms.

The $13tn industry is hoping the new White House will revive a deregulatory push from the final months of Donald Trump's first presidency, which allowed private equity investments to be included in professionally managed funds.

Now, the industry is seeking to push past that first step, allowing tax-deferred defined contribution plans such as 401ks to back unlisted investments such as leveraged buyouts, low-rated private loans and illiquid property deals, industry executives told the Financial Times.

The executives said the effort could give their higher-fee funds a chance to tap a class of investors with at least as much in assets as the sovereign wealth funds, pensions and endowments that have traditionally backed the world's largest groups such as Blackstone, Apollo Global and KKR. …

Marc Rowan, chief executive of Apollo, has called the trillions of dollars in assets held by US 401k plans an opportunity for his industry. He has raised concerns about concentration in index funds owned by retirement savers and questioned whether such investors must be confined to funds offering daily liquidity.

"I jokingly say sometimes, we levered the entire retirement of America to Nvidia's performance. It just doesn't seem smart. We're going to fix this and we are in the process of fixing it," Rowan said at an Apollo event this autumn. "In the US, we have between $12tn and $13tn in 401k plans. What are they invested in? They are invested in daily liquid index funds, mostly the S&P 500, for 50 years. Why? We don't know."

"401(k) plans do not need daily liquidity" seems obviously correct to me, so on first principles I sympathize with this critique. The counter-argument really is "daily liquid index funds charge like 0.01% fees."

Grimes Sales School

There is apparently a shortage of accountants, and last year I did my part to fix it by writing a little ode to accounting . Accounting, it seems to me, is a very appealing combination of nitpicky detail and broad theory; if you truly master it, you know a lot of specific stuff, but you also have principled intuitions about how the stuff fits together. In this, I wrote, it is "like tax law or Ancient Greek," two other things that I like.

I should say that I am not particularly trained as an accountant — though I was a corporate derivatives investment banker for a while, which requires some tourist-level accounting intuitions — and my sense of accounting comes mostly from the outside. Still it seemed obvious to me that accounting is, like tax law or Ancient Greek, my kind of thing, a discipline that appeals to my particular cast of mind.

Sales, on the other hand: not. There is also apparently a shortage of salespeople? And I *was* a salesperson, for a while, in that my job as a corporate derivatives banker was to go out and sell those derivatives. (And also achieve and explain accounting results, yes.) I was just bad at it, and it did not at all fit my cast of mind.

But I came to respect it. Selling a complex product — like corporate equity derivatives, or software systems — requires technical knowledge of the product. It requires a sense of processes and organizations and how businesses function. Most of all it requires human understanding and empathy: The way to sell something to someone is to understand her needs and desires and try to fulfill them, to get her to trust you by demonstrating that you are trustworthy. Done well, sales is a deeply humane business, a business of caring a great deal about other people and trying to help them, for money.

Like I said, it was not for me, but I came to see that as mostly a personal failing. Anyway I guess this is my little effort to help fix the sales shortage. Here's Michael Grimes's:

Michael Grimes, Morgan Stanley's investment banker to the stars of Silicon Valley, … [is] concerned about a group that often gets lost in the tech industry's bright lights: salespeople. "Sales roles are essential; they are ubiquitous," said Grimes, standing in a hotel ballroom in front of a PowerPoint presentation, and ticking off statistics about tens of thousands of salespeople at companies like Microsoft, Cisco and Oracle. And yet, he added, "it's one of the only corporate professions that generally lacks the combination of university coursework, training and a degree-career pipeline."

Grimes, 58, is trying to tap his well of connections to raise at least $40 million to help the University of California, Berkeley, his alma mater, create an academic center for teaching sales skills to undergraduate students. Those skills—including prospecting for clients and negotiating a sale—could help reduce the heavy turnover for early-career sales professionals, particularly as the career becomes more technical, he said. …

Another challenge is that sales is rarely seen as an academic discipline, even compared to other similar subjects like marketing. Faculty members typically can't get a doctorate in sales, which thins the ranks of professors who can teach it. "People look down their noses," said Mark Leslie, ex-CEO of software company Veritas, who taught a sales-focused course at the Stanford Graduate School of Business.

Yet sales roles are increasingly what tech's hottest companies need to fill. ...

I feel like getting a doctorate in sales would make you bad at sales, though?

Off channel

I spend a lot of time around here making fun of the US Securities and Exchange Commission's enforcement push against investment bankers who text their colleagues about work. The gist of it is that every single regulated financial firm in the US, these days, takes great pains to make sure that its employees communicate with each other (and clients) about work only on "official channels," like work email, and not on "unofficial channels," like WhatsApp or text messages from personal phones. But every bank will have some employee somewhere who will text a colleague "hey want to get lunch and discuss that deal," and the SEC takes the position that that is illegal and the bank should be fined for not preventing it.

In theory, the purpose of this crackdown is (1) to make sure that firms keep accurate business records as required by law and (2) much more importantly, to make sure that, if the employees are saying *bad* stuff about work, they're doing it in a form that regulators can access and search. If you're emailing your colleagues from your work account to say "hey let's steal client money," that's considerably more convenient for the SEC than if you're texting them that from a personal phone.

In practice, when the SEC brings these cases, it tends to get access to a sample of personal phones, where it often finds work texts but almost never finds crime texts. It's mostly bankers texting clients with market updates, rather than bankers texting clients with fraud. Still, sure, better to have it on official channels. And you never know what the SEC might be missing, what bad stuff might be happening on the unofficial channels that doesn't get caught.

For instance, here is a bunch of stuff from last month that happens to include "off-channel communications":

Jefferies Financial Group Inc. ousted a team of advisers in Miami who oversee the fortunes of wealthy clients after discovering allegedly improper money transfers and off-channel communications to cover it up.

The firm fired Marcelo Poliak, Rodrigo Soto, Guillermo Guerra and Pablo Gherardi last month along with four others after discovering "impermissible money-wire transfers" and "off-channel" and "deleted" communications, according to filings with the Financial Industry Regulatory Authority.

Nicholas Coubrough was also fired for allegedly seeking "improper payments" from colleagues in exchange for not disclosing inappropriate communication methods, the filings show.

Three alleged problems here:

If you are a wealth adviser, the most important bad thing that you might do — the main thing that your clients, employer and regulator will worry about — is "impermissible money-wire transfers." That's bad!

- If you're texting about the improper money transfers on your personal phone, and deleting those texts, that's also bad. Not because texting about work is generically bad, but because presumably you're doing that to cover up the bad transfers.
- If you are in the group chat with your work buddies, and they start texting about work, and you say "hey guys, I see you are texting about work, it would be a shame if compliance were to find out about that, and I could use a new car," that's … honestly very funny and you kind of *should* be allowed to do it, but I guess technically it is blackmail. I like that he was allegedly seeking the payments "for not disclosing inappropriate communication *methods*": He wasn't like "hey guys, I see you are texting about *wiring your clients' money to yourselves*, cough up," but rather "hey guys, I see you are *texting*, cough up." The main lesson that people have learned from the cell-phone crackdown is that the worst thing you can do, these days, if you work in financial services, is text about work. Improper money transfers are in second place.

Barriers

Elsewhere in communications policies. The problem if you are a big credit investing firm is that:

1. You want to buy and sell bonds, in the public market, whenever you want, and

- 2. When your debtors run into trouble, you want to be able to negotiate with them to work out some sort of mutually beneficial deal.

This raises insider trading problems, which we have discussed before . Here you are, buying and selling the bonds of, say, Puerto Rico, and Puerto Rico calls you up and says "hey we can't pay you back all the money we owe you; can we work out a deal?" And then you talk with them to work out a deal. Presumably the conversations you have with them contain lots of material nonpublic information — information about Puerto Rico's financial situation and its debt restructuring plan that it hasn't made public yet — and you are not allowed to trade the bonds while you have material nonpublic information about them. But when Puerto Rico is in trouble, that's when you especially need to be able to trade its bonds.

There are various solutions, but a common one is to divide your firm into two sides, the public side and the private side. The public side consists of traders and analysts who buy and sell bonds and never get confidential information; the private side consists of people who negotiate bond restructurings and don't trade while they do so. And then if you get involved in a restructuring, the private side does the negotiating, but doesn't tell the public side about it, so they're free to keep trading. Part of your firm has material nonpublic information but doesn't trade; the other part trades but doesn't have MNPI.

This requires a lot of administration. Here's how Silver Point Capital LP does it:

To enable Silver Point's public side to actively trade the debt of a distressed entity while the private side simultaneously participated in confidential negotiations (and received MNPI) about the same entity, Silver Point purported to adhere to an information barrier between the two sides. …

The central requirement of the barrier policy was that any private side employee who wanted to communicate with a public side employee (or vice versa) about any investment-related matter (i.e., not strictly personal or administrative) must first inform Compliance. Such preapproval was required regardless of whether the private side possessed "Confidential Information," which included, but was not limited to, MNPI. Such a communication between the public and private sides was referred to as a "wall crossing."

Per the barrier policy, the employee seeking preapproval of the proposed wall crossing was required to provide Compliance with certain information, including the participants, the name of the issuer to be discussed, the discussion topics, whether there was an information disparity between the public and private sides, and whether the private side had, and intended to share, Confidential Information.

When the private side had Confidential Information about an issuer but did not plan to disclose such information to the public side during a discussion about that same issuer, the barrier policy required Compliance to preapprove the communication, as described above, and also to monitor and log the communication. Relatedly, Compliance was required by the barrier policy to maintain a log of all wall crossings between the public and private sides to ensure daily monitoring of trading in issuers about which the private side had Confidential Information. ...

Reflecting the substantial risk in Silver Point's business model that the private side may pass MNPI to the public side, the barrier policy also dictated physical separation between the public and private sides within Silver Point's office space, with key card access required for the private side space. Private side employees were prohibited from having any investment-related conversations or meetings with, or in the physical presence of, public side employees while in the office.

That description comes from the complaint in a US Securities and Exchange Commission enforcement action last month against Silver Point, alleging that it messed up these procedures. From 2004 through 2021, Silver Point employed the prominent former bankruptcy lawyer Chaim Fortgang as a consultant. He was not exactly public side, not exactly private side; he was subject to these rules but they were not always enforced. He represented Silver Point in negotiations with Puerto Rico over its debt restructuring, where he got some material nonpublic information, but he *also* walked around Silver Point's trading floor unchaperoned:

On September 19, 2019, Fortgang was present in Silver Point's Greenwich, Connecticut office. Silver Point's barrier policy required actual physical separation between the public and private sides in the office. Despite this, Fortgang was permitted to move unimpeded throughout the office, specifically including spaces where public side employees worked—even sit next to the traders while they placed trades—without any oversight by Compliance, in contravention of the barrier policy. …

On December 12, 2019, Fortgang was again in Silver Point's office. While Fortgang was present in the office, but not subject to the public/private physical separation required by the barrier policy, the public side analyst responsible for covering Puerto Rico bonds circulated a "TIME SENSITIVE" trading recommendation to purchase additional Puerto Rico bonds. The recommendation was approved the following day, and Silver Point then bought a total of over $18 million of Puerto Rico bonds.

There is a lot of circumstantial evidence — several times, he called Silver Point public-side analysts *from* negotiating sessions, without looping in compliance, and then they did trades — but, the SEC admits, "whether Fortgang *in fact* ever passed MNPI to the public side is impossible to know." Silver Point says:

"The SEC solely claims that we should have required Chaim Fortgang, a preeminent bankruptcy lawyer who was a legal consultant to Silver Point until his death three years ago, to be chaperoned by the firm's Compliance Department in his discussions with the Public Side of the Firm," Silver Point executives said in a statement. "Importantly, after a four-year investigation, a review of approximately 350,000 documents and interviews of 10 current and former employees and Silver Point's outside counsel, the SEC has not alleged that Mr. Fortgang improperly conveyed any information to the Firm's Public Side or that Silver Point otherwise engaged in any type of improper activity or trading. It has also not alleged any potential impact or harm to investors."

Yeah but you see why the SEC wants those calls to be monitored.

Things happen

Haidar's Hedge Fund Loses 33% With Assets Plunging by $4 Billion. Bridgewater Cuts 7% of Staff in Effort to Remain ' Nimble .' Sixth Street Strikes Deal to Manage $13 Billion of Insurer's Assets. US corporate bankruptcies hit 14-year high as interest rates take toll. US regulator warns of oversight 'gap' on cryptocurrencies. Nvidia Unveils Gaming Chips, Desktop PC to Protect AI Lead. Nvidia chief calls robots 'multitrillion-dollar' opportunity. Dell Unveils Apple-Like Rebrand in Bid to Make PCs Cool Again. Dutch Central Bank Restores Amsterdam's ' Ugliest Building .' A Comprehensive And Maddening History Of Color Star, Would-Be Titans Of Just About Anything.

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To contact the author of this story:
Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:
Wendy Pollack at wpollack@bloomberg.net

- 1. Meanwhile arguably the paradigmatic *bad* private-asset investor is a *bank*, which is funded with short-term customer deposits. And yet traditionally illiquid loans were made mainly by banks, though that is changing. We have talked about this a lot around here .
- 2. I'm going to get a lot of emails like "actually I have built an index exchange-traded fund that does it" and, you know, fine. We have talked about replicating private equity returns using programmatic public-market investing.
- 3. I guess there are some "retail hobbyist venture capitalists," in the form of smallish angel investors.
- 4. This is not quite accurate, but captures the spirit of the rules.
- 5. There are other important counter-arguments about disclosure and fraud: Public investments are subject to a lot of transparency and disclosure rules, so it's harder to do various sorts of fraud in public investments than in private ones. In general, I have argued that the universe of private investments available to retail investors should be different and worse than the one available to sophisticated institutions. I think that's maybe a bit less of a problem in the sub-category of, like, "private funds offered to 401(k)s by giant publicly traded alternatives firms," as opposed to like "companies looking for venture funding," but in general it's a real risk.
- 6. "Even today," writes Byrne Hobart, "a big part of the enterprise sales process is a quest to find the True Org Chart, the actual person who needs to be persuaded to make a decision."
- 7. Channels like "meeting in person" are allowed, though see the next section for an arguable exception. Channels like "phone calls on unrecorded lines" are more complicated; depends on exactly where you sit.
- 8. Another solution is to restrict trading in a company's bonds once you get involved in any restructuring – or to refuse to get involved in restructuring negotiations so you can keep trading. You just have one side, which is mostly public but sometimes flips to private and stops trading.
- 9. As this suggests, the private side *could* share MNPI with the public side, but that would effectively turn the public side private and prevent it from trading: "Silver Point's barrier policy also required Compliance to maintain a 'watch list' and a 'restricted list' to track the firm's investments and levels of knowledge. Compliance placed an issuer on the restricted list when the public side learned MNPI about that issuer. Silver Point was prohibited from trading in securities of issuers on the restricted list. The watch list, on the other hand, included issuers about which only the private side had Confidential Information. This list was only accessible to Compliance because, as is explained in the barrier policy, 'the very fact that Private Employees are working on a particular financing or other transaction may constitute [MNPI].'"

- 10. Fortgang died in 2021. Here is a story about him throwing a bagel at an opponent in a negotiation.
- 11. Also: “Mr Fortgang acted for Silver Point solely as an attorney and therefore should have been treated no differently than any other outside counsel where chaperoning, by all accounts, is not required.”

Corporate Disclosure Law Enjoys ‘Presumption of Constitutionality,’ Feds Tell Justices

law.com/nationallawjournal/2025/01/06/corporate-disclosure-law-enjoys-presumption-of-constitutionality-feds-tell-justices

Jimmy Hoover

The U.S. Department of Justice has filed an emergency appeal with the Supreme Court to reinstate a law requiring businesses to disclose their owners to the federal government, arguing the statute enjoys a “presumption of constitutionality” and that a lower court wrongfully rejected DOJ's Commerce Clause defense.

U.S. Solicitor General Elizabeth Prelogar penned the urgent request to the justices on Dec. 31, asking them to lift a Texas federal judge’s nationwide blockade of new federal reporting requirements for companies registered to do business in their states.

Prelogar, a Biden-appointee likely to soon step down from the position, stated a “presumption of constitutionality” applies to “every Act of Congress” and that the Supreme Court should allow the to remain in effect until the justices can determine the merits of an industry challenge.

“The practical realities of this Court’s emergency docket underscore the importance of adhering to that traditional approach,” Prelogar wrote, referring to the tight timelines of emergency appeals. “When the Court operates under such constraints, it should be especially respectful of Congress’s judgment that a federal statute complies with the Constitution.”

The 2021 Corporate Transparency Act was enacted as part of an omnibus spending bill during the COVID-19 pandemic and requires potentially millions of local businesses to disclose their “beneficial owners,” or anyone with at least a 25% interest or who controls the business, to a federal regulator.

Congress passed the law to combat money laundering, tax fraud and human trafficking through corporate shell games, finding that criminal enterprises cover their tracks through companies designed like Russian nesting ‘Matryoshka’ dolls. The National Federation of Independent Business joined a Texas firearms dealer, IT company and others in bringing suit to challenge the law as exceeding Congress’ power.

U.S. District Judge Amos L. Mazzant of the Eastern District of Texas granted a nationwide injunction against the law after finding it represented a “flanking, quasi-Orwellian” invasion of the federal government into state activity. Mazzant, in rejecting the government’s claimed authority for the law under the Constitution’s Commerce Clause, barred all enforcement of the reporting requirements.

“[T]he Commerce Clause does not bless Congress with carte blanche to regulate all companies in perpetuity simply because they might engage in commerce, or one might use them to conceal criminal activity,” Mazzant wrote in issuing a preliminary injunction.

The government appealed to the U.S. Court of Appeals for the Fifth Circuit, and a motions panel temporarily paused the injunction. But upon further review, a subsequent merits panel of the appeals court vacated that stay and reinstated the injunction, preserving Judge Mazzant’s blockade of the reporting requirements.

The panel stated that It did so “to preserve the constitutional status quo while the merits panel considers the parties’ weighty substantive arguments.”

The respondent businesses are due to file their brief opposing the request with the Supreme Court on Friday.

The Treasury Department’s Financial Crimes Enforcement Network—which enforces the law—has made the requirements voluntary pending the court challenge.

“FinCEN is complying with—and will continue to comply with—the district court’s order for as long as it remains in effect,” the network stated on its website. “As a result, reporting companies are not currently required to file beneficial ownership information with FinCEN. Reporting companies may continue to voluntarily submit beneficial ownership information reports.”

The case is docketed at the Supreme Court as *Garland v. Texas Top Cop Shop*, No. 24A653.

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National Court Reporters Association Hit With Antitrust Suit

By **Jack Karp**

Law360 (January 6, 2025, 3:41 PM EST) -- The National Court Reporters Association exploits its monopoly in the stenographic certification market to charge its members inflated and unnecessary membership dues and keep potential competitors out of the market, according to a new antitrust lawsuit in New Jersey federal court.

That's because the NCRA requires that certified court reporters pay for membership in the organization in order to maintain their NCRA certification, which is either required or accepted by 95% of the states that mandate such certification, according to the proposed class action filed Friday.

That "illegal" tying arrangement, which violates Section 1 of the Sherman Act, means stenographers who have already paid the NCRA to be certified and complete required continuing education units must also separately pay the organization annual membership dues to keep that NCRA certification, two longtime court reporters say in their complaint.

"NCRA's membership fee requirement has no legitimate purpose and does nothing but produce additional revenue for NCRA," the complaint said, adding, "Under NCRA's unlawful tying arrangement, NCRA CCRs are forced to pay what amounts to gratuitous annual membership dues that do nothing to benefit their stenographic work."

The NCRA, which reported collecting over $2.8 million in annual membership dues in 2022, gets away with this tying arrangement due to its monopoly over the stenographic certification market, according to the suit, which points out that 37 of the 39 states that require court reporters to be certified either accept or require NCRA certification.

Only California and Texas courts require stenographers to sit for an exam that is not administered by the NCRA, according to the complaint.

"The grasp of NCRA in the stenographic certification market is such that some states' codes and laws are written to expressly require that NCRA certification be obtained prior to applying for state licensing," the plaintiffs insisted.

That market dominance allows the NCRA to charge inflated membership fees, which are currently set at $300 per year, compared to annual membership dues of $225 for the National Verbatim Reporters Association and $150 for the Certified Court Reporter's Association of New Jersey and the Illinois Court Reporters Association, according to the complaint.

"However, defendant's unlawful tying arrangement has deterred and reduced the number of CCRs who are willing to purchase memberships in other stenographic organizations and, thus precluded competition from developing in a relevant antitrust market, namely, the stenographic membership market," the complaint said.

The NCRA's "greedy and anticompetitive" practices have meanwhile increased its competitors' costs and softened price competition between those rivals and the NCRA, while also creating barriers to entry that prevent new rivals from entering the market, according to the complaint, which seeks treble damages and injunctive relief.

"NCRA's tying arrangement has foreclosed competition in the stenographic membership market, resulting in market-wide pricing and product offerings that are not reflective of a competitive market," the suing court reporters said.

"When people think about our civil justice system, they think about judges and lawyers but often forget about the critical role that court reporters play," Stuart A. Davidson of Robbins Geller Rudman & Dowd LLP, who represents the plaintiffs, told Law360 in a statement Monday. "It's our honor to represent them in standing up against what we allege to be anticompetitive practices."

NCRA Executive Director Dave Wenhold declined to comment Monday, saying the NCRA hadn't yet had an opportunity to review the complaint.

The plaintiffs are represented by Christopher L. Ayers of Seeger Weiss LLP and Stuart A. Davidson, Anny M. Martin and Arthur L. Shingler III of Robbins Geller Rudman & Dowd LLP.

Counsel information for the NCRA was not yet available Monday.

The case is Palazzi et al. v. National Court Reporters Association, case number 2:25-cv-00077, in the U.S. District Court for the District of New Jersey.

--Editing by Janice Carter Brown.

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Biotech Co. Revance Faces Suit After Tender Offer Weakens

By **Emilie Ruscoe**

Law360 (January 6, 2025, 7:42 PM EST) -- Biotechnology company Revance Therapeutics Inc. and two of its executives face a proposed investor class action alleging the company hurt investors after the value of a take-private tender offer was negotiated down following allegations that Revance had breached a distribution deal with another company.

In a complaint filed Friday in Nashville federal court, investor Cassandra Matney claimed that Revance, its CEO Mark J. Foley and its Chief Financial Officer Tobin C. Schilke violated antifraud provisions of the federal securities laws by allegedly concealing that the company had failed to uphold its end of its distribution agreement with Swiss company Teoxane SA.

Matney claimed that trading prices for the company's shares had been artificially inflated between last February and December, alleging that during that time, the company had been mum regarding certain details of its performance under the Teoxane distribution deal.

Matney pointed to a September disclosure in a Revance filing with the U.S. Securities and Exchange Commission that Teoxane had accused Revance of holding onto excess levels of Teoxane stock and failing to meet its obligations to promote and sell Teoxane products.

According to Matney, the September disclosure was followed by a 44-cent, or 8%, decline in trading prices for Revance shares.

The investor also claimed that the September disclosure also signaled headwinds for a separate Revance undertaking.

In August, Matney said, Revance and another U.S.-based company, privately-held Crown Laboratories Inc., announced plans to merge, with Crown offering to pay $6.66 in cash for outstanding Revance shares. At the share price announced in August, Matney noted, the enterprise value for the merger was $924 million.

The tender offer was put on hold the following month, when Revance acknowledged Teoxane's notices of default, Matney said.

In December, Revance ultimately announced that its merger agreement with Crown had been revised and Crown would now offer only $3.10 per share in cash for outstanding Revance shares, a drop of over 50% in the purchase price.

Matney pointed to market records showing that after Revance announced the revised merger deal, trading prices for Revance shares fell nearly 21% from over $3.80 to just over $3, hurting investors.

Matney described Revance as a maker of neuromodulators for both aesthetic and therapeutic purposes. According to its website, one of its key products, Daxxify, is approved by the U.S. Food and Drug Administration for both, injections to improve frown lines and to treat a neurological movement disorder of the neck.

Matney pointed to the company's February 2024 statement that by partnering with Teoxane to sell the Swiss company's dermal filler products in the U.S., it had been able to "enter the U.S. dermal filler market and [built a] foundation for Daxxify and potential future product commercialization."

The proposed class would include those who purchased Revance shares between that Feb. 29, 2024 statement and the Dec. 3 announcement of its revised merger agreement with Crown.

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

Matney is represented by Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP, Joshua E. Fruchter of Wohl & Fruchter LLP and Paul Kent Bramlett and Robert Preston Bramlett of the Bramlett Law Offices.

Counsel information for the defendants was not immediately available Monday.

The case is Matney v. Revance Therapeutics Inc. et al., case number 3:25-cv-00018, in the U.S. District Court for the Middle District of Tennessee.

--Editing by Vaqas Asghar.

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Nikola Investors Win Class Cert. In Securities Fraud Litigation

By **Hailey Konnath**

Law360 (January 6, 2025, 10:47 PM EST) -- An Arizona federal judge on Monday certified a class of investors accusing Nikola Corp. of inflating its stock price by exaggerating its ability to manufacture electric trucks, ruling that the shareholders have shown their case warrants the class treatment more than four years after they first sued.

U.S. District Judge Steven P. Logan certified a class of potentially thousands of investors who purchased Nikola stock between June 2020 and February 2021. He also appointed Pomerantz LLP and Block & Leviton LLP as class counsel.

The ruling comes almost two years after Judge Logan initially threw out the consolidated litigation brought by Vincent Chau, the estate of Stanley Karczynski and George Mersho. The trio accuses Nikola and its top brass of misrepresenting a number of aspects of its business and operations, leading to artificially inflated stock prices. When the truth emerged, stock prices plummeted, causing them significant losses, they say.

Specifically, they claim Nikola misrepresented that it had developed a fully operational "zero emissions" tractor trailer truck, the Nikola One. It also falsely claimed to have thousands of purchase orders for those trucks and that it was producing hydrogen at a fraction of the price experts believed to be possible, according to Monday's order.

Judge Logan said there were more than 115 million shares of Nikola stock outstanding during the class period of June 4, 2020, to Feb. 25, 2021.

"Plaintiffs detail a series of material omissions and misrepresentations from the remaining defendants, and plaintiffs have sufficiently alleged that investors typically rely upon this type of information when making financial decisions," the judge said.

The investors first sued in September 2020, and the case was eventually consolidated with several other actions. The litigation came after Hindenburg Research LLC, an activist short-selling research firm, released a September 2020 report labeling Nikola "an intricate fraud based on dozens of lies."

Nikola, for its part, has slammed the Hindenburg report as "false and defamatory" and merely an attempt to manipulate the market. However, the U.S. Securities and Exchange Commission **got involved**, founder Trevor Milton resigned, and Nikola's highly publicized investment deal with General Motors Co. was subsequently scaled back.

Judge Logan **initially threw out** the litigation, finding that investors hadn't established that top executives schemed to artificially boost Nikola's stock price, but noted that the company's public disclosures could have been more carefully worded to caution investors. The investors later filed a second consolidated amended complaint.

In Monday's decision, Judge Logan appointed both Mersho and Chau as class representatives, but he excluded Karcynski's estate "on the basis of adequacy." Karczynski died in July 2022, and his family's tax adviser gave a deposition in his place, according to the order. However, the adviser stated he was not sure who would be making decisions on behalf of the estate when it came to the litigation, Judge Logan said, calling that "startling."

As for class certification, the judge said he is satisfied that a class action "is the superior method of fairly and efficiently adjudicating plaintiffs' securities fraud claims."

"Undoubtedly, the parties will have to conduct extensive discovery and trial preparation to resolve their controversy," Judge Logan said. "It makes no sense for the parties to conduct that discovery and trial preparation more than once. Trying each individual plaintiff's case separately would be incredibly inefficient, burdensome and costly."

He added, "Judicial economy demands that the court certify the class and resolve the parties' controversy in just one forum."

Finally, Judge Logan also denied Nikola's motion to exclude testimony from Zachary Nye, one of the plaintiffs' experts. Nye has adequately responded to Nikola's qualms, "demonstrating that he reliably ap[plied reliable methodologies to form his opinions," the judge said.

"At this juncture, the court's role is not to nitpick, line by line, the competing expert reports offered by the parties," he stated.

The SEC hit Milton with a lawsuit July 29, 2021, the same day the Manhattan U.S. attorney's office unsealed a criminal indictment laying out fraud charges against Milton. After a month-long trial last fall, a Manhattan federal jury found Milton **guilty of one count of securities fraud** and two counts of wire fraud in October 2022.

In December 2021, Nikola agreed to pay $125 million to resolve the SEC's allegations that Milton falsely gave investors the impression that the company had reached certain product and technological milestones. But Nikola neither admitted to nor denied the SEC's claims. The company agreed to continue cooperating with the agency's ongoing litigation and investigation into Milton.

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

The class is represented by Gary Gotto of Keller Rohrback LLP, Jeremy A. Lieberman and Michael J. Wernke of Pomerantz LLP, Jeffrey C. Block, Jacob A. Walker and Michael D. Gaines of Block & Leviton LLP, and Jonathan Gardner and James T. Christie of Labaton Keller Sucharow LLP.

The Nikola defendants are represented by Brad S. Karp, Susanna M. Buergel, Gregory F. Laufer and Alison R. Benedon of Paul Weiss Rifkind Wharton & Garrison LLP.

Milton is represented by Bradley J. Bondi of Paul Hastings LLP and Troy A. Wallin and Chad A. Hester of Wallin Hester PLC.

The lead case is Daniel Borteanu et al. v. Nikola Corp. et al., case number 2:20-cv-01797, in the U.S. District Court for the District of Arizona.

--Additional reporting by Linda Chiem. Editing by Kristen Becker.

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Live Nation Can't Get Intermission In Calif. Antitrust Case

By **Craig Clough**

Law360 (January 6, 2025, 8:34 PM EST) -- A California federal judge overseeing a private antitrust case against Live Nation denied the company's bid Monday to pause the case for a government enforcement action, saying that the suit was filed first and that exceptions to the "first to file" rule do not apply.

The order from U.S. District Judge George H. Wu said the court does not see a reason to stay the case in favor of a suit brought in New York federal court by the U.S. Department of Justice and 40 state-level enforcers, although there could be reasons to consolidate the cases in one court.

The "first to file" rule from federal comity doctrine aims to avoid conflicting judgments and wasting judicial resources, Judge Wu wrote in a tentative order Friday before issuing a **minute order** Monday making the tentative ruling the final order of the court. Under the rule, the first case to be filed takes priority over a second action unless there is an exception, the judge wrote.

Judge Wu agreed with the defendants that exceptions to the rule are outlined in the Ninth Circuit's 1979 ruling in Church of Scientology of California v. U.S. Dep't of Army , but that "a much different factual situation exists here than the posture of the cases in Church of Scientology."

"In Church of Scientology, the second-filed case had been fully litigated through summary judgment and an appeal taken, decided, and remanded," the judge continued. "The public enforcer action is still in a relatively early stage: depositions have not yet been taken, discovery remains open until October 2025, the motion to dismiss has not yet been heard or decided, and the trial date is scheduled for March 2026, more than a year from now."

In the case before Judge Wu, proposed classes of consumers accuse Live Nation Entertainment Inc. and Ticketmaster LLC of monopolizing the ticketing services space. It was filed in **January 2022**, while the DOJ's case, which brings similar antitrust claims, was filed in **May 2023**.

Judge Wu wrote there are three "threshold factors" of the federal comity doctrine of the first to file rule, with the first being the chronology of events, but he found "there is not a significant enough gulf between the parallel cases to wholly dispense with the first to file rule as defendants suggest."

The second factor is the similarity of the parties, and the judge wrote that the parties in the two actions overlap but are not identical, and this factor also does not weigh in the defendants' favor.

"Unavoidable, however, is the fact that regardless of the outcome of the public enforcer action, there will inevitably be damages claims in this case for class members from at least 24 states and all U.S. territories," the judge said. "Put another way, Defendants will have to litigate this case at some point."

The third factor is similarity of the claims, the judge wrote, adding that while some of the claims overlap, not all of them do, which does not weigh in the defendants' favor. The judge also said there are several "practical" considerations in favor of denying the stay, including that none of the public enforcers in the New York case "have sought to intervene in this case for the purpose of staying the matter, let alone for any other reason."

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

The customers are represented by Kevin Y. Teruya, Adam B. Wolfson, William R. Sears and Brantley I. Pepperman of Quinn Emanuel Urquhart & Sullivan LLP, and by Warren D. Postman and Albert Y. Pak of Keller Postman LLC.

Live Nation and Ticketmaster are represented by Tim O'Mara, Roman Martinez, Sadik Huseny, Robin L. Gushman, Alicia R. Jovais, Andrew Gass, Nicholas R. Rosellini and Uriel Hinberg of Latham & Watkins LLP.

The case is Skot Heckman et al. v. Live Nation Entertainment Inc. et al., case number 2:22-cv-00047, in the U.S. District Court for the Central District of California.

--Editing by Rich Mills.

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4 Firms Ask To Helm Hybrid Jeep Exploding Battery Class

By **Carolyn Muyskens**

Law360 (January 6, 2025, 5:01 PM EST) -- Drivers claiming certain hybrid Jeep vehicles were sold with defective batteries that risk exploding or catching fire have asked a Michigan federal judge to appoint four law firms to steer the case as co-interim class counsel.

In the most recent **complaint**, filed Nov. 25, drivers allege model years 2020-2024 Jeep Wrangler 4xe and model years 2022-2024 Jeep Grand Cherokee 4xe plug-in hybrid electric vehicles have "a dangerous and defective high-voltage battery system that can cause, and has in fact caused, vehicle fires and explosions."

A Jeep vehicle belonging to plaintiff Nataliia Liakhova, for example, caught fire while charging outside her apartment, according to the complaint, and another named plaintiff's vehicle exploded while charging at his workplace.

Fiat Chrysler, which makes and sells Jeep vehicles, should have been aware of the fire risk but sold the vehicles anyway, marketing them as safe and failing to disclose to buyers the danger in the battery system, the drivers claim.

The Miller Law Firm PC, Lieff Cabraser Heimann & Bernstein LLP, Lockridge Grindal Nauen PLLP and Slack Davis Sanger LLP have already done extensive investigation of the drivers' claims to shepherd the case to the filing of the initial complaint, drivers said in Friday's **motion** to appoint the four firms as interim class counsel.

The pre-complaint investigative work performed by the firms included "a thorough review of defendant's advertising and marketing materials, defendant's representations regarding the safety of its vehicles, the pending recalls and NHTSA investigation documents, extensive research regarding published complaints, and other factual investigation" of the fire risk claims, according to the motion.

Appointing the firms as interim class counsel now, prior to discovery, will allow the firms to coordinate discovery, depositions and motion practice and in general manage the case more efficiently, the drivers said, adding that all plaintiffs firms involved in the case support the proposed leadership structure. Fiat Chrysler opposed the motion, according to the plaintiffs.

The drivers requested that any cases filed in the future involving the fire-risk defect also be brought under the same class counsel leadership structure.

Following reports of fires linked to the Jeep battery, Fiat Chrysler issued a safety recall for certain 2021-2023 Jeep Wrangler 4xe vehicles in November 2023 warning owners not to charge their vehicles and not to park near buildings while the automaker worked on a fix.

Fiat Chrysler later announced it would use a software update to test the recalled vehicles and identify batteries that are defective and should be replaced, according to the complaint.

In September 2024, Fiat Chrysler expanded the scope of the first recall to include more than 150,000 vehicles, including more model years of the Wrangler 4xe vehicles and Grand Cherokee 4xe vehicles. In the second recall, the automaker again warned owners to park their vehicles away from buildings and not to charge unrepaired vehicles.

The automaker acknowledged in the recall announcement that the recalled vehicles' "high voltage battery may fail internally and lead to a vehicle fire while parked or driving."

The drivers claim Fiat Chrysler hasn't offered an effective repair for the affected vehicles.

As a result, owners of the vehicles are forced to fuel their hybrids with gas and refrain from using the plug-in charging system while they wait for a fix, the plaintiffs said, meaning they "paid thousands of dollars for a plug-in hybrid electric propulsion system they cannot use."

The drivers filed their initial complaint in the Eastern District of Michigan in March.

The parties did not immediately respond to requests for comment Monday.

The drivers are represented by E. Powell Miller, Dennis A. Lienhardt and Dana E. Fraser of The Miller Law Firm PC, Roger N. Heller, Phong-Chau G. Nguyen and Nicholas W. Lee of Lieff Cabraser Heimann & Bernstein LLP, John R. Davis of Slack Davis Sanger LLP, Robert K. Shelquist and Craig S. Davis of Lockridge Grindal Nauen PLLP and Todd M. Friedman, Adrian R. Bacon and Meghan E. George of Law Offices of Todd M. Friedman PC.

FCA is represented by Stephen A. D'Aunoy, Scott H. Morgan, Fred Fresard and Ian Edwards of Klein Thomas Lee & Fresard.

The case is Frisch et al. v. FCA US LLC, case number 2:24-cv-10546, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Linda Voorhis.

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Indian Chemical Cos. Supplied Fentanyl Precursors, DOJ Says

By **Gina Kim**

Law360 (January 6, 2025, 5:59 PM EST) -- New York federal prosecutors on Monday unveiled criminal charges against two India-based chemical companies and a senior executive for allegedly conspiring to supply and ship chemical building blocks that would later be made into fentanyl, a highly addictive and deadly synthetic opioid, to the United States and Mexico.

The government accused Athos Chemicals Pvt. Ltd. and Raxuter Chemicals and its founder, Bhavesh Lathiya, of scheming to distribute and import to the U.S. precursor chemicals for fentanyl in the last year. While the criminal indictment for Raxuter remained sealed as of Monday, the Eastern District of New York unsealed the criminal indictment for Athos, which was filed on Dec. 20.

Prosecutors said that Lathiya was apprehended on Saturday in New York City and appeared for arraignment before U.S. Magistrate Judge Joseph A. Marutollo and was ordered to remain in custody pending trial.

Lathiya and Raxuter Chemicals face federal charges of conspiracy to distribute and import certain chemicals while being aware they would be used to make fentanyl, a Schedule II controlled substance described as "the deadliest drug threat currently facing the United States," according to Monday's announcement by the U.S. Attorney's Office for the Eastern District of New York.

Athos Chemicals faces similar charges, including conspiracy to distribute and import a listed chemical and distributing and importing a listed chemical that would be used to make and refine them into the highly addictive synthetic opioid, the U.S. Attorney's Office said.

"Our efforts to disrupt the global fentanyl supply chain are being fought on many fronts, and as alleged in these indictments, by charging two chemical companies based in India and a company executive with knowingly distributing the chemical building blocks of fentanyl," U.S. Attorney Breon Peace said in a statement Monday. "My office will vigorously prosecute those pushers of poison, here and abroad, who are responsible for fueling our nation's opioid epidemic without any regard for the extreme harm they are causing."

Prosecutors charged that the defendants supplied precursor chemicals, or the building blocks of fentanyl to the U.S., Mexico and other regions, while knowing they would be used to make the deadly drug. The defendants allegedly would ship the items via international mail and package carriers while mislabeling them, falsifying customs forms and submitting fake declarations at border crossings, prosecutors said.

In one such instance last June, Raxuter Chemicals shipped a package that was delivered to an address in New York, with its contents falsely listed as vitamin C, prosecutors alleged, when the package actually contained a fentanyl precursor known as 1-boc-4-piperidone.

Last October, an undercover Homeland Security Investigations agent communicated with Lathiya through a video call under false pretenses of wanting to buy fentanyl precursor chemicals. In that call, Lathiya allegedly agreed to sell 20 kilograms of a List I chemical used in fentanyl synthesis and offered to label the contents as an antacid, the government said.

Eventually, on Nov. 23, Lathiya and Raxuter sent over 20 kilograms of the chemical to New York, the government added.

Codefendant Athos Chemicals is accused of participating in a plan to distribute fentanyl precursor chemicals and import them to the U.S. as well, since at least February 2024, according to a criminal indictment that was filed Dec. 20 and unsealed Monday.

Athos ran a website and had listings on online retail platforms, advertising its operations as "contract manufacturing and exporting quality-assured products like Active Pharmaceutical Ingredients, Pharmaceutical raw materials," and "drug intermediates," the government alleged.

"While Athos Chemicals's website offered a list of its products, to avoid detection and advance the scheme, it did not list or openly advertise fentanyl precursor chemicals," the indictment said. "Athos Chemicals responded to customer solicitations submitted through an e-commerce platform in India for 1- boc-4-piperidone, a key fentanyl precursor and a List I chemical. Athos Chemicals then fulfilled orders for that chemical."

For example, on Feb. 20, Athos planned to send over 100 kilograms of the chemical to a known drug trafficker in Mexico, who would then make fentanyl, the indictment charged.

The following month, Athos agreed to sell more than 100 grams of the same chemical to an undercover agent pretending to be a potential buyer and shipped the contents to New York, prosecutors said.

Attempts to reach the defendants were unsuccessful on Monday.

The government is represented by Adam Amir, William P. Campos and Chand Edwards-Balfour of the U.S. Attorney's Office for the Eastern District of New York.

Counsel information for the defendants was not immediately available.

The cases are U.S. v. Raxuter Chemicals, case number 1:24-cv-00525, and U.S. v. Athos Chemicals Pvt. Ltd., case number 1:24-cr-00526, both in the U.S. District Court for the Eastern District of New York.

--Editing by Vaqas Asghar.

Correction: A previous version of this story included a misspelled name. The error has been corrected.