

Class Action Settlements Totaled \$40B+ Three Years in a Row: 'We're in a New Era'

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Amanda Bronstad

What You Need to Know

- The largest settlement in the report was 3M's PFAS deal worth at least \$10.3 billion to thousands of public drinking water providers.
- Class action settlements in 2024 were the third-highest value tallied in the past two decades, according to the report.
- Data breach and privacy class actions, plus lawsuits over "forever chemicals," are on the rise.

The total dollar value of class action and mass tort settlements dropped in 2024 but continued to surpass \$40 billion for the third year in a row.

That's according to the Duane Morris Class Action Review 2025, which calculated total settlements at \$42 billion last year, down from \$51.4 billion in 2023 and \$66 billion in 2022. The decrease comes as many of the largest cases, such as opioids and "forever chemicals," wrapped up last year, said Duane Morris partner Gerald Maatman, co-author of the 650-page report, which analyzed about 1,440 cases.

But 2024 totals, which also included big settlements in antitrust and securities class actions, as well as attorney general actions, are still the third-highest value tallied in the past two decades, according to the report.

"For the last three years, the plaintiffs bar has done very, very well at monetizing their cases at high levels," Maatman said. "We're in a new era when it comes to the height of the risk companies are looking at."

Paul Napoli, co-lead class counsel in the report's largest settlement of 2024, the PFAS agreement with 3M, gave a different answer to the trend: the dollars jumped two years ago as companies reemerged from the COVID-19 pandemic.

"I did notice during COVID our settlements went up sharply, and I think part of that was because companies were looking to increase their bottom line and fix their balance sheets by removing some pendant liabilities, and a lot of those liabilities were lawsuits," Napoli said. "So using the cash, they had to settle cases."

Top class action settlements by year. Credit: Duane Morris Class Action Review 2025

The report, released this month, also highlighted several other trends, including the proliferation of class actions brought over data breaches and privacy violations, and cases involving PFAS, or perfluoralkyl and polyfluoralkyl substances, which are “forever chemicals” found in drinking water, packaging and several products.

PFAS generated the largest class action settlement in 2024: 3M’s deal worth at least \$10.3 billion to thousands of public drinking water providers. The settlement, as well as three other PFAS deals last year with DuPont, Tyco and BASF, which collectively totaled more than \$2.25 billion, was part of the multidistrict litigation focused on aqueous film-forming foam used in firefighting.

Napoli, of Napoli Shkolnik in Santurce, Puerto Rico, said the 3M settlement was “just scratching the surface.”

“PFAS cases are here for a long time,” he said. “While the water providers have been resolved, there are still airports, water treatment facilities, and other municipal properties such as fire hazards. The U.S. government has significant liability for the 700 military sites it’s contaminated.”

Data breach cases also doubled since 2022. Maatman said plaintiffs are avoiding standing challenges in federal courts by filing more data breach class actions in state courts. One of the fastest areas of growth in class action litigation, data breach filings totaled 1,488 in 2024, compared with 1,320 in 2023 and 604 in 2022, the report concluded. Some included the \$30 million 23andMe class action settlement and Marriott’s \$52 million agreement with the Federal Trade Commission and 49 state attorneys general.

“There are ways to plead those lawsuits, ways to settle those lawsuits, and the plaintiffs bar is getting good at it,” he said.

Privacy cases also shifted away from the Illinois Biometric Information Privacy Act, which was amended last year to assess statutory damages per person, rather than per scan, reducing the potential damages amount. More privacy cases, however, are focused on “adtech,” where companies use software on websites to track consumer browsing data, used by third parties for advertising purposes, Maatman said.

Other key trends:

- The report found that, although judges in 2024 issued fewer decisions on class certification, plaintiffs won at a more consistent rate. Courts granted class certification at a rate of 63%, down from 72% in 2023 and 75% in 2022, but narrowed the scope of success rates based

on the type of case.

- Plaintiffs are getting more successful at using the transportation worker exemption to the Federal Arbitration Act and the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act to get around arbitration clauses. As a result, the report found, the success rate for compelling arbitration dropped to 54% last year from 66% in 2023. Plaintiffs lawyers are doing a better job of arguing their clients didn't sign or were unaware of the agreement, Maatman said. "And employers are not doing as good a job of documenting they handed out an arbitration agreement to its workforce, or you entered the website of the company as a consumer or a visitor, and the consent forms that contained the arbitration agreement weren't clear or conspicuous or easy to find."

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Trending

New Suit - Patent

McCarter & English and Latham & Watkins filed a patent infringement lawsuit on Jan. 17 in Delaware District Court on behalf of Eagle Pharmaceuticals Inc. The suit, which takes aim at Slayback Pharma, asserts a single patent pertaining to a leukemia medication. The suit contends that the defendant's abbreviated new drug application, which seeks FDA approval for the marketing and sale of a generic version of the plaintiff's product, will violate the plaintiff's asserted patent. Counsel have not yet appeared for the defendant. The case is 1:25-cv-00075, Eagle Pharmaceuticals, Inc. v. Slayback Pharma LLC.

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Regeneron Executives Sued for Medicare Overbilling, Stock Drop

By Gillian R. Brassil

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-00459](#) (Bloomberg Law subscription)

Regeneron Pharmaceuticals Inc.'s executives and board members overstated its key eye treatment's average selling price, prompting a Department of Justice enforcement action and exposing the drugmaker to a proposed class action, a shareholder derivative lawsuit filed Thursday says.

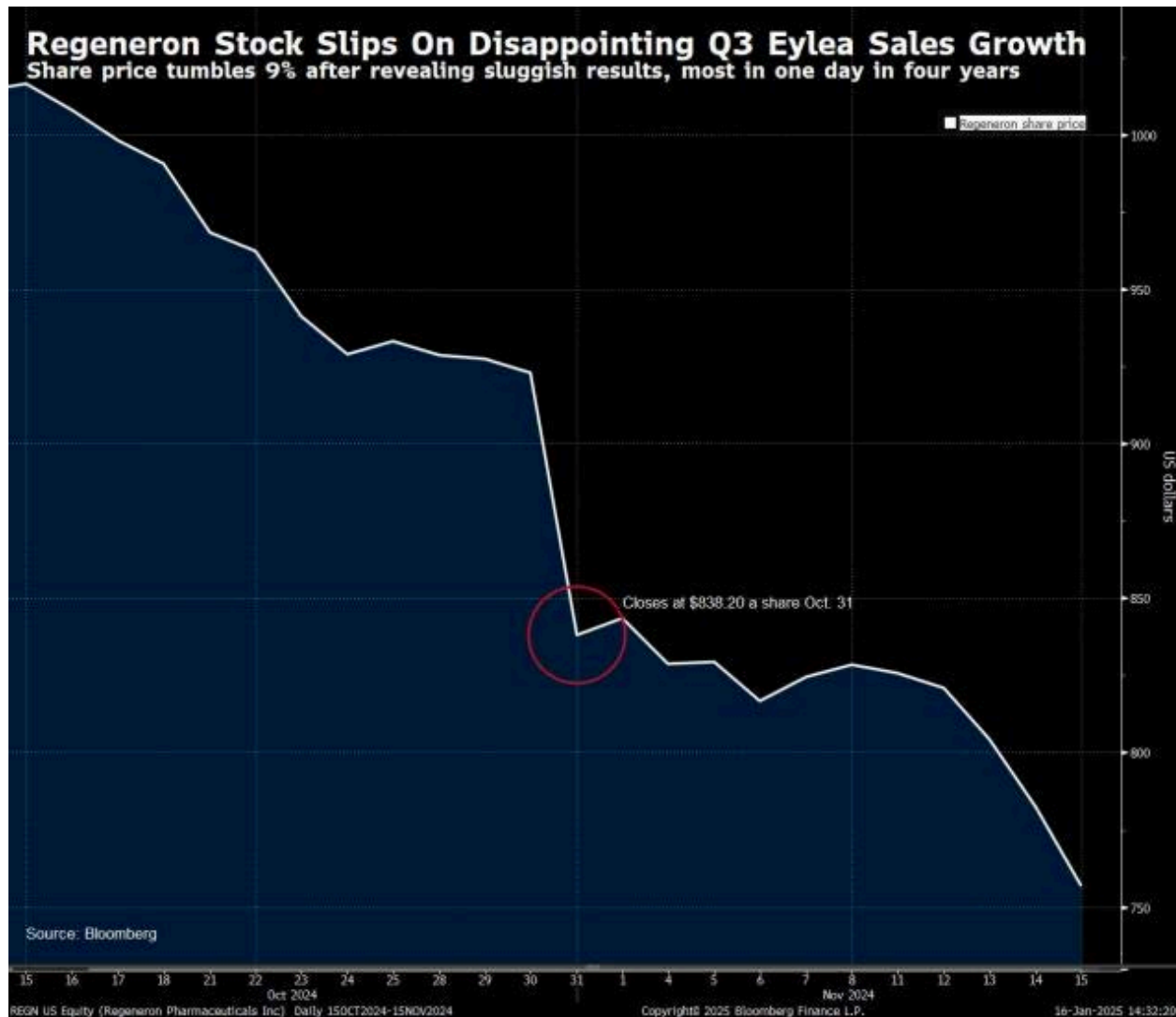
The company's reimbursing of credit processing card fees for drug distributors should've been deducted as a price concession when reporting Eylea's ASP to the Centers for Medicare and Medicaid Services, said shareholder Nathan C. Silva in the complaint filed in the US District Court for the Southern District of New York.

By not doing so, executives led Regeneron to be sued by the DOJ for purportedly overstating its ASP and overbilling Medicare and Medicaid. Covering hundreds of millions of dollars in these costs gave Eylea, an injection targeting age-related vision degeneration, and a high-dose version of it an advantage over competitor treatments, the DOJ said in its complaint.

Eylea sales are key for Regeneron and largely depend on third-party reimbursement, such as through Medicare and Medicaid, Silva said. The rate of reimbursement is based on ASP reported to CMS, he said, and is supposed to be the net price accounting for concessions.

The DOJ said it had filed a complaint against Regeneron under the False Claims Act in April. Share prices slid more than 3% over the next two trading days, closing at \$904.70 on April 12, the complaint said.

Then Regeneron revealed disappointing Eylea sales growth in the third fiscal quarter of 2024, reporting on Oct. 31 it was "adversely impacted by a lower net selling price compared to the third quarter of 2023," Silva said. The stock price fell more than 9%, closing at \$838.20 per share that day, the complaint said—its largest single-day dip since March 2020, according to data compiled by Bloomberg.



Another investor filed a parallel proposed class action against Regeneron, two top executives, and one former officer in the SDNY last week.

Silva says current and former officers breached federal securities law and their fiduciary duties from at least Nov. 2, 2023, to Oct. 31, 2024, among other claims. His requested relief includes corporate reform and for Regeneron to be awarded damages, disgorgement, or restitution.

Regeneron didn't immediately respond to an email seeking comment.

Rigrodsky Law PA represents Silva.

The case is Silva v. Schleifer, S.D.N.Y., No. 1:25-cv-00459, complaint filed 1/16/25.

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Seritage Leaders Sued Over Accounting Error After Deal Approval

By Gillian R. Brassil

- **COURT:** D. Md.
- **TRACK DOCKET:** [No. 1:25-cv-00152](#) (Bloomberg Law subscription)

Seritage Growth Properties executives and trustees overstated the value of its assets before moving to sell and distribute proceeds to investors, leading to the company's largest stock slide in four years and exposing it to a proposed class action, a shareholder lawsuit says.

The owner of former Sears Holding Corp. properties had to reduce its asset portfolio's gross value by at least \$325 million after shareholders approved its plan of sale, said the complaint filed by stockholder Paul Sidhu in the US District Court for the District of Maryland on Wednesday. He asserts wrongdoing from when officers filed a preliminary proxy statement July 7, 2022 through May 10, 2024.

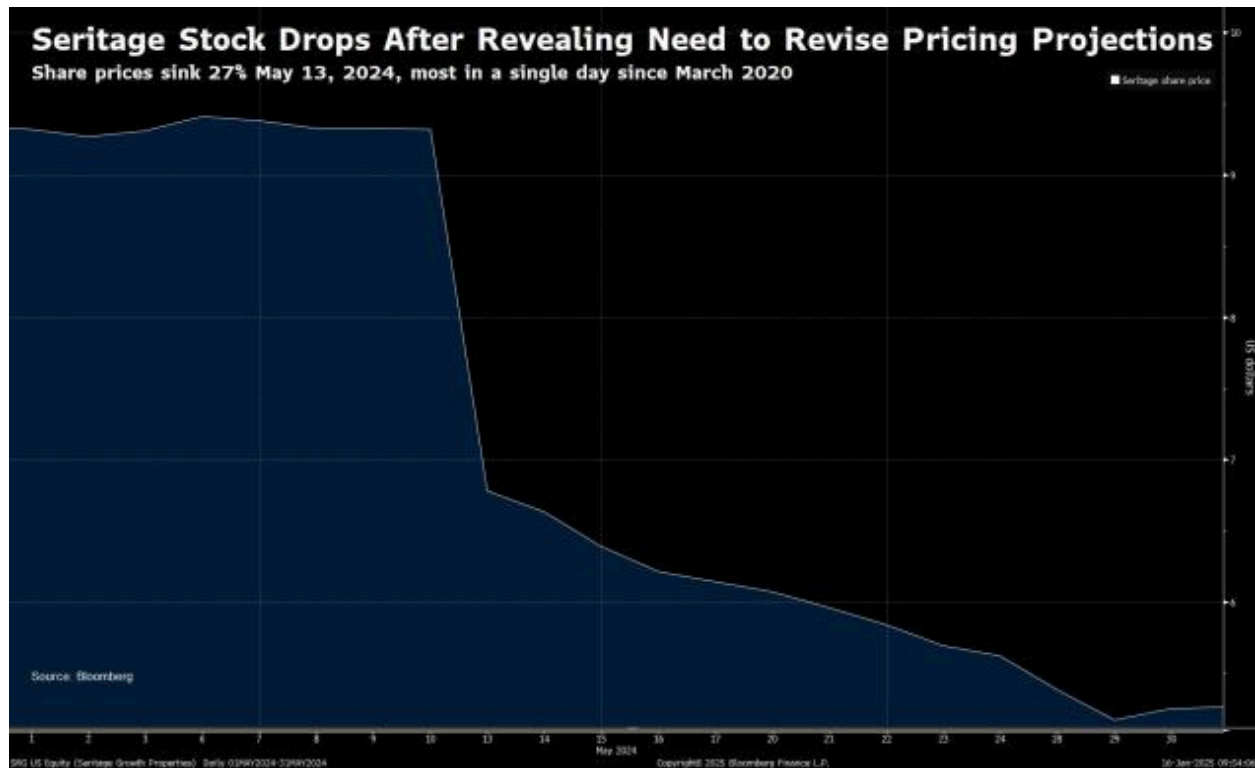
Seritage started in 2015 as a real estate investment trust to fund, in part, the \$2.7 billion acquisition of Sears properties, Sidhu said. Sears filed for Chapter 11 bankruptcy in 2018 and Seritage and others followed a court-approved master lease, controlling 51 properties. In 2022, Seritage revoked its REIT status and sought investor approval to sell its assets, distribute proceeds, and dissolve, the complaint said.

Its 2022 initial proxy statement seeking stockholder approval of the sale estimated the total shareholder distribution would be between \$18.50 and \$29.00 per share, Sidhu said, and a second quarter 2022 financial filing noted asset valuation figures of more than \$2.2 billion with over \$1 billion in real estate investments.

In September 2022, Seritage filed a definitive proxy statement, and in October it told the Securities and Exchange Commission shareholders approved the sale, the complaint said.

But in August 2023, Seritage revealed internal financial reporting controls had failed to identify indicators of impairment related to development projects, Sidhu said: The stock slid almost 10% on the news. And in May 2024, the company said it had to adjust its pricing projections for some assets as a result of some of a "material weakness" in its internal controls, and reduced its asset portfolio's gross value.

Seritage stock fell over 27% in one trading day, closing at \$6.78 per share on May 13, 2024—its largest single-day tumble since March 2020, according to data compiled by Bloomberg.



In July, another investor filed a pending proposed class action asserting similar allegations against Seritage and two top executives in the Southern District of New York. Sidhu's suit is a derivative action, brought on behalf of the company against its leaders.

The Brown Law Firm PC represents Sidhu. He asserts breaches of securities law and fiduciary duties, among other allegations, and wants damages awarded to Seritage and reformed corporate governance.

Seritage didn't respond to an email seeking comment. Neither did the firm representing it in the proposed class action.

The case is *Sidhu v. Seritage Growth Properties*, D. Md., No. 1:25-cv-00152, complaint filed 1/15/25.

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Class Action

Jan. 17, 2025, 8:32AM PST; Updated: Jan. 17, 2025, 10:13AM PST

Pump.fun Sued Over Alleged Peanut the Squirrel Memecoin Risk (1)

By [Gillian R. Brassil](#)

- **COURT:** S.D.N.Y.
- **TRACK DOCKET:** [No. 1:25-cv-00490](#) (Bloomberg Law subscription)

Cryptocurrency platform pump.fun lured nearly half a billion dollars in fees from investors and put them at high financial risk by distributing unregistered memecoins, including of the eponymous Peanut the Squirrel, a proposed class action said.

Key to pump.fun, which the suit said is operated by Baton Corp. Ltd., is “a novel evolution in Ponzi and pump and dump schemes,” said investor Kendall Carnahan in the complaint filed in the US District Court for the Southern District of New York on Thursday.

Despite being a trading platform, pump.fun never registered with the US Securities and Exchange Commission and left investors without key protections while issuing “highly volatile” securities using “guerilla marketing,” Carnahan said. Pump.fun and its operators “orchestrated this scheme by providing automated tools that allow anyone to create and sell nearly worthless digital tokens in minutes,” he said.

And pump.fun lured users by promoting “child abuse, potentially underage pornography, antisemitism, racism, self-harm, advocating violence, or any other means of pumping the token’s price, hence the name Pump.Fun,” Carnahan said.

“This case exposes the deeply troubling practices at Pump.Fun, including the use of antisemitic/racist content, torture-themed and sexualized imagery, and targeting of minors to drive traffic and manipulate markets,” said one of his attorney’s, Max Burwick, in an email. “These tactics have fleeced countless investors, leaving ordinary people to bear the financial burden while insiders profited.”

Memecoins gain their value through internet popularity and are created for speculative trading purposes, Carnahan said. Pump.fun first issued the PNUT token on Oct. 31 and quickly achieved a “market capitalization of \$1 billion, becoming what was claimed to be the fastest animal-themed memecoin to reach this milestone.”

Solana-blockchain-based PNUT derived its likeness from social media star, and eastern gray squirrel, Peanut who was seized from his owner’s New York home in late October and euthanized for rabies testing, which came back negative. This spurred public outcry and was seized upon as alleged government overreach amid the 2024 election from the likes of conservative firebrands, including billionaire Elon Musk.

PNUT is an unregistered security in violation of federal law, Carnahan alleged. Pump.fun controls the “creation, launch, and trading” of all its platform’s memecoins, including PNUT, he said, with token developers merely “participants.”

Pump.fun didn't immediately respond to an Instagram message seeking comment.

Wolf Popper LLP and Burwick Law PLLC represent Carnahan. He seeks damages, alleging securities law violations. Last month, the same law firms led a suit against the promoters of the HAWK memecoin, whose name derives from the so-called "Hawk Tuah Girl," Haliy Welch.

Both lawsuits land amid a broader probe of whether crypto transactions should be regulated like other securities trades, a question that's divided judges and comes before the Second Circuit via an SEC enforcement action involving Coinbase Inc. The Third Circuit recently ordered the SEC to explain its decision to deny Coinbase's request for rules specific to the cryptocurrency industry, after finding the agency provided insufficient justification.

The case is Carnahan v. Baton Corp. Ltd., S.D.N.Y., No. 1:25-cv-00490, complaint filed 1/16/25 .

(Updates with plaintiff's attorney comment in fifth paragraph.)

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Lyft Beats Investor Lawsuit Over Typo in Company Press Release

By Isaiah Poritz

- Earnings release last year misstated key metric by 10 fold
- Correction 42 minutes later was reasonable, judge says

Lyft Inc. succeeded in fending off a proposed shareholder class action alleging the ride-share company defrauded investors when failing to quickly correct a typo in an earnings press release caused the stock to briefly surge.

Judge Trina L. Thompson dismissed the suit Thursday, saying the shareholders failed to show that Lyft's correction 42 minutes after the statement was first released was an unreasonable amount of time.

The San Francisco-based online ridesharing company released an earnings press statement late in the afternoon on Feb. 13, 2024, saying that one of its expected earnings margins would expand by 500 basis points when it actually meant to say 50 basis points.

Lyft's share surged 67% in the hour after the statement was released on 4:05 p.m., but the company's Chief Financial Officer Erin Brewer provided the correct margin at 4:47 p.m. after a question from an analyst during Lyft's quarterly earnings call. Lyft issued a corrected press released at 6:02 p.m., attributing the mistake to a clerical error.

Shareholder Yuan Chen filed the proposed class action in March 2024 in the US District Court for the Northern District of California, claiming that the 20,000 shares before Lyft issued the correction while the stock was trading at "artificially inflated" prices. The shares began falling after Brewer corrected the statement, the suit said.

Whether shareholders can pin liability on a company over a "duty to correct" theory remains an open legal question, but she said the 42 minutes that elapsed in this case wasn't enough to advance the claims, Thompson said in the order. She cited an appeals court ruling in a securities suit against Yahoo Inc. which found that the company issuing a correction within six weeks was a reasonable time.

The judge also said the complaint failed to show that any of Lyft's corporate officers were aware of the typo before its publication.

Thompson said she would give Chen an opportunity to amend the complaint within 21 days.

Lyft and an attorney for the plaintiffs didn't immediately return requests for comment.

Wolf Popper LLP and Berman Tabacco represent Chen and the proposed class. Debevoise & Plimpton LLP represents Lyft.

The case is Chen v. Lyft Inc. , N.D. Cal., No. 3:24-cv-01330, 1/16/25 .

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Judge tosses shareholder claims against Wells Fargo executives over 'sham' interviews

[courthousenews.com/judge-tosses-shareholder-claims-against-wells-fargo-executives-over-sham-interviews](https://www.courthousenews.com/judge-tosses-shareholder-claims-against-wells-fargo-executives-over-sham-interviews/)

Edvard Pettersson

A federal judge agreed with the bank and three of its senior executives that the shareholders had failed to meet their burden to explain why it would have been futile for them to ask the board of directors to address their grievances against the executives before filing suit.

FILE - This July 14, 2014 file photo shows Wells Fargo offices in Oakland, Calif. (AP Photo/Ben Margot, File)

(CN) — A federal judge on Thursday dismissed claims against three Wells Fargo senior executives in a derivative shareholder lawsuit over "sham" job interviews the bank purportedly conducted to make it look as if they were trying to hire more diverse employees.

U.S. District Judge Trina Thompson agreed with the bank and the three executives that the plaintiffs' second amended complaint had failed to overcome the deficiencies that had prompted the judge to dismiss the same claims last year. This time, however, Thompson's decision was with prejudice and didn't allow the plaintiffs another chance to fix their claims.

The three executives, according to the plaintiffs, made false statements in corporate filings and media interviews about Wells Fargo's efforts to diversify the upper echelons of its workforce with a rule that required that half of the candidates interviewed for a position that pays more than \$100,000 have to come from historically underrepresented groups.

However, as part of a derivative shareholder lawsuit, the plaintiffs needed to show that they first tried to have company's board of directors address their grievances, or convincingly argue that such a demand on the board would have been futile.

Whereas the plaintiffs argue that the directors face substantial liability for the claims against the executives, this wasn't sufficient to meet the standard for demand futility, according to the judge, and the amended complaint failed to supply a more factual basis for that thesis.

"The factual allegations against the director defendants and the officer defendants are not a near-total overlap," Thompson said. "As currently pleaded, plaintiffs' allegations as to demand futility for claims asserted against officer defendants are conclusory as they add no facts that indicate demand on the board was futile."

Thompson last year dismissed the claims against the senior executives because she found that the plaintiffs had failed to give a good explanation why it would have been futile for them to go to the bank's board of directors to resolve their complaints about the executives before filing suit.

Gia Jung, an attorney for the shareholders, told Thompson at a hearing earlier this week in San Francisco on the executives' motion to dismiss the claims that the amended complaint "unequivocally" addressed demand futility.

"The discriminatory hiring statements that this court has already found to be actionable against the board completely overlap and are nearly identical to the statements that underlie the securities claims against the officer defendants," Jung said. "A demand on the board as to any of the alleged claims against the officer defendants would be futile, because the board would be conflicted."

Thompson, a Joe Biden appointee, asked Jung what was in the amended complaint that could change her mind about her previous order dismissing the claims against the officers.

Jung replied that the false statements of both the directors and officers implicate and are intertwined with liability allegations.

"And so here we're tying those as it relates to the board with those that relate to the officer defendants," Jung said.

The attorney didn't immediately respond to a request for comment on Thompson's decision.

Tuesday's ruling only addressed the claims against three executives that were part of the consolidated, derivative lawsuits: Scott Powell, the bank's chief operating officer, Carly Sanchez, a senior human resources executive who had been vice president for diversity recruiting until 2022, and Kleber Santos, currently the bank's CEO for consumer banking, and until July 2022, head of Wells Fargo's Diverse Segments, Representation, and Inclusion group.

Wells Fargo shareholders sued in 2022 after a New York Times' exposure of the sham interviews the bank conducted with women and people of color, among other so-called diverse candidates for jobs paying more than \$100,000 a year, even though the position was already filled and the bank had no intention to offer the job to the candidate.

The news caused Wells Fargo's shares to drop, and investors filed both securities lawsuits, claiming the bank had lied to them about its efforts to promote diversity in its ranks, and derivative lawsuits on behalf of the bank, accusing directors and officers of breaching their fiduciary duty.

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AIG, Chubb Loss in Delaware Portends More Fights Over M&A Clause

By Olivia Alafriz

Deep Dive

- Corporate policyholders cheer ruling on 'bump-up' exclusion
- 'Institutional issue' for insurers bracing for M&A litigation

A Delaware state court ruling on a controversial insurance clause limiting payouts for post-merger shareholder settlements marked a win for corporate policyholders, but more definitive court guidance will likely be needed to resolve a pileup of high-stakes cases.

The "bump-up" exclusion has become a sticking point as directors and officers insurers seek to deny coverage for settlements, in acquisition-related cases brought by shareholders seeking damages, that could be characterized as an increase in the purchase price for the target company.

Such claims are a fundamental part of what D&O policies are intended to cover, policyholder attorneys said.

A Delaware Superior Court judge this month sided with Samsung Electronics Co. subsidiary Harman International Industries Inc., concluding that its insurers—units of American International Group Inc. and Chubb Ltd.—couldn't deny coverage based on the exclusion. Shareholders in the underlying litigation alleged Harman filed a misleading proxy statement ahead of the Samsung deal.

It's one of several bump-up battles on the Delaware court's docket, with other pending cases pitting insurance giants against policyholders such as music-streaming service Pandora and communications infrastructure company Zayo Group Holdings Inc.

The US Court of Appeals for the Fourth Circuit is set to hear arguments in a similar case in March involving consulting firm WTW Delaware Holding LLC, formerly Towers Watson & Co.

The Harman ruling "provided a roadmap for what other policyholders can do to increase their chances of obtaining coverage for settlements of deal-related litigation," said Hunton Andrews Kurth LLP's Geoffrey Fehling, who leads the firm's D&O insurance and executive protection practice.

An expected boom in M&A activity under the incoming Trump administration will likely fuel more shareholder litigation. That means more insurance disputes, as carriers and policyholders disagree over whether the claims fall within the scope of coverage.

The bump-up disputes may be one-offs for policyholders, but major carriers with broad portfolios are seeking to clarify whether they'll have to cover expensive claims across the board.

An anticipated appeal in the *Harman* case would offer more conclusive guidance—but it could backfire for insurers if the Delaware Supreme Court affirms the win for policyholders and narrows the scope of the exclusion.

AIG and Chubb declined to comment on plans to appeal.

Roadmap for Policyholders

Judge Paul R. Wallace's ruling for Harman offers a playbook for overcoming the bump-up exclusion, policyholder attorneys said.

Wallace concluded the underlying settlement with Harman shareholders was covered because damages for an inadequate deal price—what the bump-up provision intends to exclude—weren't an available remedy under the theory of damages asserted in the class action.

In addition, he said, the settlement didn't represent an increase in consideration to shareholders, or in other words, a bump-up of the transaction price.

Wallace pointed to language in the settlement denying liability and indicating the reason for settling was to avoid further litigation.

The settlement amount, \$28 million, was in line with the estimated cost of continuing the case and far less than the alleged disparity between the transaction price and actual value, Wallace said in the order. The settlement therefore didn't represent an increase in consideration, he wrote, and didn't meet the criteria to trigger the exclusion.

Although insurers were likely disappointed with the ruling overall, which conflicted with arguments they made in court filings, Chubb and AIG banked a minor victory on an issue that has come up in several bump-up cases.

Most carriers' version of the provision is designed to address acquisition transactions, and policyholders have sought to duck the exclusion by arguing that "reverse triangular mergers"—where the acquisition target absorbs a subsidiary of the acquiring company and becomes its subsidiary—aren't technically acquisitions.

Wallace rejected that argument in *Harman*, concluding that the transaction with Samsung was an acquisition under the policy's plain meaning.

'Problematic Gulf'

The Delaware trial court ruling alone won't settle the longstanding disagreement between carriers and policyholders on the scope of the bump-up exclusion.

"From the perspective of policyholders and the companies that are purchasing these policies to protect themselves and their directors and officers, there is a problematic gulf between the coverage that they believe they purchased based on the plain language of these policies and the positions that certain insurance companies are taking when the insurance actually is needed," said Orrie Levy, an attorney with Cohen Ziffer Frenchman & McKenna LLP who represented Harman and has advised policyholders in several bump-up disputes.

Policyholder attorneys were united in their view that shareholder litigation following M&A transactions should fall within the scope of coverage.

Levy called such cases "the bread and butter of D&O coverage," and Tamara Bruno of Pillsbury Winthrop Shaw Pittman LLP, who leads the Texas section of the firm's insurance recovery and advisory practice, described them as "core D&O claims."

"If the insurance carriers don't want to take on that kind of risk, they need to say that explicitly in their policies and then face the market consequences as to who wants to buy these policies," Bruno said.

Insurers have pushed back through litigation, focusing on the nature of the underlying suits and arguing that policyholders have disregarded the plain meaning of policy language "in favor of an interpretation that can only be described as commercially unreasonable," as Chubb and AIG put it.

For insurers, the bump-up exclusion is an "institutional issue," and that may be why they've chosen to seek guidance from courts, Bruno said.

As they await rulings in other similar cases, insurers may want to consider revising their bump-up policy language, Kevin LaCroix, executive vice president at insurance intermediary RT ProExec and author of The D&O Diary blog, said by email.

"The bump up exclusion is not operating as intended," he said.

The case is Harman Int'l Indus. Inc. v. Ill. Nat'l Ins. Co. , Del. Super. Ct., No. N22C-05-098, 1/3/25 .

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Matt Levine's Money Stuff: You Don't Always Know What Bonds Cost

By Matt Levine

Opinion

Some good trades

A classic way to trade bonds is that you call up a broker-dealer (generally a trader at a big bank) and say “I want to buy Bond X and I’ll pay up to 90 cents on the dollar for it,” and then the dealer thinks about who else she knows who owns Bond X and might want to sell it, and she thinks “ah yes Customer Y was telling me the other day that she wants to get rid of Bond X,” so she calls Customer Y and says “hey do you want to sell Bond X,” and the Customer Y says “sure but I won’t sell for less than 91 cents on the dollar,” and then the dealer tries to negotiate you up and/or negotiate Customer Y down so that a trade can happen. If she gets you up to 90.5, and gets Customer Y down to 90.25, then a trade will happen: The dealer will buy from Customer Y at 90.25 and sell to you at 90.5, collecting 0.25 as payment for her work.

This is not the only way for bond trades to happen — a lot of trading is electronic, and sometimes the dealer will own Bond X herself, and just sell to you out of inventory — but it is a common one. It is often called a “riskless principal” trade: The dealer buys from Customer Y for her own account, and then sells to you at a markup, but she does both trades at the same time without taking any market risk by holding the bonds.

There is no magic to these numbers, 90 and 91 or whatever. It’s sort of natural for the best bid for a bond (the highest price you, or anyone, will pay for it) to be lower than the best offer for that bond (the lowest price Customer Y, or anyone, will accept to sell it), so it takes some effort or new information to make trades happen. Your model could be “there is a market price, say 90.5, and any trades that would have happened at the market price have already happened, so anybody currently holding the bond wants more than 90.5, and anyone looking for the bond wants to pay less than 90.5” (This is a roughly plausible model of the stock market, for instance.)

It is not always true in bond markets, though, because some bonds don't trade that often or have much in the way of a public "market price." Many bonds — like stocks — trade electronically and frequently in markets whose prices are pretty widely visible to investors, so you (and Customer Y) might know exactly what the market prices are, but many don't. Many trade infrequently and don't have bid and offer prices displayed on any electronic platform. You might not know how much Bond X *should* cost, and Customer Y might not know how much he should ask for it. So you might call your dealer and say "I want to buy Bond X and I'll pay up to ... 95 cents?" And the dealer might call Customer Y, who might say "sure but I won't sell for less than 88 cents." And then there is definitely a trade!

What is the trade, though? If the dealer is acting as a fiduciary for you, she will buy the bond from Customer Y at 88 cents on the dollar and turn around and sell it to you at, say, 88.25, taking a markup of 0.25 for herself. "Good news," she will tell you, "I got you a better price than you asked for." On the other hand, if she is acting as a fiduciary for Customer Y, she will tell him "oh I can do better than 88, I'll buy from you at 94.75," and then sell to you at 95, taking 0.25 for herself. If she values you both equally, she'll meet in the middle, buying from Customer Y at, say, 91.5 and selling to you at 91.75.

Or, you know. Or Customer Y will say "sure but I won't sell for less than 88 cents," and the dealer will say "man you are driving a hard bargain, my kids need to eat, but okay, fine, I think I can do 88," and then she will call you and say "good news, it wasn't easy, but with hard work and my excellent relationships I was able to get those bonds for you, here they are, 95 cents on the dollar just like you asked." And she gets 7 points for herself and a round of applause from her trading desk.

In general your bond dealer, in a riskless principal trade, *isn't* a fiduciary for you, and *is* kind of in the business of making as much money as she can on her trades, so she might be inclined to take the 7 points. But there are important constraints. Here are three:

1. You are, in this hypothetical situation, probably a professional investor, an asset manager. (The retail market works differently.) You know all this stuff. You can just ask! The dealer will call you and say "I found those bonds for you" and you can say "well how much are you paying for them" and she will probably tell you the truth. She will tell you the truth because she wants to do repeat business with you and cares about her reputation for honesty, because she expects you'll find out if she's lying, and because, if she lies to you, she will get in trouble and possibly go to prison. (Not legal advice, and we have talked about cases where courts have said actually it's okay for her to lie to you.) If she tells you that she's paying 88, you will demand to pay 88.25, not 95.

- 2. There are rules — internal rules, ethical precepts, but mostly a rule of the Financial Industry Regulatory Authority (Finra) — forbidding dealers from charging "excessive markups." Exactly what that means is a little vague, and this is not legal advice, but (1) in many markets there is a fairly standard "market" rate of markups (for instance, the 0.25 points I have used in my hypothetical examples), (2) if you regularly charge a large multiple of the market rate for ordinary transactions, you might get nervous, and (3) markups above 5% are generally assumed to be excessive. (Though "the '5% Policy' is a guide, not a rule," and "a mark-up pattern of 5% or even less may be considered unfair or unreasonable under the '5% Policy.'") So the 7 points in my example is probably too much.

- 3. Bond prices *are* public, *after* the trade. You might not know how much you *should* pay for Bond X when you call your dealer. But as soon as the trade happens, the dealer generally has to report it to Finra's Trade Reporting and Compliance Engine (Trace), which then generally publishes it. (Though the parties to the trade are anonymous.) For many types of bonds, this happens more or less immediately — within 15 minutes of the trade — so you can look, and bond investors definitely do look. The dealer will report both sides of the riskless principal trade, and if you see "Dealer buys 1,750 of Bond X at 88" followed immediately by "Dealer sells 1,750 of Bond X at 95," you know you got ripped off. And then you won't trade with that dealer again. And she knows that, so she won't rip you off.

That's the general theory. There are exceptions. Some types of bonds don't get reported or published immediately on Trace. For instance:

Consider, for example, Non-Agency CMO [collateralized mortgage obligations], the privately sponsored structured products based upon pools of residential mortgage collateral. The markets for such securities are illiquid and opaque. There are no price screens offering a real-time view into live quotes for the thousands of existing securities. Thus, buyers and sellers of such securities only learn the prices that bond dealers pay and receive through private disclosures from dealers. Moreover, in sharp contrast to its nearly immediate dissemination of prices from corporate bond transactions, FINRA waits more than 18 months after the trade date to release reports for CMO transactions with trade quantities greater than \$1 million. After the 18-month period, the data becomes available for purchase from FINRA in quarterly releases. The absence of timely trade report dissemination in CMO means that customers have no practical way to audit dealer performance. Thus, dealers in CMO have much wider scope to profit from unfair handling of not-held customer orders than in otherwise similar Corporate bond, MBS, and ABS transactions.

If you are an investment manager and you buy a corporate bond from a dealer, you will probably look on your Bloomberg Terminal a minute later to see the trade print, and if it prints at a huge markup you will call and complain. If you buy a non-agency CMO from a dealer, will you wait 18 months, buy the quarterly data release from Finra, and scroll through it to see if your trade printed at a huge markup? That would be very cool, but no, probably not. Probably you've forgotten the trade by then. So the dealer has more freedom to charge you whatever she wants.

That quoted paragraph is from a paper titled "Drawing the Line between Bond Dealer and Bandit," by Vladimir Atanasov, John Merrick and Philipp Schuster. Basically they downloaded the files and did the scrolling through them and found that, sure, dealers generally charge higher markups on CMO trades (long-delayed Trace) than on trades in corporate bonds, mortgage-backed securities and asset-backed securities (near-instant Trace):

Median markups on such transactions with market values in the \$5-\$10 million range for MBS and ABS are just 0.03%, comparable to the 0.02% observed for Corporate bonds. Corresponding median markups are 0.10% for Agency CMO and 0.20% for Non-Agency CMO. ... The top quartile of both Agency and Non-Agency CMO riskless principal trades cross at markups above 1.0%, more than *quadruple* their median values.

But also they went and found a specific very cool trade:

One particular cluster of riskless principal trades stands out among the high-markup transactions. On March 25, 2020, one dealer made \$54.5 million in riskless profits by buying 238 Non-Agency CMO worth \$1.732 billion from a single seller, while simultaneously splitting sales of these same positions among five counterparty accounts to generate proceeds of \$1.787 billion. The value-weighted average markup on this portfolio crossing trade was 3.15% (about fifteen times the full-sample median level of 0.20% for average-sized Non-Agency CMO trades).

High-fives all around! March 2020 was intense, man! The whole reason to be a bond trader at a bank is that every once in a long while there is some global catastrophe that pushes customers to buy or sell huge portfolios of bonds in a hurry, and when that happens you can charge whatever you want. You buy low, from them, and sell high, to someone else, because you sit in the middle of all the trading and the trading is wild. Banks' trading desks make money on volatility, and this is how: This trade, in the middle of a market meltdown, apparently took the bank *12 minutes* and made \$54.5 million.

The buyers did even better:

We interpret these trades as a stark example of a dealer who conspired with a group of “vulture” buyers to profit from a vulnerable seller. We provide benchmarks that suggest this dealer also orchestrated a price suppression of at least 20% of the fair value of this trade, benefiting the buying group while disadvantaging the seller by more than \$346 million. Summing together both the price suppression and the markup effects, at least \$400 million of the seller's interests vaporized in this dealer-facilitated transaction.

Thirty-five days later, on April 29, 2020, exactly one-fifth of this same set of 238 Non-Agency CMO was “unwound” with a dealer who crossed its buy trades with matched sales to a new customer. The vulture investor received \$496.8 million from the dealer upon sale of its positions, generating \$139.4 million in capital gains relative to its initial investment of \$357.4 million (i.e., one-fifth of \$1.787 billion). The \$139.4 million capital gain corresponds to a 39.0% return on invested capital in 35 days for the unwinding vulture investor

The authors think this is all bad — the buyers are “vultures” and the dealer is a “bandit” — but that's how markets work! If you have to dump all of your bonds because the market is panicking and (1) you are also panicking and/or (2) the general panic causes you to lose your financing, someone else will probably buy those bonds from you, but they will buy them cheap. They're buying into a panic; they want a discount. And then 35 days later when the panic is over they will make 39% on their money. Also the bank that puts the trade together will make a killing.

Private markets are the new public markets

The core business of an investment bank is helping companies raise money by selling debt or equity. The highest-profile forms of this, traditionally, are:

1. Mergers and acquisitions (M&A), the special case of helping a company sell 100% of its equity.

- 2. Initial public offerings (IPOs), the special case of helping a company sell its equity to public investors for the first time.
- 3. Leveraged buyouts (LBOs), which are actually M&A but have the additional feature of helping the buyers of the equity sell tons of debt.

It is entirely plausible that, in 2030, the highest-profile forms will be:

1. M&A? Probably?

- 2. Helping big private companies sell equity, privately, to big institutional investors who are now fully comfortable investing in private companies.
- 3. Helping companies sell debt in the private credit markets.

And one sort of social fact in 2025 is that, if you currently run a big investment bank, a lot of your bankers grew up wanting to do M&A and IPOs and LBOs, and you have to constantly remind them, "guys, there is so much money in private markets, and the fees are great, let's go get some of them."

So last month, Sujeet Indap quoted Ken Moelis's comments about these developments:

We're in the middle of a transaction right now. I don't think it's been announced or done. But it's like \$1.5 billion pref in a deal, not M&A deal, and we showed it to one of the direct lenders. That's one of the best things we've ever done for them. They're extremely happy with where they are. I think it's a \$30 — it's \$25 million to \$30 million type fee. So it's M&A type fee for coming up with a capital for the other parts of the firm. ...

I've been very much pushing our capital markets to make sure they're in that [private credit] market because I think it's going to explode and it's not going to be easy to get the talent and get in the market and be — not every M&A adviser is interested in capital markets. Some of them just want to be M&A advisers. It's not the same talent base to have a banker who does M&A and a banker who does capital markets.

Or we talked this week about Goldman Sachs Group Inc. reorganizing itself to put all of the financing businesses (including sourcing private credit and private equity) in one place, because "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." Traditionally investment bankers showed up at public companies to say "hey let's do a merger," and they showed up at private companies to say "hey let's do an IPO," and now they have to show up to say "hey let's raise private capital." Because that's where a lot of the action is, and you can earn an "M&A type fee."

Anyway I have been saying for almost a decade now that "private markets are the new public markets," and that companies can now grow huge and become household names and raise limitless capital and provide liquidity to employees and early investors, all without going public. Here's Goldman Chief Executive Officer David Solomon also saying it:

"Today you can get capital privately, at scale ... you can also get liquidity in the private markets. So the reasons to go public, when you really reach an incredible scale, are getting pushed out," said Solomon at the Cisco AI Summit in Palo Alto.

"If you are running a company that's working and it's growing, if you take it public, it will force you to change the way to run it and you really should do that with great caution," he added.

Goldman's role as a trusted IPO partner has been at the core of its business for years, but that market has slowed since 2021 in response to rising interest rates. The bank is increasingly supplying its services to very large private tech companies that have pushed off public offerings.

Goldman helped Stripe raise \$6.5bn in 2023, enabling the payments company to remain private for longer. Solomon said such deals were part of "a more fundamental, long-term secular trend" of shrinking numbers of public companies. ...

"It's not fun being a public company," said Solomon. "Who would want to be a public company?"

I think 10 years ago the CEO of Goldman Sachs would not have gone around saying, at a tech conference, that companies *shouldn't* go public. Even if it was true! Goldman traditionally makes its money by taking companies public, and then by providing public-company-type investment banking services to them. But now there's a lot of money in keeping them private too.

Hindenburg

It seems very hard to run a short-only hedge fund? Short sellers are unpopular, so if that's your business you will be vilified and sued and possibly arrested. Stocks mostly go up, so even if you are quite good at picking only the worst stocks to bet against, you will have a big headwind against you. Probably your best short ideas will be of the form "this company is a fraud run by evil criminals," and if you are right, those evil criminals might do evil stuff to you.

On the other hand, I do *kind* of think that we ought to be in a golden age for short-focused research? Like if your skill set is finding companies that are doing evil criminal stuff, it seems like you should have a lot of ways to monetize that skill set that didn't exist until recently:

1. You can still do short sales with your own money, sure.
- 2. There are multistrategy hedge funds that run huge amounts of money and try to be market-neutral, short as much as they are long. Can't you sell them some ideas? In some ways they are not a natural target for activist short ideas, but they do a lot of shorting and it's worth a shot.
- 3. US regulators, particularly the Securities and Exchange Commission, have relatively new whistleblower reward programs that are reasonably well-oiled machines at this point and pay out huge amounts of money. If you find a big fraud at a public company, you don't have to short the stock with your own money, or sell the idea to a hedge fund. You can sell it to the SEC, which pays top dollar. (Also the SEC doesn't require exclusivity, so you can sell it to the hedge fund too.)

- 4. “Everything is securities fraud,” so if you find a fraud at a public company you can *sue* .

Also, if your skill set is finding companies that are doing evil criminal stuff and then *telling everyone about it* so the stock goes down, there are a lot of ways to tell people stuff these days. Social media makes it a lot more possible for small-time researchers to publicize bad stuff that companies do, and to get attention so their stocks go down. Or, like Hunterbrook, you could start an online news site?

I am not saying that it is easy, but I am saying that it feels like a plausible path to a nice living and a fun job for the right kind of person? But:

Nate Anderson, the short seller who made his name with campaigns targeting billionaires Gautam Adani, Jack Dorsey and Carl Icahn, said he’s disbanding his small but renowned firm, Hindenburg Research.

“There is not one specific thing — no particular threat, no health issue and no big personal issue,” Anderson wrote in a letter posted on the firm’s website Wednesday. “The intensity and focus has come at the cost of missing a lot of the rest of the world and the people I care about. I now view Hindenburg as a chapter in my life, not a central thing that defines me.”

Here’s the letter, and obviously Anderson is the sort of person who enjoys this, or enjoyed it anyway:

I’m grateful for all of it. We have days of bizarre, hilarious and ridiculous stories and we’ve had a lot of fun amidst the pressure and challenges. It has been the adventure of a lifetime.

But he’s moving on, and “over the next 6 months or so I plan to work on a series of materials and videos to open-source every aspect of our model and how we conduct our investigations.” No time like the present to start your own short research firm, I guess.

Eurodollars

My rough mental model is that “dollars” are, in essence, entries on the balance sheets of US chartered banks. If you want to transact in dollars, you need to open an account at a US bank, or at a foreign bank that has a correspondent account with a US bank. And so dollar issuance is regulated by the US Federal Reserve, and anyone who transacts anywhere in dollars is, ultimately, subject to US financial regulation. This comes up a lot when I think about sanctions, or Tether, or Tether as a tool for sanctions evasion. I wrote last year, about Tether:

Dealing in dollars means going through the regulated US financial system, and the regulated US financial system, these days, is rather hostile to certain sorts of commodities dealings. (The ones involving Russia or Venezuela.) If someone came to you with “dollars, but not through the US financial system,” you might find that appealing.

But this mental model is incomplete. Bloomberg's Odd Lots podcast has a nice miniseries on the story of the Eurodollar, told by Lev Menand and Josh Younger, that clarified my mental model. Eurodollars *are* "dollars, but not through the US financial system," dollar-denominated liabilities of foreign banks that are *not* necessarily backed by dollar-denominated assets. (Like Tether used to be!) Anyway it is a good series and I learned a lot; you can listen to Part 1, Part 2 and Part 3 at those links.

Things happen

Morgan Stanley Profit Doubles With Big Stock-Trading Beat. BofA Investment Bankers Boost Earnings as Loan Income Rises. Private Equity Faces Pockets of Distress for Long-Held Assets. Pension funds dabble in crypto after massive bitcoin rally. AB InBev Faces Belgium Antitrust Probe Over Beer Sales Terms. Even Harvard M.B.A.s Are Struggling to Land Jobs.

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- 1. I hope the biggest asset managers hire someone to do this, or automate it, and then have the portfolio managers call banks to complain on like a two-year lag. One, that is very cool, and two, you only have to do that once or twice and the bank will stop overcharging you.
- 2. That's an exaggeration. The paper says that the dealer split "sales of these same positions among five counterparty accounts during a 12-minute 'fire sale,'" but the 12 minutes seems to be based on the Trace time stamps; presumably the bank took a bit of time to line up the counterparties before actually printing the trades. But not a ton of time, probably; that was a fast-moving market!
- 3. Schematically, if you reveal the fraud and it takes \$1 billion off the stock price, and you had shorted 0.1% of the stock with your own money, you'd make about \$1 million. But if you partner with a law firm to bring a securities class action and recover \$1 billion of damages for the stock drop, you might get ... 5% of that money? Without laying out your own cash or taking market risk? Just a more capital-efficient way to profit from a stock drop.

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Litigation

Jan. 17, 2025, 11:09 AM PST

Lawyers in Metals Price-Fixing Case Awarded \$6.7 Million in Fees

By [Katie Arcieri](#)

- Attorneys' fees represent 33% of the settlement fund
- Settling banks accused of fixing prices in platinum, palladium

Attorneys representing plaintiffs in a case claiming Goldman Sachs Group Inc. and other big banks fixed prices in the platinum and palladium markets will receive \$6.7 million in fees.

Judge Gregory H. Woods of the US District Court for the Southern District of New York on Thursday issued an order awarding the attorneys' fees as well as costs and expenses totaling more than \$462,500 to DiCello Levitt LLP and Berger Montague PC, co-lead counsel for the settlement class.

The \$6.7 million award is one-third of a \$20 million settlement reached by Goldman, HSBC Holdings Plc units, a unit of BASF SE, and ICBC Standard Bank Plc.

Woods preliminarily approved the deal in August. The plaintiffs' firms filed a motion for the attorney fees in early December.

Woods said Thursday that co-lead counsel conducted the litigation and achieved the settlement "with skill, perseverance, and diligent advocacy."

"Had the Settlement Agreement not been reached, there would remain a significant risk that Plaintiffs and the Settlement Class may have recovered less or nothing from Defendants," Woods said.

The settlement class includes people and entities who from Jan. 1, 2008, through Nov. 30, 2014, sold platinum or palladium futures contracts or call options on the New York Mercantile Exchange, or who bought platinum or palladium put options on the exchange.

Co-lead counsel will distribute the attorneys' fees and litigation expenses among the various other class counsel which have participated in this litigation, Woods said.

The banks are represented by firms including Sullivan & Cromwell LLP, King & Spalding LLP, Clifford Chance and DLA Piper.

The case is *In re Platinum & Palladium Antitrust Litig.*, S.D.N.Y., No. 1:14-cv-09391, 1/16/25 .

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Lawyers cry foul over \$34 million eXp settlement with US home sellers

 [reuters.com/legal/legalindustry/lawyers-cry-foul-over-34-million-exp-settlement-with-us-home-sellers-2025-01-16](https://www.reuters.com/legal/legalindustry/lawyers-cry-foul-over-34-million-exp-settlement-with-us-home-sellers-2025-01-16)

Mike Scarcella, David Thomas

By Mike Scarcella and David Thomas

January 16, 2025 1:10 PM PST Updated 21 hours ago

People with briefcases come out of a boardroom, in Berlin, Germany, July 29, 2020.

REUTERS/Axel Schmidt/File Photo Purchase Licensing Rights , opens new tab

Jan 16 (Reuters) - Lawyers for a group of U.S. home sellers in Missouri have accused real estate broker eXp World Holdings (EXPI.O) , opens new tab of negotiating a lowball settlement in a Georgia antitrust lawsuit in order to head off a potentially bigger nationwide class action payout in their own case.

Attorneys for the Missouri plaintiffs at Susman Godfrey, Cohen Milstein Sellers & Toll, Hagens Berman Sobol Shapiro and other firms told , opens new tab the judge in the Georgia case last week that the \$34 million settlement with eXp and an \$8.5 million deal with another realtor, Weichert, were done “on the cheap” and should be rejected.

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Antitrust litigation over real estate brokerage practices has become big business for a segment of the class action plaintiffs bar.

Many of the firms representing the Missouri plaintiffs won a nearly \$2 billion trial verdict in October 2023 in a similar case against major home brokers and the trade group National Association of Realtors. The defendants have since settled for more than \$1 billion, and the lawyers stand to recover hundreds of millions of dollars in legal fees.

In the tug of war over the eXp settlement, U.S. District Judge Stephen Bough in Missouri has ordered , opens new tab the company to hand over settlement records from the Georgia case.

Bough said he wants to determine if eXp engaged in a “reverse auction” to find plaintiffs who would settle for a lower amount. The company has argued , opens new tab that the records are confidential and that Bough lacks authority to review settlement documents from the Georgia case.

The Missouri and Georgia cases, both filed in 2023, alleged that eXp and others violated antitrust law by requiring home sellers to agree to pay commissions to buyers' agents in order to list their homes for sale.

Washington-based eXp in a statement said the company was confident the Georgia judge would find the proposed accord "to be fair, reasonable and adequate." The company has denied violating antitrust law.

Lawyers for Weichert, based in New Jersey, did not immediately respond to a request for comment, and neither did the plaintiffs lawyers leading the case in Missouri.

The plaintiffs attorneys in the Georgia case at law firms Knight Palmer and Kabat, Chapman & Ozmer declined to comment beyond their court filings. They have denied any impropriety.

In their Jan. 8 request [opens new tab](#) for preliminary settlement approval, they said the \$34 million deal came after extensive negotiations and costly, risky litigation.

The Georgia plaintiffs said they would seek no more than 20% in attorney fees – a percentage they said was on the low end of the range of fees sought in similar cases.

– In other legal fee news, a U.S. judge on Thursday awarded [opens new tab](#) nearly \$46 million to compensate attorneys who represented T-Mobile customers in a \$350 million class action settlement, after a federal appeals court struck down their earlier bid for nearly twice that amount.

U.S. District Judge Brian Wimes found the \$46 million request to be reasonable. Wimes said the settlement fund "exceeds the cash relief made available in other comparable data breach settlements, even those that took longer and required more work." T-Mobile denied any wrongdoing in agreeing to settle.

– Plaintiffs lawyers at Outten & Golden plan to seek one-third of a \$26 million settlement with Mastercard that resolves claims that the payment-processing giant systematically underpaid an estimated 7,500 female, Black, and Hispanic employees.

The firm said it will ask the court for \$8.66 million for its work on the lawsuit, which was filed the same day as the settlement on Tuesday in New York federal court.

Outten & Golden said in court papers [opens new tab](#) that it engaged in three mediation sessions with Mastercard between 2023 and 2024, and finalized the settlement agreement on Monday. Mastercard denied wrongdoing.

– In another Outten & Golden case, a federal judge in Manhattan was scheduled to hear oral arguments Thursday over a \$4.45 million attorney fee request [opens new tab](#) from the firm, which prevailed in an employment discrimination and retaliation case against Google. A federal jury in October 2023 awarded [opens new tab](#) former Google Cloud executive Ulku Rowe \$1.15 million in damages after finding that the tech giant discriminated against her because of her gender and retaliated against her.

Google denied wrongdoing, and has opposed [opens new tab](#) Rowe's fee request, arguing it should be reduced by 80%.

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

Read more:

Law firms wrangle over fees from \$2.7 bln Blue Cross Blue Shield settlement
Settlements spur big fee awards, with more to come in 2025
Meta case yields Texas-size fees as more firms ink state contracts
Reporting by Mike Scarcella

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Thomson Reuters

David Thomas reports on the business of law, including law firm strategy, hiring, mergers and litigation. He is based out of Chicago. He can be reached at d.thomas@thomsonreuters.com and on Twitter [@DaveThomas5150](https://twitter.com/DaveThomas5150).

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Litigation

Jan. 17, 2025, 7:05 AM PST

Walgreens' \$950,000 Deal to Settle Wage Suit Rejected in CourtBy **Mallory Culhane**

Walgreen Co. and a pair of workers can't move forward with their \$950,000 settlement to end their proposed class action over wage violations, a federal judge said.

Two Walgreens employees, seeking to represent nearly 12,500 class members, alleged the company violated California wage laws by requiring workers to purchase company uniforms without compensating them. The deal, first announced in June, has several issues, Judge Jon S. Tigar of the US District Court for the Northern District of California said in a Thursday order denying preliminary approval. Although there are concerns about the total settlement amount, the court is "likely to conclude" that it is "reasonable," he said.

- The named plaintiffs agreed to a general release of claims in exchange for \$10,000 each, which Tigar said doesn't provide any benefit to the class and raises "serious red flags." A \$10,000 award for class representatives is too high, and a \$5,000 award would be more reasonable, he said
- Tigar also raised concerns that class members would be required to opt out or file objections within 30 days after notices are mailed, noting that any period shorter than 60 days is generally inadequate
- The proposed agreement doesn't allow the class to object to class counsel's anticipated ask for one-third of the total amount in fees, a number that also exceeds the Ninth Circuit's 25% benchmark for class counsel awards

Aiman-Smith & Marcy represents the proposed class. Bryan Cave Laisner Paisner LLP represents Walgreen.

The case is *Naro v. Walgreen Co.*, N.D. Cal., No. 4:22-cv-03170, 1/16/25.

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MARKETS & FINANCE

American Express to Pay \$230 Million in Fines for Aggressive Sales Practices

The Wall Street Journal had reported on a series of deceptive and strong-arm tactics the card company used to increase small business sign-ups

By [AnnaMaria Andriotis](#) [Follow](#)

Updated Jan. 16, 2025 3:11 pm ET



Amex said it had cooperated with the agencies and regulators to address the problems. PHOTO: T Aidgh Barron/Zuma Press

American Express **AXP -0.27%** ▼ has agreed to pay approximately \$230 million in penalties over deceptive practices tied to how it sold credit cards and wire services to small-business customers.

The settlements include a \$108.7 million civil penalty from the Justice Department and a nonprosecution agreement with the Eastern District of New York over a criminal investigation into some of the practices. The company has also reached an

agreement in principle with its regulators at the Federal Reserve that it expects will be finalized in the coming weeks.

The Fed matter will result in a penalty that Amex said is included in the roughly \$230 million total.

The Wall Street Journal was the first to report on these practices, with a series of stories about some Amex salespeople strong-arming business owners to boost sales of cards and other products, including small-business card sales tactics that involved misrepresenting card rewards and fees and checking credit reports without consent.

Among the practices that the Journal reported on and the DOJ cited were Amex's deceptive sales and marketing of wire products that were pitched to customers as being helpful to avoid paying taxes. The card company was also cited for its practice of entering "dummy" employer identification numbers on small-business credit-card accounts, a shortcut salespeople used to increase card sign-ups, the Journal reported.

Amex said it had cooperated with the agencies and regulators to address the problems, including disciplining staff, and changing its organization and training. It said the problems had ended in 2021 or earlier.

The problematic card sales practices began when Amex was scrambling to retain Costco small-business customers after the warehouse club ended its long-running exclusive partnership with the card company. Small businesses were a particularly valuable slice of the Costco cohort, and the potential revenue hit to Amex from the loss of Costco customers was enormous.

Amex launched an aggressive campaign to keep those business cardholders, which ushered in an era of escalating sales goals and hefty commissions that persisted at least until the Journal began reporting on the practices in 2020.

The Costco retention campaign ended in 2016, but the sales practices didn't, the Journal reported. Salespeople who had grown accustomed to the big commissions from the Costco retention program and had to meet high monthly sales targets continued on with questionable practices, some of which were flagged to higher ups, the Journal reported.

Many of the findings in the U.S. government's probes matched the Journal's reporting. For example, Amex employees used "dummy" employer identification numbers such as "123456788" in opening small business credit cards as part of the Costco retention program.

In 2023, Amex agreed to pay \$15 million to the Office of the Comptroller of the Currency to settle an investigation into some of its business-card sales practices that were also tied to the Journal's reporting. The OCC penalty order confirmed several findings that the Journal reported.

Write to AnnaMaria Andriotis at annamaria.andriotis@wsj.com

Videos

Litigation

Jan. 17, 2025, 2:00AM PST

Fire Aid for L.A. Judges Is Limited Under Ethics Rules on Gifts

By [Maia Spoto](#)

- California Chief Justice applauds L.A. court staying open
- Courthouse foot traffic still slow in second week of fires

The kinds of help the court can extend to the state judges and judicial officers whose homes have burned down in Los Angeles will be limited by ethics rules on accepting gifts, California Supreme Court Chief Justice Patricia Guerrero said.

However, support for affected trial and appellate court employees, including financial assistance, is under consideration, she said.

"Our heart goes out to them and we want to make sure that we're there for them on a personal level," Guerrero said Thursday during a conversation with media outlets.

Dozens of judges and staff have lost their homes, including at least 12 judicial officers and 12 staff members in L.A. superior court, and at least five judges and six staffers in L.A. federal court.

However, the state courts largely continued operations through the wildfires that have killed at least 25 residents and burned over 40,000 acres. L.A.'s trial court temporarily closed three of its 36 courthouses since fires began Jan. 7, but all were open by Monday.

Guerrero commended the efforts Thursday, saying that state court leaders had moved ahead with "minimal disruptions for the public."

"I think the way they approached it was the right thing to do—to be open, and to have flexibility in terms of what happens when you go to court, when people can't make it," Guerrero said. "Of course, you make adjustments that are appropriate depending on the facts of any particular case."

On Wednesday, the day before the conversation with Guerrero, fires burned for a ninth day and foot traffic at California Superior Court, Los Angeles County's flagship civil courthouse, Stanley Mosk, was still significantly diminished from the 2,500 visitors it typically sees.

A security guard said since the fires started, he's seen about half the usual visitors enter Stanley Mosk, which is roughly 15 miles from the heart of the Eaton fire and 20 from the Palisades.

The L.A. trial court's move to press on with business has been controversial, with some employees, lawyers, jurors, and residents saying they feared missing evacuation notices as blazes burned uncontrolled.

The union representing L.A. public defenders on Jan. 9 called for broader closures, saying more flexibility was needed to respond to "such a fluid emergency."

"It's hard, because you will be criticized regardless of what you do," Guerrero said.

Firefighters have largely been holding the line in both Eaton and Palisades fires, and some evacuation orders have lifted, but anxieties from renewed winds Tuesday and Wednesday and warnings of another wind event next week still hang in the city.

"I smelled the ashes and the smoke for the first couple days," a man at Stanley Mosk said into his phone Wednesday, "but now we're acting like it never happened."

The man, a trial witness who asked to be unnamed to avoid impacting proceedings, said he missed work while waiting in court last week to testify.

But then several jurors didn't show up to the third day of proceedings because of the fires. The court declared a mistrial and had to find a new set of jurors.

He was nervous, on his second round of a third trial day, that the same scenario would play out again.

It's easy to see why he'd be worried, as signs of the fires were everywhere: The crowds of people waiting for elevators that typically fill the mouth of the first floor hallway were missing. Visitors and judges wore face masks to protect them from the smoke that still lingers outside. Light, tinted-yellow from the hazardous air on the other side of the glass, poured through the empty cafeteria windows.

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Class Action

Jan. 16, 2025, 3:14 PM PST

California Chief Justice Says Social Media Harms Civic Discourse

By Isaiah Poritz

-
- State-level judges haven't seen increase in physical threats
 - California judicial branch continues to face financial strain

Social media has politicized discourse about the judiciary's role as the third branch of government and has harmed the public's ability to understand the legal reasons behind a court's ruling, California Supreme Court Chief Justice Patricia Guerrero said in wide-ranging conversation with reporters Thursday.

"Frankly, I think social media contributes to" rising criticisms of the judiciary, said Guererro, who is just over two years into her tenure as chief justice of the seven-seat court. "People being able to really attack one another in ways that are not productive isn't helpful, and then it may carry over into actual physical violence."

She said she welcomed criticisms of the judicial branch, but said it becomes less useful to criticize judges based on the party of the of the governor or president who appointed them. "That suggests the decision will automatically reflect a certain outcome when that's not the case."

Guererro, who as chief justice helms the Judicial Council of California that administers the state's entire court system, said she hasn't seen an uptick in physical threats against state-level judicial officers, a contrast to an increasing concern for the safety of federal judges.

While Guererro said she doesn't personally use social media, she said she recognizes that it's "a way that many people communicate," and the court is examining ways to use social media as a means to explain the work that the judiciary does.

"Attention spans are so different," she said, noting that people outside the legal profession would have difficulty reading a long judicial opinion that directly affects them.

Guererro, who is the first Latina to serve on California's highest court, first entered judicial service as a San Diego County Superior Court judge in 2013. She was appointed to a state appellate court position in 2017, and Gov. Gavin Newsom (D) nominated her to an associate justice position on the state Supreme Court in 2022. He nominated her to the chief justice position that year, and she was sworn into office in January 2023.

Justices serve 12-year terms on the state high court.

Continued Budget Concerns

Guererro said the state judiciary continues to face challenging financial constraints from a reduced budget. The state trial court budget was hit with a \$97 million cut in the 2024-25 fiscal year, resulting in 39 of the 58 trial courts across the state adopting hiring freezes, and some adopting furloughs.

The judiciary has had to work around the constraints by reducing courthouse hours, delaying various IT updates, traveling less frequently for meetings, she said.

She said the Newsom administration earlier this month announced that it intends to restore \$42 million for trial courts on a one time basis by accessing reserves in the Trial Court Trust Fund.

"It's something we have to grapple with every year," Guererro said. "It makes it a little bit difficult to plan for things."

The budget cuts coincide with a number of challenges facing trial courts, including a shortage of certified court reporters who create verbatim transcripts of proceedings, which are required for future appeals. The California judiciary has reported that over 1.2 million hearings have gone without a verbatim record since April 2023.

Guererro said the court reporter shortage has been "a long standing problem" that presents an access to justice issue. But she said she couldn't provide additional comments because the court is currently reviewing a petition from legal aid organizations who argue that electronic recording options be made available.

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Google must face part of US consumer lawsuit over search dominance

 [reuters.com/legal/government/google-must-face-part-us-consumer-lawsuit-over-search-dominance-2025-01-17](https://www.reuters.com/legal/government/google-must-face-part-us-consumer-lawsuit-over-search-dominance-2025-01-17)

Mike Scarcella

By Mike Scarcella

January 17, 2025 8:53 AM PST Updated 4 hours ago

The logo of Google is pictured during the Viva Tech start-up and technology summit in Paris, France, May 25, 2018. REUTERS/Charles Platiau/File photo Purchase Licensing Rights , opens new tab

Jan 17 (Reuters) - Google has failed to persuade a judge in California to throw out a lawsuit accusing the technology giant of monopolizing the online search market.

San Francisco-based U.S. District Judge Rita Lin in a ruling , opens new tab on Thursday said consumers can proceed for now with allegations that the Alphabet (GOOGL.O) , opens new tab unit's business practices hampered the development of high-quality rival search engines.

The lawsuit filed in 2022, accused Google of unlawfully scheming with Apple (AAPL.O) , opens new tab to make Google the exclusive preloaded default search engine on the iPhone maker's devices.

Lin dismissed other claims in the lawsuit related to Google's text advertising and said the plaintiffs could not include Google chief executive Sundar Pichai and the Alphabet unit's former chief Eric Schmidt as defendants.

Google did not immediately respond to a request for comment. Google has denied any wrongdoing. Apple is not a defendant.

Joseph Alioto, an attorney for the 26 consumers who filed the lawsuit, on Friday said he was "confident in light of the evidence that a jury will not have any problem finding against Google."

Lin's latest ruling comes after the plaintiffs amended their complaint following a ruling in August against Google by a federal judge in Washington, D.C.

In that decision, U.S. District Judge Amit Mehta found that Google's exclusive contracts with Apple and other companies helped it create an illegal monopoly over search engines. Google countered that the D.C. judge's order, which the company is fighting, does not help the consumer plaintiffs in the California case. Google said the consumers' lawsuit rested on unfounded allegations.

Lin said the plaintiffs had shown enough detail to contend that Google's exclusive contracts for default status have hurt market competition.

At this stage in the case, Lin wrote, the consumers' claims support their conclusion that in a more competitive market "viable search alternatives would have emerged that offer greater privacy protections or are less clogged with ads."

Lin set the next hearing in the case for Feb. 12.

The case is Arcell v. Google LLC, U.S. District Court, Northern District of California, No. 22-cv-02499-RFL.

For plaintiffs: Joseph Alioto of Alioto Law Firm, and Lawrence Papale of Law Office of Lawrence Papale

For Google: John Schmidlein and Carol Pruski of Williams & Connolly

Read more:

Apple seeks to defend Google's billion-dollar payments in search case

Google offers to loosen search deals in US antitrust case remedy

Google's US antitrust trial over online ad empire draws to a close

Why the US forced sale of Google's Chrome faces legal hurdles

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Reporting by Mike Scarcella

New Trouble for Allstate: National Class Action Targets Insurer

[law.com/2025/01/17/new-trouble-for-allstate-national-class-action-targets-insurer](https://www.law.com/2025/01/17/new-trouble-for-allstate-national-class-action-targets-insurer/)

Emily Cousins

Morgan & Morgan and Clifford Law Offices filed a class action against Allstate Insurance Co. for allegedly unlawfully collecting and selling data from more than 45 million consumers to raise premiums.

The consumer class action comes on the heels of Attorney General Ken Paxton's enforcement action against Allstate and its subsidiary Arity LLC under the Texas Data Privacy and Security Act, which was filed Monday in Montgomery County, Texas.

The Texas state action and the class action both allege Allstate created software on third-party apps to collect data on consumers' driving behavior without their knowledge. In addition, the data was sold to other insurance companies and used for Allstate's underwriting purposes to raise prices, the suits alleged.

The class action was filed in the Northern District of Illinois on Tuesday, and goes further than the claims on behalf of Texas consumers in the state action to encompass a national class.

"The approach here is to advance the interest of all consumers who used upstate as its insured," John Yanchuynis of Morgan & Morgan said. "The class action device, particularly here, allows us to do that."

Yanchuynis is one of the attorneys for the proposed class. Since 1999, Yanchuynis has focused on data privacy and technology law, and has certified two class actions involving violations of data privacy against Google involving the incognito browser and the Google Analytics for Firebase tool.

The biggest challenge in a case like this, Yanchuynis said, is to get the class certified. This involves educating judges on the importance of privacy rights and the repercussions.

"Sometimes people think of damage as something that you can see," Yanchuynis said. "Here, sometimes the harms are not as ascertainable. So, you have to be better at describing how when information is taken, despite the absence of consent by the consumer, what the effect of that means. One, it's a violation of our freedom of choice, but also, people's information here was harvested without their consent and knowledge for the use by an insurance company to price its product."

While the lawsuit discusses the third-party apps with the integrated software like Life360 and Sirius XM, Yanchuynis said naming the apps as defendants would complicate things with subclasses.

Going against Allstate and Arity solely is "advancing the interest of all consumers who use the apps that Allstate used or collected information from, so it's a broader based approach to provide the relief for many more people," Yanchuynis said.

Allstate did not immediately respond to a request for comment, but in a statement from Tuesday, the insurance company pushed back against the allegations.

"Arity helps consumers get the most accurate auto insurance price after they consent in a simple and transparent way that fully complies with all laws and regulations," Allstate said in a statement.

The class action brought its claims under the Federal Wiretap Act, the Computer Fraud and Abuse Act and invasion of privacy.

"Be careful who you give your information to, and be well informed of how they're going to use it," Yanchuynis said. "One of the biggest problems in the world is companies do not provide information about their collection and whom they're selling it to and what those buyers are using that information for. It's a real problem."

Read the complaint:

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Litigation

Jan. 17, 2025, 11:43 AM PST

P&G Accused of Greenwashing Charmin's Forest Protection Efforts

By [Shweta Watwe](#)

- **COURT:** W.D. Wash.
- **TRACK DOCKET:** [No. 2:25-cv-00108](#) (Bloomberg Law subscription)

Procter & Gamble Co.'s label pledges that Charmin toilet paper supports forest preservation are greenwashed promises that mislead buyers seeking ethically sustainable products, a proposed class action alleged.

The consumer goods company "has been complicit in the clear cutting of untouched ancient primary forests in order to sell billions of dollars of single use toilet paper—all the while reassuring consumers with false claims that it was helping to regrow and restore these unique forests," the complaint filed Thursday in the US District Court for the Western District of Washington said.

The consumers target Charmin's "Keep Forests as Forests" campaign, which includes a "protect-grow-restore" collection of promises. Charmin says it uses pulp certified by the Forest Stewardship Council, a non-profit that promotes responsible forest management through a certification system for forest products, to fulfill its "protect" pledge, the complaint said. Additionally, Charmin said it will plant at least two trees for every one used for the "grow" promise, and that it partners with Arbor Day Foundation to plant trees in areas affected by natural disasters for the "restore" promise, the complaint said.

Boreal Forest 'Deforestation'

But the company doesn't tell consumers that Charmin is sourced from harvests relying on harmful logging practices like cutting Canada's boreal forest, the consumers said. The company also doesn't tell consumers that it is merely replanting a single species and covering those trees with herbicides that eliminate other growth, the complaint said.

The growth and restoration promises are misleading because P&G is turning the boreal forest into "monoculture tree crops or 'plantations,'" the complaint said. "These Frankenforests degrade overall forest health, reduce biodiversity and alter the boreal forest's unique structure."

The consumers note that Canada's boreal forest is filled with confers and birches that haven't been altered by human activity and that "because of these unique characteristics, Canada's boreal forest provides refuge to a wide variety of wildlife" that includes salmon, black bears, caribou, and snowshoe hares.

P&G knows that these forests have unique benefits and intentionally says it is committed to no deforestation in its supply chain, the consumers say.

"But P&G's harvesting practices result in the opposite from the plain meaning of the term deforestation that would be understood by reasonable consumers," the complaint said. "By relying on an extremely narrow technical definition of 'deforestation,' P&G can skirt accountability for industrial practices" so long as "the area does not permanently change its land use designations."

The consumers wouldn't have purchased Charmin products or would have paid less for them if they'd known about the alleged deception. They seek damages under multiple state consumer protection statutes and for fraudulent concealment.

They want to represent Washington, California, Illinois, and Massachusetts classes of consumers who bought Charmin toilet paper between January 2021 and 2025. They also seek to represent two multistate classes.

P&G didn't immediately respond to a request for comment.

Hagens Berman Sobol Shapiro LLP and George Feldman McDonald PLLC represent the consumers.

The case is Lowry v. Procter & Gamble Co. , W.D. Wash., No. 2:25-cv-00108, complaint filed 1/16/25 .

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AI startups cater to plaintiffs' law firms, drawing investors

[reuters.com/legal/legalindustry/ai-startups-cater-plaintiffs-law-firms-drawing-investors-2025-01-17](https://www.reuters.com/legal/legalindustry/ai-startups-cater-plaintiffs-law-firms-drawing-investors-2025-01-17)

Sara Merken

AI (Artificial Intelligence) letters and robot hand are placed on computer motherboard in this illustration taken, June 23, 2023. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights , opens new tab

Jan 16 (Reuters) - Artificial intelligence startup Eve on Thursday said it raised \$47 million in a funding round led by Andreessen Horowitz to continue building its AI platform for personal injury law firms and other plaintiffs' lawyers.

Venture capital firms Lightspeed Venture Partners and Menlo Ventures also participated in the round for the San Francisco-based company.

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Personal injury and mass torts litigation have become hot segments for investment in the legal technology market, said Scott Mozarsky, a managing director at M&A advisory firm JEGI CLARITY. He said AI can help plaintiffs' firms address workflow inefficiencies and improve transparency.

Jay Madheswaran, Eve's CEO and co-founder, said its technology lets firms take on more cases and increase revenue by improving client intake and case evaluation, document and demand letter drafting, and other litigation tasks.

In October, AI startup EvenUp raised \$135 million in a funding round led by Bain Capital Ventures, valuing the company at over \$1 billion.

EvenUp said its platform for personal injury lawyers, which provides insights and helps with drafting documents, is powered by an AI model trained on personal injury cases, medical records and internal legal expertise. It has raised \$235 million total.

Another AI startup focused on personal injury and mass tort firms, Supio, raised \$25 million in August. Another, Darrow, raised \$35 million in September 2023.

AI startups have contributed significantly to the recovery of U.S. venture capital funding from market lows, with the total capital raised in 2024 nearly 30% higher year-on-year, according to PitchBook data.

Legal technology companies that offer AI tools for corporate law firms and in-house legal teams, such as Harvey, have raised hundreds of millions of dollars from investors.

Reuters' parent company Thomson Reuters, which also owns Westlaw, is another competitor in the legal technology field.

Reporting by Sara Merken

Sara Merken

Thomson Reuters

Sara Merken reports on the business of law, including legal innovation and law firms in New York and nationally.

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SCOTUSblog Founder Indicted In Wild Poker-Fueled Tax Case

 abovethelaw.com/2025/01/scotusblog-founder-indicted-in-wild-poker-fueled-tax-case

Joe Patrice

January 16, 2025

Small Law Firms

Tom Goldstein's last few years were really something.

By Joe Patrice

on January 16, 2025 at 6:20 PM

The last time we heard from SCOTUSblog co-founder and veteran Supreme Court litigator Tom Goldstein, he was explaining why Donald Trump should be excused from all his criminal cases because winning the electoral college is basically the same as a New York state law acquittal. It seems as though Goldstein might have had some extra motivation to curry favor with Trump now that it's come to light that the federal government has been looking into Goldstein for tax evasion and loan fraud resulting in an indictment dropping this afternoon.



(image via Getty)

Where to even begin with this thing? It's really like Rounders in reverse except Teddy KGB has names like "California Businessman-1" and "Law Firm-2."

Over the course of several years, the indictment says that Goldstein racked up big winnings and bigger losses in high-stakes underground domestic and international poker matches. By the time of the alleged loan fraud, the feds say Goldstein was around \$16 million in the hole and failing to disclose that. And while he didn't report all his gambling income, a good deal of the tax problems revolve around using the firm, Goldstein & Russell, as a piggy bank to move money from firm coffers to pay personal gambling debts.

And, just for good measure, the indictment includes some extra personal and financial shenanigans:

GOLDSTEIN's Sham Employment Arrangements

11. Between 2016 and 2022, **GOLDSTEIN** was involved in, or pursued, intimate personal relationships with at least a dozen women, transferring hundreds of thousands of dollars to them from his financial accounts or joint bank accounts he set up with the women, and paying for travel and other expenses for many of them. **GOLDSTEIN** executed these financial transactions while he owed substantial amounts of money to the Internal Revenue Service ("IRS").

12. To supplement or supplant payments he was making personally to three of the women, and to pursue an intimate relationship with a fourth woman, **GOLDSTEIN** caused the four women to be nominally "hired" as employees of G&R at various points during 2018. That arrangement, **GOLDSTEIN** explained to the women, allowed the women to be paid by G&R and obtain health insurance under G&R's policy, for which G&R paid their premiums.

Paying four affairs while working with your wife... gotta say this has a real "Behind The Music" feel to it and man there are some storm clouds are on the horizon here.

Also, the infamous if apocryphal Biglaw memo where a partner asked a young lawyer to write a lengthy memo of local lunch options is now officially the second most lawyerly nonsense memo ever:

You can check out my liveblog of my initial reading of the indictment here.

Across 50 pages, the indictment describes heads up games in Macau, interfirm deals to use fees to offset debts, helping an actor get a Texas billionaire to pay up, using a litigation funder to cover losses, and crossing the border with a duffel bag filled with \$968,000.

And here we thought writing comical letters to porn stars threatening to sue was Goldstein's wild side.

(Check out the whole indictment on the next page...)



Joe Patrice is a senior editor at Above the Law and co-host of Thinking Like A Lawyer.

Leading US Supreme Court attorney Tom Goldstein charged with tax crimes

[reuters.com/legal/government/leading-us-supreme-court-attorney-tom-goldstein-charged-with-tax-crimes-2025-01-16](https://www.reuters.com/legal/government/leading-us-supreme-court-attorney-tom-goldstein-charged-with-tax-crimes-2025-01-16)

David Thomas



Thomas Goldstein, a U.S. Supreme Court advocate and the co-founder of SCOTUSblog, delivers a lecture at the University of North Carolina School of Law on March 20, 2019. University of North Carolina/Handout via REUTERS Purchase Licensing Rights [↗](#), opens new tab

Jan 16 (Reuters) - Tom Goldstein, a top U.S. Supreme Court attorney and publisher of the SCOTUSblog news website, was indicted on Thursday in Maryland federal court for allegedly failing to report millions of dollars he won in poker matches and using his former law firm's accounts to pay his gambling debts.

Goldstein, who was part of the team that represented former Vice President Al Gore in Supreme Court litigation over the 2000 U.S. presidential election, is facing 22 different charges, including tax evasion, preparing false and fraudulent tax returns, and failing to pay his taxes, according to the indictment [↗](#), opens new tab.

Goldstein's lawyers, John Lauro of Lauro & Singer and Christopher Kise of Continental, said in a statement that Goldstein would be exonerated and that they were "deeply disappointed that the government brought these charges in a rush to judgment without understanding all of the important facts."

A spokesperson for the Maryland U.S. attorney's office did not immediately respond to requests for comment. An editor of SCOTUSblog, which covers Supreme Court news, did not respond to a similar request.

Federal prosecutors described Goldstein as a high-stakes poker player. He allegedly borrowed millions of dollars to stake poker matches, underreported his gambling winnings, and used funds from his law firm, then known as Goldstein & Russell, to pay off his debts.

Prosecutors also alleged that Goldstein had sham employment arrangements with at least four women with whom he was romantically involved, using firm funds to pay for their salaries and their health insurance even though they did no work for the firm.

Goldstein has served as a top appellate attorney for "Fortnite" maker Epic Games in lawsuits against Apple and Google.

At the Supreme Court, where he argued more than 40 cases, Goldstein won a major victory for Google in 2021, when the justices said the Alphabet unit's use of Oracle's software code to build the Android operating system did not violate federal copyright law.

Goldstein said in March 2023 that he was retiring from his practice, and the law firm he co-founded with Kevin Russell was later renamed Russell & Woofter.

Russell on Thursday said his law firm has not been accused of wrongdoing and has cooperated with the government. "Mr. Goldstein is not, and has never been, an owner or employee of Russell & Woofter LLC," he said.

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Reporting by David Thomas

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- Suggested Topics:
- Government

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SCOTUSblog Co-Founder Tom Goldstein Misused Law Firm Funds, According to Federal Indictment

 [law.com/nationallawjournal/2025/01/16/scotusblog-co-founder-tom-goldstein-misused-law-firm-funds-according-to-federal-indictment](https://www.law.com/nationallawjournal/2025/01/16/scotusblog-co-founder-tom-goldstein-misused-law-firm-funds-according-to-federal-indictment)

Alyssa Aquino



Tom Goldstein, an appellate attorney and co-founder of SCOTUSblog, was charged Thursday with tax fraud by federal prosecutors who claim he misused firm funds to cover gambling debts from poker games involving millions of dollars and to pursue intimate relationships with women.

Goldstein faces 22 charges of tax evasion, preparing false tax statements and making false statements on loan applications in a 50-page indictment filed in the U.S. District Court for the District of Maryland.

The indictment alleged a pattern of misconduct beginning “at least” from 2016, many of which prosecutors connect to Goldstein & Russell, the Maryland boutique specializing in appellate law that Goldstein founded. He reportedly left the practice and retired in 2023. The firm now goes by Russell & Woofter.

The prosecutors also alleged that much of the debts concerned Goldstein’s gambling, claiming that he used a \$250,000 fee—paid by “Law Firm 1” a nationwide law firm that specializes in securities litigation—to fund his poker account. Goldstein also used, prosecutors alleged, \$175,000 in firm funds to pay a gambling debt owed to another client, “Law Firm 2,” a New York-based firm that represents clients in mass tort litigation.

Prosecutors also claim that Goldstein omitted \$3.9 million in gambling winnings on his 2016 tax forms, as well as \$3.4 million in winnings in his 2017 ones.

Prosecutors further alleged that Goldstein struck sham employment contracts with four women in 2018, allegedly using tens of thousands of dollars of firm funds to pay their salaries and health insurance premiums. The women performed little or no work at Goldstein & Russell, according to the indictment.

In a joint statement, John Lauro of Lauro & Singer and Christopher Kise of Continental, trial counsel for Goldstein, said their client intends to "vigorously contest" the charges.

"Mr. Goldstein is a prominent attorney with an impeccable reputation," the statement reads. "We are deeply disappointed that the government brought these charges in a rush to judgment without understanding all of the important facts."

Read the indictment:

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Why wouldn't SCOTUS take up Hawaii climate change case, as others fail around it?

legalnewsline.com/stories/668148133-why-wouldn-t-scotus-take-up-hawaii-climate-change-case-as-others-fail-around-it

January 17, 2025

Adler | <https://case.edu/law/our-school/faculty-directory/jonathan-h-adler>

The oil industry won a high-profile victory in New York this week, right on the heels of a bitter defeat as the U.S. Supreme Court refused to hear the appeal of a Hawaii Supreme Court ruling allowing a similar climate change case to proceed.

Climate litigation, pushed by contingency-fee lawyers who scored contracts with government officials, will likely continue on this path for a while as state courts hand down decisions in cases with multibillion-dollar implications while the the Supreme Court declines to intervene. While the court's conservative judges are considered by many to be pro-business, they also adhere to federalist principles that caution them against infringing on the authority of state courts.

"I don't think this court is particularly interested in policing state tort-law claims," said Jonathan Adler, professor of environmental law at Case Western Reserve Law School. "Thus it rarely accepts certiorari (review) in cases challenging massive tort judgments."

The high court let stand a \$2.1 billion Missouri talc verdict against Johnson & Johnson in 2021 and in 2009 conservative Justice Clarence Thomas joined the majority in refusing to overturn a Vermont state-court judgment holding a drug company liable for selling medicine that had been approved by the federal Food and Drug Administration.

Mutual respect, or comity, leads the Supreme Court to allow state court decisions to stand even when they appear to involve national or global questions, said Patrick Parenteau, an emeritus professor at Vermont Law School who studies climate litigation.

"I think they know they'll have another shot at it, and it will on the basis of a full record," said Parenteau.

The Hawaii case, for example, merely allowed the city of Honolulu and other government plaintiffs to proceed in state court on a theory the oil companies misled consumers into burning more fuel than they otherwise would, accelerating global warming. Those plaintiffs still have to convince a jury their theory makes sense and Honolulu was somehow damaged by it.

A New York judge decided New York City's case wasn't even worth putting in front of a jury, ruling the plaintiffs failed to state a claim. The industry has won similar rulings in Delaware and Baltimore, but faces dozens of common-law cases as private lawyers at firms like Sher Edling recruit cities and states to sue oil companies under state consumer-protection and fraud statutes.

Those cases have been carefully drafted to steer clear of federal pollution laws, which would allow defendants to drag them into federal court where they have had much greater success. They all rely on an as-yet unresolved question, however: Whether the federal Clean Air Act preempts these state claims.

The U.S. Supreme Court ruled the CAA preempts climate claims based on federal law but left open a narrow opening for cases claiming the oil industry misled consumers. This led to a long-running fight over where these cases should be heard, with the U.S. Supreme Court years ago sending them to state courts.

"Ultimately the question of federal preemption under the CAA has got to be resolved, and probably by the Supreme Court," Parenteau said.

In the meantime, the state cases grind on. They are different enough that the Supreme Court's conservatives have an excuse for refusing to intervene at this stage, Parenteau said.

Even in her dismissal ruling, New York Supreme Court judge Anar Rathod Patel noted New York law assumes consumers are "reasonable" and well-informed, and general corporate statements can't be used as evidence they mislabeled products. The plaintiff may have fared better in Massachusetts or Vermont, where the laws are looser, the judge said.

Pending climate cases in state court "are all different," Parenteau said, some citing consumer statutes, other relying on common law. Supreme Court justices "are a little more chary when it comes to in one stroke saying state courts are entirely stripped of authority in this area."

The risk to the oil industry is that the state cases gain enough momentum, and potential damages, that they are forced to settle to avoid the risk of bankruptcy. As with lawsuits over tobacco and opioids, they can always pass the settlement costs through to consumers.

"I wouldn't be surprised to see some of the defendants peel off and try to settle, because these cases will go on for years," Parenteau said. But the richest companies may well fight on.

As the soon-to-be-replaced Solicitor General said in a brief urging the Supreme Court to reject the Hawaii appeal, the oil companies “have raised a lot of constitutional arguments, and they may win some of them,” Parenteau said.

The court faced a similar conflict between state and federal law in 2009 when it decided in *Wyeth v. Levine* to allow a Vermont Supreme Court decision stand, upholding a product-liability lawsuit over a drug that had been approved as safe and effective by the Food and Drug Administration.

Conservative Justice Clarence Thomas joined the liberals in that case, decrying what he thought was an excessive use of federal preemption to neuter state courts.

“The Court routinely invalidates state laws based on perceived conflicts with broad federal policy objectives, legislative history, or generalized notions of congressional purposes that are not embodied within the text of federal law,” Thomas wrote then.

Since then, the conservative majority has overturned the so-called *Chevron* doctrine that ordered federal courts to defer to agency interpretations of the law, further undermining preemption. Where that leaves climate litigation is anybody’s guess, but the court’s refusal to take up the Hawaii case indicates the conservatives didn’t have five votes to step in now.

ORGANIZATIONS IN THIS STORY

New York Supreme Court

BlackRock Inc

Tennessee drops BlackRock ESG suit after asset manager agrees concessions

State's attorney-general had accused \$11.6tn fund manager of breaching consumer protection rules



BlackRock promised to disclose the reasons for its votes on corporate proxies and avoid co-ordinating those decisions with other investors © Bloomberg

Brooke Masters in New York 2 HOURS AGO



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Tennessee has dropped its landmark lawsuit against BlackRock after the \$11.6tn money manager promised to increase disclosure and compliance around its use of environmental, social and governance factors in investing.

The state's Republican attorney-general Jonathan Skrmetti sued [BlackRock](#) in 2023, accusing the money manager of violating consumer protection laws and taking an inconsistent approach about whether it prioritised ESG considerations over investment returns.

Tennessee and BlackRock settled on Friday, with the latter promising to disclose the reasons for its votes on corporate proxies and avoid co-ordinating those decisions with other investors. BlackRock will also submit to compliance audits to insure that the votes cast by non-ESG funds are made for financial reasons.

BlackRock recently [resigned from Net Zero Asset Managers](#), a group that co-ordinated industry concerns on climate change.

There was no fine or finding of consumer harm. Tennessee reserved the right to refile the lawsuit if BlackRock does not comply.

The lawsuit was part of a multifront blitz against the world's largest asset manager and sustainable investing more broadly. Several states have added BlackRock and other financial firms to boycott lists for alleged hostility to fossil fuel, and federal regulators have questioned whether the group is a truly passive investor.

BlackRock said: "We're pleased to resolve this matter. BlackRock has consistently acted in the best interests of our clients, and we welcome the opportunity to demonstrate that fact through even greater transparency about our practices."

"This resolution assures that the money Tennesseans invest with BlackRock is managed consistent with the funds' disclosures," said Skrmetti.

"While investors are always free to buy cause-oriented products instead of focusing on maximum return, this settlement ensures that only investors who make a knowing choice will see their assets directed towards these non-financial goals."

A multistate antitrust lawsuit alleging that BlackRock, State Street and Vanguard conspired to curtail coal supplies to further "a destructive, politicised environmental agenda" is still pending.

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Securities Law

Jan. 17, 2025, 10:54 AM PST

BlackRock Settles With Tennessee Over ESG Strategy (1)

By Saijel Kishan

- In deal, BlackRock will boost transparency of voting practices
- Money manager says it always acts in best interest of clients

Tennessee said it settled a lawsuit with BlackRock Inc. after accusing the world's largest money manager of allegedly breaching consumer protection laws by making "misleading" statements about its ESG investment strategy.

"This resolution assures that the money Tennesseans invest with BlackRock is managed consistent with the funds' disclosures," Tennessee Attorney General **Jonathan Skrmetti** said in a statement on Friday.

The attorney general's lawsuit, filed in December 2023, alleged that BlackRock's non-environmental, social and governance funds were being unfairly impacted by the money manager's membership in climate groups, its shareholder-voting record and the pressure it puts on companies to move away from fossil fuels.

As part of the settlement, BlackRock agreed to boost transparency of its shareholder voting practices and enact compliance measures, including independent audits. And for funds that don't have specific objectives beyond financial performance, BlackRock commits to back shareholder proposals solely to further the financial interests of investors, according to Skrmetti.

A BlackRock spokesman said in an email that the firm is pleased to resolve the case. The company said in the statement that it has consistently acted in the best interest of clients, and "we welcome the opportunity to demonstrate that fact through even greater transparency about our practices."

BlackRock, which manages \$11.6 trillion, has been the target of a barrage of legal actions from Republican politicians after it championed addressing climate change. In response, Chief Executive Officer Larry Fink has said he no longer uses the ESG label because it's become too politicized. The Tennessee lawsuit was the first by a GOP official against an investment firm for its ESG strategy.

In November, BlackRock, along with Vanguard Group Inc. and State Street Corp. , was sued by [Texas and other Republican-led states](#) for allegedly breaching antitrust laws by using climate-friendly investment strategies to suppress coal production. BlackRock said the suggestion that it invested in companies with the goal of harming them "is baseless and defies common sense."

The three largest money managers also were [the focus of a report](#) last month from the GOP-led House Judiciary Committee that said it found "evidence of collusion and anticompetitive behavior" by the financial industry to "impose radical ESG-goals" on US companies.

According to terms of the Tennessee settlement, BlackRock will cast shareholder votes without coordinating or communicating its plans with groups outside the firm. It will keep records that describe the rationale for not voting with the recommendations of corporate executives on environmental and social shareholder proposals, and will publicize on its website a record of votes on a quarterly basis, rather than on annual basis as required by US regulators.

BlackRock also agreed not to include "sustainability characteristics" such as ESG ratings in documentation for non-ESG funds. It will use terms, including "financially materiality," when communicating with investors in Tennessee and publicize any of memberships with environmental groups on its website. BlackRock left the Net Zero Asset Managers initiative last week.

The Tennessee settlement follows the decision last year by a New York judge to [dismiss a lawsuit](#) from a conservative group filed against New York City pension funds over their decision to sell billions of dollars of fossil-fuel holdings.

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Student Loan Trusts Settle CFPB Suit After High Court Rejection

By Evan Weinberger

- CFPB said trusts' debt collectors violated federal law
- Trusts said they weren't responsible for third-party servicers

Student loan investment trusts agreed to pay \$2.25 million to resolve Consumer Financial Protection Bureau claims that they filed illegal debt collection lawsuits after the US Supreme Court declined to hear the case.

The National Collegiate Master Student Loan Trust also agreed to stop collecting debts covered by the CFPB's enforcement action, according to a joint stipulation filed Thursday in the US District Court for the District of Delaware.

Judge Stephanos Bibas will have to approve the settlement before it takes effect.

The CFPB sued the trusts, a collection of 15 related investment vehicles that bought and securitized student loans, in 2017 alleging debt collection violations by third-party collectors.

The trusts argued they shouldn't be subject to CFPB jurisdiction because they were passive investment vehicles.

A federal district court judge rejected that argument in 2021 and the US Court of Appeals for the Third Circuit affirmed the lower court's ruling last year.

The Supreme Court rejected the trusts' petition for review last month, allowing the CFPB to continue policing them.

Patterson Belknap Webb & Tyler and Pinckney, Weidinger, Urban & Joyce LLC represent the trusts.

The case is Consumer Fin. Prot. Bureau v. Nat'l Collegiate Master Student Loan Trust , D. Del., No. 1:17-cv-01323, Stipulated Judgment and Order 1/16/25

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"In light of all this heads-I-win, tails-you-lose legal nonsense, it is hard to blame the millions upon millions of Americans who have given up on the system, and on legal institutions that increasingly pretend they are predicated on principle."

— CFPB General Counsel Seth Frotman



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"In light of all this heads-I-win, tails-you-lose legal nonsense, it is hard to blame the millions upon millions of Americans who have given up on the system, and on legal institutions that increasingly pretend they are predicated on principle. If over the course of a presidential administration, a federal agency is unable to change a regulation based on a raft of new data, or to update a 55-year-old rule rooted in the days when everyone routinely used checks, it may be time to unsparingly and unequivocally state that much of the system is rigged, and many of our institutions are broken.

"So we must ask ourselves: what is the fall out? Memo after memo, brief after brief, opinion after opinion, I find myself with the gnawing question: at this moment in time, can our government effectuate national policymaking that tries to help those without power? Far too often, the answer is no.

"And that necessarily leads to the next and even more troubling question: given the extent that our legal system is deployed to block the legitimate action of the elected branches, what does that say about the state of our democracy? It is hard not to see this as a coordinated and ruthlessly effective effort to render the voters' and their representatives' decisions meaningless – to try to nullify the decisions actually made in the halls of Congress, not to mention the debate we had in the national campaign four years ago. We often hear complaints that people in only a handful of swing states decide nationwide policy. If only that were the case. It is increasingly apparent that some number of unelected judges have appointed themselves our nation's decisionmakers. Those who care about the law have allowed it to get hijacked, and it is no surprise that Americans have the lowest opinion of the judiciary in recent memory."

— CFPB General Counsel Seth Frotman, Prepared Remarks at the University of Michigan: "The Federal General Counsel, Law, and Our Democracy at a Crossroads" (Jan. 7, 2025).

January 17, 2025 at 9:03 AM  Everybody can reply

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<https://www.consumerfinance.gov/about-us/newsroom/the-federal-general-counsel-law-and-our-democracy-at-a-crossroads/>

Yet over the past three years, it was hard not to realize – in the face of the massive, multi-million-dollar effort against everything we did – how little cavalry there was. We have some wonderful friends and supporters, but not nearly enough. There are simply not that many lawyers who get to wake up every day thinking about how to use the law to help everyday people. Legal aid attorneys, consumer and worker advocates, government lawyers – these are my heroes. But they are vastly outnumbered by the battalions of attorneys working the system in favor of the powerful. ^{fn146} There are too many lawyers pushing the boulder further and further back down the hill – the zealots and extremists who weaponize the law in support of their political ideology, and the many more lawyers who enable them.

I began by asking whether the federal government can plan and effectuate meaningful policy, whether the laws that Congress passed to address economic pain and uncertainty can be implemented as our elected representatives intended, and whether our institutions work for working people. We should all be concerned not only about what the answers are today, but

about where we will be tomorrow if the law, legal system, and legal profession do not fundamentally change course.

We need to confront the threats brought on by tech giants and a “platform-driven” economy, the attacks on our privacy, the increasing control of big business over workers and consumers alike, and all the ways that people are struggling. Yet we won’t be able to have an Economy for All or a Care Agenda or an Abundance Agenda – or any other prescription for a given problem or for the country writ large – if we do not confront the obstacles standing in the way of the government’s ability to deliver. All the policy ideas in the world – all the proposed regulations and model bills and campaign promises – won’t make a difference if the legal system blocks our democracy.

We are at a crossroads in our country today because nothing is ever going to change if we do not fix what is broken with our institutions. We need real solutions, and we need them now. We need to address the crisis of lawbreaking that is devastating working people. We need real reform of the legal system, to make changes that will last. And we need government lawyers thinking more about the laws that they administer, helping lead their agencies to meet the challenges of the moment, and never being satisfied with how things have always been done.

Former FirstEnergy executives charged in Ohio bribery scheme

🌐 [cincinnati.com/story/news/crime/2025/01/17/former-firstenergy-executives-charged-in-ohio-bribery-scheme/77773047007](https://www.cincinnati.com/story/news/crime/2025/01/17/former-firstenergy-executives-charged-in-ohio-bribery-scheme/77773047007)

CRIME

Former FirstEnergy executives face federal charges in massive bribery scheme



Two former FirstEnergy executives were indicted in connection with a massive statewide bribery scandal that put one of Ohio's most powerful politicians in federal prison.

Former FirstEnergy CEO Chuck Jones and ex-Senior Vice President of External Affairs Michael Dowling are accused of bribing state officials to pass a \$1 billion bailout for the company's nuclear plants and to eliminate regulatory hurdles.

"This alleged \$60 million racketeering conspiracy defrauded Ohioans to enrich the defendants," FBI Cincinnati Special Agent in Charge Elena Iatarola said. "The FBI will continue to pursue political corruption and corporate fraud to protect taxpayers and hold white-collar criminals responsible for their actions."

Both were indicted under the Racketeer Influenced and Corrupt Organizations Act, a charge created to prevent organized crime and fight against drug kingpins. Jones, 69, of Akron, and Dowling, 60, of Massillon, were turning themselves in to federal authorities Friday morning.

Ohio Gov. Mike DeWine would not comment on the indictments during a press conference on Friday.

Prosecutors allege that Jones and Dowling participated in bribery, money laundering and obstruction to increase the company stock price and enrich themselves. FirstEnergy fired the two men in October 2020.

The Akron-based company previously pleaded guilty to bribing former Ohio House Speaker Larry Householder and former Public Utilities Commission of Ohio Chairman Sam Randazzo – two public officials in powerful positions to help the company. The company paid a \$230 million fine and agreed to cooperate with federal investigators.

FirstEnergy spokesperson Jennifer Young said the company can't comment on the new indictment but noted that in the intervening years "FirstEnergy is a different, stronger company that has taken significant steps to move forward."

Householder was sentenced to 20 years in federal prison for his role in the scheme, which involved recruiting Republicans to win control of the House and passing the controversial House Bill 6, which included a \$1 billion bailout for two nuclear plants then-owned by a FirstEnergy subsidiary. Former Ohio Republican Party chairman Matt Borges received a five-year prison sentence for his role.

Randazzo was accused of accepting a \$4.3 million bribe to help pass that law and ease regulatory hurdles for the company. He had pleaded not guilty. The case was dismissed after he died by suicide last April.

A statehouse scandal fueled by dark money

Even before Friday's announcement, the case has had a huge impact: Householder and Borges are convicted and imprisoned, two co-conspirators Jeff Longstreth and Juan Cespedes pleaded guilty and are awaiting sentencing, lobbyist Neil Clark and Randazzo both died by suicide, and FirstEnergy changed its leadership and board.

The latest development marks the first time federal authorities have charged the bribers instead of the bribe recipients.

The indictment paints a picture of how FirstEnergy executives used money and influence to their own advantage at the Ohio Statehouse. After House Bill 6 passed, Jones sent a photoshopped version of Mount Rushmore, featuring Randazzo's and others' faces on it.

The caption read: "HB 6 F*** ANYBODY WHO AINT US."

In October 2016, the executives pledged to the FirstEnergy board that the company value would be increased by 27%. But at the same time, the utility faced a weak energy market and hundreds of millions of dollars in losses, especially from FirstEnergy Solutions, its nuclear power subsidiary. To turn the company around, Jones and his team pursued bailouts from federal and state officials.

In 2018, FirstEnergy Solutions filed for bankruptcy and said it would close its nuclear power plants absent a government bailout.

FirstEnergy used dark money groups to help Householder amass political power and become Ohio House speaker. In April 2019, Householder unveiled House Bill 6, which would require 4.5 million Ohio consumers to pay fees on their monthly electric bills to help keep the nuclear plants open.

It paid millions of dollars to Randazzo and his companies, including a \$4.3 million payment shortly before he applied to chair the Public Utilities Commission of Ohio.

Even after the scandal became public and lawmakers repealed the subsidies, FirstEnergy Solutions, which emerged from bankruptcy under the name Energy Harbor, kept the plants open and operating.

The federal indictment says that Jones and Dowling purposely used dark money groups because the source of funds didn't have to be disclosed.

"Huge bet and we played it all right on the (state) budget and HB6, so we can go back for more!" Dowling said in a text to Jones the day that DeWine signed the bailout into law.

The indictment details FirstEnergy's plans to "Win the National Championship" – a reference to getting favorable action in the state budget, House Bill 6 and in front of the PUCO.

When the charges against Householder became public in July 2020, FirstEnergy copied everything on Jones' company cell phone. Months later, FirstEnergy took the phone from Jones again to re-copy its contents but found that thousands of messages relevant to the investigation had been deleted, according to the indictment. Messages between Dowling and Jones were also missing from Dowling's company phone.

U.S. Attorney for the Southern District of Ohio Ken Parker and his team are prosecuting the case against Jones and Dowling nearly two years after they won convictions against Householder and Borges.

Parker is an appointee of the Biden administration and may step down in the near future. Parker inherited the Householder and Borges case from federal prosecutor David DeVillers, a Trump appointee who stepped down in February 2021.

The Jones and Dowling cases are assigned to U.S. District Court Judge Timothy S. Black, who heard the case against Householder and Borges.

Last February, Ohio Attorney General Dave Yost, a Republican, charged Jones and Dowling in state court with engaging in a pattern of corrupt activity. Both have pleaded not guilty to those offenses.

Read the federal indictment here:

This is a developing story that will be updated.

Litigation

Jan. 17, 2025, 9:09 AM PST

Former FirstEnergy Executives Face Federal Racketeering Charge

By [Eric Heisig](#)

- Pair accused of working to pay bribes, commit money laundering
- Indictment comes after charges were filed in Ohio court

Two former FirstEnergy Corp. executives, including its former CEO, face a new federal indictment in a sprawling corruption case that involved more than \$60 million in bribes to the former Ohio House speaker and a top utilities regulator.

Former CEO Charles E. Jones and former senior vice president Michael Dowling are charged with participating in a racketeering conspiracy and face up to 20 years in federal prison. Their indictment was handed up Wednesday and unsealed Friday after they were in federal custody ahead of their arraignments, according to court records.

Both men—who face a separate criminal case in state court, with Jones also facing a Securities and Exchange Commission lawsuit—allegedly committed a series of crimes geared toward increasing the Akron, Ohio-based FirstEnergy's stock price and to enrich themselves. They included bribery, money laundering, and obstruction, the US Attorney's Office for the Southern District of Ohio said in a news release.

This included steering bribe money to former House Speaker Larry Householder (R) and Samuel C. Randazzo, a former attorney at McNees Wallace & Nurick LLC who became chairman of the Public Utilities Commission of Ohio, prosecutors said. Jones and Dowling worked so FirstEnergy could steer more than \$60 million to entities operated to benefit Householder during his ultimately successful bid for House speaker and his push to pass a \$1.3 billion legislative package that bailed out two nuclear power plants owned by the utility at the time, according to authorities.

Jones and Dowling also pushed for Gov. Mike DeWine (R) to name Randazzo as the state's top utilities regulator; FirstEnergy then paid Randazzo's companies more than \$4.3 million in exchange for favorable actions in proceedings in front of the public utilities commission, according to federal officials.

Eight people have been charged because of the myriad investigations, which became public after the FBI arrested Householder, former Ohio Republican Party Chairman Matthew Borges and others in 2020. Householder, who was convicted in 2023 of the same charge that Jones and Dowling face, is serving a 20-year federal prison stint.

Randazzo died by suicide last April while facing state and federal charges, some of which stemmed from the alleged \$4.3 million bribe. His company pleaded guilty last month to state charges.

FirstEnergy has paid hundreds of millions of dollars in settlements with state and federal prosecutors and the SEC.

Jones is represented by BakerHostetler. Dowling is represented by Tucker Ellis LLP.

The case is United States v. Jones , S.D. Ohio, No. 1:25-cr-00006, indictment unsealed 1/17/25 .

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Feds charge former FirstEnergy CEO Chuck Jones, ex-senior vice president in bribery scheme

 1.next.westlaw.com/Document/I3dcecbd0d4fa11efa280fb7d6c9cbc2e/View/FullText.html

NewsRoom

1/17/25 cleveland.com (Cleveland, Ohio) (No Page)

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January 17, 2025

Jake Zuckerman; cleveland.com

COLUMBUS, Ohio - The U.S. Department of Justice on Friday charged FirstEnergy's former CEO Chuck Jones and senior vice president of external affairs Mike Dowling in two separate bribery schemes of top public officials to enact massively lucrative legislation for the company.

A spokeswoman announced the grand jury indictment Friday morning. Much, though not all, of the conduct alleged over its 42 pages has been publicized through more than five years of state and federal investigations into the passage of House Bill 6 in 2019 and the appointment of Sam Randazzo by Gov. Mike DeWine as Ohio's top utility regulator.

The indictment on federal racketeering charges seeks forfeiture, pending a conviction, from both men. In other words, besides losing their liberty for up to 20 years on the federal charges alone, they stand at risk of forking over millions.

Jones, 69, and Dowling, 60, haven't yet pleaded to the charges. The federal government has secured convictions or plea deals from ex-Ohio House Speaker Larry Householder, accused of accepting bribes from the two FirstEnergy men; Jeff Longstreth, Householder's lieutenant, who admitted to facilitating the scheme; FirstEnergy's subsidiary's lobbyist Juan Cespedes, who did the same; and Matt Borges, who was convicted of paying a \$15,000 bribe to a campaign operative seeking to repeal HB6.

FirstEnergy Corp. - after it fired Jones, Dowling, and several others associated with the bribery schemes - admitted as a corporate entity in 2021 to its role bribing both Householder and Randazzo. The company agreed to pay a \$230 million penalty and cooperate with the investigation. In exchange, the government agreed to drop an honest services wire fraud charge against it.

Householder and Borges were convicted in March 2023 in an investigation that started in 2019. It's unclear why U.S. Attorney for the Southern District of Ohio Ken Parker did not secure charges against the executives until the waning days of his tenure, more than five years after the first batch of charges.

They come mere days before President-elect Donald Trump takes office, and new presidents often bring with them new U.S. attorneys.

They also come nearly a year after Attorney General Dave Yost charged Jones and Dowling in state court over some of the same conduct. The executives have pleaded not guilty in the state case. Typically, the Justice Department does not charge for the same crimes after the state, but the new indictment covers more ground.

U.S. District Judge Timothy Black will preside over the matter, as he did in the federal cases against Householder, Borges, Cespedes and Longstreth. The docket doesn't list a date or time for an initial appearance, and a judicial assistant on Friday said she had no further information on the timing.

The charges cover some familiar territory. Jones and Dowling, prosecutors say, spent years pumping millions of dollars into Generation Now, a "social welfare" nonprofit commonly referred to as a "dark money" group, to support the elections of Householder and a slate of insurgent Republicans who would vote him into the Speaker's office. From there, Householder championed passage of HB6, leveraging the power of one of the most important slots in state government to see it through. After HB6 passed, Generation Now became the campaign to aggressively and sometimes violently thwart an effort to gather more than 250,000 Ohioans' signatures in order to repeal the bill. All told, FirstEnergy and its subsidiary gave Generation Now about \$60 million.

Most of the money was spent on the repeal. A hearty chunk went to Householder and his allies' political campaigns. Generation Now's staff, meanwhile, earned six-figure salaries via Longstreth. And more than \$514,000 of Generation Now's money also flowed to paying down a legal judgement against Householder's personal business, his personal credit card debts, and repairs to a Florida home he owned.

Separately from Householder, Jones and Dowling are accused of paying a \$4.3 million bribe to attorney Sam Randazzo. The money paid for Randazzo, an influential figure among Statehouse conservative on energy matters, to lobby for HB6. Randazzo also issued

favorable rulings to the company, including waiving regulatory review of its charges to customers and whether some of its charges were "significantly excessive."

Randazzo died by suicide in April 2024 while under both state and federal indictment. He was 74. His business, inherited by his widow, pleaded guilty to wire fraud and money laundering charges. Neil Clark, a lobbyist who worked on both passing the bill and stymieing the repeal, also died by suicide before his trial. He was 67. Jones and Dowling were charged in state court in February 2024 with bribing Randazzo. They pleaded not guilty.

Prosecutors say Jones and Dowling sought personal enrichment by the scheme. As evidence, they say \$60 million of the \$65 million Jones earned between 2015 and 2019 was performance-based, as measured against the company's share price.

Cleveland.com reached out to attorneys representing Jones and Dowling.

After FirstEnergy received criminal subpoenas for Jones' iPhone, it downloaded a digital copy of its contents. Months later, it asked Jones for the phone again, only to find thousands of messages missing, the indictment states. Dowling's phone too, was turned over with communications between the two "missing from the phone when it was imaged."

Jake Zuckerman covers state politics and policy for Cleveland.com and The Plain Dealer.

---- Index References ----

Company: FIRSTENERGY CORP.; THE NOW GENERATION MINISTRIES CIC; Far Eastern Department Stores Ltd.

News Subject: (Crime (1CR87); Criminal Law (1CR79); Financial Fraud (1FI18); Fraud (1FR30); Government (1GO80); Government Litigation (1GO18); Legal (1LE33); Lobby & Pressure Groups (1LO18); Social Issues (1SO05))

Region: (Americas (1AM92); North America (1NO39); Ohio (1OH35); U.S. Midwest Region (1MI19); USA (1US73))

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Other Indexing: (U.S. Department of Justice; FirstEnergy Corp.; Generation Now; Feds) (Chuck Jones)

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Document

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GRAND JURY INDICTS 2 FORMER FIRSTENERGY EXECUTIVES IN RACKETEERING CONSPIRACY INVOLVING MORE THAN \$60 MILLION IN BRIBERY SCHEMES

 1.next.westlaw.com/Document/I5c0270e0d4f311efa280fb7d6c9cbc2e/View/FullText.html

NewsRoom

1/17/25 States News Serv. 10:50:05

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January 17, 2025

CINCINNATI

The following information was released by the United States Attorney's Office Southern District of Ohio:

Two former FirstEnergy executives have been indicted by a federal grand jury and charged with one count of participating in a racketeering (RICO) conspiracy.

Charles E. Jones, 69, of Akron, and Michael Dowling, 60, of Massillon, will be scheduled to appear in federal court in Cincinnati today. The indictment was returned on Jan. 15 and unsealed this morning.

It is alleged that Jones and Dowling participated in an enterprise (FirstEnergy Corp. and its subsidiaries) through a pattern of racketeering activity including bribery, money laundering and obstruction to increase the company's stock price and enrich themselves. Although the defendants helped pursue the legal interests of FirstEnergy, Jones and Dowling also corrupted FirstEnergy by allegedly abusing their positions of trust and engaging in criminal activities in pursuit of personal and commercial gain.

Jones served in senior executive positions for FirstEnergy, including as President and CEO, from approximately 2015 until his employment was terminated in 2020. During that time, Jones made approximately \$65 million in compensation. Approximately \$60 million of his

earnings came from performance-based pay tied, in part, to FirstEnergy stock prices. Dowling served as Senior Vice President at the time of his termination in 2020. Part of his pay was also tied to company financial performance and growth.

The 42-page indictment details the ways in which Jones and Dowling allegedly acted in support of the RICO conspiracy, including schemes to bribe former Ohio House Representative Larry Householder and former PUCO Chairman Samuel Randazzo.

According to the indictment, between 2017 and March 2020, FirstEnergy paid more than \$59 million to 501(c)(4) entity Generation Now, which Jones and Dowling knew was operated for the benefit of and controlled by Householder. The bribe money helped Householder gain the position of Speaker of the House and pass and uphold House Bill 6, a billion-dollar nuclear plant bailout to benefit FirstEnergy.

It is alleged Jones and Dowling used a different 501(c)(4) entity, Energy Pass-Through, to fund with FirstEnergy money and direct payments to Generation Now and other entities they believed were associated with public officials for FirstEnergy's and the officials' benefit. Dowling allegedly referred to the 501(c)(4) as a "political tool."

The indictment also alleges that Jones and Dowling pushed for FirstEnergy-approved appointments to the state public utilities board, including Randazzo as PUCO Chairman. In January 2019, FirstEnergy allegedly paid Randazzo's companies more than \$4.3 million for Randazzo providing favorable official actions for FirstEnergy through PUCO proceedings.

The indictment alleges that Jones referred to Householder as his "expensive friend," and thanked Randazzo after PUCO, under Randazzo's leadership, took action in 2019 that Jones attributed to raising FirstEnergy's stock price.

After the passage of House Bill 6, Dowling wrote, "Huge bet and we played it all right on the budget and HB 6 so we can go back for more!"

"I stated following the jury conviction of Householder and Borges that this office would continue to work tirelessly to hold more people accountable for their actions to harm Ohioans, and we have," said U.S. Attorney Kenneth L. Parker. "This indictment is yet another step in the direction of that accountability."

"This alleged \$60 million racketeering conspiracy defrauded Ohioans to enrich the defendants," stated FBI Cincinnati Special Agent in Charge Elena Iatarola. "The FBI will continue to pursue political corruption and corporate fraud to protect taxpayers and hold white-collar criminals responsible for their actions."

The RICO conspiracy as charged in this case is punishable by up to 20 years in prison.

Kenneth L. Parker, United States Attorney for the Southern District of Ohio; and Elena Iatarola, Special Agent in Charge, Federal Bureau of Investigation (FBI), Cincinnati Division; announced the charges. Deputy Criminal Chief Emily N. Glatfelter and Assistant United States Attorney Matthew C. Singer are representing the United States in this case.

An indictment merely contains allegations, and defendants are presumed innocent unless proven guilty in a court of law.

---- Index References ----

Company: FIRSTENERGY CORP.; Federal Bureau of Investigation; UNITED STATES ATTORNEYS OFFICE FOR THE DISTRICT OF COLUMBIA

News Subject: (Crime (1CR87); Criminal Law (1CR79); Financial Fraud (1FI18); Fraud (1FR30); Government Litigation (1GO18); Legal (1LE33); Racketeer Influenced & Corrupt Organizations (RICO) (1RI18); Social Issues (1SO05))

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NewsRoom

Due Diligence **US & Canadian companies**

Is it time to short shorts?

Plus, Goldman chief cautions start-ups on going public and a dispatch from JPMorgan's healthcare deals conference



© Jakub Porzycki/Reuters

7 HOURS AGO



One thing to start: Rio Tinto and Glencore held talks as recently as October about combining part or all of their businesses, according to people familiar with the matter, but the discussions [didn't progress](#).

A potential tie-up: The owner of France's Natixis Investment Managers and Italian insurer Generali are close to announcing an agreement to create an asset management [joint venture](#) that would bring together two of the biggest European names in the sector.

And a scoop: France's Bureau Veritas [broke off](#) merger discussions with FTSE 100 group Intertek in favour of pursuing a €31bn combination with Swiss rival SGS, underscoring the appetite to consolidate in the certification sector.

Welcome to Due Diligence, your briefing on dealmaking, private equity and corporate finance. This article is an on-site version of the newsletter. Premium subscribers can sign up [here](#) to get the newsletter delivered every Tuesday to Friday. Standard subscribers can upgrade to Premium [here](#), or [explore](#) all FT newsletters. Get in touch with us anytime: Due.Diligence@ft.com

In today's newsletter:

- The endangered breed of short sellers
- Solomon says start-ups don't need IPOs
- On the ground at JPMorgan's San Francisco conference

Are short sellers in their final days?

Short selling has always been a tough way to make a living on Wall Street. **Warren Buffett** once mused that there were no short sellers on the Forbes 400 list of the wealthiest Americans.

Those who dare go against the market face the threat of litigation and private investigators. As Buffett noted, their targets are also highly motivated to keep their game going as long as possible.

Even established short sellers such as **Enron's** foil **Jim Chanos** have thrown in the towel. Trying to call out bad behaviour when the stock market is hitting new highs is a little like entering a party and telling everyone to turn down the music. No one wants to hear it.

Nathan Anderson of **Hindenburg Research** is the latest to [call it quits](#), announcing on Wednesday that his firm would be disbanding after seven years running.

He appears to be going out on a high note, calling time after he gripped financial markets with a series of high-profile short bets, most famously his probes of **Nikola Motors** in 2020 and **Adani Group**, which began in 2023.

Two months ago, Adani was charged by prosecutors in New York over what they said was a long-running bribery scheme. It appeared to vindicate many parts of Hindenburg's crusade, which roiled Indian financial markets.

Adani has called the allegations "baseless" and said it was seeking all "possible legal recourse".

For Anderson, the trade has bookended a short career in which his star burnt bright, thanks to the proliferation of dubious businesses taken public in 2020 and 2021 through special purpose acquisition vehicles.

Many of Anderson's targets are now virtually worthless, though a few like **Carvana**, his most recent bet, have seen their shares surge.

His withdrawal has created yet more questions about the future of short selling, particularly so-called activist short sellers who publish detailed research on their targets after they have put on positions betting on their decline.

In recent years, the practice has drawn deep scrutiny, partially because of how little money they have left to bet against companies. Researchers such as Hindenburg had turned to other funds to [bankroll their trades](#).

The **US Department of Justice** subpoenaed many short sellers as part of a dragnet of the practice, but Hindenburg was left untouched by the probe. The dizzying way in which short bets are funded has led to rising internal industry dissent.

"All of us are figuratively speaking looking into the abyss," one prominent short seller told DD. "All of the short sellers are at each other's throats on Twitter. I equate it to playing the fiddle while Rome is burning."

The political backdrop's also crucial: US president-elect **Donald Trump** is promising a deregulatory push that may make shorting even harder. He's also being advised by **Elon Musk**, whose company **Tesla** arguably has led to the greatest short selling losses in history.

Fittingly, perhaps, Anderson announced his retirement just days before Trump's inauguration.



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Chamber Slams Opioid Judge's PBM Audit Privilege Ruling

By Carolyn Muyskens

Law360 (January 16, 2025, 4:44 PM EST) -- The Sixth Circuit must step in to prevent a pharmacy benefit manager from being forced to turn over internal compliance audit documents, the U.S. Chamber of Commerce has said, arguing a lower court's decision threatens to undermine the existence of in-house counsel's attorney-client privilege.

The Chamber said the Ohio federal judge presiding over the multidistrict opioid litigation erred in finding that documents detailing Express Scripts Inc.'s internal investigations and compliance audits were not privileged.

"The decision below held the privilege inapplicable to internal audits regarding regulatory compliance, because the advice was supposedly for a business purpose. ... That conclusion ignores the legal nature and purpose of compliance audits and internal investigations, punishes corporations for trying to follow the law, and threatens the privilege's very existence in the context of in-house corporate practice," the Chamber said in an **amicus curiae brief** filed Wednesday.

The Chamber filed the brief in support of Express Scripts and co-defendant OptumRx Inc.'s petition for writ of mandamus filed Jan. 6 with the Sixth Circuit, challenging the opioid MDL judge's recent discovery orders.

In a December ruling, U.S. District Judge Dan A. Polster ordered Express Scripts to turn over audits and internal investigation reports prepared by or under the supervision of its legal department, Express Scripts said in its petition.

The judge agreed with a special master that the documents were not privileged because they predominately served a business, rather than a legal, purpose, and **later called** the pharmacy benefit managers' appeal of the matter a waste of time "border[ing] on frivolous."

In its brief Wednesday, the Chamber said the line between legal and nonlegal communications with in-house counsel can be difficult to draw at times, particularly when communications include both legal and nonlegal matters, but compliance audits and internal investigations are "quintessentially legal in nature" and must be shielded by attorney-client privilege.

In internal investigations and audits, companies look to lawyers' expert knowledge of complex state and federal regulatory regimes to assist them with compliance and evaluate risk, making such reviews predominantly legal advice, the Chamber said.

Judge Polster had found the reviews were mostly for business purposes on the grounds that compliance with regulations in such a heavily regulated industry is part of "day-to-day business operations."

The Chamber pushed back on that reasoning, saying all in-house legal advice is, at bottom, connected to business decisions. If the existence of a business purpose for a legal review meant the review could not be privileged, privilege would "effectively cease to exist for in-house attorneys," the Chamber said.

"Such an evisceration of the privilege will have deleterious consequences for businesses, consumers, and the rule of law," the Chamber warned.

Companies would be less inclined to be fully transparent with their in-house or outside counsel during internal audits or potentially forgo them altogether, given the risk of disclosure of the reviews in litigation, it argued.

"In short, the district court's rule would disincentivize companies from obtaining robust compliance audits by trained attorneys familiar with all relevant facts. That would likely lead to less compliance, which is not in society's interest," the Chamber said.

On the same day as the ruling regarding the Express Scripts documents, Judge Polster ordered the production of personnel files for employees of both pharmacy benefit managers who will be deposed in the bellwether proceeding.

The judge said the documents must be turned over to the city of Rochester, New York, the plaintiff selected for a bellwether trial over the pharmacy benefit managers' alleged role in the opioid epidemic.

Express Scripts and OptumRx have asked the Sixth Circuit to undo both orders, arguing their personnel files are unnecessary for the city to build its opioid case and disclosing them will invade employees' privacy.

The discovery orders were temporarily administratively stayed by the Sixth Circuit while the court considers if a longer stay is warranted as it considers the writ of mandamus.

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

The U.S. Chamber of Commerce is represented in-house by Jonathan D. Urick and Kevin R. Palmer of the U.S. Chamber Litigation Center, and by Robert E. Dunn of Eimer Stahl LLP.

OptumRx Inc. is represented by William H. Jordan, D. Andrew Hatchett and Brian D. Boone of Alston & Bird LLP.

Express Scripts Inc. and ESI Mail Pharmacy Service Inc. are represented by Christopher G. Michel, Michael J. Lyle and Jonathan G. Cooper of Quinn Emanuel Urquhart & Sullivan LLP.

The case is In re: Express Scripts, Inc. et al., case number 25-3006, in the U.S. Court of Appeals for the Sixth Circuit.

The multidistrict litigation is In re: National Prescription Opiate Litigation, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Yeji Jesse Lee. Editing by Lakshna Mehta.

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Chancery Nixes More Docs For Exxon-Pioneer Merger Suit

By **Jeff Montgomery**

Law360 (January 16, 2025, 6:39 PM EST) -- Ruling that "any further intrusions are unwarranted," Delaware's Court of Chancery on Thursday rejected a Pioneer Natural Resources stockholder bid for additional emails and text messages between the company's former CEO and Exxon Mobil Corp.'s top executive related to the two company's \$60 billion merger.

Senior Magistrate Judge Selena E. Molina, ruling by phone after a brief, "on the papers" trial on Jan. 9, declined to order Pioneer to add to document disclosures already made in the case, filed on Feb. 6, 2024.

Pioneer institutional investor Operating Engineers Construction Industry and Miscellaneous Pension Fund's suit focused on allegations that the company failed to secure a fair price in the all-stock merger, completed in May 2024.

At issue in part were stockholder arguments that Pioneer CEO Scott Sheffield engaged in unsupervised communications with Exxon CEO Darren Woods regarding the merger, which added millions to Sheffield's retirement package.

Although the stockholders argued that they had a credible basis to suspect that Sheffield "may have withheld material information" regarding the communications with Woods, showing a credible basis for the document demand "requires more than mere possibility" for court-ordered access to documents beyond those already disclosed, Senior Magistrate Molina said.

"Stockholders must present some evidence to suggest a credible basis from which a court can infer wrongdoing," the judge said. The case, the court noted, asserted reason to suspect failures to conduct a fair process, failure to secure a fair price, issuance of a materially misleading proxy and alleged concealment.

In a pretrial brief, attorneys for the stockholders argued that the informal communications "are vital to plaintiff's investigation, where Sheffield strengthened his counterparty's hand in negotiations, carried on private and unsupervised communications with the counterparty and repeatedly discussed price terms without prior authorization from his board."

Pioneer said in a pretrial brief that the stockholders' demands "beyond the hundreds of pages of formal board materials already produced was based on pure speculation of supposed wrongdoing."

Counsel for the company argued that the stockholders "abandoned" their original fraud-on-the-board theory, involving suggestions that Sheffield kept from the Pioneer board information on a more than \$2 billion impairment of an upstream business that the stockholders said led to a \$20 billion slide in Exxon's market capitalization.

Exxon's stock price at closing was higher than when the deal was announced, the company's attorneys argued in a brief. The company dismissed as "rank speculation" suggestions that Sheffield "backchanneled" with Woods about the percentage of ExxonMobil stock that Pioneer stockholders would own following the transaction, without telling the Pioneer Board.

In their pretrial brief, attorneys for the stockholders noted that an April 2023 report disclosed that Sheffield stood to receive \$15.8 million more in compensation if he were terminated as a result of a

change in control than if he retired. In April 2024, the company released an annual report showing that Sheffield's additional benefit from a merger had grown to \$35.3 million.

Senior Magistrate Molina confirmed in her ruling that some communications disclosed to Pioneer's board showed that the two executives discussed the merger, and "at trial counsel for defendants admitted there were additional electronic communications between Sheffield and Woods" that were not produced to the defense.

The stockholders, even if they made a "minimal" showing of a proper purpose, "failed to demonstrate that the remaining records are necessary and essential and narrowly" confined to that purpose.

Neither party's counsel spoke after the ruling.

Operating Engineers Construction Industry and Miscellaneous Pension Fund is represented by Michael J. Barry, Christine M. Mackintosh, Rebecca A. Musarra, William G. Passannante II and Demetrius M. Davis of Grant & Eisenhofer P.A.

Pioneer Natural Resources Co. is represented by David J. Teklits and Courtney Kurz of Morris Nichols Arsht & Tunnell LLP and Andrew Ditchfield, Michael Pucci and Allison Rutter of Davis Polk & Wardwell LLP.

The case is Operating Engineers Construction Industry and Miscellaneous Pension Fund v. Pioneer Natural Resources Co., case number 2024-0101, in the Court of Chancery of the State of Delaware.

--Editing by Rich Mills.



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Spirit Aero Hit With Chancery Suit Over \$8.3B Boeing Merger

By **Jeff Montgomery**

Law360 (January 16, 2025, 5:24 PM EST) -- A Spirit Aerosystems stockholder has launched a proposed class suit in the Delaware Chancery Court challenging the company's \$8.3 billion all-stock acquisition by its largest customer, Boeing, announced in July 2024, citing disclosure failures and other concerns.

Issues cited in the complaint filed late Wednesday include pressure created by a recent Airbus proposal to acquire Spirit and Airbus threats to seek damages for late deliveries, as well as alleged omissions of financial projections and other details and reports considered by Spirit's board.

"At the very least, Spirit shareholders are entitled to consider the same key inputs and analyses that the Spirit Board did in approving entry into the merger agreement," stockholder Royal B. Coburn Jr.'s complaint said.

Boeing is one of Spirit's largest customers, and the companies have had long-term supply agreements under which Spirit provides several products for Boeing's aircraft, the complaint states. Spirit's main products include aircraft fuselages, wing components and other supplies for both military and civilian aircraft.

The suit added another wrinkle to Spirit's rough outlook, which now includes litigation in multiple states, including the U.S. District Courts for the Southern District of New York, Eastern District of Virginia and claims linked to a recent, in-flight blowout of a Boeing 737 door panel in January 2024 as well as crashes of 737 aircraft in October 2018 and March of 2019. The SDNY complaint alleges that "quality failures were so severe and persistent that Boeing placed Spirit on probation from approximately 2018 through at least 2021."

Pending regulatory approval, the Spirit acquisition by Boeing, which has an equity value of \$4.7 billion, would close in the middle of 2025. Plans call for Spirit shareholders to receive Boeing shares under an exchange ratio based on Boeing's stock price. Each Spirit share would receive 0.25 shares of Boeing stock if Boeing is trading at or below \$149 per share and 0.18 shares if Boeing is selling at or above \$206.94. The value between the limits would be \$37.25 per share.

Prior to the suit, Coburn's attorneys sent Spirit a books and records demand seeking information on events leading up to the deal, the sales process and the company's disclosures.

The complaint said some provisions in the proxy resolved some of Coburn's concerns — including acknowledgment that Spirit financial adviser Morgan Stanley will receive a \$51 million fee if the deal closes. Other issues remained as the Jan. 31 stockholder vote approached, notably details regarding earlier talks in which a cash transaction had been proposed at \$40 per share.

"In particular, the proxy omitted material facts necessary for Spirit stockholders to cast informed votes at the Special Meeting with respect to the Merger" including financial projections provided to the board and details over Spirit CEO Patrick M. Shanahan's participation in negotiations on Spirit's behalf after Boeing approached him about becoming Boeing's next CEO. At the time the two sides were discussing a \$35.50 per share offer.

"There is no clear explanation of the measures taken to ensure that Shanahan's ongoing participation did not compromise the fairness of the negotiations," the complaint said.

The only projections in the proxy, Coburn's complaint said, is the final "base" plan that Moelis & Co. used in developing a fairness opinion in June 2024.

Absent from the proxy is a full summary of the financial analysis in Moelis' fairness opinion, the complaint said, adding that the proxy indicated that Moelis did not consider a selected "precedent" transactions analysis that was presented to the board.

Sought in the complaint is a finding that Spirit's directors breached their fiduciary duty and rescission of the merger agreement or an award of damages as well as costs and attorney fees for the litigation.

Spirit did not immediately respond to a request for comment.

Royal B. Coburn Jr. and the proposed class are represented by Blake A. Bennett of Cooch and Taylor PA, Juan E. Monteverde and Benjamin Vanderhyden of Monteverde & Associates PC and Joshua E. Fruchter of Wohl & Fruchter LLP.

Counsel for Spirit was not available.

The case is Royal B. Coburn Jr. v. Patrick M. Shanahan, et al, case number 2025-0029, in the Court of Chancery of the State of Delaware.

--Editing by Alex Hubbard.

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Vanguard To Pay SEC, States \$106M Over Surprise Tax Bills

By **Jessica Corso**

Law360 (January 17, 2025, 1:11 PM EST) -- The U.S. Securities and Exchange Commission was joined by dozens of state regulators Friday in announcing a \$106.4 million settlement with The Vanguard Group Inc. over claims that the company misled investors about the heightened capital gains taxes they would have to pay on certain retirement savings accounts.

The regulators claim that in 2020 Vanguard lowered the threshold for retail investors to switch from its Investor Target Retirement Funds to its Institutional Target Retirement Funds.

But the large number of customers who took them up on the offer meant that Vanguard was forced to sell off highly appreciated assets in its investor TRF, which left customers who stuck with that program with a large capital gains tax bill, according to the regulators.

"Materially accurate information about capital gains and tax implications is critical to investors saving for their retirements," Corey Schuster, leader of asset management unit inside the SEC's Division of Enforcement, said in a statement Friday.

Multiple states, including New York, Texas and New Jersey, joined the SEC in securing the settlement. The regulators said the \$106 million, which consists of disgorgement, prejudgment interest and civil penalties, will be distributed to harmed investors.

"Vanguard is committed to supporting the more than 50 million everyday investors and retirement savers who entrust us with their savings," a company spokesperson said in an email to Law360 Friday. "We're pleased to have reached this settlement and look forward to continuing to serve our investors with world-class investment options."

The company settled the cases without admitting or denying the allegations against it.

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EpiPen Direct Buyers, Mylan Ink \$75M Antitrust Deal

By **Lauren Berg**

Law360 (January 16, 2025, 7:51 PM EST) -- Mylan Pharmaceuticals has agreed to pay \$73.5 million to resolve claims it worked with Pfizer to inflate the price of the latter's popular auto-injecting emergency allergy medication EpiPen, a proposed class of direct purchasers told a Kansas federal judge Wednesday, bringing the total settlement to \$123.5 million.

The direct purchaser plaintiffs — KPH Healthcare Services, known as Kinney Drugs, FWK Holdings and César Castillo LLC — asked the court to greenlight their settlement with Mylan, which calls for the pharmaceutical company to pay \$73.5 million to benefit people who bought the EpiPen or a generic version directly from Mylan or Teva Pharmaceuticals for resale, according to the **motion for preliminary approval**.

Teva is not a party to the dispute.

"The settlement represents a substantial recovery for the settlement class — particularly in light of the many risks of continued litigation — and readily satisfies the applicable preliminary approval standard," the plaintiffs said.

Mylan, now part of Viatris, makes and markets the EpiPen device, while Pfizer manufactures the drug that goes inside the EpiPen. The drug companies were hit with the direct purchasers' lawsuit in February 2020, which accused them of working together behind the scenes to delay a generic EpiPen's market arrival and, therefore, keep the price artificially high.

After the suit was **tossed**, amended and **trimmed**, Pfizer agreed to shell out **\$50 million to exit** the dispute in a deal the plaintiffs called an "excellent result" for EpiPen purchasers. U.S. District Judge Daniel D. Crabtree gave his **final stamp of approval** in July.

Last month, Judge Crabtree **dashed** Mylan's hope of a judgment on the pleadings, saying the case must move on to the discovery phase. The judge said the plaintiffs' allegations that Mylan agreed to delay the market entry of a generic version of a blockbuster narcolepsy drug to convince Teva to delay a generic version of the injector are more than enough to establish a claim.

But Wednesday's proposed settlement with Mylan would close the book on the case and bring the direct purchasers' total recovery to \$123.5 million, according to the preliminary approval motion.

The plaintiffs said the settlement is fair, reasonable and adequate and that the relief is "excellent balanced against the costs, risks and delay of trial and appeal."

"Plaintiffs and settlement class counsel strongly believe in the merits of their claims asserted in the litigation against Mylan. They would not have fought so hard to advance these claims if it were otherwise," the motion states. "But plaintiffs recognize the substantial risks involved in continued litigation."

"Mylan has aggressively maintained that it did nothing wrong, that there was no conspiracy, and that settlement class members were not injured," the motion said. "Settlement class counsel are mindful of the inherent problems of proof and possible defenses to the claims asserted in this litigation and recognize the difficulties in establishing liability on a class-wide basis through summary judgment."

The deal further provides that class counsel — Mike Roberts of Roberts Law Firm US PC and Linda P. Nussbaum of Nussbaum Law Group PC as co-leads and Bradley T. Wilders of Stueve Siegel Hanson

LLP as liaison — can seek an attorney fee award of up to 33 ⅓% of the settlement fund, according to the motion.

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

The direct purchaser plaintiffs are represented by Norman Siegel, Bradley T. Wilders and Jordan Kane of Stueve Siegel Hanson LLP, Mike Roberts, Erich P. Schork and Sarah E. DeLoach of Roberts Law Firm US PC and Linda P. Nussbaum of Nussbaum Law Group PC.

Mylan is represented by Brian C. Fries and James Moloney of Lathrop GPM LLP and Adam K. Levin, David M. Foster, Carolyn A. DeLone, Mike Gendall and Christine A. Sifferman of Hogan Lovells.

The case is KPH Healthcare Services Inc. et al. v. Mylan NV et al., case number 2:20-cv-02065, in the U.S. District Court for the District of Kansas.

--Additional reporting by Hailey Konnath and Nadia Dreid. Editing by Drashti Mehta.

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Cherokee, Feds Reach \$80M Settlement In Accounting Fight

By Crystal Owens

Law360 (January 16, 2025, 8:49 PM EST) -- The Cherokee Nation and the federal government have settled a dispute for \$80 million after a D.C. federal court last year determined that the U.S. had not fulfilled its duty to provide the tribe with a full accounting of its federal trust assets, ending nearly a decade of litigation.

In a joint stipulation of settlement, the parties on Wednesday told a D.C. federal district court that they believed it is in their best interests **to settle the dispute**, resolving the tribe's remaining claims that include alleged mismanagement of non-monetary trust assets or resources and trust funds.

"Today, on behalf of the Cherokee people and our ancestors, we celebrate long sought justice for the mismanagement of our resources by the United States in the 20th century," Cherokee Nation Chief Chuck Hoskin Jr. said in a Wednesday statement.

The Cherokee Nation Council is now considering legislation penned by Hoskin and Deputy Chief Bryan Warner to invest the settlement funds into the construction of a justice center in Tahlequa, Oklahoma, that would house the tribe's Supreme Court, district court and attorney general's office.

Tribal council members will consider the legislation at a Jan. 30 Rules Committee meeting.

"Generations of injustice have given way to a new day of justice," Warner said in a Wednesday statement. "It is fitting that we use these settlement funds to strengthen our own justice system at a time when we need more strength than ever."

The payment is the largest single one-time settlement in the Cherokee Nation's history, according to the tribe, although it has received \$100 million total in various lawsuits from opioid retailers and manufacturers.

The Cherokee Nation first sued the U.S. Department of the Interior in 2016, but voluntarily dismissed that complaint in May 2019 in order to refine the case.

In 2019, the tribe **renewed its lawsuit**, alleging that the federal agency and its Bureau of Indian Affairs failed to account for their handling of tribal trust funds.

According to the tribe, it didn't know what assets, including financial accounts and other property, such as land, minerals and gas, remained under federal management and control. Absent that information, the Cherokee Nation said it had been unable to determine whether federal officials' management has caused trust losses.

Last September, a D.C. federal district court **found** that previous audits from the DOI secretary "do not satisfy her accounting obligations to the Nation," aligning with the February 2023 recommendation of a federal magistrate judge.

However, U.S. District Judge Trevor N. McFadden diverged from the magistrate judge on the scope of those obligations, ruling that the interior secretary's accounting duties are more circumscribed than previously recommended.

"Rather than finding a broad duty to account limited only by the common law, the court concludes

that the secretary's duty is grounded in federal statutes and reaches only so far as the statutory text permits," Judge McFadden said.

Two provisions of the 1994 American Indian Trust Fund Management Reform Act were central to the dispute: Sections 4011 and 4044.

Section 4011 requires the Interior secretary to "account for the daily and annual balance of all funds held in trust by the United States for the benefit" of a tribe or tribal citizen that have been deposited since June 1938, according to Judge McFadden's opinion.

Section 4044 required the DOI to submit a report to Congress reconciling the balance of all tribal trust fund accounts as of 1995.

The Cherokee Nation said in a Wednesday statement that it maintains the federal government failed to provide a proper accounting of its trust fund, which included land sale proceeds, coal leases, oil and gas development, and among other assets.

"For too long the United States undermined our tribal sovereignty and failed to manage and account for our natural resources," Council Speaker Mike Shambaugh said in a statement. "This settlement and the proposed investment represent justice and a way to move forward."

Counsel for the DOI couldn't immediately be reached for comment on Thursday.

The Cherokee Nation is represented by Chad Harsha of the Cherokee Nation Office of the Attorney General, Michael M. Frandina of Askman Law Firm LLC, Jason B. Aamodt, Krystina E. Phillips and Dallas L.D. Strimple of the Indian & Environmental Law Group and Anne E. Lynch and Michael D. Goodstein of Van Ness Feldman.

The government is represented by Jacob D. Ecker and Angela N. Ellis of the U.S. Department of Justice's Environment and Natural Resources Division, Dondrae N. Maiden, Shani N. Sumter, Victoria A. Cejas and Christopher K. King of the U.S. Department of the Interior and Thomas B. Kearns of the U.S. Department of the Treasury.

The case is Cherokee Nation v. Bureau of Indian Affairs et al., case number 1:19-cv-02154, in the U.S. District Court for the District of Columbia.

– Additional reporting by Ali Sullivan. Editing by Emily Kokoll.