

Class Action

Jan. 10, 2025, 7:45 AM PST

Micron Caused Stock Slip by Overhyping Demand, Lawsuit Claims

By Gillian R. Brassil

- **COURT:** S.D. Fla.
- **TRACK DOCKET:** [No. 9:25-cv-80040](#) (Bloomberg Law subscription)

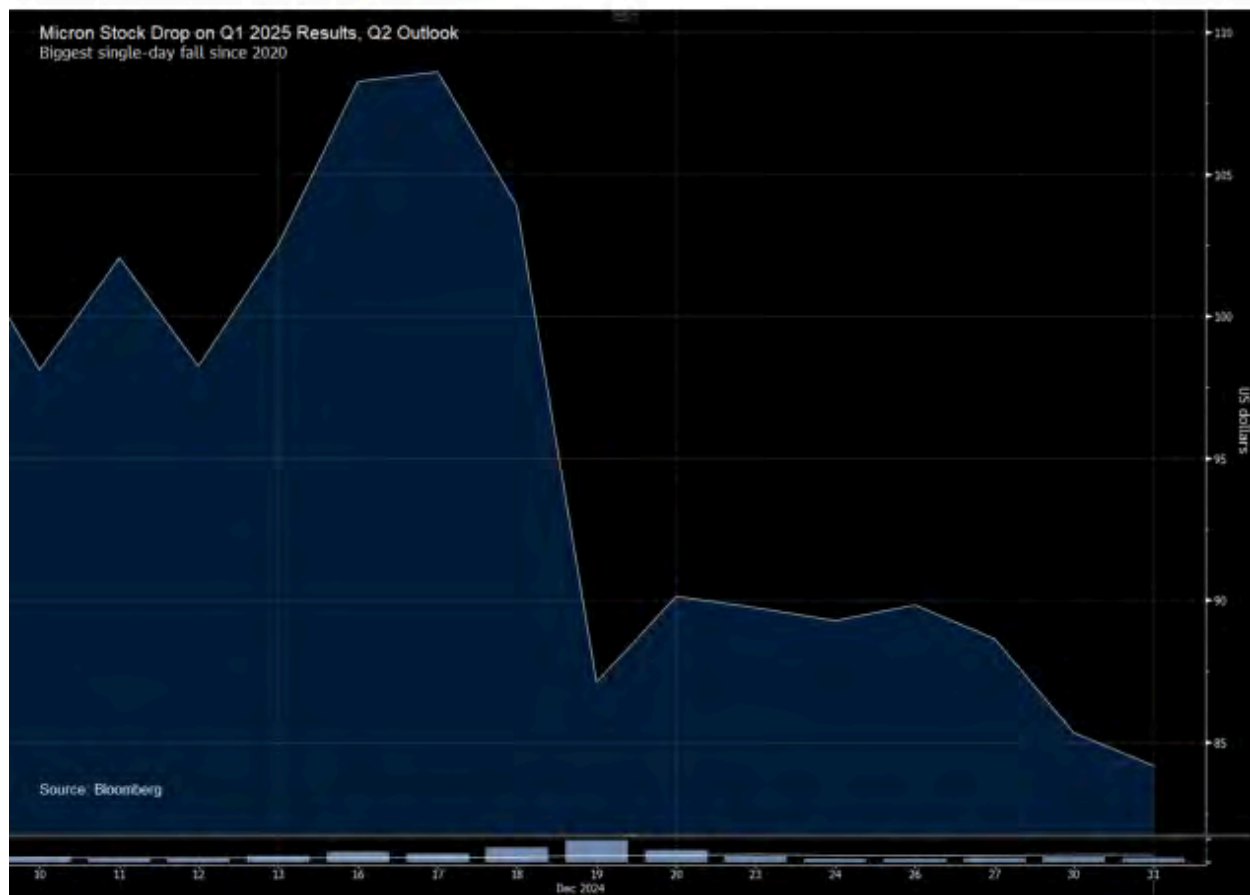
Computer-memory chip maker Micron Technology Inc. and two executives overstated demand hopes only to release disappointing financial guidance that spurred the company's worst single-day stock drop in almost five years, a proposed class action says.

Micron noted in regulatory filings that the memory and storage industry suffered in the fourth quarter of 2022 and in 2023 due to weak demand, says the complaint filed by Shlomo Klein in the US District Court for the Southern District of Florida on Thursday. But from 2023 through 2024, Micron allegedly said in press releases and public filings that demand was recovering. Klein pointed to defendant and chief executive officer Sanjay Mehrotra saying in a September 2024 press release that Micron forecasted "record revenue in fiscal Q1 and a substantial revenue record with significantly improved profitability in fiscal 2025."

Then on Dec. 18, Micron reported a greater-than-expected revenue dip for the first fiscal quarter of 2025 and disappointing second quarter guidance, with Mehrotra citing weakness in consumer-oriented markets, the complaint said. Multiple analysts lowered their Micron stock price targets the next day, Klein said.

Weakness in product demand for smartphones and personal computers didn't offset a better outlook for components used in artificial intelligence computing, Bloomberg previously reported .

Share prices fell more than 16%, closing at \$87.09 on Dec. 19, the complaint said—a record single-day tumble since March 2020, according to data compiled by Bloomberg.



Bloomberg

The class would include investors in Micron stock from Sept. 28, 2023 through Dec. 18, 2024. Klein estimates anywhere from hundreds to thousands of members. He seeks damages, alleging violations of federal securities laws.

Micron didn't respond to an email seeking comment.

Miller Shah LLP and Pomerantz LLP represent Klein.

The case is Klein v. Micron Tech., Inc., S.D. Fla., No. 9:25-cv-80040, complaint filed 1/9/25.

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

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Tesla, Musk Appeal Chancery Compensation Case to Del. Supreme Court

 [law.com/therecorder/2025/01/09/tesla-musk-appeal-chancery-compensation-case-to-del-supreme-court](https://www.law.com/therecorder/2025/01/09/tesla-musk-appeal-chancery-compensation-case-to-del-supreme-court)

Ellen Bardash

Elon Musk. Credit: Steve Jurvetson via Wikimedia Commons

News

Quinn Emanuel Urquhart & Sullivan; Cravath, Swaine & Moore; and Ross Aronstam & Moritz are representing Musk and Tesla's board on appeal, with opening briefs due Feb. 25.

January 09, 2025 at 01:38 PM

By Ellen Bardash

Litigation reporter



The Delaware Court of Chancery case that overturned Elon Musk's pay package at Tesla has been appealed to the Delaware Supreme Court, with Musk, Tesla and investors all filing appeals Wednesday.

Those three filings join another appeal, brought by a group of other shareholders challenging Chancellor Kathaleen St. J. McCormick's decision on their standing.

Quinn Emanuel Urquhart & Sullivan; Cravath, Swaine & Moore; and Ross Aronstam & Moritz are representing Musk and Tesla's board on appeal, with opening briefs due Feb. 25. Tesla shareholders who entered the Chancery case as objectors and are now appealing are represented by Klehr Harrison Harvey Branzburg and Margrave Law.

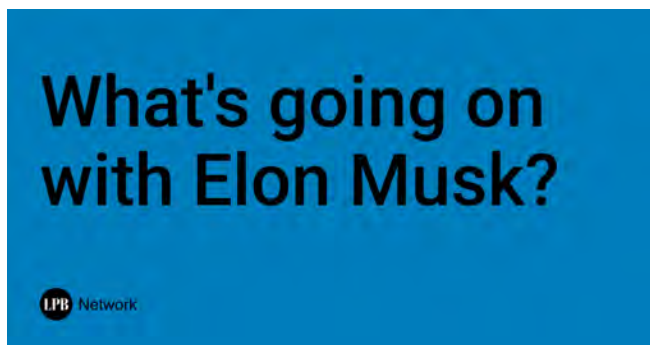
What Tesla, Musk and investors are challenging is McCormick's January 2024 post-trial opinion ordering rescission of Musk's compensation plan, valued at over \$55 billion. They're also appealing her December affirmance of that decision, which Tesla and Musk had argued was invalidated by Tesla shareholders voting after the original opinion was issued to reinstate Musk's pay. That opinion also awarded the Bernstein Litowitz Berger & Grossmann and Andrews & Springer attorneys who represented the plaintiff, Tesla shareholder Richard Tornetta, in the Chancery case, \$345 million in fees.

NOT FOR REPRINT

What's going on with Elon Musk?

 [businesslawprofessors.com/2025/01/whats-going-on-with-elon-musk/](https://www.businesslawprofessors.com/2025/01/whats-going-on-with-elon-musk/)

January 10, 2025



By Ann Lipton on January 10, 2025

Well, an awful lot, naturally, but Imma return to two of my favorite Musk subjects, namely, the pay package that was rescinded by Chancellor McCormick in *Tornetta v. Musk*, and the Twitter takeover.

So, *Tornetta*! Where we last left things, Chancellor McCormick had rejected Musk's attempt to restore the pay package through shareholder ratification (Me and Mike Levin devoted a whole podcast to that decision, [here](#)). With that decision, and her award with attorneys' fees, the case was finally over, and the defendants were able to appeal.

Which they did earlier this week.

Now, notices of appeal are usually sparse and rather dry reading, but not this time. To wit:

PLEASE TAKE NOTICE that Defendants-Below/Appellants Elon Musk, Robyn M. Denholm, Antonio J. Gracias, James Murdoch, Linda Johnson Rice, Brad W. Buss, and Ira Ehrenpreis, hereby appeal to the Supreme Court of the State of Delaware from (i) the December 13, 2024 Order and Final Judgment entered by the Honorable Kathaleen St. J. McCormick (the "Judgment"), (ii) the December 2, 2024 Opinion Awarding Attorney's Fees and Denying Motion to Revise the Post-Trial Opinion (the "Ratification Opinion"), (iii) the January 30, 2024 Post-Trial Opinion (the "Post-Trial Opinion"), (iv) the September 20, 2019 Opinion on Defendants' Motion to Dismiss the Complaint (the "Motion to Dismiss Opinion"), and (v) all other rulings and interlocutory orders made appealable through the Judgment in and for New Castle County, by the Delaware Court of Chancery in C.A. No. 2018-0408-KSJM. A copy of the Judgment is attached hereto as Exhibit A. A copy of the Ratification Opinion is attached hereto as Exhibit B. A copy of the Post-Trial Opinion is attached hereto as Exhibit C. A copy of the Motion to Dismiss Opinion is attached hereto as Exhibit D.

The defendants can always change their minds about it, and maybe they're just keeping their options open, but what this suggests is they plan to make an issue not just of the trial verdict, and not just of the ratification decision, but of the *original denial of the motion to dismiss* (which was when the case belonged to Vice Chancellor Slight, and I blogged about it here).

The thinking, I assume, is that if they prevail on the argument that the case should have been *dismissed on the pleadings*, then everything else is erased – the whole trial, the whole decision on ratification, and everything else.

That is an ... aggressive argument, and also one that smacks a little bit of desperation. After all, it's far easier to reverse a dismissal ruling (which is reviewed de novo) than it is to reverse trial findings (which are reviewed for clear error). Does this suggest Musk's attorneys aren't confident they get a reversal of the trial verdict? Or are they just hedging their bets? I suppose we have to wait for the briefing to get a better sense.

But that's not all –

A while back, when Brazil ordered the seizure of Starlink's assets to force Twitter to comply with court orders, I blogged about corporate separateness as applied to Elon Musk.

That was intended more as a hypothetical than anything else, but of course, since Elon Musk finds it necessary to hit every unit in the BizOrgs (and Sec Reg and M&A) syllabus, it's now come to life.

Namely, in the wake of the Twitter takeover, Musk ordered that, well, a lot of Twitter's contracts be broken, which led to a lot of litigation. One of those cases, *Arnold v. X Corp.*, alleges that pre-Musk Twitter made promises about employee severance that post-Musk Twitter is obligated to honor. And the employees argue that Elon Musk, along with Twitter, is personally responsible for the debt on – you guessed it – a veil-piercing theory. The plaintiffs say:

Plaintiffs alleged that Musk, through X Holdings I and its successors, owns more than 50% of Twitter (and its successors) and dominates Twitter's decisionmaking and operations. Plaintiffs also alleged Musk intermingled his companies' assets, treating them as one and the same – and as extensions of himself – despite their ostensibly separate corporate existences.

Plaintiffs have also sufficiently alleged it would be inequitable to allow Musk to use the corporate form to escape liability. By intermingling his corporate assets in the alleged conduct without formally having Twitter contract with the employees of his other companies, Musk has created a situation where – absent claims against Musk himself – the corporate defendants could argue the discriminatory or other wrongful activity was engaged in by Tesla, Space X, or Boring Company employees working as Musk's agents, not Twitter's. Indeed, Defendants would have every incentive to do so. The only way to avoid such a shell-game is to recognize that Musk's decision to treat his various corporations as interchangeable personal playthings opens him to personal liability for their actions. Moreover, as Plaintiffs alleged, Musk has repeatedly asserted that the debt load *created by his acquisition of Twitter* has driven Twitter to the edge of bankruptcy. Musk chose to saddle Twitter with crushing debt despite having more than enough money to pay Twitter's purchase price with no debt. That is sufficient to allege that Twitter was undercapitalized, and that allowing him to use that (perhaps deliberate) undercapitalization to avoid liability for obligations taken on *in that very acquisition* would be inequitable and unjust. No more is necessary at the pleading stage.

Now, the standard for pleading veil piercing is very high, and one could reasonably question whether this was sufficient except, well ... from the magistrate decision recommending the claims be sustained:

It is clear from Musk's opening brief that he knew that Plaintiffs' justification for keeping claims like Count III and IV alive as to him related to Plaintiffs' assertions in the FAC about veil piercing/alter ego liability. ... Yet for some reason, Musk only made arguments about this veil piercing/alter ego issue in a footnote in that opening brief. And even there, in that two-sentence footnote, Musk made only one brief merits-based assertion as to why the veil piercing allegations in the FAC would be insufficient to plausibly allege alter ego liability: i.e., that "Plaintiffs fail to explain [in the FAC] how respecting the corporate form would lead to an 'injustice' or 'inequitable' result' as is necessary to pierce the corporate veil[.]"

Arguments raised solely in footnotes are considered waived or forfeited. This policy is understandable, in part because when a party makes arguments like these only in a footnote, such arguments tend to be sparse and unhelpful—and they end up leading to insufficient and unhelpful briefing on important legal matters. Indeed, that exactly is what happened here, due to the fact that Musk did not sufficiently address the veil piercing/alter ego issue in his opening brief.

Therefore, since Musk waived or forfeited any argument that Counts III and IV should be dismissed due to Plaintiffs' failure to plausibly assert that Twitter's corporate veil should be pierced, his motion to dismiss these counts should be denied. The Court thus recommends denial of Musk's motion to dismiss with respect to Plaintiffs' breach of contract and promissory estoppel claims in Counts III and IV.

Arnold v. X Corp., No. 23-528-JLH-CJB (D. Del. Jan. 08, 2025).

So. There it is.

And another thing: Mike Levin and I open 2025 with a *Shareholder Primacy* podcast about aiding and abetting fiduciary breaches, and the empty voting saga at Masimo. Available here on Spotify, here on Apple, and here on YouTube.

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Bloomberg Law

Jan. 10, 2025, 9:42 AM PST; Updated: Jan. 10, 2025, 10:55 AM PST

American Airlines Held Liable for 401(k) Plan ESG Investing (1)

By Jacklyn Wille

- Case questions legitimacy of socially conscious investing
- Airline breached duty of loyalty, not duty of prudence

American Airlines Inc. violated federal law by filling its 401(k) plan with funds from investment companies that pursue environmental, social, and corporate governance goals, a Texas federal judge ruled Friday in the biggest victory yet for opponents of the strategy.

The airline breached its fiduciary duty of loyalty—but not its fiduciary duty of prudence—in allowing its \$26 billion retirement plan to be influenced by corporate goals unrelated to workers' best financial interests, Judge Reed O'Connor of the US District Court for the Northern District of Texas said after a four-day, non-jury trial.

The 2023 lawsuit, which says the airline wrongly offered 401(k) funds managed by companies that pursue ESG policy goals through proxy voting and shareholder activism, is the latest battle in the broader debate over socially conscious investing. A decision on the validity of these investment strategies in 401(k) plans would have ripple effects, particularly within the US Court of Appeals for the Fifth Circuit, which recently sent a case seeking to prevent enforcement of the Labor Department's ESG-friendly investing rule back to district court.

Disloyal, Not Imprudent

According to O'Connor, the American pilots proved that the airline's activities—which included hiring BlackRock Inc. to manage billions of dollars in plan assets despite its "ESG-oriented investing and proxy voting activism"—violated the Employee Retirement Income Security Act's directive to act loyally and in the best interests of plan participants.

"ERISA does not permit a fiduciary to pursue a non-pecuniary interest no matter how noble it might view the aim," O'Connor said, asserting that ESG investments "often underperform traditional investments by approximately 10%."

But the pilots failed to prove a violation of the statute's prudence rule, he said, because the airline "acted according to prevailing practices and in a manner similar to other fiduciaries in the industry." That's true even though those standards may stem from BlackRock's "alarming degree of control and influence over the retirement industry"—an industry O'Connor described as "incestuous" and full of "oligopolist or cartel-like behavior."

The pilots' prudence claim is best understood as an attempt to "shift industry standards" to better prioritize proxy voting oversight as an avenue for protecting workers' financial interests, O'Connor said.

"Perhaps that shift should occur," he continued. "And maybe at some point it will. But this future-looking goal reveals the fatal flaw underlying Plaintiff's prudence claim: Defendants' practices were not incongruent with the prevailing industry standards *at the time*."

Trial Outcome

O'Connor is a George W. Bush appointee who critics say has been a subject of "forum shopping" by conservative plaintiffs seeking a sympathetic court in challenges to federal policies. His prior rulings in the case denied the airline's motion to dismiss, certified a class of as many as 100,000 plan participants, and allowed the plaintiffs to present their claims at trial.

The June 2024 trial he oversaw included testimony from the airline's asset management director, who said his team didn't believe the negative press surrounding BlackRock and proxy voting was a reason for the airline to be concerned over the firm's handling of pilot retirement plans. An expert witness for the pilots testified that BlackRock's May 2021 proxy vote at ExxonMobil, which focused on ESG priorities, devalued energy stocks and caused the airline's 401(k) plan to suffer more than \$15 million in losses, an estimate American called "deeply flawed."

O'Connor's post-trial opinion, which resolves questions of liability but not potential damages, includes a lengthy discussion of which types of investments fall within the ESG rubric. According to O'Connor, ESG investing "considers or pursues a non-pecuniary interest as *an end* itself rather than as a means to some financial end." Investing aimed at reducing material risks or increasing returns for the sole purpose of seeking financial benefits "is *not* ESG investing," he said.

O'Connor instructed the parties to file briefs on damages and other outstanding issues by Jan. 31.

BlackRock isn't a party to the suit.

O'Melveny & Myers LLP and Kelly Hart & Hallman LLP represent American. Hacker Stephens LLP and Sharp Law LLP represent the pilots.

The case is *Spence v. Am. Airlines, Inc.*, N.D. Tex., No. 4:23-cv-00552, 1/10/25 .

(Updated with additional reporting throughout.)

To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloomberglaw.com

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

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<https://bsky.app/profile/madisoncondon.bsky.social/post/3lffv2xughs2w>



Madison Condon

@madisoncondon.bsky.social

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can't believe i have to spend brain cells on this, but one of the main pieces of evidence is the 2021 BlackRock vote against ExxonMobil directors (roughly at the red arrow) pitched as an investor loss... and here is what happened to Exxon stock after the vote....

Market Summary > Exxon Mobil Corp

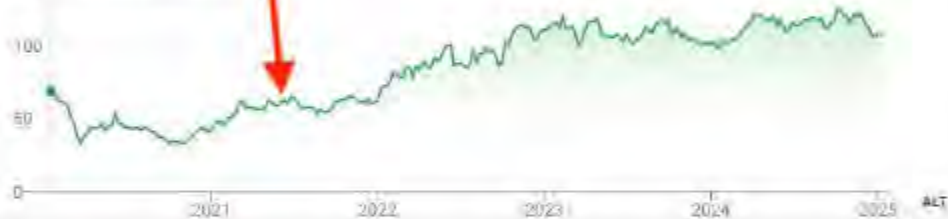
106.88 USD

+37.74 (54.58%) ↑ past 5 years

JAN 10, 2:00 PM EST • Disclaimer

1D 5D 1M 6M YTD 1Y 5Y Max

150 68.56 USD JAN 17, 2020



Ann M. Lipton @annmlipton.bsky.social · 2h

Well, he did it. Reed O'Connor conducted a bench trial and concluded that by including BlackRock plans in its 401k that voted for nonbinding climate change resolutions, American Airlines breached its fiduciary duties under ERISA:

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January 10, 2025 at 11:04 AM Everybody can reply

15 reposts 4 quotes 53 likes

2

19

53

**Dr. Pepsi** @drpepsi.bsky.social · 22m
Madison I'm not a smart man but: BlackRock and Vanguard and other ETF providers own so much of the economy, isn't it in their investors' best interest to, like, maintain the functioning of the economy?
 1   2 ...

**Madison Condon** @madisoncondon.bsky.social · 20m
someone should write this up
 1   ...

**Dr. Pepsi** @drpepsi.bsky.social · 19m
Don't make fun of me! Are you making fun of me?
 1   1 ...

**Madison Condon** @madisoncondon.bsky.social · 17m
lol no this is just the subject of a paper i wrote a few years ago that kind of took on a mind of its own and i am right at this very moment trying to respond to arguments from other corporate law scholars about how reducing emissions is not actually good for long term portfolios
 2   1 ...

**Madison Condon** @madisoncondon.bsky.social · 17m
but having trouble focusing because the world is on fire
 1   ...

**Graham Sinclair** @esgarchitect.bsky.social · 50m
Wow. Did not even rely on BlackRocks policies and reporting? No look at the Engine No.1 thesis? And no regard for \$XOM's own (disingenuous) "support" for Paris Agreement. Even my non-finance masters level students in #ENVR138A know more/research better in one week, than a US judge?
   ...

<https://bsky.app/profile/annmlipton.bsky.social/post/3lffqzoctv22x>



I am the Very Model of a Modern Mike, In General @whattheligh... · 55m

So if I have this right ...

My employer's stock people offered us a green retirement portfolio option, but said, "you'll probably make less money doing this," but we could choose that if we wanted.

This is saying they can be liable for offering one *at all*? Even with the caveat?



Ann M. Lipton @annmlipton.bsky.social · 53m

No, that's a different sort of issue and actually something that was only recently made legal under the Biden admin. When did your employer make the offer?



I am the Very Model of a Modern Mike, In General @whattheligh... · 47m

Like 10 years ago was when I first opted in, so around then. But ours is a simple IRA, not a 401k. Might be a difference.



Ann M. Lipton @annmlipton.bsky.social · 45m

not really, employer retirement plans are governed by erisa. but i'm not an erisa expert so there may be nuances i'm missing





Quatrain Gleam @quatraingleam.bsky.social · 1h

ERISA: the legal protection for humans who entrust their money to corporations, is turned into a legal protection for corporations who will end human civilization

2

4

40

...



Cynthia Laub @bloomlove.bsky.social · 1h



2

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whet moser @whetmoser.com · 2h

looking back and forth at this and "\$50b in wildfire losses"

89

...



lawless @lawless523.bsky.social · 1h

Holy fuck, what a mess. I am a retired ERISA attorney, and Reed O'Connor doesn't know what he's talking about.

1

29

...



txlawyer @txlawyer.bsky.social · 1h

O'Connor views the law as a means to whatever is his preferred outcome. I can attest

1

24

...



lawless @lawless523.bsky.social · 1h

That's been obvious for awhile, but this is an especially egregious and far-fetched example.

1

5

...



txlawyer @txlawyer.bsky.social · 57m

It's a day that ends in Y for O'Connor.

4

...



Eric Roesch, Rude Law Dog @esghound.com · 1h

This is fucking insane

23

...

Credit Suisse Group AG**Dozens more investors sue over €17bn Credit Suisse debt wipeout**

Plaintiffs argue Swiss government 'folded' to UBS demands when bank rescued its troubled rival



A parliamentary commission concluded last month that Credit Suisse's failure had been caused by 'years of mismanagement' © REUTERS

Simon Foy and **Ortenca Aliaj** in London YESTERDAY



Dozens of new investors have joined a lawsuit against Switzerland over the wipeout of €17bn of Credit Suisse debt, arguing that the government “folded to virtually all of UBS’s demands” when it orchestrated the rescue takeover of the bank.

In an amended complaint filed in New York on Wednesday, 39 plaintiffs were added to the lawsuit, taking the total value of the claim to more than \$370mn, up from \$82mn when the case was originally filed in June with eight claimants.

A majority of the new plaintiffs are individual funds run by US asset manager AllianceBernstein, while a subsidiary of Japanese lender Nomura is also named in the lawsuit, according to court documents.

The Financial Times [reported last month](#) that AllianceBernstein, which manages about \$800bn in assets, was preparing to join the claim, which is being brought by law firm Quinn Emanuel Urquhart & Sullivan.

The government's decision to wipe out the AT1 bonds has divided the market, with some arguing that the owners were sophisticated investors who should have been aware that the bonds could be written down. However, lawyers acting for the plaintiffs said retail investors and people saving for retirement had also been hit.

Dennis Hranitzky, partner and head of Quinn Emanuel's sovereign litigation practice, said the AT1 write down had affected a "diverse spectrum of investors, including retail investors and individuals saving for their retirement through institutionally managed 401k and pension plans".

The amended filing comes after a political inquiry in Switzerland last month shed new light on how the government and regulators arranged the emergency takeover.

A parliamentary commission criticised the country's financial regulator Finma but concluded that the bank's failure was [caused by "years of mismanagement" at Credit Suisse](#).

Lawyers representing the Credit Suisse bondholders are now trying to use details in the 569-page report to bolster its case against Switzerland.

In the amended complaint, Quinn Emanuel alleged that Switzerland "folded to virtually all of UBS's demands", including wiping out Credit Suisse's AT1 bonds.

"Eschewing its regulatory role and instead assuming the role of an investment bank brokering the sale of a distressed bank, Switzerland cherry-picked the only remaining major Swiss bank, UBS, to buy Credit Suisse without considering any other potential buyers," the complaint said.

"Switzerland then allowed UBS to dictate its own terms for the acquisition, which included Switzerland wiping out the AT1s — unnecessarily and in plain violation of the investors' rights," it added.

AT1, or additional tier one, bonds are a form of bank capital that converts into equity or is written down when a bank runs into trouble. Following UBS's takeover, Credit Suisse's AT1 bondholders were wiped out, while equity investors recovered \$3.3bn.

The Swiss government, which is being represented by law firm Wachtell, Lipton, Rosen & Katz, last month filed a motion to dismiss the initial Quinn Emanuel complaint. It argued that, as a foreign state, it was entitled to sovereign immunity from the lawsuit and that the dispute should be adjudicated in a Swiss court.

It is expected to file a new motion to dismiss the amended claim in the coming weeks, according to a person familiar with the matter.

Lawyers representing the Swiss Confederation did not respond to a request for comment. UBS declined to comment.

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Crypto Phoenix Capital, Xeta Sued After Millions of Dollars Lost

By Gillian R. Brassil

- **COURT:** M.D. Tenn.
- **TRACK DOCKET:** [No. 3:25-cv-00036](#) (Bloomberg Law subscription)

Cryptocurrency sellers conducted a fraudulent scheme worth “tens of millions of dollars” by scamming investors on lies about media and governmental support before going dark, a lawsuit says.

Given Phoenix Community Capital and Xeta Capital LLC executives argued to investors that they weren’t selling securities, 25 plaintiffs are also suing under the Racketeer Influenced and Corrupt Organizations Act, said their attorney Gary Blackburn of The Blackburn Law Firm PLLC in a phone call.

The complaint, filed in the US District Court for the Middle District of Tennessee on Wednesday, comes as federal judges have been divided about whether crypto coins are securities under US law. The Second Circuit is expected to rule in an interlocutory appeal from Coinbase in a Securities and Exchange Commission case that says tokens fall under its regulatory purview.

The Tennessee plaintiffs said they never saw promised returns or financial updates after purchasing PCC’s \$FIRE tokens. PCC leaders allegedly said they were working with media including Netflix and Yahoo; negotiating with the government of Thailand for licenses to build a relationship between “traditional institutions and the murky world of crypto finance;” and being sponsored by the “All-Party Parliamentary Group” in London.

The plaintiffs said they were told PCC sold assets to “Phoenix Dan” who had no duty to pay investors or share proceeds: No accounting for this was ever explained, the complaint said, and millions of dollars collected were either lost or unaccounted for.

In May 2022, some PCC leaders launched Xeta, which unfolded into multiple iterations of supposed investment opportunities, the complaint said. Xeta built its credibility through a purported partnership with a Swiss wealth management firm, the complaint said—except Gaxsys, the name of a German company, had no connection to Xeta, a digital presence, or proof it existed. The address belonged to a train station, the complaint said. Later, Xeta said it terminated the Gaxsys after learning of its plagiarism, plaintiffs said.

Xeta said promised audits were never shared because of “unnamed and nonexistent requirements” of trying to go public, the complaint said.

Leadership said in 2023 Xeta’s US entity would dissolve and reincorporate in Belize. Certain investors could request refunds, but those haven’t been made, said the complaint.

In May 2024, a leader said Xeta was shuttering and refunds would be handled through unnamed third parties; PCC closed public channels in its Discord group, the complaint said. In August, plaintiffs were told “final documents” were submitted and all that was left was for funds to be disbursed. Whatever these documents were or where they were submitted was never disclosed, the complaint said.

As of December, no distributions were made; the mere existence of the millions of dollars in investments haven’t been shared, plaintiffs said.

Among the plaintiffs are the parents and brother of a Xeta operator.

Plaintiffs want threefold damages, suit costs, and an attorney’s fee awarded.

Xeta didn’t respond to an email seeking comment. Attorney and other direct contact information for PCC, Xeta, and four individual defendants wasn’t immediately available.

The case is Riley v. Phoenix Cmty. Cap. , M.D. Tenn., No. 3:25-cv-00036, complaint filed 1/8/25 .

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

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

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Law firms wrangle over fees from \$2.7 bln Blue Cross Blue Shield settlement

 [reuters.com/legal/government/law-firms-wrangle-over-fees-27-bln-blue-cross-blue-shield-settlement-2025-01-09](https://www.reuters.com/legal/government/law-firms-wrangle-over-fees-27-bln-blue-cross-blue-shield-settlement-2025-01-09)

David Thomas, Mike Scarcella

A businessman walks on an illuminated walkway in Tokyo November 13, 2008.

REUTERS/Yuriko Nakao/File Photo Purchase Licensing Rights , opens new tab

Jan 9 (Reuters) - Nearly five years after Blue Cross Blue Shield agreed to pay \$2.7 billion in one of the largest U.S. antitrust class action settlements ever, a handful of law firms involved in the case are still fighting over their share of the attorney fees.

A trio of small law firms claims that Louisiana-based Pendley, Baudin & Coffin never paid them their dues from Pendley's portion of a \$667 million fee award allocated to the more than 30 plaintiffs' firms in the case, according to complaints made public on Monday by an Alabama federal judge who oversaw the antitrust litigation.

Blue Cross denied wrongdoing but agreed to the settlement in 2020 to resolve claims that it overcharged commercial and individual subscribers. U.S. District Judge R. David Proctor in Birmingham approved the settlement and fee award, and the U.S. Supreme Court finally pushed aside lingering objections in June.

Details about how lawyers in class actions divvy up legal fee awards are rarely made public, and are often based on a web of private agreements among firms. The disputes with the Pendley firm provide a rare peek into the process in the Blue Cross Blue Shield case.

The lion's share of the \$667 million award went to law firms Boies Schiller Flexner and Hausfeld, which led the case for the subscriber plaintiffs. The Pendley firm stood to receive close to \$13 million, according to the complaints filed by Gordon Ball LLC, the Dampier Law Firm and McArthur Law LLC.

Gordon Ball, a Knoxville, Tennessee lawyer, alleged , opens new tab that he had a written agreement with the Pendley firm to receive half of its fee in the Blue Cross Blue Shield case. The Dampier and McArthur law firms claimed , opens new tab they had a written agreement with the Pendley firm to collectively receive a quarter of the firm's fee.

The Pendley firm and its partners Patrick Pendley, Stanley Baudin and Christopher Coffin did not immediately respond to requests for comment. Attorneys representing the Ball, Dampier and McArthur law firms also did not respond to comment requests.

Pendley led a committee in charge of calculating the plaintiffs' damage claims, a person familiar with the case told Reuters, and the \$667 million fee award was apportioned among the many law firms in the case by Edgar Gentle, a Hoover, Alabama-based lawyer appointed to serve as special master in the litigation.

The vast majority of the firms accepted Gentle's allocations and were paid after the Supreme Court's ruling last summer, the person said, adding that Proctor dismissed objections from two other firms in a confidential December ruling after they also objected to their shares.

Gentle did not immediately respond to a request for comment.

The complaints against Pendley do not challenge Gentle's apportionment decisions, Proctor said in his Monday order [↗](#), opens new tab. He forbade the parties from disclosing details of the fee allocations in any public filings.

Proctor also severed the complaints against the Pendley firm from the larger antitrust litigation, so they will proceed as separate civil actions.

Proctor last month tentatively approved a separate \$2.8 billion settlement between Blue Cross Blue Shield and healthcare providers who alleged they were underpaid for reimbursements. Blue Cross Blue Shield denied the providers' claims.

– In other legal fee news, a Delaware judge on Wednesday awarded \$176 million in legal fees to plaintiffs lawyers who secured a \$919 million settlement with Tesla directors accused of overpaying themselves.

Lawyers at Fields Kupka & Shukurov; McCarter & English; Bleichmar Fonti & Auld; and Clark Hill had requested more than \$230 million for their work on the lawsuit against Tesla directors, including Chair Robyn Denholm.

The settlement, which Chancellor Kathaleen McCormick approved on Wednesday, requires Tesla board members to return roughly \$277 million in cash, \$459 million in stock options and forgo stock options for 2021-23 worth \$184 million.

Tesla had asked McCormick to cap attorney fees at \$64 million. The electric carmaker had argued that the \$230 million request was an "unwarranted windfall" that worked out to an hourly rate of \$10,690.

Though McCormick declined to grant the lawyers their full request, the \$176 million award is still the fourth-largest in the history of shareholder litigation in Delaware.

– Plaintiffs firms including Lowey Dannenberg; and Scott+Scott that negotiated a \$95 million privacy class action settlement with Apple said they may seek up to \$28.5 million in fees, plus \$1.1 million for expenses, from the settlement fund. The lawsuit claimed Apple's voice-activated assistant Siri violated users' privacy.

Apple, represented by Morrison & Foerster, denied wrongdoing while agreeing to settle. The proposed accord, disclosed on Tuesday, is pending approval before U.S. District Judge Jeffrey White in federal court in Oakland, California.

(Legal Fee Tracker is a weekly feature focused on attorney compensation. Please send tips or suggestions to D.Thomas@thomsonreuters.com [↗](#), opens new tab)

Read more:

Alphabet, Meta Face New Investor Bids on AI Data Privacy Risks

By Clara Hudson

- Proposals raise concerns about consumer data, copyrights
- Similar bid at Microsoft backed by more than a third of investors

Big tech companies from Alphabet Inc. to Meta Platforms Inc. face a slate of new investor proposals to probe concerns that personal or proprietary data could be used to train artificial intelligence models.

The bids from the National Legal and Policy Center, seen by Bloomberg Law, ask the tech giants to issue a report examining the risks of potentially using personal data to develop and train generative AI, as well as strategies to reduce those risks. The group filed proposals at Google parent company Alphabet, social media giant Meta and e-commerce behemoth Amazon in December, and at Apple Inc. over the summer.

The bids come amid growing apprehension from the public and shareholders about data privacy and AI. Microsoft Corp. recently disputed claims circulating on social media that it uses customer data from certain Microsoft 365 applications such as Word and Excel to train large language models.

Microsoft was the first big tech company to face an investor proposal on this issue at its annual meeting in early December, when 36% of shareholders backed the effort. Though the proposal did not pass, double-digit support can prompt companies to change their behavior.

The policy center's new proposal at Apple raised concerns about its partnership with ChatGPT creator OpenAI, which has faced allegations that it stole personal information from users without notice or permission.

"Americans want data privacy," the proposal said. "Developers who provide it will reap the benefits of consumer trust, while those who do not will suffer."

The bid also cited worries about copyrighted works or proprietary commercial information provided by users of the companies' technology platforms potentially being used to train AI. It wants the companies to disclose risks to their profits and operations as well as to the public.

The proposals before the other tech companies are similar to the bid at Apple.

Amazon declined to comment and the other three companies did not immediately respond to a request for comment; they all typically have their annual shareholder meetings in the spring and summer, except for Apple which held its meeting in February last year.

Investors could vote on these proposals if they're included in the businesses' proxy statements.

A range of companies in the tech and entertainment industries faced other AI-related proposals last proxy season, including on the risks of misinformation spread by AI on social media and environmental concerns about greenhouse gas emissions from the large amounts of energy required to fuel the technology.

Though none of the AI-related proposals passed last year, companies including Meta and Apple expanded their transparency over AI risks following pressure from the investors as well as government bodies and independent oversight committees. For example, Apple announced that it would disclose more about its AI plans after a proposal seeking further AI-related business and ethics information received 37.5% support from shareholders in February.

To contact the reporter on this story: Clara Hudson in Washington at chudson@bloombergindustry.com

To contact the editors responsible for this story: Amelia Gruber Cohn at agrubercohn@bloombergindustry.com; Jeff Harrington at jharrington@bloombergindustry.com

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Meta knew it used pirated books to train AI, authors say

 [reuters.com/technology/artificial-intelligence/meta-knew-it-used-pirated-books-train-ai-authors-say-2025-01-09](https://www.reuters.com/technology/artificial-intelligence/meta-knew-it-used-pirated-books-train-ai-authors-say-2025-01-09)

Blake Brittain

By Blake Brittain

January 9, 2025 1:58 PM PST Updated an hour ago

Meta AI logo is seen in this illustration taken September 28, 2023. REUTERS/Dado Ruvic/Illustration/File photo Purchase Licensing Rights [↗](#), opens new tab

Jan 9 (Reuters) - Meta Platforms (META.O) [↗](#), opens new tab used pirated versions of copyrighted books to train its artificial intelligence systems with approval from its CEO Mark Zuckerberg, a group of authors alleged in newly disclosed court papers.

Ta-Nehisi Coates, comedian Sarah Silverman and other authors suing Meta for copyright infringement made the accusations in filings made public on Wednesday [↗](#), opens new tab in California federal court. They said internal documents produced by Meta during the discovery process showed the company knew the works were pirated.

Spokespeople for Meta did not immediately respond to a request for comment.

The authors sued Meta in 2023, arguing that the tech giant misused their books to train its large language model Llama.

The case is one of several alleging that copyrighted works by authors, artists and others were used to develop AI products without permission. Defendants have argued that they made fair use of copyrighted material.

The authors asked the court on Wednesday for permission to file an updated complaint. They said new evidence showed Meta used the AI training dataset LibGen, which allegedly includes millions of pirated works, and distributed it through peer-to-peer torrents. They said internal Meta communications showed Zuckerberg "approved Meta's use of the LibGen dataset notwithstanding concerns within Meta's AI executive team (and others at Meta) that LibGen is 'a dataset we know to be pirated.'"

U.S. District Judge Vince Chhabria last year dismissed claims that text generated by Meta's chatbots infringed the authors' copyrights and that Meta unlawfully stripped their books' copyright management information (CMI).

The writers argued Wednesday that the evidence bolstered their infringement claims and justified reviving their CMI claim and adding a new computer fraud claim.

Chhabria said during a hearing on Thursday that he would allow the writers to file an amended complaint but expressed skepticism about the merits of the fraud and CMI claims.

Reporting by Blake Brittain in Washington; Editing by David Barrio and Aurora Ellis

Turning Over Legal Tedium to AI Requires Lots of Unglamorous Work on Front End

 [law.com/nationallawjournal/2025/01/09/turning-over-legal-tedium-to-ai-requires-lots-of-unglamorous-work-on-front-end](https://www.law.com/nationallawjournal/2025/01/09/turning-over-legal-tedium-to-ai-requires-lots-of-unglamorous-work-on-front-end)

Chris O'Malley

Credit: Jamie/Adobe Stock

Analysis

"Keep humans in the loop. Don't let the machines fully call the shots. Understand why they are making the recommendations they are making," Anthropic Deputy General Counsel Mark Pike said.

January 09, 2025 at 06:14 PM

By Chris O'Malley



The original version of this story was published on Corporate Counsel

Trained with the right information, AI software can draft a legal brief or analyze a stack of contracts in a fraction of the time it would take a lawyer.

But that dazzling technology intended to relieve humans of tedious work, ironically enough, requires that lawyers undergo training to use and monitor AI to prevent ethical and legal breaches.

"It becomes a training question, a supervision question. It's not can the tool do it? It is what is the right process in place internally to make sure it is checked, to make sure that it is pressure-tested," said Anna Gressel, a partner at Paul Weiss Rifkind Wharton & Garrison, during a Berkeley Law webinar on Wednesday.

Even the deputy general counsel of blockbuster AI startup Anthropic, known for its "Claude" chatbot, concurred.

"Keep humans in the loop. Don't let the machines fully call the shots. Understand why they are making the recommendations they are making," said Pike, who helps San Francisco-based Anthropic mitigate risks for its AI products.

The company is on the cusp of raising \$2 billion in a funding round led by Lightspeed Venture Partners that would triple its valuation to \$60 billion, the Wall Street Journal reported, citing people familiar with the deal. It would make Anthropic the nation's fifth-most valuable startup, WSJ said.

The legal industry is not immune from AI's irresistible lure. Pike rattled off at least a dozen capabilities including the ability vacuum-up and analyze statutes and regulatory changes, distill complicated information into briefs for executives, and even to help litigators poke holes in potential strawman arguments.

"With new features and capabilities as the models progress we're just uncovering new ways (that) can help us become better lawyers," Pike said.

"We're all looking for the opportunities to leverage the technology to make us more efficient or give us a little co-pilot on the side that can help us," said Gressel, who advises global clients on AI issues.

"I think everyone is interested in using these tools right now. The big, big question for the industry is just going to be how do we train people to use (AI)? We had to train a generation of people to use the Internet and Wikipedia and understand the risks and limitations of those tools," as well.

But where and how to get that in place and how to create the right kind of training environment is going to be an "industry imperative" right down to even the law school level, Gressel added.

The reason became more poignant as host Irene Liu, an advisor on AI to the California Senate and an executive in residence at Berkeley Law, cited the American Bar Association's Model Rule of Professional Conduct for lawyers.

In regard to obligations of confidentiality, for example, lawyers must ensure a client's information is maintained in a confidential manner, including when that lawyer is using AI.

"That sounds like a law firm issue but I think these kinds of issues course-through to folks in-house, including if there are certain types of other information screens that might be applicable to certain kinds of industries where you have to keep client data segregated from eachother," Gressel said.

Or consider privilege, in a situation where confidential, privileged information is placed in an AI tool where someone else might be able to access it. Might that require a waiver of privilege?, Gressel wondered.

Another potential breach of professional conduct may occur when a non-lawyer is given the opportunity to interact with an AI tool in a way that the end product might look like actual legal advice.

Anthropic's Pike said lawyers must be careful about over-reliance on AI without sufficient lawyer review.

AI hallucinations occasionally occur, he said, and lawyers need to be watchful. So, too, should they be transparent to clients about a lawyer's use of AI.

"The client may assume that the lawyer drafted every word. You should probably let your clients know when you are using it. Ownership ambiguity around the AI-generated text is something that could come up," Pike said.

In addition, he recommended a thorough vetting of an AI vendor's data practices.

"Are they using your data to train their models or their services? You should read that carefully and make sure they're not using customer conversations to train if that's not something that would be acceptable for your use case."

Liu noted that a number of organizations have put in place AI bots to answer compliance and general employee questions.

One problem with such bots is that the data they're trained on may be old and outdated. Or there may be separate policies in place for operations in different countries.

Gressel noted that the Department of Justice has started talking about the use of AI tools in the compliance arena, so taking steps to ensure a compliance framework is advisable.

Imagine an employee asking a bot how he could avoid compliance or "is this illegal," Gressel said. "And so you want to think a little bit about the ways in which tools, and this is always true, could be misused and how to put governance in place in your organization for employee misuse."

Another area for concern is the recent proliferation of automated AI record tools popping up in conference calls. Pike noted that such tools are valuable in their ability to quickly generate transcripts and for capturing key information that participants might otherwise miss unless they were taking notes.

These tools could potentially misinterpret speech. And there are ethical concerns to the extent participants aren't aware that the meeting is being recorded, Pike said.

"If you're trying to maintain privilege—attorney client privilege— think of ways the privilege might be waived due to the recording techniques, or (of) where the information is being shared. Who can search for it later and have access to it? You really need to develop controls on access and sharing of that sensitive type of information."

Pike advises informing participants when a conversation is being recorded and when AI is in use.

"Consider having lawyers review the AI-generated summaries, depending on the meeting context, to correct errors or remove sensitive details as needed before it's shared more widely."

Establishing policies on the storing, access and retention of certain information retained within a company is another thing to consider, Pike said.

If these kind of legal scenarios weren't interesting enough, then consider how a future court may apportion liability if AI used in product development contributes to problems in the ultimate downstream product.

"I think this is one of the most interesting emerging areas as everyone is trying to figure out the right allocation of liability in various contexts depending on where they sit," said Gressel, "what they're using the tools for, what their traditional liability overlay has been."

As such some companies may become "really nervous" around the idea of indemnification, "and it ricochets then through the ecosystem as people are beginning to start getting concerned and start getting concerned about changes to liability regimes."

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Trending

New Suit - Trademark

Christian Dior Couture, S.A. filed a trademark infringement lawsuit on Jan. 10 in Illinois Northern District Court over the alleged sale of counterfeit goods. The suit, filed by Greer, Burns & Crain, pursues claims against unidentified online retailers. The case is 1:25-cv-00291, Christian Dior Couture, S.A. v. The Partnerships and Unincorporated Associations Identified on Schedule A.

[Read More](#)

Class Action

Jan. 10, 2025, 8:52 AM PST

PowerSchool Sued Over December Breach of Student, Teacher Data

By Christopher Brown

- **COURT:** E.D. Cal.
- **TRACK DOCKETS:** Nos. [2:25-at-00037](#), [2:25-at-00040](#), and [2:25-at-00042](#) (Bloomberg Law subscription)

PowerSchool Holdings Inc. is facing three federal lawsuits alleging the education software provider negligently failed to protect the personal information of students, parents, and teachers that was exposed in a December data breach.

Sheilah Buack-Shelton, Tyler Baker, and Kimberly Kinney alleged in separate complaints that PowerSchool breached its duties under common law, contract law, industry standards, and the Federal Trade Commission Act to implement reasonable and adequate data security measures and provide timely notice of the breach.

Information exposed in the incident includes names, addresses, Social Security numbers, contact information, medical and financial information, student grades and grade-point averages, bus-stop information, and employment information, according to complaints filed Jan. 8-9 in the US District Court for the Eastern District of California.

PowerSchool didn't respond immediately to a request for comment.

The company hasn't disclosed the number of people affected by the breach. Buack-Shelton and Kinney allege that the breach exposed the data of millions of people. Baker alleges that the proposed class includes 827,000 people.

Victims have suffered lost time responding to the breach, out-of-pocket costs for mitigation measures, emotional distress, reduced value of their personal information, increased risk of fraud and identity theft, and payment for data-security that wasn't provided, according to the complaints.

Each plaintiff seeks to represent a nationwide class of people whose information was exposed in the breach. Buack-Shelton also seeks to represent a California sub-class of affected people.

The complaints bring a variety of claims, including negligence, negligence per se, breach of fiduciary duty, breach of confidence, invasion of privacy/intrusion upon seclusion, breach of implied contract, unjust enrichment, declaratory judgment, and violations of the California Consumer Privacy Act.

The plaintiffs are variously seeking compensatory, statutory, exemplary, and punitive damages; statutory penalties; restitution; equitable and injunctive relief; attorneys' fees and costs; and pre- and post-judgment interest.

MoginRubin LLP represents Buack-Shelton. Edelson Lechtzin LLP represents Baker. Zimmerman Reed LLP and Jennings & Earley PLLC represent Kinney.

The cases are Buack-Shelton v. PowerSchool Holdings Inc. , E.D. Cal., No. 2:25-at-00037, complaint filed 1/8/25 , Baker v. PowerSchool Holdings Inc. , E.D. Cal., No. 2:25-at-00040, complaint filed 1/9/25 , and Kinney v. PowerSchool Holdings Inc. , E.D. Cal., No. 2:25-at-00042, complaint filed 1/9/25 .

To contact the reporter on this story: Christopher Brown in St. Louis at ChrisBrown@bloombergindustry.com

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

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'Discordant Dots': Why Phila. Zantac Judge Rejected Bid for His Recusal

 [law.com/thelegalintelligencer/2025/01/09/discordant-dots-why-phila-zantac-judge-rejected-bid-for-his-recusal](https://www.law.com/thelegalintelligencer/2025/01/09/discordant-dots-why-phila-zantac-judge-rejected-bid-for-his-recusal)

Aleeza Furman

What You Need to Know

- Judge Joshua Roberts entered an opinion Tuesday on his denial of a motion for his recusal from the Philadelphia Zantac mass tort.
- The plaintiffs in the Philadelphia Zantac mass tort had requested that Roberts step away from the litigation on the grounds that Roberts' wife is a partner at Reed Smith, which represents Zantac manufacturer GlaxoSmithKline in litigation over the drug.
- Roberts determined that the plaintiffs' assertions were too speculative and created a 'slippery slope.'

The judge overseeing Philadelphia's Zantac mass tort did not look favorably upon a bid from plaintiffs to boot him from the litigation.

In a Tuesday opinion, Judge Joshua Roberts of the Philadelphia Court of Common Pleas said the Zantac plaintiffs "fell woefully short of presenting any concrete facts that could support recusal."

The plaintiffs in the Philadelphia Zantac mass tort had requested that Roberts step away from the litigation on the grounds that Roberts' wife is a partner at the Am Law 50 firm Reed Smith, which represents Zantac manufacturer GlaxoSmithKline, in litigation over the drug. The plaintiffs contended that the connection between GSK and Roberts' wife, Shannon McClure, could create the appearance of impropriety.

Roberts, who heads Philadelphia's mass tort program, denied the plaintiffs' motion in August, holding that he could remain impartial. In his Tuesday opinion, he asked the Superior Court to affirm his ruling as the plaintiffs seek an appeal.

Roberts criticized the plaintiffs' arguments as too speculative, writing that the plaintiffs "presented plenty of hopeful supposition in the form of discordant dots that they could not connect."

Roberts noted that Reed Smith's representation of GSK in Zantac litigation was all outside of Philadelphia and that the firm had placed an ethical wall for McClure regarding matters involving GSK. Roberts ruled that none of the facts asserted by the plaintiffs constituted a basis for recusal under the Code of Judicial Conduct.

The plaintiffs did not allege that McClure, who works in Reed Smith's global commercial disputes group, was directly involved in the Zantac litigation. However, they argued that McClure's role at her firm meant she—and, by extension, her husband—had a financial stake in the litigation's outcome.

The defendants opposed the motion, countering that the judge's purported connection to GSK was too tenuous to create the appearance of potential bias.

Roberts agreed with the defense, and said in his opinion that the basis for the plaintiffs' motion creates a "slippery slope." He questioned what other circumstances would warrant his recusal if he were to accept the plaintiffs' argument.

Without boundaries on what is and is not considered a conflict, he said, "It is easy to conceive that litigation-savvy attorneys could push for recusal under a myriad of tenuous circumstances."

Roberts also voiced concern about the timing of the motion for his recusal.

According to the opinion, Roberts had told counsel about his wife's role at Reed Smith in December 2023, but the plaintiffs waited until May 2024 to file their motion.

While the delay in filing did not appear to afford the plaintiffs a strategic advantage, Roberts said, it was nonetheless an issue.

In a footnote, he wrote, "A more cynical view of the circumstances is that plaintiffs' counsel used the motion as a broadside against my oversight of the entire mass torts program."

Anapol Weiss shareholder Tracy Finken, who represents plaintiffs in the litigation, did not respond to a request for comment, nor did a spokesperson for GSK, which is represented by Dechert in the Philadelphia mass tort.

The dispute over Roberts' recusal has caused some slowdown in the mass tort. The first few Philadelphia Zantac trials were scheduled for 2025, but Roberts put the proceedings on hold while the matter went to the Superior Court.

Read the opinion:

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Walmart faces class action over lead in cocoa mix

DJ [dailyjournal.com/articles/382807-walmart-faces-class-action-over-lead-in-cocoa-mix](https://www.dailyjournal.com/articles/382807-walmart-faces-class-action-over-lead-in-cocoa-mix)

Consumer Law,

Business Law

Jan. 10, 2025

The complaint, filed Jan. 7 in federal court in San Francisco, claims that Walmart violates California's Unfair Competition Law, or UCL, by failing to disclose the presence of lead on its labels for the hot cocoa mix.



Walmart Inc. was accused of false advertising in a putative class action by a group of customers claiming to have found "more than double" the maximum allowable dose of lead in a hot cocoa mix the company manufactures under its brand Great Value.

The complaint, filed Jan. 7 in federal court in San Francisco, claims that Walmart violates California's Unfair Competition Law, or UCL, by failing to disclose the presence of lead on its labels for the hot cocoa mix. Plaintiffs claim Walmart's labeling instead includes the company's slogan -- "Great Quality. Great Price. Guaranteed." - to mislead consumers regarding the safety of the product.

The lawsuit differs from most false labeling lawsuits involving alleged failures to disclose the presence of toxic chemicals, which typically accuse companies of violating California's Proposition 65 disclosure law.

Naomi Spector, counsel for the plaintiffs and an attorney at KamberLaw LLP in Carlsbad, explained in the complaint why the lawsuit was filed under the UCL instead of Prop 65 but noted that the two laws can be complementary. *Burnett v. Walmart, Inc.*, 3:25-cv-00228 (N.D. Cal., filed Jan. 7, 2025).

"This action is not brought pursuant to Proposition 65 but, as set forth herein, is brought pursuant to California's consumer protection laws based on consumer deception due to the mislabeling of the product," she wrote. "Proposition 65, however, provides a predicate basis for violation of the consumer protection law. Proposition 65 also establishes the specific

levels of exposure set forth by the California legislature at which 'businesses are required to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm.'"

A representative for Walmart wrote in an email that "The health and safety of our customers is a top priority. We are reviewing the complaint and will respond appropriately to the Court."

In the company's corporate policies, Walmart claims that it is committed to being transparent with consumers regarding chemicals in its consumer products and "eliminating a generation of hazardous substances."

These policies state that "Walmart has developed a policy on sustainable chemistry for its consumables/Health & Wellness business that focuses on transparency, advancing formulation, and begin labeling private brand products in accordance with the U.S. Environmental Protection Agency's Design for the Environment Safer Product Labeling."

The complaint details the potential health impact of consuming the amount of lead allegedly present in the Great Value hot cocoa and claims that competitors in the hot cocoa marketplace warn customers of the presence of lead.

"Based on the testing results described herein, a child who consumes just three cups of hot cocoa per week made with defendant's products consumes 3.5 micrograms of lead," Spector wrote. "Still other cocoa products, such as NATIVAS ORGANICS organic cacao powder, contain a warning that their cocoa contains lead."

Spector added that "Consumers are deprived of making the informed choice between defendant's products and other cocoa products because defendant fails to disclose the presence of lead in the products."

Claims in a similar putative class action lawsuit filed in the Northern District of California in June 2022 over Walmart's alleged failure to disclose the presence of lead in Great Value spice products, citing the UCL, were dismissed against the lead plaintiffs with prejudice on July 29 amid private settlement talks with Walmart. The claims of the putative class members were dismissed without prejudice and no motion for class settlement approval was filed. *Gagetta et al v. Walmart, Inc.*, 3:22-cv-03757 (N.D.Cal. filed June 24, 2022).

In that case Walmart was represented by Livia Kiser, Ethan P. Davis and Samuel R. Diamant of King & Spalding LLP in San Francisco.

#382807

Fox Corp must face Smartmatic \$2.7 billion defamation claim

 [reuters.com/legal/fox-must-face-smartmatic-27-billion-defamation-lawsuit-ny-appeals-court-rules-2025-01-09](https://www.reuters.com/legal/fox-must-face-smartmatic-27-billion-defamation-lawsuit-ny-appeals-court-rules-2025-01-09)

Jonathan Stempel

A view of the signage outside the News Corporation building, after it was announced that Rupert Murdoch would step down as chairman of News Corp and Fox in favour of his son Lachlan Murdoch, in New York, U.S., September 21, 2023. REUTERS/Bing Guan/File Photo Purchase Licensing Rights , opens new tab

NEW YORK, Jan 9 (Reuters) - Fox Corp (FOXA.O) , opens new tab, the parent of Fox News Network, failed to convince a New York state appeals court to dismiss a defamation claim in electronic voting systems company Smartmatic's \$2.7 billion lawsuit over the network's 2020 post-election coverage.

A five-judge panel of the Appellate Division in Manhattan ruled on Thursday that Smartmatic sufficiently alleged the Fox parent was directly liable for on-air statements suggesting Smartmatic helped rig the 2020 U.S. presidential election to favor Democrat Joe Biden over Republican Donald Trump.

Claims that the parent directed on-air talent to undertake a disinformation campaign, and played an active role in coverage, "sufficiently allege Fox Corporation's 'direct liability' for the challenged defamatory statements," the court said.

The appeals court also said Smartmatic's failure to allege that the Fox parent "wholly dominated" Fox News Network meant the parent could not be liable for defamation on that basis.

"We will be ready to defend this case surrounding extremely newsworthy events when it goes to trial," Fox Corp said in a statement. "Smartmatic's damages claims are implausible, disconnected from reality, and on their face intended to chill First Amendment freedoms."

J. Erik Connolly, a lawyer for Smartmatic, in a statement said the parent company "must now answer for its actions at trial."

Smartmatic claimed that Fox broadcast lies about its technology to boost ratings, and keep Trump supporters from defecting to right-wing networks Newsmax and One America News.

The company has said it provided technology for the 2020 election only to Los Angeles County, which Biden won. Smartmatic has offices in London and in Boca Raton, Florida.

Other defendants include host Maria Bartiromo and the estate of late host Lou Dobbs.

In April 2023, Fox reached a \$787.5 million settlement in a similar defamation lawsuit by voting technology company Dominion Voting Systems, as a trial in Delaware was about to begin.

The case is Smartmatic USA Corp et al v Fox Corp et al, New York State Supreme Court, Appellate Division, 1st Department, No. 2024-01388.

Reporting by Jonathan Stempel in New York; Editing by Leslie Adler and Bill Berkrot

How Law Schools Fared on California's July 2024 Bar Exam

 [law.com/therecorder/2025/01/09/how-law-schools-fared-on-californias-july-2024-bar-exam](https://www.law.com/therecorder/2025/01/09/how-law-schools-fared-on-californias-july-2024-bar-exam)

Cheryl Miller

Graduates of two out-of-state law schools posted the highest pass rates on California's July 2024 bar exam, the last to be administered in a format that required applicants to travel to convention centers and hotel ballrooms.

All 16 first-time test-takers from Cornell University and all 12 from the University of Minnesota passed the two-day exam, according to data released recently by the California state bar. The Big Red of Cornell and Golden Gophers of Minnesota join an exclusive group of alumni from schools that have lodged 100% pass rates in recent years, including the University of Texas at Austin, Duke, Notre Dame, Virginia, Vanderbilt and Yale.

The overall success rate for those who finished the July 2024 exam, including those repeating the test, was 53.8%.

The top-performing California-based law school was Stanford University with a 95.9% pass rate for rookie test-takers. UCLA posted the second highest pass rate, 93.6%, and the University of Southern California was third with 93.3%.

Students of California-based American Bar Association-approved law schools had an overall higher pass rate among new applicants, 81.3%, than students from out-of-state ABA-approved schools (74.7%).

The state bar only releases pass-rate data for schools where more than 10 alumni completed the exam.

California's next bar exam, scheduled for Feb. 25 and 26, will be the first where most applicants take the exam remotely on their own computers or in smaller, vendor-provided testing centers. Additionally, the multiple-choice portion of the exam will be written for the first time by Kaplan.

The bar proposed the changes, which were later approved by the California Supreme Court, as part of an effort to cut costs for administering the biannual test to thousands of applicants. Projected costs for the July 2025 exam are shaping up to be significantly higher than originally expected, trustees learned in a meeting

Bar officials offered a practice, 49-question version of the new Kaplan-provided test in November. More than 4,500 applicants took the experimental test, lured by a potential score increase on one of the actual 2025 bar exams if they performed well enough.

The bar has yet to publicly release data on the practice exam. Another experimental exam will be offered in July.

Additional statistics released about the July 2024 bar exam revealed:

Northwestern California University School of Law posted the best pass rate for first-time test-takers at state-accredited law schools with 81.8%.

Significantly more women took the exam than men: 3,239 to 2,200 among those sitting for the exam for the first time. Men, however, continue to pass the exam at higher rates: 72% to 65%.

White test-takers continue to have higher pass rates than applicants of color on the exam. Almost 81% of white applicants taking the test for the first time in July passed. The figure was 57% for Asian applicants, 52% for Black test-takers, 55% for those who registered as Latino and 70% for those who identified themselves as belonging to another racial or ethnic group.

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Trending

New Suit - Trademark

Christian Dior Couture, S.A. filed a trademark infringement lawsuit on Jan. 10 in Illinois Northern District Court over the alleged sale of counterfeit goods. The suit, filed by Greer, Burns & Crain, pursues claims against unidentified online retailers. The case is 1:25-cv-00291, Christian Dior Couture, S.A. v. The Partnerships and Unincorporated Associations Identified on Schedule A.

Federal courts to out-of-state lawyers: Get lost

DJ [dailyjournal.com/articles/382814-federal-courts-to-out-of-state-lawyers-get-lost](https://www.dailyjournal.com/articles/382814-federal-courts-to-out-of-state-lawyers-get-lost)

Law Practice

Jan. 10, 2025

A bizarre maze of "local" and "local-local" rules keeps qualified lawyers from crossing district lines in federal courts--where even those admitted to argue before the Supreme Court can't practice in lower courts without jumping through each district's special hoops.



Richard W. Morris

Richard W. Morris is a retired lawyer admitted in the United States Supreme Court, two U.S. states (Arizona and California), and the United Kingdom of England and Wales.

See more...

Any lawyer who's ventured into the courtroom of another state has likely experienced the delightful phenomenon of being "hometowned." That's right -- faced with a judge who favors the locals over outsiders, the visiting lawyers often find themselves on the wrong side of a bench that suddenly feels like a hometown fan club. But don't worry -- it's just an attitude, not a rule, right? Or is it?

Let's imagine the rules require judges to discriminate against "them thar' foreign folk"-- you know, the strangers in town. Sounds absurd? Not so fast! There are rules, and then there are rules. And when it comes to the federal court system, oh, Good Golly Miss Molly, do we have some goodies.

A judge's ideal vs. reality

Federal judges don sacred black robes, symbolizing purity, innocence, and impartiality -- or so the story goes. With gavel in hand, they wield the wondrous power of truth, justice, and the American way. The bailiff announces, "All rise," and the judge takes the bench -- an

embodiment of fairness, ready to dispense justice. In theory, they are as pristine as a snowy mountaintop. Their duty as noble as a knight rescuing a damsel in distress. Really?

In practice, these paragons of propriety often find themselves bogged down in a maze of rules that seem more suited for bureaucratic posturing than the noble pursuit of justice. Some rules are so baffling they could have been scribbled on a cocktail napkin during a late-night drinking session.

How can these paragons of purity enforce rules that undermine the very fairness and equality they are sworn to deliver? The answer, my friend, is blowing in the wind -- buried in a legal system that often prioritizes rules over justice.

Sometimes, courts don't even follow their own rules. Let's dive into one particularly absurd example about whether visiting lawyers can practice in the Bankruptcy Court.

A tale of two legal systems

Our legal system takes its cues from the British. In the United Kingdom, a lawyer admitted (licensed) to practice in any of His Majesty's courts can practice in any of those courts and in about two dozen other countries. But here in the U.S., it's a different story.

A lawyer admitted by a state supreme court can generally practice in all lower courts of that state. But a lawyer admitted to practice before the Supreme Court of the United States? Those lawyers can't practice in any lower federal courts -- not one. A lawyer must obtain admission for each individual District Court or Court of Appeals.

But wait, there's more! Not only do these courts have their own sets of rules, but within those rules are local rules, and then there are "local-local" rules -- specific to each judge's courtroom. It's a hodgepodge, a Matryoshka doll, of regulations that would make Kafka blush.

Enter the bankruptcy circus

The bankruptcy courts are units of the federal District Courts. Bankruptcy law is supposed to be uniform nationwide, as stated in Article I, §8 of the Constitution: Congress has the power "to establish... uniform Laws on the subject of Bankruptcies." Uniform laws. Simple enough, right?

Wrong.

Uniformity is precisely what the system lacks. A lawyer admitted to the District Court in District A cannot appear in the Bankruptcy Court of District B without a separate admission. Same national uniform law, same uniform procedure -- different permission slip. Why?

Historically, it's been a case of the proverbial dog marking its territory -- local lawyers staking their claim through exclusive rules, like fire hydrants, for their legal turf. While some District Courts do allow visiting lawyers, others don't. Not uniform.

And that brings us to the *Lawyers for Fair Reciprocal Admission v. United States* case currently pending in the Ninth Circuit as Docket Number 24-2213.

The argument for uniformity

Lawyers for Fair Reciprocal Admission (LFRA) argue that the federal system should be uniform, just as the federal law requires. Therefore, a lawyer admitted in one District Court should be allowed to practice in all District Courts -- just like their counterparts in the U.K. or a lawyer practicing in a single state. LFRA argues that federal courts should adopt a uniform standard: A lawyer admitted in one District Court should be permitted to practice in all District Courts.

LFRA leans heavily on *Siegel v. Fitzgerald*, 142 S. Ct. 1770 (2022), which held that similarly situated parties must be uniformly treated when accessing federal courts. LFRA also cites 28 U.S.C. § 2072(b), which states that local rules "shall not abridge, enlarge, or modify any substantive right..."

Going further, LFRA contends the Constitution and federal law mandate such uniformity in reciprocity.

This mishmash of restrictive admissions rules creates a dual injustice: Clients are denied the right to choose their preferred lawyer, especially those lawyers with specialized expertise. Simultaneously, lawyers are arbitrarily barred from practicing in multiple districts despite being qualified. By enforcing barriers that stifle cross-district representation, the federal court system undermines both professional freedom and the principle of equal access to justice.

The Ninth Circuit hasn't ruled yet, but its decision will say a lot about whether the U.S. judicial system obeys its own rules -- or whether it allows the local dogs to keep marking their hydrants.

#382814

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The two FirstEnergy execs accused to funding Ohio's giant bribery scheme take it on the chin in court: Today in Ohio

[cleveland.com/news/2025/01/the-two-firstenergy-execs-accused-to-funding-ohios-giant-bribery-scheme-take-it-on-the-chin-in-court-today-in-ohio.html](https://www.cleveland.com/news/2025/01/the-two-firstenergy-execs-accused-to-funding-ohios-giant-bribery-scheme-take-it-on-the-chin-in-court-today-in-ohio.html)

January 10, 2025

1. News

Published: Jan. 10, 2025, 10:40 a.m.



Today in Ohio, the daily news podcast of cleveland.com and The Plain Dealer.

By

Laura Johnston, cleveland.com

CLEVELAND, Ohio - A Summit County judge has rejected a pre-trial request from former FirstEnergy execs accused of bribing a state utility regulator with \$4.3 million.

We're talking about how grand jury transcripts won't be released -- and the case won't be further delayed -- on Today in Ohio.

Listen online here.

Editor Chris Quinn hosts our daily half-hour news podcast, with editorial board member Lisa Garvin, impact editor Leila Atassi and content director Laura Johnston.

You've been sending Chris lots of thoughts and suggestions on our from-the-newsroom text account, in which he shares what we're thinking about at [cleveland.com](https://www.cleveland.com). You can sign up here: <https://joinsubtext.com/chrisquinn>.

You can now join the conversation. Call 833-648-6329 (833-OHTODAY) if you'd like to leave a message we can play on the podcast.

Here's what we're asking about today:

The two former FirstEnergy execs accused of funding Ohio's \$60 million Statehouse bribery scheme took it on the chin in court Thursday. How?

There was a time when police shootings and excessive force cases were investigated locally, but in recent years, police and prosecutors have asked the Ohio attorney general to do the work. It makes the investigations independent. So how many cases does AG Dave Yost say his team investigated in 2024?

We have no idea where this nation's government is headed as Donald Trump takes the reins, but a local congressman is trying to ensure that work to aid the Great Lakes continues. Who is it, and what is he doing?

In what quite likely is now a big waste of time, another Ohioan was sentenced Wednesday for storming the Capital on Donald Trump's Jan. 6 insurrection. Who is he. What did he get. And why is this likely a waste of time?

Digital C is the controversial non-profit chosen by Cleveland to get residents connected to reasonably priced broadband. The agency persuaded some journalists to buy into its claims of great success in 2024. No us. Did it meet its benchmarks?

Akron has a highway that cuts through the center of the city, wrecking neighborhoods, but little of it is actually used today. How is the federal government helping repurpose it to improve neighborhood life?

We had a story recently about all the big name restaurants in the region that closed in 2024, but there's good news on the restaurant front, too. What the the most anticipated openings in 2025?

The new folks running Cleveland's beloved West Side Market blew it with their roll-out of a new parking system, confusing and infuriating longtime customers and billing them ridiculous amounts. They announced changes last year, and yesterday, they laid out how the new system will work. Is it better?

Finally, a little entertainment. Laura, you were not exactly looking forward to seeing Life of Pi at Playhouse Square last night, although some of readers have raved about it. Wha did you think? And what did reporter Joey Morona say about it?

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Read the automated transcript below. Because it's a computer-generated transcript, it contains many errors and misspellings.

Chris Quinn (00:00.816)

I think we're talking about the first energy scandal for the first time in 2025. It's Today in Ohio, the news podcast discussion from cleveland.com and The Plain Dealer. Chris Quinn here with Laura Johnston, Leila Tasi and Lisa Garvin. Lisa, the two former first energy execs accused of funding Ohio's \$60 million state house bribery scheme, took it on a chin in court Thursday. How?

Lisa (00:28.7)

Yeah, this is the new story that keeps on giving. Summit County Common Police Judge Susan Baker Ross rejected a request by First Energy former First Energy execs Chuck Jones and Mike Dowling who wanted them to release grand jury transcripts over and she rejected that over a minor technicality. She scheduled a pretrial hearing for late February to settle other disputes and set the trial date for these two men.

Jones and Dowling alleged that there was inconsistency and possible prosecutor misconduct because the original charges against them were amended through a second grand jury. Judge Ross didn't buy it. She says the defense didn't show any misconduct or a need to release grand jury transcripts, which are typically secret. And if she had granted their request, it would have added months to the timeline of this case. So in the hearing that's coming up,

They will look at disputes including the defense motions to dismiss some or all the charges against them. Also to determine, this is interesting, if First Energy qualifies as a crime victim under Marcy's law.

Chris Quinn (01:37.136)

They are trying everything they can. I think the operative part of what you said is that it would have added months and months. That's what they want to do. They just want to stretch this out as long as possible so they can keep their freedom as long as possible. If they can convicted, they're definitely going to go to prison. This is not a probation case. They're just scrambling and they've got excellent attorneys, all of them, and they just keep...

Lisa (01:47.262)

Mm-hmm.

Chris Quinn (02:03.792)

Lobbing anything they can at the wall to see what sticks it's taken too long I mean this case all broke now what four years ago When do the people get justice? These are the people accused of funding the whole thing the people that took the money have already mostly been convicted But they paid it and it's time for them to face justice

Lisa (02:09.374)

Mm-hmm.

Mm-hmm.

Lisa (02:26.842)

agreed and it just, you know, you know, we had to go to the state level to, to, you know, get charges against these two. So yeah, it's just been a long and winding road.

Chris Quinn (02:38.16)

Well, I will say when the Trump administration was in office, they had a federal prosecutor in Cincinnati who went to the mat to take this apart. So with Trump coming back, maybe he'll replace the U.S. attorney in Cincinnati, who seems quite cowardly when it comes to corporate officials. Maybe we'll get a U.S. attorney that'll go after these guys like they should have in the first place, because the guy that's in there now has been lame, lame, lame.

Laura (03:04.181)

Or maybe he'll let Larry Householder out of prison because he's asked for a pardon. mean, anything could happen.

Chris Quinn (03:08.496)

Yeah, anything could happen. You know, listening to Today in Ohio, there was a time when police shootings and excessive force cases were investigated locally. But in recent years, police and prosecutors have asked the Ohio attorney general to do that work. It makes the investigations independent, everyone argues. So, Leila, how many cases does AG Dave Yo say his team investigated in 2024?

Lisa (03:09.214)

You

Leila (03:36.82)

Well, across Ohio, Yosophs investigated 67 incidents last year. That's up significantly from 26 back in 2019. These were all critical incidents, including situations like shootings or use of force that caused injury or death. In 10 of the cases we're talking about last year, police actions resulted in deaths here in Northeast Ohio. In that batch, we saw

Incidents ranging from ambushes on officers to deadly confrontations with armed suspects. For instance, Cleveland Heights police shot 18-year-old Christian Thomas during a confrontation at his home, and Akron police killed 15-year-old Jasmeer Tucker, who was found with a handgun. Both of those cases remain under investigation. Other cases included North Ridgeville police fatally shooting a suspect who was wanted for murder in Tennessee.

and Medina County deputies killing a woman who charged at them with a replica gun and knife. State investigators also probe the death of Euclid officer Jacob Durbin, who was ambushed by a suspect, as well as the death of that same suspect, Deshaun Vaughn, who ultimately died of a self-inflicted gunshot wound.

Chris Quinn (04:47.856)

I'm of two minds of Yost's office handling this. In the old days, the local prosecutor did the work and the local prosecutor is accountable to the local voters. This seems like a way to get rid of controversy and put it on somebody else, but it's not the same accountability isn't there. Nobody's going to vote for an attorney general based on how his office investigated a shooting case. We know that in many cases, the

officers get cleared or don't get charged, even when there's some serious questions about their behavior. And I kind of liked it better when you could go after the prosecutor saying, Hey, what are you doing here? It's much different today. I don't think we've seen holes in what Yoast has done. His office seems like they've done serious work and they've been very transparent, which we're grateful for. But I don't know, it seems like accountability for these investigations is less. What do think?

Leila (05:46.006)

Matt Levine's Money Stuff: It's Tough to Be a Research Analyst (Correct)

By Matt Levine

Opinion

No research

A crude model for sell-side equity research might go something like this:

1. There are a lot of buy-side investment firms — mutual funds, asset managers, etc. — each of which can invest in the same large universe of thousands of companies.
- 2. They all try to do research, understand the companies, and invest in the good ones.
- 3. It is hard for one person to really understand more than one or two sectors, and more than a couple of dozen companies, in great depth.
- 4. A typical medium-size asset manager can't really hire hundreds of analysts to get to know every company in detail.
- 5. So there is some pooling of resources: Instead of every manager understanding every company, there are "sell-side research analysts," employed by big investment banks or small boutique research providers, who each understand a dozen or so companies in great depth, get to know their managers and suppliers and customers, follow their earnings, build detailed financial models to project future earnings, write insightful reports explaining those companies, and slap one-word recommendations — "buy," "sell" or "hold" — on top of those reports so you know whether to buy, sell or hold the stocks.
- 6. These research analysts (or, rather, their firms) sell their research — the recommendations, the detailed reports, the financial models, and most importantly, the ability to call the analyst on the phone and ask her detailed questions about the companies and sector she covers — to buy-side investment firms. The costs of the analyst, instead of being paid by one investment firm, are split among a bunch of different firms that all subscribe to the same sell-side firm's research.
- 7. The investment firms are able to employ fewer of their analysts, each of whom can cover more sectors and companies, because they can lean on sell-side research for expertise.

So sell-side research is a way for many buy-side investment managers to share the cost of detailed in-depth understanding of every company they might invest in.

Now, this is not the only possible model. It is perhaps the most straightforward and least cynical model, but we have discussed other possibilities. Two contenders are :

Sell-side research is *advertising* , a way to sell stocks. Most sell-side research is provided by investment banks and brokerages who are in the business of doing trades for buy-side customers and getting paid commissions. The more trades the customers do, the more money the brokerages will make. Putting out a constant stream of reports saying “buy!” and “sell!” generates business.

- Sell-side research is about *corporate access*: The job of an analyst is not (just) to write reports and recommend stocks, but also (mostly) to give buy-side investors access to management. In this theory, buy-side investors want to meet with the managers of the companies they might invest in, but the managers have time constraints and can't meet with every investor. But the research analysts have good access to managers, and so they can use that access to get sell-side clients meetings with the managers. This is sort of an inversion of my main crude model: Instead of “sell-side research is a way for buy-side investors to share the work of understanding companies,” it's more like “sell-side research is a way for companies to share the work of getting to know their investors.”

These models have some points, but for now I will ignore them and focus on the simple model in which sell-side research firms sell their research to the buy side because it is valuable, to the buy side, as research.

Now, in this simple model, the buy-side investment firms “buy” the research from the sell-side research analysts, but that is oversimplified. In fact, traditionally, a lot of sell-side research analysts are employed by banks and brokerages who give away their research for *free* to their asset-manager customers. In exchange for free research, a brokerage will expect the customers to do their trading through the brokerage, and to pay it commissions; a portion of the commissions will be allocated to pay for the research. There is a conflict of interest in this model: An asset manager's *clients* pay the commissions, while you might expect the asset manager itself to pay for research that helps it do its job. And since 2018, Europe's MiFID II regulation has “unbundled” sell-side research, requiring asset managers to pay directly for research that they use. Meanwhile the old, bundled model is still the main one in the US, and arguably US regulation *discourages* unbundling, so there are some cross-border issues. (“A slight oversimplification of the rules,” I wrote in 2023, is that, “in the US, it is illegal for brokers to charge clients money directly for investment research, while in the EU it is illegal for brokers *not* to charge clients money directly for investment research.”)

But I am going to ignore this too and pretend that sell-side firms really do sell their research to buy-side firms that pay to subscribe to it, which is literally true in Europe and sort of approximately true in the US.

Anyway, if this is your crude model, how would you guess the last five or 10 years have been for sell-side research? Here are some big shifts in financial markets in recent years:

1. More of the public stock markets are concentrated in a handful of superstar companies. For a big asset manager, understanding 500 \$100 million companies really well will not move the needle much compared to understanding Nvidia Corp. really, really well. “Just 26 stocks now account for half the entire value of the S&P 500 index”; with some effort you could probably get a detailed understanding of half of “the market” by yourself. You don’t need to outsource as much.

- 2. Conversely (relatedly?) a lot of investor assets are now in index funds. Index funds don’t need to understand companies at all — they just buy all the companies, in proportion to their market capitalizations — and so have no need for research. Meanwhile traditional fundamental active long-only investment managers — that is, normal mutual funds — are on the decline. So there are fewer customers to sell research to.
- 3. Meanwhile, at hedge funds — another big pool of buy-side investors — the big story has been the rise of large multi-strategy, multi-manager platforms, or “pod shops.” Some of what these big funds do is the sort of quantitative investing that doesn’t require any human to have a detailed fundamental understanding of companies, so it doesn’t require sell-side research. But some of what they do is deep fundamental analysis, trying to understand what drives a company’s stock better than anyone else does. But they do that themselves! That’s the secret sauce! They hire a lot of analysts, they have each analyst cover a fairly short list of stocks in a single sector, they pay them a lot and they ruthlessly evaluate their performance. If a hedge fund analyst did her job by calling up a sell-side analyst, saying “hey what do you think of Nvidia,” and then doing whatever the sell-side analyst recommended, she wouldn’t have her job for long. The sharing-of-analysis-resources argument for sell-side research is less relevant for giant hedge-fund platforms with huge budgets to do their own research.
- 4. Also there has been a huge vogue of, like, entertainment-driven retail investing? A lot of people on Reddit talking about stocks and buying short-dated options. Are they paying for sell-side research? We’ll come back to that.

I think it is conventional wisdom — and probably roughly true — that MiFID II has been really bad for the sell-side research business. Before MiFID II, banks could charge asset managers for research, the asset managers didn’t actually pay the costs, so the banks could charge a lot and afford to keep on lots of analysts. After MiFID II, the asset managers have to pay for research out of their own pockets (at least in Europe), so they are more price-sensitive and less inclined to pay for research that doesn’t visibly add value. I just want to suggest that there are other, perhaps simpler, stories for why sell-side research is a hard business these days.

Anyway Bloomberg’s Sujata Rao, Denitsa Tsekova, and Isolde MacDonogh have a good story on “How Analyst Job Cuts on Wall Street Are Reshaping Equity Research”:

The pandemic did, briefly, fuel a burst of hiring in equity research but when it faded, it left the same potent forces in place that have been gutting the industry for years. Regulations on how banks charge for research, a shrinking market for publicly listed companies, and the popularity of index-tracking funds have conspired to squeeze equity research in ways few could have imagined even a decade ago. Leaps in artificial intelligence only threaten to accelerate that trend, with firms like JPMorgan already experimenting with AI-powered analyst chatbots, sowing deeper doubts about the value of fundamental analysis and whether investors will keep paying for it.

Compared with their post-financial crisis peak, it's estimated that the biggest banks globally have slashed the ranks of equity analysts by over 30% to lows not seen in at least a decade. Those who remain often cover twice, or even three times, as many companies.

And the pay, while still far higher than most jobs in industries outside finance, has stagnated. For example, starting salaries for entry-level equity analysts currently range from \$110,000-\$170,000 a year, barely above their levels before the financial crisis, according to Vali Analytics. ...

Despite a small uptick in the first half of last year, spending on research globally has sunk 50% since 2018, data from Substantive Research show. That year, MiFID II was enacted, forcing asset managers in the UK and European Union to pay for research, rather than offering it for free as part of a suite of services. US brokers supplying research to Europe-based managers also became subject to the rule two years ago.

Arguably this makes the market less efficient: If investors pool their resources to pay for research on every company, every company will be covered, and investors will have access to research to help them understand, and possibly invest in, every company. Without that, small companies might be uninvestible: If you can't get up to speed by reading a sell-side report, and you can't justify investing dozens of hours of your own time to understand each small company so you can pick a few good ones, you might just ignore the small companies. Rao, Tsekova and MacDonogh write:

A growing body of evidence suggests stocks that fall off the sell-side radar often struggle to attract investors, distorting valuations and making markets less efficient.

One academic paper, which looked at data over a 40-year period, showed how investors consistently over- or undervalued companies covered by fewer analysts. Another study found firms that had a decrease in coverage showed a significant decline in investor recognition, increasing their cost of capital. A third showed that low-coverage stocks traded less and had wider bid-ask spreads, while "orphaned" companies were far more likely to be delisted.

I want to come back, though, to the last factor I mentioned above, the rise of online retail investors. Retail investors have historically been customers of sell-side research — if you have an account at a big brokerage, that brokerage will probably give you access to some research reports — but not particularly important ones. (They probably don't *pay* for the research, and probably don't have much access to direct phone conversations with the analysts.) But the modern rise of retail investing has a "do your own research" flavor, with investors spending a lot of time on Reddit and other social media sites rather than reading sell-side research.

But if bank sell-side research is on the decline, and social media-driven research is on the rise, there is an obvious reallocation of resources. Rao, Tsekova and MacDonogh's story begins with Jerry Diao, a former sell-side analyst who now "plies his trade on social media" and "until recently ... masqueraded his irreverent takes behind an avatar of Shrek." And:

Indeed, online finance blogs have exploded in recent years, with Substack estimating it now hosts tens of thousands of them.

One is written by Alex Morris. He runs TSOH Investment Research (it stands for The Science Of Hitting — he's a big baseball fan), which has racked up nearly 700 paid subscribers since 2021. At \$499 annually, that equates to roughly \$260,000 a year after fees, etc. — more than double what he earned at the Fiduciary Group, a small investment adviser in Savannah, Georgia. ...

Another is by Barry Knapp, a longtime strategist who built a following over four decades on Wall Street with Lehman Brothers, BlackRock, and most recently, Guggenheim. He currently has “hundreds” of paying Substack subscribers, each of whom forks over \$999 a year for his macro research. ...

“For someone like me to go back and work on the Street for a number that is not even close to what I was making in 2000?” Knapp mused. “What would be the point?”

Reliable figures on how lucrative financial blogging is as a full-time profession are scant, as is data on how many analysts have parlayed their Wall Street bona fides into genuine success on social media. While some, like Morris and Knapp, have managed to make it work, the signs suggest that most end up toiling away in relative obscurity.

Financial blogging as a full-time profession, imagine.

Elon Musk has a hobby

Elon Musk's whole thing is that he is super-intense and will sacrifice everything, work 24 hours a day and sleep on the floor to run Tesla Inc. And also SpaceX: 24 hours a day, sleeping on the floor, building rockets. And also, since he bought Twitter Inc. and renamed it X, X. But he also spends 24 hours a day *posting* on X. He has also built an artificial intelligence business out of X, called xAI, and does a lot of AI stuff with great intensity. And, through X, he has gotten really into politics, and spends 24 hours a day, sleeping on the floor, working on government efficiency or whatever. Also conquering Europe. And probably once a month he remembers that he owns The Boring Company and thinks about tunnels for five minutes.

The point is not just that Musk has a lot of competing interests, it is that he is showily hardcore and 24/7 about *all* of them. He doesn't spend half of his time on Tesla and a quarter of his time on SpaceX and 5% of his time running X and 10% of his time posting on X and 5% of his time on AI and 4.99% of his time on politics and 0.01% of his time on The Boring Company; he spends 200% of his time on Tesla and 200% of his time on SpaceX and 200% of his time running X and 200% of his time posting on X and and 200% of his time on AI and 200% of his time on politics and 0.01% of his time on The Boring Company.

How does he do it? Some popular theories include:

1. He's extremely good at delegating and empowering his subordinates, so a lot gets done without him, but he is also extremely on top of everything and able to keep every part of his empire in his mind at once, so he can constantly switch from a two-minute intervention in one company to a two-minute intervention in another to a

five-minute intervention in politics while also doing like 12 tweets, so in a very real sense he can work all night at Tesla while also working all night on SpaceX and tweeting all night.

- 2. We live in a simulation, and for some reason Musk is able to run several copies of himself in the simulation's software.
- 3. Drugs.
- 4. He's exaggerating, for sympathy or to make himself seem more impressive.

If this is your schtick, you can always try adding one more thing to be super-intense about: You haven't reached your limit yet, and the more things you do 24 hours a day, the more impressive each thing is. "I can't believe he runs Tesla successfully while also tweeting a lot," was a thing that people thought in like 2018; now I am not sure that either "running Tesla" or "tweeting a lot" would be at the top of the list of things he publicly spends all his time on.

Anyway, Diablo IV:

This past fall, Elon Musk unveiled Tesla's new robotaxi, launched dozens of rockets and spent weeks campaigning on behalf of president-elect Donald Trump. He also notched another achievement that some say is even more impressive.

The billionaire declared himself one of the world's best players of "Diablo IV," a blockbuster videogame set in a dark fantasy realm that involves making elixirs and slaying demons. ...

His vast array of commitments have left everyone wondering: How on Earth did he find the time to do it?

Damir Sabic, a 29-year-old devotee of the Diablo franchise, said it took him about 80 hours to reach the 129th tier of the Pit in December. He said he stopped playing at that point because leveling up became tedious. He described Musk's claim of clearing the 150th tier in November as "insane."

"It's like sitting all day, every day, at your computer playing," said Sabic, a 3-D printing artist in Houston.

One theory in the article is "that Musk paid someone to 'grind' his or her way to the top on his behalf," and maybe, but my theory is that he spent all day, every day, for two months, at his computer playing Diablo IV, while *simultaneously* spending all day, every day, for those two months, on the campaign trail, and also on the Tesla factory floor, and also at SpaceX, and also tweeting. It's not supposed to be physically possible! That's the point.

Quant finance

The basic job of a quantitative finance researcher — at a hedge fund or in academia — is to use machine learning techniques to find signals that predict future stock price returns. At a hedge fund, when you find a signal, you trade on it: You buy the stocks that your signals predict will go up. In academia, when you find a signal, you write a paper about it.

The difference in implementation creates some differences in the types of signal that are valued. Academia values signals that are intuitive, socially relevant and/or funny: A signal like “stocks with good accounting practices go up,” or “stocks of companies with diverse boards of directors go up,” or “stocks of companies whose executives have low golf handicaps go down,” will get you tenure. Hedge funds value signals that have a lot of alpha (that are particularly good at predicting which stocks will go up), ones that are uncorrelated to their other signals, ones that have low trading costs, and usually ones that have some plausible intuitive meaning so you know they’re not pure data mining. (Though Robert Mercer: “The signals that we have been trading without interruption for fifteen years make no sense. Otherwise someone else would have found them.”)

But never mind that; the point is just that there is a difference in work product. In academia, once you find the signal, you are not done; you have to go type a paper about it. The paper should say “here’s a thing that predicts stock price returns,” but also “here is how the thing fits into the existing literature,” and maybe “you might think that this thing would predict good returns because ..., or you might think that it would predict bad returns because ..., but in fact it predicts good returns, which provides support for the model of ...,” etc., you get the idea. It is maybe a little formulaic. You have already used machine learning techniques to find the signal. Could you ... maybe ... you know?

Here is “AI-Powered (Finance) Scholarship,” by Robert Novy-Marx and Mihail Velikov:

This paper describes a process for automatically generating academic finance papers using large language models (LLMs). It demonstrates the process’ efficacy by producing hundreds of complete papers on stock return predictability, a topic particularly well-suited for our illustration. We first mine over 30,000 potential stock return predictor signals from accounting data, and apply the Novy-Marx and Velikov (2024) “Assaying Anomalies” protocol to generate standardized “template reports” for 96 signals that pass the protocol’s rigorous criteria. Each report details a signal’s performance predicting stock returns using a wide array of tests and benchmarks it to more than 200 other known anomalies. Finally, we use state-of-the-art LLMs to generate three distinct complete versions of academic papers for each signal. The different versions include creative names for the signals, contain custom introductions providing different theoretical justifications for the observed predictability patterns, and incorporate citations to existing (and, on occasion, imagined) literature supporting their respective claims. This experiment illustrates AI’s potential for enhancing financial research efficiency, but also serves as a cautionary tale, illustrating how it can be abused to industrialize HARKing (Hypothesizing After Results are Known).

Fantastic. If you look at every imaginable combination of accounting data — or, rather, if you get a computer to look at them all — you will find some combinations that test well: Over your historical data, when Ratio X is greater than 2.0 and Income Statement Item X is at least 8% of Balance Sheet Item Z, the stock’s return the next quarter is on average 110 basis points higher than when Ratio X is below 0.8 and Item X is more than 12% of Item Z, or whatever. But that is just data mining, that’s just luck, that’s just green jelly beans. You can’t publish that unless you have some intuitive theory for why that particular combination of accounting items says something about the company’s business that the market otherwise neglects, ideally a theory that is supported by previous scholarship.

Fortunately large language models are in the business of generating smooth reasonable-sounding explanations of whatever you dump into them, so your paper is all done.

“While the papers and their theoretical frameworks are automatically generated, it’s important to note that all empirical analyses and statistical validations are conducted using rigorous methods developed in the academic literature, ensuring the reliability (if not the interpretation) of the underlying findings,” so I am perhaps not being quite fair; perhaps the signals really work. But it’s delightful.

Also it’s not *just* of academic interest. If you work at a quantitative hedge fund and you find a good signal and your boss says “yes this checks out statistically but I don’t feel good about trading it if we don’t have some explanation that makes sense,” you can just be like “hang on I’ll be back to you in 10 minutes” and have ChatGPT generate the explanation.

The Bitcoin in a dump guy

One of the great financial innovators of our dumb age — up there with Satoshi Nakamoto and Michael Saylor and Adam Aron — is James Howells, whose innovation was (1) throwing a hard drive full of 8,000 Bitcoins into a garbage dump in 2013 and (2) spending the last 12 years asking the local council to be allowed to dig up the dump and get it back. It is probably the most trenchant, the most earnest, and the highest-dollar-value piece of cryptocurrency performance art, which is saying something.

We talked about him back in 2021, when he was going around saying “he had financial backing from a hedge fund to pay for the search so the council would not be out of pocket,” and again later that year when he was profiled in the New Yorker. I wrote that he should securitize his more-or-less fantastical claim to get the Bitcoin back, but I guess he was having fun doing what he was doing (persistently asking to dig up the dump).

Here he is again:

A judge has thrown out a man’s attempt to sue a council to recover from a rubbish tip a Bitcoin hard drive which he says is now worth about £600m.

James Howells had argued that his former partner had mistakenly dumped the hard drive containing a Bitcoin wallet in 2013, and he wanted to access the site and recover the cryptocurrency.

But Newport council asked a High Court judge to strike out Mr Howells’ legal action to access the landfill or get £495m in compensation.

Judge Keyser KC said there were no “reasonable grounds” for bringing the claim and “no realistic prospect” of succeeding at a full trial.

I love the idea that his claim is so valuable that, if they don't let him dig up the dump, they should have to pay him £495 million. What are the chances he'd find the hard drive? ("The landfill holds more than 1.4m tonnes of waste, but Mr Howells said he had narrowed the hard drive's location to an area consisting of 100,000 tonnes.") Even if he did, what are the chances it's in good enough shape that he can recover the Bitcoin? Does the hard drive even belong to him anymore? "James Goudie KC, for the council, argued that existing laws meant the hard drive had become its property when it entered the landfill site." It would be funny if the council dug up the dump and kept the Bitcoins for itself.

Things happen

UBS Close to Large Settlement Over Credit Suisse Tax Case. Bond market 'police' are back as investors patrol spending plans. China steps up defence of renminbi against Wall Street bets. FTC's Khan Urges Agency to 'Stay Aggressive' After She Goes. UK Banknote Printer Gets Offer From Investors Who Sought Stake. BlackRock private equity fund takes more than \$600mn hit on investment. A Sinkhole Is Threatening to Consume Ecuador's Main Source of Power. Private equity turns to volleyball as financiers seek new sport frontiers. The race to claim the Moon's airwaves. Miss Universe Argentina loses her crown after claiming competition 'always fixed, every year,' bashes fellow contestants.

If you'd like to get Money Stuff in handy email form, right in your inbox, please subscribe at this link. Or you can subscribe to Money Stuff and other great Bloomberg newsletters here. Thanks!

(Corrects description of the investors who in theory want access to company managers, in the second bullet point of the first section.)

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. Or Byrne Hobart has an explanation of "What Does an 'Analyst' Do?" that is in some ways a more sophisticated version of my crude one, including a higher-order pooling of buy-side resources: "One of the valuable services they provide and which explains why their research reports matter even if there are better ways to monetize stock-picking ability: part of a sell-side analyst's job is to articulate different flavors of the current buy-side consensus. A stock price only exists when a buyer thinks it's too cheap and a seller thinks it's too expensive, so there's always at least a bull case and a bear case. Within this, there can be fractal levels of detail: one bull case might be that this small growth company will end up beating a larger incumbent, while a separate bull case might be that the same company will succeed in selling itself to the incumbent. One cohort of bears might be concerned that growth is slowing down, while another might be equally worried that management will destroy value by overpaying for growth. So buy-side analysts talk to sell-side analysts partly because other buy-side analysts do; research quality ends up being a Schelling Point for arranging even higher-quality discussions with opinionated, well-informed people on either side of the argument. So the end goal of a sell-side analyst publishing a good report is not just to get opinions out there, but to solicit other opinions, synthesize them, and hopefully get to the right answer."

- 2. Except maybe for corporate access, if the index funds want to talk to their companies. (For instance, to lobby for environmental, social and governance policies.)
- 3. That's an exaggeration, and there are important quantitative signals built from analyst recommendations, but probably not built from having long telephone conversations with sell-side analysts about the details of their models.
- 4. But not irrelevant. If your mandate is to understand a company really, really well, one input to your understanding will be calling other people — like sell-side research analysts — whose job is to understand that company well. And see footnote 1, on the Schelling point argument for sell-side analysts as coordinators of buy-side opinion.
- 5. The paper lists the various automatically generated papers, whose titles name (but do not describe in detail) the accounting combinations that work. “Operating Expense Normalized Common Stock Difference and the Cross Section of Stock Returns,” say, or “Stock Depreciation Gradient and the Cross Section of Stock Returns,” or “Equity Weighted Debt Scale and the Cross Section of Stock Returns.”
- 6. You know what I mean, “a hard drive containing the only record of the private keys to his wallet with 8,000 Bitcoins.”

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Crypto litigation brought against the SEC and the implications of a new administration

[reuters.com/legal/legalindustry/crypto-litigation-brought-against-sec-implications-new-administration-2025-01-10](https://www.reuters.com/legal/legalindustry/crypto-litigation-brought-against-sec-implications-new-administration-2025-01-10)

Alexander Drylewski, Daniel Michael, Shaud Tavakoli



U.S. Securities and Exchange Commission logo and representations of cryptocurrency are seen in this illustration taken June 6, 2023. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights [\[link\]](#), opens new tab

January 10, 2025 - As discussed in our prior columns, the Securities and Exchange Commission (SEC) has pursued a multitude of enforcement actions concerning the purchase and sale of crypto assets. These matters have expanded to encompass a broad swath of activity and have engendered substantial uncertainty and criticism from members of the digital asset industry and beyond.

Now, some states, nonprofits and industry participants have begun to proactively file lawsuits against the SEC seeking injunctive and other relief relating to a host of securities-related issues. The impact of these suits remains to be seen.

There could also be seismic shifts in the SEC's enforcement agenda with the change in administration. Current SEC Chair Gary Gensler has announced that he will step down on Jan. 20, 2025, and President-elect Trump has since chosen former SEC Commissioner Paul Atkins to lead the agency. Atkins is generally viewed as pro-crypto and in a whitepaper by the Token Alliance issued in 2018 titled "Understanding Digital Tokens: Market Overviews and Proposed Guidelines for Policymakers and Practitioners," Atkins criticized the "regulatory uncertainty" created by the SEC's statements, settlements and enforcement activity in the space.

Below is a summary of some recent actions brought against the SEC, as well as a look at what the change in administration may mean for the SEC's ongoing approach.

Lawsuits against the SEC

Secondary market sales of digital assets. In *Kentucky v. SEC*, filed in November 2024, 18 states and the DeFi Education Fund brought an action against the SEC alleging that its enforcement actions targeting secondary-market sales of crypto assets unlawfully infringe on

state regulatory authority.

The plaintiffs allege that the major questions doctrine "foreclose[s] the SEC's attempt to radically expand its power" because the SEC's approach would "work a transformative expansion in [the SEC's] regulatory authority" and would have a deep and sustained impact on the trillion-dollar digital asset industry.

The plaintiffs further allege that the SEC has violated the Administrative Procedure Act (APA) by failing to promulgate its "crypto policy" through notice-and-comment procedures. At its core, the states assert that the SEC's enforcement posture has threatened to preempt carefully designed consumer protection measures implemented by the states, including state money transmission regimes, financial regulations and unclaimed property laws.

The SEC will likely respond that the major questions doctrine does not apply because regulating the cryptocurrency industry does not have the vast economic and political significance sufficient to invoke the doctrine. See, e.g., *Sec. & Exch. Comm'n v. Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d 170, 189 (S.D.N.Y. 2023) [↗](#), opens new tab.

The SEC will also likely argue that it has not violated the APA because it is not announcing a new policy in regulating crypto or regulating by enforcement "but merely enforcing its previously stated view that certain crypto-assets can be regulated as securities if they meet the characteristics of an 'investment contract'" under existing law. *Id.* at *192.

Futures contracts on a digital asset. In *Bitnomial Exchange, LLC v. SEC*, filed in October 2024, Bitnomial Exchange LLC, a designated contract market maker approved by the Commodity Futures Trading Commission (CFTC), challenges the SEC's position that XRP US Dollar Futures Contracts — futures contracts on XRP, a digital asset — are securities futures.

Bitnomial asserts that XRP is not a security in the first place, based principally on Judge Torres' recent decision in *SEC v. Ripple Labs* holding that XRP is not in and of itself a security or when traded in blind transactions on secondary platforms.

More fundamentally, Bitnomial argues that it "cannot possibly comply with the [Securities Exchange Act of 1934's] requirements to list XRP Futures," which require the issuer of the underlying security to register it. "XRP, which is the underlying security in the SEC's view, is not registered." Nor could Bitnomial itself register XRP because Bitnomial is not the issuer of XRP.

NFTs. As we have previously [↗](#), opens new tab noted, in *Mann v. SEC*, filed in July 2024, Jonathan Mann, a musician, and Brian L. Frye, a law professor, filed suit taking aim at the SEC's enforcement actions targeting nonfungible tokens (NFTs). The complaint asserts that NFTs are art, and art is not within the regulatory ambit of the SEC.

Mann and Frye put it bluntly: "It would have been ridiculous to require great American visual artists like Lichtenstein, Basquiat, Warhol, O'Keefe, Rockwell, Pollock, Frankenthaler, or Wyeth to 'register' their paintings, or offer them under some exception in the securities laws, just because they sold multiple copies of their artwork, or made art in a series of related topics."

The plaintiffs reason that "[t]he application of securities laws to artwork makes no more sense in the digital world." The plaintiffs seek a declaratory judgment that their proposed NFT projects do not violate the securities laws.

In a motion to dismiss, the SEC argues that plaintiffs are seeking an improper advisory opinion because they do not allege that the SEC has taken steps to investigate or bring an enforcement action against them. The SEC also contends that sovereign immunity bars the action because enforcement actions are within the express discretion of the agency. The SEC may raise similar defenses, perhaps among others, in Bitnomial.

Ethereum transactions. In *Consensys Software, Inc. v. SEC*, filed in April 2024, Consensys Software Inc., sued the SEC to stop the agency from asserting jurisdiction over Ethereum (ETH) transactions. Consensys offers a "MetaMask" wallet software that allows users to self-custody their ETH and other digital assets and to direct assets for use on third-party exchanges and other decentralized applications.

The SEC staff issued a Wells Notice to Consensys stating an intent to recommend that the SEC bring an enforcement action against Consensys for violating the federal securities laws through its MetaMask products involving ETH transactions.

Consensys alleged that the SEC issued this Wells Notice notwithstanding that the SEC had declared that ETH is not a security and the CFTC had stated that ETH is instead a commodity. The court dismissed the complaint principally on the ground that the SEC staff ultimately refused to recommend an enforcement action, mooted the claims.

The court also held that Consensys did not identify a final agency action that rendered its request for declaratory relief — i.e., for an injunction preventing the SEC from subjecting Consensys to investment or enforcement action as to MetaMask — fit for judicial review.

Many of these lawsuits are in their early stages and their impact on enforcement activity and the development of the law is uncertain. They reflect, however, a groundswell of dissent — from participants seeking regulatory clarity, states looking to implement their own regulatory policies and nonprofits championing the interests of creators.

The new administration and a potential shift in enforcement activity

The thrust of each of the suits against the SEC is that the agency has taken a "regulation by enforcement" approach that has created uncertainty for industry participants. That is a view shared by two sitting commissioners. For example, Commissioner Hester Pierce opined in a February 2023 statement that "[u]sing enforcement actions to tell people what the law is in an emerging industry" is not a "fair way of regulating." Commissioner Mark Uyeda has echoed that sentiment, lamenting in a February 2023 statement that "[f]or too long, the Commission's approach to crypto asset regulation has been to use enforcement actions to introduce novel legal and regulatory theories."

That may soon change with the incoming administration. President-elect Trump has selected Paul Atkins to lead the SEC beginning in January 2025. Atkins, an SEC Commissioner from 2002 to 2008, is an outspoken proponent of regulatory restraint and an advocate of the crypto asset industry.

As Atkins explained in an April 20, 2007, speech during his tenure as an SEC commissioner, "[g]overnment securities regulators should be acutely aware of the regulatory costs that they impose on the market." He promoted "[t]ransparency in our regulatory process through public notice and comment." For that reason, Atkins stated that "[f]or any rulemaking by the commission, such proposed rules must be submitted to public comment under the [APA]."

In addition, Atkins has taken on roles that support the crypto asset industry. Atkins is a member of the Board of Advisors for the Digital Chamber, a nonprofit with the stated mission per its website of "promot[ing] the acceptance and use of digital assets and blockchain-based technologies." It has criticized the "SEC's confrontational approach" to regulation that "stifles innovation" and has called for legislation to curtail SEC overreach.

Atkins is also the Co-Chair of the Digital Chamber's Token Alliance. The Token Alliance is an initiative of more than 350 blockchain and token experts in "active discussions to create guidelines for token distributions and Token Trading Platforms."

In the forward to the Token Alliance whitepaper co-authored by Atkins in 2018, he touted the "transformative possibilities of blockchain technology and the tremendous positive impact that it could have for our economy." The Token Alliance whitepaper cautions that "[r]egulation by enforcement is not an acceptable approach" in this nascent environment.

In short, the new administration and President-elect Trump's choice of Paul Atkins to lead the SEC signals a potential sea change in the agency's crypto asset enforcement program.

As the legal landscape around the offer and sale of digital assets continues to evolve, those involved in the space should consult experienced counsel.

Alexander C. Drylewski and Shaud G. Tavakoli are regular, joint contributing columnists on Web3 and digital assets for Reuters Legal News and Westlaw Today.

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Alexander C. Drylewski

Alexander C. Drylewski is co-head of the Skadden, Arps, Slate, Meagher & Flom LLP Web3 and digital assets group. His practice focuses on high-stakes complex commercial litigation around the world and across industries and disputes, including high-profile commercial litigation involving emerging technologies, government investigations, securities class actions, trials and appeals. He is based in New York and can be reached at alexander.drylewski@skadden.com.



Daniel Michael

Daniel Michael is co-head of Skadden, Arps, Slate, Meagher & Flom LLP's Web3 and digital assets group. He advises corporations, boards, committees, officers, directors and employees on their most complex criminal and civil enforcement matters. He previously served as the chief of the SEC Enforcement Division's Complex Financial Instruments Unit (CFI). He is based in New York and can be reached at daniel.michael@skadden.com.



Shaud G. Tavakoli

Shaud G. Tavakoli is a counsel in the complex litigation and trials group at Skadden, Arps, Slate, Meagher & Flom LLP. He represents a broad range of U.S. and international clients in high-stakes securities, complex commercial and corporate disputes and mass arbitration matters throughout the country. He is based in New York and can be reached at shaud.tavakoli@skadden.com.



How Trump Came Around to Crypto—and What Crypto Wants in Return

By Monique Mulima

President-elect Donald Trump was once skeptical of digital assets, saying Bitcoin “seems like a scam” and that crypto’s value was “based on thin air.”

Times have changed. During his latest presidential campaign, Trump pivoted to crypto cheerleader: a July speech at the Bitcoin 2024 conference capped his complete about-face. Since his reelection, cryptocurrency prices have surged — especially Bitcoin’s, which hit a record high above \$108,000 in December — amid expectations that his incoming administration will pursue a pro-crypto agenda.

What has Trump said about crypto?



Donald Trump speaks at the Bitcoin 2024 conference in Nashville, Tennessee, on July 27.

Photographer: Brett Carlsen/Bloomberg

Trump has pledged to be a “pro-Bitcoin president.” He praised the original digital asset in his July speech in Nashville, saying “Bitcoin stands for freedom, sovereignty and independence from government, coercion and control.” He’s said he wants to make the US “the crypto capital of the planet and the Bitcoin superpower of the world.” He called crypto “critical to the future of American competitiveness” in a December post on Truth Social, the social media platform owned by Trump Media & Technology Group Corp.

Trump’s embrace of the industry helped him land support from prominent crypto boosters like venture capitalists Marc Andreessen and **Ben Horowitz**, and the billionaire twins **Tyler** and **Cameron Winklevoss**.

Elon Musk, who riffed on crypto on Saturday Night Live and is often associated with memecoin speculation, donated \$238.5 million to America PAC, a super political action committee supporting Trump. Andreessen and Horowitz each donated \$2.5 million to the Right for America pro-Trump super-PAC. The crypto industry also spent \$135 million, largely through the Fairshake PAC, backing candidates in the November elections — most of whom won their races.

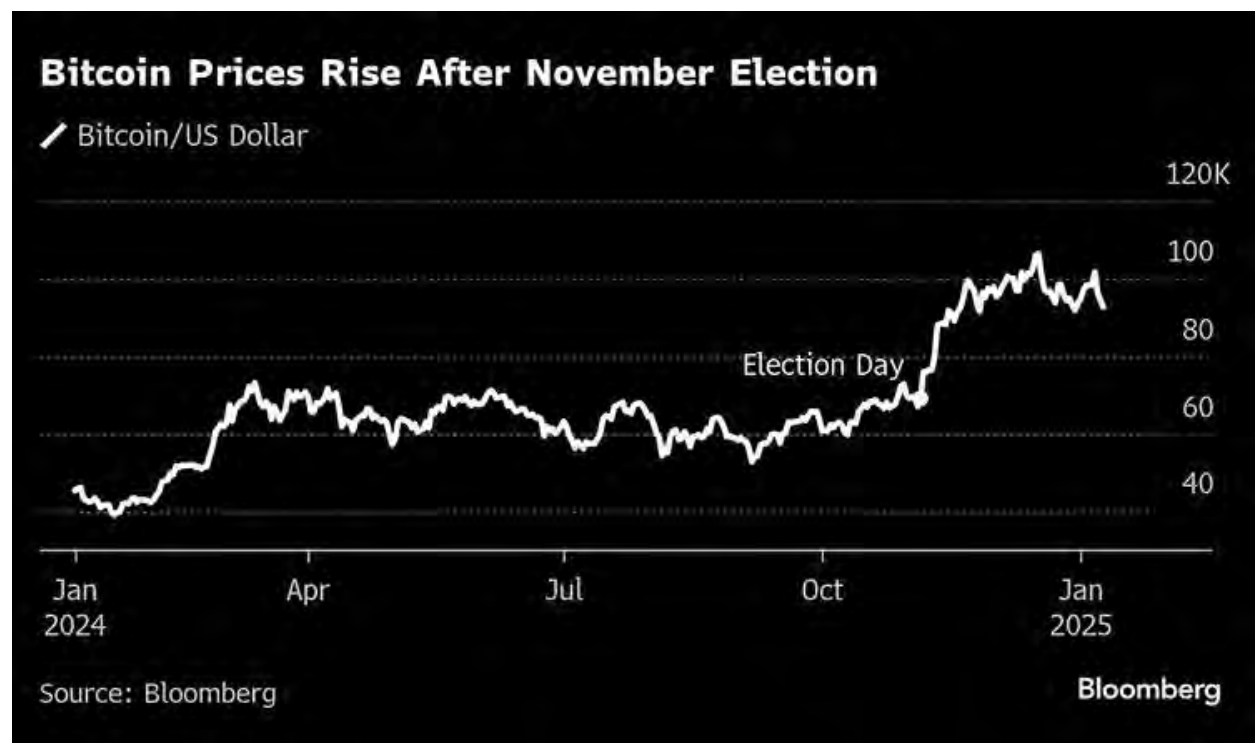
What crypto projects is Trump personally involved with?

Trump and some of his family members are promoters — and beneficiaries — of World Liberty Financial, a crypto project that has its own token named WLFI. More than 16,000 people were holders of the World Liberty Financial token as of the end of October, just weeks after the project backed by Trump and his sons began selling the cryptocurrency to accredited investors on its platform.

After crypto entrepreneur **Justin Sun** announced in November that he would invest \$30 million into WLFI tokens, the Trump family stood to collect at least \$15 million. Trump has also ventured into other digital assets. He has released four collections of nonfungible tokens featuring heroic images of himself in different costumes and settings. The most recent collection of NFTs, which he dubbed digital trading cards, sold in August for \$99 each on the primary market.

Why have crypto prices surged?

Bitcoin, the largest token by market capitalization, saw price gains of more than 50% from the election through mid-December, and other cryptocurrencies have also surged. Prices have risen on the assumption that Trump and the incoming Republican administration will create a more friendly regulatory environment. Investors in the crypto industry say this should lead to more people and institutions investing in the space, while also decreasing the risk of enforcement actions by the US Securities and Exchange Commission.



Trump has also enlisted crypto champions for important roles. Musk and **Vivek Ramaswamy**, for example, will lead an advisory group called the Department of Government Efficiency (DOGE). DOGE shares a name with a memecoin — Dogecoin — with which Musk is popularly associated.

Demand for Bitcoin exchange-traded funds has also helped to raise crypto prices, with \$110 billion invested in US Bitcoin ETFs as of Jan. 8 — just a year after their debut.

What has Trump endorsed on the crypto front?

Trump had pledged to fire SEC Chair Gary Gensler on day one of his presidency; Gensler pre-empted any such attempt when he announced his intention to resign before Trump was inaugurated.

Under Gensler's tenure, the SEC filed legal complaints against cryptocurrency companies such as Coinbase Global Inc. and Binance Holdings Ltd. for selling what the regulator alleged were unregistered securities.

Trump nominated crypto supporter **Paul Atkins** to replace Gensler, and that announcement helped Bitcoin climb above \$100,000 for the first time.

The president-elect nominated David Sacks to the newly created position of artificial intelligence and crypto czar. Trump is also creating a crypto advisory group, made up of backers of the industry. Trump said in a December Truth Social post that **Bo Hines** will be the executive director of the Presidential Council of Advisers for Digital Assets, reporting to Sacks.

Trump said he plans to have the US government keep rather than sell Bitcoin holdings seized by law enforcement, making these assets the basis of a so-called strategic Bitcoin stockpile. Trump has also said he would like all Bitcoin to be mined in the US; this promise may prove difficult to fulfill due to the reality of decentralized networks and cheaper costs of energy in other parts of the world.



"Make Bitcoin Great Again" hats at the Bitcoin 2024 conference in Nashville, Tennessee, on July 27.

Photographer: Brett Carlsen/Bloomberg

What's the regulatory environment been like?

The SEC under Gensler had made clear it considers most digital assets to be securities, a designation that brings with it an extensive set of requirements. The top US banking regulators separately issued a sweeping statement in early 2023 on the dangers of crypto. The collapse in November 2022 of the FTX crypto exchange left customers around the world facing the potential for billions of dollars in losses.

Legislation proposed in 2022 to tighten US oversight of crypto has stalled in the Senate's banking committee and faces an uncertain future. The bill would give the Commodity Futures Trading Commission additional authority to oversee digital coins that are deemed to be commodities — likely providing the regulator direct oversight of Bitcoin and Ether, the second-largest token by market capitalization. Currently the agency's remit is mostly limited to crypto derivatives. Under the bill, the SEC would police digital coins that are used to raise money from the public, providing supervision similar to its oversight of a stock offering.

What does the crypto industry want from Trump?

Many in the industry want a more hands-off regulatory approach and approval of additional crypto ETFs. The crypto industry is also looking for specific legal language on what exactly crypto is and how the industry should operate legally, which could reduce worries of lawsuits from government agencies.

Advocates would also welcome having cryptoassets classified as commodities rather than securities, which would then make them fall under the remit of the CFTC. Many in the crypto industry believe the Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency have forced banks to limit the industry's access to their services, a posture they would like to see Trump end.

Some in the crypto industry would also like to see Trump not only follow through on his plan to introduce a strategic US Bitcoin stockpile, but also have the government buy more of the token for the reserve.

US Senator Cynthia Lummis has written a bill that would order the Federal Reserve to sell some of its gold certificates to fund those purchases. Bets on Polymarket, a predictions platform popular with the crypto crowd, currently imply only about a 30% probability that a reserve will be created in Trump's first 100 days in office.

To contact the reporter on this story:

Monique Mulima in Toronto at mmulima@bloomberg.net

To contact the editors responsible for this story:

stacy-marie ishmael at sishmael@bloomberg.net

Joel Weber, Michael P. Regan

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Former McKinsey partner pleads guilty over obstruction related to opioid crisis

legalnewsline.com/stories/667530220-former-mckinsey-partner-pleads-guilty-over-obstruction-related-to-opioid-crisis

January 10, 2025

Attorneys & Judges

U.S. Attorney Christopher R. Kavanaugh | U.S. Department of Justice

A former senior partner at McKinsey & Company, Martin Elling, has pleaded guilty to obstructing justice in connection with his work on Purdue Pharma matters. The plea was entered in Abingdon, Virginia, following an investigation into the firm's consulting activities with opioid manufacturers.

Elling, a 60-year-old U.S. citizen residing in Bangkok, Thailand, waived his right to be indicted and admitted to destroying records with the intent to impede a U.S. Department of Justice investigation.

Acting United States Attorney Zachary T. Lee stated that the guilty plea is a step towards holding accountable not only corporations but also executives involved in the opioid crisis. He acknowledged the collaborative efforts of various offices and agencies in bringing about this prosecution.

Joshua S. Levy, United States Attorney for the District of Massachusetts, emphasized that Elling's actions sought to undermine justice by attempting to obstruct investigations into McKinsey's work with Purdue Pharma.

George A. Scavdis from the FDA Office of Criminal Investigations highlighted that destroying records impairs law enforcement's ability to conduct investigations and endangers public health.

Virginia Attorney General Jason Miyares expressed satisfaction with holding those who obstructed justice accountable and stressed the importance of transparency for victims seeking truth.

Court documents revealed that McKinsey was engaged by Purdue in May 2013 for a project called "Evolve to Excellence" aimed at boosting OxyContin sales through intensified marketing strategies. Elling played a significant role as director of client services for numerous engagements between McKinsey and Purdue.

Evidence showed that Elling deleted materials related to McKinsey's work for Purdue from his laptop and email account amid ongoing investigations into Purdue's conduct.

Elling is scheduled for sentencing on April 4 and faces up to 20 years in prison. The case is being prosecuted by Assistant United States Attorneys from Virginia and Massachusetts along with other legal professionals from various government divisions. The investigation involved multiple federal agencies including the FDA Office of Criminal Investigations and FBI.

ORGANIZATIONS IN THIS STORY

U.S. Attorney Christopher R. Kavanaugh

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<https://www.wsj.com/finance/regulation/former-wwe-boss-vince-mcmahon-settles-sec-charges-over-payments-to-women-0aac1834>

MARKETS & FINANCE | REGULATION

Former WWE Boss Vince McMahon Settles SEC Charges Over Payments to Women

Wrestling entrepreneur settles charges he failed to properly disclose payments to women alleging sexual misconduct

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

Jan. 10, 2025 10:31 am ET



Former WWE boss Vince McMahon, pictured in 2010. PHOTO: JESSICA HILL/ASSOCIATED PRESS

Former WWE **TKO -1.38% ▼** boss Vince McMahon agreed to settle Securities and Exchange Commission charges that he failed to properly disclose payments he made over allegations of sexual misconduct while he was running the wrestling giant.

Without admitting or denying the SEC's findings, McMahon agreed to pay a \$400,000 civil penalty and reimburse WWE around \$1.3 million.

"The case is closed," McMahon said. "In the end, there was never anything more to this than minor accounting errors with regard to some personal payments

that I made several years ago while I was CEO of WWE. I'm thrilled that I can now put all this behind me."

The charges revolved around two settlements involving McMahon, one in 2019 and one in 2022, on behalf of himself and WWE that weren't disclosed to the board, legal department or auditors. The first required a \$3 million payment to a former employee and the second was a \$7.5 million payment to a former WWE independent contractor.

The SEC said McMahon consented to its order that he violated federal law by knowingly circumventing WWE's internal accounting controls and his actions resulted in false or misleading statements being made to the company's auditor.

Because the payments weren't recorded, the SEC found that WWE overstated its net income in 2018 and 2021 by 8% and 1.7%, respectively. It added that the payments should have been disclosed as related-party transactions.

McMahon briefly retired from WWE in July 2022 following reporting by The Wall Street Journal that revealed payouts to multiple women who had alleged sexual misconduct. He returned to WWE in early 2023 and negotiated a sale to Endeavor Group, owner of the UFC. He later resigned from the merged company, TKO Group.

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

Videos

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Jan. 10, 2025, 8:41AM PST

Ex-WWE CEO Vince McMahon Settles SEC Case on Secret Payments (3)

By Nicola M. White

-
- McMahon to pay \$400,000 penalty, reimburse WWE \$1.3 million
 - Former WWE CEO says he's 'thrilled' to put this behind him

Vince McMahon, the former chief executive officer of World Wrestling Entertainment Inc., hid hush-money settlements he negotiated with a former employee and company contractor, leading to incorrect financial statements in 2018 and 2021, the Securities and Exchange Commission alleged Friday.

McMahon, without admitting to or denying the SEC allegations, agreed to pay a \$400,000 civil penalty and reimburse WWE \$1.3 million, the SEC said.

"In the end, there was never anything more to this than minor accounting errors with regard to some personal payments that I made several years ago while I was CEO of WWE," McMahon said in an emailed statement. "I'm thrilled that I can now put all this behind me."



Vince McMahon

Photographer: Ethan Miller/Getty Images

McMahon and his wife, Linda McMahon, built the family's professional-wrestling organization into a colossus over the course of decades. The company, formerly known as the World Wrestling Federation, loomed large in pop culture, churning out stars like **Hulk Hogan** and **Dwayne "The Rock" Johnson**. President-elect Donald Trump has [selected](#) Linda McMahon as his nominee for education secretary.

McMahon [resigned](#) as WWE's CEO in 2022 following misconduct allegations and secret payments described in a Wall Street Journal [report](#). A month later, the company [said](#) it identified about \$14.6 million in previously unrecorded expenses related to the former CEO's settlements.

Additional details emerged Friday in the SEC's cease-and-desist order. According to the regulator, a former independent contractor alleged McMahon assaulted her in 2005 and derailed her career after she refused to engage in a sexual relationship with him. In 2019, McMahon agreed to pay her \$7.5 million over five years in exchange for agreeing not to disclose her allegations against him, the SEC said.

In another pact, McMahon agreed to pay a former employee \$3 million over five years so she'd stay silent about a personal relationship they had from at least 2019 to 2022, according to the SEC.

In both cases, McMahon signed the agreement for himself as well as on behalf of WWE, but he never shared details with the company's legal and accounting departments, board of directors, lawyers or its outside auditor, the SEC said. Deloitte & Touche LLP had served as the company's auditor since 1999, according to regulatory filings.

Keeping the agreements silent kept them off the company's books, which led to WWE overstating its 2018 net income by about 8% and its 2021 net income by 1.7%, according to the SEC.

"Company executives cannot enter into material agreements on behalf of the company they serve and withhold that information from the company's control functions and auditor," Thomas Smith Jr., associate regional director in the SEC's New York Regional Office, said in a statement.

McMahon recently has faced allegations of misconduct, with a former WWE employee suing her former boss. McMahon's attorney [said last year](#) she was confident that evidence would prove the allegations are false.

(Updates with details from settlement starting in first paragraph.)

To contact the reporter on this story:

Nicola M. White in Washington at nicwhite@bloomberg.net

To contact the editors responsible for this story:

Michael J. Moore at mmoore55@bloomberg.net

Megan Howard, Daniel Taub

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Former WWE CEO Vince McMahon settles SEC charges over disclosures

 [reuters.com/legal/us-sec-charges-vince-mcmahon-failure-disclose-settlement-agreements-2025-01-10](https://www.reuters.com/legal/us-sec-charges-vince-mcmahon-failure-disclose-settlement-agreements-2025-01-10)

Reuters

By Reuters

January 10, 2025 6:58 AM PST Updated 4 min ago

The U.S. Securities and Exchange Commission (SEC) headquarters in Washington, DC, U.S., November 25, 2024. REUTERS/Benoit Tessier/File Photo Purchase Licensing Rights , opens new tab

WASHINGTON/NEW YORK, Jan 10 (Reuters) - Vince McMahon, the former chief executive of World Wrestling Entertainment, agreed to pay more than \$1.7 million to settle U.S. Securities and Exchange Commission charges he signed two settlement agreements without disclosing them to company officials.

The SEC said on Friday that McMahon's actions circumvented WWE's internal accounting controls, and caused material misstatements in the company's 2018 and 2021 financial statements.

Without admitting wrongdoing, McMahon agreed to pay a \$400,000 fine and reimburse \$1.33 million to WWE to resolve the SEC's civil case.

Reporting by Joanthan Stempel, Rami Ayyub, Katharine Jackson

SEC Attorneys Escape Request to Disclose Notes in Microbilt Suit

By Gillian R. Brassil

- SEC information protected by work-product rule, judge says
- Defendants wanted redacted, only factual notes and deposition

US Securities and Exchange Commission notes in its case against a consumer credit reporting corporation and investment fund manager are work product for litigation that can't be forced over in discovery, even if they are redacted, a federal judge ruled.

Defendants Princeton Alternative Funding LLC, Microbilt Corp., and its former executives wanted four SEC attorneys to sit for depositions and turn over redacted witness interview notes in the agency's enforcement action against them, saying they sought "purely 'factual' information and not the attorneys' mental impressions, conclusions, opinions, or legal theories," Magistrate Judge J. Brendan Day said Wednesday.

The US District Court for the District of New Jersey agreed with the SEC that the information is protected under the work-product doctrine—which says materials collected in preparation for litigation aren't discoverable—in denying their motion to compel and granting the SEC's motion to quash.

Defendants had said that, to the extent the doctrine applies to facts, they had demonstrated a substantial need for the notes and couldn't otherwise get the information without undue hardship. Day disagreed, saying they could simply question the SEC's witnesses themselves rather than take the agency's notes and depositions.

The SEC sued in 2021, alleging PAF and Microbilt, which owned a majority of it, and executives violated anti-fraud provisions of the federal securities laws for two investment funds by hiding the fund manager's tax fraud conviction and lying about its consumer-borrower analysis technology. This helped them raise more than \$73 million from investors before the fund was driven into bankruptcy, according to its complaint.

The SEC investigation was boosted by former employees, Day said; the defendants claimed the investigation was tainted by false information from the two whistleblowers and the funds' largest investor.

Krovatin Nau LLC and Agnifilo Intrater LLP represent Microbilt, PAF, and the former executives.

Neither the SEC nor defendants' attorneys immediately responded to emails seeking comment.

The case is SEC v. Princeton Alt. Funding, LLC , D.N.J., No. 21-12971, 1/8/25 .

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

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

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Opinion **US society**

A time for truth and reconciliation

Trump's return to the White House augurs the 'apokálypsis' of the ancien regime's secrets

PETER THIEL



Donald Trump with his wife Melania on election night in November. © Chip Somodevilla/Getty Images

Peter Thiel 2 HOURS AGO



The writer is a technology entrepreneur and investor.

In 2016, President Barack Obama told his staff that Donald Trump's election victory was "not the apocalypse". By any definition, he was correct. But understood in the original sense of the Greek word *apokálypsis*, meaning "unveiling", Obama could not give the same reassurance in 2025. Trump's return to the White House augurs the *apokálypsis* of the ancien regime's secrets. The new administration's revelations need not justify vengeance — reconstruction can go hand in hand with reconciliation. But for reconciliation to take place, there must first be truth.

The *apokálypsis* is the most peaceful means of resolving the old guard's war on the internet, a war the internet won. My friend and colleague Eric Weinstein calls the pre-internet custodians of secrets the Distributed Idea Suppression Complex (DISC) — the media organisations, bureaucracies, universities and government-funded NGOs that traditionally delimited public conversation. In hindsight, the internet had already begun our liberation from the DISC prison upon the prison death of financier and child sex offender Jeffrey Epstein in 2019. Almost half of Americans polled that year mistrusted the official story that he died by suicide, suggesting that DISC had lost total control of the narrative.

It may be too early to answer the internet's questions about the late Mr Epstein. But one cannot say the same of the assassination of John F Kennedy. Sixty-five per cent of Americans still [doubt](#) that Lee Harvey Oswald acted alone. Like an outlandishly postmodern detective story, we have waited 61 years for a denouement while the suspects — Fidel Castro, 1960s mafiosi, the CIA's Allen Dulles — gradually die. The thousands of classified government files on Oswald may or may not be red herrings, but opening them up for public inspection will give America some closure.

We cannot wait six decades, however, to end the lockdown on a free discussion about Covid-19. In subpoenaed emails from Anthony Fauci's senior adviser David Morens, we learnt that National Institutes of Health apparatchiks [hid](#) their correspondence from [Freedom of Information](#) Act scrutiny. "Nothing," wrote Boccaccio in his medieval plague epic *The Decameron*, "is so indecent that it cannot be said to another person if the proper words are used to convey it."

In that spirit, Morens and former chief US medical adviser Fauci will have the chance to share some indecent facts about our own recent plague. Did they suspect that Covid spawned from US taxpayer-funded research, or an adjacent Chinese military programme? Why did we fund the work of EcoHealth Alliance, which sent researchers into remote Chinese caves to extract novel coronaviruses? Is "gain of function" research a byword for a bioweapons programme? And how did our government stop the spread of such questions on social media?

Our First Amendment frames the rules of engagement for domestic fights over free speech, but the global reach of the internet tempts its adversaries into a global war. Can we believe that a Brazilian judge banned X without American backing, in a tragicomic perversion of the Monroe Doctrine? Were we complicit in Australia's recent legislation requiring age verification for social media users, the beginning of the end of internet anonymity? Did we muster up even two minutes' criticism of the UK, which has arrested hundreds of people a year for online speech triggering, among other things, "annoyance, inconvenience or needless anxiety"? We may expect no better from Orwellian dictatorships in East Asia and Eurasia, but we must support a free internet in Oceania.

Darker questions still emerge in these dusky final weeks of our interregnum. Venture capitalist Marc Andreessen recently suggested on Joe Rogan's podcast that the Biden administration debanked crypto entrepreneurs. How closely does our financial system resemble a social credit system? Were an IRS contractor's [illegal leaks](#) of Trump's tax records anomalous, or should Americans assume their right to financial privacy hinges on their politics? And can one speak of a right to privacy at all when Congress [conserves](#) Section 702 of the Foreign Intelligence Surveillance Act, under which the FBI conducts tens of thousands of warrantless searches of Americans' communications?

South Africa confronted its apartheid history with a formal commission, but answering the questions above with piecemeal declassifications would befit both Trump's chaotic style and our internet world, which processes and propagates short packets of information. The first Trump administration shied away from declassifications because it still believed in the rightwing deep state of an Oliver Stone movie. This belief has faded.

Our ancien regime, like the aristocracy of pre-revolutionary France, thought the party would never end. 2016 shook their historicist faith in the arc of the moral universe but by 2020 they hoped to write Trump off as an aberration. In retrospect, 2020 was the aberration, the rearguard action of a struggling regime and its struldbrugg ruler. There will be no reactionary restoration of the pre-internet past.

The future demands fresh and strange ideas. New ideas might have saved the old regime, which barely acknowledged, let alone answered, our deepest questions — the causes of the 50-year slowdown in scientific and technological progress in the US, the racket of crescendoing real estate prices, and the explosion of public debt.

Perhaps an exceptional country could have continued to ignore such questions, but as Trump understood in 2016, America is not an exceptional country. It is no longer even a great one.

Identity politics endlessly relitigates ancient history. The study of recent history, to which the Trump administration is now called, is more treacherous — and more important. The *apokálypsis* cannot resolve our fights over 1619, but it can resolve our fights over Covid-19; it will not adjudicate the sins of our first rulers, but the sins of those who govern us today. The internet will not allow us to forget those sins — but with the truth, it will not prevent us from forgiving.

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— **The_Ersquare** 7 HOURS AGO

“Sir, this is a Wendy’s”

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 Report

— **Stayingcalm** 6 HOURS AGO

This bizarre rant is invaluable as a window into the minds of those who are about to ascend to power in the US. I wondered if the FT had deliberately published it, unedited, to show the rest of the world what it will be dealing with after 20 January. The stream of insinuations, accusations and straight-out oddness is an expression of a fully-formed alternative reality to which - as the author says - large numbers of people in “advanced” democracies already subscribe.

Whether this is the new normal, or whether the ditching of fact-based reporting will turn out to be only a temporary aberration while we learn to come to terms with the Internet, only history will tell. Let’s hope it’s the latter.

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— **OddThisCoates** 7 HOURS AGO

What is this doing in a supposedly serious newspaper? I could understand if you gave this to a commentator to pick apart and say “look what this billionaire sent in”, but to *print* it, apparently uncritically?

“...our liberation from the DISC [“Distributed Idea Suppression Complex”!] prison”, “...the lockdown on a free discussion about Covid-19”, Joe Rogan as a credible source?

Gordon Bennett

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— **rose** 6 HOURS AGO

 In reply to **OddThisCoates**

I see your point, but how exactly do you pick this apart? it's so delusional. so you either publish like this, or not at all. but some explanation won't go amiss.

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 Report

— **Eric Cartman** 6 HOURS AGO

Kudos to the FT for publishing this. Any lingering doubt we had about his sanity has been well and truly dispelled.

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— **DaProf** 7 HOURS AGO

I think we've heard quite enough from '*technology entrepreneurs*' of late thank you very much! Can we please return to some sensible, level-headed, compassionate commentary and ideas?

 Recommend 64  Reply  Share

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— **Hayek's Aneurism** 7 HOURS AGO

Vapid rhetorics

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— **Jev** 3 HOURS AGO

this reads like a redditor who has found a thesaurus

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 Report

— **Ben Stanley** 6 HOURS AGO

“Darker questions still emerge in these dusky final weeks of our interregnum.”

It's as if someone trained an AI model purely on Russell Brand's “My Booky Wook” and the Unabomber manifesto.

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— **EurostarLounge** 6 HOURS AGO

 In reply to **Ben Stanley**

this is very harsh to the Unabomber manifesto (I mean it).

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— **Fledz** 6 HOURS AGO

How do I report an FT article to the FT?

 Recommend 38  Reply  Share

 Report

— **Gerard** 6 HOURS AGO

Mr Thiel manages to pack every conspiracy theory of the last 60 years into one short but pretentious article, starting with ancient Greek etymology.

He carefully adds question marks, like a prosecutor wearing rubber gloves to avoid touching the evidence, - or more precisely to avoid responsibility for his weird and twisted view of the world.

At least this article will serve future historians to show that you could make a lot of money in the 21st century without an ounce of the "common sense" so beloved of populist demagogues - nor even a drop of common decency. I can't think of any other reason for the FT to publish this kind of codswallop.

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— **MathsMatters** 7 HOURS AGO

This guy is full of it. A 'libertarian' that founded Palantir to help governments spy on all their citizens. He is no ally of the people.

 Recommend 38  Reply  Share

 Report

— **joining the dots** 6 HOURS AGO

 In reply to **MathsMatters**

This is an important point. These guys talk about small government that gets out of the way of free citizens but is actually benefiting from government funds that are directly opposed to the "freedom" mantra they espouse. Like Musk talks about freedom of speech but then buys twitter and tries to control the conversation. What is the true aim of these people?

 Recommend 5  Reply  Share

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— **jmt3** 3 HOURS AGO

This is the most worthless thing this paper I love has ever printed. Incoherent, unevidenced, reckless, self serving, and delusional.

 Recommend 29  Reply  Share

 Report

— **Maguire the dog** 3 HOURS AGO

 In reply to **jmt3**

Amen!

 Recommend 5  Reply  Share

 Report

— **Pseudo Nym** 5 HOURS AGO

I'm sure the dictionary and history books were fine when he ate them.

What came out the other end ... not so much.

 Recommend 29  Reply  Share

 Report

Meta Platforms

Dana White, the UFC boss and Trump ally now fighting for Zuckerberg

Mixed martial arts tycoon's appointment to Meta board comes as Silicon Valley builds ties with incoming US administration

Josh Noble YESTERDAY



Soon after taking charge of the Ultimate Fighting Championship in 2001, Dana White had a big problem: nobody wanted to host his events.

The cage fighting competition was under growing pressure from political heavyweights including the late Arizona senator John McCain, who derided it as “human cockfighting” as he lobbied state governors to ban it.

But Donald Trump, who was looking to boost footfall at his Taj Mahal casino in Atlantic City, came to the rescue. The venue soon hosted two fight nights and the pair have been close ever since, as UFC began a 20-year journey to become one of the hottest properties in global sport.

“I consider Donald Trump to be one of my very, very good friends,” White told the Lex Fridman podcast last year. “He’s the biggest fucking fight fan on the planet.”



Jens Pulver, left, takes on Caol Uno during a 2001 UFC fight at Donald Trump's Taj Mahal in Atlantic City © Susumu Nagao/Zuffa LLC/Zuffa LLC via Getty Images

This week, White agreed to join forces with another self-confessed fighting fanatic, Mark Zuckerberg, with the 55-year-old UFC boss appointed to the board of Meta as Silicon Valley looks to foster links to the incoming Trump administration.

“I’ve never been interested in joining a board of directors until I got the offer to join Meta’s board,” said White, who once tried to organise a cage match between the Facebook founder and Elon Musk, another close Trump ally. “I am a huge believer that social media and AI are the future.”

Born in Connecticut, White moved to Las Vegas as a child after his mother, a nurse, was offered a job there. He dropped out of college twice, worked as a bouncer and then began training boxers at gyms and leading fitness classes in Boston.

After being threatened by notorious local mob boss Whitey Bulger he moved back to Las Vegas, a city that suited his love of gambling (he once lost \$3mn in a single night of cards).

Aged 28, the foul-mouthed and high octane White fell in love with mixed martial arts while learning ju-jitsu. His instructor was a UFC fighter and introduced him to fellow trainees Tito Ortiz and Chuck Liddell. White would go on to manage the pair, who both became UFC champions.

Dana White and US president-elect Donald Trump shake hands during a UFC event at New York City's Madison Square Garden
© Chris Unger/Zuffa LLC via Getty Images

During a contract negotiation for one of his fighters, White realised UFC was running out of money and convinced the Fertitta brothers, longtime friends and the wealthy owners of Station Casinos, to buy the struggling business for \$2mn. He describes the early days as “the wild, wild west”, with rival promoters sending him death threats and the global MMA scene riddled with corruption and crime.

But among the chaos was opportunity. White sees physical combat as an innate part of being human and those who have never been in a fight as divorced from the real world. He describes being pinned to the ground during a sparring bout as “the most humbling, mind-blowing experience, especially as a man”. If two people start punching each other in the street, he believes, people are naturally drawn to watch, fascinated by raw violence.

Millions agree with him. Under his leadership, UFC has grown to become one of the most successful businesses in sport with billion-dollar television deals and sellout shows around the globe.

Shunned by the mainstream media during its early days, UFC was forced to be an early mover into streaming, helping it build a large online community. Its YouTube channel now has almost 20mn subscribers, while Joe Rogan, a UFC commentator, is now the world's top podcaster. Along the way, UFC has hoovered up rival competitions, expanded internationally and introduced women's matches.

France's Cyril Gane, left, fights reigning champion Francis Ngannou in Anaheim in 2022 © Frederic J. Brown/AFP via Getty Images

The Fertitta brothers sold to entertainment group Endeavor and a group of private equity firms in 2016 for \$4bn. In 2023, the company was valued at \$12bn when it merged with WWE to form New York-listed TKO. That year UFC reported revenue of \$1.3bn. Talks are under way over a new bumper TV deal with ESPN.

White still runs UFC as president and chief executive, and is also the owner of Power Slap, a televised contest in which participants slap each other in the face.

“One simply cannot underestimate the force of Dana White. I’ve never seen anything like it”, TKO president Mark Shapiro told the Financial Times. “Talent of all kinds just gravitate toward him.”

As the UFC’s bombastic frontman, White has cultivated a persona of being straight talking and unapologetic, with the occasional exception. After being filmed in 2023 slapping his wife of almost 30 years during an argument at a nightclub, he said there was “never any excuse for a guy to put his hands on a woman”, and that “whatever people say . . . I deserve it”.

There have been calls for White to join the new administration in Washington. During his victory speech on election night, Trump personally thanked him for his support, labelling him a “tough guy”. But White has so far rejected the idea of going into “the dirtiest, scummiest thing on earth”: politics.

Key to UFC's success has been its structure. The company maintains a tight grip on hundreds of athlete contracts, allowing it to decide who fights who, in stark contrast to the highly fragmented world of boxing.

Dana White places the championship belt on Alexandre Pantoja of Brazil in a 2024 UFC championship in Las Vegas © Josh Hedges/Zuffa LLC via Getty Images

UFC was also one of the first sports to see the importance of storytelling. Three years after the acquisition by the Fertitta brothers, the business was still haemorrhaging money. *The Ultimate Fighter*, a popular reality TV show that followed MMA fighters living together in a house in Las Vegas, helped turn things around. The model of using behind-the-scenes documentaries to create stars and drama has been copied widely, to varying degrees of success, by the likes of Formula One, golf, and tennis.

When the pandemic shut sport down all over the world, White chose a different path. He opted not to sack a single employee or cut any salaries but instead focused on getting fights back up and running as soon as possible. The result was Fight Island, a venue built at a theme park in Abu Dhabi where UFC produced bouts starting in July 2020, initially behind closed doors.

During the pandemic White embraced "biohacking" under the guidance of biologist and podcaster Gary Brecka, who he credits with changing his life by curing long-term ailments including sleep apnoea and leg pain.

Wall Street Watchdog Warns "Clock Is Ticking on a Coming Catastrophic Financial Crash"

 wallstreetonparade.com/2025/01/wall-street-watchdog-warns-clock-is-ticking-on-a-coming-catastrophic-financial-crash

By Pam Martens and Russ Martens: January 10, 2025 ~

The indefatigable Dennis Kelleher, Co-Founder and CEO of the Wall Street watchdog, Better Markets, has just released his organization's monthly newsletter for January 2025 and it's a humdinger.

Dennis Kelleher, Co-Founder and CEO, Better Markets

Kelleher warns that the financial deregulators that incoming President Donald Trump has packed into his administration means "that the clock is ticking on a coming catastrophic financial crash that will likely be much worse than 2008."

Kelleher adds that this "is not hyperbole." He cites evidence from past financial crashes, writing:

"...there is always a lag after deregulation and the creation of artificial liquidity. That was true for 'roaring '20s' followed by the crash and Great Depression; the 'great moderation' of the early 2000s followed by the crash and Great Recession; the deregulation of the first Trump administration in 2017-2020 that led to the 2023 banking crisis when 3 of the 4 largest bank failures in US history happened. Much worse is likely to happen next time."

The potential for another great crash might explain why the Vice President for Supervision at the Federal Reserve, Michael Barr, is abandoning the ship and lowering the life raft.

Kelleher has a way with coining a phrase, writing that "Banks don't neglect their duties, act recklessly, engage in high-risk behavior, or break the law – **bankers do**" – and he warns that this is going to persist "until individual bankers are meaningfully and personally punished."

Unfortunately, as *Wall Street On Parade* has documented time and again, regardless of which political party holds the reins in Washington, Wall Street has been able to draw a no-law zone around its activities with a wink and a nod from the U.S. Department of Justice.

In 2016 we reported on what the PBS Program, *Frontline*, had revealed about the Obama administration's Department of Justice and its handling of the investigations after Wall Street had crashed the U.S. economy and left millions of Americans out of work with foreclosure notices nailed to their front doors:

NARRATOR: *Frontline* spoke to two former high-level Justice Department prosecutors who served in the Criminal Division under Lanny Breuer. In their opinion, Breuer was overly fearful of losing.

FRONTLINE'S MARTIN SMITH: We spoke to a couple of sources from within the Criminal Division, and they reported that when it came to Wall Street, there were no investigations going on. There were no subpoenas, no document reviews, no wiretaps.

LANNY BREUER: Well, I don't know who you spoke with because we have looked hard at the very types of matters that you're talking about.

MARTIN SMITH: These sources said that at the weekly indictment approval meetings that there was no case ever mentioned that was even close to indicting Wall Street for financial crimes.

Following the 2008 crash, Congress passed legislation that created the Financial Crisis Inquiry Commission (FCIC) to investigate and report on the causes of the crash. In 2016, previously withheld documents from the FCIC's investigation were publicly released. Senator Elizabeth Warren was aghast at what they showed.

In a 20-page letter to the Inspector General of the U.S. Department of Justice, Senator Warren asked for an investigation into why the DOJ had failed to indict *any* of the Wall Street executives that had been referred to it by the FCIC for potential criminal prosecution. In a separate letter, Warren asked then FBI Director James Comey for his related files.

The FCIC documents showed that it had made multiple criminal referrals of Wall Street executives to the DOJ *in 2010*. Warren explained the referrals as follows in her letter:

"A review of these documents conducted by my staff has identified 11 separate FCIC referrals of individuals or corporations to DOJ in cases where the FCIC found 'serious indications of violations[s]' of federal securities or other laws. Nine individuals were implicated in these referrals (two were implicated twice). The DOJ has not filed any criminal prosecutions against any of the nine individuals. Not one of the nine has gone to prison or been convicted of a criminal offense. Not a single one has even been indicted or brought to trial. Only one individual was fined, in the amount of \$100,000, and that was to settle a civil case brought by the SEC."

The two individuals Warren refers to who were "implicated twice" in the FCIC's criminal referrals are Robert Rubin, the former Treasury Secretary in the administration of Bill Clinton, who in the lead up to the crash of Citigroup in 2008 served as Executive Committee Chair of Citigroup's Board of Directors. (After advocating for the repeal of the Glass-Steagall Act, which allowed Citigroup to own both an insured depository bank, an investment bank and brokerage firm, Rubin went straight from his post as Treasury Secretary to the Board of Citigroup, where he collected \$126 million in compensation over the next decade.)

The other individual whose name appears twice is Chuck Prince, the Citigroup CEO during its implosion. A third Citigroup executive's name appears as well on the list: Gary Crittenden, the Chief Financial Officer of Citigroup at the time of its crash. Crittenden was the individual that was fined \$100,000 by the SEC.

Not only were Citigroup's top executives not prosecuted, but the bank was secretly receiving cumulative revolving loans totaling \$2.5 *trillion* from the Federal Reserve from December 2007 to at least July of 2010. That information was revealed in 2011 when the Government Accountability Office (GAO) released its audit of the Fed's bailout programs.

The Fed is not legally allowed to make loans to insolvent institutions. But in the case of Citigroup, it appears that the Fed ignored its statutory mandate. Sheila Bair, who was the Chair of the Federal Deposit Insurance Corporation (FDIC) during the 2008 crisis, confirms this point in her book, *Bull by the Horns*. Bair writes:

"By November [2008], the supposedly solvent Citi was back on the ropes, in need of another government handout. The market didn't buy the OCC's [Office of the Comptroller of the Currency that supervises national banks] and NY Fed's strategy of making it look as though Citi was as healthy as the other commercial banks...Instead, the OCC and the NY Fed stood by as that sick bank continued to pay major dividends and pretended that it was healthy."

Actually, they weren't standing by at all. The Fed was secretly propping up Citigroup with \$2.5 trillion in loans – many of which were made at a fraction of one percent interest while Citigroup was charging double-digit interest rates to its struggling credit card customers.

Better Market's Kelleher, in the organization's current newsletter, asks and answers this question:

"How did we get here? The financial industry uses its economic power to buy political power which it then uses to increase its economic power. That just happened again in the November 2024 elections, and the financial industry is about to reap the rewards. The Trump administration is going to unleash a very dangerous juggernaut of deregulation of the financial industry."

Chinese business & finance

Chinese developer Sunac's shares tumble 26% after liquidation petition

Real estate company reveals winding-up request filed in Hong Kong



Sunac, formerly one of China's largest developers, defaulted after the 2021 failure of its peer Evergrande © Florence Lo/Reuters

Thomas Hale in Shanghai 7 HOURS AGO



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Shares in Chinese developer Sunac plummeted on Friday after the company revealed it was the subject of a petition in Hong Kong seeking to wind it up, the latest in a series of legal moves against heavily indebted mainland property groups.

The company said in a filing that the petition was issued by a Hong Kong unit of Cinda Asset Management, a state-owned bad-debt manager, and that a hearing was scheduled for March 19.

Sunac's Hong Kong-listed shares fell 26 per cent to HK\$1.30 (US\$0.17) on Friday.

[Sunac](#), formerly one of China's largest developers, defaulted after the 2021 failure of its peer Evergrande sparked a sector-wide cash crunch. The fallout, which paralysed construction projects across China, continues to weigh heavily on economic confidence.

Evergrande, the world's most indebted real estate company at the time of its failure, with liabilities in excess of \$300bn, was the subject of a [similar liquidation petition](#) approved by a Hong Kong judge last year, though the vast majority of its assets are within mainland China's distinct legal regime.

Country Garden, previously the biggest Chinese developer by sales and initially seen as well-shielded from the crisis, also faces a winding-up petition, with a hearing due this month. The company defaulted on its international debts in 2023.

It said on Thursday it had proposed a deal to cut \$11.6bn from its debt pile, which stood at \$16.4bn as of the end of 2023.

Dozens of Chinese property developers listed in Hong Kong and issued bonds to finance their activities, though issuance has dried up following the wave of defaults in 2021 and 2022. They also amassed large debts within mainland [China](#).

Sunac said in late 2023 that it had received court approval for a [\\$10bn offshore restructuring plan](#), one of the few of its kind to proceed. It is also in the process of attempting to restructure onshore debts.

Most petitions to wind up indebted developers have been presented by private creditors, although state-owned China Construction Bank last April [filed a winding-up petition](#) against Shanghai property developer Shimao.

Chinese authorities have taken various measures to boost the property market, including cutting mortgage rates and launching a scheme for state-owned enterprises to buy unsold properties.

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Zillow Brings 'Goldman' Debate Over Class Cert. To 9th Circ.

By **Jessica Corso**

Law360 (January 9, 2025, 8:57 PM EST) -- Zillow Group Inc. is asking the Ninth Circuit to issue its first ruling on the correct application of a U.S. Supreme Court's Goldman decision to investor class certification bids, saying a lower court was wrong to certify a class of shareholders who alleged that the company misled them about the robustness of its now defunct home-flipping business.

Zillow filed a **brief** with the Ninth Circuit on Wednesday, urging the court to provide clarity on how district courts in the circuit should interpret the Supreme Court's 2021 ruling in **Arkansas Teacher Retirement System v. Goldman Sachs Group Inc.** In the process, the appellate court should either decertify a class of Zillow investors or remand the case to the lower court with instructions to apply the Goldman standard, the company said.

"The Ninth Circuit has not addressed Goldman, leaving district courts without guidance on how to interpret and apply it," according to the brief. "This case presents an opportunity for the court to fill that gap and address for the first time the standards announced in Goldman."

The Goldman ruling set a new standard for certifying shareholder class actions, ordering lower courts to examine whether a corporation's alleged misstatements were too generic to have artificially increased the price of the company's stock.

The high court decision has become a flash point during class certification arguments in the lower courts, but so far the Second Circuit is **only federal appeals court** to give guidance on applying the ruling.

Zillow and some of its past and present executives, including CEO Jeremy Wacksman, are accused of failing to disclose weaknesses in its home buying segment, known as Zillow Offers, that led to a \$500 million write-down in home inventory in 2021. The company shut down Zillow Offers shortly thereafter.

Suing investors say that the company failed to disclose that purchasing managers overrode Zillow's pricing algorithm to increase their offering bid for homes and that the company was struggling to find contracts to renovate the houses so that it could turn around and sell them. They say the problems with Zillow Offers were discovered during a series of reports in October 2021, claiming that the company had a significant amount of overpriced inventory on its hands.

Those revelations led to the stock price to drop, the investors say, adding that the stock would have been priced correctly to begin with if Zillow had been forthright about the way its home-flipping segment operated. They **won their bid** for class certification before a Washington federal judge in August.

In appealing class certification, Zillow said Wednesday that the judge either overlooked or incorrectly applied the Goldman standard by ignoring the testimony of a company-hired expert showing that the alleged misstatements had no impact on the price of the company stock.

There was also a "mismatch" between the general, positive statements the company made about its pricing models and the nature of the revelations of its overpriced housing inventory that under Goldman should have led the judge to deny certification, Zillow said.

"The district court exacerbated its error by refusing to consider defendants' evidence of mismatch," the company said. "The Goldman court expressly directed lower courts to 'take into account all record evidence' regardless of whether that evidence 'overlaps with materiality or any other merits issue.'"

Attorneys for the investors didn't immediately respond to a request for comment Thursday.

Zillow and its executives are represented by Peter Morrison, Virginia Milstead and Winston Hsiao of Skadden Arps Slate Meagher & Flom LLP and Sean Knowles and Zachary Davison of Perkins Coie LLP.

Jaeger is represented by Steve Berman, Catherine Gannon, Reed Kathrein, Lucas Gilmore, Karl Barth and Sean Matt of Hagens Berman Sobol Shapiro LLP and Stacey Kaplan and Gregory Castaldo of Kessler Topaz Meltzer & Check LLP.

The case is Jaeger et al. v. Zillow Group Inc. et al., case number 24-6605, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Katryna Perera. Editing by Rich Mills.

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Activision Brands \$75B Del. Merger Suit 'Scattershot'

By **Jeff Montgomery**

Law360 (January 9, 2025, 9:18 PM EST) -- An attorney for former Activision-Blizzard directors and top officers told Delaware's chancellor on Thursday that stockholder attorneys are pursuing a massive but "scattershot" suit challenging the company's \$75.4 billion merger with Microsoft Corp., a deal that produced both a disputed \$31 billion premium and a 329-page third amended lawsuit.

During Court of Chancery arguments on dismissal, Edward B. Micheletti of Skadden Arps Slate Meagher & Flom LLP, counsel to 11 individuals named in the suit, told Chancellor Kathaleen St. J. McCormick that the complaint, led by Swedish pension fund Sjunde AP-Fonden, suggests that Microsoft "just stumbled their way into landing a record-breaking premium, which, by the way, stockholders overwhelmingly approved."

The suit, Micheletti said, "attempts to defame" former Activision CEO Robert Kotick as "the villain of the story," painting him as a company controller under intense pressure.

Michael Hanrahan of Prickett Jones & Elliott PA counsel to the stockholders, told the chancellor that the latest version of the complaint was a tale of two narratives, focused in part on a scandal that led to a serious sexual harassment investigation and lawsuits while creating incentives to sell the business.

Activision senior officers and managers were implicated for participating in, or failing to act in response to, the misconduct, including Kotick, the suit observed, with multiple state and federal investigations and lawsuits triggered.

The latest version of the complaint, Hanrahan said, asserts that the scandal "tanked Activision's stock price, disrupted the business and threatened Kotick's job, causing Microsoft to quickly pursue merger negotiations" with a wounded Kotick.

"The defense converted their dismissal motion from a legal test of the sufficiency of the complaint's allegations into a minitrial of factual issues on a paper record, where we've had no discovery," Hanrahan told Chancellor McCormick. He argued that the stockholders should be able to present "a counter-narrative based on a full record at trial."

Sjunde AP-Fonden, a Swedish national pension fund, filed its complaint against Microsoft, Activision, Kotick and several other company directors in November 2022, accusing leaders at Activision — which makes popular games like Call of Duty and World of Warcraft — of plotting with Microsoft to give Activision shareholders a raw deal.

The complaint asserts various claims including conversion, breach of fiduciary duty, aiding and abetting, and conspiracy.

The transaction closed on Oct. 12, 2023, with Activision stockholders being paid \$95 per share in cash, a 45% premium over the unaffected, pre-deal announcement price.

Sjunde-AP Fonden's original complaint, filed on Nov. 3, 2022, alleged in part that Activision hastily arranged a bargain merger with Microsoft to protect its CEO from a series of discrimination and harassment scandals at the video game company.

Included in the now-amended complaint were allegations that Activision's handling of the agreement and disclosures kept stockholders from knowing early on that the company's directors had secured

increased liability protection as part of the deal.

The current complaint observed in part that Activision's board approved a draft version of the agreement on Jan. 17, 2022, but did not review the version finalized by the two companies early the following day.

Near the end of Micheletti's argument, Chancellor McCormick asked a series of questions, including "It's your position that it's not reasonable to infer that Mr. Kotick was worried about his job at the time negotiations with Microsoft began?"

Micheletti said Kotick had been re-elected twice and was never under any liability threat.

"Nearly 2,000 Activision employees signed a petition calling for Kotick's ouster," and recommending a huge pay cut, expressing concern about his leadership, the chancellor said. "Your view is it's not reasonable to infer he was worried?"

Micheletti said Activision managed to extract multiple price increases that equate to billions of dollars.

"You would think that someone might have come to try to jump a bid," Micheletti said. "It's tough to jump a blow-away price like that," adding that the pension fund was the only stockholder to file suit.

Hanrahan argued that Activision and Microsoft were urging the court to take judicial notice of the proxy and public filings as established fact, arguing that "extraneous documents and factual contentions in a motion to dismiss and motion to strike should be denied."

Chancellor McCormick said she would take the arguments under advisement, pointing to a "foot and half" pile of appendices, not including briefs.

"I have a lot to work through," the chancellor said.

Sjunde AP-Fonden is represented by Michael Hanrahan, Corinne Elise Amato, Kevin H. Davenport, Stacey A. Greenspan, Christine N. Chappelle and Kirsten M. Valania of Prickett Jones & Elliott PA, and Lee D. Rudy, Eric L. Zagar, J. Daniel Albert and Lauren Lummus of Kessler Topaz Meltzer & Check LLP.

Microsoft and Activision are represented by Stephen P. Blake, Laura Lin and Eric C. McCaffree of Simpson Thacher & Bartlett LLP, and Elena C. Norman, Daniel M. Kirshenbaum and Y. Carson Zhou of Young Conaway Stargatt & Taylor LLP.

Activision is additionally represented by Edward B. Micheletti, Lauren N. Rosenello, Michelle L. Davis, Peyton V. Carper and Claire K. Atwood of Skadden Arps Slate Meagher & Flom LLP.

The case is In re: Activision Blizzard Inc., case number 2024-0466, in the Court of Chancery of the State of Delaware, and the plenary action is Sjunde AP-Fonden v. Activision Blizzard et al., case number 2022-1001, also in the Court of Chancery of the State of Delaware.

--Editing by Peter Rozovsky.



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Target Brass Face Derivative Suit Over DEI Fallout

By **Sydney Price**

Law360 (January 9, 2025, 9:24 PM EST) -- Target Corp.'s executives and directors have been hit with a shareholder derivative suit in Florida federal court alleging that the company's diversity, equity and inclusion initiatives and its offerings of LGBTQ+ merchandise harmed investors.

According to the suit filed by Portia E. McCollum on behalf of the McCollum Family Trust, Target lost nearly \$9 billion in market value within one week in 2023 due to the public opposition to its 2023 Pride Month campaign, Target's most extensive LGBTQ+ campaign to date. The campaign introduced products containing slogans and graphics related to queer identity, leading to widespread backlash on social media and calls to boycott the company, according to the suit.

"Despite its efforts to serve the LGBTQ community, at bottom, Target is [a] publicly traded corporation whose directors and officers are vested with fiduciary duties to maximize shareholder value — not effectuate social change to the detriment of the company and its shareholders," the suit said.

In addition to nominal defendant Target, its CEO Brian Cornell, Chief Financial Officer Michael Fiddelke and several company directors are individual defendants in the suit.

The **complaint** outlined Target's history of LGBTQ+ initiatives, which the plaintiff says dates back to May 2012. In 2015, Target launched its first Pride Month campaign, according to the suit.

The suit alleges that the company knew or should have known of the risks associated with the 2023 campaign before it was launched and that its previous campaigns and the campaigns of other major companies should have served as cautionary tales.

"The company did not disclose to stockholders the known risk of adverse customer and stockholder reactions to its [environmental, social and governance] and DEI initiatives, and the LGBTQ initiatives specifically," the suit said. "Rather, the company posed any potential risks to the company from the ESG and DEI initiatives as merely hypothetical."

After initially doubling down on the campaign, Target eventually walked back its efforts after receiving criticism from right and left-wing activists and commentators, according to the suit. On May 24, 2023, Target issued a statement announcing that it was making "adjustments" to its plan and removing items from the collection, the suit said.

On this news, Target shares fell \$20.21, or about 14%, to close at \$140.75 on May 25, 2023, according to the complaint.

Target then removed certain products from its shelves and website and limited the campaign to select stores, according to the suit.

The derivative suit follows a proposed shareholder class action filed in 2023 by Inspire Advisors LLC, a self-described "biblically responsible" investment company, and several other investors represented by America First Legal Foundation, a legal group founded by President-elect Donald Trump's political adviser Stephen Miller.

The suit alleged that Target either falsely stated or omitted the risks associated with its LGBTQ+ initiatives in filings made with the U.S. Securities and Exchange Commission.

Target failed to get the suit dismissed last year when U.S. District Judge John L. Badalamenti **said in an order** in December 2024 that Target's plan to place potentially controversial merchandise at the center of its stores "could be construed as a change to their ESG/DEI campaigns in prior years."

Counsel for McCollum and a representative of Target did not immediately respond to requests for comment on Thursday.

McCollum is represented by William J. Cook of Cook Law PA, Seth D. Rigrotsky, Timothy J. MacFall and Vincent A. Licata of Rigrotsky Law PA and Joshua H. Grabar of Grabar Law Office.

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

The case is McCollum v. Target Corp. et al., case number 2:25-cv-00021, in the U.S. District Court for the Middle District of Florida.

--Editing by Rich Mills.

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Susman Godfrey Vies To Help Lead Crypto DAO Suit

By **Parker Quinlan**

Law360 (January 9, 2025, 7:21 PM EST) -- Susman Godfrey LLP has asked a federal judge in California to allow it to serve as co-lead counsel in an investor lawsuit against decentralized autonomous organization Lido DAO and its large institutional investors over allegedly unregistered securities sold in the form of crypto tokens.

The firm said in its brief to appoint counsel filed Wednesday that it has a history of prosecuting securities and fintech cases and will be able to provide support for the two current lead firms, Fairmark Partners LLP and Gerstein Harrow LLP.

"SG, Fairmark, and GH have successfully collaborated on a similar crypto asset class action in this district, and their cooperation in this case would similarly serve the interests of the proposed class," the brief said. "In particular, SG's substantial resources and experience litigating class actions would complement Fairmark and GH's deep expertise in crypto asset cases."

The proposed class action, brought by crypto investor Andrew Samuels, accuses Lido DAO and its venture capital backers, including Andreessen Horowitz, of violating securities laws by selling the unregistered tokens that lost value.

The case has been closely watched by the crypto and venture capital sectors, particularly after U.S. District Judge Vince Chhabria ruled in November that not only can a decentralized autonomous organization like Lido DAO be sued, but so can its institutional investors.

In doing so, Judge Chhabria denied dismissal bids by Paradigm Operations, Dragonfly Digital Management and Andreessen Horowitz, better known as a16z, and chided them as seeking to "inoculate themselves from liability by creating novel legal arrangements to profit from exotic financial instruments." The judge, however, cut a fourth investment firm, Robot Ventures, from the suit.

In its Wednesday filing, Susman Godfrey attorneys said Fairmark and Gerstein, which have 12 attorneys between them, would benefit from having it assist in prosecuting the case, given the complexity of the litigation and the size of the defense team, which includes lawyers from Latham & Watkins and Skadden Arps Slate Meagher & Flom LLP.

The move would not be the first time Susman has come to the aid of Fairmark and Gerstein, being allowed to serve as lead co-counsel with the firm in other cases in California federal court, the brief said.

U.S. District Court Judge William H. Orrick signed off on Susman joining the firms in a separate lawsuit alleging a Bain Capital affiliate, a16z and other venture capital firms assisted another decentralized autonomous organization called Compound DAO in selling unregistered securities.

Susman has also represented investors in a lawsuit accusing crypto product XRP developer Ripple Labs Inc. of selling an unregistered securities product. While Susman and its co-lead firms successfully got a class approved, the class claims against Ripple Labs were ultimately tossed in June 2024.

Susman said in its brief that counsel for AH Capital Management LLC did not oppose its bid to serve as co-lead counsel, while Paradigm Operations LP and Dragonfly Digital Management LLC had no position.

Counsel for either side did not respond to a request for comment.

The proposed class is represented by Charles Gerstein and Jason Harrow of Gerstein Harrow LLP, James Crooks and Michael Liberman of Fairmark Partners LLP and Steven G. Sklaver, Rothit D. Nath, Nicolas Spear and Jason Bell of Susman Godfrey LLP.

Paradigm is represented by Peter B. Morrison, Zachary M. Faigen and Alexander C. Drylewski of Skadden Arps Slate Meagher & Flom LLP.

Andreessen Horowitz is represented by Samir Deger-Sen, Peter Trombly, Susan E. Engel, Douglas K. Yatter, Matthew Rawlinson, Benjamin A. Naftalis and Morgan E. Whitworth of Latham & Watkins LLP.

Dragonfly and Robot are represented by Jason Gottlieb, Michael Mix and Rachel Fleder of Morrison Cohen LLP and Ellen London of London & Naor PC.

The case is Andrew Samuels v. Lido DAO et al., case number 3:23-cv-6492, in the U.S. District Court for the Northern District of California.

--Editing by Vaqas Asghar.

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Kroger Accused By Calif. AG Of Ignoring Opioid 'Red Flags'

By **Rae Ann Varona**

Law360 (January 9, 2025, 7:50 PM EST) -- California's attorney general has accused The Kroger Co. of ignoring "red flags" of opioid misuse, alleging in a lawsuit lodged in a Los Angeles state court that the supermarket giant dispensed opioids without first questioning the legitimacy of prescriptions.

California Attorney General Rob Bonta said in a Tuesday complaint that Kroger, which operates pharmacies across several states, had "unique, real-time knowledge" of opioid prescriptions dispensed at its pharmacies and the resources and policies to identify suspicious orders of the class of drugs.

Yet Kroger failed to use its resources and ineffectively apply its policies, thus violating its legal obligations under both federal and California state law to guard against the diversion of opioids, Bonta said.

"Year after year, as its opioid dispensing increased and the opioid crisis grew, Defendant failed to practice its corresponding responsibility, including dispensing controlled substances without first resolving the red flags presented by suspicious prescriptions," Bonta wrote. "Defendant knew that its internal compliance program was inadequate to fulfill its anti-diversion duties pursuant to state and federal law."

The U.S., according to California's complaint, saw a nearly four-fold increase in the annual number of opioid pills pharmacies dispensed from 1999 to 2014. Bonta said that the increase contributed to opioid abuse and addiction in the Golden State, as well as overdose deaths.

The opioid crisis has also contributed to a sharp increase in the use of more powerful drugs like fentanyl and heroin, Bonta said, noting that the drugs are sometimes used in combination with prescription opioids.

According to Bonta's office, more than 5,000 Californians died due to an opioid overdose in 2020, the most recent year for which statistics are available. Nearly 4,000 died due to a fentanyl overdose, according to the office.

Kroger, the supermarket company whose subsidiaries include Ralph's, has a "crucial role" in stopping prescription opioids from being diverted from legitimate to illegitimate distribution channels, Bonta alleged in the state's complaint.

He said that under the federal Controlled Substances Act and a parallel California law, pharmacies and pharmacists are the "last line of defense in preventing the illegal diversion of controlled substances."

Bonta said that to comply with their legal duties to dispense only legitimate opioid prescriptions, pharmacies are required to exercise due diligence to identify "red flags" in opioid prescriptions.

Red flags can relate to a prescriber, patient, or the physical prescription itself, Bonta said. Red flags include patients seeking to fill opioid prescriptions written by multiple doctors in a short period, patients who seek to pay for their prescriptions in cash despite having insurance information on file, opioid prescriptions that appear altered or photocopied or contain misspellings and prescriptions written by doctors who are located far away from a patient's residence or the pharmacy's location.

In accusing Kroger of unfair competition and public nuisance, Bonta asserted that Kroger "materially contributed" to the opioid addiction crisis in California. He alleged that Kroger also knew, or should have known, that its actions and inactions would lead to the crisis.

California is seeking a civil penalty of \$2,500 for each violation alleged state law violation and a civil penalty in the same amount for each alleged violation perpetrated against a senior citizen or disabled person.

Kroger had in November agreed to pay nearly **\$1.4 billion** to dozens of states and thousands of counties, municipalities, and Native American tribes to settle allegations it contributed to the opioid crisis. California was among the states set to receive some of the largest distributions, at up to \$122 million.

Ohio had the biggest allotment of roughly **11.2%** of the funds. Texas also inked **\$83 million**.

Bonta said at the time that California would begin receiving payments in early 2025. He also said that California was expected to receive up to \$4.2 billion in opioid abatement funds under several settlements, the bulk of which will go to local state governments.

On Thursday, Kentucky Attorney General Russell Coleman announced that the state is set to receive \$110 million from Kroger in an opioid settlement. Kentucky **sued** Kroger in February 2024, alleging that the company and its more than 100 pharmacies in the state were responsible for over 11% of all opioid pills dispensed in the state.

Like California's new lawsuit, Kentucky had alleged in its complaint that Kroger ignored "obvious red flags and continued to distribute and dispense excessive and dangerous amounts of opioids in the Commonwealth."

Kroger did not immediately respond to a request for comment on Thursday.

California is represented by Rob Bonta, Neli Palma, and David A. Jones of the California Department of Justice.

Counsel information for Kroger was not immediately available.

The case is The People of the State of California v. The Kroger Co., case number 25STCV00376, in the Superior Court of the State of California for the County of Los Angeles.

--Additional reporting by Hailey Konnath, Spencer Brewer and Dan McKay. Editing by Vaqas Asghar.



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Judge Rips Meta's 'Grossly Overbroad' AI Sealing Requests

By **Dorothy Atkins**

Law360 (January 9, 2025, 7:59 PM EST) -- A California federal judge appeared open Thursday to allowing authors to amend their copyright infringement proposed class action to include allegations Meta nefariously removed copyright disclaimers from tens of millions of books in creating its Llama artificial intelligence product, while criticizing Meta's "grossly overbroad" sealing requests as illegitimate attempts at avoiding bad publicity.

U.S. District Judge Vince Chhabria's comments came during a hearing on authors' request to file a third amended complaint in the litigation **filed by high-profile plaintiffs** including Sarah Silverman, Ta-Nehisi Coates and Junot Diaz in July 2023.

The authors say they never gave Meta permission to use copyrighted works purportedly in datasets used to train versions of Meta Platforms Inc.'s Llama language learning model, and they argued in the motion that discovery recently produced by the social media giant revealed new information that Meta staffers knew they were removing copyright management information in a "stealth" internal procedure.

The authors are aiming to add allegations to beef up a Digital Millennium Copyright Act claim, as well as a claim under the California Comprehensive Computer Data Access and Fraud Act.

Judge Chhabria began Thursday's hearing noting that he had unsealed numerous filings Meta sought to keep redacted in an order Wednesday night, which called Meta's sealing requests "preposterous." His order found that there is "not a single thing" in Meta's briefs that should be sealed, with only one possible exception, "but even that seems dubious."

"It is clear that Meta's sealing request is not designed to protect against the disclosure of sensitive business information that competitors could use to their advantage," Judge Chhabria's order said. "Rather, it is designed to avoid negative publicity."

As evidence, the judge pointed to a statement by a Meta employee in one of the documents who wrote, "If there is media coverage suggesting we have used a dataset we know to be pirated ... this may undermine our negotiating position with regulators on these issues."

The unsealed documents reveal new details that the authors have learned in discovery, including allegations that Meta's CEO Mark Zuckerberg approved Meta's use of a dataset from Library Genesis, aka LibGen, to "train" Llama despite concerns among Meta's AI executive team and other top Meta engineers that the online database is "a dataset we know to be pirated."

According to a brief that was unsealed Wednesday, Meta's AI decision-makers wrote that after "escalation to MZ" — purportedly referring to Mark Zuckerberg — Meta's AI team "has been approved to use LibGen."

The LibGen database has been around for the past decade and allows users, mostly students, to search for academic texts by major publishers without paying for them, and it's also been the target of **high-stakes copyright infringement litigation**. Last year, a New York federal judge entered default judgment against the website's owners after they didn't appear in court to answer the allegations.

In light of his ruling unsealing the documents, Judge Chhabria said during the hearing Thursday that Meta should review its other sealing requests in filings pending before the magistrate judge who is handling discovery disputes.

"I assume they are just as grossly overbroad as the ones you submitted to me," Judge Chhabria said.

Meta's counsel, Kathleen Hartnett of Cooley LLP, repeatedly said Meta appreciates and respects the court's order, but she still maintained that Meta's sealing requests stem from a concern made in good faith that the company wants to protect commercially sensitive information regarding the databases used to train its LLM.

That didn't go over well with the judge. "I don't need to get into a big argument about it," Judge Chhabria replied.

The judge told Hartnett that merely considering something to be commercially sensitive "in the abstract" isn't adequate to establish that a filing should be sealed, and that even if Meta's business concerns are legitimate, if the technology is central to litigation — as it is in this case — the information still needs to be disclosed.

"It seems to me this stuff ... is quite relevant," he said.

Turning to the authors' motion to amend, the judge prefaced the discussion by telling counsel he wouldn't hear Meta's oral arguments that granting the motion would delay litigation and be futile.

He acknowledged that although Meta likely has viable arguments that some claims are preempted, "we can deal with that on a motion to dismiss — it's not a big deal."

Judge Chhabria also repeatedly said he would not push back a hearing on motions for summary judgment that is scheduled for May 1, and he said it "seems doable" that the court could "tweak" certain deadlines before then so that Meta could take additional discovery and litigate a motion to dismiss if it chooses to file one before the hearing.

Judge Chhabria also didn't want to hear Meta's arguments that the plaintiffs have been foreclosed from adding certain claims, telling Meta's counsel that Meta is "clearly wrong about that." The only topic Judge Chhabria asked the attorneys to address was what additional discovery would be needed if the motion to amend were granted.

The authors' counsel, Max Pritt of Boies Schiller Flexner LLP, said they wouldn't object to any additional discovery Meta seeks to take, although he doubted how much additional information Meta would need to defend itself from the new claims.

Hartnett replied that Meta would likely want to add at least one expert to testify about Meta's practice of removing the copyright disclosures, and she repeatedly disputed the authors' new assertions that Meta's practice was nefarious. She argued that the company's engineers removed the disclosures in an attempt to improve its LLM, and to remove repetitive entries, but not, she argued, to intentionally exacerbate any copyright infringement.

For his part, Judge Chhabria refused to let the parties argue the merits of the new allegations at length. After Pritt called Meta's conduct "staggering computer crimes," Judge Chhabria stopped him and replied that the matter likely should be decided by a jury.

"There's no jury in the courtroom," Judge Chhabria told Pritt. "I don't know if you have evidence to back up what you said. Can we just limit ourselves to legal arguments, and avoid dramatization?"

Judge Chhabria added that he doesn't have an opinion yet about whether Meta's alleged conduct was nefarious, particularly since he isn't examining the context of the evidence Pritt was pointing to, and at the end of the hearing, the judge took the arguments under consideration.

The hearing came a day after U.S. Magistrate Judge Thomas S. Hixson heard arguments on the authors' demands for certain datasets Meta used to fine-tune its Llama product, while Meta's counsel called the discovery demands belated, speculative and placing an **"alarming level of burden"** on

Meta.

Following the hearing, Judge Hixson issued an order under seal, and he gave the parties a week to propose redactions before he makes the ruling public.

The authors were represented by Margaux Poueymirou of Joseph Saveri Law Firm LLP, Max Pritt and Joshua Michelangelo Stein of Boies Schiller Flexner LLP and Daniel M. Hutchinson of Lieff Cabraser Heimann & Bernstein LLP.

Meta was represented by Kathleen Hartnett, Judd D. Lauter and Mark Weinstein of Cooley LLP.

The case is Richard Kadrey et al. v. Meta Platforms Inc. et al., case number 3:23-cv-03417, in the U.S. District Court for the Northern District of California.

--Additional reporting by Ivan Moreno. Editing by Brian Baresch.

Update: This story has been updated to include more allegations from the unsealed documents.

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Trump's Return Brings 'Deeper Anxiety' To DOJ Fraud Attys

By **Phillip Bantz**

Law360 (January 9, 2025, 2:02 PM EST) -- White collar practitioners say they've heard from U.S. Department of Justice attorneys who are anxiously bracing for the possibility of working with fewer resources while confined to narrower enforcement priorities after Donald Trump returns to the Oval Office.

What Trump's aggressive pursuit of immigration-related crimes, particularly those involving violence or drugs, will mean for federal white collar enforcement is not yet entirely clear, but sources told Law360 that career prosecutors in the DOJ's Fraud Section are worried about attention being shifted away from their work.

"The prosecutors I have spoken to have expressed a deeper concern and anxiety than under any previous change of administration that I've ever experienced," former Watergate prosecutor Jon Sale, co-chair of the white collar practice at Nelson Mullins Riley & Scarborough LLP, told Law360.

Joel Hirschhorn, a veteran criminal defense attorney based in Miami, said he'd had similar conversations recently with Main Justice fraud prosecutors. Most of the attorneys he talked with indicated that they were waiting to see how the situation plays out before deciding whether to split with the government.

"No question, there is a concern [among Fraud Section attorneys] about the reallocation of priorities and resources," Hirschhorn said.

Law360 could not independently confirm the conversations, and a spokesperson for the Fraud Section declined a request to comment.

Few expect Trump to gut the Fraud Section, but every administration has tools that it can leverage to incentivize prosecutors to prioritize certain enforcement efforts, sometimes to the disadvantage of other sections within the DOJ, experts said.

For example, prosecutors who handle illegal immigration-related cases could get more recognition through government awards or press releases touting their achievements, while their white collar-focused colleagues are largely ignored, according to Bracewell LLP partner Seth DuCharme. He served as the principal associate deputy attorney general — the top-ranking career prosecutor in the DOJ — under Trump's first administration.

"Federal prosecutors get paid the same no matter what they do, for the most part, so they tend to be mission-driven and appreciate recognition," DuCharme explained. "So if you see the wind blowing another direction, it can be harder to do the job."

He noted he saw some of that during Trump's first term, when one of the DOJ's largest ever Foreign Corrupt Practices Act cases — the 1Malaysia Development Bhd., or 1MDB, **scandal** that involved Goldman Sachs — was met with little fanfare from the administration.

"They just kind of shrugged at it like, 'OK, that's what you want to do, and it's within the law and your enforcement capabilities, so go do it.' But there wasn't a lot of excitement around it," DuCharme said.

Newly hired federal prosecutors might also be required to show on their time reports that they have devoted a certain percentage of their working hours to illegal immigration and crimes under that umbrella. The Fraud Section might also get hit with a hiring freeze, sources predicted.

"If they're feeling underappreciated and starved for resources, some of these white collar prosecutors who have options in the private sector might say, 'Well, nobody cares about this anymore. We're not getting new people. I'm not appreciated. I think it's time for me to go,'" DuCharme said.

Another potential factor that could affect white collar enforcement under Trump is the disdain he has voiced for the FBI, which was involved in investigations that led to his now-dismissed federal criminal cases. Trump has tapped loyalist Kash Patel, who also has publicly bashed the FBI, to **lead** the agency, which often plays an integral role in investigating and building complex white collar cases.

"The combination of these forces — not really wanting to focus too much on white collar crime and also not necessarily holding those investigative agencies in the highest regard — could portend fewer white collar cases coming up in the future," according to Cody Gray, a white collar partner at Keker Van Nest & Peters LLP.

That's not to suggest the bread-and-butter white collar cases centered on traditional fraud will be put on ice during Trump's second administration. But experts say it's likely that more novel white collar enforcement actions, such as the DOJ's **first-ever** digital asset insider trading prosecution, could be less of a priority, if a priority at all, during the next four years.

Examples of other types of cases likely to fall out of favor include quasi-regulatory enforcement actions, such as charges brought under the Foreign Agents Registration Act, and public integrity cases "where the line between normal politics and corruption is not always clear," DuCharme said.

The U.S. Supreme Court has narrowed the scope of federal public corruption laws in a string of decisions, most recently in June 2024, when the high court **overturned** the bribery conviction of a former Indiana mayor.

"There will be requests [from Main Justice leaders] to preview cases and if the cases are not too creative they will likely move forward," Ducharme said. "But I think we're going to see a more conservative approach."

-- Additional reporting by Stewart Bishop and Celeste Bott. Editing by Covey Son.