The 2025 Lawdragon 500 Leading Lawyers in America

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January 10, 2025

By Katrina Dewey | January 10, 2025 | Guides, News & Features

Alice Shih LaCour of Hilgers Graben; Eva Cole of Winston & Strawn; Kannon Shanmugam of Paul, Weiss.

We're honored to introduce The 2025 Lawdragon 500 Leading Lawyers in America.

These remarkable lawyers include New York dealmakers who craft billion-dollar behemoths, Texas energy gurus who help leaders in oil and gas expand their reach, Los Angeles plaintiff lawyers who battle for decades to achieve justice for victims of long-denied sexual abuse, and Washington, D.C., insiders who navigate the ins and outs of antitrust combinations.

They are military veterans and professional athletes, from the farm and upper Manhattan, telling their stories on podcasts and in tabloid battles.

They have nothing in common but for one thing: They got a law degree because they saw in it a chance to make a difference for themselves and to do something. For someone.

And boy howdy. Have they ever.

This is the 20th edition of this, our flagship guide. Thank you for the honor of getting to know so many of you and for giving us a chance. We are fiercely proud of this guide, the lawyers on it, the process that creates it and what it means: that being a great lawyer, a powerful lawyer is not just a plaque on the wall. It is an act of courage to never give up on behalf of a client, a firm, and this notion of justice that can seem as divergent as unifying.

We create our ode to the greatest lawyers in the greatest legal system in the world through an obsession with great lawyers that lasts all year long. That's how obsessions go .... We follow lawyers and firms as they emerge, track their successes and less-thans, lurk and watch and jump up and down as young lawyers find their path and soar. We accept nominations and thank you for a record number of them this year. We parse those with our own research, vet with peers and competitors, concatenate this knowledge in a competitive environment and create a list we hope you find useful and enjoy. This is not the list where you can find a family lawyer in Chicago, for instance; those are among the series of practice guides we publish throughout the year.

The Lawdragon 500 is a celebration of lawyering and those whose art is its craft.

This year's guide reflects the evolution of great lawyering since we founded Lawdragon in 2005. The world was much more top down, and it was then considered quite radical to put an M&A lawyer in a mosh pit with a plaintiff trucking lawyer. Not to mention having more than a smattering of women and inclusive lawyers. We hope we've contributed to changing the essence of what it means to be a great lawyer – to an understanding it's not top down or exclusive, but built from the bottom up every day in hopes of better days for everyone.

This guide is 42 percent female and 29 percent inclusive. New York continues to lead the way but Texas has emerged as our second leading state, followed by California. There are no finer law firms in the world than those represented here and for those going Full Monty in the race for legal dominance this year's league table is: Paul, Weiss; Cravath; Quinn Emanuel; Kirkland; Winston; Susman Godfrey and Wachtell.

Thank you for the honor of your time.

We love LA.

First	Last	Organization	Location	Practice
Aelish Marie	Baig	Robbins Geller	San Francisco	Plaintiff Consumer Litigation
Spencer	Burkholz	Robbins Geller	San Diego	Plaintiff Consumer Litigation
Desiree	Cummings	Robbins Geller	New York	Plaintiff Securities Litigation
Stuart A.	Davidson	Robbins Geller	Boca Raton, Fla.	Plaintiff Consumer Litigation
Mark J.	Dearman	Robbins Geller	Boca Raton, Fla.	Plaintiff Securities Litigation
Daniel S.	Drosman	Robbins Geller	San Diego	Plaintiff Securities Litigation
Thomas	Egler	Robbins Geller	San Diego	Plaintiff Class Actions

First	Last	Organization	Location	Practice
Jason A.	Forge	Robbins Geller	San Diego	Plaintiff Securities Litigation
Paul	Geller	Robbins Geller	Boca Raton, Fla.	Plaintiff Class Litigation
Tor	Gronborg	Robbins Geller	San Diego	Plaintiff Securities Litigation
Chad	Johnson	Robbins Geller	New York	Plaintiff Securities Litigation
David W.	Mitchell	Robbins Geller	San Diego	Plaintiff Antitrust Litigation
Danielle	Myers	Robbins Geller	San Diego	Plaintiff Securities Litigation
Darren J.	Robbins	Robbins Geller	San Diego	Plaintiff Securities Litigation
Shawn A.	Williams	Robbins Geller	San Francisco	Plaintiff Securities Litigation
Debra J.	Wyman	Robbins Geller	San Diego	Plaintiff Securities Litigation

Previous Post Lawdragon Announces 2025 Hall of Fame Inductees

Securities Law

Jan. 13, 2025, 11:49 AM PST

Investor Gains Ammunition in Veon Uzbek Bribery Disclosure Suit

By Gillian R. Brassil

- Judge allowed three more corrective disclosures that hit stock
- Denied three that didn't relate to 2017 okayed allegations

The investor leading a proposed class action against VEON, Ltd. can cite to three corrective disclosures to support claims the multinational telecommunication company artificially raised its stock price by concealing an Uzbek bribery scheme and overstating its financial oversight, a federal judge ruled.

Three other corrective disclosures can't be used to support allegations against the company formerly known as VimpelCom because they don't relate to statements that the court found actionable in 2017, said Judge Andrew L. Carter, Jr. in the US District Court for the Southern District of New York on Jan. 10.

To determine whether lead plaintiff Boris Lvov could proceed with the corrective disclosures, they needed to have "materialized the risk that VimpelCom's position in Uzbekistan was tenuous given the company's reliance of bribes," Carter wrote. Lvov had raised six disclosures in his most recent complaint leading to American Depository Share price drops between 2013 and 2015, according to the order. Disclosures centered on bribes funneled to a late Uzbeck president's daughter, Gulnara Karimova, in exchange for the company's access to that country's market.

The permitted corrective disclosures include that Swedish prosecutors found a basis to conclude the former Uzbek president's daughter orchestrated and primarily benefited from the bribery scheme through another group; that a Norwegian member of parliament would bring in VimpelCom and another affiliated organization for public hearings over the alleged bribery before its parliament; and that the Norwegian minister said she'd lost confidence in that affiliated organization's board chairman whose resignation was simultaneously announced, the judge wrote.

In 2016, VimpelCom admitted to paying more than $114 million in bribes to Karimova , who has been accused of leading an international bribery operation to pull millions of dollars from telecom companies and is currently imprisoned. VimpelCom agreed to pay $795 million in fines and penalties and improve internal controls among other agreements to resolve US and Dutch investigations.

The New York federal court had granted in part and denied in part VEON's motion to dismiss a third amended complaint in September. In it, Carter asked Lvov to explain whether the six new disclosures related only to newly-alleged false statements, which would have prevented him from using them for being time barred, or if they related to the 2017 ones.

Carter allowed securities allegations against VEON to proceed in 2017 on three categories of alleged false statements and six different corrective disclosures, but narrowed the proposed class; the then-lead plaintiff was dismissed and Lvov was then named lead plaintiff in 2022. Lvov filed the third amended complaint in 2023 on behalf of a proposed class of investors from Dec. 4, 2010 through Nov. 3, 2015 who held VEON depositary shares through at least one of those corrective disclosures.

The Rosen Law Firm, PA represents Lvov. Kramer Levin Naftalis & Frankel, LLP represents Veon. Neither firm responded to emails seeking comment.

The case is In re Veon Ltd. Secs. Litig. , S.D.N.Y., No. 1:15-cv-08672, 1/10/25 .

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Class Action
Jan. 14, 2025, 7:51 AM PST

Labor Department Probe Info Must Be Divulged in Stock Plan Suit

By Jacklyn Wille

- Information sharing agreement between DOL, law firm at issue
- Department, workers lack common legal interest, judge says

Workers suing Envision Management Holding Inc.'s board of directors over their employee stock ownership plan must turn over certain investigative materials provided to them by the US Department of Labor, a federal judge ruled.

There's no dispute that the work product in question belongs to the department, and the department didn't object to a magistrate judge's order requiring its release, Judge Charlotte N. Sweeney said. That "ends the issue," Sweeney said, because the Envision workers never demonstrated that they have standing to object on the department's behalf.

Sweeney's order, issued Monday in the US District Court for the District Court for the District of Colorado, stems from a purported information sharing agreement between the department and Cohen Milstein Sellers & Toll PLLC, which represents the Envision workers in this action.

The agreement, which has been criticized by Republican lawmakers and defended by both the department and the law firm, allowed Cohen Milstein to access investigative materials prepared during the department's investigation of various ESOPs, including interview certain interview reports.

The Envision workers said they couldn't be forced to turn over these materials in litigation because they share a common legal interest with the department and can't be forced to turn over its privileged materials.

A federal magistrate judge disagreed last year, finding no common legal interest between the two. A contrary decision would set a "dangerous precedent" by allowing the government to "litigate in the shadows, without giving the opposing party an opportunity to adequately probe and defend itself," the magistrate said.

Sweeney affirmed the magistrate's decision based on the department's failure to object and agreed that the it shares no common legal interest with the workers. The department isn't a party to the case, hasn't concluded its investigation, and expressly takes no position on the merits of the dispute, Sweeney said.

The Envision workers' proposed class action, which was allowed to advance last year, targets a 2017 transaction in which the medical imaging provider's former owners sold their shares to a newly created employee stock ownership plan at an allegedly inflated price.

Envision's directors said the dispute should be resolved through arbitration, both the district court and the US Court of Appeals for the Tenth Circuit disagreed.

Sweeney gave the workers five days to produce the relevant interview reports.

The defendants are variously represented by Groom Law Group, Bryan Cave Leighton Paisner LLP, and Faegre Drinker Biddle & Reath LLP.

The case is Harrison v. Envision Mgmt. Holding, Inc. Bd. of Dirs. , 2025 BL 10674, D. Colo., No. 1:21-cv-00304, 1/13/25 .

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SCOTUS Leaves Untouched 2nd Circuit's Revival of Binance Fraud Suit

law.com/newyorklawjournal/2025/01/13/scotus-leaves-untouched-2nd-circuits-revival-of-binance-fraud-suit

Alyssa Aquino

The U.S. Supreme Court on Monday turned away Binance Holding Ltd.'s request to undo a U.S. Court of Appeals for the Second Circuit decision reviving investor fraud claims against the exchange, which self-describes as the world's largest cryptocurrency exchange.

The justices denied the petition for review without explanation, as is customary, declining to inquire further into Binance's arguments that purchases made over its platform are extraterritorial and beyond the scope of U.S. securities law.

The rejection was welcomed by Jordan Goldstein, a member of the Selendy Gay legal team that filed a 327-page lawsuit accusing the exchange and its former CEO, Changpeng Zhao,of violating the Securities Act of 1933, the Securities Exchange Act of 1934 and dozens of state securities laws.

Representing people who purchased tokens on Binance that later crashed, Selendy Gay claims Binance illegally sold tokens that should have been registered with the U.S. Securities and Exchange Commission and failed to properly disclose the risks of the investments.

"We look forward to prosecuting this class action," Goldstein said in a statement.

Attorneys from the Cahill Gordon & Reindel and Quinn Emanuel Urquhart & Sullivan legal teams that represent Binance and Zhao, respectively, didn't respond to requests for comment. Binance is additionally represented by Gibson, Dunn & Crutcher.

Philip Moustakis, a partner at Seward & Kissel who is uninvolved with the lawsuit, told the New York Law Journal that he wasn't surprised by the justices' decision.

"Binance accessed U.S. markets and was not subject to regulation in any other jurisdiction. Binance is not registered in any other country and has purported essentially to be stateless and have no physical location whatsoever," Moustakis said in a statement. "Given the fact that Binance reached into the United States and the risks posed to U.S. investors under such circumstances, I do not think it was controversial that the Second Circuit decided the matter as it did."

Binance had initially escaped the lawsuit in 2022, when U.S. District Judge Andrew Carter Jr. of the Southern District of New York tossed the complaint on jurisdictional grounds. Binance has no physical headquarters and the judge found that the U.S.-based third-party servers

that host Binance and facilitate its transactions weren't enough to subject the company to U.S. securities laws. Carter further rejected arguments that the plaintiffs' U.S. location was enough for their purchases to be considered domestic ones.
But the Second Circuit disagreed, ruling in March 2024 that the case could proceed, as the investors were in the U.S. when they purchased the tokens, and the transactions occurred over U.S. servers.

The shareholder suit against Binance is just part of a storm of litigation that the exchange has been weathering. In 2023, the exchange paid $4.3 billion to the federal government to end money laundering, bank fraud and sanctions evasions claims from the U.S. Department of Justice, U.S. Commodity Futures Trading Commission and the U.S. Department of Treasury. The exchange is also currently defending itself against the SEC, which claims that Binance should have registered certain tokens as securities.

Securities Law News
Jan. 13, 2025, 11:30 AM PST

Matt Levine's Money Stuff: Everything Might Be Accounting Fraud

By Matt Levine

Opinion

Settlement accounting

Here's an accounting trick. You start a company. You sell 20% of the stock to investors and keep 80% for yourself. The company makes widgets; it gets $1 million of revenue from selling the widgets. The company needs raw materials to make the widgets. The raw materials cost $500,000. The company also has various other expenses — salaries and rent and so forth — which total $600,000. In total the company has $1 million of revenue and $1.1 million of expenses, for a negative net income. The economics aren't great, and the stock won't be worth very much.

So the trick is, *you* buy the raw materials, with your own money, and you give them to the company for free. Now the company has $1 million of revenue, $600,000 of expenses, $400,000 of net income and a 40% profit margin. "Our margins were high this quarter because we negotiated favorable pricing with suppliers of raw materials," you say on the earnings call. (You are also the chief executive officer.) The stock soars; the company trades at 30 times earnings, or $12 million. You own 80% of the stock. You sell it for $9.6 million. You are out the $500,000 for raw materials, but the $9.6 million more than covers that. Next year, you stop paying for the materials, the company starts losing money, and the stock collapses, but that's not your problem.

This seems bad, and it is more or less not allowed under US generally accepted accounting principles. To prevent this trick, the correct accounting is:

1. The company has an expense for the $500,000 of raw materials: The accountants pretend that the company paid for the materials, not you.

- 2. The company has an offsetting increase in additional paid-in capital: The accountants pretend that you gave the company the money to pay for the materials. But that money is a shareholder transaction that does not flow through income. The company's net income is still negative.

That's more or less the rule. Here is the US Securities and Exchange Commission's statement of the rule. It's in a questions-and-answers document, and the SEC's hypothetical is not about widget raw materials but about lawsuits:

Facts: Company X was a defendant in litigation. ... A principal stockholder of the company transfers a portion of his shares to the plaintiff to settle such litigation. If the company had settled the litigation directly, the company would have recorded the settlement as an expense.

Question: Must the settlement be reflected as an expense in the company's financial statements, and if so, how?

Interpretive Response: Yes. The value of the shares transferred should be reflected as an expense in the company's financial statements with a corresponding credit to contributed (paid-in) capital. ...

The substance of such a transaction is that the economic interest holder makes a capital contribution to the reporting entity, and the reporting entity makes a share-based payment to its grantee in exchange for goods or services provided to the reporting entity.

The staff believes that the problem of separating the benefit to the principal stockholder from the benefit to the company … is not limited to transactions involving stock compensation. Therefore, similar accounting is required in this and other transactions where a principal stockholder pays an expense for the company, unless the stockholder's action is caused by a relationship or obligation completely unrelated to his position as a stockholder or such action clearly does not benefit the company.

So if someone sues the company and the controlling shareholder pays them to go away, that is, for accounting purposes, an expense of the company. This one is maybe less intuitively obvious than in the widget materials case, but it's the same general principle.

Why might someone sue the company? Why might the controlling shareholder pay them off? Oh, various reasons. Here's one: The controlling shareholder is also the CEO, and he (allegedly) sexually harassed an employee. The employee threatens to sue the CEO/shareholder, for sexually harassing her, and the company, for allowing it. The CEO/shareholder says "this is a private matter and I don't want the company dragged into it" and writes her a check, in exchange for a settlement agreement in which she agrees to drop the suit against him and the company.

Here, the CEO/shareholder's payment is partly to settle the lawsuit against him (a personal expense), and partly to settle the lawsuit against the company (a corporate expense). Intuitively, you might argue that it is *mostly* about him: He's the one who (allegedly) did the harassing, after all, and this is really more his problem than the company's. But the SEC's rule is that the company has to expense 100% of the payment "unless the stockholder's action is caused by a relationship or obligation completely unrelated to his position as a stockholder or such action clearly does not benefit the company." Is that true here? I mean, the company obviously benefits: It was going to get sued, and now it isn't. It's hard to say that the CEO/shareholder's payment was *completely* unrelated to his position as a stockholder, or that it *clearly* doesn't benefit the company.

Or that's what World Wrestling Entertainment Inc.'s accountants concluded in 2022, when this came up. Vince McMahon, who was the controlling shareholder of WWE and, until July 2022, also its chairman and CEO, paid settlements to two women who accused him of various personal misconduct. He paid a total of $10.5 million of his own money to the two women, and in exchange they signed agreements (1) agreeing not to sue him or WWE and (2) agreeing not to talk about their allegations publicly. The agreements were countersigned by McMahon and WWE. McMahon, as CEO of WWE, signed the agreements on its behalf.

But apparently he didn't tell anyone else at WWE about them; you can kind of guess why. And, to be fair, it was his money: These agreements made a problem go away, and didn't cost WWE anything. Except that, for *accounting* purposes, they cost WWE $10.5 million: That's $10.5 million of expenses paid by WWE, reducing its net income, which were reimbursed by a shareholder contribution from McMahon, which did not increase its net income. So WWE's net income was $10.5 million less than it otherwise would have been.

Except that, since he didn't tell anyone, WWE accounted for it incorrectly for several years. Eventually the board and accountants found out, in 2022 (part of why he left as chairman and CEO), and WWE had to restate its financial statements to account for this expense.

And on Friday, the SEC announced a settlement with McMahon

for signing two settlement agreements, one in 2019 and one in 2022, on behalf of himself and WWE without disclosing the agreements to WWE's Board of Directors, legal department, accountants, financial reporting personnel, or auditor. Doing so circumvented WWE's system of internal accounting controls and caused material misstatements in WWE's 2018 and 2021 financial statements. ...

McMahon consented to the entry of the SEC's order finding that he violated the Securities Exchange Act by knowingly circumventing WWE's internal accounting controls and that he directly or indirectly made or caused to be made false or misleading statements to WWE's auditor. The order also finds that McMahon caused WWE's violations of the reporting and books and records provisions of the Exchange Act. Without admitting or denying the SEC's findings, McMahon agreed to cease-and-desist from violating those provisions, pay a $400,000 civil penalty, and reimburse WWE $1,330,915.90 pursuant to Section 304(a) of the Sarbanes-Oxley Act.

One problem here is that, while WWE's accountants and auditors are obviously quite familiar with the accounting literature and knew that these payments from McMahon's personal accounts actually needed to be accounted for as corporate expenses, *he* presumably didn't know that. As far as he knew, he was settling these cases without costing WWE anything, so why should he tell anyone? And so WWE's accountants didn't know about the payments, so they couldn't account for them properly. Ignorance of the law is no excuse, but honestly this is a pretty arcane piece of accounting lore to expect the average CEO to know about. Or it was. Now there's an SEC settlement, and CEOs are on notice.

I mean, technically, CEOs who are *also controlling shareholders* are on notice. If you're a manager-CEO and you own 0.5% of your company's stock, can you settle a sexual harassment demand out of your own pocket without looping in the board and accountants? Obviously I do not give advice about law, accounting, or appropriate workplace behavior in general. Maybe you can hush that up, I don't know.

"Everything is securities fraud," I like to say around here: If a company (or its CEO) does a bad thing, and doesn't disclose it immediately, and then later it comes out and the stock goes down, someone (maybe the SEC) will sue the company for securities fraud, saying that it deceived investors by covering up the bad thing. "The CEO was accused of sexual misconduct, settled the accusations quietly, didn't tell shareholders, and when it came out the stock went down" is a perfectly plausible everything-is-securities-fraud sort of case, though there are some problems with it in this case. (The stock didn't go down that much when it came out, and quickly recovered.)

But "the CEO was accused of sexual misconduct, settled the accusations quietly, didn't tell *accountants*, and therefore the *financial statements were wrong*" is a new one for me. Not everything is accounting fraud, but some surprising things are.

Conglomerates

If you think too hard about it, it's a little weird to expect investment funds to trade at their book value. If you want to buy shares in an exchange-traded fund with a net asset value of $100 per share — that is, each share of the ETF represents $100 worth of stocks or bonds or crypto or whatever, at current market prices — then you will pay something very close to $100 per share. If you want to invest in a hedge fund or buy a stake in a private equity fund, things might be harder, and you might end up getting a discount or paying a premium. But the starting point is usually net asset value, and generally when the *fund* transacts in its shares it does so at roughly NAV. When funds trade at prices very far removed from NAV, it's kind of a weird story.

Shares of *companies* don't work like this. For the most part, nobody's thesis on a biotech stock is "they own $2.40 per share worth of centrifuges, so I'll pay between $2.39 and $2.41 for the stock." Everyone understands that modern knowledge-based companies get their value from their employees and their know-how and their hard-to-account-for internally generated intellectual property, and they are valued based on expected future earnings.

You could imagine valuing an investment fund that way too. "I think this manager will generate returns of 20% per year on invested capital, and I need a 10% return on my capital, so I am willing to buy $100 of net asset value for $200." But this mostly doesn't happen. Why? Some possibilities:

1. Years of efficient markets theory (and empirical evidence) make investors skeptical that a manager of an investment fund can reliably produce above-market returns. You can buy an index fund for more or less exactly 100% of NAV; paying a multiple of NAV for some manager's fund seems like a very confident bet that she can add value.

- 2. Relatedly: There clearly *are* some investment managers with good long-term track records, but a lot of them, quite rationally, tend to charge fees that roughly equal all of the value they provide to investors. The expected total return may be high, so the expected value of the fund may be much more than NAV, but you should expect the manager to capture most of it.
- 3. Many sorts of investment funds, due to regulation or their fund documents, *have* to buy or sell shares at NAV. An open-end mutual fund will always happily sell you shares at NAV, so there's no reason for you to pay up to buy shares from someone else.
- 4. We live in a fairly transparent, efficient world, one where ETFs update their holdings and market values frequently and high-speed traders compete to arbitrage their prices; we are just *used* to knowing exactly what a fund's holdings are worth, and it is psychologically challenging to say "actually this fund is worth more than the pot of stuff in the fund." Whereas with companies there is much less transparency, and the actual value of their assets is much less obvious, so you do have to guess more about future income.

Still. If you manage an investment fund, it's probably nice for you if shares of the fund trade at a multiple of the underlying assets. That's good financing! You sell stock for $100, you buy $100 of assets, the value of your fund goes up by $200 or $400 or whatever. A dollar in your hands is worth more than a dollar, so people will be happy to give you their dollars. (In the long run this should only work if you can *actually* turn a dollar into more than a dollar, by buying stuff that goes up, but in the short run it's helpful.)

How can you achieve this? There are ways. But an important one is: You run a *regular public company*, and you *turn it into an investment fund*. People are used to valuing regular companies based on expected future earnings rather than at 100% of balance-sheet equity, and there are no restrictions on you selling shares for more than their book value.

This is, of course, the story of MicroStrategy Inc. Or I mean it's part of the story of MicroStrategy; there is a lot going on there, but I wrote last week that "this is its simplest and most important piece of financial engineering: It is economically a Bitcoin investment fund, but technically a regular public technology company." Its shares trade at a large premium to the value of the underlying pot of Bitcoins, in part because there is also a software business there that you can value based on its expected future earnings, but in larger part because, if you're doing that anyway, you might value MicroStrategy based on your expectations of its future *Bitcoin* earnings.

But it's not *just* MicroStrategy. Berkshire Hathaway Inc. trades at a premium to its book value. Berkshire is a big company with a lot of wholly owned operating subsidiaries, so its accounting book value is not quite the same thing as the net asset value of an investment fund. But loosely speaking it seems fair to say that (1) Berkshire Hathaway is "the investment fund" of Warren Buffett, (2) people think that Warren Buffett is a very good investor, and (3) therefore they put a premium on Berkshire Hathaway's holdings. But it matters for this analysis that Berkshire is not *technically* an investment fund. If it were, it would have a strong tendency to trade at NAV.

We talked a bunch last year about Bill Ackman's efforts to raise a giant closed-end fund, Pershing Square USA. It didn't work. The problem, I suggested, was that for the initial public offering of PSUS to work, investors would need to value it at a premium to its net asset value. Ackman was quite confident that they would: To him, PSUS was not an investment fund but rather a company, comparable to Berkshire Hathaway, that would be worth a lot of money because he is a good investor. People would pay up for shares of his fund, because they would expect him to bring them above-market returns. "This isn't a closed-end fund, this is Bill Ackman Incorporated," a potential investor told the Financial Times. Ackman even thought that PSUS might one day be in the S&P 500 index (as Berkshire Hathway is, and as MicroStrategy might be soon!), which is not really a possibility with a closed-end fund.

Again, this didn't work, for various reasons, but a simple one is: No, PSUS really was a closed-end fund. Whatever social and legal and technical facts make funds trade like funds applied to PSUS, so it couldn't get off the ground at a premium to net asset value.

But what if …

Billionaire investor Bill Ackman has said he is seeking to build a "modern-day Berkshire Hathaway" that takes control of companies in an attempt to transform his hedge fund into a diversified financial giant.

Ackman's Pershing Square on Monday offered to buy millions of shares it does not already own in Texas real estate developer Howard Hughes Holdings, in a deal worth more than $1bn.

The proposed purchase is part of an aggressive push by Ackman to reinvent his hedge fund, which at present buys minority stakes in listed companies, into a large financial group with the capacity to compete with powerful private equity buyers and other corporations on large takeovers.

"With apologies to Mr Buffett, [Howard Hughes] would become a modern-day Berkshire Hathaway that would acquire controlling interests in operating companies," Ackman said in an investor letter on Monday, referring to the company built by Warren Buffett.

Here's the letter proposing to buy Howard Hughes. Ackman would buy Howard Hughes, *not* through his *funds* (which currently own 37.6% of Howard Hughes), but through Pershing Square Holdco LP, "the parent company of the alternative investment manager which employs the entire Pershing Square team and manages our investment funds." (The funds "would elect to roll-over their 37.6% stake in the Company.") And then Pershing Square would be, not just a fund manager, but also a conglomerate:

While HHC [*Howard Hughes Corp., the real estate company*] would remain unchanged, HHH, the holding company to HHC, would become a diversified holding company. As a result, we would expect that HHH and its HHC subsidiary would operate largely independently with oversight from the HHH board and its new senior leadership team. With apologies to Mr. Buffett, HHH would become a modern-day Berkshire Hathaway that would acquire controlling interests in operating companies. …

HHH would invest the excess cash resources of its HHC subsidiary – with additional resources including potential cash from the Transaction and the financial resources generated from HHH's access to public company capital – in new companies and assets with the long-term goal of growing HHH's per-share intrinsic value at a high compound rate of return. …

In summary, Pershing Square's management team and resources would be contributed to HHH, and HHH would invest the excess cash and other financial resources of the Company to diversify its business through the acquisition of new operating companies and other assets. …

While Pershing Square's investment strategy has been constrained by the Pershing Square Funds'mandate which limits our investments to public securities, we have historically identified and received many inbound investment opportunities in private and controlled company situations that we are structurally, currently unable to pursue. The Transaction would empower HHH to leverage Pershing Square's transaction sourcing and execution capabilities in the private and controlled company markets and enable Pershing Square to pursue these opportunities via its substantial investment in HHH. …

HHH will become Pershing Square's long-term platform for acquiring controlling interests in public and private operating companies.

So this is not "we'll do our closed-end fund in the form of a regular public company"; this is "we'll buy controlling stakes through Howard Hughes and make it a Berkshire-like conglomerate, while also doing regular public stock investing through funds." Conglomerates, these days, have a certain appeal.

Capital solutions

I have written a few times about the formatting of the debt financing pitchbook that investment banks will show potential clients in, say, 2026. This pitchbook will, as pitchbooks do, contain market updates and other filler, but the centerpiece will be a page of indicative pricing for various financing options. In the financing pitchbook of, say, 2022, this page had two columns, one for syndicated loans and one for bonds. In 2026, I have suggested, the page will have *three* columns:

If you are a company looking to borrow money, the best user experience is something like "one person, whom we trust, shows up at our office, gives us a menu of borrowing options, lists the pros and cons of each one, and then goes and gets us the one we choose." Traditionally that person was an investment banker, and she'd show up with a pitchbook on the pros and cons of bonds and bank loans. The current situation is, I guess, that she shows up, does her pitch, leaves, and then you have appointments with six private lenders who offer alternatives. But that seems unstable. In the long run, the best user experience is probably that the investment banker adds another column, for private credit, to her pitchbook.

In some sense this is extremely obvious. Companies and private equity sponsors want to borrow money, and they come to investment banks for (1) advice on how to do that and (2) the money. Historically the main ways to borrow the money are in the syndicated loan market and the bond market, but recently there has been a ton of money available from private credit funds. It would be irresponsible for borrowers not to consider the pluses and minuses of private credit, and it is bad customer service for banks not to advise on it.

But there are dumb administrative impediments to formatting the pitchbook this way. If you are a leveraged finance banker at an investment bank, you talk a lot to your bank's salespeople who cover investors in leveraged loans and high-yield bonds, and you have a good sense of how that market works. But private credit is harder. A lot of private credit firms are designed to *disintermediate* the banks, to deal with borrowers directly rather than letting banks earn a fee. Even if your bank does cover private credit firms and try to bring them deals, the people who cover those firms are probably not the same salespeople who cover traditional bond and loan buyers. Meanwhile your bank itself might run private credit funds, or partner with managers who do, but the people doing that don't work on your floor — they work in *asset management*, because they run funds of outside money — and so you don't have the same relationship with them that you do with the bond and loan people.

Again, though, these impediments are dumb, and you can just fix them. Bloomberg's Todd Gillespie reports:

Goldman Sachs Group Inc. promoted several key executives and combined teams to form a capital solutions group, a move recognizing the growing importance of private markets and giving a path forward for more of its emerging talent. ...

The restructuring combines capabilities from the bank's financing group, financial-sponsors coverage in investment banking, and coverage of private equity firms from its fixed-income and equities trading group, according to a statement Monday. The firm's banking and asset-management arms have long worked together to offer clients private loans and investment opportunities.

The restructuring reflects Goldman's desire to "operate at the fulcrum of one of the most important structural trends taking place in finance," Chief Executive Officer David Solomon said in the statement.

(Disclosure: I used to work at Goldman, in the financing group.) The Wall Street Journal notes:

It will include the financial-sponsors team that provides investment-banking services to private-equity firms, the global financing group that finds investors to provide capital for deals and a big chunk of what the company calls its FICC financing team that makes loans tied to collateral to other lenders, including private-credit funds.

It is also creating a team within Capital Solutions that will focus on finding alternative sources of financing, especially for its corporate clients. …

The move is a bet by the firm that a large amount of its growth will come from arranging financing, both by facilitating deals through its investment-banking arm and its asset-management business and using its own money to make loans. The unit will also offer other capital-markets services, including equity underwriting.

And from Goldman's statement:

Our One Goldman Sachs approach allows us to channel the growing synergies between our clients in Global Banking & Markets (GBM) and those in Asset & Wealth Management (AWM). The combination of a preeminent corporate franchise with a globally scaled investing platform allows us to identify the most compelling opportunities for our investing clients across private credit, private equity and other assets. The ability to source these private asset opportunities provides both important capital for our banking clients and unique investments for our asset and wealth management clients.

Yes, right, you have raised money from investors, and you have managers whose job is to deploy that money by lending it to companies (and sponsors). You have bankers who cover those companies and advise them on borrowing money. Seems weird for them not to sit together.

Things happen

US Steel Rises on CNBC Report of American Rivals Mulling Bid. Mets Owner Steve Cohen Had an Even Better Year Off the Field. Big Banks Poised for Trading Windfalls From Election Volatility. Big US banks set for $31bn quarterly profit as Wall Street business booms. Argentina pays bondholders $4.3bn in key test for Javier Milei. Elite Prep Schools Flood Muni Market After Regional-Bank Tumult. Sonos CEO Leaving After Botched App Revamp Led to Customer Revolt. JPMorgan Chase Disables Employee Comments After Return-to-Office Backlash. "America's bourbon boom is over." Pastor who saw crypto project in his "dream" indicted for fraud.

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- 1. PWC says: "If a principal stockholder settles an obligation on behalf of the entity, it should be reflected as an expense in the company's financial statements with a corresponding credit to contributed (paid-in) capital, unless the stockholder's action is caused by a relationship or obligation completely unrelated to their position as a stockholder or such action clearly does not benefit the company."
- 2. Page F-45 of the 10-K/A describes the situation, and the accounting.
- 3. He changed his mind in 2023, and then resigned again in 2024; there's a lot of subsequent corporate drama that I'm glossing over here.

- 4. I assume? It would be wild if he did. I certainly didn't; this is all news to me.
- 5. I think "intrinsic value" is a term of art meaning something like "net asset value, but I'm Warren Buffett."

US law firm accused of ethics breach in Blue Cross antitrust lawsuit

reuters.com/legal/government/us-law-firm-accused-ethics-breach-blue-cross-antitrust-lawsuit-2025-01-13

Mike Scarcella

By Mike Scarcella

January 13, 202511:50 AM PSTUpdated 19 hours ago

An emergency room nurse is seen at a hospital in Escondido, California, U.S., January 18, 2018. REUTERS/Mike Blake/File Photo Purchase Licensing Rights, opens new tab

Jan 13 (Reuters) - A prominent U.S. law firm has been accused of misusing confidential information it obtained in antitrust litigation against insurance giant Blue Cross Blue Shield to woo new health care provider clients to sue the company.

The accusations against Zuckerman Spaeder were made on Friday in a U.S. court filing, opens new tab in Alabama by a group of lawyers representing hospitals and other providers in a proposed $2.8 billion settlement with Blue Cross.

The attorneys said Zuckerman Spaeder was disparaging the class action settlement while urging hospitals to bring their own lawsuits. The attorneys asked a U.S. judge to bar the Washington, D.C.-based law firm from representing providers.

“This motion is completely without basis," Zuckerman partner Cyril Smith said in a statement. "Neither I nor my firm has violated any ethical rule or standard.”

The providers’ lead attorneys, Edith Kallas and Joe Whatley, declined to comment. Blue Cross did not immediately respond to a request for comment.

Litigation-focused Zuckerman, which employs more than 60 lawyers, was among many firms that pursued antitrust claims accusing Blue Cross and affiliated entities of conspiring to limit competition, causing commercial and individual subscribers to be overcharged.

Smith was named to the five-person plaintiffs’ steering committee that helped direct the litigation in federal court in Alabama. Blue Cross agreed to a $2.7 billion settlement with the subscribers in 2020, and the U.S. Supreme Court last year upheld the accord. Blue Cross has denied any wrongdoing.

In October, Blue Cross said it would pay another $2.8 billion and implement a series of reforms to resolve claims from health providers that they were underpaid for reimbursements. That deal won preliminary approval in December.

The providers’ lawyers told Chief U.S. District Judge R. David Proctor in Birmingham on Friday that Smith was “affirmatively advertising” his prior access to confidential litigation information to drive new business to his firm, in violation of prior obligations as a class counsel for the subscriber settlement.

“Mr. Smith has already been well paid for his work for the subscribers; he should not be allowed to monetize his violations of his ethical obligations,” the attorneys told the court.

Hospitals and other providers have until March 4 to decide whether they will remain as part of the settlement class or opt out to pursue their own claims.

The case is In re: Blue Cross Blue Shield Antitrust Litigation, U.S. District Court for the Northern District of Alabama, No. 2:13-cv-20000-RDP.

Read more:

Law firms wrangle over fees from $2.7 bln Blue Cross Blue Shield settlement
Blue Cross' $2.8 bln health provider settlement wins judge's preliminary approval
Blue Cross Blue Shield settles US health provider class action for $2.8 billion
US Supreme Court rejects challenge to $2.7 bln Blue Cross settlement
Reporting by Mike Scarcella

Our Standards: The Thomson Reuters Trust Principles. , opens new tab

- LegalProminent California lawyer abused pandemic loan program, prosecutors say

  

  David Thomas

  August 16, 2024
- LegalTrump hush money sentencing delayed to September, weeks before US election

  

  Luc Cohen, Susan Heavey

  July 2, 2024

Securities Law News

Jan. 14, 2025, 2:00 AM PST

Airline ESG Ruling Imperils Work of BlackRock, 401(k) Managers

By Austin R. Ramsey

Deep Dive

- Judge Reed O'Connor slams 'incestuous' retirement industry
- Plans should analyze proxy votes, dual fiduciary relationships

A Texas federal judge has targeted "cartel-like" 401(k) investment managers in a ruling against American Airlines Group Inc. that could put nearly every plan in the country at risk of a fiduciary mismanagement lawsuit.

US District Court for the Northern District of Texas Judge Reed O'Connor said American Airlines broke federal benefits law by failing to rein in its investment manager BlackRock Inc. when it allegedly pursued a "green" shareholder activism agenda. Specific investments the workers had access to through BlackRock-managed index funds suffered as a consequence, O'Connor said.

WATCH: What is ESG, and why is it so controversial?

BlackRock joined State Street Corp. and the Vanguard Group Inc. in a May 2021 proxy vote that installed three dissident directors on the ExxonMobil Corp. board of directors, a move that O'Connor said played a role in a short-lived decline in energy stock prices affecting American's plan participants.

O'Connor's Jan. 10 ruling lays out an unconventional road map for suing US companies that have hired those same Wall Street firms to manage funds their workers use to build nest eggs. Together, BlackRock, State Street, and Vanguard oversee more than $5.4 trillion in US retirement assets, according to Bloomberg market share analytics. And all three have, at times, embraced proxy voting standards and external investment strategies with an eye toward environmental, social, and corporate governance goals.

"They're the Walmart, Target, and Amazon of index funds," said Daniel Aronowitz, president of Encore Fiduciary, an insurer that underwrites retirement plans against fiduciary liability suits. "Everybody has the same risk. By that standard, plaintiffs could sue almost every single 401(k) in the country."

The final outcome of the case against American Airlines hasn't been determined, as the court deferred ruling on any losses or remedies and sought briefings from both parties on how damages could be calculated. Benefits attorneys said O'Connor's final decision could unlock a new wave of ESG-themed 401(k) lawsuits—and motivate a higher-court appeal.

"There are those seminal cases in the retirement industry that we look back on as shaking things up, and changing how plans behave, said Josh Lichtenstein, a partner at Ropes & Gray LLP. "It's possible that in the future, attorneys are asking their clients if they have *American Airlines* procedures in place to protect against this sort of thing. "

Prudence and Loyalty

The opinion found American Airlines was disloyal but not imprudent to its worker-investors. The airliner prudently comported to prevailing market standards in the way that it oversaw BlackRock, O'Connor concluded, but those standards form an "incestuous industry comprised of powerful repeat players who rig the standard of care to escape fiduciary liability," that may be disloyal, he wrote.

Both prudence and loyalty are the measure of a fiduciary held to the strictest standards of care under the Employee Retirement Income Security Act, and it's rare for a fiduciary to be guilty of violating one without the other, according to Lichtenstein.

But the court suggested that, in this case, American Airlines could have tried to influence BlackRock directly, even if they lacked the influence to make a difference, said Sterling Perkinson, a partner at Kilpatrick Townsend & Stockton LLP.

"It's not clear what American Airlines could have done to satisfy the standard, other than divesting in the BlackRock funds," Perkinson said. "On the other hand, because selecting those funds was ruled prudent, it may have been unwise to divest."

Outside the ERISA context, large public pension managers like the Texas legislature have divested in money managers including BlackRock due to their shareholder activism. ESG has become a four-letter word on Capitol Hill, as Republican lawmakers investigate the role of "woke investing" on worker pensions.

Red state attorneys general sued the Biden administration's Department of Labor for promulgating a rule that permitted retirement plans to consider ESG factors as long as they are financially relevant.

Anti-ESG sentiment has affected Wall Street firms. BlackRock has since 2021 amended its voting policies. On the same day O'Connor's decision was released, BlackRock exited the Net-Zero Asset Managers Initiative, forcing the group to suspend activities.

"We always act independently and with a singular focus on what is in the best financial interests of our clients," a BlackRock spokesperson told Bloomberg Law. "Our only agenda is maximizing returns for our clients, consistent with their choices."

BlackRock is not a party to the lawsuit.

Lessons to Learn

O'Connor's ruling has put the retirement industry on tenterhooks, waiting for a final outcome.

"Copy-cat cases would be motivated by the dollars-and-cents in this case," said Lichtenstein. "It will determine the ramifications and the appeal."

The court's ruling relies heavily on BlackRock's motive for pursuing ESG proxy votes and even American Airlines' public statements supporting "green" pursuits. It's difficult to assess motive, especially at the pleading stage of a case, which could make it less likely that a flood of plaintiffs' firms will bring new suits following *American Airlines*, said Brantley Webb, a partner at Mayer Brown LLP.

But the case still offers important lessons for plan fiduciaries. O'Connor's emphasis on proxy voting oversight could spur retirement plan committees to take a careful look at what sort of documentation they receive from money managers about how proxy votes are determined and whether third-party service agreements accurately reflect participant interests, said Perkinson.

Part of the "incestuous" relationship O'Connor railed against in his ruling had to do with the fact that one of the members of American Airlines' fiduciary committee was also the corporate relationship manager between the airline and BlackRock.

"The court's opinion here emphasizes that plan sponsors need to be mindful of the separate roles of those particular individuals and make sure that there's adequate separation," said Webb.

Whatever the practical lessons, O'Connor's decision is "impossible to unwind" from the broader issue of ESG politics, said Lichtenstein.

"This decision is going to be less consequential if viewed just through a political lens, but, once damages have been assessed, it could motivate an entirely new class of plaintiffs."

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Southern California Edison faces lawsuits over Los Angeles wildfires

reuters.com/world/us/edison-utility-sued-over-role-equipment-la-wildfires-bloomberg-news-says-2025-01-13

Reuters

- Lawsuits claim SCE equipment started Eaton Fire
- Eaton Fire scorched 14,117 acres, nearly the size of Manhattan
- Shares of parent company down 12% amid fire-related lawsuits

Jan 13 (Reuters) - Southern California Edison, a unit of utility Edison International (EIX.N), opens new tab, was hit by multiple lawsuits on Monday claiming its electrical equipment started one of the major wildfires currently raging in the Los Angeles area, according to court filings.
The legal actions appear to be the first of hundreds, or even thousands, of claims that may arise from the wildfires that have engulfed parts of Southern California in the past week.

The lawsuits were filed in Los Angeles Superior Court on behalf of homeowners, renters, business owners and others with properties destroyed by the Eaton Fire in the Pasadena area.

At least 24 people have died since multiple fires began last Tuesday, and more than 90,000 residents have been forced to flee their homes. More than two dozen people are reported missing, authorities said.

The Eaton Fire in the foothills east of the city of Los Angeles has scorched more than 14,000 acres (57 sq km) or 22 square miles, nearly the size of Manhattan. That fire is the second most destructive inferno in California history, according to one complaint.

The suits cited multiple eyewitness accounts and images that appeared to show a fire at the base of a transmission tower owned by Southern California Edison (SCE) before powerful Santa Ana wind gusts quickly spread the flames.

Some of those witnesses shared videos of the incident on their social media accounts, including a post by Instagram user @jeffrey.ku of a video of a fire at the base of a transmission tower that he said was taken shortly after the start of the Eaton Fire.

One lawsuit also referred to Brendan Thorn, who was interviewed by local ABC News. Thorn said in the interview that he lives near Eaton Canyon and saw "knee high" fires around transmission towers shortly after the fire began.

Some of the lawsuits cite data from electrical monitoring company Whisker Lab indicating that the power grid in the area experienced multiple potentially spark-causing grid disruptions leading up to the blaze.

The lawsuits say Edison infrastructure in the area was still energized at the time of the fire. Last Wednesday, Southern California Edison said its distribution lines immediately to the west of Eaton Canyon were de-energized well before the reported start time of the fire.

Southern California Edison did not immediately respond to a Reuters request for comment on the lawsuits.

On Monday morning, its CEO said in a TV interview the company was continuing to investigate the fires and had not identified any electrical anomalies from its equipment around the time the Eaton Fire broke out.

"It's pretty typical you see those when you have a spark coming from equipment," Edison International CEO Pedro Pizarro said during a CNBC interview on Monday morning when asked about the company's investigation into the Eaton Fire.

"There could be some other mechanism here. Unfortunately we have not been able to get close to the lines yet," he said.

Edison International's shares were down nearly 12% to $57.24 on Monday. They have declined by about 27% since the fires broke out last week.

SCE, on Jan. 9 and 10, filed safety incident reports on the Eaton and Hurst fires, respectively.

SCE said it has received notices from insurance companies to preserve evidence related to the Eaton Fire, adding the fire could allegedly be attributable to its utility facilities, which prompted it to release its Jan. 9 report.
It also added that no fire agency had suggested its electric facilities were involved in the ignition of the fires.

However, a day later in the Hurst report, the company noted it had found a downed conductor in the area but did not know if the damage occurred before or after the start of the fire.\
Reporting by Vallari Srivastava, Seher Dareen in Bengaluru and Laila Kearney in New York; Additional reporting Jody Godoy and Peter Henderson in California and Jonathan Stempel in New York; Writing by Liz Hampton; Editing by Shounak Dasgupta, Aurora Ellis and Sandra Maler

Litigation
Jan. 14, 2025, 2:30 AM PST

Hawaii Climate Dispute Moves to Trial After Top Court Rejection

By Jennifer Hijazi

- Decision is a boon for localities with pending trials
- Critics lament 'unfortunate' ruling denying petitions

Justices have once again denied an oil major climate challenge, ruling to sit out on Honolulu's climate dispute and further clearing the path for climate tort cases on the verge of trial.

The US Supreme Court in a Monday short order said it won't examine a potentially blockbuster Honolulu petition that raises questions of whether state venues are equipped to tackle long-running climate misinformation lawsuits. Justices did not provide explanation, and Justice Samuel Alito didn't participate in the decision.

"With this latest denial, the fossil fuel industry's worst nightmare — having to face the overwhelming evidence of their decades of calculated climate deception — is closer than ever to becoming a reality," Center for Climate Integrity president Richard Wiles said in a statement.

The petition was brought by major oil and gas companies looking to override a decision from Hawaii's top court and settle whether federal law precludes state claims that deal with international-scope emissions.

"The Supreme Court's decision not to hear this case at this time is unfortunate because it prolongs litigation when there is general agreement that state law—in this instance, Hawaii's—cannot govern, let alone impose liability on, the manufacture, sale and promotion of energy around the world," according to Manufacturers' Accountability Project special counsel Phil Goldberg.

Road to Trial

Sunoco LP, Aloha Petroleum Ltd., Exxon Mobil Corp., and other companies urged justices to weigh in on whether state courts can take up cases that companies claim raise global issues. The question comes after Hawaii's Supreme Court greenlit a Honolulu lawsuit in October 2023, jettisoning it toward trial.

"Chevron will continue to defend against meritless state law climate litigation, which clashes with basic constitutional principles, undermines sound energy policy, and is factually meritless," according to Theodore J. Boutrous Jr. of Gibson, Dunn and Crutcher LLP, counsel for plaintiff Chevron Corp.

In its rebuttal, Honolulu said the petition wasn't ripe for US Supreme Court perusal and that justices didn't have authority to examine the Hawaii Supreme Court interlocutory decision when a circuit split doesn't exist and other appeals are still pending around the country.

Honolulu is also one of a few climate misinformation suits, including a challenge out of Massachusetts, that are steadily proceeding to trial in state courts. Monday's order means that process won't face another jurisdictional roadblock.

State-level decisions may still be years away, according to an update from analysts at ClearView Energy Partners LLC, and the road is still uncertain beyond trial.

"We would expect energy companies to appeal any adverse state court rulings in the future – the Supreme Court may still yet be the final word on the merits of the climate liability cases several years from now," according to ClearView analysts.

Honolulu's lawsuit echos others all around the country, brought by cities, states, and counties looking to hold energy companies accountable for what they say has been a coordinated attempt to deceive the public about climate change in order to better sell and extract fossil fuels.

"This is a significant day for the people of Honolulu and the rule of law," Ben Sullivan, executive director of the City and County of Honolulu's Office of Climate Change, Sustainability and Resiliency, said in a statement.

The case is Sunoco LP v. City and County of Honolulu , U.S., No. 23-947, Order 1/13/25 .

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Google can’t shake class claims it invaded minors’ privacy through ads

courthousenews.com/google-cant-shake-class-claims-it-invaded-minors-privacy-through-ads

Matt Simons

A cursor moves over Google's search engine page in Portland, Ore., on Aug. 28, 2018. (AP Photo/Don Ryan, File)

SAN JOSE, Calif. (CN) — A judge allowed on Monday for privacy claims to survive dismissal in a class action against Google filed by minors and their parents who say the tech company has been collecting data from the children’s viewing habits in violation of federal law.

In her 37-page order, U.S. Magistrate Judge Susan Van Keulen found the plaintiffs properly claimed that Google collected and held on to protected consumer data without permission.

“In sum, plaintiffs sufficiently allege that Google engaged in highly offensive conduct. The court, therefore, will not dismiss the privacy claims,” Van Keulen ruled.

The judge declined to hold responsible the owners of popular YouTube channels named in the lawsuit, like Dreamworks Animation, Cartoon Network and Hasbro, stating that their conduct as content creators wasn’t enough to “sufficiently tie” them to Google’s supposed wrongful data collection and that they had not collected any data themselves.

"Even if the court accepted that the channel owners affirmatively chose to present their viewers with behavioral advertising, it does not follow from that choice that the channel owners knew that doing so would assist Google in its data collection, let alone improper data collection," Van Keulen wrote.

Van Keulen ruled that the claims fell into three primary categories: specific privacy torts of intrusion upon seclusion, unjust enrichment claims and violations of consumer-protection statutes.

Although she admitted it was a high bar to prove, even at the pleading stage, Van Keulen found that the plaintiffs adequately claimed “highly offensive” conduct by Google with respect to privacy. The judge also noted the difference between YouTube's main website and YouTube Kids, which does not have behavioral tracking and advertising.

"Despite the existence of YouTube Kids, Google nevertheless targeted children in connection with the main YouTube website and that platform’s data tracking. The court cannot conclude as a matter of law that targeting children with a website that will collect their data does not constitute highly offensive behavior," she wrote.

The judge also sided with the plaintiffs' arguments that several content creators had notified Google of their concerns that YouTube did not comply with the Children's Online Privacy Protection Act. In their previous complaint, the plaintiffs couldn't convince the court that the company's conduct reached highly offensive levels.

In July 2024, the court previously dismissed all the plaintiffs' claims with only limited leave to amend. The defendant companies moved to dismiss once again in August 2024.

But it wasn't all wins for the plaintiffs. The judge dismissed all unjust enrichment claims in the case without leave to amend, saying the families hadn't offered any rebuttal to Google and the channel owner's defense that they were enriched at their expense.

"The court will dismiss those claims because plaintiffs do not oppose two of defendants' arguments and accordingly concede the point," she wrote.

When it came to ruling on Google's claimed violations of consumer protection statutes, the judge was more nuanced. Van Keulen allowed claims over damages to remain over consumer protection laws from Indiana, Massachusetts and New Hampshire and allowed claims for injunctive relief to remain over laws from Florida, Massachusetts, Michigan, New Hampshire and Tennessee.

The judge dismissed all other consumer-protection claims without leave to amend.

The families and their children first filed the class action against Google and the channel owners in 2019, claiming that Google violated the privacy of minors under the age of 13 by collecting personal information while they watched YouTube videos. They claim that the company used the information, which included their IP addresses, device serial numbers, geolocation data and other details, to create individual profiles of individuals to advertise more effectively to minors.

The plaintiffs also accused channel owners of "baiting" vulnerable children by using cartoons, nursery rhymes and other child-directed content to entice them to view YouTube channels to further their goals of collecting data without parental consent.

The families contend they have suffered economic loss and injury from Google's supposed intrusive behavior and are seeking damages that will be determined at trial. A hearing for the motion took place at the Robert F. Peckham Federal Building and Courthouse on Dec. 17, 2024.

Over the last five years in court, the class action has grown. In their most recent complaint, the plaintiffs brought 42 claims against the companies under the laws of 18 different states.

Although Google doesn't charge for access to YouTube, the company does use it as a revenue source. It collaborates with advertisers and the owners of popular YouTube channels to advertise on specific videos, with Google and the channel owners splitting the payments received from advertisers.

Categories / Business, Consumers, Courts, Technology

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Securities Law News

Jan. 13, 2025, 1:56 PM PST

SDNY Securities Fraud Head Joins Quinn Emanuel Amid Crypto Shift

By Roy Strom

Quinn Emanuel has hired Scott Hartman, a former Manhattan federal prosecutor, to be a partner in New York.

Hartman joins the litigation powerhouse after more than a decade in the US Attorney's Office for the Southern District of New York. He most recently was chief of its securities and commodities fraud task force, where he supervised hundreds of investigations and oversaw high-profile cases against Archegos Capital Management founder Bill Hwang and FTX cofounder Sam Bankman-Fried.

The Yale Law School graduate will be moving to private practice as New York's federal law enforcement priorities are bound to shift with President-elect Donald Trump's nomination of Sullivan & Cromwell's Jay Clayton to the top post. Hartman made headlines in November when he told a conference that SDNY prosecutors would be dialing back resources devoted to policing crypto crimes.

"I've long admired Quinn Emanuel's reputation for litigating the toughest cases with unmatched skill and creativity," Hartman said Monday in a statement. "I look forward to bringing my experience to this exceptional team and helping clients navigate their most complex legal challenges."

Hartman's move comes about a month after Coinbase Global Inc.'s chief executive Brian Armstrong slammed Milbank LLP for hiring Gurbir Grewal, the former enforcement director of the US Securities and Exchange Commission who led the agency's crackdown on digital assets. Armstrong said the crypto exchange will no longer work with firms who hire government lawyers viewed as anti-crypto.

Quinn Emanuel lawyers have previously represented Coinbase, including defending the company in a 2022 patent lawsuit in Delaware.

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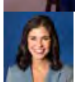
DeWine supports repeal of remaining scandal-ridden FirstEnergy legislation

news5cleveland.com/news/politics/ohio-politics/dewine-supports-repeal-of-remaining-scandal-ridden-firstenergy-legislation

Morgan Trau January 13, 2025

Ohio Gov. Mike DeWine supports repealing a remaining aspect of corrupt legislation that forces ratepayers to spend hundreds of millions per year on an out-of-state and unprofitable coal plant.



By: Morgan Trau
Posted 3:13 PM, Jan 13, 2025

and last updated 4:05 PM, Jan 13, 2025

COLUMBUS, Ohio — Ohio Gov. Mike DeWine supports repealing a remaining aspect of corrupt legislation that forces ratepayers to spend hundreds of millions per year on an out-of-state and unprofitable coal plant. This comes as the state moves forward in its case against the architects of House Bill 6, the bill that resulted from the largest bribery scheme in Ohio history.

Every month, John Makley looks at his energy bill and sighs.

"With the interest rates going up and everything is getting more expensive, it's hard to save anything these days," Makley said.

He has been trying to use less energy but is frustrated by what he calls “hidden costs” on his FirstEnergy bills.

RELATED: FirstEnergy customers furious as former CEO, VP plead not guilty in bribery scandal

"They don't break it out, it's not as itemized as you like it to be because they're trying to hide it," the Clevelander said.

Not included in the bill is a subsidy that requires ratepayers to fund two of Ohio Valley Electric Coalition's (OVEC) coal plants — one that isn't even in the state. The main beneficiaries for OVEC are American Electric Power Company (AEP), Duke Energy and AES Ohio. Still, FirstEnergy collects payment for it.

To find out which rider benefited the plants since it wasn't on the bill, I had to search through the 150-page document on FirstEnergy's website about tariffs. Still, there was no mention of OVEC under any of the riders. I reached out to the company to find out where it was — turns out it falls under a rider on page 146.

"Although certain FirstEnergy subsidiaries are considered OVEC shareholders, we do not profit from our OVEC ownership," FirstEnergy spokesperson Hannah Catlett said. "In addition, any money we collect from our Ohio customers under the 'Legacy Generation Resource Rider' related to the H.B. 6 OVEC provision is ultimately passed along to other Ohio utilities – AEP, AES and Duke – to cover their costs."

This handout was part of House Bill 6, corrupt legislation that landed former House Speaker Larry Householder in federal prison for 20 years.

Fast Facts

Back in 2019, Householder took a $61 million bribe in exchange for legislation to give FirstEnergy a $1 billion bailout, named H.B. 6, all at the expense of the taxpayers.

In March 2023, a jury found that Householder and former GOP leader Matt Borges, beyond a reasonable doubt, participated in the racketeering scheme that left four men guilty and another, Clark, dead by suicide.

RELATED: Jury finds former Ohio House Speaker Larry Householder and co-defendant Matt Borges guilty

In late June that year, federal judge Timothy Black sentenced Householder to 20 years in prison. Borges got five years. The two surviving defendants — Jeff Longstreth and Juan Cespedes — took plea agreements early on, helping the FBI, and are still awaiting their sentencing. The feds are asking for zero to six months for them.

Former FirstEnergy CEO Chuck Jones, former FirstEnergy Senior Vice President Michael Dowling and former Public Utilities Commission Chair Sam Randazzo were all hit with state bribery charges. Each pleaded not guilty during their joint arraignment in mid-February 2024. They are accused of masterminding the corruption scheme.

In April 2024, Randazzo would become the second defendant accused in the scandal to die by suicide. Neil Clark, a lobbyist accused of bribery, killed himself after pleading not guilty in 2021.

RELATED: DeWine, Husted won't comment on Randazzo's death amid corruption trial

Recently, Householder's attorney told me his team plans to use their connection to President-elect Donald Trump to try to get out of prison.

RELATED: Larry Householder using Trump 'connections' to try to get out of prison

The convicted felon was supposed to be in court Monday, but it ended up getting pushed back.

I have covered this bribery scandal extensively — from the legislation going through the Statehouse, the arrests, trial, conviction and sentencing of Householder and former GOP leader Matt Borges.

RELATED: New texts allegedly show Ohio Lt. Gov. Jon Husted leading FirstEnergy's push for House Bill 6

OVEC

And while some of the corrupt House Bill 6 was overturned, the OVEC provision still stands.

"We don't want to pay for this," Makley said.

A study commissioned by the Ohio Manufacturers' Association found that in 2024 alone, these subsidies cost ratepayers roughly $200 million. The company lost more than $100 million the same year, so consumers are paying for plants that aren't profitable.

"HB 6's OVEC subsidies currently require Ohio's residential utility customers to pay between $1.30 and $1.50 per month, depending on whether their utility is owned by AEP, AES Ohio, Duke Energy or FirstEnergy," according to the Energy News Network.

This has been happening for years, with no change from the Statehouse.

"When you're dealing with any issue in regard to utilities, any issue in regard to energy — there's always the question, 'Who pays?' and the goal, of course, is always to be as fair as as you can," DeWine told reporters last week.

I questioned the governor on "fairness."

"We're still paying for a coal plant in Indiana, the OVEC plant that we don't even know if—" I said, getting cut off.

"Yeah... I'm fine if that is certainly taken out," DeWine responded.

In the summer of 2024, I discovered and reported on more texts alleging that the governor helped push forward H.B. 6 and got a playbook from FirstEnergy on how to convince others, according to FirstEnergy executives.

RELATED: New texts show FirstEnergy allegedly working with Gov. DeWine to pass House Bill 6

That provision was never something the governor asked for, adding that the lawmakers put it into H.B. 6.

The governor isn’t the only one who told me he would be fine with reversing it. State Rep. Ron Ferguson (R-Wintersville), along with a bipartisan group of representatives, has been trying for years to repeal the entirety of H.B. 6.

Most recently, the legislation would eliminate the subsidies for the two 1950s-era plants. It would also require full repayments of revenues collected under the H.B. 6 OVEC subsidy.

RELATED: Ohio Statehouse drama continues as lawmakers attempt to repeal scandal-ridden coal plant subsidies

"A subsidy of any kind is not what [Ohioans] pay taxes for and certainly not for something that's located in another state," Ferguson said.

He listed three main reasons why it should be gone: the state shouldn't be "artificially propping up" a private company on the ratepayer's dime, it's corrupt, and one of the plants is in Indiana.

"I don't think that it's ever fair to put the taxpayer at a further disadvantage for the sake of a corporation," he continued.

Although he doesn't want to carry the legislation, he would cosponsor a bill to repeal the OVEC subsidies, he said. This would then have to be overseen by House Speaker Matt Huffman (R-Lima).

Huffman has said for years that if the plants aren't making money, the legislators should look into the legislation.

"The plants were funded based on a certain premise many, many moons ago," Huffman responded when I asked him about the poor-performing plants. "And if those premises are still true, then we should continue to do what [that]. If they're not, then we shouldn't I don't know that we've now discovered a new path forward or a new reason why they should be shut down."

Makley hopes that something will happen to lessen costs for ratepayers like him.

"Everybody's struggling these days to maintain their way of living," he said. "Anything that we could keep in our pockets is very helpful."

However, he doesn't believe that the lawmakers will actually do anything to help Ohioans. Even if the OVEC provisions were repealed, Makley believes that the lobbyists would get another provision put into law that would benefit the companies.

"It seems like they're dragging their feet on certain aspects of it, so I'm wondering — how far down this line of corruption really goes?"

Capital One sued by US CFPB for avoiding billions in interest payments

reuters.com/business/finance/capital-one-is-sued-by-us-regulator-avoiding-billions-interest-payments-2025-01-14

Jonathan Stempel

Signage is seen outside a Capital One Bank in Manhattan, New York, U.S., November 12, 2021. REUTERS/Andrew Kelly/File Photo

- CFPB says bank kept depositors in dark about higher rates
- Bank allegedly froze rate at 0.30%, other depositors got 4.35%
- Capital One disagrees with claims, says it was transparent

Jan 14 (Reuters) - Capital One (COF.N) , opens new tab was sued on Tuesday by the U.S. Consumer Financial Protection Bureau, which accused the bank of illegally cheating customers who held its flagship "high interest" savings account out of more than $2 billion in interest payments.
In a complaint filed in the Alexandria, Virginia federal court, the CFPB said Capital One promised depositors that their 360 Savings account provided one of the nation's "top," "best" and "highest" interest rates, but froze their rate at just 0.30% even as deposit rates rose nationwide.

The CFPB also said Capital One kept 360 Savings depositors in the dark when in 2019 it launched the 360 Performance Savings account, which was identical except for carrying a substantially higher interest rate that reached 4.35% in January 2024.

Capital One allegedly told branch employees not to proactively tell depositors they could switch accounts, or send depositors to the bank's account conversion unit unless they asked whether conversions were allowed.

"Banks should not be baiting people with promises they can't live up to," CFPB Director Rohit Chopra said in a statement.

The CFPB said Capital One stopped offering 360 Savings to new customers when it introduced 360 Performance Savings, which now yields 3.8% annually, according to the bank's website.

Tuesday's lawsuit seeks civil fines, restitution and other remedies for violations of the Consumer Financial Protection Act of 2010 and Truth in Savings Act.

"We are deeply disappointed to see the CFPB continue its recent pattern of filing eleventh-hour lawsuits ahead of a change in administration," Capital One said in a statement. "We strongly disagree with their claims and will vigorously defend ourselves in court."

The McLean, Virginia-based bank added that it marketed the 360 Performance Savings account widely including on national television, "with the simplest and most transparent terms in the industry," and that its 360 accounts all offer great rates.

Capital One is one of the largest U.S. banks and credit-card companies, with $353.6 billion of deposits and $486.4 billion of assets as of Sept. 30, 2024.

A July 2025 trial in private nationwide litigation over the 360 Savings accounts has been scheduled in the Alexandria court.

In a research note, TD Cowen analyst Jaret Seiberg said the CFPB lawsuit should not affect Capital One's proposed $35.3-billion purchase of credit-card rival Discover Financial Services (DFS.N), opens new tab.
The case is CFPB v. Capital One Financial Corp et al, U.S. District Court, Eastern District of Virginia, No. 25-00061.

Reporting by Jonathan Stempel in New York; Additional reporting by Michelle Price in Washington, D.C.; Editing by Louise Heavens, Chizu Nomiyama and Rod Nickel

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Binance Can't Get High Court To Review Class Cert. Decision

By **Aislinn Keely**

Law360 (January 13, 2025, 9:33 PM EST) -- The U.S. Supreme Court on Monday passed on a petition from crypto exchange Binance Holdings Ltd. and its former CEO to consider whether transactions on its platform were beyond the reach of U.S. securities laws after a Second Circuit decision found enough stateside ties to revive a suit from the exchange's users.

The high court's denial of Binance and Changpeng Zhao's petition ends a bid to overturn a **March order** from the Second Circuit that found U.S. investors could bring a proposed securities class action against the crypto exchange since their transactions were executed in the U.S. and matched on stateside servers. Binance had told the justices in its petition that the Second Circuit wrongly followed a multifactor test and rejected the "bright lines" of precedent on extraterritoriality.

Binance did not immediately respond to a request for comment Monday.

According to Binance, the Second Circuit deviated from high court precedent Morrison v. National Australia Bank Ltd. , which held that U.S. securities laws don't reach extraterritorial securities transactions occurring outside the United States. Under Morrison, the appeals court should have focused solely on the location of Binance's platform, where buy and sell orders were matched, said Binance.

But the Second Circuit couldn't pin down any physical location in the U.S. or abroad since Binance disclaims any physical location and the transactions took place on the blockchain. Without a clear location to tie the platform to, the court assessed where the plaintiffs accessed the exchange and allegations about the location of servers that store the platform's data. Binance argued that this amounted to "judicial policy-making."

"Neither Morrison nor anything in the relevant statutes suggests that Congress authorized courts to apply U.S. law wherever they perceive an international regulatory void that needs filling, judicially designating the United States as the global regulator of last resort," said Binance's petition.

After Binance filed its petition in September, the investors hit back that the matter didn't merit a Supreme Court review since the core of its disagreement appeared to be whether the investors adequately showed that the platform used stateside servers.

"[T]he errors asserted in the petition represent, at most, nothing more than petitioners' belief that the Second Circuit incorrectly assessed the sufficiency of respondents' factual allegations regarding the domestic location of the relevant Binance servers," said the investors. "That provides no sound basis for this court's review."

The group of token buyers led by Eric Lee brought their suit against Binance and Zhao in 2020, alleging the platform offered and sold billions of dollars' worth of unregistered securities. By 2022, a New York federal judge **dismissed** the case on the grounds that the buyers filed their claims too late and that Binance and Zhao were located outside the U.S. and therefore outside its securities laws. The Second Circuit went on to overturn that decision and restart the suit in March 2024.

Counsel for the investors Jordan Goldstein of Selendy Gay PLLC celebrated the denial of the petition in a statement to Law360.

"On behalf of investors who traded on Binance, we are pleased that the U.S. Supreme Court has denied defendants' recent attempt to overturn a decision by a unanimous Second Circuit panel permitting this action to proceed," said Goldstein. "We look forward to prosecuting this class action against Binance and its founder Changpeng Zhao."

Binance and Zhao **continue** to face claims from the U.S. Securities and Exchange Commission, even after the platform and its former leader settled with federal prosecutors and other regulators in a November 2023 $4.3 billion **deal**. That resolution saw Zhao step down and serve a brief prison sentence, while Binance copped to alleged money laundering, bank fraud and sanctions violations. The SEC was not part of the deal and has continued to press its case.

The investors are represented by Jordan Goldstein and David Coon of Selendy Gay PLLC.

Binance and Zhao are represented by James Rouhandeh, Daniel Schwartz and Marie Killmond of Davis Polk & Wardwell LLP.

The case is Binance et al., Petitioners v. JD Anderson et al., case number 24-336, before the U.S. Supreme Court. The originating case is Lee et al. v. Binance et al., case number 22-972, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Bruce Goldman.

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New Pirate Loot Claims Lodged In Chancery

By **Jeff Montgomery**

Law360 (January 10, 2025, 8:30 PM EST) -- A Flying Dutchman of a legal wrangle over a treasure-laden, sunken pirate ship off Cape Cod, Massachusetts, surfaced again Friday in Delaware's Court of Chancery in an investor suit demanding books and records on a decades-long salvage operation and alleging possible fraudulent conveyances by "rogue fiduciaries."

The suit, filed by a stockholder of Maritime Explorations Inc., relied in part on a decision by Vice Chancellor Nathan A. Cook in mid-May 2024 that ordered the unwinding of a 2018 merger between the same pirate treasure hunting and salvage company and an asset-holding affiliate.

MEI investor trustee Vincent Murphy's complaint on Friday focused on some of the same figures at the center of the earlier suit, filed in 2019, including Barry L. Clifford, a well-known underwater explorer involved in the 1982 discovery of the wreck of the Whydah Galley. The ship sank off Cape Cod in 1717 while commanded by the pirate Sam Bellamy.

Murphy's books and records complaint fired off a broadside of potential breaches of fiduciary duty by members of MEI's board or senior managers, including questions regarding use of assets and income, concerns regarding potential conflicts, and corporate waste and mismanagement, as well as allegations of possible corporate wrongdoing and usurpation of corporate opportunities.

Conduct described in the prior suit, filed by MEI minority investor Paul S. Buddenhagen, "is not only reprehensible" but could trigger action "to recover the fraudulent conveyances of company assets and income that rogue fiduciaries have ferreted out for themselves," Murphy's suit said.

MEI, the Murphy complaint said, has engaged in "gamesmanship" in response to regular investor books and records demands, purportedly refusing to execute a standard confidentiality agreement and being "elusive regarding when and what documents it will produce."

Buddenhagen argued in the 2019 case that Clifford and another MEI director breached their fiduciary duty to the company over many years by issuing to themselves nearly all the voting and economic power of MEI through a series of self-interested share transactions.

The deals revolved around the Whydah, its thousands of coins that are said to be worth hundreds of millions of dollars, and its potential tourism value, as well as what the suit described as self-interested decisions by Clifford and his allies since the ship's discovery.

Among other claims, Murphy's suit said Clifford appeared to have usurped a corporate opportunity to create a Las Vegas exhibit deal that could attract 300,000 visitors a year, "each paying approximately $30 plus merchandise sales." But Clifford also indicated, according to the earlier suit, that he preferred to wait until that suit ended.

The original Whydah joint venture was allegedly sidelined in favor of running the profit-making venture through Historic Shipwrecks Inc., controlled by Clifford and another director, Robert T. Lazier. Most of the business was said to have been diverted through three other companies controlled by the directors, including Clifford Explorations LLC.

Also alleged were excessive compensation and payment of director personal expenses, as well as payment of monthly draws of $20,000 each by Clifford and his son, Brandon, in addition to bonuses and other compensation and use of funds to pay Clifford's personal debts.

"Moreover, it appears that some of the company assets, the Whydah coins, have been sold and proceeds were thereafter 'donated' to entities controlled by Clifford's family, such as the Center of Historic Shipwrecks," Friday's complaint said.

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

Murphy was appointed trustee of the Atlantic Trust, formed by Bruce Heafitz, who invested in MEI and received equity in exchange in 1983, which was in turn transferred to the trust, with Murphy currently the record holder of nearly 3.2 million shares of the company through the trust and more than 56,000 in his own name.

According to the new complaint, which relies on details that emerged from Vice Chancellor Cook's findings in Buddenhagen, Murphy is seeking details on company excavation records and Whydah discoveries, inventories and company assets. Also sought are details on assets conveyed to other entities, diverted income and proceeds, executive compensation, corporate waste and usurpation of corporate opportunities.

The suit alleged that requests for information were held up by an MEI demand for a confidentiality agreement driven in part by concern that information would be shared with Heafitz, "who allegedly possesses interests that are adverse" to MEI's.

Vice Chancellor Cook found in part in his opinion last year that "it is frankly difficult to think of even a single act defendants took that might suggest they intended anything other than for the [merger] process here to be manifestly unfair." Methods included manipulating corporate records by "writing, rewriting and backdating many drafts" of board minutes spanning a decade, the vice chancellor said.

Clifford's 1982 discovery of the Whydah was made through a company called Maritime Underwater Surveys Inc., which subsequently assigned its rights to MEI. In the years that followed, Clifford allegedly operated MEI and affiliated companies and mergers without regard to minority shareholder interests.

One of the MEI transactions at issue in the Buddenhagen suit included a merger with an entity called Whydah International Inc., with MEI common stockholders receiving "new share certificates in what was dubbed 'new MEI,' reflecting that a reverse stock split reduced each of their holdings to 1/100th of premerger amounts."

A $3.25 million fee application for Buddenhagen's counsel, opposed by Clifford, remains pending before Vice Chancellor Cook, according to court filings.

Murphy is represented by Amit U. Vyas of Hudson Jones Jaywork & Fisher LLC.

Clifford and the estate of Lazier are represented by Samuel T. Hirzel and Gillian L. Andrews of Heyman Enerio Gattusso & Hirzel LLP.

MEI is represented by Peter B. Ladig of Bayard PA.

The case is Vincent Murphy v. Maritime Explorations Inc., case number 2025-0031, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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Truth Social SPAC Ex-CEO Seeks Del. Suit Toss Or Freeze

By **Jeff Montgomery**

Law360 (January 13, 2025, 5:52 PM EST) -- The former manager of the blank check company that sponsored a deal to take now President-elect Donald Trump's social media platform public heads into a pivotal Delaware Court of Chancery hearing Wednesday, seeking to freeze or scuttle a suit claiming that he and others secretly diverted millions of shares from co-investors.

The hearing before Vice Chancellor Lori W. Will is expected to focus on a call to dismiss or maintain the status quo for a 10-count suit accusing former ARC Global Investments II LLC managing member Patrick Orlando and others of being part of a scheme to funnel equity without authority from ARC to two Florida companies and a Cayman Islands entity.

More than 40 founding members of ARC filed an amended version of the suit on Dec. 6 alleging "intentional and egregious" theft of stock by Orlando, who also was CEO of Digital World Acquisition Company, the special purpose acquisition company for Trump Media & Technology Group Corp.

Also named in the suit were Benessere Investment Group LLC, accused of coordinating and managing ARC's activities with Orlando; Franlu LLC, accused of working with ARC, Orlando and others to convert public investor shares to private use; and Belsize Ventures Ltd., accused of similar share diversions. Orlando allegedly controlled all three.

In a brief filed on Jan. 3, attorneys for Orlando and ARC accused those who sued in Delaware of seeking a Chancery order that would leapfrog prior findings by a Miami-Dade County Circuit Court judge in a separate suit filed by Orlando that Orlando's distribution of stock to ARC members was in good faith. The Florida decision was described by Orlando's attorneys in Delaware as having "gutted" the Chancery claims.

"If this attempt at forum shopping and collaterally attacking the Florida court were not enough, plaintiffs asked this court to jump ahead of the Florida court and engage in hyper-expedited litigation. They did this without any reference to the Florida proceedings, which were well underway," attorneys for Orlando and ARC argued.

ARC sponsored "blank check" company Digital World Acquisition Corp., which carried Trump Media & Technology Group Corp. via a reverse public merger into public listing under the symbol DJT. The Chancery suit accuses Orlando of funneling equity without authority from ARC Global Investments II LLC to two Florida companies and a Cayman Islands entity.

"ARC is diverting shares to Orlando and his inner circle — including to Belsize in the Cayman Islands — and liquidating the remaining shares to fund Orlando's own legal defense efforts and other personal expenses on a commingled basis with ARC's own assets," the amended complaint filed this month said.

"ARC has also revealed that it liquidated virtually all of the TMTG shares it was required to distribute to [plaintiffs] — at fire sale prices," the complaint added, "leaving insufficient cash on hand to satisfy plaintiffs' claims."

In the background, meanwhile, is a Securities and Exchange Commission suit filed on July 17, 2024, accusing Orlando of fraudulent conduct and making materially false and misleading statements and omissions as CEO and chairman of DWAC.

The SEC accused Orlando of violating the Exchange Act and Securities Act by falsely claiming early on that DWAC was in search of a merger partner when he allegedly had been in discussions with and targeting Trump Media & Technology Group for months.

In the Court of Chancery case, stockholders argued that ARC and Orlando had no lawful basis for withholding their shares following the March 25, 2024, deal closing. They also acknowledged alarm after reports in November that only 45,000 shares remain available from an 8.1 million share founders' stake now at the center of the litigation.

The Chancery suit accused Orlando of enriching himself through a series of lavish purchases, including a new $6 million home in Miami, from the proceeds of TMTG stock that he misappropriated. Those transfers and liquidations allegedly involved shares owed to the investors and were said to have jeopardized ARC's ability to satisfy its obligations.

Stockholder answering briefs in opposition to Orlando and the other parties motions to dismiss or stay the Chancery suit remained under seal late Monday.

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

ACRA Assets SA and the other investors are represented by Kevin M. Coen and Jacob M. Perrone of Morris Nichols Arsht & Tunnell LLP and Bradley J. Bondi, D. Scott Carlton, Ronald Anguas and Nicholas J. Griepsma of Paul Hastings LLP.

ARC Global Investments II LLC and Patrick Orlando are represented by Matthew D. Perri, Daniel E. Kaprow, Elizabeth J. Freud and Kevin M. Kidwell of Richards Layton & Finger PA.

The case is ACRA Assets SA et al. v. ARC Global Investments II LLC et al., case number 2024-1141, in the Court of Chancery of the State of Delaware.

--Additional reporting by Dorothy Atkins. Editing by Peter Rozovsky.

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Feds Say Par Funding Fraud Caused $404M In Losses

By **P.J. D'Annunzio**

Law360 (January 13, 2025, 10:18 PM EST) -- Prosecutors and defense attorneys spent hours in a marathon hearing Monday trying to convince a Pennsylvania judge of how much financial damage they thought the principals of the Par Funding merchant lending business did by allegedly fleecing investors, with the government pushing for a $404 million figure.

The calculations were the focus of the proceedings in Philadelphia concerning the prosecution of brothers Joseph and James **LaForte** and Joseph Cole **Barleta**, the men who ran Par Funding. All three have pled guilty to their roles in raking in $100 million of alleged ill-gotten gains from investors who put money into their cash advance business.

The prosecution and counsel for the defendants offered figures that varied by tens of millions of dollars. While the government quoted the $404 million figure, defense counsel for Barleta and the LaFortes floated several numbers that they said took into account payments already made to investors, like $260 million or $227 million.

The number would matter when it came to sentencing the men to restitution payments, said U.S. District Judge Mark Kearney, who told the parties he would take their arguments under advisement at the conclusion of the hearing Monday night.

The court heard testimony from several expert witnesses who weighed in on Par Funding's financial condition and what it would take to repay the investors, although likely not to the full extent of what they lost.

"Nobody's getting any more than, at most, the principal they put in," Assistant U.S. Attorney Matthew Newcomer told the court. "They probably won't even get that."

During the eight-hour-long hearing, the parties went over vast spreadsheets detailing the money put into Par Funding by its investors and the figures the company paid back out. The court heard from a forensic accountant who reviewed the company's ledgers, the CEO of a financial consulting firm that worked with the receiver managing Par Funding's assets and an Internal Revenue Service special agent who investigated the company.

The trio are alleged to have bilked investors out of hundreds of millions dollars over a four-year period from 2016 to 2020 by inflating the success and viability of Par Funding, as well as its overall value. They're also accused of using strong-arm tactics to collect on loans issued to financially struggling businesses, which included threatening violence against debtors to get them to pay, according to a series of indictments.

Additionally, prosecutors said the LaFortes planned an attack that injured prominent Philadelphia attorney Gaetan Alfano, who represented the receiver in a U.S. Securities and Exchange Commission case against them.

The defendants were first indicted in May 2023 and were hit with two superseding indictments as the case progressed. Barleta and the LaFortes admitted to their role in the scheme last fall as part of a deal with the government. They are scheduled to be sentenced in February and March.

Barleta's agreement with the government says prosecutors will not seek more than an eight-year prison term. Joseph LaForte faces a possible 13.5 to 15.5 years in prison, while James LaForte faces a possible 9 to 11.5 years, according to their plea agreements.

The government is represented by Patrick Joseph Murray and Matthew Todd Newcomer of the U.S. Attorney's Office for the Eastern District of Pennsylvania.

Barleta is represented by Margaret M. Grasso of the Law Office of Margaret M. Grasso and Coley O. Reynolds of Reynolds Firm LLC

Joseph LaForte is represented by Joseph R. Corozzo of Rubinstein & Corozzo LLP.

James LaForte is represented by Thomas Mirigliano of The Law Office of Thomas S. Mirigliano Esq. PC

The case is USA v. LaForte et al., case number 2:23-cr-00198, in U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Rich Mills.

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Fla. Court OKs $6B Settlement Data Release In 3M's UK Case

By **David Minsky**

Law360 (January 13, 2025, 9:38 PM EST) -- A Florida federal court has authorized the release of certain information related to 3M's $6 billion multidistrict litigation settlement ending claims over allegedly faulty combat earplugs to a London arbitral tribunal, which was convened to determine if insurer AIG Europe Ltd. is refusing to pay its share of the deal.

U.S. District Judge M. Casey Rodgers issued an **order** Friday in the Northern District of Florida partially granting a motion by 3M that authorizes the settlement administrator to release information that includes claimant payment amounts and settlement allocation methodologies to 3M and subsidiary Aearo Technologies in the London proceeding against AIG Europe, one of their insurers.

Additionally, Judge Rodgers' order authorizes the settlement administrator, listed as BrownGreer PLC, to release protected material to "outside counsel, professional vendors, mediators, court personnel, party employees, experts, consultants, and witnesses only as necessary, and with the requirement that those third parties maintain the confidentiality of such information consistent with the terms" of a previous arbitration order.

"With respect to the settlement information identified above, any such documents that identify settlement awards and points values assigned to individual claimants (who shall not be identified by name) shall be disclosed only to those individual counsel and individual expert witnesses who have a need to review such information and who have signed [an agreement] to the arbitration protective order," Judge Rodgers said. "Any expert reports, summaries, or analyses prepared based on that data and disclosed to other parties as permitted by the arbitration protective order shall not disclose the amount paid to any individual claimant and shall remain confidential information."

In August 2023, 3M reached a $6 billion deal to end more than 260,000 claims that its combat earplugs failed to protect the hearing of military service members and veterans, making it the largest multidistrict litigation in U.S. history.

3M and Aearo informed the court of the arbitration last year, saying that AIR and other insurers "broke their promise" to cover liabilities and litigation costs from the hundreds of thousands of earplug claims.

The companies asked the court to authorize BrownGreer to turn over settlement information to them and AIG Europe, adding that the London tribunal ordered them to, according a brief filed by 3M in Pensacola federal court in November.

Among the information authorized in Judge Rodgers' order, the release includes: a summary chart reflecting the amount of gross compensation assigned to each participating claimant, the number of Expedited Payment Program claimants and the number of claimants participating in the Deferred Payment Program, in addition to two other categories.

The judge prohibited "any expert reports, summaries or analyses" based on the settlement data from including amounts paid to individuals.

Costs of providing the information will be equally divided between 3M/Aearo and AIG, Judge Rodgers ordered.

Judge Rodgers, however, denied 3M's motion in part, including requests for the "number of DPP claimants who have received points assignments" and "points value assigned to each DPP claimant (if such categories exist)," adding that no DPP claimants were assigned points values.

In addition, Judge Rodgers' denied 3M's request for the methodology determining compensation at "each level of the Combat Arms Settlement," according to the order, saying "there has not been a sufficient showing that such information is relevant and necessary to any issue in the arbitration."

"If AIG contends that information is relevant or necessary, AIG must appear in this court and submit briefing and argument to this court," Judge Rodgers said.

Representatives for the plaintiffs, 3M and AIG did not immediately respond to requests for comment Monday.

The plaintiffs are represented by lead counsel Bryan F. Aylstock of Aylstock Witkin Kreis & Overholtz PLLC, and co-lead counsel Shelley Hutson of Clark Love & Hutson GP and Christopher A. Seeger of Seeger Weiss LLP.

3M Co. and other defendant entities are represented by Charles F. Beall Jr. and Larry Hill of Moore Hill & Westmoreland PA.

Case and counsel information for the London arbitration was not immediately available Monday.

The case is In Re: 3M Combat Arms Earplug Products, case number 3:19-md-02885, in the U.S. District Court for the Northern District of Florida.

--Additional reporting by Caroline Simson, Dorothy Atkins and Emily Field. Editing by Rich Mills.

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State Farm, Insurance Association Escape Data-Sharing Suit

By **Elizabeth Daley**

Law360 (January 13, 2025, 7:44 PM EST) -- An Illinois federal judge dismissed a proposed class action complaint Monday accusing State Farm of improperly sharing personal health information with a consortium of other insurers that allowed them to raise premiums and deny coverage industrywide, finding the conduct wasn't prohibited under the Illinois Insurance Code.

In her **memorandum opinion and order,** U.S. District Judge LaShonda A. Hunt wrote that she agreed with defendants State Farm and Insurance Services Office Inc. that the "plaintiffs' claims are barred by the immunity provision in the Illinois Insurance Code and insufficiently alleged under common law."

Judge Hunt wrote that the plaintiffs, Mary Brown, Andy Velazquez, William Midgett and Diane Coughlin, were all people who had been involved in accidents with drivers insured by State Farm. The plaintiffs had submitted personal health information to State Farm so the insurer could evaluate their claims and alleged injuries, the judge said. However, their complaint said the insurer wrongly retained their information and used it "for developing rates and underwriting," the judge summarized.

The plaintiffs also accused the insurer of submitting reports containing their health data to ISO. The entity is described by the judge as "an association of insurance companies" that analyzes claims information to sell products, services and data to "subscribing insurers."

ISO is alleged by the plaintiffs to have used their health data to sell products and services to subscribers, "including insurers, third-party claim administrators, and self-insureds," the judge summarized.

The plaintiffs' five-count complaint accused State Farm and ISO of retaining and disclosing their protected health information in violation of their right to privacy under Illinois law, and asserted claims of negligence, unjust enrichment, public disclosure of private facts, intrusion upon seclusion and negligence per se, the judge said.

The judge found that most of the plaintiffs' arguments were nonstarters. She wrote that nothing in the state's insurance code limits protections conferred upon insurers "to disclosures pertaining to adjudication of a claim at issue."

Instead, insurers are given immunity "from negligence and invasion of privacy claims to the extent that they disclosed information to insurance institution and/or insurance support organization for the purpose of fighting fraud and facilitating insurance transactions," the judge wrote.

This was how the disclosures were characterized by the defendants, the judge said.

As a result, the judge said the defendants argued that the plaintiffs couldn't bring claims that were "barred by the immunity provision in the Illinois Insurance Code and insufficiently alleged under common law." Additionally, the plaintiffs' allegations that their information had been publicly disclosed also failed, the judge said. "ISO's disclosure to a limited membership does not constitute a disclosure to the public at large" she wrote.

Because the plaintiffs' negligence and invasion of privacy claims failed, the judge said so too did their unjust enrichment claims, because they couldn't be brought alone.

Agreeing with the defendants' arguments, she dismissed the plaintiffs' proposed class action complaint without prejudice, affording them the opportunity to amend their complaint by Feb. 7.

The judge said there was only one exception preventing the disclosure of information by insurers. She wrote that "where a party discloses or furnishes 'false information with malice or willful intent to injure any person," it is prohibited. However, the judge said that nowhere in the complaint did the plaintiffs "allege any such scienter by defendants." Nor did they make arguments regarding the reasonableness of the defendants' alleged disclosures, "particularly in light of a state statutory scheme that expressly authorizes the sharing of this type of information."

Representatives of the plaintiffs declined to comment. Representatives of State Farm and ISO did not immediately respond to requests for comments Monday.

The plaintiffs are represented by Amanda Kate Klevorn, Claire Bosarge Curwick, Korey Arthur Nelson and Natalie Rose Earles of Burns Charest LLP; Daniel S. Kirschner and William T Gibbs of Corboy & Demetrio; and Martin Woodward of Kitner Woodward PLLC.

State Farm is represented by Cari Katrice Dawson and Tiffany L Powers of Alston & Bird LLP and Frederick John Sudekum III of Sudekum Cassidy & Shulruff Chtd.

Insurance Services Office Inc. is represented by Christopher Rojao of McCarter & English LLP and Michael Rosenberg and Scott Tadashi Sakiyama of Orrick Herrington & Sutcliffe LLP.

The case is Brown et al. v. State Farm Mutual Automobile Insurance Co. et al., case number 1:23-cv-06065, in the U.S. District Court for the Northern District of Illinois.

--Editing by Bruce Goldman.